

1 DAVID PETTIT (SBN 67128)
dpettit@nrdc.org
2 MELISSA LIN PERRELLA (SBN 205019)
mlinperrella@nrdc.org
3 MORGAN WYENN (SBN 270593)
4 mwyenn@nrdc.org
5 NATURAL RESOURCES DEFENSE COUNCIL
1314 Second Street
6 Santa Monica, California 90401
Telephone: (310) 434-2300
7 Facsimile: (310) 434-2399

8 Attorneys for Defendant-Intervenor
9 Natural Resources Defense Council, Inc.

10
11 UNITED STATES DISTRICT COURT
12 FOR THE EASTERN DISTRICT OF CALIFORNIA

13 CALIFORNIA DUMP TRUCK OWNERS
14 ASSOCIATION,

15 Plaintiff,

16 v.

17 MARY D. NICHOLS, Chairperson of the
18 California Air Resources Board; and JAMES
19 GOLDSTENE, Executive Officer of the
California Air Resources Board,

20 Defendants,

21
22 NATURAL RESOURCES DEFENSE
23 COUNCIL, INC.,

24 Defendant-Intervenor.
25
26
27
28

Case No. 2:11-CV-00384-MCE-GGH

DEFENDANT-INTERVENOR'S FIRST SET
OF INTERROGATORIES TO PLAINTIFF
CALIFORNIA DUMP TRUCK OWNERS
ASSOCIATION

1 PROPOUNDING PARTY: Defendant-Intervenor the Natural Resources Defense
2 Council, Inc.

3 RESPONDING PARTY: Plaintiff California Dump Truck Owners Association

4 SET NUMBER: One

5 Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, Defendant-
6 Intervenor hereby requests that Plaintiff California Dump Truck Owners Association answer
7 fully, in writing, and under oath, the interrogatories set forth below no later than September 13,
8 11.

9 **INSTRUCTIONS AND DEFINITIONS**

10 1. The term "CDTOA" means Plaintiff California Dump Truck Owners
11 Association."

12 2. The term "COMMUNICATION" or "COMMUNICATIONS" means and refers
13 to every manner or means of transfer or exchange of information, and every transfer or exchange
14 of information, whether orally or by DOCUMENT, or whether such exchange occurred face-to-
15 face, by telephone, telecopier, mail, e-mail, personal delivery, or otherwise.

16 3. The term "COMPLAINT" means the First Amended Complaint filed by CDTOA
17 in this case.

18 4. The term "DOCUMENTS" means and refers to:

19 a. All matters within the definition of that term as defined by the Federal Rules of
20 Civil Procedure, including but not limited to writings of any kind, including the originals
21 and all non-identical copies, whether different from the originals by reason of any
22 notation made on such copies or otherwise, correspondence, memoranda, e-mail, notes,
23 diaries, statistics, letters, telegrams, minutes, contracts, reports, studies, checks,
24 statements, receipts, returns, summaries, pamphlets, books, interoffice and intraoffice
25 COMMUNICATIONS, notations of any sort of conversations, telephone calls, meetings,
26 or other COMMUNICATIONS, bulletins, printed matter, computer printouts, teletypes,
27 telefax, invoices, worksheets, and all drafts, alterations, modifications, changes, and
28

1 amendments of any of the foregoing, including any DOCUMENT stored in electronic
2 format;

3 b. All graphic or oral records or representations of any kind (including, without
4 limitations, photographs, charts, graphs, microfiche, microfilm, videotapes, recordings,
5 motion pictures), and;

6 c. All electronic, mechanical, or electrical records or representations of any kind
7 (including, without limitation, tapes, cassettes, discs, recordings, and data, images, or
8 DOCUMENTS stored in computer memories of any kind).

9 5. The term "IDENTIFY" as used with respect to anything other than a PERSON
10 calls for a full description of the name, nature, and current and former location or address of the
11 thing sought to be identified in the interrogatory. For an event, it calls for a full description of
12 the event, including, without limitation, the date, persons, and entities in attendance.

13 6. The term "MOTOR CARRIER" is used below as it is defined in 49 U.S.C.
14 §13102 and used in 49 U.S.C. §14501(c).

15 7. The term "PERSON" means and refers to any natural person, firm, agency,
16 organization, association, partnership, corporation, public entity, or any other kind of business or
17 legal entity.

18 8. A DOCUMENT or COMMUNICATION "RELATING" or "REFERRING TO" a
19 given subject means any and all DOCUMENTS or COMMUNICATIONS that constitute,
20 contain, embody, comprise, reflect, IDENTIFY, state, refer to, deal with, comment on, respond
21 to, describe, involve, mention, discuss, record, support, or are in any way pertinent to the subject,
22 including but not limited to, DOCUMENTS concerning the presentation of other
23 DOCUMENTS.

24 9. The term "TRUCK AND BUS REGULATION" means the "Regulation to
25 Reduce Emissions of Diesel Particulate Matter, Oxides of Nitrogen and Other Criteria Pollutants
26 from In-Use Heavy-Duty Diesel-Fueled Vehicles." Cal. Code Regs. tit. 13 § 2025.

27 10. The terms "YOU" and "YOUR" means and refers to CDTOA and any PERSON
28 acting at CDTOA's direction or on CDTOA's behalf, including CDTOA's members, employees,

1 partners, principals, shareholders, companies, agents, representatives, attorneys, accountants,
2 consultants, experts, and/or investigators.

3 Unless otherwise indicated, wherever used herein, the singular shall include the plural
4 and the plural shall include the singular.

5 INTERROGATORIES

6 INTERROGATORY NO. 1.

7 State all facts in support of your allegation in paragraph 6 of your Complaint that
8 "CDTOA members' primary source of livelihood is their truck."

9 INTERROGATORY NO. 2.

10 State all facts in support of your allegation in paragraph 6 of your Complaint that "Most
11 members purchase trucks to be used for decades..."

12 INTERROGATORY NO. 3.

13 State all facts in support of your allegation in paragraph 6 of your Complaint that "most
14 [members] have lengthy mortgages on their trucks."

15 INTERROGATORY NO. 4.

16 State all facts in support of your allegation in paragraph 6 of your Complaint that "The
17 trucks typically cost at least \$150,000 to purchase."

18 INTERROGATORY NO. 5.

19 State all facts in support of your allegation in paragraph 6 of your Complaint that "[The
20 trucks] have a useful life of several decades if maintained properly."

21 INTERROGATORY NO. 6.

22 State all facts in support of your allegation in paragraph 7 of your Complaint that
23 "Available retrofit technology costs tens of thousands of dollars to purchase and install for each
24 truck."

25 INTERROGATORY NO. 7.

26 State all facts in support of your allegation in paragraph 7 of your Complaint that "Most
27 CDTOA members do not have the financial resources to purchase and install retrofit technology
28 for their trucks, and will likely lose their business."

1 **INTERROGATORY NO. 8.**

2 State all facts in support of your allegation in paragraph 8 of your Complaint that "Once
3 installed, the retrofit technology makes the truck less efficient."

4 **INTERROGATORY NO. 9.**

5 State all facts in support of your allegation in paragraph 8 of your Complaint that "Once
6 installed, the retrofit technology makes [the truck] less able to run for long periods of time."

7 **INTERROGATORY NO. 10.**

8 State all facts in support of your allegation in paragraph 8 of your Complaint that "Once
9 installed, the retrofit technology makes the truck prone to mechanical breakdowns."

10 **INTERROGATORY NO. 11.**

11 State all facts in support of your allegation in paragraph 8 of your Complaint that "The
12 vast majority of trucks that are retrofitted will still have to be ultimately replaced under the rule."

13 **INTERROGATORY NO. 12.**

14 State all facts in support of your allegation in paragraph 8 of your Complaint that
15 "Retrofitting the trucks only delays the date upon which replacement is mandated."

16 **INTERROGATORY NO. 13.**

17 State all facts in support of your allegation in paragraph 9 of your Complaint that
18 "CDTOA members have based their business on the ability to use their trucks for decades to
19 come."

20 **INTERROGATORY NO. 14.**

21 State all facts in support of your allegation in paragraph 9 of your Complaint that
22 "Because the rule requires replacement of otherwise perfectly useful trucks much earlier than
23 would otherwise be required, most CDTOA members will be unable to continue their business."

24 **INTERROGATORY NO. 15.**

25 State all facts in support of your allegation in paragraph 10 of your Complaint that "Not
26 only will CDTOA members be prohibited from purchasing replacement trucks due to a lack of
27 financial resources, they will be prohibited from earning any income at all because the rule
28 prohibits them from operating their current trucks."

1 **INTERROGATORY NO. 16.**

2 State all facts in support of your allegation in paragraph 11 of your Complaint that “The
3 rule also greatly diminishes the resale value of their current trucks, precisely because they cannot
4 be operated on California roadways.”

5 **INTERROGATORY NO. 17.**

6 State all facts in support of your allegation in paragraph 11 of your Complaint that “As a
7 result, CDTOA members will be able to sell their current trucks for only a fraction of the balance
8 they owe, and will default on their truck mortgages.”

9 **INTERROGATORY NO. 18.**

10 State all facts in support of your allegation in paragraph 12 of your Complaint that “The
11 only way CDTOA members will be able to comply with the rule will be to expend tens of
12 thousands if not hundreds of thousands of dollars per truck.”

13 **INTERROGATORY NO. 19.**

14 State all facts in support of your allegation in paragraph 13 of your Complaint that “For
15 those members who are not able to replace or retrofit their trucks, their only option may be to
16 relocate their trucks outside of California, which will necessarily affect their routes.”

17 **INTERROGATORY NO. 20.**

18 State all facts in support of your allegation in paragraph 14 of your Complaint that “The
19 high cost of the retrofit technology and the limitations it places on the utility of the trucks will
20 impact the level of service that CDTOA members are able to provide.”

21 **INTERROGATORY NO. 21.**

22 State all facts in support of your allegation in paragraph 17 of your Complaint that “The
23 Truck and Bus Regulation promulgated by ARB directly impacts the price . . . of the motor
24 carrier members of CDTOA, and is therefore preempted by federal law”

25 **INTERROGATORY NO. 22.**

26 State all facts in support of your allegation in paragraph 17 of your Complaint that “The
27 Truck and Bus Regulation promulgated by ARB directly impacts the . . . route . . . of the motor
28 carrier members of CDTOA, and is therefore preempted by federal law”

1 **INTERROGATORY NO. 23.**

2 State all facts in support of your allegation in paragraph 17 of your Complaint that “The
3 Truck and Bus Regulation promulgated by ARB directly impacts the . . . service of the motor
4 carrier members of CDTOA, and is therefore preempted by federal law”

5 **INTERROGATORY NO. 24.**

6 Identify each harm that CDTOA members will suffer from compliance with the Truck
7 and Bus Regulation. For each harm, identify the nature of the harm that CDTOA members will
8 incur and describe how the Truck and Bus Regulation causes or contributes to such harm.

9 **INTERROGATORY NO. 25.**

10 Explain the impact, including quantifying the financial impact, of any harm identified in
11 response to Interrogatory No. 24.

12 **INTERROGATORY NO. 26.**

13 Identify any CDTOA members that are “motor carriers” as that term is used in 49 U.S.C.
14 section 14501(c).

15 **INTERROGATORY NO. 27.**

16 Identify the number of trucks belonging to CDTOA members that are subject to the
17 Truck and Bus Regulation.

18 **INTERROGATORY NO. 28.**

19 Identify any and all benefits incurred by CDTOA motor carrier members that comply
20 with the Truck and Bus Regulation.

21 **INTERROGATORY NO. 29.**

22 Identify and quantify any and all costs incurred by CDTOA motor carrier members in
23 relation to complying with the Truck and Bus Regulation.

24 **INTERROGATORY NO. 30.**

25 Identify and quantify any and all costs incurred by CDTOA motor carrier members in
26 carrying out their business in the absence of the Truck and Bus Regulation, including but not
27 limited to fuel and/or tire costs.

1 **INTERROGATORY NO. 31.**

2 By what percentage will CDTOA motor carrier members need to raise their prices in
3 order to cover the costs attributable to compliance with the Truck and Bus Regulation? State all
4 facts in support of your answer.

5 **INTERROGATORY NO. 32.**

6 State all facts with respect to the availability of government funds, subsidies, or grant
7 programs that were or are available to CDTOA motor carrier members that would defray the
8 costs associated with complying with the Truck and Bus Regulation.

9 **INTERROGATORY NO. 33.**

10 State all facts with respect to any government funds, subsidies, or grant programs utilized
11 by CDTOA members to help defray the costs associated with complying with the Truck and Bus
12 Regulation.

13 **INTERROGATORY NO. 34.**

14 Identify the range in age of the vehicles owned and/or operated by CDTOA members and
15 that are subject to the Truck and Bus Regulation.

16 **INTERROGATORY NO. 35.**

17 State all facts with respect to the number of years in which the Truck and Bus Regulation
18 accelerates turn over or replacement of CDTOA members' trucks.

19 **INTERROGATORY NO. 36.**

20 Identify all factors or variables that contribute to how CDTOA members subject to the
21 Truck and Bus Regulation establish their prices.

22 **INTERROGATORY NO. 37.**

23 Identify all factors or variables that contribute to how CDTOA motor carrier members
24 subject to the Truck and Bus Regulation establish their routes.

25 **INTERROGATORY NO. 38.**

26 Identify all factors or variables that contribute to how CDTOA motor carrier members
27 subject to the Truck and Bus Regulation establish their services.

1 **INTERROGATORY NO. 39.**

2 State all facts that relate or refer to any and all analyses, studies, reviews, summaries, or
3 any other type of assessment of the Truck and Bus Regulation performed, or requested to be
4 performed, on behalf of you or your members or at the request of you or your members.

5 **INTERROGATORY NO. 40.**

6 Identify any person who provided or was requested to provide information, or was
7 contacted or consulted with respect to your responses to these Interrogatories, or the concurrently
8 served Requests for Production or Requests for Admission, and for each person specify each
9 Interrogatory, Request for Production and/or Request for Admission for which he or she
10 contributed information.

11 **INTERROGATORY NO. 41.**

12 Identify CDTOA motor carrier members' competitors.

13 **INTERROGATORY NO. 42.**

14 State all facts that relate or refer to the effect of the Truck and Bus Regulation on the
15 ability of CDTOA members to compete with its competitors, as "competitor" is defined in
16 Interrogatory No. 41.

17 **INTERROGATORY NO. 43.**

18 State all facts that describe the effect of the economic conditions from 2008 to the present
19 on CDTOA motor carrier members' prices, including but not limited to, the effect of any decline
20 in home building and/or public works projects.

21 **INTERROGATORY NO. 44.**

22 State all facts that describe the effect of the economic conditions from 2008 to the present
23 on CDTOA motor carrier members' routes, including but not limited to, the effect of any decline
24 in home building and/or public works projects.

25 **INTERROGATORY NO. 45.**

26 State all facts that describe the effect of the economic conditions from 2008 to the present
27 on CDTOA motor carrier members' services, including but not limited to, the effect of any
28 decline in home building and/or public works projects.

1 **INTERROGATORY NO. 46.**

2 State all facts that describe the effect of the economic conditions from 2008 to the present
3 on CDTOA motor carrier member profits, including but not limited to, the effect of any decline
4 in home building and/or public works projects.

5 **INTERROGATORY NO. 47.**

6 Quantify the percentage of CDTOA motor carrier members that conduct business outside
7 of California.

8 **INTERROGATORY NO. 48.**

9 For those motor carrier members identified in response to Interrogatory No. 47, specify
10 what percentage of business each motor carrier conducts outside of California.

11 **INTERROGATORY NO. 49.**

12 State all facts that relate or refer to any efforts undertaken by CDTOA members to
13 retrofit their trucks in compliance with the Truck and Bus Regulation.

14 **INTERROGATORY NO. 50.**

15 State all facts that relate or refer to how the retrofit technology that can be utilized by
16 CDTOA members to comply with the Truck or Bus Regulation impacts motor carrier prices,
17 routes or services.

18
19 Dated: August 11, 2011

David Pettit
Melissa Lin Perrella
Morgan Wyenn
Natural Resources Defense Council, Inc.

20
21
22 By: 

23 Attorneys for Defendant-Intervenor
24 Natural Resources Defense Council, Inc.
25
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27
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1 **PROOF OF SERVICE**

2 I am employed in the County of Los Angeles, State of California. I am over
3 the age of 18 and not a party to the within action. My business address is: 1314 2nd Street, Santa
4 Monica, CA 90401.

5 On August 11, 2011, I served the foregoing documents described:

6 **DEFENDANT-INTERVENOR'S FIRST SET OF INTERROGATORIES TO**
7 **PLAINTIFF CALIFORNIA DUMP TRUCK OWNERS ASSOCIATION**

8 on the interested parties by causing such envelope to be delivered by first class mail to the office
9 of the addressees as indicated below:

10
11 Patrick James Whalen
12 Law Offices of Brooks Ellison
13 1725 Capitol Avenue
14 Sacramento, CA 95811
15 Attorney for Plaintiff California Dump Truck Owners Association

16
17 Nicholas Stern
18 Attorney General's Office of the State of California
19 P.O. Box 944255
20 1300 I Street
21 Suite 125
22 Sacramento, CA 94244-2550
23 Attorney for Defendant California Air Resources Board

24 I declare under penalty of perjury under the laws of the State of California that the
25 foregoing is true and correct.

26 Executed on August 11, 2011 at Santa Monica, California.

27 /s/ Lizzeth' Henao
28 Lizzeth Henao