

CHAPTER 2009-43

No. 342 AN ORDINANCE RELATIVE TO CLEAN DIESEL

Approved JULY 27, 2009

Be it ordained by the City of Providence:

WHEREAS, The protection of the health, safety and welfare of its residents is the primary concern of the City of Providence; and

WHEREAS, Diesel exhaust particle pollution poses a clear and present health risk to the people of Providence; and

WHEREAS, The United States Environmental Protection Agency has classified diesel exhaust as a likely human carcinogen, and has identified diesel particulate matter and diesel exhaust organic gases as toxic air pollutants; and

WHEREAS, Diesel exhaust is also a prime contributor to airborne fine particle pollution that is linked to premature death and other serious cardiovascular and pulmonary problems such as heart attacks, abnormal heart rhythms, atherosclerosis, stroke, asthma attacks, permanent respiratory damage and retardation of lung growth in children; and

WHEREAS, Providence County ranks among the worst six percent (6%) of all counties in the United States for health risks caused by diesel particulate matter; and

WHEREAS, The associated health cost of particulate matter emissions in Rhode Island is estimated at \$316 million annually; and

WHEREAS, Forty percent (40%) of particulate matter emissions in New England come from non-road (construction) diesel engines; and

WHEREAS, A variety of federal and other funding is available to pay for the reduction of particulate emissions from diesel vehicles; and

WHEREAS, The United States Environmental Protection Agency has enacted requirements requiring the substantial reduction of emissions from new diesel engines in both heavy-duty highway vehicles and land-based non-road equipment, but these regulations do not apply to any of the over eleven (11) million existing diesel engines in the United States, most of which emit substantially more pollution and often remain in service for ten (10) to thirty (30) years; and

WHEREAS, The same technology that limits diesel pollution from new diesel engines can be retrofitted onto existing engines or applied in new replacement engines to reduce harmful diesel emissions by eighty-five percent (85%) or more, and significantly reduce noise, odor, and vibration from diesel equipment.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PROVIDENCE that:

SECTION 1. The Code of Ordinances of the City of Providence, Chapter 12, entitled, "Health and Sanitation" is hereby amended to add the following as Section 12-19, "Diesel Emission Reduction":

Section 1. Purpose.

The purpose of this ordinance is to minimize the public health risks associated with exposure to diesel particulate emissions by establishing requirements relating to the use of ultra low sulfur diesel fuel and best available retrofit technology by non-road and on-road diesel vehicles used in City construction projects, and by City owned, leased or operated diesel vehicles.

Section 2. Definitions.

Best Available Retrofit Technology means technology verified by the United States Environmental Protection Agency (US EPA) or the California Air Resources Board that achieves reductions in particulate matter emissions at the highest classification level for diesel emission control strategies that is applicable to the particular engine and application. Such technology shall not result in a net increase in nitrogen oxides.

City means the City of Providence, its agencies, boards, commissions, and departments, including, but not limited to, the department of parks, the department of public works, and the water supply board.

Contract means a contract with the City for construction projects having a total cost of two million dollars (\$2,000,000) or more, funded in whole or in part by state and federal monies, and involving the abatement, construction, demolition, rehabilitation, renovation, restoration, or repair of any building, structure, tunnel, excavation, roadway, park or bridge; or the preparation for such construction projects; or any final work involved in the completion of such projects.

Contractor means any entity or person that enters into an agreement or contract with the City, or any entity or person that enters into an agreement with such person or entity (including subcontractors and their subcontractors and suppliers), to perform work or provide goods or services related to such contract.

Director of Public Property means the City Director of Public Property.

Energy and Sustainability Manager means the City Energy and Sustainability Manager.

Goods and services mean labor, services, material and/or equipment provided to the City.

Level 1 control means a verified diesel emission control device that achieves a particulate matter (PM) reduction of twenty-five percent (25%) or more compared to uncontrolled engine emissions levels.

Level 2 control means a verified diesel emission control device that achieves a particulate matter (PM) emission reduction of fifty percent (50%) or more compared to uncontrolled engine emission levels.

Level 3 control means a verified diesel emission control device that achieves a particulate matter (PM) emission reduction of eighty-five percent (85%) or more compared to uncontrolled engine emission levels, or that reduces emissions to less than or equal to one one-hundredth (0.01) grams of (PM) per brake horsepower-hour. Level 3 control includes repowering or replacing the existing diesel engine with an engine meeting US EPA's 2007 Heavy-duty Highway Diesel Standards, published in the federal register at 66 Fed. Reg. 5001 (January 18, 2001), or in the case of a non-road engine, an engine meeting the US EPA's Tier 4 Non-road Diesel Standards, published in the federal register at 69 Fed. Reg. 38957 (June 29, 2004).

Non-road 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 that is not a stationary source, except that this term shall apply to internal combustion engines used to power generators, compressors or similar equipment used in any construction project.

Non-road vehicle means a vehicle that is powered by a non-road diesel engine seventy five (75) 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, backhoes, bulldozers, compressors, cranes, excavators, generators, and similar equipment; non-road vehicles do not include locomotives or marine vessels.

On-road vehicle means any self-propelled vehicle designed for transporting persons or property on a street or highway that operates on diesel fuel, and that has a gross vehicle weight rating of 14,000 pounds or more.

Stationary generator means a non-mobile machine that uses diesel fuel to produce electrical energy.

Ultra low sulfur diesel fuel means diesel fuel that has a sulfur content of no more than fifteen (15) parts per million.

Section 3. Use of ultra low sulfur diesel fuel and best available retrofit technology in non-road and on-road vehicles.

Section 3. Use of ultra low sulfur diesel fuel and best available retrofit technology in non-road and on-road vehicles.

a) Contingent upon the availability of City, State or federal funds to be utilized for purchasing and installing retrofit technology, any diesel-powered non-road or on-road vehicle that is owned, leased, and/or operated by the City, on and after January 1, 2010, shall:

- (1) Be powered by ultra low sulfur diesel fuel; and
- (2) Utilize best available retrofit technology for reducing diesel particulate emissions, with the specification that if level 3 verified emissions control devices have not been verified for use on particular engines, level 2 verified devices must be required; if neither level 3 nor level 2 devices have been verified for use on particular engines, level 1 verified devices must be required.

b) Any solicitation by the City for a contract for a construction project, and any contract entered into as a result of such solicitation, on or after January 1, 2010, shall include a specification that all contractors in the performance of such contract shall:

- (1) Use ultra low sulfur diesel in diesel-powered non-road and on-road vehicles;
- and

(2) Utilize the best available retrofit technology for reducing diesel particulate emissions on all non-road vehicles and on-road vehicles used on the project site, with the specification that if Level 3 verified emissions control devices have not been verified for use on particular engines, level 2 verified devices must be required; if neither level 3 nor level 2 devices have been verified for use on particular engines, level 1 verified devices must be required.

(3) Prohibit the use on the project site of non-road and on-road vehicles powered by a model year 1993 or older diesel engine, unless those vehicles have been upgraded to meet EPA Tier 1 standards for new on-road or non-road diesel engines, as applicable, and retrofitted with Level 1 control; and

(4) Prohibit the use on the project site of non-road and on-road vehicles powered by a model year 1993 or older diesel engine on and after January 1, 2014.

c) Upon provision by the contractor to the Energy and Sustainability Manager of appropriate and sufficient documentary evidence, subsections a) (2), b) (2), b) (3) and b) (4) of this section shall not apply to:

(1) any diesel-powered non-road or on-road vehicle on the project site working five days or less over the life of the project;

(2) vehicles that are specially equipped and used for emergency response, as well as other vehicles that are operated under a contract for emergency response; and

(3) vehicles and equipment used exclusively for snow removal.

Section 4. Funding.

a) With respect to each application by the City for funding from the State of Rhode Island and/or the federal government for a contract, the cost of the construction project(s) applied for shall include the full cost of the emissions reductions measures required in Section 3 a). ~~and Section 3 b).~~ Furthermore, the City shall make regulations which may apply a cap as the City deems appropriate to such reimbursement.

b) All incremental equipment and installation costs incurred by a contractor for a specific project that are necessary to bring non-road and on-road vehicles into compliance with the provisions of Section 3 b) (2) ~~and 3 b) (3)~~ shall be fully reimbursed from project funds, provided that:

- (1) the control technology is installed before the applicable vehicle is brought onto the project site;
 - (2) the contractor submits documentation, including the technology type, EPA/CARB verification number/control level, manufacturer, make, model, serial number and installation date, proving by date that the technology was installed for this project and certifying that the expenditure for installation was not previously reimbursed by any public agency or public contract; and
 - (3) the control technology is installed prior to January 1, 2014.
- c) Retrofits installed with funds from a construction program shall remain on the diesel-powered non-road and on-road vehicle for the useful life of the emission control device or the equipment.
 - d) Incremental equipment and installation costs incurred by a contractor that are reimbursable under Section 4 b) shall be included in the budget for the project and will not be considered in the contractor's bid.

Section 5. Compliance.

a) Thirty (30) days before beginning work, the contractor shall submit to the Energy and Sustainability Manager for approval a list of all diesel-powered non-road and on-road vehicles, and stationary generators to be used on the project. The list shall include the following:

- (1) Contractor and subcontractor name and address, plus contact person responsible for the vehicles or equipment; and
- (2) Equipment type, manufacturer, engine model year, engine certification ECM calibration, horsepower, plate, serial number, and expected fuel usage and/or hours of operation; and.
- (3) For the pollution control technology installed: technology type, serial number, make, model, manufacturer, EPA/CARB verification number/level, and installation date.

b) If the contractor subsequently needs utilize project site equipment not on the list, the contractor shall submit for prior approval written notification that attests the equipment complies with all contract conditions.

c) During periods of inactivity, idling of diesel-powered non-road and on-road vehicles shall be minimized and shall not exceed the time allowed under state and local laws.

Section 5. Enforcement.

a) In the event of a violation of any provision of this ordinance, except as provided in subdivision b) and c) of this section, the contractor shall be liable to pay to the City a civil penalty in the amount of up to five thousand dollars (\$5,000) for each violation, with each piece of noncomplying equipment and each day of noncompliance being a separate violation, not to exceed a total of twenty-five thousand dollars (\$25,000) for any one piece of equipment.

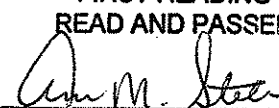
b) No contractor shall make a false statement or claim with respect to any matter material to compliance with the provisions of this ordinance to the City. Any contractor making such a false statement shall pay the City a civil penalty in the amount of up to ten thousand dollars (\$10,000) for each such statement.

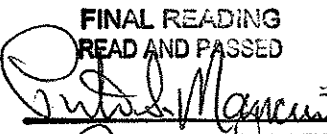
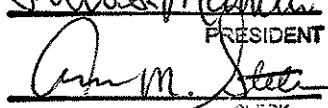
c) In the event a retrofit installed with funds from a construction project is removed or swapped onto another vehicle, the contractor in violation shall pay to the City a civil penalty not to exceed to ten thousand dollars (\$10,000) for each piece of noncomplying equipment.

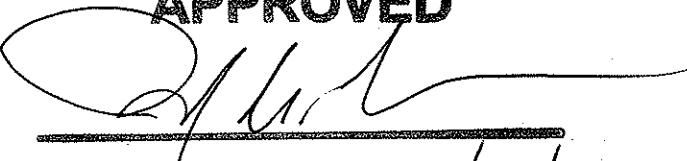
Section 6. Regulations.

Within six (6) months of the effective date of this ordinance, the Energy and Sustainability Manager shall promulgate regulations implementing the provisions of this ordinance. In the event that the Energy and Sustainability Manager position is not filled, all duties and responsibilities herein cited shall be carried out by the Director of Public Property.

SECTION 2. This ordinance shall take effect upon passage.

IN CITY COUNCIL
JUL 2 2009
FIRST READING
READ AND PASSED
 CLERK

IN CITY
COUNCIL
JUL 16 2009
FINAL READING
READ AND PASSED
 PRESIDENT
 CLERK

APPROVED

MAYOR 7/27/09



RE: #25 Docket 4/2/09

CONSTRUCTION INDUSTRIES

400 LINCOLN AVENUE

WARWICK, RHODE ISLAND 02888

(401) 739-8300

June 26, 2009

The Honorable Joseph DeLuca
Deputy Majority Leader
191 Carlton Street
Providence, Rhode Island 02908

RE: Diesel Engine Ordinance

Dear Councilman DeLuca:

Thank you for giving us the time to discuss with you some of the misperceptions and unintended negative results of the proposed Ordinance.

1. Your questions concerning the possible increase in consumption of diesel fuel created by the retrofit technology was right on the button. This technology takes the heated exhaust gases and puts them back into the engine. This much hotter air is thinner than the atmospheric air. The net result is that these retrofitted engines will burn 8% to 10% more diesel fuel. This flies in the face of the national attempt to reduce reliance on foreign supplies of fuel.
2. The preamble states that "a variety of federal and other funding is available" At this point, there are no funding sources, federal or otherwise, available in Rhode Island. The only possible source is the utilization of highway funds to pay for the retrofitting of a very minor percent of a contractor's equipment on that particular job. During a legislative hearing on a bill similar to this Ordinance, the Director of the Department of Environmental Management and a representative of the Director of the Department of Transportation both testified against the bill. The legislature, seeing the inherent problems in the bill, created a study commission in order to get to the bottom of all the facts and to get to the real sources of pollution. The number of pieces of construction equipment is deminimus compared to all the diesels running up and down all our road. Indeed, every lawnmower and weed-whacker, both of which are powered by fuel which is part gasoline and part oil, creates more pollution than any of our vehicles.
3. Section 3 of the Ordinance requires the use of ultra-low sulfur diesel fuel. By federal mandate, low sulfur diesel is now being used. We should allow the federal mandates to prevail in this area because Providence might have to pay a lot more for diesel fuel consumed on Providence jobs if the standards exceed the federal mandates.

AN EQUAL EMPLOYMENT OPPORTUNITY EMPLOYER

CONCRETE — ASPHALT — HEAVY CONSTRUCTION

The Honorable Joseph DeLuca
Deputy Majority Leader
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4. Section 3(a) Subsection 2 requires the use of "the best available retrofit technology". The Ordinance was amended to mandate this language only on jobs in excess of \$2 Million Dollars, thereby protecting "small contractors". The small contractors are the ones who will be particularly hurt because every single contractor in the country starts out small and starts out by either renting their equipment to the larger contractors or performing subcontract work for the larger contractors. They still will be prohibited from coming onto Providence jobs.

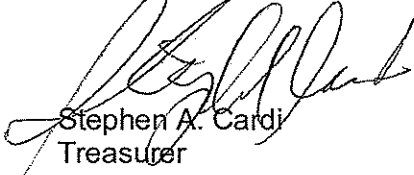
In addition, some of the retrofit technology cost up to \$35,000.00 per piece of equipment. The larger contractors will have to carry the cost of retrofitting their equipment in the bid which means Providence pays that much more for its work. In addition, every other city and town will get a free ride on the Providence taxpayers. All they have to do is not pass an Ordinance and the other cities and towns will get the benefit of the Providence expenditure.

Mr. DeLuca, we all breathe the same air. The State of Rhode Island is setting up a study commission to find out the real facts and to create an equitable solution based on the real facts. I sincerely believe that it is in Providence's interest to allow this statewide study commission to do its work which should result in a more equitable funding mechanism than having the Providence taxpayers themselves bearing 100% of the cost.

Again, thank you for giving us the time to discuss some of these issues.

Yours truly,

Cardi Corporation



Stephen A. Cardi
Treasurer