

EPA Public Hearing on California State Nonroad Engine And Vehicle Pollution Control Standards June 29, 2006 – Washington D.C.

My name is Eric Skelton. I am a Senior Policy Analyst with NESCAUM, the Northeast States for Coordinated Air Use Management. NESCAUM is the clean air association that serves the 8 northeast states in developing policies, providing information and technical support towards the states' efforts to provide clean air for their citizens. I am here today to support California's request for authorization to enforce its state emission standards for small off road engines.

The criteria under the Clean Air Act for determining if California is authorized to or prohibited from enforcing its emission standards for small off road engines are straightforward and narrowly focused:

EPA must authorize California to enforce its standards if:

- The California standards are at least as protective of public health and welfare as federal standards.

EPA may not authorize the California standards if:

- California's determination is arbitrary and capricious
- California does not need such standards to meet compelling and extraordinary conditions, or
- California's standards are not consistent with CAA Section 209
 - i.e., if there is inadequate lead time to permit development of technology, or
 - if there is inconsistency between California and federal certification procedures.

Clearly California meets all of these tests and should receive expeditious authorization from EPA to enforce its standards. And to cite just a few reasons:

- The California Air Resources Board (ARB) properly followed the state's rulemaking procedures including meeting with the outdoor power equipment industry to hear their concerns, preparing staff reports and other documents to make the case that the standards are an important part of California's attainment strategy, and holding hearings.
- California is once again leading the nation, setting stringent limits for a significant emissions category. Clearly, these standards will be more health protective than current federal standards and they will serve as a model for the subsequent federal effort to address emissions nationally for the same category.

- The exhaust catalysts, the low permeation hoses and fittings and the gas cap technologies are already being successfully used in other applications, including some lawn and garden equipment. There is little need for additional lead time to develop technology.

I was a bit surprised to see that EPA is also taking comment, as part of this exercise on how safety factors, including the potential increased risk of burn or fire, are affected by the California standards. In effect, this request for more comments on this issue constitutes a third bite of the apple. This safety issue was thoroughly addressed by ARB as part of its rulemaking process and those that raised these issues were given ample opportunity to be heard through that process. ARB met with industry groups to hear their concerns and industry was given opportunity in public hearings to testify on the safety issues. In addition, ARB contracted with Southwest Research Institute to perform a technical study of the safety issues. The SwRI study showed no increased hazard from the technologies likely to be used to meet the California standards. ARB in its August 2004 Revised Final Statement of Reasons stated the following:

External heat management issues are not new. Every engine that has been equipped with a catalytic converter, starting in 1975 when the device was first applied to passenger cars, has had to address the issue of increased exhaust system temperatures, and concerns with potential burns and fires...The engineering techniques to deal with these hot surfaces also continue to progress, but they are straightforward – reduce the heat load, insulate the heat source, isolate the heat source, and actively cool. We are confident that the engine/equipment manufacturers will be able to address the challenge of hot surfaces using similar approaches as others who have faced the same challenges three decades ago.

More recently, EPA in collaboration with the Consumer Products Safety Commission conducted its own comprehensive safety study, completed earlier this year. In addition, EPA also contracted with SwRI, this time on a Failure Mode and Effects Analysis. I attended the hearing in Ann Arbor in May 2006 where EPA presented the results of the study. As was the case in California, the industry was given opportunity to ask questions about the study and to provide their own testimony on safety issues. EPA summarized its general conclusions as follows:

...we conclude that the anticipated emission standards may be implemented without any incremental increase in risk of fire or burn to consumers. The testing and analysis further indicates that compliance with the anticipated emissions standards could somewhat reduce the risk to consumers using products in these subcategories.

We contend there is no need for a third round of comments on the safety issues. They have already been addressed twice.

Some of you may be wondering why the northeast states even care whether California is authorized to enforce its state standards especially considering that the opportunity for other states to opt into these standards was taken away by recent federal legislation. I would like to

point out just a couple of reasons. First of all, federal regulations that will reduce emissions nationally from the same engine categories are long overdue. We expect that a finding against the California regulations would have a negative effect on EPA's moving forward with Phase III federal regulations, further postponing the emissions benefits that can be realized through regulation.

Secondly, I'm reminded of a statement by Todd Gerhardt, Director of Current Products Engineering at Kohler Company, made at the May 2006 EPA hearing in Ann Arbor. Mr. Gerhardt stated, "...we believe that it is in the best interest of the industry to harmonize the EPA standard with California." I think it's reasonable to assume that many in the industry feel the same way. They would like to be able to make products that can be sold in all 50 states. Therefore, I expect the federal standards ultimately to mirror the California standards. A finding by EPA against the California standards is likely to adversely impact the stringency of those standards. And the result could be a weakening of the ultimate standards developed nationally.

I'd like to close with a few statistics. EPA estimates there are over 52 million residential and commercial walk-behind lawn mowers and ride-on lawn, garden and turf equipment in use in the United States today. In New Jersey, one of the NESCAUM states, small spark ignition engines collectively emit 136 tons of hydrocarbons per summer day. This accounts for just over 10% of the statewide summer day hydrocarbon emissions, contributing to smog formation.

The NESCAUM states need emission reductions from this very large source category as part of the regional ozone attainment strategy. We urge EPA to take the important first step of authorizing California to enforce its state standards and then move expeditiously to adopt similar federal standards.

Thank you.