

# THE FLANIGAN LAW FIRM

Mike Flanigan  
09-3-2

March 24, 2009

Mr. James Goldstene  
Executive Director  
California Air Resources Board  
1001 "I" Street  
Sacramento, CA 95814

Re: Opposition to Proposed Tire Pressure Regulation  
Section 95550 to the California Code of Regulations,  
Title 17, Article 1, Chapter 1, Subdivision 10, Division 3

Dear Mr. Goldstene:

We are writing on behalf of our client, Les Schwab Tire Centers (Les Schwab), which has been in the tire service business for 57 years. Today, the company is one of the leading independent tire dealers in the United States, with more than 7,700 employees in 420 locations throughout Oregon, Washington, Idaho, Montana, California, Nevada, Alaska, and Utah. The company opened its first operation in California in 1989 and now owns and operates 76 stores in Northern California and has a labor force of 1000 employees within the state. For the reasons set forth herein, the company is **opposed** to the adoption of the above-referenced regulation.

Simply stated, Les Schwab believes that the rationale for proposing a tire pressure regulation is valid in that properly inflated tires will reduce the amount of green house gases produced by automobiles and trucks. However, the company also maintains that the specific methodology (and technology) being proposed by way of the regulation to accomplish this goal is both unnecessary and uneconomical. Additionally, the regulation was not properly vetted within the tire manufacturing and retail industry before being formally proposed by way of the 45 day comment period. The company firmly believes that there is a better solution to the problem which would involve far less expense and, in fact, coincides with a recent promotional practice of the California Air Resources Board (the ARB).

Les Schwab realizes that the ARB is currently burning the candle at both ends relative to the myriad of tasks it is currently addressing. However, as best we can tell from our own investigation of the matter, there was no meaningful contact between the ARB staff and the actual manufacturers and retailers of tires. The ARB lists several interests that were contacted during the workshop phase of the proposed regulation. However, according to our client, the only association that was contacted, and having any real knowledge of the industry, was the Rubber Manufacturing Association. We contacted the association and were told that they have had no discussions regarding the proposed regulation with the ARB staff. (This could be due to the fact that the association never responded to the ARB's inquiry. However, the fact remains

that it appears there was never a meaningful dialogue, if any, with the industry on this issue.) Certainly, Les Schwab was not contacted by the ARB.

The Proposed Regulation Does Not Meet the Statutory Requirement of Necessity<sup>1</sup> and Will Create an Unnecessary and Unreasonable Burden on a California Business Enterprise.<sup>2</sup>

**Pressure Gauges** – As previously stated, Les Schwab agrees that properly inflated tires result in less CO<sub>2</sub> being emitted by motor vehicles. However, *the ARB has not proved that its new and very expensive approach is necessary to accomplish its goal.* Specifically, the proposed regulation would mandate very expensive gauges which are totally unnecessary to accomplish its stated goals. What is odd is that the cost of the gauge being proposed is twice as expensive as the gauge that was initially recommended by the ARB staff (i.e., \$50 per gauge rather than \$25 per gauge). Additionally, the industry customarily uses the standard “pencil” air gauge, which costs approximately \$2 a unit. This appears to be the same type of gauge that was handed out to the public by the ARB staff during its California State Fair tire check promotion in 2008.<sup>3</sup> If it was good enough for the staff email project and is good enough for current industry practices, why is a “pencil” tire gauge not sufficient for the current goals of the board?

According to our client, the calibration of a pencil gauge is easy to check, and if the pencil gauge reads over or under 2 psi, it can be discarded and replaced with minimal cost and effort. Les Schwab tests its pencil gauges once a week against a master gauge in order to assure maximum accuracy. *The level of pinpoint psi accuracy set forth in the staff report is universally viewed throughout the industry as an expensive overkill with negligible results compared to the less expensive plus or minus 2 psi variation.* It is obvious from the staff email project discussed above that staff not only knew of a more economical and practical alternative to the expensive gauges, but actually issued them to the public.<sup>4</sup>

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<sup>1</sup> California Government Code, sections 11349(a) and 11349.1

<sup>2</sup> California Administrative Procedure Act, section 11346.3(a)

<sup>3</sup> “ARB staffed a booth at the California State Fair in August of 2008. For this event, staff developed a monthly email tire pressure check reminder sign-up sheet and handed out over 2,500 tire gauges.” See: ARB Staff Report: Initial Statement of Reasons for Proposed Rulemaking – Proposed Regulation for Under Inflated Vehicle Tires, February 2009 at p 3.

<sup>4</sup> An adoption agency shall provide: “A statement that the adopting agency must determine that no alternative considered by the adopting agency would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.” See: California Administrative Procedures Act, section 11346.5 (a)(12)

**Tire Specification Manuals** – There is absolutely no need for industry members to have to periodically purchase tire specification manuals in order to determine the pressure requirements of a given tire. The recommended maximum psi for Original Equipment Manufacturer (OEM or OE) tires can be found on the sidewalls of all tires and on the driver's side door placard affixed to a vehicle's door pillar. Sometimes these psi numbers can also be found in the glove box and/or inside the center console. In situations where there are non-OE replacement tires (if they are the same size and ply as the OE tires), original OE recommendations apply. When the non-OE is not the same size and ply, standard practice is to inflate to the recommended psi on the sidewall adjusted by calculations for gross vehicle weight. Simply stated, a costly manual for a given tire line (or several lines) is not necessary, and the ARB has not met its burden as set forth in the California Administrative Procedures Act, section 11346.3(a), which reads as follows:

State agencies proposing to adopt or amend any administrative regulation shall assess the potential for adverse economic impact on California business enterprises and individuals, avoiding the imposition of unnecessary or unreasonable regulations or reporting, recordkeeping or compliance requirements.

Additionally, as a practical, in-the-field, hands-on matter, there is far more chance that an auto service repair personnel will misread a technical manual than misread the psi stamped on a sidewall or printed on the door placard.

**Recordkeeping** – At the outset, millions upon millions of unread records already exist in our state. The real winner in this era of unnecessary records and over-reporting is the storage industry. The record keeping methodology of the proposed regulations, which requires a completed service order, is not only onerous and unnecessary, but will place a needless economic burden on industry members such as Les Schwab.<sup>5</sup> Therefore, we offer for ARB's consideration the possible adoption of a simplified and affordable reporting requirement. Here is a less burdensome, yet effective, alternative:

1. The state should provide "Official Tire Pressure Check and Inflate Program" receipt books to be purchased by the automotive service providers (ASPs).
2. Upon completion of the tire pressure check and possible inflation, the customer will sign and be handed the original, and the ASP will retain a copy for ARB audit purposes.

We offer this alternative because it does not make sense for the ASP's to place this information in their more comprehensive invoices or work orders. In Les Schwab's particular situation, it's employees perform thousands of air checks where there is no other work to be done on the vehicle. The typical customers in these situations come in to the store, ask to have the air

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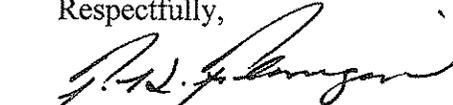
<sup>5</sup> California Administrative Procedures Act, section 11346.3(a).

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checked in their tires, and then they leave. It makes little sense to complete a work order for something that takes five minutes and is free.

Thank you for your consideration.

Respectfully,



Timothy H Flanigan