# Appendix H

# Comments Received Before the 45 Day Comment Period

**From:** Ellison Wilson Advocacy, LLC
**To:** Brasil, Tony@ARB
**Cc:** White, Erik@ARB; White, Elizabeth@ARB
**Subject:** CTTA Support for Modification to the Low-use Vehicle Exemption
**Date:** Thursday, November 14, 2013 12:42:01 PM

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Tony,

On behalf of our client, the California Tow Truck Association (CTTA), we applaud the ARB's recognition that further relief on the Truck and Bus Rule is warranted and necessary. As a follow-up to our testimony at the October 24, 2013 Meeting of the Air Resources Board (as well as numerous conversations with you and fellow ARB Staff), heavy-duty tow trucks of 33,001 GVWR and above continue to be particularly impacted by the regulation, as they tend to be traditionally driven for only a low number of miles each year (thus tend to be long-lasting, yet older model trucks) and, as specialty trucks, are extremely expensive to replace. Replacement costs for these specialty trucks range between $325K to $750K, very similar to the replacement costs for emergency vehicles such as firefighting apparatus. Furthermore, retrofit devices are oftentimes impractical as modification to these trucks would cost far more than just the retrofit device installation. Bodies would have to be modified to create space to physically enable installation. This process would be both costly and time consuming resulting in excessive out of service time.

It has always been our argument that these heavy-duty low-mileage vehicles are utilized to clean-up the most disastrous accidents on our roadways as part of the CHP and local law enforcement tow rotation lists. With so few miles driven and such a huge cost of replacement, these trucks understandably tend to be replaced at a slower pace than smaller tow trucks. Our members have mortgages on these trucks, and their business model is based on the assumption that they can get decades of service out of the vehicles. Requiring them to replace these trucks ahead of schedule will have one of two direct consequences – get out of heavy-duty towing completely or take a massive financial risk in an unstable economy by purchasing a new heavy-duty tow truck to meet the rule requirements. Either way there's a strong likelihood there will be less heavy-duty tow truck operators in California. As such, roads will remain uncleared, traffic will back up, vehicle emissions will increase, and our economy and environment will be further harmed. It is ironic that the very air the rule is designed to clean will actually become even more polluted.

While it is not complete relief, modifying the current "low-use vehicle" exemption in the current regulation in the following manner may accommodate many of these vehicles:

> "Low-use Vehicle" means a vehicle that will be operated fewer than **5,000** miles in California in any compliance year. If that vehicle has an engine that powers other equipment that can only be used while stationary, the engine or power take off (PTO) must also operate less than **500** hours in any compliance year. The hour limitation does not apply for vehicles where the engine is used to power an auxiliary mechanism that strictly loads and unloads cargo from the vehicle (examples include, but are not limited to, dump trucks, cement powder trucks, or trucks with attached lift devices).

In addition to an increase in the mileage threshold, it is critically important for any regulatory

changes to the low-use exemption to also contain a proportionate increase in the number of hours that a truck is able to operate while stationary. CTTA's recommendation is 500 hours, which is consistent with the proposed 500% increase in mileage. These trucks perform the majority of their work while stationary (clearing disabled vehicles from the roadway) and a mere increase in mileage would merely provide negligible relief.

We would like an opportunity to further discuss CTTA's recommended revisions to the low-use vehicle exemption. Please let us know your availability for an in-person meeting. Thank you.

Kirk Blackburn
Ellison Wilson Advocacy, LLC
(916) 448-2187

**From:** Elmer James
**To:** White, Elizabeth@ARB
**Subject:** Assistance required
**Date:** Friday, December 27, 2013 3:31:09 PM

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Ms. Elizabeth White
Manager On-Road Compliance
Air Resources Board

With no answer on your telephone, assuming that you may be gone over a long holiday weekend, therefore since time is slipping by, decided to send this e-mail.

Please refer to letter of 1/20/2013 from Alberto Ayala to Solartrac, Inc./ Slide Ridge Honey in which he referred me to you, for answers, and note that we take issue with many of his statements which do not relate to the real world that we have to live in to make an income.
I have in the past had a number of contacts with CARB attempting to reach an acceptable, fair solution to our position which has not happened.

Now things have changed; since my past inputs to CARB, therefore will restate our position as briefly as possible and hope that logic prevails based on the recent release of Regulatory Advisory released sometime in November 2013, which we found on the internet today.

We have questions and comments:

1. Refer to Attachment "A" of the Regulatory Advisory, this map of Kern County has it split into two Parts, which part is Bakersfield located? Is it white or light green?
2. Wasco, is it located in the white or light green?
3. It appears that the light green areas on the map, Attachment "A", are going to be converted to dark green and become exempted.
4. We are a Business registered in California with a Rio Linda Address.
5. Our Kenworth is Licensed, in the State of California.
6. We carry Insurance on our Truck.
7. We file California Income Taxes, and make a payment to CA each year based on our Income.
8. Our California in state total mileage is: 5 to 7,000 per year.
9. Our Total mileage including California mileage is about 12,000 per year.
10. We cross into California on Highway I15 from Las Vegas to Barstow, then 58 from Barstow to Bakersfield, then 99 to McFarland, Our consistence route delivering / returning our Honey Bees in and out of California.
11. Per Attachment "A" most of our California mileage is in EX-Exempted areas of San Bernardino & Kern Counties, and should not be counted as miles in a smog prone area.
12. We should be EXEMPTED as an Agricultural Operation since we are honey bee keepers, servicing the Almond Farming in California.
13. As an Agriculture Business we should not be penalized for being "out of state" since we are a California Registered Company in Good Standing, and since we are a California Tax Payer, we consider this very unfair and illegal.

14. We have contacted a Nevada Trucking Company in an attempt to hire them to truck our Honey Bees into California (Jan. 2014). Their answer was: "We will no longer haul into California due to all of the Rules & Regulations." Since our Bee Wintering yard is in southern Nevada, considered this a possible solution, however, it just pointed out that we are caught between our (contract) with the Almond Orchard & CARB.
15. The question becomes: When the Orchard files a lawsuit against us for not delivering our annually quantity of Honey Bees for Almond Pollution, is CARB going to pay the Thousands of Dollars that lawsuit will amount to because of loss in production of Almonds?
16. There is an acute shortage of Honey Bees for Almond Pollination this year due to the extreme losses most Honey Bee growers have endured this year, so every Honey Bee delivered to California, this Pollination year is very important.

All we are asking for is Fair & Realistic Treatment, so far that has not happened and in a few weeks we must move our bees into California or default on our contract because of un-realistic rules by the State of California.

Please provide a written document exempting our truck for the next 10 years, that we can place in the truck so we can legally travel to and from the orchard as required to meet our contractual commitments. Before 10 years is up, no doubt our truck will be replaced by a later version.

Please review the small mileage that we travel in the smog area of California.

Thanks for your reconsideration,

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December 03, 2013

Dear CARB Staff,

Thank you for giving me the opportunity to write and speak with you today. I am the head mechanic for Northwest Excavating, Inc. a family owned business in Southern California employing families and supporting local businesses for more than 50 years. With all the new regulations recently passed, conducting business in California has its challenges.

In the On Road Diesel Regulation we are grouped together with the large distributing and transportation companies that accumulate more miles annually than we do. The California Construction Industry is different. Most of us are family owned small businesses. These small businesses are required to comply with the same rules as the mega fleets and because of such, I would like to take this opportunity and asked if you would consider the suggestions below that in my opinion would benefit not only the construction industry, but all of us who live and work in California.

- Increase the *Low Use Vehicle Mileage* to 7,500 miles per year and 500 PTO hours annually using a three year rolling average like the *Off Road Diesel Regulation* does. 5,000 miles per year and 200 PTO hours annually is still not enough for expensive specialized trucks that don't get used that often. This option should continue indefinitely with no expiration just like the current *Low Use Vehicle* exemption. You might want to consider labeling the *Low Use Vehicles* just like the other specialized trucks.

- Adopt CIAQC's three tier *Low Mileage Construction Truck extension.*
  - Ultra – Low Mileage for less than 7,500 annual miles (exempt with no expiration).
  - Very – Low Mileage for 7,501 – 30,000 miles with a 2023 compliance deadline.
  - Low – Mileage for 30,001 – 65,000 annual miles with compliance by 2020.

- Create the ability to remove a DPF filter and install it on a like engine when the truck is sold out of state, totaled due to an accident or qualifies for an exemption like the *Low Use Vehicles.* We have that ability now to exchange like motors, transmission and other expensive truck components. This would be a win – win for both parties due to the cost savings for the owner not having to purchase another filter thus keeping that filter in California cleaning the air we breathe.

- Single construction truck owners need long term relief. For example, we have an outside lowbed hauler. He owns a 2006 truck that he just paid off. With increased fuel cost, insurance, registration, permits, maintenance and lack of business he can't afford a $20,000.00 DPF filter right now.

- Update the online Truck and Bus calculator to incorporate the new changes. This will help us in the coming years to determine what path of compliance to take.

Once again, thank you for your time and I would be happy to discuss any of these topics with you. Please feel free to call me at your earliest convenience.

Sincerely,

Ron Nuss

Andromeda Transport
P.O. Box 207
Ducor, Calif. 93218
Phone (559) 534-2406
Mobile (559) 731-2290
FAX (559)534-2565

December 10, 2013

California Air Resource Board

c/o San Joaquin Valley
Air Pollution Control District

Central Region Office

1990 E. Gettysburg Avenue
Fresno, CA 93726

Dear CARB staff:

Thank you for taking the time to hear or read my comments on the Truck and Bus Regulations. I regret that I am unable to attend this meeting personally or by Webcast. I have prior commitments this morning.

My name is David Schwartz, owner of Andromeda Transport, based in Tulare County.

I grew up with eight brothers and sisters, the son of faithful parents who grew up in the Great Depression; who fought and worked during World War II; who started a family with meager beginnings, and taught their children how to make the most out of our resources. We grew up appreciating the value of even the smallest portion of food, the simplest of clothing, and the dignity of hard work. We were true Environmentalists, making the most of what we had and wasting none. We conserved and protected our resources.

I started Andromeda Transport in 1981 with a single 18 year old truck coupled to a 31 year old trailer. Over the years, I updated the vehicles with more efficient components. In the subsequent twenty-four years, I raised four boys with that 1963 Kenworth. I drove 1.6 million miles hauling local sand and gravel products during that time. I operated (and continue to do so) this business with the highest standards of honesty and integrity.

I finally retired that 42 year old truck in 2005 when it could go on no longer. I hope to restore it someday. In the meantime, my son joined the business and we expanded the fleet, recycling older, well-running trucks.

There have always been challenges in owning one's business. I have encountered many over the past 33 years: breakdowns, middle of the night fixes, collections, even employee embezzlement. These trials are part of the whole test. The failures and near misses are instrumental in building character and growth.

The past five years have been exceptionally challenging. I had seven trucks running in 2009, with drivers and a full-time and a part-time mechanic working. I worked mainly in the office, managing everything else.

The downturn of the economy with the accompanying defaults and bankruptcies by a few critical customers put the business in a tailspin. By July of 2010, my wife and I decided our only choice for survival was to downsize. I started driving again, kept one of the drivers and my son, while I turned wrenches and did the office work. I even laid off my son at the end of 2010 as a further cost-cutting measure.

I worked my tail off until the present to salvage the business. I can confidently say that it is solvent again. All this WITHOUT government assistance.

For every Bill Gates, there are hundreds of thousands of small business owners like me who provide the essentials of a vibrant and free economy. Most of them provide a basic income for the proprietors. Most of us do it not for financial riches, but for the almost intangible wealth and substance of carving our own path in the American Dream.

At age 62, I am now facing the BIGGEST challenge of my career: the myopic and despotic decrees by our state's Air Resources Board. If CARB continues with its draconian proposals, the hard work will have been for nothing. My customers will no longer receive their service and products at reasonable rates.

I could rant on about many facets of the regulations being discussed, but time prohibits me from doing so. Suffice it to say, the short-sightedness, or blatant dishonesty integral to these regulations will put me out of business, kill my career and lifetime service to my family, community and state.

In the past, CARB board and staffers have shown little or no inclination to hear the voices of men and women like me (let alone LISTEN to those voices . . .). Your six figure salaries dictate that arrogance toward us peons.

Sincerely,

David Schwartz

**Memorandum to California Air Resources Board Staff:**
**CTA Position and Policy Recommendations on Proposed Truck and Bus Rule Amendments**

Chris Shimoda, Director of Policy

(916)373-3504 cshimoda@caltrux.org

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## Formal Position

The Board of Directors of the California Trucking Association has formally adopted a neutral stance on the proposed regulatory amendments as described in Regulatory Advisory MSC 13-28. However, it has directed its staff to ensure that any changes proposed by the Air Resources Board primarily benefit those fleets who have demonstrated early and on-time compliance with the Statewide Truck and Bus Rule.

Accordingly, we are pleased to submit to you the following policy proposals.

## Proposals to Benefit Early Compliance:

1. Extend engine compliance dates to 1/1/2023 in case of VDECS recall

CARB staff should formally extend the turnover deadlines for trucks previously equipped with recalled VDECS to 1/1/2023 during this rulemaking. Fleets who have purchased recalled filters were very early compliers and any flexibility in the rule should first aid those fleets who have taken on early compliance costs and the associated issues that came with early compliance like the Cleaire Longmile recall. Early turnover/replacement of these trucks can be achieved through CTA's earlier policy suggestions for the proposed Prop 1B Substrate Replacement Program (attached). This suggested amendment would provide a vital backstop for early compliers negatively impacted by VDECS recalls.

2. Extend early retrofitted truck 2010-turnover deadlines to 2023

Allow additional useful life for retrofitted trucks, regardless of model year, that were installed prior to 1/1/2014. This is similar to the early retrofit provision already in the rule, but allows additional flexibility for fleets using the phase-in schedule to meet compliance obligations. This additional useful life would not be transferrable in the case of an ownership exchange that occurred after 1/1/2014.

This provision would reward early and on-time compliance actions by providing additional useful life for retrofit investments.

COMPLIANCE YEAR (By 1/1/20xx)

| MODEL YEAR ENGINE | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1993 & Older | | | | | | | | | | | | |
| 1994-1995 | | | | | | | | | | | | |
| 1996-1999 | | | | | | | | | | | | |
| 2000-2004 | | | | | | | | | | | | |
| 2005-2006 | | | | | | | | | | | | |
| 2007 or Newer* | | | | | | | | | | | | |

**Legend**

| | | |
|---|---|---|
| GREEN | = | Compliant Truck |
| YELLOW** | = | Compliant Truck if retrofit for PM |
| RED | = | Replace with 2010 MY Engine |

**Notes**

* 2007 or Newer MY Engine must be OEM equipped with PM filter for the above to apply

** PM retrofits must be highest level Verified Diesel Emissions Control System (VDECS) to qualify

3. Extend early purchased truck 2010-turnover deadlines to 2027.

Allow additional useful life for 2007-2009 model year engines that were purchased prior to 1/1/2014. Assess trade-off for NOx neutrality with estimated penetration rate of optional low-NOx standard engines. Allow ownership of these trucks to be transferred within TRUCRs.

COMPLIANCE YEAR (By 1/1/20xx)

| MODEL YEAR ENGINE | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 | 2024 | 2025 | 2026 | 2027 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1993 & Older | | | | | | | | | | | | | | | | |
| 1994-1995 | | | | | | | | | | | | | | | | |
| 1996-1999 | | | | | | | | | | | | | | | | |
| 2000-2004 | | | | | | | | | | | | | | | | |
| 2005-2006 | | | | | | | | | | | | | | | | |
| 2007 or Newer* | | | | | | | | | | | | | | | | |

**Legend**

| | | |
|---|---|---|
| GREEN | = | Compliant Truck |
| YELLOW** | = | Compliant Truck if retrofit for PM |
| RED | = | Replace with 2010 MY Engine |

**Notes**

* 2007 or Newer MY Engine must be OEM equipped with PM filter for the above to apply

** PM retrofits must be highest level Verified Diesel Emissions Control System (VDECS) to qualify

CTA estimates an approximate 12 to 1 optional-low NOx to 2007-2009 ratio necessary to produce NOx neutrality. CARB staff should assess both low and high adoption scenarios through 2023 for the cumulative assumed low-NOx vehicles and compare to the estimated 2007-2009 vehicles purchased prior to 1/1/2014.

## Other Proposals:

Regarding Additional Flexibility/Delays

While CTA has chosen to remain neutral on the amendments suggested in Regulatory Advisory MSC 13-28, we would strongly advise CARB against further amendments which would retroactively provide non-compliant fleets a compliant status.

We believe non-compliance with the rules as implemented on 1/1/2012 and subsequently proposed to be amended per Regulatory Advisory MSC 13-28 is absolutely not an issue which should be dealt with through retroactive regulatory amendments, but is a matter best left to your enforcement policy.

In late 2012, CTA submitted a report to CARB outlining its concerns regarding the enforceability of your trucking industry related rules (including the Statewide Truck and Bus Rule, Tractor-Trailer Greenhouse Gas Reduction Measure, Drayage Truck Regulation and Transport Refrigeration Unit Air Toxic Control Measure). As part of the policy recommendations made at that time, we had suggested that CARB should eliminate all resources spent prosecuting administrative penalties that do not result in excess emissions. This recommendation was made due to otherwise compliant fleets being fined in excess of $1000 for reporting errors.

We would suggest that Senate Bill 1402 (Dutton – 2010) provides your enforcement staff with significant flexibility to adjust penalties and individual fleet/truck owner-operator compliance approaches depending on a series of factors as outlined in statute (applicable provisions in bold):

> *(1) The extent of harm to public health, safety, and welfare caused by the violation.*
> *(2) The nature and persistence of the violation, including the magnitude of the excess emissions.*
> ***(3) The compliance history of the defendant, including the frequency of past violations.***
> ***(4) The preventive efforts taken by the defendant, including the record of maintenance and any program to ensure compliance.***
> *(5) The innovative nature and* ***the magnitude of the effort required to comply,*** *and the accuracy, reproducibility, and repeatability of the available test methods.*
> ***(6) The efforts of the defendant to attain, or provide for, compliance.***
> *(7) The cooperation of the defendant during the course of the investigation and any action taken by the defendant, including the nature, extent, and time of response of any action taken to mitigate the violation.*
> ***(8) The financial burden to the defendant.***

We would also remind regulatory staff that California fleets have already been cited for being in violation of the Statewide Truck and Bus Rule so any retroactive amendments to the rule would necessitate a review of these cases.

Emission Control Maintenance

CTA Staff recommends CARB consult with fleet maintenance professionals and VDECS maintenance vendors to provide recommendations regarding the formulation of an effective preventative maintenance and oversight program for emission control systems.

# ATTACHMENT A

## Proposition 1B
## Filter Substrate Replacement Matrix

## Proposed Prop 1B Filter Substrate Replacement Program Matrix

| | Can replace substrate? | Suitable alternative DPF? | Proposed Action |
|---|---|---|---|
| **Scenario A** | YES | N/A | Full cost of replacement (inc. labor) funded by filter substrate replacement program. |
| **Scenario B** | NO | YES | 1. Full cost of replacement (inc. labor) DPF funded by filter substrate replacement program; or<br>2. Fleet may opt to apply for Prop 1B priority funded truck replacement + cost of removing filter. |
| **Scenario C** | NO | NO | 1. Automatic compliance extension for non-availability of VDECS until 1/1/2020<br>2. Fleet may opt to apply for Prop 1B priority funded truck replacement + cost of removing filter |

# ATTACHMENT B

## CTA Compliance Policy
## Executive Summary

## EXECUTIVE SUMMARY

The California Air Resources Board (ARB) is tasked with enforcing a suite of diesel truck regulation that will cover approximately 2,000,000 pieces of individual equipment with limited resources. The California Trucking Association's (CTA) Board of Directors tasked its staff with a review of enforcement of ARB's regulations and formed a Compliance Taskforce to ensure that regulated parties are provided a "level playing field" and ARB is efficiently managing its existing resources.

CTA's staff reviewed ARB's Enforcement Policy, requested and received the most recent inspection, settlement and compliance data from ARB enforcement personnel, and analyzed a multitude of possible enforcement policy enhancements.

### FINDINGS

i. **ARB enforcement currently has the capacity to inspect 2.1% of the regulated fleet per year. At this rate, it would take a minimum of 47 years for enforcement to inspect each piece of regulated equipment under its purview.**
ii. **The majority of ARB enforcement actions in 2011 were focused on "legacy rules" like the Periodic Smoke Inspection Program, the Heavy Duty Vehicle Inspection Program, and the Emission Control Label Regulation (56.7% of all inspections; 82% of all settlements).**
iii. **Design and scope of diesel truck regulations make them difficult to enforce.**

### RECOMMMENDATIONS

i. **Divest resources from "legacy rules" and consolidate regulatory requirements where possible.**

ii. **ARB should convene multi-agency, industry truck rule working group.**

iii. **Working group should review current enforcement staffing levels, suggested incremental staffing increases, consolidation of resources from existing programs and efficiency and streamlining measures.**

iv. **Working group should continue discussions for future vehicle registration ban proposals and other upstream, technology based solutions.**

v. **ARB should eliminate all resources spent prosecuting administrative penalties that do not result in excess emissions**

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

November 25, 2013

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

**RE: Comments on ON-ROAD TRUCK RULE**

Dear Chairman Nichols and Members of the Board:

The Construction Industry Air Quality Coalition (CIAQC) appreciates the opportunity to comment on the status of the TRUCK AND BUS Regulation (On-Road Truck rule) and its impacts on the construction industry and construction fleets and small business owners based in California.

We believe there are a number of areas where the rule can be improved without threatening the goals and objectives of the emissions reduction effort. It is also important to understand that the trucks used in construction, although they may be similar to those used in the over-the-road transport business do not operate nearly as many miles nor do they operate in the same fashion as those long-haul trucks. The one-size-fits-all truck rule simply does not work for the construction trucks. Further, we believe that due to the relative small size of the construction fleet, the low number of miles operated and the ongoing construction industry recession, we are well ahead of the expectation for emission reductions from this segment of the statewide truck fleet.

For those reasons we are recommending that the Board direct the staff to update the rule to recognize these changes in actual emissions from those "assumed" at the time of the rule development and make adjustments required to meet the reduction target without over-burdening the California based construction employers.

**CONSTRUCTION TRUCKS ARE NOT 'THOSE' TRUCKS**

The construction industry drives very few miles with their trucks. Many trucks are transported to the site by low-bed, ie. Water trucks, service trucks. Some specialty trucks drive fewer than 5,000 miles per year and according to the low-use truck registration program, many drive fewer than 1,000 miles a year. Even with the current restrictions to the Low-Mileage Construction Truck (LMCT) Extension, 7,200 trucks registered for that program at the 15,000 to 20,000 annual miles cap.

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Tel: 626 858 4611 Fax: 626 858 4610 e-mail: ciaqc@uia.net www.ciaqc.com
Major Funding Provided by the Construction Industry Advancement Fund and the Fund for Construction Industry Advancement

A high mileage construction truck might drive 35,000 to 40,000 miles per year. Compare that to an over-the-road truck which could travel 250,000 miles annually and averages 100,000 to 140,000 miles annually according to the Oak Ridge National Laboratory – Center for Transportation Analysis.

Further, many of these construction trucks are owner-operators, or part of a small family owned fleet that provides support to the construction industry. They don't have the financial resources to retrofit and replace those trucks on the same schedule as the larger, out-of-state and high mileage fleets.

Forcing the construction industry to comply with the same schedule as the over-the-road trucks is unfair and unnecessary given the unique nature of construction related trucks and the much lower mileage levels (and emissions) generated by those trucks. ***CARB should recognize that these captive in-state trucks owned by California based employers and small business owners should be given an appropriate and separate schedule for achieving the necessary emission reductions. Further, those that are clearly construction related trucks should be placed in a separate category with a separate compliance schedule to address the excessive burden placed on those small operators.***

**GET THE EMISSION NUMBERS RIGHT**

In the four years since the On-Road Truck rule was adopted, several things have become clear. The number of trucks used in construction is fewer than originally estimated, they don't drive nearly as many miles as originally thought and many are newer than originally projected. In the attached calculation (Attachment 1) it would appear that the number of construction trucks is about 44,000 or 2.4% of the on-road fleet. ***A stand-alone emission inventory and target for construction trucks would be the most equitable means to craft a regulation for the construction industry.*** Contractors are willing as an industry to reduce the emissions from their fleets, but aggregating them with the 1.5 million long haul trucks unnecessarily increases the compliance requirements for construction fleets and small businesses.

The staff presentation to the Board indicates that the emission testing done in Long Beach and Oakland demonstrated reductions in Black Carbon and NOx at 40% - 50%. Those dramatic reductions do not appear to be reflected in the graphs presented by the staff in the very same presentation (attached).

We believe that the chart presented in the staff report does not reflect the actual emissions generated or reduced by the construction industry, nor does it indicate the "recession" caused reductions versus the rule caused reductions. It also appears to be an extrapolation of 2009 data and not an update with current actual emissions. Much better data is now available on fleet sizes, mileage and age and a new examination could eliminate the "phantom" emissions that no longer exist in the inventory. ***An update to the actual construction emissions should clearly indicate that more time and flexibility is warranted in the construction truck category.***

**THERE IS NO CONSTRUCTION "RECOVERY" FROM THE RECESSION**

The use of construction equipment fluctuates with the employment and volume of construction activity in the economy. Construction volume peaked in February of 2006, with an employment level near 945,000. At the depths of the recession employment languished at 550,000. Today employment has stagnated at around 620,000, the same level as June of 1998 – this is far from a robust recovery. It has been a weak recovery at best and nowhere near the levels that were projected by the staff in their presentation to the CARB Board in 2010.

Further proof of this anemic construction recovery can be seen in the level of residential building in California. Home building has always represented about 75% of all construction activity in the state. A normal and healthy homebuilding rate is about 150,000 units per year. Before the economy collapsed in 2007 we had built 200,000 units the previous year. Last year we build 40,000 housing units. In 2013 we are expected to achieve a 50,000 unit level. The best projections for 2014 are 60,000 units if interest rates do not rise.

The Board needs to understand that construction is still all about the lowest responsible bidder, regardless of public or private work. As the industry contracted beginning in 2007, bids followed and the profit margins have not ever recovered. It is still a very competitive environment and with low profit margins many have not been able to afford to replace trucks and equipment. The theory of just "pass the costs on" has not materialized within the construction industry. ***Construction activity has not accelerated at the same rate as other segments of the economy and specific consideration should be given to the compliance schedule as a result of the lag in construction activity and subsequent reduction in emissions.***

**A CARB FILTER VERIFICATION IS NO ASSURANCE TO THE CONSUMER**

The vigorous CARB filter verification process is merely an indication that "When the filter works, it reduces the emissions the way we say it does". Most often that filter will only work

when the engine is running for long periods of time, generating high heat, under high load. Something most construction engines do not do.

Unfortunately verifying a filter for an entire engine family, regardless of the operating conditions of the engine, is a misleading presumption that it will actually work on every engine. Most consumers are unaware that extensive engine testing is required to determine if the filter will actually work on a specific engine, operating under its typical operating conditions and will not impede the operation of the equipment during actual field operations. The burden falls on the equipment owner, at the mercy of the sales rep, to make the determination. As a consequence, many verified filters are inappropriate for the operating conditions of most low-use, low-mileage construction trucks and equipment. Yet, CARB makes no effort to collect and disseminate this information to the consumers. Every contractor and trucker has to learn on his own what may or may not work on his unique truck or piece of equipment.

This is a costly and time consuming process. The "verification vs. reality" gap might also account for the numbers presented by MECA (Manufacturers of Emission Controls Association) which indicated that only 3,500 DPF devices had been installed in the first half of 2013 when CARB had estimated that 59,000 were needed for full compliance by year-end. Even 2012 installations were 24% below CARB's estimate of those required for compliance.

The gaps in the CARB reporting and information sharing process have led to widespread complaints about the reliability of the filters. The CARB warrantee reporting process is designed to capture only catastrophic failures and some types of warrantee issues. Routine problems with filter plugging disrupted operations and equipment down-time; the problems encountered every day by consumers, are not tracked or reported by CARB.

***With the growing use of retrofitting strategies to supplement OEM efforts, CARB should establish a more rigorous performance monitoring program to advise consumers about the appropriate applications for this filter equipment. In addition a truck owner should be allowed to remove a filter after a certain number of failures or engine shutdowns.***

**FORCED OBSOLESCENCE "CUMULATIVE EFFECT" IS PENALIZING CALIFORNIA BASED BUSINESSES**

Most construction and even trucking companies in California are affected by at least three CARB equipment rules; the On-Road Truck rule, the Off-Road rule and the Portable Equipment ATCM. Those with specialty equipment like forklifts, pumps or cranes may be affected by more than

three. All of these rules require the retrofit, repower or replacement of nearly 100% of the equipment owned by those companies. For most companies it means disposing or rebuilding of engines long before the useful life has been realized. These extraordinary expenses turn the business plans for most contractors completely upside down. These contractors invested in very expensive equipment planning on being able to use it well past the payment schedule in order to keep their businesses profitable.

For small companies the only compliance path in these extraordinary economic times is to shrink their fleet. That means fewer jobs, fewer projects and less revenue to achieve compliance. According to the Bureau of Labor Statistics, of the 65,000 construction companies in California 91% have fewer than 20 employees.

This burden falls particularly hard on California based employers. Large national contractors and trucking companies can purchase new pieces of equipment and use those in California while they use their older non-compliant equipment elsewhere. California based employers don't have that flexibility. These employers are not given any consideration for the fact that they have multiple rules, each with vigorous compliance schedules, forcing the expensive replacement of their primary business activity.

***CARB should consider developing flexible compliance options for California based businesses that are faced with two or more rule schedules. One option might be to adopt a three year rolling fleet average that would provide some flexibility for small fleets. Another consideration would be to harmonize the rule requirements so the same truck used in the construction industry has the same requirements as one used in the agriculture. It makes no sense for them to have different mileage limitations. A third option might be the "bubble" concept discussed before where fleet owners would be allowed to achieve aggregate emission reductions for all of their regulated equipment. CARB needs to recognize and correct the extraordinary burden they have place on California employers and small business owners with their multiple retrofit and replacement requirements.***

**LOW MILEAGE CONSTRUCTION TRUCKS**

A current provision in the regulation, added after the original adoption, allows companies to apply for a temporary low-mileage truck exemption for up to 10 trucks operating under 15,000 and 20,000 miles annually as long as the company holds a contractor's license. A total of 9,000 trucks were to be included in the program. As of the deadline, only 7,200 trucks were able to

qualify. Those trucks also operate fewer miles than the staff originally estimated and generate fewer emissions that originally projected which should allow even more trucks into the program.

This provision was originally established in recognition of the lower emissions being generated by construction activity due to the recession. As a consequence the industry has not been able to take full advantage of the savings in emission reductions.

We support the staff proposal to re-open the program ***but request that the provision for the equipment to be owned by a company with a contractor's license be dropped***. Many trucking companies do not need a contractor's license to perform the activities that they provide to the construction industry. And many construction companies hold their equipment assets in a different company than the one that provides the construction work. Having equipment registered in the off-road DOORS program should be sufficient evidence of construction related work by the equipment owner.

***The requirement for a contractor's license has clearly limited access to this program and should be modified. We would also propose the maximum number of trucks be increased to at least 12,000 as originally proposed at the time the rule was adopted. We have previously proposed that the retrofitting of these trucks be phased-in over 4 years when the provision expires.***

**LOW USE TRUCKS**

The original regulation included an exemption for trucks traveling less than 1,000 miles per year. While this has been helpful for a few trucks, there are many more that travel more than 1,000 but less than 7,500 miles per year. Many of these are specialty trucks that perform a very specific task and may be very expensive to replace. Many also have PTO (Power Take-Off) engines that run some function of the equipment while the engine is in operation. CARB has also placed an additional limit on the hours of operation of the PTO's to 100 hours annually. These two limitations combine to severely limit the ability of trucks to qualify for this program and fail to recognize the very limited emissions generated by this equipment.

***We believe that an accurate emissions inventory would support raising the exemption from 1,000 to 7,500 miles and the PTO limit from 100 to 750 hours.***

**CONSTRUCTION VOCATIONAL TRUCK MILEAGE EXTENSION**

To simplify the regulation as it relates to just construction vocational tractors and unitized trucks ***we would propose that those trucks be categorized into three mileage thresholds.***

- ***Ultra-low mileage for less than 7,500 annual miles (exempt),***
- ***Very-low mileage for 7,501-30,000 miles with a 2023 compliance deadline and,***
- ***Low mileage for 30,001 to 65,000 annual miles with compliance by 2020).***

**Construction trucks would be defined as all 2 and 3 axle tractors and unitized vehicles utilized to haul construction related commodities and materials or that preformed work on the project site. All of the following diesel powered heavy vehicles would be included:**

- Asphalt Trucks
- Agitator Truck
- Boom Trucks
- Combo Truck w/End Dump
- Combo Truck w/Lowboy
- Concrete Mixing Trucks
- Mixer Truck
- Concrete Pump Trucks
- Cranes of all types
- Dump Trucks (rear, bottom, side)
- Dump Truck w/Crane
- Drill Trucks
- Stone Slinger Truck
- Tipper Truck
- Flatbed Trucks for Construction
- Flatbed Dump Truck
- Flatbed Truck w/Crane
- Fuel & Lube Trucks
- Water & Tank Trucks
- Winch Tractors
- Service Trucks

**A SEVERE SHORTAGE OF NEWER USED TRUCKS**

There is currently a severe shortage of used trucks in the market. The (2010 year engine) trucks are not expected to begin entering the used market until 2015 and beyond. The attached chart on Class 8 truck sales indicates that the 2010 truck sales were nearly the lowest in 5 years. That means fewer trucks available for the used truck market in four or five years.

These extensions would allow the used truck market to produce enough “newer” used trucks to meet the vocational needs of the construction industry. Clearly, the construction industry is struggling to recover from the recession. The vast majority of construction companies in California are small businesses (fewer than 20 employees) and 70% of construction trucking is a single truck owner-operator. The costs and the schedule for them to comply with this regulation are just too high and too rapid. We believe they are entitled to relief given the much lower emissions from reduced fleets, lower use and mileage.

***There are too few used trucks even today 3 years after the new 2010 clean engine standard. Most trucks are now on 4-5 years (500,000 - 600,000 mi.) trade cycles There is no greener program than reusing, repurposing, and recycling of newer used trucks.***

**ATTAINMENT AREAS**

Most of the rural areas "green zones" of this state have no state or federal attainment issues and should not be subject to the provisions of this regulation. There is no public health threat in those communities and they are often more reliant on trucks to perform their livelihood than the more urban areas of the state. Further most of these trucks are "captive" to the area and do not travel to other non-attainment areas.

For single and small fleet operators compliance is a very expensive proposition. For most in the rural areas, the activities are seasonal due to weather or the economy of the region and the ability to generate additional revenue simply isn't available. The rule imposes an air quality burden where it isn't needed or warranted. The changes to the smoke testing program recommended by the industry should be sufficient to keep rural "captive" trucks within the manufacturer emission limits.

***We would recommend that trucks in the attainment areas be exempted from the rule as long as they remain in the attainment area, that they be subject to annual smoke testing and that attrition and natural turnover be allowed to bring those fleets into compliance.***

**PERIODIC SMOKE INSPECTION PROGRAM (PSIP) "Smoke Testing"**

The "smoke testing" program in California has been very successful and effective in eliminating smoking trucks from California's highways <u>for the trucks for which it applies and for which the owners are aware of the program.</u> Recent legislative amendments have made it easier for larger fleets to keep their fleets in compliance by allowing all trucks to be tested annually at the same time. Many of the trucks tested in this program are substantially below the levels established by CARB, providing an extra air quality benefit. For those that fail the test the fix can be as simple as installing a new air filter or cleaning a clogged injector.

Unfortunately tens of thousands of owner-operators were excluded from the program due to the high cost of testing. Today, there are many testing operations available, and the cost is around $45. Another weakness of the program was the lack of reporting or enforcement. After many years of not being asked to supply evidence of testing, many operators simply stopped performing the tests. Only recently did CARB begin a mail audit, asking operators to send in their proof of testing.

***We would recommend that this test be required of all trucks, even in the attainment areas. Further, trucks that fail the test should be removed from the road or repaired. Evidence of the test should be maintained on each truck and available for inspection***

**FAIR ACCESS TO GRANT FUNDING**

There are far too many obstacles to grant funding opportunities, mileage restrictions, areas of operation, miles on a replacement truck etc. If the state is going to take real property, it should fairly reimburse the property owner. Fair Access to Grant, Moyer, Prop1B funding and low interest loans for this same group of trucking businesses is a must. ***CARB currently bases grant funding on mileage but the rule itself does not contemplate low mileage in any way.***

**CARB COMPLIANCE ADVISORY**

CARB has indicated that they are going to be issuing an advisory on "good faith" compliance as a result of their proposal to shift the compliance date from January 1, 2014 to July 1, 2014. ***CIAQC supports the shift in dates.***

Staff has proposed four steps which may be taken to maintain compliance: order a PM filter, order a replacement truck, apply for a grant or apply for a loan. Those don't address all the possible issues that might arise out of the shift in compliance dates.

***First, there should be some reward for the truck owner who has achieved compliance by the original deadline*** (perhaps exemption from the 2010 engine standards).

***Second, enforcement should be delayed until <u>six months after the adoption of the amendments.</u>*** (If the mileage limit is going to be increased, why should an owner be required spend $20,000 to order a filter for a truck that will be exempt when the amendments are adopted?)

***Finally, trucks with high value chassis such as concrete booms, cement trucks, service trucks, drill rigs, even tow trucks, etc. should be exempted from the 2010 engine standards.***

The construction industry is able and willing to work closely with the board and the staff to achieve workable amendments to the rule that will achieve the California's air quality goals without economic hardship on our still struggling construction companies. We look forward to presenting an effective set of amendments at your April board meeting.

Sincerely,

Michael W. Lewis
Senior Vice President

cc: Members, California Air Resources Board
Governor Jerry Brown
Members, California State Legislature

ATTACHMENT 1

**ESTIMATING THE NUMBER OF CONSTRUCTION TRUCKS IN CALIFORNIA**

According to CA DMV registration information
(http://apps.dmv.ca.gov/about/profile/ca_dmv_stats.pdf),
there are approx. 451,000 in-state registered commercial trucks and 1.35 million IRP registered trucks that operate in California. We believe that 99% of IRP (out-of-state registered trucks are diesel powered heavy-trucks) and are long-haul (125,000 mi./yr.+), all are based outside of CA. There are another 65,000 IRP state based heavy trucks. These 1.4 million trucks should be the focus of existing CARB regulations. The 452,000 in-state registered are those of most interest to us. The CA Construction Trucking Association estimates about 40% are of the weight class and vocation of interest – construction. Of those approx. 176,000 trucks, 25% or 44,000 trucks are heavy tractors and unitized diesel powered vehicles used for construction; including dumps, pumps, cranes, water trucks etc. Again, we are focused on the approx. 2.4% or 44,000 construction industry that are now not in compliance. The 44,000 non-compliant construction trucks represent just 2.4% of the on-road fleet rather than the original 75,000 that was estimated in 2006. (See attached DMV report)

State of California
DEPARTMENT OF MOTOR VEHICLES
STATISTICS FOR PUBLICATION
JANUARY THROUGH DECEMBER 2012

## EMPLOYEE AND OFFICE STATISTICS

| | | |
|---|---|---|
| Number of Field Offices | 170 | - 19 Auxiliary Offices that include: 3 CDL sites, 1 Dealer Service Center, 6 Industry Centers, 1 Scale Location, 3 Travel Runs, and 5 Business Service Centers. |
| Number of Driver Safety Offices | 16 | - 12 are located within other DMV locations and 4 are independent. Additional Offices: 27 Resident Hearing Offices. |
| Number of Call Centers | 3 | - 3 independent facilities. |
| Number of Investigations Offices | 11 | - An additional 39 are within other DMV locations. |
| Number of Occupational Licensing Offices | 4 | - An additional 17 are within other DMV locations. |
| Number of Other Locations | 3,833 | - 161 Auto Clubs and 3,672 Business Partner sites. |
| Approximate Number of Employees | 8,590 | - Includes full-time, permanent-intermittent, and part-time employees. Approximately 5,510 (65%) are in Field, and approximately 3,080 (35%) are at Headquarters. |

## DRIVER LICENSE AND IDENTIFICATION CARD STATISTICS

*Source: DL Information Report 12/31/2012*

| | | |
|---|---|---|
| A. **Total Driver Licenses Currently Issued:** | ***24,290,288*** | (Includes 3,443,946 people that also have an ID Card) |
| **Identification Cards** | | |
| B. ID-Only | 2,768,698 | |
| C. Both ID Card and Driver License | 3,443,946 | |
| D. Under Age 16 ID Cards | 255,140 | |
| E. ***Total Identification Cards*** | **6,467,784** | (Includes 1,260,524 Senior Citizen ID Cards) |
| ***Total People with a Driver License and/or ID Card:*** | ***27,314,126*** | ***(A + B + D)*** |
| ***Total Driver Licenses and ID Cards Currently Issued :*** | ***30,758,072*** | ***(A + E)*** |

## REGISTERED VEHICLE STATISTICS

*Source: Estimated Vehicle Registration by County For the Period of January 1, 2012 through December 31, 2012*

| | | |
|---|---|---|
| Automobiles | 22,473,717 | |
| Motorcycles | 832,304 | |
| CVRA Trucks | 450,886 | (Commercial Vehicle Registration Act) |
| Non-CVRA Trucks | 5,014,040 | |
| PTI Trailers | 2,035,007 | (Permanent Trailer Identification) |
| Trailer Coach/CCH | 381,420 | |
| CA Based IRP Trucks | 65,364 | (International Registration Plan) |
| Misc. Vehicles | 136,163 | (Miscellaneous vehicles include historical vehicles, spec/farm equipment, etc.) |
| ***Fee-Paid Registered*** | **31,388,901** | |
| Exempt Registered | 557,521 | |
| ***Total Registered:*** | **31,946,422** | |
| Foreign Based IRP Trucks | 1,352,056 | (Vehicles based in other states which pay fees to operate in California.) |

## AVERAGE FEE PAID BY BASIC VEHICLE TYPE (does not include IRP)

*Source: Statement of Transactions Summary Report - Department of Finance January 2012 - December 2012*

| | TRUCK (CVRA) | TRUCK (Non-CVRA) | AUTO | MOTORCYCLE | TRAILER (CCH) |
|---|---|---|---|---|---|
| Registration Fee | $46 | $46 | $46 | $46 | $46 |
| CHP Fee | 39 | 23 | 23 | 23 | 23 |
| Vehicle License Fee (VLF) | 159 | 49 | 69 | 28 | 50 |
| Weight Fee | 0 | 88 | 0 | 0 | 0 |
| CVRA Fee ** | 897 | 0 | 0 | 0 | 0 |
| Motorcycle Safety Fee | 0 | 0 | 0 | 2 | 0 |
| ***Total*** | ***$1,141*** | ***$206*** | ***$138*** | ***$99*** | ***$119*** |
| Percent of All Vehicles | 1.55% | 17.20% | 77.09% | 2.86% | 1.31% |

*(The fee calculation does not include special fees such as air quality fees, abandoned vehicle fees, etc. that vary by county and air quality district)*

**NOTE: The current average VLF is $66 per vehicle , and the current overall Total fee paid per vehicle registration is $164.**

** The first $122 of the CVRA fee is allocated to the Motor Vehicle Account.

# ADDITIONAL ATTACHMENTS

## Class 8 Truck Sales Are Up in 2011

Mainly due to the economic recession, class 8 truck sales in 2008 and 2009 declined, but grew in 2010 and 2011. There was not a large shift in market share among the manufacturers over the last five years. Freightliner had 32% of the market in 2011 and International had 21%. All other companies listed have less than a 15% share of the market.

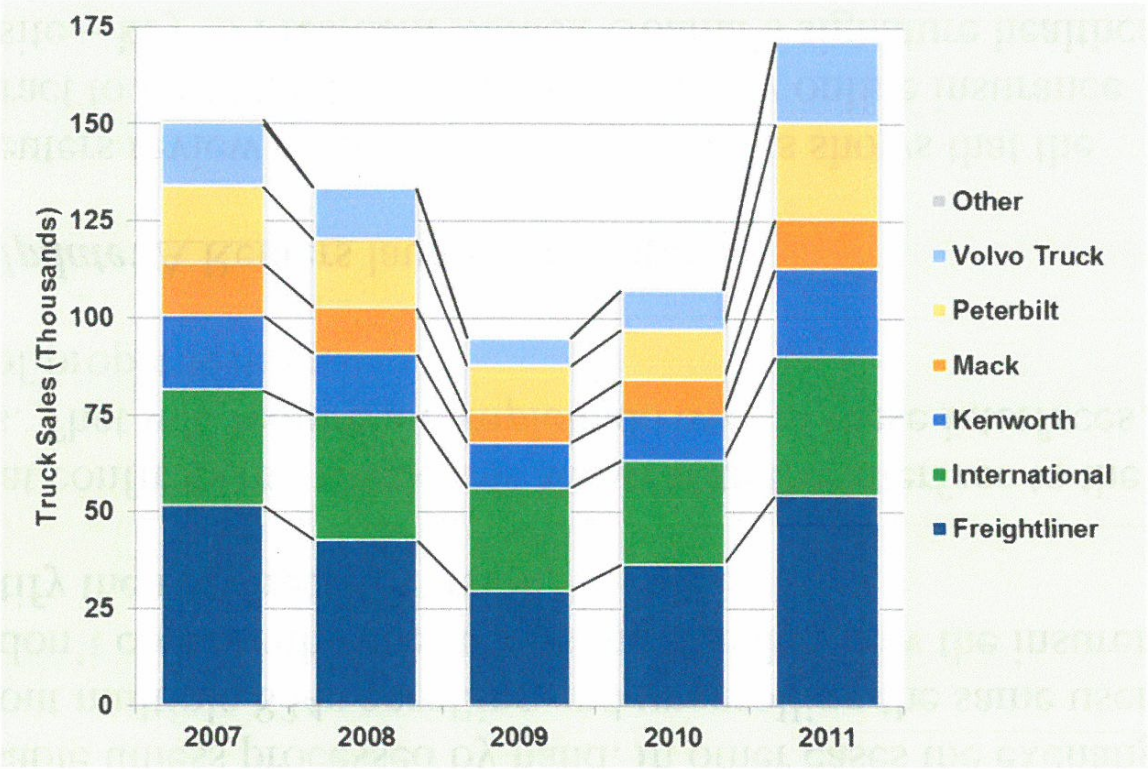
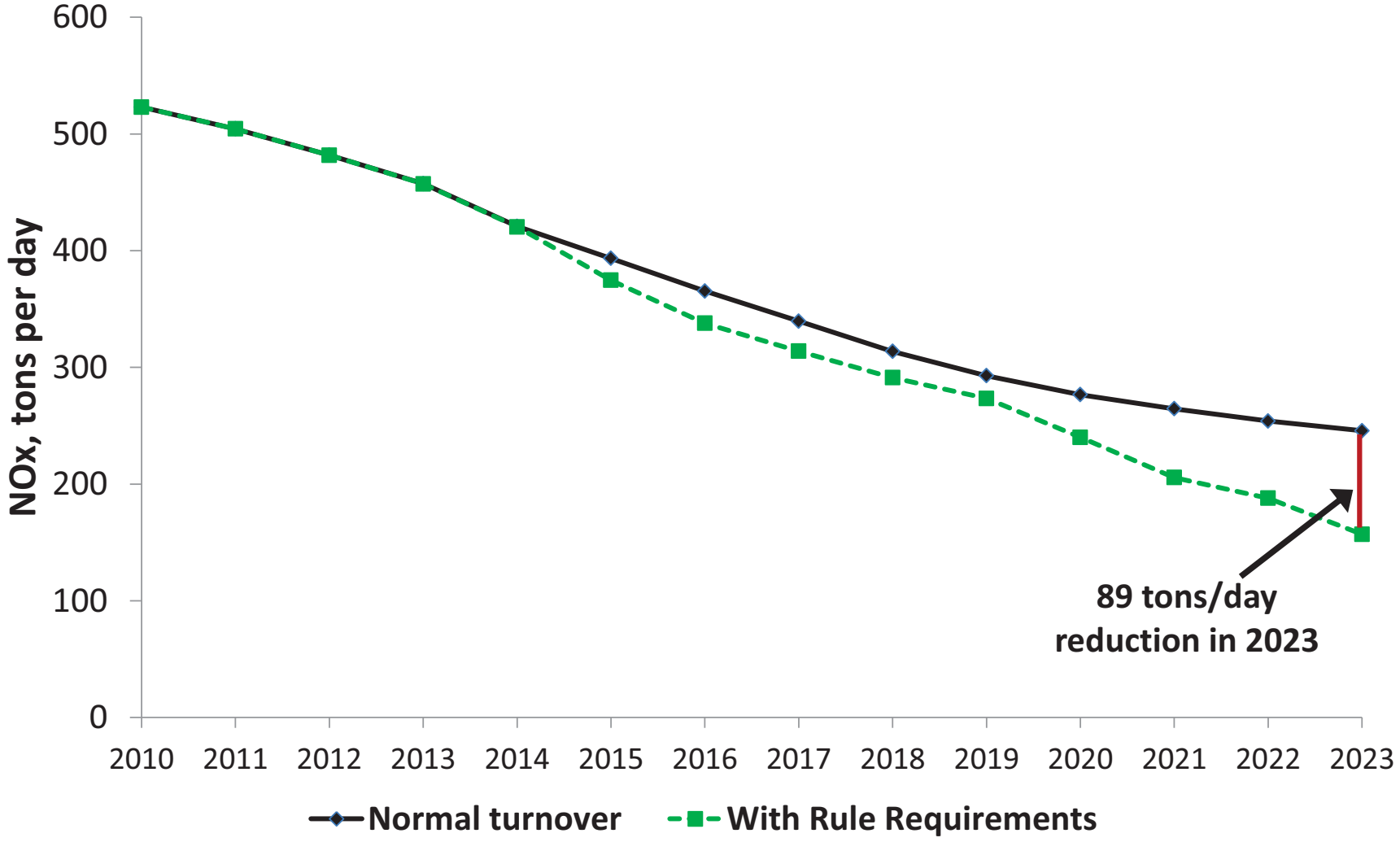



**FIGURE 61. Class 8 Truck Sales by Manufacturer, 2007-2011**

**Source:**
Ward's Automotive Group, *Motor Vehicle Facts and Figures 2012*, Southfield, MI, 2012.
http://wardsauto.com

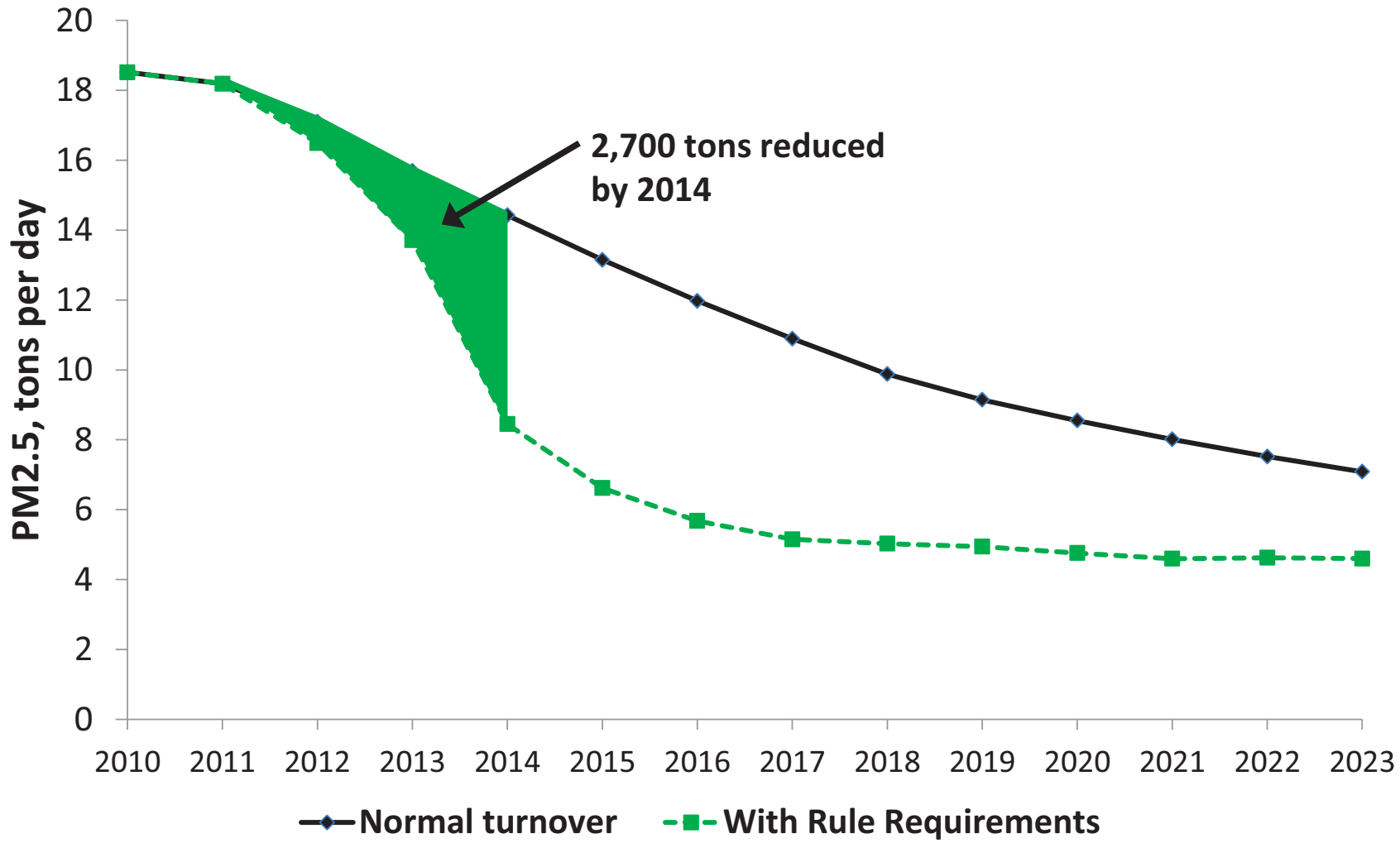
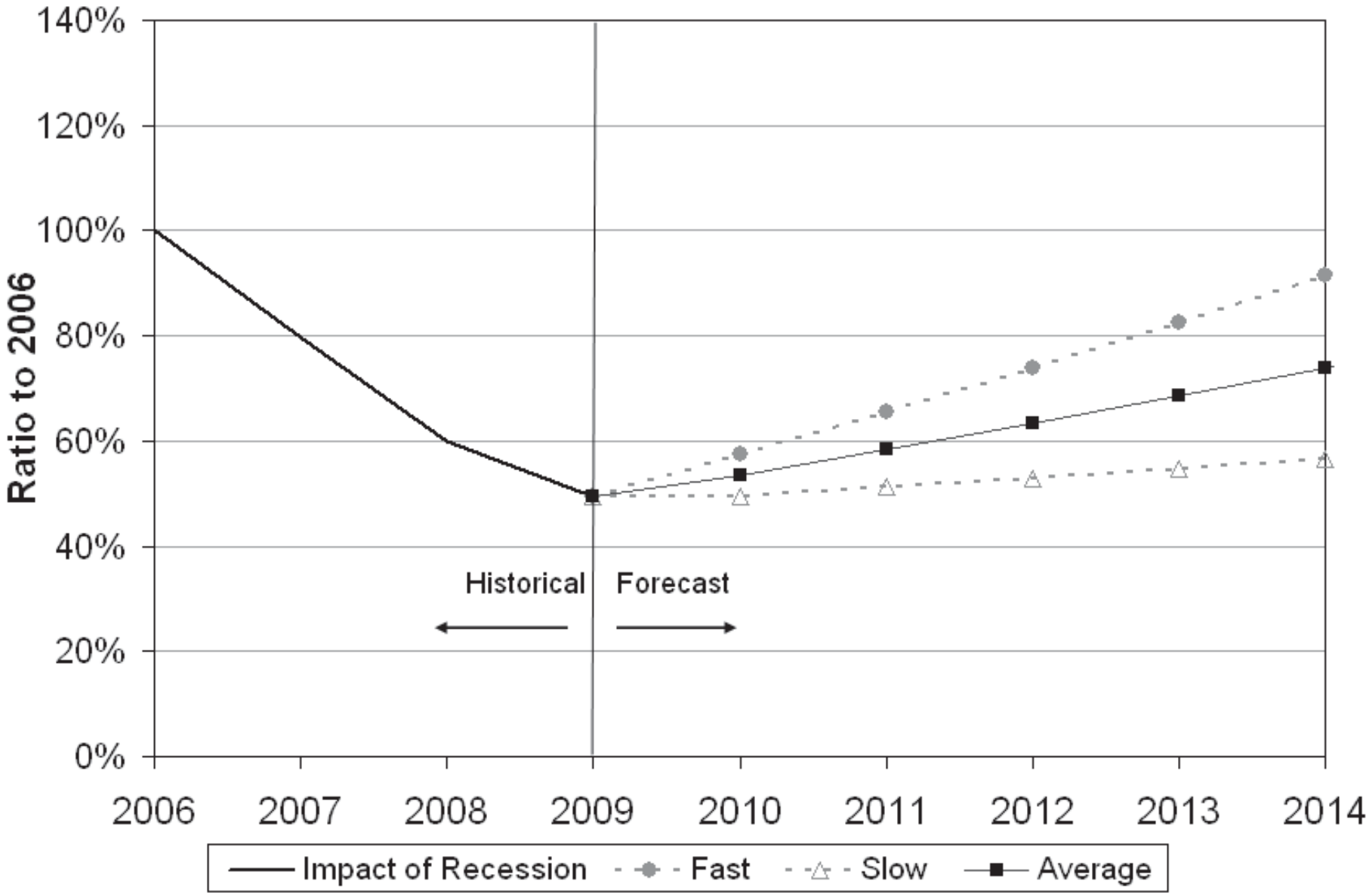
# Significant NOx Benefits Expected





# PM Benefits Already Realized





# Construction Activity Growth