

SENATE OF PENNSYLVANIA
PUBLIC HEARING
CLEAN VEHICLE EMISSION STANDARDS

JOINT HEARING OF THE SENATE TRANSPORTATION AND
ENVIRONMENTAL RESOURCES AND ENERGY COMMITTEES

Before: SENATOR ROGER MADIGAN, Co-Chairman
SENATOR MARY JO WHITE, Co-Chairman
SENATOR JAY COSTA
SENATOR EDWIN ERICKSON
SENATOR WAYNE FONTANA
SENATOR RICHARD KASUNIC
SENATOR GERALD LAVALLE
SENATOR RAPHAEL MUSTO
SENATOR DOMINIC PILEGGI
SENATOR J. BARRY STOUT
SENATOR ROBERT TOMLINSON
SENATOR DONALD WHITE

Staff : Craig Shuey, Executive Director
Patrick Henderson, Executive Director
Richard Fox, Executive Director
Cheryl Hicks, Executive Director

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Place : Room 8E-A, East Wing
Capitol Building
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By : Susan L. PetriIIa,
Registered Professional Reporter

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1 SENATOR MADI GAN: Good morni ng, everyone.
2 This is a joint hearing being held by the
3 Transportati on Commi ttee and the Envi ronmental
4 Resources and Energy Commi ttee, chaired by Senator
5 Whi te. We're pleased to have the opportunity to take
6 a look at where we are in our clean vehi cle emissi ons
7 standards and what is the potential impact if we would
8 adopt the Cali forni a regulati ons. And wi th no further
9 ado, it's great to be back, and pleased to have the
10 members here, and I'll turn it over to Senator Whi te.

11 SENATOR MARY JO WHITE: Thank you, we do
12 wel come Senator Madi gan back. It's wonderful to see
13 him looking so fi t.

14 Senator Madi gan and I have a joint
15 statement that we would like to simply submit for the
16 record so that we have more opportunity to hear from
17 witnesses as opposed to hearing from us. But we did
18 want to get this on the record. The stenographer has
19 it and will enter it in the record of this proceeding.
20 Copies will be avail able to anyone who would like to
21 read it or see it.

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23 * * * * *

24 (The follo wing is the submit ted statement
25 of Senator Mary Jo Whi te and Senator Roger Madi gan:)

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

7 To date, the Department of Environmental
8 Protection (DEP) and PENNDOT have contended that in
9 1998 the Ridge Administration endorsed and adopted the
10 California vehicle emission standards, to become
11 effective in model year 2006. DEP and others contend
12 that the proposed regulation now before the EQB just
13 postpones the effective date for two years.

14 In fact, the record from 1998 seems pretty
15 clear: That many states felt the federal Tier I
16 standard was inadequate; the Tier II standard had not
17 been finalized, and Pennsylvania therefore elected to
18 participate in the National Low Emission Vehicle
19 (NLEV) program -- thus falling back on the weaker Tier
20 I standard -- states adopted the California rules as a
21 legal backstop. Automakers would be less likely to
22 withdraw from NLEV if they faced the possibility of
23 implementing California rules. Moreover, in the event
24 the federal government never finalized its Tier II
25 rule, and NLEV expired, there would be a standard on

1 the books. The following statements made by DEP in
2 1998 during the rulemaking process substantiate this:

3 ◦ "This regulation...is the final step PA
4 needs to take to participate in NLEV."

5 ◦ Adopting the California standards "is a
6 contingency. This language is part of verbatim
7 language that EPA is asking us to adopt."

8 ◦ "DEP agrees...that NLEV would have a
9 greater air quality benefit (than Tier I) and be much
10 more equitable for PA than a state-by-state" approach.

11 ◦ "Without the state 'backstop' program,
12 there could not be a compliance alternative. It is

13 the state program that creates the legal mechanism for
14 NLEV as a compliance alternative. The NLEV program is
15 voluntary and may have limited duration."

16 ° "This is trying to make continuity about
17 clean vehicles from the NLEV vehicle to what is called
18 the Tier-two vehicle."

19 DEP and PENNDOT have argued, incorrectly,
20 that passage of either Senate Bill 1025 or House Bill
21 2141 puts Pennsylvania in violation of federal law.
22 Moreover, DEP and PENNDOT have argued that
23 Pennsylvania currently relies upon the alleged
24 commensurate emission reductions from the California
25 standards to meet our various air quality attainment

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1 obligations. EPA Regional Director Don Welsh, in a
2 recent letter to Representative Geist, disputes this
3 point. Director Welsh wrote:

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

21 This letter confirms what we have been
22 stating -- that the California rules were adopted in
23 our regulations, and submitted to EPA, only as a legal
24 backstop -- in essence a paperwork exercise. That we
25 did so only because, back in 1998, the NLEV was a

1 voluntary emission standard and states (with EPA's
2 blessing) needed an incentive to encourage automakers
3 not to withdraw from it. This became moot when the
4 federal government finalized Tier II in 2000.
5 Unfortunately, DEP has failed over the past five years
6 to update our vehicle emission standards to reflect
7 these changes.

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

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

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

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

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

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

23 We are very concerned over the prospect of
24 subjecting Pennsylvanians to regulations crafted by
25 the California Air Resources Board (CARB). CARB is

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1 obligated to impose air quality standards necessary
2 for California -- not Pennsylvania -- to meet its air
3 quality attainment obligations. CARB has promulgated
4 a rule to regulate carbon dioxide (CO2), or so-called
5 greenhouse gas emissions, as part of its vehicle
6 emissions standards. This is in litigation in
7 California. This is a perfect example whereby
8 Pennsylvania consumers would be directly impacted by a
9 decision made by California. Estimates on added costs
10 for a new vehicle range from \$1,000 - \$3,000.

11 There are serious question over the
12 legality of using vehicle emission standards to
13 regulate CO2. The EPA said the following on the
14 subject:

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

23 We remain concerned that similar instances
24 of CARB seeking to further regulate vehicle emissions
25 will materialize in the future. Pennsylvanians do not

1 participate either in California's rulemaking process
2 or in any associated litigation. Moreover, reduction
3 of CO2 emissions is not necessary for the Commonwealth
4 to achieve or maintain its air quality standards under
5 the Clean Air Act.

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

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

22 (End of submitted statement.)

23 * * * * *

24 SENATOR MARY JO WHITE: With that, I think
25 we will begin the hearing. Would you please rise and

1 raise your right hand.

2 (Secretary Kathleen A. McGinty and
3 Secretary Allen D. Biehler sworn as witnesses.)

4 SENATOR MARY JO WHITE: Good morning,
5 Secretaries. Both of you are here and may proceed in
6 whichever order you would like.

7 SECRETARY MCGINTY: Thank you very much.
8 Good morning, Madam Chair, Mr. Chair. It's especially
9 a pleasure to see you, Mr. Chairman, as Senator White
10 has said. We'll offer you our best wishes as well.
11 It's very good to see you back fit and fiddle.

12 I just wanted to share a few brief opening

13 comments. First and foremost, the 1998 Pennsylvania
14 Clean Vehicles Program, I guess as evident from 1998,
15 is not a new program. It is a program that has
16 governed car-related tailpipe standards in
17 Pennsylvania since 1998.

18 Second, I think very importantly, many of
19 you have asked questions of us, is there any
20 difference in price between a vehicle that meets the
21 EPA's standard as compared to a vehicle that meets the
22 Air Resources Board standard. And the answer to that
23 is no.

24 And, in fact, just this morning we looked
25 again and checked out the prices of a Hummer in Ohio

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1 as compared to one in New York where the California
2 standard is in place, and, once again, the prices are
3 exactly the same. So there is no difference in
4 vehicle price between those meeting the Air Resources
5 Board standard as compared to those meeting the EPA
6 standard.

7 Third point, there also is no difference in
8 terms of the variety, the makes, the models, the
9 selections of vehicles that are available. I guess
10 that's demonstrated by if a Hummer can meet these
11 standards, I guess any vehicle can. That's part of
12 the reason why I point that out in particular. I
13 guess for those of us who can afford the Cadillacs,
14 there also we checked those prices. Those are also
15 equally available and of equal price. So no
16 difference in price of vehicle, no difference in the
17 selection of the vehicle.

18 However, where there is a critical
19 difference is in the level of pollution reduction that
20 we realize from the Air Resources Board standard as
21 compared to the federal standard. And that's really
22 the crux of the matter, because with the Air Resources
23 Board standard, we would be able to achieve after a
24 20-year full implementation time about 9 percent more
25 NOx reductions and 6 to 12 percent more VOC reductions

1 from the Air Resources Board standard as compared to
2 the EPA standard.

3 Now, why is that critically important?
4 It's critically important because one way or another
5 we have to meet the air standards, and it's a zero sum
6 game. If we get less emission reductions from mobile
7 sources, we have to squeeze more out of stationary
8 sources. If we decide to be less exacting on cars,
9 then we most definitely need to be more exacting on
10 factories, manufacturers, power plants, et cetera.
11 That's how it adds up. One way or another, we need to
12 meet the standard.

13 And I guess my bottom line and concluding
14 comment for you this morning is just I can't think of
15 another strategy that we could pursue that would
16 deliver for us 9 percent reduction of NOx, up to
17 12 percent reduction in VOCs at zero cost to the
18 consumer in Pennsylvania. But I certainly can see if
19 we pursue a different strategy; namely, repeal the
20 Pennsylvania Clean Vehicles Program, adopt the EPA
21 program, the additional regulations will be quite
22 costly.

23 So I think the real key consideration is if
24 the legislature elects to direct us to pursue a
25 different course, we will simultaneously need to be

1 thinking about how those additional emission
2 reductions, which are absolutely required, will be
3 made up. And, again, I can't imagine that we could
4 make them up at zero cost as the California or the Air
5 Resources Board program delivers for us today and as
6 we go into the future.

7 Mr. Chairman, Madam Chairman, thank you,
8 that concludes my opening remarks.

9 SECRETARY BIEHLER: Thank you and good
10 morning to both Senators White and Madigan. And
11 again, Senator Madigan, it's a pleasure, a pleasure to
12 have you back.

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SECRETARY BIEHLER: My comments will be very brief. And the purpose in my comments is simply to say that the Pennsylvania Clean Vehicles Program is part of the current federally enforceable SIP, and that if a change is made in that program, as Secretary McGinty mentioned, it's important that there ultimately be balance. And I'm only here to say, in essence, to warn that if we don't follow a process in modifying the SIP, if someone wishes to do that, then we potentially run into significant potential sanctioning issues.

As we know, the Environmental Protection

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Agency has sanctioning powers if our SIP is found to be out of compliance. In that case, the opportunities, whether they're mandatory or discretionary sanctions, are very significant. And the primary hammer, if you will, to enforce the SIP is, in fact, the potential sanctioning and use of highway funds, and that can be very, very significant.

So my purpose is simply to make sure that everyone is aware of that. It's not a question of whether you can or can't make a change. You can make a change, but just be careful, because what hangs in the balance is potentially sanctioning significant amounts of highway dollars. Potentially, it could be -- if in the mandatory side, it could be literally in the hundreds of millions of dollars.

And, so, therefore, if you wish to make a change, just we would be happy to be part of that and do a lot of work along with you very carefully simply, if you will, to make sure we keep score, as Secretary McGinty was saying, so that there is ultimate balance and that the SIP remains in compliance with the Clean Air Act requirements.

That concludes my remarks. Thank you.

SENATOR MADIGAN: Yes, can you tell me what portion of our statewide fleet of vehicles turns over

1 each year?

2 SECRETARY BIEHLER: Deputy Secretary Betty
3 Serian is in the crowd. She said it's about 7 to
4 8 percent, we believe.

5 SENATOR MADIGAN: Of the 37 Pennsylvania
6 counties classified as in nonattainment, how many of
7 them will require an increased reduction strategy to
8 bring them into compliance?

9 SECRETARY MCGINTY: All of them would,
10 Senator, for ozone. They're out of compliance for
11 ozone, eight-hour ozone standard.

12 SENATOR MADIGAN: And in all of those
13 counties, what's the timeframe when attainment must be
14 reached?

15 SECRETARY MCGINTY: We have to submit to
16 U.S. EPA next year the attainment plan for the entire
17 State of Pennsylvania, which would have to include the
18 regulations, the measures that are going to ensure
19 that pollution is reduced to the required level.
20 That's as early as September of next year that that
21 plan needs to be submitted. In terms of the
22 achievements of attainment, I believe the date is
23 2009, but I would need to get back to you more
24 specifically on that.

25 SENATOR MADIGAN: Very good. In what year

1 will California eliminate the ability of consumers to
2 purchase diesel passenger cars and light trucks?

3 SECRETARY MCGINTY: I'm not aware of any
4 such proposal before California, but we also can look
5 into that as well.

6 SENATOR MADIGAN: Well, it's my
7 understanding that Maine and New York have applied to
8 be exempt and have been turned down. So that this
9 potentially seems to me -- and I have a lot of
10 farmers, a lot of loggers, a lot of small businesses
11 that use diesel truck because of their efficiency,
12 pickups especially -- and I think this is a real

13 potential that we face that will cost our consumers
14 and probably our economy.

15 SECRETARY MCGINTY: Let me mention two
16 things I guess relative to that. First of all, the
17 standards apply to vehicles 8,500 pounds and less, so
18 the bigger trucks would not be included in any
19 account. Second, the Pennsylvania Clean Vehicles
20 Program is designed by Pennsylvania for Pennsylvania.
21 California's program includes elements that in 1998
22 were not adopted as part of our program.

23 For example, there are three parts to the
24 California program, tailpipe type standard, a zero
25 emission vehicle requirement and a clean fuels

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1 requirement. Only the first is part of the
2 Pennsylvania Clean Vehicles Program. We assessed,
3 evaluated and decided against the other two elements
4 as not right for Pennsylvania. And, similarly, if the
5 kind of situation would evolve, as you just described,
6 I imagine we would do the same and decide what and
7 what does not make sense for Pennsylvania.

8 SENATOR MADIGAN: Thank you.

9 SENATOR MARY JO WHITE: First of all, I
10 just want to make one comment. I think there's been a
11 great deal of misinformation put out concerning this
12 whole process and the effects of the California car.
13 I do not want anyone to leave this room under the
14 impression that if we do not adopt the California
15 standards, we have no car standards whatsoever,
16 because that is absolutely not true. What we are
17 talking about here is whether we go with a California
18 design standard or whether we adopt the federal Tier
19 II car regulations, which most of the states in the
20 country have done.

21 I assume you agree with that statement?

22 SECRETARY MCGINTY: Yes.

23 SENATOR MARY JO WHITE: Okay. One area of
24 significant disagreement is the level of incremental
25 benefits between the two programs, the California car

1 and the federal standards. Are you aware that in
2 March 2004, EPA wrote a letter to the Northeast States
3 for Coordinated Air Use Management, NESCAUM as it's
4 called, cautioning the states not to overestimate the
5 benefits of the California car? In other words, there
6 was a fear on the part of EPA that the states are
7 claiming too much benefit from the California car.
8 They have said that while the states are saying the
9 incremental benefit is perhaps 10 percent, EPA is
10 saying under their modeling, they think the
11 incremental benefit is 1 to 2 percent.

12 Are you familiar with that letter?

13 SECRETARY MCGINTY: The EPA -- There are
14 two models according to which you can evaluate the
15 emission reductions that you achieve from your
16 tailpipe standard program.

17 SENATOR MARY JO WHITE: I believe they were
18 talking Mobile8.

19 SECRETARY MCGINTY: Yes, there's a NESCAUM
20 model and then there's the EPA model. The numbers
21 that I've offered you, the 9 percent NOx number,
22 that's EPA's number. That's from an EPA model. The
23 range that I offered on VOCs, 6 to 12 percent, the
24 6 percent derives from the EPA model, the 12 percent
25 from the NESCAUM model.

1 SENATOR MARY JO WHITE: Do you know whether
2 those models were inferring or assuming that the
3 California fuel would also be used in the California
4 car?

5 SECRETARY MCGINTY: When it's modeling the
6 benefits in California, it models the California
7 situation. But our model is run on the basis of the
8 road conditions, the fleet mix, the specific situation
9 in Pennsylvania. It's based purely on Pennsylvania
10 considerations.

11 SENATOR MARY JO WHITE: So it does not take
12 into account the California fuel?

13 SECRETARY MCGINTY: It does not do that,
14 right.

15 SENATOR MARY JO WHITE: I think the other
16 big area of confusion here is whether or not we have
17 relied on any of these benefits of reductions in our
18 SIPs that are State of Limitation Plans that have been
19 submitted to the federal government. We have looked
20 at all of the SIP submissions by DEP and we do not
21 find in there anywhere where we have claimed
22 reductions in any air emissions based on the
23 California car.

24 That being said, how can we say now that we
25 have to give back, in other words, put stricter

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1 emissions on our stationary sources in order to make
2 up for the losses when in fact there are no losses?

3 SECRETARY MCGINTY: Right, the 1998 program
4 was set up with a first phase that allowed auto
5 manufacturers the option of opting into what was
6 called the National Low Emission Vehicle program as a
7 compliance alternative. That is what the
8 manufacturers did, in fact, do. They opted into that
9 program. And we very definitely measured and took
10 credit for the emission reductions from those tailpipe
11 standards.

12 Going forward, the difference is again that
13 9 percent of NOx, let's say 6 percent of VOCs that we
14 absolutely would be counting on in order to meet those
15 attainment levels that are obligatory numbers to meet.

16 SENATOR MARY JO WHITE: So you're talking
17 about something out in the future, not something we
18 have already taken credit for that we must make up?

19 SECRETARY MCGINTY: We would not have to
20 backtrack and make up. We would have to make up
21 between now and September of next year a new set of
22 regulations that would supply us the emission
23 reductions we otherwise would be counting on from the
24 next phase of the 1998 program.

25 SENATOR MARY JO WHITE: But I've seen DEP

1 make frequent representations in their SIPs to the
2 federal government that based on the Tier II
3 standards, we can meet those requirements.

4 SECRETARY MCGINTY: We most certainly
5 cannot meet our attainment requirements with the Tier
6 II program. And I would say even further, we won't
7 make our attainment requirements with the Air
8 Resources Board standard. We will need measures in
9 addition to the tailpipe standards in order to meet
10 those requirements.

11 SENATOR MARY JO WHITE: Well, that's always
12 been the case. We know that that's a moving target,
13 that we are going to have to be improving our air
14 quality consistently down the road. I think that's
15 just a given. The question is whether we are going to
16 lock ourselves into another state's program in order
17 to do this.

18 But in regard to whether we are relying on
19 California emission reductions, I just wanted -- In
20 DEP's August 2003 recommendations to the EPA for
21 obtaining the new eight-hour ozone standard, you
22 wrote, "Pennsylvania will also derive additional
23 significant emission reduction benefits from
24 nationwide mobile measures such as cleaner new cars,
25 cleaner new diesel vehicles and cleaners fuels... with

1 the successful and timely implementation of regional
2 NOx controls and these other measures, we expect that
3 most areas of the Commonwealth should attain the
4 eight-hour ozone standard within the timeframe
5 contemplated by EPA."

6 Now, I don't hear anything in here about
7 the California car. And, in fact, talking about
8 cleaner new diesel vehicles would imply that we are
9 talking Tier II standards here.

10 SECRETARY MCGINTY: Again, I will check for
11 the record, but I don't know anything in the
12 California program that's exclusive of diesel

13 vehicles. But I think what that shows you is that we
14 are counting on a universe of programs to try to
15 enable us to reach attainment, one of which, just to
16 give you a sense of scale, we already are looking at a
17 new host of federal air quality requirements for
18 stationary sources. The price tag of those sources is
19 on the order of \$15 billion for power plants to be
20 able to meet those requirements. We're counting on
21 those as well to help bring us into attainment.

22 But it only underscores when we can get
23 9 percent of NOx at zero additional cost to the
24 customer, those are reductions that will be difficult
25 and I would suggest maybe even impossible for us to

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1 make up in other ways in Pennsylvania. They certainly
2 will come with a very high price tag.

3 SENATOR MARY JO WHITE: Thank you, I'll
4 reserve my questions. Are there other members who
5 wish to....

6 SENATOR STOUT: Thank you, Madam Chairman.
7 Secretary Biehler, you referred to the fact that
8 sanctions -- if we don't adopt the California
9 standards, sanctions could be placed on the
10 Commonwealth. Would you expand upon that, when
11 sanctions would be applicable and exactly how much you
12 project it would impact transportation funding in the
13 Commonwealth?

14 SECRETARY BIEHLER: Sure. First of all, my
15 understanding is that, again, as Secretary McGinty has
16 mentioned, this is going forward. The credit, in
17 essence, that the -- My understanding is that the
18 credit the CA Lev vehicle, the Pennsylvania Clean
19 Vehicle Program provides is an important part of a
20 state implementation plan as we move forward into
21 future years. So it would be -- a potential trigger
22 would be if we simply remove that element from the
23 program and don't replace it with enough offsetting
24 emission reductions, at that point, whenever that
25 point would be, then we would potentially be in this

1 period of potentially being in jeopardy.

2 And a couple things could happen. One is
3 that the Environmental Protection Agency could find us
4 in jeopardy. Another possibility is that a third
5 party could challenge us. If, in fact -- the critical
6 piece, it seems to me is if, in fact, the
7 Environmental Protection Agency, in fact, finds us
8 that we're not in compliance, then there's a cascading
9 series of potential sanctions and they fall into a
10 mandatory as well as a discretionary arena.

11 In terms of the mandatory potential
12 sanctions, there are certain things that might be
13 exempt. As an example, projects that increase transit
14 usage. Things that don't increase highway capacity
15 are some of the things that are on the list of
16 potential exempt projects, so those could go ahead.

17 There's also a very long list of major
18 elements of the Federal Highway Program that can get
19 sanctioned that have to do with capacity. So any new
20 projects, any widenings, even any improvement in
21 intersection capacity, those kinds of projects which
22 fall into the hundreds of millions of dollars category
23 could be subject to sanction. And there's an
24 additional set of things that are discretionary.

25 But the trigger is whether or not we will

1 be found out of compliance, whether our SIP will be
2 found out of compliance. And, hopefully, we can avoid
3 that by, as I say, if someone wishes to replace the CA
4 LEV vehicle, as long as it's an even trade, if you
5 will, so that the air emissions are in balance, then
6 we can avoid that. If they're not, then we're subject
7 to this potential set of tools that the EPA has along
8 the lines of sanctioning.

9 SENATOR STOUT: If we pass the Senate Bill
10 concerning this issue, what would be the earliest date
11 that you think these sanctions would apply to
12 Pennsylvania? Are you talking about the year 2009 or

1 obligations, and that brings us back to the need then
2 to find the additional emission reductions from other
3 sources if we're not going to find those reductions
4 from cars.

5 SECRETARY BIEHLER: One thing I would add
6 is that if you get in effect a ruling by EPA that you
7 are potentially out of compliance, there is a two-year
8 clock that starts. So there's quite an extensive
9 period of time in which you can in effect cure the
10 problem, if you will. It may go into fact finding and
11 so on. But there is a 24-month clock that starts
12 before then a final sanction goes into effect if they
13 chose to go that route. That's my understanding.

14 SENATOR STOUT: I'd just like to make a
15 statement. On this committee, there are many members
16 that served here back in the decade of the '90s when
17 this clean air standards and all implemental auto
18 emission program was considered. And there was no
19 more divisive issue over a period of 15 years we
20 visited that, and it's had a particular effect in
21 southwestern Pennsylvania, which many of us represent,
22 and which we're contiguous with Ohio and West
23 Virginia, and they don't have to meet these standards.

24 So as the air comes from the west in
25 southwestern Pennsylvania, we have the impact of air

1 coming from Ohio and West Virginia, and they don't
2 have to meet these standards of the California
3 vehicle. So that's why it's such a controversial
4 issue facing the General Assembly. And there's been
5 tremendous opposition to the auto emissions program
6 over the years in this Commonwealth, particularly on
7 the border state areas. So exactly what's going to be
8 done to upgrade the air coming from Ohio and West
9 Virginia into the Commonwealth?

10 SECRETARY MCGINTY: The question of
11 interstate transport of air pollution, I agree with
12 you, Senator, has been a matter of a lot of

13 controversy. Part of the reason why Governor Rendell
14 has authorized us actually to issue lawsuits or join
15 lawsuits against the federal EPA is because we felt
16 that the new interstate air pollution rules are not
17 fair in their treatment of downwind states as they are
18 in their treatment of upwind states, like Ohio. And
19 so we have joined or launched those lawsuits.

20 But this program, I would suggest, is
21 exactly an antidote to that. Because what we're
22 saying here is either we can call upon Michigan and
23 specifically Detroit to send us cleaner vehicles or we
24 will have to impose those burdens on our own employers
25 and manufacturers in Pennsylvania. So I think your

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1 argument is right on target. It certainly applies to
2 some of the uneven playing field that we have been
3 treated to. But this program I think is an exception
4 to that rule, which enables us to level that playing
5 field a little bit by calling on Detroit to do a
6 better job, send us vehicles that can lighten the
7 burden of our employers and manufacturers here.

8 SENATOR STOUT: Thank you, Madam Chairman.

9 SENATOR MARY JO WHITE: Just as a
10 clarification, isn't it true that under the federal
11 Tier II standards, which we are proposing, Detroit
12 would be sending us cleaner vehicles?

13 SECRETARY MCGINTY: Oh, yes. Not as clean,
14 though, as the Air Resource Board.

15 SENATOR MARY JO WHITE: Again, there's a
16 difference of opinion there whether 1 percent,
17 2 percent or 10 percent is the number.

18 SECRETARY MCGINTY: I agree with you in the
19 initial years, you're right, it would be 1 percent, et
20 cetera, but the program grows in its effectiveness as
21 the vehicle fleet turns over.

22 SENATOR MARY JO WHITE: Senator Erickson?

23 SENATOR ERICKSON: Thank you, Madam
24 Chairman.

25 I'm going to ask you to help me clarify my

1 understanding of something. I'm looking at a letter
2 from EPA from Donald S. Welsh, the regional
3 administrator, and it reads in part, the California
4 LEV program is the legally effective program for
5 Pennsylvania.

6 If this is the case, then if we do nothing
7 affirmative, the California program remains in effect
8 and we will attain this 9 percent and 6 to 12 percent
9 on both NOx and VOCs. Am I correct in that?

10 SECRETARY MCGINTY: That's exactly right.
11 That's exactly right, yes.

12 SENATOR ERICKSON: Thank you.

13 SENATOR MARY JO WHITE: Again, to clarify
14 the record on that particular issue, it appears to me
15 from reading the EPB and other documents contemporary
16 with that decision that the California vehicle program
17 was put in as a backstop, because at that time the
18 federal standards were voluntary and there was much
19 concern that the auto manufacturers would simply pull
20 out of that program and leave us with no enforceable
21 program in place.

22 We took the California standards so that we
23 would have a backstop, we would have something in
24 place if, in fact, the voluntary Tier I program was
25 discontinued. The whole thing became moot when the

1 federal government put in the Tier II standards, which
2 are much more protective, and were put in by the
3 Clinton Administration and highly touted as being a
4 very effective clean car strategy.

5 It was always Pennsylvania's intent from
6 the reading of the record to adopt that federal
7 standard. The California one was simply put in in the
8 event that the federal standards -- the voluntary
9 program fell through. Is that not your reading of the
10 record?

11 SECRETARY MCGINTY: I have the 1998
12 regulation actually before me, the preamble to it that

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13 says that the National Low Emission Vehicle program
14 was established, quote, unquote, as a compliance
15 alternative to the Pennsylvania Clean Vehicles
16 Program.

17 So the way that the program is set up is
18 from -- It was finalized in 1998 and it allowed
19 vehicle manufacturers and dealers, as I said before,
20 to opt into the NLEV program until the 2005 model
21 year. And what Mr. Welsh was addressing in his letter
22 was post the 2005 model year, the optionality goes
23 away. And from the 2006 model year on, which are the
24 vehicles in the showrooms today, then the Air
25 Resources Board, the CA LEV II standard, that is the

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1 legally operative standard in Pennsylvania under the
2 Clean Vehicles Program.

3 I do want to say that I think that there
4 has been some difference in use of which one was the
5 backstop, which one was the compliance alternative, so
6 I don't want to disagree with your characterization on
7 that point. I think the key thing is that the
8 optionality went away with the 2005 model year, and
9 now, as EPA's letter says, the legally operative
10 program in Pennsylvania is the CA LEV II program.

11 SENATOR MARY JO WHITE: Well, yes, but,
12 again, looking at the EPA's letter to Representative
13 Geist, first of all, he addresses the question of
14 sanctions. And it says, regarding whether passage of
15 the House bill would result in application of federal
16 sanctions against the Commonwealth, I believe it would
17 not.

18 Now, that appears to take away the
19 arguments that we're jeopardizing our highway funding.
20 Further in that same paragraph, he says, at present,
21 the Commonwealth's SIP, State Implementation Plan,
22 does not rely upon such emission reductions. And he's
23 talking the California car. EPA could impose
24 discretionary sanctions under Section 110M of the Act,
25 but it is unlikely that EPA would do so for failure to

1 implement a nonmandatory SIP element upon which the
2 state does not rely for emissions reductions.

3 Now, I don't know how it gets any clear
4 than that.

5 SECRETARY MCGINTY: Well, if I may, I'd
6 like to address that. First of all, I think Mr. Welsh
7 applies or provides the appropriate caution in reading
8 that sentence in context. First he very clearly says,
9 I believe you wouldn't be subject to sanctions,
10 whereas in the other key provisions and findings in
11 his letter he makes clear that it's the conclusion of
12 the EPA as a whole that he is presenting.

13 Second, he makes clear that his belief is
14 in part premised on the fact that under the 1998
15 program, again, in the first phase, vehicle
16 manufacturers were offered the compliance alternative
17 of the NLEV program, and it was that program that we
18 took credit for.

19 And, third, he underscores that his belief
20 could be different as Pennsylvania does indeed take
21 credit for those emission reductions attributable to
22 the second phase of the program.

23 And I guess the last thing I would
24 underscore, because it really is important to the
25 direction you might consider, Mr. Welsh also says on

1 the first page of that letter that Pennsylvania faces
2 a shrinking slate of potential options for meeting our
3 very challenging ozone compliance obligations. And
4 that if we decide to forego reductions from tailpipes,
5 then it's not the case that we have a universe of
6 other options that we might pursue.

7 So I think his letter is very helpful in
8 laying all of that out. And, again, I would say the
9 one sentence, Senator, that you point out is
10 important, but needs to be kept in the context of all
11 of the cautions that he otherwise offers.

12 SENATOR MARY JO WHITE: Well, but, of

13 course, he says, however, adoption of California LEV
14 standards in Pennsylvania is a choice for Pennsylvania
15 to make.

16 SECRETARY MCGINTY: Exactly right.

17 SENATOR MARY JO WHITE: So I suggest that
18 we should make that choice. I am very concerned about
19 tying our future to decisions made by the California
20 Air Quality Board. I think that is a very risky and
21 dangerous proposition, particularly as that board is
22 in litigation right now as to whether they can
23 regulate -- which was it -- carbon dioxide under these
24 regulations.

25 The outcome of that litigation, if we were

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1 in their program, could be binding on us. We have no
2 standing in that lawsuit, we have no role in their
3 rulemakings, and yet we would be bound by their
4 decisions. And I think that is a very risky course
5 for Pennsylvania to take.

6 We certainly have the expertise in this
7 room and outside of this room to make Pennsylvania
8 decisions based on Pennsylvania climate and
9 Pennsylvania economic conditions, Pennsylvania
10 specific standards, and with the help of the federal
11 government, who set those standards for Tier II. In
12 fact, that was in the administration that you served
13 in. President Clinton and Carol Browner made glowing
14 statements about the national standards, and I'm
15 assuming that -- I don't know whether you agree with
16 those or not. I guess I shouldn't assume, but.

17 The federal Tier II standards were
18 finalized under the Clinton-Gore administration and
19 EPA administrator Carol Browner. At an elementary
20 school event in December of 1999, former President
21 Clinton hailed the federal Tier II standards. He said
22 the rules would reduce vehicle emissions by 95 percent
23 and lead to "the most dramatic improvement in air
24 quality since the catalytic converter...."

25 SECRETARY MCGINTY: I don't disagree.

1 SENATOR MARY JO WHITE: That's a pretty
2 broad statement. And I'm wondering why now you are
3 telling us that these are not sufficiently protective
4 for us to meet our air quality responsibilities.

5 SECRETARY MCGINTY: Well, that's just math.
6 That's just math. There is no disparagement intended
7 in terms of the Tier II standards. They do deliver
8 appreciable emission reductions, and we would take
9 credit for them if they become the program that's
10 legally operative in Pennsylvania.

11 The question is, how are we going to meet
12 the rest of our attainment obligation? And there just
13 is not another series of options that I can think
14 about that achieve fully 9 percent additional
15 reduction at zero cost to the consumer. That is the
16 point. It's not that the Tier II standard is not a
17 good standard, et cetera. It is a good standard, but
18 the question is how do we reach attainment and what's
19 the most cost effective strategy for us to do so.

20 And I also want to say, Senator, I don't
21 think either Secretary Biehler or I would disagree
22 with one of your other comments in terms of let's
23 envision a situation where California does pursue a
24 strategy that that cost benefit analysis no longer
25 works for the state of Pennsylvania, where they decide

1 to put in a program that's inordinately expensive and
2 delivers no emission reductions, for example. Then,
3 absolutely, that's a time to change course and the
4 legislature has every authority to change course.

5 Our point is just we're not at that place
6 now. Right now we've got a program that has worked
7 well since '98. It continues to work well now, and we
8 will need it even more as we try to put a compliance
9 plan together between now and September 2006.

10 SENATOR MARY JO WHITE: If we were to
11 change course under the scenario you just described,
12 wouldn't we have to come up with -- I mean, then we

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13 would be in the California program and then we would
14 have to come up with the offsetting emission
15 reductions from our SIP.

16 SECRETARY MCGINTY: If we change course, we
17 would be switching from what's currently under the
18 Pennsylvania Clean Vehicles Program, which is the CA
19 LEV II standards to the Tier II standards, and we
20 would have a gap of that 9 percent of NOx and
21 6 percent to 12 percent of VOCs that we otherwise
22 would have to make up.

23 SENATOR MARY JO WHITE: Any other questions
24 for the Secretaries? Okay, thank you very much.

25 SECRETARY MCGINTY: Thank you very much.

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1 SECRETARY BIEHLER: Thank you.

2 MR. HENDERSON: Our next witnesses are
3 Charles Territo and Jim Kiley on behalf of the
4 Alliance of Automobile Manufacturers.

5 SENATOR MARY JO WHITE: Would you raise
6 your right hands, please.

7 (Charles Territo, James Ehlman and Jeff
8 Clarke sworn as witnesses.)

9 MR. TERRITO: Thank you for the opportunity
10 to testify before this joint committee in support of
11 Senate Bill 1025. My name is Charles Territo and I'm
12 director of communications for the Alliance of
13 Automobile Manufacturers. The Alliance of Automobile
14 Manufacturers is a trade association made up of BMW,
15 DaimlerChrysler, Ford Motor Company, General Motors,
16 Mazda, Mitsubishi, Porsche, Toyota and Volkswagen of
17 America. With me today are James Ehlman, manager of
18 vehicle emissions for General Motors, and Jeff Clarke,
19 Alliance legal counsel.

20 I'd like to begin by congratulating the
21 Department of Environmental Protection for a job well
22 done. Of the 37 non-attainment counties in the state,
23 31 are classified as basic by the U.S. EPA, meaning
24 that they are on target to reach attainment status by
25 2009 with no additional control measures necessary.

1 The modeling used to make these assumptions is based
2 on Tier II.

3 The flexibility of the federal standards
4 has allowed the state to implement emissions
5 reductions strategies while minimizing the costs to
6 consumers and the impact on the state's economy. If
7 Pennsylvania adopted the California standards, it
8 would lose this flexibility and cede emissions
9 regulating authority to California. We believe that
10 most Pennsylvanians would agree that decisions
11 affecting their air quality should be made in
12 Harrisburg, not Sacramento.

13 In 1999, as was mentioned, automakers
14 worked together with the Clinton administration and
15 the states, including Pennsylvania, to adopt EPA's
16 Tier II emission standards, the most stringent federal
17 standards ever.

18 The federal program reduces smog-forming
19 emissions by 99 percent compared to precontrol levels.
20 Under Tier II, light duty trucks including sport
21 vehicles, pickups, vans and minivans, all must meet
22 the same standards as passenger cars. The Tier II
23 standards have resulted in essentially the same air
24 quality benefits as the California program. The
25 difference between the federal Tier II program and the

1 California program is almost indistinguishable.
2 However, California's regulations do outlaw the sale
3 of light duty diesel vehicles under 8500 pounds.

4 As you know, the proposed California rules
5 include California's new vehicle greenhouse gas
6 program. The Alliance objects to the greenhouse gas
7 regulations, because they are a direct attempt to
8 regulate the fuel economy. Federal law is designed to
9 ensure a consistent national fuel economy program.
10 Federal law grants sole authority to the National
11 Highway Traffic Safety Administration to set a
12 uniform, national fuel economy standard.

13
14 under these greenhouse gas regulations, all
15 Pennsylvanians purchasing a new vehicle would pay
16 significantly more than consumers in other states that
17 have not adopted the California standards. When all
18 costs are considered, Pennsylvanians could pay an
19 average of \$3,000 or more for a new vehicle. Economic
20 studies presented in the California rulemaking show
21 that these costs would never be fully recouped through
22 savings at the pump.

23 For these reasons and several others, we
24 support SB 1025 and oppose adoption of California
25 emission standards. The regulations would have little

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1 if any impact on the quality of the air in
2 Pennsylvania. Federal clean air regulations currently
3 provide Pennsylvania with more flexibility than the
4 California regulations and in some cases more
5 stringent emissions requirements. Additionally,
6 adoption of the California regulations comes with a
7 heavy price tag.

8 Now I'd like to ask Jim Ehlman from General
9 Motors to address some of the emissions questions that
10 were mentioned in the previous testimony.

11 MR. EHLMAN: Thank you, Charlie. I just
12 wanted to comment on a couple items that were
13 discussed earlier. In terms of the air quality
14 situation in Pennsylvania, things are improving. And,
15 as Charlie mentioned, 31 of 37 counties are not
16 classified as basic for nonattainment purposes. The
17 Philadelphia area and five counties there are
18 classified as moderate for nonattainment.

19 In looking at the latest air quality data
20 from 2005, the design value for eight-hour ozone
21 compliance is at a 91 parts per billion level compared
22 to a 84 parts per billion compliance limit. So that's
23 only 8.3 percent above the limit that needs to be
24 reached by 2010.

25 Now, if you look at the on-road multiple

1 source emissions using EPA's model, the on-road
2 multiple source emissions under the federal Tier II
3 program are projected to come down 29.8 percent
4 between 2005 and 2010. If you were to adopt the
5 California LEV II program, that reduction would only
6 increase to 30.0 percent or a .2 percent increase.

7 So the big item here is the reductions
8 coming from fleet turnover under the federal Tier II
9 program and not the incremental difference between
10 California LEV II and federal Tier II. And if you do
11 look further into the future, out to 2020, the
12 reductions under Tier II are projected to be
13 65.8 percent versus where emissions are at in 2005.
14 65.8 percent. If you go to the California program,
15 that only increases to 67.4 percent.

16 But as far as going that far out in the
17 future, the reductions will become a lot more
18 speculative, because I fully expect standards will get
19 changed within the next 15 to 20 years. In fact, EPA
20 is looking at doing a mobile source air toxics
21 rulemaking next year, which will change the standards.

22 The other item I wanted to comment on was
23 diesel vehicles. When California adopted their LEV II
24 regulations, the California Air Resources Board staff
25 did propose a standard category called T LEV, which

1 was intended for diesel vehicles. At the board
2 hearing, the board clearly said we do not want diesel
3 vehicles in the California light duty fleet and voted
4 to eliminate that standard.

5 And during that process the executive
6 officer from the Air Resources Board staff stated with
7 respect to eliminating this category that it does in
8 our mind prevent any diesel vehicle we are aware of or
9 can see in the future from complying with the LEV
10 standards. So California decided to take away that
11 flexibility that could have been available to diesels.

12 In contrast, under the federal Tier II

13 program, EPA has established some emission categories
14 or bins that are above the fleet average requirement
15 for diesels to use. However, if diesels do use these
16 higher level bins, the manufacturer must offset those
17 emissions with a vehicle certified to lower levels,
18 gasoline vehicles, so that the EPA program does
19 guarantee the overall fleet average emission level for
20 NOx.

21 That concludes my comments. I would like
22 to turn it over to now to Jeff Clarke to comment on
23 some of the SIP issues.

24 MR. CLARKE: Thanks. I'm Jeff Clarke, here
25 on behalf of the Alliance. And it's my task to

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1 address the complicated federal law SIP issues and how
2 they interrelate with state law.

3 And I should say maybe as one bit of
4 background that for the last four years, in 2001 until
5 a few months ago when I returned to private life, I
6 was the number three ranking official in the United
7 States Department of Justice's Environmental National
8 Resources Division, where I represented the EPA and
9 worked on these issues regularly, so I have great
10 familiarity with them. And it's my pleasure to be
11 here to help the committee today to understand what
12 can sometimes be quite arcane issues.

13 If I could, I really have five quick points
14 to make. And I'm imagining given the nature of the
15 subject matter that there might be questions about
16 that area to which I'm completely open. But here are
17 the five quick points.

18 First, in a letter that I'm looking at --
19 and that I've seen other correspondence as well from
20 Secretary Biehler -- this letter was written by
21 Secretary McGinty, a letter dated October 28, 2005.
22 And that letters appears to me to make the rather
23 stark claim that if the California program as adopted
24 into Pennsylvania law were repealed that that would
25 put us in violation of federal law. And I think today

1 what you heard was a shift in that position. I think
2 what you heard was that as long as Pennsylvania
3 follows the correct process with EPA that that will
4 not occur, as long as in Secretary Biehler's words
5 things balance out at the end.

6 That position is actually the correct one,
7 the one that you've heard today. But I think it is
8 important to note that that appears to have been a
9 shift and that stronger points were made in the past,
10 just as recently as about a month and a half ago.

11 The second point is that the EPA letter
12 that was issued in response to this controversy about
13 the SIP issues, very clearly, to my mind, disclaims
14 that EPA will seek any kind of sanctioning authority
15 against the state. Now, EPA generally writes in very
16 cautious terms, but if you're familiar with EPA speak,
17 this is a very clear disclaimer. And I would
18 certainly think that if there were ever any change in
19 the EPA's views and they attempted to do something
20 contrary to that letter in the future that that letter
21 would be very powerful evidence to defend the
22 Commonwealth, and I think that it would be successful
23 in that regard. Again, that letter is very clear.

24 Third, the notion has been raised that
25 there would be citizens or third-party enforcement, as

1 it was referred to, against the Commonwealth. I
2 really think that that is a phantom concern for
3 reasons that relate to the way citizens who work on
4 the Clean Air Act and to the 11th Amendment.

5 Under the 11th Amendment, the Commonwealth,
6 because it's sovereign, can't essentially be forced to
7 pay penalties by citizens. That kind of backward
8 looking relief isn't available. Under 11th
9 Amendment law, what is available is only forward
10 looking prospectively. That would mean that
11 essentially a citizen could bring a lawsuit to, say,
12 make the Commonwealth come into compliance with the

13 SIP process. But, as was recognized, the Senate
14 version of the bill that's currently pending very
15 clearly indicates that the Commonwealth would intend
16 to follow that process. So there really wouldn't be
17 anything for a federal judge to compel and such a
18 citizen SIP would therefore be empty.

19 The fourth point was I think there was some
20 confusion in the earlier discussion about the CA LEV I
21 program versus the CA LEV II program. The program
22 that's operative on the books -- This relates to
23 Senator Erickson's question. The program on the books
24 is the CA LEV I program. It's the CA LEV II program
25 that in recent proposed regulations would be adopted.

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1 It's important to keep that difference in mind. So
2 when EPA refers in the letter to the operative
3 program, they're talking about the CA LEV I program.

4 In the proposed regulations, the
5 Pennsylvania Department of Environmental Protection
6 would suspend enforcement for a two-year period until
7 monitor year 2008 of the CA LEV I program. So,
8 functionally, what the administration is proposing to
9 do is to repeal the CA LEV I program and replace it
10 with the CA LEV II program. That hasn't happened.

11 And so what really is the most important
12 operative part of the letter that Region 3's
13 administrator wrote is that it remains Pennsylvania's
14 choice as to what to do here. And that it's not clear
15 by any stretch that the CA LEV II program -- in fact,
16 it's not accurate that the CA LEV II program is
17 currently the law in Pennsylvania, which is precisely
18 why the regulations that are currently proposed would
19 propose to suspend the existing program, California
20 program, and adopt another program.

21 The last point -- and this is an important
22 point really -- is that -- is this question of the
23 backstop program with the National Low Emission
24 Vehicle Program. Back in 1998, the Department of
25 Environmental Protection made the decision essentially

1 to put in place the California program, but that if
2 the National Low Emission Vehicle Program came into
3 effect -- that's is the NLEV program -- then that
4 would govern until model year 2006.

5 And I think that the correct reading of the
6 record that surrounds that is that everyone thought
7 that if the Tier II program came along that that would
8 replace it. But the regulations that were adopted in
9 the preamble cover of this issue didn't explicitly say
10 what would happen post 2006. But those regulations
11 were adopted in 1998. It was entirely foreseeable
12 that model year 2006 would come along, so it wasn't
13 necessary for the Department of Environmental
14 Protection to let the California program actually come
15 into effect.

16 What the Department of Environmental
17 Protection could have done well in advance of model
18 year 2006 -- and this is what was contemplated back in
19 1998 -- was to have taken steps essentially to make
20 the decision of what to do rather than essentially
21 having that decision made now once the California
22 program had already kicked in. And I haven't seen in
23 any correspondence or heard through other sources any
24 explanation essentially of why that -- that sort of
25 procedural flip-flop actually happened.

1 So those are the five points.

2 SENATOR MARY JO WHITE: Thank you.

3 Questions? Senator Tomlinson?

4 SENATOR TOMLINSON: Yes, could the
5 gentleman explain -- I didn't quite understand about
6 the diesel car, the light diesel. Are you talking
7 about small businesses that might have like delivery
8 trucks and things like that? Explain what that might
9 mean. You said under what, 8500 pounds?

10 MR. TERRITO: Yes, up to 8500 pounds.

11 SENATOR TOMLINSON: What kind of vehicle
12 would that be, for us who don't know?

13 MR. TERRITO: Up to 8500 pounds would
14 include obviously all cars as well as most volume of
15 the truck segment, including your half-ton.

16 SENATOR TOMLINSON: Electricians and
17 plumbers and small business vehicles that I see go
18 around?

19 MR. TERRITO: Yes, a lot of the full-size
20 vans.

21 SENATOR TOMLINSON: Construction --

22 MR. TERRITO: Most of the SUVs, certainly.

23 SENATOR TOMLINSON: So they're all under
24 8500 pounds. And what would the California
25 regulations say, you couldn't have them at all and yet

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1 we can -- we could under if we did what we do here?

2 MR. TERRITO: Yes, California, like I said
3 before, eliminated the standard category that the
4 staff had intended be used by diesels. So now they
5 have a very inflexible standard structure that if you
6 can't meet this certain level, you can't sell the
7 vehicle, a diesel vehicle, light duty vehicle in their
8 state.

9 Whereas, the federal program structured
10 their standards with more flexibility so you do have
11 some standard categories that diesels can chose as
12 long as you offset those with cleaner vehicles so that
13 you meet an overall fleet average level, which is what
14 the environment cares about.

15 SENATOR TOMLINSON: I've noticed that
16 diesel fuel is more now than gasoline. I don't really
17 quite understand why and maybe you can -- This is
18 probably not a question for you folks, but someone
19 told me that the diesel fuel is now even more refined
20 and more sulfur is out of it? Is that true? I guess
21 my real question to you, is the diesel vehicle that
22 we're talking about, the light use plumber's truck or
23 the light construction -- not even the construction
24 vehicle, but the trucks, the pickup trucks that they
25 use to go to the construction sites and carry fuel to

1 the bigger equipment, aren't the new diesel engines
2 more electric and more efficient and more clean? And
3 isn't the fuel more clean or is that not true?

4 MR. TERRITO: Yes.

5 SENATOR TOMLINSON: Is that being taken
6 into consideration?

7 MR. TERRITO: The federal government has
8 challenging standards for diesel vehicles and the
9 diesel vehicles will meet those standards, and there's
10 a lot of reductions coming from those standards. And
11 it's both the vehicle standards as well as the fuel,
12 getting the sulfur out of the fuel, which I believe is
13 happening now or the 2006 timeframe.

14 SENATOR TOMLINSON: Maybe what I could ask
15 now, could you supply the chairmen with any charts or
16 graphs of what these vehicles emit compared to what a
17 like vehicle would emit under gasoline power and what
18 the economy might be? Are there any cross-references
19 or charts that would show us the pros and cons to
20 that?

21 Because what I'm thinking of is the small
22 business people who use these. And I think they're
23 more fuel efficient. They carry a load and they
24 wouldn't have to tow things. They're more
25 advantageous to these small business people than let's

1 say a gasoline truck. I just don't know if the
2 manufacturers have got any of these charts that show
3 us the advantage of that or disadvantage to it as it
4 relates to fuel and clean air.

5 MR. TERRITO: Absolutely. That's something
6 that we can definitely work on putting together for
7 you. I will say that of all of the different
8 technologies talked about in the greenhouse gas
9 portion of the California LEV, of all the strategies
10 to reduce carbon dioxide, diesel is the most promising
11 of those technologies and the most readily available.
12 Diesel vehicles offer almost a 30 percent increase in

13 fuel economy almost overnight when you compare it to
14 traditional internal combustion engines.

15 And so we think that in some ways that this
16 strategy -- The California regulations are almost at
17 odds with itself. On one hand, it's saying we need
18 more fuel efficient technology. But, on the other
19 hand, California has made the decision not to allow
20 the most readily available fuel reduction technology
21 out there into their marketplace.

22 SENATOR TOMLINSON: I know people that are
23 buying these little Volkswagen diesel cars because
24 they get 50, 60 miles to the gallon, but that's not a
25 good idea if it's producing bad emissions. If it's

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1 not producing bad emissions and it's being more
2 efficient, then maybe we would want some flexibility
3 in allowing this to happen. I don't know that answer.

4 MR. TERRITO: The diesel combined -- The
5 ultra clean diesel technology that we have today in
6 diesel vehicles, combined with the ultra low diesel
7 sulfur fuel that will come on line in 2006 provides
8 for extremely reduced emissions for diesel vehicles to
9 the point where they meet the federal standard, but
10 also give consumers the added fuel economy benefit
11 that diesels can provide.

12 SENATOR TOMLINSON: That's particularly
13 important to the small businessman who's got that
14 light truck and is looking for some economies, because
15 these trucks under gasoline power get 6, 7, 8 miles a
16 gallon, but a diesel you get a lot more. But then
17 that's not good if you get worse emissions, so. So if
18 you could share with us any of the technical
19 information you have on where you're going with that,
20 that would help me.

21 MR. TERRITO: Absolutely.

22 SENATOR MARY JO WHITE: Senator Costa?

23 SENATOR COSTA: Thank you, Madam
24 Chairwoman. Very briefly, a follow-up to Senator
25 Tomlinson's questions.

1 Secretary McGinty stated something in her
2 testimony in response to a question about the 8500
3 weight category with respect to trucks in either
4 California or Pennsylvania. She used the word exempt.
5 Now, this is a pretty complicated area, complicated
6 issue, but do you recall her statement along those
7 lines and are you both saying the same thing or is
8 there a difference in terms of what she's saying
9 relative to these vehicles that are 8500 pounds? Does
10 anybody recall her testimony about being exempt? Does
11 that mean Pennsylvania would be exempt from some of
12 this?

13 MR. TERRITO: Well, I can say this. Of all
14 the states that have adopted California standards to
15 date that have them in place, I'm not aware of any of
16 these states that give special exemptions for diesels
17 to meet a higher standard than what California allows.

18 SENATOR COSTA: What I'll do is I will
19 follow up with her and find out what she meant by that
20 statement relative to what you just talked about.

21 My question goes to Mr. Territo. The last
22 week or so in my district, thousands of automated
23 phone calls were placed into my district speaking
24 about this particular piece of legislation. What was
25 stated in the discussion was that it's going to

1 result -- this California standard will result in
2 automobiles costing \$3,000 more.

3 MR. TERRITO: Absolutely.

4 SENATOR COSTA: And you reiterated that
5 point in your testimony as well. Secretary McGinty
6 indicated, looking at New York State -- And it's my
7 understanding that New York State has adopted the
8 California standard. Correct?

9 MR. TERRITO: Yes.

10 SENATOR COSTA: She lists a series of
11 automobiles, about 15 or so, and her testimony stated
12 that there is no difference in the cost of

13 manufacturing these cars. She looks at New York and
14 Pennsylvania, of course, being identical, there's no
15 difference. Your testimony says a \$3,000 difference
16 in vehicles.

17 What states did you look at to arrive at
18 your termination that a \$3,000 difference would be
19 there?

20 MR. TERRITO: That \$3,000 figure came from
21 a report that was done as part of the rulemaking from
22 the California greenhouse gas regulations that are
23 part of the California Low Emission Vehicle Program.
24 When we took an analysis of the technologies that
25 would be required to meet the California greenhouse

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1 gas regulations, an independent researcher found that
2 the cost of implementing those technologies would be
3 in the range of \$3,000 per vehicle. The vehicle that
4 California envisioned with their greenhouse gas
5 regulation does not exist. There are very few
6 vehicles on the road today that would meet the 2009
7 California greenhouse gas standard that would be
8 adopted as part of the California Low Emission Vehicle
9 Program.

10 So we feel very strongly that the added
11 costs to consumers that will come from implementing
12 these new technologies will in the range of \$3,000 per
13 vehicle.

14 SENATOR COSTA: Maybe I'm just not -- And
15 this is a complicated area, but why have we not seen
16 that increase in New York State?

17 MR. TERRITO: Those figures are based on
18 the 2009 -- the reduction of California's greenhouse
19 gas regulations in 2009. So we haven't reached --
20 Obviously, we aren't at 2009 yet. The California
21 Resources Board put their own number on that. They
22 said that they believed it would cost somewhere around
23 a thousand dollars per vehicle. But when they came up
24 with that figure, they used what was called -- They
25 looked at how long consumers keep their vehicle before

1 they would be paid back. For light trucks, they said
2 consumers would have to keep their vehicles for 15
3 years before that thousand dollar extra fee actually
4 came to pass.

5 SENATOR COSTA: What would the price be in
6 2009 for a vehicle if we do not adopt the California
7 standards and go with the federal LEV II standards?

8 MR. TERRITO: I can't speculate on how
9 individual manufacturers would price their vehicles in
10 2009 under the federal standard. But I can tell you
11 that I think that you would see the types of annual
12 price increases that you see in vehicles now.

13 I think one thing you can look at, look at
14 the cost of some of the hybrid technologies that are
15 in vehicles today. Those are the types of
16 technologies that would be mandated on many of the
17 vehicles in 2009. And I think that anyone would tell
18 you if you go to a dealer showroom and you take a look
19 at a vehicle with an internal combustion engine and
20 maybe look at that same vehicle with a hybrid engine
21 that the cost is somewhere around \$3500 up to as much
22 as \$5,000 more for the hybrid version of that vehicle.

23 So as you introduce these advanced
24 technologies, there are added costs for those
25 technologies. And the only way to meet the California

1 greenhouse gas standard is to implement those new
2 technologies. And so there may not be an increase in
3 the near term, but I think that definitely by 2009,
4 you would see significant cost increases for vehicles
5 in states that have adopted the California Low
6 Emission Vehicle Program.

7 SENATOR COSTA: And that's based on studies
8 that --

9 MR. TERRITO: Sierra Research is the
10 company that did the study. I could actually get you
11 copies of that study if you would like to see how they
12 came to those figures.

13 SENATOR COSTA: So this was a study that
14 was done that indicated that the increased cost would
15 not take effect the next couple of years, but rather
16 projecting down to 2009 or so?

17 MR. TERRITO: Into 2009 when the California
18 Low Emission --

19 SENATOR COSTA: And you don't know exactly
20 what the impact would be if we do not elect to take
21 the California standard, but do the federal standard,
22 you can't tell me what the increase, what that would
23 be there?

24 MR. TERRITO: No.

25 SENATOR COSTA: And there was no study to

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1 that effect?

2 MR. TERRITO: No. That's because these are
3 decisions that are decisions -- The California
4 greenhouse gas standard is a fuel economy standard.
5 It tends to regulate the fuel economy of light duty
6 vehicles. Currently, issues that deal with fuel
7 economy are handled by the National Highway Traffic
8 Safety Administration.

9 When they set a national fuel economy
10 standard, they take a look at a number of factors.
11 They take a look at safety, they take a look at costs,
12 they take a look at technological feasibility, they
13 take a look at impact on American jobs. Those are
14 things that aren't looked at when California set this
15 fuel economy standard. And so, traditionally, as the
16 federal government has set a fuel economy standard,
17 they have done so so as not to impact the consumers
18 with increased costs that are outside of what it would
19 normally cost a manufacturer in a year to manufacture
20 a vehicle.

21 SENATOR COSTA: Thank you very much and
22 thank you, Madam Chairwoman.

23 SENATOR MARY JO WHITE: Senator Madigan?

24 SENATOR MADIGAN: Thank you. Hopefully,
25 you can clarify -- And I proposed the question to

1 Secretary McGinty about diesels and she kind of
2 glossed over it, that maybe it wouldn't affect us here
3 in Pennsylvania. How do you relate the experience of
4 Maine and New York who adopted the standards and are
5 required to eliminate the diesel?

6 MR. TERRITO: I think what we saw in Maine
7 and New York was a situation where legislators found
8 out after the fact, after they had adopted California
9 LEV, that they weren't able to have diesel vehicles
10 sold in their state. And I think that they, as
11 Senator White said, that they attempted to petition
12 the EPA to allow them to bring diesels into their
13 state and they were denied.

14 Diesel vehicles, as Jim has said --
15 California made a conscious decision not to set a
16 standard for diesel vehicles in their state, which
17 meant that they didn't want diesel vehicles in their
18 state. California feels very strongly that diesel
19 vehicles are more polluting and they have gone out of
20 their way to ensure that diesel vehicles under
21 8500 pounds are not sold in the State of California.
22 And, at this time, there is no exemption that any
23 state that has received -- that any state who's
24 adopted California LEV has received to sell those
25 vehicles.

1 SENATOR MADIGAN: So, in effect, if we
2 adopted California regulations, we will be bound by
3 the same?

4 MR. TERRITO: Absolutely. You can expect
5 not to receive diesel vehicles under 8500 pounds to
6 car lots in this state.

7 SENATOR MADIGAN: At what point would that
8 happen? At some point I think we were told or
9 intimated that we would have two years.

10 MR. TERRITO: I think it would happen
11 almost as soon as the state began -- as soon as the
12 state adopted and implemented the California

13 standards.

14 SENATOR MADIGAN: Very good, thank you.

15 SENATOR MARY JO WHITE: I just want to make
16 one observation here. It really seems to me that
17 what's happening is that the proponents of the
18 California rule are underestimating and understating
19 the cost and overstating the benefit. Would you agree
20 with that statement?

21 MR. TERRITO: Absolutely.

22 SENATOR MARY JO WHITE: I was interested
23 in -- You seemed to get the full benefit -- I'm asking
24 the gentleman, Mr. Ehlman, from GM. Do you get the
25 full benefit of the California car if you don't use

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1 the California fuel?

2 MR. EHLMAN: No, the California fuel
3 provides significant additional benefit and California
4 cars are optimized for use on California fuel. I
5 can't comment on the specific modeling that others
6 have done and what fuel they've used in the modeling
7 assumptions, but you certainly get a lot more benefit
8 if you have a California fuel with the California
9 cars.

10 SENATOR MARY JO WHITE: On the cost issue,
11 I recognize we're talking incremental cost here, but
12 obviously it costs more, does it not, to manufacture a
13 California car than a Tier II car? I mean, if it
14 doesn't -- there's no cost differential, why would you
15 make the car?

16 MR. TERRITO: There are added costs and
17 those costs to this point have been borne by the
18 manufacturer. For anti-trust concerns, as an
19 association we can't speculate on how manufacturers
20 allocate different costs and how they decide to spread
21 that out, but there are definitely costs that are
22 incurred. In fact, some manufacturers on their
23 stickers will say that there are extra costs because
24 it's a California vehicle.

25 SENATOR MARY JO WHITE: I was interested in

1 the attachment to the Secretary McGinty's statement
2 that compared the price today of a Pennsylvania
3 vehicle and a New York vehicle and found no
4 difference. Well, it hasn't gone into effect yet.
5 Isn't that the reason? Does that mean anything at
6 all?

7 MR. TERRITO: Not for the greenhouse gas
8 regulation. I think the point she was trying to make
9 was that the vehicles that meet the California LEV
10 standards without the greenhouse gas have similar
11 pricing. And I think that pricing is an issue that
12 it's something that manufacturers work with dealers to
13 try and make sure that consumers aren't hurt in the
14 end and that dealers aren't hurt in the end. I think
15 that the manufacturers to this point have worked very
16 hard to make sure that the added costs of California
17 LEV are not specifically passed on to consumers. But
18 as we go towards 2009 and as the greenhouse gas
19 standards come into effect, it will be very difficult
20 for states that have these regulations to not see an
21 increase in vehicle costs. I mean, that's why we
22 believe that the \$3,000 number is really the range in
23 what you're going to be looking at in 2009.

24 SENATOR MARY JO WHITE: Thank you. Any
25 other questions? Senator Costa?

1 SENATOR COSTA: Yes, Madam Chairwoman. The
2 only thing I would point out is in the chart that was
3 given, Audi states that there would be a \$150 fee for
4 a Californian car. That's a little different than
5 \$3,000.

6 MR. TERRITO: Right.

7 SENATOR COSTA: The second point I want to
8 make is that isn't it possible that the manufacturers
9 can decide to eat that cost again down the road?
10 Hasn't that always been in the realm of possibility?

11 MR. TERRITO: I would say that given the
12 current state of the automotive industry, that's

1 talking about are health based standards. We would
2 strongly encourage the committees to consider
3 additional hearings at which public health advocates
4 would be able to testify, given the public health
5 implications of what's being debated.

6 Given the public health and environmental
7 threat posed by air pollution in Pennsylvania, the
8 state should implement the strongest possible programs
9 to reduce air pollution in the Commonwealth. Cars and
10 trucks are a significant source of this air pollution,
11 but thankfully there are both technologies that will
12 drastically reduce pollution from automobiles, and an
13 established set of vehicle emissions standards that
14 will bring these cleaner vehicles to Pennsylvania
15 faster than weaker federal standards.

16 We urge members of the Senate to give
17 Pennsylvanians a greater choice in purchasing these
18 cleaner vehicles by supporting implementation of these
19 standards in Pennsylvania, as encompassed in the
20 Pennsylvania Clean Vehicles Program. We also urge
21 members of the Senate to reject any legislative
22 attempts to prevent or delay our state regulators'
23 efforts to implement these standards.

24 While air quality has improved in
25 Pennsylvania and across the country over the last

1 three decades, Pennsylvania still suffers from air
2 pollution levels that pose significant public health
3 and environmental threats and levels that represent
4 some of the worst air pollution in the country. One
5 air pollutant of primary concern is ground-level ozone
6 or smog pollution. Nitrogen oxides and volatile
7 organic compounds or VOCs react with heat and sunlight
8 to create the smog that prompts code red ozone alert
9 days, advising citizens to limit their outdoor
10 activities.

11 In 2003, Pennsylvania ranked 11th
12 nationwide for the worst ozone smog pollution

13 nationally, as measured by the number of exceedances
14 of the EPA's eight-hour health-based ozone standard.
15 Preliminary data from 2005 suggests that just from May
16 through August, there were at least 20 days on which
17 monitors in Pennsylvania recorded smog levels
18 exceeding EPA's health-based standard.

19 Thirty-seven Pennsylvania counties have
20 been named by EPA as nonattainment areas for exceeding
21 the eight-hour health-based ozone standard. In
22 addition to creating smog pollution, nitrogen oxides
23 also react with other substances in the air to form
24 acid rain, which damages forests, lakes, rivers and
25 streams. Two other air pollutants of particular

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1 concern in Pennsylvania are air toxics such as benzene
2 and global warming pollutants such as carbon dioxide.

3 Ozone smog pollution creates a host of
4 public health problems, and exposure to even very low
5 levels of ozone contributes to a wide range of adverse
6 health effects. Much like a sunburn affects the skin,
7 ozone burns our lungs and airways, causing them to
8 become inflamed, reddened and swollen. Children,
9 senior citizens and people with respiratory diseases
10 are particularly vulnerable to the health effects of
11 ozone smog pollution. In 1997, EPA tightened the
12 national ambient air quality standard for ozone and
13 concluded that, when inhaled even at very low levels,
14 ozone can cause chest pain, aggravate asthma, reduce
15 lung function, increase emergency room visits for
16 respiratory problems and lead to irreversible lung
17 damage. Here in Pennsylvania, it is estimated that
18 ozone pollution triggers 370,000 asthma attacks
19 annually and there are 740,000 adult asthmatics in
20 Pennsylvania or nearly 8 percent of the state's adult
21 population.

22 Since 1997, more than 1,700 additional
23 studies on the health and environmental effects of
24 ozone smog pollution have been published in
25 peer-reviewed journals. These studies point to

1 additional, even more serious health effects
2 associated with exposure to ozone smog pollution,
3 including the development of asthma in individuals,
4 versus the triggering of asthma attacks, the
5 development of cardiovascular diseases, increased risk
6 of birth defects in the children of pregnant women
7 exposed to ozone smog pollution, and premature
8 mortality.

9 Also, toxic or hazardous air pollutants,
10 such as benzene, have significant public health
11 impacts as well. Many are known or suspected to cause
12 cancer, birth defects, neurological damage, and other
13 serious health effects. Benzene specifically is known
14 to cause leukemia.

15 In Pennsylvania, highway vehicles,
16 including cars and light trucks, are responsible for a
17 significant portion of the air pollution created.
18 Specifically, in 2001, highway vehicles emitted over
19 300,000 tons of smog-forming nitrogen oxides, or
20 37 percent of the state's total emissions, and over
21 180,000 tons of volatile organic compounds or
22 30 percent of the VOC emissions in Pennsylvania. In
23 2001, transportation sources also accounted for
24 27 percent of Pennsylvania emissions of the global
25 warming gas carbon dioxide.

1 Given the availability of pollution
2 reduction technologies and the need to reduce air
3 pollution and its public health and environmental
4 impacts, many states across the country have adopted a
5 set of standards that will bring cleaner cars and
6 their environmental benefits to the nation's roads
7 sooner than under weaker federal standards. These
8 more stringent standards were developed by California,
9 and have since been adopted by eight states, including
10 New York and New Jersey, and are expected to soon be
11 adopted by two more states. Pennsylvania now has the
12 opportunity to join these states by moving forward

13 with the Pennsylvania Clean Vehicles Program, which
14 implements these standards.

15 Section 177 of the Clean Air Act allows
16 states with approved state implementation plans to
17 adopt California's stronger motor vehicle standards.
18 In other words, states with air pollution problems
19 have two choices when deciding how to regulate
20 emissions from mobile sources. They can follow the
21 federal standards or the California standards. This
22 choice allows states with entrenched air pollution
23 problems the option of adopting policies proven to
24 reduce pollution in other states, and in states with
25 the most polluted areas, federal standards may not be

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1 enough to achieve attainment status under the Clean
2 Air Act.

3 In 1998, Pennsylvania's Department of
4 Environmental Protection adopted the Pennsylvania
5 Clean Vehicles Program, and in 1999 EPA incorporated
6 the Pennsylvania Clean Vehicles Program as part of
7 Pennsylvania's State Implementation Plan. Automobile
8 manufacturers were allowed to comply with the National
9 Low Emission Vehicle Program as a compliance
10 alternative to the Pennsylvania Clean Vehicles Program
11 requirements until model year 2006. In model year
12 2006, all new passenger cars and light trucks sold in
13 Pennsylvania were to meet the requirements of the
14 Pennsylvania Clean Vehicles Program.

15 The standards within the Pennsylvania Clean
16 Vehicles Program require automobile manufacturers
17 selling cars in Pennsylvania to certify under Title
18 20's Low Emission Vehicle and LEV II requirements that
19 their vehicles meet a set of more stringent vehicle
20 emission standards than those required under federal
21 law, federal Tier II standards, as well as a
22 fleet-wide average for hydrocarbon emissions.

23 Regarding the cost of these standards,
24 DEP's estimates that there is a negligible cost
25 increase for Pennsylvania Clean Vehicles Program

1 vehicles are consistent with what has been determined
2 by the California Air Resources Board. While this
3 added cost per vehicle will likely increase in 2009,
4 the cars being sold will likely recoup those
5 additional costs through savings in operating costs,
6 primarily reduced fuel consumption. Vehicles with
7 increased fuel efficiency are in high demand. A
8 recent national survey found that nine out of ten
9 Americans say that U.S. consumers should have access
10 to the more fuel-efficient vehicle models being
11 offered by some U.S. automakers in other countries,
12 but not in the United States.

13 Also, regarding some of the cost estimates
14 that have been put forward in documents from the
15 Alliance of Automobile Manufacturers, it is worth
16 noting that pre-regulatory estimates from both the
17 automobile industry and regulators are typically
18 higher than what the costs end up being.
19 Specifically, in the 1970s, Chrysler estimated that
20 adding catalytic converters to cars and trucks would
21 add \$2770 in today's dollars to the cost of vehicles.
22 Regulators estimated the cost to be \$1600 in today's
23 dollars. The actual cost for adding catalytic
24 converters ended up being \$875 to \$1350 in today's
25 dollars, meaning Chrysler's estimate was roughly two

1 to three times too high, and regulators also
2 overestimated the cost. Then, in the 1990s, the
3 automobile industry estimated that California's Low
4 Emission Vehicle standard would add \$788 to the cost
5 of vehicles, while the California Air Resources Board
6 estimated that the cost would be \$120. The actual
7 added cost for the Low Emission Vehicle standard ended
8 up being roughly \$83, meaning that the automobile
9 industry estimate was almost ten times too high, and
10 even the California Air Resources Board estimate was
11 nearly one and a half times too high.

12 The Pennsylvania Clean Vehicles Program

13 will result in cleaner vehicles being available in
14 Pennsylvania that will create significantly greater
15 reductions in vehicle air pollution than if
16 Pennsylvania were to opt into the federal Tier II
17 standards. Automobile manufacturers are making cars
18 that meet these standards, and implementation of the
19 Pennsylvania Clean Vehicles Program will ensure that
20 Pennsylvanians will be able to choose from these
21 cleaner vehicles when buying a new car. Rather than
22 limit consumer choice, Pennsylvania's choice of
23 vehicles will be expanded to include cleaner models of
24 vehicles that might not otherwise be available if the
25 state opts instead into the weaker federal Tier II

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1 standards.

2 With regard to air pollution reduction, DEP
3 estimates that by 2025, the Pennsylvania Clean
4 Vehicles Program standards will result in a 6 to
5 12 percent decrease in annual volatile organic
6 compound emissions, a 9 percent decrease in annual
7 nitrogen oxide emissions, and a 7 to 15 percent
8 decrease in toxic benzene emissions as compared to
9 reductions achieved through the federal Tier II
10 standards. These estimates are consistent with
11 estimates from state agencies in other states that are
12 implementing the California standards.

13 I would also note in regard to a question
14 asked earlier that these estimations are based upon
15 using Pennsylvania fuels and do not require the use of
16 California specific fuels available only in
17 California.

18 Pennsylvania will also likely see greater
19 reductions in global warming emissions, and consumers
20 would likely save money at the pump due to the
21 increased fuel efficiency of the cars meeting the
22 standards.

23 Given that there is legislation being
24 considered that would bar the state from implementing
25 the Pennsylvania Clean Vehicles Program, the

1 consequences of abandoning this program should also be
2 noted. Specifically, because the Clean Vehicles
3 Program is part of the state's federally enforceable
4 State Implementation Plan, there is the potential for
5 federal sanctions if Pennsylvania fails to follow the
6 necessary steps to gain approval for modifying the
7 State Implementation Plan. Any modification of
8 Pennsylvania's SIP will have to contain a plan for
9 making up for the pollution reductions that would have
10 occurred because of adoption of the Pennsylvania Clean
11 Vehicles Program.

12 These federal sanctions, as outlined in
13 Section 179 of the federal Clean Air Act can include
14 requiring increased emission reductions from incoming
15 and expanding industries, withholding of federal
16 highway funds, and withholding of air pollution
17 planning and control program grants. These
18 consequences, in addition to the lost air pollution
19 benefits, should be carefully considered in any
20 discussion around proposals to abandon the
21 Pennsylvania Clean Vehicles Program.

22 Despite the progress that has been made in
23 recent years, air pollution is still a serious
24 environmental and public health problem for
25 Pennsylvania. There are many policy handles that can

1 be implemented to help tackle this problem, and one
2 key policy is the effort in the Pennsylvania Clean
3 Vehicles Program, a program whose emissions standards
4 will cut smog-forming pollutants by roughly 10 percent
5 and help the state meet its federal air quality
6 attainment requirements. Rather than limiting vehicle
7 choice, this program will increase the clean vehicles
8 that Pennsylvanians can choose from when purchasing a
9 car. And, thankfully, this set of standards has
10 already been researched and implemented by other
11 states, including two of our border states.

12 For all these reasons, PennEnvironment

13 strongly encourages members of the Senate to support
14 the Pennsylvania Clean Vehicles Program, and to oppose
15 any legislative attempts to delay or stop the
16 program's implementation.

17 Thank you again for the opportunity to
18 testify today, and I would be happy to answer any
19 questions at this time.

20 SENATOR MARY JO WHITE: Last Tuesday, when
21 your group sent out an e-mail opposing Senate Bill
22 1025 that Senator Madigan and I have introduced, you
23 repeatedly called our bill the anti-clean car bill and
24 said it would have devastating effects. Further, you
25 state our bill would stop Pennsylvania from

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1 implementing a current proposal to reduce air
2 pollution from cars and light trucks.

3 Now, in addition to being inaccurate and
4 even somewhat insulting, your e-mail is intended to
5 leave the impression that absent adopting the
6 California standards no rules would be in place to
7 govern vehicle emission standards. That's clearly not
8 the case, because we would be in the federal Tier II
9 program already in effect that will have serious
10 benefits, significant benefits once it is fully
11 implemented.

12 Do you not think that e-mail was seriously
13 misleading?

14 MR. WILLCOX: No, I do think the e-mail was
15 seriously misleading. The intent of the e-mail was
16 never to suggest that there is not a federal standard.
17 And, in fact, I'm fairly certain that in the
18 background section of that e-mail alert that went out,
19 it was clearly outlined that there are weaker federal
20 standards that are available. So it was never
21 PennEnvironment's intent to imply that there's not a
22 federal option out there. We have said all along
23 there are federal standards that Pennsylvania could
24 adopt, but the fact is they're weaker. We won't see
25 the additional pollution reductions that were outlined

1 earlier, the 9 percent reductions in nitrogen oxides,
2 the 6 to 12 percent reductions in volatile organic
3 compounds unless we adopt the Pennsylvania Clean
4 Vehicles Program.

5 SENATOR MARY JO WHITE: Well, as you've
6 heard, there are serious differences of opinion as to
7 whether those are real numbers. And, in fact, EPA has
8 cautioned NESCAUM -- and I'm sure you've seen that
9 letter -- against overstating the benefits of the
10 California car. EPA has indicated that they think the
11 benefits might be 1 to 2 percent, not 10 percent.

12
13 MR. CLARKE: I am aware of that letter and
14 I do not think that those numbers are accurate. The
15 analysis that DEP did was based on Pennsylvania
16 specific numbers. To my knowledge, the EPA analysis
17 was not based on Pennsylvania specific numbers, so I
18 know that there are different numbers out there, but
19 we are confident in DEP's estimations of the pollution
20 benefits that will be gained through --

21 SENATOR MARY JO WHITE: Well, I'd certainly
22 want to see a lot more documentation on that piece
23 before I change my mind. But I just wanted to make
24 the comment that I think this bit about federal
25 sanctions and loss of highway money about the

1 increased impacts on stationary sources if we do not
2 do the California rule, all these dire things that are
3 supposed to happen to us are nothing more than red
4 herrings designed to scare people away from discussing
5 the real issues of what Pennsylvania should do in our
6 future. I want consumers to have more choice in clean
7 cars.

8 Consumers have choices. They can buy a
9 clean car today, they can buy a clean car tomorrow. I
10 simply want to be sure that we are not limiting the
11 options available to Pennsylvania by tying our destiny
12 to California and having to go along with whatever the

13 California Air Resources Board decides. I think that
14 is bad public policy, it's bad environmental policy.
15 And I think when we advocate for a position such as
16 that, we should not be portrayed by organizations as
17 being anti-clean air or anti-clean car.

18 With that, any other questions?

19 MR. WILLCOX: I'm sorry, Senator, could I
20 respond to --

21 SENATOR MARY JO WHITE: Yes, go ahead.

22 MR. WILLCOX: I think it is important, I
23 would insist on noting for the record that we are no
24 way by going forth with the Pennsylvania Clean
25 Vehicles Program tying ourselves forever to whatever

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1 California comes up with. As the Secretary indicated
2 this morning, if in the future California were to
3 change its regulations, Pennsylvania could come back
4 to the issue of us opting into the California
5 standards as opposed to the federal standards. So
6 it's not as if when we adopt the Pennsylvania Clean
7 Vehicles Program we will be forever tied to whatever
8 California decides. We will have options in the
9 future to disengage ourselves from the California
10 standards.

11 SENATOR MARY JO WHITE: But at that point
12 if we had claimed those benefits in our SIP, then we
13 must make them up. So that's precisely the argument
14 being used against us today. You're just saying in
15 the future, that's no big deal. Well, but today
16 somehow it's a big deal. So I think you are being
17 totally disingenuous with those arguments.

18 MR. WILLCOX: But I was not stating that we
19 are counting on -- The difference is that we are not
20 accounting for further changes in the California
21 standard in our SIP, so if California were to change
22 our standards, we would not have to make up any
23 pollution reductions, because the SIP is made up of
24 pollution reductions that are accounted through the
25 current California standards and what the California

1 standards are projected to achieve. So if California
2 were to go further in the future, our SIP does not
3 count on those pollution reductions, and therefore, we
4 wouldn't have to get those pollution reductions from
5 another source.

6 SENATOR MARY JO WHITE: Well, California is
7 going further. You know, there are serious questions
8 about the legality of using vehicle emission standards
9 to regulate carbon dioxide, and it's in litigation in
10 California right now. It is clear -- it's clear
11 according to the EPA that congressmen intended to give
12 the U.S. Department of Transportation the power to
13 regulate the fuel economy and that EPA does not have
14 authority to regulate motor vehicle emissions, CO2 and
15 other greenhouse gases. So I don't know where we're
16 going here, but I'm really awaiting the outcome of
17 that court decision.

18 But those are the kinds of things that
19 could have serious impacts on Pennsylvania's SIP and
20 on our implementation of a clean car program. I see
21 nothing wrong with the federal Tier II standards. I
22 think they are fully protective of human health and
23 the environment. I think we have the ability to
24 modify them to suit our own conditions here. We have
25 different climate conditions than California, we have

1 different demographics, we have different driving
2 patterns. And I think that for Pennsylvania to give
3 up our flexibility on that would be a huge mistake.
4 And I think to portray it as being weak on pollution
5 is unfair.

6 Senator Madigan?

7 SENATOR MADIGAN: Thank you. And following
8 up on Senator White, you know, at the point we decide
9 we don't like California if we get into it, it's not
10 an easy process to change and it's a little bit like
11 locking the barn door after the horse has been stolen.

12 My question to you is, what influence do we

13 in Pennsylvania have on the CARB board? Do we have
14 any power or standing to ensure that our sovereign
15 interests are being or will be considered?

16 MR. WILLCOX: A couple notes on that. Any
17 outside groups can submit comments to the California
18 Air Resources Board as they consider further
19 regulations. So as far as official standing, I cannot
20 comment either way on whether CARB would be required
21 to consider Pennsylvania's comments in that, but all
22 groups from across the country are invited to submit
23 comments to CARB as they consider future standards.

24 The other note that I would make on this is
25 that CARB is -- The California Air Resources Board is

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1 fully aware of their national impacts of these
2 standards. And so in the future if they decide to
3 change those standards, they realize that there are a
4 number of states that have chosen to follow them in
5 that regard and I think they will take that into
6 consideration in the future.

7 SENATOR MADIGAN: Well, we have no input on
8 who's on that board. And the recent federal court
9 cases for Maine and New York point that out very
10 clearly, that they have no options in deviating from
11 the regs of the California board.

12 MR. WILLCOX: Well, that is true to some
13 regard, but I think as we've seen in Pennsylvania,
14 there has already been some modification of what the
15 California standards propose. So in my written
16 testimony, I refer to the Zero-Emission Vehicles
17 Standard, which a standard that we in the
18 environmental community wholeheartedly support. That
19 is not part of Pennsylvania's standard. There are
20 also fuel requirements are part of the California
21 standard. They're not part of the Pennsylvania
22 standard.

23 There has been legal precedence set by EPA
24 in reviewing the standards of other states that
25 excluding the Zero-Emission Vehicles Program is not a

1 program from EPA's regard in terms of following the
2 either/or approach of the California standards or the
3 federal standards. So, yes, the California standards
4 will always serve as a basis as long as we are
5 following the Pennsylvania Clean Vehicles Program, but
6 to suggest that we have or will have to follow to the
7 letter of the law everything that California comes out
8 with, I don't think is completely accurate.

9 SENATOR MADIGAN: Well, I would disagree on
10 that. I think we're turning over our sovereign rights
11 to another state. And a follow-up question. If we do
12 not use California fuel, do we get the full value of
13 California cars?

14 MR. WILLCOX: Again, this is what I
15 referred to in my testimony. As far as the full
16 value, I'm not sure what California has quoted as far
17 as what they will achieve using California cars with
18 California fuel. What I do know is that the numbers
19 that I cited from DEP are based on using Pennsylvania
20 fuels. So the 9 percent reduction in nitrogen oxide,
21 the 6 to 12 percent reductions in volatile organic
22 compounds are based on the use of Pennsylvania fuel.
23 There would be no importation of California fuel
24 necessary to achieve those benefits.

25 SENATOR MADIGAN: And that 12 percent is

1 over 20 years and that's six-tenths of a percent per
2 year.

3 MR. WILLCOX: Well, it's --

4 SENATOR MADIGAN: Thank you.

5 MR. WILLCOX: Just to note on that one
6 point, it's a measure of the annual reductions that
7 will be achieved by 2025, so that is the difference
8 between what we would achieve in 2025 for the year
9 2025 between following the federal standard and
10 following the Pennsylvania Clean Vehicles Program.

11 SENATOR MADIGAN: Thank you.

12 SENATOR MARY JO WHITE: I just want to

13 clarify one point. It's my understanding we're
14 talking a manufacturing standard here for CARB
15 vehicles, are we not?

16 MR. WILLCOX: It's an emissions based
17 standard to help the manufacturers meet --

18 SENATOR MARY JO WHITE: That was for the
19 manufacturers. Now, I believe that the federal
20 government has made it very clear that they do not
21 want every state to have specific standards for
22 manufacturing vehicles. The reason California has one
23 is my understanding is that they had it in place
24 before the federal government had their standards in
25 place. The only exceptions that I'm aware of that are

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1 available to any state deal with the Zero-Emission
2 Vehicles and fuel. Those are the only exceptions.

3 So when you sort of imply, well, we can
4 make changes, I think that is again misleading. The
5 federal government has made it very clear that there
6 is a federal standard and there's the California
7 standard, and there are not going to be variations on
8 that theme, there will only be the two. So let's not
9 pretend here that if we take the California standard,
10 we can tailor it in some way to Pennsylvania's needs,
11 because that is absolutely false.

12 MR. WILLCOX: On that note, I was not
13 meaning to imply that we can simply tailor whatever we
14 want to with the current standards. Obviously, there
15 has been a legal precedent set, but I think limits
16 what states can tweek with regard to the California
17 standard to the Zero-Emission Vehicles Program and the
18 fuel requirements, yes.

19 What I was referring to is if additional
20 standards are made in the future, I don't know what
21 those standards will be. I don't think anyone knows
22 exactly what those standards will be, but it is
23 possible that those standards could be treated in the
24 same respect that some of the Zero-Emissions Vehicle
25 Standards, that the Zero-Emission Vehicles Standards'

1 initial requirements have been treated in the current
2 standards.

3 SENATOR MARY JO WHITE: Possible, but
4 highly unlikely.

5 Any other questions? Thank you very much.

6 MR. WILLCOX: Thank you.

7 MR. HENDERSON: Our next witness is Ted
8 Leonard, executive director of Pa. AAA Federation.

9 SENATOR MARY JO WHITE: Would you raise
10 your right hand, please.

11 (Ted Leonard sworn as a witness.)

12 MR. LEONARD: Good morning, Chairmen and
13 members of the Senate Transportation and Environmental
14 Resources Committees.

15 My name is Ted Leonard. I'm the executive
16 director of the Pennsylvania AAA Federation, which is
17 an association of the AAA clubs in Pennsylvania,
18 encompassing 3 million member motorists.

19 Thank you for this opportunity to present
20 our views on the Pennsylvania Clean Vehicles Program
21 and specifically our support for the federal Tier II
22 vehicles. First and most importantly, we do not
23 believe that this issue is a debate between a clean
24 car and a dirty car. Both the federal Tier II and the
25 CA LEV programs produce exceptionally clean vehicles

1 with large emission reductions over the National Low
2 Emissions Vehicle.

3 It's apparent from studying the EPA and DEP
4 documentation that the Pennsylvania Clean Vehicles
5 program established the Clean Air Act, Section 177
6 California standards as a backstop in the event auto
7 manufacturers did not produce an acceptable NLEV. In
8 a June 1997 report to the General Assembly on Clean
9 Vehicle Programs in Pennsylvania, DEP commented that a
10 national low emissions vehicle program would be more
11 cost effective and equitable than individual state low
12 emissions programs once contemplated throughout the

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14 ozone transport region.

15 DEP noted in the report that the Department
16 was developing a new motor emissions control
17 regulation that would allow Pennsylvania to opt into
18 the NLEV program. However, since there was still some
19 uncertainty about the NLEV program, Pennsylvania would
20 establish a Commonwealth clean vehicles program, but
21 allow automakers to comply with NLEV as an alternative
22 to a Pennsylvania specific program.

23 In a Pennsylvania Bulletin rulemaking in
24 1998, DEP commented that the backstop program is the
25 only program that a state may establish by regulation.
Quote: "It is the backstop that creates the legal

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1 mechanism to establish the voluntary NLEV program in
2 this Commonwealth." Unquote.

3 In a 1998 Federal Register regulation
4 finalizing the NLEV rule, EPA noted that NLEV would
5 produce emissions reductions equal to or greater than
6 state section 177 programs, and that it would take an
7 unlikely weakening of EPA regulations to reverse that
8 finding.

9 In a July 1999 letter to EPA, DEP stated
10 that Pennsylvania strongly supported the proposed
11 federal Tier II regulations, the federal Tier II
12 program being the even-cleaner successor vehicle
13 program to the NLEV. In fact, DEP was pleased that
14 Tier II emphasized reductions in nitrogen oxides or
15 NOx, since NOx reduction was most important for states
16 like Pennsylvania. Pennsylvania SIP submissions
17 approved by EPA included NLEV and Tier II as vehicle
18 emission reduction strategies.

19 Current proposals to adopt the California
20 LEV program come with some cost and little, if any,
21 benefit over the federal Tier II program. Consumers
22 would face a higher vehicle cost ranging from \$1,000
23 to \$3,000, thus reducing new vehicle sales and older
24 vehicles with higher emissions would remain on the
25 road longer. Consumers would also be restricted in

1 vehicle choices as dealers would only be able to bring
2 into Pennsylvania the certified CA LEV vehicles.
3 Dealer inventory trading across state lines with
4 states not participating in the CA LEV program would
5 be prohibited.

6 The California program also eliminates
7 consumer access to diesel passenger vehicles. A look
8 at EPA's list of 2006 model year fuel economy leaders
9 shows four diesel passenger vehicles in the top seven
10 vehicles. It is hardly a step in the direction of
11 increasing vehicle fuel economy, particularly in the
12 light of the recent trend of increasing fuel prices,
13 to eliminate consumer access to some of the most
14 affordable and fuel economical vehicles on the market.

15 We are also concerned that some of the
16 modeled benefits of the California program are derived
17 from the use of more expensive California fuel and an
18 electric car mandate. Both provisions would raise the
19 purchase and operating cost of all new cars.

20 The claims of immense relative benefits of
21 the California car program over the federal Tier II
22 car program do not appear to be shared by the federal
23 EPA. In a letter last year to NESCAUM, EPA expressed
24 concern that the overstated benefits of the California
25 car may entice states to adopt the California program

1 when those benefits may not actually be realized.

2 EPA estimated that the relative benefit of
3 the California car program to be 1 percent in VOCs and
4 2 percent in air toxics in the year 2020. EPA made no
5 mention of any California program benefit for NOx
6 reduction. Given this small benefit, it is highly
7 unlikely the EPA would sanction Pennsylvania based on
8 any relative program deficiency. It is even less
9 likely the EPA would withhold federal highway funds
10 from a state for adopting a federal program. And,
11 since the federal Tier II program and the CA LEV
12 programs are nearly identical in terms of emissions

13 benefits and, therefore, credits, it would appear to
14 be that there are no emissions reduction deficiencies
15 to be made up by other sources.

16 Federal law ties any state adopting the
17 California car program inescapably to any and all
18 provisions of the California program and to the
19 decisions made by a California board. The people of
20 Pennsylvania and their elected representatives would
21 have no say and no recourse to any program changes
22 that may benefit California, but could harm
23 Pennsylvania.

24 Due to population density, geographic,
25 meteorological and other reasons, California's air

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1 quality issues differ in nature and severity to those
2 of Pennsylvania. The decisions of how to best address
3 Pennsylvania air quality issues should remain in
4 Pennsylvania.

5 We believe Pennsylvania made the right
6 decision in 1997 to participate in a national low
7 emissions vehicle program and its successor Tier 2
8 program which began with the model year 2004 vehicles.
9 It was the right decision then, and it is the right
10 decision now.

11 Thank you and I would be happy to answer
12 any questions.

13 SENATOR MARY JO WHITE: I just have one
14 observation based on your testimony. It seems to me
15 that the most effective vehicle strategy to reduce
16 emissions would be to retire old vehicles from the
17 mix. It's the old cars that are causing all the
18 pollution. If you do anything to increase the cost of
19 the car, it seems to me you're making it less likely
20 that people will purchase -- replace their old
21 vehicles with new, less polluting vehicles. And yet I
22 think you get huge bang for your buck here by simply
23 encouraging people to buy new cars, plus you help the
24 economy.

25 MR. LEONARD: That's a very correct

1 observation, Senator, that one of the most effective
2 strategies and probably the most effective strategy in
3 the air quality improvement that we've seen has been
4 in the vehicle fleet turnover. And if one adopts a
5 policy to slow that vehicle fleet turnover and keep
6 these older vehicles on the road longer, of course,
7 the older vehicle being more polluting, that's
8 counterproductive.

9 SENATOR MARY JO WHITE: Any more questions?
10 I guess we're the last ones standing, aren't we? Any
11 questions?

12 Well, thank you very much. Thank you to
13 all of the witnesses today.

14 (Whereupon, the hearing was adjourned at
15 11:19 a.m.)

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C E R T I F I C A T I O N

I hereby certify that the proceedings and
evidence are contained fully and accurately in
notes taken by me on the within proceedings, and
that this copy is a correct transcript of the
same.

Dated in New Cumberland, Pennsylvania this
22nd day of December, 2005.

Susan L. PetriIIa, Notary Public

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