

ACPA enters the 'Air War' in California.

By Bill Davis, Contributing Editor

The American Concrete Pumping Association (ACPA) has entered the war between the construction industry and the California Air Resources Board (CARB) over two sets of diesel particulate matter (PM) regulations, one enacted and being toughly enforced and the other still in the “concept stage” at press time.

The two regulations include one on portable equipment which has ensnared trailer-mounted and skid-mounted pumps and the other, for off-road diesel equipment, specifically names concrete pump trucks as a target. This pretty much covers all of our equipment, but, just for fun, CARB has also announced that it plans, during the summer of 2007, to regulate on-road heavy diesel equipment—i.e. trucks—which could mean two sets of rules for the same piece of equipment. We will treat the proposed off-road on-road rules in future articles.

The Portable Equipment Airborne Toxic Control Measure went into effect March 11, 2005. You must pay particular attention the phrase “air toxic control measure” (ATCM), because CARB, in October, 2000, made the determination that diesel PM is a cancer-causing substance. California is the only state in the nation to make this decision, but right now it looks like it will stick. The California Trucking Association challenged the determination in state court in Fresno this spring and lost.

ACPA takes action

Normally the ACPA stays out of single-state issues, but in the case of environmental regulation, whither goes California, so goes the rest of the nation, according Executive Director Christi Collins. This is particularly true for the other 21 states that have been designated by EPA as having “non-attainment” areas on PM emissions—Alabama, Connecticut, Delaware, Georgia, Illinois, Indiana, Kentucky, Missouri, Montana, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia and West Virginia. What California does will establish a roadmap for these states.

“Those non-attainment states, plus California, make up a large segment of our membership,” Collins said. “This is an issue we cannot afford to ignore.”

The ACPA Board has approved the association’s entry into the air war in California and is backing it action up with funding, as necessary.

The association is working with equipment manufacturers, engine makers, California members and a variety of other resources to try to get the Air Resources Board to pull back its horns, re-think the issue and, at a minimum, reopen their portable equipment registration program so our members and the rest of the industry can avoid horrendous fines and possible forfeiture of their existing fleets. So far, CARB is adamantly refusing to reconsider reopening the registration period, even knowing that at least 50 percent of portable equipment remains unregistered.

Portable regs hit small pumps hard

The bad news for portable pump operators (50 horsepower and up), which surfaced this summer, is that most concrete pumping operations failed to meet the deadline for registration of their portable equipment (trailer and skid mounted pumps, as well as secondary engines on a few truck-mounted models) and, if caught, this equipment will suffer the “death penalty.”

As of January 1, 2006, any portable equipment that was unregistered in either the state or local district programs cannot be registered in the future unless it meets best available control technology (BACT) requirements, which in layman’s terms means an engine with the cleanest emissions available in the marketplace. Those who did not register their equipment are considered “scofflaws” by these agencies and are subject to fines (up to \$10,000 per day) and penalties, including, for owners of Tier 0 engines, having the agencies prohibit them from operating this equipment in the state of California.

What had started as a 1997 voluntary program to allow contractors to move their portable equipment from job site to job site without getting entangled in any of the state’s 35 local air district requirements has turned into a rule that forces replacement of existing equipment with new engines—which are not available for many of these units—either now, if you were unaware of the existing rule and get caught by an air district inspector or, if your older equipment is registered by January 1, 2010.

And, of course, it gets worse. Your equipment is subject to fleet average rules that kick in 2013 which will eventually require every portable pump to have a Tier 4 engine—which has yet to be designed, much less built.

According to the best available estimates, there are some 800 portable concrete pump operators in the state, with thousands of pieces of older equipment, virtually none of whom were aware of the portable equipment rules. So far we have only found a few of these companies who complied with the registration requirements—and that because they got a ticket before the registration period closed.

This makes buying new equipment a “buyer beware” experience in California—you need to make sure what kind of engine tier you are getting.

If you are registered and your fleet is unable to meet the new portable standards then you will be required to retire (remove from service, sell outside the state of California or scrap) that Tier 0 equipment by 2010. CARB’s own estimate of the fleet is that about one-third of the currently registered engines must be replaced with certified engines by that date.

The problem is that the agency has no idea how big the fleet of portable equipment really is. In June they estimated the registered portion of the fleet at 27,000 units and estimated they had roughly 50 percent of all portable engines registered. Then they, and the local air districts started to crack down on what they called “the scofflaws.”

The \$34 million fine

Just in case you think they are kidding, examine the case of MCM Construction of Sacramento, a major highway contractor with 17 projects underway right now. An air district inspector, following up on a tip from a competitor, showed up on one of the company’s job sites looking for unregistered portable equipment and was thrown off.

The response was simple and devastating—the local air district checked into each of the MCM projects, guessed at the size of the company’s unregistered portable equipment fleet, did a little arithmetic and, with the help of the state attorney general, filed suit, asking for \$34 million in fines and penalties and that the company replace all of its older equipment with new machines that meet the requirements.

MCM is trying to reach a settlement—estimates are that it will cost the company between \$4 and \$6 million before it’s all over, plus the cost of the new equipment.

What a \$300 job is worth

Even more to the point for our industry is the case of a small Sacramento trailer pump company, working on a \$300 job this summer in Placer County when a local district inspector showed up, asked for their registration information and when, met with stunned silence, pulled out his ticket book.

The fine for the failure to register for this company was \$10,000—they were let off easy, compared to MCM. The company has tried to work out an arrangement, which the agency has done in the past—a stipulation agreement where the company pays a penalty, registers the equipment, pays the fees for registration and agrees to replace it with “best available control technology” (BACT) as soon as it is available.

Here’s the rub—the three machines owned by this company are one and two year-old units—bought in 2004 and 2005, that came equipped direct from the factory with Tier 1 engines, instead of Tier 2 or Tier 3 engines that would take them through the first fleet average hurdles. The factory was within its rights, under a waiver from EPA to “use up existing inventory” of older engines and so far has refused to replace the engines on this equipment. That means this small company is facing a complete turnover of their equipment –which means the end.

Here’s the end game that ACPA supports. Open the registration program to all, repeat all members of the construction industry now. Increase the outreach effort so that all, repeat all affected parties at least know about the requirements. Amend the regulations regarding mandated technology turnover to run apace with the normal turnover of most of the fleets—in the case of portable concrete pumps, 10 to 15 years.

If this plan is followed, ACPA will have accomplished some important things, not only for California construction companies, but for the non-attainment states and eventually the entire construction industry/