

R.J. BERRY JR., INC.

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December 20, 2007

Ms. Mary D Nichols, Chairman
California Air Resources Board
1001 I Street
Sacramento, CA 95814

Sent via email

Dear Chairman Nichols and members of the Air Resources Board,

Please accept these comments on ARB's modifications to the proposed In-Use Off-Road Diesel Vehicle rules. We have provided written comments on numerous occasions over the last two years. For brevity, I will not duplicate relevant information that we have previously provided. Please refer to the public record for background and our additional comments submitted on the proposed rule.

After reviewing the modifications to the rule added subsequent to the July 26, 2007 ARB hearing, we remain deeply concerned about the ability of our company to function under these far-reaching rules.

Given the trajectory of this rule-making process, it would appear that a wholesale change to these rules is, at this point, highly unlikely; therefore, provided below are three modifications that could be easily incorporated into the framework of the proposed rule. We have determined that if ARB makes these changes, R.J. Berry Jr., Inc., and likely other businesses, will have an improved chance of being able to comply with the rules.

1. **Increase the "Small Fleet" category from 2500 horsepower to a maximum of 5,000 horsepower.** Such a move would better align the "small fleet" designation with "small business." Providing more time for small businesses to upgrade and improve our fleets, and to plan and prepare for large on-going capital expenditures will make it more likely that our business will be able to comply with the proposed rules.
2. **Reduce the percentage horsepower turnover requirements to five percent in early years and then ramp up to six, seven, and then eight percent over time.** The rates of turnover currently proposed in the rule are impossibly high. Without reducing turnover rates, the likely compliance option for our business will be to annually contract our

horsepower. After the backbone of our business -- our tools -- has been reduced to a point where we no longer have a critical mass of owned equipment, we will have no choice but to close our doors.

3. **Increase the threshold of "low-use" vehicles from 100 hours to 300 hours**, at least during the first 10 years of the compliance period. Increasing the low-use threshold will give us needed flexibility as we face the financial realities of replacing and re-powering so much equipment so quickly.

We appreciate your consideration of these additional modifications to the proposed rules.

Very Truly Yours,
R.J. Berry Jr., Inc.



Robert J. Berry Jr.
President