

State of California
AIR RESOURCES BOARD

Resolution 97-16

March 27, 1997

Agenda Item No.: 97-2-3

WHEREAS, sections 39600 and 39601 of the California Health and Safety Code (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, Health and Safety Code sections 39002 and 40000 provide that districts have primary responsibility for control of air pollution from all sources other than emissions from motor vehicles;

WHEREAS, sections 43013(b) and 43018 of the Health and Safety Code provide ARB authority to adopt standards and regulations for off-road vehicles and equipment;

WHEREAS, in sections 41750(a) and (b) of the Health and Safety Code, Legislature found that under existing law local districts have imposed separate and sometimes inconsistent emission control requirements and permits to operate for portable internal combustion engines and associated equipment that are used at various sites throughout the State; and that the multiplicity of permits and regulatory requirements impose a complex and costly burden on California businesses that use, hire, provide, and manufacture those engines and associated equipment;

WHEREAS, in section 41750(c) of the Health and Safety Code, the Legislature declared that a Statewide Portable Equipment Registration Program of portable internal combustion engines and associated equipment is necessary to ensure consistent and reasonable regulation of those engines and associated equipment without undue burden on their owners, operators, and manufacturers;

WHEREAS, sections 41752(a) through (d) of the Health and Safety Code direct the Board to evaluate emissions from the operation of portable internal combustion engines and associated equipment, identify emission reduction technologies that may be applied to portable internal combustion engines and associated equipment, hold at least one public hearing, and adopt a program providing for the voluntary registration of each portable internal combustion engine and associated equipment; such program shall establish emission limits and emission control requirements, and a fee schedule to cover the costs of adopting and administering the program, including a uniform fee to recover the cost of district enforcement;

WHEREAS, section 41752(e) of the Health and Safety Code provides that the Board may periodically revise and update the Portable Equipment Registration Program regulations, including, but not limited to, revising and updating, a determination of best available control technology (BACT) for portable internal combustion engines.

WHEREAS, sections 41753(a) and (b) of the Health and Safety Code provide that the registration program be done on a uniform, statewide basis and that portable internal combustion engines and associated equipment registered under the statewide program are preempted from further permitting, registration, and regulation by local districts;

WHEREAS, sections 41754(a)(1) through (a)(2) of the Health and Safety Code require that the ARB adopted regulations include provisions that ensure the following: emissions from portable internal combustion engines and associated equipment subject to the proposed regulation will not, in the aggregate, interfere with the attainment or maintenance of state or federal ambient air quality standards; the emissions from any one portable internal combustion engine or associated equipment, exclusive of background concentration, shall not cause an exceedance of any ambient air quality standard to the extent consistent with federal law; the registration program preserves the most stringent requirements adopted by a district which require the use of Best Available Control Technology (BACT) for each class or category of portable equipment determined appropriate by the Board and in effect on January 1, 1995; and the Board may consider technical and economic feasibility in establishing emission limits or control equipment requirements for any category or class of existing California resident portable equipment;

WHEREAS, section 41754(a)(3) of the Health and Safety Code provides that any registered portable internal combustion engines, including any turbines, used exclusively for military tactical support or other federal emergency purposes as specified in the proposed regulation by the Department of Defense or the National Guard are not subject to any statewide or district emission control or limit;

WHEREAS, section 41754(b) of the Health and Safety Code provides that the proposed regulation shall establish no emission limit or emission control requirement for any portable resident internal combustion engine and associated portable equipment unless the Board determines that the emission limit or emission control requirement is technologically and economically feasible, and is necessary to attain or maintain state or federal ambient air quality standards;

WHEREAS, Health and Safety Code section 41754(d) provides that the Board shall establish emission limits for any portable equipment or class of portable equipment that reflect the effectiveness of all control equipment installed and operated on the portable equipment or particular class of equipment;

WHEREAS, Health and Safety Code section 41754(f) provides that the Board shall establish recordkeeping and reporting requirements in the Statewide Portable Equipment Registration Program that are the minimum necessary to provide sufficient emission inventory data and allow adequate enforcement of the program;

WHEREAS, Health and Safety Code section 41754(g) provides that the Statewide Portable Equipment Registration Program regulation would not require source testing of portable equipment emissions for registration purposes if there is no emission standard established or if acceptable emission data is available;

WHEREAS, Health and Safety Code section 41755 prohibits testing under the Statewide Portable Equipment Registration Program more often than once every three years; source testing may be required more frequently only in the event where evidence of portable internal combustion engine tampering, lack of proper engine maintenance, or other problems or operating conditions that could affect emissions are identified;

WHEREAS, the Permit Reform Act of 1981, Government Code Section 15374 et seq., provides that all state agencies which issue permits, including registrations, shall adopt regulations regarding their procedures for considering and issuing permits, specifying, among other things, the time periods within which a state agency must notify an applicant that a permit application has been received and deemed complete, and within which the agency must reach a final decision;

WHEREAS, section 209(e)(1) of the federal Clean Air Act preempts the State of California and the local districts from adopting or enforcing emission standards or other requirements relating to the control of emissions (other than in-use operational controls) of new nonroad engines less than 175 horsepower primarily used in farm and construction equipment and vehicles;

WHEREAS, section 209(e)(2) requires that California seek authorization from the United States Environmental Protection Agency (U.S. EPA) prior to enforcing emission standards or other requirements relating to the control of emissions (other than in-use operational controls) from all other nonroad engines (of which portable internal combustion engines are a subpart), not otherwise preempted by section 209(e)(1);

WHEREAS, the staff now proposes adoption of new article 5, sections 2450-2465 to Title 13 of the California Code of Regulations (CCR) that, among other things, facilitate operation in multiple districts for businesses by creating a uniform statewide program for registering and regulating portable internal combustion engines and associated equipment;

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 I, Division 3, Title 2 of the Government Code).

WHEREAS, the Board finds that:

The proposed regulation to Title 13, CCR, sections 2450-2465 establishes uniform requirements for registration and control of portable internal combustion engines and associated equipment that allows for the operation of such engines and associated equipment throughout the state;

The proposed regulation establishes uniform, consistent and reasonable emission standards for portable internal combustion engines and associated equipment;

The Statewide Portable Equipment Registration Program would be mandatory for portable internal combustion engines rated at 50 horsepower or greater that are located in a district having a permit or registration program applicable to those engines that was in effect on or before January 1, 1997, if the Executive Officer has determined that the district program has been preempted by federal law;

The proposed regulation establishes emission standards consistent with current state and federal air quality law, including the prohibitions on nuisances, limitations on visible emissions, protection of ambient air quality standards, and the federal preemptions for nonroad engines;

Portable internal combustion engines used in military tactical support equipment are exempt from control technology requirements and in-use operational controls;

The proposed emission standards for resident internal combustion engines, reasonably available control technology and BACT, are technologically and economically feasible;

Nonresident portable internal combustion engines are subject to the most stringent district BACT that was in effect on January 1, 1995; this is consistent with existing district programs for new engines;

The emission limits that have been established for portable internal combustion engines minimize the emission impacts from these engines and protect the ambient air quality standards;

Equipment units associated with portable internal combustion engines are subject to BACT, daily, and annual emission limits that have been established to protect ambient air quality standards;

The proposed regulation requires that portable internal combustion engines used on dredges that operate on a continuous basis on any given day install a selective catalytic reduction or other control technology to achieve the BACT determined emission limit; dredges that operate intermittently are required to meet the same requirements as other portable internal combustion engines of comparable engine size;

In the event of an emergency, the proposed regulation establishes provisions for automatic registration for the duration of an emergency for internal combustion engines and associated equipment not permitted or registered by a district where the emergency occurs;

With the exception of military tactical support equipment, internal combustion engines shall use only fuels meeting the standards for California motor vehicle fuels as set forth in Chapter 5, Division 3, Title 13, of the California Code of Regulations;

To reduce and eventually eliminate high-emission engines, the proposed regulation, in general, requires a scheduled phase-in of cleaner technologies; with the exception of military tactical support equipment, engines rated at less than 175 horsepower used in farm and construction operations, and engines rated at less than 50 horsepower, all engines are required to meet, through retrofit or replacement, the equivalent emission limitations of federal- or State-certified new engine standards by January 1, 2010;

Source testing of portable internal combustion engines for compliance purposes shall not be required more frequently than once every three years, including testing at the time of registration, except where evidence of engine tampering, lack of proper engine maintenance, or other problems that could affect engine emissions are identified;

The recordkeeping and reporting requirements required by the Statewide Portable Equipment Registration Program are the minimum necessary to provide sufficient emission inventory data and allow adequate enforcement of the registration program, the owners of registered portable internal combustion engines and associated equipment must maintain daily operation records and submit to the ARB an annual report consisting of quarterly summaries of operation;

The proposed regulation establishes an application process for applicants to submit required information for registration, renewals, and change of ownership; additionally, procedures for identical and equivalent replacements of registered portable engines, and non-operational portable internal combustion engines and associated equipment have been established;

The proposed regulation establishes a fee structure to cover the costs of adopting and administering the program, including a uniform fee to recover the cost of district enforcement;

The proposed regulation establishes a process for appeals for portable internal combustion engines and associated equipment if registration has been suspended, revoked, or denied;

The time periods set forth in Title 13, CCR, section 2453(e) and (f), within which the Executive Officer must inform the applicant in writing that the application is complete or deficient and must issue or deny registration, are necessary given the potential volume of applicants that may apply for registration into the program; moreover, it is reasonable to anticipate that the volume will be the highest during the first year of the program and that the Executive Officer will need additional time provided to process the applications during this period;

The reporting requirement of Title 13, CCR, section 2458 that is applicable to business is necessary for the health, safety, and welfare of the people of the State;

WHEREAS, the California Environmental Quality Act (CEQA) 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 Board finds that with respect to the requirements of CEQA, in the aggregate, the Statewide Portable Equipment Registration Program will attain greater emission reductions throughout the state over the next 10 to 15 years than under the present district-by-district permitting programs, and that no feasible regulatory alternatives or mitigation measures exist that will better accomplish the Legislature's directives regarding establishing a uniform and consistent statewide program;

WHEREAS, pursuant to section 41754(c) of the Health and Safety Code, the Board has considered the magnitude of the resultant air quality benefit and the potential effects of the regulation on the costs to businesses that use portable internal combustion engines and associated equipment prior to adopting any emission limit or emission control requirement;

WHEREAS, the Board has considered the impact of the proposed regulatory action on the economy of the state and finds that, overall, the proposed regulation would have a positive environmental impact and would not interfere with the attainment or maintenance of state or federal ambient air quality standards;

WHEREAS, the Board finds that the Statewide Portable Equipment Registration Program is expected to have a beneficial impact on California business; participants in the program would no longer need to seek (and pay for) permits in each district in which they operate, or comply with different emission limits and control requirements each time the portable internal combustion engine or associated equipment is operated in a different district;

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves sections 2450-2465, Title 13, California Code of Regulations, establishing a Statewide Portable Equipment Registration Program, as set forth in Attachment A hereto, with the modifications described in Attachment B and C hereto.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to adopt sections 2450-2465, Title 13, California Code of Regulations, after making the modified regulatory language identified in Attachment B and C and such other conforming modifications as may be appropriate, along with 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 modification and additional supporting documents and information 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 Executive Officer shall, upon adoption of this regulation, forward the Statewide Portable Equipment Registration Program regulation to the Administrator of the U.S. EPA with a request that those regulations that pertain to emission standards and other requirements relating to the control of emissions from nonroad engines, as defined by the federal Clean Air Act and implementing regulations, receive authorization to enable California to enforce these provisions;

BE IT FURTHER RESOLVED that the Board hereby determines that pursuant to section 209(e) of the federal Clean Air Act the regulation adopted herein will, in the aggregate, be at least as protective of public health and welfare than applicable federal standards;

BE IT FURTHER RESOLVED that if pursuant to Title III of the Clean Air Act the U.S. EPA promulgates any maximum achievable control technology standards that are applicable to portable internal combustion engines covered by the Statewide Portable Equipment Registration Program, the Board directs ARB staff to meet and consult with the U.S. EPA and affected industry to address the implications of such standards on the statewide program;

BE IT FURTHER RESOLVED that the Board directs staff, in consultation with affected local air pollution control districts and sources and U.S. EPA, to evaluate the applicability of the Portable Equipment Registration Program to portable internal combustion engines that are operated in California territorial coastal waters and to report back to the Board if it is necessary to amend the regulation to include such engines in the Program;

BE IT FURTHER RESOLVED that staff is directed to periodically evaluate the control technology, emission standards, program effectiveness, and adequacy of fees, including enforcement fees that may not be sufficient to cover the reasonable costs of enforcement as required by California Health

and Safety Code section 41752(d)(2), and, within one year of the effective date of this regulation, report its findings to the Board, regarding but not limited to the issues set forth above, with recommended amendments to the regulation, as appropriate.

I hereby certify that the above is a true and correct copy of Resolution 97-16, as adopted by the Air Resources Board.

Pat Hutchens, Clerk of the Board

Resolution 97-16

March 27, 1997

Identification of Attachments to the Resolution:

Attachment A: Proposed Regulation to Establish a Statewide Portable Equipment Registration Program (Regulation), Title 13, California Code of Regulations, sections 2450-2465, as set forth in Appendix A to the Staff Report, issued February 7, 1997.

Attachment B: Modifications to the proposed Regulation, approved by the Board on March 27, 1997.

Attachment C: Modifications to the proposed and approved Regulation, proposed by the Board on March 27, 1997.