



**CONSTRUCTION INDUSTRY
AIR QUALITY COALITION**

December 13, 2007

Coalition Members

VIA EMAIL: jgoldste@arb.ca.gov



James Goldstene
Executive Officer
California Air Resources Board
1001 I Street
Sacramento, CA 95812



**Re: Public Hearing to Consider Proposed Regulation
for In-Use Off-Road Diesel Vehicles**

Dear Mr. Goldstene:

Associated General Contractors
America-San Diego Chapter, Inc.

In response to the Air Resources Board's notice dated December 11, 2007, to provide the public an opportunity to submit written comments on the above-captioned proposed rule, the Construction Industry Air Quality Coalition ("CIAQC") respectfully requests that the Board convene a public hearing on the proposed rule changes and on the upcoming "SOON" amendments to that proposed rule.



Building Industry Association
of Southern California

By way of background, Cal. Gov't Code §11346.8(a) authorizes the interested public to request state agencies to convene a public hearing on a proposed rule when the agency issues a proposed rule without scheduling a hearing. For at least two reasons, an ARB hearing is required here to address changes to the proposed rule since the prior proposal.



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First, to justify its statutorily required determinations on cost-effectiveness, ARB relied in large part on the viable market in used, higher-tier (*i.e.*, lower-emitting) equipment that its staff identified. By separating the NOx and PM portions of the rule to facilitate other states' adoption of portions of the off-road diesel rule, ARB reduced the availability of higher-tier used equipment by increasing the number of buyers for, and decreasing the number of sellers of, higher-tier used equipment in other states that will opt into the California program. Moreover, CIAQC understands (and will submit comments to support) that ARB staff's analysis of the market in used equipment made several key errors, including double-counting various off-road units, counting on-road and stationary units not covered by the rule as available used equipment for sale, and counting various rental equipment and foreign-based equipment not actually available for sale in the U.S. All of these factors combine to undercut ARB's determination of feasibility.



Engineering & General
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Southern California
Contractors Association

2149 East Garvey Ave. North, Suite A-11, West Covina, CA 91791

Tel: 626 858 4611 Fax: 626 858 4610 e-mail: ciaqc@uia.net www.ciaqc.com

Major Funding Provided by the Construction Industry Advancement Fund and the Fund for Construction Industry Advancement



Second, the current proposed rule package indicates that a second supplemental proposal to the same underlying proposal will include the planned Requirement for Largest Fleets to Achieve Additional Reductions of Oxides of Nitrogen, otherwise known as the Surplus for Off-Road Opt-In Program (“SOON”). Unless SOON emerges fully voluntary and fully funded, ARB will need to conduct a hearing in any event. If ARB must hold a hearing on one future aspect of this proposed rule, it might as well combine the two issues into a single hearing.

Finally, up until a meeting with CIAQC on December 3, 2007, ARB staff had advised CIAQC that ARB would include both the current notice and the SOON program in the same proposed rulemaking package and would therefore provide an extended thirty-day comment period. Thus, even if ARB did not need to hold a hearing on the foregoing changes to the proposed rule, ARB should provide at least 30 days from December 3, 2007 (*i.e.*, through January 2, 2008), for the public to submit comment on the current notice.

Please do not hesitate to contact me, or to have your staff contact me, with any questions about the foregoing.

Yours sincerely,

A handwritten signature in black ink that reads "Michael Lewis" followed by a stylized monogram "ML".

Michael Lewis
Senior Vice President

cc: ARB Docket ordiesl07
Tony Brasil, Manager of the In-Use Control Measures Section, abrasil@arb.ca.gov
Kim Heroy-Rogalski, Staff Air Pollution Specialist, kheroyro@arb.ca.gov
Alexa Malik, Manager, Board Admin. & Regulatory Coordination, amalik@arb.ca.gov
Amy Whiting, Regulations Coordinator, awhiting@arb.ca.gov