



September 6, 2011

Coalition Members

Mary Nichols,
Chairman
California Air Resources Board
1001 I Street
Sacramento, California 95814



Re: 15-Day Notice for Modified Regulation Order for In-Use Off-Road Diesel-Fueled Fleets



Dear Chairman Nichols and Governing Board Members:

Associated General Contractors
America-San Diego Chapter, Inc.

On behalf of the Construction Industry Air Quality Coalition (CIAQC), the following comments are in response to the California Air Resources Board (CARB) 15-Day Notice for Modified Regulation Order for the In-Use Off-Road Diesel-Fueled Fleets (Off-Road regulation).



Building Industry Association
of Southern California

The proposed amendments reflect the changes presented to the CARB Board in December 2010 as well as those made subsequent to the Board Hearing to reflect the direction made to the staff at the hearing. CIAQC has provided a great deal of input and effort into the development of the Off-Road Regulation and will continue to monitor its implementation and the impact it will have on its members and the construction industry moving forward.



California Dump Truck Owners
Association

The proposed amendments to the Off-Road Regulation provide much needed compliance flexibility and additional time for equipment and engine turnover and retrofit requirements. While these and other changes will help reduce the near-term compliance costs, the regulation will continue to be a heavy economic burden on the industry. The dramatic slowdown in California construction activity that began in 2006 has not rebounded by any appreciable degree, and the construction industry is still struggling to remain viable in today's economy.



Engineering
Contractors Association

Off-Road Generated Credits Used to Comply with Truck and Bus Regulation



Engineering & General
Contractors Association

CIAQC appreciates that CARB listened to its recommendation to incorporate the ability for fleets to use generated Off-Road credits to comply with the Truck and Bus regulation. The process for generating the excess compliance credits under the Off-Road Regulation however includes a methodology that is inconsistent with the rounding of horsepower (hp) approach utilized throughout the regulation.



Engineering & Utility
Contractors Association

The proposed rounding provision (based on a denominator of 300 hp) is truncated to a whole number. This approach results in rounding hp credit only



Southern California
Contractors Association

downward to an integer value, whereas the rounding of hp for other provisions is based on a standard mathematical approach. That is, if a value is less than 0.5 it is rounded down, and if 0.5 or higher it is rounded up. The practical effect of this approach is that a 299 hp off-road engine that would otherwise be available as a credit for the Truck and Bus regulation if conditions are met would not provide any credit at all ($299 \text{ hp} / 300 \text{ hp} = .997$ which is truncated to 0, resulting in no credit). Not only does this approach penalize the use of off-road PM VDECS to meet on-road obligations, it is counterproductive if the objective is to maximize early PM reductions. Further, a more generous "exchange rate" than 300 hp is necessary, especially if fleets are forfeiting double retrofit credit to move the credit over to the Truck and Bus regulation.

For this reason CIAQC recommends that this provision not require values to be truncated but rather rounded up or down as elsewhere in the regulation and that CARB reexamine the 300 hp denominator value.

In addition to the recommendations above, the section outlining the generation and application of excess compliance credits under the Off-road regulation is confusing and appears to preclude small fleets from utilizing the credit provision for the Truck and Bus regulation. Specifically, Section 2449.1(2)(11)(A)(1) includes:

"Beginning January 1, 2013, for large fleets, and on January 1, 2016, for medium fleets, if a fleet earns BACT credit in a calendar year that exceeds the BACT requirements for that year, the excess BACT credit earned (i.e., the amount of BACT credit earned above the BACT requirements for that year, in hp) from the installation of Level 3 PM VDECS may be applied towards compliance with the Truck and Bus regulation per section 2025 as follows..."

Text could be read to mean large fleets cannot generate excess credits until 1/1/2013 and medium fleets until 1/1/2016. Because small fleets were omitted this could be interpreted to mean that small off-road fleets cannot generate excess PM VDECS credits. This is not CIAQC's understanding of the intent for this credit provision. The following text change would clarify this:

"Off-road fleets that install PM VDECS early can earn get credit towards Truck and Bus PM BACT compliance obligations. A fleet can earn credit by installing a PM VDECS at least two years before the first compliance date for that size fleet. Beginning January 1, 2013, for large fleets, and on January 1, 2016, for medium fleets, the fleet can earn PM BACT credit for PM VDECS' installed that exceed the BACT requirements for the next compliance date. For example if a medium fleet installs a PM VDECS by January 1, 2015 it would get credit for PM VDECS until January 1, 2016. Starting January 1, 2016 that fleet would get credit only for PM VDECS' installed that exceed that fleets January 1, 2017 BACT obligations."

The proposed amendment could also cause the loss of credit when a retrofitted machine is sold by a fleet and the fleet would not get credit for the time that a machine had previously operated with the retrofit in place. The excess compliance credit provision should make clear that a fleet could be eligible to move credit to the Truck and Bus regulation for the number of years that a retrofitted machine operated in the off-road fleet. For example, if a loader was retrofitted in 2009 and sold in 2012, a fleet should be able to exchange that retrofit credit for three years in the Truck and Bus regulation since the emissions benefit of the retrofit was realized for 3 years. The regulation should be clarified to allow for use of such credit.

VDECS That Impairs Safe Operation of Vehicle

The proposed amendments to the Off-Road no longer require the installation of PM VDECS and establishes that the use of PM or NO_x VDECS or both is voluntary. Section 2449(e)(8) addresses VDECS that Impairs Safe Operation of Vehicles. This section creates a process for a fleet owner to request to the Executive Officer to make a finding that a VDECS shall not be considered the highest level of available if it cannot be safely installed or operated in a particular vehicle application or its use would not comply with federal or state requirements for safety or health, local air district permit conditions or is technologically infeasible.

Regulatory flexibility is important to CIAQC, however the process for submitting such a request is convoluted, time consuming and places too much burden on the fleet owner. To avoid unnecessary confusion and expense, this section must clearly state that all VDECS installations shall comply with the regulations of the California Occupational Safety and Health Agency. If they do not, then the VDECS installation is unsafe and the fleet owner does not need to take further steps to demonstrate this to CARB.

Recent Release of PM Related Health-Effects Studies

Over the last several years there have been a number of studies conducted and concluded that examine the health effects associated with exposure to atmospheric particulate matter. These studies include Krewski 2002, Enstrom 2005, Zeger 2008, Jerrett 2010 (Feb 26), Krewski 2010 (Aug 31, 2010). CIAQC would like to know how CARB plans to incorporate these studies in to its future regulatory framework.

CIAQC would like to thank the Board and its staff for working with our Coalition during the ongoing development of this regulation. Implementation with Off-Road Regulation will require contractors and fleet owners to make decisions that will significantly affect their bottom lines. This becomes even more difficult when the state's economy continues to teeter and experience record levels of unemployment. CIAQC is ready to ensure that a regulation of this scope, importance and magnitude is technically and economically feasible, results in real emission

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reductions and does not economically destroy an industry that provides essential services to the residents of the Golden State.

Please do not hesitate to contact me if you have any questions.

Sincerely,

Michael W. Lewis

A handwritten signature in black ink that reads "Michael W. Lewis". The signature is written in a cursive style with a large, prominent initial "M".

Senior Vice-President
Construction Industry Air Quality Coalition