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Submitted electronically: <u>https://ww2.arb.ca.gov/applications/public-</u> <u>comments</u>

October 10, 2022

RE: Comments on Advanced Clean Fleets Regulation: High Priority and Federal Fleet Requirements.

Dear CARB Staff,

On behalf of the Associated General Contractors (AGC) of California, we are submitting comments to the California Air Resources Board (CARB) in response to Advanced Clean Fleets Regulation, specifically regarding the High Priority and Federal Fleet requirements.

AGC of California is a member-driven organization that statewide consists of over 900 companies. Our members provide commercial construction services, many of which that own or operate 50 or more vehicles in their fleets. We believe the construction industry is vital to the success of California. Together, our members actively create opportunities to build and strengthen our state. We are passionate about shaping policy, improving industry relationships, and developing our workforce.

AGC of California appreciates the opportunities to participate in CARB's regulatory process by submitting a comment letter to advocate on behalf of the construction industry. A summary of our concerns includes fleet applicability, the infrastructure construction delay extension, an unsustainable electrical grid to meet new electric vehicle demands, the already increasing pressures on fleets due to Assembly Bill (AB) 5, costs and limitations associated with zero-emission vehicles (ZEV), decrease in transportation infrastructure funding, and heavy equipment service vehicles. Please read below for more information.

1. Fleet Applicability

The Advanced Clean Fleets (ACF) regulation applies to "any entity



that owns, operates or directs or more vehicles in California [...] that meets the following criteria: A) is an entity with \$50 million or more in total gross annual revenue in the prior year; B) is a fleet owner that owns, operates, or directs 50 or more vehicles, excluding light duty package delivery vehicles; C) is a fleet owner or controlling party whose fleet in combination with other fleets operated under common ownership and control totals 50 or more vehicles, excluding light duty package delivery vehicles; or D) is any federal government agency". AGC of California supports comments sent from the California Legislature, specifically, that we are concerned with the selection criteria based the number of vehicles or the amount in annual revenues without any distinction on the types of businesses that can feasibly accomplish this endeavor, let alone economically manage the requirement. This will result in many businesses being at a competitive disadvantage to those fleets that do not meet the selection criteria of this regulation and do not have the burden of replacing vehicles within their fleet. We question the legality of this approach to single out large companies that service construction businesses simply based upon revenue or number of vehicles.

2. Infrastructure Construction Delay Extension

While AGC of California appreciates the exemptions and extensions that were incorporated into the draft language of the Advanced Clean Fleets (ACF) regulation in attempt to make the regulation more feasible, the infrastructure construction delay extension is not long enough to be beneficial. The draft language of the extension provides a one-year extension if one experiences construction delays beyond their control on a project to purchase zero-emission vehicles (ZEVs) and install ZEV charging or fueling stations. There are a couple of reasons why the one-year time frame is not long enough. First, some ZEVs, such as electric forklifts and their charging stations need to be contained under a roof which may require an addition of a roof-covered space dependent upon plans, permits, and construction. That process alone may take several years from design to installation. Installing charging stations can easily take up to 2 years including plan design, plan check, utility company backlog in completing necessary power upgrades, and delays in getting the actual charging stations. Second, companies with multiple electric forklift replacements and on-road vehicle replacements may require more power coming into the facility. This increased need for power would require more internal electrical infrastructure within the facility to accommodate the charging stations, thereby needing more time to meet these demands. Third, proper utility infrastructure and DC charger access for heavy duty vehicles are barely existent within the state because hard wired, high voltage, and high amperage electrical power is not available. This means that heavy duty vehicles, such as water trucks and dump trucks, will have no ability to be charged in remote locations. Fourth, due to supply chain demand issues, manufacturers cannot meet the increase in demand for the ZEVs thereby resulting in backlogs. Since this extension is meant for both the purchase of ZEVs and installing charging stations, it appears that CARB expects the contractor to both obtain the ZEV and install charging stations within a one-year time frame. Due to supply chain issues obtaining ZEVs and the numerous obstacles installing charging stations, the one-year extension is not meaningful. Lastly, AGC of California questions the benefit of requiring so much infrastructure development for charging stations when construction sites are remote and temporary. After developing the infrastructure over the course of several years, will the charging stations just sit there, unused once the project is complete? AGC of California urges CARB to consider the practicality of requiring electric vehicles on remote, temporary construction sites. Additionally, we urge CARB to extend the infrastructure construction delay extension to at least three years to make this extension meaningful



and beneficial to contractors.

3. Unsustainable Electrical Grid

While AGC of California supports actions that reduce greenhouse gas emissions making our communities an even safer place to live, we urge CARB to consider the feasibility of the ACF regulation. At this moment in time, there is no current technology to reliably initiate this regulation. According to the CalMatter's article, "California's electric grid is not ready to meet climate goals," California's electrical grid was largely developed in the last century and was designed with natural gas fired generation located in urban areas, supplemented by remote hydro, nuclear, and geothermal energy (2022). The electrical grid was *not* designed to accommodate phasing out urban gas-fired generation and tripling the among of energy delivered from remote wind and solar energy. Additionally, the most recent 10-year plan developed from the Public Utilities Commission does not take shutting down gas power plants into account from now to 2031. This is concerning because rolling blackouts have been increasing over the years.

On January 13, 2021, the California Independent Systems Operator, California Public Utilities Commission, and California Energy Commission released a report regarding the root-cause analysis of the mid-August extreme heat wave power blackouts. This report states that the root-cause was attributed to "extreme weather conditions, resource adequacy and planning processes, and market practices". Additionally, it states "[t]he energy markets can help fill the gap between planning and real-time conditions, but the West-wide nature of this extreme heat wave limited the energy markets' ability to do so". This remains a consistent problem within the state of California. Governor Gavin Newsom signed a Proclamation of a State of Emergency starting August 31, 2022 and lasting until September 7, 2022 allowing the use of back-up generators to reduce the strain of the electrical grid due to another extreme heat event. Pacific Gas & Electric issued numerous "flex alerts" requesting residents and businesses to conserve power during peak times to protect against blackouts. Although there was some success in preventing rolling blackouts, there were still thousands of people who lost electricity in Silicone Valley and southern and inland areas of the San Francisco Bay Area, according to the USA Today article, "California avoids rolling blackouts amid record-breaking heat wave; State issues another 'flex alert'," by Christine Fernando (2022). This demonstrates the need to have carefully thought-out regulations that take California's current resources into consideration, as opposed to initiating a regulation that is not practical.

A further demonstration that California does not have the electrical resources to meet current demand is that California is already importing approximately 30% of its power needs. Since California cannot meet the current electrical demand, how will the state meet the future demand when the ACF regulation will only increase the demand for daily charging? All in all, AGC of California urges CARB to upgrade the electrical grid *as soon as possible* so that energy can reliably get to consumers that would make this regulation obtainable. It is optimal to have the electricity available *before* implementing such regulations.

4. Pressures on Fleets due to AB 5

Assembly Bill (AB) 5 was signed into law in September 2019 and codified the ABC standard. Under the ABC standard, a worker is assumed to be an employee. To have the worker classified as



an independent contractor, the hiring party must demonstrate the following: A) the worker is free, both contractually and in practice, from control and direction on how to perform a service; B) the worker's service is outside the hiring party's usual services; and C) the worker has an independentlyestablished trade, occupation, or business of the same nature as the work performed. AB 5 brings increased costs, administrative duties, and legal risks for hiring on multiple fronts, including but not limited to: payroll taxes; meals, breaks, and overtime policies and enforcement and premium pay; benefits; leave and PTO policies, requirements and enforcement; wage order violations; Labor Code violations and Private Attorney General Actions (PAGA) claims; unemployment insurance; and workers' compensation coverage, claims, and premiums. Therefore, the trucking industry is already experiencing hardship due to AB 5. Since the hiring contractor must prove that the trucking entities are independent contractors using the ABC standard, this increases the contractor's liability. For instance, the ABC Standard may empower competitors in the construction trade to sue the hiring contractor for unfair competition and/or unlawful business practices under the Business and Professions Code by arguing that the hiring party received a competitive advantage when it avoided paying proper employee wages and benefits. Ultimately this is resulting in reduced availability of truckers and brokers because they seek to avoid the liability. Therefore, implementing another regulation that will put increased strain on truckers, brokers, and contractors may do more harm than good.

5. Costs, Hazards, and Limitations of ZEVs

Another concern of the Advanced Clean Fleets regulation is the imposed cost the ZEVs for businesses. The International Council on Clean Transportation (ICCT) conducted a meta-study of purchase costs for zero-emission trucks and found that battery-electric tractor truck up-front costs range from about \$200,000 to \$800,000. Additionally, costs tend to increase with increased driving range as a function of total battery capacity. In comparison, new trucks with internal combustion engines tend to cost between \$99,000 - \$200,000 from low-end to high-end. In other words, the ZEV trucks will be 2 – 4 times more than non-ZEV trucks. Not only are the purchase costs more, but battery costs are also expected to rise in the coming years due to scarce resources. The Institute for Energy Research released the article, "Electric Vehicle Prices Rise as Battery Costs Increase," where they mention that although battery costs have been declining over the past decade, EV battery costs are expected to increase 14% this year to \$150 per kilowatt hour. Also, it is expected that with the increase in demand for ZEVs, this will result in EV battery cells increasing more than 20% within the next four years. Even more striking, Korean battery makers have publicly stated that their battery costs may increase by 30 – 40%. Many businesses may not be able to survive, let alone thrive, due to these associated costs. Furthermore, what does CARB plan to do with the hazardous waste when the EV batteries inevitably die? According to the Orange County Register, California does not have any EV-battery recycling plants and there are only five up and running within the entire country. There is also currently no way to track EV batteries which may result in EV batteries being illegally abandoned or improperly managed. In addition to the cost of replacing vehicles and batteries, businesses will also need to invest in charging stations to charge the vehicles they are mandated to obtain. The cost of the chargers and installation can equate to approximately \$100,000 - \$150,000 each, not including the cost of necessary electric utility upgrades. The businesses that will be affected by this regulation who have hundred of vehicles within their fleets do not have the financial resources to be able to replace so many vehicles within the proposed time frame, build the



infrastructure for charging stations, as well as maintain day-to-day business operations. This is extremely concerning and AGC of California asserts that CARB addresses this *before* implementing the ACF regulation.

It is argued that the environmental impacts outweigh the economic costs of the regulation, however, there is some evidence that suggests environmental impacts may be exaggerated. Environmental Research Letters published the article, "Environmental and economic impact of electrical vehicle adoption," where the authors conducted a comprehensive impact assessment of battery electric vehicle (BEV) adoption (Chen, Carrel, Gore, & Shei, 2021). In this article the authors state that "[a]Ithough BEV adoption leads to decreases in tailpipe emissions, increased manufacturing activity as a result of productivity increases or subsidies can lead to growth in non-tailpipe emissions that cancels out some or all of the tailpipe emissions savings". Additionally, the Emissions Analytics released a newsletter in May 2022 highlighting research that demonstrates pollution from tire wear can be 1,850 times worse than car exhaust emissions in real-world settings. Since CARB does not take tire wear emissions into consideration when evaluating the cost versus the benefit of the regulation, the proposed environmental impacts may be misleading.

Emissions Analytics first released information in their 2020 press release that pollution of tire wear can be 1,000 times worse than car exhaust emissions, however, since then they have conducted more testing and analyses under a wide range of driving conditions and performed a detailed chemical analysis. Tire wear mass emissions were measured by high-precision scales to weigh all four wheels (tires and rims together without detaching) over at least 1,000 miles on real roads along with a proprietary sampling system that collects particles at a fixed point immediately behind each tire that are drawn into a real-time detector measuring the size of distribution of particles by mass and number. Particles from 10 microns down to 6 nanometers were measured. Tailpipe particles were measured using a diffusion charger analyzer for dynamic mass concentration and condensing particle counter for number concentration, coupled with a standard Portable Emissions Measurement System (PEMS). Their results indicate that tire wear emissions are 1,850 times greater than tailpipe emissions. Additionally, they discuss risks associated with battery electric vehicles (BEVs): battery weight can result in tire emissions that are almost 400 more times greater than realworld tailpipe emissions. While AGC of California supports action to decrease tailpipe emissions, it is important that benefits outweigh the costs imposed by the regulation. While it may be impractical to incorporate all possible factors into the model, it is important that as many key factors be incorporated as possible to ensure that real-world situations are taken into consideration.

Lastly, there is a major limitation of ZEVs that must be taken into consideration: they are much less effective in cold weather and are unable to drive as many miles as they do during the summer as they do during the winter. According to Drive Electric Vermont's article, "Electric Vehicles in Winter," state that "[k]eeping the inside of the vehicle warm in winter is usually the biggest drain on EV range [...]. Lithium-ion batteries used in EVs also do not perform as well in cold temperatures, which can lead to further range reductions". While there are claims that the range of miles can go up to 300 miles or more, they may not go up to that many miles when it is cold. Furthermore, Blink Charging released an article, "Is a Cold Climate a Deterrent to EV Ownership?", that said the range of a vehicle can decrease up to 41% in cold weather when the heater is running on full blast which is often necessary in colder climates. This means that charging demands will increase in the winter months when electricity is already scarce.



6. Decreased Transportation Infrastructure Funding

Transportation infrastructure fundings comes directly from Federal and State gas taxes. According to Land Line's article, "California's inflation relief package includes diesel sales tax break," by Keith Goble, states that excise tax collected on gas purchases in California is set at 53.9 cents per gallon and the diesel tax is set at 41 cents per gallon as of July 1, 2022. Furthermore, these taxes make up a budget of \$14.8 billion for transportation infrastructure improvements, specifically for rail and transit, climate adaptation projects, pedestrian projects, high-speed rail, and ports. Since there is a push to adopt ZEVs, there will be decreased purchase of gasoline which means there will be less funding for transportation infrastructure projects that are funded through gas taxes. AGC of California and its members are concerned with this decrease in available funding as it will affect the ability to carry out current and future projects. The Eno Center for Transportation and Bipartisan Policy Center mention in their report, "The Consequences of Reduced Federal Transportation Investment," that reduced funding for transit has substantial consequences in terms of achieving our transportation goals, such as forcing transit agencies to cut programs, reduce service and/or delay upgrades to rolling stock or infrastructure. Additionally, there will be fewer new transit starts as monies are shifted to meet current commitments. Although this report was published in 2012 and is from a federal perspective, the impacts of decreased transportation infrastructure remain the same. AGC of California asserts that these negative economic impacts be considered before implementing a regulation that will jeopardize an already fragile economy.

Conclusion

All in all, there are numerous issues that need to be resolved within the Advanced Clean Fleets regulation. AGC of California urges the California Air Resources Board (CARB) to postpone the adoption of this regulation until the above-mentioned issues are resolved. We appreciate CARB for allowing AGC of California to comment on the Advanced Clean Fleets Regulation. We assert that CARB consider the comments we have expressed above. If you have any questions regarding the comments, please contact Brian Mello at 603-770-9264 (email: mellob@agc-ca.org). We appreciate the opportunity to comment and hope these concerns are addressed.

Sincerely,

Brian Mello

Brian Mello Associate Vice President of Engagement & Regulatory Affairs Associated General Contractors of California