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First-Time California Diesel Rule For In-Use Engines Eyed By Other States

California's controversial effort to adopt first-time emissions rules for existing off-road diesel engines is being followed closely by other states, which may consider adopting the same rules in order to force the construction sector to cut emissions of nitrogen oxides (NOx) and particulate matter (PM) much faster than EPA requires.

At the same time, the diesel engine industry is mounting a strong push against the proposed California rule because it fears the state could set a *de facto* national standard the industry says is far too costly. After succeeding in winning a delay in the vote on the final rule in May, industry is now expected to offer an alternative compliance proposal.

At issue are proposed California Air Resources Board (CARB) rules to require first-time pollution controls on existing off-road diesel engines in the construction, industrial and mining sectors that also include provisions that could mandate the engines be retired if they cannot meet the stringent new standards.

And despite the intense industry lobbying push, CARB is expected to finalize the rule at its July 26 meeting.

CARB would also need to win a Clean Air Act waiver from EPA in order to impose the standards, and that would allow other states to adopt identical rules.

Federal rules impose stringent new emissions requirements on new off-road diesel engines and fuels, but do not mandate any reductions in existing engines.

One industry source says CARB's proposal is being considered by other states as a way to meet new ozone requirements, which EPA proposed to possibly tighten June 21.

"We think the California rule will become the national standard, and we are very concerned about that," the source says. Industry won the earlier delay by countering CARB's \$3.3 billion cost estimate with new figures showing the cost would be more than \$13 billion, but CARB now says the industry estimates were inflated.

Northeastern states including New Jersey and New York are already requiring emissions reductions from existing off-road engines as a contract contingency in certain conditions. However, the states have indicated they would like to be able to impose broader requirements, and if California moves forward then they could follow, provided that EPA grants the waiver.

One New York environmentalist says Northeastern activists are “very excited” about the CARB rule because it would provide a way for other states to pursue broader mandates. “It would not only be federal fleets and contracts,” the source notes. “It would be easier for states if they can simply adopt the California standard.”

The CARB rules would set best available control technology (BACT) requirements for engines over 25 horsepower on a fleet average basis, and would cut PM emissions by 75 percent and NOx emissions by 23 percent in 2020.

The NOx BACT will require turnover of the existing engines at the rate of 10 percent of the fleet per year and the PM BACT requirement forces owners to install particulate traps on 20 percent of their fleets per year. Compliance dates are staggered based on size, with large fleets meeting requirements between 2009 and 2020, and small fleets between 2015 and 2025.

Additionally, [the rules](#) impose stringent standards on new engines, which go beyond EPA’s new off-road diesel engine standards, and could require existing engines to be replaced if they cannot be retrofitted.

An industry source says CARB’s cost estimates do not account for the NOx engine turnover requirement. “Industry may not be able to afford it,” the source says, noting that the construction industry in particular is in the midst of a downturn. The source calls CARB’s cost estimates “absurd.”

However, CARB counters, “We will stand by our original estimate. We identified more than \$8 billion in the industry estimate that was due to [provisions] not even in the rule,” a CARB spokeswoman says.

Now, the Construction Industry Air Quality Coalition (CIAQC) is drafting an alternative proposal it plans to submit to CARB ahead of the July 26 vote that the industry says would give contractors more lower-cost options to meet emission reduction targets, rather than the strict command-and-control approach sought by CARB.

The industry says its alternative proposal would achieve the same pollution cuts as the CARB rule. “It lets [contractors] figure out how to do it with the cheapest costs,” one CIAQC source says. Additionally, it reflects industry skepticism over the effectiveness of retrofit devices.

If CARB does adopt its original proposal, industry will likely take its fight to EPA and seek to convince the agency not to grant the state a waiver. The Clean Air Act requires EPA to determine that CARB has met four criteria: whether the state appropriately determined the standards; whether the standards are at least as protective of public health as federal requirements; whether California needs its own standards to meet “compelling and extraordinary” conditions; and whether the standards are consistent with the Clean Air Act.