

April 22, 2019

By Electronic Submission

Clerk of the Board
California Air Resources Board
1001 I Street
Sacramento, CA 95814
<http://www.arb.ca.gov/lispub/comm/bclist.php>

Re: Proposed Amendments to the Red Sticker Program for Off-Highway Recreational Vehicles

Dear Clerk of the Board:

This firm represents EcoLogic Partners, Inc. (“EcoLogic”), a non-profit consortium of recreation groups dedicated to preserving public access to public lands in the United States, and the American Motorcyclist Association District 37 (“AMA District 37, which has a long history of sponsoring and administering motorcycle races in the Southern California Area. Both EcoLogic and AMA District 37 support grassroots racing activities at reasonable fees that allows families to enjoy the sport on both public and private lands.

On behalf of EcoLogic and AMA District 37, we have analyzed CARB’s proposed amendments to the OHRV regulations. As we understand it, the overarching purpose of the amendments is to quickly phase out the existing “Red Sticker” program, which, according to the Initial Statement of Reasons, has failed to meet its objectives and is now impeding the state’s efforts to satisfy its objectives under the Clean Air Act. In our review, however, we were surprised and disappointed by the way CARB staff has misrepresented or manipulated air emissions data in an attempt to support its case that the current Red Sticker program has failed and must be eliminated. Here are a few examples from Initial Statement of Reasons:

- On page iv of the Executive Summary, CARB provides a table showing that the proposed rule change would reduce statewide summer OHMC ozone (which is the combination of ROG and NOx) by 3.11 tons per day (tpd) in 2031 and 6.35 tpd in 2042. These numbers, however, are meaningless unless they are placed in context. For instance, the Initial Statement of Reasons should have provided the **total** statewide summer ozone figures, not just those for the OHMC sector. The fact is, total statewide ozone during the summer is probably close 10,000 tons per day, which means that the anticipated reductions are mere fractions of 1% and thus meaningless in terms of addressing the state's ozone problem. At the very least, CARB should provide this information so that the public can determine whether the time and expense of this particular regulatory effort is worth the public resources that CARB has devoted to it and plans to devote to it in the future.

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- The whole point of the Red Sticker program, and the proposed changes to it, is to bring into "attainment" those air basins that currently cannot meet the federal 8-hour ozone standard of 0.08 ppm, as set forth in the 2016 State Implementation Plan (SIP). For this reason, it doesn't matter what the statewide emissions reductions will be. What matters is whether the proposed rule changes will have a material positive effect within the non-attainment air basins and help them reach the 8-hour 0.08 ppm standard. The Initial Statement of Reasons is absolutely silent on this critical issue – no doubt because the proposed rule changes will not move the needle at all in terms of attainment in the air basins that currently are out of compliance. So CARB, if it wants to convince a skeptical public that the proposed rule change is not simply an indirect attack on OHV recreation generally, must demonstrate that the statewide emissions reductions (3.11 tpd by 2031 and 6.35 by 2042) will materially improve the ability of non-attainment air basins to meet the 0.08 ppm standard. So far, however, CARB has failed to provide this basic information.
- According to the Initial Statement of Reasons, the proposed rule changes will increase the price of each OHRV by \$333. It is unclear how CARB came up with this figure, which is the first problem. The second problem is that CARB believes this increase in price will not have a significant impact on total statewide sales of new OHRVs. (See ISOR, p. iv.) Again, however, there is no data to support this conclusion. To the contrary, it appears from Figure V-2 that statewide sales of new OHRVs steadily declined between 2003 and 2012 and have largely been flat since. Every indication is that this market is already fragile and that tacking on an additional \$333 to the sticker price will cause another downturn in sales. We suspect this is exactly what CARB is hoping will happen.
- Then there is Figure I-9 (page 9), which purposes to show Summertime OHRV Evaporative and Exhaust Emissions from 1995 to 2040. This figure is interesting because it shows that the current Red Sticker program has been effective in reducing OHRV-related emissions of ROG and NOx. Since 2007, these emissions have steadily decreased and continue to do so. According to the figure, only in year 2032 is the downward trend expected to flat-line. And even that expectation is based on staff's conjecture, not hard data. One can just as easily imagine a scenario where the overall OHRV emission during the summer months continue to go down, especially as OHRV technology and fuels improve their emissions profiles. So it is simply not true that the current program is a failure. It continues to meet its basic objective, which is to reduce ROG and NOx emissions from OHRVs. CARB may argue that the downturn in emissions is related to correspondings downturns in new OHMC sales, but that is precisely what the last round of rule changes was expected to accomplish.
- We also question CARB's claim that OHRV owners use their red sticker vehicles approximately 5.5 days per month during the summer. But even if this number were accurate, it is not the proper metric for determining air emissions. That's because emissions are a function of miles traveled or hours in use. The fact that the average OHRV owner uses his or her red sticker vehicle 3.9 days per month in the summertime is immaterial and

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unhelpful unless one knows how many hours per day that vehicle is operating. It would appear, then, that CARB is using the daily use -- as opposed to hourly use -- metric to overstate emissions from OHRVs.

- Based on these findings, it appears that CARB's Initial Statement of Reason has provided inadequate evidence to support the proposed rule changes/amendments. This does not mean, however, that the current Red Sticker program cannot be improved to better accomplish its intended purpose. For example, CARB's survey of OHMC users indicates that most people ride their Red Sticker vehicles for general recreational purposes rather than for competitive racing. To address that concern and return the Red Sticker exemption to its originally-intended application, we suggest the following
 - Provide I.D. cards to participants in formally sanctioned race events and require that persons riding a Red Sticker vehicles maintain this card in their possession at all times.
 - Require that all persons riding a Red Sticker vehicle provide proof that they have registered for a permitted race/competitive event on public land.
 - Require that event sponsors issue practice permits for each permitted event, and require all participants to maintain such practice permit in their possession when riding their Red Sticker vehicles any time other than during the actual race event.
 - Require that all practice occur in areas on or near the event location and within a predetermined timeframe prior to the permitted event.
- We also suggest that CARB work closely with the OHMV manufacturers to (i) gradually reduce the number of red sticker vehicles that are introduced to the market each year, and (ii) phase out the practice of converting Green Sticker vehicles to Red Sticker vehicles to avoid the tighter emissions standards of the former. These changes, along with those described in the previous paragraph, would address the two most serious problems with the Red Sticker program. Moreover, they would be properly calibrated to the real issues that need attention, and would not be seen as an overreach by CARB.

Ultimately, we would ask that CARB take into consideration a fee structure that is affordable to the average middle income family. We would also like to see manufacturers have input into how best meet a pollution standard that would be both economically and environmentally responsible.

Very truly yours,



David P. Hubbard
of
Gatzke Dillon & Ballance LLP