American Rental Association

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Comments of the American Rental Association

before

the California Air Resources Board

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By

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Introduction

The American Rental Association (ARA) and our affiliate, the ARA of California represent approximately 282 businesses in California that operate 547 rental stores. Of these, 140 rental businesses operating 387 rental stores in California rent portable diesel equipment with engines over 50 bhp. ARA estimates that members' rental fleets contain approximately 5,550 pieces of portable equipment equipped with diesel engines. Approximately 64 members are small businesses with single store operations. The other ARA members consist of larger independently owned companies with two or more locations and branch locations of large regional or national companies.

ARA and the ARA of California make these proposals in the belief that burdensome sanctions will not provide incentives for engine owners to comply with the PERP regulations. ARA is pledging the resources of the California rental industry to assist in a comprehensive outreach program that will bring all rental companies operating in California into compliance with appropriate state and local regulations for portable equipment.

Detailed Comments

Reopening PERP Registration

ARA supports the reopening of registration for non-complying engines into the PERP. We have polled our membership to determine the impact on our membership of closing registration for certain engines on January 1, 2006. It appears that compliance by ARA member companies has been good. That said we do have a number of members who will benefit from a reopening of the registration process because they have unregistered engines in their fleets that cannot be registered under the current rule. Those affected members apparently have no Tier 0 engines that need to be registered. Assuming that ARB will reopen registration, our members could register all unregistered equipment, and thus the total economic impact on our industry would be limited to back fees and penalties. Without this amnesty, some members will have to dispose of equipment or move it to out of state locations. This could represent a significant cost burden on individual businesses.

ARA supports a reopening of registration for Tier 1 and Tier 2 engines. We also believe ARB should allow Tier 0 engines to register. Registering these Tier 0 engines provides a path for eliminating them in 2010. Otherwise, these engines will need to be discovered by a costly enforcement process.

The purpose of reopening registration should be to bring as many engines into the program as possible. Reopening the process without imposing penalties should capture the most non-registered equipment. If raising fees were the goal instead of improving air quality, air districts would benefit the most from fees generated by the largest increase in engines brought into the program as compared to punitive fees collected for fewer engines. In fact, the punitive fees contained in the most recent staff proposal may cause equipment owners to continue to avoid the program, which could ultimately have a negative impact on air quality.

We also believe that there are significant problems with the cumbersome nature of the registration process. Many of our members are smaller businesses that do not have much, if any, staff time available to specifically manage the complex registration process. Other businesses are large and may have hundreds of engines to manage. Conversations with our members have suggested that there has been no intent to avoid complying with the PERP rule. However, many businesses do not totally understand the requirements of this rule. Some members indicated that prior to January 1, 2006; they found it difficult to gather the necessary information to register equipment that was in the field. Some members told us that they attempted to register equipment but had their applications rejected because the website said ARB was not accepting applications. Others received rejected applications because they were incomplete or contained bad data. These members indicated that they believed that their equipment could not be registered and so they may have disposed or parked the units.

Specifically, if a compliant engine was purchased but not registered, there was and is no harm to air quality due to a lack of registration. Reopening registration for these engines should be afforded without penalty.

ARA proposes that the January 1, 2006, registration deadline be moved forward to January 1, 2008 for all engines that were eligible for PERP registration on January 1, 2006, and that no penalties or sanctions are assessed against the owners of these engines upon their registration in PERP.

On January 1, 2008, only engines with current Tier designations can be registered in PERP without sanction. All other engines would be assessed penalties based on their date of purchase and Tier designation. We believe that any penalty for registration of Tier 1 and Tier 2 engines should be based upon the date the owner took ***possession of the engine****. The ultimate owner cannot register equipment without being the actual owner.*

No Tier 0 engines would be allowed to register in the PERP after January 1, 2008.

We do not object to sun-setting the amnesty provision on January 1, 2010.

Outreach

In our survey of ARA members, we found that there is considerable confusion regarding the PERP program. To insure compliance, company management and involved staff need to be educated in the details of the relevant regulations. They should also be able to openly discuss difficulties they may have with implementing the rules without risk of an enforcement action.

We strongly recommend that ARB develop an extensive outreach program to educate all affected companies. This includes manufacturers, dealers, rental companies and the affected construction and other industries. While we do not support the imposition of sanctions or penalties, if such sanctions or penalties are levied, we strongly recommend that a significant portion of the proceeds be directed toward industry outreach activities.

Temporary Registration
Several ARA members have indicated that the time period between filing a registration application and receiving approval represents a financial hardship. While the ARB may currently take less than a month to issue a registration, if there is any error in the application, the whole process may take many months. Further, the regulation itself allows ARB to take up to three months to issue a registration. In a sense, the registration process involves considerable self-enforcement. As a part of this emergency action, we propose that the Board authorize a temporary registration process that would allow equipment to be rented upon filing the registration application. If the staff finds that the unit does not meet the criteria for registration, districts could take an enforcement action similar to one taken if a non-registered piece of equipment is found in the field.

We propose that ARB create a temporary registration program to lessen the financial hardship that is a result of having to wait for the registration process to be finalized.

Sell Through Provisions
Some members have told us that the regulation makes it difficult to order equipment that will be ultimately resold in California. One member, who is a manufacturer, buys engines in bulk based upon sales projections. The "sell through" provision might apply to him if he qualifies as a "dealer". Section 2452 does not define the term dealer. The same manufacturer has had problems with new equipment sold in good faith but returned for a variety of contractual reasons. In some cases, the equipment became non-compliant in the process because of Tier change. ARB should address how these issues could be addressed either through the sell through provision or the Executive Order process.

We propose that ARB modify the sell through and Executive Order provisions to help manufacturers who buy engines in good faith to not be unduly penalized with respect to resale of those engines during a Tier changeover.