

Commonwealth of Pennsylvania



November 10, 2005

DEPARTMENT OF
ENVIRONMENTAL PROTECTION

DEPARTMENT OF
TRANSPORTATION

The Honorable Roger A. Madigan
Senate of Pennsylvania
Senate Post Office Box 203023
Harrisburg, PA 17120-3023

Dear Senator Madigan:

Thank you for your letter of November 7, 2005, responding to our letter (that was in response to your earlier letter). Several items in your latest letter bear discussion.

First, nothing in our letter contradicts any previous statements we have made on the subject of HB 2141. We have never suggested that the Commonwealth does not have the option to implement federally prescribed "Tier II" standards instead of "CAL LEV II" standards. What we have underscored, however, and must continue to point out to the Legislature, is that the Commonwealth decided in 1998 to adopt the California standards rather than the federal standards in devising the "Pennsylvania Clean Vehicles Program." The federal standards were recognized as a "compliance alternative" to the California standards. But even that accommodation was made available only until the 2005 model year. By operation of the 1998 Pennsylvania Clean Vehicles regulation therefore, the California standards are the required standards in Pennsylvania today.

Second, if the Commonwealth wishes to reconsider the Pennsylvania Clean Vehicles Program, it can do so. It is critically important to understand, however, that since the Pennsylvania Clean Vehicles Program is part of our federally enforceable State Implementation Plan (SIP) under the federal Clean Air Act, the Commonwealth is obliged to follow the procedures established in federal law for changing that SIP. As we said before and reiterate here, failure to follow these requirements puts the Commonwealth in jeopardy of potential adverse federal action including but not limited to: the need to impose tougher regulation on manufacturers and power plants in Pennsylvania to make up the emission reductions we otherwise would achieve with CAL LEV II, possible restrictions on economic development in Pennsylvania through enhanced emission offset requirements, and possible transportation funding sanctions.

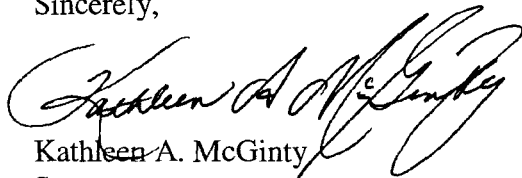
For your easy reference, let us identify here the relevant provisions of federal law that the Commonwealth must follow in considering a change to a program that is part of our SIP:

According to the Clean Air Act and associated federal regulations, the state must hold one or more public hearings concerning a proposed change to a State Implementation Plan, and must give "reasonable notice" of the public hearings (42 U.S.C. §7410(a)(2), (1); and 40 C.F.R. §51.102 - 51.104). At least 30 days' notice of the public hearing(s) must be given, and the notice must be given as specified in section 51.102(d) of the federal regulations (40 C.F.R. §51.102(d)).

Further, under the federal Clean Air Act and associated federal regulations, the United States Environmental Protection Agency (EPA) will not approve a SIP revision without a formal letter from the Governor or his designee submitting the SIP revision and requesting EPA approval (40 C.F.R. Part 51, App. V, §2.1(a), cited in 40 C.F.R. §51.103). The SIP revision submittal must include evidence that the state followed all of the procedural requirements of the state's laws and Constitution in conducting and completing the adoption or issuance of the SIP revision (Id., at §2.1(e)). The SIP revision submittal must also include evidence that the requisite public notice of the proposed change was given and the requisite public hearing(s) were held (Id. at §2.1(f) and (g)). The SIP revision submittal must contain a compilation of public comments and the state's responses thereto (Id. at §2.1(h)). There are also requirements for technical support in SIP revision submittals found in Appendix V.

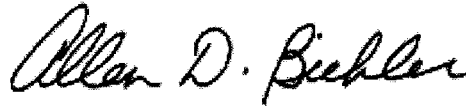
We hope this information is helpful to you and other members of the Legislature as you consider HB 2141.

Sincerely,



Kathleen A. McGinty
Secretary
Department of Environmental Protection

Sincerely,



Allen D. Biehler
Secretary
Department of Transportation

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 7, 2005

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

The Honorable Kathloen A. McGinty
Secretary of Environmental Protection
16th Floor, Rachel Carson Building
Harrisburg, PA 17105

Dear Secretary Biehler & Secretary McGinty:

Thank you for your letter in response to our concerns over the public debate on House Bill 2141, which would prohibit the Environmental Quality Board (EQB) from adopting the California Low Emission Vehicle (Cal-LEV) program.

First, we would like to clarify the suggestion in your letter that Senator White strongly supported the EQB's October 18, 2005 adoption of the proposed rulemaking amending the Clean Vehicle Program. Senator White's alternate made quite clear the concerns we share over permitting California to set vehicle emissions standards for Pennsylvania consumers. As your letter states, the October 18th vote was simply to solicit public comment on the proposal. If this proposed regulation goes forward, we will outline our concerns more formally when the public comment period commences and again urge the Department of Environmental Protection (DEP) to change course.

We are also heartened by your acknowledgement that, while it is your belief additional air quality improvements may have to be achieved elsewhere, Pennsylvania can indeed choose not to opt in to the Cal-LEV program and instead continue to utilize the federal Tier II standard. This contradicts earlier, unsubstantiated statements made to members of the General Assembly that passage of House Bill 2141 "*puts us in violation of federal law*". That is simply not the case. While we disagree with the purported incremental benefits DEP claims Pennsylvania will achieve should we let California set our vehicle emission standards, we note with interest the support expressed for Cal-LEV by activist organizations, presumably to avoid imposing tougher NOx and VOC limits on stationary sources.

Your letter states that the Commonwealth "can change the Pennsylvania Clean Vehicles Program", but doing so must occur in a manner consistent with the public hearing, comment and engagement procedures dictated by the federal Clean Air Act. We believe it is much more appropriate to have the elected General Assembly and Governor, rather than a regulatory body, make the substantial public policy decisions that affect Pennsylvanians. It is our understanding that several states, including Washington and New Jersey, have adopted Cal-LEV through the legislative process, while other legislatures have explicitly prohibited Cal-LEV. Please advise us

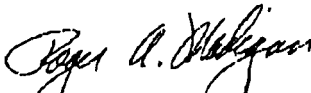
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The Honorable Kathleen A. McGinty
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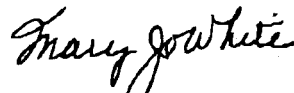
~~of the specific public hearing, comment and engagement obligations the General Assembly must~~
meet under the Clean Air Act should it decide to designate the most appropriate vehicle emission
standards program for Pennsylvanians.

As we expressed in our November 1st letter, we remain extremely troubled by the tactics
utilized by the Administration to oppose House Bill 2141. Responding to legitimate inquiries in
a fair, accurate and responsible manner is indeed a fundamental responsibility, and it has been
sorely lacking to date.

Thank you for your attention to our request for explicit instructions on how the General
Assembly can designate a vehicle emissions standards program that is both appropriate for
Pennsylvania consumers and complies with the federal Clean Air Act public hearing, comment
and engagement process referenced in your letter.

Sincerely,


Roger Madigan, Chairman
Senate Transportation Committee


Mary Jo White, Chairman
Senate Environmental Resources
& Energy Committee