

**STATE OF NORTH CAROLINA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES
DIVISION OF AIR QUALITY**

**REPORT OF PROCEEDINGS OF PUBLIC HEARING
ON PROPOSED AMENDMENTS TO RULE
15A NCAC 2D .1009
Heavy-Duty Diesel Vehicle Requirements**

**Raleigh, North Carolina
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ENVIRONMENTAL MANAGEMENT COMMISSION

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CHAPTER I

Summaries and Recommendation for the Adoption of Rule 15A NCAC 2D .1009

BACKGROUND AND SUMMARY

15A NCAC 2D .1009, Model Year 2008 and Subsequent Model Year Heavy-Duty Diesel Vehicle Requirements, is proposed to be adopted to ensure that benefits from the federal standards from 2007 and later model year heavy-duty diesel engines and vehicles will be realized. In 2001 the U.S. EPA promulgated a final rule to reduce emissions for 2007 and subsequent model year heavy-duty engines and vehicles. The 2007 standards are 0.20 g/bhp-hr of nitrogen oxides (NO_x), 0.14 g/bhp-hr of non-methane hydrocarbons (NMHC), 0.01 g/bhp-hr of particulate matter (PM), and 15.5 g/bhp-hr of carbon monoxide (CO). The emission standards represent a 90% reduction of NO_x emissions, 72% reduction of NMHC emissions, and 90% reduction of PM emissions compared to the federal 2004 emission standards. The effect of the regulation is comparable to that of the regulations that first required the use of catalytic converters on gasoline-fueled automobiles and light-duty trucks in the mid 1970's.

There is concern among states that EPA may delay or weaken its 2007 model year standards and that without adopting these standards, maintenance of the ambient air standards in North Carolina will be problematic. Based on attainment modeling emissions inventories, in 2007 mobile sources contribute approximately 55% of the overall NO_x emissions inventory on an average summer weekday and 57% of the mobile source NO_x emissions result from heavy-duty diesel vehicles. Over time the contribution of this source sector to overall emissions increases as other sources are better controlled and vehicle population and vehicle miles traveled (VMT) continue to grow. Continuation of lower emission standards for these vehicles is an essential part of the State's strategy to maintain compliance with the national ambient air quality standard (NAAQS) for ozone in future years. Inability to achieve and maintain compliance with the NAAQS could result in prohibition of new construction, withholding of highway funds, and other sanctions.

Emissions from heavy-duty vehicles contribute to the health and welfare effects of ozone, PM, NO_x, and other pollutants. Ozone, a result of photochemical reaction of NO_x and hydrocarbons, causes harmful respiratory effects, including chest pain, coughing, and shortness of breath. Sensitive populations, such as children, the elderly, and people with poor respiratory systems, may be severely affected by ozone. Healthy people who are active outdoors when ozone levels are elevated can also be affected. NO_x can be transformed into nitrate, a form of PM that can cause lung disease and premature death. It can also aggravate respiratory illnesses, such as bronchitis and asthma, and contributes to chronic lung disease. Diesel exhaust PM is also of special concern because it has been implicated in an increased risk of lung cancer and other respiratory diseases. EPA's draft Health Assessment Document for Diesel Exhaust was reviewed in public session by the Clean Air Scientific Advisory Committee ("CASAC") on October 12-13, 2000. EPA concluded, and CASAC agreed, that diesel exhaust is likely to be carcinogenic to humans. In addition to health effects ozone also causes crop and forestry losses. NO_x emissions also contribute to the acidification, nitrification and eutrophication of water bodies. EPA estimates the emission reductions achieved by the 2007 rule will prevent 8,300 premature deaths, over 9,500 hospitalizations, and 1.5 million work days lost with benefits of the rule totaling 70.3 billion dollars. In the event that the national rule is rolled back or delayed, benefits proportional to North Carolina and other adopting states contributions would occur.

Under the Clean Air Act, California is the only state that may develop its own vehicle standards. However, through Section 177 of the Clean Air Act, other states may adopt California's vehicle standards. California adopted amendments to its standards harmonizing its

rule with the federal 2007 rule for heavy-duty vehicles. The requirements became effective in November of 2002.

Several states are pursuing adopting the California heavy-duty engine and vehicle standards for 2007 and later model years as a contingency in the event that EPA delays or weakens its 2007 model year standards. The rule is proposed for adoption at this time because under the requirements of the CAA, manufacturers must be provided two years lead time in advance of the model year. EPA defines model year such that a model year 2007 vehicle or engine could be produced as early as January 2, 2006. In order to provide two years lead time as required by the Act, emission standards for model year 2007 vehicles would have to have been effective before January 2, 2004. Thus, to meet the two year lead time requirement, the earliest model year to which the North Carolina rule could apply at this time is model year 2008.

The proposed rule requires that model year 2008 and later model year heavy-duty diesel vehicles or engines be certified by the California Air Resources Board (CARB) as meeting its model year 2007 and subsequent model year heavy-duty diesel emissions standards in order to be sold, leased, or registered in North Carolina. Because the model year 2007 standards for heavy-duty diesels are a crucial part of the State's plan to attain and maintain the ozone standard, their adoption via the California rule as a contingency is needed to ensure that their benefits remain in place.

15A NCAC 2D .1009, Model Year 2008 and Subsequent Model Year Heavy-Duty Diesel Vehicle Requirements is proposed to be adopted to require that model year 2008 and subsequent model year heavy-duty diesel vehicles or engines be certified by the California Air Resources Board in order to be sold, leased, or registered in North Carolina.

PUBLIC COMMENTS AND RESPONSES THERETO

Where appropriate, similar comments have been grouped and a single response provided

Applicability

- Comment: Ted Brown, North Carolina Dump Truck Association, questioned whether the new rules, if passed, will apply only to 2008 and subsequent model vehicles and whether older vehicles will be grandfathered.
- Response: As proposed, 15A NCAC 2D .1009 would apply only to model year 2008 and subsequent model year vehicles.
- Comment: Ted Brown, North Carolina Dump Truck Association, asked if truck models 2007 and older would ever be required to retrofit to meet the air quality specifications or rules of the 2008 models.
- Response: The proposed rule does not contain any retrofit requirements for earlier model year engines or vehicles.
- Comment: Ted Brown, North Carolina Dump Truck Association, asked if a wrecked vehicle older than 2008 model has been refurbished with a "glider kit" and titled in 2008 (with a "G title") will remain grandfathered and not be required to meet the new emission standards.
- Response: The applicability of the rule requirements is based upon the model year of manufacture. Addition of a glider kit would not cause a vehicle preceding model

year 2008 to become subject to this rule

Comment: Ted Brown, North Carolina Dump Truck Association, asked if older trucks (2007 and older) would retain their grandfathered status when sold from one owner to another and whether these vehicles would forever retain their grandfathered status regardless of the number of times the vehicle's ownership may transfer.

Response: The applicability of the rule requirements is based upon the model year of manufacture. Transfer of ownership of a model year vehicle older than that specified in the final rule would not cause an older vehicle to become subject to the rule.

Comment: Anne Coan, Natural Resources Division Director of the North Carolina Farm Bureau Federation, commented that there are several additional sections of CARB regulations between and surrounding .1900 and 1956.8 that describe requirements for specific types of vehicles such as buses. Ms. Coan questioned whether such vehicles, which include buses, could be purchased, registered, or leased in North Carolina if they have engines that are not CARB certified.

Response: The proposed rule would not apply to transit buses which are covered under a different California rule. California is in the process of considering changes to that rule, thus North Carolina is not pursuing adoption of the California requirements for urban transit buses in this rulemaking. Applicability of the North Carolina rule is based upon model year and gross vehicle weight rating. Rule language and definitions are proposed to be added to clarify that the requirement to be CARB certified applies to the heavy-duty diesel vehicles. The California rule contains an optional standard for medium-duty diesel vehicles between 8,501 and 14,000 pounds GVWR to which manufacturers may certify in lieu of the primary standard for such vehicles in the California low emission vehicle rule. It is not necessary for this option to be reflected in the North Carolina rule in order for manufacturers to maintain flexibility to certify to that standard and take appropriate credits under the California program. Therefore, to eliminate confusion, the language regarding medium-duty vehicles is proposed to be eliminated and definitions and rule language clarifying that the rule applies to heavy-duty diesel vehicles with a gross vehicle weight rating of 14,001 pounds and greater is proposed to be added. Some school buses could have a gross vehicle weight rating to which this rule would apply.

North Carolina will work in conjunction with other states to develop an outreach and implementation program that provides a consistent and coordinated message to the heavy-duty diesel manufacturers, dealers and purchasing public. North Carolina will work with manufacturers and dealers to ensure that they know the subject vehicles are required to be CARB certified for sale, lease, or registration in North Carolina and to ensure that proper documentation is provided to dealers and ultimately prospective buyers.

Economic Considerations

Comment: Ted Brown, North Carolina Dump Truck Association, asked if out-of-state dump truck companies (non-North Carolina based companies), or any other trucking

companies will be held to the same standard as North Carolina based companies, noting that other states may not have equal air quality requirements. Mr. Brown asked if such companies would be allowed to compete in North Carolina using equipment that would not meet the conditions of the new rules and expressed concern that North Carolina owners and operators will have a higher overhead cost than out-of-state based companies.

- Comment: Ted Brown, North Carolina Dump Truck Association, questioned whether older model vehicles, (2007 and older), will retain a higher value because of their grandfathered status.
- Comment: Anne Coan, Natural Resources Division Director of the North Carolina Farm Bureau Federation, commented that there will be significant economic impacts on farmers and on their suppliers and haulers due to increased costs of vehicles, maintenance, fuel, and delivery costs. Ms. Coan said the rule will put North Carolina farmers, businesses and citizens at a severe competitive disadvantage. She also said there are too many questions about what the regulation means, what it will cost the citizens and the State, and what will happen with the federal and California regulations in the future. Ms. Coan said the regulation needs far more scrutiny.
- Comment: Anne Coan, Natural Resources Division Director of the North Carolina Farm Bureau Federation, commented that the proposed rule will put North Carolina farmers, haulers and businesses at a competitive disadvantage with other states. She said North Carolina's costs will be higher and profits will be lower. The goods North Carolina producers are trying to sell out-of-state will be more expensive than goods from other states. Ms. Coan questioned what this would do to existing farmers and business recruitment in North Carolina.
- Comment: Anne Coan, Natural Resources Division Director of the North Carolina Farm Bureau Federation, commented that the estimate of \$344.00 per year in annualized cost in the economic assessment for the proposed rule is based on a 30-year period with a seven percent discount rate. Ms. Coan questioned how many vehicles last 30 years. She said you do not pay for a Suburban for 30 years. She said the assessment severely underestimates the annualized cost. Ms. Coan said the assessment is faulty here and in other areas such as cost to state and local governments.
- Comment: B. B. Griffin, President of the Southeastern Cotton Ginners Association, said that the impact will be much greater than the 300 dollars plus indicated in the economic analysis. He said the analysis assumes a 30-year amortization and the expected life of nearly any vehicle is never going to be 30 years. He said that most trucks are depreciated over five years so the impact will be much greater than 300 dollars.
- Comment: Anne Coan, Natural Resources Division Director of the North Carolina Farm Bureau Federation, commented that the cost of the regulation is significant in North Carolina. She said EPA estimated that on average a new vehicle will cost \$2560.00 more with average annual maintenance and fuel costs of \$1713.00. Ms. Coan said that if EPA delays or changes its standards, North Carolina will still be

tyed to the California regulation and its tremendous cost. Ms. Coan said that EPA estimates \$16,448,000 in annualized cost for these vehicles in 2009 alone and that does not include the impacts on citizens and businesses that must pay the increased shipping costs to move goods to, from, and in North Carolina.

Response: A good faith effort economic assessment was conducted in accordance with the Administrative Procedures Act and approved by the Office of State Budget and Management. The cost information used in the assessment was taken from EPA's extensive Regulatory Impact Analysis for its 2007 rule. For consistency, the assumptions and methodologies used in the EPA analysis were used in the economic assessment. A 30-year and 7% discount rate was used to annualize the private sector expenditure on hardware at the time of purchase in addition to 30-year net present value operating costs. The EPA cost estimates of meeting the emission standards include both variable costs (incremental hardware costs, assembly costs, and associated markups) and fixed costs (tooling, R&D, and certification costs). A more detailed discussion of the estimation methods is available in Attachment 3.

Comment: Robert W. Slocum, Jr., Executive Vice-President of the North Carolina Forestry Association (NCFA), commented that the association has serious concerns about the proposed rule and opposes its adoption at this time. Mr. Slocum said that many members rely on diesel vehicles to move raw timber from the woods to mills and finished products from the mill to consumers. He said these are costs that could not be recovered or passed on to customers. Mr. Slocum said the US EPA estimates that the proposal will increase the average cost of new vehicles by \$2650 and increase the average annual maintenance costs by \$1713. Mr. Slocum says the association recognizes that the current federal regulations may be delayed or amended and strongly urges North Carolina to follow the lead of the federal government rather than adopt an independent standard. Mr. Slocum said if more stringent standards are required nationally, there is a level economic playing field. If North Carolina adopts the California standard, then the state will be locked into it regardless of what happens at the federal level. Mr. Slocum said that this will place North Carolina business and industry at a competitive disadvantage at a time it is trying to maintain and attract business. Mr. Slocum said he also believes the cost on government agencies will be huge. For the forest products industry, the increased costs of the regulation would be significant and have an adverse impact on business at all levels. Mr. Slocum said that like other manufacturing industries, his is facing significant economic pressures from overseas competition and every increased operating cost impacts the industry's ability to compete and to survive.

Comment: Robert Glaser, President, North Carolina Automobile Dealers Association, commented that there are approximately 40-50 retailers of heavy-duty trucks in North Carolina and that sales of heavy-duty trucks have been down significantly for the past three years. Mr. Glaser expressed concern that the additional requirements and costs to meet the new diesel engine standard may result in the truck dealers being unable to compete with surrounding states and could eventually force current truck dealers out of business.

Comment: W. Jay McGary, General Manager, Tar Heel Sterling Truck Center, Inc.,

commented that he is totally against the proposed legislation that would mandate diesel engines to meet California air certification requirements. Mr. McGary said truck dealers in NC are coming off a tough previous two years and the legislation would only deter growth with the NC truck dealer organization and lose valuable revenue for the state of North Carolina. He asked that the proposed requirement be reconsidered.

- Comment: Charles F. Diehl, North Carolina Trucking Association President, said the proposal, if implemented, would put North Carolina trucking companies at a severely competitive disadvantage with those based in other states. He said the equipment North Carolina Trucking companies would have to buy would cost significantly more than their competitors. If truckers choose to avoid this new expense by simply continuing to use and not replace their older equipment, it would drive truck dealers in North Carolina out of business, have a negative impact on air quality due to the use of older equipment and still hurt NC motor carriers because the older equipment costs more to maintain and operate. Mr. Diehl said that under either scenario, North Carolina trucking companies would stand to be adversely affected relative to out-of-state competitors. Mr. Diehl noted that millions of North Carolina jobs depend on the trucking industry as does every consumer in every community in the state. Mr. Diehl commented that some carriers with operations both inside and out of North Carolina would simply purchase and register their vehicles in other states. Those without that option would be singled out for economic hardship which they may or may not survive. Mr. Diehl said North Carolina carriers are eager to comply with whatever federal air quality standards are needed nationwide, but it is unfair for North Carolina to unjustly enrich businesses based in our neighboring states at the expense of North Carolina businesses. Mr. Diehl said the North Carolina Trucking Association vehemently opposes the proposed rule.
- Comment: David P. Stauffer, General Manager, Freightliner of Charlotte, commented that as a heavy-duty truck dealer in Charlotte, he is very concerned about the proposed requirement mandating all 2005/2006 diesel engines meet CARB standards. Mr. Stauffer said the sweeping changes relevant to engines that will occur in 2007 speak strongly as to the industry's support of clean air. He said truck dealers have been staggering since the late 1990's and are now slowly recovering, but the number of heavy-duty trucks sold and licensed in North Carolina continues to decline. Mr. Stauffer asked that the Commission strongly consider any proposal that might impede the industry's recovery.
- Comment: Danny Rashid, Dealer Principal/President, Tri-Point Ford Sterling Truck Sales, Inc., commented that as a small business owner in North Carolina, he is extremely concerned about the proposed requirement mandating that all 2005/2006 diesel engines meet the California Air certification criteria. Mr. Rashid said his company will be negatively impacted financially if the legislation passes and layoffs are a strong possibility. He said that most truck dealerships in North Carolina are within a few hours drive of a similarly franchised dealership in a neighboring state such as Virginia. Mr. Rashid said that if the California emissions legislation passes in North Carolina, the trucks Tri-Point sells will be almost \$5000 higher per truck than a comparable truck at his competitor's in Richmond, Virginia. He said the increased cost would be due to the emission

components added to the engines. Since dealerships in neighboring states would not incur these expenses it would be logical for customers to drive the short distance and save thousands of dollars on the purchase of their new vehicle. Mr. Rashid commented that the reduced fuel mileage compared to the non-emissions engines would be another reason for customers to purchase trucks out of state. Mr. Rashid said that small businesses are the heart and soul of the North Carolina economy. Mr. Rashid said he feels very strongly about this issue and hopes the lawmakers of the state will take the proper steps to protect the interest of small businesses and their employees. He said the state of North Carolina will experience a loss of revenue due to out of state sales and registrations and that in combination with his business loss of sales can only produce a negative effect on the economy at a time when we can least afford it.

Response: The proposed rule applies to model year 2008 and subsequent model year vehicles. In its Highway *Diesel Progress Review Report 2*, EPA420-R-04-004, March 2004, EPA concludes that NOx control should not adversely affect fuel consumption and improvement may be possible over today's engines. This conclusion is based in part on its review of a model of heavy-duty diesel vehicle with NOx and PM emissions control meeting the 2007 standards that is in use in Japan today.

The Division of Air Quality has relied upon EPA's estimated cost of the standards in its *Regulatory Impact Analysis: Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements*, US EPA, EPA420-R-00-026, December 2000, for the 2007 standards in its economic assessment. The expected increase in per vehicle cost is estimated to be \$2650 on average.

Comment: Stewart Brown, President of Triple T Parts & Equipment, commented that the proposed legislation would be catastrophic to North Carolina's currently rebounding trucking industry and will not assure a clean air environment for North Carolina. Mr. Brown said the majority of his clients already have locations outside North Carolina. The proposal will force them to simply move their purchases to other states. Mr. Brown said that this potential migration would be a crisis to the state and equally affect ancillary service businesses which will place North Carolina in an economically unfavorable light. He said implementation of the proposal will simply require vehicles to be registered out of state. Mr. Brown commented that the existing federal emission standards are already requiring all engine manufacturers to conform to new, very strict emissions standards by January 2007. The proposed change would bring about higher upfront costs, less fuel efficient engines, and higher maintenance costs. Mr. Brown said more intervention by our state government is the last thing we need right now. Mr. Brown strongly urges the Commission to reconsider the proposal.

Comment: Timothy French, Legal Counsel for the Engine Manufacturers Association (EMA), commented that the stated purpose behind NCDENR's opt-in initiative is to circumvent any potential, not anticipated, delay or relaxation of the 2007-2010 standards that EPA might determine to be warranted in the future. The underlying assumption is that by opting into the California standards as a contingency, the anticipated emission benefits from the 2007-2010 would be realized because manufacturers would be required to make products available for

sale in North Carolina that complied with the stringent California standards does not hold up when relevant commercial realities are taken into account. Mr. French argues that if EPA delays or modifies the 2007-2010 standards, it will be because the technology is not available or cost-effective. The availability and cost of advanced emission-control technologies will not change simply because CARB, North Carolina, or any other number of states choose to adopt standards calling for that technology. As a result manufacturers will only be able to produce what is technologically feasible and cost-effective and would continue to produce current model engines that meet the current model year standards or that meet the modified standards EPA determined to be necessary. The net result would be that no new heavy-duty diesel vehicles would be available for sale in North Carolina because manufacturers will not produce a separate California-compliant product line, but will instead produce vehicles for sale in the other 48 states. The result would be that vehicle owners in North Carolina would retain their older vehicles longer, would rebuild their used vehicles in lieu of acquiring new vehicles, would delay turnover of their vehicle fleets to newer and lower-emitting engines or would buy out-of-state vehicles for use in North Carolina all of which would have adverse impacts on air quality in North Carolina. Inability to acquire new vehicles in North Carolina would provide strong incentive for operators of heavy-duty fleets to move their operations out-of-state resulting in loss of jobs and revenue in North Carolina. Loss of sales tax revenues and registration fees from the underlying inability to sell new heavy-duty vehicles would only add to the adverse economic impacts. Since North Carolina's trucking needs could be met by displaced out-of-state trucking fleets operating EPA-certified engines, any hypothetical emissions benefits would be lost. Mr. French commented that the proposal is fundamentally unsound from a substantive perspective, both as a matter of environmental and economic policy and should not be approved.

Comment: Cooper Sykes, President, Cooper Kenworth, Inc., commented that as a lifelong resident and North Carolina small business owner he is also concerned about air quality, but is opposed to the proposal to mandate that all diesel engines sold in North Carolina must meet California criteria. Mr. Sykes said that based on his forty six years in the heavy-duty truck business in North Carolina, observing how trucks run daily through many states, he doesn't see the expected benefit from adopting the proposal. Mr. Sykes said the vast majority of diesel trucks on NC roads are from other states, most of which are not subject to the California standards. He said the federal emission standards, which are very stringent, must be met by all diesel powered trucks in all states. Imposition of the California standards would serve only to drive truck purchases away from North Carolina dealers to other states causing loss of tax revenue of \$1000 per truck and devastating North Carolina dealers like himself. Mr. Sykes respectfully urges that the proposal not be implemented.

Comment: Marilyn Nixon, Southern Environmental Law Center, and on behalf of NC Sierra Club, Southern Alliance for Clean Energy, Appalachian Voices North Carolina Sustainable Energy Association, Environmental Defense, NCPIRG, Canary Coalition, Carolinas Clean Air Coalition, and the Southern Province Moravian Church in America, commented that although characterized as costs to manufacturers and purchasers, when properly considered the proposed amendment poses no costs to the State of North Carolina or the manufacturers or

purchasers of heavy duty diesel vehicles. Ms. Nixon said because the federal standards are final now and will be part of North Carolina's heavy duty diesel program as the model year 2007 vehicles roll out, the proposed amendment will actually result in zero costs. The amendment to North Carolina's regulations does not change the standards, but simply assures they will not be weakened in the future. Ms. Nixon said the realistic way to think about the issue of costs is not that the proposed amendment imposes increased costs. The proposed amendment changes no standards and as a result carries no costs. Any additional costs are due to the federal government's 2001 decision to adopt the model year 2007 and later standards and were considered by the federal government at that time.

- Comment:** Timothy French, Legal Counsel for the Engine Manufacturers Association, commented that it is far more likely than not that U.S. EPA will not delay or weaken the 2007-2010 standards. As a result it is more likely than not that the proposed opt-in will accomplish nothing other than an increase in the cost of doing business in North Carolina since only those vehicles that are certified by CARB and labeled as such will be eligible for purchase in North Carolina even though vehicles certified for sale nationwide by U.S. EPA would be identical to CARB-certified vehicles. The inability to sell identical EPA-certified vehicles will require manufacturers, distributors and dealers to adopt and implement separate and distinct procedures to track, ship, label and account for those vehicles intended for sale into North Carolina. It will also require North Carolina to adopt potentially expensive enforcement procedures to try to ensure that only vehicles with CARB-certified engines are registered in North Carolina. The net result is that vehicle purchasers in North Carolina will end up paying more for the very same products than purchasers in the other 48 states imposing significant negative impacts on North Carolina businesses, while yielding no environmental benefits whatsoever.
- Comment:** Timothy French, Legal Counsel for the Engine Manufacturers Association, commented that NCDENR should not opt-in to the California heavy-duty diesel standards because the proposal is premature and will lead to potentially adverse environmental and economic impacts in the state. Mr. French said the 2007-2010 federal standards should remain applicable in North Carolina, just as they are throughout the rest of the nation.
- Comment:** John H. Byrd, President, Central Carolina Trucks, Inc., commented that he is very concerned about the proposed requirement mandating that all model year 2008 and subsequent engines or vehicles be California Air Resources Board certified in order to sold, leased or registered in North Carolina. Mr. Byrd said there is no national consistency for North Carolina to implement such a rule on their own other than California. He said there is still a possibility that the new federal rule could be pushed back and not start with the model year 2008 and if that occurs, then all North Carolina dealers and operators of diesel equipment would be at a great disadvantage to their competitors in other states by having such a financial hardship. Mr. Byrd commented that the idea of North Carolina adopting a special diesel rule that goes beyond the federal requirements is wrong and does not promote a friendly business environment.

- Comment:** Robert Glaser, President, North Carolina Automobile Dealers Association, asked that the new certification be reviewed in comparison to those requirements in surrounding states so that North Carolina does not chase the sale of heavy-duty trucks to those states. He said that on the whole the financial impact of adoption of this standard on small locally owned retailers could significantly outweigh the benefits of the new standard. For truckers who are required to purchase and register a new vehicle, it is only logical for that entrepreneur to move the sale and registration of the vehicle to a neighboring state and ironically, there is nothing to stop the trucker from operating that vehicle on North Carolina's highways.
- Comment:** Laurence Lilley, Jr., Lilley International, Inc., commented that as a heavy truck dealer, he believes the proposal to mandate California standards for 2005/2006 would be very detrimental to truck operators, dealers and North Carolina's tax revenues. Mr. Lilley said that he shares the desire to improve air quality but urges the department to maintain standards in line with federal regulations that mandate another reduction of emissions in 2007. He said requiring his industry to meet two different standards in such a short time would create a great financial hardship and many truck buyers would purchase and register trucks out of state, negatively impacting local economies and tax revenues. Mr. Lilley said that low-sulfur diesel fuel required to meet California standards is not readily available on the east coast.
- Comment:** James H. Smith, Jr., Vice-President of Smith International Truck Center, commented that he is opposed to the new requirement requiring all 2008 diesel engines to meet the California air certificate. Mr. Smith said that there are approximately 40-50 truck dealerships in North Carolina that sell heavy-duty trucks. Sales have been significantly lower for the past three years. He is concerned that adding additional requirements and costs to meet the new standard may result in some dealerships not being able to compete with surrounding states and that could eventually force those dealerships out of business. He asked that the Commission review the certificate and compare it to the requirements in surrounding states so that North Carolina doesn't chase away the sale of new heavy-duty trucks to those states. Mr. Smith said the financial impact of the adoption of the standards on small, locally-owned retailers could outweigh the benefits of the new standard since there would be nothing to stop the entrepreneur from moving a sale and registration from North Carolina to a neighboring state, yet still be able to drive on North Carolina highways. Mr. Smith said he is concerned that adoption of the new standard will result in North Carolina losing revenue related to the sale of heavy-duty trucks and that truck dealers will possibly lose their businesses.
- Comment:** Charles F. Diehl, North Carolina Trucking Association President, expressed concern with the proposal to require all 2005/2006 diesel engines to meet the California Air certification. He commented that other than California, the association has been unable to find any other state actively seeking to adopt this standard prior to or in the place of federal implementation.
- Response:** The proposed rule applies to model year 2008 and subsequent model year vehicles. (See response in next section regarding availability of low sulfur diesel.)

At least twelve states, including Connecticut, Delaware, the District of Columbia, Georgia, Maine, Maryland, Massachusetts, New Jersey, New York, North Carolina, Pennsylvania, and Rhode Island, are currently seeking to adopt or have already adopted California's 2007 requirements. New York adopted the California 2007 rule in November of 2001. The Connecticut Department of Environmental Protection adopted a regulation in March 2003, R.C.S.A. section 22a-174-36a, which is similar to the North Carolina proposal. Based on the actions of the dozen states that are pursuing adoption of or have adopted California requirements plus California, about one-third of big diesel engines sold beginning in 2007 will have to meet stringent emission control requirements even if the federal rule is compromised.

Comment: George T. Everett, Ph. D., Vice President, Duke Power Environmental and Public Policy, commented that Duke Power operates diesel engine vehicles in both North and South Carolina. The North Carolina rule would limit the company's ability to relocate fleet diesel vehicles from South Carolina to North Carolina to meet changing business needs and operational demands assuming South Carolina follows its current course and does not adopt the California vehicle standards. Mr. Everett said that Duke Power recommends that the proposed rule include language stating that North Carolina based companies, operating in one or more other states, will be allowed to register a diesel vehicle(s) in North Carolina without having to meet the new diesel engine standard if the diesel engine vehicle(s) was initially registered in another state in conformance to the diesel engine standards applicable to that state at the time the vehicle was initially registered.

Response: Language is proposed to be added to the rule to clarify that the requirements would apply to new model year 2008 and subsequent model year vehicles and used model year 2008 and subsequent model year vehicles sold by dealers. Based upon the definition of new motor vehicle taken from the General Statutes, transfer of registration should not be an issue. The definition of "new motor vehicle" at G. S. 20-286(10)a is incorporated by reference. This definition defines "new motor vehicle" as a motor vehicle which has never been the subject of a sale other than between new motor vehicle dealers, or between manufacturer and dealer of the same franchise. The definition of "used motor vehicle" at G. S. 20-286 is also incorporated by reference. This definition defines "used motor vehicle" as a motor vehicle other than described in paragraph (10)a above.

Comment: Scott Adams, Adams International and Peterbilt Carolina Inc., expressed concerns that the additional requirements and costs to meet the new diesel engine standard will result in his companies to be unable to compete with surrounding states and may eventually force him out of business. He asked that the new certification be reviewed in comparison to requirements in surrounding states so North Carolina does not chase the sale of new heavy-duty vehicles to those states. Mr. Adams said he is concerned that the state will lose revenue related to the sale of heavy-duty trucks and truck dealers may possibly lose their businesses while the standards would produce little positive effect on the quality of the air.

Comment: Jim Lilley, Lilley International, Inc. commented that as a medium and heavy-duty

truck dealer in North Carolina, he is concerned about the proposed rule. Mr. Lilley said that the federal government has worked aggressively to bring down diesel pollutants and is continuing to implement exacting standards. He said he supports those efforts. Mr. Lilley said his concern is that being faced with a regulation that goes beyond the federal standard places him in a very uncompetitive situation with dealers in neighboring states. He said the impact of competing with dealers in neighboring states on an unlevel playing field would be devastating to his industry, while air quality would see little benefit as products would simply be delivered into North Carolina on equipment purchased and licensed outside the state.

Comment: James E. Bland, President of TransSource Truck and Trailer Centers, commented that as a franchise truck dealer in North Carolina for over 22 years, he is concerned about and opposed to the proposed new emission certification for diesel engines to meet the California standards beginning in 2008. Mr. Bland said that he is in favor of protecting the environment to insure future generations enjoy clean air, but he does not feel North Carolina should become an island unto itself by imposing these new standards. Mr. Bland said that while the cost to NC truck dealers would be devastating, that is miniscule compared to the cost his customers will incur. The new EPA standards are impractical and the timing could not be more questionable. Mr. Brown said that the proposed change in the heavy truck diesel emissions standard for NC would impact not only the dealers negatively, but also the end users of truck equipped with engines meeting the new standards. The proposed change would increase the dealers' cost beyond their ability to retail products in an industry already experiencing higher cost in every segment of its business, including fuel, insurance, drivers, equipment, labor and others. Mr. Bland said that when you consider a truck transports everything we use, it is hard to comprehend why the industry is being singled out as a target for this new regulation. Mr. Bland said that EPA has already imposed new emission standards for all highway truck engines manufactured in 2007 which requires a lower NOx level. He said it would be in everyone's best interest if we follow the federal regulations rather than impose state standards that will be hard to enforce.

Comment: D. Steve White, President of White's International Trucks, expressed deep concerns regarding the proposed rule to require all 2008 diesel engines to meet the California air certification. Mr. White said that as one of the approximately 50 retailers of heavy-duty trucks in North Carolina, he feels the additional cost of this requirement will result in further decline of heavy-duty truck sales. He also said the requirement will make it virtually impossible to compete with dealers in surrounding states that will not have the requirement to meet and as a result will be able to deliver a lower cost to the customer. Mr. White is concerned that he would lose business to dealers in surrounding states and feels that because a truck bought in a surrounding state can operate on North Carolina highways, the effect on air quality in North Carolina would be very small.

Response: In order for a subject vehicle to be registered in North Carolina, it would have to be CARB certified. Therefore, to serve North Carolina customers, an out-of-state dealer would also have to be able to provide CARB certified vehicles.

Availability of Low-sulfur Diesel Fuel and Certified Engines

Comment: George T. Everett, Ph. D., Vice President, Duke Power Environmental and Public Policy, commented that the company is prepared to meet the requirements of the federal EPA final rule that will require new standards for heavy-duty diesel engines for year 2007 and subsequent model vehicles and is aware that the new engine standard will increase the cost of the new diesel vehicles. Mr. Everett said it is the company's understanding that NCDAQ proposes the adoption of this rule as a contingency in the event that the effective date of the federal rule is delayed beyond year 2007 and that the state is relying on the emission reductions anticipated to be achieved through implementation of the rule as an essential component of the state's plan to attain and maintain the ozone standard. Mr. Everett said that the rule would apply to Duke Power vehicles such as $\frac{3}{4}$ ton and larger trucks such as F-250 trucks, bucket trucks and derrick trucks. The company purchases approximately 125 new diesel engine vehicles each year to replace older diesel engine vehicles. Mr. Everett said the company is concerned that if the federal rule is delayed for any reason, and a majority of states have not moved to adopt the California vehicle standards, North Carolina and California may be the only two states required to comply with a new diesel engine standard in year 2008. In such a case there is the possibility that the supply of new emission standard diesel engines and low sulfur diesel fuel required for these engines will not concurrently be available in sufficient quantities to meet the demands of the entities subject to the rule.

Comment: George T. Everett, Ph. D., Vice President, Duke Power Environmental and Public Policy, commented that if the wording in the federal rule is changed for any reason modifying the requirements for the new emission standard diesel engines, and the majority of states adopt the federal rule, engine manufacturers will likely manufacture engines to meet the demands of the majority of states. Such a situation would put Duke Power, other North Carolina businesses, and private entities in a predicament where there would not be sufficient supply of engines available to meet the engine standards addressed in North Carolina's rule. Mr. Everett said that Duke Power recommends that the proposed rule be modified to include language clarifying that the entities subject to this rule should be expected to buy, lease or register within North Carolina a diesel vehicle certified by the California Resources Board only to the extent that the supply of new standard engines and the supply of low sulfur fuel are available.

Response: While low sulfur diesel fuel may not be widely available today, it is expected to be available by the time model year 2007 vehicles enter the fleet. Refiners and importers that plan to produce or import highway diesel fuel in 2006 through 2010 are required to submit to EPA pre-compliance reports due June 1 of each year. In its report *Summary and Analysis of the Highway Diesel Fuel 2004 Pre-Compliance Reports*, EPA420-R-04-014, September 2004, EPA states:

“While individual refiners made a number of changes in their 2004 reports relative to their 2003 reports, on balance there was little overall change at both the nationwide and PADD level. The same general conclusions as in our 2003 summary report can be drawn this year. Specifically, the 2004 reports continue to indicate: 1) that refiners are on

target for complying with the 15 ppm sulfur standard by June 2006, 2) that 15 ppm sulfur diesel fuel will be widely available nationwide with 95 percent of highway diesel fuel produced to the 15 ppm sulfur standard, and 3) that highway diesel fuel production will be sufficient to meet demand- refiners projected production exceeds the Department of Energy's Energy Information Administration's (EIA) projected demand. Hence, it appears that the refining industry as a whole is adequately planning for projected highway diesel demand through 2010."

The General Statutes, G.S. 113B-22 empowers the Governor to take emergency action in the event of an energy crisis. If an disruption in the diesel fuel supply was such that the State could not receive adequate supplies of low sulfur diesel, the Governor could, by following the procedures in G.S. 113B-22, take such action as necessary to allocate the supply of low sulfur diesel or suspend the requirement to use it.

Engine manufacturers are currently in the process of developing engines to meet the federal 2007 heavy-duty diesel engine standards. These standards are the same as same as the California standards proposed for adoption by North Carolina. With respect to the availability of engines meeting the standard, in its Highway *Diesel Progress Review Report 2*, EPA420-R-04-004, March 2004, EPA concludes:

"This second progress report documents an extensive range of ongoing emission control technology development. Whether for PM or NOx control, the ingenuity shown by industry to develop better technologies or further enhance existing emission control solutions for diesel engines is impressive. Yet, it is not this impressive progress that provides us with confidence that manufacturers can say with confidence that 2007 products will be developed on time, but rather the fact that manufacturers can say with confidence that they have technological solutions that can be brought to market through their rigorous product development programs. Based on our careful review of both the detailed and confidential information and the broader public information summarized in this report, we can conclude:

- Engine manufacturers are on track for 2007 implementation.
- CDPFs will be used by all manufacturers for PM control.
- Generally, manufacturers will treat the NOx standards as a two-step process.
- All manufacturers can comply in 2007 with existing proven technologies.
- NOx control should not adversely affect fuel consumption and improvement may be possible over today's engines.
- Engine manufacturers will provide prototype vehicles in 2005 for early customer fleet testing consistent with their product development plans.
- Engine manufacturers' 2007 compliance plans are a building block for the technology package they plan to use to meet the 0.20 g/bhp-hr NOx standard in 2010."

Other

Comment: B. B. Griffin, President of the Southeastern Cotton Ginners Association, commented that the association takes serious exception to the Environmental Management Commission subordinating itself to California. He said that while it is their understanding that the proposed changes will only impose an impact on their industry and others if the federal regulations are relaxed or delayed in some way, the proposal would allow North Carolina industry to be ruled by a board that is not answerable to a single citizen of the state. He said the proposed rule states that any amendments accepted by CARB would also be included by reference into .1009 which means that CARB could impose additional regulations on the people of this state. Mr. Griffin said that CARB has demonstrated the ability to cause retrofitting of equipment in certain cases and if this is even a slight possibility for the future, his industry can not stand idly by while an entity that does not represent any North Carolina constituency makes rules in this state. Mr. Griffin commented that if EPA relaxes or delays the implementation of the 2007 rule, North Carolina industry would be at a significant disadvantage to competing industry across state lines. He said that Virginia and South Carolina gins already have an advantage from the new industry specific air quality rule and this would be an additional burden on North Carolina industry.

Response: The concern that North Carolina is transferring all of its regulatory authority over to CARB is a misconception. The Environmental Management Commission is free to amend or repeal the rule if necessary if changes in the California or federal regulation or the importance of emissions from regulated heavy-duty diesels changes in a manner that would warrant or necessitate such an action. The authority of the Commission to propose rule amendments is in no way altered by adopting the rule.

California is the recognized authority on emissions reduction strategies for the mobile source sector. CARB's experience in this area is recognized in the Clean Air Act where state regulation of motor vehicles and engines is limited to either federal regulations or California regulations which can be adopted by other states. Relying on CARB's demonstrated expertise leverages limited resources and avoids duplication and potential regulatory inconsistency. Merely requiring CARB certification as a criteria for sale, lease, or registration also provides North Carolina a streamlined means of implementing needed emissions reductions from these sources.

Comment: Anne Coan, Natural Resources Division Director of the North Carolina Farm Bureau Federation, commented that the public notice for the proposal was inadequate. She said she has talked to many potentially affected parties even as late as October 1, none of whom knew about the proposed rule.

Comment: Anne Coan, Natural Resources Division Director of the North Carolina Farm Bureau Federation, commented that the public notice was faulty because it only says heavy-duty diesel vehicles will be captured by the regulation, but the actual rule language includes "medium-duty" diesel vehicles. Ms. Coan contends that the notice was faulty because it did not inform substantial numbers of citizens and

businesses of the potential effect of this rule on their future vehicle purchase and maintenance costs.

- Response:** The proposed rule was noticed in accordance with the North Carolina Administrative Procedures Act. The concept for the proposed rule was presented at the May Air Quality Committee meeting. The request to proceed to hearing was made at the July Environmental Management Commission meeting. The hearing on the rule was also noticed in five newspapers across the state. In addition the notice was mailed to those on the official mailing list. Since rulemakings on mobile source issues are not as frequent as other air quality rulemakings, a special effort was made to mail the notice and rule to potential stakeholder groups that might not be on the official rulemaking list.
- Comment:** Anne Coan, Natural Resources Division Director of the North Carolina Farm Bureau Federation, commented that the proposed regulation contains no definitions. She said even if the public notice referenced medium-duty diesel vehicles readers would still not know what vehicles are covered. Ms. Coan said they would have to read the rule adopted in California which is very difficult reading, and they would have to guess what the manufacturer's gross vehicle weight rating will be of a vehicle they would like to buy, register, or lease in North Carolina in 2008. Ms. Coan said there is a serious problem in that the definitions of terms used in the California regulation Title 13, Section 1956.8 doesn't contain the definitions. The referenced terms are in Section .1900 which is not cited nor adopted by reference in the proposed rule. Ms. Coan said that without definitions one is unable to determine what will be considered a medium-duty diesel vehicle or a heavy-duty vehicle in North Carolina. She said the only criterion mentioned in the rule is the vehicle's manufacturer's gross vehicle weight rating of 8,501 pounds. Ms. Coan said based upon her research that would include vehicles as small as a 2004 diesel Chevrolet suburban, a 2004 diesel Ford F-250 truck and at least one model of 2004 diesel Dodge conversion van.
- Comment:** George Pettus, Environmental Management, Maxwell Foods Inc./Goldsboro Milling Company, commented that he can't comprehend why the Environmental Management Commission would propose a regulation that would require CARB certification for model year 2008 and later heavy-duty and medium duty diesel motor vehicles. Mr. Pettus said that this will capture most full size trucks used by farmers and the agriculture industry. To comply manufacturers will have to add extra equipment that will cost over \$2000 per vehicle on average. This would place North Carolina farmers, haulers and business at a competitive disadvantage with agribusiness in neighboring states. Mr. Pettus said that this will also severely hamper efforts to promote production and use of biodiesel fuel because changing to diesel vehicles will be more expensive. Mr. Pettus commented that there are no definitions in the rule and the proposed rule doesn't reference definitions in the California rule which makes it unclear what vehicles are subject. He questioned whether a Suburban, Ford F-250 or GMC 2500 HD would be subject. Mr. Pettus questioned what the rule will cost the State and local governments that are already struggling financially. He questioned how much more school buses, DOT motor fleet, DOC, city bus fleets, and mass transit efforts will cost. Mr. Pettus also questioned what the impact would be on military installations and the NC Carolina National Guard. Mr. Pettus commented that last month EPA released a

report showing that total emissions of the six principal pollutants identified in the Clean Air Act dropped again in 2003 which signals that America's air is the cleanest ever in three decades. Mr. Pettus said that EPA recently issued regulations that will cut diesel pollution by 90 percent, and will finalize regulations cutting power plant pollution by almost 70 percent later this year. He questioned why we need this regulation that unfairly singles out North Carolina and puts agribusiness at a disadvantage to its neighbors.

Response: Definitions and rule language clarifying that the rule applies to heavy-duty diesel vehicles with a gross vehicle weight rating of 14,001 pounds and greater is proposed to be added. The proposed changes to the rule remove coverage of vehicles with a gross vehicle weight rating between 8,501 and 14,001 pounds. The manufacturer's gross vehicle weight rating can be found on the label inside a vehicle's door jamb.

Military tactical vehicles and equipment are exempt under the California requirements. The rule is proposed to be modified to add language clarifying that military tactical vehicles and equipment are exempt from the requirements consistent with California's exemption.

North Carolina will work with manufacturers and dealers to ensure that they know the subject vehicles are required to be CARB certified for sale, lease, or registration in North Carolina and to ensure that proper documentation is provided to dealers and ultimately prospective buyers.

Comment: Anne Coan, Natural Resources Division Director of the North Carolina Farm Bureau Federation, questioned whether North Carolina would be automatically hamstrung to any changes California makes to its regulation between now and 2008. She noted that North Carolina's rulemaking process is long and asked how long it would take to revise the North Carolina rule if North Carolina did not want to track CARB changes to their rules.

Response: The rule would automatically incorporate changes made in the California rule. This is necessary to ensure that the North Carolina rule remains in compliance with the federal Clean Air Act if California revises its rule later. If the EMC disagrees with a change in the California rule, it can amend or repeal this rule. In general taking a rule from the Air Quality Committee through Rules Review Commission adoption would take approximately 210-240 days at minimum under the standard rulemaking process. The North Carolina Administrative Procedures Act also contains temporary and emergency rulemaking procedures that are available under specific circumstances and are shorter processes.

Comment: Anne Coan, Natural Resources Division Director of the North Carolina Farm Bureau Federation, commented that the proposed regulation does not state whether it applies only to new vehicles. She said it therefore applies to used vehicles as well. Ms. Coan said if a farmer goes to a neighboring state and buys a used 2008 model truck, he could not register that vehicle in North Carolina if it is not CARB-certified. Ms. Coan said if a farmer goes to another state and buys a new 2008 vehicle he cannot register it in North Carolina and questioned how this impacts interstate commerce.

Response: Language to clarify that the rule applies to new vehicles and used vehicles sold by dealers is proposed to be added to the rule. As defined in G.S. 20-286(10) a “new motor vehicle” means a motor vehicle which has never been the subject of a sale other than between new motor vehicle dealers, or between manufacturer and dealer of the same franchise. This definition is proposed to be referenced in the rule. In addition definitions for “motor vehicle dealer” and “used motor vehicle” found in G. S. 20-286 are proposed to be referenced in the rule.

Comment: Anne Coan, Natural Resources Division Director of the North Carolina Farm Bureau Federation, commented that if a farmer leases a 2008 truck in Alabama that is not CARB-certified to haul a cotton picker to North Carolina, the leasing company could not lease that vehicle until that vehicle left North Carolina. Ms. Coan said the farmer will likely have to pay additional costs because the leasing company has to move the vehicle out-of-state before it can be leased. Ms. Coan also said that many farmers own farms across state lines. She questioned whether under the North Carolina rule, they will have to register and insure some vehicles in one state and some in another, because some of the vehicles are not CARB-certified. She commented that many multi-state businesses are probably in the same situation with fleets they own or lease.

Response: Language to clarify that the rule applies to new vehicles and used vehicles sold by dealers is proposed to be added to the rule. Because the requirements would apply to new vehicles and used vehicles sold by dealers beginning with the future model year 2008, the purchaser will have the flexibility to choose whether to purchase vehicles that can be registered in North Carolina. Those subject new vehicles and used vehicles sold by dealers to be registered in North Carolina would have to be CARB certified. A temporary lease or rental should not be affected unless the vehicle is registered in North Carolina.

Comment: Anne Coan, Natural Resources Division Director of the North Carolina Farm Bureau Federation, commented that the proposed regulation will severely hamper efforts to promote the production and use of biodiesel fuel in North Carolina because changing to diesel vehicles will be more expensive, and the motivation to build production facilities and buy biodiesel fuel will be greatly reduced. Ms. Coan said that biodiesel is recognized as a cleaner burning fuel and a means to cut down on fossil fuel use. She said the rule will dampen enthusiasm for biodiesel in North Carolina and have an adverse impact on a product that agriculture is looking toward to sustain its future, that citizens are looking towards for cleaner air and that all are looking towards for less dependence on foreign oil. Ms. Coan also noted that many school districts are converting their buses to diesel fleets and a major concern is that this planned conversion is partially driven by desire for use of clean burning biodiesel fuel in the school buses. She said the proposed rule could stop the effort due to higher engine and maintenance costs. Ms. Coan questioned how much more diesel school buses will cost to purchase and maintain.

Response: Many school districts have already converted their buses to diesel because of other factors such as the longevity of diesel powered vehicles and economy of operation. Diesels tend to have lower operating costs over time than gasoline

powered vehicles. The proposed rule does not prohibit or limit the use of biodiesel fuel.

- Comment:** Anne Coan, Natural Resources Division Director of the North Carolina Farm Bureau Federation, commented that the General Assembly should be the body to consider such a drastic change, because of the effect on the State budget and on the farmers, the citizens and businesses of this State. She strongly urged the Environmental Management Commission not to adopt the regulation.
- Comment:** Mr. Steve Dailey, General Manager of NGK Ceramics USA, Inc. commented that the company is strongly supportive of North Carolina's proposal to adopt California's 2007 On-Highway Heavy-duty Diesel engine standards. Mr. Dailey said this opportunity will provide significantly reduced emissions from highway heavy-duty trucks in a cost-effective manner and create jobs for people of North Carolina. Mr. Dailey said that the company, located in Mooresville, NC, employs over 400 people. The facility has manufactured over 100 million ceramic substrates, a key component of automotive and diesel catalytic converters. The company provides over 40% of the worldwide ceramic substrate market and is committed to making the necessary investments to manufacture the required emission control technologies such as ceramic substrates and diesel particulate filters. The Mooresville facility alone invested over \$25 million to support the reduced emissions provided by the US 2007 and California 2007 Heavy-duty Diesel Emission Standards. Mr. Dailey said adoption of California's 2007 Heavy-duty diesel emission standards benefits the health and welfare of the people of North Carolina and is strongly supported by the company.
- Comment:** Robert Glaser, President, North Carolina Automobile Dealers Association, commented that study should be undertaken to insure that the adoption of the proposed California certificate does indeed materially reduce the amount of pollutants placed in the atmosphere.
- Response:** Reducing emissions from heavy-duty diesel vehicles is an important part of North Carolina's ozone attainment strategy. Adoption of this rule ensures that these reductions are obtained.
- Comment:** Timothy French, Legal Counsel for the Engine Manufacturers Association, commented that it is clear that NCDENR cannot now opt-in to the California heavy-duty diesel standards. Mr. French cited Sections 209(b) and 177 of the federal Clean Air Act. Mr. French stated that the proposal is premature, noting that EPA has not yet granted a preemption waiver for the California heavy-duty diesel standards nor, to the best knowledge of the commenter, has California sought such waiver. Mr. French argues that since these preconditions for opt-in do not exist the Section 177 opt-in procedure is not yet available to NCDENR with respect to the California heavy-duty diesel standards.
- Response:** It is not necessary for a waiver to have been granted in order for North Carolina to adopt the California standard. A previous case on New York rules held that CAA Section 177 states need not wait for EPA to approve California's waiver request before adopting California's rules. *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. New York*, 15 F.3d 521 at 533-34 (C.A.2 (N.Y.), 1994). California submitted to

the United States Environmental Protection Agency its request for a waiver of preemption on July 16, 2004. California hopes to receive its waiver by the end of 2004. Receipt of a waiver by California is a necessary criteria only in order for North Carolina or another state to begin enforcing its adopted rule.

Comment: Timothy French, Legal Counsel for the Engine Manufacturers Association, commented that the basic premise for the NCDENR proposal is to adopt the California standards as a “backstop” or “contingency” measure in the event that EPA determines to delay or amend the 2007-2010 standards. Mr. French argues that the only possible basis for such a delay or amendment would be a factual determination that the technology required to achieve compliance with the 2007/2010 standards is not achievable or cost-effective. In that event, a corollary result would be that the California heavy-duty diesel standards would no longer be qualified to receive a federal preemption waiver and could no longer be subject to a valid opt-in procedure. Specifically, a condition precedent to a preemption waiver for California standards is that those standards must be consistent with Section 202(a) of the federal Clean Air Act, 42, U.S.C. 7543(a) that requires that mobile source emission standards be technologically achievable and cost-effective. Given that, if EPA determined a delay or modification of the federal 2007 standards is warranted, the identical California heavy-duty diesel standards would no longer be consistent with Section 202(a) requirements for technological feasibility and cost-effectiveness. That result would render invalid any preemption waiver in favor of the California heavy-duty diesel standards and invalidate any attempted opt-in procedure related to those standards.

Response: The comment implies that if the federal rule is weakened or delayed it would be due to technological feasibility issues that would apply in the same manner to California’s standards and render them invalid. EPA review of California regulations is deferential, and longstanding waiver decision practice states that for CAA 209 (b) to be meaningful, EPA must often review waiver requests and grant them although they might not adopt the same rule at the federal level. California has the authority to independently establish emission standards, given its severe air pollution problem. In the event that a federal amendment to delay or otherwise weaken the federal 2007 rule was adopted, the reason for such an action would need to be analyzed by California to determine whether they are technological feasibility difficulties, cost-effectiveness issues, or other issues and whether they would apply to the California 2007 standards. Because of California’s severe air pollution problem compared to the rest of the nation in general, California may take more aggressive actions than the U.S. EPA in cleaning up the air. The U.S. EPA may deny a waiver to California if it determines that the California standards are arbitrary or capricious. Otherwise, California may establish emission standards as necessary to attain clean air. If the waiver is already issued, there is no mechanism to void California’s rule if a parallel federal rule changes. EPA would have to initiate a new waiver process on its own to question the previous waiver which is seldom, if ever, done.

Health and Environmental Effects

Comment: Annemarie Evans, President, League of Women Voters of Wake County, expressed support of the League of Women Voters of Wake County for the

proposed rule to require model year 2008 and later model year heavy-duty diesel vehicles be California Air Resources Board certified in order to be sold, leased or registered in North Carolina. Ms. Evans commented that diesel trucks and buses account for 28% of emissions of oxides of nitrogen and 20% of emissions of particulate matter from mobile sources and have lagged significantly behind gasoline fueled vehicles in use of emission control systems. Ms. Evans commented that new technologies are rapidly progressing that will offer the opportunity to achieve substantial reductions in emissions. EPA's 2007 rule will encourage those technologies by setting higher emission standards. She said it is time to require the same level of emission control for HDDE vehicles that has been required for other vehicles for nearly 30 years.

Comment: Annemarie Evans, President, League of Women Voters of Wake County, commented that because diesel engines can last 20-30 years, EPA's rule may not bring about a significant improvement in air quality for many years and for that reason it is imperative that the 2007 rule not be delayed. Ms. Evans said a delay is precisely what the American Trucking Association (ATA) and other industry groups are pursuing after failing to halt the rule in court, the ATA petitioned President Bush to delay the rule and is pressing Congress for a delay. Ms. Evans said that North Carolina should be prepared to protect the improvement in air quality promised by the 2007 rule should it be delayed. Requiring California Air Resources Board certification of 2008 and later diesel vehicles will implement requirements of the 2007 rule. Ms. Evans said that frequently during the summer, ozone concentrations in the Triangle area reach unhealthy levels, exceeding EPA standards. The effect of high concentrations of ozone has been described as a sunburn on the lungs. Ms. Evans said the Triangle is also close to exceeding the EPA standards for particulate matter. She noted that studies have linked breathing particulate matter to aggravated asthma, chronic bronchitis, decreased lung function, and premature death. Ms. Evans said that air quality in the Triangle must be improved to protect the health of residents and to achieve and maintain compliance with EPA standards so that we can accommodate new industry and other businesses. Ms. Evans said the League believes controlling emissions from heavy-duty diesel vehicles as quickly as possible is necessary for long-term improvement of air quality in the community. Ms. Evans said the League urges the Environmental Management Commission to adopt 15A NCAC 2D .1009.

Comment: S. William Becker, Executive Director of the State and Territorial Air Pollution Program Administrators (STAPPA) and the Association of Local Air Pollution Control Officials (ALAPCO), commented that the associations strongly support, North Carolina's proposed adoption of a rule to require that model year 2008 and later heavy-duty diesel vehicles be certified by the California Air Resources Board in order to be sold, leased, or registered in North Carolina. Mr. Becker commented that on January 18, 2001, the United States Environmental Protection Agency promulgated a sweeping set of new regulations referred to as the Federal 2007 Rule, that will dramatically reduce pollution from on-highway, heavy-duty trucks commencing in 2007. He said these vehicles currently are significant sources of ozone and fine particulate matter. Mr. Becker noted that diesel exhaust particulate matter is of special concern because it has been determined by EPA to be a likely human carcinogen. Mr. Becker said that the

reduction in PM and ozone precursors required by the Federal 2007 Rule is a critical component in the effort to provide clean air for all Americans. Mr. Becker said that like North Carolina, states and localities across the country avidly support the rigorous regulation of heavy-duty diesel truck emissions and are relying on the emission reductions to occur from timely implementation of EPA's Federal 2007 Rule to achieve and sustain clean air and public health goals. Mr. Becker said that continued public statements by representatives of the trucking industry and others suggesting that EPA delay or weaken the Federal 2007 Rule have raised serious concerns regarding the certainty of the rule's future. Mr. Becker said that states have available section 177 of the Clean Air Act, which allows them to adopt California's heavy-duty diesel engine standards that are nearly identical to those in the federal rule applicable beginning with model year 2007. Mr. Becker noted that California has submitted its request seeking a waiver of preemption of federal regulation under Section 209(b) of the CAA. He said it is important to note that it is clearly not necessary for this step to be completed in order for other states, such as North Carolina, to adopt California's requirements. Receipt by California of the waiver is only necessary in order for another state to begin enforcing the adopted program which would not occur until the 2008 model year for North Carolina. Mr. Becker said North Carolina is one of at least 13 states that are taking part in a cooperative multi-state effort to ensure timely implementation of the 2007 standards in the event that opponents of EPA's Federal 2007 Rule are successful in attempts to delay or weaken it. Mr. Becker said that to date Connecticut, Delaware, the District of Columbia, Georgia, Maine, Maryland, Massachusetts, New Jersey, New York, North Carolina, Pennsylvania and Rhode Island have adopted, or are expecting to adopt shortly, California's 2007 highway diesel standards. Mr. Becker included a copy of the document, *Cleaning Up Diesel Trucks: A Model Rule for States*, just published by the associations to facilitate states' efforts. Mr. Becker said that STAPPA and ALAPCO fully support North Carolina's proposed adoption of a rule requiring that model year 2008 and later heavy-duty diesel vehicles sold, leased or registered in the state be certified by the California Air Resources Board. Mr. Becker said the associations concur with DENR DAQ that the rule is both timely and necessary and applaud the action, which clearly represents North Carolina's strong commitment to protecting the health and welfare of its citizens. Mr. Becker said the associations urge final adoption of the rule and look forward to North Carolina's continued leadership in environmental protection.

Comment: Christopher A. James, Director of the Division of Planning and Standards of the Bureau of Air Management for the State of Connecticut, commented that Connecticut supports the NC DENR proposal requiring any new heavy-duty diesel vehicle or engine sold, leased or registered in North Carolina for model year 2008 and beyond to be certified to meet the California standards. He said that Connecticut shares North Carolina's serious concerns about emissions from heavy-duty diesel engines with respect to their contribution to ground level ozone, fine particle pollution and regional haze. Mr. James said that such concerns caused the Connecticut Department of Environmental Protection to adopt a regulation in March 2003, R.C.S.A. section 22a-174-36a, which is similar to the North Carolina proposal. The regulation is considered a vital component of Connecticut's efforts to control emissions of sulfur, oxides of nitrogen, particulate matter and toxics and will be of particular help in plans to attain and maintain the

ozone NAAQS.

- Comment:** Mr. Steve Dailey, General Manager of NGK Ceramics USA, Inc. commented that the company is strongly supportive of North Carolina's proposal to adopt California's 2007 On-Highway Heavy-duty Diesel engine standards. Mr. Dailey said this opportunity will provide significantly reduced emissions from highway heavy-duty trucks in a cost-effective manner and create jobs for people of North Carolina. Mr. Dailey said that the company, located in Mooresville, NC, employs over 400 people. The facility has manufactured over 100 million ceramic substrates, a key component of automotive and diesel catalytic converters. The company provides over 40% of the worldwide ceramic substrate market and is committed to making the necessary investments to manufacture the required emission control technologies such as ceramic substrates and diesel particulate filters. The Mooresville facility alone invested over \$25 million to support the reduced emissions provided by the US 2007 and California 2007 Heavy-duty Diesel Emission Standards. Mr. Dailey said adoption of California's 2007 Heavy-duty diesel emission standards benefits the health and welfare of the people of North Carolina and is strongly supported by the company.
- Comment:** Marily Nixon, Southern Environmental Law Center, and on behalf of NC Sierra Club, Southern Alliance for Clean Energy, Appalachian Voices North Carolina Sustainable Energy Association, Environmental Defense, NCPIRG, Canary Coalition, Carolinas Clean Air Coalition, and the Southern Province Moravian Church in America, commented that the organizations support the North Carolina Division of Air Quality proposal to amend the rules regarding heavy-duty and medium-duty diesel vehicles. Ms. Nixon commented that under the Clean Air Act, North Carolina may choose to implement the federal standards or the California standards for model year 2007 and later heavy duty diesel vehicles. Ms. Nixon said that currently the federal standards and the California standards are the same so the proposal to adopt the California standards effects no immediate change, does not tighten the standards applicable in North Carolina or impose additional costs on industry. The proposal would act as a backstop in the event the federal standards are weakened or delayed. Adoption of the proposal will ensure that the standards in North Carolina will remain protective of human health and consistent with required air improvements under the Clean Air Act if the federal standards are weakened at some later time. Ms. Nixon commented that adoption of the California standards is critical to protecting human health. Ms. Nixon noted that diesel exhaust is a major source of substances damaging to human health including particulate matter and ozone forming pollutants. She said that diesel air pollution adds to the cancer risk of residents throughout North Carolina. In Guildford county 78% of the air cancer risk is due to mobile sources including heavy duty diesel engines and in Wake County 92% of the air cancer risk is due to mobile sources. Ms. Nixon said that of all the hazardous air pollutants diesel emissions make the highest contribution to cancer risk. (Based on www.scorecard.org.) Ms. Nixon commented that diesel air pollution is a major source of harmful fine particles which epidemiological studies associate with thousands of premature deaths and hospitalizations. Ms. Nixon said that EPA's proposal to designate eight North Carolina counties as nonattainment for PM2.5 means that about one million North Carolinians are exposed to levels of fine particles that exceed the national health-based air quality standard. Ms. Nixon

commented that diesel air pollution contributes to harmful ozone or “smog” levels which cause acute respiratory problems, aggravated asthma, decreased lung function, inflammation of lung tissue increased hospital admissions and emergency room visits for respiratory causes, and crop damage. Ms. Nixon noted that children with asthma are most at risk. Ms. Nixon said that EPA has designated 32 counties in North Carolina nonattainment for the 8-hour ozone standard and that means that over 4 million North Carolinians are exposed to ozone levels exceeding the national standard. Ms. Nixon commented that diesel exhaust contains over 40 different toxic chemicals many of which are known or suspected to cause cancer, like benzene, 1,3 butadiene, and polycyclic aromatic hydrocarbons. Ms. Nixon commented that organizations including the National Institute for Occupational Safety and Health, International Agency for Research on Cancer, Health Effects Institute, World Health Organization, U.S. Department of Health and Human Services National Toxicology Program, and the U.S. Environmental Protection Agency have determined that diesel exhaust is a probable or likely human carcinogen. Ms. Nixon also noted that the California EPA has classified it as a known human carcinogen. Ms. Nixon commented that diesel exhaust is the largest source of particulate matter from motor vehicles and accounts for one-quarter of the ozone and PM-forming nitrogen oxides emissions nationwide. Based on the state’s emissions inventory for 2007, mobile sources contribute about 55 percent of the overall NOx emissions on an average summer weekday. Fifty-five percent are projected to come from heavy-duty diesel vehicles. Thus it is crucial that North Carolina adopt and maintain strict standards to minimize pollution from the many heavy duty diesel vehicles on the state’s roadways. Ms. Nixon commented that adoption of the California standards is critical to North Carolina’s compliance with the Clean Air Act ozone and PM2.5 standards. Ms. Nixon noted that if North Carolina decides not to adopt the California standards, the state’s entire ozone attainment program could be jeopardized. She said the State completed extensive modeling work to show that its new ozone nonattainment areas will attain the federal standard by the deadline required by the Clean Air Act. The state assumed the current version of the federal standards for model years 2007 and later would remain in place. Despite the assumption the tighter federal heavy duty diesel standards as well as other state and local initiatives would improve air quality statewide, the modeling showed that some areas barely attain the standard by the deadline. Ms. Nixon said that if North Carolina does not adopt the California standards and the federal standards are weakened or delayed, the state’s projections of whether and when its 32 violating counties will achieve attainment will no longer be credible. Such a situation could throw doubt on the State’s ability to attain the federal ozone standard and imperil the Early Action Compact program which allows certain areas to clean up their air through voluntary measures. The state might also have to adopt more stringent controls on other sources to balance out higher emissions from heavy-duty diesel vehicles. Ms. Nixon said that weakening or delay of the federal standards without state adoption of the California standards would frustrate North Carolina’s efforts to attain the new fine particulate matter standard. This could also result in the State having to require potentially severe measures to lower emissions from other source sectors.

Response: NOx emissions from heavy-duty diesel vehicles are a significant contributor to ozone formation in North Carolina ozone nonattainment areas. Reductions of

emissions from heavy-duty vehicles is an important part of North Carolina's plan to achieve compliance with the ozone standards. Also, reducing emissions of fine particulate from heavy-duty diesel vehicles will aid North Carolina in achieving compliance with the fine particulate matter standard in its nonattainment areas for fine particulates.

SUMMARY OF COMMENTS AND RESPONSES

<u>Comments</u>	<u>Response</u>
<u>Applicability</u>	
Definitions should be added.	Agree. Definitions to clarify applicability have been added.
Questioned applicability to medium-duty vehicles	Language changed such that rule applies to heavy-duty diesel vehicles with a GVWR of 14,001 or greater pounds.
Rule applies to used vehicles.	Definitions have been added to clarify rule applies to new vehicles and used vehicles sold by dealers.
<u>Economic Considerations</u>	
Rule will chase vehicle sales out of state.	Disagree. Requirement for registration is that subject engine or vehicle be CARB certified in order for vehicle to be registered in North Carolina.
Economic assessment is faulty.	An economic assessment consistent with the requirements of the Administrative Procedures Act (APA) was conducted and approved by OSBM as a substantial rulemaking action.
<u>Fuel and Engine Availability</u>	
Low sulfur diesel won't be available.	Disagree. Suppliers report that they are on track for compliance in 2006.
Engines won't be available.	Disagree. Engine manufacturers report that they are on track for compliance in 2007.
<u>Health and Environmental Impacts</u>	
Heavy-duty diesel emissions are significant contributors to adverse health and environmental effects.	Agree.

Not adopting proposal could jeopardize ozone attainment.

Agree. Reductions in heavy-duty diesel emissions are a significant part of plan to achieve and maintain attainment of NAAQS.

Other

Public notice was inadequate.

Disagree. Rule was noticed in accordance with Administrative Procedures Act.

State cannot adopt until waiver issued to CA.

Disagree. Waiver not needed for adoption, only for enforcement.

CA waiver not necessary for state adoption.

Agree. CA waiver only necessary for enforcement.

North Carolina based companies operating in one or more other states should be allowed to register a vehicle that doesn't meet the standard if it was initially registered in conformance to the other state's applicable standard.

Clarification that the rule applies to new vehicles eliminates concern about transfer of registration.

Amendment of federal 2007 rule would render California's waiver and North Carolina's adoption of CA rule invalid.

Disagree. A separate EPA initiated review of and action on the CA waiver would be necessary to invalidate the waiver.

Adopting CA rule by reference gives California too much authority over North Carolinians.

Disagree. Adoption of requirement to be CARB certified by reference merely provides a streamlined means of implementing needed emissions reductions. Rule does not transfer any authorities to California.

Increased cost of vehicles will hamper efforts to promote biodiesel in North Carolina.

Disagree. Proposed rule does not prohibit or limit biodiesel use.

CONCLUSION

Comments were received from 25 individuals and organizations. Fifteen organizations commented in support of the proposed rule. Nineteen organizations commented in opposition to the proposed rule.

Some commenters said that the rule lacked definitions making it difficult to determine who is actually subject. Definitions and language are proposed to be added to clarify that the rule applies to new motor vehicles that are heavy-duty diesel vehicles that have a gross vehicle weight rating of 14,001 pounds or greater and those used motor vehicles with a GVWR of 14,001 pounds or greater that are sold by dealers.

Some commenters expressed concern that the proposed rule will chase vehicle sales out of state. In order to be registered in North Carolina subject vehicles will have to be CARB certified, therefore sales should not be chased out of state. Out of state dealers will have to

provide CARB certified vehicles to serve North Carolina customers. North Carolina will work with manufacturers and dealers to ensure that they know the subject vehicles are required to be CARB certified for sale, lease, or registration in North Carolina and to ensure that proper documentation is provided to dealers and ultimately prospective buyers.

One commenter said that the economic assessment is faulty. A good faith effort economic assessment was conducted and approved in accordance with the Administrative Procedures Act. Cost information from EPA's extensive impact analysis for the federal 2007 rule was used in the economic assessment.

Several commenters expressed concern that the rule would place North Carolina citizens and business at an economic disadvantage relative to other states. Several other states are also pursuing adoption or have already adopted the California 2007 requirements for heavy-duty diesels. As more states representing more engine and vehicle sales adopt the California 2007 requirements, it will be more likely that engine manufacturers will produce compliant engines even if the federal 2007 requirements are rolled back or delayed.

Several commenters expressed concern about the increased cost of heavy-duty diesel vehicles. The Division of Air Quality has relied upon EPA's estimated cost of the standards in its *Regulatory Impact Analysis: Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements*, US EPA, EPA420-R-00-026, December 2000, for the 2007 standards in its economic assessment. The expected increase in per vehicle cost is estimated to be 2,650 dollars on average.

Some commenters expressed concern that low sulfur diesel fuel and CARB certified engines will not be available to allow compliance with the proposed rule. Both fuel suppliers and engine manufacturers report that they are on track to provide low sulfur diesel fuel and engines that comply with the federal 2007 standards which are the same as the California standards for heavy-duty diesels.

One commenter said that it is necessary for California to have a waiver in order for North Carolina to adopt its rule. One commenter noted that it is not necessary for California to have received a waiver in order for North Carolina to adopt its rule. A waiver is not necessary in order for North Carolina to adopt California's requirements, but will be necessary in order for North Carolina to begin enforcing its requirements. California has submitted its request for a waiver and expects to receive a waiver by the end of 2004.

Some commenters said that adopting the CARB certification requirement by reference gives California too much authority to rule North Carolina industry. Adoption of CARB certification requirements by reference does not transfer any regulatory authority to California. The Environmental Management Commission is free to amend or repeal the rule if necessary if changes in the California or federal regulation or the importance of emissions from regulated heavy-duty diesels changes in a manner that would warrant or necessitate such an action. The authority of the Commission to propose rule amendments is in no way altered by adopting the rule. Relying on CARB's demonstrated expertise leverages limited resources and provides North Carolina a streamlined means of implementing needed emissions reductions from these sources.

One commenter expressed concern that an increase in the cost of diesel vehicles would hamper efforts to promote biodiesel fuel in North Carolina. Consumers purchase diesel vehicles for many existing reasons. The proposed rule does not prohibit or limit use of biodiesel fuel.

Some commenters expressed concern about the health and environmental effects associated with diesel emissions, and the health, environmental and economic implications of being unable to achieve attainment without emissions reductions from heavy-duty diesels. The Division of Air Quality is also concerned about the ability to achieve and maintain attainment with national ambient air quality standards in the absence of the heavy-duty diesel emissions reductions that would be provided by the proposed rule.

Concern that emissions reductions from the federal 2007 heavy-duty diesel rule relied

upon in attainment strategies development will be delayed or rolled back prompted proposal of this rule. Based on attainment modeling emissions inventories, in 2007 mobile sources contribute approximately 55% of the overall NOx emissions inventory on an average summer weekday and 57% of the mobile source NOx emissions result from heavy-duty diesel vehicles. Over time the contribution of this source sector to overall emissions increases as other sources are better controlled and vehicle population and vehicle miles traveled (VMT) continue to grow. EPA estimates the emission reductions achieved by the 2007 rule will prevent 8,300 premature deaths, over 9,500 hospitalizations, and 1.5 million work days lost with benefits of the rule totaling 70.3 billion dollars. In the event that the national rule is rolled back or delayed, benefits proportional to North Carolina and other adopting states contributions would occur. Emissions reductions from heavy-duty diesel vehicles are a crucial component of the state's strategy for achieving and maintaining compliance with the ambient air quality standards.

HEARING OFFICER'S RECOMMENDATION

The Hearing Officer recommends that the proposed rule, as presented in Chapter II of this hearing report, be adopted by the Environmental Management Commission.

CHAPTER II

RULES PROPOSED FOR ADOPTION

1 15A NCAC 2D .1009 is proposed for adoption as follows:

2

3 **.1009 Model Year 2008 and Subsequent Model Year Heavy-Duty and ~~Medium-Duty~~ Diesel Vehicle**
4 **Requirements**

5 (a) Applicability. This Rule applies to model year 2008 and subsequent model ~~year~~years heavy-duty
6 diesel vehicles ~~and medium-duty diesel vehicles~~ having a manufacturer's gross vehicle weight rating of
7 ~~8501-14,001~~ 14,001 pounds or greater as specified in Title 13 of the California Code of Regulations, Section
8 1956.8.

9 (b) Definitions. For the purposes of this Rule the following definitions shall apply.

10 (1) "Heavy-duty diesel vehicle" means a motor vehicle with a gross vehicle weight rating of
11 14,001 pounds or greater that is propelled by a diesel engine.

12 (2) "Motor vehicle dealer" means motor vehicle dealer as defined in G. S. 20-286(11) and
13 includes "new motor vehicle dealer" as defined in G. S. 20-286(13) and "used motor
14 vehicle dealer" as defined in G. S. 20-286(16).

15 (3) "New motor vehicle" means new motor vehicle as defined in G. S. 20-286(10)(a).

16 (4) "Used motor vehicle" means used motor vehicle as defined in G. S. 20-286(10)(b).

17 (c) Exemptions. For the purposes of this Rule the exemption of military tactical vehicles and equipment
18 as specified in 13 California Code of Regulations .1905 shall apply.

19 ~~(b)(d)~~ Requirement. No used motor vehicle that is a model year 2008 or subsequent model year heavy-
20 duty diesel vehicle sold by a motor vehicle dealer or new motor vehicle that is a model year 2008 or
21 subsequent model year heavy-duty or ~~medium-duty~~ diesel vehicle may be sold, leased, or registered
22 within North Carolina unless the vehicle or its engine has been certified by the California Air Resources
23 Board as meeting the applicable model year requirements of Title 13 of the California Code of
24 Regulations, Section 1956.8, California Exhaust Emission Standards and Test Procedures for 1985 and
25 Subsequent Model Heavy-Duty Diesel Engines and Vehicles.

26 ~~(e)~~(e) Referenced Regulation. The California Code of Regulations incorporated by reference in this Rule
27 shall automatically include any later amendments thereto. A copy of Title 13 of the California Code of
28 Regulations, Section 1956.8, and Section .1900 may be obtained free of charge via the internet from the
29 Office of Administrative Law California Code of Regulations website at <http://ccr.oal.ca.gov/>, or a hard
30 copy may be obtained at a cost of \$5.00 from the Public Information Office, California Air Resources
31 Board, P.O. Box 2815, Sacramento, CA, 95812.

32

33 *History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(6)-(7);*

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CHAPTER II

RULES PROPOSED FOR ADOPTION

1

Eff. December 1, 2004.

CHAPTER III
REPORT OF PROCEEDINGS

Introduction

A public hearing was held by the Department of Environment and Natural Resources, Division of Air Quality on August 18, 2004 at 7:00 P.M. in Raleigh. The hearing considered adoption of Rule 15A NCAC 2D .1009.

A public notice announcing this hearing was mailed to each person on the official mailing list for rule-making hearings. The public notice was also published in the *North Carolina Register* at least 15 days before the public hearing and in the *Charlotte Observer*, the *Wilmington Star News*, the *Asheville Citizen Times*, the *Winston Salem Journal*, and the *Raleigh News and Observer* at least 30 days prior to the public hearing.

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page(s) for copies of hearing officer appointment letters

III - 3

page(s) for copies of public notice as printed in the newspapers

Transcript

A transcript of the August 18, 2004 hearing has not been prepared; however, a tape recording of the proceedings will be kept on file with the Division of Air Quality for one year from the date of the final actions by the Environmental Management Commission.

A list of those attending the hearing follows.

Hearing Officer

Mrs. Marion Deerhake of the Environmental Management Commission

Staff Members

Joelle Burleson, DAQ RCO, ENR
 Thomas Allen, DAQ RCO, ENR
 Paul Grable, DAQ RCO, ENR
 Glenn Sappie, DAQ RCO, ENR
 Vladimir Zaytsev, DAQ RCO, ENR
 Sheila Holman, DAQ RCO, ENR
 Keith Overcash, DAQ RCO, ENR

Members of the General Public

Name		Title	Company
Scott	Gardner	District Manager	Duke Power Co.
Jeff	Hinkle	Transportation Manager	Chandler Concrete Company
Robert	Bass		
Anne	Coan	Natural Resources Division Director	North Carolina Farm Bureau Federation

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CHAPTER IV

EXHIBITS

page(s) for copies of the public notice as sent persons on the official mailing list (with statement typed at bottom of last page of where to get further information from.)

1 15A NCAC 2D .1009 is proposed for adoption as follows:

2

3 **.1009 Model Year 2008 and Subsequent Model Year Heavy-Duty and Medium-Duty Diesel Vehicle**
4 **Requirements**

5 (a) Applicability. This Rule applies to model year 2008 and subsequent model year heavy-duty diesel
6 vehicles and medium-duty diesel vehicles having a manufacturer's gross vehicle weight rating of 8501
7 pounds or greater as specified in Title 13 of the California Code of Regulations, Section 1956.8.

8 (b) Requirement. No model year 2008 or subsequent model year heavy-duty or medium-duty diesel
9 vehicle may be sold, leased, or registered within North Carolina unless the vehicle or its engine has been
10 certified by the California Air Resources Board as meeting the applicable model year requirements of Title
11 13 of the California Code of Regulations, Section 1956.8, California Exhaust Emission Standards and Test
12 Procedures for 1985 and Subsequent Model Heavy-Duty Diesel Engines and Vehicles.

13 (c) Referenced Regulation. The California Code of Regulations incorporated by reference in this Rule
14 shall automatically include any later amendments thereto. A copy of Title 13 of the California Code of
15 Regulations, Section 1956.8, may be obtained free of charge via the internet from the Office of
16 Administrative Law California Code of Regulations website at <http://ccr.oal.ca.gov/>, or a hard copy may be
17 obtained at a cost of \$5.00 from the Public Information Office, California Air Resources Board, P.O. Box
18 2815, Sacramento, CA, 95812.

19

20 *History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(6)-(7);*

21 *Eff. December 1, 2004.*

Suggested Hearing Comments

INTRODUCTION

Mrs. Deerhake: Good evening ladies and gentlemen. My name is Marion Deerhake. I am a member of the Environmental Management Commission. My role here as hearing officer is to listen to all relevant comment on these proceedings and report them to the full commission. Sitting with me is _____. He is with the North Carolina Division of Air Quality, Planning Section.

Some of the staff of the Division of Air Quality are here to assist. Mr. _____, please introduce the staff present.

Mr. _____. (Introduce staff)

Mrs. Deerhake: This hearing is to be held according to the North Carolina Administrative Procedures Act. The public notice for this hearing has been advertised in the North Carolina Register and five newspapers in the state. Copies of the notice have been sent to those on the official mailing list. I will enter the public notice and the proposed adoption into the hearing record without reading it at this time.

A brief description will be given for the subject. Any person desiring to comment is requested to submit a written statement for inclusion into the hearing record. Once called to speak, please come to the podium and state clearly your name and whom you represent.

Mrs. Deerhake: I will now open the hearing by providing brief background information followed by receipt of public comments on the topic.

A new rule, 15A NCAC 2D .1009, Model Year 2008 and Subsequent Model Year Heavy-Duty and Medium-Duty Diesel Vehicle Requirements, is proposed for adoption. The proposed rule requires that model year 2008 and subsequent model year heavy-duty diesel vehicles and medium-duty vehicles having a manufacturer's gross vehicle weight rating (GVWR) of 8501 pounds or greater be California Air Resources Board (CARB) certified as specified in the California regulations in order to be sold, leased, or registered in North Carolina. Certification occurs at the manufacturing level. The rule is proposed in order to ensure that benefits from the federal standards for 2007 and later model year heavy-duty diesel engines and vehicles will actually be realized.

In 2001 EPA adopted a rule to reduce emission standards for 2007 and later heavy-duty diesel engines and vehicles. The emission standards represent a 90% reduction of nitrogen oxides (NOx) emissions, 72% reduction of non-methane hydrocarbon (NMHC) emissions, and a 90% reduction of particulate matter emissions compared to the federal model year 2004 emission standards.

There is a concern that EPA or Congress may delay or weaken the 2007 standards and that without state adoption of the standards to serve as a backstop, maintenance of the ambient air quality standards will be problematic. Based on Division of Air Quality modeling, in 2007 mobile sources contribute about 55% of the overall NOx emissions inventory on an average weekday and 57% of those NOx emissions result from heavy-duty diesel vehicles. Continuation of the lower emission standards for these vehicles is a crucial part of the State's strategy to achieve and maintain compliance with the ozone and fine particulate national ambient air quality standard (NAAQS) in future years.

Under the Clean Air Act, California is the only state that may develop its own vehicle standards, but Section 177 of the Act allows other states to adopt the California standards. California adopted amendments to its standards that harmonized its rule with the federal 2007 rule for heavy-duty vehicles. The California requirements became effective in November 2002. The North Carolina rule is proposed at this time because

the Clean Air Act authority allowing adoption of the California standards requires that states adopt the California standards at least two years before commencement of the model year. EPA defines model year such that a model year 2007 vehicle or engine could be produced as early as January 2, 2006. To provide the required two year lead time for a full model year, standards for the model year 2007 would have to have been effective before January 2, 2004. In order to meet the full two year lead time requirement the earliest full model year to which the North Carolina rule is proposed to apply is 2008.

I would like to now take any comments that you may have.

(SPEAKERS)

Is there anyone else who would like to comment? If there are no more comments, then this hearing is closed. The hearing record will remain open until October 1, 2004 for additional written comments.

CHAPTER V

COMMENTS RECEIVED AT THE PUBLIC HEARING
AND DURING THE COMMENT PERIOD

INDEX OF COMMENTERS

<u>NAME</u>		<u>REPRESENTING</u>	<u>PAGE</u>
Ted	Brown	North Carolina Dump Truck Association	V-3
Robert	Glaser	President, North Carolina Automobile Dealers Association	
Timothy	French	Legal Counsel, Engine Manufacturers Association	
John H.	Byrd	President, Central Carolina Trucks, Inc.	
Laurence	Lilley, Jr.	Lilley International, Inc.	
David P.	Stauffer	General Manager, Freightliner of Charlotte	
W. Jay	McGary	General Manager, Tar Heel Sterling Truck Center, Inc.	
Danny	Rashid	Dealer Principal/President, Tri-Point Ford Sterling Truck Sales, Inc.	
Cooper	Sykes	President, Cooper Kenworth, Inc.	
George T.	Everett, Ph.D.	Vice President, Duke Power Environmental and Public Policy	
Annemarie	Evans	President, League of Women Voters of Wake County	
Stewart	Brown	President, Triple T Parts & Equipment	
Scott	Adams	Adams International and Peterbilt Carolina Inc.	
Jim	Lilley	Lilley International, Inc.	
James E.	Bland	President, TranSource Truck & Trailer Centers	
D. Steve	White	President, White's International Trucks	
James H.	Smith, Jr.	Vice-President, Smith International Truck Center	
S. William	Becker	Executive Director, State and Territorial Association Program Administrators Area and Local Air Pollution Control Officials	
Charles F.	Diehl	North Carolina Trucking Association	
Anne	Coan	North Carolina Farm Bureau Federation	
B. B.	Griffin	Cotton Ginners Associaton	
Christopher A.	James	State of Connecticut	
Robert W.	Slocum, Jr.	North Carolina Forestry Association	
George H.	Pettus	Maxwell Foods Inc. and Goldsboro Milling Co.	
Steve	Dailey	NGK Ceramics USA, Inc.	
Marily	Nixon	Southern Environmental Law Center NC Sierra Club Southern Alliance for Clean Energy Appalachian Voices North Carolina Sustainable Energy Association	

<u>NAME</u>		<u>REPRESENTING</u>	<u>PAGE</u>
		Environmental Defense NCPIRG Canary Coalition Carolinas Clean Air Coalition Southern Provinc Moravian Church in America	

COMMENTS

page(s) for copies of comments both presented at public hearing and sent in during comment period

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CHAPTER VI

ATTACHMENT(S)

CHAPTER VII

The following documentation of filing and notification is incorporated as part of this hearing record and is maintained on file:

1. EHNR 101 Internal Approval Form.
2. Submission for Notice Form and material submitted to the Office of Administrative Hearings.
3. The public notice as it appears in *The North Carolina Register* Volume 19, Issue 3, pages 371-372.
4. Letters to newspapers requesting that the public notice be published.
5. Affidavits of Publication from newspaper.
6. Memorandum transmitting hearing notice and proposal to regional offices for public inspection.
7. Memorandum transmitting hearing notice and proposal to local programs.
8. Letter notifying EPA of hearing.
9. Submission of Filing Forms and material filed with Office of Administrative Hearings.
10. Letter transmitting hearing record to EPA.