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VIA ELECTRONIC MAIL

June 29, 2021

New Mexico Environmental Improvement Board
C/O Pamela Jones, Board Administrator
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Re: EIB 21-30 (R) - Petition for Regulatory Change filed June 10, 2021

Dear Members of the Board:

On behalf of the New Mexico Environment Department (“Department” or “NMED”), I submit this letter in response to the Petition for Regulatory Change (“Petition”) filed in the above-referenced matter on June 10, 2021, by the Center for Civic Policy, Conservation Voters of New Mexico, Natural Resources Defense Council, Plug In America, Prosperity Works, Sierra Club, Southwest Energy Efficiency Project, and 350 New Mexico (collectively, “Petitioners”). The Petition requests that the Board set a hearing on draft rules establishing emission standards for new motor vehicles sold in New Mexico (“clean car rules”). For the reasons outlined below, the Department respectfully urges the Board to decline to take up this Petition, and instead, to wait for the Department’s petition to adopt such rules later this year.

As was discussed in the Petition, states such as New Mexico that have adopted state implementation plan provisions under Part D of the Clean Air Act (“CAA”) are authorized to adopt emissions standards for new motor vehicles so long as those standards are (1) identical to California standards for which California has received a waiver from the federal government for that model year, and (2) are adopted at least two years before commencement of such model year. *See* 42 U.S.C. §7507. In 2012, California adopted its Advanced Clean Cars rules (“ACC standards”), which phased in emissions standards and credit-based percentage requirements for passenger cars, light-duty trucks, and medium-duty passenger vehicles beginning with model year 2015 through model year 2025. The model year 2025 standards apply to subsequent model years unless and until California adopts new standards for model years 2026 and beyond.

This administration is fully committed to adopting clean car rules in New Mexico to address emissions from transportation sector, which is the second-largest source of greenhouse gas emissions in the state. On September 24, 2019, Governor Lujan Grisham announced New Mexico’s intention to propose, adopt and implement clean car standards. As the Department began working towards the Governor’s goal, the COVID-19 pandemic began. The Department proudly played a critical role in protecting New Mexicans from COVID-19 by closely working with employers to develop and implement COVID-safe practices; conducting rapid responses when COVID-19 entered the workplace so essential businesses stayed open; and running both surveillance testing and vaccination events across the state. Our efforts to prevent the spread of COVID-19 and save lives delayed our efforts to adopt clean car standards.

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As the Board is aware, the Department is bringing our proposed ozone precursor rules to hearing before you in September. Those rules address emissions from the largest greenhouse gas emitting sector in New Mexico: the oil and gas industry. NMED's limited resources are focused on preparations for that hearing – developing expert technical testimony, continuing to meet with stakeholders, and monitoring federal regulatory actions – to ensure significant reductions in emissions of air pollutants for the benefit of New Mexicans' health and the overall climate.

Concurrently, the Department is facing an ever-increasing number of air quality permit challenges from non-governmental organizations. Last week, the Department began preparations for 13 new air quality permit hearings. Between permit hearings, rulemaking hearings and our pursuit of enforcement matters, the Department is unable to support the Petitioner's timeline. If the Board grants the Petitioner's request, the Department will not participate in the hearing. If compelled to participate in the Petitioner's hearing, the Department will seek a delay in the ozone precursor rule hearing. Given that it is our Department that will implement and administer the proposed rules, the Board should not consider those rules without our participation.

A further reason that the Board should deny the Petitioner's request is the lack of transparent stakeholder engagement prior to the filing of the current petition, which is a necessary part of any rulemaking of this scope and impact, and must precede the filing and granting of a petition. To this end, the Department is undertaking the following inclusive activities prior to filing its own clean car rulemaking petition with the Board: coordinating efforts with the City of Albuquerque, which has its own air quality program; consulting with tribes and pueblos; working with the national auto manufacturers associations and the state dealership association; conducting public outreach in English and Spanish across the state; and continuing to carefully track and analyze the California Air Resources Board's ("CARB") rulemaking process while discussing national implications with the U.S. Environmental Protection Agency. Many if not all of the stakeholders listed above were impacted by COVID-19 and focused on saving lives. Together, we are now ready to engage on the development and implementation of clean car rules under the Department's timeline.

Indeed, the Department has already embarked on the necessary planning and processes for our pre-petition outreach. Within the last three months, the Department has begun collaborating with the City of Albuquerque's Environmental Health Department Air Quality Program ("City of Albuquerque") and meeting with staff from CARB to develop rules and plan stakeholder outreach activities. We recently initiated a robust, multi-month public and stakeholder engagement process, which will include disproportionately impacted communities, the affected business community, and consumers. There will be numerous opportunities for interested persons to obtain information regarding the proposed clean car standards and how they will work, and provide input prior to the filing of the formal rulemaking petition. This pre-petition stakeholder outreach is the general standard for significant rulemakings led by NMED, and it is what the public expects and deserves for development of clean car rules.

Following the pre-petition outreach process, NMED will file a Petition for Regulatory Change with the Board before the end of the year. As was the case in 2007, the Department and the City of Albuquerque will make a coordinated request that the EIB and the Albuquerque-Bernalillo County Air Quality Control Board ("AQCB") hold a joint hearing in spring of 2022 to consider and adopt rules implementing the ACC standards in New Mexico. This approach will ensure comprehensive rules that cover new car sales across the entire State.

The Department is carefully tracking CARB's development of new Advanced Clean Cars II rules ("ACC II"). At this point, CARB is considering adoption of rules for model year 2026, but they have not released draft rules nor have they identified how to transition current car standards into future requirements. CARB is uncertain when ACC II will be finalized and effective. Should the effective date of ACC II be after the effective date of our New Mexico clean car rules, the New Mexico clean car rules would still be viable. CARB has informed the Department that the ACC II rules may not be final and effective until the end of 2022. Assuming final action on NMED and City of Albuquerque petitions by the EIB and AQCB in the fall of 2022, the New Mexico clean car rules will apply to model year 2026 and subsequent model years. Upon adoption of those rules, the Department will move forward on a subsequent rulemaking to adopt the ACC II standards in New Mexico.

Should the effective date of ACC II be prior to the effective date of the New Mexico clean car rules, the New Mexico clean car rules will likely become null and void. In that case, the Department would bypass the rulemaking on the ACC standards, and instead go directly to rulemaking for the ACC II standards in 2022. Nevertheless, our intention is to start the stakeholder process to develop a proposal for adoption of the original ACC standards this year, and shift gears to developing rules for implementing the ACC II standards once CARB provides clarity on the effective date of those standards and the model years affected by that rule.

In sum, the Petition in EIB 21-30 (R) is lacking in several critical respects and is not the proper vehicle for adoption of clean car rules for New Mexico. The Department strongly urges the Board to deny the Petition, and await the Department's petition later this year before moving forward on a rulemaking to adopt clean car standards.

Sincerely,

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Cabinet Secretary
New Mexico Environment Department

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