

February 18, 2010

**Via Electronic Submission**

California Air Resources Board  
Clerk of the Board  
1001 I Street

Sacramento, CA 95814

**Re: Public Hearing to Consider Amendments to the Current Regulations for  
Small Off-Road Engines**

On February 4, 2010, the California Air Resources Board (“ARB”) published its Notice of Public Availability of Modified Text related to the November 21, 2008 Public Hearing to Consider Amendments to the Current Regulations for Small Off-Road Engines (referred to herein as the “15-day notice” or the “notice”).

The Engine Manufacturers Association (“EMA”) is the international trade association that represents the interests of the world’s leading manufacturers of engines, including manufacturers of small off-road non-handheld spark ignition engines. EMA’s comments are limited to those aspects of the proposed amendments that affect non-handheld engines included in the small off-road engine regulatory category.

**I. Background**

In written comments provided to the Air Resources Board in connection with the November 21, 2008 public hearing concerning agenda item 08-10-3 EMA commented that while it acknowledged that “...the proposal’s proposed zero emission equipment credit program provides a reasonable outline of the agency’s desire to pursue zero emission alternatives to conventional engine powered equipment...the proposed program is incomplete and substantial additional regulatory development is required before equipment could be certified, produced, and sold that would generate credits as intended by the proposed regulation.... A demonstration of complete product functionality and work performance over time must be required for certification and resulting credit generation by zero emission equipment. The required test protocols for this certification protocol do not exist today. Such test protocols must be developed through a public rule making process before they can be utilized to certify products and before such products generate credits.” In addition, EMA also recommended “that the zero emission equipment credit program be deleted from the current amendment in order to provide the time necessary to develop an appropriate and complete program in order to ensure credits generated by zero emission equipment provide real environmental benefit to the State of California.”

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Unfortunately, Board resolution 08-41 approved the proposed changes to the regulation for small off-road engines but did not incorporate EMA's recommendations.

On October 27, 2009 the California Office of Administrative Law (OAL) formally disapproved the amendments adopted by Board resolution 08-41, related to the lack of specificity included for the zero-emission equipment (ZEE) credit program.

ARB conducted a workshop on November 17, 2009 to obtain input from interested parties, including EMA, regarding the test and certification protocols not included in the originally adopted regulation.

EMA and its members have cooperatively worked with ARB Staff to identify the minimum regulatory requirements necessary for ARB to legally adopt the ZEE credit program portion of the small off-road engine regulations.

## II. EMA Recommendation Regarding the Notice

The proposed 15-day modifications to Title 13, Chapter 9, of the California Code of Regulations (CCR) provide the absolute minimum regulatory requirements for the generation and use of emission credits from ZEE. While EMA worked cooperatively with ARB Staff to develop the proposal, EMA remains concerned that inappropriate ZEE credits will be created and subsequently utilized to diminish the emission benefits to the people of California associated with the regulation of small off-road engines.

EMA recommends that the ZEE credit generating product labeling specified by §2404(m) be mandatory rather than optional as proposed. ARB has traditionally required all products certified by the Air Resources Board to be labeled such that their compliance status can be identified. Because certified ZEE will be generating emission credits utilized to demonstrate compliance with ARB emission standards it is important that these equipment be identifiable for warranty requirements as specified in §2405 (h) and to avoid such equipment from being utilized for emission reduction programs as specified in §2408.1(a). Failure to change the labeling requirements from optional to mandatory will result in substantial risk that ARB will provide credits to equipment that either fails to meet warranty requirements or is additionally utilized to generate emission reduction program credits.

EMA recommends that ARB Staff carefully review all applications for certification of ZEE credit generating families to ensure that (i) the equipment is in fact "professional level" meeting the proposed definition in §2401 (a); (ii) the ZEE warranty meets the requirements specified in §2405 (h); and (iii) the credits being generated comply with all of the requirements specified in §2408.1.

EMA also recommends that ARB Staff carefully review any small off-road engine certification application utilizing ZEE credits to demonstrate compliance with ARB regulatory requirements including: (i) §2408.1 (c)(1) which requires that not more than 50% of an engine manufacturers negative credits can be offset by ZEE credits; (ii) all of the provisions specified in §2408.1(g) associated with the use of ZEE credits; and (iii) §2408 (g)(1)(E), which sets the maximum ZEE credit usage for an engine family 40% above the applicable standard.

As proposed, the product types capable of generating ZEE credits are constrained to the products identified in §2408.1 Table 1 – namely, chainsaws, trimmer/brushcutters, hedge clippers, blowers (handheld and backpack), edgers, split boom systems, and walk behind mowers. Of these product, types only the walk behind mower will be allowed to generate credits for use with small off-road engine families in the 80-225 cc displacement classification. EMA recommends that ARB adopt the proposed limitations regarding the generation and use of ZEE credits. If at a future date it is determined that additional products are capable of generating ZEE credits, a formal rulemaking process would be required before such products could generate ZEE credits. Such a rulemaking process will facilitate the required public participation process required to ensure that ZEE credits are only being generated by viable products.

### III. Conclusions

EMA recommends that that the proposed 15-day changes identified in the February 4, 2010 notice of publicly available modified text be adopted as proposed; provided, however, EMA contends that the product labeling specified by §2404(m) should be mandatory rather than voluntary.

EMA would like to thank the ARB Staff for working with industry to develop the proposed amendments. If you have any questions about EMA's comments, or would like to discuss this matter further, please do not hesitate to contact us.

Respectfully,



Engine Manufacturers Association

Roger T. Gault