

May 31, 2018

Ms. Sarah Carter  
California Air Resources Board  
9480 Telstar Avenue, Suite 4  
El Monte, CA 91731

Via Electronic Submittal:

[https://www.arb.ca.gov/lispub/comm2/bcsubform.php?listname=leviii-ghgdtc2018-  
ws&comm\\_period=1](https://www.arb.ca.gov/lispub/comm2/bcsubform.php?listname=leviii-ghgdtc2018-<br/>ws&comm_period=1)

**Re: Request for Public Input on Potential Alternatives to a Potential Clarification of the  
“Deemed to Comply” Provision for the LEV III Greenhouse Gas Emission Regulations for  
Model Years Affected By Pending Federal Rulemakings**

Dear Ms. Carter –

We appreciate the opportunity to comment on potential action the California Air Resources Board (CARB) may take regarding the “deemed to comply” provision in its LEV III regulations.

This comment letter is submitted on behalf of Center for Biological Diversity, Earthjustice, the Environmental Defense Fund, the Natural Resources Defense Council, Sierra Club, Union of Concerned Scientists, and our millions of members and supporters. Our organizations have fought for decades to clean up the transportation sector, halt climate change, and protect consumers. We have worked to further these goals in earlier CARB clean cars rulemakings.

California’s clean cars program will continue to play a key role in cleaning up the air, protecting human health, and reducing climate risk in the decades ahead. Implementation of the state’s standards through model year 2025 will result in vehicles that emit 34 percent fewer greenhouse gas emissions and 75 percent fewer smog-forming emissions than vehicles today.<sup>1</sup> Cleaning up the polluted air in the San Joaquin Valley and South Coast depends on California’s suite of clean vehicle standards, as does meeting the state’s greenhouse gas emissions reduction requirements of 40% below 1990 levels by 2030.<sup>2</sup>

Preserving the strength of California’s clean cars program is vital. The state has already been hit hard by the effects of climate change – 2017 was one of the most destructive and costly fire

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<sup>1</sup> California Air Resources Board, *California’s Advanced Clean Cars Midterm Review: Summary Report for the Technical Analysis of the Light Duty Vehicle Standards* (January 18, 2017) at ES-10, available at [https://www.arb.ca.gov/msprog/acc/mtr/acc\\_mtr\\_summaryreport.pdf](https://www.arb.ca.gov/msprog/acc/mtr/acc_mtr_summaryreport.pdf); see also, [https://www.arb.ca.gov/msprog/clean\\_cars/acc%20summary-final.pdf](https://www.arb.ca.gov/msprog/clean_cars/acc%20summary-final.pdf)

<sup>2</sup> *Id.*

seasons on record<sup>3</sup>, and even though the last, long drought is officially over, the state’s snowpack remains below average.<sup>4</sup> According to the California Environmental Protection Agency, climate change has negatively impacted the state in many other ways, such as: increasing average temperatures, increasing the severity of droughts, causing rising sea levels along the coast, and increasing risks of vector-borne disease and heat-related death and illness.<sup>5</sup> Unmitigated climate change will exacerbate these effects, including longer and more severe droughts and other extreme weather events in California’s future.<sup>6</sup> Further, California continues to suffer from some of the worst air quality in the United States - areas like the San Joaquin Valley and South Coast air basin consistently fail to meet minimum state and federal air quality standards<sup>7</sup>; and over 90% of California residents live in counties affected by unhealthy air.<sup>8</sup>

We understand that in light of the United States Environmental Protection Agency withdrawing its Final Determination on light-duty vehicle greenhouse gas standards and issuing a revised one, CARB is contemplating “regulatory action as needed to clarify that compliance with any weakened federal standards will not be deemed compliance with CARB standards for the model years affected.”<sup>9</sup>

The “deemed to comply” provision was intended to apply, and can only reasonably be applied, where federal standards remain equivalent to California standards. For decades, California has been empowered to maintain its own, stricter than federal, emission standards, after receiving a waiver under the Clean Air Act.<sup>10</sup> California’s state program is essential for meeting state climate and pollution control requirements. The “deemed to comply” provision allows compliance with federal greenhouse gas emission standards to serve as compliance with California standards, provided they remain as stringent as California standards.<sup>11</sup> The “deemed to

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<sup>3</sup> Accuweather, *California’s 2017 Wildfire Season to Rank Among Most Destructive, Costly on Record* (January 3, 2018); available at <https://www.accuweather.com/en/weather-news/californias-2017-wildfire-season-to-rank-among-most-destructive-costly-on-record/70003704>

<sup>4</sup> Sacramento Bee, *The Sierra snowpack has gotten bigger, but that was no ‘March miracle’* (April 3, 2018); available at <http://www.sacbee.com/latest-news/article207692189.html>

<sup>5</sup> California Environmental Protection Agency, *Indicators of Climate Change in California: Report Summary* (May 2018); available at <https://oehha.ca.gov/media/downloads/climate-change/report/2018indicatorssummary.pdf>; see also, <https://oehha.ca.gov/media/downloads/climate-change/report/2018caindicatorreportmay2018.pdf>

<sup>6</sup> See Noah Diffenbaugh, et. al., *Anthropogenic Warming Has Increased Drought Risk in California*, Proceedings of the National Academy of Sciences (March 31, 2015); A. Park. Williams, et. al., *Contribution of Anthropogenic Warming to California Drought During 2012-2014*, American Geophysical Union (August 31, 2015); Kevin Trenberth, *Global Warming and Changes in Drought*, Nature Climate Change (December 20, 2013).

<sup>7</sup> See American Lung Association, *State of the Air 2018*; available at <http://www.lung.org/assets/documents/healthy-air/state-of-the-air/sota-2018-full.pdf>

<sup>8</sup> *Id.*

<sup>9</sup> California Air Resources Board, *Request for Public Input on Potential Alternatives to a Potential Clarification of the “Deemed to Comply” Provision for the LEV III Greenhouse Gas Emission Regulations for Model Years Affected By Pending Federal Rulemakings* (May 7, 2018); available at [https://www.arb.ca.gov/msprog/levprog/leviii/leviii\\_dtc\\_notice05072018.pdf](https://www.arb.ca.gov/msprog/levprog/leviii/leviii_dtc_notice05072018.pdf)

<sup>10</sup> 42. U.S.C. § 7543(b); *Motor and Equip. Mfgs. Ass’n, Inc. v. EPA*, 627 F.2d 1095, 1109 (D.C. Cir. 1979).

<sup>11</sup> Cal. Code Regs., tit. 13, § 1961.3(c); California Air Resources Board, *Staff Report: Initial Statement of Reasons for Rulemaking – Proposed Amendments to New Passenger Motor Vehicle Greenhouse Gas Emission Standards for*

comply” provision cannot reasonably be interpreted to allow compliance with federal greenhouse gas emission standards that are materially weaker than California’s standards to constitute compliance with California’s standards. Such a reading would render the waiver and California’s standards without effect, would eviscerate one of the most important parts of California’s climate program, and deprive the state of the many benefits of having its own program.

We believe that the intended meaning and function of the “deemed to comply” provision in the California regulations – to allow alternative compliance by demonstrating compliance with federal standards *of equivalent stringency* – is already clear. If, in light of federal actions, the Board decides to further address the “deemed to comply” provision, the only appropriate course of action is to confirm what has been obvious since the provision was adopted – that the alternative compliance pathway is limited to instances where auto manufacturers comply with federal standards substantially equivalent in stringency to California’s standards. There are no other alternatives that are consistent with the intent and purpose of the “deemed to comply” provision and preserve the status quo that has been in place since the standards were adopted.

Should you wish to discuss matters further with any of our groups, please do not hesitate to contact us through Irene Gutierrez ([igutierrez@nrdc.org](mailto:igutierrez@nrdc.org)).

Sincerely,

Vera Pardee  
*Senior Counsel/Supervising Attorney,  
Center for Biological Diversity*

Irene Gutierrez  
*Attorney, Natural Resources Defense  
Council*

Paul Cort  
*Staff Attorney, Earthjustice*

Joanne Spalding  
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Sean Donahue  
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*Model Years 2017-2025* at 4 (Sept. 14, 2012); available at <https://www.arb.ca.gov/regact/2012/leviuidtc12/dtcisor.pdf>; see also State of California Air Resources Board, Resolution 12-21 (March 22, 2012), Agenda Item No.: 12-2-7, at 8, available at <https://www.arb.ca.gov/regact/2012/zev2012/res12-21.pdf>.