State of California
AIR RESOURCES BOARD

Resolution 06-44

March 22, 2007

Agenda Item No.: 06-11-5

WHEREAS, sections 39002 and 39003 of the Health and Safety Code charge the Air Resources Board (ARB or the Board) with responsibility for systematically attacking the serious air pollution problems caused by motor vehicles;

WHEREAS, section 39600 of the Health and Safety Code declares that the Board shall 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, section 39601(a) of the Health and Safety Code declares that the Board shall adopt standards, rules, and regulations in accordance with the provisions of Chapter 3.5 (commencing with section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, necessary for the proper execution of the powers and duties granted to, and imposed upon, the Board by 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, that the State has the responsibility to establish uniform procedures for compliance with standards which control or eliminate those air pollutants, and that vehicle emission standards applied to new motor vehicles and to used motor vehicles equipped with motor vehicle pollution control devices are standards with which all motor vehicles must comply;

WHEREAS, section 43013(a) of the Health and Safety Code authorizes the Board to adopt and implement motor vehicle emission standards, in-use performance standards, and motor vehicle fuel specifications for the control of air contaminants and sources of air pollution which the Board has found to be necessary, cost-effective, and technologically feasible, to carry out the purposes division 26 of the Health and Safety Code, unless preempted by federal law;

WHEREAS, section 43013(b) of the Health and Safety Code directs the Board, consistent with section 43013(a), to adopt standards and regulations for light-duty and heavy-duty motor vehicles, and for medium-duty motor vehicles, as determined and specified by the Board;

WHEREAS, section 43105 of the Health and Safety Code authorizes the Board to require manufacturers of certified vehicles or engines to take corrective action specified

by the Board, which may include recall, if those vehicles or engines have violated emission standards or test procedures;

WHEREAS, section 43105 also authorizes the Board to establish the procedures for determining, and the facts constituting, compliance or failure of compliance with emission standards or test procedures;

WHEREAS, section 43106 of the Health and Safety Code states that each new motor vehicle or engine required to meet the emission standards established pursuant to section 43101, shall be, in all material respects, substantially the same in construction as the (certification) test vehicle or engine, as the case might be, which has been certified by the Board;

WHEREAS, section 43018 of the Health and Safety Code requires the Board to endeavor to achieve the maximum degree of emission reduction possible from vehicular and other mobile sources in order to accomplish the attainment of the state standards at the earliest practicable date;

WHEREAS, section 43205 of the Health and Safety Code requires manufacturers to warrant to the ultimate purchaser and each subsequent purchaser that each motor vehicle or motor vehicle engine is: (1) designed, built, and equipped so as to conform, at the time of sale, with the applicable emissions standards specified in this part, and (2) free from defects in materials and workmanship which cause such motor vehicle or motor vehicle engine to fail to conform with applicable regulations for its useful life;

WHEREAS, in 1982, the Board adopted regulations that established ARB's first in-use vehicle recall program; the regulations were intended to reduce vehicular emissions by: (1) ensuring that noncompliant vehicles are identified, recalled, and repaired to meet the applicable emission standards and comply with the test procedures in customer use, and (2) encouraging manufacturers to improve the design and durability of emission control components to avoid the expense and adverse publicity of a recall;

WHEREAS, in 1988, as an expansion to the 1982 in-use program, the Board adopted the Emissions Warranty Information Reporting (EWIR) regulations (title 13, California Code of Regulations (CCR), sections 2141-2149) for tracking emission-control component defects affecting on-road vehicles. The EWIR regulations require manufacturers to review all emission-related warranty claims on a quarterly basis to determine the number of repairs or replacements made for each component. Each manufacturer must report warranty activity that exceeds a one percent level and has additional reporting requirements when a component's warranty claim rate exceeds four percent on an engine family or test group basis. When an emission-control component's EWIR rate exceeds a true four percent level, the defect is considered to be systemic in nature. Should in-use vehicles or engines exhibit a systemic defect and the manufacturer's EWIR submittals acknowledge that fact, the staff considers the situation to be a violation of test procedure requirements and possibly emission standards. The warranty reporting regulations apply to all on-road 1990 and newer model-year

passenger cars, light-, medium-, and heavy-duty trucks, California-certified engines used in such vehicles, and motorcycles;

WHEREAS, after it adopted the EWIR regulations, the Board adopted regulations (title 13, CCR, sections 1968.1-1968.5 and 1971-1971.1) requiring on-board diagnostic (OBD) systems on most new vehicles sold in the state; these requirements offer ways of determining vehicles' compliance with emission standards and test procedure requirements that were not taken into account when the EWIR regulations were originally adopted.

WHEREAS, in some cases in a which manufacturer has reported valid warranty claims in excess of four percent for an emission control device under the EWIR regulations, the manufacturer has agreed to correct the situation by recalling the affected vehicles and installing more durable emission control devices; these cases have usually involved relatively small vehicle populations or simple defects. In other instances manufacturers have agreed to extend the emission control warranties on the components in question. In many other cases, however, no corrective action has occurred. In two notable cases that involved large vehicle populations and more complex defects, DaimlerChrysler Corporation and Toyota Motor Corporation claimed (over ARB's objection) that despite evidence of a pervasive defect in the emission control components or systems of their vehicles, ARB was not authorized to order that the defect be corrected since the affected vehicles allegedly did not exceed emission standards, on average for all vehicles, over their useful lives;

WHEREAS, the Toyota case was tried before an administrative law judge who upheld Toyota's claim; as a result, Toyota did not correct the defects ARB had determined to exist in the OBD systems in over 300,000 of its vehicles in California. In response, the Board amended the OBD regulations to enhance their enforceability so that should a similar OBD defect occur in the future, corrective action would result;

WHEREAS, the DaimlerChrysler case involved dozens of models, sold over several years, many of whose catalytic converter substrates disintegrated in use. Despite ample evidence that the catalyst design was defective and that catalysts were failing in use, ARB was not able to show that for each individual model the catalyst failure would result in the subject vehicles exceeding emission standards, on average, during the vehicles' useful life. The result was a 2005 settlement agreement in which DaimlerChrysler agreed, among other things, to remedy only 27 percent of the vehicles that contained the catalyst that ARB had determined to be defective. The staff estimates that the vehicles left uncorrected by DaimlerChrysler are responsible for emitting substantially more pollutants than if they had undergone corrective action;

WHEREAS, based on the Board's statutory authority and its experience in the implementation and administration of the EWIR regulations, the staff has identified three aspects of the existing regulations that need improvement, specifically: (1) the proof required to demonstrate violations of ARB's emission standards or test procedures, (2) the corrective actions available to ARB to address the violations and, (3) the way

emissions warranty information is reported to ARB. The staff has proposed amendments ("the amendments") that target these aspects of the current regulations and will result in corrective action for more vehicles that have defective emission control devices or systems, thereby reducing emissions; the amendments originally proposed by staff in the Staff Report: Initial Statement of Reasons released October 20, 2006 are set forth in Attachment A hereto;

WHEREAS, the staff's originally proposed amendments as set forth in Attachment A hereto consist of the following: amendments to title 13, CCR, sections 1958(c), 2111, 2122, 2136, and 2141; adoption of new article 5, "Procedures for Reporting Failures of Emission-Related Equipment and Required Corrective Action," with new sections 2188-2174, in title 13, CCR, division 3, chapter 2, and proposed amendments to the following title 13 regulations and the documents contained therein: section 1961(d) and the "California Exhaust Emission Standards And Test Procedures For 2001 And Subsequent Model Passenger Cars, Light-Duty Trucks And Medium-Duty Vehicles," section 1956.8(b) and the "California Exhaust Emission Standards and Test Procedures for 2004 and Subsequent Model Heavy-Duty Diesel-Engines and Vehicles," section 1956.8(d) and the "California Exhaust Emission Standards and Test Procedures for 2004 and Subsequent Model Heavy-Duty Otto-Cycle Engines," section 1976(c) and the "California Evaporative Emission Standards and Test Procedures for 1978 and Subsequent Model Motor Vehicles," and section 1978(b) and the incorporated "California Refueling Emission Standards and Test Procedures for 2001 and Subsequent Model Motor Vehicles";

WHEREAS, the proposed amendments capitalize on the ability of the now mature OBD program to detect failing components, prompt drivers to seek repairs and ensure that vehicles with systemic emission control defects are corrected by the vehicle manufacturers in a more timely and effective manner than is occurring under the current regulations. The amendments would also streamline administration and reduce program reporting. The amendments would also link directly the exceedances of emissions warranty reporting levels with ARB's durability certification test procedures and would take effect with the 2010 model year;

WHEREAS, staff proposes a change in the proof necessary for determining if a group of vehicles is in violation of emission standards or test procedures. Under staff's proposal, once a group of vehicles exceeds a valid warranty claim rate threshold of four percent or 50 vehicles, whichever is greater, ("warranty claims threshold") it would be considered to be in violation of test procedures and the manufacturer would be required to implement a recall and/or other corrective action, as specified. The existing standard that a class or category of vehicles must exceed an emission standard on average over its useful life would be eliminated because, based on the staff's experience, in practice this standard prevents corrective action from being taken to remedy defective emission control components in many cases. The staff rejected regulatory alternatives based on a showing of emission standard exceedance for the same reasons;

WHEREAS, under the staff's proposal, if the warranty claims threshold is exceeded for an exhaust after-treatment device, the Executive Officer may order a recall and/or other corrective action, including an extended warranty, but recall would be the remedy that would be considered first. If the warranty claims threshold is exceeded for emissions components other than exhaust after-treatment devices, the Executive Officer may also order a recall and/or other corrective action, including an extended warranty, but the extended warranty would be the remedy that would be considered first. For vehicles with malfunctioning on-board computers, vehicles not equipped with OBD, or vehicles equipped with OBD systems that do not function properly, a recall and/or corrective action, including an extended warranty, would be required when the warranty claims threshold is exceeded for any emissions component, with the recall remedy being considered first. All replacement parts would be required to be of improved quality and durability. The modified proposal would limit the durations of extended warranties to the useful lives of the vehicles;

WHEREAS, the modified proposed amendments would make it clear that manufacturers may request hearings when recalls or other corrective actions are ordered, and that the record would be limited to the information generated in the emissions warranty reports and any other information required by the Executive Officer up to the date of the recall order;

WHEREAS, the staff's proposal would increase the threshold for which an EWIR is required from one percent to four percent or 50 claims (whichever is greater) for all model vehicles subject to reporting requirements. Follow-up EWIR reports would be required on an annual basis, rather than quarterly. When the unverified warranty claims rate reaches ten percent, a Supplemental Emissions Warranty Information Report (SEWIR) would be required. The SEWIR replaces the FIR, which currently is issued when an unverified claims rate exceeds four percent. The SEWIR would determine the valid claims rate, and if above four percent would trigger the corrective action process. The FIR report would no longer be required. These amendments would substantially streamline current reporting requirements;

WHEREAS, staff has evaluated the potential emission benefits from the two enforcement cases mentioned above, along with actual data from emission impact investigations submitted from various manufacturers and determined that the proposed amendments to the EWIR program can result in the reduction of excess emissions associated with systemic emission-control failures; had the proposed amendments been in place, staff believes most of the vehicles involved in the DaimlerChrysler matter would have undergone corrective action and that corrective action would have been implemented in many other cases where high warranty claims rates occurred;

WHEREAS, current California emissions warranty reporting requirements are more stringent and comprehensive than their federal counterparts. (See, generally 40 C.F.R. Part 85, in particular 40 C.F.R. sections 85.1901 and 85.1903.) Federal law requires a onetime report – the emissions defect information report (EDIR) – describing the defect, the vehicles it affects and its impact on emissions. California law calls for similar

information to the EDIR, but requires the manufacturer to file follow-up reports for escalating failure rates – the three progressive reports (EWIR, FIR and EIR) which are discussed above. Unlike federal law, California law explicitly ties the warranty information to the recall process, requiring ARB to evaluate the need for a recall after the submission of the EIR. (title 13, CCR, section 2148.) Federal law has a different, potentially less stringent standard for ordering vehicle recalls than California does. Federal law allows a recall when a substantial number of vehicles do not conform to emission standards (42 U.S.C. section 7541(c)), while California regulations require a demonstration that a class or category of vehicles contains a defect that will cause the vehicles on average to exceed emission standards over their useful lives. In 1990, U.S. Environmental Protection Agency formally found that ARB's emissions warranty reporting and recall regulations were within the scope of previous waivers of federal preemption. (55 Fed. Reg. 28823 (July 13, 1990));

WHEREAS, although they are somewhat different, the two reporting regimes and the two recall standards have been comparably effective in prompting recalls where manufacturers have agreed to assume responsibility for correcting emissions related defects – but both the federal and state regulations have had limited success where manufacturers object to and contest the recalls, especially in complex cases. If adopted, the proposed amendments would modify and streamline California's requirements for defect reporting. These requirements would still be more extensive than the comparable federal requirements. The proposed amendments would also provide additional grounds for requiring a vehicle recall or other corrective action to remedy systemic defects revealed in emissions warranty reporting which could be proven without the resource intensive emissions testing that is required under current federal law and California regulations. This might lead to the implementation of more recalls or remedial actions when high rates of warranty failures are reported, than would be the case under current California or federal law in this area;

WHEREAS, pursuant to Government Code sections 11346.5(a)(5) and 11346.5(a)(6), the Executive Officer has determined that the proposed regulatory action will create costs to ARB. ARB is expected to incur ongoing costs of approximately $200,000 per year for two additional staff to implement the regulation and enforce compliance. Costs would not be created to any other state agency, or in federal funding to the state. The regulation will not create costs or mandate to any local agency or school district whether or not reimbursable by the state pursuant to part 7 (commencing with section 17500), division 4, title 2 of the Government Code, or other nondiscretionary cost or savings to state or local agencies;

WHEREAS, the businesses to which the proposed amended requirements are addressed and for which compliance would be required are manufacturers of California motor vehicles. There are presently 35 domestic and foreign corporations that manufacture California-certified passenger cars, light-duty trucks, and medium-duty gasoline and diesel fueled vehicles that would be subject to the proposed amendments, 20 heavy-duty engine manufacturers, and over 60 motorcycle manufacturers. Only one motor vehicle manufacturing plant (NUMMI) is located in California;

WHEREAS, in developing this regulatory proposal, the ARB staff evaluated the potential economic impacts on representative private persons or businesses. Costs to the manufacturers should be reduced by the significantly minimized reporting requirement. Because manufacturers are fully expected, and required, to comply with the regulations, enforcement costs to manufacturers should also be negligible. However, to the extent the regulations increase the number of corrective actions implemented, costs to those manufacturers that have produced vehicles with defective components may increase. Staff estimates that the industry wide cost will be roughly equivalent to current costs;

WHEREAS, the Executive Officer has made an initial determination that the proposed regulatory action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, or on representative private persons. Again, any cost impacts are expected to be slight, absorbable or positive;

WHEREAS, in accordance with Government Code section 11346.3, the Executive Officer has determined that the proposed regulatory action will not affect the creation or elimination of jobs within the State of California, the creation of new businesses or elimination of existing businesses within the State of California, or the expansion of businesses currently doing business within the State of California. Any impact on businesses in California is expected to be slight, absorbable or positive;

WHEREAS, the Executive Officer has also determined, pursuant to title 1, CCR, section 4, that the proposed regulatory action will not affect small businesses because the cost impacts are expected to be slight, absorbable or positive;

WHEREAS, in accordance with Government Code sections 11346.3(c) and 11346.5(a)(11), the Executive Officer has found that the reporting requirements of the regulation which apply to businesses are necessary for the health, safety, and welfare of the people of the State of California;

WHEREAS, the ARB staff conducted public workshops on May 2, 2006 and February 14, 2007, and has met with stakeholders several times on this regulatory proposal in order to include the public and affected stakeholders in the regulatory development process. Based on these meetings and workshops the staff: released the original proposed amendments on October 20, 2006; suggested further modifications to the October 20, 2006 proposal on December 7, 2006; proposed modifications to the October 20, 2006 proposal on January 23, 2007; and suggested further modifications to the October 20, 2006 proposal on February 8, 2007 and March 12, 2007; Attachment B contains staff's final suggested modifications distributed at the hearing on March 22, 2007;

WHEREAS, pursuant to section 43101 of the Health and Safety Code and section 11346.3 of the Government Code, the Board has considered and assessed the effects of the proposed amendments on the economy of the state;

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 adoption of proposed amendments to sections 1958(c), 2111, 2122, 2136, and 2141; adoption of new article 5 with new sections 2166-2174, and proposed amendments to applicable title 13 regulations and the documents contained therein, that:

Despite advances in reducing emissions from passenger cars, light-duty trucks and medium-duty vehicles, heavy-duty vehicles, motorcycles and engines used in such vehicles, California still has one of the most severe air pollution problems in the United States;

To meet Federal and California Clean Air Act emissions reductions requirements, ARB must continue to seek reductions from all sources under its authority, including in-use vehicles when large-scale violations of emission standards or certification test procedures occur;

While it is clear that new vehicles or engines must meet emissions standards when first sold, it is as important that the emission-control components installed by the manufacturer must be both effective and durable in customer use;

ARB certification test procedures require that the manufacturer demonstrate that the emission-control components utilized to comply with the applicable emission standards are both effective and durable for the vehicles' certified useful life period and statutes require that production vehicles are substantially the same in construction in all material respects to vehicles submitted for certification testing;

ARB's current EWIR program requires manufacturers to monitor their emission warranty activity and report when warranty repair rates exceeds certain thresholds, but the reporting process and staff's ability to require appropriate repairs for systemic emission-control defects have not been totally successful;

It is necessary and appropriate that the EWIR and Recall programs be linked to the certification test procedure requirements to ensure that both effective and durable emission-control components are installed on California-certified vehicles and engines;

In order to fully realize the benefits of the EWIR and Recall programs, it is necessary and appropriate that the current regulations be amended to simplify the required proof that a violation of emission standards or test procedures exists, eliminate the adherence to emission standard violations as the sole means of proving that corrective action is warranted, determine the appropriate

corrective action for systemic emission-control defects, and streamline the EWIR reporting requirements;

WHEREAS, the Board further finds that:

The amendments approved herein will not have a significant adverse environmental impact;

Having determined that the amendments approved herein should not adversely affect the environment, but rather help ensure that benefits from California's motor vehicle (and engine) emission control program are achieved statewide, the 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 the conclusions and supporting documentation for this analysis are set forth in the Initial Statement of Reasons for this regulatory action;

No new reporting requirements on California businesses are established by the proposed amendments – in fact, reporting requirements have been reduced; 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 amendments approved herein; this conclusion is based on the experience gained in the EWIR program that solely basing recalls or other corrective action on violations of emissions standards is not sufficiently effective because doing so prevents many necessary corrective actions from taking place.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves the amendments to title 13, CCR, sections 1958(c), 2111, 2122, 2136, and 2141; adoption of new article 5, "Procedures for Reporting Failures of Emission-Related Equipment and Required Corrective Action," with new sections 2188-2174, in title 13, CCR, division 3, chapter 2, and the amendments to the following title 13 regulations and the documents contained therein: section 1961(d) and the "California Exhaust Emission Standards And Test Procedures For 2001 And Subsequent Model Passenger Cars, Light-Duty Trucks And Medium-Duty Vehicles," section 1956.8(b) and the "California Exhaust Emission Standards and Test Procedures for 2004 and Subsequent Model Heavy-Duty Diesel-Engines and Vehicles," section 1956.8(d) and the "California Exhaust Emission Standards and Test Procedures for 2004 and Subsequent Model Heavy-Duty Otto-Cycle Engines," section 1976(c) and the "California Evaporative Emission Standards and Test Procedures for 1978 and Subsequent Model Motor Vehicles," and section 1978(b) and the incorporated "California Refueling Emission Standards and

Test Procedures for 2001 and Subsequent Model Motor Vehicles" 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 as approved herein, after making the modified regulatory language, with such other conforming modifications as may be appropriate, available for 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 adopted herein will not cause California motor vehicle emission standards, in the aggregate, to be less protective of public health and welfare than applicable federal standards.

BE IT FURTHER RESOLVED that the Board hereby finds that separate California emission standards and test procedures are necessary to meet compelling and extraordinary conditions.

BE IT FURTHER RESOLVED that the Board finds that the amendments adopted herein will not cause the California emission standards and test procedures for new motor vehicles and engines to be inconsistent with section 202(a) of the Clean Air Act and raise no new issues affecting previous waiver determinations of the Administrator of the U.S. Environmental Protection Agency pursuant to section 209(b) of the Clean Air Act.

BE IT FURTHER RESOLVED that to the extent it is necessary, the Executive Officer shall, upon adoption, forward the amendments to U.S. EPA with a request for a waiver or confirmation that the amendments are within the scope of an existing waiver of federal preemption pursuant to section 209(b) of the federal Clean Air Act, as appropriate.

BE IT FURTHER RESOLVED that the Board directs ARB staff to work with vehicle and engine manufacturers, industry groups and affected businesses to educate affected stakeholders about the requirements contained in the adopted regulatory amendments.

Resolution 06-44

March 22, 2007

Identification of Attachments to the Board Resolution

Attachment A: Proposed Regulation Changes to California's Emission Warranty Information Reporting and Recall Regulations and Emission Test Procedures, as set forth in Appendix A and B of the "Staff Report: Initial Statement of Reasons for Proposed Rulemaking, Public Hearing to Consider Amendments to California's Emission Warranty Information Reporting And Recall Regulations and Emission Test Procedures" released October 20, 2006.

Attachment B: Staff's Suggested Modifications to the Original Proposal, as made available at the March 22, 2007 hearing.

State of California
Environmental Protection Agency
AIR RESOURCES BOARD

Notice of Decision and Response to Significant Environmental Issues

Item: Emission Warranty Information Reporting and Recall Regulations

Approved By:	Resolution 06-44
Adopted by:	Executive Order R-07-007
Agenda Item:	06-11-5
Public Hearing Date:	December 7, 2006 March 22, 2007
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:	Trini Balcazar, Regulations Coordinator
Date:	October 10, 2007

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