State of California
AIR RESOURCES BOARD

Resolution 93-23

April 8, 1993

Agenda Item No.: 93-6-3

WHEREAS, section 39000 of the Health and Safety Code declares that the people of the State of California have a primary interest in the quality of the physical environment in which they live, and that this physical environment is being degraded by the waste and refuse of a civilization polluting the atmosphere, thereby creating a situation which is detrimental to the health, safety, welfare, and sense of well-being of the people of California;

WHEREAS, section 39003 of the Health and Safety Code charges the Air Resources Board (ARB or Board) with coordinating efforts to attain and maintain ambient air quality standards;

WHEREAS, sections 39600 and 39601 of the Health and Safety Code authorize the 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 Board by law;

WHEREAS, in section 43000.5 of the Health and Safety Code, the Legislature found and declared that despite significant reductions in vehicle emissions in recent years, continued growth in population and vehicle miles traveled throughout California have the potential not only to prevent attainment of the state standards, but in some cases, to result in worsening of air quality;

WHEREAS, section 43013 of the Health and Safety Code authorizes the Board to adopt standards and regulations for the control of contaminants from off-road sources, including utility engines;

WHEREAS, section 43018 of the Health and Safety Code directs the Board to achieve the maximum degree of emissions reductions possible from vehicular and other mobile sources in order to accomplish the attainment of state standards at the earliest possible date;

WHEREAS, sections 39515 and 39516 of the Health and Safety Code provide that the Board may delegate any duty to the Executive Officer which the Board deems appropriate and that any power, duty, purpose, function, or jurisdiction which the Board may lawfully delegate shall be conclusively presumed to have been delegated to the Executive Officer unless the Board has expressly reserved such authority onto itself;

WHEREAS, on March 20, 1992, the Board adopted regulations under Title 13, California Code of Regulations (CCR) section 2400 et seq. and test procedures incorporated by reference therein for 1994 and subsequent model

utility and lawn and garden equipment engines, and such regulations and procedures became operative on June 1, 1992;

WHEREAS, section 209(e) of the Federal Clean Air Act (CAA), as amended in 1990, requires that the ARB receive authorization from the Administrator of the Environmental Protection Agency (EPA) to adopt and enforce standards relating to the control of emissions from nonroad engines or vehicles;

WHEREAS, the ARB submitted a request for authorization to EPA on December 27, 1990, EPA has to date not granted such authorization because, inter alia, federal regulations defining the scope of the preemption of section 209(e) of the CAA have not become final;

WHEREAS, on or about August 4, 1992, the Portable Power Equipment Manufacturers Association petitioned the Board and requested a hearing for the Board to consider a one-year extension in the implementation of Title 13, CCR, sections 2400 et seq. The petition contended that manufacturers are experiencing difficulties in meeting the 1994 implementation date because of uncertainties that exist because the final rules defining the scope of the preemption of section 209(e) of the CAA have not been promulgated and authorization from EPA delineating the authority of the ARB to regulate specific equipment has not been granted;

WHEREAS, on December 18, 1992, the Executive Officer found that good cause exists for the granting of the petition;

WHEREAS, the staff has proposed adoption of amendments to Title 13, CCR, section 2400 et seq. which would delay general implementation of the regulation to January 1, 1995 and delay implementation of the quality audit provisions of section 2407 from January 1, 1995 to January 1, 1996;

WHEREAS, the California Environmental Quality Act and Board regulations require that no project which may have significant adverse environmental impacts be adopted as originally proposed if feasible alternatives or mitigation measures are available to reduce or eliminate such impacts;

WHEREAS, pursuant to section 43013(e) of the Health and Safety Code, the Board has considered the effects of the proposed standards 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 that:

> Because the EPA has, to date, not promulgated final rules defining the scope of the preemption set forth in section 209(e) of the CAA, arguable uncertainties exist as to which engines and equipment would be subject to the aforementioned California regulation;

The proposed amendments to Title 13, CCR, section 2400 et seq. are necessary, cost-effective, and technologically feasible to carry out the purposes of the California Clean Air Act;

The proposed amendments to Title 13, CCR, section 2400 et seq. do not affect the Board's earlier findings set forth in Resolution 90-80 that the regulations will result in emission reductions that will help attain and maintain national and air quality standards for ozone, carbon monoxide and nitrogen dioxide;

WHEREAS, the Board has determined, in accordance with the California Environmental Quality Act and Board regulations, that the proposed amendments to Title 13, CCR, section 2400 et seq. will not have significant adverse environmental impacts; and

WHEREAS, the reporting requirements of Title 13, CCR, section 2400 et seq. which apply to small businesses continue to be necessary for the health, safety, and welfare of the people of the state and are not affected by the proposed amendments;

NOW, THEREFORE, BE IT RESOLVED that the Board hereby adopts the amendments to sections 2400-2407, Title 13, California Code of Regulations and the test procedures incorporated therein, as set forth in Attachment A hereto.

BE IT FURTHER RESOLVED that the Board hereby determines that the amendments adopted herein will not cause the California emission standards, in the aggregate, to be less protective of public health and welfare than applicable federal standards; that California needs such standards to meet compelling and extraordinary conditions within the State; that the standards and accompanying enforcement procedures are not inconsistent with the Federal Clean Air Act, as amended; and that the regulations raise no new issues affecting previous waiver determinations of the Administrator of EPA.

BE IT FURTHER RESOLVED that the Executive Officer shall forward the amendment adopted herein to the Administrator of EPA with a request that California be given authorization to adopt and enforce such amendments.

BE IT FURTHER RESOLVED that the Board, pursuant to its direction in Resolution 90-80, directs staff to continue to consult with industry through workshops and report back to the Board in 1994 and 1996 on the status of compliance with the 1999 standards, sections 2400-2407 and the incorporated documents therein.

I hereby certify that the above is a true and correct copy of Resolution 93-23, as adopted by the Air Resources Board.

Pat Hutchens

Pat Hutchens
Board Secretary