



**Testimony of
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**U.S. Environmental Protection Agency
Hearing on the California Air Resources Board's
December 21, 2005 Request for a
Waiver of Federal Preemption under Section 209(b) of the Clean Air Act for
California's New Motor Vehicle Emission Standards and Test Procedures to
Control Greenhouse Gas Emissions
EPA Docket No. OAR-2006-0173**

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My name is S. William Becker and I am the Executive Director of NACAA – the National Association of Clean Air Agencies. NACAA (formerly known as STAPPA and ALAPCO) represents the state and local air pollution control agencies in 54 states and territories and over 165 metropolitan areas across the country. On behalf of our association, I thank you for this opportunity to testify on California's request for a waiver of federal preemption under Section 209(b) of the Clean Air Act, to permit enforcement of California's new motor vehicle emission standards to control greenhouse gas emissions. NACAA is pleased to offer its strong support for full and prompt approval of California's request.

California's Greenhouse Gas Regulations

The State of California has traditionally led the national effort to reduce air pollution, dating back to 1963 when California adopted the nation's first motor vehicle emission standards. Congress has consistently recognized and supported California's leadership role in its design of the federal Clean Air Act, which specifically authorizes enforcement of California-developed motor vehicle emission standards in California and other states, subject to relatively minor procedural constraints. This provision has

benefited greatly not only California, but the entire nation, allowing states to serve as laboratories of innovation.

In September 2005, after extensive research, consultation with the auto industry and public comment, the California Air Resources Board (CARB) adopted Greenhouse Gas Regulations. The regulations meet the challenge laid out by Assembly Bill 1493¹ to achieve the maximum feasible and cost-effective reductions in greenhouse gases from motor vehicles in a way that will not harm California's economy, will be cost effective for California's drivers and will preserve the right of any citizen to drive whatever class of vehicle he or she desires. In December 2005, CARB requested that the U.S. Environmental Protection Agency (EPA) grant a waiver of federal preemption under Section 209(b) of the Clean Air Act, to permit enforcement of California's regulations. This request has been pending before EPA for 17 months.

Mobile Source Greenhouse Gas Regulation by Other States

In the Clean Air Act, 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, provide that each state can decide whether to enforce the federal emission standards or the at-least-as-stringent California standards for new motor vehicles sold in-state. The federal government has no permissible role in this decision.

Since CARB's adoption of the Greenhouse Gas Regulations, 11 other states – Connecticut, Maine, Maryland, Massachusetts, New Jersey, New York, Oregon,

¹ Now section 43018.5, Division 26 of the California Health & Safety Code.

Pennsylvania, Rhode Island, Vermont and Washington – home to 70 million people, have recognized the benefits of these rules and have adopted statutes or regulations that permit enforcement of California's regulations in their own states. However, these state programs cannot be enforced until and unless EPA grants California's request for a waiver. Thus, EPA's failure to approve California's request in a timely fashion vitiates states' rights to protect the health and welfare of their citizens.

California's Waiver Request

As established by Congress and interpreted by EPA over the past 30 years, EPA's role in granting a waiver to California on a particular motor vehicle emission rule 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 Clean Air Act, or other policy considerations. Rather, EPA must grant California's request for a waiver unless it can demonstrate that the conditions of Section 209(b) of the Act are not met.

EPA must grant the waiver unless it can be shown by clear and convincing evidence that CARB acted in an arbitrary and capricious manner when it determined that the addition of the Greenhouse Gas Regulations did not render California's mobile source program, considered as a whole, less protective than the federal program. Here, it is difficult to imagine how regulating greenhouse gas emissions – where the federal program does not contain any parallel regulations – does anything other than make the California program even more stringent than it was before those regulations were adopted. Given the fullness of the public process employed by California and the strength of the administrative record of support for California's decision, there is no basis for EPA to determine that CARB's decision was arbitrary and capricious.

EPA must grant the waiver 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. EPA determined as recently as December 2006 – one year after California submitted this waiver request – that there were compelling and extraordinary conditions warranting a continuing California vehicle emissions program. In order to now reject California's waiver request, EPA would have to establish that something has occurred since that time that warrants elimination of the California program. In this instance, California has amassed an extensive record documenting its continued struggles with air pollution, with pollution from motor vehicles in particular and with global warming; there is nothing to suggest any significant change in circumstance.

EPA must grant the waiver unless it determines that California's motor vehicle program is not consistent with the requirements of Section 202(a) of the Act. Since California's program contains the same limitations as found in Section 202(a), the required "consistency" is established.

In its April 30, 2007 notice of public hearing and comment on California's waiver request, EPA specifically solicits comment on three additional matters. NACAA will respond to each of these in our written comments as well; our responses will offer further support for granting California's request.

Conclusion

In conclusion, California's Greenhouse Gas Regulations and its request for a waiver are clearly in the public interest. The rules start the process of demonstrating that this country can address global warming and, at the same time, create jobs, enhance energy security, reduce our dependence on foreign oil and save money for the consumer. The rules further provide a number of innovations that will allow California and the 11 states that have elected to opt into the requirements to continue to serve as the laboratory for development of national programs, consistent with the intent of Congress expressed in the Clean Air Act, thus providing a greater degree of robustness

to the federal multi-agency greenhouse gas emission decision-making process, now scheduled for completion by December 2008.

NACAA urges EPA to respond to California's 2005 request without further delay and grant complete approval of the request for a waiver of federal preemption.

Thank you for this opportunity to testify.