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ENVIRONMENTAL RESOURCES AND  
ENERGY COMMITTEE  
CHAIRMAN

October 5, 2021

The Honorable Patrick McDonnell  
Pennsylvania Department of Environmental Protection  
Rachel Carson State Office Building  
400 Market Street  
Harrisburg, PA 17101

Dear Secretary McDonnell,

It has come to my attention that the Department may be interpreting a Pennsylvania regulation regarding heavy-duty diesel emissions for larger vehicles to mean that the Commonwealth has now adopted costly warranty provisions recently put in to place by the California Air Resources Board (CARB). If this is indeed the case, it seems unfathomable that you will potentially be asking Pennsylvanians to pay thousands of dollars more to purchase, register, or title new trucks in Pennsylvania just because California adopted a warranty provision which does nothing to protect the environment.

In Subchapter E of Chapter 125, Title 25, of the Pennsylvania Code, Pennsylvania has adopted and incorporated by reference certain regulatory provisions from California. Further, the regulation requires that certain vehicles may not be sold in Pennsylvania if they have not received a CARB Executive Order noting the vehicle's compliance with California law and regulation. Setting aside the question of whether there is any wisdom in adopting any provisions of California's regulations, which I would strongly disagree with, if the Department interprets this regulation to require that our Commonwealth has automatically adopted any of California's amendments to its regulation, this raises serious constitutional concerns regarding delegation of our authority.

As you may be aware, in a significant decision reached by our state Supreme Court in the *Protz* case, a delegation of legislative authority to the American Medical Association was found to be unconstitutional. Again, if the Department is interpreting our regulation in question to be a continuing adoption by Pennsylvania of that section of California's code, including any changes which may be made to the section, instead of merely California's regulation as it stood at the time when our regulation became effective, this would fall squarely under the realm of the *Protz* case and the Pennsylvania regulation in question would be blatantly unconstitutional.

Members of the General Assembly have begun to hear from constituents who will be negatively impacted if this warranty provision goes into place. The primary consequence if this provision goes into effect in Pennsylvania seems to be that many individuals wishing to purchase a new truck will leave Pennsylvania to do so in one of our neighboring states without this warranty requirement in place.

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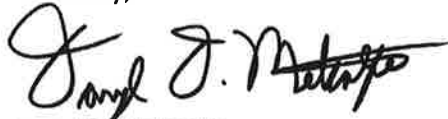
To that end, other states which have generally adopted CARB regulations have been re-considering their participation regarding this warranty provision, such as Maine, which recently stated that they would not be adopting it.

To clarify this issue, I have the following questions of the Department:

- Will CARB compliance (including California's increased warranty provisions) be required for heavy-duty trucks purchased in Pennsylvania starting in 2022?
- Does the Department interpret the Pennsylvania regulation cited above adopting sections of California's regulation to be a continuing adoption including any changes which California may make to its regulation, or does the Department consider Pennsylvania's regulation to be an adoption of California's regulation as it read on the date when our regulation became effective?
- If the Department considers it to be a continuing adoption, how does this square with the *Protz* ruling which would seem to consider such a delegation of authority to be unconstitutional?
- Did the Department consider a waiver of this warranty provision such as the one that Maine has adopted?
- How will this increased warranty provision benefit Pennsylvania?

I am requesting that you provide written responses to these above questions by no later than Thursday, October 21<sup>st</sup>. The House Environmental Resources and Energy Committee plans to examine this issue and the committee may take official action in the near future. It is unacceptable for Pennsylvania to lose out on economic activity, which the Commonwealth clearly will if this provision goes into effect, for absolutely no resulting environmental benefit.

Sincerely,



Daryl D. Metcalfe  
Chairman, Environmental Resources & Energy Committee

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