TO: California Construction Equipment Owners/Operators  
Engineers with Experience on Retrofits and Repowers

FROM: Associated General Contractors of America  
Associated General Contractors of California  
Construction Industry Air Quality Coalition

SUBJECT: Statements and Evidence Needed to Challenge ARB’s Off-Road Diesel Rule

As part of the construction industry’s challenge to the California Air Resources Board (ARB) rulemaking on in-use off-road diesel (ORD) equipment, we need to develop an administrative record that will enable a reviewing court to find that ARB’s ORD rule is cost-ineffective, technically infeasible in the allotted time, and environmentally counterproductive. To do so, we need written statements (i.e., affidavits) from fleet owners/operators and engineers to establish our position. Unlike other litigation, a legal challenge to ARB’s ORD rule will not have witnesses, experts, or live testimony: the court will review the ORD based on the evidence in the administrative record. Essentially, these affidavits take the place of live testimony. If you have relevant information on any one or more of the following questions, please send us your answers in an email or, if you prefer, a telephone call. We do not need each affiant to answer each question.

1. Estimate how the ORD rule will affect the size/capability of your company’s fleet and your financial ability to purchase or lease new equipment and newer-tier used equipment. For example, if existing used equipment loses some of its resale value and you must purchase newer equipment, will those twin factors lead you to downsize your fleet? If so, will that increase the time needed to complete projects?

2. We want to establish that the ORD rule is environmentally counterproductive (e.g., will cause more auto idling and/or congestion) by reducing individual fleets’ capacity to compete individual projects quickly and by reducing the overall California inventory of equipment, thereby delaying completion of essential infrastructure projects. If the ORD rule will shrink your fleet’s overall capacity or create discrete bottlenecks (e.g., going from two scrapers to one scraper), explain how projects would take longer and increase the duration of congestion and worker trips. Do you have any experience with projects that restricted equipment use or operation to control emissions or noise, but resulted in the project’s taking longer (i.e., more congestion, longer period of noise, more worker trips)?

3. We want to establish that the construction industry is very capital intensive, compared to other industries. Can you provide any information on the high relative value of equipment to other assets in the industry?

4. If your company has experience buying or selling used equipment, please explain whether equipment needed in California differs from equipment needed in other areas (e.g., scrapers useful in California, but not in Mountain States). Provide any other information that would help establish that the inventory of used equipment (even newer-tier used equipment) currently available in the national or California marketplace is not sufficient to allow the California industry comply with the ORD rule.

5. If your fleet has sold used newer-tier used equipment in the past, does your fleet plan to hold onto its used newer-tier equipment longer as part of its effort to comply with the ORD rule? If so, explain your fleet’s past sales practices for used newer-tier equipment and your planned changes to those practices.

6. Economically, how much leadtime does your fleet need to implement the requirements of the ORD rule (e.g., retrofits, repowers, new equipment)? How will the ORD rule affect your company economically?

7. Technically, how much leadtime does your fleet need to implement the ORD rule (e.g., retrofits, repowers) and what must happen during that time (e.g., coordinate with sellers, obtain delivery, coordinate with third-party contractors, maintenance, etc.). How will that delay/leadtime affect your company’s performance?

8. So that we can establish you as a knowledgeable expert, please identify your qualifications to provide the information above (e.g., professional or educational experience, years in industry, etc.).

Please contact AGC of America’s Leah Pilconis (703-837-5332 and pilconisl@agc.org) or CIAQC’s Clayton Miller (626-858-4611 and clayton@lewisandco.net) with any questions. If you have relevant information and are willing to provide a statement for use in AGC-CIAQC comments on ARB’s rulemaking, send your answers to any of these questions to Leah or Clayton, and we will work to reformat them into an affidavit. We would like to identify potential affiants by the end of October, so please contact us as soon as possible if you think you can help.

October 16, 2007