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INDEPENDENT REGULATORY REVIEW COMMISSION

333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

April 16, 2008

Honorable Kathleen A. McGinty, Chairperson
Environmental Quality Board
Rachel Carson State Office Building
400 Market Street, 16th Floor
Harrisburg, PA 17101

Re: Regulation #7-422 (IRRC #2658)
Environmental Quality Board
Diesel Vehicle Idling; and Auxiliary Power Systems

Dear Chairperson McGinty:

Enclosed are the Commission's comments for consideration when you prepare the final version of this regulation. These comments are not a formal approval or disapproval of the regulation. However, they specify the regulatory review criteria that have not been met.

The comments will be available on our website at www.irrc.state.pa.us. If you would like to discuss them, please contact me.

Sincerely,

Kim Kaufman
Executive Director

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Enclosure

cc: Honorable Mary Jo White, Chairman, Senate Environmental Resources and Energy Committee
Honorable Raphael J. Musto, Minority Chairman, Senate Environmental Resources and Energy Committee
Honorable Camille George, Majority Chairman, House Environmental Resources and Energy Committee
Honorable Scott E. Hutchinson, Minority Chairman, House Environmental Resources and Energy Committee

Comments of the Independent Regulatory Review Commission

on

Environmental Quality Board Regulation #7-422 (IRRC #2658)

Diesel Vehicle Idling; and Auxiliary Power Systems

April 16, 2008

We submit for your consideration the following comments on the proposed rulemaking published in the January 12, 2008 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the Environmental Quality Board (EQB) to respond to all comments received from us or any other source.

1. General - Need; Reasonableness; Implementation procedures; Feasibility.

Compliance Assistance Plan

The Preamble describes a Compliance Assistance Plan which will include an educational component to inform the regulated community about idling restrictions and the availability of financial assistance programs for the purchase or lease of mobile idling reduction equipment. We support this approach and request that, in the Preamble to the final-form regulation, the EQB provide detailed information on the scope of financial assistance programs available, the actual availability of the financial assistance, to whom the assistance is available and how to apply for the financial assistance.

Need for the regulation

In our conversations with the trucking industry, it is clear that the current cost of fuel is reducing idling substantially without regulation. The management of these companies is currently focused on the cost of fuel and reducing wasteful fuel consumption practices such as idling. Some are tracking the use of fuel by each individual driver. In light of these cost driven changes, the EQB should explain why this regulation is needed.

Identifying a violation

At the core of this regulation is the simple concept of limiting idling to five minutes in an hour. This accomplishes an improvement to air quality by simply turning off an engine when it is not needed. However, the regulation is complicated regarding affected vehicles and exemptions. First, it is difficult to identify what vehicles are affected. The definition of "commercial motor vehicle" specifies a weight of vehicle affected but also includes factors unrelated to emissions, such as the number of passengers, compensation and transporting hazardous materials. Second, the undefined term "diesel-powered" is used in the body of the regulation in combination with

“commercial motor vehicle.” Third, after it is determined that the vehicle is a “diesel-powered commercial motor vehicle,” a vehicle could be exempt based on several conditions including:

- Whether the vehicle is “model year 2007 or newer and exhibits a label” issued by the California Air Resources Board (CARB);
- Whether “the outside air temperature at the location of the vehicle is less than 40° F or greater than 75° F”;
- Whether the vehicle “is parked at a location equipped with stationary idle reduction technology that is available for use”;
- Whether idling is necessary for a vehicle “to operate work-related operations other than propulsion”;
- Whether idling is necessary “to operate defrosters, heaters, air conditioners or cargo refrigeration equipment...to prevent a safety or health emergency and not for the purpose of a rest period”; and
- Whether there is a mechanical problem that qualifies for exemption.

While the exemptions are individually reasonable, taken in total, the regulation presents a complicated process both in determining what vehicles are affected and what exemptions may apply. The EQB should explain what alternatives it considered to limit idling and why this complicated regulatory scheme was chosen as the best way to limit idling and enforce its provisions to accomplish the stated goal to improve air quality.

Uniformity between states

The Preamble states:

Idling restrictions have been adopted by 14 states, the District of Columbia and many local jurisdictions, including this Commonwealth's two most populated urban areas, Philadelphia and Allegheny Counties. The Federal government does not regulate commercial highway diesel vehicle idling, and generally considers the regulation of these vehicles in use to be the prerogative of state government. In March 2006, recognizing that reducing unnecessary diesel vehicle idling would be a public health benefit and that a multiplicity of state and local rules was a "barrier to greater implementation of idling control technologies," the EPA released a model state idling law. (EPA Model State Idling Law, EPA420-S-06-001) The model was a result of five workshops across the country in which affected stakeholders participated.

In written comments provided on the regulation and in discussions with commentators, it is clear that the regulated community seeks a uniform regulation between states to ease compliance.

Unfortunately, while the EPA provided a framework with its Model State Idling Law, portions of the EPA's model cause concerns related to our criteria for determining whether a regulation is in the public interest. For example, see our comment on the definition of “commercial motor vehicle.” (Issue 2 relating to Section 121.1) The EPA Model State Idling Law document says

that this definition was reached by a consensus of stakeholders that recommended a weight classification to determine applicability. However, the EPA's definition includes factors extraneous to the weight of the vehicle and emissions, such as hauling hazardous materials. We further note that the exemptions included in the EQB's regulation differ in several instances from those in the EPA Model State Idling Law. The EQB should explain whether this regulation is consistent with the states that already have idling restrictions and particularly with neighboring states. The EQB should also explain whether it believes complete uniformity among states is being accomplished based on the EPA Model State Idling Law. If the requirements among states are not uniform, the EQB should explain what efforts it is making to coordinate development of a regulation that is as uniform as possible with other states.

Enforcement

The Preamble describes widespread vehicle idling in Pennsylvania. The Regulatory Analysis Form, Question (20a) states that vehicles idle in Pennsylvania to avoid idling restrictions in New York and New Jersey. While a compliance assistance plan may accomplish some degree of reduction, it is not clear how the regulation will be enforced to the degree needed to accomplish air quality improvement. As noted in these comments, Section 126.612(c)(2) makes a vague reference to an "other enforcing agency," but it is not clear what that is. Can the Department of Environmental Protection alone dedicate enough resources to enforce this regulation? Does the EQB expect other law enforcement agencies to enforce idling restrictions among their other duties, particularly given the complicated process required to identify a violation? The EQB should explain how this regulation will be enforced to accomplish air quality improvement.

Other exemptions

Commentators requested several additional exemptions for unique and specific circumstances. Again, although overall the regulation is complicated, many exemptions are individually reasonable. If the EQB determines numerous exemptions are needed, it should also consider commentators' requests for exemptions in situations such as transportation of special needs children, public utility work in extreme weather, idling as part of the manufacturer operating requirements and periodic stops required for waste collection.

2. Section 121.1. Definitions. - Reasonableness; Need; Clarity

Commercial motor vehicle

This definition is not clear for several reasons.

First, the Preamble states this definition was "adapted from 49 CFR 390.5." As explained below, portions of this definition do not appear to be relevant to emissions from vehicles. This definition would be much simpler to understand, comply with and enforce if it only designated a weight limit and a number of passengers. The EQB should explain why a definition applicable to Federal Motor Carrier Safety Regulations under the United States Department of Transportation, used verbatim, is the most appropriate way to define and regulate vehicle emissions in Pennsylvania.

Second, we see no need to use the word “commercial” in the term because emissions occur regardless of whether the vehicle is engaged in commerce or not. The EQB should explain why the word “commercial” is needed to designate vehicles affected by the regulation.

Third, Paragraph (i) states:

The vehicle has a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight, of 4,536 kg (10,001 pounds) or more, whichever is greater.

Different weights are considered within Paragraph (i), but not all terms are defined. The term “gross vehicle weight rating” is defined in existing regulation and the term “gross combination weight rating” is defined in the proposed regulation. However, the terms “gross vehicle weight” and “gross combination weight” are not defined in this regulation and are therefore ambiguous. For example, the regulation does not state whether the term “gross vehicle weight” includes the load or not, whereas the defined terms make that specification. We recommend that the EQB review and explain the need for four different weight ratings in Paragraph (i). If it determines four different weight ratings are needed, it should define “gross vehicle weight” and “gross combination weight” in the final-form regulation.

Fourth, Paragraph (iv) states:

The vehicle is used in transporting material found by the Secretary of the United States Department of Transportation to be hazardous under 49 U.S.C. § 5103 (relating to general regulatory authority) and transported in a quantity requiring placarding under regulations prescribed by the Secretary of the United States Department of Transportation under 49 CFR, Subtitle B, Chapter I, Subchapter C (relating to hazardous materials regulations).

Why did the EQB include transporting hazardous materials and placarding as determinative factors in the scope of vehicles that must comply with emission standards?

Finally, Paragraph (ii) includes a vehicle transporting more than eight passengers for compensation and Paragraph (iii) includes a vehicle transporting more than 15 passengers not for compensation. What constitutes “compensation”? The regulation would be clearer if it only specified a number of passengers and did not involve compensation. We recommend that the EQB also take into consideration the existing definition in Section 121.1 of “passenger car,” defined as “a motor vehicle designed primarily for transportation of persons and having a design capacity of 12 persons or less.” The EQB should explain why the regulation needs two provisions based on the number of passengers and conditioned on compensation.

Undefined terms

We recommend defining the following terms which are used in the regulation, but are not defined:

- “Bus terminal” is used in Subsection 126.612(d).

- “Passenger bus” is used in Paragraph 126.612(a)(2).
- “School bus” is used in Paragraph 126.612(a)(11).
- “Stationary idling technology” is used in Paragraph 126.612(a)(1).

3. Section 126.601. Applicability. - Reasonableness; Clarity.

Diesel-powered commercial motor vehicle

Beginning in this section and used thereafter, the regulation uses the phrase “diesel-powered commercial motor vehicles.” In addition to our comment on the definition of “commercial motor vehicle,” the regulation does not define the phrase “diesel-powered.” The regulation should clearly establish what a “diesel-powered” vehicle is because it establishes who must comply with the regulation.

Owners and operators of “locations”

The Preamble describes the locations in Section 126.601 as follows:

The locations affected include, for example, warehouses, terminals, truck stops, other retail locations, schools, parking lots, rest areas and roadway rights-of-way. The proposed rulemaking would regulate idling at off-road sites by highway vehicles, but not by construction, agricultural or other off-road vehicles or equipment, or by locomotives, marine vessels or aircraft.

The intent described in the Preamble is not reflected in the language of the regulation. We agree with commentators who expressed uncertainty as to whether their equipment or situations fall under the regulation. We also question what actions are required when the regulation places the burden of compliance on the owner or operator of a “location.” How can they act responsibly, recognizing they may not own the vehicle? Other commentators expressed concern that this might affect emission limitations on a facility. We recommend rewriting Section 126.601 to take into consideration public comment on this provision and to clearly state the applicability of the regulation.

4. Section 126.611. Idling restriction. - Reasonableness.

This section states “No person subject to this subchapter may cause **or allow** the engine...to idle for more than 5 minutes in a 60-minute period...” (Emphasis added.) As noted in our comment on “owners and operators of locations” in Section 126.601, in many instances the person the regulation charges with preventing idling is not the driver or owner of the idling vehicle. How can a person reasonably comply if the person, who by regulation cannot allow a vehicle to idle, is not able to enter, take action to turn off the idling vehicle, or could be otherwise liable for damage to the vehicle or its contents? The EQB should explain the reasonableness of this requirement for persons who are not operating the vehicle and what measures must be taken to comply. In addition, the EQB should also explain how this provision will affect a facility already subject to air quality regulations or permits relating to emissions.

5. Section 126.612. Exemptions. - Statutory authority; Need; Reasonableness; Feasibility; Clarity.

Outside temperature less than 40° F or greater than 75° F

The exemption in Paragraph (a)(1) is conditioned upon the outside air temperature. The exemption allows idling when "the outside temperature at the location of the vehicle is less than 40° F or greater than 75° F." We support an exemption that allows time for owners and operators to install alternative means of heating and cooling sleeping berths. We also support allowing drivers to rest comfortably so that they can drive safely through the Commonwealth.

Our concern lies with the reasonableness and feasibility of this provision. As written, a violation could automatically occur due to a natural temperature fluctuation at dusk or dawn. If a driver in good faith allows the vehicle to idle under this exemption, an outside temperature increase or decrease would automatically cause a violation of this provision. Compliance should not require a driver trying to rest to also monitor the outside temperature during the rest period. We recommend that the EQB rewrite this provision so that drivers can reasonably comply.

Stationary idle reduction technology that is available for use

The exemption in Paragraph (a)(1) also states: "This exemption does not apply if the vehicle is parked at a location equipped with stationary idle reduction technology that is available for use." As written, the regulation automatically triggers a violation when stationary idle reduction technology becomes available for use. This places a burden on a driver to monitor the availability of stationary idling technology during a rest period. We recommend rewriting this provision to continue the exemption for the full rest period if the stationary idling technology is not available at the time the driver begins the rest period.

Model year 2007 or newer engine

Subsection (b) states:

The restriction on idling in § 126.611 does not apply to a vehicle that has a model year 2007 or newer engine and exhibits a label issued by CARB under 13 CCR 1956.8(a)(6)(C) (relating to exhaust emissions standards and test procedures-- 1985 and subsequent model heavy-duty engines and vehicles) showing that the vehicle's engine meets an optional NOx idling emission standard.

This is a wholesale exemption from the idling reduction requirement for these newer vehicles. Despite the reduction in some emissions from these newer vehicles, unnecessary idling of these vehicles still produces emissions which are as unnecessary as emissions from older model vehicles. The EQB should explain why it is in the public interest to allow newer vehicles to idle without restriction, particularly when idling is deemed unnecessary for other vehicles.

If the EQB believes this exemption is in the public interest, the regulation should explain what meets the requirement that the vehicle "exhibits a label issued by CARB." If the label is in the door frame or otherwise not visible from outside the vehicle, the driver would have to be woken up to demonstrate the exemption is valid. The regulation should specify in what way(s) this

label must be displayed to facilitate compliance with and enforcement of the regulation without interrupting the driver's rest period.

Other enforcing agency

Paragraph (c)(2) allows the vehicle owner or operator to verify a mechanical problem to "the Department or other enforcing agency." The phrase "other enforcing agency" is vague. The regulation should specify who has authority to enforce this regulation and accept verification of a mechanical problem.

Statutory authority for Subsection (d)

The EQB cites the Air Pollution Control Act as statutory authority for this regulation. Subsection (a) of 35 P.S. § 4012 (relating to powers reserved to political subdivisions) of the Air Pollution Control Act states:

Nothing in this act shall prevent counties, cities, towns, townships or boroughs from enacting ordinances with respect to air pollution which will not be less stringent than the provisions of this act, the Air Pollution Control Act or the rules and regulations promulgated under this act or the Clean Air Act....

Subsection (d) of the regulation states:

A county, city, town, township, borough or local air authority with idling regulations in existence before _____ (*Editor's Note: The blank refers to the effective date of adoption of this proposed rulemaking.*) may approve alternative compliance plans for bus terminals to minimize idling.

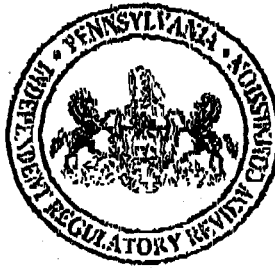
Unless the EQB can establish that Subsection (d) is consistent with its statutory authority, we recommend deleting Subsection (d) in its entirety.

6. Sections 126.701. Applicability. and 126.702. Auxiliary power systems. - Possible conflict with other regulations.

Sections 126.701 and 126.702 only require a "model year 2007 or newer engine" and do not include the requirement specified in Section 126.612(b) for "a label issued by CARB under 13 CCR 1956.8(a)(6)(C)." Why do these requirements differ?

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

To: Debra L. Fallor
Agency: Department of Environmental Protection
Phone: 7-2814
Fax: 705-4980
Date: April 23, 2008
Pages: 9

Comments: We are submitting the Independent Regulatory Review Commission's comments on the Department of Environmental Protection's regulation #7-422 (IRRC #2658). 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:

Date:

4-16-08