

April 17, 2007

The Honorable Kathleen A. McGinty  
Secretary  
Department of Environmental Protection  
Rachel Carson State Office Building  
Harrisburg, PA 17105

The Honorable Allen D Biehler  
Secretary  
Department of Transportation  
Commonwealth Keystone Building  
Harrisburg, PA 17120

Dear Secretaries McGinty and Biehler,

The Clean Air Board of Central Pennsylvania appreciates the opportunity to comment on the draft Response to the Petition for Rulemaking. CAB commends DEP and PennDOT for providing a thorough analysis of the issues raised by the petition.

CAB asks the agencies to consider these additional reports and studies. Reducing our exposure to fine particulate from diesel exhaust is an urgent priority. A recent report by the Clean Air Task Force assesses the impact of diesel exhaust on our daily lives.

Routine exposure to diesel exhaust is not just an occupational hazard for truckers, railroad or construction workers – most of us breathe it every day in traffic or near major thoroughfares. In fact, diesel exhaust shortens the lives of an estimated 21,000 people per year in the U.S. and many more suffer the effects of diesel-related respiratory and cardiovascular disease.

Clean Air Task Force Special Report 2007-1: A Multi-City Investigation of Exposure to Diesel Exhaust in Multiple Commuting Modes (February 2007) at 4. (attached hereto as Appendix 1)

Diesel related emissions can cause elevated local concentrations of PM<sub>2.5</sub>. An analysis prepared for Environmental Defense shows that neighborhoods located near highway and transportation facilities are likely exposed to significantly higher concentrations of PM 2.5 than neighborhoods located at greater distances from highway

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sources and facilities. The analysis was conducted on PM 2.5 monitors located in the metropolitan Washington, DC area (attached as Appendix 2).

The Clean Air Board commends the Commonwealth and Michael Baker Jr., Inc. for documenting the numbers of heavy-duty vehicles that travel on the Commonwealth's highways and the effects of this traffic on local communities. Heavy duty trucks account for nearly 1.3 million vehicle miles travel per day in Cumberland County alone. (Baker Report at 3).

The combination of truck stops, rest areas, warehouses, and rest period idling can have a significant effect on local air quality. As the Baker Report indicates, idling emissions disproportionately affect Cumberland and Luzerne Counties due to the concentration of major highways, truck stops, rest areas, and warehouses. (Baker Report at 30-32)

Your Response raises concerns on how the proposed regulation would be enforced\*. CAB recognizes that law enforcement resources are often limited and stretched. CAB believes that a dual enforcement scheme, involving DEP inspectors and state and local police would be most effective.

We are unaware of any case authority for the proposition that state and municipal police officers may enforce violations of the Air Pollution Control Act as a summary offense. Section 9 of the Act specific refers to DEP employees and not other law enforcement personnel. We believe that it would be preferable to have a separate regulation adopted under the Motor Vehicle Code to limit idling. Under 75 Pa.C.S. 6502, violations of regulations promulgated under the Motor Vehicle Code are summary offenses. We believe that the State Police and municipal police are more familiar with summary prosecutions under Motor Vehicle Code than under the Air Pollution Control Act. Police can enforce idling regulations they encounter as part of their normal workday. Many jurisdictions have a dual enforcement of idling restrictions. In Philadelphia, Air Management Services can enforce the Health Department regulation limiting idling and city police can enforce the City Ordinance limiting idling.

A concern that police officers may need a search warrant to enter into enclosed areas, such as warehouse areas, is unfounded. In Commonwealth, Dep't of Environmental Resources v. Blosenski Disposal Service, 523 Pa. 274, 566 A.2d 845 (Pa. 1989), the Pennsylvania Supreme Court held that a warrantless search of an enclosed area which led to a conviction on a summary offense under the Solid Waste Management Act, 35 P.S. 6018.101 et seq., was constitutional. In that case, the evidence obtained when the DER inspector entered private property, not visible from the public road, and searched an enclosed area without first obtaining a search warrant. The court relied on the U.S. Supreme Court's decision in United States v. Dunn, 480 U.S. 294, 107 S.Ct. 1134, 94

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\* We note that Appendix B of the draft Response used an earlier version of the CAB rule for comparison. The proposed regulation actually submitted with the petition contains a slightly different provision than is reflected in Appendix B.

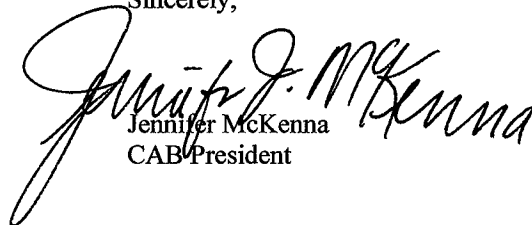
L.Ed.2d 326 (1987), which held that a search conducted in “open fields” does not violate the Fourth Amendment. Similarly, in Commonwealth v. Split Vein Coal Co., 74 Pa. D. & C.2d 515 (1974) the Northumberland Court of Common Pleas held that an inspector’s observation of a potential violation of the Clean Streams Law from a public highway and the subsequent entry on an unenclosed area to take water samples did not require a search warrant. The courts have generally held that the mere looking at that which is open to view is not a “search.” Commonwealth v. Chiesa, 329 Pa. Super. 401; 478 A.2d 850 (Pa. Super. 1984)

The lack of personnel resources to monitor compliance should not be a deterrent to adopting a regulation. A private citizen, using a video camera, a clock, and a thermometer, can record a violation from public property. Nevertheless, as noted in your draft Response (at 16), a police officer would need to be present to prosecute the violation.

Having local police officers enforce violations of the motor vehicle code makes sense. Regardless of who enforces the limitations on idling, enforcement need not be pervasive to have an effect. CAB believes that a proactive program, involving education, warnings for first time offenders, truck fleet communication, posted signs at truck stops, rest areas, and warehouses, and a focused enforcement approach, is workable and would be effective in securing compliance with the regulation.

The Clean Air Board appreciates the work of your agencies in preparing the draft Response. We believe that your Response will help the public understand the need for this regulation.

Sincerely,



Jennifer McKenna  
CAB President

**Attachments**

- Appendix 1 - Clean Air Task Force Special Report 2007-1: A Multi-City Investigation of Exposure to Diesel Exhaust in Multiple Commuting Modes (February 2007)
- Appendix 2 – David Greenblatt, Mobile Hotspot Regression Study Report (2006)