A. Relevant Clean Air Act Provisions

Under section 209(a) of the Clean Air Act (''CAA''), states and localities are prohibited from adopting or attempting to enforce ''any standard relating to the control of emissions from new motor vehicles.'' Section 209(a) also prohibits state approvals ''relating to the control of emissions from any new motor vehicle * * * as condition precedent to the initial sale, titling * * * or registration of such motor vehicle.'' However, section 209(b) of the Act permits the state of California to request an EPA waiver from this prohibition if California determines that its standards are, in the aggregate, at least as protective of public health and welfare as applicable federal standards. EPA must grant this request unless it finds one of the following: (1) California's ''in the aggregate'' determination was arbitrary and capricious; (2) California does not need standards to meet compelling and extraordinary conditions; or (3) California's standards and accompanying enforcement procedures are not consistent with Clean Air Act section 202(a).

There is no similar provision for other states to obtain a waiver from the prohibitions in section 209(a). However, under CAA section 177, once California has promulgated its motor vehicle program, other states may adopt and enforce their own standards as long as such standards are ''identical to the California standards for which a waiver has been granted for such model year'' and such standards have been adopted at least two years before commencement of such model year. Section 177 further states:

> Nothing in this section * * * shall be construed as authorizing any such State to prohibit or limit, directly or indirectly, the manufacture or sale of a new motor vehicle * * * that is certified in California as meeting California standards, or to take any action of any kind to create, or have the effect of creating, a motor vehicle * * * different than a motor vehicle * * * certified in California under California standards (a ''third vehicle'') or otherwise create such a ''third vehicle'.

B. Factual Background

In 1990, the California Air Resources Board (''CARB'') adopted its Low Emission Vehicle (''LEV'') program. One of the elements of that program was a requirement, beginning in model year 1998, that two percent of the cars offered for sale in California by a manufacturer must be ZEVs. That percentage would increase to five percent in model year 2001 and ten percent in model year 2003. California received a waiver for its LEV program, including the ZEV sales requirement, in 1993. 58 FR 4166 (Jan. 13, 1993).

New York and Massachusetts both promulgated regulations adopting California's LEV program, including the ZEV mandate, into their state regulations. Auto manufacturers challenged both state programs in federal court, claiming that the state programs were prohibited under section 209 and were not authorized under the provisions of section 177. In both instances, manufacturers were not successful in their challenges. Courts in both the 1st and 2nd Circuit ruled that the state regulations were permitted under section 177.

However, in 1996, California amended its regulations to eliminate its ZEV sales mandate until the 2003 model year. Later in 1996, California entered into Memoranda of Agreement (''MOAs'') with the seven largest automobile makers. As part of these MOAs, the automobile manufacturers agreed to supply a certain number of ZEVs in the state of California during calendar years 1998–2000. Massachusetts then revised its LEV regulations by replacing the preexisting ZEV sales mandate for the 1998–2002 model years with the ZEV sales portions of the MOAs, using the ZEV sales numbers in the MOAs.

AAMA sued Massachusetts, claiming the revised ZEV regulations violated section 209(a) of the Clean Air Act.[2] The District Court in Massachusetts ruled in favor of the auto manufacturers.[3] However, on appeal, the 1st Circuit refrained from deciding the case, preferring instead to allow EPA to provide its views on the issue, if it chooses to do so. ''This matter is plainly within the EPA's primary jurisdiction, and its resolution could clearly benefit from a deep familiarity with the CAA and the public policy considerations that underlie these statutory provisions. We therefore refer this issue to the EPA for its consideration.'' [4] The court then stayed further judicial action to allow Massachusetts the opportunity to obtain a ruling from EPA on the issues relevant to deciding the case. However, if EPA does not rule within 180 days of the court's decision, the court has indicated that it will then decide the issues without EPA's guidance. Pursuant to the court's decision, the Massachusetts Attorney General sent a letter to the Administrator requesting EPA's opinion regarding the issues arising from the court's opinion.

EPA believes it is appropriate to seek comments from the public on this request from Massachusetts. EPA therefore requests that any interested parties provide comments on the issues raised by the Court's opinion and the letter from Massachusetts.

II. Procedures for Public Participation

EPA will keep the record open until April 26, 1999. Upon expiration of the comment period, EPA will determine the appropriate response, if any, to the request from the Massachusetts Attorney General. Persons seeking information relevant to this proceeding may review the information provided at the EPA Air Docket. (Docket No. A–99–08).

Persons with comments containing proprietary information must distinguish such information from other comments to the greatest possible extent and label it as ''Confidential Business Information'' (CBI). If a person making comments wants EPA to base its decision in part on a submission labeled CBI, then a nonconfidential version of the document which summarizes the key data or information should be submitted for the public docket. To ensure that proprietary information is not inadvertently placed in the docket, submissions containing such information should be sent directly to the contact person listed above and not to the public docket. Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed and by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the submission when it is received by EPA, it may be made available to the public without further notice to the person making comments.

Dated: March 17, 1999.

Robert D. Brenner,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 99–7428 Filed 3–25–99; 8:45 am]

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[2] AAMA also sued New York, which had not amended its ZEV mandate at all. The Second Circuit found for the auto makers in that case. *AAMA* v. *Cahill*, 152 F. 3d 196 (2d Cir. 1998).

[3] *AAMA* v. *Massachusetts DEP*, 998 F. Supp. 10 (D. Mass. 1997).

[4] *AAMA* v. *Massachusetts DEP*, 163 F. 3d 74, 83 (1st Cir. 1998).

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6314–7]

Public Water Supply Supervision Program Revision for the State of New York

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Notice is hereby given that the United States Environmental Protection Agency (USEPA) has determined to approve an application by the State of New York to revise its Public Water Supply Supervision Primacy Program to incorporate regulations no less stringent than the USEPA's National Primary Drinking Water Regulations (NPDWR) for Synthetic Organic Chemicals and Inorganic Chemicals (Phase 5 Chemical Regulations) promulgated by EPA on July 17, 1992 (57 FR 31776).

Effective May 27, 1998, the New York State Department of Health adopted revisions to 10 NYCRR Part 5, Subpart 5.1—Public Water Systems. These revised regulations have been submitted by the State in an application to revise its approved Public Water Supply Supervision Primacy Program (approved primacy program). The application demonstrates that New York has adopted drinking water regulations which satisfy the National Primary Drinking Water Regulations (NPDWR) for Synthetic Organic Chemicals and Inorganic Chemicals promulgated by EPA on July 17, 1992 (57 FR 31776). The USEPA has determined that New York State's chemical regulations are no less stringent than the corresponding Federal regulations and that New York continues to meet all requirements for primary enforcement responsibility as specified in 40 CFR 142.10.

In addition, the revised regulations contained in the revision application make several minor changes, consisting of corrections and clarifications, to New York State's drinking water regulations which parallel a number of other NPDWRs, including the Lead and Copper Rule (56 FR 26548) and Surface Water Treatment Rule (54 FR 27527) and certain variance and exemption procedures. Here, too, the USEPA has determined that New York State's drinking water regulations remain no less stringent than the corresponding Federal regulations. (The USEPA's June 3, 1997 determination to retain primacy, until May 15, 2007, for the enforcement of the Surface Water Treatment Rule within the City of New York's Catskill and Delaware water supply systems remains unaffected by today's action.) This determination to approve the State's primacy program revision application is made pursuant to 40 CFR 142.12(d)(3). It shall become final and effective April 26, 1999, unless (1) a timely and appropriate request for a public hearing is received or (2) the Regional Administrator elects to hold a public hearing on her own motion. Any interested person, other than Federal Agencies, may request a public hearing. A request for a public hearing must be submitted to the USEPA Regional Administrator at the address shown by April 26, 1999. If a substantial request for a public hearing is made within the requested thirty day time frame, a public hearing will be held and a notice will be given in the **Federal Register** and a newspaper of general circulation. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on her own motion, this determination shall become final and effective April 26, 1999.

Any request for a public hearing shall include the following information:

(1) the name, address and telephone number of the individual organization or other entity requesting a hearing;

(2) a brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement on information that the requesting person intends to submit at such hearing;

(3) the signature of the individual making the requests or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: Requests for Public Hearing shall be addressed to: Regional Administrator, U.S. Environmental Protection Agency—Region II, 290 Broadway New York, New York 10007–1866.

All documents relating to this determination are available for inspection between the hours of 9:00 am and 4:30 pm, Monday through Friday, at the following offices:

New York State Department of Health, Bureau of Public Water Supply Protection—Room 406, 2 University Plaza/Western Avenue, Albany, New York 12203–3399

U.S. Environmental Protection Agency—Region II, Drinking Water Section, 290 Broadway, New York, New York 10007–1866

FOR FURTHER INFORMATION CONTACT: Michael J. Lowy, Drinking Water Section, U.S. Environmental Protection Agency—Region II, (212) 637–3880.

Authority: (Section 1413 of the Safe Drinking Water Act, as amended, 40 U.S.C. 300g–2, and 40 CFR 142.10, 142.12(d) and 142.13)

Dated: February 25, 1999.

William J. Muszynski,

Acting Regional Administrator, EPA Region II.

[FR Doc. 99–7181 Filed 3–25–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

(ER–FRL–6241–2)

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared March 01, 1999 Through March 05, 1999 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1998 (63 FR 17856).

Draft EISs

ERP No. D–AFS–J65297–MT

Rating EC2, Bull Lake Estates Road Access Project, Implementation, Easement Grant Permit, Kootenai National Forest, Three Rivers Rangers District, Lincoln County, MT.

Summary: EPA expressed environmental concerns about potential adverse social, water quality, fisheries, and wildlife impacts of the development of the Bull Lake Estates subdivision. The Final EIS should discuss the environmental impacts of the management actions and mitigation measures.

ERP No. D–AFS–L65312–WA

Rating EO2, Olympic Cross Cascade Pipeline Project, Construct and Operate a Common Carrier Petroleum Pipeline, Mt. Baker-Snoqualmie and Wenatchee National Forests, City of Pasco, Snohomish, King, Kittitas, Adams, Grant and Franklin Counties, WA.

Summary: EPA expressed environmental objections because the draft EIS does not adequately discuss the need for the project in terms of a public interest, a range of alternatives needed to meet the purpose and need for the project, and environmental risks posed by the proposed alternative.

ERP No. D–AFS–L65316–ID

Rating EC2, Coeur d'Alene River Ranger District Noxious Weed Control