

April 17, 2024

U.S. Environmental Protection Agency  
Docket ID No. EPA-HQ-OAR-2023-0574  
Submitted via [www.regulations.gov](http://www.regulations.gov)

To Whom It May Concern:

The National Association of Clean Air Agencies (NACAA) appreciates the opportunity to provide the following comments on the U.S. Environmental Protection Agency's (EPA) notice, "California State Nonroad Engine Pollution Control Standards; In-Use Locomotive Regulation; Requests for Authorization; Opportunity for Public Hearing and Comment," which was published in the *Federal Register* on February 27, 2024 (89 Fed. Reg. 14,484).<sup>1</sup> NACAA is the national, nonpartisan, non-profit association of 157 air pollution control agencies in 40 states, including 117 local air agencies, the District of Columbia and five 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. These comments are based upon that experience. The views expressed in these comments do not represent the positions of every state and local air pollution control agency in the country.

This matter relates to the California Air Resources Board's (CARB) November 7, 2023, request for EPA to grant California an authorization under Section 209(e)(2) of the Clean Air Act (CAA) for the state's In-Use Locomotive Regulation (Title 13, California Code of Regulations, Section 2478).<sup>2</sup> In brief, we urge EPA to fulfill its statutory obligations and fully and promptly approve this request.

### **State and Local Authority for Regulatory Action Is 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 authorization and waiver requests and continues to make protecting the CAA 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*,<sup>3</sup> "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."

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

In the CAA, 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 and engine emission requirements to serve as a "floor"

<sup>1</sup> <https://www.govinfo.gov/content/pkg/FR-2024-02-27/pdf/2024-03955.pdf>

<sup>2</sup> <https://www.epa.gov/system/files/documents/2023-12/ca-waiver-carb-req-loco-2023-11-07.pdf>

<sup>3</sup> <https://www.4cleanair.org/wp-content/uploads/NACAA2021PresidentialTransitionDocument-01152021.pdf>

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 and engine emission standards led Congress to preempt states other than California from adopting motor vehicle and engine emission standards, Congress does, in Section 177 of the Act, provide that each state is free to choose whether to adopt and enforce the federal emission standards or California's at-least-as-protective-in-the-aggregate standards for new motor vehicles and engines 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 nation by advancing innovative and effective regulatory strategies to reduce air pollution. Congress has consistently recognized and supported California's leadership role in its design of the federal CAA. 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 [and authorization] provision[s] 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>4</sup>

### **California's Waiver Requests**

As established by Congress, EPA's role in granting authorization to California on a particular emissions control rule for non-new nonroad vehicles or engines is narrow and deferential. EPA is not to substitute its judgment for that of CARB as to whether a standard is too technically challenging or too expensive. Moreover, EPA may not base its decision on statutes other than the CAA, or other policy considerations. Rather, EPA must grant California's request for an authorization unless it can demonstrate that one or more of the conditions of Section 209(e)(2) of the Act are not met.

EPA must grant the authorization 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 an authorization did not render the state's mobile source program, considered in the aggregate, less protective than the federal program.

EPA must grant the authorization 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 authorization unless it determines that California's standards and accompanying enforcement procedures are not consistent with the requirements of CAA Section 202.

The In-Use Locomotive Regulation meets all of the statutory criteria that EPA must, and the only criteria that EPA may, consider when responding to a request by California for an authorization. It is therefore incumbent upon EPA to fully approve this authorization request and NACAA urges the agency to do so swiftly..

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<sup>4</sup> *Id.*

Again, thank you for this opportunity to comment. If you have any questions, please feel free to contact either of us or Nancy Kruger, Deputy Director of NACAA..

Sincerely,



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