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May 11, 2007

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

Re: **PROPOSED IN USE OFF ROAD DIESEL REGULATION - COMMENTS**

Dear Ms. Witherspoon,

BACKGROUND:

My partner and I have an engineering contracting company and have regularly employed between 150 and 200 highly skilled and highly skilled Operating Engineers. Our area of expertise is heavy earthmoving, so our livelihood and that of our employees is based entirely on the use of heavy off road diesel equipment. .

I am a graduate engineer and have been in the heavy construction industry for 30 years. Our company has been actively repowering equipment since 2001 using the Moyer Program. I personally have been active for over 2 years with local and regional stakeholder groups with regards to the proposed offroad diesel regulations. We expect that the regulations will have a significant impact on the operation of our company because we rely so much on our diesel driven off road equipment.

There are two reasons I have been active both locally and through the Construction Industry Air Quality Coalition (CIAQC) in Los Angeles:

- The first is that I have tried to become educated as to what these regulations will be with the hope that by understanding as early as possible what is to be required and when it will be required, I will be able to plan for potentially detrimental economic impact on our company (and our families' and employees families' future) by these regulations.
- The second is to share the information locally with others in my industry. I realized early on that there is has been very little structured outreach effort by CARB staff regarding these pending regulations. There is no dispute that these regulations will have a huge impact on all contractors and equipment owner's in San Diego and the rest of California and it is just not right that these regulations "blind side" those individuals and families that have worked hard to make a living in this tough and competitive business environment. After having personally participated in over a dozen meetings regarding this issue locally, it is my opinion that a majority of equipment owners that will be affected have no idea what these proposed regulations are about.

A summary of my thoughts and where I believe the problems lie:

A. CARB is irresponsible if it makes the off road diesel regulation without a true understanding of the devastating economic impact this regulation will have to the construction industry and the downstream impact to the state economy, the cost of private and public works construction and the price of housing. The economic models presented by CARB staff in the workshops and in the staff report show there is huge lack of understanding on the part of the staff of how the economics of contracting and equipment ownership work. There is no better way of putting it than whomever put this analysis together simply doesn't have a clue about:

- business and short and long term financial planning
- balance sheets
- equipment equity structure
- equipment financing
- equipment depreciation vs. Usable equipment life
- bonding
- the diverse nature of different types of construction / equipment companies
- the structure of risk
- the immediate and long term negative impact on construction costs - especially in PUBLIC WORKS CONSTRUCTION infrastructure including roads, mass transit and utilities and housing
- how the highly competitive, hard bid construction industry works.

If this regulation is to be enacted in its current form, then CARB staff must provide a complete accurate and honest economic analysis so that CARB board members are fully informed of the true economic devastation to the construction and related industries and to the budgets of construction projects - including the Governor's Proposition I Infrastructure Bonds - that will be a direct result and an accurate and honest prediction of the significant cost impact to private and public works construction and housing costs throughout California. Your staff has not shown they have the understanding, ability or desire to an honest economic analysis even though the industry has made a huge effort to "educate" them on our industry.

B. CARB Staff does not have a good fleet census. According to CARB staff, the off road diesel fleet in California is about 50% tier 0 engines. In workshops, they explained that this analysis was derived using "national averages" that were tweaked with their state equipment census. Their statewide census was admittedly weak with, staff claims, a little over 5% of the industry responding to a request for census information. An Industry census shows that the tier 0 engines comprise well over 60% of the fleet horsepower.

How can CARB understand what the emissions generated by the fleet are and what the scope of the emissions solutions are without having an accurate fleet census? There is no question that an accurate census is the first necessary step to understanding the scope of this problem and the scope of the resolution of this problem. CARB staff does not have this census.

C. The business decision our company made to voluntarily replace 43 high horsepower engines over the last 5 years using the Carl Moyer Program has not only not been a good

decision, it has been a terrible business decision in view of the proposed rule. And CARB staff agrees. We have done a fleet evaluation using the fleet calculator provided by CARB. As the other contractors who have run this calculation have learned, we will not even come close to meeting either the PM or the recently added NOx thresholds for a number of years. Therefore, we must still retrofit and replace engines. ***There is no credit given for voluntarily replacing over 20 Tier 0 engines with Tier 1 engines and 23 Tier 0 engines with Tier 3 engines, at a cost of over \$5.5 million over the last 5 years for PM emissions.*** We are still simply noncompliant and must replace the prescribed 20% VDEC solutions (solutions that are not currently available in an engineered, proven, warranted package, regardless of what CARB staff wants to believe). It will have been of little benefit to our company to have done this early and voluntarily with regards to meeting the requirements. The staff has included a provision to back off on replacement of Tier 1 until 2014 but in reality this is of no benefit to those of us that have retrofitted Tier 0 to Tier 1 voluntarily.

From a business standpoint, we wasted our money trying to be proactive with early, voluntary replacement. There should be a reward for early, voluntary efforts by equipment owners rather than a penalty. NOTE: It is sure hard to make long term, high dollar, high risk business decisions (i.e. a "**BUSINESS PLAN**") when regulations are initiated with short term thinking on a short term cycle.

- D. The manufacturer's will not have the required equipment available in the time frame prescribed.** Most of the equipment we own is Caterpillar equipment. All of the equipment we have and continue to repower is Caterpillar. I have met directly with top management from the Caterpillar factory. I know what the repower solutions are, I have a pretty good idea of what to expect in the future and what it costs.

I have attended two workshops that representatives from Caterpillar have told staff that the required volume of engines necessary for the repowers and the engineered repower solutions required as a part of this regulation will not be available to fulfill the demand. CARB staff is confused about the difference between new equipment and engines for repower. All new equipment sold will meet the current engine emission requirements. This does not mean that their will be either enough new equipment to satisfy demand or that there will be additional engine solutions available to repower existing equipment to satisfy the requirements. The repower solutions are not simply engine switch outs. They require engineering for cooling systems, controls, electronics and frame modification. These solutions are forthcoming for a small percentage of equipment in use. ***A majority of the equipment in use will not have repower solutions available and will have to be retired.***

- E. There has been insufficient outreach effort by CARB to the industry and individual stakeholders in the industry.** The room was packed for the one and only CARB workshop held in San Diego through no effort of the CARB staff. We were told in January by CARB staff that there wouldn't be any workshops in San Diego and then this workshop was belatedly scheduled. There was no prior notification to any contractors in San Diego of this meeting. The postcard announcing this workshop which CARB sent to some contractors in the area was received in the mail the day of, or the day after, the workshop and with no time, date or location mentioned. The fact that the workshop was held in the basement of a public building with no audio or visual capabilities verifies my belief that this workshop was an afterthought. ***The only***

reason that the room was filled was because the industry took the initiative and used mass mailings and multiple email contacts to those affected to inform them of this meeting. My opinion is that the outreach by CARB staff makes the PERP notification look great, and the PERP notification has been acknowledged as a miserable failure.

CARB staff needs to take industry outreach as a serious responsibility and work with the industry to be sure that every stakeholder that will be affected by these regulations (contractors, equipment owners and dealers) is informed of the pending regulations and has the opportunity to be a part of the process.

- F. **Who is going to “pay” for equipment owner’s equity loss due to regulations?** Even now, due to the proposed regulations, the market value of all except the newest equipment is plummeting. **Owner’s are currently experiencing a real loss of net worth** on their balance sheets that has a direct affect on their ability to borrow money (credit lines) and their ability to bond. This will accelerate as the impact of these regulations becomes widespread. **Does CARB staff understand that they are asking equipment owners to significantly increase debt through major equipment modifications or upgrading and at the same time are reducing equipment owners financial ability? Is this simply a “penalty” that we equipment owners are expected to absorb from a regulation that “Monday Morning Quarterback’s” business decisions that were made in the past? And this is at a time when the very competitive private construction market is in a major downturn.**
- G. **Why is there a one size fits all regulation for different sized companies with the noted exception of small companies and public agencies.** Through the examples presented, CARB staff demonstrated that this regulation will have significantly varying impacts on companies, depending on what portion of their total revenue is generated by equipment. At one end of the spectrum is a heavy equipment rental company that operates on very thin margins, is not a contractor and does not have the ability to generate revenue beyond a competitive equipment rental rate. The relative impact of this regulation is huge to these company’s operational and financial ability. On the other end of this spectrum are the heavy contractors that have a relatively low percentage of their revenue generated by equipment. The impact of this regulation on their fleet is “diluted”. Yet there is not provision in these proposed regulations for this disparity.

And why are small companies excluded from this regulation? A bulldozer from a small or large company pollutes at the same rate. If 20 to 30% of the state’s fleet horsepower is owned by small companies, why are medium and large companies being asked to pick up (finance) a disproportionate share of the problem? Either a small or large contractor’s ability to absorb these costs is directly proportional to the business they do and no different for one or the other.

If the purpose of this regulation is to reduce emissions , why is CARB excluding as much as 20 to 30% of the fleet horsepower (i.e. SMALL FLEETS) from these regulations?

- H. **What will the cost be for noncompliance?** Despite repeated requests both in work shops and directly with staff, I have not been able to get any reasonable response regarding the cost of noncompliance, fines. This is significant to me as an owner in the very risky construction business in two ways:

- First, to make an informed decision regarding the annual outlay of millions of dollars (I anticipate our cost of compliance will be \$1.5 to \$2.5 million per year), I need to understand the alternatives. One alternative might be to pay for noncompliance, but I can not do that analysis without something specific regarding the cost of noncompliance. Staff is not willing to provide that information.
- Second, the business I am in, heavy earthmoving, is extremely risky. There is a very high failure rate for this business sector, including companies that have been around for years. A single bad job can result in millions of dollars of loss...and we build 20 to 30 projects per year. Due to the complexity of the regulation, there is always a chance that we might error in our effort to comply and be subject to penalty.

I have to be able to evaluate the value of a potential fine as another layer of risk in my business. I hear of multimillion dollar fines for "paperwork errors" being prosecuted by the State. It should be the responsibility of CARB to lay out for our industry the potential scope of the cost of noncompliance in a form that is understandable and predictable so that I know how much additional risk there is in being added to our business.

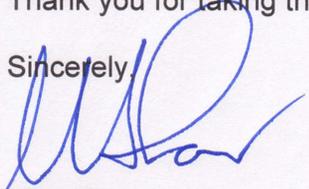
IN CONCLUSION:

As I originally stated, I expect that these comments fall on deaf ears. I believe that the outcome of this process is already determined. The industry has worked for years with CARB staff and repeatedly presented reasonable solutions that will attain the required goals in the end. There has been little or no reaction by CARB staff to industry concerns and in fact over time the proposed regulations have become more restrictive, despite feedback from our industry.

It is too bad that these regulations will probably be implemented by CARB without any real understanding of the affect that they will have on the individual's that own and work for private business in this state. And I expect that the phrase that I heard more than once in the workshops here from CARB staff **"...we didn't think of that..."** will be used again and again in the years to come as the unintended consequences of these regulations devastate a large portion of the construction industry in the state, put out of business a many heavy construction equipment owners both large and small and cause a huge escalation in the cost of public works construction and the price of a home in California.

Thank you for taking the time to read this.

Sincerely,



Mike Shaw
President

cc: Ron Roberts CARB