

STAPPA / ALAPCO

STATE AND TERRITORIAL  
AIR POLLUTION PROGRAM  
ADMINISTRATORS

ASSOCIATION OF  
LOCAL AIR POLLUTION  
CONTROL OFFICIALS

**Statement of  
S. William Becker  
on behalf of the  
State and Territorial Air Pollution Program Administrators  
and the  
Association of Local Air Pollution Control Officials  
before the  
U.S. Department of Justice  
and the  
U.S. Environmental Protection Agency  
at a Public Meeting on  
Implementation of the Heavy-Duty Diesel Consent Decrees**

S. WILLIAM BECKER  
EXECUTIVE DIRECTOR

**July 25, 2002**

Good morning. I am Bill Becker, Executive Director of STAPPA – the State and Territorial Air Pollution Program Administrators – and ALAPCO – the Association of Local Air Pollution Control Officials – the two national associations of state and local air pollution control officials.

As you are no doubt aware, our associations – whose members have primary responsibility for implementing the Clean Air Act and ensuring clean, healthful air across the country – have a tremendous interest in the implementation and enforcement of these consent decrees. We have gone on record over the past four years, both at these public meetings and in numerous written correspondence, articulating our concerns with the attempts of diesel engine manufacturers to seek relief from their consent decree obligations. I am here today because our concerns have now risen to an unparalleled level.

Although I do not want to dwell on why we ended up with the consent decrees in the first place, I believe it is critically important not to lose sight of the chain of events that has lead us to where we are today. So I will summarize what happened, very quickly and very plainly: the engine manufacturers cheated; they got caught; they negotiated and agreed to their punishment; and now two of them are seeking to renege on the deal they made. It is as simple as that.

STAPPA and ALAPCO are pleased that several of the manufacturers have stepped to the plate and committed themselves to fulfilling their responsibilities. However, we find it unconscionable that Caterpillar Inc. and Detroit Diesel Corporation have filed motions with

the D.C. District Court to rewrite the terms of their settlement agreements. Further, we find their arguments for doing so to be baseless.

Let me provide a bit of context here. The actions that led to the negotiation of these consent decrees – that is, the use of illegal “defeat devices” over a period of more than a decade on 1.3 million heavy-duty diesel engines – resulted in over 15½ million tons of excess NO<sub>x</sub> emissions. Let me repeat that: 15½ million tons.

When all was said and done in the consent decree negotiations, an agreement was reached to recoup about 4½ million tons of NO<sub>x</sub> reductions; not all 15½ million tons, 4½ million tons.

These emission reductions were to be recovered, in part, by the manufacturers’ accelerated compliance with federal engine standards – including the 2.5-gram HC+NO<sub>x</sub> standard – otherwise set to take effect in 2004. This is what the manufacturers agreed to and signed of their own volition. They further agreed that if they did not comply by October 2002, they would pay nonconformance penalties (NCPs) as established by EPA. Compliance by all affected engine manufacturers with the 2004 standard 15 months early will recoup NO<sub>x</sub> emission reductions on the order of 1.27 million tons.

Now, on the one hand, 1.27 million tons may seem like a ridiculously small price to pay, considering that the illegal use of defeat devices resulted in 15½ million tons of excess NO<sub>x</sub> emissions. But that is what was negotiated and, because we believe a deal is a deal, that is what we will accept.

But, in the world of air pollution control, let me illustrate for you just how huge 1.27 million tons is.

State and local air pollution control agencies have a statutory obligation to develop and implement effective State Implementation Plans that will result in attainment and maintenance of health-based National Ambient Air Quality Standards; if they fail to fulfill this obligation, their jurisdictions face stiff economic sanctions.

These agencies labor on a daily basis to find single tons of NO<sub>x</sub> emission reductions to help them in their quest for attainment. The measures they must implement to garner these reductions are neither cheap nor easy, and they are often politically unacceptable. Yet, if we are to deliver clean, healthful air to our citizens, we are left with little choice.

Right here in the Washington, DC metropolitan area, for example – where our ozone pollution problem is due largely to motor vehicle emissions – the NO<sub>x</sub> shortfall is 5 tons per day. The State of Maryland is responsible for making up 2.5 tons per day of this shortfall. To do so, it will have to spend \$40 million over the next three years, and is considering emission control measures that range from replacing their bus and auto fleets, to adopting a number of Transportation Control Measures, many of which are expensive and controversial.

Similarly, in the Baltimore ozone nonattainment area, the NO<sub>x</sub> shortfall is 6 tons per day. The burden of making up this shortfall could likely fall on the shoulders of small “mom and pop” businesses.

Yet, Caterpillar and Detroit Diesel, whose illegal actions resulted in over 11 million tons of excess NO<sub>x</sub> emissions, and who agreed to play a role in recouping a fraction of those emissions, have now decided that they should not have to keep their word. Incredibly, they are arguing that keeping their word is no longer in the public’s interest.

Well, needless to say, we disagree. We believe that, indeed, it is in the best interest of the public to ensure that corporations that skirt the law and foul our environment at least be held to their commitments to make restitution.

The consent decrees Caterpillar and Detroit Diesel negotiated for themselves allow two, and only two, alternatives: meet the 2.5-gram pull-head standard by October 2002 or pay NCPs. What the consent decrees do not allow is any “creative” rewriting of their terms.

Further, even if such rewriting were an option – which, again, I remind you, it is not – what Caterpillar and Detroit Diesel have proposed can hardly be considered a serious alternative. For themselves, they ask for relief from the 2.5-gram standard; but for the breathers of our nation – the public, whose interest they claim to protect – Caterpillar and Detroit Diesel offer nothing to make up for the excess pollution other than a vague reference to some unsubstantiated “pay back” scheme.

We reject these and other arguments of Caterpillar and Detroit Diesel. To this end, we urge EPA to issue the final NCPs for the 2004 standards without delay, so that these higher penalties will apply to any engine manufacturer that does not comply with the pull-ahead standard by October 2002. Such higher penalties are imperative to eliminate the possibility of a competitive advantage for a recalcitrant company.

STAPPA and ALAPCO applaud the U.S. Environmental Protection Agency and the U.S. Department of Justice for their opposition to Caterpillar and Detroit Diesel’s motions. Tomorrow, our associations will file with the court an *amicus* brief in support of the government. We believe the consent decrees are clear that, come October 2002, these companies must fulfill the promise that they made four years ago to the U.S. government, the court and the people of this nation. Renegotiation is not an option.

Thank you for this opportunity to provide comments.