UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

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CIVIL RIGHTS

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Certified Mail#7004-2510-0004-2241-6862

In Reply Refer to:
EPA File No. 19R-05-R4

Commissioner Robert J. Martineau, Jr.
Tennessee Department of Environment & Conservation
401 Church Street
L&C Annex, 1st Floor
Nashville, TN 37243-2310

Return Receipt Requested
Certified Mail#7004-2510-0004-2241-6893

Mr. Bob Colby
Director
Chattanooga-Hamilton County Air Pollution Control Bureau
6125 Preservation Drive
Chattanooga, TN 37416-3734

Re: DISMISSAL OF TITLE VI ADMINISTRATIVE COMPLAINT NO. 19R-05-R4

Dear Messrs. Martineau and Colby:

The purpose of this letter is to notify you that the U.S. Environmental Protection Agency (EPA) Office of Civil Rights (OCR) is dismissing the claims raised in the administrative complaint filed by the Concerned Citizens for Justice and the Bus Riders Union (Complainants), pursuant to EPA's regulations implementing Title VI of the Civil Rights Act of 1964 (Title VI), as amended. The complaint was initially received by the Department of Transportation (DOT) on October 25, 2005. DOT referred the complaint to EPA Region 4 on January 9, 2006. The complaint was accepted for investigation on May 31, 2007. As discussed below, OCR is dismissing the complaint because the investigation failed to uncover evidence of discrimination in violation of Title VI.

I. COMPLAINT ALLEGATIONS

The complaint alleges discrimination against African Americans by the City of Chattanooga, Hamilton, and Davidson[1] Counties, and the Tennessee Department of Environment

[1] The allegations concerning Davidson County are not attributable to the recipients named in the complaint.

and Conservation (TDEC) in violation of EPA's regulations implementing Title VI found at 40 C.F.R. Part 7. The alleged discriminatory act was the adoption of the motor vehicle inspection and maintenance program by the County Commission of Hamilton County, TN on April 1, 2005.[2] The Tennessee Department of Public Safety was also named in the complaint, but is not a recipient of EPA financial assistance and, therefore, these allegations are rejected.

The complaint alleged that the requirements of the motor vehicle inspection and maintenance (I/M) program implemented by the City of Chattanooga and Hamilton County created a disparate economic impact on African Americans in the County. OCR accepted the following allegation for investigation:

> The requirements of the motor vehicle inspection and maintenance (I/M) program initiated by TDEC and implemented by the City of Chattanooga and Hamilton County, on April 1, 2005, have created a disparate impact on African Americans in Hamilton County and Davidson County.[3]

The Chattanooga metropolitan area in Hamilton County was in National Ambient Air Quality (NAAQS) non-attainment status in 2004 and implemented the I/M program to comply with the NAAQS. The I/M program provides a temporary one year waiver for vehicles that do not meet emissions requirements and for which repairs have not been effective. The Complainants allege that the cost to comply with the I/M program are disproportionately borne by African Americans in Chattanooga because they are low-income. Relatedly, one of the attachments to the complaint references a petition to the Tennessee Department of Safety on behalf of a Chattanooga resident, [redacted], who was unable to renew his vehicle because it failed the new I/M emissions standards.[4] As his vehicle was a 1993 model, [redacted] would have had to pay $200 to obtain a waiver.

II. RECIPIENTS

Tennessee Department of Environment and Conservation

The Division of Air Pollution Control is directed to maintain the purity of the air resources of the State of Tennessee consistent with the protection of normal health, general welfare, and physical property of the people while preserving maximum employment and enhancing the industrial development of the State. The Division directly serves 91 counties

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[2] Administrative EPA Title VI Complaint, filed by the Concerned Citizens for Justice and the Bus Riders (referred from U.S. Department of Transportation to EPA (January 9, 2006).

[3] EPA Acceptance letter to Complainant (May 31, 2007).

[4] Administrative EPA Title VI Complaint, filed by the Concerned Citizens for Justice and the Bus Riders (referred from U.S. Department of Transportation to EPA (January 9, 2006)).

within the state and oversees and assists in the actions of Davidson, Hamilton, Knox, and Shelby counties, which have their own local air pollution control programs. Established to carry out control and abatement of air pollution, the Tennessee Air Pollution Control Board (State Board) adopts regulations, holds hearings, and initiates court actions to enforce regulations.[5]

Chattanooga-Hamilton County Air Pollution Control Bureau[6]

Hamilton County is one of four counties in Tennessee with a local air pollution control program. The Chattanooga-Hamilton County Air Pollution Control Bureau (County Bureau) works with the state of Tennessee and EPA to determine national standards for various air pollutants and, in turn, collaborates with communities to develop pollution reduction plans, such as State Implementation Plans (SIPs), for those pollutants that fail.[7]

In Hamilton County, the State Board has primary enforcement authority for air pollution regulations, and the County Bureau handles the day-to-day operations of the air pollution control program, including responding to citizen complaints. The State Board shares enforcement authority with the EPA. However, Hamilton County has been granted a Certificate of Exemption, which means that the State of Tennessee has relinquished its primary authority to enforce air pollution regulations within Hamilton County and its included municipalities.[8]

III. CLEAN AIR ACT

The Clean Air Act (CAA) requires EPA to set NAAQS[9] for pollutants considered harmful to public health and the environment, including carbon monoxide, lead, nitrogen oxide, particulate matter, sulfur dioxide and ground-level ozone. In general, the SIP is a collection of programs, such as monitoring, modeling, emission inventories, and control strategies and policies and rules that the state uses to attain and maintain the NAAQS. A state must engage the public in approving its plan prior to sending it to EPA for approval.

If the air quality in a geographic area meets or does better than the national standard, it is called an attainment area; areas that do not meet the national standard are called nonattainment areas. States and tribes submit recommendations to the EPA as to whether or not an area is attaining the NAAQS for a criteria pollutant. The states and tribes base these recommendations on air quality data collected from monitors at locations in urban and rural settings. After working with the states and tribes and considering the information from air quality monitors,

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[5] Chattanooga-Hamilton County Air Pollution Control Bureau website, *available at* http://www.apcb.org [hereinafter referenced as County APCB website].

[6] The Chattanooga-Hamilton County Air Pollution Control Bureau (Bureau) was a recipient from 2005 to 2009. The Bureau is currently not a recipient.

[7] County APCB website, *supra* note 5.

[8] *Id.*

[9] 40 C.F.R. Part 50.

EPA designates an area as attainment or nonattainment with the NAAQS. Under the CAA, each state with nonattainment areas must develop a SIP describing how it will attain and maintain NAAQS compliance.[10]

Inspection and maintenance programs are required in both ozone and carbon monoxide nonattainment areas, depending upon population and nonattainment classification (e.g., the severity of the air pollution problem).[11]

IV. HAMILTION COUNTY VEHICLE INSPECTION AND MAINTENANCE PROGRAM

Hamilton County was identified as in non-attainment status for the 8-hour ozone standard by EPA in 2005.[12] Hamilton County entered into an Early Action Compact with EPA, which required that it provide EPA with a plan to come into compliance with the standard earlier than required.[13] As a result, the county enacted four voluntary clean-air initiatives, one of which was an I/M program that was implemented on April 1, 2005. Other counties in the state have implemented I/M programs to combat air emissions in their jurisdictions, because motor vehicles are the single largest source of air pollution in Tennessee.[14] Pollutants in vehicle exhaust combine with heat and sunlight to form ozone or smog. Ozone can pose an array of health hazards to individuals and children that range from respiratory damage and asthma to premature deaths. According to the County Bureau, I/M programs in Middle Tennessee have reduced harmful pollution from tailpipe exhaust by eliminating 26,000 tons of smog-forming pollution from 1996-2002 and 40,000 tons of carbon monoxide from the air each year.[15]

The county's I/M program requires gasoline-and diesel-powered passenger vehicles to pass an annual emissions test before they can be registered in Hamilton County. Gasoline-fueled vehicle models 1975 – 1995 must pass a tailpipe emissions test and a tampering check. For 1996 models and newer, the vehicle must pass an Onboard Diagnostics II (OBD) test and a gas cap

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[10] The EPA Office of Air and Radiation gives an overview of how the SIP process works. *See* http://www.epa.gov/air/urbanair/sipstatus/process.html. There is also more specific information concerning SIPs for nonattainment areas. *See* http://www.epa.gov/air/urbanair/sipstatus/nonattainment.html.

[11] 40 C.F.R. §51.350. Classification for Hamilton County is based on ozone, not carbon monoxide (CO), as Hamilton County was never listed as a targeted area for CO in the Green Book. However, it is also listed as a nonattainment area for PM2.5 under the 1997 standard as of 8/30/2011 (but not under the 2006 standard). *See* http://www.epa.gov/oar/oaqps/greenbk/cindex.html.

[12] U.S. EPA Area Designations for 1997 Ground-level Ozone, *available at* http://www.epa.gov/ozonedesignations/1997standards/regions/region4desig.htm.

[13] County APCB website, *supra* note 5.

[14] Department of Environment & Conservation, Division of Air Pollution Control, Vehicle Emissions Testing Program, Fact Sheet, *available at* http://www.apcb.org/pdf%20files/Hamilton%20CO%20Fact%20Sheet%202-15-05.pdf at [2/4] [hereinafter referenced as Fact Sheet]

[15] *Id.*

leak check.[16] While the majority of vehicles are subject to testing, electric cars, motorcycles and antiques are among a limited group of exempt vehicles. The emissions test fee is $10.[17]

If the vehicle fails the emissions test, the vehicle has to be repaired so that it can pass the test. If the vehicle still fails the test after repairs are completed, the vehicle owner may be eligible for a waiver.[18] To qualify for a cost waiver, the owner must:

- Have a minimum expenditure of at least $75 in emissions-related repairs for 1975-1980 model vehicles; or
- Have a minimum expenditure of at least $200.00 in emissions-related repairs for 1981-1995 model vehicles; or
- Have a minimum expenditure of at least $650 in emissions-related repairs for vehicle models 1996 and newer; and,
- Provide copies of receipts for repairs and verification of repairs.

Cost waivers are available for a single inspection cycle, so once a waiver is granted the vehicle is not eligible for another waiver. Like other states, Tennessee waiver provisions feature a tiered system so the model year of the car dictates the minimum repair expenditure required.[19] Therefore, owners of older cars pay less for a waiver than new car owners.[20] In comparison, some states offer only one fixed amount to be eligible for a waiver,[21] of which four exceed the highest repair thresholds offered by Hamilton County, and six states have no waiver provisions at all.[22]

Hamilton County also provides hardship waivers if a driver's vehicle fails the emissions test. Individuals eligible for a hardship waiver must: 1) have personal circumstances that meet the hardship criteria established by the Tennessee Air Pollution Control Board; 2) submit a Hardship Waiver application to the Division of Air Pollution Control with required documentation; and, 3) be approved and granted by the Board.[23]

V. FINDINGS OF MATERIAL FACT

Following its investigation, OCR established the following findings of material fact:

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[16] Diesel powered vehicles 1975 -2001are subject to an idle test of 10 percent opacity limit and a fuel cap check. Diesel powered vehicles 2002 and newer equipped with OBD system must pass OBD test and fuel cap check.

[17] APCB website, *supra* note 5.

[18] Rules of Tennessee Department of Environment and Conservation Bureau of Environment, Division of Air Pollution Control, Chapter 1200-3-29-.11. *See also* EPA regulations at 40 C.F.R. § 51.360.

[19] Other states include Arizona, Delaware, Indiana, Kentucky, Massachusetts, and Ohio.

[20] Connecticut, Rhode Island, Georgia and the District of Columbia have higher repair thresholds.

[21] These states include Colorado, Connecticut, District of Columbia, Georgia, Illinois, Maryland, Nevada, New Jersey, New Mexico, New York, North Carolina, Pennsylvania, Rhode Island, and Washington.

[22] These states include Louisiana, Maine, New Hampshire, Utah, Vermont and Wisconsin.

[23] Fact Sheet, *supra* note 14, at [3-4/4].

1. Under the Clean Air Act (CAA), each state with nonattainment areas must develop a State Implementation Plan (SIP) to attain and maintain NAAQS compliance.[24]

2. In 2004, Hamilton County and the Chattanooga metropolitan area was designated as a non-attainment area for the 8-hour ozone standard established under the National Ambient Air Quality Standards (NAAQS) as promulgated in 1997.

3. On December 29, 2004, the TDEC proposed to adopt an Early Action Compact with EPA (EAC) together with Hamilton County and other local agencies in the state, whereby the County committed to reduce air pollution by 2007. The EACs were voluntary agreements between the States, local governments, and EPA. The intent of these agreements was to reduce ozone pollution and thereby attain and maintain the 8-hour ozone standard.

4. In 2005, Hamilton County implemented an Inspection/maintenance (I/M) program to attain the NAAQS standard.

5. Motor vehicles are the single largest source of air pollution in Tennessee.[25]

6. Pursuant to EPA regulations for vehicle I/M programs, Tennessee provides a one-time waiver for older vehicles that do not meet emissions requirements and for which repairs have not been effective. As in other states, owners must provide evidence of the cost of repairs performed to attempt achievement of the emissions requirements.

7. In Hamilton County, the cost of the I/M waiver depends on the model year of the vehicle. The repair cost thresholds range from $75-$650 and they increase as the vehicle age goes down. Six other states have a similar sliding scale for obtaining waivers.

8. In 2005, [redacted], a Chattanooga resident, was unable to renew his vehicle because it failed the new I/M emissions standards. His vehicle was a 1993 Oldsmobile. [redacted] would have had to pay $200 to obtain a waiver.

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[24] See *supra* note 10. Even if states do not have non-attainment areas, "[a]ll states are required to submit SIPs with general infrastructure elements showing the state has the capacity to attain, maintain, and enforce a new or revised NAAQS…" and these "must include the basic program requirements for managing air quality required in section 110(a)(2) of the" Clean Air Act. In addition, "...CAA Section 172 requires states with nonattainment areas to adopt additional regulatory programs designed to achieve and maintain attainment of the relevant NAAQS." *See* http://www.epa.gov/air/urbanair/sipstatus/overview.html.

[25] Fact Sheet, *supra* note 14, at [2/4].

9. Thirty-three states, including the District of Columbia, mandated vehicle emissions testing as of 2005.

10. Fourteen states offer waivers only after the driver has paid a fixed repair amount, regardless of the model year of the car.

11. Connecticut, Rhode Island, Georgia and the District of Columbia require repair expenditures of $660, $700, $755 and $855, respectively, to obtain a waiver, all of which are higher than Hamilton County's highest repair threshold amount.

12. Louisiana, Maine, New Hampshire, Utah, Vermont and Wisconsin do not provide any I/M program waivers.

13. Drivers in Hamilton County with cars that fail to pass the emissions test may also be eligible for a hardship waiver.

14. In 2008, Hamilton County was designated as an attainment area for the eight-hour ozone standard established under NAAQS.

VI. METHODOLOGY

EPA conducted its investigation in accordance with the U.S. Department of Justice (DOJ) Investigation Procedures Manual.[26] In conducting its investigation, OCR reviewed an array of federal and state regulatory, academic and online resources related to state inspection and maintenance programs. OCR reviewed documentation of I/M provisions within Tennessee and in other states, as well as EPA regulations and guidance documents.

VII. LEGAL FRAMEWORK FOR ANALYZING DISPARATE IMPACT

A. Title VI and EPA's Regulations Implementing Title VI

Title VI prohibits discrimination based on race, color, or national origin under programs or activities receiving Federal financial assistance. Specifically, Section 601 of Title VI provides:

> No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.[27]

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[26] *See* U.S. Dep't of Justice, *Investigation Procedures Manual for the Investigation and Resolution of Complaints Alleging Violations of Title VI and Other Nondiscrimination Statutes* (September 1998).
[27] 42 U.S.C.S. § 2000d.

The purpose of Title VI is to ensure that public funds are not spent in a way that encourages, subsidizes, or results in discrimination on the basis of race, color, or national origin. Toward that end, Title VI bars intentional discrimination.[28]

In addition, Section 602 of Title VI authorizes and directs Federal agencies to enact "rules, regulations, or orders of general applicability" to effectuate the provisions of Section 601.[29] Like most federal agencies, in addition to prohibiting intentional discrimination, EPA's regulations prohibit recipients of Federal funds from using criteria or methods of administering their programs that have the **effect** of subjecting individuals to discrimination based on race, color, or national origin. The Supreme Court has recognized that such regulations may validly prohibit practices having a disparate impact on protected groups, even if the actions or practices are not intentionally discriminatory.[30]

EPA's regulations implementing Title VI, codified at 40 C.F.R. Part 7, were promulgated under the authority of Section 602. Under these regulations, OCR is responsible for investigating complaints alleging intentional discrimination and/or disparate impact discrimination in programs or activities of recipients receiving financial assistance from EPA.[31] Under 40 C.F.R. § 7.120(g), if OCR's investigation reveals no violation of EPA's Title VI regulations, OCR will dismiss the complaint.

B. Standard for Evaluating a Disparate Impact Claim

Pursuant to EPA's regulation at 40 C.F.R. §7.35(b):

> A recipient [of EPA assistance] shall not use criteria or methods of administering its program which have the effect of subjecting individuals to discrimination because of their race, color, national origin, or sex, or have the effect of defeating or substantially impairing the accomplishment of the objectives of the program with respect to individuals of a particular race, color, [or] national origin [. . .].

In assessing whether a recipient's criteria or methods of administration resulted in unlawful discriminatory effects, the Agency relies, in part, on case law developed under Title VI and under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et* seq. This case law sets forth the legal standard for establishing an adverse disparate impact.

To determine whether a *prima facie* case of disparate impact exists, OCR must ascertain whether the recipient utilized a facially neutral practice or engaged in a facially neutral action

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[28] *Guardians Ass'n v. Civil Serv. Comm'n*, 463 U.S. 582, 607-08 (1983).
[29] 42 U.S.C.S. §2000d-1.
[30] *See Alexander*, 469 U.S. at 292-94; *Guardians*, 463 U.S. at 582; *Elston v. Talladega County Bd. of Educ.*, 997 F.2d 1394, 1406, *reh'g denied*, 7 F.3d 242 (11th Cir. 1993).
[31] 40 C.F.R. § 7.20.

that may have a disproportionate impact on a group protected by Title VI.[32] In addition, OCR will determine whether a causal connection exists between the recipient's policy, practice, or action and the allegedly adverse disparate impact.[33] If the Agency finds that a causal connection exists, it will then determine whether the alleged impact is significantly "adverse" and "disparate" on the group that allegedly suffered the impact.[34] If a *prima facie* adverse disparate impact case exists, the Agency will determine if the recipient has a "substantial legitimate justification" for its action that caused the adverse disparate impact.[35] To demonstrate such a justification, the recipient must show that the challenged policy was "necessary to meeting a goal that was legitimate, important, and integral to the [recipient's] institutional mission."[36] If the recipient can make such a showing, the inquiry must focus on whether there are any "equally effective alternative practices" that would result in less racial disproportionality or whether the justification proffered by the recipient is actually a pretext for discrimination.[37]

The preponderance-of-the-evidence standard is the applicable burden of proof in this investigation and decision.[38] In other words, to make a finding of adverse disparate impact, the Agency must be satisfied at every step of the analysis that the record demonstrates that it was more likely than not that the recipient's actions had a disproportionately adverse effect on the complainant.

C. Analysis

In the instant case, even assuming that the facts established a *prima facie* case of disparate impact, following its investigation, OCR concluded that the Bureau's I/M program is substantially justified. Pursuant to the CAA, Hamilton County was designated as a NAAQS nonattainment area, which required the County to undertake measures to reduce its air emissions. Like seven other counties in Tennessee and thirty-three states, including the District of Columbia, Hamilton County adopted an I/M program to meet the NAAQS.

Hamilton County's I/M program has waivers available for vehicles that cannot pass the emissions test and for which repairs have been ineffective. The county's repair thresholds for

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[32] *New York City Envtl. Justice Alliance (NYCEJA) v. Giuliani,* 214 F.3d 65, 69 (2d Cir. 2000); *Elston v. Talladega County Bd. of Educ.,* 997 F.2d 1394, 1407 (11th Cir. 1993); *Larry P. v. Riles,* 793 F.2d 969, 982 (9th Cir. 1984).
[33] *NYCEJA*, 214 F.3d at 69.
[34] *NAACP v. Medical Center, Inc.,* 657 F.2d 1322, 1332 (3d Cir. 1981); *cf. Wards Cove Packing Co., Inc. v. Atonio,* 490 U.S. 642, 656-57 (1989) (Title VII case); *see Bryan v. Koch,* 627 F.2d 612, 617 (2d Cir. 1980).
[35] *See Elston*, 997 F.2d at 1413; *Georgia State Conferences of Branches of NAACP v. Georgia*, 775 F.2d 1403, 1417-18 (11th Cir.1985).
[36] *Sandoval v. Hagan*, 7 F. Supp.2d 1234, 1278 (M.D. Ala. 1998), *aff'd,* 197 F.3d 484 (11th Cir. 1999), *cert. granted sub.nom. Alexander v. Sandoval*, 532 U.S. 275 (2001)(quoting *Elston*, 997 F.2d at 1413).
[37] *Elston*, 997 F.2d at 413. *See generally*, *McDonnell Douglas v. Green*, 411 U.S. 792 (1973).
[38] U.S. Dep't of Justice, *Investigation Procedures Manual for the Investigation and Resolution of Complaints Alleging Violations of Title VI and Other Nondiscrimination Statutes* at pg. 58 (1998) (citing Administrative Procedure Act, 5 U.S.C. § 556(d)).

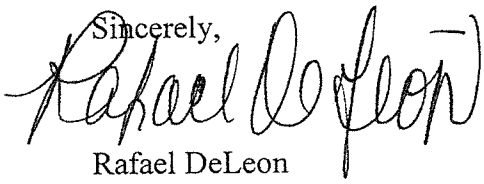
waivers are consistent with EPA regulations, which provide similar repair cost thresholds for model years before and after 1981 to obtain waivers for basic I/M programs.[39] In addition, the county's repair thresholds for the waivers are comparable to other states in the country which allows owners of older vehicles to pay less for waivers. Generally, older cars are the highest emitters,[40] so the county's I/M program, and low waiver amounts, helps to remove older cars from the road, thereby reducing air emissions. A number of states provide only fixed waiver amounts, regardless of the model year of the car, and in some instances they exceed the highest repair thresholds provided in Hamilton County's I/M program. Further, the County minimizes impacts of the I/M program by providing two types of waivers for drivers whose cars cannot pass the emissions test, including a hardship waiver. The program has been successful in reducing air ozone and carbon monoxide emissions in Tennessee, which in turn, will decrease the likelihood of associated health impacts.[41] Finally, it is noteworthy that Hamilton County is currently in attainment with the NAAQS. Therefore, OCR concludes that there are not less discriminatory alternatives to the county's I/M program.

VIII. CONCLUSION

Based on the facts established during this investigation and applicable legal standards, OCR concludes that the Complainant's allegations of unlawful disparate impact are not supported by the record. Thus, OCR finds no violation of Title VI and EPA's implementing regulations found at 40 C.F.R. Part 7, and hereby dismisses this complaint against Hamilton County and the Tennessee Department of Environment and Conservation.

If you have any questions, please contact Helena Wooden-Aguilar, Assistant Director, Office of Civil Rights, by telephone at 202-564-0792, by email at Wooden-Aguilar.Helena@epa.gov, or by mail at U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, N.W., Mail Code 1201A, Washington, DC, 20460.

Sincerely,



Rafael DeLeon
Director

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[39] *See* 40 C.F.R. §51.360.

[40] *See* U.S. Envtl. Prot. Agency, Office of Transportation and Air Quality. "Accelerated Retirement of Vehicles," March 1992. *Online*: http://www.epa.gov/otaq/stateresources/policy/transp/tcms/accelerate_retire.pdf, at [2/17]. *See also* Robert F. Sawyer. "Vehicle Emissions: Progress and Challenges," *J Exposure Sci. and Envtl. Epidemiology* (2010) 20, 487-488. *Online*: http://www.nature.com/jes/journal/v20/n6/pdf/jes201044a.pdf, at [1/2].

[41] *See generally*, Fact Sheet, *supra* note 14, at [2/4].