

Appendix H

Policy for Portable Agricultural Use Engines



Linda S. Adams
Secretary for
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Air Resources Board

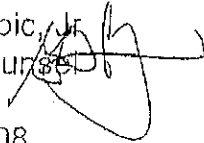
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DATE: January 25, 2008

SUBJECT: APPLICABILITY OF AIRBORNE TOXIC CONTROL MEASURES AT
AGRICULTURAL SOURCES

There has been some discussion regarding the applicability of the Airborne Toxic Control Measure for Stationary Compression Ignition Engines (title 17 §93115 et seq.) ("Stationary Engine ATCM") and the Airborne Toxic Control Measure for Diesel Particulate Matter from Portable Engines over 50 hp (title 17 §93116 et seq.) ("Portable Engine ATCM") to portable engines operating at agricultural sources. The Office of Legal Affairs ("OLA") has been requested to review this issue and this memorandum sets out the results of that review.

Conclusion

In light of specific statutory language codified as a result of the enactment of Senate Bill 700, it is clear that the Legislature intended to consider portable internal combustion engines operating at agricultural sources of air pollution to be a part of the agricultural stationary source. Accordingly, for portable engines owned by the agricultural source owner, the applicable airborne toxic control measure is the Stationary Engine ATCM. For portable engines not owned by the owner of the agricultural source, such as rental portable engines, the Portable Engine ATCM continues to apply.

Regulatory Background

In February 2004, the Air Resources Board (ARB/Board) approved the Portable Engine ATCM. The Portable Engine ATCM included emission standards for new and in-use portable engines, which would include portable engines used in agricultural operations.

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At that same meeting, the Board also approved the Stationary Engine ATCM. The Stationary Engine ATCM included emission standards for new, but not in-use, stationary agricultural engines. In November 2006, the Board approved amendments to the Stationary Engine ATCM to include emission standards, registration requirements, and other provisions for in-use agricultural engines.

The Board also took emergency actions with respect to both the Stationary Engine ATCM and the Portable Engine ATCM at its December 2006 meeting to address issues not relevant here. These emergency measures were followed up with regular rulemakings resulting in the current form of these regulations.

The two ATCMs reflect differing approaches to diesel particulate emissions reduction. The Stationary Engine ATCM sets specific emissions standards, tied to California and federal engine certification standards. These emissions standards apply to each and every engine.

The Portable Engine ATCM, however, relies on a fleet averaging approach. This approach allows emissions from older, dirtier operating engines to be offset by cleaner operating engines to achieve overall compliance. This approach allows the fleet owner to plan its purchasing of cleaner engines over time to maintain compliance with the fleet standards.

Analysis

As discussed above, the Board has adopted several regulations, including the Stationary Engine ATCM and the Portable Engine ATCM, in response to the mandates of its Diesel Risk Reduction Program. These two regulations are mutually exclusive in the same manner that stationary and mobile sources are mutually exclusive, with one exception. This exception pertains to portable engines used in agricultural operations and is the subject of this memorandum.

Prior to the adoption of these two ATCMs, the Board had implemented the statutory mandates of portable equipment program (Health and Safety Code ["HSC"] §§41750 et seq.) by adopting regulations for the Portable Engine and Equipment Registration program (title 13 §§2450 et seq.) ("Statewide Program"). The Statewide Program provides significant benefits to its registrants, such as relief from local district permitting requirements for minor sources. The Statewide Program and the Portable Engine ATCM are designed to work in conjunction with each other. In addition, a portable engine cannot be registered in the Statewide Program unless it meets the requirements of the Portable Engine ATCM. Stationary engines cannot be registered in the Statewide Program.

SB 700, signed into law in 2003, added to the Health and Safety Code a definition of an agricultural source of air pollution (HSC §39011.5). In that definition, the Legislature

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made specific reference to internal combustion engines used in the production of crops or the raising of fowl or animals, including engines subject to the portable registration program (HSC §39011.5(a)(2)). By making this explicit reference to engines subject to the portable program, OLA concludes that it was the intent of the Legislature to make portable engines used in agricultural operations a part of the agricultural stationary source. Accordingly, at agricultural sources, portable engines should be regulated in the same manner as other compression ignited stationary engines (viz.) under the Stationary Engine ATCM, rather than the Portable Engine ATCM.

This initial conclusion, however, does not end the analysis. The issue is further complicated by the existence of third party equipment rental companies. These rental companies represent a significant segment of registrants in the Statewide Program. The Statewide Program contains specific provisions applicable to these rental companies:

Portable engines owned by rental companies, then, are usually registered and would be subject to the Portable Engine ATCM. As discussed above, compliance with the Portable Engine ATCM is achieved through fleet averaging. Each rental company's fleet may be comprised of a unique mix of engines reflecting the rental company's business approach and purchasing strategy for fleet-wide compliance.

The Stationary Engine ATCM, however, sets emissions standards for each emissions unit. A specific engine owned by a rental company, therefore, may be compliant under the fleet averaging requirement of the Portable Engine ATCM, but not meet the emissions standards under the Stationary Engine ATCM. To avoid these potentially conflicting requirements, the preferred approach would be to exclude non-source owned portable engines used in agricultural operations from the requirements of the Stationary Engine ATCM so long as the portable engines are compliant under the Portable Engine ATCM. Accordingly, portable engines owned by a rental company and used at an agricultural source of air pollution should remain subject to the requirements of the Portable Engine ATCM.

It should be noted that portable engines may lose their portable status and become stationary under other provisions of law, such as the twelve month residency limitation found in the Statewide Program. In this event, the portable engine, regardless of ownership or use, would be deemed stationary and subject to the Stationary Engine ATCM.

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