

No. 24-1129 (and consolidated cases)

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

STATE OF NEBRASKA, et al.,

Petitioners,

v.

ENVIRONMENTAL PROTECTION AGENCY, et al.,

Respondents,

ALLIANCE OF NURSES FOR HEALTHY ENVIRONMENTS, et al.,

Intervenors.

On Petition for Review from the United States
Environmental Protection Agency
(No. EPA-HQ-OAR-2022-0985)

**PRIVATE PETITIONERS' ADDENDUM OF STATUTES AND
STANDING DECLARATIONS**

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RELEVANT STATUTES

42 U.S.C. § 7521. Emission standards for new motor vehicles or new motor vehicle engines

(a) Authority of Administrator to prescribe by regulation

Except as otherwise provided in subsection (b)—

(1) The Administrator shall by regulation prescribe (and from time to time revise) in accordance with the provisions of this section, standards applicable to the emission of any air pollutant from any class or classes of new motor vehicles or new motor vehicle engines, which in his judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare. Such standards shall be applicable to such vehicles and engines for their useful life (as determined under subsection (d), relating to useful life of vehicles for purposes of certification), whether such vehicles and engines are designed as complete systems or incorporate devices to prevent or control such pollution.

(2) Any regulation prescribed under paragraph (1) of this subsection (and any revision thereof) shall take effect after such period as the Administrator finds necessary to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period.

(3)(A) In general.—

(i) Unless the standard is changed as provided in subparagraph (B), regulations under paragraph (1) of this subsection applicable to emissions of hydrocarbons, carbon monoxide, oxides of nitrogen, and particulate matter from classes or categories of heavy-duty vehicles or engines manufactured during or after model year 1983 shall contain standards which reflect the greatest degree of emission reduction achievable through the application of technology which the Administrator determines will be available for the model year to which such standards apply, giving appropriate consideration to cost, energy, and safety factors associated with the application of such technology.

(ii) In establishing classes or categories of vehicles or engines for purposes of regulations under this paragraph, the Administrator may base such classes or categories on gross vehicle weight, horsepower, type of fuel used, or other appropriate factors.

(B) Revised standards for heavy duty trucks.—

(i) On the basis of information available to the Administrator concerning the effects of air pollutants emitted from heavy-duty vehicles or engines and from other sources of mobile source related pollutants on the public health and welfare, and taking costs into account, the Administrator may promulgate regulations under paragraph (1) of this subsection revising any standard promulgated under, or before the date of, the enactment of the Clean Air Act Amendments of 1990 (or previously revised under this subparagraph) and applicable to classes or categories of heavy-duty vehicles or engines.

(ii) Effective for the model year 1998 and thereafter, the regulations under paragraph (1) of this subsection applicable to emissions of oxides of nitrogen (NO_x) from gasoline and diesel-fueled heavy duty trucks shall contain standards which provide that such emissions may not exceed 4.0 grams per brake horsepower hour (gbh).

(C) Lead time and stability.—Any standard promulgated or revised under this paragraph and applicable to classes or categories of heavy-duty vehicles or engines shall apply for a period of no less than 3 model years beginning no earlier than the model year commencing 4 years after such revised standard is promulgated.

(D) Rebuilding practices.—The Administrator shall study the practice of rebuilding heavy-duty engines and the impact rebuilding has on engine emissions. On the basis of that study and other information available to the Administrator, the Administrator may prescribe requirements to control rebuilding practices, including standards applicable to emissions from any rebuilt heavy-duty engines (whether or not the engine is past its statutory useful life), which in the Administrator's judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare

taking costs into account. Any regulation shall take effect after a period the Administrator finds necessary to permit the development and application of the requisite control measures, giving appropriate consideration to the cost of compliance within the period and energy and safety factors.

(E) Motorcycles.—For purposes of this paragraph, motorcycles and motorcycle engines shall be treated in the same manner as heavy-duty vehicles and engines (except as otherwise permitted under section 7525(f)(1)¹ of this title) unless the Administrator promulgates a rule reclassifying motorcycles as light-duty vehicles within the meaning of this section or unless the Administrator promulgates regulations under subsection (a) applying standards applicable to the emission of air pollutants from motorcycles as a separate class or category. In any case in which such standards are promulgated for such emissions from motorcycles as a separate class or category, the Administrator, in promulgating such standards, shall consider the need to achieve equivalency of emission reductions between motorcycles and other motor vehicles to the maximum extent practicable.

(4)(A) Effective with respect to vehicles and engines manufactured after model year 1978, no emission control device, system, or element of design shall be used in a new motor vehicle or new motor vehicle engine for purposes of complying with requirements prescribed under this subchapter if such device, system, or element of design will cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function.

(B) In determining whether an unreasonable risk exists under subparagraph (A), the Administrator shall consider, among other factors, (i) whether and to what extent the use of any device, system, or element of design causes, increases, reduces, or eliminates emissions of any unregulated pollutants; (ii) available methods for reducing or eliminating any risk to public health, welfare, or safety which may be associated with the use of such device, system, or element of design, and (iii) the availability of other devices, systems, or elements of design which may be used to conform to requirements prescribed under this

¹ Section 7525(f)(1) of this title, referred to in subsec. (a)(3)(E). was redesignated section 7525(f) of this title by Pub. L. 101-549, title II, §230(8), Nov. 15, 1990, 104 Stat. 2529.

subchapter without causing or contributing to such unreasonable risk. The Administrator shall include in the consideration required by this paragraph all relevant information developed pursuant to section 7548 of this title.

(5)(A) If the Administrator promulgates final regulations which define the degree of control required and the test procedures by which compliance could be determined for gasoline vapor recovery of uncontrolled emissions from the fueling of motor vehicles, the Administrator shall, after consultation with the Secretary of Transportation with respect to motor vehicle safety, prescribe, by regulation, fill pipe standards for new motor vehicles in order to insure effective connection between such fill pipe and any vapor recovery system which the Administrator determines may be required to comply with such vapor recovery regulations. In promulgating such standards the Administrator shall take into consideration limits on fill pipe diameter, minimum design criteria for nozzle retainer lips, limits on the location of the unleaded fuel restrictors, a minimum access zone surrounding a fill pipe, a minimum pipe or nozzle insertion angle, and such other factors as he deems pertinent.

(B) Regulations prescribing standards under subparagraph (A) shall not become effective until the introduction of the model year for which it would be feasible to implement such standards, taking into consideration the restraints of an adequate leadtime for design and production.

(C) Nothing in subparagraph (A) shall (i) prevent the Administrator from specifying different nozzle and fill neck sizes for gasoline with additives and gasoline without additives or (ii) permit the Administrator to require a specific location, configuration, modeling, or styling of the motor vehicle body with respect to the fuel tank fill neck or fill nozzle clearance envelope.

(D) For the purpose of this paragraph, the term “fill pipe” shall include the fuel tank fill pipe, fill neck, fill inlet, and closure.

(6) Onboard vapor recovery.—Within 1 year after November 15, 1990, the Administrator shall, after consultation with the Secretary of Transportation regarding the safety of vehicle-based (“onboard”) systems for the control of vehicle refueling emissions, promulgate standards under this section requiring

that new light-duty vehicles manufactured beginning in the fourth model year after the model year in which the standards are promulgated and thereafter shall be equipped with such systems. The standards required under this paragraph shall apply to a percentage of each manufacturer's fleet of new light-duty vehicles beginning with the fourth model year after the model year in which the standards are promulgated. The percentage shall be as specified in the following table:

Implementation Schedule for Onboard Vapor Recovery Requirements

Model year commencing after standards promulgated	Percentage*
Fourth	40
Fifth	80
After Fifth	100

*Percentages in the table refer to a percentage of the manufacturer's sales volume.

The standards shall require that such systems provide a minimum evaporative emission capture efficiency of 95 percent. The requirements of section 7511a(b)(3) of this title (relating to stage II gasoline vapor recovery) for areas classified under section 7511 of this title as moderate for ozone shall not apply after promulgation of such standards and the Administrator may, by rule, revise or waive the application of the requirements of such section 7511a(b)(3) of this title for areas classified under section 7511 of this title as Serious, Severe, or Extreme for ozone, as appropriate, after such time as the Administrator determines that onboard emissions control systems required under this paragraph are in widespread use throughout the motor vehicle fleet.

* * *

(b) Emissions of carbon monoxide, hydrocarbons, and oxides of nitrogen; annual report to Congress; waiver of emission standards; research objectives

(1)(A) The regulations under subsection (a) applicable to emissions of carbon monoxide and hydrocarbons from light-duty vehicles and engines manufactured during model years 1977 through 1979 shall contain standards which provide that such emissions from such vehicles and engines may not exceed 1.5 grams per vehicle mile of hydrocarbons and 15.0 grams per vehicle mile of carbon monoxide. The regulations under subsection (a) applicable to emissions of carbon monoxide from light-duty vehicles and engines manufactured during the model year 1980 shall contain standards which provide that such emissions may not exceed 7.0 grams per vehicle mile. The regulations under subsection (a) applicable to emissions of hydrocarbons from light-duty vehicles and engines manufactured during or after model year 1980 shall contain standards which require a reduction of at least 90 percent from emissions of such pollutant allowable under the standards under this section applicable to light-duty vehicles and engines manufactured in model year 1970. Unless waived as provided in paragraph (5),² regulations under subsection (a) applicable to emissions of carbon monoxide from light-duty vehicles and engines manufactured during or after the model year 1981 shall contain standards which require a reduction of at least 90 percent from emissions of such pollutant allowable under the standards under this section applicable to light-duty vehicles and engines manufactured in model year 1970.

(B) The regulations under subsection (a) applicable to emissions of oxides of nitrogen from light-duty vehicles and engines manufactured during model years 1977 through 1980 shall contain standards which provide that such emissions from such vehicles and engines may not exceed 2.0 grams per vehicle mile. The regulations under subsection (a) applicable to emissions of oxides of nitrogen from light-duty vehicles and engines manufactured during the model year 1981 and thereafter shall contain standards which provide that such emissions from such vehicles and engines may not exceed 1.0 gram per vehicle mile. The Administrator shall prescribe standards in lieu of those required by the

² Paragraph (5) of subsec. (b), referred to in subsec. (b)(1)(A), related to waivers for model years 1981 and 1982, and was repealed by Pub. L. 101-549, title II, §230(3), Nov. 15, 1990, 104 Stat. 2529.

preceding sentence, which provide that emissions of oxides of nitrogen may not exceed 2.0 grams per vehicle mile for any light-duty vehicle manufactured during model years 1981 and 1982 by any manufacturer whose production, by corporate identity, for calendar year 1976 was less than three hundred thousand light-duty motor vehicles worldwide if the Administrator determines that—

(i) the ability of such manufacturer to meet emission standards in the 1975 and subsequent model years was, and is, primarily dependent upon technology developed by other manufacturers and purchased from such manufacturers; and

(ii) such manufacturer lacks the financial resources and technological ability to develop such technology.

(C) The Administrator may promulgate regulations under subsection (a)(1) revising any standard prescribed or previously revised under this subsection, as needed to protect public health or welfare, taking costs, energy, and safety into account. Any revised standard shall require a reduction of emissions from the standard that was previously applicable. Any such revision under this subchapter may provide for a phase-in of the standard. It is the intent of Congress that the numerical emission standards specified in subsections (a)(3)(B)(ii), (g), (h), and (i) shall not be modified by the Administrator after November 15, 1990, for any model year before the model year 2004.

(2) Emission standards under paragraph (1), and measurement techniques on which such standards are based (if not promulgated prior to November 15, 1990), shall be promulgated by regulation within 180 days after November 15, 1990.

(3) For purposes of this part—

(A)(i) The term “model year” with reference to any specific calendar year means the manufacturer’s annual production period (as determined by the Administrator) which includes January 1 of such calendar year.

(ii) For the purpose of assuring that vehicles and engines manufactured before the beginning of a model year were not manufactured for purposes of circumventing the effective date of a standard required to be prescribed by subsection (b), the

Administrator may prescribe regulations defining “model year” otherwise than as provided in clause (i).

(B) Repealed. Pub. L. 101–549, title II, §230(1), Nov. 15, 1990, 104 Stat. 2529.

(C) The term “heavy duty vehicle” means a truck, bus, or other vehicle manufactured primarily for use on the public streets, roads, and highways (not including any vehicle operated exclusively on a rail or rails) which has a gross vehicle weight (as determined under regulations promulgated by the Administrator) in excess of six thousand pounds. Such term includes any such vehicle which has special features enabling off-street or off-highway operation and use.

(3)³ Upon the petition of any manufacturer, the Administrator, after notice and opportunity for public hearing, may waive the standard required under subparagraph (B) of paragraph (1) to not exceed 1.5 grams of oxides of nitrogen per vehicle mile for any class or category of light-duty vehicles or engines manufactured by such manufacturer during any period of up to four model years beginning after the model year 1980 if the manufacturer demonstrates that such waiver is necessary to permit the use of an innovative power train technology, or innovative emission control device or system, in such class or category of vehicles or engines and that such technology or system was not utilized by more than 1 percent of the light-duty vehicles sold in the United States in the 1975 model year. Such waiver may be granted only if the Administrator determines—

(A) that such waiver would not endanger public health,

(B) that there is a substantial likelihood that the vehicles or engines will be able to comply with the applicable standard under this section at the expiration of the waiver, and

(C) that the technology or system has a potential for long-term air quality benefit and has the potential to meet or exceed the average fuel economy standard applicable under the Energy Policy and Conservation Act [42 U.S.C. 6201 et seq.] upon the expiration of the waiver.

³ So in original. Probably should be “(4)”.

No waiver under this subparagraph⁴ granted to any manufacturer shall apply to more than 5 percent of such manufacturer's production or more than fifty thousand vehicles or engines, whichever is greater.

* * *

(g) Light-duty trucks up to 6,000 lbs. GVWR and light-duty vehicles; standards for model years after 1993

(1) NMHC, CO, and NO_x

Effective with respect to the model year 1994 and thereafter, the regulations under subsection (a) applicable to emissions of nonmethane hydrocarbons (NMHC), carbon monoxide (CO), and oxides of nitrogen (NO_x) from light-duty trucks (LDTs) of up to 6,000 lbs. gross vehicle weight rating (GVWR) and light-duty vehicles (LDVs) shall contain standards which provide that emissions from a percentage of each manufacturer's sales volume of such vehicles and trucks shall comply with the levels specified in table G. The percentage shall be as specified in the implementation schedule below:

Table G—Emission Standards for NMHC, CO, and NO_x from Light-Duty Trucks of up to 6,000 Lbs. GVWR And Light-Duty Vehicles

Vehicle type	Column A			Column B		
	(5 yrs/50,000 mi)			(10 yrs/100,000 mi)		
	NMHC	CO	NO _x	NMHC	CO	NO _x
LDTs (0–3,750 lbs. LVW) and light-duty vehicles	0.25	3.4	0.4*	0.31	4.2	0.6*
LDTs (3,751–5,750 lbs. LVW)	0.32	4.4	0.7**	0.40	5.5	0.97

Standards are expressed in grams per mile (gpm).

For standards under column A, for purposes of certification under section 7525 of this title, the applicable useful life shall be 5 years or 50,000 miles (or the equivalent), whichever first occurs.

For standards under column B, for purposes of certification under section

7525 of this title, the applicable useful life shall be 10 years or 100,000 miles (or the equivalent), whichever first occurs.

*In the case of diesel-fueled LDTs (0–3,750 lvw) and light-duty vehicles, before the model year 2004, in lieu of the 0.4 and 0.6 standards for NO_x, the applicable standards for NO_x shall be 1.0 gpm for a useful life of 5 years or 50,000 miles (or the equivalent), whichever first occurs, and 1.25 gpm for a useful life of 10 years or 100,000 miles (or the equivalent) whichever first occurs.

**This standard does not apply to diesel-fueled LDTs (3,751–5,750 lbs. LVW).

Implementation Schedule for Table G Standards

Model year	Percentage*
1994	40
1995	80
after 1995	100

*Percentages in the table refer to a percentage of each manufacturer's sales volume.

(2) PM Standard

Effective with respect to model year 1994 and thereafter in the case of light-duty vehicles, and effective with respect to the model year 1995 and thereafter in the case of light-duty trucks (LDTs) of up to 6,000 lbs. gross vehicle weight rating (GVWR), the regulations under subsection (a) applicable to emissions of particulate matter (PM) from such vehicles and trucks shall contain standards which provide that such emissions from a percentage of each manufacturer's sales volume of such vehicles and trucks shall not exceed the levels specified in the table below. The percentage shall be as specified in the Implementation Schedule below.

 PM Standard for LDTs of up to 6,000 lbs. GVWR

Useful life period

Standard

5/50,000

0.08 gpm

10/100,000

0.10 gpm

The applicable useful life, for purposes of certification under section 7525 of this title and for purposes of in-use compliance under section 7541 of this title, shall be 5 years or 50,000 miles (or the equivalent), whichever first occurs, in the case of the 5/50,000 standard.

Implementation Schedule for PM Standards

Model year

Light-duty vehicles

LDTs

1994

40%*

1995

80%*

40%*

1996

100%*

80%*

after 1996

100%*

100%*

*Percentages in the table refer to a percentage of each manufacturer's sales volume.

* * *

(m) Emissions control diagnostics**(1) Regulations**

Within 18 months after November 15, 1990, the Administrator shall promulgate regulations under subsection (a) requiring manufacturers to install

on all new light duty vehicles and light duty trucks diagnostics systems capable of—

- (A) accurately identifying for the vehicle's useful life as established under this section, emission-related systems deterioration or malfunction, including, at a minimum, the catalytic converter and oxygen sensor, which could cause or result in failure of the vehicles to comply with emission standards established under this section,
- (B) alerting the vehicle's owner or operator to the likely need for emission-related components or systems maintenance or repair,
- (C) storing and retrieving fault codes specified by the Administrator, and
- (D) providing access to stored information in a manner specified by the Administrator.

The Administrator may, in the Administrator's discretion, promulgate regulations requiring manufacturers to install such onboard diagnostic systems on heavy-duty vehicles and engines.

(2) Effective date

The regulations required under paragraph (1) of this subsection shall take effect in model year 1994, except that the Administrator may waive the application of such regulations for model year 1994 or 1995 (or both) with respect to any class or category of motor vehicles if the Administrator determines that it would be infeasible to apply the regulations to that class or category in such model year or years, consistent with corresponding regulations or policies adopted by the California Air Resources Board for such systems.

(3) State inspection

The Administrator shall by regulation require States that have implementation plans containing motor vehicle inspection and maintenance programs to amend their plans within 2 years after promulgation of such regulations to provide for inspection of onboard diagnostics systems (as prescribed by regulations under paragraph (1) of this subsection) and for the maintenance or repair of malfunctions or system deterioration identified by or affecting such diagnostics systems. Such regulations shall not be inconsistent with the

provisions for warranties promulgated under section 7541(a) and (b) of this title.

(4) Specific requirements

In promulgating regulations under this subsection, the Administrator shall require—

(A) that any connectors through which the emission control diagnostics system is accessed for inspection, diagnosis, service, or repair shall be standard and uniform on all motor vehicles and motor vehicle engines;

(B) that access to the emission control diagnostics system through such connectors shall be unrestricted and shall not require any access code or any device which is only available from a vehicle manufacturer; and

(C) that the output of the data from the emission control diagnostics system through such connectors shall be usable without the need for any unique decoding information or device.

(5) Information availability

The Administrator, by regulation, shall require (subject to the provisions of section 7542(c) of this title regarding the protection of methods or processes entitled to protection as trade secrets) manufacturers to provide promptly to any person engaged in the repairing or servicing of motor vehicles or motor vehicle engines, and the Administrator for use by any such persons, with any and all information needed to make use of the emission control diagnostics system prescribed under this subsection and such other information including instructions for making emission related diagnosis and repairs. No such information may be withheld under section 7542(c) of this title if that information is provided (directly or indirectly) by the manufacturer to franchised dealers or other persons engaged in the repair, diagnosing, or servicing of motor vehicles or motor vehicle engines. Such information shall also be available to the Administrator, subject to section 7542(c) of this title, in carrying out the Administrator's responsibilities under this section.

42 U.S.C. § 7522. Prohibited Acts.**(a) Enumerated prohibitions**

The following acts and the causing thereof are prohibited—

- (1) in the case of a manufacturer of new motor vehicles or new motor vehicle engines for distribution in commerce, the sale, or the offering for sale, or the introduction, or delivery for introduction, into commerce, or (in the case of any person, except as provided by regulation of the Administrator), the importation into the United States, of any new motor vehicle or new motor vehicle engine, manufactured after the effective date of regulations under this part which are applicable to such vehicle or engine unless such vehicle or engine is covered by a certificate of conformity issued (and in effect) under regulations prescribed under this part or part C in the case of clean-fuel vehicles (except as provided in subsection (b));
- (2)(A) for any person to fail or refuse to permit access to or copying of records or to fail to make reports or provide information required under section 7542 of this title;
 - (B) for any person to fail or refuse to permit entry, testing or inspection authorized under section 7525(c) of this title or section 7542 of this title;
 - (C) for any person to fail or refuse to perform tests, or have tests performed as required under section 7542 of this title;
 - (D) for any manufacturer to fail to make information available as provided by regulation under section 7521(m)(5) of this title;
- (3)(A) for any person to remove or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this subchapter prior to its sale and delivery to the ultimate purchaser, or for any person knowingly to remove or render inoperative any such device or element of design after such sale and delivery to the ultimate purchaser; or
 - (B) for any person to manufacture or sell, or offer to sell, or install, any part or component intended for use with, or as part of, any motor vehicle or motor vehicle engine, where a principal effect of the part or component is to bypass, defeat, or render inoperative any device or

element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this subchapter, and where the person knows or should know that such part or component is being offered for sale or installed for such use or put to such use; or

(4) for any manufacturer of a new motor vehicle or new motor vehicle engine subject to standards prescribed under section 7521 of this title or part C—

(A) to sell or lease any such vehicle or engine unless such manufacturer has complied with (i) the requirements of section 7541(a) and (b) of this title with respect to such vehicle or engine, and unless a label or tag is affixed to such vehicle or engine in accordance with section 7541(c)(3) of this title, or (ii) the corresponding requirements of part C in the case of clean fuel vehicles unless the manufacturer has complied with the corresponding requirements of part C

(B) to fail or refuse to comply with the requirements of section 7541(c) or (e) of this title, or the corresponding requirements of part C in the case of clean fuel vehicles

(C) except as provided in subsection (c)(3) of section 7541 of this title and the corresponding requirements of part C in the case of clean fuel vehicles, to provide directly or indirectly in any communication to the ultimate purchaser or any subsequent purchaser that the coverage of any warranty under this chapter is conditioned upon use of any part, component, or system manufactured by such manufacturer or any person acting for such manufacturer or under his control, or conditioned upon service performed by any such person, or

(D) to fail or refuse to comply with the terms and conditions of the warranty under section 7541(a) or (b) of this title or the corresponding requirements of part C in the case of clean fuel vehicles with respect to any vehicle; or

(5) for any person to violate section 7553 of this title, 7554 of this title, or part C of this subchapter or any regulations under section 7553 of this title, 7554 of this title, or part C.

No action with respect to any element of design referred to in paragraph (including any adjustment or alteration of such element) shall be treated as a prohibited act under such paragraph (3) if such action is in accordance with section 7549 of this title. Nothing in paragraph (3) shall

be construed to require the use of manufacturer parts in maintaining or repairing any motor vehicle or motor vehicle engine. For the purposes of the preceding sentence, the term “manufacturer parts” means, with respect to a motor vehicle engine, parts produced or sold by the manufacturer of the motor vehicle or motor vehicle engine. No action with respect to any device or element of design referred to in paragraph (3) shall be treated as a prohibited act under that paragraph if (i) the action is for the purpose of repair or replacement of the device or element, or is a necessary and temporary procedure to repair or replace any other item and the device or element is replaced upon completion of the procedure, and (ii) such action thereafter results in the proper functioning of the device or element referred to in paragraph (3). No action with respect to any device or element of design referred to in paragraph (3) shall be treated as a prohibited act under that paragraph if the action is for the purpose of a conversion of a motor vehicle for use of a clean alternative fuel (as defined in this subchapter) and if such vehicle complies with the applicable standard under section 7521 of this title when operating on such fuel, and if in the case of a clean alternative fuel vehicle (as defined by rule by the Administrator), the device or element is replaced upon completion of the conversion procedure and such action results in proper functioning of the device or element when the motor vehicle operates on conventional fuel.

(b) Exemptions; refusal to admit vehicle or engine into United States; vehicles or engines intended for export

(1) The Administrator may exempt any new motor vehicle or new motor vehicle engine, from subsection (a), upon such terms and conditions as he may find necessary for the purpose of research, investigations, studies, demonstrations, or training, or for reasons of national security.

(2) A new motor vehicle or new motor vehicle engine offered for importation or imported by any person in violation of subsection (a) shall be refused admission into the United States, but the Secretary of the Treasury and the Administrator may, by joint regulation, provide for deferring final determination as to admission and authorizing the delivery of such a motor vehicle or engine offered for import to the owner or consignee thereof upon such terms and conditions (including the furnishing of a bond) as may appear to them appropriate to insure that any such motor vehicle or engine will be brought into conformity with the standards, requirements, and limitations applicable to it under this part. The Secretary of the Treasury shall, if a motor vehicle or engine is finally refused admission under this paragraph, cause

disposition thereof in accordance with the customs laws unless it is exported, under regulations prescribed by such Secretary, within ninety days of the date of notice of such refusal or such additional time as may be permitted pursuant to such regulations, except that disposition in accordance with the customs laws may not be made in such manner as may result, directly or indirectly, in the sale, to the ultimate consumer, of a new motor vehicle or new motor vehicle engine that fails to comply with applicable standards of the Administrator under this part.

(3) A new motor vehicle or new motor vehicle engine intended solely for export, and so labeled or tagged on the outside of the container and on the vehicle or engine itself, shall be subject to the provisions of subsection (a), except that if the country which is to receive such vehicle or engine has emission standards which differ from the standards prescribed under section 7521 of this title, then such vehicle or engine shall comply with the standards of such country which is to receive such vehicle or engine.

42 U.S.C. §7524. Civil Penalties.

(a) Violations

Any person who violates sections¹ 7522(a)(1), 7522(a)(4), or 7522(a)(5) of this title or any manufacturer or dealer who violates section 7522(a)(3)(A) of this title shall be subject to a civil penalty of not more than \$25,000. Any person other than a manufacturer or dealer who violates section 7522(a)(3)(A) of this title or any person who violates section 7522(a)(3)(B) of this title shall be subject to a civil penalty of not more than \$2,500. Any such violation with respect to paragraph (1), (3)(A), or (4) of section 7522(a) of this title shall constitute a separate offense with respect to each motor vehicle or motor vehicle engine. Any such violation with respect to section 7522(a)(3)(B) of this title shall constitute a separate offense with respect to each part or component. Any person who violates section 7522(a)(2) of this title shall be subject to a civil penalty of not more than \$25,000 per day of violation.

(b) Civil actions

The Administrator may commence a civil action to assess and recover any civil penalty under subsection (a) of this section, section 7545(d) of this title, or section 7547(d) of this title. Any action under this subsection may be brought in the district court of the United States for the district in which the violation is alleged to have

¹ So in original. Probably should be “section”.

occurred or in which the defendant resides or has the Administrator's principal place of business, and the court shall have jurisdiction to assess a civil penalty. In determining the amount of any civil penalty to be assessed under this subsection, the court shall take into account the gravity of the violation, the economic benefit or savings (if any) resulting from the violation, the size of the violator's business, the violator's history of compliance with this subchapter, action taken to remedy the violation, the effect of the penalty on the violator's ability to continue in business, and such other matters as justice may require. In any such action, subpoenas for witnesses who are required to attend a district court in any district may run into any other district.

(c) Administrative assessment of certain penalties

(1) Administrative penalty authority

In lieu of commencing a civil action under subsection (b), the Administrator may assess any civil penalty prescribed in subsection (a) of this section, section 7545(d) of this title, or section 7547(d) of this title, except that the maximum amount of penalty sought against each violator in a penalty assessment proceeding shall not exceed \$200,000, unless the Administrator and the Attorney General jointly determine that a matter involving a larger penalty amount is appropriate for administrative penalty assessment. Any such determination by the Administrator and the Attorney General shall not be subject to judicial review. Assessment of a civil penalty under this subsection shall be by an order made on the record after opportunity for a hearing in accordance with sections 554 and 556 of title 5. The Administrator shall issue reasonable rules for discovery and other procedures for hearings under this paragraph. Before issuing such an order, the Administrator shall give written notice to the person to be assessed an administrative penalty of the Administrator's proposal to issue such order and provide such person an opportunity to request such a hearing on the order, within 30 days of the date the notice is received by such person. The Administrator may compromise, or remit, with or without conditions, any administrative penalty which may be imposed under this section.

(2) Determining amount

In determining the amount of any civil penalty assessed under this subsection, the Administrator shall take into account the gravity of the violation, the economic benefit or savings (if any) resulting from the violation, the size of the violator's business, the violator's history of compliance with this

subchapter, action taken to remedy the violation, the effect of the penalty on the violator's ability to continue in business, and such other matters as justice may require.

(3) Effect of Administrator's action

(A) Action by the Administrator under this subsection shall not affect or limit the Administrator's authority to enforce any provision of this chapter; except that any violation,

(i) with respect to which the Administrator has commenced and is diligently prosecuting an action under this subsection, or

(ii) for which the Administrator has issued a final order not subject to further judicial review and the violator has paid a penalty assessment under this subsection,

shall not be the subject of civil penalty action under subsection (b).

(B) No action by the Administrator under this subsection shall affect any person's obligation to comply with any section of this chapter.

(4) Finality of order

An order issued under this subsection shall become final 30 days after its issuance unless a petition for judicial review is filed under paragraph (5).

(5) Judicial review

Any person against whom a civil penalty is assessed in accordance with this subsection may seek review of the assessment in the United States District Court for the District of Columbia, or for the district in which the violation is alleged to have occurred, in which such person resides, or where such person's principal place of business is located, within the 30-day period beginning on the date a civil penalty order is issued. Such person shall simultaneously send a copy of the filing by certified mail to the Administrator and the Attorney General. The Administrator shall file in the court a certified copy, or certified index, as appropriate, of the record on which the order was issued within 30 days. The court shall not set aside or remand any order issued in accordance with the requirements of this subsection unless there is not substantial evidence in the record, taken as a whole, to support the finding of a violation or unless the Administrator's assessment of the penalty constitutes an abuse

of discretion, and the court shall not impose additional civil penalties unless the Administrator's assessment of the penalty constitutes an abuse of discretion. In any proceedings, the United States may seek to recover civil penalties assessed under this section.

(6) Collection

If any person fails to pay an assessment of a civil penalty imposed by the Administrator as provided in this subsection—

(A) after the order making the assessment has become final, or

(B) after a court in an action brought under paragraph (5) has entered a final judgment in favor of the Administrator,

the Administrator shall request the Attorney General to bring a civil action in an appropriate district court to recover the amount assessed (plus interest at rates established pursuant to section 6621(a)(2) of title 26 from the date of the final order or the date of the final judgment, as the case may be). In such an action, the validity, amount, and appropriateness of the penalty shall not be subject to review. Any person who fails to pay on a timely basis the amount of an assessment of a civil penalty as described in the first sentence of this paragraph shall be required to pay, in addition to that amount and interest, the United States' enforcement expenses, including attorneys fees and costs for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. The nonpayment penalty shall be in an amount equal to 10 percent of the aggregate amount of that person's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

42 U.S.C. §7525. Motor vehicle and motor vehicle engine compliance testing and certification

(a) Testing and issuance of certificate of conformity

(1) The Administrator shall test, or require to be tested in such manner as he deems appropriate, any new motor vehicle or new motor vehicle engine submitted by a manufacturer to determine whether such vehicle or engine conforms with the regulations prescribed under section 7521 of this title. If such vehicle or engine conforms to such regulations, the Administrator shall issue a certificate of conformity upon such terms, and for such period (not in excess of one year), as he may prescribe. In the case of any original equipment

manufacturer (as defined by the Administrator in regulations promulgated before November 15, 1990) of vehicles or vehicle engines whose projected sales in the United States for any model year (as determined by the Administrator) will not exceed 300, the Administrator shall not require, for purposes of determining compliance with regulations under section 7521 of this title for the useful life of the vehicle or engine, operation of any vehicle or engine manufactured during such model year for more than 5,000 miles or 160 hours, respectively, unless the Administrator, by regulation, prescribes otherwise. The Administrator shall apply any adjustment factors that the Administrator deems appropriate to assure that each vehicle or engine will comply during its useful life (as determined under section 7521(d) of this title) with the regulations prescribed under section 7521 of this title.

(2) The Administrator shall test any emission control system incorporated in a motor vehicle or motor vehicle engine submitted to him by any person, in order to determine whether such system enables such vehicle or engine to conform to the standards required to be prescribed under section 7521(b) of this title. If the Administrator finds on the basis of such tests that such vehicle or engine conforms to such standards, the Administrator shall issue a verification of compliance with emission standards for such system when incorporated in vehicles of a class of which the tested vehicle is representative. He shall inform manufacturers and the National Academy of Sciences, and make available to the public, the results of such tests. Tests under this paragraph shall be conducted under such terms and conditions (including requirements for preliminary testing by qualified independent laboratories) as the Administrator may prescribe by regulations.

(3)(A) A certificate of conformity may be issued under this section only if the Administrator determines that the manufacturer (or in the case of a vehicle or engine for import, any person) has established to the satisfaction of the Administrator that any emission control device, system, or element of design installed on, or incorporated in, such vehicle or engine conforms to applicable requirements of section 7521(a)(4) of this title.

(B) The Administrator may conduct such tests and may require the manufacturer (or any such person) to conduct such tests and provide such information as is necessary to carry out subparagraph (A) of this paragraph. Such requirements shall include a requirement for prompt reporting of the emission of any unregulated pollutant from a system, device, or element of design if such pollutant was not emitted, or was

emitted in significantly lesser amounts, from the vehicle or engine without use of the system, device, or element of design.

(4)(A) Not later than 12 months after November 15, 1990, the Administrator shall revise the regulations promulgated under this subsection to add test procedures capable of determining whether model year 1994 and later model year light-duty vehicles and light-duty trucks, when properly maintained and used, will pass the inspection methods and procedures established under section 7541(b) of this title for that model year, under conditions reasonably likely to be encountered in the conduct of inspection and maintenance programs, but which those programs cannot reasonably influence or control. The conditions shall include fuel characteristics, ambient temperature, and short (30 minutes or less) waiting periods before tests are conducted. The Administrator shall not grant a certificate of conformity under this subsection for any 1994 or later model year vehicle or engine that the Administrator concludes cannot pass the test procedure established under this paragraph.

(B) From time to time, the Administrator may revise the regulations promulgated under subparagraph (A), as the Administrator deems appropriate.

(5)(A) A motor vehicle engine (including all engine emission controls) may be installed in an exempted specially produced motor vehicle if the motor vehicle engine is from a motor vehicle that is covered by a certificate of conformity issued by the Administrator for the model year in which the exempted specially produced motor vehicle is produced, or the motor vehicle engine is covered by an Executive order subject to regulations promulgated by the California Air Resources Board for the model year in which the exempted specially produced motor vehicle is produced, and—

(i) the manufacturer of the engine supplies written instructions to the Administrator and the manufacturer of the exempted specially produced motor vehicle explaining how to install the engine and maintain functionality of the engine's emission control system and the on-board diagnostic system (commonly known as "OBD"), except with respect to evaporative emissions;

(ii) the manufacturer of the exempted specially produced motor vehicle installs the engine in accordance with such instructions and certifies such installation in accordance with subparagraph (E);

(iii) the installation instructions include emission control warranty information from the engine manufacturer in compliance with section 7541 of this title, including where warranty repairs can be made, emission control labels to be affixed to the vehicle, and the certificate of conformity number for the applicable vehicle in which the engine was originally intended or the applicable Executive order number for the engine; and

(iv) the manufacturer of the exempted specially produced motor vehicle does not produce more than 325 such vehicles in the calendar year in which the vehicle is produced.

(B) A motor vehicle containing an engine compliant with the requirements of subparagraph (A) shall be treated as meeting the requirements of section 7521 of this title applicable to new vehicles produced or imported in the model year in which the exempted specially produced motor vehicle is produced or imported.

(C) Engine installations that are not performed in accordance with installation instructions provided by the manufacturer and alterations to the engine not in accordance with the installation instructions shall—

(i) be treated as prohibited acts by the installer under section 7522 of this title and any applicable regulations; and

(ii) subject to civil penalties under section 7524(a) of this title, civil actions under section 7524(b) of this title, and administrative assessment of penalties under section 7524(c) of this title.

(D) The manufacturer of an exempted specially produced motor vehicle that has an engine compliant with the requirements of subparagraph (A) shall provide to the purchaser of such vehicle all information received by the manufacturer from the engine manufacturer, including information regarding emissions warranties

from the engine manufacturer and all emissions-related recalls by the engine manufacturer.

(E) To qualify to install an engine under this paragraph, and sell, offer for sale, introduce into commerce, deliver for introduction into commerce or import an exempted specially produced motor vehicle, a manufacturer of exempted specially produced motor vehicles shall register with the Administrator at such time and in such manner as the Administrator determines appropriate. The manufacturer shall submit an annual report to the Administrator that includes—

(i) a description of the exempted specially produced motor vehicles and engines installed in such vehicles;

(ii) the certificate of conformity number issued to the motor vehicle in which the engine was originally intended or the applicable Executive order number for the engine; and

(iii) a certification that it produced all exempted specially produced motor vehicles according to the written instructions from the engine manufacturer, and otherwise that the engine conforms in all material respects to the description in the application for the applicable certificate of conformity or Executive order.

(F) Exempted specially produced motor vehicles compliant with this paragraph shall be exempted from—

(i) motor vehicle certification testing under this section; and

(ii) vehicle emission control inspection and maintenance programs required under section 7410 of this title.

(G)(i) Except as provided in subparagraphs (A) through (F), a person engaged in the manufacturing or assembling of exempted specially produced motor vehicles shall be considered a manufacturer for purposes of this chapter.

(ii) Nothing in this paragraph shall be construed to exempt any person from the prohibitions in section 7522(a)(3) of this title or the requirements in sections 7542, 7525(c), or 7521(m)(5) of this title.

(H) In this paragraph:

(i) The term “exempted specially produced motor vehicle” means a light-duty vehicle or light-duty truck produced by a low-volume manufacturer and that—

(I) is intended to resemble the body of another motor vehicle that was manufactured not less than 25 years before the manufacture of the exempted specially produced motor vehicle; and

(II) is manufactured under a license for the product configuration, trade dress, trademark, or patent, for the motor vehicle that is intended to be replicated from the original manufacturer, its successors or assignees, or current owner of such product configuration, trade dress, trademark, or patent rights.

(ii) The term “low-volume manufacturer” means a motor vehicle manufacturer, other than a person who is registered as an importer under section 30141 of title 49, whose annual worldwide production, including by a parent or subsidiary of the manufacturer, if applicable, is not more than 5,000 motor vehicles.

(b) Testing procedures; hearing; judicial review; additional evidence

(1) In order to determine whether new motor vehicles or new motor vehicle engines being manufactured by a manufacturer do in fact conform with the regulations with respect to which the certificate of conformity was issued, the Administrator is authorized to test such vehicles or engines. Such tests may be conducted by the Administrator directly or, in accordance with conditions specified by the Administrator, by the manufacturer.

(2)(A)(i) If, based on tests conducted under paragraph (1) on a sample of new vehicles or engines covered by a certificate of conformity, the Administrator determines that all or part of the vehicles or engines so covered do not conform with the regulations with respect to which the certificate of conformity was issued and with the requirements of section 7521(a)(4) of this title, he may suspend or revoke such certificate in whole or in part, and shall so notify the manufacturer. Such suspension or revocation shall

apply in the case of any new motor vehicles or new motor vehicle engines manufactured after the date of such notification (or manufactured before such date if still in the hands of the manufacturer), and shall apply until such time as the Administrator finds that vehicles and engines manufactured by the manufacturer do conform to such regulations and requirements. If, during any period of suspension or revocation, the Administrator finds that a vehicle or engine actually conforms to such regulations and requirements, he shall issue a certificate of conformity applicable to such vehicle or engine.

(ii) If, based on tests conducted under paragraph (1) on any new vehicle or engine, the Administrator determines that such vehicle or engine does not conform with such regulations and requirements, he may suspend or revoke such certificate insofar as it applies to such vehicle or engine until such time as he finds such vehicle or engine actually so conforms with such regulations and requirements, and he shall so notify the manufacturer.

(B)(i) At the request of any manufacturer the Administrator shall grant such manufacturer a hearing as to whether the tests have been properly conducted or any sampling methods have been properly applied, and make a determination on the record with respect to any suspension or revocation under subparagraph (A); but suspension or revocation under subparagraph (A) shall not be stayed by reason of such hearing.

(ii) In any case of actual controversy as to the validity of any determination under clause (i), the manufacturer may at any time prior to the 60th day after such determination is made file a petition with the United States court of appeals for the circuit wherein such manufacturer resides or has his principal place of business for a judicial review of such determination. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Administrator or other officer designated by him for that purpose. The Administrator thereupon shall file in the court the record of the proceedings on which the Administrator based his determination, as provided in section 2112 of title 28.

(iii) If the petitioner applies to the court for leave to adduce

additional evidence, and shows to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Administrator, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Administrator, in such manner and upon such terms and conditions as the court may deem proper. The Administrator may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken and he shall file such modified or new findings, and his recommendation, if any, for the modification or setting aside of his original determination, with the return of such additional evidence.

(iv) Upon the filing of the petition referred to in clause (ii), the court shall have jurisdiction to review the order in accordance with chapter 7 of title 5 and to grant appropriate relief as provided in such chapter.

* * *

42 U.S.C. §7541. Compliance by vehicles and engines in actual use

(a) Warranty; certification; payment of replacement costs of parts, devices, or components designed for emission control

(1) Effective with respect to vehicles and engines manufactured in model years beginning more than 60 days after December 31, 1970, the manufacturer of each new motor vehicle and new motor vehicle engine shall warrant to the ultimate purchaser and each subsequent purchaser that such vehicle or engine is (A) designed, built, and equipped so as to conform at the time of sale with applicable regulations under section 7521 of this title, and (B) free from defects in materials and workmanship which cause such vehicle or engine to fail to conform with applicable regulations for its useful life (as determined under section 7521(d) of this title). In the case of vehicles and engines manufactured in the model year 1995 and thereafter such warranty shall require that the vehicle or engine is free from any such defects for the warranty period provided under subsection (i).

(2) In the case of a motor vehicle part or motor vehicle engine part, the manufacturer or rebuilder of such part may certify that use of such part will not result in a failure of the vehicle or engine to comply with emission

standards promulgated under section 7521 of this title. Such certification shall be made only under such regulations as may be promulgated by the Administrator to carry out the purposes of subsection (b). The Administrator shall promulgate such regulations no later than two years following August 7, 1977.

(3) The cost of any part, device, or component of any light-duty vehicle that is designed for emission control and which in the instructions issued pursuant to subsection (c)(3) of this section is scheduled for replacement during the useful life of the vehicle in order to maintain compliance with regulations under section 7521 of this title, the failure of which shall not interfere with the normal performance of the vehicle, and the expected retail price of which, including installation costs, is greater than 2 percent of the suggested retail price of such vehicle, shall be borne or reimbursed at the time of replacement by the vehicle manufacturer and such replacement shall be provided without cost to the ultimate purchaser, subsequent purchaser, or dealer. The term “designed for emission control” as used in the preceding sentence means a catalytic converter, thermal reactor, or other component installed on or in a vehicle for the sole or primary purpose of reducing vehicle emissions (not including those vehicle components which were in general use prior to model year 1968 and the primary function of which is not related to emission control).

* * *

(c) Nonconforming vehicles; plan for remedying nonconformity; instructions for maintenance and use; label or tag

Effective with respect to vehicles and engines manufactured during model years beginning more than 60 days after December 31, 1970—

(1) If the Administrator determines that a substantial number of any class or category of vehicles or engines, although properly maintained and used, do not conform to the regulations prescribed under section 7521 of this title, when in actual use throughout their useful life (as determined under section 7521(d) of this title), he shall immediately notify the manufacturer thereof of such nonconformity, and he shall require the manufacturer to submit a plan for remedying the nonconformity of the vehicles or engines with respect to which such notification is given. The plan shall provide that the nonconformity of any such vehicles or engines which are properly used and maintained will be remedied at the expense of the manufacturer. If the

manufacturer disagrees with such determination of nonconformity and so advises the Administrator, the Administrator shall afford the manufacturer and other interested persons an opportunity to present their views and evidence in support thereof at a public hearing. Unless, as a result of such hearing the Administrator withdraws such determination of nonconformity, he shall, within 60 days after the completion of such hearing, order the manufacturer to provide prompt notification of such nonconformity in accordance with paragraph (2).

(2) Any notification required by paragraph (1) with respect to any class or category of vehicles or engines shall be given to dealers, ultimate purchasers, and subsequent purchasers (if known) in such manner and containing such information as the Administrator may by regulations require.

(3)(A) The manufacturer shall furnish with each new motor vehicle or motor vehicle engine written instructions for the proper maintenance and use of the vehicle or engine by the ultimate purchaser and such instructions shall correspond to regulations which the Administrator shall promulgate. The manufacturer shall provide in boldface type on the first page of the written maintenance instructions notice that maintenance, replacement, or repair of the emission control devices and systems may be performed by any automotive repair establishment or individual using any automotive part which has been certified as provided in subsection (a)(2).

(B) The instruction under subparagraph (A) of this paragraph shall not include any condition on the ultimate purchaser's using, in connection with such vehicle or engine, any component or service (other than a component or service provided without charge under the terms of the purchase agreement) which is identified by brand, trade, or corporate name; or directly or indirectly distinguishing between service performed by the franchised dealers of such manufacturer or any other service establishments with which such manufacturer has a commercial relationship, and service performed by independent automotive repair facilities with which such manufacturer has no commercial relationship; except that the prohibition of this subsection may be waived by the Administrator if—

(i) the manufacturer satisfies the Administrator that the vehicle or engine will function properly only if the component or

service so identified is used in connection with such vehicle or engine, and

(ii) the Administrator finds that such a waiver is in the public interest.

(C) In addition, the manufacturer shall indicate by means of a label or tag permanently affixed to such vehicle or engine that such vehicle or engine is covered by a certificate of conformity issued for the purpose of assuring achievement of emissions standards prescribed under section 7521 of this title. Such label or tag shall contain such other information relating to control of motor vehicle emissions as the Administrator shall prescribe by regulation.

(4) Intermediate in-use standards.—

(A) Model years 1994 and 1995.—For light-duty trucks of up to 6,000 lbs. gross vehicle weight rating (GVWR) and light-duty vehicles which are subject to standards under table G of section 7521(g)(1) of this title in model years 1994 and 1995 (40 percent of the manufacturer's sales volume in model year 1994 and 80 percent in model year 1995), the standards applicable to NMHC, CO, and NO_x for purposes of this subsection shall be those set forth in table A below in lieu of the standards for such air pollutants otherwise applicable under this subchapter.

Table A—Intermediate In-Use Standards LDTS up to 6,000 lbs. GVWR and Light-Duty Vehicles

Vehicle type	NMHC	CO	NO _x
Light-duty vehicles	0.32	3.4	0.4*
LDT's (0–3,750 LVW)	0.32	5.2	0.4*
LDT's (3,751–5,750 LVW)	0.41	6.7	0.7*

*Not applicable to diesel-fueled vehicles.

(B) Model years 1996 and thereafter.—

(i) In the model years 1996 and 1997, light-duty trucks (LDTs) up to 6,000 lbs. gross vehicle weight rating (GVWR) and light-duty vehicles which are not subject to final in-use standards under paragraph (5) (60 percent of the manufacturer's sales volume in model year 1996 and 20 percent in model year 1997) shall be subject to the standards set forth in table A of subparagraph (A) for NMHC, CO, and NO_x for purposes of this subsection in lieu of those set forth in paragraph (5).

(ii) For LDTs of more than 6,000 lbs. GVWR—

(I) in model year 1996 which are subject to the standards set forth in Table H of section 7521(h) of this title (50%);

(II) in model year 1997 (100%); and

(III) in model year 1998 which are not subject to final in-use standards under paragraph (5) (50%);

the standards for NMHC, CO, and NO_x for purposes of this subsection shall be those set forth in Table B below in lieu of the standards for such air pollutants otherwise applicable under this subchapter.

Table B—Intermediate In-Use Standards LDTs More Than 6,000 Lbs. GVWR

Vehicle type	NMHC	CO	NO _x
LDTs (3,751–5,750 lbs. TW)	0.40	5.5	0.88*
LDTs (over 5,750 lbs. TW)	0.49	6.2	1.38*

*Not applicable to diesel-fueled vehicles.

(C) Useful life.—In the case of the in-use standards applicable under this paragraph, for purposes of applying this subsection, the applicable useful life shall be 5 years or 50,000 miles or the equivalent (whichever first occurs).

(5) Final in-use standards.—

(A) After the model year 1995, for purposes of applying this subsection, in the case of the percentage specified in the implementation schedule below of each manufacturer's sales volume of light-duty trucks of up to 6,000 lbs. gross vehicle weight rating (GVWR) and light duty¹ vehicles, the standards for NMHC, CO, and NO_x shall be as provided in Table G in section 7521(g) of this title, except that in applying the standards set forth in Table G for purposes of determining compliance with this subsection, the applicable useful life shall be (i) 5 years or 50,000 miles (or the equivalent) whichever first occurs in the case of standards applicable for purposes of certification at 50,000 miles; and (ii) 10 years or 100,000 miles (or the equivalent), whichever first occurs in the case of standards applicable for purposes of certification at 100,000 miles, except that no testing shall be done beyond 7 years or 75,000 miles, or the equivalent whichever first occurs.

LDTs up to 6,000 Lbs. GVWR and Light-Duty Vehicle Schedule for Implementation of Final In-Use Standards

Model year	Percent
1996	40
1997	80
1998	100

(B) After the model year 1997, for purposes of applying this subsection, in the case of the percentage specified in the implementation schedule below of each manufacturer's sales volume of light-duty trucks of more than 6,000 lbs. gross vehicle weight rating (GVWR), the standards for NMHC, CO, and NO_x shall be as provided in Table H in section 7521(h) of this title, except that in applying the standards set forth in Table H for purposes of determining compliance with this subsection, the applicable useful life shall be (i) 5 years or

¹ So in original. Probably should be "light-duty".

50,000 miles (or the equivalent) whichever first occurs in the case of standards applicable for purposes of certification at 50,000 miles; and (ii) 11 years or 120,000 miles (or the equivalent), whichever first occurs in the case of standards applicable for purposes of certification at 120,000 miles, except that no testing shall be done beyond 7 years or 90,000 miles (or the equivalent) whichever first occurs.

LDTs of More Than 6,000 Lbs. GVWR Implementation Schedule for

Implementation of Final In-Use Standards

Model year	Percent
1998	50
1999	100

(6) Diesel vehicles; in-use useful life and testing.—

(A) In the case of diesel-fueled light-duty trucks up to 6,000 lbs. GVWR and light-duty vehicles, the useful life for purposes of determining in-use compliance with the standards under section 7521(g) of this title for NO_x shall be a period of 10 years or 100,000 miles (or the equivalent), whichever first occurs, in the case of standards applicable for purposes of certification at 100,000 miles, except that testing shall not be done for a period beyond 7 years or 75,000 miles (or the equivalent) whichever first occurs.

(B) In the case of diesel-fueled light-duty trucks of 6,000 lbs. GVWR or more, the useful life for purposes of determining in-use compliance with the standards under section 7521(h) of this title for NO_x shall be a period of 11 years or 120,000 miles (or the equivalent), whichever first occurs, in the case of standards applicable for purposes of certification at 120,000 miles, except that testing shall not be done for a period beyond 7 years or 90,000 miles (or the equivalent) whichever first occurs.

* * *

(h) Dealer certification

(1) If at any time during the period for which the warranty applies under subsection (b), a motor vehicle fails to conform to the applicable regulations under section 7521 of this title as determined under subsection (b) of this section such nonconformity shall be remedied by the manufacturer at the cost of the manufacturer pursuant to such warranty as provided in subsection (b)(2) (without regard to subparagraph (C) thereof).

(2) Nothing in section 7543(a) of this title shall be construed to prohibit a State from testing, or requiring testing of, a motor vehicle after the date of sale of such vehicle to the ultimate purchaser (except that no new motor vehicle manufacturer or dealer may be required to conduct testing under this paragraph).

49 U.S.C. §32902. Average fuel economy standards

(a) Prescription of Standards by Regulation.—At least 18 months before the beginning of each model year, the Secretary of Transportation shall prescribe by regulation average fuel economy standards for automobiles manufactured by a manufacturer in that model year. Each standard shall be the maximum feasible average fuel economy level that the Secretary decides the manufacturers can achieve in that model year.

* * *

(h) Limitations.—In carrying out subsections (c), (f), and (g) of this section, the Secretary of Transportation—

(1) may not consider the fuel economy of dedicated automobiles;

(2) shall consider dual fueled automobiles to be operated only on gasoline or diesel fuel; and

(3) may not consider, when prescribing a fuel economy standard, the trading, transferring, or availability of credits under section 32903.

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

STATE OF NEBRASKA, et al.,

Petitioners,

v.

ENVIRONMENTAL PROTECTION
AGENCY, et al.,

Respondents.

No. 24-1129

and consolidated cases

**DECLARATION OF DUSTIN MEYER ON BEHALF OF THE AMERICAN
PETROLEUM INSTITUTE**

I, Dustin Meyer, declare under penalty of perjury that I am over 18 years of age and that the following is true and correct, to the best of my knowledge:

1. I am the Senior Vice President of Policy, Economics and Regulatory Affairs for the American Petroleum Institute (“API”).

2. API is a national trade association that represents all segments of America’s oil and natural gas industry, which supports more than 11 million jobs in the United States. API’s nearly 600 members produce, process, and distribute most of the Nation’s energy. API represents companies throughout the entire supply chain of the oil and natural gas industry, including companies that explore and produce crude oil and natural gas; own and operate refineries, pipelines, terminals, ships, barges, and railways that move crude and finished products; supply branded and

unbranded gasoline and diesel fuel; own the brands used to sell retail gasoline and diesel; and own and operate retail fuel stations. As of 2017, API members supplied 51% of all gasoline and 31% of all diesel sold in the United States.

3. As part of my work for API and its members, I am responsible for executive-level management of policies relating to the exploration, production, and movement of crude oil and natural gas, and the refining, movement, and sale of finished products including gasoline, diesel, renewable diesel, natural gas, biodiesel, and renewable natural gas. I am also responsible for analyzing and understanding the impacts of regulatory changes on the industry. I have extensive experience analyzing the oil and gas markets and the impact of regulatory changes on those markets.

4. EPA recently promulgated a rule establishing new or revised heavy-duty vehicle greenhouse-gas emission standards for model years (“MYs”) 2027 through 2032 and beyond. *See* Greenhouse Gas Emissions Standards for Heavy-Duty Vehicles—Phase 3, 89 Fed. Reg. 29,440 (Apr. 22, 2024).

5. Those new standards require manufacturers to produce vehicle fleets for sale in the United States that will use considerably less liquid fuel on average than their existing vehicle fleets. EPA’s new standards significantly limit the average amount of carbon dioxide that manufacturers’ heavy-duty fleets may emit through liquid fuel use (though not indirectly through electricity use). *See, e.g.*, 89 Fed. Reg.

at 29,443 (explaining that the rule “finalizes certain revised [heavy-duty] vehicle carbon dioxide (CO₂) standards for MY 2027 and certain new [heavy-duty] vehicle CO₂ standards for MYs 2028, 2029, 2030, 2031, and 2032 that will achieve significant [greenhouse gas] reductions for these and later model years”). Because “[t]he amount of [tailpipe] CO₂ emissions is essentially constant per gallon combusted of a given type of fuel,” 75 Fed. Reg 25,324, 25,327 (May 7, 2010), “any rule that limits tailpipe [CO₂] emissions is effectively identical to a rule that limits fuel consumption,” *Delta Const. Co. v. EPA*, 783 F.3d 1291, 1294 (D.C. Cir. 2015); *see also* 89 Fed. Reg. at 29,708 (projecting that “the final standards will reduce ... liquid fuel consumption (*i.e.*, oil consumption)”); *id.* at 29,735 (recognizing that the new standards “will reduce CO₂ emissions from heavy-duty vehicles ... which will result in significant reductions in the consumption of petroleum”). This makes the rule not technology-neutral in addressing heavy-duty vehicles’ emission profile.

6. To meet the new standards, heavy-duty vehicle manufacturers will have to dramatically increase the proportion of their fleets made up of electric vehicles, including battery-electric vehicles, fuel-cell electric vehicles, and plug-in hybrid electric vehicles, all of which are specifically designed to use significantly less or no liquid fuel at all, but which still have an emissions profile. Although EPA claims its rule is technology-neutral, there is no practical means to comply with the rule other than to significantly increase the manufacturing and sale of electric vehicles, while

ignoring the emissions profile of these vehicles. *See, e.g.*, 89 Fed. Reg. at 29,455 (recognizing that under EPA’s “modeled potential compliance pathway,” the standards “will lead to an increase” in heavy-duty battery-electric and fuel-cell electric vehicles); *see also id.* at 29,567-68 (projecting growth in market share of battery-electric and fuel-cell electric heavy-duty vehicles to 45% by MY 2032 under the standards, as opposed to 20% without the standards).

7. API and its members are committed to accelerating safety and environmental progress across their operations while meeting the global demand for affordable, reliable, and cleaner energy. Meeting those goals requires safe and responsible production, transportation, refining and exports managed by a skilled and diverse workforce, and continuous improvement in performance through diverse, new technologies and approaches informed by sound science and data.

8. API’s members are invested in new technologies that reduce greenhouse gas emissions but that will be impeded by EPA’s undue emphasis on electrification in its new standards that will manipulate and depress markets in a way that will make reducing emissions more expensive than a market-based, technology-neutral approach. Those emission reduction projects include: 1) stand-alone production and co-processing of bio-feedstocks to make renewable fuels; 2) manufacturing of low-carbon ethanol; 3) manufacturing of renewable natural gas from wastewater, landfill gas, and bio-digesters at farms as fuel for compressed

natural gas vehicles; 4) direct air carbon capture; and 5) carbon capture and sequestration of CO₂.

9. EPA's new standards also fail to appropriately consider the full lifecycle emissions of electric vehicles, including but not limited to emissions from power plants that generate the electricity used to charge battery-electric and plug-in hybrid electric vehicles, and emissions from the raw material extraction, transport, and processing of minerals needed to manufacture electric vehicle motors and batteries, the manufacturing of the vehicles themselves, and the disposal of batteries, fuel cells, and related components from electric vehicles. API and its members support a lifecycle approach to carbon accounting that facilitates informed decision-making throughout the value chain instead of focusing only on emissions from vehicles using liquid fuels. Carbon data that are consistent, reliable and transparent across sectors, products, and firms of all sizes can be used to understand the carbon intensity associated with a good or service at each stage of the lifecycle, from production to manufacturing to transport to disposal. That is especially important when comparing, for example, emissions from internal-combustion-engine vehicles and electric vehicles.

10. By EPA's own admission, its new standards will significantly and artificially depress market demand for oil in the United States. *See, e.g.*, 89 Fed. Reg. at 29,735 (recognizing that the new standards "will result in significant

reductions in the consumption of petroleum”). Indeed, according to EPA’s own projections, the new standards “will result in a reduction of 135 billion gallons of diesel and gasoline consumption” through 2055. *Id.*

11. That market manipulation resulting in a reduction in sales of liquid fuel will cause API members financial injury and result in a decrease in the manufacture and sale of internal combustion engine vehicles that will reduce consumer choice without addressing the lifecycle greenhouse-gas emissions of all vehicle types. The capital investments and revenues of API members like Chevron Corporation (“Chevron”), Exxon Mobil Corporation (“ExxonMobil”), Marathon Petroleum Corporation (“Marathon”), and others depend in part on the market demand for liquid fuel and related products and services. By artificially reducing market demand for (and consumer spending on) liquid fuel, EPA’s new standards will cause API members like Chevron, ExxonMobil, Marathon, and others direct financial injury by depriving them of revenues that they would otherwise have obtained in meeting consumers’ demand for their products, and will further deprive consumers of products that EPA predicts they would prefer if given the choice.

12. EPA’s new rule will decrease market demand not only for petroleum gasoline and diesel, but also for renewable fuels, undermining the objectives of programs like the federal Renewable Fuel Standard directed at promoting the increased use of renewable fuels. By reducing market demand for renewable fuels,

the standards will cause additional adverse impacts on API members, like Chevron, Marathon, Phillips 66 Company, and others by reducing their sales of renewable fuels and revenue from those sales.

13. Those injuries will be redressed by a favorable decision from this Court, as market demand for liquid fuel (and thus for API members' products and services) will be higher if EPA's new standards are invalidated, eliminating or at least reducing the financial injury that the standards would otherwise cause to API members. Indeed, EPA's own projections confirm that the injury to API members is redressable if EPA's new standards are vacated, as they demonstrate that market demand for liquid fuel will be substantially higher without the standards, which are not technology neutral. *See, e.g.*, 89 Fed. Reg. at 29,735.

14. The new standards will also harm API members such as Chevron, Marathon, The Williams Companies ("Williams"), Halliburton Company ("Halliburton"), ASRC Energy Services ("ASRC Energy") and others, as purchasers of heavy-duty vehicles, by forcing them to purchase costly electric heavy-duty vehicles that they would not otherwise purchase and/or to pay more for internal-combustion-engine heavy-duty vehicles.

15. API members such as Marathon, Williams, Halliburton, ASRC Energy, and others use heavy-duty vehicles in their operations throughout the country. Electric heavy-duty vehicles, however, are often less well-suited for API members'

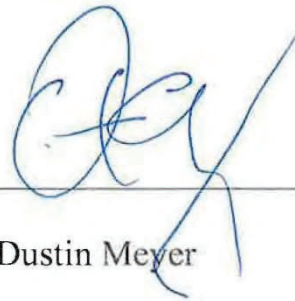
needs. For example, battery-electric semi-trucks weigh significantly more than internal-combustion-engine semi-trucks, meaning that API members that purchase them to transport fuel will not be able to transport as much fuel in each load due to weight restrictions. Battery-electric semi-trucks also require substantially more downtime to charge than internal-combustion-engine semi-trucks require to refuel, and this is intensified in cold climates where battery life is shorter and the cold requires dependable vehicles. As a result of these two factors (reduced hauling capacity and increased downtime to charge), API members that purchase battery-electric semi-trucks will need to use more trucks to attain their current level of deliveries, increasing operating costs. In addition, API members that purchase battery-electric semi-trucks will incur additional costs to install charging infrastructure at their facilities, as well as potential costs associated with safety measures to mitigate the risk associated with battery-electric vehicle battery fires. Absent EPA's rule, API could raise these concerns directly with manufacturers and advocate for more suitable vehicles. EPA's rule interferes with API's ability to advocate for the availability of suitable vehicles by effectively mandating a different mix and allowing manufacturers to insist that their hand is forced by EPA.

16. As manufacturers are forced to increase the share of electric heavy-duty vehicles in their fleets, API members will be forced to either purchase those electric heavy-duty vehicles (which will cost API members substantially more than their

diesel-fueled counterparts, as well as being less well-suited for API members' needs), or else purchase internal-combustion-engine heavy-duty vehicles at higher prices than the market would otherwise set (due to reduced supply and cross-subsidization of electric vehicles as a result of the standards). These injuries will likewise be redressed by a favorable decision from this Court, as vacating the standards will eliminate the artificial market distortion that the standards create and that causes higher prices for internal-combustion-engine heavy-duty vehicles.

Date: _____

10/8/24

A handwritten signature in blue ink, appearing to read "Dustin Meyer", written over a horizontal line.

Dustin Meyer

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

STATE OF NEBRASKA, et al.,

Petitioners,

v.

ENVIRONMENTAL PROTECTION AGENCY
AND MICHAEL S. REGAN, IN HIS OFFICIAL
CAPACITY AS ADMINISTRATOR OF THE
U.S. ENVIRONMENTAL PROTECTION
AGENCY,

Respondents,

ALLIANCE OF NURSES FOR HEALTHY EN-
VIRONMENTS, et al.,

Intervenors.

Case No. 24-1129
and consolidated
cases

DECLARATION OF SUSAN W. GRISSOM

I, Susan W. Grissom, declare under penalty of perjury that the following is true and correct, to the best of my knowledge:

1. I am the Chief Industry Analyst for American Fuel & Petrochemical Manufacturers (“AFPM”), responsible for analyzing market and economic impacts of regulatory and statutory changes on the refining and petrochemical manufacturing industries. I have extensive experience analyzing and directing the analysis of energy markets.

2. AFPM is a national trade association representing nearly all American refining and petrochemical companies. Our 25 refining company members own and operate about 88% of U.S. domestic petroleum refining capacity. Many of them also produce biofuels. These companies provide jobs, contribute to economic and national security, and enable the production of products used by families and businesses throughout the United States.

3. The refining industry supports nearly 3 million jobs in all 50 States, plus the District of Columbia. All told, the refining industry contributes \$688 billion to the United States economy. See <https://www.afpm.org/newsroom/blog/supporting-millions-jobs-and-contributing-billions-understanding-economic-impact-us>.

4. EPA recently promulgated a rule establishing new or revised heavy-duty highway vehicle (HDV) greenhouse-gas emission standards for model year (“MY”) 2027 and later. See 89 Fed. Reg. 29,440 (April 22, 2024). EPA’s rule requires Original Equipment Manufacturers (OEMs) to produce vehicle fleets for sale in the United States that, on average, use considerably less gasoline and diesel fuel than they otherwise would.

5. EPA's standards limit the amount of carbon dioxide that OEM fleets may emit. *See* 89 Fed. Reg. at 51236-37 (showing increased stringency in standards from MY 2027 to MY 2032 and beyond). And because the amount of tailpipe CO₂ emissions is "essentially constant per gallon for a given fuel type that is consumed," 76 Fed. Reg. 57,106, 57,110 (Sept. 15, 2011), "any rule that limits tailpipe CO₂ emissions is effectively identical to a rule that limits fuel consumption," *Delta Const. Co. v. EPA*, 783 F.3d 1291, 1294 (D.C. Cir. 2015). Indeed, EPA explains that this rule will cause "significant reductions in the consumption of petroleum." 89 Fed. Reg. at 29,735; *see also id.* at 29,470 ("EPA's past GHG vehicle rules ... also reduced demand for liquid fuels."). This is not technology neutral in addressing the emission profile of vehicles.

6. Further, the rule will cause OEMs to produce and sell more vehicles that use less or no liquid fuel than they otherwise would, reducing consumer choice without addressing the lifecycle greenhouse gas emissions of the different vehicles. EPA projects that as the standards become more stringent, the share of battery-powered electric vehicles and fuel-cell electric vehicles will rise from 11% of new heavy-duty vehicles in model year 2027 to 45% in model year 2032. 89 Fed. Reg. at 29,568. These

projections reflect EPA's modeling of a "compliance pathway" in which manufacturers "seek to minimize costs and maximize profits." *Id.* at 29,562.

7. EPA compared those projections for heavy-duty vehicles to projections under a "reference case," representing "the U.S. without the final rule," *i.e.*, carrying the Phase 2 rule forward indefinitely. *Id.* at 29,664; *see also* EPA, Greenhouse Gas Emissions Standards for Heavy-Duty Vehicles: Phase 3: Regulatory Impact Analysis (RIA) 567 (Mar. 2024) (reference case includes existing state and federal laws and regulations, including the State of California's Advanced Clean Trucks program, as adopted by California and seven other states). In the "reference case," the share of battery-powered electric vehicles and fuel-cell electric vehicles will be only 7% of new heavy-duty vehicles in model year 2027, rising to just 20% in model year 2032. 89 Fed. Reg. at 29,568. That 20% projection is far less than the 45% share projected under the rule.

8. EPA's rule depresses the demand for petroleum and renewable liquid fuels in the United States and thereby harms AFPM's member companies such as Cenovus Energy, Flint Hills Resources, HF Sinclair,

Hunt Refining, Marathon Petroleum, Par Pacific, PBF Energy, Placid Refining, and Valero Energy. A refining company's bottom line depends on the market's demand for transportation fuel. AFPM's members suffer economic injury, therefore, when EPA imposes emission standards that result in vehicles using less fuel per mile or force greater adoption of vehicles that do not operate on gasoline, diesel, or renewable liquid fuel at all.

9. These economic harms are not speculative. EPA itself estimated that its rule "will result in a reduction of 135 billion gallons of diesel and gasoline consumption" through 2055. 89 Fed. Reg. at 29,735; RIA 750.

10. The reduced demand for transportation fuels caused by EPA's rule results in lost sales for AFPM member companies and requires them to expend resources changing feedstock and product slates, diverting fuel to other markets, and remedying supply-chain distortions.

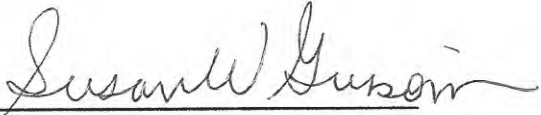
11. In 2020, for example, when demand for transportation fuels declined by 11.5% due to the COVID-19 pandemic, AFPM members suffered financial hardship. *See, e.g., Valero Energy, 2020 Fourth Quarter Earnings Release* (losses of \$1.4 billion in 2020).

12. Similar harms will flow from EPA's rule. Indeed, EPA projects that the reduced demand for transportation fuel caused by the rule will adversely affect U.S. refinery production, estimating that "the total decrease in refinery activity measured in gallons of gasoline and diesel refined is half of the estimated drop in domestic fuel demand," or reduced domestic production of 67.5 billion gallons. RIA 585.

13. EPA's new rule will decrease market demand not only for petroleum gasoline and diesel, but also for renewable liquid fuels, undermining the objectives of programs like the federal Renewable Fuel Standard directed at promoting the increased use of renewable liquid fuels. By reducing market demand for renewable liquid fuels, the standards will cause additional adverse impacts on AFPM members by reducing their sales of renewable liquid fuels and revenue from those sales.

14. For these reasons, EPA's rule financially injures AFPM's members that produce gasoline, diesel, and renewable liquid fuels for sale in the U.S., and a judicial decision setting the rule aside would redress those injuries by allowing OEMs to produce a fleet of vehicles that consume more liquid fuel.

Dated: Oct 15, 2024


Susan W. Grissom
Susan W. Grissom

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

STATE OF NEBRASKA, et al.,

Petitioners,

v.

ENVIRONMENTAL PROTECTION
AGENCY, et al.,

Respondents.

No. 24-1129

and consolidated cases

DECLARATION OF JOHN MARTINI

I, John Martini, declare under penalty of perjury that the following is true and correct, to the best of my knowledge:

1. I am the Manager of Corporate Policy for Chevron Corporation (“Chevron”), which is an energy company specializing in oil and gas and renewable fuels exploration, production, refining, distribution, and marketing. Chevron’s subsidiary, Chevron U.S.A. Inc., is a refiner of petroleum products in the United States. Chevron’s subsidiary, Renewable Energy Group, Inc., produces renewable transportation fuels, and it is in the process of developing innovative renewable fuel technologies. Chevron’s subsidiaries also market petroleum products and biofuels in the United States, including liquid transportation fuels.

2. As part of my work for Chevron, I am familiar with Chevron's analyses of the impacts on Chevron's subsidiaries and the transportation fuels market of various policies and market scenarios, including the effects of regulatory changes.

3. Chevron is a member of the American Petroleum Institute ("API"), and Chevron's subsidiary Chevron U.S.A. Inc. is a member of the American Fuel & Petrochemical Manufacturers ("AFPM").

4. EPA recently promulgated a rule establishing new heavy-duty vehicle emissions standards for model years 2027 through 2032 and beyond. *See* Greenhouse Gas Emissions Standards for Heavy-Duty Vehicles-Phase 3, 89 Fed. Reg. 29440 (Apr. 22, 2024) ("Standards"). EPA's new Standards directly affect Chevron subsidiaries' transportation fuel businesses and customers, as well as Chevron subsidiaries' purchases of heavy-duty vehicles.

5. As stated in Chevron's 2023 Climate Change Resilience Report,¹ Chevron believes that the future of energy is lower carbon. Chevron continues to take actions that attempt to help lower the carbon intensity of its operations while meeting the world's demand for energy. Chevron believes that many of the potential pathways to achieving the goals of the Paris Agreement include the continued use of oil and gas.

¹ Chevron, Advancing Energy Progress: 2023 Climate Change Resilience Report, <https://www.chevron.com/-/media/chevron/sustainability/documents/climate-change-resilience-report.pdf>.

6. Chevron also supports well-designed climate policy. As stated in Chevron's comment letter for the rulemaking on the Standards, it believes that broad, market-based, lifecycle standards are the most efficient approach to addressing greenhouse gas (GHG) emission reductions, and should include multiple technologies, like biofuels, hybrid technologies, and renewable natural gas. In the transportation sector, Chevron supports technology neutral policies that cost-effectively drive GHG emission reductions, rather than policies that artificially pick winners and losers among various technology options to detriment of consumers and effective climate policy.

7. EPA's Standards significantly limit the average amount of carbon dioxide that heavy-duty vehicle manufacturers' fleets may emit, and, as structured, the Standards necessarily require manufacturers to produce vehicle fleets for sale in the United States that will use considerably less liquid fuel on average than their existing vehicle fleets.

8. Specifically, the Standards will cause automakers to produce and sell more vehicles (than they otherwise would) that use no liquid fuel at all. EPA itself projects that as a result, the share of battery-powered electric vehicles, fuel-cell electric vehicles, and plug-in hybrids will rise from 11% of new heavy-duty vehicles in model year 2027 to 45% in model year 2032.² These projections are the result of

² 89 Fed. Reg. at 29568.

EPA’s “compliance pathway” modeling in which automakers “seek to minimize costs and maximize profits.”³

9. EPA compared those projections for heavy-duty vehicles to projections under a “reference case,” representing “the U.S. without the final rule” and instead carrying the Phase 2 rule forward indefinitely.⁴ In the “reference case,” the share of battery-powered electric vehicles, fuel-cell electric vehicles, and plug-in hybrids will be only 7% of new heavy-duty vehicles in model year 2027, rising to just 20% in model year 2032.⁵ That 20% projection is far less than the 45% share projected under the Standards.

10. EPA has further recognized that its Standards “will result in significant reductions in the consumption of petroleum.”⁶ Specifically, EPA projects that “through 2055 these standards will result in a reduction of 135 billion gallons of diesel and gasoline consumption.”⁷ By reducing demand for liquid transportation fuels, EPA’s Standards will have a direct financial impact on Chevron by artificially skewing the market and reducing the sales that Chevron, through its subsidiaries, would otherwise have made.

³ *Id.* at 29562

⁴ *Id.* at 29664; *see also* EPA, Greenhouse Gas Emissions Standards for Heavy-Duty Vehicles: Phase 3: Regulatory Impact Analysis (RIA) 567 (Mar. 2024) (reference case includes existing state and federal laws and regulations, including the State of California’s Advanced Clean Trucks program, as adopted by eight states).

⁵ 89 Fed. Reg. at 29568.

⁶ *Id.* at 29716.

⁷ *Id.* at 29735.

11. Chevron’s subsidiary Chevron U.S.A. Inc. operates five wholly owned refineries in the United States and has a total crude refining capacity in the United States of over one million barrels per day.⁸ As EPA explains, its new Standards will directly impact domestic refiners and “20 percent of the reduced domestic demand [for liquid fuel] will result in reduced domestic refining.”⁹

12. Chevron’s subsidiary Renewable Energy Group, Inc. (CREG) also provides liquid transportation fuels, including bio-based renewable diesel and biodiesel, and operates multiple active biorefineries in the United States. CREG is currently the largest producer of biomass-based diesel by volume in the United States — as well as a producer and supplier of many other products. Bio-based renewable diesel and biodiesel can generally be used in a wide range of diesel engines and are lower carbon intensity compared to petroleum diesel. Since EPA’s Standards will result in a reduction of 135 billion gallons of diesel and gasoline consumption and renewable fuels represent over 8% of the total diesel demand in the United States, EPA’s standards will reduce demand for these fuels as well.¹⁰

⁸ Chevron, *Delivering Higher Returns: 2023 Supplement to the Annual Report* 21, <https://www.chevron.com/-/media/shared-media/documents/2023-chevron-annual-report-supplement.pdf> (noting United States-Consolidated refinery capacities of 1,059,000 barrels per day at year-end 2023).

⁹ EPA, *Greenhouse Gas Emissions Standards for Heavy-Duty Vehicles: Phase 3: Regulatory Impact Analysis*, EPA-420-R-24-006, at 753 (March 2024).

¹⁰ See Chevron, *Comment Letter on Proposed Rule: Greenhouse Gas emissions Standards for Heavy-Duty Vehicles – Phase 3* (June 15, 2023), <https://www.regulations.gov/comment/EPA-HQ-OAR-2022-0985-1552>.

13. These harms will be redressed by a favorable decision from this Court, as the projected impacts on domestic marketing and refining of liquid fuels will not occur if the Standards are invalidated.¹¹

14. EPA's Standards also harm Chevron subsidiaries' efforts to develop creative and effective ways to meet the world's energy needs. By forcing the shift towards electric heavy-duty vehicles, EPA disincentivizes other lower-carbon technologies that could help achieve the policy goal of reduced GHG emissions. These include renewable natural gas made from dairy methane and the development of other novel catalysts to create renewable fuels, which could be used to lower the lifecycle carbon emissions of heavy-duty vehicles with internal combustion engines. Instead, EPA's new Standards disincentivize those innovations, which in Chevron's view, will be needed along with electric heavy-duty trucks to achieve the policy goal of reduced GHG emissions.

¹¹ *See, e.g.*, 89 Fed. Reg. at 29735 (estimating a reduction in gasoline consumption of “135 billion gallons of diesel and gasoline consumption” through 2055).

15. Chevron believes an approach that embraces all forms of technologies and solutions is critical to achieving climate and air quality policy goals with transportation options that are affordable and accessible to everyone. EPA's Standards are contrary to that approach and deeply flawed. Among other things, EPA's Standards fail to properly account for the true emissions of electric vehicles. As Chevron noted in its comment letter, a lifecycle approach to carbon accounting would have facilitated informed decision making throughout the value chain. Carbon data that is consistent, reliable, and transparent across sectors, products, and firms of all sizes can be used to understand the carbon performance associated with a good or service at each stage of the lifecycle, from production to manufacturing to transport.

16. Unfortunately, EPA declined to conduct this lifecycle emissions comparison, instead electing to force adoption of a single technology (electric vehicles) at a rate that would require wholesale transformation of electric energy generation and distribution infrastructure for heavy-duty vehicles on an unprecedented, abbreviated time scale. On the other hand, a market-based approach, allowing multiple technologies to compete, would allow battery-powered and lower-carbon intensity fueled vehicles to attempt to achieve GHG reduction targets in a potentially more cost-effective manner.

17. Additionally, the EPA Standards force a single technology that does not

appear to be feasible on EPA's timelines. For example, electric heavy-duty powertrains are not available in sufficient quantities or at affordable levels, nor do they function at the same level of operability as current heavy-duty vehicles, *i.e.* hauling capacity.¹² They are also more expensive.¹³ Moreover, charging infrastructure for electric heavy duty vehicles is woefully inadequate to meet the need imposed by the Standards.¹⁴

18. As a result, the EPA Standards will also harm Chevron, through its subsidiaries, as purchasers of heavy-duty vehicles by forcing them to purchase costly electric heavy-duty vehicles with powertrain limitations that they would not otherwise purchase, and/or to pay more for non-electric heavy-duty vehicles to the extent they remain available.¹⁵ This harm will be redressed by a favorable decision

¹² See, e.g., Chevron, Comment Letter on Proposed Rule: Greenhouse Gas emissions Standards for Heavy-Duty Vehicles – Phase 3 (June 15, 2023), <https://www.regulations.gov/comment/EPA-HQ-OAR-2022-0985-1552>.

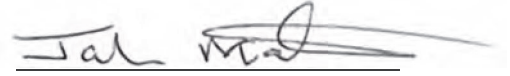
¹³ *Id.* (noting that a new Class 8 diesel truck tractor costs between \$135-150,000 and a new Class 8 battery electric vehicle can be as much as \$450,000).

¹⁴ See American Petroleum Institute, Comment Letter on Proposed Rule: Greenhouse Gas emissions Standards for Heavy-Duty Vehicles – Phase 3 (June 16, 2023), <https://www.regulations.gov/comment/EPA-HQ-OAR-2022-0985-1617>; see also, e.g., Charging Infrastructure Challenges for the U.S. Electric Vehicle Fleet, American Transportation Research Institute, December 2022.

¹⁵ American Petroleum Institute, Comment Letter on Proposed Rule: Greenhouse Gas emissions Standards for Heavy-Duty Vehicles – Phase 3 (June 16, 2023), <https://www.regulations.gov/comment/EPA-HQ-OAR-2022-0985-1617>; see also, e.g., EPA, *Proposed Determination on the Appropriateness of the Model Year 2022–25 Light-Duty Vehicle Greenhouse Gas Emissions Standards under the Midterm Evaluation*, at A-63, <https://19january2017snapshot.epa.gov/sites/production/files/2016-11/documents/420r16020.pdf> (“[I]f the only compliance path available to automakers involves more use of PEVs than markets would normally support (in the absence of government incentives), then . . . [a]utomakers may . . . cross-

from this Court, as these projected impacts on Chevron subsidiaries' purchases of heavy-duty vehicles will not occur if the Standards are invalidated.

Dated: 10/08/24



John Martini

subsidize sales as they have long been able to do to meet fleet average standards; in this case using higher prices on conventional vehicles to support lower prices on PEVs, to increase sales of PEVs relative to gasoline vehicles beyond levels that markets would support in the absence of the standards.”).

**UNITED STATES COURT OF APPEALS
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v.

ENVIRONMENTAL PROTECTION
AGENCY, et al.,

Respondents.

No. 24-1129

and consolidated cases

DECLARATION OF DAVID K. BARRETT

I, David K. Barrett, declare under penalty of perjury that I am over 18 years of age and that the following is true and correct, to the best of my knowledge:

1. I am the Americas Regional Fuels Manager of ExxonMobil Product Solutions Company, a division of Exxon Mobil Corporation (“ExxonMobil”). Divisions and affiliated companies of ExxonMobil operate or market products in the United States and many other countries of the world. Our principal business involves exploration for, and production of, crude oil and natural gas; manufacture, trade, transport and sale of crude oil, natural gas, petroleum products, petrochemicals, and a wide variety of specialty products; and pursuit of lower-emission business opportunities including carbon capture and storage, hydrogen, lower-emission fuels, and lithium. Affiliates of ExxonMobil conduct extensive research programs in support of these businesses.

2. ExxonMobil or one of its divisions or affiliated companies is a member of the American Fuel & Petrochemical Manufacturers, American Petroleum Institute, California Manufacturers & Technology Association, Consumers Energy Alliance, Louisiana Mid-Continent Oil & Gas Association, Texas Oil & Gas Association, The Petroleum Alliance of Oklahoma, and Western States Petroleum Association.

3. As part of my work for ExxonMobil, I am familiar with its analyses of the impacts of various policies and market scenarios on its divisions and affiliated companies, including regulatory changes, on the transportation fuels market.

4. ExxonMobil is pursuing more than \$20 billion in lower-emission investments from 2022 through 2027. These investments are aimed at reducing the Company's own greenhouse gas emissions and growing its Low Carbon Solutions business, which is focused on value-accretive opportunities in carbon capture and storage, hydrogen, biofuels, and lithium.

5. ExxonMobil believes the task of reducing greenhouse gas emissions across the transportation sector requires a range of solutions. The best policy approach for reducing transportation emissions is a federal low carbon fuel standard paired with well-to-wheel vehicle emissions standards. Such a policy would recognize and encourage emission reductions from production, processing and on-road use, regardless of whether a vehicle has a tailpipe. Moreover, it would

encourage a combination of electric vehicles (e.g., battery-electric vehicles, plug-in hybrid electric vehicles, fuel-cell electric vehicles) and efficient internal combustion engine vehicles that could operate with biofuels and renewable fuels. A technology-neutral policy approach such as this would foster innovation and competition across all technologies, encouraging more effective and lower cost solutions for consumers and businesses.

6. EPA recently promulgated a rule establishing new or revised heavy-duty vehicle greenhouse-gas emission standards for model years (“MYs”) 2027 through 2032 and beyond. *See* Greenhouse Gas Emissions Standards for Heavy-Duty Vehicles—Phase 3, 89 Fed. Reg. 29,440 (Apr. 22, 2024).

7. To meet the new standards, heavy-duty vehicle manufacturers will have to dramatically increase the proportion of their fleets made up of electric vehicles, including battery-electric vehicles, fuel-cell electric vehicles, and plug-in hybrid electric vehicles, all of which are specifically designed to use significantly less or no liquid fuel at all, but which still have an emissions profile. Although EPA claims its rule is technology-neutral, there is no practical means to comply with the rule other than to significantly increase the manufacturing and sale of electric vehicles, while ignoring the emissions profile of these vehicles. *See, e.g.*, 89 Fed. Reg. at 29,455 (recognizing that under EPA’s “modeled potential compliance pathway,” the standards “will lead to an increase” in heavy-duty battery-electric and fuel-cell

electric vehicles); *see also id.* at 29,567-68 (projecting growth in market share of battery-electric and fuel-cell electric heavy-duty vehicles to 45% by MY 2032 under the standards, as opposed to 20% without the standards).

8. EPA's new standards also fail to appropriately consider the full lifecycle emissions of electric vehicles, including but not limited to emissions from power plants that generate the electricity used to charge battery-electric and plug-in hybrid electric vehicles, and emissions from the raw material extraction, transport, and processing of minerals needed to manufacture electric vehicle motors and batteries, the manufacturing of the vehicles themselves, and the disposal of batteries, fuel cells, and related components from electric vehicles.

9. By EPA's own admission, its new standards will significantly and artificially depress market demand for oil in the United States. *See, e.g.*, 89 Fed. Reg. at 29,735 (recognizing that the new standards "will result in significant reductions in the consumption of petroleum"). Indeed, according to EPA's own projections, the new standards "will result in a reduction of 135 billion gallons of diesel and gasoline consumption" through 2055. *Id.*

10. That market manipulation resulting in a reduction in sales of liquid fuel will cause ExxonMobil financial injury and result in a decrease in the manufacture and sale of internal combustion engine vehicles that will reduce consumer choice without addressing the lifecycle greenhouse-gas emissions of all vehicle types.

ExxonMobil's capital investments and revenues depend in part on the market demand for liquid fuel and related products and services. By artificially reducing market demand for (and consumer spending on) liquid fuel, EPA's new standards will cause ExxonMobil direct financial injury by depriving it of revenues that it would otherwise have obtained in meeting consumers' demand for its products, and will further deprive consumers of products that EPA predicts they would prefer if given the choice.

11. Those injuries will be redressed by a favorable decision from this Court, as market demand for liquid fuel (and thus for ExxonMobil's products and services) will be higher if EPA's new standards are invalidated, eliminating or at least reducing the financial injury that the standards would otherwise cause to ExxonMobil. Indeed, EPA's own projections confirm that the injury to ExxonMobil is redressable if EPA's new standards are vacated, as they demonstrate that market demand for liquid fuel will be substantially higher without the standards, which are not technology neutral. *See, e.g.*, 89 Fed. Reg. at 29,735.

Date: _____

11 Oct 2004_____
David K. Barrett

ORAL ARGUMENT NOT YET SCHEDULED

**IN THE UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA CIRCUIT**

STATE OF NEBRASKA, et al.,

Petitioners,

v.

ENVIRONMENTAL PROTECTION
AGENCY, et al.,

Respondents.

Nos. 24-1129 (and consolidated
cases)

DECLARATION OF JESSICA JAWALKA

I, Jessica Jawalka, declare under penalty of perjury that the following is true and correct to the best of my knowledge:

1. I am a Manager of the Fuels Compliance division servicing the Valero family of companies, including Diamond Alternative Energy, LLC (“Diamond Alternative”). I am responsible for a wide range of compliance and business matters relating to Diamond Alternative’s production and sale of renewable fuels, such as renewable diesel. My responsibilities include analyzing impacts of regulatory and statutory changes on the liquid fuels production industry, including the impacts on renewable fuels.

2. I have extensive experience in ensuring the Valero family of companies’ compliance with the requirements of the federal Renewable Fuel Standard (“RFS”),

which requires so-called “obligated parties” to blend certain percentages of renewable fuels into transportation fuels or to purchase an equivalent number of “Renewable Identification Numbers” credits, or RINs, to meet an EPA-specified Renewable Volume Obligation. I am likewise familiar with the requirements of the RFS on renewable fuel producers, such as Diamond Green Diesel, a joint venture of Diamond Alternative, which is engaged in the program as a RIN generator.

3. In addition, I have extensive experience with California’s Low Carbon Fuel Standard (“LCFS”) program. The LCFS is designed to reduce greenhouse gas emissions by setting a carbon intensity (“CI”) benchmark for transportation fuels consumed in the State, which decreases over time. Under this program, each fuel is assigned a CI value based on a model produced by the California Air Resources Board (“CARB”). The CI value is intended to represent the greenhouse gas emissions associated with the feedstocks from which the fuel was produced, the fuel production and distribution activities, and the use of the finished fuel. Fuels below the benchmark generate LCFS credits, while fuels above the benchmark generate deficits. The lower the fuel’s CI score compared to the benchmark, the greater number of credits generated. Each producer or importer of fuel must demonstrate that the overall mix of fuels it supplies for use in California meets the CI benchmarks for each compliance period. A producer or importer with a fuel mix that is above the CI benchmark must purchase LCFS credits sufficient to meet the CI benchmark.

4. Diamond Alternative is a part owner of the Diamond Green Diesel renewable diesel production facilities in St. Charles Parish, Louisiana and Port Arthur, Texas. Between these two production facilities, Diamond Green Diesel currently produces approximately 1.2 billion gallons of renewable diesel per year, making it the largest renewable diesel producer in North America and the second-largest renewable diesel producer in the world. On average, Diamond Green Diesel sells approximately 65 percent of its total renewable diesel production domestically. Any harm to Diamond Green Diesel is also borne, at least in part, by Diamond Alternative as one of two owners of Diamond Green Diesel.

5. Renewable diesel is made from sustainable low-carbon feedstocks, such as used cooking oil, inedible animal fats derived from processing meat fats, soy bean oil, and inedible corn oil. Its chemical composition is nearly identical to that of petroleum-based diesel, making it a “drop-in” fuel that can be stored, distributed, and used interchangeably with petroleum-derived diesel, but its production results in up to 80 percent fewer greenhouse gas emissions for the finished fuel.

6. I am generally aware of the United States Environmental Protection Agency’s (“EPA’s”) issuance of a final rule titled, “Greenhouse Gas Emissions Standards for Heavy-Duty Vehicles—Phase 3,” 89 Fed. Reg. 29,440 (Apr. 22, 2024). It is my understanding that the rule sets carbon-dioxide emissions standards for heavy-duty tractors and vocational vehicles, which generally increase in

stringency from model years 2027 through 2032. *Id.* at 29,560–62, tbls. II-24, II-25, II-26, II-27. EPA expects that manufacturers will meet these standards by decreasing production of internal-combustion engine tractors and vocational vehicles that use liquid fuels like diesel and gasoline, while increasing production of tractors and vocational vehicles that use other fuels, like electricity, hydrogen, and natural gas. *Id.* at 29,452–53, tbls. ES-3, ES-4. As a result, according to EPA the rule will have significant impacts on liquid fuel consumption: EPA expects the rule “will result in a reduction of 135 billion gallons of diesel and gasoline consumption” through 2055. *Id.* at 29,735. Indeed, reducing liquid fuel consumption is a primary purpose of the rule. *See* EPA, Greenhouse Gas Emissions Standards for Heavy-Duty Vehicles: Phase 3: Regulatory Impact Analysis (“RIA”) at 750, EPA-HQ-OAR-2022-0985-3858 (“Reducing fuel consumption is a significant means of reducing GHG emissions from the transportation sector”).

7. According to EPA, the rule will result in a reduction of approximately 120 billion gallons of diesel fuel consumed through 2055. RIA at 750, tbl. 6-1. Because renewable diesel is a drop-in alternative to petroleum diesel and often blended with petroleum diesel fuels, the rule necessarily leads to a corresponding reduction in demand for the renewable diesel that Diamond Alternative produces.

8. EPA’s rule also impacts revenues Diamond Alternative obtains through its participation in the LCFS and RFS programs.

9. Renewable diesel fuels produced by Diamond Alternative have CI scores that are lower than traditional petroleum-based transportation fuels. Therefore, these fuels generate LCFS credits that have significant monetary value and are an important part of the business planning and economics for the renewable fuels facilities, as they generate hundreds of millions of dollars in revenue annually. Diamond Alternative relies on credit revenue to provide a return on investment, and decreased demand for renewable fuels in the United States would undermine these expectations. By way of example, the economics underlying the significant investment in Diamond Alternative's newest Port Arthur renewable diesel facility were driven, in large part, by the expectation of LCFS credit values.

10. Likewise, Diamond Alternative relies on revenue from RIN sales. As demand for liquid transportation fuels decreases domestically, so do the RIN revenues Diamond Alternative generates.

11. In theory, the impacts of such reduction in demand can be mitigated to some extent through exports to foreign markets, but such mitigation efforts come with increased costs and capacity limitations, as well as other market complications. As an initial matter, foreign markets are not currently positioned to take on the significant and sudden influx of product from the United States' renewable fuels industry, as a whole, that would be necessary to offset EPA's expected reduction in domestic liquid fuel demand resulting from its rule, which would result in non-

economical margins beyond a certain threshold. However, even if foreign markets could take on such increased product supply in its entirety, the movement of such product would nevertheless require companies to incur additional transportation costs and would also be limited by dock, vessel, rail, and permitting constraints. To the extent that capital investment might improve such constraints and allow for increased product movements, that would require significant expenditures by Diamond Alternative and third parties over whom it has no control, and would further depend on business analyses and forecasts to justify said investment. And the European Renewable Energy Directive requires that renewable fuels be produced from certified feedstocks under an approved, third-party certification scheme, over which Diamond Alternative has no control. This restriction, in turn, limits access to the European market for a majority of renewable fuels produced from U.S. feedstocks, including much of the renewable diesel produced by Diamond Green Diesel. Moreover, such sales would be ineligible for domestic credits under the RFS and LCFS programs, which as stated above are an integral part of the business planning and economics for Diamond Alternative's renewable fuels facilities.

12. Even EPA concluded that the possibility of increased exports would not fully compensate for the reduced domestic refining that results from the “drop in domestic fuel demand” caused by its rule. 89 Fed. Reg. at 29,455 n.76. EPA estimates that only 50 percent of the reduced domestic demand for liquid fuels will be


“offset by an increase in exports.” *Id.*; *see also* RIA at 802 (estimating that “for a given reduction in a volume of gasoline and diesel fuel demand, 50 percent of that reduced demand will be due to reduced production by U.S. refineries”).

13. In short, the subject rulemaking is projected by EPA to force a rapid reduction in the new heavy-duty tractor and vocational vehicle market share for internal-combustion engine vehicles powered by liquid fuels, and a corresponding reduction in domestic liquid fuel demand. Such a reduction in demand would negatively impact the business operations and profitability of Diamond Alternative as described herein.

14. These economic impacts are not speculative. Indeed, as stated above, EPA itself projects that “through 2055” the rule “will result in a reduction of 135 billion gallons of diesel and gasoline consumption,” 89 Fed. Reg. at 29,735, which includes a reduction of 120 billion gallons of diesel fuel consumption, RIA at 750, tbl. 6-1.

15. All of these injuries would be substantially ameliorated if EPA’s rule were set aside. As EPA’s analysis shows, without the rule, manufacturers would produce—and consumers would purchase—a greater share of liquid fuel-powered heavy-duty tractors and vocational vehicles, mitigating any reduction in liquid fuels demand. *See* 89 Fed. Reg. at 29,568, tbl. II-31, 29,666–67 & tbl. V-3, V-4.

Dated: October 14, 2024


Jessica Jawalka

NOT YET SCHEDULED FOR ORAL ARGUMENT

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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)	
STATE OF NEBRASKA, <i>et al.</i> ,)	
)	
<i>Petitioner,</i>)	
)	
v.)	No. 24-1129 (and
)	consolidated cases)
UNITED STATES ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
<i>Respondent.</i>)	
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DECLARATION OF SCOTT FENWICK

I, Scott Fenwick, hereby attest as follows:

Background

1. I am over 21 years of age and competent to make this declaration.

The facts set forth in this declaration are based on both my personal knowledge and information gathered in the course of my business activities. I am submitting this declaration on behalf of Clean Fuels Alliance America in the above-captioned matter.

2. I am the Technical Director of Clean Fuels Alliance America. Clean

Fuels is the national trade association representing America’s first advanced

biofuels, biodiesel and renewable diesel (known together as “biomass-based diesel”). Clean Fuels is comprised of biomass-based diesel producers, feedstock and feedstock processor organizations, fuel marketers and distributors, and technology providers. The group works to create sustainable biomass-based diesel industry growth through education, communication, government affairs, technical, and quality assurance programs.

3. Clean Fuels’ members own and operate facilities in the United States that use renewable biomass to produce biomass-based diesel, including, but not limited to, soybean oil, canola oil, distiller’s corn oil, waste (used) cooking oil, and animal fats.

4. In my capacity as Technical Director of Clean Fuels, I work to coordinate technical issues affecting the biomass-based diesel industry, including fuel quality, technical standards, and acceptance of biomass-based diesel in vehicle engines and all other combustion applications. In my role, I often coordinate with manufacturers of automobiles and automobile parts, known in the industry as “Original Equipment Manufacturers,” or “OEMs.”

5. I have also served on the boards of committees of several standard setting organizations focused on liquid fuels, including ASTM International and BQ-9000.

Impacts of the Rule on Acceptance of Higher Biomass-based Diesel Blends

6. The two types of biomass-based diesel, renewable diesel and biodiesel, are different in important ways.

7. Renewable diesel uses a renewable feedstock to create a fuel that is chemically indistinguishable from petroleum diesel. It is considered more of a “drop in” fuel that can be used in current diesel engines in any amount.

8. Biodiesel, which is composed of fatty acid methyl esters (sometimes referred to as “FAME”) is chemically different than petroleum diesel. It can theoretically be used in diesel engines in concentrations up to 100 percent, but many OEMs currently only manufacture engines that are approved for biodiesel in concentrations of B20 (a blend of 20 percent biodiesel and 80 percent petroleum diesel) or less.

9. Biodiesel and renewable diesel both have significantly lower lifecycle GHG emissions relative to petroleum fuels. Specifically, they currently lower GHG emissions by about 70 percent on an industry-wide volume-weighted average basis, and technologies including carbon capture and storage and climate-smart agriculture are continually improving their emissions profile. Biodiesel and renewable diesel also have lower emissions of particulate matter, carbon monoxide, and other criteria pollutants.

10. I have frequently advocated for OEMs, particularly OEMs that make

diesel engines for heavy-duty trucks, to manufacture more engines that are approved for B50 (a blend of 50 percent biodiesel) or higher.

11. OEMs have told me that EPA's heavy-duty tailpipe rule is an obstacle to investing in engines that can use higher biodiesel blends. OEMs face significant pressure to comply with the tailpipe rule, and under the current iteration of the rule they will need to invest in rapidly expanding production of EV engines to comply. Because they receive no credit under the tailpipe rule for making a B50-approved or even a B100-approved engine, they have no incentive to do so (in contrast to the incentives provided for flex-fueled vehicles and higher blends of ethanol in the CAFE standard program). And given the need and expense of investing in EVs, OEMs cannot justify simultaneously undertaking the additional expense to design and produce B50-approved engines when it will not help their tailpipe rule compliance under the rule.

12. My understanding from speaking with OEMs is that, if they received credit under the tailpipe rule for manufacturing engines approved for B50 or higher blends, they would invest in making more such engines because it would make strong economic sense.

13. With most OEMs unwilling to make engines approved for B50 or higher blends, the amount of biodiesel that can be used in the market is effectively capped, in spite of the fact that biodiesel is registered with the EPA as a fuel in

concentrations up to 100%. If there is no demand to use blends higher than B20, no one will blend biodiesel in higher ratios, and the demand for biodiesel will be artificially constrained. That lower biodiesel demand will directly hurt Clean Fuels' members by reducing their ability to sell biodiesel and lowering the prices they receive per gallon.

Impacts of the Rule on the Diesel Fuel Market

14. EPA's tailpipe rule also hurts Clean Fuels' members by lowering the overall demand for liquid diesel fuel.

15. Specifically, EPA projects that the rule will result in a reduction of *120 billion gallons* of diesel consumption through 2055. RIA, Table 6-1.

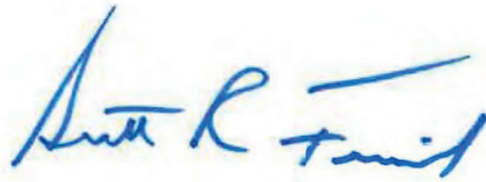
16. Separately, EPA estimates in the context of its recent RFS rulemaking that biomass-based diesel will be about 3.35 billion gallons out of 48 billion gallons of transportation diesel fuel in 2025, or about 7 percent. 88 Fed. Reg. at 44,470; EIA AEO 2023 Reference case, Table 36.

17. So, assuming that biomass-based diesel is impacted the same as other liquid diesel fuel, EPA's current tailpipe rule would reduce biomass-based diesel demand by about 8.4 billion gallons by 2055.

18. And, because of the rule's disincentive for the production of engines that can use B50 or higher biodiesel blends, that 8.4 billion gallons is likely an underestimate of the true impact of the rule on biomass-based diesel producers.

The real impact on biomass-based diesel demand would be amplified because the rule effectively prevents biomass-based diesel from being absorbed by the market in a higher percentage in addition to shrinking the overall size of the diesel fuel market. In other words, the rule causes biomass-based diesel to get a smaller slice of a smaller pie.

Executed on October 13, 2024 in Jefferson City, Missouri

A handwritten signature in blue ink, appearing to read "Scott R. Fenwick". The signature is written in a cursive style with a horizontal line above the name.

Scott R. Fenwick

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

STATE OF NEBRASKA, et al.,

Petitioners,

v.

ENVIRONMENTAL PROTECTION
AGENCY, et al.,

Respondents.

No. 24-1129

and consolidated cases

**DECLARATION OF JOE GILSON ON BEHALF OF
THE AMERICAN FARM BUREAU FEDERATION**

I, Joe Gilson, declare under penalty of perjury that I am over 18 years of age and that the following is true and correct, to the best of my knowledge:

1. I am a Director of Government Affairs for the American Farm Bureau Federation (“AFBF”).

2. AFBF was formed in 1919 and is the largest nonprofit general farm organization in the United States. Representing about six million member families in all fifty States and Puerto Rico, AFBF’s members grow and raise every type of agricultural crop and commodity produced in the United States. AFBF’s mission is to protect, promote, and represent the business, economic, social, and educational interests of American farmers and ranchers.

3. As part of my work for AFBF and its members, I am responsible for the management of policies relating to various agricultural crop and commodity cultivation, production, transportation, and sale in the United States. I am also responsible for and have experience analyzing and understanding the impacts of changes in the industry and in related industries, like the oil and gas market, that impact the livelihoods of American farmers and ranchers.

4. AFBF members have for years supported America's energy market by growing crops necessary for alternative and renewable fuels. One such renewable fuel is ethanol, which many AFBF member farmers and ranchers help produce through their growth and sale of corn all across the United States. Ethanol is the second largest component of the fuel that powers the Nation's vehicle fleet, as refiners across most of the United States add ethanol to gasoline in order to (among other things) raise its octane rating to a level suitable for use in most vehicles.

5. EPA recently promulgated a rule establishing new heavy-duty vehicle emission standards for model years ("MYs") 2027 through 2032 and beyond. *See* Greenhouse Gas Emissions Standards for Heavy-Duty Vehicles—Phase 3, 89 Fed. Reg. 29,440 (Apr. 22, 2024).

6. Those new standards require manufacturers to produce vehicle fleets for sale in the United States that will use considerably less liquid fuel on average than their existing vehicle fleets. EPA's new standards significantly limit the average

amount of carbon dioxide that manufacturers' heavy-duty fleets may emit. *See, e.g.*, 89 Fed. Reg. at 29,443 (explaining that the rule “finalizes certain revised [heavy-duty] vehicle carbon dioxide (CO₂) standards for MY 2027 and certain new [heavy-duty] vehicle CO₂ standards for MYs 2028, 2029, 2030, 2031, and 2032 that will achieve significant [greenhouse gas] reductions for these and later model years”). Because “[t]he amount of [tailpipe] CO₂ emissions is essentially constant per gallon combusted of a given type of fuel,” 75 Fed. Reg 25,324, 25,327 (May 7, 2010), “any rule that limits tailpipe CO₂ emissions is effectively identical to a rule that limits fuel consumption,” *Delta Const. Co. v. EPA*, 783 F.3d 1291, 1294 (D.C. Cir. 2015); *see also* 89 Fed. Reg. at 29,708 (projecting that “the final standards will reduce ... liquid fuel consumption (*i.e.*, oil consumption)”); *id.* at 29,735 (recognizing that the new standards “will reduce CO₂ emissions from heavy-duty vehicles ... which will result in significant reductions in the consumption of petroleum”).

7. To meet the new standards, heavy-duty vehicle manufacturers will have to dramatically increase the proportion of their fleets made up of electric vehicles, which use significantly less or no liquid fuel at all. Although EPA's rule claims to be technology neutral, its practical effect is to require a significant increase in the manufacturing and sale of electric vehicles. *See, e.g.*, 89 Fed. Reg. at 29,455 (recognizing that under EPA's “modeled potential compliance pathway,” the standards “will lead to an increase in [heavy-duty electric vehicles]”); *see also id.* at

29,567-68 (projecting growth in market share of electric heavy-duty vehicles to 45% by MY 2032 under the standards, as opposed to 20% without the standards).

8. By EPA's own admission, its new standards will significantly depress market demand for oil and gas in the United States. *See, e.g.*, 89 Fed. Reg. at 29,735 (recognizing that the new standards "will result in significant reductions in the consumption of petroleum"). Indeed, according to EPA's own projections, the new standards "will result in a reduction of 135 billion gallons of diesel and gasoline consumption" through 2055. *Id.* And because ethanol is blended into nearly every gallon of gasoline sold in the United States, EPA's new rule will reduce ethanol consumption by tens of millions of gallons.

9. That massive reduction in demand for ethanol will cause AFBF members significant financial injury. The revenues of numerous AFBF members depend in substantial part on the market demand for corn, which in turn depends in substantial part on the market demand for ethanol for use in liquid fuel.

10. For instance, AFBF member Cordt Holub of Iowa grows and sells approximately 220,000 bushels of corn each year for use in ethanol production. Depending on the year, approximately 75% to 100% of Mr. Holub's corn is sold for ethanol production, and corn represents approximately 45% of Mr. Holub's revenue. AFBF member Lance Atwater in Nebraska grows and sells approximately 25,000 to 30,000 bushels of corn each year for use in ethanol production; in addition, the

ethanol market affects the futures price of corn, which then affects all other corn commodities Mr. Atwater sells, such as white corn and popcorn. Approximately 10% to 15% of Mr. Atwater's revenues come from corn sales for ethanol, and 60% of his overall revenues come from corn. By reducing demand for (and consumer spending on) liquid fuel, EPA's new standards will reduce demand for ethanol, and deprive AFBF members like Mr. Holub and Mr. Atwater of revenues that they would otherwise have obtained through sale of their corn for use in ethanol production.

11. That injury will be redressed by a favorable decision from this Court, as the demand for liquid fuel (and thus the demand for corn to make ethanol) will increase if EPA's new standards are invalidated, eliminating or at least reducing the financial injury that the standards would otherwise cause to AFBF and its members. Indeed, EPA's own projections confirm that the injury to AFBF and its members is redressable if EPA's new standards are vacated, as they demonstrate that the demand for liquid fuel will be substantially higher if the standards are not in effect. *See, e.g.*, 89 Fed. Reg. at 29,735.

12. EPA's efforts to force electrification of the Nation's heavy-duty vehicle fleet will also have negative effects on the transportation needs of AFBF members. Battery-powered electric heavy-duty vehicles lack the mileage range of conventional heavy-duty vehicles, reducing the distance that they can travel between charges; they take significantly longer to recharge than a conventional heavy-duty vehicle does to

refuel, increasing the time needed for each trip; and they are substantially heavier than conventional heavy-duty vehicles, reducing the total cargo weight that they can carry on each trip. In addition, there is no national charging infrastructure network in place for electric heavy-duty vehicles, severely limiting the routes along which electric heavy-duty vehicles can travel. These disadvantages will collectively increase the cost and logistical difficulties associated with the long-range ground transportation on which AFBF members depend to transport their livestock and produce nationwide, causing AFBF members further financial injury that would be redressed by vacating the standards.

13. The new standards will also harm AFBF members as purchasers of heavy-duty vehicles, by forcing them to purchase costly electric heavy-duty vehicles that they would not otherwise purchase and/or to pay more for internal-combustion-engine heavy-duty vehicles. As manufacturers increase the share of electric heavy-duty vehicles in their fleets, AFBF members will be forced to either purchase those electric heavy-duty vehicles (which can cost over three times as much as their diesel-fueled counterparts), or else purchase internal-combustion-engine heavy-duty vehicles at higher prices than the market would otherwise set (due to reduced supply and cross-subsidization of electric vehicles as a result of the standards). These injuries to AFBF members will likewise be redressed by a favorable decision from this Court, as vacating the standards will eliminate the artificial market distortion

that the standards create and that causes higher prices for internal-combustion-engine heavy-duty vehicles.

Date: 10/10/24

Joe Gilson

Joe Gilson

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

STATE OF NEBRASKA, et al.,

Petitioners,

v.

ENVIRONMENTAL PROTECTION
AGENCY, et al.,

Respondents.

No. 24-1129

and consolidated cases

**DECLARATION OF NEIL CASKEY ON BEHALF OF THE NATIONAL
CORN GROWERS ASSOCIATION**

I declare under penalty of perjury that I am over 18 years of age and that the following is true and correct, to the best of my knowledge:

1. I am the Chief Executive Officer for the National Corn Growers Association (“NCGA”).

2. NCGA is a national trade association representing nearly 40,000 dues-paying corn growers and the interests of more than 300,000 farmers who contribute through corn checkoff programs in their states. NCGA and its affiliated state associations and checkoff organizations work together to sustainably feed and fuel the world by creating and increasing opportunities for corn growers.

3. Because of my work for NCGA and its members, I am familiar with the domestic market for corn and products, such as ethanol, that are made using the corn

grown by our members. I also have experience analyzing and understanding the impacts of changes in the industry and related industries, like the oil and gas market, that impact the livelihoods of our many members.

4. More than a third of the corn that farmers grow is sold to be used for ethanol production. Ethanol is a renewable fuel that forms the second-largest component of the liquid fuel that powers the Nation's vehicle fleet. Across most of the United States, refiners add ethanol to gasoline in order to (among other things) raise its octane rating to a level suitable for use in most vehicles.

5. EPA recently promulgated a rule establishing new heavy-duty vehicle emission standards for model years ("MYs") 2027 through 2032 and beyond. *See* Greenhouse Gas Emissions Standards for Heavy-Duty Vehicles—Phase 3, 89 Fed. Reg. 29,440 (Apr. 22, 2024).

6. Those new standards require manufacturers to produce vehicle fleets for sale in the United States that will use considerably less liquid fuel on average than their existing vehicle fleets. EPA's new standards significantly limit the average amount of carbon dioxide that manufacturers' heavy-duty fleets may emit. *See, e.g.*, 89 Fed. Reg. at 29,443 (explaining that the rule "finalizes certain revised [heavy-duty] vehicle carbon dioxide (CO₂) standards for MY 2027 and certain new [heavy-duty] vehicle CO₂ standards for MYs 2028, 2029, 2030, 2031, and 2032 that will achieve significant [greenhouse gas] reductions for these and later model years").

Because “[t]he amount of [tailpipe] CO₂ emissions is essentially constant per gallon combusted of a given type of fuel,” 75 Fed. Reg 25,324, 25,327 (May 7, 2010), “any rule that limits tailpipe CO₂ emissions is effectively identical to a rule that limits fuel consumption,” *Delta Const. Co. v. EPA*, 783 F.3d 1291, 1294 (D.C. Cir. 2015); *see also* 89 Fed. Reg. at 29,708 (projecting that “the final standards will reduce ... liquid fuel consumption (*i.e.*, oil consumption)”); *id.* at 29,735 (recognizing that the new standards “will reduce CO₂ emissions from heavy-duty vehicles ... which will result in significant reductions in the consumption of petroleum”).

7. To meet the new standards, heavy-duty vehicle manufacturers will have to dramatically increase the proportion of their fleets made up of electric vehicles, which use significantly less or no liquid fuel at all. Although EPA’s rule claims to be technology neutral, its practical effect is to require a significant increase in the manufacturing and sale of electric vehicles. *See, e.g.*, 89 Fed. Reg. at 29,455 (recognizing that under EPA’s “modeled potential compliance pathway,” the standards “will lead to an increase in [heavy-duty electric vehicles]”); *see also id.* at 29,567-68 (projecting growth in market share of electric heavy-duty vehicles to 45% by MY 2032 under the standards, as opposed to 20% without the standards).

8. By EPA’s own admission, its new standards will significantly depress market demand for oil and gas in the United States. *See, e.g.*, 89 Fed. Reg. at 29,735 (recognizing that the new standards “will result in significant reductions in the

consumption of petroleum”). Indeed, according to EPA’s own projections, the new standards “will result in a reduction of 135 billion gallons of diesel and gasoline consumption” through 2055. *Id.* And because ethanol is blended into nearly every gallon of gasoline sold in the United States, EPA’s new rule will reduce ethanol consumption by tens of millions of gallons. Additionally, a substantial amount of distilled corn oil is blended into bio diesel and renewable diesel which are also harmed by this new standard.

9. That massive reduction in demand for ethanol will cause NCGA members significant financial injury. The revenues of NCGA members depend in substantial part on the market demand for corn, which in turn depends in substantial part on the market demand for ethanol for use in liquid fuel. Ethanol production will use an estimated 36% of the corn produced in 2024, contributing over one-third of the value of corn revenues for U.S. farmers. *See* U.S. Dep’t of Agric., *World Agricultural Supply and Demand Estimates*, at 12 (Sept. 12, 2024). Therefore, the EPA’s projected reductions in gasoline use in its final rule will translate into significant reductions in corn use.

10. In short, by reducing demand for (and consumer spending on) liquid fuel, EPA’s new standards will reduce demand for ethanol, depriving NCGA members of revenue that they would otherwise have obtained by selling their corn for use in ethanol production while also driving down the value of their largest

business asset, their land. For instance, NCGA member Kelly Nieuwenhuis grows and sells 100% of his corn each year for use in ethanol production. By reducing demand for (and consumer spending on) liquid fuel, EPA's new standards will reduce demand for ethanol, and deprive NCGA members like Kelly Nieuwenhuis of a market for their corn for use in ethanol production. Basic economic fundamentals indicate that removing ethanol as a source of market demand will further depress corn prices, which are currently well below the cost of production, and worse, will decrease the value of farmland in the Midwest. Indeed, according to a recent report by two University of Nebraska economists analyzing EPA's parallel effort to mandate light-duty electric vehicles, "[c]ollectively, the top five corn-producing states (Iowa, Illinois, Nebraska, Minnesota and Indiana) could stand to lose well over \$100B [billion] in farmland value from corn acreage alone from a permanent 50% decrease in the price of corn." J. Stokes & J. Jansen, *Could the EPA Cause the Next Farm Financial Crisis?*, Cornhusker Economics (July 5, 2023), <https://agecon.unl.edu/could-epa-cause-next-farm-financial-crisis>.

11. The financial injuries caused by EPA's rule will be redressed by a favorable decision from this Court, as the demand for liquid fuel (and thus the demand for corn to make ethanol) will increase if EPA's new standards are invalidated, eliminating or at least reducing the financial injury that the standards would otherwise cause to NCGA's members. Indeed, EPA's own projections confirm


that the injury to NCGA's members is redressable if EPA's new standards are vacated, as they demonstrate that the demand for liquid fuel will be substantially higher if the standards are not in effect. *See, e.g.*, 89 Fed. Reg. at 29,735.

12. EPA's efforts to force electrification of the Nation's heavy-duty vehicle fleet will also negatively affect the transportation needs of NCGA members. Battery-powered electric heavy-duty vehicles lack the mileage range of conventional heavy-duty vehicles, reducing the distance that they can travel between charges; they take significantly longer to recharge than a conventional heavy-duty vehicle does to refuel, increasing the time needed for each trip; and they are substantially heavier than conventional heavy-duty vehicles, reducing the total cargo weight that they can carry on each trip. In addition, no national charging infrastructure network exists for electric heavy-duty vehicles, severely limiting the routes along which electric heavy-duty vehicles can travel. These disadvantages will collectively increase the cost and logistical difficulties associated with the long-range ground transportation on which NCGA members depend to transport their crops nationwide, causing them further financial injury that would be redressed by vacating the standards.

13. The new standards will also harm NCGA members as purchasers of heavy-duty vehicles by forcing them to purchase costly electric heavy-duty vehicles that they would not otherwise purchase and/or to pay more for internal-combustion-engine heavy-duty vehicles. NCGA members use heavy-duty vehicles in their

operations throughout the country and regularly purchase new heavy-duty vehicles. As manufacturers increase the share of electric heavy-duty vehicles in their fleets, NCGA members will be forced to either purchase those electric heavy-duty vehicles (which can cost over three times as much as their diesel-fueled counterparts) or else purchase internal-combustion-engine heavy-duty vehicles at higher prices than the market would otherwise set (due to reduced supply and cross-subsidization of electric vehicles as a result of the standards). These injuries to NCGA members will likewise be redressed by a favorable decision from this Court, as vacating the standards will eliminate the market distortion that the standards create and that causes higher prices for internal-combustion-engine heavy-duty vehicles.

October 11, 2024



Neil Caskey

No. 24-1209

(Consolidated with 24-1129, 24-1133, 24-1157, 24-1207, 24-1208,
24-1210, and 24-1214)

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

AMERICAN FREE ENTERPRISE CHAMBER OF COMMERCE, ET AL.,
Petitioners,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, ET AL.,
Respondents.

On Petition for Review from the United States
Environmental Protection Agency
(No. EPA-HQ-OAR-2022-0985)

DECLARATION OF KIRK LEEDS

1. My name is Kirk Leeds. I am over 18 years of age and am competent to give this Declaration. This Declaration is based on personal knowledge. I am submitting this Declaration on behalf of the Petitioners' opening brief in the above-captioned matter.

2. I have been a member of the Iowa Soybean Association (“Association”) for 35 years. I am currently the Association’s Chief Executive Officer. The Association is a non-profit, nonpartisan advocacy organization that represents the interests of the state’s soybean industry.
3. Bio-based diesel is produced in the United States and can either be blended with traditional petroleum diesel or used as a direct substitution. Engines burning bio-based diesel can emit fewer pollutants than engines burning petroleum diesel, and compared to petroleum diesel, bio-based diesel reduces carbon dioxide emissions on average by 74% when considering the entire lifecycle.
4. Most of the bio-based diesel in the United States is made from soybean oil, and around 30% of the soybean oil produced in the United States is used to for that purpose.
5. In 2023, 3.28 billion gallons of biodiesel were consumed in the United States. 1.77 billion gallons – over half of the 2023 total – were produced from soybean oil. In 2023, another 4.89 billion gallons of renewable diesel were consumed in the United States. 498 million gallons – over ten percent were produced from soybean oil. *See Figure 1.*

Sum of RINs	Column Labels							
Row Labels	2018	2019	2020	2021	2022	2023	2024	Grand Total
Biodiesel (EV 1.5)	3,045,928,096	2,847,807,701	3,051,588,188	2,869,651,101	2,790,943,660	3,277,533,563	2,062,555,873	19,946,008,182
All Other Feedstock	730,261,474	341,899,923	248,149,360	233,254,609	239,845,327	494,978,860	290,748,335	2,579,137,888
Biogenic Waste Oils/Fats/Greases	462,490,879	365,497,400	324,194,733	342,622,970	299,233,879	319,921,000	243,003,559	2,356,964,420
Biogenic Waste Oils/Fats/Greases; Distillers corn oil	34,520,964	168,789,121	209,811,925	307,214,692	140,378,449	75,430,423	41,428,208	977,573,782
Biogenic Waste Oils/Fats/Greases; Distillers corn oil; Soybean Oil	6,748,470	171,188,591	207,751,557	161,234,873	254,314,225	177,040,757	112,851,797	1,091,080,210
Canola Oil	255,949,507	297,139,349	382,538,736	385,269,246	387,198,206	436,626,900	266,821,146	2,411,543,090
Soybean Oil	1,555,956,802	1,503,343,377	1,679,141,877	1,440,054,711	1,469,973,574	1,773,535,623	1,107,702,828	10,529,708,792
Non-ester Renewable Diesel (EV 1.6)	3,800,968	5,418,525	30,409,900	95,661,315	888,126,052	542,644,472	1,566,061,232	
All Other Feedstock	3,800,968	5,418,525	30,409,900	95,661,315	888,126,052	542,644,472	1,566,061,232	
Non-ester Renewable Diesel (EV 1.7)	1,046,063,379	1,547,229,539	1,641,523,518	2,205,641,510	3,131,351,961	4,000,950,847	3,257,085,811	16,829,846,565
All Other Feedstock	761,486,048	1,002,700,501	1,041,152,043	1,294,385,078	1,609,522,445	2,079,829,184	1,476,682,162	9,265,757,461
Biogenic Waste Oils/Fats/Greases	248,503,624	412,508,781	447,326,713	619,452,148	1,096,953,453	1,422,953,049	1,314,251,642	5,561,949,410
Soybean Oil	36,073,707	132,020,257	153,044,762	291,804,284	424,876,063	498,168,614	466,152,007	2,002,139,694
Grand Total	4,091,991,475	4,398,838,208	4,698,530,231	5,105,702,511	6,017,956,936	8,166,610,462	5,862,286,156	38,341,915,979

Figure 1. Env'tl. Protection Agency, RINs Generated Transactions, available at <https://www.epa.gov/fuels-registration-reporting-and-compliance-help/rins-generated-transactions>.

6. EPA’s new emissions standards for heavy-duty vehicles can only be met by averaging emissions from internal combustion engine vehicles with the emissions from zero-emission vehicles that do not run on liquid fuels.

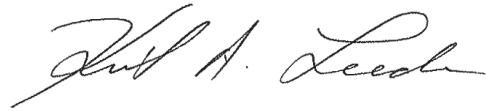
Therefore, this rule will reduce the demand for all liquid fuels, including bio-based diesel, which will in turn reduce the demand for the feedstocks used to produce renewable fuels, such as soybeans.

7. A reduced demand for bio-based diesel would result in great economic harm to the Association’s members, as it would undermine their ability to sell soybeans at a profit.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct based on my personal knowledge.

Date: October 11, 2024

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kirk A. Leeds". The signature is fluid and cursive, with the first name "Kirk" being the most prominent.

Kirk Leeds

*Chief Executive Officer for the Iowa
Soybean Association*

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

STATE OF NEBRASKA, et al.,

Petitioners,

v.

ENVIRONMENTAL PROTECTION
AGENCY, et al.,

Respondents.

No. 24-1129

and consolidated cases

**DECLARATION OF TODD SPENCER ON BEHALF OF
THE OWNER-OPERATOR INDEPENDENT DRIVERS ASSOCIATION**

I, Todd Spencer, declare under penalty of perjury that I am over 18 years of age and that the following is true and correct, to the best of my knowledge:

1. I am the President of the Owner-Operator Independent Drivers Association (“OOIDA”).

2. OOIDA is the largest trade association representing the views of small-business truckers and professional truck drivers. OOIDA has more than 150,000 members located in all fifty states that collectively own and operate more than 240,000 individual heavy-duty trucks. OOIDA’s mission is to promote and protect the interests of its members on any issues that might impact their economic well-being, working conditions, and the safe operation of commercial motor vehicles on our nation’s highways.

3. As part of my work for OODIA and its members, I am responsible for and have experience analyzing and understanding the impacts of regulatory changes relating to greenhouse gas emissions from heavy-duty vehicles on the trucking industry.

4. EPA recently promulgated a rule establishing new heavy-duty vehicle emission standards for model years (“MYs”) 2027 through 2032 and beyond. *See* Greenhouse Gas Emissions Standards for Heavy-Duty Vehicles—Phase 3, 89 Fed. Reg. 29,440 (Apr. 22, 2024).

5. Those new standards require manufacturers to produce vehicle fleets for sale in the United States that will use considerably less liquid fuel on average than their existing vehicle fleets. EPA’s new standards significantly limit the average amount of carbon dioxide that manufacturers’ heavy-duty fleets may emit. *See, e.g.*, 89 Fed. Reg. at 29,443 (explaining that the rule “finalizes certain revised [heavy-duty] vehicle carbon dioxide (CO₂) standards for MY 2027 and certain new [heavy-duty] vehicle CO₂ standards for MYs 2028, 2029, 2030, 2031, and 2032 that will achieve significant [greenhouse gas] reductions for these and later model years”). Because “[t]he amount of [tailpipe] CO₂ emissions is essentially constant per gallon combusted of a given type of fuel,” 75 Fed. Reg 25,324, 25,327 (May 7, 2010), “any rule that limits tailpipe CO₂ emissions is effectively identical to a rule that limits fuel consumption,” *Delta Const. Co. v. EPA*, 783 F.3d 1291, 1294 (D.C. Cir. 2015);

see also 89 Fed. Reg. at 29,735 (recognizing that the new standards “will reduce CO₂ emissions from heavy-duty vehicles ... which will result in significant reductions in the consumption of petroleum”).

6. To meet the new standards, heavy-duty vehicle manufacturers will have to dramatically increase the proportion of their fleets made up of electric vehicles, which use significantly less or no liquid fuel at all. Although EPA’s rule claims to be technology neutral, its practical effect is to require a significant increase in the manufacturing and sale of electric vehicles. *See, e.g.*, 89 Fed. Reg. at 29,455 (recognizing that under EPA’s “modeled potential compliance pathway,” the standards “will lead to an increase in [heavy-duty electric vehicles]”); *see also id.* at 29,567-68 (projecting growth in market share of electric heavy-duty vehicles to 45% by MY 2032 under the standards, as opposed to 20% without the standards).

7. That massive artificial increase in the market share of electric heavy-duty vehicles will have substantial negative effects on OOIDA members. Electric heavy-duty vehicles lack the mileage range of conventional heavy-duty vehicles, reducing the distance that they can travel between charges; they take significantly longer to charge than a conventional heavy-duty vehicle does to refuel, increasing the time needed for each trip; and they are substantially heavier than conventional heavy-duty vehicles, reducing the total cargo weight that they can carry on each trip. In addition, there is no national charging infrastructure network in place for electric

heavy-duty vehicles, severely limiting the routes along which electric heavy-duty vehicles can travel. These disadvantages will collectively increase the costs and logistical difficulties that OOIDA members will face in their efforts to keep their cargo moving across the country, subjecting OOIDA members to concrete financial injury that will be redressed if the standards are vacated.

8. The new standards will also harm OOIDA members as purchasers of heavy-duty vehicles, by forcing them to purchase costly electric heavy-duty vehicles that they would not otherwise purchase and/or to pay more for internal-combustion-engine heavy-duty vehicles. OOIDA members use heavy-duty vehicles in their operations throughout the country, and approximately 7.5% of OOIDA members purchase a new truck each year, totaling approximately 11,000 new heavy-duty vehicles purchased each year. As manufacturers increase the share of electric heavy-duty vehicles in their fleets, OOIDA members will be forced to either purchase those electric heavy-duty vehicles (which can cost over three times as much as their diesel-fueled counterparts), or else purchase internal-combustion-engine heavy-duty vehicles at higher prices than the market would otherwise set (due to reduced supply and cross-subsidization of electric vehicles as a result of the standards). These injuries to OOIDA members will likewise be redressed by a favorable decision from this Court, as vacating the standards will eliminate the artificial market distortion

that the standards create and that causes higher prices for internal-combustion-engine heavy-duty vehicles.



Date: October 9, 2024

Todd Spencer

No. 24-1133

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

WARREN PETERSEN, President of the Arizona State Senate,

BEN TOMA, Speaker of the Arizona House of Representatives, and

ARIZONA TRUCKING ASSOCIATION,

Petitioners,

v.

U.S. ENVIRONMENTAL PROTECTION AGENCY, and

MICHAEL S. REGAN, in his official capacity as Administrator of the U.S.
Environmental Protection Agency,

Respondents.

DECLARATION OF ANTHONY BRADLEY

I, Anthony Bradley, declare as follows:

1. I am President and Chief Executive Officer at the Arizona Trucking Association. I have served in these positions for more than 10 years. This experience has provided me with a deep understanding of the Arizona Trucking Association, its members, and the transportation industry.

2. The Arizona Trucking Association was founded in 1937.

3. It is the Arizona Trucking Association's mission to represent its members before legislative, regulatory and enforcement agencies, to serve as the trucking industry's primary voice on transportation and other public policy issues and to provide members with cost-effective services that can help them comply with all relevant laws and regulations.

4. Based on my experience and knowledge of the Arizona Trucking Association and its members, as well as interactions with individual members, I am aware of how the Final Rule is expected to impact Arizona Trucking Association members.

5. Many Arizona Trucking Association members purchase and use heavy-duty trucks that are subject to the Final Rule.

6. The Arizona Trucking Association projects that many of its members will be forced to purchase and use electric vehicles as a result of the Final Rule.

7. Higher upfront costs to purchase electric trucks and necessary equipment will impact Arizona Trucking Association members because of issues relating to cash flow, time-value of money, and other business considerations.

8. Arizona Trucking Association members will suffer even greater financial harm if EPA's cost estimates are incorrect.

9. Heavier batteries in electric vehicles will reduce payload, and thus decrease profitability for every Arizona Trucking Association member forced to

purchase an electric vehicle as a result of the Final Rule because trucks will have to carry less to stay within weight limits. Large shipments will require more trucks and personnel to transport the same amount of goods.

10. The lack of sufficient public charging, the time spent waiting for a charger to become available, and the time spent waiting for a vehicle to be fully charged will disrupt business activities, particularly long-haul transportation by Arizona Trucking Association members.

11. The Arizona Trucking Association's mission is to represent its members and serve as their voice on public policy issues impacting the transportation industry, which is why the Arizona Trucking Association has brought this challenge.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: June 17, 2024

/s/ Anthony Bradley
ANTHONY BRADLEY

No. 24-1157

(Consolidated with 24-1129, 24-1133, 24-1207, 24-1208, 24-1209,
24-1210, and 24-1214)

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

WESTERN STATES TRUCKING ASSOCIATION, INC., ET AL.,
Petitioners,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, ET AL.
Respondents.

On Appeal from the Environmental Protection Agency
EPA-HQ-OAR-2022-0985; FRL-8952-02-OAR

DECLARATION OF LEE BROWN

I, Lee Brown, hereby declare as follows:

1. I am over the age of eighteen (18) and am competent to testify in this matter. I have personal knowledge of the following facts and if called upon to do so could competently testify to them under oath. As to those matters which reflect a matter of opinion, they reflect my personal opinion and judgment upon the matter.

2. I am the executive director of Western States Trucking Association, Inc. (“WSTA”), formerly known as California Dump Truck Owners Association, a named petitioner in the above-captioned suit. Our organization’s articles of incorporation, and subsequent amendments, are attached herein as Exhibits A–C.

3. WSTA is a nonprofit corporation formed for the general purpose of “protect[ing] the interests of the owners and operators of trucks using the highways

of the State of California.” Exhibit A at 1 (WSTA articles of incorporation). We additionally “conduct public educational campaigns for the purpose of preventing legislation adverse to the interests of the shipping public, and those engaged in the transportation business” *Id.* at 1–2. WSTA’s purpose is also, in part, “to sue and be sued” in the interest of its members. *Id.* at 2. In short, we represent the interests of multiple member trucking companies that transport cargo and goods within the state of California and beyond.

4. WSTA’s purpose is generally to support its trucking company members in all aspects of their businesses, including but not by way of limitation, the ability of their members to maintain their trucks for their full useful lives and to purchase replacement trucks at reasonable cost that will not adversely impact their businesses.

5. On April 22, 2024, the Environmental Protection Agency (“EPA”) promulgated a final regulation entitled “Greenhouse Gas Emissions Standards for Heavy-Duty Vehicles—Phase 3” (“HD Regulations”). *See* 89 Fed. Reg. 29440 *et seq.* (Apr. 22, 2024).

6. The HD Regulations establish new, more stringent emission standards for greenhouse gases for heavy-duty highway vehicles that will be phased in over model years 2027 through 2032. *Id.*

7. WSTA and its members have advocated against overly stringent EPA heavy-duty vehicle emissions regulations.

8. WSTA’s members include Oakland Port Services Corp. (“Oakland Port Services”), whose CEO is William Aboudi. The contents of William Aboudi’s declaration are hereby incorporated herein in their entirety.

9. Members of WSTA, in addition to Oakland Port Services, are also injured by EPA’s HD Regulations, and WSTA has instituted this lawsuit on behalf of all of our members.

10. As detailed in the declaration of William Aboudi, WSTA members will be injured by the HD Regulations, which will directly affect their profitability, market share, and overall economic stability.

11. The HD Regulations will limit the types of vehicles available that are necessary to conduct WSTA members' business activities, making them choose between purchasing costly and unreliable vehicles and losing significant profits.

12. By unnecessarily increasing the stringency of emissions requirements for heavy-duty vehicles the HD Regulations limit the vehicles that can be sold to and operated by WSTA's members. Because the majority of WSTA's members, including Oakland Port Services, own fleets of heavy-duty vehicles, they will be forced to purchase expensive vehicles that meet the requirements of the HD Regulations to continue operating their businesses, thereby losing revenue.

13. The HD Regulations limit the availability of vehicles needed for WSTA members to profitably conduct their businesses. The sales limitations that the HD Regulations impose increase market scarcity of reliable and cost-effective diesel-powered heavy-duty vehicles, parts, and supplies necessary to maintaining a profitable fleet.

14. As fewer diesel-powered heavy-duty vehicles remain on the road thanks to the knock-on effects of the HD Regulations, the cost of diesel fuel will increase and the prevalence of diesel refueling stations will decrease.

15. If WSTA's members wish to continue operating, these regulations will eventually force them to purchase unreliable electric vehicles that often break down or catch fire. There is no nationwide charging infrastructure yet available for such vehicles. Their employees will lose valuable time and be made to risk their lives due to these regulations.

16. EPA promulgated these regulations knowing full well that their approval would cause businesses like those represented by WSTA to purchase

electric trucks or lose significant business. These regulations will increase WSTA member costs by a significant amount.

17. In summary, due to existing externalities, including a lack of nationwide or statewide charging infrastructure, reliability problems with existing electric heavy-duty vehicles, and the higher cost of new heavy-duty vehicles when compared to traditional diesel models, multiple WSTA members may not be able to continue running their businesses profitably now that the agency action under review has taken effect.

18. But for EPA’s decision to promulgate the HD Regulations, the businesses of many WSTA members would not suffer economic injury. As WSTA’s members are directly affected by EPA’s decision in a manner that will negatively impact their businesses, WSTA may stand in the shoes of its members and “sue” on their behalf, as is its associational purpose. Exhibit A at 2.

19. The Court can redress WSTA members’ injuries by setting aside these EPA regulations, preventing these job-killing regulations from going into effect.

Pursuant to 28 U.S.C. § 1746, I, Lee Brown, declare under penalty of perjury that the foregoing is true and correct.

Executed on the 4th day of October,
2024, in Upland, in the State of
California.



LEE BROWN
Executive Director
Western States Trucking Association, Inc.

EXHIBIT A

ARTICLES OF INCORPORATION

of

CALIFORNIA DUMP TRUCK OWNERS ASSOCIATION

(A California non-profit corporation)

Know all men by these presents that we, the persons whose names are signed hereto, have associated ourselves together, to become incorporated under the laws of the State of California, for the transaction of business in said state, and for such purpose we adopt the following articles of incorporation:

ARTICLE I.

The name of this corporation is:

California Dump Truck Owners Association.

It is a corporation which does not contemplate pecuniary gain or profit to the members thereof.

ARTICLE II.

The purposes for which this corporation is formed are:

(a) Generally to protect the interests of the owners and operators of trucks using the highways of the State of California.

(b) To conduct public educational campaigns for the purpose of preventing legislation adverse to the interests of

the shipping public, and those engaged in the transportation business, and particularly those engaged in the dump trucking business.

(c) To educate the producer and shipping business in general regarding the many advantages of using independent dump trucking operators.

(d) To promote general safety and to prove to the public that the truckmen are highly efficient, safe drivers, and gentlemen of the highways.

(e) To teach the public that the trucks owned and operated by the members of this association are reliable equipment, manned by competent, safe operators, and that the trucks are capable of carrying the loads that they are designed to carry anywhere, any time, and on time at reasonable prices.

(f) To sue and be sued.

(g) To contract and be contracted with.

(h) To receive property by devise or bequest, subject to the laws regulating the transfer of property by will, and to otherwise acquire and hold all property, real or personal, including shares of stock, bonds and securities of other corporations.

(i) To act as trustee under any trust incidental to the principal objects of the corporation, and to receive, hold, administer, and expend funds and property subject to such trust.

(j) To convey, exchange, lease, mortgage, encumber,

(k) To borrow money, contract debts, and issue bonds, notes and debentures, and secure the same.

(l) To do all other acts necessary or expedient for the administration of the affairs and attainment of the purposes of the corporation.

(m) And incidental to the main purposes of this non-profit corporation to carry on any business whatsoever which this corporation may deem proper or convenient in connection with any of the foregoing purposes or otherwise, or which may be calculated directly or indirectly to promote the interests of this non-profit corporation or to enhance the value of its property; to conduct its business in this state, in other states, in the District of Columbia, in the territories and colonies of the United States, and in foreign countries.

The foregoing statement of purposes shall be construed as a statement of both purposes and powers, and the purposes and powers stated in each clause shall, except where otherwise expressed, be in nowise limited or restricted by reference to or inference from the terms or provisions of any other clause, but shall be regarded as independent purposes.

ARTICLE III.

The existence of this corporation is to be perpetual.

ARTICLE IV.

The county in this state where the principal office

for the transaction of the business of this non-profit corporation is to be located in the county of Los Angeles.

ARTICLE V.

The names and addresses of the persons who are to act in the capacity of directors until the selection of their successors and who shall be known as directors, are:

<u> NAMES:</u>	<u> ADDRESSES:</u>
Freasia Jones	1718 E. Plymouth, Long Beach
Frank Heidlebaugh	3125 E. 11th St. Long Beach
J. A. Frethiem	800 Edgewood, Inglewood
Barney Bryce	1111 Raymond Ave., Long Beach
<u>E. T. Seibert</u>	<u>Box 62, Route 3, Santa Ana</u>
<u>E. M. Balcom</u>	<u>5632 Lenkershim Blvd., No. Hollywood</u>
^F <u>Leonard Schempp</u>	<u>5128 S. Gramercy, L.A.</u>
<u>H. J. Gehlin</u>	<u>1002 Glickman Ave., El Monte</u>
<u>H. L. Willingham</u>	<u>2103 Pontius, West L.A.</u>
<u>T. E. Milligan</u>	<u>645 E. 79th St., L.A.</u>
<u>Edw. Davis</u>	<u>6316 11th Ave., L.A.</u>
<u>George Harrop</u>	<u>1381 No. Catalina St., Burbank</u>

The number of directors shall remain at twelve until changed by an amendment to the by-laws adopted pursuant to this authority.

ARTICLE VI.

The authorized number and qualifications of the members of this organization, the different classes of membership, the property, voting and other rights, and privileges of each class of membership, and the liability of each or all classes, to dues or assessments and the method of collection thereof, may be set forth in the by-laws of this corporation, except that

known to me to be the persons whose names are subscribed to the foregoing articles of incorporation and acknowledged to me that they executed the same.

WITNESS my hand and official seal.

Virginia F. Runyon
Notary Public in and for the
County of Los Angeles, State
of California

(Notarial Seal)

My Commission Expires Dec. 4, 1944

We, the undersigned, desiring to associate with the first directors for the purpose of forming California Dump Truck Owners Association, a California non-profit corporation, have subscribed our names to these articles of incorporation, have subscribed our names to these articles of incorporation.

MEMBERS

NAMES:

ADDRESSES:

- ✓ Ed. W. Davis, 6316 11th Ave. L.A. ✓
- Barney J. Bryce, 1111 Raymond Ave. L.B.
- ✓ Frank Heidlebaugh, 3125 E. 11th St. L.B.
- T. E. Milligan, 645 79 St., L.A.
- ✓ E. M. Balcom, 5632 Lankershim Blvd. No.Ho. ✓
- George Harrop, 1381 No. Catalina St. Burbank ✓
- ✓ E. T. Seibert, Box 62 Route #3, Santa Ana ✓
- H. L. Wellingham, 2103 Pontius West L.A. ✓
- ✓ H. J. Gebelin, 1002 Glickman Ave. El Monte
- ✓ A and W Trucking Service, 1180 So. Boyle Ave. L.A.
(By J. Abromson)
- ✓ Leonard F. Schempp, 5128 So. Gramercy Pl. L.A. ✓
- ✓ J. P. Gross, 5821 Priory Bell

✓ Rudolph Lenz

6019 So. Wilton Pl. L.A.

✓ J. P. Lutor

127 E. Ave. 31 L.A.

✓ J. C. Wiant

114a, ...

voting rights or privileges shall be restricted to regular members as defined in the by-laws.

We, the persons who are to act in the capacity of first directors, hereby subscribe to the foregoing articles in the corporation of California Dump Truck Owners Association this 13th day of June, 1941.

Frank Heidlebaugh
Barney Bryce

E. T. Seibert

E. M. Balcom

Leonard F. Schempp

H. J. Gebelin

H. L. Willingham

T. E. Milligan

Ed. W. Davis

George Harrop

Freasia Jones
J. A. Prethiem

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.

On this 13th day of June, in the year one thousand nine hundred and forty-one, before me Virginia F. Fanyon a Notary Public in and for said county of Los Angeles, state of California, residing therein, duly commissioned and sworn, personally appeared the above twelve (12) in-

<u>corporators,</u>	<u>Frank Heidlebaugh</u>
<u>Barney Bryce</u>	<u>E. T. Seibert</u>
<u>E. M. Balcom</u>	<u>Leonard F. Schempp</u>
<u>H. J. Gebelin</u>	<u>H. L. Willingham</u>
<u>T. E. Milligan</u>	<u>Ed. W. Davis</u>
<u>Freasia Jones</u>	<u>George Harrop</u>
<u>J. A. Prethiem</u>	

known to me to be the persons whose names are subscribed to the foregoing articles of incorporation, and acknowledged to me that they executed the same.

WITNESS my hand and official seal.

Virginia F. Runyon
Notary Public in and for the
county of Los Angeles, State
of California
My Commission expires Dec. 4, 1944

(Notarial Seal)

EXHIBIT B

**CERTIFICATE OF AMENDMENT OF
ARTICLES OF INCORPORATION**

The undersigned certify that:

1. They are the president and the secretary, respectively, of California Dump Truck Owners Association, a California corporation.
2. Article I of the Articles of Incorporation of this corporation is amended to read as follows:

The name of this corporation is:
 California Construction Trucking Association.
 It is a corporation which does not contemplate pecuniary gain or profit to the members thereof.

3. The foregoing amendment of the Articles of Incorporation has been duly approved by the board of directors.
4. The foregoing amendment of the Articles of Incorporation has been duly approved by the required vote of the members.

We further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of our own knowledge.

DATE: 01/05/12 _____

 Fred Martin, President

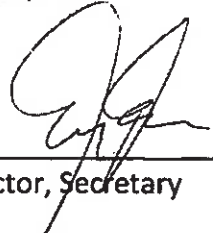
DATE: 01/05/12 _____

 Mary Proctor, Secretary

EXHIBIT C

NOTO

40772453

0180202

CERTIFICATE OF AMENDMENT OF ARTICLES OF INCORPORATION

FILED KEZ Secretary of State State of California DLX

100 JUL 07 2015

The undersigned certify that:

- 1. They are the president and the secretary, respectively, of California Construction Trucking Association, a California corporation.
- 2. Article I of the Articles of Incorporation of this corporation is amended to read as follows:

The name of this corporation is:
 Western States Trucking Association.
 It is a corporation which does not contemplate pecuniary gain or profit to the members thereof.

- 3. The foregoing amendment of the Articles of Incorporation has been duly approved by the board of directors.
- 4. The foregoing amendment of the Articles of Incorporation has been duly approved by the required vote of the members.

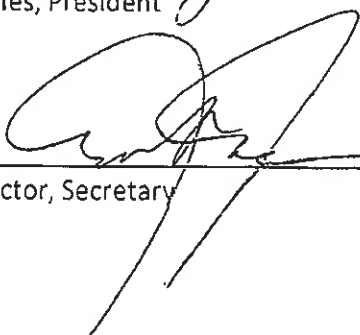
We further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of our own knowledge.

DATE: 7-1-2015



 Susan Jones, President

DATE: 6/30/2015



 Mary Proctor, Secretary

No. 24-1157
(Consolidated with 24-1129, 24-1133, 24-1207, 24-1208, 24-1209,
24-1210, and 24-1214)

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

WESTERN STATES TRUCKING ASSOCIATION, INC., ET AL.,
Petitioners,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, ET AL.
Respondents.

On Appeal from the Environmental Protection Agency
EPA-HQ-OAR-2022-0985; FRL-8952-02-OAR

DECLARATION OF WILLIAM ABOUDI

I, William Aboudi, hereby declare as follows:

1. I am over the age of eighteen (18) and am competent to testify in this matter. I have personal knowledge of the following facts and if called upon to do so could competently testify to them under oath. As to those matters which reflect a matter of opinion, they reflect my personal opinion and judgment upon the matter.

2. I am the CEO of Oakland Port Services Corp. (“Oakland Port Services”). Oakland Port Services is an interstate authorized trucking company that is a member of Western States Trucking Association, Inc. (“WSTA”), a named petitioner in the above-captioned suit. WSTA represents my interest in this lawsuit.

3. My company, which is based in Oakland, California, transports international cargo within California and other states using heavy duty trucks.

4. On April 22, 2024, the Environmental Protection Agency (“EPA”) promulgated a final regulation entitled “Greenhouse Gas Emissions Standards for Heavy-Duty Vehicles—Phase 3” (“HD Regulations”). *See* 89 Fed. Reg. 29440 *et seq.* (Apr. 22, 2024).

5. The HD Regulations establish new, stringent emission standards for greenhouse gases for heavy-duty highway vehicles that will be phased in over model years 2027 through 2032. *Id.*

6. Oakland Port Services owns or intends to purchase 2024 or newer model year vehicles using heavy-duty diesel engines and operates or intends to operate said vehicles in California and other states in order to continue to conduct its business operations. For this reason, the HD Regulations will directly affect the profitability, market share, and overall economic stability of my business.

7. By unnecessarily increasing the stringency of emissions requirements for heavy-duty vehicles the HD Regulations limit the vehicles that can be sold to and operated by Oakland Port Services. Because Oakland Port Services owns a fleet of heavy-duty vehicles, I will be forced to purchase expensive vehicles that meet the requirements of the HD Regulations to continue operating my business, thereby losing revenue.

8. The HD Regulations limit the availability of vehicles needed to profitably conduct my business as well. The sales limitations that the HD Regulations impose increase market scarcity of reliable and cost-effective diesel-powered heavy-duty vehicles, which will increase my costs in purchasing vehicles, parts, and supplies necessary to maintaining a profitable trucking fleet.

9. As fewer diesel-powered heavy-duty vehicles remain on the road thanks to the knock-on effects of the HD Regulations, the cost of diesel fuel will increase and the prevalence of diesel refueling stations will decrease, making it even harder for Oakland Port Services to conduct business.

10. If I wish to continue operating Oakland Port Services, these regulations will eventually force me to purchase unreliable electric trucks that often break down or catch fire. There is no nationwide charging infrastructure yet available for such trucks. My employees will lose valuable time and be made to risk their lives due to these regulations.

11. EPA promulgated these regulations knowing full well that their approval would cause trucking businesses like mine to purchase electric trucks at additional cost or lose significant business.

12. The HD Regulations will increase Oakland Port Services' operational costs per truck by approximately \$3,000 per year.

13. The HD Regulations will increase Oakland Port Services' purchase costs per truck by approximately \$300,000 at time of purchase.

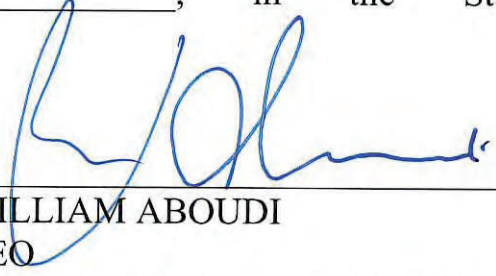
14. In summary, due to existing externalities, including a lack of charging infrastructure, reliability problems with existing electric heavy-duty vehicles, and the higher cost of new electric heavy-duty vehicles when compared to traditional diesel models, I will not be able to continue running my businesses profitably now that the agency action under review has taken effect.

15. But for EPA's decision to promulgate the HD Regulations, my business would not suffer the economic injuries set forth in this declaration.

16. The Court can redress my injuries by setting aside these EPA regulations, thereby preventing these unnecessary, job-killing regulations from going into effect.

Pursuant to 28 U.S.C. § 1746, I, William Aboudi, declare under penalty of perjury that the foregoing is true and correct.

Executed on the 3RD day of OCTOBER,
2024, in OAKLAND, in the State of
CALIFORNIA.



WILLIAM ABOUDI
CEO
10 Burma Rd., Oakland, CA 94607

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

THE TRANSPORT PROJECT, also known as
THE NATURAL GAS VEHICLE COALITION,

Petitioner,

v.

U.S. ENVIRONMENTAL PROTECTION
AGENCY, and MICHAEL S. REGAN,
ADMINISTRATOR, U.S. ENVIRONMENTAL
PROTECTION AGENCY,

Respondent.

No. 24-1129

[Consolidated with 24-
1133, 24-1157, 24-1207,
24-1208, 24-1209, 24-
1210, 24-1214]

DECLARATION OF JEFFREY CLARKE

Pursuant to 28 U.S.C. § 1746, I, Jeffrey Clarke, am older than 18 years of age and declare under penalty of perjury the foregoing is true and correct, to the best of my knowledge:

1. I am General Counsel and Vice President of Regulatory and Government Affairs for The Transport Project (TTP), also known as The Natural Gas Vehicle Coalition (NGVC).¹ In that role, I monitor federal and state

¹ The organization's trade name, The Transport Project, is registered with the D.C. government. TTP participated in the public Phase 3 rule-making process as NGV America and subsequently changed its trade name to The Transport Project in early 2024.

legislation germane to TTP's purpose, provide analysis and support for related legislative policy, and serve as general counsel and secretary to the Board of Directors.

2. TTP is a nonprofit trade association whose members are a national coalition of heavy-duty truck fleets, vehicle and engine manufacturers, servicers, and suppliers, and fuel producers and providers dedicated to the decarbonization of North America's transportation sector. TTP was formed in 1988 for the purpose of advancing the use of natural gas vehicle technology to promote the provision of necessary federal and state incentives and the removal of artificial barriers to the promotion of such technology; to influence and support governmental policies affecting vehicle use; and for any lawful purpose or purposes related thereto. *See* Exhibit A (Articles of Incorporation). TTP advocates for the increased use of gaseous motor fuels such as renewable natural gas and hydrogen to achieve ambitious climate goals and greatly improve air quality in a safe, reliable, and effective manner without delaying or compromising existing commercial business operations.

3. I am aware of and familiar with the United States Environmental Protection Agency's (EPA's) issuance of a final rule titled, "Greenhouse Gas Emissions Standards for Heavy-Duty Vehicles—Phase 3," 89 Fed. Reg. 29, 440 (Apr. 22, 2024) ("The Phase 3 Rule"). I have followed this rule as part of my

responsibilities at TTP because it relates directly to the interests of TTP's members and TTP's purpose. TTP submitted comments on The Phase 3 Rule as NGVAmerica (NGVA) and subsequently submitted a petition for reconsideration. NGVA and TTP have argued that EPA's regulations must include a lifecycle assessment of different vehicle and engine technologies and also account for the emission reduction benefits of biofuels. NGVA's comments in the Phase 3 rulemaking provided documentation supporting several approaches to incorporating the lifecycle benefits of biofuels into the Phase 3 regulation.

4. The NGVC Bylaws (Bylaws) provide the rules by which TTP's governing structure operates. Those Bylaws are attached as Exhibit B.

5. The governing structure of TTP consists of a Board of Directors (Board) and an Executive Committee. The Executive Committee consists of the Chair, Vice-Chair, past-Chair, Treasurer, Secretary, President, General Counsel, and not less than two additional Directors approved by the Board. Exhibit B.

6. Under Article VII of the Bylaws, TTP's Executive Committee has authority to act on behalf of the Board in periods between Board Meetings. Exhibit B. On June 21, 2024, which was a date between Board Meetings, the Executive Committee directors voted to file this lawsuit, which is germane to TTP's interests.

7. On June 24, 2024, a quorum of the Board met. The Executive Committee presented the Board with information on The Phase 3 Rule and this

litigation. Following that presentation, and in accordance with Article V of the Bylaws, the Board affirmed the Executive Committee's decision to file this lawsuit on behalf of its members. Neither the claims asserted, nor the relief requested, requires participation of an individual member in the lawsuit.

8. TTP's members include Hexagon Agility Inc. (Hexagon). Hexagon's Senior Vice President of Legal and Government Affairs is Ashley Remillard. The contents of Ms. Remillard's declaration are incorporated herein in their entirety.

9. As detailed in Ms. Remillard's declaration, Hexagon will be injured by The Phase 3 Rule, which will directly affect Hexagon's profitability, marketability, and overall economic stability by rendering Hexagon's RNG technology non-compliant and diminishing the need for Hexagon's related maintenance services.

10. TTP's members also include Detmar Logistics. The President and CEO of Detmar Logistics is Matthew Detmar. The contents of Mr. Detmar's declaration are incorporated herein in their entirety.

11. As detailed in Mr. Detmar's declaration, Detmar Logistics will also be injured by The Phase 3 Rule, which will negate the company's significant investments in RNG trucks and infrastructure, including an RNG fueling station that has substantially reduced the company's GHG emissions. Furthermore, The Phase 3 Rule will directly affect the profitability and stability of Detmar Logistics

by requiring it to expend millions of dollars to build additional infrastructure, including approximately \$20 million to construct and deploy a 15-megawatt charging station. Detmar Logistics and similarly situated TTP members will also have to increase the size of their fleets; hire additional employees; identify and implement operational changes; and purchase substantially more expensive and less capable heavy-duty trucks when replacing their current fleets.

12. RNG requires the use of internal combustion engines (ICEs), which will be unable to comply with the Rule's increasingly stringent GHG emission requirements. The vehicle-specific standards, particularly for later model years, are technologically unachievable for ICEs.

13. Additionally, The Phase 3 Rule's averaging, banking, and trading (ABT) provisions strongly favor electric vehicles, as evidenced by EPA's zero g/ton-mile CO₂ decree for battery-electric vehicles, the multiplied credits awarded to electric vehicle manufacturers in the Rule's early years, and EPA's failure to sufficiently consider or provide any incentives for RNG and other biofuels. The combination of the technological infeasibility of the Rule's standards and EPA's award of extravagant incentives for electric vehicles under the ABT program creates overwhelming pressure for TTP members, who include truck and engine manufacturers, to abandon ICEs in favor of electric power.

14. The Phase 3 Rule will also erode demand for fuel systems produced by TTP members, such as Hexagon, whose products are compatible only with ICEs designed to operate with RNG. Because, under The Phase 3 Rule, RNG-powered ICEs will not meet the Rule's compliance standards—and because the Rule fails to incentivize biofuels while over-incentivizing electric and zero-emission power train vehicles—heavy-duty vehicle and engine manufacturers will turn away from RNG technologies even though they provide significant reductions in GHG emissions over their lifecycle.

15. If manufacturers scale back or stop offering natural gas trucks, TTP members that are truck fleet operators will be forced to shift their purchases to diesel trucks with higher emissions, thus hindering their ability to continue to meet environmental targets, or they could be forced to purchase electric trucks that cost significantly more and have significant operational challenges.

16. Manufacturers of RNG-powered vehicles who do not sufficiently increase their electric offerings will be forced to purchase emission credits or use banked credits to comply with The Phase 3 Rule. These compliance costs will increase the price of RNG-powered heavy-duty trucks for fleet owners, such as Detmar Logistics, and similarly situated TTP members. As explained in Mr. Detmar's and Ms. Remillard's declarations, because RNG-powered engines will not be able to comply with the Phase 3 standards, demand for RNG vehicles will

dramatically reduce. To the extent any fleet owners still use RNG-powered vehicles, they will become more expensive. If fewer customers are willing to purchase these trucks due to their increased price, vehicle manufacturers will produce fewer RNG trucks.

17. By disincentivizing the use of RNG in heavy-duty trucks, the Phase 3 Rule is intended and expected to cause increased use of electric vehicles and less use of biofuels such as RNG, thereby harming TTP member fleet owners and operators, including Detmar Logistics, and fuel system manufacturers, such as Hexagon. TTP members have invested billions of dollars in operation centers, fueling stations and depots, and training programs related to RNG trucks, which, under the Rule, will fail to advance manufacturers' compliance objectives.

18. By focusing solely on tailpipe emissions and neglecting the broader lifecycle carbon advantages of RNG, the Phase 3 Rule falsely equates RNG engines with traditional diesel engines and unfairly penalizes TTP's members, as the accompanying declarations of Ms. Remillard and Mr. Detmar demonstrate. Without a lifecycle analysis and proper compliance incentives for RNG technology, TTP members' customers will turn to alternative technologies, primarily electric vehicles, to meet regulatory requirements. This will result in a substantial loss of business for TTP members such as Hexagon and Detmar Logistics.

19. The Phase 3 Rule's disincentives for RNG will also harm TTP member fuel providers and retailers who sell RNG and will face decreased market demand. Other impacted TTP members include fueling station construction firms, fueling station and motor vehicle equipment suppliers, and renewable energy producers and suppliers.

20. The harm caused to TTP's members by this rulemaking would be avoided if this Court grants the relief sought. As described in the declarations from Hexagon and Detmar Logistics, vacating and/or remanding the Rule to correct the errors identified in the brief of private petitioners would vacate the EPA's unfair and unlawful electric vehicle mandate. Analyzing GHG emissions via a lifecycle analysis would ensure a more level playing field for TTP members and avoid harms described above because most natural gas used today in natural gas vehicles is renewable and has an extremely low carbon intensity value. For example, in California, RNG has a *negative* carbon-intensity average. If emissions are correctly measured, instead of incurring emission credit deficits, RNG engines would earn credits.

By: 

Jeffrey L. Clarke

Dated: October 11, 2024

EXHIBIT A

ARTICLES OF INCORPORATION
OF
THE NATURAL GAS VEHICLE COALITION

TO: Department of Consumer and Regulatory Affairs
Corporations Division
614 H Street, Northwest
Washington, D.C. 20001

We, the undersigned natural persons of the age of eighteen years or more, acting as incorporators of a corporation, adopt the following Articles of Incorporation for such corporation pursuant to the District of Columbia Non-profit Corporation Act:

- FIRST: The name of the corporation is
THE NATURAL GAS VEHICLE COALITION.
- SECOND: The period of duration is perpetual.
- THIRD: The purpose or purposes for which the corporation is organized is to advance the use of natural gas vehicles and the development of natural gas vehicle technology to promote the provision of necessary federal and state incentives and the removal of artificial barriers to the promotion of such technology, to influence and support governmental policies which affect vehicle use, and for any lawful purpose or purposes related thereto.
- FOURTH: The corporation shall have three classes of members: Charter Members, Regular Members and Associate Members.
- FIFTH: Directors shall be elected at the annual meeting of the members, or as otherwise provided, in the bylaws.

SEP 13 1988

BY _____

SIXTH: The internal affairs of the corporation shall be governed by the laws of the District of Columbia and by the by-laws.

SEVENTH: The address of the initial registered office is 1133 21st Street, N.W., Suite 500, Washington, D.C. 20036, and the name of the initial registered agent at such address is Michael J. Zimmer.

EIGHTH: The number of directors constituting the initial board is 20 and the names and addresses, including street and number, of the persons who are to serve as initial directors until the first annual meeting or until their successors are elected and qualified are:

<u>NAME</u>	<u>ADDRESS</u>
Elwin Larson	Brooklyn Union Gas Company 195 Montague Street 12th Floor Brooklyn, NY 11201
Joseph T. Hydok	Consolidated Edison Company 4 Irving Place, #2215S New York, NY 10003
Charles F. Brown	Providence Gas Company 100 Weybossett Street Providence, RI 02903
William M. Laub, Sr.	Southwest Gas Company P.O. Box 98510, 5241 Spring Mountain Road Las Vegas, NV 89193-8510

Don J. Heim Washington Gas Light Company
1100 H Street, N.W.
Washington, D.C. 20080

George S. Slocum Transcontinental Gas Pipeline Corp.
P.O. Box 1396,
2800 Post Oak Blvd.
Houston, TX 77251

Roger E. Wright The Peoples Natural Gas Company
625 Liberty Avenue
Pittsburgh, PA 15222

John M. Brown National Fuel Gas
Distribution Corp.
10 Lafayette Plaza
Buffalo, NY 14203

Donald Felsing San Diego Gas & Electric Co.
P.O. Box 1831, 101 Ash Street
San Diego, CA 92112

Fred W. Sullivan Elizabethtown Gas Company
1 Elizabethtown Plaza
Elizabethtown, NJ 07207

C. Ronald Tilley Columbia Gas Distribution Companies
200 Civic Center Drive
P.O. Box 117
Columbus, OH 43216

Don L. Lindeman Citizens Gas & Coke Utility
2020 N. Meridian Street
Indianapolis, IN 46202-1306

Mike Reeves Peoples Gas Light & Coke Utility
122 South Michigan
Chicago, IL 60603

Stanley C. Horton Enron Corp.
1400 Smith Street
P.O. Box 1188
Houston, TX 77251

Janel Hill Southern California Gas Co.,
810 South Flower Street
P.O. Box 3249 - Terminal Annex
Los Angeles, CA 90051

Albert D. Etchelecu

Minnegasco
201 South 7th Street
Minneapolis, MN 55402

E. James McIntyre

Northern States Power Co.
825 Rice Street
St. Paul, MN 55117

John W. Dunn

NIPSCO Industries
5265 Hohman Avenue
Hammond, IN 46320

Lawrence R. Codey

Public Service Electric & Gas
Company
P.O. Box 570, 80 Park Plaza, 11-A
Newark, NJ 07101

R. W. Martin

Consumers Gas Company
100 Pimcoe Street
Toronto, Ontario M5H 3G2

NINTH: The names and addresses including street and number of each incorporator is:

<u>NAME</u>	<u>ADDRESS</u>
Bruce A. Templeton	1133 21st Street, N.W. Suite 500 Washington, D.C. 20036
Gerald S. Endler	1133 21st Street, N.W. Suite 500 Washington, D.C. 20036
Kenneth H. Marks, Jr.	1133 21st Street, N.W. Suite 500 Washington, D.C. 20036

August 11, 1988
Date

August 11, 1988
Date

August 11, 1988
Date

Bruce A. Templeton
Incorporator

Gerald S. Endler
Incorporator

Kenneth H. Marks, Jr.
Incorporator

)
) ss
)

I, Teresa L. Shirley a Notary Public, hereby certify that on the 11th day of August, 1988, personally appeared before me Bruce Templeton, Gerald Endler and Kenneth Mackay, who signed the foregoing document as incorporators, and that the statements herein contained are true.

Teresa L. Shirley
Notary Public

My Commission Expires June 30, 1990

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EXHIBIT B

THE NATURAL GAS VEHICLE COALITION BYLAWS

ARTICLE I NAME AND LOCATION OF CORPORATION

The Natural Gas Vehicle Coalition (hereinafter referred to as the "Coalition") is a corporation incorporated and existing under the laws of the District of Columbia. The principal office of the Coalition is located at 400 North Capitol St., NW, Washington, DC 20001 or at such other location(s) as the Board of Directors may designate from time to time. The Coalition conducted business as "NGVAmerica" since November 2005 and changed its trade name to "The Transport Project" in February 2024.

ARTICLE II PURPOSES

The purposes for which the corporation is organized are: to advance the use of vehicles powered by gaseous fuels including natural gas and hydrogen, especially in their renewable forms, and the development of such vehicle technology and fueling infrastructure; to educate potential customers about the benefits of these vehicles; to promote the establishment of codes and standards to facilitate the development of markets for vehicles powered by gaseous fuels; to promote the provision of necessary federal and state incentives and the removal of barriers to the promotion of vehicles powered by gaseous fuels; to influence and support governmental policies that affect vehicle use; to provide specific product development information to the industry; and for any lawful purpose or purposes.

ARTICLE III MEMBERSHIP

Section 1. Class of Members

There shall be two classes of membership in the Coalition: (1) Sustaining Members and (2) Supporting Members.

Section 2. Sustaining Members

Sustaining membership shall be available to companies, corporations, partnerships or other business units that are willing to provide substantial support for natural gas vehicles. Applicants for Sustaining membership must receive the approval of two-thirds of the Board members at a meeting at which there is a quorum, and must be fully committed to support the goals of the Coalition.

The Board of Directors shall establish the range of dues, including the minimum level of dues, for Sustaining members. Dues shall be billed on a calendar year basis. New members joining between January 1st and June 30th of a calendar year shall be billed for the entire annual dues. New members joining between July 1st and December 31st of the calendar year shall be billed for fifty percent (50%) of the annual dues.

Only Sustaining members shall be eligible to serve on the Board of Directors. Sustaining members also shall be eligible to vote in the election of Directors to the Board, on amendments to the Articles of Incorporation and on matters relating to a proposed merger or consolidation of the Coalition. Sustaining members are eligible to serve on all Standing Committees. The right to vote in the election of Directors to the Board of Directors may be subject to forfeiture, at the discretion of the Board of Directors, for nonpayment of dues or of Board of Directors approved assessments. In addition, each Sustaining member shall be entitled to receive all general membership communications and attend and vote at all annual and special membership meetings of the Coalition.

Section 3. Supporting Members

Supporting membership shall be available to companies, corporations, partnerships or other business units that will provide substantial support for the development of natural gas vehicles.

The Board of Directors shall establish the range of dues for Supporting members from time to time. Dues shall be billed on a calendar year basis. New members joining between January 1st and June 30th of a calendar year shall be billed for the entire annual dues. New members joining between July 1st and December 31st of the calendar year shall be billed for fifty percent (50%) of the annual dues.

Each Supporting member shall be eligible to vote in the election of Directors to the Board of Directors, on amendments to the Articles of Incorporation and on matters relating to a proposed merger or consolidation of the Coalition. Supporting members are eligible to serve on all Standing Committees. The right to vote shall be subject to forfeiture, at the discretion of the Board of Directors, for nonpayment of dues or of Board of Directors approved assessments. In addition, Supporting members shall be entitled to receive selective membership communications as determined by the President and attend all annual and special membership meetings of the Coalition.

ARTICLE IV **MEETINGS OF MEMBERS**

Section 1. Place of Meetings

Meetings, both annual and special, of the membership shall be held at such times and places as may be designated by the Board of Directors.

Section 2. Annual Meetings

There shall be an annual meeting of the members, which shall be held at a time and place to be designated by the Board of Directors. At such annual meeting, the membership shall transact such business of the Coalition as may properly come before the membership.

Section 3. Special Meetings

The Chair or Secretary may call special meetings of the members at the direction of the Board of Directors. Notice of any special meeting shall state the time and place of such meeting and the purpose thereof.

Section 4. Notice of Meetings

Written or printed notice stating the place, day and hour of the meeting and, in the case of the special meeting, the purpose or purposes for which the meeting is called, shall be given not less than ten (10) nor more than fifty (50) days before the date of the meeting (unless a different time is required by law), either personally, by mail, or by e-mail, by or at the direction of the Chair or the Secretary, to each member entitled to vote at such meeting. If mailed, such notice shall be deemed to be given when deposited in the United States mail, addressed to the member at his or her address as it appears on the membership list maintained by the Secretary of the Coalition, with postage thereon prepaid.

Notice of a membership meeting to act on an amendment to the Articles of Incorporation or on a plan of merger or consolidation, shall be given in the manner provided above not less than twenty five (25) nor more than fifty (50) days before the date of the meeting. A copy of the proposed amendment or plan of merger or consolidation shall accompany any such notice.

Section 5. Quorum

The presence, either in person or by proxy, of at least fifty percent (50%) of the total number of Sustaining members shall constitute a quorum for transacting business at all meetings of members. If less than 50% of the Sustaining members are represented, a majority of the members present may adjourn the meeting, from time to time, without further notice. At any reconvened session of such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally notified.

Section 6. Manner of Acting

The affirmative vote of the majority of the members at a meeting and entitled to vote on the subject matter shall be the act of the membership, unless the vote of the greater number or voting by classes is required by law or the Articles of Incorporation. Less than a quorum may adjourn.

Section 7. Proxies

At all meetings of the membership, a member may vote by proxy executed in writing by the member or by his or her duly authorized attorney-in-fact. Such proxy shall be filed with the Secretary of the Coalition before or at the time of the meeting. No proxy shall be valid after the expiration of eleven (11) months from the date of its execution, unless otherwise provided therein.

Section 8. Informal Action by the Membership

Unless otherwise provided by law, any action required to be taken at a meeting of the membership or any other action which may be taken at a meeting of the membership may be taken without a meeting if a consent in writing, which sets forth the action so taken, shall be signed by all of the members entitled to vote with respect to the subject matter thereof.

ARTICLE V **DIRECTORS**

Section 1. Powers and Duties

The affairs of the Coalition shall be governed by the Board of Directors. The Board of Directors may do all acts and things as are not by law or by these Bylaws directed to be done by the members. Directors shall be individuals who are owners or employees of Sustaining members.

Section 2. Composition, Election and Term

The Board of Directors shall consist of at least 20 and no more than 50 Directors. The Chair, Vice-Chair, President, Secretary, Treasurer and General Counsel shall serve as Directors by virtue of their election as officers of the Coalition. The Immediate Past-Chair shall also serve on the Board of Directors. The Board of Directors shall elect the officers of the Board. The Sustaining and Supporting members shall elect the Directors of the Board. Elected Directors shall serve for a term of two years, beginning with the meeting of the Board at which they are elected.

To provide for continuity in the Board, approximately one-half of the total number of Directors shall be elected each year at the annual meeting of the members. Directors shall have equal rights and privileges except as otherwise provided in these Bylaws. Each elected Director shall serve until the election and acceptance of his or her duly qualified successor, unless sooner removed by appropriate action of the Board or by resignation of the Director. During intervals between meetings of the Members, the Chair, subject to the approval of the Board of Directors, may appoint one or more individuals to serve as Directors, or, in the case of vacancies, as Officers, until the next meeting of the Members.

Section 3. Chair

A Chair shall be elected by the Board of Directors every other year and shall serve without compensation. The Chair shall be a Director and an officer and shall preside at all meetings of the Board of Directors and at all meetings, whether annual or special, of the members. The Chair shall perform all duties incident to the office of Chair, and such other duties as may be prescribed or delegated by the Board of Directors from time to time. The Chair shall supervise and control all of the business and affairs of the Coalition, including the execution of contracts and appointment of Committee members. The Chair shall also be responsible for the designation of Advisory Consultants to the Coalition, as may be necessary from time to time. The Board of Directors may remove with or without cause the Chair whenever, in its judgment, the best interests of the Coalition would be served thereby. Removal of the Chair shall require a two-thirds vote of the Board of Directors.

Section 4. Regular Meetings

The Board of Directors shall meet regularly on a quarterly basis during the year. The Board of Directors may provide, by resolution, the time and place for the holding of additional regular meetings without notice other than such resolution. Only Directors or their designees shall have the right to attend and vote at a meeting of the Board of Directors. Directors may not vote by proxy in meetings of the Board of Directors but they may have a designee attend for them and vote on their behalf. Non-Director members may attend, but not vote, at a meeting of the Board of Directors if they are invited to do so. The Board may meet by telephone conference call.

Section 5. Special Meetings

Special meetings of the Board of Directors shall be called by the Chair or the Secretary at the request in writing of any five (5) members of the Board of Directors. Such special meeting shall be held at a place designated by the Chair, or may be held by telephone conference call.

Section 6. Notice

Notice of any regular meeting of the Board or special meeting of the Board and, in the case of a special meeting, the purpose thereof, shall be given not less than ten (10) nor more than fifty (50) days prior thereto by written notice delivered personally, by e-mail, by telegram, or by mail to each Director at the Director's business address. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail so addressed, with postage thereon prepaid. If notice be given by telegram, such notice shall be deemed to be delivered when the telegram is delivered to the telegraph company. Any Director may waive notice of any meeting. The attendance of the Director at a meeting shall constitute a waiver of notice of such meeting, except when a Director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

Section 7. Vacancies

Any vacancy of a Director shall be filled by the appointment of an individual by the Chair, subject to the approval of the Board, until the next meeting of the members. Notwithstanding the above, a Director's company shall have the right to select another employee to complete the unexpired term of the Director if the vacancy is created by the retirement, dismissal, death, or if other circumstances prevent the Director from continuing to serve. A Director who is no longer an employee of a member company shall be deemed to have relinquished his or her position as a Director.

Section 8. Voting and Quorum

At each meeting of the Board of Directors, a majority of the number of Directors shall constitute a quorum for the transaction of business at any meeting of the Board of Directors, but if less than such majority is present at a meeting, a majority of the Directors present may adjourn the meeting from time to time without further notice.

Section 9. Manner of Acting

The Board when voting on matters brought before it shall strive to reach consensus among the respective Board members. If a consensus cannot be reached, the act of two-thirds of the Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors. Directors may transact business at any meeting including a meeting held by telephone, and tele-conference. Any action so taken by the Board in the absence of a quorum that is subsequently agreed to in writing by a two-thirds majority of the Directors shall constitute an act of the Board. Written consent to any action by a two-thirds majority of the Directors shall constitute official action of the Board of Directors.

Section 10. Informal Action by Directors

Unless otherwise provided by law, any action required to be taken at a meeting of the Board of Directors, or any other action which may be taken at a meeting of the Board of Directors, may be taken without a meeting if a consent in writing, which sets forth the action so taken, shall be signed by all of the Directors entitled to vote with respect to the subject matter thereof.

Section 11. Presumption of Assent

A Director who is present at a meeting of the Board of Directors at which action on any corporate matter is taken shall be presumed to have assented to the action unless his or her dissent shall be entered in the minutes of the meeting or unless he shall file his or her written dissent to such action with the person acting as the Secretary of the meeting before the adjournment thereof, or shall forward such dissent by registered mail to the Secretary of the Coalition immediately after the adjournment of the meeting. Such right to dissent shall not apply to a Director who voted in favor of such action.

Section 12. Removal of Directors

Any Director elected by the Members may be removed at any time by two-thirds vote of the Board or of the Members.

Section 13. Resignation of Directors

Any Director may resign his or her office at any time. Such resignation must be made in writing to the Board of Directors at the address of the Coalition, and shall take effect as provided in such writing, or upon receipt by the Coalition if no effective date is provided in such writing. A Director who is no longer an employee of the company he or she represents on the Board of Directors shall be deemed to have resigned their position as a Director.

ARTICLE VI **OFFICERS**

Section 1. Designation

The officers of the Coalition shall be a Chair, Vice-Chair, President, Secretary, Treasurer and General Counsel, each of whom shall be elected by the Board of Directors, and the immediate past-Chair. Any two or more offices may be held by the same person, except the Chair shall not also be the Secretary. The previous Chair shall be deemed to be an officer by virtue of their having served as Chair. The responsibilities of the immediate past-Chair shall be to provide counsel and advice to the Board on strategies and direction, and to give support to the officers of the Board.

Section 2. Election and Term of Office

The officers of the Coalition shall be elected by the Board every other year. Each officer shall hold office until his or her successor has been duly elected and qualified or until his or her death or until he resigns or has been removed in the manner hereinafter provided. The Chair of the Board of Directors shall be elected to serve a non-consecutive term of two-years.

Section 3. Removal of Officers

Any officer or agent nominated by the Board of Directors may be removed with or without cause by the Board of Directors whenever, in its judgment, the best interests of the Coalition would be served thereby. Removal of officers or agents nominated by the Board of Directors shall require a two-thirds vote of the Board of Directors.

Section 4. Vacancies

A vacancy in any office because of death, resignation, removal, disqualification, or otherwise, may be filled by the Board of Directors for the unexpired portion of the term.

Section 5. Chair

As provided in Article V, Section 3 of these Bylaws, the Chair shall be an officer of the Coalition with the powers and duties provided in that section.

Section 6. Vice Chair

In the absence of, or disability of, the Chair, the Vice Chair shall perform the Chair's functions and duties as long as such absence or disability continues. The Vice Chair shall have such powers and duties as the Board of Directors may confer from time to time.

Section 7. President

The President shall be the chief operating officer of the Coalition and shall report to the Chair and to the Board of Directors. The President shall be in charge of all membership services and the development of new members for the Coalition. The President will coordinate all activities of the Standing Committees and other advisory groups. The President shall also have such powers and duties as the Board of Directors may confer from time to time.

Section 8. Secretary

The Secretary shall: (a) oversee the keeping of the minutes of all meetings of the Board of Directors and the minutes of all meetings of the members of the Coalition in one or more books provided for that purpose; (b) ensure that all notices are duly given in accordance with these Bylaws or as required by law; (c) be custodian of the corporate

records and of the seal of the Coalition and see that the seal of the Coalition is affixed to all documents, the execution of which on behalf of the Coalition under its seal is duly authorized; (d) keep a register of the post office address of each member which shall be furnished to the Secretary by such members; (e) have general charge of the books and papers of the Coalition and (f) perform all duties incident to the office of Secretary and such other duties as, from time to time, may be assigned by the Chair or by the Board of Directors.

Section 9. Treasurer

The Treasurer of the Coalition shall oversee the keeping of the financial books of the Coalition and render a financial accounting and report to the membership on a quarterly basis, or at such other time designated by the Board of Directors. The Treasurer shall: (a) have charge and custody of and be responsible for all funds and securities of the Coalition, receive and give receipts for monies due and payable to the Coalition from any source whatsoever, and deposit all such monies in the name of the Coalition in such banks, trust companies or other depositories as shall be selected by the Board of Directors; and (b) perform all of the duties incident to the office of Treasurer and such other duties as, from time to time, may be assigned to him by the Chair or the Board of Directors. If required by the Board of Directors, the Treasurer shall give a bond for the faithful discharge of his or her duties in such sum and with such surety or sureties as the Board of Directors shall determine.

Section 10. General Counsel

The General Counsel shall be chief legal officer of the Coalition and shall be subject to the control of the Chair and the Board of Directors. The General Counsel shall supervise the legal affairs of the Coalition and shall have such other powers and duties as the Board of Directors may confer from time to time.

ARTICLE VII **STANDING COMMITTEES**

Section 1. Executive Committee

The Executive Committee shall be a permanent standing committee of the Board of Directors. The Executive Committee shall be responsible for directing the business affairs of the organization. It shall have and may exercise all of the powers of the Board of Directors during intervals between meetings of the Board, except as provided specifically by the Board or by law. It is the chief coordinating committee for the Board outlining how the Board's business should be conducted, setting agendas and organizing the activity of other committees. All standing committees of the organization shall report to the Executive Committee and the Board.

The Executive Committee may transact business by telephone. Participation in an Executive Committee telephone conference shall constitute the presence in person at such meeting. Further, any action required or permitted to be taken by the Executive Committee may be taken without a meeting or telephone conference if all members of the Executive Committee consent to such action in writing and the writings are filed with the minutes of the proceedings of the Committee.

The Executive Committee shall consist of the Chair, Vice-Chair, past-Chair, treasurer, secretary, President, General Counsel, and not less than two additional Directors to be nominated by the Nominating Committee and approved by the Board of Directors. The Chair shall serve as Chair of the Executive Committee. The officers shall serve as members of the Executive Committee for as long as they are officers. The elected members of the Executive Committee shall serve for two years beginning with the date of the approval of their membership on the Committee by the Board.

Section 2. Additional Standing Committees

The Board of Directors may establish additional Standing Committees to provide strategy and direction to the activities of the Coalition. All Standing Committees will report to the Executive Committee and the Board.

Section 3. Governance of Standing Committees

Standing Committees shall report quarterly to the Board of Directors on the status of their activities. Standing committees, if requested, shall also report to the Executive Committee on the status of its activities. Unless otherwise approved by the Board of Directors, Standing Committees shall have a Chair and a Co-chair. The Chair and Co-chair of each Standing Committee shall be selected by the Nominating Committee and be approved by the Board of Directors. The Board of Directors from time to time shall consider the continued need for each Standing Committee and shall determine whether its work is completed. If the work of the Standing Committee is deemed completed, the Board of Directors shall vote to retire the standing committee.

Section 4. Membership on Additional Standing Committees

Any member company can request to be a member of one or more of the Additional Standing Committees. To ensure effectiveness of the Additional Standing Committees, the Chair and Co-chair shall determine the maximum number of committee members. The Chair and Co-chair also shall consider the diversity of industry segments represented by Coalition members and shall to the extent practical ensure that the Committee reflects that diversity. If, for any reason, a member's request to serve on a standing committee is not accepted, that member is eligible to appeal that decision to the Board of Directors.

Section 5. Advisory Committees

From time to time, the Executive Committee may establish advisory committees to provide input to the President on issues of importance to the Coalition and the broader NGV industry. Organizations can be nominated by the Executive Committee or the Board of Directors, as approved by a majority of the Board.

Section 6. Nominating Committee

A Nominating Committee of eight (8) persons shall be elected every other year by the Board of Directors. The Vice-Chair and President shall serve as members of the Nominating Committee. The committee shall be chaired by the Vice-Chair. The Board of Directors shall elect six (6) additional Board members to serve on the Nominating Committee. The committee shall nominate Directors, and shall submit its nominations as necessary prior to any annual meeting at which an election of Directors is to be held. The committee shall nominate officers and members of the next Nominating Committee, and shall submit its nominations as necessary prior to any Board of Directors meeting at which an election of officers or members of the nominating committee are to be held. The committee also shall nominate the Chair and Co-Chair of the Additional Standing Committees, and shall submit its nominations as necessary prior to any Board of Directors meeting at which elections are to be held. In selecting persons as nominees for officers, Directors, members of the Nominating Committee, and Chairs and Co-Chairs of Standing Committees, the Nominating Committee shall consider the diversity of industry segments among the membership and to the extent practical nominees should reflect that diversity. Members of the Nominating Committee shall serve for a term of approximately two years beginning the date of their election. No elected member of the Nominating Committee may serve consecutive terms. A former member of the Nominating Committee may be eligible for reelection to the committee, but not until the meeting of the Board of Directors that follows the meeting of the Board of Directors at which his or her immediate prior term expired.

ARTICLE VIII **MEMBERSHIP ROSTER**

The Secretary shall, at the direction of the Board of Directors, maintain a membership roster, which shall constitute the official list of all members of the Coalition. Any member in good standing or prospective member shall be entitled to inspect the membership roster upon reasonable notice being given to the Vice Secretary of the Coalition.

ARTICLE IX **ACCOUNTING YEAR**

The accounting year of the Coalition shall be determined by the Board of Directors.

ARTICLE X
SEAL

The Coalition shall have a corporate seal which shall be circular in form and shall have inscribed thereon the name of the Coalition, the year of the incorporation, the state of incorporation and the words "Corporate Seal."

ARTICLE XI
WAIVER OF NOTICE

Unless otherwise provided by law, whenever notice is required to be given to any member or Director of the Coalition under the provisions of these Bylaws or under the provisions of the Articles of Incorporation, a waiver thereof in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

ARTICLE XII
INDEMNIFICATION

The Coalition shall indemnify officers and Directors to the extent permitted under the laws of the District of Columbia and in the manner provided by the Code of the District of Columbia.

ARTICLE XIII
AMENDMENTS

These Bylaws may be amended by a majority vote of the Board of Directors at any regular or special meeting.

Last Modified by action of the Board of Directors on February 29, 2024. Changes recorded by Jeff Clarke August 26, 2024.

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

THE TRANSPORT PROJECT, also known as
THE NATURAL GAS VEHICLE COALITION,

Petitioner,

v.

U.S. ENVIRONMENTAL PROTECTION
AGENCY, and MICHAEL S. REGAN,
ADMINISTRATOR, U.S. ENVIRONMENTAL
PROTECTION AGENCY,

Respondent.

No. 24-1129

[Consolidated with 24-
1133, 24-1157, 24-1207,
24-1208, 24-1209, 24-
1210, 24-1214]

DECLARATION OF MATTHEW DETMAR

Pursuant to 28 U.S.C. 1746, I, Matthew Detmar, am older than 18 years of age and declare under penalty of perjury the foregoing is true and correct, to the best of my knowledge:

1. I am the Chief Executive Officer of Detmar Logistics, LLC (“Detmar Logistics”). As CEO, I have a thorough understanding of the company, its operations, its finances, and its market.

2. Detmar Logistics is a trucking company with an asset base of about 180 trucks and 200 trailers. We are a leading provider of proppant (frac sand) logistic solutions in the Permian Basin in western Texas and are dedicated to

decarbonizing our logistics footprint through sustainable transportation. Detmar Logistics is a member of The Transport Project.

3. Detmar Logistics has committed to moving away from diesel. To accomplish that goal, we have shifted a significant portion of our fleet to biofuels. We currently own 60 trucks that run on renewable natural gas (“RNG”) and have invested in a state-of-the-art RNG refueling station. These and other efforts to reduce our carbon impact have reduced our carbon emissions by 60 percent.

4. I am aware of and familiar with the United States Environmental Protection Agency’s (EPA’s) issuance of a final rule titled, “Greenhouse Gas Emissions Standards for Heavy-Duty Vehicles—Phase 3,” 89 Fed. Reg. 29,440 (Apr. 22, 2024) (“The Phase 3 Rule” or “Rule”). I have followed this Rule because it relates directly to the business and operations of Detmar Logistics.

5. By focusing on tailpipe emissions without accounting for or crediting the lifecycle emissions benefits of RNG, the Phase 3 Rule will render RNG-fueled heavy-duty trucks non-compliant, which would have the effect of negating significant investments we have made to lower our emissions and fuel costs through RNG.

6. Because the Rule mandates electric vehicles and fails to incentivize or otherwise account for the benefits of RNG, it will cause manufacturers to move away from manufacturing engines and vehicles that rely on gaseous fuels,

including RNG. This shift in manufacturing will decrease the availability of the heavy-duty trucks Detmar Logistics needs to operate, make a profit, and achieve its sustainability goals.

7. Detmar Logistics hauls by the payload and charges by the ton. An electric heavy-duty truck requires a heavy battery, which would impact carrying capacity and pricing. In addition to losing freight capacity, electric heavy-duty trucks have a shorter range and must stop to recharge at established and sufficiently powered charging stations. This will require us to increase the size and scope of our fleet.

8. An electric fleet would also be prohibitively expensive and make it more difficult for Detmar Logistics to achieve its sustainability goals. An electric heavy-duty truck costs about \$400,000, compared to RNG trucks, which cost about \$250,000 each. An electric fleet would also require the construction of a 15-megawatt substation, which would cost approximately \$20 million to set up, and we would be forced to compete for electricity in a market already facing grid stability issues. Given the overall weak condition of the freight-trucking industry and the massive financial investment required to support an electric heavy-duty trucking fleet, such a transition is likely not possible for Detmar Logistic or the trucking industry.

9. The injuries described above would be avoided if the Rule were vacated and the EPA corrected its errors, including its failure to consider lifecycle greenhouse

gas emissions and its failure to recognize or incentivize emissions benefits
achieved through RNG.

Dated: 10/11/2024 _____

By:  _____
153E42ADEAE2413...
Matthew Detmar, CEO of Detmar Logistics, LLC

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

THE TRANSPORT PROJECT, also known as
THE NATURAL GAS VEHICLE COALITION,

Petitioner,

v.

U.S. ENVIRONMENTAL PROTECTION
AGENCY, and MICHAEL S. REGAN,
ADMINISTRATOR, U.S. ENVIRONMENTAL
PROTECTION AGENCY,

Respondent.

No. 24-1129

[Consolidated with 24-
1133, 24-1157, 24-1207,
24-1208, 24-1209, 24-
1210, 24-1214]

DECLARATION OF ASHLEY REMILLARD

Pursuant to 28 U.S.C. § 1746, I, Ashley Remillard, am over 18 years of age and state under penalty of perjury that the following is true and correct, to the best of my knowledge:

1. I am Senior Vice President of Legal and Government Affairs for Hexagon Agility Inc. (Hexagon). My responsibilities include overseeing Hexagon's legal department and serving as general counsel for Hexagon and several of its subsidiaries. Additionally, I oversee Hexagon's government affairs in the United States and Europe, which is conducted primarily through membership in trade associations, including The Transport Project (TTP). As a

member of Hexagon's executive management team, I have a thorough understanding of Hexagon's products and their path to market.

2. I am aware of and familiar with the United States Environmental Protection Agency's (EPA's) issuance of a final rule titled, "Greenhouse Gas Emissions Standards for Heavy-Duty Vehicles—Phase 3," 89 Fed. Reg. 29, 440 (Apr. 22, 2024) ("The Phase 3 Rule"). I have followed this rule as part of my responsibilities at Hexagon because it relates directly to Hexagon's business and the business of its subsidiaries.

3. Hexagon is a leading global provider of highly engineered and cost-effective clean fuel solutions for medium- and heavy-duty commercial vehicles. Hexagon's products, which include specialized fuel tanks and fuel systems, enable the safe and effective use of natural gas, including renewable natural gas (RNG), as transportation fuel. These clean fuels reduce greenhouse gas emissions and other air pollutants and save money for fleet operators and their customers.

4. Hexagon manufactures both fuel tanks and fuel systems for heavy-duty vehicles capable of operating on natural gas and RNG. A typical Hexagon system consists of a high-pressure fuel tank that holds compressed natural gas (CNG) and a fuel system that de-pressurizes the gas for use in heavy-duty internal combustion engines (ICEs) designed specifically for natural gas. Hexagon's products are used in applications like refuse collection, transit, and trucking for

companies such as UPS and Amazon. Hexagon is the only vertically integrated manufacturer of both heavy duty on-road fuel systems and storage tanks.

5. The Phase 3 Rule is problematic because it focuses on tailpipe emissions without accounting for or crediting the lifecycle emissions benefits of RNG. RNG is carbon-negative when considering its methane abatement properties, but The Phase 3 Rule treats Hexagon's technology as equivalent to a traditional diesel engine, ignoring the environmental advantages RNG offers. As a result, The Phase 3 Rule fails to provide a compliance pathway for Hexagon's products, significantly reducing their market viability. To be accurate and fair, emissions standards designed to reduce greenhouse gas emissions from heavy-duty trucks must take into account the significant benefits of using RNG.

6. Hexagon's customers include original equipment manufacturers (OEMs) such as Volvo, PACCAR and Freightliner, as well as large end-users like UPS and Amazon, who integrate Hexagon's systems into their fleets. The Phase 3 Rule forces OEMs to prioritize electric vehicles (EVs) over natural gas vehicles, reducing demand for Hexagon's natural gas systems. Without proper compliance incentives based on RNG's lifecycle benefits, customers will turn away from natural gas technologies, causing substantial harm to Hexagon.

7. Hexagon has already experienced a significant reduction in demand due to a similar regulatory shift under the Advanced Clean Trucks (ACT)

regulations in California, where OEMs have drastically reduced their offerings of natural gas vehicles and systems, which reduces demand for Hexagon's products. The Phase 3 Rule will further exacerbate this decline on a national level. Without a lifecycle analysis and proper compliance incentives for RNG technology, Hexagon's products will be viewed as non-compliant, and customers will turn to alternative technologies, primarily electric vehicles, to meet regulatory requirements. This will result in a substantial loss of business for Hexagon, both in terms of product sales and aftermarket services.

8. In contrast to manufacturers of general engine components such as fuel valves, which can be used across a variety of engines, Hexagon manufactures highly specialized products designed specifically for vehicles powered by natural gas. Hexagon fuel tanks and systems are not interchangeable with those used for traditional internal combustion engines or electric vehicles. Hexagon's products are tailored to natural gas engines and require specialized design and engineering to manage the high pressure of CNG and the conversion of this gas into a form that can be used in engines.

9. Because Hexagon's products are highly specialized, if the national market for natural gas vehicles declines, as it has in response to the ACT regulations in California, Hexagon's products cannot be repurposed for other vehicle types or markets. Hexagon's business is directly correlated to the success

of natural gas vehicles, and without proper compliance incentives for RNG, like those that should arise from a full lifecycle analysis, Hexagon's ability to compete will be severely compromised.

10. Hexagon Agility FleetCare, a wholly owned subsidiary of Hexagon, provides aftermarket services, including repair and maintenance of natural gas fuel systems. The decline in sales of natural gas vehicles in response to The Phase 3 Rule will also reduce demand for aftermarket services, constricting this significant revenue stream.

11. The injuries Hexagon faces would be alleviated if The Phase 3 Rule were vacated and/or revised to account for the full lifecycle emissions benefits of RNG. Hexagon seeks relief that requires EPA to conduct a proper lifecycle analysis and implement compliance incentives that account for RNG's full environmental benefits. By including RNG and natural gas technologies as a viable compliance pathway, OEMs and fleet operators would have a cost-effective and environmentally beneficial alternative to electric vehicles. Hexagon's products would then play a key role in helping fleets meet emissions standards, restoring demand for Hexagon's products and services.

12. In summary, The Phase 3 Rule, as currently written, harms Hexagon by reducing demand for its natural gas technologies and providing no recognition for the carbon-negative lifecycle benefits of RNG. Hexagon seeks a requirement

that the EPA conduct a full lifecycle analysis and create proper compliance incentives for RNG, which would mitigate this harm. These revisions would provide a compliance pathway for natural gas vehicles and RNG technologies, ensuring that Hexagon’s environmentally beneficial products can compete fairly in the market.

By: 
Ashley Remillard, Senior Vice President of Legal and Government Affairs,
Hexagon Agility Inc.

Dated: October 8, _____, 2024

No. 24-1157

(Consolidated with 24-1129, 24-1133, 24-1207, 24-1208, 24-1209,
24-1210, and 24-1214)

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

WESTERN STATES TRUCKING ASSOCIATION, INC., ET AL.,
Petitioners,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, ET AL.
Respondents.

On Appeal from the Environmental Protection Agency
EPA-HQ-OAR-2022-0985; FRL-8952-02-OAR

DECLARATION OF MICHAEL LEWIS

I, Michael Lewis, hereby declare as follows:

1. I am over the age of eighteen (18) and am competent to testify in this matter. I have personal knowledge of the following facts and if called upon to do so could competently testify to them under oath. As to those matters which reflect a matter of opinion, they reflect my personal opinion and judgment upon the matter.

2. I am the executive director of Construction Industry Air Quality Coalition (“CIAQC”), a named petitioner in the above-captioned suit. Our organization’s articles of incorporation are attached herein as Exhibit A.

3. CIAQC is a nonprofit California trade association representing the interests of other California nonprofit trade associations and their members whose air emissions are regulated by California state, regional, and local regulations, as well as federal regulations.

4. CIAQC's specific purpose is "to obtain and provide information to its members concerning environmental regulatory issues affecting the members, assist in the development of environmental regulatory strategies and legislation that will balance the goals of a healthy environment and a healthy local economy, act as a conduit for information from members to regulatory agencies and legislators concerning the effect of proposed regulations and legislation on its members, and to cooperate with other persons and associations in the development of reasonable and effective environmental improvement strategies." Exhibit A at 1 (CIAQC articles of incorporation). To those ends, CIAQC may "engage in any lawful act or activity for which a corporation may be organized under [applicable California law]." *Id.* This includes bringing legal challenges on behalf of its members. We represent the interests of multiple member construction companies that transport cargo and goods within the state of California and beyond in connection with construction activities.

5. On April 22, 2024, the Environmental Protection Agency ("EPA") promulgated a final regulation entitled "Greenhouse Gas Emissions Standards for

Heavy-Duty Vehicles—Phase 3” (“HD Regulations”). *See* 89 Fed. Reg. 29440 *et seq.* (Apr. 22, 2024).

6. The HD Regulations establish new, stringent emission standards for greenhouse gases for heavy-duty highway vehicles that will be phased in over model years 2027 through 2032. *Id.*

7. CIAQC’s members are injured by EPA’s HD Regulations, and CIAQC has instituted this lawsuit on behalf of its members.

8. The HD Regulations will limit the types of vehicles available that are necessary to conduct CIAQC members’ business activities, making them choose between purchasing costly and unreliable vehicles required by the regulations and losing significant profits.

9. By unnecessarily increasing the stringency of emissions requirements for heavy-duty vehicles the HD Regulations limit the vehicles that can be sold to and operated by CIAQC’s members, which will be forced to purchase expensive vehicles that meet the requirements of the HD Regulations to continue operating their businesses, thereby losing revenue.

10. The HD Regulations limit the availability of vehicles needed for CIAQC members to profitably conduct their businesses. The sales limitations that the HD Regulations impose increase market scarcity of reliable and cost-effective

diesel-powered heavy-duty vehicles, parts, and supplies necessary to maintaining a profitable fleet.

11. As fewer diesel-powered heavy-duty vehicles remain on the road thanks to the knock-on effects of the HD Regulations, the cost of diesel fuel will increase and the prevalence of diesel refueling stations will decrease.

12. If CIAQC's members wish to continue operating, these regulations will eventually force them to purchase unreliable electric vehicles that often break down or catch fire. There is no nationwide charging infrastructure yet available for such vehicles. Their employees will lose valuable time and be made to risk their lives due to these regulations.

13. CIAQC's members frequently operate in locations where there is no electric power because CIAQC members are installing electric power at that specific location, which only further complicates the use of all-electric vehicles.

14. But for EPA's decision to promulgate the HD Regulations, the businesses of many CIAQC members would not suffer economic injury. As CIAQC's members are directly affected by EPA's decision in a manner that will negatively impact their businesses, CIAQC may stand in the shoes of its members for purposes of this litigation.

15. The Court can redress CIAQC members' injuries by setting aside these EPA regulations, preventing these job-killing regulations from going into effect.

Pursuant to 28 U.S.C. § 1746, I, Michael Lewis, declare under penalty of perjury that the foregoing is true and correct.

Executed on the 8 day of October,
2024, in Acuna Heights, in the State of
California.


MICHAEL LEWIS
Executive Director
Construction Industry Air Quality Coalition,
Inc.

EXHIBIT A

1954125

FILED
in the office of the Secretary of State
of the State of California

**ARTICLES OF INCORPORATION OF
CONSTRUCTION INDUSTRY AIR QUALITY COALITION**

NOV 17 1995

Bill Jones
BILL JONES, Secretary of State

**I.
NAME**

The name of the corporation is Construction Industry Air Quality Coalition.

**II.
PURPOSES**

2. (A) This corporation is a nonprofit mutual benefit corporation organized under the Nonprofit Mutual Benefit Corporation Law. The purpose of this corporation is to engage in any lawful act or activity for which a corporation may be organized under such law.

(B) The specific purpose of this corporation is to obtain and provide information to its members concerning environmental regulatory issues affecting the members, assist in the development of environmental regulatory strategies and legislation that will balance the goals of a healthy environment and a healthy local economy, act as a conduit for information from members to regulatory agencies and legislators concerning the effect of proposed regulations and legislation on its members, and to cooperate with other persons and associations in the development of reasonable and effective environmental improvement strategies.

**III.
AGENT FOR SERVICE OF PROCESS**

The name and address in the State of California of this corporation's initial agent for service of process is: Michael Lewis, 1330 South Valley Vista Drive, Diamond Bar, California 91765.

**IV.
OTHER PROVISIONS**

A. An existing unincorporated association, Construction Industry Air Quality Coalition, is being incorporated by the filing of these articles.

B. The Bylaws may provide for two classes of membership: general and associate.

C. Notwithstanding any of the above statements of purposes and powers, this corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the specific purpose of this corporation.

Dated: September 5, 1995

Amy Glad

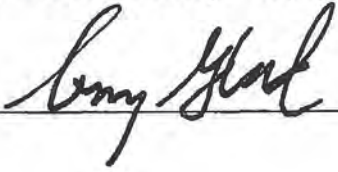
Amy Glad

Jon R. Kruse

Jon R. Kruse

Amy Glad and Jon R. Kruse declare under penalty of perjury under the laws of the State of California that they are two of the Board Members of Construction Industry Air Quality Coalition, the subject of the Articles of Incorporation attached to this declaration, and further declare that Construction Industry Air Quality Coalition has duly authorized and approved its incorporation by means of the attached Articles in accordance with its rules and procedures.

Executed at Monterey Park, County of Los Angeles, California, on September 5, 1995



A handwritten signature in cursive script, appearing to read "Amy Glad", written over a horizontal line.



A handwritten signature in cursive script, appearing to read "Jon R. Kruse", written over a horizontal line.



STATE OF CALIFORNIA

FRANCHISE TAX BOARDP.O. BOX 1286
RANCHO CORDOVA, CA. 95741-1286

November 17, 1995

In reply refer to
340:G :PTS

CONSTRUCTION INDUSTRY AIR QUALITY
COALITION
1330 SOUTH VALLEY
VISTA DRIVE
DIAMOND BAR CA 91765

Purpose : BUSINESS LEAGUE
Code Section : 23701e
Form of Organization : Corporation
Accounting Period Ending: December 31
Organization Number :

You are exempt from state franchise or income tax under the section of the Revenue and Taxation Code indicated above.

This decision is based on information you submitted and assumes that your present operations continue unchanged or conform to those proposed in your application. Any change in operation, character, or purpose of the organization must be reported immediately to this office so that we may determine the effect on your exempt status. Any change of name or address also must be reported.

In the event of a change in relevant statutory, administrative, judicial case law, a change in federal interpretation of federal law in cases where our opinion is based upon such an interpretation, or a change in the material facts or circumstances relating to your application upon which this opinion is based, this opinion may no longer be applicable. It is your responsibility to be aware of these changes should they occur. This paragraph constitutes written advice, other than a chief counsel ruling, within the meaning of Revenue and Taxation Code Section 21012 (a)(2).

You may be required to file Form 199 (Exempt Organization Annual Information Return) on or before the 15th day of the 5th month (4 1/2 months) after the close of your accounting period. See annual instructions with forms for requirements.

You are not required to file state franchise or income tax returns unless you have income subject to the unrelated business income tax under Section 23731 of the Code. In this event, you are required to file Form 109 (Exempt Organization Business Income Tax Return) by the 15th day of the 5th month (4 1/2 months) after the close of your annual accounting period.

November 17, 1995
CONSTRUCTION INDUSTRY AIR QUALITY
Page 2

If the organization is incorporating, this approval will expire unless incorporation is completed with the Secretary of State within 60 days.

Exemption from federal income or other taxes and other state taxes requires separate applications.

A copy of this letter has been sent to the Office of the Secretary of State.

P SHEK
EXEMPT ORGANIZATION UNIT
CORPORATION AUDIT SECTION
Telephone (916) 845-4171

EO :
cc: CURTIS L. COLEMAN

COPY

**IN THE UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA CIRCUIT**

STATE OF NEBRASKA, et al.,

Petitioners,

v.

ENVIRONMENTAL PROTECTION
AGENCY, et al.,

Respondents.

No. 24-1129 (and consolidated
cases)

DECLARATION OF AMANDA GARRAHAN

I, Amanda Garrahan, declare under penalty of perjury that the following is true and correct to the best of my knowledge:

1. I am Executive Director of Strategic Planning and Public Policy for Valero. In this role, my responsibilities include monitoring and assessing regulatory developments, including assessing the impact of vehicle emissions regulations on Valero’s liquid fuels segments. Through my experience in this role, I also have experience analyzing vehicle emissions modeling performed by EPA to support its vehicle standards, including modeling and emissions data from heavy-duty tractors and vocational vehicles.

2. I am generally aware of the United States Environmental Protection Agency’s (“EPA’s”) issuance of a Final Rule titled, “Greenhouse Gas Emissions Standards for Heavy-Duty Vehicles—Phase 3.” 89 Fed. Reg. 29,440 (Apr. 22,

2024). The Rule sets carbon-dioxide emissions standards for heavy-duty tractors and vocational vehicles starting in model year 2027. *Id.* at 29,560–62, tbls. II-24, II-25, II-26, II-27; *see also* 40 C.F.R. §§ 1037.105, 1037.106. For most vehicles, the Rule’s standards increase in stringency (i.e., the permissible grams/ton-mile of carbon-dioxide decrease) from model years 2027 through 2032. 89 Fed. Reg. at 29,560–62, tbls. II-24, II-25, II-26, II-27. For later years, the Rule’s carbon-dioxide standards are set constant at model year 2032 levels. *Id.*

3. It is my understanding that EPA allows manufacturers to generate, average, bank, and trade emissions credits to satisfy the Rule’s standards. 89 Fed. Reg. at 29,600–01; *see also* 40 C.F.R. Part 1037, Subpart H. In practice, this means that a manufacturer generally can meet the Rule’s carbon-dioxide emissions standards if its model year light-heavy, medium-heavy, and heavy-heavy duty fleets meet appropriate standards on average. *See* 40 C.F.R. §§ 1037.701, 1037.740(a) (designating light-heavy, medium-heavy, and heavy-heavy duty vehicle averaging sets). EPA projects that manufacturers will meet the Rule’s standards by producing an increasing share of battery-electric and fuel-cell-electric vehicles. *See* 89 Fed. Reg. at 29,452, tbl. ES-3. EPA also presented an alternate compliance pathway that projects that manufacturers could meet the Rule’s standards by producing hydrogen internal-combustion engine vehicles, which are currently not commercially available. *Id.* at 29,453, tbl. ES-4.

4. It is my understanding that EPA’s modeling to support the feasibility of the Rule relies exclusively on an increasing displacement of heavy-duty internal-combustion-engine vehicle sales with heavy-duty battery-electric and fuel-cell-electric vehicle sales. *See* EPA Regulatory Impact Analysis 586 (2024). As such, EPA’s principal heavy-duty vehicle feasibility modeling to support the Rule does not rely upon improvements to the greenhouse gas emissions performance of future model years of internal-combustion-engine vehicles.

5. To investigate whether commercially available spark-ignition and compression-ignition engine vehicles are likely to meet the Rule’s standards, I examined the emissions certification data for model year 2024 heavy-duty tractors and vocational vehicles that were available in the Rule’s docket. *See* EPA, *Heavy-Duty Greenhouse Gas Emissions Certification Data*, EPA-HQ-OAR-2022-0985-3249. The data include emissions certification information for heavy-duty vehicles powered by common commercial fuels including gasoline, diesel, compressed natural gas, and liquified natural gas.

6. For each vehicle, I compared the “lowest projected CO₂ FEL” certification value to the appropriate model year 2032 standard. *See id.* Projected family emissions limit (FEL) values are generated from EPA’s Greenhouse Gas Emissions Model (GEM) and used by manufacturers to establish subfamily FEL values, which are used to determine compliance with EPA’s greenhouse gas

emissions standards for heavy-duty tractors and vocational vehicles. EPA, *Greenhouse Gas Emissions Model (GEM) User Guide, v 4.0*, 36, EPA-HQ-OAR-2022-0985-0686. For the vast majority of manufacturers using the averaging, banking, and trading program, the lowest projected FEL determines the maximum credits or minimum deficits a certification family or subfamily could generate for compliance with a standard. *See* 40 C.F.R. §§ 1037.105(d), 1037.520, 1037.705(b). It is my understanding that the lowest projected FEL value represents the “best case” (i.e., lowest) carbon-dioxide emissions level simulated by GEM for each vehicle family or subfamily. *See* EPA, *HD Vehicle Certification Tutorial 23*, <https://perma.cc/VB6Y-J4UP>.

7. For each 2024 vehicle, I determined whether the lowest projected FEL met the appropriate model year 2032 standard from the Rule. *See* 89 Fed. Reg. at 29,560–62, tbls. II-24, II-25, II-26, II-27; 40 C.F.R. §§ 1037.105(h)(1)(i), 1037.106(b)(1).

8. The results for heavy-duty tractors are plotted in Figure 1 (next page), with vehicles grouped by vehicle subcategory.

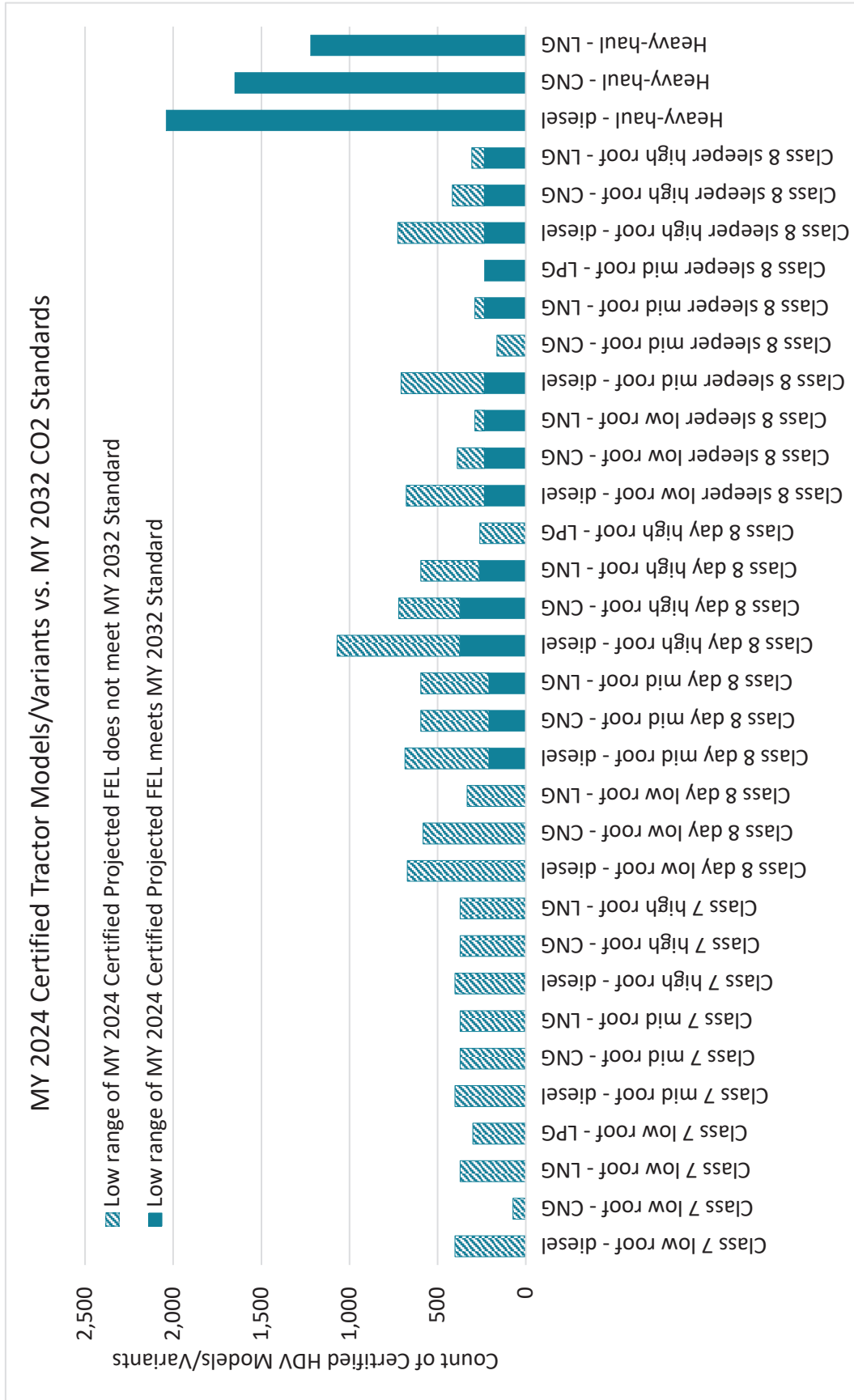


Figure 1. Model Year 2024 Tractors—Lowest Projected FEL vs. Model Year 2023 Standards

9. Figure 1 shows that no model year 2024 Class 7 tractor meets the Rule's model year 2032 carbon-dioxide emissions standards. Several subcategories of Class 8 tractors also have no vehicle that meets the Rule's model year 2032 standards. For example, no Class 8 day cab with a low-roof configuration would meet the Rule's model year 2032 standards. The only vehicle subcategories in which all 2024 vehicles meet the Rule's model year 2032 standards are heavy-haul tractors, which are among the subcategories for which EPA projects the lowest levels of battery-electric and fuel-cell-electric vehicle adoption. *See* 89 Fed. Reg. at 29,567, tbl. II-29.

10. The results for heavy-duty vocational vehicles are plotted in Figure 2 (next page), with vehicles grouped by vehicle subcategory.

11. Figure 2 shows that almost no model year 2024 heavy-duty vocational vehicle of any service class meets the Rule's model year 2032 carbon-dioxide emissions standards. The only vocational vehicles that meet the Rule's standards are a small number of coach buses, concrete mixers, mixed-use vehicles, and emergency vehicles, for which EPA opted not to impose increasingly stringent carbon-dioxide emissions standards. *See* 89 Fed. Reg. at 29,560, tbl. II-25 (standards for coach bus, concrete mixer, mixed-use vehicles, and emergency vehicles do not change year-over-year).

12. Figures 1 and 2 show that for many heavy-duty tractor and vocational vehicle categories, even the best-performing model year 2024 internal-combustion-engine vehicles that use common commercial fuels cannot meet the Rule's model year 2032 standards.

13. In its alternative feasibility assessment, EPA projects no additional feasible efficiency improvement for conventional internal-combustion vocational vehicles, and "4 percent lower CO₂ emissions than the" model year 2027 tractor standards from feasibly aerodynamic improvement and low-rolling-resistance tires in tractors. 89 Fed. Reg. at 29,577–78. EPA projects that switching to compressed natural gas powertrains would feasibly reduce carbon-dioxide emissions by 6 to 7 percent relative to the model year 2027 standards. *Id.* at 29,579. EPA also projects

that a 10 percent reduction in carbon-dioxide emissions from hybridizing tractors is feasible and that a 15 percent reduction in carbon-dioxide emissions from hybridizing vocational vehicles is feasible. *Id.* at 29,580–81. (EPA claims that plug-in hybrids tractors could also achieve a 30 percent reduction in carbon-dioxide emissions for tractors and a 50 percent reduction in carbon-dioxide emissions in vocational vehicles, but these are electric vehicles that draw energy from an outside power source. *Id.*)

14. Even according to these EPA projections, those technologies are insufficient to meet the model year 2032 standards, which, relative to the model year 2027 standards, range from requiring a 60% reduction in carbon-dioxide emissions for light-heavy-duty vocational vehicles, to a 25% reduction in carbon-dioxide emissions for sleeper cab tractors. *See* EPA, Fact Sheet, Final Standards to Reduce Greenhouse Gas Emissions from Heavy-Duty Vehicles for Model Year 2027 and Beyond, EPA-420-F-24-018 (Mar. 2024), <https://www.epa.gov/system/files/documents/2024-04/420f24018.pdf>. Indeed, EPA can only rely upon these technologies by assuming a high rate of plug-in electric vehicles (which are also electric vehicles) and by assuming the high market shares of battery-electric and fuel-cell-electric vehicles it projects in the “reference case” based upon compliance with California’s Advanced Clean Trucks rule in California and several other states that have adopted this California rule. 89 Fed.

Reg. at 29,584.

15. Based upon the available certification data in the administrative record and EPA's technological assessment, it is my opinion that manufacturers will have to decrease the market share of internal-combustion vehicles propelled solely by diesel, gasoline, liquid biofuel, or compressed natural gas in order to comply with 2032 model year standards. Conversely, they will have to increase the market share of other vehicles that can deliver greater assigned reductions.

16. EPA's regulations assign battery-electric and fuel-cell-electric vehicle powertrains zero carbon-dioxide emissions (FEL of 0 g/ton-mile), crediting them with a 100% carbon-dioxide emissions-reduction effectiveness despite their significant lifecycle emissions. 40 C.F.R. § 1037.615(f).

17. Because battery-electric vehicles and fuel-cell-electric vehicles are treated by EPA's regulations as 100% effective at reducing carbon-dioxide emissions, EPA's regulations virtually ensure that manufacturers will use these technologies to meet the model year 2032 standards across the tractor and vocational-vehicle categories.

18. In one alternative pathway, EPA claims that the standards could be met without any electric vehicles by achieving hydrogen internal-combustion-engine market shares ranging from 26% to 12% and hybridizing many other vehicles. 89 Fed. Reg. at 29,453. But hydrogen internal-combustion-engines are not

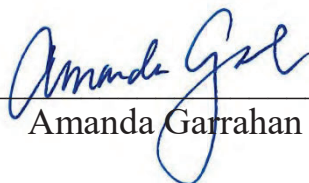
commercially available in the heavy-duty vehicle market, and they would face extraordinarily challenging fuel supply and infrastructure barriers. Moreover, because they emit nitrogen-oxide emissions, California (where these technologies would most likely be first introduced) would ban hydrogen internal-combustion engines beginning in 2036, Cal. Code of Regs. titl. 13 § 2016(c), making it unlikely that manufacturers will devote scarce capital to develop this technology at scale. Moreover, EPA also admits that this hydrogen internal-combustion technology would have a negative payback for tractors, so there is no reason to expect it will be adopted by tractor fleets, let alone at the rates hypothesized by EPA. 89 Fed. Reg. at 25,575 (“For H₂–ICE tractors, our assessment is that the operating costs exceed the operating costs of ICE tractors ...). EPA’s compliance pathway with no electrification but widespread hydrogen internal-combustion-engine market shares therefore rests on unrealistic speculation.

19. Furthermore, according to the available certification data, there are currently no other commercially available powertrain technologies that would allow manufacturers to meet the model year 2032 standards. To comply with the standards, manufacturers will therefore predictably have to increase the market share of plug-in electric and fuel-cell-electric technologies and predictably reduce the market share of compression-ignition and spark-ignition technologies.

20. As projected by EPA, this mandated technological shift will predictably

reduce domestic demand for motor vehicle liquid and natural gas fuels, including diesel, biodiesel, gasoline, ethanol, and compressed natural gas. *See* EPA Regulatory Impact Analysis 750–51 (2024).

Dated: October 8, 2024



Amanda Garrahan

CERTIFICATE OF SERVICE

I hereby certify that on October 16, 2024, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the CM/ECF system. I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

s/Paul D. Clement
Paul D. Clement