



Coalition Members



Associated General Contractors  
America-San Diego Chapter, Inc.



Building Industry Association  
of Southern California

Western States Trucking  
Association



Engineering  
Contractors Association



United Contractors



Southern California  
Contractors Association

November 7, 2022  
Clerk's Office  
California Air Resources Board  
1001 "I" Street  
Sacramento CA 95814

**RE: Off-road Proposed Regulation Changes**  
<https://ww2.arb.ca.gov/applications/public-comments?p=comm&s=bccommlog&l=offroaddiesel2022>

Dear Chair Randolph, Vice Chair Berg, and CARB Board Members:  
The Construction Industry Air Quality Coalition is submitting the following comments on the CARB In-Use Off-Road Diesel Fueled Fleets Regulation proposal at your November meeting.

Our Construction Industry Air Quality Coalition has engaged in the development of air quality regulation in California for over 30 years. Our Industry members include the Associated General Contractors of California, the Building Industry Association of Southern California, the Engineering Contractors Association, the Southern California Contractors Association, United Contractors, and the Western States Trucking Association. We have over 2000 contractor members employing over 300,000 workers in California. Many of the member companies are rental companies or rent their idle fleets to other construction companies as the market dictates.

Our industry has significant concerns with the regulation as presented by your staff. Those concerns fall into several categories: the timing and extent of the turnover requirements; the expanded use of renewable diesel; the extension of the regulation to those air basins that do not need this regulation to meet federal or state attainment; the transfer of enforcement responsibilities to prime contractors and the cumulative effect of this regulation on an industry that is also significantly effected by the ACF rule, the portable equipment rule, the forklift rule and other CARB and local air district requirements.

The following represents just the most significant concerns about the current proposal.

CIAQC held several meetings with staff on their concerns for the changes proposed for the accelerated November hearing (originally slated for December); however, like the concerns raised for the advanced clean fleets regulation, the comments we made were dismissed by staff. The last workshop held in May provided no changes to what we discussed. The concerns include:

### **THE TURNOVER REQUIREMENTS ARE TOO EXTREME**

Elimination of the Tier 0 machines for large fleets by the end of 2023. The current regulation allowed fleets to use carryover credits until the end of this year, after which they are required to turn over 10% of their horsepower starting with Tier 0 and Tier 1 machines following 1/1/2023. The proposal demands large fleets turn over all remaining Tier 0 machines by the end of next year irrespective of whether or not this will require the

2149 East Garvey Ave. North, Suite A-11, West Covina, CA 91791  
Tel: 626 858 4611 Fax: 626 858 4610 e-mail: [ciaqc@uia.net](mailto:ciaqc@uia.net) [www.ciaqc.com](http://www.ciaqc.com)  
Major Funding Provided by the Construction Industry Advancement Fund and the Fund for Construction Industry Advancement

retirement of more than 10%. This not only creates bonding issues for these large fleets, but it also creates issues with their ability to finance costly new replacement machines because in one fall swoop their assets needed to show financial worth are eliminated. Our industry has repeatedly stated that the turnover of this equipment (and the Tier 1 and most of the Tier 2 equipment), which runs very few hours at best, will already be depleted within the ensuing two (maximum three years for a few) following the end of this year for these fleets to meet the final required NOx fleet average. We do not see where staff has provided any justification for any acceleration. We have asked that the deadline for large fleets to eliminate Tier 0 be extended to be parallel to the medium fleet phase out of 1/1/2026.

Phase out of Tier 3 should be extended to 1/1/2026 at minimum for fleets. Banning Tier 3 purchase by 1/1/2024, especially those in small fleets that will be banned from Tier 2 purchases at the end of 2022, will make it more costly and more difficult for small fleets to reach their final compliance. As for the small fleets they have not even reached 2026 where a Tier 3 average is required.

Tier 4 Interim should not be banned from purchase at all. The current NOx fleet average is based upon fleets meeting a final fleet average equivalent to Tier 4 Interim, so this should not be eliminated as a purchase option at all. If a phase out of purchased equipment is to be used for equipment certified to this level, it must be no earlier than 2030. The ban on this equipment in 2024 will bring havoc to the ability for the owners of this equipment to sell their Tier 4 Interim, excepting out of state at a much-reduced asset value. This again creates issues with bonding and financial stability for fleets to purchase Tier 4 Final equipment.

## **THE RENEWABLE DIESEL REQUIREMENT IS UNREALISTIC**

A mandate to use renewable R99 or R100 diesel by the end of next year is infeasible. Not only will this drive up the cost of the fuel when everybody with off-road equipment will be seeking to purchase this fuel, but many of our clients are in contracts that last more than a year making such a change costly, if not infeasible. Further, we cannot agree with the rosy picture staff states on the availability of this fuel for all, including that which is already mandated for marine in the Harbor Craft regulation. Many of our clients have multiple sites across the state that will need time for the adjustment. We believe CARB should instead be offering some sort of incentive for early use of this fuel, and then set the deadline for 1/1/2028.

The rule proposed to require fleets use renewable diesel “if available”. ARB needs to define “available” in cost terms relative to conventional diesel. Would renewable diesel that costs three times as much as conventional diesel be considered “available”?

## **CONTRACTORS SHOULD NOT BE RESPONSIBLE FOR ENFORCEMENT**

We cannot agree with the requirement in the regulation to put our contractors to be the police in this regulation in managing their construction contracts. That policing should only be the task of your enforcement staff. Asking contractors to turn in other contractors that might not have a compliance certificate is unacceptable. This can also lead to lawsuits our industry cannot tolerate financially.

## **BAD TIMING**

This proposal will force companies to purchase much newer equipment at a time when interest rates are at a 12-year high. This will without doubt put inflationary pressure on construction costs and the state's economy at a period of high inflation. It is the worst possible time to impose these costs on the construction industry.

## **THERE IS NO REGULATORY BASIS FOR APPLYING THE NEW RESTRICTIONS AND PROHIBITIONS STATEWIDE**

Staff says the proposed forced retirement of equipment is needed to meet federal regulatory requirements for ozone in 19 areas of the state and PM 2.5 in the San Joaquin Valley and South Coast AQMD. (ISOR, p 37, 38).

*This is just not accurate! The only areas that require the additional reductions to meet federal regulatory standards are the San Joaquin Valley and South Coast AQMD for ozone. Show us letters from the Air Pollution Control Officers from those other 17 areas stating that their current air quality plans are deficient, and they need the additional reductions to meet federal Clean Air Act requirements.*

Staff says the forced retirement of equipment is needed because diesel exhaust is an air toxic contaminant, and the additional reductions are needed to protect public health. (ISOR, p 38).

*The current regulation was sold by staff to your board as an **air toxic control measure** to comply with your board's 2000 Diesel Risk Reduction Plan. That plan required an 85% reduction in diesel PM. The original staff report for the Off-Road Regulation said the regulation would reduce diesel PM by 92% by 2020 (TECHNICAL SUPPORT DOCUMENT, April 2007, p. 3). The current staff report says the existing regulation will further reduce diesel PM by another 66% between 2020 and 2040 (ISOR, Appendix F, p 33). The current regulation meets and exceeds your board's emission reduction requirements to protect public health from diesel PM.*

Staff says the amendments will reduce 571 premature deaths over a 14-year period (ISOR p. 12)

*Equipment regulated by the existing Off-Road regulation fully complies with your board's stated diesel PM risk reduction targets. Any additional requirements are just arbitrary. We also find it odd why staff seems so concerned about premature deaths from off-road diesel construction equipment when in-use diesel farm equipment is completely unregulated. We also note that over the same 14-year period 50,400 Californians will die in traffic accidents, 64,400 from suicide and 96,600 from drug overdoses. And unlike premature deaths from diesel PM, these are not the elderly and health compromised. If the state really wants to reduce premature deaths the proposed amendments would be at the bottom of the list.*

Staff says the additional requirements are critical to all Californians, especially those working and living near where these vehicles operate. (ISOR, p 41).

*The current regulation requires massive reductions in PM and NOX throughout the state. The additional requirements are ONLY "critical" to meeting the federal ozone standard in the San Joaquin Valley and SCAQMD.*

Staff says the additional requirements are needed to protect disadvantaged communities because they are impacted more by emissions from off-road equipment than other areas. (ISOR, p 38).

*This is just speculation. Staff has provided zero evidence that such communities are impacted more by off-road equipment than other areas.*

Staff says the regulations are required statewide to ensure a level playing field for all fleets. (ISOR, p 41).

*There are thousands of fleets in California subject to the current rule in California. If this a concern from our fleets, there should a flood of comments on the proposed amendments to this effect. Show them to us. If this were a CARB staff concern on the other hand "to level the playing field for all fleets", for us would mean including the large number of fleets in the farming and forestry sectors that are currently exempt from the rule and have no analogous rule of their own.*

*Suggesting these amendments are leveling the playing for all fleets is inaccurate when in fact it does just the opposite.*

Staff says limiting the new forced retirement of equipment to the San Joaquin Valley and SCAQMD will allow fleets with locations inside and outside those areas to move their “dirtier” equipment to outside those areas hurting the residents in those areas. (ISOR, p 41).

*Staff is suggesting that equipment moved outside the San Joaquin Valley and SCAQMD would somehow escape lower emission requirements. That is just misleading. That equipment is still subject to the existing regulation which requires massive reductions in PM and NOx. Moreover, the current regulation already allows companies that have multiple equipment locations to meet lower requirements depending on where the equipment is located (Captive Attainment Areas).*

*If the location of “dirtier” equipment was truly a CARB staff concern, they would also be concerned with the movement of the “dirtier” equipment from fleets subject to the current rule to the unregulated fleets in the same area.*

To sum up there is no regulatory basis for prohibiting the purchase of Tier 3 and Tier 4i equipment and forcing the early retirement of equipment by tier in areas outside of the San Joaquin Valley and South Coast AQMD. Text can be easily added to the proposed regulation clarifying that the new requirements apply only to these “Extreme” areas. And to clarify we are not proposing any change to captive attainment areas designations.

Compliance verification would be simple. All equipment has to have that EIN label. The EIN will tell you the fleet, fleet size and the engine tier, which is all that is needed to determine if a piece of equipment can be operated in the Extreme regions. The same goes for the prohibition on the purchase of Tier 3 and Tier 4i equipment. Fleets located in the extreme areas would be unable to register newly purchased Tier 3 and Tier 4i after the effective dates of the prohibition.

## **THE CUMULATIVE EFFECT OF THE CARB RULES IS EXCESSIVE**

Finally, we are gravely concerned about the complete lack of effort on the part of CARB to determine the cumulative economic burden placed on contractors by **ALL** the rules that have been imposed on the construction industry. Currently contractors are regulated by the Off-Road Rule, the Truck and Bus Rule, the Forklift Rule, and the Portable Equipment Rule at a minimum. These rules require the replacement of virtually every piece of equipment owned by our industry.

The cost to comply is staggering. By piecemealing the rulemaking process and looking at only one type of equipment at a time, CARB has been able to avoid calculating the total cost to our industry both in dollars and jobs. That is further exacerbated by a CARB’s fictional economic model that assumes most of the equipment has no value and its replacement cost is not a regulatory burden but rather a capitol necessity not attributable to the rule itself. It is junk analysis at its best!

The CARB needs to take clear action to direct that provisions be included in the rule to make regular technology and infrastructure assessments, on specific timelines, before further provisions of the rule may take effect.

Without such re-openers and off-ramps in the regulation you will leave industry with no options but to seek legislative relief for the staggering employment losses that will result from this proposal.

We also want to support the comments submitted by the **Caterpillar** dealers, the **Associated General Contractors of California** and the **Associated General Contractors of San Diego**. In particular we want to applaud the research provided by **Teichert Materials** on the limitations on the use of renewable diesel fuel.

Thank you for your consideration of these concerns.

Sincerely,

A handwritten signature in black ink, reading "Michael W. Lewis". The signature is written in a cursive, flowing style with a large initial "M" and a prominent "L".

Michael Lewis, Senior Vice President  
Construction Industry Air Quality Coalition