

ATTACHMENT G

Responses to Comments

on the

Environmental Analysis

for

**PROPOSED CALIFORNIA GREENHOUSE GAS EMISSIONS
STANDARDS FOR MEDIUM- AND HEAVY-DUTY ENGINES
AND VEHICLES (PHASE 2) AND PROPOSED
AMENDMENTS TO THE TRACTOR-TRAILER
GREENHOUSE GAS REGULATION**



**To be considered at the
September 27 and 28, 2018 Board Meeting**

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PREFACE

The California Air Resources Board (CARB) prepared an Initial Statement of Reasons (ISOR) for the proposed adoption of California Greenhouse Gas (GHG) Emissions Standards for Medium- and Heavy-Duty Engines and Vehicles and proposed amendments to the Tractor-Trailer GHG Regulation, collectively referred to as the California Phase 2 GHG rulemaking action. This ISOR included an Environmental Analysis (EA) for the California Phase 2 GHG rulemaking action. CARB circulated the ISOR on December 19, 2017, for a public review and comment period that concluded February 5, 2018. A total of 16 comment letters were received on the California Phase 2 GHG rulemaking during the 45-day public comment period, 6 comment letters were received during the board hearing on February 8, 2018, and 2 comment letters were received during the 15-day comment period for the modified text released to the public July 3, 2018, one of which addressed the EA prepared for the California Phase 2 GHG rulemaking.

1. INTRODUCTION

On December 19, 2017, CARB staff released for public review and comment the ISOR for the California Phase 2 GHG rulemaking action. The public comment period began on December 22, 2017, and concluded on February 5, 2018. On July 3, 2018, CARB staff published modified regulatory language and supporting documentation initiating the 15-day public comment period, with the changes to the originally proposed regulatory text and incorporated test procedures and environmental label specifications clearly indicated, according to provisions of the California Administrative Procedure Act (APA). Per APA requirements, comments considered on 15-day changes are to address the changes, rather than the original regulatory proposal circulated for at least 45 days. (See Cal. Govt. Code § 11346.8(c).)

16 comment letters were submitted during the initial public comment period from December 22, 2017, to February 5, 2018, 6 comment letters were received during the board hearing on February 8, 2018, and 2 comment letters were received during the 15-day comment period from July 3, 2018, to July 18, 2018; one of which purported to raise environmental issues associated with the California Phase 2 GHG rulemaking action. Comments are available at:

<https://www.arb.ca.gov/lispub/comm/bccommlog.php?listname=phase2>.

Staff has prepared the below responses to the comments purporting to raise environmental issues associated with the California Phase 2 GHG rulemaking action. Pursuant to CARB's certified regulatory program, staff has carefully reviewed all the comment letters received to determine which ones raised substantive environmental issues related to the EA and required a written response.

This document presents written responses by CARB staff only to those comments related to the EA for the Board to consider for approval prior to taking final action on the California Phase 2 GHG rulemaking action. All of the public comments were considered by staff and provided to the Board members for their consideration. The entire comment letter that relates to the EA is provided as Attachment 1 to this response, and this document summarizes each environmental comment therein, followed by the CARB staff's written response. The commenter also submitted previously-submitted comment letters on two different CARB programs (Lawson's May 25, 2018 Comment Letter regarding the Heavy-Duty Vehicle Inspection Program and Periodic Smoke Inspection Program Regulation, and June 26, 2018 Comment Letter regarding the Heavy-Duty Vehicle Emission Control System Warranty Regulation Amendments.) To the extent the commenter intends these comment letters to be part of its comments on this proceeding, CARB responds that these comment letters are outside the scope of this project (since they do not address this rulemaking) and therefore do not require a response in this document. However, CARB staff has already previously provided responses to these comment letters and those responses can be accessed at the following web addresses, for reference:

<https://www.arb.ca.gov/regact/2018/hdvippsip18/res1828attb.pdf> and
<https://www.arb.ca.gov/regact/2018/hdwarranty18/res-attc.pdf>.

A. Requirements for Responses to Comments

These written responses to public comments on the EA are prepared in accordance with CARB's certified regulatory program to comply with the California Environmental Quality Act (CEQA). CARB's certified regulations states:

California Code of Regulations, title 17 section 60007. Response to Environmental Assessment

(a) If comments are received during the evaluation process which raise significant environmental issues associated with the proposed action, the staff shall summarize and respond to the comments either orally or in a supplemental written report. Prior to taking final action on any proposal for which significant environmental issues have been raised, the decision maker shall approve a written response to each such issue.

B. Comments Requiring Substantive Responses

CARB is required to prepare substantive responses only to those comments that raise "significant environmental issues" associated with the proposed action, as outlined in California Code of Regulations, title 17, section 60007(a). As stated above, of the 24 total comment letters submitted for the California Phase 2 GHG rulemaking action, staff determined that one of the letters mentioned or raised an issue related to the EA.

Comments on the EA were considered by staff and provided to the Board members for their consideration prior to the September 27 and 28, 2018, Board hearing.

2.0 RESPONSES TO COMMENTS

The comment letter was coded by the order in which it was received on the comment docket, excluding comments received outside the comment period or orally at the February 2018 Board hearing. Table 2-1 lists the comment letter that contains substantive environmental comments. Responses to these comments are provided below. Responses are not provided to comments which do not raise substantive environmental issues. The one comment letter, bracketed to indicate individual comments, is provided in Attachment 1.

Table 2-1 List of Commenters		
No.	Commenter	Date
24	Wanger Jones Helsley PC (on behalf of Lawson Rock & Oil, Inc.)	July 18, 2018

General Objection To Comment Letter: As noted above, the APA requires that comments on 15-day changes should address the *changes from* the original regulatory proposal, not the original regulatory proposal. (See, e.g. Cal. Govt. Code § 11346.8(c).) The comment letter in this case does not focus on the 15-day changes, but instead effectively attempts to belatedly re-open the initial 45 day comment period. CARB therefore objects to the entire comment letter as untimely. CARB is not required to respond to such comments, and they should not serve to exhaust administrative remedies, as the commenter failed to timely raise its issues during the noticed 45-day public comment period.

Nevertheless, CARB provides the following responses to comments to ensure the record is clear on the issues raised by the commenter.

24-1 **Summary of Comment:** The commenter states generally on page 2 of the comment letter that CARB has failed to comply with various laws, presumably including CEQA.

Response: CARB disagrees with this comment. Given the general nature of the comment, it is not possible to respond with specificity. Therefore, CARB responds generally that as noted above, CARB has followed the requirements of its Certified Regulatory Program (CRP) in preparing the EA. No changes to the EA are necessary.

24-2 **Summary of Comment:** The commenter states that CARB's CRP does not authorize a finding of exemption from CEQA, and therefore a full EA must be prepared and circulated for public review.

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Response: CARB disagrees with this comment. First, the EA prepared for this item satisfies all requirements of CARB's CRP. CARB's CRP provides that its staff reports "shall contain a description of the proposed action, an assessment of anticipated significant long or short term adverse or beneficial environmental impacts associated with the proposed action and a succinct analysis of those impacts. The analysis shall address feasible mitigation measures and feasible alternatives to the proposed action which would substantially reduce any significant adverse impact identified." (17 CCR § 60005(b).) The EA in this case satisfies this requirement. As no significant impacts are associated with this proposed action, the analysis does not need to, and cannot, assess any significant adverse impacts from the proposed action (as there are none). (See ISOR at pages V-1 and V-2.) The analysis also does not need to address mitigation measures or alternatives, as under both CARB's CRP and long-established CEQA principles, those are only required where potentially significant impacts exist. (*Id.*; see also Pub. Resources Code §§ 21100(b)(3), 21150; and 14 CCR § 15126.4(a)(3).)

Second, it is also long-established that an agency's CRP exempts it from Chapters 3 and 4 of CEQA only. (Pub. Resources Code § 21080.5(c).) CEQA's exemption provisions are not contained in Chapter 3 or 4; rather, they are located elsewhere in CEQA, mainly in Chapter 2.6. (See, e.g., Public Resources Code §§ 21080, 21083.) So, the commenter is incorrect that CARB lacks authority to properly determine that certain activities are exempt from CEQA.

Finally, contrary to the commenter's claim, the ISOR does indeed include an EA to the extent it is possible to conduct one for an activity that has no negative environmental impacts. It is included in Chapter V, entitled "ENVIRONMENTAL ANALYSIS." In brief, that analysis showed that the Proposed Amendments qualify as exempt under CEQA because the action is both an action taken by a regulatory agency for protection of the environment (as described in CEQA Guidelines §15308 for "class 8" exemptions), and because it can be seen with certainty that there is not possibility that the proposed amendments may have a significant effect on the environment. Therefore, there is no need to revise the ISOR and circulate it for additional review.

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Summary of Comment: The commenter states that CARB is improperly seeking to improperly "piecemeal" environmental review by declining to analyze in a single EA all of the "upcoming regulations that affect the trucking industry together."

Response: As the commenter correctly notes, CEQA requires

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agencies to consider the “whole of the action” proposed, rather than just a part of it that could conceal broader environmental impacts. However, CARB disagrees that the CEQA “project” here encompasses more than the California Phase 2 GHG rulemaking action. As set forth in more detail in the ISOR, this rulemaking action primarily comprises requirements applicable to new on-road medium- and heavy-duty vehicles and engines including trailers. Specifically, the Phase 2 GHG rulemaking action primarily: (1) establishes greenhouse gas (GHG) emission standards and other emission-related requirements for **new** 2021 and subsequent model year on-road medium- and heavy-duty vehicles greater than 8,500 pounds GVWR and the engines that power them (ISOR III-3- III-8 and III-II-III-12); (2) establishes GHG emission standards and other emission-related requirements for **new** 2020 and subsequent model year new trailers used in combination with tractors (ISOR III-3, III-9-III-10); (3) provides owners of specified box-type trailers that are hauled by heavy-duty tractors on California highways a new option to comply with California’s Tractor-Trailer GHG regulation by either purchasing Phase 2 certified trailers or retrofitting trailers with approved Phase 2 aerodynamic technologies and low rolling resistance tires (ISOR III-36); and (4) establishes emissions standards and other emissions related requirements for **new** glider vehicles (ISOR II-2, and II-4).

It remains unclear why the commenter believes the California Phase 2 GHG rulemaking action is similar enough to other heavy-duty regulations to constitute part of the same “project”. Even if the California Phase 2 GHG rulemaking action was related to other CARB efforts in a general sense, the California Phase 2 GHG rulemaking action has utility independent of CARB’s other heavy-duty vehicle regulations. Courts have consistently found that a related activity need not be treated as part of the project under review when the project has independent utility or serves an independent purpose, and is not dependent on completion of the related activity. (*See, e.g., Del Mar Terrace Conservancy, Inc. v. City Council* (1992) 10 Cal.App.4th 712, 736.) For example, the California Phase 2 GHG rulemaking will help control GHG emissions from new 2021 and subsequent model year on-road medium- and heavy-duty vehicles greater than 8,500 pounds GVWR and the engines powering such vehicles, and new 2020 and subsequent model year trailers used in combination with tractors on California’s highways, as such reductions are needed to both offset projected increases of GHG emissions associated with increased vehicle miles traveled (VMT) by heavy-duty vehicles, and to achieve reductions of GHGs as mandated by the California Global Warming Solutions Act of 2006, (Assembly Bill (AB) 32, Chap. 488, Stats. 2006 (Nunez)), AB 32, which requires CARB to enact regulations to achieve the level of statewide GHG emissions in 1990 by 2020, and by Senate

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Bill (SB) 32 (Chap. 249, Stats. 2016 (Pavley), which requires CARB to ensure that California's statewide emissions of GHGs are reduced to at least 40 percent below the level of statewide GHG emissions in 1990, no later than December 31, 2030. The California Phase 2 GHG rulemaking action will also help allow CARB to verify and enforce the Phase 2 regulatory standards, which would ensure the program's GHG emission benefits occur. (See ISOR at ES-5 and ES-6.) Increasing enforceability and enforcement of the Phase 2 regulatory standards is a key driver for the Proposed Amendments. The Phase 2 GHG rulemaking therefore serves distinct purposes from CARB's other in-use heavy-duty vehicle regulations like the Truck & Bus Rule, which is designed to control emissions of criteria pollutants from in-use vehicles. This is a discrete and independent project of independent utility, which CARB appropriately analyzed.

Nothing in CARB's certified regulatory program requires wholesale reevaluation of all regulations affecting an entire sector each time one part of an individual regulation is amended. It would not be appropriate under CEQA, or sensible as a matter of California administrative law, to require separate regulatory proposals that generally relate to the same general subject matter or class of vehicles to be treated as a shared project, as commenter seems to assert is the case. Because regulations are necessarily developed over time, to address specific issues and legislative mandates, it would be difficult and unnecessary to analyze all potential regulations that (in the view of some) relate in some way to a class or category of vehicles together in one document at one moment in time; the delays and complexities involved in attempting to do so, moreover, could well delay critical public health protections and climate goals mandated by the legislature, while not providing additional useful public transparency. Furthermore, treating all regulations applicable to a given sector as a single CEQA "project" would require extensive over-noticing of entire industries, at taxpayer expense, every time a discreet rulemaking affecting specific subsectors is undertaken. This would prevent CARB from providing efficient regulatory relief to those subsectors, where necessary and justified.

Even if the California Phase 2 GHG rulemaking action was considered part of a broader "project" (which it is not here), CARB disagrees that any undisclosed potentially significant impacts could exist. To the extent CARB can discern an environmental claim from the commenter's "piecemealing" arguments, the premise is that CARB's more protective environmental regulations are increasing the very emissions they are designed to reduce by a combination of what the commenter characterizes as inadequate enforcement and introducing new costs to the trucking industry. In addition to being entirely

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speculative, such a premise is contrary to both logic and reality, and does not constitute evidence of an environmental impact.

There is no evidence that the California Phase 2 GHG rulemaking action would increase emissions or cause any other potentially significant environmental impacts. Commenter's contentions in this regard defy logic or evidence. Here, the commenter suggests that multiple environmental regulations, combined with what it characterizes as a "policy of under-enforcement", combine to "incentivize non-compliance" and generate "unintended environmental effects." This general claim regarding environmental impacts can properly be addressed with a general response, which is that commenter's conclusion involves multiple layers of speculation. CEQA does not require an agency to engage in speculation when future actions that may follow from an activity are uncertain. (See *Environmental Council of Sacramento v. City of Sacramento* (2006) 142 Cal.App.4th 1018, 1032; 14 CCR 15145.) In particular, courts have repeatedly held that "speculation about possible violations does not constitute substantial evidence of a significant impact."¹

The commenter provides no evidence that more protective regulations have any potential to increase emissions above the existing conditions baseline; indeed, the evidence in the record shows otherwise. CARB vigorously enforces its truck program requirements. For example, since 2011 CARB has successfully closed 1,015 fleet investigations and assessed more than \$22 million in penalties for violations of CARB diesel rules. Over this same period, CARB also issued 27,413 citations and collected more than \$11 million in penalties for violations of diesel program requirements on individual vehicles.

CARB's 2017 Annual Report is publicly available (https://www.arb.ca.gov/enf/reports/2017_enf_annual_report.pdf), and provides detailed information about the Board's diesel enforcement activities. For example, in 2017, CARB closed 132 diesel fleet investigations and assessed \$3,249,907 in penalties. CARB also issued 3,963 citations and collected \$1,222,314 in penalties. Moreover, as described on page 19, CARB is implementing a streamlined enforcement process designed to greatly increase the efficiency in truck enforcement

¹ See *Covina Residents for Responsible Dev. v. City of Covina* (2018) 21 Cal. App. 5th 712, 729; see also *East Sacramento Partnership for a Livable City v. City of Sacramento* (2016) 5 Cal.App.5th 281, 297 ("[i]n the absence of a specific factual foundation in the record, dire predictions by nonexperts regarding the consequences of a project do not constitute substantial evidence"); *Jensen v. City of Santa Rosa* (2018) 23 Cal. App. 5th 877, 897 ("appellants' doubt about whether drivers will choose to abide by the no parking rule is pure speculation"); *Towards Responsibility In Planning v. City Council* (1988) 200 Cal. App. 3d 671, 680 (holding that a city was "not obliged to speculate about effects which might result from violations of its own ordinances or water quality standards set by other agencies").

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efforts. (See the 2017 Annual Enforcement Report at pages 17-23 (particularly the top of page 19), and at pages 24-27.) The initial results of this process are encouraging. The report also notes that CARB staff's enforcement efforts continue to evolve to further streamline enforcement efficiency.

Overall CARB's vigorous enforcement efforts bring fleets and trucks into compliance, and assess penalties that serve as a deterrent to future non-compliance both for individual violators and the industry as a whole. While certain fleets have experienced compliance issues, CARB has developed a comprehensive compliance assistance and enforcement presence to help bring these fleets into compliance and penalize those who will not comply. For the past several years, a data-driven process to identify noncompliant fleets has been used by CARB's Enforcement Division.

Finally, the commenter's suggestion that the claimed lack of enforcement combined with the California Phase 2 GHG rulemaking action could somehow increase emissions is directly at odds with the other claims in its comment letter, which include claims that the California Phase 2 GHG rulemaking action would require compliance so expensive as to constitute a regulatory taking (comment letter at pages 8-9). Commenter attempts to have it both ways: it claims that the California Phase 2 GHG rulemaking action would both somehow increase emissions by causing entities to *not* comply with CARB's regulations, while somehow also increasing costs to industry to such an extent that would violate the Constitution by *requiring* companies to comply with its regulations. These arguments are contradictory. The record is clear that the California Phase 2 GHG rulemaking action is designed to cost-effectively achieve emissions reductions.

Attachment 1

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July 18, 2018

VIA ELECTRONIC SUBMISSION & U.S. MAIL

Clerk of the Board
CALIFORNIA AIR RESOURCES BOARD
1001 I Street, 23rd Floor
Sacramento, CA 95812

Re: Comments of Lawson on the Proposed Amendments to the July 3, 2018, Notice of Public Availability of Modified Text for the Proposed California Greenhouse Gas Emissions Standards for Medium- and Heavy-Duty Engines and Vehicles (Phase 2) and Proposed Amendments to the Tractor-Trailer Greenhouse Gas Regulation

Dear Madam Clerk:

The following comments are submitted on behalf of John R. Lawson Rock & Oil, Inc. ("Lawson"). This letter includes Lawson's comments on the California Air Resources Board's ("CARB") July 3, 2018 Notice of Public Availability of Modified Text (the "15-Day Notice") for the rulemaking on the proposed amendments to the California Greenhouse Gas Emissions Standards for Medium- and Heavy-Duty Engines and Vehicles ("Phase 2") and the proposed amendments to the Tractor-Trailer Greenhouse Gas ("GHG") Regulation ("Tractor-Trailer GHG Regulation"). Collectively, the proposed amendments to Phase 2 and the Tractor-Trailer GHG Regulation are referred to in these comments as the "Proposed Amendments," while the proposed modifications to Phase 2 and the Tractor-Trailer GHG Regulation identified in the 15-Day Notice are referred to as the "Proposed Modifications."

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Lawson, as an operator and purchaser of a large fleet of vehicles, is subject to the Proposed Amendments. Lawson has invested millions of dollars proactively complying with the existing programs and other programs adopted by CARB affecting the trucking industry. Like many fleet and individual owner operators, Lawson cares about the environment and generally supports measures to improve air quality in California and has invested a large amount of private capital in pursuit of that goal. Having made that investment, however, Lawson has significant concerns about the Proposed Modifications, as well as CARB's inability or unwillingness to enforce the laws it has already promulgated.

CARB is required to comply with the California Environmental Quality Act ("CEQA") through its certified regulatory program when it seeks to adopt regulations. (See Pub. Resources Code § 21080.5; 14 Cal. Code Regs. ["CEQA Guidelines"], §§ 15250-15253; 17 Cal. Code Regs. §§ 60005, 60006, 60007.) CARB is likewise required to comply with the California Administrative Procedures Act, Govt. Code, 11350, *et seq.* (the "APA"), which, among other things, requires CARB to prepare a Economic Impact Assessment ("EIA") or a Standardized Regulatory Impact Assessment ("SRIA") and assess the economic impacts of the Proposed Amendments.

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By failing to consider the unintended consequences of the Proposed Amendments and failing to address the unintended consequences of the Proposed Amendments in the Proposed Modifications – and various other proposed regulations that impose additional costs on responsible truckers – CARB has failed to discharge its duties under the law. CARB has already created an untenable situation by adopting the Truck and Bus regulation. Despite the immense costs imposed on responsible truckers in California who dutifully complied with the regulation, CARB admits it is difficult to enforce the Truck and Bus regulation on out of state trucks. (Staff Report at ES-10.) This has caused significant harm to responsible truckers in California. Although responsible truckers in California spent millions to comply with the regulation, they have been unable to recoup their costs because the truckers who have failed to comply (and to whom CARB has largely turned a blind eye with respect to enforcement) have (i) undercut responsible truckers in pricing for jobs, and (ii) have depressed the costs for jobs, resulting in responsible truckers being unable to pass-on any cost of compliance to those who use their services. The same of course is true for the Proposed Amendments.

Over the past several years, CARB has adopted regulations and engaged in unwritten policies creating a perverse regulatory environment that *rewards* those who *fail* to comply with CARB's regulations while at the same time *punishing* those who dutifully meet CARB's aggressive deadlines. Just this year, CARB proposed amendments to the Heavy-Duty Vehicle Inspection Program ("HDVIP") and Periodic Smoke Inspection Program ("PSIP"), and the Heavy-Duty ("HD") Emissions Warranty. Later this year and in 2019, CARB also plans to impose additional regulations for HD vehicles, including the Innovative Clean Transit Regulations, the HD OBD Regulations, HD Zero Certification Procedures, EWIR Regulation Amendments, and HD Low-NOx Standards, TPs, In-Use Compliance Step 2 Warranty. The

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cumulative effect of these programs and regulations is cost prohibitive on responsible truckers in California who will be required to purchase compliant trucks and extended warranties that will be marked up significantly.

CARB should either decline to adopt the Proposed Amendments, recirculate the Staff Report, or recirculate a second 15-Day Notice to the Proposed Amendments to address the full consequences of the Proposed Amendments (and all related and foreseeable regulatory actions CARB seeks to undertake with respect to the trucking industry).

A. CARB's Proposed Action Violates CEQA

1. CARB's Certified Regulatory Program Does Not Authorize a Finding of Exemption from CEQA

The Staff Report for the Proposed Amendments does not discuss the potential environmental effects of the Proposed Amendments, as required under the California Environmental Quality Act, Pub. Resources Code, § 21000, *et seq.* ("CEQA") and CARB's certified regulatory program, but instead purports to find the Proposed Amendments are "exempt" from CEQA:

Staff has determined that the proposed regulation is exempt from CEQA under the general rule or "common sense" exemption (14 CCR 15061(b)(3)). CEQA Guidelines state "the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA". The proposal is also categorically exempt from CEQA under the "Class 8" exemption (14 CCR 15308) because it is an action taken by a regulatory agency for the protection of the environment. (CCR, 2017)

(Staff Report at V-1.)

A Notice of Exemption, however, is not a document cognizable under CARB's certified regulatory program. Section 60005(b) of CARB's certified regulatory program specifically states:

All staff reports shall contain a description of the proposed action, an assessment of anticipated significant and long or short term adverse and beneficial environmental impacts associated with the proposed action and a succinct analysis of those impacts. The analysis shall address feasible

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mitigation measures and feasible alternatives to the proposed action which would substantially reduce any significant adverse impact identified.

(17 Cal. Code Regs., § 60005(a) [emphasis added].) There is no authority to suggest that CARB may avoid the procedures of its certified regulatory program in instances where CARB subjectively believes no environmental analysis is warranted.

Section 60007 refers to this analysis as the “Environmental Assessment.” (*Id.*, § 60007(b).) CARB’s certified regulatory program does not include any mechanism for CARB to find a proposed regulatory action is “exempt” from CARB’s certified regulatory program or CEQA generally, (*id.* §§ 60005, 60006, 60007); rather, the Environmental Assessment must be included for “[a]ll staff reports . . .” (*Id.* § 60005(b) [emphasis added].) Moreover, CARB’s certified regulatory program does not authorize the filing of a Notice of Exemption; rather, the only cognizable “notice” in the certified regulatory program is the “notice of the final action” referenced in Section 60007(b), which Lawson understands CARB refers to as the “Notice of Decision.”

Here, the relevant document is the “*Staff Report: Initial Statement of Reasons*” released December 19, 2017. Since the relevant document *is* a *Staff Report*, and “[a]ll staff reports shall contain . . . an assessment of anticipated significant and long or short term adverse and beneficial environmental impacts associated with the proposed action and a succinct analysis of those impacts,” (17 Cal. Code Regs., § 60005(a)), CARB was required to comply with Section 60005, and prepare an Environmental Assessment – and not a Notice of Exemption. The Proposed Modifications did not address CARB’s failure to include an Environmental Assessment. The Staff Report/ISOR should therefore be revised to include an Environmental Assessment, and recirculated for public review.

2. CARB Is Seeking to Piecemeal Environmental Review

Lawson has previously commented that CARB is seeking to impermissibly piecemeal environmental review by declining to analyze all of the upcoming regulations that affect the trucking industry together. (See Lawson’s May 25, 2018 Comment Letter to the HDVIP and PSIP Program Amendments; June 26, 2018 Comment Letter to the HD Warranty.) As explained before, the “requirements of CEQA cannot be avoided by piecemeal review which results from chopping a large project into many little ones—each with a minimal potential impact on the environment—which cumulatively may have disastrous consequences.” (*Envi’t Prot. Info. Ctr. v. Calif. Dept. of Forestry & Fire Prot.* (2008) 44 Cal.4th 459, 503.) Thus, CEQA “forbids ‘piecemeal’ review of the significant environmental impacts of a project.” (*Berkeley Keep Jets Over the Bay Comm. v. Bd. of Port Comm’rs* (2011) 91 Cal.App.4th 1344, 1358.) Rather, when a lead agency undertakes the environmental review process, the lead agency must review and consider the “*whole* of the action,” (CEQA Guidelines, § 15378

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[emphasis added]), and consider “the effects, both individual and *collective*, of all activities involved in [the] project.” (Pub. Resources Code, § 21002.1, subd. (d).) It is only through a complete and accurate “view of the project may affected outsiders and public decision-makers balance the proposal's benefit against its environmental cost.” (*Berkeley Keep Jets, supra*, 91 Cal.App.4th at 1358.) This will also allow affected outsiders and public decision-makers to “consider mitigation measures, assess the advantage of terminating the proposal . . . and weigh other alternatives in the balance.” (*Id.* at 1358.)

CARB is presently considering numerous regulatory actions that will adversely impact the trucking industry. These actions are all aimed at reducing GHG emission for HD-vehicles, which is a “reasonably foreseeable consequence,” *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 396, and are thus one project under CEQA. The cumulative effect of these regulations, as well as CARB’s policy of under-enforcement, is to incentivize non-compliance. As such, to avoid piecemealing, CARB’s revised environmental document should include an analysis of the *all* pending efforts to increase costs on the trucking industry, and analyze whether CARB’s inability to enforce existing and future regulations will cause unintended environmental effects.

B. CARB’s Proposed Action Violates the APA

1. CARB Must Prepare a SRIA for the Proposed Amendments

Under the APA, state agencies proposing to “adopt, amend, or repeal any administrative regulation” must first perform an assessment of “the potential for adverse economic impact on California business enterprises and individuals.” (Govt. Code, § 11346.3, subd. (a).) Among other things, the APA requires that agencies such as CARB prepare either an EIA or a SRIA analyzing “the potential adverse economic impact on California business and individuals of a proposed regulation,” (Govt. Code, § 11346.3), and declare in the notice of proposed action any initial determination that the action will not have a significant statewide adverse economic impact directly affecting business. (Govt. Code, § 11346.5, subd. (a)(8); *WSPA v. Board of Equalization* (2013) 57 Cal.4th 401, 428.)

CARB must prepare an SRIA for “major regulations.” “Major regulations” include “any proposed rulemaking action adopting, amending or repealing a regulation subject to a review by OAL [Office of Administrative Law] that will have an economic impact on California business enterprises and individuals” exceeding \$50,000,000 “in any 12-month period between the date the major regulation is estimated to be filed with the Secretary of State through 12 months after the major regulation is estimated to be fully implemented.” (1 Code Regs. § 2000, subd. (g).) Preparation of a SRIA is subject to review by the Department of Finance (“DOF”). (1 Code Regs. § 2002, subd. (a).) The DOF will vigorously object if an agency attempts to evade the SRIA requirement for major regulations. (See OAL Matter Number: 2016-0104-01 [The OAL disapproved the Board of Equalization’s proposed regulation because a

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Cont.

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SRIA was not prepared. The OAL agreed that the proposed regulation was major, based on the DOF's public comments].)

CARB did not prepare a SRIA because it classified the Proposed Amendments as a non-major regulation. Instead, CARB, dismisses the SRIA requirement in the Staff Report, stating, "[t]he annual economic impacts of the proposed California Phase 2 regulation do not exceed \$50 million, and hence a SRIA is not required." (See Staff Report at VII-8.)

The cumulative impact of the Proposed Amendments and the numerous regulatory actions that will affect the trucking industry exceeds \$50 million. The Proposed Amendments and numerous regulatory actions affecting the trucking industry are all aimed at reducing emissions for HD-vehicles. CARB cannot engage in piecemeal review of the various regulations to avoid fully analyzing the economic impacts of its numerous regulatory actions. Accordingly, CARB must prepare a SRIA.

2. CARB's EIA Is Inadequate for the Proposed Amendments

Notwithstanding CARB's failure to prepare a SRIA, the current EIA for the Proposed Amendments does not meet the applicable standards. The analysis of the Proposed Amendments' "potential adverse economic impact on California businesses and individuals," (Govt. Code, § 11346.3), is contained on pages VII-1 – VII-10 of the Staff Report.

The APA requires the EIA and SRIA to evaluate several issues, including "elimination of jobs within the state" and "the elimination of existing businesses within the state." (Govt. Code, § 11346.3, subs. (b)(1)(A)-(B), (c)(1)(A-B).) The SRIA is also required to evaluate "[t]he competitive . . . disadvantages for businesses currently doing business within the state." (Govt. Code, § 11346.3, subs. (c)(1)(C).) When evaluating the competitive the disadvantages for business, the SRIA cannot limit its analysis to interstate competitiveness, but rather is required to consider intrastate and interstate competitiveness. (*John R. Lawson Rock & Oil, Inc. v. State Air Resources Board* (2018) 20 Cal.App.5th 77, 114-115.)

The EIA and SRIA must be circulated with the 45-day materials (here, the ISOR), and must be supported by "facts, evidence, documents, [or] testimony," and made available for public review and comment for at least 45-days before an agency approves a regulation. (Govt. Code, §§ 11346.5, subs. (a)(7), (a)(8), 11347.3(b)(4).) The SRIA cannot be based on "mere speculati[on]." (*WSPA, supra*, 57 Cal.4th at 428.)

"A regulation . . . may be declared invalid if . . . [t]he agency declaration . . . is in conflict with substantial evidence in the record." (*Calif. Ass'n of Medical Products Suppliers v. Maxwell-Jolly* (2011) 199 Cal.App.4th 286, 306.) "Inferences may constitute substantial evidence, but they must be the product of logic and reason. Speculation or conjecture alone is

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not substantial evidence.” (*Roddenberry v. Roddenberry* (1996) 44 Cal.App.4th 634, 651.) “The ultimate test is whether it is reasonable . . . in light of the whole record.” (*Id.* at p. 652.)

The EIA’s discussion of “[t]he . . . elimination of jobs within the state,” (Govt. Code, § 11346.3, subd. (b)(1)(A)) and the “[t]he . . . elimination of existing businesses within the state” (Govt. Code, § 11346.3, subd. (c)(1)(B)), is incomplete. CARB asserts that “[m]inimal impacts . . . within California are anticipated.” (Staff Report at VII-6.)

Although CARB staff admits “the increased cost impacts on these manufacturers would be passed on to heavy-duty vehicle fleets who purchase the California Phase 2-certified heavy-duty vehicles and trailers,” CARB classifies these costs as “indirect costs.” (See Staff Report at VII-5, VII-6.) CARB staff estimates approximately 158,000 California vehicle fleets (87% of the impacted are small businesses) will be impacted by the Proposed Amendments, and estimates the annual costs for impacted California vehicle fleets will run from zero to \$53.05. (See Staff Report, VII-6.) CARB dismisses the costs as “small,” which “can be absorbed without changing the number of staff or driving any businesses out of business,” (Staff Report at VII-6), this ignores the fact that additional costs will be borne by California vehicle fleets. As the California Trucking Association’s (“CTA”) and American Trucking Association’s (“ATA”) comment letter to the Proposed Amendments notes, “the state’s unique in-use truck standards which have required fleets to purchase new or newer trucks ahead of normal turnover cycles. The cost of accelerating purchases to meet the state’s deadlines has stretched financial resources and resulted in delayed purchases once the initial compliance has been met.” (See CTA and ATA February 5, 2018 Comment Letter to Proposed Amendments.)

CARB also fails to comply with the APA by failing to look at the cumulative impact of the numerous rulemakings in 2018 and 2019 on California vehicle fleets. The Proposed Amendments to Phase 2 and the Tractor-Trailer GHG Regulation at issue are just two of numerous rulemakings CARB is considering in 2018 and 2019 that will increase costs on the trucking industry (and which CARB is unwilling or unable to effectively enforce). For instance, in addition to the Proposed Amendments, CARB’s website reveals that CARB is considering amendments to the HDVIP and PSIP Programs, as well as amendments to the HD Warranty. In addition, Lawson understands CARB is considering amendments to the Innovative Clean Transit Regulations, the HD OBD Regulations, HD Zero Certification Procedures, EWIR Regulation Amendments, and HD Low-NOx Standards, TPs, In-Use Compliance Step 2 Warranty. Each of these regulations – and the regulations cumulatively – will increase costs on compliant truckers, and not non-compliant truckers. “[T]he combined cost of numerous regulations receives much less focus yet likely results in additional unintended consequences.” (See CTA and ATA February 5, 2018 Comment Letter to Proposed Amendments.) The EIA should be amended to consider the adverse cumulative impact of these regulations (as well as the existing Truck and Bus Regulation), and the overwhelming likelihood that CARB will continue to fail to enforce the regulations against non-compliant truckers. Because the EIA does not consider this “potential

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adverse economic impact on California business and individuals of a proposed regulation,” (Govt. Code, § 11346.3), it fails under the APA.

CARB fails to address the EIA’s shortcomings in the Proposed Modifications. As a result of the foregoing, CARB should decline to adopt the Proposed Amendments until such time as CARB is able to effectively address the adverse impacts on California businesses. Absent that, CARB must augment the EIA or prepare a SRIA to adequately address the adverse impacts on California businesses.

C. The Proposed Amendments Constitute a Regulatory Taking, Particularly When Combined with the Effects of (i) Other Rulemakings and (ii) CARB’s Uneven Enforcement

Responsible truckers will be required to spend millions of dollars in an attempt to comply with the Proposed Amendments, in addition to their existing compliance with other programs and regulations. CARB admits Phase 2 benefits “would allow CARB to verify and enforce the Phase 2 regulatory standards,” only “*potentially leading to higher levels of compliance, which would ensure the program’s GHG emission benefits occur.*” (Staff Report at ES-5, ES-6 [emphasis added].) In other words, CARB is essentially saying that while there is only a possibility that Phase 2 would lead to higher levels of compliance, it certifies that emissions benefits will occur. This is wholly contradictory. There is no ascertainable public benefit associated with the Proposed Amendments, particularly viewed in the context of the ambivalence of the Proposed Amendments and combined with CARB’s failure to evenly enforce the existing regulations.

This is particularly true in light of the fact that CARB is already imposing millions of dollars of requirements on the trucking industry through the Truck and Bus Regulation, and that CARB seeks to force industry to expend even more money comply with future amendments planned for 2018 and 2019. Making matters worse, CARB is failing to evenly enforce the regulations currently on the books, and is actively harming the responsible truckers who have dutifully complied with CARB’s myriad regulations targeting the trucking industry.

CARB’s actions – both with respect to the Proposed Amendments and cumulatively – result in a deprivation of private property in a manner that is arbitrary, capricious, and of no benefit to the public. This violates well-settled constitutional property rights, and results in a regulatory taking. (See *Kelo v. City of New London, Conn.* (2005) 545 U.S. 469; see also Cal. Const. art. 1, § 19.) In *Maritrans, Inc. v. United States*, 342 F.3d 1344, 1348 (Fed. Cir. 2003), the court evaluated whether vessel owners have a property interest in their vessels after the Oil Pollution Act of 1990 (“OPA90”) required all single hull tank vessels used in the transport of oil that existing at the time of OPA90’s enactment, to “be retrofitted with double

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hulls in order to qualify for operation on the navigable waters or the United States.” Although the court found that a 13.1% decline in value was “not enough of a diminution in value to indicate that Maritrans was carrying an undue portion of the burden created” by OPA90, the court found that owners of tank vessels had a property interest in their vessels. (*Id.* at 1358.) Like the vessel owners in *Maritrans*, California vehicle fleet owners have a reasonable, investment-backed expectation that the State would not require responsible truckers to spend millions of dollars to comply with the Proposed Amendments and regulations, or if they did, that the regulations would be evenly enforced against the entire industry. The cumulative effect of the Proposed Amendments combined with the other regulations and programs has created an untenable situation for California vehicle fleet owners, certainly resulting in a greater decline in value than 13.1%. (See *Avenida San Juan Partnership v. City of San Clemente* (2011) 201 Cal.App.4th 1256, 1267 [recognizing the well-established principle that selective enforcement through spot zoning is irrational discrimination in the land use context].)

D. Violation of Equal Protection and Due Process

By CARB’s own admission, direct costs incurred by engine and vehicle manufacturers due to the Proposed Amendments would be passed on to fleet owners by increasing the purchase price of the vehicle. (Staff Report at VII-5, VII-6.) CARB has not provided any rational justification for this deferential treatment. By effectively allowing engine and vehicle manufacturers to pass the costs of repairs to their customers and then only enforcing the regulations against responsible compliant fleet, CARB places responsible compliant fleet and truck owners at a significant competitive disadvantage. The Staff Report and Proposed Modifications fail to recognize this result, let alone provide any rational justification for it. This is a violation of Lawson’s equal protection and due process rights, as well as the rights of countless other similarly situated trucking companies.

E. Violation of the Dormant Commerce Clause

CARB’s actions – both with respect to the Proposed Amendments and cumulatively – burden California vehicle fleet owners in violation of the dormant Commerce Clause. The dormant Commerce Clause is violated when the burden imposed by the Proposed Amendments and cumulatively “is clearly excessive in relation to the putative local benefits.” (See *Pike v. Bruce Church* (1970) 397 U.S. 137, 142.)

As stated above, and by CARB’s own admission, Phase 2 would only “potentially” lead to higher levels of compliance. This uncertainty coupled with CARB’s persistent failure to evenly enforce existing regulations shows there are no ascertainable public benefits associated with the Proposed Amendments.

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California vehicle fleet owners have spent millions of dollars to comply with the regulations imposed by CARB. From the Proposed Amendments, CARB staff estimates the number of impacted California vehicle fleets to be 158,000, with 87% of the impacted being small businesses. (Staff Report at VII-6.) The Proposed Amendments combined CARB's other regulations will effectively force some California Vehicle fleets out of business. Other companies will either route trucks around California and/or ship to California using only a certain portion of their fleet. The Staff Report and Proposed Modifications fail to recognize this result. This constitutes a dormant Commerce Clause violation of Lawson's rights.

CONCLUSION

Based on the foregoing, CARB should decline to approve the Proposed Modifications to the Proposed Amendments. If CARB does consider the Proposed Amendments, CARB must fully discharge its obligations under the APA and CEQA, and ensure the Proposed Amendments will not violate Lawson's constitutional rights.

Respectfully submitted,



John P. Kinsey

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May 25, 2018

VIA HAND DELIVERY

Clerk of the Board
CALIFORNIA AIR RESOURCES BOARD
1001 I Street, 23rd Floor
Sacramento, CA 95812

**Re: May 25, 2018, Public Meeting, Agenda Item No. 18-4-3:
Proposed Heavy-Duty Vehicle Inspection Program and
Periodic Smoke Inspection Program Amendments**

Dear Madam Clerk:

I am submitting the following comments on behalf of John R. Lawson Rock & Oil, Inc. ("Lawson"). The purpose of this letter is to comment on the amendments the California Air Resources Board ("CARB") has proposed to the Heavy-Duty Vehicle Inspection Program ("HDVIP") and Periodic Smoke Inspection Program ("PSIP") (collectively, the "Programs"). The proposed amendments to the Programs are collectively referred to herein as the "Proposed Amendments."

Lawson operates a large fleet of vehicles subject to the Programs, and has invested millions of dollars proactively complying with the existing Programs and other regulations adopted by CARB affecting the trucking industry. Like many fleet and individual owner operators, Lawson cares about the environment and supports measures to improve air quality in California and has invested a large amount of private capital in pursuit of that goal. Having made that investment, however, Lawson has grave concerns regarding CARB's continued lack of enforcement of the existing Programs and other regulations. CARB's failure to evenly enforce its own regulations, and to repeatedly turn a blind eye to non-compliance, negatively impacts the environment, has adverse economic consequences for responsible truckers across the state, and violates the law.

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CARB is required to comply with the California Environmental Quality Act ("CEQA") through its certified regulatory program when it seeks to adopt regulations. (See Pub. Resources Code § 21080.5; 14 Cal. Code Regs. ["CEQA Guidelines"], §§ 15250-15253; 17 Cal. Code Regs. §§ 60005, 60006, 60007.) CARB is likewise required to comply with the California Administrative Procedures Act, Govt. Code, 11350, *et seq.* (the "APA"), which, among other things, requires CARB to prepare a Standardized Regulatory Impact Assessment ("SRIA") and assess the economic impacts of the Proposed Amendments.

By failing to consider the unintended consequences of the Proposed Amendments – and various other proposed regulations that impose additional costs on responsible truckers – CARB has failed to discharge its duties under the law. CARB has already created an untenable situation by adopting the Truck and Bus regulation. Despite the immense costs imposed on responsible truckers, who dutifully complied with the regulation, CARB's failure to evenly enforce the Truck and Bus regulation has resulted in approximately *30% of California truckers failing to comply with the regulation*. (Staff Report at 17.) This has caused significant harm to responsible truckers. Although responsible truckers spent millions to comply with the regulation, they have been unable to recoup their costs because the truckers who have failed to comply (and to whom CARB has largely turned a blind eye with respect to enforcement) have (i) undercut responsible truckers in pricing for jobs, and (ii) have depressed the costs for jobs, resulting in responsible truckers being unable to pass-on any cost of compliance to those who use their services. With a compliance rate of only 50%, (*id.* at 15), the same of course is true for the Programs and the Proposed Amendments.

If CARB is going to adopt a regulation increasing costs on an industry, it should evenly enforce that regulation. Over the past several years, however, CARB has adopted regulations and engaged in unwritten policies creating a perverse regulatory environment that *rewards* those who *fail* to comply with CARB's regulations while at the same time *punishing* those who dutifully meet CARB's aggressive deadlines. And yet, CARB is again seeking to adopt proposed regulations that cannot enforce, and has no intention of enforcing. This is not just bad policy; it is unlawful. CARB should either decline to adopt the Proposed Amendments, or recirculate the Staff Report to address the full consequences of the Proposed Amendments (and all related and foreseeable regulatory actions CARB seeks to undertake with respect to the trucking industry).

A. CARB's SRIA is Inadequate

Under the APA, state agencies proposing to "adopt, amend, or repeal any administrative regulation" must first perform an assessment of "the potential for adverse economic impact on California business enterprises and individuals." (Govt. Code, § 11346.3, subd. (a).) Among other things, the APA requires that agencies such as CARB prepare a Standardized Regulatory Impact Assessment ("SRIA") analyzing "the potential adverse

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It is my opinion that unless there is additional education/notification regarding regulation requirements, and stricter enforcement of the regulation, such as requiring submission for registration renewal, etc., that the regulation will continue to be scoffed at by many.

(May 13, 2018, Curtis Bogart.)

[T]his type of reporting will simply add costs for compliant companies while a large percentage of fleets avoid these costs through noncompliance and continued nondetection.

(May 21, 2018, American Trucking Association.)

[The Proposed Amendments will] further exacerbate the uneven playing field created by a persistent lack of enforcement of CARB regulations

(May 21, 2018, California Trucking Association.)

The additional reporting costs created by the Proposed Amendments alone will cost over \$10 million. (Staff Report, Appendix D at 17.) While CARB staff dismisses the \$10 million additional reporting costs as “minor relative to the total costs” and is “not anticipated to result in a competitive disadvantage to California fleets,” (SRIA at 44), this ignores the fact that additional costs will likely be borne by already compliant fleets, and not by non-compliant fleets, which will continue and exacerbate the uneven playing field caused by CARB regulations.

As noted in the Staff Report, CARB concedes only “about 50 percent of fleets are currently compliant with the annual testing and record keeping requirements.” (Staff Report at 15.) CARB even admits that staff would use “submitted data to better *target large fleet audits* toward fleets that are not performing the required PSIP testing.” (*Id.* [emphasis added].) Thus, CARB is effectively conceding it intends to engage in selective enforcement by only targeting large fleets that voluntarily comply, while completely turning a blind eye to fleets that do not voluntarily comply.

In addition, the existing Truck & Bus regulation has an exceptionally poor compliance rate of only “70 percent.” (Staff Report at 17.) This regulation has already caused significant harm to the industry due to CARB’s uneven enforcement that CARB impermissibly failed to analyze. (See Exhibit “A”; see also *John R. Lawson Rock & Oil, Inc. v. State Air Resources Board* (2018) 20 Cal.App.5th 77, 115-16.)

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economic impact on California business and individuals of a proposed regulation,” (Govt. Code, § 11346.3), and declare in the notice of proposed action any initial determination that the action will not have a significant statewide adverse economic impact directly affecting business. (Govt. Code, § 11346.5, subd. (a)(8); *WSPA, supra*, 57 Cal.4th at 428.) The APA requires the SRIA to evaluate several issues, including “elimination of jobs within the state,” “the elimination of existing businesses within the state,” and “[t]he competitive . . . disadvantages for businesses currently doing business within the state.” (Govt. Code, § 11346.3, subds. (c)(1)(A)-(C).) The SRIA must be circulated with the 45-day materials (here, the ISOR), and must be supported by “facts, evidence, documents, [or] testimony,” and made available for public review and comment for at least 45-days before an agency approves a regulation. (Govt. Code, §§ 11346.5, subds. (a)(7), (a)(8), 11347.3(b)(4).) The SRIA cannot be based on “mere speculat[ion].” (*WSPA, supra*, 57 Cal.4th at 428.) “A regulation . . . may be declared invalid if . . . [t]he agency declaration . . . is in conflict with substantial evidence in the record.” (*Calif. Ass’n of Medical Products Suppliers v. Maxwell-Jolly* (2011) 199 Cal.App.4th 286, 306.)

The current SRIA for the Proposed Amendments does not meet the applicable standards. The analysis of the Programs’ “potential adverse economic impact on California business and individuals of a proposed regulation,” (Govt. Code, § 11346.3), is contained on pages 33-44 of Appendix F to the ISOR.

The SRIA’s discussion of “[t]he competitive . . . disadvantages for businesses currently doing business within the state,” (Govt. Code, § 11346.3, subd. (c)(1)(C)), is incomplete. As an initial matter, several individuals and entities have objected to the PSIP on the basis that it continues and exacerbates the uneven playing field caused by CARB’s failure to evenly enforce the regulations it has imposed on the trucking industry:

With all due respect, the board should not amend these programs. The board needs to focus on enforcing the current programs it has. It is well known that the ARB does not have the funds to enforce any of the programs it has. The honor system does not work in this state. The majority of the people in this state will break the rules for financial gain.

(April 27, 2018, Chris Torres.)

I have spoken with some who feel there is lack of enforcement and, therefore take the “I’ll wait until I [sic] get caught” attitude. Many claim they have never heard of the regulation, so they too take the same “I haven’t been caught yet” attitude. I even speak with personnel from California State Entities that believe they are exempt because they are part of state government and refuse to test even when presented with the PSIP Facts.

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Making matters worse, the PSIP rulemaking at issue is just one of numerous rulemakings CARB is considering in 2018 and 2019 that will increase costs on the trucking industry (and which CARB is unwilling or unable to effectively enforce). For instance, in addition to the Proposed Amendments CARB's website reveals that CARB is considering amendments to the CA Phase 2 and Tractor-Trailer Regulation, as well as amendments to the Heavy Duty Diesel Vehicle Emission Control System Warranty Regulation. In addition, Lawson understands CARB is considering anticipated regulations governing TRU units in 2019. Each of these regulations — and the regulations cumulatively — will increase costs on compliant truckers, and not non-compliant truckers. The SRIA should be amended to consider the adverse cumulative impact of these regulations (as well as the existing Truck and Bus Regulation), and the overwhelming likelihood that CARB will continue to fail to enforce the regulations against non-compliant truckers. Because the SRIA does not consider this "potential adverse economic impact on California business and individuals of a proposed regulation," (Govt. Code, § 11346.3), it fails under the APA.

The SRIA also fails to analyze "[t]he competitive . . . disadvantages for businesses currently doing business within the state," (Govt. Code, § 11346.3, subd. (e)(1)(C)), as a result of out-of-state competition. As explained in the May 21, 2018, letter from Michael Lewis, because out-of-state vehicles/fleets are not required to report, "California fleets are competitively disadvantaged with more reporting and more scrutiny than those registered elsewhere." The letter also explains that "California rental fleets will be disadvantaged by out of state rental companies that will not be burdened with reporting requirements." The May 14, 2018, comments from the California Caterpillar Dealers likewise express concern that the "PSIP reporting and test uploading would put California-based rental fleets at a competitive disadvantage with companies based out of state that have no smoke test or reporting requirements." There is no mention of any such impacts in the SRIA.

As a result of the foregoing, CARB should decline to adopt the Proposed Amendments until such time as CARB is able to effectively enforce the regulations currently on CARB's books. Absent that, the SRIA must be augmented to adequately address the adverse impacts on California businesses.

B. CARB's Policy and Practice of Nonenforcement is an Underground Rulemaking:

The APA prohibits the use of underground regulations. (Govt. Code, § 11340.5, subd. (a).) An underground regulation is defined to mean "any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, including a rule governing a state agency procedure, that is a regulation as defined in Section 11342.600 of the Government Code, but has not been adopted as a regulation and filed with the Secretary of State pursuant to the APA and is not subject to an express statutory exemption from adoption pursuant

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to the APA.” (1 C.C.R. § 250(a) [emphasis added]; see also Govt. Code, § 11342.600 [defining “regulation”].)

To determine whether an agency’s rule is a “regulation” as defined by Section 11342.600, the courts employ a two-part test. (*Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557.) First, “the agency must intend its rule to apply generally, rather than in a specific case. The rule need not, however, apply universally; a rule applies generally so long as it declares how a certain class of cases will be decided.” (*Id.* at 571 [citing *Roth v. Dept. of Veterans Affairs* (1980) 110 Cal.App.3d 622, 630.]) “Second, the rule must ‘implement, interpret, or make specific the law enforced or administered by [the agency], or . . . govern [the agency’s] procedure.’” (*Tidewater Marine, supra*, 14 Cal.4th at 571 [citing Govt. Code, § 11342 subd. (g), renumbered as Govt. Code, § 11342.600].)

Since the adoption of the amendments to the Truck and Bus regulation, CARB has engaged in a policy and practice of uneven enforcement of its regulations. In addition, CARB vigorously enforces the Truck and Bus regulation against only those who *voluntarily* submit information to CARB. This informal policy is noted in the Staff Report, which states CARB intends to use “submitted data to better target large fleet audits toward fleets that are not performing the required PSIP testing.” (Staff Report at 15 [emphasis added].) This policy and practice of focusing on those who attempt to comply voluntarily is not just bad policy; it is an unlawful underground regulation – *i.e.*, a generally applicable practice that implements the PSIP.¹

C. CARB’s Proposed Action Violates CEQA

1. CARB’s Certified Regulatory Program Does Not Authorize a Finding of Exemption from CEQA

The ISOR for the Proposed Amendments does not discuss the potential environmental effects of the Proposed Amendments, as required under the California Environmental Quality Act, Pub. Resources Code, § 21000, *et seq.* (“CEQA”) and CARB’s certified regulatory program, but instead purports to find the Proposed Amendments are “exempt” from CEQA:

the proposed amendments to the HDVIP and PSIP would not result in a significant adverse impact on the physical environment. Further, the proposed action is designed to protect the environment and staff found no substantial evidence indicating the proposal could adversely affect air

¹ Of course, the same concern applies to CARB’s enforcement of existing regulations, including the Truck and Bus regulation, where compliant truckers enter information regarding their attempt to comply onto the TRUCRS system.

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quality or any other environmental resource area, or that any of the CEQA exemptions apply (14 CCR 15300.2). Therefore, staff has concluded it is appropriate to rely on the class 8 and common sense exemptions to satisfy the requirements of CEQA for the proposed amendments.

(ISOR at 37-38.)

A Notice of Exemption, however, is not a document cognizable under CARB's certified regulatory program. Nor is there any authority to suggest that CARB may avoid the procedures of its certified regulatory program in instances where CARB subjectively believes no environmental analysis is warranted. Section 60005(b) of CARB's certified regulatory program specifically states:

All staff reports shall contain a description of the proposed action, an assessment of anticipated significant and long or short term adverse and beneficial environmental impacts associated with the proposed action and a succinct analysis of those impacts. The analysis shall address feasible mitigation measures and feasible alternatives to the proposed action which would substantially reduce any significant adverse impact identified.

(17 Cal. Code Regs., § 60005(a) [emphasis added].) Section 60007 refers to this analysis as the "Environmental Assessment." (*Id.*, § 60007(b).) CARB's certified regulatory program does not include any mechanism for CARB to find a proposed regulatory action is "exempt" from CARB's certified regulatory program or CEQA generally, (*id.* §§ 60005, 60006, 60007); rather, the Environmental Assessment must be included for "*all* staff reports . . ." (*Id.* § 60005(b) [emphasis added].) Moreover, CARB's certified regulatory program does not authorize the filing of a Notice of Exemption; rather, the only cognizable "notice" in the certified regulatory program is the "notice of the final action" referenced in Section 60007(b), which Lawson understands CARB refers to as the "Notice of Decision."

The relevant document here is the "*Staff Report: Initial Statement of Reasons*" released April 3, 2018. As a result, CARB was required to comply with Section 60005 of its certified regulatory program, and prepare an Environmental Assessment – and not a Notice of Exemption. The Staff Report/ISOR should therefore be revised to include an Environmental Assessment, and recirculated for public review.

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2. A "Fair Argument" Exists that the Proposed Amendments
Would Have Significant Environmental Impacts

Because CARB does not have the authority to adopt a Notice of Exemption, the environmental analysis in the Staff Report should be construed as the functional equivalent of a negative declaration.

CEQA contains a strong presumption in favor of lead agencies preparing an EIR (or a functional equivalent). This presumption is reflected in the "fair argument" standard, under which an agency must prepare an EIR (or a functional equivalent) whenever substantial evidence in the record supports a "fair argument" that a project may have a significant effect on the environment. (*Quail Botanical Gardens Found., Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1602; *Friends of "B" Street v. City of Hayward* (1980) 106 Cal.App.3d 988, 1002.) If a "fair argument" exists, the lead agency may not prepare a negative declaration, but instead must prepare an EIR (or its functional equivalent). (Pub. Resources Code, §§ 21100, 21151; CEQA Guidelines, § 15064(a)(1), (f)(1).)

A "fair argument" exists here, both at a project-level and cumulatively. Due to the pervasive and costly regulations CARB had imposed upon the trucking industry over the last several years – and CARB's unwillingness to evenly enforce its own regulations – many truckers have simply declined to comply with CARB regulations. For instance, CARB's Staff Report concedes that the existing Truck & Bus regulation only "has about a 70 percent compliance rate." (Staff Report at 17.) CARB likewise concedes only "about 50 percent of fleets are currently compliant with the annual testing and record keeping requirements." (*Id.* at 15.)

Due to the significant expense of CARB regulation, including the Truck and Bus Regulation and the Programs, any action making the Programs more burdensome will create disincentives for non-responsible truckers to comply with the Programs in their entirety. This is particularly true given that (i) non-responsible operators are aware that CARB is not actively enforcing its own regulations, and (ii) CARB continues to consider a host of new regulations that will further increase costs on responsible truckers.² Making the Programs more stringent through the Proposed Amendments has a significant potential of incenting existing operations to decline to comply with the Programs or to voluntarily self-report. A decline in participation in the Programs would not achieve the alleged benefits of the Proposed Amendments, but instead has the potential to increase emissions.

² These include, but are not limited to, the (i) CA Phase 2 and Tractor-Trailer Amendments Regulation, (ii) the Proposed Amendments, (iii) the Heavy Duty Diesel Vehicle Emission Control System Warranty Regulation Amendments; and (iv) anticipated regulations governing TRU units.

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Moreover, by disproportionately impacting compliant truckers, and rewarding non-compliant truckers, the Proposed Amendments (and other regulations) have a significant danger of lessening the ranks of compliant truckers (many of whom could be forced out of business) and increasing the tanks of non-compliant truckers who are not impacted by the regulation. Of course, a greater percentage of non-compliant truckers on the road will increase emissions.

3. CARB is Seeking to Piecemeal Environmental Review.

CARB is also seeking to impermissibly piecemeal environmental review by declining to analyze all of the upcoming regulations that affect the trucking industry. The “requirements of CEQA cannot be avoided by piecemeal review which results from chopping a large project into many little ones—each with a minimal potential impact on the environment—which cumulatively may have disastrous consequences.” (*Env’t Prot. Info. Ctr. v. Calif. Dept. of Forestry & Fire Prot.* (2008) 44 Cal.4th 459, 503.) CEQA, therefore, “forbids ‘piecemeal’ review of the significant environmental impacts of a project.” (*Berkeley Keep Jets Over the Bay Comm. v. Bd. of Port Comm’rs* (2011) 91 Cal.App.4th 1344, 1358.) Rather, when a lead agency undertakes the environmental review process, the lead agency must review and consider the “*whole* of the action,” (CEQA Guidelines, § 15378 [emphasis added]), and consider “the effects, both individual and *collective*, of all activities involved in [the] project.” (Pub. Resources Code, § 21002.1, subd. (d).) It is only through a complete and accurate “view of the project may affected outsiders and public decision-makers balance the proposal’s benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal . . . and weigh other alternatives in the balance.” (*Berkeley Keep Jets, supra*, 91 Cal.App.4th at 1358.)

As explained above, CARB is considering several regulatory actions that will increase costs on the trucking industry. These regulations force compliant truckers to incur significant costs; however, compliant truckers are unable to effectively recoup those costs due to CARB’s under-enforcement. Cumulatively, these regulations (and CARB’s failure to evenly enforcement) incentivize and reward non-compliance, and force small truckers who have dutifully complied with CARB’s mandate off the road. As such, to avoid piecemealing, CARB’s revised environmental document should include an analysis of the *all* pending efforts to increase costs on the trucking industry, and analyze whether CARB’s inability to enforce existing and future regulations will cause unintended environmental effects.

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D. The Proposed Amendments Constitute a Regulatory Taking, Particularly When Combined with the Effects of (i) Other Rulemakings and (ii) CARB's Uneven Enforcement

Responsible truckers will be required to spend millions of dollars in an attempt to comply with the Proposed Amendments, in addition to their existing compliance with the Programs. Because of CARB's failure to evenly enforce the existing regulations, there is no ascertainable public benefit associated with the Proposed Amendments.

This is particularly true in light of the fact that CARB is already imposing millions of dollars of requirements on the trucking industry through the Truck and Bus Regulation, and that CARB seeks to force industry to expend even more money comply with future amendments planned for 2018 and 2019. Making matters worse, CARB is failing to evenly enforce the regulations currently on the books, and is actively harming the responsible truckers who have dutifully complied with CARB's myriad regulations targeting the trucking industry.

CARB's actions – both with respect to the Proposed Amendments and cumulatively – result in a deprivation of private property in a manner that is arbitrary, capricious, and is of no benefit to the public. This violates well-settled constitutional property rights, and results in a regulatory taking. (See *Kelo v. City of New London, Conn.* (2005) 545 U.S. 469; see also Cal. Const. art. 1, § 19.)

Lawson will seek to recover the expenses it has incurred as a result of CARB's unjust, arbitrary, and capricious regulatory action.

E. Violation of Equal Protection and Due Process

The Proposed Amendments provide significant benefit to those truckers who have actively chosen not to comply with the PSIP (and CARB's existing regulations, such as the Truck and Bus Regulation). By CARB's own admission non-compliance with the existing Programs is a staggering 50%. In contrast, the Proposed Amendments severely adversely effect those responsible truckers who have dutifully complied with CARB's regulatory programs.

CARB has not provided rational justification for providing this significantly deferential treatment to these selective groups. By effectively exempting voluntarily non-compliant truckers from CARB's regulations, CARB places responsible compliant fleet and truck owners at a significant competitive disadvantage. The Staff Report fails to recognize this result, let alone provide any rational justification for it. This is a violation of Lawson's equal protection and due process rights.

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F. Interference With Contract/Contract Clause

As stated above, selective enforcement and application of the Programs, particularly through the adoption of the proposed amendments, will continue to disrupt the highly competitive environment of the trucking and transportation industry, and reward non-compliant truckers. Meanwhile, those who comply, while providing benefits to the environment and supporting CARB's stated mission to improve air quality, will be placed at a significant competitive disadvantage in comparison to those who fail to comply.

This is highly disruptive to the contracts and business relationships established by Lawson and other compliant truck and fleet owners, who are now faced with competition from those who have significantly reduced overhead costs by failing to comply with the Programs, the Proposed Amendments, and all other CARB regulations affecting the trucking industry.

Again, Lawson will pursue all available legal remedies to recover the losses incurred by CARB artificially, arbitrarily, and capriciously disrupting Lawson's contracts and business relationships by disrupting the competitive market environment.

CONCLUSION

Based on the foregoing, CARB should decline to approve the Proposed Amendments. If CARB does consider the Proposed Amendments, CARB must fully discharge its obligations under the APA and CEQA, and ensure the Proposed Amendments will not violate Lawson's constitutional rights.

Respectfully submitted,



John P. Kinsey
WANGER JONES HELSLEY PC
Attorneys for John R. Lawson Rock & Oil, Inc.

11.11.2020

**May 25, 2018, Public Meeting, Agenda Item No. 18-4-3: Proposed
Heavy-Duty Vehicle Inspection Program and Periodic Smoke
Inspection Program Amendments**

Exhibit "A"

MEETING
STATE OF CALIFORNIA
AIR RESOURCES BOARD

BYRON SHER AUDITORIUM
SECOND FLOOR
1001 I STREET
SACRAMENTO, CALIFORNIA 95814

THURSDAY, APRIL 24, 2014

9:08 A.M.

TIFFANY C. KRAFT, CSR
CERTIFIED SHORTHAND REPORTER
LICENSE NUMBER 12277

J&K COURT REPORTING, LLC (916) 476-3171

1 MS. MOREHOUSE: Good morning. Erica Morehouse
2 with Environmental Defense Fund. Thank you.

3 We appreciate the incredible progress that's been
4 made so far in cleaning up our trucks and buses and also
5 California's national leadership on this issue. And we
6 also recognize the difficult balancing that ARB is doing
7 today.

8 We do urge the Board to keep the truck and bus
9 rule as strong and consistent as possible in order to
10 maintain the critical health and environmental benefits
11 that it provides and also to avoid undermining investments
12 in clean trucks that have already been made. I'm going to
13 align my comments with my environmental colleagues that
14 are coming. I'll leave it at that. Thank you very much.

15 CHAIRPERSON NICHOLS: Thank you.

16 Shellie Archer.

17 MS. ARCHER: Chairman Nichols and the Board, I'm
18 Shellie Archer. I'm owner of Archer Trucking, a northern
19 California construction broker with two locations,
20 Mendocino County and Yuba County.

21 We have 64 trucks. I spent hours and hours
22 fighting the rule, fighting what is in existence right
23 now. I was one of the lead. I joined in with many people
24 here in this room fighting and going to meetings and
25 begging for staff to listen to reason, to allow more time.

1 All the things that you're proposing today in the
2 amendments, we begged for those things. For over four
3 years, we begged.

4 You said no, as a Board. It was absolutely, this
5 is the rule, this is the law. And my husband and I
6 stepped up. And we are over \$3 million in debt. I could
7 cry, too. Because, for us, we're 56 years old. And it's
8 a ridiculous amount of money to spend. And we would have
9 done just fine with the older trucks. And now my
10 competitors who have not complied are getting the golden
11 ticket. I'm getting slapped in the face because I
12 complied and spent the money and made the investment.

13 A very important point, going away from my
14 company, which is a big company. Never thought we would
15 be this big. No one is fighting for the little guys who
16 have complied. We have approximately 60 owner-operators
17 of individual trucks. About half of them have gone out
18 and either spent money on filters or bought a new truck.
19 The other half have not. They're sitting back with shirts
20 that say, "No, we're never -- comply? No. I'd rather
21 die." That kind of thing. And they're getting away with
22 it now. They just permission to not go out.

23 I have next door neighbors. One has a brand-new
24 truck or a \$15,000 filter on a really old truck. And one
25 is just driving his old truck. They're on the same jobs

1 to work with ARB to look for additional funding to
2 accomplish this very important work.

3 I have a specific request, and that is I'm asking
4 the ARB to include language in your resolution that
5 allocates all remaining Prop. 1B funding for the San
6 Joaquin Valley to be used for truck replacement
7 assistance. And we will look forward to working with you
8 for additional incentive funds to make sure all of our
9 truckers are able to make this very important change, but
10 that we help them get there.

11 So it's really a pleasure to be back here. I
12 wish you well. I think you have a long hearing yet to go.
13 Again, thank you for everybody for allowing me to come
14 forward.

15 CHAIRPERSON NICHOLS: Thank you for making the
16 trip, especially using a train.

17 Okay. Mr. Nguyen.

18 MR. NGUYEN: Hi. How are you doing today?

19 I'm here to talk on behalf with all my fellow
20 co-worker. We are like single. We only have only truck.
21 We have an older truck. So, you know, with all the
22 regulation coming on, we had to follow what they
23 requesting.

24 And we had to sell our own truck for nothing to
25 by a newer truck and put on the filter on it. We cost

1 around like 40 to like \$50,000 to be, like, to be able to
2 work for, like, the next, like, ten years. To follow
3 whatever the regulation is. And now you come out with
4 extension for those people that didn't do anything about
5 it. They just sit there and wait for our extension.

6 We was thinking when we do other requirement, we
7 would get more money for the contractor to pay us because
8 we spent our money to work on it. So how how are we going
9 to go out and compete with those guys don't do anything
10 about it. They bid the job for lower money. They don't
11 need any payment. So they willing to work for lower the
12 rate. So how are we going to compete with them? And how
13 out \$50,000 in our pocket.

14 So if you guys thinking about extension, think
15 about us who followed the regulation, you know, to be
16 compliant. Give us some kind of credit, you know, like
17 tax credit or anything. Just don't like -- need more fund
18 to other people this and that, I understand. What about
19 us? We follow the rule. And people just sit there and
20 wait. And just give them another three, four more years.
21 For what?

22 Everybody in California I know all the air
23 pollution and stuff. I have kid. That's why I followed
24 the rule. I don't want my kid to grow up and get sick.
25 My son have asthma, I don't want that to happen to my son.

1 So, you know, I hope you guys think about it.
2 You know, give an extension to those people don't do
3 anything about it? Think about people that complying, do
4 everything, whatever it take to be compliance and follow
5 your rule and make California better. Thank you.

6 CHAIRPERSON NICHOLS: Thank you.

7 Could I ask, Mr. Nguyen, if you and your
8 colleagues, did they sign up also to testify, the other
9 gentleman who were with you?

10 MR. NGUYEN: I think they did but --

11 CHAIRPERSON NICHOLS: If they are not going to
12 testify, they should let the clerk know. If they still
13 want to come up and testify. But just so you know, it
14 makes it easier for us to let us know.

15 MR. NGUYEN: We tried to make it short.

16 CHAIRPERSON NICHOLS: Thank you very much.

17 Okay. Next is Steven Davis.

18 MR. DAVIS: I'm Stephen Davis. I'm kind of
19 unusual that I'm also an end user and an installer. My
20 parent corporation is RV Jensen. We're a fuel oil jobber
21 based in Fresno, California. So far we spent \$1.8 million
22 in retrofits and replacement equipment to be a compliant
23 carrier. It's been a great expense for us. By the end of
24 the year, we're going to be at \$2.6 million to be
25 compliant with the equipment replacement and put installs

1 on the trucks. It puts it at a great disadvantage. We're
2 really opposed to any rule changes. Puts us at a great
3 disadvantage to compete with the other carriers that have
4 not done anything so far. They're waiting for the rule
5 changes. They're always saying if we don't do anything,
6 CARR change the rules and they won't have to. So far,
7 they've been right on target. The longer they wait, the
8 more we spent, and there's still undercutting our rates.
9 Makes it very hard for us to compete.

10 Then on the installer part, we're an installer
11 out of Fresno. Advanced emissions. We do a very good
12 job. We pre-assess. We check the trucks for the wells
13 the best we can. We download the computers. Oil samples,
14 smoke test before we do installs. We're having very
15 little problems.

16 Actually, on the R.V. J. side, the new trucks are
17 giving us more problems than the retrofit trucks we've
18 got. The retrofit trucks are doing a better job of being
19 on the road more hours without service. Then on the
20 advanced emission side when we go to the installs and try
21 to talk to the customer, tell them about how to run the
22 filter, yearly cleanings, we send out letters, our
23 response for yearly cleaning is pretty low. Probably
24 about 20 percent come in. Most of them wait until their
25 red light comes on. By that time a lot of times they've

1 BOARD MEMBER BALMES: Could I ask staff to
2 explain this 11 liter engine?

3 BOARD MEMBER RIORDAN: Certainly. I'm assuming
4 staff when issues are raised, you are taking this down and
5 then you'll respond at the end. But let's take this one
6 for an example.

7 MANAGER YURA: Elizabeth Yura with the Prop. 1B
8 program. The program does have specific requirements for
9 if you are coming into the program with a certain class or
10 certain rating of truck, that's what we paid for
11 replacing. And so there are some different types of
12 flexibilities the program does offer to look at for
13 specific vocational uses if different types of engines are
14 needed we could look at exceptions. So it's something
15 that we are willing to look at if the gentleman wants to
16 grab us after the hearing. We can definitely talk to him.

17 BOARD MEMBER RIORDAN: Excellent. Mr. Cook, I've
18 kind of lost you. But if you might, when we conclude the
19 testimony this morning, you may want to speak to one of
20 the staff members. Very good.

21 Mr. Falkner.

22 MR. FALKNER: Good morning to everybody. I'm Ron
23 Falkner, from Falkner Trucking, the President out of
24 Tulare. We have a 50 truck operation. We are CARB
25 compliant until 2017.

1 Like Ms. Archer, we started fighting this in
2 2007. Tony and Todd took a lot of flak from me over the
3 years over this. But we decided in 2011 to get compliant
4 because it was coming. I tried to get all these one to
5 two to three truck guys involved in this. They all said
6 no, Ron, you're wasting your time. It's ludicrous. It's
7 never going to happen. We decided it's going to happen.
8 So we spent -- we have spent a million and a half since
9 2011 to get compliant. We'll have to spend at least
10 another 750,000 by 2017 to stay compliant.

11 So what we need, we need all these people to get
12 CARB compliant like we are where we can keep the rates up
13 to where we need.

14 My accountant and I yesterday got together, and
15 we done a spreadsheet. My first nine months of my fiscal
16 year with all the money we had to spend on extra payments,
17 retrofits and all the stuff we had done in the first
18 nine months, I'm \$13,000 in the hole. We refinanced my
19 whole company last year to be able to even try to survive
20 this ruling.

21 So these other people -- and we had trouble
22 getting credit. We had to hock everything we got, me and
23 my wife did, to get our company restructured.

24 And we're trying to stay in business. I have 60
25 employees. I have to worry about them, too. These one to

1 three truck guys. I'm an owner-operator myself. I
2 started with one truck like Thomas did from Gardner in
3 1988. I started with my first truck.

4 These people need to get in line to get this
5 stuff done. They should have been hustling earlier to get
6 this done. They should have got in compliance so we can
7 get the rates up to where we can afford this. With the
8 rates where they're at now, with the difference in the
9 market, we're up here with their debt. They're down here.
10 That's where the rates are at. It needs to be a level
11 playing field to get the rates up to where everybody can
12 survive this. It's here. It's going to happen. It needs
13 to stay this way.

14 I'm opposed for the amendments, because we need
15 to get the rates up. Everybody needs to be on a level
16 playing field to get the rates up to where we can all
17 survive this. Thank you.

18 CHAIRPERSON NICHOLS: Mr. Hessler.

19 MR. HESSLER: Thank you, Chairman Nichols,
20 members of the Board.

21 My name is Chris Hessler. The firm I work for,
22 AJW, supports both of the trade associations that work in
23 the emissions control industry. MECA is the technical arm
24 of the industry and AESI is the new policy arm of the
25 industry.

1 There are four simple points I want to leave with
2 you today.

3 Number one: Emission control technologies work.
4 The evidence is in operation, right now on every highway in
5 the country and every major construction site in the
6 country. The retrofit devices that are required by the
7 truck and bus rule are no different than the devices that
8 have been sold on new diesel engines since 2007. The
9 devices work. And failures, when they happen, are most
10 often caused by poor engine maintenance.

11 Number two: It's important to be fair to those
12 that have complied. Why should a driver who has already
13 complied with your rule have to compete against another
14 driver who is being given a new extension? ARB should be
15 careful not to take an action that makes timely compliance
16 with ARB rules seem like a poor business decision.

17 Number three: ARB needs anti-backsliding
18 measures. Strong anti-backsliding will help ensure that
19 the promised and paid for emissions reductions are
20 actually delivered. An inspection and maintenance program
21 will help reduce the potential for engine maintenance
22 issues to interfere with the operation of emissions
23 controls. A more rigorous aftermarket certification
24 protocol will ensure that replacement of emissions devices
25 meet the appropriate performance standards.

1 right is extremely important. But also enforcing the rule
2 is extremely important for making sure there is a level
3 playing field. I encourage the Board to continue their
4 efforts on the enforcement side of the regulation.

5 Thank you very much.

6 CHAIRPERSON NICHOLS: Mr. Britten.

7 MR. BRITTEN: Thank you, Chairman.

8 I assume most of you got my letter that I wrote,
9 I'm a little fired up. I ditto Ron Faulkner. Whether
10 it's 55 million for Gardener or two million for him or my
11 figure is 600,000 -- and it would be 600,000 that I borrow
12 now that I would probably be at zero debt right now if it
13 weren't for this stupid rule. I've complied.

14 I got people telling me I'm going to wait until
15 they catch me. In the mean time, my trucks are parked
16 while their trucks are going in and out of the port. That
17 sucks for me. This is non-sense that these people say
18 they just heard about this rule a couple days ago or a
19 couple weeks ago. This rule has been in progress since
20 2006. In 2008, you had your first Board meetings. We
21 fought it then. By 2010, we knew we had to comply. So we
22 did comply. It's like a stick in the eye to people like
23 me that you allow people to go forward and not be able to
24 comply. My trucks are Heavier now. I could lose 1500
25 pounds on every load. That costs me 30 to \$40 a day over

1 the people that are not complying because their trucks are
2 lighter. You bet I'm fired up. They've had their time,
3 too. They actually had more time than me as it is.

4 Thank you.

5 CHAIRPERSON NICHOLS: Ms. Holmes-Gen.

6 MS. HOLMES-GEN: Chairman Nichols and Board
7 members, Bonnie Holmes-Gen of the American Lung
8 Association in California. And pleased to be here on
9 behalf of the Lung Association, other health and medical
10 organizations in support of this life-saving diesel truck
11 and bus regulation.

12 Some of the other groups that are supporting this
13 regulation and our letter to you include the California
14 Thoracic Society, numerous medical associations, and
15 asthma coalitions. We are calling the diesel truck and
16 bus regulation a critical public health measure and
17 emphasizing this regulation not only saves lives every
18 year it's implemented, but protects vulnerable
19 populations. And you've heard that discussion this
20 morning. Children, the elderly, those with asthma,
21 emphysema, chronic bronchitis, other respiratory and
22 cardiac illnesses, all in that vulnerable population.

23 You've had a very clear explanation of the health
24 dangers. And we had Dr. Calhoun, a lung cancer surgeon
25 was here this morning. He couldn't stay -- to remind us

1 been wasted.

2 Madam Chair and members of the Board, the staff
3 recommendations are fair, are relevant, and significant.
4 The crane industry supports the work trucks and heavy
5 crane provisions. Most crane fleets have made significant
6 investments in retrofits PM filters, replacement engines,
7 and new vehicles. Construction fleets are still grappling
8 with multiple rules. The best of the best have an
9 incredibly difficult time distinguishing one from another.
10 It would be fair to conclude these amendments may not be
11 the last you will consider. I didn't consciously set out
12 on this path --

13 CHAIRPERSON NICHOLS: Excuse me. Your time is
14 up. If you could wrap up quickly, please.

15 MS. BURKE: I just want to thank you for your
16 time. The amendment process worked as it will work again
17 in the future. You can count on us to be a willing
18 partner in that.

19 CHAIRPERSON NICHOLS: Thank you for your work on
20 this issue.

21 MS. DE GRAAF: Good morning, Madam Chair and
22 members of the Board.

23 My name is Joanna deGraaf, and my husband and I
24 are both owner-operators and run two compliant livestock
25 trucks for hire for deGraaf Ranch Trucking in Manteca.

1 It's been a family-run business for over 48 years in the
2 San Joaquin Valley. Third generation that I hope to pass
3 on to the only deGraaf son for a fourth generation.

4 I also have two children that are massive
5 asthmatics and have willed both of them to breathe in ICU
6 in the hospital in Manteca.

7 We are CARB compliant and strongly oppose the
8 proposal to delay the rules for the four higher livestock
9 haulers until 2023. We ask CARB for a compromise allowing
10 ranchers with their own trucks not hauling for hire to be
11 exempt, but that CARB enforce the rule for the for-hire
12 carriers. Our company has spent over \$600,000 over the
13 last ten years to comply while supporting a family of six.

14 It is not a fair playing field for those of us
15 who complied. The non-compliant trucks have done nothing
16 but sit on their hands and ignore their rules. They
17 charge the same rate per mile as compliant trucks do.
18 They should not be rewarded for ignorance and defiance.

19 How will you enforce this provision? The CCA and
20 their representatives speak on behalf of the livestock
21 industry, and they are not being honest with you and they
22 are not being honest with the trucking. No one said they
23 had to buy a new truck. They can buy a used one and
24 retrofit it. We chose to buy new. And due to issues on
25 retrofitting, that was a personal and business decision

1 that my husband and I both made.

2 Out of state trucks will not register with CARB
3 because they don't think it's any of your business what
4 they're doing. A lot of out of state trucks are
5 compliant, plus 150 California livestock haulers have
6 already complied. And there are more.

7 The truth is that there are more livestock trucks
8 now in California than there was 20 years ago. There are
9 economics involved in the trucking side as well. We have
10 to purchase more expensive trucks, pay for four dollar a
11 gallon fuel. And we are not against ranchers whom we haul
12 for to survive. But the trucking end has been divided
13 into compliant versus not compliant. Even Dwayne Martin,
14 one of the largest cattle ranchers in California in our
15 area didn't know about this, or Ed Rocha. They are
16 members of the CCA and have compliant fleets. Truckers
17 will do what they have and what's necessary to survive.
18 Cattle hauling is seasonal, but there are other things to
19 haul. Don't punish us for the millions of dollars we all
20 spent to comply. There are more compliant trucks in
21 California than not.

22 You gave us ten years to comply, and you're
23 ignoring -- letting the ignorant and defiant borrow more
24 and have 20. Please enforce the rule as it stands.

25 CHAIRPERSON NICHOLS: Thank you.

1 Ms. Ferrari.

2 MS. FERRARI: Hi. I've scratched this thing and
3 changed it a few times.

4 My name is Debbie Ferrari. I've been involved
5 with dump truck management for 32 years. I work at MAG
6 Trucking out of Hayward as an estimator and manager, and we
7 utilize over 100 owner-operators. Our company managers
8 have spoken with CARB personnel several times. Every time
9 we receive the same clear instructions. We were told it's
10 our responsibility to make sure that all of the
11 owner-operators that work for us are in compliance or we
12 would be severely penalized. We cooperated and acted as
13 an agent for CARB in this regard, not only out of fear,
14 but also because we wanted to operate in a legal and
15 proper manner.

16 We took many steps and spent many hours and days
17 helping the owner-operators. When some drivers said to
18 me, "I heard there will be a postponement," I called a
19 very high level manager at CARB and passed on the concern.
20 The manager told me in no uncertain terms there will not
21 be any extension. So I dutifully informed the truck
22 owners they would have to comply immediately and many have
23 already.

24 We would have preferred a postponement for all,
25 especially given that there have been a lot of holes in

1 the grant distribution and the unequal applications of the
2 law to date. Even some of the proposal extensions makes
3 some sense. But the proposal that doesn't make any sense
4 at all is the "I can't get a loan proposal," I'll call it.
5 You claim that you can't get a loan for whatever reason.
6 And in the mean time, the people that stepped up and went
7 out and scratched and scraped and got the loan, they have
8 already complied or they're willing and potentially able
9 to comply, now they're on an uneven playing field. And
10 now their business expenses are much higher. And now they
11 risk losing their business because they have to pay so
12 much more, as compared to their competitors.

13 It's been stated by important executives at CARB
14 that the reason for proposing this "I can't get a loan
15 four-year extension" is for that more grants will become
16 available for single truck owner-operators as they are not
17 available now and that more slightly used trucks will
18 become available. In order to qualify for a slightly used
19 truck or a grant, you must be able to get a loan. You
20 cannot get a grant without getting a loan.

21 If you're going to go through with the "I can't
22 get a loan proposal," there needs to be some reimbursement
23 tax credits, cash reimbursements for these people that
24 have already put on a very expensive and difficult to deal
25 with filter on the truck, or I would say you need to put

1 the extent that people can curtail their comments further,
2 it will prevent me from having to reduce it to two minutes
3 or one minute.

4 Also, I'm going to give you five minutes. If
5 you're thinking you want to testify, thinking you might
6 want to testify, sign up now or I'm going to cut off the
7 list in five minutes because I think at that point
8 everybody who has something to say will have had a chance
9 to be heard. So that's it. Thank you.

10 MR. VAN DYKE: Thank you, Madam Chairman. I will
11 do my best.

12 I'm Bob Van Dyke, VA farms. We are a
13 family-owned farming and trucking company. We are
14 compliant. We have 22 trucks of our own and utilize as
15 many as 50 sub-haulers owner-operators at our peak time,
16 rice harvest.

17 I believe you realize the decisions and rules
18 that you've made in the past have created disastrous
19 economic hardship on the trucking industry. But you're
20 six years too late. This is not a fair thing to do to
21 change a mandatory program when the deadlines are up.

22 I complained to the ARB about the impact this
23 would have on the owner-operators that pull for us that
24 most would not be able to update their trucks, let alone
25 put a particulate filter on them.

1 I stated it will hurt the trucking and ag
2 products industry, moving transportation, and there would
3 be a transportation shortage. Their response was that
4 there would be fewer trucks on the road, helping the
5 environment, and those remaining we would be able to raise
6 our trucking rates to pay for the new equipment.

7 We are a small company, and we were able at first
8 to participate in assistance programs. Thank you very
9 much, but still have spent over a million dollars to be
10 compliant with ARB and the drayage truck regulations.

11 Out of necessity, a majority of our sub-haulers,
12 owner-operators, have also gone deep into debt, borrowing
13 against their houses, their friends and family, trying to
14 stay in the business, the only business most of them know.
15 These changes are not right. I never want to see a
16 business fail or employees lose their jobs. But people
17 that have procrastinated and claimed ignorance should not
18 be rewarded by this new amendment.

19 A lot of us that borrowed and have gone deep into
20 debt to be compliant with the current laws aren't
21 interested in credits or extensions. But give me a tax
22 break, a no interest loan, or an economic rebate for the
23 good job we've done to clean up the air so that you can
24 consider these changes and amendments. Thank you very
25 much.

1 CHAIRPERSON NICHOLS: Is Mr. MacDonald here? Did
2 we just miss him?

3 MR. MAC DONALD: Thank you. My apologies.

4 Madam Chair and members of the Board, appreciate
5 this opportunity to share our comments.

6 My name is Ian MacDonald. I'm the Vice President
7 of Sales and Marketing with CDTI, also known as Clean
8 Diesel Technologies.

9 CDTI is headquartered in Ventura, California, and
10 has supplied over 11 million catalyts to customers and
11 car manufacturers in over 35,000 diesel retrofits systems
12 throughout North America and Europe since 2000.

13 CDTI has made significant investments in support
14 of California's truck and bus rule. And since its
15 inception, it supported many of the preceding ARB
16 programs.

17 Many of the written comments and actually many of
18 the oral comments so far have indicated these amendments
19 destabilize the highly competitive trucking industry,
20 effectively penalizing those who have already complied
21 with the rule and forcing them to compete with
22 higher-polluting non-compliant truck owners who are
23 afforded with a lower business cost due to their failure
24 to comply.

25 We understand the intention of the amendments,

1 CHAIRPERSON NICHOLS: Mr. DeVries.

2 MR. DE VRIES: Hi. Thank you. I am Ronnie
3 DeVries from Bakersfield, California. I got seven
4 livestock trucks. Been in business for 18 years. I got
5 six brand-new ones here. Got two more next month. And I
6 have no help with them. I bought them all myself. No
7 grant money. It's all about working hard and staying
8 compliant. We've all got to stick together. We can't
9 change this now. We worked too hard for this.

10 That's all I've got to say. Thank you.

11 CHAIRPERSON NICHOLS: Mr. Slater.

12 MR. SLATER: Madam Chair, Board members, my name
13 is James Slater with West Coast Sand and Gravel. We're a
14 large California construction material transporter with
15 the sub-hauler network of over 150 California motor
16 carriers, most of which are small fleets primarily
17 independently owned single truck operators.

18 I'm here today to represent their collective
19 voice. According to the rule and due to the inability to
20 enforce the rule, our company is responsible to ensure
21 that all of our sub-haulers are registered with CARB and
22 complying carriers. Our companies spent considerable time
23 and resources educating these carriers on the truck and
24 bus and went through the process in helping them get
25 registered and inform them in many cases of their

1 compliance options. These carriers have gone out and
2 spent considerable dollars, increased their monthly
3 overhead just to comply with the rule.

4 Any delay is going to cause irreparable harm to
5 these companies. And given the uneven playing field, many
6 are concerned if they're going to be able to remain in
7 business, let alone compete.

8 My company, along with these, were early
9 compliers this agency want and need. I urge you on behalf
10 of the independents, as well as the over 500 employees of
11 West Coast to abandon any proposed amendments to future
12 delays. Thank you for your time.

13 CHAIRPERSON NICHOLS: Mr. VanDyk.

14 MR. VAN DYK: Thank you. I'm a small two-truck
15 owner-operator of like I said, a little company. All we
16 haul is cattle 36 years. That's all I know how to haul.
17 Never hauled anything else.

18 This word compliancy up until about 2006 I never
19 heard that word before. Now it's all we hear. It makes
20 us sick to hear it, believe me. The last thing we wanted
21 to do was comply.

22 We did though. \$319,000 I've spent to comply.
23 One of the trucks -- my very first truck I complied with
24 has been nothing but trouble. 2008, first year they came
25 out with the particulate filter on it from the factory, I

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June 25, 2018

VIA ELECTRONIC SUBMISSION & U.S. MAIL

Clerk of the Board
CALIFORNIA AIR RESOURCES BOARD
1001 I Street, 23rd Floor
Sacramento, CA 95812

Re: June 28, 2018, Public Meeting, Agenda Item No. 8-5-2: Proposed California Emission Control System Warranty Regulations and Maintenance Provisions for 2022 and Subsequent Model Year On-Road Heavy-Duty Diesel Vehicles And Heavy-Duty Engines with Gross Vehicle Weight Ratings Greater Than 14,000 Pounds and Heavy-Duty Diesel Engines In Such Vehicles Amendments

Dear Madam Clerk:

The following comments are submitted on behalf of John R. Lawson Rock & Oil, Inc. ("Lawson"). This letter includes Lawson's comments on the California Air Resources Board's ("CARB") proposed amendments (the "Proposed Amendments") to the California emission control system warranty regulations and maintenance provisions for 2022 and subsequent model year road heavy-duty ("HD") diesel vehicles and HD engines with gross vehicle weight rating ("GVWR") greater than 14,000 Pounds and HD diesel engines in such vehicles (the "HD Warranty").

Lawson, as an operator and purchaser of a large fleet of vehicles, is subject to the Proposed Amendments. Lawson has invested millions of dollars proactively complying with the existing programs and other regulations adopted by CARB affecting the trucking industry. Lawson, like many fleet and individual owner operators, cares about the environment and generally supports measures to improve air quality in California; however, Lawson has

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significant concerns about the Proposed Amendments, as well as CARB's inability or unwillingness to enforce the laws it has already promulgated.

CARB is required to comply with the California Environmental Quality Act ("CEQA") through its certified regulatory program when it seeks to adopt regulations. (See Pub. Resources Code § 21080.5; 14 Cal. Code Regs. ["CEQA Guidelines"], §§ 15250-15253; 17 Cal. Code Regs. §§ 60005, 60006, 60007.) CARB is likewise required to comply with the California Administrative Procedures Act, Govt. Code, 11350, *et seq.* (the "APA"), which, among other things, requires CARB to prepare an Economic Impact Assessment ("EIA") or a Standardized Regulatory Impact Assessment ("SRIA") and assess the economic impacts of the Proposed Amendments for major regulations. With respect to the Proposed Amendments, CARB has failed to comply with both CEQA and the APA. As a result, CARB should either decline to adopt the Proposed Amendments, or recirculate the Staff Report to address the full consequences of the Proposed Amendments (and all related and foreseeable regulatory actions CARB seeks to undertake with respect to the trucking industry).

A. CARB Must Prepare a SRIA for the Proposed Amendments

Under the APA, state agencies proposing to "adopt, amend, or repeal any administrative regulation" must first perform an assessment of "the potential for adverse economic impact on California business enterprises and individuals." (Govt. Code, § 11346.3, subd. (a).) Among other things, the APA requires that agencies such as CARB prepare either an EIA or a SRIA analyzing "the potential adverse economic impact on California business and individuals of a proposed regulation," (Govt. Code, § 11346.3), and declare in the notice of proposed action any initial determination that the action will not have a significant statewide adverse economic impact directly affecting business. (Govt. Code, § 11346.5, subd. (a)(8); *WSPA v. Board of Equalization* (2013) 57 Cal.4th 401, 428.)

CARB must prepare an SRIA for "major regulations." "Major regulations" include "any proposed rulemaking action adopting, amending or repealing a regulation subject to a review by OAL [Office of Administrative Law] that will have an economic impact on California business enterprises and individuals" exceeding \$50,000,000 "in any 12-month period between the date the major regulation is estimated to be filed with the Secretary of State through 12 months after the major regulation is estimated to be fully implemented." (1 Code Regs. § 2000, subd. (g).) Preparation of a SRIA is subject to review by the Department of Finance ("DOF"). (1 Code Regs. § 2002, subd. (a).) The DOF will vigorously object if an agency attempts to evade the SRIA requirement for major regulations. (See OAL Matter Number: 2016-0104-01 [The OAL disapproved the Board of Equalization's proposed regulation because a SRIA was not prepared. The OAL agreed that the proposed regulation was major, based on the DOF's public comments].)

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The APA requires the EIA and SRIA to evaluate several issues, including “elimination of jobs within the state” and “the elimination of existing businesses within the state.” (Govt. Code, § 11346.3, subds. (b)(1)(A)-(B), (c)(1)(A-B).) The SRIA is also required to evaluate “[t]he competitive . . . disadvantages for businesses currently doing business within the state.” (Govt. Code, § 11346.3, subds. (c)(1)(C).) The EIA and SRIA must be circulated with the 45-day materials (here, the ISOR), and must be supported by “facts, evidence, documents, [or] testimony,” and made available for public review and comment for at least 45-days before an agency approves a regulation. (Govt. Code, §§ 11346.5, subds. (a)(7), (a)(8), 11347.3(b)(4).) The SRIA cannot be based on “mere speculati[on].” (*WSPA, supra*, 57 Cal.4th at 428.)

“A regulation . . . may be declared invalid if . . . [t]he agency declaration . . . is in conflict with substantial evidence in the record.” (*Calif. Ass’n of Medical Products Suppliers v. Maxwell-Jolly* (2011) 199 Cal.App.4th 286, 306.) “Inferences may constitute substantial evidence, but they must be the product of logic and reason. Speculation or conjecture alone is not substantial evidence.” (*Roddenberry v. Roddenberry* (1996) 44 Cal.App.4th 634, 651.) “The ultimate test is whether it is reasonable . . . in light of the whole record.” (*Id.* at p. 652.)

CARB did not prepare an SRIA because it classified the Proposed Amendments as a non-major regulation. Dismissing the SRIA requirement in three sentences in the Staff Report, CARB stated, “the annual economic impact of staff’s proposal does not exceed \$50 million in 2023 which is 12 months after full implementation of the warranty amendments, and hence this proposal is not a major regulation as defined by title 1 CCR section 2000(g), and thus a SRIA is not required.” (See Staff Report at IX-11.)

This conclusion is not supported by substantial evidence. CARB staff states that direct costs incurred by engine and vehicle manufacturers due to the Proposed Amendments would be passed on to HD vehicle owners by increasing the purchase price of the vehicle. (Staff Report at IX-1, IX-8, IX-9, IX-10.) CARB “expects manufacturers to markup warranty packages to include a profit, by as much as 45%.” (Staff Report at ES-11.) CARB’s only source for this claim is a link from Fullbay, a company that provides HD repair software and does not engage in the sale of warranty packages of any kind.¹

CARB’s use of Fullbay’s *Heavy Truck Shop Parts Pricing* (the “Fullbay article”) as its data source for the 45% markup ceiling for the HD Warranty is erroneous for several reasons. (See Exhibit “A”.) First, the Fullbay article only addresses pricing for HD vehicle parts. In fact, warranties are wholly absent and not even mentioned in the Fullbay article. (See Exhibit “A”.)

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¹A link to Fullbay’s website for the Board’s reference: <https://www.fullbay.com/>.

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CARB also misconstrues the Fullbay article's interpretation of "45%." The Fullbay article states HD vehicle shops should *average a 45% profit before overhead*. (See Exhibit "A".) The Fullbay article, however, states: "Be careful not to confuse profit and markup. If you need a 45% profit, does that mean you mark your parts up 45%? No! Profit and markup are not the same thing. Many shops fall into the trap of assuming they are. To achieve a 45% profit, you don't mark your parts up 45%; you actually have to mark them up 81.6%." (See Exhibit "A".) Thus, CARB's claim that 45% is the markup ceiling for the HD Warranty is unsubstantiated by the evidence it cites. This is even more concerning considering CARB used the 45% markup ceiling to calculate the economic impact of the Proposed Amendments, which as a result is significantly undervalued.

Even if CARB were to use the Fullbay article markup table, a 45% profit would mean a 81.6% markup and a 75% profit could mean a 299.4% markup. (See Exhibit "A".) With no ceiling on what HD manufacturers could charge, fleet owners could expect the cost of HD Warranties to cost more than three times its current price.

Notwithstanding CARB's failure to prepare a SRIA, the current EIA for the Proposed Amendments does not meet the applicable standards. The analysis Programs' "potential adverse economic impact on California business and individuals of a proposed regulation," (Govt. Code, § 11346.3), is contained on pages 86-87 of the ISOR and pages 1-24 of Appendix C to the ISOR.

As stated above, CARB admits that the costs impacts on manufacturers will be passed on to fleet owners who will purchase HD Warranties. (Staff Report at p. 93.) CARB staff, however, dismisses the costs passed onto fleet owners as "indirect cost impacts." This ignores the fact that fleet owners may have to pay more than three times for an extended HD Warranty.

The EIA's discussion of "[t]he . . . elimination of jobs within the state," (Govt. Code, § 11346.3, subd. (b)(1)(A)) and the "[t]he . . . elimination of existing businesses within the state" (Govt. Code, § 11346.3, subd. (c)(1)(B)), is incomplete. CARB asserts that there will be "[m]inimal impacts . . . on the elimination of businesses within California." While fleet owners will have to pay an increased cost through a higher purchase price of HD vehicles, CARB believes the "benefits from reduced emission-related repair costs will mostly offset the increased capital cost." (ISOR at p. 93.) Thus, CARB is effectively conceding fleet owners will be forced to pay for the repair costs upfront since the repairs will be covered by the higher price of the HD Warranty.

CARB has also failed to comply with the APA by failing to look at all of its numerous rulemakings in 2018 and 2019 – and their impacts on California truckers – in the aggregate. The HD Warranty rulemaking is just one of numerous rulemakings CARB is considering in 2018 and 2019 that will increase costs on the trucking industry. For instance, in addition to the Proposed Amendments, CARB's website reveals that CARB is considering amendments to the CA Phase 2

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and Tractor-Trailer Regulation, as well as amendments to the Heavy Duty Vehicle Inspection Program and Periodic Smoke Inspection Program (which CARB is unwilling or unable to effectively enforce). In addition, Lawson understands CARB is considering anticipated regulations governing TRU units in 2019. Each of these regulations – and the regulations cumulatively – will increase costs on truckers. The EIA should be amended to consider the adverse cumulative impact of these regulations (as well as the existing Truck and Bus Regulation), and the overwhelming likelihood that CARB will continue to fail to enforce the regulations against non-compliant truckers. Because the EIA does not consider this “potential adverse economic impact on California business and individuals of a proposed regulation,” (Govt. Code, § 11346.3), it fails under the APA.

As stated above, CARB’s undervaluation of the potential markup goes to the heart of the economic impact conclusions in the Staff Report. The 45% markup ceiling is unsubstantiated, yet CARB uses that figure to calculate numerous figures throughout the Staff Report. As a result of the foregoing, CARB should decline to adopt the Proposed Amendments until such time as CARB is unable to substantiate and calculate the true cost of the Proposed Amendments on fleet owners. Absent that, CARB staff must prepare a SRIA or the EIA must be augmented to adequately address the adverse impacts on California businesses.

B. CARB’s Proposed Action Violates the Clean Air Act

CARB asserts that “California is the only state with the authority to adopt and enforce emissions and test procedures for new motor vehicles and new motor vehicle engines that differ from federal emission standards and test procedures” citing Clean Air Act section 209(b)(1). (ISOR at p. 27.) This is only true provided that CARB first seeks a section 209 waiver from the EPA.

The Proposed Amendments apply to new 2022 and subsequent model MY HD diesel engines. Since section 209(a) applies to new motor vehicles and engines, the Proposed Amendments are necessarily implicated.

However, it does not appear that CARB has sought and received a section 209(b) waiver from EPA for the Proposed Amendments. Any mention of a section 209(b) waiver from the EPA is absent from the Staff Report. Rather, the Staff Report simply states, “CARB is authorized to adopt different warranty requirements than those in effect at the federal level under the authority granted to it by the Health and Safety Code, and under the provisions of the federal Clean Air Act,” with no further explanation. (ISOR at p. 103.) By failing to obtain a section 209 waiver for its Proposed Amendments, CARB has violated the Clean Air Act.

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C. CARB's Proposed Action Violates CEQA

1. **CARB's Certified Regulatory Program Does Not Authorize a Finding of Exemption from CEQA**

The ISOR for the Proposed Amendments does not discuss the potential environmental effects of the Proposed Amendments, as required under the California Environmental Quality Act, Pub. Resources Code, § 21000, *et seq.* ("CEQA") and CARB's certified regulatory program, but instead purports to find the Proposed Amendments are "exempt" from CEQA:

[S]taff has concluded that the proposed regulatory amendments qualify as exempt under CEQA because the action is both an action taken by a regulatory agency for protection of the environment (as described in CEQA Guidelines 15308 for "class 8" exemptions); and because it can be seen with certainty that there is no possibility that the proposed amendments may have a significant effect on the environment (as described in CEQA Guidelines 15061(b)(3) for "common sense" exemptions).

(ISOR at VII-1.)

A Notice of Exemption, however, is not a document cognizable under CARB's certified regulatory program. Nor is there any authority to suggest that CARB may avoid the procedures of its certified regulatory program in instances where CARB subjectively believes no environmental analysis is warranted. Section 60005(b) of CARB's certified regulatory program specifically states:

All staff reports shall contain a description of the proposed action, an assessment of anticipated significant and long or short term adverse and beneficial environmental impacts associated with the proposed action and a succinct analysis of those impacts. The analysis shall address feasible mitigation measures and feasible alternatives to the proposed action which would substantially reduce any significant adverse impact identified.

(17 Cal. Code Regs., § 60005(a) [emphasis added].) Section 60007 refers to this analysis as the "Environmental Assessment." (*Id.*, § 60007(b).) CARB's certified regulatory program does not include any mechanism for CARB to find a proposed regulatory action is "exempt" from CARB's certified regulatory program or CEQA generally, (*id.* §§ 60005, 60006, 60007); rather, the Environmental Assessment must be included for "[a]ll staff reports . . ." (*Id.* § 60005(b) [emphasis added].) Moreover, CARB's certified regulatory program does not authorize the filing of a Notice of Exemption; rather, the only cognizable "notice" in the certified regulatory

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program is the “notice of the final action” referenced in Section 60007(b), which Lawson understands CARB refers to as the “Notice of Decision.”

The relevant document here is the “*Staff Report: Initial Statement of Reasons*” released May 8, 2018. As a result, CARB was required to comply with Section 60005 of its certified regulatory program, and prepare an Environmental Assessment – and not a Notice of Exemption. The Staff Report/ISOR should therefore be revised to include an Environmental Assessment, and recirculated for public review.

2. CARB is Seeking to Piecemeal Environmental Review.

Lawson has previously commented that CARB is seeking to impermissibly piecemeal environmental review by declining to analyze all of the upcoming regulations that affect the trucking industry together. As explained before, the “requirements of CEQA cannot be avoided by piecemeal review which results from chopping a large project into many little ones—each with a minimal potential impact on the environment—which cumulatively may have disastrous consequences.” (*Env’t Prot. Info. Ctr. v. Calif. Dept. of Forestry & Fire Prot.* (2008) 44 Cal.4th 459, 503.) Thus, CEQA “forbids ‘piecemeal’ review of the significant environmental impacts of a project.” (*Berkeley Keep Jets Over the Bay Comm. v. Bd. of Port Comm’rs* (2011) 91 Cal.App.4th 1344, 1358.) Rather, when a lead agency undertakes the environmental review process, the lead agency must review and consider the “*whole* of the action,” (CEQA Guidelines, § 15378 [emphasis added]), and consider “the effects, both individual and *collective*, of all activities involved in [the] project.” (Pub. Resources Code, § 21002.1, subd. (d).) It is only through a complete and accurate “view of the project may affected outsiders and public decision-makers balance the proposal’s benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal . . . and weigh other alternatives in the balance.” (*Berkeley Keep Jets, supra*, 91 Cal.App.4th at 1358.)

CARB is presently considering numerous regulatory actions that will adversely impact the trucking industry. The cumulative effect of these regulations, as well as CARB’s policy of under-enforcement, is to incentivize non-compliance. As such, to avoid piecemealing, CARB’s revised environmental document should include an analysis of the *all* pending efforts to increase costs on the trucking industry, and analyze whether CARB’s inability to enforce existing and future regulations will cause unintended environmental effects.

D. CARB Impermissibly Double-Counts Benefits

CARB estimates the Proposed Amendments would “result in a statewide reduction in NOx emissions of 0.75 tons per day in the year 2030, as well as a small reduction in PM2.5 emissions (16 pounds per day in 2030).” (Staff Report at ES-11.) However, CARB has claimed similar reductions in NOx emissions and PM2.5 emissions in previously programs and

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rulemakings. CARB provides no explanation as to how these "benefits" will be achieved through the Proposed Amendments. Rather, CARB assumes that these "benefits" are solely the result of additional compliance as a result of fleet owners fixing problems under the HD Warranty, which CARB has failed to substantiate.

E. The Proposed Amendments Constitute a Regulatory Taking, Particularly When Combined with the Effects of (i) Other Rulemakings and (ii) CARB's Uneven Enforcement

Responsible truckers will be required to spend millions of dollars in purchasing extended HD Warranties under the Proposed Amendments, in addition to their existing compliance with other programs and regulations. There is no ascertainable public benefit associated with the Proposed Amendments, particularly when viewed in the context of these other programs and regulations. Making matters worse, CARB is failing to evenly enforce the regulations currently on the books, and is actively harming the responsible truckers who have dutifully complied with CARB's myriad regulations targeting the trucking industry.

CARB's actions – both with respect to the Proposed Amendments and cumulatively – result in a deprivation of private property in a manner that is arbitrary, capricious, and is of no benefit to the public. This violates well-settled constitutional property rights, and results in a regulatory taking. (See *Kelo v. City of New London, Conn.* (2005) 545 U.S. 469; see also Cal. Const. art. 1, § 19.)

Lawson will seek to recover the expenses it has incurred as a result of CARB's unjust, arbitrary, and capricious regulatory action.

F. Violation of Equal Protection and Due Process

By CARB's own admission, direct costs incurred by engine and vehicle manufacturers due to the Proposed Amendments would be passed on to fleet owners by increasing the purchase price of the vehicle. (Staff Report, Appendix C, at 1.) CARB has not provided rational justification for providing this significantly deferential treatment to engine and vehicle manufacturers compared to truckers. By effectively allowing engine and vehicle manufacturers to pass the costs of repairs to their customers, CARB places responsible compliant fleet and truck owners at a significant competitive disadvantage. Moreover, CARB erroneously warranty packages could be marked up to include a profit by as much as 45%. (Staff Report at IX-1, IX-8, IX-9, IX-10.) In reality, the warranty packages could be marked up to include a profit more than three times the price of current warranty packages. (See Ex. "A.") The Staff Report fails to recognize this result, let alone provide any rational justification for it. This is a violation of Lawson's equal protection and due process rights.

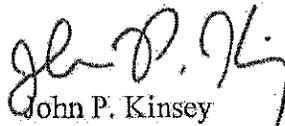
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CONCLUSION

Based on the foregoing, CARB should decline to approve the Proposed Amendments. If CARB does consider the Proposed Amendments, CARB must fully discharge its obligations under the APA and CEQA, and ensure the Proposed Amendments will not violate Lawson's constitutional rights.

Respectfully submitted,



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WANGER JONES HELSLEY PC
Attorneys for John R. Lawson Rock & Oil, Inc.

Heavy Truck Shop Parts Pricing

We see many heavy truck shops that underprice their parts. A lot are not getting the profit margin they need (and may not even be covering their costs). Some picked a markup percentage long ago and just stuck with it. Others feel bad about making any profit on parts.

Don't fall into these traps. Heavy duty shops have to be deliberate in pricing parts—good parts pricing won't happen on its own. You'll see customers complain when parts are priced too high, but never when they're too low.

Making a profit is how you survive. If you don't make a profit on parts you have to make it up in other areas. As we discuss in our shop profitability article, even the nuns that founded St. Joseph's Hospital in Phoenix baked a profit into all the work the hospital did. They followed the mantra "No Margin, No Mission." So if even a charity needs a healthy margin to keep the doors open, don't you?

If you want your shop to survive and thrive, you must make a healthy profit on your parts. This article discusses how heavy truck shop parts pricing should work. Follow our guide below to figure out where your heavy duty parts should be priced.

25% **45%**

Max ticket share you should spend on parts.

Profit you should average before overhead.

FULLBAY

Heavy truck shop parts pricing should give you an average 45% profit between parts and labor. Only 25% of the average ticket should be spent on buying parts.

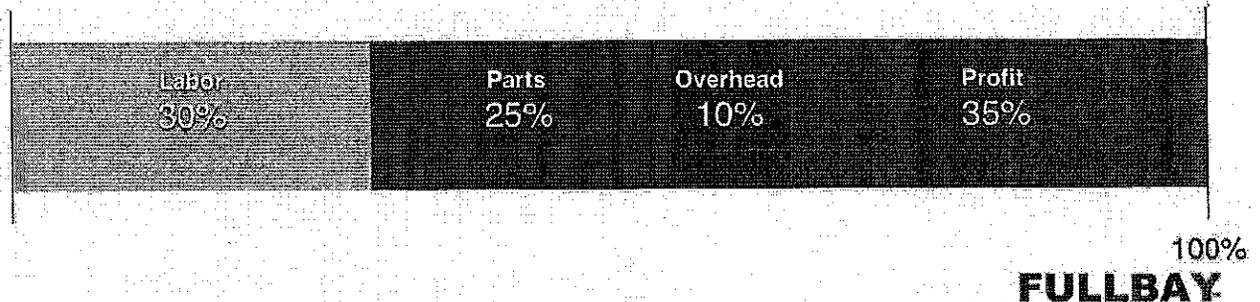
Heavy Truck Shop Parts Pricing and You

1. **Know your numbers:** Add up your costs so you know how much needs to be covered
2. **Do the math:** Start with the profit you need and back into a parts markup percentage
3. **Be reasonable:** Charge a higher markup for lower-priced parts
4. **Save your energy:** Use shop management software that calculates markup for you so you don't have to think about it every time

1. Know Your Numbers: How much cost needs to be covered?

Your total cost on parts shouldn't be any higher than 25% of sales. The chart below shows how every dollar of sales, on average, should be allocated in your shop. (30% to pay techs and managers; 25% to buy parts; and 10% for overhead. What's left is your profit.)

Breakdown of Every Dollar in Heavy Duty Repair



If your diesel repair shop is firing on all cylinders, profit should be 35% of sales.

Labor should be 30%, parts 25%, and overhead 10%.

Anything higher than this 30/25/10 mix eats directly into profit. So if your cost on parts is above 25% of sales, you either need to charge more or cut your costs. Ways to cut costs include negotiating prices with suppliers and keeping inventory low.

ties up in inventory, cost of the parts room, insurance, obsolescence, and theft.

Cultivate a good relationship with your parts suppliers and constantly work on getting better pricing. Your shop management software should show which vendors you throw the most business to. Leverage these statistics to get better pricing. Your software should also make parts ordering very accurate. Vendors are more likely to give you a break on pricing if your parts return rate is low.

2. Do the Math: Back into a parts markup percentage

A heavy duty diesel shop should be making 35% profit after covering labor, parts, and overhead. If your profit is below 35%, there are adjustments you can make to get there. (Read more about this in our article on diesel repair shop profitability.)

To achieve 35%, your profit on parts and labor actually needs to average 45%. That is because of overhead. After covering 10% overhead you will come in at your target of 35%. If your profit on labor is higher than 45%, you can afford to make less profit on parts. If your profit on labor is less than 45%, you will need to make it up on parts. Heavy truck shop parts pricing done right will keep your profit where it should be.

Be careful not to confuse profit and markup. If you need a 45% profit, does that mean you mark your parts up 45%? No! Profit and markup are not the same thing. Many shops fall into the trap of assuming they are. To achieve a 45% profit, you don't mark your parts up 45%; you actually have to mark them up 81.6%.

Use the table below as a guide in converting profit to markup. Find your desired profit. Next to it will be the markup you will need to achieve that profit.

Converting Profit to Markup

Profit %	Markup %	Profit %	Markup %
20%	25.0%	50%	100.0%
25%	33.3%	55%	121.8%
30%	42.8%	60%	149.9%
35%	53.8%	65%	185.2%
40%	66.7%	70%	233.2%
45%	81.6%	75%	299.4%

FULLBAY

Profit and markup are not the same thing. Heavy truck shop parts pricing involves finding the profit you need, then backing into the markup you will charge to get that profit.

By the way, if you want to build this table yourself, the formula to convert profit to markup is: Profit = Markup / (Markup + 1). Read more in our profitability article about how to reduce the cost of parts.

3. Be Reasonable: Charge a higher markup for lower-priced parts

Now you have an idea of what your markup percentage should be. Let's say we've chosen 82% to get us a profit of 45% on our parts. Does this mean you charge an 82% markup across the board?

Consider the case of two parts: a \$5,000 engine core and \$5 wiper blades. You would get run out of town trying to charge an 82% markup on the engine core. But you could probably justify charging

In other words, you should charge a higher markup for lower-cost parts, then gradually reduce the markup as the parts get more expensive. Heavy truck shop parts pricing should be on a graduated scale, using a parts pricing matrix.

Here is an example of a graduated markup scale.

Parts Pricing Matrix

Cost of Part	Gross Profit %	Markup %
\$0.01 - \$1	50%	100%
\$1.01 - \$10	43%	75%
\$10.01 - \$25	33%	50%
\$25.01 - \$150	31%	45%
\$150.01 - \$300	29%	40%
\$300.01 - \$500	23%	30%
\$500.01 - \$1,000	20%	25%
\$1,000.01 - \$5,000	17%	20%
\$5,000.01 - Above	13%	15%

FULLBAY

Heavy truck shop parts pricing should be done on a graduated scale. This is an example parts pricing matrix that shows a higher markup for lower-priced parts.

4. Save Your Energy: Your shop management software should calculate the markup

Don't wait until the heat of the moment to do your parts markup. Your shop management software should do the math for you on the fly. The software should allow you to set up a graduated pricing

Heavy truck shop parts pricing should be automated like this due to the sheer volume of parts coming through the shop. If you wait to calculate markup every time, you'll spend energy doing the math on markup that you could be spending more productively. Do the math once, then let your shop management software do the work for you going forward.

Conclusion

With a little effort upfront, parts will be a steady source of profit to your shop. With the right tools, heavy truck shop parts pricing will help you achieve your profitability goals.

We built Fullbay to drive consistent, predictable profitability on parts in your shop. It also runs the front and back office areas of your shop. Visit our demo request page or fill out the form below to see Fullbay in action.

Request a demo

First Name *

Last Name *

Email *

Phone *

Your Shop *

Preferred Time of Day

REQUEST DEMO

Philosophy

Preventive Maintenance

Remember the 'Why'

Planning

Efficiency

Complaint, Cause,
Correction

Go for Win-Win Deals

Accountability

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Guides

How to Start a Diesel
Repair Shop

How to Attract Diesel
Technicians

How to Set Your Labor
Rates

How to Price Your Parts

How to Build Trust With
Your Customers

How to Make Your Shop
Profitable

Heavy Duty Labor Guides

Diesel Particulate Filter
(DPF) Regen

Why to Charge for
Diagnostic Work

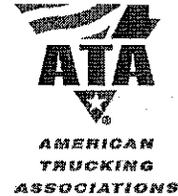
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February 5, 2018

California Air Resources Board
1001 I Street
Sacramento CA 95814

Re: Comments of the California Trucking Association and American Trucking Associations on the Proposed California Greenhouse Gas Emissions Standards for Medium- and Heavy-Duty Engines and Vehicles and Proposed Amendments to the Tractor-Trailer GHG Regulation

(Submitted Electronically: <http://www.arb.ca.gov/lispub/comm/bclist.php>)

Dear Chair Nichols and Members of the Board:

The California Trucking Association (CTA) and American Trucking Associations (ATA) appreciate the opportunity to comment on the California Air Resources Board's (CARB's) Proposed California Greenhouse Gas Emissions Standards for Medium- and Heavy-Duty Engines and Vehicles and Proposed Amendments to the Tractor-Trailer GHG Regulation posted on December 19, 2017. CTA is the nation's largest statewide trade association representing the trucking industry and the California representative of the ATA federation. ATA is the national trade association that represents the U.S. trucking industry and is a united federation of motor carriers, 50 state trucking associations, and national trucking conferences created to promote and protect the interests of the trucking industry.

As part of this federation, member companies have worked tirelessly to be both sustainable and environmentally-sensitive in their operations. Our members have taken great strides to improve their environmental performance while also advancing their business positions whether through the development and adoption of the trucking industry's first-ever sustainability plan in 2008; the phase-in of ultra-low sulfur diesel fuel beginning in 2006; the use of new clean diesel engine technologies to reduce PM and NOx emissions to unprecedented levels; and support for both the Phase 1 and Phase 2 greenhouse gas and fuel efficiency standards for medium- and heavy-duty trucks.

With respect to the above-referenced CARB proposals, CTA and ATA:

- 1) Support the proposed adoption of GHG emission standards that largely align with the federal Phase 2 standards and amendments to the Tractor-Trailer GHG Regulation to harmonize with the Phase 2 trailer standards.**
- 2) Request the Board to direct staff to quantify and include the additional NOx reductions which will result from the Phase 2 GHG standards in state and regional emissions inventories.**
- 3) Request the Board to carefully evaluate the impacts additional state-only costs attributed to this proposal, plus upcoming proposals, will have on new truck purchases within the state.**

- 1) CTA and ATA support the proposed adoption of GHG emission standards that largely align with the federal Phase 2 standards and amendments to the Tractor-Trailer GHG Regulation to harmonize with the Phase 2 trailer standards.

With respect to the U.S. Environmental Protection Agency's Final Rule for Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles – Phase 2 (Phase 2), a brief overview of ATA's involvement and the process which led to our support is in order.

ATA convened a group of major fleet members to provide input and assess the development of the Phase 2 rule. This group, known as ATA's Fuel Efficiency Advisory Committee (FEAC), represented all aspects of the trucking community including truckload, less-than truckload, package delivery, tank, flatbed, refrigerated, leasing, intermodal, small businesses, cross-border, and vocational applications. Likewise, the FEAC members conducted operations across the entire geographic spectrum of the country. The FEAC worked closely with EPA, National Highway Traffic Safety Administration, CARB, suppliers, manufacturers, academia, trade groups, environmental organizations, fuel providers, and member companies to develop the industry's basic framework on areas of concern under the Phase 2 rule. This document came to be known as the FEAC Guiding Principles which were adopted as official trucking industry policy.

Pertinent to CARB's proposed adoption, the Guiding Principles sought federal standards which would result in harmonization across the nation. Given the interstate nature of trucking, national consistency in regulatory approaches is critical. It is both unwise and unhealthy for the nation's economy and the movement of the nation's freight to have a patchwork of state and federal tailpipe and fuel consumption standards for trucks. CARB's adoption of the GHG and fuel efficiency standards under the Phase 1 rule was a positive step in this direction and this proposed adoption largely continues a harmonized, national approach which is consistent with our Guiding Principles.

- 2) CTA and ATA request the Board to direct staff to quantify and include the additional NOx reductions which will result from the GHG standards in state and regional emissions inventories.

In the federal Phase 2 analysis, the final rule is projected, under all analyses, to reduce emissions of NOx.¹ These reductions are the result of fuel not being consumed, including an estimated 20 billion gallons in California through 2050.² Lowering fuel consumption will reduce upstream emissions from processes involved in getting petroleum to the pump as well as downstream emissions associated with vehicle travel. These reductions include nearly 11 percent of downstream, or tailpipe, NOx emissions by 2050 to more than 20 percent of upstream NOx emissions by 2050.³

CARB has estimated that an 80 percent reduction in ozone emissions from mobile sources is needed to meet federal air quality standards by 2031. Consequently, the federal government's determination that NOx reductions will result from the Phase 2 rulemaking should not be overlooked. California's share of

¹ U.S. Environmental Protection Agency, Final Rule for Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles – Phase 2, p. 73850.

² California Air Resources Board, *Staff Report: Initial Statement Of Reasons for Proposed Rulemaking, Proposed California Greenhouse Gas Emissions Standards for Medium- and Heavy-Duty Engines and Vehicles and Proposed Amendments to the Tractor-Trailer GHG Regulation*, p. ES-5 (December 19, 2017).

³ U.S. EPA, *Ibid.* pp. 73853-73854.

these reductions should be quantified and credited in the state implementation plans once the standards are adoption by the Board. This will help to ensure that all creditable reductions are being accounted for.

- 3) CTA and ATA request the Board to carefully evaluate the impacts additional state costs attributed to this proposal, plus upcoming proposals, will have on new truck purchases within the state.

The ability of trucking companies to purchase and operate new equipment is a key component in reducing emissions. Unfortunately, California lags behind when it comes to the deployment of trucks with the latest generation of clean diesel technologies. According to a study commissioned by the Diesel Technology Forum, California ranks 46th among states in the deployment of these newer trucks (2011 and newer model years).⁴ California's deployment of these trucks, at 25 percent, trails the national average and is half of Indiana's 51 percent, the state with the highest percentage. As noted in the study, additional emissions reductions could occur in California through the accelerated deployment of these trucks.

Governor Brown's Executive Order B-32-15, which led to the development of the Sustainable Freight Action Plan, directed state agencies to increase the competitiveness of the state's freight system. Clearly, the purchase and deployment of newer trucks in the state is not keeping pace with the rest of the nation.

One contributing factor is the state's unique in-use truck standards which have required fleets to purchase new or newer trucks ahead of normal turnover cycles. The cost of accelerating truck purchases to meet the state's deadlines has stretched financial resources and resulted in delayed purchases once the initial compliance has been met. In addition, the use of technology-forcing standards has caused trucking companies to re-evaluate their investment in new trucks that are more expensive, less reliable and require increased maintenance.

The proposed California Phase 2 regulation costs will further increase the cost of new trucks and trailers sold in California. Bear in mind that the federal Phase 2 regulation is projected to increase the price of a new Class 8 truck by more than \$12,000 and a new 53-foot box trailer by roughly \$1,000. While the California-only Phase 2 provisions are projected to cost California fleets an additional \$53 annually, this figure assumes each of these fleets will be purchasing new trucks every year. In reality, only companies purchasing new trucks and trailers in California will bear these costs which will likely result in higher costs.

While the Board has spent a significant number of hours discussing the financial impacts of the state's Truck and Bus Rule, the combined cost of numerous regulations receives much less focus yet likely results in additional unintended consequences. Upcoming state regulatory activities focused on truck warranties, onboard diagnostics, heavy-duty inspection and maintenance practices, and lowering NOx emissions are expected to further add to the cost of purchasing and operating new trucks in California. How these combined initiatives impact fleet purchase patterns and the ability of fleets to operate newer, cleaner trucks is a real concern.

⁴ TruckingInfo.com, *Clean Diesel Trucks Make Up 30% of Commercial Vehicles in the U.S.* (July 17, 2017).

A prime example of this has been the exponential growth of trucks built with glider kits – a new truck chassis combined with major driveline components re-manufactured from a donor vehicle, typically with an engine built prior to the installation of the latest emissions control technologies. Purchasers are drawn to gliders to avoid the additional maintenance, downtime, non-reliability, cost, and driver dissatisfaction involving new vehicles utilizing unreliable technologies. It is not equitable to purchasers of the newest, cleanest trucks to keep paying the bill for cleaner air while trucks built with glider kits negate much of these benefits. CTA and ATA are opposed to any attempts to change the glider vehicle provisions included in EPA's final Phase 2 rule and support the state's proposed adoption of these provisions. We welcome CARB's support in helping to protect the value of our members' investment in newer, cleaner trucks.

CTA and ATA further request the Board to more carefully assess in future rulemakings how state regulatory initiatives and enforcement limitations are impacting fleet purchasing decisions. CARB must also commit to assess how agency decisions involving technology-forcing standards adversely impact fleet turnover rates, the competitiveness of in-state fleets and the purchase of new vehicles.

In closing, CTA and ATA are supportive of CARB's proposed adoption of the Phase 2 standards in order to largely align with the federal program and harmonize the Tractor-Trailer GHG regulation with these standards. We continue to be concerned about the rising cost of new tractors and trailers and how these costs are impacting fleet modernization, particularly in California, where the enactment of additional regulatory requirements and enforcement disparities are impacting the economic viability of the state's trucking industry.

CTA and ATA appreciates the Board's consideration of these comments.

Sincerely,



Chris Shimoda
Vice President, Government Affairs
California Trucking Association



Michael Tunnell
Director, Energy & Environmental Affairs
American Trucking Associations

