State of California
AIR RESOURCES BOARD

Response to Significant Environmental Issues

Item: Notice of Public Hearing to Consider the Adoption of Regulations Establishing Procedures for Administrative Hearings for Citations Issued Under the Heavy-Duty Vehicle Roadside Smoke and Tampering Inspection Program

Agenda Item No.: 91-4-1

Public Hearing Date: May 9, 1991

Issuing Authority: Air Resources Board

Comment: No comments were received identifying any significant environmental issues pertaining to this item. The staff report identified no adverse environmental effects.

Response: N/A

Certified: Pat Hutchens
Board Secretary

Date: 7/8/91

RECEIVED BY
Office of the Secretary

JAN 21 1993

RESOURCES AGENCY OF CALIFORNIA

State of California
AIR RESOURCES BOARD

Resolution 91-26

May 9, 1991

Agenda Item No.: 91-4-1

WHEREAS, sections 39600 and 39601 of the Health and Safety Code authorize the Air Resources Board (the "Board") to adopt standards, rules and regulations and to do such acts as may be necessary for the proper execution of the powers and duties granted to and imposed upon the Board by law;

WHEREAS, Senate Bill (SB) 1997 (Stats. 1988, ch. 1544) added section 44011.6 to the Health and Safety Code directing the Board, in cooperation with the California Highway Patrol and an ad hoc advisory committee created by the Board, to establish, by regulation, an inspection program for heavy-duty vehicles including test procedures to identify heavy-duty diesel vehicles with excessive smoke emissions, and authorizing the Board to establish procedures for identifying heavy-duty vehicles with defective emission control systems;

WHEREAS, section 44011.6(b) of the Health and Safety Code directs the Board to prohibit, by regulation, the use in California of heavy-duty vehicles which are determined, pursuant to the test procedures adopted by the Board, to have excessive smoke emissions or other emission-related defects;

WHEREAS, section 44011.6(b) of the Health and Safety Code authorizes the Board to issue a citation to the owner or operator of any vehicle in violation of the heavy-duty vehicle inspection program regulations and to require the owner to take corrective action immediately;

WHEREAS, pursuant to section 44011.6(d) of the Health and Safety Code, the owner of a motor vehicle in violation of the heavy-duty vehicle inspection program regulations is subject to a civil penalty of not more than fifteen hundred dollars ($1500) per day for each day that the vehicle is in violation;

WHEREAS, section 44011.6(d) of the Health and Safety Code authorizes the Board to adopt a schedule of reduced civil penalties to be applied in cases where violations are corrected in an expeditious manner, provided that reduced penalties shall not apply where there have been repeated incidents of emissions control system tampering;

WHEREAS, in 1989 Assembly Bill (AB) 1107 (Stats. 1989, ch. 940) added subsection (h) to section 44011.6 of the Health and Safety Code, which further requires that the owner of a vehicle cited for violation of the heavy-duty vehicle inspection program regulations shall pay an additional three hundred dollar ($300) penalty for each citation that is issued (except the first citation issued to a school bus) to be deposited in the Diesel Emissions Reduction Fund;

WHEREAS, on November 8, 1990 the Board approved regulations to implement SB 1997, establishing a test procedure for identifying heavy-duty diesel vehicles with excessive smoke emissions and heavy-duty vehicles with defective emission control systems, including a schedule of penalties and reduced penalties for vehicles cited under the program, as well as procedures for clearing citations through demonstration of correction or post-repair test inspections and procedures for the release of vehicles removed from service;

WHEREAS, in 1990 SB 1874 (Stats. 1990, ch. 1433) was enacted amending section 44011.6 by adding subsection (i) and modifying subsection (f) to provide that the owner of a vehicle cited under the heavy-duty vehicle inspection program shall be afforded an opportunity for an administrative hearing before the Board requests that a vehicle be removed from service for failure to take corrective action or to pay a civil penalty on a timely basis;

WHEREAS, staff has proposed regulations setting forth rules for the conduct of administrative hearings based on administrative hearing procedures currently in place for similar regulatory programs with modifications to meet the specific needs of the heavy-duty vehicle inspection program;

WHEREAS, the California Environmental Quality Act and Board regulations require that no project which may have significant adverse environmental impacts be adopted as originally proposed if feasible alternatives or mitigation measures are available to reduce or eliminate such impacts;

WHEREAS, a public hearing and other administrative proceedings have been held in accordance with the provisions of Chapter 3.5 (commencing with section 11340), Part 1, Division 3, Title 2 of the Government Code; and

WHEREAS, the Board finds that:

> Principles of due process and other provisions of state law require that owners of vehicles cited under the heavy-duty vehicle inspection program shall be afforded an opportunity for an administrative hearing prior to removing a vehicle from service for failure to take corrective action or pay an assessed penalty in a timely manner;

The proposed regulations set forth rules governing the conduct of administrative hearings which provide for a full and fair hearing by an impartial hearing officer of matters relating to citations issued by the staff of this Board under the heavy-duty vehicle inspection program;

The procedural rules contained in the proposed regulations provide that the owner of a vehicle cited under the heavy-duty vehicle inspection program shall be given notice and an opportunity to be heard, an opportunity to present evidence, confront and cross-examine witnesses, the right to discover facts and things relevant to his or her case, the right to representation by an attorney or other person, the means to obtain a hearing record, and the right to a written decision based on the record and supported by findings of facts; and

The proposed regulations will have no potential adverse impact on the environment.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby adopts sections 60075.01 through 60075.47, Title 17, California Code of Regulations, as set forth in Attachment A hereto.

I hereby certify that the above is a true and correct copy of Resolution 91-26, as adopted by the Air Resources Board.

Patricia Hutchens for
Judith M. Lounsbury, Board Secretary