CIAQC
CONSTRUCTION INDUSTRY AIR QUALITY COALITION

Coalition Members

AGC CALIFORNIA

Associated General Contractors America-San Diego Chapter, Inc.

Building Industry Association of Southern California

California Dump Truck Owners Association

Engineering Contractors Association

Engineering & General Contractors Association

Engineering & Utility Contractors Association

Southern California Contractors Association

December 8, 2008

Ms. Mary Nichols, Chairman
California Air Resources Board
1001 "I" Street
P.O. Box 2815
Sacramento, California 95812

RE: CARB Estimated $1 Billion Cost of Proposed On-Road Diesel Regulation to Construction Industry More Than It Can Bear

Dear Chairman Nichols:

The Construction Industry Air Quality Coalition (CIAQC) requests that you and your Board consider these comments on the Proposed Regulation for In-Use On-Road Diesel Vehicles (On-Road Regulation). The construction industry in California is in an economic free-fall. Public and private investment for all types of construction including home-building, commercial, industrial, institutional, essential public works and infrastructure projects has all but dried up over the last two years. The impacts of this decline in California's investment for its future has resulted in record job losses and the closure of many-family owned businesses. The ability of companies to remain viable and open for business are further threatened by regulations adopted in 2007 that require the owners and operators of off-road construction equipment to turn over their fleets beginning in 2010. The proposed On-Road Regulation will exponentially compound this very serious and precarious situation.

The Initial Statement of Reasons for the Proposed Rulemaking for the On-Road Regulation states that the cost impact of the proposed regulation would vary across different California business sectors. The anticipated cost of the proposed regulation on California companies is estimated to be $4.5 billion in 2008 dollars, and CARB anticipates that the construction industry will be the second most impacted industry, with estimated costs of about $1 billion[1]. These estimated costs are separate from and additional to the $3.4 billion CARB estimate for compliance with the Off-Road Regulation, most of which is expected to be incurred directly by the construction and mining industries[2]. (CIAQC believes the true costs of the Off-Road Regulation will be much greater, approaching $12.9 billion[3].) The construction industry simply does not have the resources required to fulfill these mandates.

[1] CARB Staff Report: Initial Statement of Reasons for Proposed Rulemaking, Proposed Regulation for In-Use On-Road Diesel Vehicles, October 2008, Page 53.
[2] CARB Staff Report: Initial Statement of Reasons for Proposed Rulemaking:, Proposed Regulation for In-Use Off-Road Diesel Vehicles, April 2007, Page 3.
[3] M. Cubed. Estimating the Construction Industry Compliance Costs for CARB's Off-Road Diesel Vehicle Rule, July 2007, Page 2.

CIAQC requests CARB perform a cumulative cost impact analysis of the proposed On-Road Regulation and the Off-Road Regulation on the construction industry.

The cost of the proposed On-Road Regulation to California's construction industry is estimated to be $1 billion. CARB estimates that 76,000 vehicles are construction trucks. Two thirds of these vehicles are owned and operated by small and medium fleets[4]. Overall, more than 20 percent of the cost of the proposed On-Road Regulation is expected to be incurred by the construction industry[5]. CARB staff estimates that for construction fleets subject to the on-road regulation, the cumulative impact of the proposed regulation and the Off-Road Regulation is an additional 6 percent over the anticipated costs of that regulation[6]. CARB staff concludes that it "does not believe the cumulative costs for these construction fleets will be significant"[7].

This conclusion is highly suspect. Using CARB's own estimates, the Off-Road regulation is expected to cost more than $3.4 billion. The proposed On-Road Regulation is estimated to be $1 billion. The construction and mining industries are not able to absorb these additional costs. This is especially true considering the findings for the Off-Road Regulation. CARB staff recognized this and reported that for particulate matter emission reductions, "staff believes the <u>proposed regulation represents the economic limit of what industry could bear</u>, any further emission reductions requirements would likely require financial incentives"[8]. Further, "Staff <u>also considered requiring higher turnover rates</u> and more stringent NOx averages, <u>but the higher costs would likely be more than the industry could bear</u>"[9].

While CARB staff acknowledges that the "cost of the proposed regulation is significant, there are also significant amounts of incentive monies available for fleets to assist in cleaning up and modernizing their vehicles." Proposition 1B and the Carl Moyer Program are held as examples of potential funding to help offset the burden of the proposed regulation. However the construction industry has largely been unable to utilize this funding for its fleets. CARB staff suggests now that it is considering changes to Proposition 1B funding calculations to allow

---

[4] CARB Staff Report: Initial Statement of Reasons for Proposed Rulemaking, Proposed Regulation for In-Use On-Road Diesel Vehicles, October 2008, Page 56.
[5] CARB Staff Report: Initial Statement of Reasons for Proposed Rulemaking, Proposed Regulation for In-Use On-Road Diesel Vehicles, October 2008, Page 4.
[6] CARB Staff Report: Initial Statement of Reasons for Proposed Rulemaking, Proposed Regulation for In-Use On-Road Diesel Vehicles, October 2008, Page 4.
[7] CARB Staff Report: Initial Statement of Reasons for Proposed Rulemaking, Proposed Regulation for In-Use On-Road Diesel Vehicles, October 2008, Page 56.
[8] CARB Staff Report: Initial Statement of Reasons for Proposed Rulemaking:, Proposed Regulation for In-Use Off-Road Diesel Vehicles, April 2007, Page 10.
[9] CARB Staff Report: Initial Statement of Reasons for Proposed Rulemaking:, Proposed Regulation for In-Use Off-Road Diesel Vehicles, April 2007, Page 61.

construction industry trucks to compete for funding.[10] This adds little comfort for those that must begin vehicle replacements and retrofits in the near term in such a down economy. Incentive funding to help offset the cost to comply with the Off-Road and proposed On-Road regulations effectively is not available for construction.

The California construction industry is facing immediate multi-billion dollar compliance costs due to already adopted portable equipment, off-road and large spark-ignited engine rules adopted by the California Air Resources Board. This affects nearly a quarter-million machines and vehicles with a cost of compliance for these rules that will exceed $4.3 billion, even with CARB's overly optimistic cost estimates. An analysis performed by M.Cubed for CIAQC determined the cost of compliance of the Off-Road Regulation alone to be $12.9 billion. When construction industry on-road trucks are also included in the inventory of construction equipment and vehicles affected by CARB regulations, the number approaches 300,000.

The state of California's economy is also affecting the construction sector more than any other industry. The economic downturn has impacted the construction industry severely. Construction employment reached a level of 949,000 in February 2006 and is estimated to average 759,500 in 2009. This represents a loss of 189,500 construction jobs.

Another issue that needs to be addressed in the proposed regulation is the recent Cal/OSHA determination that the installation of some diesel particulate filters are unsafe for use on off-road equipment under certain circumstances. CARB must ensure that the requirement to install DPFs on trucks will not create similar safety issues with the on-road truck regulation. The proposed regulation also creates an inconsistency between what CARB requires of public agencies and utility companies and the private sector, requiring particulate and NOx reductions. This creates a double standard.

Recently the California Legislative Analyst's Office (LAO) reviewed CARB's AB 32 Scoping Plan and found that the economic analysis performed for the plan to be inadequate. The LAO recommends that it is important for the Legislature to exercise oversight as CARB continues to develop the Scoping Plan's measures up to and through regulatory development. This uncertainty for one of CARB's major initiatives certainly casts a shadow of doubt on the analysis performed for the proposed On-Road Regulation.

For these reasons, CIAQC requests that CARB perform a creditable analysis of the cumulative impact on construction jobs and companies and that the proposed regulation be structured provide a reasonable timeframe and flexibility while still allowing meaningful emission

[10] CARB Staff Report: Initial Statement of Reasons for Proposed Rulemaking, Proposed Regulation for In-Use On-Road Diesel Vehicles, October 2008, Page 62

reductions to occur. The Proposed On-Road Regulation should not be approved until this analysis has been performed.

The Proposed On-Road Regulation should provide for extended compliance dates for lower mileage and dedicated use trucks.

Many of the vehicles owned by the construction industry that will fall under the proposed regulation do not accumulate a high number of miles on average per year. Many of these vehicles also are also dedicated use trucks, where the equipment affixed to the truck can cost more than the cab and chassis itself. These include dump trucks, cement mixers and other specialty equipment utilized by the construction industry.

However, the proposed regulation sets the bar for low mileage exemptions too low for most contractors to benefit from these provisions. Emissions from the construction sector are significantly lower at this time than estimated to be during the development of the Off-Road Regulation and the assumptions used to develop the On-Road Regulation. This is due to the reduction in construction activity associated with California's slumping economy.

CIAQC worked with Driving Toward a Cleaner California to develop a reasonable alternative to the on-road proposal that recognized the need to provide flexibility for lower mileage vehicles. Unfortunately CARB staff found that proposal to be inadequate and did not incorporate this recommendation. The impacts of the proposed regulation are too great and there are too many good jobs at stake. Therefore CIAQC requests that the impacts to the construction industry from this and the Off-Road Regulation must be further examined before moving forward and adopting the proposed regulation.

In conclusion, CIAQC and all its affiliated members request that CARB delay the adoption of the On-Road Regulation for 120 days while an update to the emissions inventory, a re-examine the economic analysis and a cumulative impact analysis to the California construction industry is performed.

Sincerely,

Michael W. Lewis

Michael W. Lewis,
Senior Vice- President