

December 10, 2013

Clerk to the Board
California Air Resources Board
1001 I Street
Sacramento, CA 95814

Re: Opposition – Heavy Duty Diesel Idling ATCM Amendments to extend compliance responsibility

Dear Chair Nichols:

These comments are offered on behalf of the California Construction and Industrial Materials Association (CalcIMA). CalcIMA is a statewide trade association representing the construction aggregate, ready mix concrete and industrial minerals industries in California. Our members operate over 500 facilities statewide providing the raw materials to fuel California's infrastructure needs as well as the needs of the construction, manufacturing and industrial sectors. We recognize the importance of the rules adopted by the Board to protect our Air and comply with the Clean Air Act for the benefit of the health and well being of Californians. However, we oppose the extension of compliance responsibility in the proposed amendments to the idling ATCM.

We understand and appreciate that CARB's inspectors have had difficulty where they have been unable to find the drivers of vehicles to collect on citations issued. However, this strikes us as an issue likely much more applicable to fleets and vehicles outside of our industry. Our industry operates on a daily delivery schedule with drivers often delivering multiple loads to job sites each day. As a result our drivers are not engaged in overnighting activities where the Driver may not be locatable to be issued the citation.

We disagree that the rule is similar to other extended compliance obligation provisions included in other rules. In the truck and bus rule liability occurs for not hiring a truck that meets that rules standards or failing to modify trucks you own. In the Tractor Trailer GHG Rule it is for brokers that fail to ensure trucks have been modified or meet standards and in the Transport Refrigeration Rule a violation can occur for not specifying a compliant truck within your contract. In all of these cases the party that has a compliance obligation can control whether they incur a violation directly by either their contract language or by verifying the physical modifications year model of hired vehicles.

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In this proposal third parties have compliance liability for items beyond their control the behavior of the driver. The Board should not create violations for activities beyond a company's control.

We are also concerned that by removing the drivers obligation, CARB could harm compliance with the idling ATCM. The drivers who operate in an unsupervised fashion upon the roads are in the end the only ones who have full control of whether they comply with the rule. Indeed CARB staff in the ISOR note no problems with having citations paid where the driver is locatable and issued the citation and instead defines the problem attempting to be addressed by the rule change as those situations where the driver is unavailable to be issued the citation;

*"However, sometimes citations cannot be issued to the driver because, at the time the vehicle is idling, the driver may not be in the vehicle or may be resting in the sleeper cab. In such situations, enforcement personnel issue the citation and leave it on the vehicle's window or windshield. A copy of the citation is also sent to the owner of the vehicle, later identified using the license plate of the vehicle or the motor carrier, identified by the motor carrier number displayed on the vehicle, but only for purposes of ultimately reaching the driver. **Many such citations have been ignored by the driver, owner, and motor carrier,** leaving ARB with no recourse for settling the citation. Such unresolved citations have significantly lowered the compliance rate of the regulation." Pg. 75-76
CARB ISOR*

We are therefore very concerned that the fix proposed applies to all citations not simply those where the driver was unavailable to receive the citation. Vehicle owners and Motor Carriers lack the ability and authority to change the drivers behavior in the field as they are beyond managements direct control.

Should you have any questions regarding our comments do not hesitate to contact us at (916) 554-1000 Ext. 102. Again please reject the regulatory solution as proposed in the rulemaking packet and redirect your staff to identify ways within the rule to Identify the drivers responsible for violations.

Respectfully,


Adam Harper
Director of Policy Analysis