



CONSTRUCTION CO., INC.

(916) 364-0292
FAX (916) 364-7641
P.O. Box 277517
Sacramento, CA 95827
CLN 257024

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Governor Arnold Schwarzenegger
State Capitol Building
Sacramento, CA 95814

RE: The Outcome of California Air Resource Board's Regulations.

Dear Governor Schwarzenegger,

Delta Construction Co., Inc. is a family business celebrating its 65th year in construction in California. We have built a solid reputation for performance in a very competitive environment. This has been accomplished by owning equipment and maintaining the same crews, some of them having worked for us up to 35 years. Our fleet of trucks and heavy equipment ages 2 to 30 years old, with the newer equipment used daily and the older kept for part-time and standby use. I have directed this letter to you with copies to the Air Resources Board to express my frustration as to the efforts of Industry to convince the Board of the frailty of their regulations. I speak as the owner and manager of Delta for some 44 years.

An example of what one business faces due to CARB Regulations:

Ninety-five percent of Delta's fleet will "disappear" (will be illegal to use or sell in California) via the recent regulations passed (and about to be passed) by the California Air Resources Board (CARB). This includes 100% of our portable equipment (by January 1, 2010), 90% of our off-highway equipment (beginning in 2014) and 100% of our on-road diesel trucks (proposed to be effective in 2010). The "promise" of just adding on exhaust filters to solve pollution issues for continued use until normal retirement has not held true for older engines. Even new equipment purchased today will have to be upgraded within four years, possibly before the original purchase debt is retired. The probability of replacement or upgrading engines for just one air quality program in today's economy is zero. Considering that CARB regulations impacts contractors by three such programs at once (not to mention the upcoming AB32 requirements) makes replacement possibility inane. Currently the market value of Delta's fleet is around 10% of its previous value just a few years ago prior to CARB's regulations. This reduction in value has degraded Delta's ability to bond and finance construction work, reducing our probability of securing work and maintaining employment. Loss of equipment through attrition just to meet the regulations will

eventually negate any possibility of maintaining operations. Does this constitute a "taking" by the government? Did the government "take" my private property and condemn it for "public use" (public use in this case being the "non-use" of this equipment)? If not, then where did my asset value of my private property go and how did it get there? My bank would be very interested in your answer.

CARB regulation essentially kills the business model that has provided employment and tax base throughout history:

The business model used successfully since the inception of an industry has been for an entrepreneur to save capital and invest in assets that perform a useful function (provides a good or service along with the employment of workers). This effort automatically increases the tax base, an absolute necessity for viability of a government. A capitalistic system will not survive without a business model that provides for growth of assets for future production of goods and services. Delayed gratification by the businessman allows additional capital for investment, increasing capacity and size of operations, further expanding employment and tax base. CARB destroys this model by command eradication of saved capital through mandated destruction of productive equipment, i.e. trucks and equipment owned by businesses. This capital cannot be instantly replaced without borrowing. Prudent owners of businesses will NOT borrow needed dollars to replace this destroyed asset base in an economy such as we presently have, even if capital was available (which it is not due to frozen credit markets). Additionally, there is little or no work obtainable of which to place this new equipment on to generate the dollars necessary for re-paying the loan. Even if the desire was there to purchase a new fleet in the unreasonably short period of time allotted by the regulations, without the existing asset base to guarantee the loan (the trucks and equipment made valueless via edict), the banks will not loan the money.

It's a crying shame to destroy a competent California business of some 65 years, after having done nothing wrong but follow the business model (buy and use equipment to supply a good to the economy all the while employing workers, providing them with a good wage, health care and retirement programs along with paying substantial taxes to the State and Federal Governments). Typically, Delta has paid or caused to be paid (through employment) 14% of its annual volume in taxes to these agencies (quantum calculated by audit). This amount does not include taxes paid by suppliers or subcontractors to Delta. Our volume was cut in half from 2006 to 2007 (along with the taxes paid) due to economic conditions and 2008 has been worse than 2007. The light at the end of the tunnel for 2009 has been turned off. I have retired employees after personally employing them over 35 years and have two with me at 30 years currently. My equipment was state of the art at the time of purchase and still performs the functions designed. I have worked in this diesel smoke industry alongside the crews for (believe it or not) over 50 years (father didn't agree with the child labor laws in the 50's) and have never had any of our employees come down with lung diseases at a later time to my recollection. This is not to say that diesel smoke cannot cause lung problems, just to

point out that when the smoke from equipment was at it worst (decades ago), it caused very little lung problems for the very operators of this equipment, much less the population as a whole. Diesel engines are constantly improved and normal attrition of equipment has removed most of the major offenders of air quality. The diesel smoke from today's equipment is virtually non-existent at this time (invisible to the naked eye), but still not "clean enough, fast enough" for CARB. California has around 5 million folks (13% of the population) **legally** running around puffing on cigarettes (the admitted major cause of Chronic Obstructive Lung Disorders) but makes diesel engine exhaust components above some pre-determined level **illegal** because someone **might** breathe some of it. What's wrong with this picture?

Now we are the bad guys, causing (supposedly) billions of dollars of injury to unknown persons (according to "studies"). This sounds a lot like the Prop 65 bounty Delta paid to avoid being sued a few years ago for our "cancer causing" products we use (asphalt concrete). That issue only cost my firm about \$20,000 in "blackmail" (money paid to the attorneys threatening suit, all without ANY direct evidence that anyone got cancer from asphalt concrete). The cancer rate among workers in the industry was no higher than anyone else's but the proposition was passed and the bounty hunters threatened to sue the asphalt industry. After enough money was paid, the "issue" was "settled". I now post warning signs and it's all ok. That one was an "easy" solution to another supposed catastrophic health problem that was never proven. Just a posted warning sign, along with a bundle of cash. Instant Cancer Cure: Apply here behind the warning sign! The "bundle of cash" necessary to "solve" the current "health crisis caused by diesel particulate matter" amounts to bankruptcy to hundreds of thousands of businesses if CARB rules are allowed to proceed at the pace set. The current unemployment of 8+% will increase drastically when these programs take effect. This certainly does not bode well with California's State Unemployment Insurance Fund projected to be insolvent in early 2009.

Regulations amount to heavy, regressive taxation:

When the dust settles, and all of the "offending" equipment and trucks are taken off of the construction projects and highways, the result will be the most regressive tax on the residents of this state ever conceived. The cost of all goods will accelerate dramatically, from building roads to producing widgets to delivering bread. Businesses that survive pass the costs along. This is nothing new. Economics 1A. The reduction of competition along with the increased costs to meet these esoteric air quality targets at the time imposed will not go unnoticed at the check-out counter. The agency (CARB) enforcing the rules should survive well via fines imposed upon Industry, thus guaranteeing their employment at the expense of others. The population affected most by these cost increases will be the portion least likely to afford it-the elderly and poor along with the budgets of all Cities and Counties in the State. There is no need for a "study" to confirm this; just apply some common sense (the characteristic apparently deficient in the "rush to judgment" by CARB).

A proposal to allow an existing business to survive the transition to cleaner engines:

I have suggested during numerous meetings with CARB that they should allow some additional leniency by using a fleet average of horsepower-hours usage, not just a total measurement of horsepower owned. Sorry, sounds too complicated were the replies. Why not? I already have to register all of my equipment and report hours or miles of usage for low use equipment. What's the problem with calculating the "total horsepower hours used"? By allowing a combined number of horsepower-hours of usage for a fleet, I have all the available horses to perform work without polluting more. I have 18 "horses" (individual pieces of equipment) in the stable and only 6 company "riders" (operators). 12 horses are parked every day. Unused horses (not running) do not pollute. Why am I being penalized just because I own them? Some equipment owned may sit the entire season without use on one year and then used 200-300 hours the next year. Some machines have 50 horsepower (hp) and others have 300 hp. They should not be treated equally, as the 300 hp pollutes at a rate of six times the 50 hp machine (all other factors such as Tier level treated equally). If CARB will allow 100 annual hours of use for the 300hp engine (without upgrade), it should allow 600 hours of annual use for the 50hp engine. I do not know what type of project will present itself and therefore which horses I will need in the future to perform the work. I have acquired these horses (trucks and equipment) over the years and most of the older ones have low hour usage annually. Eliminating these (through edict) will certainly go a long way towards ensuring this company's demise. The paltry number of hours allowed (100 per year) or proposed miles allowed (1,000 per year for trucks) will not pay for the insurance necessary to own this equipment, much less the fuel to run them. Limiting each horse to 100 hours per year instead of allowing a total number of horsepower-hours for the fleet precludes the company's flexibility to use all of available resources to bid projects and secure employment (and pay taxes!).

According to Construction Industry Air Quality Coalition, the depressed economy has already succeeded in achieving 2011 or 2012 CARB goals for reduction of PM and NoX, just through the "non-use" of equipment due to economic conditions. The amount of existing equipment sold at auction and forever gone from the State has been record setting. Why hasn't CARB recognized this and backed off their mandates? Has there been any "less" lung disorders noted? Probably not. Maybe we "just don't want to know this". Maybe this goes against the real intended goal (by some) of just shutting down industry altogether.

Future deficits are guaranteed via CARB Regulations:

Shutting down the construction industry in today's economy through mandate is redundant. Other than the Prop 1B projects (i.e., money borrowed) by the State, it already is. Shutting down the transportation industry (on-road diesel engines) should finish off any possibility of California recovering from the current recession (depression?). Your Legislative Analyst Office admits the \$20B annual deficit goes out

at least 5 years, an optimistic view in my opinion as there is NO evidence that the LAO has a clue about what CARB mandates will do to economic conditions, precluding any possibility of recovery. The loss of tax base from these industries assures this. Truckers cannot replace equipment at the mandated rate any better than contractors. Massive unemployment in the transportation industry will be the result. Trucks owned and used by contractors mainly provide support to heavy construction operations. Most days, these trucks are operated only one to three hours by going to and returning from projects. The "blanket 1000 miles" maximum allowed to call these trucks "low use" does not suffice and thus all such trucks must be re-powered or replaced as if they were driven 100,000 miles per year. A concept such as the horsepower-hours of usage should also be applied to the trucking regulations, allowing breaks for engine replacement dates depending on the number of miles traveled annually (such as those that travel less than 30,000 miles per year at one replacement interval and less than 15,000 miles per year at another). As the trucks owned by contractors are not the real producers of income (they provide mainly support to the heavy equipment), contractors will not replace them. The loss of availability of these trucks again limits ability to continue operations (read again, loss of taxes to the State).

Summation:

Who can be against clean air? With four children and five grandchildren, certainly not myself. This State has done more for the accomplishment of this goal than anywhere else in the world. Technology has cleaned up our auto, truck and heavy equipment exhaust dramatically already, and we should not rest on our laurels and stop improvement. We just need to "back off on the throttles" a bit to allow businesses to survive through this process.

The economic "downturn" (to use a most moderate description) has begun the destruction of many businesses, including construction and trucking industries. The CARB Regulations will complete the extirpation of "who is left" in California. A quick and imprudent decision will undoubtedly bring about clearer heads, albeit when it is much too late. It will take years to rebuild businesses shut down via mandate. Although CARB's outreach has informed some companies, most small and medium size businesses are completely uninformed. This rock thrown into the economic pond will cause a tsunami of business failures of small and medium contractors and transportation businesses (collectively the largest employer of construction and transportation workers) throughout the state. Larger businesses will survive purely due to size and financial capacity, albeit in a much smaller mode for an indeterminate time. For some reason, CARB, in its forced march to meet an imposed upon time-table for this more perfect air quality, refuses to recognize the effects on the construction and trucking businesses and the economic devastation to follow. They have had plenty of opportunity but presentations by Delta and countless others to the Board have been summarily ignored.

California is broke. The United States, likewise. Shutting down the construction and trucking industries and laying off employees, to become tax takers instead of tax payers, certainly might clear up the air somewhat but will also exacerbate and continue the financial condition of the above. Destruction of the business model practiced by entrepreneurs throughout time will not stimulate new business in California, quite the contrary. Capital will flee the State as who knows when some other future government program will destroy decades of delayed gratification through investment in assets made valueless by the stroke of the pen (as it has mine). Strong environmental progress has been made in California during good economic times. These are the times when some excess capital is available for such efforts. We should not warrant the destruction of business and the resultant State of California's viability through command air quality decisions when the economics cannot justify the accelerated rate of improvement proposed by CARB. It is time to "pull back on the throttle" and as our illustrious ex-governor and current Attorney General Jerry Brown once stated years ago: we need to "lower our expectations".

I beseech you to revisit this issue, providing CARB with new directions allowing companies such as Delta to continue to pay taxes to the State of California (I never would have thought that I would beg to be allowed to pay taxes!).

Sincerely,



Norman R. "Skip" Brown
President

cc: via E-mail

Mary Nichols, Chair, California Air Resources Board
California Air Resources Board Members
California Industry Air Quality Coalition
Driving Towards a Cleaner California
Senator Darrell Steinberg
Senator Dave Cox
Small Business California
California Alliance for Jobs