

**Testimony of
Nancy R. Kruger
on behalf of the
National Association of Clean Air Agencies
Presented at the
U.S. Environmental Protection Agency
Hearing on the California Air Resources Board's
June 27, 2012 Request for a
Waiver of Federal Preemption under §209(b) of the Clean Air Act for
California's Advanced Clean Car Program
Docket No. EPA-HQ-OAR-2012-0562**

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Washington, DC**

Good morning. I am Nancy Kruger, Deputy Director of NACAA – the National Association of Clean Air Agencies. On behalf of our association, I thank you for this opportunity to testify on the California Air Resources Board's (CARB's) request for a waiver of federal preemption under §209(b) of the Clean Air Act for CARB's new Advanced Clean Car (ACC) program. NACAA is pleased to offer its strong support for full and prompt approval of California's request. This program clearly meets the statutory tests upon which EPA must base its determination and, further, will yield important public health, environmental and economic benefits.

NACAA is a national, non-partisan, non-profit association of air pollution control agencies in 45 states, the District of Columbia, four territories and 116 metropolitan areas. The air quality professionals in our member agencies have vast experience dedicated to improving air quality in the U.S. The comments we offer are based upon that experience. The views expressed in this testimony do not necessarily represent the positions of every state and local air pollution control agency in the country.

California's Advanced Clean Car Program

The State of California has traditionally led the national effort to reduce air pollution, dating back to 1963 when California adopted the nation's first motor vehicle emission standards. Congress has consistently recognized and supported California's leadership role in the design of the federal Clean Air Act, which specifically authorizes enforcement of California-developed motor vehicle emission standards in California and other states, subject to limited procedural constraints. This provision has benefited greatly not only California, but the entire nation, allowing states to serve as laboratories of innovation.

On January 27, 2012, after extensive research, consultation with the auto industry and federal agencies, including EPA, and public comment, the California Air Resources Board unanimously approved a package of new rules for cars and light trucks for model years 2017 through 2025 that combines the control of ozone precursor pollutants and greenhouse gas (GHG) emissions. The ACC program includes LEV III – revisions to California's Low Emission Vehicle program – to further reduce criteria pollutant and GHG emissions from gasoline and diesel-fueled cars; amendments to the state's Zero Emission Vehicle (ZEV) program designed to deliver increasing numbers of ZEVs; and provisions to ensure that adequate fueling infrastructure is available for the planned increase in hydrogen fuel cell vehicles in California.

Among the benefits expected to result from this program are a \$5-billion savings in costs for California drivers in 2025, which will increase to \$10 billion in 2030; a 75-percent reduction in ozone-forming emissions from new vehicles by 2025; ZEVs and plug-in hybrid vehicles accounting for 15.4 percent of new cars sold in California in 2025 (one in seven vehicles), which will mean more than 1.4 million ZEVs and plug-in hybrids on the road in California in 2025; a GHG emissions reduction of 52 million tons by 2025, which is equivalent to taking 10 million cars off the road for a year; and a cumulative reduction of more than 870 million metric tons of GHGs through 2050. CARB estimates the average consumer will save about \$6,000 in fuel costs over the life of their vehicle – an amount that is nearly three times the estimated additional cost per vehicle in 2025. CARB also anticipates that the overall savings generated by the program will result in 21,000

additional jobs in the state in 2015, increasing to 37,000 in 2030. Motorists in other states where this program is implemented are expected to experience similar results.

Of particular note are the ACC program's ZEV provisions, which will serve to advance technology beyond the federal motor vehicle program. As California's motor vehicle programs have demonstrated in the past, forward-looking requirements accelerate commercialization of technology by moving these vehicles beyond research and development to the market. We expect this to be the case with ZEVs under California's ACC program. In turn, these technological advances can form the basis for future national rules. The end result of these provisions, and the ACC program in general, will be cleaner cars and, more importantly, cleaner air and reduced GHG emissions.

California's Waiver and Within-the-Scope-of-the-Waiver Requests

On June 27, 2012, CARB requested that the U.S. Environmental Protection Agency (EPA) 1) grant a waiver of federal preemption under §209(b) of the Clean Air Act to permit enforcement of the LEV III program and 2) confirm that the revisions to the ZEV program are within the scope of a previous EPA waiver decision or, in the alternative, issue a waiver for the ZEV revisions.

As established by Congress and interpreted by EPA over the past 35 years, EPA's role in granting a waiver to California on a particular motor vehicle emission rule is narrow and deferential. The agency must grant California's request for a waiver unless it can demonstrate that the conditions of §209(b) of the Act are not met.

EPA must grant the waiver unless it can be shown that CARB acted in an "arbitrary and capricious" manner when it determined that the ACC program did not render California's mobile source program, considered as a whole, less protective than the federal program. Given the fullness of the public process employed by California and the strength of the administrative record of support for California's decision, we believe there is no basis for EPA to determine that CARB's decision was arbitrary and capricious.

EPA must grant the waiver unless it determines that California no longer needs to maintain an independent motor vehicle emissions program. Under prior precedent the issue is not whether California needs a particular standard or whether any particular standard will significantly contribute to resolving an identified problem unique to California. EPA has consistently determined – for example, in 2003, 2005, 2006, 2009 and as recently as 2011 – that there are compelling and extraordinary conditions warranting a continuing California vehicle emissions program. We believe California has documented its continued struggles to reduce air pollution, particularly pollution attributed to motor vehicles; there is nothing to suggest any significant change in circumstance and certainly nothing to support a determination that California no longer needs an independent motor vehicle program.

EPA must grant the waiver unless it determines that California’s motor vehicle program is not consistent with the requirements of §202(a) of the Act, which EPA has agreed concerns technological feasibility and lead time with consideration of costs. Here again, California’s feasibility analysis, based primarily on studies conducted jointly with federal agencies, including EPA, are comprehensive and robust.

We believe the LEV III program contained in California’s ACC program meets all of the statutory conditions for a waiver. Further, NACAA agrees with CARB that the ZEV program revisions fall within the scope of a prior waiver determination by EPA and that EPA should confirm this, per California’s request. In the event EPA disagrees that the ZEV revisions fall within the scope of a prior waiver determination, the ZEV revisions also clearly meet the Clean Air Act waiver conditions and EPA should grant a waiver for them.

Regulation of Mobile Source Emissions by Other States

In the Clean Air Act, Congress finds that the reduction of air pollution, including that which may have an effect on climate and weather, is the primary responsibility of states and local governments. Although the Act establishes a federal program to set minimum requirements to serve as a “floor” for state regulation, it specifically authorizes more stringent state regulation. While consideration of the potential adverse impact on

commerce of many different state emission standards led Congress to preempt states other than California from adopting motor vehicle emission standards, Congress does, in §177 of the Act, provide that each state can decide whether to enforce the federal emission standards or the at-least-as-stringent California standards for new motor vehicles sold in-state. The federal government has no permissible role in this decision.

Over the years, numerous states have recognized the benefits of California's motor vehicle standards, including LEV and ZEV standards, as well as GHG emissions standards, and have adopted statutes or regulations that permit enforcement of California's regulations in their own states. These state programs, and revisions to them, cannot be enforced until and unless EPA grants California's request for a waiver. States that wish to continue to avail themselves of their statutory authority to adopt and enforce California's vehicle standards also look to EPA to approve California's request in a timely fashion, thus ensuring their rights to protect the health and welfare of their citizens. While we understand that California has proposed a "deemed to comply" rule, whereby California would accept compliance with national program GHG standards, we believe California's request as submitted meets the conditions for a waiver and should serve as an important backstop in the event the national program is either weakened or terminated.

Conclusion

In conclusion, California's ACC program and its request for a waiver and a scope-of-the-waiver determination are clearly in the public interest and fully consistent with the Clean Air Act. NACAA urges EPA to approve California's request as quickly as possible.

Thank you for this opportunity to testify.