

**Testimony of  
Erik White  
Co-Chair, Mobile Sources and Fuels Committee of the  
National Association of Clean Air Agencies  
at the  
U.S. Environmental Protection Agency's  
Hearing on the California Air Resources Board's  
Requests for  
Waivers of Preemption Under Section 209(b) of the Clean Air Act for  
California Rulemaking Actions to Regulate  
Emissions from Onroad Heavy-Duty Vehicles  
EPA Dockets No. EPA-HQ-OAR-2022-0330, No. EPA-HQ-OAR-2022-0331 and  
No. EPA-HQ-OAR-2022-0332**

**June 29, 2022**

Good morning. I am Erik White, Director of the Placer County Air Pollution Control District in California. I am testifying on behalf of the National Association of Clean Air Agencies (NACAA), for which I serve as Co-Chair of the Mobile Sources and Fuels Committee. NACAA is the national, nonpartisan, non-profit association of air pollution control agencies in 40 states, including 117 local air agencies, the District of Columbia and four territories. The air quality professionals in our member agencies have vast experience dedicated to advancing the equitable protection of clean air and public health in the U.S. This testimony is based upon that experience. The views expressed in this testimony do not represent the positions of every state and local air pollution control agency in the country.

Thank you for convening this hearing to take testimony on three requests by the California Air Resources Board (CARB) for EPA to grant waivers of preemption, or to confirm that certain regulatory amendments fall within the scope of a waiver of preemption previously granted to California, under Section 209(b) of the Clean Air Act:

- 1) Request for Waiver Action Pursuant to Clean Air Act Section 209(b) for 2018 Amendments to the California Emissions Warranty and Maintenance Provisions for 2022 and Subsequent Model Year On-Road Heavy-Duty Diesel Engines and Heavy-Duty Diesel Vehicles With Gross Vehicle Weight Ratings (GVWRs) Exceeding 14,000 Pounds (October 22, 2021) (Docket No. EPA-HQ-OAR-2022-0330);
- 2) Request for Waiver Action Pursuant to Clean Air Act Section 209(b) for California's Advanced Clean Trucks, Zero Emission Airport Shuttle and Zero-Emission Powertrain Certification Regulations (December 20, 2021) (Docket No. EPA-HQ-OAR-2022-0331); and
- 3) Request for Waiver and Authorization Action Pursuant to Clean Air Act Section 209(b) for California's "Omnibus" Low NO<sub>x</sub> Regulation (January 31, 2022) (Docket No. EPA-HQ-OAR-2022-0332).

Today, I will focus my testimony on CARB's request for a waiver for its Omnibus Low NO<sub>x</sub> Regulation (Omnibus). NACAA will provide additional comments on all three waiver requests in writing by the August 2, 2022 deadline. In brief, we urge EPA to fulfill its statutory obligations and fully and promptly approve all three waiver requests currently before the agency.

## **State and Local Authorities to Take Actions on Their Own Are a Pillar of the Clean Air Act**

NACAA has a decades-long unwavering history of strongly supporting full and prompt approval by EPA of CARB's waiver requests and continues to make protecting the Clean Air Act authorities vested by Congress in state and local air agencies to take actions on their own a top priority. As we highlight in NACAA's January 15, 2021, white paper, *Improving Our Nation's Clean Air Program: Recommendations from the National Association of Clean Air Agencies to President-Elect Biden's and Vice President-Elect Harris' Administration*, "The authority vested in state and local agencies to take actions on their own – that are at least as rigorous as, or go beyond, federal requirements – is a pillar, not a quirk, of the Clean Air Act. The Administration should support states and localities that take such actions on clean air and climate change in order to achieve and sustain their clean air and climate goals. When state and local air agencies are allowed to be laboratories of innovation and implement programs that best meet their needs and circumstances, everyone benefits."<sup>1</sup>

## **States' Regulation of Mobile Sources**

In the Clean Air Act, Congress determined that the reduction of air pollution – including that which may have an effect on climate and weather – is the primary responsibility of states and local governments. Although the Act establishes a federal program to set minimum vehicle emission requirements to serve as a "floor" for state regulation, it specifically authorizes California to establish a more stringent state motor vehicle emissions control program under certain conditions. While consideration of the potential adverse impact on commerce of many different state vehicle emission standards led Congress to preempt states other than California from adopting motor vehicle emission standards, Congress does, in Section 177 of the Act, provide that each state is free to choose whether to enforce the federal emission standards or California's at-least-as-protective-in-the-aggregate standards for new motor vehicles sold in-state. The federal government has no permissible role in this decision.

## **California's Leadership Role Under the Clean Air Act**

California has traditionally led the national effort to reduce air pollution. Congress has consistently recognized and supported California's leadership role in its design of the federal Clean Air Act. As we also highlight in our January 15, 2021, recommendations to the Biden-Harris Administration, "In 1967, Congress protected states' rights by specifically preserving California's authority to regulate emissions from motor vehicles under the waiver provision of Section 209 of the Clean Air Act. It extended these rights in 1977 by allowing other states to adopt California's motor vehicle emission standards under Section 177" if they so desire.<sup>2</sup>

## **California's Waiver Requests**

As established by Congress, EPA's role in granting a waiver to California on a particular motor vehicle emissions rule is narrow and deferential. EPA is not to substitute its judgment for that of CARB as to whether

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<sup>1</sup> <https://www.4cleanair.org/wp-content/uploads/NACAA2021PresidentialTransitionDocument-01152021.pdf>

<sup>2</sup> *Id.*

a standard is too technically challenging or too expensive. Moreover, EPA may not base its decision on statutes other than the Clean Air Act, or other policy considerations. Rather, EPA must grant California's request for a waiver unless it can demonstrate that one or more of the conditions of Section 209(b) of the Act are not met.

EPA must grant the waiver unless it can be shown by clear and convincing evidence that CARB acted in an arbitrary and capricious manner when it determined that the regulation for which it seeks a waiver did not render the state's mobile source program, considered as a whole, less protective than the federal program.

EPA must grant the waiver unless it determines that California no longer needs to maintain an independent motor vehicle emissions program. Under prior precedent, the issue is not whether California needs a particular standard or whether any particular standard will significantly contribute to resolving an identified problem unique to California but, rather, that there are compelling and extraordinary conditions warranting a continuing California vehicle emissions program.

Finally, EPA must grant the waiver unless it determines that California's motor vehicle program is not consistent with the requirements of Clean Air Act Section 202(a).

### **The Urgent Need for NO<sub>x</sub> Emission Reductions from Heavy-Duty Trucks and Engines in California and Nationwide**

In August 24, 2020, written comments to CARB,<sup>3</sup> NACAA supported the state's proposed Omnibus to reduce NO<sub>x</sub> emissions from heavy-duty trucks, which was adopted on August 27, 2020, and ultimately finalized in December 2021, after an extensive public process that was preceded by several years of informal stakeholder input. The research supporting CARB's Omnibus – including research jointly funded by EPA and CARB and conducted by the Southwest Research Institute – is rigorous and the data and findings solidly supportive of the Omnibus standards.

NACAA recognizes the urgent need for the Omnibus in California, beginning not later than model year (MY) 2024, as well as the clear and profound need for significant NO<sub>x</sub> emission reductions from heavy-duty (HD) trucks and engines nationwide, beginning not later than MY 2027.

Five states have already individually exercised their right of self-determination under Section 177 of the Clean Air Act and joined California with adoption of heavy-duty new vehicle policies.<sup>4,5,6,7,8</sup> A sixth state has passed enabling legislation<sup>9</sup> and others are considering similar bills or have taken public process steps related to regulatory development. These states have chosen to take these actions because they need the emission reductions offered by the Omnibus to best protect the health of their residents.

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<sup>3</sup> [https://www.4cleanair.org/wp-content/uploads/Documents/NACAA\\_Comments-CARB\\_HD\\_NOx\\_Omnibus\\_Proposal-082420.pdf](https://www.4cleanair.org/wp-content/uploads/Documents/NACAA_Comments-CARB_HD_NOx_Omnibus_Proposal-082420.pdf)

<sup>4</sup> <https://www.mass.gov/guides/massachusetts-low-emission-vehicle-lev-program>

<sup>5</sup> [https://www.nj.gov/dep/rules/adoptions/adopt\\_20211220a.pdf](https://www.nj.gov/dep/rules/adoptions/adopt_20211220a.pdf)

<sup>6</sup> <https://www.dec.ny.gov/regulations/26402.html>

<sup>7</sup> <https://www.oregon.gov/deq/rulemaking/Pages/ctr2021.aspx>

<sup>8</sup> <https://ecology.wa.gov/Air-Climate/Climate-change/Reducing-greenhouse-gases/ZEV> and <https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC173-423-400Jan18>

<sup>9</sup> <https://portal.ct.gov/Office-of-the-Governor/News/Press-Releases/2022/04-2022/Governor-Lamont-Apprises-Final-Passage-of-Climate-Legislation-That-Includes-New-Emissions-Standards>

In fact, more than one third of the U.S. population lives in areas of the country designated nonattainment for the health-based National Ambient Air Quality Standards (NAAQS) for ozone, particulate matter (PM) or both, and many others live in areas just on the cusp of nonattainment. In the absence of far more stringent federal HD truck NO<sub>x</sub> standards beginning with MY 2027, these areas will find themselves unable to address emissions from one of their largest sources, likely delaying their attainment, or driving them into nonattainment. Areas that miss their attainment deadlines face the threat of “bump up” to a more demanding classification of nonattainment – if they are not already classified as Extreme – and statutorily required economic sanctions if they fail to meet their attainment deadlines. On April 13, 2022, EPA proposed to bump up 30 areas in nonattainment of the 2008<sup>10</sup> and 2015<sup>11</sup> NAAQS for ozone, meaning the citizens of these areas continue to suffer the detrimental impacts of unhealthy air. Additionally, EPA is now in the process of reconsidering the existing PM and ozone NAAQS, adopted in 2012 and 2015, respectively, and reaffirmed in December 2020 – initiatives that could well conclude with the Administrator revising the standards for one or both pollutants to be more protective of public health, thus requiring many areas across the country to reduce, or further reduce, emissions that contribute to levels of pollution that exceed the new standard(s).

As such, NACAA strongly supports adoption by EPA of a final federal rule, by not later than the end of this calendar year, establishing NO<sub>x</sub> emission standards and other program components as described in our May 16, 2022, comments to EPA on the agency’s March 28, 2022, proposed HD truck rule.<sup>12</sup> In addition to adopting such a federal rule, we cannot overstate the need for EPA to grant the waiver requested by California for the Omnibus without delay, so that it can take effect on schedule for California and for the states that have availed themselves of their Section 177 authority to adopt the CARB rule and so that the Omnibus is available for other states to adopt should the final federal rule be delayed; fall short on the rigor of the emission standards or related program components; or, as a whole, fail to achieve the necessary emission reductions.

## **Conclusion**

In conclusion, the Omnibus meets all off the statutory criteria that EPA must, and the only criteria that EPA may, consider when responding to a request by California for a waiver. It is incumbent on EPA to take swift action to fully approve this waiver and, for similar reasons, the other two requested by California as well.

Thank you for this opportunity to testify.

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<sup>10</sup> <https://www.govinfo.gov/content/pkg/FR-2022-04-13/pdf/2022-07509.pdf>

<sup>11</sup> <https://www.govinfo.gov/content/pkg/FR-2022-04-13/pdf/2022-07513.pdf>

<sup>12</sup> [https://www.4cleanair.org/wp-content/uploads/NACAA\\_Comments-EPA\\_HD\\_Truck\\_NPRM-051622lh.pdf](https://www.4cleanair.org/wp-content/uploads/NACAA_Comments-EPA_HD_Truck_NPRM-051622lh.pdf)