MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION

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

Filed by

MORE THAN 150 VOTERS REGISTERED IN THE STATE OF MAINE
CONSERVATION LAW FOUNDATION
SIERRA CLUB
NATURAL RESOURCES COUNCIL OF MAINE

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TABLE OF CONTENTS

I. INTRODUCTION 3
a. Petitioners 3
b. Petition 3
c. Procedure 4
II. BACKGROUND 4
a. The Threat of the Climate Crisis Demands Urgent Action 4
i. Climate Change Is Substantially Impairing Maine's Natural Environment 7
ii. Climate Change Is Detrimental to Mainers' Health 8
iii. Climate Change Challenges Maine's Economy 8
b. The Department Has a Long-Standing Responsibility to Address the Climate Crisis 9
c. The Department Has Protected Maine's Air by Incorporating California's Vehicle Emission Standards for Decades 10
III. DESCRIPTION OF THE PROPOSED RULE 11
IV. THE DEPARTMENT MUST REGULATE TO REDUCE GREENHOUSE GAS EMISSIONS FROM MAINE'S TRANSPORTATION SECTOR 12
a. It Is the Department's Statutory Obligation to Ensure Compliance with Maine's Mandatory Greenhouse Gas Emissions Limits 12
b. The Department's Prioritization of Emissions Reductions from Maine's Transportation Sector Is Common Sense and Required by Law 13
c. The Department Must Accelerate Maine's Transition to Electric Cars and Trucks to Align with Maine's Climate Action Plan 14
d. The Department Must Adopt the Proposed Rule to Reduce Transportation Emissions and Achieve Maine's Climate Targets 16
V. ADOPTION OF THE PROPOSED RULE IS SOUND PUBLIC POLICY 17
a. The Advanced Clean Trucks Rule Will Reduce Maine's Greenhouse Gas Emissions 17
b. The Advanced Clean Trucks Rule Will Reduce Air Pollution Detrimental to Mainers' Health 17
c. The Advanced Clean Trucks Rule Will Boost Maine's Economy 18
VI. MAINE'S ADOPTION OF THE PROPOSED RULE MUST BE EQUITABLE 20
VII. CONCLUSION 21

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 sales requirements for medium and heavy-duty vehicles to reduce GHG emissions from the transportation sector as Maine law demands. Adoption of California's Advanced Clean Trucks ("ACT") 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

More than 150 registered voters of the state, together with Conservation Law Foundation, Sierra Club, and Natural Resources Council of Maine submit this petition pursuant to 5 M.R.S. § 8055. Signatures are certified 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 Trucks Regulation Pursuant to 5 M.R.S. § 8055 (this document);
- Attachment 1. Certified Petition Signatures; and
- Attachment 2. Proposed Regulatory Text.

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[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).

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 this rulemaking pursuant to 5 M.R.S. § 8052.

II. BACKGROUND

a. The Threat of the Climate Crisis Demands Urgent Action

Climate scientists agree that at least net-zero GHG emissions must be achieved by mid-century to have the best chance at mitigating the worst effects of climate change. Global average surface temperatures have already risen approximately two degrees Fahrenheit above pre-industrial levels.[6] Our world is experiencing higher annual temperatures, increased and more severe storms, extreme weather, and rising seas due to the global rise of GHG emissions.[7]

According to the Intergovernmental Panel on Climate Change ("IPCC"), a vast majority of these rising emissions are from the burning, extraction, and transportation of fossil fuels.[8] The IPCC has repeatedly emphasized that drastic decarbonization is needed to combat the effects of climate change. In 2014, the IPCC concluded that continued emission of greenhouse gases would lead to further warming and long-lasting impacts, and that mitigating climate change would require "substantial and sustained" reductions in GHG emissions.[9] In 2018, the IPCC provided a graver assessment, concluding that with the current pace of emissions, warming would reach 1.5 degrees Celsius (2.7 degrees Fahrenheit) by 2040.[10] At 1.5 degrees Celsius, there are significant impacts on human health, food and water supply, sea level rise and mass species extinction.[11] Similar warnings came from the United States Global Change Research Program in 2018[12] and the World Economic Forum's Global Risks Report in 2019.[13]

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[5] 5 M.R.S. § 8055 (3); *see also* 21-A M.R.S. § 354 (7).
[6] Rebecca Lindsey & Luann Dahlman, *Climate Change: Global Temperature*, Climate.gov (Jan. 18, 2023), https://www.climate.gov/news-features/understanding-climate/climate-change-global-temperature.
[7] *The Effects of Climate Change*, Nat'l Aeronautics & Space Administration, https://climate.nasa.gov/effects/ (last visited Mar. 7, 2023).
[8] Intergovernmental Panel on Climate Change [IPCC], *Climate Change 2014 Synthesis Report* 5 (2014), https://www.ipcc.ch/site/assets/uploads/2018/02/SYR_AR5_FINAL_full.pdf.
[9] *Id*. at 8.
[10] Intergovernmental Panel on Climate Change [IPCC], *Global Warming of 1.5℃* 82 fig.1 (2018) [hereinafter 2018 IPCC Report], https://www.ipcc.ch/site/assets/uploads/sites/2/2022/06/SR15_Full_Report_LR.pdf.
[11] *Id*. at 7-9.
[12] U.S. Glob. Change Rsch. Program, *Fourth National Climate Assessment, Vol. II: Impacts, Risks, and Adaptation in the United States* (2018), https://nca2018.globalchange.gov/downloads/NCA4_2018_FullReport.pdf.
[13] World Econ. F., *The Global Risks Report 2019* (2019), https://www3.weforum.org/docs/WEF_Global_Risks_Report_2019.pdf.

Projections from the IPCC have only become increasingly dire. In 2021, the IPCC found that climate change is "unequivocally" caused by human influence,[14] and that recent changes in the climate system are "unprecedented" over the last two thousand years.[15] The IPCC stated human-caused climate change is "already affecting many weather and climate extremes in every region across the globe,"[16] and revealed that global warming of 1.5 degrees Celsius to 2.0 degrees Celsius will be exceeded during the 21st century unless significant greenhouse gas emission reductions occur.[17]

This March, the IPCC finalized the Sixth Assessment Report (full report publication forthcoming) summarizing climate change impacts, risks, mitigation and adaptation.[18] This most recent report reemphasizes the "unequivocal" human role in causing global warming.[19] It observes "widespread and rapid" disruptions already to ecosystems throughout the globe, including some irreversible losses.[20] The report highlights the human toll of climate change, including reduced food and water security; mortality due to extreme heat events; increased transmission of food-borne, water-borne, and vector-borne diseases; and threats to mental health including trauma and cultural loss.[21]

The year 2022 brought one of the strongest La Niña events in the past half-century, and approximately the fifth-hottest year ever recorded.[22] The global average surface temperature was consistent with the long-term and ongoing warming trend of 0.36 degrees Fahrenheit per decade.[23] Climate models generally anticipate that 2023 will be warmer than 2022 and among the hottest years on record, making 2014-2023 the hottest decade ever recorded.[24]

But the science gives us reason to hope. For all the IPCC's increasingly dire projections, its calls for urgent action grow in intensity, too. Scientists agree: Humans can mitigate climate change and avoid the most severe impacts. There is a nearly linear relationship between the amount of CO_2 emissions and the increase in global surface temperature; thus every ton of CO_2 released into the atmosphere will worsen climate change and increase the frequency and severity

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[14] Intergovernmental Panel on Climate Change [IPCC], *Climate Change 2021: The Physical Science Basis* 4 (2021) [hereinafter 2021 IPCC Report], https://report.ipcc.ch/ar6/wg1/IPCC_AR6_WGI_FullReport.pdf.
[15] *Id*. at 6.
[16] *Id*. at 8.
[17] *Id.* at 14.
[18] Intergovernmental Panel on Climate Change [IPCC], *Synthesis Report of the IPCC Sixth Assessment Report (AR6)* (forthcoming 2023).
[19] Intergovernmental Panel on Climate Change [IPCC], *Synthesis Report of the IPCC Sixth Assessment Report (AR6), Summary for Policymakers* 4 [hereinafter 2023 IPCC Summary SYR Report], https://report.ipcc.ch/ar6syr/pdf/IPCC_AR6_SYR_SPM.pdf.
[20] *Id.* at 5.
[21] *Id.* at 5-6.
[22] Dana Nucccitelli, *2022 Was a Remarkable Year for the Climate. Here's What to Expect in 2023*, Yale Climate Connections (Jan. 9, 2023), https://yaleclimateconnections.org/2023/01/2022-was-a-remarkable-year-for-the-climate-heres-what-to-expect-in-2023/.
[23] *Id*.
[24] *Id*. This is assuming that an unforeseen event substantially affecting global warming, such as a major volcanic eruption, would not occur during 2023.

of extreme weather events.[25] Put differently, every ton of CO_2 *not* released will lessen the impacts.

However, there's no time to lose on mitigation. The IPCC recently explained, "[d]eep, rapid, and sustained reductions" in GHG emissions would make a difference in terms of global warming within around twenty years.[26] Limiting GHG emissions throughout the current decade is critical and requires "reaching at least net zero CO_2 emissions."[27] Tackling emissions in the near term is imperative to minimize future warming and avoid the most devastating impacts of climate change.[28]

While Maine's emissions represent only a fraction of those contributing to the global climate crisis, it is imperative for our state government to confront this challenge. Maine can serve as an example for other states by adopting sound climate, energy and environmental policies that decrease GHG emissions and advance equity while bolstering our economy.[29] Moreover, state action is necessary to realize the full scope of climate benefits at a federal level under the Inflation Reduction Act.[30] While the Act makes an unprecedented investment in climate action and clean energy in the United States, states' choices about use of the money will have an enormous impact on emission reductions (plus, timely action will avail Maine of the Act's unprecedented state funding opportunities). In short, the benefits of Maine's pursuit of climate solutions will extend beyond our boundaries by catalyzing climate action in other states as well as supporting the entire country in meeting its Paris Accord obligations.[31]

Maine is already experiencing urgent impacts from climate change. Maine temperatures are increasing, with faster warming occurring in winters and coastal areas.[32] The University of Maine has warned that:

> [Maine's] annual temperature has increased 3.2 degrees Fahrenheit in the last 124 years, and the rate of warming has increased most notably since 1960. The six warmest years on record have occurred since 1998. Indeed, the Northeast is warming faster than any other region in the U.S. and is projected to warm 5.4 °F (3 °C) when the rest of the world reaches 3.6 °F (2 °C).[33]

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[25] 2021 IPCC Report, *supra* note 14, at 28.
[26] 2023 IPCC Summary SYR Report, *supra* note 19, at 12.
[27] *Id*. at 20.
[28] 2021 IPCC Report, *supra* note 14, at 27-28.
[29] Sam Ricketts et al., *States Are Laying a Road Map for Climate Leadership*, Ctr. for Am. Progress (Apr. 30, 2022), https://www.americanprogress.org/article/states-laying-road-map-climate-leadership/.
[30] Inflation Reduction Act of 2022, Pub. L. No. 117-169, 136 Stat. 1818.
[31] Chris Chyung et al., *How States and Cities Can Benefit from Climate Investments in the Inflation Reduction Act*, Ctr. for Am. Progress (Aug. 25, 2022), https://www.americanprogress.org/article/how-states-and-cities-can-benefit-from-climate-investments-in-the-inflation-reduction-act/.
[32] Me. Climate Council Sci. & Tech. Subcommittee, Scientific Assessment of Climate Change and Its Effects in Maine 22 (2020) [hereinafter STS Report], https://www.maine.gov/future/sites/maine.gov.future/files/inline-files/GOPIF_STS_REPORT_092320.pdf.
[33] Univ. of Me., *Maine's Climate Future 2020 Update* 3 (2020), https://climatechange.umaine.edu/wp-content/uploads/sites/439/2020/02/Maines-Climate-Future-2020-Update-3.pdf.

Statewide heavy precipitation has similarly surged, and the frequency of heavy rainfall events is projected to rise.[34] The Maine Climate Council has concluded that these and other climate impacts pose unique and urgent risks to Maine's environmental, human, and economic health unless the state promptly takes action to mitigate GHG emissions.[35]

Mainers will continue to bear heavy burdens from the environmental, health and economic impacts of unmitigated climate destruction. By acting now, Maine can join the global and national fight against climate change while protecting our own environment, people, and economy. Maine's swift climate change action will revitalize the state's workforce, build resilient infrastructure, and safeguard the communities and resources at the core of Maine's character threatened by climate change.[36]

i. Climate Change Is Substantially Impairing Maine's Natural Environment

Increased temperatures and precipitation are creating cascading, adverse effects on Maine's beloved coastal and inland environments. Experts project that local sea levels will rise up to nearly two feet by 2050, and four feet by 2100.[37] The rate of sea level rise has doubled in the past century compared to the previous five thousand years, diminishing Maine's rugged coastline.[38] This may cause more frequent and severe storm surges—including "a 10-fold increase in coastal flooding in Maine in the next 30 years"—as well as saltwater contamination of groundwater and reductions in coastal sand dunes and dry beaches.[39] The Maine Climate Council warns that northeast fisheries and aquaculture facilities, vital aspects of Maine's economy, are "potentially among the most vulnerable to ocean acidification in the United States."[40]

The Gulf of Maine is warming.[41] By 2050, Maine's historical subarctic coastal climate and ecosystems may instead resemble those of Rhode Island and Massachusetts.[42] The damaging impacts of climate change threaten Maine's iconic coast and historic maritime industries.

But the effects of climate change do not stop at the coast. Inland ecosystems face substantial risks from GHG emissions. Freshwater quality is deteriorating, threatening ecosystem health (to say nothing of property values).[43] Warming water temperatures and increased nutrient loading from runoff exacerbate the frequency of harmful algal blooms that will indirectly impact

[34] STS Report, *supra* note 32, at 9.
[35] Me. Climate Council, *supra* note 2, at 22.
[36] *Id.* at 8.
[37] *Impacts of Climate Change Across Maine*, Me. Climate Council, https://www.maine.gov/climateplan/climate-impacts (last visited Mar. 13, 2023).
[38] STS Report, *supra* note 32, at 11.
[39] *Id*. at 12.
[40] *Id.* at 13.
[41] Univ. of Me., *supra* note 33, at 11.
[42] STS Report, *supra* note 32, at 62.
[43] *Id*. at 47.

Maine's biodiversity.[44] Meanwhile, direct climate impacts like rising ambient temperatures push Maine's subarctic species further north and permit the expansion of southern species into the state.[45]

ii. Climate Change Is Detrimental to Mainers' Health

The impact of climate change upon Maine's temperatures, precipitation, and natural environment has taken a toll on human health. Warming temperatures and shorter winters have expanded the geographic range of tick-borne diseases and facilitated a habitat hospitable to new tick species,[46] a troubling development for the many residents and visitors who frequent Maine's vast woods and mountains. Meanwhile, more recurrent extreme temperature and weather events risk "increases in storm-related injuries and deaths; outbreaks of waterborne diseases; carbon monoxide poisonings and food-borne illnesses following power outages; as well as mental health impacts."[47]

These and other climate-induced health impacts are likely to disproportionately affect Maine's environmental justice and frontline communities that lack adequate resources to fend off or respond to public health risks.[48] A 2020 equity assessment prepared for the Climate Council on proposed public health strategies under the Maine Climate Action Plan recognized that "[a] more resilient Maine can also be a more equitable Maine, but climate action is not inherently just."[49] To combat the health impacts of climate change, Maine must pursue emissions regulations that prioritize the needs of vulnerable communities.

iii. Climate Change Challenges Maine's Economy

Maine's economy is closely tied to the environment. Nearly every sector, from energy to tourism, is susceptible to climate change, and Mainers will bear the ultimate cost of climate destruction.

Flooding is the "largest overall threat" to Maine's economic welfare.[50] The Governor's Office of Policy Innovation and the Future ("GOPIF") estimates that, if Maine does nothing to adapt to climate change, sea level rise and storm surges alone "could lead to the loss of about

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[44] Me. Pub. Health Ass'n, *Me. Climate Council Pub. Health Subgroup Strategies* 25 (2020), https://www.maine.gov/future/sites/maine.gov.future/files/inline-files/PublicHealthSubgroup_FinalStrategyRecommendations_June2020.pdf.
[45] STS Report, *supra* note 32, at 172, 196.
[46] *Id.* at 297-98.
[47] *Id.* at 297.
[48] Me. Governor's Off. of Pol'y Innovation & the Future et al., *Assessing the Impacts Climate Change May Have on the State's Economy, Revenues, and Investment Decisions: Summary Report* 5-6, 6 tbl.2 (2020), https://www.maine.gov/future/sites/maine.gov.future/files/inline-files/ERG_MCC_AssessingImpactsClimateChangeMaine_Summary.pdf.
[49] Linda Silka et al., Univ. of Me. Senator George J. Mitchell Ctr. for Sustainability Sols., *Assessing the Potential Equity Outcomes of Maine's Climate Action Plan: Framework, Analysis and Recommendations* 2 (2020), https://climatecouncil.maine.gov/future/sites/maine.gov.future/files/inline-files/MCC_EquityAssessmentReport_201007.pdf.
[50] Me. Governor's Off. of Pol'y Innovation & the Future et al., *supra* note 48, at 1.

22,000 jobs . . . and building damage of $17.5 billion" by 2050.[51] Maine's key industries, like lobster and shellfish harvesting and commercial fishing, are especially threatened by climate-induced changes in Gulf of Maine ocean ecology.[52] Further, the lost value of beach-dune ecosystem services could lead to $71.8 million or more in losses annually, impacting both the state's tourism industry, natural flood protection, and essential wildlife habitats along Maine's coastline.[53]

While sea level rise and coastal impacts represent the largest threat, the economy across the state will suffer if Maine fails to act on climate change. Warmer, shorter winters will shrink the winter outdoor recreation economy and "increasingly variable precipitation, including droughts and extreme weather events, are causing damage to [Maine] farm livelihoods, impacting farmers, workers, crops, and livestock."[54] Reductions in freshwater quality may lead to reductions in property values, "caus[ing] a domino effect with respect to property taxes by shifting the burden from shoreland properties to upland properties."[55] Further, extreme heat and precipitation will increase public health costs and cause property and infrastructure damage—costs that will fall disproportionately to Maine's most vulnerable and isolated communities.[56]

b. The Department Has a Long-Standing Responsibility to Address the Climate Crisis

Maine's dedication to addressing the climate crisis goes back at least two decades. In 2003, the state enacted GHG emission reduction goals and gave the Department key implementation duties: adopt a climate action plan to achieve those goals and establish a lead-by-example initiative driving down emissions from state-owned facilities and state-funded programs.[57]

Maine has since taken numerous actions—placing the onus primarily on the Department—to address the grave threats the climate crisis presents for the people, natural resources, and environment of our state. In 2019, the legislature passed An Act to Promote Clean Energy Jobs and To Establish the Maine Climate Council (the "Climate Law"), transforming the state's approach to GHG emissions.[58] The Climate Law aligned the state's emissions goals with

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[51] *Id.* at 10.
[52] *Id*. at 13 ("Nearly $600 million of annual revenue in lobster and aquaculture is potentially at risk from warming ocean waters."); STS Report, *supra* note 32, at 18.
[53] Me. Governor's Off. of Pol'y Innovation & the Future et al., *supra* note 48, at 12.
[54] Me. Climate Council, *supra* note 2, at 25; U.S. Forest Serv., *Climate Change Resource Center: Recreation: Likely Changes*, U.S. Dep't of Agric., https://www.fs.usda.gov/ccrc/topics/recreation (last visited Mar. 21, 2023) ("In short, climate change projections anticipate shorter winters with less snow. This will place stress on all forms of winter recreation in the United States, including downhill skiing, cross-country and back-country skiing, snowmobiling, dog-sledding, snowshoeing, and ice-climbing.").
[55] STS Report, *supra* note 32, at 10.
[56] Me. Governor's Off. of Pol'y Innovation & the Future et al., *supra* note 48, at 5-6, 6 tbl.2 (identifying Downeast communities and Maine's more rural areas as highest vulnerability communities with respect to sea level rise, riverine flood, high heat, and municipal resilience vulnerability).
[57] An Act to Provide Leadership in Addressing the Threat of Climate Change, P.L. 2003, ch. 237, § 1 (effective Sept. 13, 2003) (codified as amended at 38 M.R.S. §§ 574-577).
[58] An Act to Promote Clean Energy Jobs and To Establish the Maine Climate Council, P.L. 2019, ch. 476, §§ 5-10 (codified as amended at 38 M.R.S. §§ 574-578).

prevailing climate science, converted them to mandatory levels and specifically charged the Department with ensuring their achievement. Maine is now required to reduce gross annual GHG emissions at least 45% below 1990 levels by 2030 and at least 80% below 1990 levels by 2050, with an interim target in 2040.[59] In her first term, Governor Mills also issued an Executive Order, codified into law in early 2022,[60] requiring Maine to meet net-zero emissions by 2045.[61]

The Climate Law created the Maine Climate Council to advise the state on mitigating, preparing for and adapting to the climate crisis, and to assist the state in achieving these ambitious targets.[62] The Legislature further directed the Climate Council to update the Climate Action Plan by December 2020 and every four years thereafter.[63] Acting under this authority, the Maine Climate Council—with the Department and GOPIF at the helm—timely developed *Maine Won't Wait: A Four-Year Plan for Climate Action* (the "Climate Action Plan" or "Plan").[64] The Plan sets forth myriad strategies to meet Maine's emissions reduction targets, placing primary importance on the need to aggressively pursue reductions in the transportation sector.[65] To that end, the state's Clean Transportation Roadmap identifies policies, programs, and regulatory changes needed to decarbonize transportation.[66] Leading amongst those recommendations are adoption of the Advanced Clean Cars II and Advanced Clean Trucks rules.[67]

c. The Department Has Protected Maine's Air by Incorporating California's Vehicle Emission Standards for Decades

The federal Clean Air Act (CAA) establishes the framework for controlling mobile source emissions in the United States. While the law generally preempts states from adopting their own emissions standards, the CAA grants California a special exemption to do so as long as the state standards are at least as protective as the federal standards.[68] Section 177 of the CAA authorizes other states to adopt the California standards if they are identical to California's standards, and so long as states provide vehicle manufacturers at least two model years' lead time before enforcement.[69]

Thirty years ago, Maine's Legislature specifically authorized the Department to adopt California's vehicle emissions standards consistent with the CAA.[70] This authority is bolstered

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[59] 38 M.R.S. § 576-A(1)-(2), (3).
[60] P.L. 2021, ch. 517, § 1 (codified at 38 M.R.S. § 576-A(2-A)).
[61] Me. Exec. Order No. 10 FY 19/20 (Sept. 23, 2019) (requiring a net neutral Maine economy by 2045 and requiring DEP to "develop a framework for accounting and tracking progress on greenhouse gas reduction, and [to] report on such progress every other year").
[62] 38 M.R.S. § 577-A.
[63] *Id*. § 577(1).
[64] Me. Climate Council, *supra* note 2.
[65] *See generally id.* 39-45 (detailing Strategy A of the Climate Action Plan: "Embrace the Future of Transportation in Maine").
[66] *See generally* Cadmus, *supra* note 3.
[67] *Id.* at 2 tbl.1.
[68] 42 U.S.C. § 7543.
[69] *Id.* § 7507.
[70] An Act Regarding Automobile Air Emission Standards, P.L. 1993, ch. 358, § 1 (codified as amended at 38 M.R.S. § 585-D).

by even longer-standing general grants of jurisdiction over emission standards and air quality.[71] The Department has exercised these authorities on numerous occasions. Maine first adopted California's vehicle emission standards in 1993, impacting model years beginning in 2001.[72]

Since then, the Department has periodically amended its rules to remain consistent with California's emission standards in compliance with the CAA. In 2012, for instance, the Department amended Chapter 127, New Motor Vehicle Emission Standards, to adopt motor vehicle emission standards for criteria pollutants for model years 2015-2025 and greenhouse gases for model years 2017-2025.[73] The 2012 amendment also revised the state's Zero Emission Vehicle requirements, improved vehicle labeling requirements, and amended greenhouse gas standards for passenger vehicles.[74]

Most recently, in 2021 the Department proposed that the Board of Environmental Protection ("Board") adopt a new chapter incorporating California's Advanced Clean Trucks regulation encouraging the sale of electric medium- and heavy-duty vehicles.[75] The Board conducted a hearing and accepted public comment on the proposed rule, which generated "significant interest,"[76] and held a deliberative session. Ultimately, the Board allowed the rulemaking to expire under the Administrative Procedure Act to await the outcome of a stakeholder engagement process.

III. DESCRIPTION OF THE PROPOSED RULE

Pursuant to 38 M.R.S. §§ 576-A, 585, 585-A, and 585-D, Petitioners urge the Department to adopt a new chapter incorporating California's Advanced Clean Trucks (ACT) regulation[77] to accelerate sales of zero-emission medium- and heavy-duty vehicles and reduce emissions of greenhouse gases and criteria air pollutants in Maine. The proposed new chapter establishes a program to accelerate sales of zero-emission on-road vehicles over 8,500 pounds gross vehicle weight rating. The Department's adoption of the ACT regulation will help ensure that truck manufacturers offer affordable zero emission choices in Maine.[78]

The Department previously proposed this rule to the Board for adoption in October 2021. At the time, the Department described the rule as follows:

> The proposed ACT regulation would introduce zero-emission vehicle (ZEV) sales requirements for certain manufacturers that sell vehicles in weight classes 2b through 8 (gross vehicle weight rating (GVWR) > 8,500 lbs.) in Maine. . .

[71] *See* 38 M.R.S. §§ 585, 585-A.
[72] 06-096 C.M.R. ch. 127 (Feb. 17, 1993) (amended 1994).
[73] 06-096 C.M.R. ch. 127 (Dec. 12, 2012) (amended 2013).
[74] *Id.*
[75] Me. Dep't of Env't Prot., *Rulemaking Fact Sheet 06-096 Chapter 128, Advanced Clean Trucks Program* (2021).
[76] Me. Dep't of Env't Prot., *Board Memo. re: Proposed Chapter 128, Advanced Clean Trucks* (Jan. 20, 2022).
[77] 13 CCR §§ 1963 through 1963.5.
[78] *See* Me. Dep't of Env't Prot., *supra* note 75.

> [M]anufacturers would incur deficits for each gasoline or diesel engine vehicle sold to an ultimate purchaser in Maine. These deficits must be met with credits generated by selling medium- and heavy-duty ZEVs to an ultimate purchaser in Maine or purchasing ZEV credits generated by another manufacturer's sales of ZEVs in Maine. The sales requirement would be a percentage, varying by model year, vehicle class, and vehicle type of the manufacturer's annual Maine sales volume for that model year. . .
>
> Credit value is based on vehicle weight class to account for higher emissions associated with larger vehicles and to provide manufacturers flexibility in meeting compliance requirements by allowing manufacturers to produce more ZEVs in one group to avoid making a small number of ZEV sales in other groups. However, to ensure ZEV tractors will be available to reduce emissions at ports and at other areas with high tractor concentrations, only Class 7 and 8 tractor credits may be used to satisfy Class 7 and 8 tractor deficits.[79]

The proposed regulatory text mirrors the Department's earlier proposed language, with the exception of references to outdated year and model year dates. The soonest model year the state can now impact is 2027 under the CAA's two-model year lead time requirement. To that end, Petitioners urge the Department to adopt this rule by January 1, 2024.

The full text of the proposed regulation is found in Attachment 2.

IV. THE DEPARTMENT MUST REGULATE TO REDUCE GREENHOUSE GAS EMISSIONS FROM MAINE'S TRANSPORTATION SECTOR

a. It Is the Department's Statutory Obligation to Ensure Compliance with Maine's Mandatory Greenhouse Gas Emissions Limits

The Climate Law directs the Department to "ensure compliance" with Maine's greenhouse gas emissions levels.[80] The Legislature gave the Board until September 1, 2021, over two years from enactment of the Climate Law and nine months from publication of the Climate Action Plan, to "adopt rules" to do so.[81] The Climate Law requires that the Department's decarbonization rules: (1) are "consistent" with the Climate Action Plan; and (2) prioritize emissions reductions from sectors that are the "most significant sources."[82]

Maine law compels the Department to adopt the proposed rule. More than a year past the Department's deadline to adopt implementing regulations, the Department has yet to adopt any rule addressing the transportation sector. This is despite the agency repeatedly reporting that cars

[79] *Id.*; *see also* 13 CCR § 1963(a).
[80] 38 M.R.S. § 576-A(4).
[81] *Id.*
[82] *Id.* § 576-A(4)(A)-(B). Consistent with the Climate Law, the Department timely adopted chapter 167 to track and report annual gross and net greenhouse gas emissions. 06-096 C.M.R. ch. 167 (2021). The Department additionally adopted Rule chapter 168 establishing numerical emission targets in carbon dioxide equivalents to meet the 2030 and 2050 goals. 06-096 C.M.R. ch. 168 (2021).

and trucks are the biggest contributors of CO_2 emissions from fossil fuel consumption in the state.[83]

The Department's inaction stands in marked contrast to the Climate Action Plan, which emphasizes widespread light, medium- and heavy-duty electrification as a key strategy for hitting the Climate Law's mandatory emissions levels.[84] The Department's failure to act further defies the Clean Transportation Roadmap, which recommends adoption of both California's ACT and Advanced Clean Cars II ("ACC II") rules as critical emission-reducing policies.[85] In the swift adoption of Petitioners' proposed rule, the Department will acknowledge its legal obligation to ensure Maine hits its climate targets, prioritize emissions reductions from the state's leading contributor to GHG emissions levels, and accelerate Maine's transition to electric trucks in alignment with the Climate Action Plan.

b. The Department's Prioritization of Emissions Reductions from Maine's Transportation Sector Is Common Sense and Required by Law

Transportation contributes nearly *50%* of CO_2 emissions from fossil fuel consumption in Maine, making it the largest source of these emissions—by far.[86] This isn't news: The Department itself reports that Maine's transportation has been the "leading contributor. . . for all years 1990 to 2019."[87] And while certain energy sectors have shown marked reductions in emissions since 1990 (53% drop by the industrial sector; 41% by the electric power sector),[88] Maine's transportation emissions have dropped only 8% in the same period—remaining "relatively stable" according to the state's Clean Transportation Roadmap.[89]

The pace of transportation emissions declines under existing state policy and programming is inadequate. The Department must adopt—with haste—a new regulatory approach to limiting vehicle emissions to cut overall emissions 45% by 2030 and comply with the Climate Law's directive to "prioritize" GHG reductions from the "most significant sources."[90] The Department's prioritization of transportation emissions is a common sense move as the agency leads Maine toward decarbonization by implementation of the Climate Action Plan.

[83] Me. Dep't of Env't Prot., Bureau of Air Quality, *Ninth Biennial Report on Progress Toward Greenhouse Gas Reduction Goals* 11 (2022), https://www.maine.gov/climateplan/sites/maine.gov.climateplan/files/inline-files/9th_GHG_Report_FINAL%20%282%29.pdf.
[84] Me. Climate Council, *supra* note 2, at 10.
[85] Cadmus, *supra* note 3, at 2 tbl.1.
[86] Me. Dep't of Env't Prot., *supra* note 83, at 11 figs.6-7.
[87] *Id.* at 11.
[88] *Id.* at 12.
[89] Cadmus, *supra* note 3, at 8.
[90] 38 M.R.S. § 576-A(1), (4)(B).

c. The Department Must Accelerate Maine's Transition to Electric Cars and Trucks to Align with Maine's Climate Action Plan

Given the transportation sector's outsized emissions contributions, it is no surprise that the Climate Action Plan kicks off with strategies addressing this critical sector. The Climate Action Plan boldly proclaims, "[t]o meet our emissions-reductions goals by 2030 and 2050, our state must pivot to the future by pursuing aggressive transition strategies and innovative solutions within [the transportation] sector."[91] The Climate Action Plan asserts this is achievable primarily by electrification, complemented by strategies to increase efficiency and reduce vehicle miles travelled: "The most significant reductions of greenhouse gas emissions in Maine's transportation sector will come through the long-term and large-scale electrification of our transportation systems . . . ."[92]

Acknowledging the critical nature of clear metrics for measuring climate progress, the Climate Action Plan lists ten "key actions," three of which pertain to transportation electrification:[93]

	By 2025	By 2030	By 2050
Number of Light-Duty EVs on the Road	41,000	219,000	904,000
EV-Share of New, Light-Duty Vehicle Sales	28%	85%	100%
ZEV-Share of New, Heavy-Duty Vehicle Sales	12%	55%	100%

These quantified electrification metrics are not arbitrary. The state's consultant, Synapse Energy Economics, modeled the extent of electrification necessary to hit the Climate Law's target emissions levels.[94] Modeling was performed for a sustained policy scenario and three alternative policy scenarios that included varying degrees of electrification of the vehicle fleet, reductions in vehicle miles traveled, light-duty fuel economy improvements, and displacement of gasoline and diesel fuels with low-carbon fuels.[95] In all of these transportation scenarios, non-motor vehicle[96] emissions were assumed to grow over time, requiring greater emission reductions from motor vehicles, and future fuel efficiency improvements were included in all scenarios.[97]

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[91] Me. Climate Council, *supra* note 2, at 39.
[92] *Id*.
[93] *Id.* at 106-7.
[94] Synapse Energy Econ., Inc., *Volume 3: Mitigation Modeling Consolidated Energy Sectors Modeling Results* (2020), https://www.maine.gov/future/sites/maine.gov.future/files/inline-files/ERG_MCC_Vol3_MaineEmissionsAnalysisSynapse_11-9-2020.pdf.
[95] *Id.* at 2.
[96] Aviation, rail, and marine vehicle emissions. *Id.* at 6.
[97] *Id.*

Of the four modeled transportation sector scenarios considered, only one was projected to comply with the 2030 decarbonization target.[98] As a result, the Climate Action Plan's aggressive electrification metrics reflect the assumptions from this one compliant scenario.[99] Hence, the Climate Action Plan's vehicle electrification metrics are the state's best projection of what is necessary to comply with the Climate Law.

The Climate Action Plan's principal strategy for hitting these robust goals was the development of a Clean Transportation Roadmap to identify policies, programs, and rules "necessary" for doing so.[100] The Department was one of several state agencies serving on the steering committee overseeing Cadmus' development of this Roadmap, published in December 2021.[101] Like the Climate Action Plan before it, the Clean Transportation Roadmap characterizes transportation sector emissions reductions as "critical" to compliance with the state's GHG emissions limit targets.[102] The Roadmap describes electrification within Maine's transportation sector as the "most effective strategy" for emission reductions in the short term,[103] and describes the ACC II standards as the "most important regulatory driver" for electrifying Maine's light-duty fleet in the next two decades.[104]

The Roadmap's modelled EV trajectories illustrate that the ACC II and ACT—though inadequate on their own—are crucial for advancing the state toward its electrification goals.[105] For light-duty vehicles, a reference case scenario assuming no state policies (AEO 2021) depicts little growth, maxing out at less than 50,000 EVs on the road by 2035.[106] In contrast, the best-case scenario (ACC II Upper Bound), assuming adoption of the ACC II and exact manufacturer compliance, shows the state in the ballpark but still falling more than 10,000 new EV registrations short in 2030.[107] Unfortunately, this best-case scenario is already out of reach as it assumes adoption of ACC II in 2022 (i.e., impacting MY 2026) and, contrary to the scenario's premise, manufacturers are "nearly assured" to use historical credits under the program.[108]

The Roadmap's medium- and heavy-duty ZEV adoption projections make the same point: the ACT, while insufficient for cleaning up this transportation sector on its own, is a necessary baseline step toward Maine's goals. Even assuming ACT adoption impacting MY 2026 vehicles, now an impossibility given the CAA's two-year lead time requirement, the state would trail the Climate Action Plan's target new registration share by roughly 20% in 2030.[109]

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[98] *Id.* at 7.
[99] *Id*. The compliant scenario required both light-duty and heavy-duty EV sales, reduction in vehicle miles traveled, increased fuel efficiency and use of low-carbon fuel sources, and the management of EV charging infrastructure.
[100] Me. Climate Council, *supra* note 2, at 42.
[101] Cadmus, *supra* note 3, at ii.
[102] *Id.* at 7.
[103] *Id*. at 7.
[104] *Id*. at 29.
[105] *Id.* at 30 & fig.12.
[106] *Id.*
[107] *Id.*
[108] *Id*. at 29-30.
[109] *Id*. at 30-31, 30 fig.12.

The Clean Transportation Roadmap sets forth important recommendations "needed to continue decarbonizing Maine's transportation sector,"[110] hailing the adoption of the ACC II and ACT rules as the "most critically important" and as having a "profound impact" in cutting GHG emissions.[111] The Roadmap's unequivocal primary recommendation for driving emission reductions from Maine's transportation sector is adoption of the ACC II and ACT rules. Thus, in alignment with Maine's Climate Law, Climate Action Plan, and Clean Transportation Roadmap, and under the Department's clear statutory authority, Petitioners urge the Department to swiftly adopt the proposed rule to ensure compliance with the state's decarbonization targets.

d. The Department Must Adopt the Proposed Rule to Reduce Transportation Emissions and Achieve Maine's Climate Targets

The significance of Maine's Climate Law is to ensure climate action is more than mere piecemeal progress: Its mandatory decarbonization levels and Climate Action Plan create a framework within which solutions must be developed, coordinated, and implemented, all while aiming for these specific GHG reduction targets. The Department's duty to adopt rules ensuring that climate policies collectively reduce GHG emissions at least 45% by 2030 and at least 80% by 2050 is clearly established within Maine law.

We acknowledge and applaud the strategies Maine has implemented so far to increase access and exposure to EVs. The Efficiency Maine Trust continues to expand accessibility of its EV rebate program, for instance, doubling the number of rebates granted in 2020 just one year later.[112] The state developed and submitted a comprehensive Plan for Electric Vehicle Infrastructure Deployment to the Federal Highway Administration, since approved, to avail Maine of federal dollars (approximately $19 million) for EV charging.[113] These initiatives have already more than doubled the number of public EV charging stations in the state since 2019 and doubled the number of EVs on the road between 2020 and October 2022.[114] Maine's ongoing transportation electrification initiatives, presumably paired with significant additional federal funding, will be instrumental to the state's transition away from a fossil fuel-powered fleet of vehicles.

Maine is undoubtedly making strides toward widespread electrification. But is the state doing *enough* to reduce GHG emissions in its transportation sector? Not according to the Climate Action Plan or Clean Transportation Roadmap, both which strongly suggest Maine's EV deployment levels are nowhere near where they need to be to hit the state's looming 45% reduction target. Maine's 8,594 total EV registrations as of October 2022, while leaps beyond the 4,258 at the end of 2020, is a far cry from the 2025 goal of 41,000 and shockingly distant from the 219,000 projected to be necessary by the end of the decade.[115]

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[110] *Id*. at 1.
[111] *Id*. at 53 & tbl.7.
[112] Me. Climate Council, *Maine Won't Wait Progress Report* 10 (2022).
[113] Me. Dep't of Transp., *Maine Plan for Electric Vehicle Infrastructure Deployment (MAINE PEVID)* (2022).
[114] Me. Climate Council, *supra* note 112, at 9.
[115] *Transportation Data*, Maine.gov: Climate Plan, https://www.maine.gov/climateplan/dashboard/transportation (last visited Mar. 21, 2023).

Accelerating Maine's transition to EVs will have an incredible impact on Maine's GHG emissions. Driving an EV in Maine today has a lower emissions impact than a vehicle with an internal combustion engine due to the lower carbon intensity of electricity generation.[116] Cadmus estimates that a light-duty gasoline vehicle in Maine produces over 11,000 pounds of CO_2 equivalent annually, while "[a] light-duty EV . . . is estimated to produce only 852 pounds of CO_2 equivalent, or 92% less overall emissions than a gasoline vehicle."[117]

Yet, EVs currently account for less than 0.5% of registered vehicles in Maine.[118] The Department cannot sit idly by while Maine continues to make incremental electrification progress. The Climate Law requires the agency to take swift and broad action to clean up Maine's cars and trucks. The Department needs to act now to adopt the proposed rule in the interest of Maine's people, environment and economy.

V. ADOPTION OF THE PROPOSED RULE IS SOUND PUBLIC POLICY

a. The Advanced Clean Trucks Rule Will Reduce Maine's Greenhouse Gas Emissions

According to the state's consultants and planning documents, rampant electrification of light-, medium- and heavy-duty vehicles in Maine is essential for adherence to the looming 2030 decarbonization target. The Clean Transportation Roadmap recognizes the profound impact adoption of the ACT rule will have on GHG emissions. The swift implementation of this important rule is crucial to accelerate the state's transition to zero-emission vehicles as necessary to comply with the Climate Law.

The ACT also has an important role to play in moving ZEV markets and getting ZEVs into the state—one of the central challenges to making Maine EV-ready. In setting requirements for ZEV sales in Maine, the ACT sends an important message to dealers, manufacturers, fleet owners and managers, and everyday Mainers about the direction the state is headed. Adoption of this rule is key to the state's successful ZEV transition, and therefore critical to achievement of the state's GHG emission targets.

b. The Advanced Clean Trucks Rule Will Reduce Air Pollution Detrimental to Mainers' Health

Fossil fuel vehicles emit nitrogen oxide pollution, which contributes to the formation of both particulate matter pollution and ozone (i.e., smog).[119] Nitrogen oxide and particulate matter emissions are toxic and dangerous to those closest to the source of pollution. Exposure to fossil

[116] Cadmus, *supra* note 3, at 15.
[117] *Id.*
[118] Me. Climate Council, *supra* note 2, at 41.
[119] *The Sources and Solutions: Fossil Fuels*, U.S. Env't Prot. Agency, https://www.epa.gov/nutrientpollution/sources-and-solutions-fossil-fuels (last visited Mar. 14, 2023).

fuel exhaust can lead to devastating health impacts[120] including asthma and respiratory impacts,[121] pregnancy complications and adverse reproductive outcomes,[122] cardiac and vascular impairments,[123] and heightened cancer risk.[124] Transportation pollution disproportionately impacts low-income and Black, Indigenous, and people of color communities who often live adjacent to freight hubs like highways and ports.[125]

An analysis by the International Council on Clean Transportation found that by adopting the ACT rule, Maine could reduce medium- and heavy-duty nitrogen oxide emissions by more than 10%, particulate matter emissions by 10%, and CO_2e emissions by 18% by 2050.[126] Maine can expect these emission reductions to lower the number of deaths, hospital visits, and sick days. The American Lung Association estimates that from 2020 to 2050, the cumulative national health benefits of a zero-emission transportation sector would include 110,000 premature deaths avoided, 2.78 million asthma attacks avoided, and 13.4 million lost workdays avoided.[127]

In short, while adoption of the proposed ACT rule is a positive step forward in cutting climate pollution, it is crucial for cleaning up the air we breathe and improving the health of all Mainers.

c. The Advanced Clean Trucks Rule Will Boost Maine's Economy

In addition to cleaning up the environment and protecting public health—and the associated significant, quantifiable value[128]—adoption of the ACT rule together with the ACC II will drive economic growth and development. Transitioning to ZEVs will enable significant fuel and maintenance cost savings, attract large charging infrastructure investments, create high-paying jobs, and put downward pressure on electricity rates for all customers.

EVs offer cost savings over the lives of the vehicles. While purchase prices today are higher than most comparable vehicles, up-front costs are rapidly declining, and expected to continue to do so thanks to economies of scale and decreasing battery prices. According to

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[120] *Particle Pollution*, U.S. Ctr. for Disease Control & Prevention, https://www.cdc.gov/air/particulate_matter.html (last visited Mar. 15, 2023); *Nitrogen Dioxide (What Makes Outdoor Air Unhealthy)*, Am. Lung Ass'n, https://www.lung.org/clean-air/outdoors/what-makes-air-unhealthy/nitrogen-dioxide (last visited Mar. 22, 2023).
[121] *Short-Term Exposure to Air Pollution Linked with Hospital Admissions, Substantial Costs*, Harvard Gazette (Dec. 23, 2019), https://news.harvard.edu/gazette/story/newsplus/short-term-exposure-to-air-pollution-linked-with-new-causes-of-hospital-admissions-substantial-economic-costs/.
[122] Frederica P. Perera, *Multiple Threats to Child Health from Fossil Fuel Combustion: Impacts of Air Pollution and Climate Change*, 125 Env't Health Persps. 141-43 (2017).
[123] *Short-Term Exposure to Air Pollution Linked with Hospital Admissions, Substantial Costs*, *supra* note 121.
[124] Perera, *supra* note 122, at 143, 145.
[125] *Id.* at 142.
[126] Int'l Council on Clean Transp., *Benefits of Adopting California Medium- and Heavy-Duty Vehicle Regulations Under Clean Air Act Section 177*, at 1 & n.1, 2 tbl.1 (2021), https://theicct.org/wp-content/uploads/2021/12/state-level-hdv-emissions-reg-FS-oct21.pdf .
[127] Am. Lung Assoc., *Zeroing in on Healthy Air: A National Assessment of Health and Climate Benefits of Zero-Emission Transportation and Electricity* 3, 8 (2022), https://www.lung.org/getmedia/13248145-06f0-4e35-b79b-6dfacfd29a71/zeroing-in-on-healthy-air-report-2022) (assumes a national shift to 100 percent sales of zero-emission passenger vehicles by 2035 and medium- and heavy-duty trucks by 2040, coupled with renewable electricity).
[128] *See, e.g., id.* at 8 (estimating value of national benefits from 2020-2050 at $1.2 T in public health benefits and $1.7 T in climate benefits).

Bloomberg New Energy Finance, battery costs have decreased by 89 percent over the past ten years and continue to drop.[129] Upfront vehicle costs will continue to fall as battery prices decline. Moreover, EVs cost less to service, maintain, and fuel, providing significant long-term cost savings to Maine drivers and fleets.

According to the U.S. Department of Energy, medium- and heavy-duty trucks will be cheaper to buy, operate and maintain as zero emissions vehicles than traditional diesel-powered combustion engine vehicles.[130] This analysis, conducted by the Department of Energy's National Renewable Energy Laboratory, found that continued improvements with zero emission vehicle and fuel technologies will enable clean trucks to become cheaper and more readily available over the next decade.[131] Battery electric trucks are expected to become cost-competitive for smaller trucks before 2030 while heavy trucks with less than 500-miles of range are projected to be cost competitive by 2035.[132] As a result of lower total ownership costs, Maine can expect significant net fleet savings by 2050 thanks to the ACT rule.

Accelerating the transition to ZEVs will support good local jobs, including in the installation and maintenance of charging infrastructure. By adopting these rules in 2023, Maine can expect to attract public and private investment in charging infrastructure. In the third quarter of 2022, the Northeast had the largest increase in public charging infrastructure (11.7%), though California has led the country in the number of available public EVSE ports.[133] The Infrastructure Investment and Jobs Act appropriated $7.5 billion in alternative fuel infrastructure and the National Electric Vehicle Infrastructure Formula Program injected $5 billion in EV charging infrastructure nationwide.[134] Coupled with the incentives and funding of the Inflation Reduction Act of 2022, continued utility investments, private investments, and action by Maine's state government will increase the amount of reliable and fast electric charging infrastructure along Maine highways and local communities.[135]

Plugging in thousands of new electric cars, trucks and buses will spread an increasing amount of electricity demand over the largely fixed costs of the system. These savings would be passed directly to Maine customers, resulting in reduced utility bills. Maine can and should expect adoption of both the ACC II and ACT rules to unlock additional resources and infrastructure investments.

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[129] James Frith, *Battery Price Declines Slow Down in Latest Pricing Survey*, Bloomberg (Nov. 30, 2021), https://www.bloomberg.com/news/articles/2021-11-30/battery-price-declines-slow-down-in-latest-pricing-survey?leadSource=uverify%20wall.

[130] *DOE Projects Zero Emissions Medium- and Heavy-Duty Electric Trucks Will Be Cheaper than Diesel-Powered Trucks by 2035*, Energy.gov (Mar. 7, 2022), https://www.energy.gov/articles/doe-projects-zero-emissions-medium-and-heavy-duty-electric-trucks-will-be-cheaper-diesel.

[131] *Id.*

[132] *Id*.

[133] *Electric Vehicle Charging Infrastructure Trends*, U.S. Dep't of Energy: Alt. Fuels Data Ctr, https://afdc.energy.gov/fuels/electricity_infrastructure_trends.html(last visited Mar. 21, 2023).

[134] Abby Brown et al., Nat'l Renewable Energy Lab., U.S. Dep't of Energy, *Electric Vehicle Charging Infrastructure Trends from the Alternative Fueling Station Locator: Third Quarter 2022*, Technical Report NREL/TP-5400-84817 (2023), https://afdc.energy.gov/files/u/publication/electric_vehicle_charging_infrastructure_trends_third_quarter_2022.pdf.

[135] *Id.* at 14-15 (demonstrating that the Northeast region experienced 12.8% Level 2 EVSE port growth and 7.7% DC fast EVSE port growth during Q3 2022).

VI. MAINE'S ADOPTION OF THE PROPOSED RULE MUST BE EQUITABLE

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."[136] 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.[137] 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."[138] 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.[139]

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."[140] The Department's adoption of the ACT rule is consistent with the spirit and letter of the Climate Law and Climate Action Plan.

As discussed above in section V(b), the ACT will reduce on-road air pollution from cars and trucks by increasing the number of ZEVs and by cleaning up conventional internal combustion vehicles. This will reduce exposure to vehicle pollution throughout Maine, including in communities that are disproportionately exposed to and impacted by vehicular pollution, thereby improving health outcomes.

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 and ACT proposed rules 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 ACT 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.

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[136] Me. Climate Council, *supra* note 2, at 6.
[137] 38 M.R.S. § 577(7)(B).
[138] *Id.* § 577(7)(C).
[139] Me. Climate Council, Equity Subcomm., *Final Recommendations of the Equity Subcommittee of the Maine Climate Council* 5 (2023).
[140] 38 M.R.S. § 576-A(4)(C).

VII. 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 by conducting 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.

Respectfully submitted,

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