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U.S. Environmental Protection Agency
EPA Docket Center
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1200 Pennsylvania Ave., NW
Washington, DC 20460

To Whom It May Concern:

On behalf of the National Association of Clean Air Agencies (NACAA), we are submitting the following comments on the U.S. Environmental Protection Agency's (EPA's) proposed rules for regulating Greenhouse Gas (GHG) emissions for the power sector under the Clean Air Act (CAA), titled "*New Source Performance Standards for Greenhouse Gas Emissions From New, Modified, and Reconstructed Fossil Fuel-Fired Electric Generating units; Emission Guidelines for Greenhouse Gas Emissions from Existing Fossil Fuel-Fired Electric Generating Units; and Repeal of the Affordable Clean Energy Rule* (Proposed Power Plant GHG Rules) which was published in the *Federal Register* on May 23, 2023 (88 Fed. Reg. 33,240)¹.

NACAA is the national, non-partisan, non-profit association of 157 state and local air pollution control agencies located in 40 states, the District of Columbia and five territories. The air quality professionals in our member agencies have vast experience dedicated to improving air quality and protecting public health in the U.S. These comments are based on that experience. The views expressed do not represent the positions of every state and local air pollution control agency in the country.

Introduction

Though the proposal implicates many important stakeholder groups, Section 111 of the Clean Air Act vests NACAA's members with the ultimate responsibility to draft, sign, and submit state plans implementing the proposed New Source Performance Standards (NSPS) and Emissions Guidelines (EG) included in the Proposed Power Plant GHG Rules. If

¹ Available online at <https://www.federalregister.gov/documents/2023/05/23/2023-10141/new-source-performance-standards-for-greenhouse-gas-emissions-from-new-modified-and-reconstructed>

finalized, the Proposed Power Plant GHG Rules would regulate GHG emissions from new natural gas-fueled electric generating units (EGUs) while also setting emissions guidelines for the states to address emissions from existing coal and natural gas-fueled EGUs under Clean Air Act (CAA) Section 111.

EPA states that its Proposed Power Plant GHG Rules would yield projected net climate and health benefits ranging from \$64 billion to \$85 billion, an annual net benefit that ranges from \$5.4 billion to \$5.9 billion. Beyond the 617 million metric tons of CO₂ through 2042 that the Proposed Power Plant GHG Rules would reduce directly, they would co-beneficially reduce criteria pollutants significantly: 64,000 short tons of NO_x and 6,000 short tons of PM_{2.5} in 2030 alone², in addition to significant SO₂ benefits. These are needed reductions to stabilize the climate and to address the ongoing burdens on the public and the environment caused by air pollution. The Proposed Power Plant GHG Rules describe a pathway toward meeting the urgency of the climate crisis as it relates to the emissions of GHGs from the electric power sector, which remains a critically important sector in its contributions to global atmospheric GHG concentrations and conventional air pollutants that harm the health of Americans.

As EPA considers how to move forward through the rulemaking process to meet its obligations to protect the public and the environment from power plant GHG emissions, EPA should work to finalize proposal elements consistent with the technical and policy recommendations set forth in these comments. In summary, our comments on the Proposed Power Plant GHG Rules call for EPA to set realistic rulemaking timetables and explicitly enumerate mechanisms to meet those timetables, provide flexibilities that will enable our clean air agencies to successfully implement the rule, clarify requirements that are incompletely described in the proposal, and offer technical support and resources to support the successful implementation of the Proposed Power Plant GHG Rules by state and local clean air agencies.

Coordinating with NACAA Agencies

Our agencies have a long track record of implementing CAA Section 111 standards and EPA should benefit from the experience of the co-regulators who will share in the implementation of any proposal. Given our agencies' tremendous hands-on expertise with the real-world implications of programs that would be affected the proposal, NACAA urges EPA to leverage their existing relationships with NACAA and our agencies to engage with each state and local clean air agency and to consider their input and perspectives with the highest weight and priority. NACAA's January 15, 2021 Transition Letter to the Biden-Harris Administration³ says that "EPA should work closely with state and local agencies as it develops federal rules responsive to the 2009 Endangerment Finding to limit emissions of the six identified GHGs" and "...mine the knowledge of state and local regulators and apply it to the development of nationally

² Noted in EPA's Regulatory Impact Analysis at ES-12, available online at https://www.epa.gov/system/files/documents/2023-05/utilities_ria_proposal_2023-05.pdf

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

consistent federal rules to reduce GHG emissions from industrial and other stationary sources regulated under the Clean Air Act... New federal programs should use innovative mechanisms that provide industry and the public with flexibility and transparency relative to the path to lower emissions and provide the confidence and regulatory certainty necessary for companies to make the required investments.”

The Clean Air Act and its Section 111 are built on a model of cooperation that requires EPA to work in close partnership with clean air regulators in states, cities and counties, to provide flexibility to develop compliance pathways for affected existing sources, which can include emission limitations that are at least as stringent as the federal guidelines. A Final Rule should explicitly state that its emission reduction requirements are a baseline for all agencies, but that state and local regulatory agencies can use their own approaches if their needs are more effectively met with different paths that are overall at least as stringent and health-protective.

The Proposed Power Plant GHG Rules also have components that relate to another EPA proposal, the as-yet-unfinalized December 23, 2022 *Adoption and Submittal of State Plans for Designated Facilities: Implementing Regulations Under Clean Air Act Section 111(d)* (Proposed Section 111 Implementing Regulations)⁴. NACAA offered comments on the Proposed Section 111 Implementing Regulations⁵ on February 27, 2023, and in addition to this letter, NACAA commends these comments to EPA’s attention as well. Consistent with our Section 111 Implementing Regulations comments, NACAA supports many of the provisions and flexibilities offered by the proposed rule. However, several of these areas still require clarification or explicit support in the language of a Final Rule, and EPA’s proposed timelines for state plan development in the Proposed Power Plant GHG Rules will create challenges for state and local regulators if the rule is finalized as proposed. In this comment letter, NACAA identifies the basis for our concerns and makes recommendations that would affect successful implementation of the rule.

Emissions Trading and State Programs

NACAA agencies are established leaders in GHG reduction programs. Robust programs that protect the public and the environment from GHG have been in place and operating for decades, instituted and administered by state and local agencies under their own authorities. Where these programs may play an appropriate role in a state plan, EPA should affirmatively acknowledge them in its Proposed Power Plant GHG Rules and provide approval pathways in state plans for existing programs as broadly as possible, including multistate and regional programs. Some programs may utilize alternative regulatory designs and compliance mechanisms but deliver analogous or greater emission benefits when compared to unit-specific Section 111 standards. EPA should include

⁴ Available online at <https://www.federalregister.gov/documents/2022/12/23/2022-27557/adoption-and-submittal-of-state-plans-for-designated-facilities-implementing-regulations-under-clean>

⁵ Available online at https://www.4cleanair.org/wp-content/uploads/NACAA_111d_Implementing_Regs_Comments--02272023.pdf

emissions trading programs in their articulation of the elements of state plans that may be presumptively approvable in a Final Rule, including any additional steps or information EPA would need to approve them, and meaningful engagement with communities near units that may participate in trading. NACAA reiterates the request we made in our October 31, 2018 comments on the EPA's ACE Proposal⁶: that "EPA take care to ensure that the ... rule, if finalized, does not interfere with existing state and local programs including cap-and-trade programs and state-level GHG reduction goals, and that it does not preclude the development of future programs."

EPA notes that emission trading has been used in the power sector at the federal, regional, and state levels for nearly three decades. State agencies, their federal counterparts, other government officials, power plant operators, stakeholders in the power sector, and actors elsewhere in the private sector thus have extensive familiarity with emission trading, which could make the design and implementation of a mass-based trading program as part of a state plan a proven mechanism to deliver emission benefits quickly, efficiently, and predictably. NACAA supports its affirmative inclusion as a compliance pathway in a Final Rule. EPA should also affirmatively provide flexibility to state and local clean air agencies to employ rate-based and mass-based approaches in state plans for existing sources. This flexibility will ensure state and local agencies have the maximum flexibility to apply the existing source emission guidelines in a manner most appropriate for the affected sources in their state.

NACAA also supports EPA's proposed determination to allow states to apply a more stringent standard than EPA's designated Best System of Emission Reduction (BSER) if they so choose. States may determine that due to early power-plant retirements, the availability of new technology or other factors, a more stringent standard is more beneficial than those required under an emissions guideline promulgated by EPA, and the provision in the proposal accurately articulates the cooperative federalism contemplated in CAA Section 111(d).

BSER Determinations and Compliance Pathways

EPA's proposal describes a number of primary pathways in its determination of the BSER, including highly efficient generating practices; curtailed operations; hydrogen co-firing; and carbon capture and storage (CCS). Of these, CCS has been shown to be technically feasible at projects described in the preamble to the rule, including SaskPower's Boundary Dam Station in Saskatchewan, Canada; AES's Warrior Run facility in Cumberland, Maryland, the Shady Point project in Panama, Oklahoma, and the Bellingham Energy Center in Bellingham, Massachusetts. Hydrogen co-firing is an available combustion approach with fewer deployment examples, although EPA references projects in development by the Los Angeles Department of Water and Power and Intermountain Power Agency. EPA should continue to urge the federal government to strategically target their massive investment through the Inflation Reduction Act rapidly scale up production of this fuel, for use in numerous decarbonization

⁶ Available online at <https://www.4cleanair.org/wp-content/uploads/Documents/NACAAACEComments-10312018.pdf>

applications. EPA's own analysis notes that neither hydrogen co-firing nor CCS are widely deployed in the power sector, and each faces uneven viability in areas where infrastructure for hydrogen may not be easily deployed or where carbon storage may not be possible given available geology. Moreover, while the rule may under some analyzed scenarios result in NO_x reductions, there are also scenarios that involve more hydrogen co-firing that could result in NO_x increases. State, local, and federal clean air agencies have extensive experience with implementing technologies and strategies reducing NO_x emissions, and EPA should leverage this experience as it takes steps to ensure that compliance pathways selected do not result in unintended increases in criteria air pollutants. If during the rulemaking process EPA considers narrowing the BSER pathways to exclude either hydrogen co-firing or CCS, it should in a Final Rule explicitly allow state and local clean air agencies to include all of these technologies as presumptively approvable for unit-by-unit compliance in state plans, if the state plan can demonstrate the technology and compliance pathway achieves emission reductions commensurate with the stringency of the EPA's Proposed Power Plant GHG Rules and does not result in a net increase in criteria air pollutants.

Numerous uncertainties also arise from the low levels of experience that the power sector has in deploying these technologies, and EPA's regulatory design should accommodate a "multipathway" approach to the greatest extent possible. The Proposed Power Plant GHG Rules describe regulatory flexibilities that allow for a "dual pathway" approach, with accommodations for the power sector and states to pursue numerous potential compliance pathways at once. This not only allows for course corrections as technologies mature, and enables approaches that provide equivalent or greater emission benefits in a shorter time or at a lower cost to emerge as conditions evolve. EPA should also consider whether agencies can reclassify the compliance pathway for units without a full plan revision as conditions warrant and identify the types of regulatory mechanisms agencies can create to accommodate dynamic changes in operating conditions at affected units. In addition, the Proposed Power Plant GHG Rules offer states the opportunity to revise plans after initial submittal, and this flexibility should enable more effective and efficient state action in the face of uncertainty.

In its BSER determination, EPA's proposal charts pathways for compliance for existing coal fired units that vary based on these units' period of operation. Coal fired units that have earlier retirement dates may comply using best operational practices with capacity limitations, enforceable provisions that prevent emissions backsliding, and firm retirement commitments. For coal fired units with later retirement dates, the emission guidelines establish CO₂ emission rates achieved based through natural gas co-firing or CCS. Compliance for existing natural gas fired units vary based on capacity utilization and unit type, relying on the use of CCS or hydrogen co-firing to achieve the emission guidelines while excluding the option of applying capacity limits with best operational practices and anti-backsliding provisions. More analysis should be undertaken to ensure that this does not result in the unintended consequence of incentivizing extending the operations of these coal fired units while incentivizing the retirement of natural gas fired units that offer beneficial characteristics, including lower emissions, based solely on regulatory design. EPA should otherwise offer analogous flexibilities that apply to both

existing coal- and natural gas-fueled EGUs, including the development of retirement-based pathways and capacity limitations, the use of averaging and trading, multipath options, and other flexibilities.

In addition to hydrogen, other “drop in” fuels may deliver analogous benefits and may emerge as alternatives. For example, although it is an emerging product and still requires handling as a toxic chemical, “green” ammonia produced on a low or zero carbon basis has high energy density, a significantly lower storage cost, can be stored and transported as a liquid, and benefits from existing upstream, midstream, and downstream infrastructure due to the ubiquity of traditional ammonia use in our economy. Advancements in this arena may enable it to serve as an alternative pathway, along with other emerging “drop in” fuel alternatives. However, as with hydrogen, ammonia can also result in an increase in NO_x emissions, and impacts like these should also be considered as EPA determines potential alternatives to hydrogen. A Final Rule should offer state and local clean air agencies mechanisms to exercise flexibility to employ non-hydrogen fuel alternatives as compliance pathways if they emerge as attractive low-carbon or zero-carbon substitutes and do not result in a net increase in criteria air pollutants.

Implications for State Workload, Permitting Backlog, and Regulatory Burden

The Proposed Power Plant GHG Rules implicate an enormous additional workload for our agencies. These agencies continue to face a great variety of challenges, but if finalized, the proposed rule will almost certainly require agencies to increase their investments in personnel and technical capabilities, and to incur other costs. The federal grants that support state and local clean air agencies remain, for now, funded at effectively the same levels as they were in 2004. Most agencies will face a large number of new permits, state plans, and other activities resulting from the Proposed Power Plant GHG Rules, if finalized. Moreover, all agencies already face inadequate resources to meet their existing and emerging Clean Air Act responsibilities. For agencies that face a daunting number of new permits and an already-stretched workforce and funding, the rule will create implementation challenges if EPA does not match the regulatory responsibilities assigned to these agencies with the resources to carry them out. Underinvesting in people, training, and technical assistance will yield challenges for planning, permitting, community engagement and enforcement by state and local agencies. NACAA urges EPA to ensure that new regulatory responsibilities given to state and local agencies are paired with appropriate levels of federal support that can assure success of the Proposed Power Plant GHG Rules.

NACAA supports the development of an example state plan and model rule language that can be incorporated directly or by reference to meet the Proposed Power Plant GHG Rules. While there are some state programs that are already being implemented or well developed in the proposal stage, many agencies will benefit from a model rule. The opportunity to adopt preapproved rule language, in addition to the option to develop a unique state plan in accordance with the Proposed Power Plant GHG Rules,

is consistent with the Clean Air Act’s cooperative approach and will expand state compliance options while conserving state resources.

NACAA generally supports the provisions for the issuance of variances for Remaining Useful Life and Other Factors (RULOF) articulated in the proposal but encourages EPA to communicate with and implement the feedback of state clean air agencies, who have deep, firsthand experience and understanding of the affected units in their states. Where these conversations identify situations where it is reasonable to deviate from presumptive standards in each EG, EPA should affirmatively include these as presumptively approvable approaches to reduce the regulatory burden on agencies developing and submitting plans.

Technical assistance to our agencies will be essential in the implementation of the Proposed Power Plant GHG Rules, if finalized, and EPA should articulate how it will offer that assistance to enable our agencies to succeed. For example, EPA should consider developing as part of its technical assistance not only guidance and / or model language for plans, but a workbook to compute emissions baselines and reductions, that states can use to develop their plans consistently. EPA should also consider offering a more developed list of examples that agencies can use as templates for making baseline determinations. EPA should also consider the development and deployment of technical assistance “tiger teams” at a regional level to work with individual agencies.

Timeframe for Plan Development and Submittal, and Extension Proposal

The Proposed Power Plant GHG Rules offer 24 months for state plan development. NACAA recommends that EPA consider adding language to the Proposed Power Plant GHG Rules that institutionalizes a process for issuing reasonable extensions. NACAA shares EPA’s goal of efficient, effective, and quick plan development and approval. Our February 23, 2023 comments on EPA’s Proposed Section 111 Implementing Regulations highlighted the concerns NACAA had about the curtailed timeframes for state plan development, suggesting that 24 to 36 months would be a reasonable timeframe for plan development but that this variability would reflect specific and uncontrollable situations that would delay submittal. The development of state plans includes requirements for legislative or regulatory interactions, public hearings, supporting analysis, and other requirements. NACAA continues to express concerns that the timeline in the Proposed Power Plant GHG Rules may not be reasonably achievable by many states needing to align with administrative and legislative processes that are outside of their control. Moreover, EPA’s proposed timeframe will curtail state agency opportunities to develop plans in a way driven by meaningful engagement with affected stakeholders that will deliver public health and environmental benefits, a priority we share with EPA.

To ensure they are able to meet planning timelines, NACAA suggests that EPA articulate a reasonable 24 month baseline in its Proposed Power Plant GHG Rules, but also issue language explaining how it will accommodate longer plan timeframes through

an automatic extension process that allows an agency to submit a plan in line with their procedural requirements and accommodating meaningful engagement.

Although left out of the description of rulemaking steps cited earlier in this letter, EPA notes that “the component that EPA expects to take the most time and have the most variability from state to state is the administrative process (e.g. though legislative process, regulation, or permits) that establishes standards of performance.” NACAA concurs and notes the frequency with which legislative actions and decisions taken by elected officials and other government institutions are required to support the development of a plan by a clean air agency. This is particularly true with respect to any action that includes budget provisions, as budget cycles are frequently linked to legislative calendars that are outside the control of a state administrative agency. Furthermore, it is essential that EPA consult with our agencies directly to determine constraints and timeframes that arise from their regulatory and permitting processes, among other administrative procedures. Anecdotally, in addition to public involvement, plan development, and other implementation steps, 24 months is the minimum generally required to merely incorporate these legislative, regulatory, and other administrative procedures. However, EPA should engage with states directly to determine what administrative actions are needed and what timeframes these will require and base its timeframe or submittal process on a standard that is achievable rather than one that will routinely missed for reasons beyond the control of the state.

Beyond this set of actions, however, EPA has also included new provisions for meaningful engagement with affected stakeholders, which would also have to be incorporated within the agency’s proposed 24-month timeframe. NACAA strongly supports effective and meaningful stakeholder engagement, and notes that our agencies have learned from their pioneering experience in this arena that it requires trust-building with communities, adequate time and careful planning. Moreover, the time and effort invested in building trust and developing policy with meaningful contribution from affected stakeholders is linked directly to the effectiveness with which the plan delivers policies that improve public health outcomes. EPA, state and local agencies, the public, and the courts all recognize the value of identifying the insights and needs of affected constituencies and communities to ensure public health outcomes are effectively delivered. NACAA recommends EPA engage with state and local agencies individually to determine what timeframe offers sufficient time not only for administrative rulemaking but also, based on their long and deep experience, whether it will allow for the kind of meaningful public engagement that has produced the best outcomes in these states in other programs. Where state plans are delayed due to a commitment to meaningful public engagement, the Proposed Power Plant GHG Rules should include a mechanism to automatically allow for a reasonable extension of the timeframe for final plan submission, as described above.

Meaningful Engagement

The Proposed Power Plant GHG Rules call for a “robust and meaningful public participation process” with provisions “to require states to identify and conduct

meaningful engagement with underserved and overburdened communities as they develop state plans.”⁷ This outreach and engagement can include sharing information with all stakeholders throughout the plan development process and seeking their input before a plan is adopted and submitted to EPA. NACAA supports robust public engagement, especially with underserved and disproportionately impacted communities. This aligns with NACAA’s commitment to environmental justice.⁸ Within the rule, EPA should be more specific about what will be approvable for meaningful engagement and commit to providing guidance to our agencies that identifies the objectives and outlines processes and methods of engagement.

Some NACAA members are at the cutting edge of achieving meaningful involvement of vulnerable communities in agency decision-making, with programs that have far longer track records and that are more robust than approaches at the federal level. EPA can and should draw from and benefit from their experience. State and local programs with deep experience in advancing clean air protection with and for vulnerable communities have learned that these efforts are very time- and resource-intensive, not just for agencies but for the communities themselves. Given the tremendous variety of communities, their needs, and their capacities, EPA should set expectations realistically and allow for the flexibility to truly meet the unique needs of these communities, as well as to reflect the economics and demographics of individual states.

State and local agency leadership in this arena includes holding public meetings and open houses very early in the regulatory process to help communities and stakeholders understand the regulations, process, and available options. For maximum effectiveness, for some situations these engagement opportunities may need to be offered multiple times in multiple locations throughout a state. In these situations, these meetings and touch points with state and local regulators sometimes need to occur at times of the day that enable participation from the widest variety of people, and not just those who can attend a meeting during normal business hours of a regulatory agency. Our agencies have also found that to ensure we hear from as many voices as possible, we often must provide a diversity of ways to provide input and avoid relying solely on formal written comments as the way to hear from communities. These alternative means can involve well-crafted surveys, online and electronic tools for gathering input, in-person opportunities, voting-like opportunities to express preferences and priorities, and small-group discussion opportunities. A collection of these tools may need to be deployed multiple times throughout the development of a state plan to avoid the pitfalls of past engagement that too often was a one-and-done transactional interaction near the conclusion of a regulatory process.

⁷ For example, on Page 7 of the Regulatory Text for the Proposed Emissions Guidelines available online at <https://www.epa.gov/system/files/documents/2023-05/Regulatory%20Text%20-%20Proposed%20Emission%20Guidelines.pdf>

⁸ NACAA’s “Mission & Values” and “Statement & Direction for Racial Justice” are available at http://www.4cleanair.org/sites/default/files/Documents/NACAAMissionValuesGoalsandRacialJusticeStatement-10_19_2020-noQ.pdf.

In addition to the logistical tools identified, it is critical that public engagement consider the particular needs of environmental justice communities and disadvantaged communities. If necessary, these needs can include producing information in languages other than English, understanding cultural trust and communication customs, transportation and mobility limitations or opportunities, and effective mechanisms to provide notice of engagement and participation opportunities. Some agencies successfully conducting meaningful engagement have also considered and taken steps to address the imbalance that exists between stakeholders who are paid by their organization to participate in regulatory input processes, and community members who must volunteer their time and energy to participate. Some agencies have also prioritized the inclusion and hiring of culturally-competent community champions from the communities themselves – they are best positioned to reach and engage effectively with the intended audience.

Some states have conducted robust analyses and implemented sophisticated programs, but not all agencies have done this work. EPA can help implementing agencies meet clearly articulated federal requirements by providing resources, guidance, trainings, and other support. Where agencies have completed their own analyses and developed tools and programs in consultation with their local communities and advisory groups, EPA should allow these to serve compliance needs, rather than simply mandating national adoption of federal tools. As EPA brings its own community support resources to bear, it should not be forgotten that some of the most affected communities will be closely tied socially and economically to the fossil fuel economy. Resources should be targeted to help mitigate impacts to these affected communities as well.

ACE Repeal

NACAA supports the Proposed Power Plant GHG Rule's repeal of the July 8, 2019 Affordable Clean Energy (ACE) Rule⁹. Our October 31, 2018 comments on the ACE Rule¹⁰ identified serious concerns with a number of aspects of the ACE Rule, noting that would provide only a nominal national reduction in CO₂ emissions while increasing both GHG and criteria pollutant emissions in many states. Failing to repeal the ACE Rule would also be incompatible with the January 19, 2021 vacatur by the United States Court of Appeals for the District of Columbia Circuit in *American Lung Association et al. v. EPA* (ALA v. EPA, USCA D.C. Circuit Case no. 19-1140).

Thank you for the opportunity to comment on the EPA's proposal *New Source Performance Standards for Greenhouse Gas Emissions From New, Modified, and Reconstructed Fossil Fuel-Fired Electric Generating Units; Emission Guidelines for Greenhouse Gas Emissions From Existing Fossil Fuel-Fired Electric Generating Units*;

⁹ "Repeal of the Clean Power Plan; Emission Guidelines for Greenhouse Gas Emissions From Existing Electric Utility Generating Units; Revisions to Emission Guidelines Implementing Regulations," 84 FR 32520 (July 8, 2019), <https://www.federalregister.gov/documents/2019/07/08/2019-13507/repeal-of-the-clean-power-plan-emission-guidelines-for-greenhouse-gas-emissions-from-existing>

¹⁰ Available online at <https://www.4cleanair.org/wp-content/uploads/Documents/NACAAACEComments-10312018.pdf>

and Repeal of the Affordable Clean Energy Rule. If you have any questions about these comments, please do not hesitate to contact either of us or Miles Keogh, Executive Director of NACAA.

Sincerely,



Frank Kohlasch
(Minnesota)
State Agency Co-Chair
NACAA Climate Change Committee



Alberto Ayala
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