

We are dedicated to protecting public health and the environment from the hazards of diesel pollution.

Portland Neighbors for Diesel Action
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November 12, 2018

Re: Comments on the Clean Air Construction Standard dtd November 5 Draft for Public Comment

To City and Council Commissioners, Mayor Wheeler and Chairperson Deborah Kafoury:

We are a group of Portland residents working independently to increase public awareness of diesel pollution and its health effects and other costs and to press for effective measures to reduce diesel pollution substantially and without further delay. Our group began in Brooklyn which surrounds the Rail Yard and which has nearly tripled in heavy diesel activity over the past 6 years. We have reached out successfully to 20+ neighborhoods across Portland thus far. On September 26, we organized a successful Town Hall Forum on Diesel Pollution. Representatives of the Mayor's office, the State House and Senate, and the County, as well as Jo Ann Hardesty attended, and we very much appreciate their attendance and participation.

Here are our comments on the November 5 draft standard proposal. Our overall assessment is that this policy, with further revisions, could help to begin reducing the high concentrations of diesel emissions at and around construction sites in Portland and Multnomah County. By showing that Portland and Multnomah County are serious about reducing diesel emissions, it may serve as a model for other Oregon cities and counties and may help to break the legislative stalemate which has blocked the statewide regulation of diesels for many years. However the standard as drafted is unclear, raising many questions of intent and interpretation; it is generally weak; and the Phase-In Schedule is at least twice as long as would be reasonable.

Unfortunately, we believe that the standard as drafted is unlikely to produce significant reductions in diesel particulates at public construction sites for six to eight years. Its effectiveness even then will depend upon the details of compliance requirements; upon the rigor with which the standard is applied in the field; and upon the rigor of its application in the field, a serious program of monitoring, regular assessment, and mid-course corrections. We are concerned that this effort risks being seen by affected residents and neighborhoods as little more than symbolic.

Here are our concerns in more detail.

1. Which construction sites are subject to the policy? The standard is not clear on this point. We believe it should apply to all construction projects aided by City or County grants as well as projects directly funded and supervised by the City or County.

2. Idle Reduction. The standard sets a 5-minute limit. Other jurisdictions have set 3-minute limits on idling. Why not use the shorter limit, given the seriousness of diesel emissions as a threat to public health?

3. Lack of baseline, benchmarks, and an assessment plan. There is no baseline and no benchmarks against which effectiveness can be assessed. We understand that an air quality baseline for construction sites cannot be defined. Nevertheless, without measurable goals that can be tracked annually, this proposal seems to be more symbolic than substantive.

We understand that an equipment inventory can be prepared as a starting point for assessment. If so, that should be referenced in the standard, as well as an annual assessment plan that includes a revised equipment inventory as a surrogate for particulate reduction measurements.

Although an overall particulate baseline for construction sites in general is not known or possible to obtain, particulate levels at each site (or at least each major site) should be monitored before, during, and after the project. Over the Phase-In period, such data would be helpful in assessing the program's effectiveness as engines are replaced or retrofitted.

On a related issue, the proposed program assessment needs to be carried out at least every two years, and must be based upon regular site and equipment inspections and site-specific monitoring of emissions. Program updates, assessments, and recommendations for improvements must be made available to the public on a timely basis.

4. Excessively drawn-out Phase-In Schedule. People in affected neighborhoods should not have to wait seven or eight years for substantial reductions in particulate emissions at these sites. The standard should have clear, annual benchmarks in terms of particulate reductions, and a timetable of no more than three years from the effective date to achieve at least 60% reduction in particulate emissions, and four years for at least an 80% reduction.

5. Inadequate, weak standards for retrofits on non-road and on-road diesels. The following comment applies to non-road diesels specifically. We have similar concerns regarding on-road equipment (cement mixers and dump trucks); we would ask if the Phase-In Schedule for on-road equipment is the best that can be done under EPA regulations. If so, we would ask that the schedule be compressed as soon as federal pre-emption allows.

With respect to non-road equipment: apparently, Tier 0, 1, and 2 engines may be retrofitted with a DOC emission control device and used until January 2026. A DOC device reduces particulates by only 20%, which is wholly inadequate, given the threat of diesel particulates to public health. New DOC emission control devices are not prohibited until January 2024. That means that as late as December 2023, equipment can be inadequately retrofitted with a DOC device and then used until January 2026. That is a perverse result of an excessively protracted and lenient policy that does not take diesel particulates seriously as a public health threat. If our interpretation is incorrect, then standard policy must be clarified so that it can be readily understood. If our interpretation is correct, the Phase-In Schedule must be tightened by at least four years.

6. Exemptions. We note with approval that there is no longer a "hardship" exemption. However, the long Phase-In period and weak retrofit requirements will not provide an effective incentive for owners to replace old equipment. Instead they may tend to incentivize retention of older equipment using inadequate retrofit technology. To provide consistency and fairness, exemptions should be administered by a central authority, perhaps upon recommendations from a site manager. We believe that a program of financial incentives to DMWESB contractors encouraging investment in replacement of older equipment or in DPF technology is essential.

7. Compliance stickers. Compliance stickers should clearly and legibly indicate the end date for the equipment's compliance period.

8. We have not seen an estimate of, or projected source for funds to implement this program. Nor is there a description of the administrative responsibility for this program, including base-line assessments (such as an inventory of existing equipment), monitoring of construction sites, periodic program assessment, and compliance and enforcement.

This program cannot be entirely tucked into existing responsibilities for procurement and site managers. It seems clear that a central program manager must be designated, with sufficient independence and authority to ensure consistency and excellence in administration of the program. In addition, we strongly urge that funding be provided to mitigate the impact of this standard on DMWESB contractors and to provide incentives for their early compliance with higher tiers of emission reduction.

9. Adapting this standard in light of evolving technology, available funds, findings from regular program assessments, and possible changes in the legal environment.

The policy should recognize that the framework and standards adopted at this time are a “minimum” that may need to be strengthened in order to reflect adequately the serious threat to public health throughout Portland. The City and County should commit to considering a future incentive program and other necessary changes that push substantial emissions reductions under this policy more quickly beyond minimum compliance.

We understand that an important objective of this standard is to serve as a positive model for other local jurisdictions and even for the State of Oregon. We are concerned that an unclear and weak standard, or one that is administered unevenly with respect to retrofit requirements or exemptions, will not be perceived as a model by other jurisdictions.

10. Instituting this policy is particularly important in advance of major commitments by the City and Metro to constructing thousands of affordable residential units.

Many of these badly needed projects, enabled by public dollars, are likely to be located in communities that are already impacted by higher than average levels of diesel emissions. This long-anticipated major push for affordable housing should not increase the levels of diesel pollution in communities where such projects are located, whatever their income level or ethnic composition. It is especially important as a matter of environmental justice that this standard be applied from its inception to publicly-aided housing construction in a manner that will prevent a surge in diesel emissions, especially in communities already impacted by high levels of emissions.

In summary, we urge you, the leaders of our City and County to give serious consideration to our concerns and to adopt a clearer and stronger standard of which we all can be proud. We also urge you to give serious consideration during the twelve months following adoption to a funding package in support of a strong, well-administered policy that provides incentives for DMWESB contractors to invest in the best available retrofit technology or in replacement of older engines that are not compatible with DPF retrofits. A 20% reduction in particulate emissions for a five-year period will contribute little to alleviating the threat that diesel particulates pose to all of us.

Respectfully submitted,

Portland Neighbors for Diesel Action