DECONSTRUCTING DIESEL

Legal Strategies for Reducing Harmful Diesel Emissions in Oregon

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The Legal Framework

Mobile Source Regulation and Preemption Under the Clean Air Act

Diesel Regulation Without Further State Legislation

- Local governments (City of Portland/Multnomah County) if:
  - Within jurisdiction (e.g., city roads) + public health, welfare, safety
  - Not preempted by state or federal law
- State agencies if:
  - Authorized by state statute
  - Not preempted by federal law

Preemption/Displacement

Federal Laws

- Clean Air Act
- Federal Aviation Administration Authorization Act
- Corporate Average Fuel Economy Standards
- Others

State Laws

- State laws may preempt local regulations only where they do so expressly
  - E.g., Oregon's idling law
- State agencies may not unilaterally preempt local regulation

CAA Preemption

Mobile sources

Stationary/
indirect sources

not preempted

California waiver

federal preemption

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CAA Preemption

- Mobile sources
  - Use/ Performance
  - "Design"
- Stationary/ indirect sources

not preempted

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CAA Preemption

- Mobile sources
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  - "Design"
    - Onroad
    - Nonroad
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CAA Preemption

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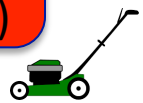
CAA Preemption

- Mobile sources
  - Use/ Performance
  - "Design"
    - Onroad
      - New
      - Non-new
    - Nonroad
      - New
        - Small (under 175 hp)
        - Large (over 175 hp)
      - Non-new
- Stationary/ indirect sources



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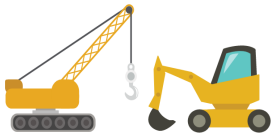
Reducing Diesel Pollution in Oregon

State and Local Strategies for Reducing Emissions from On-Road, Off-Road, and Indirect Sources

Key Diesel Emissions Reduction Categories

1. Emissions reductions from existing heavy duty diesel vehicles



2. Emissions reductions from non-road diesel engines

3. Aggregate emissions reductions from indirect sources

4. Emissions reductions from the use and movement of vehicles

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Emissions Reductions from Existing On-Road Heavy Duty Diesel Vehicles

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Emissions Reductions from Existing On-Road Heavy Duty Diesel Vehicles

On-Road Heavy Duty Diesel Vehicles (HDVs)

New vs. Non-New HDVs

New HDVs have 90%–95% fewer PM and NOx emissions than pre-2007 HDVs

Old (Pre-2007)

New (2007+)

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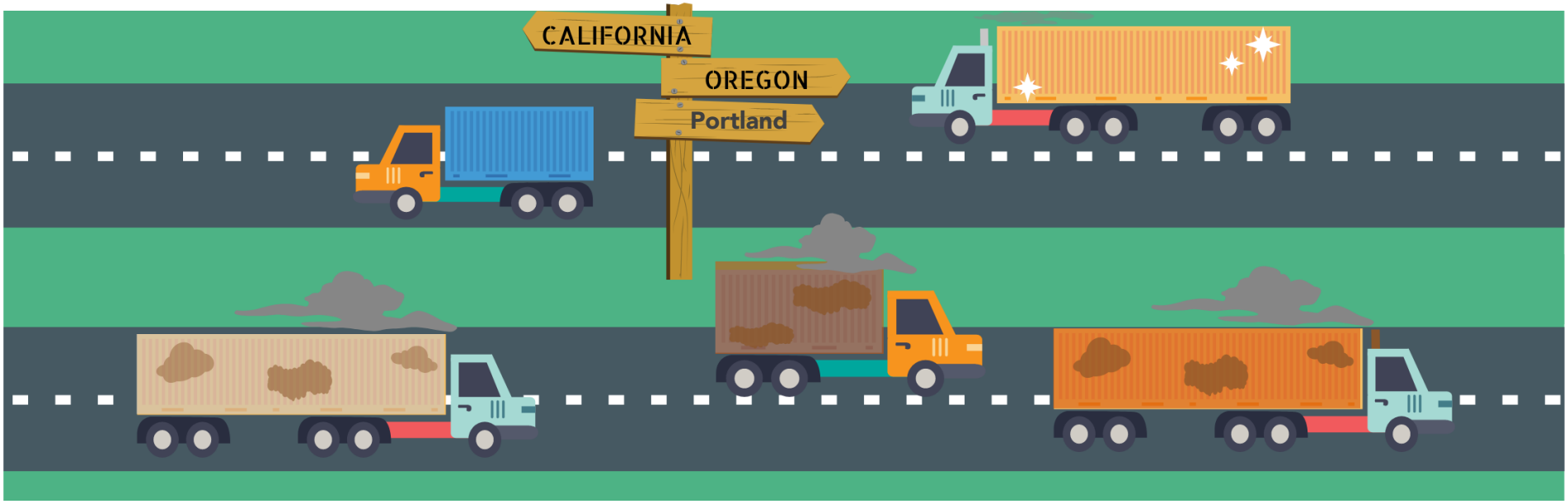
California-to-Oregon Dirty Diesel Leakage

California's Truck & Bus Rule

- By 2024, all vehicles in HDV fleets operating in California must have 2010 or newer engines
- As older trucks are phased out in California, many dirty diesel engines are being sold to new owners in Oregon



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Regulatory Strategy: Phase-Out Old, Dirty Diesel Trucks & Buses

EQC/DEQ

Clean Fleet Performance Standards

Jurisdiction?

- The EQC may adopt clean fleet standards for non-new vehicle fleets
- Local governments may adopt clean fleet standards for public fleets, public contracts, and licensed franchises

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Regulatory Strategy: Require Inspections and Emissions Testing for Diesel HDVs

EQC/DEQ

Why Require Inspections and Emissions Testing?

- To verify that engines are compliant with applicable model year emissions standards
- To ensure emissions are not violating Oregon's visible emissions standards

Compliant
(30% opacity)

Not Compliant
(42% opacity)

Jurisdiction?

- The EQC has authority to motor vehicle inspection and emissions testing rules

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Regulatory Strategy: Regulate Glider Emissions

EQC/DEQ

EPA estimates that gliders emit 20 to 450 times more PM and NOx than new truck engines.

EQC Glider Strategies:

- Adopt emissions standards for glider trucks
- Adopt glider fleet performance standards
- Require inspections and emissions testing for glider trucks

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Legislative Strategy: Repeal Local Idling Preemption

LEGISLATURE

Oregon's Existing Idling Law, ORS §§ 825.601–825.615

- Restricts commercial vehicle idling to no more than five minutes per hour, with exceptions for certain vehicles and activities
- Preempts local governments from adopting idling restrictions for commercial vehicles

The Oregon Legislature Should Repeal the Local Idling Preemption

- Allow cities and towns to adopt more stringent idling restrictions to address local emissions, particularly in the vicinity of vulnerable locations, such as schools

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Emissions Reductions from Non-Road Vehicles and Engines

Emissions Reductions from Non-Road Vehicles and Engines

Non-Road Vehicles and Engines

Regulating Emissions from Non-Road Diesel Vehicles

- Oregon may adopt California's non-road emissions regulations that have received a waiver from EPA
- Oregon may NOT adopt emissions regulations for new or existing non-road engines that differ from California's regulations

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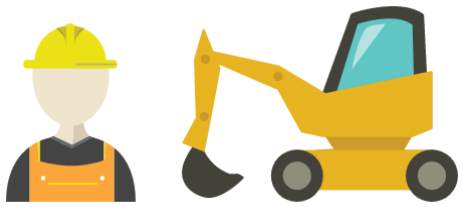
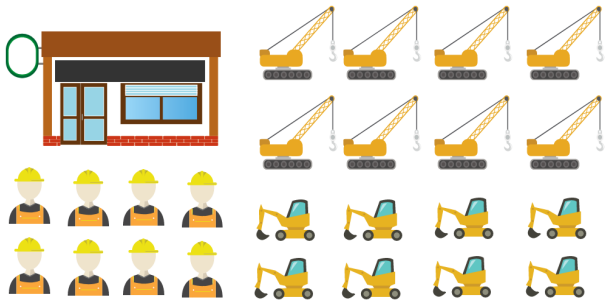
Non-Road Strategy: Adopt California's In-Use Non-Road Fleet Standards

EQC/DEQ

"Fleet" Applicability



Small Fleet: 25–2,500 HP



Large Fleet: 5,000 HP+

California's Non-Road Standards

Limits on Fleet Additions:

- Fleet owners may not add dirty diesel engines to their fleets after a certain date

Fleet Performance Standards:

- Fleets must meet fleet average emissions targets or apply Best Available Control Technology by a certain date

Jurisdiction?

- The EQC may have implicit authority to adopt California's non-road standards by reference

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Indirect Source Regulations

Regulatory Strategy: Adopt Effective Indirect Source Rules

EQC/DEQ

LOCAL

Indirect Sources are stationary sources that attract mobile sources of air pollution, including on-road and non-road mobile sources

Indirect Source Rules regulate aggregate emissions from the indirect source as a whole —NOT from individual mobile sources

Jurisdiction?

The EQC and local governments have authority to establish indirect source programs

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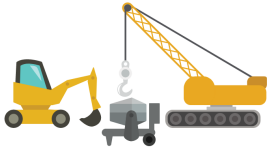
Regulatory Strategy: Adopt Effective Indirect Source Rules

EQC/DEQ

LOCAL

1. Applicable to a broad variety of new, modified, and existing indirect sources



2. Require reductions in emissions from construction and operations

Require % reduction in Construction Emissions

Require % reduction in Operations Emissions

3. Offer flexible compliance alternatives

On-Site Measures for construction emissions

On-Site Measures for operational emissions

Off-Site Measures to offset local emissions

Alternative compliance payments

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Emissions Reductions from the Use and Movement of Diesel Vehicles

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Local Strategy: Control Vehicle Use and Traffic

LOCAL

Emissions reductions strategies related to the use, operation, and movement of vehicles and traffic:

- Establish Mandatory Truck Routes
- Regulate and control truck parking to incentivize off-hours deliveries
- Restrict road use during certain times of day as necessary to protect the interest and safety of the general public

MANDATORY TRUCK ROUTES

CONTROL TRUCK PARKING

TIME-OF-DAY ROUTES

Jurisdiction?

- Local governments (acting as Road Authorities) may regulate traffic, road use, and parking on local roads
- Local road authorities may establish mandatory truck routes and prohibit truck traffic on alternative jurisdictional routes

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Additional Local Strategies to Reduce Diesel Emissions

LOCAL

- Include clean diesel equipment requirement in public contracts
- Adopt in-use restrictions for construction sites near vulnerable locations (such as schools or hospitals)
- Establish voluntary "clean diesel" truck loading zones and/or hours
- Require construction signage to provide notice of localized diesel emissions
- Impose road user fees (tolls)
- Impose and/or increase motor vehicle fuel taxes
- Impose vehicle registration fees
- Enforce visible emissions limits
- Enforce statewide idling restrictions
- Allow ZEVs and/or EVs to use HOV lanes
- Offer EV and/or ZEV incentives

Questions?

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