

June 25, 2018

Senator John Barrasso  
Chair  
Senate Committee on Environment and Public Works  
United States Senate  
Washington, DC 20510

Senator Tom Carper  
Ranking Member  
Senate Committee on Environment and Public Works  
United States Senate  
Washington, DC 20510

Senator Shelley Moore Capito  
Chair  
Senate Committee on Environment and Public Works  
Subcommittee on Clean Air and Nuclear Safety  
United States Senate  
Washington, DC 20510

Senator Sheldon Whitehouse  
Ranking Member  
Senate Committee on Environment and Public Works  
Subcommittee on Clean Air and Nuclear Safety  
United States Senate  
Washington, DC 20510

Dear Chairman Barrasso, Ranking Member Carper, Chairwoman Capito and Ranking Member Whitehouse:

The National Association of Clean Air Agencies (NACAA) respectfully provides the attached comments on certain technical issues contained in two bills currently under consideration by the Senate Committee on Environment and Public Works, S. 839 and S. 1857.

NACAA is the national, non-partisan, non-profit association of 156 local and state air pollution control agencies in 41 states, the District of Columbia and four territories. The members of NACAA have the primary responsibility under the Clean Air Act for implementing our nation's clean air program. The air quality professionals in our member agencies have vast experience dedicated to improving air quality in the United States. These comments are based upon that experience. The views expressed in this letter do not represent the positions of every state and local air pollution control agency in the country.

We appreciate your consideration of these perspectives.

If NACAA can be of further assistance, please do not hesitate to contact me at [mkeogh@4cleanair.org](mailto:mkeogh@4cleanair.org) or 202-624-7864.

Sincerely,



Miles Keogh  
Executive Director

**Comments of the National Association of Clean Air Agencies on  
Technical Provisions of  
S. 839, the “Blocking Regulatory Interference from Closing Kilns Act,” and  
S. 1857, the “Relief from New Source Performance Standards Act”**

**June 21, 2018**

The National Association of Clean Air Agencies (NACAA) is providing these comments to express technical concerns with provisions of two bills currently pending before the Senate Environment and Public Works (EPW) Committee, S. 839 and S. 1857.

NACAA is the national, non-partisan, non-profit association of 156 local and state air pollution control agencies in 41 states, the District of Columbia and four territories. The members of NACAA have the primary responsibility under the Clean Air Act for implementing our nation’s clean air program. The air quality professionals in our member agencies have vast experience dedicated to improving air quality in the United States. These comments are based upon that experience. The views expressed in these comments do not represent the positions of every state and local air pollution control agency in the country

S. 839 – the “Blocking Regulatory Interference from Closing Kilns Act” or “BRICK Act” – would prohibit EPA from requiring compliance with the Maximum Achievable Control Technology (MACT) standards for brick and structural clay products manufacturing and clay ceramics manufacturing (Brick and Clay MACT) until all judicial reviews of the regulations are complete.

S. 1857 – the “Relief from New Source Performance Standards Act” – would delay by three years, until May 2023, Step 2 of EPA’s March 2015 New Source Performance Standards (NSPS) for new residential wood-burning heating devices.

S. 839 and S. 1857 had House companions – H.R. 1917 and H.R. 453, respectively. On March 7, 2018, the U.S. House of Representatives approved a version of H.R. 1917 (the BRICK Act) that incorporates the provisions of H.R. 453 (related to the NSPS for residential wood-burning heating devices). H.R. 1917 has been referred to the Senate.

The Senate EPW Subcommittee on Clean Air held a hearing on S. 839 and S. 1857 on November 14, 2017, but the bills have not gone before the Subcommittee or Committee for a vote. Should these bills become the subject of further Senate discussion – or should these issues be taken up in other legislation – we respectfully request that you give careful consideration to, and resolve, the issues we have identified before any action is taken.

**S. 839**

The “Blocking Regulatory Interference from Closing Kilns Act of 2017” would extend the compliance deadline for the Maximum Achievable Control Technology (MACT) standard for the brick and structural clay products manufacturing and clay ceramics manufacturing source categories (Brick and Clay MACT) – including rules promulgated in October and December 2015 *and* any final rule that may succeed or amend

those rules – until judicial review of all such rules is complete and they are “no longer subject to further appeal or review, in all actions.” This includes legal actions “that seek review of any aspect of such rule” filed within 60 days of the rule’s promulgation.

There are three points related to the compliance extension that should be considered and resolved before the Senate makes a determination on the passage of legislation.

First, state and local air pollution control agencies recognize the importance to regulated entities of certainty and clarity with respect to the timing of implementation. Although the bill is aimed at resolving judicial uncertainty, leaving the compliance deadline open-ended instead increases uncertainty. Judicial review can be protracted – sometimes lasting many years – creating a potential incentive for some to prolong the judicial process as long as possible, thereby extending uncertainty for regulated entities as well as for regulators. EPA might also issue successor rules or amendments, which could prolong the judicial process even further. While awaiting final court action, as S. 839 would require, the public, the regulated community and regulators would lack the essential assurances that a known deadline provides.

Second, a provision that postpones compliance until judicial review is complete would be precedent-setting and could be used in the future to justify lengthy and open-ended compliance delays for other rules. Such measures are unnecessary since the court of appeals is already empowered to stay the implementation of a regulation pending completion of judicial review on a case-by-case basis, if it determines a stay is warranted. In the case of the Brick and Clay MACT, the D.C. Circuit did not opt to issue such a stay, while in other cases it has.

Third, and perhaps most importantly, protracted and open-ended delays of regulations would have adverse public health consequences. In the case of the Brick and Clay MACT, for example, EPA estimates that the rule would reduce emissions of hazardous air pollutants from this source category by an additional 375 tons per year. These pollutants include hydrogen fluoride, hydrogen chloride and hazardous metals, exposure to which is associated with acute and chronic health effects, including cancer.<sup>1</sup> Without a clear compliance deadline, these additional emissions could continue causing harm to public health until the judicial process is exhausted, which could be an extensive period of time.

In summary, S. 839’s extension of the compliance deadline until the completion of judicial review creates the unintended consequence of being open-ended and potentially indefinite, and presents a potentially damaging and unnecessary precedent for future rules. Open-ended deadlines and their associated compliance delays would result in ongoing emissions of hazardous air pollutants.

## **S. 1857**

The “Relief from New Source Performance Standards Act” would delay by three years, until May 15, 2023, Step 2 of EPA’s final March 16, 2015 New Source Performance Standards (NSPS) for new residential wood heaters, pellet stoves, hydronic heaters and forced air furnaces (80 Fed. Reg. 13,672). Multiple

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<sup>1</sup> *Fact Sheet – Final Amendments to the Air Toxics Standards for Brick and Structural Clay Products Manufacturing and Clay Ceramics Manufacturing*, U.S. Environmental Protection Agency (September 2015) – [https://www.epa.gov/sites/production/files/2016-03/documents/20150924\\_factsheet\\_brick\\_clay\\_products.pdf](https://www.epa.gov/sites/production/files/2016-03/documents/20150924_factsheet_brick_clay_products.pdf)

manufacturers have already met and surpassed the Step 2 standards that are to take effect in 2020. The proposed delay is unnecessary and unwarranted and would harm public health and the environment,

In 1988, EPA established an NSPS for woodstoves; most pellet stoves were exempt from those standards. In the March 2015 NSPS, EPA revised the 27-year-old emission standards for woodstoves, made these revised standards applicable to all pellet stoves and set the first-ever emission standards for hydronic heaters and forced air furnaces.

Wood smoke contains a mixture of harmful substances that penetrate deep into the lungs. The adverse health impacts of wood smoke can affect large areas as well as local neighborhoods, such as those in valleys where the wood smoke accumulates. In fact, a single wood-burning device can emit enough pollutants to place an entire neighborhood at risk.<sup>2</sup> Each year, residential wood combustion is responsible for hundreds of thousands of tons of PM<sub>2.5</sub> emissions. These emissions can increase the concentration of particle pollution to levels that cause serious health impacts ranging from exacerbation of cardiac and respiratory problems to premature death.<sup>3</sup> Further, PM<sub>2.5</sub> contributes significantly to our nation's regional haze problem. Residential wood smoke also contains volatile organic compounds, carbon monoxide and black carbon, as well as toxic air pollutants such as benzene, formaldehyde, dioxin and polycyclic organic matter (POM). EPA estimates that 44 percent of all stationary and mobile source POM, and almost a quarter of all area source air toxic cancer risks and 15 percent of non-cancer respiratory impacts, can be attributed to wood combustion.<sup>4</sup>

A few states have enacted legislation barring their jurisdictions from enforcing the March 2015 federal NSPS for residential wood-burning heating devices. However, emissions from residential wood combustion cause many counties across America to either exceed, or come precariously close to exceeding, the health-based National Ambient Air Quality Standards (NAAQS) for PM<sub>2.5</sub>. Many states are relying on the emission reductions that will result from the Step 2 NSPS to attain and maintain the NAAQS and/or meet other clean air goals, and have included these reductions in their State Implementation Plans. If EPA's Step 2 NSPS are delayed, these states will be left with a shortfall in emission reductions that could impede their attainment efforts and put nonattainment areas at risk of missing statutory deadlines and attainment areas at risk of violating the NAAQS.

There are complexities around regulating emissions from residential woodstoves at the state level because the devices are installed and operated in private homes. Consumers are able to purchase wood heaters and stoves outside their own state, which could enable them to purchase a device that does not meet the standards of the state where the device will be used. Nonetheless, in the face of a delay, some states and localities that depend on those reductions may – as an alternative to regulating other industries or source categories to offset the emission reduction shortfall (if such other industries or source categories are available) – have no choice but to pursue or build upon their own residential wood heater regulatory programs in order to ensure the anticipated reductions are realized.

In the final NSPS rule, EPA phased in the new emission requirements in two steps to provide manufacturers five years to adapt emission control technologies for Step 2 to their respective model lines.

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<sup>2</sup> Bay Area Air Quality Management District

<sup>3</sup> *Strategies for Reducing Residential Wood Smoke*, U.S. Environmental Protection Agency (March 2013), p. 4 – <https://www.epa.gov/sites/production/files/documents/strategies.pdf>

<sup>4</sup> *Regulatory Impact Analysis (RIA) for Residential Wood Heater NSPS Revisions – Final Report*, U.S. Environmental Protection Agency (February 2015), p. 1-2 – <https://www.epa.gov/sites/production/files/2015-02/documents/20150204-residential-wood-heaters-ria.pdf>

Numerous manufacturers have now made investments enabling them to produce over 200 different models (in all categories – boilers, furnaces and stoves) of the cleaner devices necessary to meet the Step 2 standards in order to be ready for on-time compliance with the May 2020 regulatory deadline. A delay in the deadline would be unfair to those manufacturers by creating an uneven playing field, negating the value of their investment and harming their ability to provide high-paying jobs and contribute to the economy.

In short, the three-year extension to the Step 2 emission standards sought by S. 1857 is unnecessary and would adversely impact public health and the environment and undermine clean air efforts in certain states and local areas as well as harm the bottom line for most manufacturers that have already taken steps to comply.

### **Conclusion**

S. 839 and S. 1857 contain provisions that would create uncertainty, postpone the reduction of air pollutants that harm public health and the environment, frustrate the efforts of many states and localities to comply with their obligations under the Clean Air Act and have the potential to negatively affect manufacturing jobs and the economy. Should the Senate contemplate taking action on these bills, or move forward with these issues through other legislation, each of these concerns should be considered and resolved.

Thank you for considering NACAA's input. If our association can be of further assistance, please do not hesitate to contact Miles Keogh, NACAA's Executive Director, at [mkeogh@4cleanair.org](mailto:mkeogh@4cleanair.org) or 202-624-7864.