

# PWIA

Pennsylvania Waste Industries Association  
A Chapter of the National Solid Waste Management Association

April 18, 2012

*Via Electronic Submission*

Pennsylvania Department of Environmental Protection  
Division of Air Resource Management  
Bureau of Air Quality  
P.O. Box 8468  
Harrisburg, PA 17105-8468  
Attn: Arleen Shulman

**Re: Comments on Control Measures under Consideration by the Ozone Transport Commission, Specifically Those Relating to Limits on Idling of Nonroad Diesel Vehicles and Equipment to Reduce NOx.**

Dear Ms. Shulman:

The Pennsylvania Waste Industries Association (“PWIA”) and its members submit these comments to the Pennsylvania Department of Environmental Protection (“Department”) in response to the Department’s request for comments on control measures under consideration by the Ozone Transport Commission (“OTC”), specifically those relating to limits on idling of nonroad diesel engines and equipment (the “Proposed Anti-Idling Regulations”).<sup>1</sup>

As responsible stewards of the environment, PWIA supports the Department’s efforts to reduce air emissions within the Commonwealth, including oxides of nitrogen (“NOx”), volatile organic compounds (“VOCs”), and particulate matter, which are produced by nonroad diesel engines. However, PWIA cautions the Department not to adopt the Proposed Anti-Idling Regulations without first revising them to appropriately fit within the regulatory confines and economic conditions that exist in Pennsylvania. Specifically, PWIA believes that Env-A XXXX.02 should be stricken,<sup>2</sup> a new exemption that is specific to the solid waste disposal industry should be added to Env-A XXXX.03, and clarification should be provided in Env-A XXXX.07 that the Proposed Anti-Idling Regulations, if enacted, will not constitute “additional requirements” under the Department’s Air Quality Permit Program.

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<sup>1</sup> While PWIA takes no position on whether the regulatory process is the appropriate means of considering anti-idling limitations, we note that Pennsylvania’s Diesel-Powered Motor Vehicle Idling Act, 35 P.S. § 4601 et seq., which addresses on-road motor vehicle idling, was enacted by the legislature.

<sup>2</sup> We understand that this numbering scheme will change if PADEP proposes nonroad diesel engine idling restrictions, but for the convenience of our readers, we will use the convention set forth in the OTC’s Proposed Anti-Idling Regulations.

Without such revisions, the Proposed Anti-Idling Regulations will (1) impede safety and the performance of the essential public function of waste disposal in Pennsylvania, and (2) present a significant and undue hardship to members of the PWIA who operate nonroad diesel engines within the Commonwealth. Furthermore, the current form of the Proposed Anti-Idling Regulations is impractical because it will translate into increased costs for Pennsylvania's businesses and residents from waste disposal activities with little to no gain in air quality.

## **I. PWIA and its Membership**

PWIA represents private-sector waste haulers and landfill operators in Pennsylvania and is the Pennsylvania chapter of the National Solid Wastes Management Association, the trade association that represents the interests of the North American waste services industry. PWIA members include both privately-held and publicly-traded companies that own and operate numerous commercial solid waste facilities throughout the Commonwealth. PWIA members are involved in all facets of solid waste management in Pennsylvania, including recycling, curbside collection, transfer stations, long-haul transportation, co-generation, and disposal. PWIA's primary mission includes the advancement of safe, efficient, and environmentally responsible management of solid waste, and the promotion of sound public policy affecting the management of solid waste.

PWIA members and their employees take very seriously their responsibility to perform the essential service of disposing of Pennsylvania's municipal waste in an efficient, economical, and safe manner. PWIA members are effective stewards of the environment who, as businesses and citizens of the Commonwealth, are committed to doing their jobs in a way that protects and preserves the environment.

## **II. Scope of the Proposed Anti-Idling Regulations**

PWIA understands that the Proposed Anti-Idling Regulations have limited application to "mobile" nonroad diesel engines, meaning those that are self-propelled, those in or on equipment that is self-propelled or intended to be propelled while in use, and those that are designed to be and capable of being portable or transportable. Env-A XXXX.04(7)(A). PWIA also understands that the Proposed Anti-Idling Regulations are not applicable to engines that are defined as either "stationary sources" or "motor vehicles" under federal and Pennsylvania laws. Env-A XXXX.04(7)(B).

### III. PWIA's Suggested Revisions and Comments

In order to eliminate the undue hardships and impracticalities that will result from the implementation of the current form of Proposed Anti-Idling Regulations, PWIA submits the following suggested revisions and comments:

A. Env-A XXXX.02

PWIA members respectfully request that Paragraph 2 of Env-A XXXX.02 be stricken in its entirety, as it is confusing and inconsistent with Pennsylvania's standard regulatory conventions. Paragraph 2 states:

A nonroad diesel engine subject to this regulation is operated for, but not limited to, the following purposes: construction, mining, landscaping, recycling, landfilling, manufacturing, warehousing, composting, airport ground support equipment, industrial activities, and other operations.

Paragraph 2 confuses the regulatory target of the Proposed Anti-Idling Regulations by listing specific industries which may (or may not) operate engines subject to the idling restriction, instead of examples of engines that are subject to the restriction. PWIA is concerned that the specificity of such examples may trump the substance of the Proposed Anti-Idling Regulations and focus the regulatory burden on those industries, instead of all users of nonroad diesel engines. Simply put, applicability is based on **engine type and use**, and not the business classification of the engine owner or operator, and therefore Paragraph 2 should be stricken.

In addition, it is our understanding that this is not consistent with the general practice in Pennsylvania to avoid inclusion of non-inclusive lists specifying examples of specific industries to which a regulation may apply in the body of the regulation itself. Typically, examples of applicability are included in guidance documents that accompany the regulation, not in the regulatory text. Guidance documents provide the Department with more flexibility and allow regulations to remain relevant longer in the face of rapid changes in the economy and technology.

In the alternative, PWIA members respectfully request that the terms "recycling" and "landfilling" in Paragraph 2 of Env-A XXXX.02 be stricken as examples of purposes for which a nonroad diesel engine may be used, as the terms are vague and indeterminate. A variety of different types of engines are used in recycling and landfilling operations, and some (but not all) of those engines may be nonroad diesel engines, as defined in the Proposed Anti-Idling Regulations.

B. Env-A XXXX.03

Landfills and other waste disposal facilities employ a wide range of nonroad diesel engines to complete various functions, including unloading, spreading, and compacting waste. Daily at such sites, multiple nonroad diesel engines (as well as other equipment and engines) work together in complex, integrated operations. While all equipment equipped with engines is actively engaged in the operation, at any given time one or more pieces of the equipment may be intermittently “idle” only as defined in the Proposed Anti-Idling Regulations, while others perform their role or function. More specifically, mobile compactors at landfills are used to spread and compact waste after it is unloaded from trucks delivering waste. These compactors are manned continuously, maintained in a ready-reserve state when not actively performing work, and compact the delivered waste on an-as needed but frequent basis. Operators using equipment such as compactors have their nonroad diesel engines running during these so-called “idle” periods for two reasons: 1) turning nonroad diesel engines off would be impractical, as operators often do not know and are unable to predict how long they will remain “idle” during an operation, and 2) the landfill operations are dynamic, and during each “idle” period, an operator must be ready to take over its part of the operation at any time to ensure safe operation of the landfill, including being able to move quickly for safety reasons.

Imposing idling restrictions on nonroad diesel engines used at landfills or other waste disposal facilities may also result in increased emissions of NO<sub>x</sub>, VOC, and particulate emissions. If non-road diesel engines on compactors and similar landfill equipment were required to shut down intermittently during unloading and compaction operations, timeframes for waste delivery and queuing times for diesel-powered waste collection vehicles would increase due to delays in waste unloading and compaction. This would violate the spirit, if not the language, of Pennsylvania’s Diesel-Powered Motor Vehicle Idling Act, 35 P.S. § 4601 *et seq.*, under which facility owners are encouraged to keep queues moving and may be held liable for “inefficient traffic flow or poor scheduling” that causes excessive idling.<sup>3</sup>

While the Proposed Anti-Idling Regulations provides a limited exemption from the anti-idling requirements where the equipment manufacturer has provided a written manual explicitly requiring longer idle times (see Env-A XXXX.06(1), this exemption does not resolve the delays in waste unloading and compaction identified directly above. In addition, excessive engine cycling can harm engines, and while some engine manufacturer’s operating manuals address this issue directly in terms of minimum idle times, they generally do not address excessive engine cycling. Excessive engine cycling can cause increases in emissions due to engine wear, and the emissions avoided from reduced idling may be offset by increased emission rates during normal operation from an engine that is excessively cycled.

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<sup>3</sup> PADEP, Frequently Asked Questions: Diesel-Powered Motor Vehicle Idling Act, at 9, *available at* [http://www.dep.state.pa.us/dep/deputate/airwaste/aq/cars/docs/Act\\_124\\_Common\\_QA's.pdf](http://www.dep.state.pa.us/dep/deputate/airwaste/aq/cars/docs/Act_124_Common_QA's.pdf).

The *OTC Model Rule: Guidance for Implementation of Nonroad Idling Rule 3.09.2012 draft* (“*OTC Model Rule Guidance*”) attempts to address this issue with a blanket statement that “Shutting off and turning on the engine will not result in engine damage or increased wear as long as the engine manufacturer’s recommendations regarding warm-up and cool-down time are followed.” The *OTC Model Rule Guidance*’s only support for this statement is a citation to a 2003 Canadian report *Review of the Incidence, Energy Use and Costs of Passenger Vehicle Idling*. The Canadian report relies on 1980’s and 1990s data exclusive to gasoline-powered passenger cars, and does not analyze any type of nonroad or diesel engine at all.

Excessive engine cycling times will increase maintenance costs for nonroad diesel engines due to increased engine wear. The emissions avoided by reducing idling times may be offset by increased emission rates from over-cycled engines.

For these reasons, PWIA members respectfully request that Env-A XXXX.03 be amended to include the following exemption of the solid waste disposal industry from the Proposed Anti-Idling Regulations:

Env-A XXXX.03 This regulation does not apply to locomotives, generator sets used on locomotives, marine vessels, recreational vehicles, farming equipment, **equipment used in the collection and/or disposal of solid waste**, military equipment when it is being used during training exercises, emergency or public safety situations, or any use of a non-road diesel engine that is not for compensation.

In the alternative, PWIA members respectfully request that a new Section Env-A XXXX.06(6) be added to clarify that the idling restrictions set forth in the Proposed Anti-Idling Regulations do not apply to nonroad diesel engines actively engaged in a common operation, as follows:

(6) **Idling of any nonroad diesel engine engaged in a common operation with multiple engines or equipment, when one or more engine or equipment is actively performing a function for which the engine or equipment was designed.**

C. Env-A XXXX.04

PWIA members recommend that the definition of “idling” be modified, and a definition for “ready reserve” be included in the definitions section of the Proposed Anti-Idling Regulations, with Env-A XXXX.04 amended as follows:

(3) “Idling” means, for purposes of a nonroad diesel engine, that the engine is running while the nonroad equipment is not moving and is not utilized in whole or in part for the necessary and work-related mechanical or

electrical operation for which it was designed, **except for engines in ready reserve service;**

- (9) **“Ready Reserve” means an engine may not be performing work at all times, but must be ready to take over powering or performing all or part of an operation at any time to ensure safe operation of a process.**
- (10) “Recreational Vehicle” means...

A discussion of the ready reserve exemption to the anti-idling prohibitions is included in the OTC Model Rule Guidance. Adding a definition of ready reserve directly into the Proposed Anti-Idling Regulations would provide important clarity to the regulated community.

D. Env-A XXXX.06(1)

PWIA members respectfully request that Env-A XXXX.06(1) of the Proposed Anti-Idling Regulations be amended as follows:

- (1) Idling necessary to ensure the safe operation of the equipment and the safety of the operator **and others in the work area**, including idling to verify that the equipment is in good working order, or as otherwise **necessary to comply with manufacturers’ operating requirements, specifications and warranties, Federal or State workplace safety regulations, or local requirements.**

The slight expansion of Env-A XXX.06(1) proposed above would allow PWIA members to maintain their compliance with workplace safety requirements suggested by vehicle manufacturers and imposed by federal, state, and local authorities. The need for such compliance was recognized by the Pennsylvania legislature when it included text similar to that proposed above in Pennsylvania’s Diesel-Powered Motor Vehicle Idling Act, 35 P.S. § 4603(c)(2) (allowing a vehicle to idle for longer than the time allowed in § 4602(a) when “otherwise necessary to comply with manufacturers’ operating requirements, specifications and warranties in accordance with Federal or State motor carrier safety regulations or local requirements”).

E. (NEW) Env-A XXXX.07

PWIA members respectfully request that a new Env-A XXXX.07 be added to clarify that the Proposed Anti-Idling Regulations, if enacted, will not be considered “additional requirements” under the Department’s Air Quality Permit Program or plan approvals or permits held by facilities under that program, as follows:

**Env-A XXXX.07 APPLICABILITY. The requirements of this regulation are not applicable to the operating permit required under 25 Pa. Code Ch. 127 (relating to construction, modification, reactivation and operation of sources). No requirements under this regulation may be incorporated into any plan approval or operating permit issued by the department under 25 Pa. Code Ch. 127.**

Env-A XXXX.**08** PENALTIES

Under the Department's Air Quality Permit Program, most nonroad diesel engines are exempt from plan approval and permitting requirements. Specifically, 25 Pa. Code § 127.14(a) exempts "mobile sources" from plan approval requirements, and the Department's Air Quality Permit Exemption guidance considers "combustion emissions from propulsion of mobile air contamination sources" to be trivial activities. If enacted without the clarification proposed above, the Proposed Anti-Idling Regulations could be considered an "applicable requirement" that must be included in Title V and other air permits. Including idling restrictions in such permits would be in contravention of the regulations guiding the Department's Air Quality Permit Program.

This need for clarification was also addressed by the Department in the Comment-Response Document for its proposed Diesel Vehicle Idling Regulations (2008), as follows:

**108. Comment:** Concern was raised that there could be unintended consequences of imposing monitoring and compliance certification obligations on Title V facilities. (470)

**Response:** The requirements of the idling restriction regulation will not be included in Title V permits.

**109. Comment:** Explain how the proposed regulation will affect the facility already subject to air quality regulations or permits relating to emissions. (568)

**Response:** See response to comment #108).

Text similar to that proposed above was also included in Pennsylvania's Diesel-Powered Motor Vehicle Idling Act, 35 P.S. § 4610 ("The diesel idling requirements of this act are not applicable to the operating permit required under 25 Pa. Code Ch. 127 [relating to construction, modification, reactivation and operation of sources]. No requirements under this act may be incorporated into any operating permits issued by the department under 25 Pa. Code Ch. 127").

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Thank you for the opportunity to present comments regarding the Proposed Anti-Idling Regulations.

Respectfully submitted,

A handwritten signature in black ink that reads "Tim O'Donnell". The signature is written in a cursive style with a large, sweeping "T" and "O".

Tim O'Donnell <sup>cap</sup>  
President

cc: Mary Webber, PWIA  
Mark C. Hammond, Esq.; Land Air Water Legal Solutions LLC