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AIR QUALITY COALITION

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Southern California
Contractors Association

July 20, 2009

Mary Nichols, Chairman and
Members of the Board
California Air Resources Board
1001 "I" Street
P.O. Box 2815
Sacramento, California 95812

**RE: Proposed Amendments to the Regulation for In-Use Off-Road
Diesel-Fueled Fleets**

Dear Chairman Nichols and Board Members:

The Construction Industry Air Quality Coalition (CIAQC) appreciates the opportunity to comment on, and offer its recommendations for the Proposed Amendments to the Regulation for In-Use Off-Road Diesel-Fueled Fleets (Off-Road Regulation). The June 2009 proposed amendments are to incorporate the changes to the Off-Road Regulation as legislatively directed in Assembly Bill (AB) 8 2X. CARB states that the intent of AB 8 2X, is to provide economic relief and to preserve jobs in the construction industry, which is currently facing difficult times due to the current global recession (Assembly, 2008; Senate, 2008).

The construction industry has been severely impacted by economic slowdown in California. The loss of construction jobs continues to climb and available resources necessary to upgrade construction fleets dwindle. Contractors have dramatically reduced the size of their fleets, turning over older equipment that is prohibited from reentering the California fleet. This shrinking of the California fleet is occurring at a pace greater than CARB anticipated when the Off-Road Regulation was created. The result is permanent and real emission reductions greater than anyone expected.

CIAQC generally agrees that staff has attempted to incorporate the legislative changes into the existing regulation. However some very important matters remain. These are the methodology for establishing the baseline for reduced fleet activity, additional reporting requirements for the sale of vehicles and the added clarification for the safe installation of Verified Diesel Emission Control Systems (VDECS). CIAQC offers specific recommendations and suggestions for these below.

As a general comment, CIAQC continues to be concerned that the Off-Road regulation is extremely complex. CIAQC has heard over and over again from the regulated community that that it is nearly incomprehensible and very

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difficult to understand. We hope that future reviews of the regulation can address this complexity.

Comments on proposed amendments

Reduced Fleet Activity

A fleet must compare two periods of time to determine if a reduced activity credit is applicable to it. CIAQC agrees that a 12-month period is appropriate for establishing both a starting and ending point. AB 8 2X creates a credit provision for reduced activity between July 1, 2007, March 1, 2010.

CARB staff proposes using the 12-month period prior to the March 1, 2010 ending date of March 1, 2009 to February 28, 2010 to establish the ending period activity level. Consistent with this, CIAQC believes the beginning period should rely on the preceding 12-month period of July 1, 2006 through June 30, 2007 to establish activity level.

It is our desire that there be flexibility to establish a 12-month activity level baseline. CIAQC has attempted to explain to your staff that many contracts for our industry last two to three years in duration and that in some instances (perhaps in as much as 25% of the cases) contracts may run over the planned time period. For this reason, we recommend that a fleet should be able to establish a beginning 12-month baseline between the two legislative dates if the period appropriately reflects the fleet's activity. This would allow flexibility for a determining a 12-month fleet activity period beginning between July 1, 2006 to March 1, 2008.

Sale of Vehicles

The proposed requirement for the seller of a vehicle to notify CARB within 30 days of a sale is unnecessary and adds to the already extensive reporting requirements of the regulation. Due to the recession, companies are downsizing and not adding employees. Creating a new burden on a seller will add to the already significant reporting requirements of all fleets and will not result in emission benefits. Currently the buyer of a vehicle is required to report the purchase to CARB within 30 days.

CIAQC recommends that when CARB receives notice from the purchaser of a registered vehicle, that the DOORS reporting program automatically send an email notice to the registered owner on file (seller) to seek verification that the vehicle has been sold. This would require minimum staff time, avoid the creation of additional requirements that carry the potential for penalties and violations and facilitate updated vehicle owner status.

VDECS That Impair Safe Operation of Vehicle

Staff proposes to add language to the regulation that states: “The Executive Officer shall accept the official findings of the responsible federal or state agency that compliance with the requirements of this regulation would make compliance with the federal and state safety or health requirements impossible.”

This section should address the potential conflict between requirements of the off-road regulation and compliance with federal and state safety or health requirements due to the design of the equipment and design configurations when installations cannot be accomplished due to safety concerns or design barriers. The use of the word “impossible” however establishes a standard or threshold determination that state or federal agencies will not be able to make. This could be addressed with the term ‘not practicable’ rather than ‘impossible’.

CIAQC also recommends that CARB should inform the party requesting a determination that a VDECS not be considered the highest level available within 30 days, rather than 60, as currently required. The high cost of VDECS and their central role in regulatory compliance requires fleets to make expensive and complicated choices. The longer response time increases uncertainty and postponed decision-making results in higher compliance costs.

Additional Incentives for Early Action

CIAQC supports additional incentives proposed at this time. It is important to note that the availability of retrofit devices is still very limited. CIAQC continues to be concerned about the future availability of VDECS and the ability and capacity of VDECS manufacturers to fulfill the needs of the regulation, as well as costs. CARB reports that 400 retrofit devices are currently installed on the California fleet. This number will necessarily increase dramatically as compliance dates approach. The verification process must operate as efficiently as possible to prevent testing backlogs and delays.

CIAQC recommends that future NOx turnover requirements if the highest level VDECS are installed prior to March 11, 2011 not be limited to 15% as proposed. To achieve maximum participation, incentives should not be limited. Staff must quantify how it determined that increasing the proposed 15% limit could forego over a third of total NOx emission benefits.

State of the California Construction Industry

The impact of the off-road regulation cannot be examined without considering the current economic state of the construction industry in California. The economy has changed dramatically since 2006 when the staff compiled their original optimistic assumptions about the future of the industry (CARB estimated off-road activity growth rate of 8% per year). Not only

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were the CARB assumptions way off base, but the framework of the existing rule goes well beyond the economy in crippling the industry in California. We believe that significant and substantial relief is warranted given these facts.

As CARB continues to gather vehicle registration data over the next couple of months, we believe the emission reduction benefits associated with reduced activity and vehicle retirements that have occurred (and will continue in the foreseeable future), will become more clear. In October 2009 CARB staff is scheduled to provide to the Board an update of the status of the implementation of the regulation. By that time all fleets will have performed their initial reporting, and an accurate equipment inventory of equipment in California will be available for the first time. By the end of March 2010, all large fleets will have reported the actions taken to meet the first year compliance. This reporting will also include an updated equipment inventory. These data will provide a basis for a reexamination of the emission inventory and projected emission reductions. CIAQC recommends that CARB staff provide an outline of how it intends to address this moving forward.

In conclusion CIAQC would like to thank the Board and its staff for working with us and the regulated community on the update to the regulation. We recognize the work and effort by your staff and the construction industry has already taken place. CIAQC is ready and will to through the end that a regulation of this magnitude is technically and economically feasible, results in real emission reductions and does not destroy an industry that provides an essential service to the residents of California.

Please do not hesitate to contact me if you have any questions or would like to discuss our recommendations further.

Sincerely,

A handwritten signature in black ink that reads "Michael W. Lewis". The signature is written in a cursive, flowing style.

Michael W. Lewis
Senior Vice-President

Attachment: California Legislature re: Legislative intent regarding ABX2 8 with regard to off-road diesel regulation; 4-22-2009

California Legislature

April 22, 2009

Ms. Mary Nichols, Chair,
California Air Resources Board
1001 I St
Sacramento, CA 95814

Re: Legislative intent regarding ABX2 8 with regard to off-road diesel regulation

It has been brought to our attention that the staff of the California Air Resources Board is struggling with the question of legislative intent regarding ABX2 8 related to the off-road diesel regulation, passed as a part of the budget compromise of 2009 with a strong bi-partisan vote.

To assist ARB staff with their implementation actions with regard to ABX2 8, we are providing the following as a statement of intent from the California Legislature on this matter.

The underlying intent of ABX2 8 is to provide economic stimulus and preserve jobs in the construction industry by acknowledging the large reduction in emissions from that market segment. This relief is based on the unforeseen economic conditions which have reduced both the activity and financial capacity of California's construction industry impacted by this rule.

The legislature believed these factors and the early compliance efforts of many fleets have already reduced the emissions of this industry to levels far in excess of current ARB requirements.

The legislation provides three specific areas of relief.

The first adds an additional compliance option to the so-called best available control technology (BACT) turnover/retrofit requirements. This change largely defers repowers and retrofits in 2011–2012 for large fleets, based on specific criteria. The large-fleet initial compliance deadline of March 1, 2010, is unaffected by this change, although the additional credits provision should meet that need.

Our intent is to lower turnover and retrofit percentages in 2011 and 2012, thereby reduce capital outlays in these years, and preserve jobs.

The second change allows a fleet to claim early nitrogen oxide (NOx) and particulate matter (PM) credit due to a reduction in overall size (horsepower) occurring between March 1, 2006, and March 1, 2010. This is an expansion of the early credit allowances in the current rule. Currently, no early NOx or PM credit is given for reducing fleet size. The legislature intended that any reductions of fleet size, regardless of engine tier be available for fleet owners to obtain this credit. The change treats any vehicle that was sold, retired, or scrapped after March 1, 2006, as being "turned over" regardless of tier, if that action reduced the fleet's horsepower size.

The final change allows a fleet to claim NOx and PM credit by virtue of reduced activity that occurred between July 1, 2007, and March 1, 2010. Reduced activity is defined as the percentage reduction in annual hours of operation of an off-road fleet. Reductions will count toward the required NOx turnover or PM retrofit reduction needed per the requirements of the regulation.

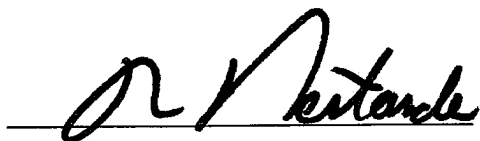
This credit may be used only for 2010 and 2011 and is applicable only to large fleets. For fleets that have incurred a sharp drop-off in activity, this credit may entirely eliminate any requirements for the 2010 and 2011 compliance years. By reducing or eliminating compliance actions in the first two compliance years, large fleets will need to increase compliance actions in later years, when, hopefully they will have the financial resources and access to new technology to comply.

The legislature hopes that the downward spiral in construction activity will be halted and that the industry will begin recovery before the March 1, 2010 end date, eliminating the need for additional emissions credit.

The agency has wide latitude in determining how to measure reduced activity, including, but not limited to hour meter records, operator hours from payroll records and maintenance records.

The intent of the Legislature is clear—the agency is to acknowledge the already large emission reductions achieved in the construction industry and provide the industry with a means to reduce compliance activities in the very early part of the off-road rule, so as to provide economic stimulus for the state and real jobs for its people.

Sincerely,





Alan Jozu

Ray D. Gilmer

~~John B. Gilmer~~

~~Walter J. Gilmer~~

Jim Silva

Martin Garick

~~Carl~~

~~Robert~~
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