

# The Legal Intelligencer

## Facility Owners, Operators Rev Up to Comply With Motor Vehicle Idling Act

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On Oct. 9, 2008, Gov. Edward G. Rendell signed into law the Diesel-Powered Motor Vehicle Idling Act, which establishes idling restrictions for certain diesel-powered motor vehicles and imposes a penalty on drivers and owners of vehicles who violate the act. Significantly, the act also broadly mandates that facility owners and operators may not allow violations of the act on the property they own or operate and that they must erect and maintain permanent signs to inform drivers that idling is restricted.

The overriding purpose of the act is to reduce air pollution caused by the operation of diesel engines. Another aim is to promote a uniform idling standard across the state. However, ordinances restricting idling were in place in Philadelphia and Allegheny counties before the act was passed. The act dictates that more restrictive provisions of the Philadelphia County and Allegheny County ordinances in effect as of Jan. 1, 2007, will be enforced so long as the local ordinance is not amended, suspended or rendered invalid, in whole or in part, by a court decision. Pennsylvania intends the act to comprise part of the commonwealth's State Implementation Plan by which the state and its counties meet the national standards.

The act is notable because it imposes requirements on those who own or control land relating to emissions they do not generate. As written, the act is breathtaking in scope. It applies to any location where a diesel-powered motor vehicle with a gross weight of 10,001 pounds or more engaged in commerce loads, unloads or parks, and it prohibits most regulated vehicles from idling for more than five minutes in any continuous 60-minute period. While the act imposes this restriction on the owner and operator of the regulated vehicle, it also charges the owner and operator of the property where the idling occurs with the obligation of preventing a violation of the act. So, the operator of a restaurant could be fined for "allowing" vendors and suppliers to idle regulated vehicles in excess of the time limits in the act. The restaurant owner's landlord also could be fined for the same conduct.

Expecting that real estate owners and tenants might choke on the requirement, the Air Quality Technical Advisory Committee had recommended that they not be subject to liability for violations by vehicles they do not control. However, in commenting on virtually identical regulations being considered at the same time as the act, the Department of Environmental Protection stated that shared responsibility among facility owners and vehicle operators was essential to reduce excessive idling. The act is sure to have some landlords fuming as they are charged with liability for activity generally outside their control. Landlords and tenants must develop strategies for enforcing the act's requirements and protecting themselves against violations.

In addition, the act requires the owner and operator of a location where regulated vehicles load or unload or a location that provides 15 or more parking spaces for regulated vehicles, to erect and maintain a permanent sign on the property to inform drivers that idling is restricted. The sign must comply with the Pennsylvania Handbook of Approved Signs (Department of Transportation Publication 236M), which includes standards relating to the shape, color, dimensions, legends, application and placement of official signs.

Motor homes, commercial implements of husbandry, implements of husbandry, farm equipment and farm vehicles are excluded from the act. The act also includes a litany of common sense exemptions from liability, e.g., for vehicles stuck in traffic, suffering mechanical breakdown beyond the control of the operator or those engaged in safety or emergency operations. The exemptions listed below are likely to be those most relevant for property owners attempting to comply with the law. The act exempts vehicles that idle:

- To operate cargo refrigeration equipment.
- To power work-related mechanical, safety or electrical operations (such as a crane, for example).
- Where the vehicle is armored and must idle while a person remains inside the vehicle to guard contents or while the vehicle is being loaded or unloaded.
- When actively engaged in solid waste collection or collection of source-separated recyclable materials.
- When equipped with "stationary idle reduction technology."

A violation of the act is a summary offense punishable by a fine of not less than \$150 or more than \$300 plus court costs. In addition, the Pennsylvania Department of Environmental Protection may issue orders and civil penalties as necessary to aid in the enforcement of the act pursuant to the separate Pennsylvania Air Pollution Control Act. However, penalties for violations of the act, even if issued under the authority of the Air Pollution Control Act, are capped at \$1,000 per day for each violation.

The act is effective Feb. 6. Property owners and operators have until that date to erect the requisite signs on their properties. Landlords should also notify existing tenants of their duty to comply with the act to protect against liability, and should consider including appropriate indemnification clauses in leases to ensure tenant responsibility when the tenant is in control of the property or is the recipient of goods or services related to the idling regulated vehicles.

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