Pennsylvania Department of Environmental Protection

Rachel Carson State Office Building
P.O. Box 2063
Harrisburg, PA 17105-2063
September 22, 2009

Office of Waste, Air and Radiation Management 717-772-2724

Clerk of the Board
California Air Resources Board
1001 I Street
Sacramento, California 95814

Re: California Air Resources Board's Proposed Amendments to New Passenger Motor Vehicle Greenhouse Gas Emission Standards

Dear Sir or Madam:

The Pennsylvania Department of Environmental Protection (DEP) is writing to express its support for the proposed amendments to California's greenhouse gas emission (GHG) standards for new passenger motor vehicles and test procedures for light- and medium-duty vehicles that are scheduled for a public hearing before the California Air Resources Board on September 24, 2009. We are submitting these comments pursuant to 25 *Pa. Code* § 126.451(2)(iii), which requires DEP to submit comments on behalf of the residents of the Commonwealth of Pennsylvania (Pennsylvania) on proposed or final-form rulemakings amending the California Code of Regulations (CCR) requirements that are incorporated by reference into the Pennsylvania Clean Vehicle Program regulations.

Pennsylvania adopted and incorporated by reference California's Low Emission Vehicle (LEV) regulations in 1998, except for the California Zero Emission Vehicle and emissions control warranty systems statement provisions. 28 *Pennsylvania Bulletin* 5873 (Dec. 5, 1998). The California proposal would amend Title 13 CCR, Division 3, Chapter 1, §§ 1961 and 1961.1, and the "California Exhaust Emission Standards and Test Procedures for 2001 and Subsequent Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles," referenced therein, all of which are included in Pennsylvania's incorporation by reference in 25 *Pa. Code* § 126.411(b). Pennsylvania's regulations are found in 25 *Pa. Code* Chapter 126, Subchapter D, entitled, "The Pennsylvania Clean Vehicles Program."

With regard to the California Air Resources Board's (CARB) proposed amendments for the GHG emission standards for new passenger motor vehicles, DEP supports the proposed amendment to allow vehicle manufacturers to demonstrate compliance based on the total number of subject vehicles delivered for sale in California and all other states that have adopted California's GHG standards pursuant to Section 177 of the Clean Air Act (known as "Section 177 states"), including Pennsylvania.

DEP also supports the proposed California amendment to allow manufacturers to use emissions testing data from the federal Corporate Average Fuel Economy (CAFE) Program to demonstrate compliance with the California GHG standards. The manufacturers are required to test carbon dioxide (CO_2) emissions as part of the CAFE Program. The proposed California amendment is appropriate because it enables manufacturers to eliminate multiple test procedures for CO_2 and provides CO_2-equivalance calculation formulas for other greenhouse gases.

DEP understands that an automobile manufacturer has questioned whether Pennsylvania's regulations incorporate California's GHG standards for motor vehicles, and that the Association of International Automobile Manufacturers (AIAM) questions whether Pennsylvania sales should be included in the pool of vehicle sales in Section 177 states. Please be assured that Pennsylvania's regulations do include California's GHG standards and that Pennsylvania sales belong in the pool. Under Pennsylvania law, Pennsylvania's 1998 adoption and incorporation by reference of California regulations automatically incorporated all later amendments and additions California has made and will make to its regulations. *Pennsylvania Statutory Construction Act,* 1 Pa.C.S.A. § 1937(a).[1] Consequently, Pennsylvania has in place the current California LEV II program, including the California greenhouse gas regulations.

Additionally, the reports required to be submitted to demonstrate compliance with the non-methane organic gases fleet average in Pennsylvania include reports of annual sales in Pennsylvania, contrary to the assertion of AIAM that our regulations do not require separate reporting of sales in Pennsylvania.

As a Section 177 State, Pennsylvania has consistently supported California's efforts to regulate GHGs from motor vehicles and we fully support California's efforts to regulate greenhouse gases to abate the impacts of climate change. Efforts to combat climate change must come from across the spectrum of local, state, and federal governments. Pennsylvania appreciates California's proactive efforts to regulate and raise awareness of the impact of greenhouse gases and climate change. Pennsylvania has included GHG reductions from the vehicle program in its proposed climate change action plan required under the Pennsylvania Climate Change Act.

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[1] Section 1937(a) of the Pennsylvania Statutory Construction Act reads:

> A reference in a statute [or regulation] to a statute or to a regulation issued by a public body or public officer includes the statute or regulation *with all amendments and supplements thereto and any new statute or regulation substituted for such statute or regulation,* as in force at the time of application of the provision of the statute in which such reference is made, unless the specific language or the context of the reference in the provision clearly includes only the statute or regulation as in force on the effective date of the statute in which such reference is made. *(Emphasis added.)*

Pennsylvania courts have held that the rules in the Statutory Construction Act apply to regulations as well as to statutes. *See, e.g., Highway New, Inc. v. Pennsylvania Department of Transportation,* 789 A.2d 802, 808 (Pa. Cmwlth. 2002).

Thank you for your consideration of our comments on California's proposed amendments to the GHG emission standards for new passenger motor vehicles. Please do not hesitate to contact me by e-mail at kereisinge@state.pa.us or by telephone at (717) 772-2724 if you have any questions or need additional information. You may also contact Joyce E. Epps, Director of the Bureau of Air Quality, by e-mail at jeepps@state.pa.us or by telephone at 717-787-9702.

Sincerely,

Kenneth R. Reisinger
Acting Deputy Secretary