

## MINUTES

### NACAA BOARD OF DIRECTORS AND COMMITTEE CHAIRS' 2017 SUMMER MEETING

August 15-16, 2017

Embassy Suites Chicago Downtown  
Chicago, Illinois

#### **Tuesday, August 15, 2017**

##### Introductions and Review of Agenda

The NACAA Board of Directors and Committee Chairs convened their meeting at 9:00 a.m. NACAA Co-President Dave Klemp (MT) welcomed everyone. Other NACAA Board Members present included Co-President Craig Kenworthy (Seattle, WA) as well as Charlene Albee (Reno, NV), Rick Brunetti (KS), Stu Clark (WA), Bob Colby (Chattanooga, TN), Mike Dowd (VA), Steve Flint (NY), Ali Mirzakhilili (DE), Ursula Nelson (Tucson, AZ), Sam Rubens (Akron, OH), Bart Sponseller (WI) and Eddie Terrill (OK). Committee Co-Chairs, who are not also Board Members, present included Lynn Fiedler (MI), Heidi Hales (VT), Merlyn Hough (Eugene, OR), Lynne Liddington (Knoxville, TN) and Erik White (Auburn, CA). NACAA staff present included Miles Keogh, Nancy Kruger, Mary Sullivan Douglas, Karen Mongoven and Phil Assmus. Deborah Stone (Chicago, IL) and Pinaki Banerjee (Chicago, IL) attended the meeting on Tuesday afternoon. The meeting agenda is attached.

##### Conversation with NACAA's New Executive Director

NACAA Co-President Dave Klemp (MT) introduced Miles Keogh, NACAA's new Executive Director, who had been hired after a national search and whose first day on the job was the week before (August 7, 2017). In turn, Board Members and Committee Co-Chairs introduced themselves and, at Miles' request, each identified the one thing NACAA does that is most valuable to him/her. Miles then spoke about, and the group discussed, the future of NACAA and the kinds of things the association could do including how we might drive better value to the members with NACAA's existing services. He also spoke about membership, funding and potential new areas of work for NACAA.

##### Legislative, Judicial and Regulatory Update

Nancy Kruger (NACAA), Mary Sullivan Douglas (NACAA) and Karen Mongoven (NACAA) provided an update on recent activity in Congress, by the Administration and in the courts.

Mary provided an update on the FY 2018 appropriations process, reporting that the Administration had recommended steep cuts to EPA's budget, including a reduction of 30 percent in state and local air grants. In response, NACAA submitted testimony to both the U.S. House of Representatives and Senate requesting that Congress, at a minimum, continue to fund state and local air grants at last year's level (\$228.2 million) and retain funding for fine PM monitoring under Section 103 authority. NACAA also provided to Congress a report, based on a survey the association had conducted, that contained information about the difficulty state and local air agencies would have accommodating any cuts, especially of the magnitude being proposed.

The House Appropriations Committee approved a bill in July that would maintain state and local air grants at last year's level, among other things. It contains several air-related riders, including postponement of the implementation of the 2015 ozone standard. The House has not yet voted on this bill.

In the Senate, no formal action has been taken on the FY 2018 appropriations bill. Both houses are in recess until September. It may be necessary for Congress to adopt a short-term continuing resolution to keep the government in operation after September 30, 2017.

Nancy provided an overview of legislation introduced in the 115<sup>th</sup> Congress that is of particular interest to NACAA members. She highlighted a number of regulatory reform bills, including, among others, the Regulatory Accountability Act (H.R. 5, S. 951) and the Regulations from the Executive in Need of Scrutiny (REINS) Act (H.R. 26, S. 21), both of which have passed the House and been reported out by the Senate Homeland Security Committee. Nancy also reported on two ozone bills: the Ozone Standards Implementation Act (H.R. 806, S. 263), which has passed the House and been the subject of a Senate Environment and Public Works (EPW) Committee hearing, and the Ozone Regulatory Delay and Extension of Assessment Length (ORDEAL) Act (S. 452), which has also been the subject of an EPW hearing. In addition, she discussed two science-related bills – the Honest Open and New EPA Science Treatment (HONEST) Act (H.R. 1430) and the Science Advisory Board Review Act (H.R. 1431) – and several other bills.

Craig Kenworthy (Seattle, WA) then opened a discussion of how NACAA should determine when and how to weigh in with Congress on various issues. After a conversation about this Craig suggested a statement of principles be developed to serve as guidance.

Nancy then overviewed various Executive Orders and a Presidential Memorandum issued by President Trump, which have an effect on EPA and environmental issues.

Karen provided a combined regulatory and judicial update on major Clean Air Act programs. Her presentation focused heavily on the status of judicial activity in the U.S. Court of Appeals for the D.C. Circuit, which hears all challenges to Clean Air Act rules with national applicability. In the months since the Trump Administration took office, EPA has informed the court that it will be reconsidering its positions on a number of rules currently undergoing judicial review. In other cases, EPA has announced plans to postpone or suspend rules that were already scheduled to come into effect and was met with prompt legal challenges. Karen concluded by providing a list of all D.C. Circuit challenges to Clean Air Act rules where the cases are currently "active" (i.e., not being held in abeyance). She noted that she maintains a detailed chart providing the status of every Clean Air Act case in the D.C. Circuit, which NACAA will soon make available to the Board of Directors, Committee Chairs, and potentially the membership.

## Critical Issues

### *Agriculture*

Merlyn Hough (Eugene, OR), Co-Chair of NACAA's Agriculture Committee, updated the Board on three agriculture-related issues. First, Merlyn summarized the recent decision in *Waterkeeper v. EPA*, which struck down a 2008 EPA rule exempting farms from air release reporting requirements under the Comprehensive Environmental Response, Compensation and Liability Act and the Emergency Planning and Community Right-to-Know Act. NACAA is closely watching EPA's efforts to develop guidance for the new reporting requirements, which EPA has indicated will include stakeholder outreach. Second, Merlyn shared that NACAA is monitoring EPA's development of a conservation measures guide for livestock and poultry. A draft guide was circulated for comment in February, but the final version has not been released. Finally, Merlyn noted that the USDA's Agriculture Air Quality Task Force remains on hiatus until the current administration re-signs its charter.

### *Air Toxics*

Bob Colby (Chattanooga, TN), Co-Chair of the NACAA Air Toxics Committee, provided an update on the streamlined state and local review process for the 2014 National Air Toxics Assessment (NATA). He reported that EPA staff expect to have revised results ready by spring 2018 for state and local agencies to preview, before the public-release date expected in late spring or early summer 2018. He noted that one significant change is an update to the risk estimates related to ethylene oxide, which has resulted in dozens of sources being flagged for high risk.

Bob reported that EPA is under court order to issue 33 Risk and Technology Review (RTR) standards, seven of which will be due by December 31, 2018 and the remainder by dates in 2020. RTR standards are designed to address the risk that remains from sources of hazardous air pollutants after the establishment of MACT standards and to account for advances in control technologies since MACT was implemented. Bob reported that NACAA is assisting EPA in this significant effort by collecting information about emissions from the source categories and providing it to the agency.

Finally, Bob noted that EPA has not reported any additional activity related to NACAA's recommendation that the agency formally evaluate the completeness of its air toxics source category list under Section 112(c) and develop a Maximum Achievable Control Technology standard for the methyl bromide fumigation source category.

### *Criteria Pollutants*

Lynne Liddington (Knoxville, TN), Co-Chair of the NACAA Criteria Pollutants Committee discussed the EPA Administrator's recent withdrawal of his June 2017 decision to extend by one year (to October 1, 2018) the deadline for making area designations under the 2015 ozone National Ambient Air Quality Standards (NAAQS). Lynne indicated that there is little information available regarding how EPA will proceed now that the deadline is less than two months away, noting that the agency did not send 120-day letters. Lynne also reported that in July EPA proposed to retain without change the existing primary oxides of nitrogen NAAQS. Lynne apprised members that the NACAA-ECOS-EPA SIP Reform Workgroup was preparing to conduct its third review of progress made ameliorating the SIP backlog and that Anna Wood and Rebecca Weber of EPA would provide a preview of the agency's analysis at the NACAA Fall Membership Meeting. Finally, Lynne gave kudos to the numerous EPA staff members who participate in the Criteria Pollutants Committee's monthly conference calls.

### NACAA Finances and Business

Craig Kenworthy (Seattle, WA) stated that NACAA Board Members and Committee Chairs in four EPA Regions had received emails from their respective Regional Offices re-polling them about their desire to continue their NACAA membership in Fiscal Year (FY) 2018 and how they would like to pay their association dues. The same poll was already conducted for FY 2018 but the new poll also inquires whether the state and local air agencies have a desire to be a member of the Association of Air Pollution Control Agencies. The choices in the re-poll are to be a member of NACAA, be a member of AAPCA, be a member of both organizations or be a member of neither. The group discussed reactions to this.

### *NACAA Financial Reports*

Nancy Kruger (NACAA) explained NACAA's financial reports and provided details about the association's current finances. The reports included information about the NACAA treasury account (i.e., non-grant funds) as well as NACAA's grant from EPA. Nancy reported that NACAA's finances are in good order.

### *NACAA Investments*

Nancy Kruger provided information about the NACAA treasury funds that had been invested several years ago. She reported that the investments are in good order and reiterated that NACAA's investment advisor would be happy to speak with the Board at any time, if the Board so desires.

### *Approval of Minutes – 2017 Spring Board of Directors and Committee Chairs' Meeting*

The State Agency Members and the Local Agency Members of the NACAA Board, in separate votes, unanimously approved the minutes of the 2017 Spring Board of Directors and Committee Chairs' Meeting.

### *Future Meeting Dates and Locations*

Dave Klemp (MT) opened a discussion of future NACAA Membership and Board Meeting locations and dates, following the NACAA 2017 Fall Membership Meeting in Seattle (September 25-27, 2017 at the Hilton Seattle Downtown, to be preceded by the NACAA Board and Committee Chairs' Meeting on September 24, 2017). Following the discussion, the group asked the staff to provide the Co-Presidents and Co-Vice Presidents with recommendations for the next few meetings.

## **Wednesday, August 16, 2017**

### Critical Issues (continued)

#### *Emissions and Modeling*

Lynn Fiedler (MI) and Charlene Albee (Reno, NV), Co-Chairs of the NACAA Emissions and Modeling Committee, provided an update on key issues that the Committee is following closely. Lynn reported that EPA's long-awaited revisions to 40 C.F.R. part 51, Appendix W (the *Guideline on Air Quality Models*), took effect on May 22, 2017. The final rule was originally scheduled to take effect on February 22, but after the new Administration took office, the effective date was delayed on two separate occasions to give the new EPA leadership time to "review and consider" the revisions. The Committee regularly receives updates from EPA on the development of guidance documents that supplement the revised Appendix W. For example, EPA finalized a two-tiered demonstration approach for addressing single-source impacts on ozone and secondary PM<sub>2.5</sub> and has been working on a two-tier compliance tool for ozone and PM<sub>2.5</sub> precursors using Modeled Emission Rates for Precursors. Charlene noted that just last week (August 4), EPA released a new memorandum entitled, "Use of Photochemical Grid Models for Single-Source Ozone and Secondary PM<sub>2.5</sub> Impacts for Permit Program Related Assessments and for NAAQS Attainment Demonstrations for Ozone, PM<sub>2.5</sub> and Regional Haze." The Committee expects to learn more about this on its next regular call. Charlene also highlighted two events: the upcoming Regional/State/Local Modelers' Workshop (September 25-26 in Research Triangle Park, NC) which the state and local NACAA-EPA representatives help to plan, and the 2018 International Emissions Inventory Conference currently underway (August 14-18 in Baltimore, MD).

#### *Enforcement*

Eddie Terrill (OK), Co-Chair of the NACAA Enforcement and Compliance Committee, reported that NACAA is partnering with the National Association of State Energy Officials (NASEO) to create a web-based clearinghouse for information pertaining to the Volkswagen (VW) Mitigation Settlement. The clearinghouse is being designed to include information that will be most useful to state and local governments, but it will be publicly available. NACAA and NASEO are also considering forming a working group to hold monthly or quarterly meetings to inform one another about plans and activities related to the VW settlement program. The primary purpose is to share information and avoid duplication of effort.

Eddie reported that there have been several recent events that are intended to prohibit the federal government from reaching settlement agreements in enforcement cases that provide funds to non-governmental third parties, including Supplemental Environmental Projects (SEPs). The first is a bill – H.R. 732 – that calls for an end to payments that violators make to support environmental improvements intended to offset the harm their violations caused. The second is a recent memo from Attorney General Jeff Sessions that prohibits the Department of Justice (DOJ) from including in civil or criminal settlement agreements the payment of settlement funds to non-governmental third parties that were neither victims nor parties to the lawsuits. On July 20, DOJ and Harley Davidson reached a new

agreement that replaces an enforcement settlement from August 2016. The new agreement is exactly like the original except that it omits \$3 million for a SEP for a wood-burning change-out program.

### *Global Warming*

Stu Clark (WA), Co-Chair of NACAA's Global Warming Committee, highlighted a recent D.C. Circuit decision, in *Mexichem Fluor v. EPA*, which struck down a 2015 Significant New Alternatives Policy (SNAP) program rule requiring manufacturers to replace certain HFCs used in aerosols, motor vehicle air conditioners, commercial refrigerators and foams. The SNAP program was the primary regulatory vehicle for the U.S. to meet its obligations under the October 2016 Kigali Amendment to the Montreal Protocol, which was developed to phase down high global warming potential HFCs. Stu noted that the court decision has created significant uncertainty as to whether and how the U.S. will be able to reduce its HFC emissions and meet its treaty obligations. Stu also noted that consideration is being given to changing the name of the Global Warming Committee.

### *Mobile Sources and Fuels*

Steve Flint (NY), who was recently appointed Co-Chair of the NACAA Mobile Sources and Fuels Committee by NACAA Co-President Dave Klemp (NY), apprised the group of a regulatory streamlining regulatory initiative for fuels that EPA's Office of Transportation and Air Quality (OTAQ) has undertaken. Under the initiative – which is not intended to weaken or rollback standards in any way – OTAQ will take a holistic look at its 40 CFR Part 80 fuel (gasoline, diesel and other) rules and seek to delete expired, unnecessary, out-of-date requirements; consolidate or eliminate redundant provisions; and create a national survey program to measure all regulated in-use parameters at retail locations. The overall intent is to improve clarity and efficiency, reduce burden and costs for both the agency and stakeholders and improve implementation and compliance assurance while maintaining environmental performance and fuel quality. EPA will seek stakeholder input as it continues with this effort.

Next, Erik White (Auburn, CA), Co-Chair of the NACAA Mobile Sources and Fuels Committee, reported on a July 28, 2017 D.C. Circuit ruling in a case challenging EPA's renewable fuel requirements for 2014 through 2017. The court denied all petitions for review except that of Americans for Clean Energy, et al, in which the petitioners argued that EPA erred in how it interpreted the "inadequate domestic supply" waiver provision of the Renewable Fuel Standard (RFS) when it decided to invoke that authority to reduce the total renewable fuel volume requirements for 2016, which were established in a 2015 final rule. The D.C. Circuit granted this petition, vacated EPA's decision to use its "inadequate domestic supply" waiver authority to reduce total renewable fuel volume requirements for 2016 and remanded the rule to EPA for further consideration in light of the court's interpretation. Erik highlighted this decision because of the precedent it sets for the RFS program going forward.

Erik also advised the group that the Committee would be drafting a letter in response to EPA's request for comments on its reconsideration of the January 2017 Final Determination on the Mid-term Evaluation of the Model Year (MY) 2022-2025 GHG emission standards established in 2012 and on whether the MY 2021 standards remain appropriate. In doing so, the Committee will draw on NACAA's previous comments supporting the Final Determination and all the MY year standards – including those for MY 2021 – established in the 2012 joint EPA-NHTSA rulemaking.

### *Monitoring*

Monitoring Committee Co-Chair Heidi Hales (VT) reported on some recent discussions she has had with the National Tribal Air Association (NTAA) about monitoring. NTAA is very interested in increased collaboration with NACAA on monitoring issues. In particular, NTAA would like to explore including NACAA members in a monitoring equipment exchange program that it has been hosting, as well as in general information-sharing. Heidi asked if any Board Members or Committee Chairs had thoughts about that. Several members expressed the view that it would be worth pursuing increased collaboration with tribes and some agreed with Heidi's suggestion that the Committee might consider inviting NTAA to join a call. One member opined that collaboration with tribes might be more useful on some issues than on others.

Next, Monitoring Committee Co-Chair Sam Rubens (Akron, OH) brought to the group's attention a House bill, H.R. 1355, the "Crowd Sourcing and Environmental Data Act of 2017." The bill would allow states, at their discretion, to amend their monitoring plans for one or more NAAQS by adding a large number of air quality sensors for that pollutant. If the state can show, on an annual basis, that the data collected by the sensors is "at least as good" as the data that would have been collected if the state did not choose to use sensors, it may use the sensor data as the basis for any determination as to whether an exceedance of a NAAQS has occurred. The bill raises a number of red flags for state and local monitoring agencies. A major concern is that the current state of sensor technology is nowhere near good enough to take the place of federal reference and equivalent monitoring methods. The Monitoring Committee will continue to track the progress of this bill.

### *Permitting and NSR*

Ali Mirzakhilili (DE), Co-Chair of the NACAA Permitting and New Source Review Committee, noted that the Committee continues to feature state and local agencies' e-permitting initiatives on its monthly calls, and these presentations are very well-received. The Committee received a large number of responses to its e-permitting survey. The completed surveys are available on the Permitting Committee's web page.

Next, Ali reported on the Committee's efforts to engage with EPA as the agency undertakes future "permit streamlining" initiatives. In March, the Commerce Department solicited input from domestic manufacturers on the topic of "permit streamlining and reducing regulatory burdens," and Clean Air Act permitting issues figured prominently in the comments it received. EPA informed the Committee on a recent call that it will probably be developing some type of permit streamlining "action plan" in the near future. The Committee has decided to draft a set of written principles that NACAA believes should guide any permit streamlining efforts. For example, any EPA proposals should undergo a basic litmus test in that they should not weaken public health protections. A number of state permitting Committee members have volunteered to join a Permit Streamlining Subcommittee to help develop a draft document. Any draft principles document will be reviewed by the full NACAA membership in accordance with the association's normal procedures before being publicly released.

### *Public Outreach*

Craig Kenworthy, (Seattle, WA), Co-Chair of NACAA's Public Outreach Committee, highlighted the upcoming "Communicating Air Quality" conference in Austin, TX that is being jointly sponsored by EPA, NACAA and AAPCA. He noted that the conference will include sessions on wildfire smoke and public health. Finally, Craig shared that the Public Outreach Committee had revised its call schedule to hold quarterly calls rather than monthly calls.

### *Training*

Mike Dowd (VA), Co-Chair of NACAA's Training Committee, updated the Board and Chairs on recent training developments. He provided an overview of training needs and challenges, noting that many of the established courses are outdated and require significant funding to update. He proposed further discussion about ways for NACAA to expand its role in providing training resources to air agencies. Mike closed his update by reminding the group of NACAA's new web-based Training Resources Hub as well as an early September Joint Training Committee meeting in North Carolina that both he and Phil Assmus (NACAA) plan to attend.

The discussion that followed reiterated the training needs and challenges outlined by Mike. Members specifically pointed to the need for course updates, more consultant training to help address a wave of retirements and improving EPA workshops for new rules.

## New Business

The Board and Chairs discussed NACAA's governance policies and procedures as well as the Bylaws, with several noting they would like a review to be undertaken, either of specific policies, procedures or provisions (e.g., review of staff compensation), or comprehensively.

## Adjourn

The NACAA Board of Directors and Committee Chairs' Meeting was adjourned.

**AGENDA**

**NACAA  
BOARD OF DIRECTORS AND COMMITTEE CHAIRS'  
SUMMER MEETING**

**August 15-16, 2017**

**Embassy Suites Chicago Downtown  
Chicago, IL**

**Tuesday, August 15, 2017**

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|-------------------------|---|
| 6:30 a.m. – 9:00 a.m.   | Embassy Suites Cooked-to-Order Breakfast  |
| 9:00 a.m. – 9:15 a.m.   | <u>Welcome and Review of Agenda</u>   |
| 9:15 a.m. – 10:30 a.m.  | <u>Conversation with NACAA's New Executive Director</u> <ol style="list-style-type: none"><li>1. Introduction of Miles Keogh</li><li>2. Member Self Introductions (expanded)</li><li>3. Executive Director's Remarks</li><li>4. Open Discussion</li></ol>             |
| 10:30 a.m. – 11:00 a.m. | Break   |
| 11:00 a.m. – 12:15 p.m. | <u>Conversation with NACAA's New Executive Director (cont.)</u>   |
| 12:15 p.m. – 1:45 p.m.  | Lunch   |
| 1:45 p.m. – 3:15 p.m.   | <u>Legislative, Judicial and Regulatory Update</u>  |
| 3:15 p.m. – 3:45 p.m.   | Break   |
| 3:45 p.m. – 4:30 p.m.   | <u>Critical Issues</u> <ul style="list-style-type: none"><li>• Agriculture</li><li>• Air Toxics</li><li>• Criteria Pollutants</li></ul>   |
| 4:30 p.m. – 5:00 p.m.   | <u>NACAA Finances and Business</u> <ol style="list-style-type: none"><li>1. NACAA Financial Reports</li><li>2. NACAA Investments</li><li>3. Approval of Minutes – Spring 2017 Board/Committee Chairs' Meeting</li><li>4. Future Meeting Dates and Locations</li></ol> |



**Wednesday, August 16, 2017**

6:30 a.m. – 9:00 a.m.	Embassy Suites Cooked-to-Order Breakfast
9:00 a.m. – 10:30 a.m.	<u>Critical Issues</u> <ul style="list-style-type: none"><li>• Emissions and Modeling</li><li>• Enforcement</li><li>• Global Warming</li><li>• Mobile Sources and Fuels</li><li>• Monitoring</li></ul>
10:30 a.m. – 10:45 a.m.	Break
10:45 a.m. – 11:30 a.m.	<u>Critical issues</u> <ul style="list-style-type: none"><li>• Permitting and NSR</li><li>• Public Outreach</li><li>• Training</li></ul>
11:30 a.m. – 12:00 p.m.	<u>New Business</u>
12:00 p.m.	Adjourn

(8/10/17)