



August 15, 2002

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The Honorable Christine Todd Whitman
Administrator
U.S. Environmental Protection Agency (1101A)
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Governor Whitman:

The undersigned members of the Ozone Transport Commission (OTC) are writing to commend the U.S. Environmental Protection Agency (EPA) on its successes to date in addressing emissions from highway diesel engines and fuels. We also wish to express our concerns regarding recent activities that could adversely affect EPA's diesel programs, and urge EPA to do what it can to fend off such assaults. These programs are targeted at sources that emit significant amounts of nitrogen oxides, particulate matter, hydrocarbons, carbon monoxide, sulfur dioxide, and air toxics, all of which contribute to serious public health and environmental problem. Exposure to diesel emissions is widespread, especially in urban areas.

Your recent victory, in which the U.S. Circuit Court of Appeals for the District of Columbia upheld the 2007 on-road heavy-duty diesel rule (66 FR 5002, January 18, 2001), was a critical milestone that underscored the appropriateness of strong, timely, and protective rules to address on-road (highway) diesel emissions. OTC is pleased with EPA's integrated approach to regulating the heavy-duty diesel sector through a program encompassing the engine, the vehicle, and the fuel. We were also pleased to learn that regulating non-road diesel emissions is one of the Agency's top priorities, and we are poised to work with you to ensure appropriate parity between on-road and off-road engine and fuel standards. According to a June 2002 report issued by the State and Territorial Air Pollution Program Administrators and the Association of Local Air Pollution Control Officials (STAPPA/ALAPCO), if federal non-road heavy-duty diesel engine and fuel standards were equivalent to the abovementioned on-road heavy-duty diesel standards, the health and economic benefits would be significant, nationally and within the States of the Ozone Transport Region (see Attachment 1).

While we are pleased with EPA's progress to date with respect to recently promulgated on-road diesel standards, we are extremely concerned about recent developments that may result in a significant weakening of these programs, or possibly undermine future non-road diesel regulations. Any weakening would result in an erosion of the public health protection from these sources that has already been committed to by EPA (see Attachment 1). Our concerns include:


- Industry efforts to derail the 1999 consent decrees between EPA, the Department of Justice, and seven heavy-duty diesel engine manufacturers. Between 1988-1998, seven U.S. engine manufacturers were found to be employing illegal defeat devices that frequently turned off emission controls on over one million engines. This has resulted in over 11 million tons of excess NOx emissions, to date. OTC has been following the progress of these consent decrees over the past few years, and remains concerned about the delays in implementation, and a possible weakening of their provisions. In June 2002, the American Trucking Association asked EPA to reconsider the 2004 rule on which the consent decrees are based, and appealed to President Bush to delay the October 1, 2002 compliance date of the consent decrees, citing inadequate time to test new engines. In July 2002, two engine manufacturers -- Caterpillar and Detroit Diesel Corporation -- filed motions in court for judicial review and modifications of their respective consent decrees. Both manufacturers requested a suspension of the standards that would take effect October 1, 2002. At the same time, two other engine manufacturers have already developed and certified engines that comply with the upcoming standards. Caterpillar recently filed a challenge of EPA's certification for one of the manufacturers' engines. OTC urges EPA to continue to reject all arguments for delays or changes to the consent decrees, and to take whatever steps are necessary to ensure that the October 2002 compliance date remains in effect.
- Efforts to undermine the proposed non-compliance penalties for the heavy-duty diesel consent decrees. All regulatory programs require sufficiently stringent penalties to encourage compliance and offset environmental damages from non-compliance. In January 2002, EPA issued draft non-compliance penalties with the heavy-duty diesel decrees, and OTC noted that sufficiently high penalties were proposed. We have heard that EPA has been pressured to and may consider lowering proposed non-compliance penalties for the heavy-duty diesel consent decrees. Less stringent penalties would encourage non-compliance and place those manufacturers who have invested in compliant engines at an economic disadvantage. We urge you to move forward with sufficiently stringent non-compliance penalties that will be in place in time for EPA to take enforcement action on engines that do not comply with the standards by October 1, 2002.
- Possible "intersector" trading rules for mobile sources. In June, EPA announced that it will be collaborating with the Office of Management and Budget in drafting non-road diesel standards, and will consider "the potential use of market-based averaging, banking, and trading programs that might

include permission to trade emission reduction credits between off-road and highway engines.” OTC has been a leader in trading programs, and supports market-based mechanisms, where appropriate. However, relying on off-road and highway mobile source emissions trading as a mechanism to achieve reductions is of considerable concern. Some of our concerns include: (1) Off-road/highway mobile source trading has an unproven track record. In order to assure emission reductions actually occur, non-road trading policy issues such as how the credits would be quantified, who would own the credits, and how compliance would be assessed must be resolved. Lack of in-use enforcement in the non-road sector, as well as significant gaps in on-road diesel enforcement adds to these concerns; (2) It would be very difficult to ensure adequate protection from adverse local impacts through mobile source trading programs, and given the urban area concerns with diesel vehicles, local impacts must be addressed; (3) Off-road/highway trading involving fuel standards that are phased in at different times would be problematic. Diesel emission controls are sulfur sensitive, and for those programs to be effective, 15 parts per million sulfur fuel must be available across the country; (4) An off-road/highway trading program must not affect the currently established lead time and product stability provisions in the current on-road rules, nor the standards contained in those rules. Product design has already commenced for the on-road programs, and a trading program that hinges on finalization of the non-road rule could create uncertainty in implementing the 2007 on-road rule (e.g., new technology development might stop as companies await the final non-road rule). Overall, we believe that “intersector” trading may be inappropriate, and could significantly impede our ability to garner the reductions that these programs are designed to yield.


We have supported your efforts to promulgate strong on-road diesel programs, and urge you to do everything in your power to keep those programs intact and on schedule. We must realize the full emission reduction benefits of all of the on-road programs, as designed, in order to protect public health. We hope you can assure us that there will be no backsliding, and the integrity of these programs will not be compromised.

We also need EPA to develop strong and protective non-road diesel engine and fuel standards that will help us attain the health-based air quality standards. OTC's position on non-road diesel standards is reiterated in Attachment 2. We stand ready to work with you to ensure that strong, timely, and protective non-road diesel standards are adopted and implemented, in parity with on-road diesel standards.

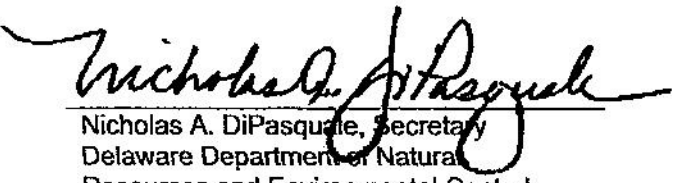
Sincerely,




Arthur J. Rocque, Jr., Commissioner
Connecticut Department of Environmental
Protection



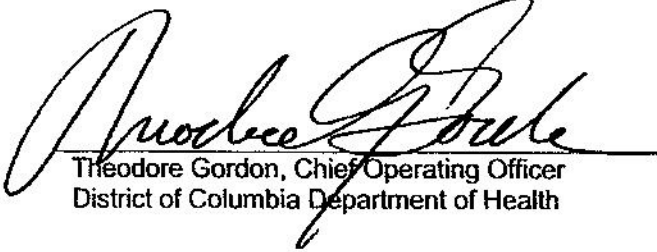
Dana Bisbee, Assistant Commissioner
New Hampshire Department
of Environmental Services



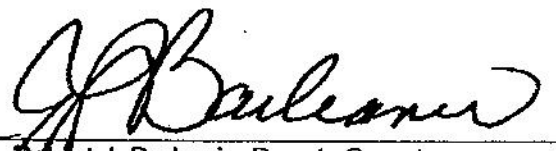
Nicholas A. DiPasquale, Secretary
Delaware Department of Natural
Resources and Environmental Control



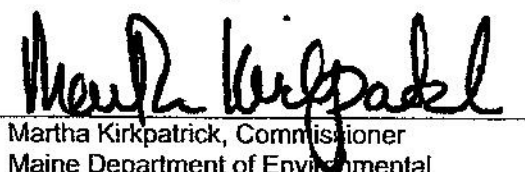
Bradley M. Campbell, Commissioner
New Jersey Dept. of Environmental
Protection



Theodore Gordon, Chief Operating Officer
District of Columbia Department of Health



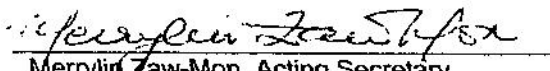
Robert J. Barkanic, Deputy Secretary
Pennsylvania Department of Environmental
Protection



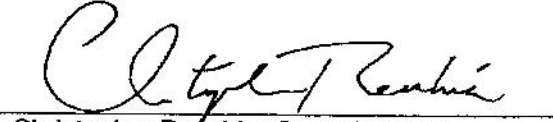
Martha Kirkpatrick, Commissioner
Maine Department of Environmental
Protection



Jan H. Reitsma, Director
Rhode Island Department of Environmental
Management




Merrylin Zaw-Mon, Acting Secretary
Maryland Department of the Environment



Christopher Recchia, Commissioner
Vermont Department of Environmental
Conservation



Robert Durand, Secretary
Massachusetts Executive Office
of Environmental Affairs



David Paylor, Deputy Secretary of Natural
Resources, Commonwealth of Virginia

Cc: Jeffrey Holmstead, EPA
Rob Brenner, EPA
Margo Oge, EPA
Susan Studien, EPA Region I
William Baker, EPA Region II
Judy Katz, EPA, Region III
S. William Becker, STAPPA/ALAPCO
Kenneth Colburn, NESCAUM
Susan Wierman, MARAMA

ATTACHMENT 1

Health and Environmental Impacts of Diesel Engines and Fuels Programs

1. When fully implemented, EPA's on-road heavy-duty diesel and engine standards will prevent¹:

- 8,300 premature deaths per year
- 9,500 hospitalizations per year
- 5,500 cases of chronic bronchitis per year
- 17,600 cases of acute bronchitis in children per year
- 360,000 asthma attacks per year
- 1.5 million lost work days per year

Projected annual emission reductions from those programs are the equivalent to taking 13 million trucks and buses off the road:

- 2.6 million tons of NOx
- 115,000 tons of HC
- 109,000 tons of PM

2. If equivalent non-road heavy-duty diesel engine and fuel standards are adopted within similar timeframes, the health and economic benefits would be significant², including the avoidance of:

- 8,500 premature deaths per year
- 5,600 cases of chronic bronchitis per year
- 18,000 cases of acute bronchitis in children per year
- 180,000 asthma attacks per year
- 1.5 million lost work days per year

In the Ozone Transport Region States alone, non-road diesel standards would prevent:

- 31,000 fewer asthma attacks per year
- 3000 fewer cases of acute bronchitis in children per year
- 374 fewer asthma-related emergency room visits per year
- 274,000 fewer lost work days per year

¹ On-road statistics from U.S. Environmental Protection Agency

² Non-road statistics from "The Dangers of the Dirtiest Diesels: The Health and Welfare Impacts of Nonroad Heavy-Duty Diesel Engines and Fuels," The State and Territorial Air Pollution Program Administrators and the Association of Local Air Pollution Control Officials, June 2002.

ATTACHMENT 2

OTC's Position on Non-Road Diesel Engines and Fuel Standards

- Effective in 2007, establish parity between on-road and non-road heavy-duty diesel engines by promulgating non-road Tier 3 PM standards based on the same levels of emission reductions, i.e., greater than 90%.
- Between 2007 and 2010, establish parity between on-road and non-road heavy-duty engines by promulgating non-road Tier 4 NOx standards based on the same levels of emission reductions established for on-road engines, i.e., greater than 95%.
- By the start of ozone season 2006, establish parity between on-road and off-road fuels by promulgating a 15-ppm low-sulfur non-road diesel fuel standard and making available such fuel.