



June 3, 2009

BY ELECTRONIC MAIL

Attn: Docket No. EPA-HQ-OAR-2008-0708
U.S. Environmental Protection Agency
EPA Docket Center, Mail Code 6102T
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

RE: Comments on EPA's Proposed Hazardous Air Pollution Standard for Reciprocating Internal Combustion Engines During Periods of Startup, Shutdown, and Malfunction, 74 Fed. Reg. 9698 (March 5, 2009)

Dear Sir or Madam:

The Office of Advocacy of the U.S. Small Business Administration (Advocacy) submits the following comments in response to the U.S. Environmental Protection Agency's (EPA's) proposed rulemaking, "National Emission Standard for Hazardous Air Pollutants for Reciprocating Internal Combustion Engines" (RICE), 74 Fed. Reg. 9,698 (March 5, 2009). Advocacy is commenting specifically on EPA's proposed emission standard for RICE units (and, potentially, for other sources of hazardous air pollution) during periods of startup, shutdown, and malfunction (SSM). Advocacy has made significant outreach efforts on this issue to potentially affected small businesses, including a roundtable meeting in May in which small entities voiced concerns over their ability to comply with the SSM requirements. This letter reflects the input of small entities who participated in the roundtable.

Congress established the Office of Advocacy under Pub. L. No. 94-305 to advocate the views of small entities before federal agencies and Congress. Because Advocacy is an independent body within the U.S. Small Business Administration (SBA), the views expressed by Advocacy do not necessarily reflect the position of the Administration or the SBA.¹

Based on Advocacy's review of the RICE proposal and discussion with potentially affected small entities, we are concerned that the proposed emission limits for SSM are

¹ 15 U.S.C. § 634a, *et. seq.*

premature; are not supported by adequate emissions data on startup, shutdown, and malfunction conditions; and are technically infeasible. The result of finalizing these SSM emission limits in the RICE rule and in other hazardous air pollution rules would be to render sources subject to these rules, most of which are small entities, incapable of complying with the limits during SSM conditions.

I. Background.

EPA solicits comment on two alternative approaches for limiting emissions from RICE units during periods of startup, shutdown, and malfunction. EPA included these potential SSM emissions limits in the RICE rule proposal in order to address the D.C Circuit Court of Appeals' decision in *Sierra Club v. EPA*.² That decision vacated the exemption in 40 CFR § 63.6(e)(1)(i) that for many years has allowed sources to deviate from their normal emission standards temporarily during startup, shutdown, or malfunction situations.

Under the first approach considered by EPA, RICE units would be subject to the same emission limits during SSM conditions that they must meet during normal operations.

Under the second approach, EPA would require RICE units with catalyst-controls to achieve the same emission limits during SSM as the best performing units can prior to the "warm up" of catalyst-based controls. Units that have no catalyst-based controls would have to meet the same emission limits during SSM conditions that they must meet during normal operations.

II. EPA should delay new SSM emission limits until current litigation over SSM has been resolved.

EPA has proposed new SSM emission limits in the RICE rule in order to respond to the December 2008 *Sierra Club v. EPA* decision. A petition for rehearing of that case is now pending, however. If the petition is granted, the court's mandate may be revised or modified. Alternatively, the decision may be appealed to the U.S. Supreme Court. Given the present uncertainty surrounding the SSM requirements, EPA should consider suspending the SSM portion of the proposed RICE rule (as well as in any other current hazardous air pollution rulemaking) until the SSM litigation has been resolved.

Moreover, as explained below, EPA should gain a more complete understanding of how sources actually deal with SSM conditions before imposing new SSM emission limits. For instance, some small businesses indicated that they already alter operating conditions such as engine load upon start-up in order to minimize the amount of time it takes for engine emissions controls to reach operating temperatures. Given the type of equipment they have on hand, these small entities believe they already do all that is technically feasible to minimize start-up emissions without placing overdue stress on their equipment that would increase maintenance costs.

² *Sierra Club v. EPA*, No. 02-1135, (D.C. Cir., Dec. 19, 2008).

III. EPA'S proposed SSM emission limits are not supported by adequate data.

EPA's SSM proposals are premised on the assumption that units under SSM conditions can either meet the same emission limits that they meet under normal operating conditions or, alternatively, that they can match the emission limits of their best-performing counterparts during SSM events. Yet EPA has little or no data to demonstrate that RICE units are capable of meeting normal emission limits during SSM conditions. EPA's data on emissions during startup conditions, for example, is based on tests of uncontrolled engines, which are not analogous to the performance of engines with catalyst-based controls. Moreover, EPA cites no specific data on emissions during malfunction conditions. Indeed, it is not entirely clear how the emissions of the "best-performing malfunctioning unit" could reasonably be measured in practice. If EPA wishes to establish SSM emission limits, the agency needs to develop adequate data to demonstrate that emission limits are achievable in practice by covered sources during startup, shutdown, and malfunction situations.

IV. EPA'S proposed SSM emission limits are not technically feasible.

Either of EPA's proposed SSM emission limits would be difficult, if not impossible, for most RICE units to comply with under all SSM conditions. In malfunction situations, it is unreasonable to expect a unit to be able to meet the same emission limits that it can under normal operations. Similarly, most engines have higher emissions during startup than they do during steady-state operations, a fact long-recognized by EPA in its emission testing of mobile source engines. This is particularly true of catalyst-based controls, which must reach critical temperatures to operate properly. Even if EPA were to impose an SSM emission limit based on the best performing catalyst-controlled engines prior to "warm-up," variation among catalyst-equipped RICE units would mean that many units would fail to meet the startup limits. As a result, many existing RICE units would be unable, from a technical standpoint, to meet the SSM emission limit during startup and malfunction conditions. EPA has provided no evidence to demonstrate that existing RICE units could meet either of the proposed SSM emission limits.

V. Small entities will be significantly impacted by new SSM emission limits.

By itself, the proposed RICE rule potentially affects large numbers of small entities, from emergency generators in home-based businesses and hospitals to the RICE units serving on farms. New SSM emission limits could significantly impact these small entities by forcing them into noncompliance any time they go through startup, shutdown, or malfunction conditions. Further, if EPA adopts new SSM emission limits in other hazardous air pollution rules, the impact on area sources and small entity major sources will be significant. These sources will become subject to noncompliance penalties and other enforcement risks despite the fact that they will be operating in the same way that they have for more than a decade.

Because new SSM emission limits are anticipated to have a significant economic impact on a substantial number of small entities, EPA should suspend the SSM rulemaking and convene a Small Business Advocacy Review (SBAR) Panel on SSM under section 609(b) of the Regulatory Flexibility Act (RFA).³ EPA could benefit from receiving the views of small entities, and their on-the-ground experience, through the SBAR Panel process.

Going through the SBAR Panel process would also allow EPA to consider alternative approaches for controlling SSM emissions, such as employing work practice standards instead of numerical limits⁴ or imposing temporal limitations on startup, shutdown, and malfunction events.

VI. Conclusion.

For the foregoing reasons, EPA should consider immediately suspending its RICE SSM rulemaking. The RICE SSM rulemaking (and any other SSM rulemakings) should proceed only after the current litigation has been resolved, EPA has developed adequate emissions data to support its SSM approach, and the agency has heard the views of small entities through an SBAR Panel on SSM. During the Panel process, EPA should consider alternative approaches to controlling SSM emissions, such as work practice standards.

We look forward to working with you to ensure that the impact on small entities is seriously considered prior to EPA moving ahead on regulating SSM emissions. Please do not hesitate to call me or Assistant Chief Counsel Keith Holman (keith.holman@sba.gov or (202) 205-6936) if we can be of further assistance.

Sincerely,

/s/

Shawne C. McGibbon
Acting Chief Counsel for Advocacy
Environment

/s/

Keith Holman
Assistant Chief Counsel for
Regulatory Policy

cc: Kevin Neyland, Acting Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget

³ 5 U.S.C. § 609(b).

⁴ The *Sierra Club* court suggested that EPA could exempt SSM events from numerical limits under section 112(d)(5) for area sources and under 112(h) for major sources.