

Opportunities for Control of Greenhouse Gases Under the CAA

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The National Association of Clean Air Agencies (NACAA)

- Association of State and Local Air Pollution Control Agencies in 53 states and territories and more than 165 metropolitan areas across the country.
- Web page at: <http://www.4cleanair.org/>
- Links to:
 - [Climate Change Initiatives in the States](#)
 - [State Greenhouse Gas Actions](#)
 - [NACAA Global Warming Papers](#)

Positions of the National Association of Clean Air Agencies on the following

- NACAA Global Warming Principles
- The California Waiver
- EPA's Advanced Notice of Proposed Rulemaking
- EPA's Proposed Rule for "Mandatory Reporting of Greenhouse Gases"

NACAA Global Warming Principles

- NACAA urges **Congress** to promptly enact a mandatory economy-wide greenhouse gas (GHG) emission reduction program with quantifiable and enforceable limits.
- This program should include measures and programs that reduce GHG emissions in a **cost-effective manner**, utilizing, among other approaches, **market-based strategies**.
- The goal of such legislation should be to reduce U.S. GHG emissions substantially below current levels in order to lessen dangerous anthropogenic interference with the climate. The legislation should also set **interim milestones**, including short, medium and long-term GHG emission reduction targets, and recognize the benefits of **significant early reductions**.
- While any federal program should be sufficiently stringent to substantially reduce GHG emissions, federal legislation **should not preempt state or local** governments from taking more stringent actions to reduce GHG emissions within their jurisdictions. Legislation should also ensure that GHG **emissions do not increase elsewhere** as a result of these actions.

NACAA Global Warming Principles

- Federal legislation should reflect the **extremely active role state and local governments have played**, and will continue to play, in reducing GHG emissions, ranging from developing **emission inventories** and registries (including reporting protocols) to adopting regulatory emission reduction strategies and action plans.
- Federal legislation should authorize, and Congress should appropriate, **sufficient funds** for federal, state and local agencies to implement GHG emission inventory, registry and reduction programs. These funds should be newly authorized appropriations, not reprogrammed resources.
- Because **power generation is the primary source of GHG emissions** in the U.S., **energy efficiency** should be a priority when evaluating emission reduction strategies from this sector. Congress should develop stringent energy efficiency standards for new products in the residential, commercial and industrial sectors. In addition, Congress should require that all cost effective energy efficiency measures (e.g., demand-side management strategies) be considered at existing facilities.

NACAA Global Warming Principles

- Congress should require that new **Electric Generating Units**, as well as existing units making major modifications, reduce GHG emissions by meeting the **best available performance standard**.
- Federal legislation should address the **transportation sector**, the second largest source of GHG emissions in the United States. Legislation should include measures designed to reduce the carbon content of fuels and to promote the development of biofuels that, over their life cycle, produce lower carbon emissions. Legislation should also promote land use and transportation planning that encourages compact, transit-friendly development and alternatives to single occupancy vehicles.
- Congress should set stringent **Corporate Average Fuel Economy (CAFE)** standards for passenger vehicles and trucks to reduce their substantial GHG emissions. Such standards should become more stringent over time as technology advances.

NACAA Global Warming Principles

- Federal legislation should include measures to promote expanded uses of **clean renewable energy**, including but not limited to wind, solar, geothermal and appropriate biomass sources.
- Any **data collection system** (such as an inventory, registry or allowance tracking program) should be open and transparent and contain data with high environmental integrity.
- Congress should provide the U.S. Environmental Protection Agency (**EPA**) with the lead federal role in implementing these programs (e.g., inventory, registry and any market-based program that may be adopted).
- Federal legislation should promote actions that have collateral and **multi-pollutant benefits**, including benefits to other environmental media.

NACAA Global Warming Principles

- Federal legislation should recognize that global warming is already underway and should require a full updated assessment of the potential impacts to the United States, including effects on water resources, agriculture, infrastructure, natural systems, environmental quality, public health, biodiversity and the cultures of our native peoples. Such an **updated assessment** will support the development of domestic and international adaptation strategies. EPA should support and assist, as necessary, states in developing adaptation plans.
- Congress should authorize and appropriate funding and provide other incentives to spur the *deployment of new and existing technologies to improve* energy efficiency and reduce GHG emissions.

NACAA Global Warming Principles

- Congress should authorize and appropriate funding and provide other incentives for expanded *research, development and demonstration of new and* innovative technologies and other mitigation strategies (e.g., carbon capture and storage) to reduce GHG emissions.
- Congress should promote and expand technology and R&D transfer with other countries, focusing on developing countries.
- Congress should seriously consider the GHG recommendations of other state and local organizations, including, among others, the National Governors Association, the Environmental Council of States, the U.S. Conference of Mayors and The Climate Registry.

The California Waiver

- Requested December 21, 2005 under Section 209(b) of the CAA to permit enforcement of the state's emissions standards and test procedures for motor vehicle GHG emissions.
- September 24, 2004 California regulation requiring a 30% reduction of GHG emissions per mile phased in from 2009 to 2016.
- As of June, 2007 eleven states chose to opt in to the standards under Section 177 of the CAA.

The California Waiver

- EPA responded in February of 2007 that it would delay a decision on the waiver request until the Supreme Court ruled in *Massachusetts v. EPA*.
- The Supreme Court on April 2, 2007 ruled that the CAA does, in fact, provide authority for EPA to regulate GHG.
- EPA then published a notice soliciting comment on the waiver on April 30, 2007.

The California Waiver

- Under Section 209(b) EPA must grant California's waiver request unless it can affirmatively determine that
 - California acted in an arbitrary and capricious manner when it determined that its motor vehicle emissions program standards “will be as protective of the public health and welfare as applicable federal standards,”
 - California does not need its motor vehicle emissions program standards to meet compelling and extraordinary conditions, or
 - California's motor vehicle emission standards were not “consistent with” the requirements of Section 202(a) of the Act.

The California Waiver

- NACAA recommended EPA approval of the waiver for the following reasons:
 - a waiver is in the public interest,
 - a waiver will assist California and other states in carrying out their responsibilities under the CAA,
 - respect for the rights of states requires EPA to grant California's request, and
 - well-established law requires EPA to do so.

The California Waiver

- On February 29, 2008 Administrator Johnson denied the California waiver request stating his finding that California does not need its greenhouse gas standards for new motor vehicles to meet compelling and extraordinary conditions.
- In April of 2009 Administrator Jackson announced she was reconsidering the denial.
- NACAA submitted comments supporting the reconsideration.

The California Waiver

- The number of states who have adopted the rule and are awaiting waiver approval is now at 14.
 - Arizona, Connecticut, the District of Columbia, Maine, Maryland, Massachusetts, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, Vermont, and Washington.

EPA's ANPR

NACAA Comments

- EPA should regulate GHG emissions under the Clean Air Act.
- The scientific evidence clearly demonstrates that GHGs endanger public health and welfare.
- The National Ambient Air Quality Standards regulatory path (Section 108) is not well-suited for GHG emissions, nor is the Hazardous Air Pollutants section (Section 112).
 - The concentrations of CO₂ in the atmosphere are not directly associated with health effects.

EPA's ANPR

NACAA Comments

- EPA should promptly pursue the regulation of Mobile Source-Related GHG Emissions under Title II of the Clean Air Act. The principles we recommend for EPA to follow in this process have been successfully followed by EPA for decades.
- EPA should promptly pursue regulation of Major Stationary Source Categories using NSPS Stationary Source Regulations.
- EPA should adopt BACT permitting for GHG emission reductions.
- State and Local authorities to regulate GHG emissions must be protected.

CAA Regulation of Mobile Source Related GHG Emissions

- Establish GHG standards for transportation fuels that take into account the **complete lifecycle of GHG emissions**, including upstream processing.
- Identify **long-term national mobile source GHG emission targets** based on scientific assessments of environmental need and base the stringency of standards for individual sub-sectors on technological feasibility, cost and fuel savings, taking into consideration the relationship of mobile source reductions to reductions in emissions from other sectors under any economy-wide program.
- Allow for **staggered rulemakings** for various mobile source sub-sectors and fuels, starting with the largest GHG-contributing sub-sectors.

CAA Regulation of Mobile Source Related GHG Emissions

- Develop and enforce GHG standards for **all key vehicle, engine and equipment subsectors within the overall transportation sector**, including GHG emission standards for cars and light trucks, heavy-duty vehicles, nonroad engines and equipment, locomotive and marine engines and aircraft, to ensure comprehensive GHG emission reductions from the mobile sector and provide incentives for seeking the most cost effective solutions.
- Develop and enforce standards for **all GHGs** emitted by the transportation sector for which EPA makes an endangerment finding.
- Develop and enforce standards for **transportation fuels** as part of a **systems-based** approach.

CAA Regulation of Mobile Source Related GHG Emissions

- Adopt technology-forcing standards when appropriate; for long-term technology forcing standards, provide for periodic technology reviews, if deemed necessary, to determine whether **mid-course corrections** may be needed.
- Increase the rate of emission reduction targets over time, allowing for the **development of innovative**, cost-effective technological solutions.
- Establish a **flexible compliance program**.
- Design enforcement programs to ensure **real-world compliance** and reductions over the life of the vehicle/engine/equipment.
- Provide flexibility so that mobile source control programs **complement existing regulatory programs**.

Use of New Source Performance Standards

- EPA has discretion to define the source categories covered by the NSPS, the size of sources covered and the pollutants to include in an NSPS and to identify facilities within the source category to be covered.
- EPA also is given much discretion in setting the NSPS level (defined as best demonstrated technology, or BDT), including consideration of costs.
- Existing sources may have less stringent standards than new and modified sources and longer compliance deadlines.

Use of New Source Performance Standards

- NSPS are usually numerical emission standards expressed as performance levels, but EPA could set efficiency standards or specify work practice standards.
- Energy efficiency offers significant cost-effective opportunities for reducing GHG emissions quickly in the near term, so aggressive efficiency standards should be strongly considered by the agency for any source category (though efficiency improvements alone should not be the only GHG emission reduction strategy considered by EPA).

Use of New Source Performance Standards

- EPA should immediately issue and update NSPS for the categories of sources that emit the most GHGs, proceeding concurrently (and not sequentially) and without regard to whether an existing NSPS is due or not due to be updated:
 - Carbon Dioxide (CO₂): power plants; pulp, paper and forest products; cement plants; iron and steel industry; and petroleum refineries; and
 - Methane: oil and gas exploration and transmission.
- The NSPS should include both GHGs and relevant criteria pollutants to ensure that optimal benefits result.
- The NSPS should be forward-looking and anticipate emerging technology. When EPA develops an NSPS, it should consider not only technologies that are currently available, but also those projected to be available by a later date.

BACT Permitting for GHG Emission Reductions

- NACAA believes that EPA has the discretion to limit permitting requirements to large sources of GHG emissions.
- The association believes that a regulatory threshold within the range of 10,000 to 25,000 tons per year may be appropriate, but urges EPA to undertake further analysis to determine the proper level.
- NACAA recommends that EPA promulgate Presumptive BACT guidelines for these source categories as expeditiously as practicable.
- NACAA does not recommend the mandatory application of PSD and construction permitting to sources below the major source GHG emissions threshold level discussed above.

BACT Permitting for GHG Emission Reductions

- When a source that is major for any regulated pollutant makes a major modification and increases its GHG emissions by a significant amount, it will become subject to PSD BACT permitting requirements for GHGs. Therefore, when GHGs become regulated pollutants under the Clean Air Act, EPA should promulgate a significance level proportional to the major source GHG emissions threshold level discussed on the previous slide. Sources making major modifications and increasing GHG emissions should be subject to PSD permitting and BACT energy efficiency requirements.

Title V Permits

- Title V permits must assure compliance with all federal "applicable requirements." As new or modified sources are permitted under the section 165 PSD BACT or section 111 NSPS provisions of the Clean Air Act, the relevant applicable GHG requirements – performance standards, GHG emissions reductions, monitoring, recordkeeping, reporting and the like – should be incorporated into the facility's Title V operating permit. Further, EPA should clarify that the major source threshold for Title V purposes will be based on the GHG emissions threshold discussed in previous slides. EPA should also clarify that, as a legal matter, GHGs will be "regulated pollutants" for purposes of Title V – as well as Title I – once an endangerment finding is made and mobile or other regulations adopted for these pollutants.

EPA's Proposed Rule for "Mandatory Reporting of Greenhouse Gases"

- NACAA believes that data reporting requirements should be consolidated within EPA to the greatest extent possible in order that those reporting are not required to send data on criteria, toxic and GHG pollutants to different parts of the agency on differing time lines.
- NACAA representatives have been working with EPA on the development of a National Environmental Inventory System (EIS) which is near completion. We recommend this system.

EPA's Proposed Rule for "Mandatory Reporting of Greenhouse Gases"

- We encourage EPA to delegate to states/locals the authority for compilation of the inventory.
- We recommend that EPA consider third-party verification for certain emissions categories (large sources without CEMs).
- We recommend harmonization of all emissions reporting requirements.
- EPA should specifically honor existing state/local reporting rules in place (non-preemption).
- EPA needs to assure the program is properly funded at all levels of government.

Summary

- NACAA prefers legislation to comprehensively address global warming, but recommends specific actions under the Clean Air Act to begin as soon as possible.
- EPA should approve the California Waiver Request.
- EPA should promptly pursue the regulation of Mobile Source-Related GHG Emissions under Title II of the Clean Air Act.
- EPA should promptly pursue regulation of Major Stationary Source Categories using NSPS Stationary Source Regulations.

Summary

- EPA should work with state and local agencies to establish permitting thresholds for GHG emissions at levels appropriate to properly address needed controls without burdening the system with administrative paper work.
- EPA should adopt BACT permitting for GHG emission reductions.
- The National Environmental Inventory System should be completed and used as the reporting mechanism for the Greenhouse Gas Reporting requirement.
- State and Local authorities to regulate GHG emissions must be protected and properly funded.