



CONSTRUCTION INDUSTRY
AIR QUALITY COALITION

Coalition Members



March 6, 2008

Mary Nichols, Chairman of the Board
California Air Resources Board
1001 I Street
Sacramento, California 95814

Re: **Comments on the Proposed Surplus Off-Road Opt-In for NOx (SOON) Provisions of the In-Use Off-Road Diesel Regulation**

Dear Chairman Nichols and Members of the Board:

On behalf of the Construction Industry Air Quality Coalition and the Coalition to Build a Cleaner California we would like to offer the following comments on the Off-Road regulation adopted by your Board in July.

We support the changes which the staff has made to remove the dollar threshold from the definition of a small business; the removal of the VDECS requirement for SOON funded projects and the proposal to make the SOON program voluntary for 2008. The ability to designate one's SOON application as high priority is helpful, but will not address the problem of contractors who simply do not have the resources to spend on SOON compliance. These are small steps in making the Off-Road rule workable for the hundreds of thousands of contractors in the State of California and we appreciate the staff's efforts to address the practical implementation issues raised by the construction industry.

THE SOON PROGRAM

There are numerous implementation problems with the SOON program as it is written and it will take significant modifications to the program before it becomes a policy that the construction industry will support. Specifically, applying the Carl Moyer incentive funding requirements to a mandatory program make it completely unworkable and is proving to be a "non-starter" for the industry as a whole. We outlined this problem and the solution to it, in the attached letter to Board Member Berg's Moyer Task Force. The Moyer guidelines remain a considerable obstacle to the SOON program and drive many of the problems identified in trying to implement the program.

Quite simply the SOON Program's development and adoption was too rushed. It took nearly four years to develop the off-road rule. The SOON program was first discussed just six weeks before the Board adopted it. There was insufficient time to understand the implications of the program or the barriers that would arise to the implementation of the program. There was only minimal stakeholder

involvement. Initially the staff recommended against the idea. The recommendations presented by industry to provide flexibility were rejected at the last minute. As a consequence, we are now stuck with an adopted rule that most agree is not going to work in its current configuration. At this point it appears that the staff intends to merely add bandages to the program in an attempt to fix it. This approach is not going to work. If Carl Moyer funding is going to provide the framework for SOON, then the program needs to be redone to focus on the very limited pool of equipment and emissions that are the intended target (See Attachment #1)

The SOON Program is not voluntary. Originally, the SOON Program was presented to the construction industry as a voluntary program that would assist contractors in the long run with their CARB base rule compliance. However, due to the application of the Carl Moyer requirements to the SOON program, contractors are expected to contribute from 15% – 50% of the cost of the re-power. This is simply impossible on top of the CARB low estimate of the cost of the regulation of \$3.4 billion. Making the program voluntary for 2008 was the proper step to resolve the many issues that have arisen with the SOON program. We still would recommend that it be made voluntary until 2014.

The SOON equipment target is disappearing. Unfortunately, the requirements proposed by the air districts that require re-powers under the SOON program to be from a Tier 0 to a Tier 3 engine significantly reduces the pool of equipment. Since 2000, the construction industry has re-powered nearly 2,500 pieces of heavy duty off-road equipment under the Moyer program. Because Tier 3 repowers were not introduced until 2006, only about 5% of the 2,500 repowers were done with a Tier 3 engine. That equipment falls into six types; wheel loader scrapers, wheel dozers/compactors, excavators, loaders, track type tractors and motor graders . (See attached breakdown, Attachment #2). All of this equipment is in excess of 200 horsepower, and manufactured before 1988. It is the oldest equipment in the fleet. We believe that fewer than 10,000 pieces of this equipment exist in the state today, perhaps substantially fewer, and the pool is shrinking rapidly due to age and frame life. We would recommend that the SOON program be modified with a replacement or scrapage program aimed at just the six specific pieces of equipment that can meet the re-power requirements.

The SOON applies to equipment that cannot qualify for the Moyer program. Many contractors will be in the SOON program by reason of their 20,000 horsepower fleet and 40% Tier 0 and Tier 1 machines, but that does not mean that they will own equipment that can be re-powered under the Moyer requirements. It will generate an enormous cost the development of compliance plans and paperwork for contractors to submit equipment funding applications to demonstrate SOON compliance yet, never be eligible for funding. Further, a fleet that is composed of all Tier 2 engines (manufactured as recently as 2005) will not meet the SOON targets in 2014. There needs to be some mechanism by which fleets are removed from the SOON eligibility when the target equipment is not available.

The SOON should not be open to all air districts. SOON was intended to assist the two air districts in California that need to meet the 2014 deadline to achieve compliance with the Federal PM2.5 standard. Both of those districts are approaching the program differently and it will result in confusing and conflicting requirements for contractors who operate in multiple districts. It would appear that there are fewer than 100 fleets that are subject to SOON in South Coast and San Joaquin districts, and many operate of those in both districts. It is unfair for them to have to comply with a patchwork of rules for the CARB base rule and local SOON programs. Adding other districts to the regulation will only compound the confusion. CARB needs to guarantee that the SOON provisions are consistent district-to-district.

The SOON is too costly for contractors. Most contractors will struggle to meet the CARB base rule compliance and will probably have to reduce the size of their fleets in order to meet the fleet averages because they will not be able to afford the turnover and retrofit requirements. This will reduce the capacity of those firms and the size of the jobs they will be able to bid in the future. To expect contractors to have additional resources available to meet the additional turnover requirements of the SOON program is unrealistic. We concur with the statement made by your staff in their April 2007 Initial Statement of Reasons for Proposed Rulemaking which read: **“Staff also considered requiring higher turnover rates and more stringent NOx averages, but the higher costs would likely be more than the industry could bear.”** The economic circumstances for the industry have only grown worse since April of 2007. They are not expected to improve before the middle of 2009 or later. This fact seems to be continually missed by the CARB staff engaged in rule implementation.

SOON puts an unfair economic hardship on contractors. Due to the Moyer contract requirements proposed for the SOON program, contractors can expect to lose equity in the SOON funded equipment which will reduce their ability to borrow and bond for their company needs. See the Perry & Shaw comment letter (Attachment #3) that presents a thoughtful discussion of this effect of the SOON program. The requirements to operate within a specific district will further limit the contractor's ability to work outside the air district as opportunities arise in other parts of the state.

SOON requires over-compliance with the CARB base rule resulting in increased costs. The SOON program will unfairly require contractors and fleets selected for funding to over-comply with the base regulation. SOON funded equipment will be counted in the base fleet calculations as a Tier 0 for the term of the project, just as if the repower or replacement never took place. To compensate for this, fleets will be forced to replace, repower, retrofit or retire additional equipment to overcome the higher emissions associated with the “Tier 0” SOON equipment. In addition, the SOON program will fund the most cost-effective repowers or replacements in a fleet first. The remaining base-rule equipment will be less cost-effective to replace, repower or retrofit thereby increasing the cost to comply for these fleets.

The SOON program requires contractors to sign long term contracts "under duress". The SOON program anticipates that each contractor whose equipment is selected for SOON funding will have the resources available to fund their share of the compliance costs as well as commit to a seven year contract period and all the onerous terms that are included in the most recent Moyer contracts. It also assumes that a contractor can be forced to sign the Moyer contract when his accountant and attorney both tell him not to. Not only is this unrealistic, but contractors are already beginning to return voluntary Moyer contracts to optimize their fleet flexibility in anticipation of the implementation of the off-road rule (See Attachment #4). Nevertheless the SOON program expects contractors to comply with the program even though they cannot sign the SOON funding contract. That leaves contractors only the option of selling the piece of equipment in order to comply. That option does not solve the district's problem of needing a verifiable emission reduction contract to satisfy EPA's requirements. The "forced" over-compliance anticipated by the SOON program will not work. As a result, the desired emission reductions will never be achieved.

CARB needs to reevaluate the CIAQC recommendations. CIAQC worked diligently with the South Coast air district staff to craft a SOON program that would achieve the emissions reductions desired by the district. Despite the lack of time and the need to focus on the impacts of the CARB base rule, industry representatives spent innumerable hours trying to shape the SOON program. We made very specific recommendations to CARB staff outlining what it would take for contractors to be able to participate in the program. Those recommendations included the multi-year targets for fleet average milestones and the integration of the base rule and the SOON requirements. The SOON language that was presented at the last minute to your Board on July 26 had significant deviations from what the construction industry had recommended to SCAQMD staff, including their changes to make the program mandatory and not fully funded. CARB staff also failed to examine the cost effectiveness or the reduced compliance burden of the construction industry alternative. Those recommendations were quickly rejected by CARB staff and now need to be re-examined in light of the collapse of the SOON program as a viable emission reduction program.

CARB must perform a Socio-Economic Impact Study that includes both the SOON program and the Base Rule. The SOON program will require fleets to turnover equipment at a rate greater than would be necessary to achieve the NOx fleet averages and, well above the 8% per year level companies pushed into the Best Available Control Technology (BACT) path will need to sustain. The costs for this must be analyzed. During the development of the regulation and the State Implementation Plan, the South Coast Air Quality Management District asked CARB to consider a BACT path equivalent of 15% for the South Coast. CARB recognized that this rate of turnover would be too costly and unsustainable. For these reasons, CARB staff must perform a Socio-Economic Impact analysis that examines the real costs of the SOON program that requires additional vehicle turnover of as a component of the Off-Road regulation. Equally important is

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that this analysis should be made publicly available for review and comment before the regulation is finalized.

THE CARB BASE RULE

VDECS Availability. As of this date, CARB has not verified any more VDECS for broad usage than they had before the rule was adopted. However, there have been a few conditional verifications for very limited applications. The Showcase demonstration project which was supposed to highlight the emerging technology is running months behind schedule. Further, the manufacturers are jockeying to get their devices mounted on the equipment that will put it in the best light and the contractors are withdrawing equipment because they cannot provide the hours of operation that were expected before the economic slump in the industry. CARB has amended the verification process making it longer and more expensive. The devices are getting more expensive, not cheaper as the staff anticipated and the Huss device touted as the most widely applicable to the construction industry has proven to be very impractical for the off-road construction duty cycle. Without more cost effective, passive devices available, the PM fleet averages are simply unachievable. CARB needs to expedite the verification process and CARB needs to disclose to the construction industry how many devices are in the verification pipeline and likely to be realistically available for use by 2010. It has been mentioned repeatedly in a host of public settings that the CARB web site in outlining compliance options is unwieldy, confusing and unfocused. We have kindly asked that it be updated and have offered detailed commentary repeatedly, to no avail. This must be addressed as a priority item in our view and we respectfully request that someone be assigned to make this happen as soon as possible.

The construction industry is subject to multiple rules for which no cumulative impact analysis has been conducted. Most contractors in California own portable, off-road and on-road equipment in order to properly service their construction contracts. Staff believes they have pushed the industry as far as possible based just on the anticipated expense of the off-road rule alone. When you add the cost of replacing all Tier 0 portable equipment (which numbers somewhere around 25,000 pieces) as required by the statewide Portable Equipment Registration Program (PERP) by 2010 and the pending costs of the on-road rule (about 75,000+ construction trucks) which the staff estimates at twice the cost of the off-road rule (180,000 machines), the burden on the industry is staggering. Further, the PERP does not allow the use of control equipment in lieu of engine replacement even when emissions can be reduced to levels equivalent to, or less than, the most stringent applicable off-road engine emissions standards. This lack of flexibility acts to stifle the development of the diesel engine control that CARB is counting on to make compliance with these multiple rules achievable in a less costly manner. CARB needs to devise a way to provide flexibility in meeting emission reductions from the entire company fleet, not just dictate a series of fleet averages based on equipment type. Without

such flexibility, many companies will simply have to liquidate their fleets in order to achieve one fleet average or the other.

The CIAQC alternative needs to be re-examined. The construction industry spent many months and many thousands of dollars attempting to develop an alternative framework that would accommodate the diverse make-up of the construction industry (See Attachment #5). That proposal would have achieved the same 2015 emission reductions as the CARB rule, provided maximum flexibility for contractors to reach the target, recognized the wide divergence in fleet sizes, emissions and capabilities, minimized the financial impact on most firms and maintained the industry capacity and competitive bidding environment. As we move closer to the implementation deadlines, it is also clear that the aggressive schedule envisioned by the CARB rule cannot be achieved due to the slow introduction of appropriate technology. The schedule and approach proposed by CIAQC is more realistic and practical than the rule adopted by the Board. It needs to be looked at again before the 2009 report to the Board.

Enforcement – Level Playing Field. The costs to comply with the off-road regulation will be significant for contractors and fleet owners. Many companies will not be able to bear the financial strain and will simply sell-off their equipment, businesses or retire. CIAQC has already heard of this happening as a result of the off-road rule (See Attachment #6). Some companies, however, are likely to decide that the costs to comply are too great and will choose instead not to take the steps required in the regulation, starting with the reporting requirements. Others will be unaware that the regulation exists at all (e.g. the Large Spark Ignited regulation which has a compliance date of January 1, 2009 is virtually unknown to the owners of this equipment in the state due to the lack of *any* CARB outreach). This will create an uneven playing field for the majority of those that will follow the rules and expend the capital or sell the equipment necessary to comply. For these reasons broad enforcement will be critical to ensure everyone is following the same set of guidelines. Currently the regulatory scheme lacks an effective mechanism to locate those companies that are not in compliance. CARB must develop a strong and equitable enforcement program to avoid the worst of all worlds; an extremely expensive rule and a weak enforcement program that creates a competitive advantage for those that do not follow the rules.

CARB must establish clear criteria for the 2009 staff review of the regulation. The off-road regulation relies heavily on the application of verified diesel emission control systems (VDECS) to achieve emission reductions. Currently there exists only a handful of verified diesel retrofit technologies that can be utilized to satisfy the requirements of the regulation. The VDECS available today can have an installed cost in excess of \$50,000 per engine (two or three individual VDECS per engine and some equipment have dual engines) and require the equipment to be shut down after only four hours of operation to regenerate. Also, CARB staff did not even account for the additional hazardous waste ash removal costs associated with these VDECS, or more importantly the potential of *complete replacement costs of the VDECS within*

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the life of the machine (VDECS are only guaranteed for 5 years or 4,200 hours – most of the machines will significantly longer life than that period of time.) Recognizing that the future availability and cost to purchase and operate VDECS is not certain, the Board directed staff to prepare a review of the state of the technology in 2009.

We believe the scope of this review should be clearly established before the regulation is finalized. In addition, the review should also include an examination of other significant factors that will ultimately determine the ability of the industry to comply with the regulation. These factors include the economic status of the construction industry as a whole. The construction industry is currently experiencing a major downturn. There are 60,000 fewer construction jobs in California now than a year ago for this reason ([http://www.calmis.cahwnet.gov/file/1fmonth/cal\\$PDS.pdf](http://www.calmis.cahwnet.gov/file/1fmonth/cal$PDS.pdf)). A slower economy means more machines are sitting idle, not polluting and not generating the revenue necessary to replace, repower and retrofit equipment for the regulation. Another factor that should be considered during the review is the overall equipment inventory in California. A record number of equipment is also being sold to buyers in other states and countries. It is permanently leaving the state. According to the Ritchie Bros. Auctioneers, 34% of the participants during the November 13 & 14, 2007 auction in Perris, California were from outside the state and purchased 64% of the equipment. Twenty-nine percent of the equipment left the United States (See Attachment #7). This equipment will never be replaced and the statewide emission inventory should be updated to accurate account for this change.

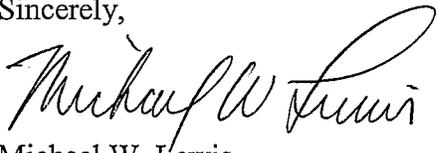
These conditions will severely impact the ability of the construction industry to provide the critical services necessary for Governor Schwarzenegger's Fast Tracking California's Infrastructure Bond Projects to help jump start economic growth in California (See Attachment #8).

The Regulation lacks the clarity required under the Administrative Procedures Act. The off-road regulation is too complex for most contractors to understand or decipher without hiring an expert to assist them. CIAQC's previous comments detailed the problem, but we offer one additional example to demonstrate the confusion. One NOx turnover exemption applies to "vehicles less than 10 years old" while the similar PM exemption applies to "engines in vehicles less than 5 years old". Obviously, since the engine causes the emissions, not the vehicle frame, both exemptions should be applicable based on the age of the engine. However, the language causes one to think that the NOx exemptions is applied based on the vehicle frame age while the PM exemption is applied based on the engine age.

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It is our firm belief that in order for the aggressive air quality goals to be achieved under this regulation, that industry experience and perspectives must be entered into the equation. To ignore our concerns will leave all of us with negative economic effects, air quality goals unrealized and poor working relationships. It is our sincere hope that reasonable consideration of these issues will result in a better more workable regulation. Thank you.

Sincerely,

A handwritten signature in black ink, reading "Michael W. Lewis". The signature is written in a cursive style with a large, looping initial "M".

Michael W. Lewis
Senior Vice-President

ATTACHMENT #1



**CONSTRUCTION INDUSTRY
AIR QUALITY COALITION**

December 18, 2007

Coalition Members



Associated General Contractors
America-San Diego Chapter, Inc.



Building Industry Association
of Southern California



Engineering
Contractors Association



Engineering & General
Contractors Association



Engineering & Utility
Contractors Association



Southern California
Contractors Association

Mr. Barry Wallerstein
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765

Re: Proposed Rule 2449 (SOON Program)

Dear Mr. Wallerstein,

On behalf of the Construction Industry Air Quality Coalition (CIAQC) please consider the significant concerns CIAQC has identified with Proposed Rule 2449 (PR 2449) and the SOON Program. As proposed, PR 2449 will have a direct and significant impact on many of CIAQC's contractor members. CIAQC does not believe the South Coast Air Quality Management District should proceed with the development of PR 2449 at this time.

The California Air Resources Board approved the SOON Program as an adjunct to the In-Use Off-Road Diesel Vehicle Regulation in July 2007. The SOON Program was hastily developed without adequate opportunity to determine if the elements were even workable as a voluntary program. Many of the changes were made by CARB staff immediately prior to the Board meeting with virtually no opportunity for the construction industry to understand the implications of the program. The construction industry is very disappointed and unhappy with the CARB regulation and adamantly believes the SOON Program, as now written, will not achieve the emission reductions estimated for the South Coast Air Basin.

The SOON Program is not voluntary for fleets that meet the program requirements. Those fleets will be required to submit a compliance plan and apply for SOON funding irrespective of the equipment owner's ability to meet the financial obligations for engine repowers and retrofits. CIAQC does not believe this was ever the intent of the CARB board when it approved the off-road regulation in July. Most contractors will have to retire equipment just to comply with the base CARB rule, because they simply are unable to afford to repower and retrofit enough units to achieve the statewide fleet averages. The sale of used equipment in California has already reached unprecedented levels.

To suggest that under the SOON program, contractors will have to keep Tier 0 and Tier 1 engines in their fleet, and pay to repower and retrofit them in order for the air districts to get State Implementation Plan credit is unfathomable. Most of those vehicles would have been sold in order to comply with the

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



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CARB regulation. The only way you keep them in operation is to make it "no-cost" for the contractor to do so.

Since the adoption of the SOON Program in July 2007, CLAQD has worked diligently with your staff and the that of San Joaquin Air Pollution Control District on the steps necessary to implement a SOON Program. However it is increasingly clear that the SOON provisions cannot be implemented as the regulation (PR 2449) is currently written for the following reasons:

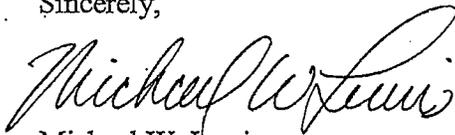
1. The program is not voluntary as originally envisioned. Making the program mandatory will require all eligible fleets to develop compliance plans and apply for funding whether or not they have the matching dollars to participate in the SOON. Further the program requires that the contractors install the necessary repowers if they are selected for funding.
2. The SOON elements are not fully funded as originally agreed. Most contractors will not be able to afford the compliance costs of the CARB rule let alone the added costs of the SOON program. The requirement for matching funds and the added burden a contractor funded particulate trap will be beyond the reach of most contractors. If contractors are forced to retire equipment to comply with SOON, no SIP credits will be achieved.
3. The cost effectiveness requirement is unnecessary. Because these emissions are excess to CARB's requirements the low Cost-Effectiveness threshold will unfairly burden the larger contractors who use their equipment more hours annually.
4. The seven-year contract length is unacceptable. No contractor is willing or able to commit to a seven-year residency requirement. Further, the method of calculating fleet average emissions will require SOON participants to over-comply on the CARB side of the regulation.
5. State-wide Opt-In is unworkable. Since the excess NOx reductions are only needed in two air districts (SCAQMD and SJVAPCD), the SOON program should be limited to only those districts. Most of the contractors eligible for the program already operate in the two districts. Both districts are already proposing different SOON programs. This greatly complicates contractor compliance plans. Adding more districts will make it even worse.
6. The 40% eligibility requirement should only apply to equipment over 175 horsepower. Since this is a NOx repower program eligibility should be determined by the percentage of equipment that can reasonably be repowered.

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7. CARB needs to insist that the district plans be consistent and compatible. Differing requirements will make it impossible for contractors to demonstrate multi-district compliance. SOON Program applicants should only be required to prepare a single compliance plan and funding application for their fleet irrespective of where the project equipment operates within the state.
8. The SOON program needs to be removed from the CARB rule and simplified. The emission reductions required for SOON in South Coast and San Joaquin Valley is estimated to be only 1,000 to 1,300 engines to be repowered total. Those reductions can be achieved in a much simpler fashion than proposed by the SOON regulation.
9. The eligibility date and percentage are arbitrary and problematic. The January 1, 2008 and 40% vehicle eligibility threshold will exclude large contractors with 39% or fewer eligible vehicles. The eligibility criteria also prevents fleets that drop below the 40% from exiting the SOON program after January 1, 2008. Contractors whose fleets become 40% Tier O and Tier 1 after January 1, 2008 are excluded from the program. Compliant fleets should be allowed the option to participate in a voluntary SOON Program if they so choose.
10. The annual CARB NOx fleet averages coupled with the SOON 3-year averages, make it impossible for contractors to develop reasonable compliance plans. CIAQC made it very clear at the adoption hearing that the only way the SOON program could be implemented was if the CARB NOx fleet averages were made every three years for those in the SOON program.

CIAQC envisions a SOON Program that will avoid the program pitfalls described above and will achieve early and voluntary emission reductions. We welcome the opportunity to discuss this matter with you and attempt to resolve the significant deficiencies currently found in Proposed Rule 2449.

Sincerely,



Michael W. Lewis
Senior Vice-President

cc: SCAQMD Governing Board Members
Randal Pasek
CARB Board Members



**CONSTRUCTION INDUSTRY
AIR QUALITY COALITION**

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Associated General Contractors
America-San Diego Chapter, Inc.



Building Industry Association
of Southern California



Engineering
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Engineering & Utility
Contractors Association



Southern California
Contractors Association

January 25, 2008

Chairman William Burke
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765

**RE: Proposed Rule 2449 – Control of Oxides of Nitrogen
Emissions from Off-Road Diesel Vehicles**

Dear Chairman Burke and Members of the Board:

The Construction Industry Air Quality Coalition cannot support the adoption of the Surplus Off-Road Opt-In for NOx (SOON) program, proposed rule 2449, at this time. In addition, we see little likelihood that the contractors in Southern California will be able to participate in the program as it is currently written. Nor, do we see any reason to rush to adopt a local District Rule when the State-wide regulation has not become final and will not be final for many more months, perhaps longer.

We have repeatedly warned the staff at California Air Resources Board (CARB), South Coast Air Quality Management District (SCAQMD) and San Joaquin Valley Air Pollution Control District (SJVAPCD) that the SOON program is unworkable in its current form and our suggestions to make it workable have all been ignored.

The SOON program was originally presented to the construction industry as a voluntary, fully funded effort to help South Coast and San Joaquin air districts achieve the additional NOx reductions that are needed by 2014 in order to comply with the SIP commitments. We have made it known to everyone what it would take for construction companies to be willing to participate in an "over compliance" effort. The CARB staff, air district staffs, environmental interests, and the CARB Board ignored all of our suggestions. Instead they decided to write a regulation that has now confounded even the efforts of the bureaucrats to figure out how to make it work. Short of starting over, we see no likelihood that the South Coast air district will ever achieve the additional 12 tons of NOx reductions that it is seeking.

Unlike what we were told originally, today, SOON participation is mandatory, not voluntary. It's life goes well beyond 2014. The contractors are expected to co-finance the compliance and the program requirements are a disincentive for any contractor to participate. Additionally, the construction industry is

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facing a severe economic downturn which makes the survival of most companies a difficult challenge. For many, survival is an impossibility considering the compliance requirements associated with the CARB off-road regulation. We are already seeing contractors and equipment rental companies close their doors and nearly 40,000 fewer construction workers are employed than just one year ago.

Insisting that the SOON program must meet the Carl Moyer guidelines will doom the program to failure.

SOON is an "over-compliance" program. Carl Moyer was designed as an "early-compliance" incentive program. It will not work for the "mandatory" SOON program for several reasons. First, the pool of available Tier 0 equipment, exceeding 250 horsepower that can be re-powered to Tier 3 is shrinking rapidly as contractors dump old equipment in anticipation of the need to comply with the base CARB rule. Second, even less of that equipment spends 75% of its time in the South Coast district. Third, the contractors are not willing to sign seven year contracts that penalize them for participating in the program. Fourth, most contractors will spend all their resources complying with the CARB base program and have no funds left for South Coast's co-funding requirements. Fifth, differing rules in South Coast and San Joaquin will make it problematic for fleets based in both air districts to comply. Sixth, contractors will be required to submit funding proposals for thousands of pieces of equipment that cannot possibly be funded under the Moyer program. And finally, it is more likely that a contractor being selected for funding under this program will sell the equipment rather than re-power it, thus precluding the opportunity for the district to take credit for the emissions reductions.

The sad irony of all of this is that the construction industry currently has nearly 50% of the statewide fleet parked and not operating due to the lack of work. That condition is expected to last until at least mid-2009. The emissions from that off-road construction equipment are down dramatically. In fact we have probably already achieved the 12 tons in reductions you are seeking.

The CARB staff has announced that in the next round of 15-day comments on the Off-Road Rule, they are going to make the SOON program voluntary for 2008. That would suggest that there is no need to adopt Proposed Rule 2449 at this time, there is no requirement to submit compliance plans in early 2008 and that there is plenty of time to carefully consider drafting a rule that will achieve the results the district is seeking.

We have long maintained that there should be a simple way to do this. By our calculation South Coast needs somewhere between 650 and 1,200 engines to be re-powered in the next five years

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in order to meet the 12 ton goal. In the last six years, there have been approximately 2,000 re-powers completed successfully in California. There are only five types of equipment that can actually be re-powered to Tier 3 using the Moyer guidelines. They are 7 models of scrapers, four models of compactors, two loaders, one bulldozer and one motor grader. Nothing else qualifies. According to several major equipment manufacturers less, it is physically possible to repower less than 5% of the existing off-road equipment fleet with a Tier 3 engine. It would be easier to devise a program to hunt down that type of equipment and fund it, rather than make every contractor spend what limited resources they have submitting compliance plans for equipment that cannot be re-powered and will not be funded.

The Construction Industry Air Quality Coalition has grown increasingly frustrated with the tone and direction of the District's efforts to implement the SOON program. Until we see some commitment on the part of South Coast to devise a workable rule, there is little interest in cooperating with the District to redraft a broken rule that will only create more economic hardship for contractors in Southern California.

Sincerely,



Michael Lewis, Senior Vice President
Construction Industry Air Quality Coalition

Attachment

Cc: Governor Schwarzenegger
CARB Board Members
San Joaquin Valley APCD Board Members &
Executive Staff

ATTACHMENT #2

ATTACHMENT #

Off-Road Equipment - Engine Repower Availability
(Tier 0 & Tier 1 Repowers 2000 - 2007)

Equipment Type	Model	Replacement Engine	VDECS	Comment
Wheel Loader Scrapers	621B	Tier 3	DPF Available	
	621E	Tier 3	DPF Available	
	621F	Tier 3	DPF Available	
	623B	Tier 3	DPF Available	
	623E	Tier 3	DPF Available	
	623F	Tier 3	Dual DPF Available	
	627E	Tier 3	Carl Moyer Waiver Exists	tractor only; not rear engine
	627F	Tier 3	Carl Moyer Waiver Exists	tractor only; not rear engine
	631D	Tier 3	DPF Available	
	633D	Tier 3	DPF Available	
	637 D	Tier 3	Carl Moyer Waiver Exists	both engines
	637E	Tier 3	Carl Moyer Waiver Exists	both engines
	651B	Tier 3	Carl Moyer Waiver Exists	
	657B	Tier 3	Carl Moyer Waiver Exists	tractor only
	657E	Tier 3	Carl Moyer Waiver Exists	both engines



Approximately 2,055**
Engines Repowered to Date



Equipment Type

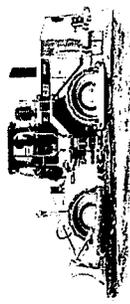
Model

Replacement Engine

VDECS

Comment

Equipment Type	Model	Replacement Engine	VDECS	Comment
Wheel Dozers/Compactors	824C 825C 826C 834B *	Tier 3 Tier 3 Tier 3 C-18 Tier 3	DPF Available DPF Available DPF Available DPF Available	Repower Not CAT Approved or Verified



Approximately 165**
Engines Repowered to Date

Excavators (Terex O&K Hydraulic Shovel)	RH 120-C	Tier 3	Carl Moyer Waiver Exists	
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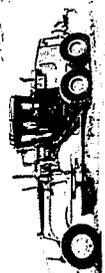
Approximately 53**
Engines Repowered to Date

Loaders	966F * 988F *	C-7 Tier 3 C-15 Tier 2	DPF Available Dual DPF	Repower Not CAT Approved or Verified Repower Not CAT Approved or Verified
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Approximately 65**
Engines Repowered to Date

Equipment Type	Model	Replacement Engine	VDECS	Comment
Track-Type Tractors	D8L* D8N* D9L* D10N*	C-15 Tier 3 C-13 Tier 3 C-18 Tier 3 C-27 Tier 3	Status of VDECS Unknown Status of VDECS Unknown Status of VDECS Unknown Status of VDECS Unknown	Repower Not CAT Approved or Verified Repower Not CAT Approved or Verified Repower Not CAT Approved or Verified Repower Not CAT Approved or Verified
				
Approximately 93** Engines Repowered to Date				

Motor Grader	140G* 16G	C-9 Tier 3 Tier 3	Status of VDECS Unknown DPF Available	Repower Not CAT Approved or Verified Repower Not CAT Approved or Verified
				
Approximately 12** Engines Repowered to Date				

Engine Replacements above range from approximately 150 to 550 Horsepower

* Repower not released as Caterpillar approved and verified design. Some dealers may be repowering as prototypes, but final verification of application must be approved by CAT.

** Engine repower counts are approximations. Roughly 95% of repowers performed between 2000 and 2007 have been with Tier 1 or Tier 2 engines. Tier 3 engines became available beginning in 2006 and are now available for these equipment.

Other Off-Road Equipment Types Used by the Construction Industry

Equipment Type	Model	Replacement Engine	VDECS	Comment
Articulated Trucks		N/A		No Tier 3 Repower available at this time
Backhoe Loaders		N/A		No Tier 3 Repower available at this time
Cold Planers		N/A		No Tier 3 Repower available at this time
Feller Bunchers		N/A		No Tier 3 Repower available at this time
Forest Machines		N/A		No Tier 3 Repower available at this time
Forwarders		N/A		No Tier 3 Repower available at this time
Hydraulic Excavators		N/A		No Tier 3 Repower available at this time
Industrial Loaders		N/A		No Tier 3 Repower available at this time
Knuckleboom Loaders		N/A		No Tier 3 Repower available at this time
Material Handlers		N/A		No Tier 3 Repower available at this time
Multi Terrain Loaders		N/A		No Tier 3 Repower available at this time
Off-Highway Tractors		N/A		No Tier 3 Repower available at this time
Off-Highway Trucks		N/A		No Tier 3 Repower available at this time
Paving Equipment		N/A		No Tier 3 Repower available at this time
Pipelayers		N/A		No Tier 3 Repower available at this time

Equipment Type

Model

Replacement
Engine

VDECS

Comment

Equipment Type	Model	Replacement Engine	VDECS	Comment
Road Reclaimers		N/A		No Tier 3 Repower available at this time
Skid Steer Loaders		N/A		No Tier 3 Repower available at this time
Skidders		N/A		No Tier 3 Repower available at this time
Telehandlers		N/A		No Tier 3 Repower available at this time
Track Loaders		N/A		No Tier 3 Repower available at this time
Underground Mining		N/A		No Tier 3 Repower available at this time
Wheel Excavators		N/A		No Tier 3 Repower available at this time

ATTACHMENT #3

Perry & Shaw, Inc.
General Engineering Construction

475 West Bradley
El Cajon, CA 92040

(619) 390-6500
Fax: (619) 390-8831
License No. A 719408

February 22, 2008

California Air Resources Board
1001 "I" Street
P.O. Box 2815
Sacramento, CA 95812

Attn: California Air Resources Board

Re: **PROPOSED IN-USE OFF ROAD DIESEL REGULATIONS
SOON PROGRAM - CONTRACT DOCUMENT**

Dear Sirs / Madams,

The purpose of this letter is to comment on the SOON program. In reading of *ATTACHMENT 2: DESCRIPTION OF SURPLUS OFF-ROAD OPT-IN FOR NO_x (SOON) PROGRAM* provided on the ARB website as supporting documentation to SOON, I take exception to the staff's oversimplification of the real impact of this regulation on business. I am addressing two of the notable flaws in this proposed regulation.

ISSUE 1 - REAL LOSS IN EQUITY VALUE OF EQUIPMENT AND DOWNSTREAM IMPACTS OF THIS LOSS:

STAFF ECONOMIC ANALYSIS:

The economic analysis provided by staff relative to the "cost" to the owner of a piece of equipment could be somewhat accurate when the piece of equipment is taken out of the context of fleet ownership, or, in other words "...in an ideal world...". Some of the staff comments relating to compliance costs:

"...a fleet participating in the SOON program may face slightly higher compliance costs..."

"...the participating fleet will realize an economic benefit..."

"...Although the SOON program will ultimately lessen the costs of compliance..."

"...the SOON program could also potentially increase the estimated cost of the off-road regulation in its initial years...by a small amount (less than one percent)."

"Even with the slight increase in the regulatory cost of the regulation, staff expects...(it) is still in the cost effectiveness range of previous measures..."

The conclusion is that there might be a very minor cost to the Owner on the front end but it will be more than made up on the back end and everything will be O.K. In the real world, the world where we all go to work each day, things don't work this way, not even close.

Heavy equipment ownership is a complex business. When it is joined with contracting, it is even more complex. As an industry, we have tried in vain to educate CARB staff about how our business and our financing and our bonding and our contracting work. They have no understanding.

AN EXAMPLE OF THE HOW THE PROPOSED SOON REGULATION IMPACTS EQUIPMENT OWNERSHIP:

The example presented below is a real scenario based on current cost and market conditions:

STEP 1: The Owner of a fleet of heavy, off road equipment is a contractor. In that fleet is a 1995 CAT 657E scraper with engines in good condition.

- Current market value of the machine is about \$285,000 (most recent auction value).
- The machine is owned 100% by the fleet owner, there is no direct debt.
- The owner has a line of credit with a lender that is backed by the equity in this and other equipment in the fleet. This line of credit is used for equipment procurement and to cash flow the contracting business.
- In addition, the owner has a bonding capability based on a balance sheet that uses the equity built up in this and other pieces of equipment as a large part of the financial base of the company. The real equity base in the company is used as a part of a direct calculation used by the Owner's bonding company to determine the amount of bonding available to the owner.
- The largest portion of the Owner's equity in his contracting business is the equity built up in each piece of equipment.
- The Owner of this equipment utilizes it throughout California on large projects as bids are won.

STEP 2: Even though the owner does not request or want to repower the machine and has no need to repower the machine to meet CARB Off Road Diesel regulations, this machine is chosen to be in the mandatory SCAQMD SOON program by the air district.

- The repower cost is approximately \$345,000 to go to Tier 3 for both engines. The Owner contributes \$45,000 to the repower cost. The remaining \$300,000 is paid for by the air district.
- THE PROBLEM: There is no where near dollar for dollar value added to the equipment by doing these repowers. The value of the machine is based on the condition of the machine and the condition of the engines, not their Tier. On day one following the repower of the machine it is now worth \$300,000 to \$325,000, certainly no more and more realistically still \$285,000. For purposes of this review, I will be generous and assume the new value of the machine is \$325,000.
- On that day the owner of the machine also has a new liability against that machine in terms of the air district's position of their contribution to the machine of \$300,000. Therefore, the owner's equity in the machine has dropped from \$285,000 to $(\$325,000 - \$300,000)$ or \$25,000. In addition, the Owner has spent \$45,000 as a part of his contribution to the repower. The net loss to the owner on the first day after the repower is all of the that day for the repower is all but \$25,000 of his equity in this machine and an additional \$45,000 out of pocket.
- The finance company that has the line of credit will no longer use any remaining equity in this machine to support the line of credit because the ownership of the machine is "clouded."

(This can be affirmed by reviewing the terms and conditions of SCAQMD Moyer contract and affidavits in the previous public comments by representatives of equipment finance companies). Financing companies are dealing with the Moyer attachment to machines by simply not considering these encumbered machines as a part of the fleet for financing purposes..

- The Owner's's bonding company will follow the finance company in terms of viewing the owner's equity when calculating the contractor's ability to bond. There will be a direct, significant reduction in the Owner's bonding capacity.

NET EFFECT:

The real net effect of this mandatory repower is that the owner has:

- A real loss in equipment equity of \$260,000,
- A real loss of borrowing ability due to decreased equity,
- A real loss of bonding ability
- An out of pocket the \$45,000 spent for the repower
- This negative impact must be multiplied by the number of machines brought under the SOON program. The true impact could quickly have a 7 figure negative impact rippling through the company's balance sheet and bonding ability.

OTHER POTENTIAL ECONOMIC IMPACTS:

- In addition, the program will require that the machine be used within the bounds of the air district 75% of the time for 7 years. *The air district essentially conscripts the machinery from the Owner, in that the Owner unwillingly must enter an agreement restricting the ability to use the equipment where and when he chooses to.*
- There will be times when the Owner has work for the equipment out of the district but not in the district and will have to supplement his fleet to make up for the loss of productivity for this piece of equipment by renting. This is an additional, indirect cost of the program to the Owner.
- Because the Owner is a large fleet owner, the severity of the impact of the SOON program puts him at a distinct economic disadvantage when competing with other fleet owner's that are not compelled to be in this program including but not limited to small and medium fleet owners. Other Owner's with exactly the same machines are allowed to do things with their equipment that this Owner is not allowed to do.
- **THE OVERRIDING ECONOMIC IMPACT - THE CURRENT ECONOMY:** Currently our business is depressed. Our business is heavy earthmoving and we are running at about 12% of the volume we were doing two years ago. We are currently operating 21% of our fleet when weather permits. It is taking all the creativity and resources we have just to keep enough cash flow to keep the doors open. There currently is no capacity to spend any capital on the equipment except as needed to keep the few pieces moving that are needed and it is my belief that there won't be significant work for at least another 2 years. To be mandated to spend money on this program would be a real financial disaster and, without

question, if this program is mandated, there will be good, substantial contractors that will go out of business because of this.

The CARB staff presentation of this analysis is testimony to the CARB staff's underlying inability (or intended refusal) to understand the real impact to business. I can go on and on about the real impact to the Owner's contracting business that will result from this program. These are simply a few of the ways that there will be a real impact to a real business that staff does not begin to understand and for which staff is not qualified to make a truly valid economic analysis. If the program is as good as is portrayed by staff, contractors and owners would be lined up to take advantage of it. But they're not.

THE CONTRACT:

The second place this program is flawed is that it is mandated that the Owner unwillingly sign a contract with the air district. It does not directly state that the Owner of a piece of equipment is compelled to sign a binding contract with the air district. Rather, it states that it is mandatory for the Owner to make application for funding. It then says that the Owner shall complete any projects selected through SOON. I believe it is implied that, through the SOON program, the Owner is compelled to sign these contracts and if he refuses to, he will be subject to action by either the air district or the state.

THE PROBLEM: Upon review of the current SCAQMD Carl Moyer contract, I am convinced that I could never negotiate this contract to what I would consider reasonable terms. If this is the case, then by what authority am I compelled by the air district to unwillingly sign the contract? Some examples of issues:

- Review by counsel: The language in the contract states that I have had the contract reviewed by counsel. My attorney will recommend that I not execute this contract. How is this to be dealt with?
- Indemnity Language: There is very strong indemnity language in favor of the air district. If I am being compelled to execute this contract, why would I want to provide any indemnity to this agency or its employees or consultants. I would require that I receive complete indemnity in my favor from the air district. No public agency will provide my company with complete indemnity for machinery I own.
- Insurance: The insurance requirements of the contract are well in excess of any insurance I may consider having on the equipment.

These are just a couple of the areas of the contract that I know I could not work out with the air district. I have no incentive to try to work this out because the air district is mandating that work be done to my equipment that I can not afford to do and that I don't want to because I am in compliance with all current regulations.

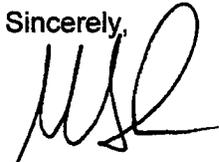
SUMMARY:

If my fleet is currently in compliance with the air quality requirements of the State of California, how can I be mandated to participate in this program? How can I be compelled to spend money I do not

have a need to spend, to give up real equity (value) in my machinery, to have my ability to contract diminished and have my ability to use my equipment as I need arbitrarily constrained without my willing participation?

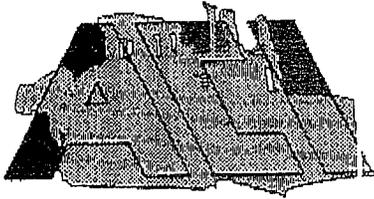
A more honest and thorough analysis, including real consideration for the input from industry, should be made before any form of this program is considered for implementation. I would expect that if this program is presented as a voluntary program with more reasonable constraints, it might be as effective as the Moyer program has been to date.

Sincerely,

A handwritten signature in black ink, appearing to read 'MSH', written over the word 'Sincerely,'.

Mike Shaw

ATTACHMENT #4



ACI • ALTFILLISCH CONTRACTORS INC.
General Engineering Construction • License No. 351917
13300 Citrus Street, Corona, California 92880 • (951) 736-2811 • Fax (951) 735-8934

May 25, 2006

Lani Montojo
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765-4178

Contract # 7

Attn: Carl Moyer Contract Administrator, Technology Advancement

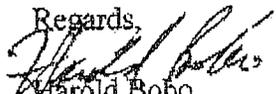
Re: Contract #6110

ACI has decided not to exercise this contract. The maintenance cost for these machines has been expensive and the contract has many more requirements than previous contracts. Some problems we see with the contract:

1. The term is for 7 years.
2. It is becoming more difficult to purchase engines from manufactures; the order time is becoming very long.
3. CARB is requiring the highest level of retrofit devise for these pieces of equipment.
4. Post inspection are now required.
5. The reporting hours need to be within 30% above or below the projected hours.
6. Contractor is required to destroy the old engines.

ARB is also in the process of passing regulations for Off Road Equipment, so we want to see what those requirements will be.

Thank you for the offer.

Regards,

Harold Bobo
ACI

A. L. MacIntosh Company

Excavating & Grading Contractors

9501 Kruse Road

Pico Rivera, CA 90660-1431

(562) 692-1203 • FAX (562) 695-8293

Cal. Lic. No. 193388

Serving Our Valued Customers Since 1955

February 5, 2008

South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765-4178

Attn: Lani B. Montojo

Re: AQIP Contract #08134

It is with deep regret that I must, at this time, return the above referenced contract. Because of the recent unexpected downturn in our construction industry, our hours of equipment utilization have substantially decreased. Therefore, we cannot come close to obtaining the emission reductions required by this contract.

We are committed to reducing our overall emissions in the South Coast Air Basin and will pursue any and all other economically viable options as they become available.

Thank you for your consideration.

Sincerely,

Donald MacIntosh
President

ATTACHMENT #5



COALITION TO BUILD A CLEANER CALIFORNIA

CLEANING CALIFORNIA'S CONSTRUCTION FLEET *AN ALTERNATIVE PROPOSAL - July 2007*

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
The California Rental Association
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
ABC of California
AGC America
American Concrete Pumping Association
American Road and Transportation Builders Association
Associated Builders and Contractors
Associated Builders and Contractors of San Diego
Barnett VanDyne Construction Inc.
Beaverhead Construction
Bellizzi Tree Service
Bert W. Salas, Inc.
Butte Sand and Gravel
California Building Materials Dealers Association
California Building Industry Association
California Dump Truck Owners Association
California Golf Course Superintendents Association
California Legislative Conference of the Plumbing, Heating and Piping Industry
California Ski Industry Association
Carlton E. Cooper Excavating & Grading
Contractors Association of Truckee Tahoe
CST Environmental, Inc.
Fallen Leaf Tree Service, Inc.
Franklin Construction, Inc.
Justice & Associates
Kern Minority Contractor Association
Mid-State Steel Erectors, Inc.
National Electrical Contractors Association
NotCal Excavating Inc.
Northern California Engineering Contractors Association
O'Brien Steel Erectors, Inc.
Passage Excavating
PC Exploration, Inc.
Pinnick, Inc.
Ram Construction & Association
SCV Superior Grading, Inc.
Steico
Stevens Creek Quarry, Inc.
Sukut Construction, Inc.
SKANSKA Construction
The Builders' Exchange of Stockton
Twin Cities Equipment Rentals
Valley Contractors Exchange
Vinci Pacific Corporation
WWT/Welenco
Western Engineering
Qualcomm

California's Construction Industry

The construction industry in California is not a monolithic industry despite its size and its contribution to the state's economy. Currently, the industry directly employs nearly 1 million workers at more than 70,000 company locations. Yet, almost 90% of construction firms employ 20 or fewer persons making it an industry that surprisingly is comprised of many, very small companies. Additionally, about 168,000 construction firms have no employees, as owner-operators, sole proprietorships and self-employed businesses.

However, those small firms control approximately 28% of the construction equipment in the state. Only 2% of the state's construction companies employ 100 persons or more and they own approximately 36% of the statewide construction fleet. The balance of the firms between 20 and 100 employees own the remaining 36% of the equipment. The cost of the California Air Resources Board's (CARB) proposed regulation falls disproportionately on these small and medium companies.

It is also important to note that 98% of California construction firms generate less than \$13 million in annual sales and have fewer than 100 employees. With small profit margins (3 to 5 percent) there are scarce resources available for those firms to comply with the enormous costs of the proposed regulation.

The Impact of CARB's Proposed Rule

CARB estimates there are 180,000 pieces of off-road construction equipment in California today. Approximately 85% of that equipment is Tier 0 or Tier 1 equipment that will all need to be replaced by the end of 2020. This equipment tends to be heavy duty, diesel powered equipment that is designed and maintained to last for decades. As a result of its long life, CARB has decided that it needs to adopt a regulation that will accelerate vehicle turnover well beyond that which is normal for this equipment in order to achieve lower oxides of nitrogen (NOx) and particulate matter (PM) emissions from construction activity.

The CARB staff has proposed a classic "command and control" regulation that will require all construction fleets to meet a strict fleet average emission limit annually. This limit is set for both NOx and PM, and if the fleet does not meet the set limit, it must annually replace, repower or retire 8% (accelerating to 10% in 2015) of their engines to achieve NOx reductions, and an additional 20% of the engines must be retrofitted with a verified diesel emission control system (VDECS) trap to reduce PM. This mandatory turnover and retrofitting

on an annual basis is extremely costly and financially crippling for many companies.

Further, the regulation requires all fleets to begin with the same fleet emission average in 2010. This places an extraordinary burden on older fleets and forces considerable cost on those fleets in the early years of the regulation. For contractors who do not have the money to comply, the only option is to shrink their fleet by disposing of equipment each year until the emission limit can be achieved. We believe that this compliance method will be the most likely strategy for most small and medium sized contractors. Our economic analysis concludes that the state-wide fleet could shrink by as much as 30,000 pieces of equipment. A reduced fleet will limit the size and type of contracts that companies can bid on and will reduce the bonding capacity of those firms to do additional work. It will have a dramatic effect on the cost of construction contracts just as California launches the \$40 billion rebuilding bond issue effort approved by the voters in November 2006.

A Coalition to Build a Cleaner California Alternative

Members of the Coalition to Build a Cleaner California have been working with CARB for more than three years on the development of this regulation. We believe there is a better way to achieve the desired emission reductions without the mandated annual emission limits proposed by CARB. In developing this alternative, our goals are simple:

1. Achieve better emission reductions for 2015 than the CARB proposal.
2. Keep the same starting date as the CARB proposal.
3. Require annual reporting to demonstrate progress toward the goal.
4. Provide maximum flexibility for contractors to reach the target.
5. Allow more time at the back-end for new Tier 4 engines to enter the fleet (estimated to be approx. 2014/2015).
6. Recognize the wide divergence in fleet sizes, emissions and capabilities.
7. Permit each fleet to determine how to best achieve the reductions.
8. Give credit to those fleets that provide early reductions for both NOx and PM.
9. Minimize the financial impact to keep the most firms in business.
10. Maintain a highly competitive bidding environment.

The Coalition proposal would have each contractor establish individual fleet emissions and fleet inventories in 2009, the same requirement contained in the current proposal. Starting points would be established in 2010 for large fleets, 2013 for medium fleets and 2015 for small fleets.

However, rather than establishing an annual fleet emission target, the alternative would establish a 2015 emission reduction goal as a percentage of the individual fleet emissions.

For large fleets, the 2015 NOx emission reduction goal would be 32.5% and the PM emission reduction goal would be 47.5% which is slightly more than the 31.23% for NOx and the 46.84% for PM set by CARB's proposal. Each contractor would have to report annually their progress toward the goal, but the required reductions would be a percentage of their starting point. Every large and medium contractor fleet would have the same percentage reduction requirement.

Some contractors would be able to reach the goal sooner than others and would have a head start on the 2020 goals of a 50% reduction in NOx and a 70% reduction in PM. Every large contractor would have to comply with the 2015, 2020 and 2025 goals. The 2025 goals would be a 62.6% reduction in NOx and an 84% reduction in PM for each fleet. Medium fleets would have to comply with the 2018, 2023 and 2028 goals and small fleets would comply with the 2020, 2025 and 2030 goals.

Small fleets would be subject to a similar approach for PM emission reductions only. Required PM reductions would be 35% in 2020, 70% in 2025 and 84% in 2030.

The advantage of this alternative is that contractors can manage their fleet in a fashion most suitable for their financial condition. It allows for a more practical 5-year business planning cycle and it provides each contractor with the flexibility to use the full range of options available such as repowering, retrofitting, replacing or retiring equipment as they see fit. It achieves the same emission reductions at each milestone but it allows each fleet to reduce emissions in direct relation to their total emissions and their starting point.

The most significant difference between the alternative plan and the CARB proposal is moving the 2020 goal for large fleets to 2025. Small and Medium fleets would also be given additional time. We believe that is necessary in order to allow more time for Tier 4 engines, which will not be available in most horsepower ranges until 2014/2015, to enter the market and be acquired by the contractors. Tier 4 engines will achieve all the emission targets without any further retrofitting. It is the most desirable engine and the CARB proposal assumes that roughly half of the California construction fleet will be made up of these engines. Even when these engines are available in the marketplace, it's highly unlikely that 100,000 engines can be introduced to the fleet in 5 years or less as envisioned by the CARB proposal. Additional time will be needed.

The Coalition alternative is designed to fit within the framework established in the draft proposal prepared by the staff. The following outlines the specific changes that would need to be made to the draft proposal to adapt it to the Coalition alternative.

Regulatory Premise

1. Based on the 2010 NOx Target and the 2020 NOx Target in the proposed regulation, CARB seeks to achieve a 62.6% reduction in NOx during this time frame.
2. Based on the 2010 PM Target and the 2020 PM Target in the proposed regulation, CARB seeks to achieve an 84.0% reduction in PM during this time frame.
3. The proposed regulation is too complicated and too prescriptive. It leaves the fleet owner very little flexibility in managing his fleet.
4. The construction industry has requested an additional five years to achieve the remaining 12.6% and 14% of NOx and PM reductions respectively required by the regulation for large and medium fleets primarily to allow more Tier 4 engines to become available for purchase in California.

5. The regulation would be simpler if it established required percentage reductions over time and let fleet managers decide how best to achieve the reductions.
6. The percentage reductions required should be the same overall as those currently envisioned by the regulation.
7. The regulation should have "benchmark" or "interim" requirements for emission reductions throughout the applicable regulatory period. Annual reports submitted by each fleet should include total emission reductions required necessary for the fleet to meet the upcoming compliance goal, the actions taken and reductions achieved to date toward that goal, and the percent of progress remaining to achieve goal.
8. Fleet operators should have to report each year, beginning in 2009, so that progress towards the emission reduction goals can be monitored. Each year, CARB should send a letter to all contractors after annual reports are submitted reminding them of their emission reduction obligations and penalties associated with non-compliance.
9. The 2009 report for each fleet should be used to establish fleet and statewide inventories only, not to establish the Start Points.
10. Fleet size should be revised to reflect the following:

Small Fleet = 2,500 horsepower or less (remove additional requirement to meet small business definition)
Medium Fleet = 2,501 horsepower to 10,000 horsepower.
Large Fleet = Greater than 10,000 horsepower.
11. Start Points should be established using the NOx and PM Index Calculations currently specified in the proposed regulation. For fleets achieving early reductions, the start point may be calculated based on the year the first early reduction occurred.
12. End Points should be calculated based on a percentage reduction from the Start Point.
13. Start Points and End Points will be unique for each fleet.
14. Small Fleets will continue to be subject only to the PM requirements of the regulation.
15. Compliance for all fleets shall be demonstrated as indicated in the table that follows:

Fleet Size and Emission Reduction Requirements

Year	Large		Medium		Small	
	NOx	PM	NOx	PM	NOx	PM
2009	<i>Initial Inventory Report - All Fleets</i>					
2010	<i>Establish Start & End Point</i>					
2011						
2012						
2013			<i>Establish Start & End Point</i>			
2014						
2015	<i>32.5% Reduction From Start Point</i>	<i>47.5% Reduction From Start Point</i>			<i>Establish Start & End Point - PM Only</i>	
2016						
2017						
2018			<i>32.5% Reduction From Start Point</i>	<i>47.5% Reduction From Start Point</i>		
2019						
2020	<i>50% Reduction From Start Point</i>	<i>70% Reduction From Start Point</i>				<i>35% Reduction From Start Point</i>
2021						
2022						
2023			<i>50% Reduction From Start Point</i>	<i>70% Reduction From Start Point</i>		
2024						
2025	<i>62.6% Reduction From Start Point</i>	<i>84% Reduction From Start Point</i>				<i>70% Reduction From Start Point</i>
2026	Maintain Rate	Maintain Rate				
2027	Maintain Rate	Maintain Rate				
2028	Maintain Rate	Maintain Rate	<i>62.6% Reduction From Start Point</i>	<i>84% Reduction From Start Point</i>		
2029	Maintain Rate	Maintain Rate	Maintain Rate	Maintain Rate		
2030	Maintain Rate	Maintain Rate	Maintain Rate	Maintain Rate		<i>84% Reduction From Start Point</i>
2031+	Maintain Rate	Maintain Rate	Maintain Rate	Maintain Rate		Maintain Rate

16. NOx and PM reductions can be achieved the following ways:
 - Equipment Replacement
 - Equipment Retirement
 - Engine Repower
 - Retrofit with Verified Diesel Emission Control Systems (VDECS).This option applies to both PM and NOx to the levels established in the regulation.
17. This regulatory concept will naturally result in early removal of Tier 0 engines from fleets because fleet managers will receive the most significant percentage emission reductions by replacing or otherwise controlling Tier 0 engines.
18. Credit for emission reductions achieved by fleets that have repowered or replaced Tier 0 engines with Tier 1, 2 or 3 engines beginning March 1, 2000 through the applicable starting point should be granted and applied to the reductions required by Item 15.

Credit for reductions of both NOx and PM should be granted.
19. Credit for emission reductions achieved by fleets that have retired Tier 0 engines from their fleets between March 1, 2000 through the applicable starting point should be granted and applied to the emission reductions required by Item 15.

Credit for reductions of both NOx and PM should be granted.
20. New fleets entering California after the time start and end points are established will be required to achieve a pro-rated level of reductions between the date they begin operating in California and their respective end-point date. New fleets cannot include Tier 0 engines, but instead must be comprised entirely of engines less than five (5) years old or engines representing the most current Tier for the engine horsepower.
21. Compliance extensions should be granted for equipment manufacturer delays. This should apply to delays related to both engines and VDECS. Fleet operators who have purchased new engines/equipment or VDECS in order to comply with the regulation will be excused from immediate compliance if the new engines/equipment or VDECS have not been received due to manufacturing delays as long as a purchase order for the engine/equipment or VDECS has been placed at least 6 months prior to the applicable compliance date.
22. Fleets comprised solely of Interim and Final Tier 4 engines need not achieve any further reductions and are deemed in final compliance with the regulation. Fleets comprised solely of Interim and Final Tier 4 engines may add only interim and final Tier 4 engines to their fleet.

Conclusion

We can't emphasize it enough. **The Coalition to Build a Cleaner California alternative plan will result in the cleanest construction fleets in the world.** And it will do so while keeping:

- the most number of construction companies in business and workers employed,
- the bidding environment at its most competitive,
- the Rebuild California bond program on schedule,
- construction cost increases to a minimum.

We believe this alternative approach is superior to the rigid targets set by the CARB proposal. *The construction industry is being asked to do something that no other industry in California has been asked to do – dispose of equipment and assets before their useful life has been completed* and purchase new equipment before it would otherwise be acquired. Given the multi-billion dollar cost of this regulation the construction industry should be at least be given the opportunity to comply in the most reasonable and flexible manner possible. We believe that this alternative is the best way to achieve the desired emission reductions and minimize the cost to achieve the goal.

ATTACHMENT #6

Auctioneers early winners with new CARB regulations

Ritchie Bros. Auctioneers scored big earlier this year, thanks to the California Air Resources Board's off-road diesel regulation. Signs are that all auction houses are going to be very busy going forward.

Take the case of three-generation equipment rental house Cobra Equipment Rentals of Colton.

They put their entire fleet in the November 14th Ritchie Bros auction, including 25 pieces that had Carl Moyer grants for repowers and retrofits attached.

"It is just too confusing right now," said Jim Atkins, CEO of Cobra Equipment. "We have talked to our lawyers, our accountants and our air quality consultants and this is the best decision we can come up with right now."

Atkins said the current state of the rental market was a factor in his decision as well.

"Our rates are going down and our costs, particularly with the CARB rules, are going up," he said. "We may take the money and get back in with new equipment and we may not."

Atkins cited the deep uncertainty held by many in our industry regarding the durability of the bolt-on verified diesel emission control systems (VDECS) required by CARB as a key factor in the firm's decision-making.

"Nobody knows when those things are going to start falling off and hurting someone," he said.

The final version of the regulation had not seen the light of day as of press time, but, many equipment owners have been grappling with the rule for a long time.

Ritchie Bros. three-day auction in May of this year generated more than \$41 million in gross auction sales and featured more than 2,900 lots from over 500 consignors—new site records for both categories, the company said. ♦

ATTACHMENT #7

ATTACHMENT #8



FAST TRACKING CALIFORNIA'S INFRASTRUCTURE BOND PROJECTS HELPING JUMP START ECONOMIC GROWTH IN CALIFORNIA

"I have spoken with all four legislative leaders and we are committed to acting quickly on removing regulatory and statutory hurdles that hinder investment in new construction in both the public and private sector. We will continue to identify other steps we can take to stimulate our economy."

Governor Schwarzenegger, "Gov. Schwarzenegger Announces Action to Combat Increased Unemployment Rate," Press Release, 1/18/08

Today Governor Schwarzenegger will bring together builders, engineers, cabinet officials and other experts to discuss steps the state can take to jump start the economy. With California's housing market slumping, foreclosures continuing and unemployment on the rise, the Governor is calling for immediate economic stimulus measures to reinvigorate California's economy. This meeting follows last week's emergency cabinet meeting in which agency directors and department heads were instructed to immediately recommend ways to work with the legislature to speed the release of \$29 billion in unallocated funds from the 2006 infrastructure bonds. The Governor also had a Big 5 meeting with the legislative leaders last week to address this issue. Speeding up construction of roads, schools and levee repairs will help our economy continue to grow and keep more Californians working.

California currently has \$29 billion in unallocated funds from the 2006 infrastructure bonds. In November 2006, voters approved \$42 billion in infrastructure bonds – championed by the Governor – to restore and expand California's highways, roads and transit systems, as well as schools, housing, parks, levees and water supply systems. While much of this funding has been committed to projects statewide, \$29 billion remains. Learn more at: www.bondaccountability.ca.gov/.

Fast tracking unallocated infrastructure bond funds can help give California's economy the boost it needs. The sooner California allocates the remaining infrastructure bond funding, the sooner the state can create jobs, boost incomes, enable goods movement, strengthen trade and help our economy, while protecting the environment.

- The Governor has directed the state's agencies and departments to find solutions. Last week agency directors and department heads were instructed to immediately recommend ways to work with the legislature to fast track infrastructure bond funds and projects. In today's meeting the Governor will discuss the next steps the administration can take.
 - Last week, the Governor also instructed Finance Director Mike Genest to use his authority in the current budget act to release \$300 million in funding for roads, highways and corridor mobility improvements. Also, the Department of Water Resources will begin early environmental work and mitigation to allow \$200 million of already allocated levee projects to move quicker.
- To move forward, current regulatory and statutory hurdles must be removed. Currently, regulatory and statutory hurdles are preventing California from expediting existing projects and fully accelerating infrastructure funding and project authorization.
 - Options for removing regulatory impediments include, but are not limited to: fast tracking CEQA, streamlining the OSHPD hospital permitting process and accelerating the DGS procurement process.
 - To remove these barriers, the Governor is committed to working with the legislature, labor and environmental leaders, builders, engineers and cabinet officials to find immediate solutions.
- Over the last year, the state has shown that it can expedite major infrastructure projects safely and efficiently. Fast tracking infrastructure projects saves money, gets more Californians working, relieves traffic, speeds up goods movement and improves our environment. Last year the state:
 - Reopened the southbound Golden State Freeway (I-5) Newhall Pass truck lanes and tunnel more than two weeks early following a 31-vehicle pile-up that ignited a devastating fire, temporarily closing I-5 in both directions.
 - Reopened the MacArthur Maze only 26 days after a gasoline tanker carrying 8,600 gallons of fuel overturned and caught fire, closing both the southbound 880 and eastbound 580 connector.

Rebuilding California is a key component of the Governor's overall economic development strategy for the state. The Governor is committed to boosting economic growth, enhancing our environment, improving service for citizens and increasing value for taxpayers by improving the pace of delivery, improving operation and maintenance, and lowering the cost and risk of California's infrastructure. Recently the Governor has:

- Joined Pennsylvania Governor Rendell and New York City Mayor Bloomberg to reinvigorate federal investment in the nation's infrastructure by creating the "Building America's Future" coalition.
- Proposed the state pursue the broad use of Performance Based Infrastructure (PBI), establish the Strategic Growth Council to promote economic, sustainable growth and development and meet California's skilled workforce demands with 20,000 new engineers over the next decade. Learn more at: www.gov.ca.gov/sots/2008/#/sgp/.
- Called for additional investment in water, education and court infrastructure as part of California's Strategic Growth Plan. Learn more at: www.gov.ca.gov/pdf/gov/CSGP.pdf.

In addition to these economic stimulus measures the Governor has:

- Called on Congressional leaders to quickly pass legislation to raise limits for government loan programs which will help boost the housing market, reduce foreclosures and allow more people to achieve the American dream with solid, responsible loans.
- Directed the state's Employment Development Department to extend the hours of operation at all job assistance centers across the state so displaced workers can get help finding jobs.
- Announced an agreement with California's major loan servicers to streamline the loan modification process for subprime borrowers living in their home and launched a \$1.2 million public awareness campaign to help homeowners avoid foreclosure.