

MEMORANDUM

To: Lisa Vest, Hearing Officer

Through: Ali Mirzakhali *Am 10/24/13*
Ron Amirikian *raa 10/22/13*
Valerie Gray *vag 10/22/13*

From: Deanna Cuccinello *dmc 10/21/13*

Re: Department's Response to Comments received on the proposed amendments to 7 DE Admin Code 1140 – *Low Emission Vehicle Program.*

You presided over a public hearing on Monday, September 23, 2013 beginning at 6:00 PM in DNREC's Richardson & Robbins Building Auditorium, 89 Kings Hwy, Dover, DE 19901. The subject of that public hearing was a proposed revision to 7 DE Admin. Code 1140 – Low Emission Vehicle Program. The Department received comments from the following:

Date Received	Name	Organization
9/23/2013	Julia Rege	Global Automakers
9/23/2013	rnfield@countrypropaneonline.com (No name submitted)	private citizen
9/23/2013	Richard Timmons	private citizen
9/23/2013	Arron Wright	private citizen
9/23/2013	John Nichols	private citizen
9/24/2013	John Nichols	Private citizen
9/24/2013	Linda Shinn	private citizen
9/25/2013	Joseph Fulgham	Minority Caucus
9/27/2013	77whitebronco@gmail.com (No name submitted)	private citizen
9/27/2013	Robert Wrieden	private citizen
9/28/2013	jm3de7736@aol.com (No name submitted)	private citizen
9/29/2013	James F Canalichio	private citizen
9/30/2013	Martin Shuey	private citizen
9/30/2013	George Brown	private citizen
9/30/2013	Eileen Boyle	private citizen
10/1/2013	Matt Schlitter	private citizen
10/2/2013	Sabine Buergermeister	via Sierra Club
10/2/2013	John Jacobs	via Sierra Club
10/2/2013	Kathleen Eaton	via Sierra Club
10/2/2013	Mark Jolly-Van Dodgraven	via Sierra Club
10/2/2013	Linda Jacobs	via Sierra Club
10/2/2013	Robin Coventry	via Sierra Club
10/2/2013	Kimberly Frey	via Sierra Club
10/2/2013	Ken Reynolds	via Sierra Club

10/3/2013	Nicole Catalina	via Sierra Club
10/3/2013	Sharon Stevenson	via Sierra Club
10/3/2013	Rhonda Brittingham	via Sierra Club
10/3/2013	Denis Dellaloggia	via Sierra Club
10/3/2013	Tricia Herron	via Sierra Club
10/3/2013	Julia Mercier	via Sierra Club
10/3/2013	Carol Collins	via Sierra Club
10/3/2013	Majed Subh	via Sierra Club
10/4/2013	Bruce Abbott	via Sierra Club
10/5/2013	Julia Taeuber	via Sierra Club
10/7/2013	Bethany Hall-Long	DE Senator
10/8/2013	Josh Miller	private citizen
10/8/2013	Aaron Wright	private citizen
10/8/2013	Steve Wright	private citizen
10/8/2013	Thurman Brendlinger	Clean Air Council
10/8/2013	Barbara Reader	private citizen

This memorandum provides a summary of the comments received and the Division of Air Quality (DAQ) response. Each comment received is included verbatim as an attachment.

I. General Comments Received

Comment 1

The commenter was concerned that the adoption of these amendments would “lock” Delaware to any future changes adopted by California.

Department Response

The Clean Air Act (CAA) establishes the framework for controlling mobile source emissions. Section 209 of the CAA allows California to regulate tailpipe emission from mobile sources, and CAA Section 177 allows other states to adopt the California standards. Delaware is currently regulating mobile sources pursuant to its adoption of CA LEV II requirements. California has revised their LEV II requirements to LEV III requirements. Delaware currently has two options under the CAA, 1) adopt the CA LEV III requirements, or 2) revert to the federal program.

This proposal is to adopt the CA LEV III standards. This is being done by incorporating by reference the applicable sections within Title 13 of the California Code of Regulations as they exist on 12/31/12.

This adoption method does not “lock” Delaware to future changes adopted by California. If California makes any changes to its requirements they will have no effect in Delaware because Delaware’s proposal incorporates the CA requirements as they exist on 12/31/12. Every time CA makes a change to their requirements Delaware in turn will evaluate that change, and propose to either adopt the new CA requirement or revert to the federal program. Either way a regulatory revision will be necessary, subject to all of the provisions of 7 DE Code Chapters 60 and 101.

Adoption of CA LEV III is reasonable: Delaware adopted the CA LEV II requirements in December 2010. CA has since adopted CA LEV III requirements, and Delaware now has the option of either adopting the CA LEV III requirements or reverting to the federal program. Because mobile sources are the largest part of Delaware's overall emissions inventory, and because Delaware's air quality does not meet federal health based standards, and because CA LEV III requirements are reasonable and have greater emission benefit than the current federal program, DAQ recommends the adoption of CA LEV III requirements.

Responses to comments associated with costs are provided in Section III below.

Comment 3

A commenter at the public hearing was concerned that the adoption of these amendments was viewed as a reversal of the Secretary's decision to adopt the California Low Emission Vehicles II standards. At the time, the Department failed to include the dates by which California had adopted the standards.

Department Response

This comment is referring to an error made by the Department in its December 2010 adoption of the CA LEV II requirements. One of the purposes of this action is to correct this error by removing the provisions of 7 DE Admin. Code 1140 that provide for the prospective incorporation by reference of future revisions made by California.

Comment 4

Commenter stated that he will buy his car(s) 5 miles away in New Jersey where the cars will be cheaper, less pollution rules.

Department Response

DAQ cannot not confirm that the commenter may or may not be able to purchase cars in New Jersey cheaper, but it does not agree that New Jersey has less restrictive vehicle emission rules. New Jersey has already adopted CA LEV III requirements.

The CA LEV III requirements have already been adopted in surrounding states including New Jersey, Pennsylvania, and Maryland. In addition to California and these three states, ten other states have adopted the standards: Oregon, Washington, New York, Vermont, Maine, Massachusetts, New Mexico, Rhode Island, Connecticut, and Arizona. Vehicles purchased in any of these states must be certified to the CA LEV III emission standards.

In addition, if this proposal to adopt CA LEV III requirements is finalized, Delawareans may only register CA LEV III certified vehicles (or vehicles certified as 50-state vehicles), regardless of the state they choose to purchase the vehicle.

Debating the health impacts of PM_{2.5} was not the subject of this public hearing. Despite this, the Department is required, by the Clean Air Act, to attain and maintain the all federally established National Ambient Air Quality Standards (NAAQS). The EPA established a PM_{2.5} NAAQS because it determined that PM_{2.5} particles pose a serious public health problem. Exposure to PM_{2.5} can cause premature death and harmful effects on the cardiovascular and respiratory system. People most at risk from PM_{2.5} pollution include people with diseases that affect the heart or lung, older adults, children, and people of lower socioeconomic status. New Castle County, Delaware is currently designated by the EPA as not meeting the health based PM_{2.5} NAAQS. The Department concludes that the existence of the PM_{2.5} NAAQS, and all of the associated EPA supporting documentation, form an adequate basis to conclude that PM_{2.5} is harmful to public health.

Comment 8

The commenter stated concern for the environment, but noted that this regulation would still not save the environment. The commenter believes that the Department should focus on electrical generation and increases in lead and mercury.

Department Response

This amendment to 7 DE Admin Code 1140 – Low Emission Vehicle Program is one of many strategies that ensure Delaware emission sources are well controlled. The Department regulates emissions from electrical generation and increases from lead and mercury under other regulations that are not the subject of this public hearing. Despite this, the Department notes that emission controls on electrical generation in Delaware are among the best in the country.

7 DE Admin. Code 1146, adopted in 2006, regulates NO_x, SO₂, and Hg from all coal or oil fired electric generating units (EGUs) in the state, on a unit-by-unit basis. Regarding lead, EPA adopted a new health based lead standard in 2008, and based on source and ambient monitoring data Delaware's air quality meets this standard.

At this time the DAQ does not have any data that indicates further action on its electrical generation, lead or mercury emitting sources is necessary.

III. Comments Received Regarding the Cost Benefit Analysis

Comment 9

The Department received numerous comments regarding the projected increased costs for a new vehicle in 2025. Many felt the costs to be too expensive for Delaware consumers to pay for cleaner more fuel efficient vehicles.

Department Response:

In response to these comments the Department is providing the economics associated with the proposed revision to adopt the CA LEV III requirements. The estimated cost of CA LEV III was presented at the public hearing as a \$1,900 per vehicle price increase in 2025 due to technology upgrades, along with a much greater savings from the improved fuel economy. This estimated cost/savings was taken directly from work done by CA when they adopted the LEV III requirements. CA LEV III is comprised of three main components, 1) a

In summary, in light of current Federal requirements and Delaware's geographical location the Department believes that this action will have no practical impact on the price of cars in Delaware, and will have a positive impact relative to overall consumer cost and warranty protection.

Comment 10

During the public hearing, one commenter asked about the assumptions supporting the conclusions in the PowerPoint presentation, specifically - the number of miles driven per month, the overall lifetime of the vehicle, the price of fuel for the 2025 estimate as well as the economic impact when the regulations initially go into effect in 2015.

Department Response

The commenter was provided a verbal response from the Department at the public hearing. The Department used California's Initial Statement of Reasons as a guidance document (California Air Resources Board – "Initial Statement of Reasons" dated December 11, 2011. Retrieved from <http://www.arb.ca.gov/regact/2012/leviiighg2012/leviiighg2012.html>.) Emissions data calculations and costs were compiled using the best methods and measurements available at the time.

Comment 11

During the public hearing, one commenter asked how increased repair costs were factored into the economic analysis and the impact of the increased warranty period on the final price of a vehicle.

Department Response

This comment is asserting that CA LEV III vehicles will be more complex, and that there is a relationship between vehicle complexity and repair/maintenance cost, and is asking if this increased cost is factored into the economic analysis.

The cost of any new technology needed to meet CA LEV III requirements is clearly factored into the CA and EPA analysis discussed under Comment 9 above. It does not, however, appear that any increased repair costs were factored in for the following reasons:

In general, the refinement of current vehicle technology is adequate to meet the new requirements. EPA explains in their Tier III proposal that,

"...the federal fleet is already demonstrating actual emissions performance that is much cleaner than the level to which it is currently being certified. Although the vehicles that make up the federal light-duty fleet are capable of meeting lower standards there is no impetus for vehicle manufacturers to certify their respective fleets to anything lower than the current requirements. In addition, we anticipate that not every technology will be required on all vehicles to meet the proposed standards. While catalyst loading and engine calibration changes will most likely be applied on all vehicles, only the most difficult powertrain applications will require very expensive emissions control solutions such as active hydrocarbon adsorbers. We expect that manufacturers will implement emission control solutions as a function of increasing cost and will avoid implementing very expensive designs whenever possible."

Climate website for the Light-Duty Vehicle standards at <http://www.epa.gov/otaq/climate/regs-light-duty.htm#new1>.

The cost benefits analysis for the proposed amendments as provided in the Technical Support Document and the California Initial Statement of Reasons reflects the most recent up to date data as provided by the auto manufacturers to California for their 2012 rulemaking. The analysis is further supported by USEPA's regulatory impact assessment conducted for the joint EPA/NHTSA Final Rulemaking to Establish 2017 and Later Model Years Light-Duty Vehicle Greenhouse Gas Emissions and Corporate Average Fuel Economy Standards (see Chapter 5 - <http://www.epa.gov/otaq/climate/documents/420r12016.pdf>). In both analyses the [fuel] cost savings greatly outweigh the program costs.

IV. Global Automakers

Comment 14

Global Automakers supports harmonized national programs for improving fuel economy and reducing greenhouse gases (GHG) and criteria pollutant emissions. ... In light of the harmonization between EPA's and California's programs for MY2012-2025 GHG standards, as well as the upcoming criteria pollutant harmonization between the LEV III and Tier 3 programs, we believe it is not necessary for Delaware to adopt the proposed regulations.

Department Response

Under the Clean Air Act, Delaware has the option of the federal vehicle emissions standards or those standards established by California. The DAQ agrees that the proposed amendments to 7 DE Admin. Code 1140 are very similar to the Tier 3 requirements proposed by the EPA however, the Federal Tier 3 program has not been finalized.

Furthermore, if finalized the Federal Tier 3 requirements are not expected to go into effect until model year 2017. The Delaware LEV III program will go into effect with model year 2015, providing two additional years of credit that Delaware can rely on in meeting air quality standards.

Comment 15

Global Automakers recommends a minor edit, the addition of the letter "i", to the following text, as shown in red, underlined and bolded text:

No person, including a manufacturer or dealer, shall deliver for sale or lease, offer for sale or lease, sell or lease, import, acquire, receive, purchase or rent a new vehicle that is a 2014 or subsequent model-year passenger car, light-duty truck or medium-duty vehicle in Delaware unless the vehicle is California-certified and complies with the following criteria:the following attachment

Department Response

The Department is in agreement and recommends this typographical error be corrected.

VI. Department's Recommended Changes to 7 DE ADMIN CODE 1140

Based on these comments received, the DAQ recommends that 7 DE Admin. Code 1140 be adopted, with the following minor changes to the proposed regulatory language:

- Section 1.2 should now read as follows:

The LEV program shall apply to all new model year 2014 and subsequent model year motor vehicles that are passenger cars, light-duty trucks, ~~and~~ medium-duty passenger vehicles, **and medium-duty vehicles** subject to the California LEV program and delivered for sale in Delaware.

- Section 5.1 should now read as follows:

5.1 No person, including a manufacturer or dealer, shall deliver for sale or lease, offer for sale or lease, sell or lease, import, acquire, receive, purchase or rent a new vehicle that is a 2014 or subsequent model-year passenger car, light-duty truck, **medium-duty passenger vehicle**, or medium-duty vehicle in Delaware unless the vehicle is California-certified and complies with the following criteria:

Attachments

PC: Ali Mirzakhali
Ronald A. Amirikian
Valerie A. Gray
Dover file