

BEFORE THE COLORADO AIR QUALITY CONTROL COMMISSION

REGARDING PLANNED REVISIONS TO)
REGULATION NUMBER 20 – ADVANCED)
CLEAN TRUCKS AND LOW-NO_x)
OMNIBUS RULES)

**Petition for Declaratory Order to Expedite the Advanced Clean Trucks and
Low-NO_x Omnibus Rulemaking**

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INTRODUCTION AND SUMMARY OF PETITION

Air pollution from trucks, buses, and other vehicles disproportionately harms low-income communities and communities of color in Colorado. In addition, the transportation sector recently passed the electric sector as the state's largest source of greenhouse gas emissions. To help reduce the significant air and climate pollution from the transportation sector, Colorado has joined fifteen other states, the District of Columbia, and the Canadian province of Quebec in committing to eliminate toxic air pollution from new medium- and heavy-duty trucks and buses by 2050. The key policy tool for achieving this goal is adopting California's Advanced Clean Trucks (ACT) and Low-Nitrogen Oxides Omnibus (Low-NOx) rules. Five states—Massachusetts, New Jersey, New York, Oregon, and Washington—have already successfully adopted California's ACT and/or Low-NOx rules over the past year.

When states adopt California's motor vehicle standards, Clean Air Act section 177 establishes a two-year lead time requirement before those states can enforce the rules. The Act bases this two-year lead time requirement on the vehicle model year, and the timing of vehicle model years means states must finalize their rulemaking processes by December 31 to ensure prompt implementation of the standards. When the Colorado Air Quality Control Commission adopted the Low Emission Vehicle (LEV) and Zero Emission Vehicle (ZEV) programs in recent years, it recognized that it must finalize the rulemakings by December 31 to maximize the benefits of adopting California's motor vehicle standards.

The Commission planned to conduct a rulemaking hearing regarding the ACT and Low-NOx rules in August 2022. The State began holding public meetings and conducting stakeholder outreach on this rulemaking and the related Clean Truck Strategy over a year-and-a-half ago. The State also collaborated on a report with M.J. Bradley & Associates that analyzed adopting the rules in 2022 and concluded the rules will provide widespread public health, economic, and environmental benefits. And notably, the Commission included the August rulemaking on its long-term calendar, and the Colorado Department of Public Health and the Environment (CDPHE) placed this August rulemaking on its 2022 Regulatory Agenda. This initial rulemaking schedule would provide ample time for the Commission to adopt and finalize the rules by the end of 2022, which would allow the rules to go into effect in Colorado beginning with model year 2026 vehicles. Moreover, during the prior outreach, disproportionately impacted communities told the State that they are ready for the Commission to move forward with a rulemaking as soon as possible.

However, the Colorado Department of Transportation (CDOT) and the Colorado Energy Office (CEO) recently informed the Commission that they prefer to delay the ACT and Low-NOx rulemaking hearing until 2023. If the Commission does not finalize the rulemaking by the end of 2022, the rules would not go into effect until model year 2027 vehicles at the earliest.

The Commission should not delay the ACT and Low-NOx rulemaking for several reasons. First, postponing the rulemaking hearing until 2023 would delay when the rules could go into effect in Colorado by at least one model year, and this postponement would delay the rules' air pollution and climate benefits by a year. In addition, if the Commission delays the rulemaking, as many as 160,000 model year 2026 vehicles sold in Colorado would not be subject to the heightened pollution standards and would emit greater amounts of air pollution every year they operate. This additional air and climate pollution would

harm all Coloradans, and particularly disproportionately impacted communities. The transportation sector is one of the primary sources of air pollution in many disproportionately impacted communities, and needlessly delaying implementation of the ACT and Low-NOx rules by a year is contrary to the Commission's equity and environmental justice obligations. Moreover, there is no reason to delay these benefits, as the M.J. Bradley study found that the rules will provide these substantial health benefits at a net cost-savings.

Second, the Commission has recently abandoned or delayed other rulemakings that would reduce pollution from the transportation sector and benefit disproportionately impacted communities, such as the Employee Traffic Reduction Program and Phase 2 of the Greenhouse Gas Emissions and Energy Management Program for Industrial Manufacturers (GEMM). These withdrawn and delayed rulemakings make it especially urgent that the Commission expeditiously secure emission reductions that will reduce pollution from the transportation sector and benefit disproportionately impacted communities. Promptly adopting California's ACT and Low-NOx rules provides the Commission with an opportunity to secure significant pollution reductions in one relatively straightforward rulemaking.

Third, five states have already adopted California's ACT and/or Low-NOx rules. Colorado will be a year behind these states in implementing these rules even if the Commission completes this rulemaking in 2022. Colorado should not fall even further behind other states in moving toward a cleaner transportation sector by delaying the rulemaking. Colorado should continue its role as a regional and national leader in clean transportation by completing the rulemaking as planned this year.

While there are numerous urgent public health and environmental reasons why the Commission should promptly proceed with the rulemaking, CDOT and CEO have provided no compelling rationales that warrant delay. The agencies claim that postponing the rulemaking would provide additional time to conduct outreach to disproportionately impacted communities and other stakeholders. But there will be ample time to conduct sufficient outreach if the Commission completes the rulemaking by December 31, 2022, which is over nine months from now. The State has already conducted significant outreach on these rules, and some of the Petitioners have also already conducted outreach to disproportionately impacted communities, including monolingual Spanish outreach across the state. The Petitioners strongly support robust and meaningful outreach to disproportionately impacted communities, yet such outreach should not occur at the expense of delaying pollution reductions that will benefit these communities.

CDOT and CEO also suggest that due to current supply chain concerns, it would be easier for industry to participate in the rulemaking process if the Commission postpones the rulemaking. However, these supply chain issues are a national phenomenon that is not unique to Colorado. Tellingly, Massachusetts, New Jersey, New York, Oregon, and Washington all recently adopted the ACT and/or Low-NOx rules despite facing similar supply chain concerns. If these other states can successfully move forward with these rules in the face of supply chain concerns, Colorado can too.

Finally, CDOT and CEO have provided no support for their claims that completing the rulemaking this year as initially planned would impede progress on other clean truck

strategies and complementary programs. The State has long planned on moving forward with the ACT and Low-NOx rulemaking in parallel with other clean truck strategies. In addition, the earliest these rules would go into effect is for model year 2026 vehicles, and the ACT rule's requirements would increase gradually. This provides sufficient time for CDOT and CEO to develop and implement complementary programs that will help ensure near-term emission reductions and successful implementation of the rules.

For these reasons, GreenLatinos, Colorado Working Families Party, Mi Familia Vota, NAACP Denver, and Womxn from the Mountain (collectively the "Environmental Justice Coalition"); Boulder County; the City and County of Denver; Conservation Colorado; Environmental Defense Fund; Natural Resources Defense Council; Sierra Club; and Western Resource Advocates submit this Petition. The Petitioners request that the Commission issue a declaratory order expediting the ACT and Low-NOx rulemaking and directing the Air Pollution Control Division to promptly request a rulemaking hearing that will ensure the rules are published in the Colorado Register by December 31, 2022. The Petitioners recommend the Commission order the Division to request a rulemaking hearing for the ACT and Low-NOx rules at the Commission's May or June meeting, and to conduct the rulemaking hearing in September or October. This schedule would allow the Commission to finalize its decision by the end of 2022, while allowing sufficient time for additional stakeholder outreach and engagement.

To complete the ACT and Low-NOx rulemaking by the end of 2022, time is of the essence and the Commission must promptly decide this Petition and direct the Division to proceed with the rulemaking. **The Petitioners therefore request the Commission consider and decide this Petition at its next scheduled meeting, on April 21, 2022.**¹

PETITIONERS

GreenLatinos is a national non-profit organization that convenes a broad coalition of Latino leaders committed to addressing national, regional, and local environmental, natural resources, and conservation issues that significantly affect the health and welfare of the Latino community in the United States. GreenLatinos provides an inclusive table at which its members establish collaborative partnerships and networks to improve the environment; protect and promote conservation of land and other natural resources; amplify the voices of low-income and tribal communities; and train, mentor, and promote

¹ The Petitioners believe the Division should request the ACT and Low-NOx rulemaking and be the party proponent of this rulemaking, which is the Division's role in most rulemakings. The Division planned to serve in this role for this rulemaking and it presumably has already started drafting the rulemaking package, as the Commission's long-term calendar recently listed the Division requesting a rulemaking hearing at the April 21, 2022 meeting. However, if the Division now claims it is unable to complete the ACT and Low-NOx rulemaking before the end of 2022, some of the Petitioners are prepared to develop and submit a petition for rulemaking to ensure timely completion of the rulemaking process. If the Commission prefers to proceed in this manner, the Petitioners request that it expressly state so at the April 21, 2022 meeting. This would allow the Petitioners to promptly prepare and submit a petition for rulemaking on a schedule that would result in the rulemaking hearing occurring no later than October 2022.

the current and future generations of Latino environmental leaders for the benefit of the Latino community and beyond.

Colorado Working Families Party believes the true promise of democracy is a nation in which all people are free and equal participants in civic and political life and in which shared prosperity is valued over private wealth. Colorado Working Families Party's mission is to build the political power and organization necessary to realize that promise. Only by making our political process work for everyone can we achieve our vision of a society that is fair and sustainable, that transcends the enduring injustice of structural racism, and that lives up to the full promise of democracy.

Mi Familia Vota's mission is to build Latino political power by expanding the electorate, strengthening local infrastructures, and through year-round voter engagement. Mi Familia Vota is also training the next generation of leaders by opening opportunities through its Youth Development Programs and through its Mi Familia Vota work. Mi Familia Vota is strategically located in states with some of the highest Latino population counts, but it has worked to identify and serve communities where Latino participation in the electoral process is lacking. Mi Familia Vota advocates year-round on critically important issues that affect its community in the fields of immigration, voting rights, the environment, workers' rights, education, and health care.

NAACP Denver's mission is to secure the political, educational, social, and economic equality of rights in order to eliminate race-based discrimination and ensure the health and well-being of all persons. From police brutality to COVID-19 and voter suppression; the NAACP works to disrupt inequality, dismantle racism, and accelerate change in key areas including environmental justice, criminal justice, health care, education, and the economy. When it comes to civil rights and social justice, the NAACP has the proven ability to secure wins. The NAACP works to make racial equity a reality.

Womxn from the Mountain is an inclusive women's group open to women of all colors and backgrounds, including those that identify as women and the feminine identity. Womxn from the Mountain's goal is to empower individual, spiritual, physical, emotional, and educational needs directly supporting the Colorado indigenous and disproportionately impacted community through transformative art healing. Womxn from the Mountain is currently working as climate change organizers and cultural educators for disproportionately impacted communities, and to create protections from the cumulative impacts of environmental racism through the Environmental Justice Task Force and in current policies to transformatively address climate change with authentic equity.

Boulder County's top priorities include improved air quality and a strong response to the climate crisis. Boulder County supports Commission rulemakings that advance the county's climate goals, and has specifically supported several transportation-focused rulemakings in recent years. Strong air quality regulations help the county meet its greenhouse gas emissions reduction goals of 45% by 2030 and 90% by 2050 and the need for drastically reduced ozone levels in our area. Boulder County is already taking action to support cleaner vehicles in its community, and the adoption of ACT and the Low-NOx rules will assist with these efforts.

The City and County of Denver (Denver) is a home rule municipal corporation charged with protecting the public health and environment of its residents and visitors. Denver, through its Office of Climate Action, Sustainability, and Resiliency and Department of Public Health and Environment, is focused on reducing harmful emissions and improving health outcomes, especially in under-resourced and disproportionately impacted communities, which are concentrated in Denver. While 14 percent of the state’s residents live in Denver, it is home to 21 percent of the communities burdened by more than one category of disproportionate impact.² In the state’s Climate Equity Data Viewer, Denver is home to 28 percent of most impacted census blocks in the state.³ Denver’s residents and community based organizations have encouraged Denver to support the ACT and Low-NOx rules and to bring the rules’ benefits and reduced emissions to Denver neighborhoods as soon as possible.

Conservation Colorado is a statewide grassroots environmental non-profit with the mission to protect Colorado’s land, air, and water for future generations. Conservation Colorado believes in addressing the root causes of climate change, defending our state’s wild places, protecting our stressed rivers and drinking water, accelerating the transition to a clean energy future, and elevating voices from impacted communities to help ensure all Coloradans are represented and engaged in order to build a powerful conservation movement.

Environmental Defense Fund is a 501(c)(3) membership organization incorporated under the laws of the State of New York. Environmental Defense Fund brings together scientists, economists, engineers, business school graduates, and lawyers to help solve challenging environmental problems in a scientifically sound and cost-effective way – and strives to protect and restore the quality of our air, water, and other natural resources. Environmental Defense Fund advocates for a transition to zero-emission vehicles that is cost-effective and equitable, and maximizes environmental and grid benefits.

Natural Resources Defense Council is a national nonprofit organization of scientists, lawyers, and environmental specialists dedicated to protecting public health and the environment. Founded in 1970, Natural Resources Defense Council has over 3 million members and online activists. Over 12,000 of these members live and work in Colorado. Its members from across the state are impacted daily by Colorado’s various air quality and climate threats, including the pollution from commercial trucks these rules seek to address.

² Colo. Dep’t Pub. Health & Env’t, *Data Viewer for Disproportionately Impacted Communities in Colorado*, https://cohealthviz.dphe.state.co.us/t/EnvironmentalEpidemiologyPublic/views/EJActDICo mmunities-Public/HB21-1266DICommunities?%3AshowAppBanner=false&%3Adisplay_count=n&%3AshowVizHome=n&%3Aorigin=viz_share_link&%3AisGuestRedirectFromVizportal=y&%3Aembed=y (last visited Mar. 16, 2022).

³ Colo. Dep’t Pub. Health & Env’t, *Climate Equity Data Viewer*, <https://www.arcgis.com/apps/webappviewer/index.html?id=25d884fc249e4208a9c37a34a0d75235> (last visited Mar. 16, 2022).

Sierra Club is the nation’s oldest and largest grassroots environmental organization, with hundreds of thousands of members nationwide and more than 22,000 in Colorado. Sierra Club’s mission is to explore, enjoy and protect the wild places of the Earth; to practice and promote the responsible use of the Earth’s resources and ecosystems; to educate and enlist humanity to protect and restore the quality of the natural and human environment; and to use all lawful means to carry out these objectives. For decades, Sierra Club has used the traditional tools of advocacy—organizing, lobbying, litigation, and public outreach—to fight for clean transportation policies that improve air quality and reduce dependence on fossil fuels in Colorado and across the country.

Western Resource Advocates is a non-profit conservation organization dedicated to protecting the land, air, and water of the West in order to ensure that vibrant communities exist in balance with nature, with a vision of prosperous economy that is not dependent on fossil-fueled electricity generation. Western Resource Advocates’ Clean Energy Program develops and implements policies to reduce the environmental impacts of carbon emissions in the Interior West by advocating for clean, affordable, and reliable energy that reduces economic risks, and protects the environment. Reducing emissions and air pollution from the transportation sector, including widespread electric vehicle adoption, is deeply intertwined with Western Resource Advocates’ long-recognized tangible interest in reducing the detrimental environmental impacts from carbon dioxide and conventional air emissions through energy policy reform.

Each of the organizations and governments listed above will directly benefit from the pollution reductions resulting from the ACT and Low-NOx rules, and they represent members and residents who support the rules and who will directly benefit from the pollution reductions resulting from these rules. A Commission decision that postpones the ACT and Low-NOx rulemaking hearing until 2023 will harm the Petitioners and their members and residents, as this action would delay implementation of the ACT and Low-NOx rules and the realization of related pollution benefits. If the Commission completes this rulemaking by the end of 2022—as the Petitioners request—the ACT and Low-NOx rules will go into effect in Colorado beginning with model year 2026 vehicles. However, if the Commission defers this rulemaking hearing until 2023—as CDOT and CEO request—the rules would not go into effect until model year 2027 vehicles. This postponement would delay the air and climate benefits of the rules by a year. Moreover, delaying the rulemaking would result in as many as 160,000 model year 2026 vehicles sold in Colorado that are not subject to heightened pollution requirements, and these vehicles would emit greater amounts of pollution every year they remain in operation. The delay CDOT and CEO request would thus force the Petitioners to endure greater amounts of air and climate pollution than if the Commission completes the rulemaking this year.

BACKGROUND

I. Legal Background

A basic principle of administrative law is that members of the public may submit a petition to an agency requesting that the agency take specific actions or issue declaratory orders. The Colorado Administrative Procedure Act (APA) codifies this principle. For example, the Colorado APA states that “[a]ny interested person shall have the right to petition for the issuance, amendment, or repeal of a rule.” Colo. Rev. Stat. § 24-4-103(7).

The law further states that agencies must allow “petitions for declaratory orders to terminate controversies or to remove uncertainties as to the applicability to the petitioners of any statutory provision or of any rule or order of the agency.” *Id.* § 24-4-105(11). The Colorado APA also makes clear that agencies have broad authority to grant any necessary and appropriate “relief” to any person, including petitioners. *See id.* § 24-4-102(14) (defining “relief” to include “any other [agency] action upon the application or petition of, and beneficial to, any person”).

The Colorado Air Pollution Prevention and Control Act further enshrines this basic principle and recognizes the wide variety of petitions that members of the public may submit to this Commission. For example, the Act states that “any person” may petition the Commission to find that a criteria pollutant emission inventory is inadequate for regulatory purposes. *Id.* § 25-7-105(18). The Act also states that if the Division exempts a source from complying with relevant hazardous air pollutant standards, “any person may appeal such determination by filing with the [C]ommission a written petition requesting a hearing.” *Id.* § 25-7-109.3(3)(d)(III). In addition, members of the public “may complain to the [C]ommission by petition” regarding the Division’s investigation of air pollution emergencies. *Id.* § 25-7-112(1.5)(a).

The Commission’s Procedural Rules similarly acknowledge that members of the public can submit petitions to the Commission. For example, the Procedural Rules state that “[a]ny member of the public may petition the Commission in writing to issue, amend, or repeal a rule.” 5 Colo. Code Regs. § 1001-1:V.A.2. The Procedural Rules also state that “the Commission may grant a petitioner’s request to deviate from the Commission’s schedule upon showing of good cause.” *Id.* § 1001-1:V.A.3. In addition, the Procedural Rules state that the Commission “may review petitions for declaratory orders in order to terminate controversies or to remove uncertainty in the application to a petitioner of provisions of the Act or of any relevant statute, rule, regulation, decision, permit, or order.” *Id.* § 1001-1:VI.H.

II. Factual Background

A. Five states have adopted the California ACT and Low-NOx Rules since 2021.

The ACT and Low-NOx rules provide states an opportunity to adopt stronger standards for medium-and heavy-duty vehicles such as trucks, which are among the highest polluting vehicles on the road. While the U.S. Environmental Protection Agency (EPA) sets nationwide emissions standards for new motor vehicles, the Clean Air Act allows California to set stricter vehicle emissions standards due to its unique air pollution issues and its early efforts to reduce vehicle emissions before Congress enacted the Act. 42 U.S.C. §§ 7543(a)–(b). Other states may also adopt California’s motor vehicle emissions standards. *Id.* § 7507.

In June 2020, California adopted the Advanced Clean Trucks rule. The ACT rule contains two primary components: (1) a manufacturer sales requirement, and (2) a fleet reporting requirement. First, under the manufacturer sales requirement, truck manufacturers must build and sell progressively more zero emission medium- and heavy-duty vehicles over time. Cal. Code Regs. tit. 13, §§ 1963–1963.5. Second, the fleet reporting

requirement is a one-time reporting requirement for large entities that own, operate, or direct the movement of trucks, buses, or vans. *Id.* § 2012.

In addition to the ACT rule, California adopted the final Low-NOx rule in December 2021. The Low-NOx rule updates standards, testing, and compliance mechanisms for NOx and particulate matter (PM) pollution from heavy-duty vehicles for model years 2024–2031. *Id.* § 1956.8. Further, the Low-NOx rule includes updated emission limits for heavy-duty vehicles starting in model year 2024 and updates them again in model years 2027 and 2031. *Id.* § 1956.8(a)(2)(C), (D).

In June 2020, Colorado joined fourteen states and the District of Columbia in a Memorandum of Understanding (MOU) that recognized medium- and heavy-duty vehicles as a major source of air pollution and greenhouse gas emissions.⁴ Virginia and the Canadian province of Quebec have since joined the MOU. Under the multi-state MOU, the states recognized the importance of coordinated state action on climate change. The multi-state MOU included an agreement for signatories to make thirty percent of new medium- and heavy-duty vehicle sales zero emission no later than 2030, and all sales should be zero emission no later than 2050.⁵ The MOU signatories also committed to developing an action plan to meet the zero emission vehicle sales targets.⁶ The first strategy in the draft action plan is state adoption of the ACT and Low-NOx rules.⁷ These states have sent a strong signal to encourage truck manufacturers to shift production to develop medium- and heavy-duty vehicles that will comply with ACT and Low-NOx rules. Ensuring this change in the marketplace occurs depends on each of the MOU states taking steps to actually adopt the ACT and Low-NOx rules.

In recent months, several states completed rulemakings to adopt the ACT and Low-NOx rules, building momentum toward widespread adoption. Five states—Massachusetts, New Jersey, New York, Oregon, and Washington—adopted the ACT rule in 2021. *See* 310 Mass. Code Regs. 7.40; N.J. Admin. Code § 7:27-31; N.Y. Comp. Codes R. & Regs. tit. 6, § 218-4; Or. Admin. R. 340-257-0040; Wash. Admin. Code § 173-423-075. Together with California, these states account for twenty percent of the country’s trucking fleet.⁸ Additionally, Massachusetts and Oregon adopted the Low-NOx rule in 2021 and Washington proposed adoption in 2022. *See* 310 Mass. Code Regs. 7.40; Or. Admin. R. 340-

⁴ *Multi-State Medium- and Heavy-Duty Zero Emission Vehicle Memorandum of Understanding* (2020), https://www.energy.ca.gov/sites/default/files/2020-08/Multistate-Truck-ZEV-Governors-MOU-20200714_ADA.pdf.

⁵ *Id.* at 3–4.

⁶ *Id.* at 3.

⁷ Multi-State ZEV Task Force, NESCAUM, *Multi-State Medium- and Heavy-Duty Zero-Emission Vehicle Action Plan* 26 (Mar. 10, 2022), <https://www.nescaum.org/documents/mhd-zev-action-plan-public-draft-03-10-2022.pdf>.

⁸ Laura Bliss, *Six States Adopt Clean Truck Rule*, Bloomberg News (Jan. 6, 2022), <https://www.ttnews.com/articles/six-states-adopt-clean-truck-rule>.

261-0040. Connecticut, Maine, Maryland, and Rhode Island may also adopt the ACT and/or Low-NOx rules in 2022.⁹

B. Colorado’s plans to delay the ACT and Low-NOx rulemaking.

After joining the multi-state MOU in June 2020, Colorado kicked off a process of statewide engagement to develop a comprehensive clean trucking strategy.

The State first hosted three public meetings in the fall of 2020 that introduced the Clean Truck Strategy concept, accepted public comments, and answered the public’s questions.¹⁰ Following those public meetings, the State embarked on a technical analysis of clean trucking strategies, including the ACT and Low-NOx rules.¹¹ Although the State initially planned to complete the technical analysis by spring 2021, it delayed the study’s release until September 2021.¹² The study process included additional stakeholder meetings and presentations.¹³ Ultimately, the study, which modeled the impact of Colorado adopting the ACT and Low-NOx rules in 2022, found substantial health benefits, greenhouse gas reductions, and net cost-savings.¹⁴

⁹ See, e.g., *id.*; Conn. Dep’t Energy & Env’tl. Prot., *An Assessment of Connecticut’s Need to Adopt California’s Medium and Heavy-Duty Vehicle Emission Standards* 21 (2022), https://portal.ct.gov/-/media/DEEP/air/mobile/MHD/MHD_Whitepaper_030822.pdf (recommending that Connecticut should implement the suite of California emission standards for new trucks); Me. Dep’t Env’tl. Prot., *Rulemaking Fact Sheet*, <https://www.maine.gov/tools/whatsnew/attach.php?id=5789893&an=2> (last visited Mar. 16, 2022).

¹⁰ Colo. Dep’t. Transp., *Colorado Clean Truck Strategy*, [hereinafter “*Colorado Clean Truck Website*”], <https://sites.google.com/state.co.us/cotriporgfreight/clean-truck-strategy> (last visited Mar. 16, 2022) (noting public meetings held August 27th, 2020, September 16, 2020, and October 28, 2020); see also Colo. Energy Off., Colo. Dep’t Pub. Health and Env’t & Colo. Dep’t Transp., *Colorado Clean Trucking Strategy* 5 (Aug. 27, 2020) [hereinafter “*August 2020 Strategy Meeting*”], <https://drive.google.com/file/d/18CDWbomnsFMXAjTkvs2I6sipigbItRjQ/view>.

¹¹ *Colorado Clean Trucks Website*, *supra* note 10; see also Colo. Energy Off., Colo. Dep’t Pub. Health and Env’t & Colo. Dep’t Transp., *Colorado Clean Trucking Strategy* 20 (Oct. 28, 2020) [hereinafter “*October 2020 Clean Trucks Meeting*”], <https://drive.google.com/file/d/12gPmbaVDzUuF87lnfN-Jo9YViv1dVkm2/view>.

¹² Compare *October 2020 Clean Trucks Meeting*, *supra* note 11, at 20 (stating final technical analysis is due spring 2021) with M.J. Bradley & Assocs., *Colorado Medium- and Heavy-Duty (M/HD) Vehicle Study* 26 (Sept. 2021), <https://drive.google.com/file/d/1N8tQp0v1RPK86Kle08ZQ83rKsY4Ja5Tx/view> (stating a September 2021 release date).

¹³ See Colo. Dep’t Transp., *Clean Trucking Strategy 2021 - Working Group Meeting #1* at 22:22–23:08, YouTube (Dec. 3, 2021), <https://www.youtube.com/watch?v=q1-WMhShM-8> (noting M.J. Bradley and Associates were selected to perform analysis, and “Stakeholder Meetings and Presentations” were to occur between November 2020 and October 2021)

¹⁴ M.J. Bradley & Assocs., *supra* note 12.

After the study's release, the State hosted three public meetings in November 2021 to present the study's findings and again take public comments and answer questions.¹⁵ The State then established a stakeholder working group to provide input regarding the development of Colorado's Clean Truck Strategy.¹⁶ The working group held four public meetings between December 2021 and March 2022.¹⁷ The State has released the draft Strategy, with a series of additional public meetings scheduled for late March 2022.¹⁸ Complementing this stakeholder engagement process, in 2021 Governor Polis signed into law Senate Bill 21-260. Senate Bill 21-260 increases funding for Colorado's transportation systems and establishes three new state enterprises to assist with the transition to zero emissions medium- and heavy-duty vehicles.¹⁹

In the September 2021 study and between November 2021 and February 2022, the state consistently indicated that a clean trucks rulemaking would occur in the fall of 2022. For example, at the Fall 2021 meetings, CDOT, CEO, and CDPHE's timeline included a potential ACT rulemaking request by May 2022.²⁰ The working group's first two meetings again highlighted a potential ACT rulemaking that the Commission would notice in May 2022.²¹ In line with these expectations, Commissioner Rueter in August 2021 explained that the ACT rule was "scheduled (for a) rulemaking next August [2022]," expressing support for an August 2022 timeline as opposed to an accelerated rulemaking.²² Similarly, as recently as March 3, 2022, the Commission's long-term rulemaking calendar included an April 2022 "Request Rulemaking Hearing" item for the Division to request a hearing regarding the ACT and Low-NOx rules.²³ And that version of the Commission's calendar, as well as CDPHE's 2022 Regulatory Agenda, includes an August 2022 rulemaking hearing to consider the clean truck rules.²⁴

¹⁵ *Colorado Clean Trucks Website*, *supra* note 10 (noting three public meetings in November 2020); See Colo. Energy Off., Colo. Dep't Pub. Health and Env't & Colo. Dep't Transp., *Colorado Medium- and Heavy-Duty (M/HD) Vehicle Study* (Nov. 20, 2021), <https://drive.google.com/file/d/1ueSIZZGRGxh14MRcyDezM4LtOwnR7xaw/view>.

¹⁶ *Colorado Clean Trucks Website*, *supra* note 10.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Colo. Energy Off., Colo. Dep't Pub. Health and Env't & Colo. Dep't Transp., *Colorado Medium- and Heavy-Duty (M/HD) Vehicle Study* 52 (Nov. 20, 2021), <https://drive.google.com/file/d/1ueSIZZGRGxh14MRcyDezM4LtOwnR7xaw/view>.

²¹ Colo. Dep't Transp., *Clean Trucking Strategy 2021 - Working Group Meeting #2* at 1:23:18, YouTube (Dec. 14, 2021), <https://www.youtube.com/watch?v=jIIgBjoKSSA>.

²² Chase Woodruff, *Colorado to delay clean-trucks rule to 2023, frustrating environmentalists again*, Colo. Newswire, Feb. 16, 2022, <https://coloradonewswire.com/2022/02/16/colorado-to-delay-clean-trucks-rule-to-2023-frustrating-environmentalists-again/>.

²³ Petition_Ex_1, Air Quality Control Commission, *Long Term Calendar 2* (downloaded Mar. 3, 2022).

²⁴ *Id.*; Petition_Ex_2, Colo. Dep't Pub. Health & Env't, 2022 Regulatory Agenda 8 [hereinafter "*CDPHE Regulatory Agenda*"].

But at the working group’s third meeting on February 7, 2022, CEO unilaterally and for the first time proposed to delay the rulemaking until “the end of this year.”²⁵ CEO reiterated its preference to delay the ACT and Low-NOx rulemaking in a joint briefing with CDOT to the Commission on February 17, 2022.²⁶

CDOT and CEO provided three rationales for postponing the rulemaking. The agencies claim that delaying the rulemaking would provide more time for stakeholder outreach, including outreach to disproportionately impacted communities.²⁷ In addition, CDOT and CEO state that current supply chain issues will begin to ease later this year, and postponing the rulemaking would make it easier for industry to participate.²⁸ The agencies also claim that delaying the rulemaking would allow the State to focus on other near-term clean truck strategies and develop supporting programs.²⁹ The newly proposed timeline would result in a rulemaking hearing in 2023.

ARGUMENT

I. The Commission has the legal authority to grant this Petition and to direct the Division to promptly commence the ACT and Low-NOx rulemaking.

The Colorado APA, the Colorado Air Pollution Prevention and Control Act, and the Commission’s Procedural Rules all recognize the basic administrative law principle that members of the public can petition state agencies to take specific actions and issue declaratory orders. *See supra* p. 7. Although the Commission’s Procedural Rules do not explicitly include provisions for a petition for a declaratory order to expedite a delayed rulemaking, this Petition is procedurally proper and the Commission can consider and grant this Petition for several reasons.

First, the relief Petitioners request falls squarely within the scope of relief contemplated by the types of petitions that the Commission has listed in the Procedural Rules. The Procedural Rules note that the Commission maintains a long-term rulemaking calendar, and the Rules state that “[i]n limited circumstances, the Commission may grant a petitioner’s request to deviate from the Commission’s schedule upon showing of good cause.” 5 Colo. Code Regs. § 1001-1:V.A.3. This provision encompasses and reflects the relief Petitioners request here. CDPHE and the Commission have placed the August 2022 ACT and Low-NOx rulemaking on the regulatory agenda and long-term calendar, and CDOT and CEO now recommend the Commission adjust this schedule and postpone the hearing until 2023. This Petition requests that the Commission reject this delay and

²⁵ Colo. Dep’t Transp., Clean Trucking Strategy 2021 Working Group Meeting #3 Recording 29:00, YouTube (Feb. 14, 2022) [hereinafter “*CDOT Working Group Meeting #3*”], https://www.youtube.com/watch?v=XFoCMqP6TV8&list=PLYszme4xVADBJ_P_cj5a_0fAJV_m_xeC-R&index=6.

²⁶ Colo. Energy Off., Colo. Dep’t Pub. Health and Env’t & Colo. Dep’t Transp., *Briefing to the Air Quality Control Commission on the Colorado Clean Truck Strategy* 44 (Feb. 17, 2022) [hereinafter “*CEO Briefing to AQCC*”], https://drive.google.com/drive/folders/1s_kog6QhbnNoJZOZdruq1goCOo-PWnqk.

²⁷ *Id.* at 49.

²⁸ *Id.*

²⁹ *Id.*

expedite the ACT and Low-NOx rulemaking, so the final rules are published in the Colorado Register by December 31, 2022. Accordingly, the Petitioners are requesting the Commission manage its long-term schedule so it completes the rulemaking by the end of 2022, and that it “deviate” from any delayed rulemaking schedule that would postpone the rulemaking hearing until 2023. In addition, as detailed below, there is good cause for granting the Petitioners’ request to adjust the rulemaking calendar, as it will result in greater reductions in air and climate pollution.

Second, the public’s right to petition agencies is broad, and the public is not limited to filing a petition that requests a form of relief explicitly delineated in an agency’s procedural rules. Even if the Petitioners were not requesting a calendar deviation of the kind provided for in the Procedural Rules, the Colorado APA makes clear that agencies have broad authority to grant any necessary and appropriate “relief” to any person, including petitioners. *Id.* § 24-4-102(14) (broadly defining “relief” to include “any other action upon the application or petition of, and beneficial to, any person”). Thus, if the Commission were to entertain petitions from the public only in specifically delineated circumstances, it would contravene the public’s right to petition the Commission and unduly restrict the Commission’s authority to broadly grant relief to petitioners. Moreover, nothing suggests that by explicitly discussing some types of petitions in various subsections of the Procedural Rules, the Commission intended to preclude members of the public from filing other types of petitions not listed in the rules. In a circumstance such as this, when a statute or regulation explicitly discusses certain types of petitions, courts and agencies should not interpret the statute or regulation to limit other types of petitions “unless it is fair to suppose that [the drafter of the statute or regulation] considered the unnamed possibility and meant to say no to it.” *Barnhart v. Peabody Coal Co.*, 537 U.S. 149, 168 (2003). There is no evidence here that the Commission intended to limit the public to only filing the types of petitions explicitly listed in the Procedural Rules. If that were the case, the Commission’s application of its Procedural Rules would likely violate the Colorado Air Pollution Prevention and Control Act. As noted above, the Act discusses numerous types of petitions that members of the public may file with the Commission—including petitions to appeal the Division’s decision exempting a source from hazard air pollutant standards and petitions challenging the Division’s investigation of air pollution emergencies. *See, e.g.*, Colo. Rev. Stat. §§ 25-7-109.3(3)(d)(III), 25-7-112(1.5)(a). Yet notably, the Procedural Rules do not explicitly list any of these types of petitions. Consequently, the Commission necessarily has the implicit authority and the obligation to consider petitions from the public, regardless of whether the petition requests a form of relief explicitly listed in the Procedural Rules.

Third, the Petitioners have standing to request this declaratory order. *See Defend Colo. v. Polis*, 482 P.3d 531, 537–40 (Colo. App. 2021). To establish standing, a party must show that it has suffered an injury-in-fact to a legally protected interest. *Id.* at 537. The Petitioners will suffer an injury-in-fact if the Commission fails to finalize the ACT and Low-NOx rules by the end of 2022, as initially planned. Adopting these rules in Colorado will result in less air pollution and greenhouse gas emissions from Colorado’s transportation sector. *See infra* pp. 14–19. The Petitioners and the members and residents they represent will benefit from these air pollution and greenhouse gas reductions, and the Commission’s decision to postpone the rulemaking would delay those benefits by a year and result in increased air pollution and greenhouse gas emissions relative to earlier adoption of the

rules. *See id.* pp. 13–19. As courts have repeatedly recognized, agency actions that delay air pollution reductions represent a cognizable injury-in-fact for standing. *See, e.g., Nat. Res. Def. Council v. EPA*, 643 F.3d 311, 318–19 (D.C. Cir. 2011).

This delay injures the Petitioners’ legally protected interests. As *Defend Colorado* explains, this issue turns on whether the Commission could grant the relief requested in a petition. 482 P.3d at 540 (“[B]ecause the Commission could not grant the relief sought in Defend Colorado’s petition, we conclude that Defend Colorado suffered no injury to a legally protected interest and thus does not have standing.”); *see also Sierra Club v. Jewell*, 764 F.3d 1, 6 (D.C. Cir. 2014) (explaining that when the U.S. Supreme Court “used the phrase ‘legally protected interest’ as an element of injury-in-fact, it . . . was referring only to a cognizable interest,” and the Supreme Court concluded that a party “had a cognizable interest in observing animal species without considering whether the plaintiff had a legal right to do so” (quoting *Parker v. District of Columbia*, 478 F.3d 370, 377 (D.C. Cir. 2007))). Here, the Petitioners request that the Commission manage its long-term calendar to ensure it completes the ACT and Low-NOx rulemaking by the end of 2022. The Commission undoubtedly has the authority to grant this relief and to manage its own rulemaking calendar in a manner that ensures it completes the ACT and Low-NOx rulemaking this year. And the Petitioners clearly have a cognizable interest in promptly achieving the air and climate pollution benefits of these rules, as they will face higher amounts of air and climate pollution if the Commission delays the rulemaking.

II. The Commission should expedite the ACT and Low-NOx rulemaking and ensure the rule is published in the Colorado Register by December 31, 2022.

A. If the Commission fails to finalize the ACT and Low-NOx rulemaking by the end of 2022, it will delay the effective date of the rules in Colorado by a year.

A fundamental feature of both the ACT and Low-NOx rules is that the rules have relatively modest initial requirements that gradually increase over time, which leaves time for technology to improve, the supporting ecosystem to mature, and vehicle prices to decline. For both rules, California’s initial requirements begin with model year 2024 vehicles, and the standards gradually increase for subsequent model year vehicles. Cal. Code Regs. tit. 13, §§ 1956.8(a)(2)(C)–(D) (Low-NOx rule); § 1963.1 (ACT rule).

Clean Air Act section 177 imposes a two-year lead time requirement, so states that adopt California’s motor vehicle standards must wait two model years for the rules to go into effect. 42 U.S.C. § 7507(2). According to EPA’s regulations, the commencement of a vehicle model year can start as early as January 2 of the *preceding* calendar year. 40 C.F.R. § 85.2304(a). Because the commencement of a model year can begin in January, if a state finalizes a rule adopting California’s motor vehicle standards after December 31, it will likely delay the implementation of the rule in that state by at least one model year. When the Commission adopted the LEV and ZEV programs, it recognized this inherent deadline and the need to finalize the rules by the end of a given year to maximize the benefits of adopting the rules. 5 Colo. Code Regs. § 1001-24:F.I.(V) (“[I]n order for Colorado to maximize the benefits from [the LEV] rule, it should be adopted before January 1, 2019.”); *id.* § 1001-24:F.II.(V) (“For Colorado to maximize the benefits from [the ZEV] rule, it should

be adopted before January 1, 2020 in order to be effective for the 2023 Model Year, which will begin to be introduced in 2022.”).

If the Commission finalizes the ACT and Low-NOx rules by December 31, 2022, the rules’ requirements in Colorado will take effect with model year 2026 vehicles. However, if the Commission defers its decision on the rules, it would delay implementation of the rules’ requirements in Colorado until model year 2027 vehicles. Accordingly, if the Commission postpones the rulemaking hearing until 2023, it will delay implementation of the ACT and Low-NOx rules in Colorado by at least one year.

B. Delaying the ACT and Low-NOx rulemaking would result in greater air and climate pollution that will harm disproportionately impacted communities.

Any delay in adopting the ACT and Low-NOx rules will harm disproportionately impacted communities. Vehicles, and trucks in particular, emit PM and NOx, harming the health of all who live, work, and recreate near busy thoroughfares. But the widespread harms of the transportation sector are not distributed equally. Instead, harms are concentrated in lower-income communities and communities of color. Due to historic inequities in transportation infrastructure planning, these disproportionately impacted communities are most at risk of exposure to these harmful pollutants. For example, the north Denver area endures heavy traffic and the resulting increased exposure to pollution from intersecting highways I-70, I-25, and I-270.³⁰ Colorado’s heaviest freight traffic is concentrated on I-25 and I-70,³¹ and “high volumes of freight traffic” rely on the I-270 corridor, which connects I-70 to I-25 and runs between disproportionately impacted communities in Commerce City, Globeville, and Elyria-Swansea.³²

The manifest disparities in today’s transportation system are rooted in decades of planning decisions that have favored high-income and white communities over low-income and minority communities.³³ For example, when constructing the country’s interstate highway system, agencies frequently sited projects in low-income communities as part of so-called “slum clearance” and “urban renewal.”³⁴ In Denver, I-70 “ravaged the largely Latinx

³⁰ Colo. Energy Off., Colo. Dep’t Pub. Health and Env’t & Colo. Dep’t Transp., *Briefing to the Air Quality Control Commission on the Colorado Clean Truck Strategy 7*, https://drive.google.com/drive/folders/1s_kog6QhbnNoJZOZdruq1goCOo-PWnqk.

³¹ M.J. Bradley & Assocs., *supra* note 12, at 26.

³² Colo. Dep’t Transp., *Why the Project is Needed*, <https://www.codot.gov/projects/i270/why-the-project-is-needed> (last visited Mar. 16, 2022).

³³ *See, e.g.*, Thomas Sanchez, Rich Stolz & Jacinita Ma, *Moving to Equity: Addressing Inequitable Effects of Transportation Policies on Minorities* 3 (2003), <https://escholarship.org/uc/item/5qc7w8qq> (“Post-World War II surface transportation policies were not favorable to minority and low-income communities.”).

³⁴ *Id.* at 3; *see also* Noel King, *A Brief History Of How Racism Shaped Interstate Highways*, NPR (Apr. 7, 2021), <https://www.npr.org/2021/04/07/984784455/a-brief-history-of-how-racism-shaped-interstate-highways>.

neighborhoods in its path” when it was first completed in 1964.³⁵ The elevated viaduct destroyed homes, and “[t]hose who stayed saw their neighbors replaced by dangerous exhaust fumes and roaring traffic.”³⁶

These inequities in infrastructure placement cause inequities in health. Congested roadways spew PM, NO_x, carbon monoxide, and volatile organic compounds into the air.³⁷ Residents exposed to these pollutants are at higher risk of asthma, lung cancer, heart disease, respiratory illness, and premature death.³⁸ Localized pollution means that communities overburdened by traffic are most at risk. Living near major roads, particularly between roughly 150 to 5,000 feet, increases the risk of asthma and reduced lung function, the onset of childhood asthma, and cardiovascular death.³⁹ Neighborhoods within 1,500 feet of a highway suffer the greatest impacts from air pollution. Critically, marginalized communities are more likely to live within 500 feet of a major road.⁴⁰ Further, trucks contribute 30% of NO_x emissions and 40% of PM emissions in Colorado, despite comprising less than 10% of on-road vehicles.⁴¹ Communities with major freight routes in their neighborhoods—frequently disproportionately impacted communities—thus bear an even greater pollution burden.

These impacts hit home in Elyria-Swansea. Bordered by I-70 and I-270, Elyria-Swansea is the most polluted neighborhood in the country.⁴² Children who live near I-70

³⁵ *Building Roads to a Just & Equitable Future: Highway Advocacy Toolkit*, Center on Race, Inequality, & the Law, NYU School of Law 17 (2020) [hereinafter “*Building Roads*”], https://www.law.nyu.edu/sites/default/files/Highway%20Advocacy%20Toolkit%20v2_508_0.pdf; see also Andrew R. Goetz & E. Eric Boschmann, *Metropolitan Denver: Growth and Change in the Mile High City* 138 (2018).

³⁶ *Building Roads*, *supra* note 35, at 17.

³⁷ Shireen Malekafzali, *Healthy, Equitable Transportation Policy Recommendations and Research*, PolicyLink Prevention Inst. Convergence P’ship 86, <https://www.preventioninstitute.org/sites/default/files/publications/Healthy%20Equitable%20Transportation%20Policy%20Recommendations%20and%20Research.pdf> (last visited Mar. 16, 2022).

³⁸ Shireen Malekafzali, *Healthy, Equitable Transportation Policy Recommendations and Research*, PolicyLink Prevention Inst. Convergence P’ship 22, 86, <https://www.preventioninstitute.org/sites/default/files/publications/Healthy%20Equitable%20Transportation%20Policy%20Recommendations%20and%20Research.pdf> (last visited Mar. 16, 2022).

³⁹ Health Effects Inst., *Traffic-Related Air Pollution: A Critical Review of the Literature on Emissions, Exposure, and Health Effects* 3–4 (2010), https://www.healtheffects.org/system/files/SR17TrafficReview_Exec_Summary.pdf.

⁴⁰ Courtnee Melton, *How Transportation Impacts Public Health*, The Sycamore Inst. 2 (Feb. 21, 2017), <https://www.sycamoreinstitute.org/wp-content/uploads/2017/02/How-Transportation-Impacts-Public-Health.pdf>.

⁴¹ *CEO Briefing to AQCC*, *supra* note 26, at 6.

⁴² Julie Turkewitz, *Colorado Aims to Expand a Main Artery, but Beleaguered Neighbors Balk*, N.Y. Times (Feb. 19, 2017), <https://www.nytimes.com/2017/02/19/us/denver-interstate-70-expansion.html>.

are hospitalized for asthma almost 40% more frequently than the rest of Denver.⁴³ Heart disease is also more prevalent.⁴⁴ For these communities, truck pollution is deadly.

Worse yet, the communities most impacted by the transportation sector already endure disproportionate harms from other sources of air pollution. North Denver suffers from some of the greatest environmental health risks in the country.⁴⁵ For example, the Suncor oil refinery contributes significantly to pollution in north Denver, with a long history of permit noncompliance that has resulted in accidents so significant that schools and residents have had to shelter in place to avoid toxic ash.⁴⁶ These routine “upsets” fill the air with pollutants that cause respiratory problems and heart disease. Because of the cumulative harms from transportation, industry, superfund sites, and other sources of pollution, north Denver residents suffer some of the highest rates of cardiovascular disease, diabetes, and asthma in the metro area.⁴⁷ Yet these same residents also have more limited access to health care, further compounding these harms.⁴⁸

The same pattern holds true across Colorado. Truck pollution is heaviest along major thoroughfares, and disproportionately impacted communities tend to live closest to those highways.⁴⁹ As noted above, I-25 is one of the heaviest freight corridors in the state. CDPHE’s data viewer for disproportionately impacted communities shows that these vulnerable communities line the I-25 corridor in Colorado Springs, Pueblo, and the Denver metro area.⁵⁰ Each of these communities suffers from disproportionate traffic- and truck-related health burdens and urgently needs relief.

Today, Colorado’s transportation plans will result in even more traffic burdening low-income and minority communities. For example, the state is intensifying I-70’s harmful

⁴³ Gretchen Armijo & Gene C. Hook, *How Neighborhood Planning Affects Health in Globeville and Elyria Swansea*, Denver Dep’t of Env’tl. Health 16 (2014) [hereinafter “*Health Impact Assessment*”], https://www.denvergov.org/content/dam/denvergov/Portals/746/documents/HIA/HIA%20Composite%20Report_9-18-14.pdf.

⁴⁴ *Id.* at 16 fig. 6.

⁴⁵ The Denver zip code 80216, which includes Elyria-Swansea and Globeville, carries the highest environmental hazard housing risk in the county. To conduct the report, ATTOM Data Solutions evaluated 8,665 U.S. zip codes for four environmental risk factors: superfund sites, brownfields, polluters and poor air quality. *Home Prices in Highest-Risk Zips for Environmental Hazards Increased at Faster Pace Than U.S. Average Over Past Decade*, ATTOM Data Solutions (Feb. 22, 2018), <https://www.attomdata.com/news/risk/2017-environmental-hazard-housing-risk-index/>.

⁴⁶ *See Enforcement Actions Against Suncor*, Colo. Dep’t of Pub. Health & Env’t, <https://cdphe.colorado.gov/enforcement-actions-against-suncor> (last visited Mar. 16, 2022); Bruce Finley, *Suncor oil refinery’s release of clay-like “catalyst” triggers alarm, prompts air tests north of Denver*, Denver Post, (Dec. 11, 2019), <https://www.denverpost.com/2019/12/11/suncor-refinery-emissions-alarm/>.

⁴⁷ *Health Impact Assessment*, *supra* note 43, at 5.

⁴⁸ *Id.* at 6.

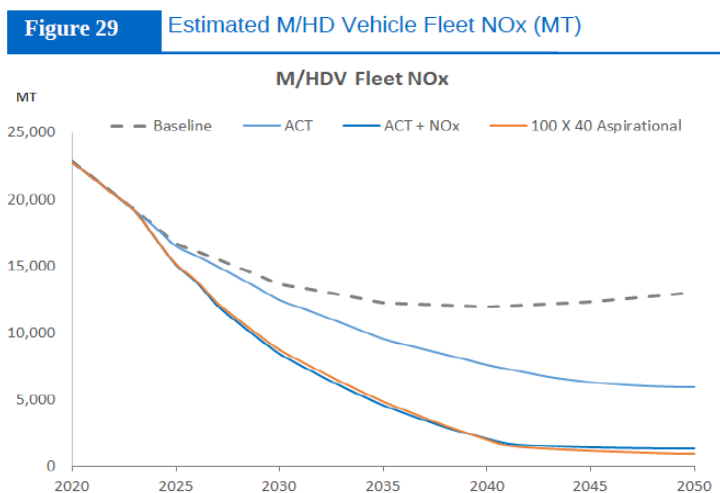
⁴⁹ *See CEO Briefing to AQCC*, *supra* note 26, at 22.

⁵⁰ *See Colo. Dep’t Pub. Health & Env’t*, *supra* note 2.

impacts by expanding the I-70 highway in the Elyria-Swansea and Globeville neighborhoods in north Denver.⁵¹ The project increases the number of residents living in unhealthy proximity to the highway.⁵² The state has doubled down on these harms with a proposed expansion to I-270 that would impact the same communities.⁵³ Overall, Colorado’s total freight traffic is projected to increase by more than 10% between 2020 and 2050.⁵⁴

Prompt action to adopt the ACT and Low-NOx rules will help alleviate freight traffic’s disparate health impacts. CEO found that adopting both rules in 2022 would result in significant health benefits, as the rules would result in immediate reductions in NOx pollution and continued reductions through 2050.⁵⁵ Figure 1 below shows the NOx reductions that will result from the ACT and Low-NOx rules.

Figure 1. NOx Reductions in Colorado from the ACT and Low-NOx Rules.⁵⁶



These NOx reductions, in conjunction with PM and greenhouse gas reductions, would result in half a billion dollars in health savings by 2030.⁵⁷ For impacted communities, this translates to over 15,000 fewer minor health-related cases by 2030.⁵⁸ The

⁵¹ Colo. Dep’t of Transp., *Central 70 Project*, <https://www.codot.gov/projects/i70east> (last visited Mar. 16, 2022).

⁵² Cong. for the New Urbanism, *Freeways Without Futures 2019* at 22–23 (2019), https://www.cnu.org/sites/default/files/FreewaysWithoutFutures_2019.pdf.

⁵³ Allen Cowgill, *Commentary: I-270 Expansion Will Harm Latino Communities, Increase Air Pollution, and Accelerate Climate Change*, StreetsBlog Denver (Feb. 23, 2021), <https://denver.streetsblog.org/2021/02/23/commentary-i-270-expansion-will-harm-latino-communities-increase-air-pollution-and-accelerate-climate-change/>.

⁵⁴ See M.J. Bradley & Assocs., *supra* note 12, at 29 (stating the total average annual vehicle miles traveled for the M/HD fleet is expected to increase from 6.5 billion miles in 2020 to 7.2 billion miles in 2050).

⁵⁵ *Id.* at 98.

⁵⁶ *Id.* fig. 29.

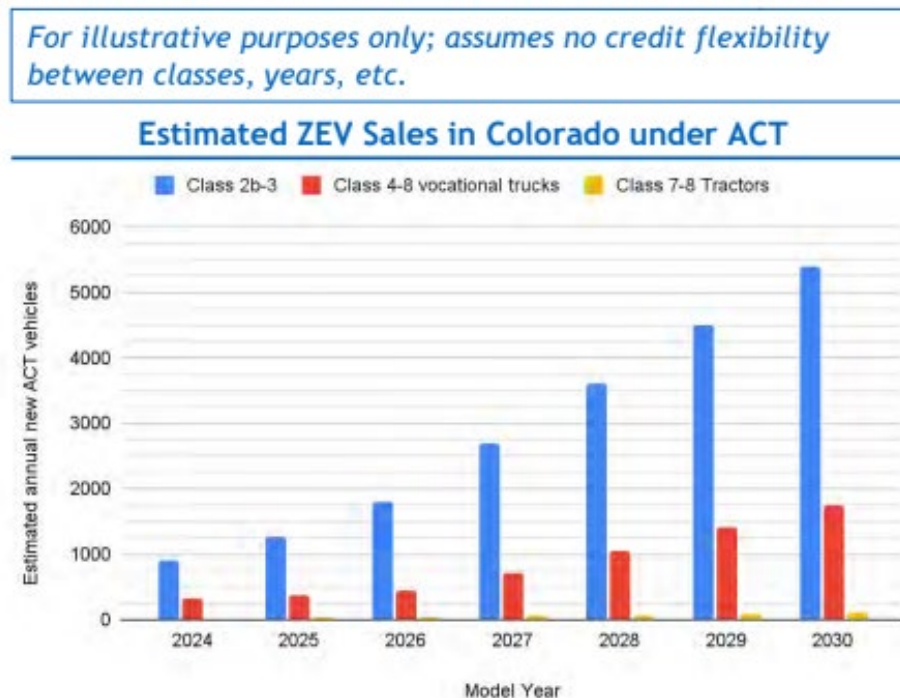
⁵⁷ *Id.* at 99 fig. 31.

⁵⁸ *Id.* at 100 fig. 32.

effect is particularly large in the Denver Metro area, reducing minor cases by nearly 10,000 by 2030.⁵⁹

Critically, CEO’s study assumed that tailpipe reductions would start in 2024 and accelerate in 2027.⁶⁰ But if the Commission delays this rulemaking until 2023, the requirements would not kick in until 2026 (as model year 2027 vehicles can commence as early as January 2 of the preceding calendar year). The health benefits described above would decrease correspondingly with this delay. In addition, medium- and heavy-duty vehicles in Colorado have a long lifetime—nearly half of the state’s fleet is older than fourteen years and sixteen percent are older than twenty years.⁶¹ For the ACT rule alone, CEO estimates that model year 2026 requirements would result in nearly 2,000 additional ZEV Class 2b-3 trucks on the road, and hundreds of ZEV Class 4-B vocational trucks.⁶² As Figure 2 below demonstrates, delaying the ACT rule by just a few months would thus result in thousands of additional trucks polluting for more than a decade to come.

Figure 2. ZEV Sales in Colorado from ACT⁶³



Delaying the Low-NOx rule would similarly lock-in higher-emitting trucks and corresponding health impacts. According to IHS Polk vehicle registration data, 63,479 new medium- and heavy-duty vehicles were registered in Colorado in 2020, and 2021 was on track for even higher sales volumes with quarter-on-quarter registration growth from the

⁵⁹ *Id.* at 109 fig. 45.

⁶⁰ *Id.* at 93, 98; see Cal. Code Regs. tit. 13, § 1956.8 (a)(2)(C), (D).

⁶¹ M.J. Bradley & Assocs., *supra* note 12, at 27.

⁶² See *CEO Briefing to AQCC*, *supra* note 26, at 47.

⁶³ *Id.*

first quarter of 2021 to the second quarter of 3.7%.⁶⁴ As Figure 3 below shows, even assuming sales slow to just one percent growth, between 94,000 and 163,000 new fossil fuel medium- and heavy-duty vehicles could be sold in Colorado in 2026. These vehicles could remain operational for several decades, spewing elevated levels of NOx and PM due to the agencies' decision to delay the rulemaking.

Figure 3. Projected Colorado Medium- and Heavy-Duty Vehicle Sales

Colorado Medium- and Heavy-Duty Vehicle Sales		
2020	63,479	
2021 (Q1)	18,642	
2021 (Q2)	19,337	
	1% Annual Sales Growth	3.7% Annual Sales Growth (2021 Q1-Q2)
2022	80,895	91,274
2023	84,180	105,666
2024	87,598	122,326
2025	91,155	141,614
2026	94,856	163,943

Finally, the EPA recently proposed new federal standards to reduce NOx and greenhouse gas emissions from heavy-duty vehicles.⁶⁵ These proposed federal standards are less protective than the ACT and Low-NOx rules and they would not go into effect until model year 2027. As a result, the Commission should still act promptly and complete the ACT and Low-NOx rulemaking this year.

C. The Commission has recently abandoned or delayed other rulemakings that would benefit disproportionately impacted communities and reduce pollution from the transportation sector.

CDOT and CEO's request to delay the ACT and Low-NOx rulemaking occurs at a time when the Commission has recently abandoned or delayed other rulemakings that would reduce pollution from the transportation sector and benefit disproportionately impacted communities. The delay of other pollution-reduction actions only heightens the need to promptly adopt the ACT and Low-NOx rules.

⁶⁴ Atlas EV Hub, *Medium- and Heavy-Duty Vehicles Registrations Dashboard*, <https://www.atlasevhub.com/materials/medium-and-heavy-duty-vehicle-registrations-dashboard/> (last visited Mar. 16, 2022).

⁶⁵ U.S. Env'tl. Prot. Agency, *Proposed Rule and Related Materials for Control of Air Pollution from New Motor Vehicles: Heavy-Duty Engine and Vehicle Standards*, <https://www.epa.gov/regulations-emissions-vehicles-and-engines/proposed-rule-and-related-materials-control-air-1> (last visited Mar. 16, 2022).

In the summer of 2021, the Commission had planned a rulemaking hearing on the Employee Traffic Reduction Program, which would reduce the number of employees commuting to work in non-zero emission, single occupancy vehicles.⁶⁶ The program was intended to reduce NOx and greenhouse gas emissions from the transportation sector, and it would require large employers to develop plans to encourage and incentivize their employees to reduce single occupancy vehicle commute rates. The Division initially proposed the rule in May 2021 and the program proceeded through the typical rulemaking process.⁶⁷ However, shortly before the hearing, the Division withdrew the Employee Traffic Reduction Program from the rulemaking. The Division explained there was opposition to the program and that it would instead focus on solely voluntary measures to reduce single occupancy vehicle commutes.⁶⁸ As a result, the Commission abandoned one of its planned 2021 rulemakings to reduce air and climate pollution from the transportation sector.

In addition, the Division recently announced plans to delay the Phase 2 GEMM rulemaking from 2022 until 2023.⁶⁹ This rule would reduce NOx and greenhouse gas pollution from large manufacturers, and the Suncor oil refinery will be one of the primary sources at issue in this rulemaking. The Suncor refinery is located in the heart of a disproportionately impacted community in North Denver and Commerce City, and it has some of the worst environmental justice impacts of any facility in Colorado. Consequently, postponing this Phase 2 GEMM rulemaking will delay long-overdue pollution reductions in disproportionately impacted communities.

Given these recently withdrawn and delayed rulemakings, the Commission should not postpone the ACT and Low-NOx rulemaking. The Colorado General Assembly has made addressing equity and environmental justice a priority for the Commission in recent legislative sessions. *See, e.g.*, Colo. Rev. Stat. §§ 24-4-109(2)(b)(II), 24-4-109(3)(b), 25-7-102(2)(b), 25-7-105(1)(e)(II)–(IV). The ACT and Low-NOx rules, the Employee Traffic Reduction Program, and the Phase 2 GEMM rule should all result in substantial pollution reductions that will benefit disproportionately impacted communities in Colorado. Yet the Commission is now poised to either delay or abandon each of these rulemakings, which is contrary to the Commission’s equity and environmental justice obligations.

In addition, the ACT rule, along with other transportation rules, were identified as key actions needed to achieve Colorado’s economy-wide greenhouse gas emission reduction goals. In August 2020, the Division presented an analysis to the Commission’s Greenhouse

⁶⁶ *See, e.g.*, Petition_Ex_2, *CDPHE Regulatory Agenda*, *supra* note 24, at 25.

⁶⁷ Colo. Air Pollution Control Div., *Memorandum of Notice regarding Regulations Number 11, 20 and 22* (May 11, 2021), <https://drive.google.com/file/d/1rFTWw-wKkfeEuUBZPoSibd228xaS-ZGW/view>; Colo. Air Pollution Control Div., *Prehearing Statement regarding Regulations Number 11, 20 and 22* (July 9, 2021), https://drive.google.com/file/d/1veSTjl5cEy0J9XM_Cu7bD-bky8S42Mwp/view.

⁶⁸ Colo. Air Pollution Control Div., *Withdrawal of Proposal* (July 21, 2021), https://drive.google.com/drive/u/1/folders/1jpsxeQ2l-ueBqHAoAyfxH8uxaAXyq_Mp; *see also* Woodruff, *supra* note 22.

⁶⁹ Michael Booth, *Colorado needs to cut greenhouse gas pollution from industry. They’ve put it off until 2023.*, Colo. Sun (Mar. 8, 2022), <https://coloradosun.com/2022/03/08/colorado-industrial-air-pollution-rule-delay/>.

Gas Subcommittee that identified a series of transportation-related rulemakings and the expected emission reductions. The Division’s analysis showed that collectively, the set of rulemakings would achieve the economy-wide emission goals in 2025 and 2030. The analysis identified several key transportation sector rulemakings: an “AQCC 2021 Rulemaking: GHG Planning and MDV/HDV Rules,” an “AQCC 2022 Rulemaking: Possible New LEV/ZEV rules,” and an “AQCC 2022-23 Rulemaking: Indirect Source Rules”, as well as rulemakings at other agencies.⁷⁰ Collectively, these transportation rules were expected to achieve reductions of 2.0 MMTCO_{2e} in 2025, and 4.6 MMTCO_{2e} in 2030. Given that only the GHG Planning Rule has been adopted, it is likely impossible to achieve the reductions by 2025. Further delay of these rulemakings will make achieving the 2030 reductions increasingly out of reach.

The ACT and Low-NOx rules present the Commission with an opportunity to promptly reduce air and climate pollution—and benefit disproportionately impacted communities—in one relatively straightforward rulemaking. Unlike many Commission rulemakings in which the Division must draft entirely new rules, the ACT and Low-NOx rulemaking will largely involve a decision whether to adopt pre-existing rules that California and other states have already adopted. This simplifies the rulemaking process in many ways and should allow the Commission to move forward quickly with the rulemaking. If the Commission delays this rulemaking hearing until 2023, it will miss an opportunity to promptly secure air and climate pollution reductions that will benefit disproportionately impacted communities throughout Colorado.

D. Five other states have already successfully adopted California’s ACT and Low-NOx rules, and Colorado should not fall further behind these states.

The Clean Air Act provides an option for states to adopt California vehicle emission standards, such as the ACT and Low-NOx rules. Section 209 of the Act prohibits states other than California from adopting and enforcing vehicle emission “standard[s].” 42 U.S.C. § 7543(a). Section 177 contains an exception to that rule: a state may adopt vehicle emission “standards” so long as the standards (1) are “identical to the California standards for which a waiver has been granted for such model year,” and (2) provide manufacturers with at least a two-year compliance lead time. *Id.* § 7507.

As discussed above, California adopted the ACT rule in June 2020 and the final Low-NOx rule in December 2021. *See supra* pp. 7–8. These complementary rules will result in substantial reductions in air pollution and greenhouse gas emissions from trucks and other heavy-duty vehicles. The ACT rule will result in progressively more zero emission medium- and heavy-duty vehicles over time, and the Low-NOx rule will result in less NOx and PM pollution from all trucks and other heavy-duty vehicles.

Five states adopted California’s ACT and/or Low-NOx rules over the past year: Massachusetts, New Jersey, New York, Oregon, and Washington. *See id.* By adopting the ACT and Low-NOx rules this year, Colorado would follow these other states’ prompt action. Colorado signaled its commitment to transitioning to cleaner, zero emission trucks by joining the multi-state MOU. Many multi-state MOU signors have already successfully

⁷⁰ Petition_Ex_3, Colo. Air Pollution Control Div., August DRAFT – GHG Reductions.

adopted and began implementation of the ACT and Low-NOx rules; meanwhile, Colorado has now delayed its commitment.

Colorado should not fall behind the other states that have adopted the ACT and Low-NOx rules and moved quickly to a cleaner transportation sector. Those states have commenced rulemaking processes, adopted the ACT and/or Low-NOx rules, and followed through with their commitment to cleaner trucks—while Colorado is now planning to delay its rulemaking hearing until next year. There is no compelling reason why Colorado needs substantially more time to adopt and implement these rules than other states. Colorado should therefore continue its role as a regional and national leader in clean transportation by adopting the ACT and Low-NOx rules this year.

III. CDOT and CEO’s rationales for delaying the ACT and Low-NOx rulemaking until 2023 lack merit.

A. The State has conducted sufficient stakeholder outreach and further delay for additional outreach is unwarranted.

CDOT and CEO claim that delaying the ACT and Low-NOx rulemaking is warranted to enable a more robust stakeholder process that would “hopefully ease participation” for disproportionately impacted communities.⁷¹ But community advocates have rejected the agencies’ claims that a delay is needed.⁷² Accordingly, disproportionately impacted communities are ready for the Commission to move forward with a rulemaking as soon as possible, as the submission of this Petition illustrates.

CDOT and CEO have already conducted significant stakeholder outreach. As discussed above, Colorado signed the multi-state MOU in July 2020, kicking off a process of engagement statewide.⁷³ Following three public meetings in the fall of 2020, the State subsequently embarked on a study of clean trucking strategies, including the ACT and Low-NOx rules.⁷⁴ Strategy development has included three public meetings in the fall of 2021, two upcoming public meetings, and four stakeholder working group meetings that were also open to the public.⁷⁵ In addition, in the State’s very first public meeting in the fall of 2020, it acknowledged the applicability of Colorado’s Climate Equity Framework and called for building equity and justice into the clean trucking strategy.⁷⁶ These public meetings have included interpretation services and Spanish-language written materials, improving accessibility for Colorado’s Latino communities.⁷⁷ In addition, some of the Petitioners have also conducted separate and independent outreach to disproportionately impacted communities, including monolingual Spanish outreach across the state.

⁷¹ *CDOT Working Group Meeting #3, supra note 25, at 29:00; see also CEO Briefing to AQCC, supra note 26, at 49.*

⁷² *Booth, supra note 69.*

⁷³ *See supra p. 8.*

⁷⁴ *Colorado Clean Truck Website, supra note 10.*

⁷⁵ *Id.*

⁷⁶ *August 2020 Strategy Meeting, supra note 10, at 17.*

⁷⁷ *See Colorado Clean Truck Website, supra note 10.*

Given the stakeholder outreach to date, the Commission should not allow the State to now claim there is a great unmet need for stakeholder outreach and to rely on that claim as an excuse to delay substantive, pollution-reducing action. The State has had more than a year-and-a-half since its first public meeting to fulfill its obligations to engage with disproportionately impacted communities. Stakeholder outreach is certainly an essential component of rulemakings, especially engaging members of disproportionately impacted communities. But here, community members have been clear—they need action now.⁷⁸ Moreover, the Commission can conduct additional outreach concurrent with the rulemaking process itself. For example, an October rulemaking hearing would allow for an additional seven months of outreach and engagement. The Commission should heed the calls of community advocates and move forward promptly with a rulemaking.

B. The purported supply chain issues are not unique to Colorado and do not warrant delaying the ACT and Low-NOx rulemaking.

CDOT and CEO also claim that national supply chain issues and their effects on the trucking industry warrant postponing the ACT and Low-NOx rulemaking.⁷⁹ CEO has publicly described supply chain-related difficulties on the trucking industry, asserting that “the trucking industry is extremely focused right now on meeting those supply chain needs . . . so we think that this is an appropriate timeline to allow the industry to really be able to focus and engage in that rulemaking stakeholder process.”⁸⁰ In other words, CEO contends that the trucking industry is too busy with supply chain issues to actively participate in the ACT and Low-NOx rulemaking. CEO’s contention is baseless for three reasons.

First, CEO’s supply chain rationale is unsupported and conclusory. CDOT and CEO did not present any facts demonstrating that supply chain issues would impede this rulemaking process from moving forward this year. The trucking industry and truck manufacturers are well-positioned to engage in the rulemaking and for the State to adopt the ACT and Low-NOx rules. In 2021, trucking companies logged record profits despite supply chain issues.⁸¹ And trucking companies spent their record profits on new equipment investments.⁸² CDOT and CEO’s conclusory claim does not reflect the realities faced by the affected industries.

⁷⁸ See Booth, *supra* note 69 (“[J]ustice groups respond that they are all engaged . . . and that what their constituents have already said they want is for Colorado to adopt California-style clean truck rules immediately, as officials had promised to do.”); see also Mi Familia Vota, Clean Trucks Means Cleaner Air and Equity for all Coloradans, (Feb. 4, 2022), <https://www.mifamiliavota.org/news/clean-trucks-means-cleaner-air-and-equity-for-all-coloradans/>.

⁷⁹ CEO Briefing to AQCC, *supra* note 26, at 49.

⁸⁰ CDOT Working Group Meeting #3, *supra* note 25, at 30:39–31:00.

⁸¹ Jennifer Smith, *Freight Operators’ Profits Are Surging in Strained Supply-Chain Markets*, Wall St. J., Nov. 3, 2021, <https://www.wsj.com/articles/freight-operators-profits-are-surging-in-strained-supply-chain-markets-11635931980>.

⁸² Dominic Pino, *Trucking Companies Investing Record Profits in New Equipment*, Nat’l Rev., Feb. 18, 2022, <https://www.nationalreview.com/corner/trucking-companies-investing-record-profits-in-new-equipment/>.

Second, supply chain issues are a national phenomenon that are not unique to Colorado. Notably, multiple states successfully adopted the ACT and Low-NOx rules in 2021 while facing the same national supply chain issues. In those rulemakings, representatives from the trucking industry and vehicle manufacturers actively participated by providing written and oral comments.⁸³ Moreover, industry actively participated in concurrent ACT and Low-NOx rulemakings in multiple states during the summer of 2021.⁸⁴ Industry participation included attempts to delay ACT adoption in other states.⁸⁵ However, the states rejected industry's delay attempts.⁸⁶ The Commission should likewise not delay implementing the ACT and Low-NOx rulemakings in Colorado.

Last, the timing of the rules' implementation renders the current supply chain issues irrelevant. The ACT and Low-NOx rules would not apply immediately because of the two-year lead time requirement. As stated by CEO, macroeconomic trends suggest that current supply chain issues will ease later this year.⁸⁷ As a result, current supply chain issues are unlikely to impact ACT and Low-NOx implementation. Further, zero emission vehicle adoption will become more cost effective over time. Recent studies demonstrate that zero emission medium- and heavy-duty vehicle deployment will become increasingly feasible from a cost perspective.⁸⁸ In just a few years, many electric vehicles will be less

⁸³ See, e.g., Petition_Ex_4, Letter from Industry Coalition to Acting Comm'r Shawn LaTourette, N.J. Dep't Env'tl. Prot. (Apr. 2021); Petition_Ex_5, Timothy French, *Comments of the Truck and Engine Manufacturers Association: State of New Jersey Advanced Clean Trucks Program and Fleet Reporting Requirements* (June 18, 2021); Letter from Truck & Engine Mfrs. Ass'n to State of Or. Dep't Env't Quality (Aug. 16, 2021), in *State of Oregon Department of Environmental Quality: Written Comments* 47–66, <https://www.oregon.gov/deq/rulemaking/Documents/ctr2021m2Comments.pdf>; Timothy French, Truck and Engine Mfrs. Ass'n, Oral Statement at Public Hearing on the Washington DOE's Proposal to Opt-In to California's Advanced Clean Trucks Rule (July 27, 2021) [hereinafter "*Timothy French Washington Letter*"], https://scs-public.s3-us-gov-west-1.amazonaws.com/env_production/oid100/did1008/pid_201445/assets/merged/zg29iod_document.pdf?v=ENTV7DKWJ; Letter from Truck & Engine Mfrs. Ass'n to Wash. Dep't Ecology (July 16, 2021), https://scs-public.s3-us-gov-west-1.amazonaws.com/env_production/oid100/did1008/pid_201445/assets/merged/h309iok_document.pdf?v=ENTV7DKWJ.

⁸⁴ See *id.*

⁸⁵ See, e.g., Petition_Ex_6, Letter from Truck & Engine Mfrs. Ass'n to N.J. Dep't Env'tl. Prot. 1–2 (Jan. 21, 2021); *Timothy French Washington Letter*, *supra* note 83; Eleanor Lamb, *Transportation Groups Ask N.J., N.Y. to Delay Adoption of Advanced Clean Trucks Rule*, *Transp. Topics* (July 30, 2021), <https://www.ttnews.com/articles/transportation-groups-ask-new-jersey-delay-adoption-advanced-clean-trucks-rule>.

⁸⁶ See, e.g., State of Wash. Dep't Ecology, *Pub. No. 21-02-030, Summary of Rulemaking and Response to Comments* 21 (Nov. 2021), <https://apps.ecology.wa.gov/publications/documents/2102030.pdf>.

⁸⁷ *CEO Briefing to AQCC*, *supra* note 26, at 49.

⁸⁸ Vishnu Nair et al., *Technical Review of: Medium and Heavy-Duty Electrification Costs for MY 2027- 2030* at 118 (Feb. 2, 2022), http://blogs.edf.org/climate411/files/2022/02/EDF-MDHD-Electrification-v1.6_20220209.pdf;

expensive than their combustion engine counterparts in terms of upfront and operation costs.⁸⁹ Moreover, the supply chain issues are not unique to zero emission vehicles. The semiconductor shortage is a major component of supply chain issues, which affects conventional vehicles as much as zero emission vehicles.⁹⁰ In addition, the ACT rule's zero emission vehicle sales requirements are based on total annual sales. This was an intentional design choice to accommodate potential manufacturing or macroeconomic trends that may impact vehicle production, such as supply chain constraints, to help industry comply. Based on the timing and nature of the rules, current supply chain concerns should not impact the implementation of the ACT and Low-NOx rules.

C. Promptly proceeding with the ACT and Low-NOx rulemaking would not impede progress on other clean truck strategies.

CDOT and CEO claim that delaying the ACT and Low-NOx rulemaking would allow the State to focus on other near-term clean truck strategies and develop supporting programs.⁹¹ However, Colorado's burgeoning Clean Truck Strategy should not delay the rulemaking, as promptly moving forward with the ACT and Low-NOx rulemaking would not interfere with Colorado's broader clean truck initiatives.

In March 2022, Colorado published the draft 2022 Clean Truck Strategy.⁹² The Clean Truck Strategy includes key actions that will support the transition to zero emission medium- and heavy-duty vehicles. The Strategy also identifies the ACT and Low-NOx rules as near-term regulatory actions. Nothing in the Clean Truck Strategy prevents the State from moving forward with the near-term ACT and Low-NOx rulemakings.

The ACT and Low-NOx rulemakings are complementary to Colorado's other Clean Truck Strategy actions. For example, once implemented, the ACT rule's fleet reporting requirement will inform strategies on how to accelerate the zero emission market. *See* Cal. Code Regs. tit. 13, § 2012(a). The fleet reporting requirement will clarify where large fleets operate in the state and the types of vehicles in each fleet. *Id.* § 2012(e). Using the information gained, Colorado could more efficiently target resources, incentives, and infrastructure. Importantly, the fleet reporting requirement information could also help document the disproportionate impacts of trucking fleets in the state, improving Colorado's equity lens in its clean truck initiatives.

Catherine Ledna et al., Nat'l Renewable Energy Lab., *Decarbonizing Medium- & Heavy-Duty On-Road Vehicles: Zero-Emission Vehicles Cost Analysis 2* (Mar. 2022), <https://www.nrel.gov/docs/fy22osti/82081.pdf>.

⁸⁹ Nair et al., *supra* note 88, at 118.

⁹⁰ Jennifer Smith, *Chip Shortage Curtails Heavy-Duty Truck Production*, Wall St. J., Sept. 3, 2021, https://www.wsj.com/articles/chip-shortage-curtails-heavy-duty-truck-production-11630661401?mod=article_inline; Theo Leggett, *Electric Car Sales Soar, But Chip Shortage Hits Market*, BBC News, Jan. 6, 2022, <https://www.bbc.com/news/business-59887024>.

⁹¹ *CEO Briefing to AQCC*, *supra* note 26, at 49; *CDOT Working Group Meeting #3*, *supra* note 25, at 29:28–30:15.

⁹² Colo. Air Pollution Control. Div. et al., *2022 Colorado Clean Truck Strategy: Public Comment Draft* (March 2022), <https://drive.google.com/file/d/1Rj9fy5CtVawKepqYPQtMAJLAZVvIxqwi/view>.

In addition, the ACT and Low-NOx rules provide important compliance components to the Clean Truck Strategy. CEO pointed to early action incentives as a reason for later adoption of the rules.⁹³ While tools like early action incentives help with compliance, such actions do not obviate the need for compliance requirements. The ACT and Low-NOx rules will require vehicle manufacturers to act and meet mandates. Paired with other programs and tools, such mandates will guarantee a smooth transition to zero emission trucks.

If the Commission moves forward with the ACT and Low-NOx rulemaking this year, the agencies can continue to coordinate complementary programs that support the rules' required adoption levels. During the rules' two-year lead time, Colorado has ample time to implement other Clean Truck Strategy actions that will ensure success with ACT and Low-NOx rule implementation.

CONCLUSION

Adopting the ACT and Low-NOx rules in Colorado will reduce air and climate pollution from the transportation sector. These pollution reductions will benefit all Coloradans, and particularly the disproportionately impacted communities across the state who have long suffered the brunt of pollution from trucks, buses, and other vehicles. The Commission should therefore promptly complete the ACT and Low-NOx rulemaking this year, as it initially planned to do. Although CDOT and CEO now prefer to postpone the rulemaking hearing until 2023, their preferred course of action would delay the implementation of these rules by a year. Delaying the effective date of the rules by a year would unreasonably and unnecessarily force disproportionately impacted communities and other Coloradans to experience greater air and climate pollution.

The Petitioners thus request the Commission issue a declaratory order that:

- Affirms the need to expedite the ACT and Low-NOx rulemaking so that the final rules are published in the Colorado Register by December 31, 2022. Meeting this end-of-year deadline will ensure that the ACT and Low-NOx rules take effect in Colorado beginning with model year 2026 vehicles.
- Directs the Division to request a rulemaking hearing for the ACT and Low-NOx rules at either the May or June 2022 Commission meeting. This should allow the Commission to conduct the rulemaking hearing in September or October 2022. And importantly, this schedule would allow the Commission to finalize its decision by the end of 2022, while allowing sufficient time for stakeholder outreach.⁹⁴

⁹³ *CDOT Working Group Meeting #3, supra note 25, at 46:40–47:10.*

⁹⁴ As explained above, the Petitioners believe the Division should be the rulemaking proponent that requests the ACT and Low-NOx rulemaking. *See supra* p. 3, note 1. However, if the Division claims it is unable to proceed on the initially planned schedule for this rulemaking, some of the Petitioners are prepared to develop and submit a petition for rulemaking to ensure the Commission completes the rulemaking process by the end of this

Date: March 17, 2022.

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year. If the Commission prefers to proceed in this manner, the Petitioners request that it expressly state this at the April 21, 2022 meeting, so the Petitioners can submit a petition for rulemaking as quickly as possible.

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CERTIFICATE OF SERVICE

I certify that on March 17, 2022, the foregoing **Petition for Declaratory Order to Expedite the Advanced Clean Trucks and Low-NOx Omnibus Rulemaking** was served on the following via electronic mail:

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