Responses to Comments

on the

Environmental Analysis

for

THE PROPOSED AMENDMENTS TO THE HEAVY-DUTY VEHICLE INSPECTION PROGRAM AND PERIODIC SMOKE INSPECTION PROGRAM

To be considered at the

July 26, 2018 Board Meeting

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PREFACE

The California Air Resources Board (CARB) prepared an Initial Statement of Reasons (ISOR) for the Proposed Amendments to the Heavy-Duty Vehicle Inspection Program and Periodic Smoke Inspection Program (Proposed Amendments). This ISOR included an Environmental Analysis (EA) for the Proposed Amendments. CARB circulated the ISOR on April 3, 2018 for a public review and comment period that concluded May 21, 2018. A total of 7 comment letters were received on the Proposed Amendments during the public comment period, and 4 comment letters were received during the hearing, one of which addressed the EA prepared for the Proposed Amendments.

1. INTRODUCTION

On April 3, 2018, CARB staff released for public review and comment the ISOR for the Proposed Amendments to the Heavy-Duty Vehicle Inspection Program and Periodic Smoke Inspection Program (Proposed Amendments). The public comment period began on April 6, 2018 and concluded on May 21, 2018.

Seven comment letters were submitted during the public comment period from April 6, 2018, through May 21, 2018, and four comment letters were received during the hearing, one of which addressed the EA prepared for the Proposed Amendments. Comments are available at: https://www.arb.ca.gov/lispub/comm/bccommlog.php?listname=hdvippsip18

At the May 2018 Board Hearing, CARB received one comment letter that purported to raise environmental issues associated with the proposed amendments. Because of a logistical issue, the Board did not have an opportunity to review CARB staff's responses to those comments at that time. To address that issue, subsequent to the May Board Hearing, staff has prepared the below responses to those written comments. 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 Proposed Amendments. 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.

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 twelve total comment letters submitted for the Proposed Amendments, 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 July 26, 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 at the May 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
11	Wanger Jones Helsley PC (on behalf of Lawson Rock & Oil, Inc.)	May 24, 2018

11-1 **Summary of Comment:** The commenter states generally on page 2 of the comment letter that CARB has failed to comply with 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.

11-2 **Summary of Comment:** The commenter states that CARB's CRP does not authorize a finding of exemption from CEQA, and therefore a full Environmental Analysis must be prepared and circulated for public review.

Response: CARB disagrees with this comment. First, the Environmental Analysis 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 Environmental Analysis 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 36-38.) 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 environmental analysis 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 IMPACT ANALYSIS." In brief, that analysis showed that the proposed amendments to the HDVIP and PSIP 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.

11-3 **Summary of Comment:** The commenter states that a "fair argument" exists that the Proposed Amendments would have significant environmental impacts. In particular, the commenter states that due to CARB's "pervasive and costly regulations," and "CARB's unwillingness to evenly enforce its own regulations," truckers have decided not to comply with CARB's regulations. Commenter states that CARB "cannot enforce, and has no intention of enforcing," the Proposed Amendments. Commenter suggests that the Proposed Amendments will create further disincentives for non-responsible truckers to comply with CARB's programs relating to heavy duty trucks, which will cause them to decline to comply with CARB's regulations even further.

Response: CARB disagrees with this comment on multiple levels.

First, as explained below, CARB properly concluded the Proposed Amendments are exempt from CEQA. (See discussion regarding that issue in response to comment 11-2, above.) Therefore, CARB disagrees that the "fair argument" standard applies in this case.

Rather, CARB's determination that the Proposed Amendments are exempt from CEQA is subject to the "substantial evidence" standard of review. As explained in the ISOR and elsewhere in the record, substantial evidence supports CARB's determination. (See ISOR at 35-38.)

Second, there is no substantial evidence to support a fair argument that the Proposed Amendments would increase emissions or cause any other potentially significant environmental impacts. Commenter's contentions in this regard defy logic or evidence.

CEQA provides that "[w]hether a fair argument can be made that the project may have a significant effect on the environment is to be determined by examining the whole record before the lead agency. Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate, or evidence of social or economic impacts which do not contribute to or are not caused by physical impacts on the environment does not constitute substantial evidence." (CEQA Guidelines § 15384 (emphasis added).) 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. In support of this claim, the commenter vaguely suggests that CARB is under-enforcing its regulations, and that this under-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").

somehow incentivizes continued noncompliance that this proposed action will exacerbate. In claiming CARB selectively enforces its regulations against large fleets and not small fleets, the commenter purports to quote language from the ISOR, but it erroneously adds a non-existent term – "large" fleets – to its quoted ISOR text. That term does not appear in the actual ISOR text that commenter references.[2]

Contrary to the commenter's claims, CARB vigorously enforces its diesel truck program requirements. 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, 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 efforts. (See the attached 2017 Annual Enforcement Report at pages 17-23 (particularly the top of page 19), and the attached staff presentation for the 2017 Annual Enforcement Report 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.

[2] Specifically, at pages 4 and 6 of its letter, the commenter claims the ISOR states that Staff would use "submitted data to better target large fleet audits toward fleets that are not performing the required PSIP testing." This is incorrect. In actuality, the referenced language in the ISOR does not include the key word "large"; rather, it states that "Staff would use the submitted data to better target fleet audits toward fleets that are not performing the required PSIP testing."

As the commenter correctly notes, compliance with the current Periodic Smoke Inspection Program (PSIP) regulation is relatively low, at approximately 50 percent. However, that is not evidence that CARB's Proposed Amendments would *decrease* compliance. Indeed, as explained in detail in the ISOR and other places in the record, a primary purpose of the Proposed Amendments is to *increase compliance* by adding reporting requirements. (ISOR at 14-15, 24-25.) This, in combination with further outreach, recordkeeping requirements, and staff audits, will ensure robust enforcement of the PSIP regulation. The ISOR also notes additional factors that are expected to increase compliance under the Truck & Bus Rule, including implementation of SB 1, which will further incentivize turnover to cleaner engine technologies. (ISOR at 17.) Taken together, these improvements will greatly assist CARB with enforcing this program. (See ISOR at 14-15.)

Finally, the commenter's claims regarding the Proposed Amendments' potential to somehow increase emissions are directly at odds with the other claims in its comment letter, which include claims that the Proposed Amendments would require compliance so expensive as to constitute a regulatory taking (comment letter at page 10) and which would amount to unconstitutional interference with contract (comment letter at page 11). Commenter attempts to have it both ways: it claims that the Proposed Amendments 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 Proposed Amendments are designed to cost-effectively improve compliance across all of California's truck fleets subject to the Proposed Amendments.

11-4 **Summary of Comment:** The commenter states that CARB is improperly seeking to improperly "piecemeal" environmental review by declining to analyze in a single Environmental Analysis all of the "upcoming regulations that affect the trucking industry together."

Response: As the commenter correctly notes, CEQA requires 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 Proposed Amendments. As set forth in more detail in the ISOR, the Proposed Amendments only encompass proposed modifications to the HDVIP and PSIP programs, which regulate opacity and smoke emitted from heavy-duty vehicles.

Specifically, the Proposed Amendments primarily involve: (1) lower opacity limits for on-road HD vehicles that apply to both the Heavy-Duty Vehicle Inspection Program (HDVIP) and PSIP programs; (2) training requirements for the PSIP smoke testers; (3) voluntary on-board diagnostics reporting in lieu of the annual PSIP opacity test for vehicles with 2013 MY and newer engines; and (4) reporting requirements for fleets subject to PSIP. (ISOR at 13-14.)

It remains unclear why the commenter believes the Proposed Amendments are similar enough to other heavy-duty regulations to constitute part of the same "project". Even if the Proposed Amendments were related to other CARB efforts in a general sense, the Proposed Amendments have 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 Proposed Amendments will help ensure that on-road vehicles and engines continue to comply with the applicable opacity standards, and that vehicle owners have an incentive to properly maintain and timely seek repairs of defects that cause such vehicles and engines to exceed opacity standards. As noted above, increasing enforceability and enforcement of the HDVIP/PSIP requirements is a key driver for the Proposed Amendments. The HDVIP and PSIP programs serve distinct purposes from CARB's other heavy-duty vehicle regulations (like the Truck & Bus Rule). 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 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 Proposed Amendments were considered part of a broader "project" (which they are 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 speculative, such a premise is contrary to both logic and reality, and does not constitute evidence of an environmental impact. See discussion in response to comment X-3, above.

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Attachment 1

Yian Nguyen
18-4-3

WANGER JONES HELSLEY PC
ATTORNEYS

OLIVER W. WANGER
TIMOTHY JONES*
MICHAEL S. HELSLEY
PATRICK D. TOOLE
SCOTT D. LAIRD
JOHN P. KINSEY
KURT F. VOTE
TROY T. EWELL
JAY A. CHRISTOFFERSON
MARISA L. BALCH
PETER M. JONES**
STEVEN M. CRASS**
AMANDA G. HEBESHA***
JENA M. HARLOS****
MICAELA L. NEAL
REBECCA S. MADDOX
NICOLAS R. CARDELLA
ERIN T. HUNTINGTON
STEVEN K. VOTE
JENNIFER F. DELAROSA
LAWRENCE J.H. LIU
ROCCO E. DICICCO
GIULIO A. SANCHEZ

* Also admitted in Washington
** Of Counsel
*** Of Counsel/Also admitted in Idaho
**** Also admitted in Wisconsin

265 E. RIVER PARK CIRCLE, SUITE 310
FRESNO, CALIFORNIA 93720

MAILING ADDRESS
POST OFFICE BOX 28340
FRESNO, CALIFORNIA 93729

TELEPHONE
(559) 233-4800

FAX
(559) 233-9330

WJH

OFFICE ADMINISTRATOR
LYNN M. HOFFMAN

Writer's E-Mail Address:
jkinsey@wjhattorneys.com

Website:
www.wjhattorneys.com

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.

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. I 11-1

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

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 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.)

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.

> 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 complaint 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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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 effective 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. (c)(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

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

11-2

[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.

> 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 "*[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."

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.

11-2 Cont.

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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.

11-3

[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.

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.

11-3 Cont.

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." (*Envt'l 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.)

11-4

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.

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.

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

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

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

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

CHAIRPERSON NICHOLS: Thank you.

Shellie Archer.

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

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

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

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

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

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

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

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

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

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

Okay. Mr. Nguyen.

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

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

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

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

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

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

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

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

CHAIRPERSON NICHOLS: Thank you.

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

MR. NGUYEN: I think they did but --

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

MR. NGUYEN: We tried to make it short.

CHAIRPERSON NICHOLS: Thank you very much.

Okay. Next is Steven Davis.

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

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

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

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

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

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

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

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

Mr. Falkner.

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

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

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

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

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

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

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

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

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

CHAIRPERSON NICHOLS: Mr. Hessler.

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

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

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

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

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

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

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

Thank you very much.

CHAIRPERSON NICHOLS: Mr. Britten.

MR. BRITTEN: Thank you, Chairman.

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

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

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

Thank you.

CHAIRPERSON NICHOLS: Ms. Holmes-Gen.

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

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

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

been wasted.

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

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

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

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

MS. DE GRAFF: Good morning, Madam Chair and members of the Board.

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

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

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

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

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

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

that my husband and I both made.

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

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

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

CHAIRPERSON NICHOLS: Thank you.

Ms. Ferrari.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MR. MAC DONALD: Thank you. My apologies.

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

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

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

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

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

We understand the intention of the amendments,

CHAIRPERSON NICHOLS: Mr. DeVries.

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

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

CHAIRPERSON NICHOLS: Mr. Slater.

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

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

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

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

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

CHAIRPERSON NICHOLS: Mr. VanDyk.

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

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

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