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California Air Resources Board
1001 I Street, P.O. Box 2815
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RE: Two Options for Off-Road Diesel Engines

Dear Board Members,

Delta Construction Co., Inc. is a family business celebrating its 67th year in construction in California. We have built a solid reputation for performance in a very competitive environment. This has been accomplished by owning equipment and maintaining good crews, some of them having worked for us up to 35 years. Our fleet of trucks and heavy equipment ages 2 to 30 years old, with the newer equipment used daily and the older kept for part-time and standby use.

In regards to the onerous regulations you have placed on Industry's Off-Road Equipment, I submit the following:

- California Almanac of Emissions and Air Quality shows dramatic improvement in Southern California and the Central Valley over the last 20 years, despite increased trucking, construction and port activities and population growth.
- The science symposium verified that the science is NOT SETTLED on the potentially damaging health effects in California, regardless of "accepted" studies by CARB. The need for a truly independent study of California specific effects is paramount before regulations are implemented.
- The edicts passed and to be implemented will severely damage what's left of our construction industry, hitting especially hard on small and medium sized businesses.
- The damage caused by ordinances to my financial and bonding capacity (resulting in the devaluation of my asset base)-- both of which is key to my ability to acquire, finance and build projects -- will be unrecoverable with the continuation of your mandates.
- The only way Delta will be able to meet the regulations is by attrition. I will not replace equipment for which I currently have no work. Selling this equipment out of State will remove potential jobs as the economy recovers, decreasing

revenues for California while increasing unemployment (along with passing the supposed pollutants from this equipment to just another populace). If we are looking at solely health benefits, what is the justification of improving the health of one populace at the expense of another?

- The AGC Study shows that Off-Road Equipment has already met the PM targets through 2014 and NOx until 2025.
- CARB Study of March 23, 2006 submits $4 to $28 of benefits per $1 of control.

There are two available options that CARB should take that will not deter any potential improvement in the economy while accomplishing the goals set.

1) Lacking evidence to the contrary of AGC's independent report concluding that Off-Road Equipment has met the goals set by CARB until 2015 for PM and NOx, declare victory and stop all regulatory requirements for this equipment. This should be followed by continued air monitoring and reviewing the data in 2013-2014 to verify that the goals continue to be met. Adjust the program at that time to secure the continued targets by Off-Road Equipment to meet the SIP.

2) Providing that is not acceptable, adopt a "pay-go" program. If it is true that the benefit is from $4 to $28(benefit) to $1[1](cost), it should be no problem to have the public (who are the beneficiaries of these regulations) pay for the expense to maintain and improve their health. Put a bond measure on the ballot. If the bond measure passes, the expense of the upgrade for the equipment will be reimbursed directly by the beneficiaries of the upgrade.

Lacking a pay-go program and requiring those who have purchased perfectly legal and reliable equipment to replace the same prior to the end of its useful life is not only onerous but unconstitutional. At some point, someone with enough assets will sue under Amendment 5 of the U.S. Constitution. A public agency cannot just "take personal property" without remuneration for same. There is no reason that the State of California should have to defend such a blatant and illegal ex-post-facto regulation. Everyone loses, especially the tax-payer. One successful suit will bring tens of thousands of others, bankrupting an already insolvent State.

The CARB has done a yeoman's job of cleaning up the air in California, and should not rest on its laurels. This has been accomplished by mandated improvements in technology to clean up all sources of air contaminants to apply to **new** autos, trucks and equipment purchased. These regulations, however, are the first to make existing assets owned by entrepreneurs throughout the State illegal to use or sell in California. This method of air quality improvement does not come without a huge cost, and directing that cost solely to the owners of these assets for the benefit of the populace as a whole is just not right.

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[1] CARB Presentation, "Stronger Relationship Between Particulate Matter and Premature Death", March 23, 2006

CARB staff has advised industry to cover this cost by "raising prices". Obviously, this advice comes from those who do not understand the free market system of public bids. If this was possible, such as it is in a regulated pricing structure in monopolistic systems, the cost would be passed on directly to the public. Lacking this type of business structure, an alternate direct way for a "user (read beneficiary) pay" would be the bond method as discussed above.

Sincerely,

Norman R. "Skip" Brown
President