

## CALIFORNIANS FOR ENFORCEMENT-REFORM AND TRANSPARENCY (CERT)

# Recommendations to CARB on Improving Enforcement Policies

October 22, 2009<sup>1</sup>

In order to promptly evaluate, address and implement the systemic problems and needed improvements discussed at the October 12<sup>th</sup> enforcement workshop, CARB should undertake the following actions:

**I. By November 11<sup>th</sup>, CARB's Chief Counsel should:**

- Respond to Workshop Questions

Respond in writing to the 25 questions in the enclosed CERT position paper, which was submitted to CARB's Chief Counsel on October 7<sup>th</sup>. CARB's response should be made available to the public in an ongoing open and transparent process. This process should allow all stakeholders to seek and obtain responses from CARB to similar types of questions.

**II. At the November 19<sup>th</sup> CARB Board Hearing, CARB's Chief Counsel and Executive Officer should make the following recommendations to the Board:**

- Penalty Policy

The CARB Board should direct CARB staff to adopt and start implementing immediately a formal and transparent penalty policy that is primarily designed to respond to impacts on air quality and is modeled on the U.S. EPA's "Clean Air Act Mobil Source Civil Penalty Policy – Vehicle and Engine Certification Requirements." (See Section II. B. of enclosed CERT Position Paper and the supporting "Note" prepared by George Lawrence, prior head of EPA's Office of Mobile Source Enforcement). As part of this formal penalty policy, in order to fully incentivize compliance, CARB

---

<sup>1</sup> This document was provided to CARB Chief Counsel, Ellen Peter, and enforcement staff on October 22, 2009 with the enclosed recommended timelines. Thus far, we have received little meaningful response to these critical and time-sensitive issues. In fact, CARB Chief Counsel has told CERT that CARB will not be responding to these issues in any manner until at least mid to late January 2010, and this date is "likely to slip."

should account for a company's demonstrated commitment to achieve compliance through undertaking "reasonable prudent precautions" or taking other related actions (such as environmental management systems). (See Section III. A. of enclosed CERT Position Paper).

- Administrative Hearing Process

The CARB Board should direct staff to make immediately available to all parties an Administrative Hearing Process – which is currently only available to parties that receive a citation under ARB's Heavy-Duty Vehicle Inspection Program. (See Section II.C. of enclosed CERT Position Paper).

- Appeals to Cal/EPA

The CARB Board should direct staff to create an internal appeals/complaint system/program implemented through the Cal/EPA Secretary's Office. This is essential so that all stakeholders can raise concerns about CARB's illegal, problematic or inappropriate enforcement-related processes or practices.

- Restructuring CARB Organization

The CARB Board should re-organize: the Chief Counsel's Office to separate out the traditional policy-legal advisory function from compliance/enforcement and education/outreach, and assign these latter functions to the CARB Board's Ombudsman Office; including the Training and Compliance Assistance Branch. This re-organization will fulfill the spirit and intent of the Board's education and compliance outreach needs and avoid any appearance of a conflict of interest. A separation of the policy/legal advisory responsibilities and compliance/enforcement functions must be "fire-walled" from one another---as they are now with the Board's existing regulatory implementation efforts (mobile sources and fuels for example) and enforcement. These operational and reporting distinctions will ensure that the Board's policy functions are not impacted by any specific enforcement matters, thereby creating no semblance of a conflict of interest. Additionally, staff with public relations sensitivities and experience will be put in more hands-on management roles to bolster and improve/enhance access to the Board's outreach and education resources.

### **III. By December 11<sup>th</sup>, CARB's Chief Counsel should:**

- Issue Enforcement–Transparency Report

Issue a public summary that explains: (1) the criteria CARB currently applies to assess penalties – including the penalty calculations on a per-unit basis; (2) the oversight controls that ensure that settlements collected under the Air Pollution Control Fund are spent in a manner to improve air quality – under the State Legislature’s and Governor’s direction and control; and (3) an explanation of how the Air Pollution Control Funds have been specifically spent in 2007, 2008 and thus far in 2009, and how those specific allocations were developed, reviewed and approved. (See Section III of enclosed CERT Position Paper). As part of this summary, CARB should specifically explain the decision-making process (selection and screening) for Supplemental Environmental Programs (SEPs) – as well as the projects/programs funded and all the associated SEPs from 2007-2009. Also, CARB should outline the application process required to receive consideration for SEP funding.

\* \* \* \* \*

CERT Members include:

- American Home Furnishing Alliance (AHFA)
- California Chapter of the American Fence Contractors Association
- California Dump Truck Owner Association (CDTOA)
- California Manufacturers and Technology Association (CMTA)
- California Motorcycle Dealers Association (CMDA)
- California Moving and Storage Association (CMSA)
- California Retailers Association (CRA)
- Construction Industry Air Quality Association (CIAQC) – and several of their affiliates
- Engineering Contractors Association
- Flasher/Barricade Association
- Independent Waste Oil Collectors and Transporters
- Marine Builders Association
- Moving and Storage Association
- National Marine Manufacturers Association (NMMA)
- Outdoor Power Equipment Institute (OPEI)
- Sand Car Manufacturers Association
- Southern California Contractors Association