

State of California
AIR RESOURCES BOARD

Resolution 06-38

November 16, 2006

Agenda Item No.: 06-10-4

WHEREAS, sections 39600 and 39601 of the Health and Safety Code authorize the Air Resources Board (ARB or 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, Assembly Bill 471 (AB 471) was passed by the California Legislature in 2004, signed by the Governor, and codified in Health and Safety Code section 39630 *et seq.* effective January 1, 2005; AB 471 prohibits cruise ships from conducting onboard incineration while operating within three miles of the California coast;

WHEREAS, in November 2005, the Board adopted the Airborne Toxic Control Measure for Cruise Ship Onboard Incineration (the Cruise Ship ATCM) which became effective in May 2006; the Cruise Ship ATCM is contained in section 93119, title 17, California Code of Regulations and implements AB 471 by clarifying the three nautical mile limit for incineration along the California coast and establishing recordkeeping and reporting requirements;

WHEREAS, Senate Bill 771 (SB 771) was passed by the California Legislature in 2005, signed by the Governor, and codified in Health and Safety Code section 39630 *et seq.* effective January 1, 2006; SB 771 prohibits oceangoing ships from conducting onboard incineration while operating within three miles of the California coast;

WHEREAS, AB 471 and SB 771 further require that ARB enforce Health and Safety Code division 26, part 2, chapter 3.3 (section 39630 *et seq.*);

WHEREAS, ARB has established, through extensive studies, that meteorological, atmospheric, and weather conditions exist such that emissions of air pollutants in California Coastal Waters are transported to the coastal communities and adversely affect the health, welfare, and safety of the people in those communities and the surrounding regions;

WHEREAS, in May 2006, ARB sent out the Oceangoing Ship Onboard Incinerator Survey (Survey) to the affected industry in order to gather information on incinerator and waste handling practices;

WHEREAS, the Survey revealed that oceangoing ships incinerate a wide variety of wastes, such as paper products, rags, sludge oil, waste oil, oil filters, packing materials, and plastics; the Survey also showed that 56 percent of oceangoing ships conduct onboard incineration and the ships operate their incinerators, on average, six hours per day for two days per week;

WHEREAS, by extrapolating from the Survey responses, ARB staff estimates less than one percent of oceangoing ships incinerated within three nautical miles of the California coast, prior to the effective date of SB 771, January 1, 2006;

WHEREAS, Health and Safety Code section 41511 provides that for the purpose of carrying out its duties, ARB may adopt rules and regulations to require the owner or the operator of any pollution emission source to take such action as ARB may determine to be reasonable for the determination of the amount of emissions from such source;

WHEREAS, under section 39650 of the Health and Safety Code, the Legislature finds and declares that it is the public policy of the State that emissions of toxic air contaminants (TAC) should be controlled to levels which prevent harm to the public health;

WHEREAS, TACs associated with oceangoing ship onboard incineration may include, but are not limited to, arsenic, beryllium, cadmium, chromium, hydrochloric acid, lead, manganese, nickel, polychlorinated dibenzodioxins (dioxins), polychlorinated dibenzofurans (furans), and polycyclic aromatic hydrocarbons;

WHEREAS, ARB has formally identified all of the substances listed above as TACs pursuant to Health and Safety Code sections 39660-39662 without the identification of a threshold level below which no significant adverse health effects are anticipated; in addition, all of these substances have been listed as hazardous air pollutants by the United States Environmental Protection Agency under the Federal Clean Air Act (42 U.S.C. 7412);

WHEREAS, sections 39658, 39665, 39666, and 39667 of the Health and Safety Code authorize the Board to establish airborne toxic control measures (ATCM) for substances identified as TACs in accordance with specified criteria;

WHEREAS, for TACs for which the Board has not specified a threshold exposure level, section 39666 of the Health and Safety Code requires ATCMs to be designed to reduce emissions to the lowest level achievable through the application of best available control technology (BACT) or a more effective control method, considering factors specified in section 39665, unless the Board determines, based on an assessment of risk, that an alternative level of emissions reduction is adequate or necessary to prevent an endangerment of public health;

WHEREAS, in AB 471 and SB 771, the Legislature specifically imposed a prohibition of cruise ships and oceangoing ships, respectively, from conducting onboard incineration

while operating within three miles of the California coast, without regard to any BACT or a more effective control method;

WHEREAS, in accordance with the above authority, ARB staff has proposed ATCM amendments limiting onboard incineration on cruise ships and oceangoing ships based upon SB 771 and potential risks to public health; these amendments to section 93119, title 17, California Code of Regulations are set forth in Attachment A hereto;

WHEREAS, in developing the proposed ATCM amendments, ARB staff met and worked with affected private industry, federal, State, and local agencies, and the public;

WHEREAS, ARB staff prepared a report, entitled the Initial Statement of Reasons for the Proposed Adoption of Airborne Toxic Control Measure Amendments Limiting Onboard Incineration on Cruise Ships and Oceangoing Ships (the ISOR);

WHEREAS, the ISOR identifies and explains the need for and appropriate degree of regulation for oceangoing ship onboard incineration;

WHEREAS, the ISOR identifies and explains the need for the proposed amendments affecting cruise ships, which allow cruise ships to incinerate within three nautical miles of the California coast when operation of the incinerator is required by the United States Coast Guard (USCG); add a requirement for cruise ships to record additional information when the incinerator is operated under the direction of the USCG; require that records of incineration within 24 nautical miles be made available to ARB; and clarify the definition of cruise ship;

WHEREAS, the ISOR further discusses, to the extent data could reasonably be made available, the factors specified in Health and Safety Code section 39665(b) which include emissions, exposure, and potential cancer risk remaining after implementation of the proposed ATCM amendments, feasible control options, potential environmental impacts, and cost impacts for the affected industry, local districts, the State, and local government;

WHEREAS, in accordance with Health and Safety Code section 39665(c), the report and any relevant comments received during public consultation with the local air districts, affected sources, and the public were made available for public review and comment 45 days prior to the public hearing to consider the proposed ATCM amendments;

WHEREAS, as part of the ISOR, staff performed a qualitative assessment of potential health impacts remaining after implementation of the proposed ATCM amendments and compared it to the quantitative assessment conducted for cruise ships as previously evaluated in the Initial Statement of Reasons for the Proposed Airborne Toxic Control Measure for Cruise Ship Onboard Incineration;

WHEREAS, in comparing incineration practices aboard oceangoing vessels against those aboard cruise ships, based on several factors, such as the significantly lower amounts of waste generated and incinerated onboard, smaller numbers of crew, limited operating times, and prohibitory company and military policies, ARB staff has determined that the proposed prohibition of incineration onboard oceangoing vessels within 3 nautical miles would be sufficiently protective of public health;

WHEREAS, concepts and drafts of the proposed ATCM amendments were discussed at two workgroup meetings and at one public workshop, which was held on August 30, 2006;

WHEREAS, staff evaluated the potential costs of the proposed ATCM amendments and concluded that the overall costs to the affected industry are negligible;

WHEREAS, the costs to ARB for enforcement of the proposed amended ATCM are expected to be absorbed into the existing ARB budget for the current year; however, additional resources to enforce the proposed amended ATCM may be necessary at a future date;

WHEREAS, the California Environmental Quality Act (CEQA), section 21080.5 of the Public Resources Code and Board regulations at title 17, California Code of Regulations, section 60006, require that no project that 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 chapter 3.5 (commencing with section 11340), part 1, division 3, title 2 of the Government Code;

WHEREAS, in consideration of the ISOR, written comments, and public testimony it has received, the Board finds that:

Existing federal, State, and local regulations do not sufficiently protect the public health from TACs associated with oceangoing ship onboard incineration;

Oceangoing ship onboard incineration results in emissions of TACs which may include, but are not limited to, arsenic, beryllium, cadmium, chromium, hydrochloric acid, lead, manganese, nickel, dioxins, furans, and polycyclic aromatic hydrocarbons;

Oceangoing ship onboard incineration may result in potentially harmful airborne concentrations of these TACs, which may result in adverse health impacts to exposed members of the public;

The proposed ATCM amendments would significantly reduce exposure and protect health more effectively than any other possible alternative evaluated;

The proposed ATCM amendments comply with the requirements of State law for control of sources of TACs identified by the Board;

Insufficient emission data and health impacts from incineration within 24 nautical miles onboard cruise ships and oceangoing ships exist;

The economic impacts of the proposed ATCM amendments have been analyzed as required by California law, and the conclusions and supporting documentation for this analysis are set forth in the ISOR;

The benefits to human health, public safety, public welfare, or the environment justify the costs of the regulatory requirements;

No reasonable alternative considered or that has otherwise been identified and brought to the attention of ARB would be more effective in carrying out the purpose for which the ATCM amendments are proposed, or would be as effective and less burdensome to the affected private persons, businesses, and public agencies than the proposed ATCM amendments;

The proposed ATCM amendments are consistent with ARB's environmental justice policy by reducing health risks from TAC emissions associated with oceangoing ship onboard incineration in all communities where oceangoing ships operate within three miles of the California coast, including those with low-income and ethnically diverse populations;

The proposed ATCM amendments are necessary in order to protect public health by reducing exposure to TAC emissions associated with oceangoing ship onboard incineration;

Military agencies are exempt from recordkeeping requirements under USCG regulations and have formal policies in place prohibiting onboard incineration within 12 nautical miles of the California coast (United States Navy) and within three nautical miles of the California coast (USCG);

The National Oceanic and Atmospheric Administration (NOAA) nautical charts, which are incorporated by reference in the proposed amended ATCM, are available through NOAA's website at <http://chartmaker.ncd.noaa.gov>; and

Use of NOAA nautical charts, as opposed to charts or maps from other sources, including international sources, would promote consistency, reliability, and enforceability;

WHEREAS, the Board further finds, in accordance with Health and Safety Code section 39650(e), that while absolute and undisputed scientific evidence may not be

available to determine the exact extent of risk from emissions of oceangoing ship onboard incineration, it is necessary to take action to protect public health;

WHEREAS, the Board further finds based on its independent judgment and analysis of the entire record before it that with respect to the requirements of CEQA and the Board's regulations, the proposed ATCM amendments will not have a significant adverse impact on the environment, but instead, will result in the reduction of exposure to residents and workers for people living or working near ports and along the California coast; and

WHEREAS, the reporting requirements applicable to businesses under the proposed amended ATCM are necessary for the health, safety, and welfare of the people of the State of California.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves the amendments to section 93119, title 17, CCR, as set forth in Attachment A hereto, with modifications to delete the recordkeeping requirement while operating in Regulated California Waters, add recordkeeping requirements within 3 nautical miles of the California coast, add provision for ARB to access and review incinerator records out to 24 nautical miles, which are required under federal and international law, delete the definition of "Estuarine Waters," and delete the definition of "Regulated California Waters."

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to adopt the above amendments as set forth in Attachment A hereto, with modifications to delete the recordkeeping requirement while operating in Regulated California Waters, add recordkeeping requirements within 3 nautical miles of the California coast, add provision for ARB to access and review incinerator records out to 24 nautical miles, which are required under federal and international law, delete the definition of "Estuarine Waters," and delete the definition of "Regulated California Waters" after making the modified regulatory language and any additional supporting documents and information available for public comment for a period of 15 days, provided that the Executive Officer shall consider such written comments regarding the modification and additional supporting documents and information 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 she determines that this is warranted.

BE IT FURTHER RESOLVED that, pursuant to sections 39515, 39516, 39600, and 39601 of the Health and Safety Code, the Board expressly delegates to the Executive Officer the authority to adopt updated NOAA nautical charts when there is a change in chart number or name, or when there is a revision to the Three Nautical Mile Line as shown on the respective NOAA nautical charts; and to conduct public hearings, if necessary, and to take such actions that are necessary to incorporate by reference, into the California Code of Regulations, those updated charts.

BE IT FURTHER RESOLVED that the Executive Officer shall publish in the California Regulatory Notice Register, send an electronic notice out to all subscribers of the oceangoing ship incineration list serve and cruise ship incineration list serve, post to the oceangoing ship incineration website at www.arb.ca.gov/toxics/shipincin/shipincin.htm, and notify potentially affected cruise ship owners or operators, regarding revisions to NOAA Nautical Charts at least 30 days before the updates take effect.

BE IT FURTHER RESOLVED that the Board directs ARB staff to:

Enforce this regulation, rather than encouraging district-by-district adoption of different regulations, to ensure that California speaks with “one voice” with regard to regulating foreign-flagged vessels;

To take the lead role in implementing and enforcing the ATCM and to ensure compliance with the regulation through on-site inspections, review of records, and other enforcement actions as necessary;

To recognize and follow established military policies and procedures for onboard environmental inspections to preserve national security while not denying legitimate entry for inspection; and

To recognize that non-military vessels have policies and procedures for addressing security issues during onboard environmental inspections and to follow those as well.

To review records of incineration within 24 nautical miles onboard cruise ships and oceangoing ships to determine whether the prohibition of incineration within 3 nautical miles is sufficiently protective of public health.

I hereby certify that the above is a true and correct copy of Resolution 06-38, as adopted by the Air Resources Board.

Lori Andreoni, Clerk of the Board

Resolution 06-38

November 16, 2006

Identification of Attachment to the Board Resolution

- Attachment A:** Proposed Airborne Toxic Control Measure Limiting Onboard Incineration on Cruise Ships and Oceangoing Ships (amendments to section 93119, title 17, California Code of Regulations) as set forth in Appendix A to the Initial Statement of Reasons, released September 29, 2006.
- Attachment B:** Staff's Suggested Modifications as distributed at the November 16, 2006 Board Hearing