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U.S. Environmental Protection Agency
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Washington, DC 20460

Attention Docket ID No. EPA-HQ-OAR-2022-0723

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) September 8, 2022 non-regulatory docket seeking input on the power sector strategy being considered by the agency (EPA-HQ-OAR-2022-0723¹), titled "Pre-Proposal Public Docket: Greenhouse Gas Regulations for Fossil Fuel-fired Power Plants". NACAA is the national, non-partisan, non-profit association of 157 state and local air pollution control agencies 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 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.

In 2009, the EPA Administrator issued an Endangerment Finding under CAA Section 202(a)(1)². In the Endangerment Finding, which focused on public health and public welfare impacts within the United States, the Administrator found that elevated concentrations of GHGs in the atmosphere could reasonably be anticipated to endanger public health and welfare. Twelve years (and counting) later, EPA remains subject to

¹ As accessed online at <https://www.epa.gov/stationary-sources-air-pollution/pre-proposal-public-docket-greenhouse-gas-regulations-fossil-fuel>, 9/20/2022.

² As accessed online at https://www.epa.gov/sites/default/files/2016-08/documents/endangermentfinding_faqs.pdf, 9/20/2022.

Clean Air Act obligations to promulgate rules to satisfactorily address this danger.

This letter with NACAA's response to EPA's request for pre-proposal information has both policy recommendations and technical input. First, we offer policy principles that highlight the importance of state, local, and federal coordination from the design stage, reflecting our agencies' role as co-regulators responsible

for implementing the Clean Air Act. Second, we offer technical recommendations, largely drawing from excerpts of a 2015 document that continues to offer a great deal of relevant technical information.

Policy Principles

In NACAA's January 15, 2020 "transition Letter to the Incoming Biden-Harris Administration"³, NACAA called for EPA to act strategically to address greenhouse gas (GHG) emissions:

"Recognizing the overwhelming scientific evidence of the climate crisis, the Administration should implement a comprehensive federal strategy on climate change mitigation and adaptation that addresses all important sources, prioritizes public health, fosters prosperity and makes our nation a leader in technology advancements, emissions reduction strategies and climate justice. In addition, EPA should mine the knowledge of state and local regulators and apply it to the development of nationally consistent federal rules to reduce GHG emissions from industrial and other stationary sources regulated under the Clean Air Act. Federal rules to control GHG emissions would be far more efficient than individual rule development by state and local air agencies. 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."

We restate that call here. Beyond this high-level consideration, NACAA encourages EPA to engage in its rulemaking processes with consideration of the following seven principles:

1. State and local regulators are not simply stakeholders, we are co-regulators of the Clean Air Act, which gives state and local governments a primary role in preventing and addressing emissions that harm public health and create environmental damage. While communities, elected officials, private sector entities, the regulated community, and other state and local entities may be vital touchpoints for EPA's consultation, only air pollution agencies are charged with the implementation of the Clean Air Act in partnership with EPA. The role of co-regulator is particularly important for the Administration's power sector strategy because state and local agencies will be charged with developing state programs

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

and plans, conducting rulemaking, engaging people at the local level– especially in disadvantaged or underserved communities, and the eventual enforcement of pollution reduction requirements.

2. Engagement with the state and local clean air agencies must be meaningful, regular, and substantive. It is best done at the design stage with opportunities to craft foundations that produce synergies with state and local efforts and that streamline the final result. Affording us the opportunity to share access to listen-only briefings does not constitute meaningful engagement; being limited to offering input that is given the same weight as broader stakeholders who - no matter how critical they are - have no role in implementing the Clean Air Act, is likely to result in flawed program design and implementation.
3. State and local agencies have built decades of experience in implementing GHG reduction programs from the power sector. Many of our members are actively engaged in local integrated resource planning processes and work constructively with their electric utilities. EPA must place as its highest priority that its programs leverage, integrate with, and never conflict with, these state and local GHG reduction programs and related policy efforts.
4. EPA should not be limited to its 2015 technical work and may consider other potential options as “best systems of emissions reductions” under Section 111 regulations beyond those referenced in question 1. Regulations compelling control technologies on marginal generation units can perversely incentivize their continued operation by creating new revenue requirements for units that might otherwise retire, and EPA should be judicious in avoiding that perverse incentive. While setting the standard EPA should leave open “inside the fenceline” options which may include renewables and storage, for example, at generation facilities. Any options should be investigated with strict attention to the U.S. Supreme Court’s June 30, 2022 *West Virginia v. EPA* decision⁴, so that additional legal action does not prolong realizing emissions benefits. In addition to the regulatory contours set in *West Virginia v. EPA*, other policy changes should be reconsidered. EPA should use engagement with co-regulators and stakeholders to re-examine the basic assumptions of the CPP, rather than using that experience as a foundation. Many positions, and circumstances have changed in the intervening years (for example, whether a jurisdiction prefers or would realize additional emissions reductions from a rate basis or a mass basis for measuring compliance with the BSER). EPA may wish to keep options open to pathways for its power sector strategy that may cause GHG reduction programs driven by programs other than CAA Sect. 111(d), such as the NAAQS. As EPA explores the form of the regulation, the agency should consult closely with those who will implement these programs – your state and local agency co-regulators.

⁴ U.S. Supreme Court case no. 20-1530, June 30, 2022, https://www.supremecourt.gov/opinions/21pdf/20-1530_n758.pdf.

5. Federal funding support for state and local implementation of the Clean Air Act and climate change programs has been essentially flat since 2004. New regulatory efforts to address power sector emissions will add to the workload of state and local agencies that are already stretched thin accomplishing our existing clean air work, and additional resources will be an essential ingredient in the success of these programs. EPA should redouble its efforts to advocate for adequate and additional funding for our agencies in order to assure the success of power sector pollution reduction programs that we undertake together. Moreover, in program design, EPA should reduce unnecessary burdens on state and local co-regulators by offering flexibility and tools like model rules, state plan language, and the ability to demonstrate equivalency wherever appropriate. Leveraging the Inflation Reduction Act of 2022 provides federal, state, and local governments a once-in-a-generation opportunity to act strategically and together. EPA should also continue to develop tools and analysis that accompanies clear expectations about serving the needs of communities bearing disproportionate pollution and climate harms.
6. While the overall trend of air pollution exposure in the United States is an improving success story, it is uneven and many areas continue to struggle to identify additional emission reduction strategies to attain the NAAQS or avoid becoming nonattainment. EPA's power sector strategy would provide the highest benefits if it achieved not only greenhouse gas reductions but also delivered other multiple co-benefits, including improving air quality, helping jurisdictions attain the NAAQS, protecting public health, and advancing environmental justice and equity.
7. Transparency, consultation, and coordination are not excuses for delay. The climate crisis is urgent and decisions in the next five years will be critical. To avoid the worst impacts, actions may need to be taken, either delegated to our agencies or advanced at the federal level, that precede the finalization of a strategy. We may have to "fly the plane while we build it" for the most immediate reduction actions. Moreover, while climate change is a global burden, cities and states vary in their challenges and strengths. Opportunities for pursuing progress on climate and EPA's regulations should allow, encourage or reward these entities for going beyond baseline federal requirements.

We are ready to address these challenges together. EPA and NACAA have a shared mission and working in close collaboration will increase our chances for success. We look forward to exercising a truly collaborative, peer-to-peer partnership between EPA and our state and local member regulatory 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.

Technical Input

EPA may find that a broader set of technical information is useful for articulating compliance flexibilities than for setting the standard. For its work exploring compliance flexibilities, NACAA offers for EPA's consideration the technical information in excerpted chapters from our 2015 document "Complying with the Clean Power Plan: A Menu of Options" (hereafter called, "the Menu of Options"). NACAA produced the Menu of Options document to assist state and local air agencies to implement EPA's 2015 proposal to address power sector GHG emissions, in what was subsequently dubbed the "Clean Power Plan" (CPP).

The CPP was stayed by the Supreme Court in 2015 and limited in the decision in the June 30, 2022 case, *West Virginia v. EPA*. It is of the utmost importance that EPA consider and adhere to the contours of the *West Virginia v. EPA* ruling to ensure that the air pollution and climate benefits of future rulemakings are realized as expeditiously as possible. Recognizing changes to the regulatory options available to EPA caused by the Supreme Court, NACAA recognizes that several chapters of the Menu of Options would not be relevant to informing options available to EPA in crafting a power sector strategy using Section 111 of the Clean Air Act to address power plant emissions, because they describe policy directions limited by the decision. However, the technical information in the following 7 chapters of the original 26 chapter volume may be valuable touchpoints for EPA's consideration, especially with regard to compliance flexibility options:

Chapter	Title	Description
1	Optimize Power Plant Operations	Explores techniques to permit a plant to improve thermal efficiencies by up to four to seven percent, reducing coal combustion and GHG emissions by an equivalent quantity
2	Implement Combined Heat and Power in the Electric Sector	Focuses on combined heat and power at central electric generating units as a means of reducing the carbon emissions of the power sector
3	Implement Combined Heat and Power in Other Sectors	Discusses how combined heat and power technologies in the commercial, institutional, and manufacturing sectors can reduce CO ₂ emissions across the economy through system-wide gains in energy efficiency that improve economic competitiveness

4	Improve Coal Quality	Discusses different coal types and beneficiation options, examples of different types of beneficiation in practice, and the resulting GHG and environmental impacts of such actions
7	Pursue Carbon Capture and Utilization or Sequestration	Describes the process of carbon capture and storage/utilization, updates the state of projects throughout the United States, and details the regulatory backdrop for this technology
8	Retire Aging Power Plants	Explores the various decision metrics that affect whether a unit is retired and provides examples of how retirement decisions have been carried out in select jurisdictions.
9	Switch Fuels at Existing Power Plants	Explores fuel switching as an emissions reduction option, and outlines three strategies to accomplish fuel switching

We have excerpted these chapters of the original 2015 Menu of Options and include them as an appendix to this letter.

Thank you for the opportunity to provide early input on EPA’s power sector strategy. NACAA looks forward to the implementation of this tremendously important strategy and stands ready to work in close partnership with the agency as we move forward together. 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,

Alberto Ayala
 Sacramento, California
 Local Agency Co-Chair
 NACAA Climate Change Committee

Frank Kohlasch
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