

STATE OF MAINE

CUMBERLAND, SS.

SUPERIOR COURT

CONSERVATION LAW FOUNDATION,
SIERRA CLUB and
MAINE YOUTH ACTION,
Plaintiffs,

v.

MAINE DEPARTMENT OF ENVIRONMENTAL
PROTECTION, and
MAINE BOARD OF ENVIRONMENTAL
PROTECTION
Defendants.

PETITION FOR JUDICIAL REVIEW
OF FAILURE OR REFUSAL OF
AGENCY TO ACT and COMPLAINT
FOR DECLARATORY JUDGMENT
AND OTHER RELIEF

Civil Action No. _____

Introduction and Nature of the Action

Maine’s Board of Environmental Protection and Department of Environmental Protection (collectively, “Defendants”) are responsible for implementing Maine’s “Climate Law,” 38 M.R.S. §§ 576-A – 577-A, which requires cutting greenhouse gas emissions at least 45% by 2030 and 80% by 2050. Defendants’ duties are clear: they “shall adopt rules to ensure compliance” with these climate requirements, rules which must prioritize emissions reductions from the most significant sources. In Maine, the leading source of emissions for over a decade has been the transportation sector—by a significant margin. Now, nearly five years since Maine’s Climate Law’s enactment and more than two and a half years since the Department’s legal obligation to enact rules to implement the law, the Board has adopted only two rules aimed at Maine’s Climate Law’s requirements, and not a single rule aimed at transportation. Rather, the Board has abdicated its statutory obligation, rejecting three transportation decarbonization rules during this time.

Defendants' lack of action comes at a time that Maine is experiencing debilitating and costly impacts from climate change due to emissions of greenhouse gases, such as the extreme storm events that caused millions of dollars in damage to Maine communities, from Kittery to Fort Kent and Jackman to Deer Isle. This action seeks to compel the Defendants to carry out their statutory obligation to promulgate regulations necessary to ensure compliance with Maine's climate requirements set forth in 38 M.R.S. § 576-A(1) – (3).

Plaintiffs Conservation Law Foundation, Maine Youth Action, and Sierra Club now bring this Petition under 5 M.R.S. §§ 11001 – 11008, 5 M.R.S. § 8058, 38 M.R.S. § 346, and 14 M.R.S. §§ 5951 – 5963 to challenge the failure or refusal of Defendants to act under 38 M.R.S. § 576-A and to challenge the Defendants' refusal or failure to adopt the proposed Chapter 127-A, Advanced Clean Cars II Program, where adoption of the rule was required by law. Plaintiffs allege as follows:

Jurisdiction and Venue

1. This Court has jurisdiction pursuant to 5 M.R.S. § 11002(1), 38 M.R.S. § 346, 5 M.R.S. § 8058, 14 M.R.S. §§ 5951-5963, and 4 M.R.S. § 105.
2. Venue is proper in Cumberland County Superior Court pursuant to 5 M.R.S. § 11002(1) because one of the Plaintiffs has its principal place of business there.
3. This petition is timely under 5 M.R.S. § 11002(3) as Plaintiffs have filed within 40 days of Defendants' March 20, 2024 vote not to adopt the Advanced Clean Cars II rule.

Parties

4. Plaintiff Conservation Law Foundation, Inc. (CLF) is a non-profit, member-supported organization incorporated under the laws of Massachusetts with offices at 53 Exchange Street, Suite 200, Portland, Maine in Cumberland County. Founded in 1966, CLF is a

regional environmental organization, working to conserve natural resources, protect public health, and promote thriving communities. CLF protects New England's environment for the benefit of all people, promoting the interests of its 6,000 members, including more than 400 members in Maine. CLF has a long history of working on behalf of its members to reduce harmful air emissions, including greenhouse gas pollution, from all sectors of the economy, including transportation.

5. Plaintiff Maine Youth Action (MYA) is a non-profit, member-supported organization incorporated under the laws of Maine with headquarters at 9 Wildwood Dr., Saco, Maine in York County. Established in 2022, MYA aims to empower young Mainers to get involved in the climate action movement and assert themselves as the critical stakeholders they are. MYA's advocacy work is grounded in policies that are transformative, intersectional and aim to not only mitigate the effects of the climate crisis, but to create sustainable communities. MYA champions policies that benefit all of its 400 young members. Since the inception of the organization, MYA advocates have worked tirelessly to identify priorities based on its diverse stakeholderhood and the input of membership. This has led to advocacy reducing greenhouse gas emissions from all sectors of the economy, especially within the transportation sector.

6. Plaintiff Sierra Club is a national non-profit environmental organization founded in 1892 with over 5,000 members in Maine and 1.6 million members and supporters nationwide. The Sierra Club is headquartered in California, with a business address of 2101 Webster St., Suite 1300, Oakland, CA 94612. 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 ecosystems and resources; 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.

7. Defendant Maine Department of Environmental Protection (“Department”) is the executive agency charged with preventing, abating, and controlling pollution of the air, water and land and with protecting natural resources. 38 M.R.S. § 341-A(1). The Department is comprised of the Commissioner of Environmental Protection and the Board of Environmental Protection. *Id.* § 341-A(2).

8. Defendant Maine Board of Environmental Protection (“Board”) is responsible for rulemaking to implement and enforce matters within the Department’s jurisdiction. *Id.* §§ 341-H, 341-B, 341-D. The Board is statutorily charged with adopting rules to ensure compliance with the state’s greenhouse gas emissions reduction levels under Maine’s Climate Law. *Id.* § 576-A.

Manner in Which Plaintiffs Are Aggrieved

9. In Maine, to advance CLF’s mission on behalf of CLF’s members, CLF is pushing for policies and initiatives that reduce climate-altering emissions while protecting our communities from the devastating effects of climate change and harmful air pollution. For instance, CLF advocates have served on the Maine Climate Council Transportation and Energy Working Groups (informing recommendations of the Climate Council) since 2020. CLF is also active at the Maine Public Utilities Commission, advocating for consideration of climate impacts in dockets regarding distributed generation, energy efficiency, and gas heating systems, among others. CLF advocated at the legislature in favor of development of Maine’s Climate Law in 2019 and more recently has worked on bills to reign in gas system expansion, establish a medium- and heavy-duty electrification pilot, and establish statewide sector-specific greenhouse gas level obligations, to name a few. Further, CLF submitted the rulemaking petition prompting Defendants to initiate a rulemaking on the Advanced Clean Trucks rule in 2023 and submitted

written and oral comments regarding that rulemaking as well as the Advanced Clean Cars II and prior Advanced Clean Trucks rulemakings.

10. CLF is a person aggrieved under 5 M.R.S. § 11001 and 5 M.R.S. § 8058 by Defendants' failure or refusal to fulfill their obligations under 38 M.R.S. § 576-A and Defendants' failure or refusal to adopt the proposed Chapter 127-A, Advanced Clean Cars II Program.

11. Defendants' failure or refusal to fulfill their obligations under 38 M.R.S. § 576-A and Defendants' failure or refusal to adopt the proposed Chapter 127-A, Advanced Clean Cars II Program have harmed and will continue to harm a variety of interests held by CLF members in Maine, including their economic, property, health, and professional interests. For instance, CLF has members in Maine that have suffered: property and financial impacts due to sea level rise and other climate change effects; impacts on winter recreational activities that are snow- or ice-dependent; negative health impacts from elongated and worsened allergy seasons; consumer harm from lack of choice of affordable zero emission vehicles in Maine; and harm to their businesses that are dependent upon availability of electric vehicles in Maine. Defendants' failure or refusal to fulfill their obligations causes these harms by failing to mitigate and protect Maine residents from the worst effects of climate change. This failure or refusal can be redressed by a favorable ruling from this Court.

12. MYA advocates for policies and initiatives to mitigate the effects of the climate crisis, while also remaining strong in its resolve for solutions to be geared towards sustainability and equity. For example, MYA has represented the youth in key advisory groups in reducing transportation-related emissions, such as the Maine Climate Council Transportation Working Group (informing recommendations of the Climate Council) from 2021 to 2023, where MYA

advocated for vehicles miles traveled reduction goals, enhanced public transportation funding, and mass vehicle electrification. Moreover, MYA has had a representative serving on the Public Transit Advisory Council since 2023. The organization advocates for public transportation to reduce emissions, and as a sustainable transportation alternative. At the Maine legislature, the organization has supported legislation to increase public transportation funding, expand passenger rail service, and incentivize electric vehicle usage. Furthermore, MYA has more recently advocated for restricting the expansion of the state's gas system, strengthening rules pertaining to lithium mining, establishing and funding the Maine Climate Corps, establishing a climate education pilot program, creating a constitutional right to a healthy environment, among other pieces of critical legislation in response to the climate crisis. MYA has submitted written and oral comments pertaining to Defendants' Advanced Clean Cars II rulemaking and pertaining to the Defendants' two Advanced Clean Trucks rulemakings.

13. MYA is a person aggrieved under 5 M.R.S. § 11001 and 5 M.R.S. § 8058 by Defendants' failure or refusal to fulfill their obligations under 38 M.R.S. § 576-A and Defendants' failure or refusal to adopt the proposed Chapter 127-A, Advanced Clean Cars II Program.

14. Defendants' failure or refusal to fulfill their obligations under 38 M.R.S. § 576-A and Defendants' failure or refusal to adopt the proposed Chapter 127-A, Advanced Clean Cars II Program have harmed and will continue to harm a variety of interests held by MYA members in Maine, including their economic, property, health, and professional interests. For instance, MYA has members in Maine that have suffered: property and financial impacts due to sea level rise and other climate change effects; impacts on winter recreational activities that are snow- or ice-dependent; negative health impacts from elongated and worsened allergy seasons; and consumer

harm from lack of choice of affordable zero emission vehicles in Maine. Defendants' failure or refusal to fulfill their obligations causes these harms by failing to mitigate and protect Maine residents from the worst effects of climate change. This failure or refusal can be redressed by a favorable ruling from this Court.

15. In Maine, to advance Sierra Club's mission on behalf of its members, Sierra Club works to promote a cleaner, healthier, and more sustainable natural environment by advocating for the rapid replacement of fossil-fuel generation in the electric sector with carbon-free renewable energy and accelerating the electrification of the transportation sector by working to eliminate barriers to electric vehicle adoption. Sierra Club has advocated at the legislature in favor of climate-friendly policies including Maine's Climate Law in 2019, to establish a medium- and heavy-duty vehicle electrification pilot, and to establish statewide sector-specific greenhouse gas level obligations, and has participated in various climate and decarbonization-related working groups, including the Buildings, Housing and Infrastructure and 30x30 subcommittee of the Natural and Working Lands working groups of the Maine Climate Council. Sierra Club submitted the rulemaking petition alongside CLF prompting Defendants to initiate a rulemaking on the Advanced Clean Trucks rule in 2023 and advocated for that rulemaking as well as the Advanced Clean Cars II and prior Advanced Clean Trucks rulemakings.

16. Sierra Club is a person aggrieved under 5 M.R.S. § 11001 and 5 M.R.S. § 8058 by Defendants' failure or refusal to fulfill their obligations under 38 M.R.S. § 576-A and Defendants' failure or refusal to adopt the proposed Chapter 127-A, Advanced Clean Cars II Program.

17. Defendants' failure or refusal to fulfill their obligations under 38 M.R.S. § 576-A and Defendants' failure or refusal to adopt the proposed Chapter 127-A, Advanced Clean Cars II

Program have harmed and will continue to harm a variety of interests held by Sierra Club members in Maine, including their economic, property, health, and professional interests. For instance, Sierra Club has members in Maine that have suffered: property and financial impacts due to sea level rise and other climate change effects; impacts on winter recreational activities that are snow- or ice-dependent; negative health impacts from elongated and worsened allergy seasons; consumer harm from lack of choice of affordable zero emission vehicles in Maine; and harm to their businesses that are dependent upon availability of electric vehicles in Maine. Defendants' failure or refusal to fulfill their obligations causes these harms by failing to mitigate and protect Maine residents from the worst effects of climate change. This failure or refusal can be redressed by a favorable ruling from this Court.

Legal Framework

18. In 2019, recognizing the “effects of climate change on the State, its communities and natural resources,” the Maine Legislature passed and the Governor signed into law, *An Act to Promote Clean Energy Jobs and to Establish the Maine Climate Council* (Maine’s “Climate Law”). P.L. 2019, ch. 476 (emergency, effective June 26, 2019).

19. Because even waiting until 90 days after adjournment was too long to delay addressing these “critical and pressing issues,” Maine’s Climate Law was enacted as emergency legislation. *Id.*

20. Maine’s Climate Law established mandatory greenhouse gas emission reduction levels, or “climate requirements.” These provide that Maine must reduce gross annual greenhouse gas emissions at least 45% below the 1990 level by January 1, 2030, and at least 80% below the 1990 level by January 1, 2050. 38 M.R.S. § 576-A(1) – (3).

21. Maine’s Climate Law also established a Climate Council and charged it with updating Maine’s climate action plan every four years with strategies to meet the climate requirements. *Id.* §§ 577, 577-A.

22. To implement the climate requirements, the Climate Law directed that the Department “shall adopt rules to track and report” on Maine’s greenhouse gas emissions, and mandated that the Board “shall adopt rules to ensure compliance” with the climate requirements. *Id.* § 576-A(4).

23. The Board’s rules that “ensure compliance” with the climate requirements “must be consistent with the climate action plan” (*Maine Won’t Wait*) and “must prioritize greenhouse gas emissions reductions by sectors that are the most significant sources” *Id.* § 4(A), (B).

Implementation of Maine’s Climate Law

24. Pursuant to Maine’s Climate Law, the Climate Council released Maine’s climate action plan in December 2020. Maine Climate Council, *Maine Won’t Wait, A Four-Year Plan for Climate Action*, (Dec. 2020) (“*Maine Won’t Wait*”).

25. In developing *Maine Won’t Wait*, the Climate Council analyzed future scenarios for Maine’s greenhouse gas emissions to “quantify[] the impacts of particular strategies and clarify[] the timing required” to achieve the climate requirements. *Id.* at 31.

26. In the “business as usual” pathway, emissions would exceed the 2050 climate requirement by 9.6 million metric tons, in violation of Maine’s Climate Law. *Id.* at 31.

27. In a potential compliance pathway, Maine would achieve the 2030 and 2050 climate requirements thanks to “a largely electrified transportation and buildings sector, combined with a transition to a clean electricity sector.” *Id.* at 31; *see also J. Hall et al., Synapse*

Energy Economics, Inc., Volume 3: Mitigation Modeling Consolidated Energy Sectors Modeling Results Prepared for the State of Maine (Updated Nov. 9, 2020), at 71.

28. *Maine Won't Wait* identifies transportation as the leading cause of greenhouse gas emissions in the state, contributing 54%, and declares that the “most significant reductions of greenhouse gas emissions in Maine’s transportation sector will come through the long-term and large-scale electrification of our transportation systems.” *Maine Won't Wait* at 10, 39.

29. Accordingly, *Maine Won't Wait* calls for aggressive electrification of the light-duty and heavy-duty automotive sectors, quantifying goals along clear timelines that align with the metrics in the analyzed compliance pathway. *Compare Maine Won't Wait* at 107 with *J. Hall et al.*, *Synapse Energy Economics, Inc.*, Volume 3: Mitigation Modeling Consolidated Energy Sectors Modeling Results Prepared for the State of Maine (Updated Nov. 9, 2020), at 71.

30. To achieve the vehicle electrification goals set for compliance with the climate requirements, *Maine Won't Wait* recommends developing an EV roadmap identifying necessary policies, programs, and regulatory changes. *Maine Won't Wait* at 41.

31. Implementing that recommendation, the Governor issued *An Order to Advance Clean Transportation Solutions for Maine* on March 30, 2021. Me. Exec. Order No. 36 FY 20/21 (Mar. 30, 2021).

32. The Executive Order directs the Governor’s Energy Office and Governor’s Office of Policy Innovation and the Future to develop and implement a roadmap “to accelerate the widespread adoption of electric vehicles, plug-in hybrid electric vehicles and other clean transportation technologies in Maine,” “to meet the state’s EV and transportation emission reduction goals” and “to maximize emission reduction in the transportation sector to help meet the state’s emission reduction goals,” that is, the statutory climate requirements. *Id.*

33. The Executive Order further declares that electrification of the transportation sector is one of the most effective emissions reduction strategies for Maine, that EV adoption has been prioritized by the federal government, that vehicle manufacturers are expanding models and in some cases stating their intent to, over several decades, phase-out the sale of gas-powered vehicles, and that advancements are leading to reduced costs.

34. The Maine Clean Transportation Roadmap was released in December 2021. Governor’s Energy Office, Governor’s Office of Policy Innovation and the Future, Cadmus, *Maine Clean Transportation Roadmap* (Dec. 2021) (“*EV Roadmap*”).

35. The *EV Roadmap* makes a number of recommendations for creating a favorable environment for EV deployment—expanding EV charging, increasing education and awareness, and incentivizing clean vehicles, for instance. *See EV Roadmap* at 2.

36. However, the *EV Roadmap* only endorses two recommendations for bringing more EVs into Maine and directly increasing EV adoption to meet *Maine Won’t Wait’s* transportation goals and achieving Maine’s Climate Law’s requirements: adopt the Advanced Clean Cars II rule and adopt the Advanced Clean Trucks rules. *Id.* These rules are promulgated by the California Air Resources Board for reducing emissions from transportation by requiring, among other things, manufacturers to sell more zero emission vehicles.

37. The *EV Roadmap* calls the Advanced Clean Cars II and Advanced Clean Trucks rules its “most critically important [recommendations] in terms of impact on [greenhouse gas] emissions,” and explains that if implemented, they would have a “profound impact” on greenhouse gas emissions. *Id.* at 53.

38. It describes the Advanced Clean Cars II as the “most important regulatory driver in the electrification of Maine’s light-duty vehicles in the next two decades,” and projects that without it, Maine would fail to comply with its 2030 statutory climate requirements. *Id.* at 29-30.

39. The *EV Roadmap* also explains that electrifying medium- and heavy-duty vehicles is “critical” for meeting Maine’s climate requirements, and shows that without adoption of Advanced Clean Trucks, the state would fall far short of *Maine Won’t Wait’s* electrification goals and therefore Maine’s Climate Law’s requirements. *See id.* at 3, 31.

Regulation of Transportation Emissions in Maine

40. The federal Clean Air Act establishes the framework for controlling mobile source emissions in the United States and prohibits states from adopting their own emissions standards, with one exception. 42 U.S.C. § 7543.

41. The law grants California a special exemption to regulate vehicle emissions as long as its rules are “at least as protective” as the federal standards and if certain requirements are met, including a waiver from the U.S Environmental Protection Agency. *Id.* § 7543(b).

42. Recently on April 9, 2024, the D.C. Circuit Court rejected Ohio and other states’ challenge of California’s authority under the Clean Air Act to set its own protective standards for pollution from new cars and trucks. *Ohio v. Env’tl. Prot. Agency*, 2024 WL 1515001 (D.C. Cir., Apr. 9, 2024).

43. States other than California may also deviate from the federal standards and avoid the Act’s prohibition against adopting their own vehicle emission regulations by adopting standards identical to California’s. 42 U.S.C. § 7543(b).

44. Since at least 1993, pursuant to the express authorization of the Maine Legislature, PL 1993, c. 358, §1, Defendants have done just that and adopted and implemented California’s vehicle emission standards.

45. Today, Defendants’ rules incorporate numerous provisions of California’s vehicle emission regulations, impacting vehicles through model year 2025. *See, e.g.*, 06-096 C.M.R. ch. 127, § 3.

46. Maine is one of 13 states that adopted California’s Advanced Clean Cars I, which is “a foundational policy for accelerating EV adoption.” *Maine Won’t Wait* at 41.

47. The Advanced Clean Cars II and Advanced Clean Trucks are the latest iterations of California’s vehicle emissions rules, pertaining to vehicles beginning with model year 2026.

48. The Advanced Clean Cars II rule was adopted in California in 2022 and has been adopted since then by twelve other states plus the District of Columbia, including Vermont, Rhode Island and Massachusetts.

49. The Advanced Clean Trucks rule was adopted in California in 2023 and has been adopted since then by ten other states, including Vermont, Rhode Island, and Massachusetts.

Defendants’ Failure to Adopt Rules Ensuring Compliance with Maine’s Climate Law

50. Maine’s Climate Law establishes a framework for implementation and enforcement of the climate requirements: it charges the Department with tracking and reporting on greenhouse gas emissions, and it mandates that the Board “shall adopt rules to ensure compliance” with the climate requirements that “[m]ust be consistent with the climate action plan” (*Maine Won’t Wait*) and “[m]ust prioritize greenhouse gas emissions reductions by sectors that are the most significant sources of greenhouse gas emissions.” 38 M.R.S. § 576-A(4).

51. *Maine Won't Wait* asserts that transportation is the leading contributor of emissions in the state, and sets forth more than 40 recommendations for reducing greenhouse gas emissions across eight broad categories: transportation, buildings, energy and industrial, clean-energy and natural-resource industries, working lands and waters, healthy and resilient communities, climate-ready infrastructure, and community engagement.

52. Yet Defendants have adopted just two rules reducing emissions under Maine's Climate Law, both targeting narrow slices of the building sector: Chapter 180, Appliance Efficiency Standards, reduces building emissions by establishing minimum efficiency standards and water conservation standards for certain appliances, products, and fixtures; and Chapter 147, Hydrofluorocarbon Prohibitions, prohibits the use of hydrofluorocarbon chemicals with high global warming potentials in certain end uses.

53. In Maine, transportation has not only been the leading source of CO₂ emissions from the combustion of fossil fuels for more than thirty years, but also these emissions have remained at high levels while other sectors have shown improvements. *See* Bureau of Air Quality, Maine Department of Environmental Protection, *Ninth Biennial Report on Progress toward Greenhouse Gas Reduction Goals* (July 2022) at 11.

54. The Board has not adopted a single rule that prioritizes reducing emissions from transportation as Maine's Climate Law requires.

55. *Maine Won't Wait* calls for 41,000 light-duty EVs on the road in Maine by 2025 and 219,000 by 2030 to hit our statutory climate requirements. *Maine Won't Wait* at 41, 107.

56. Maine had 12,369 EVs on the road as of 2023. Maine Climate Council, *Annual Report* (Dec. 1, 2023) at 4.

57. Contrary to Maine’s Climate Law, the Board has not adopted a single rule that is consistent with the electrification goals in *Maine Won’t Wait* or the endorsements in the *EV Roadmap*.

58. Indeed, Defendants have considered, but refused or failed to adopt, rules that would have had a “profound impact” on transportation greenhouse gas emissions—on three separate occasions. *EV Roadmap* at 2, 53.

Defendants failed to adopt the Advanced Clean Trucks rule in 2021/2022

59. In October 2021, the Department proposed adoption of a rule to incorporate by reference California’s Advanced Clean Trucks regulation. Department of Environmental Protection, *Memorandum re: Proposed rule to adopt zero emission vehicle (ZEV) sales requirements for medium and heavy-duty vehicles in accordance with 38 M.R.S. §585-D and §576-A – request for posting for public hearing* (Oct. 7, 2021).

60. According to the Department, the rule would “accelerate Maine’s transition to [zero emission vehicles] which have no tailpipe emissions and will both reduce Maine’s [greenhouse gas] emissions and its dependence on fossil fuels.” *Id.*

61. According to the Department, the rule would “help ensure that truck manufacturers offer affordable [zero emission] choices to fleets and accelerate sales of zero-emission medium and heavy-duty vehicles in Maine.” *Id.*

62. The Board received public comments and conducted a hearing on November 4, 2021.

63. The Department issued a memorandum in December notifying the public of a deliberative session to allow more discourse with the Board, and explaining its expectation that

the proposed rule would be reposted for additional comment. Department of Environmental Protection, *Memorandum re: Chapter 128, Next Steps* (Dec. 16, 2021).

64. Yet in January 2022, despite recognizing the Advanced Clean Trucks was part of a “comprehensive strategy to implement recommendations” from *Maine Won’t Wait*, the Department recommended the Board not act on the rule, or any other rule or policy to directly reduce emissions from medium- and heavy-duty vehicles. Department of Environmental Protection, *Memorandum re: Proposed Chapter 128, Advanced Clean Trucks* (Jan. 20, 2022).

65. Instead, a stakeholder process to address implementation concerns and focus on medium- and heavy-duty zero emission deployment policies and programs was launched. *Id.* The Department requested the Board await the outcome of that stakeholder process before taking further action. Department of Environmental Protection, *Memorandum re: Proposed Chapter 128, Advanced Clean Trucks* (Jan. 20, 2022).

66. Waiting meant the rulemaking could not be adopted within 120 days of the comment period as the Maine Administrative Procedure Act requires, so the Department stated it would “request that the Board repost the proposed rule at a later date, restarting the rulemaking process and opportunity for public comment.” Department of Environmental Protection, *Memorandum re: Proposed Chapter 128, Advanced Clean Trucks* (Jan. 20, 2022); *see also* 5 M.R.S. § 8052(7)(A).

67. The Board did not vote on the rule, allowing the rulemaking to expire.

68. The nearly year-long stakeholder process never culminated in any public outcomes or conclusions, and Department staff did not re-propose the Advanced Clean Trucks rule for adoption by the Board—or any other rule for reducing emissions from medium- and heavy-duty vehicles—until prompted by a rulemaking petition to do so more than a year later.

Defendants failed to adopt the Advanced Clean Trucks rule in 2023

69. On May 23, 2023, Plaintiffs CLF and Sierra Club, along with the Natural Resources Council of Maine and more than 150 citizens of Maine filed a rulemaking petition requesting that Defendants initiate a rulemaking to adopt the Advanced Clean Trucks program under the Maine Administrative Procedure Act. *See* 5 M.R.S. § 8055.

70. As required by statute, Defendants initiated a rulemaking for Chapter 128, Advanced Clean Trucks Program, at the Board's meeting on July 20, 2023.

71. At that meeting, Department staff and other agencies with expertise in transportation (the Maine Department of Transportation), transportation electrification (the Efficiency Maine Trust), and Maine's electricity grid and energy needs (the Governor's Energy Office) presented information to the Board, including: the disproportionate contributions of medium- and heavy-duty vehicles to Maine's greenhouse gas emissions; *Maine Won't Wait's* medium- and heavy-duty transportation electrification recommendations; the *EV Roadmap's* recommendations for adoption of the Advanced Clean Trucks rule; the *EV Roadmap's* projections that Maine would fail to meet *Maine Won't Wait's* electrification goals and therefore the statutory climate requirements without adopting regulations such as the Advanced Clean Trucks rule; Maine's ongoing EV initiatives and incentives; Maine's extensive charging infrastructure deployment underway and plans for further development; and the significant energy planning efforts underway. Board of Environmental Protection, *Presentation* (July 20, 2023).

72. The Board received extensive comments throughout the comment period and during a public hearing on August 17, 2023, and held deliberations on the Advanced Clean Trucks Program on October 24, 2023.

73. The Board took no final action at the October meeting but based on a straw vote, directed Department staff to prepare a memorandum summarizing the Board's decision to not move forward with adopting the Advanced Clean Trucks rule.

74. Final action on the rule was scheduled to occur at the Board's December 21, 2023 meeting. However, that meeting was postponed due to another in a series of extreme weather events that caused significant damage and left hundreds of thousands of people without power in Maine, and a declaration of a State of Civil Emergency.

75. Ultimately, the Board never voted on the Advanced Clean Trucks rulemaking, instead letting it expire under the statutory requirement that rules must be adopted within 120 days of the public comment period. *See* 5 M.R.S. § 8052(7).

Defendants failed to adopt the Advanced Clean Cars II rule in 2024

76. Over a year after release of the *EV Roadmap* calling for adoption of the Advanced Clean Cars II and the Board's first rejection of the Advanced Clean Trucks rule, Defendants had still not initiated a rulemaking to adopt the Advanced Clean Cars II—or any other rule to reduce transportation-sector emissions.

77. On the same date as the rulemaking petition for the Advanced Clean Trucks, May 23, 2023, the Natural Resources Council of Maine and more than 150 citizens of Maine filed a rulemaking petition requesting that Defendants initiate a rulemaking to adopt the Advanced Clean Cars II.

78. In response, and simultaneous to the rulemaking on the proposed chapter 128, Advanced Clean Trucks Program, Defendants initiated a rulemaking for consideration of chapter 127-A, Advanced Clean Cars II Program, on July 20, 2023.

79. At the July Board meeting, Department staff and other agencies with expertise in transportation, transportation electrification, and Maine’s electricity grid and energy needs presented information to the Board, including: the significant contributions of light-duty vehicles to Maine’s greenhouse gas emissions; *Maine Won’t Wait’s* light-duty transportation electrification recommendations; the *EV Roadmap’s* recommendations for adoption of the Advanced Clean Cars II rule; the *EV Roadmap’s* projections that Maine would fail to meet *Maine Won’t Wait’s* electrification goals and therefore the statutory climate requirements without Advanced Clean Cars II; Maine’s ongoing EV initiatives and incentives; Maine’s extensive charging infrastructure deployment underway and plans for further development; and the significant energy planning efforts underway.

80. In a Rulemaking Fact Sheet, the Department explained that if Advanced Clean Cars II “is not adopted, Maine will revert to the less stringent federal standards, and the state will be unable to meet the goals set in [] Maine’s 2020 Climate Action Plan [*Maine Won’t Wait*].” Department of Environmental Protection, *Rulemaking Fact Sheet, 06-096 C.M.R. Chapter 127-A, Advanced Clean Cars II Program* (July 20, 2023).

81. The Board received many comments from the public and held a public hearing on August 17.

82. At the Board’s deliberations on October 24, 2023, the Board took no final action on Advanced Clean Cars II but indicated majority support for the rule via a straw vote. The Board directed the Department to prepare a rulemaking adoption package, including a response to timely received comments on the proposed rule, for further consideration at a future meeting.

83. The Board’s consideration of the Advanced Clean Cars II was scheduled for their December 21, 2023 meeting. However, as described above, that meeting was postponed due to the declaration of a State of Civil Emergency.

84. Accordingly, the Board's vote on Advanced Clean Cars II was pushed into 2024. Under the Clean Air Act’s lead-time requirement, 42 U.S.C. § 7507(2), this necessitated moving the proposed rule’s effective date back by one model year.

85. Reposting the rule for additional comment, the Department again stated, “[i]f the ACC II regulation is not adopted, Maine will revert to the less stringent federal standards, and the state will be unable to meet the goals set in [] Maine’s 2020 Climate Action Plan [*Maine Won’t Wait*].” Department of Environmental Protection, *Rulemaking Fact Sheet, 06-096 C.M.R. Chapter 127-A, Advanced Clean Cars II Program* (Dec. 21, 2023).

86. On March 20, 2024, the Department presented a Basis Statement and Response to Comments to the Board, explaining that “the [business-as-usual] scenario will not meet Maine’s statutorily mandated greenhouse gas emission limits,” and that *Maine Won’t Wait* identifies “accelerating Maine’s transition to electric vehicles and greatly increasing the percentage of light-duty EVs on the road in Maine . . . as key to meeting the statutory” climate requirements. Department of Environmental Protection, *Basis Statement and Response to Comments* (Mar. 13, 2024) at 15, 6.

87. The Department also explained to the Board, “[r]ecognizing the need to reduce transportation emissions, the Maine Climate Council developed Maine’s Clean Transportation Roadmap that identifies a number of regulatory changes, programs, and policies that would be effective in reducing transportation sector GHG emissions. Recommendations included

expanding the electric vehicle charging network, reducing vehicle miles travelled, and most notably, the adoption of regulatory programs such as ACC II.” *Id.* at 60.

88. After deliberations on March 20, 2024, the Board voted not to adopt the Advanced Clean Cars II and to take no further action.

Count I

Petition for Review Pursuant to 5 M.R.S. § 11001(2) and Me. R. Civ. P. 80C

89. Plaintiffs hereby repeat and reallege all previous paragraphs as if fully set forth herein.

90. Defendants have an existing and ongoing obligation to adopt rules to ensure compliance with the requirements in Maine’s Climate Law, 38 M.R.S. § 576-A.

91. Defendants have adopted only two rules reducing emissions pursuant to their rulemaking obligation in Maine’s Climate Law, addressing only a narrow slice of one sector of Maine’s economy and not resulting in any significant reduction in overall emissions.

92. Defendants have not “adopt[ed] rules to ensure compliance” with Maine’s Climate Law’s requirements.

93. Plaintiffs are aggrieved by the failure or refusal of Defendants to fulfill their obligations under Maine’s Climate Law, which has also harmed and continues to harm a variety of interests held by CLF, Sierra Club, and MYA members, including their economic, property, health, and professional interests.

Count II

Petition for Review Pursuant to 5 M.R.S. § 11001(2) and Me. R. Civ. P. 80C

94. Plaintiffs hereby repeat and reallege all previous paragraphs as if fully set forth herein.

95. Defendants have not adopted rules addressing transportation sector emissions.

96. Defendants have not adopted rules implementing *Maine Won't Wait's* transportation electrification metrics, or other *Maine Won't Wait* recommendations aside from those pertaining to hydrofluorocarbons and appliance efficiency.

97. Defendants have not “adopt[ed] rules” which are “consistent” with *Maine Won't Wait* or that “prioritize greenhouse gas emissions reductions by sectors that are the most significant sources of greenhouse gas emissions.”

98. Plaintiffs are aggrieved by the failure or refusal of Defendants to fulfill their obligations under Maine’s Climate Law, which has also harmed and continues to harm a variety of interests held by CLF, Sierra Club, and MYA members, including their economic, property, health, and professional interests.

Count III

Declaratory Judgment Under 5 M.R.S. § 8058

99. Plaintiffs hereby repeat and reallege all previous paragraphs as if fully set forth herein.

100. By rejecting proposed chapter 127-A, Advanced Clean Cars II, based on factors that are unsupported by the record, Defendants acted in a way that was arbitrary, capricious, and an abuse of discretion.

101. Plaintiffs are aggrieved by the failure or refusal of Defendants to adopt the Advanced Clean Cars II, which has also harmed and continues to harm a variety of interests held by CLF, Sierra Club, and MYA members, including their economic, property, health, and professional interests.

Count IV

Declaratory Judgment Under 5 M.R.S. § 8058

102. Plaintiffs hereby repeat and reallege all previous paragraphs as if fully set forth herein.

103. Defendants' adoption of the Advanced Clean Cars II rule was necessary to "ensure compliance" with the emissions requirements in Maine's Climate Law.

104. Plaintiffs are aggrieved by the failure or refusal of Defendants to adopt the Advanced Clean Cars II, which has also harmed and continues to harm a variety of interests held by CLF, Sierra Club, and MYA members, including their economic, property, health, and professional interests.

Prayer for Relief

WHEREFORE, Plaintiffs Conservation Law Foundation, Maine Youth Action, and Sierra Club respectfully request that judgment be entered in Plaintiffs' favor and that the Court provide the following relief:

- a. Declare that Defendants are under an existing and ongoing statutory obligation pursuant to 38 M.R.S. § 576-A to adopt rules ensuring compliance with the climate mandates;
- b. Declare that Defendants are under an existing and ongoing statutory obligation pursuant to 38 M.R.S. 576-A to adopt rules that are consistent with *Maine Won't Wait* and that prioritize emissions from the sectors that are the greatest contributors;
- c. Declare Defendants' failure to adopt the Advanced Clean Cars II rule arbitrary and capricious and an abuse of discretion;

- d. Declare Defendants' failure to adopt the Advanced Clean Cars II rule or any other rule reducing emissions from the transportation sector inconsistent with *Maine Won't Wait* and unlawful under Maine's Climate Law;
- e. Order that the Board adopt rules ensuring compliance with Maine's Climate Law requirements, prioritizing emissions from transportation, and consistent with *Maine Won't Wait* on or before November 1, 2024;
- f. Order that the Board adopt the Advanced Clean Cars II rule or an alternative rule that reduces emissions from the transportation sector consistent with Maine's Climate Law on or before November 1, 2024; and
- g. Award all other relief, at law or in equity, to which Plaintiff may be justly entitled.

Respectfully submitted,

CONSERVATION LAW FOUNDATION,
MAINE YOUTH ACTION

SIERRA CLUB

By its attorneys,

By its attorney,



Sean Mahoney, ME Bar No. 8664

smahoney@clf.org

Emily Green, ME Bar No. 5095

egreen@clf.org

CONSERVATION LAW FOUNDATION
53 Exchange Street, Suite 200
Portland, ME 04101
(207) 210-6439



Sarah Krame, NY State Bar No. 5592423

Motion for *Pro Hac Vice* pending

sarah.krame@sierraclub.org

SIERRA CLUB

Environmental Law Program
50 F Street NW, 8th Floor
Washington, DC 20001
(202) 548-4597