ESW Group®

April 11, 2014

Clerk of the Board
Air Resources Board
1001 I St, Sacramento, CA, 95814
Submitted electronically at: http://www.arb.ca.gov/lispub/comm/bclist.php

Re: ARB April 24, 2014 Board Consideration of Proposed Amendments to the Regulation to Reduce Emissions of Diesel Particulate Matter, Oxides of Nitrogen, and Other Criteria Pollutants from in-use Heavy-Duty Diesel-Fueled Vehicles

To Whom It May Concern:

As a California-based retrofit supplier, ESW Group respectfully submits these comments in response to ARB's proposal to roll back and delay the well-established retrofit effective dates established under its Truck and Bus Regulation. In 2010, ARB already delayed the retrofit compliance requirements that were established in 2008. Changing these well-established regulations again at this late date would further destabilize the marketplace and send the wrong message to vehicle owners that they should defer all investments in cleaner retrofits, even though they are readily available. ARB's proposed rollback of the retrofit deadlines violate its legal obligations and would directly harm ESW, its dealers, and its downstream vehicle-customers, that have made substantial investments to comply with the existing regulations.

The ARB staff report raises numerous unresolved problems which need to be addressed through improved outreach and enforcement (as opposed to additional delays) to ensure a fair and even playing field and to achieve the critical emission mandates of the program. The Board should reject the proposed rollbacks for retrofits and should direct staff to seek comments on needed safeguards to address the proposed loophole under which fleet owners can obtain substantial compliance delays, most importantly on delays based on a single denial of a loan. In lieu of the proposed delays and arbitrary processes, the Board should direct staff to work with all stakeholders on practical solutions to issues such as the alleged financing challenges. For example, ESW believes that there could be a workable public-private financing program suited to the emission control retrofit market. Constructive ideas focused on resolving issues together with the private sector, whilst ensuring compliance against long dated deadlines could help ARB resolve the estimated 15% of the affected vehicles that are completely non-compliant

I. About ESW Group

Pursuant to the obligations set forth in Government Code section 11346.3 and Sections 2002 and 2003 of the California Code of Regulations, ARB prepared and relied on a Standardized Regulatory Impact Analysis (SRIA.) In its SRIA, ARB relied on the following incorrect conclusions in addressing the impacts of its proposal on California businesses: "ARB does not expect any business elimination or creation in California. While some of the truck engine and PM filter retrofit manufacturers will experience lower demand, these manufacturers are not located in California. The businesses installing retrofits would experience lower demand. The affected businesses will continue to operate in California."[1]

In fact, the ESW Group primarily operates in San Diego, California, is a California tax paying corporation, and is a major developer and manufacturer of retrofit systems to reduce diesel emissions on used trucks and equipment. ESW Group has annual sales of approximately $17 million and close to 65 full-time employees, with 30 employees located in California. ESW's California operations include: metal fabrication, forming, cutting, welding ; Electronic Control Unit system integration, assembly and software installation and programming; component inspection and confirmation; Emission Control System assembly and testing; installation kit assembly and kitting; packaging and shipping; filter cleaning; field service; and engineering. The types of positions at ESW California include engineers, welders, metal workers, warehouse managers, field technicians, to name a few.

ESW's add-on retrofits reduce the emission of harmful pollutants such as oxides of nitrogen (NOx) and particulate matter (PM) from older diesel vehicles that lack the sophisticated emissions controls of their newer counterparts. In order to achieve the compliance requirements in the existing regulations, ESW invested over $3.5 million in 2013 to acquire the retrofit-assets of Cleaire and restarting its manufacturing operations in San Diego, including increasing its portfolio of ARB Level III verified system to assist in the compliance targets set by ARB Over

[1] http://www.dof.ca.gov/research/economic_research_unit/SB617_regulation/2014_Major_Regulations/documents/SRIA%20Truck%20and%20Bus%20Reg%20DocumentFeb25.pdf

the last year, ESW has made substantial investments in hiring close to 30 additional employees in its California operations, and building up critical parts inventory levels to enable ESW to produce more than 4000 retrofit systems so that it could fully supply the regulated California truck fleets in 2014 through 2016. All these investments were made based on ESW's understanding that ARB was committed to implement the existing program pursuant to the current timelines.

Roughly 60% of ESW's customer base are small fleet owners who own between one and three diesel trucks. ESW has specifically increased its investment and production to supply these fleet owners with retrofitted systems on the existing phase-in schedule of 2014, 2015, and 2016 trucks. Additionally, ESW Group leverages a sizeable local supply chain that includes numerous small businesses in California, including stainless steel, stainless steel wire, stainless steel tubing, particular filters, electronic and mechanical components.

ESW has recently experienced a substantial drop in retrofit orders against projections from its distribution network. ESW has received the feedback that because of ARB's proposed rollbacks, many of the small fleet owners are holding up orders or ready to walk away from deposits put forth with distributors for emissions control devices.

II. Adverse Impact of Proposed Amendments on Retrofit Industry

In the staff report, ARB exclusively focuses its economic analysis on the reduced compliance costs on vehicle fleet owners. The staff report estimates that the total savings to vehicle owners who would take advantage of the proposed amendments is around $400 million. However, these savings come at a cost to other industries, small service businesses and the health of Californians that are never fully quantified in the SRIA. In particular, ARB fails to analyze the corresponding adverse economic costs on the retrofit industry (including ESW) or on public health. A full-time job is created as a result of the installation of every 3-7 diesel retrofits, so that every one million dollars spent on diesel retrofit technology creates or preserves about 21 jobs. (See the comments filed by MECA in this proceeding.)

According to the staff report, the currently proposed amendments alone, are likely to result in a loss of 8,420 retrofit opportunities or $160 million in revenue over the next three years.[2] Using the above relationships, this could represent as many as 3,300 lost retrofit related jobs in California. This is in addition to ARB's 2010 rollback to the on and off-road in-use fleet rules that eliminated over 80,000 retrofit opportunities or a loss of $1.5 billion in retrofit-related revenue and impacted an estimated 11,200 to 26,400 jobs. Many of these jobs were in California.

According to the ARB staff report, the proposed amendments would cause a 7% increase in emissions or an additional 1,350 tons of PM alone over the first five years of the proposed regulations—as a result of the loss of 8,420 retrofit opportunities that would occur under the existing program. However, the number of lost retrofit opportunities would be even greater as a result of the proposed amendments. For example, according to the staff report and the TRUCRS Reporting Data, PM filters were ordered for 8,195 vehicles (as of January 31, 2014) out of the total pool of "Good Faith Efforts" of 20,194 vehicles.[3] The staff report also needs to be updated to reflect the projected number of these retrofit orders that have been cancelled or postponed because of the regulatory uncertainty created by ARB's rollbacks.

The Board should direct staff to develop and submit a comprehensive cost-benefit analysis that quantifies the adverse impact of the amendments on the retrofit industry and public health. According to comments submitted by MECA, U.S. EPA estimates that incremental health costs avoided from reductions in PM2.5 are in the range of $320,000 to $730,000 per ton.[4] The heath benefit costs of these PM emissions alone will substantially exceed the projected savings to vehicle owners. As part of this analysis, the Board should also request that ARB staff provide a more detailed accounting for all the environmental consequences of the proposed amendments and relaxations. In fact, the California Department of Finances (DOF) has

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[2] Under the proposed amendments, ARB estimates that the number of retrofits from the affected vehicles would decline in 2015 from 5,454 under the current regulation to 0—in 2016, the number of retrofits would decline from 6,031 to 2,361. (See ISOR Appendix J at page 1 of SRIA.)

[3] Appendix C-8.

[4] U.S. EPA Technical Support Document, Estimating the Benefit per Ton of Reducing PM2.5 Precursors from 17 Sectors, January 2013

expressly requested that ARB provide "a more thorough description of the health impacts" of the amendments.[5]

III. ARB's Proposed Relaxation of Regulatory Requirements Violates its Statutory Mandates and Regulatory Obligations

The federal Clean Air Act (CAA) sets an air quality attainment date of 2014 for PM 2.5 for the most severe, non-compliant air quality districts, including California's South Coast and San Joaquin Valley districts. Diesel trucks and buses are the largest source of diesel PM emissions in California. Diesel trucks and buses emit 40% of diesel PM and 30% of the mobile source NOX emissions—which cause the formation of PM 2.5 and ozone.[6] Accordingly, the Board adopted the Truck and Bus Regulations in 2008 to achieve its CAA obligations to attain the ambient PM 2.5 and ozone standards. The US Environmental Protection Agency (EPA) has approved the Truck and Bus Regulation as part of California's Air Quality Plan to meet its federal air quality standards. To achieve these attainment mandates, ARB has an obligation under State law to achieve the "maximum feasible" emission reductions from diesel engines.[7]

Diesel PM has also been identified by ARB as a carcinogen and as a toxic air contaminant. Accordingly, ARB must adopt and enforce airborne toxic control measures (ATCM) for particulate matter emitted by diesel engines.[8] These ATCM must achieve emission reductions using "best available control technology" (BACT.)

In numerous prior rulemakings over the last five years, ARB has appropriately identified retrofit diesel PM filter systems as readily available and cost-effective controls that are required under ARB's well-established statutory criteria summarized above, including BACT. In the ARB staff report in this rulemaking, ARB repeatedly concedes that retrofit filter systems are widely available from multiple suppliers and dealers in California and generally cost in the range of $12,000 to $19,000 to purchase and install. In the staff report, ARB also concedes that these retrofit-installations represent only a small fraction of the cost of a new truck (typically over

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[5] DOF's February 28, 2014 letter to ARB at page 2 (cited in SRIA Appendix J of ISOR.

[6] ISOR at page 32.

[7] HSC Sections 43013 and 43018(a).

[8] HSC Sections 39666 and 39667.

$100,000) or the market value of a used truck (typically around $30,000.) The staff report projects that 12,347 retrofit PM filters have already been installed and that an additional 8,195 orders had been placed (as of January 31, 2014) for PM filters pursuant to the "Good Faith Efforts" Program. These numbers suggest the program can be effectively implemented without any additional rollbacks on the existing requirements and flexibilities.

Despite these successful retrofit investments made by thousands of compliant vehicle owners, ARB claims that certain vehicle owners are facing financial challenges in obtaining loans or state grants. ARB's staff report tries to base its proposed relaxation of the existing retrofit requirements primarily on the grounds that "about 4,000 fleet owners reported 5,000 vehicles under the allowances of the good faith advisory as being in fleets where the owner was denied a loan and would likely not be able to fully comply."[9] ARB has proposed that the denial of a single loan application would create a compliance extension for up to three vehicles in the fleet.[10] The denial of a single loan application is a weak and ill-defined exemption that will be widely misused and abused without any meaningful enforcement recourse.

While the proposed regulatory language theoretically requires "good faith" efforts to obtain financing from an "institution that commonly finances trucks or retrofits"—the regulations fail to specify how this theoretical requirement will be practically and effectively implemented. In the absence of such needed clarity, ARB's proposal creates an enormous loophole, given that fleet owners will always be able to find a single financial institution that denies a loan—even though numerous other qualified institutions would have approved such a loan.

In its staff report, ARB fails to even explain how alleged challenges with obtaining a loan could ever serve as the legal basis of ARB not requiring the implementation of controls that have been identified as cost-effective and widely available at a modest investment cost of less than $20,000. The Board should request ARB staff to submit a supplemental report that explains or justifies:

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[9] ISOR at page 13.

[10] §2025(p)(10.)

(1) How ARB is meeting all of its statutory obligations by basing this proposed rollback on the denial of a single loan; and

(2) How ARB would ever enforce this provision to prevent widespread abuse.

The Board should also direct ARB staff to re-propose alternate solutions and explain or seek comments on needed improvements to ensure that fleet owners document "good faith" and diligent efforts to obtain a loan from multiple qualified financial institutions that have experience in funding such retrofits.

IV. Proposed Improvements to Facilitate Loans

According to the ARB staff report, 5,195 vehicles were denied a single loan request and only 1,807 vehicles were approved for loan.[11] If vehicle owners are unable to obtain loans after diligent efforts with multiple lenders, the program will fail to achieve its objectives. The solution to this financing problem is to work on mechanisms to facilitate such loans—and not to gut the program's requirements when a single loan is denied.

ESW is committed to working with ARB, financial institutions, vehicle owner-operations, retrofit dealers and manufacturer, as well as other stakeholders to maximize the plentiful availability of joint public and private financing for retrofits. It is in these stakeholders' mutual interests to develop practical funding solutions that ensure that vehicle owners can obtain the needed funding under a "fair and even" program that rewards and does not penalize fleet owners that make the required-investments.

One element of this hearing should be an update for ARB staff on the following program. To address these same concerns with financing challenges, ARB has worked with CPCFA's California Capital Access Program (CalCAP) to provide loan guarantees or insurance that has resulted in $340 million in financing for small trucking fleets. We understand that $10 million in funding was allocated in SB359 to continue to fund those loan guarantees in 2014. Under a proposed new Interagency Agreement, these loan guarantees will be available in 2014 to cover a

[11] Appendix C-8.

contribution of 10% for all lenders with over $5 million in loans—and a 20% contribution until $5 million in loans are issued.[12]

The Board should direct ARB staff to explain or seek comment on needed improvements that would help fleet owners obtain loans. ARB should also direct staff to hold a public hearing as part of this rulemaking and develop a record and recommendation on alternate solutions to meet these challenges. To facilitate financing, ESW would like to work on the following solution-pathways:

(1) Though CalCAP or similar programs, ARB should provide a conditional guarantee or backstop to the retrofit loan provider wherein ARB covers 20% of the retrofit-installation in the event that the vehicle owner fails to pay the affected financial institutions.

(2) Retrofit manufacturers and dealers, including ESW, could provide matching conditional guarantees to the financial institution for an additional 10% of the total retrofit and installation costs.

(3) To protect the financial guarantors and lenders, ARB should maintains the right to rescind or block DMV registrations for any vehicles that fail to meet their financial obligations to pay for a retrofit.

(4) Recourse for non-payment to the guarantors and lenders should include the right to place a lien on the entire truck (or similar financial assurances.)

V. Improved Compliance Outreach and Enforcement Efforts

In the staff report, ARB staff concedes that an estimated 15% of the affected vehicles are completely non-compliant with any of the regulatory requirements or flexibilities. The Board should be concerned that any further rollbacks will send a perverse signal to the market that vehicle owners should avoid compliance with the regulations. Accordingly, the Board should reject the proposed retrofit-rollbacks. ARB should issue a strongly worded guidance that the overall 2014 compliance deadlines will not change and will be vigorously enforced. Given the

[12] December 9, 2013 ARB/CalCAP Workshop

large number of recent cancellations of pending retrofit orders, the Board should direct staff to scrutinize cancelled or postponed orders to assesses whether they violate the regulations or ARB's policies.

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ESW appreciates the opportunity to submit these comments and would welcome the opportunity to discuss our concerns and solutions.

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