

New York State Diesel Emissions Reduction Act (DERA) & 6NYCRR Part 248



Background

- NYS law “Diesel Emissions Reduction Act of 2006” (DERA) signed August 2006
- ECL 19-0323 added: “Use of Ultra Low Sulfur Diesel Fuel & Best Available Technology by the State”
- public comment period & hearings on proposed Part 248 held in Nov 2008
- Part 248 effective in July 2009



Overview of Major Compliance Components

- 1) Ultra low sulfur diesel fuel (ULSD) required for covered heavy duty vehicles (HDVs) effective 2/12/07
- 2) Best Available Retrofit Technology (BART) required for covered HDVs according to a compliance schedule
- 3) Installation of Low NOx Rebuild Kit required for affected HDV engines prior to BART installation



Overview of Major Compliance Components

- compliance schedule for BART installation:
 - Minimum 33% of covered HDVs by 12/31/08
 - Minimum 66% of covered HDVs by 12/31/09
 - All covered HDVs by 12/31/10



Overview of Major Compliance Components

- Who does it apply to ?
 - 1) ULSD req'mt applies to state agencies, state/regional public authorities, and their contractors
 - 2) BART req'mt applies to state agencies, public authorities w/ more than 1/2 of its governing body appointed by the Governor, and their contractors
 - 3) Low NOx Rebuild Kit req'mt applies to state agencies, public authorities, and their contractors on HDVs w/ affected engines



NYSDEC Enforcement Discretion

- October 27, 2009 letter from DEC to regulated entities and contractor associations
- DEC will not enforce provisions of 248-3.1(e) retrofit requirements for calendar years 2008 & 2009 (33% & 66% phase-in requirements)
- DEC does not require annual reports and will not enforce reporting requirements of 248-6.1 for calendar years 2008 & 2009 due on Nov.1, 2008 & Nov.1, 2009 respectively
- all other requirements in effect including status report in 2010 and 12/31/10 retrofit req'mt for all covered HDVs



Subpart 248-1: Definitions

- contractor: any person or entity that contracts directly or indirectly with a regulated entity to provide labor, services, materials and/or equipment on behalf of the regulated entity. Contractor includes prime contractor, subcontractor, and contractors hired by such subcontractor.



Subpart 248-1: Definitions

key terms

- 248-1.1(b)(14): **HDV** - on road and off road vehicles powered by a diesel engine w/ GVW > 8,500 lbs **subject to specified excepted vehicles**
- 248-1.1(b)(21): **on road vehicle** - a motor vehicle powered by a diesel engine that has a GVWR > 8,500 lbs and is designed primarily for transporting persons or properties on a street or a highway
- 248-1.1(b)(19): **off road vehicle** - a motor vehicle, other than an on road vehicle, powered by a diesel engine and:
 - 1) w/ GVW > 8,500 lbs, or
 - 2) having an engine \geq 50 Hp



Subpart 248-1: Definitions

- **HDV exceptions** include most off road construction vehicles, earth movers, farm vehicles, authorized emergency vehicles, self propelled caterpillar or crawler type equipment operated on a contract site
- See 248-1.1(b)(14) definition for “HDV” for all specified vehicle exceptions



off road vehicles

- If off road vehicle is not specifically excepted as noted under the 248-1.1(b)(14) “HDV” definition, it is subject to Part 248 unless it does not meet the criteria in 248-1.1(b)(19) “off road vehicle” definition



Subpart 248-1: Definitions

- ULSD: diesel fuel w/ 15 ppm sulfur or less
- BART: retrofit technology verified by the USEPA or the California Air Resources Board (CARB) that achieves reductions in particulate matter (PM) at the highest classification level applicable to the specific engine. Technologies which also reduce NOx at reasonable cost must be considered. (Note: There are 3 classification levels)
- Low NOx Rebuild Kit: an engine manufacturer's upgrade kit required under consent order to be installed on the engine control module of an affected engine



Subpart 248-1: Definitions

- BART classification levels:
 - Level 3 (highest): \geq 85% PM reduction
 - Level 2 : \geq 50% PM reduction
 - Level 1 (lowest) : \geq 25% PM reduction

Verified retrofit technologies can be found at:

EPA: www.epa.gov/otaq/retrofit/verif-list.htm

CARB: www.arb.ca.gov/diesel/verdev/vt/cvt.htm

Note: Several EPA listed technologies provide $<$ 25% PM reduction & are therefore not approved for use in the 248 program. Also, each engine must be evaluated starting with level 3 technologies according to 248-3.1(f)(2) process. Recommend checking w/ your engine & retrofit manufacturers.



Subpart 248-2: Applicability

- Part 248 does not apply to:
 - locomotives
 - alternative fuel vehicles
 - HDV subject to lease/contract entered into or last renewed prior to 2/12/07
 - on road HDV w/ engine model year prior to 1960



Subpart 248-3: Compliance Requirements

- HDVs deemed in compliance w/ Part 248 which do not require BART retrofit:
 - Vehicles w/ engines certified to EPA or CARB 2007 standard for particulate matter (PM)
 - HDVs retrofitted w/ EPA or CARB verified or approved diesel retrofit device prior to 2/12/07 provided device is maintained throughout the HDV's useful life
 - Approved bi-fuel vehicles



248-3: Compliance Requirements (process)

- For ULSD: Should not be an issue since ULSD available for on-road use at retail since Oct 2006
- For BART: Follow the 248-3.1(f)(2) evaluation/selection process for each engine starting w/ evaluation of all Level 3 technologies, or select an option (options indicated on next slide)
- For Low NOx Rebuild Kit: First check to see if engine is an affected consent decree engine at:
www.epa.gov/compliance/resources/cases/civil/caa/diesel/index.html



Subpart 248-3: Compliance Requirements

- BART options (in lieu of retrofitting):
 - replace/repower engine w/ engine certified to EPA 2007 standard for PM or subsequent EPA standard at least as stringent, or
 - replace w/ alternative fuel engine/vehicle which does not operate on diesel fuel, or
 - retire the vehicle or remove vehicle's engine



Other Part 248 Items

248-4: waiver provisions – only required if no verified Level 1 retrofit device applicable for specific engine – if granted, valid for 1 year; “application for waiver of BART” can be accessed at:

<http://www.dec.ny.gov/chemical/4754.html>

248-5: vehicle labeling requirements for vehicles equipped w/ BART device or issued waiver

248-7: record keeping requirements – could use DEC “vehicle inventory form” available from DEC website



248-6: reporting requirements

- annual reporting is required which includes completion/submittal of DEC's vehicle inventory form & annual report form for covered HDVs
- contractors should submit inventory & report forms to their contracting agency
- agencies should submit their own fleet inventory form & report form, along with their contractors' report forms, to the DEC by

Nov. 1



248-6: reporting

- DEC vehicle inventory & annual report forms can be accessed at:
<http://www.dec.ny.gov/chemical/4754.html>



Other Part 248 items

- 248-8: contractor compliance requirements
- 248-9: right of entry
- 248-10: non-compliance



248-10: non-compliance

- ECL Sections 71-2103 and 71-2105 address civil & criminal liabilities for violations
 - civil for 1st violation: not to exceed \$18,000 for each violation & an additional penalty not to exceed \$15,000 for each day during which the violation occurs
 - civil for 2nd & subsequent violations: not to exceed \$26,000 per violation & an additional penalty not to exceed \$22,500 for each day of occurrence
 - ECL 71-2105 describes criminal liabilities for violations



HDV engine Useful Life Waiver

- allows the NYSDEC to issue waivers from ECL 19-0323(3) BART req'mts to owners/operators of HDVs who request & certify that the subject vehicle/engine will be taken out of service in NYS on or before 12/31/13
- “useful life waiver form” available at DEC website

<http://www.dec.ny.gov/chemical/4754.html>



possible retrofit compliance options for contractors

- After 12/31/10 and prior to HDV use for state agency/public authority work, possible options include:
 - vehicle w/ engine certified to 2007 EPA or CARB emission standard for PM (vehicle should be equipped w/ a diesel particulate filter)
 - retrofit w/ BART device



possible retrofit compliance options for contractors (con't)

- useful life waiver
- 248-4.1 BART device waiver



Part 248: Useful Related websites

-Part 248 regulation

<http://www.dec.ny.gov/regs/2492.html>

-CARB verified retrofit technology searchable database (note that database only has information back to 1981 MY engines and is only one screening tool; need to review CARB EOs issued for devices)

<http://www.arb.ca.gov/diesel/verde/vdb/disclaimer.php>



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