State of California
AIR RESOURCES BOARD

Resolution 10-24

May 27, 2010

Agenda Item No.: 10-5-2

WHEREAS, the Air Resources Board (ARB or Board) is authorized by section 39600 of the Health and Safety Code to do such acts as may be necessary for the proper execution of its powers and duties;

WHEREAS, the local air districts have primary responsibility for the control of air pollution from nonvehicular sources and for adopting control measures, rules, and regulations to attain the National Ambient Air Quality Standards within their boundaries pursuant to sections 39002, 40000, 40001, 40701, 40702, and 41650 of the Health and Safety Code;

WHEREAS, the San Joaquin Valley Air Pollution Control District (District) was established pursuant to sections 40150 and 40151 of the Health and Safety Code as the unified air pollution control district responsible for carrying out these responsibilities in the San Joaquin Valley Air Basin;

WHEREAS, pursuant to Health and Safety Code section 41856, ARB was directed to develop guidelines for the regulation and control of agricultural burning for each of the air basins;

WHERAS, on March 23, 2000, ARB adopted the Smoke Management Guidelines (Guidelines) requiring air districts to adopt, implement, and enforce a Smoke Management Program consistent with the Guidelines;

WHEREAS, on November 18, 2002, ARB approved the District's revised Smoke Management System as meeting the requirements of the Guidelines;

WHEREAS, in 2003, Senate Bill 705 (Florez, Chapter 481, Statutes of 2003) was enacted; it added sections 41855.5 and 41855.6 to the Health and Safety Code, which require the District to phase-out the burning of agricultural materials within the District;

WHEREAS, pursuant to Health and Safety Code section 41855.5, by January 1, 2005, the District was directed to develop and adopt rules to regulate the burning of diseased crops (Phase I);

WHEREAS, pursuant to Health and Safety Code section 41855.5, by June 1, 2005, the District was directed to develop and adopt rules to establish best management practices for the control of other weeds and maintenance (Phase II);

WHEREAS, pursuant to Health and Safety Code section 41855.5, the District was directed to prohibit burning of specific agricultural waste in the San Joaquin Valley commencing on June 1, 2005 (Phase II), June 1, 2007 (Phase III), and June 1, 2010 (Phase IV);

WHEREAS, Health and Safety Code section 41855.6 allows the District to postpone the burn prohibitions for any category of agricultural waste or crop if all of the following criteria are met:

(a) The District determines that there is no economically feasible alternative means of eliminating the waste.
(b) The District determines that there is no long-term federal or State funding commitment for the continued operation of biomass facilities in the San Joaquin Valley or development of alternatives to burning.
(c) The District determines that the continued issuance of permits for that specific category or crop will not cause, or substantially contribute to, a violation of an applicable federal ambient air quality standard.
(d) ARB concurs with the District's determinations.

WHEREAS, on September 16, 2004, the District amended their open burning rule to allow for conditional permitting to authorize the burning of diseased crops (Phase I);

WHEREAS, on May 19, 2005, the District amended their open burning rule to address the elimination of burning of waste from field crops, pruning, and weed abatement operations, and to establish best management practices for other weeds (Phase II);

WHEREAS, on May 17, 2005, ARB concurred with the District's determination to postpone the prohibitions on burning associated with pome fruits, figs, rice straw, and weed abatement until June 2010;

WHEREAS, on May 17, 2007, the District amended the open burning rule to prohibit burning of orchard removal matter (Phase III).

WHEREAS, on June 18, 2007, ARB concurred with the District's determination to postpone the burn prohibition for orchard removals of 20 acres or less, orchard removal matter from citrus, pear, quince, and fig crops, and the phase-down of rice stubble burning;

WHEREAS, on April 15, 2010, the District amended their open burning rule to incorporate the language from Health and Safety Code sections 41855.5 and 41855.6 and require the District to prepare a report documenting the economic feasibility determinations of burn postponement prohibitions at least every five years;

WHEREAS, on April 20, 2010, the District released a report entitled "Proposed Staff Report Recommendations of Agricultural Burning" (Report); the Report documents the District's determination that there were no economically feasible alternatives for burning vineyard removal materials, orchard removal materials and pruning from apple, pear, and quince crops, orchard removals from citrus crops, orchard removals 15 acres or less, weed abatement from surface waterways, diseased bee hives; raisin trays, 70 percent of rice stubble acreage, and almond, walnut, and pecan crop pruning under 20 acres;

WHEREAS, in the Report the District also determined that there were differential costs for the removal of almond, walnut, and pecan crop pruning between 20 and 3500 acres and therefore the District will require further documentation of economic impacts on a case by case basis in order to allow burning;

WHEREAS, in the Report, the District determined that there was no long-term federal or State funding commitment for the continued operation of biomass facilities in the San Joaquin Valley or development of alternatives to burning:

WHEREAS, in the Report, the District determined that the continued issuance of permits for burn postponement categories will not cause or substantially contribute to a violation of a federal air quality standard;

WHEREAS, the Board finds that:

1. At this time there are no economically feasible alternatives for burning vineyard removal materials, orchard removal materials and pruning from apple, pear, and quince crops, orchard removals from citrus crops, orchard removals 15 acres or less, weed abatement from surface waterways, diseased bee hives; raisin trays, 70 percent of rice stubble acreage, and almond, walnut, and pecan crop pruning under 20 acres;

2. At this time there are differential costs for the removal of almond, walnut, and pecan crop prunings from operations 3500 acres and smaller and thus, the District's proposal for allowing burning of up to 20 acres per year and case by case documentation procedure for the limited burning beyond this amount is appropriate for determining whether the prohibition of burning is not economically feasible;

3. At this time there is no long-term federal or State funding commitment for the continued operation of biomass facilities in the San Joaquin Valley or development of alternatives to burning; and

4. The continued issuance of permits for burn postponement categories will not cause or substantially contribute to a violation of a federal air quality standard.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby concurs with the Districts determinations regarding their burn prohibition postponements, as set forth in the Report prepared by the District.

BE IT FURTHER RESOLVED that the Board's concurrence with the District's determinations is limited to a duration of two years, as specified in Attachment A to this Resolution.

BE IT FURTHER RESOLVED that the Board's two year concurrence is subject to the condition that the Board reserves the right to withdraw its concurrence for any category of agricultural waste or crop, if the Board determines that the criteria specified in Health and Safety Code section 41855.6 are not met.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to schedule an agenda item for the September 2010 Board meeting, if new information is developed prior to the September meeting that may affect the Board's concurrence with the District's determinations.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer and ARB staff to undertake the actions identified in Attachment A to this Resolution.

I hereby certify that the above is a true and correct copy of Resolution 10-24, as adopted by the Air Resources Board.

Lori Andreoni

Lori Andreoni, Clerk of the Board

Attachment A to Resolution 10-24

Proposal for Time-Limited Concurrence with District's Postponements

SB 705 requires the San Joaquin Valley to phase out agricultural burning by June 1, 2010, except where statutory criteria for specific postponements are met. The provision to allow some postponements recognizes the technical and economic impediments to a complete ban on all agricultural burning. ARB must concur before any postponements adopted by the District can take effect.

Since 2002, agricultural burning in the San Joaquin Valley has been reduced by 70%. This is a result of SB 705 requirements to phase out agricultural burning, and the implementation of ARB's smoke management regulation which makes all agricultural burning subject to daily limitations. The San Joaquin Valley Air District's newest regulation will further decrease burning another 10% to achieve an overall 80% reduction.

Staff is proposing a time-limited concurrence with the District's postponements and a process to help remove obstacles to further reductions in the remaining agricultural burning in the San Joaquin Valley. The need for disease control and other technical constraints affects about 5% of the remaining burning. For the rest, there are economic issues as a result of the increased incremental costs of chipping and soil incorporation, and uncertainties about whether biomass facilities will accept agricultural waste in a timely and economic fashion.

Staff recommends the following approach to address the remaining technical and economic impediments to further reductions in agricultural burning:

- Provide an initial two year concurrence with the District's postponements
- Work with the State Legislature, California Energy Commission, and California Department of Food and Agriculture to obtain incentive funding to increase utilization of agricultural waste at biomass facilities
- Work with the San Joaquin Valley Air Pollution Control District and biomass waste to energy facilities to develop permit conditions that will provide more certainty regarding the use of agricultural wastes
- In 2012 reconsider the ARB's concurrence based on progress made to obtain incentive funding and any other new information
- Provide for an extension of the concurrence if the statutory criteria continue to be met