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California Air Resources Board
1001 I Street
P.O. Box 2815
Sacramento, CA 95812

Re: Suspend All Diesel Regulations

Dear Board Members:

I am writing as a businessman of some 45 years in California requesting you to suspend all CARB diesel regulations until misconduct and malfeasance in the development of these mandates are properly investigated and it is determined how such official misconduct have resulted in inappropriate regulatory actions and policy making. Over the past 2 years I have strongly recommended that CARB examine its conduct in the affairs of diesel regulation writing and have been ignored.

I have emphasized in the past that the diesel regs will result in:

- The annihilation of most small and medium size businesses who do not have the capital and are unable to borrow due to the devastation of their financial statements by CARB's mandated extirpation of their assets. This will result in increasing the unemployment rate substantially culminating in decreasing tax revenues and increasing expenses to the State, which is exactly opposite of what the State should be doing at this time.
- The elimination of used equipment available in California will be the biggest barrier to entry into the market by small contractors as the expense of new is prohibitive to start-ups. This reduces competition, employment and the tax base necessary to support government.

Again I maintain that the CARB should follow the law, specifically in regards to the economic impacts that CARB should consider:

- The Federal Clean Air Act (42 USC.7410(k) and (40 CFR 52.02(a) states, in part: "...Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601). These regulations will destroy most, if not all small businesses in the "diesel smoke industries" in California. I believe that will "fit the requirement" of a "significant economic impact on a substantial number...". For the Board to "certify otherwise" could only be described as another artifice.
- The attempt to "fix" only approximately 3% of the total Pm in the atmosphere (the amount resultant from diesel exhaust) through the horrendously expensive trucking, off-road and portable regulations amounts to an arbitrary and capricious regulation, which is also illegal under the Federal Clean Air Act, Section 209 (42 U.S.C. 7543) "No such waiver shall be granted if the Administrator finds that - (A) The determination of the State is arbitrary and capricious,..." (A common sense interpretation of arbitrary and capricious would include not allowing

unqualified individuals write the report promoting the regulation, biased individuals reviewing such regulation but also unconvincingly minimizing serious criticisms put forward in the public comments).

CARB has made a mockery out of “scientific studies” and the “peer review” process.

- The CARB “Tran” report should be completely redone by a new non-partisan group of real experts who are not lead by a dishonest scientist with a mail order “PhD”. CARB re-defines “peer review” by picking “reviewers” that were directly involved with, advocates of, and even authors of several of the primary studies that the report is based upon! This can only be called an incestuous and conflicted review! Specific names and relationships will be supplied upon request to support these statements.
- CARB cannot appropriately claim that Californians are dying prematurely from diesel particulate matter when California is rated the 4th LOWEST age-adjusted total death rate among all states, based upon CDC statistics (www.wonder.cdc.gov). Additionally, CARB’s report does not consider the REAL HEALTH EFFECTS caused by loss of employment, health insurance, etc. resulting from the regulations. A recent study by Pope, Ezzati and Dockery reports that a change in income affects health considerably more than a change in PM2.5. Loss of employment will definitely “change the income”!

The imposition of a diesel regulatory regime raises other questions:

- The Fifth Amendment to our Constitution states, in part: “...nor shall private property be taken for public use, without just compensation.” CARB, through edict, has “taken” my private property for the “public use”. In this case, (for supposed public health purposes) CARB has forbidden me to use or sell in the State of California perfectly legal (when purchased) equipment that is completely functional and has not reached the end of its useful life! This commanded “non-use” amounts to a “taking of my private property” without compensation! These ex post facto regulations expose the State of California to a class action lawsuit which would be in the tens of billions of dollars.
- The supposed reimbursement for upgrading equipment purported by CARB has not been forthcoming due to the fact the California cannot sell the bonds to be used for this purpose. Even if so, the amount portended to reimburse those affected did not begin to approach the amount of loss, as only a few firms and individuals would “qualify”, not to mention the few million dollars apportioned to solve a multi billion dollar expense.
- These decrees were passed by a potentially illegally composed Scientific Review Panel, which is under a June 18, 2009 lawsuit filed by the Pacific Legal Foundation. No regulation should be implemented until the conclusion of this lawsuit, as it could lead to the voiding of all of the statutes promulgated.

I remind you again items from commentary previously offered:

- Although requested, the U.S. EPA has not given CARB the required waiver of preemption on diesel engines under 175 Hp. CARB cannot regulate these engines without the waiver, yet illegally proceeds with edict(s) unabated.
- All of the epidemiological studies used by CARB portending to show resultant disease or early deaths that would be caused by diesel particulate matter fail miserably to reach the minimum requirements for submission as evidence in a Federal Court (Reference Manual on Scientific Evidence, Second Edition, specifically, the chapter “Reference Guide on Epidemiology”). As

this regulation of diesel smoke and particulate matter is resultant of Federal Clean Air Act requirements, any lawsuit filed would be in Federal Courts. Without CARB's ability to supply even one study that meets minimum requirements, CARB's reasoning for regulations would be moot and thrown out.

- Although weak relationships may exist elsewhere in the United States, there are six independent sources of epidemiologic evidence indicting that there is NO current relationship between fine particulate matter and premature death in California and this "California Specific" evidence has not been fairly considered by CARB.
- The new engines and Diesel Emission Controls required do not work in high traffic environments and shut down automatically in heavy traffic, exacerbating the very condition they are supposed to solve, not to mention the lack of fuel mileage and additional downtime and repair costs experienced by those who have purchased them.

The economic consequences of the regulations will curtail indefinitely, if not end the potential of an economic recovery in California through the massive destruction of businesses and resultant unemployment. All of this from data-mined studies by a dishonest scientist, reviewed by folks who either wrote the studies or have clear conflicts of interest and confirmed by a possibly illegally composed Board to be bulldozed on industries without regard to lucid and cogent refutation to the denouements.

Now is not the time, nor does CARB have adequate studies or rationale to support such draconian regulations. There are a number of knowledgeable folks who have presented cogent arguments debunking the "Tran" report, all of which were summarily ignored by CARB using what one could only call sophomoric palliatives. I will not be more specific about which ones I am referring to at this juncture, but would be more than pleased to be a part of the discussion and would supply particulars at that time.

Ron Roberts published opinion in the Fresno Bee on December 05, 2009 entitled "Gaining some extra time to breathe" finishes with the statement "We need to clear the air of this controversy". He is correct. The California Air Resources Board needs to "clean up its own house" before it attempts to "clean up California".

Thank you very much for your consideration regarding this important matter.

Sincerely yours,



Norman R. Brown
President