

Recall of smog-bypass engines revisited

By Chris Bowman

The Sacramento Bee (Updated Thursday, March 25, 2004, 4:39 PM)

California's air pollution police have backed off a plan that would have required manufacturers of diesel engines to recall at least 400,000 big trucks, buses and RVs that are electronically programmed to bypass smog controls at freeway speeds.

The state Air Resources Board instead is scheduled to vote today on a voluntary approach that would have no more than 80,000 of these big rigs reprogrammed by 2010.

The board would withhold regulation so long as the engine manufacturers and vehicle owners have made certain progress uninstalling the "smog defeat" feature.

Environmentalists say California would be foolish to rely on the word of manufacturers who rigged their engines to subvert state and federal pollution-control rules.

"Why should the public trust the industry that was caught cheating in the first place?" said Craig Noble, spokesman for the Natural Resources Defense Council, a national environmental lobby. The air board's staff defends the voluntary approach as the most promising way of achieving large cuts in tailpipe emissions sooner rather than later.

Most of the world's top makers of truck and bus engines said last fall that they would sue California if it adopted a rule making them pay for fixing or "re-flashing" the computer chips sooner than required under a 1998 federal court-approved settlement.

State officials said the legal challenge ultimately would fail but likely would cost California years of delay in retrofitting the engines.

The proposed voluntary route promises to avert the legal obstacles and delays because it has the support of the diesel engine companies and the California Trucking Association, said Jerry Martin, the board's chief spokesman.

"We can start getting the tons of pollution reduction now as opposed to fighting the companies in court and getting the reductions two years from now," Martin said.

Accelerating the removal of the smog-defeat feature, as smog regulators call it, would result in a huge reduction of nitrogen oxides, or NOx, the toughest and most expensive of the regulated air pollutants to control. That's because it's relatively easy, quick and inexpensive to uninstall the program, which causes NOx emissions to more than double when rigs are at cruising speeds.

Technicians simply plug a laptop loaded with the correction software into the engine's electronic panel, which is usually accessible, said Karen Wilson, an official with the Sacramento Metropolitan Air Quality Management District.

"It takes only 20 minutes," Wilson said.

From a regulatory standpoint, the Sacramento region has the most to gain from a hastened switch-out of the high-NOx engine program, state air board officials said.

That's because the Sacramento area has less than a year to bring its high NOx levels within compliance of national clean-air standards by the federal deadline. The smoggier San Joaquin Valley and Los Angeles region have several more years to comply.

The air board targeted the smog-defeat programs last year after learning that fewer than 4% of an estimated 1.3 million trucks and buses equipped with the devices had been retrofitted with the compliant software, state officials said.

The rate fell far short of what state and federal air pollution officials had anticipated in negotiating an industry settlement over the rigged engines.

Under the agreement, seven engine manufacturers, including U.S. diesel giants Mack Trucks Inc., Cummins Engine Co. and Caterpillar Inc., promised to reprogram the engines when they were overhauled.

State air board officials understood that the heavy-duty diesel engines are rebuilt every 300,000 to 400,000 miles. As it turned out, the 1993 to 1998 models with the smog-defeat programs are running closer to 1 million miles before overhaul.

"Clearly, the industry gave us information that wasn't accurate," the air board's Martin said.

Industry representatives deny that they misled regulators.

"At no time did engine manufacturers misrepresent when engines would be rebuilt under the federal consent decree," said Tim French, an attorney with the Engine Manufacturers Association in Chicago.

In the October 1998 settlement, the engine companies said they did nothing illegal. The computer program was designed to save fuel at cruising speeds while still meeting the federal emission standards.

Manufacturers, however, agreed to pay a record-setting \$1 billion in civil fines and corrective actions for allegedly committing what then-U.S. Environmental Protection Agency Administrator Carol Browner called "high-tech cheating" that violated the Clean Air Act.

But over the protests of environmentalists and local smog enforcers, the consent decree did not require that the high-polluting engines be immediately recalled and modified.

Last year alone, the engines put out about 1 million more tons of NOx nationwide than they were supposed to, the equivalent of adding 65 million cars to the nation's highways, according to the EPA.

California has more than 400,000 of these rigs on its roadways, including about 80,000 registered in the state.

Under the voluntary plan, manufacturers would have to pay for the retrofits regardless of whether the vehicles were being overhauled.

The plan calls for 35% of the California-registered vehicles to be fixed by Dec. 1. If the deadline is blown, the air board can make the recall mandatory. The compliance goal grows to 60% by June 2005, 80% by February 2006 and 100% by 2010.

Full compliance would mean a NOx reduction of a projected 30 to 50 tons daily, the same effect as removing 1 million cars from California's roads, Martin said.

Air district roused by settlement

By Mike Taugher and Lisa Vorderbrueggen

CONTRA COSTA TIMES - March 25, 2004

Bay Area refineries could face new pollution reduction rules by the end of next year under terms of a settlement reached Wednesday between environmentalists and regional air-quality and transportation agencies.

The Bay Area Air Quality Management District must either propose new rules to reduce pollution from refinery flares and other refinery sources or show why such rules are not cost-effective.

"We think it's going to result in significant reductions in pollution -- tons per day," said Will Rostov, a lawyer for Oakland-based Communities for a Better Environment, one of the groups that sued.

The lawsuit caps three years of challenges from environmentalists who accused the air district and the Metropolitan Transportation Commission of failing to do enough to reduce pollution in their 2001 smog-reduction plan.

In that plan, the air district agreed to revisit earlier estimates of how much pollution might be coming from refinery flares, certain marine loading operations and other sources that the air district considered relatively trivial.

In the lawsuit, environmentalists sought concrete pollution reduction commitments.

Since then, the air district has found those sources contribute greater amounts of pollution than earlier believed. In the most dramatic case, air district engineers estimate that flares contribute at least 6 tons of air pollution a day, far more than previously thought.

As a result, the air district already is moving to pass rules to restrict pollution from flares and possibly other sources, said air district spokeswoman Teresa Lee. She said the air district already was planning to meet the December 2005 deadline in the settlement agreement.

"We were going to do that anyway," she said.

A spokesman for the Western States Petroleum Association disputed environmentalists' assertion that the settlement will bring significant reductions in air pollution.

"We will continue to press for reasonable emissions reductions where they're available," WSPA spokesman Dennis Bolt said.

The settlement requires the air district to develop proposed rules, or justify why doing so is unnecessary, but it does not require the district's board of directors to adopt the rules. The air district and the transportation commission agreed in the settlement to pay \$350,000 in environmentalists' legal bills.

Lee said that since the upheaval surrounding the 2001 plan, the air district has taken more seriously issues raised by environmentalists and residents of the air district.

"Our district has become more proactive," she said.

On the transportation piece of the deal, the Metropolitan Transportation Commission agreed to study the benefits of compact, mixed-use development near transit as a part of its next highway and transit spending plan.

The analysis will include a comparison of the cost-effectiveness of projects in the plan, such as BART to San Jose and express bus routes.

Under federal law, the commission must update its 20-year regional transportation plan every three years. The agency is midway through planning its next version.

"All we wanted was an honest test of our ideas, and we think that when they are tested, smart growth will look very good," David Schonbrunn told MTC commissioners Wednesday.

Schonbrunn is president of Transportation Solutions Defense and Education Fund, a group that sued the agencies along with Communities for a Better Environment. "The only reason we initiated litigation was our frustration at your agency's unwillingness to consider our input," he said.

Schonbrunn and other environmentalists oppose projects in the regional plan, such as a BART extension to San Jose or a fourth bore in the Caldecott Tunnel, on the grounds that they cost too much and fuel suburban sprawl.

But the commission already planned to study smart growth and evaluate cost-effectiveness in the next plan, said Contra Costa County Supervisor and Commissioner Mark DeSaulnier.

"We're already doing things differently as a agency, but it's good a thing to put the litigation behind us," DeSaulnier said. "I don't agree with our opponents' litigation strategy, but I agree with their goals."

ARB puts diesel cleanup on fast track

Makers agree to recall vehicles programmed to bypass smog controls.

By Chris Bowman -- Bee Staff Writer

Published in the Sacramento Bee 2:15 a.m. PST Friday, March 26, 2004

In a potential big win for the smoggy Sacramento area, state air pollution regulators Thursday approved a plan to accelerate the removal of "smog defeat" features built into big diesel engines powering tens of thousands of trucks, buses and motor homes.

The plan promises remarkably large cuts in toxic soot and smog-forming emissions several years sooner than is occurring under a legal settlement between state and federal environmental regulators and the world's major diesel engine manufacturers.

The state Air Resources Board rule is not a mandate but rather an agreement with the manufacturers to voluntarily recall vehicles with the rigged engines ahead of the schedule required under the settlement.

Some members of the politically appointed board said they had difficulty backing away from an earlier proposal that would have made the accelerated recalls mandatory.

They have said in meetings that the engine companies betrayed the public trust when they programmed 1993 through 1999 models to bypass smog controls at cruising speeds as a fuel-saving measure.

"I'm still pretty angry about this," said Matthew McKinnon, a board member appointed by former Gov. Gray Davis. McKinnon is executive officer of the California Conference of Machinists, a union that includes truck drivers.

McKinnon nonetheless approved the voluntary approach, saying, "We get cleaner air faster this way."

Unenforceable agreements have unraveled in the past, as when automakers in the mid-1990s failed to deliver promised numbers of zero-emission vehicles to California sales lots.

In the case of the high-polluting diesel engines, however, air board officials said California can gain air quality improvement only under a voluntary approach.

That's because the agreement approved Thursday kicks in immediately, whereas a regulation, by law, could not go into effect for another year, air board officials said. And an enforceable rule would invite further delay as engine manufacturers have vowed to tie up any such measure in court.

Board Chairman Alan Lloyd said Californians cannot afford to reject industry's offer to voluntarily pay for the engine modifications ahead of time because the cost-effectiveness is so great - less than \$100 per ton in reducing tailpipe emissions of smog-forming nitrogen oxides, or NOx.

"To sit idly by when an inexpensive, readily available solution is at hand is unforgivable," Lloyd said.

By comparison, the air pollution control district in the Sacramento region collectively has been able to cut NOx by about 3 tons a day the past decade, at a cost of roughly \$13 million a ton, according to the Sacramento Metropolitan Air Quality District.

Representatives of the Sacramento air district applauded the state air board's decision.

"We need these emission reductions as soon as we can possibly get them," said Mike Neuenburg, a district official.

Several environmental groups, however, urged the board to make the agreement mandatory.

"It's the only way to appropriately deal with a proven bad actor," said Bonnie Holmes-Gen, spokeswoman for the American Lung Association of California.

The six-county Sacramento region risks losing federal highway construction funds and other economic penalties if it fails to comply with federal clean-air standards by next year.

The plan adopted Thursday calls for 35 percent of the estimated 60,000 California-registered vehicles equipped with the smog defeat devices to be fixed by Dec. 1. If the deadline is blown, the air board can make the recall mandatory.

The compliance goal grows to 60 percent by June 2005, 80 percent by February 2006 and 100 percent by 2010.

If the voluntary plan's quotas aren't met, the recall becomes mandatory and extends to all 400,000 rigs that pass through California.

The air board targeted the smog defeat programs last year after learning that fewer than 4 percent of an estimated 1.3 million trucks and buses equipped with the devices had been retrofitted with the compliant software, state officials said.

The rate fell far short of what state and federal air pollution officials had anticipated in negotiating an industry settlement over the rigged engines.

Under that agreement, engine manufacturers promised to reprogram the engines when they were overhauled. State air board officials said they understood that heavy-duty diesel engines are rebuilt every 300,000 to 400,000 miles. As it turned out, the 1993 to 1998 models with the smog defeat programs are running closer to 1 million miles before overhaul.

In the October 1998 settlement, the engine companies said they did nothing illegal. The computer program was designed to save fuel at cruising speeds while still meeting the federal emission standards in the slower speed treadmill test required before the models were sold.

The manufacturers, however, agreed to pay a record \$1 billion in civil fines and corrective actions for allegedly violating the federal Clean Air Act.

The seven manufacturers, with about 95 percent of the diesel market, are: Caterpillar Inc., Cummins Engine Co., Detroit Diesel Corp., Mack Trucks Inc., Renault SA, Navistar International Transportation Corp. and Volvo Truck Corp.

California Auto Dealer Charged with Violating Clean Air Act

Somis, CA - March 18, 2004 Claus Graeter of Somis, Calif., operator of GC Motor Corporation in Oxnard, Calif., was arrested on March 5 on charges that he allegedly conspired to defraud the United States by smuggling and using false statements to import goods into the country, and by making false statements under the Clean Air Act. Graeter's company imported Mercedes Benz Smart Cars and Gelandewagens, BMW Z28s, Range Rovers and other foreign cars. The charges against Graeter allege that these vehicles did not meet American emissions or safety standards, and that the defendant falsely told officials of the EPA, the Customs Service and the National Traffic Safety Administration that the vehicles were for personal temporary use, that they would not be resold and were worth far less than their actual value. The case was investigated by the Los Angeles Area Office of EPA's Criminal Investigation Division, the Inspector General's Office of the U.S. Department of Transportation and the Bureau of Immigrations and Customs Enforcement. The case is being prosecuted by the U.S. Attorney's Office in Los Angeles. A criminal complaint is merely an allegation and all defendants are presumed innocent unless or until proven guilty in a court of law.

Forest fire threatens ski area in San Bernardino Mountains

The Modesto Bee, Friday, March 26, 2004

BIG BEAR, Calif. (AP) - A fire set to destroy brush and dead trees got out of control Thursday and threatened a ski area as it roared through 100 acres in the San Bernardino Mountains, authorities said.

No damage or injuries were reported but a voluntary [evacuation of local ski resorts was called because of heavy smoke](#), the San Bernardino County Sheriff's Department said.

Brad Farmer of Bear Mountain ski resort told KCAL-TV that skiers were evacuated from his lodge and nearby Snow Summit. He said the fire destroyed a hut used by the ski patrol.

There was some snow on the ground, and as many as 50 Bear Mountain resort staff were fighting the flames. Water hoses poured water onto the roof of a ski lift shed.

The prescribed burn by firefighters got out of control shortly after 2:30 p.m. in Barton Flats on the back side of Bear Mountain Summit, said Georgia Smith of the U.S. Forest Service.

Two helicopters and two air tankers were called in to help battle the flames.

The area is about two miles south of the resort city of Big Bear.

Last fall, wildfires burned tens of thousands of acres and hundreds of homes in the neighboring Lake Arrowhead area of the 840,000-acre San Bernardino National Forest.

But vast stands of trees killed by an infestation of bark beetles remain.

Group says 2003 historic year for pro-environment legislation

By Anna Oberthur

The Modesto Bee, Friday, March 26, 2004

SACRAMENTO (AP) - The California Legislature passed a record number of pro-environment laws in 2003, making important breakthroughs in the areas of [clean air](#) and e-waste, in spite of a continuing partisan split, according to a report released Thursday by an environmental group.

"Last year was a historic year for environmental protection, and that's not hyperbole. It will probably not be matched again for quite some time," said Rico Mastrodonato, Northern California director of the California League of Conservation Voters.

The nonpartisan political action group rated members of the Legislature on 22 environmental votes. Each bill was worth a little less than 5 percentage points. Members gained the points if they approved a bill. If a member was absent for voting without an excuse it counted as a no vote, Mastrodonato said.

For Assembly Democrats, the average score went up 8 points to 94 percent, and for Senate Democrats the average rose one point to 93 percent.

The Republicans' average fell one point in both the Senate and Assembly to 3 and 4 percent, respectively.

The split between Republicans and Democrats shows a "major disconnect" between the majority of Republican lawmakers and their constituents, according to the League.

But such ratings indicate a legislator's support for a particular side's version of an environmental bill; often, many Republicans support environment-oriented bills but not the versions backed by the League or its allies.

The Republicans' average has been dropping since 1998, even though polls show that the majority of Californians say the environment is an issue that is extremely important to them, Mastrodonato said.

Republican leaders did not return calls for comment Thursday.

Before he was ousted by Republican Arnold Schwarzenegger in the October recall election, Democratic former Gov. Gray Davis signed into law all 19 pro-environmental laws that reached his desk - a first in the 30 years the organization has been keeping track, the report says.

They included a first-in-the-nation law enacting a recycling program for outdated televisions and computer monitors and [a package of bills tackling air pollution in the Central Valley](#).

But next year's outlook doesn't appear quite so promising, Mastrodonato said.

Schwarzenegger has laid out an ambitious environmental agenda, but fulfilling it could prove challenging while the state grapples with its budget problems.

Still, the governor's popularity and apparent political power could lead to more Republican support on environmental issues.

"I think it's very possible if we get the governor to support a piece of legislation, it will be very difficult for some of the Republicans to vote against the bill," Mastrodonato said.

March 25, 2004

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Council to allow new homes on Aera land

By James Burger, The Bakersfield Californian

Bakersfield City Council members on Wednesday approved a zone change that will eventually allow homes on around 160 acres of northeast Bakersfield hillside. The land, owned by oil company Aera Energy, sits north of Paladino Drive near where Morning Drive will one day snake north and east toward the Kern County Soccer Park.

Sierra Club spokesman Gordon Nipp, who appealed the Planning Commission's approval of the project to the council, spoke out against the approval.

Nipp said many of his concerns were similar to those he's raised on a long list of other projects the Sierra Club has challenged in the last year.

But he focused Wednesday night on **air pollution** and the way the city studies how much pollution new homes add.

He said city staff doesn't look closely enough at the reports consultants for developers submit to the city to justify development.

But representatives for WZI, the consultant who did the **air quality** study for Aera Energy, said their work is very specific and is tailored carefully to what the developer actually plans to build.

Development Services Director Jack Hardisty said the city is also careful to look at the studies submitted by developers and pays special attention to the details the consultants put into their computer models.

He said city planning staff, in the case of the Aera project, had noted and responded to the Sierra Club concerns.

"I believe we answered those concerns appropriately even though the Sierra Club still isn't satisfied," Hardisty said.

Council members approved the project with a 6-0 vote with Councilman Harold Hanson absent. Nipp, after the decision, said he is just trying to push the city to impose more stringent **air quality** standards on new development.

The Sierra Club has filed lawsuits against other developments similar to the Aera project, and settled some of those suits out of court in exchange for promises from developers to pay \$1,200 **air quality** mitigation fees for each home they build.

Aera representatives said the company does not yet have plans to develop the property. The zone change was requested, Aera land specialist Chris Boyd said, because other land in the area is moving toward development.

* In other action at the council meeting, council members stopped just short of approving a revision to the city's fireworks ordinance.

Each year the city holds a lottery to determine which nonprofit groups will be given lucrative permits to sell fireworks around the Fourth of July. The council's Legislative and Litigation Committee looked at inequities in the system before recommending a decision to the full council.

On Wednesday, the council decided to send the review of the fireworks ordinance back to the committee for more study.

The committee will look at whether nonprofits should be allowed to apply for a permit multiple times, whether 39 groups who are guaranteed permits will be able to keep their "grandfathered" status and whether fees paid to apply for a permit will be returned to applicants if they lose in the lottery.

* Council members also heard a report from Planning Director Stan Grady on the city's efforts to expand its sphere of influence -- a boundary within which the city is allowed to annex land.

Group says 2003 historic year for pro-environment legislation

By Anna Oberthur, Associated Press Writer

Published in the Bakersfield Californian

Thursday, March 25, 2004

(03-25) 17:34 PST SACRAMENTO (AP) --

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Voluntary diesel emissions program enacted

DON THOMPSON, Associated Press Writer

Thursday, March 25, 2004
(03-25) 17:37 PST SACRAMENTO (AP) --

The San Francisco Chronicle

California air pollution regulators adopted a voluntary plan Thursday they say will speed cleanup of illegal diesel engines, but backed it with regulations that will kick in if not enough truckers comply quickly.

Federal and state regulators thought they had resolved the issue six years ago with a \$1 billion settlement with truck manufacturers. The settlement required manufacturers to replace so-called "smog defeat" devices that regulators contend were installed to illegally skirt earlier emissions requirements by bypassing emissions equipment in trucks, buses and recreational vehicles when they reached highway speeds.

But the settlement required replacement only when heavy -duty engines built between 1993 and 1999 underwent major overhauls, something regulators thought would be needed quickly for most engines. They've since discovered modern engines are more durable, so that only 4 percent to 10 percent of the controversial devices have been removed.

That leaves more than 60,000 California-licensed vehicles with the devices, along with an estimated 300,000 to 400,000 vehicles licensed in other states that drive through California.

The voluntary plan triggered criticism from environmental groups because it applies only to the California vehicles, while the regulations would have compelled compliance by any vehicle using state highways.

But the Air Resources Board estimated out-of-state vehicles produce between six and nine tons of diesel pollution each day. Removing the devices from the bulk of state-licensed vehicles will prevent an estimated 30 tons a day of diesel pollution from entering the atmosphere, the equivalent of removing 1 million cars from California highways.

The out-of-state vehicles must still comply with the original 1998 settlement between the board, the federal Environmental Protection Agency and diesel manufacturers.

The board's voluntary plan requires manufacturers to replace 35 percent of the devices by Nov. 1; 60 percent by June 2005; 80 percent by February 2006; and 100 percent by 2008. The final deadline was moved up two years from the board's staff recommendations at environmental groups' request.

Some board members and air quality groups questioned the voluntary plan, given the installation of the bypass devices in the first place. But the plan avoids a threatened lawsuit by manufacturers, requires them to pay all replacement costs, and gets a substantial percentage of the devices off the highways more quickly than a regulation, said board spokesman Jerry Martin.

"If the voluntary program stumbles for any reason, then the board has a regulatory program in place that can be enacted almost immediately," he said.

The state and trucking industry will launch a program to persuade truckers to bring their rigs in for the free bypass removal at truck fairs and other events, under the agreement with the California Trucking Association and manufacturers including Caterpillar, Cummins, Diesel Detroit, Mack-Renault, Navistar and Volvo.

[Fresno Bee editorial, Friday, March 26, 2004:](#)

Dealing with cheaters

Compromise with diesel engine manufacturers is a necessary evil.

(Updated Friday, March 26, 2004, 5:25 AM)

It has been six years since the country's leading diesel engine makers were caught tinkering with government required pollution control devices on truck engines. The cheating, aimed at boosting mileage, went on for 10 years. It added the air pollution equivalent of 50 million cars to the nation's roads.

While they did not admit wrongdoing, the companies -- including Mack Trucks, Cummins Engine Co. and Caterpillar -- reached a \$1 billion settlement with the federal EPA and the state Air Resources Board.

Under it, they agreed to remove the illegal devices that defeated pollution controls -- not immediately, but over a period of years as the trucks involved were brought in for major engine overhauls.

But the truck engines turned out to be more durable than the government recognized. Regulators anticipated that they would have to be rebuilt after 300,000 to 400,000 miles. Instead, they need rebuilding only every 1 million miles on average. Since 1998, only 10% of the heavy -duty truck fleet has been repaired.

Faced with federal requirements to clean the air and desperate to get dirty trucks repaired faster, CARB considered issuing a new regulation to force truck owners to go in for repairs earlier. Unfortunately, the flawed settlement agreement they had accepted made that difficult. Individual truck owners would have had to pay for the mandated early repairs, not engine companies. Faced with fierce opposition, CARB staff came up with a compromise. Under the compromise, the air board would approve a new rule mandating repairs but hold the rule in abeyance until December. During that period, the California Trucking Association and engine manufacturers would work together on a voluntary program to speed truck repairs.

The goal is to have 35% of dirty trucks repaired by December. If that goal is reached, the rule will be suspended again until June 2005, when 60% of the trucks are scheduled to be repaired and then until January of 2006, when 80% will be repaired.

A compromise may be necessary but this one needs to be toughened. Among other things, CARB should require the California Trucking Association to commit to a specific dollar amount to help publicize and implement the repair program. Engine manufacturers should be pushed to repair pollution control systems on buses and motorhomes that were tampered with, as well as those on trucks. There needs to be greater assurance that the final 20% of dirty trucks get fixed after 2006.

Outmaneuvered by the manufacturers once already, regulators have to compromise. But they don't have to sign on to another weak deal that leaves dirty trucks on the road longer than they have to be.

LASTGASP

"We can't go on living this way.

And we won't."

Diesel companies cheated and got caught. The state can't let that happen again.