

WANGER JONES HELSLEY PC
ATTORNEYS

OLIVER W. WANGER
TIMOTHY JONES*
MICHAEL S. HELSLEY
PATRICK D. TOOLE
SCOTT D. LAIRD
JOHN P. KINSEY
KURT F. VOTE
TROY T. EWELL
JAY A. CHRISTOFFERSON
MARISA L. BALCH
PETER M. JONES**
STEVEN M. CRASS**
AMANDA G. HEBESHA***
JENA M. HARLOS****
MICAELA L. NEAL
REBECCA S. MADDOX
NICOLAS R. CARDELLA
ERIN T. HUNTINGTON
STEVEN K. VOTE
JENNIFER F. DELAROSA
ROCCO E. DICICCO
GIULIO A. SANCHEZ
YLAN H. NGUYEN

265 E. RIVER PARK CIRCLE, SUITE 310
FRESNO, CALIFORNIA 93720

MAILING ADDRESS
POST OFFICE BOX 28340
FRESNO, CALIFORNIA 93729

TELEPHONE
(559) 233-4800

FAX
(559) 233-9330



OFFICE ADMINISTRATOR
LYNN M. HOFFMAN

Writer's E-Mail Address:
jkinsey@wjhattorneys.com

Website:
www.wjhattorneys.com

* Also admitted in Washington
** Of Counsel
*** Of Counsel/Also admitted in
Idaho
**** Also admitted in Wisconsin

September 26, 2018

VIA ELECTRONIC SUBMISSION

Clerk of the Board
CALIFORNIA AIR RESOURCES BOARD
1001 I Street, 23rd Floor
Sacramento, CA 95812

Re: Comments of Lawson on the Proposed Amendments to the September 11, 2018, Notice of Public Availability of Modified Text for the Proposed Amendments to the Heavy-Duty Vehicle Inspection Program and Periodic Smoke Inspection Program

Dear Madam Clerk:

The following comments are submitted on behalf of John R. Lawson Rock & Oil, Inc. ("Lawson"). This letter includes Lawson's comments on the California Air Resources Board's ("CARB") September 11, 2018, Notice of Public Availability of Modified Text (the "15-Day Notice") for the rulemaking on the proposed amendments to the Heavy-Duty Vehicle Inspection Program ("HDVIP") and Periodic Smoke Inspection Program ("PSIP") (collectively, the "Programs"). The proposed amendments to the Programs are collectively referred to herein as the "Proposed Amendments," and the proposed modifications to Proposed Amendments identified in the 15-Day Notice are referred to as the "Proposed Modifications."

Lawson concurs in the comments filed by The California Caterpillar Dealers, the California Trucking Association, and the American Trucking Associations. As an operator and purchaser of a large fleet of vehicles, Lawson is subject to the Proposed Amendments. Lawson has made significant investments proactively complying with the existing programs and other programs adopted by CARB affecting the trucking industry. Like many fleet and individual owner operators, Lawson cares about the environment and generally supports measures to

WANGER JONES HELSLEY PC

Clerk of the Board

CALIFORNIA AIR RESOURCES BOARD

September 26, 2018

Page 2

improve air quality in California and has invested a large amount of private capital in pursuit of that goal. Having made that investment, however, Lawson has significant concerns about the Proposed Modifications, as well as CARB's inability or unwillingness to enforce the laws it has already promulgated.

While Lawson appreciates some of CARB staff's recommended modifications, there are still several issues with the Proposed Modifications. As an initial matter, several individuals and entities raised concerns to the Proposed Amendments at the May 25, 2018 Hearing. For example, Michael Lewis stated that he "understands the desire to hunt down non-compliant fleet, but believes compliant California fleet will be adversely impacted," and believes the "reporting requirements will create a paperwork snowstorm." (Michael Lewis, May 25, 2018.) Chris Torres testified that due to the costs associated with the Truck and Bus Rule, his fleet of twenty vehicles has been reduced to five vehicles, and believes the "Proposed Amendments will put people out of business." (Chris Torres, May 25, 2018.)

In light of the concerns raised by the individuals and entities, Chairwoman Nichols expressed concerns with the reporting requirements of the Proposed Amendments, and directed CARB staff to provide further clarifications to the reporting requirements. Based on these concerns, the motion to approve the Proposed Amendments stated "I would encourage our Chairman . . . to work with . . . our staff on a 15-day change that might alleviate that burden . . . And . . . make the motion to approve the staff's proposal with 15-day changes . . . including the concept that you'll work with our Chairwoman on the issue of record keeping." (May 25, 2018, Hearing.)

Lawson was under the impression that the Board's motion made clear CARB's intent to "work with our staff on a 15-day change that might alleviate that reporting burden." However, Lawson was disappointed to learn that CARB staff wholly failed to address any of the concerns raised regarding the reporting requirements in the Proposed Modifications.

A. CARB's Proposed Amendments Violate the APA

CARB is required to comply with the California Administrative Procedures Act, Govt. Code, 11350, *et seq.* (the "APA"), which, among other things, requires CARB to prepare a Standardized Regulatory Impact Assessment ("SRIA") and assess the economic impacts of the Proposed Amendments.

Lawson previously commented in its May 25, 2018 to the Proposed Amendments that the additional reporting costs created by the Proposed Amendments alone will cost over \$10 million. (Staff Report, Appendix D at 17.) The Proposed Amendment's reporting requirements will likely be borne by already compliant fleets, and further exacerbate the uneven playing field caused by CARB regulations. Additionally, the DMV and CARB systems do not track vehicles

WANGER JONES HELSLEY PC

Clerk of the Board

CALIFORNIA AIR RESOURCES BOARD

September 26, 2018

Page 3

by the same identifying factors. Despite these concerns, the Proposed Modifications fail to address the inconsistencies and reporting concerns. Thus, Lawson urges CARB staff to provide further clarifications on the reporting requirements, including, but not limited to the determination of the “true owner” verses operator, real time synchronization of the DMV and CARB databases, engine model year verses vehicle model year, and the process of uploading smoke tests, among other reporting concerns.

B. Violation of Equal Protection and Due Process

As Lawson previously noted, the Proposed Amendments provide significant benefit to truckers who have actively chosen not to comply with the PSIP. The 90 day smoke tests requirements exclude single-fleet owners altogether, despite CARB’s admission that non-compliance with the existing Programs is a staggering 50%. CARB provides no rational justification for providing deferential treatment to single-fleet owners. By exempting single-fleet owners from the smoke test requirements, CARB places compliant fleet and truck owners at a competitive disadvantage. Additionally, there is no mechanism in the vehicle code that makes the smoke tests requirement a condition of sale through the DMV or a mechanism between the DMV and CARB to enforce the smoke test requirements. Accordingly, Lawson urges CARB staff to address the inconsistencies of the smoke tests requirements.

CONCLUSION

Based on the foregoing, CARB should decline to approve the Proposed Modifications to the Proposed Amendments. If CARB does consider the Proposed Amendments, CARB must fully discharge its obligations, and ensure the Proposed Amendments will not violate Lawson’s constitutional rights.

Respectfully submitted,



John P. Kinsey

WANGER JONES HELSLEY PC

Attorneys for John R. Lawson Rock & Oil, Inc.