State of California
AIR RESOURCES BOARD

Resolution 09-54

November 19, 2009

Agenda Item No.: 09-9-5

WHEREAS, sections 39002 and 39003 of the Health and Safety Code charge the Air Resources Board (ARB or Board) with responsibility for systematically attacking the serious air pollution problems caused by motor vehicles;

WHEREAS, section 39600 of the Health and Safety Code declares that the Board shall 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 39601(a) of the Health and Safety Code declares that the Board shall adopt standards, rules, and regulations in accordance with the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, necessary for the proper execution of the powers and duties granted to, and imposed upon, the Board by law;

WHEREAS, in section 43000 of the Health and Safety Code, the Legislature has declared that the emissions of air pollutants from motor vehicles is the primary cause of air pollution in many parts of the State, that the State has the responsibility to establish uniform procedures for compliance with standards which control or eliminate those air pollutants, and that vehicle emission standards applied to new motor vehicles and to used motor vehicles equipped with motor vehicle pollution control devices are standards with which all motor vehicles must comply;

WHEREAS, section 43013(a) of the Health and Safety Code authorizes the Board to adopt and implement motor vehicle emission standards, in-use performance standards, and motor vehicle fuel specifications for the control of air contaminants and sources of air pollution which the Board has found to be necessary, cost-effective, and technologically feasible, to carry out the purposes in Division 26 of the Health and Safety Code, unless preempted by federal law;

WHEREAS, section 43013(b) of the Health and Safety Code directs the Board, consistent with section 43013(a), to adopt standards and regulations for light-duty and heavy-duty motor vehicles, and for medium-duty motor vehicles, as determined and specified by the Board;

WHEREAS, section 43105 of the Health and Safety Code authorizes the Board to require manufacturers of certified vehicles or engines to take corrective action specified by the Board, which may include recall, if those vehicles or engines have violated emission standards or test procedures;

WHEREAS, section 43105 also authorizes the Board to establish the procedures for determining, and the facts constituting, compliance or failure of compliance with emission standards or test procedures;

WHEREAS, section 43106 of the Health and Safety Code states that each new motor vehicle or engine required to meet the emission standards established pursuant to section 43101 shall be, in all material respects, substantially the same in construction as the (certification) test vehicle or engine, as the case might be, which has been certified by the Board;

WHEREAS, section 43018 of the Health and Safety Code requires the Board to endeavor to achieve the maximum degree of emission reduction possible from vehicular and other mobile sources in order to accomplish the attainment of the state standards at the earliest practicable date;

WHEREAS, section 43205 of the Health and Safety Code requires manufacturers to warrant to the ultimate purchaser and each subsequent purchaser that each motor vehicle or motor vehicle engine is: (1) designed, built, and equipped so as to conform, at the time of sale, with the applicable emissions standards specified in Part 5, and (2) free from defects in materials and workmanship which cause such motor vehicle or motor vehicle engine to fail to conform with applicable regulations for its useful life;

WHEREAS, in 1982 the Board adopted regulations that established ARB's first in-use vehicle recall program; the regulations were intended to reduce vehicular emissions by: (1) ensuring that noncompliant vehicles are identified, recalled, and repaired to meet the applicable emission standards and comply with the test procedures in customer use, and (2) encouraging manufacturers to improve the design and durability of emission control components to avoid the expense and adverse publicity of a recall;

WHEREAS, in 1988, as an expansion to the 1982 in-use program, the Board adopted the Emissions Warranty Information Reporting (EWIR) regulations (title 13, California Code of Regulations (CCR), sections 2141-2149) for tracking emission-control component defects affecting on-road vehicles. The EWIR regulations require manufacturers to review all emission-related warranty claims on a quarterly basis to determine the number of repairs or replacements made for each component. Each manufacturer must report warranty activity that exceeds a 1 percent level and has additional reporting requirements when a component's warranty claim rate exceeds 4 percent on an engine family or test group basis. When an emission-control component's EWIR rate exceeds a true 4 percent level, the defect is considered to be systemic in nature. Should in-use vehicles or engines exhibit a systemic defect and the manufacturer's EWIR submittals acknowledge that fact, this is considered to be a violation of test procedure requirements and possibly emission standards. The warranty reporting regulations apply to all on-road 1990 and newer model-year passenger cars, light-duty, medium-duty, and heavy-duty trucks, California-certified engines used in such vehicles, and motorcycles;

WHEREAS, after the Board adopted the EWIR regulations, the Board adopted regulations (California Code of Regulations, title 13, sections 1968.1-1968.5) requiring on-board diagnostic (OBD) systems on most new vehicles sold in the state; these requirements offer ways of determining vehicles' compliance with emission standards and test procedure requirements that were not taken into account when the EWIR regulations were originally adopted;

WHEREAS, in some cases in which a manufacturer has reported valid warranty claims in excess of 4 percent for an emission control device under the EWIR regulations, the manufacturer has agreed to correct the situation by recalling the affected vehicles and installing more durable emission control devices; these cases have usually involved relatively small vehicle populations or simple defects. In other instances manufacturers have agreed to extend the emission control warranties on the components in question. In many other cases, however, no corrective action has occurred. In two notable cases that involved large vehicle populations and more complex defects, two manufacturers claimed (over ARB's objection) that despite evidence of a pervasive defect in the emission control components or systems of their vehicles, ARB was not authorized to order that the defect be corrected since the affected vehicles allegedly did not exceed emission standards, on average for all vehicles, over their useful lives;

WHEREAS, based on the Board's statutory authority and its experience in the implementation and administration of the EWIR regulations, the staff identified three aspects of the regulations that needed improvement. In 2007, the staff proposed amendments ("the 2007 amendments") to the EWIR regulations that would result in corrective action for more vehicles that have defective emission control devices or systems, thereby reducing emissions;

WHEREAS, ARB staff conducted public workshops on May 2, 2006 and February 14, 2007, and met with stakeholders several times in order to include the public and affected stakeholders in the regulatory development process. Based on these meetings and workshops, the staff: released the original proposed amendments on October 20, 2006; and suggested further modifications to the October 20, 2006 proposal on December 7, 2006; January 23, 2007; February 8, 2007; March 12, 2007; and at the hearing on March 22, 2007. The original amendments as modified were unanimously approved by the Board at its March 22, 2007 hearing and given final approval by the Office of Administrative Law on December 8, 2007;

WHEREAS, the 2007 amendments would have changed the proof necessary for determining if a group of vehicles is in violation of emission standards or test procedures. Once a group of vehicles exceeds a valid warranty claim rate threshold of 4 percent or 50 vehicles, whichever is greater, ("warranty claims threshold"), it would be considered to be in violation of test procedures and the manufacturer would be required to implement a recall and/or other corrective action, as specified.

WHEREAS, by March 2008, petitions for writs of mandate were filed in Los Angeles Superior Court by the Automotive Service Councils of California and other associated service industry petitioners, and the Engine Manufacturers Association, against ARB

challenging the newly amended EWIR regulations on a variety of grounds, including allegations that ARB had no authority to undertake corrective actions based solely on a 4 percent failure rate;

WHEREAS, on December 16, 2008, the Superior Court Judge upheld most of the EWIR amendments; however, the judge's ruling invalidated the most vital portion of the 4 percent failure rate trigger that authorized the Executive Officer to order a recall or other corrective action. The judge ruled that the 4 percent failure rate did not constitute a violation of a "test procedure" as that term is used in the Health and Safety Code section 43105;

WHEREAS, ARB staff concluded that the remaining provisions of the amended regulation are unenforceable because they depend on the 4 percent failure rate corrective action trigger to have any real effect; the staff is therefore proposing that the 2007 EWIR amendments be repealed, and that version of the EWIR regulation adopted by the Board in 1988 be readopted;

WHEREAS, the staff's proposed amendments as set forth in Attachment A hereto consist of the following: proposed amendments to sections 1956.8, 1958, 1961, 1976, 1978, 2111, 2112, 2122, 2136, 2141, title 13, CCR, and the following related test procedures which are incorporated by reference: "California Exhaust Emission Standards and Test Procedures for 2001 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles," adopted August 5, 1999, and as last amended May 2, 2008, "California Exhaust Emission Standards and Test Procedures for 2004 and Subsequent Model Heavy-Duty Diesel-Engines and Vehicles," adopted December 12, 2002, and as last amended October 14, 2008, "California Exhaust Emission Standards and Test Procedures for 2004 and Subsequent Model Heavy-Duty Otto-Cycle Engines," adopted December 27, 2000, and as last amended October 17, 2007, "California Refueling Emission Standards and Test Procedures for 2001 and Subsequent Model Motor Vehicles," adopted August 5, 1999, and as last amended October 17, 2007, "California Evaporative Emission Standards and Test Procedures for 2001 and Subsequent Model Motor Vehicles," adopted August 5, 1999, and as last amended October 17, 2007, and repeal of sections 2166, 2166.1, 2167, 2168, 2169, 2170, 2171, 2172, 2172.1, 2172.2, 2172.3, 2172.4, 2172.5, 2172.6, 2172.7, 2172.8, 2172.9, 2173, and 2174.

WHEREAS, the proposed amendments will have the effect of readopting title 13, CCR, sections 2111-2149, as they existed prior to the 2007 EWIR amendments;

WHEREAS, although there are limits and weaknesses in the 1988 EWIR regulations, they have resulted in many recalls of defective parts and vehicles and increased durability of emissions components;

WHEREAS, the 1988 California EWIR regulations are more stringent and comprehensive than their federal counterparts;

WHEREAS, in developing this regulatory proposal, the ARB staff evaluated the potential economic impacts on representative private persons or businesses. Costs to affected businesses will return to the status quo of the 1988 EWIR regulatory program any cost impacts are expected to be slight, absorbable, or positive;

WHEREAS, in accordance with Government Code sections 11346.3(c) and 11346.5(a)(11), the Executive Officer has found that the reporting requirements of the regulation which apply to businesses are necessary for the health, safety, and welfare of the people of the State of California;

WHEREAS, pursuant to section 43101 of the Health and Safety Code and section 11346.3 of the Government Code, the Board has considered and assessed the effects of the proposed amendments 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, the Board finds regarding the proposed repeal of the 2007 amendments that:

Despite advances in reducing emissions from passenger cars, light-duty trucks and medium-duty vehicles, heavy-duty vehicles, motorcycles and engines used in such vehicles, California still has one of 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 in-use vehicles when large-scale violations of emission standards or certification test procedures occur;

While it is clear that new vehicles or engines must meet emissions standards when first sold, it is as important that the emission-control components installed by the manufacturer must be both effective and durable in customer use;

ARB certification test procedures require that the manufacturer demonstrate that the emission-control components utilized to comply with the applicable emission standards are both effective and durable for the vehicles' certified useful life period and statutes require that production vehicles are substantially the same in construction in all material respects to vehicles submitted for certification testing;

ARB's prior EWIR program requires manufacturers to monitor their emission warranty activity and report when warranty repair rates exceeds certain thresholds, and while the reporting process and staff's ability to require appropriate repairs for systemic emission-control defects have not been totally successful, they are superior to no EWIR program at all or an unenforceable EWIR program; and

WHEREAS, the Board further finds that:

The amendments approved herein will not have a significant adverse environmental impact;

The amendments approved herein should help ensure that benefits from California's motor vehicle (and engine) emission control program are achieved statewide, and should not adversely impact any community in the State, including low-income or minority communities;

The economic and cost impacts of the proposed amendments 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 for this regulatory action;

No new reporting requirements on California businesses are established by the proposed amendments; in fact, reporting requirements have been reduced; and

No reasonable alternative considered or that has otherwise been identified and brought to the attention of the ARB would be more effective in carrying out the purpose for which the amendments are proposed, or would be as effective and less burdensome to affected private persons and businesses than the amendments approved herein; this conclusion is based on the experience gained in the EWIR program that basing recalls or other corrective action solely on violations of emissions standards is not sufficiently effective because doing so prevents many necessary corrective actions from taking place.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves the amendments to sections 1956.8, 1958, 1961, 1976, 1978, 2111, 2112, 2122, 2136, and 2141, title 13, California Code of Regulations, and the following related test procedures which are incorporated by reference: "California Exhaust Emission Standards and Test Procedures for 2001 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles," adopted August 5, 1999, and as last amended May 2, 2008, "California Exhaust Emission Standards and Test Procedures for 2004 and Subsequent Model Heavy-Duty Diesel-Engines and Vehicles," adopted December 12, 2002, and as last amended October 14, 2008, "California Exhaust Emission Standards and Test Procedures for 2004 and Subsequent Model Heavy-Duty Otto Cycle Engines," adopted December 27, 2000, and as last amended October 17, 2007, "California Refueling Emission Standards and Test Procedures for 2001 and Subsequent Model Motor Vehicles," adopted August 5, 1999, and as last amended October 17, 2007, "California Evaporative Emission Standards and Test Procedures for 2001 and Subsequent Model Motor Vehicles," adopted August 5, 1999, and as last amended October 17, 2007, and repeal of sections 2166, 2166.1, 2167, 2168, 2169, 2170, 2171, 2172, 2172.1, 2172.2, 2172.3, 2172.4, 2172.5, 2172.6, 2172.7, 2172.8, 2172.9, 2173, and 2174 as set forth in Attachment A hereto, with the modifications set forth in Attachment B hereto.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to take final action to adopt the proposed amendments as approved herein, after making the modified regulatory language, with such other conforming modifications as may be appropriate, available for public comment for a period of at least 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 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 the amendments adopted herein will not cause California motor vehicle emission standards, in the aggregate, to be less protective of public health and welfare than applicable federal standards.

BE IT FURTHER RESOLVED that the Board hereby finds that separate California emission standards and test procedures are necessary to meet compelling and extraordinary conditions.

BE IT FURTHER RESOLVED that the Board finds that the amendments adopted herein will not cause the California emission standards and test procedures for new motor vehicles and engines to be inconsistent with section 202(a) of the Clean Air Act and raise no new issues affecting previous waiver determinations of the Administrator of the U.S. Environmental Protection Agency pursuant to section 209(b) of the Clean Air Act.

BE IT FURTHER RESOLVED that to the extent that is necessary, the Executive Officer shall, upon adoption, forward the amendments to U.S. EPA with a request for a waiver or confirmation that the amendments are within the scope of an existing waiver of federal preemption pursuant to section 209(b) of the federal Clean Air Act, as appropriate.

BE IT FURTHER RESOLVED that the Board directs ARB staff to work with vehicle and engine manufacturers, industry groups and affected businesses to educate affected stakeholders about the requirements contained in the adopted regulatory amendments.

BE IT FURTHER RESOLVED that the Board directs ARB staff to ensure compliance with the regulation through enforcement actions as necessary.

I hereby certify that the above is a true and correct copy of Resolution 09-54, as adopted by the Air Resources Board.

Lori Andreoni

Lori Andreoni, Clerk of the Board

FILED
SEP 27 2010
Resources Agency of California

Resolution 09-54

November 19, 2009

Identification of Attachments to the Board Resolution

Attachment A: Proposed Amendments to California's Emission Warranty Information Reporting (EWIR) and Recall Regulations and Emission Test Procedures, and Readoption of the Prior EWIR Regulations and Emission Test Procedures, as set forth in Appendix A of the "Staff Report: Initial Statement of Reasons for Proposed Rulemaking, released October 2, 2009.

Attachment B: Staff's Suggested Modifications to the Original Proposal.

State of California
Environmental Protection Agency
AIR RESOURCES BOARD

Notice of Decision and Response to Significant Environmental Issues

Item:	**AMENDMENTS TO REPEAL THE 2007 AMENDMENTS TO CALIFORNIA'S EMISSION WARRANTY INFORMATION AND REPORTING AND RECALL REGULATIONS (EWIR) AND EMISSION TEST PROCEDURES AND READOPT THE PRIOR EWIR REGULATIONS AND EMISSION TEST PROCEDURES**
Approved By:	Resolution 09-54
Adopted by:	Executive Order R-10-018
Agenda Item:	09-9-5
Public Hearing Date:	November 19, 2009
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:	Amy J. Whiting, Regulations Coordinator
Date:	August 2, 2010

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