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December 20, 2007

Mary Nichols
Chairman Of The Board, California Air Resources Board
1001 I Street
Sacramento, CA 95814

RE: Comments on the In-Use, Off-Road Diesel Equipment Regulation

Dear Chairman Nichols:

The revised language of the In-Use, Off-Road Diesel Equipment Regulation released on December 12th, 2007 continues to fail in addressing many of the legitimate concerns of the industry which it aims to regulate. The nearly 300 union-signatory contractor members of the Engineering & Utility Contractors Association have prided themselves in providing practical, useful and no-nonsense comments and recommendations to the various legislative and regulatory agencies that we interact with. A majority of the time, our reputation for our pragmatic viewpoints results in once ridiculous and impractical regulations becoming more sensible and thus makes compliance more likely. We have continued this philosophy with the staff and members of the California Air Resources Board, but to no avail.

In the instance of the In-Use, Off-Road Diesel Equipment Regulation, as the development of the rule has progressed over the last several years, the ability for those regulated by this rule to comply with it has significantly deteriorated. I will not uselessly flood you with repetitive statistics of compliance cost and the impacts of those costs on our industry. I will however, restate the requests that we have previously made that will increase the likelihood of compliance.

EUCA has and continues to request that the inclusion of a small business certification be removed from the definition of "small fleet" in your regulation, section 2449(c)(25)(C). While we appreciate CARB staff keeping the commitment made to this industry of raising the fleet horsepower for the "small fleet" category to 2,500, including the requirement of a "small fleet" to be a certified small business will create additional burdens on small companies to comply. During multiple workshop meetings, CARB staff agreed to remove the requirement for the small business certification, but has failed to keep its commitment on this matter. Horsepower should be the only measurement relevant in determining fleet size.

Additionally, we continue to support the Construction Industry Air Quality Coalition's recommendation of a three-year compliance timeline, rather than a fleet having to demonstrate compliance annually. The overall emission reductions goals at the conclusion of the regulation will still remain intact, but the flexibility of three year compliance deadlines will greatly assist a majority of the fleets and increase the likelihood of their compliance.

With significant speculation on the availability of the products required for fleet owners to meet the demands of this regulation, and the uncertain associated costs, allowing for a three-year compliance period is a critical component to ensuring compliance and thus meeting the overall emission reduction goals of the regulation. Stringency will only result in evasion or delay of compliance for a majority of fleet owners who must choose between staying in business or meeting the requirements of this rule and going broke.

As previously stated, the members of EUCA support reductions in air pollutants, and are willing to do their part to this end. However, we believe that a realistic, practical and pragmatic approach should be taken so as to not break an industry already facing a significant economic downturn due to no fault of their own. The industry is already significantly burdened by the Portable Equipment Registration regulation, and is soon to likely be subject to the provisions of the On-Road, In-Use Diesel regulation.

The proposed In-Use, Of-Road Diesel regulation will impact the construction industry at a time when many businesses are already facing challenging financial conditions. Taking this into consideration, and considering the other regulatory constraints you have placed on our industry, EUCA continues to ask that our recommendations, and the recommendations of our industry be seriously considered and implemented.

Sincerely,

Tara McGovern
Director of Government Relations