



June 21, 2021

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Attention: DEP Docket No. 05-21-03, Advanced Clean Trucks Program and Fleet Reporting Requirements

These comments on the Advanced Clean Trucks Program (ACT) are submitted on behalf of the above groups, all committed to building a green economy through the creation of good, union jobs. New Jersey must adopt policies that maximize job creation by providing family-supporting, and community-supporting, union jobs.

The transportation sector represents the largest source of GHG emissions in New Jersey at 42%. Currently, gasoline-fueled vehicles account for over 70% of the transportation sector’s emissions.¹ Throughout the State, millions of New Jersey residents are suffering from the damaging effects of living with unhealthy air quality. According to the 2021 American Lung Association’s State of the State Report, eight counties received an “F” for air quality. Due to the history of discriminatory land use policies and structural racism, the worst of this pollution burden is concentrated disproportionately in New Jersey’s low income communities and communities of color. These communities bear the brunt of transportation pollution, with bus and freight depots more likely to be located near or within these neighborhoods.²

In New Jersey port cities like Newark, Elizabeth and Bayonne, more than 200 trucks drive through residential streets every hour to transport goods. In these cities, diesel pollution is up to 150 times higher than the level considered safe to breathe, leading to child asthma rates nearly three times higher than the state's average. Truck pollution also harms transportation hub workers, who spend much of their week breathing in the diesel fumes.

At the same time, too many workers in the trucking and logistics industries – many of whom

¹ State of New Jersey. New Jersey’s Global Warming Response Act 80x50 Report. October 15, 2020.

² Coalition for Healthy Ports. (2017). Evaluation of the port of new york & new jersey clean truck program rollback. Retrieved from: <http://www.cleanwateraction.org>

come from the local community - also face unfair and precarious working conditions

Transitioning medium- and heavy-duty vehicles (MHDVs) to zero-emissions alternatives is a critical component to a low-emissions future. In addition to their sizable greenhouse gas (GHG) impact, these vehicles are responsible for an outsized portion of harmful, localized pollution from transportation – contributing a disproportionate amount of nitrogen oxide (NOx) and sulfur oxide (SOx) emissions relative to the size of the vehicle fleet.

Increasing the number of electric trucks on the road is important to address these pollution and health impacts; it can create good new jobs with the installation of charging stations, vehicle maintenance and it should also support more good jobs in the trucking and logistics industries themselves. As part of creating good jobs, labor standards must be followed and there must be recognition of properly trained installers of infrastructure including installation of charging stations.

In the wake of a public health crisis that's worsened by air pollution and that has left thousands of New Jerseyans unemployed, we need policies like this one that can put people back to work tackling climate change and making our communities healthier.

Robust policies must address these emissions, through mandatory reductions, as well as invest in transportation solutions that improve the wealth and quality of life of communities most hit by pollution and income inequality. In addition, the shift to clean trucks must support good jobs in these communities and across the trucking industry. Our comments focus on the rule elements needed to make this a reality.

The ACT Rule will work. Zero-emission long haul trucks already have lower total cost of ownership than diesel, with an estimated 3-year payback period and \$200,000 in savings over the vehicle's lifetime³. Driving up demand for electric (EV) trucks and infrastructure results in more innovation and lowers future costs. Important that the rule is not so rigid or time locked that the state cannot accelerate the transition to electricity more rapidly if technology or other conditions change.

These comments outline the rule changes that are necessary to ensure the rule will achieve the various commitments the Governor and the New Jersey Department of Environmental Conservation (NJDEP) have made to protect communities and transition polluting truck fleets to zero-emissions. As described below, these revisions are necessary to match the scale of the pollution problem caused by these fleets, and will ensure the feasible transition to zero-emissions.

NJDEP must improve the proposed fleet reporting rule

Under the proposed reporting requirements, fleet owners, entities, brokers, and government agencies that meet the requirements in the rule will be required to submit a report to the Department, which will include information related to vehicle identification, vehicle operations, and facility locations within New Jersey.⁴ The rule states that the purpose of reporting is to “collect information to understand the use cases of zero-emission vehicles with a GVWR of

³ Berkeley Lab. Tracking the Sun: Pricing and Design Trends for Distributed Photovoltaic Systems in the United States. 2019.

⁴ New Jersey Draft Advanced Clean Truck Rule at pg 65

more than 8,500 pounds in New Jersey and to inform potential future strategies to accelerate the sales of zero-emission vehicles in these weight classes in the State.”⁵

Understanding these industry economic dynamics will be crucial for the design of successful and equitable fleet rules in such an economically inequitable and financially precarious industry as trucking. To fully implement and obtain compliance, it is critical for NJDEP to regulate the entities actually managing large fleets rather than focusing on individual drivers or individual truck owners. This rule should include strong language signaling its intent to require compliance from the top of the food chain—the entity who ultimately controls the vehicle during the course of its operation—and to ensure that compliance with this program does not become just another business expense that carriers unlawfully pin on their drivers.

In order to ensure substantial emission reductions and put New Jersey on a path to achieving its climate goals, the threshold for required fleet reporting should be reduced from 50 trucks to five trucks. By lowering the reporting threshold to five trucks, it will capture 71% of in-state commercial truck registrations compared to only capturing 32% for the 50 truck threshold.

NJDEP should ask for more detailed information about brokers and contract truckers to better understand this business practice. Tools to accomplish this task should include staff suggested steps of identifying non-asset based fleets using Franchise Tax Board data (in-lieu or in addition to truck registry data); identification of owner-operator trucks under company control by pairing VIN and DOT identification numbers; and by directly asking mixed, asset, and non-asset based fleets for critical financial and operations information, under penalty of perjury, in the reporting questionnaire or interview. In addition, NJDEP must require **annual reporting** and limit confidentiality to ensure that the public and agency have the most up-to-date information to determine progress and gaps in real time.

This data is essential to the design of effective fleet rules, as we know that independent contracting, owner-operations, and employee misclassification present fundamental economic barriers to efficiency investments and advanced technology adoption. This holds true across the US, as reported in numerous trucking industry, government, and academic studies.^{6 7 8} Fundamentally, economic insecurity among trucking contractors, including lack of capital, employment precarity, and high turnover—whether in long haul, short haul, drayage or delivery—undercuts technology shifts such as that to clean vehicles.

Use Expansive Definition of Common Ownership or Control

The Advanced Clean Fleet (ACF) Rule is intended to reduce greenhouse gases and criteria pollutants statewide by mandating the adoption of zero emissions vehicles in the transportation industry. Key considerations in achieving this goal are ensuring that the state has a clear avenue for enforcing ACF standards and that the costs of such a transition are not borne solely by individual drivers who are already being exploited and are often misclassified as independent contractors. This is critical because previous attempts at achieving environmental goals, particularly in the drayage industry, have unduly burdened such drivers who often barely made enough money to pay for their vehicle and who are less likely to achieve compliance with environmental goals.

Both of these goals are served by ensuring that NJDEP focuses its requirements and enforcement efforts not on individuals who may own or lease a truck that they are using to drive

⁵ New Jersey Draft Advanced Clean Truck 7:27 - 33.2 at 80

⁶ North American Council for Freight Efficiency. *Barriers to the Increased Adoption of Fuel Efficiency Technologies in the North American On-Road Freight Sector*. 2013. Available online:

https://www.theicct.org/sites/default/files/publications/ICCT-NACFE-CSS_Barriers_Report_Final_20130722.pdf

⁷ US EPA Working Paper #14-02: *Heavy Duty Trucking and the Energy Efficiency Paradox*. 2014. Available online:

https://www.epa.gov/sites/production/files/2014-12/documents/heavy-duty_trucking_and_the_energy_efficiency_paradox.pdf

⁸ Viscelli, Steve. *The Big Rig: Trucking and the Decline of the American Dream*. UC Press. In print. 2016.

for a larger entity, but on the larger entity itself. By and large, these entities are typically the ones that dispatch and control the vehicles in question. They have both an incentive to ensure their entire fleet is in compliance—to avoid fines and to ensure they can continue operating—and more resources to make this happen than individual drivers. Administering compliance from these larger entities is a much easier administrative task than figuring out how to police compliance from a much more fractured web of misclassified independent contractors and subhaulers.

“Common ownership or control” means being owned or managed day-to-day by the same person or entity. Vehicles managed by the same directors, officers, or managers, or by corporations controlled by the same majority stockholders are considered to be under common ownership or control even if their title is held by different business entities. Common ownership or control of a Federal government vehicle shall be the primary responsibility of the unit that is directly responsible for its day-to-day operational control.⁹

The Rule should use expansive common ownership and control language to identify and define the regulated entities. In other words, in every applicable section of the rule, a “fleet” should not be defined solely by who owns the vehicles on paper. A “fleet” should include any trucks commonly owned, controlled, or dispatched by a single entity, and any truck that operates using the entity’s operating authority and/or registration.

Many drayage companies operate on a non-asset-based/contractor model in which truck ownership by a contractor obfuscates real corporate control over operations. Companies with operational control must bear the cost of the rule without shifting costs to drivers. In California, to help address this issue, CARB defined ownership in the ACT rule as “common ownership or control” to include companies that control or direct trucks. The improved “common ownership or control” definition must also be used to identify the rule’s regulated party. We support the intention in the proposed private and federal fleet requirements that uses the “common ownership and control” definition to identify the regulated entity. By making the “common owner” responsible for compliance, the regulatory burden and financial penalties for non-compliance correctly fall on the controlling entity.

The Advanced Clean Trucks program and Fleet Reporting Requirements are just the first step in New Jersey reaching our climate goals set forth in the Global Warming Response Act. This program alone will not get us there. Complementary policies also must be implemented to meet climate reduction goals as well as advancing health, environmental equity and creating family sustaining careers. Complementary policies should:

- Target investments to ensure economic, jobs and environmental benefits for communities
- who need it most.
- Prioritize workers and communities that may experience job loss due to the transition to a renewable energy based economy to ensure they are not harmed.
- Bolster the domestic manufacturing supply chain for EV transportation, infrastructure and renewable energy generation.

Thank you for the opportunity to engage in this comment period. We look forward to receiving a response to these comments, and continuing conversations regarding the Advanced Clean Trucks Program.

⁹ New Jersey Draft Advanced Clean Truck Rule page 73

Sincerely,

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