



Caterpillar Inc.

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March 21, 2007

**Attn: State of California, Air Resources Board**

**Public Hearing to Consider Amendments to California's Emissions Warranty Information  
Reporting and Recall Regulations and Emissions Test Procedures.  
Hearing Date: March 22, 2007, Agenda Item # 06-11-5**

**Written Comments of Caterpillar Inc.**

Caterpillar Inc. (Caterpillar) is a major manufacturer of heavy-duty diesel engines for on-highway, non-road, marine, locomotive, and stationary engine applications. As such, Caterpillar is significantly impacted by any proposed rulemaking concerning reporting and recall regulations for our certified engines. Caterpillar hereby comments on California's Emission Warranty Information Reporting and Recall Regulations and Emission Test Procedures (hereinafter, the "Proposed Defect Reporting Rule" or the "Proposed Rule").

Caterpillar fully supports the oral and written comments of the Engine Manufacturers Association regarding the Proposed Rule. Caterpillar hereby incorporates by reference the oral and written comments of the Engine Manufacturers Association, as well as Caterpillar's prior written comments dated December 06, 2006.

At the December 2006 Board meeting, Caterpillar provided written comments concerning the Proposed Rule. Caterpillar agreed with the Board's decision at that meeting to defer action until Industry and Staff had adequate time to work on this important rulemaking. While teleconferences and meetings have occurred since the December board meeting, in Caterpillar's view there has been no significant change to the Staff position concerning the Proposed Rule. In fact the rule in some respects is now more problematic than it was in December.

Caterpillar supports improvements to the current warranty reporting requirements to reduce emissions, which are cost effective and workable. However the Proposed Rule currently before the Board is neither, and in fact it inappropriately extends beyond the legal mandate under California Health & Safety Code Section 43000 *et seq.*, to control and eliminate air pollution. As was the case in December 2006, the Proposed Rule must be revised.

Previously, in addition to the fundamental legal problems with the Proposed Rule, Caterpillar identified specific concerns that would impose significant additional regulatory burden with little benefit to the environment. While Caterpillar can support regulatory initiatives that drive appropriate emissions reductions and customer value, those that increase regulatory burden without these benefits represent poorly devised public policy. Requiring recall and extended warranty on defects that do not cause increased emissions drives unnecessary cost and burden with no attendant environmental benefit. Caterpillar submits that, if any emissions benefits actually accrue under the Proposed Rule, these benefits would be small and would be outweighed by extensive and unnecessary burdens on truck owner/operators and manufacturers. In addition, Caterpillar also believes that the increased uncertainty imposed by the Proposed Rule will greatly inhibit technology development required to meet the stringent emissions compliance thresholds contained in current and future Air Resources Board (ARB) regulations.

Caterpillar respectfully provides the following additional comments for ARB consideration.

A) As submitted on December 06, 2006, Caterpillar has continued significant concerns with the Proposed Rule that, if promulgated, would require a recall or corrective action for any alleged defect occurring in excess of proposed warranty rates. This includes corrective action even if there is no actual increase in emissions during typical operating conditions. As long as there is an imaginable ("conceivable" to use the terminology of the Proposed Rule) emissions increase due to a defect, Staff would be able to recall heavy-duty engines. We believe the Board should direct ARB Staff to seek corrective action only in situations where an emissions increase above the applicable certified level exists. The requirement to initiate a recall or corrective action in the absence of an emissions increase and without meaningful due process is clearly beyond ARB's statutory authority and should not be endorsed. On this basis alone the Proposed Rule is unworkable and must be revised.

B) Caterpillar strongly objects to the ARB proposed requirement that engine manufacturers state, as a condition of certification, that engine components will not exceed a 4% failure rate over their useful life. Extended operational data to verify such an assertion is not and cannot be generally available at the time of certification, making this requirement impractical. Technology forcing designs and components required to certify to ARB's stringent emissions standards will inherently involve increased risks when providing this latest technology into California, and at the time of certification manufacturers have insufficient if any practical opportunity to test these new technologies for full useful life durability and understand their actual failure rate over that period. Heavy duty manufacturers already have strong market incentives to improve component reliability as technologies are introduced and improved, driven by the inherent nature of heavy duty vehicles, which spend their lives in commercial and vocational applications. Also, an arbitrarily imposed useful life reliability standard at the time of certification adds no value to the manufacturer, the heavy duty vehicle business owner, or the ARB. Thus, the Proposed Rule requirement for manufacturers to comply with a yet unknown future failure rate is unworkable and must be removed.

C) Caterpillar also strenuously objects to ARB's attempt to define warranty rates as "test procedures," and deem warranty rates exceeding the 4% threshold to be "violations" of those test procedures. This concept is the linchpin of the Proposed Rule – without attempting to define warranty rates as "test procedures," ARB has no authority to require mandatory unilateral recall in the absence of a demonstrated emissions exceedence. California Health & Safety Code § 43105. This new "definition" is nothing more than an attempt to make an end-run around the statutory requirement to demonstrate an emissions increase to justify mandatory recall.

Test procedures are well-defined methods for measuring compliance with emission limits for purposes of certifying engine families, and under California law the "board shall base its test procedures on federal test procedures or on driving patterns typical in the urban areas of California." California Health & Safety Code § 43104. Warranty rates have nothing whatsoever to do with the test procedures required to demonstrate that an engine meets the applicable emissions standards at the time of certification. It is inappropriate and unsupportable for ARB to link the failure rates of emissions control devices from in-use engines to the well-defined test procedures applicable to engine certification. The Proposed Rule must be substantially revised to avoid this fatal legal flaw.

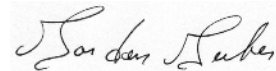
D) Caterpillar opposes the proposed extension of warranty requirements for heavy duty diesel engines beyond the emissions warranty period. This issue is the prime example of how the Board's directive for Staff to work with industry has resulted in worsening of the Proposed Rule. The proposed extended warranty period for heavy duty diesel engines was 200,000 miles the last time this rule came before the Board. Since that time, ARB staff has arbitrarily raised this limit to 435,000 miles, even though this issue did not receive significant focus from manufacturers in ARB Staff discussions.

E) Caterpillar opposes the extent to which the Proposed Rule, if adopted, would prohibit manufacturers from properly segregating failures due to different failure modes. Parts may be replaced even though no actual failure occurred, due to issues perceived by the servicing agent or customer. Additionally, components may consist of many subcomponents and may involve multiple possible failure modes. As a result, two separate warranty claims against the very same part number often may reflect very different failure modes. It is unnecessary, and impractical to require corrective action and/or recalls with respect to components whose total warranty claims exceed the proposed regulatory threshold, but which could experience multiple causes of failure. The failure rates associated with different failure modes, the impact on emissions (if any), the need for corrective action, and the range of corrective actions available will vary widely depending on the failure mode for a given component. Manufacturers should not be required to aggregate warranty claims with vastly different and unrelated root causes for purposes of "automatic" and mandatory corrective action and potential recall activity.

F) Caterpillar believes that the ARB should not add additional regulatory burden in the form of new defect reporting requirements in the 2010 time frame, when new emissions standards and new OBD requirements also come into effect. This additional burden in the 2010 model year will dramatically increase manufacturer workload, risk and uncertainty as the most stringent on-highway emission limits ever imposed are implemented for on-highway heavy-duty diesel engines, and will garner insignificant emissions benefits in return. As such the Proposed Rule timeframe is unworkable and the implementation date of the Proposed rule must be deferred. Caterpillar recommends that the Proposed Rule be deferred until 2016 at the earliest.

Caterpillar respectfully requests that the ARB Board continue to defer action on the Proposed Rule and direct Staff to address the issues outlined above before any Defect Reporting Rule Changes are brought again before the Board.

Respectfully submitted,



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