

## Jake Brake Issues

MMA's "Maine Townsman" article-Nov. 2008

### JAKE BRAKE ADVISORY

from *Maine Townsman*, "Legal Notes," November 2008

For several years, and for several reasons, we've advised against the adoption of "Jake Brake" or engine braking ordinances as a means of controlling truck engine noise (see "'Jake Brake' Ordinances," *Maine Townsman*, "Legal Notes," October 2000). Now we learn, courtesy of the MaineDOT's Maine Local Roads Center, that engine braking ordinances may actually be pre-empted by federal law.

The Noise Control Act of 1972 (now codified at 42 U.S.C. § 4917) authorizes the Environmental Protection Agency (EPA) to promulgate uniform national noise emission regulations for motor carriers engaged in interstate commerce. The federal statute expressly prohibits the states and their political subdivisions (including municipalities) from adopting or enforcing noise standards applicable to any motor carrier engaged in interstate commerce unless the standards are identical to the federal standards (see § 4917[c][1]). (The current version of the EPA's regulations is codified at 40 C.F.R. § 202.20.) Therefore, unless the noise standards in an engine braking ordinance are identical to the federal standards, the ordinance is unenforceable as applied to motor carriers engaged in interstate commerce.

As we've advised all along, engine braking ordinances can be difficult to enforce and may not get at the real problem, which is often a modified or defective exhaust system (which is already against State law, 29-A M.R.S.A. § 1912). The federal preemption of these ordinances as applied to motor carriers engaged in interstate commerce may be one more good reason to reject them.

Thanks to the Maine Local Roads Center (and its Vermont counterpart) for bringing this issue to our attention. (By R.P.F.)

### Jake Brake Issues

- What they are and can a town control the truck engine noise?
  - What they are and can a town control the truck engine noise? Many towns around Maine have started erecting "No Jake Brake" signs (or something similar) in hopes of "controlling" the engine noise from downshifting trucks. Many residents are conscious of the noise and want the town "to do something" about the noise. Depending on your town and the cooperation of truckers, the results may be positive or they may be negligible.
- What is a Jake Brake?
  - What is a Jake Brake? "Jake Brake®" is a registered trademark of Jacobs Vehicle Systems™. The term "Jake Brake" is sometimes incorrectly used to refer to compression release type engine brakes in general. The term correctly refers to all of Jacobs Vehicle Systems retarding products, including their line of Exhaust Brakes and Driveline Brakes..... as well as Jacobs Engine Brakes. The Jacobs Engine Brake is a device that mounts on the engine overhead. The principle behind the Jacobs Engine Brake™ engine retarder is simple. It changes the action of the exhaust valves, turning the engine into a giant air compressor. It makes a distinctive sound while in operation, and converts a power-producing diesel engine into a power-absorbing retarding mechanism. It is typically used on class 7 and 8 vehicles and can be activated or deactivated at the flip of a switch or foot on the pedal. Further details can be seen on the company's website:

[www.jakebrake.com](http://www.jakebrake.com)

When operating, it produces a distinctive staccato sound. When used on a vehicle with a poorly muffled or un-muffled exhaust (straight pipes for example), the sound can be quite loud.... which is what citizens will complain about. According to the Jacobs Company, the real problem here is the illegally modified or defective exhaust systems.

The signs around Maine are probably unfairly using the company trademark, because they are brand-specific. The term "Jake Brake" also refers to the company's nearly silent exhaust brakes and driveline brakes, so these signs don't make sense for all Jake Brakes..... and don't target the root problem of illegal exhaust systems Therefore, any sign or ordinance should avoid use of the term "jake brake".

- What are the benefits of using a "jake brake"?
  - A "jake brake" can provide:
    - Faster, steadier, more efficient braking performance.
    - Reduced wear on engine, tires, and service brakes.
    - Lower vehicle maintenance costs.
    - Less vehicle downtime.
    - Enhanced driver confidence.
- Can our town pass an ordinance to "control" the noise?
  - Can our town pass an ordinance to "control" the noise? First of all, erecting a sign or two without an ordinance has no legal authority As with any regulatory traffic issue, a traffic ordinance must be in place to "enforce" the actual signs, or the sign is advisory only. Enacting a traffic ordinance to deal with "jake brakes" under 30-A § 3009 may seem like a kind and responsive reaction to engine noise, but is safety of the public being compromised?? Engine brakes are very effective at reducing the speed of heavy trucks on a downgrade, but what if the trucker had to stop quickly for a child or elderly person or an entering vehicle, and only use his regular brakes?? In most cases, the stopping distance will be longer without the engine braking system and this could lead to disaster at the bottom of the hill.

At best, the success of an ordinance will probably be voluntary compliance from truckers Some truckers may be sensitive to their truck noise and will try to reduce the noise, while others may intentionally try to make it worse, especially if a "squeaky wheel" citizen is emphatic about the noise problem. If a town passes a specific "jake brake ordinance", is the "No Jake Brake" sign or "Quiet Zone" sign a black lettering-on-white regulatory type sign.... or is it (wrongly) on a black-on-yellow warning sign?? If the local police get into the action of enforcement, are they going to check the actual engine braking system installed on each truck, or have a decibel meter to measure the noise level? What if the trucker says he had to stop quickly for a pedestrian? Or the car in front of him stopped quickly?

- What is the real problem?
  - The federal government has required all vehicles manufactured since 1978 to meet noise requirements when delivered to the customer. Today, trucks are required to emit less than 80 dBa of noise when they drive by, as measured at 50 feet. So trucks have been required to meet noise requirements when they leave the dealership as new vehicles for quite some time. In many "noisy truck" areas, the real problem is modified or defective exhaust systems. There is a good chance that the noisy trucks are running with straight stacks or gutted mufflers. Some are poorly maintained vehicles, while others have drivers who simply enjoy making noise. In any case, the use of the engine brake may not be the problem. The real problem in this noise issue is the illegal exhaust systems in many trucks At other times, it may be the engine braking system, which is being used by the driver who has not tried to slow down in advance of a hill or traffic signal. The regulations on vehicle noise relating to

engine/muffler systems need to be enforced Otherwise, atown would be fining for using engine brakes (sometimes being used justifiably) and not fining for the illegal muffler system

- What can a town do?
  - Most states, including Maine, already have a law on the books that prohibits operating a motor vehicle on a public highway without a serviceable muffler (MRSA 29-A§ 1912). The real noise offenders, those with straight stacks or gutted mufflers, are operating in violation of this law. Have your local police stop noisy vehicles and check them for muffler integrity. Cite those that are not in compliance. This is a fairly easy step that should produce a noticeable improvement in the quality of life of your community.

If the town decides to enact a traffic ordinance under 30-A § 3009, it probably is best to hope for voluntary compliance, but who will do the enforcement? Another ordinance without enforcement possibilities is relatively useless Be sure to use the black-on-white signs and try to avoid the term "jake brake".... maybe use "quiet zone ahead", or "reduce engine noise ahead".

If a town does not adopt an ordinance and simply puts up a sign or two, the signs have no legal authority or enforceability.

- The MaineDOT response
  - The MaineDOT will not erect these signs on state roads The only way that a sign will appear is if a town officially adopts an ordinance and erects the signs themselves Then the town will be responsible for enforcement, sign maintenance, or any liability issues

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