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By email to: ngoc.hoang@mass.gov

December 12, 2024

Ngoc Hoang
MassDEP, Bureau of Air and Waste
100 Cambridge Street, Suite 900
Boston, MA 02114

RE: Comments of Massachusetts Chemistry & Technology Alliance regarding Emergency Regulations and Limited Enforcement Discretion for Advanced Clean Trucks Regulations - 310 CMR 7.40: *Low Emission Vehicle Program*

Dear Ms. Hoang:

On behalf of our members, the Massachusetts Chemistry & Technology Alliance (MCTA) would like to make the following comments relative to pending implementation of the Massachusetts Department of Environmental Protection (MassDEP) Emergency Regulations and Limited Enforcement Discretion for Advanced Clean Trucks Regulations: 310 CMR 7.40: *Low Emission Vehicle Program*.

MCTA is the professional organization representing manufacturers, users, and distributors of chemistry in the Commonwealth. Our membership ranges from small, multi-generational family-owned businesses operating with a handful of employees to large global companies employing thousands. More than 96% of all manufactured goods – including solar panels, turbine blades, energy efficiency products, microelectronics, and pharmaceutical devices – are touched by chemistry.

MCTA supports the greenhouse gas goals of the Commonwealth provided the concerns of businesses are addressed so that they may grow here and provide crucial materials and components for medical products, pharmaceuticals, clean energy, and other important sectors.

In these Emergency Regulations, MassDEP proposes a one model year delay (from 2025 to 2026) to the upcoming compliance deadline of Massachusetts' adoption of two California Air Resources Board (CARB) standards for medium and heavy-duty (MHD) engines and vehicles: Phase 2 Greenhouse Gas ("Phase 2 GHG"); and Heavy-duty Omnibus ("HDO"). The delay is needed to account for lack of waiver from the Environmental Protection Agency (EPA), which is required before implementation. CARB Phase 2 GHG and HDO standards become identical to EPA standards in 2027.

Additionally, on October 18, 2024, MassDEP adopted a "Limited Enforcement Discretion" policy for the related Advanced Clean Trucks ("ACT") rule which requires manufacturers to sell an increasing number of zero emission medium and heavy-duty vehicles (ZEVs) beginning in 2025. This Limited Enforcement Discretion is for two model year years (MY 2025 and 2026) but only for state and local agency vehicles used in snowplowing and snow removal and street

sweepers used in snow response. The exemption excludes from “Massachusetts total sales” sales to exempted agencies. There are no changes to the ACT rule for non-state and local agencies or non-snow related vehicles.

MCTA appreciates the consideration and outreach that MassDEP has shown to impacted parties throughout this discussion when it became clear that meeting these deadlines would be problematic for end-users and appreciate the proposal to adopt a one-year delay in HDO rules.

However, the Emergency Regulations related to the HDO delay and the Limited Enforcement Discretion policy for the ACT rule simply do not solve the problem that industries in Massachusetts face as both these rules go into effect.

In previous correspondence, MCTA and other trade associations urged MassDEP to delay the HDO and ACT rule until Model Year 2027. Delaying until then, we argued, will allow the CARB rules and EPA rules to converge, making HDO compliant vehicles more available since the market would be larger and manufacturers would be more willing to supply trucks that meet the new standards. With regards to the ACT Rule, the two-year delay would optimally allow for battery technology, vehicle production, cost, and infrastructure to catch up with the projected demand. As it now stands, ZEVs are simply not available and, if they were, the lack of accessible and sufficient recharging stations throughout the state, the region and the country renders them useless for long-distance transport. Battery technology also needs to advance in order to protect the safety of operators transporting flammable cargo, first responders, and the public.

MCTA still believes that the best course for an effective and equitable solution is to delay the implementation of both the HDO and ACT rules to Model Year 2027 as originally requested.

The HDO Compliance Deadline Should be Extended to Model Year 2027 at the Earliest

In the case of the HDO, the major problem is the lack of vehicles meeting the new emission standards at an affordable price. MCTA members are the end-users of vehicles subject to HDO. Since no MCTA member manufactures or sells these vehicles, we are unaware where the actual bottleneck for equipment is – technical, supplier-related or part of a national campaign to await convergence of CARB and EPA rules.

In the end though, it doesn't matter. MCTA members and others are essentially pawns in this much larger discussion. MCTA members have zero control over the availability and price of these vehicles, and this creates a crisis that MassDEP needs to consider and address.

Extending the compliance date until MY 2027 would provide additional time for manufacturers to produce vehicles compliant with EPA and CARB rules – making these engines far more profitable for manufacturers to produce. The one-year extension proposed here is simply a stopgap measure designed to comply with a legal technicality regarding EPA waivers. It does nothing to solve the real-world problem impacting businesses in the Commonwealth. Even if a waiver is granted by the EPA, it does not mean manufacturers will produce MY 2026 engines in advance of the CARB/EPA convergence. They may simply choose to wait until 2027.

As such, we urge MassDEP to reconsider the deadline extension and extend the deadline for two years – to MY 2027 as previously requested. This extension will offer some regulatory certainty to manufacturers and industry.

The Limited Enforcement Discretion for ACT is Unfair to the Majority of End Users

In the case of the ACT rule, the lack of vehicle availability as described above under our HDO comments has an additional layer of complexity as the zero emission trucks available today are simply not suited to the uses of industry. The lack of electric charging infrastructure, particularly along routes outside of Massachusetts, renders long-distance hauling virtually impossible. Where there is a sufficient, accessible charging infrastructure, the time to “fuel up” adds thousands of dollars in downtime and significant delivery delays.

In the October 18, 2024, guidance document, MassDEP adopts a Limited Enforcement Discretion for MY 2025 and 2026 – *a full two years* (the same delay requested by industry) but only for state and local agency vehicles involved in snow removal and street sweeping activities. No industry concerns are addressed by this enforcement discretion, and municipal leaders have made clear that this solution does not work even for them. The Limited Enforcement Discretion also underscored our points as it acknowledges the difficulty (price, availability, and lack of charging options) of obtaining and using equipment that complies with the new rules within the current deadlines. It is puzzling why MassDEP understands the need for enforcement discretion for certain state and municipal functions but ignores the reality of the private sector - despite, in many cases, both sectors using the *same equipment*.

There are dozens of other needs of state and municipal agencies and private industries that still need relief from the ACT deadlines. MCTA members serve a critical need in Massachusetts and transport the products and chemicals needed to keep our hospitals safe and functioning, our public water supplies safe, and our residents warm during the winter months. Further, this exemption does not include the role mid- and large size trucks play in getting farmers' produce to markets. The manufacturing, food production and home heating sectors are no less crucial and no less impacted than state and local agencies.

Even if MassDEP is only concerned about dangers from inadequate snow removal, the enforcement discretion misses the mark. State and local agencies are not the only ones that face this concern. Hundreds of manufacturing companies – many members of MCTA are in the central and western part of the state – have huge parking lots or sites that need to be cleared multiple times during the day. Snow removal equipment is crucial to their employees' safety and the operations of their facilities.

MassDEP has also severely underestimated the cooperation that state and local agencies have with private contractors. As an example, the Massachusetts Department of Transportation (MassDOT) and cities and towns have been advertising for weeks for private companies to take some of the burden off state and local snow removal operations. And the Limited Enforcement Discretion does not even address ancillary equipment needed to make our roads safe, like the need for salt deliveries or delivering concrete, asphalt or other types of construction material needed for municipal construction or flood control.

The two-year Limited Enforcement Discretion is an acknowledgement that the rule is unworkable. We urge MassDEP to delay the ACT rule for everyone for two years to 2027.

The Economic Impact Harm from HDO and ACT is Real

In the November 4, 2024, Background Document released with the Emergency Regulations, MassDEP asserts that the Emergency Regulations will have “no adverse economic impact in

Massachusetts.” This does not reflect the reality of the manufacturing sector. Given the lead times for medium and heavy-duty trucks, companies are already investigating the purchase of MY 2027 trucks and finding much higher prices and limited (if any) availability. Facing higher prices, companies are thinking twice about making investments here or, if possible, delaying the purchase of new vehicles. In some cases, companies are considering siting their fleets in out-of-state yards or contracting their trucking operation to trucking firms located outside of Massachusetts.

As to the ACT rule, the situation is identical. Implementation of the ACT rule obviously has a significant economic impact. If the ACT rule had no economic impact in Massachusetts, then MassDEP would not need to exempt certain state and local agency functions from the very same rule it is mandating for the private sector.

Exempting only municipal and state snow plowing and street sweeping vehicles actually makes the problem worse for all the other sectors. The carve-out, as written, means those exempted will not have to buy *any ACT compliant vehicles*, which reduces the demand and the incentive for manufacturers to build these vehicles. It shifts the burden to industry to purchase vehicles that comply with ACT, which, if available, are at a higher cost and of limited functionality for long-distance transport. There is simply no justification for this limited exemption. A delay is necessary for everyone, and it should be all encompassing as the variety and uses of vehicles statewide is vast, with some equipment performing multiple duties.

The added costs of this regulation – even with these Emergency Regulations and Limited Enforcement Discretion - will act as a tax on those trying to operate and expand here – a region with already very high costs in energy, taxes and labor.

Thank you for your consideration of the concerns raised by MCTA and our members. If you have any questions, please do not hesitate to call Katherine Robertson at 508-572-9113 or via email at katherine@masscta.org.

Respectfully,



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