

1 **AKIN GUMP STRAUSS HAUER & FELD LLP**

2 REX S. HEINKE (SBN 066163)

3 ANDREW OELZ (SBN 216885)

4 MARKOS C. GENERALES (SBN 324287)

5 1999 Avenue of the Stars

6 Los Angeles, California 90067

7 Telephone: 310-229-1000

8 Facsimile: 310-229-1001

9 E-mail: rheinke@akingump.com

10 aoelz@akingump.com

11 mgenerales@akingump.com

12 Attorneys for Petitioner and Plaintiff

13 California Natural Gas Vehicle Coalition

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

15 **FOR THE COUNTY OF FRESNO**

16 CALIFORNIA NATURAL GAS VEHICLE  
17 COALITION, a California not-for-profit  
18 corporation,

19 Petitioner and Plaintiff,

20 v.

21 CALIFORNIA AIR RESOURCES BOARD,  
22 and DOES 1 through 50, inclusive,

23 Respondents and  
24 Defendants.

Case No.

**PETITION FOR WRIT OF MANDATE  
AND COMPLAINT FOR INJUNCTIVE  
RELIEF**

**[California Environmental Quality Act,  
Public Resources Code § 21000 et seq.;  
California Administrative Procedure Act,  
Government Code § 11350 et seq.]**

1 **INTRODUCTION**

2 1. This action challenges the decision of the California Air Resources Board (“CARB”) to  
3 approve the Advanced Clean Truck Regulation (“ACT Regulation”) in violation of the California  
4 Environmental Quality Act (“CEQA”), Public Resources Code Sections 21000 et seq., as well as the  
5 California Administrative Procedure Act (“APA”), Government Code Sections 11350 et seq.

6 2. The ACT Regulation requires, among other things, that manufacturers sell an increasing  
7 percentage of medium- and heavy-duty zero-emission vehicles (“ZEVs”) in California starting in the  
8 2024 model year. CARB unlawfully ignored the *significant*, short-term environmental impacts that  
9 will result from its regulation. While CARB acknowledged that construction of infrastructure to  
10 support ZEVs, such as new hydrogen fueling stations and electric vehicle charging stations, will result  
11 in significant, short-term air quality impacts, CARB neglected to adopt readily-available, feasible  
12 alternatives and/or mitigation measures to reduce or avoid those impacts. CARB also failed to  
13 properly evaluate and acknowledge significant economic impacts that its regulation will have on the  
14 clean-running renewable natural gas (“RNG”) industry in California.

15 3. Ironically, had CARB listened (and responded) to the chorus of public comments urging  
16 the incorporation of low NOx truck engines powered by RNG fuel into the ACT Regulation, it could  
17 have complied with CEQA, achieved greater public health, air quality, and greenhouse gas (“GHG”)  
18 emissions benefits, and supported a critical industry in California. Indeed, CARB’s failure to  
19 incentivize low NOx trucks in the ACT Regulation likely will lead to more diesel trucks on the road,  
20 negating many of the benefits of the ZEV strategy.

21 4. While Petitioner has long supported CARB’s efforts to maximize reductions of both  
22 criteria pollutants and GHG emissions from California’s fleet of medium- and heavy-duty vehicles,  
23 CARB’s actions fall short of the environmental and administrative mandates required by California  
24 law. Accordingly, Petitioner seeks the following relief: (i) a writ of mandate pursuant to Section 1085  
25 of the Code of Civil Procedure and Section 21080.5 of the Public Resources Code setting aside  
26 CARB’s approval of the ACT Regulation; (ii) a writ of mandate under Section 11346.3(a) of the  
27 Government Code setting aside CARB’s approval of the ACT Regulation; and (iii) injunctive relief  
28

1 pursuant to Sections 525-526 of the Code of Civil Procedure to obtain compliance with CEQA and  
2 Section 11346.3(a) of the Government Code.

3 **PARTIES**

4 5. Petitioner and plaintiff California Natural Gas Vehicle Coalition (“Petitioner”) is an  
5 association of natural gas vehicle and engine manufacturers, utilities, fuel providers, and fleet operators  
6 serving the State of California. Petitioner is the industry’s premier advocacy organization in  
7 California, supporting new initiatives, providing up-to-date information on natural gas vehicle  
8 technology and market developments, and working with legislators and regulators to encourage the  
9 wider adoption of clean-running natural gas vehicles. Petitioner’s members manufacture and sell low  
10 NOx engines for medium- and heavy-duty trucks in California, and develop and sell RNG, a low  
11 carbon transportation fuel, in communities across the State, including Fresno.

12 6. Petitioner has standing to pursue these claims because it and its members are  
13 beneficially interested in the subject matter of the proceedings as they will be adversely impacted by  
14 the ACT Regulation. By creating a compliance system that incentivizes the use of ZEVs and hybrid  
15 electric vehicles only, the Regulation discourages investment in clean-running, natural gas-powered  
16 vehicles. In addition, the interests Petitioner seeks to protect in this lawsuit are germane to its  
17 organizational purpose. Petitioner was founded on the belief that wider adoption of vehicles powered  
18 by natural gas is key to helping California reduce greenhouse gas (“GHG”) emissions, air pollution,  
19 and petroleum dependence. By this suit, Petitioner seeks to compel CARB to incentivize the short-  
20 term use of clean-running, low NOx medium- and heavy-duty vehicles to mitigate the significant air  
21 quality impacts that would result from the ACT Regulation.

22 7. Neither the claims asserted nor the relief requested requires participation of Petitioner’s  
23 members in the lawsuit, nor do they require the Court to consider the individual circumstances of  
24 Petitioner’s members to grant the requested relief.

25 8. Respondent and defendant CARB is the state agency responsible for protecting the  
26 public from the harmful effects of air pollution and developing programs and actions to fight climate  
27 change, with certain powers and duties under the California Health and Safety Code. Among other  
28 things, CARB was responsible for complying with CEQA before approving the ACT Regulation.

1 9. Petitioner is ignorant of the true names and capacities of respondents and defendants  
2 sued as Does 1 through 50, inclusive, and therefore sues these respondents and defendants by fictitious  
3 names. Petitioner will request leave to amend this Petition and Complaint to allege their true names  
4 and capacities when ascertained. Petitioner is informed and believes the respondents and defendants  
5 sued as Does 1 through 50 were responsible in some manner for the damages alleged in this Petition  
6 and Complaint.

7 **JURISDICTION AND VENUE**

8 10. This Court has jurisdiction over this action pursuant to its general subject matter  
9 jurisdiction, as well as Section 1085 of the California Code of Civil Procedure and Section 21168.5 of  
10 the California Public Resources Code. Sections 525-526 of the Code of Civil Procedure provide for an  
11 injunction when it appears that Petitioners are entitled to the relief sought. Accordingly, and based on  
12 the facts stated in this Petition, this Court has jurisdiction to grant injunctive relief and to issue a writ  
13 of mandate on the claims presented here.

14 11. Venue is proper in this Court because CARB is a state agency and the Attorney General  
15 has an office in this county. Cal. Civ. Proc. Code § 401.

16 12. Petitioner has performed all conditions precedent to filing this Petition. Petitioner has  
17 exhausted any and all administrative remedies required by law by, among other things, participating in  
18 the administrative and environmental review process. This participation is evidenced by, among other  
19 things: Petitioner's November 18, 2019 comment letter; the December 12, 2019 hearing testimony of  
20 Thomas Lawson, Petitioner's President; Petitioner's December 14, 2019 comment letter; Petitioner's  
21 May 28, 2020 comment letter; and the June 25, 2020 hearing testimony of Thomas Lawson.

22 13. Petitioner has no plain, speedy or adequate remedy in the ordinary course of the law  
23 unless this Court grants the requested writ of mandate to require CARB to comply with its duties and  
24 set aside its approval. In the absence of such remedies, implementation of the ACT Regulation will  
25 occur in violation of law.

26 14. If CARB's approval of the ACT Regulation is not set aside, and if CARB is not ordered  
27 to cease all activities implementing the ACT Regulation, Petitioner will suffer irreparable harm from  
28 which there is no adequate remedy at law because, contrary to the requirements of state law, the ACT

1 Regulation will be implemented without adequate CEQA environmental review and without the  
2 evaluation and imposition of feasible alternatives and/or mitigation measures.

3 15. Petitioners complied with the requirements of Public Resources Code § 21167.5 by  
4 mailing written notice of this action to CARB. A copy of the letter providing written notice to CARB,  
5 and proof of service of the letter, are attached as Exhibit A.

6 16. A copy of this Petition will be served on the Attorney General concurrently with the  
7 filing of this action pursuant to Section 388 of the Code of Civil Procedure.

8 17. Petitioners have complied with Public Resources Code § 21167.6 by concurrently filing  
9 a request concerning the preparation of the record of administrative proceedings relating to this action,  
10 a copy of which is attached as Exhibit B.

### 11 **FACTUAL BACKGROUND**

#### 12 **1. CARB Evaluates Environmental Impacts of Rulemaking Regarding Truck Emissions**

##### 13 *a. Air Quality and Greenhouse Gas Issues in California*

14 18. Despite CARB's efforts to date to reduce harmful air pollutant emissions throughout the  
15 State, significant regions of California continue to exceed health-based ambient air quality standards  
16 for certain pollutants, such as ozone and particular matter. Additionally, while California is currently  
17 on track to meet goals set by Assembly Bill 32 to reduce GHG emissions to 1990 levels by 2020,  
18 California must take additional steps to reduce GHG emissions to meet future goals established by  
19 Senate Bill 32 and other established State goals.

20 19. Mobile sources are the greatest contributor to emissions of criteria pollutants and GHGs  
21 in California, accounting for approximately 80 percent of ozone precursor emissions, such as oxides of  
22 nitrogen ("NOx"), and approximately 50 percent of statewide GHG emissions when upstream  
23 emissions are included.

24 20. NOx are a group of highly reactive gases including nitrogen dioxide (NO<sub>2</sub>), nitrogen  
25 oxide, nitric acid, and others. Breathing air with a high concentration of NO<sub>2</sub> can irritate airways in the  
26 human respiratory system. Such exposures over short periods can aggravate respiratory diseases,  
27 particularly asthma, leading to respiratory symptoms (such as coughing, wheezing or difficulty  
28 breathing), hospital admissions, and visits to emergency rooms. Longer exposures to elevated

1 concentrations of NOx may contribute to the development of asthma and potentially increase  
2 susceptibility to respiratory infections.

3 21. NOx react with other chemicals in the air to form ozone. Ozone inhalation can trigger a  
4 variety of health problems including chest pain, coughing, throat irritation, and airway inflammation.  
5 It also can reduce lung function; harm lung tissue; and worsen bronchitis, emphysema, and asthma,  
6 leading to increased medical care.

7 22. California is subject to both federal and state air quality attainment standards for various  
8 air pollutants, including NO<sub>2</sub> and ground-level ozone. California’s State Implementation Plan (“SIP”)  
9 is its regulatory roadmap to reducing air pollution in areas that do not meet attainment standards. In  
10 the South Coast Air Basin, 80% of harmful NOx pollution comes from heavy-duty trucks, mostly  
11 powered by diesel engines. Medium- and heavy-duty trucks, which make up 2% of the South Coast’s  
12 vehicle fleet, account for 40% of the basin’s NOx emissions. Similarly, on-road mobile sources  
13 account for nearly 50% of NOx emissions in the San Joaquin Valley, with medium- and heavy-duty  
14 trucks making up nearly three-quarters of that on-road mobile sources total.

15 23. In an effort to reduce diesel truck emissions, California passed a law in 2017 that  
16 prevents the Department of Motor Vehicles (“DMV”) from renewing vehicle registrations of older,  
17 dirtier diesel trucks, phased in over several years. Under this law, starting January 1, 2023, the DMV  
18 will not renew pre-model year (“MY”) 2010 diesel vehicles that have gross vehicle weight ratings  
19 greater than 14,000 pounds. As explained below, CARB’s failure to incentivize low NOx engines in  
20 the ACT Regulation likely will mean that more diesel trucks—not low NOx trucks—will replace these  
21 older models.

22 *b. CARB Initiates Rulemaking to Reduce Truck Emissions*

23 24. CARB first introduced the policy that would become the ACT Regulation in the 2016  
24 SIP, as a proposed measure to transition from internal combustion truck engines toward ZEVs for “Last  
25 Mile Delivery” vehicles – i.e., vehicles making short-distance shipments to homes or businesses from a  
26 central location. As the regulation continued to develop, CARB concluded that medium- and heavy-  
27 duty trucks specifically built for other purposes had similar operating characteristics that are well  
28 suited for transition to ZEV technology, so its scope expanded.

1           25.     On October 8, 2019, CARB announced availability of the proposed ACT Regulation  
2 and issued a notice of public hearing. According to the accompanying Draft Environmental Analysis  
3 (“EA”), the objectives of the ACT Regulation are to accelerate the deployment of vehicles that achieve  
4 maximum emission reductions, reduce petroleum use and support the use of diversified fuels, decrease  
5 GHG emissions to fulfill statewide GHG reduction goals, develop a regulation that is consistent with  
6 state goals and that complements existing programs, and incentivize and support emerging zero-  
7 emission technologies.

8           26.     The Regulation contains two main elements: (1) manufacturers must sell medium- and  
9 heavy-duty ZEVs as an increasing percentage of California sales starting in MY 2024; and (2) large  
10 employers such as retailers, manufacturers, government agencies, and fleet owners must report certain  
11 information to CARB for use in developing future strategies to further accelerate the use of ZEVs.

12           27.     To achieve its ZEV sales goals, the Regulation uses a credit system, whereby  
13 manufacturers must retire a certain number of ZEV credits (full credits based on a weight class  
14 modifier) or NZEV credits (partial credits based on a weight class modifier and the vehicle’s range  
15 using stored electricity) each year. The Regulation defines ZEV as a vehicle with a drivetrain that  
16 produces zero exhaust emission of any criteria pollutant (or precursor pollutant) or GHG under any  
17 possible operational modes or conditions. The Regulation defines NZEV as a hybrid electric vehicle  
18 that is capable of travel using electricity stored on-board the vehicle.

19           28.     The Regulation provides that a manufacturer accrues deficits based on its total  
20 California sales volume of different classes of medium- and heavy-duty trucks for each MY from 2024  
21 to 2030. Those deficits must be offset with credits generated by the sale of ZEVs or NZEVs.  
22 Essentially, for MY 2024 the proposed Regulation required manufacturers’ total sales volumes to  
23 include 3% ZEVs in the Class 2b-3 Group (vehicles with gross vehicle weight ratings (GVWR) of  
24 8,501-14,000 pounds), 7% in the Class 4-8 Group (vehicles with GVWR above 14,000 pounds), and  
25 5% in the Class 7-8 Tractor Group (tractors with GVWR above 26,000 pounds). The required  
26 percentages for each Group increased each year, until ZEV sales for each Group in MY 2030 and  
27 beyond had to represent 15%, 50%, and 15% of total sales, respectively. (In the final Regulation,  
28 CARB increased the ZEV sales requirements for each class and model year nearly across the board,

1 and established requirements for MY 2030 to 2035 and beyond, such that the ZEV sales requirements  
2 in MY 2035 and beyond are 55%, 75%, and 40%, respectively.)

3 29. Exceeding these annual credit requirements yields excess credits, which can be banked  
4 or sold to other manufacturers; falling short of the requirements requires retirement of any banked  
5 credits and/or purchase and retirement of credits from other manufacturers.

6 c. CARB's Environmental Review

7 30. Generally, before approving a project or activity that could result in a significant  
8 environmental impact, a public agency must prepare an Environmental Impact Report ("EIR")  
9 pursuant to CEQA. The Secretary of the California Natural Resources Agency may certify agency  
10 regulatory programs as being exempt from CEQA's requirements for preparing EIRs if the Secretary  
11 finds that the program has a similarly robust environmental review process in place. A certified  
12 program remains subject to other provisions in CEQA, such as the fundamental mandate that an  
13 agency must avoid or mitigate significant adverse effects on the environment where feasible. CARB's  
14 regulatory program is one such certified program, and CARB's EA is the functional equivalent of an  
15 EIR.

16 31. In conjunction with its release of the proposed ACT Regulation, on October 8, 2019,  
17 CARB announced the availability of a Draft EA. The Draft EA for the ACT Regulation described  
18 potentially adverse environmental impacts and corresponding proposed mitigation measures.

19 32. In particular, the Draft EA indicated that the ACT Regulation would result in potentially  
20 significant short-term environmental impacts, including significant short-term air quality (i.e., criteria  
21 pollutant) impacts, due primarily to "an increase in manufacturing and associated facilities to increase  
22 the supply of ZEVs, along with construction of new hydrogen fueling stations and electric vehicle  
23 charging stations to support ZEV operations and associated increase in hydrogen fuel supply and  
24 transportation." CARB acknowledged that significant infrastructure will need to be built across  
25 California to accommodate ZEV fueling or charging, and that construction-related activities would  
26 result in an increase in criteria air pollutants and toxic air contaminants from the use of heavy-duty  
27 construction equipment, trenching, etc. For example, "[s]ite grading and excavation activities would  
28 generate fugitive particulate matter (PM) dust emissions," as would "[e]xhaust emissions from off-road



1 construction equipment, material delivery trips, and construction worker-commute trips.” CARB  
2 concluded that these construction activities “could result in hundreds of pounds of daily NOx and PM,  
3 which may exceed applicable significance thresholds depending on the exact location of generation”  
4 and “could generate levels that conflict with applicable air quality plans, violate or contribute  
5 substantially to an existing or projected violation, result in a cumulatively considerable net increase in  
6 nonattainment areas, or expose sensitive receptors to substantial pollutant concentrations.”

7 33. These effects would be especially pronounced in the Central Valley, which is already  
8 designated as an extreme or serious nonattainment area for ozone and fine PM, respectively.

9 34. Despite the significant environmental impacts that would result from the ACT  
10 Regulation, CARB did not propose any enforceable mitigation measures in the Draft EA, stating it  
11 “does not have the authority to require implementation of mitigation related to new or modified  
12 facilities that would be approved by local jurisdictions,” and that “[t]he ability to require such  
13 measures is under the purview of jurisdictions with local discretionary land use and/or permitting  
14 authority.”

15 35. In the Draft EA, CARB also noted that it had already considered and rejected a low  
16 NOx alternative, which would have provided a credit for combustion vehicles that meet certain low  
17 NOx emission standards, offering a mere six sentences of explanation over the Draft EA’s 261 pages.  
18 Without any supporting evidence, CARB rejected the low NOx alternative because it was “duplicative  
19 [of] CARB efforts already underway” in a separate regulatory proceeding, it would add complexity to  
20 the ACT Regulation, and it would not provide additional NOx, particulate matter, or GHG emission  
21 reductions.

22 36. This rejection is even more puzzling considering that CARB itself has hailed the  
23 emissions reduction benefits of low NOx trucks on numerous occasions. For example, the “On-Road  
24 Heavy-Duty Sector” chapter of CARB’s 2016 Mobile Source Strategy focuses heavily on expanding  
25 market penetration of low NOx truck engines—which CARB repeatedly points out have 90% lower  
26 NOx emissions than traditional diesel engines—to achieve air quality goals. And just last year, CARB  
27 issued a white paper highlighting the need to address severe ground-level ozone pollution—for which  
28 NOx is a critical precursor—and the important role of the low NOx truck engine in those efforts.

1 *d. Interested Parties Urge CARB to Adopt Low NOx Measures to Reduce Criteria*  
2 *Pollutants and GHG Emissions*

3 37. Soon after issuing the proposed ACT Regulation and Draft EA, CARB opened a public  
4 comment period. CARB received approximately 126 written comments during this first comment  
5 period. Approximately fifteen stakeholders, including Petitioner, identified the emissions reductions  
6 that could be achieved by incorporating a low NOx measure into the ACT Regulation. Petitioner  
7 stated, in part: “Heavy-duty low NOx trucks using renewable fuel are the most cost-effective way to  
8 address GHG and NOx emissions in this sector, especially in the near-term. **Heavy-duty low NOx**  
9 **technologies are certified by CARB as 90 percent cleaner than diesel and available today to help**  
10 **achieve NOx and toxic emissions goals**” (emphasis added). The South Coast Air Quality  
11 Management District (“SCAQMD”), which is charged with meeting SIP air quality targets in 2023 and  
12 2032 for ozone, pointed out: “[B]ased on the proposed regulation, **there is and will remain a critical**  
13 **need for near-zero technologies (e.g., Internal Combustion Engines that meet the 0.02 g/bhp-hr**  
14 **NOx levels) in achieving NOx reductions**” (emphasis added).

15 38. CARB held its first of two hearings on the proposed ACT Regulation on December 12,  
16 2019. CARB heard from approximately 101 members of the public and received approximately  
17 sixteen additional written comments. Approximately nine stakeholders, including Petitioner’s  
18 President, Thomas Lawson, testified regarding the immediate emissions reductions that could be  
19 achieved by incorporating a low NOx measure in the Regulation. Mr. Lawson explained that, by  
20 adding a partial credit for heavy duty low NOx trucks, whether through amendment of the NZEV  
21 definition or by some other means, CARB could achieve substantial emission reductions, particularly  
22 in the short-term. Additionally, Dr. Matt Miyasato, the Deputy Executive Officer for Science and  
23 Technology Advancement at SCAQMD, testified that to achieve needed emission reductions in the  
24 coming years, SCAQMD was “going to need a very, very strong incentive program – to replace trucks  
25 today with commercialized technologies that are available, for instance, the ultra low natural gas.”

26 39. In remarks following the public testimony period, three board members engaged with  
27 the concerns of Petitioner (and others) about the low NOx measure. Vice Chair Berg stated: “the only  
28 question I had for staff is I didn’t truly understand the issue around the ultra low NOx definition, other

1 than there seems to be a lot of them floating around and how that really affected. And so maybe  
2 someone can get back to me about that another time, since we're running late." Board Member  
3 Sherriffs went further: "What can we do in terms of the NOx problem and how can we integrate this  
4 into the NOx -- solutions for the NOx problem? And, you know, are there ways to work the definition  
5 whatever in terms of low NOx, low NOx, renewable natural gas, into near-zero for a limited time  
6 period, but to help us -- the technology is there. We certainly desperately need what that can help us  
7 with in terms of ozone for the Central Valley and for the South Coast and can be an important part of  
8 this as well." Finally, Board Member Mitchell added concern that compliance with the Regulation or  
9 other of the CARB's suite of mobile source emissions regulations may lead to "a bunch of new diesel  
10 trucks that we don't want on the road." Staff did not publicly respond to any of these concerns.

11 *e. CARB Ignores Calls to Adopt a Low NOx Mitigation Measure or Alternative*

12 40. In the months following its first hearing on the proposed ACT Regulation, CARB's staff  
13 made several modifications to the proposed Regulation, but did not change the NZEV definition to  
14 incorporate vehicles achieving a low NOx standard or otherwise incorporate a low NOx mitigation  
15 measure or alternative into the Regulation. On April 28, 2020, CARB announced public availability of  
16 the modified Regulation and several new supporting documents. CARB opened a second and final  
17 public comment period and received approximately 340 written comments. Approximately twenty-two  
18 stakeholders, including Petitioner, wrote in support of incorporating into the Regulation a low NOx  
19 strategy that would result in emissions reductions. Petitioner again testified that the Regulation failed  
20 the residents of California by ignoring the near-term emission reductions that could be achieved in the  
21 medium- and heavy-duty commercial truck sector by utilizing low NOx trucks powered by RNG.  
22 Petitioner reiterated its recommendation for a credit system for medium- and heavy-duty trucks that  
23 meet a 0.02 g/bhp-hr NOx certification standard or better in order to achieve health-based and climate  
24 emission reductions. Similarly, the City of Roseville urged CARB to incorporate measures  
25 incentivizing the use of "near-zero NOx engines and renewable natural gas," noting that  
26 implementation of its plan to transition its solid waste fleet "from diesel fuel to renewable CNG will  
27  
28

1 reduce greenhouse gas emissions by approximately 3,655 metric tons of CO2 equivalents per year and  
2 will reduce NOx emission by 5 metric tons per year at project build-out.”

3 41. On June 23, 2020, CARB issued a Final EA and Response to Comments on the  
4 Environmental Analysis, and held its second and final public hearing two days later. CARB heard  
5 from approximately 123 members of the public at the hearing, and received another approximately 113  
6 written comments during the hearing. Approximately thirteen individuals testified in support of  
7 incorporating a low NOx measure into the Regulation, including Mr. Lawson on behalf of Petitioner.  
8 Mr. Lawson expressed concern regarding the Regulation’s environmental impacts while the ZEV sales  
9 mandate slowly ramps up, pointing out that all or nearly all of the non-ZEV trucks produced during  
10 these years will burn dirtier, traditional diesel. BREATHE California, Los Angeles Chapter, a local  
11 environmental health advocacy organization, also submitted a written comment at the meeting in favor  
12 of adopting a low NOx measure and the emissions benefits that would result: “In order to get cleaner  
13 trucks on the road, CARB must have a comprehensive approach that looks at both short-term and long-  
14 term strategies.... In the short-term, we believe an on-road Low-NOx medium- or heavy-duty vehicle  
15 powered by an engine that is certified to the CARB's Optional Low NOx standard set at 0.02g/bhp-hr  
16 should be considered in the near-zero definition.”

17 42. CARB also ignored the easily foreseeable effects of the 2017 California law that  
18 effectively mandates replacement of larger, pre-MY 2010 diesel trucks starting in 2023. Because the  
19 ZEV purchase requirement does not begin until 2024, operators forced to replace trucks will likely opt  
20 for cheaper, dirtier traditional diesel engines rather than low NOx engines. Around the time of the  
21 law’s passage, the California State Transportation Agency estimated that over 300,000 older diesel  
22 trucks would be replaced as a result of the overall program.

23 43. Despite the breadth and depth of record evidence in support of a low NOx mitigation  
24 strategy for the Regulation, on June 25, 2020, CARB approved the Regulation without further changes  
25 and certified that the Final EA was completed in compliance with CARB’s certified regulatory  
26 program to meet the requirements of CEQA. CARB formally concluded that it had no authority to  
27 mitigate short-term air quality impacts of the Regulation, and that no such mitigation would be  
28

1 implemented as part of the Regulation. Five days later, on June 30, 2020, CARB filed a Notice of  
2 Decision with the California Resources Agency announcing its approval of the ACT Regulation.

3 **2. CARB Evaluates the Economic Impacts of the ACT Regulation**

4 44. The APA requires agencies such as CARB to assess carefully “the potential for adverse  
5 economic impact on California business enterprises and individuals.” Gov’t Code § 11346.3(a).  
6 Generally, this economic analysis should “provide agencies and the public with tools to determine  
7 whether the regulatory proposal is an efficient and effective means of implementing the policy  
8 decisions enacted in statute or by other provisions of law in the least burdensome manner.” Gov’t  
9 Code § 11346.3(e).

10 45. CARB’s economic impact analysis for the ACT Regulation—contained in its August 8,  
11 2019 Standardized Regulatory Impact Analysis (“SRIA”)—failed to assess critical adverse economic  
12 impacts to California businesses in several ways.

13 *a. CARB Assesses Impacts to Competition*

14 46. The APA requires an SRIA to address, among other things, “[t]he competitive  
15 advantages or disadvantages for businesses currently doing business within the state.” Gov’t Code  
16 § 11346.3(c)(1)(C). The agency “must look at each type of business subject to the relevant proposals  
17 and consider whether those proposals will advantage or disadvantage that particular type, despite the  
18 source of those impacts being advantages the regulations bring to other in-state businesses.” *John R.*  
19 *Lawson Rock & Oil, Inc. v. State Air Res. Bd.*, (2018) 20 Cal. App. 5th 77, 114.

20 47. In addressing this requirement, CARB stated simply: “Early credit generation incentives  
21 are proposed to benefit all manufacturing entities, and therefore would not give an explicit competitive  
22 advantage or disadvantage to competing manufacturers.”

23 48. Furthermore, CARB’s two-paragraph discussion entitled “Competitive Advantage or  
24 Disadvantage” in the SRIA did not address the competitive disadvantages to California businesses such  
25 as Petitioner’s members, and likewise did not provide the public with any meaningful sense of how the  
26 ACT Regulation will affect competition to impacted businesses operating in California.

27 49. The ability of Petitioner’s members to compete in California will be, and in fact already  
28 has been, directly affected by the ACT Regulation. Petitioner’s members are key players in

1 California’s RNG industry, which the ACT Regulation has left unaccounted for by focusing solely on  
2 electric and fuel cell technology.

3 50. Several of Petitioner’s members have already seen RNG customers forgo expected  
4 orders out of concern they will face further difficulty complying with the ACT Regulation if they  
5 continue purchasing RNG products or investing in RNG technology, such as low NOx engines.

6 51. Trillium likewise expressed concern regarding the ACT Regulation’s impact on  
7 competition in California in its May 28, 2020 comment letter. It explained “[t]here are a variety of  
8 existing technologies and renewable, low-carbon fuels types, including renewable diesel, biodiesel,  
9 and renewable gas, that are in the market today and are creating real GHG emissions savings today.”  
10 However, the ACT Regulation “dictate[s] a winner technology at this point” and “ignores the  
11 renewable fuel investments Trillium and other stakeholders have made . . . in the hundreds of millions  
12 of dollars, and could be stranded if a more balanced approach to the medium and heavy-duty sector  
13 isn’t pursued.”

14 *b. CARB Utilizes Flawed Economic Projections to Assess Economic Consequences*

15 52. In addition to inadequately assessing the ACT Regulation’s impacts to competition,  
16 CARB’s flawed economic projections in its SRIA also fall short with respect to another key  
17 component of the APA—informing the public of the economic consequences of regulatory choices.

18 53. On several occasions and despite record evidence urging a different path, the economic  
19 projections in CARB’s SRIA fail to adequately incorporate economic realities to the point that the  
20 projections lose all informative value. These miscalculations are not mere disagreements over final  
21 figures; they represent entire economic realities that CARB failed to consider.

22 *i. Multi-Shift Operations*

23 54. CARB’s economic analysis failed to account for the fact that many medium- and heavy-  
24 duty trucks are operated for more than one shift each day. Therefore, the SRIA’s cost comparison to  
25 the baseline is fundamentally and fatally flawed.

26 55. As the ACT Fleet Forum explained to CARB in its comment letter, “[f]or commercial  
27 trucking operations, increased asset utilization is at the heart of financial viability. **A truck at rest is a**  
28

1 **truck not making money, and commercial trucks are – ideally – operated as much as possible**  
2 **each day**, precluding lower-kW, slower charging strategies.” (Emphasis added).

3 56. In its Market Assessment accompanying the Regulation, **CARB itself acknowledged**  
4 **that “Multi-shift charging issues should be accounted for” and that “Multiple shift operations**  
5 **impact charging times”** in Class 4-8 trucks.

6 57. Typical electric vehicle charge times far exceed liquid fueling rates for combustion  
7 engines. The SRIA should have addressed this issue in one of two ways, and its failure to adopt either  
8 approach substantially distorted its cost analysis to the detriment of non-ZEV trucks.

9 58. First, the SRIA could have assumed that fleets would need to purchase more than one  
10 replacement truck to maintain normal multi-shift operations. Under this approach, fleets’ cost of  
11 compliance in replacing trucks alone would be roughly double CARB’s projections.

12 59. In the alternative, the SRIA should have assumed a much higher charging cost. The  
13 SRIA assumes an 80kW (kilowatt) charger at a cost of \$50,000 for Class 7-8 Tractors. But in a  
14 comment letter, the ACT Fleet Forum discussed a pilot project’s findings that even 150kW chargers  
15 could not charge tractors fast enough to maintain multi-shift operations. In the pilot project, “150kW  
16 charging cabinets . . . prov[ed] infeasible to support the fueling windows needed for multi-shift  
17 operations,” and therefore the demo fleet was “actively looking into 350kW chargers.” The demo fleet  
18 received “quotes for these higher rate chargers . . . from \$350,000 to \$400,000 per unit (around \$1,000  
19 per kW), before any necessary site and electrical service infrastructure upgrade costs.”

20 60. By failing to account for basic market realities—of which it was fully aware—CARB  
21 grossly underestimates the cost of ZEV trucks and thereby fails to provide an accurate picture of the  
22 ACT Regulation to the public.

23 *ii. Resiliency*

24 61. CARB’s economic analysis also fails to account for ZEV costs associated with grid  
25 resiliency, despite multiple commenters identifying such costs and growing concern over the increasing  
26 frequency and severity of wildfires and their effects on the electrical grid.

27 62. For example, the Truck and Engine Manufacturer’s Association pointed out that  
28 increasingly common Public Safety Power Shutoff events generate uncertainty around when charging

1 will be possible, and that long-term solutions to such events are costly and inevitably passed on to  
2 ratepayers.

3 63. Similarly, UPS commented: “The proposed timeline for these modified regulations must  
4 align to the capabilities of the electric utilities.” The company added that it “[does not] see the  
5 possibility of providing [its] own backup power sufficient to replace the grid, even for short periods of  
6 time.”

7 64. Two other stakeholders—including a different state agency—expressed concerns with  
8 respect to their truck fleets engaging in necessary 24-hour operations. Caltrans commented that the  
9 emergency response capabilities of ZEV trucks would be limited compared to combustion trucks:  
10 “Heavy duty electric vehicle does not have the range and charging times that would be needed in  
11 emergency response and 24-hr operations, e.g., during storms.” The California Refuse Recycling  
12 Council added that ZEV trucks are “not ready to meet certain duty cycle requirements, let alone the  
13 need to refuel or charge at the end of the shift in order to be able to operate within that same range the  
14 following day or be on standby to meet public health and environmental emergencies.”

15 65. Again, CARB’s failure to fully account for key costs associated with its ZEV sales  
16 mandate prevents the public from truly understanding the ACT Regulation’s impacts.

### 17 **FIRST CAUSE OF ACTION**

#### 18 **Violations of CEQA – Public Resources Code § 21000 et seq. and Implementing Regulations**

19 66. Petitioner re-alleges and incorporates by reference the allegations contained in  
20 paragraphs 1 through 65, above.

21 67. Respondents violated CEQA by certifying an EA for the Project that is inadequate and  
22 fails to comply with the requirements of CEQA, the CEQA Guidelines, and CARB’s Certified  
23 Regulatory Program (Cal. Code Regs., tit. 17, § 60004 et seq.). Among other things:

24 a. Respondents failed to adopt feasible mitigation measures or alternatives for  
25 significant adverse environmental impacts that would result from the ACT Regulation.

26 Respondents concluded that the ACT Regulation would result in potentially significant short-  
27 term air quality impacts, but nevertheless failed to adopt mitigation measures or alternatives  
28



1 that were feasible, readily available, and proposed by Petitioner and numerous other interested  
2 parties.

3 b. Respondents failed to meaningfully consider feasible alternatives and mitigation  
4 measures to the ACT Regulation. Respondents acknowledged the existence of a low NOx  
5 mitigation strategy, but dismissed that approach during its development of alternatives to the  
6 proposed project with a legally and factually inadequate explanation. During the public  
7 participation process, numerous stakeholders described the air quality benefits of the low NOx  
8 proposal consistent with CARB’s air quality objectives.

9 c. Respondents failed to respond to Petitioner’s and other interested parties’  
10 comments on significant environmental issues. For example, in its November 18, 2019  
11 comment letter, Petitioner explained that a plan including both ZEVs and low NOx Trucks  
12 “would achieve both immediate and long-term reductions in greenhouse gas (GHG) and NOx  
13 emissions in California’s heavy-duty transportation sector.” Dozens of other interested parties  
14 also submitted comment letters proposing low NOx measures to substantially lessen air quality  
15 impacts. Respondents did not respond to any of those comments.

16 d. Respondents failed to draft the Regulation’s objectives in a way that would help  
17 Respondents develop a reasonable range of alternatives and aid the decision makers in  
18 preparing findings or a statement of overriding considerations. To the extent that Respondents’  
19 objectives are intended to favor one technology over another, Respondents artificially narrowed  
20 their focus in a way that excluded other strategies that could mitigate some of the significant  
21 adverse environmental impacts caused by the ACT Regulation.

22 68. As a result of the foregoing defects, Respondents prejudicially abused their discretion  
23 by certifying an EA that does not comply with the requirements of CEQA, the CEQA Guidelines, or  
24 CARB’s Certified Regulatory Program. Therefore, Respondents’ certification of the EA and approval  
25 of the ACT Regulation must be set aside.

1 **SECOND CAUSE OF ACTION**

2 **Violations of the APA – Government Code § 11340 et seq.**

3 69. Petitioner re-alleges and incorporates by reference the allegations contained in  
4 paragraphs 1 through 68.

5 70. Respondents violated the APA by failing to comply with several of its provisions that  
6 require agencies to consider the effects of rulemakings on competition, to accurately disclose economic  
7 information relating to rulemakings, and to administer their delegated authority in a manner consistent  
8 with legislative directives. Among other things:

9 a. Respondents failed to assess carefully “the potential for adverse economic  
10 impact on California business enterprises and individuals,” including “[t]he competitive  
11 advantages or disadvantages for businesses currently doing business within the state.” Despite  
12 being presented with substantial, credible evidence that the ACT Regulation would  
13 significantly impact the ability of California businesses, including Petitioner, to compete in the  
14 state, Respondents’ economic impact assessment did not meaningfully address those impacts.

15 b. Respondents failed to adequately inform the public of the ACT Regulation’s  
16 economic consequences by using flawed economic projections in its SRIA. Respondents’  
17 ignorance of basic tenets of the trucking industry, such as multi-shift operations and resiliency,  
18 yielded projections of ZEV transition costs that are out of touch with reality. This failure  
19 denied Petitioner and the public the ability to meaningfully evaluate the Regulation’s economic  
20 consequences.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Petitioner prays for relief from Respondents as follows:

23 1. That the Court issue a writ of mandate ordering Respondents to set aside their June 25,  
24 2020 decision and mandating that Respondents comply with CEQA before making any further  
25 decisions regarding the ACT Regulation as specified in Petitioner’s Causes of Action.

26 2. That the Court issue a writ of mandate ordering Respondents to set aside their June 25,  
27 2020 decision and mandating that Respondents comply with the APA before making any further  
28 decisions regarding the ACT Regulation as specified in Petitioner’s Causes of Action.




**VERIFICATION**

1  
2 I, Thomas Lawson, an employee of California Natural Gas Vehicle Coalition,  
3 declare as follows:

4 I am the President of California Natural Gas Vehicle Coalition, which is  
5 the petitioner and plaintiff in this action. I have read the foregoing Petition and Complaint and know  
6 its contents. The facts alleged in the Petition and Complaint are true of my own knowledge and belief,  
7 except as to those matters alleged on information and belief, and as to those matters I believe them to  
8 be true.

9 Executed this 30<sup>th</sup> day of July 2020, at Sacramento, California.

10 I declare under penalty of perjury under the laws of the State of California that the  
11 foregoing is true and correct.

12  
13   
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

# **EXHIBIT A**

1 **AKIN GUMP STRAUSS HAUER & FELD LLP**

2 REX S. HEINKE (SBN 066163)

3 ANDREW OELZ (SBN 216885)

4 MARKOS C. GENERALES (SBN 324287)

5 1999 Avenue of the Stars

6 Los Angeles, California 90067

7 Telephone: 310-229-1000

8 Facsimile: 310-229-1001

9 E-mail: rheinke@akingump.com

10 aaelz@akingump.com

11 mgenerales@akingump.com

12 Attorneys for Petitioner and Plaintiff

13 California Natural Gas Vehicle Coalition

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

15 **FOR THE COUNTY OF FRESNO**

16 CALIFORNIA NATURAL GAS VEHICLE  
17 COALITION, a California not-for-profit  
18 corporation,

19 Petitioner and Plaintiff,

20 v.

21 CALIFORNIA AIR RESOURCES BOARD,  
22 and DOES 1 through 50, inclusive,

23 Respondents and  
24 Defendants.

Case No.

**NOTICE OF INTENT TO FILE CEQA  
PETITION FOR WRIT OF MANDATE**

(Pub. Res. Code § 21167.5)

1 **To CALIFORNIA AIR RESOURCES BOARD:**

2 **PLEASE TAKE NOTICE**, under Public Resources Code § 21167.5, that CALIFORNIA  
3 NATURAL GAS VEHICLE COALITION intends to file a Petition for Writ of Mandate and Complaint  
4 pursuant to the California Environmental Quality Act (“CEQA”) against Respondent CALIFORNIA  
5 AIR RESOURCES BOARD in Fresno County Superior Court. The Petition challenges the decision of  
6 the California Air Resources Board (“CARB”) to approve the Advanced Clean Truck Regulation  
7 (“ACT Regulation”).

8 The Petition will seek, *inter alia*, that the Court issue a writ of mandate ordering Respondent to  
9 set aside its June 25, 2020 decision and mandating that Respondent comply with CEQA before making  
10 any further decisions regarding the ACT Regulation as specified in Petitioner’s Causes of Action.

11 **A copy of the Petition to be filed by Petitioner is attached to this Notice.**

12  
13 Dated: July 30, 2020

**AKIN GUMP STRAUSS HAUER & FELD LLP**

14  
15 By /s/ Rex S. Heinke  
16 Rex S. Heinke  
17 Attorneys for Petitioner and Plaintiff  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 PROOF OF SERVICE

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I am employed in the County of Los Angeles, State of California. I am over the age of 18 and  
4 not a party to the within action; my business address is: 1999 Avenue of the Stars, Suite 600, Los  
5 Angeles, California 90067. On July 30, 2020, I served the foregoing document described as:  
**NOTICE OF INTENT TO FILE CEQA PETITION FOR WRIT OF MANDATE** on the interested  
6 parties below, using the following means:

7 Ellen Peter, Chief Counsel  
8 California Air Resources Board  
9 1001 I Street  
10 Sacramento, CA 95814  
11 [epeter@arb.ca.gov](mailto:epeter@arb.ca.gov)

12  BY UNITED STATES MAIL I enclosed the documents in a sealed envelope or package addressed to the  
13 respective address(es) of the party(ies) stated above and placed the envelope(s) for collection and  
14 mailing, following our ordinary business practices. I am readily familiar with the firm’s practice of  
15 collection and processing correspondence for mailing. On the same day that correspondence is placed  
16 for collection and mailing, it is deposited in the ordinary course of business with the United States  
17 Postal Service, in a sealed envelope with postage fully prepaid at Los Angeles, California.

18  BY OVERNIGHT DELIVERY I enclosed the document(s) in an envelope or package provided by an  
19 overnight delivery carrier and addressed to the respective address(es) of the party(ies) stated above. I  
20 placed the envelope or package for collection and overnight delivery at an office or a regularly utilized  
21 drop box of the overnight delivery carrier.

22  BY MESSENGER SERVICE I served the documents by placing them in an envelope or package addressed  
23 to the respective address(es) of the party(ies) stated above and providing them to a professional  
24 messenger service for service.

25  BY ELECTRONIC MAIL OR ELECTRONIC TRANSMISSION. Based on a court order or an agreement of the parties  
26 to accept service by e-mail or electronic transmission, I caused the document(s) to be sent to the  
27 respective e-mail address(es) of the party(ies) as stated above. I did not receive, within a reasonable  
28 time after the transmission, any electronic message or other indication that the transmission was  
unsuccessful.

(STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing  
is true and correct.

Executed on July 30, 2020, at Los Angeles, California.

23 Tatiana Thomas  
24 [Print Name of Person Executing Proof]

/s/ Tatiana Thomas  
[Signature]



# **EXHIBIT B**

1 **AKIN GUMP STRAUSS HAUER & FELD LLP**

2 REX S. HEINKE (SBN 066163)

3 ANDREW OELZ (SBN 216885)

4 MARKOS C. GENERALES (SBN 324287)

5 1999 Avenue of the Stars

6 Los Angeles, California 90067

7 Telephone: 310-229-1000

8 Facsimile: 310-229-1001

9 E-mail: rheinke@akingump.com

10 aaelz@akingump.com

11 mgenerales@akingump.com

12 Attorneys for Petitioner and Plaintiff

13 California Natural Gas Vehicle Coalition

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

15 **FOR THE COUNTY OF FRESNO**

16 CALIFORNIA NATURAL GAS VEHICLE  
17 COALITION, a California not-for-profit  
18 corporation,

19 Petitioner and Plaintiff,

20 v.

21 CALIFORNIA AIR RESOURCES BOARD,  
22 and DOES 1 through 50, inclusive,

23 Respondents and  
24 Defendants.

Case No.

**REQUEST TO PREPARE THE RECORD  
OF PROCEEDINGS**

1 **TO RESPONDENT CALIFORNIA AIR RESOURCES BOARD:**

2 Pursuant to Public Resources Code section 21167.6(a), and Rule 2.11.3 of the Local Rules for  
3 the Superior Court of California, County of Fresno, Petitioner hereby requests that Respondent  
4 California Air Resources Board (“CARB”) prepare the record of proceedings relating to the above-  
5 captioned action, which challenges CARB’s approval of the Advanced Clean Truck Regulation (“ACT  
6 Regulation”). Petitioner requests that CARB include in the record all documents required pursuant to  
7 Government Code section 11347.3 and Public Resources Code section 21167.6(e), including all  
8 transcripts, minutes of meetings, notices, correspondence, reports, studies, proposed decisions, final  
9 decisions, findings, and any other documents or records relating to CARB’s determination to approve  
10 the ACT Regulation.

11  
12  
13 Dated: July 30, 2020

**AKIN GUMP STRAUSS HAUER & FELD LLP**

14  
15 By /s/ Rex S. Heinke  
16 Rex S. Heinke  
17 Attorneys for Petitioner and Plaintiff  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28