



May 22, 2007

Dr. Robert Sawyer, Chairman and
Members of the Board
California Air Resources Board
1001 "I" Street
P.O. Box 2815
Sacramento, California 95812

RE: Oppose Adoption of Proposed Regulation for In-Use Off-Road Diesel Vehicles

Dear Chairman Sawyer and Board Members:

The Construction Industry Air Quality Coalition (CIAQC) and the Coalition to Build a Cleaner California (CBCC) appreciate the opportunity to express its strong opposition to the adoption of the Proposed Regulation for In-Use Off-Road Diesel Equipment in its current form. CIAQC recognizes the need to reduce Particulate Matter, Oxides of Nitrogen and visible emissions from off-road diesel vehicles; we are convinced, however, that the staff proposed regulation is unachievable for many reasons, including those outlined below:

CIAQC was formed in 1989 to promote the adoption and implementation of emission reduction measures that are cost-effective and efficient while minimizing unacceptable impacts on its construction and building industry members. The coalition is comprised of several major construction and building industry associations in California. These include the Associated General Contractors of California and San Diego, the Building Industry Association of Southern California, the Engineering Contractors Association, the Engineering and General Contractors Association, the Engineering & Utility Contractors Association and the Southern California Contractors Association. Associate members include the Southern California Rock Products Association (now a part of the California Construction and Industrial Materials Association) and the California Rental Association. In all CIAQC represents several thousand member companies throughout California.

The Coalition to Build a Cleaner California is dedicated to improving California's air quality while maximizing the historic infrastructure investment approved by California voters in November 2006. The Coalition's members include CIAQC as well as the construction industry, its workers and infrastructure stakeholders. A list of the coalition's membership is attached.

While we strongly opposes the proposed off-road regulation in its current form, we would like to acknowledge the willingness of your staff to sit down with CIAQC representatives and members

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to discuss the development of a regulation over the last two and a half years. We believe more needs to be done and appreciate your consideration in these matters.

There are too many unresolved issues to approve this regulation now.

This is the largest in-use regulation ever undertaken by CARB. The experience with the recently amended portable rule has left the construction industry very skeptical that CARB staff is prepared to implement the rule today. There are many unresolved issues such as the “calculator” not working, the statewide inventory never having been resolved, the very limited availability of technology, the more complex verification process being proposed for VDECS and a clear misunderstanding of the construction industry and the operation of construction companies, large and small.

The comment period needs to be restarted.

This rulemaking is a substitute CEQA process, and the public is entitled to review all documents involved in the development of the rule. The failure to post reports and the model used to establish fleet compliance is a violation of CEQA.

The 2000 baseline and inventory was never established or revealed.

CARB established the goal of reducing PM by 85% from the 2000 baseline emissions. That number, and the inventory calculations to determine it, has not yet been documented by CARB. Also, it has made it impossible for contractors who know their 2000 emissions levels to match their baseline to the proposed annual emission average numbers.

The calculator should use actual emission factors.

The stationary and portable regulations both use actual emission factors to calculate fleet emissions. CARB is proposing to use standardized emissions, which are substantially higher than actual emissions. This requires extraordinary measures to reduce emissions that don't really exist. The calculator does not have a feature to include hours of operation, which is an option available in the regulation.

Early compliance credit for repowers should include PM credit as well.

The early compliance credit for repowers only includes NOx credit, and does not include the substantial reductions also achieved for PM. Those PM reductions should also be allowed as carry-forward credit in the annual turnover calculation.

More credits should be given for early reductions.

The value of the emissions reductions that have been achieved since 2000 cannot be underestimated. Further substantial reductions could be achieved before 2010 if greater credit were given for those early reductions. Without incentive credits, most contractors will wait until compliance deadlines force them to retire or replace equipment and no significant air quality benefit will be realized before 2010.

Costs of the regulation are substantially underestimated.

Staff used inaccurate costs when determining the full cost of compliance with the proposed regulation.

- a. Underestimated VDECS costs. Actual installed costs currently being paid by contractors vary from \$25,000 to \$50,000 per engine. Staff used numbers substantially below those. Further the VDECS useful life is less than 5000 hours. Most will have to be replacing more than once during the compliance period.
- b. New equipment costs are underestimated. The Tier 3 and Tier 4 engines cost substantially more than Tier 1 and Tier 2 engines. This has increased the cost of new machines. Compliance will require more new equipment to be purchased than staff has estimated.
- c. Natural turnover is overestimated. Normal turnover for off-road construction equipment is 2.5 to 3 % annually. By using a higher number, CARB's model can demonstrate a lower compliance cost by shifting regulatory costs to the "normal" turnover category.
- d. Repowering options are overestimated. Less than 30% of the fleet will have repower options available. The balance will have to be replaced or retired. CARB assumed a much higher percentage would be repowered and thus lowered the compliance cost for that option.

The Fleet definitions need to be changed.

The small fleet definition should be raised to 2500 HP and the medium should be raised to 10,000 HP. These limits match the actual company/industry sizes than the proposed definitions. Also, the requirement to meet a "small business" definition should be dropped. The dollar volume of work performed is not a good measure of company size given the cost of materials and labor used for many construction jobs.

Many Small and Medium companies will opt to close their doors.

The simplest and easiest way to comply with the regulation is to discard equipment. If a contractor is unable to fund the annual replacement of 8% of his fleet and retrofit 20% of the fleet, the only option is to reduce the size of the fleet until compliance is achieved. There is no means to achieve 90% or 95% compliance. Most small and medium contractors who are marginally capitalized will have to shrink equipment fleets and staffing in order to comply.

Manufacturers cannot meet the new equipment needs by 2020.

This regulation will require the replacement of 85% of the existing 165,000 machines. It will require 140,000 new pieces of equipment. The manufacturing capacity does not exist to deliver that much new equipment to California and the contractors do not have the financial resources to acquire that many new pieces in the time available.

There will be no market for used equipment.

CARB staff has assumed that many contractors will be able to comply by purchasing used Tier 2 and Tier 3 equipment at industry auctions. It is highly unlikely that any contractor will dispose of a Tier 2 or Tier 3 compliant machine. In particular because the Tier 4 replacement machines will not be available until very late in the compliance schedule and Tier 2 and Tier 3 machines will have to make up the bulk of any compliant fleet.

Repowering is not a realistic option.

Staff has assumed that repowering will be widely used and that it will replace the need to purchase new equipment. In the last 5 years, contractors have repowered 1000 machines at a cost of \$100 million dollars. There are very few machines for which repowering is a viable option, and manufacturers are planning few repowering kits for existing equipment. Repowering to a Tier 2 or 3 engine will not be an option for most of the existing fleet.

VDECS are not ready for broad application.

The process for determining exemptions for VDECS needs to be more clearly defined. These devices will be unsuitable for most existing applications. Even though they may be certified for certain applications, they may not be suitable for installation due to space constraints, diminished visibility, safety considerations or considerations from other agencies such as OSHA and OEHHA. Recent installations have made it clear that the VDECS manufacturers are not prepared and have not done the necessary engineering to install these devices on California's off-road fleet. They are not properly engineered. The clamps, restraints and hoses are not durable enough to withstand the heat and vibration of heavy use. There is no infrastructure for maintenance of the devices and disposal of the ash. No coordination has been done with state and federal license agencies for necessary hazardous waste handling and disposal points.

The regulation will negatively impact the \$40 billion REBUILD CALIFORNIA bond program.

In addition to driving up contractor's costs and bid prices, the reduction in the number of bidders will drive up project costs. Fewer contractors will also mean reduced capacity to perform the work and a delay in the issuance of contracts. The Bond dollars will fund fewer projects than originally planned.

Other transportation and essential building projects will suffer due to a shortage of construction equipment as a result of the proposed regulation.

Due to the major cost of replacing, retrofitting or repowering equipment, it is reasonable to expect that the proposed regulation will cause a shortage of compliant equipment to be available for residential, commercial, industrial and institutional projects. These shortages will be particularly acute during initial implementation of the regulation from 2007 through 2015.

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These years are also critical for implementing regionally significant transportation projects, bond-funded congestion relief projects, and Transportation Control Measures that would provide emission reductions to reach attainment of the PM 2.5 standard in 2015. A shortage of compliant construction equipment will result in fewer emission reductions and benefits than assumed in regional air quality management plans.

The regulation will reduce contractor capacity to perform construction contracts.

As contractors reduce their fleets to comply, their asset bases and their ability to bond are correspondingly reduced. Any wide-spread reduction in the capacity of the industry will delay projects and drive up costs.

Contractors will not be able to pass-through compliance costs.

Construction is a highly competitive business. Contractors are awarded on a "low-bid" basis. A job can be lost over a \$1,000 difference in bids. Contractors often bid jobs at or below cost in order to keep their employees working and recover basic operating costs. Any contractor who has spent substantial dollars to purchase new equipment will be at a distinct disadvantage in the bidding process. If he tries to recover those costs, his bids will be higher than those of his competitors.

There is no realistic enforcement plan.

In order to maintain an even playing field, ARB enforcement of the off-road regulation must be evenly applied and not concentrated only on high visibility projects and the contractors performing those jobs. The staff report does not indicate how ARB is going to outreach, or find those contractors who do not report or comply with the regulation. There is no mechanism proposed to verify that reports are accurate. Nor is there any indication of how CARB even intends to compile a list of contractors with off-road equipment.

Tens of thousands of skilled, high paying construction jobs will be lost.

As contractors are forced to shrink their fleets to comply with the regulation, between 10,000 and 30,000 jobs will be lost. CARB did not include the social and economic cost of those job losses in their health benefits or compliance cost calculation for the regulation.

Greenhouse gas issues were not considered.

The added fuel consumption due to increased back-pressure from VDECS and the fuel required for regeneration of the devices will result in an industry wide increase in greenhouse gas contributions. The additional electrical regeneration required for the VDECS devices will also add to greenhouse gas emissions.

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Carl Moyer incentive funding needs to continue.

Incentive programs designed to reduce PM and NOx emissions from construction equipment have been very effective over the last several years. These programs have included the Carl Moyer Program. We believe incentive funding programs for off-road equipment should be expanded and restructured in such a way that that will allow small contractors who were unable to participate in past incentive programs to help meet the cost demands of retrofitting equipment. CARB should endorse a tax credit scheme for retrofits, repowers and replacement equipment.

The regulation is not understandable.

Most contractors will not be able to read and interpret the provisions of the regulation. It's terminology and legalese is a foreign language to most business owners in California. Unless a simple English version can be prepared, non-compliance will be even more widespread than the industry has already indicated can be expected.

EPA does not have the authority to grant a waiver for engines less than 175 HP

Section 209(e)(1) of the federal Clean Air Act preempts any state, including California, from setting any emission-related standards or other requirements for construction and farm equipment under 175 horsepower. Congress intended to that these smaller pieces of construction and farm equipment enjoy the same preemption that applies to locomotives under Section 209(e)(1). Accordingly, ARB cannot adopt fleet standards or any other type of emission standard to apply to construction equipment under 175 horsepower.

CARB has not considered the cumulative impacts of the series of regulations affecting the construction industry.

Construction companies are now faced with requirements to replace their portable equipment, their off-road equipment, as well as their on-road trucks and their spark ignited equipment beginning later this year. Any one of those rules is expensive. Combined they make staying in business impossible for many contractors. Any shrinkage in the industry will result in delays in 1000's of public projects, all of which reduce emissions from congestion relief. Those added emissions dwarf the construction emissions from those improvements. Those impacts have not been included in CARB's analysis of the economic and environmental impacts of the proposed regulation.

CARB needs a better economic analysis of the regulation impacts.

With the delay in adoption CARB should take the added time to do an independent analysis by an agency or firm familiar with the industry, of the economics and assumptions used by staff to determining the industry's ability to afford this regulation.

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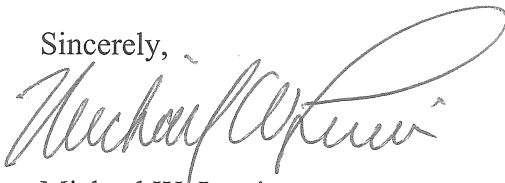
CARB should allow sufficient time for the regulation to work.

CARB should consider adopting a proposal that gives equipment manufacturers the additional five years they need to produce sufficient Tier 4 powered vehicles to meet the final emission reduction requirement and allows fleet owners to decide how to comply with it in terms of vehicle replacements, repowers and retrofits.

In conclusion, CIAQC and the CBCC would like to thank the Board and its staff for working with us to develop this regulation. We recognize that a lot of work and effort by your staff and the construction industry has already taken place. We stand ready and willing to see through to the end that a regulation of this scope and importance is technically and economically feasible, results in real emission reductions and does not destroy an industry that provides an essential service to the residents of California.

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

Sincerely,



Michael W. Lewis
Senior Vice-President
Construction Industry Air Quality Coalition and
Coalition to Build a Cleaner California

Attachment: Coalition to Build A Cleaner California Membership List



OUR MEMBERS

The Coalition to Build a Cleaner California is dedicated to improving California's air quality while maximizing the historic infrastructure investment approved by California voters in November 2006. The Coalition's members include the construction industry, its workers and infrastructure stakeholders. A current list of our membership is below.

Construction Industry Air Quality Coalition Members

Associated General Contractors of California
Associated General Contractors of San Diego
Building Industry Association of Southern California
California Construction and Industrial Materials Association
Engineering Contractors Association
Engineering & Utility Contractors Association
Engineering and General Contractors Association
Mobile Crane Operators Group
Southern California Contractors Association
The California Rental Association

Labor Organizations

California Conference of Carpenters
California Alliance for Jobs
Operating Engineers Local Union Nos. 3 & 12
Southern California Cement Masons Local 600
Southern California District Council of Laborers

Other Coalition Members

ABC of California
AGC America
American Concrete Pumping Association
American Road and Transportation Builders Association
Associated Builders and Contractors
California Building Materials Dealers Association
California Building Industry Association
California Dump Truck Owners Association
California Golf Course Superintendents Association
California Legislative Conference of the Plumbing, Heating and Piping Industry
California Ski Industry Association
Carlton E. Cooper Excavating & Grading

CST Environmental, Inc
Justice & Associates
Mid-State Steel Erectors, Inc.
National Electrical Contractors Association
Northern California Engineering Contractors Association
O'Brien Steel Erectors, Inc.
Passage Excavating
PC Exploration, Inc.
Ram Construction & Association
Steico
Stevens Creek Quarry, Inc.
Sukut Construction, Inc.
SKANSKA Construction
Synes & Pennick, Inc.
The Builders' Exchange of Stockton
Twin Cities Equipment Rentals
Valley Contractors Exchange
Western Engineering
Qualcomm