



October 29, 2024

Her Excellency Maura Healey, Governor  
Office of the Governor  
State House, Room 280  
Boston, Massachusetts 02133

Ms. Bonnie Heiple, Commissioner  
Department of Environmental Protection  
100 Cambridge Street, Suite 900  
Boston, Massachusetts 02108

Dear Governor Healey and Commissioner Heiple:

On behalf of the Trucking Association of Massachusetts (TAM) and the Massachusetts State Automobile Dealers Association (MSADA), we write in response to the Massachusetts Department of Environmental Protection's (MassDEP's) recent decision to delay the heavy-duty omnibus (HDO) rule by one year and effectively provide an exemption from the Advanced Clean Truck (ACT) rule to government for the purchase of snow-plows and street sweepers. While appreciative of the DEP's attempt to provide relief from these onerous rules, the fact remains that truck dealers, companies and municipalities (apart from the exempted snow-plows and street sweepers) that rely on medium- and heavy-duty (MHD) trucks, and, most importantly, the general public will be irreparably harmed by the failure to delay implementation of the ACT rule in Massachusetts. Respectfully, the MassDEP's recent actions effectively provide minimal, if any, relief for MHD truck end-users and dealers – while effectively stagnating the Commonwealth's efforts to curb emissions from MHD trucks.

The failure to delay the ACT rule means that manufacturers must sell an increasing percentage of electric MHD trucks, effective January 1, 2025, in order to sell internal combustion engine (ICE) vehicles without penalty. As previous correspondence from almost 40 industry associations have highlighted, electric MHD trucks currently lack the application and capacity to serve the needs of the industries that rely on these vehicles – notwithstanding the Commonwealth's lack of infrastructure necessary to even support the charging of these electric MHD trucks if they were suitable. Therefore, industries ranging from traditional freight delivery, perishable foods delivery, medical necessities, home heating oil, landscaping and construction to towing and forestry, will not be able to buy the MHD trucks they need in the coming year. Quizzically, your Administration's actions make it more likely that older, dirtier trucks will remain on the Commonwealth's roads for a longer period than maybe they should. This simply makes no sense.

The facts on this issue are straightforward:

- The infrastructure does not exist to support electric MHD trucks at this time. Massachusetts is not California. We have not made the necessary investments in our electric grid or the infrastructure

necessary to support charging MHD trucks. As noted in the Massachusetts Electric Vehicle Infrastructure Coordinating Council's (EVICC's) 2023 baseline assessment, "[l]imits in our distribution and transmission infrastructure are interfering with transportation electrification projects right now. For example, the initial results from the MassCEC Mass Fleet Advisor program, which provides technical support to medium- and heavy-duty fleet operators looking to transition to electric vehicles, *found that nearly all the proposed projects require significant utility upgrades as well as customer-side investments such as electric panel upgrades. Some of these investments will take years to install. These upgrades are delaying projects and discouraging even highly motivated fleet operators from moving forward with electric vehicle purchases.*"<sup>1</sup>. At that, much of the Commonwealth's efforts have focused on identifying charging means for electric passenger vehicles. Thankfully, language included in the legislature's Conference Committee report on clean energy and siting will require the EVICC to focus on identifying MHD truck needs for electric charging<sup>2</sup>, but it certainly will not result in new infrastructure appearing before January 1<sup>st</sup>.<sup>3</sup>

- Lack of electric MHD truck sales in the previous and current years are a likely indicator of upcoming failure. Contrary to the very concept of a sales driven market, the fiction somehow exists that manufacturers and dealers do not want to sell electric MHD trucks. However, the fact remains that end-users do not want to buy electric MHD trucks yet because of the aforementioned infrastructure and previously discussed capacity problems. For example, from January 2023 through June 2024, Massachusetts saw the registration of exactly fourteen (14) Class 8 heavy-duty trucks last year in an 18-month period.<sup>4</sup> In the same period of time, Massachusetts registered 2,904 Class 8 heavy-duty trucks overall. Over that period of time, electric Class 8 sales represented 0.48% of all sales. To put it into terms of what this would mean under the ACT rule, the ACT rule requires a 7% rate of sale for model year 2025, meaning that if we applied the last available full year's numbers, the rate of sale would have been 0.68% (14 electric; 2,116 Class 8 registrations overall in 2023). To reach 7%, 148 Class 8 electric heavy-duty vehicles would have needed to have been sold, meaning we would have been 134 vehicles short. (Note: To put the current year into context, from January 2024 through June 2024, not one (1) Class 8 electric heavy-duty truck was registered in the Commonwealth.) The manufacturing of MHD trucks is driven by demand; there is simply no demand because few, if any, applications for medium- and heavy-duty electric trucks exist at this time. Each MHD truck is built to the specific needs of the buyer; if there is no demand, there is no supply needed.
- Soon to be enacted ACT rule amendments will not solve this problem. The MassDEP's announcement delaying the HDO rule and instituting enforcement discretion cited that "[m]anufacturers are able to purchase zero emission vehicle (ZEV) credits from other

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<sup>1</sup> Electric Vehicle Infrastructure Coordinating Council (EVICC), Report to the General Court, 2023.

<https://www.mass.gov/doc/evicc-final-assessment/download> (emphasis added).

<sup>2</sup> See Senate Bill 2967, Section 102. (EVICC shall ... "(x) [create] estimates of the number of zero-emission medium and heavy-duty vehicle charging stations required to meet the commonwealth's emission limits and sublimits pursuant to said chapter 21N; (x) a discussion of costs, permitting processes and estimated timelines for installing charging stations for medium and heavy-duty vehicles".

<sup>3</sup> For Massachusetts, the American Transportation Research Institute (ATRI) concludes that our state will need to generate 47.5% more electricity to meet ZEV travel needs just to stay on par with current non-transportation electricity requirements. See Jeffrey Short, Alexandra Shirk, Alexa Pupillo. 2022. *Charging Infrastructure Challenges for the U.S. Electric Vehicle Fleet*. Atlanta: American Transportation Research Institute, Page 24. <https://truckingresearch.org/2022/12/charging-infrastructure-challenges-for-the-u-s-electric-vehicle-fleet/>.

<sup>4</sup> S&P Global Mobility, as compiled by the Association of Truck Dealers (ATD), a division of the National Automobile Dealers Association (NADA), August 28, 2024.

manufacturers and can carry a ZEV sales deficit forward one Model Year”<sup>5</sup>. Taking the Class 8 truck example from above, a manufacturer cannot trade credits derived from lower Class vehicle types to support the sale of non-electric Class 8 vehicle. Further, even with the upcoming ACT rule amendments that let manufacturers carry and make-up deficits for up to three years, nothing has changed that will actually incentivize end-users to buy an electric MHD truck, meaning the barrier to needed non-electric trucks that can meet an end-user’s needs still remains. The California Air Resources Board (CARB) continues to offer amendments to the ACT and HDO rules as they apply to California, not our state. Massachusetts has not increased grant money for vehicle or infrastructure purchases nor have the utilities made significant progress, through no fault of their own, to generate the additional electricity or transmission network needed. One simply need look at the State of California’s work on this issue compared to the Commonwealth’s to see that we have not invested the same resources to being ready for the implementation of the ACT rule or the upcoming ACT rule amendments.

- MassDEP’s enforcement discretion, which favors government over private industry, may violate governing law. The MassDEP’s decision to exercise “enforcement discretion” for government purchasers of snow-plows and street sweepers may constitutes a violation of the identity requirement imposed by Section 177 of the Clean Air Act (the “Act”). 42 U.S.C. § 7507. Under Section 177 of the Act, states are given the authority to adopt emission control standards set forth by California, provided that “(1) such standards are *identical* to the California standards for which a waiver has been granted for such model year, and (2) California and such State adopt such standards at least two years before commencement of such model year (as determined by regulations of the Administrator).” 42 U.S.C. § 7507 (emphasis added). Since the HDO waiver has not been approved by United States Environmental Protection Agency (EPA), the applicable regulation is the ACT rule. Unfortunately, the ACT rule does not list those vehicle types as emergency vehicles, nor does it allow for state discretion. Massachusetts’ own law, Mass. Gen Laws ch. 111, §142K, requires the state to adopt “motor vehicle emissions standards based on the California’s duly promulgated motor vehicle emissions standards of the state of California unless, after a public hearing, the department establishes, based on substantial evidence, that said emissions standards and a compliance program similar to the state of California’s will not achieve, in the aggregate, greater motor vehicle pollution reductions than the federal standards and compliance program for any such model year.” There is no mention of discretion anywhere to simply add an exception – particularly when providing relief to one class of user (government) – based on government feeling the same marketplace pressures faced by private end-users performing the same function<sup>6</sup>.

Massachusetts’ end users and dealers of MHD trucks are seemingly caught in the middle of a battle between regulators and manufacturers that expands well past Massachusetts’ borders. No reasonable company that relies on MHD trucks on a daily basis can afford to take a risk of this size when the truck in question cannot perform to the level needed and little to no infrastructure exists to support it. Unfortunately, this current situation hurts Massachusetts businesses and residents as our efforts to curb emissions within our state, by replacing older, dirtier MHD trucks, essentially stops.

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<sup>5</sup> This brings up another interesting point that has become apparent during this issue; no one seems to know what Massachusetts credits are actually available. Considering fleet owners often plan for their purchase decisions well in advance, there is no sense as to what the status of credits in Massachusetts actually are. California makes it clear as to its available credits: <https://ww2.arb.ca.gov/applications/annual-zev-credits-disclosure-dashboard>. (Note: credits are not transferable from state to state; California’s information is provided as an example of a state who is far ahead of the Commonwealth.)

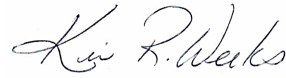
<sup>6</sup> Respectfully, creating an exception for government, when private entities perform many of the same services for government, creates an impression of “do as I say; not as I do”. Is it not a public safety function when a private contractor, driving alongside a publicly owned snow-plow, clears a road for a municipality or a state agency?

We appreciate your attention to this important matter and, again, respectfully implore you to delay the ACT rule. Technology and infrastructure simply have not caught up to a well-intentioned regulatory policy; therefore, it is time to work together, while we delay the ACT rule, to put the Commonwealth in a position to succeed.

Sincerely,

A handwritten signature in blue ink, appearing to read "Robert F. O'Koniewski", with a stylized flourish at the end.

Robert F. O'Koniewski, Esq.  
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A handwritten signature in black ink, appearing to read "Kevin R. Weeks", with a stylized flourish at the end.

Kevin Weeks  
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Cc:

Ms. Rebecca Tepper, Secretary  
Massachusetts Executive Office of Energy and Environmental Affairs