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To: Alice A. Previte, Esq. Office of Legal Affairs

Attention: DEP Docket No. 01-23-07.
Proposed New Rules: N.J.A.C. 7:27-29A
Proposal Number: PRN 2023-083.

From: Raymond Cantor, Deputy Chief Government Affairs Officer on behalf of the
New Jersey Business & Industry Association

Date: October 20, 2023

On behalf of the New Jersey Business & Industry Association please accept our comments concerning the Department of Environmental Protection's proposal to adopt by reference the California Advanced Clean Car II regulations. The NJBIA is the state's largest business association with members both large and small, representing all facets of our economy. Given the impacts this rule will have on our economy, social structure, transportation, and energy systems, we have a keen interest in this rule proposal.

It is our opinion that, if adopted, these regulations will have a negative impact on New Jersey's economy and its citizens, in particular those in disadvantaged communities. Further, we believe that the necessary infrastructure, of all types, cannot possibly be put in place to meet the timeframes being proposed. We ask that the Department withdraw this proposal and work with the Legislature on means to reduce carbon emissions from the transportation sector.

NJBIA opposes this rule for three main reasons which we will detail below. Generally, we do not see electric vehicles (EVs) or other zero emission vehicles (ZEVs) as an affordable option for a good part of the State's citizens at this point in time and we do not believe the affordability issue will change during the phase-in period (*i.e.*, to 2035). We believe it will be impossible to support the electrical demand, supply the public and private charging infrastructure, and to provide adequate distribution system upgrades to support a massive increase in electric vehicles. We also object to the Department's draconian interference with the marketplace and consumer choice by mandating the type of vehicles people can drive. Contrary to public statements by the Department, this rule takes away choice, it does not offer more choice. Cars are fundamental to the functioning of society in New Jersey. Such a fundamental change in what cars can be sold should be a decision of our elected officials, embodied in the New Jersey Legislature, not by regulators in one Executive Department. Finally, we question the legality of this proposal and its consistency with legislative intent.

Affordability: Electric vehicles are not affordable for a large segment of the New Jersey population. Low- and moderate-income (LMI) people are especially impacted by this

policy to phase out and then ban the sale of new internal combustion engine (ICE) vehicles. But the impacts will go beyond LMI and will impact middle class families as well. Seniors, young people, and families will be especially hard hit and negatively impacted.

There is no denying or getting around this point. The California Air Resources Board (CARB) in public venues recognized that there will be segments of the population who will no longer afford to own a car. They refer to these people as “those who will not own cars.” The solution being offered to these people are programs to promote EV buses, ride share, and bicycle ownership. These are not realistic solutions for New Jersey residents who depend on their cars to get to work, shop, vacation, and see their health care professionals.

Has the Department done any analysis on how this rule will impact their lives? How will this rule impact disadvantaged communities? It is not sufficient to say climate change has negative impacts and therefore any burdens we place on individuals or communities are justified. If the Department is deciding on this rule, then it should be obligated to actually study and evaluate who is being impacted and what those impacts will be.

It is not just the cost of new EVs that is the problem. Once this rule goes into effect, as early as mid-2026 (when model year 2027 cars are released) we will see an impact on all car prices. The costs of EVs, contrary to claims, are going up, not down. This is largely due to unavoidable supply chain and mineral availability and processing issues. There does not appear to be any short or even mid-term resolution to these problems. Long-term solutions, well beyond the full mandate takes effect, are purely speculative. While one mine is being contemplated out west for certain minerals, there are no plans for a processing plant. No one is serious about addressing these real problems. We should not impose draconian mandates based on speculation, or prayers, that these issues will be solved or that prices will come down.

We acknowledge that on the high, luxury end of the EV market, once you consider government incentives, there is price parity. But this high-end market is already not affordable for most of the market. At the lower end, EVs are substantially more expensive than an ICE vehicle, even with incentives. This is true for both new car sales and leases. Leases make up a substantial part of the new car market. Has the Department analyzed how this rule will impact that segment? Consumers who lease have a certain payment down and cost in mind that dictates their vehicle choice. EVs lease prices do not meet those buying criteria. What happens if consumers refuse to lease EVs?

We often hear that there is price parity between ICE vehicles and EVs. This is not the case. While a low-end EV may be comparable to an average SUV, they are not comparable vehicles. A family of four or more may need a large SUV. A comparably sized EV is \$20,000 to \$30,000 higher in initial cost. Incentives, even where they exist, do not make up for that difference. It should also be noted that there is no guarantee that state or federal incentives will even exist when this mandate takes effect. Incentives should not be part of the cost or economic calculations. Incentives, we should also note, are not funded with free money. Taxpayers or ratepayers pay for them. They act as more a subsidy for wealthy people funded largely by those who cannot afford EVs.

We worry as well what this mandate will do to the price of new and used ICE vehicles. New car prices are already out of reach for many people and what were once three- or four-year car loans not too long ago are now seven- or even eight-year loans in order to make new car ownership possible. Once this rule goes into effect, the price of new ICE vehicles will go up as their supply will be limited. Does anyone remember the supply chain issues during COVID?

The rule will have a downward impact on the used car market. With fewer new ICE cars available, and with people holding onto their ICE cars longer, the used car market will see spikes in prices. It is a simple supply and demand response. Those people with less income, who could only afford a used car, may now need to buy an even older car, or be priced out of the market entirely. Older cars have more repair problems thus harming this population even further.

Further, it is insulting when this Administration points to the used car market as an alternative for those who can no longer afford a new car. Has the Department done any analysis on the used car market and how it will impact LMI, disadvantaged communities, seniors, the young, and the middle class? Will families that need two cars now only be able to afford one? What impact will that have?

The Department also cites studies that look at the total cost of owning an EV over 10 years and compares it to ICE ownership and then proclaims that monies will be saved. We find those arguments unconvincing. First, these are California studies and are not applicable to New Jersey. California has much higher fuel prices, lower vehicle miles travelled per car, a different climate, more pollution, and different demographics. These studies make certain assumptions about cost savings that seem optimistic in a market that has not yet developed. No one knows how the cost of EV repairs will remain over time, or even if there will be enough service centers to deal with repairs. These studies do not consider the resale value of EVs vs ICE vehicles. What we currently know about the resale EV market is weak. Once an EV battery is degraded down to 70%, it must be replaced at the cost of \$20,000 or more. Few people can afford that, and that known liability will decrease the value of used EVs. On the other hand, used car values of ICE vehicles are well known and established. This needs to be considered.

We note as well that these impacts are not a decade away. Instead, we will begin to see them as early as 2026, two years from when this rule is adopted. If the Department adopts this rule in 2023, as it declared it intends to do, it will impact model year 2027. These impacts will get worse and worse each year thereafter. If a dealer cannot sell the EVs delivered, they will also not be able to sell ICE vehicles to meet the demand. This will only exacerbate the cost and social issues. These impacts are not discussed in the rule summary.

Consumer Choice: The Department states that this mandate is not limiting consumer choice, but it is actually enhancing consumer choice. The Department is wrong, their comment is Orwellian. The Department knows they are forcing consumers to buy a product they otherwise would not buy. The Department has done a study, referenced in the rule summary, which lays out a business-as-usual penetration of EVs compared to the penetration under the ACC II rule. There is a large gap in reality. If consumers were willing to purchase EVs then this rule would not be needed. But consumers have rejected EVs at the levels the Department wants so they are making the major decision to take away consumer

choice. This draconian mandate in deciding who can drive a car and who cannot and what type of car they can drive is unprecedented and wrong.

We live in the most prosperous time in human history. Our material wealth, quality of life, and life expectancy have never been better. Modern society has achieved its advancements due to its adherence to certain core principles. Chief among those principles is that of individual liberty and free market capitalism. While government has imposed some limits on business, such as reasonable labor laws and environmental regulations, we have prospered because we have been largely free to make our own decisions and to let the market dictate consumer behavior.

The Department is about to break from those fundamental principles of freedom and liberty and impose the most draconian mandates on markets and consumer choice we have ever seen in this state. They are proposing to change how we drive, what we drive, and even who is allowed to drive.

The automobile has been at the foundation of modern society. It has allowed citizens to live further distances from each other but still be able to be close. It has allowed our cities and suburbs to expand and our economy to grow. Our culture has developed around the automobile, from drive-ins to road trips to journeys to the shore. We developed a massive road network based on our love and need for cars. Henry Ford envisioned the dream. He built an affordable vehicle, one his workers could afford, and he changed the world. And we have been in love with cars ever since.

This rule would effectively end that dream and say, 'Well, not for everyone.' Wealthy people will still be able to afford to buy the cars being allowed to be sold. The rest of us, especially low- and moderate-income people, are being told to take an EV bus, ride share, or buy a bike. This policy seems contradictory to the Department's previous policies in support of disadvantaged communities and to support policies to make us stronger and fairer.

Most people do not care if their car is electric or gas fired, or use any other fuel. What they do care about is that their cars are affordable and capable of taking them where they want to go. The truth is that EVs are less affordable, even with government subsidies which will likely not be available in the future. EVs are not convenient for long trips or for those who live in apartments, condos, or urban areas. They are not convenient for single moms, who may feel unsafe standing with their young child in strange areas for an hour as they charge their car so they can make it home. They apparently don't even work for the Department whose vehicle fleet is primarily ICE and whose employees do not have access to sufficient charging stations. But EVs will be mandated for the rest of us under the proposed rule.

The consumer market is already speaking. While about 9% of new car sales are EVs (far shy of the existing mandate of 22% under the existing regulatory scheme), these sales reflect the early adapters, mainly people who can afford these cars and who like their performance and the fact that they are zero emissions. EVs are good cars if you can afford them.

We also know how this story will end. EVs are stockpiling up on dealership lots as the early adapters have largely bought their Teslas, while the rest of us have either been priced out of the market or decided they simply do not work for our needs. Prices are going up, not down, due to supply chain issues, worldwide

limits on essential materials, and government mandates. We know that many people will lose the American dream of owning a car and the freedom that comes with it. Teenagers, seniors, and disadvantaged communities will be especially hard hit. Maybe if you want a car, New Jersey is not the state for you.

These and other concerns are not unknown to the Department. The rule summary states:

Indeed, for the proposed ACC II program to succeed, consumers in New Jersey will need to embrace ZEVs on a much larger scale than they have to date and at an accelerated pace. This will require, for example, affordable and reliable ZEVs and sufficient charging infrastructure throughout the State, which could mean upgraded distribution lines and other utility infrastructure. In the absence of consumer acceptance of the proposed ACC II program, an unintended consequence could be vehicle owners retaining their fossil-fuel powered vehicles for longer, meaning older, more polluting vehicles remain on the road.

For the Department to propose and adopt this rule knowing all the challenges, the lack of realistic plans to address them, and the lack of consumer acceptance is the equivalent of the adage “shoot first, aim later.”

The Department describes the multiple ways the Administration is trying to advance the sales of EVs. NJBIA supports many of these policies, such as limited financial incentives and building out our public charging infrastructure. These efforts push the market but maintain consumer choice. This rule eliminates choice. It takes away options, it does not add to them. This rule should not be adopted.

Practicality: Everyone knows that this rule is doomed for failure if, for no other reason, we don't have the infrastructure to support it. The State's Energy Master Plan predicts that an all-electrification policy, of which EVs are a major part, will require a doubling or even tripling of our electricity demands. This is on top of other drivers for more electricity.

We are already at the point where the PJM has expressed concern that existing power plants are being taken offline faster than they are being replaced. Renewables, which many see as the future replacement power for these plants, cannot come online either due to transmission limitations or other permitting and cost factors. While NJBIA supports the development of the wind industry in New Jersey, we note that supply chain, financial, and other obstacles have delayed their construction and have put in doubt the breadth and timing of the industry. While we hope that these issues are readily solved, we should not mandate electrification of the transportation sector without knowing where the power will come from.

Studies that show we can save power and costs by charging at night and shifting to a winter peak system are overly optimistic in their assumptions of consumer behavior. They also do not adequately address the supply issues. These studies may be useful were we to have a market driven, thoughtful transition to EVs and other ZEVs. These policy options will be overrun by an EV mandate.

Equally as important as the electrical supply is that of transmission and distribution. Our grid is just not adequate enough to handle the increase in supply and it is not adequate at a street level to supply enough

power to people who want to charge their cars at home, which over 90% of EVs owners want to do. If only a few homes on a block want to charge their EVs, it is likely that the transformer on that block will need to be upgraded. Over an entire state this is an enormous cost that will be borne by ratepayers. Each home will also need its own charging system at the cost of a few thousand dollars each.

Even if all the money were available for all the additional electricity production, all the transmission upgrades, all the distribution upgrades, all the transformers, all the home and public charging systems, it is very unlikely that there will be enough equipment available to meet these needs. This is especially true given the other states that are also seeking to impose the same EV mandate. However, even if the equipment supply issue were resolved, it is unlikely that there will be enough trained professionals to build these facilities and install all the chargers. Has anyone at the Department tried to get a plumber out to their house recently? We have a workforce crisis across many technical professions, including many of the ones who are needed to build out an EV ecosystem.

While NJBIA is a leader in working with our educational establishments in workforce training and in promoting vocational schools, these problems will not be resolved in the truncated timeframe this rule envisions. These challenges will not be overcome by government mandate. It is extremely arrogant of the Department to think it can dictate the market by fiat. Capitalist markets have succeeded in the past and have been cost efficient because they *are* market driven and not government mandated. Governments around the world who have failed to recognize the power of markets and who have, instead, set policies demanding consumer actions (think 10-year plans) have failed. Have we not learned? If this rule is adopted and goes against consumer markets, it will fail as well.

Environmental benefits: The rule summary spent very little time discussing the actual carbon reduction benefits of this rule given the fact that the electricity coming from the PJM grid (New Jersey has now become a net importer of electricity) is produced from facilities using coal, oil, and gas. The Department did not move forward with its boiler rule, in part, because it recognized that the carbon intensity of electricity from the PJM grid exceeded that from onsite, efficient gas boilers. While we recognize that there will be some carbon reductions even with the PJM emissions, it is important to note that EVs are not zero emission devices given their reliance on the generation of electricity and the fact that the grid is not clean. It likely will not be clean, even under the best circumstances, during the life of the cars being mandated under this rule.

While assumptions can be made that carbon emissions from the PJM grid will decrease over time as more renewables are put onto the grid and older, coal plants are removed, the extent of these reductions are largely speculative. The Department should not claim to be promoting cars that have zero emissions when, in fact, they do. These concerns do not even take into account the full lifecycle of carbon emissions from EVs, a topic ignored by the Department.

We are disappointed in the Department's promotion of the co-benefits of EVs as they relate to NOx, particulates, and ozone. First, merely stating the health impacts of these pollutants is disingenuous. Everyone knows those impacts. The question is what additional benefits these EV policies will have on the state and on specific communities. The Department seems to be ignoring the decades of environmental

progress that was made under its leadership in addressing particulates, NOx, ozone, and other air pollutants. New Jersey is in attainment for particulates. A major achievement not often touted by the Department for reasons unknown. New Jersey is in non-attainment for ozone, but largely because the standards have been lowered after attainment was achieved for the previous standard. New Jersey is also part of two metropolitan areas, both north and south, that have largely driven the non-attainment designation. New Jersey has suffered the pain by doing its part. None of this is acknowledged by the Department.

If this rule were really about these co-benefits, and not about greenhouse gas reductions, perhaps different strategies would be pursued. Maybe we would be more aggressive in going after our western neighbors for their emissions that largely drive our ozone non-compliance. Maybe we would turn our attention to our neighbor to the north that still allows dirty peaker plants to be turned on during the worst ozone days.

We are also disappointed that the Department has thrown in every potential and speculative climate impact in an attempt to justify the economics of this rule. We don't have the time to refute or question all of the claims put forth by the Department, but we would advise the Department to study the recent studies put forth by the Intergovernmental Panel on Climate Change (IPCC) that significantly decreased the potential warming that may result from realistic emission scenarios. The IPCC has also refuted much of the claims on many of the extreme weather events being attributed to climate change calling the science supporting them to be of "low confidence." The Department's assertion of an "ozone penalty" due to climate change is also speculative and we would ask the Department to review those claims based on the latest IPCC data and reports under likely emission scenarios.

Given the enormous burden this rule would have on New Jersey's citizens and its economy, any rationale to justify the imposition of this burden needs to be equally great. Listing climate change, GHG emissions, generic impacts, and the intellectually false "social cost of carbon" as justifications for this rule do not meet that high burden. When talking about the benefits of this rule the Department did not provide any details as to what would actually change in the environment. Will temperatures drop? Will there be any impact on the climate? To natural disasters?

We understand the argument that every action results in less carbon emissions and theoretically at some point there may be a beneficial impact. Setting aside the fact that models have shown that even a complete and immediate elimination of GHG emissions will not change warming trends this century and setting aside the issue of climate uncertainty due to natural variability, what we do know is that this rule will have a tremendous negative impact on the economy and mobility of the citizens of this state. Before we take that major step, it is incumbent on the Department to have a better argument than they have expressed in this rule proposal.

Legal Issues and legislative Intent: In 2003, the New Jersey Legislature invoked the State's authority under the federal Clean Air Act and formally adopted the California Low Emission Vehicle program in the State, specifically providing for the Department to apply the California emissions program to all new passenger

vehicles and light duty trucks sold in New Jersey on or after January 1, 2009. See P.L. 2003, c. 266 (C.26:2C-8.15 et seq.).

However, this law defines the “California Low Emission Vehicle program” as the “second phase of the low emission program being implemented in” California. The ACC II program is substantially and substantively different from the program authorized by the New Jersey Legislature. The program adopted by the Legislature envisioned a lower emission ICE vehicle along with a small EV (or ZEV) mandate. It is the program currently in place today. The Legislature did not know and could not contemplate that the California program would be supplanted by the ACC II which totally changed its emphasis from low emissions ICE vehicles to one that seeks to ban ICE vehicles.

One could argue, as we do now, that the adoption of these rules was not authorized by the Legislature and thus the Department is obligated to go to the Legislature, as it did in 2003, for authorization to adopt ACC II. Perhaps the Department does not want to do this is because this mandate is very unpopular with the public and they know that the Legislature would not support their efforts. The Department is trying to avoid legislative authorization by using an administrative rule process that they can totally control without the need for public support or that of our elected officials. A change so significant to how we live and work in New Jersey can and should only be made by the Legislature, who is answerable to the public.

Even if a court would find that the Department has the authority to adopt ACC II, it is clear that this rule is not consistent with legislative intent when they authorized the California program in 2003. They could not have intended this outcome because it was never discussed or contemplated. It is not too speculative to say that if the Legislature had been aware of this possibility in 2003, they would never have passed that law. We again urge the Department to seek approval by the Legislature. If they do not seek such approval, we ask the Legislature to exercise their oversight authority and to determine if this rule is consistent with legislative intent. If it is not, we urge them to invalidate this rule using their constitutional authority to do so.

Hydrogen and other technologies: While the rule would allow for hydrogen vehicles to qualify as zero emission vehicles, we are concerned that the timeframes for implementing the rule and eliminating new ICE vehicles will squeeze out competing technologies. This rule freezes ZEV technology to what can be achieved today. There is only so much money to invest in technological development, infrastructure, and equipment. Once the commitment is made to eliminate ICE vehicles in a little over a decade, the Department will have locked in EVs as the only choice for New Jersey. No new technologies will advance in the state, no other options will remain. We have time to allow technology to advance. Setting artificial deadlines to achieve made up emission reductions locks us in to existing technologies. This is not beneficial to the State nor to the environment.

New Car Dealerships: We know that new car dealerships will be sending in their own extensive comments on how this rule will impact their industry. We support those comments and their recommended solutions. However, we want to add that this rule is not solely about what type of car can be sold in New Jersey. It is about how many cars can be sold. While dealers are willing to sell any car that consumers want to buy, if they do not want to or can't afford to buy an EV, dealers will have less cars to sell. Given the

mandatory ratios of EVs that must be delivered to dealerships if they do not sell the EVs at the mandated levels they will not be able to sell the allowed amount of ICE vehicles even if consumers want to buy them. We understand the rule is set up for manufacturers delivering vehicles and there is no sales mandate per se. But if consumers do not buy the EVs in the necessary percentages, dealers will stop accepting more EVs than they can sell. This will automatically limit the ICE vehicles they can accept and sell. None of these issues are addressed in the rule proposal.

The Administration's statement that people "can go to another state" to buy an ICE vehicle is an insult to the citizens of New Jersey and the business community. We also question the legality of that statement. After 2035 when new ICE vehicles cannot be delivered for sale in New Jersey, can a person go out of state, buy a new ICE vehicle, and register it in New Jersey? Where is this addressed in the rule? If the Department's position is that the new ICE vehicle cannot be registered in New Jersey, we believe there would be a constitutional commerce clause issue.

Linkage to California: Adoption of the ACC II program would continue to delegate significant New Jersey policy decisions to another state, with different demographics, different geographies, different economic issues, and different policy concerns. We understand that if we do not adopt this rule that New Jersey will be subject to the rules of the federal Environmental Protection Agency. We have concerns about those rules as well. However, the federal government is part of our constitutionally created system with supremacy over state actions in many areas, especially as it relates to commerce. We have elected officials who serve in the Congress, and we get to vote for the President of the United States, under whose authority sits the EPA. For better or for worse, most states, comprising 60% of cars sold in the United States, are regulated by the EPA rules for cars and light duty trucks. There are checks on the system and it is part of a national system.

The same cannot be said for California. On the other side of the continent, California is often an outlier in policy issues. They don't value manufacturing or business for that matter. They have higher taxes, higher utility rates, and the highest gasoline and fuel prices in the country. We do not vote for their Legislature. We do not vote for their Governor. When they seek to make a change to ACC II, we can only submit comments, like anyone else. We don't have a seat at the regulatory table. Their rules, which we are obligating ourselves to, are out of our control. One could question the legality of this delegation of authority to another state.

We have seen the harm caused by such delegation. Under ACC I, the rules were set up to benefit California at the expense of all those states who opted into their program. Waivers and credits were designed to help build the California EV and charging infrastructure. Manufacturers were incentivized to sell EVs in California over sales in New Jersey and elsewhere. That is partly why California has a higher EV vehicle penetration than does NJ or any other state. They set the rules so that they benefit the most.

We cannot predict how ACC II will play out and who will benefit and who will not. But we do know that California has set the rules, they can change the rules, and no one can stop them. By opting into the California program, we are opting into any changes they make in the future, even if New Jersey would be

harmful or would object. As a matter of public policy, NJBIA objects to such delegation of authority to another state.

EPA's proposed rules: The Department concedes that when California adopted ACC II, that the EPA rules were still in draft form and not yet adopted. Thus, they were not fully considered as an alternative to ACC II. They should be. Before we move in this direction, we should fully consider the costs and benefits of the alternative. There should be no rush to adopt ACC II. We need a full evaluation of options.

Conclusion: Given all the valid concerns mentioned above, we urge the Department not to adopt this rule at this time. Such a major decision should be made by the Legislature, our elected body, responsive to the public. An EV mandate has too many unknowns, and many objectionable knowns. This mandate that makes cars unaffordable to many, that eliminates consumer choice, and that cannot be practically implemented, should not be adopted by the Department.

