California Construction Trucking Association

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April 21, 2014

VIA E-MAIL

Mary D. Nichols
Chair, California Air Resources Board
1001 "I" Street
Sacramento, CA. 95812-2815

Re: CCTA Written Comments to the California Air Resources Board Regarding Staff Proposed Amendments to the Truck and Bus Regulation (Truckbus14)

Dear Ms. Nichols,

On behalf of the members of the California Construction Trucking Association ("CCTA"), formerly known as the California Dump Truck Owners Association ("CDTOA") we submit these comments in response to the California Air Resources Board ("CARB") staff report – Initial Statement of Reasons ("ISOR") for proposed amendments to the Statewide Truck and Bus regulation.

The CCTA is a 501(c)(6) trade association incorporated in 1941 and headquartered in Upland, California. The CCTA is constituted of four conferences, each designed to represent and provide for the distinctive needs of a particular segment of the trucking industry. While our members still predominantly operate dump trucks made up of every style and configuration, our collective membership operates virtually every type of commercial motor vehicle imaginable. We actively maintain transportation conferences for oversized (permitted) lowbed loads, water trucks, concrete boom and trailer pumps, and most recently interstate motor carriers under the conference name Western Trucking Alliance. It is also important to note that at least 50-percent of our members also own and operate off-road and portable diesel powered equipment, from backhoes to large wheeled loaders. Our members operate fleets ranging in size from one-truck owner-operators to companies owning and operating more than 350 trucks and they are all affected by CARB regulations, in many cases multiple regulations.

<u>COMMENTS</u>:

As CARB is aware, the CCTA has been at the forefront of advocating for owner-operators and small-business truckers in opposing the imposition of what we believe is a regulation promulgated in violation of federal law[1]. We believe the entire regulatory scheme was ill-conceived from its very inception and driven by multiple agendas determined to use environmental regulation as a means of "economically re-

[1] The CCTA has sued CARB in federal court (*CDTOA v. Mary Nichols, et al*) challenging the legality of CARB enforcing a rule that conflicts with federal law (Federal Aviation Administration Authorization Act). The FAAAA prohibits any state from enforcing a law affecting the "routes, price, and services" of motor carriers. The CCTA's appeal of Judge England's ruling is still pending in the Court of Appeals for the Ninth Circuit. Briefing on that case was completed in August, 2013; the case has been pending for over 8 months.

regulating" the trucking industry to be dominated by larger motor carriers fortunate enough to secure various forms of grant "public" funding. As you, Ms. Nichols have recognized and publicly stated, "Regulation has winners and losers" and to date, the "losers" column continues to grow.

While we sympathize with the economic conundrum many owner-operators and motor carriers find themselves in who have complied with the regulation thus far, we also must recognize the plight of many owner-operators and motor carriers unable to comply, and NOT because they made some conscious choice at avoidance as some commenters in the docket attempt to claim. We have members on both sides of this equation and ultimately any perceived unfairness should be blamed on a poorly constructed and implemented set of rules.

As the CCTA looks back on the torturous process resulting in this rule, it originally began with the baseless pseudo-scientific determination by UCLA activists John Froines and his Scientific Review Panel identifying diesel exhaust as a Toxic Air Contaminant ("TAC"). It continued with the scandals, cover-ups and false promises involving CARB employee Hein Tran, lead author of both the on- and off-road diesel emissions health effects analysis and his faked academic credentials. Then came the bankruptcy of CARB's own wunderkind preferred diesel particulate filter ("DPF") manufacturer Cleaire and DPF funding schemer Cascade Sierra Solutions – both now defunct. Thousands of truckers are now left with recall(s) of faulty DPF's. Where's the economic justice for them? Lastly, it's critical that everyone understands the historical discrimination behind the granting and distribution of public funds for new trucks and DPF's. The smallest most vulnerable business owners within the industry are relegated to the "back of the funding bus." Not even the satirical digital media organization *the Onion* could have possibly written such a concocted tale.

Contrary to many commenters who have taken the position that the Statewide Truck and Bus rule represents "settled law" in the State of California, the CCTA would remind everyone that three current legal challenges exist (ours in the ripest) aimed directly at this regulation and only because of legal delays in the court system there has not been any justice – justice delayed is justice denied. Only the uniformed or naive would conclude that the Statewide Truck and Bus rule can be considered "settled law." For those upset at any extended flexibility in implementation of the rule, we strongly believe legal challenges ought to be settled before any further damage is done to California's trucking industry – for both large and small fleets. You must ask yourself if one or all of these suits are successful, and stops these regulations in their tracks – how would one feel then about these regulations?

The CCTA still strongly believes the very basis of these regulations – that diesel exhaust is killing any Californian is rooted in unsound scientific claims lacking provable association between diesel exhaust exposure and increased mortality. If diesel exhaust were so dangerous, then truck drivers themselves would have the highest discernable rates of mortality related to exposure – which simply isn't happening[2] – an "inconvenient truth" ignored by CARB. Even the U.S. EPA has admitted to congressional overseers that it cannot produce all the original data from the 1993 Harvard Six Cities Study and the American Cancer Society's 1995 Cancer Prevention Study II used as the foundation for EPA determinations and regulations on air quality[3]. The inability of other researchers to replicate the findings claimed in these studies would normally give pause to any government agency from moving forward with business destroying regulations, but apparently not in this case of an easy moving target – truckers.

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[2] See: "*Mortality Among Members of a Truck Driver Trade Association*." By Jan Birdsey,MPH, Toni Alterman, PhD, Jia Li, MS, Martin R. Petersen, PhD, and John Sestito, JD, MS. American Association of Occupational Health Nurses, October 2010.

[3] See Addendum I. EPA Administrator Gina McCarthy response to subpoena from U.S. House of Representatives, Committee on Science, Space and Technology, page 2, third paragraph.

CARB has released its draft Scoping Plan for eventual inclusion in California's State Implementation Plan ("SIP") filed with U.S. EPA suggesting future mandates for "zero" emissions trucks. Further, CARB appears to be moving towards an "ultra-low-NOx" engine mandate as early as 2019 that will push the technological window beyond anything economically feasible creating a "California only" engine standard – different from the rest of the U.S. For those truck owners opposing any further flexibility in CARB's current rules because "they have already complied," we wonder if they realize their investment today in newer trucks and their "compliant" status is a temporary illusion. Of course, if the desire is to use environmental regulation to knock competitors from the marketplace, one wonders if those so supportive of CARB's regulations on diesel powered trucks today will feel so smug when they cannot afford the technology mandated in the next round of regulation? Especially, when it's doubtful they can count on more public grant funding to aid with another round of fleet turn-over.

Nevertheless, the CCTA has the following comments on CARB's proposed amendments:

WORK TRUCK EXTENSION (Low-Mileage Construction Truck Extension):

One of the chief problems with CARB's original rule was to regulate all trucks as if they were utilized the same (one-size fits-all). While property-carrying long-haul fleets can easily average more than 120,000 miles annually, construction trucking operations have annual vehicle usage less than half those miles[4] many 30,000 miles or less. With California's virtually non-existent construction recovery, it makes sense to expand available relief to this vulnerable mostly state-based segment of the market. We suggest the following additional steps be considered and approved:

- Expand the annual mileage allowance from 20,000 to 30,000 miles per vehicle.
- Under the proposed amendment, one-truck owners would still face a compliance deadline of January 1, 2016. We believe that should be extended to January 1, 2018 to harmonize with the deadlines available in other extensions. By aligning the compliance deadline for one-truck owners using the Work Truck Extension, CARB would be effectively limiting the annual miles of these trucks as opposed to encouraging many to move to another more generous extension with unlimited annual mileage potential.
- Enable "Work Truck" fleets to have the flexibility that the Board directed in the December 2010 amendments that created the "Low Mileage Construction Truck" time extension. Specifically, fleets with LMCT's could comply by applying the minimum PM filter requirement to only their LMCT fleet and the remaining non-LMCT fleet could comply with either the Engine Model Year or Phase-in Schedules. The current proposal removes that flexibility and mandates that the fleet owner "… meets the compliance schedule in Table 9 for the entire fleet of heavier vehicles." Fleet owners should have the flexibility to comply separately or combine their "Work Truck" and non-Work Truck fleets, similar to what the Board approved in December 2010.

High-value Chassis Time Extension (e.g. concrete pumps, conveyor trucks and specialty rigs)

As a matter of equity, the owners of high replacement cost construction trucks and on-road equipment such as concrete boom pumps should be afforded the same compliance schedule as the "Heavy Crane Phase-in Option" proposed in Section 2025 (n) at p. A-32 of Appendix A. The rationale provided in Appendix E for this schedule is "Modifications to cranes require a manufacturer or registered professional engineer who is familiar with the equipment to review and approve any modifications to the crane, and may require modifications to load charts, procedures, instruction manuals and other items as needed." (CARB Hearing Documents, Appendix E). This same condition applies to carrier or truck mounted

[4] Source: Oak Ridge National Laboratory – Center for Transportation Analysis. See: http://cta.ornl.gov/cta/

concrete pumps and conveyers, which are unique vehicles with the cost of replacing these vehicles beginning in the $200,000 range and climbing to well over $1 million.

The same issues of weight distribution and balance are of concern, but also the recapturing of the original investment cost takes far longer than many other diesel powered equipment. Engine replacement or retrofitting with a DPF to comply with CARB's regulation is highly problematic for these vehicle owners, largely due to the lack of physical space and the fact that the equipment operator is often outside of the equipment and unable to cease operations for a filter regeneration event or monitor filter performance until too late.

Ready Mix concrete has approximately 45 minutes from time of batching to time in place before it begins to harden. It is a perishable commodity; once the set begins there is no method to stop the reaction without destroying the concrete. Therefore even if an operator was faced with a regeneration requirement of 45 minutes or more, the concrete would have set-up in the vehicle. This adds an expense of over $10,000 just in parts, plus liability and the interrupted slab may have to be removed and replaced at cost to the pumping company.

Replacement of the engine is not an option due to enclosure limitations, electronic interface with the pump computers and programming is beyond a "chip" replacement. Retrofitting with a DPF can be a significant safety problem because once the unit is up on outriggers the operator leaves the machine and a radio remote control operates all the functions required. The operator positions themselves as close as they can to the point of concrete placement per safety regulations.

These are unique – and expensive vehicles and when the California economy begins to rebound and revenues return, fleets will be updating with new – not used equipment.

NOx AREA EXEMPT EXTENSION:

The CCTA recognizes the need to expand those counties listed as NOx Exempt Areas. It has always been unfair to insist that truck owners and fleets living and operating in areas of the state without air quality issues comply with the regulation. Claims of an "unfair" advantage and "lack of a level playing field" are completely inappropriate when discussing these particular truck owners. Truck owners and fleets in these areas have been specifically excluded from grant programs and yet they too must ultimately comply with the rule unless it is defeated in court.

When CARB staff at the direction of the Board instituted partial measures in November 2013 to extend temporary relief, the counties of Yolo, Solano, Placer, El Dorado, southern Butte, the majority of San Bernardino, and eastern most Riverside were originally included for NOx Exempt status. Those areas are no longer included in staff proposal and the explanation given appears to be politically motivated as opposed to science-based. While CARB staff by way of explanation for the omission of those counties only stated these regions are in non-attainment for ozone, it certainly is not from the operation of diesel-fueled trucks in those counties, but because of wind-blown transmission from larger cities to the west of all these counties. Are companies that signed-up by January 31, 2014 for the NOx Extension originally proposed that included those counties now excluded from NOx Exempt status going to be in violation for the remainder of this year? Guidance needs to be issued because we are aware of many truck owners who registered for this exemption operating in those counties believing they are in compliance until the end of this year.

Also, we believe truck owners registered as operating in NOx Exempt Areas should be allowed to also utilize the Low-Use Exemption as a means to operate in/or transit through non-attainment areas up to the maximum of 5,000 annual miles proposed in the SOR for the expanded Low-Use Exemption.

LOW-USE VEHICLE EXEMPTION:

The CCTA believes the Low-Use Exemption should be expanded to 7,500 miles annually. We also believe that not allowing all truck owners, regardless of domicile, to fully use the expanded exemption whether its 5,000 or 7,500 annual miles are discriminatory and too much of the discussion related to this proposal has centered on "economic competiveness" issues as opposed to an equitable legal standard for all truck owners.

WATER TRUCK MILEAGE IN A DROUGHT:

On January 17, 2014, Governor Brown declared a drought "State of Emergency" (see: http://gov.ca.gov/news.php?id=18368). Many of our members operating water trucks have enrolled those vehicles in the Low-Use Exemption. Water trucks are often trailered to a job site and primarily used on-site for compaction and environmental dust mitigation efforts.

California's declared drought emergency has placed these truck owners in a quandary since in many instances they are now being required to travel great distances in order to fill their tanks with non-potable water instead of from a local fire hydrant. While the state has declared an emergency, water trucks necessary for virtually every type of construction project in California are not defined within the Truck and Bus rule as an eligible "Emergency Vehicle" nor "Emergency Support Vehicle" while engaged in non-government related work.

CARB should grant an added mileage allowance specific to water trucks during the remainder of the declared Drought State of Emergency.

GOOD FAITH EFFORT:

Since many small-fleet owners and owner-operators were specifically excluded from grant funding opportunities for a wide variety of reasons, the CCTA believes granting hardship relief to those unable to currently comply with the rule for financial reasons is appropriate. While many types of motor carriers (large and small) were adversely affected by the economic downturn, the effects still linger for tens of thousands of truck owners.

The CCTA is aware that many in opposition to this relief have discussed how they need a "certain level of a rate or rates" in order to support their businesses. We would caution CARB that we believe discussion related to rates is perilously close to crossing the line into an anti-trust violation. (See: e.g., *Re/Max International v. Realty One, Inc*. (1999) 173 F.3d 995, 1008 [An agreement to fix prices is a per se violation of §1 of the Sherman Act].) The very fact that so much "truck rate" discussion is occurring related to this particular amendment actually validates a point in our litigation against CARB and its adoption of the rule – namely that the rule has impacted motor carrier rates and in many cases services in violation of the Federal Aviation Administration Authorization Act (FAAAA). This proposed amendment should either rise or fall on its own merits, but in no way should be denied based on rate considerations.

There are many in the trucking industry who opposes this particular relief that demonstrably benefited from various public grants to aid in replacement or retrofitting their equipment. For those truck owners who either complied with the regulation already without any public funding or those economically disadvantaged because of the "Great Recession" and not qualified for grant funding – the dynamic of who mostly benefited from grant funding is solely responsible for tilting "the economic playing field" far more than any temporary relief from adopting this provision.

We have included Addendum II to our comments which is an exposé published in our association magazine – *California Transportation News* highlighting tens of millions of dollars in grant funding to large entities, out-of-state entities, and even one carrier fined $300,000 last year by CARB and now the lucky recipient of $1.25 million in grant funding.

So all of this is a "level playing field?" We think not. It's hypocrisy for any beneficiary of grant funding to take a position opposing this amendment. Instead of begrudging the "least among us" a few crumbs, perhaps those opposing this amendment might actually spend their time as CCTA has done and vigorously oppose the environmental encroachment into the trucking industry by environmental regulators instead of viewing these regulations as a way to eliminate competition in the marketplace.

Approved Grants & Good Faith Effort - Enforcement Relief

The CARB Board should compel staff to provide formal enforcement relief for fleets and owner-operators that have been approved:

A. Grant funding from all public and private/public sources including ports, rail, Carl Moyer, Prop 1BB1 or any other existing or proposed public source. Due to subsequent funding delays or denial, businesses become subject to enforcement action. Brokers and supply chain entities that hire or dispatch any truck with an "approved grant" for a DPF, replacement engine or truck should be provided relief from enforcement action.

B. Good Faith loan declination for the purchase of a DPF, replacement engine or truck should be provided relief from enforcement action. Brokers and supply chain entities that hire or dispatch any truck with a "Good Faith Extension" for a DPF, replacement engine or truck should be provided relief from enforcement action.

We are aware of at least one case where a small fleet in 2011, located in Ontario Ca, (Ivve Transportation) which contracted four owner-operator motor carriers that were provided a grant approval for a DPF, that was subsequently denied by the SCAQMD. Both the truck owners and the brokering motor carrier had reason to believe that the trucks were CARB-legal but were nevertheless fined $126,000 (ultimately settled at $59,050) by CARB. (See: http://www.arb.ca.gov/newsrel/newsrelease.php?id=239).

In 2010, Senate Bill 1402 (Dutton)[5] was passed to help deal with these types of egregious enforcement situations. We are requesting that the circumstance above be added to the list of penalty policy considerations that the Board takes into account. Clearly, the Ivve Transportation situation was not protected by the language in SB 1402 but should have been. By reference, the legislature directed that the penalty policy shall take into consideration all relevant circumstances, including, but not limited to all of the following:

(1) The extent of harm to public health, safety, and welfare caused by the violation.

(2) The nature and persistence of the violation, including the magnitude of the excess emissions.

(3) The compliance history of the defendant, including the frequency of past violations.

(4) The preventive efforts taken by the defendant, including the record of maintenance and any program to ensure compliance.

(5) The innovative nature and the magnitude of the effort required to comply, and the accuracy, reproducibility, and repeatability of the available test methods.

(6) The efforts of the defendant to attain, or provide for, compliance.

(7) The cooperation of the defendant during the course of the investigation and any action taken by the defendant, including the nature, extent, and time of response of any action taken to mitigate the violation.

(8) The financial burden to the defendant

[5] Source: http://www.leginfo.ca.gov/pub/09-10/bill/sen/sb_1401-1450/sb_1402_bill_20100928_chaptered.pdf

<u>TRUCK OWNERS EXPOSED TO MULTIPLE RULES</u>:

While staff proposed amendments never addressed this issue, the CCTA would encourage the Board to consider all the proposed amendments from the standpoint of many truck owners having to comply not with just one CARB diesel related regulation, but multiple regulations and the cumulative financial burden they impose.

Many CCTA members also own and operate off-road equipment as well as stationary engines and portable diesel powered equipment. The compounded compliance costs of conforming with multiple regulations is staggering for many businesses regardless of size.

CARB should consider further amendments that factor any fleets requirement to comply with multiple regulations.

<u>OTHER RELIEF & COMMENTS FROM OWNER-OPERATORS</u>

Considering some of the vitriolic comments directed at owner-operators and small-businesses from those opposed to extending any further relief, we would like to note that larger entities and their representatives are not quite so shy about requesting relief that benefits them only, for instance, extended "early action credits" and even relief on the Transport Refrigeration Unit rule. We don't believe that request is unreasonable just because they are "larger" entities, but this type of "cherry-picked" relief that only benefits certain participants in the marketplace at the exclusion of others is at the heart of creating an "uneven playing field."

It is almost surrealistic to read comments from larger entities claiming to speak for or know what owner-operators and small-businesses think about this rule and its impact. While savvy and more sophisticated entities have filed comments – even in one instance using their law firm, we suggest the public record does contain evidence of the material thinking from many owner-operator and small-businesses. The following comments were taken from public submission to the docket:

> **Damanjit Mahal:** "I spoke to the local Air resource management people but they have said that I do not qualify for a grant for a replacement of my truck due to not meeting the criteria mentioned above…I am the only earning member in my household. I also support my parents along with my wife and kid. In this time of hardship I am certainly not able to afford a new or a used higher model truck."
>
> **Mike Anderson:** "These amendments being considered are a very good starting point. Much more needs to be done for the rural counties that have the cleanest air in the nation but lack the wherewithal to pay the bill associated with these rules."
>
> **Cindy Alvarez:** "In today's economy, people are barely paying their truck payments and house payments…if CARB wants this filter in place, they should make it possible for all of us to comply. We need help..."
>
> **Central Sierra Mining Association:** CARB refrain from imposing new emission requirement for all trucks in the currently exempt and proposed exempt areas listed above.
>
> **Francisco Ramirez:** "Some colleagues that went through a lot just to comply are also frustrated because they think we are being rewarded for ignoring the regulations, but it is not that we are simply ignoring them we are trying to comply but we need more time, at least a couple more years."
>
> **Joe Kroening:** "We are just existing what has been a very prolonged depression, expenses are high and rates remain depressed… I would like to see a longer phase time allowance of an additional two to three years."

Ron Taylor: “This Low-mileage use exemption… If this was increased I believe it would help out many of us drivers that are not able to financially upgrade our trucks.”

Josie Martinez: “I would like to kindly request an extension for all of us who have done our very best to comply but were denied a loan… we need time to gather the money and resources necessary to keep running our small business and to keep our jobs that we have worked so hard in and invested all we have.”

Owner-operators and small-business truckers can speak for themselves without patronizing statements from larger entities on their behalf.

CONCLUSION:

The CCTA reiterates its opposition to the Truck and Bus rule believing it will be eventually found to conflict with the FAAAA and other federal laws. Until the legal issues surrounding the adoption of this rule are resolved, extending compliance time to as many truck owners as possible limits the damage being done by this rule to California truck owners and businesses.

Regarding incentive funding from the state, the CCTA believes CARB should institute means testing procedures for future grantees. It is unconscionable that any public funds should go to large (in some instances multi-billion dollar) motor carriers that would have or in fact do, as a normal business practice, replace their fleets. Calculated environmental benefits from handing over money to these types of motor carriers (or any larger entity with normal fleet turn-over cycles) are an illusion – there isn’t any net environmental benefit since they would have replaced trucks anyway. Had distribution of public funding been conducted equitably, there likely would have been a significantly diminished need for these amendments. It is certainly true that the enthusiasm for these regulations as a means to eliminate competitors from the marketplace would have been reduced.

Respectfully submitted,

Joe Rajkovacz

Director of Governmental Affairs

California Construction Trucking Association

ADDENDUM I

THE ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

MAR 0 7 2014

The Honorable Lamar Smith
Chairman
Committee on Science, Space and Technology
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your letter of February 14, 2014, regarding the United States Environmental Protection Agency's (EPA's) response to a subpoena *duces tecum* (subpoena) from the Committee on Science, Space, and Technology (Committee).

As you note in your letter, during and immediately after my November 14, 2013, appearance before your Committee, we agreed to additional dialogue regarding the EPA's response to the subpoena. I understand that our staffs have had several discussions since that date, and made significant progress toward a common understanding of this matter. I want to thank you and your staff for your willingness to engage in these discussions, as I believe they have been both productive and constructive.

Your subpoena sought data from the American Cancer Society and Harvard Six Cities cohorts, as well as analyses and re-analyses of that data. In particular, the subpoena sought data from studies that utilized data from the American Cancer Society and Harvard Six Cities cohorts. Once the EPA received the subpoena, we conducted a diligent search for data, as well as analyses and re-analyses of that data that were already in our possession, custody, or control that would be responsive to the subpoena. In addition, we considered what data, as well as analyses and re-analyses of that data, were not in our possession, custody, or control on the date we received the subpoena, but that may still be within the scope of the Committee's subpoena. For data, as well as analyses and re-analyses of that data, that were not in the EPA's possession, custody, or control but that could still be considered within the scope of the subpoena, the EPA sought to identify a legal authority for the agency to obtain that information so that it could be provided to the Committee. In this case, the Shelby Amendment (Public Law 105-277) provides the EPA with the authority to obtain certain research data that was not in the agency's possession, custody, or control on the date we received the subpoena, and the EPA utilized that authority to obtain that data.

The actions taken in response to the subpoena are detailed in an enclosure (Enclosure 1) to this letter, and included multiple interactions with the third party owners of the research data in an effort to obtain that data. Once the agency successfully obtained the research data, we undertook a review of this data to determine whether the release of the data would raise privacy concerns. The agency sought the

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assistance of the Centers for Disease Control in this inquiry as well, in an effort to ensure the privacy of the subjects of the data was not compromised.

Through its efforts, the EPA located within its possession, custody, or control, or obtained through its authority, the data for five studies listed in the subpoena. Any other data, as well as analyses and re-analyses of that data, that may be within the scope of the subpoena, whether specifically listed in the subpoena or not, are not (and were not) in the possession, custody, or control of the EPA, nor are they within the authority to obtain data that the agency identified. However, the issuance of the subpoena does not provide the agency with any additional authority to obtain data, as well as analyses and re-analyses of that data, that we otherwise do not have the authority to obtain.

All responsive data, as well as analyses and re-analyses of that data, located or obtained during our efforts to respond to the subpoena have been provided to the Committee. The EPA provided that data to the Committee through letters sent prior to our receipt of the subpoena, and then our letters responding to the subpoena of August 19, 2013, September 16, 2013, and September 30, 2013. The EPA provided the Committee with the data for these five studies in exactly the same format the data were provided to us. Importantly, the agency was able to work through the various privacy concerns so that we would not need to de-identify any of the data. As of the EPA's letter of September 30, 2013, the agency has provided the Committee with all of the data covered by the subpoena that the agency has obtained or has the authority to obtain under the Shelby Amendment. Additionally, the EPA has not withheld any data in our possession that is responsive to the subpoena. Thus, the EPA has completed its response to the subpoena. The EPA acknowledges, however, that the data provided are not sufficient in themselves to replicate the analyses in the epidemiological studies, nor would they allow for the one to one mapping of each pollutant and ecological variable to each subject. For the reasons explained in our previous letters on this topic, these acknowledgements do not call into question the EPA's reliance on these studies for regulatory actions.

Your February 14, 2014, letter also requests the grant agreements related to the studies covered by the subpoena, and those documents are being provided with this letter. These EPA grant agreements span from 1998 to 2006 and contain a variety of data access provisions. Despite that variation, the EPA has reviewed each of the agreements and determined that each grant agreement contained data access provisions that are consistent with the EPA grant regulations at the time of the award. The EPA's current practice is to incorporate into our grant agreements a reference to the agency's regulations regarding access to research data funded by the grant.

Thank you again for the opportunity to explain the actions the EPA took in responding to your subpoena. If you have additional questions, please do not hesitate to contact me or your staff may contact Tom Dickerson at (202) 564-3638 or Dickerson.Tom@epa.gov.

Sincerely,

Gina McCarthy

Enclosures

Enclosure 1
Actions Taken in Response to Subpoena

The United States Environmental Protection Agency (EPA) was served with the House Committee on Science, Space, and Technology's (Committee's) subpoena *duces tecum* (subpoena) on August 1, 2013. Once the agency received the subpoena, we undertook diligent actions to respond.

While the agency did in fact have some data responsive to the subpoena in our possession on the date we received the subpoena, we did not possess certain other data. The agency quickly began to take actions to obtain additional data. In particular, the agency had multiple interactions with Health Effects Institute (HEI) as we worked to obtain research data from that organization. The EPA obtained the final set of research data that is both covered by the subpoena and subject to the Shelby Amendment in late August, after the original return date for the subpoena.

Once data was in our possession, the agency's efforts focused on preparing for the provision of the data to the Committee. Because of the types of studies involved in the subpoena, before the agency could provide the Committee with the data we had to review that data for privacy considerations. The EPA brought together an ad hoc data review committee on August 2, 2013, to begin the process of reviewing all data responsive to the subpoena that was currently in our possession. That committee included representatives from the Office of Air and Radiation, the Office of Research and Development, and the Office of General Counsel. The committee reviewed each set of research data as we obtained it, rather than waiting until all of the data were obtained to begin that phase of our response.

In instances where the agency had potential privacy concerns, consistent with our obligations under the Public Health Services Act (42 U.S.C. 241(d), the agency consulted with the Centers for Disease Control regarding the releasibility of that data. In particular, the agency had multiple interactions with the Centers for Disease Control related to the research data for Lepeule J, Laden F, Dockery D, Schwartz J 2012. "Chronic Exposure to Fine Particles and Mortality: An Extended Follow-Up of the Harvard Six Cities Study from 1974 to 2009." Environ Health Perspect. Jul;120(7):965-70. The agency's efforts ultimately resulted in the Centers for Disease Control reaching the conclusion that all of the research data could be provided without the need for de-identification. The EPA concluded its final consultation with the Centers for Disease Control on September 27, 2013, and made its final production of data to the Committee just days later on September 30, 2013.

ADDENDUM II

Prop 1B Truck Grant Funds Lots of Big Winners!

By Bill Davis - CTN Magazine

The Proposition 1B Goods Movement Emission Reduction Program (GMERP) is a partnership between the California Air Resources Board (CARB) and local air quality management districts to reduce particulate matter and NOx emissions from freight movement (trucks, trains and ships) along California's trade corridors.

To fund the effort, voters approved spending $1 billion in bond funds from Gov. Arnold Schwarzenegger's 2006 Prop 1B, which raised another $18.25 billion for roads, bridges, ports and other infrastructure. That money is fast running out (*see story on opposite page "The End of Prop. 1B Funding"*), with CARB set to award the remaining $240 million in the GMERP account, perhaps sometime this summer.

The question is....who is going to get the last drops of this retrofit and repower public funding. So far the program has been described as a source of corporate welfare for giant trucking companies (many from out-of-state) who would have replaced their power units every three to four years without CARB's help.

In response to this criticism, the South Coast Air Quality Management District (SCAQMD), the state's largest and arguably worst managed air district, (covering Orange County and major portions of Los Angeles, San Bernardino and Riverside counties) says it is "making efforts to help small fleets."

In August 2013, SCAQMD announced that CARB supplied more than $81 million in funding for heavy-duty diesel truck replacement projects from Prop. 1B funds. SCAQMD released its Program Announcement (PA2014-06) to solicit eligible heavy-duty diesel truck projects. The two-phased solicitation closed on October 10, and December 12, 2013, respectively.

SCAQMD received applications for about 2,400 individual truck projects under the first phase and about 1,600 under the second phase, according to Barry Wallerstein, the agency's executive officer.

In a report to his board, Wallerstein said of the $77,351,940 in project funds (there was $3.9 million subtracted for "administrative funds"), CARB allocated a maximum of $65,542,416, to the first phase and a minimum of $11,809,524 to the second phase with the intent to "prioritize and help applicants with small fleets of three or fewer trucks in the second phase." The small fleet applications received by the December 12th deadline, are currently being evaluated and are expected to be ready for board consideration at its April meeting.

Where the Money Went

The South Coast Board, on February 7, awarded $65.5 million to replace about 1,900 older heavy-duty diesel trucks with new lower-emission models. Not surprising, the majority of the funding went to large transportation and regional businesses.

The most recent GMERP report from South Coast showed their usual pattern of large trucking companies dominating the funding. You can check it out yourself at ***www.aqmd.gov/tao/Implementation/G13GMLT1-Preliminary-Ranked-List_3-18-2014.pdf***

To start with, there is always a caveat whenever you deal with air quality bureaucrats – they can give and they can take away. In this program it is this: "Equipment projects listed are not guaranteed to receive Program funding. Selection for funding is contingent upon the availability of funding and the successful completion of CARB's Proposition 1B compliance check."

Proposition 1B: Goods Movement Emission Reduction Program
DECEMBER 2013 SEMI-ANNUAL STATUS REPORT

TOTALS – ALL EQUIPMENT PROJECTS BY TRADE CORRIDOR

Trade Corridor	Amount ($ millions)	PM (lbs)	NOx (lbs)
Los Angeles/Inland Empire	$389,181,095	2,558,000	74,439,000
Central Valley	$176,424,599	1,746,000	38,841,000
Bay Area	$90,446,624	515,400	17,096,000
San Diego/Border	$45,241,452	245,000	6,183,000
Statewide - Loan Assistance[1]	$10,300,000		
Statewide - Truck Filter Substrate Replacement Program	$6,300,000		
ARB Administration	$21,400,000		
TOTAL	$739.3 million	5,064,400 lbs or 2,530 tons	136,559,000 lbs or 68,280 tons

TOTALS – ALL PROJECTS BY CATEGORY

Funding Category	Amount ($ millions)	PM (lbs)	NOx (lbs)
Other Trucks	$485,029,178	3,250,000	84,267,000
Drayage Trucks	$114,928,891	948,400	18,712,000
Shore Power	$82,395,415	500,000	29,283,000
Harbor Craft	$915,286	5,000	131,000
Locomotives	$18,025,000	361,000	4,166,000
ARB Loan Assistance[1]	$10,300,000		
ARB Truck Filter Substrate Replacement Program	$6,300,000		
ARB Administration	$21,400,000		
TOTAL	$739.3 million	5,064,400 lbs or 2,530 tons	136,559,000 lbs or 68,280 tons

[1]ARB will reallocate the $5.3 million awarded at the July 2013 Board Meeting to local agency truck projects for small fleets

Air Resources Board 16 December 31, 2013

According to the report, one of the most startling grants on the list was for Atlanta based giant international package shipper UPS, which received $1.51 million to repower 150 of its Class 6 delivery trucks with propane conversion kits and $650,000 to repower an additional 25 Class 6 power units with electric motors. The CARB/SCAQMD grant of $2.16 million, while small for a company with $55.4-bil. in revenue and $4.5-bil. in profit (after taxes) for 2013, makes one pause and ask – why would a hugely profitable company get any grant funding, when small trucking companies are being driven out of business?

Other winners in the grant lottery included Gardner Trucking who will be able to replace 94 of its 1440 trucks with its $4,750,000 award; The Complete Logistics Company, 40 replacements worth $2,050,000; Applebees Leasing, 51 replacement units for $2,015,000; Dependable

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ASSOCIATION STAFF

Prop 1B Truck Grant

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Highway Express, 47 trucks for $1,755,000; WC Logistics LSE/Civic with 31 units for $1,550,000 and Ralph's Grocery Company (a subsidiary of Kroger – the nation's largest supermarket chain) with 29 new trucks for $1,500,000.

Another interesting category of winners included out-of-state operators, like Oak Harbor Freight Lines from Tacoma, Wash., which received three quarters of a million dollars to replace 17 of its 272 truck fleet.

As a group, the ready mix industry in the South Coast district did remarkably well in this round of funding. For example, RRM Properties (Robertson's Management, LLC, owned by the Troesh family which sold Robertson's material business to Mitsubishi) landed the biggest single grant, $16.2 million to replace 323 mostly mixer trucks with 2013 machines. This represents about 27 percent Robertson's 1,183 truck fleet. Other big hitters in the ready mix business included A&A Ready Mix which will replace 94 of its 507 trucks with a $4.75 million grant; Superior Ready Mix will add 64 new trucks to its fleet of 305 unit fleet for $2.7 million and National with 17 new trucks for its 232 truck fleet for $1.8 million.

How the Other Half Lives

South Coast has received half of all the Prop 1B funding, $382 million so far, which makes sense when you consider half the population of California lives south of Wilshire Boulevard. The CARB has to make a report twice a year to the State Department of Finance – the latest version came out in December, 2013 and is available at ***www.arb.ca.gov/bonds/gmbond/docs/proposition-1b-goods-movement-december-2013-semi-annual-report-to-dof.pdf***.

The other five air districts in the trade corridors did a much better job of spreading the wealth, given what they had to work with, according to the latest reports.

The San Joaquin APCD distributed funding to 224 owner/operators and another 194 fleets with fewer than ten trucks. They did have some multi-million dollar grants, but they were all Central Valley companies: Save Mart Supermarkets got $3.9 million for 63 replacement units; Scan-Vino LLC received $1.75 million for 34 replacements; Will-Lill Transports received $1.38 million for 23 trucks as did Ralph Panella and Producers Dairy received $1.08 million for 18 replacements. San Joaquin has received $176.4 million in trade corridor funding so far.

The Bay Area APCD received the third largest amount of CARB largess – $90.4 million. In its last round of funding the Bay Area divided its most recent grants into $25,000 packets and while there were some multiple grants of a select few companies (none over $1 million), but most went to small truckers – 662 owner operators, and 52 other fleets of three or less.

In San Diego and Imperial Counties, they received $45.2 million since 2007. UPS received an additional $440,000 for 44 propane conversions; WC Logistics received $1.95 million for 325 replacement trucks and Mex-Cal Truck Line will replace 25 trucks for $1.25 million. The award to Mex-Cal Truck Line is interesting because last year they were fined $300,000 by CARB for dispatching non-compliant vehicles onto regulated rail yards in 2011 and 2012.