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Assembly
California Legislature



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APPROPRIATIONS
EDUCATION
TRANSPORTATION

March 17, 2009

Governor Arnold Schwarzenegger
State Capitol
Sacramento, CA 95814

Dear Governor Schwarzenegger:

We are writing to express our concern over testimony provided by the top executives at the Air Resources Board during a hearing in the Assembly Transportation Committee on Monday, March 9th. The testimony was regarding the implementation of ARB's new Enhanced Vapor Recovery Phase II regulations. Mary Nichols and Tom Cackette, Chair and Chief Deputy Executive Officer of the ARB respectively, testified that they did not have the statutory authority to extend the April 1 deadline for the new EVR regulations on gas stations.

Consequently, we asked for an oral opinion from Legislative Counsel on whether or not the ARB has the statutory authority to extend the EVR deadline. Legislative Counsel was unable to find any statute that precluded their authority to do so. Furthermore, if you refer to Executive Order G-70-213 issued by the ARB (attached), you will clearly note their authority to extend the deadline for new regulations regarding aboveground gasoline storage tanks.

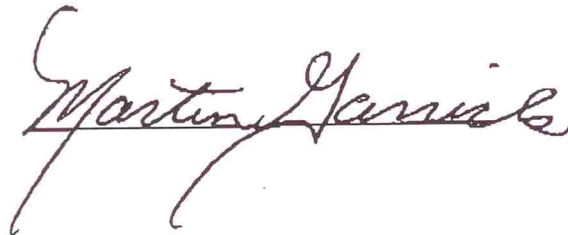
We would like to ask your office or someone at the ARB to please further explain this testimony or guide us to the appropriate section of California Code where their authority to extend the deadline is precluded.

It is our belief that the ARB does in fact have the authority to extend the deadline, and we would implore them to do so. Instead of an extension, the ARB issued a special advisory regarding the April 1 deadline that stipulates how gas station owners may avoid enforcement penalties if they are not in compliance by the deadline. This advisory establishes a criteria for determining station owners' "good faith efforts" to meet the new deadline in order to avoid penalties. The criteria allows local agencies wide discretion in determining a station's "good faith efforts" to comply on a case by case basis, which could be subjective and problematic.

By their own admission, the ARB concedes that at least thirty percent of the State's gas stations will be unable to comply with these regulations in the near future. It has become clear that the ARB is not concerned with the fate of many of the State's small business owners that will be adversely affected by this deadline. As Governor, we believe you have a broader view of the needs of California, and as a statewide elected official, we believe you understand the struggles of your constituents better than a bureaucracy that has little interaction with the public. In the interest of all Californians, we implore you to step in and take action in this important matter.

Thank you for your prompt attention in the matter.

Sincerely,

Handwritten signature of Jeff Miller in cursive script, written over a horizontal line.Handwritten signature of Martin Garris in cursive script, written over a horizontal line.Handwritten signature in cursive script, written over a horizontal line.