**Comments for CARB proposals to fine brokers and shippers for non-compliant trailers**

The provisions to extend the parties, beyond trucking companies/carriers, which are fined when a 53’ trailer is not in compliance with Smartway is unfair, unworkable, and will certainly result in increased transportation costs. The carrier could be fined up to $1,000 if they are not in compliance. Under the new proposal anyone involved in the transaction including the carrier, the driver, the shipper, the receiver, the transportation broker, and the warehouse will be fined up to $1,000 each. These provisions cannot be extended to parties other than the trucking company or carrier.

Clearly, a non-asset based transportation broker is not a carrier, has no trucks, and is not an employer of independent carriers. Such a broker has no control over the carrier or its trucks or operations. If fact, exerting such control over a carrier can open a broker up to other types of liability when hiring an independent contractor. Allen Lund Company (“ALC”) is most concerned that the present proposal includes provisions to fine ALC if the carrier is not in compliance. This is the equivalent of fining a travel agent if an airline is out of compliance on an aircraft. ALC works with 22,000 carriers in a year and it is impossible to monitor the 100,000+ trailers owned by those companies.

This is completely unfair to California based companies. You propose to fine only companies with a California presence. This allows a broker from any other state to broker freight in California and to have an advantage over the same type of business that has a presence in California. This will only serve to drive more companies out of this state and to further negatively impact the tax revenues in California.

It will be an impossible burden, in practice, for brokers to assure carrier compliance – ALC is not in law enforcement, does not have access to the documents/paperwork the state has, and must rely upon the carrier’s honesty. It is physically impossible for brokers to travel to each trucking company or owner/operator to inspect the entity’s records and examine each trailer. If ALC books a load with what has been assured to it is a compliant truck, and even procures the VIN, but the carrier switches trucks on ALC, how can an innocent party such as ALC be fined? What if the carrier provides ALC with the VIN belonging to a different, but compliant, truck? What if carrier paperwork is forged?  Given these significant issues, through what mechanism can carriers prove compliance sufficient to insulate ALC, and other California-based brokers, from fines? There must be some nexus between the wrongdoer, and the fine.

If a carrier’s truck is retrofitted, what proof will ALC need to produce to avoid a fine? And as ALC will not be with the trucker, nor in contact with him, at the time the fine is issued, how does ALC prove its lack of wrongdoing when a delay in receiving its own fine may compromise its ability to determine the true facts from the carrier? ALC is not an enforcement branch of the state government, and cannot be asked to act as a policing agency for the thousands of carriers which operate in California.

Produce loads are very different from others – the freight is moved when the produce is ready and that cannot be timed with certainty.  As such, when ALC is advised of a load, it must move quickly to ensure that the produce is delivered in a timely manner.  Adding a new requirement for verifying carrier compliance, especially where there is no fool-proof, and fine-proof, method for doing so, will not allow brokers to move the same number of loads, nor will loads move for a reasonable and acceptable cost. Of course, this will affect the transportation of such loads, adding to the cost of the product to the consumer.

This proposed revision to the regulations, extending what truly should be carrier liability, to those who have no way to ensure compliance, cannot stand.