

October 22, 2012

Air and Radiation Docket  
Docket ID No. EPA-HQ-OAR-2008-0691  
Environmental Protection Agency  
Mailcode 6102T  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

**Re: California State Nonroad Engine Pollution Control Standards; California Nonroad Compression Ignition Engines—In-Use Fleets; Authorization Request; Opportunity for Public Hearing and Comment**

On behalf of the 5,000 members of the American Road and Transportation Builders Association (ARTBA), I respectfully offer comments on regarding the consideration of the California Air Resources Board's (ARB's) request for a federal waiver from the EPA allowing implementation of the ARB's regulations for in-use off-road diesel vehicles.

ARTBA's membership includes public agencies and private firms and organizations that own, plan, design, supply and construct transportation projects throughout the country. Our industry generates more than \$380 billion annually in U.S. economic activity and sustains more than 3.3 million American jobs.

ARTBA's public sector members adopt, approve, or fund transportation plans, programs, or projects, while ARTBA's private sector members plan, design, construct and provide supplies for these federal transportation improvement projects, including bridge projects. This document represents the collective views of our 5,000 member companies and organizations.

ARTBA's many California members rely heavily on off-road construction equipment to perform core business functions and would be directly impacted by ARB's in-use, off-road diesel equipment regulation. Similarly, if ARB's regulation is eventually adopted by other states, ARTBA's members in those areas would also be impacted.

The CAA grants special status to California due to the state's unique air quality problems, allowing California to set its own air quality standards in many areas subject to federal approval. If approved, the CAA then gives other states the choice to either stay with existing federal standards or "opt-in" to those passed by California. This could severely impact efforts at improving our nation's infrastructure, as transportation improvement projects often by necessity involve moving construction equipment across state lines. A patchwork approach to state regulation could lead to a scenario where equipment becomes usable on one portion of a project, but prohibited on another.



The CAA does not give California complete authority to enact its own standards, there are limitations. Among these limitations, California may not set its own standards or impose other emission-related requirements for “[n]ew engines which are used in construction equipment or vehicles or used in farm equipment or vehicles which are smaller than 175 horsepower (HP).” This preemption lasts throughout the useful life of the equipment. The ARB regulations would apply to all in-use, off-road diesel construction equipment with a rating of 25 HP or more and are thus not allowed by the CAA.

Further, the CAA states that any proposed California standards must be “at least as protective of the public health” as those on the federal level. Protecting the public health is a commendable objective and one shared by ARTBA. EPA, however, must be cognizant of the impact ARB’s proposed standards would have on public health both within California as well as any other states that chose to “opt-in” to the standards if they are enacted. Due to the enormous expense of replacing the affected in-use off-road construction equipment—in some cases more than \$1 million for each machine—the cost of sorely needed transportation and infrastructure improvement projects will likely increase. This means that either fewer roads, schools, housing and levees will be built or project owners will have to spend more. For those projects that go forward, the pace at which they can be completed could be significantly slowed because the pool of construction firms with the proper equipment to do the jobs will likely be diminished.

Further, nearly 33,000 people die on U.S. highways each year and many federally-funded highway improvements in these states are designed specifically to address safety issues. Allowing ARB’s rule to go forward could delay needed safety enhancements that would improve public health because much of California’s transportation construction community would, as a result, be prevented from building them.

Also, the CAA states California’s standards should not be adopted if California’s public-health protectiveness determination for the ARB rule is “arbitrary and capricious” or if “California does not need such standards to meet compelling and extraordinary conditions.” In considering whether ARB’s rule is “arbitrary and capricious,” ARTBA respectfully submits that ARB’s prioritizes once public health issue at the expense of another, which is by definition “arbitrary.”

While ARTBA is very supportive of both EPA and ARB’s goal of reducing PM and NOx emissions, ARTBA does not believe ARB has considered fully some of the air quality improvements already occurring in California and the nation. These improvements in air quality undercut the need for a measure as severe as the ARB proposal.

Specifically, EPA’s own findings demonstrate that concentrations of fine particulate matter have declined by 24 percent (national standards) and 28 percent (24-hour standard) between 2001 and 2010 while concentrations of NOx have declined by 33 percent nationally in the same time period. This decline in emissions becomes more remarkable when compared to additional EPA data explaining that since 1980, gross domestic product increased by 127 percent, vehicle miles travelled increased by 96 percent, population increased by 36 percent and energy consumption increased by 19 percent. Indeed, since 1980, the overall amount of aggregate emissions, including PM and NOx, has decreased by 67 percent. Thus, air quality is significantly improving without the ARB rule.

Finally the CAA requires that California standards comply with the “feasibility constraints” when implementing its rule. ARTBA has serious concerns regarding the specifics and feasibility of ARB’s off-road diesel rule. ARB’s regulation requires the use of technology which, in some cases, might not be available for purchase until 2014. Further, where technology is available, the sudden increase in demand caused by the ARB rule could cause supplies to be exhausted. Contractors simply may not be able to purchase the necessary equipment and could be barred from continuing their work. If ARB’s rule is fully implemented, there could be profound, negative impacts on California’s infrastructure rebuilding efforts, the health of the state’s construction industry, and its overall economy. Instead, ARB must allow technology to catch-up to its regulatory goals by allowing industry more time to develop equipment clean enough and available enough to meet the standards mandated and the demand created by its regulation.

Many of California’s larger construction companies have already begun the process of repowering or retrofitting their fleets in anticipation of these regulations. However, smaller companies with less than ten employees, which make up nearly 80 percent of California’s industry, will be severely hampered by the costs of repowering or retrofitting equipment that, in some cases, are the sole assets of their family-owned businesses. Additionally, many of these smaller companies simply do not have the resources or access to capital to repower or retrofit their engines and may be forced to park the equipment, ultimately costing jobs and revenue to the state’s economy.

Under the annual emission reduction targets required in ARB’s regulation, many contractors will be required to first re-power or retrofit an engine, only to have to turn around a few years later and replace the entire piece of equipment when the technology to do the job right finally hits the marketplace. The total industry-wide cost of implementation is estimated to be between \$15 and \$30 billion over the life of the rule.

It should also be noted that ARTBA appeared before EPA in April of 2010 to discuss a federal waiver for the ARB rule. Since that time, while the nation’s economy has shown signs of what can be at best called a sluggish recovery, unemployment in the construction sector has become even worse. Thus, the market is less prepared to handle the ARB rule now than it was when ARTBA previously appeared before the EPA. While the recent passage of the federal surface transportation reauthorization bill offers hope for the construction sector, implementing the ARB rule will cut off any reason for optimism by denying California the chance to take advantage of this new stability in the transportation sector.

In conclusion, ARB’s rule does not satisfy the requirements of the CAA because it attempts to regulate equipment below 175 HP, could lead to public health concerns and is “arbitrary and capricious.” EPA should recognize this and deny ARB’s request for a federal waiver. ARTBA looks forward to continuing to work with both EPA and ARB in encouraging voluntary diesel retrofitting at an attainable pace, rather than mandating retrofits at a pace many companies will not be able to meet.

Sincerely,



T. Peter Ruane  
President & C.E.O