

DANNEL P. MALLOY
GOVERNOR
STATE OF CONNECTICUT

December 17, 2012

Commissioner Daniel C. Esty,
Connecticut Department of Energy and Environmental Protection
79 Elm Street
Hartford, CT 06106

Dear Commissioner Esty,

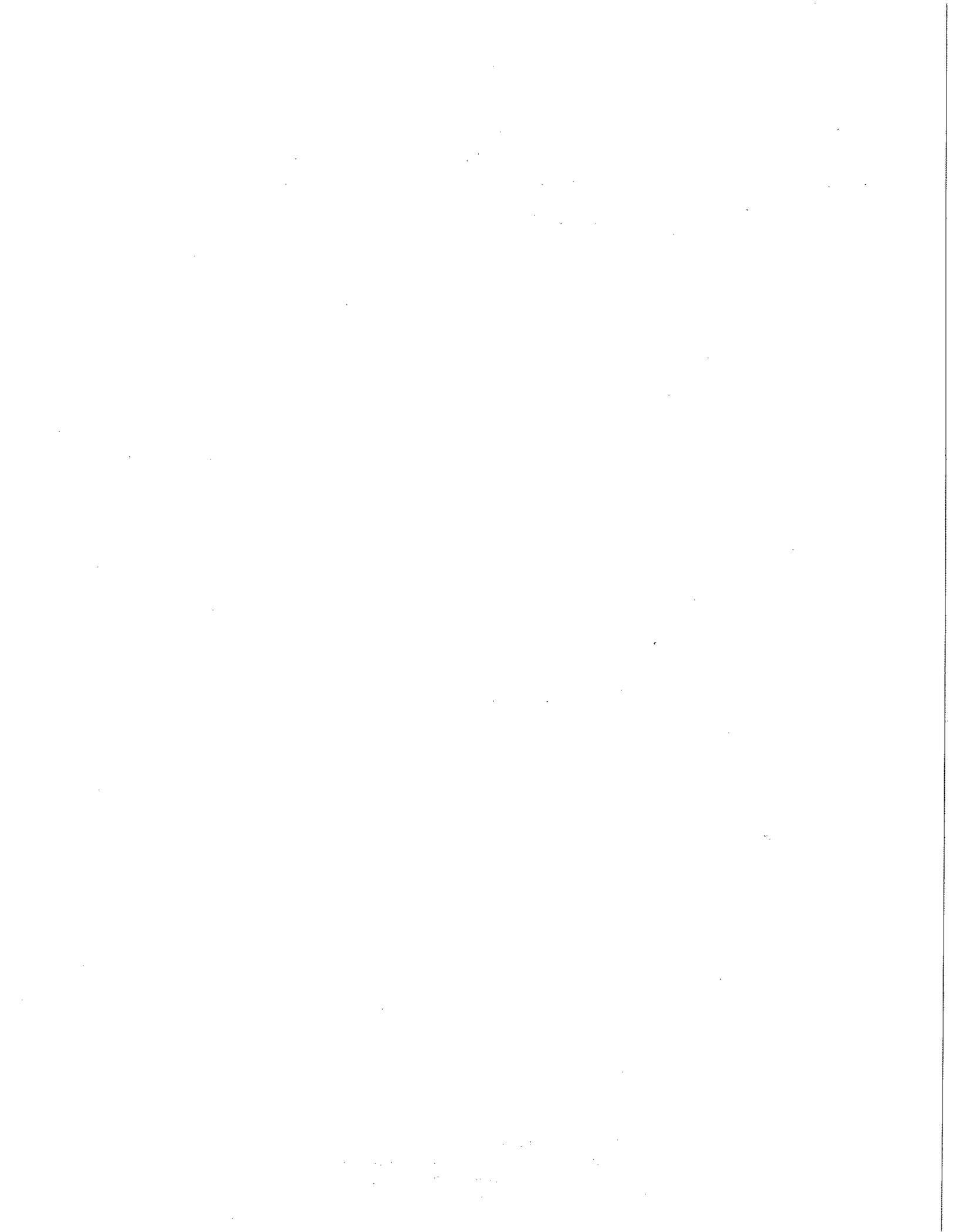
Thank you for your memorandum dated December 14, 2012 describing the need to adopt emergency regulations to protect the market for Low and Zero Emissions Vehicles in the state. The proposed regulations attached to your memorandum will bring Connecticut into conformity with the federal Clean Air Act, avoid forcing Connecticut consumers to leave the state to purchase these vehicles, and allow our state to remain in the vanguard of automobile emissions policy. Pursuant to Connecticut General Statute § 4-168(f) I hereby approve your findings and authorize you to proceed with the adoption of these emergency regulations in accordance with Chapter 54 of the Connecticut General Statutes.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Malloy", written over a large, stylized, light-colored scribble or watermark.

Dannel P. Malloy
Governor

cc: Paul E. Farrell, Department of Energy & Environmental Protection



VIA ELECTRONIC MAIL

December 14, 2012

The Honorable Dannel P. Malloy
Governor of Connecticut
State Capitol
Hartford, Connecticut 06106

Re: Finding of Imminent Peril to the Public Welfare Necessitating the Adoption of Emergency Regulations for the Low Emissions Vehicle Program.

Dear Governor Malloy:

In accordance with Connecticut General Statutes section 4-168(f) and as further described below, I have made a finding that an imminent peril to the public welfare of the residents of Connecticut exists requiring adoption of an emergency regulation concerning the low emissions vehicle (LEV) program. The authority for these regulations is set forth in Section 22a-174g of the Connecticut General Statutes.

I. LEGAL REQUIREMENTS

Section 22a-174g requires that the Department of Energy and Environmental Protection adopt, and remain consistent with, the California LEV program. Additionally, the federal Clean Air Act section 177 requires that any state that adopts the California program maintain engine requirements that are "identical" to those in California. The Clean Air Act also requires that regulations be adopted with a 2-year lead-time to be enforceable. Due to these lead-time requirements, the Department is at risk of losing the power to enforce these clean vehicle regulations for 2015 model year vehicles. Without this enforcement power, the market for low and Zero Emissions Vehicles (ZEV) may suffer irreparable damage.

II. BACKGROUND

In August, the California Air Resources Board finalized amendments to the California LEV II program and ZEV program, and adopted new LEV III and extended ZEV program requirements. The new regulations will extend the California clean vehicle programs out to the 2025 model year and gradually introduce cleaner standards for conventional vehicles. The new regulations will also increase the number of advanced technology vehicles – plug-in hybrids, electric vehicles, fuel cell vehicles, etc. – that must be introduced into Connecticut and the other states participating in the ZEV program.

California's action last summer triggered the requirement for the Department to amend its regulations. Given that the Clean Air Act requires that auto manufacturers be provided a 2-model year lead-time, and because the proposed LEV III standards are effective in California on January 1, 2015, the Department must have these standards adopted in Connecticut by January 2, 2013. As such, there is insufficient time to adopt these regulations consistent with the lead time requirements mandated by the Clean Air Act.

III. FINDING OF IMMINENT PERIL TO PUBLIC WELFARE

In support of this finding of imminent threat to the public welfare necessitating the adoption of an emergency regulation, I hereby state the following:

1. To address ongoing air quality concerns, and improve consumer protections through enhanced warranties and increased commercialization of zero emission vehicles, in January and August of 2012, the California Air Resources Board adopted amendments to the California LEV II program and amendments to the ZEV Program, adopted a new LEV III program and extended ZEV program requirements.
2. In order to address the ongoing initiative to progressively improve air quality and to address the ongoing public health risk, Clean Air Act section 177 requires that any state, such as Connecticut, that adopts the California program maintain standards that are “identical” to those in California and that such regulations be adopted with a 2-model year lead-time in order to be enforceable.
3. As distinct from the terms Public Health or Public Safety, the term Public Welfare is broadly defined as the prosperity, well being, or convenience of the public at large, or of a whole community, as distinguished from the advantage of an individual or limited class. It also embraces the primary social interests of safety, order, *economic* and non-material interests such as public convenience. See *Melton v. Rowe*, 42 Conn. Supp. 323, 324 (1992) (emphasis added).
4. Delay in Connecticut’s adoption of new LEV and ZEV regulations will lead to following adverse economic, consumer protection, and air quality impacts affecting the overall welfare of Connecticut’s citizens:
 - Due to the 2-year lead-time requirements, Connecticut would be at a serious risk of losing zero emission vehicles for the 2015 model year – e.g., plug-in hybrids, battery electric vehicles, and other advanced technology vehicles – which the manufacturers would have been required to deliver to the Connecticut market. Manufacturers would likely deliver these advanced vehicles to surrounding states (e.g., New York, New Jersey, Massachusetts, and Rhode Island) that have adopted California’s updated ZEV requirements. Connecticut’s auto dealers would lose the opportunity to sell these new zero emission vehicles, and some portion of the Connecticut market for LEV and ZEV would certainly go to neighboring states to purchase these advanced vehicles. Fewer sales of these advanced technology vehicles would also result in fewer sales of ancillary items needed to support these vehicles, such as home charging stations or fueling stations. These lost sales would translate to meaningful economic harm to the state.
 - Connecticut’s potential loss of regional market share for zero emission vehicles will slow the future growth for this sector of Connecticut’s clean energy economy. Having fewer plug-in hybrid, electric, and other advanced zero emission vehicles on Connecticut’s roads would put Connecticut at risk of falling behind other states in the region in developing the public and private infrastructure necessary to support these new vehicles. In other words, having fewer clean advanced technology vehicles on Connecticut’s roads would suppress the creation of businesses and jobs to build the clean vehicle infrastructure of the future, and would harm the overall health of Connecticut’s economy.
 - California’s new vehicle requirements mandate that manufacturers provide warranties on the vehicle’s emissions-related parts for 150,000 miles or 10 years whichever occurs first. The federal Clean Air Act only requires vehicles to have warranties on the emissions-related parts

for 80,000 miles or 8 years whichever occurs first. Failure to timely adopt the California regulations could disadvantage and cause economic harm to Connecticut consumers, because auto manufacturers would only be required to provide consumers the lower federal warranty requirements on emissions-related parts for 2015 model year vehicles. Thus, even if manufacturers chose to deliver the California standard (i.e. cleaner) vehicles to CT in the 2015 model year, the manufacturers may capitalize on a market incentive to attach the lower warranty provisions to these vehicles. Should the manufacturers embark on such a strategy it could confuse Connecticut consumers at the points of sale and resale for years to come.

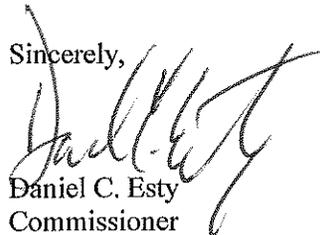
- Data reviewed by the Department indicates that in 2007, light duty vehicles accounted for 43% of the harmful nitrogen oxide emissions in Connecticut, which are a precursor in the formation of surface level ozone (smog) pollution. Surface level ozone (smog) pollution in Connecticut presents a health risk to Connecticut residents, as demonstrated by the rising rates of asthma in Connecticut children, especially in urban areas. Certain locations in the state routinely fail to meet federal ambient air quality standards. Failure to promptly adopt the California LEV and ZEV clean vehicle regulations would undermine the state's attempts to address unhealthy levels of air pollution.

Therefore, in light of the findings articulated herein, in order to prevent economic harm to the businesses and citizens of Connecticut, to continue to protect the public health in Connecticut through the reduction of air pollution emitted by motor vehicles, to maintain consistency with the California LEV regulation as required by section 22a-174g of the Connecticut General Statutes, to maintain identity as required by Clean Air Act section 177, and in accordance with the requirements of section 4-168(f) of the Connecticut General Statutes, I do hereby find an imminent threat to the public welfare of the citizens of Connecticut, justifying the emergency adoption of this regulation.

IV. CONCLUSION

For all the reasons stated above, the Department requests approval of its finding of imminent peril to the public welfare of the citizens of Connecticut, and requests approval of the enclosed emergency regulation. If you have any questions, please contact Paul Farrell at (860) 424-3389, or Robert LaFrance, the Department's legislative liaison, at (860) 424-3401.

Sincerely,



Daniel C. Esty
Commissioner

cc: Robert LaFrance

