

September 26, 2025

OAL Reference Attorney  
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Sacramento, California 95814  
Email: [staff@oal.ca.gov](mailto:staff@oal.ca.gov)

*Re: Title 13 and Title 17 California Code of Regulations, California Air Resources Board,  
Emergency Amendment and Adoption of Vehicle Emission Regulations*

Dear OAL Reference Attorney:

The Northeast States for Coordinated Air Use Management (NESCAUM) is writing to express strong support for the California Air Resources Board's (CARB's) emergency amendments and adoption of vehicle emission regulations. In the midst of highly unusual circumstances creating unprecedented uncertainty, this emergency rulemaking is needed to set the record straight on California's long-standing authority to regulate motor vehicle emissions and clarify operative regulations.

NESCAUM is the regional nonprofit association of state air quality agencies in Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont. NESCAUM serves as a technical and policy advisor to its members and works with broader groups of states to develop strategies to achieve their shared air quality and climate goals. For more than three decades, NESCAUM has supported states in using the authority under Section 177 of the Clean Air Act to adopt California's motor vehicle emission standards. Currently, NESCAUM hosts a workgroup for Section 177 states across the country to assist with and coordinate state adoption and implementation of California's clean car and truck standards. NESCAUM also facilitates the Multi-State ZEV Task Force, which serves as a unique forum for galvanizing state leadership on complementary programs and policies through research and analysis, information sharing, collective strategizing, and coordinated action on shared priorities.

CARB's emergency rulemaking is urgently needed to set the record straight and push back against misinformation and misguided attempts to dismantle California's long-standing authority. Earlier this year, Congress passed resolutions that inappropriately used the Congressional Review Act to purportedly disapprove EPA waivers of preemption for the emissions standards in the Advanced Clean Cars II (ACC II), Low NOx Omnibus, and Advanced Clean Trucks regulations. Once signed by the president, California and a coalition of ten states immediately filed a lawsuit challenging the resolutions. Because waivers are required to enforce California's standards, the resolutions create confusion and uncertainty as to which California emissions standards are currently in effect. Moreover, in recent court filings, vehicle manufacturers suggested that California standards that preceded the standards in the ACC II and Low NOx Omnibus regulations are now defunct, calling into question regulatory programs that began

decades ago. This line of argument amounts to misinformation that needs to be corrected immediately because it is irresponsible, incorrect, and goes against the public interest to argue that harmful motor vehicle emissions should not be controlled at all by CARB's long-standing emission standard programs. We are grateful for CARB's efforts to quickly counter false information about its motor vehicle emission standard programs that have also been adopted by Section 177 states across the country.

For nearly six decades, the Clean Air Act has authorized the U.S. Environmental Protection Agency to establish federal emission standards for new motor vehicles and California to establish its own standards, subject to obtaining a waiver of preemption. Congress adopted this two-standard strategy for regulating motor vehicle pollution in 1967 because California was then, and still is, the nation's leader in the fight against motor vehicle air pollution. As one court explained, "Congress intended [California] to continue and expand its pioneering efforts at adopting and enforcing motor vehicle emissions standards different from and in large measure more advanced than the corresponding federal program; in short, to act as a kind of laboratory for innovation." Motor & Equip. Mfrs. Ass'n v. EPA, 627 F.2d 1095, 1111 (D.C. Cir. 1979).

In 1977, Congress amended the Clean Air Act to authorize other states to adopt standards identical to California's in lieu of weaker federal standards. In doing so, Congress elegantly balanced concerns about subjecting manufacturers to a patchwork of state standards and concerns about interfering with the legitimate police powers of states to protect public health. The end result is that the manufacturers are subject to two separate standards for motor vehicle emissions. Under this two-standard system, new motor vehicles must be designed and certified to meet either federal standards or California standards. The California standards apply in California, and any other state that has adopted California's standards pursuant to Section 177 of the Clean Air Act, provided there is a waiver of preemption.

States that have adopted and benefitted from California's standards appreciate CARB's actions to quickly clarify the regulatory provisions that remain operative during this time of unprecedented regulatory uncertainty. Over the past sixty years, California has regularly used its authority to reduce motor vehicle pollution and has become a "proving ground" for emissions standards, many of which EPA later copied as federal standards.<sup>1</sup> As a result, the entire nation has benefitted from this two-standard system because the California standards, bolstered by Section 177 state adoption, have fostered more effective federal programs, led to greater reductions in motor vehicle pollution and corresponding public health and economic benefits, and played a key role in maintaining U.S. leadership in clean vehicle technology innovation.


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<sup>1</sup> For example, in 1987 California tightened its standards for oxides of nitrogen (NOx) beginning with the 1989 model year. Cal. Code Regs. tit. 13, § 1960.1(g)(1) (2008); 53 Fed. Reg. 36,488, 36,489 (Sept. 20, 1988). The federal government adopted similar regulations beginning with the 1994 model year. Standards for Emissions, 59 Fed. Reg. 48,472, 48,516 (Sept. 21, 1994). In 1997, EPA agreed to a National Low Emission Vehicle program that harmonized the national program with the pre-existing California program. See 62 Fed. Reg. 31,192, 31,194 (June 6, 1997). In 2007, the federal government adopted evaporative emissions standards equivalent to those that were already in use in California. 72 Fed. Reg. 8428, 8460 (Feb. 26, 2007). EPA later adopted Tier 3 standards that "are in most cases identical to those of California's LEV III program" that were already in place in California and twelve other states. 79 Fed. Reg. 23414, 23417, 23421 (April 28, 2014).

States continue to urgently need the mobile source reductions that the California standards have provided for decades. Despite dramatic reductions in ozone pollution in the Northeast, the New York City metropolitan area fails to comply with federal air quality standards for ozone. This affects over 20 million people living in the New York City metropolitan area, which includes northern New Jersey and over half the population of Connecticut, along with the 65 million people visiting this area each year. Nitrogen oxides (NO<sub>x</sub>) are the key pollutants promoting ozone formation in the Northeast, and, given that mobile sources are the largest sources of NO<sub>x</sub> pollution in our region, it is simply not possible for the New York City metropolitan area to meet national health-based ozone air quality standards without deep pollution reductions from the mobile source sector (see attached figure). However, other than the right to adopt and enforce emission standards for new cars and trucks that are identical to California's standards, mobile source emissions are largely under federal control. CARB's emergency rulemaking clarifies that, at a minimum, the emissions standards for criteria pollutants for vehicles and engines in place prior to ACC II and Low NO<sub>x</sub> Omnibus remain operative while litigation about the waivers for the standards adopted as part of the ACC II and Omnibus regulations is pending. The CARB rules are important tools for states to use in protecting the health of millions of people in the Northeast, especially in the absence of meaningful federal actions to reduce public exposure to ozone.

Thank you for the opportunity to comment on CARB's emergency amendment and adoption of vehicle emissions regulations. With this emergency rulemaking, CARB is ensuring that the regulators, regulated entities, and other stakeholders have a clear and common understanding of which regulatory provisions remain operative in the wake of federal actions that have introduced unprecedented uncertainty into CARB's longstanding motor vehicle emission standard programs. We appreciate California's continued leadership in protecting the environment and public health from motor vehicle pollution.

Sincerely,

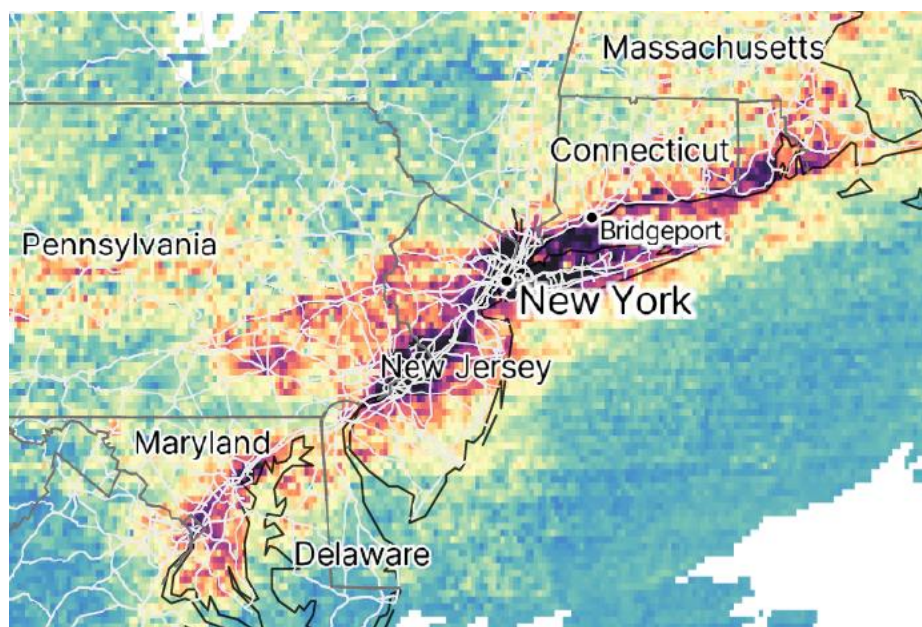


Paul J. Miller  
Executive Director

cc: cotb@arb.ca.gov  
NESCAUM Directors

Attachment: TEMPO satellite image of NO<sub>x</sub> (NO<sub>2</sub>) in the Northeast

Figure Attachment



The image above is from the Tropospheric Emissions: Monitoring of Pollution (TEMPO) instrument onboard the telecommunications spacecraft Intelsat-40e, launched in April 2023. The warmer (orange to dark purple) colors show the highest concentrations of nitrogen dioxide ( $\text{NO}_2$ ), which is the major component of  $\text{NO}_x$  pollution at the earth's surface. Atmospheric chemistry involving  $\text{NO}_x$  forms ozone, and  $\text{NO}_x$  is the primary controllable pollutant at the regional scale for reducing peak daily ozone pollution during the ozone season. The highest  $\text{NO}_x$  concentrations closely align with the major highway arteries and urban centers of the Northeast, illustrating the large role transportation sources have in creating the region's ground-level ozone pollution problem. This image is from June 12, 2025 (8:25AM local time) and was downloaded from the TEMPO public data site at [https://tempo.si.edu/data\\_for\\_public.html](https://tempo.si.edu/data_for_public.html).