



# CITY OF REDDING

## OFFICE OF THE CITY COUNCIL

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November 27, 2013

Mary D. Nichols, Chairman  
California Air Resources Board  
1001 I Street  
Sacramento, CA 95814

Dear Ms. Nichols:

This letter pertains to the "In-Use On-Road Heavy-Duty Diesel-Fueled Vehicles" regulation. The City Council of the City of Redding has adopted the enclosed resolution to invoke coordination with the California Air Resources Board (CARB) with respect to this regulation. The City Council of the City of Redding has selected me to represent the City of Redding. The City Council of the City of Redding has also selected the Shasta County Coordination Committee to assist the City of Redding (City) with coordination.

The City requests you meet with us to enter into coordination as required by statute and followed by all agencies, federal or state, which receive federal funding, implement federal standards, or rely on federal programs, with rules and regulations impacting the goals and objectives of local government bodies. *Specific Issues to Address* on Page 6 of this letter outlines the proposed points of discussion at this meeting. We invite you to suggest additions if you wish.

We request that you meet with us in the City's Community Room located at 777 Cypress Avenue, Redding, California, either on Tuesday, January 14, 2014, at 1:00 p.m. or Tuesday, January 28, 2014, at 1:00 p.m. Please advise us by Friday, December 20, 2013, as to which date, if any, is acceptable, along with the name of your contact person.

The meeting will be a government to government meeting. It will be open to the public as required by California law, but there will be no public participation through comment or question. The public will be advised that they may make any comment they desire at the public comment period during the next regular City Council meeting after the date of the government to government meeting.

The City may include natural resource advisers to participate as advisory staff and not as members of the public. Please feel free to bring any of your Agency staff.



### **Legal Establishment of Responsibility for Coordination**

You may not be fully aware of the California Air Resources Board's (CARB's) responsibility to coordinate with elected officials. However, for your convenience and ours, we are including in the next portion of this letter the statutory and regulatory provisions setting forth your Board's responsibilities.

At first glance, CARB may be under the impression its diesel rulings emanated only from a concern for the public health and welfare of California's citizens. While this may be partially correct, it is in no way an accurate assessment. Lacking assistance from the Federal Environmental Protection Agency (EPA), CARB would not have promulgated their current diesel particulate standards.

### **Intermingled history connecting California's clean air initiatives with the Federal Government.**

Specifically, CARB has morphed from a bill signed June 10, 1947, by Governor Earl Warren creating the law of the Air Pollution Control Act, authorizing the creation of an Air Pollution Control District in every county of California. California government officials recognized that many illnesses were likely caused by bad air quality. This resulted in the call for air pollution control programs as early as the 1930s. The State Department of Public Health was thus created to look into air quality and the health of the public. Subsequently, California established legislation requiring the state Department of Public Health to establish air quality standards and necessary controls to regulate motor vehicle emissions. The California Motor Vehicle State Bureau of Air Sanitation was created, and they mandated the first automotive emissions control technology in the nation. The first Federal Clean Air Act of 1963 was enacted, and this began federal grants to state and local air pollution control districts.

In 1967, the California Air Resources Board was created from the merging of the California Motor Vehicle Pollution Control Board and the Bureau of Air Sanitation and its Laboratory.

In 1970, the National Environmental Protection Act (NEPA) was signed. This Act oversaw all efforts by both State and Federal initiatives that affected the environment. Also in 1970, the Federal Clean Air Act Amendments were enacted. Together these two Acts served as the principal source of statutory authority for controlling air pollution and established the basic US program for controlling air pollution.

In 1975, the federal EPA developed strategies for implementing State Plan Activities. This again shows how the EPA worked in unison with CARB.

### **The Council on Environmental Quality**

The Council on Environmental Quality (CEQ) coordinates Federal environmental efforts and works closely with agencies and other White House offices in the development of environmental

policies and initiatives. CEQ was established within the Executive Office of the President by Congress as part of the National Environmental Policy Act of 1969 (NEPA), and additional responsibilities were provided by the Environmental Quality Improvement Act of 1970.

Through interagency groups and coordination with other Environmental Operating Principals (EOP) components, the Council on Environmental Quality (CEQ) worked to advance the President's agenda. It also served to balance competing positions, and encouraged government-wide coordination, bringing Federal agencies, state and local governments, and other stakeholders together on matters relating to the environment, natural resources and energy.

### **Balancing Social, Economic, and Environmental Goals**

In addition, CEQ oversees Federal agency implementation of the environmental impact assessment process and acts as a referee when agencies disagree over the adequacy of such assessments.

In enacting NEPA, Congress recognized that many Federal activities affect the environment in some way. It mandated that before Federal agencies make decisions, they must consider the effects of their actions on the quality of the human environment. Under NEPA, CEQ works to balance environmental, economic, and social objectives in pursuit of NEPA's goal of "productive harmony" between humans and the human environment. 42 U.S.C. §4331(a). The CARB diesel particulate requirements fail to meet these goals.

NEPA assigns the Council of Environmental Quality (CEQ) the task of ensuring that Federal agencies meet their obligations under the Act. The challenge of harmonizing economic, environmental, and social aspirations has put NEPA and CEQ at the forefront of our Nation's efforts to protect the environment.

### **Federal funds to CARB for operations, studies, and grants.**

A number of federal grants were given to California EPA for CARB, specifically to advance the Clean Diesel Emissions Program. A partial list includes:

\$3,949,496 to CA EPA for CARB specifically for Clean Diesel Emissions Program on 06-01-2010.

\$1,730,000 for the same purpose on 04-08-09.

\$750,025 to California EPA for CARB studies, research, etc. for the Clean Air Act on 05-17-10

\$670,025 to EPA for the same purpose on 06-12-09.

\$666,515 for the same purpose on 05-12-08.

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When it comes to diesel emission standards in California, CARB is simply an extension of the federal EPA and must comply with federal NEPA requirements.

**Federal permission to CARB related to the California diesel regulations.**

In 2007, EPA granted CARB a waiver of federal preemption for heavy-duty diesel regulations for 2007 and subsequent model year vehicles and engines: (2007 California Heavy Duty Diesel Engine Standards). Reference Federal Register, vol70, #165 dated Friday, Aug 26, 2005 pg 50322. Once again, without federal concurrence, CARB would not have promulgated its diesel particulate standards.

**Statutory Provisions Requiring Coordination**

By including both the statutory and regulatory language, we set forth both the Congressional legal mandate of coordination because of CARB's intermingled authority emanating from the Federal Environmental Protection Agency (EPA).

Under Title 40 of the Code of Federal Regulations, CARB is a "cooperating agency" with the US EPA. Consistent with 40 CFR 1501.5, 1501.6, and 1508.5, the Responsible Official will request other appropriate federal and non-federal agencies to be joint lead or cooperating agencies as a means of encouraging early coordination and cooperation with federal agencies, state and local governments, and federally-recognized Indian tribes with jurisdiction by law or special expertise.

The national Clean Air Act, administered by the EPA and the National Environmental Policy Act of 1969 requires coordination with local elected bodies.

**Specifics required by Coordination.**

Congress did not define "coordinated" or "coordination" in the Clean Air Act. It was not necessary because, at the same time, Congress placed the obligation to coordinate in NEPA and other federal acts such as in the Federal Land Policy Management Act. In those acts, Congress defined very specifically what "coordination" means, that is, the steps an agency must take to coordinate.

In addition, coordinate, coordination, coordinating are not vague terms. If there had been no definition furnished by Congress, the meaning of such word would be taken from an ordinary dictionary since it is a word of common usage. Had that been done, the dictionary definition would have boiled down to a situation in which neither party at the table is superior to the other, each is equal and not subordinate. The California Appellate Court, in *Native Plant Association v. City of Santa Cruz* has added to that the meaning. In coordination, parties make every practical good faith effort to reach consistency and to reach a harmonious state of agreement.

The following information is provided as an example to better define what is required when government to government coordination meetings take place.

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In 1982, the Secretary of the Agriculture issued the Forest Service Planning Rules. At the time the Secretary issued the Planning Rules, he was aware of the manner in which Congress had passed and defined the term "coordinate". Consistent with that definition, the Secretary issued Rule 219.7 "Coordination with other public planning efforts."

In Rule 219.7, he provided that in order to satisfy the rule, the "responsible line officer" "shall coordinate regional and forest planning with the equivalent and related planning efforts of other federal agencies, States and local governments, and Indian Tribes."

Having full knowledge of the elements prescribed for coordination by the Congress in Federal Land Policy Management Act and NEPA, the Secretary spelled out the following equivalent elements for the Forest Service. This same level of coordination is required to occur between CARB and the City of Redding.

1. Notice must be given to the local elected body of any intent to prepare a land or operational restriction, or anticipated activities impacting the citizens of the governing body. In this case, those truck owners operating in the area of influence for the City of Redding and or providing goods and services for northern California citizens.
2. Under the requirements for the CARB to coordinate with local elected officials, CARB is required to inform and notify the local council of any planned or pending actions impacting business or the citizens in the area of influence for the City of Redding.

#### **Procedures for Coordination under NEPA.**

Title 40: Part 6 details the procedures which are to be followed when implementing standards under the National Environmental Policy Act (NEPA) and assessing the environmental effects of CARB's proposed standards and/or actions impacting citizens in the north state.

CARB, acting in concert with the Federal EPA, must comply with the same standards designed for the federal EPA under NEPA reviews. This includes interagency coordination.

Consistent with 40 CFR 1501.5, 1501.6, and 1508.5, the Responsible Official will request other appropriate federal and non-federal agencies to be joint lead or cooperating agencies as a means of encouraging early coordination and cooperation with federal agencies, state and local governments, and federally-recognized Indian tribes with jurisdiction by law or special expertise.

For a CARB action related to an action of any other federal agency, the Responsible Official must comply with the requirements of 40 CFR 1501.5 and 1501.6 relating to lead agencies and cooperating agencies, respectively. The responsible official will work with the other involved agencies to facilitate coordination and to reduce delay and duplication.

The responsible official will also prepare a single document to fulfill both NEPA and state or local government, or federally-recognized Indian tribe requirements, consistent with 40 CFR

1506.2. The responsible official should enter into a written agreement with the involved state or local government, or federally-recognized Indian tribe that sets out the intentions of the parties, including the responsibilities each party intends to assume and procedures the parties intend to follow.

During the coordination process, the CARB officials are to review the planning, policies, and goals for economic growth in the Redding area. This is the requirement that guarantees transparency so citizens can see who is influencing the implementation of requirements for diesel engines in the effort to achieve cleaner air.

During the Coordination process, the responsible CARB officials must:

- consider the objectives of the local government as expressed in their rules, plans or policies;
- assess the interrelated impacts of the state rules, plans and policies within the area of influence of Redding;
- determine how CARB's plan could be modified to achieve the concerns and goals of both CARB and the City;
- advance a plan which can both achieve cleaner air, as desired by CARB, and at the same time not hinder or frustrate economic growth in the area.

CARB officials were actually required to meet with representatives of local government at the beginning of their consideration of methods to control pm 2.5 diesel particulates. CARB may not tell the local government how it will implement standards to accomplish CARB's goal of healthy air. Rather, it requires the CARB officials to meet with local officials to jointly develop methods to attain cleaner air, while not creating conditions promoting the failure of trucking businesses.

**Early coordination is required.**

As a minimum, this coordination meeting must take place after public issues have been identified and management concerns have been identified. And it must take place before the Air Resources Board recommends a preferred alternative. This did not happen in regards to the Diesel particulate filter requirements.

In the case of CARB's mandate of particulate filters on diesel engines operating in California, and especially in the Redding area, CARB "shall seek input from federal, state, local government and universities to help resolve management concerns in the planning process and to identify areas where additional research is needed."

**Specific Issue to address.**


The City believes there are other ways to achieve CARB's desire for cleaner air, while at the same time retaining business growth facilitated by the owners and operators of local trucking businesses. CARB could alter the dates for compliance, and simply opt to grandfather in the

older diesel engines. CARB's attainment goals would still be achieved, but at a more gradual rate through attrition, as older vehicles become obsolescent and newer compliant vehicles are purchased. This would also achieve the City's objective that there be no sudden loss of equipment or livelihoods dependent on the use of diesel engines.

As I noted above, I am the City Council's liaison for all communications in this matter. I have had a long interest in matters of air and water quality affecting Shasta County and look forward to working with you on this issue. My contact information is:

Gary Cadd  
City of Redding  
777 Cypress Avenue  
Redding, CA 96001  
(530) 225-4447  
gcadd@ci.redding.ca.us

Sincerely,



Gary Cadd  
Council Member

c: City Council  
Shasta Coordinating Committee

enclosure

**RESOLUTION NO. 2013-098**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF REDDING TO INVOKE COORDINATION WITH THE CALIFORNIA AIR RESOURCES BOARD (CARB)**

**WHEREAS**, the air quality in the City of Redding, within the County of Shasta, and demonstrably throughout the entirety of the California North State, has been shown by CARB and other independent studies to have no significant hydrocarbon particulates or other atmospheric pollutants levels, produced by diesel emissions, sufficient to warrant initiating the proposed CARB remedies on January 31, 2014; and

**WHEREAS**, the City of Redding and the County of Shasta are local government agencies within the legal and administrative jurisdiction of the State of California, yet all three government agencies including the State of California, and thus CARB, are all subject to the jurisdiction of the Federal EPA laws set forth in the National Environmental Policy Act (NEPA); and

**WHEREAS**, much of the original data gathered and utilized by CARB to justify the scope and necessary remediation for air quality concerns in the State of California are demonstrably predicated upon false, misleading and sometimes even fraudulent information; and

**WHEREAS**, the public health justification for the proposed remedies, the August 31, 2010 CARB Report, "Estimate of Premature Deaths Associated with Fine Particle Pollution (PM2.5) in California Using a U.S. Environmental Protection Methodology," is being challenged by the U.S. House of Representatives Science, Space and Technology Committee in the form of an August 1, 2013 subpoena of U.S. EPA "secret science" data; and

**WHEREAS**, the proposed remedies for diesel hydrocarbon and air pollutant emissions by CARB are likely to result in significant economic and "quality of life" harm to the inhabitants of the City of Redding, Shasta County and to the entire State of California; and

**WHEREAS**, the CARB has instituted a major new action requiring particulate filters on all large diesel trucks desiring to operate in California, which will severely impact millions of trucks, both in and outside of California, and such action was made under the auspices of the Clean Air Act; and

**WHEREAS**, almost everything consumed in California is delivered by diesel trucks, and a readily available fleet of diesel trucks and equipment is essential for timely and economical delivery of goods and services; and

**WHEREAS**, the availability of retrofit particulate filters is expensive, not available for many existing trucks, do not function as they must, increase diesel fuel consumption, add to greenhouse gas emissions and is overall an ill conceived idea; and

R-2013-098



**WHEREAS**, these regulations render millions of well maintained diesel trucks and equipment legally obsolete and destined to be sold outside of California at less than otherwise fair market value; and

**WHEREAS**, these regulation constitute a "take" of private property for public use without just compensation which is prohibited by the 5th amendment of the U.S. Constitution; and

**WHEREAS**, these mandated regulations exceed federal standards thus creating unfair trucking advantages and disadvantages in California; and

**WHEREAS**, the City of Redding and the County of Shasta have standing Resolutions demonstrating both their desire and willingness to invoke "Coordination" under the provisions of NEPA when other State or Federal government agencies, without the involvement or consent of local government agencies, seek to do harm to our local economy and quality of life without coordinating with local elected bodies.

**NOW THEREFORE, BE IT RESOLVED** that the elected City Council, acting on behalf of the citizens of the City of Redding, hereby invokes the legal process of "Coordination" under the National Environ-mental Policy Act (NEPA) with the State of California, and, in particular the California Air Resources Board (CARB), compelling CARB to coordinate with the City of Redding as coequal partners in the matter of unilateral state required compliance with CARB regulations come January 31, 2014.

**I HEREBY CERTIFY** that the foregoing resolution was introduced, read and adopted at a regular meeting of the City Council on the 5th day of November, 2013, by the following vote:

AYES:	COUNCIL MEMBERS:	Cadd, Jones, McArthur, Sullivan & Bosetti
NOES:	COUNCIL MEMBERS:	None
ABSENT:	COUNCIL MEMBERS:	None
ABSTAIN:	COUNCIL MEMBERS:	None

THIS INSTRUMENT IS A CORRECT COPY  
OF THE ORIGINAL ON FILE IN THIS OFFICE

ATTEST

NOV 27 2013

PAMELA MIZE  
CITY CLERK OF THE CITY COUNCIL  
AT THE CITY OF REDDING, COUNTY OF SHASTA,  
STATE OF CALIFORNIA

  
PAMELA MIZE, City Clerk

  
RICK BOSETTI, Mayor

FORM APPROVAL:

  
RICHARD A. DUVERNAY, City Attorney