

December 19, 2017

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Mr. William Wehrum
Assistant Administrator
EPA Office of Air and Radiation
U.S. Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Avenue, NW
Washington, DC 20560

Dear Mr. Wehrum:

The National Association of Clean Air Agencies (NACAA) is pleased to provide the following principles and recommendations for the Environmental Protection Agency (EPA) to consider as it develops policy and regulatory initiatives intended to help improve and streamline Clean Air Act permitting.

NACAA is a national, non-partisan, non-profit association of state and local air pollution control agencies in 41 states, 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 United States. The observations and recommendations conveyed in this letter are based upon that experience. The views expressed in this document do not necessarily represent the positions of every state and local air pollution control agency in the country.

NACAA's member agencies have primary responsibility for reviewing and issuing most Clean Air Act permits. We recognize the important role that permitting plays in managing our air quality and the successes that have been achieved under the Clean Air Act permitting programs. We also recognize the important role an efficient and effective permitting process plays in supporting a healthy environment and a vibrant economy. The federal New Source Review (NSR) program, as well as state and local agencies' minor source permitting programs, has spurred the development of state-of-the-art pollution control technologies and reduced air pollution from stationary sources, protecting public health while allowing our economy to grow. The federal Title V operating permits program has improved the overall quality of permits throughout the nation, thereby improving overall compliance and the practical enforceability of permit terms and conditions. Working in partnership with EPA and industry, state and local permitting authorities have achieved considerable reductions in air pollution, greatly improving the health and well-being of millions of Americans. EPA now has the opportunity to build upon the success of the permitting programs and find ways to improve the existing programs.

NACAA has reviewed comments provided to the Department of Commerce by business and industry stakeholders in response to a Request for Information (RFI) that sought input on how federal rules and permitting requirements could be made less burdensome for domestic manufacturers. We have also reviewed EPA's *Draft FY 2018-2022 Strategic Plan*, in which the agency commits to finding ways to accelerate permitting decisions and streamlining permit processes,¹ and EPA's *Final Report on Review of Agency Actions that Potentially Burden the Safe, Efficient Development of Domestic Energy Resources Under Executive Order 13783*. Most recently, we studied the report released by the Department of Commerce that summarizes the input received from domestic manufacturers in response to the RFI, particularly the sections related to Clean Air Act permitting issues.

Clearly, air permit program streamlining will be a top priority for EPA in the coming months and years. NACAA's members, as the primary implementers of the Clean Air Act permitting programs, have extensive knowledge and experience with the permitting process and have undertaken a wide range of streamlining efforts. We therefore urge EPA to work collaboratively with state and local agencies throughout all stages of rulemaking or policy development in this area. To the extent EPA chooses to pursue reforms to the NSR program, NACAA stands ready to work with the agency to find ways to make the permitting process more streamlined and address real or perceived inefficiencies with the program.

We understand that EPA's Regulatory Reform Taskforce has been charged with preparing, by December 31, an "Action Plan" that addresses the permitting reform issues highlighted in the Commerce Department's report. As EPA works to finalize that plan, we encourage the agency to think broadly about ways in which the permitting processes can be made more efficient. In that spirit, we offer the following set of principles and recommendations on air permit streamlining.

The list below is divided into two sections. First, we present a set of "Overarching Principles." These are principles that EPA should follow in any permit streamlining initiative. Second, we offer a series of "Recommendations," including both general observations and specific ideas for EPA to consider as it develops its permit streamlining priorities.

I. Overarching Principles

- Our purpose and responsibility as air regulators is to protect public health and the environment from the harmful effects of air pollution. Because the permitting program is one of the programs we implement to achieve this goal, any permit reform or streamlining initiative must maintain or improve upon current levels of public health and environmental protection.
- The integrity of the NSR pre-construction air permitting process is key to realizing national clean air standards in the most economical way, because the best time to control a source is at the time of its construction or major modification. It is far more cost-effective and efficient for a facility to design pollution control equipment into its operations from the inception rather than to install additional controls at a later date.

¹ NACAA submitted comments on the Draft Strategic Plan in a separate letter dated October 31, 2017. See http://www.4cleanair.org/sites/default/files/Documents/NACAA_Strategic_Plan_Comments_10-31-17.pdf

- The permitting process should be open, transparent and inclusive. In undertaking any policy changes aimed at improving air permitting efficiency, EPA must maintain an open, transparent process with reasonable opportunity for public participation, while being mindful of barriers to meaningful public participation in low-income and/or minority communities that may be disproportionately burdened by harmful air pollution.

II. Recommendations

- EPA should not presume that permitting delays are always attributable to inefficient or unfairly burdensome processing by state and local permitting authorities or by the Clean Air Act permit rules themselves. In our members' experience, delays in processing air permits are often the result of applicants submitting incomplete or unapprovable applications. There are a number of actions that we believe could help improve this situation:
 - Support state efforts to improve permit application forms; develop and promote the use of checklists.
 - Create a clearinghouse for permit application forms that agencies can contribute to voluntarily and use to implement best practices.
 - Provide training for consultants and consider requiring use of a certification process for application preparers.
 - Reinvigorate and redesign the Small Business Ombudsman role to include assistance in permit application preparation for small businesses.
- State and local agencies, as well as the private sector, have an urgent need for increased training in Clean Air Act permitting. EPA should significantly increase the resources it devotes to developing, updating and providing such training. At the same time, as EPA's training functions have experienced an unfortunate decline over the past decade, regional and national-scale multi-jurisdictional organizations (including NACAA) have played an increasingly important role in developing and coordinating training opportunities for state and local air agencies. These efforts also merit increased support.
 - Update, reinvigorate and expand EPA's Air Pollution Training Institute "APTI-Learn" courses on Clean Air Act permitting.
 - Increase funding to multi-jurisdictional organizations for developing and providing training.
 - To reduce travel costs, incorporate the use of technology such as webinars and online classes, while also expanding the number of geographic locations where in-person training is offered.
- There are efficiencies to be gained through increased use of electronic permitting (or "e-permitting") at state and local agencies. Many NACAA members either have, or are actively working to implement, systems that allow air permit applications to be

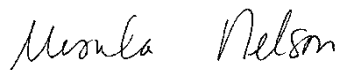
submitted, reviewed, and approved electronically. We encourage EPA to provide active support to bolster these efforts, including additional funding. EPA should work with states and localities to address implementation issues associated with the Cross Media Electronic Reporting Rule, which has presented challenges to many agencies' efforts to streamline their permitting and compliance programs.

- Many state and local agencies have achieved success in improving the efficiency of their permitting processes using techniques such as Lean, Kaizen and Six Sigma. EPA should look for ways to support these efforts.
 - Offer agencies (including EPA itself) the opportunity to map their permitting processes to provide clarity for stakeholders and help identify opportunities for streamlining and improvement.
 - Provide a toolkit for agencies to use in their efforts to evaluate creation of additional efficiencies and help introduce a uniform platform for use in such efforts.
 - Establish a “best practices” resource for state, local and federal agencies, including practices to improve communications between agencies and the regulated community such as pre-application meetings between applicants and permitting agencies.
 - Provide funding to help state and local agencies address inefficiencies in their permitting processes that are identified through use of Lean and similar techniques.
- NACAA supports the RACT/BACT/LAER Clearinghouse (RBLC) and believes it is reasonable to expect data entry by state and local agencies. That said, the RBLC is in urgent need of upgrading to a more modern, user-friendly platform. State and local agencies find the database very difficult and time-consuming to use in its present state.
- To address the declining availability of offsets for NSR permitting in some nonattainment areas (in particular, for ozone) EPA should, where state law allows, expand the geographic areas from which offsets may be secured to include areas that significantly contribute to exceedances of the pollutant in the nonattainment area (irrespective of contiguousness). EPA should also consider expanding the source categories from which offsets can be obtained, subject to the same limitation.
- EPA should focus on improving consistency across and within the EPA Regions with respect to the oversight and guidance they provide to state and local permitting programs. Regional inconsistency can lead to increased permitting times when, for example, a state agency is compelled to elevate to EPA Headquarters a question that has been addressed differently by various EPA Regions. Regional inconsistency can also result in the unequal or unfair treatment of similar sources located in different EPA Regions.

- Many state and local agencies are interested in employing approved “flexible air permitting” approaches such as Alternative Operating Scenarios and advance approvals in Title V and NSR permitting. In their experience, however, these approaches often add significant time and effort to the permitting process because of the customized nature of each flexible permit. Hence, flexible permitting can conflict with the goal of streamlining. There is also perceived variation among the EPA Regions in their level of support for flexible permitting.
 - Where flexible permitting processes are developed, there should be recognition of the time and staffing resources required to develop each flexible permit.
 - EPA should work to improve Regional consistency in this area.
 - NACAA supports EPA’s plans to develop a flexible permitting website and encourages the agency to look for additional opportunities to educate state and local agencies about flexible permitting approaches that maintain or strengthen compliance and promote the development of clean technologies.

NACAA looks forward to continued engagement with EPA on air permit streamlining issues and to commenting on specific proposals. If you have any questions about the principles and recommendations outlined above, please do not hesitate to contact either of us or Karen Mongoven at NACAA (kmongoven@4cleanair.org).

Sincerely,



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