

March 19, 2009

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Michael Hadrick
Office of Air and Radiation
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Mr. Hadrick:

On behalf of the National Association of Clean Air Agencies (NACAA), thank you for this opportunity to provide comments on the "U.S. Environmental Protection Agency (EPA) Office of Air and Radiation Draft Fiscal Year 2010 National Program and Grant Guidance," dated February 18, 2009. This guidance will eventually apply to the President's budget request for FY 2010, when the details pertaining to the air budget are announced. Since the specifics of that request have not yet been proposed, many of the details that would usually be contained in the draft guidance are absent. It is difficult to provide comments without knowing the size of the budget request or how much will be allocated to each activity. Therefore, we would like to provide additional comments on this or supplemental draft guidance after the details of the FY 2010 budget have been proposed. Also, we would like the opportunity to discuss with you what programs, if any, you are considering funding with grants held off the top of the national grant amount, prior to the issuance of additional guidance. As you know, Congress has made clear that funds be held off the top only with the concurrence of state and local air agencies.

As we have noted in the past, Section 103 and 105 grants are critical to state and local agency efforts to carry out our nation's clean air programs. Budget cuts in recent years, along with the current difficult economic climate, are making it harder for state and local agencies to operate their programs. While significant grant increases are needed to address these budget shortfalls, we recognize the budget constraints facing EPA and Congress and are recommending a total of \$270 million in FY 2010 for Section 103 and 105 grants, an increase of only \$53 million above FY 2008 levels. Additionally, NACAA requests that monitoring activities currently funded under Section 103 authority continue to be funded under that authority.

COMMENTS ON THE DRAFT GRANT GUIDANCE (Appendix A)

Fine Particulate Matter Monitoring

EPA is soliciting comments on a proposal to shift grants for the fine particulate matter (PM_{2.5}) monitoring program from Section 103 authority to Section

105 authority (pages A-12 and A-14). In previous years, this proposal has been accompanied by a recommendation to also cut those funds by the amount of the 40-percent match. NACAA is strongly opposed to such an approach. To keep the program whole and to accept the federal monitoring grants, state and local agencies would need to supply additional matching funds. However, many agencies are currently overmatched and would not be required or able to increase their contributions and, therefore, may not target additional funds to the PM_{2.5} monitoring program. Furthermore, other agencies that do not have additional resources for the match could not make up the difference and may possibly be forced to turn away much-needed grant funds. Shifting the monitoring program to Section 105 authority could result in significant cuts to this important program.

EPA indicates that the annual PM_{2.5} standard was not changed (page A-17). However, on February 24, 2009 the US Court of Appeals of the DC Circuit remanded the annual standard to EPA. It is possible (likely) that there will be revisions of that standard and a need for additional monitors in new areas. Therefore, additional funding would be needed.

Finally, with respect to monitoring for particulate matter, numerous small towns – particularly in the western states – have expanded beyond the 50,000 population level and are now subject to minimum federal PM_{2.5} monitoring requirements. EPA should address this problem and provide funding as appropriate.

Lead Monitoring

The draft includes references to the new lead standard and associated new monitoring requirements and requests comment on the use of community-scale monitoring funds to support the lead monitoring network (page A-10). Additionally, the draft indicates that state and local agencies should begin their network planning now, using Section 105 funds (page A-23). NACAA has previously expressed concern about the financial obligations placed on agencies by new federal mandates. While we understand the budgetary difficulties at the federal level, state and local agencies face even more severe budget constraints. Community-scale project funds have been useful to state and local efforts to identify health risks from air toxics emissions and NACAA would prefer that those funds continue to be made available for their original purpose, rather than expanding them to cover lead as well. However, if no other source of lead monitoring funds is available, NACAA suggests that EPA provide the regions with maximum flexibility to utilize community-scale funding and other funding sources to assist the state and local agencies to develop and operate well thought out and cost-effective lead monitoring networks. All funds made available for lead monitoring should be awarded under the provisions of Section 103 to avoid the requirement to provide matching funds.

Regional Planning Organizations

NACAA is very concerned that EPA is proposing to eliminate funding for the Regional Planning Organizations (RPOs). We believe this will deprive the RPOs – and state and local agencies – of necessary tools and resources to help them carry out technical activities related to regional haze. The need for the services that the RPOs provide is ongoing. While it is difficult to discuss precise amounts for the RPO funding without knowing what the total Section 103/105 budget request will be, NACAA urges EPA to provide at least \$2.5 million in FY 2010 for the

RPOs. Additional recommendations will be forthcoming when the total Section 105/103 request is known.

NO_x/CAIR Budget

The draft calls for Section 105 funds to be set aside for the NO_x/CAIR Budget system. Several years ago, the states participating in the NO_x SIP call agreed to off-the-top funding for this program because it was a state initiative used as a State Implementation Plan (SIP) strategy that was more efficiently funded that way. Now that EPA has adopted the CAIR program, we believe EPA should take responsibility for administering the program in the same way that the agency administers the Acid Rain program. The cost for administering CAIR should be absorbed by EPA's budget, not from Section 105 grants.

EPA should acknowledge in the document that the U.S. Court of Appeals has deemed the CAIR program illegal and remanded it to EPA to correct its flaws. Specifically, EPA needs to address interstate pollution transport in a manner that is consistent with Section 110(a)(2)(D) of the Clean Air Act.

Training

For many years NACAA has recommended that EPA fund training from its own budget, and we have agreed to match EPA's expenditures for training from the Section 105 grant during the transition to full EPA funding. Reductions in training funds will result in a loss of training infrastructure that will be very difficult to replace later. Further, elimination of training is not a wise funding choice as it will reduce the effectiveness of federal, state and local programs in the long run. As in the past, NACAA recommends that EPA hold \$1,995,000 off the top for training and urges the agency to at least match the Section 105 grant funding for training from EPA's own budget. Further, NACAA recommends that adequate staffing support be allocated within EPA to provide necessary training services to state and local agencies. NACAA's Training Committee will convene on March 23-25, 2009 and, as a part of that meeting, will define the critical tasks that EPA should assume to provide a strong national training program to meet future air pollution control needs.

Diesel Emission Reduction Program

NACAA recommends that the funds to support the Diesel Emission Reduction (DERA) provisions of the Energy Policy Act of 2005 not be part of the STAG account, since many of the funds are not provided to state and local governments. We recommend that the funds be provided through one of EPA's other accounts.

With respect to the distribution of the diesel funds, NACAA hopes that EPA will continue to keep the program open to both attainment and nonattainment areas. Many state and local agencies have active diesel emission reduction programs that apply outside of nonattainment areas to reduce air toxics, greenhouse gases and haze.

Co-Regulator Organizations

We note that EPA is not prescribing an approach for state agencies to issue an assurance of prior concurrence with EPA's plan to use off-the-top funds for co-regulatory organizations (page A-10). We agree that EPA should allow each state to determine which mechanism works best and commend EPA for using this strategy.

Grant Competition

With respect to grant competition, EPA notes that co-regulator status is no longer available as an exception to competition for grants for MJOs. As we have indicated in previous comments, we disagree with this view and believe that co-regulator organizations, such as NACAA and the multi-jurisdictional organizations, should continue to be treated under an exception to competition requirements. It would be very inefficient for EPA and those organizations to go through a competitive process when those entities are each uniquely qualified to perform their missions and were established by their members for this express purpose. There are no other organizations that directly represent their members and are able to carry out the national and regional environmental and public health objectives of their members.

NACAA Headquarters

NACAA's office in Washington, DC is now known as the "Headquarters", rather than the "Secretariat" (Page A-9).

COMMENTS ON DRAFT NATIONAL PROGRAM GUIDANCE

Healthy Outdoor Air

The draft document does not recognize the attainment deadlines EPA has set (or that the goal is attainment) or the fact that reasonable progress goals for regional haze must be met by 2018 (under Objective 1.1 – Healthy Outdoor Air, page 6). We believe these goals are important and should be articulated.

Reduction of Air Toxics

NACAA recommends that EPA identify the measures that will achieve the goals stated in the plan (under Subobjective 1.1.2 – Reduce Air Toxics, page 7). These should include completing the statutory and court-ordered mandates under the NESHAP program (e.g., Portland Cement and Utility Boiler Maximum Achievable Control Technology).

NAAQS Priorities for 2010

EPA should provide guidance to state and local agencies in a timely manner. In the past, EPA has issued guidance for the preparation of SIPs well after it is useful to state and local agencies, if at all. For example, guidance for the implementation of the 1997 ozone and

particulate matter NAAQS is still not implemented for New Source Review and modeling, yet these SIPs were due over the past few years.

Thank you for your consideration of our recommendations. We look forward to discussing these and other issues with you when the details of the President's FY 2010 budget proposal are available. In the meantime, please do not hesitate to contact us if you need additional information.

Sincerely,



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