

April 4, 2012

U.S. Environmental Protection Agency  
EPA Docket Center (EPA/DC)  
Air Docket; Attention Docket ID No. EPA-HQ-OAR-2011-1000  
1200 Pennsylvania Avenue, NW (Mail Code 2822T)  
Washington, DC 20460

Re: *Nonconformance Penalties for On-Highway Heavy-Duty Diesel Engines* (Proposed & Interim Final Rules)

To Whom It May Concern:

The Northeast States for Coordinated Air Use Management (NESCAUM) provides these comments on the subject Proposed and Interim Final Rules.<sup>1</sup> NESCAUM is a non-profit association of the air pollution control agencies in Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont. The NESCAUM states, being located within the Northeast Ozone Transport Region, have a particular interest in measures that affect emissions of ozone precursor pollutants, such as oxides of nitrogen (NO<sub>x</sub>). The following comments focus on a few key provisions within the notice of proposed rulemaking, but apply equally to the interim final rule.

It is our understanding that EPA is promulgating these rules principally to provide a temporary pathway, through payment of nonconformance penalties, for a single manufacturer to be issued a certificate of conformity for its heavy-duty engines that would otherwise fail to conform to the applicable NO<sub>x</sub> emissions standard. NO<sub>x</sub> emissions will increase as a result of consumer purchases and subsequent operation of heavy-duty vehicles that are powered by these engines, compared to a scenario whereby this manufacturer would otherwise be compelled to meet the current NO<sub>x</sub> standard.

NESCAUM estimates as a result of the sale and use of these higher emitting engines that NO<sub>x</sub> emissions within our eight-state region will increase by as much as 2590 tons in 2012, and by 45,500 tons over the useful life of these model year 2012 engines as compared with the use of fully compliant engines. If these engines were to continue to be covered under a certificate of conformity in subsequent production years beyond 2012, aggregate NO<sub>x</sub> emissions would continue to increase. The NESCAUM states are concerned about the effect that this unanticipated increase in NO<sub>x</sub> emissions will have on attainment and maintenance of the ozone standard.

Between 2001 and 2005, eight states adopted California's heavy-duty engine standards for model year 2007 and newer diesel engines, including three of the eight states in the NESCAUM region.

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<sup>1</sup> 77 FR 4736 & 4678 January 31, 2012

Accordingly, engines sold in these states are required to be covered under a certificate of conformity issued by the California Air Resources Board (CARB). It appears there is no option in this circumstance for payment of nonconformance penalties. Therefore one likely scenario is that an engine manufacturer that does not presently produce enough engines meeting current emissions standards may hold its credits to be used exclusively in these states and pay penalties in all other states. In effect, the proposed rule potentially creates an opportunity for an engine manufacturer to significantly extend the life of its accumulated credits.

In the notice of proposed rulemaking, EPA acknowledges the difficulty of attempting to quantify the competitive advantage an engine manufacturer has to “benefit in the marketplace from producing an engine that is, or may be perceived to be, more convenient to operate.” Potentially, this is a significant problem with regards to the engines to be produced by the single manufacturer that stands to benefit from this rulemaking. Presently, this manufacturer’s engines are not equipped with selective catalytic reduction (SCR) systems for controlling NO<sub>x</sub> emissions. Consequently, there is the prospect that consumers may disproportionately choose to purchase vehicles powered by this manufacturer’s engines (the nonconformance penalty notwithstanding) on the basis of a perceived convenience of not having to maintain appropriate levels of diesel exhaust fluid for proper functioning of the SCR system.

Given the significant emissions dis-benefit in conjunction with the potential for extended use of credits and the uncertainty of the effect on market share, the best approach is the one outlined in the Alternative Penalties section of the notice of proposed rulemaking. The nonconformance penalty should “be defined as the amount of NO<sub>x</sub> emission reductions that would not be achieved by the engine compared to the applicable standard.” Also, this approach would provide a means to recover the environmental loss, calculated as the total excess NO<sub>x</sub> emissions expected from the non-conformance engines over their lifetimes, through a specific offset plan developed by the engine manufacturer and at a cost equivalent to or greater than what the nonconformance penalty would be under the conventional approach outlined in the proposed rule. The excess NO<sub>x</sub> emission calculation could take into account actual sales volume of non-conformance engines, thereby retrospectively addressing the uncertainty associated with marketplace perceptions.

We would be pleased to further elaborate on any of these issues. If you have any questions, please feel free to contact Eric Skelton of my staff at (617) 259-2028. Thank you for the opportunity to comment on this rulemaking.

Sincerely,



Arthur N. Marin  
Executive Director

cc: NESCAUM Directors