

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of the General Counsel, Deputy Commissioner & General Counsel
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www.dec.ny.gov

OCT 09 2024

RE: Limited Enforcement Discretion Related to the Advanced Clean Trucks and Heavy-Duty Low NOx Omnibus Programs

To: New York State and Local Agencies making purchases of model year (MY) 2025 and 2026 medium- and heavy-duty (M/HD) vehicles for snowplowing and street cleaning purposes, and

Motor Vehicle Manufacturers subject to New York State's Advanced Clean Trucks (ACT) and Heavy-Duty Low NOx Omnibus (HD Omnibus) regulations under Title 6 of the New York Codes, Rules and Regulations (6 NYCRR), Parts 200 and 218, including but not limited to the entities listed in Appendix A of this letter.

This is to advise you that, subject to the terms set forth in this letter, the New York State Department of Environmental Conservation (DEC) will exercise its authority to utilize enforcement discretion with respect to certain provisions of 6 NYCRR Parts 200 and 218, as DEC will exempt vehicles used for snowplowing and street cleaning from new vehicle requirements under New York's ACT and HD Omnibus regulations.

Background

New York adopted California's (CA) ACT regulation, under 6 NYCRR Parts 200 and 218, in December 2021. The ACT regulation requires applicable M/HD vehicle manufacturers to sell a percentage of their total sales in New York State as zero-emission vehicles (ZEVs) starting in MY 2025, with increasing ZEV sales through MY 2035. Transit buses, motor coaches, and emergency vehicles¹ are exempt from the ACT regulation.

Likewise, New York adopted CA's HD Omnibus regulation, under 6 NYCRR Subparts 200 and 218, in December 2022. The HD Omnibus regulation requires, among other things, applicable M/HD vehicle manufacturers to certify medium- and heavy-duty on-road engines and vehicles with more stringent nitrogen oxides (NOx) and particulate matter (PM) emissions standards, beginning with engine model year (EMY) 2026 in New York State.

In July 2023, the California Air Resources Board (CARB) announced its intention to amend the HD Omnibus NOx certification standards to generally align with recently

¹ See, 13 California Codes of Regulations (CCR) 1963
([https://govt.westlaw.com/calregs/Document/I7CAACD935A1E11EC8227000D3A7C4BC3?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)](https://govt.westlaw.com/calregs/Document/I7CAACD935A1E11EC8227000D3A7C4BC3?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default))), which included emergency vehicle exemptions under California Vehicle Code Section 165
(https://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=VEH§ionNum=165.)

revised U.S. Environmental Protection Agency (EPA) NOx certification standards beginning with MY 2027.² CA is expected to formally adopt amendments to HD Omnibus next year.

DEC was made aware by various stakeholders, including State agencies, municipalities, and dealerships, that motor vehicle manufacturers are limiting internal combustion engine (ICE) medium- and heavy-duty truck sales unless zero-emission trucks sales are proportionally purchased. While manufacturers have other compliance flexibilities available under the terms of the ACT regulations, manufacturers are limiting ICE sales as a means to ensure their compliance with ACT sales requirements.

As a result of this manufacturer sales practice as a means to comply with ACT requirements, several New York State and Local Agencies have advised DEC that a significant number of anticipated snowplow and street cleaning truck purchases will not be completed this year, adversely impacting these agencies' ability to respond to snow emergencies and to clean streets of debris in preparation for severe storms and anticipated flood events, which, in turn, would have a significant adverse impact on public safety in the state.

Additionally, vehicles used for street cleaning and snowplowing, including refuse and dump trucks converted to function as snowplows during the winter, are not explicitly listed under the emergency vehicle exemptions of California Vehicle Code Section 165, which New York State also adopted as part of DEC's adoption of ACT.

Based on the above, DEC finds it necessary to provide a limited grant of enforcement discretion to applicable motor vehicle manufacturers and to New York State and Local Agencies to effectuate the purchase of internal combustion engine-powered medium- and heavy-duty trucks for snowplowing and street cleaning purposes. This enforcement discretion will ensure the continued protection of public safety in the state, by not enforcing the requirements of ACT for the continued purchase of new vehicles for snowplowing and street cleaning purposes by New York State and Local Agencies. These vehicles are vital to the clearing of snow from roadways during snow emergencies, as well as in the normal course of responding to snow accumulation during the winter months, in communities across the state. In addition, street cleaning vehicles are critical to public safety by helping to mitigate flood impacts to communities by removing debris that often exacerbates flooding.

Limited Enforcement Discretion

1. DEC will exercise enforcement discretion regarding applicable motor vehicle manufacturers subject to ACT zero-emission sales requirements during MYs 2025 and 2026 to allow for truck purchases designated for snowplowing and street cleaning purposes by New York State and Local Agencies. For purposes of ACT compliance, all internal combustion engine truck sales completed as the result of this enforcement discretion shall be excluded from "total New York State

² <https://ww2.arb.ca.gov/news/carb-and-truck-and-engine-manufacturers-announce>

sales” when determining ACT deficit generation and compliance (see 13 CCR 1963.1).³

Applicable motor vehicle manufacturers may not apply sales allocations (i.e., require the purchase of a ZEV prior to the purchase of an ICE vehicle) for snowplowing and street cleaning purposes when there are no zero-emission options for snowplowing or street cleaning available or when a State or Local Agency determines that available zero-emission option(s) cannot complete the intended snowplowing or street cleaning duty cycle.

This enforcement discretion applies to new vehicle purchase requests designated for snowplowing and street cleaning purposes by authorized executive officers of New York State and Local Agencies, as defined by Environmental Conservation Law §8-0105.4

New York State and Local Agencies shall make written requests to applicable motor vehicle manufacturers or their authorized dealerships detailing the make, model, model year, and number of vehicles to be purchased. These requests shall also be forwarded to DEC at air.regs@dec.ny.gov with the subject line “Enforcement Discretion Purchases.”

Applicable motor vehicle manufacturers may contact DEC at air.regs@dec.ny.gov with any questions.

2. DEC will exercise enforcement discretion regarding motor vehicle manufacturers subject to the HD Omnibus regulation during EMY 2026 for truck purchases designated for snowplowing and street cleaning purposes by New York State and Local Agencies. Applicable motor vehicle manufacturers may sell trucks with EPA-certified EMY 2026 engines to New York State and Local Agencies designated for snowplowing and street cleaning purposes. DEC strongly recommends that New York State and Local Agencies purchase CA HD Omnibus-certified EMY 2026 vehicles and engines when available for snowplowing or street cleaning purposes.

All other provisions of the New York State Environmental Conservation Law and its attendant codes, rules and regulations remain in effect and will be enforced.

Thank you for your cooperation in this matter. Questions regarding this enforcement discretion should be directed to Khai Gibbs, Esq. of the Office of General Counsel at khai.gibbs@dec.ny.gov.

³[https://govt.westlaw.com/calregs/Document/I7CB68D635A1E11EC8227000D3A7C4BC3?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)](https://govt.westlaw.com/calregs/Document/I7CB68D635A1E11EC8227000D3A7C4BC3?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default))

⁴ <https://www.nysenate.gov/legislation/laws/ENV/8-0105>

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Berkman', with a long horizontal flourish extending to the right.

Thomas S. Berkman
Deputy Commissioner
and General Counsel

cc: Regional Directors
Regional Air Pollution Control Engineers
Regional ECO Cpt.

APPENDIX A

This Enforcement Discretion letter applies to Motor Vehicle Manufacturers subject to New York State's ACT and HD Omnibus regulations under 6 NYCRR Parts 200 and 218, including but not limited to the entities listed below:

Agility

Allison Transmission Inc.

BAE Systems Controls Inc.

Battle Motors

Blue Bird Body Company

BYD Auto Industry Company Limited

Cummins Inc.

Daimler Truck North America LLC

Detroit Diesel Corporation

FCA US LLC

Ford Motor Company

FPT Industrial S.P.A.

Gillig LLC

GM

Hino Motors, Ltd.

Hyllion, Inc.

Hyundai Doosan Infracore Co., Ltd.

Isuzu Motors Limited

Landi Renzo USA

Lightning Emotors, Inc.

Motor Coach Industries

Navistar, Inc.

New Flyer of America, Inc

Nikola Corporation

PACCAR Inc.

Power Solutions International, Inc.

Proterra Operating Co, Inc.

Roush Industries, Inc.

The Lion Electric Co USA Inc.

Van Hool N.V.

Volvo Group Trucks Technology, Powertrain Engineering, a Division of Mack Trucks, Inc. (Volvo)

XOS, Inc.