Contract Language Examples

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Illinois Department of Transportation - Dan Ryan Expressway

Description. The reduction of emissions of Carbon Monoxide (CO), Hydrocarbons (HC), Nitrogen oxides (NOx), and Particulate Matter (PM) will be accomplished by installing Retrofit Emission Control Devices and/or by using cleaner burning diesel fuels. The term "equipment" refers to any and all diesel fuel powered devices rated at 50 Horse power (HP) and above, to be used on the project site for any length of time, (including any "rented" or "rental" equipment).

All Contractor and Sub-contractor diesel powered equipment with engine horsepower (HP) ratings of 50 HP and above, that are on the project or are assigned to the contract shall be prohibited from using "off-road" diesel fuel (above 500 parts per million (ppm) sulfur content) at any time. In addition, diesel powered equipment shall be either (1) retrofitted with Emissions Control Devices *and* use Cleaner burning "on-road" diesel fuel (500 ppm sulfur content or less), or (2) use Ultra Low Sulfur Diesel fuel (ULSD) exclusively (15 ppm sulfur content or less), in order to reduce diesel particulate matter emissions. Large cranes (Sky cranes or Link Belt cranes), which are responsible for critical lift operations are exempt from installing Retrofit Emission Control Devices if they adversely affect equipment operation.

In addition, all construction motor vehicles (both on-road and off-road, gasoline or diesel fuel powered) shall comply with all pertinent State and Federal regulations relative to exhaust emission controls and safety, including opacity. Frequently Asked Questions (FAQ's) regarding Illinois Environmental Protection Agency (IEPA) emissions testing for gasoline powered vehicles can be accessed at (www.epa.state.il.us/air/vim/faq/testing.html). Regulations regarding diesel powered vehicles over 16,000 pounds, and the Diesel Emission Inspection Program (Title 92: Transportation Part 460, Diesel Emission Inspection Program, Subpart A: General) can be accessed at (www.dot.state.il.us/regulations.html). Diesel powered vehicles less than 16,000 pounds are exempt from testing by IDOT. All diesel powered equipment used on the project site shall be subject to reasonable, random spot checks for compliance with the required emissions controls and proper diesel fuel usage. The Secretary of State, Illinois State Police and other law enforcement officers shall enforce Part 460. For additional information concerning Illinois diesel emission inspection requirements, please call the Illinois Department of Transportation, Diesel Emission Inspections Unit, at 217-557-6081.

The Retrofit Emission Control Devices shall consist of oxidation catalysts, or similar retrofit equipment control technology that (1) is included on the Environmental Protection Agency (EPA) *Verified Retrofit Technology List* (www.epa.gov/otaq/retrofit/retroverifiedlist.html) and (2) is verified by EPA or certified by the manufacturer via letter, to provide a minimum emissions reduction of 20% PM10, 40% CO, and 50% HC when used with "on-road" diesel fuel. As noted above, the Retrofit Emission Control Device *must be used with on-road diesel fuel* (500 ppm sulfur content or less).

If used, ULSD fuel shall conform to American Society for Testing and Materials (ASTM) D-975 diesel with the following additional specifications:

- ASTM D-5453 15 ppm Sulfur max.
- ASTM D-6078 Lubricity (SBOCLE) 3100 g min.
- ASTM D-613 Cetane 45 min.
- Dyed (for Off-road use)

Construction shall not proceed until the contractor submits a certified list of the diesel powered equipment that will be retrofitted with emission control devices and use “on-road” diesel fuel, and a list of equipment that will use ULSD fuel only. The list(s) shall include (1) the equipment number, type, make, and contractor/sub-contractor name; (2) the emission control device make, model and EPA verification number; and (3) the type and source of clean fuels to be used. Vehicles reported as fitted with emissions control devices shall be made available to the Engineer for visual inspection of the device installation by qualified staff, prior to being used on the project site. Diesel powered equipment in non-compliance will not be allowed to be used on the project site, and is also subject to a “Notice of Non-Compliance” as outlined below under “Environmental Deficiency Deduction.”

The contractor shall submit monthly summary reports, updating the list of construction equipment, and include certified copies of the diesel fuel delivery slips (for both “on-road” and ULSD) for the reporting time period, noting the type of diesel fuel used with each piece of diesel powered equipment. The addition or deletion of any diesel powered equipment shall be included in the summary and noted on the monthly report.

If any diesel powered equipment is found to be in non-compliance with any portion of this specification, the Engineer will issue the contractor a Notice of Non-Compliance and given an appropriate period of time, as outlined below under “Environmental Deficiency Deduction,” in which to bring the equipment into compliance or remove it from the project site. Failure to comply with the "Diesel Vehicle Emission Controls", shall also subject the Contractor or sub-contractor to an "Environmental Deficiency Deduction," as outlined below.

Any costs associated with bringing any diesel powered equipment into compliance with these "Diesel Vehicle Emissions Controls" shall be included in the overall cost of the contract. In addition, there shall be no time granted to the contractor for compliance with this notice. The contractor's compliance with this notice and any associated regulations shall also not be grounds for a claim.

A. <u>IDLING</u>. The contractor shall establish truck-staging areas for all diesel powered vehicles that are waiting to load or unload material at the contract area. Such zones shall be located where the diesel emissions from the equipment will have a minimum impact on adjacent abutters and sensitive receptors of the general public. The Department will coordinate such locations with the Contractor and City Of Chicago authorities, including local aldermen, in the selection of staging areas, whether within or outside the existing

highway right-of-way (ROW), to avoid locations near sensitive areas or populations to the extent possible. Sensitive receptors include, but are not limited to hospitals, schools, residences, motels, hotels, daycare facilities, elderly housing and convalescent facilities. Diesel powered engines shall also be located as far away as possible from fresh air intakes, air conditioners, and windows. Idling of diesel powered equipment shall not be permitted during periods of non-active vehicle use. Diesel powered engines shall not be allowed to idle for more than five consecutive minutes when the equipment is not in use, occupied by an operator, or otherwise in motion, except only as follows:

- When the equipment is forced to remain motionless because of traffic conditions or mechanical difficulties over which the operator has no control;
- When it is necessary to operate auxiliary systems installed on the equipment, only when such system operation is necessary to accomplish the intended use of the equipment;
- To bring the equipment to the manufacturer's recommended operating temperature;
- When the outdoor temperature is below forty-five (45) degrees Fahrenheit or above eighty (80) degrees Fahrenheit;
- When the equipment is being repaired.

All work shall be conducted to ensure that no harmful effects are caused to adjacent sensitive receptors. Equipment and equipment operators found in non-compliance with these idling provisions shall receive a warning, and on the next offense be subject to an Environmental Deficiency Deduction as outlined below. The contractor or sub-contractor may reserve the right to enforce this deduction on their own equipment operator, as necessary.

O'Hare Modernization Program

CONSTRUCTION AIR QUALITY – DIESEL VEHICLE EMISSIONS CONTROLS
SECTION 01111

PART 1 GENERAL

1.01 DESCRIPTION

A. The O'Hare Modernization Program (OMP) developed a "Sustainable Design Manual" (SDM) as an integral part of the overall design and construction standards for the OMP. (City of Chicago, O'Hare Modernization Program, Sustainable Design Manual. O'Hare Modernization Program. December 2003 can be found at www.oharemodernization.org, see "OMP Public Information".) Its vision states that "O'Hare International Airport will continue to evolve as a benchmark for environmental stewardship in design and construction. The OMP will embrace the best possible environmental, social, and fiscally responsible practices to enhance the quality of life and maintain consistency with the overall mission and goals of the City of Chicago."

B. Section 8.5 of the OMP SDM, "Clean Fuel Construction Vehicles", includes consideration of requiring "…that a portion of the construction vehicle fleet be clean fuel vehicles and/or incorporate clean air technologies."

C. The specifications herein meet and exceed the scope of Section 8.5 of the OMP SDM and will benefit the Chicagoland region by providing meaningful reductions in air emissions associated with OMP construction activity.

PART 2 PRODUCTS

- FUEL USE REQUIREMENTS

- The fuel use requirements apply to all off-road vehicles and equipment utilized by Contractors, Subcontractors and Suppliers that are on the project site for a minimum period of fourteen (14) consecutive calendar days.

- The fuel use requirements apply to all on-road vehicles and equipment utilized by Contractors, Subcontractors and Suppliers that transport materials regularly to and from the Project site that exceed five (5) calendar days per month accessing the work site.

- The contractor must utilize Ultra Low Sulfur Diesel (ULSD) for all diesel-powered vehicles and equipment (both mobile and stationary) with engine HP ratings of 50 HP or more that are utilized on the Project site. It should be noted that ULSD fuel is readily available in the Chicagoland area. Also, it should be noted that the requirements stated herein are

compatible with, but in advance of, Federal requirements for the use of ULSD fuel for both on-road (2007) and off-road (2010) vehicles. The ULSD must conform to the American Society of Testing and Materials (ASTM) D975 with the following additional specifications:

- ASTM D5453 15 ppm Sulfur maximum

1. ASTM D6078 Lubricity (SBOCLE) 3100g minimum

- ASTM D613 Cetane 45 minimum

- EQUIPMENT TECHNOLOGY REQUIREMENTS

- The equipment technology requirements apply to all off-road vehicles and equipment utilized by Contractors, Subcontractors and Suppliers that are on the Project site for a minimum period of fourteen (14) consecutive calendar days.

- These requirements do not apply to on-road vehicles and equipment, however Contractors, Subcontractors and Suppliers that transport materials regularly to and from the Project site are encouraged to follow these requirements to the best of their ability.

B. Requirements:

1. All off-road diesel-powered vehicles and equipment (both mobile and stationary), as applicable, with engine HP ratings of 50 HP or more, must install and or retrofit with emissions control devices that will reduce emissions prior to utilization of said equipment on the Project. The Retrofit Emission Control Devices must consist of diesel oxidation catalysts, diesel particulate filters or similar retrofit equipment control technology that

   a. is included on the EPA Verified Retrofit Technology List (http://www.epa.gov/otaq/retrofit/retroverifiedlist.htm) or verified by the California Air Resources Board (CARB) (http://www.arb.ca.gov/diesel/verdev/verdev.htm) or

   b. is verified by EPA or represented by the manufacturer in writing, to provide a minimum emissions reduction of 20% PM, 20% CO, and 40% HC when used with Ultra Low Sulfur Diesel fuel.

   This requirement applies unless the vehicle or equipment is either EPA Tier 2 Rule compliant or meets the horsepower/model year defined in the table below:

Horsepower Range	Model Year (or newer)
50-99	2004
100-299	2003

300-599	2001
600-749	2002
750 and up	2006

38. Project Site Air Quality.

Because fine particulate matter levels for Milwaukee County are typically close to $PM_{2.5}$ limits and the project is in a non-attainment area for the federal 1-hour ozone standard, contributions from construction activities can have a major impact well beyond the project limits. Take practical measures to mitigate the impact of operating construction equipment on the air quality in and around the project site.

Do not burn diesel fuel with a sulfur content exceeding 500 ppm (0.05% by weight) within the project limits. Red dyed diesel fuels marketed for off-road use frequently will not meet this requirement. If burning dyed fuel, ensure that the sulfur content meets this requirement.

The department encourages the contractor to voluntarily establish staging zones for trucks waiting to load and unload. Locate staging zones where idling of diesel powered equipment will have minimal impact on abutting properties and the general public. The department will make signs available to the contractor to help identify these zones. Have truckers queue up in these zones whenever it is practical. The department further encourages drivers to shut down diesel trucks as soon as it appears likely that they will be queued up for more than 15 minutes.

TRUCK DRIVERS

PROJECT SITE STAGING ZONE

SHUT DOWN IF QUEUED UP FOR MORE THAN 15 MINUTES

The department also encourages the contractor to locate stationary diesel powered equipment to minimize the impact of diesel emissions on abutting properties and the general public. The department further encourages the contractor to shut down stationary diesel powered equipment when not in use for extended periods.

39. Environmental Protection.

Supplement 107.18 of the standard specifications with the following:

The contractor is advised that a number of businesses in the project vicinity have either air-conditioning units or precision machinery that can be affected by dust. Take appropriate measures to minimize dust during construction operations.

Blasting of piers or abutments for removal purposes will not be permitted. Removal of debris shall be in accordance with this provision. Disposal of debris shall be in accordance with 203.3.4 of the standard specifications.

Take adequate precautions to install and maintain necessary erosion and sediment control during grading and construction operations at curbs and gutters, and at other locations as determined by the engineer. Protect storm drain inlets and manholes at locations determined by the engineer with a filter fabric or equivalent barrier meeting accepted design criteria, standards, and specifications.

REV. 2/6/06
Leg 28
SI-3(B)(1)

BOARD OF LEGISLATORS ---- COUNTY OF WESTCHESTER

Your Committee is aware that the United State Environmental Protection Agency has classified Westchester's air as failing to meet ambient air quality standards for ozone and particulate matter.

Your Committee is in receipt of a Report from its Healthy Air Task Force further documenting that Westchester's air is unhealthful and outlining various measures that Westchester should adopt to improve its air quality.

The Healthy Air Task Force urged Westchester County government to adopt an act requiring that all diesel-powered **onroad vehicles and** all diesel-powered **nonroad vehicles** owned, leased and/or operated by or on behalf of Westchester County be powered by ultra low sulfur diesel fuel and utilize the best available technology, to reduce the emission of pollutants. Nonroad vehicles include backhoes, bulldozers, excavation machines, generators and cranes.

Your Committee is aware that diesel emissions, due in large part to their high concentrations of particulate matter, are associated with severe and multiple health risks to the citizens of Westchester County. Public health organizations, including the National Institute of Occupational Safety and Health, the World Health Organization, the United States Environmental Protection Agency (EPA), the California Environmental Protection Agency and the United States Department of Health and Human Services' National Toxicology Program, have associated diesel exhaust or diesel particulates with an increased risk of cancer, decreased lung function, aggravated asthma, respiratory symptoms and premature death.

Your Committee is aware diesel exhaust also contains nitrogen oxides which, in the presence of heat and sunlight, combine with volatile organic compounds in the air,

such as hydrocarbons, to form ground-level ozone (smog). Your Committee is aware diesel exhaust emitted by nonroad vehicles also contains these hydrocarbons.

Nonroad equipment powered by diesel fuel is the single largest mobile source of diesel particulate matter. Recognizing the harmful effects of nonroad-vehicle diesel emission, the EPA has promulgated a comprehensive rule to require advanced emission controls for *new* nonroad diesel engines and to decrease the allowable fuel sulfur levels by 99 percent. The EPA estimates that when all older nonroad engines have been replaced, exhaust emissions from nonroad engines will be reduced by over 90 percent and 12,000 premature deaths, one million lost work days, 15,000 heart attacks and 6,000 children's asthma-related emergency room visits will be prevented. But the lag in effective date and long life spans of heavy-duty diesel engines means that the federal rule's impact will not be fully realized for twenty years.

Your Committee finds that the air in Westchester can be made cleaner now by the use of emission-control technologies and ultra low sulfur diesel fuel. Your Committee finds that use of ultra low sulfur diesel for onroad and nonroad vehicles operating in Westchester County would reduce particulates released into the air by these vehicles and significantly improve our air quality.

Your Committee believes that reducing particulate matter and nitrogen oxide emissions by using cleaner fuels and installing emission-control technologies on onroad and nonroad equipment may help to stem the tide of the asthma epidemic in Westchester County. In Westchester, an estimated 48,000 people have asthma -- 25 percent of them children. More cases are reported each year, especially among the very young, minorities and the poor.

Your Committeee intends that diesel particulate filters (DPFs) (or technologies with similar emissions benefits) be used to the maximum extent possible as part of

emissions-reduction systems, since DPFs currently achieve best performance in reducing harmful $PM_{2.5}$ emissions. This is especially important to help the county achieve compliance with federal $PM_{2.5}$ standards and to attract the best $PM_{2.5}$ - and NOx-reducing technologies into the Westchester market.

Your Committee finds that it is in the best interest of the health of our County's residents, workers and schoolchildren for the County and all of its agents to use ultra low sulfur diesel fuel and the best available technology for reducing the emission of pollutants in its diesel-powered onroad and nonroad vehicles in all areas of the entire County. Your Committee believes that the County should contract for construction and other services only with contractors who use ultra low sulfur diesel fuel and the best available technology. The County should choose to allocate its purchasing dollars to protect the health of its residents and, thereby, potentially save millions of dollars in avoided health care costs.

As you know, this Honorable Board must comply with the requirements of the State Environmental Quality Review Act ("SEQRA"). If this Honorable Board adopts the aforementioned Act, your Committee believes this would constitute an action under Article 8 of the Environmental Conservation Law, which requires this Honorable Board to comply with the requirements of SEQRA. As this project is classified as a "Type II" action under SEQRA, your Committee has been provided with an Environmental Assessment Form prepared by the Department of Planning to assist this Board in determining that this action will have no adverse impact on the Environment.

Your Committee recommends the adoption of the attached Act.

Dated:
White Plains, New York

COMMITTEE ON LEGISLATION:

COMMITTEE ON THE ENVIRONMENT & ENERGY:

ACT NO. - 2006

An ACT requiring that all diesel-powered onroad and nonroad vehicles owned, leased and/or operated by or on behalf of Westchester County be powered by ultra low sulfur diesel fuel and utilize the best available technology to reduce the emission of pollutants.

BE IT ENACTED by the County Board of the County of Westchester as follows:

Section 1. Declaration Of Legislative Findings And Intent.

In 2004 the United States Environmental Protection Agency classified Westchester County as a nonattainment area for ozone and fine particulate matter ($PM_{2.5}$).

The Board of Legislators finds that there is credible evidence that diesel emissions, with their high concentrations of particulate matter, are associated with severe and multiple health risks to the citizens of Westchester County, including an increased risk of cancer, decreased lung function, aggravated asthma, respiratory symptoms and premature death and that there is an asthma epidemic in Westchester - County.

The Board finds that the utilization of emission-control technologies and ultra low sulfur diesel fuel in diesel-powered onroad and nonroad vehicles can significantly reduce these harmful emissions of particulate matter and nitrogen oxides.

The Board finds that nonroad equipment powered by diesel fuel is the single largest mobile source of diesel particulate matter.

The Board finds that requiring the use of cleaner fuels and emission control technologies for onroad and nonroad equipment can aid in reducing the incidence of these diseases, assist in the county's achieving compliance with federal $PM_{2.5}$ standards and attract the best $PM_{2.5}$ - and NOx-reducing technologies into the Westchester market.

Section 2. Chapter 873 Article XIII Section 873.1329 is amended as follows:

[Sec. 873.1329] **<u>Sec. 873.1330 Air Quality; severability.</u>**

If any provision of this article is held invalid, such invalidity shall not affect other provisions which shall be given effect without the invalid provision.

Section 3. Chapter 873 Article XIII is amended by adding a new section as follows:

Section 873.1329 Air Quality; Onroad and nonroad vehicles; Emission standards.

1. Definitions.

Whenever used in this section, the following terms shall have the meaning indicated:

a. "Best Available Technology" (BAT) means a system for reducing the emission of pollutants which is based on technology verified by the United States Environmental Protection Agency or the California Air Resources Board or which has been identified pursuant to New York City's Department of Environmental Protection (under Local Law 77 §24-163.3d.(1)) that:

i. reduces diesel particulate matter emissions by at least 85 percent, as compared to a similar engine operating on traditional diesel fuel without emission control technology, or reduces engine emissions to 0.01 grams diesel particulate matter per brake horsepower per hour or less; and

ii. achieves the greatest reduction in emissions of nitrogen oxides at a reasonable cost and in no case produces a net increase in nitrogen oxides in excess of 10%.

b. "Contractor" means any person (as defined in Section 873-1301(27), who enters into an agreement or contract with WestchesterCounty valued at more that $150,000 (such sum to increase $5,000 on the first day of January each year following the enactment of this section until it reaches a maximum of $250,000) to perform County work or any person who enters into an agreement or contract with such person to perform County work.

c. "County work" means to provide labor, services, material and/or equipment which traditionally has been provided by the government of the County of Westchester through county employees or contractors except it does not include labor, services, materials and/or equipment provided by (1) a common carrier, (2) a shipping company (including overnight delivery companies) or (3) a manufacturer or delivery company which does not deliver materials or equipment to Westchester County government on a regular and frequent basis.

d ."Nonroad diesel engine" means an internal combustion engine (including the fuel system) operating on diesel fuel not used in a motor vehicle or a vehicle used solely for competition or not subject to standards promulgated under United States Code Title 42 sections 7411 or 7521, except that this term shall apply to internal combustion engines used to power generators, compressors or similar equipment used in any construction program or project.

e ."Nonroad diesel vehicle" means a vehicle that is powered by a diesel engine fifty horsepower or greater, including but not limited to excavators, backhoes, cranes,

compressors, bulldozers and similar equipment, but not including a vehicle used solely for competition.

f. "Onroad diesel vehicle" means any self-propelled vehicle designed for transporting persons or property on a street or highway that operates on diesel fuel.

g. "Owned, leased and/or operated by or on behalf of Westchester County" includes all diesel-powered vehicles owned by Westchester County or a contractor, which are used by Westchester County or a contractor to do County work.

h. "Reasonable cost " means that the cost to purchase and install the system with technologies to reduce both Particulate Matter and Nitrogen Oxides does not exceed the cost of the system without Nitrogen Oxide control by more than thirty percent.

i. "Ultra low sulfur diesel fuel" means diesel fuel that has a sulfur content of no more than fifteen parts per million.

j. "Westchester County" means all departments, agencies, bureaus, boards, commissions, sewer and water and other districts, the Westchester Community College, the Westchester County Airport and all other entities whose expenses are shown in the Operating Budget of Westchester County and/or are paid in whole or in part from Westchester County funds.

2. Requirements: ultra low sulfur diesel fuel and best available technology

a. All onroad and nonroad diesel vehicles owned, leased and/or operated by or on behalf of Westchester County when used to perform County work as defined herein shall be powered by ultra low sulfur diesel fuel beginning as soon as practicable but in no event later than September 1, 2006.

b. All onroad and nonroad diesel vehicles owned, leased and/or operated by or on behalf of Westchester County equipped with an model year 2003 or older engine when used to perform county work as defined herein shall utilize the best available technology in accordance with the following schedule:

i. 35% of all such motor vehicles in each department or agency by September 1, 2007;
ii. 65% of all such motor vehicles in each department or agency by September 1, 2008;
iii. 100% of all such motor vehicles in each department or agency by September 1, 2009.

c. All onroad and nonroad diesel vehicles owned, leased and/or operated by or on behalf of Westchester County when used to perform county work as defined herein having a gross vehicle weight rating of more than 14,000 pounds shall utilize the best available technology or be equipped with an engine certified to the applicable 2007 United States environmental protection agency standard for particulate matter as set forth in section 86.007-11 of title 40 of the code of federal regulations or to any subsequent United States environmental protection agency standard for such pollutant that is at least as stringent, in accordance with the following schedule:

i. 35% of all such motor vehicles in each department or agency by September 1, 2007;
ii. 65% of all such motor vehicles in each department or agency by September 1, 2008;
iii. 100% of all such motor vehicles in each department or agency by September 1, 2009.

3. Agreements and contracts.

Westchester County shall specify in all of its solicitations, bids and requests for proposals to perform County work issued after the effective date hereof and in all contracts pursuant thereto that all contractors in the performance of each such contract shall comply with the provisions of Paragraph 2 of this section.

4. Determination of fuel non-availability.

If sufficient quantities of ultra low sulfur diesel fuel are not available to meet the needs of Westchester County or a contractor to fulfill the requirements of this section, the Commissioner may issue a written determination permitting the use of diesel fuel with a sulfur content of no more than thirty parts per million to fulfill the requirements of this section provided that Westchester County or the contractor to the extent practicable shall use whatever quantity of ultra low sulfur diesel fuel is available. Such determination shall be made on a case by case basis upon written application of Westchester County or a contractor which determination shall expire sixty days thereafter and may be renewed in writing for additional periods of sixty days .

5. Determination of best available technology.

a. On or before September 1, 2006, the Westchester County Commissioner of Health, or such other Commissioner as the County Executive may designate in writing to the Clerk of the Board of Legislators, shall, in consultation with the Commissioners of Public Works and Transportation, determine the best available technology as defined herein for reducing the emission of pollutants for each type of diesel-powered onroad and nonroad vehicle to which this section applies and the strategy to be used with respect to each type of vehicle to which this section applies.

b.The Commissioner shall publish a list, delivered in writing to the Clerk of the Board of Legislators, containing such determinations, which the Commissioner shall revise, as needed, on a regular basis, but in no event less often than once every twelve months.

c. Neither Westchester County nor any contractor shall be required to replace best available technology or other authorized technology utilized for each diesel-powered motor vehicle in accordance with this section for three years from having first utilized such technology for said vehicle.

d. For new engines to be delivered after the effective date of this act, BAT may be installed by the Original Equipment Manufacturered (OEM) and need not be shown

on the EPA or CARB. verified retrofit list, provided that the technology otherwise complies with the definition of BAT as defined herein

6. Applicability.

This act shall not apply:

a. where federal or state funding precludes the requirements of this act;

b. where such applicability would interfer with the purchase, lease or operation of emergency response vehicles operated by the Department of Emergency Management or the Department of Public Safety;

c. to purchases that are determined to be emergency procurements as by the Commissioner of Health or accelerated procurements compliant with the County Procurement Policy as adopted by the Boald of Legislators as Act No. 23 of 1992;

d. to any agreement or contract entered into prior to the effective date hereof;

e. to a diesel-powered nonroad vehicle where

i. the commissioner certifies that the best available technology for reducing the emission of pollutants as required herein is unavailable for such vehicle, in which case such agency or contractor shall use whatever technology available and appropriate for such vehicle that the commissioner approves for reducing the emission of pollutants; or

ii. the vehicle is used for fewer than five calendar days pr contract; or

iii. the commissioner issues a written waiver based upon a finding that the use of the best available technology for reducing the emission of may present a hazard or threat to the safety of the operator, other workers or members of the public.

7. Reporting.

a. On or before April 1, 2007, and every succeeding April 1, all Westchester County departments, agencies, bureaus, boards, commissions, districts and other entities to which this act applies shall report to the Clerk of the Board of Legislators on the use of ultra low sulfur diesel fuel in onroad and nonroad diesel vehicles and the use of the best available technology for reducing the emission of pollutants and such other authorized technology in accordance with this act for the immediately preceding fiscal year. This report shall include, but not be limited to

(i) the total number of onroad and nonroad diesel vehicles it owned, leased and/or operated;

(ii) the number of such onroad and nonroad diesel vehicles that were powered by ultra low sulfur diesel fuel;

(iii) the number of such onroad and nonroad diesel vehicles that utilized the best available technology or retrofit technology, including an itemization by vehicle model and the type of technology used for each vehicle;

(iv) the number of onroad and nonroad diesel vehicles that utilized other authorized technology in accordance with this act, including an itemization by vehicle model and the type of technology used for each vehicle;

(v) all findings, determinations and renewals of such findings and determinations which it issued or which were issued relative to said entity pursuant to this act, which shall include, but not be limited to the quantity of diesel fuel needed to power each onroad and nonroad diesel vehicles owned by, operated by or on behalf of or leased by the entity or used to fulfill the requirements of a public work contract for such entity;

(vi) specific information concerning the availability of ultra low sulfur diesel fuel or low sulfur diesel fuel where it is used;

(vii) detailed information concerning the entity's and its or contractor's efforts to obtain ultra low sulfur diesel fuel and low sulfur diesel fuel, and

(viii) all findings, determinations and waivers, and renewals thereof issued including all specific information submitted by an entity or contractor upon which such are based authorizing alternative technology, if any, utilized instead of the best available technology for reducing the emission of pollutants.

b. Nothwithstanding the foregoing, whenever a determination pursuant to subdivision 4 above is in effect, information regarding alternative fuel shall be reported wherever information regarding ultra low sulfur diesel fuel is required to be reported.

8. Contractor violations.

The Commissioner is authorized to enforce the provisions of this section.

a. Any contractor who violates any provision of this section shall be liable for a civil penalty not to exceed ten thousand dollars plus twice the amount of money saved by such contractor for failure to comply with this section.

b. Any contractor who makes a false claim may be liable for a civil penalty not to exceed twenty thousand dollars, in addition to twice the amount of money saved by such contractor as a result of having made such false claim.

9. Miscellaneous.

Nothing in this section shall be construed to limit Westchester County's authority to cancel or terminate a contract, deny or withdraw approval to perform a subcontract or provide supplies, issue a non-responsibility finding, issue a non-responsiveness finding, deny a person or entity pre-qualification as a vendor, or otherwise deny a person or entity public entity business.

Section 4. Severability

If any section, subsection, sentence, clause, phrase or other portion of this act is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction such portion shall be deemed severable, and such

unconstitutionality or invalidity shall not affect the validity of the remaining portions of this act, which remaining portions shall continue in full force and effect.

Section 5. Effective date.

This act shall take effect immediately.

SEQR STATUS SHEET

PROJECT: Diesel Vehicles Legislation

DEPARTMENT: Board of Legislators

Description

The County of Westchester proposes to amend the Sanitary Code (Chapter 873, Article XII) by adding a new section (§873.1329) which would require that all diesel-powered vehicles owned, leased and/or operated by or on behalf of the County be powered by ultra-low sulfur diesel fuel and utilize the best available technology to reduce the emission of pollutants.

The proposed legislation would apply to all on-road and non-road vehicles being utilized by the County or by a private contractor-performing work (valued above a certain cost) for the County. Non-road vehicles include construction equipment that is powered by a diesel engine of fifty horsepower or greater.

The proposed law provides a phased set of requirements to allow for the gradual replacement or conversion of diesel-powered vehicles and equipment. The law also provides for temporary waivers in the event that the required fuel or technology becomes unavailable.

The Commissioner of Health, or other Commissioner as may be designated by the County Executive, will be responsible for publishing a list of what is considered the best available technology at the time and revising the list on a regular basis (at minimum yearly). The Commissioner of Health will also be authorized to administer civil penalties to contractors who violate the provisions of this section.

All County departments, bureaus, boards, commissions, districts or other applicable county agencies will be required to submit annual reports demonstrating compliance with the proposed legislation.

The proposed law will help reduce air pollution and serve to protect public health. The proposed law will also assist the County in achieving compliance with National Ambient Air Quality Standards, particularly for ozone and fine particulate matter.

SEQR Status

Type II. Since the proposed law essentially regulates the types of equipment that may be used by the County, or in connection with County work, for the express benefit of protecting air quality, this may be classified as a Type II action, pursuant to sections: 617.5(c)(20), "routine or continuing agency administration and management, not including new programs or major reordering of priorities that may affect the environment;" 617.5(c)(25), "purchase or sale of furnishings, equipment or supplies...;" and 617.5(c)(27), "adoption of regulations, policies, procedures and local legislative decisions in connection with any action on this list."

Department of Environmental Protection
Notice of Promulgation of
Chapter 14 of Title 15 of the Rules of the City of New York
Rules Concerning the Use of Ultra-Low Sulfur Fuel and Emissions Control Technology in Nonroad Vehicles Used in City Construction

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN THE Department of Environmental Protection by section 1043 and subdivision (c) of section 1403 of the New York City Charter and section 24-163.3 of the Administrative Code of the City of New York that the Department of Environmental Protection is promulgating rules concerning the use of ultra-low sulfur fuel and emissions control technology in nonroad vehicles. PLEASE BE ADVISED THAT the prior versions of this Rule were published in the City Record on June 11th, 2004 and February 10th, 2005, and hearings were held on the first and second draft Rules on July 12th, 2004 and on March 28th, 2005 respectively.

The proposed Rule was listed in the Department's FY '04 Regulatory Agenda.

Please note that as the entire rule is new, the text is neither underlined nor [bracketed].

Statement of Basis of Purpose

On December 22, 2003, Mayor Michael Bloomberg signed Local Law 77 for the year 2003. The law amended the Administrative Code of the City of New York in relation to the use of ultra low sulfur diesel fuel ("ULSDF") and the best available technology ("BAT") by nonroad vehicles in city construction. The law requires that any diesel-powered nonroad vehicle, fifty horsepower and greater, that is owned by, operated by or on behalf of, or leased by a City agency be powered by ULSDF and utilize BAT for reducing the emission of pollutants. The law provides that the Commissioner of the Department of Environmental Protection shall make determinations, and shall publish a list of such determinations, as to the BAT for reducing the emission of pollutants to be used for each type of diesel-powered nonroad vehicle affected by the law.

This rulemaking sets forth the initial determinations of the Commissioner as to what constitutes BAT for the purposes of compliance with section 24-163.3 of the Administrative Code. In addition, it sets forth the method for obtaining a waiver from the BAT requirements as provided by subdivision k of section 24-163.3.

The Rules are authorized by section 1403 of the Charter of the City of New York and section 24-163.3 of the Administrative Code of the City of New York.

*** * ***
Chapter 14 of Title 15 of the Rules of the City of New York is enacted to read as follows:

Chapter 14
Rules Concerning the Use of Ultra Low Sulfur Diesel Fuel and Emissions Control Technology in Nonroad Vehicles Used in City Construction

Subchapter
A General Provisions

B Use of Best Available Technology and Ultra Low Sulfur Diesel Fuel
C Waiver Procedure

Subchapter A
General Provisions
§ 14-01 Definitions

§ 14-01 Definitions

Code shall mean the Administrative Code of the City of New York.

Commissioner shall mean the commissioner of the New York City Department of Environmental Protection or his or her designee.

Nonroad engine shall mean an internal combustion engine (including the fuel system) that is not used in a motor vehicle or a vehicle used solely for competition, or that is not subject to standards promulgated under section 7411 or section 7521 of title 42 of the United States code, except that this term shall apply to internal combustion engines used to power generators, compressors or similar equipment used in any construction program or project.

Nonroad vehicle shall mean a vehicle powered by a nonroad engine, fifty horsepower and greater, and that is not a motor vehicle or a vehicle used solely for competition, which shall include, but not be limited to, excavators, backhoes, cranes, compressors, generators, bulldozers, and similar equipment, except that this term shall not apply to horticultural maintenance vehicles used for landscaping purposes that are powered by a nonroad engine of sixty-five horsepower or less and that are not used in any construction program or project.

Ultra low sulfur diesel fuel shall mean diesel fuel that has a sulfur content of no more than fifteen parts per million.

Subchapter B
Use of Best Available Technology and Ultra Low Sulfur Diesel Fuel

§14-02 Best Available Technology Determination
§14-03 Method of Best Available Technology Selection
§14-04 Best Available Technology Selection Applicability
§14-05 Use of Ultra Low Sulfur Diesel Fuel
§14-06 Public Works Contracts

§14-02 Best Available Technology Determination Pursuant to section 24-163.3 of the Administrative Code, the Best Available Technology ("BAT") that must be utilized is one of the following, provided, that this technology shall achieve the greatest reduction in emissions of particulate matter and shall in no event result in an increase in the emissions of either particulate matter or nitrogen oxides:

Category I
Any properly installed and functioning system utilizing a Diesel Particulate Filter ("DPF") that primarily reduces emissions of particulate matter (PM) and secondarily nitrogen oxide (NOx) that appears on either the United States Environmental Protection Agency ("EPA") or the California Air Resources Board ("CARB") verified lists for onroad or nonroad engines or any properly installed DPF from either of the verified lists.

Category II
Any properly installed and functioning system utilizing a Diesel Oxidation Catalyst ("DOC") or Catalyzed Wire Mesh Filter (CWMF) that primarily reduces emissions of particulate matter (PM) and secondarily nitrogen oxide (NOx) that appears on either the United States Environmental Protection Agency ("EPA") or the California Air Resources Board ("CARB") verified lists for onroad or nonroad engines or any properly installed DOC or (CWMFs) on the verified list and that produces the greater PM reduction.

Category III
Any emulsified diesel fuel that appears on either the EPA or CARB verified lists for onroad or nonroad engines. Fuel technologies must be compatible with the use of ultra low sulfur diesel fuel.

§ 14-03 Method of Best Available Technology Selection

(a) Any contractor or agency operating a type of nonroad vehicle must select the appropriate BAT for use with such type of nonroad vehicle. For each type of nonroad vehicle subject to the BAT requirement, the contractor or agency operating such type of vehicle must identify, in list form, all types of pollution control technology devices that qualify as BAT in Category I for such nonroad vehicle.

(b) All types of pollution control technology devices identified by the contractor or agency as Category I BAT that are not technologically feasible for use with the subject type of nonroad vehicle are to be eliminated from the list of Category I BAT. To eliminate a specific type of pollution control technology or individual device, the contractor or agency must demonstrate to the satisfaction of the Commissioner and document that operational constraints or physical, chemical or engineering principles preclude the successful and effective use of the nonroad vehicle when used with the specific pollution control technologies of that type.

(c) If, after the elimination process, no technologies remain in Category I from which the contractor or agency can select a BAT, the same identification and elimination process must be done for Category II. If, after the elimination process, no technologies remain in Category II from which the contractor or agency can select a BAT, the same identification and elimination process must be done for Category III. If, after the elimination process, no technologies remain in Category III from which the contractor or agency can select a BAT, the contractor or agency operating the subject nonroad vehicle must apply for an Approval of Finding of Unavailability or a Safety Waiver.

(d) Once a category is selected as provided for in (c) above, an economic impact analysis is to be performed on the remaining technologies if the technology reduces both PM and NOx. If the cost of the technology that provides NOx control is equal to or greater than thirty percent more than that of the technology without NOx control, than the technology without NOx control shall be selected. For the purpose of this paragraph, the criteria that shall be considered is the cost of the strategies, themselves and the cost of installation.

(e) For newly purchased vehicles, BAT may be Original Equipment Manufacturer (OEM) installed control technology, provided that the technology is selected in a manner such that it provides the greatest reduction in particulate matter without increasing NOx and that reduction is verified by the manufacturer. The BAT need not be on EPA or CARB verified retrofit lists.

(f) The contractor or agency must use the pollution control technology identified as BAT by the process set forth in this subchapter.

(g) All contracts with City agencies shall include a provision requiring that the contractor fully document all steps in the BAT selection process when such process is required pursuant to this chapter and section 24-163.3 of the Administrative Code, and that such documentation be furnished to the Department upon request. The contractor must retain all documentation generated in the BAT selection process for as long as the selected BAT is in use. A contractor's failure to fully document the selection process or to provide such documentation shall be considered a violation of subdivision e of section 24-163.3 and is subject to applicable penalties.

§14-04 Best Available Technology Selection Applicability
The BAT listed in this subchapter may be amended, superceded, or repealed at any time. However, no contractor or agency will be required to replace a selected BAT within three years of first using such BAT on any nonroad vehicle.

§ 14-05 Use of Ultra Low Sulfur Diesel Fuel
All nonroad vehicles subject to this rule must be powered by ultra low sulfur diesel fuel, regardless of which BAT is selected, unless the Commissioner has issued a written determination pursuant to subdivision i of section 24-163.3 permitting the use of diesel fuel that has a sulfur content of no more than thirty parts per million.

§14-06 Public Works Contracts
Any contractor acting pursuant to a public works contract that is subject to the provisions of paragraph four of subdivision f of section 24-163.3, but not paragraph one or three of such subdivision, shall comply with this subchapter and subchapters A and C of this chapter as of June 19, 2005.

Subchapter C
Waiver Procedures

§14-07 Application for Approval of a Written Finding of Unavailability

§14-08 Application for a Safety Waiver

§ 14-07 Application for Approval of a Written Finding of Unavailability
(a) If the BAT required for any nonroad vehicle is unavailable, an agency may submit a Written Finding of Unavailability for the Commissioner's approval. Any application for approval of a Written Finding of Unavailability for the applicable BAT must contain the following information:

(1) The name of the agency applying for approval of the Written Finding of Unavailability;
(2) The name and identification number of the subject contract, if applicable;
(3) Identification of the specific nonroad vehicle that is the subject of the Written Finding of Unavailability;
(4) Identification of the required BAT;
(5) An explanation as to why the applicable BAT is unavailable. Such explanation must include all documentation generated in the BAT selection process described in this chapter;
(6) Identification of a technology for reducing the emission of pollutants, if any, that is available and appropriate for such vehicle, which may include a technology that does not appear on the EPA or CARB verified lists, and that, if available and appropriate, will be used instead of the BAT.
(7) The name and contact number of the applicant.

(b) Applications should be sent to:
Director of the Division of Air and Noise Programs, Enforcement and Policy
Bureau of Environmental Compliance
New York City Department of Environmental Protection
59-17 Junction Blvd.
Flushing, NY 11373

(c) The Department will make a determination whether to approve the Written Finding of Unavailability no later than thirty days after receipt of the Written Finding.

(d) Approvals shall expire 180 days after issuance, unless the agency renews the Written Finding and the Commissioner approves such Finding, in accordance with the procedures set forth in subdivisions (a), (b) and (c) of this section. Any such application for renewal shall be submitted no later than thirty days prior to the expiration date of the approval.

§ 14-08 Application for a Safety Waiver
(a) Any application for a waiver from the applicable BAT must contain the following information:
(1) If a contractor applies, the name of the contractor applying for the waiver and the agency to which the contractor is under contract;
(2) If an agency applies, the name of the agency applying for the waiver;

(3) The name and identification number of the subject contract, if applicable;

(4) Identification of the specific nonroad vehicle that is the subject of the waiver request;

(5) Identification of the required BAT;

(6) A technical explanation as to why use of such Best Available Technology may endanger the operator of the vehicle or those working near the vehicle, due to engine malfunction;

(7) Identification of a technology for reducing the emission of pollutants, if any, that is available and appropriate for such vehicle, which may include a technology that does not appear on EPA or CARB verified lists, and that, if available and appropriate, will be used instead of the BAT;

(8) The name and contact number of the applicant.

(b) Waiver applications should be sent to:
Director of the Division of Air and Noise Programs, Enforcement and Policy
Bureau of Environmental Compliance
New York City Department of Environmental Protection
59-17 Junction Blvd.
Flushing, NY 11373

(c) The Department will make a determination whether to issue a waiver no later than thirty days after receipt of the waiver request.

(d) Waivers shall expire 180 days after issuance, unless the Commissioner renews the waiver in accordance with the procedures set forth in subdivisions (a), (b) and (c) of this section. Any such application for renewal shall be submitted no later than thirty days prior to the expiration date of the waiver.

Rockland County, New York-Local Law 77

A local law relating to the reduction of the emission of pollutants from the county's on-road, diesel fuel-powered motor vehicles and requiring annual reports to the county executive and legislature of Rockland county.

Be it enacted by the legislature of the county of Rockland as follows:

Section 1. Name of local law

This law shall be known as "the Rockland county ultra low sulfur diesel fuel and best available retrofit technology act"

Section 2. Definitions.

When used in this law:

(1) "Best available retrofit technology" means technology, verified by the United States environmental protection agency or the California air resources board, for reducing the emission of pollutants that achieves reductions in particulate matter emissions at the highest classification level for diesel emission control strategies, as set forth in section 5 of this local law, that is applicable to the particular engine and application. Such technology shall also, at a reasonable cost, achieve the greatest reduction in emissions of nitrogen oxides at such particulate matter reduction level and shall in no event result in a net increase in the emissions of either particulate matter or nitrogen oxides.

(2) "County department" means any department of Rockland county government that uses diesel-powered vehicles in any capacity. It does not include contract agencies.

(3) "Gross vehicle weight rating" means the value specified by the manufacturer of a motor vehicle model as the maximum design loaded weight of a single vehicle of that model.

(4) "Motor vehicle" means a vehicle owned by the county and operated or driven upon a public highway which is propelled by any power other than muscular power, except electrically-driven mobility assistance devices operated or driven by a person with a disability, provided, however, that this term shall not include vehicles that are specially equipped for emergency response by the office of fire and emergency management, or the sheriff's office.

(5) "Person" means any individual, partnership, firm, company, association, joint stock association, corporation or other like organization.

(6) "Reasonable cost" means that such technology does not cost greater than forty percent more than other technology applicable to the particular engine and application that falls within the same classification level for diesel emission control strategies, as set forth in section 5 of this local law, when considering the cost of the strategies, themselves, and the cost of installation.

(7) “Specially equipped vehicle” means a motor vehicle defined as specially equipped pursuant to rules and regulations developed and approved by an appropriate department of county government designated by the county executive, and adopted by the legislature of Rockland county.

(8) “Ultra low sulfur diesel fuel” means diesel fuel that has a sulfur content of no more than fifteen parts per million.

Section 3. Use of ultra low sulfur diesel fuel required.

(1) Each diesel fuel-powered motor vehicle owned, leased, or operated by a county department shall be powered by ultra low sulfur diesel fuel.

(2) Diesel fuel-powered motor vehicles having a gross vehicle weight rating of more than 8,500 pounds that are owned or operated by county departments shall utilize the best available retrofit technology or be equipped with an engine certified to the applicable 2007 United States environmental protection agency standard for particulate matter as set forth in section 86.007-11 of title 40 of the code of federal regulations or to any subsequent United States environmental protection agency standard for such pollutant that is at least as stringent, pursuant to the following schedule:

10% of all such motor vehicles	by January 1, 2007;
20% of all such motor vehicles	by January 1, 2008;
30% of all such motor vehicles	by January 1, 2009;
50% of all such motor vehicles	by January 1, 2010;
70% of all such motor vehicles	by January 1, 2011;
90% of all such motor vehicles	by January 1, 2012;
100% of all such motor vehicles	by July 1, 2012.

Section 4. County executive discretion regarding technology

(1) The county executive shall make determinations, and shall publish a list containing such determinations, as to the best available retrofit technology to be used for each type of diesel fuel-powered motor vehicle to which this section applies. Each such determination shall be reviewed and revised, as needed, on a regular basis, but in no event less often than annually.

(2) The county executive may determine that a technology, whether or not it has been verified by the United States environmental protection agency or the California air resources board, may be appropriate to test, on an experimental basis, on a particular type of diesel fuel-powered motor vehicle owned or operated by a county department. The county executive may authorize such technology to be installed on up to three of such

type of motor vehicle. Any motor vehicle on which such technology is installed may be counted for the purpose of meeting the requirements of section 3(2) of this local law. Such technology shall not be required to be installed on other motor vehicles of the same type and shall be subject to the provisions of paragraph three of this section.

(3) No county department shall be required to replace best available retrofit technology or experimental technology utilized for a diesel fuel-powered motor vehicle in accordance with the provisions of this section within three years of having first utilized such technology for such vehicle, except that technology that falls within level 4, as set forth in section 5 of this law, shall not be required to be replaced until it has reached the end of its useful life.

Section 5. Classification of diesel emission control strategies.

The classification levels for diesel emission control strategies are as follows, with level 4 being the highest classification level:

Level 4 – strategy reduces diesel particulate matter emissions by 85 percent or greater or reduces engine emissions to less than or equal to 0.01 grams diesel particulate matter per brake horsepower-hour;

Level 3 – strategy reduces diesel particulate matter emissions by between 50 and 84 percent;

Level 2 – strategy reduces diesel particulate matter emissions by between 25 and 49 percent;

Level 1 – strategy reduces diesel particulate matter emissions by between 20 and 24 percent.

Section 6. Procedure when ultra-low sulfur diesel fuel is unavailable.

The county executive shall issue a written determination that permits the use of diesel fuel that has a sulfur content of no more than thirty parts per million to fulfill the requirements of this law if ultra low sulfur diesel fuel is not available to meet the needs of county departments to fulfill the requirements of this law. Such determination shall expire after six months and shall be renewed in writing every six months if such lack of availability persists, but in no event shall be in effect after September 1, 2006.

Section 7. Waiver.

The county executive may issue a waiver for the use of ultra low sulfur diesel fuel where a county department makes a written finding, approved in writing by the county executive, that a sufficient quantity of ultra low sulfur diesel fuel, or diesel fuel that has a sulfur content of no more than thirty parts per million where a determination is in effect pursuant to section 6 of this law, is not available to meet the requirements of this law,

provided that such department, to the extent practicable, shall use whatever quantity of ultra low sulfur diesel fuel or diesel fuel that has a sulfur content of no more than thirty parts per million is available for its diesel fuel-powered motor vehicles. Any waiver issued pursuant to this section shall expire after two months, unless the county department renews the finding, in writing, and the county executive approves such renewal, in writing.

Section 8. Report to county executive and legislature.

(1) Not later than January 1, 2007, and not later than January 1 of each year thereafter, the appropriate department or departments of county government, as determined by the county executive, shall submit a report to the county executive and legislature of Rockland county regarding, among other things, the use of ultra low sulfur diesel fuel and the use of the best available retrofit technology by diesel fuel-powered motor vehicles owned or operated by county departments during the immediately preceding calendar year. The information contained in this report shall include, but not be limited to, for each county department: (i) the total number of diesel fuel-powered motor vehicles owned or operated by such department; (ii) the number of such motor vehicles that were powered by ultra low sulfur diesel fuel; (iii) the total number of diesel fuel-powered motor vehicles owned or operated by such department having a gross vehicle weight rating of more than 8,500 pounds; (iv) the number of such motor vehicles that utilized the best available retrofit technology, including a breakdown by motor vehicle model, engine year and the type of technology used for each vehicle; (v) the number of such motor vehicles that are equipped with an engine certified to the applicable 2007 United States environmental protection agency standard for particulate matter as set forth in section 86.007-11 of title 40 of the code of federal regulations or to any subsequent United States environmental protection agency standard for particulate matter that is at least as stringent; (vi) the number of such motor vehicles that utilized technology in accordance with paragraph two of subdivision c of this section and the results and analyses regarding the testing of such technology; and (vii) all waivers, findings, and renewals of such findings, issued pursuant to sections 6 and 7 of this law that, for each waiver, shall include, but not be limited to, the quantity of diesel fuel needed to power diesel fuel-powered motor vehicles owned or operated by such department; specific information concerning the availability of ultra low sulfur diesel fuel or diesel fuel that has a sulfur content of no more than thirty parts per million where a determination is in effect pursuant to section 6 of this law; and detailed information concerning the department's efforts to obtain ultra low sulfur diesel fuel or diesel fuel that has a sulfur content of no more than thirty parts per million where a determination is in effect pursuant to sections 6 or 7 of this law.

(2) Where a determination is in effect pursuant to section 6 or 7 of this law, information regarding diesel fuel that has a sulfur content of no more than thirty parts per million shall be reported wherever information is requested for ultra low sulfur diesel fuel pursuant to paragraph one of this section.

(3) The report due January 1, 2007 in accordance with paragraph one of this section shall only include the information required pursuant to subparagraphs (i), (ii) and (vii) of such paragraph.

Section 9. Inapplicability.

This law shall not apply:

(1) when federal or state funding precludes the county from imposing the requirements of this law; or

(2) to purchases that are emergency procurements pursuant to the charter or any local law allowing for such emergency procurements.

Section 10. Severability.

If any clause, sentence, paragraph, subdivision, section or part of this local law or the application thereof to any person, individual, corporation, firm, partnership, entity or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, effect or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part of this law or in its application to the person, individual, corporation, firm, partnership, entity or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

Section 11. Effective date.

This local law shall take effect immediately upon filing in the office of the secretary of state pursuant to section 27 of the municipal home rule law.

Massport Construction Bid Specifications

Note: Massport does not require the use of these bid specs, but provides them as an option for projects.

46. Dust Control and Diesel Vehicle Emission Controls

Dust Control

The Contactor is responsible for controlling dust at all times during this contract, including all work shifts, non-working hours, weekends and holidays. The Contractor shall submit a Dust Control Plan to the Engineer within 30 days after the award of the Contract. The Plan shall include contact information for the responsible individual(s) from the Contractor who have authority to implement necessary controls and mitigative measures. The Plan should detail dust control procedures for activities that may typically generate dust (e.g. jack hammering, saw-cutting concrete, haul roads, material storage, etc.)

Fugitive dust shall be controlled through wetting, sweeping, and other suppression techniques. Contractor shall maintain on-site water trucks. Trucks hauling materials and excavate shall be covered.

Designated wash down areas shall be established by the Contractor on site for the control of dust tracking from vehicles leaving the site. All trucks or other vehicles leaving the site shall be hosed and washed clean of mud clinging to the wheels.

Diesel Equipment Emission Controls

All Contractor and Sub-Contractor diesel-powered non-road construction equipment with engine horsepower (HP) ratings of 60 HP and above, which is used on the project for a period in excess of 30 days, shall be retrofitted with Emission Control Devices in order to reduce diesel emissions. In addition, all motor vehicles and construction equipment shall comply with all pertinent local, state and federal regulations covering exhaust emission controls and safety.

The reduction of emissions of volatile organic compounds (VOCs), carbon monoxide (CO), and particulate matter (PM) from diesel-powered equipment shall be accomplished by installing Retrofit Emission Control Devices.

The acceptable Retrofit Emission Control Devices for the project shall consist of oxidation catalysts that (1) are included on the Environmental Protection Agency (EPA) *Verified Retrofit Technology List*; and (2) are verified by EPA or certified by the manufacturer to provide a minimum emissions reduction of 42 percent for VOCs, 31 percent for CO and 23 percent for PM. Attainment of the required reduction in PM emissions can also be accomplished by using less polluting Clean Fuels (e.g. PuriNOx).

Construction shall not proceed until the Contractor has submitted a certified list of the non-road diesel-powered construction equipment that will be retrofitted with emission control devices. The list shall include (1) the equipment number, type, make and Contractor/Sub-Contractor name; and (2) the emission control device make, model and EPA verification number. The Contractor shall also identify any vehicles that will use Clean Fuels. Equipment that has been retrofitted with an emission control device shall be stenciled or otherwise clearly marked as "Low Emission Equipment".

The Contractor shall submit monthly reports, updating the same information stated above, including the quantity of Clean Fuel utilized. The addition or deletion of non-road diesel equipment shall be indicated in the report.

In addition to installing the required emission control devices, the Contractor shall use methods to control nuisance odors associated with diesel emissions from construction equipment including without limitation the following: (1) turning off diesel combustion engines on construction equipment not in active use, and on trucks that are idling while waiting to load or unload material for five minutes or more; (2) locating diesel equipment away from the general public and sensitive receptors (e.g., fresh air intakes, air conditioners and windows); and (3) utilizing electronically-powered scissor/man lifts.

Any costs associated with implementing the dust controls and diesel equipment emissions controls as specified in this section shall be included in the general cost of the contract.