

CHAPTER 94

AN ACT concerning regulation of fine particle emissions from certain vehicles and equipment powered by diesel engines, and amending P.L.2005, c.219.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. Section 6 of P.L.2005, c.219 (C.26:2C-8.31) is amended to read as follows:

C.26:2C-8.31 Closed crankcase technology for regulated school buses.

6. a. No later than two years after the effective date of P.L.2005, c.219 (C.26:2C-8.26 et al.), or two years after the date on or by which both certifications required in this subsection have been made, whichever is later, every owner of a regulated school bus shall have installed on the regulated school bus closed crankcase technology as specified by the rules and regulations adopted pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28).

No owner of a regulated school bus shall be required to install closed crankcase technology pursuant to this subsection unless:

(1) the State Treasurer certifies in each of the two years after the effective date of P.L.2005, c.219 (C.26:2C-8.26 et al.) that the constitutionally dedicated moneys have been deposited in the Diesel Risk Mitigation Fund; and

(2) the Department of Environmental Protection certifies that sufficient moneys are available in the fund to pay the cost of purchase and installation of the closed crankcase technology required pursuant to this subsection in that two-year period.

Provided that the State Treasurer has issued the certification required under paragraph (1) of this subsection for that year, the department may determine the amount of moneys available in the fund for that year, require the purchase and installation of those retrofit devices in those regulated vehicles or pieces of regulated equipment for which sufficient moneys are available, and certify that sufficient moneys are available for those retrofit devices in those regulated vehicles or pieces of equipment.

b. The Department of Environmental Protection shall provide, and each owner of a regulated school bus shall obtain from the department, a compliance form for each regulated school bus. The owner of the regulated school bus shall submit a cost estimate to the department detailing the cost of any retrofit device to be installed as part of the closed crankcase technology and any cost associated with the installation of the closed crankcase technology prior to its purchase or installation. The department may determine whether the estimated costs are unreasonable, based upon criteria including, but not limited to, prevailing market rates and acquisition by the State of comparable technology. If the department makes such a determination, the department shall enter into negotiations with the owner of the regulated school bus to resolve the discrepancy.

The owner of the regulated school bus shall complete the compliance form, retain a copy for the owner's records, and return it to the department as soon as practicable after the installation of the closed crankcase technology to verify compliance with the requirements of subsection a. of this section and to seek reimbursement for the cost of the closed crankcase technology. The compliance form shall include the cost of any retrofit device installed as part of the closed crankcase technology and any cost associated with the installation of the closed crankcase technology. After the installation of the closed crankcase technology on a regulated school bus, a copy of the completed compliance form shall be kept on each regulated school bus at all times.

c. The department shall review the compliance forms submitted pursuant to subsection b. of this section and forward them to the State Treasurer. The State Treasurer shall

reimburse each owner of a regulated school bus the cost of any retrofit device installed as part of the closed crankcase technology requirement and any cost associated with the installation of the closed crankcase technology indicated on the compliance form, in accordance with the provisions of sections 28 through 31, inclusive, of P.L.2005, c.219 (C.26:2C-8.53 through C.26:2C-8.56).

d. The Department of Environmental Protection shall provide any training necessary to implement the provisions of subsection d. of this section for any employees of, or persons contracted or licensed by, the New Jersey Motor Vehicle Commission, as determined necessary by the Chief Administrator of the New Jersey Motor Vehicle Commission.

e. The Department of Environmental Protection and the New Jersey Motor Vehicle Commission shall adopt jointly, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations concerning the installation of the crankcase technology required pursuant to this section and establishing the inspection requirements and procedures for verification of compliance with the crankcase technology requirement established pursuant to this section, the use of the compliance form in any inspection or as part of the inspection procedures and verification of compliance, any training necessary for any employees of, or persons contracted or licensed by, the New Jersey Motor Vehicle Commission, and the extent of that training to be provided by the Department of Environmental Protection, and in what manner that training shall be provided.

f. If for any reason, the owner of the regulated school bus is unable to comply with the requirements specified in this section, the owner shall notify the department, as soon as practicable, of the inability to comply. The department shall resolve the situation with the owner as soon as practicable, and the department shall issue any necessary documentation and other information to the owner of the regulated school bus.

2. Section 9 of P.L.2005, c.219 (C.26:2C-8.34) is amended to read as follows:

C.26:2C-8.34 Submissions to DEP by owner of regulated vehicle, equipment.

9. a. Except as otherwise provided for in this section, any owner of a regulated vehicle or regulated equipment shall submit to the Department of Environmental Protection:

(1) an inventory of all on-road diesel vehicles and off-road diesel equipment owned, operated, or leased by the owner;

(2) notice by the owner that the owner shall comply with the requirements of P.L.2005, c.219 (C.26:2C-8.26 et al.) through the use of the best available retrofit technologies as designated and provided for under the rules and regulations adopted pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28), or that the owner cannot comply in that manner and is submitting a fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan;

(3) the fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan being submitted in lieu of complying through the use of the best available retrofit technologies as designated and provided for under the rules and regulations adopted pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28), if the owner has elected to do so; and

(4) an estimate of the cost of any retrofit device and any cost associated with the installation of that retrofit device, in accordance with the rules and regulations adopted pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28).

The department may disapprove any notice submitted pursuant to paragraph (2) of this subsection by an owner complying with the requirements as designated and provided for under the rules and regulations adopted pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28), if the department determines that the costs or cost estimates, submitted pursuant to

paragraph (4) of this subsection, for the best available retrofit technology described in the notice, are unreasonable based upon criteria including, but not limited to, prevailing market rates and acquisition by the State of comparable technology. If the department makes such a determination, the department shall enter into negotiations with the owner to resolve the discrepancy. For owners complying by submitting a fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan pursuant to this subsection, the department shall review any notice, plan, cost, or cost estimate in accordance with the provisions of section 10 of P.L.2005, c.219 (C.26:2C-8.35).

b. Each owner of a regulated vehicle or regulated equipment shall make the submittals required pursuant to subsection a. in accordance with the following schedule:

(1) for regulated solid waste vehicles, no later than 180 days after the effective date of the rules and regulations adopted pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28);

(2) for public regulated commercial buses, no later than one year after the effective date of the rules and regulations adopted pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28);

(3) for private regulated commercial buses, no later than one year and 180 days after the effective date of the rules and regulations adopted pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28); and

(4) for regulated on-road diesel vehicles and regulated equipment other than regulated solid waste vehicles and regulated commercial buses, no later than four years after the effective date of the rules and regulations adopted pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28).

c. No owner of a private regulated commercial bus shall be required to make any submittal pursuant to subsection b. of this section until the owners of public regulated commercial buses have made their submittals required pursuant to that subsection, and no installation and use of a retrofit device on a private regulated commercial bus may be required earlier than 180 days after the owners of public regulated commercial buses have been required to install and have begun the use of retrofit devices on public regulated commercial buses.

d. The owner of regulated vehicles or regulated equipment who commences operation of a fleet after the effective date of the rules and regulations adopted pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28) shall make the submittals required pursuant to subsection a. of this section within 180 days after the date on which they began operations, or the date provided in subsection b. of this section, whichever is later.

e. The owner of regulated vehicles or regulated equipment may coordinate or combine the development of a fleet retrofit plan with the development of a fleet retrofit plan of any other owner, or a group of owners, of regulated vehicles or regulated equipment, and with the guidance of the Department of Environmental Protection submit a combined fleet retrofit plan.

f. The fleet retrofit plan submitted pursuant to subsection a. of this section shall include a description by the owner of the best available retrofit technology and the specific regulated vehicle or piece of regulated equipment on which the specific best available retrofit technology would be used, as determined by the owner pursuant to the rules and regulations adopted pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28).

g. If the owner of regulated vehicles or regulated equipment determines that the best available retrofit technology as required under the rules and regulations adopted pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28) is not feasible for a specific regulated vehicle or pieces of regulated equipment, the owner may document this determination in the fleet retrofit plan and request the use of another level of best available retrofit technology to meet

the requirement for that specific regulated vehicle or piece of regulated equipment, or provide documentation as to why the owner cannot use the best available retrofit technology that is required. The owner may also propose and negotiate an enforceable commitment to:

(1) retire the regulated vehicle or piece of regulated equipment and replace it with a vehicle or piece of equipment certified to fine particle emission levels at or below the emission levels that would have been achieved by the use of the required best available retrofit technology; or

(2) replace the engine of the vehicle or the equipment with an engine certified to that fine particle emissions level.

h. The owner of 75 or more regulated vehicles or pieces of regulated equipment, or any group of owners who elect to develop a combined fleet retrofit plan pursuant to subsection e. of this section under which 75 or more regulated vehicles or pieces of regulated equipment would be regulated, may propose to the Department of Environmental Protection a fleet averaging plan, in lieu of a fleet retrofit plan or a combined fleet retrofit plan, for the fleet or fleets affected. The owner or owners may propose a fleet averaging plan provided that the total net percent reductions in fine particle emissions under the proposed fleet averaging plan are equivalent to the estimated reductions in fine particle emissions that would have been achieved by the owner if a fleet retrofit plan were submitted and implemented for the regulated vehicles or regulated equipment, or both, or by the owners if the owners had submitted and implemented a combined fleet retrofit plan for their regulated vehicles or regulated equipment, or both, as calculated pursuant to the provisions of the rules and regulations adopted pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28). The owner or group of owners may propose achieving fine particle emissions reductions from any on-road diesel vehicle, off-road diesel equipment, regulated vehicle, or regulated equipment owned by the owner or group of owners, or the retirement of any of those vehicles or equipment, and shall submit the proposed fleet averaging plan to the department as required by the rules and regulations adopted pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28).

i. A fleet averaging plan proposed pursuant to subsection h. of this section that proposes the use of retrofit devices on any on-road diesel vehicle, off-road diesel equipment, regulated vehicle, or regulated equipment shall include: (1) a description by the owner of the best available retrofit technology and the specific vehicle or equipment on which the specific best available retrofit technology would be used, the specific vehicle or equipment to be retired, and how the required fine particle reductions shall be achieved through a combination of the use of best available retrofit technology on the specific vehicles or equipment; and (2) other measures or applications of best available retrofit technology consistent with the provisions of the rules and regulations adopted pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28).

j. The Department of Environmental Protection shall give due consideration in the application of the fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan requirements to any efforts or actions by owners of regulated vehicles or regulated equipment who voluntarily retrofit, retire, or repower vehicles or equipment prior to the adoption of rules and regulations pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28), and may modify any of the requirements of this section for such an owner in order to provide such due consideration.

k. The Department of Environmental Protection shall provide any technical guidance needed in preparing the fleet retrofit plans, combined fleet retrofit plans, and fleet averaging plans required pursuant to this section and any revisions, supplements, or modifications thereto required pursuant to P.L.2005, c.219 (C.26:2C-8.26 et al.).

1. No owner of regulated vehicles or regulated equipment shall be required to install or use a retrofit device on a regulated vehicle or regulated equipment as required pursuant to the rules and regulations adopted pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28) or under a plan submitted pursuant to this section in any year unless the State Treasurer certifies for that year that the constitutionally dedicated moneys have been deposited in the Diesel Risk Mitigation Fund and the Department of Environmental Protection certifies that sufficient moneys are available in the fund to pay the cost of purchase and installation of the retrofit devices required to be used by rule and regulation or under an approved fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan or supplement or modification thereto, as applicable, by an owner in that year.

Provided that the State Treasurer has issued the certification that the constitutionally dedicated moneys have been deposited in the fund for that year, the department may determine the amount of moneys available in the fund for that year, require the purchase and installation of those retrofit devices in those regulated vehicles or pieces of regulated equipment for which sufficient moneys are available, and certify that sufficient moneys are available for those retrofit devices to be purchased for, and installed in, those regulated vehicles or pieces of regulated equipment.

3. Section 10 of P.L.2005, c.219 (C.26:2C-8.35) is amended to read as follows:

C.26:2C-8.35 Approval of fleet retrofit plans.

10. a. The department shall review, and approve or disapprove all parts of any fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan submitted pursuant to section 9 of P.L.2005, c.219 (C.26:2C-8.34). The department may approve or disapprove any fleet retrofit plan, combined fleet retrofit plan, or the fleet averaging plan in part, and:

(1) may direct the owner to comply with the approved part or parts of the fleet retrofit plan, the combined fleet retrofit plan, or the fleet averaging plan, as applicable, prior to final approval of other parts of the fleet retrofit plan, the combined fleet retrofit plan, or the fleet averaging plan; or

(2) in the case of a fleet averaging plan, may determine that the owner or the group of owners cannot comply with the requirements of P.L.2005, c.219 (C.26:2C-8.26 et al.) by implementing the proposed fleet averaging plan, and may require the owner to submit a fleet retrofit plan, or the group of owners of the fleets to submit a combined fleet retrofit plan or individual fleet retrofit plans.

Any determination made, or requirement established, pursuant to paragraph (2) of this subsection shall be made in writing and shall be provided in writing to each owner affected by the determination or requirement.

The department may disapprove any fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan, or any part thereof, submitted pursuant to paragraph (3) of subsection a. of section 9 of P.L.2005, c.219 (C.26:2C-8.34), if the department determines that the costs or cost estimates, submitted pursuant to paragraph (4) of subsection a. of section 9 of P.L.2005, c.219 (C.26:2C-8.34) for retrofit devices described in the fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan, as appropriate, are unreasonable based upon criteria including, but not limited to, prevailing market rates and acquisition by the State of comparable technology. If the department makes such a determination, the department shall enter into negotiations with the owner to resolve the discrepancy.

b. If the department exercises its authority under paragraph (2) of subsection a. of this section, the department shall issue a modified timetable for submittal of a fleet retrofit plan

for the regulated vehicles or regulated equipment, a combined fleet retrofit plan for the group of owners, or individual fleet retrofit plans for the owners in the group. The department may require the submittal of these plans no earlier than 180 days after the date of the determination pursuant to paragraph (2) of subsection a. of this section, or the date on or by which both of the certifications required pursuant to subsection l. of section 9 of P.L.2005, c.219 (C.26:2C-8.34) have been made, whichever is later. The department shall review, approve or disapprove any fleet retrofit plan or combined fleet retrofit plan submitted in accordance with this modified timetable.

c. Whenever the department disapproves a fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan, or a part thereof, the department shall provide a detailed explanation to the owner indicating the deficiencies of the disapproved fleet retrofit plan, disapproved combined fleet retrofit plan, or the disapproved fleet averaging plan, or part thereof, and the recommendations of the department to correct the deficiencies.

d. During the review process or prior to final approval of a fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan, or the part thereof in question, the department may contact and enter into negotiations with the owner to resolve discrepancies between the rules and regulations adopted pursuant to section 3 of P.L.2005, c.219 (C.26:2C-8.28), the submitted fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan, and any requests by the owner for alternatives pursuant to subsection g. of section 9 of P.L.2005, c.219 (C.26:2C-8.34).

e. The owner or a group of owners whose fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan, or any part thereof, is disapproved by the department shall make the recommended revisions to the disapproved fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan, or the disapproved part thereof, within 60 days after the receipt of the disapproval notification from the department, and shall submit to the department the final revised fleet retrofit plan, final revised combined fleet retrofit plan, or the final revised fleet averaging plan, or the final revised part thereof that had been disapproved and revised. If the department does not take further action within 30 days after receipt of the final revised fleet retrofit plan, final revised combined fleet retrofit plan, the final fleet averaging plan, or the final revised part that had been disapproved, the fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan, or the part that had been disapproved and revised, shall be considered approved and in effect. If the department finds within 30 days after the receipt of the final revised fleet retrofit plan, final revised combined fleet retrofit plan, or the final revised fleet averaging plan, that the owner has not complied with the recommended revisions, the department may take further action to require compliance with this subsection, but the plan shall be in effect as of the date of the close of the 30-day period following the submittal of the final revised plan, or part thereof.

f. Upon the date of final approval of the fleet retrofit plan, combined fleet retrofit plan, or fleet averaging plan, or any part thereof, the owner shall be subject to the provisions of the fleet retrofit plan, combined fleet retrofit plan, fleet averaging plan, or that part thereof, and shall be required to comply with these provisions on or after the final approval date or the date on or by which both certifications required pursuant to subsection l. of section 9 of P.L.2005, c.219 (C.26:2C-8.34) have been made, whichever is later.

4. Section 25 of P.L.2005, c.219 (C.26:2C-8.50) is amended to read as follows:

C.26:2C-8.50 Percentage of ultra-low sulfur diesel fuel required on-road.

25. a. (Deleted by amendment, P.L.2006, c.94).

b. No sooner than July 15, 2006, and following a public hearing held by the Department of Environmental Protection on the availability of ultra-low sulfur diesel fuel in the State for use in on-road diesel vehicles and off-road diesel equipment, the department shall determine and issue a written notice of its determination as to whether sufficient supplies of ultra-low sulfur diesel fuel are available in the State to require a minimum of 80 percent of all diesel fuel annually sold, distributed, or used in the State to be ultra-low sulfur diesel fuel for use in on-road diesel vehicles or off-road diesel equipment, or both, on and after January 15, 2007, without significant disruption of, or significant price increases in, the wholesale and retail fuel market. If the department determines that supplies would be sufficient, the department shall require a certain percentage, to be determined by the department, of all diesel fuel annually sold, distributed, or used in the State to be ultra-low sulfur diesel fuel for use in on-road diesel vehicles or off-road diesel equipment, or both, on or after the 180th day after the date on which the department issues a written determination that supplies would be sufficient, provided that this percentage shall be the highest percentage that can practicably be required without significant disruption of, or significant price increases in, the wholesale and retail fuel market, but shall be no less than 80 percent of all diesel fuel annually sold, distributed, or used in the State.

c. If the department determines that sufficient supplies are not available pursuant to subsection b. of this section, the requirement to sell, distribute, or use only ultra-low sulfur diesel fuel in the State shall take effect only 180 days after the department issues a written determination that the supplies are sufficient to sell, distribute, or use only ultra-low sulfur diesel fuel in the State.

d. The Department of Environmental Protection, in consultation with the Department of Law and Public Safety, the Department of Labor and Workforce Development, and the Attorney General, shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations necessary for the implementation of this section.

5. This act shall take effect immediately.

Approved August 22, 2006.