

August 26, 2021

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The Honorable Michael S. Regan
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator Regan:

On behalf of the National Association of Clean Air Agencies (NACAA),¹ we write to you in follow up to our January 15, 2021, recommendations to the Biden-Harris Administration on the regulation of mobile sources and attainment of health-based National Ambient Air Quality Standards (NAAQS).² We understand that you face multiple competing priorities and that there is a narrow window of opportunity for this Administration to take regulatory action on any one of these priorities. While we applaud your leadership in moving quickly to rectify the rescission of the waiver of federal preemption for portions of California's Advanced Clean Car program and the roll-back of light-duty vehicle (LDV) emission standards, we must highlight the importance of also addressing the long-overlooked need for more stringent standards for emissions from the heavy-duty mobile source sector. President Biden's Executive Order 14037 and your recent announcement related to such standards are encouraging. Cleaning up this sector as soon as possible is imperative to putting the country on a path to attaining and maintaining the NAAQS and protecting communities fouled by diesel pollution. Considering this, and consistent with our association's record of comments and letters, NACAA respectfully requests accelerated action by EPA to promulgate new stringent standards for heavy-duty engines and vehicles that will significantly reduce emissions of oxides of nitrogen (NO_x) as soon as practicable.

There is a looming crisis facing many state and local clean air agencies. Currently, over one-third of the U.S. population lives in an area that does not meet the federal standards for ozone, particulate matter or both. Many of these areas are overburdened communities whose citizens are exposed to a disproportionate share of harmful environmental conditions. Emissions from heavy-duty mobile sources – trucks, ships,

¹ NACAA is the national, non-partisan, 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. The comments and recommendations in this letter are based upon that experience. The views expressed in this letter do not represent the positions of every state and local air pollution control agency in the country.

² <https://www.4cleanair.org/wp-content/uploads/NACAA2021PresidentialTransitionDocument-01152021.pdf>

locomotives and aircraft – are the primary causes. They contribute substantial NO_x emissions – the key pollutant contributing to the formation of ozone and secondary particulate matter (PM) – and also toxic diesel PM.

While state and local air agencies have made great strides in reducing emissions from stationary sources, for the most part they lack the authority to regulate mobile sources. That is an authority that lies squarely within the purview of the federal government. Unfortunately, emission standards for these “federal sources” have not kept pace with standards for the light-duty sector or stationary sources, and fall far short of what is needed to meet clean air goals. As large swaths of the country slip deeper into nonattainment, or teeter on the cusp of it, many state and local air agencies are left with few avenues to achieve the emission reductions they sorely need. Areas that miss their attainment deadlines face the threat of “bump-up” to a more demanding classification of nonattainment (if they are not already classified as “extreme”) and statutorily required economic sanctions if they fail to meet their attainment deadlines. Even more perilous, their citizens will continue to suffer the serious adverse impacts of unhealthy air. EPA must step forward and lead the way.

As we state in our January 2021 recommendations, our nation is in need of a strong, sustainable transportation strategy with top priority placed on new federal programs to continue to reduce emissions from the mobile source sector. As this strategy is developed, the need for further reductions in criteria pollutant emissions, especially NO_x and PM, cannot be overlooked. Especially regarding attainment and maintenance of the ozone NAAQS, most areas of the country are “NO_x-limited,” meaning that reducing NO_x emissions is the key to success.

Failure to adequately address these sources will have a direct and consequential impact on state and local air agencies’ abilities to fulfill their statutory obligations to attain and maintain health- and welfare-based NAAQS by mandated deadlines and achieve their environmental justice goals. The gravity of timely compliance with the NAAQS requires federal action; the protection of public health and welfare, particularly in overburdened communities across the country, demands it.

EPA Must Take Immediate Regulatory Action to Significantly Reduce NO_x Emissions from Highway Heavy-Duty Trucks

First and foremost, NACAA has communicated through previous comments that it is urgent that EPA move quickly to issue a revised highway heavy-duty (HD) truck NO_x standard. EPA last set national NO_x emission standards and related requirements for highway HD trucks in January 2001. State and local air agencies have actively urged EPA to take meaningful regulatory action to update and strengthen these standards for years. In fact, in 2020, California set its own state standards to address emissions from new HD trucks sold in California. In August 24, 2020, comments to the California Air Resources Board (CARB) NACAA supported the state’s proposed Heavy-Duty Omnibus Regulation.³ However, as we noted, strong, equivalent federal standards are critically important to address the significant need for NO_x reductions from highway HD trucks in areas all across the country.

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

The previous Administration initiated a rulemaking in 2018 in response to years of requests. However, we fear that the central focus on NO_x reductions that this initiative requires, to secure emission reductions as quickly as possible to protect public health, has shifted and, along with it, EPA's timetable for action. Although a proposed national rule was ready when President Biden took office, we have been stymied by the absence of this initiative from EPA's Spring 2021 Regulatory Agenda – released in the spring and announced in the *Federal Register* on July 30, 2021 (82 Fed. Reg. 41,276) – listing efforts slated for regulatory action in the next 12 months.⁴ Therefore, we were relieved when we read in the August 5, 2021, Executive Order on Strengthening American Leadership on Clean Cars and Trucks⁵ that President Biden has called upon EPA to establish new NO_x standards for HD vehicles, but troubled by the dates associated with this initiative: a proposed rule by January 2022 and a final rule by December 2022. Although we are pleased with a final goal that would allow for the inclusion of the 2027 model year (MY), we remain dissatisfied with the slow pace of this initiative – both for the proposed and final rules – and are concerned that if the “final-hour” December 2022 date is missed the 2027 MY will be lost.

We understand, from an August 5, 2021, EPA press release (announcing the proposed rule to revise the LDV greenhouse gas (GHG) emission standards)⁶, that your intention is to also include in the rule “targeted upgrades to the current ‘Phase 2’ GHG emission standards for that model year”; we recommend that such provisions be pursued in a parallel rulemaking, not in this one. While we recognize the critical need for GHG reductions, especially in light of the August 9, 2021, report from the Intergovernmental Panel on Climate Change⁷, we must still urge that you release a strong NO_x proposal and set in motion a speedy process to a final rule without any further delay.

EPA must take immediate action to issue a proposed rule, not only because revised HD NO_x standards are long overdue, but also because truck emissions contribute substantially to ozone and fine particulate levels, and if left unaddressed will prevent many areas from attaining or maintaining the NAAQS or meeting other clean air and public health goals. In our February 20, 2020, comment letter on the agency's January 21, 2020, Advance Notice of Proposed Rulemaking (ANPRM)⁸ NACAA clearly illustrated – with specific examples from state and local air agencies facing an array of circumstances necessitating NO_x reductions – the true nationwide need for a federal highway HD NO_x rule.

A strong, 50-state standard consistent with California's Heavy-Duty Omnibus Rule is critical if nonattainment areas are to meet their applicable attainment deadlines as prescribed under the Clean Air Act (CAA). In our comment letter on the ANPRM NACAA called for, and elaborated on, a full complement of robust provisions including, among others, the following:

- 1) engines designed to a fundamentally lower standard to achieve a reduction in NO_x emissions of at least 90 percent from current in-use levels as soon as possible but by no later than MY 2027,

⁴ <https://www.govinfo.gov/content/pkg/FR-2021-07-30/pdf/2021-14882.pdf> and https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST¤tPub=true&agencyCode=&showStage=active&agencyCd=2000&csrf_token=3C2AA5C992FCCF4B36FE9EEE8268DBCA3BF4890D84AD51FBFCC28A3E169CFFE5E6230C4BBD00BF1909898D5B9F7A7E148DEB

⁵ <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/08/05/executive-order-on-strengthening-american-leadership-in-clean-cars-and-trucks/>

⁶ <https://www.epa.gov/newsreleases/epa-overhaul-pollution-standards-passenger-vehicles-and-heavy-duty-trucks-paving-way>

⁷ <https://www.ipcc.ch/report/ar6/wg1/>

⁸ https://www.4cleanair.org/wp-content/uploads/Documents/Highway_HD-EPA_ANPRM-NACAA_Comments-022020.pdf

- 2) anti-backsliding requirements for PM,
- 3) in-use performance requirements that ensure achievement of the requisite emission standards across all duty cycles – idling, low load and loaded,
- 4) revamped test procedures correlated to real world operation,
- 5) longer useful life and warranty periods,
- 6) enhanced enforcement, including an updated program for reporting defects,
- 7) onboard diagnostics and vehicle maintenance,
- 8) incorporation of advanced and emerging technologies and
- 9) early introduction of the cleanest engines and technologies for MYs 2024 through 2026.

Because mobile source emission standards take years to phase in, action on the proposed HD NO_x standards must occur immediately and the final rule must follow as expeditiously as practicable.

If EPA does not require sufficient NO_x reductions from HD trucks, or does not take such action immediately, many areas will be forced to adopt severe limits on local businesses. Because the CAA largely preempts state and local regulation of mobile sources, states and local authorities facing ozone nonattainment may be forced to impose extremely stringent limits on stationary sources – for which they have authority to control – at ever-increasing costs, if reductions from such sources are even available. However, such limits will likely not be sufficient to attain the NAAQS in some areas

EPA Must Also Reduce Emissions from Other Source Categories in the Heavy-Duty Mobile Source Sector, Including Ocean-Going Vessels, Locomotives and Aircraft

There are also several other important “federal source” categories within the heavy-duty mobile source sector for which EPA needs to develop pathways to reduce emissions, namely ships, locomotives and aircraft. These categories, which are largely beyond the control of state and local air agencies, are responsible for a substantial and increasing share of NO_x emissions nationwide and will be among the biggest obstacles to attaining and maintaining NAAQS once trucks are addressed. NACAA has raised these categories in previous comments and letters to EPA.

For many areas, ocean-going vessels (OGVs) present an ever-increasing and substantial barrier to attaining federal air quality standards. In areas with port activity, OGVs are a significant source of NO_x and diesel PM. The diesel PM from OGVs impacts local port communities that are often environmental justice areas, while the NO_x from OGVs travels far inland and influences ozone and PM levels thousands of miles away. Regulating OGVs is challenging because they are subject to international regulation. The International Maritime Organization last established NO_x-based emission standards in 2008; however, those standards are far from sufficient and riddled with loopholes such that the incremental reduction in NO_x that these standards could yield has not been realized. We ask that EPA work with the U.S. Department of Transportation and other federal entities involved in the regulation of OGVs to develop meaningful approaches to reducing OGV NO_x emissions.

Locomotives also present a growing challenge; their proportionate contribution of emissions will increase over time if no further action is taken. Reducing these emissions will improve air quality and protect public health in every region of the country. Like OGVs, the diesel PM from locomotives burdens the environmental justice communities adjacent to railyards, while their NO_x emissions contribute substantially

to regional ozone and PM. Unlike OGVs, EPA has clear authority and ability to regulate these sources. CARB petitioned EPA to revise the federal standards for new and remanufactured locomotives in 2017, a petition supported by NACAA.⁹ That petition called for EPA to establish more stringent, health-protective standards for remanufactured locomotives and a Tier 5 standard for new locomotives that would include zero-emission operation capability. Establishing emission standards for remanufactured locomotives is particularly important because it takes many decades to turn the locomotive fleet over to new engines as locomotives are remanufactured several times over their lifetime. Emission standards for remanufactured locomotives will therefore help bring cleaner technologies to the existing fleet. EPA has never responded to this now four-year-old petition. NACAA urges EPA to respond affirmatively to CARB's petition and begin work on a rulemaking.

Finally, we ask that EPA evaluate approaches for reducing NO_x emissions from aircraft. These sources are substantial contributors of NO_x emissions that state and local air agencies are effectively pre-empted from regulating and also subject – but not limited – to an international regulatory regime. EPA should analyze potential technology options and operational practices and take steps to maximize NO_x reductions from aircraft.

EPA Has Much to Gain by Collaborating with State and Local Air Agencies to Develop Strategies to Address These Issues

In our January 2021 recommendations to the Biden-Harris Administration, NACAA states the following:

We are ready to address these challenges together. EPA and NACAA have a shared mission and working in close collaboration will increase our successes exponentially. We look forward to building a truly collaborative, peer-to-peer partnership between EPA and our state and local member agencies and hope that the Administration will create opportunities for intergovernmental conversations and projects to advance science-based air quality protections and climate change progress. We cannot overstate the significant mutual value of EPA reaching out to NACAA in the initial stages of any national air-quality- or climate-related rulemaking or guidance-development process and continuing to work cooperatively throughout the process....The Clean Air Act is based on a vision of federal, state and local co-regulation. We hope the Administration and EPA will join NACAA in committing to creation of a new model for co-regulation that will allow us to achieve our shared clean air and climate goals.

Today, we reiterate NACAA's strong interest in working in partnership with EPA on the issues we have identified and our belief that such collaboration will result in significant mutual value.

⁹ https://www.4cleanair.org/wp-content/uploads/2021/04/CA_Locomotive_Petition-NACAA_Letter_to_Admin_Pruitt-100417.pdf

Toward this end, we request a meeting with you or your designees from among the Office of Air and Radiation's political leadership and senior managers from the career staff. If you have any questions, or to schedule a meeting, please contact either of us or Nancy Kruger, Deputy Director of NACAA.

Sincerely,



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