

# GRINESTAFF & CHA

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March 21, 2014

California Environmental Protection Agency  
Air Resource Board  
1001 I Street  
Sacramento, CA 95814

P.O. Box 2815  
Sacramento, CA 95812

re: Hearing on April 24, 2014 regarding: adoption of 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 (Truck and Bus regulation)

Dear Sirs and Madams,

My firm represents certain small construction business owners in the Inland Empire who feel that it is neither fair nor just for CARB to continually grant modifications or extensions for companies who are either willfully or negligently refusing, or failing, to comply with regulations for upgrades to their diesel vehicles/equipments under the guise that such requirements are either infeasible, impractical, or too dangerous.

As early as 2002<sup>1</sup>, CARB and/or ARB made it known to the public that regulations were in order to protect the environment from toxic emissions from heavy duty vehicles, including buses and construction vehicles and equipments<sup>2</sup>. After several modifications and adoptions of applicable regulations, one of the regulations now require that diesel trucks and buses that operate in California be upgraded to reduce emissions by January 2014.<sup>3</sup> In what appears to be a reasonable attempt to accommodate certain situations, aside from extensions previously granted, an advisory was sent out that explained how ARB will recognize specific good faith efforts that owners have made to comply

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<sup>1</sup>See, e.g., [http://www.arb.ca.gov/ch/factsheets/toxics\\_brochure.pdf](http://www.arb.ca.gov/ch/factsheets/toxics_brochure.pdf)

<sup>2</sup>See, <http://archive.is/FlkS>

<sup>3</sup>See, <http://www.arb.ca.gov/msprog/onrdiesel/documents/FSRegSum.pdf>

with the January 1, 2014 deadline; and how owners can report and take advantage of planned regulatory changes that would increase low-use thresholds, allow owners to opt-in to a number of flexibility options, and receive additional time to comply with the PM filter requirements for vehicles operated in certain areas of California.<sup>4</sup>

Companies have either taken advantage of this leeway, or have made every effort, successfully, to comply with the January 2014 deadline, despite the hardship on the company. Numerous companies, small and large alike, have taken the necessary steps, begrudgingly or otherwise, and spent the necessary monies, and time and effort, in order to meet their obligations to this State and its people. Some companies have even spent hundreds of thousands of dollars, some in the millions, to ensure that these regulations are complied with.

As an illustration of a few small companies who are in compliance despite it all, one of my clients is B & W Leasing, Inc. ("B & W".) B & W only owns equipments and vehicles that comply with CARB regulations. The equipments cost more, modifications were expensive, but B & W successfully, despite the hard times and the condition of the construction market, to ensure that every equipment it owns, every boom pump it has, is in full compliance with CARB regulations, and any other requirements required by law.

Another one of my client is HD Construction Equipment. ("HDCE".) HDCE is a construction contracting company whose majority shareholder is a minority female trying to get a foothold in the construction business. Despite the competitive world of construction, HDCE ensures every equipment, every boom pump, it uses is in full compliance with CARB regulations, despite the fact that doing otherwise would likely net the company a larger profit, if not on the books, then definitely for the shareholders.

Despite the accommodations and time allotted to business owners falling under this regulation, in early 2013, an active movement began in which certain construction companies, as organized by the Sierra Research Group and the California Concrete Pumpers Alliance, united to further challenge regulations by CARB.

The objective of this movement, as stated in a letter dated February 22, 2013, by the Sierra Research Group, in pertinent part, was to:

1. Obtain a "one-year extension from compliance requirement of CARB'S In-use On-road Heavy-duty Diesel Vehicle Regulation" due to:
  - a) the infeasibility of engine repowers/vehicle replacements,
  - b) the unavailability of appropriate Verified Diesel Emission Control Systems (VDECS), and
  - c) potential safety issues related to the operation of concrete boom

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<sup>4</sup>See, <http://www.arb.ca.gov/msprog/onrdiesel/onrdiesel.htm>



pumps that been retrofit with available VDECS (such as boom pumps collapsing because of a loss of hydraulic pressure due to unsafe modifications required by CARB.)

and/or

2. Secure CARB's agreement to redesignate concrete boom pumps as off-road, rather than on-road, vehicles with respect to compliance with the agency's in-use Diesel regulations.

In a letter dated May 9, 2013, from the California Concrete Pumpers Alliance, the goal of the movement was divided in two parts. The first objective is to obtain an "off-road exemption" from CARB that would place some or all concrete pumps into the CARB Off-road Regulation where additional time and flexibility to comply exists. The second objective is for a "long term extension strategy" that would leave concrete pumps in the Truck and Bus Regulation but recognize the unique characteristics of concrete pumps and safety considerations that could allow a time extension until at least 2018 under the current version of the Regulation.

First of all, scare tactics regarding boom pumps collapsing due to CARB regulations is outrageous and unsupported by reliable facts and evidence. What is clear is that scare tactics are being used to gain an advantage these companies do not deserve. Some of my clients have employees who have been in the construction business for over 20 years, who are experts at operating boom pumps. They are amazed that such information is being disseminated among educated people. Boom pumps move or are maneuvered by hydraulic pressure. If a boom pump loses power, there is no hydraulic pressure to cause the boom to move; ergo, the boom pump would not collapse but rather freeze in place. If the boom pump collapses or breaks down, that is more likely due to maintenance issues and not regulation requirements.

Second, boom pumps operate with the engine running. Arguably, the boom pumps actually emit more PM when idle and pumping than it does traveling on the road. "Redesignating" boom pumps as off-road equipment is merely a ploy to avoid compliance with CARB regulations. Why have a regulation if a company may simply sidestep such requirements by reclassifying, or "redesignating", the equipment to avoid having to comply with such regulation?

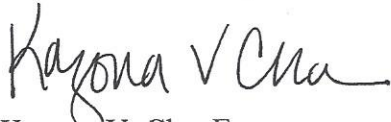
Finally, while the objecting construction companies present their cause as a negative effect on their company, what they do not present to CARB is that by avoiding expenditures related to compliance, they gain a economic advantage in the field against all the other companies that have complied. Without having to spend any money on making changes to their equipments, these company can afford lower bids on construction projects while other companies, such as HDCE, who, in order to afford to continue running their company and paying their employees, may have to proffer a higher bid, thereby losing the contract at issue. This creates an unfair business advantage in favor of the construction companies who are saving money not just by refusing to comply with CARB regulations but who can make lower bids.

There are many companies that have taken great steps, and lost profits, in order to comply with CARB regulations. Some did it because they were required to. Others because they genuinely believe in protecting the environment and the people of the State of California. These are the companies who are now at a disadvantage because they are out-bid on projects by the companies who do not feel they need to comply with any regulations. These compliant companies spent large sums of money so they may share the same road, the same environment, as those who are claim such compliance are "infeasible" and "dangerous". The more extensions CARB grants, the more likely it will be that the purpose for these regulations will be diminished and disregarded. Arguably, whether it be an extension for a year or to 2018, the request will be the same when the time is up because there is no guaranty these companies requesting extensions and modifications to the regulations will ever comply.

I hope that you will take these issues under consideration in any meetings or hearing on these issues. It is my, as well as my clients', intention to attend any future hearings on these issues so that the companies who have complied can be heard and not be ignored. Thank you for your time and consideration.

Sincerely,

GRINESTAFF & CHA  
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A handwritten signature in black ink, appearing to read "Kazoua V. Cha". The signature is fluid and cursive, with a large initial 'K' and a stylized 'V'.

Kazoua V. Cha, Esq.