

SUMMARY OF COMMENTS AND RESPONSES

**AIR POLLUTION CONTROL REGULATIONS
SUBCHAPTER XI, LOW EMISSION VEHICLES**

**PROPOSED AMENDMENTS TO LOW EMISSION VEHICLE PROGRAM
REGULATIONS**

November 13, 2008

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COMMENTERS

- 1) Alliance of Automobile Manufacturers
- 2) Vermont Automobile Dealers Association
- 3) Quebec-Labrador Foundation

SUPPORTIVE COMMENTS

[The Commenter is identified by the number in the bracket following the comment.]

ZEV Amendments

1) Comment: “The currently proposed ZEV amendments will help foster electric drive vehicles in a wide variety of configurations. Emerging full-function battery electric vehicles will permit some Vermonters to significantly reduce their per-mile operating costs by fueling with electricity. Plug-in hybrid vehicles will provide similar benefits along with the extended range provided by a traditional combustion engine. Super clean gasoline engine vehicles will also provide efficient operation and long service, while their build quality and lengthy warranties will protect consumers’ pocketbooks.” [3]

Response: The Agency acknowledges the comment.

Warranty/Recall Amendments

2) Comment: “By supporting timely emissions recalls or the alternative extended warranties, the proposed amendments will ensure that vehicle performance more closely follows manufacturer claims during the certification process. Some consumers will be spared paying for expensive emissions repairs, and consumers in general will benefit from the enhanced resale value and reduced operating costs attributable to more complete recall provisions.” [3]

Response: The Agency agrees.

Environmental Performance Labeling Amendments

3) Comment: “. . . the new environmental performance labeling will align Vermont with California and neighboring states in providing strategic information to new vehicle buyers. As with the ZEV and emissions recall amendments, the new labeling will reinforce consumer awareness that being green, clean and efficient returns significant monetary benefits beyond the protection of public health and the environment.” [3]

Response: The Agency agrees.

CRITICAL COMMENTS

[The Commenter is identified by the number in the bracket following the comment.]

ZEV Amendments

4) Comment: Staff from the California Air Resources Board (CARB) issued a 15-day notice announcing changes to the amendments to the ZEV regulations on July 25, 2008. It is common in complex rulemakings for CARB staff to issue more than one 15-day notice of modifications to the proposed regulatory text, which could ultimately mean that Vermont standards will not be identical to California standards short of executing additional rulemaking. Therefore, Vermont should wait until the ZEV amendments are finalized before adopting them to avoid the waste of repetitive rulemaking. [1]

Response: On September 23, 2008 the Agency extended the public comment period for the proposed amendments until October 20, 2008. On October 3, 2008, CARB staff issued a second 15-day notice of modifications to the regulatory text of the amendments to California's ZEV regulations and set October 20, 2008 as the deadline for comments on this notice. Thus, the comment period for Vermont's proposed amendments, including those to the ZEV regulations, closed on the same day that the comment period for CARB's second 15-day notice of the modifications to the ZEV amendments closed. Interested parties therefore had the opportunity to comment on the proposed modifications to the ZEV amendments in both California and Vermont. Since then, CARB has communicated to the Agency that there will be no additional 15-day notices of modifications to the regulatory text of the ZEV amendments and that CARB intends to adopt the ZEV amendments before the end of the year. Therefore, the Agency believes it is prudent to proceed with its rulemaking at this time. Moreover, the Agency is mindful of the requirements under section 177 of the Clean Air Act and will continue to ensure that any emission standards that it adopts pursuant to section 177 are identical to the standards adopted by California.

Warranty/Recall Amendments

5) Comment: Recent amendments to California's Emission Warranty Information Reporting and Recall Regulations (hereinafter "EWIR regulations") are being legally challenged in California state court, and a trial in December 2008 will determine if these amendments "will ever come into force." Therefore, the Agency should consider delaying adoption of this regulation until the litigation is concluded in California. [1]

Comment 5), continued:

Response: The amendments to California's EWIR regulations became effective in California on January 4, 2008 and remain in effect despite the litigation noted by the commenter. These amendments apply to new motor vehicles with a model year of 2010 or later. Model year 2010 vehicles are typically introduced and sold during the 2009 calendar year. Therefore, the Agency believes that it is important to adopt the amendments to California's EWIR regulations without delay to ensure that Vermonters receive the full benefits of these environmental and consumer protection amendments. Without commenting on the merits of the litigation, the Agency notes that if the amendments to California's EWIR regulations are ultimately declared invalid by a California state court or other court of competent jurisdiction, Vermont's incorporation by reference of such amendments would be repealed by operation of law under 3 V.S.A. § 848(a)(2).

Environmental Performance Labeling Amendments

6) Comment: The Agency's proposal to adopt environmental performance label requirements for 2010 and subsequent model years conflicts with California's requirement for environmental performance labeling on all 2009 model year vehicles manufactured on or after January 1, 2009. California also allows manufacturers to use environmental performance labels on all 2009 model year vehicles in lieu of the smog index label. Revisions to make the Agency's regulations consistent with California's are recommended. [1]

Response: By statute, the content of Vermont's environmental performance label is required to be consistent with California's environmental performance label. *See* 10 V.S.A. §579(b). With respect to timing, however, Vermont law provides that the Agency "shall establish, by rule, a vehicle emissions labeling program for new motor vehicles sold or leased in the state with a model year of 2010 or later." *See* 10 V.S.A. §579(b). Consequently, the Agency proposed to require environmental performance labels for new motor vehicles beginning with the 2010 model year. Nevertheless, in response to this comment, the Agency has decided to give manufactures the option of using environmental performance labels in lieu of smog index labels on 2009 model year vehicles. However, the Agency is not requiring environmental performance labels until the 2010 model year. Accordingly, the Agency is proposing to revise the proposed amendments to section 5-1103(a)(2) of the Air Pollution Control Regulations to read as follows:

Response 6), continued:

the emission control label requirements, the smog index label or the environmental performance label requirements for 2002 through 2009 model-year vehicles, and the environmental performance label requirements for 2010 and subsequent model year vehicles in accordance with Title 13, California Code of Regulations Section 1965. . . .

7) Comment: The Agency should revise section 5-1103 of the proposed regulations to include the statutory exception for dealer trades set forth in 10 V.S.A. §579(d). The Agency should also amend any other portions of the regulations, including Appendix F, as may be necessary to ensure the proposed regulations are consistent with this statutory exemption. [2]

Response: By way of background, 10 VSA §579(d) provides:

On or after the effective date of the rules adopted under subsection (a) of this section, no new motor vehicle shall be sold or leased in the state unless a vehicle emissions label that meets the requirements of this section and the rules adopted thereunder is affixed to the vehicle except in the case of a trade of a new motor vehicle by a Vermont dealer, as that term is defined in 23 V.S.A. § 4(8), with a dealer from another state that does not have a similar labeling law, provided that the motor vehicle involved in the trade is sold within 30 days of the trade.

(Emphasis added.) In response to this comment, the Agency has decided to revise the proposed amendments by adding the phrase “except as otherwise provided by 10 V.S.A. § 579(d)” to the end of section 5-1103(a)(2) of the Air Pollution Control Regulations. Because the exemption for dealer trades contained in 10 V.S.A. §579(d) applies only to vehicle emission labeling requirements, the Agency does not believe it is necessary to amend any other portions of the regulations to ensure consistency with this statutory exemption.