



Air Resources Board



Matthew Rodriguez
Secretary for
Environmental Protection

Mary D. Nichols, Chairman
1001 I Street • P.O. Box 2815
Sacramento, California 95812 • www.arb.ca.gov

Edmund G. Brown Jr.
Governor

VIA ELECTRONIC MAIL AND HAND-DELIVERY

November 23, 2011

The Honorable Darrell E. Issa
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington D.C. 20515

Dear Chairman Issa,

I am writing in response to your letter dated November 9, 2011 requesting information regarding California's long-standing and world-leading regulation of dangerous air pollution from motor vehicles, and our recent successful efforts to coordinate these effective, common-sense standards with federal government regulations.

Attached please find specific responses to your questions, and records regarding our consultations with federal agencies, automobile manufacturers, and other stakeholders during the period from early 2009 to the present day.

To summarize California's role, the Air Resources Board (ARB) staff collaborated with our partners in the federal agencies and engaged industry and stakeholders to produce and share the latest and best science on cost-effective pollution reduction technologies. We compared our respective regulatory authority with our federal partners, and identified opportunities to make our standards more consistent, effective, and beneficial.

From this common technical foundation and harmonized regulatory structure has risen a single National Program of vehicle standards that is already providing unprecedented savings to consumers across the country, dramatically reducing American petroleum dependence and greenhouse gas pollution, and providing long-term certainty and a truly global market to resurgent American auto manufacturers.

Under this program, the United States will reduce its consumption of oil by 12 billion barrels – a reduction of 2.2 million barrels a day, more than we import from the Persian Gulf every day – and cut more than 6 billion metric tons of greenhouse gas pollution

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our website: <http://www.arb.ca.gov>.

California Environmental Protection Agency

over the life of the program. Consumers will save more than \$8,000 per vehicle by 2025, and those dollars will be spent and invested in Main Streets across the country.

This achievement is not only one of the greatest accomplishments of U.S. energy policy or environmental policy in recent decades, but also an exemplar of good government involving unprecedented agency coordination at the federal level. This accomplishment is by no means a single recent development but is, in fact, the culmination of decades of progress in addressing vehicle emissions that spans several administrations and has received bipartisan backing.

When ARB first issued its greenhouse gas standards for vehicles in 2004, we were building on over 50 years of successful state regulation of passenger vehicles that has reduced smog-forming pollution emissions by over 99 percent. Moreover, the vast majority of the standards pioneered in California were eventually adopted at the federal level – a history of state-federal cooperation we are happy to continue today. Our greenhouse gas standards were adopted or supported by 16 states, dozens of cities and local governments, Congressional leaders of both parties, local and national labor and business groups, environmentalists and economists. When the Bush Administration delayed and then denied our waiver request – the first outright denial in four decades -- it was widely anticipated that a legal appeal of the decision would likely prevail, forcing the next administration to reconsider that denial, regardless of which candidate won the White House.

Likewise, U.S. EPA's regulation of greenhouse gas emissions has been anticipated since the Supreme Court ruled in 2007 that EPA could not shirk its responsibility under the Clean Air Act to address this pollution, and EPA's standards for vehicles have been in progress since first being contemplated by the Bush Administration in 2008.

The Committee's current concern that these separate and independent activities are somehow preempted by the federal regulation of vehicle fuel economy is not supported by the facts or the law.

California's authority to regulate pollution has been in place since long before the Energy Policy and Conservation Act (EPCA). Our authority has been re-affirmed, and even expanded, several times since EPCA, despite widespread recognition that pollution standards may affect fuel economy. In fact, EPCA, as amended by the Energy Independence and Security Act, expressly prohibited any preemption of state pollution standards. Every federal court that has heard this misguided preemption mantra has soundly dismissed it. As the United States District Court in Fresno found,

“The court concludes that, just as the *Massachusetts [v EPA Supreme Court decision]* held EPA's duty to regulate greenhouse gas emissions under the Clean Air Act overlaps but does not conflict with DOT's duty to set fuel efficiency standards under EPCA, so too California's effort to regulate greenhouse gas emissions through the waiver of preemption provisions of the Clean Air Act overlaps, but does not conflict with DOT's activities under EPCA.”¹

Moreover, the claim that this preemption rests on an expansive definition of the words “related to fuel economy” is a legalistic contortion that defies common sense. By this logic, states would be prevented from setting speed limits or regulating the length of tractor-trailers, because these rules affect fuel economy.

For example, in the 1970s, when California issued world-leading standards for smog-forming emissions (a rule soon adopted at the federal level), we set the stage for an explosion in technical innovation that included the commercialization of the two-way catalyst, a technological advance that also resulted in dramatic increases in vehicle efficiency. By the Committee's logic, this “happy accident” of increasing fuel economy should have preempted this ground-breaking regulation that has dramatically improved air quality and saved thousands of lives across the country.

The Committee's elastic interpretation of “related to fuel economy” has also been definitively rejected by other courts as well as the United States District Court in Vermont made clear regarding ARB's greenhouse gas standards.

“Unless this Court is to ignore decades of EPA-issued and approved regulations that also can be said to “relate to” fuel economy, this regulation does not “relate to” fuel economy within the meaning intended by Congress.”²

Although I appreciate and support the Committee's mandate to conduct oversight of federal government operations, I would hope that, especially in this time of fiscal restraint, instead of choosing to re-examine legally discredited arguments the Committee would support the development of improved regulatory coordination at the federal level that generates jobs and benefits consumers, industry, American energy security, and Main Street economies.

¹ *Central Valley Chrysler-Jeep, et al., v. Goldstene*, 529 F.Supp.2d 1151, 1174 (E. Dist. CA (Fresno) 2008) (*Central Valley*)

² *Green Mountain Chrysler Plymouth Dodge Jeep, et al., v. Crombie*, 508 F.Supp.2d 295 (D.Vt. 2007)

The Honorable Darrell E. Issa
November 23, 2011
Page 4

While ARB's jurisdiction and primary statutory mandate are to reduce the urgent threat to human health and welfare from smog-forming and greenhouse gas pollution, we take pride that we have crafted common-sense rules supported by the auto industry and labor, by consumers and citizen groups, and that in the process are helping move our country toward a more prosperous and secure future.

I appreciate the opportunity to correct the record.

Respectfully,



Mary D. Nichols
Chairman

Attachments:

- Attachment 1: ARB Responses to November 9, 2011 Committee Questions
- Attachment 2: List of ARB Employees Providing Heavy Duty GHG Information
(Question 2)
- Attachment 3: Chronology of Emission Standards Meetings with ARB Attendees
(Question 3)
- Attachment 4: Compilation of documents responding to Questions 14, 15 and 16
(approximately 4,000 pages to be provided to the Committee on CD
under separate cover).