

Senator Roger Madigan, Chairman
Transportation
Room 286 Main Capitol Building
Senate Box 203023
Harrisburg, PA 17120-3023



Senator Mary Jo White, Chairman
Environmental Resources & Energy
Room 169 Main Capitol Building
Senate Box 203021
Harrisburg, PA 17120-3021

Senate of Pennsylvania

November 1, 2005

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

Dear Secretary Biehler:

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

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

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

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

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

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

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

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

Sincerely,



Roger Madigan, Chairman
Senate Transportation Committee



Mary Jo White, Chairman
Senate Environmental Resources
& Energy Committee

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