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Agency Secretary

Air Resources Board

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Gray Davis
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MEMORANDUM

TO: David B. Judson
Deputy Director and General Counsel
Office of Administrative Law
300 Capitol Mall, Suite 1250
Sacramento, CA 95814

FROM: /s/
W. Thomas Jennings
Senior Staff Counsel

DATE: January 16, 2002

SUBJECT: ZERO-EMISSION VEHICLE REGULATION AMENDMENTS
REGULATORY ACTION NO. 01-1207-02S

The above-referenced regulation amendments were submitted to the Office of Administrative Law (OAL) December 7, 2001, and OAL's last day to act on them is January 23, 2002. In this memorandum I am advising OAL of new information Air Resources Board (ARB) staff has learned of in the last week, and transmitting material relating to this information to be added to the rulemaking file.

Last week ARB staff was contacted by staff of the Regulation Review Unit (RRU) of the California Technology, Trade and Commerce Agency, who asked why the Final Statement of Reasons (FSOR) in the rulemaking apparently did not include responses to written comments transmitted by the RRU the day before the January 25, 2001 public hearing. In the course of investigating the situation, we determined that due to internal miscommunications between ARB staff members, the program staff had been unaware of approximately 109 written comments that had been received on the day of the hearing and were included in the rulemaking file transmitted to OAL. Attachment A provides a list of these commenters. This occurrence had two significant consequences.

First, while the FSOR summarized and responded to 302 public comments in 157 pages of text and a 45-page attachment, it did not identify any comments attributed to the written submittals described above. Accordingly, we have prepared the attached Supplement to the FSOR which addresses those written submittals. It summarizes and responds to the comments made by the RRU, in a separate section as required by

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

California Environmental Protection Agency

David B. Judson
January 16, 2002
Page 2

Government Code section 11347.6. We recognize the importance of comments from the RRU, and deeply regret that they were not addressed in the FSOR filed with OAL December 7, 2002. After reviewing all of the other written comments on Attachment A, we have determined that each point made in those comments regarding the proposed amendments had already been summarized in the FSOR due to the fact that other parties had also made the same basic point. However, the FSOR does not attribute those comments to the written submittals from the commenters listed on Attachment A. Accordingly, the Supplement to the FSOR identifies the additional persons or entities to whom various comments in the FSOR should be attributed.

Second, the staff members who were responsible for summarizing and responding to most of the comments in the FSOR were also responsible for compiling the mailing lists of names and addresses of commenters to whom we were required by Government Code section 11347.1(b) to send "15-day" notices of the availability of modified regulatory text. We have accordingly determined that while the three "15-day" notices listed as Tabs 13, 15 and 17 were each mailed to approximately 700 persons and e-mailed to approximately 723 persons, they were *not* transmitted to the persons and entities on Attachment A unless the person was on our mailing or e-mailing list by virtue of some other reason. In this respect the certifications in Tabs 13, 15 and 17 were in error, although the person who signed them had a good-faith belief the certifications were correct. We recognize that failure to transmit the "15-day" notices to persons listed on Attachment A affects the approvability of the amendments.

We request that this memorandum and its attachments be added to the rulemaking file, with the Supplement to the FSOR being added in a new Tab 20 and this memorandum and its Attachment A added as a new Tab 21. I also enclose a revised Table of Contents, showing the new Tabs 20 and 21, and a new certification of the rulemaking record, reflecting addition of the new materials.

Thank you for your assistance in this matter. If you have further questions, please call me at 323-9608 or 322-2884.

cc: Barbara Anderson, RRU

Attachments