

November 29, 2021

Clerk's Office, California Air Resources Board
1001 I Street,
Sacramento, CA 95814

Electronic Submittal: <https://www.arb.ca.gov/lispub/comm/bclist.php>

RE: Proposed Amendments to the Small Off-Road Engine Regulations: Transmission to Zero Emissions

Dear California Air Resources Board:

Thank you for the opportunity to provide written comments on the California Air Resources Board's ("CARB") "Proposed Amendments to the Small Off-Road Engine Regulations: Transmission to Zero Emissions" ("Proposed Amendments"). The Proposed Amendments would modify the preexisting Small Off-Road Engine Exhaust Emissions Regulations, Off Road Vehicles and Engines Pollution Control Devices and the Small Off Road Engine Evaporative Emission Regulations, Evaporative Emission Requirements for Off Road Equipment ("SORE Regulations").

For the purposes of the Proposed Amendments and the SORE Regulations, our comments reflect the perspective and product scope of ITW Construction Products which manufactures, among other items, certain construction equipment, such as fastening tools, some of which use combustion processes as a means of operation. ITW Construction Products is a wholly-owned segment of Illinois Tools Works Inc. ("ITW"), a U.S. manufacturer of value-added commercial and industrial-use products, components, and systems. ITW is a Fortune 200 company operating a diverse global portfolio of 84 manufacturing divisions.

Compressor Equipment Preemption to SORE Regulations – Statutory Bases

After review of the Proposed Amendments to the SORE Regulations, and being mindful of federal statute and applicable regulations, we conclude that the fastening tools referenced herein are clearly preempted from the SORE regulations pursuant to Section 209(e)(1) of the federal Clean Air Act ("CAA").

Compressor equipment is overwhelmingly used by commercial contractors at construction sites in California and throughout the United States to power pneumatic fastening tools. As you know, the federal Environmental Protection Agency ("EPA") defines "construction equipment or vehicle" at 40 CFR 1074.5, to mean "any internal combustion engine-powered machine primarily [51% or more] used in construction and located on commercial construction sites." Brackets added. Moreover, when discussing these provisions, the EPA indicated that the preemption to construction equipment applies by category or type of equipment (e.g., general use of the

equipment) rather than to each individual engine or piece of equipment. *See Air Pollution Control; Preemption of State Regulation for Nonroad Engine and Vehicle Standards*, 59 Fed. Reg. 36969, 36979. Consequently, the CARB developed a list of specific new construction equipment that is preempted (e.g., “List to Determine Preempt Off-Road Applications”—referred to herein as the “Federally Preempt List”) from regulation under the agency’s nonroad regulations, including the California flexibility provisions at 13 CCR 2423.

The Federally Preempt List specifically identifies compressors as preempted from CARB regulation. As such, we would conclude that—compressor equipment should be specifically out of scope of the SORE Regulations, and we would suggest the CARB consider clarifying amendments to the Proposed Amendments as explained below.

Sections 2400 and 2751(c) – Applicability

As part of our review of the Proposed Amendments, we note that CARB specifically referenced the CAA preemption in a note within the Proposed Amendment’s “Applicability” section at 13 CCR 2400 and in the Proposed Amendment’s Notice of Public Hearing.

To add further clarity to the regulatory status of the equipment listed on the Federally Preempt List, we respectfully request that the CARB amend Sections 2400 and 2751(c) to state that the SORE Regulations do not apply to equipment on the Federally Preempt List, such as commercial nailers, drills, jackhammers, etc. In the alternative to referencing the Federally Preempt List, we request that the CARB amend Sections 2400 and 2751(c) to include an enumerated list of preempt equipment. ITW Construction Products believes that doing so will provide greater clarity and certainty to equipment manufacturers, sellers and end users by allowing manufacturers to easily determine how the regulation applies to their products and practices.

Sections 2401(a)(29) – Cordless Tools Not in Scope

In addition, in our review of the SORE Regulations definition of “gas-powered engines,” we explored the definition to consider how it would apply to products that may rely on combustion activity as part of their performance. Some of ITW Construction Products’ fastening tools are “cordless” and incorporate cartridges of non-gasoline fuel to produce an on-demand combustion event which is harnessed to drive fasteners into building materials. The power and portability of this “cordless” equipment provides unique benefits over its air compressor driven counterparts because of the mobility needs of end-users on construction sites. This heightens the integrity, strength and versatility of cordless products that our customers rely on, especially in large-scale construction settings.

So, while we recognize the combustion function that characterizes our products, our examination of CARB’s intended product scope as defined under the SORE Regulations leads us to conclude that CARB does not intend for construction equipment such as ours to be considered in scope to the extent our products do not use, contain or are powered by gasoline and the cartridges within the fasteners are not engines as defined the SORE Regulations. We

recognize that it may be reasonably foreseeable for other stakeholders to be concerned whether similar products could fall inside of the SORE Regulation scope, so we would, again, respectfully suggest that the CARB consider amending the proposed regulation to avoid any unintended stakeholder confusion.

In conclusion, we appreciate CARB allowing written comments as you consider the Proposed Amendments. We look forward to our continued partnership and collaboration with CARB.

Respectfully submitted,

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