

November 13, 2017

Clerk of the Board  
California Air Resources Board  
1001 "I" Street  
Sacramento, CA 95814

**RE: PROPOSED AMENDMENTS TO ATCM AND PORTABLE EQUIPMENT REGULATIONS**

Dear Chairman Nichols and Members of the Board:

The Construction Industry Air Quality Coalition (CIAQC) submits the following comments in response to the proposed changes to the Airborne Toxic Control Measure (ATCM) for Diesel Particulate Matter and the Portable Equipment Registration Program (PERP).

CIAQC sponsored the original legislation that created the PERP program out of a growing sense of frustration with the myriad of separate district rules and regulations governing the use and movement of portable equipment throughout the State of California. It has always been our intent to develop a common set of requirements that are readily understood by contractors as they move from jobsite to jobsite. Since the original adoption of PERP in 1997 the regulation has become ever more complex and the air districts have been allowed to offer differing interpretations of the regulation which have made compliance even more complicated. We hope that many of the proposed changes will return us to one rule that will have a single interpretation regardless of the air district in which our equipment is in use.

Much of the need to these proposed amendments is due to CARB's "regulate first and fix it later" approach to rule development. While that may seem like a "safe" way adopt regulations it often has a deleterious effect on small business trying to make long-term financial plans and it often results in less than anticipated air quality benefits as business owners wait to see what the next round of "fixes" will bring. The PERP has produced just such an effect as the newer Tier 4 engines failed to materialize as quickly as anticipated and cost considerably more than expected. In addition, the rule did not force the development of Diesel Particulate Filters for portable equipment did it enable re-powering of existing equipment.

Today, we know several important and relevant facts about the portable equipment fleet. There are about 30,000 pieces of equipment in the program. The equipment operates on average about only 850 hours per year. Nearly 38% of the engines are Tier 1 or Tier 2. Without amendments, these would have to be replaced with Tier 4 engines by December 2016. A Tier 4 engine costs about twice as much as the same Tier 3 engine. Only 7 engines of the 30,000 have been equipped with DPFs. The ATCM emission standard for engines in excess of 750HP is lower than the required Federal emission limit.

From 2011 to 2015 the fleet size remained virtually unchanged, but staff is predicting a 26% (10,000 engines) increase in the fleet by 2030. This equipment is owned by 4400 companies of which 78% would be considered small fleets under the proposed definition. Small fleets (under 750HP) own about 8% of the total horsepower.

Under the existing regulation nearly 5000 Tier 0 pieces of equipment have already been eliminated from the fleet. With the proposed changes, Tier I and Tier 2 must be replaced by 2020 and 2023 respectively. They account for 11,000 of the current fleet. When Tier 0's was phased-out the fleet remained flat for the next five years. It may not be realistic to assume that the fleet will grow as the next tiers of engines are eliminated. That would

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Major Funding Provided by the Construction Industry Advancement Fund and the Fund for Construction Industry Advancement



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Southern California  
Contractors Association

significantly change the economic assumptions about the cost of the regulation, as more than the projected number of businesses are driven out-of-business by the regulation. We are quite concerned about the number of businesses projected to cease operation because of this rule.

Further, the real cost of the regulation is masked by the staff's assumption that the industry will save \$416,000,000 in fines by being in compliance with the rule. There is no evidence presented that the current level of non-compliance generates fines in excess of \$30 million per year. It also completely discounts the real projected costs of \$185,000,000 in direct costs for equipment, DEF Fluid and Registration and Renewal fees. It's disingenuous to claim that spending nearly \$200 million will save \$416 million in fines and result in the \$223 million-dollar benefit. Nor is it realistic to think that the industry will add 10,000 pieces of equipment and replace 11,000 pieces of equipment with Tier 4 equipment for less than \$10,000 apiece. The numbers simply don't make sense.

There are numerous changes to the ATCM and the PERP which we find beneficial.

- We support the exemption for 2<sup>nd</sup> engines on two engine vehicles subject to the Off-Road rule.
- We support the exemption for engines used exclusively in emergency events.
- We support the exemption for equipment designated for hazardous locations.
- We support the extension of low use from 80 hours to 200 hours per year.
- We support the option of using the fleet average or phase-out schedule for large fleets.
- We support the remote location definition of ½ mile.
- We support the extra benefit of double counting Tier 4 engines for early compliance.
- We also appreciate the recognition that more flexibility is necessary for compliance given the lack of Tier 4 equipment as well as its extraordinary cost.

We have serious reservations about the Ambient Air Quality Standard (AAQS) protection provisions being added for extreme non-attainment areas. Trying to make an accurate assessment of an air quality impact once active construction has commenced is going to be disruptive, impossible to enforce and not likely to produce a responsible party. Requiring notice whenever 2500HP of equipment is present on a job site during will be difficult if not impossible to determine. With multiple contractors, using or merely possessing numerous portable equipment devices, which may or may not be used simultaneously or at all, providing an accurate calculation of emissions will be difficult if not impossible. We see this approach as likely stopping numerous construction projects in the middle of their work and adding significantly to the cost of the project. Air Districts can collect this data and calculate the impacts during the CEQA process. That is the appropriate time to make the request and propose the mitigations; not in the middle of construction.

There are already "prohibition of sale notice" requirements for On-Road and Off-Road equipment. Adding a third one for portable equipment should only be done if all three notices can be done with identical language. Sales and Rental companies don't need the added confusion of trying to determine which language applies to which sale when one standard notice would suffice.

Finally, we want to thank the CARB staff for the considerable energy that they put into this effort with the stakeholders to craft a consensus on these amendments. It was an extremely complicated set of regulations which need to be updated and harmonized. There were also issues unique to many specific industries. Throughout the process your staff remained thoughtful and focused on the goal of finding workable solutions.

Sincerely,

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

Michael Lewis, Senior Vice President  
Construction Industry Air Quality Coalition