State of California
AIR RESOURCES BOARD

Final Statement of Reasons for Rulemaking, Including Summary of Comments and Agency Response

PUBLIC HEARING TO CONSIDER A DELAY IN THE IMPLEMENTATION DATE OF THE UTILITY AND LAWN AND GARDEN ENGINE EMISSION REGULATIONS

Public Hearing Date: April 8, 1993
Agenda Item No.: 93-6-3

1. GENERAL

The Staff Report: Initial Statement of Reasons for Rulemaking ("staff report"), which was available for public inspection February 19, 1993, is incorporated herein by reference.

Following a public hearing on April 8, 1993, the Air Resources Board (the Board or ARB) by Resolution 93-23 adopted amendments delaying implementation of the utility and lawn and garden engine emission regulations (Regulations) from January 1, 1994 to January 1, 1995, and implementation of the quality-audit provisions from January 1, 1995 to January 1, 1996. Resolution 93-23 is attached hereto and incorporated by reference herein. The amendments are in Title 13, California Code of Regulations (CCR) sections 2400-2407.

The regulations amended by the Board incorporate by reference standards, procedures and specifications for new 1995 and later utility and lawn and garden equipment engines. Section 2403(c) incorporates by reference the test procedures for determining compliance with the standards for exhaust emissions from new utility and lawn and garden equipment engines sold in the state. The incorporated document has been amended to reflect the revised implementation dates and is now entitled "California Exhaust Emission Standards and Test Procedures for 1995 and Later Utility and Lawn and Garden Equipment Engines (Test Procedures)."

The incorporated Test Procedures were identified by title in the informative digest of the notice of proposed action and were identified by title and date in the respective sections incorporating the documents. The referenced documents have been readily available from the ARB upon request pursuant to Title 13, CCR, section 1902 and were made available in the context of the subject rulemaking in the manner provided in Government Code section 11346.7 (a).

The Board has determined that this regulatory action does not impose a mandate on local agencies or school districts.

The Board has further determined for the reasons set forth in the Petition Decision and Initial Statement of Reasons that no alternative to the adopted amendments would be more effective in carrying out the purposes for which

the regulations and evaluation procedures were adopted or would be as effective and less burdensome to affected private persons than the adopted amendments.

2. SUMMARY OF COMMENTS AND AGENCY RESPONSE

Prior to the public hearing on April 8, 1993, the Board received written comments from American Honda Motor Company, Inc. (Honda) and the Engine Manufacturers Association (EMA). At the public hearing, oral testimony was presented by EMA, the Portable Power Equipment Manufacturers Association (PPEMA), and Emissionex, an emissions controls company.

In comments made at the Board hearing and in written submittals, EMA, PPEMA and Emissionex expressed support for the staff's proposal. The staff was complimented on how well it worked with the industry to resolve concerns about the implementation.

TABLE OF TOPICS ADDRESSED IN COMMENTS:

A. The Tier I Standards.

B. Technological Feasibility.

C. Effect of the Delay on Certification.

D. The Tier II Standards.

A. THE TIER I STANDARDS

1. Comment: EMA's only concern with the proposal is whether the one-year delay in implementation will be sufficient. If the United States Environmental Protection Agency (EPA) continues, as it has, to fail to issue its final rule on the scope of the nonroad preemption (farm and construction equipment engines under 175 horsepower) and make its determination on the ARB's request for authorization, industry may need to request a further delay at a later date. (EMA)

Agency Response: The staff agrees that similar problems may arise in the future if EPA does not finalize the construction and farm definitions and the waiver protocol. However, the staff has been in contact with EPA and believes that rules on these matters will be promulgated in the near future, making further delays unnecessary. Furthermore, if the EPA delays its implementation of the preemption well beyond the expected date, the industry could return to the Board and request further delays.

B. TECHNOLOGICAL FEASIBILITY

2. Comment: Based on data developed after approval of the regulations, manufacturers have determined that certain of the standards may not be technologically feasible for production engines by January 1, 1994. (EMA)

Agency Response: If the commenter means that production (not certification) of complying engines by January 1, 1994, may not be possible, the staff agrees, for the reasons cited in the staff report (pages 5-6). However, the staff does not agree that the technological feasibility of the standards is an issue; rather it is the lack of certainty for manufacturers that is the sole reason for the proposed delay. By the time of the Board hearing, several manufacturers had certified some of their engine families, and at least one manufacturer plans to have all of its engine families certified by January 1, 1994. Please see Comment 3, below.

C. THE EFFECT OF THE DELAY ON CERTIFICATION

3. Comment: We do not oppose the proposal to delay implementation of the Regulations and the corresponding delay to quality-audit regulations. However, Honda would like to be able to continue to certify its utility engines for California. Honda plans to complete its certification program by January 1, 1994. (Honda)

Agency Response: Manufacturers may continue their certification activities and are, in fact, encouraged to do so. The ARB staff will continue to review applications for certification of utility engines and issue Executive Orders as appropriate.

D. THE TIER II STANDARDS

The Tier II Standards Should be Delayed

4. Comment: EMA and its members are hopeful that the Board will approach the Tier II standards with the same kind of understanding demonstrated by the proposal to delay Tier I implementation. The effects of the federal preemption on engine development and production extend not only to the Tier I regulations but to the Tier II regulations as well. We recommend that the Board include in the Proposal a one-year delay in implementation of the Tier II standards to correspond with the one-year delay in implementation of the Tier I standards and quality-audit test procedures. (EMA)

5. Comment: A delay of the Tier II standards is important for several reasons. When the Regulations were originally proposed, the Board approved the Tier II standards with the understanding that they represented a "target" to be achieved, if technologically feasible, almost a decade after approval of the regulations. Specifically, the Tier II standards were based

on the assumption that use of aftertreatment devices would effect an emissions reduction of 60 to 70 percent from Tier I levels. Such reductions were expected to be achieved during the period from 1994 to 1999.

Several events have occurred since approval of the regulations to alter that scenario. The enactment of the Clean Air Act amendments has had an obvious impact on engine development and production. Second, and perhaps more importantly, research that engine manufacturers have conducted clearly demonstrates that the Tier II standards may not be technologically feasible in the lead time currently provided. (EMA)

6. Comment: With federal activity prompting the need for delay in the implementation of the Tier I standards, the interim period between Tier I and Tier II has been reduced by a full year. As a result, the biennial reviews of manufacturer progress and the appropriateness of the Tier II standards should now logically be scheduled for 1995 and 1997, rather than 1994 and 1996. If Tier II standards are not delayed until 2000, manufacturers will be denied sufficient lead time to produce engines meeting the standards ultimately determined to be technologically feasible. Delay of the Tier II standards by one year would reinstate the schedule originally contemplated by the resolution. (EMA)

7. Comment: A one-year delay in implementation of the Tier II standards would provide engine manufacturers with a meaningful period of stability for the Tier I standards. Engine manufacturers are currently facing a deluge of federal and state regulation. The regulations affect every size of engine for every purpose and are scheduled for implementation over a very brief period. It appears now that manufacturers will be unable to produce complying engines in all major categories by the implementation date -- even if the date is delayed by one year. They will have to introduce certain lines at a later time, only as development efforts and production capability permit. At the same time, the industry is not experiencing the growth necessary to recoup some of the added costs of such regulation. Without a period of stability in which the research and development costs associated with the Tier I standards can partially be recovered, engine manufacturers may be forced to make dramatic cuts in their product lines and personnel. Such a result certainly is not what the Board intended. These concerns should be noted and be talked about as we go through the biennial review process. It would be prudent perhaps to consider that there needs to be a similar parallel one-year delay in the implementation of the Tier II standards because of the lead time effect and the need for additional time. (EMA)

Agency Response: The Tier II standards are outside the scope of the present rulemaking. At the 1990 hearing when the Board originally approved the utility and lawn and garden regulations, the Board approved the Tier II standards and the institution of status reports in 1994 and 1996. The rationale was that although there may be some questions regarding the ability of industry to meet the Tier II standards, a "target" was needed to encourage manufacturers to continue research and development. The 1994 and 1996 reviews were specifically set up to allow the Board to reevaluate the technological feasibility of the Tier II standards and to examine the

progress of industry research and development. Staff does not believe that the reviews should be rescheduled; since manufacturers should have completed Tier I certification in 1994 for those products to be produced in 1995, the timing remains appropriate to report on the progress to meet the Tier I standards. The 1996 review continues to be appropriate to report on the progress toward the 1999 standards, since those were not changed. Maintaining the schedule allows manufacturers the eight years of lead time originally envisioned. The delay in the Tier I standards should not reduce the efforts manufacturers must undertake in time to meet the 1999 standards.

Staff also notes that EMA has not yet shared the data, referred to in its comments, that show the Tier II standards to be infeasible. Staff will consider in full any additional information that industry wishes to submit for the 1994 and 1996 reviews.

The Tier II Standards may not be Necessary for the Estimated Reductions

8. Comment: EMA and its members question whether the Tier II standards are necessary for the emissions reductions initially thought to be achieved by the regulations. The emissions inventory on which the Regulations were based relied on data from 1989-1990, which is prior to when several manufacturers, in the absence of regulation, voluntarily improved the emissions performance of their engines. Thus, certain reductions have already been achieved. While EMA and its members are certainly concerned about the serious air quality problems facing the state of California, they nonetheless recommend that a reassessment of the emissions inventory and the reductions achievable by the Tier II standards be made before such standards are implemented. As EMA has represented throughout the rulemaking process, the costs of the planned reductions compared to the projected increase in engine costs will be significant. Such costs should be balanced against the necessity of the standards. (EMA)

Agency Response: The necessity of the Tier II standards is outside the scope of the present rulemaking. However, it should be noted that staff began preparation for the December, 1990 Board hearing in 1989, and that EMA was notified of ARB's intent to regulate emissions from utility engines no later than November 1989, when ARB staff met with EMA representatives and members; in light of this, staff believes the commenter's statement that manufacturers' work after 1990 was done "in the absence of regulation" to be misleading, though perhaps not technically incorrect.

The emission benefits initially estimated for the 1990 Board hearing assumed that all utility engines would meet the Tier II standards. The commenter appears to be saying that since some engines are now cleaner than the 1989 baseline (though not at Tier I levels), the Tier II standards are unnecessary. This is illogical; if the engines in 2010 were to emit higher levels of pollutants than the Tier II standards allow, total emissions would be higher than the estimate based on the Tier II standards. Please refer also to the agency response to Comments 4-7.

The Implementation of the Tier II Standards Should Coincide with EPA's Action

9. Comment: EMA and its members recommend that implementation of the Tier II standards be delayed one year or whatever other period is appropriate, to coincide with the federal standards to be adopted by EPA pursuant to the regulatory negotiation process currently being proposed. Under EPA's proposal, EPA would promptly adopt California's Tier I standards as the federal program. Thereafter, the affected parties, including ARB, would participate in a negotiated rulemaking to determine the scope of an appropriate second phase federal emission reduction program. Clearly, the date developed as part of the negotiated rulemaking would be of benefit to, and should be considered by, the ARB in confirming the parameters of its Tier II standards. (EMA)

Agency Response: Again, the implementation date of the Tier II standards is not within the scope of the notice of the proposed amendments. However, in answer to the comment, although consistency with federal programs is desirable, it is unclear at this point whether the results of the regulatory negotiation would be adequate to protect the public health in California and meet mandated air quality goals. The ARB will follow the regulatory negotiation process carefully and will certainly consider any results at the 1994 and 1996 reviews. However, any agreement to adopt the results of negotiations that have not yet taken place would be premature and unwise. If federal regulations are adopted, the staff will study those regulations and report any conclusions to the Board at the 1994 and 1996 reviews. Please refer also to the agency response to Comments 4-7.