



**John W. McClelland, Ph.D.**  
*Vice President, Government Affairs*

1101 Vermont Ave. NW, Suite 400  
Washington, D.C. 20005  
202/289-4460 Phone  
202/289-4461 Fax  
John.McClelland@ararental.org

January 21, 2010

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

Dear Ms Nichols and Board Members:

The American Rental Association (ARA) provides the following comments, attached to this letter, related to agenda item 10-1-2 "Public Hearing to Consider the Adoption of Proposed Amendments to the Regulations Applicable to Potable Diesel Engines and Diesel Engines used in Off-Road and On-Road Vehicles", January 28, 2010. ARA believes that all aspects of this regulation may be commented on since the changes proposed by the PERP staff in effect significantly alter the regulatory requirements.

We appreciate that the Board is concerned about the economic state of small businesses. At the same time, some of our larger businesses suffer economic hardship as a result of PERP and we have addressed two areas in our comments where the Board could provide assistance. These are related to how fees for PERP are assessed with multiple inspections, and punitive enforcement actions where Rental Businesses do not have an active role in committing a violation.

We also provide comments regarding record keeping requirements for Rental Companies where Staff requires that our members report hearsay data. We are concerned that we could be held legally liable where the information we provide is inaccurate.

We appreciate the opportunity to comment on this important issue.

Sincerely,

A handwritten signature in black ink that reads 'John W. McClelland'.

John W. McClelland, Ph.D.  
ARA Vice President Government Affairs



Comments by the American Rental Association

Board Agenda Item 10-1-2

“Public Hearing to Consider the Adoption of Proposed Amendments to the Regulations Applicable to Potable Diesel Engines and Diesel Engines used in Off-Road and On-Road Vehicles”

January 28,2010.

1. **Comment:** With the new text addition, the meaning of 2453(i)(3) is not clear.

*“Except for registered “Engines or equipment units owned by a rental business or involved in a third party rental, if the engine or equipment unit, based ~~on averaging of annual operation in each district from the three annual reports submitted during the 3 year registration cycle~~ operational and/or location records as required by 2458(a) or the annual report as required 2458(g) for the calendar year prior to renewal, operated the largest percentage of the time in a district other than the designated home district, the owner shall change the home district designation at the time of renewal. The change is not required if the difference between the home district operation percentage and the district with the largest operating percentage is 5 percent or less.”*

2. **Section 2458**

Under section 2458(b), *“The owner shall provide each person who rents a registered engine or equipment unit with a written copy of applicable requirements of this article, including recordkeeping and notification requirements, as a part of the agreement.”*

**Comment:** Please instruct Staff to spell out in detail what Rental Companies must include as part of the rental contract, and exactly what records must be kept. In the past, Rental Companies have been told that they must comply with this requirement and have received some fairly non-committal guidance from ARB staff. Staff has told us that this requirement is the District’s responsibility. We believe it is our responsibility to satisfy the requirements of the regulation, but it is Staff’s responsibility to clearly describe our responsibilities. Because of fear of an enforcement action, some Rental Companies have actually given customers complete copies of this regulatory order. Please codify this guidance so rental companies are not liable for interpreting the meaning of this section.

2458(b) specifies the record keeping requirements for Rental Companies. It refers back to 2458(a) to define what Rental Companies must do regarding equipment units. *“Records for each rental equipment unit shall be kept according to section 2458(a)”*.

Then,

*2458(a)(2) For registered engines and equipment units subject to a daily and/or annual operational limitation, daily or annual records as appropriate of either hours of operation, fuel usage, or process throughput as applicable.*

**Comment:** 2458(a)(2) requires rental companies to know and record operation subject to operational limitations for which they may have no information. Operational limitations could be specified in an operator's permit, for example, the conditions of which were not known by the rental company.

*2458(a)(3) For equipment units subject to the requirements of section 2457(b)(3), daily throughput shall be the sum of measurements of material introduced into the equipment unit by weight. These measurements shall be taken at the initial loading point(s) of the equipment unit.*

**Comment:** Under 2458(a)(3), rental companies would have no knowledge of throughput by weight. They might only know the total hours of use.

*2458(a)(4) Except for certified engines, the specific location where the registered engine or equipment unit is located (i.e. street address and city, county and UTM coordinates, or other location indicator) shall be recorded each time the engine or equipment unit is brought to a new location. The date the engine or equipment unit was placed at the new location shall also be recorded.*

**Comment:** Under 2458(a)(4) rental companies would not know the *specific* location each time an equipment unit was moved. For example, we could rent sandblasting equipment to a contractor for a period of time. That unit could easily be moved by the contractor so as to be used at several jobsites.

If there are engine and equipment unit report data that rental companies would have detailed and accurate knowledge of that would provide useful information to the State and Districts, such information should be required. These should be incorporated into 2458(b) instead of using the confusing circular reference to (a) that obviously applies to the operator and not the owner. Asking rental companies to maintain hearsay records is a nonproductive exercise.

*In 2458(b)(4) The specific location where the registered engine is located while out on rent identified by street address and city, county and UTM coordinates, or other location indicator shall be recorded no less than once a month*

**Comment:** All rental companies could report is the address of the renter as provided on the contract and what they were told by the customer assuming the customer even honestly disclosed the location of use of the equipment to the rental company. In some cases, the rental company delivers the unit to a site, but in other situations, the contractor or private

citizen who is renting an engine transports the equipment to and from the rental yard. Beyond that, the monthly requirement is meaningless as contracts can last a day to a year.

***Section 2458 puts a rental company in jeopardy of violating the rule through no fault of the rental company.***

*2458(g) the owner or operator of a registered engine or equipment unit used by a PEPS shall provide the Executive Officer an annual report, in a format approved by the Executive Officer, by March 1st of each calendar year containing all of the following information:*

- (1) The reporting year;*
- (2) The registration number of each registered engine and/or equipment unit;*
- (3) For registered engines, the total annual hours of operation; and*
- (4) For registered equipment units, the total annual process throughput estimate of the percentage of hours or fuel usage for the three counties in which the registered engine or equipment unit operated the most.*
- (5) an estimate of the percentage of time spent in the three counties in which the registered engine or equipment unit operated the most.*

**Comment:** In the case of rented equipment, The PEPS should make this report, and not the Rental Company. A rental company would keep track of the hours of use as a part of the rental contract.

**3. 2459. Notification.**

*(a) Except as listed in subsection (d) of this section, if a registered equipment unit will be at a location for more than five days, the owner or operator of that registered equipment unit, shall notify the district in writing in a format approved by the Executive Officer, within two working days of commencing operations in that district. If the registered equipment unit is to be moved to different locations within the same district, the owner or operator shall be subject to the notification requirements above, unless the owner or operator and the district, by mutual agreement, arrange alternative notification requirements on a case-by-case basis. The notification shall include all of the following:*

- (1) The registration number of the registered equipment unit;*
- (2) The name and phone number of the responsible official or renter with information concerning the locations where the registered equipment unit will be operated within the district; and*
- (3) Estimated time the registered equipment unit will be located in the district.*

*(b) If the district has not been notified as required in section 2459(a) above, because the owner or operator did not reasonably expect the duration of operation to trigger the notification requirement in section 2459(a) above, the owner or operator shall notify the district, in a format approved by the Executive Officer, within 12 hours of determining the registered equipment unit will be operating at a location more than five days.*

**Comment:** Rental companies who are the owners of equipment units should be explicitly exempted from notification requirements as long as they fulfilled their requirement to notify renters regarding this section

#### **4. Section 2461, “ Fees”**

**Comment:** Rental Companies are penalized compared to other businesses like utilities because it is exceedingly difficult to schedule a multiple inspection at some distant time in the future. A company pays fees at the time of registration to cover inspections and at that time must declare an inspection plan. There should be a refund mechanism created for rental companies who register based on the one engine at a time fee, but are able to have multiple engines at the yard for inspection at a later date. This could include a reasonable advanced notice to the district inspector, say 10 working days as to how many engines would be available at on a given inspection date.

#### **5. Stationary/Portable Engine Rules:**

**Comment:** We are aware of a case where a Rental Company rented a piece of equipment to a user. The term of the rental, possibly including contract renewals, exceeded a year. The District fined the rental company because of the lack of a stationary engine-operating permit. Under the record keeping requirements in Section 2458, we have stated that the rental company cannot be expected to know the location and nature of service provided by its equipment. The equipment in question was registered under PERP. The rental company was fined because after one year, PERP didn't apply and the engine was not permitted through the district as a stationary engine. We contend that the responsibility is totally that of the operator and the District could have issued a warning instead of taking a punitive approach. Such actions are detrimental to the program.

**John W. McClelland PhD  
Michael S. Graboski PhD  
American Rental Association**