



**Testimony on the “Diesel Emissions Reduction Act of 2008
(S2633, H7524)”**

Before the House Environment Committee

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ENE is a nonprofit research and advocacy organization focusing on the Northeastern United States and Eastern Canada with offices in Rhode Island, Connecticut, Massachusetts, Maine and Prince Edward Island, Canada. Our mission is to address large-scale environmental challenges that threaten regional ecosystems, human health, or the management of significant natural resources. We use policy analysis, collaborative problem solving, and advocacy to advance the environmental and economic sustainability of the region.

ENE has been working in Rhode Island to reduce diesel emissions from heavy duty diesel vehicles and equipment such as school buses, transit buses and construction equipment for the last few years as part of the Rhode Island Diesel Pollution Initiative with organizations such as Clean Water Action and the American Lung Association, and we support their statements and written testimony today.

Beginning in 2007, federal standards require new on-road diesel engines to be more than 85% cleaner than they previously were by requiring technologies like diesel particulate filters to be built into every new on-road vehicle. But since these new standards only apply to NEW engines, the construction equipment and waste haulers that were built to yesterday’s emission standards will continue to pollute our communities for years to come. There are three levels of tailpipe filters-levels 1, 2 and 3:

- Level 3: eliminates greater than 85% of the particulate matter emissions;
- Level 2: eliminates greater than 50% but less than 85% of the particulate matter emissions;
- Level 1: eliminates greater than 25% but less than 50% of the particulate matter emissions.

Last year, the Rhode Island Legislature signaled its commitment to reducing diesel emissions in the state by passing The Diesel Emissions Reduction Act and the Department of Environmental Management (DEM) was able to secure \$700,000 of federal Congestion Mitigation and Air Quality (CMAQ) money to start retrofitting school buses in the state with pollution control equipment. Also, DEM has requested 4.3 million in additional CMAQ funding to be able to retrofit all school buses in the state. Rhode Island has already retrofitted many of the transit buses in the state with pollution control equipment. These actions constitute a major commitment to cleaning up the state’s fleet of existing diesel vehicles. Retrofitting these buses with pollution control equipment will reduce the serious negative health and economic impacts of diesel emissions on our most vulnerable population.

Environment Northeast is encouraged that Rhode Island is working to address the very large public health and global warming problem caused by diesel emission each year in Rhode Island. Fortunately, unlike other public health and environmental challenges, diesel pollution can be solved in a proven, cost-effective manner.

Environment Northeast supports the goals of the new diesel legislation which is to require installation of the most stringent retrofit devices on state owned and operated vehicles/equipment as well as vehicles or equipment which is used on state funded construction sites. While we stand behind the legislation, we received a copy of the DEM's comments on this proposed legislation dated March 6, 2008 from Stephen Majkut, Chief Air Resources and we also support many of DEM's recommendations to improve the legislation. For instance, we support DEM's suggestion that the language be streamlined in section 31-47.3-4(2) so that the state mandates that any vehicle purchases or leases made by the state or any state authority meet the requirements as set forth in the proposed legislation. We also note that the intention of the legislation in section 31-47.3-4 was to extend the retrofit deadline for fleets of fewer than 15 vehicles to 2015, not 2010.

As a result, we have proposed the following changes:

31-47.3-4. Use of ultra low sulfur diesel and emission control technology in new state contracts. --

(1) By January 1, 2009 all diesel powered heavy duty vehicles that are owned by, operated by or on behalf of, or leased by or operating under contract to a state agency or state or regional public authority shall be powered by ultra low sulfur diesel fuel.

(2) All diesel powered heavy duty vehicles and construction equipment purchased or otherwise acquired or leased after January 1, 2009 by a state agency or state or regional public authority shall utilize particulate matter (PM) emissions control technology based on the following requirements:

~~(a) all diesel onroad vehicles must be powered by model year 1994 or later engines, and such engines model years between and including 1994-2006 must be equipped with Level 3 emission control technology;~~

(a) Any vehicle purchases or leases made by the State or any State authority should be powered by a model year 1994 or newer engine and that engines model years between and including 1994-2006 be retrofitted with level 3 verified emissions control devices. If level 3 devices have not been verified for use on particular engines, level 2 verified (if available) or level 1 verified emissions control devices should be required.

~~(b) all diesel nonroad vehicles must be equipped with engines model year 1994 or newer. Engines 75 hp and greater must be equipped with emission control technology verified by US EPA or the California Air Resources Board (CARB) for use with nonroad engines to reduce particulate matter emissions by a minimum of twenty percent (20%); and~~

~~(c) The director will evaluate the level of control technology for off road diesel vehicles, taking into consideration advances in technology, cost to fleet owners, potential pollution reductions, and other relevant factors. Based on the results of this evaluation, by January 1, 2011 the director is hereby authorized to require a higher level of control technology through regulations or procurement policies for off road vehicles.~~

Any diesel powered vehicles and non-road construction equipment with an Engine 75 hp and greater used on projects or activities contracted by the state or a State authority should be required to have the highest level of emissions control equipment available as a contract requirement, which is stipulated in contract specifications. If level 3 verified emissions control devices have not been verified for use on particular engines, level 2 verified (if available) or level 1 verified should be required.

~~(d) The effective date for this provision for fleets with fifteen (15) or fewer heavy duty on road diesel vehicles is January 1, 2010.~~

We also support DEM's recommendation that the retrofit requirements for waste collection and recycling vehicles be stipulated in contract specifications and have proposed language below. DEM

has expressed concern in Section 31-47.3-5 that “Because states are preempted from requiring emission standards other than federal emission standards, the refuse fleet used to collect commercial waste and recyclables that are privately owned and operate under no government contracting requirements cannot be mandated to retrofit vehicles or only purchase certain vehicles for their commercial businesses.” In a letter from David Marshall, Clean Air Task Force to the Ohio MORPC Diesel Emissions Subcommittee dated July 13, 2005, he concludes,

“Statutory and judicial precedent support the conclusion that the authority of Ohio and local jurisdictions to regulate emissions from large existing diesel highway engines such as trucks and buses has not been superseded by federal law. Although the Clean Air Act does preempt states and local governments from a variety of highway and non-road emissions regulation, it does not preempt such regulation of emissions from in-use heavy-duty highway diesels. Furthermore, such regulation, if properly crafted, should not violate Commerce Clause restrictions.”

As a result, we believe that Rhode Island has the authority to require privately owned fleets of waste haulers and recycling vehicles to be retrofitted with pollution control equipment since these devices are a retrofit device and are different than an emissions standard such as the low carbon emissions standards California has been requesting (Pavley standards) that regulates new engines.

31-47.3-5. Use of diesel retrofit devices for newly contracted waste haulers. --

(a) By January 1, 2009 any diesel powered waste collection and recycling vehicle with engine model years between and including 1994-2006 that is newly purchased, acquired, leased, or contracted to perform the removal or transfer of municipal waste, including residential or commercial waste, or recycling services shall utilize Level 3 control retrofit technology for reducing the emission of pollutants, which is stipulated in contract specifications. If level 3 verified emissions control devices have not been verified for use on particular engines, level 2 verified (if available) or level 1 verified should be required.

(b) By January 1, 2009 it is prohibited to purchase, acquire, lease, or contract for the operation of any diesel powered waste collection and recycling vehicle with engine model years 1993 and earlier to perform the removal or transfer of municipal waste, including residential or commercial waste, or recycling.

~~(c) Upon written finding by the director that Level 3 control technology as required by subdivision (a) of this section is not available for an individual vehicle or class of vehicles having model year 1994 or later, the director may grant a waiver, in writing, providing reasons therefore and requiring the highest level of emission control that is available.~~

We also concur with DEM’s suggestion to modify the existing language slightly regarding the price points of the retrofit devices for level 1, level 2, and level 3 for school buses.

If this legislation is amended, Environment Northeast recommends that the existing law at 31-47.3-3(c)(ii) be amended as follows:

(ii) Drawing upon any available federal or state monies, the director shall establish and implement a system of providing incentives consistent with this section to municipalities, vendors, or school bus owners for the purchase and installation of any CARB/EPA-verified emission control retrofit device together with the purchase and installation of closed crankcase ventilation system (CCV) retrofit device. ~~In 2007, the per unit incentive shall not exceed one thousand two hundred fifty dollars (\$1,250) for a level 1 device plus a CCV, or two thousand~~

~~five hundred dollars (\$2,500) for a level 2 device plus a CCV, or for model years 2003-2006~~
~~five thousand dollars (\$5,000) for a level 3 device plus a CCV. Incentive levels may be~~
~~reevaluated annually, with the goal of maintaining competition in the market for retrofit devices.~~
~~To the extent practicable, in kind services will also be utilized to offset some of the costs. The~~
~~department shall have the authority to determine the incentive levels to take advantage of~~
~~changing technology and cost fluctuations due to the competition in the market for retrofit~~
~~devices.~~ To the extent practicable, in kind services will also be utilized to offset some of the
costs. Incentive recipients must also certify that newly purchased or retrofitted buses with a level
3 technology will operate in the state of Rhode Island for a minimum of four (4) years.

Below is a chart summarizing progress made by other states on the progress they have made to clean up diesel pollution. It illustrates that Rhode Island has an opportunity to take similar measures to improve public health and reduce asthma and lung cancer and protect workers, commuters, school kids, and the residents of Rhode Island.

Jurisdiction	Diesel Fleets to Obtain Retrofits	Public Funding Source(s)	Allocated \$	Status
New Jersey	<ul style="list-style-type: none"> • All School Buses • Public & Private Transit Buses • Garbage & Recycling Trucks • Publicly owned heavy duty on-road and non-road vehicles 	<i>0.68% of Corporate Business Tax</i>	\$150 million + over 10 years Starts 2007	<i>In NJ Law</i>
California	<ul style="list-style-type: none"> • All Public Transit Buses • Garbage & Recycling Trucks • On-road Heavy-Duty Public Fleets • Off-road engines • Stationary Agricultural Engines • Harbor Craft (pending) • In-state Trains 	<i>Legislative Approp., \$1.75 New Tire fee, \$2 Motor Vehicle Registration fee, Local Revenue Sources,</i>	\$1 billion + 1999 - ongoing	<i>In CA Law and Regulations</i>
Connecticut	<ul style="list-style-type: none"> • School Buses • Transit Buses • Garbage & Recycling Trucks • State-funded Construction (TBD) 	<i>General Fund, Bonding, CMAQ, Enforcement, Penalties</i>	\$10 million appropriation for school buses \$5 million in bonding for transit buses	<i>In CT law</i>
New York	<ul style="list-style-type: none"> • School Buses • Transit Buses • Garbage & Recycling Trucks • City-funded Construction • All Public Fleets 	<i>State Approp., City Budget, EPA Grants</i>	\$35 million +	<i>In New York City and State Laws and Regs</i>
Massachusetts	<ul style="list-style-type: none"> • All School Buses statewide • All Transit Buses statewide 	<i>CMAQ</i>	\$22.5 million + 2007-2010	<i>Final Agreement between DEP + DOT</i>
	<ul style="list-style-type: none"> • All state-owned, leased or contracted fleets • All municipal owned, leased, or contracted waste haulers • Private Fleet Fund 	<i>TBD, CMAQ, Enforcement Penalties</i>	TBD	<i>Pending</i>