

**State of California
California Environmental Protection Agency
AIR RESOURCES BOARD**

**PUBLIC HEARING TO CONSIDER AMENDMENTS TO THE REGULATIONS FOR
PORTABLE FUEL CONTAINERS**

FINAL STATEMENT OF REASONS

October 2005

State of California
California Environmental Protection Agency
AIR RESOURCES BOARD

**Final Statement of Reasons for Rulemaking,
Including Summary of Comments and Agency Response**

PUBLIC HEARING TO CONSIDER AMENDMENTS TO THE PORTABLE FUEL
CONTAINER REGULATIONS

Public Hearing Date: September 15, 2005
Agenda Item No.: 05-8-7

I. General

The Staff Report: Initial Statement of Reasons for Rulemaking (“staff report”), entitled “Initial Statement of Reasons for Proposed Amendments to the Portable Fuel Container Regulations”, released July 29, 2005, is incorporated by reference herein.

In the portion of the rulemaking covered by this Final Statement of Reasons, the Board is adopting amendments to the Portable Fuel Container (PFC) regulations. During its September 15, 2005 public hearing, the Air Resources Board (Board or ARB) adopted staff’s recommendation to adopt two Resolutions for this rulemaking. As detailed in the staff report and in staff’s presentation before the Board, this rulemaking is comprised of two components. The first component consists of amendments that specify that kerosene containers and utility jugs (large capacity plastic containers) used to store and dispense fuel and kerosene are subject to the Portable Fuel Container (PFC) regulations. Because these amendments are estimated to reduce reactive organic gas (ROG) emissions by 16.5 tons per day in the year 2015 compared to the existing regulation, and because staff intends to implement these amendments by January 2006 to provide adequate lead time to manufacturers to meet the peak gasoline fueling system of the summer of 2006, the Board adopted staff’s recommendation to bifurcate this rulemaking in order to expedite the implementation of these amendments. The first Resolution only addresses those amendments relating to the applicability and definition section of the regulation (the first component of the rulemaking action).

The second component of this rulemaking consists of amendments that establish a mandatory certification program and accompanying test procedures that will take effect on July 1, 2007. These amendments will take effect much later than the amendments incorporated within the first component of this rulemaking, and these amendments can therefore be addressed separately.

Only the amendments of the first component of this rulemaking that relate to the

applicability and definition sections of the PFC regulations are addressed here; the remaining amendments will be discussed in a separate Final Statement of Reasons.

The amendments to the applicability and definition sections of the PFC regulations consist of the following primary elements:

Amending the definition of portable fuel container to include containers designed or used for receiving, transporting, storing and dispensing kerosene;

Amending the definition of portable fuel container to include large capacity plastic containers that are designed or used for receiving, transporting, storing and dispensing fuel or kerosene;

Amending the definition of portable fuel container to exempt containers that are permanently embossed or labeled with language indicating such containers are solely intended for use with non-fuel or non-kerosene products;

Amending the applicability provision to clarify that the regulation applies to any person who advertises portable fuel containers or spouts for use in California; and

Amending the definitions of spill-proof system and spill proof spout to more clearly specify that portable fuel containers, spouts, and both portable fuel containers and spouts are subject to the administrative requirements specified in the regulation. Spill-proof systems and spill proof spouts are currently subject to these administrative requirements; the amendments merely incorporate such requirements into the definitions of spill-proof systems and spill proof spouts.

On July 29, 2005 ARB published a notice for a September 15, 2005 public hearing to consider the proposed amendments. A Staff Report: Initial Statement of Reasons (the Staff Report) was also made available for public review and comment starting July 29, 2005. The Staff Report provides the rationale for the proposed amendments. The text of the proposed amendments to title 13, California Code of Regulations (CCR) sections 2467 and 2467.1 was included as an Appendix to the Staff Report. These documents were also posted on the ARB's Internet site for the rulemaking at: <http://www.arb.ca.gov/regact/pfc/2005/pfc2005.htm>.

On September 15, 2005, the Air Resources Board (the "Board" or the "ARB") conducted the public hearing and received written and oral comments. At the conclusion of the hearing, the Board adopted Resolution 05-50, in which it approved the proposed amendments to the applicability and definitions section of the PFC regulation without modification.

This Final Statement of Reasons contains a summary of the comments received by the

Board on the proposed regulatory amendments to the applicability and definitions section of the PFC regulation and ARB’s responses to those comments.

Fiscal Impacts. The Board has determined that this regulatory action will not create costs or savings, as defined in Government Code section 11346.5(a)(6), to any state agency or in federal funding to the state, costs or mandate to any local agency or school district whether or not reimbursable by the state pursuant to part 7 (commencing with section 17500), Division 4, title 2 of the Government Code, or other nondiscretionary costs or savings to state or local agencies.

The Executive Officer has determined that this regulatory action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, or on representative private persons.

In accordance with Government Code section 11346.3, the Executive Officer has determined that this amendment will not affect the creation or elimination of jobs within the State of California, the creation of new businesses and the elimination of existing businesses within the State of California, and the expansion of businesses currently doing business within the State of California.

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

The Board has further determined that no alternative considered by the agency would be more effective in carrying out the purpose for which the regulatory action was proposed or would be as effective and less burdensome to affected private persons or businesses than the action taken by the Board.

II. Summary of Comments and Agency Response

List of Comments Received (written comments unless otherwise noted)

STAKEHOLDER	AUTHOR
Fair Trail Enterprises	Richard Wallace (oral and written)
Portable Fuel Container Manufacturers Association	Phil Monckton (oral)
Dave Smith	Dave Smith (oral)

1. **Support for Amendment to Definition of Portable Fuel Container**

Fair Trail Enterprises (FTE) supports the proposed amendment to the definition of a portable fuel container to include kerosene containers and utility jugs. Currently, kerosene containers are mislabeled and utility jugs are not labeled at all. This lack of labeling could jeopardize consumers if they unknowingly store flammable liquids in an unregulated container (e.g., a consumer could store gasoline in a kerosene container, then another consumer, thinking the container is filled with kerosene, dispenses the gasoline into a kerosene heater). FTE supports the amendment to include utility jugs as the utility jugs were intended to be regulated under the current regulation, the amendments will apply equally to all manufacturers, and no manufacturer has objected to the amendments.

Both Phil Monckton, representing the Portable Fuel Container Manufacturers Association, and Dave Smith, representing himself, submitted oral comments in support of the amendments.

Agency Response

Staff acknowledges the comments in support of the amendments. As stated in the Staff Report, a statewide consumer survey revealed that 59% of all kerosene containers sold in California is used for the transport and storage of gasoline. Given the potential safety concern and air quality impacts, staff agrees with the severity of this issue. Staff also agrees that utility jugs used to store and dispense gasoline were intended to be regulated under the current PFC regulation, and that the proposed amendments will address this issue by clarifying that utility jugs used to store and dispense gasoline and other fuels are subject to the amended regulations.