

State of California  
AIR RESOURCES BOARD

Resolution 89-68

August 10, 1989

WHEREAS, Sections 39600 and 39601 of the Health and Safety Code authorize the Air Resources Board (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, Health and Safety Code Section 39003 charges the Board to coordinate efforts throughout the state to attain and maintain state and national ambient air quality standards;

WHEREAS, Health and Safety Code Section 41500(b) directs the Board to review the rules and regulations of the local air pollution control districts ("districts") to determine whether they are sufficiently effective to achieve and maintain the state ambient air quality standards;

WHEREAS, Section 41504 of the Health and Safety Code authorizes the Board, if it finds after a public hearing that the rules and regulations of a district are not likely to achieve and maintain the state ambient air quality standards, to adopt rules or regulations for a local air pollution control district which it deems necessary to enable the district to achieve and maintain state ambient air quality standards;

WHEREAS, Health and Safety Code Section 39517 provides that a district shall be given notice and the opportunity to act before the Board adopts any rule or regulation for the district;

WHEREAS, the Board and the U.S. Environmental Protection Agency have established health-based ambient air quality standards for several air pollutants including ozone and particulate matter (PM10);

WHEREAS, in the California Clean Air Act of 1988 (the "Act;" Stats. 1988, ch. 1568, Section 1), the Legislature found that attainment of the health-based state ambient air quality standards is necessary to protect public health, particularly of children, older people, and those with respiratory diseases, and that it is therefore in the public interest that these standards be attained at the earliest practicable date;

WHEREAS, Health and Safety Code Section 40001 requires the district to adopt and enforce rules and regulations to achieve and maintain the state and national ambient air quality standards in all areas affected by emission sources under their jurisdiction;

WHEREAS, the Act provides that districts shall endeavor to achieve and maintain the state ambient air quality standards for ozone, carbon monoxide, sulfur dioxide, and nitrogen dioxide by the earliest practicable date (Health and Safety Code Section 40910);

WHEREAS, the San Joaquin Valley Air Basin has not attained the state or national standards for ozone and PM10, and the Board approved regulations on June 9, 1989 which formally designate the Air Basin as nonattainment for the state ambient air quality standards for ozone and PM10;

WHEREAS, in order to attain the state ambient air quality standards, the Act mandates a comprehensive program of emission reduction measures and planning requirements for the state and the local air pollution control districts in areas where the standards are not attained (Health and Safety Code Section 40910 et seq.); adopts, as a measure of progress towards attainment, an annual 5 percent emissions reduction requirement for nonattainment pollutants and their precursors (Health and Safety Code Section 40914); and specifically requires that a district attainment plan for areas with serious or severe air pollution include a permitting program designed to achieve no net increase in emissions of nonattainment pollutants or their precursors from all permitted new or modified stationary sources (Health and Safety Code Sections 40919 and 40920);

WHEREAS, at a public meeting of the Board April 7, 1988, Board staff presented substantial information on the deteriorating air quality in the Valley, the rapid growth of new stationary sources, and the inadequacy of the existing Valley district rules to prevent substantial emissions increases from new stationary sources;

WHEREAS, in response to this information, the San Joaquin Valley Basinwide Air Pollution Control Council ("BCC") and Board staff commenced efforts to develop more effective stationary source permitting rules and, in particular, to lower the existing threshold levels of 150 pounds per day of specified pollutants for the control technology requirements (generally referred to as Best Available Control Technology or "BACT") and of 250 pounds per day of specified pollutants for the emissions offset requirements;

WHEREAS, in December 1988 the Board received a petition from the City of Kingsburg and several citizens groups requesting the Board to exercise its oversight authority over the eight San Joaquin Valley districts with respect to their new and modified stationary source permitting rules;

WHEREAS, on February 3, 1989, the BCC approved a proposal for a revised rule for the Valley districts with a threshold for BACT requirements of zero by January 1, 1990, and with thresholds for emissions offset requirements of 150 pounds per day (80 for PM10) by January 1, 1990, and of zero by July 1, 1991;

WHEREAS, on March 10, 1989, the Board adopted Resolution 89-28 directing the Executive Officer to notify the eight Valley districts pursuant to Health and Safety Code Section 39517 to adopt amended rules incorporating the threshold levels for the Best Available Control Technology and emissions offset requirements and other appropriate amendments as proposed by the BCC as expeditiously as practicable;

WHEREAS, Resolution 89-28 further directed the Executive Officer to notify the districts to take immediate action to assure that any permits which might be issued to sources which had pending applications for authority to construct permits reflected the proposed reduced threshold requirements for BACT and offsets, and, with respect to sources which had been permitted but were not yet constructed or operating, to take any action which was available in light of any technical and legal considerations to assure that the permits reflected the proposed reduced threshold requirements for BACT and offsets;

WHEREAS, on May 3, 1989, the BCC approved a proposed rule and a schedule for the revisions of the rule for the review of new and modified stationary sources which would lower the threshold levels for the BACT and offsets requirements but which would apply only to sources whose applications for authority to construct permits were determined to be complete after the effective date of the rule revisions (approximately August 22, 1989);

WHEREAS, at a public hearing May 11, 1989, after receiving testimony from the BCC, the districts and interested persons, the Board encouraged the Valley districts to continue on their rulemaking schedules and also directed Board staff to notice a hearing pursuant to Health and Safety Code Section 41500 et seq. for the consideration of a regulation which would apply the lower threshold levels for BACT and emissions offsets to sources whose applications for authority to construct permits were pending or received after March 10, 1989 or who have received authority to construct permits but have not acquired vested rights to proceed;

WHEREAS, each Valley district has proposed revisions (adopted by the Fresno County district August 8, 1989) to its permitting rules which would apply the lower threshold levels only to projects whose applications for authority to construct permits were determined to be complete after the effective date of the rule revisions;

WHEREAS, in response to the Board's direction, staff has prepared a proposed regulation which would apply threshold levels of zero pounds per day for BACT and 150 pounds per day (80 pounds per day for PM10) for emissions offsets to sources whose applications for authority to construct permits were pending on or received after March 10, 1989, and to sources which have received their authority to construct permits or their renewals of authority to construct permits but have not yet acquired a vested right under California law to proceed in accordance with those permits.

WHEREAS, the proposed regulation does not apply to sources who have permits to operate or to sources whose application for an authority to construct permit is determined to be complete after the effective date of any amendments to the district's rules relating to the control technology or offset requirements adopted after August 7, 1989;

WHEREAS, the proposed regulation defines vested right as the right acquired by the holder of an authority to construct permit to proceed in accordance with the permit based on applicable California law and specifies that the district hearing boards shall make vested rights determinations upon request by a permit holder;

WHEREAS, the proposed regulation includes procedures for the districts to follow in implementing the regulation;

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, a public hearing and other administrative proceedings have been held in accordance with the provisions of Section 41502 of the Health and Safety Code and Chapter 3.5 (commencing with Section 11340), Part 1, Division 3, Title 2 of the Government Code;

WHEREAS, the Board has heard and considered the testimony and written comments presented by Board staff, representatives of the Valley districts, affected businesses and industries, and other interested persons and agencies;

WHEREAS, the Board finds that:

The San Joaquin Valley Air Basin has not yet attained the state and national ambient air quality standards for ozone and particulate matter (PM10);

Emissions from existing stationary sources significantly contribute to concentrations of ozone and particulate matter in the San Joaquin Valley Air Basin and emissions from new stationary sources will add substantially to such concentrations;

The California Clean Air Act of 1988 requires that the state ambient air quality standards shall be attained as expeditiously as practicable, and it is not intended to delay the adoption of needed control measures until the attainment plans to be submitted in 1991 are approved;

Substantial emission reductions from existing levels are necessary to make the legally required progress toward

attainment of the standards in the Valley, and emission increases from new sources not yet operating would add significantly to the total reductions from existing sources which are necessary to make such progress;

Significant emissions reductions of ozone precursors and PM10 and its precursors may be realized from applying the lower threshold levels for BACT and offsets in the proposed regulation to sources which have applications for authority to construct permits pending or which have received their authority to construct permits but have not acquired vested rights to proceed in accordance with their permits;

Requiring the application of BACT to new and modified stationary sources to limit their emission increases is far more cost effective than requiring equivalent reductions from existing sources;

The existing threshold levels for control and offset requirements in the new and modified stationary source review rules of the Valley districts will not prevent substantial emission increases from new sources and will not likely achieve and maintain the state ambient air quality standards;

The revisions to the Valley rules proposed by the districts lower the threshold levels for BACT and offset requirements but are inadequate to provide for the attainment of the state ambient air quality standards because they only apply to sources whose applications for authority to construct permits are determined to be complete after the effective date of the rule revisions;

The Valley districts were given notice and an opportunity to act to revise their new and modified stationary source review rules pursuant to Health and Safety Code Section 39517 in Resolution 89-26;

The regulation proposed by the staff will prevent substantial emission increases from new sources which have not acquired vested rights to proceed with construction and will also provide a procedure by which a source with an authority to construct permit may establish a vested right under California law to proceed according to its permit;

The revisions to the Valley districts' regulations proposed by staff will have no significant adverse environmental impacts but will have a beneficial effect

on air quality in the Valley by limiting the emission increases associated with the permitting of new and modified sources; and

It is necessary to adopt this regulation as an emergency measure for the immediate preservation of the public health, safety and general welfare in order to minimize any delay or period of uncertainty which the proponents of projects granted their authority to construct permits under existing district rules may experience by allowing them to proceed under their permits, or, if necessary, to modify their permits expeditiously.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves Section 86000, Title 17, California Code of Regulations, as set forth in Attachment A hereto and as amended by the Board.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to adopt Section 86000, Title 17, California Code of Regulations, as an emergency measure for the immediate preservation of the public health, safety, and general welfare in accordance with the provisions of the Administrative Procedure Act set forth in Section 11346.1 of the Government Code, after making it available to the public for a period of 15 days, provided that the Executive Officer shall consider such written comments as may be submitted during this period, shall make modifications as may be appropriate in light of the comments received, and shall present the regulation to the Board for further consideration if he determines that this is warranted.

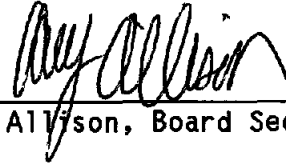
BE IT FURTHER RESOLVED that prior to adopting Title 17, California Code of Regulations, Section 86000, the Executive Officer shall, based on the record of the public hearing, including all of the comments presented for the hearing and during the 15-day comment period, adopt the written findings required by Section 41502(c) of the Health and Safety Code.

BE IT FURTHER RESOLVED that the Board further directs the Executive Officer to complete the procedures set forth in the Administrative Procedure Act, Sections 11346.4 to 11346.8 of the Government Code, inclusive, as expeditiously as practicable to formally adopt the regulation.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to transmit this resolution and the adopted regulation to each of the eight Valley district boards and air pollution control officers and to take all steps necessary to ensure that the regulation is being implemented as required by Health and Safety Code Section 41504.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to monitor the progress of each Valley district in adopting revisions to its new source review rules and to initiate proceedings before the Board in accordance with Sections 39517, 41502 and 41504 of the Health and Safety Code in the event appropriate revisions are not expeditiously adopted by each district board.

I hereby certify that the above is a true and correct copy of Resolution 89-68, as adopted by the Air Resources Board.



Cary Allison, Board Secretary

State of California  
AIR RESOURCES BOARD

Response to Significant Environmental Issues

Item: Public Hearing to Consider the Adoption of a  
Regulation Amending the New and Modified Stationary  
Source Review Rules of the Eight San Joaquin Valley  
County Air Pollution Control Districts

Agenda Item No.: 89-14-1

Public Hearing Date: August 10, 1989

Response Date: N/A

Issuing Authority: Air Resources Board

Comment: No comments were received identifying any significant  
environmental issues pertaining to this item. The  
staff report identified no adverse environmental  
effects.

Response: N/A

Certified: \_\_\_\_\_

*Ray Allen*  
Board Secretary

Date: \_\_\_\_\_

*9/21/89*