

August 28, 2023

rulecomments.dep@maine.gov

Lynne Cayting, Chief
Mobile Sources Section, Bureau of Air Quality
Maine Department of Environmental Protection
17 State House Station
Augusta, ME 04333-0017

RE: Chapter 127-A: Advanced Clean Cars II Program

Dear Ms. Cayting:

On behalf of the Maine Automobile Dealers Association (“MADA”), this letter provides comment to the Board of Environmental Protection (“BEP”) and the Maine Department of Environmental Protection (“DEP”) regarding proposed Chapter 127-A: Advanced Clean Cars II Program (“ACCII”).

To be clear, MADA is not opposed to the goals of reducing greenhouse gas emissions via the increased purchase in Maine of light-duty zero-emission vehicles (“ZEVs”). MADA’s members are ready and willing to sell light-duty ZEVs, along with any other desired vehicles, to interested Maine customers. MADA does take issue with the California-based ACCII as proposed.

1. ACCII should be treated as a “major substantive” rule.

While ACCII may be considered a “routine technical” rule, its effects are far from routine or merely technical. At minimum, ACCII will result in significant increases in the cost of doing business for MADA’s members. The statute does not prescribe a certain type of rulemaking for petition requested adoption or creation of rules and instead it only directs the Department “initiate *appropriate* rulemaking proceedings.” [5 M.R.S. § 8055\(3\)](#) (emphasis added).

“At the time that an agency is preparing a rule, the agency shall consider the goals and objectives for which the rule is being proposed, *possible alternatives to achieve the goals and objectives* and the estimated impact of the rule.” [5 M.R.S. § 8057-A\(1\)](#) (emphasis added). The entire point of ACCII is to increase the percentage of ZEVs driven in Maine relative to internal combustion engine (ICE) vehicles to “substantially reduce air pollutants that threaten public health and cause climate change.” California Air Resources Board, Advanced Clean Cars II Regulations: All New Passenger Vehicles Sold in California to be Zero Emissions by 2035. Advanced Clean Cars II. <https://ww2.arb.ca.gov/our-work/programs/advanced-clean-cars-program/advanced-clean-cars-ii>.

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A rule with this kind of impact is more appropriately considered by the Maine Legislature, rather than directed wholesale by a mere 150 signatories to a petition. We urge the BEP to postpone any decision on rulemaking until the Legislature has the opportunity to consider this first.

2. To effectively reduce emissions, sale of ZEVs should be defined as a sale to the ultimate driving customer, not merely as delivery of ZEVs to dealer lots.

Currently, only 4% of vehicles sold in Maine are ZEVs, and ACCII has an ambitious goal – an annual requirement of 43% ZEV sales by 2027 and 82% ZEV sales by 2032 to achieve its ultimate objective of lowering greenhouse gas emissions. However, this goal is likely to be achieved only if a “sale” is defined as the sale of a ZEV to the end user – a purchaser that drives the ZEV off the dealer lot. If a sale is defined merely as the delivery of ZEVs to dealers, manufacturers will meet the letter of ACCII (thereby avoiding significant monetary penalties) by forcing Maine dealers to accept ZEVs, in which case ACCII achieves nothing other than increasing the dealers’ costs by keeping ZEV on their lots.

3. In the absence of registration denial, ACCII will serve to incentivize Mainers to purchase non-ZEVs out of state and bring them into Maine.

First, cost is a major factor. Many people simply cannot afford the significantly higher cost for a ZEV. Second, Maine currently does not require municipalities or the Bureau of Motor Vehicles to deny in-state registration to vehicles purchased out of state. There is no reason to do so. The proposed mandates of ACCII, however, are a game changer. Customers cannot be allowed to avoid ZEV purchases by buying ICE vehicles in New Hampshire, for example, and then register them in Maine. The goal of lowering greenhouse gas emissions cannot be achieved if Maine residents are allowed to purchase ICE vehicles in other states. Such sales undercut Maine dealers – every sale by a foreign state is a sale a Maine dealer cannot make. It makes no sense whatsoever to put a standard in place mandating certain ZEV market penetration and then provide an escape hatch that frustrates that goal and hurts Maine dealers and impacts Maine’s tax base in the process. Therefore, under the ACCII, residents must be strongly incentivized to purchase ZEVs in Maine via registration denial.

4. Proponents for ACCII elevate hope over reason by relying on speculative assumptions about the electrical grid.

The proponents contend that electricity costs will go down both as a result of more EV sales and because of the availability of solar and wind generation. There is no way to accurately predict if or when electricity costs will decrease. It is counterintuitive to argue that increased EV sales, however limited, will lower electric costs. As to alternatives, as

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the BEP knows, there are often significant roadblocks to developing renewable energy, with the result that it can take many years before the electrical grid can possibly benefit.¹

Instead of implementing rules that rely on the hope that electricity prices will decrease and consumers will accelerate their ZEV purchases, the DEP should delay the implementation of these rules for at least two years to determine *if* a project of this scope is reasonably attainable. Ambitious goals are important but only if they are ultimately feasible. Maine does not have, nor is likely to develop, the infrastructure to support going from 4 percent ZEV sales to 43% in the next four years and 82% ZEV sales in the next ten years.

5. ACCII is not tailored to Maine circumstances, including the state's financial capacity to create a substantial incentive program.

The proponents contend that ACCII has been tailored specifically to Maine. First, the market penetration requirements are increased over time rather than all at once, and second, there is a midway stopping point around 2030 where the program is given a “second look.” Proponents also point to incentives that they argue will induce many consumers to buy cars that qualify under the proposed rule. Unlike California, however, which has the resources to invest billions of dollars to incentive ZEV purchases and infrastructure,² Maine, specifically Efficiency Maine, does not have the luxury of a meaningful level of funding. Incentives are key to altering consumers behavior. While there is a small cadre of ZEV enthusiasts, it will take significant investment to incentivize Maine car buyers to take a chance on ZEV technology.

¹ See Valigra, L. (2023, April 6) *The major dates in Maine's battle over the CMP corridor*, Bangor Daily News, <https://www.bangordailynews.com/2023/04/06/business/major-dates-in-maines-battle-over-cmp-corridor-joam40zk0w/> (noting that the hydropower corridor is currently in year five of attempting to develop the project); Sharp, D (2023, July 25) *Maine Lawmakers endorse proposal that would jumpstart offshore wind projects*, The Associated Press, <https://apnews.com/article/gulf-of-maine-offshore-wind-e6010b8be2a0536f7f8fa441c85ec047> (noting that “legislation ... call[ed] for requests for proposals to be issued for 3,000 megawatts of electricity from offshore wind turbines **by 2040**” which is eight years after Maine is supposed to be up to 82 percent ZEV sales.); O'Brien, K, (2023, March 10) *Corinth becomes latest Maine town to consider solar development restrictions*, Bangor Dail News, <https://www.bangordailynews.com/2023/03/10/news/penobscot/corinth-solar-development-moratorium-joam40zk0w/> (noting the rise in municipalities passing solar development moratoriums due to concerns about “how future solar farms could impact adjacent property values, the environment, and the aesthetics of the town” which delay the additional power that solar could bring to the electrical grid).

² “A suite of incentive programs is available for consumers who want to make the switch to zero-emission vehicles or use other modes of clean transportation. Incentives are developed by the California Air Resources Board and include rebates for new and used clean cars, funding for charging options, and alternatives to owning a car, such as car sharing and ride hailing. The regulations are backed by Governor Newsom's \$2.4 billion dollar investment in vehicle incentives, charging infrastructure and public outreach.” California Air Resources Board, *Advanced Clean Cars II Regulations: All New Passenger Vehicles Sold in California to be Zero Emissions by 2035*. Advanced Clean Cars II. <https://ww2.arb.ca.gov/our-work/programs/advanced-clean-cars-program/advanced-clean-cars-ii>.

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6. Proponents have not directly or completely addressed ZEV technical challenges.

ZEVs require lithium batteries which not only have supply chain concerns, but present the risk of "thermal runaway," a rapid and unstoppable increase in temperature that leads to fires in EVs that are hard to extinguish and can spontaneously reignite.

As to the supply chain, there "aren't sufficient reliable supplies of lithium and other battery materials, like nickel and cobalt, for the millions of electric vehicles the world needs." Krauss, C., & Ewing, J. (2023, July 2). *Lithium scarcity pushes carmakers into the mining business*. The New York Times. <https://www.nytimes.com/2023/07/02/business/lithium-mining-automakers-electric-vehicles.html>. Automakers are working to resolve this problem because they recognize the importance of electric vehicles, but it takes time to address the supply chain issues and this is not recognized by the proposed rule.

As to the spontaneous fires, there are numerous examples of this problem, including ships that transport ZEVs sinking because of spontaneous ZEV fires on board. Baertlein, L., & Deutsch, A. (2023, July 28). *Focus: Ocean shippers playing catch up to electric vehicle fire risk*. Reuters. <https://www.reuters.com/business/autos-transportation/ocean-shippers-playing-catch-up-electric-vehicle-fire-risk-2023-07-27/#:~:text=One%20hazard%20in%20lithium%20Dion,extinguish%20and%20can%20spontaneously%20reignite>. It has gotten to the point that manufacturers and fire safety officials have instructed dealers to store battery packs outside in remote buildings to avoid fire risk. Consumers have also been advised of the same potential, have recognized the risk and accordingly have parked outside of garages.

7. The proposed rule requires the state to participate in achieving the proposed ZEV mandates. Given that ZEVs are meaningfully more expensive than ICE vehicles, when push comes to shove and the Legislature has to enact a budget it is likely that the Legislature will jettison ZEV requirements for its fleet of vehicles. While the BEP cannot order the Legislature to leave state participation alone, it can use its bully pulpit to urge that the state fully participate in the program.

ZEV technology and development still face a myriad of challenges. While they ultimately may be an important step to reducing greenhouse gas emissions, Maine is not ready for a rule as ambitious as the Advanced Clean Cars II Program proposes.

In conclusion, MADA strongly urges the BEP to postpone ACCII until the Legislature has had the opportunity to consider the issues presented by rule. If the Board decides to promulgate a rule, sales must be recognized only after an end use consumer buys the unit. In short, no rule should be promulgated until it is revised to more appropriately incentive Maine car buyers and ZEV technical challenges are understood and have been thoroughly addressed.

PRETI FLAHERTY

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Sincerely yours,

A handwritten signature in blue ink that reads "Bruce C. Gerrity". The signature is written in a cursive style with a large, sweeping flourish at the end.

Bruce C. Gerrity

BCG:apl