

**Senator Roger Madigan, Chairman
Transportation**

Room 286 Main Capitol Building
Senate Box 203023
Harrisburg, PA 17120-3023



**Senator Mary Jo White, Chairman
Environmental Resources & Energy**

Room 169 Main Capitol Building
Senate Box 203021
Harrisburg, PA 17120-3021

Senate of Pennsylvania

November 1, 2005

The Honorable Allen D. Biehler, P.E.
Secretary of Transportation
8th Floor, Commonwealth Keystone Building
Harrisburg, PA 17120

Dear Secretary Biehler:

We are writing in response to your email to members of the Senate expressing your concern over the potential fiscal impact of House Bill 2141. This legislation, currently under consideration by the House of Representatives, would prohibit the Environmental Quality Board (EQB) from adopting the California Low Emission Vehicle (Cal-LEV) program.

House Bill 2141 was introduced in response to the Department of Environmental Protection's (DEP) endorsement of the Cal-LEV program. On October 18, 2005, the EQB voted to solicit public comment on DEP's proposal. Many legislators have since expressed concern not only about the supposed benefits of the Cal-LEV program, but also opposed to the idea of essentially permitting the California Air Resources Board to promulgate vehicle emission standards for the Commonwealth.

First, it is imperative to appreciate the subject currently before the General Assembly and the EQB. The Clean Vehicle Program refers to the emission standards new vehicles must meet before they may be sold or registered in Pennsylvania. This is a separate and distinct program from the annual vehicle emissions testing program (tailpipe, on-board diagnostic, etc.). We agree that unilaterally eliminating the annual vehicle emissions testing program, which was sanctioned by the federal courts, could jeopardize federal transportation funding. We strongly disagree with your assertion that failing to adopt or enforce the Cal-LEV program places federal funding in jeopardy, as well as with DEP Secretary McGinty's October 28, 2005 statement that passage of House Bill 2141 "*puts us in violation of federal law*". These statements are not only inaccurate, they are irresponsible.

It is worth noting that during the EQB's deliberations of the proposed rulemaking, DEP never referenced the possibility of losing federal funding should Pennsylvania instead choose to opt in to the federal clean vehicle standards program. As you well know, under the federal Clean Air Act, states are free to choose whether to opt in to the Cal-LEV program, or utilize the federal vehicle emission standards (Tier II). DEP representatives substantiated this fact both during meetings with staff, as well as at the October 18th EQB meeting. The argument that adopting Tier II runs afoul of the State Implementation Plan (SIP) to meet federal air quality standards is specious as well. Specifically, while DEP states that Pennsylvania has had a Cal-LEV program referenced in our regulations since 1998, and that Cal-LEV has been in force since 2004, to date no vehicle in Pennsylvania has been held to the California standard. Therefore, the implication that Pennsylvania will be backsliding is not accurate because no incremental benefits have

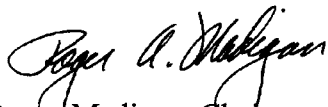
The Honorable Allen D. Biehler, P.E.
Secretary of Transportation
November 1, 2005
Page 2

actually been achieved. Taking the Administration's argument one step further, we fail to see how DEP's plan to postpone the current effective date of Cal-LEV from 2006 until 2008 would not also violate the Commonwealth's SIP. It is one thing for the Administration to prefer Cal-LEV over the federal Tier II standard for policy reasons; it is quite another for the Administration to engage in revisionist history and essentially deny that the Tier II program is even an alternative for the Commonwealth to consider.

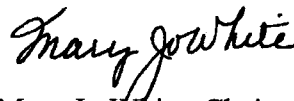
We also strongly object to the high-handed tactics of both PENNDOT and DEP in the past week. We have been informed that some legislators were told by the Administration that funding for needed road and bridge projects would not materialize should they support House Bill 2141. Last week, DEP prepared a list of specific businesses and power plants – seemingly located in the districts of notable legislators - it claimed would face even more stringent VOC and NOx requirements should the Commonwealth choose to opt in to Tier II, rather than Cal-LEV. DEP shared this list with activist organizations, with the intent to pressure lawmakers to support Cal-LEV. These actions come despite the fact that, to date, DEP has not actually visited with either of us to discuss our concerns in a reasoned manner.

In summary, we are extremely disappointed in the manner by which the Administration has chosen to oppose House Bill 2141. This is an important issue, with significant environmental and economic ramifications, and should be debated honestly.

Sincerely,



Roger Madigan, Chairman
Senate Transportation Committee



Mary Jo White, Chairman
Senate Environmental Resources
& Energy Committee

cc: Honorable Ed Rendell, Governor
Senate of Pennsylvania
House of Representatives

Commonwealth of Pennsylvania



November 2, 2005

DEPARTMENT OF
ENVIRONMENTAL PROTECTION

DEPARTMENT OF
TRANSPORTATION

The Honorable Mary Jo White
Senate of Pennsylvania
Senate Post Office Box 203021
Harrisburg, PA 17120-3021

Dear Senator White:

Thank you for the opportunity to respond to your letter to further explain the complex issues and problems posed by H.B. 2141, a bill that would repeal the Pennsylvania Clean Vehicles Program.

As you know, with Senator White's strong leadership and affirmative support, the Environmental Quality Board on October 18 approved a 60-day public comment period with three public hearings to give residents the opportunity to examine proposed changes to Pennsylvania's Clean Vehicles Program. Shortly after that, H.B. 2141 was introduced and quickly approved by the House Transportation Committee. Since then, we have received numerous legislative requests for information about how these two actions relate, and we have worked diligently to answer members' inquiries, especially as this measure moves quickly through the legislative process and as no public hearings have been scheduled or held on the proposal. With all due respect to your concern that we have acted in a "high handed" matter, we feel that it is our duty and obligation to respond to the many questions and otherwise apprise legislators of the ramifications of the action that they are being asked to take.

It is true that the facts here are discomfiting. Those familiar with the lengthy debate to implement federally required emissions programs remember that Pennsylvanians paid dearly in the past for legislative action that invited federal sanction and private lawsuit. Similar potential serious consequences are posed today with H.B. 2141. Failure to implement federally enforceable requirements -- like the vehicle regulations that are part of Pennsylvania's federally approved State Implementation Plan under the federal Clean Air Act -- bring into play the sanctions provisions of the Clean Air Act and expose the Commonwealth to several types of substantial potential penalty.

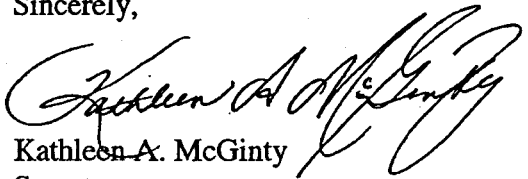
Upon a finding by U.S. Environmental Protection Agency (EPA) that a state has failed faithfully to execute all or part of their Clean Air Act plan, that state first might face serious economic development constraints. Specifically, EPA can order that any proposed new air pollution source find double the offset of the emissions it might produce before it can be permitted. Second, the state would be exposed to a cascading series of sanctions that could result in severely restricting Pennsylvania's use of federal transportation funds. Highway and bridge projects worth hundreds of million of dollars would be in jeopardy.

In your letter, you note that sanctions are not threatened when a state implements a federal standard. That is correct. But, the Pennsylvania Clean Vehicles Program adopts the tailpipe standards established by the California Air Resources Board, not the federal standard for model year 2006 and later vehicles. The state can change the Pennsylvania Clean Vehicles Program. But to do so, we must abide by procedures established in state and federal law and regulation. Those procedures call for extensive public hearing, comment and engagement and ultimately for EPA approval of the changes and formal adoption of the revised State Implementation Plan that we would have to submit.

One other consideration bears note here: If the Commonwealth does change the Pennsylvania Clean Vehicles Program such that fewer emission reductions are required of automakers and dealers, additional regulation on factories, power plants or other entities would be required. If the state decides to require less of one sector in meeting those standards, it must require more from another sector. Our State Implementation Plan must add up to compliance. Meeting the federal clean air standards is not optional.

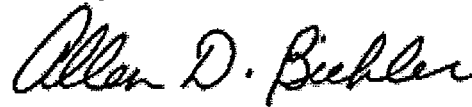
We will continue to advise members of the General Assembly, and other stakeholders throughout the state, of the consequences associated with changes to the Pennsylvania Clean Vehicles Program in a manner that is fair, accurate and responsible.

Sincerely,



Kathleen A. McGinty
Secretary
Department of Environmental Protection

Sincerely,



Allen D. Biehler
Secretary
Department of Transportation