California Council for Environmental and Economic Balance
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May 28, 2020

Mr. Tony Brasil
Branch Chief, Heavy Duty Diesel Implementation Branch
Air Resources Board
Submitted electronically via www.arb.ca.gov/lispub

RE: Proposed Advanced Clean Trucks Regulation, 15-Day Comment Period

Dear Tony,

The California Council for Environmental and Economic Balance (CCEEB) appreciates the opportunity to submit 15-day comments on the proposed regulation order for Advanced Clean Trucks (ACT). We also thank staff for meeting with us to discuss the revised rule language and for incorporating many of our suggestions into the final draft. CCEEB broadly supports the State's climate and air quality goals, as well as the stated intention for Large Entity reporting in the ACT rule, which is to collect meaningful data on medium- and heavy-duty vehicles in order to inform future rulemaking and policies. While the final proposed rule is markedly improved, CCEEB continues to be concerned with sections of the rule that remain ambiguous or difficult to interpret. These issues are now exacerbated by the extraordinary circumstances of the pandemic crisis. CCEEB hopes that our comments can help staff successfully implement the rule and gather needed data from fleet owners and operators, despite the many challenges faced by ARB and regulated businesses in California.

Our main points are as follows:

- **Data quality for Section (§) 2012 Large Entity Reporting will be greatly diminished by the coronavirus pandemic**. Fleets and facilities will have atypical and irregular operations for the foreseeable future, and no historical data exists that could be used for compliance reporting. ARB should consider alternative means to collect data through an ongoing, iterative process rather than the "snapshot in time" required by regulatory reporting.

- **Rule language is much improved but still difficult to interpret in some areas.** We provide a number of specific examples, in the hope that final adjustments can facilitate better compliance rates and the collection of meaningful data. However, taken together, the Board should recognize many questions remain on

how to accurately respond and report. This highlights the need for guidance on compliance and the importance of reasonable enforcement discretion.

- **ARB should commit to reasonable and fair enforcement.** Entities that report data in good faith should be treated fairly, keeping focus on collection of good quality data as the overriding goal. ARB should develop standards describing the level of data accuracy required, and provide entities with clear and transparent guidance on how compliance will be determined, as well as priorities for enforcement.

- **The basis for changes to Section (§) 1963 is not clear.** While CCEEB members are not subject to this section, and as such, have not been involved in development of proposed rule language, we are interested in understanding how new targets and vehicle types were set since the December 12, 2019 board hearing. It is in the general interest of all public stakeholders that ARB rules and policies are cost effective, technologically feasible, and developed in a transparent manner that allows for public participation.

What follows is a more detailed discussion of each of these main points, as well as specific comments by section.

Public Safety Orders impede a facility's ability to collect representative data

CCEEB asks ARB to consider how the current COVID-19 crisis negatively affects the ability of Large Entities to report "representative data" as required in Section 2012 of the proposed regulation. First and foremost, most facilities in the state are under public safety orders for the foreseeable future, which include work-from-home for non-essential employees; slow downs or, in some cases, complete shutdowns of facilities; and radical changes in safety practices and operations, including but not limited to changes to routine maintenance schedules (e.g. cleaning and disinfection); provision and availability of third party services (e.g. landscaping and building services); supply chains and logistics for deliveries and shipments; and location of business activities and workforce schedules. As a result, business in California today is anything but typical, with no certain timeframe for when "representative" operations could be safely resumed.

While we appreciate that § 2012(e)(1) now allows a Large Entity some flexibility to report fleet information as it was comprised "on a date of the fleet owner's choosing any time after January 1, 2019," it must be understood that no fleet tracking would have been in place prior to this regulation. As such, the effective period for data tracking would in reality be from the time of final rule adoption (expected June 2020) through April 1, 2021, the deadline for report submittals to ARB. In practice, this window could even be shorter, since the effective rule date would be October 1, 2020 at the earliest,

and entities would need to have data collected and consolidated well before the April 1, 2021 deadline.

More importantly, because of the framing of several of the questions posed in § 2021.2, an entity would actually need data over a much longer time period, anywhere from three months to three years or more, depending on the question. For example, in order to calculate a daily average, a facility would need at minimum three months of good data, as per the requirements of the rule. Given the short implementation schedule, CCEEB is concerned that collecting this data is not possible.

For these reasons, CCEEB strongly recommends that data be collected through a non-regulatory process, similar to the approach to be used for collecting facility-specific data.[1] This would allow businesses to share information and perspectives with staff through an iterative process that evolved over time, and would provide opportunities for follow-up and clarifications. It would also allow for a more comprehensive view of facilities and fleets, since both aspects of large entity operations could be addressed in a single, combined process. Our concern with the proposed approach is that the rule results in a single snapshot in time that is unlikely to provide the type or quality of data staff need. Indeed, we anticipate staff's questions will change over time as ARB develops its concepts for future rulemaking. Furthermore, we do not believe it is necessary to have one topic addressed in the rule (fleet information) while another is addressed through a survey (facility information), when many of the same entities are involved.

More generally, we note that the survey approach is the usual way that ARB collects data to inform rulemaking. Conversely, regulatory reporting has, until now, been used for verifying emissions and compliance with adopted rules, such as with the GHG Mandatory Reporting Rule and the Criteria and Toxics Reporting Rule. These two rules collect data on an annual basis and are fundamentally different than what is being proposed in the ACT regulation. If the ultimate purpose is to collect good quality data that can be used to inform sound rulemaking in the future, then we are concerned that the collection of poor quality data could have negative consequences for future rules.

Additional benefits to a combined, iterative process include but are not limited to:

- Avoids duplication – ARB can better utilize data already reported in DOORS-LSI, DOORS-ORD, TRUCRS, and ARBER.
- More efficient – businesses avoid cumbersome and expensive "cookie-cutter" reporting requirements, and ARB avoids resource-intensive enforcement.[2]
- Fair – businesses would not be subject to unworkable or unclear requirements.

[1] CCEEB strongly supports the removal of § 2012.2: Facility Category Reporting. We believe the approach being used to collect this data through alternate means should be equally suitable for large entity fleet reporting.

[2] Given the significant number of businesses and fleets that would be subject to the rule, CCEEB anticipates high rates of non-compliance, particularly for entitles that do not know they have compliance obligations.

Enforcement must be reasonable and fair, with clear standards for compliance

CCEEB recognizes that the final proposed regulation order is a major improvement over the draft released as part of the December 12, 2019 board-hearing package. However, we continue to have concerns and questions about the rule, and believe that some of the important definitions, applicability criteria, and reportable items remain vague or challenging to precisely answer. Additionally, the electronic system to submit data to ARB has not been developed, and details about what it will look like are not yet available. In our experience, reporting portals need an initial break-in period so that administrative and technical problems can be identified and fixed.

To minimize compliance problems, CCEEB requests ARB to clarify in the rule or final staff report what enforcement standards it will use to determine violations. We also ask ARB to discuss its enforcement priorities for Large Entity reporting.

CCEEB appreciates the addition of § 2012(e)(4) as it recognizes that clarifications may be needed for submitted reports. However, when this concept was first raised in discussions with staff, CCEEB had asked that enforcement discretion be applied to ensure that changes to reported data were not deemed as a violation if the entity had responded in good faith and had met the April 1, 2021 submittal deadline. The amended rule language addresses the first half of the issue (i.e. the potential need to clarify information), but does not address the second part related to enforcement discretion. We ask that this be included and that staff actively encourage businesses to report the most accurate data possible without fear of unfair compliance enforcement for "good faith" responses submitted on time.

Additionally, we do not believe that a 14-day response period is sufficient time, especially given current circumstances. Depending on how ARB notifies an entity that additional information is being sought, it could take time to route requests to appropriate staff, and longer still for those staff to gather the information needed. We note that large entities subject to the rule may have only one or a few actual vehicles, and as such, would not have fleet managers or fleet tracking systems. Even for those with existing tracking systems, such systems are not necessarily designed to track the data being requested by CARB under the proposed regulation. CCEEB believes more time should be provided to businesses that need to revise and resubmit data.

CCEEB seeks to understand the basis for major changes to Section 1963

We expect the final staff report will provide further insight, but do not have the benefit of information at this time. Specifically, we would like to understand the basis for increasing sales targets by as much as 100 percent in some model years, as well as what additional analysis has been conducted since December to demonstrate that these new targets are feasible and not arbitrary. Similarly, we would like to understand why the exclusion for Class 2b-3 pickup trucks was removed.

The highly ambitious sales mandates proposed in the 45-day rulemaking package were arrived upon using a bottom-up analysis of market segments and suitability factors (ISOR Appendix E: Zero Emission Truck Market Assessment) which incorporated analysis performed by the Truck and Engine Manufacturers Association. In contrast, the increased sales mandates in the 15-day comment period were accompanied by no such analysis of technological feasibility. Rather, Attachment B to the Modified Statement of Reason contains a curt and superficial analysis stating the increases are "consistent with Board direction and many public comments seeking to increase the number of ZEVs deployed" to "meet the goals of the (San Pedro) Port's Clean Air Action Plan." Other rationale provided in Attachment B surrounding cost and production is similarly speculative or qualitative, and does not fully explain the technical basis used to arrive upon the revised schedule of percentages.

Specific Comments by Section

§ 2012(b)(1) $50 million gross revenues applicability – by definition of the rule, these entities have small fleets, sometimes amounting to only one or a few vehicles. CCEEB believes that data collected from these entities is better suited for the facility survey, not fleet reporting. Unless a business has a sizeable fleet, single vehicle reporting would add little value to aggregate results. As such, enforcement by ARB to ensure compliance would likely far outweigh any value. CCEEB anticipates that many thousands of entities will be at risk of noncompliance since most will have received no notification about their reporting obligations, and will be in violation. CCEEB recommends this applicability criterion be removed. At a minimum, we recommend raising the vehicle threshold so that the administrative burden is commensurate with the value of data collected.

§ 2012 (c)(6) Exemptions for Emergency Vehicles – CCEEB supports the addition of this exemption. However, we ask staff to clarify how this exemption interacts with § 2012.2 (b)(2)(O), which requires reporting on emergency vehicles. Would an entity only report non-emergency vehicles sent to assist in an emergency?

§ 2012 (d) Definitions

(5) Dispatched – the definition is vague and difficult to interpret as it relates to specific activities. For example, are materials delivered by a third-party considered to have been "dispatched" by the entity, such as pickup and transport of recycling?

(8) Fleet – for consistency, this definition should be the same as Title 13, California Code of Regulations, Section 2025(d)(29), which defines "fleet" as "one or more vehicles, that travel in California in a compliance year and are subject to this regulation that is [sic] owned by a person, business, or government agency as defined in California Vehicle Code 460."

(9) Fleet Owner – Please provide clarity as to how entities should handle vehicles that only operate on private property and are not registered with the Department of Motor Vehicles. Under this definition, as written, those vehicles would not have fleet owners.

(24) Weight bin class – CCEEB recommends that the definition for "light-duty" be removed, since this vehicle class is outside the scope of the rule.

§ 2012(e)(3) General Requirements: Record Retention – the addition of "off-yard tractors" is problematic. First, this term has not been defined in the rule, yet appears inconsistent with definitions of "vehicle," "fleet," and "weight class bin," all of which are predicated on a vehicle being used on highways. Because this category of vehicles was added subsequent to the December board hearing, it was not included in either the Standardized Regulatory Impact Analysis or environmental analysis. We recommend that it be removed and dealt with outside of the regulation, especially as it appears not to be part of the scope of Advanced Clean Trucks.

(B) – Please clarify if this is meant to apply only to "brokers" that dispatch vehicles. All other requirements in the rule that use the term "dispatched" are specific to brokers except this one, which also appears to be directed toward brokers but is it not specified as such.

(C) – How should entities treat vehicles not registered with the DMV because they operate exclusively on private property?

§ 2012(e)(3)(D) General Requirements: Record Retention
§ 2012.1(a)(15) General Entity Information Reporting
In both subsections, the term "entities" is vague and open for misinterpretation. CCEEB recommends defining this term in the rule, or, at a minimum, providing guidance in the staff report.

(a)(15) – This subsection is difficult to interpret and needs clarification. It appears that four separate conditions must all apply in order for activity to be reportable: (1) a contract is in place to deliver goods or perform work in California in 2019 or 2020; (2) the contract must specify the use of a truck over 8500 GVWR; (3) the contractor must be serving the contractee's customers; and (4) the contractor must represent the contractee's brand. Is this interpretation correct? Regardless, CCEEB asks ARB to clarify what is meant by "represent your brand" and "to serve your customers." Does this mean the truck must have a company's logo on it, or that contractors are delivering product in containers with a company's logo?

§ 2012.2 Vehicle Usage by Facility Reporting – this section should clarify that information on vehicle home bases should only be required for locations that have vehicles over 8,500 GVWR, and not for a location where only light-duty vehicles or those under 8,500 GVWR are domiciled. This would alleviate significant administrative burden without compromising the value of reported data since light-duty vehicles are outside the scope of the current ACT regulation and would not be subject to a future heavy-duty vehicle fleet rule.

(a)(6) and (7) – Please clarify how to interpret these subsections. For example, "initially installed" implies a single moment in time, such as at the opening of a facility. However, the term "on or after" implies an indefinite span of time. Does ARB instead mean to ask, "What refueling infrastructure has been installed on or after January 1, 2010?" We note that facilities were not required to keep records of whether or not fueling infrastructure had been installed in 2010 or any time since then, which makes compliance record keeping challenging. This would be particularly true for a facility that changed ownership since 2010.

Additionally, we recommend that (6) and (7) use consistent language, either "refueling infrastructure" or "fueling infrastructure" as it appears this is meant to be the same thing.

(a)(8) – Please clarify if this applies to "yard tractors" or tractors more broadly.

(b) – Will the electronic reporting system be flexible enough to allow for both the main response method and the alternative response method? When will the electronic reporting system be available? CCEEB recommends that ARB work with users to beta test the system well in advance of the April 1, 2021 deadline, allowing enough time to fix any bugs or flaws. Our experience with electronic reporting systems is that they never operate perfectly from the start.

(b)(2) and (7) – ARB is requiring annual or quarterly data, averaged for the work days selected by the entity as the reporting period. This goes against the very purpose for allowing entities flexibility in choosing a representative week, since

ultimately, they would still need at least quarterly data to comply. As we stated in the beginning of our comments, given the coronavirus pandemic, facilities will not have this information. Additionally, if the rule is adopted at the June 2020 board hearing, the earliest possible effective date is October 1, 2020. This means that, at best, a facility could only collect data for Q4 2020, regardless of whether or not this would be "representative of periods of high vehicle utilization." The only alternative approach would be for a facility to use a week or month during its "busy season" (and was able to substantiate with records the reason for selecting this period). However, the alternate approach is similarly hampered by the short effective window given to collect data (arguably, October 1, 2020 to March 1, 2021, since time would be needed to consolidate data for reports). We do not see the practicality of either approach. This underscores the problem we raise related to the poor quality of data likely to be produced by the rule.

(b)(2)(A) through (E) – Please clarify whether responses in (B) through (E) are additive to (A) and so on down the list. Additionally, CCEEB is concerned that average miles per day may be a poor indicator of whether or not a vehicle is suitable for electrification, as it does not describe the upper range of miles at which a vehicle operates. For example, a vehicle that drives 50 miles one day, nothing for three days, and then 250 miles on the final day would have a workweek average of 60 miles per day, or only 20 percent of its upper range. For the burden associated with tracking and calculating this information, we do not see how it necessarily informs the overall question of suitability for electrification.

Finally, we note that subsections (b)(2)(A) through (E) do not account for heavy-duty vehicles that travel short distances but typically remain idle during normal operations, such as aerial bucket trucks. Such vehicles would have operational limitations that would not be addressed by average daily miles.

(b)(2)(L) – This provision seems to be geared toward long haul trucks that have access to scales rather than for businesses that simply use trucks at their facilities. Most companies do not have data on daily or typical weight limits, and do not keep scales onsite. We do not see how a facility could comply given the difficulty of collecting this information in such a short time period. We note that an entity would need to have information for each and every vehicle in its fleet, since individual data is need to calculate percent of a group. This represents an inordinate amount of data collection and effort, the value of which is hard to discern. CCEEB recommends it be removed.[3]

[3] Many questions in this section are problematic and examples of why a non-regulatory approach is preferable to a reporting regulation. Reporting rules, such as the GHG Mandatory Reporting Rule, the Criteria and Toxics Reporting Rule, Air Toxics Hot Spots reporting, and compliance reporting under the Low Carbon Fuel Standard, the Alternative Diesel Fuels regulation, and the Truck and Bus rule, all require accuracy and precision, and all have extensive guidance documents that strictly and explicitly explain how to report and the requisite level of data quality needed to meet compliance obligations. The ACT rule is a

Additionally, this question seems overly narrow. Trucks have a specific weigh limit (e.g. 10,000 lbs). The way this provision is written implies the company would only report if the truck were operating at exactly 10,000 lbs. This is clearly not the intent but cleanup is needed if this provision is kept.

(b)(2)(O) – This question requires three-years of data to answer. We have the same concern with this subsection as we do with (b)(2) and (7). It should be removed as entities have no way to respond, and, even if a "best guess" were offered, entities would have no records that could validate answers. Entities involved with emergency response are not tracking vehicle usage or deployment in those situations; they are focused on assisting with the emergency. Moreover, three years of data may not necessarily capture significant but infrequent emergency events and would therefore not be representative of a facility's operations and vehicle usage in response to a catastrophic event, such as a major earthquake or flood.

(b)(4) – This question cannot be answered using data from 2019 and 2020, even if 2019 data were available. In order to respond accurately, entities would need more than 20 years of historical data, i.e. data for the useful life of each vehicle. It should be removed.

(b)(7) – Would two or more "locations" be deemed "similar" if operations were similar but they had different sized service areas or different numbers of vehicles domiciled there?

CCEEB views the current rulemaking and Large Entity reporting as the start of what we hope will be a productive public process for developing heavy-duty vehicle electrification and infrastructure in California. Our comments here are forward thinking and focused on establishing a firm foundation for meaningful information sharing and dialogue between ARB and the regulated community. CCEEB members serve myriad roles in transportation, including energy and fuel providers, infrastructure and technology developers, facility operators, and fleet owners. As ARB shifts focus from automakers and vehicle technology developers, CCEEB believes that its outreach and communications will need to be broadened to engage new sectors and businesses that represent fleets and facilities, and that the need for effective interagency coordination is greatly heightened. We are committed to working with ARB in support of successful implementation of the ACT Large Entity reporting requirements and in development of future heavy-duty vehicle electrification rules and policies. Should you or your staff have

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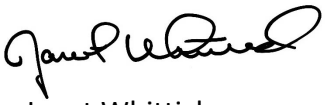
major departure from regulatory reporting, and entity attempts to provide accurate responses could be mismatched with what information staff is actually seeking to understand.

any immediate questions or wish to discuss our comments further, please contact me at janetw@cceeb.org or (415) 512-7890 ext. 111. Thank you.

Sincerely,



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