

OTC Model Rule: Nonroad Diesel Equipment Anti-Idling

5.04.2011 draft

1. The terms [OTC STATE] and [OTC STATE AGENCY] are placeholders for individual State and State Agency names.

2. Please note that States opting to promulgate rules based on this model rule must comply with State specific administrative requirements and procedures.

3. Track changes are intended to reflect changes suggested by AGC-NJ on August 3, 2011.

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Deleted: any and all changes made to the model rule since circulation of the August 9th, 2010 draft

Model Rule for Nonroad Diesel Equipment Anti-Idling

PART Env-A XXXX

NONROAD DIESEL EQUIPMENT ANTI-IDLING.

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Env-A XXXX.01 Purpose. The purpose of this regulation is to protect public health and the environment by reducing diesel engine emissions consisting of criteria pollutants, primarily particulate matter (PM), that result from unnecessary idling while conserving fuel from nonroad diesel engines.

Env-A XXXX.02 Applicability. Except as provided in the paragraphs below, this regulation applies to any person, entity, owner, or operator of a property or location where a nonroad diesel engine is operated, owners and operators of a nonroad diesel engine, or the holder of the permit for the activity for which the nonroad diesel engine is being operated. (AGC-NJ – The property owner will often be the State of New Jersey or other state or local government entity.)

A nonroad diesel engine subject to this regulation is operated for, but not limited to, the following purposes: construction, mining, landscaping, recycling, landfilling, manufacturing, warehousing, composting, airport ground support equipment, industrial activities, and other operations.

Env-A XXXX.03 Non-Applicability. This regulation does not apply to locomotives, generator sets used on locomotives, marine vessels, recreational vehicles, farming equipment, military equipment when it is being used during training exercises, emergency or public safety situations, or any use of a nonroad diesel engine that is not for compensation. (AGC-NJ – Why is farming equipment exempt?)

Env-A XXXX.04 Definitions. Unless otherwise expressly defined in this section, the terms used in this regulation shall be defined by reference to [OTC STATE AGENCY: GENERAL DEFINITIONS]. As used in this regulation, the following terms shall, where the context permits, be construed as follows:

- (1) "Airport ground support equipment" means mobile diesel-fueled nonroad compression ignition engines used to service and support aircraft operations. Ground support equipment performs a variety of functions, including but not limited to: aircraft maintenance, aircraft fueling, pushing or towing aircraft, transporting cargo to and from aircraft, loading cargo, and baggage handling. Ground support equipment includes, but is not limited to, equipment types such as baggage tugs, belt loaders, and cargo loaders;
- (2) "Farming equipment" means any appliance used directly and principally for the purpose of producing agricultural products, including horticultural products, for sale and use or consumption off the premises. This definition includes any equipment or machinery used primarily in preparation of land, planting, raising, cultivating, irrigating, harvesting, or placing in storage of farm crops. This definition also includes any equipment or machinery used primarily for the purpose of feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or bees, or for dairying and the sale of dairy products. This definition also includes any equipment or machinery used primarily in any other agricultural or horticultural use or animal husbandry or any combination thereof;
- (3) "Idling" means, for purposes of a nonroad diesel engine, that the engine is running while the nonroad equipment is not moving and is not performing any other function for which it was designed;
- (4) "Locomotive" means a self-propelled diesel-powered vehicle, for pulling or pushing freight or passenger cars on railroad tracks;
- (5) "Marine vessel" means any diesel-powered vehicle that is used, or capable of being used, as a means of transportation on water except amphibious vehicles.
- (6) "Military equipment" means equipment that meets military specifications, is owned by the U.S. Department of Defense and/or the U.S. military services or its allies, and is used in combat, combat support, combat service support, tactical or relief operations or training for such operations;
- (7) "Nonroad diesel engine" means:
 - (A) with the exceptions discussed in paragraph (B), a nonroad diesel engine is any internal combustion engine that utilizes diesel fuel as its fuel source:

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- (i) in or on a piece of equipment that is self-propelled or serves a dual purpose by both propelling itself and performing another function (i.e., garden tractors, off-highway mobile cranes, and bulldozers); or
 - (ii) in or on a piece of equipment that is intended to be propelled while performing its function (i.e., lawnmowers and string trimmers); or
 - (iii) that, by itself or on a piece of equipment, is portable or transportable, meaning designed to be and capable of being carried or moved from one location to another. Indicia of transportability include, but are not limited to, wheels, skids, carrying handles, dolly, trailer, or platform;
- (B) An internal combustion engine utilizing diesel fuel as its fuel source is NOT a nonroad diesel engine if:
 - (i) the engine is used to propel a motor vehicle or a vehicle solely for competition, or is subject to standards promulgated under section 202 of the Clean Air Act; or
 - (ii) the engine is regulated by a federal New Source Performance Standard promulgated under section 111 of the Clean Air Act; or
 - (iii) the engine otherwise included in paragraph (A)(iii) of this definition remains or will remain at a location for more than 12 consecutive months or a shorter period of time for an engine located at a seasonal source. A location is any single site at a building, structure, facility, or installation. Any engine(s) that replaces an engine(s) at a location and that is intended to perform the same or similar function as the engine replaced will be included in calculating the consecutive time period. An engine located at a seasonal source is an engine that remains at a seasonal source during the full annual operating period of the seasonal source. A seasonal source is a stationary source that remains in a single location on a permanent basis (i.e., at least two years) and that operates at that single location approximately three months (or more) each year. This paragraph does not apply to an engine after the engine is removed from the location;
- (8) "Nonroad equipment" means a piece of equipment that is powered by a nonroad diesel engine;

- (9) “Recreational vehicle” means any mechanically propelled vehicle used for pleasure or recreational purposes running on rubber tires, belts, cleats, tracks, skis or cushion of air and dependent on the ground or surface for travel, or other unimproved terrain whether covered by ice or snow or not, where the operator sits in or on the vehicle. This definition includes snowmobiles, all-terrain vehicles (ATVs), non-road motorcycles, or any other legally registered motor vehicle when used for non-road recreational purposes.

Env-A XXXX.05 General Requirements. No person, entity, owner, or operator shall cause or allow the idling of nonroad diesel engine under its control or on its property for more than [three (3)/five (5) consecutive minutes], except as provided in AXXXX.06.

Env-A XXXX.06 Exemptions. The idling limit does not apply to:

- (1) Idling necessary to 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 nonroad diesel engine;
- (2) Idling for testing, servicing, repairing, or diagnostic purposes, including regeneration of a diesel particulate filter;
- (3) (AGC-NJ – This is not an exemption; rather, the activity described here is not regulated as it does not constitute “idling” as that term is defined in the definition section. Establishing an exemption for activity that is not regulated in the first place is confusing.)
- (4) Idling when queuing, i.e., when nonroad 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.; (AGC-NJ - The guidance can clarify that, ordinarily, “queuing” should not occur for more than 15 minutes. However, when queuing does, in fact, require idling for more than 15 minutes, it should be exempt. Queuing for more than 15 minutes might warrant closer enforcement scrutiny to discern whether the equipment is actually queuing or is simply not engaged in a construction related activity; however, a categorical 15 minute limit is inappropriate.)
- (5) Idling by any nonroad diesel engine being used in an emergency or public safety capacity; and
- (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.

Deleted: 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);

Deleted: for less than fifteen (15) minutes

Deleted: Idling will be limited to fifteen (15) minutes when queuing

(7) Idling to ensure the health and safety of the equipment operators. (AGC-NJ – This exemption is discussed in the guidance, but is not tethered to any text in the model rule itself.)

Env-A XXXX.07 Penalties. Penalties may be assessed to any person, entity, owner, or operator who causes or allows idling of non-road diesel equipment in violation of this regulation to occur on property or locations under their control or during activities for which a permit was acquired. Any person, entity, owner, or operator of a property or location where a nonroad diesel engine is located or operated may be held responsible for ensuring compliance of all contractors and subcontractors operating a nonroad diesel engine at that site. Owners and operators of a nonroad diesel engine may also be held responsible for complying with this regulation. (AGC-NJ – See comments in the Guidance document regarding liability. Also, diffusing responsibility among many different parties will cause confusion and diminish responsibility.)

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Env-A XXXX.08 Enforcement. The prohibitions of this regulation may be enforced by [OTC STATE AGENCY]. For the purposes of inspecting a nonroad diesel engine to determine compliance with these regulations, an inspector of any enforcing authority has the right to enter any property or location where a nonroad diesel engine is located. (AGC-NJ – The model rule should recognize that the agencies and individuals who are authorized to enforce the rule will depend upon the specific statute that authorizes the rule and will vary from one state to another. In NJ, for example, local government agencies do not have authority to enforce rules adopted under the NJ Air Pollution Control Act; further, rules limiting the idling of nonroad equipment are not authorized by and cannot be adopted under the Motor Vehicle Code (Title 39) without changes to the statute.)

Deleted: any municipal or local government entity having jurisdiction over the place where the idling occurs, as well as by any agent or employee of the

Env-A XXXX.09 Severability. If any provision of this regulation or the application thereof to any person or circumstance, is held invalid by a court of competent jurisdiction, the validity of the remainder of the regulation shall not be affected thereby.