



## PROCEEDINGS

The Division of Air Resources ("Division") of the New York State Department of Environmental Conservation ("Department") scheduled a public hearing as part of the process to revise Title 6 of the State of New York Official Compilation of Codes, Rules and Regulations ("6 NYCRR") with a proposed new Part 217-5 and related changes to existing Part 217-3 and Part 200. The Division caused the issuance of a Notice of Public Hearing for distribution and for publication on May 5th, 1999 as a legal notice in the New York Post, Newsday, Journal News (formerly Gannett publications in Westchester and Rockland Counties), Albany Times Union, Buffalo Evening News, Syracuse Herald, Binghamton Press, Glens Falls Post Star, Middletown Times Herald, Rochester Democrat, Niagara Falls Gazette, Catskill Daily, Watertown Daily, and the Amsterdam Recorder and published on May 5, 1999 in the Department's Environmental Notice Bulletin. Consequently, in a memorandum dated April 16, 1999, Richard Gibbs, Director of the Bureau of Mobile Sources requested from the Office of Hearings and Mediation Services the services of an administrative law judge ("ALJ") to conduct the hearing.

The legislative hearing for the receipt of public statements was held as scheduled on June 7th, 1999 at 10:00 AM in the Stedman room of the Sanford Town Library in the Town of Colonie, Albany County before the assigned ALJ Francis W. Serbent. Fifteen (15) people attended and one person read, and submitted his written statement for the record. After the final call for statements, the hearing was adjourned and the Department Staff remained to informally answer questions and/or discuss the proposals with the interested public. The record was held open for the receipt of written statements until June 14th, 1999. Four written statements were filed.

These proceedings were held according to the Environmental Conservation Law ("ECL") Article 1 General Provisions, Article 3 General Functions, Powers, Duties and Jurisdiction, Article 8 Environmental Quality Review, Article 19 Air Pollution Control and Article 70 Uniform Procedures; also 6 NYCRR Chapter III Air Resources, Part 617 State Environmental Quality Review, Part 621 Uniform Procedures and Part 624 Permit Hearing Procedures.

### **The Proposed Heavy Duty Inspection and Maintenance Program Regulations**

For the State environmental quality review, the Staff, as lead agency, determined that the proposed Part 217-5 and the related changes to Part 217-3 and Part 200 would not have a

significant adverse effect on the environment and issued a Negative Declaration in a Notice of Determination of Non-significance on March 4th, 1999. For State purposes, the proposed rule making activity was also the subject of a notice dated April 16, 1999 for publication in the New York State Register.

#### STATEMENTS

The Department Staff was represented at the public hearing by Steven Flint from the Division of Air Resources. He presented a summary of program mandates and the evolution of the proposed Part 217-5 with related changes to Part 217-3 and Part 200.

#### THE NEW YORK STATE MOTOR TRUCK ASSOCIATION

The New York State Motor Truck Association was represented at the public hearing by Gerald R. DeLuca, Director of Government Relations. He had an overall favorable outlook for the program and offered the following subjects as issues for the Department program Staff:

##### Timing

1. The implementing date has now passed and a reasonable new date should provide (a), a fair amount of time to broadcast the detailed requirements industry wide and (b), a fair amount of time for the private sector to be able to develop and deliver equipment (opacity meters) for the State to certify and for the certified equipment to be available.

##### Re-inspections

2. Re-inspections would be at fixed locations such as engine repair shops and would require the purchase of expensive equipment that may get too little use to justify the expense. Under the proposed program, DMV would require emission inspection stations to also do safety inspections even if the companies only do engine repairs. Many engine repair companies are not licensed by DMV nor want to be as their business is engine repair. Mr. DeLuca suggests that these companies be certified for only engine emissions testing.

3. Interstate truckers that fail the emissions test may not return to New York within the thirty day period allowed for re-inspections and, in this program, would lose the fine reduction potential only because they had no trucking in New York. Mr. DeLuca urges authorization for New York State to

recognize re-inspections at out-of-state certified repair shops/stations.

4. Before an emission test is made, the inspector would first examine both the exhaust system and the truck's governor. If either system fails, the emission test is not performed and the truck is deemed to have failed the emissions test and that would result in a ticket/summons in the upstate regions. The NYS Motor Truck Association suggests the program allow thirty days for the repair and inspection before any enforcement action would be taken.

5. The NYS Motor Truck Association urges authorization or mandates for the emissions violations to follow the vehicle and not the driver because it is not fair to issue tickets/summons to drivers for failing emission tests since it is the owner, not the driver, who maintains the truck and because it is not fair for an owner to be categorized as a multiple offender only because a newly hired driver brings with him past emissions failures while trucking for other owners.

#### AMERICAN TRUCKING ASSOCIATIONS

The American Trucking Association, ("ATA") 2200 Mill Road, Alexandria VA. 223 144677, filed a statement by Fern Abrams, Manager of Environmental Affairs. AT A supports the State's goal of clean air and offers these comments:

#### Re-inspections

1. Trucks operating mainly in the vicinity of New York City ("NYC") would, by the proposed 217-5.2(c), be subject to mandated periodic testing at permanent centers, as well as the roadside testing as proposed outside metropolitan NYC. AT A states that upstate and out-of-state truckers are thereby at a disadvantage as they predict there would be few, if any, upstate repair and reinspection opportunities. Without the needed repairs and re-inspection, the reduced fine incentive feature of the proposed regulations would not be available to upstate or out-of-state truckers that fail the roadside test or be counter productive by requiring extra travel to a permanent testing station in the NYC area.

ATA recommends that upstate and out-of state truckers be permitted to submit proof of repairs in lieu of are-inspection.

## Reciprocity

2. Interstate truckers should not be subject to multiple citations within a given time period before repairs can be made.

ATA recommends the proposed regulations provide for interstate reciprocity of each States citations, time periods and remedies.

### ADLER'S ANTIQUE AUTO'S, me.

Adler's Antique Auto's, Inc. ("Adler"), 801 NY Route 43, Stephentown, NY 12168 filed a written statement by Bob Adler.

1. Mr. Adler proposes that antiques twenty five years old or older should be exempt from the proposed regulation since the engines may not have been designed or built to operate under the no load conditions of the proposed testing.

2. Testing antiques to 80% of the manufacturer's recommended maximum speed presupposes the manufacturer's maximum speed is or can be made available and presupposes the truck owner would risk running an antique similarly.

3. Mr. Alder expects that the requirements for a hardship waiver may be too expensive for owners of antique trucks.

4. The inspector training program proposed in 217-5.5(a)(2) must be sufficiently rigorous so graduates can accurately correct raw data to industry criteria (i.e. SAE J 1667).

### EMPIRE STATE PETROLEUM ASSOCIATION, INC.

The Empire State Petroleum Assoc. Inc. ("ESPA"), was represented by Emilio Petroccione of Roland, Fogel, Koblenz & Petroccione, LLP, Attorneys at Law, 1 Columbia Place, Albany, NY 12207. The ESPA generally favors the proposal and offers the following comments:

#### Timing

1. Because the enabling statute already is in effect and because implementation and enforcement are dependent on proposed DMV, DOT and DEC regulations, ESP A suggests ample time be allowed for industry to adjust, for NYC metropolitan area parties to purchase and train personnel on the smoke meters and to test trucks.

2. Upstate trucks beyond the NYC metropolitan area are subject only to roadside testing and testing otherwise for compliance,

remedial repairs, testing and re-inspection may, in the first instance, present unreasonable problems. Consequently, first time test failures should be repaired but without notice of a violation.

#### Drivers

3. ESPA does not expect drivers to be able to perform the smoke tests prior to trucking and recommends that violations be written in the name of the truck owner.

#### Upstate re-inspections

4. According to the proposed regulations, upstate truckers that fail an upstate inspection may not have a re-inspection station available outside the NYC area. ESPA recommends upstate repair shops be certified for smoke testing exclusively as an incentive for more test stations upstate.

#### NATURAL RESOURCE DEFENSE COUNCIL

The Natural Resource Defense Council ("NRDC"), 40 West 20th Street, New York, NY 10011 submitted statements dated June 14, 1999 by Richard A. Kassel, Senior Attorney. They also presented a description of diesel exhaust emissions in general and in particular, New York State.

1. NRDC objects to the proposed exception from emission inspection and testing for hybrid electric vehicles as there are comparable vehicles with verifiable emission benefits and using inherently cleaner fuels. [6 NYCRR §217-3.3(g)]

2. NRDC urges the State to adopt New Jersey Standards for busses at a 30% cutpoint for busses newer than the 1998 model year and a 40% cutpoint for 1987 and older urban busses. (sic) [6 NYCRR 217-5.3]

3. NRDC suggests the State review cutpoint standards in the year 2003 and within twelve months of any change in tail pipe standards thereafter for the vehicles to be regulated by these proposals.

4. NRDC objects to the proposed one year delay for busses and municipally owned vehicles operating in NYC and would begin testing this year. [6 NYCRR 217-5.2(b)&(c)]

5. NRDC urges the Department to find a way to keep trucks off the road after a truck fails the test. As proposed, truckers could pay a fine and remain on the road and may avoid impoundment.

6. NRDC urges enforcement audits of self-inspection facilities with publicized results.

7. NRDC offers the following for consideration: all inspection test results be made reasonably available to the public at a central location, additional or alternative hardware for testing and additional tests be provided for a better understanding of the emissions, 217 -5.1 (1) should read "employs certified" not "employees certifies"; at 217-5.4, insert "or" at the ends of subparagraphs (1) & (2) and at 217-5.5(a)(iv) replace "at least one exhaust tailpipe" with "all exhaust tailpipes".