

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Air Resources

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May 31, 2018

Ms. Sarah Carter
California Air Resources Board
9480 Telstar Avenue, Suite 4
El Monte, CA 91731

Re: Potential Alternatives to Clarification of “Deemed to Comply” Provision

Dear Ms. Carter:

On behalf of the New York State Department of Environmental Conservation (DEC), I would like to offer comments on the *Request for Public Input on Potential Alternatives to a Potential Clarification of the “Deemed to Comply” Provision for the LEV III Greenhouse Gas Emission Regulations for Model Years Affected by Pending Federal Rulemakings* released May 7, 2018. Consistent with our March 2017 testimony, DEC supports the California Air Resources Board’s (CARB) determination that the greenhouse gas (GHG) emission standards currently in place for model years 2022-2025 remain appropriate and feasible. DEC believes that the U.S. Environmental Protection Agency (U.S. EPA) determination that the current (Federal) standards are too stringent is arbitrary and capricious, is not supported by facts, and is a gross dereliction of U.S. EPA’s duty to protect human health and the environment. DEC fully supports CARB’s decision to conduct a thorough review of the “deemed to comply” provision, including the possible elimination of the provision.

In New York State, DEC is tasked with mitigating the effects of climate change and has the obligation to regulate and mitigate greenhouse gas (GHG) emissions from mobile sources to safeguard the health of New York State’s residents and protect the State’s environment. As the result of a substantial reduction in power sector emissions supported by New York’s environmental and clean energy programs, the transportation sector is now the largest source of GHG emissions in New York, accounting for roughly 33% of all GHG emissions statewide¹. New York State has adopted goals calling for a 40 percent reduction in GHG emissions by 2030, and 80 percent reduction by 2050. Maintaining stringent mobile source GHG emission standards is critical to achieving New York’s air quality goals to protect human health and the environment.

New York State has made considerable progress in improving its air quality utilizing California’s stringent Advanced Clean Cars mobile source emission standards. New

¹ New York State Greenhouse Gas Inventory: 1990–2015 Final Report | March 2018.
<https://www.nyscrda.ny.gov/About/Publications/EA-Reports-and-Studies/Energy-Statistics>

York initially adopted the California mobile source emission standards in 1990 as permitted under Section 177 of the federal Clean Air Act (CAA). Section 177 of the CAA specifically permits states to adopt California's motor vehicle emission standards in lieu of federal standards. This is a right New York embraces and intends to continue to exercise in order to attain and maintain its air quality goals.

New York strongly supports California's right to adopt and implement more stringent emission standards as permitted by Section 209 of the CAA. California standards have been technology forcing and have served as a template for subsequent federal emission standards. California and U.S. EPA completed a significant effort to align California and federal emission standards in recent years. New York supports these alignment efforts, but it is essential that California retain its authority under Section 209 to adopt more stringent emission standards as necessary.

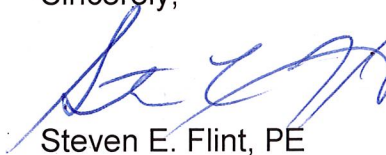
DEC supports CARB's determination that the GHG emissions standards currently in place for model years 2022-2025 remain appropriate and a change is not warranted. This determination was aligned with U.S. EPA's original determination regarding the 2022-2025 GHG standards, which was supported by over 1,000 pages of facts and scientific data. This stands in stark contrast to U.S. EPA's most recent determination that the standards are inappropriate, which was supported by 38 pages of statements largely attributable to automobile industry sources and devoid of facts or data to support the conclusion. CARB's basis for the determination is that the 2022-2025 model year GHG standards are technologically feasible, cost effective, and the automotive industry is complying with standards ahead of schedule. DEC agrees that many of the technologies needed to meet the 2022-2025 standards are available today and are being utilized in growing numbers. Increased adoption of hybrid, plug-in hybrid, battery electric, and fuel cell electric vehicle technologies will also make GHG standards easier to achieve. Retaining the GHG standards for the 2022-2025 model years will achieve significant emissions reductions and provide much desired regulatory certainty to the automotive industry.

The current harmonized GHG standards are a significant compromise on the part of California and the Section 177 states, with the reduced stringency being offset by applying the standards to more vehicles. While New York opposes any further reduction in stringency from previously established California standards, we recognize the value in harmonized standards that provide for reductions in GHG emissions nationwide. We conceptually agree with the publicly stated position of the auto industry that seems to support continued harmonization, while asking for increased flexibility. We reserve judgement on such flexibility until such time as it can be fully defined, and its impact assessed. We also take note of recent statements by U.S. EPA suggesting a desire to work toward a similar approach. Therefore, we suggest that as California evaluates alternatives during this rulemaking process that it include a mechanism that will allow for a truly harmonized national standard to exist and flourish, to the benefit of California, the 177 States, manufacturers, U.S. EPA, and the American public.

To be clear, however, the standards contemplated by U.S. EPA's reconsideration of the Mid Term Evaluation are not sufficiently stringent to be harmonized with California's legally adopted, environmentally and economically supported standards. Therefore, if U.S. EPA forges ahead with its ill-considered plan, CARB should not allow 'deemed to comply' to stand. Absent a significant change in direction from U.S. EPA the deemed to comply provision must be stripped from the regulation, and we must return to a time where there will be a more protective and technically rigorous standard in California and the Section 177 states and a weaker standard in the rest of the country. And responsibility for this backward step in environmental protection and regulatory streamlining will fall squarely on U.S. EPA's shoulders.

In closing, DEC reiterates its support for CARB's determination that the current GHG emission standards for model years 2022-2025 are appropriate and should be retained. Should U.S. EPA proceed with its ill-conceived efforts to rollback existing GHG standards, DEC will strongly support CARB's efforts to reconsider the existing "deemed to comply" provision, while seeking an alternative that would provide a harmonized standard that meets our GHG reduction goals.

Sincerely,

A handwritten signature in blue ink, appearing to read 'S. Flint', is written over the typed name.

Steven E. Flint, PE
Director, Division of Air Resources