

REVISED LEGISLATIVE DIGEST
(Substituted 9/30/2014)

[Environment, Administrative Codes - Clean Construction Ordinance]

Ordinance amending the Environment Code to require a Construction Emissions Minimization Plan and monitoring for certain public works projects within an Air Pollutant Exposure Zone and to require controls on emission-producing equipment used for public works projects outside of such zones; and amending the Administrative Code to incorporate these requirements in construction contracts where applicable; and making environmental findings.

Existing Law

Chapter 6 of the Administrative Code governs policies and procedures for contracting for public works or improvements, including the procurement of professional design, consulting and construction management services for public work projects.

Section 6.25, adopted in 2007, requires Clean Construction for all public work contracts for major construction projects, unless a waiver has been granted. "Major construction project" is defined as "a public work to be performed within the geographic limits of the City that is estimated to require twenty (20) or more cumulative days of work to complete." "Clean Construction," in turn, is defined as "performing all work required to be performed under a public works contract (1) utilizing only off-road equipment and off-road engines fueled by biodiesel fuel grade B20 or higher and (2) utilizing only high use equipment that either (a) meets or exceed Tier 2 standards for off-road engines or (b) operates with the most effective verified diesel emission control strategy." (See Section 6.25(a)(6) and (3).) Waivers from the Clean Construction requirement are only available under limited circumstances, such as emergencies, if it would be cost-prohibitive, there is no available equipment meeting the required specifications, or other reasonable basis, demonstrated in writing. (See Section 6.25(b)(3).)

Section 6.25 mandates that the Department of the Environment and the contract awarding authorities maintain a publicly accessible list of all waivers granted; it encourages Clean Construction be used for other City Contracts; and it provides for penalties in cases of misrepresentation, including suspension of the contract.

Amendments to Current Law

This Ordinance is a companion piece of legislation to an amendment to Article 38 of the Health Code, which was introduced at the same time. This Ordinance updates and clarifies

the Clean Construction requirements, and codifies these requirements within the Environment Code.

The Ordinance divides the City in two sections, for purposes of the Clean Construction requirement: projects located within or outside the Air Pollutant Exposure Zone, as defined in Article 38 of the Health Code. Article 38, as proposed to be amended, defines the Air Pollutant Exposure Zone as “those areas within the City and County of San Francisco which, by virtue of their proximity to air pollution emissions sources, including freeways, have substantially greater concentrations of air pollutants.” The companion legislation requires that this Zone be mapped by the Director of the Department of Public Health, or the Director’s designee.

The Ordinance provides that for public works projects located outside Air Pollutant Exposure Zone, the following must be utilized:

- only off-road equipment and off-road engines fueled by biodiesel fuel grade B20 or higher, and
- only off-road equipment that either meet or exceed Tier 2 standards for off-road engines; or operate with the most effective verified diesel emission control strategy, or “VDECS.”

For public works projects located within the Air Pollutant Exposure Zone, on the other hand, preparation of a Construction Emissions Minimization Plan is required. The Construction Emissions Minimization Plan requires that:

- where access to alternative sources of power is available, portable diesel engines shall be prohibited;
- all off-road equipment have engines that meet or exceed either United States Environmental Protection Agency or California Air Quality Regional Board (“ARB”) Tier 2 off-road emission standards, and engines that are retrofitted with an ARB Level 3 VDECS. These types of engines are defined in the Ordinance.

The Ordinance allows specific exceptions to these requirements in circumstances where it is infeasible to meet them, as defined, and mandates that if an exception is granted, the Contractor or City Department performing the work shall provide the next cleanest piece of off-road equipment possible, as provided in a table included in the Ordinance. If no sensitive uses are determined to be within 1,000 feet of the construction site and/or the project requires limited use of off-road equipment, the Ordinance provides that a waiver may be issued that specifies that the project is not required to comply with the Clean Construction requirements.

In addition, the Ordinance prohibits leaving diesel engines idling for more than two minutes; mandates that contractors or City Departments carrying out construction activities train construction workers and operators on the maintenance and tuning of construction equipment;

and requires that the Construction Emissions Minimization Plan be available to the public for review on-site during working hours. It also creates a monitoring requirement, mandating preparation of quarterly reports and a final report outlining compliance with the Construction Emissions Minimization Plan.

The Ordinance also makes conforming amendments to Administrative Code Sections 6.25 and 6.67.

Background Information

As explained in the Findings section, the purpose of this Ordinance is to help alleviate the public health risks involved in construction, particularly when off-road diesel equipment is used.

n:\legana\as2014\1400351\00960162.doc