



**CONSTRUCTION INDUSTRY
AIR QUALITY COALITION**

January 8, 2008

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**



Associated General Contractors
America-San Diego Chapter, Inc.



Building Industry Association
of Southern California

Dear Mr. Goldstene:

This follows on our letter dated December 13, 2007, to request that the California Air Resources Board ("ARB" or the "Board") hold a public hearing on the above-captioned proposed rule to address the implications of the proposed rule changes and the upcoming "SOON" amendments. For the reasons set forth here and in the public comments submitted on the current 15-day notice, we ask you to find further Board consideration and a public hearing necessary to ensure that ARB meets its statutory obligations to consider economic and environmental alternatives and consequences.



Engineering
Contractors Association

As indicated in the enclosed list of our members and affiliates, the Construction Industry Air Quality Coalition ("CIAQC") and the Coalition to Build a Cleaner California ("CBCC") are umbrella organizations that represent numerous major California construction and, building-industry, and trade associations. We appreciate the opportunity to work professionally with ARB and its staff, even while we strongly oppose the current form of the proposed regulations, and we commit to working with ARB to adopt a workable rule that reduces NOx and particulate emissions while minimizing unintended and untoward environmental, economic, and social consequences.



Engineering & General
Contractors Association

As we explained on December 13, 2007, Section 11346.8(a) authorizes the interested public to request state agencies to convene a public hearing on proposed regulations that agencies issue without scheduling a prior hearing. New regulatory provisions such as the bifurcated NOx-PM provisions, as well as the still-forthcoming "SOON" program trigger the need for a further public hearing. Further, in Resolution 07-19, the Board directed you to return to the Board if, after reviewing the public comments, you deem it warranted. For at least nine reasons set forth below, we respectfully submit that you should find further Board review warranted here:



Engineering & Utility
Contractors Association



Southern California
Contractors Association

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

- Global Warming Impacts:** As explained in our comments and those of the Associated General Contractors of America, the ARB staff reports vastly understate the increase in greenhouse gas emissions that the current proposal will create. As a result, the CO₂ emissions benefits that ARB anticipates will not almost mitigate the rule's CO₂ increases. Instead, in the 2020 baseline year, the current proposal will increase CO₂ emissions by almost 400,000 metric tons per year. By failing to consider the emission increases from rule's entire life cycle (i.e., manufacture, delivery, installation, and servicing), the ARB staff analysis missed a significant adverse environmental impact.
- Economic and Criteria-Pollutant Impacts:** In addition to the unconsidered CO₂ impacts, the ARB staff's flawed economic analysis (discussed below) underestimates the debilitating impact that the currently drafted rule would have on the California construction industry. By failing adequately to assess that social and economic impact, ARB staff also fails to assess the negative environmental impacts (such as congestion and increased criteria-pollutant emissions) that the currently drafted rule will cause by crippling industry's ability to perform on congestion-reducing and emission-reducing infrastructure projects.
- Weekend NO_x Effect:** ARB did not consider the significant body of research, by eminent scholars not affiliated with industry, that show that lowering NO_x emissions does not reduce ozone pollution and may even increase it in urban areas where most of California's population lives. Before it commits a major California industry and that industry's customers – all of California's state and local governments – to billions of dollars of investment, ARB should determine whether that investment will return any (or even negative) dividends in clean air.
- Unclear and Overly Complex Rule:** The California Administrative Procedure Act requires agencies to adopt clear regulations, without unnecessary complexity and "easily understood" by regulated entities. As documented in our comments filed today, the current rule is incredibly and unnecessarily unclear, long, and complex. In many instances, we demonstrate that ARB could have made the same points, more clearly, with fewer than half the words.
- Inadequate Consultation with Sister Agencies:** The California Environmental Quality Act requires ARB to consult with federal, state, regional, and local public agencies (including transportation planning agencies) *before* adopting regulations that (a) affect California's transportation infrastructure, (b) regulate offroad equipment leased, owned, or contracted for by California state and local agencies, including trustee agencies, and (c) regulate federally preempted vehicles. Moreover, "informal[] contact" does not constitute "required consultation." Pub Resources Code §21080.3(a). Instead of meeting its required consultation obligations, ARB has created a regulation with unprecedented financial, economic, transportation, and environmental implications in an area (namely, the construction industry) in which ARB staff have little experience. Under the circumstances, ARB staff would have benefited from the intra-agency consultation on this rule.

- **Inadequate Consultation with Stakeholders on NOx Component and Alternatives:** By adding NOx controls on the eve of proposing this incredibly complex rule and deferring all consideration of alternatives to its staff reports, the ARB staff failed to meet the California Administrative Procedure Act's requirement to involve regulated stakeholders, prior to making "complex proposals... that cannot easily be reviewed during the comment period." Section 11346.45's pre-rulemaking public participation would have improved the quality of the eventual rule, and ARB should direct staff to implement that public process. It is not too late to get this rule right.
- **Overstated Market in Used Later-Tier Equipment:** Our industry has considered ARB staff's finding of a sufficient market in higher-tier used equipment as highly suspect. Significantly, that staff finding is a critical parameter that underlies the gap between ARB's and industry's wildly divergent cost assumptions (\$3 billion to \$12 billion). A viable market in later-tier used equipment would tend to reduce the rule's cost. As explained in the comments by the Associated General Contractors of America, we convened an analysis of ARB staff's analysis and found that ARB double-counted vehicles, counted vehicles and equipment such as on-road and portable equipment not subject to the proposed rule, and relied heavily on small equipment types that industry would replace regularly without any rule. A viable market in irrelevant equipment does nothing to establish a viable market in the higher-horsepower large equipment that industry needs to undertake its vital infrastructure work in California.
- **Shrinking Market in Used Later-Tier Equipment:** Although overstating the used-equipment market is bad, ignoring the contraction of that market is worse. The Associated General Contractors of America comments also explain how the availability of the needed higher-horsepower equipment is actually shrinking, not expanding because companies need to hoard their later-tier equipment to comply with ARB's rule. Moreover, with the NOx-PM bifurcation, ARB has made it easier for other states to opt into the California standards, which converts former sellers of later-tier equipment to competing buyers of later-tier used equipment.
- **SOON Unfair, and Unworkable:** Envisioned as a voluntary program to encourage repowers and retrofits, the SOON program would have provided air districts and industry another useful means of upgrading the California construction fleet. As the staff have reworked the SOON program, it is in no way sufficiently related to the concept discussed at the public hearing in July 2007, much less "sufficiently related to the original text" of the rule proposed in April 2007. Because it does not meet Government Code §11346.8(c)(2)'s sufficiently-related test for promulgation as an outgrowth of the original proposed rule, the SOON program requires its own public hearing. At that hearing, the

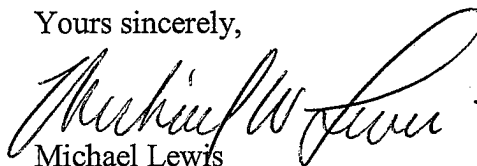
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Board can review the many reasons that we have identified to explain why the SOON program is unfair and unworkable.

For all these reasons, CIAQC and CBCC implore you to find further Board review warranted under the circumstances and, as directed in Resolution 07-19, return this matter to the Board for its further consideration.

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

Yours sincerely,



Michael Lewis
Senior Vice President

cc: Members of the Air Resources Board
The Hon. Mary Nichols, Chairperson
ARB Docket ordies107
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
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COALITION TO BUILD A CLEANER CALIFORNIA

OUR MEMBERS

The Coalition to Build a Cleaner California is dedicated to improving California's air quality while maximizing the historic infrastructure investment approved by California voters in November 2006. The Coalition's members include the construction industry, its workers and infrastructure stakeholders. A current list of our membership is below.

Construction Industry Air Quality Coalition Members

Associated General Contractors of California
Associated General Contractors of San Diego
Building Industry Association of Southern California
California Construction and Industrial Materials Association
Engineering Contractors Association
Engineering & Utility Contractors Association
Engineering and General Contractors Association
Mobile Crane Operators Group
Southern California Contractors Association
California Dump Truck Owners Association
The California Rental Association

Labor Organizations

California Conference of Carpenters
California Alliance for Jobs
Operating Engineers Local Union Nos. 3 & 12
Southern California Cement Masons Local 600
Southern California District Council of Laborers

Individual Construction Contractors

SKANSKA Construction
Synes & Pennick, Inc.

Coalition Partners

AGC America
American Concrete Pumping Association
American Road and Transportation Builders Association
Associated Builders and Contractors
California Building Industry Association
California Ski Industry Association
National Electrical Contractors Association
Valley Contractors Exchange