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Arnold Schwarzenegger
Governor

TO: Brad Norris, Staff Counsel
Office of Administrative Law

FROM: Alex Wang, Staff Counsel
Air Resources Board

DATE: January 4, 2005

SUBJECT: OAL Regulatory Action Number 05-1201-01S; Answer to Questions

Pursuant to our telephone conversations of December 20 and 29, 2005, this memorandum responds to the issues we discussed regarding the subject rulemaking file ("Amendments to the Regulations for Portable Fuel Containers") filed with the Office of Administrative Law (OAL) on December 1, 2005.

Modification of Regulatory Text for Consistency with Current Regulation

The modifications we discussed on December 29, 2005 have been incorporated into the revised "Final Regulation Order Portable Fuel Container Regulation."

Clarification of CFR Citation

The citation to "49 Code of Federal Regulation Section 172.407" in title 13 CCR section 2467.1(a)(12) has been clarified to "49 Code of Federal Regulation Section 172.407(a) as it existed on September 15, 2005." This revision has been incorporated into the revised "Final Regulation Order Portable Fuel Container Regulation."

Clarification of Amendments to 13 CCR Sections 2467.1(a)(17) and (a)(18)

13 CCR sections 2467.1(a)(17) and (18) should incorporate the amendments "and with the requirements in Section 2467.5."

The ARB is submitting three revised documents to be substituted into the subject rulemaking file ("Amendments to the Regulations for Portable Fuel Containers") filed with the Office of Administrative Law (OAL) on December 1, 2005.

OAL is authorized to substitute the attached revised "Certification of Closing of Rulemaking Record" for the "Certification of Closing of Rulemaking Record" currently in the subject rulemaking file.

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our website: <http://www.arb.ca.gov>.

California Environmental Protection Agency

OAL is authorized to substitute the attached revised "Final Regulation Order Portable Fuel Container Regulation" for the "Final Regulation Order Portable Fuel Container Regulation" currently attached to form Std. Form 400, "Notice Publication/Regulations Submission."

OAL is authorized to modify the Std. Form 400, "Notice Publication/Regulations Submission" in the rulemaking file by checking the box in Section B.6 indicating that these regulations require notice to, or review, consultation, approval or concurrence by the Department of Finance.

OAL is also authorized to substitute the attached revised "Final Statement of Reasons for Rulemaking, Including Summary of Comments and Agency Responses" for the version of the FSOR currently located in tab 3 of the subject rulemaking file.

Executive Officer Approval for Minor Changes

In response to your inquiry, ARB will not be submitting an Executive Order authorizing the minor clarifications discussed in this memorandum.

Health and Safety (H & S) Code section 39515 directs ARB to appoint an Executive Officer, and provides that ARB may delegate any duty to the Executive Officer that ARB deems appropriate. H & S Code section 39516 states that any power, duty, purpose, function, or jurisdiction which ARB may lawfully delegate shall be conclusively presumed to have been delegated to the Executive Officer unless it is shown that ARB, by affirmative vote recorded in its minutes, has specifically reserved the same for ARB's own action.

On February 23, 1978, ARB adopted Resolution 78-10 (attached) which specifies the specific powers, duties, purposes, functions and jurisdictions that ARB has reserved to itself. ARB specifically reserved the power to "[a]dopt model rules and regulations for control of emissions from nonvehicular sources," but qualified this reservation of powers. "[T]he Executive Officer may undertake action pertaining to matters otherwise reserved hereby to the Board for the purpose of making corrective, clarifying or ministerial changes."

The changes discussed in this memorandum clearly constitute only minor clarifying and corrective changes to regulations applicable to nonvehicular sources, and ARB's Executive Officer is therefore authorized to make such changes pursuant to the authority of H & S Code sections 39515 and 39516, and Resolution 78-10.

To the extent your inquiry concerns the need for ARB to memorialize the Executive Officer's action, H & S Code section 39516 provides the Executive Officer may redelegate any power, duty, purpose, function or jurisdiction to subordinates "unless, by

state board rule or express provision of law, the executive officer is specifically required to act personally.” For making nonsubstantial clarifications such as the ones at issue here, ARB’s Executive Officer has historically delegated to ARB’s Staff Counsels the authority to identify and correct items such as the ones at issue here.

Attachments

ATTACHMENT
Revised "Certification of Closing of Rulemaking Record"

ATTACHMENT
Revised "Final Regulation Order Portable Fuel Container Regulation"

ATTACHMENT
Revised "Final Statement of Reasons for Rulemaking,
Including Summary of Comments and Agency Responses"

ATTACHMENT
ARB Resolution 78-10

ATTACHMENT
Revised "Final Regulation Order Portable Fuel Container Regulation"

ATTACHMENT
Revised "Final Statement of Reasons for Rulemaking,
Including Summary of Comments and Agency Responses"