



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7

11201 Renner Boulevard
Lenexa, Kansas 66219

NOV 10 2016

Ms. Catharine Fitzsimmons
Air Quality Bureau
Iowa Department of Natural Resources
7900 Hickman Road, Suite #1
Windsor Heights, Iowa 50324

Dear Ms. Fitzsimmons:

This responds to your letter dated August 24, 2016, requesting that the Environmental Protection Agency (EPA) provide guidance on an issue raised to the Iowa Department of Natural Resources (IDNR) by John Deere Dubuque Works in Dubuque, Iowa.

As described in your letter, during the assembly of construction and forestry equipment, John Deere performs tests on the equipment during assembly by utilizing the equipment's already-installed nonroad engine to provide power to the equipment.¹ These tests can occur either at the end of the assembly line (roll-off testing, where the equipment is completely assembled) or at various points along the assembly line (try-out testing, where the equipment is only partially assembled). In either case, the tests conducted can include initial hydraulic testing, electronic system testing, mechanical function verification, pressure system testing, and leak detection. During these tests, the previously installed engine is turned on while still within the facility and exhaust emissions from the engine are collected and routed to stacks which release the emissions outside of the facility.

Please note that in developing our responses to your questions we consulted with EPA's Office of Air Quality Planning and Standards (OAQPS) and Office of General Counsel (OGC). Below are our responses to the four questions outlined in your letter.

Q1: Are emissions from nonroad engines installed in a final product or a partially assembled unit intended to become a final product considered mobile source emissions and not part of the stationary source even if the emissions are captured and vented out of a building through a stationary emission point?

Based on the information that you provided to us, and our interpretation of the relevant statutory provisions pertaining to what constitutes a "stationary source" (as described below), EPA's view is that the emissions at issue are direct emissions from a certified nonroad engine and, therefore, not stationary source emissions.

Under Clean Air Act (CAA) section 302(z), a "stationary source" is defined as "... any source of air pollution except those emissions resulting directly from an internal combustion engine for transportation purposes or from a nonroad engine or nonroad vehicle as defined in section 216." As stated, the two

¹ EPA understands that the nonroad engines have already been tested and certified prior to installation in the equipment.



exceptions from the definition of a stationary source are (1) direct emissions from internal combustion engines for transportation purposes; and (2) direct emissions from nonroad vehicles or engines. CAA section 216(10) defines a “nonroad engine” as “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 the standards promulgated under section 7411 [CAA § 111] of this title or section 7521 [CAA § 202] of this title.” A “nonroad vehicle” is defined under section 216(11) as “a vehicle powered by a nonroad engine and that is not a motor vehicle or a vehicle used solely for competition.” Additionally, EPA’s regulations at 40 CFR 1068.30 define “nonroad engine” to include, in part, an internal combustion engine that “is (or will be) used in or on a piece of equipment that is self-propelled or serves a dual purpose by both propelling itself and performing another function (such as garden tractors, off-highway mobile cranes and bulldozers).”

Our reasoning here, that the emissions at issue are not stationary source emissions, is distinct from a November 27, 2012 memo from EPA Region 5 (the GM memo) which details a situation where motor vehicles were being tested for “road readiness” to ensure they were ready for introduction into commerce. The GM memo only discusses motor vehicles and how the facts at issue in that memo led EPA to view those motor vehicles as “ready for transportation purposes,” and, therefore, not subject to stationary source requirements. Here, the exhaust emissions from John Deere’s assembly line testing are not stationary source emissions because the direct emissions at issue are from certified nonroad engines and nonroad engines are categorically excluded from the stationary source definition.

We note that, as similarly stated in the GM memo, while these emissions may not be subject to stationary source permitting, unless otherwise preempted by CAA section 209, the State of Iowa retains authority to use other means to control pollution from these sources should the state have a need to in the future. These include but may not be limited to the following: “in-use” regulations (regulations approved into the SIP to control emissions from in-use mobile sources, i.e., limits on hours of operation or fuel use)² and indirect source review programs (regulations or programs designed to control emissions from indirect sources, i.e., controlling mobile source emissions from a parking garage).³

Q2: At what point in the assembly process do the nonroad engine emissions become mobile source emissions? Does the equipment have to be fully assembled or only partially assembled? Is it immediately after the engine is certified in the test cells or at some other point in the process?

The fact that the equipment is only partially or fully assembled has no bearing on EPA’s view that these emissions are not stationary source emissions. The emissions here are emissions from certified nonroad engines, regardless of whether the engines are installed in a partially or fully assembled piece of equipment (e.g., a nonroad vehicle).

Q3: The facility also has repair bays to service finished equipment. Entire units are moved into the bays for service. The engine exhaust is captured and vented outside. Are the engine emissions from these bays considered to be mobile source emissions and not part of a stationary source? Does it

² In *Engine Manufacturers Association v. EPA*, 88 F.3d 1075 (D.C. Cir. 1996), the court upheld EPA’s interpretation that “the ‘other requirements’ states are preempted from adopting are ... limited to ancillary enforcement mechanisms such as certificates and inspections” and do not include “in-use” regulations.

³ CAA section 110(a)(5) specifies that EPA cannot require indirect source review programs, but that states retain such authority and can voluntarily submit such a program for approval into the state implementation plan to assist the state in maintaining or attaining the National Ambient Air Quality Standards (NAAQS).

make a difference if the repairs are on the engine (i.e. tune-up) and not the mechanics of the equipment? What if the engine is removed from the equipment and rebuilt or otherwise repaired apart from a finished unit and tested while separated from the equipment?

Since your question refers to repairs we will assume this means the equipment has previously been placed into service. For the same reasons as explained in response to Q1 and Q2 above, the emissions from the equipment while in the repair bays are from nonroad engines and not stationary source emissions. Repairs on the engine, and not on the equipment, regardless of whether the engine is still in the equipment or removed from the equipment, have no bearing on the issue.

Additionally, in regards to the last part of this question, if the facility is a major source of hazardous air pollutants it would be subject to the engine test cell NESHAP (40 CFR subpart P) because the facility engages in testing of uninstalled stationary or mobile engines (i.e., an engine that is not installed in, or an integrated part of, the final product). The engine test cell NESHAP applies to any apparatus used for testing uninstalled stationary or uninstalled mobile engines regardless of whether that engine has previously been certified or placed into service.

Q4: Does the answer to question 3 apply equally to aftermarket repair shops as it does to the original manufacturer?

Yes.

We appreciate the opportunity to work with you to answer your questions. Please contact Joe Schulingkamp at (913) 551-7795 if you have any questions or comments regarding this letter.

Sincerely,



Mark A. Smith, Chief
Air Permitting and Compliance Branch
Air and Waste Management Division

cc: Sarah Piziali, Iowa Department of Natural Resources