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INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

May 12, 2006

Honorable Kathleen A. McGinty, Chairperson
Environmental Quality Board
Rachel Carson State Office Building
400 Market Street, 16th Floor
Harrisburg, PA 17101

Re: Regulation #7-398 (IRRC #2523)
Environmental Quality Board
Pennsylvania Clean Vehicles Program

Dear Chairperson McGinty:

Enclosed are the Commission's comments for consideration when you prepare the final version of this regulation. These comments are not a formal approval or disapproval of the regulation. However, they specify the regulatory review criteria that have not been met.

The comments will be available on our website at www.irc.state.pa.us. If you would like to discuss them, please contact me.

Sincerely,

Kim Kaufman
Executive Director

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Enclosure

cc: Honorable Mary Jo White, Chairman, Senate Environmental Resources and Energy
Committee
Honorable Raphael J. Musto, Minority Chairman, Senate Environmental Resources and
Energy Committee
Honorable William F. Adolph, Jr., Majority Chairman, House Environmental Resources and
Energy Committee
Honorable Camille George, Democratic Chairman, House Environmental Resources and
Energy Committee

Comments of the Independent Regulatory Review Commission

on

Environmental Quality Board Regulation #7-398 (IRRC #2523)

Pennsylvania Clean Vehicles Program

May 12, 2006

We submit for your consideration the following comments on the proposed rulemaking published in the February 11, 2006 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the Environmental Quality Board (EQB) to respond to all comments received from us or any other source.

1. National v. California Emissions Standards - Economic impact; Protection of public health and effect on this Commonwealth's natural resources; Legislative review of a policy decision.

Senators Roger A. Madigan and Mary Jo White submitted a letter on March 27, 2006, expressing several concerns with the proposed regulation. Their letter expressed support for the national vehicle emissions control program known as Tier 2 (*Federal Register*, February 10, 2000 (65 FR 6698)), as an alternative to the California Air Resources Board (CARB) regulations referenced by the existing and proposed regulations. In addition, the Senate passed Senate Bill 1025, by a vote of 27 to 20 on February 15, 2006. This bill would revive the regulatory framework initiated in 1998 and give the automobile industry the option of complying with either the CARB regulations or Tier 2.

Commentators for the automobile industry also recommended that the EQB adopt the Tier 2 program. They claim that it is a comparable, or an even better, program for reducing air pollution. Additionally, the economic impacts on the automobile industry and consumers will not be as great as those imposed by CARB regulations.

In its response to these concerns, the EQB needs to explain why and how the CARB regulations address the issues of environmental protection and cost-effectiveness. It should demonstrate how its regulation will generate greater benefits for public health and the Commonwealth's natural resources at a cost that is affordable, reasonable and competitive with alternative regulatory approaches.

2. Section 126.412. Emission requirements. - Clarity.

The EQB indicates that Subsection (d) is intended to allow manufacturers to carry forward nonmethane organic gases (NMOG) credits fully for a three-year period without any loss of those credits each year. However, this is not clearly stated in this section. This provision should be amended to clarify the EQB's intentions.

3. Requests for information. - Reasonableness; Clarity.

Subsection (b) in Sections 126.421 - 126.425 requires a manufacturer to provide certain types of information to the Department of Environmental Protection (Department) "upon request." Under what circumstances would the Department make the request? The EQB should clearly identify the type of request it will make to the manufacturers and that the request should be in writing.

4. Rental vehicles. - Implementation procedure; Reasonableness; Clarity.

The Hertz Corporation is concerned about how the CARB standards will affect the rental car industry. Does the EQB intend to require rental car companies to ensure that any car that could possibly be used in Pennsylvania comply with CARB standards or would rental car companies merely be required to have all vehicles registered in the Commonwealth comply with those standards? Department staff indicated that it is investigating potential solutions to this issue and it does not intend to impede business in the Commonwealth for the rental car industry. The EQB should clearly delineate the requirements for rental vehicles in the final-form regulation.

5. Fuel alternatives. - Fiscal impact; Reasonableness; Clarity.

Commentators expressed concern with the impact of this proposed regulation on vehicles that operate on different types of fuels. Light-duty vehicles that operate on diesel are very popular. Will consumers still be able to purchase and operate these vehicles in Pennsylvania under CARB regulations? In addition, industry, federal and state leaders have recently expressed support for "flexible fueled vehicles" that operate on fuels with a greater percentage of ethanol which is a renewable fuel. What will be the impact of this proposed regulation on the use of ethanol?

Facsimile Cover Sheet

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INDEPENDENT REGULATORY REVIEW COMMISSION
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To: Debra L. Failor
Agency: Department of Environmental Protection
Phone: 7-2814
Fax: 705-4980
Date: May 12, 2006
Pages: 4

Comments: We are submitting the Independent Regulatory Review Commission's comments on the Environmental Quality Board's regulation #7-398 (IRRC #2523). Upon receipt, please sign below and return to me immediately at our fax number 783-2664. We have sent the original through interdepartmental mail. You should expect delivery in a few days. Thank you.

Accepted by: Debra L. Failor Date: May 12, 2006