



...Dedicated to Community Service

2554 SWEETWATER SPRINGS BLVD, SPRING VALLEY, CA 91978-2004
(619) 670-2222

otaywater.gov

September 28, 2022

Mr. Tony Brasil
Mobile Source Control Division
California Air Resources Board
1001 I Street
Sacramento, CA 95814

Mr. Craig Duehring
Mobile Source Control Division
California Air Resources Board
1001 I Street
Sacramento, CA 95814

Mr. Paul Arneja
Mobile Source Control Division
California Air Resources Board
1001 I Street
Sacramento, CA 95814

Re: Otay Water District Comments on Draft Regulatory Language for the Advanced Clean Fleets Regulation Public Fleet Requirements

Otay Water District (Otay) appreciates the opportunity to provide public comments to the California Air Resources Board (CARB) in response to the recent Draft Regulatory Language on Public Fleet Requirements (Draft Rule), and the May 4, 2022 Advanced Clean Fleets Regulation public workshop. We appreciate the work that CARB staff has done to consider and incorporate stakeholder input in the draft regulatory language, and we encourage CARB staff to continue these constructive efforts to develop a feasible, practical, and effective Draft Rule as the State moves towards ambitious goals to maximize Zero Emission Vehicles (ZEVs), and Near-Zero Emission Vehicles (NZEVs) in the state's fleets.

Otay appreciates that the Draft Rule has expanded upon the exemption process, has added early-action credit, has added a pathway to consider declared emergency events, and has started to consider the complexity of public fleet operations (one size will not fit all). However, more work remains to fill in the details of the Draft Rule through this process. OWD will continue to engage with CARB staff and request that CARB ensure that the Draft Rule avoids imposing unintended consequences that would limit water and wastewater agencies' ability to deliver essential services, including during emergencies. We all want to see a workable rule with a streamlined process to comply where feasible and have an exemption process when ZEVs (and NZEVs through 2035) are unavailable to meet our fleets' needs. Thus, we submit the comments below describing our continued concerns and recommendations regarding the Proposed Rule related to state and local government fleets

Re: Otay Water District Comments on Draft Regulatory Language for the Advanced Clean Fleets Regulation Public Fleet Requirements

As an entity which manages a large public fleet with specialty and emergency response vehicles, we are writing to share specific comments and recommendations that we hope will help inform the final regulation, as outlined below.

Background on Otay Water District

Otay provides essential public services including water, recycled water, and sewer services to more than 226,000 customers within approximately 125 square miles of southeastern San Diego County, including the communities of eastern Chula Vista, Bonita, Jamul, Spring Valley, Rancho San Diego, unincorporated areas of El Cajon and La Mesa, and eastern Otay Mesa along the international border with Mexico.

Additionally, Otay owns and operates a wastewater collection system providing public sewer service to homes and businesses within the Jamacha drainage basin, as well as delivers recycled water to customers through a dedicated distribution system where it is used to irrigate golf courses, playing fields, public parks, roadside landscapes, and open space in eastern Chula Vista.

Otay operates a range of vehicles, which serve the purpose of providing day-to-day operations and emergency-response services within its service area. Currently, the District has 86 vehicles in our public fleet including construction, utility repair, utility monitoring, and customer service vehicles. During the past two years alone, Otay has purchased 29 new vehicles and during the past five years, a total of 48 new vehicles – the typical lifespan of a vehicle is 7 years or 100,000 miles while the typical lifespan of a commercial vehicle is approximately 7 years or 60,000 miles.

Specifically, Otay operates water and wastewater specialty vehicles, most of which are required to travel long distances, on rough and uncertain terrain, and could include extended operation of auxiliary equipment via power-take off devices at project sites. These specialty vehicles often perform tasks that require long duty cycles and have unique duty-cycle specifications. Additionally, these vehicles serve as shelter and auxiliary equipment if needed during extreme weather conditions while staff are working in remote areas of the District.

1. Charging and Fueling Infrastructure Concerns

Otay remains concerned about the feasibility and safety of relying upon for ZEVs without ensuring there is an adequate supply of and access to charging and fueling infrastructure. While we are making great strides to transition, the District currently does not have access to the infrastructure necessary to support an expansive ZEV fleet currently.

Otay currently operates four Level 2 chargers and plans to add charging infrastructure within its facilities. However, to meet the demands of a zero-emission fleet required in the Proposed Rule and continue to provide seamless and critical public services, Otay would need access to have additional access of at least 51 charging stations within the service territory. The possible costs associated with construction, maintenance, and operation of the charging stations is expected to be in the range of more than \$2 million over the next six to seven years. This projected amount will have a direct impact on our customer rates creating potential increases in our water and sewer rates.

Re: Otay Water District Comments on Draft Regulatory Language for the Advanced Clean Fleets Regulation Public Fleet Requirements

Additionally, the time taken to locate charging stations in more rural areas could significantly delay emergency response, and mobile, quick charging technology is currently not available to recharge ZEVs deployed to remote locations.

Grid reliability should further be factored into this rulemaking when considering potential exemptions, or adoption timelines. We appreciate that CARB has incorporated many fellow state agencies into workshops and conversations about the Draft Rule at the January 12, and March 10 workshops on Electricity and the Grid. While both workshops proved beneficial, it was clear that the conversations must continue, and we encourage further dialogue and lessons learned into the Draft Rule. Further consideration must be given since electricity demand and cost is set to rise significantly as fleets ramp up electrification following adoption of the Draft Rule. Recently, state officials from the California Energy Commission, California Public Utilities Commission, California Independent Service Operator, and Governor's Newsom's office forecasted a shortfall of 1700 Megawatts (MW) this year (and as high as 5000 MW if the grid is severely taxed) and are expecting a capacity shortfall of 1800 MW in 2025 when the Draft Rule will already be in effect.

2. Exemption Process does not capture the full extent of considerations needed for a functional process to comply and/or file for exemptions under the proposed Draft rule's

Otay remains concerned that the criteria for exemption still do not fully consider the reasons that fleets may be unable to comply with the Advanced Clean Fleets Rule for the reasons stated here:

- Cost of compliance is prohibitive: The cost to purchase ZEVs (and NZEVs through 2035), and the necessary infrastructure to charge ZEVs can be cost prohibitive to public agencies, especially small and medium sized agencies. These necessary investments could require trade-offs and shifting budgetary priorities to cover these increased costs, as well as rate increases for some of our member agencies. Even if the investments needed in ZEVs and charging infrastructure are cost neutral in the long run, members must invest in the resources up-front, which means they will have to make trade-offs or find new revenue in the near term. The combined cost of a more expensive vehicle and necessary fueling infrastructure creates a bottleneck effect since not all fleet vehicles will immediately or in the first few years be able to make use of the new fueling infrastructure. For example, if a fleet manager must spend \$20,000 more on a ZEV than they would have on a conventional vehicle, \$200,000 for charging infrastructure, and spend on additional planning and staffing, it will take a while to break even on the reduced cost of fuel if only a portion of the fleet is transitioned to ZEV vehicles.
- Education on ZEVs/NZEVs: Education for effective ZEV/NZEV deployment, maintenance, and charging is a gap that must be bridged to educate public agencies on how best to proceed to comply with the Draft Rule. Education is a necessary feature of this rule to ensure public agencies (future buyers) better understand where to effectively deploy charging stations, how long these vehicles will take charge, and what type of stations will be deployed based on vehicle needs.
- Mutual Aid Assistance: The Mutual Aid Assistance exemption provision, as written, is restrictive especially towards the use of fleet vehicles for numerous purposes including: the 14,000 pounds requirement and required demonstration that mobile fueling is not commercially available for

Re: Otay Water District Comments on Draft Regulatory Language for the Advanced Clean Fleets Regulation Public Fleet Requirements

needed configurations. Additionally, the 75% requirement is unclear on if it refers to 75% of new purchases, or 75% of the fleet as a whole.

3. *Additional clarification is needed on included key regulatory concepts within the Draft Rule.*

We request further clarification on the following concepts in the Draft Rule.

- Declared Emergency Event- The definition of a Declared Emergency Event, as written, is unclear on the order of operations to determine a “Declared Emergency Event.” Otay appreciates that CARB has incorporated feedback from public agencies regarding emergencies and offers this commentary to help clarify the written concept. As written, it sounds as though a local governing board will have the authority to declare an emergency, which would enable fleets to use backup vehicles as necessary to mitigate emergencies and not count against the 1,000 miles allotted per year to the backup vehicle. Only after the event and declaration of emergency, occurring in real time, would the CARB Executive Officer then determine whether the event was in fact a “Declared Emergency Event.” A public water agency may need to respond to a disaster (either natural or manmade) with a quick response to protect our communities by repairing terrain or infrastructure. Local boards meet infrequently and would not be readily accessible to deem an event a “declared emergency event.” Responding to these events is not “routine,” but is essential to upholding and protecting public health. Water purveyors must have absolute certainty for when backup vehicles can be used. Otay offers instead that a public agency general manager (or ranking officer under different title) could be tasked with declaring an emergency event. Each agency is different, and no one size fits all approach will adequately equip all agencies to proceed. Water and wastewater districts have different circumstances such as a main break with a sink hole, which puts the public at risk, and these should be declared by the responding agency representative once the situation is evaluated. Following declaration to mitigate the declared emergency event, the general manager can inform their local board that they had to declare an emergency event to protect the general interest of the public, and then report to the CARB Executive Officer. This proposed approach enables local officials use their expertise to declare emergencies when appropriate (not to overuse it) and to uphold their missions dedicated to serving local communities in times of need. General managers are in a better position to determine an emergency event and this approach will prevent potential bottlenecks for an already remarkably busy CARB Executive Officer.
- Early or Excess ZEV additions- Additional guidance is needed to inform public agency fleet managers of their options to make use of Early or Excess ZEV additions. We appreciate that CARB added this provision to incentive and reward fleets that are able to act early while weathering higher costs and more unknowns.
 - How will early/excess additions be reported, and when should documentation be submitted?
 - Are all new purchases made prior to 2024 countable towards future compliance years once?
 - Are all new purchases during 2024-27, that exceed the 50% requirement, countable towards future compliance years?

Re: Otay Water District Comments on Draft Regulatory Language for the Advanced Clean Fleets Regulation Public Fleet Requirements

- Vehicles Acquired with Public Funds- CARB staff briefly described how CARB views public funding sources differently for claiming credit for new vehicle purchases. We encourage CARB to develop an exhaustive list to help public agency fleets navigate public funding sources to confirm what funding sources can be used to claim credit for new ZEV/NZEV purchases.
- NZEV Consideration- Within the Draft Rule, as written, there is little detail about how NZEVs will be considered in purchases decisions to determine if the performance specifications (specifically minimum range) of available NZEVs, in the absence of a viable ZEV option, is appropriate to purchase before defaulting to an Internal Combustion Engine Vehicle for purchase. During the May 4 workshop, CARB staff offered a much clearer description, and we encourage CARB staff to include that description in the rule to inform guidance in the process for public fleets determining their feasible options for purchase.

4. We suggest pushing back the compliance start date to give public agencies more time to plan

Otay recommends that the compliance start date be delayed by a year due to the challenges listed below. The Proposed Rule will be adopted in early 2023, leaving less than 12 months to budget and implement procurement to comply with a steep increase by 2024 purchase requirements. Otay forecasts budgets for purchases over the next five-year period and has noted that at this point in mid-2022 it would already be too late to proceed through its procurement processes to purchase ZEVs for January 1, 2024.

As the Draft Rule is currently written, the time frame for receiving purchased ZEV vehicles (due to lack of availability and/or production time) is challenging from practical standpoint for public agency fleets because fleets will comply with the rule, but unable to carry out fleet functions effectively while waiting for the new vehicle. As stated numerous times during recent CARB workshops, it can take up to two years to receive a purchased vehicle depending upon availability (which Otay has noted above). Public agencies remain responsible to prove that target vehicles classes, which are unlisted on the ZEV Unavailability List and unavailable for purchase, are unavailable via release of a public bid process that yields no vendors able to meet agency specifications. Public agencies can only pursue ICEVs after working through this process. This scenario is challenging when a conventional vehicle model could be available and reliable and will force fleets to continue to rely upon older vehicles that may be beyond their useful life and at higher risk to fail to account for the stopgap in the absence of the purchased ZEV. For these reasons, we ask that the compliance start date be extended.

5. We encourage CARB to incorporate a definition of “commercial availability” for ZEVs and NZEV’s through 2035 into the Draft Rule.

Otay encourages CARB to develop a definition for “commercial availability” into the Draft Rule to be used for including ZEVs (and NZEVs through 2035) in the requirements of rule. Commercially availability vehicles should exist in sufficient quantity to facilitate reasonable competition among suppliers in responding to bid requirements from customers, including public water and wastewater agencies. CARB should incorporate commonly accepted features for deeming products commercially available into the definition of commercial availability for the Draft Rule.

Public water and wastewater agencies need to know that the type of vehicles required for purchase and use can and will work and be able to continue to operate for extended hours, in all weather, elevation,

Re: Otay Water District Comments on Draft Regulatory Language for the Advanced Clean Fleets Regulation Public Fleet Requirements

and natural disaster conditions. There will be considerable uncertainty and challenges in the early years of the Proposed Rule even with the 50% requirement on-ramp prior to 2027. At present, the commercial availability of ZEV medium- and heavy-duty vehicles that meet our members' service needs remain limited. Initial assessments by our members regarding the design and capabilities of existing and prospective vehicles have also raised significant concerns with the factors affecting accurate sizing and installation of fueling infrastructure. We understand that there is the expectation for the market of ZEVs that meet our members' service requirements to expand but need to operate with a higher degree of certainty for the market that is not yet available.

Otay remains concerned that public fleets will be competing with one another for limited vehicle stock of available ZEV models to meet fleet needs. For this reason, we disagree with the statement regarding competitive advantage in Standardized Regulatory Impact Assessment § 5.3.8 Competitive Advantage or Disadvantage suggesting that "Public agencies do not compete against each other, and each agency would be able to identify the strategy, which allows them to comply within their allocated budgets." Lack of access will result in delays to receive the target vehicles, and likely drive up the cost to purchase the vehicles, which is noted above as a concern as well. As has been stated numerous times by CARB staff, the intent is for fleets to purchase ZEVs if the available models meet fleet needs. Thus, there is the risk, if only one option is available, that not all fleets trying to comply will be able to do so.

Concern also remains for fleets with unique duty cycles across difficult terrains and far distances, and power take off (PTO) requirements and payloads that may be hindered by weight of batteries and in-field fuel provisions that will not be met by the commercially available ZEV models. Based on past conversations with CARB, it sounds as though there will be opportunity to further discuss this concern and enable fleets to submit exemption claims. This concern could be lessened if the exemption process enables fleets with these issues to file their claims.

The Draft Rule, as written, does not fully explain the process for how public agency fleets should navigate filing compliance reports or exemption claims. Further clarity on "commercial availability" would inform and provide assurance to public agencies that they are completing required steps to comply. We encourage that the definition of "commercial availability" of a ZEV (or NZEV through 2035), and process to affirm "commercial availability" include that a vehicle model:

- Exists and is purchasable from more than one vendor
- Is sold on a competitive basis to multiple buyers
- Is in sufficient supply to be purchased and received in acceptable time frame (comparable to available ICEV)
- Reliably meets the required specifications of the purchasing fleet (as stated in public bid)
- Require availability from three manufacturers that have at least 2 years' experience selling vehicles in California
- At least 25 of each model placed in service
- Allow for a public review and comment period

6. We want more clearly defined reporting and administrative requirements for the Draft Rule.

Otay requests clearer directions within the Draft Rule to understand requirements for filing annual compliance documents, filing exemption requests, and understanding the timetable for a response from CARB staff. Clarity will be a benefit to all fleet owners so that staff can better plan for submitting

Re: Otay Water District Comments on Draft Regulatory Language for the Advanced Clean Fleets Regulation Public Fleet Requirements

materials and planning for when to expect responses from CARB in case additional action is required or purchase decisions hang in the balance of CARB staff accepting submitted materials.

We offer the following suggestions:

- Report changes to the fleet annually (instead of within 30 days)
- Provide documents for an audit within 10 days (instead of within 72 hours)
- For Hiring Compliant Fleets, require fleets that are hired to submit documentation to the hiring entity

Closing Comments

In closing, as an essential public service provider and fellow dedicated resource steward, Otay provides reliable water and wastewater services that protect public health and the environment. We wholeheartedly understand and support efforts to transition to a more sustainable future.

However, in doing so, we must ensure that water agencies, which operate large existing fleets and operate as first responders are not inhibited from responding to emergencies. We remain concerned that achieving compliance with this Proposed Draft Rule as currently drafted could challenge water and wastewater agencies' ability to reliably maintain core functions and levels of service for delivering and treating water and meet increasingly regulated mandates from local, state, and federal agencies as well as frequent mutual aid demands during emergency responses to natural disasters and other emergencies.

The Draft Rule must ensure water and wastewater agencies can maintain critical public services by carefully considering an exemption process for emergency response vehicles that also enables a feasible adoption timeline to achieve state goals.

The Otay Water District would like to thank you and CARB for your thoughtful work on the Draft Rule and appreciates the opportunity to provide comments on its development. We welcome yourself and your team to use us as a resource as you work to develop a final regulation. Please let me or our Legislative Advocates, Teresa Cooke, and Ruy Laredo, know if you have any questions.

Sincerely,



Jose Martinez, General Manager
Otay Water District