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Date XX, 2019

Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Sir or Madam:

The National Association of Clean Air Agencies (NACAA) appreciates this opportunity to comment on the U.S. Environmental Protection Agency's (EPA) *National Compliance Initiatives for Fiscal Years 2020-2023*, which was published in the *Federal Register* on Feb 8, 2019¹. Since this document will help guide EPA's compliance and enforcement activities for the next three years, it could have a profound impact on our nation's efforts to protect public health and the environment. Therefore, we are eager to contribute our thoughts and recommendations as the agency develops the final document.

NACAA is a national, non-partisan, non-profit association of state and local air pollution control agencies in 40 states, including 114 local air agencies, and the District of Columbia and four territories. The members of NACAA have 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 U.S. 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.

EPA's National Compliance Initiatives (NCIs) are a multi-year planning document that allows EPA's Office of Enforcement and Compliance Assurance to target its resources to the most serious environmental violations by identifying national enforcement and compliance program priorities. At a high level, the criteria for inclusion or exclusion from the national priority list seems to focus primarily on whether EPA's activities produce results that are in line with EPA's Strategic Plan goals. In particular, the proposal makes reference to two strategic objectives: addressing vulnerable populations, and addressing clean air act non-attainment areas. This is laudable, but has been inconsistently applied in this proposal, as detailed later in these comments.

A theme missing throughout the document is the recognition of the essential part that both state *and local* agencies play in our nation's environmental programs and the importance of federal efforts to collaborate with these organizations. Indeed, the Clean Air Act articulates the critical role of local air agencies, as well as state agencies, as follows:

*The Congress finds...(3) that air pollution prevention...and air pollution control at its source is the primary responsibility of States and local governments; and (4) that Federal financial assistance and leadership is essential for the development of cooperative Federal, State, regional, and local programs to prevent and control air pollution.*²

Local air pollution control agencies, along with their state counterparts, have tremendous experience and knowledge to contribute to our nation's efforts to obtain and maintain healthful air quality. EPA should rely on the expertise of these air agencies in developing and implementing national

¹ 84 Fed. Reg. 2,849 (February 8, 2019) <https://www.govinfo.gov/content/pkg/FR-2019-02-08/pdf/2019-01548.pdf>

² Clean Air Act Section 101(a)(3) and (4)

compliance and enforcement programs, and they should be explicitly enumerated wherever state and local air pollution control agencies are mentioned.

Another criterion that could be considered by EPA when it considers whether to continue or desist from including areas in its national initiatives is whether agency expertise, resources, and focus are non-substitutable by its state, local, and other partners. In some respects, Agency priorities should focus on where it can do work that its partners cannot. EPA plays an essential role in of addressing sources that are nationally significant – those that represent a substantial portion of the emissions inventory, can be cost-effectively regulated at the national level and offer the potential to reduce emissions of numerous pollutants and precursors that cause or contribute to elevated criteria pollutant levels and numerous other public health and environmental problems. In addition to stationary sources, these also include mobile sources and fuels. As EPA acknowledges in its Strategic Plan, the agency “develops, implements, and ensures compliance with national emission standards to reduce mobile-source-related air pollution from light-duty cars and trucks, heavy-duty trucks, buses, nonroad engines and vehicles, and their fuels” (pp. 11). EPA should consider an additional NCI focused on compliance by mobile sources with applicable laws and regulations.

The NCI proposal seeks comment on whether to extend the inclusion of “Cutting Hazardous Air Pollutants”. NACAA supports this extension. The EPA’s proposal clearly lays out a justification supported by the ongoing process of identifying sources and offering the right tools for efficiently ending non-compliance and meeting the strategic goal of “addressing vulnerable communities”. “Cutting Hazardous Air Pollutants” is an area where continued partnership between the federal government and the state and local air pollution control agencies will yield cleaner air and public health protection for Americans.

EPA proposes to transition the initiative “Ensuring Energy Extraction Activities Comply with Environmental Laws” to a focus on significant sources of volatile organic chemical (VOC) emissions. These emissions continue to harm the health of Americans and are an obstacle to local and state agency effort to bring their non-attainment areas into compliance, particularly for ozone given the role VOCs play as a precursor. NACAA would support the transition of this NCI into “Cutting Hazardous Air Pollutants” provided that, in acknowledgement that all VOCs are not always listed as hazardous air pollutants, resources are more effectively targeted to both problems. However, this merger should not reduce EPA focus and resources on either of these two critical challenges facing state and local legal obligations to implement the Clean Air Act and assure clean air for Americans.

EPA also proposes to no longer include “Reducing Air Pollution from the Largest Sources” on its NCI list, stating “the Agency believes that this NCI no longer presents a significant opportunity to affect nonattainment areas or vulnerable populations nationwide.” NACAA opposes returning this issue to the Core Program and eliminating it from the National Compliance Initiatives. This area of agency effort remains unfinished, and has continued harmful impacts on the health of Americans, the economy, and the environment. The proposal asserts that the EPA has taken significant action under this NCI, but does not provide an analysis on which to form a conclusion that air pollution from large sources is no longer a serious concern. EPA’s own enforcement website³ includes the following statements:

- **Coal-fired power plants.** There are approximately 1,100 coal-fired electric utility units in the United States with an overall capacity of 340,000 megawatts. This sector emits approximately two-thirds of the nation's emissions inventory of sulfur dioxide (SO₂) and approximately one-third of the nitrogen oxides (NO_x). Investigations of this sector have identified a high rate of noncompliance with NSR/PSD when old plants are renovated or upgraded.

³ <https://www.epa.gov/enforcement/air-enforcement>

- **Plants that manufacture sulfuric and nitric acid, which are used in fertilizer, chemical and explosive production.** Acid production plants emit many thousands of tons of nitrogen oxides, sulfur dioxide, and sulfuric acid mist each year. EPA investigations have found a high rate of non-compliance with NSR/PSD in connection with plant expansions and process changes.
- **Glass manufacturing plants.** There are approximately 125 large glass plants operating in the United States. These plants emit approximately 200,000 tons per year of NO_x, SO₂ and particulate matter (PM). Investigation of this sector has shown that there have been a significant number of plant expansions but few applications for the installation of pollution controls required under NSR/PSD.
- **Cement manufacturing plants.** Cement manufacturing plants are the third largest industrial source of air pollution, emitting more than 500,000 tons per year of SO₂, NO_x and carbon monoxide. EPA determined that many cement manufacturers made changes to existing facilities without applying for and obtaining pre-construction permits.

These statements are contradictory to EPA's NCI proposal assertion that "this NCI no longer presents a significant opportunity to affect nonattainment areas or vulnerable populations nationwide." In fact, this NCI is *the most critical* to facilitate improvement in the EPA's strategic goal of affecting nonattainment areas. Keeping this NCI demonstrates EPA's commitment in this area. This NCI should be retained and a stronger commitment made to assuring compliance in this arena, either through federal action, assistance to state and local agencies, or through joint activity.

In August 2018, EPA changed the name of this endeavor from "National Enforcement Initiatives" to "National Compliance Initiatives"⁴ and expressed its intent that this should reflect that enforcement is one tool in a full toolbox that enables conformity with air pollution control laws and regulations. Inasmuch as the change communicates a shift in priorities, EPA should be clear in also communicating a willingness by the Federal government to bring enforcement actions against those who violate the law. The NCIs offer EPA a further chance to signal its priorities and demonstrate that EPA plays a non-substitutable role in our nation's clean air efforts along with state and local air pollution control agencies. This includes being the final provider of assurance that enforcement programs result in compliance with applicable air quality laws and regulations.

On behalf of NACAA, we thank you for this opportunity to provide these comments. If you have any questions please feel free to contact us, or Miles Keogh, Executive Director of NACAA at (202) 624-7864.

Sincerely,

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Virginia DEQ
Co-Chair, NACAA Enforcement Committee

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⁴ <https://www.epa.gov/enforcement/transition-national-enforcement-initiatives-national-compliance-initiatives>