



HEAVY CONSTRUCTION  
EQUIPMENT RENTALS

# ECCO Equipment Corporation

30243 KELSEY STREET • VISALIA, CA 93291  
(559) 651-0116 • (800) 729-3226 • FAX (559) 651-0986

January 4, 2008

California Air Resources Board  
1001 "I" Street  
PO Box 2815  
Sacramento, CA 95812

**Re: 15 Day Comment Letter – Off-Road Diesel Regulation**

Dear Members of the California Air Resources Board:

As a concerned stakeholder of the California Air Resources Board's Off-Road Diesel regulation, I have many thoughts that I need to state for the record. I have spent more time on the concepts of this regulation that I have on anything else, and I have to say that although the CARB staff did their due diligence on all aspects of our industry, they have totally missed the financial aspect that this regulation will have on the Construction Industry. The Board used staffs data in considering all aspects of this regulation, and based on this information, adopted the Off-Road Diesel (ORD) rule. Based on what was adopted; only time will decide whether this information was correct. In the meantime, we will be monitoring the effects that this industry will face in attempting to adhere to a very complicated, and in many cases, hard to understand regulation. After being involved with this rule making process for over the past two and one-half years, I am still discovering that parts of the regulation language that I thought I fully understood, are not what I thought after all. I can only imagine what the thought process will be when a fleet owner reads this regulation for the first time. Staff should have found a way to make the ORD rule language more user friendly, written in a manner that is understandable by most readers.

As the rule is currently written, the compliance timetables do not give the Construction Industry many options, which will ultimately force equipment owners to sell their equipment. As the compliance dates become reality and equipment owners struggle to understand the impacts that this regulation will have on their business, large amounts of non-compliant or Tier 0 and Tier 1 emission equipment will flood the marketplace creating a surplus of used equipment. This equipment surplus will continue to deteriorate the equipment values even more, and in the process, it will compound a company's ability to meet the cost of compliance. In a recent article in the Southern California Contractors Association magazine, Highway Edition 2007, Cobra Equipment Rentals of Colton placed all of their equipment in an auction, including 25 pieces that had Carl Moyer grants for repowers and retrofits. According to their Vice President, Mr. Jim Atkins, "It is too confusing right now, we have talked with our lawyers, our consultants, and our air quality consultants and this is the best decision we can come up with right now." Mr. Atkins went on to say "Our rates are going down and our costs, particularly with the CARB rules, are

going up”. Unfortunately, this mind set is beginning to resonate throughout the California construction industry.

Because of the lack of VDECS and Tier 4 emission engines in the marketplace, equipment owners will be forced to remove non-compliant equipment from the California construction inventory. In reality, CARB and the Environmental communities never really addressed the global emission problem; their actions have only forced the transfer of these emissions to neighboring states. The migration of equipment with non-compliant engines from California will not provide any benefit to the improvement of public health from the effects of diesel particulates. Time and technological advances in engine manufacturing are the only real way to address our emission problems.

At the July 26, 2007, CARB hearing, the construction industry repeatedly requested that the rule’s compliance dates be extended to allow technology manufacturers the needed time to develop and market more VDECS. In addition to the highly restrictive time requirements, CARB has provided very few workable solutions. The tools to comply are too limited in scope and availability to secure compliance. This is a serious flaw in the regulatory scheme and a possible insurmountable hurdle to clear for the managers of construction fleets.

Heavy off-road construction equipment traditionally offers the equipment owner years of productive life. Construction equipment that has been well maintained and properly serviced can operate productively for twenty to thirty years. Forcing equipment owners to replace or retire good construction equipment before the end of its useable life is a classic example of mandated scrappage, similar to the “taking of property”, a program used to prematurely eliminate non-emission compliant engines for the sake of emission reductions. The Fifth Amendment of the United States Constitution includes a provision known as the “Takings Clause”, which states that “private property shall not be taken for public use, without just compensation”. While the Fifth Amendment by itself only applies to actions of the federal government, the Fourteenth Amendment extends the “Takings Clause” to actions by state and local government as well. In other words, there is protection when government regulations, which are enacted to secure some sort of public benefit (in the case of the ODR rule, public health), fall disproportionately on some property owners (Owners of diesel-powered construction equipment) and cause significant diminution of property (Loss of use and devaluation of construction equipment). The ORD regulation that has been adopted by CARB is a good example of forced premature elimination of non-compliant engines for the sake of emission reductions.

No matter where you turn, someone is pointing a finger at an industry that is polluting California’s air. Every regulation comes at a cost whether it makes a significant impact on our environment or not. I believe that every single Californian wants cleaner air not just for themselves, but for their children as well. We have to remember that our emission problem did not happen overnight, and we will not be able to meet everyone’s expectations overnight. We have come a long way in cleaning California’s air, and there is no question that the air we breathe is cleaner than it was 10, 20 or even 30 years ago. When our legislators determined that the auto industry needed to clean up the emissions on the engines being produced by the auto manufacturers, they turned to the manufacturers, and forced them to meet lower emission standards. They did not ask every automobile owner to shell out thousands of dollars to meet an emission standard. NO, they placed the requirements to meet new clean air standards on the heels of the manufacturers. The newly adopted ORD regulation does the opposite; it places the responsibilities directly on the backs of the equipment owner, those that have no real expertise in

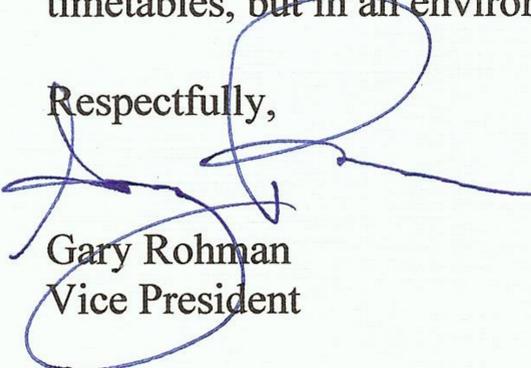
finding answers to complicated emission controls. Federal law requires that engine manufacturers produce engines that meet stricter emission standards every year. These cleaner burning engines are very complicated in their design. Adding an aftermarket device on these engines becomes problematic for the manufacturer in that the devices alter the operational characteristics of the engine. Adding an aftermarket exhaust device to an engine can create an environment which could result in premature or in some cases, immediate engine failure. Allowing more time for the engines manufacturers' to research, develop and install these VDECS on their own engines will be more conducive to finding lasting, workable results.

The California construction industry is currently facing an economic downturn that has virtually crippled many contractors and construction equipment owners. Dollars that were spent to pro-actively re-power construction equipment is no longer available from Carl Moyer type funding programs and the discretionary dollars that were used to purchase newer emission compliant equipment has evaporated. I am extremely concerned that the current ORD regulation does not contain language that addresses times of economic downturn. I have listened to many discussions held by staff and board members some have even addressed their concern for the viability of this industry to succeed. If this is true, where are the stop gap measures in the regulation to address changes in the economy? Without some type of protection, the stringent demands of the ORD rule could very well be the catalyst that decides whether a company remains in business.

What protection does industry have to address the hours of usage requirements that are tied to every Carl Moyer type funding program. As the economy continues to deteriorate, it will be next to impossible to fulfill the usage requirements tied to these re-powers contracts. Our company has found that due to a significant drop in the construction equipment rental market, we will not meet the annual requirements for hours of operation on any of the contracts that we currently hold. Industry is concerned that the air districts which have issued these re-power contracts will require large refunds at the end of the contract for not meeting the usage requirements of the contract. Because of this downturn in the economy, and the unintended consequences of the Carl Moyer type funding programs, ECCO has no plans on re-powering any equipment in 2008.

Placing unrealistic regulations on any business will continue to be counterproductive. We must find a way to keep the construction industry economically viable so that the stakeholders can work with CARB in finding answers to this very complicated issue. Government can and should be the catalyst behind a cleaner environment, but it must allow companies to continue to utilize their equipment so that they will have the financial ability to fund the requirements of a reasonable regulation. Squeezing too much regulatory demands out of a company too quickly will only result in failure. We need to keep our vision on emission reductions based on realistic timetables, but in an environment that allows companies the ability to survive.

Respectfully,



Gary Rohman  
Vice President