State of California
AIR RESOURCES BOARD

Resolution 11-29

September 22, 2011

Agenda Item No.: 11-7-4

WHEREAS, sections 39600 and 39601 of the Health and Safety Code authorize the Air Resources Board (ARB or the "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 41954 of the Health and Safety Code requires the Board to adopt procedures for determining the compliance of any system designed for the control of gasoline vapor emissions during gasoline marketing operations with performance standards established by the Board;

WHEREAS, sections 41950 and 41954 of the Health and Safety Code require the installation of vapor recovery systems for gasoline vapor control during gasoline marketing operations;

WHEREAS, the Board has adopted Enhanced Vapor Recovery regulations for certification and testing of vapor recovery systems installed at gasoline dispensing facilities, as set forth in sections 94010, 94011, 94016, 94148–94160, and 94162-94167, title 17, California Code of Regulations (CCR), and the documents incorporated by reference therein;

WHEREAS, ARB staff has identified improvements to the existing vapor recovery certification and test procedures; these amendments are set forth in Attachments A and B hereto;

WHEREAS, ARB staff has prepared an Initial Statement of Reasons document (ISOR), released August 3, 2011 which presents the rationale and basis for the proposed amendments and identifies the data, reports, and information relied upon in proposing the amendments;

WHEREAS, the staff has proposed amendments which include the following elements:

> Amend the vapor recovery certification procedures to specify that the "four-year clock" provision in section 41956.1(a) of the Health and Safety Code begins on the new effective date. Re-define the effective date to be the date when the first system complying with applicable performance standards is certified by ARB. This amendment will provide needed clarity to the regulated community and

improve the vapor recovery program by ensuring that, in all cases, facilities have adequate time to plan for required vapor recovery equipment upgrades;

Amend the certification procedures to provide a process which allows the public to petition the Executive Officer to exempt from installation requirements certain subgroups of facilities that are found to be incompatible with the first certified system. The incompatible facility would have four years from the date when a compatible system is certified to comply;

Amend the certification procedures to specify that Phase II EVR system emission factor and collection efficiency shall be determined by testing the refueling process of vehicles not equipped with On-board Refueling Vapor Recovery (ORVR), rather than the currently required mix of vehicles with or without ORVR. This change is necessary because ORVR vehicles process gasoline vapors on board, and thus including ORVR vehicles in the test introduce a bias in the collection efficiency measurements for conventional vehicles;

Establish a new low permeation emission performance standard for gasoline dispensing facility hoses, resulting in approximately one ton per day of Reactive Organic Gases (ROG) emission reductions at a net cost savings to California consumers. This amendment will reduce the emissions from affected hoses by 96 percent from uncontrolled emissions;

Amend the existing vapor recovery certification test procedures to streamline the testing process, correct errors in test criteria, and reflect most current test methodologies; and

Clarify, update, and remove redundant provisions in the existing certification and test procedures which are incorporated by reference in the regulations.

WHEREAS, ARB staff conducted five public workshops regarding the proposed amendments and also participated in meetings with various stakeholders in order to include the public and affected stakeholders in the regulatory development process;

WHEREAS, the California Environmental Quality Act (CEQA), Public Resources Code section 21080.5, allows public agencies with regulatory programs to prepare a plan or other written document in lieu of an environmental impact report or negative declaration once the Secretary of the Resources Agency has certified the regulatory program;

WHEREAS, that portion of the ARB's regulatory program that involves the adoption, approval, amendment, or repeal of standards, rules, regulations has been certified by the Secretary of Resources Agency (CEQA Guidelines section 15251(d));

WHEREAS, in accordance with ARB's certified regulatory program, and the policy and substantive requirements of CEQA, ARB prepared an environmental analysis as part of the ISOR that assessed the potential for significant long or short term adverse and

beneficial environmental impacts associated with the proposed action (CCR section 60005(b));

WHEREAS, the environmental analysis included in the ISOR concluded that the amendments will not have a significant adverse effect on the environment;

WHEREAS, the ISOR and proposed amendments were made available to the public for at least 45 days prior to the public hearing to consider the proposed amendments;

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 has considered the preliminary impact of the proposed regulatory action on the economy of the State; and

WHEREAS, in consideration of the ISOR, written comments, and public testimony it has received, the Board finds that:

> The proposed amendments set forth in Attachments A and B hereto are necessary and appropriate to satisfy the requirements of section 41954 of the Health and Safety Code, and are necessary to achieve and maintain ambient air quality standards;
>
> On the basis of the whole record, including the environmental analysis included in the ISOR and comments received, there is no substantial evidence that the proposed amendments will have a significant adverse effect on the environment;
>
> Air quality is expected to improve as a result of the installation and use of low permeation hoses; and
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> There is no reasonable alternative considered by the Board or otherwise identified that 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 or businesses.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves for adoption the proposed amendments set forth in Attachments A and B hereto.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to determine if additional conforming modifications to the regulation are appropriate. If the Executive Officer determines that additional conforming modifications are appropriate, the Executive Officer shall take final action to adopt the modified regulation after making the modified regulatory language and any additional supporting documents and information available to the public for a period of 15-days, consider such written comments as may be submitted during this period and make such further modifications as may be

appropriate in light of the comments received. The Executive Officer may return the regulatory amendments to the Board for further consideration if he determines that this is warranted. If no additional modifications are appropriate, the Executive Officer shall take final action to adopt the regulatory amendments, as set forth in Attachments A and B hereto.

BE IT FURTHER RESOLVED that the Executive Officer is the final decision maker, and shall, in accordance with CCR section 60007, consider and approve the written responses to any comments raising environmental issues prior to taking final action to adopt the regulatory amendments.

I hereby certify that the above is a true and correct copy of Resolution 11-29, as adopted by the Air Resources Board.

Mary Alice Morency, Clerk of the Board

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Identification of Attachments to the Resolution

Attachment A: Proposed Amendments to Vapor Recovery Definitions, Certification and Test Procedures for Gasoline Dispensing Facilities, as set forth in Appendix 2 of the Initial Statement of Reasons released August 3, 2011.

Attachment B: Proposed amendments to title 17, California Code of Regulations, sections 94010, 94011, 94016, 94150, and 94168, as set forth in Appendix 1 of the Initial Statement of Reasons released August 3, 2011.