

State of California
California Environmental Protection Agency
AIR RESOURCES BOARD

Addendum to the Final Statement of Reasons for Rulemaking

AMENDMENTS TO THE REGULATION FOR THE STATEWIDE PORTABLE
EQUIPMENT REGISTRATION PROGRAM

Public Hearing Date: February 26, 2004

Agenda Item No.: 04-2-3

Addendum Prepared: June 21, 2005

I. BACKGROUND

This addendum to the Final Statement of Reasons (FSOR) describes modifications made by the Air Resources Board (ARB or the "Board") to amendments to the Regulation for the Statewide Portable Equipment Registration Program (Statewide Regulation or Statewide Program). ARB is submitting this addendum to the FSOR for insertion in the Office of Administrative Law (OAL) File Number 05-0107-04 S.

On January 7, 2005, ARB staff submitted the FSOR and a Final Regulation Order amending sections 2451-2465 and repealing section 2466, title 13, California Code of Regulations (CCR) to the OAL for review and approval. On February 25, 2005, OAL issued a Decision of Disapproval on the proposed amendments. This addendum to the FSOR addresses the comments made by OAL and the commenters noted below.

II. ADDITIONAL MODIFICATIONS

ARB made changes the Statewide Regulation to address the concerns raised by OAL and the commenters mentioned below. However, in certain instances, rather than making modifications to the proposed language, ARB has elected to remove proposed language and thereby revert to existing regulatory text.

For instance, an apparent major concern of OAL was the discretion vested in the Executive Officer to insure that portable equipment use comported with statewide program requirements. This necessary oversight language was pre-existent in ARB regulations. ARB had proposed a minor text change in an effort to clarify the provision. However, in light of OAL's comments, ARB is removing the clarifying language and will revert to the existing regulatory language.

OAL comments that ARB:

"...declined the[se] invitation[s] to clarify the description of the equipment that this paragraph would authorize the Executive Officer to exclude from the PERP." (Decision of Disapproval p.1)

First and foremost, it is not the type of portable equipment that is at issue here. The issue is more the use to which portable equipment is put. Secondly, it is simply not possible to list every allowed or disallowed use. Portable equipment is used in very diverse applications. Any attempt to list all applications of portable equipment would not only make the regulation unworkable but would invariably fail.

For these reasons, ARB did not make changes addressing specific applications of portable engines used to power equipment such as movie shoots by the motion picture industry and in dehumidification operations, are eligible for registration in the Statewide Program. ARB believes that the current Statewide Regulation already contains provisions in section 2451(b) and section 2451(c) to allow these portable engines to register in the Statewide Program. Section 2451(b) states that the Statewide Regulation applies to portable engines as defined in 2452(z). It appears that these engines satisfy the portable definition. However, until an application is received, ARB simply cannot, in the abstract, make decisions on whether specific equipment can be registered.

The following summarizes the modifications adopted by ARB:

In section 2451(c)(9), ARB adopted changes to allow registered portable engines to be used during electrical upgrades that do not exceed sixty calendar days. In addition, the modifications would allow portable generators used in operation where only generators can supply the necessary voltage, frequency, and electrical current requirements to be eligible for registration in the Statewide Program.

In section 2452(e), ARB added a definition for "Electrical Upgrade" to mean replacement or addition of electrical equipment and systems resulting in increased generation, transmission, and/or distribution capacity. For enforcement of the electrical upgrade provisions, ARB, in section 2458(e), added language to require owners and operators of portable engines used in electrical upgrade operations to maintain daily records, which include the location of operation, the month, date and year at the location, and hours of operation.

As discussed above, ARB deleted proposed section 2451(c)(5), which was intended to clarify the existing authority of the Executive Officer to determine what uses of portable engines or equipment units require permits from the districts and would not qualify for registration under the Statewide Program. ARB also deleted examples of portable equipment uses that are not eligible for registration. In its place, ARB added section 2451(c)(6) through (9), which list specific uses of portable engines or equipment units that are ineligible for registration under the Statewide Program.

ARB moved subsection 2451(c)(5)(E) back to its original place in the existing Statewide Regulation, now renumbered as section 2451(c)(3). This provision makes the registration of equipment units ineligible under the Statewide Program if the Executive Officer determines that the equipment unit is part of a stationary source permitted by a district. In addition, ARB added language in section 2451(c)(3) to preclude engines associated with equipment units from being eligible for registration in the Statewide

Program if the equipment unit is part of a stationary source that is required to obtain a district permit.

Under the current Statewide Regulation, applicants are not required to select a home district for their portable engines or equipment units. In the 1st 15-Day Change Notice, ARB in section 2452(k) defined “Home District” to mean the district designated by the responsible official of the portable engine or equipment unit in which the portable equipment operates most of the time. In response to the comment received, ARB revised the definition of “Home District,” now located in section 2452(l), to mean the district designated by the responsible official of the portable engine or equipment unit in which portable equipment resides most of the time.

To clarify that daily records are required only on days the portable equipment is operated, ARB modified section 2458(b) by adding the phrase “each day of operation”. Section 2458(b) now reads “...including engines otherwise preempted under section 209(e), or portable equipment unit shall maintain daily records for each day of operation of each registered portable engine and equipment unit.” The modification reduced the burden of having to maintain daily records for days the portable equipment is idle and not operated.

Five sections of the amended Statewide Regulation contain language that indicates they apply or do not apply to a person who held, or did not hold registration “prior to the effective date of the amendments to this article.” After publication in the CCR, those references may be confusing to the reader. To clarify this, ARB has indicated in sections 2452(j), 2452(u), 2456(j), 2458(b)(6)(A) and 2458(b)(6)(B) that the effective date of the amendments will be inserted by OAL.

To clarify an obsolete reference, ARB deleted the wording in section 2451(a) that refers back to section 2451(d).

ARB modified section 2456(d) by adding the word “shall” before the phrase “meet the most stringent emissions standard.”

Subsection 2457(b)(3)(F) contains a small text discrepancy as compared to the current CCR. ARB added the words in strike out text “~~there are~~” to ensure they are removed from the regulation by the publisher.

In addition, ARB in section 2463(d) replaced the words “hearing officer” with Executive Officer. The proposed change is being made to be consistent with the entire section where the Executive Officer for just cause may suspend or revoke a registration for the listed circumstances. In determining whether to grant a stay, the Executive Officer, rather than a hearing officer, shall consider the reasonable likelihood that the registration holder will prevail on the merits of the appeal and the harm the registration holder will likely suffer if the stay is not granted.

III. PUBLIC COMMENTS AND AGENCY RESPONSES

Three comment letters were submitted during the 3rd 15-day comment period, which began on May 6, 2005 and ended on May 21, 2005. A list of commenters is set forth below, identifying the date and form of all comments that were submitted. Following the list is a summary of each comment or recommendation made regarding the proposed action, together with an explanation of how the proposed action has been changed to accommodate the comment or recommendation or the reasons for taking no action.

A. Responses to Comments Received During the 3rd 15-Day Comment Period

<u>Abbreviation</u>	<u>Commenter</u>
GEER	Shannon S. Broome, PC Counsel to GE Energy Rental Written Testimony: May 21, 2005
PG&E/SEM	Sven Thesen Pacific Gas and Electric Company Bernie Orozco Sempra Energy Written Testimony: May 20, 2005
SCE	Michael M. Hertel Southern California Edison Written Testimony: May 20, 2005

Comments and Responses

1. **Applicability**

- 1.1 Comment: The commenter wants to confirm that the revisions to section 2451(c)(9) will allow the use of PERP-registered generators to provide primary or supplemental power to a building, facility, stationary source, or stationary equipment when voltage, frequency, or electrical current requirements can only be supplied by a portable generator. [GEER]

Agency Response: ARB staff confirms the interpretation of the commenter regarding the revisions to section 2451(c)(9) is correct. This includes the use of generators for concert projects where customers may need 240-415 volts at a frequency of 50 HZ in a 3-phase configuration and film shoots where customers may need DC power or power at temporary locations such as an old warehouse or airport hanger.

- 1.2 Comment: The commenter indicated that section 2451(b) or section 2451(c)(9) would allow portable generators used to power portable equipment such as dehumidification equipment to register in the Statewide Program. [GEER]

Agency Response: ARB staff agrees that section 2451(b) and section 2451(c)(9) applies to the eligibility of portable engines used to power equipment such as dehumidification equipment to register in the Statewide Program.

Note: In its Decision of Disapproval, OAL stated that the proposed rule did not clearly authorize the use of portable engines to power portable equipment such those used in dehumidification operations, off-site film shoots, and at concerts to register in the Statewide Program. As stated in page 2 of the addendum, and the Agency Responses to Comments 1.1 and 1.2, ARB believes that engines used to power equipment as those described above, are eligible for registration under the current Statewide Regulation.

- 1.3 Comment: In section 2451(c)(9), the time limitation for electrical upgrades should be changed from 60 to 90 days. [PG&E/SEM], [SCE]

Agency Response: No changes were made in response to this comment. In previous comments submitted by PG&E and noted in OAL's Decision of Disapproval, PG&E indicated that electrical upgrades involve the use of portable engines to supply temporary power to a building or facility for up to two days. In addition, PG&E wanted electrical upgrades to include more complex routine and non-routine transmission and equipment upgrades in small towns, industrial complexes, and electrical generating or similar facilities. For this short duration and low impact of the use, ARB modified section 2451(c)(9) to provide up to 60 days for the use of portable engines during electrical upgrade operations.

Since electrical upgrades are planned maintenance activities, ARB believes that it is appropriate for operators to apply in advance to the districts for necessary permits for upgrade operations that take longer than 60 days. By applying for permits, district staffs can evaluate and mitigate potential air quality impacts from the use of portable engines in upgrade operations.

Note: In response to OAL's Decision of Disapproval, ARB added provisions for electrical upgrade operations.

- 1.4 Comment: The commenter stated that the proposed language in section 2451(c)(9) should add language that allows reasonable time for engine start-up, shutdown, and testing during interruption of electrical power. [PG&E/SEM], [SCE]]

Agency Response: ARB has clarified its modification of section 2451(c)(9) to include time for engine start-up, shutdown, and testing during interruption of electrical power; however, the time allowed for engine start-up, shutdown, and testing is limited to the actual duration of the event or interruption. This modification is a clarification that does not materially affect any regulatory requirement of the amended Statewide Regulation.

Note: In response to OAL's Decision of Disapproval, ARB added time for engine start-up, shutdown, and testing during interruption of power.

1.5 Comment: Commenter requests that the recordkeeping requirement in section 2458(e) for electrical upgrades be modified so that the requirement only applies to non-certified engines. [PG&E/SEM], [SCE]

Agency Response: ARB staff did not make changes as requested by the commenters to modify the recordkeeping requirement in section 2458(e) for electrical upgrades. The recordkeeping requirement contained in the Statewide Regulation is necessary to assist the district and ARB staffs with the enforcement of the 90-day time limitation for electrical upgrades.

IV. CONCLUSION

ARB believes that the regulatory text has been sufficiently clarified, consistent with the Board's directives at the hearing, and the clarification issues raised by OAL in its Decision of Disapproval has been addressed, along with issues raised by the public during the 15-day comment period.