R.J. BERRY JR., INC.

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BUS. (559) 896-1680 FAX (559) 896-1682
STATE LIC. #433753

May 23, 2007

Robert Sawyer, Chairman
Air Resources Board

Sent via email

Dear Chairman Sawyer and members of the Air Resources Board,

On behalf of R.J. Berry Jr., Inc., a general engineering contracting firm with a 25-year history of executing public works projects in the Central Valley, I am writing to provide the Board with specific comments on the proposed new rules regulating in-use off-road diesel engines. I have written on three previous occasions regarding this topic and am enclosing the most recent of those letters to ensure it becomes a part of the public comment record.

As you prepare to decide upon the new rules later this week, please consider the following:

1. We at RJ Berry Jr., Inc. are concerned about the quality of California's air and how it affects our employees, our families, our neighbors, and ourselves. We understand that more stringent rules on all sources of air pollution are needed and important for environmental, health, and other reasons. Our views are not unique in the industry. Please consider industry, and our firm, as a partner in your efforts to reduce emissions from heavy construction equipment.

2. While air quality issues are being addressed, construction within the state must continue. It is our opinion that the proposed rules will have a profound negative impact on the construction industry's ability to execute the State's work, as the financial impacts on RJ Berry and many other construction firms will be extreme.

3. We have run scores of scenarios using the Air Resources Board's fleet calculator/excel model to understand how our existing medium-sized fleet (19 pieces of equipment with 3000 horse power) will need to change over time in order to comply with the new regulations. We have determined that:

a. Under any scenario, it appears that our relatively young fleet (our fleet average age is 13 years) will be required to turnover at least 70% of our equipment and retrofit emission control devices on each motor in next 13 years in order to achieve compliance. This is a rate at least three times faster than what our normal rate of turnover would likely be during the same period.
b. We estimate that it will cost our firm more than $5 million to achieve compliance through 2020. Our annual work volume – not to be confused with profit – is just under $5 million. Without a significantly more robust Carl Moyer-type program in place through 2020, our company will be unable to fund the capital requirements dictated by the proposed rule.
c. Even if State funding became readily available to our company to assist with the replacement, repowering and retro-fitting of so much of our fleet so quickly, we are concerned about the equipment manufacturers' ability to provide the quantity of Tier 3 and Tier 4 equipment and VDECS that will be needed within the state. Given the rules of supply and demand, the cost of this equipment during the compliance period will likely inflate dramatically. We feel that this is a serious limitation that should be addressed.

4. We suggest that making the following changes to the proposed rules will allow R.J. Berry Jr., Inc. to be able to continue to operate a similarly-sized construction fleet while complying with ARB rules:

   a. The date of first compliance should be extended 5 years and stronger incentive and carry-over credit programs should be in effect immediately.
   b. The percentage turnover requirements should be reduced to five percent in early years and then ramp up to six, seven, and then eight percent.
   c. The threshold of "low-use" for vehicles should be increased from 100 to 300 hours.

We appreciate the opportunity to provide comments and suggestions to you prior to your vote on the new rules.

Sincerely,

Robert J. Berry, Jr.
President

Enclosure

R.J. BERRY JR., INC.

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March 28, 2008

Dr. Robert Sawyer, Chairman
California Air Resources Board
P.O. Box 2815
Sacramento, CA 95812

Regarding: California Air Resources Board proposed rule change

Dear Dr. Sawyer:

I am the founder and president of a 25-year-old grading and paving contracting firm doing business throughout the Central Valley and based in District 16. I have been following with great interest the California Air Resources Board's (CARB) development of new rules for off-road diesel-powered construction equipment. I am writing to ask for your assistance on important matters that will have extremely negative impacts on the State's construction industry.

As a family man born and raised in the San Joaquin Valley, I am acutely aware of and interested in air quality problems as they relate to health and the environment. Rules further limiting everyone -- individuals, auto manufacturers, and all segments industry -- are inevitable and important, given the State's growth and development. Please know that these views underlie all comments that follow.

I have attended meetings hosted by CARB in the last several months. Though the final recommendations for new rules regulating off-road construction equipment will not be released for a few weeks, CARB has released draft rules that are universally considered unworkable by the heavy construction industry.

In short, CARB has proposed a complicated set of rules that will essentially require my company to replace my fleet of heavy equipment within an impossibly short time frame with newer equipment that meets higher air quality standards. CARB has presented information that concludes that (a) California contractors can afford to comply with this proposed rule and that (b) the heavy equipment manufacturers will be able to support replacing, repowering and retro-fitting the majority of the State's over 200,000 off-road diesel equipment fleet in the next decade. Both conclusions are wrong.

Reducing the emissions from off road diesel equipment is an important goal. In anticipation of more stringent air quality rules, I have improved my fleet over the last decade. The result of this effort is that, at great expense, my fleet is continually getting younger and less polluting on average. I expected, and still hope, that rules will be adopted that encourage my firm and the rest of the industry to continue to upgrade our fleets and pollute less within a timeframe that works for my small business and the rest of the industry. With CARB's proposed rule, the State is placing conflicting and unattainable demands on heavy construction contractors like myself: execute the backlog of public infrastructure improvement projects (note the nearly $40 billion in road construction authorized in the November elections) while complying with unworkably stringent air quality standards. Bear in mind that the State estimates that off-road diesel powered construction equipment accounts for less than 1% of the diesel particulate matter pollution and 9% of the oxides of nitrogen pollution in the state.

I am asking that you please take the time to better understand the construction industry's perspective and ensure that a practical, balanced rule is put in place. Your unique leadership position as Chairman of CARB's board allows you to reconcile impending and serious conflicts within the state. I have enclosed two recent letters that I have written to CARB that addresses specific details of the proposed rule.

Thanks in advance for your leadership and assistance on this important matter.

Sincerely,

Original signed

R.J. Berry Jr.
President

Enclosures