From:	Laiosa, Rayna
To:	jjakuta@otcair.org.;
cc:	Ozone Transport; Fagan, Tim; Holgado, Leilani; Smith, Joseph A.;
Subject:	Comments on the Draft Model Rule for Non-Road Diesel Equipment Anti-Idling
Date:	Monday, April 09, 2012 1:40:52 PM

April 9, 2012

Joseph Jakuta, Environmental Analyst

Ozone Transport Commission

Dear Joseph,

PSEG Services Corporation, on behalf of its affiliate Public Service Electric & Gas Company ("PSE&G") hereby submits the following comments on the Draft Model Rule for Non-Road Diesel Equipment Anti-Idling. These comments are in addition to our previous comments submitted on this rule on September 30, 2011. These additional comments raise a concern with the model rule's assignment of violations and request incorporation of the guidance document's operator safety provisions into the regulatory text.

COMMENT 1: Draft Model Rule for Non-Road Diesel Equipment Anti-Idling (Clarification of responsibility)

PSE&G is concerned that the draft language addressing potential violations and associated penalties is too vague and could lead to penalties being assigned to parties that do not have control over the operation of non-road diesel equipment, thus dampening the effect of the proposed rule. Thus, we recommend the following clarifications to apply the potential penalties to the owner or operator of the nonroad diesel engine in violation of the anti-idling rule, reflecting similar existing rules at the state level (additions in **bold**; deletions in ~~strikethrough~~):

> 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~~.
>
> …

Env-A XXXX.05 General Requirements. No ~~person, entity,~~ owner~~,~~ or operator shall cause or allow the idling of nonroad diesel engine**s** under its control ~~or on its property~~ for more than [final number of [1] minutes] .

…

Env-A XXXX.07 Penalties. Penalties may be assessed to any ~~person, entity,~~ owner~~,~~ or operator **of a nonroad diesel engine** who **is primarily responsible for** caus**ing** or allow**ing** 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 will 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 **are** ~~may also be held~~ responsible for complying with this regulation.

In addition, the draft guidance states that "Parties are jointly and severally liable for violations, meaning multiple parties can be held liable for the same violation." We believe this is unnecessary and would serve only to increase administrative burden, rather than promote compliance. We would instead recommend that the model rule assign the violation and associated penalty to the owner or operator responsible for the violation. In an extreme hypothetical under this wording, if a crane operator is contracted to perform work for a company which rents the land on which the violation occurs from another entity, penalties for a violation could be assigned to the operator, the contracting company, and the property landlord. However, only the crane operator is in a position to correct the violation and thus should be the only recipient of the notice of violation and any associated penalty.

COMMENT 2: Draft Model Rule for Non-Road Diesel Equipment Anti-Idling (Exemptions for extreme weather conditions)

We support OTC's draft guidance's clarification that "Enforcement personnel will have the discretion to make exceptions to the idling limitations when idling is necessary to provide heating or air conditioning to ensure the safety of the operators. When temperatures are within 25ºF & 85ºF no exemptions will be allowed. Additionally, equipment with APUs installed for temperature control

purposes will not be exempted at any temperature." We believe this is a sufficient temperature range to ensure workers' safety. However, we encourage OTC to include this specificity in the rule language rather than the guidance to ensure certainty, particularly in the event a state may not adopt the guidance in tandem with the regulation.

PSE&G's concern is worker safety. When operating equipment during extreme weather conditions, heat or cold stress presents an elevated risk to field personnel by increasing the frequency and severity of equipment operator judgment errors. In addition, extreme cold can impair dexterity that is needed by equipment operators to manipulate sensitive mechanical controls (excavation and lifting) that are used on, or in proximity to, pressurized natural gas and live electric delivery system components. In order to aid in ensuring the safe operation of equipment, we recommend that the rule include the guidance's exclusions for utility work that is conducted in extreme hot and cold conditions. In this instance, regulatory ambiguity that hinders operator safety could be an unintended consequence of the rule, as it is currently written.

PSE&G recommends the following:

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

…

(6) Idling to ensure worker safety, in equipment such as backhoes, dozers, and other applicable non-road equipment that has both a cab and heating and/or air conditioning during cold weather (25 degrees F and lower) and hot weather (85 degrees F and higher).

PSE&G appreciates the opportunity to comment on this proposal. If you should have any questions, please contact me at 973-430-8412 or by email at Rayna. Laiosa@pseg.com.

[1]

PSE&G has previously recommended increasing this limit in comments submitted September 30, 2011.

Best Regards,

Rayna Laiosa
Rayna Laiosa, CHMM, CPEA
Manager Environmental Policy
PSEG Services Corporation
80 Park Plaza MC- T-17
Newark, NJ 07102
973-430-8412 - Office
973-565-0525 - Fax

---

[1]

PSEG has previously recommended increasing this limit in comments submitted September 30, 2011.

The information contained in this e-mail, including any attachment(s), is intended solely for use by the named addressee (s). If you are not the intended recipient, or a person designated as responsible for delivering such messages to the intended recipient, you are not authorized to disclose, copy, distribute or retain this message, in whole or in part, without written authorization from PSEG. This e-mail may contain proprietary, confidential or privileged information. If you have received this message in error, please notify the sender immediately. This notice is included in all e-mail messages leaving PSEG. Thank you for your cooperation.