

June 28, 2023

**VIA EMAIL (Ellen.Peter@arb.ca.gov)**

Ms. Ellen M. Peter  
Chief Counsel  
California Air Resources Board  
1001 I Street  
Sacramento, CA 95814

**Re: Request for Enforcement Discretion Under California Code of Regulations,  
Title 13 Section 2015(r)**

Dear Ellen:

As we have discussed, the California Air Resources Board (CARB) has submitted to the Office of Administrative Law for approval the Advanced Clean Fleets (ACF) regulations. Towards the end of the ACF rulemaking process, CARB made a 15-day change to section 2015(r) of the regulations that is raising serious concerns, which are impacting the ability of EMA's member-companies to provide their fleet customers with medium-duty and heavy-duty (MHD) vehicles powered by internal combustion engines (ICEs).

Under those recent changes, as further explained by CARB staff in public presentations, when any ACF-regulated fleets, which include out-of-state fleets that conduct any operations in California, purchase any new ICE-powered MHD vehicles for use in California, those ICEs must be fully certified to CARB's Omnibus low-NOx standards and requirements. CARB staff have explained that, under the 15-day changes, MHD ICEs sold outside of California that qualify for a CARB Clean Idle Label under Manufacturers Advisory Circular (MAC) 2022-4, including non-offset MHD ICEs sold under the legacy engine provisions of the Omnibus regulations, cannot be operated in California by any ACF-regulated fleet.

These recent developments are severely constraining the ability of EMA member-company original equipment manufacturers (OEMs) to accept or fill orders from any out-of-state ACF-regulated fleets, given the low volumes of fully Omnibus-compliant MHD engine families that are currently being certified for sale. In that regard, the 15-day changes at issue will effectively undermine the expanded allowances that we have negotiated as part of a broader agreement regarding CARB's MHD vehicle regulations, which agreement we are on the verge of finalizing and announcing. Specifically, we have agreed to expand the allowances under title 13 section 1956.8 for legacy engine sales in model years 2024 through 2026, and have further agreed, consistent with MAC 2022-4, that sales of legacy engines to out-of-state fleets would not count against the expanded legacy caps in California. The 15-day changes, if strictly enforced pursuant to CARB staff's interpretations, would in effect nullify the expanded legacy provisions we have agreed on, and would prevent OEMs from selling certain MHD ICEs to fleets that have operations in California. The ramifications from that are, needless to state, unacceptable.

Ms. Ellen M. Peter

June 28, 2023

Page 2

In order to continue to do business in a reasonable manner, OEMs and the fleets they sell to must be able to know with certainty whether the new MHD ICE-powered vehicles that they sell and buy are compliant for operation in California. To that end, and in light of the foregoing, we request that CARB confirm in writing that, after the ACF regulations become effective, CARB will exercise enforcement discretion regarding the sale of Omnibus MHD ICEs to out-of-state fleets, and that the expanded legacy caps will not apply to such sales. The enforcement discretion we seek needs to cover model years 2024 through 2026, the same model years covered by the agreed-upon expanded Omnibus legacy provisions, and should apply to those Omnibus engines that are either CARB-certified or 50-state certified.

Thank you in advance for your prompt response to this important request, and please let me know if you have any questions.

Very truly yours,



Jed R. Mandel