

February 16, 2011

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S. William Becker

Dear Representative:

On behalf of the National Association of Clean Air Agencies (NACAA) – the association of air pollution control agencies in 51 states and territories and over 165 major metropolitan areas across the country – we are writing to express our concerns with two major provisions contained in H.R. 1, the Continuing Resolution that was introduced in the U.S. House of Representatives on February 11, 2011. First, we are alarmed by the potential for significant reductions in federal funding for state and local air quality agencies in Fiscal Year (FY) 2011 and the impact these cuts could have on our ability to carry out the federally mandated responsibilities to protect public health and welfare. Second, we are troubled by the provisions to prevent the U.S. Environmental Protection Agency (EPA) from using federal funds for activities related to greenhouse gases (GHGs). Doing so will only lead to greater regulatory uncertainty, impede efforts to promote energy efficiency and, in some jurisdictions, result in *de facto* construction bans for sources subject to preconstruction permitting requirements for GHGs.

With regard to funding, NACAA is strongly opposed to the bill's proposed cuts in federal grants to state and local air pollution control agencies. H.R. 1 would cut close to \$100 million, possibly more, from the FY 2011 budget request for state and local air grants under the categorical grant portion of the State and Tribal Assistance Grant account, representing a reduction of close to 30 percent. Such a decrease would have a devastating impact on our programs.

State and local air pollution control agencies, which have primary responsibility under the Clean Air Act for implementing our nation's clean air program, carry out numerous activities, including, but not limited to, monitoring, strategy development, compliance assistance and enforcement, and permitting. To accomplish this work, agencies receive funding from several sources, including federal grants under Sections 103 and 105 of the Clean Air Act, which support the foundation of state and local air quality programs and fund specific monitoring efforts.

Our agencies have struggled for years with insufficient funding. Over the past 15 years, for example, federal grants to operate our programs (not including monitoring) have actually decreased by approximately one-third in terms of purchasing power. This has come at a time when our responsibilities have increased exponentially.

Slashing state and local air grants could also have significant economic ramifications. If funding for state programs is cut further, agencies will be forced to eliminate even more jobs than they are today. And some may be compelled to

return part or all of their delegated programs to EPA, which is unable to act as quickly or as responsively to the needs of local industries and businesses. Such a scenario could hurt local businesses and thus be a hindrance to saving and creating new jobs.

In light of the essential support federal grants provide to our programs, we are very concerned that the funding reductions contemplated by H.R. 1 would severely undermine our ability to protect public health and welfare and could cause economic harm as well. Accordingly, we urge that you reject these cuts to state and local air quality grants.

Second, NACAA has several concerns with section 1746 of H.R. 1, which provides that “[n]one of the funds made available to the Environmental Protection Agency by this division or any other Act may be expended for purposes of enforcing or promulgating any regulation (other than with respect to section 202 of the Clean Air Act) or order, taking action relating to, or denying approval of state implementation plans or permits because of the emissions of greenhouse gases due to concerns regarding possible climate change.”

Our principal concern lies with the impact that section 1746 would have on GHG permitting requirements. While H.R. 1 prevents EPA from using federal funds for actions relating to GHG permitting, the underlying Clean Air Act requirements remain. Sources are still subject to GHG permitting requirements under the Act – most importantly the need to obtain preconstruction permits. Under the Clean Air Act, sources subject to the preconstruction permitting program cannot commence construction without first obtaining the necessary permits requiring the Best Available Control Technology (BACT) for GHGs.

In most jurisdictions, state and local air pollution control agencies are responsible for issuing preconstruction permits to sources. However, in some jurisdictions, EPA is the permitting authority responsible for issuing preconstruction permits covering all applicable pollutants, including GHGs. In other jurisdictions, EPA is the permitting authority for GHGs under a temporary federal program covering state and local programs that do not yet have the authority to issue preconstruction permits covering GHGs. In jurisdictions where EPA is the permitting authority, sources would still be subject to GHG permitting requirements, but would not be able to obtain the necessary preconstruction permits from EPA. This would result in a *de facto* construction ban in these jurisdictions.

Moreover, state and local agencies that are currently in the process of revising their state plans to include GHGs would be unable to complete these revisions without EPA approval. In areas where EPA is the permitting authority for GHGs under a temporary federal program, sources would not only be unable to obtain the necessary permits from EPA, but state and local agencies would also be unable to revise their state plans to include GHG authority due to the inability of EPA ability to review and approve those revisions. Sources in jurisdictions where a state or local agency is the permitting authority – and therefore still able to obtain the necessary preconstruction permits – also risk delay and regulatory uncertainty, as EPA could be prohibited from providing additional support and guidance regarding GHG BACT.

NACAA is also troubled by at least two other aspects of section 1746. First, it would prevent EPA from granting any new waivers of federal preemption under section 209(b) of the Clean Air Act to permit the State of California to enforce its own motor vehicle GHG emissions standards. Since 1977, Congress has consistently recognized and supported California’s leadership role in its design of the federal Clean Air Act, which specifically authorizes enforcement of California-developed motor vehicle emissions standards in California and other states. This provision has provided enormous benefits to California and the entire nation,

allowing states to serve as laboratories of innovation. Second, it would prevent EPA from moving forward on developing New Source Performance Standards (NSPS) that cover GHG emissions from the electric power and petroleum refinery industries, overturning recent settlements in litigation.

In conclusion, NACAA urges you to reject funding cuts to state and local air quality grants. We further urge you to oppose constraints on EPA's authority to regulate GHGs with respect to permitting, NSPS and granting waivers for California to enforce its own motor vehicle GHG standards.

Thank you very much for considering our views. If you have any questions or need further information, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. William Becker', with a long horizontal stroke extending to the right.

S. William Becker