**Attachment 3**

**2nd 15-Day Change Notice**

**Letter, Dated April 20, 2004**
**from Air Resources Board Executive Officer, Catherine Witherspoon,**
**to Ms. Stephanie Williams, California Trucking Association**

Terry Tamminen
Agency Secretary

# Air Resources Board

Alan C. Lloyd, Ph.D.
Chairman
1001 I Street • P.O. Box 2815
Sacramento, California 95812 • www.arb.ca.gov

Arnold Schwarzenegger
Governor

April 20, 2004

Ms. Stephanie Williams
California Trucking Association
3251 Beacon Boulevard
West Sacramento, California 95691

Dear Ms. Williams: Stephanie

On February 26, 2004, the California Air Resources Board (ARB) held a public hearing to consider the adoption of the Airborne Toxic Control Measure (ATCM) for Transport Refrigeration Units (TRU). During your testimony, you requested that ARB staff provide you two additional pieces of information related to our legal authority to regulate particulate matter from in-use engines.

Your first request was for citations of cases we believe support our position that we have legal authority to require out-of-state trucks equipped with TRUs, and operating in California, to meet the same emission requirements as in-state trucks equipped with TRUs. Enclosure 1, provides the listing of cases that support our legal opinion.

Your second request was for additional information to support staff's position that engines meeting the proposed 2008 emission standards (Tier 4) could be available as soon as 2004. Enclosure 2, is a listing of engines that currently meet the proposed 2008 In-Use Performance Standards (0.3 gram per horsepower-hour for less than 25 horsepower engines and 0.22 gram per horsepower-hour for 25 to 50 horsepower engines). Also enclosed is a letter, dated December 10, 2003, from Carrier Transicold requesting a modification to the proposed TRU ATCM allowing the use of the new TRU test cycle (once U.S. Environmental Protection Agency finalizes their Tier 4 rule) to re-evaluate the emissions from engines currently in use. Based on this letter and subsequent discussions, staff concluded that some engines certified using the current test cycle could meet the 2008 In-Use Performance Standards, if re-evaluated using the TRU test cycle.

Thank you for attending the Public Hearing on February 26, 2004, and providing your comments. If you have further questions, please feel free to contact me at (916) 445-4383.

Sincerely,

Catherine Witherspoon
Executive Officer

Enclosures

**Enclosure 1**

*Bibb v. Navajo Freight Lines, Inc.* (1959) 359 U.S. 520
*Brown-Foreman Distillers Corporation v, New York State Liquor Authority* (1986) 476 U.S. 573, 578
*Ferguson v. Friendfinders, Inc.* (2002) 94 Cal.App.4th 1255
*Healy v. The Beer Institute* (1989) 491 U.S. 324, 326
*Hunt v. Washington Apple Advertising Comm'n* (1977) 432 U.S. 333, 350
*Huron Portland Cement Co. v. Detroit* (1960) 362 U.S. 440, 443
*Jordan v. Department of Motor Vehicles* (1999) 75 Cal. App. 4th 449, 461
*Maine v. Taylor* (1986) 477 U.S. 131, 138
*Merrion v. Jicarilla Apache Tribe* (1982) 455 U.S. 130
*National Collegiate Athletic Association (NCAA)*, (9th Cir. 1993) 10 F.3d 633
*National Electric Manufacturers Association v. Sorrell (NEMA)* (2nd Cir. 2000) 272 F.3d 104
*National Solid Waste Management Association v. Meyer (NSWMA)* (1995, 7th Cir.) 63 F.3d 652, 656
*People ex rel. State Air Resources Board v. Wilmshurst* (1999) 68 Cal.App.4th 1332, 1345
*Pike v. Bruce Church, Inc. (Pike)* (1970) 397 U.S. 137
*Raymond Motor Transportation v. Rice*, (1978) 434 U.S. 429, 439
*Southern Pac. Co. v. State of Arizona* (1945) 325 U.S. 761, 767
*Valley Bank of Nevada v. Plus System, Inc* (1990, 9th Cir.) 914 F.2d 1186
*White v. Massachusetts Council of Const. Employers* (1983) 103 S.C. 1042, 1047

## Enclosure 2

| Engine Mfr | Model Year | Model Name | Rated Power Class | PM Cert Value (g/hp-hr) |
|---|---|---|---|---|
| Kubota | 1995 | Z482 | <25 HP | 0.3 |
| Kubota | 1995 | D722 | <25 HP | 0.3 |
| Kubota | 1995 | D1105 | <25 HP | 0.3 |
| Kubota | 1996-99 | Z482 | <25 HP | 0.2 |
| Kubota | 1996-99 | D1105 | <25 HP | 0.3 |
| Kubota | 2000-04 | D722-EB-CARRIER-1E | <25 HP | 0.24 |
| Kubota | 2000-04 | Z482-EB-CARRIER-2E | <25 HP | 0.24 |
| Kubota | 2000-04 | Z482-EB-CARRIER-1 | <25 HP | 0.23 |
| Kubota | 2000-04 | D1105-EB-CARRIER-2E | <25 HP | 0.14 |
| Kubota | 2004 | V1903-E2B-CTD-1 | 25-50 HP | 0.2 |
| Kubota | 2004 | V1903-E2B-CARRIER-1 | 25-50 HP | 0.2 |
| Kubota | 2004 | V2203-E2B-CARRIER-5 | 25-50 HP | 0.22 |
| Kubota | 2004 | V2203-E2B-CTD-2 | 25-50 HP | 0.22 |
| Kubota | 2004 | V2203-E2B-CARRIER-2 | 25-50 HP | 0.22 |
| Yanmar | 2003-04 | 3TNV76K | <25 HP | 0.201 |
| Yanmar | 2003-04 | 4TNV86-TK | 25-50 HP | 0.201 |

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TO:
Clerk of the Board
Air Resources Board
1001 "I" Street, 23rd Floor
Sacramento, California 95814

DATE: December 10, 2003

FROM: Peter Guzman

SUBJ.: CARB Staff Report

Attn: Dan Dohohoue

Dear Dan,

This letter is being written to share some concerns Carrier has regarding the latest revision of the CARB 'Staff Report: Initial Statement of Reasons for Proposed Rulemaking' dated October 28th, 2003.

While we all understand that engine emissions need to be reduced, and in general support the reductions and timeframes associated with the planned reductions, there are a couple of concerns we would like to see addressed.

First, we are concerned over the exclusion of older engines (Tier 1 and Tier 2) which are currently running in our units, to be re-evaluated under the new TRU test cycle. Carrier would like to propose that the data points used to certify the engines to the current EPA Tier 1 and Tier 2 standards (using the ISO 8178, 8 mode cycle) be allowed to be used to recalculate a value for the newly adopted EPA TRU cycle. We feel this is fair as the data already exists, and is a more accurate representation of how our units operate. We do not feel that it should be necessary to re-certify an older engine design by having to re-run the same data that was already previously gathered years before. This would be an unnecessary waste of time and resources for all involved.

Second, we are concerned about the requirement of a 'Level 2' VDECS for LETRU designation. Since the 'Level 2' VDECS requires a 50% reduction in particulate matter, the proposed legislation will mandate that our customers replace their engines in all units built prior to 2001, starting in 2008, or try out new, unproven trap technology, at a great initial expense. There are no 'add on' devices that have been demonstrated to produce that level of reduction on our units, and we have some concerns over finding a trap technology that will work acceptably with the low exhaust temperatures that are typical of our TRU's. Carrier would like to suggest that the legislation for the LETRU be written to include 'Level 1' or ' Level 2' VDECS. This would allow for the use of less costly, and more time proven oxidation catalysts, and still deliver a measurable reduction in particulate emissions.

Thank you for your consideration in this matter.

Sincerely,

Peter Guzman