State of California
AIR RESOURCES BOARD

Resolution 07-10

March 22, 2007

Agenda Item No: 07-3-4

WHEREAS, sections 39600 and 39601 of the Health and Safety Code authorize the Air Resources Board (the Board or ARB) 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, the Board adopted an Airborne Toxic Control Measure for Diesel-Fueled Portable Engines (Portable ATCM), and approved Resolution 04-7 on February 26, 2004;

WHEREAS, in accordance with section 41750 et seq. of the Health and Safety Code, the Board has established, by regulation, a Statewide Portable Equipment Registration Program (PERP) providing for the voluntary registration of portable engines and associated equipment, establishing emission limits and emission control requirements, and a fee schedule to cover the costs of administering and enforcing PERP, including a fee for the recovery of the cost of district enforcement activities;

WHEREAS, section 41752(e) of the Health and Safety Code provides that the Board may periodically revise and update the Statewide Portable Equipment Registration Program Regulation (Statewide Regulation), including but not limited to, revising and updating a determination of the Best Available Control Technology (BACT) for portable engines;

WHEREAS, the Board adopted the Statewide Regulation and approved Resolution 97-16 on March 27, 1997;

WHEREAS, the Board adopted amendments to the Statewide Regulation and approved Resolution 06-18 on June 22, 2006;

WHEREAS ARB has amended the Statewide Regulation three times since the program's inception and each time ARB staff conducted outreach before and after each regulatory action including workshops throughout the State, teleconferences, and meetings with interested parties;

WHEREAS, prior to the most recent amendments, the ARB staff mailed 25,000 informational brochures about the PERP program to individuals licensed by the California Contractors State License Board; 1,600 to companies on ARB's electronic listserve for the Statewide Regulation; 1,200 to the Construction Industry Air Quality

Coalition (CIAQC); and electronic copies to two public works associations, 35 air districts, and approximately 1,100 public works agencies for forwarding to other affected industry and stakeholders;

WHEREAS, the Board received comments from affected industry during the ARB's September 28, 2006 Board meeting that raised concerns regarding requirements of the Statewide Regulation and the Portable ATCM;

WHEREAS, despite the outreach and noticing efforts, some owners and operators of portable equipment have stated that they were not aware of the requirements to purchase cleaner complying engines and obtain district permits to operate or registration as provided in the Statewide Regulation;

WHEREAS, owners and operators of portable equipment that did not purchase cleaner complying engines and obtain district permits to operate or registration, as provided in the Statewide Regulation, operated at a competitive advantage compared to owners and operators that did pay registration or permitting fees and/or purchased cleaner complying engines;

WHEREAS, during the periods when complying engines are not available, engine owners are unable to obtain a permit for or register an engine that complies with the Portable ATCM, or the Statewide Regulation;

WHEREAS the Portable ATCM includes increasingly stringent (tiered) emission standards that are phased in over time, of which several have become effective recently;

WHEREAS, the impact on business owners who have been unable to purchase a compliant engine would be severe if they must wait until the normal rulemaking process is completed because they will not be able to conduct business;

WHEREAS, the ARB staff has worked closely with the air pollution control districts and air quality management districts (districts), and the affected industry to collect and evaluate the most current information regarding concerns about requirements of the Statewide Regulation and the Portable ATCM;

WHEREAS, on December 7, 2006, the Board adopted Resolution 06-43, by which the Board adopted emergency amendments to the Statewide Regulation and the Portable ATCM; the emergency amendments became effective on December 27, 2006, and will expire after April 26, 2007;

WHEREAS, on this day – March 22, 2007 – the Board has conducted a hearing to consider adoption of proposed amendments that will make permanent the currently-effective emergency amendments to the Statewide Regulation and the Portable ATCM with some revisions; these amendments will be submitted to the Office of Administrative

Law (OAL) following full compliance with all of the applicable requirements in the California Administrative Procedure Act for nonemergency rulemakings;

WHEREAS, at this hearing the Board has adopted Resolution 07-09, by which it has adopted the proposed permanent amendments to the Portable ATCM, and approved the proposed permanent amendments to the Statewide Regulation with modifications that are to be made available for a supplemental 15-day comment period before final adoption;

WHEREAS, the supplemental comment period, the need to respond to all comments in the Final Statement of Reasons, and the need for up to 30 working days for review by OAL mean that it will not be possible for the permanent amendments to become operative by the time the emergency amendments expire;

WHEREAS, staff has accordingly proposed that the Board adopt a second set of emergency amendments, which would be identical to the amendments adopted and approved in Resolution 07-09, would become operative on April 27, 2007, and would apply for a limited period while the rulemaking on the permanent amendments is completed; the proposed emergency amendments to the Statewide Regulation are set forth in Attachment A hereto, and the proposed emergency amendments to the Portable ATCM are set forth in Attachment B hereto; and

WHEREAS, the proposed amendments to the Statewide Regulation in Attachment A hereto are shown compared to the Statewide Regulation as amended by the Board on June 22, 2006; the June 22, 2006 amendments are currently pending at the Office of Administrative Law and are expected to become operative April 27, 2007.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby incorporates the findings in Resolution 07-9 adopting and approving the permanent amendments to the Statewide Regulation and the Portable ATCM.

BE IT FURTHER RESOLVED that the Board adopts the emergency amendments to the Statewide Regulation as set forth in Attachment A hereto, and adopts the emergency amendments to the Portable ATCM as set forth in Attachment B hereto.

BE IT FURTHER RESOLVED that the amendments be submitted to the Office of Administrative Law (OAL) as emergency regulations, and that the Executive Officer prepare a "Finding of Emergency" in compliance with Government Code section 11346.1(b); provided that if the Executive Officer decides prior to submittal of the emergency regulations that further modifications should be made to the permanent amendments pursuant to Resolution 07-09, she shall incorporate those modifications into the emergency amendments as well.

BE IT FURTHER RESOLVED that the Board directs the staff to continue its ongoing outreach efforts, to inform portable engine users and owners, equipment dealers and

distributors, engine manufacturers, and other interested stakeholders about complying with the Statewide Regulation and the Portable ATCM.

I hereby certify that the above is a true and correct copy of Resolution 07-10, as adopted by the Air Resources Board.

Lori Andreoni

Lori Andreoni, Clerk of the Board

Resolution 07-10

March 22, 2007

Identification of Attachments to the Resolution

Attachment A: Proposed Emergency Amendments to the Statewide Portable Equipment Registration Program Regulation as distributed at the March 22, 2007 hearing

Attachment B: Proposed Emergency Amendments to the Airborne Toxic Control Measure for Diesel Particulate Matter from Portable Engines Greater Than 50 Horsepower as distributed at the March 22, 2007 hearing