

December 7, 2009

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By Email and Posting to ARB

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California Air Resources Board
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Re: Offroad Diesel Rule – Economic Impact on Emissions

Dear Mr. Terris:

On behalf of the Associated General Contractors of America ("AGC") and its approximately 33,000 members, I would like to thank you, Mr. Saxe and Ms. Heroy-Rogalski for meeting with AGC's General Counsel, Michael Kennedy, AGC members Tom Brown, Mike Shaw and Tony Grasso, Jim Lyons of Sierra Research and me, on Thursday, December 3rd. Enclosed is a copy of Mr. Kennedy's presentation.

When AGC appeared before the Board in January of 2009, the association made it clear that it does not challenge the environmental objectives that ARB originally intended its off-road rule to achieve. AGC merely explained that the dramatic downturn in California's construction industry had provided an opportunity for ARB to meet those objectives without imposing all of the costly and burdensome requirements found in the current rule. The Board directed staff to work with AGC and others to determine the impact of the recession and to report back in the Fall of 2009.

That analysis is now complete and it clearly shows that the rule is unnecessary to meet ARB's original objectives for NOx emissions at any time in the near future, that the rule is unnecessary to meeting ARB's original objectives for PM emissions until some uncertain time between 2012 and 2014 (depending on whether ARB evaluates the reductions on either an annual or a cumulative basis), and that the rule is unnecessary in its current form to meet ARB's original objectives for PM at any time.

In the four years since the board developed the off-road rule, almost 35% of California's construction workers—some 326,000 people—have lost their jobs. While this catastrophic

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downturn has no silver lining, it has significantly reduced diesel exhaust emissions from the construction industry.

In order to quantify the impact of the recession on emissions, AGC retained Sierra Research, a well-respected air modeling consultancy based in Sacramento. AGC directed Sierra to use the same model and assumptions that ARB had originally used, and simply to replace certain values that ARB had derived from various surveys and studies with the new values that ARB has obtained from the actual fleet data it collected earlier this year as various reporting requirements took effect. The results are summarized in the enclosed copy of Mr. Kennedy's presentation.

Sierra's analysis, which was generally praised by your staff, makes it clear that the current recession has reduced the construction industry's emissions of NOx far below anything that ARB originally anticipated, and with only minor exceptions, to levels lower than ARB sought to achieve through 2025. Though some version the rule would yield additional reductions in emissions of PM in the years to come (if the growth rate that ARB assumed and built into its model is accurate), ARB can achieve its original goals for PM with significantly fewer of the expensive retrofits and repowers than the rule currently contemplates.

All of us hope that this recession ends soon and that economic activity, including construction, grows rapidly. There is, however, no basis for believing that such rapid recovery and growth will occur. Indeed, as we pointed out to you in our meeting last week, construction typically recovers more slowly from a recession than other economic sectors. At this time, ARB cannot even assume that the construction sector has bottomed out, or that recovery will be as strong as the growth rates predicted when ARB adopted the rule.

Even though there is little prospect for a strong and rapid recovery, AGC directed Sierra to assume the same growth rate that ARB assumed when it developed the rule. Any suggestion that the future growth rate will justify the rule would run counter to the assumptions ARB made when it developed the rule—during a period of steady and significant economic growth.

In light of these facts, we asked you to relay to the Board that AGC requests it to direct you and the other members of the staff to:

1. Streamline the regulation, eliminating the distinctions between small, medium and large fleets, and regulating all fleets over the same period and to the same extent that ARB originally sought to regulate the small fleets;
2. Genuinely exempt the individual vehicles that the current regulation merely purports to exempt, excluding such vehicles from the calculation of fleet averages

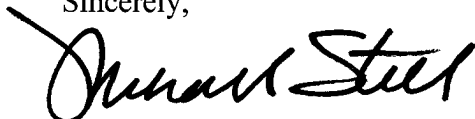
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and compliance with target rates, and excluding the horsepower of such vehicles from the calculation of fleet horsepower;

3. Create a "safe harbor" for fleet owners at risk of suffering serious financial harm, limiting the direct expense that any fleet owner would have to incur in any one year to comply with the regulation (perhaps to a percentage of the owner's net revenue in the preceding year);
4. At least two years before the first deadline for compliance with any fleet average requirements, re-evaluate the costs and benefits of those requirements, and modify them at least to the extent that ARB can do so and still meet its original emission reduction targets; and
5. At least two years before the first deadline for compliance with any fleet average requirements, evaluate and report on the technical feasibility of installing VDECs on the broad array of vehicles that an amended regulation would still require fleet owners to retrofit.

If the Board believes that additional information is needed before it can direct staff to make the changes outlined above, AGC is prepared to present such information and to respond to questions at this week's Board meeting, or at a special meeting called for the purpose of examining the economic impact of the rule in detail. As we discussed, however, time is of the essence. As the state's construction contractors struggle to survive, and to provide at least the remainder of the jobs in the construction industry, they have to weigh the very real prospect that they cannot, in any event, survive the crushing blow that the rule still promises to deliver in 2013.

Sincerely,



Michael Jacob Steel

Counsel to AGC of America

Enclosure

cc: Members of the Air Resources Board (w/enc.)