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April 27, 2020

VIA ELECTRONIC SUBMISSION

Cari Anderson
Chief, Freight Transport Branch
Transportation and Toxics Division
California Air Resources Board
P.O. Box 2815
Sacramento CA 95812

Re: **Comments on Draft Regulatory Language for
Upcoming Regulation on Transport Refrigeration
Units ("TRUs")**

Dear Ms. Anderson:

Our office represents several trucking companies, including Northern Refrigerated Transportation, Inc. ("Northern"), in connection with the California Air Resources Board's ("CARB") development of potential regulations (the "Proposed Regulations") concerning transport refrigeration units ("TRUs"). I am writing to provide comments on the Draft Regulatory Language presented in advance of the March 19, 2020, workshop on the Proposed Regulation. My clients, including Northern, intend to provide additional comments regarding specific provisions of the Draft Regulatory Language, which will be circulated under separate cover.

CARB Should Postpone Development and Consideration of the Proposed Regulations Until the Public Health, Financial, and Environmental Impacts of COVID-19 Are Fully Understood. As you know, the country has been thrust into a wave of uncertainty with the rise of the global pandemic related to COVID-19, often referred to as the coronavirus. The crisis caused by the pandemic is unfolding in real-time, and the public health, financial, and environmental impacts are currently unknown.

What is known, however, is that the pandemic has demonstrated the need for healthy supply chains. This is particularly important for TRUs, which are an integral component of the supply chain necessary to safely deliver vital, life-sustaining items such as food and medicine. At the same time, however, warning signs have begun to emerge to suggest that the pandemic could result in significantly reduced demand for freight, as explained in the letter submitted concurrently by the California Trucking Association and the American Trucking Association. Any such disruption could result in a broad range of negative consequences to California consumers, as well as public health. To avoid these potential consequences, California regulators should be focused on promoting healthy supply chains and reducing the financial and regulatory stressors faced by the trucking industry.

Unfortunately, however, the Proposed Regulations take the opposite tack, and seek to undermine significant investments by the industry to comply with prior regulations concerning TRUs. While Northern appreciates CARB's commitment to enhancing air quality and reducing greenhouse gases, and to that end has spent millions of dollars upgrading its infrastructure to proactively comply with existing regulations, this is simply the wrong time to frustrate those efforts by prematurely phasing out TRUs and related clean infrastructure that complied with CARB's existing regulations long before the end of their useful life.

To this end, CARB should learn from its previous mistakes concerning the Truck and Bus Regulation. Specifically, in 2008, at the beginning of the last recession, CARB promulgated the Truck and Bus regulation, only to have its aggressive compliance deadlines extended in 2012, due to the extensive burdens on the industry. Due to the extent of the recession, CARB ultimately viewed these efforts as insufficient, and in 2013 and 2014 engaged in efforts to provide relief from the regulation to segments of the regulated industry—which were ultimately invalidated in court. (See *John R. Lawson Rock & Oil, Inc. v. State Air Resources Board* (2018) 20 Cal.App.5th 77.)

To avoid such regulatory uncertainty, and to develop a suite of regulations that achieves CARB's objectives without creating undue burden on the regulated industry—and, with it, critical supply chains—CARB should pause its efforts to promulgate the Proposed Regulations, meaningfully assess the financial status of the trucking industry as this crisis and its effects unfold, and ensure that those who proactively complied with the existing TRU regulations are not unduly burdened.

CARB's Standard Regulatory Impact Assessment and Other Economic Analyses Must Be Rewritten. During the March 19, 2020, workshop, CARB staff advised that CARB will likely not be able to provide information about its estimates on the financial burdens of this regulation until the staff report is released for public comment in October 2020. This is of significant concern to Northern and other members of the trucking industry.

As an initial matter, any financial assumptions relied upon by CARB staff concerning trucking industry have now been completely undermined by the vast changes to California's economy caused by COVID-19 and the related orders issued by the Governor and local governments. Because the financial impacts to the industry—and the State's economy generally—are currently unknown, any evidence relied upon at this juncture by CARB staff in the SRIA is simply without foundation. As such, under any circumstances, the SRIA and the underlying economic analyses must be re-written.

We also understand that Northern has provided CARB with evidence showing the true costs associated with electrifying Northern's terminals. Northern has also extended offers to CARB staff to visit Northern's sites to better understand how the industry works, and the effect that the Proposed Regulations will have on similar operations. To date, CARB staff has not accepted this invitation, raising further concerns that the SRIA will be based on incomplete and inaccurate information. CARB's economic analysis should include this information, and the SRIA under any circumstances should not be completed until CARB understands—based on site visits and concrete evidence—the impacts of the Proposed Regulations on the trucking industry.

CARB's Standard Regulatory Impact Assessment and Other Analysis Should Be Circulated Well in Advance of the 45-Day Comment Period. The significant uncertainties to the industry also demand extensive information sharing between CARB and the trucking industry. It would be impossible for CARB to gain a realistic understanding of the trucking industry without such interface. As a result, CARB should not wait until the 45-day comment period to seek input from the trucking industry on the SRIA and the underlying economic analysis, but should instead release those documents well in advance to ensure CARB and the Legislature fully understand the consequences of the Proposed Regulations.

Comments on the Proposed Regulatory Language. As explained above, Northern does not believe that CARB should, at this time, consider the Proposed Regulations; rather, CARB should wait until the economic and public health consequences of COVID-19 and the related emergency orders are fully understood. However, if CARB proceeds with the Proposed Regulations, the Proposed Regulatory Language should be modified, as follows:

- As requested by the CTA and ATA, the proposed in-use requirements should be moved two to four years into the future. Northern generally agrees with the timelines presented by CTA and ATA in their comments on the Proposed Regulatory Language.

- The proposed regulations concerning <25hp units should also be modified. Northern and others have spent millions of dollars on such units, and has been preparing for several years to have TRUs in place that can be run on diesel-electricity to meet the existing

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ATCM, and produce minimal GHG emissions. Not all <25hp TRUs, however, can be both retrofitted to VDEC and made to run on electric standby. As such, the Proposed Regulatory Language would significantly decrease the useful life of evergreen equipment recently purchased to comply with the existing regulations. As a result, Northern agrees with CTA and ATA that <25hp units purchased prior to January 1, 2021, should be grandfathered.

- Northern likewise agrees with CTA and ATA that (i) the registration renewal period should be eliminated or extended; (ii) the relationship between the proposed 15-minute SOTL and GPS ping rates need to be examined; and (iii) a phased-in approach to the infrastructure requirement should be employed.

Should CARB Consider the Proposed Regulations, CARB Should Ensure the Regulation is Uniformly and Fairly Enforced. As explained above, my clients do not believe the rulemaking should go forward at this time. However, in the event CARB does proceed with the Proposed Regulations, it should ensure mechanisms are in place to prevent harm to those who vigorously and timely comply with the regulations.

When the Truck and Bus Regulation first became effective in January 2014, CARB “staff estimated 85 percent of trucks operating in California were in compliance with the rule.” (CARB 2015 Annual Enforcement Report at 13.)¹ This conclusion was found to be erroneous, with CARB’s Enforcement Division reducing the compliance estimates downward in January 2016 to 70-75%. (*Id.* at 13.) CARB staff now recognizes that compliance was approximately 70% in both 2014 and 2015, as opposed to 85%. (2016 Annual Enforcement Report at 15, 22.)² Over the following years, enforcement rates did not improve significantly. (Staff Report: Proposed Amendments to the Heavy Duty Vehicle Inspection Program and Periodic Smoke Inspection Program,³ April 3, 2018 at 17, 30 [estimating Truck and Bus Regulation compliance rates in 2018 were approximately 70%]; see also 2018 Annual Enforcement Report at 24.)⁴

Compliance rates for other CARB regulatory programs have been even lower. For example, CARB publications have asserted that, between 2015 and 2018, compliance rates for the Periodic Smoke Inspection Program (“PSIP”) have been approximately 50%. (2016 Annual Enforcement Report at 22; Staff Report: Proposed Amendments to the Heavy Duty Vehicle Inspection Program and Periodic Smoke Inspection Program, April 3, 2018 at 15.) Compliance rates for the existing regulations concerning refrigerated units (*i.e.*, the TRU ATCM), in 2017 were only approximately 74-77%, (2018 Annual Enforcement Report at 34), and perhaps even lower as suggested by CTA and ATA in their correspondence in response to the Proposed Regulatory Language.

¹ Available at https://ww3.arb.ca.gov/enf/reports/2015_enf_rpt.pdf?_ga=2.264403016.677783111.1568476396-1803952867.1510506149

² Available at https://ww3.arb.ca.gov/enf/reports/2016_enf_annual_report.pdf

³ Available at <https://ww3.arb.ca.gov/regact/2018/hdvpipsip18/isor.pdf>

⁴ Available at <https://ww2.arb.ca.gov/sites/default/files/2019-06/Enforcement%20Report%202018.pdf>

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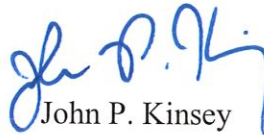
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These low compliance rates are harmful to diligent transportation companies that vigorously comply with CARB directives. Uneven enforcement makes it far more difficult for compliant companies to compete in the marketplace because their rates and overhead are far higher than non-compliant companies. Lack of compliance also results in lower rates for compliant trucking companies, making it far more difficult for responsible trucking companies to recoup the costs of maintaining their fleets and trailers in a manner consistent with CARB regulations.

Thus, while my clients disagree that CARB should be pursuing new regulations for TRU units at this time, to the extent CARB continues to pursue such regulations, CARB must ensure it has the means to compel compliance with the regulations in a uniform and fair manner, so that compliance rates do not remain artificially low.

Thank you for your consideration of these comments.

Respectfully submitted,



John P. Kinsey

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