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Robert F. Sawyer, Ph.D.  
Chair, California Air Resources Board  
1001 'I' Street  
P.O. Box 2815  
Sacramento, California 95812-2815

Re: Proposed Off Road Equipment Rule

Dr. Sawyer,

As you well know, BNSF Railway and the California Air Resources Board have a collaborative relationship in our mutual efforts to reduce emissions from rail activities throughout the state. Our 1998 and 2005 MOU agreements have demonstrated our respective, visionary commitments to take early actions in that regard. BNSF Railway continues to develop similar early action measures to reduce our rail related emissions, and looks forward to a continued and successful collaborative relationship with the Board. We support the effort to improve air quality throughout the state.

We appreciate the opportunity to respectfully submit comments regarding the proposed Off-Road Equipment Rule, scheduled for an adoption hearing on May, 25, 2007. First, our California based fleet of off-road equipment consists of 92 pieces of common and rail-specific machinery. The equipment varies from small machines that pullout spikes from ties in the track to ballast tampers that firm up our track structure. Most of the equipment works in rural areas maintaining our track. Of the 92 pieces, 56.5% or 52 pieces are Tier 0. Using the staff's compliance spreadsheets to estimate the affects of Diesel Particulate Filters and Selective Catalytic Reducers, BNSF Railway cannot achieve full compliance after 2017 with this technology alone; all of our Tier 0 equipment must be replaced by 2017, with several Tier 2 and the remaining pieces replaced with Tier 3 equipment. Additionally, the entire fleet of 92 pieces must also be retrofitted with both a Level 3 DPF and an SCR device in order to achieve full compliance beyond 2017.

Much of this Tier 0 equipment has not yet worked its useful life, and because of the nature of the rail specific equipment, would fail to sell on the open market. We strongly urge the Board to preview this rail specific equipment at our Bakersfield facility to validate the unique nature of this equipment that, under this rule, would become scrap decades ahead of scheduled retirement.

Additionally, as this equipment is typically used in the field at very remote locations, at this time the use of “active” electrically powered regeneration units as contemplated in the rules is quite uncertain. Currently, there is only one passively regenerating Level 3 DPF verified for off road applications, and no passively regenerating verified SCR units. While we remain optimistic that an increase in the number of passively regenerating units for both PM and NOx will become verified, there remains the possibility that verified retrofits will fail to materialize in a timely manner.

Second, the proposed rule also requires that equipment not based in California but that performs work in California in excess of 100 hours during the previous year also comply with the emissions requirements set forth in the rule. We maintain and operate a similar fleet of off road equipment in many of the 27 other states in which we operate. For the past several years, we have performed some track maintenance by bringing in crews and equipment from other states to concentrate all the activities within a several week window. This reduces the overall disruption to train service allowing better customer service most of the year. This equipment from other states resides here for only a few weeks but more than the 100 hours under the rule. Thus the new rule poses a special burden on the railroad.

Third, much of this equipment is used only sparingly and as a result produces minimal emissions as stated on a ton/year basis. We have calculated the ton/year totals of this California based fleet in various evolutions and have included them below in Table 1:

Table 1: Comparison of emissions reductions in Tons/Year and associated costs.

<b>Fleet Comp</b>	<b>PM Ton/Yr</b>	<b>NOx Ton/Yr</b>	<b>% Reduction</b>
<b>Null</b>	0.038	0.466	0%
<b>Retrofit</b>	0.001	0.019	97%/96%
<b>Retire Tier 0</b>	0.013	0.132	66%/72%
<b>Retire/Retro</b>	0.000	0.005	100%/99%

Our California based fleet produces 0.038 tons/year of PM, and 0.466 tons/year of NOx. While the emissions reductions proposed in the rule remove most of these emissions at increasing costs for each action level, BNSF remains confident that these emissions can be reduced further by means of an Alternative Compliance Option. For instance, purchasing a low emitting switch locomotive might provide a greater level of emissions reduction in areas where more people reside at a far less expense than the currently proposed rules.

To summarize the affect the proposed rule will have on our fleet;

1. Total compliance beyond 2017 cannot be achieved without scrapping 52 pieces of Tier 0 equipment at a total loss due to the unique use and non-marketable nature of the used rail specific equipment.
2. BNSF must frequently utilize out-of-state based equipment to "Blitz" for several weeks in excess of the 100 hour low use exemption in order to safely maintain our 30,000 miles of infrastructure.
3. Our California based equipment only generates 0.038 tons of PM and 0.466 tons of NOx annually. Applying retrofits, scrapping Tier 0 equipment, and applying both actions is neither cost effective on a straight cost or cost/ton basis.

BNSF Railway therefore respectfully urges that you consider three modifications prior to adoption of the proposed rule:

1. Amend the language to allow for an Alternative Compliance Option that produces at least the same emissions reductions as provided for in the proposed rule.
2. Amend the language to offer the fleet operator either a BACT or a Fleet Average Option, effectively removing the retirement requirement.
3. Amend the language to allow foreign based power to operate in California for up to 180 days, or 1440 hours per year without being included in the definition of the fleet.

These proposed modifications will allow operators of off road equipment fleets increased flexibility to choose the best compliance option to reduce their total emissions at a least cost alternative, and allow increased flexibility towards the goal of meeting the National Ambient Air Quality Standards.

Respectfully yours,



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