

# CLIMATE POWER

February 13, 2024

VIA E-MAIL

## RE: False American Fuel & Petrochemical Manufacturers Advertisements

I am the Chief Operating Officer of Climate Power, an organization dedicated to encouraging leaders to take immediate bold climate action and exposing climate deniers and their oil and gas lobby allies. I write on behalf of Climate Power regarding two blatantly false advertisements currently being run on your station by American Fuel & Petrochemical Manufacturers (“*AFPM*”).<sup>1</sup> These advertisements include obvious lies aimed at deceiving the public and must be pulled from the air immediately.

AFPM’s advertisements falsely state that “President Biden’s EPA is rushing to ban new gas-powered cars.”<sup>2</sup> The ads ask viewers to “tell [President Biden] to stop his EPA’s car ban.”<sup>3</sup> **However, there is no pending federal “car ban,” and to claim otherwise is patently false and intentionally misleading.** As support, AFPM opaquely cites the New York Times and states “EPA Proposal Designed to End Use of Gas Cars.”<sup>4</sup> **But no New York Times article supports this claim.**<sup>5</sup> AFPM’s attempt to imply the existence of a New York Times article belies the truth: there is no support for their claim because the Environmental Protection Agency (“*EPA*”) has not proposed a “ban” on new gas-powered cars.

A recent Politifact fact check confirmed that it is “wrong to say there is a ‘Biden mandate’ to replace gasoline-powered cars with [electric vehicles].”<sup>6</sup> In truth, the EPA’s policies focus on

<sup>1</sup> The ads are available here: *All of Us*, YouTube, <https://www.youtube.com/watch?v=Q3sYuqhWXBQ> (last accessed Feb. 13, 2024); *Open Roads*, YouTube, [https://www.youtube.com/watch?v=NNa\\_967ZWOY](https://www.youtube.com/watch?v=NNa_967ZWOY) (last accessed Feb. 13, 2024).

<sup>2</sup> *All of Us* at 0:03; *Open Roads* at 0:10.

<sup>3</sup> *All of Us* at 0:14; *Open Roads* at 0:22.

<sup>4</sup> *All of Us* at 0:03.

<sup>5</sup> Search: EPA Proposal Designed to End Use of Gas Cars, N.Y. Times, <https://www.nytimes.com/search?dropmab=false&query=EPA%20proposal%20designed%20to%20end%20use%20of%20gas%20cars&sort=best> (last accessed Feb. 12, 2024).

<sup>6</sup> *Donald Trump’s Off-Base Claims About Electric Car ‘Mandates’ and Markets*, POLITIFACT (Oct. 11, 2023), <https://www.politifact.com/article/2023/oct/11/donald-trumps-off-base-claims-about-electric-car-m/>.

<sup>7</sup> emissions, not technology; the standards “wouldn’t ban gasoline-fueled powertrains.”<sup>7</sup> Even if

this was the goal, the EPA does not have the authority to demand such a mandate.<sup>8</sup> **Under no stretch of the imagination would the EPA’s proposed emission standards “ban new gas-powered cars.” These ads are baseless and deceptive.**

Grasping for straws, the AFPM likely seeks to make hay over the fact that the EPA, over 10 months ago, proposed new emissions standards for passenger cars, large pick-up trucks, and vans starting model year 2027.<sup>9</sup> The Clean Air Act *requires* the EPA to set emission standards.<sup>10</sup> Emission standards make automakers ensure the total number of vehicles they sell each year do not exceed a certain emissions limit.<sup>11</sup> **Emission standards do *not* ban the sales of new gas cars.**

Unlike candidates, independent organizations like AFPM do not have a “right to command the use of broadcast facilities.”<sup>12</sup> Because you need not air these advertisements, your station bears responsibility for their content when you do grant access.<sup>13</sup> You have a duty “to protect the public from false, misleading or deceptive advertising.”<sup>14</sup> Failure to prevent the airing of “false and misleading advertising” may be “probative of an underlying abdication of licensee responsibility” that can be cause for the loss of a station’s license.<sup>15</sup>

You must remove these ads from the air immediately. Thank you for your attention to this matter, and please contact us immediately at **202-964-3737** to confirm that these advertisements are no longer appearing on your station.

Very truly yours,

Jill Shesol, Chief Operating Officer  
Climate Power

<sup>7</sup>*Id.*

<sup>8</sup> *E.P.A. Lays Out Rules to Turbocharge Sales of Electric Cars and Trucks*, N.Y. TIMES (Apr. 12, 2023), <https://www.nytimes.com/2023/04/12/climate/biden-electric-cars-epa.html#:~:text=The%20proposed%20tailpipe%20pollution%20limits,be%20all%2Delectric%20by%202032>

<sup>9</sup> Multi-Pollutant Emissions Standards for Model Years 2027 and Later Light-Duty and Medium-Duty Vehicles, Env’t Protection Agency, 88 Fed. Reg. 29184 (proposed Apr. 13, 2023) (to be codified at 40 CFR pts. 85, 86, 600, 1036, 1037, and 1066).

<sup>10</sup> 42 U.S.C. §7401 *et seq.* (1970).

<sup>11</sup> Multi-Pollutant Emissions Standards for Model Years 2027 and Later, *supra* note 8.

<sup>12</sup> *See CBS v. DNC*, 412 U.S. 94, 113 (1973).

<sup>13</sup> *See Felix v. Westinghouse Radio Stations*, 186 F.2d 1, 6 (3rd Cir.), cert. denied, 314 U.S. 909 (1950). <sup>14</sup> Licensee Responsibility with Respect to the Broadcast of False, Misleading or Deceptive Advertising, 74 F.C.C.2d 623 (1961).

<sup>15</sup> *Cosmopolitan Broad. Corp. v. FCC*, 581 F.2d 917, 927 (D.C. Cir. 1978).

