

State of California
AIR RESOURCES BOARD

Resolution 98-77

December 11, 1998

Agenda Item No.: 98-15-1

WHEREAS, sections 39600 and 39601 of the California Health and Safety Code (Health and Safety Code) authorize the Air Resources Board (ARB or 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 sections 39002 and 40000 provide that districts have primary responsibility for control of air pollution from all sources other than emissions from motor vehicles;

WHEREAS, sections 43013(b) and 43018 of the Health and Safety Code provide ARB authority to adopt standards and regulations for off-road vehicles and equipment;

WHEREAS, in sections 41750(a) and (b) of the Health and Safety Code, the Legislature found that, under existing law, local districts have imposed separate and sometimes inconsistent emission control requirements and permits to operate for portable engines and associated equipment that are used at various sites throughout the State; and that the multiplicity of permits and regulatory requirements impose a complex and costly burden on California businesses that use, hire, provide, and manufacture those engines and associated equipment;

WHEREAS, in section 41750(c) of the Health and Safety Code, the Legislature declared that a Statewide Portable Equipment Registration Program of portable engines and associated equipment is necessary to ensure consistent and reasonable regulation of those portable engines and associated equipment without undue burden on their owners, operators, and manufacturers;

WHEREAS, in accordance with sections 41752(a) through (d) of the Health and Safety Code, the Board established, by regulation, a Statewide Portable Equipment Registration Program providing for the voluntary registration of portable engines and associated equipment, after holding at least one public hearing; such program establishes emission limits and emission control requirements, and a fee schedule to cover the costs of adopting and administering the program, including a uniform fee to recover the cost of district enforcement;

WHEREAS, sections 41753(a) and (b) of the Health and Safety Code provide that the Statewide Portable Equipment Registration Program shall be done on a uniform, statewide basis and that portable engines and associated equipment registered under the program are preempted from further permitting, registration, and regulation by local districts;

WHEREAS, sections 41754(a)(1) through (a)(2) of the Health and Safety Code require that the regulations include provisions that ensure the following: emissions from portable engines and associated equipment subject to the regulations will not, in the aggregate, interfere with the attainment or maintenance of state or federal ambient air quality standards; the emissions from any one portable engine or associated equipment, exclusive of background concentration, shall not cause an exceedance of any ambient air quality standard to the extent consistent with federal law; the registration program preserves the most stringent requirements adopted by a district which require the use of Best Available Control Technology (BACT) for each class or category of portable equipment determined appropriate by the Board and in effect on January 1, 1995; and the Board may consider technical and economic feasibility in establishing emission limits or control equipment requirements for any category or class of existing California resident portable equipment;

WHEREAS, section 41754(a)(3) of the Health and Safety Code provides that any registered portable internal combustion engines, including any turbines, used exclusively for military tactical support or other federal emergency purposes as specified in the proposed regulation by the Department of Defense or the National Guard are not subject to any statewide or district emission control or limit;

WHEREAS, section 41754(b) of the Health and Safety Code provides that the regulations shall establish no emission limit or emission control requirement for any portable resident engine and associated equipment unless the Board determines that the emission limit or emission control requirement is technologically and economically feasible, and is necessary to attain or maintain state or federal ambient air quality standards;

WHEREAS, Health and Safety Code section 41754(d) provides that the Board shall establish emission limits for any portable equipment or class of portable equipment that reflect the effectiveness of all control equipment installed and operated on the portable equipment or particular class of equipment;

WHEREAS, Health and Safety Code section 41754(f) provides that the Board shall establish recordkeeping and reporting requirements in the Statewide Portable Equipment Registration Program that are the minimum necessary to provide sufficient emission inventory data and allow adequate enforcement of the program;

WHEREAS, Health and Safety Code section 41754(g) provides that the Statewide Portable Equipment Registration Program regulations shall not require source testing of portable equipment emissions for registration purposes if there is no emission standard established or if acceptable emission data is available;

WHEREAS, Health and Safety Code section 41755 prohibits testing under the Statewide Portable Equipment Registration Program more often than once every three years; however, source testing may be required more frequently if evidence of portable internal combustion engine tampering, lack of proper engine maintenance, or other problems or operating conditions that could affect emissions are identified;

WHEREAS, the Permit Reform Act of 1981, Government Code Section 15374 et seq., provides that all state agencies that issue permits, including registrations, shall adopt regulations regarding their procedures for considering and issuing permits, specifying, among other things, the time periods within which a state agency must notify an applicant that a permit application has been received and deemed complete, and within which the agency must reach a final decision;

WHEREAS, section 209(e)(1) of the federal Clean Air Act preempts the State of California and the local districts from adopting or enforcing emission standards or other requirements relating to the control of emissions (other than in-use operational controls) of new nonroad engines less than 175 horsepower used in farm and construction equipment and vehicles;

WHEREAS, section 209(e)(2) requires that California seek authorization from the United States Environmental Protection Agency (U.S. EPA) prior to enforcing emission standards or other requirements relating to the control of emissions (other than in-use operational controls) from all other nonroad engines (of which portable internal combustion engines are a subset), not otherwise preempted by section 209(e)(1);

WHEREAS, section 41752(e) of the Health and Safety Code provides that the Board may periodically revise and update the Statewide Portable Equipment Registration Program regulations, including, but not limited to, revising and updating, a determination of BACT for portable engines;

WHEREAS, the Board's staff now proposes to amend article 5, sections 2450-2465, title 13 of the California Code of Regulations (CCR); proposed amendments to the regulations address issues discovered during the first year of implementation of the Statewide Portable Equipment Registration Program;

WHEREAS, the California Environmental Quality Act (CEQA) 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 41754(c) of the Health and Safety Code, the Board has considered the magnitude of the resultant air quality benefit and the potential effects of the proposed amendments to the regulations on the costs to businesses that use portable engines and associated equipment prior to adopting any emission limit or emission control requirement;

WHEREAS, the Board has considered the impact of the proposed regulatory action 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 I, Division 3, Title 2 of the Government Code);

WHEREAS, the Board finds that:

The proposed amendments to the regulations make eligible for registration, portable engines and associated equipment operating within State Territorial Waters (STW), subject to the offset requirements of the corresponding onshore district as determined on a per project basis;

The proposed amendments to the regulations make eligible for registration, portable associated equipment subject to federal New Source Performance Standards (NSPS) of Title 40 Code of Federal Regulations (CFR) Part 60 Subpart OOO, Standards of Performance for Nonmetallic Mineral Processing Plants;

The proposed amendments to the regulations make statewide registrations invalid for any portable associated equipment operating at locations, if by virtue of the activity to be performed, hazardous air pollutants will be emitted;

The proposed amendments to the regulations modify the 10 tons per engine per district per year limit for criteria pollutants to specify that the limit applies onshore only; this is consistent with the scope of the initially adopted regulations, and allows other emission limits to be proposed for newly eligible portable STW equipment, which have the potential to emit significant amounts of air pollutants;

The proposed amendments to the regulations remove the selective catalytic reduction or other control technology requirement for portable engines used on dredges that operate on a continuous basis on any given day; instead, all resident dredge engines must meet the most stringent State or federal emissions standards pursuant to 40 CFR Part 89 or title 13, CCR, (certified levels) by January 1, 2005, five years earlier than in the current regulations; non-resident dredge engines must meet the certified levels at the time of statewide registration;

The proposed amendments to the regulations exempt portable engines certified to meet the State or federal engine emission standards in 40 CFR Part 89 or title 13, CCR, from further source testing, except where evidence of engine tampering, lack of proper engine maintenance, or other problems that could affect engine emissions are identified;

The proposed amendments to the regulations include additional requirements for existing portable associated equipment categories in order to update the requirements to conform to district BACT;

The proposed amendments to the regulations include portable associated equipment requirements for tub grinders and trommel screens consistent with the most stringent district BACT;

The proposed amendments to the regulations specify that portable associated equipment categories not already listed in the regulations are subject to the most stringent district BACT requirements in effect at the time of application for statewide registration that have been established to protect ambient air quality standards;

To encourage the use of cleaner technologies, the proposed amendments to the regulations exempt spark-ignition engines meeting the more stringent of an applicable State or federal emission standard in effect at the time of statewide registration or the non-resident emission levels in the regulations, from emission limits and recordkeeping and reporting requirements; this is consistent with existing exemptions in the regulations for compression-ignition engines with comparable emissions;

To encourage turnover of larger engine fleets, the proposed amendments to the regulations extend the 18-month compliance plan exemption for retrofit or replacement of portable engines to meet the requirements for new engines set forth in 40 CFR Part 89 or title 13, CCR;

The proposed amendments to the regulations add approved methods for determining portable engine daily fuel use to aid owners and operators in complying with the recordkeeping requirements of the regulations;

The proposed amendments to the regulations include reporting and notification requirements for projects in STW, which are necessary so offsets can be secured for STW projects that may exceed the corresponding onshore district offset thresholds;

The proposed time periods set forth in title 13, CCR, sections 2453(e) and (f), within which the Executive Officer must inform the applicant in writing that the application is complete or deficient and must issue or deny registration, are necessary given the potential volume of applicants that may apply for statewide registration due to the amendments; moreover, it is reasonable to anticipate that the volume will be the highest during the first year of implementation of the amended regulations and that the Executive Officer will need additional time provided to process the applications during this period;

The time period set forth in title 13, CCR, section 2456(e)(7), within which any non-resident portable engine must meet the most stringent emission standard pursuant to 40 CFR Part 89 or title 13, CCR, is necessary given the proposed amendments allow statewide registration of new sources and sources previously excluded from the Statewide Portable Equipment Registration Program;

The proposed amendments to the regulations establish a fee structure to cover the costs incurred by the districts for implementing and enforcing the requirements of 40 CFR Part 60 Subpart OOO for newly eligible portable nonmetallic mineral processing plants, due to the complexity of the sources; and

WHEREAS, the Board further finds that:

The proposed amendments to the Statewide Portable Equipment Registration Program in the aggregate will continue to attain greater emission reductions throughout the State over the next 10 to 15 years than under the present district-by-district permitting programs, and that no feasible regulatory alternatives or mitigation measures exist that will better accomplish the Legislature's directives regarding establishing a uniform and consistent statewide program;

Overall, the proposed amendments to the regulations would have a positive environmental impact and would not interfere with the attainment or maintenance of State or federal ambient air quality standards; and

The proposed amendments to the Statewide Portable Equipment Registration Program regulations are expected to have a beneficial impact on California business; participants in the program would no longer need to seek (and pay for) permits in each district in which they operate, or comply with different emission limits and control requirements each time the portable internal combustion engine or associated equipment is operated in a different district.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves sections 2450-2465, title 13, California Code of Regulations, amending the Statewide Portable Equipment Registration Program, as set forth in Attachment A hereto, with the modifications described in Attachment B.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to adopt the proposed amendments to sections 2450-2465, title 13, California Code of Regulations, after making the modified regulatory language identified in Attachment B and such other conforming modifications as may be appropriate, along with 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 he or she determines that this is warranted.

BE IT FURTHER RESOLVED that the Board hereby determines that pursuant to section 209(e) of the federal Clean Air Act the regulations adopted herein will, in the aggregate, be at least as protective of public health and welfare than applicable federal standards.

BE IT FURTHER RESOLVED that the Executive Officer shall, upon adoption of the regulations, forward the regulations to the Administrator of the U.S. EPA with a request that the regulations, as amended, receive authorization to enable California to enforce these provisions as within the scope of the authorization requested on July 15, 1998.

BE IT FURTHER RESOLVED that if pursuant to Title III of the Clean Air Act, the U.S. EPA promulgates any maximum achievable control technology standards that are applicable to portable internal combustion engines covered by the Statewide Portable Equipment Registration Program, the Board directs ARB staff to meet and consult with the U.S. EPA and affected industry to address the implications of such standards on the statewide program.

I hereby certify that the above is a true and correct copy of Resolution 98-77, as adopted by the Air Resources Board.

Pat Hutchens, Clerk of the Board

Resolution 98-77

December 11, 1998

Identification of Attachments to the Resolution:

Attachment A: Proposed Amendments to the Regulations to Establish a Statewide Portable Equipment Registration Program (regulations), title 13, California Code of Regulations, sections 2450-2465, as set forth in Appendix A to the Staff Report, issued October 23, 1998.

Attachment B: Proposed Modifications to the Proposed Amendments to the Regulations to Establish a Statewide Portable Equipment Registration Program (regulations), title 13, California Code of Regulations, sections 2450-2465, as set forth in Appendix A to the Staff Report, issued October 23, 1998.