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**Sent:** Friday, April 07, 2006 3:59 PM

**To:** EP, RegComments

**Subject:** Comments on EQB Proposed Rulemaking on Pennsylvania Clean Vehicles Program

Attached are the Pennsylvania AAA Federation comments on the Environmental Quality Board Proposed Rulemaking [25 PA CODE CHS. 1212 and 126] Pennsylvania Clean Vehicles Program [36 PaB. 715]. A hardcopy has been mailed separately.

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**Pennsylvania AAA Federation Comments  
On the Environmental Quality Board Proposed Rulemaking  
To Adopt Pennsylvania Clean Vehicles Program Regulations**

The Pennsylvania AAA Federation is pleased to offer the following comments on the Environmental Quality Board Proposed Rulemaking to adopt Pennsylvania Clean Vehicles Program Regulations, Document Number 06-221.

The Pennsylvania AAA Federation supports all reasonable efforts to improve air quality in the Commonwealth. We applaud the impressive success of DEP and the Legislature for the ongoing and continually improving trend of air quality throughout the state.

We believe changing the Pennsylvania Clean Vehicles Program from the federal Tier 2 standards to the California low emission vehicle (CA LEV) standards will produce no air quality benefit relative to the Tier 2 program, but will instead produce increased consumer cost in terms of higher prices and limited consumer choices. Federal Tier 2 standard vehicles have been operating in Pennsylvania since model year 2004, and provide significant emission reductions over older model vehicles. We recommend the Commonwealth continue participation in the Federal Tier 2 vehicle emissions program.

**Historical Perspective.**

We believe the Commonwealth has always desired to participate in a national or federal low emission vehicle program instead of a single-state or regional program. AAA was an appointed member of the Pennsylvania Low Emissions Vehicle Commission created by Act 166 of 1992. In its report to the Governor, the LEV Commission rejected adoption of a California LEV program for Pennsylvania, with the AAA representative expressing concern that if the Commonwealth adopted the CA LEV, California would be regulating the LEV for the Legislators and citizens of Pennsylvania.<sup>1</sup> In a June 1997 Report to the General Assembly on Clean Vehicle Programs in Pennsylvania,<sup>2</sup> DEP commented that, "A *National low emission vehicle (NLEV) would be more cost-effective and equitable than individual state low emission vehicle programs once contemplated throughout the Ozone Transport Region.*" DEP noted in the report that the Department was developing a new motor vehicle emissions control regulation that would allow Pa. to opt into the NLEV program. However, since there was still some uncertainty about the NLEV program, Pa. would establish a Commonwealth clean vehicles program but allow automakers to comply with NLEV as an alternative to a Pa.-specific program. In a Pennsylvania Bulletin rulemaking in 1998, DEP commented, that the backstop program is the only program that a state may establish by regulation, "It is the backstop that creates the legal mechanism to establish the voluntary NLEV program in this Commonwealth." In a 1999 letter to EPA, DEP strongly supported the federal Tier 2 program, noting, "*Pennsylvania is encouraged that the Tier 2 program emphasizes nitrogen oxides (NOx), while significantly reducing volatile organic compound levels. New car standards for NOx are probably the most*

<sup>1</sup> Final Report of the Pennsylvania Low Emission Vehicle Commission (August 13, 1993)

<sup>2</sup> Clean Vehicle Programs in Pennsylvania, A Report to the General Assembly on Pennsylvania's Ozone Attainment Status Recommended by the Low Emission Vehicle Commission of 1993 (June 1997), ES-2



*effective way to reduce this pollutant from transportation sources. NOx reduction is most important for states like Pennsylvania which are significantly affected by long range transport.*"<sup>3</sup> This is a notable assertion by DEP since the federal Tier 2 program focuses on NOx reduction while the CA LEV program does not. AAA also participated in Ozone Stakeholder Groups whose reports included a recommendation for adoption of the EPA Tier 2 Regulation.<sup>4</sup> The June 1997 Clean Vehicle program report also noted that the Southeast Ozone Stakeholders Working Group recommended adoption of NLEV. None of the DEP Ozone Stakeholder reports recommended CA LEV as an ozone reduction strategy.

### **States are prohibited from adopting fuel economy regulations that seek to reduce vehicle carbon dioxide**

The EQB Proposed Rulemaking for the Pennsylvania Clean Vehicles Program cites in paragraph D (*Purpose and Background*) that one of the purposes of the proposed regulation is to reduce carbon dioxide. States have no statutory authority and are, in fact, expressly prohibited from passing or enforcing any statute, regulation or otherwise that attempts to reduce carbon dioxide through the regulation of vehicle fuel economy. In August 2005, the National Highway Traffic Safety Administration (NHTSA) stated, "*We reaffirm our view that a state may not impose a legal requirement relating to fuel economy, whether by statute, regulation or otherwise, that conflicts with this rule. A state law that seeks to reduce motor vehicle carbon dioxide emissions is both expressly and impliedly preempted. (Emphasis added) Our statute contains a broad preemption provision making clear the need for a uniform, federal system: "When an average fuel economy standard prescribed under this chapter is in effect, a State or a political subdivision of a State may not adopt or enforce a law or regulation related to fuel economy standards or average fuel economy standards for automobiles covered by an average fuel economy standard under this chapter."* 49 U.S.C. 32919 (a). *Since the way to reduce carbon dioxide emissions is to improve fuel economy, a state regulation seeking to reduce those emissions is a "regulation related to fuel economy standards or average fuel economy standards."* Further, such a regulation would be impliedly preempted, as it would interfere [with] our implementation of the CAFÉ statute. For example, it would interfere the careful balancing of various statutory factors and other related considerations, as contemplated in the conference report on EPCA, we must do in order to establish average fuel economy standards at the maximum feasible level. It would also interfere with our effort to reform CAFÉ so as to achieve higher fuel savings, while reducing the risk of adverse economic and safety consequences."<sup>5</sup>

NHTSA reaffirmed this position in its just-released Final Rule for Average Fuel Economy Standards for Light Trucks stating, "*In mandating federal fuel economy standards under EPCA, Congress has expressly preempted any state laws or regulations relating to fuel economy standards. A State requirement limiting CO2 emission is such a law or regulation because it has the direct effect of regulating fuel consumption. CO2 emissions are directly linked to fuel consumption because CO2 is the ultimate end product of burning gasoline. Moreover, because*

<sup>3</sup> DEP Office of Air, Recycling and Radiation Protection letter July 13, 1999. Public Docket No. A-97-10, page 2.

<sup>4</sup> Southcentral Pennsylvania Ozone Stakeholder Working Group Final Report, January 10, 2000, pg.5

<sup>5</sup> National Highway Traffic Safety Administration NPRM, Average Fuel Economy Standards for Light Trucks, Docket No. 2005-22223, Aug 2005



*there is but one pool of technologies for reducing tailpipe CO2 emissions and increasing fuel economy available now and for the foreseeable future, regulation of CO2 emissions and fuel consumption are inextricably linked. It is therefore NHTSA's conclusion that such regulation is expressly preempted. A State requirement limiting CO2 emissions is also impliedly preempted under EPCA. It would be inconsistent with the statutory scheme, as implemented by NHTSA, to allow another governmental entity to make inconsistent judgments made about how quickly and how much of that single pool of technology can and should be required to be installed, consistent with the need to conserve energy, technological feasibility, economic practicability, employment, vehicle safety and other relevant concerns."*<sup>6</sup>

### **Tier 2 and LEV II provide the same emission reduction benefit**

Both the Federal Tier 2 and CA LEV II will provide significant vehicle emission reductions over NLEV. Much of the claimed incremental benefit of the LEV II program over the Tier 2 is derived from two factors in the California program: California-specific gasoline and an advanced technology requirement or zero emissions vehicle (ZEV) mandate. Neither of these two factors is included in the Pennsylvania proposed regulation. The Environmental Protection Agency has stated, "We estimated that LEV II will provide about 1 percent additional reduction in mobile source VOC, and about 2 percent reduction in air toxics, over Tier 2 in 2020 with the program starting in the 2004 model year and lower with a later program start date."<sup>7</sup> This estimate was reiterated in EPA testimony before the Pa. House Environmental Resources and Energy Committee.<sup>8</sup> Mr. Joel Schwartz, in testimony before the same committee, noted, "PA DEP's claim of large benefits from CA-LEV II is misleading. DEP has been claiming that CA-LEV II will reduce automobile NOx by 9% and VOC by 6%-12%. Compared with current emissions of the automobile fleet, DEP's CA-LEV II benefit claim becomes 1.2%-2.4%."<sup>9</sup> USEPA has also noted that Pennsylvania does not rely upon emissions reductions from CA LEV in any SIP<sup>10</sup>

### **LEV II will mean higher cost to consumers**

Adoption of the CA LEV program will cost Pennsylvania consumers both in terms of higher vehicle prices, and in limiting consumer choices. The higher costs of the recently-passed California fuel economy regulations have been placed at \$1,000 per vehicle by CARB and \$3,000 per vehicle by the auto industry. CARB has listed 28 new technologies necessary to meet the new CO2 reduction regulations.<sup>11</sup> In arguing that consumers will recoup the increased cost of these new vehicle technologies, CARB has made several assumptions: (1) CARB has assumed that consumers in other states would purchase CA LEV II vehicles with the effect of lowering the cost of vehicles for California consumers. Thus, if Pennsylvania adopts CA LEV II,

<sup>6</sup> National Highway Traffic Safety Administration Final Rule, Average Fuel Economy Standards for Light Trucks, Docket No. 2006-24306, March 2006

<sup>7</sup> USEPA letter dated March 26, 2004 to Mr. Kenneth A. Colburn, Executive Director, NESCAUM, pg. 2

<sup>8</sup> Testimony of Judy Katz, USEPA before the House Environmental Resources and Energy Committee, February 8, 2006

<sup>9</sup> Testimony of Joel Schwartz, Visiting Fellow, American Enterprise Institute before the House Environmental Resources and Energy, February 8, 2006

<sup>10</sup> Testimony of Judy Katz, USEPA before the House Environmental Resources and Energy Committee, February 8, 2006

<sup>11</sup> California Air Resources Board Initial Statement of Reasons, August 6, 2004, Table 5.2-3.



Pennsylvania consumers are paying a higher price for a California air quality mandate. (2) in calculating a payback period, CARB assumed an average lifetime VMT of over 202,000 miles (16 years) for passenger cars and nearly 224,000 miles (18.6 years) for light trucks. Given that the weather and highway conditions in Pennsylvania are not the same as California; it is unlikely Pennsylvania consumers will experience the same lifetime payback period. In its lifecycle cost analysis, CARB utilized unrealistically low figures for auto loan rates and sales taxes, contributing to an underestimated figure of vehicle costs and an overestimation of vehicle payback.<sup>12</sup> Because adoption of CA LEV II will increase vehicle prices, emissions are likely to be higher under CA LEV II because slower fleet turnover will mean older vehicles with higher emissions will stay on the road longer, and will offset any purported benefits of CA LEV II relative to the federal Tier 2.

The CA LEV II program eliminates consumer access to diesel passenger vehicles. At a November 5, 1998 hearing, the California Air Resources Board made a decision to preclude light duty diesels from the market. The Minutes of the Board meeting read, "**FORMAL BOARD ACTION: Approved Resolution 98-53 adopting staff's proposal by an 11-0 vote. The resolution reflected an additional change proposed by the Board on a 7-3 vote (1 member abstaining) to eliminate the Transitional Low-Emission Vehicle (TLEV) beginning in 2004 (which likely precludes diesels in vehicles below 8500 lbs. gross vehicle weight).**"<sup>13</sup> (Emphasis added). CARB's Deputy Executive Officer commented, "*The TLEV I, the current standard, can be used to a limited extend to the year 2006, then the program goes away in 2007. It's not available. If you make this motion, it's not available to anybody. I don't think it creates an impossible situation anywhere, but it clearly takes away flexibility and it does in our mind prevent any diesel vehicle we are aware of or can see in the future from complying with the LEV standards.*" (Emphasis added).

EPA's list of 2006 model year fuel economy leaders shows four diesel passenger vehicles in the top seven vehicles. It is hardly a step in the direction of increasing fuel economy, particularly in light of the trend of increasing fuel prices, to eliminate consumer access to some of the most affordable and fuel economical vehicles on the market.<sup>14</sup>

Under the currently operating Clean Vehicles Program, Pennsylvania consumers have a choice of federal Tier 2 vehicles, including light duty diesel vehicles, and CA LEV certified vehicles, if they desire to purchase one. A government regulation is not required for a Pennsylvania consumer to purchase a CA LEV vehicle.

Currently available technology cannot meet the proposed fuel efficiency and emissions requirements of CA LEV II without reducing vehicle weight and size.<sup>15</sup> Besides decreased towing capability, and the resulting loss of other consumer utility; smaller, lighter vehicles

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<sup>12</sup> Environmental and Economic Impacts of the ARB Staff Proposal to Control Greenhouse Gas Emissions from Motor Vehicles, NERA Economic Consulting and Sierra Research, Inc., September 2004, Appendix P

<sup>13</sup> California Air Resources Board Meeting Summary, November 5, 1998

<sup>14</sup> USEP Fuel Economy Leaders: 2006 Model Year, [www.epa.gov/otaq/cert/mpg/overall-high.htm](http://www.epa.gov/otaq/cert/mpg/overall-high.htm).

<sup>15</sup> The Economics of Greenhouse Gas Control and the NJ Clean Cars Act, Presentation to the Center for Policy Research of New Jersey, Joseph L. Bast, November 12, 2003



contribute to higher fatalities.<sup>16</sup> Researchers at Harvard University and the Brookings Institute report that for every 100 pounds of weight taken off new cars to meet fuel economy standards, between 440 and 780 additional people are killed in auto accidents – a total of 2,200 to 3,900 lives lost per model year.<sup>17</sup>

### **Pennsylvania Sovereignty**

Adopting the CA LEV program ties Pennsylvania to any and all changes made to the program by the California Air Resources Board, on which Pennsylvania has no representation. A legal interpretation of the Clean Air Act, Section 177 says states adopting California standards must do so as a package, including the Zero Emission Vehicle (ZEV) sales mandate.<sup>18</sup> A lawsuit in federal court could leave the Commonwealth at risk of having to adopt all sections of the California regulation. The nature, severity and geography of California's air pollution problem drives California's pollution reduction strategies. California regions are in "extreme" non-attainment while Pennsylvania regions are defined as "moderate" or "marginal." California's pollution reduction strategies may not be appropriate for Pennsylvania. California revises its standards more frequently than the USEPA.<sup>19</sup> In fact, one comment to the California regulations noted that California has changed its regulation 49 times. Policy decisions regarding the control of air pollution in Pennsylvania should be made by Pennsylvania's elected representatives, not by a California bureaucracy that is unaccountable to Pennsylvanians.

### **Cost-Benefit Analysis**

The Department has not conducted the required cost-benefit analysis required of new regulations.<sup>20</sup> The Department has reiterated CARB cost and benefit figures which may not be appropriate for Pennsylvania. The Department has also cited the benefit of a reduction in greenhouse gases, which in addition to violating a NHTSA prohibition on the state regulation of CO<sub>2</sub>, does not cite a specific goal or benefit of such reductions, i.e. what concentration of CO<sub>2</sub> in the Pennsylvania atmosphere is the goal? The cost of new regulations should not outweigh the intended realistic measurable benefits.

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<sup>16</sup> Vehicle Weight, Fatality Risk and Crash Compatibility of Model Year 1991-1999 Passenger Cars and Light Trucks, NHTSA Technical Report, DOT HS 809 662, October 2003

<sup>17</sup> National Center for Policy Analysis, Brief Analysis No. 388, February 13, 2002, pg 2

<sup>18</sup> Legal Issues Pertaining to the Adoption of California GHG Emission Standards by Other States, Sierra Club, September 24, 2002, pg 6

<sup>19</sup> NESCAUM White Paper, Comparing the Emissions Reductions of the LEV II Program to the Tier 2 Program, October 2003, pg 5

<sup>20</sup> Commonwealth of Pennsylvania Governor's Office Executive Order Number 1996-1, February 6, 1996.