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April 12, 2007

Jerry Kurtzweg
Director
Office of Program Management Operations
Office of Air and Radiation
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Jerry:

On behalf of the National Association of Clean Air Agencies (NACAA), thank you for this opportunity to provide comments on the "Environmental Protection Agency (EPA) Office of Air and Radiation FY 2008 Final Draft National Program and Grant Guidance," dated February 27, 2007. This guidance reflects the President's budget for FY 2008, which proposes cutting funding for state and local air quality grants by \$35.1 million from FY 2006 levels (from \$220.3 million to \$185.2 million).

The cuts the President has proposed, if enacted by Congress, would have a devastating effect on many state and local air agencies and their efforts to ameliorate the serious public health problems caused by air pollution. These cuts would compound the problems state and local air agencies have faced for years due to insufficient grants and the effects of inflation on diminished budgets. When similar cuts were proposed in FY 2007, NACAA (then STAPPA and ALAPCO) surveyed state and local agencies on the impact of such cuts to their programs. Over 70 agencies responded. A copy of the study is attached for your consideration.

The severity of the proposed cuts for FY 2008 is so great that, in many cases, state and local air agencies would have to lay off existing personnel and/or not fill empty positions. This reduction in staff would be in addition to the loss in personnel state and local agencies have already suffered over the years due to the increasing costs of doing business. In many small agencies, each staff person has cross-cutting responsibilities, thus the loss of one or two people will affect multiple programs. Furthermore, even if budgets are increased in the future, trained personnel will already have been lost and training new staff will be very costly.

Many agencies would have to cease operating existing monitors or otherwise curtail their monitoring programs. The reductions would impair their ability to inspect sources and carry out enforcement activities, making clean air requirements less effective. Additionally, permits for minor sources will take longer to process and customer service will diminish.

The funding cuts could seriously impair the ability of state and local air agencies to prepare new plans for implementing ozone and particulate matter standards. Without funds to develop and carry out the state implementation plans, some areas currently meeting the standards may no longer attain them. Not only would such areas experience degraded air quality, they would also be subject to the more onerous requirements applicable to nonattainment areas. New activities, including those for implementing new standards, require increased funding, not smaller budgets.

If the proposed reductions come to pass, agencies could also be forced to return portions of their programs to EPA due to a lack of funds to carry them out. Not only will this place an excessive burden on EPA, but there would be an additional loss of resources for the air program as state and local funds that are currently leveraged as part of the matching requirements would no longer be spent on those Clean Air Act activities.

The adverse impacts of the budget cuts would be further exacerbated by the proposal to shift the fine particulate monitoring program from Section 103 to Section 105 authority, requiring a 40-percent match. Some agencies do not currently have additional funds for the match and, without a reasonable transition period in which to make adjustments, they could be forced to turn away grant funds.

Perhaps most troubling of all, if the proposed reductions occur, several local air quality agencies face the very real possibility of having to close their operations entirely. This would be a terrible loss for those local areas.

The following are comments on specific elements of the draft guidance.

Funding for the National Association of Clean Air Agencies and Other Co-Regulator Organizations

In two places in Appendix A of the draft guidance (pages A-4 and A-15), EPA states that the agency has received “several” or “numerous” inquiries from states and Members of Congress about how EPA funds co-regulator organizations with State and Tribal Assistance Grant (STAG) funds. The draft then goes on to say that in order to “assure that State preferences are being followed OARM has determined that each Region must now ensure that the head of any State environmental agency or department that wishes to provide a portion of its STAG support to NACAA provide their prior concurrence to do so” (page A-15). We believe the unfortunate juxtaposition of those two sentences implies that there has been a problem with the way the states and local agencies have provided their concurrence with NACAA’s grant in the past, and that a change in procedures is now necessary to ameliorate these problems.

All inquiries about EPA’s funding of co-regulator organizations are not complaints or criticisms, as the draft implies. If there have been several inquiries of a critical nature, NACAA is unaware of them and would very much like to know about them. While there may be an instance or two in the past of a complaint about how co-regulator organizations are funded, these

should not be lumped together with benign inquiries about the mechanism for funding NACAA. These inquiries do not necessarily mean the questioners are uncomfortable with the process that has been in place. To follow the statement that there have been “numerous” inquiries with the point that a change in the approval policy is needed implies that one sentence is related to the other and that the change is in response to these inquiries.

Further, the complaint of which NACAA is aware was made several years ago and should not necessarily be considered timely today or included in a guidance document designed to address FY 2008. If there were a current problem that necessitated the measures outlined in the draft guidance, certainly the Environmental Council of the States (ECOS), the national association representing environmental commissioners, would be aware of it. Yet, ECOS did not request that this change be made on behalf of its members, the association was not consulted about it, nor has it expressed support for or agreement with such a requirement.

Finally, EPA’s suggestion that the head of the state environmental agency or department must grant approval for funding co-regulator organizations with grant funds is presumptuous on EPA’s part. Each state or local entity should determine to whom to delegate the authority to approve such expenditures and EPA should not dictate those procedures to these departments and agencies.

NACAA strongly urges that EPA remove the passages in the draft guidance, particularly those on pages A-4 and A-15, that make reference to past inquiries about how EPA funds co-regulator organizations using STAG funds. Those negative statements are misleading.

NACAA further recommends that EPA not dictate who within the environmental agencies or departments must approve funding for co-regulator organizations. Decisions on who will approve this funding should be entirely at the discretion of those entities.

With respect to the co-regulator exception to the competition policy, EPA states in the draft guidance that it is no longer appropriate (page A-4). We disagree with this view and believe that co-regulator organizations, such as NACAA, should continue to be treated under an exception to competition requirements. While we have outlined our reasons in comments to EPA in the past, we would like to restate that it would be terribly inefficient for the Agency and our organization to go through a competitive process when none is called for. NACAA and other similar organizations are each uniquely qualified to perform their missions and were established by their members for this express purpose. There are simply no other organizations that directly represent their members and are able to carry out the national and regional environmental and public health goals of states, localities and the Agency as embodied in the assistance agreements.

Reductions in Pollutant-Specific Activities

The proposed budget reductions, even if distributed proportionally among programs and agencies, would be highly problematic. The situation is further compounded, however, by EPA’s proposed distribution of funds among program areas. As NACAA commented last year, when EPA recommended a similar allocation of state and local air grants, the proposed guidance targets reductions based on the incorrect premise that state and local agencies have completed work related to certain pollutants and, therefore, have unused resources to be redirected. This assumption is incorrect.

EPA is proposing in the FY 2008 draft program and grant guidance to focus reductions in the Section 105 allocations on spending for activities related to four specific pollutants: sulfur dioxide, nitrogen dioxide, carbon monoxide and lead. While the percentages on which the reductions were based may reflect spending in the past, they are no longer current. In fact, to the extent that problems related to the four pollutants were ameliorated, many state and local air agencies shifted the funding related to those activities into higher-priority work. This was done with the knowledge and concurrence of EPA, including the Regional Offices. Further, while air quality related to the four pollutants may have improved in some areas, at least nitrogen dioxide and sulfur dioxide are precursors to fine particulate matter and it is important for many areas to continue addressing them.

Rather than reflecting success related to these pollutants, the proposed reductions will in fact decrease funding to current high-priority air quality concerns. Instead of improving grant accountability, allocating the reduction according to the four pollutants would actually undermine the ability of state and local agencies to meet the grant commitments made to EPA Regional Offices. With respect to grant accountability, it is important to note that the Regional Offices negotiate workplans with state and local agencies and, through these workplans, maintain accountability for the activities supported with grant funds.

EPA and NACAA have been engaged in an extensive process to update the formula by which Section 105 grants have been allocated to the EPA Regions. This process is intended to give thoughtful consideration to the Clean Air Act criteria and develop a transition plan that will avoid major disruptions in state and local agency budgets. In addition, NACAA has long recommended that any reallocation should be applied when there is a significant increase in the grant in such a way so that no agency experiences an actual reduction in funding due to a change in the formula. To implement significant reductions based on outdated allocations to four pollutants would result in a change in the entire formula without regard to this thoughtful process, which is designed to better align priorities with funding. If the devastating grant cuts are ultimately approved by Congress, NACAA strongly urges EPA to allocate the reduction in the regional allocations of Section 105 funds by equal percentages, rather than targeting four specific pollutants. This would help ensure that the funding distribution does not unfairly exacerbate the already difficult conditions with which state and local agencies will be faced.

Particulate Matter Monitoring

It appears EPA is assuming that, by shifting fine particulate matter (PM_{2.5}) monitoring from Section 103 to Section 105 authority, the reduction in funding will be made up by the required 40-percent match and EPA can still mandate that the funds be spent only on PM_{2.5} monitoring. In reality, however, many state and local agencies will not be able to make up the cut in funding for PM_{2.5} monitoring and the monitoring will compete with other state and local priorities once the funding is moved under Section 105 authority.

The President's budget reduced PM_{2.5} monitoring funds by 40 percent just when monitoring costs are expected to increase due to new particulate standards. State and local agencies will be faced with carrying out important PM_{2.5} monitoring activities with greatly diminished monitoring resources, or reducing the monitoring network. EPA should not assume that state and local governments will be able to make up this lost revenue. Most agencies are facing ongoing budget restrictions, so that there are few if any additional resources available for

replacing those funds. Agencies that are barely meeting the current match may not be able to accept new Section 105 funds. Those that can increase their match may not be in a position to target the additional funds to PM monitoring in the face of so many competing priorities. Further, agencies that are well above the match are not required to increase their contributions to accept increased Section 105 funds, so no additional state or local funds will be made available in those areas. As a result, agencies could have to choose between cutting other priority work to keep the monitoring program operational or curtailing extremely important monitoring activities.

In shifting monitoring funds from Section 103 to Section 105 authority, EPA should recognize that there is a basic difference between the two programs. Under Section 103, EPA funds 100 percent of the cost of a program. Accordingly, EPA may dedicate the funds to a specific purpose, such as PM_{2.5} monitoring. Section 105 is the federal grant used to provide a portion of the ongoing funding required to state and local agencies to carry out their responsibilities under the Clean Air Act. While many state and local agencies will give high priority to PM_{2.5} monitoring, others will redirect the funds to higher priorities once the funding is moved to Section 105 authority.

Other Ambient Monitoring

The draft guidance states that the National Ambient Air Monitoring Strategy document “will provide agencies with more flexibility in designing their networks” (page 15). Although this was one of the central goals originally, it was premised on level funding allocations for monitoring, which is no longer the case. State and local agencies will now be hard-pressed to meet minimum federal monitoring requirements, let alone enjoy the flexibility to allocate funds to local or regional monitoring needs such as air toxics or supplemental PM_{2.5} sites. Given the deep reduction of the PM_{2.5} monitor funding from \$42 million to \$25 million, it is difficult to see that it can be, as we would all wish, “a large robust network...to support several monitoring objectives...” (page A-21).

NACAA supports multipollutant NCore monitoring, which was a cornerstone of the Strategy, but not at the expense of mandated NAAQS-related monitoring. EPA asks for comment on “the extent to which state and local agencies will be able to re-orient their monitoring programs in FY 2008 to prepare for [NCore]” (page A-18). While the nature of “reorientation” activities is not clear, in light of the continued need for regulatory monitoring, public information monitoring (AIRNOW), the new requirements of the October 17, 2006 regulations, and the slashed FY 2008 budget, it appears unlikely that state and local agencies will have the resources to re-orient their programs to NCore multipollutant sites. EPA should consider scaling back the scope and timing of NCore sites in light of the budget realities.

NACAA agrees that “all pollutants are still of interest depending on local needs and use of the data for other monitoring objectives” (page A-28). We encourage EPA to issue guidance on the Annual Network Assessments, including criteria for concluding which existing carbon monoxide, sulfur dioxide, nitrogen dioxide, lead, PM₁₀ and PAMS monitors should be considered “low value.” We understand that guidance will be released on the Five-Year Network Assessment requirement.

The grant guidance indicates that Acid Rain funds under Section 105 may be used to establish, modernize, and/or operate CASTNET sites (page 11). In the past, EPA proposed to use \$3.5 million in grant funds for this program. NACAA continues to question the technical

viability of CASTNET and objects to the use of state and local air grant funds for its development. We recommend that the CASTNET enhancement project be terminated immediately, and any remaining funds be added to the Regional allocation for the FY 2008 Section 105 grant.

National Set-Asides Held “Off the Top”

Before allocating grants to the EPA regions for distribution to state and local agencies, a portion of the Section 103 and 105 funds are set aside at the national level to support a range of activities. We agree that this is an efficient way to fund agreed-upon priorities. Since Congress provides Sections 103 and 105 grants to state and local air agencies, these set-asides should only exist if state and local agencies concur.

EPA’s draft allocation holds \$2.3 million off-the-top for the NO_x/CAIR Budget system. Originally, states participating in the NO_x State Implementation Plan (SIP) call agreed to off-the-top funding for this program because it was a state initiative used as a SIP strategy that was more efficiently funded that way. Now that EPA has adopted the CAIR program, we believe EPA should take responsibility for administering the program in the same way that the agency administers the Acid Rain program. The cost for administering CAIR should be absorbed by EPA’s budget, not from the Section 105 grant.

Regarding air toxics monitoring, NACAA recommends that the entire \$10 million be shifted to the Section 105 account. The NATTS funds should be shifted proportionally to how they were apportioned in the past so agencies can continue monitoring. The non-NATTS funds should be distributed to the regions according to the same proportion as the balance of the Section 105 grants.

As for the PM_{2.5} associated program costs (e.g., lab costs and quality assurance/quality control), we believe the total set-aside should be reduced to reflect the reduced size of the network. Further, we agreed to support this set-aside when there was sufficient funding. Now that reductions have been proposed, we believe EPA should shoulder these costs.

NACAA has urged EPA to fund training from its own budget, and we have agreed to match EPA’s expenditures for training from the Section 105 grant during the transition to full EPA funding. Elimination of funding for training will result in a loss of training infrastructure that will be very difficult to later replace. Further, elimination of training is not a wise funding choice as it will reduce the effectiveness of federal, state and local programs in the long run. NACAA agrees with EPA’s proposal to hold \$1,995,000 off the top for training and urges EPA to at least match the Section 105 grant funding for training from EPA’s own budget.

Diesel Emission Reduction Program

While NACAA is very disappointed that reductions were proposed for Section 103 and 105 grants in FY 2008, rather than the increases state and local agencies so desperately need, we support increased funding for the Diesel Emission Reduction provisions of the Energy Policy Act of 2005. With respect to EPA’s plans for allocating the diesel funds, NACAA is pleased that EPA does not plan to limit the program to only nonattainment areas. Many state and local agencies have active diesel emission reduction programs that apply outside of nonattainment areas to reduce air toxics, greenhouse gases and haze. We believe that school children who ride

buses in attainment areas deserve the same protection against toxic air pollution as do children in nonattainment areas.

Promoting Competition

While the draft guidance states that it is EPA's policy to promote competition in awarding grants (page A-7), the Section 105 and 103 funds are provided by Congress for state and local agencies. Therefore, if a program is to be competed, it should only be with the concurrence of state and local agencies.

Performance Track

NACAA believes that the Performance Track program should be reevaluated and adjustments made (page 23). At a minimum, incentives proposed for inclusion in State/EPA Memoranda of Agreement, or Regional Performance Partnership Agreements or Grants must be adequately noticed and opportunity for public comment given on this and all other aspects of this program. We also encourage EPA to: 1) raise the standards for admission; 2) insure a consistently high level of achievement among members; 3) evaluate facilities in a holistic fashion rather than enabling them to cull four activities from an environmental performance table; and 4) monitor compliance with the members' environmental commitments.

Air Toxics Standard Development

EPA is required to develop important standards in FY 2008, including several related to Residual Risk and Area Source requirements, yet rule development was not listed among EPA Headquarters' list of priorities (page 25). In light of the importance of effective air toxics rules, NACAA believes this essential activity should be among EPA's priorities for the coming fiscal year.

NACAA Name Change

Finally, we wish to make one minor clarification: as part of NACAA's name change, the association's office in Washington, DC is now known as the "Headquarters", rather than the "Secretariat" (Page A-14).

Thank you for your consideration of our recommendations. Please do not hesitate to contact us if you need additional information.

Sincerely,



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Co-President of NACAA



Ursula Kramer
Pima County, Arizona
Co-President of NACAA