California Dump Truck Owners Association

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VIA REGULAR MAIL and E-MAIL

Mary D. Nichols
Chair, California Air Resources Board
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Re: CDTOA Written Comments on the California Air Resources Board's Truck and Bus Regulation (15-day Notice of Public Availability of Modified Text to Consider the Adoption of a Diesel Particulate Matter and Oxides of Nitrogen and Greenhouse Gases Control Measure for On-Road Heavy-Duty Diesel-Fueled Vehicles Operating in California)

Dear Ms. Nichols,

On behalf of the membership of the California Dump Truck Owners Association (CDTOA) we are writing to identify our continued concerns with the Air Resources Board's (CARB) Truck and Bus Regulation, as well as to provide critical information for the Board to consider as the regulation continues to develop and further devastates our industry.

The California Dump Truck Owners Association (CDTOA) is a 501(c)(6) trade association incorporated in 1941. A little over a year ago, we represented 1,400 construction industry related trucking company members ranging in size from 1 truck to over 350 trucks. Sadly, today that number has diminished to under 1,000 due to the recessionary economy, near-depressionary construction industry, the off-road diesel engine rule, and unfortunately now, the Truck and Bus Regulation. While our members are predominately dump truck operators, we also represent a large segment of the construction industry that hauls oversized and overweight off-road vehicles and materials, plus a specialized segment that operates pneumatic bulk trucks, water trucks and flatbed construction trucks within this state. Approximately 60%, or 600, of our members are sole proprietors; small one truck independent contractor owner-operator businesses. Additionally, the majority of our members operate low mileage vehicles, typically between 20,000 – 65,000 per year.

It is important to note that due to the relatively low mileage that the typical construction truck operates, small business owners within our industry rarely qualify for any of the grant money or funding CARB constantly alludes to. So while you and your staff continue to publicly avow that "a billion dollars is available for retrofits and replacements," our industry continues to be overlooked and neglected despite the financial devastation the Truck and Bus Regulation has and will continue to bring.

First, the August 19, 2009 Modified Text Version of the Truck and Bus Regulation is inconsistent with the Board's recommended changes at the December 12, 2008 hearing, as follows:

1. **The small fleets provision has been re-drafted in contradiction to the Board's direction**. In response to the inequitable damage the Truck and Bus Regulation would inflict upon small fleets of 3 vehicles or less, at the December hearing the Board agreed to delay the compliance deadline by one year until January 1, 2014. Unfortunately, CARB Staff obfuscated this direction and re-drafted the small fleets provision in a manner that actually makes the rule more painful for businesses with two and three trucks. Previously, fleets with two or three vehicles had to ensure at least one vehicle was equipped with a 2004 NOx emissions equivalent engine (or newer) by January 1, 2013, while the second and third vehicle had to be in compliance one year later in 2014. Staff re-drafted the provision such that now fleets with two or three vehicles may equip one vehicle with a 2004-2006 model year engine NOx emissions equivalent engine (or newer) by January 1, 2014, however, the second and third vehicle have **no compliance delay whatsoever**; they must abide by the traditional BACT schedule. This means

that these vehicles will likely need to be in compliance even earlier than 2014, thus an earlier compliance deadline than the previous version. Staff also introduced an even more stringent alternative method of small fleet compliance, which requires a **2010** model year engine equivalent. Certainly the Board's direction was not to further decimate small fleets; rather it was to ease the financial burden on these small businesses already struggling to survive. We request the rule be re-modified to be consistent with the Board's direction to delay the previous small fleet provision until January 1, 2014.

2. **The Retired Vehicle Credit contains an unnecessary end date**. In an effort to encourage fleets to retire older vehicles early (and thus expedite emissions reductions in the state), the Board agreed to add a Retired Vehicle Credit for vehicles retired on July 1, 2008 or later. In the August 19, 2009 version, Staff unnecessarily placed a cap of January 1, 2014 as to when the credit may be obtained. This cap only discourages the continued elimination of older vehicles from California's roads. We strongly request that the 2014 end date be eliminated from the Retired Vehicle Credit provision.

3. **No language ensuring "courtesy compliance inspections" has been added to the Rule**. In order to boost compliance, ease enforcement burdens, and provide vehicle owners with assurance they are in compliance, the Board agreed to provide "courtesy compliance inspections." However no language has been added to the regulation to ensure such courtesy inspections, nor detail the process of requesting one. We request the addition of such language to the regulation.

4. **Staff has still not provided the Board-requested comprehensive economic report**. Recognizing the impact the global recession has had on California's economy, and particularly the trucking industry, the Board directed Staff to provide them with a full comprehensive economic report and update the Rule to accommodate for the continuing downward trend. To date, Staff has furnished no such economic report. In fact, Staff has not once reached out to our industry in the nine months since the December hearing for any statistics or feedback on this matter. We have provided some pertinent information below. As you can see, our industry continues to suffer greatly through this economic turbulence, and is in an even worse position now to absorb the financial burden this Rule demands. We strongly request the Board demand this Staff economic report immediately so modifications can be made to the Rule as our industry prepares for compliance. Our members need to conduct significant financial planning to comply with this Rule and time is of the essence.

Second, the scientific justification for CARB's Truck and Bus Regulation is seriously flawed and we are formally requesting that CARB reassess the seriously flawed science leading to these regulations. For the record, we have provided below some, but not all, of the reasons why we believe these regulations are based on faulty if not fraudulent science:

The scientific justification for all CARB on-road diesel vehicle regulations has been seriously flawed since 1998 and needs to be reassessed before any of these regulations are implemented. Given the submission deadline of September 3, 2009, this response is limited to the brief statements indicating the flawed process, along with links to detailed documentation. Additional details can be provided to the Office of Administrative Law after September 3, 2009.

1. Based on California Health and Safety Code (CHSC) Sections 39670-39671, the CARB Scientific Review Panel (SRP) on Toxic Air Contaminants (TAC) was not legally constituted when it identified diesel exhaust as TAC on April 22, 1998. As far as can be determined through Freedom of Information Act requests and other related sources, ALMOST NONE of the SRP reappointments during the past 22 years have followed CHSC requirement that at least three qualified scientists be nominated for each position by the University of California (UC) President. If the UC President cannot provide evidence documenting regular SRP nominations and re-nominations in accord with CHSC provisions, then the SRP appointment/reappointment process seriously violates the CHSC. For more details about this issue, read June 18, 2009 Pacific Legal Foundation petition in which CDTOA is listed as a petitioner (Brown v. Adams).

    a. The January 1991 reappointment of the SRP epidemiologist, Gary D. Friedman, M.D., expired on January 1, 1994, based on the CARB Chair letter to Dr. Friedman (page 28 of Brown v. Adams). There has been no known reappointment letter since then. Furthermore, the CHSC states that the epidemiologist position must be made by the Secretary for Environmental Protection (Cal EPA), not by the CARB Chair, who wrote the January 1991 reappointment letter. Thus, Dr. Friedman has served illegally for over 15 years and has thereby kept every other California epidemiologist off of the SRP. Dr. Friedman was serving illegally at the April 22, 1998 SRP meeting when diesel exhaust was identified as a TAC. The SRP epidemiologist position is essential because the health effects of diesel exhaust are primarily based on epidemiologic studies and many complex and important epidemiologic issues were discussed during this meeting. The TAC identification was based primarily on epidemiological studies of occupational groups presumably exposed to high levels of diesel exhaust (railroad workers and truckers). However, the SRP never presented the occupational epidemiologic evidence for the railroad workers and truckers in California and never presented evidence for the health effects of diesel exhaust on average Californians. Furthermore, the SRP developed a Unit Risk Factor relating diesel exhaust and lung cancer based on national studies, in spite of the explicit request from Dr. Eric Garshick of Harvard University that his occupational studies NOT be used for quantitative risk analysis. However, Dr. Friedman made only 3.2% of the comments at the April 22 SRP meeting and never commented on these important points.

b. For the past 25 years the SRP has been dominated by two activist scientists, namely toxicologist John R. Froines, Ph.D., and biostatistician Stanton A. Glantz, Ph.D. Specifically regarding diesel assessment, a total of 56.9% of the comments at the April 22, 1998 meeting were made by Drs. Froines and Glantz, who have no scientific publications assessing diesel toxicity and who have long records as activist scientists. They are not representative of the California scientists who could have served on SRP as toxicologist and biostatistician. As of 1998 Dr. Froines had been on SRP for 14 years and Dr. Glantz had been on SRP for 12 years and they continue to serve as of 2009. They have effectively blocked all other toxicologists and biostatisticians from serving on the SRP. Substantial evidence can be presented that they have not behaved as objective or ethical scientists regarding the issue of diesel toxicity in California.

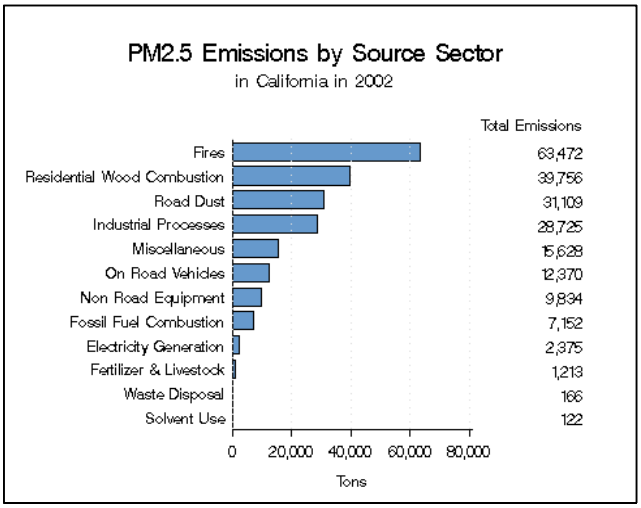
c. Based on the many detailed criticisms of the 1998 SRP identification of diesel exhaust as a TAC, we believe that a properly appointed SRP would have taken an entirely different approach regarding diesel toxicity and would certainly have considered the scientific points raised above, particularly the relevance of diesel toxicity to the general CA population.

2. The scientific basis for the on-road diesel regulations is the October 24, 2008 CARB Staff Report on PM2.5 and Premature Deaths in California by lead author Hien T. Tran.

   a. This report was written by CARB staff with no peer-reviewed publications relevant to PM2.5 and premature mortality and lead author Tran misrepresented his Ph.D.

   b. Substantial epidemiologic evidence from six different sources indicates that there is no current relationship between PM2.5 and premature deaths in California.

   c. The EPA's own (most recent 2002) California inventory of PM2.5 indicates that on-road diesel powered vehicles account for less than 6% of the total PM2.5 in California and consequently over-regulating the existing fleet of on-road diesel powered vehicles will have virtually no quantifiable impact on reducing total PM2.5 levels in CA but will cost in excess of $8-billion to implement of $648,000/ton. See graph:



   d. The key epidemiologists relied upon by CARB in the October 24, 2008 CARB Staff Report (Drs. C. Arden Pope, Michael Jerrett, Daniel Krewski, and Michael J. Thun) have clear conflicts of interest (CARB and EPA funding, involvement in review of report, etc.). Furthermore, they have repeatedly refused to allow reanalysis of the key American Cancer Society CPS II database, which is in violation of Federal Data Access Act.

   e. CARB has not considered several factors relevant to the justification of the on-road regulations. California has fourth lowest total age-adjusted death rate of all 50 states; California is currently experiencing 12% unemployment, the highest level since the Great Depression; none of the epidemiologic evidence used by CARB satisfies the Federal Judiciary Center standards for establishing a causal relationship between PM2.5 and premature deaths; additional factors cited in the references below.

Supporting referenced sources for these claims are at the end of the document

Third, the economic impacts of our industry upon California, as well as the recession's economic impacts upon our industry are much different and much worse than CARB's Staff report:

- Sadly, today CDTOA's membership numbers have diminished blow 1,000 due to the recessionary economy, near-depressionary construction industry, the off-road diesel engine rule, and unfortunately now, the Truck and Bus Regulation. This rule could have not come at a worst time in the last 40-years.
- CDTOA's member employers provide work for approximately 4,000 drivers, mechanics, support personal and managers. Approximately 60%, or 600, of our members are sole proprietors, small one truck independent contractor owner-operator businesses.
- The majority of our members operate between 20,000 – 65,000 miles per year. Newer trucks typically carry 600,000 – 1,000,000 mile warranties, and therefore have a very long service life within our industry. Today, based upon our surveys the average age of a small business owner's truck is 13-years old, or 1996 MY. The average fleet truck age is 2002 MY. Again CARB's Appendix J, Cost and Economic Analysis Methodology, is wrong.
- The business model utilized by owner-operator independent contractors (those that own and drive their own truck) within the construction transportation industry has proven itself to be extremely efficient and fair. Due to the unpredictable nature of construction; owner-operators have efficiently supplemented smaller regional fleets to address construction projects of varying sizes throughout the state. Plus, this model has served as a springboard for opportunities and growth for many who are now some of the larger and more successful transportation business owners in the state.
- Over 80% of the nation *survives* because of the trucking industry. It is the backbone of the nation's freight system. Commercial trucks carry 85% of domestic cargo (value) and 70% by weight. Commercial truck drivers deliver to 80% of the United States and collect more than $650 billion in revenue annually. These are numbers that cannot be ignored; no matter what the state of the economy is, citizens have to eat and survive. The trucking industry is what makes this possible.
- According to a 2004 report by CalCIMA titled, "The Importance of the Aggregates and Construction Industry to the California Economy" the contribution of this related industry is extraordinary. California's aggregates industry supplies sand, gravel and crushed stone for local construction. Aggregates are necessary for making ready-mixed concrete, asphalt and many other building materials. Millions of tons of aggregate and dirt are required to build and maintain our infrastructure: roads, highways, homes, buildings, schools and public works.
- Aggregates, construction and the transportation of construction materials was California's fourth largest industry.
- Statewide, the aggregates and construction industry's total economic impact is $230 billion – 16% of all California industry output. Construction materials transportation costs are worth approximately 7% of that total or $16 billion.
- Over 1.8 million California jobs – a 49% increase since 1998 – are supported by the aggregates and construction industry.
- Construction materials transportation employees earn about average wages and compensation compared to other industries.
- Every Californian uses nearly 7-tons of aggregates per person per year and 95% is hauled to and from locations via trucks.
- A new "2008" transfer dump truck with a new dump body can easily cost about $200,000. A 2-axle straight truck costs about $100,000. And a 3-axle truck tractor costs about $120,000. Specialty truck prices can easily exceed $200,000.
- In its recently published (6-09) *North American Commercial Vehicle Outlook*, ACT Research Company or (ACT) forecasts 2009 Class 8 retail sales will be 43% below 2008 levels and only recover about half of that decline in 2010. According to industry modeling, freight volumes are down 10% to 11% year over year from 2008 to 2009. Anecdotally, it's a fact that almost all haul contracts have been renegotiated contracts this season, with pricing being set at a lower base. In construction, California trucking rates are what they were over a decade ago – as you can see, it's severe deflation. Fleets or all shape and sizes are under a lot of monetary pressure right now especially in California, as the business here continues to decline. The cost of 2010 EPA and CARB driven emission control technology is also a major concern for both the manufacturer and the buyer. For example, by the time the $9,600 extra per truck for SCR technology that Volvo is charging plus the FET (federal excise tax) and sales taxes, new truck buyers looking at a $12,000 increase for a new 2010-compliant truck, minimum. Who can afford that non-productive increase? It's important to note that orders failing to arrive in sufficient numbers all but removed the possibility of an EPA/CARB 2010-driven pre-buy bounce in 2009, and with significant excess capacity in trucking and no expectation of a strong rebound coming out of the recession. T**he report estimates that the Class 8 fleet will end 2010 with its oldest average age on record**. **By the end of 2009, the U.S. Class 8 fleet will be the oldest it's ever been since 1986 – 6.4 years**, according to the ACT forecast. By the end of 2010, the projected fleet age will be 6.6 years old. What needs to be stressed, however, is that the chronological age of

these trucks won't necessarily be reflective of their operating condition, as many Class 8 vehicles right now are being significantly under-used – or are parked and not being used at all. ACT's analysis also indicated that that trailer demand is being significantly impacted by the steep recession, coupled with structural issues that have increased the average life of trailers. ACT forecasts total trailer shipments will fall 49% in 2009, reaching the lowest levels in 47 years. However, the firm projects a much improved 2010 with total trailer shipments rising 79%.

- A new study by UC Irvine, UCLA, Cal State Long Beach and Orange County Business Council economists shows that California diesel prices, on average, are 30 cents higher per gallon than the national average – and this differential has been growing for nearly two decades due to CARB fuel regulations. The study shows that California has among the most demanding and expensive set of fuel policies in the world, leading to a myriad of distinct fuel standards and blends. Californians pay at least 15 cents extra per gallon solely due to the CARB required special blends in the state. While these special blends "may" help the environment, they also can cause radical price spikes when supplies run low. As our fuel standards grow increasingly differentiated from the rest of the country, it also is harder to find supplies that comply with state regulations. This effectively renders California a "fuel island" since we also have no pipelines linking us to petroleum or crude oil supplies, and our storage capacity is limited. The state must import an increasing share of fuel from shrinking domestic and distant international sources. Our elected leaders and regulators at CARB need to consider carefully the ripple effect of the state's fuel policies. Policies can change when the true impact on consumers, businesses and the economy are clearly understood. Among other things, the state could:
    1. Alleviate future fuel price spikes by reconsidering the economic impact or timing of otherwise worthwhile environmental policy goals during a time of severe recession, like right now with unemployment at 12 percent and millions of families struggling to pay their mortgages.
    2. Temporarily reduce fuel taxes during periods of supply disruption.
    3. Allow special fuel blend requirements to be eased temporarily if prices rise above a certain pre-determined point.
    4. Ease the regulatory difficulty to build and expand storage and refining capacity.

  There is no inevitable reason why California fuels need to be more expensive in the future than in other regions. Plus, the additional costs that California businesses are forced to operate in clearly adds another level of burden that seems to be ignored but shouldn't.
- Golden State employers cut their payrolls by 35,800 jobs in July, according to figures released recently by the state Employment Development Department. While that's a significant improvement over monthly losses that averaged 76,000 over the first half of the year, employers are scrambling to add furlough hours and cut wages without additional layoffs. Still, July's jobless rate reached a fresh post-World War II high, climbing to 11.9%. The numbers were far worse than some analysts had expected, rising from 11.6% in June and led by declines in trade, construction and manufacturing. California's battered construction and housing industries, long pillars of the state economy, remain troubling sources of weakness. Over the last year, the state has lost 760,200 jobs, nearly 1 in 5 of them in construction. White-collar workers have likewise suffered from the housing crash as thousands of jobs in banking, mortgage processing and real estate sales have vanished. The number of new-home permits issued in July fell 47.4% from a year earlier, according to the Construction Industry Research Board. That's had a particular effect on California's 13.5 million Latinos, who are heavily concentrated in the building trades. In 2007, Latinos made up 47% of the construction workforce in the state, according to the U.S. Equal Employment Opportunity Commission. In July, California's Latino unemployment rate hit 12.7%, dwarfing the white jobless rate of 9.5%, according to the U.S. Bureau of Labor Statistics. Black unemployment remains the highest in the state at 14.2%. But Latino joblessness has grown much faster. In July 2007 the Latino unemployment rate stood at just 5.9%, compared with 9.2% for blacks and 4.8% for whites. Last month, 805,000 California Latinos were jobless. That's up 127% over the last two years. The number of unemployed whites in the state grew 103% over the same period, while the number of out-of-work African Americans rose 66%.

As outlined in our 4th recommendation of section #1 above concerning a realistic economic impact study, the CARB Staff has in fact not even attempted to review their economic analysis associated with the cost of this rule. This must be done, CARB owes it to the many small and medium sized businesses that are likely be put out of business, to at least be provided a study that seriously contemplates the present state of the economy. Issues such as unproven technology associated with these retrofit devices and 2010 engines must be considered. Having reviewed Appendix J, Cost and Economic Analysis Methodology of the on-road truck rule, the staff has wrongly assumed concepts like fleet sizes and ages at almost every level. For example, there are no increased offsets in maintenance costs due to newer engines. In fact, the cost to operate this "new technology"-based equipment may be 10 times greater than what was estimated due to the technology leap-caused operating issues and reduces fuel efficiency. In addition, the CARB Staff's economic impact estimates have been proven to be inaccurate and not just by a small amount. This rules affects on Caltrans alone was off by over 300% according to a recent LAO analysis. Also, the lack of understanding by the CARB Staff to "just pass on the cost" of this new equipment is a truly naïve viewpoint, and reflects a lack of understanding about the construction industry, particularly the concept that the "lowest bid wins". Presently, we are seeing construction work of all types and especially public work being bid 30% less than the project engineer estimates. It is unlikely within this very competitive business environment that these unwarranted businesses costs can just simply be "passed on"! For these and other reasons, we strongly request a new comprehensive economic impact study relating to this rule be done by the staff with input from industry.

Fourth, below are "CDTOA's" additional suggestions and concerns we hope you again reconsider in the Truck and Bus Regulation:

1. **Air District's & Bond Funds Incentive Program Funding Criteria are Blatantly Prejudiced** – Our experiences over the last 2-3 years concerning these incentive funding programs leaves us without exception wondering how something so important could be administered so "unfairly". The air district's autonomy to determine criteria for accepting funding projects in their area without general guidelines is totally unjust. Whether it's the funding for truck re-powering or air districts looking only at mileage and not idle time too, the vocational trucking industry, because it operates low mileage, as well as those similarly situated, have not received the same considerations and funding opportunities. We would like to see many immediate improvements, as detailed below, to these incentive programs and the extension of the Truck and Bus Regulation. This would allow increased incentive funding opportunities and access for small businesses – the same ones this rule has been focused on.
    - **a.** Repowering or retrofitting older trucks will in most instances not be a viable economic alternative nor is it a wise investment. This is especially true for repowers which can cost in excess of $50,000. There are many other problems with this proposition; for instance, a truck owner that agrees to put a newer $50,000-plus engine into a $10,000 or even $20,000 truck, only increases the truck's value by $5,000 to $8,000 according to truck sales industry professionals.
    - **b.** There are also misunderstood insurance issues. Under a stated value full coverage truck insurance policy, an insurance company has an option to replace the truck with a similar valued truck and not the full value of the truck. Under an actual cash value policy a repowered truck could cover the total cost but the policy would be extremely expensive because it would have to cover the old truck and new engine cost. This is very impractical.
    - **c.** There are also potentially burdensome tax implications that also need to be understood. If the truck owner is IRS 1099 for the funds he/she receives to repower ($50,000+) but the trucks value only goes up $5,000 to $8,000, the tax implications can be almost double the increased valuation of the vehicle.
    - **d.** The lending clauses of these incentive agreements associated with repowering or replacement that are tied to the truck's operational time to only one region or districts is unreasonable. Construction trucks are moving continuously throughout the state, moving from job-to-job and even have a seasonality element especially in the northern part of the state. Considerations for these and other related issues have to be reasonably understood.
    - **e.** Finally, funding should exclusively benefit California state citizens and businesses. In an era of a crushing state budget deficit, government expenditures for non-taxpayers are entirely unjustified.

    Make no mistake, CDTOA firmly believes that this CARB rule does not satisfy incentive funding program equity and objectivity that should have been responsibly contemplated and managed by CARB from the very beginning. Why should any class of trucking business be allowed to be treated any different (harbor haulers funding) than those not in the harbor areas, but similarly situated? This is about the most prejudiced regulatory and incentive funding scheme that has ever been perpetrated on an industry – the intrastate vocational trucking outside the ports! This government should be buying all California based small fleet owners new trucks! It is truly an OUTRAGE!

2. **Phased-in Emissions Testing Similar to "CA Smog Check"** – We suggest as part of this rule that CARB adopts a process to analyze diesel truck emissions based on each truck's total emissions foot-print. Through a combination of miles/hours driven/operated, total miles on engine, maintenance and engine emission testing results, an emissions footprint can be established. Trucks of any given year are treated all the same under the proposed Truck and Bus Regulation, but may emit much different levels and types of emissions. All trucks of a certain year are not all the same concerning emissions and greenhouse gas profiles.

    We would push for annual emissions testing similar to cars (i.e. CA Smog Check) for all size fleets including one truck companies of a given age and support a push to eliminate all mechanical engines (pre-1989-90 model-year, MY) by 2015.

This date, 2015 is important to the vocational truck industry because historically, many on-highway/freight trucks come off their (4-5 year) leases and are available for resale in many markets, including vocational applications, such as construction trucking. The 2010 powered trucks would begin to be available to the industry without having to be retrofitted. As a low mileage vocational truck with minor modifications, they would have a long and valuable life and help to keep down construction costs for both private and public work.

3. **Truck Trade-Down Concept** – We support this concept as an element of a more reasonable rule that addresses the issues contained within this memo.

4. **Rule Implementation Model** – We believe that this rule should incorporate a model that considers mileage, age of vehicle engine, and fleet size. The current CARB rule lumps together all on-road diesel trucks that operate over 7,500 miles into essentially the same rule. So, trucks operating 7,500 to 20,000 and 20,001 to 65,000 miles a year (like most within our industry) are subject to the same rules as those operating 150,000 or more miles. This is blatantly **biased against** industries that operate low to medium mileage. Shouldn't CARB rules actually focus on higher mileage trucks first? Minimally, there should be a laddered implementation schedule based on truck operating mileages. The rules are "Too Green Too Fast" for most that operate in the vocational intrastate commercial transportation industry.

5. **Fair Equipment Valuation & Reimburseme**nt – Used truck values have significantly eroded from a construction industry depression, a national recession and the proposed CARB diesel engine rules. Used truck sales executives we spoke with estimate that used on-road dump trucks have lost an additional 50-75% of their value from just a year ago. It is our understanding that at least 17 other states, many of them bordering California could adopt similar on-road diesel engine and emission rules for vehicles. If this happens, older trucks (pre-2010) will have virtually little or no value because of the additional retrofit requirements and the associated costs. The CARB's rule will eliminate hundreds of millions if not billions of dollars in truck equipment value from those that can least afford it, small businesses and sole proprietors. And at a time when the construction industry is in a full blown recession that will likely get worse before it improves late next year or even into 2010.

6. **The Taking of Property** – Surely if the Governor, legislature and the public's intent is to replace all older trucks they should pay a fair price to the owner no different than eminent domain of real property. Instead of forcing the truck owners to buy new or retro-fit and then pass on their costs, when they can't, the public should pay "some" large cost of a new truck – "Tax the Bear because it's Fair!"
   - **a.** Whether through direct non-1099 funding, trade-in rebates and tax credits or a combination of these elements, the truck owner should be reimbursed fairly for his/her property.
   - **b.** And on the balance of the new truck purchase loan, the state should create a financing scheme to guarantee low cost loans for those willing to continue to operate in this industry. The major credit bureaus have previously announced that most small business lenders will now require credit checks on both the business and the owner applying for the loan. In the past, only the businesses credit worthiness was utilized. This will no doubt create more difficulties when attempting to borrow money for business purposes, especially small businesses.
   - **c.** Finally, repowering or retrofitting older trucks is not a viable alternative in most cases nor is it a good investment. The financing of these propositions, if even available, will surely be usury if not controlled and regulated by government.

   California diesel truck owners should not be forced to bear the entire cost of this public health related regulation. This will be a huge burden on small transportation businesses, especially during a construction industry recession and when oil and diesel prices were just recently at record highs and no relief is in sight. With the instability of the financial markets right now few can afford conventional financing when there is so little work.

7. **Small Businesses Unjustly Bear the Brunt of the Rule** – The small vocational fleet businesses, including owner-operators, are the most unlikely companies to be able to afford new trucks. Unfortunately, the way the rule is currently written, these small businesses are the ones who are being asked to most dramatically impact their businesses. Generally, due to close profit margins and low operational mileage a small fleet operator in construction may buy a single used older truck and choose to diligently maintain this truck over the years rather than purchase a new one every 5-7 years as the CARB truck replacement model seemingly utilizes. While new truck purchases in a short time period will be difficult for some large low-mileage vocational fleet companies, it will be economically possible. However, the same requirement is likely to drive small fleets and owner-operators out of business. More leniency and flexibility is needed for the small fleet businesses.

8. **Fair & Efficient Truck Routing** – Require the state and its political subdivisions to provide a plan and implementation schedule for statewide commercial transportation routing that is reasonable and efficient throughout the state. We have personally seen legal weighing commercial vehicles (80,000 lbs. or less) systematically eliminated from thousands of miles of state, county and city highways and roads all based on a "not-in-my-backyard" philosophy. This is an epidemic commercially and environmentally that the CARB has apparently turned its back on. Arguably, tens of thousands if not millions of tons of emissions are added to the state's air pollution inventory because legal commercial vehicles are forced to take, in many cases, unreasonably long and circuitous routes on only interstate routes when more direct and safe routes are available. The other benefit of efficient routing is that it would save millions of gallons of fuel which would make all of us less reliant on foreign oil. The lack of cooperation by the state and its political subdivisions would include reduced road maintenance funding from STIP's and even gas taxes etc. Some type of punitive action needs to be attached. This allows city officials to blame regulations and it moves them to explain that it is out of their authority, "because the state will withhold valuable highway funds from the municipality."

9. **Public vs. Private** – State and municipalities need to reconsider competing with private industry for construction and related maintenance or force account type work. These political subdivisions operate literally thousands of diesel vehicles and increasingly compete with the private construction industry in a very inefficient and wasteful manner. We would encourage the rule to push these entities to comply with any regulation prior to private industry if they wish to continue to compete; they arguably have an enormous advantage because cities and counties do not have to operate in for-profit business environment. They can more easily pass their wasteful costs onto the unsuspecting taxpayer.

10. **Emergency Preparedness** – Whether it is an earthquake, a mudslide, a levee breach or a 911 event, dump trucks are the first line of response, along with heavy-equipment. When the Northern California floods of New Years 1997 hit, every dump truck available was called out to the Sierra's and a week later to the San Joaquin Valley when levee after levee gave way. All truck safety rules and regulations were temporarily suspended, including registration, mechanical violations and over-loads. Truck owners were actually provided written exemptions from state enforcement management in case they were stopped by any officer. The irony of this rule is, if another California disaster hits the state and a large portion of the California dump truck industry is gone due to this rule, dump trucks from other states will need to be called in to perform this work. Historically speaking, the main reason this industry was regulated was because the State of California realized that in the event of a disaster here, it was critical that California had a strong and vibrant dump truck industry. This point has evidently been long forgotten.

11. **The Rule Should Be Renamed the: "On-road Vocational & Small Fleet Replacement Rule"** – This rule is clearly aimed at small intrastate vocational fleets (construction, agriculture and local distribution) and owner-operators both intra and interstate who have older fleets or trucks. In fact, according to the 2006 DMV data CARB presented recently, 32% of all trucks registered or paying IRP fees to the state are owned by 1-truck owner-operators, 10% of the fleets have 2-trucks and 6% have 3-trucks. So, about 50% of all the trucks in the state are fleets of one to three trucks in size. According to CDTOA fleet survey's, the median age of these trucks are 1997-98 model years. By contrast, only 16% of the trucks operated here are by companies with 10 or more trucks.

    The irony in this rule is that it is really not focused at high mileage fleet freight trucks because those companies will be able to replace their equipment under one of the available options which fits easy within many of these fleets' normal truck replacement schedules. Most truckload and LTL freight companies, which tend to run higher-mileage, already have 6-7 year or sooner truck turn-over cycles that will easily fit within the CARB's fleet averaging option. The irony or prejudice of the rule is with the incentive funding schemes available to those who the rule is directly aimed at, these small, low-mileage trucks seldom qualify for any funding help due to low operating mileage. It's an unreasonable Catch-22!

    The rule is heavily weighted to just get rid of older, small fleet trucks, while the funding programs (Carl Moyer, 1B Goods Movement etc.) concentrates on everything but this group because of lower mileage.

    It's hard not to read about some large highly profitable company fleet that was subsidized for hundreds of thousand if not millions of dollars for new trucks or retrofits, when our members call and say they were turned down or told they could only get funding to repower an ancient truck with a mechanical engine, which is well, about the most ridiculous thing that anyone could do.

12. **Multi-rule Considerations** – Many of our members (30%) also own and operate off-road and portable diesel powered equipment. We have not seen any effort by CARB to address the multi-rule burdens. There is a cumulative effect and costs on these businesses but there has been no consideration contemplated within any of

these rules. We support a 3-5 year extension per rule for those who are subject to multiple CARB diesel engine rules.

13. **Construction Industry's History of Recycling** – What is the social, economic and environmental cost of scrapping out a formally valuable asset – a relatively low mileage previously owned, efficient and well maintained truck for a new and very expensive truck? Both the state and federal government along with the environmentalist movement pushes for recycling, but eliminating older trucks for new ones is arguably contrary to this position. What is the environmental cost and greenhouse foot-print to build a new truck?

14. **CVRA Revenue Neutrality Weight Fees Clause Will Push All Remaining Trucks Fees Higher** – The underlying foundation of the Commercial Vehicle Registration Act (CVRA) of 1999 was a concept created by the Dept. of Finance and it was referred to as "revenue neutrality." According to the DMV, the state DoF projected commercial weight fee revenue of $689 million in 1999 when commercial vehicle registration methodology changed, but actually collected $746 million that year. Since 1999 the revenue actually collected was supposed to even out at about $700 million. However, because of the continued economic and construction boom here through 2007, those fees escalated to almost $900 million. That is an increase of about $260 million over 8 years or about $35 million per year, which is an annual growth rate of about 4.8%. Due to the present recession and this revenue neutrality clause, when these on-road truck rules are fully implemented, the reduction of trucks will create a truck shortage that will create a reduction in the CVRA fees and the remaining vehicles may likely face increased CVRA fees of 25-30% if not more. Compound this with a record state budget deficit, CVRA fee increases in excess of 50% can be expected.

15. **The Recession is Already Paying an Environmental Dividend** – As painful as it, there is no doubt this recession and high fuel prices paid and likely to be paid in the future have played an interesting roll in reducing emissions. Both used truck and heavy equipment sales and auctions and the depression in the construction industry has clearly dropped this type of equipments usage across the state. According to the California State Board of Equalization (BOE), on Dec. 1, consumption of gasoline in California declined 8.3% in August 2008 from August 2007. Californians consumed 1.26 billion gallons of gasoline in August 2008, which is 113.8 million gallons below that of August 2007. **Diesel fuel sold for use on California roads totaled 234 million gallons in August 2008, a 14.4% decline, which is 39.37 million gallons below that of August 2007**. The decreased consumption reflects both the impacts of higher diesel prices of $4.54 in August 2008 and the slowing economy that is associated with less freight movement on California roads and highways. The BOE is able to monitor gallons through tax receipts paid by fuel distributors. Figures for September 2008 are scheduled to be available near the end of December. The precipitous declines in the economy suggests that the September, October, November and December diesel sales will also show increased reductions that could be 20% or more. We are also guessing that off-road diesel sales/consumption had similar if not greater reductions. Clearly, a 20% reduction in on-road diesel sales can be easily quantified into major emission reductions not ever anticipated by any CARB regulation. We would hope that CARB does not even attempt to spin this as somehow bad for the environment!

CDTOA and its representatives have made every attempt to work closely with CARB on every step of these rules and even other rules (i.e. Refuse Truck Rules). We have worked closely with CARB to help its staff to better understand how an industry operates. But after helping to facilitate these efforts, there seems to recently be a growing unwillingness by CARB and its staff to be fair and balanced in its analysis of our and the DTCC's suggestions and especially in the divulging of its own methodologies behind their models and calculations utilized in determining their emissions reduction goals as part of their proposed regulations.

As members of both CIAQC and other industry organizations we have noticed a pattern of rule-making that frankly is flawed in many ways. In March 2009, the Legislative Analyst's Office (LAO) criticized CARB's under-estimation of the costs inflicted upon the fellow California agency the Department of Transportation (Caltrans) stating: "[o]ver multiple years, Caltrans expects to spend a total of about $260 million (including $82 million in prior expenditures) to comply with four sets of state air quality regulations. The CARB's diesel regulations for both on–road vehicles (such as maintenance trucks) and off–road vehicles (such as graders and other heavy equipment) account for about 90 percent, or $240 million, of the total cost. These costs for Caltrans are substantially greater than CARB estimated when it developed the diesel rules. Your staff at CARB had estimated the total cost for all state agencies would be about $60 million over multiple years." This critique follows last year's LAO report concerning CARB's rulemaking on the AB 32 scoping plan. In their report, they discovered that CARB's methodology was "deeply flawed and often ignored evidence" that would counter the economic-boom thesis. The most startling finding was that "CARB arbitrarily defined any reduction in greenhouse gas emission as being cost-effective". If, say, energy costs double for a small business because of AB 32, how is that possibly cost-effective? These CARB methodology problems have also been reaffirmed by no less than a half dozen other scientists and researchers including a recent report by Sierra Research.

We believe we are a strong proponent for clean air and clean diesel trucks and can provide many examples of that commitment. But we also believe that these rules need to strike the right balance between protecting our environment, our economy and the businesses that drive it. The rule and its related funding incentive programs as proposed and administrated are clearly not fair to most businesses and especially small business owners. We are also very concerned about the "promised" availability of incentive or support funds for those most affected by the rule.

Lastly, we would again appreciate an item by item response to the issues outlined within this letter especially in section one concerning the 15-day rule deficiencies and a new, responsible Cost and Economic Analysis Methodology report since our original letter on December 8 requesting this was apparently ignored.

We appreciate the opportunity to express our comments and concerns regarding the approved regulation with the changes.

Respectfully,

Lee Brown
CDTOA Executive Director

Cc: Air Resources Board Members:
Dr. John R. Balmes, M.D.
Ms. Sandra Berg
Ms. Dorene D'Adamo
Mr. Ken Yeager
Ms. Lydia H. Kennard
Mr. Ronald O. Loveridge
Ms. Barbara Riordan
Mr. Ron Roberts
Mr. Daniel Sperling
Dr. John G. Telles, M.D.

The Honorable Arnold Schwarzenegger, Governor
Ms. Linda Adams, Secretary, California EPA
Mr. Dale Bonner, Secretary, California BT&H
Mr. Michael Benjamin, Chief, Mobile Source Analysis Branch, CARB
Mr. Erik White, Chief, Heavy-Duty Diesel In-Use Strategies Branch, CARB

CDTOA Executive Committee & Board
Jeanne Cain, Executive Vice President, California Chamber of Commerce
Brooks Ellison, Ellison Wilson Advocacy, CDTOA General Counsel & Legislative Advocate
Sean Edgar, Clean Fleets Coalition
Dr. James E. Enstrom, Ph.D., M.P.H.
Members of the DTCC & CIAQC

REFERENCES supporting above statements:

February 17, 2006 Apodaca v. CARB Diesel TAC History and Decision
(http://www.cdtoa.org/Apodaca021706.pdf)

June 6, 2008 CARB Scientific Review Panel Legislative Description 323C
(http://www.cdtoa.org/SRP060608.pdf)

June 13, 2008 California Health and Safety Code & CARB Scientific Review Panel
(http://www.cdtoa.org/SRP060608.pdf)

July 11, 2008 Comments on May 22, 2008 CARB Draft Report on PM2.5 and Premature Deaths
(http://www.arb.ca.gov/research/health/pm-mort/pm-mort_supp.pdf)

December 3, 2008 Enstrom-Fucaloro-Malkan-Phalen "Request to Postpone and Reassess CARB Diesel Regulations"
(http://www.arb.ca.gov/lists/truckbus08/902-request_to_postpone_and_reassess_carb_diesel_regulations_120308.pdf)

December 10, 2008 Enstrom Comments regarding proposed CARB Statewide Truck and Bus Regulations
(http://www.arb.ca.gov/lists/truckbus08/897-carb_enstrom_comments_on_statewide_truck_regulations_121008.pdf)

April 9, 2009 CARB "Notice of Adverse Action" Against Hien T. Tran Regarding Misrepresentation of Ph.D. Degree
(http://static.tbc.zope.net/newsroom/pdfs/aircreds.pdf)

May 27, 2009 Enstrom Comments to CARB showing No Relationship between PM2.5 and Life Expectancy in California
(http://www.arb.ca.gov/lists/gmove09/1-carb_enstrom_comments_re_pm2.5_and_life_expectancy_052709.pdf)

June 18, 2009 Pacific Legal Foundation petition challenging CARB Scientific Review Panel (Brown v. Adams): notice for lawsuit
(http://community.pacificlegal.org/Page.aspx?pid=934) and full 45-page lawsuit (http://community.pacificlegal.org/Document.Doc?id=305)

August 1, 2009 Forum on CARB Diesel Science in Ontario, CA:
Forum Summary (http://www.cdtoa.org/ForumSummary080109.pdf)
Thirty minute video all speakers (http://rapidshare.com/files/272492112/Produce.zip.html)
Forty minute video of Prof. Enstrom (http://www.youtube.com/user/carbnoneofthisisreal)
Enstrom PPT presentation http://www.cdtoa.org/EnstromPPT080109.pdf)
Highlights PPT Presentation (http://www.cdtoa.org/ForumPPT080109.pdf