



Weatherford

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January 5, 2010

Clerk of the Board
Air Resources Board
1001 I Street
Sacramento, CA 95814

RE: Comments on Proposed Amendments to the Statewide Portable Equipment Registration Program (PERP) and the Airborne Toxic Control Measure for Diesel Fueled Portable Engines (Portable Engine ATCM).

Dear Board Members,

We appreciate the opportunity to provide comments for your consideration of the above issues. Weatherford has been a part of the PERP Working Group since inception and part of the larger effort that preceded the PERP when CAPCOA tried to put a similar rule into effect. Over the years we have worked with the regulating community and many of the regulated community seeking means to simplify the rule making process and easing compliance while meeting clean air targets. Our comments are based upon the approximate 15 years of history working this issue.

Rule Change Support:

To begin, we would like to suggest that regardless of our comments that follow, we fully endorse the proposed rule changes. We appreciate that CARB and Staff have considered the impact of regulations upon the business climate and even if we are unable to benefit from portions of the rule we think any regulatory relief is positive for the state. While we have concerns we believe that CARB is the single agency within California that poses the greatest threat to the survival of business within the State; we cannot allow the perfect to stand in the way of the good. Further, we will state here and again, we believe that the time has come for CARB to stand-down on enforcement of all Diesel Regulations along with the Spark Ignite Mobile Equipment Rule unless and until unemployment decreases below 9% within the State.

Points of Concern:

Notwithstanding the above statement and with no intention to undermine our stated support, Weatherford has concerns as follow.

- 1) Targeted relief is grossly unfair:
 - a) The targeted relief action excluding large fleets is grossly unfair. With this action CARB has officially sided with one group of market players against another seeking to pick winners and losers in the open market. This kind of meddling in the market is bound to have repercussions that are as of yet unknown both in type and degree of consequence.

- 2) Targeted relief undermines CARB Credibility:
 - a) Government regulations should not be modified at the last minute in support of any one market player over another. All PERP owners are forced into one or more markets for capital and the premise for the capital is dependant upon certain given conditions. When CARB enters into the market undermining one sector's return on capital employed while enhancing another it not only risks the stability of the disfavored entities but reputation of CARB as well. Access to capital is already extremely tight and all stakeholders have a vested interest in ensuring that there are no further barriers erected; this action could very

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well serve to restrict capital for all players harming all stakeholders, even those that it seeks to support.

- 3) Targeted relief creates a Competitive Disadvantage:
 - a) It is unconscionable for the State to create a competitive advantage some or disadvantage for others. CARB is with this action doing in an official capacity what would be illegal for a private entity under California Business Code.
- 4) Targeted relief offers aid and comfort to Scofflaws:
 - a) It cannot be lost upon CARB that this rule change is proposed to offer aid to the very companies noted as Scofflaws in earlier Staff reports¹. Scofflaws are companies that ignored and sought competitive advantage by operating with reduced costs thereby depressing the market and inhibiting progressive companies that sought to operate in compliance. Many Skofflaws are now included in the list of companies seeking relief. They do not have the 15 years of compliance history such as Weatherford, rather they likely have maybe a few years as they were enticed and coerced through the rule changes and enforcement called outreach by Staff and CAPCOA. The rationale for each previous rule change being similar, to aid the small companies coming into compliance. While we think it is appropriate to provide relief given the current economic conditions, it is incredibly unwise to continually provide aid and support for companies that have operated outside the boundaries of compliance with indifference to the message it sends to historically compliant companies. While this charge does not apply to all small fleet owners it certainly applies to a large segment (i.e. those small fleets brought in under amnesty program in 2005).
 - b) The reference by Staff in the Summary of Proposed Amendments, item III B. 1 on page III-4, last paragraph is evidence of our premise. Here we see Staff making the argument for us; Large Fleet owners have been compliant, it is the small fleets that have not. With this rule change as proposed CARB is providing aid, support and financial reward for Scofflaws. This only serves to create rewards for similar future behavior.
- 5) Inventory Corrections:
 - a) We disagree with the Inventory and stated impacts from this rule change or the other options. We think that the inventory has not been adjusted to account for the economic decline and related reduction of emissions from decreased equipment utilization. The offset for consideration of a broader relief effort would be found in correcting the inventory. This should not be overlooked, the inventory is wrong and the basis for Staff recommendations is without merit. CARB should take immediate action to stop enforcement of the regulations mentioned above and address the costs justification.
- 6) The Costs of Regulation as found in current form is unsustainable.
 - a) We believe that CARB risks its reputation as an August board as it continues developing and/or supporting regulations that are destroying businesses and the viability of this State. CARB must take into account the impact of regulation upon the overall health of the economy and the consequential impact upon the health of the citizens of this State.

Summary:

In summary, we support the proposed rule change and offer comments because our points were not heeded in the Working Group meeting. We understand and appreciate both Staff's and the Board's

¹ Scofflaws were referenced in the Staff Report, Introduction Section C page I-4 and have been a topic of Working Group discussions for years.



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concern for business and job preservation though we think you are still far from providing the relief required to help forestall further economic erosion. What is most troubling with this proposed rule change is that CARB has used a Bait and Switch tactic in making sudden changes following deadlines that required considerable outlay of capital.

While supporting the rule change we disagree that the focus is correctly placed on companies based upon size for the reasons above. We further think that CARB is tinkering with rules that have fundamental flaws, specifically the rapid replacement of new engines in the Fleet Averaging portion of the ATCM, the PERP and other Diesel regulations. With this particular rule change CARB may very well be setting up small fleets for not only dissolution² but could very likely lead to bankruptcy under the rule as proposed³. Make no mistake, we believe that CARB will bear responsibility for the continued demise of the economy unless it takes dramatic action and that everything else is just Band-Aids applied to open wounds.

We will close with this prediction and wait to visit it again in the future; just as CARB has made 4 (four) similar changes with the intent of helping small fleets, it will have to do so again and in each case the large fleet compliant operator has been, is and will be harmed. We would like to suggest the time for official acts of inequity be stopped with this proposed rule change and that all fleet owners be considered as equal stakeholders from this point forward. We also believe that the most prudent action would be to place the entire slate of Diesel Regulations as well as the Spark Ignite Mobile Equipment Regulation on hold under emergency action unless and until the state economy rebounds as noted above. We are available at any time to discuss the points raised in this letter.

Sincerely,

Robert Hassebrock

² A likely outcome under the regulation in current form.

³ Many companies may very well make immediate capital investments only to get squeezed out as they face the rapid retire schedule in the fleet averaging deadlines fall, just like this most recent deadline. The difference this time is that their demise will likely leave many bankrupt from the high debts from initial investment.
