**BEFORE THE**

**California Environmental Protection Agency - Air Resources Board**

**Notice of Public Hearing to Consider Proposed Amendments to the Airborne Toxic Control Measure for In-Use Diesel-Fueled Transport Refrigeration Units (TRU) and TRU Generator Sets, and Facilities Where TRUs Operate**

## Comments

## submitted by

**Allen Lund Company, Inc**.

**kenny lund – VP Support Operations**

The proposed amendments to the TRU-Act to extend beyond trucking companies, the parties who will be fined when a refrigerated trailer is not in compliance on its Transportation Refrigeration Unit(TRU) is unfair, unworkable, will most certainly result in increased transportation costs, and will lead to more businesses leaving California.

Currently, the carrier can be fined $1,000 if it is not in compliance. Under the new proposal, anyone involved in the transaction including the carrier, the driver, the shipper, the receiver, the transportation broker, and the warehouse can be fined $1,000 each, or be sentenced up to six months in jail. These penalties cannot be extended to any parties other than the trucking company or carrier.

Clearly, a non-asset based transportation broker is not a carrier, it has no trucks, and is not an employer of drivers. A broker cannot exercise control over the carrier or its trucks or operations. A broker’s role is not to select certain trucks or drivers when tendering loads to a carrier. Allen Lund Company (“ALC”) is most concerned that the present proposal includes provisions to fine ALC, and all transportation brokers, if their independently-contracted carrier is not in compliance. This is the equivalent of fining a travel agent if an airline is out of compliance on an aircraft. ALC works with 22,000 carriers in a given year and it is impossible to monitor the 100,000+ trailers owned and operated by these companies.

It will be an impossible burden, in practice, for brokers to assure carrier compliance. ALC is not a law enforcement agency, it does not have access to the documents the state retains, and it must rely upon the carrier’s business practices to ensure compliance. It is physically impossible for brokers or shippers to travel to each trucking company or owner/operator to inspect the entity’s records and examine each trailer. If ALC books a load on a truck with assurances from the carrier that the truck is compliant (and even if ALC were to procure the VIN), the carrier can still switch the truck to be used on the ALC-booked load. In such a case, how can an innocent party such as ALC be fined or warned? What if the carrier provides ALC with the VIN belonging to a different, but compliant, truck? What if carrier paperwork is forged by the carrier?  If a carrier’s truck is retrofitted, what proof will ALC need to produce to avoid a fine? Given these significant issues, what mechanisms are in place for carriers to prove compliance sufficient to insulate ALC, and other California-based brokers, from fines and possible jail time?

At the time the trucker is fined, ALC will not be with the trucker. How does ALC prove its lack of wrongdoing when a delay in receiving its own fine may compromise its ability to determine the true facts from the carrier? ALC is not an enforcement branch of the state government, and cannot be asked to act as a policing agency for the thousands of carriers which operate in California.

Produce loads, moved in refrigerated trailers, are very different from other loads. With produce the freight is moved when the produce is ready, and this cannot be timed with certainty.  As such, when ALC is advised of a load, it must move quickly to ensure that the produce is delivered in a timely manner.  Adding a new requirement for verifying carrier compliance, especially where there is no fool-proof, and fine-proof, method for doing so, will not allow brokers to move the same number of loads, nor will loads move for a reasonable and acceptable cost. Of course, this will negatively affect the transportation of such loads, increasing the consumer’s final cost of the produce.

The CARB staff on TRU compliance has indicated that a first offense will result in a letter of non-compliance being sent to the shipper, transportation broker, and receiver. There is no process to appeal such a letter, no way to verify the allegations, nor any due process afforded to the warned party. Such a warning letter from a state agency, indicating the broker’s use of a non-compliant truck, will tarnish the broker’s standing with its customers, jeopardize future business dealings, and cause continuing economic damage to California companies. ALC, and any California-based broker, will be thrust into a no-win situation caused by unnecessary overregulation which is impossible to comply with. This proposed extension of liability for compliance to parties other than solely the carrier, which parties cannot physically ensure compliance, is unfair, unworkable, and an economic blow to already struggling California businesses. The revision cannot and must not be implemented.

It must be noted that the TRU Act itself is in question based upon CARB’s own letter to the lead author of the 2008 study that overstated issues with diesel exhaust. The NOTICE OF ADVERSE ACTION to Hien T. Tran dated April 9, 2009 from Linda Smith, Chief of the Health and Exposure Assessment Branch, , in the ‘Statement of Facts’ section states, “Your dishonesty regarding your education has called into question the validity of the report ‘Methodology for Estimating Premature Deaths Associated with Long-term Exposure to Fine Particulate Matter in California’ in which you were the project coordinator and lead author. This report in turn supports other controversial and critical regulation adopted by Air Resources Board (ARB). Your actions could create long lasting and damaging reflection on ARB and the California Environmental Protection Agency.” The report, authored by Mr. Tran, has been problematic and has been called into question several times by other properly credentialed scientists. To use and rely upon such a problematic report to extend the enforcement of this act to those who do not own the trucks is unwise and unjust. Additional scientific study must be conducted before expanding the TRU Act to parties other than truckers and trucking companies.

At a time of tremendous overregulation, this proposed amendment adds yet another reason for shippers and brokers to cease operations in this great state. ALC employs more than 100 people in high paying jobs in California. These are service jobs that can be moved to other states. ALC currently chooses to remain in California, however there continues to be pressure to move part or all of this company to a state that works with business, rather than California which oftentimes makes working in this state a burden.

We respectfully request that the TRU Act not be expanded, as proposed, as such a course of action will unfairly punish companies such as Allen Lund Company, Inc.