

April 24, 2015

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Re: Feedback from NACAA on EPA's Draft Principles and Best Practices for Oversight of State Permitting Programs

Dear Deputy Assistant Administrators Shaw and Shapiro:

The purpose of this letter is to provide feedback from the National Association of Clean Air Agencies (NACAA<sup>1</sup>) on EPA's "draft principles and best practices for efficient and effective oversight of state permitting programs," as set forth in your March 11, 2015 letter to Commissioner Robert J. Martineau, Jr., President of the Environmental Council of the States (ECOS). NACAA is offering these comments separately from ECOS, both to provide you with the distinct perspective of air regulators, and because our members include not only state agencies, but also many local agencies that issue Clean Air Act Title V operating permits. We understand that the draft principles and best practices would apply equally to EPA's oversight of both state and local Title V permitting programs, and we recommend that EPA clarify that point if and when it issues a final set of principles and best practices.

NACAA agrees that EPA must collaborate with state and local agencies as it develops common principles for oversight of air, water and waste programs. We urge EPA to continue to engage with NACAA's Permitting Committee as this effort progresses, so that state and local air permitting authorities remain fully informed and have the opportunity to provide meaningful input. Overall, the draft principles and best practices appear sensible and constructive. Because they are all quite general (which is appropriate), it will not be possible to fully evaluate them until we know the specific measures used to implement them in the Title V program. We urge EPA to remain

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<sup>1</sup> NACAA is a national, non-partisan, non-profit association of air pollution control agencies in 41 states, the District of Columbia, four territories and 116 metropolitan areas. The air quality professionals in our member agencies have vast experience dedicated to improving air quality in the U.S. The views expressed in this letter do not necessarily represent the positions of every state and local air pollution control agency in the country.

mindful of the importance of scaling the oversight process to the needs of particular agencies and programs, as the state and local programs vary widely in size and complexity.

NACAA believes that this effort should be guided by an underlying focus on identifying ways in which EPA's oversight efforts can be streamlined and improved to make it easier for state and local permitting agencies to run effective, efficient permitting programs that meet all federal requirements. We are concerned that EPA's emphasis on "using data and analysis to accelerate program improvements" will translate to increased administrative and reporting burdens for our members. For example, the first of the draft best practices focuses on developing policies, guidance and tools to "support the EPA" in its review of state-developed permits and permitting programs. We believe it would be more appropriate to structure the best practices to reflect what EPA can do to support the state and local programs.

NACAA urges EPA not to impose new reporting requirements that would strain state and local air program resources. In particular, EPA should avoid imposing electronic reporting requirements that are not compatible with state and local information technology (IT) systems. NACAA's concern here is informed by our experience with EPA's electronic reporting requirements for air enforcement data. These requirements have resulted in very high IT and personnel costs for many state and local agencies due to compatibility issues between the EPA and state- or local-agency IT programs. We do not want to recreate for permitting the problems and friction that have resulted from EPA's air enforcement data reporting requirements. Currently, air permits issued using state and local IT systems are made available to EPA for auditing. The EPA Regions also collect information on Title V permit issuance every six months and use the Title V Operating Permits System ("TOPS") to report program statistics directly to Headquarters. We believe these mechanisms are working and we urge EPA to avoid asking state and local agencies to use TOPS or other EPA-based IT systems to report information directly to EPA Headquarters.

Having EPA develop and maintain training and tools that will assist state and local permitting agencies to perform their functions would be very helpful. EPA should remain mindful, however, that some air permitting authorities have more stringent local requirements applicable to their operating permits programs than are required by the Clean Air Act and EPA's regulations. The materials that EPA develops will need to meet the most common denominator (the federal regulations) and as a result, they may not mesh well with the requirements/needs of some state and local programs.

Finally, we noticed that in describing EPA's "path forward," your letter to ECOS references "E-Enterprise for the Environment solutions"—including the production of "real-time data," which you assert offers "significant potential to transform oversight of permitting programs to greater levels of effectiveness and efficiency." Real-time data produced through, for example, advanced air monitoring technologies, are an *enforcement* tool; they do not relate to assessing the adequacy of state and local air permitting programs. We are concerned that EPA may be blurring the line here between permitting and enforcement. EPA's oversight of state and local permitting performance should not be commingled with enforcement, which is a separate and distinct program area.

Thank you for your consideration of NACAA's comments and observations. We look forward to further discussing and reviewing the draft oversight principles and best practices as EPA continues to develop them. If you have any questions, please contact Karen Mongoven of NACAA at (202) 624-7864, or [kmongoven@4cleanair.org](mailto:kmongoven@4cleanair.org).

Sincerely,



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NACAA Permitting Committee



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