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April 19, 2010

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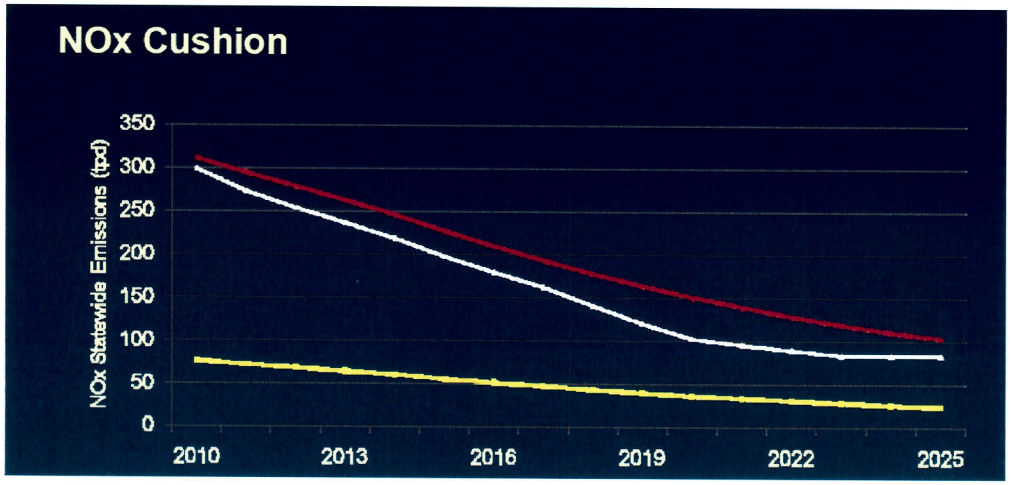
Members of the Air Resources Board
1001 I Street
Sacramento, CA 95812

Re: Off-Road Diesel Regulation

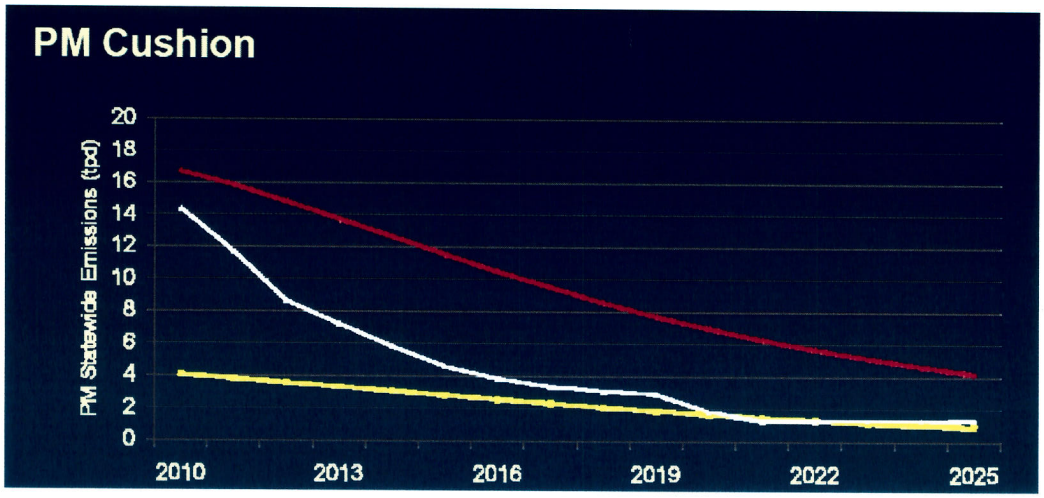
Dear Board Members:

Enclosed as promised in our letter last week is the Associated General Contractors of America (AGC) updated analysis of the Air Resources Board modeling of emissions from construction equipment.

This analysis, which reflects data provided to AGC by ARB staff through February 2010, shows that there is no need for the off-road rule; the emission reductions the rule was designed to achieve have already been realized. Current emission levels are well below the levels staff predicted when it drafted the off-road rule, and will remain below such levels in the future. This provides an emission reduction "cushion" that should be used to afford relief to the construction industry:



ARB Prediction **without** Off-Road Rule
ARB Prediction **with** Off-Road Rule
Actual 2009 Emissions **without** Off-Road Rule



ARB Prediction **without** Off-Road Rule
ARB Prediction **with** Off-Road Rule
Actual 2009 Emissions **without** Off-Road Rule

As we indicated last week, not only has construction activity declined, but fundamental flaws in the ARB OFFROAD model have resulted in grossly overstated emissions estimates. ARB staff has been well-aware of the serious problems with the OFFROAD model for many years. Professor Robert Sawyer of the University of California, Berkeley and Professor Andrew Kean of Cal Poly first published a study identifying some of these problems back in 2000. Professor Robert Harley of Berkeley published a paper calling for corrections to the model in 2004, before the off-road rule was adopted. Professor Harley joined with Dr. Dev Millstein at Lawrence Berkeley Laboratories to publish an additional paper in 2009 identifying errors in the OFFROAD model. Despite these repeated expressions of skepticism about the OFFROAD model, even before the off-road rule was adopted, it does not appear that staff has ever briefed the Board on this issue. And as of last week staff advised AGC that they still had not completed an analysis of the issues raised in these studies.

Our air quality experts at Sierra Research have, however, just completed their analysis of the errors in the OFFROAD model. Their findings, which are set out in the enclosed paper entitled "Emissions from Diesel-Fueled Non-Road Equipment in California," conclude that **the rule will not be needed for PM control until sometime after 2019 and will never be needed for NOx control.**

This gross overstatement of the emissions resulting from construction equipment means that there can be no dispute that the Board can provide relief to California's construction contractors without in any way compromising on its commitment to reducing emissions and meeting the SIP goals.

In light of these facts, AGC reiterates its request that the Board direct the staff to:

1. Apply the small fleet requirements to all fleets;

2. Clarify the existing exemptions in the regulation to make it clear that exempt vehicles should not be included in the calculation of fleet averages or compliance with target rates; and

3. Create a "safe harbor" for fleet owners at risk of suffering serious financial harm, limiting the direct expense that any fleet owner would have to incur in any one year to comply with the regulation (to 3 percent of the owner's net revenue in the preceding year).

These changes will help California's construction contractors to begin creating jobs again, while still allowing the state to meet its commitment to cleaner air.

There is no reason for further delay in providing this relief. AGC's proposal is a simple one, and we have provided ample evidence to show that the Board can provide the requested relief without impeding progress towards compliance with the goals set forth when the Rule was adopted. Further delay simply means further irreparable harm and continued loss of jobs.

Sincerely,

Michael Jacob Steel
Counsel to AGC

Enclosures

cc: Michael Terris, Esq. (Air Resources Board, w/enclosures)
Mr. Dan Pellissier (Cal/EPA, w/enclosures)