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Testimony of Commissioner Seggos before the U.S. Environmental Protection Agency (EPA) regarding Request for Comment on the Reconsideration of EPA's actions under the joint EPA/National Highway Traffic Safety Administration (NHTSA) action titled *The Safer Affordable Fuel-Efficient Vehicles Rule Part One: One National Program (SAFE-1)*

June 2, 2021
Virtual Public Hearing

Greetings. My name is Basil Seggos, and I am the Commissioner of Environmental Conservation in New York State.

On behalf of the State of New York, I thank you for holding this hearing regarding EPA's necessary reconsideration of the Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule adopted by the prior administration. That misguided action barred California and other states from enforcing greenhouse gas (GHG) standards for cars and light-duty trucks and the zero-emission vehicle (ZEV) sales mandate. On September 18, 2019, Governor Cuomo, joined by California Governor Newsom and Washington Governor Inslee, strongly registered the disappointment of the US Climate Alliance, a coalition of 25 governors, to the prior administration's action to deprive states of their longstanding authority to reduce vehicle emissions. They wrote: "This action …. will increase air pollution, cost our residents more at the pump, and limit the ability of Alliance states to meet their own emission reduction targets and take crucial climate action."

Today, we applaud EPA for beginning the process of reversing that indefensible decision and restoring the important authority of states to take actions to protect their people and resources from the harmful impacts of the climate crisis. More generally, New York strongly supports the Biden administration's recent actions to realign EPA's

charge to combat climate change and to restore science into rulemaking efforts. On April 21, 2021, New York joined eleven other state in sending President Biden a letter that, among other things, calls on EPA to enact standards requiring all new vehicles to be zero emission by 2035.

Over the last four years, New York and two dozen other states have led the way in implementing policies and programs to reduce greenhouse gas emissions. For example, New York's Climate Leadership and Community Protection Act establishes a high bar for action to address the climate crisis. The success of President Biden's bold pledge of 50-52% reduction in nationwide greenhouse gas emissions by 2030 relies on continued progress by states such as New York. To contribute that progress, and to enable the United States to meet the climate challenge, states will have to utilize all legal policy tools, including setting standards to reduce emissions from transportation, the largest emission sources nationally and in New York.

I wish to elaborate on four key points as to why the misnamed SAFE-1 regulation should be rescinded in an expeditious manner:

First, EPA's unprecedented withdrawal of a prior waiver of preemption was based on the flawed interpretation that the Energy Policy and Conservation Act (EPCA) preempts states – and EPA -- from adopting greenhouse gas or zero emission standards. EPA's misguided approach of equating fuel economy and greenhouse gas standards was taken despite federal District Court cases and the Supreme Court decision in Massachusetts v EPA that ruled directly to the contrary. As clearly enunciated in Massachusetts v EPA, there is no basis for a claim that EPCA preempts EPA,

California, or other states in accordance with Section 177 of the Clean Air Act from adopting standards for greenhouse gas emissions from motor vehicles.

Second, EPA's revocation of the waiver is also based on the erroneous notion that Congress intended Section 209 to regulate only "smog forming" pollutants. California's vehicle standards, however, have regulated criteria pollutants and greenhouse gases since 2004 and EPA's standard likewise covered both types of pollutants since 2012. The Clean Air Act authorizes California to set standards for the control of emissions of any pollutants, including greenhouse gases, that harm public health or the environment. The Clean Air Act also allows states, such as New York, to adopt standards identical to California. Nowhere does the statute impose any limitations on the types of emissions that California or section 177 states may regulate.

Third, there is also no legal basis for the prior administration's novel view that a ZEV mandate is preempted because it reduces greenhouse gases in addition to criteria pollutants. California and New York have had a ZEV mandate since the early 1990s. At the start of the ZEV program, the standards regulated criteria pollutants and were not confined to smog-forming pollutants. As technology has evolved, just as Congress anticipated that it would, and as Massachusetts v. EPA confirmed, EPA updated these standards to include greenhouse gas pollutant standards to best protect the environment and public health and welfare. The ZEV mandate now serves the purpose of reducing criteria pollutants, mobile source air toxics, and greenhouse gas emissions.

Finally, the waiver language in the Clean Air Act clearly requires EPA to issue the waiver subject to Section 209's established, unambiguous criteria. California had made no changes to its standards after issuance of a waiver in 2013, and its standards

are still at least as protective in aggregate as federal standards. EPA should not have revoked the existing 2013 waiver.

For these reasons, New York strongly urges EPA to reinstitute California's waiver of preemption under Section 209. We further urge EPA to return to the prior interpretation of Section 177, based on established case law, which determined correctly that greenhouse gases are pollutants that fall within the purview of Section 177.