STATE OF CALIFORNIA
AIR RESOURCES BOARD
2020 L STREET
P.O. BOX 2815
SACRAMENTO, CA 95812

PETE WILSON, Governor

State of California
AIR RESOURCES BOARD

Notice of Decision and
Response to Significant Environmental Issues

Item: Notice of Public Hearing to Consider the Revision of Emission Control Requirements to Mitigate the Impact of Transported Pollutants on Ozone Concentrations in Downwind Areas

Approved by: Executive Order G-822
Signed: September 13, 1993

Agenda Item No.: 93-4-1

Public Hearing Date: March 11, 1993

Issuing Authority: Air Resources Board

Comment: The Board found that this regulatory action may result in significant adverse environmental impacts in the affected upwind and downwind areas. Additionally, comments were received identifying significant environmental issues pertaining to this item. These comments are summarized and responded to in Chapter IV of the Final Statement of Reasons, which is incorporated by reference herein.

Response: Resolution 93-19 is incorporated herein and attached hereto. In the Resolution, the Board made various findings pertaining to potential environmental impacts of the proposed regulations. The Board found that there are no feasible mitigation measures or alternatives available to the Board which would further substantially reduce the potential adverse impacts of the proposed regulations while at the same time providing the substantial overall public health benefit from the emissions reductions, as predicated in the Resolution. Additionally, the Board found overriding considerations extenuated the adverse environmental impacts that might result from the modified regulations. Responses to the comments identifying significant environmental issues are made in Chapter IV of the Final Statement of Reasons, which is incorporated by reference herein.

Certified: Pat Hutchens
Pat Hutchens
Board Secretary

Date: September 14, 1993

RECEIVED BY
Office of the Secretary

SEP 15 1993

RESOURCES AGENCY OF CALIFORNIA

ATTACHMENT

PROPOSED TEXT OF REGULATIONS FOR MITIGATING THE IMPACT OF UPWIND EMISSIONS ON DOWNWIND OZONE CONCENTRATIONS.

Amend Subchapter 1.5. Air Basins and Air Quality Standards, of Chapter 1, Title 17, California Code of Regulations, sections 70600 and 70601, as follows:

ARTICLE 6. TRANSPORT MITIGATION

70600. Emission Control Requirements

Districts within the areas of origin of transported air pollutants, as identified in section 70500(c), shall include sufficient emission control measures in their attainment plans for ozone adopted pursuant to Chapter 10 of the Health and Safety Code, Part 3, Division 26, beginning with section 40910, to mitigate the impact of pollution sources within their jurisdictions on ozone concentrations in downwind areas. At a minimum, the attainment plans for districts within the air basins or areas specified below shall conform to the following requirements:

~~1.~~(a) Broader Sacramento Area (as defined in section 70500(b)(3)) shall:

(a1) require the adoption and implementation of best available retrofit control technology, as defined in Health and Safety code section 40406, on all existing stationary sources of ozone precursor emissions as expeditiously as practicable. At a minimum, the plan shall provide for the adoption of rules that represent best available retrofit control technology for source categories that collectively amount to 75 percent of the 1987 actual reactive hydrocarbon emission inventory for permitted stationary sources, and 75 percent of the 1987 actual nitrogen oxides emissions inventory for permitted stationary sources, no later than January 1, 1994.

~~(b~~2) ~~provide for a permitting program designed to achieve no net increase in emissions of ozone precursors from all new or modified permitted stationary sources~~ ~~that have the potential to emit 10 tons per year or more of either oxides of nitrogen or reactive organic gases.~~ ~~Such program shall be adopted and implemented no later than July 1, 1991.~~

(~~c~~2) include measures sufficient to attain the state ambient air quality standard for ozone by the earliest practicable date within the Upper Sacramento Valley, except as provided in Health and Safety Code section 41503(d), during air pollution episodes which the state board has determined meet the following conditions:

(~~1~~A) are likely to produce a violation of the state ozone standard in the Upper Sacramento Valley;

(~~2~~B) are dominated by overwhelming pollutant transport from the Broader Sacramento Area; and

(~~3~~C) are not measurably affected by emissions of ozone precursors from sources located within the Upper Sacramento Valley.

~~2.~~(b) San Francisco Bay Area Air Basin shall:

(~~a~~1) require the adoption and implementation of best available retrofit control technology, as defined in Health and Safety Code section 40406, on all existing stationary sources of ozone precursor emissions as expeditiously as practicable. At a minimum, the plan shall provide for the adoption of rules that represent best available retrofit control technology for source categories that collectively amount to 75 percent of the 1987 actual reactive hydrocarbon emissions inventory for permitted stationary sources, and 75 percent of the 1987 actual nitrogen oxides emissions inventory for permitted stationary sources, no later than January 1, 1994.

~~(b~~2~~)~~ ~~provide for a permitting program designed to achieve no net increase in emissions of ozone precursors from all new or modified permitted stationary sources~~ <u>that have the potential to emit 10 tons per year or more of either oxides of nitrogen or reactive organic gases</u>~~.~~ ~~Such program shall be adopted and implemented no later than July 1, 1991.~~

(~~c~~2) include measures sufficient to attain the state ambient air quality standard for ozone by the earliest practicable date within the North Central Coast Air Basin, except as provided in Health and Safety Code section 41503(d), during air pollution episodes which the state board has determined meet the following conditions:

(~~1~~A) are likely to produce a violation of the state ozone standard in the North Central Coast Air Basin;

(~~2~~B) are dominated by overwhelming pollutant transport from the San Francisco Bay Area Air Basin; and

(~~3~~C) are not measurably affected by emissions of ozone precursors from sources located within the North Central Coast Air Basin.

~~3.~~(c) San Joaquin Valley Air Basin shall:

(~~a~~1) require the adoption and implementation of best available retrofit control technology, as defined in Health and Safety Code

section 40406, on all existing stationary sources of ozone precursor emissions as expeditiously as practicable. At a minimum, the plan shall provide for the adoption of rules that represent best available retrofit control technology for source categories that collectively amount to 75 percent of the 1987 actual reactive hydrocarbon emissions inventory for permitted stationary sources, and 75 percent of the 1987 actual nitrogen oxides emissions inventory for permitted stationary sources, no later than January 1, 1994.

~~(b2) provide for a permitting program designed to achieve no net increase in emissions of ozone precursors from all new or modified permitted stationary sources that have the potential to emit 10 tons per year or more of either oxides of nitrogen or reactive organic gases/ Such program shall be adopted and implemented no later than July 1, 1991.~~

(c~~1~~2) include measures sufficient to attain the state ambient air quality standard for ozone by the earliest practicable date within the Southeast Desert Air Basin and the Great Basin Valleys, except as provided in Health and Safety Code section 41503(d), during air pollution episodes which the state board has determined meet the following conditions:

(~~1~~A) are likely to produce a violation of the state ozone standard in the Southeast Desert Air Basin or the Great Basin Valley;

(~~2~~B) are dominated by transported pollutants from the San Joaquin Valley Air Basin; and

(~~3~~C) are not measurably affected by emissions of ozone precursors from sources located within the Southeast Desert Air Basin or the Great Basin Valleys, as applicable.

~~4.~~(d) South Central Coast Air Basin south of the Santa Barbara-San Luis Obispo County border shall, for sources located in that portion of the Basin:

(a1) require the adoption and implementation of best available retrofit control technology, as defined in Health and Safety Code section 40406, on all existing stationary sources of ozone precursor emissions as expedituously as practicable. At a minimum, the plan shall provide for the adoption of rules that represent best available retrofit control technology for source categories that collectively amount to 75 percent of the 1987 actual reactive hydrocarbon emissions inventory for permitted stationary sources, and 75 percent of the 1987 actual nitrogen oxides emissions inventory for permitted stationary sources no later than January 1, 1994.

(b2) provide for a permitting program designed to achieve no net increase in emissions of ozone precursors from all new or modified permitted stationary sources that have the potential to emit 10 tons per year or more of either oxides of nitrogen or reactive organic gases. Such program shall be adopted and implemented no later than July 1, 1991.

5.(e) South Coast Air Basin shall:

(a1) require the adoption and implementation of best available retrofit control technology, as defined in Health and Safety Code section 40406, on all existing stationary sources of ozone precursor emissions as expeditiously as practicable. At a minimum, the plan shall provide for the adoption of rules that represent best available retrofit control technology for source categories that collectively amount to 75 percent of the 1987 actual reactive hydrocarbon emissions inventory for permitted stationary sources, and 75 percent of the 1987 actual nitrogen oxides emissions inventory for permitted stationary sources, no later than January 1, 1994.

(b2) provide for a permitting program designed to achieve no net increase in emissions of ozone precursors from all new or modified permitted stationary sources. Such program shall be adopted and implemented no later than July 1, 1991.

(c12) include measures sufficient to attain the state ambient air quality for ozone by the earliest practicable date within the portions of the South Central Coast Air Basin south of the Santa Barbara-San Luis Obispo County border, the San Diego Air Basin, and the Southeast Desert Air Basin, except as provided in Health and Safety Code section 41503(d), during air pollution episodes which the state board has determined meet the following conditions:

(1A) are likely to produce a violation of the state ozone standard in the South Central Coast Air Basin south of the Santa Barbara-San Luis Obispo County border, or in the San Diego Air Basin, or in the Southeast Desert Air Basin;

(2B) are dominated by transported pollutants from the South Coast Air Basin; and

(3C) are not measurably affected by emissions of ozone precursors from sources located within the South Central Coast Air Basin south of the Santa Barbara-San Luis Obispo County border, or the San Diego Air Basin, or the Southeast Desert Air Basin, as applicable.

NOTE: AUTHORITY CITED: SECTIONS 39601, 39610(b), HEALTH AND SAFETY CODE. REFERENCES CITED: SECTIONS 39610, 40911(b), 40912, 40913, 40921 AND 41503, HEALTH AND SAFETY CODE.

70601. Procedure For Limiting the Application of Best Available Retrofit Control Technology

A district may exclude one or more sources from the requirement to apply best available retrofit control technology as transport mitigation pursuant to section 70600 provided that the district plan prepared pursuant to Part 3, Chapter 10 (commencing with section 40910) of Division 26 of the Health and Safety Code and approved by the Board pursuant to Part 4, Chapter 1 (commencing with section 41500) of Division 26 of the Health and Safety Code demonstrates that:

(a) emissions from the source, because of its location, do not contribute to ozone violations in any downwind area; or

(b) emissions reductions from the source are not needed to attain the ozone standard in any downwind area; or

(c) the district is implementing an alternative emission reduction strategy pursuant to section 40914 of the Health and Safety Code and that strategy will be at least as effective and as expeditious as the transport mitigation requirements specified in section 70600.

NOTE: AUTHORITY CITED: SECTIONS 39601, 39610(b), HEALTH AND SAFETY CODE. REFERENCES CITED: SECTIONS 39610, 40911~~(b)~~, 40912, 40913, 40921 AND 41503, HEALTH AND SAFETY CODE.

State of California
AIR RESOURCES BOARD

Resolution 93-19

March 11, 1993

Agenda Item No.: 93-4-1

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, the Legislature enacted the California Clean Air Act of 1988 (the "Act"; Stats. 1988, ch. 1568) declaring that it is necessary that the state ambient air quality standards be attained by the earliest practicable date to protect the public health, particularly the health of children, older people, and those with respiratory disease;

WHEREAS, in order to attain these standards, the Act mandates a comprehensive program of emission reduction measures and planning requirements for the state and local air pollution control districts ("districts") in areas where the standards are not attained;

WHEREAS, section 40001 of the Health and Safety Code requires each district to adopt and enforce rules and regulations to achieve and maintain the state ozone standard in all areas affected by emission sources under its jurisdiction;

WHEREAS, the Act in section 39610(a) of the Health and Safety Code directs the state board to identify each district in which transported air pollutants from upwind areas outside the district cause or contribute to a violation of the state ambient air quality standard for ozone and to identify the district of origin based upon the preponderance of available evidence;

WHEREAS, on December 14, 1989, the Board adopted section 70500, Title 17, California Code of Regulations (CCR), identifying districts affected by transported air pollutants from upwind areas, and identified the areas of origin of the transported pollutants consistent with the requirements of the Act;

WHEREAS, the Act, in section 39610(b) of the Health and Safety Code, directs the Board, in cooperation with the districts, to assess the relative contribution of upwind emissions to downwind ambient pollutant levels to the extent permitted by available data and to establish mitigation requirements commensurate with the level of contribution;

WHEREAS, transport assessment studies presented to the Board on August 10, 1990, characterized the impact of air pollutants transported from upwind areas on ambient ozone concentrations in downwind areas in which the state ozone standard is exceeded as overwhelming, significant or inconsequential;

WHEREAS, on August 10, 1990, the Board adopted emission control requirements in 17 CCR section 70600, to mitigate the impact of transported pollutants on ozone concentrations in downwind areas, applicable to upwind areas which were identified as having an overwhelming or significant impact on exceedences of the state ambient ozone standard in one or more downwind areas;

WHEREAS, 17 CCR section 70600 requires districts in the Broader Sacramento Area, the San Francisco Bay Area Air Basin, the San Joaquin Valley Air Basin, the South Central Coast Air Basin south of the Santa Barbara-San Luis Obispo County border, and the South Coast Air Basin to adopt and implement a permitting program designed to achieve no net increase in emissions of ozone precursors from all new or modified permitted stationary sources by no later than July 1, 1991;

WHEREAS, 17 CCR section 70600 also requires the same districts to adopt best available retrofit control technology (BARCT) requirements for all existing stationary sources in their jurisdictions and, at a minimum, to adopt by January 1, 1994, BARCT for the source categories that comprise 75% of the permitted stationary source emissions of reactive organic gases (ROG) and nitrogen oxides (NOx);

WHEREAS, 17 CCR section 70600 also requires that districts in the Broader Sacramento Area, the San Francisco Bay Area Air Basin, the San Joaquin Valley Air Basin, and the South Coast Air Basin include, in their attainment plans adopted pursuant to section 40910 et seq. of the Health and Safety Code, sufficient measures to attain the state ozone standard in affected downwind areas, during conditions of overwhelming transport to those downwind areas;

WHEREAS, the Act, in section 40911(b) of the Health and Safety Code, requires that any district which is a receptor or contributor of transported air pollutants, as determined by the Board, shall prepare and submit its plan for attaining and maintaining the ozone standard not later than June 30, 1991;

WHEREAS, the Act, in section 40912 of the Health and Safety Code, requires that the attainment plans for districts responsible for air pollutant transport shall provide for attainment and maintenance of the state and federal standards in both the upwind and downwind district;

WHEREAS, section 40912 of the Health and Safety Code also requires the plan for each upwind district to contain, at a minimum, all transport mitigation requirements established by the Board pursuant to Health and Safety Code section 39610(b);

WHEREAS, the Act, in Section 39610(d) of the Health and Safety Code, requires the Board to review and update its transport analysis at least once every three years;

WHEREAS, the Act's permitting requirements (Health and Safety Code sections 40918-40920.5), applicable to all nonattainment areas, were amended by AB 2783 (Stats. 1992, chapter 925) to provide regulatory relief to the owners and operators of small sources of air pollution who may have difficulty obtaining emission offsets for new and modified sources;

WHEREAS, upwind districts subject to the current transport mitigation requirements in 17 CCR section 70600 are not eligible for the regulatory relief provided by AB 2783, unless those requirements are amended by the Board;

WHEREAS, AB 2783 did not alter the Board's responsibilities to identify and adopt regulations to mitigate the impact of transported pollutants on downwind areas;

WHEREAS, the Board staff has proposed amendments to 17 CCR section 70600, which provide a substantial degree of regulatory relief without compromising the purpose for which the mitigation requirements were established;

WHEREAS, the Board staff has provided opportunities for public comment and considered such comments before proposing regulations to the Board;

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 the Board has considered the testimony presented by interested persons and the staff;

WHEREAS, the Board finds that:

1. Significant and overwhelming transport to downwind areas must be mitigated in order for those downwind areas to achieve the state ambient air quality standard for ozone by the earliest practicable date.

2. The existing transport mitigation requirements are guided by the principle that upwind districts should do at least as much as downwind areas to abate the ozone violations to which they contribute.

3. At the time they were adopted, the existing transport mitigation requirements were found to be all of the following: supported by available data, reasonable, and a preliminary step toward full mitigation of transport impacts (refer to Resolution 90-53, incorporated by reference herein).

4. No event or evidence has changed the basis of those findings with respect to the BARCT provisions of the transport mitigation requirements.

5. Similarly, no event or evidence has affected the findings with respect to the requirement that districts which are the source of overwhelming transport demonstrate that their plans are sufficient to attain the state ozone standard in downwind areas on which they have an overwhelming impact.

6. By contrast, AB 2783 granted prospective regulatory relief to all but "extreme" nonattainment areas of the state, requiring those areas to mitigate only those emissions increases from permitted stationary sources with the potential to emit 25, 15, or 10 tons per year in "moderate", "serious" and "severe" areas, respectively; "extreme" areas must still mitigate all emissions increases.

7. The regulatory relief provided by AB 2783 can be effectuated for upwind transport areas only if the permit program provisions in 17 CCR section 70600 are amended.

8. Information presented to the Board indicates that the economic pressures which prompted AB 2783 are present throughout the state as evidenced by rates of job loss and business failure that are above the national average.

9. Deleting the "no net increase" provisions of the transport mitigation requirements will provide relief to the owners and operators of facilities with low levels of emissions, a large majority of which are small businesses.

10. A number of districts did not adopt a "no net increase" permit program by July 1, 1991, as required by the Act and the Board's transport regulations.

11. All districts, including upwind transport districts, are required to comply with the Act's permitting requirements both before and after the AB 2783 amendments, and must mitigate the impacts of emissions increases from new and modified sources from July 1, 1991, to the extent required by the Act and ARB regulations.

12. Deleting the "no net increase" provisions of the transport mitigation requirements will allow some unmitigated emission increases, thereby causing the overall regulation to produce fewer emission reductions than would otherwise be achieved.

13. The Board is prohibited from providing relief in excess of the minimum statutory requirements for moderate, serious, severe, and extreme areas; therefore the South Coast Air Basin must continue to comply with the "no net increase" requirement for all new and modified sources as set forth in Health and Safety Code section 40920.5.

14. Deleting the "no net increase" provision would provide substantial relief to areas where such relief is legally permissible.

15. Staff estimates that deleting the "no net increase" provision would result in an estimated emissions increase of 0.2 to 2.6 tons per day, by the year 2000, in each upwind area, compared to the existing requirements.

16. The 0.2 to 2.6 tons per day estimated emissions increase represents less than one-half of one percent of the total stationary source inventory, for each area, in the year 2000.

17. By the year 2000, the four affected upwind areas have committed to adopting measures which reduce ozone precursors by a combined 523.2 tons per day.

18. The proposed amendments to 17 CCR section 70600 may result in significant adverse environmental impacts in the affected upwind and downwind areas.

19. No feasible alternative or mitigation measure exists which will achieve the objective of the proposed change without simultaneously causing or allowing to occur the potential significant adverse environmental effects described above.

20. The need for economic relief in the upwind areas affected by these proposed changes overrides any potential significant adverse environmental impacts that may result from making the proposed changes.

21. Adoption of the proposed amendments will not have a significant adverse economic impact on small businesses; rather, it will have a positive impact insofar as districts in the Broader Sacramento Area, the San Francisco Bay Area Basin, the San Joaquin Valley Air Basin, and the South Central Coast Air Basin South of the Santa Barbara-San Luis Obispo County border will be able to permit new or modified small facilities without obtaining offsets to mitigate the resulting emission increases.

22. No alternative would be more effective in carrying out the purpose for which the amendment is proposed nor would be as effective or less burdensome to affected private persons.

23. The proposed amendments will be revisited periodically and amended, as appropriate, to reflect additional information on the contribution of transported pollutants to downwind ambient ozone concentrations.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves the amendments to section 70600, Title 17, California Code of Regulations as set forth in Attachment A hereto.

BE IT FURTHER RESOLVED, that the Board intends the amendments to operate prospectively only, and Districts shall comply with the permit provision previously set forth in 17 CCR section 70600 by mitigating emission increases from July 1, 1991, as required therein, to the extent they have not already adopted permit programs which have done so.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to monitor the actual emission increases resulting from amendments to 17 CCR section 70600, to report back to the Board at regular intervals, and to make whatever recommendations may be appropriate to ensure that significant and overwhelming transport impacts on downwind areas are mitigated as required under state law.

BE IF FURTHER RESOLVED that the Board directs the Executive Officer to adopt the amendments set forth in Attachment A after making them available to the public for a period of 15 days, provided that the Executive Officer shall consider such written comments as may be submitted during this period, shall make modifications as may be appropriate in light of the comments received, and shall present the regulations to the Board for further consideration if he determines that this is warranted.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to adopt the amendments to the regulations set forth in Attachment A after responding to the comments presented to the Board which raise significant environmental issues, and to present the amendments to the regulations to the Board for further consideration if he determines that this is warranted in light of the comments.

I hereby certify that the above is a true and correct copy of Resolution 93-19, as adopted by the Air Resources Board.

Pat Hutchens

Pat Hutchens, Board Secretary

RECEIVED BY
Office of the Secretary

SEP 15 1993

RESOURCES AGENCY OF CALIFORNIA