

## **ARB FEARS WORKER SAFETY AGENCY PLAN MAY UNDERCUT OFF-ROAD RULE**

A proposal by the state's worker safety agency to possibly exempt some construction equipment from having to install air pollution reduction devices is drawing opposition from the air board and environmentalists, who argue that the proposal could cripple the board's landmark, highly controversial "off-road" rule targeting construction equipment emissions.

The plan by the state's Division of Occupational Safety & Health (Cal/OSHA) responds to an industry petition claiming that using pollution retrofit devices on some equipment would risk the safety of workers. But the board and activists argue that the Cal/OSHA plan would make much of the construction pollution rule no longer viable.

The conflict between the agencies, the air board, industry officials, and environmentalists underscores the ongoing controversy over the Air Resources Board regulation, which is expected to be one of the costliest in the state's history. The regulation targeting air pollution from construction equipment is also lauded by the board and activists as a critical measure to help the state meet federal air quality standards and also reduce health risks tied to diesel emissions.

Cal/OSHA's board was scheduled Nov. 20 to consider a construction industry petition advocating for changes to ARB's off-road regulation. The petition essentially requests that some construction equipment be exempt from the rule if worker safety issues arise.

The industry's petition, submitted to Cal/OSHA this summer, requests that Cal/OSHA change language in ARB's off-road regulation to prohibit the use of retrofit emission reduction devices, or "traps," on construction vehicles unless the vehicle's manufacturer has given prior written approval. *A copy of the industry petition is available at [InsideEPA.com](http://InsideEPA.com).*

The industry argues that ARB's rule requiring the use of retrofit exhaust devices to cut emissions in some cases creates safety hazards by blocking the vehicle operator's visibility and that the devices also lead to extremely hot surfaces on the equipment.

Cal/OSHA staff recommended that its board grant the petition at the Nov. 20 board hearing. Cal/OSHA staff also recommended that a rulemaking proposal be brought to its board at a future hearing. *A copy of the Cal/OSHA staff recommendation is available at [InsideEPA.com](http://InsideEPA.com).*

ARB adopted the off-road regulation last year. The rule requires reductions in smog-forming emissions and diesel particulate matter or "soot" from construction equipment. The rule targets bulldozers, tractors, airport ground support, and a variety of other diesel off-road equipment. Fleets can comply with the regulation through a

combination of replacing older vehicles completely and by installing the retrofit pollution-reduction devices.

Compliance with the rule will cost industry just over \$3 billion according to ARB staff predictions, but industry has argued that the figure will likely be much higher.

ARB officials and environmentalists say they are very concerned about Cal/OSHA's proposal to grant the industry petition.

An ARB spokeswoman said this week that ARB officials were expected to testify at the Nov. 20 Cal/OSHA board meeting to oppose granting the petition.

ARB is requesting that the Cal/OSHA board not approve the industry's proposed regulation changes because the regulatory language suggested is extremely problematic, the ARB spokeswoman said.

Instead, ARB staff is hoping to work with Cal/OSHA staff to find a way to work together and implement the off-road rule, while still protecting workers, she said.

The industry's suggested changes to the rule that would limit the use of retrofit devices to only those with approval from the vehicle manufacturer would make major portions of the off-road rule no longer viable, a Nov. 18 ARB letter to the Cal/OSHA board argues. "Vehicle manufacturers have no incentive to approve the installation of retrofits on their vehicles; doing so would cause them to expend resources and assume additional liability for no benefit." *A copy of the ARB letter is available at InsideEPA.com.*

Some vehicle manufacturers, such as Caterpillar, market their own pollution retrofit devices, making it unlikely that they would approve the installation of retrofits made by other companies with which they are competing, even if there are no actual safety concerns, the ARB letter adds.

"With no way for ARB to compel vehicle manufacturers to grant approval, most, if not all, of the retrofits required by the off-road regulation could become impossible to install regardless of true safety concerns," the ARB letter states. The letter adds that the health benefits expected from the off-road rule, including 4,000 saved lives, would not be achieved under the suggested changes to the rule.

A coalition of environmentalists in a Nov. 12 letter to the Cal/OSHA board says it is deeply troubled by the Cal/OSHA staff plan to grant the petition. *A copy of the letter is available at InsideEPA.com.*

The letter disputes a notion in the Cal/OSHA staff review of the petition stating that there is a consensus among the principal stakeholders to revise the rule. "The only stakeholders involved appear to be industry representatives and Cal/OSHA. The public health and environmental community, air districts, and those who breathe California's dirty air have not been included in these discussions," the environmentalists argue. "Moreover, ARB staff that developed the regulation, clearly

an important stakeholder agency, appears to have concerns but has not been among the groups fully included in the discussion.”

The letter also slams the industry’s proposal, arguing that vehicle manufacturers do not have the expertise to determine whether an add-on pollution control device has been installed correctly and meets safety standards.

The environmentalists’ letter also calls for Cal/OSHA to convene an advisory group consisting of all stakeholders, including ARB and air district staff, to discuss if the off-road rule should be changed to address potential safety issues.

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