

Oral Statement of Nick Goldstein
Before the Environmental Protection Agency
Public Hearing
For California State Nonroad Engine Pollution Control Standards;
California Nonroad Compression Ignition Engines—In-Use Fleets;
Authorization Request
April 14, 2010

Good morning, I am Nick Goldstein, Assistant General Counsel for the American Road and Transportation Builders Association (ARTBA).

ARTBA represents more than 5,000 members nationwide, involved in all sectors of the U.S. transportation design and construction industry.

I would like to begin my statement by thanking the United States Environmental Protection Agency (EPA) for the opportunity to speak at today's public hearing 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 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 nationwide 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.

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 36,000 people die on U.S. highways each year and many federally-funded highway improvements in these states are designed specifically to address safety issues. As such, allowing ARB’s rule to go forward could lead to highway improvements being denied, and in turn, delaying needed safety enhancements that would improve public health.

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 failure to consider collateral negative public-health impacts of the off-road diesel rule make ARB’s public-health protectiveness determination arbitrary and capricious.

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.

EPA should recognize reductions in PM and NOx levels will occur as a direct result of existing federal regulations. Dramatic improvements in emissions levels will come from implementation of regulations on sulfur levels in gasoline, as well as measures affecting heavy-duty diesel engines and highway vehicles. In fact, regulations took effect in 2006 requiring refiners to meet a 30-parts per million (ppm) average sulfur level for gasoline with a cap of 80-ppm. This fuel will enable vehicles to use emissions controls which are projected to reduce tailpipe emissions of NOx by 77 percent from passenger cars and as much as 95 percent for pickup trucks, vans and sports utility vehicles. When fully implemented, these regulations are expected to have the effect of removing 164 million cars from our nation’s roadways.

In addition, the EPA will continue implementation of its rule to make heavy-duty trucks and buses run cleaner. Pollution from heavy-duty highway vehicles will be reduced by more than 90 percent, resulting in an additional reduction in NOx levels of 2.6 million tons per year, while PM will be reduced by 110 thousand tons per year. EPA has also begun implementation of its rule to regulate emissions from nonroad diesel engines by integrating engine and fuel controls as a system to gain the greatest emission reductions. This is estimated to result in an additional reduction of 738 thousand tons of NOx per year.

All of these reductions, coupled with EPA's own findings that between 1980 and 2008, gross domestic product increased 126 percent, vehicle miles traveled increased 91 percent, energy consumption increased 34, population increased 29 percent—all while emissions of the six principle air pollutants, including NOx and PM decreased by 54 percent, show that the 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 five employees, which make up more than 55 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.

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.