

State of California  
AIR RESOURCES BOARD

**VOLUNTARY NOX REMEDIATION MEASURE FUNDING**

Resolution 18-22

**April 27, 2018**

Agenda Item No.: 18-3-5

WHEREAS, sections 39600 and 39601 of the Health and Safety Code designates that the California Air Resources Board (CARB) has general responsibility for control of emissions from motor vehicles and to coordinate, encourage, and review the efforts of all levels of government as they affect air quality;

WHEREAS, sections 39600 and 39601 of the Health and Safety Code also authorizes CARB 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 39602 of the Health and Safety Code designates CARB as the air pollution control agency for all purposes set forth in federal law. and gives CARB the responsibility for preparing the State Implementation Plan (SIP) for attaining and maintaining the national ambient air quality standards and to coordinate the activities of the California's air districts as necessary to comply with the federal Clean Air Act (42 U.S.C. section 7401 et seq.);

WHEREAS, section 39605 of the Health and Safety Code authorizes CARB to conduct public hearings and to provide assistance to the air districts;

WHEREAS, pursuant to section 43015 of the Health and Safety Code, upon appropriation by the legislature, money in the Air Pollution Control Fund is available to CARB to carry out its duties and functions;

WHEREAS, section 38510 of the Health and Safety Code designates CARB as the State agency charged with monitoring and regulating sources of greenhouse gas (GHG) emissions that cause global warming in order to reduce such 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, the Board approved a list of early GHG actions at its June 21, 2007, hearing and approved additions to the list at its October 25, 2007, hearing, and a subset of nine of these early actions were designated as Discrete Early Action Measures, including the “Low Carbon Fuel Standard” (LCFS) measure to reduce GHG emissions from transportation fuels used in California;

WHEREAS, the Board approved the LCFS regulation in Resolution 09-31 at its April 2009 hearing, and the initial version of the regulation became effective on April 15, 2010;

WHEREAS, on July 15, 2013, the State of California Court of Appeal issued an opinion in *POET, LLC v. California Air Resources Board* (2013) 218 Cal.App.4th 681, requiring that CARB take specified actions to correct errors related to the adoption of the first LCFS in 2009, and concluding that the public interests at stake, including the protection of the environment, weighed in favor of preserving the operation of the LCFS while those actions were taken;

WHEREAS, the 2013 *POET* opinion ordered CARB to, among other things, further consider whether the LCFS might result in increased nitrogen oxide (NOx) emissions due to increases in the use of biodiesel;

WHEREAS, in February 2014, the Fresno County Superior Court issued a writ of mandate ordering the Board to take the actions directed by the Court of Appeal;

WHEREAS, to correct the issues identified in the 2013 *POET* decision and to improve the LCFS regulation, on September 25, 2015, with Resolutions 15-36 and Resolution 15-41, the Board set aside the previous LCFS regulation, and adopted a new LCFS regulation, along with a companion regulation for the commercialization of alternative diesel fuels (ADF regulation) designed to, among other things, ensure long term mitigation of any potential NOx emissions increases that might otherwise result from increased use of alternative diesel fuels;

WHEREAS, both the new LCFS and the ADF regulations became effective January 1, 2016, the former published at sections 95480, 95481, 95482, 95483, 95483.1, 95483.2, 95484, 95485, 95486, 95487, 95488, 95489, 95491, 95492, 95493, 95494, 95495, 95496, and 95497 of Title 17, California Code of Regulations; and the latter published at sections 2293, 2293.1, 2293.2, 2293.3, 2293.4, 2293.5, 2293.6, 2293.7, 2293.8, 2293.9, and Appendix 1 of Title 13, chapter 5, article 3, California Code of Regulations;

WHEREAS, on September 25, 2015, the Board approved Resolution 15-51, thereby certifying the *Final Environmental Analysis for the Low Carbon Fuel Standard and Alternative Diesel Fuel Regulations* and approving the responses to comments;

WHEREAS, on January 5, 2016, the Fresno County Superior Court discharged its February 2014 writ of mandate;

WHEREAS, on May 30, 2017, the State of California Court of Appeal issued an opinion in *POET, LLC v. California Air Resources Board* (2017) 12 Cal.App.5th 52, reversing the Superior Court's discharge of the February 2014 writ, and directing CARB to take specified actions relating to the issue of potential NOx emissions from biodiesel to complete its compliance with a modified writ of mandate;

WHEREAS, on November 17, 2017, with Resolution 17-48, the Board set aside the portions of the 2015 LCFS environmental analysis addressing NOx emissions from biodiesel to comply with a revised writ of mandate issued by Fresno County Superior Court on October 18, 2017;

WHEREAS, staff has proposed amendments to the Low Carbon Fuel Standard Regulation and to the Regulation on Commercialization of Alternative Diesel Fuels, as set forth in Appendix A to the Initial Statement of Reasons released to the public on March 6, 2018;

WHEREAS, those proposed amendments are designed to ensure that any long-term biodiesel use increases driven by the LCFS will not result in statewide NOx emissions increases;

WHEREAS, as directed by the October 18, 2017, revised writ of mandate, Board staff has developed and publicly released a Draft Supplemental Disclosure Discussion of Oxides of Nitrogen Potentially Caused by the Low Carbon Fuel Standard Regulation [Draft Disclosure Discussion] identifying potential NOx emissions that may have been caused in the past, and could be caused in the future by the LCFS regulation;

WHEREAS, that Draft Disclosure Discussion was included as Appendix G to the Initial Statement of Reasons released March 6, 2018;

WHEREAS, utilizing a conservative analytical approach that may overestimate LCFS attributable impacts, the Draft Disclosure Discussion concluded that potential increases in NOx emissions from biomass-based diesel use attributed to LCFS, considered in isolation from the overall air quality impacts of biodiesel use, may have had a significant adverse effect on the environment in 2012, 2015, and 2016;

WHEREAS, the Draft Disclosure Discussion also determined, again under this conservative approach, that "NOx emissions from biomass-based diesel use attributed to the LCFS resulted in a potentially significant impact on cumulative long-term air quality";

WHEREAS, taking into account the overall emissions impacts of biodiesel, including beneficial impacts, the Draft Disclosure Discussion concluded that "the use of biodiesel on its own is beneficial to California";

WHEREAS, specifically, in all years analyzed, the Draft Disclosure Discussion concluded that “the health benefit from reductions in direct particulate matter (PM) emissions outweighed the potential adverse health impact due to increases in NOx, and resulted in net health benefits”;

WHEREAS, the Draft Disclosure Discussion concluded that “due to the short atmospheric lifetime of NOx emissions, it is not physically possible, and is therefore infeasible, to mitigate any specific potentially significant historical LCFS NOx emissions”;

WHEREAS, notwithstanding the infeasibility of mitigating past potential NOx emissions increases, the overall health benefits of biodiesel as compared to conventional fossil diesel, or the beneficial cumulative overall long-term NOx emissions reductions attributable to increases in the use of biomass-based diesel and other alternative fuels driven by the combined implementation of the LCFS and ADF, the Draft Disclosure Discussion outlined a CARB commitment, “consistent with CARB’s mission to promote and protect public health and welfare through the effective and efficient reduction of air pollutants,” to remediate potential historical LCFS NOx emissions by seeking additional reductions of NOx emissions;

WHEREAS, sections 44275 through 44299.2 of the Health and Safety Code establish the Carl Moyer Program to provide grants to offset the incremental cost of projects that reduce emissions of oxides of nitrogen, particulate matter, and reactive organic gases from qualifying sources in California;

WHEREAS, the Carl Moyer Program complements CARB’s regulatory efforts by providing monetary incentives to obtain surplus emission reductions before or beyond those required by rules and regulations;

WHEREAS, the Board approved revised Carl Moyer Program Guidelines (2017 Guidelines) on April 27, 2017, with new limits on project cost-effectiveness and new flexibility to implement infrastructure projects and to co-fund projects with other incentive programs, with the goal of advancing clean air technologies to reduce emissions throughout California;

WHEREAS, the Draft Disclosure Discussion proposes that CARB will voluntarily “remediate the potential past emissions through remedial measures supporting air district-level NOx mitigation projects targeting engines, such as the replacement of existing diesel engines with low-NOx engines”;

WHEREAS, Attachment A to this resolution outlines an approach to implement this proposal pursuant to which the Executive Officer would enter into grant agreements with air districts to fund NOx remediation projects subject to criteria and implementation specifications modeled after the 2017 Guidelines;

WHEREAS, the NOx remediation measure outlined in Attachment A is intended to fund remediation of historic potential NOx emissions and to incorporate rigorous ongoing tracking of progress;

WHEREAS, CARB's regulatory program that involves the adoption, approval, amendment, or repeal of standards, rules, regulations, or plans has been certified by the Secretary for Natural Resources under Public Resources Code section 21080.5 of the California Environmental Quality Act (CEQA; California Code of Regulations, title 14, section 15251(d)), and CARB conducts its CEQA review according to this certified program (California Code of Regulations, title 17, sections 60000-60007);

WHEREAS, staff has determined that the proposed voluntary NOx remediation measure funding is not a "project" subject to CEQA review, because the funding constitutes a government funding mechanism or other government fiscal activity which does not involve any commitment to any specific project that may result in a potentially significant physical impact on the environment (California Code of Regulations, title 14, section 15378(b)(4)). The voluntary NOx remediation measure funding is a statewide program implemented by the local air districts. The districts receive grants from CARB but choose the projects to fund that best fit the needs of their community. Staff has further determined that even if the proposed voluntary NOx remediation measure funding constituted a CEQA "project," CARB's approval of the funding would be exempt from CEQA review under the California Code of Regulations, title 14, section 15061(b)(3) because it can be seen with certainty that there is no possibility the funding may have a significant adverse impact on the environment;

WHEREAS, the Board finds that it is appropriate for the Executive Officer to enter into grant agreements with air districts to fund NOx emissions reductions projects subject to criteria and implementation specifications modeled after the 2017 Guidelines as described in Attachment A; and

WHEREAS, the Board further finds that the proposed voluntary NOx remediation measure funding described in Attachment A is consistent with CARB's mission and authority; is appropriately designed to achieve and track the targeted reductions; and is consistent with legislative appropriations and funds.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves the proposed voluntary NOx remediation measure funding, as set forth in Attachment A hereto.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to allocate funds, as available subject to Executive Officer determination, to districts for purposes of NOx remediation consistent with the approved voluntary NOx remediation measure funding.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to enter into grant agreements with air districts to fund NOx emissions reductions projects subject to

criteria and implementation specifications modeled after the 2017 Guidelines as described in Attachment A.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to track and confirm achievement of NOx reductions pursuant to the voluntary NOx remediation measure funding.

I hereby certify that the above is a true and correct copy of Resolution 18-22 as adopted by the Air Resources Board.

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Rana McReynolds, Clerk of the Board

Resolution 18-22

**April 27, 2018**

**Identification of Attachments to the Board Resolution**

**Attachment A: Voluntary NOx Remediation Measure Funding:  
Guidelines for District Grants to Remediate Potential Historic Biodiesel NOx  
Emissions Conservatively Attributable to the LCFS**