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June 17, 2009

Environmental Protection Agency
EPA Docket Center (EPA/DC)
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1200 Pennsylvania Ave., NW
Washington, DC 20460

To Whom It May Concern:

The National Association of Clean Air Agencies (NACAA), an association of state and local air pollution control agencies in 53 states and territories and more than 165 metropolitan areas throughout the country, appreciates this opportunity to comment on the U.S. Environmental Protection Agency's (EPA's) Proposed Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act, as published in the *Federal Register* on April 24, 2009 (74 *Federal Register* 18886). EPA is proposing to find under section 202(a) of the Clean Air Act that (1) greenhouse gases (GHGs) endanger public health and welfare and (2) the combined emissions of four specific GHGs from new motor vehicles and new motor vehicle engines are contributing to this mix of GHGs in the atmosphere and therefore contribute to the air pollution that is endangering public health and welfare. We commend the agency for issuing these proposed findings and we lend our full support to finalizing them.

These findings are long overdue. In the association's comments on EPA's Advance Notice of Proposed Rulemaking (ANPRM) on Regulating GHGs Under the Clean Air Act and the association's recommendations to the new administration, we called on EPA to propose the GHG endangerment finding.¹ The evidence is overwhelming that GHG emissions from human activities are causing global warming and that this warming is endangering public health and welfare. In 2007, the Intergovernmental Panel on Climate Change (IPCC) concluded that the evidence that global warming is already affecting our planet is "unequivocal, as is now evident from observations of increases in global average air and ocean temperatures, widespread melting of snow and ice, and rising global average sea level."² EPA catalogues much

¹ NACAA, "Comments on EPA's Advance Notice of Proposed Rulemaking (ANPR) on Regulating Greenhouse Gas Emissions Under the Clean Air Act," (November 26, 2008) and NACAA, "Change Is in the Air: Recommendations from the National Association of Clean Air Agencies to President-Elect Obama's Administration for Improving Our Nation's Clean Air Program," (December 16, 2008).

² Intergovernmental Panel on Climate Change, "Climate Change 2007 – A Synthesis Report," (2007), at p. 2, available at <http://www.ipcc.ch/ipccreports/ar4-syr.htm>.

of these data in its Technical Support Document,³ which uses as its core references reports from the IPCC, the U.S. Climate Change Science Program and the National Research Council of the National Academies of Sciences, as well as the Arctic Climate Impact Assessment, an inventory of GHG emissions produced by EPA and an assessment of the impacts of climate change on regional air quality, also produced by EPA. These are all peer-reviewed documents, and that review included the U.S. government. Thus, the proposed finding that GHGs endanger public health and welfare is based on an extensive body of scientific research peer reviewed by thousands of scientists, including scientists in the U.S. government.

We agree with EPA that GHGs endanger both public health and welfare. While GHGs at current and projected concentrations in the atmosphere do not *directly* affect public health, they do so indirectly. In its *Federal Register* notice, EPA states that the impacts of global warming include more frequent heat waves and unusually hot days and nights, increases in regional ozone pollution, and an increase in the spread of several food and water-borne pathogens. All of these changes induced by global warming cause mild and potentially severe health effects, including death. In fact, health effects are specifically mentioned in the IPCC's Synthesis Report as one of the impacts of global warming. In short, we could not say it better than EPA has: "[m]ortality and morbidity that result from the effects of climate change are clearly public health problems."⁴

As officials working to improve air quality and thus improve public health, we are keenly interested and aware of the impacts of global warming on air quality. These are detailed in Section 8 of EPA's Technical Support Document. For particulate matter, the effect of global warming is less certain than for ozone, though the increased drought and wildfires predicted in a global warming world will increase particulate matter levels. For ozone,

"simulated climate change causes increases in summertime [ozone] concentrations over substantial regions of the country, though this was not uniform, and some areas showed little change or decreases. For those regions that showed climate-induced increases, the increase in Maximum Daily 8-hour Average [ozone] concentration, a key metric for regulating U.S. air quality, was in the range of 2-8 [parts per billion], averaged over the summer season. The increases were substantially greater than this during the peak pollution episodes that tend to occur over a number of days each summer."

Thus, global warming will clearly make achieving the ozone National Ambient Air Quality Standards (NAAQS) more difficult for a number of areas, with a discernible impact on ozone levels over the summer and substantial impacts during peak pollution episodes during the summer. The primary ozone NAAQS are designed to protect public health, so the impact of global warming on the ozone NAAQS alone is enough to justify a finding of endangerment of public health (though there is ample evidence of other public health effects as well).

We are also pleased that EPA fulfilled its obligation to base its decision solely on scientific evidence and, accordingly, arrived at the only plausible conclusion: that GHG emissions endanger

³ Climate Change Division, EPA Office of Atmospheric Programs, "Technical Support Document for Endangerment and Cause or Contribute Finding for Greenhouse Gases Under Section 202(a) of the Clean Air Act," (April 17, 2009), available at http://epa.gov/climatechange/endangerment/downloads/TSD_Endangerment.pdf

⁴ 74 *Federal Register* at 18902.

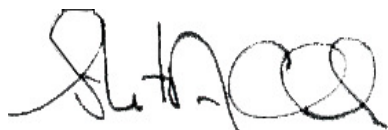
public health and welfare. NACAA has previously stated that EPA must make an endangerment finding based on scientific considerations alone.⁵ Consideration of the potential policy implications of the finding, such as how the agency would handle regulation of GHGs under the Clean Air Act, is wholly inappropriate and must not be a factor in the decision-making process for the finding.

NACAA also supports EPA's finding that the mobile source categories encompassed by section 202(a) cause or contribute to GHG levels in the atmosphere that may reasonably be anticipated to endanger public health and welfare. These source categories in their own right contribute a significant portion of long-lived GHG emissions (carbon dioxide, methane, nitrous oxide and hydrofluorocarbons) to the atmosphere. Furthermore – and of critical importance – EPA correctly points out that no single source category is solely responsible for the climate change problem, and effective solutions need to address many source categories to achieve the necessary collective GHG reductions.

When these two findings are finalized, we believe that EPA can and should use the authorities in the Clean Air Act wisely to regulate GHG emissions. In our comments on the ANPRM, after offering perspectives on the endangerment finding, we went on to explain how regulation of GHGs under the Act is, in fact, quite manageable, and we provided some suggestions in this regard. We are concerned that other commenters have exaggerated the consequences of a positive endangerment finding, claiming it will wreak economic havoc. We disagree strongly. While a positive endangerment finding and a positive cause or contribute finding place a duty on the agency to promulgate regulations to control GHG emissions from new motor vehicles and new motor vehicle engines, these findings themselves do not make GHGs “regulated pollutants” under the Act. After EPA finalizes the endangerment and cause or contribute findings, the agency must next issue a proposal for regulating GHG emissions from new motor vehicles and new motor vehicle engines, and the public must be provided an opportunity to comment on that proposal. We are confident that before EPA finalizes any regulation controlling GHG emissions, it will chart a common-sense pathway for regulating GHG emissions under the Act. In our comments on the ANPRM, we offer several suggestions for how the agency could proceed thoughtfully and deliberately.

Thank you for the opportunity to provide the association's views on EPA's proposed endangerment and cause or contribute findings. If you have any questions, please feel free to contact either of us or S. William Becker, Executive Director of NACAA.

Sincerely,



Stu Clark
Washington
Co-Chair, Global Warming Committee



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Sacramento, California
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⁵ In the association's comments on EPA's ANPRM and the recommendations to the new administration, *supra* note 1.