



CONSTRUCTION INDUSTRY  
AIR QUALITY COALITION

Coalition Members



March 20, 2008

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

**Re: Comments on the Third Notice of Availability of Modified Text and Availability of Additional Documents for the In-Use Off-Road Diesel Regulation**

Dear Chairman Nichols and Members of the Board:

On behalf of the Construction Industry Air Quality Coalition and the Coalition to Build a Cleaner California we would like to offer the following comments on the Off-Road regulation adopted by your Board in July. With this letter, CIAQC also acknowledges its support for the comments prepared and submitted by the Associated General Contractors of America on this day.

The change to the regulation’s language found in the Third Notice of Availability of Modified Text and Availability of Additional Documents for Section 2449.2(a)(2)(A)4.a through d. is characterized by staff as “clarified the wording” in the supporting material. This change however represents a significant change from the intent of the language presented at the July 2007 Board Hearing and is done without justification or explanation, as described below.

The July language in this section addressing the conditions for exemptions previously read:

“4. **Exemption** – *The following exemptions from the retrofit requirement apply, provided that retrofits have been or are being applied to all other engines in the owner’s fleet not subject to these exemptions. A fleet is exempt from the retrofit requirement in 2449(d)(2)(B)1. if all its vehicles’ engines meet one of the criteria below:*

a. **Engines** in vehicles less than 5 years old,”

The exemption is now stated as follows:

“4. **Exemptions** – *A vehicle is exempt from the retrofit requirements in section 2449.2(a)(2)(A)1. if all vehicles in the fleet that do not qualify for an exemption under the following conditions have been retrofitted, and the vehicle meets one of the following conditions:*

*a. On the date of compliance, the vehicles is less than 5 years old from the vehicles date of manufacture,”*

This change would now exclude from the exemption provided in this section vehicles older than 5 years old that were repowered with a higher tier, newer engine that is less than 5 years old. This is a significant change from the intent of the original regulation. A vehicle with an engine less than 5 years old (lower emission engine) will now be penalized for not being itself newer (age of frame for example) and held to a different standard than a new vehicle, with a new similar engine less than 5 years old. In this example the repowered vehicle and the new vehicle would have an identical engine, but only the new vehicle would receive the exemption. This penalizes the owner of the older vehicle that voluntarily repowered (a compliance option) to a newer engine (less than 5 years old), before the off-road regulation was created. The off-road regulation is designed to reduce emissions from diesel fueled engines, not penalize older equipment simply because they are not new. Because of this change, two engines that come off an assembly line back-to-back will be treated differently if one happens to end up being used to repower an older vehicle while the other is used to power a new piece of equipment. This makes no sense and does nothing to enhance air quality. It merely creates a more confusing rule and causes contractors to keep additional records uniquely identifying new engines from new vehicles.

The latest draft provided for the Third 15-Day comment period also creates a distinction between emission reduction technologies where it should remain neutral. It does so by not treating all Tier 4 engines equally even though they meet the same emission standard. For example, some of the off-road vehicle manufactures appear to have developed Interim Tier 4 engines utilizing particulate filters. Some do not. Both approaches achieve the same emission standard for particulate that is lower than the lowest particulate fleet average targets in the rule (for the 75 – 750 horsepower range).

When contractors replace or repower equipment with Tier 4 Interim engines that meet the standard **with** a particulate filter, they get credit on a horsepower-for-horsepower basis on both the NOx and Particulate side of the rule. When they replace or repower equipment with Tier 4 Interim engines that meet the same standard **without** a particulate filter, they get credit on the NOx side, but not the Particulate side.

Finally, beginning on March 1, 2021, contractors who have Tier 4 Interim engines in their fleets that meet the Particulate standard **without** a particulate filter have to begin a process of installing VDECS on these engines, even though they meet the same standard as Tier 4 Interim engines that do not have a particulate filter (see 2449(d)(10)(B)). Removing this credit and requiring VDECS on Tier 4 Interim engines that meet the standards without the use of particulate filters

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indicates that CARB is projecting a bias for a certain technology instead of just advocating for emissions targets and allowing engine manufacturers figure out how best to achieve them.

In conclusion, we believe the changes made to the off-road regulation described above are not necessary, made without adequate explanation or justification, are inconsistent with the language approved by your board in July 2007, and will further harm the owners and operators of off-road equipment for no apparent reason. Please do not hesitate to contact me if you have any questions or wish to discuss this further.

Sincerely,

A handwritten signature in black ink that reads "Michael W. Lewis". The signature is written in a cursive, flowing style.

Michael W. Lewis  
Senior Vice-President