

CLEAN CONSTRUCTION PRINCIPLES FOR FEDERALLY FUNDED TRANSPORTATION PROJECTS

The Associated General Contractors of America and the Clean Air Task Force agree on the following “Clean Construction Principles” that both organizations encourage Congress to include in the legislation necessary to reauthorize federal funding for highway and other transportation projects beyond September 30, 2009.

The two organizations share an interest in improving air quality, and to that end, they recommend that Congress set aside a significant portion of the funds that Congress has historically provided for the Congestion Mitigation and Air Quality (CMAQ) program (and/or an appropriate percentage of other funds that the relevant legislation authorizes Congress to appropriate for surface transportation projects) for a new set of contractual requirements intended to reduce emissions from equipment needed to construct federally funded transportation projects. By contract, these “Clean Construction Principles” would require the contractors constructing these projects to employ diesel emissions reduction options on designated pieces of off-road diesel equipment. The two organizations recognize the challenges of implementing these principles, but believe that the benefits to the environment and for public health would justify the necessary effort.

1. WHAT THESE PRINCIPLES REQUIRE OF THE GOVERNMENT

- 1.1 Each state must expend all of the funding set aside to satisfy these new Clean Construction Principles and provided to the State under Section 149 of Title 23 of the United States Code (and/or an appropriate percentage of other funds that relevant legislation authorizes Congress to appropriate for surface transportation projects) for the purpose of reducing emissions from off-road diesel equipment, and maximizing public health benefits, on change orders for Diesel Emission Reduction Options. In the process of meeting its obligation under the immediately preceding sentence, each state shall give priority to Qualified Construction Projects located in nonattainment or maintenance areas. A state may not use funds set aside for the purpose of implementing these Clean Construction Principles for any other purpose.
- 1.2 U.S. EPA and U.S. DOT/FHWA shall provide a streamlined formula and process for ensuring that states may (i) quantify all emission reductions achieved in accordance with these principles; (ii) include such emission reduction in their State Implementation Plans to help demonstrate progress toward, attainment of, or maintenance of NAAQS; and (iii) include such emission reductions in transportation conformity and/or general conformity determinations.

2. LIMITS ON THE STATES' DISCRETION TO DETERMINE HOW THEY WILL MEET THEIR OBLIGATION

- 2.1 Following the award of a contract to construct a Qualified Construction Project, but not at any earlier point in the construction process, a state **shall require** the successful bidder for that project to provide the state with a reasonable projection of the Covered Equipment that the bidder expects to operate on the project site (for at least 10 days), relevant information about each piece of such equipment, and a reasonable estimate of the number of days that the bidder expects to operate each piece of such equipment on the site of the project, provided that this requirement shall cease to apply once a state has obligated all of the Clean Construction Principles funding which Section 1.1 requires the state to expend.
- 2.2 By change order, a state **shall require** the successful bidder for a Qualified Construction Project to employ Diesel Emission Reduction Options that achieve the maximum reduction of PM2.5 emissions for the particular application on designated pieces of Covered Equipment to be operated on the project site (for at least 10 days), if and only if the following conditions are met:
- 2.2.1 The project is located in a nonattainment or maintenance area for PM2.5, as defined by 42 U.S.C. Sec. 7401 et seq.;
- 2.2.2 The state does not determine that the project is so small in size, or short in duration, or the Covered Equipment that the successful bidder expects to operate on the project site is already so low in its emissions of PM 2.5, that implementing such a change order would not contribute to the state's effort to control emissions of PM2.5 in that nonattainment or maintenance area¹; and
- 2.2.3 The conditions set forth in the following Subsections 2.3.1 through 2.3.5 are also met.
- 2.3 By change order, a state **may require** the successful bidder for any Qualified Construction Project located outside of a nonattainment or maintenance area for PM2.5 to employ Diesel Emission Reduction Options on designated pieces of Covered Equipment if the following conditions are met:
- 2.3.1 Neither the change order nor the Diesel Emission Reduction Option(s) that it requires the successful bidder to employ would, for reasons beyond the control of

¹ The Clean Air Task Force and the Associated General Contractors of America agree that this provision shall not require a state to go so far as to perform air quality modeling or equivalent analysis. They further agree that how a state exercises this discretion shall not be subject to judicial review. If a state DOT determines that a project meets one or more of the criteria listed in this provision, and therefore excludes a project from these Clean Construction Principles, the state DOT must, however, give written notice to the state agency responsible for air quality and to the public of that determination, and for the 15 business days that follow such notice, the state agency responsible for air quality shall have the right to challenge that determination. If the state agency responsible for air quality exercises that right, the Governor shall have another 10 days to make and announce a final determination.

the successful bidder, materially delay the start of construction, materially increase the time required to perform the work, or cause any material interruption of the work;

2.3.2 The change order would not increase any risk to the safety or health of any construction worker;

2.3.3 In the case of a diesel engine repower, the repowered piece of equipment will perform essentially the same function as the original piece of equipment, and the replaced engine is scrapped, permanently disabled or returned to the original manufacturer for remanufacture to a higher emission standard;

2.3.4 The change order entitles the bidder to recover 100% of its cost of employing such Diesel Emission Reduction Options; and

2.3.5 The state has the funding necessary to pay for the change order in its entirety.

2.4 Within these Clean Construction Principles, only a successful bidder for a Qualified Construction Project is required to identify the off-road diesel equipment that it expects to operate on the site of such project.

2.5 A state may structure any change order that these principles authorize to provide for the phase-in of any requirements or opportunities that are the subject of such a change order to the extent necessary to avoid any delay in the start of construction or any interruption of work that is already underway.

3. NEEDED ADJUSTMENTS OF THE CMAQ PROGRAM (OR OTHER SURFACE TRANSPORTATION LEGISLATION)

3.1 Congress should set-aside a significant percentage of the funding that it has historically provided for the CMAQ program (and/or an appropriate percentage of other funds that the relevant legislation authorizes Congress to appropriate for surface transportation projects) to carry out these Clean Construction Principles. Congress should provide a minimum allocation of such funding to each and every state, and should provide an additional amount of such funding to the states with areas in nonattainment.

3.2 States shall be provided with a streamlined process for administering these Clean Construction Principles, whereby their DOTs shall assume sole responsibility for funding change orders for Diesel Emission Reduction Options. To the extent that funding for these Clean Construction Principles comes from the CMAQ program, it shall be separate and removed from the past process for awarding CMAQ funds. There will be no state/local match requirements for expenditures made to carry out these Clean Construction Principles.

- 3.3 To be eligible for funding under these Clean Construction Principles, it will be deemed sufficient for the Qualified Construction Project to be included in the area's current transportation plan and Transportation Improvement Plan (TIP) – meaning the retrofit component of that project need not appear in the plan or TIP in order to qualify for funding under these Clean Construction Principles.

4. DEFINITIONS

- 4.1 A Qualified Construction Project is a highway or other transportation project that the federal government is funding, at least in part, in accordance with Title 23 or 49 of the United States Code.
- 4.2 Covered Equipment is any off-road diesel equipment that the successful bidder for a Qualified Construction Project operates on the construction site of that project for a total of at least 10 working days.
- 4.3 Diesel Emission Reduction Options mean and are limited to diesel exhaust control technologies, diesel engine upgrades, diesel engine repowers, and idle reduction technologies that have the effect of reducing emissions from the affected engines below the levels that U.S. EPA required of such engines on the date of their manufacture, and that meet the following conditions:
- 4.3.1 In the case of diesel exhaust control technologies, they are devices (i) installed on a diesel engine or vehicle; (ii) included in a list of verified retrofit technologies maintained by U.S. EPA or California Air Resources Board (CARB); and (iii) certified by the installer (or the equipment owner, if self-installed) as having been installed in conformance with the specifications included in the relevant agency's list for achieving a reduction in one or more criteria air pollutants.
- 4.3.2 In the case of diesel engine upgrades, they are diesel engines (i) rebuilt with new components that collectively appear, as a system (such as a "kit" that a manufacturer has developed), on a list of verified retrofit technologies maintained by U.S. EPA or CARB; and (ii) certified by the installer (or the equipment owner, if self-installed) as having been installed in conformance with the specifications included in the relevant agency's list for achieving a reduction in one or more criteria air pollutants.
- 4.3.3 In the case of diesel engine repowers, they are new or remanufactured diesel engines (i) installed as replacements for the engines in existing pieces of equipment; (ii) certified by the engine manufacturer to meet U.S. EPA or CARB emission standards in effect on the date of their manufacture, or if later, remanufacture; and (iii) the replaced engine is scrapped, or permanently disabled or returned to the original manufacturer for remanufacture to at least a Tier 2 emissions standard.

4.3.4 In the case of idle reduction technologies, they are devices (i) installed on a diesel engine or vehicle; (ii) included in a list of verified retrofit technologies maintained by U.S. EPA or the CARB; and (iii) certified by the installer (or the equipment owner, if self-installed) as having been installed in conformance with the specifications included in the relevant agency's list for achieving a reduction in one or more criteria air pollutants.

5. SAVINGS CLAUSE

5.1 Nothing herein shall be understood or construed to express either support for or opposition to modifying the Clean Air Act, or any authorities or restrictions found therein, or otherwise changing the scope of any authority that the states or local authorities may otherwise possess to address emissions from equipment to which these Clean Construction Principles may apply.