

July 31, 2000

BY HAND DELIVERY

The Honorable Lois Schiffer
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
950 Pennsylvania Avenue, NW, Room 2718
Washington, DC 20530

and

The Honorable Steve Herman
Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW, Room 3204
Washington, DC 20460

Re: Diesel Consent Decrees

Dear Lois and Steve:

I am writing to thank you again for meeting with our group of state and local air pollution control officials, as well as representatives of environmental and public health organizations. We think we made great progress in clarifying not only our position regarding your ongoing negotiations with the six diesel engine manufacturers covered by consent decrees, but also the role that state and local officials can play in compelling the manufacturers to honor their commitments. Our exchange was open, thoughtful, and productive, and we appreciate your willingness to continue to keep us apprised of developments in this important matter.

To recap briefly, we made the following points at the meeting:

No Relief is Warranted

We urge you to reject the manufacturers' request for relaxation of consent decrees they signed just over a year ago. As we explained at the meeting, we wrote letters to the chief executive officers of all six companies asking for information that would allow us to evaluate their requests for relief. Four companies ignored our letters, and two sent us replies asserting that they had not broken the law in the first place. We have reviewed the language of the decrees very carefully, and we have concluded that the provisions governing relaxation of the standards are very limited. In sum, we have heard nothing that convinces us that the manufacturers are entitled to relief and we do not believe they would be successful if they challenged your enforcement of the decrees in court.

Criteria for an Appropriate Settlement

If, as the negotiations proceed, the manufacturers persuade you to grant them some relief, we hope you will adopt the following four criteria in determining what is an appropriate settlement:

1. Most importantly, the consent decrees must remain in force until its requirements are codified in rule and that rule takes effect. We absolutely cannot afford any backsliding by these companies during the period between 2004 and the date when the rule takes effect.
2. Any increased emissions should be offset by a ratio of at least two to one, by either requiring the manufacturers to reduce emissions in another area of their operations, or requiring them to purchase emissions credits from other industrial sectors. This is the same ratio of emissions offsets required when states are sanctioned under Section 179(b) of the Clean Air Act.
3. The mechanism for confirming compliance and measuring emission increases must be foolproof and must measure local impacts, so that the benefits of the recovered emissions are returned to the local area where the excess emissions occur. We cannot accept a situation where one city is required to absorb more emissions, while a second area achieves greater reductions at the first city's expense.
4. The revised consent decrees must be at least as easy for EPA to enforce as the original decrees.

The States' Commitment to Take Action under Section 177

As we promised, the states are committed to aggressively exploring opportunities under Section 177 of the Clean Air Act in response to the manufacturers' unwarranted requests for relief from the standards, especially the "Not-to-Exceed" limits that are set forth in the consent decrees.

As you know, the states are not constrained by the lead-time and stability requirements that apply to EPA under the Act. States cannot afford to lose the emissions reductions contemplated by the decrees, and will be compelled to move quickly and firmly in response to the manufacturers' claims.

Again, I want to thank you for meeting with us to address this crucial issue and for remaining committed to consulting with us throughout this process.

Sincerely,

S. William Becker

cc: Robert Perciasepe