



May 22, 2020

Via electronic mail to: pmiller@nescaum.org

Paul Miller
OTC Lead Manager
Ozone Transport Commission
89 South Street, Suite 602
Boston, MA 02111

Re: OTC Consideration of Low-NOx Standards for Heavy-Duty Vehicles

Dear Mr. Miller:

On behalf of the above organizations, we write in response to recent comments submitted to the Ozone Transport Commission on April 29, 2020 on behalf of the Engine Manufacturers Association regarding consideration of next-generation low-NOx standards for heavy-duty trucks. In those comments EMA erroneously advises that:

A low-NOx rule for new [heavy-duty] vehicles, phasing-in starting with the 2027 model year, may not have a material impact on ozone NAAQS-attainment demonstrations in the OTC States. In that regard, state opt-ins to California regulations under section 177 of the federal Clean Air Act (CAA) are limited to States that are in and are projected to remain in NAAQS nonattainment. (See 42 U.S.C. §7507.)

Nothing in this statement is factually or legally accurate.

First, as a legal matter, nothing in section 177 requires states choosing to opt-in to California vehicle standards to be "in and . . . projected to remain in NAAQS nonattainment." Section 177 allows "any State which has plan provisions approved under this part" to adopt and enforce model year standards that meeting the requirements outlined in that section. 42 U.S.C. § 7507. This language applies to any plans approved under Clean Air Act title I part D, which includes both nonattainment plans, as required under Clean Air Act section 172, *and* maintenance plans as required under section 175A. There is no requirement in section 177 for demonstrating need, let alone need into the future. There is no justification requirement whatsoever. Indeed, to require justification of such control measure choices would have been antithetical to Congress's well-established cooperative federalism scheme for addressing criteria pollution problems. *See Train v. Natural Res. Def. Council, Inc.*, 421 U.S. 60, 79 (1975) ("The Clean Air Act "gives EPA no authority to question the wisdom of a State's choices of emission limitations if they are part of a [state implementation] plan which satisfies the standards of § 110(a)(2)."); *see also Union Electric Co. v. EPA*, 427 U.S. 246, 265-66 (1976). EMA's description of section 177 has no foundation in the statutory text or history.

EPA has sowed some confusion recently by claiming that the title and placement of section 177 suggest that Congress intended to limit States to adopting only standards related to criteria pollution. 84 Fed. Reg. 51310, 51350 (Sept. 27, 2019) (withdrawing California waiver for greenhouse gas standards). Those arguments are unavailing because it is well established that statutory headings cannot be used to create ambiguity where none exists. *See, e.g., Brotherhood of R.R. Trainmen v. Baltimore & O.R. Co.*, 331 U.S. 519, 528-29 (1947) (reiterating "the wise rule that the title of a statute and the heading of a section cannot limit the plain meaning of the text"); *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 483 (2001) (explaining that a title "may only she[d] light on some ambiguous word or phrase in the statute itself") (internal quotation omitted). But even under EPA's reading, the limitation is on the *types* of pollutant standards that can be adopted, not the nonattainment circumstances that may justify adoption of criteria pollutant-related standards.

Second, as relates to material impact and on-going need, even if the Commission felt obliged to explain the need for recommending adoption of next-generation NOx standards for heavy-duty trucks, there is little question that stronger standards will be necessary. As you are well aware, NESCAUM has documented the need for stronger truck standards to meet existing air quality standards,¹ and it is entirely rational to expect that EPA will eventually strengthen the ozone and particulate matter NAAQS based on current science, notwithstanding proposed actions by this administration. Finally, it is simply beyond dispute that adopting the next-generation of NOx standards for heavy-duty trucks is important to ensure a cleaner fleet will be operating in the region to protect the health of its residents.

¹ See <https://www.nescaum.org/documents/nescam-anpr-cleaner-trucks-initiative-comments-20200220-final.pdf>

Indeed, while EPA is considering new standards for 2027, CARB plans to adopt rules requiring improvements for 2024 that will deliver needed emission reductions before 2027. In 2016, leaders of air pollution control districts in Arizona, California, Connecticut, Delaware Massachusetts, Ohio, Nevada, New Hampshire, New York, Vermont and Washington petitioned EPA to tighten heavy-duty engine NOx standards from 0.2 grams per brake-horsepower-hour (g/hp-hr) to 0.02 g/hp-hr, with full implementation for new vehicles by 2024. EPA is working on a potential 0.02 g/hp-hr standard with full implementation by 2027. That slower timeline means that the pollution concerns raised by the air districts will be even worse, and earlier action is warranted.

Thank you for including these comments in your meeting docket and for the opportunity to correct the record.

Sincerely,

/s/

Paul Cort
Earthjustice