

TECHNICAL RESPONSE MEMORANDUM

To: Lisa Vest, Hearing Officer

Through: Valerie Gray *vag* 3/14/19

From: Ajo Rabemiarisoa *ar* 3/12/2019

Re: Department’s response to public comments received on the proposed amendments to 7 DE Admin. Code 1140 - *Delaware Low Emission Vehicle Program*

You presided over a public hearing on Thursday, February 21, 2019 beginning at 6:00 PM in the Auditorium at The Richardson and Robbins Building, 89 Kings Highway, Dover. The subject of the public hearing was a proposed revision to 7 DE Admin. Code 1140 - *Delaware Low Emission Program*. The Department received comments from the following:

Date Received	Name	Organization
February 21, 2019	Coralie Pryde	Private Citizen
February 21, 2019	Sherrri Evans-Stanton	Delaware Sierra Club
March 8, 2019	Julia M. Rege	The Association of Global Automakers
Comments Received at Public Hearing		
February 21, 2019	Sherry Marsico	Private Citizen
February 21, 2019	Don Brill	Delaware Sierra Club

This memorandum provides a summary of the comments received and the Division of Air Quality (DAQ) response. Each comment is included verbatim as an attachment. The comments and the public hearing transcript containing comments are available on the Clean Vehicles and Fuels page of the Department website. Available: <https://dnrecwp.test.dti.state.de.us/air/mobile-sources/clean-vehicles-fuels/>

I. Comments Received from The Association of Global Automakers

Comment 1

The comments provided by Global Automakers suggest that Delaware should not be able to adopt the proposed amendments at this time, because the California regulations (December 12, 2018 amendments) have not yet received a waiver from the U.S. Environmental Protection Agency.

Department Response

Pursuant to Section 177 of the Clean Air Act, Delaware may adopt California motor vehicle emission standards if “*such standards are identical to the California standards for which a waiver has been granted.*”

By adopting the proposed amendments to 7 DE Admin. Code 1140, the Department will maintain the currently adopted greenhouse gas standards for model years 2021 through 2025, as last amended on October 25, 2016, and for which a waiver has been granted. It is important to note that the California “deemed to comply” amendments do not increase nor decrease the stringency of the greenhouse gas emissions standards for California, thus (following the Global Automakers suggestion based on past EPA waiver decisions) they do not warrant the issuance of a new waiver from the Environmental Protection Agency.

California’s recent amendments serve to clarify that California’s “deemed to comply” provision holds true with the light-duty vehicle federal standards adopted in 2012 for greenhouse gas emissions, and will not hold true for weakened federal standards. Consequently, the Department’s adoption by reference of California’s “deemed to comply” amendments does not consist in a violation of Section 177 of the Clean Air Act.

Comment 2

The comments provided by Global Automakers suggest that the pending Safer Affordable Fuel-Efficient (SAFE) rule that the federal government is currently finalizing for the light-duty vehicle fuel economy and greenhouse gas emission standards may result in a national program that sets meaningful and continued increase in vehicle efficiency standards, while also meeting the needs of America’s drivers, and negating the need for separate state regulations. In this optic, Global Automakers asks the Department to defer its adoption of California’s “deemed to comply” amendments until after the federal rulemaking is complete.

Department Response

On February 21, 2019, officials from the White House, Department of Transportation, and Environmental Protection Agency announced that “*the Trump Administration has decided to discontinue discussions with the California Air Resources Board regarding the SAFE Vehicles Rule*”¹. Although this statement does not offer details about the final greenhouse gas standards that will be implemented by the SAFE rule, it does highlight an expected discrepancy with the currently adopted California standards.

In its Technical Support Document for the proposed amendments, the Department has recognized the social, environmental and economic benefits of maintaining the currently adopted standards for model years 2021 through 2025, and has also concluded that the SAFE would result in weakened national standards, unnecessary increase in CO₂ emissions, and exacerbated effects of climate change. Additionally, the Department has highlighted the urgency of preserving the emissions standards for model year 2021 through an Emergency Order signed on December 27, 2019, which acknowledges the adverse effects for Delaware, if the adoption of the “deemed to comply” amendments was delayed.

For these reasons, the Division does not recommend the Department to wait until after the final federal SAFE rule has been published to proceed with the adoption of California’s “deemed to comply” amendments.

II. Comments Received in Support of the Proposal

Comment 1

Four out of the five comments received were in support of the Department’s proposed amendments to 7 DE Admin. Code 1140. The supporting comments highlighted that the adoption by reference of California’s amendments clarifying the “deemed to comply” provision was necessary, given the benefits to the quality of life of Delawareans, and due to the urgency of Climate Change mitigation actions.

Department Response

The Division of Air Quality appreciates that the Delaware Sierra Club and two private citizens took the time to voice their support for the proposed amendments. The Division recommends that the Department finalizes the revisions, as proposed.

¹ The White House. February 21, 2021. Joint Statement from the White House, Department of Transportation, and Environmental Protection Agency on the SAFE Vehicles Rule. Accessible online, via: <https://www.whitehouse.gov/briefings-statements/joint-statement-white-house-department-transportation-environmental-protection-agency-safe-vehicles-rule/>