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U.S. Environmental Protection Agency
EPA Docket Center
Air Docket
Docket ID No. EPA-HQ-OAR-2021-0257
Mail Code 28221T
1200 Pennsylvania Avenue NW
Washington, DC 20460

To Whom It May Concern:

The National Association of Clean Air Agencies (NACAA) offers the following comments on the U.S. Environmental Protection Agency's (EPA's) action titled, "California State Motor Vehicle Pollution Control Standards; Advanced Clean Car Program; Reconsideration of a Previous Withdrawal of a Waiver of Preemption; Opportunity for Public Hearing and Public Comment," which was published in the *Federal Register* on April 28, 2021 (86 Fed. Reg. 22,421).¹ NACAA is the national, nonpartisan, non-profit association of air pollution control agencies in 41 states, including 115 local air agencies, the District of Columbia and four territories. The air quality professionals in our member agencies have vast experience dedicated to improving air quality 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.

In this action, EPA seeks comment to inform its reconsideration of the withdrawal, in the September 27, 2019, "Safer Affordable Fuel-Efficient Vehicles Rule Part One: One National Program" ("SAFE 1") (84 Fed. Reg. 53,310),² of two components of the waiver of preemption it granted to California on January 9, 2013 (78 Fed. Reg. 2,112)³ for the state's Advanced Clean Car (ACC) program. The ACC program includes LEV III – revisions to California's Low Emission Vehicle (LEV) program – to further reduce criteria pollutant and greenhouse gas (GHG) emissions from gasoline and diesel-fueled cars and amend the state's Zero Emission Vehicle (ZEV) program. In "SAFE 1," EPA withdrew the GHG and ZEV portions of the waiver.

EPA states in its reconsideration notice, "In considering whether to rescind the action that withdrew portions of the ACC program waiver, EPA is seeking to determine whether it properly evaluated and exercised its authority to reconsider a previous waiver granted to CARB and whether the withdrawal was a valid and appropriate exercise of authority and consistent with judicial precedent." As discussed below, in "SAFE 1," EPA acted outside its authority and must take swift action to fully rescind its withdrawal of California's waiver, thereby restoring the full effectiveness of the ACC program, including as it pertains to the GHG emission standards and ZEV mandate, for all affected model years.

¹ <https://www.govinfo.gov/content/pkg/FR-2021-04-28/pdf/2021-08826.pdf>

² <https://www.govinfo.gov/content/pkg/FR-2019-09-27/pdf/2019-20672.pdf>

³ <https://www.govinfo.gov/content/pkg/FR-2013-01-09/pdf/2013-00181.pdf>

Congress has consistently recognized and supported California's leadership role, which dates back to 1963 when California adopted the nation's first motor vehicle emission standards, in the design of the federal Clean Air Act (CAA). Specifically, the CAA authorizes enforcement of California-developed motor vehicle emission standards in California and other states, subject to limited procedural constraints. This provision has benefited California and the entire nation, allowing states to serve as laboratories of innovation.

At the core of EPA's withdrawal of the GHG and ZEV portions of the 2013 waiver under "SAFE 1" was an issue on which NACAA is unwavering: the issue of states' rights. As established by Congress under CAA Section 209, and interpreted by EPA over the past 50 years, California has authority to adopt its own more stringent clean car standards, subject to an EPA waiver. EPA's role in granting a waiver to California on a particular motor vehicle emission rule is narrowly constrained and deferential. Under the CAA, if California determines that its standards, in the aggregate, will be at least as protective of public health and welfare as applicable federal standards, the waiver must be granted unless EPA finds 1) that California's determination was arbitrary and capricious, 2) that California does not need its state program of standards to meet compelling and extraordinary conditions or 3) that California's standards and accompanying enforcement procedures are not consistent with the CAA.

With respect to the ACC program, which included the GHG emission standards and ZEV mandate, EPA was required to grant the waiver unless it could show that the California Air Resources Board (CARB) acted in an arbitrary and capricious manner when it determined that the ACC program did not render California's mobile source program, considered as a whole, less protective than the federal program. Given the fullness of the public process employed by California and the strength of the administrative record of support for California's decision, there was no basis for EPA to determine that CARB's decision was arbitrary and capricious.

EPA was required to grant the waiver unless it determined that California no longer needed to maintain an independent motor vehicle emissions program. Under prior precedent, the issue was not whether California needed a particular standard or whether any particular standard would significantly contribute to resolving an identified problem unique to California. EPA had consistently determined – for example, in 2003, 2005, 2006, 2009 and 2011 – that there were compelling and extraordinary conditions warranting the continuation of California's vehicle emissions program. California documented its continued struggles to reduce air pollution, particularly pollution attributed to motor vehicles; there was nothing to suggest any significant change in circumstance and nothing to support a determination that California no longer needed an independent motor vehicle program.

EPA was required to grant the waiver unless it determined that California's motor vehicle program was not consistent with the requirements of Section 202(a) of the CAA, which concerns technological feasibility and lead time with consideration of costs. Here again, California's feasibility analysis, based primarily on studies conducted jointly with federal agencies, including EPA, were comprehensive and robust.

EPA appropriately granted the waiver in 2013 because California's ACC program, including the GHG emission standards and ZEV mandate, clearly met the statutory tests upon which EPA must base its determination to grant a waiver. There is nothing in the CAA or elsewhere that allows EPA to withdraw a duly granted waiver at a later time – in this instance, almost seven years later. The agency's withdrawal of the waiver in 2019 was not a valid and appropriate exercise of EPA's authority.

In the CAA, Congress finds 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 requirements to serve as a “floor” for state regulation, it specifically authorizes more stringent state regulation. While consideration of the potential adverse impact on commerce of many different state emission standards led Congress to preempt states other than California from adopting motor vehicle emission standards, Congress does, in Section 177 of the Act, preserve the ability of states to exercise their inherent authority to protect public welfare and choose to adopt and enforce California’s motor vehicle emission standards.

The enabling authority under CAA Sections 209 and 177 has been consistently respected by EPA administrators for decades. Yet, in “SAFE 1,” EPA, for the first time, withdrew a waiver appropriately granted to California for the state’s GHG emission standards and ZEV program and nullified the critically important state authorities for adopting and enforcing these programs. Thirteen states and the District of Columbia have independently exercised their authority under CAA Section 177 to adopt the GHG and criteria pollutant emission standards established by California under its ACC program; 10 of these 14 jurisdictions have adopted the ZEV program, while others (e.g., Minnesota, New Mexico, Nevada, the District of Columbia) are in varying stages of considering adoption of the ZEV program.

For California and Section 177 states, the GHG and ZEV programs allowed by the waiver are vitally important, enabling long-term planning and yielding critical emission reductions that will contribute significantly to states’ abilities to meet their climate goals and their statutory obligations to attain and maintain the health-based National Ambient Air Quality Standards (NAAQS) for criteria pollutants. State planning processes for attaining and maintaining the NAAQS are complex, costly and time consuming. Even small changes to a State Implementation Plan (SIP) or the rules governing NAAQS compliance can cause substantial increases in costs and delays in NAAQS compliance. Retroactively nullifying state compliance options available through Sections 209 and 177, particularly nearly seven years after the waiver was granted, unilaterally disrupts SIPs; seriously impedes, if not outright prevents, attainment and maintenance in California and the jurisdictions that adopted California’s standards; and upends substantial state reliance interests. EPA is required to consider the reliance interests of California and the Section 177 states. Yet, EPA conceded in “SAFE 1” that it did not identify alternative measures that states could use as replacements for the GHG and ZEV standards in their ozone SIPs. It is also necessary to acknowledge that California’s ACC program is important to many non-177 states, which benefit from the emission reductions and resulting critical public health benefits that accrue when California and Section 177 states lead the way.

Many states and local jurisdictions will not meet their goals without increasingly more protective vehicle emission standards and the ZEV program. If the federal government makes the transportation sector off limits, necessary reductions in vehicle emissions of GHGs, criteria pollutants and/or air toxics will have to come from other stationary sources, potentially including power plants and industry. But in some areas, there simply are no other sources; reaching or maintaining clean air goals relies entirely on adequately addressing mobile source emissions.

Moreover, across many jurisdictions, air pollution from vehicles disproportionately harms communities of color and lower income communities. As with SIP planning, to achieve state and local environmental justice goals and provide equitable access to clean air across all communities, states need options for reducing vehicle pollution. The mechanisms for adopting more stringent vehicle standards

envisioned by Sections 209 and 177 of the CAA are critical tools for states in their work towards achieving just environmental outcomes.

Further, EPA's claim in "SAFE 1" that the GHG and ZEV waiver should be revoked is at odds with the core principles of federalism. The CAA is built on a framework of cooperative federalism that facilitates synergies across state, local and federal authorities. Congress recognized that the virtue of national emission standards is that they provide equal treatment and consistency across the country. However, Congress also understood that because pollution levels and local impacts vary widely across the country, national standards will provide inadequate reductions in many states and localities. This variability therefore precludes any single standard from striking a safe and efficient balance everywhere. By authorizing a parallel set of standards to evolve and any state to adopt them where needed, Sections 209 and 177 mitigate the regulatory inefficiencies and potential conflicts with state and local agencies that arise with uniform national standards.

For all these reasons, EPA must act quickly to fully rescind its withdrawal of California's waiver, thereby restoring the full effectiveness of the ACC program, including as it pertains to the GHG emission standards and ZEV mandate, for all affected model years.

Thank you for the opportunity to comment on this very important and welcome action. If you have questions, please contact either of us or Nancy Kruger, Deputy Director of NACAA.

Sincerely,



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