

State of California
AIR RESOURCES BOARD

Resolution 99-22

June 24, 1999

Agenda Item No.: 99-5-1

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, sections 43018(a) and (b) of the Health and Safety Code direct 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 ambient air quality standards at the earliest practicable date, and to take whatever actions are necessary, cost-effective, and technologically feasible in order to achieve, by December 31, 2000, specified reductions in the emissions of reactive organic gases, oxides of nitrogen (NO_x), particulates, carbon monoxide (CO), and toxic air contaminants from vehicular sources;

WHEREAS, section 43018(c) of the Health and Safety Code provides that in carrying out section 43018, the Board shall adopt standards and regulations which will result in the most cost-effective combination of control measures on all classes of motor vehicles and motor vehicle fuel, including but not limited to specification of vehicular fuel composition;

WHEREAS, Health and Safety Code section 43013 authorizes the Board to adopt and implement 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 of Division 26 of the Health and Safety Code;

WHEREAS, following a hearing in November 1991, the Board adopted regulations for California reformulated gasoline, applicable beginning March 1, 1996; these regulations include a comprehensive set of specifications affecting eight different gasoline properties — summertime Reid vapor pressure (RVP), T50, T90, and aromatic hydrocarbon, benzene, sulfur, olefin, and oxygen content — which result in significant reductions in emissions of ozone precursors and toxic air contaminants;

WHEREAS, when implemented in 1996, the California reformulated gasoline regulations required that California gasoline sold or supplied throughout the gasoline distribution system in specified winter months (the “winter control periods”) contain at least 1.8 percent by weight (wt.%) oxygen; the regulations also required that gasoline must contain at least 1.8 wt.% oxygen year-round when it was supplied from its production or import facility, except that a producer or

importer was permitted to reduce or eliminate the oxygen outside the winter control period as long as the gasoline is formulated so that the California Predictive Model showed it will result in overall emission reductions equivalent to those resulting from the limits set forth in the regulations;

WHEREAS, the California reformulated gasoline regulations as originally adopted, including the minimum oxygen content requirements, were approved by the U.S. Environmental Protection Agency (U.S. EPA) on August 21, 1995 as a revision to California's State Implementation Plan (SIP);

WHEREAS, adding oxygen to gasoline reduces emissions of CO from the current motor vehicle fleet, and the primary reason for the California reformulated gasoline requirement for at least 1.8 wt.% oxygen in the winter control periods when ambient CO levels are the highest was that section 211(m) of the federal Clean Air Act (CAA) conditionally required California to mandate wintertime oxygenated gasoline in eight urban areas that were designated as nonattainment for the federal ambient CO standard and met specified criteria;

WHEREAS, in March 1998, the U.S. Environmental Protection Agency (U.S. EPA) granted ARB's request that all federal CO nonattainment areas in California be redesignated to attainment except Los Angeles - South Coast Air Basin; the redesignated areas included the Lake Tahoe North Shore Area and the Lake Tahoe South Shore Area;

WHEREAS, based on a determination that it was no longer necessary for wintertime gasoline to be oxygenated in order to maintain attainment of the federal CO standard in most of the state, and to provide refiners additional flexibility in meeting the California reformulated gasoline requirements, on August 27, 1998, the Board amended its regulations to eliminate the minimum oxygen content requirement for wintertime gasoline sold in most CO attainment areas; however, in order to ensure maintenance of the federal and state ambient CO standards, the wintertime oxygen requirements were continued until January 31, 2000 for the Lake Tahoe Air Basin and Fresno and Madera counties, and the wintertime oxygen requirements remained unchanged in Los Angeles, Orange, Riverside, San Bernardino, Ventura and Imperial counties;

WHEREAS, in September 1998, the Board redesignated the Lake Tahoe Air Basin as attainment for the State ambient air quality standard for CO;

WHEREAS, pursuant to CAA section 211(k), U.S. EPA administers federal reformulated gasoline regulations applicable to 70 percent of California gasoline that is sold in the greater Los Angeles, San Diego, and Sacramento areas; these regulations require a year-round minimum oxygen content of 2.0 wt.% or 2.1 wt.% on average;

WHEREAS, in order to meet the state and federal requirements for the minimum oxygen content of gasoline, refiners have primarily used the oxygenate methyl tertiary butyl ether (MTBE); in 1998, over 90 percent of California gasoline was blended with MTBE;

WHEREAS, “The MTBE Public Health and Environmental Protection Act of 1997” (stats 1997 ch 816; Senate Bill 521, Mountjoy) required the University of California to conduct a study of the health and environmental risks and benefits of MTBE in gasoline compared to other oxygenates;

WHEREAS, the University of California prepared a report on the “Health and Environmental Assessment of Methyl Tertiary Butyl Ether (MTBE)” and presented it to the Governor on November 12, 1998;

WHEREAS, in response to this report, on March 25, 1999 Governor Gray Davis issued Executive Order D-5-99, in which he found that, “on balance, there is significant risk to the environment from using MTBE in gasoline in California” because of the environmental threat of MTBE contamination of groundwater and drinking water resulting from leaking underground fuel storage tanks;

WHEREAS, Executive Order D-5-99 directed, among other things, that the California Energy Commission, in consultation with the ARB, develop a timetable for the removal of MTBE from California gasoline not later than December 31, 2002; that the ARB evaluate the need for wintertime oxygenated gasoline in the Lake Tahoe Air Basin; and that the ARB develop regulations that would require prominent identification at the pump of gasoline containing MTBE;

WHEREAS, as a result of Executive Order D-5-99, the ARB staff has proposed amendments to the California reformulated gasoline regulations that: (1) would rescind in the Lake Tahoe Air Basin the requirement for at least 1.8 wt.% oxygen in gasoline sold in the air basin’s one remaining wintertime control period, from October 1, 1999 through January 31, 2000; and (2) would require statewide the prominent labeling of retail pumps dispensing gasoline containing MTBE, exempt gasoline that contains less than de minimis levels of MTBE, and require a person delivering gasoline containing more than de minimis levels of MTBE to a retail outlet to identify the presence and amount of MTBE on the bill of lading or other written material;

WHEREAS, the California Environmental Quality Act and Board regulations require that an action not be adopted as proposed where it will have significant adverse environmental impacts if feasible alternatives or mitigation measures are available which would substantially reduce or avoid such impacts;

WHEREAS, the Board has considered the impact 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 that:

A substantial number of drinking water wells in the Lake Tahoe Air Basin have been closed because of threatened contamination by MTBE leaking from underground gasoline storage tanks, and rescission of the minimum oxygen requirements in the Lake Tahoe Air Basin in the one remaining wintertime control period — October 1, 1999 through January 31, 2000 — is necessary and appropriate to make it easier to market complying California reformulated gasoline that does not contain MTBE in the Lake Tahoe area during that period;

The statewide labeling requirements for pumps dispensing gasoline containing MTBE, as approved herein, will ensure that the citizens of California are provided an opportunity to make an informed choice as to the type of gasoline they purchase;

It is appropriate to require MTBE labeling only on gasoline containing more than 0.6 volume percent MTBE, because of potential residual MTBE that may remain in the gasoline distribution system from prior batches of gasoline;

The modified regulatory text in Attachment B hereto appropriately includes two additional alternative mechanisms that may be used by operators of retail gasoline outlets to determine that an MTBE label is not required on gasoline dispensing equipment; these mechanisms will provide more flexibility in complying with the regulatory requirements;

The modified regulatory text in Attachment B hereto appropriately adds a requirement prohibiting the delivery of gasoline containing more than residual levels of MTBE to a retail gasoline outlet unless the dispensing equipment has MTBE labels or the distributor has been notified in writing that the dispensing equipment has MTBE labels; this requirement will help assure retail outlet operators that their dispensing equipment is not mislabeled;

The regulatory action adopted and approved herein will implement specific directives contained in the Governor's Executive Order D-5-99;

The oxygen content amendments adopted herein will not result in increased costs to gasoline producers and marketers as they provide additional flexibility and do not prohibit previously permitted actions; costs associated with complying with the proposed statewide labeling requirements for pumps dispensing gasoline containing MTBE should be less than \$25 per retail service station, and should be minimal for gasoline distributors;

The amendments adopted and approved herein will not affect the creation or elimination of jobs within the State of California, the creation of new businesses or the elimination of existing businesses within California, the expansion of businesses currently doing business within California, or the ability of California businesses to compete with businesses in other states;

The amendments adopted and approved herein will not have a significant adverse impact on the economy of the state; and

WHEREAS, the Board further finds that:

To the extent that refiners and importers reduce the amount of oxygen in winter 1999-2000 gasoline in the Lake Tahoe Air Basin in response to the wintertime oxygen amendments adopted herein, CO emissions from motor vehicles operating on that gasoline will increase as a result of the reduced oxygen content;

The CO emission benefit of oxygenated gasoline compared to gasoline produced without oxygenates is an approximate 10 percent reduction in CO emissions from motor vehicles; CO emissions from motor vehicles also decline from four to eight percent annually as a result of the turnover of the vehicle fleet to new vehicles;

Since 1995, CO emissions in the Lake Tahoe Air Basin have decreased from 106 tons per day to less than 90 tons per day in 1997; maximum 8-hour ambient concentrations of CO in the Lake Tahoe Air Basin have decreased from 6.3 parts per million (ppm) in 1995 to 4.3 ppm in 1998 while the applicable federal and State ambient air standards for CO in the air basin are 9.0 and 6.0 ppm, respectively;

Rescission of the minimum oxygen requirements in the Lake Tahoe Air Basin in the winter of 1999-2000 will not interfere with the maintenance of the federal or State ambient CO standards;

The amendments adopted herein regarding minimum oxygen content may result in the decreased use of MTBE in the Lake Tahoe Air Basin during October 1999 - January 2000, and such a reduction would lessen the threat of additional groundwater and drinking water contamination by MTBE;

Eliminating the minimum oxygen requirements in the Lake Tahoe Air Basin in the winter of 1999-2000 will make it more practical to produce and market MTBE-free gasoline during that period, and this constitutes an overriding consideration which justifies the adverse CO emissions impacts identified above, and the limitations in the amendments substantially mitigate the impacts; there are no other feasible alternatives or mitigation measures available that would further reduce or avoid such impacts while maintaining the increase in producer and importer flexibility;

The amendments adopted herein regarding minimum oxygen content are not expected to have an adverse or beneficial impact on exhaust emissions of HC, NOx or potency-weighted toxics because gasoline containing less than 1.8 wt.% oxygen will only be permitted if it meets the Predictive Model criteria; and

The requirements for the statewide labeling of retail pumps dispensing gasoline containing MTBE approved herein will not result in any adverse environmental impacts.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby adopts the amendments to section 2262.5(a), and approves the adoption of new section 2273 in title 13, California Code of Regulations, as set forth in Attachment A hereto, with the modifications set forth in Attachment B.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to incorporate into the approved new section 2273 the modifications described in Attachment B hereto, with such other conforming modifications as may be appropriate, and then to adopt the modified new section 2273, after making the modified regulatory language available for public comment for a period of 15 days, provided that the Executive Officer shall consider such written comments regarding the modified text 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 determines that this is warranted.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to take the appropriate steps necessary for the amendments adopted and approved herein to be filed with the Office of Administrative Law as expeditiously as possible, with an effective date for the labeling requirements of 30 days after filing with the Secretary of State or September 1, 1999, whichever occurs later, and an immediate effective date for revision of the minimum oxygen requirements for the Lake Tahoe region.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to submit the rescission of the remaining winter minimum oxygen requirements in the Lake Tahoe Air Basin adopted herein to the U.S. EPA as a revision to the California SIP, and to take whatever actions are necessary to assure prompt approval of the SIP revision by the U.S. EPA.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to monitor implementation of the MTBE labeling requirements approved herein, particularly with respect to how those requirements affect small businesses and independent gasoline marketers, and to report back to the Board on these matters no later than December 1999.

I hereby certify that the above is a true and correct copy of Resolution 99-22, as adopted by the Air Resources Board.

Pat Hutchens, Clerk of the Board

Resolution 99-22

June 24, 1999

Identification of Attachments to the Resolution

Attachment A: Proposed amendments to section 2262.5(a) and new section 2273, as modified, in title 13, California Code of Regulations, as set forth in Attachment A of the Staff Report.

Attachment B: Staff's Suggested Changes to the Original Proposal, distributed at the hearing on June 24, 1999.