

State of California
AIR RESOURCES BOARD

Resolution 99-33

September 23, 1999

Agenda Item No.: 99-7-1

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, section 43013 of the Health and Safety Code authorizes the Board to adopt standards and regulations to control emissions from off-road or non-vehicle engine categories;

WHEREAS, section 43018 of the Health and Safety Code directs the Board to endeavor to achieve the maximum degree of emissions reduction possible from vehicular and other mobile sources to accomplish the attainment of state ambient air quality standards by the earliest practicable date;

WHEREAS, regulations targeting a source type previously unregulated in California could substantially reduce reactive organic gases (ROG) statewide, including substantial reductions in the South Coast;

WHEREAS, the regulations proposed by staff would establish the portable fuel containers and spouts to which the regulations would apply; standards and test procedures; administrative requirements (including labeling); and provisions for innovative products and variances;

WHEREAS, the staff proposes that the Board adopt title 13, California Code of Regulations, Chapter 9, Article 6, Portable Fuel Containers and Spouts, containing section 2470, Applicability, section 2471, Definitions, section 2472, Performance Standards for Portable Fuel Containers and Spill-Proof Spouts, section 2473, Exemptions, section 2474, Innovative Products, section 2475, Administrative Requirements, section 2476, Variances, section 2477, Test Procedures, and section 2478, Severability, hereinafter referred to cumulatively as "Portable Fuel Container and Spout Regulations" or "Proposed Regulations";

WHEREAS, existing portable fuel containers and spouts produce substantial statewide emissions caused by daily ambient temperature variations and by open spouts and secondary vents;

WHEREAS, existing portable fuel containers and spouts produce substantial statewide

emissions during transport and storage of fuel, and during refueling;

WHEREAS, existing plastic portable fuel containers produce substantial statewide emissions from fuel permeating through the container walls;

WHEREAS, portable fuel containers and spouts produce substantial statewide emissions from vapor displaced during refueling;

WHEREAS, the Board approved emissions inventory upon which the proposed regulations are based, will be reviewed as information becomes available and will be made available to the public as it is updated;

WHEREAS, performance standards, such as those in the proposed regulations, are a proven method to ensure that products reaching the California market emit less than the maximums permitted by the proposed regulations;

WHEREAS, the Board routinely adopts test procedures, such as the four test methods proposed (Test Method 510, Automatic Shut-Off Test Procedure for Spill-Proof Systems and Spill-Proof Spouts, Test Method 511, Automatic Closure Test Procedure for Spill Proof Systems and Spill-Proof Spouts, Test Method 512, Determination of Fuel Flow Rate for Spill Proof Systems and Spill-Proof Spouts, and Test Method 513, Determination of Permeation Rate for Spill-Proof Systems -- hereinafter "Test Methods"), in tandem with regulations to alert parties of the manner in which ARB will determine compliance with technical requirements;

WHEREAS, the market turnover necessary to reach the full amount of emissions reductions targeted by the proposed regulations depends on early and continuing consumer acceptance of the filling and spillage characteristics of containers and spouts meeting the regulations' performance standards;

WHEREAS, some spill-proof systems and spill-proof spouts may not be capable of refueling passenger cars used on highways, in contrast to potential consumers' expectations;

WHEREAS, programs to buy back or exchange existing conventional products with products meeting newly adopted standards have been successful at both the District and state level in bringing compliant product to the market sooner than might otherwise occur;

WHEREAS, strict adherence to the performance standards proposed may discourage

development of new and innovative products;

WHEREAS, there may be limited instances in which full compliance with the proposed regulations could cause severe economic hardship;

WHEREAS, sell-through periods and exemptions for products of specific and limited usage have been implemented in other regulations to limit their scope;

WHEREAS, the proposed California Code of Regulations specify that portable fuel containers or spouts sold on or after January 1, 2001 must comply with performance standards for automatic closure, automatic shut-off, permeation, and one opening to reduce evaporative, storage and transport spillage, refueling spillage, permeation, and displaced vapor emissions;

WHEREAS, the California Environmental Quality Act (CEQA) and Board regulations require that no project that 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 must consider the impact of the proposed standards on the economy of the state;

WHEREAS, the Board must follow state law procedures to adopt regulations;

WHEREAS, the Board finds that:

Despite advances in reducing emissions from mobile sources, stationary sources, and area sources, California still has 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 portable fuel containers and spouts;

The proposed regulations would significantly reduce evaporative emissions from portable fuel containers and spouts;

The proposed regulations would substantially reduce spillage associated with transport, storage and refueling using portable containers and spouts;

The proposed regulations would substantially reduce emissions associated with fuel permeating through plastic containers;

The proposed regulations would substantially reduce vapor emission displaced during refueling. The proposed regulations specify fill level, flow rates, and warranty to enhance consumer acceptance of spill-proof systems and spill-spouts;

A buy-back or other program resulting in a more rapid container turnover than might otherwise occur under the proposed regulations alone is an appropriate use of eligible ARB funding, and is a promising avenue for Districts to explore with ARB guidance;

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;

The proposed regulations would appropriately lessen the economic impacts to portable fuel container and spouts manufacturers by providing a one year sell through for containers and spouts manufactured before January 1, 2001, and by exempting several products types serving limited and specific needs;

The proposed regulations provide portable fuel container and spout manufacturers the flexibility to develop new and innovative products without significantly impacting emissions reductions;

The proposed regulations specify appropriate administrative requirements for labeling portable fuel containers and spouts to help consumers identify spill-proof containers, spill-proof spouts, and fuel flow rates, and for coding compliant containers or spouts to help the Executive Officer verify compliance;

The proposed consumer labeling requirements may independently help to reduce emissions by promoting the sales of spill-proof containers and spouts in California;

Additional consumer labeling identifying spill-proof systems and spill-proof spouts not capable of refueling on-road motor vehicles will improve consumer awareness of such limitations;

The proposed regulations authorize the Executive Officer to issue variances in

limited circumstances, following proposed procedures similar to those found in ARB regulations;

The proposed regulations incorporate by reference four test procedures, each of which can and will be used to verify compliance with the performance standards;

The economic and cost impacts 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, as supplemented by Staff's presentation at the hearing on this item; and

The cost of controlling portable fuel containers and spouts under the proposed regulation would be approximately \$2.01 per pound of ROG emissions reduced;

WHEREAS, the Board further finds that:

It is necessary and appropriate that the proposed regulations require portable fuel containers and spouts sold in California to adhere to the proposed performance standards, beginning with the 2001 calendar year, to provide for reductions of reactive organic gases;

It is necessary and appropriate that the proposed regulations incorporate the proposed Test Methods to verify compliance with the performance standards and to provide affected parties with those methods;

It is necessary and appropriate to require consumer labeling to: identify spill-proof containers and spill-proof spouts; identify flow rate; for spouts only, identify compatible compliant containers; require date and identification coding for compliance determination; and to identify an inability to refuel on-road motor vehicles;

The proposed regulation establishes uniform, consistent and reasonable performance standards for portable fuel containers and spouts;

Adoption of the proposed standards and test procedures would result in a reduction of approximately 71 tons per day of reactive organic gases statewide in 2010, including 30 tons per day of reactive organic gases in the South Coast Air Basin by 2010;

Adoption of the regulations would reduce evaporative, transport and storage

spillage, refueling spillage, permeation, and displaced vapor emissions from portable fuel containers;

Adoption of the regulations would enhance customer satisfaction by establishing fill levels, flow rates, and minimum warranty requirements;

Adoption of the proposed standards will assist compliance with commitment ARB made in settling the 1994 State Implementation Plan suit;

Adoption of the proposed regulations will not have a significant adverse environmental impact and that the regulations are projected to positively impact air quality;

Based on the above, the Staff Report/Initial Statement of Reasons, and the information provided during the public hearing of this item, the proposed portable fuel container and spout regulations are necessary, cost-effective, and technologically feasible to carry out the purposes of the state and federal clean air laws; and

No alternative considered by the Board would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective and less burdensome to affected private persons.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves the following sections of title 13, California Code of Regulations, and the documents incorporated by reference therein: Chapter 9, Off-road Vehicles and Engines Pollution Control Devices; Article 6, Portable Fuel Containers and Spouts, sections 2470-2478, and the incorporated Test Method 510, Automatic Shut-Off Test Procedure For Spill-Proof Systems And Spill-Proof Spouts, Test Method 511, Automatic Closure Test Procedure For Spill Proof Systems And Spill-Proof Spouts, Test Method 512, Determination of Fuel Flow Rate for Spill-Proof Systems and Spill-Proof Spouts, and Test Method 513, Determination of Permeation Rate for Spill-Proof Systems."

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to adopt the above regulations as set forth in Attachment A hereto and the four test procedures incorporated by reference in Attachment A and set forth in Attachment B hereto, with the modifications set forth in Attachment C and such other conforming modifications and technical amendments as may be appropriate, after making the modified regulatory language and additional supporting documents and information available for public comment for a period of 15 days, as required by Government Code 11346.8, provided

that the Executive Officer shall consider such written comments 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 after reviewing the comments.

BE IT FURTHER RESOLVED that, the Board directs the Executive Officer to work with the districts and interested parties to develop a plan for the expeditious distribution and usage of spill-proof containers and spill-proof spouts, and to explore funding opportunities and seek funding from existing and new funding sources.

BE IT FURTHER RESOLVED that, following approval of the regulations by the Office of Administrative Law the Executive Officer is directed to submit the regulations to US EPA for inclusion in the California State Implementation Plan for Ozone (SIP).

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to include in the SIP revision any additional documentation identified as necessary for enforceability under the federal Clean Air Act and US EPA regulations, and to work with the US EPA to ensure the regulations are approved as a SIP revision.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to report to the Board at or before its regularly scheduled March 2000 Board hearing, regarding manufacturers' progress toward meeting the January 1, 2001 performance standards approved herein.

I hereby certify that the above is a true and correct copy of Resolution 99-33, 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:** Proposed addition of new sections 2470-2478, as set forth in Attachment A to the Hearing Notice and Staff Report: Initial Statement of Reasons for Proposed Rule Making Public Hearing to Consider the Adoption of Portable Fuel Container Spillage Control Regulations (released August 6, 1999);
- Attachment B:** Proposed Test Method 510, Automatic Shut-Off Test Procedure For Spill-Proof Systems And Spill-Proof Spouts, Test Method 511, Automatic Closure Test Procedure For Spill Proof Systems And Spill-Proof Spouts, Test Method 512, Determination of Fuel Flow Rate for Spill-Proof Systems and Spill-Proof Spouts, and Test Method 513, Determination of Permeation Rate for Spill-Proof Systems, all as set forth in Appendix B to the Hearing Notice and Staff Report: Initial Statement of Reasons for Proposed Rule Making Public Hearing to Consider the Adoption of Portable Fuel Container Spillage Control Regulations (released August 6, 1999)
- Attachment C:** Staff's suggested modifications to the original proposal (distributed at the Board hearing on September 23, 1999)