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December 9th, 2019

Mary Nichols, Chair, California Air Resources Board
1001 I Street Sacramento, CA 95814

RE: Support for a Stronger Advanced Clean Trucks Reporting Requirement

Dear Chair Nichols and members of the California Air Resources Board:

We, the undersigned, including California Teamsters Public Affairs Council, BlueGreen Alliance, Los Angeles Alliance for a New Economy (LAANE), Sierra Club California, Working Partnerships USA, Central Coast Alliance United for a Sustainable Economy (CAUSE), Natural Resources Defense Council (NRDC), EarthJustice, Center for Community Action and Environmental Justice (CCA EJ), Warehouse Workers Resource Center (WWRC), Strategic Concepts in Organizing and Policy Education (SCOPE), the Partnership for Working Families (PWF), Center on Policy Initiatives (CPI), and Jobs to Move America (JMA) respectfully offer the following comments on the proposed Advanced Clean Truck Reporting Requirement regulation.

We write, first, to express our support for the Reporting Requirement in concept. The Board and stakeholders need accurate industry data to engage in informed dialogue around Fleet Rule policies. Without data provided by the Reporting Requirement, informed policymaking and stakeholder engagement will be constrained.

Secondly, we implore the Board to consider strengthening the Reporting Requirement. The Requirement currently captures insufficient data on key industry sub-sectors. *For instance, the Reporting Requirement as currently written would capture data on only 26 trucking firms, or less than 2% (1.97%) of all active trucks, at the San Pedro Bay Ports.*¹ For drayage--and other important segments for near-term electrification, like parcel delivery--such a low percentage of reporting entities is untenable, and cannot form the basis for sound policy analysis.

We recommend the following changes to improve industry coverage in the Reporting Requirement:

1. Lower the firm size threshold for reporting for key industry sub-sectors

Currently, the Requirement covers trucking entities with either 100 vehicles dispatched over 8500 GVWR, or with gross annual revenues in excess of \$50 Million.

We recommend that CARB lower firm size thresholds for drayage, parcel delivery, construction, and long haul trucking entities to 15 or more dispatched vehicles in the 2019 calendar year. As detailed in the 'background' section below, small firms and sub-contractors proliferate in these specific industry sub-sectors. A sound model of these sub-sectors--and subsequent fleet policies for them--cannot be developed without data on the extent of smaller firms.

2. Clarify the distinction between subhaulers and subcontractors and that all businesses operating under contract are covered.

As written, the distinction between subhaulers and subcontractors is confusing. The paragraphs pertaining to contracted work should convey a clear intent to capture data on all businesses operating under contract.

3. Collect data on all contractors, not just those with 1+ year contracts

Currently, covered entities are required to enumerate subcontractors engaged in 2020 with a one year or longer contract (§2012.1.(a)(13)). Many contracts in the trucking industry, however, are shorter than this duration. Reporting based on this contract length will offer a distorted picture of the industry. In drayage trucking, for instance, companies regularly engage contractors every 90 days with a new contract; and some even require a new contract every month, or less.

We recommend that CARB require covered entities to report total subcontractors engaged, regardless of the length of contract. We also recommend that CARB require

¹ See page 4, *Port of Los Angeles - Clean Truck Program - Gate Move Data Analysis*. Available online: https://kentico.portoflosangeles.org/getmedia/3aa9df60-41b3-4d51-803a-cbbabb6401cf/POLA-Monthly-Truck-Move-Analysis-July-2019_webposting.

reporting of discrete numbers of contractors and subhaulers engaged, as opposed to using ‘bins’.

4. *Collect data on total hauls and hauls performed by direct employees/direct employees of contractors*

To straightforwardly understand how heavily firms rely on contractors, CARB should require firms to also report total hauls and hauls made by direct employees. These data would most directly tell CARB the extent to which trucking entities rely on contractors or employees.

5. *Annual reporting*

As the trucking industry undergoes various large scale transformations over the next five years, CARB and interested stakeholders would be well-served to see annual reports on vehicle usage and business practices from covered firms.

Finally, we recommend that the Board signal its strong support for a trucking industry built on fair business practices. We recommend that the agency indicate its intent, in rulemaking language, to encourage responsible business practices including fair and legal competition, respect for the trucking workforce, and high road economic development practices including training, graduated and livable pay with sufficient fringe benefits, safe workplaces, and compliance with all applicable labor, health, environmental, and safety laws. Such statements indicate the Board’s commitment to a Just Transition in the trucking sector.

Issue Background

Through the course of the Advanced Clean Trucks rulemaking, our groups have consistently drawn attention to the need for comprehensive reporting on contractors and driver misclassification.² Our top line point on contracting is that firms that rely on contractors, particularly misclassified contractors, are positioned poorly to adopt clean truck rules. Consequently, they violate fleet rules. These firms also regularly violate labor laws and contribute to poor labor outcomes widespread in trucking. We posit that CARB should fully account for contracting in the industry in order to develop implementable and successful fleet rules.

CARB enforcement data make evident the extent of the adoption barrier posed by contracting. In *Truck Driver Misclassification: Climate, Labor, and Environmental Justice Impacts*, UC Berkeley Labor Center researchers describe disproportionate fleet rule non-compliance among contractors:

² Refer to July 2019 comments to CARB staff entailed in comment docket submission.

As a result of the capital barriers contractors face, this segment of the trucking industry has the lowest compliance rates with California's current clean vehicle regulations, with compliance rates of 61% with the landmark Truck and Bus Rule, compared to 83% for large firms that directly employ truck drivers. Non-compliant trucks in the contractor segment represent 44% of all non-compliant trucks, a significantly greater share than their share of all operating trucks.³

Contractors far and away earn lower incomes and face higher capital costs than their employed driver counterparts. Under the contractor business model, low-income drivers bear the financial burden for vehicle transition.

Communities bear the predictable costs of poor environmental compliance among contract truck drivers. According to CARB, diesel PM emitted by vehicles subject to the Truck and Bus Rule accounts for 70% of cancer risk from toxic air contaminants in California.⁴ And non-compliant trucks roughly double PM 2.5 emissions statewide versus a full-compliance scenario, according to CARB data.⁵ Non-compliance among contractors in existing regulation should not be carried over into the Advanced Clean Trucks suite of rules.

Contractor non-compliance is a significant barrier to achieving our climate goals and will impede roll out of fleet rules if not well studied and accounted for. We hope the Board will take these concerns of environmental, labor, and environmental justice organizations into account.

Thank you for considering these comments. We look forward to continuing to work with the Board on the Advanced Clean Trucks regulations.

Sincerely,

Shane Gusman
Legislative Director
California Teamsters Public Affairs Council

Sam Appel
California Policy Organizer
BlueGreen Alliance

³ Available online: <http://laborcenter.berkeley.edu/truck-driver-misclassification/>

⁴ CARB Truck and Bus Regulation Homepage. Available online: <https://ww2.arb.ca.gov/our-work/programs/truck-and-bus-regulation>

⁵ CARB Informational Update. December 2018. Available online: <https://www.arb.ca.gov/board/books/2018/121318/18-105pres.pdf>

Roxana Tynan
Executive Director
Los Angeles Alliance for a New Economy

Katherine Garcia
Policy Advocate
Sierra Club California

Jeffrey Buchanan
Director of Public Policy
Working Partnerships USA

Maricela Morales
Executive Director
Central Coast Alliance United for a Sustainable Economy

David Pettit
Senior Attorney
Natural Resources Defense Council

Paul Cort
Staff Attorney
EarthJustice

Andrea Vidaurre
Policy Analyst
Center for Community Action and Environmental Justice

Sheheryar Kaoosji
Executive Director
Warehouse Workers Resource Center

Abhilasha Bhola and Hector Huevo
California Senior Policy Coordinator and Senior Policy Equity Coordinator
Jobs to Move America

Laura Muraida
Research Director
Strategic Concepts in Organizing and Policy Education (SCOPE)

Lauren Jacobs
Executive Director
Partnership for Working Families

Kyra Green
Executive Director
Center on Policy Initiatives