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April 20, 2017

Via Federal Express

Mr. Scott Pruitt
EPA Administrator
United States Environmental Protection Agency
EPA Headquarters
Mail Code 1101A
William Jefferson Clinton Building (North)
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Re: *Dalton Trucking v. EPA* (9th Circuit Case No. 13-74019)

Dear Administrator Pruitt:

I write as the owner of one of the ten petitioners in the referenced case, in which we challenge EPA's approval of California's application for waiver from the Clean Air Act's preemption of state regulation over mobile source emissions standards. Specifically, EPA granted a waiver to California in a Federal Register notice dated September 20, 2013, 78 Fed. Reg. 58090, et seq., allowing California to enforce its strict emissions standards for particulate matter and nitrogen oxides from nonroad diesel engines, such as tractors and excavators.

EPA rubber stamped the waiver application on the ground that California needed its own mobile source emissions program “as a whole,” without determining whether California needed the specific emissions standard for which the waiver application was made. I am not a lawyer, but I can read. The test that EPA applied to grant the waiver is contrary to the language of the Clean Air Act, which requires California to prove that it has “compelling and extraordinary circumstances” necessitating a waiver for the specific emissions standard for which the waiver application was made. California did not make that showing and according to the CDC, California is the 4th healthiest State in the Nation measured by premature death. If Federal Standards is adequate for 46 other States which are less healthy, then it should certainly be fine for California. When I commented on this during the public comment period, EPA responded by stating that California needed the waiver in order to comply with its State Implementation Plan in two air quality basins in the state. The problem is that California has 14 air quality basins, not two, yet EPA nevertheless granted a statewide waiver.

The issue is not academic to me. My father started our road construction business in 1943, and these California regulations are putting his legacy, and our entire company, out of operation. We cannot afford to retrofit our existing vehicles to meet the regulatory requirements, nor can we afford to purchase new ones, leaving us with no option but to lay off honest, hardworking people and close shop. My co-plaintiffs are in similar circumstances. The overall result of the waiver grant is that smaller companies relying on diesel equipment are going out of business while larger ones with available credit or cash are taking over market share, thereby decreasing competition and increasing prices across-the-board. In addition, individuals are precluded from starting a heavy construction company due to the fact

that they cannot purchase used equipment that don't meet these regulations and new equipment costs are too expensive. All this is transpiring because EPA improperly granted California's waiver application.

The 9th Circuit is hearing oral argument in the case on May 18, 2017, in San Francisco. Anything you can do to help EPA and its attorneys take a position that honors the actual language of the Clean Air Act would be greatly appreciated.

Sincerely,



Skip Brown
Owner

NOTE: My TALKING POINTS TO CARB
ON OCT 19, 2012 - IGNORED

EPA WAIVER OF PREEMPTION

Talking Points

October 19, 2012

By

Skip Brown, Owner, Delta Construction Co., Inc. Established 1943

California needs a Waiver of Preemption from the EPA to enforce new regulations on previously owned and legal when purchased off-road diesel equipment. It must have a “COMPELLING AND EXTRAORDINARY NEED” to qualify for such a waiver.

Regardless of this lack of waiver to date, CA has proceeded with implementation dates of regulations which have severely damaged financial capacities of owners of off-road diesel engines by making these engines illegal to use or sell in CA in the near future. A recent sale of one of Delta's equipment that had at least another 10 years of life left brought \$13,000, replacement cost new \$225,000.

Current and upcoming regulations have destroyed the value of Delta's asset base causing the loss of my banking and bonding relationships exceeding 20 years. Forced sales return only 5% of costs to replace and unemployment increases when owners do not replace sold equipment.

In an effort to analyze the “COMPELLING AND EXTRAORDINARY NEED” for granting the Waiver for CA regulations, I find that:

- It is not for health reasons; CA is 4th healthiest State in the Nation as measured by premature death according to the CDC. If Federal Standards is adequate for 46 other States which are “less healthy”, then it's certainly fine for CA.
- It is not due to air pollution studies; Since 2000, 10 separate analyses of CA specific studies have shown that there is no significant relationship between PM2.5 and premature death.
- It cannot be due to excessive amounts of PM2.5 emitted by off road diesel engines as CARB studies show that only 1% of all PM2.5 come from said engines. Even if there was a significant relationship of PM2.5 to premature death, there are much bigger emitters that should be dealt with before anyone considers regulating previously owned diesel engines.

- It is not when you view the significant economic impact on a substantial number of small entities as described in the Regulatory Flexibility Act. If these regulations can destroy my 69 year business, it can and will destroy thousands of others who have not survived nearly as long.
- And it is certainly not when one considers Mortality Associations resultant from decreases of income as compared with increases of airborne PM. The 4 healthiest Counties and the 4 unhealthiest Counties in CA have the same number of Particulate Matter Days (6-7) per year. Other Counties have PMD's in the 30's per year. There is no relationship of PMD's to premature mortality. The real cause of poor health is poverty. The average households with children in poverty in the 4 healthiest Counties is 13%, while the same average in the 4 unhealthiest is 31%. Here you find a direct relationship.

California is broke and these regulations will only exacerbate this condition, leading to increased poverty along with declining health of the residents. These regulations are counterproductive to the health of Californians. This supposed "improvement of health" is the sole reason for this regulation.

The only COMPELLING AND EXTRAORDINARY NEED that CA qualifies for is for the EPA to deny this Waiver of Preemption, due to the reasons above and many more articulated before me.