

January 16, 2008

Ms. Analisa Bevan, Chief  
Sustainable Transportation Technology Branch  
California Air Resources Board  
10011 I Street  
Sacramento, California 95812

Re: Response of the Six Large Volume Manufacturers to ZEV Credit Disclosure  
Questionnaire

Dear Ms. Bevan:

As we discussed during the December 18, 2007 conference call between the six large volume manufacturers and ARB, the manufacturers agreed to respond to an Air Resources Board questionnaire aimed at determining whether the manufacturers, ARB and the ZEV Alliance could reach common ground with respect to the ZEV Alliance's request for ZEV credit information under California's Public Records Act. This letter constitutes the manufacturers' response to the questionnaire distributed by ARB effectively on January 8, 2008.

We wish to emphasize that we continue to disagree with certain conclusions in ARB's Options Report<sup>1</sup> and those presented to the Board at its hearing on December 6, 2007. The industry provided preliminary oral and written comments on our position at that Board hearing. We reserve the right to provide additional analysis supporting the continued confidential treatment of the information submitted to ARB under confidentiality claims by the large volume manufacturers, and to take other steps to protect the confidentiality of the submitted information. Industry relied upon, and continues to rely upon, the Agency's diligent protection of trade secrets and other confidential business and technical information that we provide to ARB. We remain very concerned about the prospective impact of the Options Report, and the potential chilling effect it may have on the open communication necessary between the industry and the ARB, not just for the ZEV rulemaking and the ZEV program, but also on the full range of ARB mobile source regulatory matters.

With these concerns in mind, any voluntary disclosures we may agree upon in this context are not a waiver of our rights to continued protection of this confidential information or any other past, current or future confidential submittals or communications to or with the ARB. The manufacturers' view is that in order to reach an amicable resolution of this matter, any such voluntary disclosures will need to be governed by an appropriate non-disclosure agreement between the six large volume manufacturers and the members of the ZEV Alliance, and we would need the ZEV Alliance's agreement not to pursue its California Public Records Act request to ARB for public disclosure of this type of information.

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<sup>1</sup> The 22-page ARB Office of Legal Affairs report, dated December 3, 2007, entitled "Options Regarding the Requested Disclosure of Zero Emission Vehicles (ZEV) Credit Data Based on Submittals by Vehicle Manufacturers Who Have Designated The Data as Confidential Trade Secret Information" ("Options Report").

Accordingly, the large volume manufacturers' responses to ARB's questionnaire are set forth below:

1) *For model years through 2006, ARB staff is requesting permission to share PZEV, AT PZEV, and ZEV information from the following columns of the individual automaker credit statements:*

- *model year*
- *model*
- *number of vehicles*

*Will you, as an automaker, concur with an ARB staff request to publicly disclose this information? If you cannot, please discuss your reasoning.*

The six large volume manufacturers will agree to provide their individual sales information regarding PZEV, AT PZEV and ZEV vehicles produced and delivered for sale in California through model year 2006, including model year, model and number of vehicles. We will provide this information only under a non-disclosure agreement with the ZEV Alliance in order to ensure that this competitive information is not released to others, including manufacturers not subject to the ZEV regulation. We are prepared to enter into discussions regarding the terms of an appropriate non-disclosure agreement.

The six large volume manufacturers will also agree to provide this information, as it becomes available, for model years 2007 through 2011, under the same general terms described above.

2) *Under Section 1962(g)(4) of the ZEV Regulation (Title 13, California Code of Regulations (CCR)), some automakers received credits for the production of advanced demonstration vehicles. Will you, as an automaker, concur with an ARB staff request to publicly disclose this information? If you cannot, please discuss your reasoning.*

The six large volume manufacturers will agree to provide model year, model, and number of advanced demonstration vehicles, through model year 2006, to the extent such demonstration vehicles qualify under Section 1962(g)(4). We will also agree to provide this information as it becomes available for model years 2007 through 2011. Again, we will provide such information only under a non-disclosure agreement.

3) *ARB staff is considering a requirement that all future production credit data (for vehicles produced on or after January 1, 2009) be made available to the public. Would you support or oppose a proposal to require release of:*

- a) *Information on actual production credits earned?*
- b) *Information on your credit balance?*

The manufacturers have a three-part response to this question, as follows:

1. Conceptually, to the extent that regulatory changes are made beginning with the 2012 MY, the manufacturers would be willing to share actual production credits earned in the 2012 MY and beyond. We believe that the start of the proposed "New Path" would be the logical time to consider amending the rules on the disclosure of credits earned.
  2. Regarding actual credits earned prior to 2012 MY, this information was and is being submitted as confidential pursuant to Manufacturers Advisory Correspondence (MAC) 2006-03, and our companies have relied on ARB's assurances of confidential treatment. We do not believe it would be appropriate to make midstream changes to the disclosure rules for this program.
  3. Regarding any information on credit balance, the manufacturers do not believe that it is appropriate to require public disclosure of such information, either now or in the future. Credit balance information is comparable to each company's "bank account" information, which would be of interest to competitors and suppliers in the automobile industry. The public disclosure of this information could result in competitive harm to some manufacturers.
- 4) *Under Section 1962(g)(2)(C) of the ZEV Regulation (Title 13, CCR), automakers are required to elect to comply via the primary or alternative requirements. Will you, as an automaker, concur with an ARB staff request to publicly disclose the compliance path elected for the 2009 through 2011 model years? If you cannot, please discuss your reasoning.*

The six large volume manufacturers do not support the release of this information for two reasons. First, this information may not be available since manufacturers have until the end of the 2009 MY to declare their compliance path. Second, and more fundamentally, this would amount to a requirement for manufacturers to make a public disclosure regarding their future product plans, which is unprecedented in our experience. Future product plans fall within the classic definition of confidential business information, and any requirement to disclose such information would have an adverse impact on a manufacturer's competitive position. For example, by making such product plan information public, this sensitive information would be available not only to those manufacturers subject to the ZEV regulation, but to each of our competitors worldwide.

- 5) *Under Sections 1962(f)(2) of the ZEV Regulation (Title 13, CCR), ZEV and PZEV credits are earned in units of grams per mile non-methane organic gas (g/mi NMOG). To simplify the ZEV credit bank, staff would like to propose calculating credits based on the number of vehicles produced and the ZEV credit per vehicle rather than converting with the NMOG fleet average. Additionally, this would entail converting existing bank balances to credits using a 1/0.035 multiplier. This multiplier represents the asymptote of the NMOG fleet average curve (Section 1961(a), Title 13, CCR). Would you support or oppose such a proposal?*

Industry understands the desire to simplify the credit calculation. We believe, however, that the rationale for earning credits in NMOG is sound and should remain, as it provides a tie-in to overall air quality. This provision also incentivizes the early introduction of ZEV technology since the value of a previously earned credit appreciates as the NMOG fleet decreases. Additionally, the 0.035 value only represents the lowest value if we assume the LEV fleet average requirement will not be changed. We understand that such a change is already being considered by CARB as part of the future "LEV III" rulemaking. Finally, this proposed change can impact the value of banked credits and can be considered retroactive. For these reasons, we do not support this change.

The manufacturers submit the above responses in good faith and in an effort to reach a compromise on these important issues, while not waiving certain rights already established. We appreciate ARB's time and effort in preparing the questionnaire, considering our responses to your questions, and working to reach such a compromise. We are available for additional discussions in this regard, and look forward to resolving these issues. We would like to discuss this with you on January 18, 2008; we will call you to arrange this teleconference.

Very Truly Yours,

Chrysler LLC  
Ford Motor Company  
General Motors Corporation  
American Honda Motor Co., Inc.  
Nissan North America, Inc.  
Toyota Motors North America, Inc.