STATE OF CALIFORNIA
AIR RESOURCES BOARD

Public Hearing to Consider	**)**	
Amendments to California's	**)**	**Hearing Date:**
Emission Warranty Information	**)**	**December 7, 2006**
Reporting and Recall Regulations	**)**	**Agenda Item #: 06-11-5**
and Emission Test Procedures	**)**	

COMMENTS OF THE ENGINE MANUFACTURERS ASSOCIATION

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COMMENTS OF THE ENGINE MANUFACTURERS ASSOCIATION

The Engine Manufacturers Association (EMA) hereby submits its comments on ARB's proposed Amendments to California's Emission Warranty Information Reporting and Recall Regulations and Emission Test Procedures (hereinafter, the "Defect Reporting Rule" or "the proposed Rule"). EMA represents the world's leading manufacturers of internal combustion engines used in heavy-duty on-highway applications. EMA's members produce engines covered by ARB's proposed Rule and have significant concerns about the Defect Reporting Rule.

EMA and its members have a long and positive record of working with ARB and its staff on successful, and often innovative, emission regulatory programs. As such, we were surprised to first hear of ARB's intent to significantly modify the existing defect reporting program via the April 4, 2006 notice of ARB's May 2, 2006 "Warranty Reporting Amendments Workshop." There had been no previous discussion about defect reporting, and the heavy-duty engine industry was unaware of staff's intent to significantly change the existing program.

At that Workshop, and at an earlier meeting on April 25, 2006 with Tom Cackette, EMA expressed concern that the proposed amendments were based solely on light-duty/passenger car concerns and experience, and that no consideration had been given to the significantly different nature, concerns and experience of the heavy-duty engine industry. EMA's concerns were acknowledged in both meetings: the staff admitted that it had not considered heavy-duty on-highway issues in developing the May 2 Workshop proposal, nor had staff reached-out to EMA and its members.

As such, EMA asked to meet with the ARB staff responsible for the Defect Reporting Rule on June 1, 2006. EMA's representatives came to that meeting with the intent of discussing the proposed new Defect Reporting Rules, how they might impact the heavy-duty engine industry (and its customers), and the special, and often unique, circumstances that make the reporting of warranty claims so different for the heavy-duty engine industry. Instead of focusing on the proposed new regulations, however, the ARB staff only wanted to discuss issues associated with the current emissions warranty reporting program, which ended up being the sole focus of the meeting (and subsequent agreed upon follow-up discussions).

Nevertheless, at the June 1st meeting, and subsequently, EMA's representatives repeated their interest in working with ARB when, and if, staff determined that changes in the existing emission warranty reporting program were necessary or appropriate for heavy-duty on-highway engines. ARB staff indicated that having such discussions was their intent and desire and indicated that they would seek EMA's input before proceeding with proposed amendments applicable to heavy-duty on-highway engines.

Despite that agreement, the staff never contacted us. The next we heard about possible changes to the emission warranty reporting and recall program was ARB's publication of its proposed Defect Reporting Rule. Needless to say, we were surprised and disappointed that ARB proceeded to propose a new set of rules without taking into consideration the interests of the heavy-duty on-highway industry or issues that we raised at the May 2nd Workshop and subsequently. It should be noted that the proposed Defect Reporting Rule is significantly different than the proposal outlined at the May 2 Workshop. Clearly, something happened to cause ARB to change its proposal; just not anything to do with the heavy-duty on-highway industry.

Nevertheless, EMA and its members attempted to "get up to speed" on the new proposed amendments in the very short time provided since the proposed rule was published in late October. As such, we had a number of telephone conferences with ARB staff in the first two weeks of November. During those conferences, EMA and its members provided information about the characteristics of the heavy-duty on-highway engine industry and how those characteristics not only warrant, but require, changes in the proposed amendments. Staff indicated an interest and willingness to make changes to address the issues we raised. However, in spite of those representations, staff informed us on the eve of Thanksgiving that they were unwilling to make any changes in their proposal to address our concerns.

The heavy-duty on-highway engine industry has characteristics that are different than the passenger car or motorcycle industry. Those differences fundamentally derive from the fact that heavy-duty on-highway engines and vehicles are a capital investment and used for a commercial purpose. As such, the customer has a completely different (and much greater) level of expertise and involvement in the performance, durability, and maintenance of their heavy-duty engines and vehicles than does a typical automobile owner. Further, the commercial nature of the heavy-duty marketplace, and its competitive and performance oriented nature, result in heavy-duty manufacturers being highly responsive to their customers needs, and complaints – whether real or imagined.

As such, it is not at all unusual for a manufacturer to replace components at the mere request of the customer, despite the fact that there is nothing wrong with the component. As a result, the ordinary commercial practices of heavy-duty engine manufacturers can result in the processing of an unusually large number of non-defective parts through the manufacturers' warranty claims system. It is essential that manufacturers have the ability to "screen out" those claims and/or parts for which there is no defect.

Equally important, when there are defects, manufacturers are highly motivated to fix those problems because it is essential to their business interests to do so, and because of the leverage that their customers have over them. To the degree that such defects have no impact or

effect on emissions, ARB has no reason to try to regulate corrective action, and should avoid injecting itself in a commercial process that works. EMA's concerns are underscored by the fact that ARB's proposed Defect Reporting Rule would impose significant new burdens and costs on manufacturers.

We believe that additional dialogue and discussion – focused on heavy-duty on-highway issues – would lead to a much greater awareness of the special characteristics of the heavy-duty engine industry that impact emission warranty reporting. And, with greater awareness, ARB could implement a more appropriate, cost-effective, and successful set of defect reporting regulations. There is no need to adopt such amendments for the heavy-duty engine industry on December 7, 2006, and there are significant reasons not to.

As such, we formally request that ARB defer taking action on the proposed Rule as it applies to heavy-duty on-highway engines and vehicles. We also request that staff be directed to work with EMA and other interested stakeholders to develop amendments appropriate to the heavy-duty on-highway industry. Such revised amendments could be presented to the Board for consideration and adoption in six months. In considering this request, ARB should note that this is not a case of deferring the adoption of a new program where there are no regulations in place. Indeed, there are existing regulations that already require defect reporting. A modest delay in adopting amendments applicable to heavy-duty engines and vehicles will not have any adverse impacts.

In the meantime, EMA provides the following comments on the proposed Defect Reporting Rule:

A. ARB should not require recall or corrective action for defects that do not increase emissions beyond the family emission level (FEL).

ARB's ISOR discusses ARB's concerns with its existing recall regulations, and the perceived need to provide authority to recall products where there otherwise is no exceedance of an emission standard, on average. It should be noted that ARB's concerns, as documented in the ISOR, are not based on heavy-duty engine experience or issues. Holding aside questions of ARB's legal authority to proceed as it has proposed, EMA strongly objects to ARB's proposal to count each and every defect in an emissions-related part to be a "valid failure" (an undefined and ambiguous term) even if the defect does not cause <u>any</u> exceedance in emissions.

EMA's concerns are much different, and narrower, than those which appear to have led to ARB's proposed amendments. We are not focused on exceedances of emission standards, on average or otherwise. Instead, we think it is essential that the manufacturers not have to count in the first instances, or, at a minimum, those defects that do not cause <u>any</u> increase in emissions.

There are many examples of potential "failures" of emission related components that will have no effect on emissions: a fuel pump shaft may break resulting in engine not starting; an electronic fuel injector solenoid may short-out not allowing fuel to be injected; a fuel pressure sensor may fail resulting in limp-home capability in a fully emission compliant manner, etc. More importantly, such conditions will be immediately noticeable to the customer; will be completely unacceptable to them; will be covered under the manufacturers' commercial

warranty; and will be promptly corrected by the manufacturer. There simply is no need to "count" those potential defects towards the 4% corrective action threshold. But, if ARB nevertheless insists that they be counted, manufacturers must have the clear and unequivocable ability to screen-out such claims once the 10% threshold is reached in order to stay below the 4% level at which a claim and/or defect is deemed "systemic" and "valid."

B. ARB should provide specific criteria that would allow manufacturers to "screen-out" warranty claims that are not defects and/or are not valid.

The proposed amendments purport to ease the burden on manufacturers by raising the unscreened warranty claim threshold to 10%. The amendments explain that no corrective action is required unless "valid warranty claims" exceed 4%. But, the regulations provide no criteria that allow the manufacturer to have any meaningful basis, for reducing warranty claims or provide any certainty that claims that exceed the 10% threshold can or will be reduced to below the 4% trigger for corrective action.

There are any number of reasons why unscreened warranty claims should not "count" and should be screened-out: There is no defect (e.g. Customer satisfaction issues may result in claims being processed for parts that are not defective); the warranty claim and/or defect has no impact on emissions; the warranty claim may be the result of a secondary failure (another part's failure or defect may result in the failure of a "downstream" part); the part may already be part of voluntary recall or service action; the claim was double counted (e.g. a repair is made, but the dealer is required to service the engine again because of incompleteness); the claim is the result of an OBD system program fault that causes an improper defect code. Manufacturers should have the right to screen out such claims to avoid unfairly and improperly having to undertake corrective action.

In addition, many emission related parts have different and multiple potential failure modes. This is particularly true for complex assemblies such as a fuel pump. It is not reasonable for a manufacturer to be forced to take corrective action based on different failure modes that happen to occur on the same part, or based on the aggregated failures associated with the potential failed function of individual sub-components on a complex assembly. Manufacturers must not be obligated to aggregate warranty claims on different failure modes on the same part.

C. ARB should not require manufacturers to demonstrate, as part of certification, that their engines will not exceed a 4% failure rate.

ARB is proposing to substantially change the certification process, and impose a new, unworkable and unreasonable requirement on manufacturers. The proposed amendments would require that the manufacturer certify and demonstrate that their engines will not exceed a valid failure rate of 4% or 50, whichever is greater. Nowhere in the proposed amendments does ARB suggest how the manufacturers can make such a demonstration. In fact, the ISOR explicitly states that manufacturers won't be able to make such a demonstration: "No one knows or can accurately predict how well emission control systems of different manufacturers will work 10, 20, or more years from now. This is especially true when vehicles are required to meet increasingly stringent emission standards, requiring new and complex technologies to be utilized." ISOR at 16.

This is a most insidious new requirement. Not only does the staff provide no basis for making the demonstration; they know that it cannot be done. Thus, the staff has created a giant "Catch-22." Either the manufacturer does not or cannot make the demonstration (and they do not get certified) or they make the demonstration and then (without any due process or technical justification by ARB) subject themselves to automatic and mandatory corrective action. ARB must withdraw the new certification requirement. Further, ARB has no statutory or legal basis for determining that the failure rate determination is a "test procedure." It is not. See discussion in Comments of Detroit Diesel Corporation (November 29, 2006).

D. ARB should not impose new requirements on heavy-duty engine manufacturers in 2010.

In 2010, heavy-duty on-highway engines will be required to meet very stringent, aftertreatment forcing NOx emission limits. In addition, heavy-duty engines will be required for the first time to meet stringent OBD requirements. Imposing new Defect Reporting Rules, including mandatory recall action, in that same time period is unwise, unfair, and unrealistic.

The 2010 NOx emission limits and heavy-duty OBD requirements will require significant technology changes for engine and vehicle manufacturers. Manufacturers should not be forced to implement those new technologies while facing new, unknown, and unproven warranty and defect reporting requirements. The ISOR makes it very clear that the new Defect Reporting Rule will result in a significant increase in corrective actions for the passenger car and motorcycle industries in 2010, a time period of unchanged, stable underlying emission limits and where no new technology is expected to be implemented.

The potential adverse impact of such new requirements on the heavy-duty industry, where there are new emission limits and where major, unproven new technologies will be mandated, must be taken into consideration by ARB. At a minimum, ARB should defer the potential for recall under the new rules until 2013.

E. ARB should properly define certain key terms.

Section 2166.1 should be modified to provide defined terms as follows:

"Emission-related failure" – Failure of an emission control component or an emission related component that is reasonably and causally associated with an increase in emissions above the Family Emission Limit (FEL), or that reduces or impairs the ability to detect or diagnose such failures.

"Valid emission-related failures" – Emission related failures that have been screened to eliminate secondary failures, non-related failure modes, and non-failing components associated with an emission warranty claim where the failure of the component results in at least one of the following:

a) Result in an increase in emissions beyond the family emission limit (FEL) and/or

b) Reduce or impair the ability to detect or diagnose failures that would result in an increase in emissions beyond the applicable threshold level.

"Emissions warranty" – The manufacturer's warranty that specifically includes the emission control and/or emission related components as identified in the application for certification for the period specified in the applicable regulation.

"Systemic Failure" – Any particular defect or condition in an emission control or emission related component which, for a specific engine family or test group, results in a cumulative number of valid emission-related failures which exceed the greater of 4% or 50 of engines installed in California registered vehicles.

F. ARB should modify the proposed extended warranty requirements for light and medium heavy-heavy duty diesel engines.

ARB proposes that the extended warranty period for both light-heavy and medium-heavy heavy-duty engines be extended to 10 years/200,000 miles/6,000 hours, whichever is less. That proposed extended warranty period exceeds the regulatory useful life period of such engines and, as such, is not appropriate or authorized. Nevertheless, assuming ARB adopts extended warranty periods in excess of useful life for light-heavy heavy-duty engines (LHHDE), such period should be modified. LHHDEs are essentially the same as, and compete with, engines classified by ARB as Medium-Duty Vehicles (MDVs). ARB has proposed that the extended warranty period for MDVs be 150,000 miles. To the extent that it is legal for ARB to implement extended warranties at all, ARB should provide that same extended warranty period for LHHDEs.

The useful life period for medium-heavy heavy-duty engines (MHHDE) is 185,000 miles. Under no circumstances should ARB extend the warranty period for MHHDEs beyond 185,000 miles.

G. ARB must provide manufacturers an opportunity for a public hearing before any corrective action is imposed.

Section 2174(a) attempts to limit the manufacturers' right to request a public hearing to only those circumstances where there is a finding of nonconformity or an ordered recall. Further, Section 2174(a) restricts the record of any such hearing to only that information provided in the reports required by the proposed Rules (Section 2167-2171). ARB's proposed public hearing constraints are unfair and improper. As discussed above, the reports required in Section 2167-2171 do not provide an adequate basis, or any criteria, for establishing whether or not warranty claims are "valid." It is critical that manufacturers have an unfettered right to a public hearing with a meaningful opportunity to provide adequate information and create a record. ARB's proposal would deny manufacturers fundamental principles of fairness and due process.

H. ARB should amend Section 2172.3.

The wording in Section 2172.3(d)(1) should be changed to read: "The California Air Resources Board has determined that your (vehicle or engine) may have an emission related component that is defective. This defect (if it exists) may result in increased air pollutants. Emission control standards were established to protect your health and welfare from the dangers of air pollution."

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EMA and its members have significant concerns about the proposed changes to the Defect Reporting Rule. While we have outlined several specific changes in these comments, all of which should be made, we believe that deferring action now and taking some modest additional time to address the issues we have raised, and other issues related to heavy-duty engines, vehicles, and their customers, will result in a better, more cost-effective and functional emission warranty reporting and recall program applicable and appropriate to the heavy-duty industry.

Respectfully submitted,

ENGINE MANUFACTURERS ASSOCIATION