DELTA
SINCE 1943
CONSTRUCTION CO., INC.

(916) 364-0292
FAX (916) 364-7641
P.O. Box 277517
Sacramento, CA 95827
CLN 257024

March 2, 2007

COPY

Catherine Witherspoon, Executive Officer
Air Resources Board
1001 I Street
Sacramento, CA 95812

Dear Ms. Witherspoon,

I am writing you today to offer suggestions on how your proposed regulation for in-use off-road diesel vehicles might be made fairer to established fleets. There are several areas of inequities designed into this regulation. They are (in part):

1) Your regulation discriminates against contractors, etc. who have been in business more than 10 years.
2) The horsepower amount to determine "small fleets" sets the limits too low.
3) The method for determining the contribution to air pollution is erroneous.
4) The exempted "low-use" vehicle approach is flawed.
5) The program will put contractors out of business (or at least severely reduce their ability to perform) during a time when Governor Schwarzenegger's Go-California Team is promoting the ICE (Industry Capacity Expansion) Program to handle the large upcoming amount of highway work.
6) Your staff cost estimates for replacement engines are woefully low.
7) The proposed use of VDEC's may contribute to accidents and injuries.
8) The program discriminates against fleet owners in Northern California due to the reduced available annual work time.

Delta Construction Co., Inc., is celebrating its 63rd year in business in the State of California. Delta was started by my father in 1943. Over the years, Delta has acquired a number of pieces of diesel equipment that are only used on a part-time basis. We own all of our equipment (although some of the more recent pieces are still being paid off). We have only one crew of 10-12 employees (plus staff and support). Our specialty is chip sealing and paving roads with asphalt concrete. Six employees operate (on a somewhat rotating basis) our 20 pieces of equipment. In other words, 14 of our diesel engines are parked on any given day. Your new regulation discriminates against firms such as Delta as much of our equipment was purchased before Tier 1 engines were available. Our diesel engines still perform as designed and when used on a low-hour per year basis, will last for a number of years without overhaul or replacement. New contractors in business will have only the newer model engines that are not subjected to the considerable expense of upgrading.

Your proposed rule allows a contractor to have up to 1500 horsepower (hp) and remain a small fleet (with corresponding relief before mandated re-power or retrofit). The next level (mid-sized) allows up to 20,000 hp. This is a disproportionate interval. The regulation places our company (with 2,014hp) in the same category as a rental company in Sacramento with 80 pieces of equipment with 19,000 hp who typically rents over 90% of the fleet on any given day. Delta

normally works daily with a total of 500 hp (with 1500 hp parked) while this rental company is using around 17,000 hp. Your regulation requires Delta to upgrade at the same rate as this other "mid-size" company. This is an untenable situation. We are being penalized only because we have been in business for a longer period of time and have acquired specialized equipment (paving and sealing machines that are not available to rent) for specific types of work. Our usage is low and the expense of purchasing is very high, necessitating the continued ownership over an extended period of time for recapture of investment. There are many "Mom and Pop" contractors such as Delta that have equipment used in this manner with an aggregate horsepower in excess of your preset limit. The limit is set too low. A more reasonable limit would be 3,000 to 4,000 hp for a small fleet.

Your method of categorizing size is also **not** directly proportional to the output of emissions. This regulation outlines the need for emission reduction. The output of emissions is not just related to horsepower, but to **horsepower/hours** (the actual usage of this horsepower). **A parked engine does not emit**. A more accurate way to regulate emissions should take in the number of hours each piece of equipment works times the amount of available horsepower. Your regulation proposes that if a piece of equipment is not used more than 100 hours per year, it is exempt. Relating directly to emissions, this "100 hours" should be multiplied by the horsepower. A 250hp engine used for 100 hours would total 25,000 horsepower/hours (hp/hrs). The frailty of your proposed rule is that it purports a 25hp engine used for 100 hours totaling 2500hp/hrs is the same (creates the same emissions) as a 250hp engine totaling 25,000 hp/hrs. Hardly!

I propose that a "fleet average" of horsepower be computed for each fleet of equipment. You can compute a reasonable use of non-compliant engines. This reasonable use should be more like 300 hours per year, not 100 (at least for small users). This usage should be a blanket allowance for the total available hp/hrs for the fleet, not limited to a set hour usage for each piece. There are years when a particular piece of specialized equipment may not be used at all in my company. On other low-usage equipment, Delta may acquire 300 or more hours. This hardly relates to the potential 65% usage of equipment on any given year, which would total 1,200-1,400 hours (typical of large contractors in Northern California). A blanket allowance would permit a contractor to maintain operations without resorting to "clock dis-connecting" or other methods of manipulating the system.

Contractors are not clairvoyant. They cannot foresee what work will be available to bid or perform in advance of any given year. They must have the equipment necessary to complete the work that the market offers. Over time, either normal attrition reduces the usage of older equipment to zero, or the increased usage financially allows for replacement with newer equipment. While this may take longer than your proposed rule timing, it won't bankrupt the small contractor who does not use his equipment enough to warrant replacement with new. As outlined above, minimal usage would not appreciably affect air quality.

Collateral damage resulting from your proposed rule would reduce the value of 60% of Delta's equipment to essentially zero. This equipment has no market value in California as no one wants to purchase a piece of construction equipment that has an engine that will not be permitted to be used in a year or two. **Also, within one year, Delta could not even legally sell this equipment in California.** Hauling older equipment out of state hardly is worth the expense, as the flood of equipment leaving California will depress the market value. Delta has been unsuccessful in locating a farmer who needs some paving equipment to overlay his rice paddy, so sales to the agriculture industry are moot. Normal re-sales of equipment from large contractors to small

contractors through equipment dealers, assisting new business start-ups, will be prohibited through this regulation. Competition is reduced as required capital to purchase equipment is substantially increased to start or grow a business. When my bank and bonding company realize what you have done to my net worth, Delta most certainly will not be performing to capacity. Not only will this be due to the forced "retirement" of perfectly good equipment but because of our reduced bonding and borrowing limits. Growth is out of the question. **Perhaps reduction in industry capacity is the real purpose of this regulation. If so, you could not have designed it better!**

With just one swift stroke of your pen, Delta's net worth will be substantially reduced.

Incentive funding (Carl Moyer Program, etc.) requires a minimum number of hours usage per year to qualify. Low usage equipment need not apply, as the anticipated hours used will not meet the minimums and will not be funded. Most of the Tier 0 equipment used by contractors will be very difficult to re-power. A recent quote to re-power a 65 hp engine came to $53,000 ($815 per hp). ARB staff estimates for replacing engines are in the $200-$250 per hp. One reason for this high expense is that the new engines will not bolt up to the drive train, necessitating an entire replacement of the drive train. Other requests for quotations have not been returned due to the increased size of the new engines being unable to fit in the existing compartments and/or the necessitation of replacing hydraulic systems, transmissions, cooling systems, etc.

Your staff has suggested that Delta retrofit VDEC's for compliance. Who pays for the down time when these unproven technologies destroy engines due to the increased back-pressure on turbo-chargers? There is a contractor in Southern California who suffers from this exact problem at this time! Installed VDEC's will run afoul of OSHA, as no matter where installed, they will impede visibility of the operator. Most construction equipment is used around employees "on the ground" and 360 degree operator visibility is critical. Restricting visibility will undoubtedly lead to increased accidents portending injuries and possible death of construction workers. Adding insult to this will be the wrongful death suits filed due to the "add-on VDEC" and fines from OSHA, all a result of modifying the original equipment configuration restricting visibility.

In addition, it is unreasonable to place this regulation "across the board" for the entire State. Although the regulation allows exemptions for certain Northern California Counties, it lumps the Central Valley with Southern California. This is not realistic. Due to the soil types, amount of rain, lower temperatures and fog conditions in the Central Valley, a **nine-month construction season can be anticipated, at best.** There have been early and/or extended winters and late spring rains that have restricted construction operations to just 7 months out of 12. Southern California has an entirely different environment. The soil types usually are more granular and the moisture/temperature conditions more moderate. The construction season there is generally 11-12 months each year. Accumulated horsepower/hours usage per year normally is 25%-40% higher. These additional hours result in an increased amount of PM and NOX emissions along with an increased ability of contractors to capitalize their investment. To treat Northern California equally with Southern California in this regulation is a parody of justice.

No reasonable individual wishes polluted air in California. California leads the nation in cleaning up its air, water and natural resources. We must continue this effort. Your proposed regulation needs severe modification to achieve this worthwhile goal without crippling the economy in the process. We ask that the recommendations here be considered along with others that share the

desire to achieve the goal without strangling the geese that lay the golden eggs (provide employment).

At a minimum, the Air Resources Board should:

1) Devise a system that **does not discriminate** against contractors who have been in business longer, owning equipment that still is perfectly functional.
2) Reset the '**small fleet" limit to 4,000 hp**.
3) Reconfigure the method of usage to actual contribution to air pollution, i.e., change the horsepower limitation to a **horsepower/hour standard**.
4) Allow a **fleet total limitation of hp/hr** in lieu of a single piece limitation.
5) **Slow down the mandatory VDEC installation** until the potential damage to existing engines can be determined and corrected and the restriction of visibility issue can be resolved.
6) **Revise the regulation to be more site specific**. This should include the total annual potential restriction of use of these engines at different locales considering weather and soil conditions.
7) Abandon the Carl Moyer program that discriminates against small fleets with low hours to **an incentive program based on investment tax credits** to replace older equipment. This will allow all contractors access for assistance, instead of the "favored few".
8) Allow some sort of **relief language for complying if a recession becomes evident**. I can guarantee you that during the recessions of the early 70's, 80's and 90's, no equipment purchases or upgrades happened at Delta. The focus during these times is pure survival.

As the Industry begins to realize the potential devastation of their businesses as a result of this drastic regulation **(not to mention the compounding expense of the upcoming proposed regulation of on-highway diesel engines)**, there will be an outcry beyond comprehension. We will not be forced out of business without a fight. Cheating will be the norm, as businessmen attempt to forestall the inevitable. Lawsuits will be filed due to the inequities, discrimination and safety issues outlined above. It is easy to foresee injunctions stopping this program while highly paid attorneys gleefully argue the points. Statistics noting that Federal Air Quality Standard non-attainment areas have lower asthma rates and death rates due to CLRD (chronic lower respiratory disease) than attainment areas will be argued. Is it really true that LA County, which has by far the most Californians exposed to non-attainment air, has a relatively low death rate from CLRD while Humboldt County is in attainment yet has one of the state's highest CLRD death rates? The probable outcome (after years of delay in the courts with untold wasted capital paid to attorneys) of this will be the elimination of a substantial number of quality businesses in California with corresponding unemployment. Not a good thought, but the most likely one.

If it is **not** your interest to bankrupt older established businesses, create a divisive atmosphere of lawsuits, injunctions and avoidance of principle goals, I recommend you listen to the input of Industry prior to drafting unilateral regulations for emission controls.

Sincerely,

Skip Brown

Norman R. "Skip" Brown
President

Cc:

Will Kempton
Director/ Cal Trans
1120 N Street
Sacramento, CA 95814

Construction Industry Air Quality Coalition
2149 E. Garvey N Suite #A-11
West Covina, CA 91791

Pacific Legal Foundation
3900 Lennane Drive, Suite 200
Sacramento, CA 95834

California Alliance for Jobs
928 2nd Street Suite 200
Sacramento, CA 95814

Lowell Robinson
293 Lower Grass Valley Road
Nevada City, CA 95959

Senator Tom McClintock
State Capitol
Sacramento, CA 95814

Kim Heroy-Rogalski, P.E.
1001 I Street, P.O. Box 2815
Sacramento, CA 95812