July 28, 2022

Chair Liane Randolph
California Air Resources Board
1001 I Street
Sacramento, CA 95814

Re: Earthjustice Comments on the Advanced Clean Cars II Proposal

Dear Chair Randolph,

Earthjustice appreciates the opportunity to provide comments on the Advanced Clean Cars II Proposal. The need for ambitious action to transition off fossil fueled vehicles is now over-determined: the window to prevent further unraveling of our climate is rapidly closing, progress tackling our air pollution crisis is backsliding, and for many families, the cost of fossil fuel-based transportation has become excruciating.

Fortunately, thanks in large part to the past work of the California Air Resources Board ("CARB"), we now have the exact technology needed to rapidly eliminate much of this pollution. Zero-emission vehicles are not available, but in high-demand. ZEVs are already cheaper to own and operate than combustion powered vehicles. And evidence from other countries that have used stringent standards to leapfrog ahead of us in EV adoption makes it perfectly obvious that California could be moving faster.[1]

To live up to its mission to safeguard public health and the environment, CARB should not only predict the potential for a transition to zero emission vehicles, but to accelerate it, so that it delivers on the timeframes demanded by climate science and environmental justice.

Unfortunately, this proposal fails to achieve that level of ambition. Earthjustice is deeply disappointed that the selected sales requirement fails to regain – let alone expand – California's historic place as a leader in the ZEV transition. This standard is too weak to secure what CARB's own modeling shows is necessary to achieve our air and climate targets and also fails to promote meaningful access to affordable ZEVs by placing conditions on the use of other credit flexibilities. Worse, the 15-day changes to the proposal needlessly add multiple concessions to automakers that further relaxes the possibility of using credits, which functions to dampen the already weak sales requirement.

Unfortunately, given the late stage in the rulemaking process, the best course of action for our air and climate is for the Board to vote through the current proposal, and then work expeditiously to build upon it so that we outperform the sales requirements with additional measures. **We therefore urge the Board to adopt the proposed regulation, and in the adopting resolution, include clear direction on the need for further action.**

[1] See, e.g. David Reichmuth, "Is California About to Give Up the Driver's Seat on Electric Vehicles?" (Dec. 13, 2021) https://blog.ucsusa.org/dave-reichmuth/is-california-about-to-give-up-the-drivers-seat-on-electric-vehicles/.

1. **The Board should resolve that staff will identify the measures needed to ensure light-duty vehicles deliver an "equal share" of reductions.**

Throughout the rulemaking, Earthjustice and our many partners have urged CARB staff to ensure the ACC II rule – at a minimum – achieves the level of ZE sales identified in the 2020 Mobile Source Strategy. The Mobile Source Strategy ("MSS") is the State's framework for meeting federal and State health-based ambient air quality standards, and specifically identifies the level of ZEVs needed for light-duty vehicles to deliver an "equal share" of reductions.[2] Unfortunately, as shown below, the Proposal trails the MSS's ZEV sales scenario (Alt 2 in the table below from the staff Report) by almost 10% in 2026, not reaching parity until 2031. **These are precisely the years when the reductions from the MSS are most critical to achieving the State's 2031 ozone deadlines in the San Joaquin and South Coast air basins, and the 2030 statutory greenhouse gas reduction target.** And because stated sales obligations are not guaranteed, given the excessive flexibilities in the rule, the gap will likely be larger.

Table XI-1: ZEV Sales Percentage Requirements by Scenario

	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035+
Proposal	35%	43%	51%	59%	68%	76%	82%	88%	94%	100%
Alt 1	23%	29%	34%	39%	45%	50%	55%	60%	65%	70%
Alt 2	46%	52%	58%	64%	70%	76%	82%	88%	94%	100%

This gap is even more troubling given the MSS scenario falls short of delivering its "equal share" of reductions needed to meet the State's targets. The MSS admits that even under it's scenario, the light-duty vehicle sector "still cannot achieve its 'equal share' of the reductions for NOx and GHG emissions in 2037 and 2045 respectively assumed for this analysis."[3] Thus, falling short of the MSS scenario further imperils our air and climate targets. **We cannot accept an outcome where light-duty vehicles, commonly understood to be among the easiest-to-decarbonize sectors of the economy, fail to deliver their share of reductions.**

At the June 9th hearing, the Board asked staff to explain the discrepancy between the ACC II proposal and the MSS. Staff suggested that the MSS scenario represents a range of policies of which ACC III is only one**. We therefore urge CARB to request that staff provide a detailed analysis of the suite of measures that will fill the gap left by the ACC II scenario to ensure light duty vehicles deliver an equal share of emission reductions.** Given the shortfall from new sales, it is imperative that CARB staff identify the "suite" of measures it has argued will keep us on course for our state and federal commitments.

2. **CARB Chose a Sales Requirement that Trails the "Slow-Phase" Scenario, Falling Well-Below the Maximum Feasible Degree of Emission Reductions**

Earthjustice reiterates CARB's clear legal authority under the federal Clean Air Act to establish its own vehicle standards, including a zero-emission vehicle sales mandate. Contrary to industry allegations, the proposal falls well within CARB's authority under both federal and state law. The emissions reductions

[2] CARB, Proposed 2020 Mobile Source Strategy, at 98 (Sept 28, 2021), available at https://ww2.arb.ca.gov/sites/default/files/2021-09/Proposed_2020_Mobile_Source_Strategy.pdf.
[3] Id. at p. 98.

from this rule—though insufficient—are essential for California to meet state and federal statutory requirements. In fact, staff's rigorous analysis makes clear that even stronger targets—resulting in greater health benefits sooner – are imminently feasible. CARB's model shows that the proposed regulation lags a more aggressive ("ASAP") deployment scenario, and even lags behind a relaxed "slow phase" scenario, proving OEMs could meet a much stronger sales requirement without accelerating beyond a "conventional redesign schedule."[4]

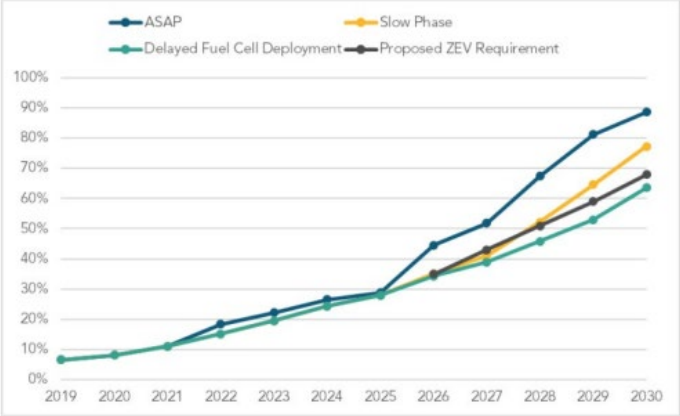

Figure 1. CARB Analysis of Model Turnover Scenarios[9]

Even if none of the several flexibility mechanisms offered in the rule were used toward compliance, the starting sales requirements for MY 2026 are almost identical to what manufacturers' own projections of ZEV sales for that year. These projections are virtually certain to be conservative, since they do not include new EV-only market entrants, such as Rivian, Lucid, Canoo, or Arrival. And, as the staff report notes, "what is striking about these projections is that they were submitted by manufacturers prior to future regulations being adopted."[5] The projections therefore do not reflect upward pressure on EV adoption that will come from the ACC II proposal, the U.S. EPA's light-duty rulemaking, nor the significant public investment from both the State budget and the Infrastructure Investment and Jobs Act, all of which would markedly tip the scale in favor of greater EV adoption. As staff clearly states: "manufacturers will be more than on track to meet staff's proposed requirements in the early years of this proposal."[6] We agree, though we regret that the proposal does not then take the logical step of requiring anywhere near the maximum degree of emissions reductions feasible given the clear feasibility to do so.

3. Additional Action is Needed to Push Automakers to Deliver Affordable ZEVs for Low-Income Communities.

With this ACC II proposal, California has missed an opportunity to induce the production of lower-cost EVs needed to achieve mass-market adoption. Contrary to the unfounded assumption that a stronger rule somehow increases costs for low-income customers, the fact is that a stronger manufacturer requirement would result in OEMs needing to compete to develop vehicles that can penetrate beyond affluent consumers, and would have accelerated volumes into the used vehicle market. This is being demonstrated in Europe and China, where stronger sales requirements are pushing the deployment of lower-cost EVs

[4] CARB, Advanced Clean Cars II - ISOR, at p. 41.
[5] ISOR, p. 39.
[6] ISOR, p. 39.

that are not even available for sale in the United States. As one recent interview with vehicle analysts highlights:[7]

> "Cheaper EVs do exist — just not in U.S. markets. In China, the average cost of an electric car is $24,000; in Europe, it's $46,000. But American automakers appear to be taking a different approach, one inspired by Tesla's rollout of its sleek, high-end Roadster. 'Automakers will first roll out their big, range-topping, super pricey — kind of like their halo model,' DeGraff said, referring to a marketing term for a high-end car designed to bring consumers into the brand."

Unfortunately, this is precisely the trend that the proposal may perpetuate. OEMs, armed with excessive flexibility from historical and early compliance credits, can focus on electrifying high-end SUVs and pick up trucks while still easily meeting their modest compliance obligations. This also dampens the incentive to use the environmental justice credits. The programs that allow for these credits to be generated (e.g. by selling low-MSRP vehicles or placing vehicles in programs like Clean Cars 4 All) have merit. But without sufficient stringency and excessive leniency in other credits, there is little guarantee they will be used.

Worse, because all the 15-day changes increase the flexibility of these credits (e.g. by increasing the volume of credits available by dividing ACC I credit values by 2 instead of 4; by allowing fuel cell vehicle credits to "travel; and by allowing historical credit caps to be collected and allocated in earlier years), there is even less incentive for the EJ credits to be used, and greater likelihood that credits in general will come at the expense of volume in ZEV sales.

We therefore urge CARB to commit to additional improvements to the program that will counter the current trend, whereby OEMs sell only luxury-EVs, and instead lead to the prioritization of affordable, accessible electric vehicles. This could be initiated by including in the adopting resolution for the regulation, a clause that resolves for CARB to work with automakers, environmental justice groups, and other stakeholders to commit to using the equity credits, and a clause that commits to annually analyze the equity impacts of the ACC II program.

In the final years of the defining decade of our planet's future, California's leadership has never been more important. While we are dismayed that this proposal did not do more to accelerate the transition to zero-emission vehicles – one of California's greatest advantages in the energy transition – we are hopeful that its expeditious passage will provide the momentum needed to catalyze the transition across the country and globe. We urge CARB to pass this rule and include our recommended clauses in the adopting resolution, so that we can continue to work together to achieve a safe climate and breathable air for California.

Sincerely,

Sasan Saadat
Regina Hsu

[7] Shannon Osaka, "Batteries are getting cheap. So why aren't electric vehicles?" (Apr. 27, 2022) https://grist.org/article/batteries-are-getting-cheap-so-why-arent-electric-vehicles/.