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September 26, 2008

## **COMMENTS OF WEST COAST ENVIRONMENTAL LAW ON THE B.C. GREENHOUSE GAS REDUCTION (VEHICLE EMISSIONS STANDARDS) ACT POLICY INTENTIONS PAPER<sup>1</sup>**

### **Overall Comment:**

West Coast Environmental Law ("West Coast") commends the BC Government on adopting California-equivalent vehicle GHG emissions standards - this is a positive step that will help BC to meet its own GHG reduction targets, and will help Canada to meet its Kyoto commitments. West Coast believes it is important to support the California-led effort to create a market that will accelerate the broad adoption of cleaner technologies.

Our comments follow the general outline of the Ministry's Response Form.

### **1. Scope of the Regulation**

In our submission, the scope of the regulation should be broadened to impose GHG emissions standards on medium duty passenger vehicles<sup>2</sup> as well as the light duty passenger vehicles - like California's regulation. This will demonstrate BC's commitment to harmonizing with California standards and in effect, create a larger market for low GHG emission medium duty vehicles. From an equitable standpoint, it makes no sense to exclude the Hummers and "fully loaded" pick-up trucks (the kind of medium duty vehicles currently on the road) from regulation, especially considering the use of such vehicles is often devoted exclusively to in-city commuting and errand-running, contrary to principles of "right-sizing". Even if BC does not have good data gathered on what share of the market medium duty vehicles occupy within BC, or if the market share is lower, it makes good policy sense to expand the market for low-emitting medium duty vehicles, by harmonizing with California on this issue.

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<sup>1</sup> Found at [http://www.env.gov.bc.ca/epd/codes/vehicle\\_emissions/index.htm](http://www.env.gov.bc.ca/epd/codes/vehicle_emissions/index.htm)

<sup>2</sup> Medium duty is defined as passenger vehicles greater than 8500 pounds and up to 10,000 pounds.

West Coast recommends that the BC regulation focus as well on affiliates of the manufacturer who market and distribute within the province, if there is otherwise no corporate presence for the vehicle sale or lease within BC.

West Coast also encourages the early implementation of the Act's provisions respecting zero emissions vehicles. We are disappointed that the Intentions Paper suggests that there do not seem to be any immediate plans to regulate in this area.

## **2. Fleet Average**

We understand the fleet average approach is known to effectively achieve the goal of overall emissions reductions, however, we would observe that from a consumer perspective it is inequitable that using a fleet averaging approach means that the very consumers who are most motivated to reduce societal and personal GHG emissions, and make their choice of vehicle model dependent on low GHG emissions, end up "enabling" the continued production and sale of higher emissions-producing vehicles.

West Coast does not support the exclusion of smaller manufacturers from the emission standards. Smaller manufacturers (usually of luxury or exotic vehicles) should also be receiving the policy signal that they need to comply with emissions standards, just like other manufacturers in the vehicle manufacturing business.

## **3. Compliance and Enforcement**

We support the plans for submission of an annual report on fleet average GHG emissions, but we would submit that the compliance report (related to sales and leasing reports) should be submitted after three years, not five. Five years allows an unduly lengthy amount of time for manufacturers to gather together their data on sales of different models. Three-year reporting is a more reasonable time-period for ensuring compliance, and notably it is also the period used by the US EPA and the US Department of Transportation.

Notably as well, we would note that currently the three-year time limit established in section 20 (for laying an information for an offence) appears inconsistent with the 5-year compliance reporting. Not only may this invite arguments that the prosecution of an offence was out of time - which is a waste of valuable court resources - but even if section 20(2)(b) provides an answer to that argument (the facts of the offence only crystallizing once data shows non-compliance), it still seems an undue amount of work to have the minister complete a certificate certifying the date on which the minister became aware of the facts on which the information is based. We would submit that if anything, the time limit for laying an offence should be prescribed to be a longer time period than the time period allowed for compliance

reporting; i.e. it would seem more reasonable, and ultimately administratively simpler, to set it at 3 years (or 5 years) (whatever the compliance report timeline is) *plus* an additional 18 months.

West Coast also recommends that the regulation require the director or his/her agent to conduct unannounced independent "spot audits" of manufacturers to verify that reported emissions match actual emissions.

#### **4. Technical Discussion Issues**

West Coast supports a penalty per vehicle approach and we would submit that it should be the same penalty as in other jurisdictions implementing the California standard, stipulated in the footnote to the Intentions Paper as \$5000 per vehicle delivered. BC should NOT introduce the additional considerations noted, such as consideration of the applicable standards and the extent to which the fleet is out of compliance. We submit that it is important to support a harmonization effort in this regard, not to become known as the jurisdiction that is "soft on compliance".

West Coast supports administrative penalties for late, incomplete or inaccurate reporting as well, as well as the offence provisions that have been proposed.

#### **5. Confidentiality of Information**

West Coast submits that the default starting point for the Act and regulation should be that all reported information is public unless specifically stipulated in the regulation to be excluded on the basis of confidentiality. The onus for exceptions should be placed on the manufacturer, not on the public. West Coast does not agree that numbers of each type of vehicle with a distinct emission value that the manufacturer delivered to BC for sale or lease should be confidential information. This is exactly the kind of information that should be public, so the public can knowledgeably participate in and contribute to ensuing policy debates on whether it makes sense to allow low-GHG vehicles to enable sales of high-GHG vehicles. This also would allow calculations of the GHG reductions that could be achieved, if other more stringent standards were put in place to cap high-GHG emissions of certain models

#### **6. Additional Comments**

##### **6.1 Implications for vehicle manufacturing and retail sales industry?**

West Coast believes that this legislation will help to support a world-wide push on manufacturers to produce cars with lower emissions. We would note that the EU lawmakers just yesterday (September 25) approved more aggressive GHG emissions standards, with aggressive targets for 2012 through 2020.

## 6.2 Implications for vehicle purchasers

West Coast recommends that the regulation should require public labeling/consumer information on both new and used vehicles to be sold/leased providing data with respect to both vehicle fuel consumption and GHG emissions, together with comparative information - what the standard is, best/worst available, etc. (CO<sub>2</sub>, etc. labeling of cars, as per European Union Directive). The EU and the BC government has itself recognized that labeling consumer products allows consumers to make an informed choice and plays a role in their choices; there is an opportunity her to use a requirement for labels to influence buyers toward lower consumption and low GHG emitting vehicles.

## 6.3 Other Comments or Suggestions

The Intentions Paper is currently silent on the issue of inspection powers, authorities and procedures, a matter which the Act contemplates will be addressed through the regulations. In addition to a "spot audit" function urged above, we would submit that the regulations should be very clear that inspections are authorized and may be conducted both regularly and on a 'spot audit' basis for the purpose of ensuring compliance with the Act and regulations. The regulation needs to be very clear with respect to detailing how the inspection and seizure powers currently authorized in section 30 of the Act will be implemented.

The Intentions Paper is also currently silent on the issue of appeals, and the Act currently limits the right of appeal to the manufacturer or person subject to a "decision" as defined in section 14 of the Act.

We would like to see a mechanism that would provide an opportunity for a member of the public to initiate a review of alleged non-compliance. In our view, this might be achieved in one of two ways:

(1) The first means would be to broaden the definition in the Act of a "decision" to include e.g. a decision on an inspection or other exercise of regulatory power by the director or inspector, with a corresponding expansion that "any person" might appeal such a decision to the Environmental Appeal Board. (Allowing "any person" to appeal would, analogous to what was recognized by the wording of appeal rights in the *Integrated Pest Management Act*, recognize the public stake in ensuring compliance: therefore, rather than there being identifiable "persons aggrieved" in every case, this recognizes in advance that indeed "any person" may be affected by non-compliance on global warming greenhouse gas reduction efforts). This option would require an amendment to the Act.

(2) The alternative means would be to make provision - either in the regulation under the inspection authority - or through statutory amendment - to allow individuals to apply for an investigation under the Act by the Chief Conservation Officer or by the director. Given the broad language of section

30 of the Act, it may be that such a provision could be included in the regulations. Alternatively, it could be accomplished through a statutory amendment. There is a precedent for this sort of public right to request an investigation in the *Greenhouse Gas Reduction (Cap and Trade) Act* (Bill 18), the relevant provisions of which are sections 29 through 34. There is value in standardizing this type of public involvement opportunity across the provincial statutes dealing with greenhouse gas emissions.

West Coast appreciates the opportunity to comment on this Intentions Paper.

Please direct any questions in respect of these comments to:

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