



## Southwest Energy Efficiency Project

*Saving Money and Reducing Pollution through Energy Conservation*

### COMMENTS BY THE SOUTHWEST ENERGY EFFICIENCY PROJECT

On the proposed revocation of  
ARIZONA'S CLEAN CAR STANDARDS

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#### **Introduction.**

The Southwest Energy Efficiency Project (SWEEP) is dedicated to assisting States, utilities, industries, metropolitan planning organizations, local governments and agencies identify and implement strategies that reduce the need for energy use and lower energy costs by improving energy efficiency. SWEEP's Transportation program is focused on supporting the adoption of policies designed to improve energy efficiency in the transport sector and reduce dependence on petroleum fuels. One of the transportation strategies that SWEEP has identified that can achieve these objectives is the replacement of gasoline vehicles with battery operated vehicles powered from the grid. Our objective in submitting these comments is to present evidence of the significant economic benefits that will be achieved in Arizona's three most populated counties if a significant portion of the gasoline vehicles now on the road are replaced with electric vehicles (EVs) between now and 2030.

#### **Economic Benefits of Replacing Gasoline Vehicles with Electric Vehicles.**

We submit for your consideration an analysis of the economic benefits of three levels of market penetration of EVs. *See* PROTECTING ARIZONA FROM THE ECONOMIC SHOCKS OF RISING FUEL PRICES (SWEEP, June 2011). This analysis estimates the economic benefits that Arizona will achieve by cutting its dependence on petroleum fuels (gasoline and diesel), and reducing its vulnerability to inevitable future fuel price shocks that can be expected from global factors that drive the rising price of petroleum fuels.

One of these scenarios is based on the current target in Arizona's Clean Car Standards for the annual sale of zero-emission vehicles by auto manufacturers. The other two EV scenarios are potential sales targets identified by EPA as part of its assessment of the potential reductions in greenhouse gas emissions that could be achieved from the transportation sector if aggressive marketing and financial incentive programs are adopted. The economic analysis demonstrates that after accounting for the incremental costs of battery technology, the fuel cost savings to the region could add more than \$5 billion to the State's economy between now and 2030. Retaining these resources in the State will create jobs and keep down the cost of transportation as a share of each household budget.

SWEEP urges ADEQ not to abandon the billions in reduced fuel costs, the increased job creation that will result from local production of energy, and the lowered dependence on global markets that will begin to accrue to the State as the current Clean Car Standards are implemented beginning with the 2012 Model Year.

The Clean Car Standards will also achieve additional reductions in the pollutants that cause ozone compared to the federal motor vehicle emission standards. An analysis prepared by the AZ Department of Environmental Quality<sup>1</sup> shows that the Clean Car Standards will provide emission reductions needed to attain the new, more protective air quality standard for ozone that EPA will issue next month. By 2020, these standards will reduce the ozone precursor nitrogen oxides by 1800 tons annually, and organic gases by 1200 tons annually. These reductions will do more to protect public health from the hazards of ozone pollution caused by vehicle emissions than any other option available to the state.

### **Legal Rationale For Proposed Revocation is Not Based on Sound Interpretation of the Law.**

The Notice of Proposed Rulemaking offers the argument that because California supplemented the LEV II standards in 2009 after Arizona adopted those standards pursuant to section 177 of the Clean Air Act, therefore Arizona's Clean Car Standards are no longer "identical" to the California standards as required by the Act. The Department argues that to comply with section 177, ADEQ must either adopt the supplemental provisions added by California in 2009 or revoke the Clean Car Standards. This is a misreading of the requirements of section 177 of the Clean Air Act, and is contradicted by EPA's acceptance of CARB's contention that California did not change its standards when it adopted revised compliance and test procedures in the 2009 rules.

Section 177 of the Clean Air Act allows States to adopt CA standards, and expressly denies authority to such states to prohibit the sale of a new motor vehicle or engine that is certified as meeting California standards:

#### **NEW MOTOR VEHICLE EMISSION STANDARDS IN NONATTAINMENT AREAS**

SEC. 177. Notwithstanding section 209(a), any State which has plan provisions approved under this part may adopt and enforce for any model year standards relating to control of emissions from new motor vehicles or new motor vehicle engines and take such other actions as are referred to in section 209(a) respecting such vehicles if—

- (1) Such standards are identical to the California standards for which a waiver has been granted for such model year, and
- (2) California and such State adopt such standards at least two years before commencement of such model year (as determined by regulations of the Administrator). Nothing in this section or in title II of this Act shall be construed as authorizing any such State to prohibit or limit, directly or indirectly, the manufacture or sale of a new motor vehicle or motor vehicle engine that is certified in California as meeting California standards, or to take any action of any kind to create, or have the effect of creating, a motor vehicle or motor vehicle engine different than a motor vehicle or engine certified in California under California standards (a "third vehicle") or otherwise create such a "third vehicle".

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<sup>1</sup> "Calculation and Analysis of Emission Reduction Benefits of Adopting California LEVII Program in Arizona" (Air Quality Division, ADEQ, September 2009), Table 5.

The Arizona Clean Car Standards continue to be identical to the California standards after 2009 because California did not change its standards. On June 28, 2010, California submitted to EPA a request that EPA determine that the supplemental revisions to compliance and test procedures adopted by California in September 2009 and in 2010 were within the scope of the federal pre-emption waiver granted by EPA on June 30, 2009, with respect to the GHG (Pavley) standards previously adopted by California. In its letter requesting the determination, page 4, California stated that “the California standards have remained the same (i.e., covering the same vehicles for the same model-years at the same stringency).” EPA accepted California’s request and found that the supplemental rules CARB adopted in 2009 were within the scope of EPA’s earlier pre-emption waiver. 76 Fed. Reg. 34,693 (June 14, 2011). In granting this request, EPA accepted CARB’s characterization that the supplemental rules did not change the standards. 76 Fed. Reg. 34695, 34696.

CARB has not changed its overall California fleet average greenhouse gas emission standards. The amendments at issue have been adopted to provide additional means and flexibilities for manufacturers to comply with the standards. These amendments do not require the development or application of any additional technology beyond that already required by California’s original greenhouse gas emission standards.

Id., 34696. Arizona may not now reverse EPA’s finding that California’s 2009 rules did not change the emission standards contained in the CARB rules that ADEQ adopted in 2008 pursuant to section 177. Because the CARB standards that ADEQ adopted have not changed, the Arizona Clean Car Standards remain identical to the California standards and therefore continue to comply with section 177.

Federal law does not require Arizona to adopt CARB’s 2009 testing and compliance procedures because those procedures are not standards. If they were, then CARB’s standards would have changed. But since EPA has determined that the standards have not changed, Arizona has no obligation to adopt the revised testing and compliance procedures in order to remain in compliance with section 177 of the Clean Air Act.

This result is clear under the language of section 177. The section expressly focuses attention on whether state action has the effect of prohibiting the sale of vehicles or engines certified in California, or forces manufacturers to produce a “third” because the state prohibits the sale of both federally and California certified vehicles. Nothing in the Arizona standards has such an effect. Indeed, by adopting the California regulations, the Arizona standards specifically authorize the sale of vehicles certified in California. Nothing in the Arizona standards authorizes what section 177 prohibits, or otherwise conflicts with federal law.

### **State Law Does Not Bar Adoption of Revised CARB Rules.**

If Arizona were to decide that there are good reasons to adopt CARB’s rules prescribing supplemental testing and compliance procedures, or the new LEV III standards for 2017-2025 Model Years that CARB has proposed for adoption later this year (September 2011), the 2010 amendment to the Arizona statute does not prohibit such action. For example, if the California standards were necessary to demonstrate attainment of the revised ozone NAAQS soon to be

promulgated by EPA, Arizona law specifically authorizes ADEQ to adopt clean car standards more stringent than the EPA standards.

The current Clean Car Standards, and any amendments required to comply with the State's obligation to develop a State Implementation Plan under sections 110 and 172 of the federal CAA are 1) authorized by the legislature, and 2) are not more stringent than federal law. Recently enacted A.R.S. § 49-104(A)(17) specifically allows ADEQ to adopt standards more stringent than the federal standards to the extent that they are "specifically authorized by the legislature." This provision must be interpreted *in pari material* with other related sections. The legislature in A.R.S. § 49-447 has specifically authorized ADEQ to adopt standards for motor vehicles:

ADEQ "shall adopt rules setting forth standards controlling the release into the atmosphere of air contaminants from motor vehicles and combustion engines. Any rules adopted pursuant to this section shall be consistent with provisions of federal law, if any, relating to control of emissions from motor vehicles or combustion engines."

The current and any future Clean Car Standards, including the ZEV provisions contained in California's LEV standards, comply with both sections 104(A)(17) and 447 of title 49 because they are adopted pursuant to legislative authorization, and are "consistent with provisions of federal law, if any, relating to control of emissions from motor vehicles or combustion engines."

Even if the Department concludes that section 447 does not provide the specific legislative authorization for Clean Car Standards as required by § 49-104(A)(17), that section does not bar adoption by ADEQ of California standards for motor vehicles. The provisions of federal law relating to the control of emissions from motor vehicles specifically authorize Arizona to adopt California's standards for motor vehicles. The Clean Air Act authorizes each state to elect to adopt standards that are consistent with either EPA's or CARB's standards. Either option is consistent with federal law, and neither option can be more stringent than federal law because federal law allows the State to elect either option. Any decision by ADEQ to elect to adopt the CARB standards is therefore not in violation of § 49-104(A)(17) because such election is "consistent with and no more stringent than the corresponding federal law that addresses the same subject matter...."

This interpretation of § 49-104(A)(17) becomes even more compelling when the greater emission reductions made possible by electing the California standards are necessary to develop an attainment strategy for an approvable State Implementation Plan. CAA sections 110 and 172 require the State to adopt a SIP that provides for attainment of the NAAQS. If the California standards are necessary to demonstrate attainment, then electing to adopt the EPA standards is NOT "consistent with and no more stringent than the corresponding federal law that addresses the same subject matter..." To the extent that adopting the California standards is necessary to satisfy the requirements for a SIP that provides for attainment, then the "consistent with" requirement of § 49-104(A)(17) compels adoption of the California standards. To interpret the section otherwise would be to interpret state law as prohibiting action necessary for attainment, and therefore inconsistent with the federal Act. If the State law does not provide adequate authority to adopt an attainment SIP, then EPA will be required to promulgate another FIP for Arizona as it did in 1990.

## **CONCLUSIONS.**

**SWEEP** urges that ADEQ not revoke the Clean Car Standards for the following reasons:

I. The proposed action fails to consider whether the California standards will be needed to develop an attainment strategy to implement the revised Ozone NAAQS that will be promulgated next month. It would be folly to revoke standards if they are necessary for attainment.

II. The economic analysis provided by ADEQ as the basis for considering the proposed revocation of the Clean Car Standards is fundamentally inadequate because it fails to consider the significant economic benefits to the State of reducing dependence on petroleum fuels as the primary energy source for the transportation sector.

III. The announced legal grounds for the proposed rulemaking is without any basis in law because--

A) California determined that it did not change its standards when it adopted testing and compliance procedures, and EPA has affirmed that determination, therefore ADEQ is under no obligation to change its Clean Car Standards to comply with section 177; and

B) Given the requirement under state law to adopt standards that are consistent with comparable federal requirements, ADEQ is authorized by the legislature to elect to adopt the California standards. To the extent that California standards must be adopted to demonstrate attainment with the new revised NAAQS for ozone, State law compels the adoption of such standards if necessary to be "consistent with" the federal requirements for attainment and maintenance of the NAAQS.

Respectfully submitted,

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