

# **State Fuel and Diesel Retrofit Programs: Legal Requirements/Restrictions**

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# STATE FUEL PROGRAMS

# Cleaner Gasoline – Cleaner Air

- 1990 CAAA authorize policy innovations requiring cleaner gasoline designed to improve air quality
- Federal and state fuel programs authorized
- EPA promulgated nationally applicable federal standard for RVP under 211(c) and 211(h)
- Reformulated Gasoline program (RFG) initiated in 1995 following lengthy stakeholder process – 211(k)

# Section 211 - Fuels

- (c)(4)(A) preempts state and local governments from regulating, for purposes of motor vehicle emission control, any fuel or fuel additive in for a motor vehicle if
  - (1) EPA has found that no control or prohibition of the fuel or additive is necessary and has published that finding, or
  - (2) EPA has set a control or prohibition for the fuel or fuel additive
- (c)(4)(C) Allows a State to prescribe controls or prohibitions on fuel and additives, if a SIP plan so provides - must be necessary to achieve the national primary or secondary air quality standards.

# Preemption Waiver Request Process



- Identify the quantity of reductions needed to reach attainment of NAAQS.
- Identify all other possible control measures & quantify reductions each would achieve
- Determine whether unreasonable or impracticable

# Determining “Unreasonable or Impracticable”



- Should be determined in comparison to fuel measure state is petitioning to adopt
- Must provide solid reasons with adequate factual support
- Reasons can include but not limited to:
  - Length of time to implement the measure
  - Length of time to achieve ozone reduction benefits
  - Degree of disruption entailed by implementation
  - Supply issues
  - Cost to industry/consumers/state
  - Cost effectiveness
  - Reliance on commercially unavailable technology

# Preemption Waiver Request

- Demonstrate necessity
- Submit as SIP revision
- EPA must make a necessity finding
- Approve the SIP revision through notice-and-comment rulemaking

“Guidance on Use of Opt-In to RFG and Low RVP Requirements in Ozone SIPs,” August 1997.

<http://www.epa.gov/otaq/regs/fuels/rvpguide.pdf>

# Low RVP Fuel (7.0)



- In nonattainment (Subpart 1) areas:
  - -Allowed but subject to 211(c)(4)(C) waiver process
- In nonattainment (Subpart 2) areas:
  - -Allowed but subject to 211(c)(4)(C) waiver process
- In attainment areas:
  - May be allowed but difficult; in the past we have allowed states to extend RVP gasoline requirements to attainment areas, under section 211(c)(4)(C).
  - Maine – 55 FR 20601 (May 18, 1990)
  - Maryland – 56 FR 23804 ( May 24, 1991)
  - States may extend the low RVP program to attainment areas where modeling for the attainment area shows that growth in that area will cause increased emissions and subsequent violations of a NAAQS unless additional control measures are implemented.

# Reformulated Gasoline (RFG)



- In nonattainment (Subpart 2) areas:
  - Allowed with a request from the Governor to EPA for areas classified marginal, moderate, serious, or severe.
  - Required for severe areas
- In nonattainment (Subpart 1) areas:
  - Allowed but subject to 211(c)(4)(C) waiver process (RFG “like” program)
- In attainment areas:
  - Might be allowed but difficult; subject to 211(c)(4)(C) waiver process (RFG “like” program)

# **STATE DIESEL RETROFIT PROGRAMS**

# Section 209 - On-highway (new and used)



- (a) preempts state and local governments from adopting and enforcing standards relating to the control of emissions from NEW motor vehicles
- (b) California can seek a waiver of federal preemption from (a)
- (d) state and local governments are not precluded from restricting the use, operation, or movement of motor vehicles [EPA has also applied this to nonroad ]

# Section 209 - On-highway

- US Supreme Court recently held (in EMA v SCAQMD) that the regulation of emission standards from new private fleets is preempted by section 209.
- Issue of regulating public fleets - under a concept of state sovereignty (contractual and purchasing power authority as well) - should be remanded to lower court. Several jurisdictions have pursued regulation of public fleets.

# Section 209 - On-highway

- A state can require the retrofit and/or rebuild of “non-new” or used motor vehicles
- Preemption sections do not preclude a state or locality from imposing its own exhaust emission control standards upon the resale or reregistration of the automobile. Nor do they preclude a locality from setting its own standards for the licensing of vehicles for commercial use within that locality. (*Allway Taxi, Inc. v. New York*, 340 F. Supp 1120 (S.D.N.Y.))

# Section 209 - Nonroad (new and used)



- (e)(1) permanently preempts state and local governments from adopting and enforcing standards relating to the control of emissions from new engines used in farm or construction equipment/vehicles less than 175 horsepower and new engines used in locomotives and new locomotives
- (e)(2) for other nonroad engines (New and Used) California can seek a waiver to adopt standards relating to the control of emissions
- (e)(2)(B) - other States can opt-in to California's nonroad standards if identical and both California and the opt-in state have provided two years of lead time - and CARB has received a waiver ("authorization" from EPA).

# Section 209 - Nonroad



- States are precluded from requiring retrofitting of used nonroad engines except that States are permitted to adopt and enforce such retrofit requirements that may have been adopted by California and authorized by EPA under section 209 of the CAA.
- States are not federally preempted from passing regulations that mandate nonroad equipment fleet owners achieve a specific reduction in a regulated pollutant.
- Fleet owners could comply with such type of regulation in a variety of ways, including changing or limiting hours of operations, retiring old equipment and buying new equipment, or retrofitting such old equipment.

# Contact Information

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# Midwest Diesel Initiative

LADCO

Regional Air Quality Workshop

March 8, 2004



# Midwest Diesel Initiative

- Health Implications
- Regulatory Background
- Overview of Midwest Diesel Initiative

# Midwest Diesel Initiative

Diesel emissions contribute to:

- Ozone (NOx)
- Particulate Matter/Haze
- Air Toxics



Diesel Emissions pose significant public health concerns

- exacerbates asthma, causes respiratory and cardiovascular illness and premature death
- Possible human carcinogen

# Midwest Diesel Initiative

## Regulatory Background

Clean Diesel Truck/Bus and Low Sulfur Diesel Rule:

On-road (heavy duty trucks, garbage trucks, buses)

(engines) Starting in Model year 2007

(fuels) June 2006 - Ultra Low Sulfur Diesel (ULSD) 15 ppm (current 500 ppm)

# Midwest Diesel Initiative

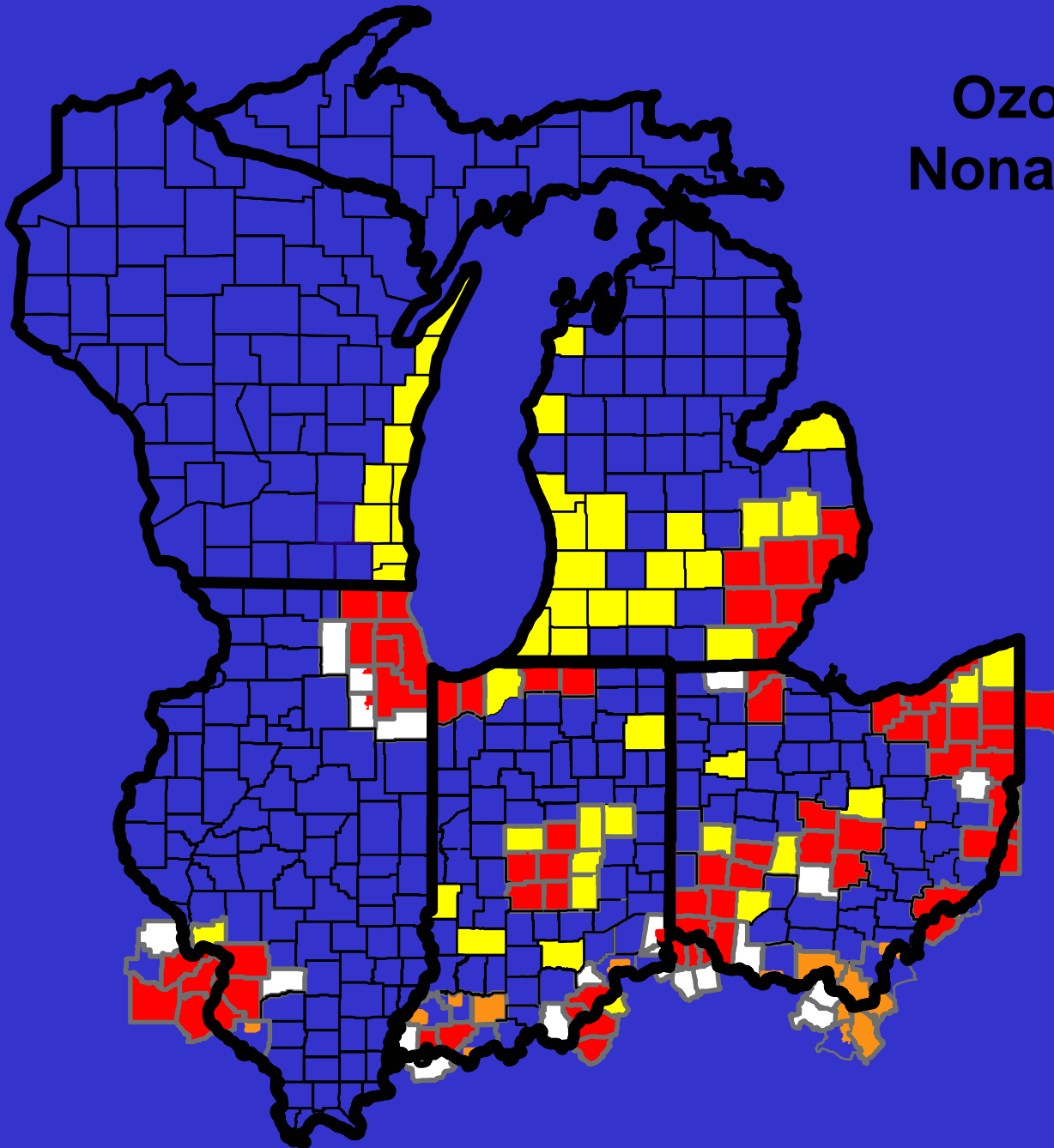
## Regulatory Background


Clean Air Non-road Diesel Rule: (diesel engines in construction, agriculture, mining, industrial, material handling)


- Engines phased in 2008-2014 based on hp
- Fuel
  - Currently averages 3400 ppm sulfur
  - 2007 – 500 ppm sulfur (All non-road diesel fuel including locomotive and marine applications)
  - 2010 – 15 ppm sulfur
  - 2012 – 15 ppm sulfur (locomotive and marine applications)


# Region 5 Ozone and PM 2.5 Nonattainment Areas

104 Full Counties  
11 Partial Counties



 **PM 2.5  
Nonattainment**  
11 Counties

 **Ozone  
Nonattainment**  
45 Counties

 **Ozone and PM 2.5  
Nonattainment**  
59 Counties

# Midwest Diesel Initiative

- Diesel engines currently on the road pollute at much higher rates. They can run for 1,000,000 miles and last for 20 to 30 years.
- The rules will address new engines but there is a great opportunity to address existing fleets
- 11,000,000 diesel engines in the existing fleet today!

# Midwest Diesel Initiative

Goal: To reduce diesel emissions in the Midwest by working with our Federal, State and local partners, private sector, and non-profit organizations

- To leverage resources to maximize environmental impact
- To accelerate market for clean diesel technologies and fuels
- To encourage early adoption of technologies and practices

# Midwest Diesel Initiative

## Clean School Bus USA Program

- 10 million granted since 2003
- \$7.5 million appropriated in 2005



## SmartWay Transport Partnership

- \$1.7 million granted in 2004
- \$5 million appropriated in 2005



## Voluntary Diesel Retrofit and Replacement Program

- \$5 million granted since 2000

# Midwest Diesel Initiative

## Department of Energy Clean Cities Coalitions

## Department of Transportation's Innovative Finance Programs

- Congestion Mitigation, and Air Quality Program
- Section 129 loans

## Supplemental Environmental Projects

# Midwest Diesel Initiative

Federal, State and Local Partners are addressing this issue...

- IDOT Dan Ryan Construction Project
- IDEM – Diesel Wise Website  
Advanced Truck Stop Electrification in Gary, IN
- MDEQ – School Bus Retrofit
- WNDR – CMAQ \$ to retrofit School buses in Southeast Wisconsin
- Chicago Clean Air Counts Campaign –  
Municipality Diesel Retrofits



# Midwest Diesel Initiative

Focusing on four sectors:

- Trucking
- Locomotives (Switch engines)
- Ports (10 major ports, 8 in non-attainment areas)
- Construction

Planning diesel-focused discussions in major cities across the Region

# Midwest Diesel Initiative

## State Implementation Plan Guidance

- October 24, 1997 Voluntary Emission Reduction Programs Guidance
- EPA is looking at guidance for quantification of voluntary mobile source emission reduction programs

## Draft Report, *Emission Reduction Incentives for Off-Road Diesel Equipment Used in the Port and Construction Sectors*

- Focuses on grant programs, tax incentives, modified contracting procedures, and non-monetary incentives implemented at the state, regional and local level

<http://www.epa.gov/sectors/ports/index.html>

# Midwest Diesel Initiative

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