State of California
AIR RESOURCES BOARD

Resolution 09-23

February 26, 2009

Agenda Item No.: 09-2-4

WHEREAS, the California Global Warming Solutions Act of 2006 (AB 32; Stats 2006, ch. 488, Health and Safety Code section 38500 et seq.), declares that global warming poses a serious threat to the economic well-being, public health, natural resources, and the environment of California and creates a comprehensive multi-year program to reduce California's greenhouse gas (GHG) emissions to 1990 levels by 2020;

WHEREAS, section 38505 of the Health and Safety Code defines "greenhouse gases" as including carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride;

WHEREAS, section 38510 of the Health and Safety Code designates the Air Resources Board (ARB or Board) as the State agency charged with monitoring and regulating sources of GHG emissions in order to reduce these emissions;

WHEREAS, section 38560 of the Health and Safety Code directs the Board to adopt rules and regulations in an open public process to achieve the maximum technologically feasible and cost-effective GHG emission reductions from sources or categories of sources, subject to the criteria and schedules specified in Part 4 of Division 25.5 of the Health and Safety Code;

WHEREAS, section 38560.5 of the Health and Safety Code requires the Board to publish and make available a list of discrete early action GHG emission reduction measures (early action measures) by June 30, 2007;

WHEREAS, section 38560.5 of the Health and Safety Code directs the Board to adopt regulations to implement the discrete early action measures identified on the list, and specifies that the regulations shall be enforceable no later than January 1, 2010;

WHEREAS, sections 39600 and 39601 of the Health and Safety Code authorize 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, in September 2007, ARB staff released for public review a draft report entitled "Expanded List of Early Action Measures to Reduce Greenhouse Gas Emissions in California Recommended for Board Consideration" (staff report), which sets forth staff's proposed expanded list of early actions; the staff report was released in final form in October 2007 for public review prior to the Board meeting;

WHEREAS, the staff report recommended that a measure to restrict the use of sulfur hexafluoride emissions from non-semiconductor and non-electric utility applications be identified as a discrete early action measure pursuant to section 38560.5 of the Health and Safety Code;

WHEREAS, staff estimated that the measure would reduce GHG emissions 0.10 million metric tons of carbon dioxide equivalents annually by 2020 relative to 2007 levels;

WHEREAS, after a public hearing on October 25, 2007, the Board approved the measure to restrict the use of sulfur hexafluoride emissions from non-semiconductor and non-electric utility applications and directed staff to develop it into a regulation;

WHEREAS, after a public meeting on December 11, 2008, the Board approved the Climate Change Scoping Plan which includes the non-semiconductor and non-electric utility discrete early action measure;

WHEREAS, in 2008 ARB staff conducted three public workshops, and participated in four stakeholder meetings in order to include the public and affected stakeholders in the regulatory development process;

WHEREAS, sulfur hexafluoride is a potent GHG that has a global warming impact 23,900 times greater than carbon dioxide (CO_2);

WHEREAS, sulfur hexafluoride is used in magnesium casting, tracer uses, research, for military applications, in products, and other applications unrelated to electricity and semiconductor manufacturing;

WHEREAS, ARB staff prepared a staff report entitled "Initial Statement of Reasons for Proposed Rulemaking, Adoption of the Proposed Regulation for Reduction of Sulfur Hexafluoride from Non-Semiconductor and Non-Utility" (ISOR) which presents the rationale for the proposed regulation;

WHEREAS, the ISOR and proposed regulatory language were made available to the public for at least 45 days prior to the public hearing to consider the proposed regulation;

WHEREAS, the uses covered by this proposed regulation are mostly emissive in nature and generate an estimated 150,000 metric tons of carbon dioxide equivalent emissions each year;

WHEREAS, staff is therefore proposing the adoption of a regulation to phase-out use of sulfur hexafluoride in non-electricity and non-semiconductor applications;
WHEREAS, the proposed regulation would become effective on January 1, 2010 with the phase-out effective on January 1, 2013 for tracer gas testing, magnesium sand and

investment casting, and military applications and January 1, 2011 for all other applications;

WHEREAS, the regulation would also establish a process for exemption from the phase-out if a use meets one of two criteria: 1) Uses of sulfur hexafluoride that result in reduced greenhouse gas emissions or 2) Uses of sulfur hexafluoride with no alternatives;

WHEREAS, the proposed regulation would adopt new Subarticle 3, title 17 California Code of Regulations, sections 95340 to 95346, as set forth in Attachment A hereto;

WHEREAS, the Board has considered the impact of the regulation on the economy of the State and the potential adverse economic impacts on California business enterprises and individuals;

WHEREAS, the Board has considered the community impacts of proposed regulations, including environmental justice concerns;

WHEREAS, the California Environmental Quality Act 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, 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 information in the public record, including the ISOR, written comments, and testimony provided at the hearing, the Board finds that:

The proposed regulation meets the requirements specified in section 38560.5 of the Health and Safety Code;

The proposed regulation is estimated to reduce 100,000 metric tons of carbon dioxide equivalents emissions annually in California, at a cost of about $2 per metric ton of carbon dioxide equivalent reduced;

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

The cost-effectiveness of the proposed regulation has been considered, and the regulation will achieve cost-effective GHG emission reductions;
The benefits to human health, public safety, public welfare, or the environment justify the costs of the proposed regulation;

The proposed regulation is consistent with ARB's environmental justice policies and will equally benefit residents of any race, culture or income level;

The reporting requirements of the proposed regulation which apply to businesses are necessary for the health, safety, and welfare of the people of the State;

The proposed regulation meets the criteria set forth in section 38562 of the Health and Safety Code; and

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 regulation is proposed, or be as effective and less burdensome to affected private persons and businesses than the proposed regulation.

WHEREAS, pursuant to the requirements of the California Environmental Quality Act and the Board's regulations, the Board further finds that the proposed regulation will not result in any significant adverse impacts on the environment;

NOW THEREFORE, BE IT RESOLVED that the Board hereby approves the proposed adoption of Subarticle 3, Title 17, California Code of Regulations Sections 95340, 95341, 95342, 95343, 95344, 95345 and 95346, as set forth in Attachment A hereto.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to modify the proposed regulation as requested by the Department of Defense (i.e., to phase out the use of military tracer gas at year 2020), and to further modify the regulation to create a new exemption for research, subject to appropriate conditions such as monitoring and reporting.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to take final action to adopt the regulation as set forth in Attachment A, with the modifications identified by the Board at the hearing and such other conforming modifications as may be appropriate, 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 modifications as may be submitted during this period, shall make modifications as appropriate in light of the comments received, and shall present the regulation to the Board for further consideration if he determines that this is warranted.

I hereby certify that the above is a true and correct copy of Resolution 09-23, as adopted by the Air Resources Board.

Monica Vejar

Monica Vejar, Clerk of the Board

FILED
NOV 12 2009
Resources Agency of California

Resolution 09-23

February 26, 2009

Identification of Attachments to the Resolution

Attachment A: Proposed Regulation for Reduction of Sulfurhexafluoride from Non-Semiconductor and Non-Utility Applications, as set forth in Appendix A to the Initial Statement of Reasons, released January 9, 2009.