State of California
AIR RESOURCES BOARD

Resolution 00-8

March 23, 2000

Agenda Item No.: 00-3-1

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, section 41856 of the Health and Safety Code requires the Board to promulgate agricultural burning guidelines (Guidelines) for the regulation and control of agricultural burning for each of the air basins established by the Board;

WHEREAS, section 41857 of the Health and Safety Code directs the Board to base the Guidelines on meteorological data, the nature and volume of materials to be burned, and the probable effect such burning will have on ambient air quality within affected air basins;

WHEREAS, section 41858 requires the Board, in adopting such Guidelines, to consider their economic and technical feasibility, including the probable effect on agricultural production in the affected air basin;

WHEREAS, section 41859 of the Health and Safety Code authorizes the Board to continuously review such Guidelines, modifying, repealing, or altering such Guidelines if warranted;

WHEREAS, section 41850 of the Health and Safety Code provides for the reasonable regulation, but not the prohibition, of agricultural burning, based upon factors including, but not limited to, the population in an area, geographical characteristics, meteorological conditions, the economic and technical impacts of such rules and regulations, and the importance of a viable agricultural economy in the State;

WHEREAS, section 39011 of the Health and Safety Code generally defines agricultural burning as the intentional use of fire for vegetation management in areas such as agricultural fields, orchards, and wildlands including rangeland and forests;

WHEREAS, section 41863 of the Health and Safety Code requires each basinwide coordinating council and air district to include within its pollution control program a component for the regulation and control of agricultural burning, and section 41508 authorizes an air district to establish stricter standards than those set by the Board for agricultural burning;

WHEREAS, section 48155 of the Health and Safety Code requires the Board to determine and designate days when agricultural burning shall be prohibited within each air basin, based on meteorological data;

WHEREAS, section 41853 of the Health and Safety Code requires the Board to designate public fire protection agencies and other equivalent agencies to issue burn permits subject to the rules and regulations of the Board;

WHEREAS, section 41852 of the Health and Safety Code prohibits any person to knowingly set or permit agricultural burning unless he/she has a valid permit;

WHEREAS, section 41854 of the Health and Safety Code specifies that no burn permit shall be valid for any day declared by the Board or an air district as a "no burn day";

WHEREAS, section 41862 of the Health and Safety Code authorizes an air district to issue a permit to allow agricultural burning on days designated by the Board as "no burn days" when denial of such permit would threaten imminent and substantial economic loss, and also requires air districts to transmit regular reports of those permits to the Board;

WHEREAS, section 41861 of the Health and Safety Code prohibits burning for the improvement of land for wildlife or game habitat until the burner obtains a written statement from the California Department of Fish and Game certifying the propriety and desirability of such burning, and such statement is filed with the air district having jurisdiction in the affected area;

WHEREAS, agricultural burning is currently regulated in accordance with the Board's Agricultural Burning Guidelines as set forth in title 17 of the California Code of Regulations, sections 80100 through 80330, and pursuant to the existing rules and regulations of each air district;

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, the staff has held public workshops and consultative meetings with the air districts, the California Air Pollution Control Officers Association, interested business and industry representatives, federal and State land management and fire protection agencies, environmental organizations, and the public in developing the proposed regulations;

WHEREAS, the staff has prepared an "Initial Statement of Reasons for Rulemaking" (staff report) that describes the basis and rationale for the elements of the proposed regulation and has made that staff report available for public comment at least 45 days in advance of the Board Hearing;

WHEREAS, pursuant to the California Environmental Quality Act and Public Resources Code section 21159, the ARB staff has completed an environmental assessment of (1) reasonably foreseeable environmental impacts of the methods of compliance, (2) reasonably foreseeable feasible mitigation measures, and (3) reasonably foreseeable alternative means of compliance with the regulation, and determined that the proposed Guidelines would not pose significant adverse environmental impacts;

WHEREAS, the Board has considered the impact of the proposed amendment 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 1, Division 3, Title 2 of the Government Code;

WHEREAS, based upon the staff report, oral and written public testimony, and other documents in the record, the Board finds that:

1. The practice of open-field burning of crop waste, forest materials, and other plant residues releases large quantities of smoke particles and gases into the air which can result in severe, short-term smoke-related episodes that significantly impact air quality and affect public health, particularly among those with respiratory and cardiovascular illness.

2. Forest fires can release as much as 35 times the emissions per acre as smoke from crop waste.

3. Federal and State land managers have a legitimate need to increase current levels of planned, or prescribed, burning in California to reduce excess vegetative fuel loadings that heighten the risk of catastrophic wildfires, as well as to manage and maintain ecosystem health, diversity and productivity.

4. Severe smoke episodes that occurred from prescribed burning over the past two years could have been avoided with an approach that relies upon closer communication and collaboration among the State, the air districts, other concerned public agencies, and prescribed burners.

5. California's existing Agricultural Burning Guidelines are inadequate to meet new federal requirements for health-based ambient air quality standards for particulate matter and visibility goals and to minimize the public's exposure to

acute, short term levels of smoke from increased agricultural burning, including prescribed burning.

6. There is a need to strengthen California's existing smoke management program because of concerns about the public health effects of smoke from expected increases in planned as well as unwanted wildland fires, and identified problems with the current system of regulating and monitoring burns.

7. Enhancements to the existing Guidelines that provide for (a) a daily authorization system for regulating the timing, amount, and location of burns; (b) adherence to detailed smoke management plans for prescribed burn projects; and (c) marginal burn days that limit specific burn projects in accordance with acceptable meteorological and air quality conditions, can minimize the public's exposure to acute, short term levels of smoke.

8. It is the responsibility of the Board and air districts to ensure the achievement of ambient air quality standards and to protect public health, safety, and welfare while being sensitive to economic concerns and the need to dispose of agricultural and forest waste products efficiently.

9. Both air districts and the Board must consider the cost effectiveness of their air quality programs and strive towards the most efficient methods of achieving public health benefits and air pollution control, including sharing available resources and consolidating common requirements, to the maximum extent feasible, so as to avoid duplication of existing capability.

10. Air district compliance with the proposed Guidelines will impose additional set-up and administrative costs to air districts that cannot be recovered with existing permit fees and subvention funds, so that fees will likely need to be increased.

11. Substantial issues have been raised regarding residential burning that the Board finds would more appropriately be studied and addressed in a separate Board hearing.

12. The cost of compliance with the proposed Guidelines is not expected to have a significant impact on California employment, and while the proposed Guidelines may impose hardship on some small and marginal timber operators, especially in Northern California counties, it should have no noticeable impact on the ability of the California forest products industry to compete in the national market and may actually increase the competitiveness of timber production in California.

13. No alternative proposed to or considered by the Board would be more effective in carrying out the purposes for which the regulation is proposed, or would be as effective and less burdensome to affected private persons or public agencies.

WHEREAS, pursuant to the requirements of the California Environmental Quality Act (CEQA) and the Board's regulations, the Board further finds that:

1. Public lands managers are required by federal and State environmental laws to evaluate and consider project alternatives and mitigation of any adverse environmental impacts of resource management treatments on publicly owned lands and must undertake comprehensive reviews and analyses of the potential impacts from affected programs and projects that occur from program implementation.

2. An environmental assessment of the proposed amendments to the Guidelines was conducted as required by California law, including an analysis of the reasonably foreseeable environmental impacts of the methods of compliance, an analysis of reasonably foreseeable feasible mitigation measures, and an analysis of reasonably foreseeable alternative means of compliance with the regulation; and the conclusions and supporting documentation for this analysis are set forth in the Initial Statement of Reasons.

3. Compliance with the proposed revisions to the Guidelines will not pose significant adverse environmental impacts and will reduce smoke-related health impacts from agricultural burning, including prescribed burning.

4. No additional mitigation measures are necessary because sufficient safeguards are incorporated into the burn program such that no significant adverse environmental impacts associated with the proposed amendments to the Guidelines are anticipated.

5. The proposed amendments to the Guidelines provide air districts with both flexibility in managing their programs and alternative means of compliance, provided the smoke management objectives contained in the Guidelines are fulfilled.

6. While the revised Guidelines are not expected to result in significant adverse environmental impacts when properly implemented, the air districts will need to conduct an independent environmental assessment during the development and adoption of their respective programs to determine whether there is a potential for adverse environmental impacts at the local level.

NOW, THEREFORE, BE IT RESOLVED, that the Board hereby approves the proposed amendments to California's Agricultural Burning Guidelines in title 17 of the California Code of Regulations, sections 80100, et seq., as set forth in Attachment A hereto, with the modifications from the original proposal set forth in Attachment B hereto.

BE IT FURTHER RESOLVED, that the Board directs the Executive Officer to adopt the regulatory guidelines as set forth in Attachments A and B after making them available to the public for comment for a period of at least 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 this is warranted.

BE IT FURTHER RESOLVED, that this regulation shall apply to any air district that adopts, implements, or amends a rule or regulation that regulates agricultural burning, including prescribed burning.

BE IT FURTHER RESOLVED, that once adopted, the new Guidelines shall be sent to the air districts, and the Executive Officer shall assist and monitor their implementation, and report back to the Board within one year of the July 1, 2001, program implementation date.

BE IT FURTHER RESOLVED, that the Board directs the Executive Officer to convene a working group that shall include of representatives of the California Department of Forestry and Fire Protection (CDF), the U.S. Forest Service, the California Air Pollution Control Officers Association (CAPCOA), and the ARB to investigate and, if feasible, develop a uniform smoke management plan format for use by the CDF, U.S. Forest Service, and other land managers, and report back to the Board on its progress within one year.

BE IT FURTHER RESOLVED, that the Board directs the Executive Officer to work with the air districts requesting changes to the meteorological criteria contained in Article 3 of the Guidelines to begin evaluating revised criteria pursuant to title 17 of the California Code of Regulations, section 80179, and to propose appropriate regulatory amendments for the Board's consideration by August 1, 2001.

BE IT FURTHER RESOLVED, that the Board directs the Executive Officer to work with the U.S. Forest Service and CAPCOA to investigate the feasibility of sharing available resources and technical information, particularly in the area of meteorology, so as to promote efficient and consistent implementation of the smoke management program.

BE IT FURTHER RESOLVED, that the Board directs the Executive Officer to work with CAPCOA to determine how to address the issue of residential burning and to report back to the Board within one year with recommendations.

BE IT FURTHER RESOLVED, that the Board directs the Executive Officer to seek ways, in addition to increased permit fees, to recover air district costs associated with compliance with the requirements of the Guidelines.

BE IT FURTHER RESOLVED, that the Board directs the Executive Officer to work with CAPCOA to assess appropriate fee structures to ensure equity and a level of uniformity to burners and other stakeholders participating in the program and to report to the Board periodically on the fees, costs, and funding status of the districts' smoke management programs.

BE IT FURTHER RESOLVED, that the Board directs the Executive Officer to work with CAPCOA to develop a programmatic environmental impact report template that can be used by the air districts in performing environmental impact assessments of their smoke management programs and to assist the air districts, as requested, in the assessment of environmental impacts associated with burn projects.

BE IT FURTHER RESOLVED, that the Board directs the Executive Officer to assist air districts, as requested, in the assessment of environmental impacts associated with burn projects or smoke management program revisions that are undertaken by the districts to comply with the Guidelines.

BE IT FURTHER RESOLVED, that the Board directs the Executive Officer to submit the adopted regulation to the Office of Administrative Law with a request that this regulation become effective upon filing with the Secretary of State in order to facilitate expeditious air district compliance with the Guidelines.

I hereby certify that the above is a true and correct copy of Resolution 00-8, as adopted by the Air Resources Board.

Pat Hutchens

Pat Hutchens, Clerk of the Board

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RESOURCES AGENCY OF CALIFORNIA

Resolution 00-8

March 23, 2000

Identification of Attachments to the Resolution

Attachment A: Proposed Amendments to title 17, California Code of Regulations, sections 80100, et. seq., as set forth in Appendix A to the Staff Report: Initial Statement of Reasons released February 4, 2000.

Attachment B: Staff's Suggested Changes to the Original Proposal, dated March 23, 2000, and distributed at the March 23, 2000, hearing and further modified by the Board.

Attachment B

Staff's Proposed Modifications to Title 17
Smoke Management Guidelines for Agricultural and Prescribed Burning
March 23, 2000

The ARB staff is proposing the following additional changes to the proposed amendments of the Agricultural Burning Guidelines. The ~~*italic and strike-out*~~ indicates deletions, and the **bold double underline** indicates additions to the following sections:

Significant Changes

Section 80101(l) is amended to read:

(l) "Forty-eight hour forecast" means a prediction of the meteorological and air quality conditions that are expected to exist for a specific prescribed burn in a specific area 48 hours from the day of the prediction. **The prediction shall indicate a degree of confidence.**

This change has been made to provide burners with additional information about the confidence level associated with the prediction. This will facilitate the decision-making ability of burners to plan and allocate resources to a particular burn.

Section 80102(d) is amended to read:

~~*(d) These Guidelines also limit residential burning to burn days and daylight hours unless other considerations specified in section 80145(e)(4) indicate that burning should be done during other hours.*~~

The regulation is designed to address agricultural burning. Residential burning falls into the non-agricultural burning category in the Health and Safety Code. In addition, many districts already have programs to address residential burning on the local level. Therefore, the staff is proposing to delete residential burning from these Guidelines and to work with CAPCOA to determine how best to address residential burning on a statewide basis.

Section 80130(c) is amended to read:

(c) The ARB Executive Officer may, on a district-by-district basis, alter the frequency or contents of the reports required pursuant to ~~*subdivision*~~ **subsections** (a) and (b) of this section, based on information needed to conduct or evaluate smoke management programs. **The Executive Officer shall provide a justification and reasonable schedule for implementing any revisions.**

This change has been made to clarify that the districts will have sufficient lead-time to gather the necessary data and implement the revised reporting requirements.

Section 80140(h) is amended to read:

(h) If a program is disapproved, the ARB shall return the program to the air district(s) for amendment. The air district(s) shall amend the program to address ARB concerns within ~~120~~ **180** days.

This change has been made to provide additional time for the districts to amend programs.

Section 80140(i) is amended to read:

(~~g~~i) If the ~~plan~~ program or ~~modification~~ amendment of such ~~plan~~ program is ~~rejected~~ disapproved, or if ~~no timely~~ ~~plan~~ a program or amendment is not submitted by the specified date, ~~*or if the plan program is economically or technically not feasible,*~~ the ~~state board~~ ARB, after a public hearing ~~held~~ in the basin affected, shall adopt an alternative ~~plan~~ program.

The deleted clause is an inappropriate and unnecessary criterion as it is unlikely that a district would adopt a program that is not economically or technically feasible.

Section 80145(b) is amended to read:

(b) ~~**A burn authorization system is not required for small amounts of daily agricultural burning, excluding prescribed burning, if an air district demonstrates, based on historical data, that those small amounts of burning do not cause or contribute to air quality problems.**~~ **If requested in writing by a district, the Executive Officer may approve an alternative burn authorization system for agricultural burning (excluding prescribed burning), provided the Executive Officer determines that the alternative system is likely to minimize smoke impacts on smoke sensitive areas, avoid cumulative smoke impacts, and prevent public nuisance. In making such determination, the Executive Officer shall consider the rules and regulations of the district relating to agricultural burning, historical data on the amount, types, location, and impacts of agricultural burning in the district (excluding prescribed burning), the effectiveness of the smoke management program in place in the district, and other documentation provided by the district. The decision, along with the reasons for the decision, shall be in writing.**

This change has been made to clarify the approval process for alternative burn authorization systems.

Section 80145(g) is amended to read:

(g) Procedures for authorizing burning, including a procedure for authorizing individual prescribed burns ~~*no more than*~~ 24 hours prior to ignition of the fire, **recognizing that any burn decision made 24 hours in advance is always subject to**

change if meteorological conditions or conditions affecting smoke dispersion are different from those anticipated.

The phrase "no more than" was struck to ensure that burners have a reasonable assurance of a burn decision in sufficient time to mobilize resources. Note, however, that conditions must still be favorable on the day of the burn and the prescriptions within the smoke management plan concerning meteorological conditions on the day of the burn must still be met.

Section 80145(o)(5) is amended to read:

(o) Rules and regulations or, until April 1, 2003, other enforceable mechanisms that:

...

(5) Regulate hours of ignition and burning. ~~Residential burning should be limited to burn days and daylight hours unless local conditions indicate that smoke impacts are not expected to occur if burning is done during other hours, or coordination with local fire agencies requires burning during other hours~~;

See reason for section 80102(d)

Section 80150(a)(2) is amended to read:

(a) The district smoke management program shall include rules and regulations or, until April 1, 2003, other enforceable mechanisms that:

...

(2) Require burning hours to be set so that no **field** crop burning shall commence before 10:00 a.m. or after 5:00 p.m. of any day, unless local conditions indicate that other hours are appropriate.

The term "field" had been inadvertently dropped from the current version of the regulation. The ARB staff did not intend to include any substantive revision to this section, with the exemption of allowing flexibility for the districts to authorize burning in hours outside of the 10:00 am to 5:00 p.m. window, if local conditions are appropriate.

Section 80160(c)(5) is amended to read:

(c) Require that smoke management plans for burn projects greater than 100 acres in size or estimated to produce more than 10 tons of particulate matter contain, at a minimum, the information contained in subdivision (b) and the following additional information:

...

(5) An evaluation of alternatives to burning considered; **if an analysis of alternatives has been prepared as part of the environmental documentation required for the burn project pursuant to the National Environmental Policy Act (NEPA) or the California Environmental**

Quality Act (CEQA), as applicable, the analysis shall be attached to the smoke management plan in satisfaction of this requirement; and

This change, proposed by the staff to clarify that such an evaluation does not have to be duplicated if an approved NEPA or CEQA analysis has been conducted, was further modified in response to testimony to require that such an analysis be attached to the smoke management plan.

Section 80160(d) is amended to read:

(d) If smoke may impact smoke sensitive areas, require smoke management plans to include appropriate monitoring, **which may include visual monitoring, ambient particulate matter monitoring or other monitoring approved by the district,** as required by the district for the following burn projects:
(1) projects greater than 250 acres;
(2) projects that will continue burning or producing smoke overnight;
(3) projects conducted near smoke sensitive areas; or
(4) as otherwise required by the district.

This change has been made to clarify that monitoring is not limited to ambient particulate matter monitoring.

Section 80160(h) is amended to read:

(h) Require that when a natural ignition occurs on a no-burn day, the initial "go/no-go" decision to manage the fire for resource benefit will be a "no-go" unless:
(1) After consultation with the district, the district decides, for smoke management purposes, that the burn can be managed for resource benefit; **or**
(2) For periods of less than 24 hours, a reasonable effort has been made to contact the district, or if the district is not available, the ARB;
(3) After 24 hours, the district has been contacted, or if the district is not available, the ARB has been contacted and concurs that the burn can be managed for resource benefit.
A "no-go" decision does not necessarily mean that the fire must be extinguished, but that the fire cannot be considered as a prescribed fire.

This change has been made to reflect the practical limitations of reaching district or ARB representatives on short notice and to ensure that reasonable attempts are made.

Section 80160(j) is amended to read:

(j) Require the land manager or his/her designee conducting a prescribed burn to ensure that **all** conditions **and requirements** stated in the smoke management plan are met on the day of the burn event and prior to ignition.

This change has been made to ensure that all requirements stated in the smoke management plans must be met.

Miscellaneous Editorial and Other Non-Substantial Changes

1. Nonsubstantive changes have been made to the following sections to reflect alphabetical numbering as "subsection" and numerical numbering as "paragraph": 80101(a)(2), 80101(r)(2), 80120(a), 80130(b), 80130(c), 80140(j), 80145(h), 80145(j), 80150(c)(1), and 80160(c).

2. Section 80140(l)

(l) After an air district smoke management program is approved by the ARB and the ARB finds that changes are necessary, the ARB shall discuss the findings with the air district and, in consultation with the district, **establish** an appropriate schedule for revising the smoke management program.

"Establish" was added as a verb to make a complete sentence.