

MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION

**PETITION TO REQUIRE
MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION
RULEMAKING TO ADOPT ADVANCED CLEAN CARS II REGULATION
PURSUANT TO 5 M.R.S. § 8055**

Filed by

150 VOTERS REGISTERED IN THE STATE OF MAINE

NATURAL RESOURCES COUNCIL OF MAINE

MAY 23, 2023

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I. INTRODUCTION

Maine law requires the state to reduce gross greenhouse gas (“GHG”) emissions 45% below 1990 levels within the next decade and 80% by 2050 in recognition of the grave threat climate change poses.¹ Despite this legal obligation, the Department of Environmental Protection (“Department”) has missed its statutory 2021 rulemaking deadline and failed to adopt any regulations or policies addressing Maine’s largest contributor: transportation. The Department’s inaction conflicts with the state’s Climate Action Plan, which emphasizes transportation electrification as a key strategy for achieving the mandatory emission reduction levels.² The Department’s inaction further defies the state’s Clean Transportation Roadmap, which recommends adoption of California’s vehicle emission regulations as “critical” for hitting the GHG milestones.³

Petitioners hereby submit this Petition to Require Agency Rulemaking to compel the Department to adopt zero-emission vehicle and low emission vehicle regulations for light-duty vehicles to reduce GHG emissions from the transportation sector as Maine law demands. Adoption of California’s Advanced Clean Cars II (“ACC II”) regulation is well within the Department’s long-standing and regularly exercised authority over vehicle emissions, and the proposed rule will benefit Maine’s environment, people, and economy.

a. Petitioners

150 registered voters of the state, together with Natural Resources Council of Maine, submit this petition pursuant to 5 M.R.S. § 8055. Signatures are certified by Portland, Farmington, Chesterville, Alfred, Topsham, Freeport, Brunswick, Sanford, Otisfield, Woodstock, and Norway municipalities, pursuant to 21-A M.R.S. § 354(7).

b. Petition

In compliance with 5 M.R.S. § 8055(2), Department *Information About Petitions to Require Agency Rulemaking*,⁴ and Department petition forms, this petition includes a cover letter and:

- Department Petition Cover Sheet;
- Petition to Require Maine Department of Environmental Protection Rulemaking to Adopt Advanced Clean Cars II Regulation Pursuant to 5 M.R.S. § 8055 (this document);

¹ 38 M.R.S. § 576-A.

² 38 M.R.S. § 577; Me. Climate Council, *Maine Won’t Wait: A Four-Year Plan for Climate Action* 38-42 (2020), https://www.maine.gov/climateplan/sites/maine.gov.climateplan/files/inline-files/MaineWontWait_December2020_printable_12.1.20.pdf.

³ Cadmus, *Maine Clean Transportation Roadmap* 53 (2021); *see also* Me. Exec. Order No. 36 FY 20/21, 1 (Mar. 30, 2021) (“[T]he transportation sector is vital to Maine’s economy and is also responsible for fifty four percent of greenhouse gas emissions in Maine . . .”).

⁴ Me. Dep’t of Env’t Prot., *Information About Petitions to Require Agency Rulemaking*, Maine.gov, <https://www.maine.gov/dep/rules/petition.html> (last visited Mar. 16, 2023).

- Attachment 1. Certified Petition Signatures; and
- Attachment 2. Proposed Regulatory Text.

c. Procedure

The Maine Administrative Procedure Act requires the Department to initiate appropriate rulemaking proceedings within 60 days of receipt of this Petition because it is submitted by more than 150 registered voters of the state.⁵

Petitioners respectfully request the Department conduct a public hearing as a component of the rulemaking pursuant to 5 M.R.S. § 8052.

II. DESCRIPTION OF THE PROPOSED RULE

Pursuant to 38 M.R.S. §§ 576-A, 585, 585-A, and 585-D, Petitioners urge the Department to promulgate a new chapter incorporating California’s Zero Emission Vehicle (ZEV) and Low Emission Vehicle (LEV) IV regulations, together known as the Advanced Clean Cars II (ACC II) Program. The ACC II combines:

- ZEV standards that require increasing sales of battery electric vehicles, hydrogen fuel cell electric vehicles, and the cleanest possible plug-in hybrid-electric vehicles (PHEVs) for passenger cars and light-duty trucks; and
- LEV IV requirements that reduce smog-forming and particulate emissions from new light- and medium-duty internal combustion engine vehicles.

In addition, the ACC II includes charging and ZEV and PHEV assurance measures that set minimum warranty and durability requirements that will help ensure consumers successfully replace their internal combustion engine vehicles with new or used ZEVs and PHEVs. The Department’s adoption of these provisions will drive sales of new ZEVs and PHEVs to 82% in Maine through model year (MY) 2032, which will reduce emissions of criteria and toxic air pollutants and greenhouse gases, improving air quality and reducing the adverse effects of climate change. The proposed rule would require the Department to conduct a mid-term review in 2029 to determine incorporation of ACC II percentage requirements for subsequent years.

California adopted these rules November 30, 2022, effective beginning with MY 2026. Under the CAA’s two-model year lead time requirement, it is too late for Maine to impact vehicles of that model year. The soonest model year the state can impact is 2027. To do so, Petitioners urge the Department to adopt this rule by January 1, 2024.

The full text of the proposed Advanced Clean Cars II rule is found in Attachment 2.

III. MAINE’S ADOPTION OF THE PROPOSED RULE MUST BE EQUITABLE

⁵ 5 M.R.S. § 8055 (3); *see also* 21-A M.R.S. § 354 (7).

A central tenet of the Climate Law and Climate Action Plan is the advancement of equity through climate policies to “ensure communities and citizens who are often left behind can benefit from climate solutions by having access to opportunities and protection from threats.”⁶ Among other references to this important goal, the Climate Law directs the council to consider actions that “minimize deleterious effects, including those on persons of low income and moderate income,” and that create opportunities for economic growth, especially in “rural and economically distressed regions” of Maine.⁷ The council is to “[e]nsur[e] equity for all sectors and regions of the State and that the broadest group of residents benefit . . . with consideration of economic, quality-of-life and public health benefits.”⁸ The Maine Climate Council Equity Subcommittee introduced its recent report by explaining the rationale for this focus:

In Maine and across the world, climate change poses the greatest threat to communities which are already marginalized. Low-income communities and communities of color, among others, are often already subject to both social and environmental harm—experiencing disparities in health outcomes, and inequitable access to healthy, efficient, and secure housing, potable drinking water, and reliable transportation.⁹

The Climate Law’s emphasis on equity extends to the Department’s emissions reduction mandate: the rules ensuring compliance with the GHG levels must be “fair and equitable.”¹⁰ The Department’s adoption of the ACC II rules is consistent with the spirit and letter of the Climate Law and Climate Action Plan.

The ACC II will increase accessibility to personal EVs, helping the benefits of clean cars reach all Mainers, including low-income, rural or communities of color. Growing supply and demand will not only drive down costs of EVs as markets continue to improve; it will also contribute to more diversified model availability (including more affordable models) and will boost the burgeoning used EV market.¹¹ The adoption of ACC II would allow ZEV placement in community car share programs or related incentives to encourage sales to low-income community members. However, equity groups should be met and consulted with directly during the development of complementary policies, programs, and incentives that ensure disadvantaged communities experience the full benefits of ZEVs.

The ACC II regulations will more directly spur increased access to EVs by offering automakers compliance opportunities for actions targeting overburdened and lower-income communities. The proposed ACC II regulations would allow manufacturers to fulfill 5% of their

⁶ Me. Climate Council, *supra* note 2, at 6.

⁷ 38 M.R.S. § 577(7)(B).

⁸ *Id.* § 577(7)(C).

⁹ Me. Climate Council, Equity Subcomm., *Final Recommendations of the Equity Subcommittee of the Maine Climate Council 5* (2023).

¹⁰ 38 M.R.S. § 576-A(4)(C).

¹¹ See Alexander Tankou et al., Int’l Council on Clean Transp., *Understanding and Supporting the Used Zero-Emission Vehicle Market* (2021), <https://theicct.org/wp-content/uploads/2021/12/ZEVA-used-EVs-white-paper-v2.pdf> (In the United States, five-year-old plug-in electric vehicles could save 11% to 17% in annual ownership costs relative to a comparable conventional car, and the savings increase to 17% to 22% for seven-year-old vehicles.)

total annual ZEV requirement by earning “environmental justice” credits.¹² Manufacturers can earn these credits by selling lower priced EVs, placing EVs at a 25% discount in qualifying “community-based clean mobility programs,” reselling EVs at the end of their lease to participating dealerships, and by offering financial assistance programs for low-income consumers.¹³ While these credits are voluntary for automakers, to maximize the equity benefits accruing under the ACC II, the Department should ensure that these programs are in place before automakers can start earning these credits. We urge the Department to work with all interested stakeholders, including rural, low-income and community of color organizations to develop and implement programs that qualify for these credits.

The impacts of climate change and air pollution affect all Mainers, but residents in low-income and Black, Indigenous, and people of color communities are especially vulnerable and often face the most severe impacts. The Department’s swift adoption of the ACC II proposed rule will ensure that communities historically overburdened with transportation pollution realize the benefits of zero-emission vehicles upon Maine’s air and transportation sector. The Department’s implementation of the ACC II rule will also align with the expectations of the state’s Climate Law and Climate Action Plan that require the advancement of equity in climate policymaking.

IV. CONCLUSION

Under 5 M.R.S. § 8055, Petitioners—including more than 150 registered voters of the state—urge the Department to take swift action in Maine’s transportation sector by adopting the proposed rule by January 1, 2024. Doing so will protect Maine’s residents, communities, and natural resources from the devastating effects of climate change while protecting Mainers’ health, boosting the economy, and promoting equity.

Petitioners urge the Department to promptly initiate rulemaking proceedings including a public hearing pursuant to 5 M.R.S. § 8052.

Thank you for your climate work and dedication. Petitioners look forward to continuing to work together to achieve just and effective solutions for all Mainers.

¹² 13 CCR § 1962.4(e)(2).

¹³ *Id.*

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'JS', with a large, sweeping flourish extending to the right.

Jack Shapiro
Climate and Clean Energy Director
Natural Resources Council of Maine