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Statement of Senator Mary Jo White and Senator Roger Madigan

Clean Vehicle Emission Standards

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There is currently before the Environmental Quality Board (EQB) a proposed regulation amending the PA Clean Vehicle Program. This program establishes a vehicle emission manufacturing standard for new cars which must be met in order to be registered in Pennsylvania.

To date, the Department of Environmental Protection (DEP) and PENNDOT have contended that in 1998 the Ridge Administration endorsed and adopted the California vehicle emission standards, to become effective in model year 2006. DEP and others contend that the proposed regulation now before the EQB just postpones the effective date for two years.

In fact, the record from 1998 seems pretty clear: that many states felt the federal Tier I standard was inadequate; the Tier II standard had not been finalized, and Pennsylvania therefore elected to participate in the National Low Emission Vehicle (NLEV) program – a stricter, voluntary standard agreed to by various states, automakers and the Environmental Protection Agency (EPA). However, to encourage automakers not to withdraw from NLEV – thus falling back on the weaker Tier I standard – states adopted the California rules as a legal backstop. Automakers would be less likely to withdraw from NLEV if they faced the possibility of implementing California rules. Moreover, in the event the federal government never finalized its Tier II rule, and NLEV expired, there would be a standard on the books. The following statements made by DEP in 1998 during the rulemaking process substantiate this:

- "*This regulation…is the final step PA needs to take to participate in NLEV.*"
- Adopting the California standards "*is a contingency. This language is part of verbatim language that EPA is asking us to adopt.*"
- "*DEP agrees…that NLEV would have a greater air quality benefit (than Tier I) and be much more equitable for PA than a state-by-state*" approach.
- *"Without the state 'backstop' program, there could not be a compliance alternative. It is the state program that creates the legal mechanism for NLEV as a compliance alternative. The NLEV program is voluntary and may have limited duration."*

- *"This is trying to make continuity about clean vehicles from the NLEV vehicle to what is called the Tier-two vehicle."*

DEP and PENNDOT have argued, incorrectly, that passage of either Senate Bill 1025 or House Bill 2141 puts Pennsylvania in violation of federal law. Moreover, DEP and PENNDOT have argued that Pennsylvania currently relies upon the alleged commensurate emission reductions from the California standards to meet our various air quality attainment obligations. EPA Regional Director Don Welsh, in a recent letter to Representative Geist, disputes this point. Director Welsh wrote:

> "*Regarding whether passage of HB 2141 would result in application of federal sanctions against the Commonwealth, I believe it would not. Revocation of legal authority for an approved SIP element could lead EPA to make a finding that the Commonwealth failed to implement an approved SIP element. Such a finding is prerequisite to imposition of sanctions. Pennsylvania was not required to adopt and submit the CA LEV regulations as an element of its SIP. Mandatory sanctions under section 179 of the Act would not be triggered by failure to implement the CA LEV program unless Pennsylvania relied on emission reductions attributable to the CA LEV program in certain SIP-approved elements (e.g. attainment demonstrations, reasonable further progress plans). At present, the Commonwealth's SIP does not rely upon such emission reductions.*"

This letter confirms what we have been stating – that the California rules were adopted in our regulations, and submitted to EPA, only as a legal backstop – in essence a paperwork exercise. That we did so only because, back in 1998, the NLEV was a voluntary emission standard and states (with EPA's blessing) needed an incentive to encourage automakers not to withdraw from it. This became moot when the federal government finalized Tier II in 2000. Unfortunately, DEP has failed over the past five years to update our vehicle emission standards to reflect these changes.

Part of the argument put forth by the Administration and others is that the California standards are part of our federally enforceable State Implementation Plan (SIP). That may be true – technically. But that is only true to the extent that we adopted the California rule as a backstop should the automakers withdraw from NLEV. As drafted, Senate Bill 1025 would direct DEP to amend the SIP to accurately reflect the federal Tier II standard currently in place.

The real question is whether the Commonwealth actually relies on the California standard to achieve its ambient air quality standards. The answer – according to numerous DEP documents, and EPA itself – is no. In his letter to Representative Geist, EPA Regional Administrator Welsh wrote:

> "*At present, the Commonwealth's SIP does not rely upon such [CA] emission reductions.*"

Moreover, in DEP's own August 2003 recommendations to EPA for attaining the new 8-hour ozone standard, it wrote:

"*Pennsylvania will also derive additional significant emission reduction benefits from nationwide mobile measures such as cleaner new cars, cleaner new diesel vehicles and cleaner fuels…with the successful and timely implementation of regional NOx controls and these other measures, we expect that most areas of the Commonwealth should attain the 8-hour ozone standard within the timeframe contemplated by EPA.*"

Several other SIPs submitted to EPA for approval also utilize the federal Tier II vehicle emission reductions as part of the Commonwealth's strategy to fulfill its air quality attainment obligations. The argument that failure to adopt California vehicle standards would require added emission reduction requirements on power plants and other stationary sources is specious and a cynical attempt to intimidate legislators over a serious public policy question.

We are very concerned over the prospect of subjecting Pennsylvanians to regulations crafted by the California Air Resources Board (CARB). CARB is obligated to impose air quality standards necessary for California – not Pennsylvania – to meet its air quality attainment obligations. CARB has promulgated a rule to regulate carbon dioxide (CO2), or so-called greenhouse gas emissions, as part of its vehicle emissions standards. This issue is in litigation in California. This is a perfect example whereby Pennsylvania consumers would be directly impacted by a decision made by California. Estimates on added costs for a new vehicle range from $1,000 - $3,000.

There are serious questions over the legality of using vehicle emission standards to regulate CO2. The EPA said the following on the subject:

"*In light of the language, history, structure and context of the CAA (Clean Air Act) and Congress' decision to give DOT (U.S. Department of Transportation) authority to regulate fuel economy under EPCA (Environmental Pollution Control Act), it is clear that EPA does not have authority to regulate motor vehicle emissions of CO2 and other GHGs (greenhouse gases) under the CAA (Clean Air Act).*"

We remain concerned that similar instances of CARB seeking to further regulate vehicle emissions will materialize in the future. Pennsylvanians do not participate either in California's rulemaking process or in any associated litigation. Moreover, reduction of CO2 emissions is not necessary for the Commonwealth to achieve or maintain its air quality standards under the Clean Air Act.

Opponents of Senate Bill 1025 have inferred that, absent adopting California's vehicle emission standards, we would have no standards protecting the health of our citizens. In fact, the federal Tier II standards were finalized in 1999 under the Clinton-Gore Administration and former EPA Administrator Carol Browner. At an elementary school event in December 1999, former President Clinton hailed the federal Tier II standards. He said the rules would reduce vehicle emissions by 95%, and lead to "*the most dramatic improvement in air quality since the catalytic converter*" over a century ago.

We agree, and urge that the Commonwealth maintain its implementation of the federal Tier II vehicle emission standards.