State of California
AIR RESOURCES BOARD

Resolution 06-2

January 26, 2006

Agenda Item No.: 06-1-5

WHEREAS, sections 39002 and 93003 of the Health and Safety Code charge the Air Resources Board (ARB or the Board) with the responsibility for systematically attacking the serious air pollution problems caused by motor vehicles;

WHEREAS, sections 39600 and 39601 of the Health and Safety Code authorize the state 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 state board by this division and by any other provision of law;

WHEREAS, in section 43000 of the Health and Safety Code, the Legislature has declared that the emissions of air pollutants from motor vehicles is the primary cause of air pollution in many parts of the State; also, the State has the responsibility to establish uniform procedures for compliance with standards which control or eliminate those air pollutants, vehicle emission standards apply to new and used motor vehicles equipped with motor vehicle pollution control devices;

WHEREAS, section 43013(a) and (b) of the Health and Safety Code authorizes the board to adopt and implement emission standards, in-use performance standards, and motor vehicle fuel specifications for the control of air contaminants and sources of air pollution for light, medium, and heavy-duty motor vehicles, which the state board has found to be necessary, cost-effective, and technologically feasible, to carry out the purposes of this division, unless preempted by federal law;

WHEREAS, pursuant to Health and Safety Code sections 39650 et seq., the Board adopted Resolution 98-35 on August 27, 1998, identifying particulate emissions from diesel-fueled engines as a toxic air contaminant;

WHEREAS, section 43016 of the Health and Safety Code declares that any person who violates any provision of part 5 (Vehicular Air Pollution Control), division 26, Health and Safety Code, or any order, rule, or regulation of the state board adopted pursuant to that part, and for which violation there is not provided in part 5 any other specific civil penalty or fine, shall be subject to a civil penalty of not to exceed five hundred dollars ($500) per vehicle; any penalty collected pursuant to this section shall be payable to the State Treasurer for deposit in the Air Pollution Control Fund;

WHEREAS, on September 29, 2004, the Governor signed Assembly Bill (AB) 1009 (Stats. 2004 Ch. 873), which amended section 43701(d) and (e) of the Health and Safety Code and became effective immediately;

WHEREAS, section 43701(d) of the Health and Safety Code provides that, to the extent permissible under federal law, the owner or operator of any commercial motor truck, as defined in Section 410 of the Vehicle Code, with a gross vehicle weight rating greater than 10,000 pounds (heavy-duty commercial vehicle) that enters the state for the purposes of operating in the state shall maintain, and provide upon demand to enforcement authorities, evidence demonstrating that its engine met the federal emission standards applicable to commercial heavy-duty engines for that engine's model-year at the time it was manufactured, pursuant to the protocol and regulations developed and implemented pursuant to subdivision (e);

WHEREAS, section 43701(e) of the Health and Safety Code provides that ARB, in consultation with the California Highway Patrol, shall develop, adopt, and implement regulations establishing an inspection protocol for determining whether the engine of a truck subject to the requirements of subdivision (d) met the federal emission standard applicable to heavy-duty engines for that engine's model-year at the time it was manufactured;

WHEREAS, the legislature found in establishing Health and Safety Code section 43701(d) and (e) that heavy-duty commercial vehicles equipped with engines that emit greater levels of oxides of nitrogen (NOx) and particulate matter (PM) than the federal emission standards that were applicable at the time they were manufactured contribute to ozone and PM levels, and pose a threat to the public health of California;

WHEREAS, pursuant to section 44011.6 of the Health and Safety Code, ARB has adopted and implemented the Heavy-Duty Vehicle Inspection Program (HDVIP) for the purpose of inspecting smoke opacity of all heavy-duty vehicles that operate on California roadways and that, among other things, the regulation requires that all engines be equipped with engine emission control labels;

WHEREAS, the California Environmental Quality Act (CEQA), section 21080.5 of the Public Resources Code and Board regulations at title 17, California Code of Regulations (CCR) section 60006 require that no project that may have significant adverse environmental impacts may be adopted as originally proposed if feasible alternatives or mitigation measures are available to reduce or eliminate such impacts;

WHEREAS, pursuant to section 11346.3 of the Government Code, the Board is to consider and assess the effects of the proposed regulations on the economy of the state;

WHEREAS, the ARB staff conducted public workshops on May 16 and June 17, 2005 on regulatory action implementing AB 1009, in order to include the public and affected stakeholders in the process for regulatory development; in developing its regulatory proposal staff has also consulted with the California Highway Patrol;

WHEREAS, with the information and comments received from the workshops, ARB staff prepared a report, entitled "Staff Report: Initial Statement of Reasons for Proposed Rulemaking, Public Hearing to Consider Amendments to the Heavy-Duty Vehicle

Smoke Inspection Program (Implementation of Assembly Bill 1009, Pavley 2004, Chapter 873)", released December 9, 2005 (ISOR);

WHEREAS, in the ISOR the staff proposed that AB 1009 be implemented by the adoption of amendments to the HDVIP regulations, codified at title 13, California Code of Regulations (CCR), sections 2180-2189; the proposed amendments were set forth in Appendix 3 of the ISOR and are attached hereto as Attachment A;

WHEREAS, the proposed amendments to the HDVIP regulations:

Reaffirm that all owners of heavy-duty commercial vehicles that operate in California are responsible for having its emission control label correctly affixed to the engine by the engine manufacturer or its authorized agents that indicates the emission certification level of the engine;

Prohibit operation in California of 1974 and newer diesel powered heavy-duty commercial vehicles that are not equipped with engines that have been certified to meet emission standards at least as stringent as those promulgated by the United Stated Environmental Protection Agency (U.S. EPA) for the applicable year of manufacture;

Establish penalties for owners of heavy-duty commercial vehicles that do not have an emission control label properly affixed to the engine and owners of heavy-duty commercial vehicles that are not equipped with engines certified to meet emission standards at least as stringent as federal emission standards for the applicable year of manufacturer;

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;

WHEREAS, the Board finds regarding the amendments approved herein to sections 2180 through 2189 of title 13, CCR, that:

Emissions from heavy-duty trucks, especially NOx and PM emissions released from diesel trucks, are of great concern;

NOx is a precursor to ozone and causes lung irritation, and diesel PM is carcinogenic and identified as a toxic air contaminant;

Heavy-duty commercial vehicles equipped with engines certified to emission standards less stringent than those required by the U.S. EPA for the applicable model year emit excess NOx and PM emissions, exacerbating California's air quality problems;

Modifications to current cross-border travel restrictions will likely significantly increase the number of heavy-duty commercial vehicles operating in California with engines that were not designed to meet U.S. emission standards;

Legible engine emission control labels on heavy-duty commercial vehicles that operate on state roadways are necessary for HDVIP inspection staff to assess the certification status of a given engine;

Requiring the HDVIP staff to continue to conduct inspections for missing engine emission certification labels and for heavy-duty commercial vehicles that do not at least meet federal emission certification standards for the year of manufacture will provide an efficient and cost-effective means of satisfying the requirements of Health and Safety Code section 43701 (d) and (e);

Proposed amendments that ARB conduct inspections of heavy-duty commercial vehicles and issue citations under the HDVIP that carry civil penalties for missing emission control labels and for operating heavy-duty commercial vehicles in California that are equipped with engines that do not meet at least U.S. EPA certification standards are necessary to minimize the air quality impacts from such vehicles and to ensure compliance;

The modification approved herein increasing the penalty for operation of a diesel powered heavy-duty commercial vehicle not equipped with an engine certified to meet emission standards at least as stringent as federal emission standards for the applicable year of manufacturer from the originally proposed $300 to $500 is appropriate to more effectively deter the illegal operation of such vehicles in California;

WHEREAS, the Board further finds regarding the amendments approved herein to sections 2180 through 2189 of title 13, CCR that:

With respect to the requirements of CEQA, the proposed amendments would not adversely impact the environment, but would reduce emissions in California by prohibiting the use of heavy-duty commercial vehicle engines that were not designed to meet standards at least as stringent as those promulgated by the U.S. EPA applicable to the year of manufacture;

By doing so, the proposed amendments would help in the attainment and maintenance of the national ambient air quality standards for ozone and NOx;

Having determined that the proposed regulation should not adversely affect the environment, but rather help ensure that measurable emission benefits are achieved statewide, the proposed amendments should not adversely impact any community in the State, including low-income or minority communities;

The economic and cost impacts of the proposed amendments have been analyzed as required by California law and are set forth in the ISOR, and the effects of the proposed amendments will not have an adverse impact on the economy of the State of California or competitiveness of industries within the state;

No new reporting requirements on California businesses are established by the proposed amendments; and

No reasonable alternative considered or that has otherwise been identified and brought to the attention of the ARB would be more effective in carrying out the purpose for which the amendments are proposed, or would be as effective and less burdensome to affected private persons and businesses than the proposed amendments;

The purposes and intent of AB 1009 and the amendments approved herein are not to discriminate against any party to the North American Free Trade Agreement (NAFTA); rather the purposes and intent are to ensure that California continues to meet its ambient air quality goals set forth in the federal Clean Air Act and U.S. EPA regulations and by the California Legislature in the Health and Safety Code; and

The amendments approved herein do not establish a discriminatory standards-related measure because they will apply standards no less favorable to Canadian and Mexican owners of heavy-duty commercial vehicles than they provide to owners of heavy-duty commercial vehicles domiciled in the United States; they further do not create an unnecessary obstacle to trade between the NAFTA parties because the demonstrable purpose is to achieve the legitimate objective of attaining the federal and state ambient air quality standards, and they do not operate to exclude goods of another NAFTA party that meet that legitimate objective since heavy-duty commercial vehicles equipped with engines that meet the nondiscriminatory U.S. certification standards will not be prohibited from operating in California.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves for adoption the amendments to sections 2180-2189, title 13, CCR, as set forth in Attachment A hereto, with the modifications set forth in Attachment B hereto.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to adopt the proposed amendments to sections 2180 through 2189, title 13, CCR as approved herein, after making the modified regulatory language in Attachment B, with such other conforming modifications as may be appropriate, available for supplemental public comment for a period of at least 15 days, provided that the Executive Officer shall consider such written comments regarding the modifications 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 or she determines that this is warranted.

BE IT FURTHER RESOLVED that the Board hereby determines that the amendments approved herein are not preempted by section 209 of the federal Clean Air Act because they do not involve the adoption or enforcement of standards relating to the control of emissions from new motor vehicles or new motor vehicle engines; the amendments are covered by section 209(d) of the federal Clean Air Act, which provides that "Nothing in this part shall preclude or deny to any State or political subdivision thereof the right

otherwise to control, regulate, or restrict the use, operation, or movement of registered or licensed motor vehicles."

BE IT FURTHER RESOLVED that the Board directs ARB staff to:

Work with industry groups and affected businesses to educate affected owners and operators of HDCVs about the requirements contained in the approved regulatory amendments; and

Ensure compliance with the regulation through enforcement actions as necessary.

I hereby certify that the above is a true and correct copy of Resolution 06-2, as adopted by the Air Resources Board.

Lori Andreoni

Lori Andreoni, Clerk of the Board

Dec. 4, 2006

Resolution 06-2

January 26, 2006

Identification of Attachments to the Board Resolution

Attachment A: Proposed Regulation Order for amendments to sections 2180-2189, title 13, California Code of Regulations (Heavy-Duty Diesel Smoke Emission Testing, and Heavy-Duty Vehicle Emission Control System Inspections), as set forth in Attachment C of the ISOR released December 9, 2005.

Attachment B: Staff's Suggested Modifications to the Original Proposal, as made available at the January 26, 2006 hearing.

State of California
Environmental Protection Agency
AIR RESOURCES BOARD

Notice of Decision and Response to Significant Environmental Issues

Item:	Notice of Public Hearing to Consider Amendments to the Heavy-Duty Vehicle Smoke Inspection Program (Implementation of Assembly Bill 1009, Pavley 2004, Chapter 873)
Approved By:	Resolution 06-2
Adopted by:	Executive Order R-06-008
Agenda Item:	06-1-5
Public Hearing Date:	January 26, 2006
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:	Alexa Malik Regulations Coordinator
Date:	11/27/06

Dec. 4, 2006