

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

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

Petitioners,

v.

PENNSYLVANIA DEPARTMENT OF  
ENVIRONMENTAL PROTECTION OF  
THE COMMONWEALTH OF  
PENNSYLVANIA; PENNSYLVANIA  
ENVIRONMENTAL QUALITY BOARD  
OF THE COMMONWEALTH OF  
PENNSYLVANIA; and RICHARD  
NEGRIN, in his official capacity as Acting  
Secretary of the Department of  
Environmental Protection,

Respondents.

No. \_\_\_\_\_

**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—which provide critical services that the People of the Commonwealth depend upon for a continual supply of food, commodities, and consumer products.

2. The Petitioners challenge Pennsylvania regulations, 25 Pa. Code § 126.501, *et. seq*, which unlawfully incorporate standards adopted by bureaucrats in *California*. The statutory scheme thus delegates 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. 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.

5. Further, it is unlawful to enforce California's heavy diesel regulatory standards because they were not developed in accordance with Pennsylvania procedural rules—which demand, among other requirements, publication in the Pennsylvania Bulletin and opportunity for Pennsylvanians to provide comment.

6. The Petitioners seek relief because they should be at liberty to operate and grow their businesses free from imposition of California standards.

7. 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.

## **JURISDICTION**

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

9. 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 his official capacity.

## **PARTIES**

10. 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.

11. Plaintiff and Petitioner H.R. Ewell, Inc. (“H.R. Ewell”), is a trucking company that provides transportation services across the Eastern United States. H.R. Ewell, Inc., is incorporated in Pennsylvania as an S-Corp.

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

13. 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.

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

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

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

17. Defendant and Respondent the Acting Secretary, Richard Negrin, is the officer with authority over the Department. He is sued in his official capacity because this lawsuit seeks declaratory and injunctive relief against the Office of the Secretary.

#### **STATEMENT OF MATERIAL FACTS GENERAL ALEGATIONS**

18. The Pennsylvania Board promulgated 25 Pa. Code § 126.501, *et. seq.*

19. 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 must comply with air emission standards set forth in the California Code of Regulations (“California Code”).

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

21. The Pennsylvania Board 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.

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

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

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

25. The Assembly delegated only limited rulemaking authority for the Pennsylvania Board to promulgate vehicle emission standards.

26. For example, the Pennsylvania Board only has authority to “[r]ecommend to the [Pennsylvania] Secretary of Transportation ... [vehicle] emission control[s] ....” 35 Pa. Stat. § 4005(a)(4).

27. And the Board 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).

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

29. Yet 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 (“California Board”) revises periodically pursuant to California law.

30. 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 Board requirements. 25 Pa. Code §§ 126.503(d), 126.531.

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

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

33. As might be expected, the California Board followed California procedures when revising California’s heavy diesel emission and warranty standards. Consequently, the California Board did not comply with any Pennsylvania-specific procedural requirements.

34. Nor did the California Board consult with or seek approval from the Pennsylvania Secretary of Transportation.

35. And neither the Pennsylvania Board nor the Pennsylvania DEP sought approval from, or worked in consultation with, the Secretary of Transportation to promulgate new vehicle emission standards for the Commonwealth.

36. Neither the Pennsylvania Board nor the Pennsylvania DEP published anything proposing these new standards or offering opportunity for public comment.

37. Therefore, Pennsylvanians were denied the opportunity to raise objections.

38. Nor did the Pennsylvania Board or the Pennsylvania DEP provide regulatory analysis as to the impacts of enforcing California's new standards.

39. For example, they failed to: (a) explain why there was a compelling public need for new standards in Pennsylvania; (b) provide a cost-benefit analysis; (c) consider whether new regulation would put Pennsylvania businesses at a competitive disadvantage, or; (d) consider less burdensome regulatory alternatives.

40. The Respondents contend that California standards govern automatically in the Commonwealth without need to comply with Pennsylvania procedures.

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

42. 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. Metclafe, Chairman of Env'tl. Res. & Energy Committee (Nov. 3, 2021).



43. 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.

44. 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.

45. Whereas the California Code only previously required warranty coverage for 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.

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

47. For model year 2031 and beyond, California’s new standards will require coverage for up to 210,000, 280,000, or 600,000 miles.

48. Whereas the California Code only previously required warranty coverage for 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.

49. Further, whereas the California Code only previously required warranty coverage for 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.

50. These new standards are now enforceable against anyone buying or selling heavy diesel trucks in Pennsylvania.

51. 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 J, Suspension of the Pennsylvania Heavy-Duty Diesel Emissions Control Program, 53 Pa.B. 3166 (June 10, 2023).

52. DEP intends to begin enforcing California's new standards beginning with Model Year 2027 vehicles and engines.

53. But insofar as DEP maintains enforcement discretion, DEP might just as well elect to begin enforcing California's new heavy diesel emission and warranty standards applicable to Model Year 2024–2026 vehicles at any time.

54. In any event, 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 J.

55. 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 against dealerships or trucking companies. *Id.*

56. 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.

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

57. 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.

58. 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 E, Declaration of Rebecca Oyler ¶ 14 (“Oyler Decl.”); Exhibit F, Declaration of Brian Wanner ¶ 12 (“Wanner Decl.”); Exhibit G, Declaration of Kenton Good ¶¶ 6–7 (“Good Decl.”); Exhibit H, Declaration of Calvin Ewell ¶ 18 (“Ewell Decl.”); Exhibit I, Declaration of Shawn Brown ¶¶ 6–7 (“Brown Decl.”).

59. PMTA members are injured because it will cost more for them to buy California-compliant trucks with extended warranties. *See* Exhibit E, Oyler Decl. ¶¶ 15–17; Exhibit G, Good Decl. ¶ 22; Exhibit I, Brown Decl. ¶¶ 8–9.

60. For example, Peters Brothers does not want to purchase extended California warranties for its new trucks. Exhibit F, Wanner Decl. ¶¶ 13–17. The company would rather decline extended coverage because it has in-house technicians who can handle issues that may arise. *Id.* ¶14.

61. 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 G, Good Decl. ¶¶ 22–23; Exhibit I, Brown ¶¶ 8–10.

62. Likewise, Pennsylvania heavy diesel truck dealers like Transteck and MTE are injured by Pennsylvania’s rolling incorporation of new and increasingly more stringent heavy diesel engine emission standards. *See* Exhibit E, Oyler Decl. ¶¶ 15–16; Exhibit G, Good Decl. ¶¶ 13–21; Exhibit I, Brown ¶¶ 17–18.

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

64. 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.

65. Conversely, PMTA 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.

66. 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* Wanner Decl. ¶ 18; Exhibit G, Good Decl. ¶ 13; Exhibit I, Brown Decl. ¶ 17.

67. Transteck and MTE reasonably anticipate that they will see a reduction in sales because of increased costs for California-compliant vehicles going forward. *See* Decl. Exhibit G, Good Decl. ¶ 15; Exhibit I, Brown Decl. ¶ 18.

68. PMTA 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 E, Oyler Decl. ¶ 10; Exhibit H, Ewell Decl. ¶ 16.

69. A decision declaring Pennsylvania's Rolling Diesel Regulations and Rolling Warranty Regulation unlawful would provide relief to Petitioners.

70. 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 35 Pa. Stat. § 4005 (Ultra Vires Regulation)**

71. The preceding paragraphs are incorporated herein by reference.

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

73. 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.*

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

75. Therefore, the Pennsylvania Board’s Rolling Warranty Regulation violates the Pennsylvania Air Pollution Control Act.

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

76. The preceding paragraphs are incorporated herein by reference.

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

78. Nor did the General Assembly delegate rulemaking authority for the Pennsylvania Board to adopt California’s heavy diesel engine emission standards.

79. The Act authorizes the Pennsylvania Board only to “recommend” performance or specification standards for emission control systems and devices on motor vehicles. 35 Pa. Stat. § 4005(a)(4). The Pennsylvania Board has no authority to adopt such standards on its own accord without approval from the Pennsylvania Secretary of Transportation.

80. The Act authorizes the Pennsylvania Board only to work in consultation with the Pennsylvania Secretary of Transportation in promulgating rules designed to reduce emissions from motor vehicles. *Id.* § 4005(a)(7).

81. The Pennsylvania Secretary of Transportation did not issue the heavy diesel emission and warranty standards set forth in Title 13 of the California Code.

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

83. Therefore, the Pennsylvania Board's Rolling Deisel Regulations violate the Pennsylvania Air Pollution Control Act.

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

84. The preceding paragraphs are incorporated herein by reference.

85. 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.

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

87. To the extent that the Air Pollution Control Act allowed the Pennsylvania Board 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.

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

88. The preceding paragraphs are incorporated herein by reference.

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

90. To the extent that the General Assembly delegated unfettered rulemaking authority to the Pennsylvania Board 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.

91. This delegation violates Article II, Section 1 of the Pennsylvania Constitution.

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

92. The preceding paragraphs are incorporated herein by reference.

93. 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.



94. 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.

95. 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.

**Sixth Claim for Relief:  
71 Pa. Stat. § 745.5 (Regulatory Review Act)**

96. The preceding paragraphs are incorporated herein by reference.

97. The Respondents have failed to submit California's new heavy diesel emission and warranty standards or any associated regulatory analysis for review to the Pennsylvania Independent Regulatory Review Commission.

98. The Respondents have failed to submit analysis considering the impact of California's new heavy diesel emission and warranty standards on Pennsylvania small businesses; they have likewise failed to consider alternatives for minimizing the impact on small businesses.

99. The Respondents have failed to submit analysis considering the direct and indirect costs to the Commonwealth of enforcing California's new standards.

100. Respondents' putative adoption of California's standards therefore violates the Regulatory Review Act.

**Seventh Claim for Relief:  
Violation of 4 Pa. Code § 1.374 (Pennsylvania Administrative Code)**

101. The preceding paragraphs are incorporated herein by reference.

102. The Respondents have failed to submit, to the Governor's Office, a written attestation that California's new heavy diesel emission and warranty standards are needed to address a compelling public need in Pennsylvania.

103. The Respondents have failed to provide a required cost/benefit analysis of California's new heavy diesel emission and warranty standards.

104. The Respondents have failed to provide analysis as to whether California's new heavy diesel emission and warranty standards places the Commonwealth at a competitive disadvantage compared to other states.

105. Respondents' putative adoption of California's standards therefore violates the requirements set out in the Pennsylvania Administrative Code.

**REQUEST FOR RELIEF**

WHEREFORE, Petitioners respectfully request relief as follows:

1. 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.

2. 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 separation of powers, as well as the Commonwealth Documents Law, the Regulatory Review Act, and the Pennsylvania Administrative Code.

3. 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).
4. An award of costs and expenses.
5. Any further legal and equitable relief the Court deems just and proper.

DATED: June 13, 2023

Respectfully submitted,

/s/ Caleb J. Kruckenberg

Caleb J. Kruckenberg  
Attorney ID No. 322264  
Pacific Legal Foundation  
3100 Clarendon Boulevard, Suite 1000  
Arlington, VA 22201  
Telephone: (202) 888-6881  
ckruckenberg@pacificlegal.org

Luke Wake\*  
Cal. Bar No. 264647  
Pacific Legal Foundation  
555 Capitol Mall, Suite 1290  
Sacramento, CA 95814  
Telephone: (916) 419-7111  
lwake@pacificlegal.org

*Counsel for Petitioners*

*\*Pro Hac Vice motion forthcoming*

**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  
Telephone: (717) 783-2300

**Richard Negrin, 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  
Telephone: (717) 783-2300

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

P.O. Box 8477  
Harrisburg, PA 17105

**Attorney General Michelle Henry, Pennsylvania Office of Attorney General**

16th Floor, Strawberry Square  
Harrisburg, PA 17120  
Telephone: (717) 787-3391

DATED: June 13, 2023

/s/ Caleb J. Kruckenberg  
Caleb J. Kruckenberg  
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: June 13, 2023

/s/ Caleb J. Kruckenberg  
Caleb J. Kruckenberg  
Pacific Legal Foundation

*Counsel for Petitioners*