

**STATE OF CALIFORNIA
AIR RESOURCES BOARD**

**Amendments to the Current Regulations)
For Small Off-Road Engines)
)
)
)
)**

Agenda Item: 08-10-3

**Board Hearing:
November 21, 2008**

**COMMENTS OF THE
OUTDOOR POWER EQUIPMENT INSTITUTE
November 18, 2008**

**Of Counsel:
William M. Guerry, Jr
Kelley Drye & Warren LLP
3050 K. Street NW
Suite 400
Washington, DC 20007
(202) 342-8858**

**James McNew
Outdoor Power Equipment Institute
Vice President, Technical Services
341 South Patrick Street
Alexandria, VA 22314
(703) 549-7604**

On behalf of the Outdoor Power Equipment Institute (OPEI), we appreciate the opportunity to submit these comments in response to the Amendments to the Small Engine Regulations.

OPEI represents approximately 80 manufacturers that produce handheld products (like chainsaws), ground-supported lawn and garden products (like lawnmowers and commercial turf equipment), and the engines that power these products. Over the last twelve months, OPEI has proactively worked with ARB staff by suggesting numerous improvements and effective solutions to address ARB's air quality goals in a practical manner. OPEI looks forward to continuing to work with ARB staff on implementing the suggested improvements and amendments described below in these comments.

OPEI COMMENTS

I. PROPOSED RESTRICTIONS ON CREDIT LIFE

A. Unintended Consequences

OPEI and ARB share a mutual goal to create meaningful incentives that encourage manufacturers to invest in, and pull ahead, the cleanest technologies *as soon as possible*. ARB's proposed five year limitation on credit life will have several adverse impacts. First, it will unintentionally dilute the long-term incentives for manufacturers to pull ahead new clean technologies. In these economic times, it will be even more difficult for manufacturers to make early investments – when they will lose the resulting credits after a certain period of time. For example, instead of introducing a cleaner technology and banking credits in 2010, a manufacturers may wait until 2013 – so that his banked credits would still be available in 2017.

Second, even though the exhaust standards are now fully harmonized, under ARB's credit life proposal, ARB's ABT credit program will not be consistent with the federal program

(which does not impose a credit life on Phase 3 credits). Consequently, manufacturers would have to develop and implement unique ARB vs. EPA ABT-compliance strategies. This could require separate product lines for the California market. In turn, this will add cost-inefficiencies and higher prices for California consumers with no environmental benefits.

B. Responding to ARB Staff's Stated Concerns

ARB Staff's is concerned that manufacturers could hold on to banked credits for longer than 5 years and use them much later when the affected products are no longer in the field.

However, reductions that occur on a faster track have greater environmental value – compared to delayed environmental benefits. In short, “a ton of air pollution reduced today is more valuable to public health than a ton of pollution reduced at some later date.” (See EPA’s enclosed Fact Sheet on the PSEG Fossil LLC Consent Decree). For that reason, ARB, EPA, and other policy makers try to achieve “temporal environmental neutrality.” Like the “net present value” of money, “temporal neutrality” holds that a premium should apply to earlier emission benefits and a discount should apply to delayed, future emission benefits. However, in this case, ARB is doing just the opposite – essentially claiming emission benefits that were pulled ahead on the fastest track should be “discounted” and become worthless after five years – when credits that are subsequently banked will still be viable.

ARB’s other concern is that large, existing banked credits could be subsequently relied on by manufacturers to delay the introduction of new emission control technologies. However, ARB can readily address this concern (as explained in the next section) without causing the adverse consequences discussed above. Because of the current standard stringency, the Tier 3 standards have reduced the baseline emissions of HC and NOx by roughly 90%. There simply are not much allowed emissions left for manufacturers to generate new credits. Accordingly, significant certification credits have not been generated for <80 cc engines or non-handheld

engines meeting the new Tier 3 standards for Class 1 or 2 engines. In fact, several OPEI members have individually proven to ARB that their banked credits were generated from PLT credits or from prior Tier standards.

The Board should direct ARB staff to quantify and present to the Board the relatively small amount of banked, *certification* (as opposed to PLT) credits (from both ground-supported and handheld products) generated under the current Tier 3 exhaust standards. This needed analysis would document that applying the 5 year credit life (only to the prior Tier standard levels) effectively addresses ARB Staff's concerns.

C. OPEI Recommendation

OPEI recommends that ARB fully align their AB&T credit program with EPA by: (i) eliminating the PLT credit program (as proposed); (ii) imposing a 5 year credit life on manufacturer AB&T credits generated *prior to the current standard levels*; and (iii) allowing unlimited life of credits generated by engines that emit at lower levels than required by the current standard levels. This recommendation is supported by the following facts. The PLT credit program has generated 52% of the total banked credit population. (See Table 3.2 of the ARB staff report). This means ARB's proposal to eliminate the PLT program after the 2009 Model Year will eliminate 52% of manufacturer's "future earning potential."

The vast majority of the remaining pool of certification credits were generated under the prior Tier 2 standards. ARB will effectively address these Tier 2 credits under its "5 year credit life" limit. (It is not too late to add new restrictions focused on the future use of these credits (as ARB incorrectly claims in its Staff Report)). Finally, ARB could further limit credit exchanges between ground-supported and handheld classes similar to the restrictions EPA has adopted in its final Phase 3 regulations.

II. CREDITS FOR BATTERY-PRODUCTS

A. Policy Concerns with New, High-risk Market Entrants

OPEI is concerned that new, high-risk manufacturers could bank battery-based credits and then use them to import low-cost, higher emitting gas product using these credits. These high-emitting products would be replacing higher-cost, but lower-emitting gas products in the market. It is in California's, as well as, industry's best interest to assure this does not happen.

B. Ambiguities in Proposed Regulation

Power curves for electric product are much different than gasoline-power products. A combination of cutting speed and power must be evaluated to insure the credit earning potential of such electric products will not be abused. For that reason, the Board should direct staff to add more specificity in the final regulations that address the following potential ambiguities and loopholes.

First, section 2408(f)(7)(A) does not specify the information that is required to verify the power of zero emission products compared to that of gas units. Second, ARB needs to define what is meant in (A)(1) – by battery-powered product “performing at a level equivalent to that of professional equipment (i.e., power, cutting width, etc).” Third, ARB needs to clarify what is meant by the Section (A)(3) – in terms of the battery (without recharging) allowing the equipment to perform at a continuous “professional performance level for at least 4 hours.”

C. OPEI Recommendations

Battery-based credits should be limited to prior “carry-over” engine families. This would assure the gas powered products were CARB certified prior to credit use and the user of credits has legitimately entered the market. CARB would have greater compliance assurances and greater enforcement authority over these established manufacturers.

The Board should direct ARB Staff to either come back to the Board with a more refined proposal, or work through a “15 day” regulatory comment process with the affected stakeholders, including OPEI, to develop the needed technical amendments and procedures. These technical amendments and procedures should ensure the implementation of the Board’s goals: Credits should only be generated for electric products that achieve a comparable level of operation/performance as professional gas equipment. To conduct an “apples-to-apples” comparison, ARB should ultimately define, and require (as one minimum criteria) the quantification of the equivalent, required “energy content” of batteries – that would be used to achieve “professional performance levels” for different products to benchmark the required performance. These standards should require the equivalent, sustained power (produced throughout the engine-powered products) be demonstrated as a condition of certification.

The language concerning credits for zero emission products in section 2408(f)(7) should specifically address the following issues:

- 1) Horsepower ratings of electric and gas motors run on opposite curves. Cutting power at a working tool speed and power/torque are critical in comparing the two products. Given the fact electric motors and gasoline engines have different properties in terms of sustained power, torque and engine speed – functional comparisons of finished-products are probably the only realistic means to determine equivalent performance.
- 2) ARB should clarify if a “backpack battery” source is included in paragraph (2).
- 3) In paragraph (3), ARB indicated the product must perform for 4 hours on each refueling or recharge. We generally agree the product should operate

for a substantial period (producing the same performance level during all this time) before battery replacement or recharge is required.

III. EXECUTIVE OFFICER DISCRETION FOR TECHNICAL CHANGES

New Section 2403(i) would allow for minor improvements, such as harmonization with EPA on technical test procedures – if the ARB Executive Officer deems it necessary and appropriate.

Based on a recent conference call with ARB staff, it is our understanding that if the Board adopts this proposed provision, the following process would still apply. ARB staff would informally provide advance notice to OPEI and other stakeholders and would work with these stakeholders to help draft MACs or similar technical amendments or guidance. As long as this process is implemented in this matter so that there is an informal stakeholder input process, OPEI generally supports this amendment.

Per ARB's staff's recent request, below are several examples of needed amendments that ARB should adopt (hopefully under its expedited new authority) to harmonize with the new EPA Phase 3 regulations:

- 1) EPA's new engine test procedure (Part 1065) needs to be an option for certification ASAP (by 2013 at the latest when EPA mandates it for new families).
- 2) New 40 CFR §1054.501(b)(3) provides testing and correction guidance of humidity per 40 CFR Part 1065.670. ARB should add this language as an option to their current test procedure.
- 3) ARB should add language for the time to stabilize and the measurement period (for emissions) that is indicated in new section 1054.505(a)(1).

EPA requires a 5-minute warm up at each mode (minimum) and a 1-minute measurement period.

- 4) EPA describes (in detail) the measurement speed of rated WOT and Idle.

The language can be found in 1054.505(b)(1) and 1068.510(b)(3). ARB should accept these test points as an alternate to the current specified test speeds in the ARB regulation.

- 5) Pursuant to (and with the same effective dates as) new 40 CFR §1054.135(c), ARB should revise its label language in section 2759(c)(4)(A) and 2404(C)(4)(A) to read "EMISSION CONTROL INFORMATION" (instead of the current "IMPORTANT EMISSION INFORMATION") in order to harmonize with EPA. ARB should avoid pulling ahead any labeling changes before it is required by EPA – typically in the 2011 and 2012 Model Year.

IV. ETHANOL FUELS

OPEI supports the addition of the EPA Phase 3 approach allowing exhaust certification with fuels with up to 10% ethanol. We understand ARB's staff's intent is to link the selected certification fuel with any confirmatory testing. OPEI requests ARB to add language that clarifies that any confirmation or auditing tests that ARB conducts or requires be conducted will use the same, selected certification fuel.

V. SECTION 2406: EMISSION CONTROL WARRANTY STATEMENT

ARB staff has appropriately proposed to harmonize with the new EPA Phase 3 warranty provisions that require a live, English-speaking contact to promptly respond to warranty-service questions. However, the new ARB requirements need to specify when these new warranty-service obligations start to apply. OPEI suggests the 2010 Model Year.

DC01/GUERW/359307.8