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**TO:**

**Pennsylvania Department of Environmental Protection of the Commonwealth of Pennsylvania**

Rachel Carson State Office Building  
400 Market Street  
Harrisburg, PA 17101

**Jessica Shirley, Acting Secretary of the Pennsylvania Department of Environmental Protection of the Commonwealth of Pennsylvania**

Rachel Carson State Office Building  
400 Market Street  
Harrisburg, PA 17101

**Pennsylvania Environmental Quality Board of the Commonwealth of Pennsylvania**

P.O. Box 8477  
Harrisburg, PA 17105

**Attorney General David Sunday, Pennsylvania Office of Attorney General**

16th Floor, Strawberry Square  
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**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

PETERS BROTHERS, INC.; MOTOR TRUCK EQUIPMENT COMPANY d/b/a KENWORTH OF PENNSYLVANIA; TRANSTEK, INC.; PENNSYLVANIA MOTOR TRUCK ASSOCIATION; and PENNSYLVANIA BUS ASSOCIATION,

Petitioners,

v.

PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION OF THE COMMONWEALTH OF PENNSYLVANIA; PENNSYLVANIA ENVIRONMENTAL QUALITY BOARD OF THE COMMONWEALTH OF PENNSYLVANIA; and JESSICA SHIRLEY, in her official capacity as Acting Secretary of the Department of Environmental Protection,

Respondents.

No. 272 MD 2023

## NOTICE

You have been sued. If you do not file a written response to the enclosed Petition for Review within thirty days of service, a judgment may be entered against you without further notice. You may lose important rights.

/s/ Sean Radomski \_\_\_\_\_

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Respondents.

No. 272 MD 2023

**AMENDED PETITION FOR REVIEW IN THE NATURE OF A COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

**INTRODUCTION**

1. This is an action to protect the rights of Pennsylvania businesses to lawfully sell, operate, and upgrade their fleets of commercial trucks and buses—which provide critical services that the People of the Commonwealth depend upon for a continual supply of food, commodities, consumer products, and transportation.

2. The Petitioners challenge Pennsylvania regulations, 25 Pa. Code § 126.501, *et seq.*, that unlawfully incorporate standards adopted by officials in *California*. These regulations delegate critical policy decisions concerning diesel engine emission and warranty standards to California officials who have no accountability to the People of Pennsylvania.

3. Pennsylvania’s rolling incorporation regulations were promulgated without statutory authority—and, therefore, in violation of separation of powers.

4. Defendants and Respondents assert that the Pennsylvania Air Pollution Control Act (“APCA”) authorizes these regulations.

5. But if the General Assembly truly delegated such open-ended regulatory powers as to allow a state agency to adopt a rolling incorporation of California law, then the Pennsylvania Air Pollution Control Act violates the nondelegation doctrine, which prohibits the Assembly from giving away its lawmaking powers.

6. Only the General Assembly can bind Pennsylvania to such momentous policy decisions because the People have entrusted the Assembly (not any state agency—and much less the State of California) to represent their collective interests. Further, it is unlawful to enforce California’s heavy diesel regulatory standards because they were not developed in accordance with the Pennsylvania Documents Law, which requires publication in the Pennsylvania Bulletin and opportunity for Pennsylvanians to provide comment.

7. The Petitioners need relief now because they are presently subject to unlawfully-imposed regulatory standards from California.

8. Those injuries will only be exacerbated as California continues to make its regulatory standards more stringent.

9. The Petitioners have no choice but to comply with newly-incorporated California standards because they will otherwise risk ruinous lawsuits or criminal prosecution.

10. Notwithstanding the fact that the Petitioners are presently required to comply with unlawfully incorporated California standards, and that they face grave liability for any noncompliance, the Commonwealth Court held the Petitioners have no avenue to obtain judicial relief because 35 P.S. § 4004.2(e) imposes a statutory bar on any “pre-enforcement review.” *See* Nov. 21, 2024, Opinion at 12–14.

11. The Petitioners maintain the Commonwealth Court misinterpreted 35 P.S. § 4004.2(e), and that the statutory bar on pre-enforcement lawsuits does not preclude their merits claims.

12. But insofar as 35 P.S. § 4004.2(e) imposes a statutory bar on this pre-enforcement lawsuit, it violates the Due Process Clauses of the United States and the Pennsylvania Constitutions.

13. The Due Process Clauses of the United States and Pennsylvania Constitutions guarantee a right to judicial review of binding and enforceable

regulations where—as here—there are significant civil liabilities and penal consequences for noncompliance.

14. No one should be forced to violate the law and risk civil liability or criminal prosecution to have their day in court.

15. To the extent that 35 P.S. § 4004.2(e) closes the door to pre-enforcement judicial review it is unconstitutional and cannot be enforced to preclude this lawsuit.

### **JURISDICTION**

16. Petitioners are suing under the U.S. Constitution, the Pennsylvania Constitution, and the Declaratory Judgments Act, 42 Pa. C.S. § 7532.

17. This Court has original jurisdiction under 42 Pa. C.S. § 761(a) because Petitioners are suing Commonwealth agencies and an officer of a state agency in her official capacity.

### **PARTIES**

18. Plaintiff and Petitioner Peters Brothers, Inc. (“Peters Brothers”), is a trucking company that specializes in transporting refrigerated products and commodities across the country. Peters Brothers is incorporated in Pennsylvania as a C-Corp.

19. Plaintiff and Petitioner Motor Truck Equipment Company d/b/a Kenworth of Pennsylvania, Inc. (“MTE”), is a dealership that sells heavy diesel trucks, and is incorporated in Pennsylvania as an S-Corp.

20. Plaintiff and Petitioner Transteck, Inc. (“Transteck”), is a dealership that sells heavy diesel trucks in Pennsylvania. Transteck is incorporated as a Delaware S-Corp; it is headquartered in Harrisburg, Pennsylvania, and has various locations across Pennsylvania.

21. Plaintiff and Petitioner Pennsylvania Motor Truck Association (“PMTA”) is a trade association representing approximately 1,200 Pennsylvania trucking companies, dealerships, and other businesses servicing the trucking industry.

22. Plaintiff and Petitioner Pennsylvania Bus Association (“PBA”) is a trade association representing approximately 500 dues-paying members, including Pennsylvania bus operators, tourism representatives, and other businesses supplying the passenger bus industry—including dealerships that sell heavy diesel engine buses in the Commonwealth.

23. Defendant and Respondent Pennsylvania Department of Environmental Protection of the Commonwealth of Pennsylvania (“Department” or “DEP”) is the state agency charged with enforcing regulations promulgated by the Pennsylvania Environmental Quality Board.

24. Defendant and Respondent Pennsylvania Environmental Quality Board of the Commonwealth of Pennsylvania (“EQB”) is a state agency with delegated rulemaking authority under the Pennsylvania Air Pollution Control Act, 35 Pa. Stat. § 4002, *et seq.*

25. Defendant and Respondent Jessica Shirley, Acting Secretary, is the officer with authority over the Department. She is sued in her official capacity because this lawsuit seeks declaratory and injunctive relief against the Office of the Secretary.

**STATEMENT OF MATERIAL FACTS  
GENERAL ALLEGATIONS**

26. In 2002, the EQB promulgated 25 Pa. Code § 126.501, *et seq.*

27. These regulations, 25 Pa. Code §§ 126.502–03, 126.511–14, 126.531 (“Rolling Diesel Regulations”), require that all heavy diesel engines sold or acquired in Pennsylvania comply with air emission standards set forth in the California Code of Regulations (“California Code”).

28. Additionally, 25 Pa. Code § 126.521 requires that any heavy diesel engine sold in Pennsylvania comply with California’s vehicle emission warranty requirements (“Rolling Warranty Regulation”).

29. The EQB claimed that it was acting under delegated rulemaking authority from the Pennsylvania Air Pollution Control Act, 35 Pa. Stat. § 4002, *et seq.*, when adopting this rolling incorporation of California law.

30. But the General Assembly made no policy choice to follow California emission or warranty standards.

31. The Act empowers the Department to take actions “necessary or proper for the effective enforcement” of the Act. *See* 35 Pa. Stat. § 4004(27).

32. In turn, the Assembly delegated authority to the EQB to adopt regulations “for the prevention, control, reduction and abatement of air pollution” consistent with the Commonwealth Documents Law—which requires adherence to notice-and-comment procedures to ensure transparency and a measure of accountability to Pennsylvanians. *See* 35 Pa. Stat. § 4005(a)(1).

33. The EQB has delegated authority to impose rules “designed to reduce emissions from motor vehicles,” such as mandating “centrally clean-fueled fleets [or] clean alternative fuels” only if working in consultation with the Pennsylvania Secretary of Transportation. *See id.* § 4005(a)(7).

34. The Assembly did not delegate the power to regulate Pennsylvania emissions to the *State of California*.

35. Pennsylvania’s Rolling Diesel Regulations do not adopt any specific emission standard; instead, they incorporate “all applicable requirements” of Title 13 of the California Code—which the California Air Resources Board (“CARB”) revises periodically pursuant to California law.

36. As such, vehicles sold or acquired in Pennsylvania must satisfy California’s engine certification and compliance requirements and must “possess a valid emissions control label that meets” California requirements. 25 Pa. Code §§ 126.503(d), 126.531.

37. Likewise, Pennsylvania’s Rolling Warranty Regulation incorporates “the requirements of Title 13” of the California Code—which is periodically updated by the CARB pursuant to California law.

38. In late 2021, the CARB promulgated an omnibus regulation that imposes more aggressive emission system standards, and that requires extended warranty coverage beyond what was previously required. *See Exhibit A, Final Regulation Order, Amendments to Title 13, California Code of Regulations.*

39. As might be expected, the CARB followed California procedures when revising California’s heavy diesel emission and warranty standards.

40. The CARB did not comply with any Pennsylvania-specific procedural requirements.

41. Nor did the CARB consult with the Pennsylvania Secretary of Transportation.

42. Neither the Pennsylvania EQB nor the Pennsylvania DEP worked in consultation with the Secretary of Transportation to promulgate new vehicle emission standards for the Commonwealth in 2021, or in any subsequent year since California adopted those heightened standards.

43. Neither the Pennsylvania EQB nor the Pennsylvania DEP published anything proposing these new emission and warranty standards or offered

opportunity for public comment in 2021, or in any subsequent year since California adopted those heightened standards.

44. Therefore, Pennsylvanians were denied the opportunity to raise objections to, or propose revisions to, these newly formulated standards.

45. The Respondents contend that California standards govern automatically in the Commonwealth without need to comply with Pennsylvania procedures—subject only to the federal Clean Air Act’s (“CAA”) requirement that California must obtain a “waiver” from the U.S. Environmental Protection Agency (“EPA”) before new California standards may be enforced.

46. For example, the Pennsylvania DEP has confirmed that the Commonwealth’s “rulemaking updates when CARB’s rulemaking updates[,]” and that “DEP does not need to develop a rulemaking for regulations that are incorporated by reference.” Exhibit B, Email Correspondence from Chris Trostle, Mobile Sources Section Chief, PA DEP, to Rebecca Oyler (June 21, 2021).

47. And former DEP Secretary Patrick McDonnell stated: “The Department interprets the Pennsylvania regulation adopting sections of California’s regulation to be a continuing adoption including any changes which California may make to its regulation.” Exhibit C, Letter to Hon. Daryl D. Metcalfe, Chairman of Env’t Res. & Energy Committee (Nov. 3, 2021).

48. Pennsylvania’s Rolling Diesel Regulations automatically incorporated changes to the California Code, which now imposes a schedule of progressively more stringent emission standards for Model Year 2024–2031 vehicles.

49. California’s new emission standards are now enforceable because the U.S. EPA has granted California’s waiver request under the CAA. California State Motor Vehicle and Engine and Nonroad Engine Pollution Control Standards; The “Omnibus” Low NOX Regulation; Waiver of Preemption; Notice of Decision, 90 Fed. Reg. 643 (Jan. 6, 2025).

50. Pennsylvania’s Rolling Warranty Regulation automatically incorporated changes to the California Code, which now requires extended warranty coverage that varies depending on the gross vehicle weight rating of the truck in question.

51. Whereas the California Code previously required warranty coverage for only the first 100,000 miles, California’s new standards require warranty coverage for up to 110,000, 150,000, or 350,000 miles—depending on the weight class of the vehicle—for 2022–2026 Model Year engines.

52. For Model Year 2027–2031 engines, California’s new standards will require warranty coverage for up to 150,000, 220,000, or 450,000 miles.

53. For Model Year 2031 and beyond, California’s new standards will require coverage for up to 210,000, 280,000, or 600,000 miles.

54. Whereas the California Code previously required warranty coverage for only the first five years, California's new standards will require coverage for up to seven years beginning with Model Year 2027 engines and will require coverage for up to ten years beginning with Model Year 2031 engines.

55. Further, whereas the California Code previously required warranty coverage for only the first 3,000 operating hours, California's new standards will require warranty coverage for up to 30,000 hours for some heavy diesel engines when Model Year 2031 vehicles come to market.

56. These standards are now enforceable against anyone buying or selling heavy diesel trucks in Pennsylvania because the U.S. EPA has granted California a "waiver" from baseline federal warranty standards for emission devices. California State Motor Vehicle and Engine Pollution Control Standards; Heavy-Duty Vehicle and Engine Emission Warranty and Maintenance Provisions; Advanced Clean Trucks; Zero Emission Airport Shuttle; Zero-Emission Power Train Certification; Waiver of Preemption; Notice of Decision, 88 Fed. Reg. 20,688 (Apr. 6, 2023).

57. Pennsylvania DEP has temporarily suspended enforcement of California's new standards. *See* Exhibit D, Suspension of the Pennsylvania Heavy-Duty Diesel Emissions Control Program, 51 Pa.B. 7000 (Nov. 6, 2021). *See also* Exhibit E, Suspension of the Pennsylvania Heavy-Duty Diesel Emissions Control Program, 53 Pa.B. 3166 (June 10, 2023).

58. DEP has stated that it intends to begin generally enforcing California’s new standards beginning with Model Year 2027 vehicles and engines in January 2026.

59. But insofar as DEP maintains enforcement discretion, DEP may begin enforcing California’s new heavy diesel emission and warranty standards applicable to Model Year 2024–2026 vehicles at any time.

60. Likewise, insofar as DEP maintains enforcement discretion to forbear on enforcement of regulations promulgated under the Pennsylvania Air Pollution Control Act, DEP may choose to further extend its policy of non-enforcement beyond 2026.

61. Whenever DEP elects to begin generally enforcing Pennsylvania’s Rolling Emission Regulations or Rolling Warranty Regulation, the Department would still retain enforcement discretion as to whether to initiate an enforcement action against any specific entity.

62. DEP has warned that its “exercise of enforcement discretion does not protect” the Petitioners “from the possibility of legal challenge by third persons under 25 Pa. Code Chapter 126, Subchapter E.” Exhibit E.

63. Notwithstanding DEP’s temporary policy of nonenforcement, “any person” may initiate suit “to compel compliance” with incorporated California Code standards under Pennsylvania’s Rolling Diesel Regulations and Rolling Warranty Regulation. 35 Pa. Stat. Ann. § 4013.6(c). And in such a case, the plaintiff may seek

civil penalties of up to \$25,000 per day, per violation. *See* 35 Pa. Stat. Ann. § 4009.1(a).

64. Further, it is, putatively, a summary offense or a misdemeanor to violate incorporated California Code standards under Pennsylvania’s Rolling Diesel Regulations and Rolling Warranty Regulation. *See* 35 Pa. Stat. Ann. § 4009.

65. Violators may be fined up to \$2,500 for each criminal offense.

66. Willful or negligent violations may also carry a fine of up to \$50,000 and imprisonment of up to two years for each offense. *Id.* § 4009(b)(1).

#### **INJURY TO PETITIONERS AND DECLARATORY RELIEF ALLEGATIONS**

67. There is controversy between the parties as to whether Pennsylvania’s rolling incorporation of California’s new heavy diesel emission and extended warranty standards is lawful.

68. The Petitioners are injured by Pennsylvania’s rolling incorporation of California’s new heavy diesel emission and extended warranty standards because they are placed at a competitive disadvantage with competitors in other states who do not have to contend with California’s unwieldy regulatory standards. *See* Exhibit F, Declaration of Rebecca Oyler in Support of Pet. Amended Petition for Review ¶ 14 (“Oyler Decl.”); Exhibit G, Declaration of Brian Wanner in Support of Pet. Amended Petition for Review ¶¶ 11, 16, 20 (“Wanner Decl.”); Exhibit H, Declaration of Kenton Good in Support of Pet. Amended Petition for Review ¶¶ 6–

7, 21 (“Good Decl.”); Exhibit I, Declaration of Shawn Brown in Support of Pet. Amended Petition for Review ¶ 6 (“Brown Decl.”).

69. PMTA and PBA members are injured because it will cost more for them to buy California-compliant trucks and buses with extended warranties. *See* Exhibit F, Oyler Decl. ¶ 17; Exhibit H, Good Decl. ¶ 22; Exhibit J, Declaration of Patricia Cowley in Support of Pet. Amended Petition for Review ¶ 8 (“Cowley Decl.”).

70. For example, Peters Brothers does not want to purchase extended California warranties for its new trucks. Exhibit G, Wanner Decl. ¶¶ 13–16. The company would rather decline extended coverage because it has in-house technicians who can handle issues that may arise. *Id.* ¶ 13.

71. Pennsylvania truck dealers like Transteck and MTE will lose existing customers and sales opportunities if Pennsylvania trucking companies begin buying heavy diesel trucks in other states to avoid unnecessary extended warranty requirements. *See* Exhibit H, Good Decl. ¶¶ 22–23.

72. Likewise, Pennsylvania heavy diesel truck dealers are injured by Pennsylvania’s rolling incorporation of new and increasingly more stringent heavy diesel engine emission standards. *See* Exhibit F, Oyler Decl. ¶¶ 15–16; Exhibit H, Good Decl. ¶¶ 13–21; Exhibit I, Brown Decl. ¶¶ 8–9.

73. For example, Transteck is limited to selling California-compliant engines in Pennsylvania. *See* Exhibit H, Good Decl. ¶ 10.

74. Dealers can sell a broader array of engines in other states. *Id.* ¶ 11. As such, Transteck stands to lose sales from customers who would prefer to purchase more reasonably priced engines elsewhere. *Id.* ¶ 18.

75. Conversely, PMTA and PBA members have fewer options when seeking to replace vehicles in their fleets because they are confined to purchasing California-compliant heavy diesel engines. *Id.* ¶¶ 10–11. *See* Exhibit J, Cowley Decl. ¶ 6.

76. The Petitioners reasonably anticipate that the cost of California-compliant heavy diesel engines will rise in response to California’s increasingly more stringent emission standards. *See* Exhibit G, Wanner Decl. ¶ 18; Exhibit H, Good Decl. ¶ 13; Exhibit I, Brown Decl. ¶ 8.

77. Transteck and MTE reasonably anticipate that they will see a reduction in sales because of increased costs for California-compliant vehicles going forward. *See* Exhibit H, Good Decl. ¶ 15; Exhibit I, Brown Decl. ¶ 9.

78. PMTA and PBA members reasonably anticipate that the State of California will make further regulatory changes to the California Code that will be incorporated into Pennsylvania regulation and that such changes will impose new challenges. *See* Exhibit F, Oyler Decl. ¶ 10; Exhibit J, Cowley Decl. ¶ 5.

79. The automatic, rolling incorporation of California’s new emissions or warranty standards also impairs Pennsylvania’s democratic process by preventing

Petitioners from providing comments and proposed revisions to Pennsylvania agencies before these regulations go into effect.

80. Despite these on-going injuries, the Commonwealth Court has held that the APCA bars any pre-enforcement review of Pennsylvania’s rolling incorporation of California’s new emission or warranty standards. *See* Nov. 21, 2024, Opinion at 12–14.

81. Section 4.2(e) of the APCA, 35 P.S. § 4004.2(e), provides that “[n]o person may file a preenforcement review challenge under this section based in any manner upon the standards set forth in subsection (b) of this section.”

82. The Petitioners maintain that section 4.2(e)’s statutory bar on pre-enforcement claims does not preclude the sort of claims advanced in this suit because their merits arguments do not turn “in any manner” on whether the Board violated the standards set forth in section 4.2(b) of the APCA, 35 P.S. § 4004.2(b)—which concerns certain restrictions on unnecessarily stringent regulatory standards not relevant here.

83. But in its November 21, 2024, opinion, the Commonwealth Court held that section 4.2(e) forecloses all of the Petitioners’ claims because DEP is not currently enforcing these new California standards. Nov. 21, 2024, Opinion at 12–14.

84. The Court ruled that section 4.2(e) requires the Petitioners to wait “until an enforcement action is lodged against them” to challenge Pennsylvania’s rolling incorporation of California’s standards. *Id.* at 13.

85. If this interpretation is correct, it means that the Petitioners must violate these newly effective emission and warranty standards before they can have an opportunity to contest the legality of Pennsylvania’s rolling incorporation of California standards.

86. But the Petitioners maintain that they have a due process right to have their claims heard at this time because they are currently subject to newly effective standards from California, and face both civil and criminal liability for any noncompliance. *See* Exhibit F, Oylar Decl. at ¶¶ 19–20; Exhibit H, Good Decl. at ¶¶ 27–31; Exhibit I, Brown Decl. at ¶¶ 10–11; Exhibit J, Cowley Decl. at ¶¶ 7, 15, 17.

87. The Petitioners maintain that they should not have to violate the Board’s regulations and risk civil and criminal liability to have an opportunity to have their case heard.

88. As such, a decision declaring section 4.2(e) unconstitutional, under either the Due Process Clause of United States or Pennsylvania Constitutions, would provide relief to the Petitioners by allowing them the opportunity to have their

challenge to Pennsylvania’s Rolling Warranty Regulation and Rolling Diesel Regulations heard on the merits.

89. A decision declaring Pennsylvania’s Rolling Warranty Regulation and Rolling Diesel Regulations unlawful would provide further necessary relief to Petitioners.

90. The Petitioners have no plain, speedy, and adequate remedy at law for their injuries. Money damages are not available. And therefore, they need declaratory and injunctive relief.

## **LEGAL CLAIMS**

### **First Claim for Relief:**

#### **Violation of U.S. Const. amend. XIV (Due Process)**

91. The preceding paragraphs are incorporated herein by reference.

92. The Fourteenth Amendment to the United States Constitution provides that “No State shall ... deprive any person of life, liberty, or property, without due process of law ....” U.S. Const. amend. XIV, § 1.

93. Pennsylvania’s rolling incorporation of California standards has already compromised the Petitioners’ ability to adequately maintain property—namely, their fleets and inventory—that is indispensable to the operation of their businesses. And this rolling incorporation impedes the right of Pennsylvania dealerships, like Transteck and Kensworth, to sell vehicles on their own terms.

94. Due process guarantees an opportunity to be heard at a meaningful time and in a meaningful manner.

95. But the Petitioners were not given any opportunity to be heard before they became subject to California's standards. Nov. 21, 2024, Opinion at 12–14.

96. And under section 4.2(e) of the APCA, as interpreted by the Commonwealth Court, the Petitioners are denied any opportunity to contest the validity of these new California standards “until an enforcement action is lodged against them.” *Id.* at 13.

97. Under the Commonwealth Court's interpretation, section 4.2(e) bars the Petitioners from raising challenges *even if DEP should begin general enforcement of California's new standards*—so long as DEP does not institute an enforcement action specifically against them. *Id.*

98. This rigid bar on pre-enforcement lawsuits deprives the Petitioners of the opportunity to be heard at a meaningful time because they are already subject to these California standards and face liability for any noncompliance at this time—including the prospect of third-party lawsuits or criminal prosecution. *See* 35 P.S. § 4013.6(c).

99. By closing the courthouse doors to Petitioners in this way, section 4.2(e) constitutes an ongoing violation of the Petitioners' due process right to be heard, and to be heard at a meaningful time.

**Second Claim for Relief:  
Violation of Pa. Const. art. I, § 1 (Due Process)**

100. The preceding paragraphs are incorporated herein by reference.

101. Article I, section 1, of the Pennsylvania Constitution provides that “All men ... have certain inherent and inalienable rights, among which are those of ... acquiring, possessing and protecting property and reputation, and of pursuing their own happiness.”

102. Article I, section 1, protects the Petitioners’ due process rights to be heard at a meaningful time and in a meaningful manner.

103. The Petitioners are denied the opportunity to be heard at a meaningful time insofar as section 4.2(e) of the APCA precludes pre-enforcement review of regulations that the Petitioners are required to comply with on threat of civil or criminal sanction.

104. By closing the courthouse doors to Petitioners, section 4.2(e) constitutes an ongoing violation of the Petitioners’ due process right to be heard, and to be heard at a meaningful time.

**Third Claim for Relief:  
Violation of 35 Pa. Stat. § 4005 (Ultra Vires Warranty Regulation)**

105. The preceding paragraphs are incorporated herein by reference.

106. The Pennsylvania Air Pollution Control Act delegates only limited authority for the EQB to promulgate regulation.

107. The Act delegates limited authority to establish emission control standards. 35 Pa. Stat. § 4005(a)(1). This entails enumerated authority for regulation “for the prevention, control, reduction and abatement of air pollution.” *Id.*

108. But the Legislature did not delegate any authority to promulgate regulations imposing emission system warranty requirements.

109. Therefore, the EQB’s Rolling Warranty Regulation violates the Pennsylvania Air Pollution Control Act.

**Fourth Claim for Relief:  
Violation of 35 Pa. Stat. § 4005 (Ultra Vires Emissions Regulation)**

110. The preceding paragraphs are incorporated herein by reference.

111. The General Assembly did not adopt California’s heavy diesel emission standards when it enacted the Pennsylvania Air Pollution Control Act.

112. The Act delegates limited rulemaking authority to the EQB.

113. The Act requires the EQB to consult with the Pennsylvania Secretary of Transportation in promulgating rules designed to reduce emissions from motor vehicles. *Id.* § 4005(a)(7).

114. The recently updated standards set forth in Title 13 of the California Code were not developed in consultation with the Pennsylvania Secretary of Transportation.

115. The EQB’s 2002 consultation with the Department of Transportation could not have specifically addressed standards developed by California officials in 2021.

116. Therefore, the EQB's Rolling Deisel Regulations violate the Pennsylvania Air Pollution Control Act.

**Fifth Claim for Relief:  
Violation of Pa. Const. art. II, § 1 (Nondelegation Doctrine Violation)**

117. The preceding paragraphs are incorporated herein by reference.

118. The General Assembly made no basic policy decision as to how to control emissions from heavy diesel trucks with enactment of the Pennsylvania Air Pollution Control Act.

119. The General Assembly provided no standard guiding or restraining the EQB's exercise of rulemaking discretion in deciding what conduct should be subject to regulation.

120. The General Assembly made no basic policy decision to follow California's emission and warranty standards for heavy diesel trucks.

121. To the extent that the General Assembly delegated unfettered rulemaking authority to the EQB to adopt any emission and warranty standards that the Board might deem fit, it provided no standard guiding or restraining the Board's exercise of discretion.

122. To the extent that the Air Pollution Control Act allowed the EQB to regulate conduct that only tangentially or indirectly affects air emissions (i.e., regulation of emission system warranties), it violates article II, section 1, of the Pennsylvania Constitution.

123. To the extent that the Air Pollution Control Act allowed the EQB to adopt a prospective (i.e. “rolling”) incorporation of California law, it violates article II, section 1, of the Pennsylvania Constitution.

**Sixth Claim for Relief:  
Violation of 45 Pa. Stat. § 1201  
(Commonwealth Documents Law Violations)**

124. The preceding paragraphs are incorporated herein by reference.

125. The heavy diesel emission and warranty standards set forth in Title 13 of the California Code were not published as a proposed rule in the Pennsylvania Bulletin.

126. The Respondents have failed to publish anything soliciting public comment on California’s new heavy diesel emission and warranty standards set forth in Title 13 of the California Code.

127. Respondents failed to comply with the procedural and substantive requirements of the Commonwealth Documents Law, and thus the incorporation of California’s standards was invalid.

**REQUEST FOR RELIEF**

WHEREFORE, Petitioners respectfully request relief as follows:

1. A judgment declaring that section 4.2(e) of the Air Pollution Control Act violates the Petitioners’ due process rights under the Fourteenth Amendment to the U.S. Constitution and Article I of the Pennsylvania Constitution and that the Petitioners are entitled to an opportunity to have their merits claims heard without

having to violate the contested regulations and waiting for an enforcement action against them.

2. A judgment declaring that the Air Pollution Control Act does not authorize a rolling incorporation of any California law or standard, including California's heavy diesel emission and warranty standards, or that the Act violates the nondelegation doctrine if construed as authorizing a rolling incorporation.

3. A judgment declaring that California's new heavy diesel emission and warranty requirements have no effect in Pennsylvania for lack of statutory authority or because imposition of new California standards violates the separation of powers and Commonwealth Documents Law.

4. An order permanently enjoining Respondents, and any private litigant, from enforcing Pennsylvania's Rolling Diesel Regulations and Rolling Emission Regulation (25 Pa. Code §§ 126.502–03, 126.511–14, 126.521, 126.531).

5. An award of costs and expenses.

6. Any further legal and equitable relief the Court deems just and proper.

DATED: January 31, 2025.

Respectfully submitted,

/s/ Sean Radomski

SEAN RADOMSKI

Pa. Bar No. 319732

KERRY HUNT\*

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**PROOF OF SERVICE**

I hereby certify that I am this day serving the foregoing document upon the persons and in the manner indicated below, which service satisfies the requirements of Pa. R.A.P. 121:

Service by first class, certified mail addressed as follows:

**Pennsylvania Department of Environmental Protection of the Commonwealth of Pennsylvania**

Rachel Carson State Office Building  
400 Market Street  
Harrisburg, PA 17101  
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**Jessica Shirley, Acting Secretary of the Pennsylvania Department of Environmental Protection of the Commonwealth of Pennsylvania**

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Telephone: (717) 787-3391

DATED: January 31, 2025

/s/ Sean Radomski  
SEAN RADOMSKI  
Pacific Legal Foundation  
*Counsel for Petitioners*

## CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the Case Records Public Access Policy of the Unified Judicial System of Pennsylvania that require filing confidential information and documents differently than non-confidential information and documents.

DATED: January 31, 2025.

/s/ Sean Radomski  
SEAN RADOMSKI  
Pacific Legal Foundation

*Counsel for Petitioners*