

DONNA WILSON'S TESTIMONY NOVEMBER 19TH CARB BOARD HEARING

Madame Chairwoman and Board –

Today I am speaking on behalf of the CERT coalition and several of its member-organizations.

CERT urges the ARB Board to direct the Executive Office and staff to prioritize and expeditiously develop a transparent penalty policy (based on the existing, well-established EPA policy). This needed policy will achieve the following mutual goals:

First, we should target and focus California's limited enforcement and judicial resources on gross emitting, unsafe products from deliberate bad actors – these products are unfairly hurting consumers, air quality, and reputable manufacturers and dealers in the marketplace.

Second, we should distinguish between major versus administrative minor violations that have no impact on the environment and do not involve any avoided compliance costs.

Third, we should distinguish between difference grades of innocence or culpability, taking into account whether a party undertook “reasonable prudent precautions.”

Blindly holding companies “strictly liable” for even the most minor, paperwork violations, without any consideration of culpability or efforts to improve environmental compliance, undermines CARB's credibility and eliminates incentives for improvement. CARB's enforcement program, including its penalty policy, should account for a demonstrated commitment to achieve compliance – such as the installation of environmental management systems.

Fourth, CARB provides virtually no process or forum — other than resource-intensive litigation with the Attorney General. A fair, accessible administrative hearing process, similar to the administrative hearing procedure used by CARB for citations under the Heavy-Duty Vehicle Inspection Program, as well as most other California agencies, is a minimum due process obligation. Such a process would provide industry with an objective forum to challenge Agency action (including inconsistent penalties and factual inaccuracies), while at the same time providing CARB the same forum to explain its actions. In addition, an administrative hearing process would provide a much needed perception of fairness and would help encourage more transparent settlements from all parties.

Finally, another major CERT goal is to increase industry compliance by promoting adequate lead time and enhancing regulatory clarity. Essential to this compliance goal is CARB's compliance with administrative procedures – in lieu of enforcing “underground regulations” – which muddy the process and they provide zero and often negative lead time. As a result, industry unfairly becomes subject to enforcement actions. You just heard from Kit Enger about his industries experience with underground regulations. There is now a final opinion from the California Legislative Counsel concluding that CARB had no authority to enforce these off-highway regulations before August 15, 2007.

There are similar concerns about “underground regulations” from the furniture manufacturing industry. The industry understands that CARB plans to enforce unproven and technically dubious “deconstructive” test procedures that are completely outside the scope of any final regulation.

CARB’s deconstructive test procedures have been imposed without any advanced notice, lead time, or meaningful discussion with any stakeholder, including environmental groups.