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IN RE: Proposed Chapter 128 Advanced Clean Trucks Program

Submitted electronically to: rulecomments.dep@maine.gov

Introduction

Thank you for the opportunity to comment on the Maine Department of Environmental Protection's (DEP) proposed adoption of the California Advanced Clean Trucks (ACT) program.

The American Petroleum Institute (API) represents all segments of America's natural gas and oil industry, which supports more than 11 million U.S. jobs. Our nearly 600 members produce, process, and distribute the majority of the nation's energy. API and its members commit to delivering solutions that improve air quality and the goal of reduced emissions across the broader economy. We support global action that drives emissions reductions and economic development. With respect to greenhouse gas (GHG) emissions, a federal policy with an economy-wide carbon pricing mechanism is the most efficient and transparent framework to address these emissions at both the national and state levels. Absent a federal economy-wide policy, a federal technology-neutral framework of carbon intensity-based fuel requirements linked to new vehicle standards on a well-to-wheels basis is a meaningful solution that provides a targeted systems-focused approach to achieving significant emissions reductions from the transportation sector both nationwide and for Maine.

As DEP goes through the process of soliciting and considering public input and feedback, API respectfully requests that DEP consider the following comments.

State and Country Have Unique Truck Needs

The fleet of medium- and heavy-duty vehicles operating on U.S. highways is extremely diverse. It has evolved and diversified over decades to meet a wide range of engineering, operating, and durability specifications tailored to the often-unique needs and requirements of many different end-use applications. For example, some vehicles are designed for short urban daily package delivery trips in fleet operations, others are used in inland port freight drayage operations, while still others are engaged in utility maintenance operations, building and highway construction, urban and intercity passenger transit and freight hauling, to name just a few end-use vocational applications.

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While some companies have announced plans to incorporate electric and zero emission vehicles (ZEV) into their operations, these technologies cannot currently meet the needs of all the end-uses for medium- and heavy-duty fleets. For instance, some cities are testing the use of battery electric buses (BEB) to determine if they can meet their needs depending on the terrain, weather, mileage of the route and the time available to charge. Some have found issues while others have been successfully deployed.

Municipalities are different and find that a combination of diesel and natural gas buses serve their municipal requirements while contributing to their GHG and other environmental goals. A study shows that there are 17 applications that account for 91 percent of the U.S. Medium- and Heavy- Duty Vehicle (MHDV) market and 94 percent of national MHDV emissions.[1] The proposed ZEV-centric regulatory approach would place significant limitations on MHDV fleets whose needs cannot be served currently by ZEV technology. Further, the proposed rule ignores fuel- and vehicle-based options (such as diesel technology vehicles meeting the U.S. Environmental Protection Agency's (EPA) latest near-zero emissions standards) that are currently available and can better accomplish DEP's objectives to expeditiously achieve greater transportation sector-related emission reductions from the entire vehicle fleet (both new and in-use) at lower cost.

Allowing Multiple Powertrains Creates More Opportunities to Reduce Emissions

API encourages DEP to allow private and public entities the freedom to determine the powertrain technology that best meets their individual operational needs and that best fits within the constraints imposed by the economic requirements and management philosophy of their individual organizations. Such an approach will optimize capital and result in sustained reductions in carbon emissions. In further support of these arguments, we incorporate by reference our comments to CARB regarding their proposal on the Advanced Clean Fleets regulation.[2]

Federal Approach and Value of Renewable Diesel, Biodiesel and Renewable Natural Gas

EPA has proposed a federal, nationwide MHDV GHG rule[3] which negates the need for DEP to adopt a California centric approach that might have unnecessary negative impacts to Maine. While our comments on that proposal express some concerns with the design of EPA's proposed program, API strongly believes that a federal program, rather than a patchwork of state-specific programs, is needed to achieve emissions reductions.

API supports a federal policy that improves and drives carbon dioxide and criteria pollutant emissions reductions from transportation. This approach includes liquid fuels which can provide improvements using feedstock and process technologies to reduce the carbon intensity of fuel and emissions. Lower-carbon intensity fuels such as renewable diesel, biodiesel, and renewable natural gas are being used today in existing clean-diesel and natural gas MHDVs to reduce emissions.

[1] "The Easiest and Hardest Commercial Vehicles to Decarbonize," by Guidehouse Insights for the Fuels Institute, April 2022.

[2] *See* API CARB Comments, Advanced Clean Fleets Regulation, submitted October 17, 2022, available at https://www.arb.ca.gov/lispub/comm/iframe_bccommlog.php?listname=acf2022&_ga=2.107523714.16078033.1676579910-776905670.1675872088.

[3] "Greenhouse Gas Emissions Standards for Heavy-Duty Vehicles—Phase 3," 88 FR 25926, April 27, 2023, available at https://www.govinfo.gov/content/pkg/FR-2023-04-27/pdf/2023-07955.pdf.

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Additional Considerations

Further, API members have made, and continue to make, significant investments in new fuels and process technologies that reduce transportation sector emissions. Examples include:

- Stand-alone production and co-processing of bio-feedstocks to make renewable fuels,
- Manufacturing of renewable natural gas from wastewater, landfill gas, and biodigesters at farms as fuel for CNG vehicles,
- Production of blue and green hydrogen for transportation and stationary applications including building infrastructure,
- Manufacturing of low carbon ethanol,
- Direct air carbon capture,
- Carbon capture and sequestration of carbon dioxide, and
- Installation of electric vehicle charging stations.

Maine is Unique from California

API respectfully suggests that Maine policymakers recognize that their state is fundamentally distinct from California geographically and economically. Adopting the ACT program in Maine that was developed by California regulators with California's singularly unique attributes is not the most prudent approach. In addition, California regulators have not done a critical analysis on alternative vehicle technologies beyond ZEVs that can reduce emissions now and even more into the future. Nor has a critical analysis of the uncertainties and ultimate feasibility of pushing forward a very high percent ZEV requirement been completed. This lack of analysis could have significant impacts to consumers and businesses in Maine.

DEP should undertake additional economic analysis and undertake a detailed state-specific cost study that accounts for unique differences in Maine in contracts to California (*i.e.,* geography, weather, non-attainment issues, average salary[4]) that may impact the benefits or results from adopting California's ACT program. Additionally, the economic analysis should include annual miles driven, costs associated with battery replacement, disposal and end-of-life, financing, recharging time, and the impact on truck utilization, as well as the necessary grid improvements, and the impact to Maine trucking companies and to road maintenance.

Tax Implications and the Need for More Analysis

API respectfully suggests that DEP analyze the impact on tax revenue generated from changes to diesel fuel consumption and switching to increased consumption of electricity. Liquid transportation fuels are taxed by both the federal and state governments to fund the construction and maintenance of bridges, roads, highways, and other transportation initiatives. State motor fuels (diesel fuel plus gasoline) tax revenue collections in Maine were over $222 million dollars for fiscal year ending June 2023.[5] The federal tax on diesel fuel is 24.4 cents per gallon,[6] while Maine

[4] The average annual salary of a person living in Maine is $17,260 less than that of a person residing in California, see https://www.forbes.com/advisor/business/average-salary-by-state/, accessed August 28, 2023.

[5] Maine Department of Administrative and Financial Services, "Revenues – June 2023" Memorandum, *see* https://www.maine.gov/osc/sites/maine.gov.osc/files/inline-files/2023-06-Revenue%20Report.pdf.

[6] *See* https://www.eia.gov/petroleum/marketing/monthly/pdf/enote.pdf, U.S. Energy Information Administration (EIA), "Petroleum Market Explanatory Notes," June 2023.

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adds 32.60 cents per gallon in the form of a state tax as of 2023.[7] This amount would likely be eroded under an ACT program scenario, especially when considering that, on average, diesel consumption has increased 1.2 percent compared to gasoline increase of 0.6 percent between 2011 and 2021.[8] Additionally, about 95 percent of the federal excise tax is returned to the state where it is collected. This revenue must be accounted for when considering the adoption of new ZEV technology to ensure the continued revenue is available to fund the maintenance and construction of highway infrastructure.

The federal Highway Administration projects an almost two percent increase year over year from 2018 through 2034 for single unit commercial vehicle miles traveled. Combination truck miles are projected to increase 1.3 percent over the same period.[9] Given that there is no federal tax on electricity and there are *de minimis* state taxes on electricity, DEP should consider the impacts of the ACT Program on tax revenues and the programs those revenues fund. Notably, the Four-Year Revenue and Expenditure Forecast prepared by the Department of Administrative & Financial Services projected a shortfall in the 2024 biennium of $712 million "representing a structural gap between revenues and expenditures that appears to be widening;" even with new motor vehicle taxes recently signed into law, a decrease in motor fuels taxes will exacerbate the infrastructure funding gap.[10]

California is Changing its Regulations: Maine Should Pause

Given California will be amending provisions of regulatory programs, API recommends that it would be most prudent for DEP to suspend consideration of adopting California's ACT program and reevaluate following those amendments.

On July 6, 2023, the California Air Resources Board (CARB) and heavy-duty truck and engine manufacturers announced the Clean Truck Partnership, an agreement which offers flexibility to address both California's public health concerns and the needs of manufacturers that build the technology required for the transition to zero-emissions.[11] This partnership stemmed from known challenges with the feasibility of California's programs that were not addressed until after the programs were finalized. As a part of the Partnership, CARB will be amending both its Low NOx Omnibus and ACT programs. Amendments to the Low NOx regulations were proposed on August 1, 2023, and the comment period for that proposal remains open until September 18, 2023.[12]

Accordingly, it is recommended that DEP consider the forthcoming amendments to the ACT regulations prior to its consideration of the adoption of this program. DEP's proposed amendments adding Chapter 128 to the Code of Maine Rules (CMR) could incorporate obsolete provisions from the California Code of Regulations (CCR). Notably, Appendix A of

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[7] *See* https://www.api.org/-/media/files/statistics/state-motor-fuel-taxes-charts-january-2022.pdf.

[8] *See* https://www.eia.gov/dnav/pet/pet_cons_prim_dcu_SCO_a.htm.

[9] *See* federal Highway Administration, Office of Highway Policy Information, "FHWA Forecasts of Vehicle Miles Traveled (VMT): Spring 2020," https://www.fhwa.dot.gov/policyinformation/tables/vmt/vmt_forecast_sum.pdf.

[10] *See* https://www.ttnews.com/articles/maine-tax-highway-fund.

[11] Clean Truck Partnership Agreement, July 6, 2023, *see* https://ww2.arb.ca.gov/sites/default/files/2023-07/Final%20Agreement%20between%20CARB%20and%20EMA%202023_06_27.pdf.

[12] California Air Resources Board Heavy-Duty Engine and Vehicle Omnibus Regulation Amendments, *see* https://ww2.arb.ca.gov/rulemaking/2023/hdomnibus2023?utm_medium=email&utm_source=govdelivery.

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proposed Chapter 128 specifically states CCR "Section Effective Date" references, denoting when those provisions were approved by the California Office of Administrative Law. Adopting the ACT provisions, and any others based on California's *current* regulations, could render the Maine regulations out of date if California amends those specific regulations in its current and upcoming rulemaking actions.

Conclusion

API supports the societal goal of reducing carbon emissions in the transportation sector and believes that all technologies have a place in meeting these goals. If DEP ultimately adopts California's Low NOx Omnibus and ACT programs in spite of the concerns identified in these comments, API respectfully requests that the regulations be drafted in such a manner as to require the state to take affirmative subsequent actions and independently evaluate future California updates to the regulations prior to a formal decision on whether to implement them in Maine. Without taking this approach, Maine is in danger of following a current or future California governor's requirements without due consideration or due process. This could result in inadvertently incorporating obsolete provisions or more stringent standards without proper vetting or unknowingly adopting completely *different* standards into the Maine regulations when the California regulations are amended.

API encourages state policy makers to exercise discretion and not make a significant and consequential policy change by virtue of the fact that 150 signatures were obtained. It would be prudent for the state to be deliberative and learn from the experiences of others before deferring its policies to another jurisdiction.

API members are applying their abilities to solve the complex challenges of emissions reductions in the transportation sector in a manner that will provide affordable and reliable products that allow consumers in Maine, and nationwide, the ability to choose the transportation mode that meets their needs while meeting the policy objectives of reducing transportation emissions. To that end, API welcomes discussion on viable solutions to the dual challenge of ensuring reliable and affordable energy supplies to support economic growth and human prosperity, while advancing environmental progress.

Respectfully submitted,

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