

State of California
AIR RESOURCES BOARD

Resolution 05-50

September 15, 2005

Agenda Item No: 05-8-7

WHEREAS, sections 39600 and 39601 of the 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, section 43013 of the Health and Safety Code authorizes the Board to adopt standards and regulations to control emissions from off-road or non-vehicle engine categories;

WHEREAS, section 43018 of the Health and Safety Code directs the Board to endeavor to achieve the maximum degree of emissions reduction possible from vehicular and other mobile sources to accomplish the attainment of state ambient air quality standards by the earliest practicable date;

WHEREAS, on September 23, 1999, the Board adopted title 13, California Code of Regulations, Division 3, Chapter 9, Article 6, Portable Fuel Containers and Spouts, containing section 2467, Applicability, section 2467.1, Definitions, section 2467.2, Performance Standards for Portable Fuel Containers and Spill-Proof Spouts, section 2467.3, Exemptions, section 2467.4, Innovative Products, section 2467.5, Administrative Requirements, section 2467.6, Variances, section 2467.7, Test Procedures, and section 2467.8, Severability, hereinafter referred to cumulatively as "Portable Fuel Container and Spout Regulations" or "Regulations";

WHEREAS, the Regulations were projected to reduce statewide ROG emissions from portable fuel containers by 75 tons per day in 2007;

WHEREAS, the emissions benefit of the Regulations was based on a statewide inventory of portable fuel containers of approximately 9.9 million portable fuel containers;

WHEREAS, containers designed or used for receiving, transporting, storing and dispensing kerosene were not subject to the Regulations, and were not accounted for in the statewide inventory of portable fuel containers upon which the emissions benefit of the Regulations was calculated;

WHEREAS, containers designed or used for receiving, transporting, storing and dispensing fuel were subject to the Regulations and were included in the inventory of

portable fuel containers upon which the emissions benefit of the Regulations was calculated;

WHEREAS, based on two recent surveys, staff has revised its estimate of the number of containers used as portable fuel containers in the State from approximately 10.6 million in 1999 to 11.7 million in 2004;

WHEREAS, the surveys indicate that 590,000 kerosene containers are in the State, 350,000 of which are used to store and dispense gasoline;

WHEREAS, the surveys also indicate that 1.4 million utility jugs (large capacity plastic containers), are being used to store and dispense gasoline in this State and should therefore be subject to the Regulations;

WHEREAS, although staff expected that emissions from utility jugs used to store and dispense gasoline would be controlled to the same degree as emissions from any container meeting the definition of a portable fuel container, the existing definition of a portable fuel container in the Regulations has not clearly and fully specified if utility jugs used for this purpose are subject to the Regulations;

WHEREAS, amending the definition of a portable fuel container will clarify to entities manufacturing and selling utility jugs used to receive, transport, store and dispense fuel and kerosene that such utility jugs are subject to the Regulations;

WHEREAS, staff estimates that amending the definition of portable fuel container to include previously unregulated kerosene containers will reduce ROG emissions by approximately 3.2 tons per day in 2015 compared to the current Regulation;

WHEREAS, staff also estimates that amending the definition of portable fuel container to clarify that utility jugs used to receive, transport, store and dispense fuel and kerosene are subject to the Regulation will reduce ROG emissions by approximately 13.3 tons per day in 2015 compared of the current Regulation;

WHEREAS, non-compliant portable fuel containers are being sold adjacent to compliant portable fuel containers in retail stores at prices that are generally lower than those of compliant portable fuel containers;

WHEREAS, non-compliant portable fuel containers are generally similar in size, shape and appearance to compliant portable fuel containers, and use spouts that do not control evaporative, permeation or spillage emissions;

WHEREAS, the Regulations rely on market turnover from non-regulated to regulated portable fuel containers to attain the full amount of emissions reductions targeted by the Regulations;

WHEREAS, some consumers are purchasing non-compliant containers and filling them with gasoline, which slows the transition from non-regulated to regulated portable fuel containers;

WHEREAS, the use of kerosene and non-compliant containers decreases the emission reductions achieved by the Regulations;

WHEREAS, the compliance of retailers and distributors of portable fuel containers is key to ensuring that the emission reductions of the Regulations are achieved;

WHEREAS, the proposed amendments to the definition of a portable fuel container are estimated to increase the cost of a kerosene container or utility jug an average of \$8.50 per container;

WHEREAS, the Board-approved emissions inventory upon which the amendments to the regulations are based, has been reviewed and will be made available to the public as it is updated;

WHEREAS, the staff has proposed amendments to the Regulations, which include the amendments shown in Attachment A; the Attachment A amendments would make the Regulations applicable to persons who advertise portable fuel containers, and would change the definition of a portable fuel container to require that utility jugs used to receive, transport, store and dispense fuel and kerosene, and kerosene containers, that are sold on or after 30 days after filing the proposed amendments with the Secretary of State, to comply with existing performance standards of the Regulations;

WHEREAS, the Regulations provide substantial statewide emissions benefits by controlling emissions resulting from daily ambient temperature variations and by open spouts and secondary vents;

WHEREAS, the Regulations provide substantial statewide emissions benefits by controlling emissions resulting from transport and storage of fuel, and during refueling;

WHEREAS, the Regulations provide substantial statewide emissions benefits by controlling emissions resulting from fuel permeating through plastic fuel container walls;

WHEREAS, the Regulations provide substantial statewide emissions benefits by controlling emissions resulting from vapor displaced during refueling;

WHEREAS, the California Environmental Quality Act (CEQA) and Board regulations 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, the Board must consider the impact of the proposed standards on the economy of the state;

WHEREAS, the Board must follow state law procedures to adopt regulations;

WHEREAS, the Board finds that:

Despite advances in reducing emissions from mobile sources, stationary sources, and area sources, California still has the most severe air pollution problems in the United States;

To meet Federal and California Clean Air Act emissions reductions requirements, ARB must continue to seek reductions from all sources under its authority, including portable fuel containers and spouts;

The amendments adopted herein will significantly reduce evaporative emissions from utility jugs and kerosene containers;

The amendments adopted herein will substantially reduce spillage emissions associated with the transport, storage and refueling using utility jugs and kerosene containers;

The amendments adopted herein will substantially reduce emissions associated with fuel permeating through the walls of plastic utility jugs and kerosene containers;

The amendments adopted herein will substantially reduce vapor emissions displaced during refueling from utility jugs and kerosene containers;

The amendments adopted herein will achieve approximately 16.5 tons per day of ROG emissions in 2015 compared to the current Regulation;

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; and

The amendments adopted herein specify appropriate administrative requirements to lessen the economic impacts to utility jug and kerosene container manufacturers by exempting containers that are permanently embossed or labeled with language indicating that such containers are solely intended for use with non-fuel or non-kerosene products; and

The economic and cost impacts have been analyzed as required by California law, and the conclusions and supporting documentation for this analysis are set forth in the Initial Statement of Reasons, as supplemented by Staff's presentation at the hearing on this item.

WHEREAS, the Board further finds that:

It is necessary and appropriate that the amendments adopted herein require utility jugs and kerosene containers sold in California to adhere to the Regulation's performance standards, beginning 30 days after filing with the Secretary of State, to provide for reductions of reactive organic gases;

It is necessary and appropriate to exempt containers that are permanently embossed or labeled with language indicating that such containers are solely intended for use with non-fuel or non-kerosene products;

It is necessary and appropriate to make the Regulations applicable to persons who advertise portable fuel containers, since the advertisement of noncomplying portable fuel containers could lead to the use of noncomplying containers and associated increases in emissions;

The amendments adopted herein require utility jugs and kerosene containers to comply with uniform, consistent and reasonable performance standards;

The amendments adopted herein will reduce evaporative, transport and storage spillage, refueling spillage, permeation, and displaced vapor emissions from utility jugs and kerosene containers by approximately 16.5 tons per day of reactive organic gases statewide in 2015.

The amendments adopted herein will assist ARB's compliance with the commitments it made in settling the 1994 State Implementation Plan suit;

The amendments adopted herein will not have a significant adverse environmental impact and that the amendments are projected to positively impact air quality;

Based on the above, the Staff Report/Initial Statement of Reasons, and the information provided during the public hearing of this item, the amendments adopted herein are necessary, cost-effective, and technologically feasible to carry out the purposes of the state and federal clean air laws; and

No alternative considered by the Board would be more effective in carrying out the purpose for which the amendments to the regulations are proposed or would be as effective and less burdensome to affected private persons.

NOW, THEREFORE, BE IT RESOLVED that, the Board hereby adopts the proposed amendments to title 13, California Code of Regulations, sections 2467 and 2467.1 as set forth in Attachment A hereto.

BE IT FURTHER RESOLVED that, following the approval of the amendments to the regulations by the Office of Administrative Law, the Executive Officer is directed to submit the amended regulations to United States Environmental Protection Agency (US EPA) for inclusion in the California State Implementation Plan for Ozone (SIP).

BE IT FURTHER RESOLVED that, the Board directs the Executive Officer to include in the SIP revision any additional documentation identified as necessary for enforceability under the federal Clean Air Act and US EPA regulations, and to work with the US EPA to ensure the amendments to the regulations are approved as a SIP revision.

I hereby certify that the above is a true and correct copy of Resolution 05-50, as adopted by the Air Resources Board.

_____/s/_____
Lori Andreoni, Clerk of the Board

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Identification of Attachments to the Resolution

Attachment A: Proposed amendments to title 13, California Code of Regulation sections 2467(a), Applicability, and 2467.1, Definitions, as set forth in Attachment A to the Staff Report: Initial Statement of Reasons for Proposed Rule Making Public Hearing to Consider the Adoption of Portable Fuel Container Spillage Control Regulations (released July 29, 2005)

Attachment A
Resolution 05-50

NOTE: Regulatory amendments to existing language are shown in underline to indicate additions to the text and ~~strikeout~~ to indicate deletions.

Amend title 13, California Code of Regulations, sections 2467(a) and 2467.1, as follows

Article 6 Portable Fuel Containers and Spouts

2467. Applicability

- (a) Except as provided in Section 2467.3, this article applies to any person who sells, supplies, offers for sale, advertises or manufactures for sale in California portable fuel containers or spouts, or both portable fuel containers and spouts for use in California.

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NOTE: Authority cited: Sections 39600, 39601, 43013, 43018, and 43101, of the Health and Safety Code, and *Western Oil and Gas Ass'n. V. Orange County Pollution Control District*, 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975). Reference: Sections 39000, 39001, 39003, 39500, 39515, 39516, 41511, 43000, 43013, 43016, 43017, and 43018, of the Health and Safety Code, and *Western Oil and Gas Ass'n. V. Orange County Pollution Control District*, 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975).

2467.1. Definitions

- (a) The definitions in Section 1900(b), Title 13 of the California Code of Regulations apply with the following additions:
 - (1) "ASTM" means the American Society for Testing and Materials.
 - (2) "Consumer" means the first person who in good faith purchases a new portable fuel container or spout or both portable fuel container and spout for purposes other than resale, including but not limited to personal, family, household, or institutional use.
 - (3) "Distributor" means any person to whom a portable fuel container or spout or both portable fuel container and spout is sold or supplied for the purposes of resale or distribution in commerce. Manufacturers, retailers, and consumers are not distributors.
 - (4) "Executive Officer" means the Executive Officer of the Air Resources Board, or his or her designee.

- (5) "Fuel" means all fuels subject to any provision of Title 13, California Code of Regulations, Chapter 5, Standards for Motor Vehicle Fuels, Sections 2250 - 2298, except for Sections 2292.5, 2292.6, and 2292.7.
- (6) "Kerosene" means any light petroleum distillate that is commonly or commercially known, sold or represented as kerosene, that is used in space heating, cook stoves, and water heaters, and is suitable for use as a light source when burned in wick-fed lamps.
- (7) ~~(6)~~"Manufacturer" means any person who imports, manufactures, assembles, packages, repackages, or re-labels a portable fuel container or spout or both portable fuel container and spout.
- (8) ~~(7)~~"Nominal Capacity" means the volume indicated by the manufacturer that represents the maximum recommended filling level.
- (9) ~~(8)~~"Outboard Engine" means a spark-ignition marine engine that, when properly mounted on a marine watercraft in the position to operate, houses the engine and drive unit external to the hull of the marine watercraft.
- (10) ~~(9)~~"Permeation" means the process by which individual fuel molecules may penetrate the walls and various assembly components of a portable fuel container directly to the outside ambient air.
- (11) ~~(10)~~"Person" has the same meaning as defined in Health and Safety Code Section 39047.
- (12) ~~(11)~~"Portable Fuel Container" means any container or vessel with a nominal capacity of ten gallons or less intended for reuse that is designed, or used, sold, advertised or offered for sale primarily for receiving, transporting, storing, and dispensing fuel or kerosene. Portable fuel containers do not include containers or vessels permanently embossed or permanently labeled, as defined in 49 Code of Federal Regulation Section 172.407, with language indicating said containers or vessels are solely intended for use with non-fuel or non-kerosene products.
- (13) ~~(12)~~"Product Category" means the applicable category that best describes the product with respect to its nominal capacity, material construction, fuel flow rate, and permeation rate, as applicable, as determined by the Executive Officer.

- (14) ~~(13)~~ "Retailer" means any person who owns, leases, operates, controls, or supervises a retail outlet.
- (15) ~~(14)~~ "Retail Outlet" means any establishment at which portable fuel containers or spouts or both portable fuel containers and spouts are sold, supplied, or offered for sale.
- (16) ~~(15)~~ "ROG" (Reactive Organic Gas) means a reactive chemical gas, composed of hydrocarbons that may contribute to the formation of smog. ROG is sometimes referred to as Non-Methane Organic Compounds (NMOC's).
- (17) ~~(16)~~ "Spill-Proof Spout" means any spout that complies with all of the performance standards specified in Section 2467.2(b) and with the requirements in Section 2467.5.
- (18) ~~(17)~~ "Spill-Proof System" means any configuration of portable fuel container and firmly attached spout that complies with all of the performance standards in Section 2467.2(a) and with the requirements in Section 2467.5.
- (19) ~~(18)~~ "Spout" means any device that can be firmly attached to a portable fuel container for conducting pouring through which the contents of a portable fuel container can be dispensed.
- (20) ~~(19)~~ "Target Fuel Tank" means any receptacle that receives fuel from a portable fuel container.

NOTE: Authority: Sections 39600, 39601, 43013, 43018, and 43101, of the Health and Safety Code, and *Western Oil and Gas Ass'n. V. Orange County Pollution Control District*, 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975). Reference: Sections 39000, 39001, 39003, 39500, 39515, 39516, 41511, 43000, 43013, 43016, 43017, and 43018, of the Health and Safety Code, and *Western Oil and Gas Ass'n. V. Orange County Pollution Control District*, 14 Cal.3d 411, 121 Cal.Rptr. 249 (1975).