STATE OF CLIFORNIA
AIR RESOURCES BOARD

Public Hearing to Consider Amendments	)	
To California's Emission Warranty Information	)	
Reporting and Recall Regulations and	)	Hearing Date:
Emission Test Procedures	)	December 7, 2006

COMMENTS OF DETROIT DIESEL CORPORATION

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Detroit Diesel (DDC) is a major manufacturer of heavy-duty diesel engines used in on-highway vehicles. The comments provided here are specific to the provisions of the proposed amendments as they relate to manufacturers of heavy-duty engines used in highway vehicles.

PRIMARY ISSUES

1) **ARB should not require recall or other remedial actions for defects that are not reasonably and causally associated with exhaust emissions.**

Sections 2169, 2170 and 2171 require the manufacturer to perform remedial corrective action (generally either recall or extended warranty) whenever a "systemic failure" occurs. In Section 2166.1 "systemic failure" is defined to mean "any emission-control component as defined in this article or warranted part as defined in Section 2035 (c)(2)(b), found to have valid failures[1] meeting or exceeding four percent or 50 vehicles or engines (whichever is greater) within a specific engine family or test group, pursuant to this article."

While emission-control components certainly may fail in a manner that can effect emission control, they can and do also fail in ways that have absolutely no effect on exhaust emissions and that do not even effect the ability of diagnostic systems to detect other failures that could impact exhaust emissions. For instance, fuel injectors may exhibit fuel leaks, turbochargers may have oil leaks, EGR coolers may leak coolant; all of which are unacceptable to owners and are covered under manufacturers' commercial warranties, but have no effect on exhaust emissions. There are other types of failures that make it impossible or impractical to operate the engine. Examples would include

[1] The term "valid failures" is not a commonly understood term and it is not defined within the proposed amendments. Without an explicit definition of "valid failures" the proposed definition of "systemic failure" is unacceptably ambiguous.

catastrophic failures of fuel injectors or turbochargers or certain failures to the electronic control module or other electronic elements. Since the engine is inoperable with these failures present, it is axiomatic that there can be no increase in emissions.

DDC believes that ARB's proposed definition of "systemic failure" is overly broad with the consequence that ARB mandated remedial actions would be inappropriately required for defects that have no effect on exhaust emissions. To correct this situation, DDC recommends that the following changes be made to the definitions in Section 2166.1:

a) Create a separate definition of "emission-related failure" as follows:

"Emission-related failure" means a failure of an "emission control component or an "emission-related component" that is reasonably and causally associated with changes in emissions or that reduces or impairs the ability to detect or diagnose failures that are causally associated with changes in emissions."

b) Create a definition of "valid emission-related failure" as follows:

"Valid emission-related failure" means those emission-related failures for which a warranty claim on a California registered vehicle was received by the manufacturer and found to be payable under the terms of the manufacturer's emission warranty and/or commercial warranty."

c) Modify the definition of "systemic failure" to read as follows:

"Systemic failure" means a particular defect or condition which, for a specific engine family or test group, has resulted in a cumulative number of valid emission-related failures which exceeds the greater of 50 or 4% of the number of engines installed into California registered vehicles.

Usage of these definitions will not have any effect on the information that ARB receives via Emission Warranty Information Reports (EWIR) since these reports are a compilation of unscreened warranty claims. Usage of these definitions will ensure that ARB mandated remedial actions will occur for defects that result in failure rates that reach the 50 / 4% threshold and that either have a direct effect on emissions or that reduce the ability of the on board diagnostic (OBD) systems to detect failures which effect emissions. At the same time, these definitions will allow manufacturers that elect to file a Supplemental Emissions Warranty Information Report (SEWIR) to avoid ARB-mandated remedial action triggered by warranty claims for failures that have no proximate effect on emissions. This avoids ARB's inappropriate and unnecessary intrusion into cases where it has no legitimate emissions interest and allows engine manufacturers and their customers to resolve non-emission related product problems in the most expedient manner consistent with existing product warranties and other commercial relationships.

2) ARB's proposal to require manufacturers to demonstrate at the time of certification that emission control devices on their engines will not exceed failure rates of 50/4% is unreasonable, inappropriate, unnecessary, and should be withdrawn.

ARB is proposing to modify the California Exhaust Emission Standards and Test Procedures for 2004 and Subsequent Model Heavy-Duty Engines and Vehicles to require manufacturers beginning in the 2010 model-year to demonstrate at the time of engine certification that the emission control devices on their engines will not exceed a valid failure rate of 4% or 50 engines whichever is greater. The provision further states that if any emission control device fails at this rate, it would constitute a violation of the test procedures and entitle the ARB Executive Officer to require corrective remedial action.

During the product development stage, DDC does extensive laboratory and in-use testing to assess the efficacy and reliability of our new component designs. These tests are designed to reveal weaknesses in the design. When weaknesses are found design changes are made to make the component more robust. This process has normally resulted in products that are durable, reliable and perform as intended throughout their useful lives and beyond.

DDC would not knowingly proceed into production with emission-control components that exceed the threshold failure rates that ARB cites. Nevertheless, no matter how thorough our developmental testing, it is impossible for us to know with certainty that future failure rates will not exceed ARB's threshold values. There are several reasons for this. Chief among them is the fact that the development testing is done with prototype parts that may not reflect the range of production variability and the inability to foresee and test for the full range of conditions that may be encountered by customers in-use. This is further complicated by the extremely complex emission control technologies being used and the long life of heavy heavy-duty engines. ARB staff explicitly acknowledges the impossibility of this requirement when they state on page 16 of the Initial Statement of Reasons for the Proposed Rulemaking (ISOR) that "No one knows or can accurately predict how well emission control systems of different manufacturers will work 10, 20, or more years from now. This is especially true when vehicles are required to meet increasingly stringent emission standards, requiring new and complex technologies to be utilized."

As noted above, the proposed language requires manufacturers to demonstrate at the time of certification that the 4%/50 failure rate will not be exceeded. This language presumably makes it necessary as a condition for certification for the manufacturer to demonstrate to the Executive Officer's satisfaction that the specified failure rate will not be exceeded. The proposed regulation provides no direction, guidance or even any hint as to what a manufacturer would be expected to provide by way of a successful demonstration.

The proposed language thus establishes an unrealistic two-stage burden for the certification of heavy-duty engines. In the first instance, the manufacturer must assure

itself that the failure threshold will not be exceeded and then he must somehow convincingly demonstrate this to the Executive Officer's satisfaction without any guidance as to what may be required for this demonstration. This language must be modified to relieve this unrealistic burden.

On page 11 of the ISOR, ARB staff acknowledges that it is proposing to add the failure rate language to the existing test procedures specifically for the purpose of providing ARB with solid grounds to order corrective actions when the failure rate thresholds are exceeded. This is because Section 43105 of the Health and Safety Code provides ARB with substantial authority to order corrective actions when test procedures are violated. This is both inappropriate and unnecessary.

As ARB staff indicates, the term "test procedures" is not specifically defined within the Health and Safety Code, but that the language of sections 43104 and 43105 of the code suggests that "test procedures" means the test procedures that manufacturers must conduct to obtain ARB's certification. In this context, a "test procedure" must be a specific assessment methodology or protocol that is used to make an objective determination of whether numeric certification standards or other requirements have been met. The language that is proposed requires manufacturers to demonstrate that a specified failure rate will not be exceeded, but does not define any specific protocol or method by which such demonstration is to be made. This is much too vague to constitute a "test procedure" and can not masquerade as such. [2]

Section V (B) of the ISOR discusses several additional sources for their authority to require remedial actions, including recall, for systemic emission-related failures in-use. We agree that ARB has sufficient authority to require remedial actions when necessary. [3] In particular, and as ARB staff has noted on page 14 of the ISOR, ARB has this authority by virtue of section 43013(a) of the health and Safety Code which allows the board to "adopt and implement motor vehicle emission standards, *in-use performance*

[2] The language from section 43015 of the Health and Safety Code quoted on page 11 of the ISOR refers to "emission standards or test procedures." It is clear from this context, that the test procedures being referred to are *emission* test procedures or procedures that, in some sense, can be used to evaluate or assess emissions. Thus the cited language only gives ARB authority to require remedial actions when there are violations of *emission-related* test procedures. Consistent with our arguments in item #1 above the cited language does not provide ARB with authority to require remedial actions for violation of test procedures that are unrelated to emissions.

[3] DDC rejects ARB's argument at page 12 of the ISOR that suggests that when an emission component fails at a rate of 4 percent or 50 it is strong evidence that the production component is not, in all material respects, substantially the same in construction as the certification test engines and thus in violation of section 43106 of the Health and Safety Code. Because components are subjected to a wide variety of operating conditions in use that are different that conditions experienced during certification testing, it is quite possible for a 4% failure rate to be experienced in-use even for parts that are identical in design, construction, material and workmanship to the parts used on the certification test engines. Similarly, we reject the argument that because a 4% failure rate occurs in use, it is evidence that the manufacturer has not exercised "good engineering judgment" during the certification process and thus has violated the test procedures. "Good engineering judgment" is not infallible and can not be relied on to foretell the future with certainty. As noted previously, ARB acknowledges this when they state on page 16 of the Initial Statement of Reasons for the Proposed Rulemaking (ISOR) that "No one knows or can accurately predict how well emission control systems of different manufacturers will work 10, 20, or more years from now."

standards…for the control of air contaminants and sources of air pollution which the state board has found to be technically feasible, to carry out the purposes of this division, unless preempted by federal law." [emphasis added] Consequently, we believe the language proposed to be added to the Test Procedure section is not needed to give ARB the authority that it seeks.

Since the new language that ARB proposes to add to the test procedures would establish infeasible and unclear certification requirements, and is inappropriate and unnecessary, DDC believes that it should either be withdrawn in its entirety or drastically modified to overcome these deficiencies.

3) **The 4%/50 corrective action triggers should apply to individual failure modes.**

Sections 2169, 2170 and 2171 specify corrective actions to correct "systemic failures" when valid warranty claims for a component meet 4% or 50. Implicit in this is ARBs finding that a 4%/50 failure rate is indicative of a "systemic" condition that requires correction. This is a reasonable finding when the failures are all of a single mode, but is not reasonable if the 4%/50 threshold is met via the aggregation of failures from multiple modes. DDC does not think that remedial action should be mandated when there is no underlying systemic problem, but only sporadic random failures of multiple types.

Accordingly, we believe that in the warranty claim screening process that is done to develop the SEWIR, manufacturers should be allowed to classify the claims by failure mode. Corrective remedial action should be required only when the emission-related failure rate for a specific failure mode reaches the prescribed threshold.

4) **Manufacturers should have the option to begin using the provisions of new Article 5 for model years prior to 2010.**

As written, the new reporting and corrective action requirements in proposed Article 5 would apply to engines certified for 2010 and later model years. Existing rules would remain in effect for engines produced through the 2009 model year.

DDC believes that manufacturers should have the option, on an engine family specific basis, to begin using the new procedures for earlier model years. This could be accomplished very simply by giving manufacturers the ability to include an early opt in statement in the application for certification for the 2007, 2008 and 2009 model years. This statement would be irrevocable upon certification approval. Manufacturers choosing this option would then be bound to using the new requirements of Article 5 and associated regulations with respect to that engine family. Manufacturers not providing the opt-in statement would need to comply with the existing regulations. Beginning in 2010, all families would comply with the new requirements.

5) **The remedial action requirements as they apply to heavy-duty engines during the 2010-2012 model years should be made more flexible.**

Heavy-duty engine manufacturers are tasked with developing sophisticated new emission control technologies to meet stringent emission limits that take effect in 2010. In addition, heavy-duty engine manufacturers will also be required for the first time in 2010 to provide complex OBD systems that detect and diagnose failures of the sophisticated new emission-control systems.

Under the provisions of this proposed rule, manufacturers will be required to take ARB-mandated remedial actions when failure rates for either emission-control or OBD system components reach the prescribed 4%/50 trigger level. Given the maturity level that these new technologies will have in 2010, exceedences of these trigger levels can be anticipated. In these cases, strict adherence to the proposed rules will force manufacturers to focus on meeting ARB's remedial action requirements. This will divert engineering resources from problem solving. In addition, this will interject ARB education, review and approval steps into the timeline for developing and implementing engineering solutions. This will have the unintended effect of hampering and delaying manufacturers in their attempts to refine and improve the reliability of their emission control and OBD systems.

To avoid this problem, DDC believes that flexibility is needed in the way ARB specifies and/or administers the remedial action triggers. This flexibility could be provided in a number of ways.

One possibility would be to increase the remedial action trigger levels applicable to heavy-duty engines for the 2010-2012 model years. A variation on this would be to set different and somewhat higher trigger levels for OBD system failures than for emission control system failures. This approach would recognize the particular difficulties associated with first-time deployment of complex OBD systems and the fact that OBD system failures are not directly linked to emission increases, but only relate to the ability to detect and diagnose emission control system failures if they should occur. Still another approach would be to modify the language in Section 2169, 2170 and 2171 to make the remedial actions discretionary on the part of the Executive Officer when the thresholds are met. Currently the language in these sections gives the Executive officer discretion as to the type of remedial action that may be required, but does not allow the Executive Officer authority to use discretion on the question of whether to require remedial action once the threshold has been met.

There are undoubtedly other approaches to providing flexibility. DDC would welcome the opportunity to work with the Board and ARB staff to explore these opportunities.

SECONDARY ISSUES

1) Section 2166 improperly identifies the applicability of Article 5

Paragraph (a) of Section 2166 lays out the applicability of proposed new Article 5. With respect to heavy-duty vehicles and engines, the paragraph states that the Article applies to

"California-certified 2010 and subsequent model year….heavy-duty vehicles… and…… California-certified engines used in such vehicles."

California does not certify heavy-duty vehicles. As such, a literal reading of the paragraph would lead to the conclusion that the Article does *not* apply to California certified heavy-duty engines. Since this is clearly not ARB's intent, it is recommended that this language be revised to make it clear that California certified heavy-duty engines are covered by the Article.

2) **The definition of "useful life" should be limited to those applications covered by the proposed Article**

Paragraph (p) of Section 2166.1 provides a definition of "useful" life. Subparagraphs (13) and (14) define the useful life period for off-road compression-ignition engines and for spark-ignition inboard and sterndrive marine engines. Since Article 5 does not apply to these engine types, inclusion of these subparagraphs is inappropriate and can only be a source of confusion. Accordingly, it is recommended that these subparagraphs be deleted.

3) **Section 2167 provides contradictory information about when EWIRs are required.**

Section 2167 lays out the provisions relating to EWIRs. Paragraph (a)(1) requires manufacturers to review warranty claim records on a quarterly basis and paragraph (a)(3) indicates that an EWIR is to be filed for each calendar year. Paragraph (c) states that an EWIR shall be submitted not more than 25 days after the end of each calendar year.

The apparent contradictions in these paragraphs are a source of confusion. Accordingly, the section needs to be revised to more clearly reflect ARB's intent. If it is intended that EWIRs be submitted quarterly when thresholds are met, then paragraphs (a)(3) and (c) need to be revised to clearly indicate this. If it is intended that EWIRs are required annually then paragraph (a)(1) should be modified to indicate that the warranty claim records are to be reviewed on an annual basis. If it is ARB's intent that EWIRs are to be submitted annually, but that warranty records are to be reviewed each quarter for purposes other than preparing an EWIR, then the requirement for the quarterly review should be placed in an appropriate section of the rule rather than in Section 2167 which, by title, relates to the requirements associated with EWIR reporting.

4) **There should be a limit on the time period for which the warranty records for a given model year engine need to be kept and reviewed.**

Paragraph (a)(1) of Section 2167 requires manufacturers to review the warranty records for each engine family without any limitation on the period of time that the manufacturer must continue reviewing the records for a particular family. Paragraph (a) of Section 2168 requires manufacturers to continue updating the SEWIR on a quarterly basis until the warranty reporting requirements for the given warranty item ends.

Without some specified time period, the conclusion would be that the EWIR and SEWIR reporting requirements would be ongoing *forever*. Such open-ended requirements create extra unnecessary burden for ARB and for manufacturers. To avoid this unnecessary burden, DDC recommends that the EWIR and SEWIR reporting periods for heavy-duty engine families be specified to extend for the calendar year associated with the model year of the engine family and for three additional calendar years. DDC believes that systemic emission-related failures will typically reveal themselves within this period of time and that extending the reporting period beyond this will add burden but will do little to improve the effectiveness of the program.

5) **The threshold triggers for reporting and remedial actions should be clearly specified when nationwide data is used for monitoring warranty claims for California–certified engine families.**

Section 2167(a)(1) gives manufacturers the flexibility to use nationwide data for monitoring warranty claims of California-certified engine families that are also certified by the United States Environmental Protection Agency.

Because of the similarity of standards and emission requirements, DDC expects that many engine families will be offered for certification both by EPA and ARB creating "50 state" families. For these families it may be less burdensome to perform a review of the nationwide warranty records rather than separating out the records for the California-only fleet. DDC, therefore, appreciates having the flexibility that paragraph (a)(1) provides.

DDC believes, however, that the applicable thresholds for EWIR and SEWIR reporting and remedial actions should be clarified in the regulations when manufacturers are using nationwide warranty claim data. DDC further believes that the percentage based thresholds should be the same whether using nationwide or California claim data. For the purposes of determining if the numeric thresholds are exceeded, we believe that the number of nationwide claims should be proportioned by the ratio of the size of California fleet to the size of the nationwide fleet.

6) **ARB should work with engine manufacturers to develop the electronic format for the EWIR and SEWIR.**

Section 2167 (b) and section 2168(e) require that the EWIR and SEWIR be submitted using an electronic format specified by ARB. DDC believes engine manufacturers should have input on the development of these formats. This will help ensure that reporting burden will be minimized while also ensuring that ARB receives essential information. These formats must be established well in advance of the date when the new reporting procedures are required to be used so that manufacturers have an opportunity to make changes to their warranty reporting systems to ensure that all required information is available.

7) **The requirement to include a "repair code" in the EWIR indicating if the component was repaired or replaced should be deleted.**

Section 2167(b)(4) requires that a "repair code" that indicates if the emission-related component was repaired or replaced be included in the EWIR.

The warranty claim information may not in all cases clearly indicate if the claim was resolved though repair or replacement. In cases where this information is available, it may require someone to read individual claim reports in order to extract and compile this data. Finally, it is not clear how this information is to be reported when some of the claims for a given component are resolved through repair and others are resolved through replacement.

DDC believes that this requirement will add substantial burden and complication to the EWIR and that this information is of marginal value. Therefore, DDC recommends that this requirement be deleted.

8) **The requirement to include the "warranty coverage" information in the EWIR should be deleted.**

Section 2167(b) (5) requires manufacturers to specify the "warranty coverage" for each component reported in the EWIR. If "warranty coverage" means the period of time, mileage or hours for which the part was warranted by the engine manufacturer, inclusion of this information in the EWIR will be problematic. DDC and other heavy-duty engine manufacturers offer standard warranties and a variety of extended warranty plans to their customers. Thus, there is no single warranty coverage period associated with each component type. Determination of the warranty coverage period information that ARB is requesting would, therefore, require a claim-by-claim review in which the warranty coverage period was correlated with the associated engine serial number. This is an extremely burdensome process and inclusion of this information would significantly complicate the EWIR. DDC believes that this information adds little value to the program. Accordingly, DDC recommends that the requirement to include this information in the EWIR be deleted.

9) **If ARB insists on the inclusion of the repair code and warranty coverage information in the EWIR, then the time period for submission of the EWIR must be extended.**

Section 2167(c) requires that EWIRs be submitted "not more than 25 days after the end of each calendar year." As noted above, compilation of the repair code and warranty coverage information is a burdensome labor-intensive effort. If, contrary to DDC's recommendations, the requirements to provide this information in the EWIR are retained, the 25 day period is not adequate for preparation of the EWIR. To ensure that manufacturers have adequate time to compile this information, the reporting period should be extended to 90 days.

10) **ARB must more clearly specify the records that must be made available to the Executive Officer**

Section 2167(d) states that "the records described in this section shall be made available to the Executive Officer upon request." It is not clear exactly what records are referred to in this provision. This should be clarified.

If this refers to the individual warranty claim records that the DDC receives, ARB must recognize that these records not only contain DDC proprietary business information, but information that may be proprietary to our customers. Before turning over this information to the Executive Officer, we would need assurances that there is a legitimate need for the information and that the information will be handled in a confidential manner.

11) The requirement for manufacturers to describe computer recalibrations in the SEWIR is redundant and unnecessary.

Section 2168(e)(5) requires manufacturers to include an explanation of the vehicle conditions/parameters that are being changed by a recalibration action in the SEWIR. Since any emission-related calibration changes would have had to have been fully described to ARB as part of the running change process when the calibration change was introduced, ARB already has information fully describing the change. Manufacturers should not be burdened with the resubmission of information that has already been provided to ARB.

12) Manufacturers should not be required to provide projections of unscreened warranty claim rates as part of the SEWIR.

Section 2168 (e)(6)(ii) requires manufacturers to make projections of the number and percentage of unscreened warranty claims and failures of a specific emission-related component over the engine family's useful life. This projection and the method used to make this projection are required to be included in the SEWIR.

Making reliable projections of future claim rates is a burdensome task and, as with any projections, is subject to uncertainty. Further, since the focus of the SEWIR is on valid claims, the usefulness and appropriateness of including estimates of unscreened claim rates is highly questionable. DDC recommends that this burdensome requirement be deleted.

13) The intent/purpose of the provision at Section 2168 (e)(6)(iv) is unclear.

Section 2168(e)(6)(iv) states that "If the failure of a specific emission-related component is found to exist in less than 4 percent or 50 (whichever is greater), provide a brief explanation why the vehicles with this specific component replacement or repair are being repaired."

It would seem obvious that the repairs are being made in response to warranty claims submitted on behalf of customers. It is unclear why ARB is proposing to require this information to be included in a SEWIR.

14) Section 2168(a) and Section 2168 (e)(6)(v) appear to be contradictory.

When the failure rate reported in an SEWIR is below the remedial action threshold, Section 2168(e)(6)(v) requires the manufacturer to re-evaluate the failure *"in the following calendar year* until the warranty reporting is no longer required." As noted above, ARB has not specified the warranty reporting period and, as a result, this provision lacks specificity. More importantly, though, this appears to be in direct conflict with Section 2168(a) which requires the manufacturer to "continue to update and report the Supplemental Emissions Warranty Information Report *on a quarterly basis."* This contradictory information needs to be reconciled.

15) The time period for submission of a corrective action plan should be more flexible.

The introductory language to Section 2172 states that the ARB may require the engines manufacturer to provide a corrective action plan within as little as 45 days from the date when the manufacture receives a notice from the Executive Officer that remedial action is required.

In some cases, effective corrective action may require the invention, development and validation of new technology before the nature of the corrective action can be defined and an effective "plan" can be developed. While DDC understands and appreciates ARB's interest in ensuring that corrective actions are implemented expeditiously, we believe ARB needs to recognize that in cases where new technical solutions are needed, additional time will likely be required to assemble all of the information required to be included in the plan (see Section 2172(b)(1)-(9)). Accordingly, DDC recommends that this language be revised to provide more flexibility in the time periods for submitting the corrective actions. Specifically, we would suggest that the language be modified to indicate that ARB will consult with the manufacturer before issuing the notification of required corrective action to obtain the manufacturer's input on the appropriate time period for submission of the corrective action plan. The existing language at Section 2172.1 (a) that allows the Executive Officer to grant the manufacturer an extension upon a showing of good cause should be retained.

16) The language that ARB is requiring to be included in the corrective action notices that manufacturers send to engine owners is highly misleading and objectionable.

Section 2172.3 (d)(1) requires manufacturers to include the following statement in the corrective action notices that manufacturers send to engine owners:

"the California Air Resources Board has determined that your (vehicle or engine) (is or may be) releasing air pollutants which exceed (California or Federal and California) standards, ***or that the manufacturer violated emissions test procedures****. These standards were established to protect your health and welfare from the dangers of air pollution."*

The highlighted phrase suggesting that the manufacturer violated emissions test procedures leaves the impression that the manufacturer intentionally attempted to circumvent prescribed test procedures. As such, this language is misleading and highly prejudicial. Additionally this objectionable language is wholly unnecessary and does nothing to enhance the effectiveness of the corrective action. Accordingly, DDC believes that the requirement to include this offensive language should be deleted.

17) The prohibition on the inclusion of a statement in the corrective action notice that the item being corrected will not degrade air quality may need to be reconsidered.

Section 2172.3 (f) prohibits inclusion of a statement indicating that the "nonconformity" will not degrade air quality in the corrective action notices sent to engine owners.

Unless ARB agrees with our prior recommendation to modify the definitions of "emission-related failure" and "systematic failure" to exclude those failures that do not effect emissions, then corrective actions may be required in cases where, in fact, the so called "nonconformity" that is being corrected does not degrade air quality. In these cases, there should not be any prohibition on informing the engine owners of this fact.

18) Manufacturers should be allowed to request a public hearing to contest any finding of nonconformity or the scope of any ordered remedial action.

Section 2174(a) states that "The manufacturer may request a public hearing pursuant to the procedures set forth in Sections 60040, Title 17, California Code of Regulations to contest the finding of nonconformity and the necessity for or the scope of any ordered recall, but not to contest the finding of nonconformity or the necessity of any other type of corrective action provided in this article."

This sentence is awkwardly written and appears to give contradictory direction as to whether a hearing can be requested to contest a finding of nonconformity. This needs to be reworded to clarify ARB's intent.

If ARB's intent is to allow hearings to contest issues where the corrective action is recall, but to deny hearings when the corrective action is other than recall, DDC objects. DDC believes that public hearings provide manufacturers with a measure of protection from arbitrary or inappropriate actions by ARB and that this protection should extend to manufacturers whenever ARB orders a corrective action of any kind.