State of California
AIR RESOURCES BOARD

Resolution 07-9

March 22, 2007

Agenda Item No: 07-3-3

WHEREAS, sections 39600 and 39601 of the Health and Safety Code authorize the Air Resources Board (the Board or ARB) 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, in accordance with section 41750 et seq. of the Health and Safety Code, the Board has established, by regulation, a Statewide Portable Equipment Registration Program (PERP) providing for the voluntary registration of portable engines and associated equipment, establishing emission limits and emission control requirements, and a fee schedule to cover the costs of administering and enforcing PERP, including a fee for the recovery of the cost of district enforcement activities and outreach activities;

WHEREAS, section 41752(e) of the Health and Safety Code provides that the Board may periodically revise and update the Statewide Portable Equipment Registration Program Regulation (Statewide Regulation), including but not limited to, revising and updating a determination of the Best Available Control Technology (BACT) for portable engines;

WHEREAS, the Board adopted an Airborne Toxic Control Measure for Diesel-Fueled Portable Engines (Portable ATCM), and approved Resolution 04-7 on February 26, 2004;

WHEREAS, based on comments received from affected industry during the ARB's September 28, 2006 Board meeting that raised concerns regarding eligibility of the Statewide Regulation and the Portable ATCM, the Board directed staff to consider options and report back to the Board;

WHEREAS, proposed emergency amendments to the Statewide Regulation and the Portable ATCM to resolve the eligibility issues were developed by staff through discussions of draft versions made available to the public for review and comments at a public consultation meeting, and numerous conference calls;

WHEREAS, the Board adopted emergency amendments to the Statewide Regulation and the Portable ATCM and approved Resolution 06-43 on December 7, 2006;

WHEREAS, the emergency amendments to the Statewide Regulation and the Portable ATCM became effective on December 27, 2006 for a period not to exceed120 days;

WHEREAS, due to the limited duration of the emergency amendments, staff has developed a proposal to make the emergency amendments adopted on December 7, 2006 permanent, along with other revisions to improve the clarity and expediency of the Statewide Regulation;

WHEREAS, the amendments to the Statewide Regulation and Portable ATCM to make permanent the previously adopted emergency amendments were developed by staff through discussions of draft versions made available to the public for review and comments at a public workshop, and numerous conference calls;

WHEREAS, with the information and comments received from the affected public, the staff has prepared a staff report entitled "Initial Statement of Reasons for the Proposed Amendments to the Statewide Portable Equipment Registration Program Regulation and the Airborne Toxic Control Measure for Diesel Particulate Matter from Portable Engines" (Initial Statement of Reasons), which presented the rationale for the proposed amendments to the Statewide Regulation and Portable ATCM set forth in Attachment A and B hereto;

WHEREAS, the proposed amendments to the Statewide Regulation in Attachment A hereto are shown compared to the Statewide Regulation as amended by the Board on June 22, 2006; the June 22, 2006 amendments are currently pending at the Office of Administrative Law and are expected to become operative April 27, 2007;

WHEREAS, the Initial Statement of Reasons and the proposed amendments to the Statewide Regulation and Portable ATCM were made available for public review and comment at least 45 days prior to the public hearing to consider the proposed amendments to the Statewide Program;

WHEREAS, the Board has considered the magnitude of the resultant air quality benefit and the potential effects of the proposed amendments to the Statewide Regulation and Portable ATCM on the costs to businesses that use portable engines and associated equipment prior to adopting any emission limit or emission control requirement;

WHEREAS, the Board has considered the economic analysis in the Initial Statement of Reasons and the impact of the proposed regulatory action on the economy of the State;

WHEREAS, the California Environmental Quality Act and Board regulations require that a project which may have significant adverse environmental impacts may not be adopted as originally proposed if feasible alternatives or mitigation measures are available to substantially reduce or eliminate such identified impacts;

WHEREAS, a public hearing was held March 22, 2007, in accordance with the provisions of chapter 3.5 (commencing with section 11340), part 1, division 3, title 2 of the Government Code;

WHEREAS, after consideration of the Initial Statement of Reasons, written comments, and public testimony received, the Board finds that:

Despite outreach and noticing efforts, some owners and operators of portable equipment have stated that they were not aware of the requirements to purchase cleaner complying engines and obtain district permits to operate or registration as provided in the Statewide Regulation;

Owners and operators of portable equipment that did not purchase cleaner complying engines and did not obtain district permits to operate or registration, as provided in the Statewide Regulation, operated at a competitive advantage compared to owners and operators that did pay registration or permitting fees and/or purchased cleaner complying engines;

During the periods when complying engines are not available, engine owners were unable to obtain a permit for or register an engine that complies with the Portable ATCM or the Statewide Regulation;

Tier 0 engines have significantly higher emissions than certified Tier 1, 2 or 3 engines and these emission impacts are best evaluated on a case-by-case basis by the local districts at their discretion;

It is appropriate to allow the registration for a limited time of engines that do not meet current emission standards as long as they have been previously resident in the State and the owners will pay the applicable back registration and inspection fees that should have been paid had the engine been properly registered when first put into service;

Compliance dates should be extended during those instances where it can be verified to ARB that engines meeting current emission standards are not available;

An extension to register diesel-fueled engines meeting prior emissions standards should be allowed for a limited time after an emission standard change;

Requiring the tracking of hours of operation for rental equipment units is redundant and places an undue burden on industry;

The economic impacts of the proposed amendments to the Statewide Regulation 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;

The staff will conduct extensive outreach activities to inform affected parties of the adoption of the proposed amendments to the Statewide Regulation and Portable ATCM;

WHEREAS the Board further finds that:

The proposed amendments to the Statewide Regulation and Portable ATCM are expected to have a positive environmental impact by having more portable engines participating in a regulatory program that will eventually reduce emissions from such equipment;

WHEREAS, the Board further finds that:

The proposed amendments would ensure the continued reduction of emissions of NOx and diesel PM which will benefit urban area communities, where operation of registered engines and equipment units occurs most frequently; and

WHEREAS, the Board further finds that:

There is no less costly alternative or combination of alternatives which would be equally effective in achieving increments of environmental protection in a manner that ensures full compliance with statutory mandates within the same amount of time as the proposed regulatory requirements.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves the proposed amendments to the Statewide Regulation as set forth in Attachment A with the modifications set forth in Attachment C.

BE IT FURTHER RESOLVED that the Board hereby adopts the proposed amendments to the Portable ATCM as set forth in Attachment B.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to incorporate the modifications described in Attachment C into the amendments contained in Attachment A, with such other conforming modifications as may be appropriate, including, but not limited to, modifications related to annual reporting for rental equipment units and recordkeeping of daily throughput for specified types of equipment units, and then to adopt the modified amendments after making the modified regulatory language available for supplemental public comment for a period of 15 days, provided that the Executive Officer shall consider such written comments regarding the modifications as may be submitted during this period, shall make additional modifications as may be appropriate in light of the comments received, and shall present the regulations to the Board for further consideration if she determines this is warranted.

BE IT FURTHER RESOLVED that the Board hereby determines, pursuant to section 209(e)(2) of the federal Clean Air Act, that the emission standards and other requirements related to the control of emissions from off-road engines adopted or amended as part of this rulemaking are, in the aggregate, at least as protective of public health and welfare as applicable federal standards, that California needs its off-road engine emission standards to meet compelling and extraordinary conditions, and the standards and accompanying enforcement procedures as adopted or approved herein are consistent with Clean Air Act section 209.

BE IT FURTHER RESOLVED that the Board hereby determines that the amendments adopted or approved herein will not cause California portable off-road engine emission standards, in the aggregate, to be less protective of public health and welfare than applicable federal standards.

BE IT FURTHER RESOLVED that pursuant to the determinations set forth above, the Board directs staff file a request for authorization from the U.S. Environmental Protection Agency pursuant to Clean Air Act section 209(e), or confirmation that the adopted fall within the scope of previous authorizations, to the extent necessary.

RECEIVED BY
Office of the Secretary

JUL 31 2007

RESOURCES AGENCY OF CALIFORNIA

I hereby certify that the above is a true and correct copy of Resolution 07-9, as adopted by the Air Resources Board.

Lori Andreoni

Lori Andreoni, Clerk of the Board

Resolution 07-9

March 22, 2007

Identification of Attachments to the Resolution

Attachment A: Proposed Amendments to the Statewide Portable Equipment Registration Program Regulation, title 13, California Code of Regulations, sections 2451, 2452, 2453, 2455, 2456, 2458, 2459, 2460, 2461 and 2462, as set forth in Appendix A to the Staff Report: Initial Statement of Reasons issued February 2, 2007.

Attachment B: Proposed Amendments to the Airborne Toxic Control Measure for Diesel Particulate Matter from Portable Engines Greater Than 50 Horsepower, title 17, California Code of Regulations, sections 93116, 93116.1, 93116.2 and 93116.3 and adoption of section 93116.3.1, as set forth in Appendix B to the Staff Report: Initial Statement of Reasons issued February 2, 2007.

Attachment C: Staff's Suggested Modifications to the Proposed Amendments to the Statewide Portable Equipment Registration Program Regulation, title 13, California Code of Regulations, sections 2453, 2456 and 2458, as distributed at the March 22, 2007 hearing.