STATE OF NEW MEXICO
ENVIRONMENT DEPARTMENT

Environmental Protection Division

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September 23, 2009

Clerk of the Board
Air Resources Board
1001 I Street
Sacramento, CA 95814

Re: CARB ISOR "Notice of Public Hearing to Consider Proposed Amendments to New Passenger Motor Vehicle Greenhouse Gas Emission Standards" (Scheduled for Consideration: September 24, 2009)

Dear Sir or Madam:

The New Mexico Environment Department (NMED) hereby submits its comments in response to the California Air Resources Board's (CARB's) July 28, 2009 "Notice of Public Hearing to Consider Proposed Amendment to New Passenger Motor Vehicle Greenhouse Gas Emission Standards" (Notice) and the related Initial Statement of Reasons (ISOR).

NMED has reviewed the Notice and the ISOR and strongly supports CARB's proposed amendments. NMED appreciates CARB's inclusion of New Mexico as part of the multi-state compliance averaging option beginning in the 2011 model year despite the fact that there is on-going litigation challenging New Mexico's Motor Vehicle Greenhouse Gas Emission Standards. NMED is endeavoring to resolve the litigation short of adjudication but is also confident that it would prevail in court given the dealer plaintiffs' lack of standing and the compelling precedent set by district courts in Vermont and California in the auto industry's identical lawsuits brought in federal courts in those states.

NMED is aware of the May 2009 commitment letters and White House announcement referenced in the CARB Notice. Shortly after those events, we requested that the dealer plaintiffs in the New Mexico litigation agree to stay the New Mexico litigation, as was done in the Vermont, California, and Rhode Island appeals. Despite the dealer plaintiffs' subsidiary and derivative interest in the matter, as well as

the obvious coordination between the New Mexico dealer plaintiffs and the manufacturer plaintiffs in the Vermont, California, and Rhode Island litigation (including the use of the same counsel), the dealer plaintiffs have refused to provide a similar commitment to cease litigation. Instead, the dealer plaintiffs have only agreed to a series of continuances of the pending motions, based upon dubious claims of needing to review future rulemaking documents. NMED continues to request a commitment to stay the litigation from the New Mexico plaintiffs, as shown by the accompanying letter from the New Mexico Attorney General's Office.

NMED understands that, given these circumstances, CARB could have reasonably determined to exclude New Mexico from the pooling amendments. However, we are hopeful that CARB will not exclude New Mexico from the multi-state compliance averaging group as a result of the automobile dealer plaintiffs' refusal to honor the automobile industry's agreement to cease litigation as expressed in its May 2009 commitment letters. It must be remembered that this litigation is being controlled by the National Automobile Dealers Association (NADA) and its counsel for their own purposes, rather than individual dealers in New Mexico. In fact, we were extremely disappointed to learn that NADA recently filed yet another lawsuit challenging EPA's waiver decision.

Several of the individual New Mexico dealer plaintiffs have gone out of business for reasons completely unrelated to the greenhouse gas standards. Even if excluding New Mexico from the pooling amendment were an appropriate response to NADA's agenda, it might also inadvertently punish individual dealers in New Mexico who are not responsible for this litigation.

While NMED did not directly participate in the negotiations that led to the issuance of the May 2009 commitment letters, NMED shares in the spirit of cooperation expressed in those letters and hopes that the compromise called for in those letters will come to fruition, despite the NADA's apparent decision to undermine those efforts.

NMED appreciates your consideration of our comments. Please contact Sandra Ely at (505) 827-0351 if you have any questions regarding these comments.

Sincerely,

Jim Norton
Director
Environmental Protection Division