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U. S. Environmental Protection Agency
EPA Docket Center
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1200 Pennsylvania Avenue, NW
Washington, D.C. 20450

Re: Docket ID No. EPA-HQ-OAR-2008-0508

To Whom It May Concern:

On behalf of the National Association of Clean Air Agencies (NACAA), thank you for the opportunity to comment on the proposed rule, "Mandatory Reporting of Greenhouse Gases," as published in the *Federal Register* on April 10, 2009 (74 *Federal Register* 16448). NACAA is the national association of air pollution control agencies in 53 states and territories and over 165 major metropolitan areas throughout the United States.

Over the last several years, states have been leaders in deploying mandatory greenhouse gas (GHG) reporting programs. So far, 18 states have enacted (or are in the process of enacting) GHG reporting requirements, many of which go beyond the scope of EPA's proposed mandatory reporting rule. For example, many states have required reporting by sources at thresholds lower than 25,000 tons per year; some have required all sources that have operating permits under Title V of the Clean Air Act to submit GHG data; and many have tailored GHG data requirements to the state's particular mix of industrial sectors and facilities. Moreover, 41 states are members of The Climate Registry (TCR), the nonprofit collaborative of states, Canadian provinces, Mexican states and Native Sovereign Nations that has initiated and supported a well-respected and effective voluntary GHG reporting program.

Tasked by Congress in December 2007 to develop a federal mandatory reporting program for GHG emissions in all sectors of the United States, EPA has compiled in its proposed rule a comprehensive compendium of methodologies for calculating GHGs from different emissions source categories. NACAA commends the agency for its thorough, sector-by-sector analysis of GHG emissions and affected facilities. Moreover, we agree with the conclusion in the *Preamble* that EPA currently has the authority to require GHG reporting under the existing Clean Air Act.¹

¹ 74 *Federal Register* 16454.

Nonetheless, we have questions and concerns about the proposal, which are set forth below.

First, we urge EPA to carefully consider how best to collect these data, and to give further thought to the needs of states and localities and the regulated community. In particular, NACAA believes that data reporting requirements should be consolidated within EPA to the greatest extent possible in order that those reporting are not required to send data on criteria, toxic and GHG pollutants to different parts of the agency on different time lines. The proposal states that “the goal is to have this GHG reporting program supplement and complement, rather than duplicate, U.S. government and other GHG programs.”² This proposal, however, might well be viewed by many as more duplicative than “complementary.” The needs of state and local air agencies (and the regulated community) for streamlining and avoiding duplicative activities can be better met.

For example, the proposed rule states that, “...for sources that do not [currently] report GHGs...EPA proposes to develop a new system for emission reporters to submit the required data.”³ This proposal troubles us, as EPA has spent considerable time and effort over the last several years modernizing its system for collecting criteria pollutant data for the National Emissions Inventory (NEI). In fact, a NACAA/EPA Reengineering Committee consisting of 38 members of NACAA’s Emissions & Modeling Committee and numerous EPA representatives has been convening regularly since mid-2006, brainstorming on how best to reengineer the NEI. The result of this collaborative effort is the Environmental Inventory System (EIS), which is now near completion.⁴

The EIS utilizes a common air emissions reporting schema that was designed to include not only criteria, but air toxics and GHG pollutant data as well.⁵ The benefits of the EIS include greater efficiencies for state, local and industry reporters submitting to multiple programs, clearer and consistent requirements across these programs, and the capability to utilize agency infrastructure, including the Exchange Network, to share data among network participants.⁶ The EIS furthers the goals articulated by the National Academy of Sciences in 2004 in its report titled, “Air Quality Management in the United States” that “more protective and cost-effective multipollutant strategies” be developed by EPA.⁷ In particular, the EIS process will result in an NEI that provides a consolidated “snapshot” nationwide of all state, local, tribal and federal data – including sulfur dioxide data from the Acid Rain Program, nitrogen oxide data, and Toxic Release Inventory (TRI) emission data.⁸ In light of the EIS’ impressive capabilities to inform air quality decisions – to the ultimate benefit of public health – NACAA is very disappointed that the proposed GHG reporting

² 74 *Federal Register* 16456.

³ 74 *Federal Register* 16594.

⁴ See, for example, the Comment submitted to the rulemaking docket of James H. Southerland, formerly of the North Carolina Department of Natural Resources and Environment, which advocates melding of the disparate federal and voluntary programs into an all-inclusive mandatory reporting program based on equipment-level, annual reporting that utilizes the NEI Input Format, or NIF: “Many states utilize web-based computer systems that facilitate reporting by facilities at the equipment level, which provides a good existing skeleton upon which to add relatively minimal additional data that [can be] reviewed by state and local agency staff before submission to EPA/NIF. We do not need to reinvent the wheel!”

⁵ <http://www.exchangenetwork.net/exchanges/air/eis/htm>

⁶ Id.

⁷ National Academy of Sciences Report, “*Air Quality Management in the United States*,” January 29, 2004; http://books.nap.edu/openbook.php?record_id=10728&page=1, p. 6

⁸ *National Emission Inventory Program Update*, power point presentation given by Doug Solomon – U.S. EPA; 2009 Spring CenSARA Membership Meeting, April 23, 2009.

rule apparently will not take advantage of it. State and local air agency NEI experts have been closely involved in its design and development, and are confident that the reengineered EIS represents the gold standard in transparency, flexibility and reliability. NACAA is concerned, particularly in light of current budgetary constraints, that agencies will be asked to start from scratch with a duplicative, undeveloped new system that may not be able to accommodate the massive numbers of complex industrial, mobile, upstream and unconventional sources whose GHG data must now be reported. In summary, the association urges EPA to utilize the EIS for mandatory submission of GHG data.

Second, the proposed rule requires sources to report directly to EPA, bypassing state and local air pollution control agencies. Having compiled criteria pollutant data for 30 years from their facilities in order to comply with the NEI requirements of the Clean Air Act, state and local permitting authorities are experienced with collecting accurate, defensible data from their facilities. Among states that have their own GHG reporting requirements, there is considerable trepidation that EPA may encounter delays in collecting and auditing GHG data, which could impede states from meeting their own, state-mandated deadlines. Therefore, we encourage EPA to provide in the rule that states and localities that choose to directly collect GHG data from their sources be allowed to do so, as advocated by the Western Climate Initiative and others in the public hearings on this proposal. For states that do not choose to collect data in the first instance, data reported to satisfy this rule should be readily available from EPA in a timely manner – electronically and without unwarranted delays. To accomplish this objective, the reporting protocols and procedures of EPA’s data collection system should be compatible and consistent with the reporting protocols and procedures of states, localities and TCR. The rule should also include time lines and schedules for federal data-handling and dissemination to states. Further, to ease the burden on the regulated community, we suggest that EPA should consider how to accomplish this in a manner that does not require duplicate reporting.

Third, we are concerned that EPA’s mandatory GHG reporting rule does not insure a sufficiently high level of data quality and consistency. The agency has proposed to model mandatory reporting of GHGs on its Acid Rain program, which relies on self-certification by reporting facilities, and EPA-performed data verification.⁹ Although this proposed data validation method is consistent with the agency’s original, modest goal of “collect[ing] a reasonable estimate of GHG emissions data that can be used to inform future policy decisions,”¹⁰ it is inadequate in light of today’s legislative landscape. Congress is moving rapidly to implement GHG reduction goals and requirements that will rely on a cap-and-trade system. We are doubtful that the proposed rule’s level of data validation will be sufficient to support the needs of the domestic and international market-based GHG allowance and offset programs that likely will be deployed in the near future. Third-party verification provisions, like those utilized by the European Union’s Emissions Trading System, the United Kingdom’s GHG trading system and the California Air Resources Board, are becoming the international standard and should be added to the rule to provide the data quality, credibility and consistency that is needed for a successful cap-and-trade system whose currency is carbon emissions.¹¹ Such a rigorous approach may not be necessary for all sectors, however. For example, utilities and other facilities that directly

⁹ 74 *Federal Register* 16476.

¹⁰ Regulatory Impact Analysis, *supra* at p.2-8.

¹¹ See TCR’s Public Hearing Comments on the Proposed Mandatory GHG Reporting Rule, p. 4 (April 6, 2009). TCR suggested that cost-effective approaches to third-party verification are available and should be explored by the agency, a recommendation that we support.

measure emissions using Continuous Emissions Monitoring would not likely need additional independent data verification. NACAA recommends that EPA examine the feasibility of a multi-tier approach to verification, with a lower level of data verification for sources directly measuring GHGs emitted into the atmosphere, and a higher level of verification for other sources.

Fourth, we had anticipated that this proposal would have given greater weight to the needs and experiences of state and local air pollution control agencies. Key choices regarding the process and time frames for reporting and the level of reporting appear to have been made by EPA without substantive consultation with states and localities. The agency states in its Regulatory Impact Analysis that it wished to make use of existing cooperative efforts with facilities, and that, therefore, “some reporting requirements of the proposed rule are different from other federal and state programs.”¹² These differences, however, are not insignificant. A hodgepodge of regulatory reporting time frames for different programs will be exacerbated by the proposal unless harmonized. Specifically, the proposed rule requires annual reporting for data from most industrial sources on March 31, but requires data from EGUs to be reported quarterly. Criteria pollutant data for the NEI must be reported 12 months after the end of the calendar year, or December 31, under the Air Emissions Reporting Rule. TRI data must be reported to EPA annually on July 1. States and localities believe that these disparate reporting times can and should be harmonized, and that agencies should be consulted about the best, most efficient way to do so. Although NACAA is mindful that EPA’s proposal was developed on a fast track in order to meet Congressional requirements, a stronger proposal having wider acceptance would have emerged – and still could emerge – from a more collaborative, inclusive process.

Fifth, we assume from the proposal’s silence on the question of preemption that the proposed rule is not intended to preempt state mandatory or voluntary GHG reporting programs. As noted above, 18 states have either promulgated rules, or are in the process of developing rules, establishing their own GHG reporting systems, many of which diverge from the federal proposal. Virtually all states that have enacted reporting rules have undergone lengthy and comprehensive stakeholder processes. Each has culled from the numerous viewpoints of industry, environmental groups, and the public at large the optimum GHG reporting approach. NACAA therefore believes that this federal GHG reporting rule must not preempt or curtail in any way state GHG reporting initiatives. In accord with President Obama’s recent policy Memorandum on Preemption, which supports the adoption by states of “rules and principles that reflect [their] distinctive circumstances and values,” we encourage EPA to include in the rule’s *Preamble* a statement of nonpreemption.¹³

Finally, a program of this scope, affecting all stationary sources emitting more than 25,000 tons of GHGs per year, will inevitably require activities by the state and local permitting authorities in order to be successful. If, as we hope, EPA provides (at a minimum) for delegation to states to collect GHG data, those delegated states will be required to perform a host of new activities. Moreover, non-delegated states as well will be expected by the facilities in their jurisdictions to provide assistance in quantifying GHG emissions and in communicating reporting procedures. Additionally, if EPA chooses to consolidate the reporting functions by utilizing the EIS, harmonizing the time frames and reporting levels to the greatest extent possible, a still greater level of activity by

¹² *Regulatory Impact Analysis for the Mandatory Reporting of Greenhouse Gas Emissions Proposed Rule; Final Report* at p. 2-8, March 2009.

¹³ *Memorandum from President Barack Obama to the Heads of Executive Departments and Agencies on Preemption*, May 20, 2009, p. 1.

air agencies will be required. Whatever decisions are ultimately made, NACAA recommends that the final rule articulate clearly what is expected of states and localities regarding the nationwide GHG reporting rule, and that new, not reprogrammed, funding be provided for all necessary activities. In addition, EPA should provide outreach and training on the GHG reporting rule to the association's members.

NACAA appreciates the opportunity to comment on EPA's proposed rule, "Mandatory Reporting of Greenhouse Gases." Please do not hesitate to contact one of us or Mary Stewart Douglas if you have any questions or require additional information.

Sincerely,



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