



December 22, 2006

Via E-Mail and U.S. Mail

Mr. W. Thomas Jennings
Chief Counsel
California Air Resources Board
1001 I Street
Sacramento, CA 95814

Re: December 1, 2006 Response to the Alliance's October 30, 2006
and November 28, 2006 Letters Concerning Deficiencies in the
Initial Statement of Reasons for the Warranty and Defect
Reporting Rulemaking

Dear Mr. Jennings:

Thank you for your response to my letter of November 28, 2006 to Catherine Witherspoon, on behalf of Air Resources Board Staff [hereafter "December 1 Letter"]. I also take that letter to be a response to my original October 30, 2006 letter requesting that the December 7, 2006 Board hearing be postponed because of procedural and other flaws in the October 10, 2006 Initial Statement of Reasons ("ISOR" or "Proposed Rule") for the warranty and defect reporting rulemaking. Please note that while your letter was dated December 1, 2006, we received it via regular U.S. mail on December 11, 2006 -- four days after the hearing. In future, I would ask that time-sensitive letters concerning this rulemaking be sent directly to me via fax, e-mail, or some form of express delivery.

At the December 7, 2006 hearing, the Board directed regulated parties and staff to continue working together to attempt to come to a mutually satisfactory resolution of how to revise the warranty and defect-reporting regulatory system. The Alliance pledges to work with ARB in good faith toward that end, and we have contacted ARB staff via email to arrange a mutually convenient time in early January for further individual discussions, and of course will participate in the tentatively scheduled March 22, 2007 second Board hearing in this matter and the planned February 2007 second public workshop process to precede it.

We note, however, that your December 1 letter appears to suggest that the agenda item for the Proposed Rule was not postponed to a later hearing date because "a meaningful dialogue

among the Alliance, its members and Board staff has taken place.” The main point of the Alliance’s original (October 30) letter was that staff did not properly discharge their California Administrative Procedure Act duties to consider various alternatives in connection with issuing the ISOR. Flaws in the ISOR cannot be corrected by meetings, however meaningful, held merely with one representative of regulated parties to a rulemaking. Rather, California law requires that reasonable rulemaking alternatives be considered in the ISOR document or other documents accompanying the initial Proposed Rule, and released to the general public. Nor did ARB provide a substantive response to the October 30 letter in any meetings or communications that took place after that date. At the November 3, 2006 meeting held with Deputy Executive Officer Tom Cackette, meeting participants did not turn to discussing the October 30 letter in legal terms until after Senior Staff Counsel Kirk Oliver needed to depart for a return trip to Sacramento. Mr. Cackette expressed his own views on the letter, but made it clear that he would defer to Mr. Oliver on the issue of how to respond to the legal issues raised in the October 30 letter. Since that time, we have not received any written or verbal communications addressing those issues.

In that connection, we would like to suggest that the best way to proceed from here would be for ARB to issue a new proposed rule and ISOR after the upcoming discussions among staff and regulated parties have taken place, regardless of the nature of any future proposed changes. We believe that would be far more efficient than trying to amend the existing proposal. Moreover, in light of the concerns we raised in our October 30 letter, we do not believe that it would be consistent with the Administrative Procedure Act to attempt to modify the existing proposal using the “15-day” process. The “15-day” provisions were not intended as a means to address significant procedural shortcomings at earlier stages of the regulatory process.

We look forward to continuing our dialogue with ARB on warranty and defect reporting issues. Feel free to contact me at your convenience with any questions about this letter. Thank you for your consideration.

Sincerely,



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cc: Tom Cackette, Deputy Executive Officer
Kirk Oliver, Senior Staff Counsel
Alexa Malik, Regulations Coordinator
Tony Dickerson, Air Resources Engineer
Tom Valencia, Air Pollution Specialist