

APPENDIX 3

DEC On-board Diagnostic Public Hearings

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
HEARING NOTICE

Notice is hereby given that the New York State Department of Environmental Conservation (Department), will hold legislative public hearings on the following proposed rules pursuant to Environmental Conservation Law (ECL) Sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0301, 19-0303, 19-0305, and 71-2103:

Amendments to 6 NYCRR Subpart 217-1, Motor Vehicle Enhanced Inspection and Maintenance Program Requirements, Subpart 217-3, Vehicles Propelled by Diesel Engines, Subpart 217-4, Inspection and Maintenance Program Audits, and Subpart 217-5, Heavy Duty Inspection and Maintenance Program. Subpart 217-2 is being repealed. Promulgation of this rule will maintain emission standards identical to California's standards for light, medium and heavy-duty vehicles, further reducing mobile source emissions of volatile organic compounds, nitrogen oxides, carbon monoxide, benzene and formaldehyde.

The hearings will be held as follows:

DATE: Tuesday, APRIL 2, 2002 TIME: 1 P.M.
PLACE: NYSDEC, 625 Broadway, Public Assembly Room 129B, Albany NY 12233

DATE: Thursday, APRIL 4, 2002 TIME: 1 P.M.
PLACE: NYSDEC Annex, Region 2, 11 - 15 47th Ave., Hearing Room 108, Long Island City NY 11101

DATE: Tuesday, APRIL 9, 2002 TIME: 1 P.M.
PLACE: Onondaga Community College, Applied Technology Center, Room 209, 4915 Onondaga Road, Syracuse NY 13215

DATE: Thursday, APRIL 11, 2002 TIME: 1 P.M.
PLACE: Mahoney State Office Building, 65 Court Street, Hearing Room Part 1, Buffalo NY 14203

The hearings are scheduled in places that are reasonably accessible to persons with impaired mobility. The Department will provide interpreter services for deaf persons at no charge. Written requests for interpreter services are required and should be submitted by March 22, 2002, to Arlene Schmidt, NYSDEC, 625 Broadway, Albany NY 12233-3250, 518 402-8465, afschmid@gw.dec.state.ny.us.

Pursuant to Part 617 of the implementing regulations for the State Environmental Quality Review Act, the Department has prepared a Negative Declaration stating that the proposed actions will not have a significant effect on the environment.

The Department invites all persons, organizations, corporations, and government agencies that may be affected by the proposed revisions to attend the hearings. At each hearing, persons who wish to make a statement will be invited to speak. It is requested that oral statements also be submitted in writing. The Department will give equal weight to written and oral statements, and since a cumulative record will be compiled it is not necessary for interested parties to attend each hearing.

Information, may be obtained from Guy Bobersky, P.E., NYSDEC Division of Air Resources, 625 Broadway, Albany NY 12233-3255, telephone, 518 402-8401; email, gtbobers@gw.dec.state.ny.us. Written statements may be submitted to the Department until 5 p.m., April 18, 2002.

The proposed regulation may be obtained from any of the following Department offices:

REGION 1, Building #40, State University of New York, Stony Brook, NY 11790, Attention: Ajay Shah

REGION 2, Hunters Point Plaza, 47-40 21st Street, Long Island City, NY 11101, Attention: Amar Nagi

REGION 3, 21 South Putt Corners Road, New Paltz, NY 12561, Attention: Robert Stanton

REGION 4, 1150 North Westcott Rd., Schenectady, NY 12306, Attention: Rick Leone

REGION 5, Hudson Street Extension, Box 220, Warrensburg, NY 12885, Attention: Michael Stawarz

REGION 6, Watertown State Office Bldg., 317 Washington St., Watertown, NY 13601, Attention: Thomas Morgan

REGION 7, 615 Erie Boulevard West, Syracuse, NY 13204-2400, Attention: Chuck Chernoff

REGION 8, 6274 East Avon-Lima Road, Avon, NY 14414, Attention: Thomas Marriott

REGION 9, 270 Michigan Ave., Buffalo, NY 14202, Attention: Larry Sitzman

City of New York and the State Education Department, including those individuals who live or work in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 1 per square mile or less.

2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS; AND PROFESSIONAL SERVICES:

The proposed amendment will not impose any additional reporting or recordkeeping requirement on regulated parties located in rural areas. Prospective school employees and applicants for teaching certification may have to file applications for clearances, and no additional applications will have to be filed as a result of the proposed changes. In fact, the clarification is less detailed for individuals who have been fingerprinted previously by the City School District of the City of New York and meet conditions of the proposed amendment for not having to be fingerprinted again.

The proposed amendment sets forth requirements and procedures for exchange of criminal history records between the State Education Department and City School District of the City of New York for statutorily prescribed individuals, some of whom may live or work in rural areas. It clarifies the appeal procedures for prospective school employees denied clearance for employment, some of whom may live or work in rural areas. The proposed amendment implements Chapter 380 of the Laws of 2001, which authorizes the exchange of criminal history records of certain individuals upon their authorization, between the State Education Department and the City School District of the City of New York. Such individuals who have been fingerprinted for employment with and/or licensure by City School District of the City of New York or for certification or clearance for employment by the State Education Department, will not have to be re-fingerprinted.

The amendment also establishes reasonable conditions that must be satisfied for the Department to utilize the criminal history record maintained by the City School District of the City of New York for purposes of clearance for certification and employment.

The amendment clarifies the intent of the regulation concerning what constitutes the record on an appeal of a denial of clearance for employment. It clarifies that only written materials shall be part of the record on appeal.

The proposed amendment will not require regulated parties in rural areas to acquire additional professional services.

3. COSTS:

The proposed amendment will not impose a cost on school districts, CES, and charter schools located in rural areas. In addition, the amendment does not impose any additional costs on prospective school employees or applicants for teaching certification who live or work in rural areas. In fact, in accordance with Chapter 380 of the Laws of 2001, it will allow certain individuals, who have been fingerprinted for employment with and/or licensure by the City School District of the City of New York or for certification or clearance for employment by the State Education Department, to avoid the \$74 cost for the fees charged by DCJS and the FBI for processing a new criminal history information request.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment establishes requirements and procedures for exchange of criminal history records between the State Education Department and the City School District of the City of New York for statutorily prescribed individuals, in accordance with Chapter 380 of the Laws of 2001. It also clarifies both the scope of the State Education Department's criminal history record check and appeal procedures for prospective school employees denied clearance for employment. An individual's location in a rural area has no bearing on the requirements applicable to the sharing of information, upon authorization by that individual, between the State Education Department and the City School District of the City of New York, or the due process procedures afforded that individual, or the scope of the Department's criminal history check. Because of the nature of the subject matter of the proposed amendment, it would be inappropriate to impose different standards for entities or individuals located in rural areas.

5. RURAL AREA PARTICIPATION:

Comments on the proposed amendment were solicited from the Department's Rural Advisory Committee, whose membership includes, among others, representatives of school districts, BOCES, business interests, and government entities located in rural areas. In addition, comments on the proposed amendment were solicited from the State Professional Standards Board for Teaching, an advisory board to the Commissioner of Education and the Board of Regents on matters pertaining to teacher certification, and certification and practice. This board includes members who live and/or work in rural areas.

Job Impact Statement

The purpose of the proposed amendment is to set forth requirements and procedures for the exchange of criminal history records between the State Education Department and the City School District of the City of New York for statutorily prescribed individuals, and to clarify both appeal procedures for prospective school employees denied clearance for employment and the scope of the State Education Department's criminal history record check. Specifically, the proposed amendment implements Chapter 380 of the Laws of 2001, which authorizes the exchange of criminal history records of certain individuals upon their authorization, between the State Education Department and the City School District of the City of New York. Such individuals, who have been fingerprinted for employment with and/or licensure by the City School District of the City of New York or for certification or clearance for employment by the State Education Department, will not have to be re-fingerprinted. In addition, the proposed amendment clarifies the intent of the regulation relating the scope of the Department's criminal history record check and the record upon which the denial of clearance for employment is decided. Because it is evident from the nature of the proposed amendment that it will not have a substantial adverse impact on jobs and employment opportunities, no further steps were needed to ascertain these facts and none were taken. Accordingly, a job impact statement was not required, and one was not prepared.

Department of Environmental Conservation

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Motor Vehicle Emissions

I.D. No. ENV-08-02-00001-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed action: Addition of Subparts 217-1, 217-3—217-5 and repeal of Subpart 217-2 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0107, 19-0301, 19-0303, 19-0305, 19-0320, 71-2103 and 71-2105

Subject: Motor vehicle emissions.

Purpose: To protect the health of residents of and visitors to New York State.

Public hearing(s) will be held at: 1:00 p.m. on April 2, 2002 at Department of Environmental Conservation, 625 Broadway, Public Assembly Rm., 129B, Albany, NY; 1:00 p.m. on April 4, 2002 at Department of Environmental Conservation, Annex, Region 2, 11 - 15th 47th Ave., Hearing Rm. 108, Long Island City, NY; 1:00 p.m. on April 9, 2002 at Onondaga Community College, Applied Technology Center, Rm. 209, Onondaga Rd., Syracuse, NY; and 1:00 p.m. on April 11, 2002 at Mahoney State Office Bldg., 65 Court St., Hearing Rm., Part 1, Buffalo, NY.

Accessibility: All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

Interpreter Service: Interpreter services will be made available to deaf persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

Substance of proposed rule: The Department of Environmental Conservation (Department) is amending existing Part 217. The Department adopted Enhanced Inspection and Maintenance regulations (6 NYCRR Part 217) in March 1996. Part 217 contains five subparts. Part 217-1, -2, and -4 will be modified to correct standards and to include updated onboard diagnostic (OBD) requirements that will apply throughout the state. Subpart 217-3 will be modified to include a prohibition for five minute idling for on-road heavy duty vehicles regardless of the specific fuel to power the vehicle. Subpart 217-5 will be revised to state the correct penalty as provided in the ECL Section 19-0320.

Subpart 217-1, Motor Vehicle Enhanced Inspection and Maintenance Program Requirements, sets forth exhaust emission standards and inspec-

tion procedures for all non-electric or non-diesel powered motor vehicles. This subpart will be modified to correct exhaust emission standards and include updated onboard diagnostic (OBD) requirements that will apply throughout the state.

Subpart 217-2, Motor Vehicle Inspection and Maintenance Program Requirements, contains outdated exhaust emission standards and inspection procedures and will be repealed.

Subpart 217-3, Vehicles Propelled by Diesel Engines, sets forth exhaust emission standards for diesel powered vehicles. The idling requirements that are in place for heavy duty diesel vehicles will now apply to non-diesel heavy duty vehicles. The new idling requirements will improve the air quality in New York State by decreasing emissions from these vehicles.

Subpart 217-4, Inspection and Maintenance Program Audits, sets forth standards for emission inspection equipment. Compliance with the equipment audit procedures and criteria that are set forth will be a necessity for operating an official emissions inspection station.

Subpart 217-5, Heavy Duty Inspection and Maintenance Program, sets forth exhaust emission standards and inspection procedures for diesel powered vehicles. The intent of the revision to Subpart 217-5 is to provide consistency between ECL Section 19-0320 and Section 217-5.7(c)(3). The statute provides for penalties for noncompliance that must be incorporated into the implementing regulation. The existing regulation contains a typographical error and is inconsistent with the statute. While the statutory provisions prevail, this error should be corrected in the regulation.

Text of proposed rule and any required statements and analyses may be obtained from: Guy Bobersky, Department of Environmental Conservation, 625 Broadway, Albany, NY 12233, (518) 402-4801, e-mail: gtbobers@gw.dec.state.ny.us

Data, views or arguments may be submitted to: Same as above.

Public comment will be received until: 5 days after the last scheduled public hearing.

Additional matter required by statute: Pursuant to art. 8 of the State Environmental Quality Review Act, a short environmental assessment form, a negative declaration and a coastal assessment form has been prepared and are on file. This rule must be approved by the environmental board.

Summary of Regulatory Impact Statement

The New York State Department of Environmental Conservation (DEC) is proposing to amend 6 NYCRR Part 217. The purposes of the rule changes are to revise the existing motor vehicle inspection program to reduce emissions of air contaminants from operating motor vehicles and reduce emissions from idling of non-diesel heavy duty vehicles.

By statutory authority of, and pursuant to, the Environmental Conservation Law (ECL), the Environmental Conservation Commissioner is responsible for protecting the air resources of New York State. The Commissioner is authorized to adopt rules and regulations to enforce the ECL. The Legislature bestowed on the DEC the power to formulate, adopt, promulgate, amend and repeal regulations for preventing, controlling or prohibiting air pollution.

The main purpose of enacting this program is to protect the health of New York State residents and its visitors. The revised inspection program, developed to reduce air pollution from mobile sources, will have a positive impact by decreasing vehicle emissions. The new idling requirements for non-diesel heavy duty vehicles will help reduce the emission of air pollution through the implementation of a five minute idling restriction when the vehicle is not in motion. These reductions in emissions will have a positive health impact on the population of New York.

Exposure to motor vehicle emissions has caused or has been associated with eye, throat and bronchial irritation, headaches, nausea and light-headedness. Deterioration in the health condition of those individuals with respiratory ailments may also occur. The primary compounds emitted from vehicle exhaust, and the secondary compounds that may form, can be detrimental to human health.

These amendments to Part 217 will further the objectives of the Federal Clean Air Act of 1990(CAAA) as the implementation of the federal onboard diagnostic test will efficiently and effectively ensure that vehicles meet CAAA requirements and by reducing the emissions which lead to air pollution from non-diesel heavy duty vehicles by limiting idling of such vehicles.

The onboard diagnostic inspection standards promulgated in Part 217 are those established by the USEPA. These standards are based upon federal regulations used to certify new vehicles for emissions. Emission testing of motor vehicles is mandated by the CAAA. The "no action" alternative is not available because failure to adopt these regulations will

leave the State open to sanctions and jeopardize the State's ability to receive highway funds.

There are no significant alternatives to amendments for non-diesel heavy duty vehicles. The "no action" alternative is not acceptable given that there are emissions from non-diesel fuel vehicles which may be harmful to human health and the environment as emissions from conventional diesel fueled vehicles. This proposal is pro-active and in the best interests of the general public.

Regulatory Flexibility Analysis

1. Effect of rule:

The New York State Department of Environmental Conservation (Department) has no precise figure of small businesses that may be affected by the repeal of Subpart 217-2 and the revisions to Subpart 217-1 and 217-4. Approximately 3,800 licensed New York Metropolitan Area (NYMA), and approximately 11,000 licensed Upstate New York (Upstate), emission inspection facilities will be affected by the rule. An additional 17,000 registered repair shops, 10,600 used car dealerships, as well as an unknown number of automotive parts stores and small businesses that own motor vehicles, will also be affected by this rule. The effect on local government from the rule will be no different from the other regulated parties.

Potentially, the proposed regulatory revisions to Subpart 217-3 and 217-5 will affect small businesses and local governments that own/operate non-diesel fueled heavy duty vehicles with a gross vehicle weight rating (GVWR) exceeding 8,500 pounds. The Subpart 217-3 revisions will restrict on-road, non-diesel fueled heavy duty vehicles such as gasoline and compressed natural gas (CNG) powered buses and trucks to a five minute maximum idle time when the vehicle is not in motion.

2. Compliance requirements:

The only additional reporting and recordkeeping requirements associated with the revisions to Subpart 217-1 and 217-4 relate to the Onboard Diagnostic II (OBD II) inspection reporting requirements. These include requirements above the existing annual safety and emission inspection reporting including the following items: malfunction indicator light status, retrieved diagnostic trouble codes, readiness monitor results, test result and reason for failure. The effect on local government from the rule will be no different from the other regulated parties.

The revisions to Subpart 217-3 and 217-5 affect on-road heavy duty vehicles, both diesel and non-diesel fuel vehicles, which will not be allowed to idle more than five consecutive minutes except as provided in the exception section of the regulation. There is no additional paperwork requirement associated with the proposed regulatory revisions. A person who owns, operates or leases a bus or truck powered by diesel or non-diesel fuel found in violation of the five minute idling requirement can be issued a summons and is subject to penalty.

3. Professional services:

The repeal of Subpart 217-2 and the revisions of Subpart 217-1 and 217-4 will allow existing test equipment to be used in the NYMA. That equipment was originally specified to have the OBD II inspection capability and its suppliers are required to make modifications to it at no cost to the owner. These suppliers will train the emission inspector in the OBD II inspection procedure. The OBD II test procedure is simple and does not entail extensive training. No other services are expected to allow the emission inspector to perform the OBD II inspection.

In the Upstate area, training will be needed in the OBD II inspection procedure, the operation of a Windows-based operating system and a dial up networking system. The OBD II test procedure is simple and does not entail extensive training. Many emission inspection facilities and emission inspectors are familiar with OBD II as a result of repairing these vehicles so the transition to an OBD II based emission inspection is not expected to be a problem.

The Department does not believe that affected small businesses will need the use of any other outside professional services to comply with the proposed rule. The effect on local government from the rule will be no different from the other regulated parties.

The revisions to Subpart 217-3 and 217-5 do not require the use of outside professional services to comply with these revisions.

4. Compliance costs:

The revisions of Subpart 217-1 and 217-4 allow, in the NYMA, that existing equipment can be used and no additional capital or annual costs are expected to be incurred by the emission inspection facility. The OBD II inspection component is primarily software based and software is updated annually at no cost. The OBD II inspection will reduce the current overall emission inspection time for these vehicles which will reduce the emission inspection facilities' overall inspection costs.

In the Upstate area, OBD II inspection equipment capital cost is expected to be incurred. Estimates of this cost depend on the type of equipment purchased. The expected capital cost for a paper-based inspection system, ranges in cost from about \$250 - \$1,000, using a hand-held aftermarket scanner. The expected capital cost for an OBD II inspection system using a Windows-based platform, ranges from about \$1,000 - \$2,000, for a personal computer and printer. The expected capital cost for a networked, OBD II inspection system using a Windows-based platform and dial-up networking for data transmission, ranges from about \$4,000 - \$5,000, for a personal computer, printer and modem. The OBD II inspection component is primarily software based and software will be updated annually at no cost.

Potential suppliers to an Upstate program have indicated that the OBD II inspection equipment could be provided at no capital cost to the emission inspection facility if a competitively bid program management contract is awarded that both integrates the safety with the emission inspection and automates collection and reporting of the inspection data to a central database. Funding would be derived from the inspection fee. Equipment and software would be updated at no cost to the emission inspection facility.

The U.S. Environmental Protection Agency (EPA) estimates that the average repair costs to bring vehicles failing OBD II inspections into compliance was \$252 for light-duty vehicles and \$284 for light-duty trucks. These costs were based upon actual repair costs gathered from existing I/M programs and additional work conducted by the EPA in Ann Arbor, Michigan, as reported in the EPA's report, Evaluation of On Board Diagnostics for Use in Detecting Malfunctioning and High Emitting Vehicles, Document EPA 420-R-00-013, dated August 2000. Many repair facilities are familiar with OBD II as a result of repairing these vehicles so their cost is expected to be negligible. The effect on local government from the rule will be no different from the other regulated parties.

There will be no costs expected to be incurred by owners/operators of heavy duty vehicles as a result of the regulatory revisions to Subpart 217-3 and 217-5.

i. Economic and technological feasibility:

For the revisions of Subpart 217-1 and 217-4, in the NYMA, as the inspection facilities are using the current emission inspection equipment, the feasibility of compliance is expected to be high as the OBD II inspection simplifies inspection procedures.

In the Upstate area, the OBD II inspection will require automotive electronics knowledge that differs from the current inspection procedure. Consequently, it is expected that full compliance will be attained over time as emission inspectors gain competence in the new procedure. The OBD II test procedure is simple and will not entail extensive training, consequently, full compliance with the test procedure is expected within a short period of time.

Depending on the OBD II inspection system chosen, costs may affect the emission inspection facilities' ability to continue providing the service to customers. It is difficult to assess the degree of impact that costs will have on facilities. Previously, it was expected that NYMA emission inspection facility participation would decline at the onset of the high enhanced emission inspection program that entailed a capital investment of about \$40,000. Instead, emission inspection facility participation increased when the program started. The Upstate program will not approach the level of investment of the NYMA, consequently, a similar trend may happen when the OBD II inspection program is started there. The effect on local government from the rule will be no different from the other regulated parties.

Those owners/operators found in violation of the Subpart 217-3 idling provision are subject to penalties and fines. However, there should be no economic burden to owners/operators that comply with the regulatory provision. From a technical feasibility standpoint, owners/operators of non-diesel fuel heavy duty vehicles should be able to comply with the five minute idling restriction without any technical difficulties.

i. Minimizing adverse impact:

The rule is a direct result of a federal requirement found in the Clean Air Act. Other than seeking to minimize the implementation cost of the OBD II inspection system by optimizing system arrangement to meet the federal requirements, no further means can be designed to minimize economic impacts. The effect on local government from the rule will be no different from the other regulated parties.

Subpart 217-3 will be revised to exempt heavy duty vehicles used exclusively for agricultural purposes and currently provides for several additional exemptions.

1. Small business and local government participation:

The Department is extending outreach to the emission inspection industry to explain the OBD II inspection and the revisions to Subpart 217-1, 217-2 and 217-4. Reaction has been positive with industry seemingly in favor of the OBD II inspection procedure and its spin-off benefits. The effect on local government from the rule will be no different from the other regulated parties.

Public hearings and a public comment period will be held once the regulatory revisions to Subpart 217-3 and 217-5 are published.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The proposed rules apply to the entire State. The repeal of Subpart 217-2 and the revisions to Subpart 217-1 and 217-4 apply to light duty motor vehicles registered in New York State. The modifications to Subpart 217-3 and 217-5 apply to heavy duty motor vehicles operated in New York State.

While rural areas are located throughout New York State, neither rule targets rural areas specifically.

2. Reporting, recordkeeping and other compliance requirements; and professional services:

The only additional reporting and recordkeeping requirements associated with the revisions to Subpart 217-1 and 217-4 relate to the Onboard Diagnostic II (OBD II) inspection reporting requirements. These include requirements above the existing annual safety and emission inspection reporting including the following items: malfunction indicator light status, retrieved diagnostic trouble codes, readiness monitor results, test result and reason for failure.

Many emission inspection facilities and emission inspectors are familiar with OBD II as a result of repairing these vehicles so the transition to an OBD II based emission inspection is not expected to be a problem. The OBD II test procedure is simple and does not entail extensive training. Existing test equipment will be used in the New York Metropolitan Area (NYMA) and equipment suppliers will train the emission inspector in the OBD II inspection procedure. In the Upstate New York (Upstate) area, training will be needed in the OBD II inspection procedure, the operation of a Windows-based operating system and a dial up networking system.

There are no reporting, recordkeeping and other compliance requirements associated with the revisions to Subpart 217-3 or 217-5. Owners/operators of heavy duty motor vehicles are not required to obtain any professional services to comply with the proposed regulatory revisions.

3. Costs:

Existing test equipment will be used in the NYMA so no additional cost associated with the OBD II inspection are expected. In the Upstate area, OBD II inspection equipment capital cost is expected to be incurred. Estimates of this cost depend on the type of equipment purchased. The expected capital cost for a paper-based inspection system, ranges in cost from about \$250 - \$1,000, using a hand-held aftermarket scanner. The expected capital cost for an OBD II inspection system using a Windows-based platform, ranges from about \$1,000 - \$2,000, for a personal computer and printer. The expected capital cost for a networked, OBD II inspection system using a Windows-based platform and dial-up networking for data transmission, ranges from about \$4,000 - \$5,000, for a personal computer, printer and modem. The OBD II inspection component is primarily software based and software will be updated annually at no cost.

Potential suppliers to an Upstate program have indicated that the OBD II inspection equipment could be provided at no capital cost to the emission inspection facility if a competitively bid program management contract is awarded that both integrates the safety with the emission inspection and automates collection and reporting of the inspection data to a central database. Funding would be derived from the inspection fee. Equipment and software would be updated at no cost to the emission inspection facility.

There are no costs expected to be incurred by owners/operators of heavy duty motor vehicles resulting from the regulatory revisions of Subpart 217-3 and 217-5.

4. Minimizing adverse impact:

The repeal of Subpart 217-2 and the revisions to Subpart 217-1 and 217-4 are a direct result of a federal requirement found in the Clean Air Act. In the New York Metropolitan Area, integrating the OBD II inspection into the existing emission inspection equipment will minimize adverse impacts. For the Upstate New York Area, the Department will endeavor to specify an affordable test tool that meets the federal test requirements to minimize adverse impacts to the emission inspection facilities.

Subpart 217-3 will be revised to exempt heavy duty vehicles used exclusively for agricultural purposes. The current Subpart 217-5 exempts those vehicles used exclusively for agricultural purposes and the proposed revision to Subpart 217-5 does not change that exemption.

5. Rural area participation:

The Department is extending outreach to the emission inspection industry throughout the Upstate area to explain the OBD II inspection. Reaction has been positive with industry seeming in favor of the OBD II inspection procedure and its spin-off benefits.

Certain counties in the Upstate area, including Allegheny, Chenango, Delaware, Hamilton, Lewis, Orleans, Schuyler, Tompkins and Yates, have a low ratio of vehicles subject to the OBD II inspection to the number of emission inspection stations. These counties may see a reduction in inspection facilities if the test equipment purchase cost is considered greater than possible returns from repair work.

The Department plans on holding public hearings at various locations throughout New York State to explain the revisions to Subpart 217-3 and 217-5. Some of these locations may be convenient for persons from rural areas to participate. Additionally, there will be a public comment period in which interested parties who are unable to attend a public hearing can submit written comments.

Job Impact Statement

1. Nature of impact:

The proposed repealing of Subpart 217-2 and revisions to Subpart 217-1 and 217-4 will affect the two Enhanced Motor Vehicle Inspection/Maintenance program areas differently.

For the New York Metropolitan Area, or the Downstate Area, the integration of Onboard Diagnostic II inspections into the existing emission testing program will reduce the effort to be expended by emission inspectors and reduce their burden to perform an emission test on model year 1996 and newer vehicles. The existing emission test equipment was designed to perform OBD inspections and will be used to perform the inspection so additional capital outlay will be minimal or nonexistent. As little or no incremental cost is expected to perform OBD inspections, this should result in the emission inspector population to maintain its current level. The OBD test should result in increased repairs to malfunctioning vehicles, due to its preventative maintenance aspect that was not available from prior emission tests, consequently, existing opportunities for work may increase.

For the Upstate New York Area, the implementation of Onboard Diagnostic II inspections into the existing emission testing program will result in increased effort to be expended by emission inspectors as there is currently only a Malfunction Indicator Light check and gas cap test in place. Even though the Onboard Diagnostic II inspection is both simple and of short duration, it represents additional work not currently performed. There is no existing emission test equipment in the Upstate New York Area because only a paper based emission inspection consisting of a Malfunction Indicator Light check and gas cap test are in place, consequently, additional capital outlay will be needed to perform the Onboard Diagnostic II inspection. This may deter existing inspectors from maintaining their registration as an inspector. The OBD test should result in increased repairs to malfunctioning vehicles, due to its preventative maintenance aspect that was not available from prior emission tests, consequently, existing opportunities for work may increase.

The proposed Subpart 217-3 and 217-5 revisions will not impact job and employment opportunities.

2. Categories and numbers affected:

For the revisions to Subpart 217-1 and 217-4, there are approximately 3,800 emission inspection facilities in the New York Metropolitan Area that employ about 60,000 emission inspectors. There are approximately 11,000 emission inspection facilities in the Upstate New York Area that employ about 45,000 emission inspectors.

The revision to Subpart 217-3 will prohibit a larger number and broader range of non-diesel fuel heavy duty vehicles from idling for more than five minutes. These requirements may negatively affect the busing and trucking industries for those non-diesel fueled vehicle operators that allow their vehicles to idle more than five minutes. However, the positive impact is that the vehicle owner/operator may reap the benefit of an increase in fuel economy as a result of limiting the idling time.

3. Regions of adverse impact:

For the repeal of Subpart 217-2 and the revisions to Subpart 217-1 and 217-4, there is no adverse impact expected in the New York Metropolitan Area. Certain counties in the Upstate New York Area may see a reduction in inspection facilities if the test equipment purchase cost is considered greater than possible returns from repair work. These counties are those with a small number of vehicles subject to inspection per inspection facility. These counties could include Allegheny, Chenango, Delaware, Hamilton, Lewis, Orleans, Schuyler, Tompkins and Yates. As the vehicle fleet is further penetrated by vehicles subject to inspection; i.e., those that

are MY 1996 or newer, this issue will subside. Fleet penetration by vehicles subject to the OBD II inspection is currently about one-third at present with full penetration expected around the year 2010.

For the revisions to Subpart 217-3 and 217-5, the impact is statewide. 4. Minimizing adverse impact:

For the revisions to Subpart 217-1 and 217-4, in the New York Metropolitan Area, use of the existing emission inspection equipment will minimize adverse impacts by minimizing additional capital outlay. The use of existing equipment that is familiar to the operator will minimize the expense to change as the inspection is added to the program. For the Upstate New York Area, aside from fleet penetration, there is little that can minimize adverse impacts to the emission inspection facilities as new equipment must be purchased in order to perform the inspection. The Department will endeavor to specify an affordable test tool that meets federal test requirements.

Subpart 217-3 will include a section describing exceptions to the five minute idling prohibition which will minimize to some degree any adverse impact.

5. Self-employment opportunities:

NA

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Acid Deposition Reduction Budget Trading Programs

I.D. No. ENV-08-02-00025-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed action: Amendment of Part 200 and addition of Parts 237 and 238 to Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 1-011, 3-0301, 19-0103, 19-0105, 19-0301, 19-0303, 19-0305 and 19-0311

Subject: Acid deposition reduction budget trading programs.

Purpose: To reduce emissions of NO_x and SO₂ from fossil fuel fired electric generating sources statewide to protect the sensitive ecosystems in the northeast from the damaging effects of acid rain.

Public hearing(s) will be held at: 1:00 p.m. on April 2, 2002 at Department of Environmental Conservation Annex, Region 2, 11 - 15 47th Av Hearing Rm. 108, Long Island City, NY; 1:00 p.m. on April 4, 2002 Mahoney State Office Bldg., 65 Court St., Hearing Rm. Part 1, Buffalo NY; and 1:00 p.m. on April 5, 2002 at Department of Environmental Conservation, 625 Broadway, Public Assembly Rms. 129A and 129 Albany, NY.

Accessibility: All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

Interpreter Service: Interpreter services will be made available to deaf persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

Substance of proposed rule: 6 NYCRR Part 237, Acid Deposition Reduction NO_x Budget Trading Program

6 NYCRR Part 238, Acid Deposition Reduction SO₂ Budget Trading Program

6 NYCRR Part 200, General Provisions

Part 237 establishes the Acid Deposition Reduction (ADR) NO_x Budget Trading Program and Part 238 establishes the ADR SO₂ Budget Trading Program. These programs are designed to reduce acid deposition in New York State by limiting emissions of NO_x during the non-ozone season and SO₂ year-round from fossil-fuel fired electricity generating units.

Parts 237 and 238 establish emission budgets for NO_x and SO₂, respectively. Parts 237 and 238 establish trading programs by creating an allocating allowances that are limited authorizations to emit up to one ton of NO_x or SO₂ in the respective control periods or any control period thereafter. Affected units are required to hold for compliance deduction, the respective allowance transfer deadlines, the tonnage equivalent to total emissions at the unit for the control period immediately preceding such deadline. The New York State Department of Environmental Conservation (Department) authorizes the U.S. Environmental Protection Agency (EPA) Administrator to assist the Department in implementing both the ADR NO_x Budget Trading Program and the ADR SO₂ Budget Trading Program by performing the functions set forth for the Administrator in Parts 237 and 238.

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ursuant to Sections 1-0101; 3-0301; 19-0103; 19-0105; 19-0107; 19-0301; 19-0302; 19-0303; 19-0305, 19-0311; 19-0319; and 70-0109 the NYS Department of Environmental Conservation gives notice of a the following:

Notice of Adoption of Rule

This rule was adopted to introduce consistency with federal statute. The U.S. Environmental Protection Agency (EPA) redesignated the Metropolitan carbon monoxide nonattainment area, consisting of Westchester, Bronx, New York, Richmond, Kings, Queens and Nassau Counties, to attainment. Subdivision 200.1(ax) defines the area as being nonattainment. The Department has removed the definition of the Metropolitan carbon monoxide nonattainment area from subdivision 200.1(ax).

Contact: Steven Botsford, P. E., NYSDEC Division of Air Resources, 625 Broadway, Albany NY 12233-3251, phone: (518) 402-8396, email srbotsfo@gw.dec.state.ny.us

Adoption of Amendments to Air Regulations

Pursuant to Sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0107, 19-0301, 19-0303, 19-0305, 19-0320, 71-2103, and 71-2105 the NYS Department of Environmental Conservation gives notice of a the following:

NOTICE OF ADOPTION OF RULE: 6 NYCRR Part 217, Motor Vehicle Emissions on September 30, 2002, to be effective October 30, 2002.

The amendments to Part 217 apply statewide. Onboard diagnostic inspection standards and procedures will be modified to meet federal standards, exhaust emission standards and test equipment audit procedures will be updated, and outdated exhaust emission standards and inspection procedures for non-electric and non-diesel motor vehicles are repealed. The amendments subject all heavy duty vehicles to idling restrictions and correct penalties for noncompliance with the heavy duty exhaust emission standards and inspection procedures.

Contact: James Clyne, NYSDEC Division of Air Resources, 625 Broadway, Albany NY 12233-3257, phone: (518) 402-8401, e-mail: jjclyne@gw.dec.state.ny.us

Adoption of Amendment to Air Regulations

Pursuant to Environmental Conservation Law, Sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0301 and 19-0305, the NYS Department of Environmental Conservation gives notice of the following:

NOTICE OF ADOPTION OF RULE on October 10, 2002, to be effective November 9, 2002. Notice is hereby given that the New York State Department of Environmental Conservation, has finalized amendments to 6 NYCRR Part 200, General Provisions, and has adopted Part 235, Consumer Products.

The adoption of this rule is intended to reduce Volatile Organic Compound (an ozone precursor) emissions from consumer products to attain the one-hour ozone standard. This rule applies to any person who sells, supplies, offers for sale, or manufactures consumer products on or after January 1, 2005 for use in the state of New York. Approximately 87 product categories are covered by the rule. Consumer products are used by household and institutional consumers including, but not limited to, cleaning compounds; personal care products; home, lawn and garden products; disinfectants; and automotive specialty products.

Contact: Dan Brinsko, P.E., NYSDEC Division of Air Resources, 625 Broadway, Albany NY 12233-3257, phone: (518) 402-8396, e-mail: dsbrinsko@gw.dec.state.ny.us

ASSESSMENT OF PUBLIC COMMENTS SUMMARY

Subparts 217-1, 217-2, 217-3, 217-4, and 217-5

Subpart 217-1, Motor Vehicle Enhanced Inspection and Maintenance Program Requirements, sets forth the exhaust emission standards and inspection procedures for all non-electric and non-diesel powered vehicles for New York's motor vehicle Inspection/Maintenance (I/M) programs. Revisions to Subpart 217-1 will require on-board diagnostic (OBD II) testing for model year 1996 and newer vehicles statewide.

Subpart 217-2 contains I/M emission standards and procedures related to New York's previous I/M program ("NY 91") that are no longer applicable, and will be repealed.

Subpart 217-3, previously named Vehicles Propelled by Diesel Engines, sets forth the idling restrictions for diesel powered vehicles. The idling requirements currently in place for heavy duty diesel vehicles will now also apply to non-diesel heavy duty vehicles.

Subpart 217-4 sets forth the auditing standards for emission inspection equipment in the downstate I/M area. Revisions reflect current auditing procedures and those requirements necessary for operating an official emissions inspection station.

Subpart 217-5 will be revised to provide consistency between ECL Section 19-0320 and Section 217-5.7(c)(3) of DEC's regulation. The existing regulation contains a typographic error concerning penalties for noncompliance that is inconsistent with the statute. The error is corrected within regulation.

The entire rule making proposal was published in the February 20, 2002 editions of the New York State Register and Environmental Notice Bulletin. Public hearings were held in Albany on April 2, 2002, Long Island City on April 4, 2002, Syracuse on April 9, 2002, and Buffalo on April 11, 2002. The public comment period officially closed on April 18, 2002. Six people made statements at the public hearings, and seven written statements were received by the Department.

Summary of Statements

Subpart 217-1 OBD I/M Testing

Statements were generally supportive of the Department of Environmental Conservation's (DEC) proposal to incorporate on-board diagnostic testing into New York's I/M programs. Concerns were raised regarding the following: the cost of OBD testing equipment, whether inspection fees will be increased or capped, the perceived burden of purchasing multiple scan tools to repair OBD-failed vehicles, the need to educate the public of new OBD requirements, the need to provide OBD training to inspectors and repair technicians, the uncertainty of New York's OBD implementation schedule, and cautions that New York should not repeat perceived problems encountered with the existing downstate I/M program when finalizing the design of the upstate program. The Department

acknowledges the importance of these issues, and has offered responses where information is presently known.

Examples of some of the statements received and the Department's responses are noted below. Several statements reflect the repair industry's concern that OBD II testing has been delayed and that OBD testing may not be implemented. The Department notes that federal OBD guidance needed for implementation was delayed as the United States Environmental Protection Agency (EPA) evaluated the effectiveness of OBD. EPA also made multiple revisions to federal I/M regulation delaying the mandatory implementation of OBD testing. New York remains committed to OBD testing, and will implement I/M program modifications as soon as practical. The cost of OBD equipment in both the upstate and downstate I/M areas were raised at each of the hearings. New York has two I/M areas, which are impacted differently. Regarding the downstate program, New York is negotiating with three equipment vendors on the cost to complete software upgrades to incorporate OBD testing within existing "NYTEST" equipment. In the upstate area, which currently does not have comparable testing equipment, New York is finalizing the design for the 53-county upstate area. The cost of OBD equipment, in both I/M areas, is therefore unresolved at this time. Comments were received indicating the belief that New Yorkers are generally uninformed regarding upcoming OBD testing. DEC and the Department of Motor Vehicles (DMV) acknowledge the need of continued outreach programs. Insert fliers detailing OBD testing requirements will be inserted into registration renewal mailings prior to implementation. Fact sheets will be prepared by both Departments summarizing the OBD program and requirements for those vehicles failing the OBD test. A statewide media campaign is also planned. Independent repair stations believe that their small businesses are at a competitive disadvantage to dealers when repairing OBD vehicles. Limited access to technology including the ability to reprogram vehicles were cited. The Department notes that the EPA came to this same conclusion and in response has made regulatory reforms under the proposed "Service Information Rule." Original equipment manufacturers (OEM) will be required to make

available service, diagnostic, and training information including the ability to reprogram OBD vehicles. DEC also notes a website that contains references and links to OEM information.

Subpart 217-3 Heavy Duty Vehicle Idle Restrictions

Statements were generally supportive of the Department's proposed revisions to expand heavy duty diesel idling restrictions to now include heavy duty gasoline-powered vehicles. Statements received reflect concerns regarding the decline in heavy duty roadside enforcement in the upstate area resulting in diminished use of emissions testing equipment, the uncertainty in assigning weight classifications to heavy duty vehicles, the proposed duration of the idling restriction, and the impact heavy duty idling restriction may have on cold weather starting. In response to these statements, the Department provides a summary of roadside enforcement statistics for heavy duty diesel vehicles, clarifies Environmental Conservation Law (ECL) and DMV regulation related to vehicle weight rating, and offers technical information related to cold weather heavy duty diesel cold starts.

ASSESSMENT OF PUBLIC COMMENTS

Proposed Revisions to Subpart 217-1 (Requiring On-Board Diagnostic, OBD II, Testing Statewide) and Subpart 217-3 and 217-5 (Heavy Duty Idling Restriction)

Comment No.1:

On-board Diagnostic training and education need to be emphasized prior to implementing an OBD Inspection/Maintenance (I/M) program. Will OBD II diagnostic training be provided for service technicians? If so, will incentives be offered for the needed training?

Response:

The New York State Departments of Environmental Conservation (DEC) and Motor Vehicles (DMV) agree that training of both inspectors and repair technicians are of critical importance to a successful motor vehicle inspection program. In practice, there are actually two separate training issues. The first is to ensure that inspectors are adequately trained in the procedures to complete the actual OBD-based I/M test, and the second entails training for repair technicians to effectively repair OBD II-based failures.

Training of inspectors to complete New York's OBD test procedure will be completed by the selected vendor and will likely cover the operation of the testing equipment, how to conduct an inspection, basic troubleshooting, and care and maintenance of equipment. It is anticipated that this training will be provided to all participating inspection stations at no cost.

DMV is currently offering an OBD II training course as component of its Automotive Technician Training Program (ATTP). A fee is charged for each component. The primary objective of the OBD course is to improve the technician's ability to diagnose and repair vehicles failing the OBD II emissions inspection. The course is currently being piloted across the state. For details on the OBD Training Module schedule, technicians can contact the ATTP instructor in their area (see www.attp.com) or contact DMV at (518) 473-8353 for the next available offering. During the Part 217 hearing process, DEC was made aware of additional training opportunities presently being developed for a coordinated, statewide curriculum at many of the New York State's community colleges. Information related to this training will be made available when finalized.

Repair station owners, managers, and repair technicians are urged to take advantage of these existing opportunities to keep pace with the developments within their industry. Financial incentives for inspectors are not presently available. Additional training opportunities, currently not considered, may become available with the completion of the upstate I/M program design.

Comment No.2:

New York needs to increase motorist public awareness concerning OBD emission inspections.

Response:

The Department acknowledges the need for greater public awareness, and anticipates several OBD II public outreach campaigns as OBD is rolled-out statewide. As with past I/M changes, the Department of Motor Vehicles will prepare insert fliers summarizing new OBD II requirements into the mailing of the registration renewals. Fact sheets

and brochures will be prepared by both Departments describing the actual test and summarizing the options for vehicles failing the OBD test. A statewide media campaign is being planned, but details are not yet available.

Comment No.3:

OBD II inspections represent a significant change over traditional tailpipe testing (for model year 1996 and newer vehicles), and therefore pose new challenges for the motoring public to understand.

Response:

The Department agrees with the comment. A greater understanding of OBD, by not only the motoring public but also inspectors and repair technicians, is needed since OBD will be technically and procedurally different from the existing "NYTEST" test in the 9-county New York City Metropolitan Area and the visual anti-tampering visual inspections being completed in the remaining 53 counties of New York State.

Under New York's existing I/M programs, vehicles receive annual inspections with the motorist knowing very little about their vehicle's emissions systems (unless there are driveability problems) prior to the actual test. In contrast, OBD is a functioning component of the vehicle's design. OBD II performs some type of diagnostic testing every time the vehicle is operated. OBD also has the added ability to alert the motorist of a potential emissions-related problem by the illumination of the Malfunction Indicator Light (MIL, or "Check Engine Soon").

OBD is not a tailpipe-based test, and emission analyzers are not employed in the pass/fail determinations. During an OBD II I/M test, data is transferred from the vehicle's computer to testing equipment via a vehicle data link

connector (DLC). OBD relies upon various monitors and sensors to determine when an emissions control component may not be working as designed. Whenever such conditions are encountered, the MIL is illuminated and diagnostic trouble codes (DTCs) are stored in memory. These codes aid in the diagnosis and repair of the vehicle. OBD does have technical complexities, not found in conventional tailpipe testing, such as “monitor readiness.”

Overall, OBD II testing is deemed superior to conventional tailpipe testing. As discussed in the responses concerning Comments Nos.1 and 2, inspector training and public information are needed for the successful implementation of this program.

Comment No.4:

How much will the upstate OBD equipment cost? Will the State ensure a sufficiently high failure rate to guarantee a fair return on investment when considering the cost of OBD II testing equipment?

Response:

The design of the upstate 53-county area, including the equipment specification, has not been finalized. DEC and DMV have initiated a Request for Information (RFI) process to solicit comments and suggestions from equipment vendors, I/M program managers, and data managers to assist in the design of the upstate program. The cost of equipment is therefore not known at this time. The upstate emissions inspection test fee will be evaluated based on the cost of the required OBD testing equipment, any contractor costs, the expected duration of the program, the number of upstate vehicles to be inspected, and the estimated number of participating stations.

The United States Environmental Protection Agency has estimated the current failure rate for all OBD-equipped vehicles (Model Year 1996 and newer) to range between 2 percent and 4 percent. This range has been confirmed both in other states' pilot studies and in actual I/M testing. DEC notes that this failure rate estimate is based on very new vehicles - currently no older than six years old. Over time, the OBD failure rate will increase, since as vehicles age their emissions systems degrade. For instance, recent data from high milage OBD-equipped vehicles (greater than 100,000 miles) in Oregon, indicate a failure rate of 11.2 percent, even though these are still relatively "new" vehicles. Unlike a tailpipe test, the OBD failure rate cannot be adjusted by increasing the stringency of emissions cut points (see Comment No.3 above). An estimated failure rate should not be used by any business to determine an equipment return on investment.

Comment No.5:

Are any additional costs associated with the downstate NYTEST equipment to include OBD II modifications?

Response:

Discussions regarding the cost of the downstate software update are ongoing between DEC, DMV, and the three NYTEST equipment vendors.

Comment No.6:

Will New York cap the upstate emissions inspection fee and prohibit stations from offering reduced or free

inspections?

Response:

The inspection fee for the upstate I/M area (Non-NYMA) is presently capped at \$14 for the combined safety/emissions inspection, but stations do have the ability to offer reduced or no cost inspections. There are no current plans to modify this requirement.

Comment No.7:

Will the emissions inspection fee be increased anywhere in the State? Will the upstate testing fee (53 counties) be the same as the downstate 9-county NYMA I/M area?

Response:

At the present time, NYS does not plan to increase inspection fees charged to motorists. Concerning the NYMA, NYS believes the shorter OBD test and diminished use of the dynamometer will save stations in labor and operating costs. The current combined safety/emissions of \$35, as set in regulation, is competitive when compared with surrounding states offering comparable services. The fee associated with the upstate program may change depending upon the capital and operating costs of the program design. Emission test fees for both of New York's I/M areas do not necessarily need to be equal.

Comment No.8:

There could be a noticeable decrease in the number of inspection stations due to the cost of OBD equipment.

Response:

This statement is speculative as the capital cost of equipment, fee structure, and other applicable upstate design features have not been determined. Ultimately, consideration to become or remain an inspection facility is a business decision that each service station owner will have to weigh.

Comment No.9:

Comments were received from several service station associations expressing their concern that New York should avoid repeating the same problems encountered with the downstate I/M program when designing and implementing the upstate I/M program. Specifically, the issues identified were the need for extended equipment warranties; poor service response time; and uncontrolled costs attributed to updating software, replacing equipment, and [repair] service agreements.

Response:

The issues raised do involve significant cost and design considerations. At the time of this responsiveness summary, the design for the Upstate I/M program has not been finalized. The Departments have sought the input of firms associated with emissions testing and data management through a Request for Information dated (RFI) April 29, 2002. The aforementioned issues will be considered in the design and implementation of the 53-county upstate I/M program.

Comment No.10:

On-board Diagnostic (OBD II) testing was supposed to start in 2001; then it was changed to 2002; and now proposed again for 2003. Why have there been delays, and will OBD testing really happen?

Response:

The existing downstate enhanced I/M program was intended to include OBD II testing by late summer of 2002. As noted earlier, the cost of the OBD II software upgrade is now being debated and discussions are continuing with the three NYTEST equipment vendors. OBD testing should begin this year in the downstate area.

New York expects the upstate low enhanced I/M program to start in 2003. The Departments are using a Request for Information (RFI) process to augment the design of the program.

The deferred start dates were caused by delays in the issuance of federal OBD II guidance to states and multiple revisions to the federal I/M regulation affecting start dates. The United States Environmental Protection Agency (EPA) carefully considered the implications of substituting OBD II testing in the place of traditional tailpipe testing. EPA monitored OBD II performance from those states opting into early implementation prior to establishing the mandatory implementation dates. EPA believes that issues encountered in other states (i.e., monitor readiness) were addressed within its guidance.

Comment No.11:

There is confusion over which vehicle weight is used for gasoline-powered light duty Inspection/Maintenance

(I/M) testing.

Response:

The weight used for testing is defined under the DMV Regulations, Section 79.1(c), as maximum gross weight (MGW). The MGW is the weight of a motor vehicle as shown on the vehicle's registration receipt, or in the case of a truck or trailer, the weight of the vehicle plus the maximum load the vehicle is registered to carry as shown on the vehicle's registration receipt. The MGW, not the designed carrying capacity of the vehicle, will be the weight that is used to determine the appropriate inspection of the vehicle.

Comment No.12:

Independent repair stations are at a competitive disadvantage regarding the repair of OBD II failures in comparison to the original equipment manufacturer's (OEM) authorized dealers. Independent shops do not have access to the same technology, including the ability to reprogram vehicles.

Response:

While the comment focuses on OBD II repairs, the issue is more universal reflecting automotive repairs in general. Whether a station is independently owned or a franchised dealer, owners must ensure proper training, facilities, and tools to allow for the proper diagnosis and repair of OBD II failures. This issue has an extensive legal and regulatory history. Section 208(c) of the federal Clean Air Act prohibits the withholding of OEM service information that is provided to franchise dealers. Pursuant to Section 202(5) of the Act, the United States Environmental Protection Agency promulgated regulation in 1995 ("Service Information Rule") that requires auto

manufacturers to release emissions-related service information to the aftermarket. Since this time, EPA has determined that repair service providers were still unable to receive the necessary information to perform emission-related repairs on OBD-equipped vehicles. EPA also concluded that technology enhancements now allow for more meaningful and timely electronic access to service information. As a result, EPA proposed regulatory changes last year, which are being finalized. Key elements of EPA's proposed regulations are as follows:

Make full text emission-related *service and training* information available via the world wide web. Aftermarket service providers will have realtime access to the same information available to OEM dealerships.

Provide equipment and tool companies with the information that allows them to develop equipment with vehicle reprogramming capabilities. With this provision, aftermarket service providers will be able to provide customers with reprogramming services which are currently provided primarily by dealerships.

Make enhanced diagnostic information available to the aftermarket scan tool manufacturers. With this provision, aftermarket service providers will have more advanced generic OBD diagnostic tools available.

Make manufacturer-specific diagnostic tools available for sale to interested parties. With this provision, aftermarket service providers specializing in particular manufacturers will have access to more specialized equipment.

Require manufacturers to provide any supplemental OBD technical information necessary to perform an

emission-related repair.

The Department also recognizes the work of the National Automotive Service Task Force (NASTF). This organization represents the cooperative effort among the automotive service industry, the equipment and tool industry, and automotive manufacturers to ensure that automotive service professionals have the information, training, and tools needed to properly diagnose and repair today's high tech vehicles. NASTF has compiled the "OE Service Information Matrix" which identifies what service information is directly available from each car manufacturer including contact phone numbers and web sites where available. This table can be found at www.iatn.net/nastf. The Department is aware that OEMs are actively developing electronic access to their service information in anticipation of EPA's regulations. There will be costs associated with obtaining this information.

Comment No.13:

Generic aftermarket scan tools are adequate for most applications, but there are repairs that require more detailed OEM information. The purchase of many scan tools to repair OBD II-related repairs may prove cost prohibitive for small businesses.

Response:

The Department recognizes this concern, and agrees that OEM-specific scan tools generally provide more detailed information for the applicable make of vehicle. As noted in Comment No.12 above, aftermarket generic scan tools will improve with proposed EPA regulation. Clearly, scan tools are needed to adequately diagnose and repair OBD II failures. Station owners and operators need to make informed business decisions concerning what percentage of

the fleet they intend to service. Due consideration should be taken in determining the make of vehicles requiring repairs and the capabilities of each prospective scan tool. For example, dealerships generally carry only the OEM scan tool(s) for the make of vehicles that they sell. This situation leaves a fair segment of the repair market for independents, but also creates unique tool demands. Total fleet coverage would probably entail a minimum of ten scan tools, while four of the “right” scan tools could provide coverage for over 80 percent of the vehicles. These numbers are benchmarks that will vary depending on the specific scan tools selected. Diagnostic equipment has, and will continue to be costly, but the reality is that scan tools are needed for repairing 1996 and newer vehicles regardless of Inspection/Maintenance requirements.

Comment No.14:

A repair association requests that New York state a guaranteed duration for the upstate OBD I/M program.

Response:

New York intends to specify a minimum number of years of operation. The Departments have not determined the duration at this time, as the design of the upstate program has not been finalized.

Proposed Revisions to Subpart 217-3 and 217-5 (Heavy Duty Idling Restriction)

Comment No.15:

The ALANYS (American Lung Association of New York State) supports the modification to the idling prohibition (proposed Subpart 217-3) with one exception. The ALANYS requests the Department to consider a minor, yet meaningful, change to proposed Section 217- 3.2. ALANYS believes that the prohibition for idling heavy-duty vehicles should be set at three minutes rather than the existing five minutes. Setting the prohibition at three minutes in Section 217-3.2 would harmonize the state idling prohibition with the more protective New York City limit of three minutes.

Response:

The Department considers the statewide five minute idling prohibition reasonable and adequate in terms of protecting human health, while at the same time meeting the needs of the motoring public. The need for a statewide three minute prohibition has not been demonstrated.

Comment No.16:

Approximately two years ago, at the request of the DEC, the Gasoline and Repair Shop Association of New York mailed a flyer detailing information on the upstate heavy duty diesel emission program. The flyer indicated that starting in June of 2000, the DEC in conjunction with the New York State Department of Transportation (DOT), the Thruway Authority, and the State Police would begin random roadside checks of HDDV emissions throughout New York State. Fines for failing these tests would be hefty, but could be reduced if the truck owner had the vehicle repaired in a timely manner. The station repairing the vehicle would need a smokemeter to certify that emissions were brought into compliance. Heavy duty vehicles throughout the state are still subject to this random testing, regardless of their county of registration and routes. As such, there would be a need for test equipment throughout

the state. Some Association members elected to take advantage of this opportunity. We have not heard any complaints relative to problems with the equipment. What we have heard is that these smoke meters have remained unused since their purchase. The DOT reports failure rates in the 13 to 14 percent range. The question we ask is how many random roadside emission inspections have been performed, and what specific plans exist to increase this number. Until the Association receives some assurances that this part of the program can be successfully implemented, we can no longer encourage our members to participate.

Response:

The DOT, State Police and the DEC have the authority to conduct roadside inspections of heavy duty diesel vehicles (HDDVs) and to cite those vehicle operators whose vehicle fails an emissions inspection. The DOT roadside inspections began in 1999. Statistics provided by the DOT indicate that, in 1999, there were 1,456 inspections performed, 201 of which were failures, for a 13.8 percent failure rate. In 2000, 2,560 inspections were performed, 340 of which were failures, for a 13.3 percent failure rate. In 2001, 360 opacity inspections were performed, of which 52 failed, for a 14.4 percent failure rate.

Emissions enforcement of HDDVs is also performed by certified DEC environmental conservation officers (ECOs) traveling both within and outside of the NYMA. In 2001, ECOs conducted over 50 HDDV opacity inspections and issued 20 tickets in the NYMA. They conducted 60 opacity inspections and issued 31 tickets in the upstate area (primarily in Central and Western New York State) for HDDV emissions violations.

Another factor which affects the upstate roadside inspection program is the State Police's policy to enforce the HDDV program in only those counties where an official diesel emissions inspection station (ODEIS) is located.

This was done to alleviate any hardship on the HDDV operator should the vehicle fail and the operator, in seeking a penalty reduction, had to travel an unreasonable distance to an ODEIS, for retest after repair from where the ticket was issued.

Comment No.17:

Concerning the HDDV program, partial funding was available for eligible ODEISs toward the purchase of DEC-approved opacity meters through the Environmental Facilities Corporation (EFC). In the upstate areas, the few stations that purchased the meters believe they have been done an injustice as these meters are not being used. These monies would have been better utilized in training, possibly for developing a course addressing diesel emissions problems or how to effectively repair HDDVs to maintain and/or reduce emissions. Funding could have also been used to offset the cost of this type of training to businesses. The EPA will probably mandate on-board diagnostic capabilities for heavy duty trucks in the future, making opacity meters (for testing purposes only) obsolete.

Response:

Beyond the vehicle "retest" function for ticket penalty reduction, the existing opacity meters could also be used by those ODEIS owners/operators to educate their customers and others on the benefits of emissions testing of smoking vehicles in terms of fuel savings and engine maintenance. This could provide an additional market for vehicle testing. Regarding the potential for HDDV on-board diagnostics in the future, the DEC still sees the regulatory need to test older pre-OBD HDDV vehicles for opacity. Many older HDDVs remain on the road today due to their engine durability and overall efficiency.

Comment No.18:

The owner of an ODEIS noted having only two HDDV failures, with both vehicles being mechanically governed diesels. This and other experience suggest minimal failure rates associated with newer electronically controlled engines.

Response:

The DEC agrees with this observation. The DOT has provided 1999 statistics on the roadside inspection program according to model year. HDDVs Model Year (MY) 1991 and newer had a 6.5 percent failure rate, while HDDVs MYs 1974 to 1990 indicated a 46.4percent failure rate. Based on these statistics, it appears that the new electronically controlled engines have a much lower failure rate than the older mechanically governed engines. This observation would be expected given advancements in engine technology.

Comment No.19:

Are all agencies adopting the same weight classification standards in defining a heavy duty diesel vehicle (HDDV)? For example, who decides the GVWR for inspection or enforcement? Is the OEM GVWR rating or a request by the registrant used to determine the weight rating at DMV registration? There needs to be clearer definition for shops and owners of this issue and its consequences.

Response:

The legislation defines heavy duty vehicle as “any vehicle powered by diesel fuel and having a gross vehicle weight of greater than eight thousand five hundred pounds.” DEC regulation under Subpart 217-5 defines heavy duty vehicle as “a vehicle that has a GVWR exceeding 8,500 pounds,” and later states gross vehicle weight rating as “the value specified by the vehicle manufacturer as the maximum loaded weight of a single or combination vehicle.” Therefore, the GVWR is determined by the vehicle manufacturer. The registered weight, defined as MGW, as noted on the DMV registration certificate is determined by the vehicle registrant and may differ from the GVWR. In the event an inspection station has a vehicle being presented for inspection for which it believes the MGW is incorrect, they have the right to refuse to do an inspection on this vehicle and recommend that the registrant get the vehicle re-registered at the correct weight.

Comment No.20:

New York’s idling restrictions pose cold weather start-up issues.

Response:

Several options exist to address cold weather starting. Engine block heaters can be used with a timing device that turns on the heater several hours before a planned departure. The block heater will raise the coolant and oil temperatures enough to thin the oil for better lubrication and reduce battery start-up strain. Another feature made possible by the electronic engine is an automatic stop-start engine feature for optimized idle control. This feature monitors the engine automatically and starts and stops the engine whenever necessary to maintain coolant temperature, battery voltage and cab temperature. Another option is that heaters can be installed in the fuel tank to prevent any water in the tank or fuel supply lines from freezing or the fuel from thickening at low temperatures.

Additionally, auxiliary power units are commercially available to provide various power needs. These units run off small diesel engines and consume much less fuel than would be used for idling. All of the technologies mentioned provide more fuel efficiency and reduce engine wear rather than prolonged idling. As a result, less emissions are expected using these technologies than long term idling.



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| | | | | | | JOURNAL NEWS (GANNET TOTAL | \$800.00 |
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| | | | | | | ALBANY TIMES UNION TOTAL | \$500.00 |
| BUFFALO NEWS | LEGAL NOTICE | N2110076 | 02/20 | 1.00 | 1 | 1800.00 | 1800.00 |
| | | | | | | BUFFALO NEWS TOTAL | \$1,800.00 |
| SYRACUSE HERALD AMER | LEGAL NOTICE | N2110078 | 02/20 | 1.00 | 1 | 500.00 | 500.00 |
| | | | | | | SYRACUSE HERALD AMER TOTAL | \$500.00 |
| BINGHAMTON PRESS * | LEGAL NOTICE | N2110079 | 02/20 | 1.00 | 1 | 500.00 | 500.00 |
| | | | | | | BINGHAMTON PRESS * TOTAL | \$500.00 |
| GLENS FALLS POST STA | LEGAL NOTICE | N2110081 | 02/20 | 1.00 | 1 | 500.00 | 500.00 |
| | | | | | | GLENS FALLS POST STA TOTAL | \$500.00 |
| MIDDLETOWN TIMES HER | LEGAL NOTICE | N2110082 | 02/20 | 1.00 | 1 | 500.00 | 500.00 |
| | | | | | | MIDDLETOWN TIMES HER TOTAL | \$500.00 |
| ROCHESTER DEMOCRAT* | LEGAL NOTICE | N2110083 | 02/20 | 1.00 | 1 | 1600.00 | 1600.00 |
| | | | | | | ROCHESTER DEMOCRAT* TOTAL | \$1,600.00 |
| NIAGARA FALLS GAZETT | LEGAL NOTICE | N2110085 | 02/20 | 1.00 | 1 | 465.00 | 465.00 |
| | | | | | | NIAGARA FALLS GAZETT TOTAL | \$465.00 |
| CATSKILL DAILY MAIL | LEGAL NOTICE | N2110148 | 02/20 | 1.00 | 1 | 510.00 | 510.00 |
| | | | | | | CATSKILL DAILY MAIL TOTAL | \$510.00 |

Page 2/11
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INVOICE

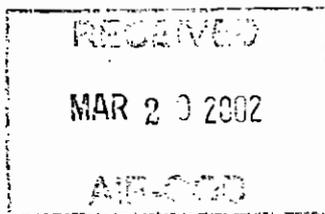
NYS DEPT. OF ENV. CONSERVATION-A988
Attn: Linda Betz
625 Broadway
Albany, NY 12233-3251

Client Number 020173
Invoice Number 380806-054
Invoice Date 03/19/02
Terms: Net 30 Page 2

Regarding
ARLENE SCHMIDT.

| Media | Description | Ad Number | Insert Dates | Ad Size | Times | Rate | Amount |
|----------------------|--------------|-----------|--------------|---------|-------|-----------------------------------|-----------------|
| WATERTOWN DAILY TIME | LEGAL NOTICE | N2110088 | 02/20 | 1.00 | 1 | 480.00 | 480.00 |
| | | | | | | WATERTOWN DAILY TIME TOTAL | \$480.00 |
| AMSTERDAM RECORDER | LEGAL NOTICE | N2110089 | 02/20 | 1.00 | 1 | 475.00 | 475.00 |
| | | | | | | AMSTERDAM RECORDER TOTAL | \$475.00 |

INVOICE TOTAL \$11,770.00



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INSERT ORDER NUMBER
N2110096

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DATES OF INSERTION: 02/20
Weekdays = 1

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L/0857543

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
HEARING NOTICE

Notice is hereby given that the New York State Department of Environmental Conservation (Department), will hold legislative public hearings on the following proposed rules pursuant to Environmental Conservation Law (ECL) Sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0301, 19-0303, 19-0305, and 71-2103:

Amendments to 6 NYCRR Subpart 217-1, Motor Vehicle Enhanced Inspection and Maintenance Program Requirements, Subpart 217-3, Vehicles Propelled by Diesel Engines, Subpart 217-4, Inspection and Maintenance Program Audits, and Subpart 217-5, Heavy Duty Inspection and Maintenance Program. Subpart 217-2 is being repealed. Promulgation of this rule will facilitate attainment of air quality standards and compliance with the federal requirements under the Clean Air Act Amendments. These requirements will have a positive impact on the residents of New York as they were developed to reduce mobile source emissions from light, medium and heavy duty vehicles operating in New York. The hearings will be held as follows:

- DATE: Tuesday, APRIL 2, 2002 TIME: 1 P.M.
- PLACE: NYSDEC, 625 Broadway, Public Assembly Room 129B, Albany NY 12233
- DATE: Thursday, APRIL 4, 2002 TIME: 1 P.M.
- PLACE: NYSDEC Annex, Region 2, 11 - 15 47th Ave., Hearing Room 10A, Long Island City NY 11101
- DATE: Tuesday, APRIL 9, 2002 TIME: 1 P.M.
- PLACE: Onondaga Community College, Applied Technology Center, Room 209, 4915 Onondaga Road, Syracuse NY 13215
- DATE: Thursday, APRIL 11, 2002 TIME: 1 P.M.
- PLACE: Mahoney State Office Building, 65 Court Street, Hearing Room Part 1, Buffalo NY 14203

The hearings are scheduled in places that are reasonably accessible to persons with impaired mobility. The Department will provide interpreter services for deaf persons at no charge. Written requests for interpreter services are required and should be submitted by March 22, 2002, to Arlene Schmidt, NYSDEC, 625 Broadway, Albany NY 12233-3259, 518-402-8465, afschmad@pw.dec.state.ny.us

Pursuant to Part 617 of the implementing regulations for the State Environmental Quality Review Act, the Department has prepared a Negative Declaration stating that the proposed actions will not have a significant effect on the environment.

The Department invites all persons, organizations, corporations, and government agencies that may be affected by the proposed revisions to attend the hearings. At each hearing, persons who wish to make a statement will be invited to speak. It is requested that oral statements also be submitted in writing. The Department will give equal weight to written and oral statements, and since a cumulative record will be compiled it is not necessary for interested parties to attend each hearing.

Information may be obtained from Guy Bobersky, P.E., NYSDEC Division of Air Resources, 625 Broadway, Albany NY 12233-3255, telephone: 518-402-8401; email: gbobersky@pw.dec.state.ny.us. Written statements may be submitted to Mr. Bobersky until 5 p.m., April 18, 2002.

The proposed regulation may be obtained from any of the following Department offices:

- REGION 1, Building 440, State University of New York, Stony Brook, NY 11790, Attention: Ajay Shah
- REGION 2, Hunters Point Plaza, 47-40 21st Street, Long Island City, NY 11101, Attention: Amar Nagi
- REGION 3, 21 South Pond Corners Road, New Paltz, NY 12561, Attention: Robert Stanton
- REGION 4, 1150 North Westcott Rd., Schenectady, NY 12306, Attention: Jack Leone
- REGION 5, Hudson Street Extension, Box 220, Warrensburg, NY 12885, Attention: Michael Starwarz
- REGION 6, Watertown State Office Bldg., 317 Washington St., Watertown, NY 13601, Attention: Thomas Morgan
- REGION 7, 615 Erie Boulevard West, Syracuse, NY 13204-2100, Attention: Chuck Chernoff
- REGION 8, 6274 East Avon-Lima Road, Avon, NY 14414, Attention: Thomas Marriot
- REGION 9, 270 Michigan Ave., Buffalo, NY 14202, Attention: Larry Sitzman

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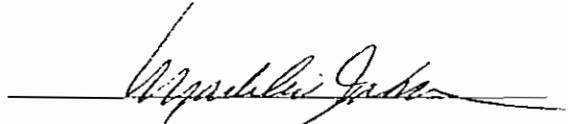
STATE OF NEW YORK)
:SS.:
COUNTY OF SUFFOLK)
Madeline Johansen

Legal

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of Newsday, Inc., Suffolk County, N.Y., being duly sworn, says that such person is, and at the time of publication of the annexed Notice was a duly authorized custodian of records of Newsday, Inc., the publisher of NEWSDAY, a newspaper published in the County of Suffolk, County of Nassau, County of Queens, and elsewhere in the State of New York and other places, and that the Notice of which the annexed is a true copy, was published in the following editions/counties of said newspaper on the following dates:

WEDNESDAY FEBRUARY 20 2002 Nassau Suffolk Queens



Sworn To Before Me This
20 day of February , 2002
Notary Public



Guy P. Wasser
Notary Public, State of New York
No. 01WA6045924
Commission Expires 08/07/2002
Qualified in Suffolk County



New York State Department of Environmental Conservation

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Hearing Report for SIP Enhanced Motor Vehicle Inspection/Maintenance

More information from this division:

*[Office of Hearings and Mediation](#)
Decisions - Updated regularly.*

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
50 Wolf Road
Albany, NY 12233-1550

In the Matter

- of -

the proposed adoption of a New York State
Implementation Plan (SIP) for the Enhanced
Motor Vehicle Inspection/Maintenance (I/M)
Program

Hearing Report

- by -

/s/

John H. Owen
Administrative Law Judge

July 27, 1998

Proceedings

The Legislative Hearing on the captioned matter was held on July 27, 1998 at the William K. Sanford Town of Colonie Library, Stedman Room, 629 Albany-Shaker Road, Loudonville, New York.

The Hearing

James Clyne, an Environmental Engineer, read a statement on behalf of the Department's Division of Air Resources of which he is a member. Other than Mr. Clyne, there were no requests to speak and no speakers.

NOTICE OF PUBLIC HEARING

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

PROPOSED REVISION TO THE NEW YORK STATE IMPLEMENTATION PLAN: ENHANCED MOTOR VEHICLE INSPECTION/MAINTENANCE PROGRAM

Notice is given that the NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION ("Department"), pursuant to Section 19-0301(1)(a) of Environmental Conservation Law, will hold a PUBLIC HEARING on proposed revisions to the New York State Implementation Plan ("SIP") for the Enhanced Motor Vehicle Inspection/Maintenance (I/M) Program. Through the following letter, Department is committing to revise the enhanced I/M program portion of the SIP to conform with changes in federal regulation under 40 CFR Part 51 (Subpart S - Inspection/Maintenance Program Requirements). The letter commits New York to implementing mandatory on-board diagnostic (OBD) checks for applicable OBD-equipped vehicles in all areas of New York State by January 1, 2001.

Ms. Jeanne M. Fox
Regional Administrator
United States Environmental Protection Agency
Region 2
290 Broadway
New York, New York 10007-1866

Dear Administrator Fox:

This letter is in response to the Agency's February 27, 1998 request for the Department of Environmental Conservation to revise our March 1996 Inspection/Maintenance (I/M) State Implementation Plan (SIP) to include on-board diagnostic (OBD) checks in our motor vehicle emissions testing program by January 1, 2001.

The Department supports EPA's postponement of mandatory OBD checks for all I/M areas until January 1, 2001. Further research is needed not only to evaluate the performance of OBD, but also to allow the Agency to determine the associated credit for OBD. OBD does offer the potential to replace traditional emissions testing I/M programs, which is of considerable value when considering cost-effective alternatives to I/M in the less-populated areas of the ozone transport region (OTR), such as upstate New York.

New York's March 1996 I/M SIP did identify OBD checks as components of both our upstate and downstate I/M programs. Revision to the I/M SIP is needed merely to reflect the more recent change in federal regulation and policy. New York commits to revise the New York State

Department of Motor Vehicles' regulation under 15 NYCRR Part 79 (Appendix 2 of the March 1996 SIP) to include mandatory OBD checks, for both the upstate and downstate I/M programs, in accordance with Section 51.357 of the federal I/M rule.

In making this commitment, the Department notes that the effectiveness of OBD checks cannot be assumed solely by the states. The Environmental Protection Agency must finalize credit guidance on OBD checks sufficiently prior to January 2001 to allow states, and most notably those states affected by the OTR low enhanced performance standard, to make cost-effective I/M program determinations. The Agency must also ensure that all OTR states complete OBD checks in a uniform manner. Failure to do so will delay OBD and reduce its true effectiveness.

If you or your staff should have questions on the OBD SIP revision, please contact James Ralston, Director, Bureau of Abatement Planning at (518) 457-2823.

Pursuant to Part 617 of the implementing regulations for the State Environmental Quality Review, the Department has prepared a Negative Declaration indicating that the proposed action will not have a negative effect on the environment.

A PUBLIC HEARING on the proposed revision to the SIP will be conducted at the following date, place, and time:

*July 27, 1998
William K. Sanford, Town of Colonie Library
Stedman Room
629 Albany Shaker Road
Loudonville, NY
Time: 9:30 a.m.*

The public hearing is scheduled in a location that is reasonably accessible to persons with impaired mobility. Interpreter services will be made available to hearing impaired persons, at no charge, upon written request received by Elizabeth Bartlett at 50 Wolf Road, Room 190, Albany, New York 12233-3251 by July 13, 1998.

The Department invites all persons, organizations, corporations, and government agencies which may be affected by the proposed enhanced motor vehicle I/M SIP revision to attend the hearing and/or to submit oral or written statements for the record. A cumulative record will be compiled of both oral and written statements received. It is not necessary for persons wishing to make an oral statement to request an appointment in advance. Written statements received prior to, during, or after the hearing and oral statements made at the hearing will be given equal weight.

Written Statements may be submitted until *August 3, 1998*, and should be sent to:

Joseph R. Tuttle, P.E.
Section Chief
I/M Program Coordination Section
Bureau of Enhanced Inspection/Maintenance
Division of air Resources
50 Wolf Road
Albany New York, 12233-3257
(518) 457-8894

EB:sl
BAPQ22/EBDHEAR.
6/5/98

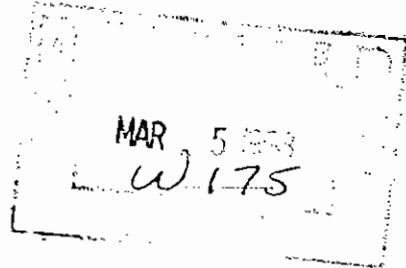


UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

FEB 27 1998

Mr. Robert K. Warland
Director
Division of Air Resources
New York State Department
of Environmental Conservation
50 Wolf Road
Albany, New York 12233-0001



Dear Mr. Warland:

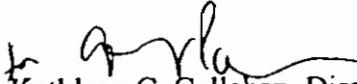
I am writing to remind you of two upcoming deadlines for the submittal of state implementation plan revisions and to offer assistance in meeting these deadlines. The Environmental Protection Agency's (EPA's) regulation for transportation conformity (40 CFR Subpart T) requires affected states to revise their State Implementation Plan (SIP) to include state requirements for conformity. These state requirements must be enforced in nonattainment and maintenance areas. The Clean Air Act also requires that states revise their SIPs to implement checks of On-board Diagnostics (OBD) systems as part of their inspection and maintenance (I/M) programs. To date, New York has not submitted these SIP revisions.

Over the past few years, EPA has been making changes to the transportation conformity regulation based on experiences with its implementation. This effort has been completed and on August 15, 1997 EPA promulgated final rules revising the transportation conformity regulation. This rule requires that states submit SIP revisions, incorporating these changes, by adopting a state transportation conformity regulation by August 15, 1998.

Additionally, the current OBD rule, dated August 6, 1996, requires Ozone Transport Region areas with low enhanced Inspection and Maintenance (I/M) programs to implement OBD checks by January 1, 1999, and all other areas by January 1, 1998. The Clean Air Act also requires that states revise their SIPs within two years after promulgation of the regulations to implement OBD. On December 22, 1997, EPA proposed to extend the deadline by which states must implement OBD checks as part of their I/M programs. EPA has proposed to extend the deadline to January 1, 2001 for all areas. However, states are still required to revise their I/M SIPs by August 6, 1998 to include OBD checks.

Your staff can contact John Walsh at 212-637-3702 concerning the conformity requirement and either Judy-Ann Mitchell at 212-637-3708 or Richard Graciano at 212-637-3719 concerning the OBD requirements.

Sincerely yours,



Kathleen C. Callahan, Director

Division of Environmental Planning and Protection

cc: G. McVoy, NYSDOT
H. Brown, FHWA New York Division
L. Thompson, FTA
D. Shaw, NYSDEC
D. Sullivan, NYSDEC

New York State Department of Environmental Conservation
Office of Air & Waste Management, Room 608

50 Wolf Road, Albany, New York 12233-1014
Phone: (518) 457-1415 FAX: (518) 457-9629



John P. Cahill
Commissioner

AUG 04 1998

Ms. Jeanne M. Fox
Regional Administrator
United States Environmental Protection Agency
Region 2
290 Broadway
New York, New York 10007-1866

Dear Regional Administrator Fox:

On behalf of the Governor of the State of New York, I am submitting for approval by the United States Environmental Protection Agency, this Proposed Revision to the New York State Implementation Plan: Enhanced Motor Vehicle Inspection/Maintenance Program.

Prior to making this submittal the New York State Department of Environmental Conservation (the Department), in accordance with New York State's Administrative Procedures Act, solicited public comment regarding this Proposed Revision and completed the public hearing process required.

The following documents are enclosed as part of this submittal:

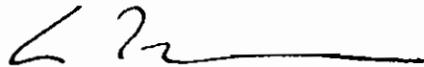
- 1) Copy of the commitment letter, which was originally sent to the United States Environmental Protection Agency on June 1, 1998;
- 2) Copy of the Notice of Public Hearing published in the New York State Register on June 24, 1998 for the Hearing held on July 27, 1998 regarding the Proposed Revision;
- 3) Copy of the Notice of Public Hearing that appeared in the New York State Environmental Bulletin on

June 24, 1998 for the Hearing held on July 27, 1998 regarding the Proposed Revision;

- 4) Copies of the Affidavits of Publication of the Notice of Public Hearing for the Hearing held on July 27, 1998 from newspapers in circulation in the affected area regarding the Proposed Revision, and copies of the Notices which were published on June 24, 1998;
- 5) Copy of the Hearing Report, prepared by John Owen on the Hearing held July 27, 1998.

No comments were received on this matter; therefore, no responsiveness summary is enclosed. Should you have any questions regarding this matter, please contact Arlene Schmidt at (518) 457-7231.

Sincerely,



Carl Johnson
Deputy Commissioner
Office of Air and Waste Management

Enclosures

cc: R. Borsellino, EPA (w/o enc.)
R. Werner, EPA “
R. Kapichak, EPA “
J. Zamurs, DOT “
R. Warland “
bcc: C. McCarthy (w/o enc.)
G. Neighmond “
J. Clyne “
G. Bobersky “
E. Bartlett “
A. F. Schmidt “

A:OBD-EPA.AS
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REPLY

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