

State of California
AIR RESOURCES BOARD

Resolution 98-18

April 23, 1998

Agenda Item No.: 98-4-2

WHEREAS, sections 39600 and 39601 of the Health and Safety Code authorize the Air Resources Board ("ARB" or "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, Assembly Bill 2937 (Brulte; Stats. 96, ch. 775) added sections 39150-39153 to the California Health and Safety Code ("H&SC") requiring the Board to adopt and implement a program for issuing a "notice to comply" for minor violations of air pollution requirements that are administered by the ARB;

WHEREAS, the purpose of AB 2937 is to establish an enforcement policy for violations that the Board finds are minor when the danger or risk they pose to human health, safety, welfare or the environment are taken into account;

WHEREAS, the express legislative intent of AB 2937 is to provide a more resource-efficient enforcement mechanism, faster compliance times, and the creation of a productive and cooperative working relationship between the Board, air pollution control districts, and the regulated community, while maintaining protection of human health and safety and the environment;

WHEREAS, AB 2937 specifies the factors to consider when classifying minor violations and defines "notice to comply" ("NTC") as a written method of alleging a minor violation and sets forth the requirements for issuance of a notice to comply;

WHEREAS, Board staff has proposed a regulation that classifies the types of violations of regulations, rules, standards, orders, permit conditions, or other requirements that shall be considered minor violations and a process for issuing notices to comply with the underlying requirements to which an NTC would apply;

WHEREAS, the California Environmental Quality Act (CEQA) and Board regulations require that no action 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 Air Resources Board staff has held public workshops and solicited comments on

the proposed regulation from the public, affected industry, environmental groups and businesses in the State of California and the Board has considered these comments;

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 that:

1. The proposed regulation classifies "minor violations" in areas for which ARB adopts regulations and has primary enforcement authority including motor vehicle fuels content, consumer product regulations, and cargo tank inspections (H&SC sections 43830 et seq., 41962, and 41712, respectively).
2. No emission-related violations, except those which are determined to be of a de minimis amount, shall be considered a minor violation in order to ensure the protection of air quality, the integrity of the state implementation plan, and the approval of the federal Environmental Protection Agency.
3. Because it is neither possible nor desirable to set a numerical threshold for "de minimis" which will suffice in all circumstances, "de minimis" determinations shall be made by the Executive Officer of the Air Resources Board, or his delegate pursuant to H&SC 39516, on a case-by-case basis, depending on the circumstances, in the exercise of judgement and discretion.
4. Due to the localized nature of toxic air contaminants and associated health impacts, any increase of toxic emissions in excess of any emissions standard, limitation, or other state or federal requirement that is applicable to that toxic air contaminant shall not be considered a minor violation.
5. The proposed regulation appropriately considers certain procedural violations as minor violations.
6. No alternative considered would be more effective in carrying out the intent and purposes of AB 2937, or would be as effective and less burdensome to affected persons than the proposed action, and this proposed action is the one that best meets the goals of providing a more resource-efficient enforcement mechanism, faster compliance times, and the creation of a productive and cooperative working relationship between the state board, the local air districts, and the regulated community while maintaining protection of human health and safety and the environment.

7. A plain English discussion of the proposed regulation and notice of public hearing to consider the proposed regulation was provided in the staff report and the notice of public hearing made available to the public, which satisfies the requirements of Government Code section 11346.2(a)(1), which requires that a non-controlling "plain English" summary of the regulation be made available to the public.
8. The economic and cost impacts of the adoption of the regulation have been analyzed as required by California law, and the conclusions and supporting documentation for this analysis are properly set forth in the Initial Statement of Reasons.
9. Adoption of the regulation will not result in any significant adverse impacts on the environment for the following reasons:
 - a. A minor violation pursuant to this regulation cannot result in or contribute to, or have the effect of covering or concealing, an increase in emissions of any air contaminant by more than a de minimis amount;
 - b. A minor violation cannot endanger the health, safety, or welfare of any person(s) and cannot endanger the environment;
 - c. A minor violation cannot cause or contribute to the violation of any state or national ambient air quality standard;
 - d. A minor violation cannot hinder the ability of the Executive Officer to determine compliance with any applicable local, state, or federal rule, regulation, information request, order, variance, permit or other requirement;
 - e. A notice to comply cannot be issued for chronic violations or to a recalcitrant violator, as defined in the regulation; and
 - f. A notice to comply cannot be issued to eliminate criminal penalties or civil penalties required by federal law.

WHEREAS, the Board further finds that the changes proposed by staff to the regulation as originally noticed for public comment improve the regulation and are necessary to ensure its proper scope, clarity, and implementation.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves sections 60090 through 60095 as additions to Article 6 of Subchapter 1 of Chapter 1 of Division 3 of Title 17, California Code of Regulations, as set forth in Attachment A hereto.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to adopt sections 60090 through 60095, Title 17, California Code of Regulations, after making the regulatory language and 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 proposed regulation 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 determines that this is warranted.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to prepare a status report on the implementation and effect of this minor violation program for the Board no later than June 1999, along with recommendations for making the program more effective, if any.

I hereby certify that the above is a true and correct copy of Resolution 98-18, as adopted by the Air Resources Board.

Pat Hutchens, Clerk of the Board

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Identification of Attachments to the Resolution

Attachment A: Modifications to the originally noticed proposed regulations, as the modifications were suggested by staff and were directed by the Board at the April 23, 1998 public hearing.