

State of California  
AIR RESOURCES BOARD

Resolution 84-10

March 23, 1984

Agenda Item No.: 84-6-2

WHEREAS, Sections 39600 and 39601 of the Health and Safety Code authorize the Air Resources Board (the "Board") to adopt standards, rules, and regulations necessary for the proper execution of the powers and duties granted to and imposed upon the Board by law;

WHEREAS, the California Public Records Act (Government Code, Section 6250 et seq.) provides that public records of state and local agencies shall be open to inspection at all times during business hours, except as specifically provided therein;

WHEREAS, Section 6253 of the Public Records Act authorizes the Board to adopt regulations to fulfill its duties under the Act, and pursuant to that section the Board has adopted public disclosure regulations in Sections 91000-91022, Title 17, California Administrative Code, including procedures for the submission of data claimed to be confidential and for the Board's review of requests for disclosure;

WHEREAS, Section 6255 of the Public Records Act requires an agency to justify withholding any records from disclosure; and Sections 6256 and 6256.1 set forth time limits within which an agency must determine whether to comply with requests for records;

WHEREAS, in fulfilling its statutory responsibilities, the Board receives data claimed to be confidential from numerous sources, including other state and local agencies;

WHEREAS, Section 39660(e) of the Health and Safety Code (AB 1807, Stats. 1983, Ch. 1047) authorizes the Board to obtain information regarding substances which may be toxic air contaminants and sets forth procedures for the protection of trade secret information obtained pursuant to that section;

WHEREAS, on November 17, 1983, the Board reviewed its public disclosure regulations under criteria established by the Governor's Task Force on Regulatory Reform and concluded that amendments to these provisions should be considered at a public hearing;

WHEREAS, the California Environmental Quality Act and Board regulations require that no project having significant adverse environmental impacts be adopted as proposed if feasible alternatives or mitigation measures are available;

WHEREAS, a public hearing has 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:

The proposed amendments would decrease the burden to persons submitting data to the Board, while continuing to provide for access to public records and to protect confidential data;

The proposed amendments would provide for the making of determinations regarding requests for records within the time limits specified in the Public Records Act;

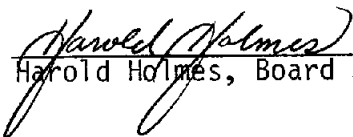
The proposed amendments would provide specifically for coordination with other state and local agencies from which the Board receives data;

The proposed amendments would establish procedures for the submission of documentation supporting claims of confidentiality made with regard to information concerning substances which may be toxic air contaminants; and

This regulatory action will not have a significant adverse impact on the environment.

NOW, THEREFORE BE IT RESOLVED that the Board hereby approves the amendments to Sections 91011 and 91022, Title 17, California Administrative Code, as set forth in Attachment A, and directs the Executive Officer to adopt the amendments after making them available to the public for at least 15 days.

I hereby certify that the above is a true and correct copy of Resolution 84-10 as adopted by the Air Resources Board.

  
Harold Holmes, Board Secretary

Amend Section 91011, Title 17, California Administrative Code, to read as follows:

91011. ~~Trade-Secret-Claims.~~ Submission of Confidential Data.

~~(a) Any person from whom the state board obtains any records may submit a written claim identifying as "confidential" all data which may be entitled to confidentiality~~ submitting to the state board any records containing data claimed to be "trade secret" or otherwise exempt from disclosure under Government Code Section 6254 or 6254.7 of the Government Code or under other applicable provisions of law prohibiting disclosure of the data shall, at the time of submission, identify in writing the portions of the records containing such data as "confidential" and shall provide the name, address and telephone number of the individual to be contacted if the state board receives a request for disclosure of or seeks to disclose the data claimed to be confidential. Emission data shall not be identified as confidential. The state board shall not disclose data identified as confidential, except in accordance with the requirements of this subchapter or Section 39660(e) of the Health and Safety Code.

~~--Any such claim shall contain at least the following information:--~~

- ~~(1) --the statutory provision(s) under which a claim of confidentiality is asserted;~~
- ~~(2) --a specific description of the portions of the data which are claimed to be entitled to confidential treatment;~~
- ~~(3) --the period of time for which confidential treatment is requested;~~
- ~~(4) --the extent to which the data has been disclosed to others and whether its confidentiality has been maintained or its release restricted;~~

~~(5)--confidentiality determinations, if any, made by other public agencies as to all or part of the data and a copy of any such determinations, if available; and~~

~~(6)--whether it is asserted that the data is used to fabricate, produce, or compound an article of trade or a service and that the disclosure of the data would result in harmful effects on the business' competitive position, and the nature and extent of such anticipated harmful effects.~~

~~(b)--After a preliminary review, the state board may reject a claim for failure to submit the data described in subsection (a) above, in which case the person submitting the claim shall be promptly notified in writing and provided an opportunity to submit complete data. --Twenty one days from the date of the notice, the data in question shall be subject to public disclosure unless a claim which meets the requirements of subsection (a) above is received. --Data covered by claim(s) which meet the requirements of subsection (a) above will be kept confidential subject to review initiated pursuant to Section 91022 of this subchapter.~~

~~(c)--Appropriate portions of an application for approval, accreditation, or certification of a motor vehicle emission control device or system shall be kept confidential until such time as the approval, accreditation, or certification is granted, at which time the application (except for trade secret data) shall become a public record, except that estimates of sales volume of new model vehicles contained in an application shall be kept confidential for the model year, and then shall become public records. --If an~~

~~application-is-denied,-it-shall-continue-to-be-confidential-but-shall-be  
subject-to-the-provisions-of-Section-91022.~~

NOTE: Authority cited: Sections 39600 and 39601, Health and Safety Code.  
Reference: Sections 39660, 39701, 41500, 41511, 41512, and 42705, Health and  
Safety Code; Sections 6253, 6254, and 6254.7, Government Code; Natural  
Resources Defense Council v. EPA, 489 F.2d 390 (5th Cir. 1974) (5 ERC 1248);  
Northern California Police Practices Project v. Craig (1979) 90 Cal.App.3d  
116; Uribe v. Howie (1971) 19 Cal.App.3d 194.

Amend Section 91022, Title 17, California Administrative Code, to  
read as follows:

91022. Disclosure of Confidential Data

~~(a) Except-as-otherwise-provided-in-Section-91010(e),-only-these-portions  
of-records-in-the-custody-of-the-state-board-which-are-not-emission-data-and~~

This section shall apply to all data in the custody of the state board

(1) were designated "trade secret" prior to the adoption of this subchapter,

(2) have-been considered by the state board or identified by the person who  
submitted the data as confidential pursuant to this subchapter, or

(3) are received from a federal, state or local agency, including an air  
pollution control district, with a confidential designation, shall-be-subject

to-the-procedure-set-forth-in-this-section subject to the following exceptions:

(1) Except for the time limits specifically provided in subsection (b),  
only subsections (c) and (d) of this section shall apply to information  
submitted pursuant to Health and Safety Code Section 39660(e).

(2) Appropriate portions of an application for approval, accreditation, or  
certification of a motor vehicle emission control device or system shall be  
kept confidential until such time as the approval, accreditation, or  
certification is granted, at which time the application (except for trade  
secret data) shall become a public record, except that estimates of sales

volume of new model vehicles contained in an application shall be kept confidential for the model year, and then shall become public records. If an application is denied, it shall continue to be confidential but shall be subject to the provisions of this section.

(3) If disclosure of data obtained from a federal, state or local agency after (insert effective date of amendments) from a state or local agency subject to the provisions of the Public Records Act is sought, the state board shall request that the agency which provided the data determine whether it is confidential. The state board shall request that it be notified of the agency's determination within ten days. The state board shall not release the data if the agency determines that it is confidential and so notifies the state board; provided, however, that the data may be released with the consent of the person who submitted it to the agency from which it was obtained by the state board.

~~-(b) Upon receipt of a request to inspect data which is not emission data and which has been either designated "trade secret" previously or claimed to be confidential pursuant to Section 91011, the state board shall promptly review the request, the data, and the justification for the claim to confidentiality. Upon receipt of a request to inspect data which has been claimed to be confidential, the state board shall notify the person claiming the data to be confidential of the request to inspect and shall review any additional information, which is received prior to the issuance of a response to the request for the information, submitted in support of the claim to confidentiality. Following this review, the state board shall either (1) refuse to disclose the data and provide a justification for the determination pursuant to Government Code Section 6255 or (2) propose to disclose the data and provide written notice of the determination to the person claiming the~~

~~data is confidential and to the person requesting the data, with an additional notice that the data in question shall be released for inspection to the person requesting it twenty-one (21) days after receipt of the notice, unless the state board is restrained from so doing by a court of competent jurisdiction.~~

(b) Upon receipt of a request from a member of the public that the state board disclose data claimed to be confidential or if the state board itself seeks to disclose such data, the state board shall inform the individual designated pursuant to Section 91011 by telephone and by mail that disclosure of the data is sought. The person claiming confidentiality shall file with the state board documentation in support of the claim of confidentiality. The documentation must be received within five (5) days from the date of the telephone contact or of receipt of the mailed notice, whichever first occurs. In the case of information submitted pursuant to Health and Safety Code Section 39660(e), the documentation must be received within 30 days of the date notice was mailed pursuant to that section. The deadlines for filing the documentation may be extended by the state board upon a showing of good cause made within the deadline specified for receipt of the documentation.

(c) The documentation submitted in support of the claim of confidentiality shall include the following information:

(1) the statutory provision(s) under which the claim of confidentiality is asserted;

(2) a specific description of the data claimed to be entitled to confidential treatment;

(3) the period of time for which confidential treatment is requested;

(4) the extent to which the data has been disclosed to others and whether its confidentiality has been maintained or its release restricted;

(5) confidentiality determinations, if any, made by other public agencies as to all or part of the data and a copy of any such determinations, if available; and

(6) whether it is asserted that the data is used to fabricate, produce, or compound an article of trade or to provide a service and that the disclosure of the data would result in harmful effects on the person's competitive position, and, if so, the nature and extent of such anticipated harmful effects.

(d) Documentation, as specified in subsection (c), in support of a claim of confidentiality may be submitted to the state board prior to the time disclosure is sought.

(e) The state board shall, within ten (10) days of the date it sought to disclose the data or received the request for disclosure, or within 20 days of that date if the state board determines that there are unusual circumstances as defined in Government Code Section 6256.1, review the request, if any, and supporting documentation, if received within the time limits specified in subsection (b) above, including any extension granted, and determine whether the data is entitled to confidential treatment pursuant to Government Code Section 6254, 6255 or 6254.7 or other applicable provisions of law and shall either:

(1) decline to disclose the data and, if a request was received, provide to the person making the request and to the person claiming the data is confidential a justification for the determination pursuant to Government Code Section 6255; or



(2) provide written notice to the person claiming the data is confidential and, if a request was received, to the person requesting the data that it has determined that the data is subject to disclosure, that it proposes to disclose the data, and that the data shall be released 21 days after receipt of the notice by the person claiming confidentiality, unless the state board is restrained from so doing by a court of competent jurisdiction. The state board shall release the data in accordance with the terms of the notice unless so restrained.

(f) {e} Should judicial review be sought of a determination issued in accordance with subsection {b} (e), either the person requesting data or the person claiming confidentiality, as appropriate, may be made a party to the litigation to justify the determination.

NOTE: Authority cited: Section 39601, Health and Safety Code. Reference: Sections 6253, 6254, 6254.7, 6255, 6256, 6256.1, 6258 and 6259, Government Code.

Public Hearing to Consider Proposed Amendments to Title 17, California  
Administrative Code, Sections 91011 and 91022, Regarding Disclosure of Public  
Records

Public Hearing Date: March 23, 1984  
Public Availability Date: April 2, 1984

On March 23, 1984, the Air Resources Board (the "Board") considered the adoption of proposed amendments to Sections 91011 and 91022, Title 17, California Administrative Code, regarding disclosure of public records. Attached is a copy of the Board's Resolution 84-10, approving the amendments. Appended to Resolution 84-10 is the approved language showing additions to the originally proposed language by double underline and deletions by slashes.

In approving these amendments, the Board directed the Executive Officer to adopt the regulations after making them available to the public for a period of at least 15 days.

Attachment

State of California  
AIR RESOURCES BOARD

Response to Significant Environmental Issues

Item: Public Hearing to Consider Amendments to Title 17, California  
Administrative Code, Sections 91011 and 91022, Regarding Disclosure of  
Public Records

Agenda Item No.: 84-6-2

Public Hearing Date: March 23, 1984

Response Date: April 17, 1984

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:

  
Board Secretary

Date:

5/29/84

# Memorandum

To : Gordon Van Vleck  
Secretary  
Resources Agency

Date : June 8, 1984

Subject: Filing of Notice of  
Decisions of the Air  
Resources Board

*Harold Holmes*  
Harold Holmes  
Board Secretary

From : Air Resources Board

Pursuant to Title 17, Section 60007 (b), and in compliance with Air Resources Board certification under section 21080.5 of the Public Resources Code, the Air Resources Board hereby forwards for posting the attached notice of decision and response to environmental comments raised during the comment period.

## ATTACHMENTS

~~84-10~~  
84-11  
84-20  
84-31  
84-32

FILED AND POSTED BY  
OFFICE OF THE SECRETARY

JUN 8 1984

Resources Agency of California