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October 22, 2024

Via Electronic/U.S. Mail

Clerks' Office
California Air Resources Board
1001 I Street
Sacramento, CA 95814

Re: Comments to October 7, 2024, Proposed Amendments to the Advanced Clean Trucks Regulation and the Zero-Emission Powertrain Certification Test Procedure

Dear Executive Officer:

Our firm is retained by Municipal Maintenance Equipment, Inc. (MME)¹ to provide counsel for collaborative resolution of the current supply disruption of chassis and engines needed for medium- and heavy-duty vehicles performing essential public and health safety services.² MME and other similarly impacted companies joining this letter (collectively, "Impacted Businesses"),³ primarily attribute this disruption to provisions of the Advanced Clean Truck Regulation (ACT), adopted in June 2020,⁴ which, at a high level, requires original equipment manufacturers (OEM) to either: (1) sell zero emission vehicles (ZEV) as a certain percentage of their annual total sales in California; or (2) incur credit deficits for each non-ZEV (i.e., internal combustion engine-equipped (ICE) vehicles) produced and sold in California that must be later

¹ MME is a family-owned business established over three decades ago and currently employs approximately 50 people.

² In the California Air Resources Board (CARB) staff's September 24, 2024 memorandum to the CARB Board, titled, "California Truck Availability Analysis" (Staff Memo), these vehicles are referred to simply as "municipal equipment." (See Staff Memo, p. 4, < https://ww2.arb.ca.gov/sites/default/files/202409/240925_Actmemo_ADA_0.pdf > [as of Oct. 15, 2024].) We do not use the term "municipal equipment" herein as it does not encapsulate the essential role such vehicles have in our society. Further, the term "vocational vehicle" appears to be a specially defined term. (See e.g., Cal. Code Reg., tit. 17, § 95662, subd. (a)(28) [defining vocational vehicle as one subject to 40 Code Fed. Reg., § 1037.105].) Accordingly, we use the term "essential public health and safety service vehicle."

³ The companies joining this letter include the following: Haaker Equipment Company; Owen Equipment Company; Plumbers Depot; Mar-co Equipment; PB Loader Corporation; and GCS Environmental Equipment Services; and Arata Equipment Company. Collectively, through these companies, over 300 families are affected by the medium- and heavy-duty essential public and health safety service vehicle supply shortage.

⁴ ACT is codified at California Code of Regulations, title 13, sections (Section) 1963, 1963.2, 1963.3, 1963.4, and 1963.5.

neutralized (i.e., “made up”) through subsequent sales of ZEV or near ZEV (NZEV). (See Sections 1963.1, Table A-1 [ZEV Sales Percentage Schedule, 1963.3, subd. (b).] An OEM earns credits for each ZEV and NZEV “produced and delivered for sale in California for the model year,” except for vehicles where the ZEV or NZEV is counted towards compliance with a different regulation: “Zero-Emission Vehicle Requirements for 2026 and Subsequent Model Year Passenger Cars and Light-Duty Trucks” codified at Section 1962.4. (Section 1963.2, subds. (a) [ZEV credit calculation], (b) [NZEV credit calculation].)

The Impacted Businesses further attribute the supply disruption to the confluence of ACT and the Heavy-Duty Engine Omnibus Regulation (Omnibus Regulation) adopted in September 2021,⁵ and the resulting “internal business decisions” made by OEM. (See Staff Memo, p. 7.) Importantly, this supply disruption impacts the public’s health and safety. While not CARB’s intent when enacting the ACT and/or the Omnibus Regulation, the supply disruption is creating a severe shortage and is impeding, if not preventing, the Impacted Businesses from obtaining the necessary chassis and/or engines for the essential public health and safety service vehicles they supply to their customers, who are predominately state and local government agencies, as well as private companies that contract with government agencies. Because the Impacted Businesses’ customers are subject to various statutes and regulations (and in some instances, regulatory orders) imposing standards to ensure the protection of public health and the environment, if this supply disruption is not ameliorated quickly it will not only continue to adversely affect the Impacted Businesses and the essential public health and safety service vehicle provider market as a whole, but may also extend to the health and wellbeing of our communities and the environment.

The Impacted Businesses appreciate the Board and staff’s thoughtful discussions during the May 23, 2024, hearing (May Hearing), as well as CARB staff’s work in developing the Staff Memo investigating the causes of the medium- and heavy-duty vehicle shortage in California for model year (MY) 2024. The Staff Memo provides valuable insight and information regarding the availability and cost issues that could not have been obtained without staff’s efforts. Further, the revisions to the ACT now before the Board – Proposed Amendments to the Advanced Clean Trucks Regulation and the Zero-Emission Powertrain Certification Test Procedure (ACT Amendments) – are a step in the right direction to help address the supply issue.⁶ They will, however, have a limited positive effect on the essential public health and safety service vehicle market and/or the supply issue facing it, because under the ACT Amendments OEM must still be willing to accept credits to produce the needed medium- and heavy-duty ICE vehicles. As staff

⁵ The Omnibus Regulation amended emission standards for a variety of engine and vehicle types, as well as other related vehicle requirements (e.g., useful life), all of which are codified in numerous Sections, such that we do not provide a citation to them, unless we are referring to specific provision.

⁶ References to the “ACT Amendments” include only the additional amendments that CARB staff made available for public comment on October 7, 2024, as the initial amendments that CARB staff made available for public comment on March 26, 2024, are “not being made available for public comment by this Notice.” (Appendix A-1, Proposed ACT Amendments, p. 1 (Oct. 7, 2024) <<https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2024/actzepcert/15dayapp1.pdf>> [as of Oct. 16, 2024] hereinafter, “App. 1 to ACT Amendments.”)

noted in the May Hearing, the availability of credits is not the problem. The problem is that OEM – for an undetermined reason(s) – are not purchasing and/or using credits to meet the production demand for the essential public health and safety service vehicle market.

Thus, below we propose additional revisions to the ACT for the CARB Board and staff to consider. Importantly, the suggested amendments are narrow, applying only to the impacted essential public health and safety service vehicle provider market and include a sunset provision, thereby maintaining the push for the ZEV and NZEV technology to catch up and meet the operational demands of the essential public health and safety service vehicle market, but still keeping the Impacted Businesses operating and our communities clean and safe.

Impacted Businesses' Customer Base

A majority (approximately eighty-five percent (85%)) of MME's sales and leases are made to government agencies – the state, counties, municipalities, and local special districts – that provide essential public health and safety services, as well as emergency services. MME's remaining sales and leases are attributable to private companies who generally contract with government agencies to provide those same services. The companies joining this letter have a similar customer base. Thus, while the Impacted Businesses are private entities, the ramifications of the supply disruption touch all those who receive the essential public health and safety and emergency services provided by, or through, government agencies.

Essential Public Health and Safety Service Vehicles and Supply Shortage

The vehicles providing the essential public health and safety services come in diverse configurations and serve specific and unique purposes. The vehicles include (and are not limited to) vactor trucks (used to clean sewers and sewer lines), refuse trucks, street sweepers, snow removal vehicles, dump and haul trucks, sign trucks, lift trucks, and asphalt transport and patch trucks. These vehicles also respond to emergency situations, such as mitigating or preventing storm-induced overflow releases from sewer systems and hauling debris after floods and wildfires. Given these vital services, these vehicles typically operate until a job is complete, rather than for a time certain, making the need for frequent charging – a characteristic of current ZEV and NZEV technology – unworkable.

Additionally, they are specially outfitted with bodies and equipment necessary to respond to the essential public health and safety services they provide. Such outfitting affects a vehicle's available space to accommodate a suitable battery system, as well as its gross vehicle weight rating (GVWR). In the case of a refuse collection truck, for example, equipment will include at least the container, compaction plate, and discharge plate. Accordingly, these essential public health and safety service vehicles require chassis in the ACT's "Class 5" or higher, which are vehicles with a GVWR of 19,501 pounds and greater, some of which exceed 33,001 pounds. (See Section 1963, subd. (c) [definitions of "Class 5," "Class 6," "Class 7," and "Class 8"].)

Notably, there are only six distinct “classes” of vehicles under the ACT,⁷ and the essential public health and safety service vehicles at issue fall within four of those six possible classes (Classes 5, 6, 7, and 8). Indeed, the Staff Memo expressly notes that the vehicle “shortage varies by vehicle type, but generally affects Class 4-8 diesel [heavy duty] vehicles, *with a prevalent impact on Class 6 and 7 vehicles* (which typically use medium heavy-duty (MHD) engines).” (Staff Memo, p. 3, emphasis added.) Despite the overwhelming impact to Classes 4 through 8, however, there is little regulatory relief in the ACT under which OEM may produce the essential public health and safety service vehicles within these impacted classes. This contrasts with the relief available for other specialty vehicles. (Section 1963, subd. (c) [definitions of excluded bus and vehicle].)

Impacted Businesses Need Relief from OEM Business Decisions

The Staff Memo suggests to us that the supply issue facing the essential public health and safety service vehicle market may not be redressable without a regulatory exemption or other regulatory relief. While the ACT and the ACT Amendments include alternatives to the ZEV production requirement (e.g., deficit generation and allowing secondary vehicle manufacturers to trade, sell, or otherwise transfer credits with OEM,⁸ respectively), the OEM are not producing sufficient ICE or ZEV/NZEV vehicles in Classes 4 through 8 for internal business reasons. Specifically, the Staff Memo states:

All of the regulated OEMs have ZEV products available for the market in the 2024 MY,^[9] and many have already sold ZEVs in previous years to build up an early credit bank. Most manufacturers have also indicated that they are open to purchasing ACT credits from other OEMs *if the economics make sense but would ultimately prefer to sell ZEVs themselves*.

(Staff Memo, p. 4, emphasis added.) If a cause of the supply disruption is due to OEM wanting to generate their own credits, the ACT Amendments allowing secondary manufacturers to “trade, sell, or otherwise transfer ZEV and NZEV credits” will have limited – if any – impact on ICE

⁷ The ACT includes the following distinct classes: Class 2b-3; Class 4; Class 5; Class 6; Class 7; and Class 8. (Section 1963, subd. (c).) The ACT also includes class groups (e.g., “Class 2b-3,” “Class 4-8 group,” and “Class 7-8 tractor group,” which group together “all of the on-vehicles” within the enumerated classes. (*Ibid.*)

⁸ This revision is found in ACT Amendments Section 1963.2, subd. (e). (See App. 1 to ACT Amendments, p. 8.)

⁹ While there are “ZEV products available for the market in the 2024 MY[.]” for Classes 5 through 8, the Impacted Businesses understand that the options are either severely limited (i.e., one manufacturer – Peterbilt) and/or the option(s) cannot meaningfully meet the operational demands of the essential public health and safety service provided thereby (e.g., an electrified dump/haul truck can only dump two loads before needing to recharge, which is exclusive of the battery demand to travel). Thus, even though a ZEV or NZEV supply may exist, it is not sufficient to meet the demand of the *entire* essential public health and safety service vehicle market, and may not meet the requisite operational demands of a vehicle performing the essential service. These ramifications, coupled with ACT’s production requirements and/or deficit generation, have constrained OEM’s production ICE vehicles in Classes 5 through 8.

vehicle production because the OEM want to generate their own credits for their own uses, whether that be vehicle production or selling credits for revenue generation. (App. 1 to ACT Amendments, p. 8.)

Further, these amendments, while creative and solution-oriented, leave the Impacted Businesses at the mercy of OEM business decisions. The Staff Memo goes on to state:

Some [OEM] have expressed plans to begin implementing a rigid policy to require each dealer or upfitter to purchase a certain number of ZEVs from the manufacturer before they can get any ICEs whether or not the manufacturer offers ZEVs in the market segment the dealer specializes. For example, one dealer may focus on selling school buses which are already being electrified today while another may focus on specialized municipal equipment.

(Staff Memo, p. 4, emphasis added.) This is troubling because it suggests that one day, in order for the Impacted Businesses to acquire sufficient ICE vehicles to service their essential public health and safety service vehicle market, they may also be forced to purchase ZEV they do not need and that are for a market they do not serve. How does OEM forcing public health and safety service vehicle providers to purchase ZEV for a market they do not serve, just so they can obtain sufficient ICE vehicles, further the express goal of the ACT to “reduce emissions of oxides of nitrogen (NO_x), fine particulate matter [(PM)], other criteria pollutants, toxic air contaminants, and greenhouse gases (GHG) from medium- and heavy-duty on-road vehicles”? (Section 1963 [purpose of ACT].)

Lastly, increasing the way OEM may source credits to possibly manufacture ICE vehicles – an amendment before the Board – may not result in the actual manufacture of the ICE vehicle classes needed for the essential public health and safety service market. The Staff Memo acknowledges this, stating: “Product offering by OEM[] are based on internal business decisions ... focus[ing] production efforts on platforms with the highest profit margins while eliminating low-margin products ... *even if additional [medium heavy-duty] engines become available, they may or may not end up being used for tow truck or municipal applications.*” (Staff Memo, p. 7, emphasis added). Indeed, such increased credit sourcing will also not impact the technology for, and production of, ZEV and NZEV to become ubiquitous in the essential public health and safety service vehicle industry. Thus, the Impacted Businesses request CARB to take additional action to provide additional regulatory relief under the ACT for these essential public health and safety service vehicles to address the supply disruption.

Proposed Regulatory Relief

The Impacted Businesses suggest two ways CARB may provide meaningful regulatory relief. CARB can exempt from OEM deficit generation certain medium- and heavy-duty on-road ICE vehicles (e.g., Classes 5 through 8, or the Class 4-8 group) that are both sold in California and are for an essential public health and safety service. This exemption should be for a limited duration (e.g., five years), or until the Executive Director determines certain criteria, such as that: (1) the available supply of ZEV or NZEV in the exempted classes is capable of meeting the

operational requirements of the essential public health and safety service vehicles (e.g., torque, duration of operation, etc.); or (2) the supply disruption for the ICE vehicles within the exempted classes is resolved. In either instance, the sunset provision will protect our communities and environment, while still encouraging “the market for on-road [ZEV.]” (Section 1963 [purpose of ACT].) Importantly, it will not only incentivize OEM to allocate a higher percentage of their resources to the essential public health and safety service vehicle market, it will also allow the independent, family-owned businesses selling and leasing these essential public health and safety service vehicles, like the Impacted Businesses, to remain operational.

Another potential form of regulatory relief is entity-specific and draws on our past experience representing the City of San Bernardino Municipal Water Department (Department) in achieving compliance with South Coast Air Quality Management District (SCAQMD) Rule 1196.¹⁰ Similar to the purpose of ACT, the SCAQMD designed Rule 1196 to “reduce air toxic and criteria pollutant emissions” by requiring public fleets operating heavy-duty vehicles within SCAQMD’s jurisdiction to acquire alternative-fuel or dedicated gasoline heavy-duty vehicles when procuring or leasing new vehicles. The Department is funded entirely by the ratepayers of the disadvantaged communities it serves – the City of San Bernardino and its surrounding areas – and provides the essential public health and safety services of wastewater collection, wastewater treatment, and potable water treatment and distribution. Without SCAQMD staff negotiating with us a regulatory carve-out for the Department to achieve Rule 1196 compliance over a term certain (i.e., a stipulated order for abatement), and the SCAQMD hearing board’s findings and decision supporting that carve-out, the Department would have been precluded from operating its vehicles, impeding its ability to provide its essential wastewater and potable water services to an entire city and surrounding areas. Over the course of six years, the Department achieved compliance with Rule 1196, after spending approximately \$1.9 million to replace 12 vehicles.

SCAQMD’s cooperation in this example may be a framework from which CARB can develop a process by which it grants orders for entities like the Impacted Businesses, who either directly – or whose customers – provide similar essential public and health safety services. Under this form of regulatory relief, MME could, for example, seek an order from CARB authorizing a specific OEM with whom MME has a purchase order to produce the number of medium- and/or heavy-duty ICE essential public health and safety service vehicles specified in the purchase order, and specifically for MME’s customers, with whom MME also has a purchase order. The purchase orders in both instances would be contingent upon CARB’s approval of the production, but would evince the specific use of the vehicles produced: essential public health and safety service. Further, to redress the stymied ICE production and to incentivize participation from OEM, the production of the ICE vehicles under this process would not generate a deficit for OEM which, based on the Staff Memo, appear disinterested in either using others’ credits or generating deficits to produce ICE vehicles in the Classes 4 through 8, at least for 2024 MY.

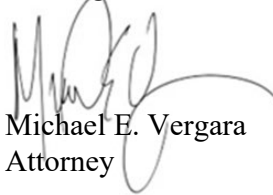
¹⁰ SCAQMD Rule 1196 is titled, “Clean On-Road Heavy-Duty Public Fleet Vehicles.”

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Conclusion

The Impacted Businesses reiterate their appreciation for CARB staff and the Board's care and attention in amending the ACT. The regulatory relief suggested herein is the Impacted Businesses' effort to address this complex issue, over which both the Impacted Businesses and CARB have limited control to resolve directly. Nevertheless, the proposals herein seek to restore the market and power balance between OEM and their customers for Class 4 through 8 vehicles. Importantly, the Impacted Businesses support the transition to ZEV and NZEV and do not seek to be a barrier to that progress. They do, however, seek assistance in ensuring their survival while the ZEV and NZEV technology and market meet the demands of the essential public and health safety service vehicle market. We welcome the opportunity to engage further and discuss these and any additional possible solutions that advance the goal of the ACT and Omnibus Regulation, while reasonably addressing the supply disruption encountered by the essential public and health safety service vehicle sector.

Best regards,



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cc: CARB Chair and Board Members (*email only* - arbboard@arb.ca.gov)
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