AGC of America
THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA
Quality People. Quality Projects.

SENT VIA EMAIL: agarcia@otcair.org

September 30, 2010

Anna Garcia
Executive Director
Ozone Transport Commission
Hall of the States
444 North Capitol Street
Suite 638
Washington, DC 20001

RE: Model Rule for Non-Road Diesel Equipment Anti-Idling

Dear Ms. Garcia:

AGC of America (AGC) recognizes that limiting the amount of time construction equipment spends idling, while not in use, may help reduce emissions from this equipment. It may also save fuel and prolong engine life. At the same time, AGC remains very seriously concerned that the three (3)-minute idling limit lying at the heart of the Ozone Transport Commission's proposal would be unworkable. AGC strongly opposes that limit because, quite simply, it neglects to account for the real world of construction. To the very considerable extent that the number remains divorced from any factual findings, the number is arbitrary. If the OTC has a factual record – including risk assessments or other data – to support its three (3)-minute limit, AGC remains unaware of that record, and whether OTC has fully and fairly developed that record remains far from certain.

OTC is moving much too fast to develop a "cut and paste" model rule for states to simply adopt. OTC needs to conduct much more extensive outreach throughout the regulated community. Diesel fleet owners/operators have not been provided with amble time to evaluate the model language. AGC first found out about OTC's effort on Friday, September 10, 2010, in a blast email circulated by one of EPA's Clean Diesel Collaboratives that noted Sept. 30th as the deadline for comment. Fourteen business days has not been nearly adequate time for AGC to solicit input from its chapter and members who could be affected by OTC's model anti-idling rule.

What is more, it is imperative that OTC hear directly from people operating the equipment and further study the processes of the equipment it seeks to regulate. In a second email correspondence sent by one of EPA's Clean Diesel Collaboratives on Monday, September 20, 2010, AGC received a copy of a PowerPoint that OTC had presented at its Sept. 16th stakeholder meeting, including slides and some background information on the model anti-idling rule. AGC was not invited to, or informed of, this stakeholder meeting until after it had passed; and AGC is not aware that OTC has provided the regulated community with any

other opportunities to share their first-hand knowledge and experiences regarding equipment operation in the field.

AGC requests that OTC expand its outreach to the regulated community and offer equipment owners/operators more information and additional time to provide feedback on the proposed model rule. If OTC does not follow this course of action, it is destined to make serious and egregious mistakes in crafting this rule.

About AGC

Founded in 1918, AGC is a full-service national trade association with a nationwide network of chapters. AGC represents more than 33,000 firms including 7,500 of America's leading general contractors, nearly 12,500 specialty contractors and more than 13,000 service providers and suppliers. AGC is the leading association for the construction industry. AGC's members build highways, bridges, tunnels, airport runways and terminals, buildings, factories, warehouses, shopping centers, and both water and wastewater treatment facilities. AGC contractors will be impacted by OTC's proposed model rule because AGC contractors purchase and use non-road diesel equipment. The following comments outline some of AGC's specific recommendations and concerns related to the proposed model rule.

Requirement

AGC offers the following track-changed edits to **Env-A XXXX.05 General Requirements**—

> Except as provided in Section Env-A XXXX.06 Exemptions, ~~No person, entity, owner, or~~ an operator of non-road diesel equipment covered by this rule may not, while the equipment is being used for commercial purposes, ~~shall~~ cause or allow the equipment's primary propulsion engine to idle for more than [XXX] consecutive minutes when the equipment is not in use. ~~the idling of non-road diesel equipment under its control or on its property for more than three (3) consecutive minutes.~~

AGC recommends that OTC more clearly define who is in charge of making sure that non-road diesel equipment being used for commercial purposes does not exceed any limit on idling time. Under the proposed joint and several liability framework, the various parties may try and shift the responsibility for meeting the idling law and the legal/contractual obligations regarding equipment operation may become unnecessarily complicated. To illustrate this point, AGC questions the need to make property owners – e.g., the firm, individual, or institutions for which the construction project is/was undertaken – jointly responsible for limiting the idling time of the equipment being used to develop their land. In most cases, the property owner is not on site during the construction process.

AGC has similar concerns with the **Env-A XXXX.02 Applicability** and the **Env-A XXXX.07 Penalties** sections of the draft model rule.

Non-Applicability

AGC offers the following track-changed edits to **Env-A XXXX.03 Non-Applicability**—

This regulation does not apply to locomotives~~,~~; marine engines~~,~~; oil field support and development equipment; recreational vehicles~~,~~; farming equipment~~,~~; ~~or~~ military equipment when it is being used during training exercises, emergency or public safety situations; Tier 4 off-road construction equipment; or construction equipment operating in ambient temperatures below zero degrees Fahrenheit. Non-road diesel equipment owned and operated by an individual for personal, non-commercial purposes are exempt from the provisions of this regulation.

Exemptions

AGC offers the following track-changed edits to **Env-A XXXX.06 Exemptions**—

The idling limit does not apply to:

(1) Idling necessary to maintain ~~and~~ or ensure the safe operation of the equipment, including idling to verify that the equipment is in good working order, or other conditions specified by the equipment manufacturer in the manual or other technical document accompanying the non-road diesel equipment;

(2) Idling for testing, servicing, repairing, or diagnostic purposes, including regeneration of an exhaust emission control device ~~diesel particulate filter~~;

(3) ~~Idling when the diesel engine is utilized in whole or in part for necessary and prescribed mechanical or electrical operation (such as operating a crane, cement mixer, cherry picker, or boom lift)~~Idling where the equipment's primary propulsion engine is necessary for an associated power need such as electrical power, mechanical operation, compressed air, water flow, and various power take-off devices. This includes, but is not limited to, the following operations:

Mixing, dumping or processing cargo,

Operating a lift, generator, crane, pump, drill, hoist, or other auxiliary mechanical equipment,

Heating or refrigeration to protect cargo or freight being transported by the motor vehicle, and

Utility service restoration;

~~(3)~~(4) Idling ~~for less than fifteen (15) minutes~~ when queuing, i.e., when non-road diesel equipment, situated in a queue of other vehicles, must intermittently move forward to

perform work or a service. This does not include the time an operator may wait motionless in line in anticipation of the start of a workday or opening of a location where work or a service will be performed. ~~Idling will be limited to fifteen (15) minutes when queuing~~;

~~(4)~~(5) Idling by any non-road diesel equipment being used in an emergency or public safety capacity; ~~and~~

~~(5)~~(6) Idling for a state or federal inspection to verify that all equipment is in good working order, if idling is required as part of the inspection~~.~~;

(7) Idling of non-road diesel equipment engaged in a stop-and-go project operation or in immediate stand-by mode for purposes related to passenger loading or unloading, project or worker safety, or readiness for an upcoming phase of a specific project element;

(8) Idling for less than thirty (30) minutes where the non-road diesel equipment is being used to transport property and that property is being loaded or unloaded;

(9) Idling when necessary to warm the equipment up to the manufacturer's recommended operating temperature;

(10) Idling when the non-road diesel equipment is experiencing mechanical difficulties over which the vehicle operator has no control – if within 30 days after the end of this period the equipment's owner submits by mail to the appropriate authority repair paperwork or a product receipt verifying that the mechanical difficulty has been fixed;

(11) Idling for the purpose of defogging, defrosting or deicing windows when ice or frost conditions are present, and other attempts to remove snow, ice or frost have been less than completely successful;

(12) Idling to maintain the temperature of the working environment as necessary for the well being of the operator and passengers during the winter season with below freezing temperatures and during summer periods of high heat.

(13) Idling – at the discretion of the operator – as necessary to operate safety lights or other equipment to prevent or address any safety or health emergency.

AGC Outreach

There are an infinite number of unforeseeable circumstances that may arise on a construction project that would require equipment operators to idle their machines beyond any rigid limit on idling time. In the 14 days that AGC was provide to solicit input from its membership, many contractors pointed to the numerous climatic situations in which the OTC threshold limit could not be met without posing an undue risk to the health or safety of construction workers. Other contractors commented on equipment used by industry that

must remain running to keep the temperature levels up for the lay down operation of asphalt. In addition, the operation of cranes dominated as another area of concern. If a crane is performing a lift it may have to idle for a longer period of time. An example would be setting bridge beams where the engine is at a higher RPM during the actual lift, but once the beam is in place the crane may idle for a period while the beam is being secured before the rigging is taken off the load and the crane free to move to another task or shut down.

AGC members also provided anecdotal examples of companies that will set up a batch plant on a job site to produce concrete and use trucks that are not licensed to operate on the highway to carry ready mix product on the construction right-of-way to the placement site. The equipment's engine must continue to run while it performs this operation. A similar scenario exists in roller compacted dam construction where there is no roadway on which to travel. Those trucks run the mixer for discharging the concrete through what is called a Power-Take-Off (PTO). This PTO drives a hydraulic pump which serves the mixer. Again, the equipment's engine must be kept running to perform this operation.

In addition, bucket trucks – used for the purposes of working on communications systems both wired and wireless – must often remain parked and idling for several hours at a time when working in severe cold weather conditions. The operator must keep the bucket and cab of the truck warm for safety, and the bucket must be operational at all times when working on mission critical communications systems.

It is also critical to note that manufacturer recommendation for engine warm-up for many off-road machines calls for equipment operators to "LOW IDLE" the machine "for at least five minutes." The precise time needed to for this equipment to reach the recommended operating temperate is directly related to the existing environmental conditions and outside temperature. For example, the Caterpillar 980H Wheel Loader idling time is increased to 15 minutes if outside temperatures are above freezing and 30 minutes if below freezing (see attached example).

> "When you idle the engine in order to warm up the engine, observe the following recommendations:
>
> - Allow the engine to warm up for approximately 15 minutes when the temperature is higher than 0°C (32°F).
> - Allow the engine to warm up for approximately 30 minutes or more when the temperature is below 0°C (32°F).
> - More time may be required if the temperature is less than −18°C (0°F). More time may also be required if the hydraulic functions are sluggish."

See CAT Operation and Maintenance Manual – 980H Wheel Loader, Media Number SEBU7879-12, updated July 28, 2010.

Hydraulic spills may result if equipment has not been properly warmed up before it is put in operation. In cold climates, several AGC equipment operators report that they generally warm the engine and then cycle all controls to allow the warm hydraulic oil to circulate through all of the machine's hydraulic cylinders and lines. These procedures, while often

over-and-above those specified in the manufacturers' operating manuals, are performed to prevent hydraulic hose failure spills.

It takes energy to build equipment. Not operating equipment according to manufacturer recommendations means more frequent replacements. More frequent replacements mean more emissions in the production of that extra equipment.

Conclusion

As previously stated, AGC requests that OTC expand its outreach to the regulated community and offer equipment owners/operators more information and additional time to provide feedback on the proposed model rule. As a starting point, AGC believes that the additional exemptions offered above would help to ensure that work flow is not disrupted and that the equipment's primary propulsion engine can be used to power work that must be performed when the equipment itself is not in motion. Among other things, AGC's comments also address the practical issue of keeping workers safe by allowing engines to idle in extreme hot or cold weather.

Sincerely,

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