December 10, 2008

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

SUBJECT: In-Use On-Road Heavy Duty Diesel Vehicle Regulations

Dear Chairman Nichols:

Driving Toward a Cleaner California (DTCC) is a coalition of California's businesses that are demonstrating their dedication to improving the state's air quality by proposing a sound, sensible alternative proposal to CARB's on-road diesel truck and bus replacement rule that would achieve aggressive emissions reductions. We want to work in good faith with the Board, the Legislature and the Administration to implement a regulation that will result in the cleanest on-road heavy-duty fleets in the world. At a time of unprecedented financial turmoil in the United States, the DTCC proposal strikes the necessary balance of cleaning our air while ensuring the state's fragile economy is not negatively impacted in the process.

CARB is proposing this multi-billion dollar regulation during a recession. California truckers, construction contractors and bus operators are struggling to make ends meet in the face of skyrocketing diesel prices, a massive slow down in the construction sector due to falling home prices and foreclosures, and a freeze in the credit markets, which severely limits access to capital for businesses, large and small. Additionally, nearly every sector that would be affected by this rule already faces compliance with multiple regulations recently imposed by CARB. For example, the state's construction industry is currently complying with a portable equipment rule and an off-road diesel vehicle rule that requires them to retrofit or replace thousands of pieces of heavy-duty construction equipment.

Given the multi-billion dollar cost of this regulation – and the current volatile economic environment – the DTCC alternative proposal would give the affected industries and sectors the opportunity to comply in the most reasonable timeframe and flexible manner possible while still attaining aggressive emission reductions. In fact, CARB's own analysis of the DTCC alternative confirms that the DTCC alternative proposal achieves roughly similar emissions benefits to the proposed regulation in the long-term.

DTCC is very concerned that the baseline emissions inventory data crafted by ARB staff does not adequately consider the impact the current recession on emissions inventory. Sierra Research has undertaken an analysis of the ARB findings at the request of DTCC and found that the recession may have a significant impact on the baseline emissions used to justify the proposed rule. Sierra Research has also raised concerns based on the fact that ARB staff analysis of the baseline emissions, the emission benefits and the economic impacts rely on methodologies that are not available for public review. In addition, the ARB analyses have not been peer reviewed and, as such, provides only limited credibility for adoption of the proposed rule.

At a time of unprecedented financial turmoil in the United States, the DTCC proposal strikes the necessary balance of cleaning our air while ensuring the state's fragile economy is not negatively

impacted in the process. We ask that the ARB adopt the DTCC alternative proposal. If the DTCC alternative is not adopted, we request that the ARB direct staff to have the economic analysis and emissions assumptions peer reviewed, and that the review be factored in to any rule that is ultimately adopted.

Sincerely,

Jeanne Cain

Jeanne Cain
Chair, DTCC

CC: **Air Resources Board Members**
John R. Balmes, M.D.
Ms. Sandra Berg
Ms. Dorene D'Adamo
Mr. Jerry Hill
Ms. Lydia H. Kennard
The Hon. Ronald O. Loveridge
Mrs. Barbara Riordan
The Hon. Ron Roberts
Mr. Daniel Sperling
John G. Telles, M.D.

The Hon. Linda Adams, Secretary, California Environmental Protection Agency
The Hon. Dale Bonner, Secretary, California Business, Transportation & Housing Agency
Ms. Cindy Tuck, Undersecretary, California Environmental Protection Agency
Mr. Michael Benjamin, Chief, Mobile Source Analysis Branch, ARB
Mr. Erik White, Chief, Heavy-Duty Diesel In-Use Strategies Branch, ARB

Office of Governor Arnold Schwarzenegger
Ms. Susan Kennedy, Chief of Staff
Ms. Victoria Bradshaw, Cabinet Secretary
Mr. Chris Kahn, Legislative Secretary
Ms. Cynthia Bryant, Director, Office of Planning and Research
Mr. John Moffat, Deputy Legislative Secretary
Mr. Curt Augustine, Deputy Legislative Secretary

Attachment: DTCC Alternative Proposal

Attachment

Asphalt Pavement Association of California
Associated General Contractors of California
Basic Resources, Inc.
Bonanza Food and Provisions, Inc.
California Beer and Beverage Distributors
California Business Properties Association
California Chamber of Commerce
California Construction & Industrial Materials Association
California Construction and Industry Materials Association
California Groundwater Association
California Groundwater Association
California Independent Grocers Association
California Manufacturers and Technology Association
California Restaurant Association
California Retailers Association
California Trucking Association
Chemical Industry Council of California
Construction Industry Air Quality Association
Engineering and Utility Contractors Association
Engineering Contractors Association
International Council of Shopping Centers
Long Beach Area Chamber of Commerce
Lumber Association of California and Nevada
National Association of Industrial and Office Properties
National Federation of Independent Business
Pacific Coast Rendering Association
Retail Industry Leaders Association
Southern California Contractors Association
Western Electrical Contractors Association
Western Wood Preservers Institute

December 10, 2008

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

SUBJECT: Coalition Comments: In-Use On-Road Heavy Duty Diesel Vehicle Regulations

Dear Chairman Nichols:

The coalition of trade associations and businesses listed above would like to submit the following comments on the proposed In-Use On-Road Heavy Duty Diesel Vehicle Regulations. We believe that the ARB should act to ensure the California's air quality meets both the expectations of its citizens and the requirements imposed by the federal government. However, we believe that the ARB also has a responsibility to ensure that their regulatory requirements do not unfairly impair the ability to California businesses and workers to earn a living. We believe that the current structure of the proposed In-Use On-Road Heavy Duty Diesel Vehicle regulations does not balance the responsibilities of the ARB, and will consequently inflict significant economic harm on tens of thousands of California businesses who have made a significant investment in our state. The unfortunate result will be the loss of jobs during a time when California is facing an unprecedented increase in the ranks of the unemployed. Instead, we urge the ARB to adopt the alternative proposal submitted by the *Driving Toward a Cleaner California* (DTCC) coalition.

Economic Impacts of the Truck Rule

The proposed rule being presented to you for adoption will have significant financial implications for businesses with vehicles subject to the rule. While the coalition does agree that the vehicles targeted by this regulation should be regulated in order to achieve emission reductions, we also believe that ARB has a duty to accurately assess and mitigate, where necessary, the economic impacts of the rule.

Many policy makers in California have been calling for economic stimulus because of tough economic times. Unemployment is increasing at the fastest pace in many decades and this trend is likely to continue. We believe that the DTCC alternative proposal provides an appropriate balance between environmental needs and the economic caution that is being urged by policy makers. Although the DTCC alternative proposal does not eliminate these economic hardships outlined below, it does mitigate the impact.

Cost of Early Turnover
Businesses purchase heavy equipment as a long-term investment in their operations. Businesses purchase specific vehicles for specific purposes and may plan on using them well into the future. The proposed rule will cause a large number of businesses to prematurely retire vehicles that they had planned to use for years to come.

More Expensive Equipment
The rule proposed by ARB will require businesses to purchase equipment that meets specific emissions requirements. In some cases the equipment required by the proposed rule will be far more costly than the equipment that a business would have purchased during the normal course of truck turnovers. In some cases the retrofit device required under the regulation will be more expensive than the vehicle being retrofitted.

Current Equipment is Devalued
When companies turn over trucks during the normal course of business they sell the old vehicles in an attempt to offset the cost of new equipment. Trucks are usually turned over at a point where they have provided the greatest value to the owner while still having maximum resale value. The proposed truck rule will inhibit the ability of truck owners to turn over equipment when the nature of their business demands it. Moreover, the resale value of the equipment that they are replacing will be drastically reduced because the market will be flooded with vehicles that cannot be used in California.

Economic Woes Impact Ability to Comply
Companies that are barely surviving the current economic slowdown will face additional hardships as a result of the proposed rule. The current economic downturn is already causing many businesses to make adjustments in order to stay viable. The proposed rule will compound the economic woes of California companies by forcing them to invest in new equipment during a period of economic downturn. Additionally, problems in the financial markets have resulted in a credit crunch that will prevent many companies from obtaining the funds necessary to comply with the proposed rule. Companies who cannot obtain credit to replace vehicles may be forced to close their doors and lay off workers.

Cumulative Impact of ARB Regulations
The staff economic analysis evaluates only the impacts of this specific proposed regulation. However, many of the companies are required to comply with a number of other ARB regulations. For example, the struggling construction industry is currently attempting to comply with the recent off-road equipment replacement mandate passed by the ARB. The cumulative impact of these regulations is significant and should be reviewed and analyzed by ARB staff when proposing new regulations.

Adopt DTCC Alternative Proposal

We support the alternative regulatory proposal that has been submitted by the DTCC coalition. The alternative represents a good-faith effort on the part of the business community to develop and present an alternative regulatory structure that allows ARB to achieve significant reductions in PM2.5 and NOx emissions in a way that is less harmful to California's struggling economy. According to ARB staff analysis the alternative crafted by DTCC will reach the goals set by ARB staff, just at a slower pace. The ARB staff analysis also states that the DTCC analysis will result in California not meeting attainment goals in 2014 for South Coast and 2017 for the San Joaquin Valley.

This coalition believes that the ARB should adopt the alternative regulatory structure proposed by DTCC. The DTCC alternative strikes an appropriate balance between the need to clean the air and the need for a robust economy that provides much needed jobs and tax revenues. Although the DTCC alternative proposal does not mitigate all of the economic concerns outlined above, we believe that it strikes a reasonable balance between emission reductions and economic stability and fairness. If the current structure of the DTCC alternative is unacceptable to the board members we would support a continuation of discussions in an effort to determine where changes could be made to the current proposal.

CC: **Air Resources Board Members**
John R. Balmes, M.D.
Ms. Sandra Berg
Ms. Dorene D'Adamo
Mr. Jerry Hill
Ms. Lydia H. Kennard
The Hon. Ronald O. Loveridge
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Mr. Curt Augustine, Deputy Legislative Secretary

Attachment: DTCC Alternative Proposal

Alternative Proposal Under Consideration

Keep all regulatory concepts including mileage, early compliance and NOx exemptions, BACT, BACT averaging, and Fleet averaging, responsibility and definitions with exceptions and modifications (see below)...

Additions/changes to exemptions (all require reporting):

- Under 30,000 miles annual: beginning end of 2010: 2004 or newer until 2020 then NOx and PM BACT (2010 Technology). Under 15,000 miles annually: beginning at the end of 2010: 1994 or equivalent with Level 3 PM until 2020 whereupon 2007 technology level. Under 7,500 miles annually: beginning at the end of 2010: Level 3 PM until 2020 whereupon 2004 Technology. (see below) ***(Currently the ARB has no mileage exemption above 7500 miles annually. These mileage exemptions allow for older model year trucks to be used initially while still realizing emissions reductions; until 2020, where then they will need to meet the specific emissions requirements to help meet air attainment goals, will require reporting)***

15,000 - 30,000 Miles:

End of 2010: 2004 engine equivalent or newer until 2020

2020: 2010 Technology (2010 NOx and PM BACT)

7,500 - 15,000

End of 2010: 1994 with Level 3 PM Control or equivalent until 2020

2020: 2007 Technology or equivalent

Under 7,500 Miles

End of 2010: Level 3 PM control until 2020

2020: 2004 Technology or equivalent

- Each Mileage exemption is based upon mileage only. Operating hours have been removed which will result in application of current idling rules to apply to low mileage vehicles where idling rather than low mileage is the issue as in PTO.

- Equipment owners who purchase and run 2007 or newer technology who are not specifically engaged in port service before Dec 31, 2009 will receive an additional two years of compliance under the current BACT regulatory structure starting in 2020 for 2007 etc. ***(This concept encourages the purchase of new clean technology sooner)***

- Allow for exemption for dedicated use or single unit vehicles (including but not limited to what is described in Title 13 sec 2027(c) (9)). Starting at the end of 2012: all dedicated use vehicles must meet 1994 or later with 850/0 PM and 25% NOx control or equivalent. In 2020 all dedicated use vehicles will meet 2007 standards. ***(this concept allows for used vehicles to remain in service due to high costs associated with the purchase of new equipment of this type)***

- Require CARB to address any and all safety concerns and allow for specific exemptions related to emissions reductions technology and safe operation including the transport of hazardous or flammable materials and other considerations.

- Require CARB to develop a personalized compliance schedule for those commercial entities subject to two or more CARB rules. The schedule would permit compliance on a schedule which considers the financial impacts of all rules rather than the schedule required by each rule.

- Require CARB to investigate and address all operational and other safety considerations of potential retrofit technology (such as transport of hazardous/flammable materials or sensitive cargo} view impediments} etc.) before allowing for its use for compliance purposes and if safety/operational concerns cannot be rectified} provide exemptions for such equipment.

BACT Changes:

Change BACT implementation to allow for PM BACT until 2013} with NOx and PM BACT taking place in 2014} model year compliance path take place chronologically with full NOx and PM BACT requirements by 2022} consistent with current BACT structure.

Compliance Deadline, as of December 31	*Engine Model-Years*	*BACT Requirements*
2010	Pre-1994	PM BACT*
2011	1994 -1997	PM BACT
2012	1998 - 2003	PM BACT
2013	2004 - 2006	PM BACT*
2014	Pre - 1994	NOx and PM BACT
2015	1994 -1998	NOx and PM BACT
2016	1998 - 2003	NOx and PM BACT
2017	2004 - 2006	NOx and PM BACT
2018	NA	NA
2019	NA	NA
2020	2007	NOx and PM BACT
2021	2008	NOx and PM BACT
2022	2009	NOx and PM BACT

*Limited Availability of Technology: no retrofit device will be required unless self-regenerating system becomes available for a particular application or engine and is verified for at least one year prior. For engines certified to the 2004 standard (2.5NOx/HC - .10 PM) and for pre 1994 engines unless system becomes available (as described above) will need to follow BACT replacement schedule for 2017.

Fleet Averaging Changes:

- Allow Double credit for Hybrids for the life of the regulation
- For one vehicle fleets} and exempt trucks for two and three truck fleets} move compliance for PM and NOx performance requirements to 2020} require 2004 technology starting at the end of 2012 for exempt truck.
- For two vehicles} move compliance for non-exempt truck from December 31} 2013 to December 31} 2015. Exempt truck to meet 2004 standard at end of 2012.
- For three vehicle fleets; move compliance for non exempt trucks from December 31} 2013 for both to December 31} 2015 for one and December 31} 2016 for the other. Exempt truck to meet 2004 standard at end of 2012.
- Count each vehicle retired (as consistent with previously adopted ARB rules: in that the equipment is scrapped} sold out of state or utilized in a low mileage capacity) in a fleet before December 31} 2010} as 2010 compliant until December 31} 2017 for purposes of fleet averaging. Each retired vehicle will count as a 2010 MY equivalent and will be included in total fleet average size until 2017. Equipment owners who choose to utilize this option must present proof of retirement.
- Space out initial NOx compliance for fleet averaging targets for fleets of four or more. For NOx: Space out requirements starting 2012 a second target in 2014} with a third Target starting in 2016} a fourth target in 2020 and the remainder of the fleet in compliance for NOx in 2022.
  For PM: Keep same targets as ARB (See below for NOx and PM Targets)

Compliance Deadline, as of *December 31*	*Fleet NOx Targets for each compliance deadline*	
	MHO	**HHO**
2012	8.5	14.4
2013	8.5	14.4
2014	5.8	9.8
2015	5.8	9.8
2016	4.6	7.8
2017	4.6	7.8
2018	4.0	6.0
2019	4.0	6.0
2020	3.2	3.0
2021	1.6	3.0
2022	0.8	1.6

Compliance Deadline, as of *December 31*	*Fleet PM Targets for each compliance deadline*	
	MHO	**HHO**
2010	0.38	0.710
2011	0.29	0.520
2012	0.17	0.320
2013	0.06	0.110
2014	0.06	0.110
2015	0.06	0.110
2016	0.06	0.110
2017	0.06	0.110
2018	0.06	0.110
2019	0.06	0.110
2020	0.06	0.110
2021	0.06	0.110
2022	0.06	0.110

BACT Percentage Limits Changes:

- For BACT fleet Percentage compliance scenario, employ similar concept for fleet averaging targets with initial space out of one year between initial compliance schedule for NOx. The targets for PM are the same (See Table Below)
- Count the number of vehicles retired (as consistent with previously adopted ARB rules: in that the equipment is scrapped, sold out of state or utilized in a low mileage capacity) in a fleet before the end of each compliance year, in total fleet size for each compliance year starting once a baseline fleet size is established on January 1, 2010. Each retired vehicle will count as a BACT compliant vehicle in total fleet size for each compliance year for fleet percentage requirements until 100% compliance is required.

Compliance Deadline, as of December 31	Percentage of Total Fleet Complying with BACT	
	PM BACT	NOx BACT
2010	25%	NA
2011	25%	NA
2012	50%	25%
2013	1000/0	25%
2014	100%	50%
2015	100%	50%
2016	100%	75%
2017	100%	75%
2018	100%	80%
2019	100%	90%
2020	100%	90%
2021	1000/0	90%
2022	1000/0	100%

Enforcement Consideration:

- The ARB must work closely with the DMV to determine the most appropriate course of action for prohibiting registration of non-compliant trucks. Tie motor carrier permit to emissions compliance as it is tied to it for BIT.
- CARB should be responsible for compiling a list of compatible technologies for all equipment subject to this regulation while simultaneously addressing compatibility and availability issues by providing a more robust off-ramp for unavailable or incompatible technology.
- Require CARB to perform continued cost analysis for the life of the regulation.
- Create ucompliance corral" where shippers, brokers, members of the public can look up a fleet to see if it is in compliance. Voluntary participation.
- Create certificate of reported compliance for equipment owners if compliance corral cannot be available for the initial rule implementation. Require that section 2025 b(l)(A) does not apply to person, business until there is a certificate of reported compliance program for equipment owners.
- Require CARB to work with local transportation agencies and evaluate potential emissions impacts from truck route closures resulting in additional mileage or increased exposure for sensitive groups.

Funding Considerations:

- Create self sustaining loan program available to all California based carriers.
- Allow for utilization of the tiered truck trade for exemption vehicles.

BACT Comparison:

CARB Schedule

Compliance Deadline, as of December 31	*Engine Model-Years*	*BACT Requirements*
2010	Pre-1994	PM BACT
2011	2003 - 2004	PM BACT
2012	2002 - 2006	PM BACT
	1994 -1999	NOx and PM BACT
2013	2000 - 2002	NOx and PM BACT
2014	Pre-1994	NOx and PM BACT
2015	2003 - 2004	NOx and PM BACT
2016	2005 - 2006	NOx and PM BACT
2017	NA	NA
2018	NA	NA
2019	NA	NA
2020	2007	NOx and PM BACT
2021	2008	NOx and PM BACT
2022	2009	NOx and PM BACT

Drcc Alternative Schedule (differences in RED)

Compliance Deadline, as of December 31	*Engine Model-Years*	*BACT Requirements*
2010	Pre-1994	PM BACT
2011	1994 - 1997	PM BACT
2012	1998 - 2003	PM BACT
2013	2004 - 2006	PM BACT
2014	Pre - 1994	NOx and PM BACT
2015	1994 - 1997	NOx and PM BACT
2016	1998 - 2003	NOx and PM BACT
2017	2004 - 2006	NOX and PM BACT
2018	NA	NA
2019	NA	NA
2020	2007	NOx and PM BACT
2021	2008	NOx and PM BACT
2022	2009	NOx and PM BACT

BACT Percentage Limits Comparison:

CARB Schedule:

Compliance Deadline, as of December 31	Percentage of Total Fleet Complying with BACT	
	PM BACT	NOx BACT
2010	25%	NA
2011	500/0	NA
2012	75%	25%
2013	100%	50%
2014	100%	60%
2015	1000/0	70%
2016	100%	80%
2017	100%	80%
2018	100%	800/0
2019	100%	900/0
2020	100%	900/0
2021	100%	900/0
2022	100%	100%

DTCC Alternative (differences in Red):

Compliance Deadline, as of December 31	Percentage of Total Fleet Complying with BACT	
	PM BACT	NOxBACT
2010	25%	NA
2011	25%	NA
2012	50%	25%
2013	1000/0	250/0
2014	100%	50%
2015	100%	50%
2016	100%	75%
2017	100%	75%
2018	100%	80%
2019	100%	90%
2020	100%	90%
2021	1000/0	90%
2022	100%	100%

Fleet Averaging Comparison (NOx):

CARB Proposal (NOx Targets)

Compliance Deadline, as of December 31	*Fleet NOx Targets for each compliance deadline*	
	MHO	**HHO**
2012	8.5	14.4
2013	5.8	9.8
2014	4.6	7.8
2015	4.6	7.8
2016	4.0	6.0
2017	4.0	6.0
2018	4.0	6.0
2019	3.2	4.4
2020	3.2	4.4
2021	1.6	3.0
2022	0.8	1.6

nTCC Alternative Proposal (NOx Targets) (differences in Red)

Compliance Deadline, as of December 31	*Fleet NOx Targets for each compliance deadline*	
	MHO	**HHO**
2012	8.5	14.4
2013	8.5	14.4
2014	5.8	9.8
2015	5.8	9.8
2016	4.6	7.8
2017	4.6	7.8
2018	4.0	6.0
2019	4.0	6.0
2020	3.2	3.0
2021	1.6	3.0
2022	0.8	1.6

Fleet Averaging Comparison (PM):

CARB and nTCC Proposals for PM are identical

Compliance Deadline, as of December 31	*Fleet PM Targets for each compliance deadline*	
	MHO	**HHO**
2010	0.38	0.710
2011	0.29	0.530
2012	0.17	0.320
2013	0.06	0.110
2014	0.06	0.110
2015	0.06	0.110
2016	0.06	0.110
2017	0.06	0.110
2018	0.06	0.110
2019	0.06	0.110
2020	0.06	0.110
2021	0.06	0.110
2022	0.06	0.110