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April 14, 2010

Writer's Direct Contact
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Members
Air Resources Board
1001 I Street
P.O. Box 2815
Sacramento, CA 95812

Re: Off-Road Diesel Regulation

Dear Board Members:

This week, the Associated General Contractors of America (AGC) completed its analysis of the Air Resources Board modeling of emissions from construction equipment, which we briefly described at the Board's December 2009 meeting.

This analysis, based on actual fuel usage data from the State Board of Equalization and the Federal Energy Information Administration, shows that staff's model overstates the emissions from the construction industry by almost three times. To cause the emissions that staff's model predicts, California's construction contractors would have to burn almost three times as much fuel as they actually do, based on state and federal statistics on actual fuel use.

The modeling, when corrected for this major error and updated to reflect actual fleet numbers from ARB's own database, shows that the rule is not needed for PM control until sometime after 2019. For NOx control, the need doesn't arise until after 2025 (if ever).

We expect to have our findings documented by the beginning of next week, and will send the report to you before the Board meeting.

The combination of declining activity in the construction sector (widespread and deep unemployment, precipitous drops in residential and commercial construction) and the serious problems with ARB's model (impossible fuel consumption rates), make it clear 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 requests that the Board direct the staff to:

1. Apply the small fleet requirements to all fleets;

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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

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