CONSTRUCTION INDUSTRY AIR QUALITY COALITION

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February 19, 2008

Via Electronic Mail

Mrs. Sandra Berg, Member
California Air Resources Board
1001 "I" Street
P. O. Box 2815
Sacramento, CA 95812

RE: Amendments to Carl Moyer Program

Dear Board Member Berg:

On behalf of the Construction Industry Air Quality Coalition I would like to thank you for your leadership on the In-Use Off-Road rule and express our gratitude for including our industry as members of the Carl Moyer Task Force.

Over the last eight years, the construction industry has been able to utilize $200 million to re-power 2,500 pieces of off-road construction equipment and voluntarily reduce NOx emissions by 10,000 tons per year. As a consequence we are very familiar with the Moyer program as well as its strengths and weaknesses.

When Carl Moyer began 10 years ago, it was designed as an incentive program for early reductions of NOx emissions from all mobile diesel sources. At that time is was important to establish priorities for the expenditure of the funds because there was such a large pool of potential projects available for funding. As regulatory efforts have expanded over the last decade, however, that pool of projects has shrunk dramatically as fewer and fewer engines remained eligible for funding. Naturally, many districts are having problems finding enough projects in order to spend their money in a timely basis, and are pushing for changes in the Moyer program that would streamline the process.

When there were fewer regulations and a large inventory of engines eligible for the Moyer program, it made sense to set priorities for funding that included cost effectiveness, hours of operation, geographic considerations (Environmental Justice) and matching funds requirements. Now that the inventory has shrunk so dramatically and the target industries have shifted, it is time to consider more structural changes to the Moyer program.

As an incentive program, the current guidelines are workable but probably need to be updated to reflect today's economic and technological realities. There is every reason to believe that companies will apply for incentive

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funding in the absence of any rule and be willing to share in the cost of the re-power of their equipment. It can make great business sense; it prolongs the life of the equipment and the public benefits from emission reductions that would not have occurred otherwise. It also makes sense for the agencies distributing the funds to have some way to measure the effectiveness of their investment, to prioritize the projects and to assure some equity in the distribution of the funds. We have probably made that process overly complicated with the current guidelines and we believe that your task force has made some useful recommendations to improve the program.

It is also our belief that we need to step back and look at the next decade of funding and revise the Moyer program to reflect the new paradigm in emission reductions. In the next ten years, virtually all the available equipment will be subject to some rule or regulation that will render most of it ineligible for Moyer incentive funding. That does not mean that there are not further reductions that might be achieved with some additional funding. The SOON program is an example of the effort to do that and we assume similar concepts will be included in subsequent rules adopted by your board.

However, the rules that apply to incentive funding will not work for programs that are "post" regulation, or "excess" to regulatory requirements. There are several reasons for that. By definition the rule making process has "wrung out" all the economic ability of the individual companies to comply and has pushed the regulated industry as a whole, as far and as fast as believed practical by CARB. To expect companies on top of that to commit additional resources to "excess" emission reductions, contradicts your own findings in adopting a rule and would seem to imply that the rule didn't go far enough.

There are many locations in California that have severe air pollution levels that require emission reduction efforts beyond those necessary for the rest of the state. Those areas need tools to achieve these "excess" reductions that don't have the same limitations as the early incentive programs. After all, we are told those emissions are more urgent and have greater health impacts. If those emissions are indeed so important then the Moyer program ought to be able to pay for 100% of the cost of reducing those "excess" emissions. It is unreasonable to expect the regulated community to pay for 100% of the cost of base rule compliance, and then, have the funds to contribute toward the cost of "excess" emission reductions.

We believe that the Moyer program needs statutory reconstruction. We would recommend that legislation be prepared that would create an additional category of Moyer funding that would not contain all the limitations now present in the incentive side of the program. This category would be for excess reductions only, not early incentive reductions. It would allow for 100% funding of these critical emission reductions. It would not need cost effectiveness criteria since these reductions are "excess" and critical to reaching the federal and state standards and cost should

not be a consideration. There would be no need for environmental justice criteria since the base rule has already squeezed out all the emissions possible on an industry-wide scale. Simply put, any ton of emissions that is available ought to be eligible for "excess" Moyer funding regardless of its Environmental Justice issues, hours of operation, cost per ton or the ability of the owner to provide matching funding.

Clearly, we are moving into new territory with the current Moyer program. While it is important to update the current guidelines, without modifying the statute, the Moyer program will not be able to respond to the future regulatory environment and air quality needs. There appears to be a small window of time to seek the statutory changes we have recommended. We believe that a proposal coming from industry, the air districts and the ARB would be well received in the state legislature. The construction industry would like to seek your support and that of the task force in making those changes in this current legislative session.

We believe that the creation of this less restrictive "excess" emissions category will provide the flexibility that the air districts need to meet their emission reduction goals without further economic damage to the regulated industries that are being asked to participate in the effort.

We are available to discuss the matter at your convenience.

Sincerely,

Mike Lewis,
Senior Vice-President
Construction Industry Air Quality Coalition

cc: CARB Board
SCAQMD Board
SJVAPCD Board