

tbh, inc.

Toby B. Hayward, Inc.

General Contractors

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California Air Resources Board

P.O. Box 2815

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Dear Members of the California Air Resources Board:

The California Air Resources Board (CARB) adopted a flawed off-road diesel regulation this summer that will have a profound, negative impact on California's infrastructure rebuilding efforts, the health of the state's construction industry and its overall economy.

Construction contractors and workers want these regulations to work for everyone, however this rule lacks clarity, does not take into account the availability of capital in the industry or the advancement of engine technology, will result in a downsizing of construction firms and loss of construction jobs, contains unfair retroactive requirements and does not accurately reflect the economics of our business. More specifically, this regulation is flawed for the following reasons:

Clarity and Comprehensibility: The regulation is too complex and lengthy: we do not fully understand it or its effect on our fleet. Before this regulation, we bought equipment based on what we needed to do our work. We will have to hire consultants to tell us what we can and must buy and when we will need to replace, retrofit, or re-power what have.

Capital-Intensive Industry: The value of our business is tied up in our fleet of construction equipment. To meet CARB's requirements for newer equipment, we will have to sell existing equipment. This is like a retailer being forced to sell its building and buy a new one.

Availability of Technology: The engines we need to purchase to be in ultimate compliance with this rule do not exist in the market today and won't for at least another six years. Due to this, we will be forced to spend tens of thousands of dollars to retrofit equipment that in less than ten years we will have to turn around and replace.

Rule Forces Downsizing of Capability: Because newer equipment costs more than our older equipment, CARB's rule will force us to downsize our operations. Downsizing will limit our ability to perform on contracts and require us to take longer on the projects that we win. This means the more than \$42 billion in infrastructure bonds to rebuild California passed in 2006 will build fewer schools, houses and roads.

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Page 2

Unfair Retroactive Requirements: When we made our purchasing decisions and other investments, we relied on the standards that applied to us at the time. It is unfair to require us to retrofit or replace equipment that was legal when we bought it. With this rule CARB, for the first time, is regulating the consumer of equipment rather than the manufacturers.

Cost Pass-Through: CARB has suggested that the cost of this regulation will be passed on to our customers. This is unrealistic. For us to win contracts, we cannot simply pass on the costs of equipment purchases to our customers. We have to absorb a significant portion of our own expenses. Increasing our expenses will overwhelm our already narrow profit margin.

I want to be clear: Toby B. Hayward, Inc. is very supportive of reducing particulate matter (PM) and NOx emissions from diesel engines. There is no disagreement that we need to work collectively to improve the state's air quality and all of us want to provide as healthy an environment as possible for our employees on our job sites, but we need to make sure we do it in away that keeps the state moving forward and with consideration for both the environment and the economy.

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