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INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

November 29, 1999

John T. Durbin
Executive Director
Pennsylvania Turnpike Commission
P. O. Box 67676
Harrisburg, PA 17106-7676

Re: IRRC Regulation #60-002 (#2057)
Pennsylvania Turnpike Commission
Traffic Regulations

Dear Mr. Durbin:

Enclosed are our Comments on the subject regulation. They are also available on our website at <http://www.irrc.state.pa.us>.

Our Comments list objections and suggestions for consideration when you prepare the final version of this regulation. We have also specified the regulatory criteria which have not been met. These Comments are not a formal approval or disapproval of the proposed version of this regulation.

If you would like to discuss these Comments, please contact Chris Markham at 772-3455.

Sincerely,

A handwritten signature in black ink that reads "Robert E. Nyce". The signature is fluid and cursive.

Robert E. Nyce
Executive Director

REN:cae
Enclosure
cc: Mark H. Koch
Alphonse P. Lepore
Office of General Counsel
Office of Attorney General
Lee Ann Labecki

COMMENTS OF THE INDEPENDENT REGULATORY REVIEW COMMISSION

ON

THE PENNSYLVANIA TURNPIKE COMMISSION REGULATION NO. 60-2

TRAFFIC REGULATIONS

NOVEMBER 29, 1999

We have reviewed this proposed regulation from the Pennsylvania Turnpike Commission (PTC) and submit for your consideration the following objections and recommendations. Subsections 5.1(h) and 5.1(i) of the Regulatory Review Act (71 P.S. § 745.5a(h) and (i)) specify the criteria the Commission must employ to determine whether a regulation is in the public interest. In applying these criteria, our Comments address issues that relate to statutory authority, reasonableness, need, protection of the public health and safety, and clarity. We recommend that these Comments be carefully considered as you prepare the final-form regulation.

1. Section 601.4. Speed limits. – Clarity.

Subsection (a) provides specific speed limits, but allows exceptions. On the other hand, a vehicle is restricted to the maximum and minimum posted speed limits. For clarity, the PTC should delete the specific speed limits and simply require vehicles to obey the posted maximum and minimum speed limits.

2. Section 601.5. Hazardous materials. – Statutory authority; Reasonableness; Protection of the public health and safety; and Clarity.

Subsections (a) to (e)

The Preamble states “The Department of Transportation [Department] has terminated its hazardous materials permitting process and the Commission (PTC), following the Department’s lead has done the same. Both entities terminated their programs due to **anticipated** Federal legislation that was to take effect this year.” (Emphasis added.) Why is the PTC revising regulations to conform with legislation that hasn’t passed? How will the PTC protect the public health and safety if the current regulation is deleted prior to implementation of the federal program? If the sole basis for these amendments is to eliminate redundant state permitting, the PTC should wait for implementation of the federal regulations.

Subsection (f)

Subsection (f) provides that an “administrative fee in the amount of \$300, payable directly to the Pennsylvania Turnpike Commission, will be assessed for violation of Subsection (e).” A “fee” that will only be imposed in the instance of a violation is actually a “fine.” As such, it raises several questions of statutory authority.

Section 6110(b) of the Motor Vehicle Code (75 Pa.C.S. § 6110(b)) establishes penalties for violation of the rules and regulations of the PTC and for fare evasion. Paragraph (1) provides that the fine for violation of the PTC's regulations shall be \$25.00, unless otherwise provided by statute. (Emphasis added.) Paragraph (2) establishes fines for fare evasion. Both paragraphs provide that fines shall be imposed upon conviction of a summary offense. This implies that the alleged violator is entitled to a hearing before a magistrate, with the right to appeal a conviction.

Given this statutory provision, we question the PTC's authority to impose a fine by regulation. If the PTC can demonstrate that it has the statutory authority to do so, who will make the finding of a violation, what procedure will be followed, and what recourse will be available for the violator to challenge the finding?

Finally, we question the statutory authority for the mandate that the "fee" will be paid directly to the PTC. The Judicial Code (42 P.S. § 3571(b)(2)) provides that all fees and fines imposed through State Police action shall be paid to the Commonwealth and credited to the Motor Vehicle Fund.

3. Section 601.6. Parking, stopping, loading, or unloading. – Need and Clarity.

Subsection (b), as amended, states "The State Police may remove . . . the vehicle within 24 hours . . . of the presumption of abandonment." This provision lacks clarity -- it could be interpreted that the State Police may not remove the vehicle beyond 24 hours after it is presumed abandoned. We assume this isn't the intent. Further, this sentence is not needed because it duplicates the preceding sentence. For these reasons, the PTC should consider deleting this sentence.

4. Section 601.18. Accident prevention investigations. – Statutory authority and Clarity.

This section is modeled after Section 3754 of the Motor Vehicle Code (75 P.S. § 3754), which provides for the confidentiality of accident prevention investigations undertaken by the Department of Transportation in association with the Pennsylvania State Police. The PTC has proposed this section pursuant to Section 6110 of the Motor Vehicle Code (75 P.S. § 6110(a)), which authorizes the PTC to apply provisions of the Motor Vehicle Code to its own operations, and modify them through regulation.

Subsection (b) states "In-depth accident investigations and safety studies and information, records and reports used in their preparation are not discoverable nor admissible in any legal action or other proceeding." (Emphasis added.) However, the PTC should limit the scope of this provision to civil proceedings. In *Commonwealth of Pennsylvania, Department of Transportation v. Taylor*, *Commonwealth of Pennsylvania, Department of Transportation v. Hall*, 1999 Pa. Super. 174 (1999), the Pennsylvania Superior Court has held that Section 3754(b) of the Motor Vehicle Code does not apply to criminal prosecutions.

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To: Bill Chestnut
Agency: Pennsylvania Turnpike Commission
Phone: 986-9682
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From: Kristine M. Shomper
 Deputy Director for Administration
Company: Independent Regulatory Review
 Commission
Phone: (717) 783-5419 or (717) 783-5417
Fax: (717) 783-2664

Date: November 29, 1999
of Pages: 84

Comments: We are submitting the Independent Regulatory Review Commission's comments on the Pennsylvania Turnpike Commission's regulation #60-002. Upon receipt, please sign below and return to me immediately at our fax number 783-2664. We have sent the original through Interdepartmental mail. You should expect delivery in a few days. Thank you.

Accepted by: *Lynne M. Kelly* Date: 11/29/99