

CITY OF OAKLAND



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Docket Management Facility: U.S. Dept. of Transportation
1200 New Jersey Ave SE
West Building Ground Floor, Room W12-140
Washington, D.C. 20590-0001

Re: Notice of Intent To Prepare an Environmental Impact Statement; Docket No.
NHTSA-2022-0075.

To Whom It May Concern:

The Office of the Oakland City Attorney (OCA) respectfully submits the following comment in response to the National Highway Traffic Safety Administration (NHTSA)'s Notice of Intent To Prepare an Environmental Impact Statement; Docket No. NHTSA-2022-0075. OCA's comment urges NHTSA to prioritize environmental justice in its Environmental Impact Statement (EIS) for Model Years 2027 and Beyond Corporate Average Fuel Economy (CAFE) Standards and Model Years 2029 and Beyond Heavy-Duty Pickup Trucks and Vans Vehicle Fuel Efficiency (FE) Improvement Program Standards.

Background

The U.S. Environmental Protection Agency (EPA) defines environmental justice as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.”¹ The California Environmental Protection Agency (CalEPA) adds additional context to this definition, including that environmental justice is “an aspiration towards a state where the race and income of a community are no longer indicators of the environmental pollution burden it suffers.”²

Unfortunately, across the country, including here in Oakland, frontline and fenceline communities—particularly lower-income communities and communities of color—continue to be disproportionately burdened by the harmful effects of pollution, with devastating consequences for health and well-being.

¹ EPA, Environmental Justice, <https://www.epa.gov/environmentaljustice> (last visited Sept. 12, 2022).

² CalEPA, Environmental Justice Task Force, *Oakland Initiative Report 3*, https://calepa.ca.gov/wp-content/uploads/sites/6/2018/03/OAKEJ_initiative_FINALweb.pdf (last visited Sept. 13, 2022).

Vehicle emissions—which include carbon dioxide and toxic co-pollutants such as nitrogen oxides and particulate matter—are major sources of pollution in the United States. As the U.S. Department of Transportation (DOT) has observed:

Vehicle emissions contribute to the formation of ground level ozone (smog), which can trigger health problems such as aggravated asthma, reduced lung capacity, and increased susceptibility to respiratory illnesses, including pneumonia and bronchitis. . . . Many scientific studies have linked breathing particulate matter to significant health problems, including asthma, chronic bronchitis, and heart attacks. Diesel particulate matter is of particular concern because long-term exposure is likely to cause lung cancer. Levels of traffic-related air pollution are higher near major roadways that have high traffic volume.³

These health risks are particularly acute in a city like Oakland, which is home to four interstate highways and freeways and a major commercial port. Hundreds of thousands of vehicles traverse Oakland each day on the Bay Area freeway system.⁴ Meanwhile, the Bay Area Air Quality Management District has long since “estimated that 7,200 trucks (medium heavy duty and heavy heavy duty) travel daily on surface streets through West Oakland.”⁵

The effects of traffic-sourced pollution are not evenly distributed in Oakland, just as they are not in many cities across the country. CalEPA has identified two communities in Oakland—West Oakland and the industrial corridor of East Oakland—as areas “where residents experience high pollution burdens and increased vulnerability to pollution.”⁶ Both of these communities are home to large numbers of Black, Indigenous, Latinx, Asian and Pacific Islander, and other residents of color and residents living under the poverty line.⁷

Data analyzed by CalEPA have shown that “West Oakland is in the 98th percentile for diesel particulate matter as the result of being surrounded by freeways and in close proximity to the [Port of Oakland].”⁸ East Oakland, meanwhile, sits in “close proximity to drayage from the port[] and highly trafficked roads, which result in localized air quality impacts.”⁹

Effects of Vehicle Emissions on Frontline and Fenceline Communities in Oakland

Frontline and fenceline communities such as West Oakland and East Oakland have for decades borne the brunt of health-related effects of vehicle emissions. “Childhood asthma in East

³ U.S. Dept. of Transportation, Cleaner Air, <https://www.transportation.gov/mission/health/cleaner-air#:~:text=Vehicle%20emissions%20contribute%20to%20the,illnesses%2C%20including%20pneumoni%20and%20bronchitis> (last visited Sept. 13, 2022).

⁴ City of Oakland, *West Oakland Specific Plan*, 5-3 - 5-5 (June 2014), <https://oaklandca.s3.us-west-1.amazonaws.com/oakca1/groups/ceda/documents/report/oak049125.pdf> (last visited Sept. 13, 2022).

⁵ Bay Area Air Quality Management District, *West Oakland Truck Survey ES-2* (2009), <https://www.baaqmd.gov/~/media/files/planning-and-research/care-program/final-west-oakland-truck-survey-report-dec-2009.pdf> (last visited Sept. 13, 2022).

⁶ CalEPA, *supra* note 2, at 5.

⁷ *Id.* at 5-7.

⁸ *Id.* at 6.

⁹ *Id.* at 7.

Oakland is more than twice as high as in the rest of Alameda County” and East Oakland is in “the 98th percentile for emergency room visits for asthma-related health problems” in California.¹⁰ Data from 2011-2015 “shows a 20-year difference in life expectancy between a community in West Oakland and a community in the Northwest Hills of Oakland.”¹¹

Health disparities by race are also stark. Black Oaklanders make up roughly one fifth of the population under five years old in the city, but account for more than half of asthma-related emergency room visits in that age group, according to the Alameda County Public Health Department.¹² According to a study from the Environmental Defense Fund, “On average, neighborhoods [in the Bay Area] with higher percentages of residents of color experienced double the rate of asthma from traffic-related air pollution compared with predominantly white neighborhoods.”¹³

According to a study of neighborhood-level concentrations of nitrogen dioxide:

The top five [census block groups (CBGs)] with the highest premature mortality burden within Oakland would have experienced an estimated 27% and 79% reduction in NO₂-attributable mortality if concentrations were reduced to median and minimum concentrations, respectively. The same five CBGs had a greater than 50% population of racial and ethnic minorities, indicating that the policy changes would disproportionately benefit minority populations.¹⁴

Vehicle Emissions Reductions Are a Form of Environmental Justice

Improved fuel efficiency in passenger and commercial vehicles can significantly reduce emissions of dangerous pollutants, disproportionately benefiting the communities that currently face the highest environmental health risks. For example, the EPA has estimated that driving our most fuel efficient vehicles “could prevent almost 100 million metric tons of tailpipe CO₂ emissions, equivalent to taking almost 20 million cars off the road.”¹⁵ In Oakland, “the residents and neighborhoods closest to transportation related greenhouse gas (GHG) emissions with toxic

¹⁰ *Id.*

¹¹ Alameda County Public Health Department, *Housing Habitability and Health: Oakland’s Hidden Crisis* 3 (2018), <https://www.acgov.org/cda/lead/documents/news/health,housinginoakland.pdf> (last visited Sept. 12, 2022).

¹² *Id.*

¹³ Environmental Defense Fund, *Air Pollution’s Unequal Impacts in the Bay Area* (2021), <https://www.edf.org/airqualitymaps/oakland/health-disparities#:~:text=While%20everyone%20is%20impacted%20by,compared%20with%20predominantly%20white%20neighborhood> (last visited Sept. 13, 2022).

¹⁴ Veronica A. Southerland et al., *Assessing the Distribution of Air Pollution Health Risks within Cities: A Neighborhood-Scale Analysis Leveraging High-Resolution Data Sets in the Bay Area, California* 9, *Environmental Health Perspectives* Vol. 129 (2021), <https://ehp.niehs.nih.gov/doi/epdf/10.1289/EHP7679> (last visited Sept. 13, 2022). The median and minimum concentrations refer to “hypothetical scenarios in which concentrations of each pollutant were reduced to the minimum and median grid-cell-level concentrations of each data set.” *Id.* at 5.

¹⁵ EPA, *Green Vehicle Guide: What If We Drove Our Most Efficient Car?*, <https://www.epa.gov/greenvehicles/what-if-we-drove-our-most-efficient-car> (last visited Sept. 13, 2022).

co-pollutants such as diesel particulate matter (diesel PM), receive the most local benefits when those transportation related emissions are reduced.”¹⁶

California has already recognized the importance of moving away from fuel-dependent vehicles. In August 2022, the California Air Resources Board voted to approve a rule creating “a year-by-year road map so that by 2035 100% of new cars and light trucks sold in California will be zero-emission vehicles.”¹⁷ The new rule codified one piece of Governor Gavin Newsom’s 2020 executive order, which also set the goal of making all medium- and heavy-duty vehicles zero-emission by 2045.¹⁸ The goals articulated in that order were based in part on the recognition that California “must prioritize clean transportation solutions that are accessible to all Californians, particularly those who are low-income or experience a disproportionate share of pollution.”¹⁹

The City of Oakland, meanwhile, has taken its own actions towards advancing environmental justice, including in the area of vehicle emissions. The City recently completed its Oakland 2030 Equitable Climate Action Plan (ECAP), which sets forth “an equitable path toward cost-effectively reducing Oakland’s local climate emissions a minimum of 56%, transitioning away from fossil fuel dependencies, and ensuring that all of Oakland’s communities are resilient to the foreseeable impacts of climate change.”²⁰ The ECAP includes the development of a Zero Emission Vehicle Action Plan, which will address “medium and heavy-duty vehicle electrification, including trucks and delivery vehicles; personal vehicle charging infrastructure in multifamily buildings, including affordable buildings; curbside charging; school and transit buses; and coordination with private and public fleet operators.”²¹

To ensure that environmental justice is a guiding force in implementation, the ECAP was accompanied by a Racial Equity Impact Assessment and Implementation Guide (REIA). The REIA is premised on the understanding that “the communities in Oakland with the greatest socio-economic burdens are located in natural and built environments that face high climate risks,” and it “provide[s] City staff with clear guidelines for maximizing equitable outcomes as they implement each of the” actions identified in the ECAP.²²

The City of Oakland has also taken bold steps to address environmental justice in the development of the Oakland 2045 General Plan (“the Plan”). In recognition of the fact that “[m]any of Oakland’s Black, Indigenous, People of Color (BIPOC) and low-income

¹⁶ Environmental/Justice Solutions, *Racial Equity Impact Assessment & Implementation Guide* 5 (2020), https://cao-94612.s3.amazonaws.com/documents/FINAL_Complete_EF-Racial-Equity-Impact-Assessment_7.3.2020_v2.pdf (last visited Sept. 13, 2022) [hereinafter “REIA”].

¹⁷ California Air Resources Board, Press Release: California Moves to Accelerate to 100% New Zero-Emission Vehicle Sales by 2035, Aug. 25, 2022, <https://ww2.arb.ca.gov/news/california-moves-accelerate-100-new-zero-emission-vehicle-sales-2035> (last visited Sept. 13, 2022).

¹⁸ State of California, Executive Order N-79-20.

¹⁹ *Id.*

²⁰ *Oakland 2030 Equitable Climate Action Plan* 1 (July 2020), <https://cao-94612.s3.amazonaws.com/documents/Oakland-ECAP-07-24.pdf> (last visited Sept. 13, 2022).

²¹ *Id.* at 39.

²² REIA, *supra* note 16, at 3.

communities are disproportionately burdened by pollution and environmental stressors,”²³ the City is actively prioritizing environmental justice in the design and implementation of the Plan. As a first step, the City created a “Map of Potential Environmental Justice (EJ) Communities as a starting place for conversations with communities that disproportionately experience some of the greatest environmental burdens and related health problems.”²⁴ This map, and the knowledge and lived experiences of the communities it highlights, will be used to “develop specific goals, policies, and implementation programs that respond to and prioritize the needs of disadvantaged communities.”²⁵

To bolster the efforts of the City of Oakland’s sustainability and resilience leaders, OCA has long supported city staff in passing bold environmental justice-oriented policies. OCA has also engaged in various forms of civil enforcement rooted in environmental justice, from playing a part in the city’s robust illegal dumping program²⁶ to filing civil actions to hold local polluters accountable.²⁷ OCA’s environmental justice enforcement powers derive from local, state, and federal law, and it uses these enforcement authorities to advance Oakland’s environmental justice goals.

In order to ensure the success of the City’s climate goals, however, the City is also dependent on policies enacted at the federal level. In setting new CAFE and FE standards to regulate fuel efficiency standards across the country, NHTSA can help ensure the kinds of long-lasting and far-reaching benefits for Oakland communities that the City cannot achieve on its own.

NHTSA Must Prioritize Environmental Justice in its EIS

Despite the ambitious action already taken by the City of Oakland and the State of California, the federal government remains an essential partner if we are all to achieve the goal of environmental justice. Aggressive CAFE and FE standards will be essential tools in reducing vehicle emissions in Oakland, across California, and across the country, and the effects of these reductions will be felt most dramatically by the communities that have historically suffered the greatest pollution-related harms.

OCA respectfully requests that NHTSA apply an environmental justice lens to its impact analysis. Specifically, in analyzing the range of alternatives considered for the CAFE and FE standards, NHTSA should pay particular attention to the impact of each alternative on frontline

²³ City of Oakland, Environmental Justice Community Hub for the Oakland 2045 General Plan Update, <https://city-of-oakland-general-plan-update-oakgis.hub.arcgis.com/> (last visited Sept. 15, 2022).

²⁴ *Id.*

²⁵ *Id.*

²⁶ See Oakland City Attorney, Press Release: Oakland Cracks Down on Illegal Dumping, Aug. 6, 2013, <https://www.oaklandcityattorney.org/news/Press%20releases/Illegal%20dumping%20actions.html> (last visited Sept. 13, 2022); City of Oakland, Oaktown PROUD: Prevent & Report Our Unlawful Dumping, <https://www.oaklandca.gov/topics/illegal-dumping> (last visited Sept. 15, 2022).

²⁷ See, e.g., Oakland City Attorney, Press Release: City Attorney Files Environmental Justice Lawsuit Against Debris Hauling Company that Blew Dangerous Dust into West Oakland Neighborhood, Jan. 31, 2018, <https://www.oaklandcityattorney.org/News/Press%20releases/NLC%20Debris%20Hauling%20Lawsuit.html> (last visited Sept. 13, 2022).

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and fenceline communities that have historically suffered the greatest environmental harms from vehicle emissions. Oakland's own West and East Oakland serve as prime examples of communities whose residents face severe health problems as a result of vehicle-related pollution, and who would therefore benefit disproportionately from aggressive fuel efficiency standards. And, of course, there are many more communities like these in cities and states across the country.

We hope that NHTSA will prioritize the experiences and future of these communities as it undertakes this important environmental impact analysis.

Sincerely,

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