



Linda S. Adams
Secretary for
Environmental Protection

Air Resources Board

Mary D. Nichols, Chairman
1001 I Street • P.O. Box 2815
Sacramento, California 95812 • www.arb.ca.gov



Arnold Schwarzenegger
Governor

January 25, 2008

To: Air Pollution Control Officers/Executive Officers:

The California Air Pollution Control Officers Association (CAPCOA) has asked the Air Resources Board (ARB) for an interpretation concerning the applicability of regulations governing the use of stationary and portable diesel-fired engines on agricultural sources. In response, the ARB legal staff has prepared the attached memo. In summary, stationary and portable diesel-fired engines used exclusively at an agricultural source are now subject to the requirements of the Airborne Toxic Control Measure for Stationary Compression Ignition Engines (Stationary Engine ATCM). This includes requirements for registration, health risk assessments, and fees as determined by the district. The Stationary Engine ATCM became effective October 18, 2007.

The Stationary Engine ATCM continues to apply to an engine as long as it remains in agricultural use and is owned by the same owner even if the engine is moved to contiguous or non-contiguous agricultural sources that are under the same ownership. These engines are also subject to any applicable district requirements, including registration programs. The ARB staff recommends that the districts establish specific requirements for diesel-fired engines used on multiple agricultural sources under common ownership that are located either within their district boundaries or in different districts.

This approach will allow stationary and portable diesel engines used at an agricultural source to take advantage of the reduction in required years of agricultural engine voluntary emission reductions under the Carl Moyer Program. Agricultural source operators may now apply for Carl Moyer Program funds to replace any portable or stationary diesel engine larger than 25 brake horsepower used exclusively at an agricultural source. Information about the Carl Moyer Program can be found at the following website: <http://www.arb.ca.gov/msprog/moyer/moyer.htm>.

There are no changes to the requirements for engines owned by rental companies. To avoid potentially conflicting requirements on the same engine, the preferred approach would be to exclude portable engines used in agricultural operations from the requirements of the Stationary Engine ATCM. However, those portable engines not owned by the owner of the agricultural source, such as rental companies, must be in compliance with the Airborne Toxic Control Measure for Diesel Particulate Matter from Portable Engines Rated at 50 Horsepower and Greater (Portable Engine ATCM).

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our website <http://www.arb.ca.gov>

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If you have any questions, please call me at (916) 324-8167, or by email at rfletche@arb.ca.gov. Questions on the legal memo should be directed to Mr. George Poppic, Senior Staff Counsel, at (916) 322-3940, or by email at gpoppic@arb.ca.gov.

Sincerely,

A handwritten signature in cursive script that reads "Bob Fletcher".

Robert D. Fletcher, Chief
Stationary Source Division

Attachment

cc: Mr. George Poppic
Senior Staff Counsel



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TO: Robert D. Fletcher, Chief
Stationary Source Division

FROM: Robert Jenne 
General Counsel (Acting)

BY: George T. Poppic, Jr. 
Senior Staff Counsel

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.

If you have any questions, please contact Mr. George Poppic at (916) 322-3940, or by email at gpoppic@arb.ca.gov.

