



Mary D. Nichols, Chairman
California Air Resources Board

December 28, 2010

Dear Ms. Nichols:

West State Alliance (WSA) is a non-profit membership association of truckers and ancillary goods movement industries servicing the Port of Oakland. WSA represents the best interests of drayage trucking and cargo transportation while advancing positive environmental conditions and advocating for the economic well being of the community.

Over the past few months CARB staff have participated in WSA sponsored Port of Oakland Trucker Work Groups to present a set of proposed Drayage Regulation Amendments pending adoption by the Board. Of greatest concern to drayage truckers was a proposed rule change that would delay Phase II requirements for installation of NOx filers on 1994-2006 model year trucks equipped with diesel particulate filters until 2020. According to an October 11, 2010 CARB bulletin, this rule modification would "provide relief to drayage truck owners, ensure that PM reduction goals for local communities are met . . . and formally sunset the Drayage Truck Regulation". Furthermore, the proposed change would have put scheduled upgrades for drayage trucks in exact alignment with other diesel trucks covered under the state Truck and Bus Regulation. To the dismay of many local truckers, this proposed rule change was shot down by CARB at the December 17 meeting that saw all other provisions of the rule change moved forward by the Board.

We respectfully submit the following arguments in response to the December 17 decision not to delay requirements for Phase II compliance of drayage trucks until January 1, 2020. Considering the Board's deliberations on this issue, we find it deeply offensive that our own state would enact policy that privileges large trucking companies over independent owner operators/small business, disregards the best interests of the Port of Oakland, and subjects the workers of a severely economically depressed community to still further hardship by adding punitive costs to the already high cost of doing business in an economic downturn. The testimony, discussion and comments we heard during the December 17 proceedings fly in the face of the known facts and serve to disregard the plight of many independent owner operators who are the lifeblood of goods movement at the Port. Thus, we are both saddened and outraged by the Board's decision not to support a sound goods movement strategy reflective of the economic realities of the State, the Port and the City of Oakland, nor one based on a fair and balanced position respecting the interests of all parties concerned.

To this end, we submit the following points of contention:

1. Acting on information of questionable accuracy presented by CARB staff, the Board mistakenly assumes that, as of one year ago, some 2,000 trucks making frequent visits to the Port were sufficient to handle cargo volumes, and that only minor adjustments to this figure need be made to accommodate current volumes. The reality is quite different. Current volumes are up 15% over this time last year and expected to continue on a growth curve throughout 2011. Authoritative sources at the Port put the number of frequent (daily) visitors at closer to 3,000 trucks and, based on 10,000 daily gate transactions, WSA calculates the number may in fact be substantially higher. Ms. Marvin determines the number of current compliant trucks that would benefit from a delay in Phase II equipment upgrades required on January 1, 2014 to be 1,700. A large percentage of these trucks are at great risk for obsolescence due to adding the cost of yet another emissions filter to debt incurred during Phase I DPF installation. Regardless of which set of numbers one uses, one cannot fail to understand how a large percentage of trucks becoming disabled will have a significant impact on cargo movements at the Port. In not voting to extend the Phase II schedule, CARB runs the risk of unduly removing a sizable portion of the Port's truck fleet from daily cargo transport and the vital commerce it supports. Some 600 drivers were forced out of the trucking industry after the January 1, 2010 Port truck ban eliminated their trucks from service, and we fear for the welfare of the Port and the local community should another wave of truck obsolescence hit the industry.

2. As Ms. Marvin notes, 1,700 out of 2,200 statewide Phase II non-compliant trucks engage in cargo movement at the Port of Oakland. The City of Oakland can ill afford the loss of jobs resulting from up to 1,700 trucks being prematurely mothballed due to the high cost of yet another emissions upgrade. Small trucking companies and owner operators who incurred substantial debt complying with Phase I requirements still are reeling from 50% cargo load reductions during 2008-09. Many independent truckers who survived the expense of last year's DPF retrofit are saddled with \$500 monthly loan payments and would be forced to abandon older trucks rather than add the cost of an additional equipment upgrade. Additional job loss will have significant social and health impacts on an already economically disadvantaged community suffering from one of the highest rates of unemployment in the State. West Oakland, home to the Port, experienced over 30% unemployment before the recession and would be hardest hit by additional loss of trucker jobs. As CARB acknowledges in the Proposed Resolution 10-45, "California and the nation have been in an economic recession that is deeper and longer lasting than anticipated" [with] "significant impact on overall trucking activities including companies that operate drayage trucks."

3. Enacting the proposed rule change would achieve the goal of consistency in marrying drayage rules with the Truck and Bus Regulation. As stated in the Proposed Resolution 10-45: "The elimination of the current Phase II requirement is necessary to provide compliance relief to drayage truck owners and to align the requirements of the Drayage regulation with the requirements of the Truck and Bus regulation." In the course of their deliberations, the Board contrasted the worthy goals of consistency with those of "parity," questioning whether (in Ms. Marvin's words) "businesses who've made compliance choices" (i.e. invested in new trucks) deserve not to have the Phase

II deadline extended. WSA takes issue with the principle in question, i.e. that early adopters are owed the obsolescence of older trucks on a pre-set, inviolate schedule. The overarching intent of the proposed set of rule changes is to factor in the effect of the recession on both income and emissions, rebalancing scheduled improvements in air quality with protection of fledgling California business. Nowhere in the intended outcomes has the ARB suggested enacting revised policy that privileges the position of one class of business (i.e. those that bought new trucks) over another nor an intent to favor early adopters over later ones. Thus, the issue of so-called "parity" is a spurious one and is a misleading argument in these deliberations.

WSA also takes issue with the implication that the cost of new truck purchases put a disproportionate burden on fleet owners while those who kept older rigs skated by with inexpensive installation of diesel particulate filters. We beg the Board to recognize that many Port trucks received no State subsidies and others mere \$5,000 grants on filter purchases of up to \$20,000, necessitating sizable debt and \$500 monthly loan repayments. These trucks continue to incur costly filter maintenance, they bear increased costs and frequency of engine maintenance, and experience financially punitive down days for all too frequent filter cleaning and engine repair. Thus, those who purchased emissions equipment upgrades already bear an extensive financial burden for which no immediate upturn in container movements will compensate.

Using "fairness" to support a rationale for not enacting a Phase II rule delay neglects the hardship realities of independent owner operators and small businesses with respect to out-of-pocket equipment and maintenance costs while rejecting CARB's own admission that California's deep and long-lasting recession has had a significant impact on all truckers. The lobbying of big companies who willingly made large equipment investments with \$50,000 per truck State subsidies yet cite fairness as the underlying principle to force compliance with Phase II scheduling, appears, quite frankly, an attempt to attain unfair competitive advantage by purging the market of independent operators.

4. While we applaud Board Member Berg's suggestion of incentive funding for future equipment upgrades, past experience suggests that State subsidies will be overly limited in number and/or result in dollar amounts too small to serve the needs of Port truckers. As the Board will recall, one year ago 1,321 bona fide grant applications were turned down by the State after available grant monies were expended. Exacerbating the scarcity of funds, some motor carriers applied early and were able to upgrade their entire fleets with public monies, leaving many individual owner operators later to go begging. Due to the limited number of available grants and the high cost of retrofits, over 600 local truckers with legitimate grant requests were forced out of business. Thus, commitments to the welfare of truckers during future equipment purchasing cycles ring hollow.

In conclusion, some form of compliance relief for all of California's truckers is vital to the trucking industry due to the state's unprecedented slumping economy. We at West State Alliance were heartened by the prospects of the ARB delaying Phase II requirements for NOx emissions due to the untenable cost of purchasing new

equipment in today's faltering economy. As with the expensive and unanticipated costs associated with Phase I equipment retrofits, our industry fears that yet another round of retrofitted exhaust systems will place a much greater financial burden on drayage truckers than the economy can reasonably support. Taking into account the costs of economic recession and its associated loss of cargo movements seems a reasonable response to the ARB compliance schedule, as do factoring in the much lower levels of pollution due to significant reduction in cargo shipments in and out of the Ports.

In what appears an example of unaccountable favoritism, trucks governed by the Truck and Bus Regulation have been granted liberal concessions in meeting requirements laid out in the current compliance schedule while delays to Port drayage trucking were voted down by the Board as unnecessary measures. In pitting one class of trucking business against another, false issues of parity have served to derail what otherwise could be a fair and consistent response to the traumas of a grave business climate in which all truckers doing business at the Port suffer equally. Drayage truckers can only wonder what forces drive the decisions made by regulators when a State board turns a deaf ear to the plight of small business owners and to a largely immigrant population of owner operators in the face of an unprecedented dreary economy, yet acknowledges the suffering of large fleet operators. And one wonders again at how the good fortune of unexpected air quality improvement can relax statewide rules for on-road trucks and buses yet have no effect on policies affecting Port trucks when all classes of trucks have experienced greatly reduced mileage as a result of an indiscriminately harsh economy. Clearly, there is a danger of oversimplification in reducing the complex dynamics of air quality, the economy and a large, multifaceted industry to simple equations. If WSA has erred in its assessment of the Board's recent decisions and decision-making process, perhaps we can be forgiven as the public facts just do not bear out these decisions with either clear purpose or fairness of attitude, nor with recognition of the probable consequences for owners of 1,700 affected trucks at the Port of Oakland.

West State Alliance respectfully submits these comments in the hope the Air Resources Board will reconsider their decision not to delay implementation of the Phase II drayage rules in light of information and common business concerns presented on behalf of the many Port trucking companies WSA represents.

cc:

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Oakland Council District 1 - Jane Brunner (Council President)
Oakland Council District 2 - Patricia Kernighan
Oakland Council District 3 - Nancy Nadel
Oakland Council District 4 Elect - Libby Schaaf
Oakland Council District 5 - Ignacio De La Fuente
Oakland Council District 6 - Desley Brooks
Oakland Council District 7 - Larry Reid
Oakland Councilmember At Large - Rebecca Kaplan

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Alameda County Supervisor Gail Steele
Alameda County Supervisor Alice-Lai Bitker
Alameda County Supervisor Nathan Miley
Alameda County Supervisor Keith Carson
Alameda County Supervisor Elect Nadia Lockyer

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