

April 1, 2016

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Administrator Gina McCarthy  
U.S. Environmental Protection Agency  
Air and Radiation Docket and Information Center  
Docket ID No. EPA-HQ-OAR-2014-0827  
Mail Code: 28221T  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

Administrator Mark R. Rosekind  
U.S. Department of Transportation  
National Highway Traffic Safety Administration  
Docket ID No. NHTSA-2014-0132  
Docket Management Facility, M-30  
1200 New Jersey Avenue, SE  
Washington, DC 20590

Dear Administrators McCarthy and Rosekind:

The National Association of Clean Air Agencies (NACAA) appreciates this opportunity to comment on the U.S. Environmental Protection Agency's (EPA) and the National Highway Traffic Safety Administration's (NHTSA) March 2, 2016 joint Notice of Data Availability (NODA) (81 Fed. Reg. 10,822) related to the July 13, 2015 proposed rule, *Greenhouse Gas and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles – Phase 2*. NACAA is a national, non-partisan, non-profit association of air pollution control agencies in 40 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. 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.

NACAA submitted comments to EPA and NHTSA on the proposed Phase 2 rule on September 29, 2015.<sup>1</sup> The comments we offer below supplement those remarks and recommendations. With respect to the issues raised in the NODA, NACAA would like to comment on three in particular: 1) the February 19, 2016 EPA memorandum, *Additional Discussion of Selective Enforcement Audit and Confirmatory Testing for Aerodynamic Parameters for Combination Tractors and for Trailers*; 2) the February 2016 draft EPA Legal

<sup>1</sup> NACAA letter to EPA and NHTSA providing comments on the joint proposed rule, *Greenhouse Gas and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles – Phase 2* (September 29, 2015), [http://www.4cleanair.org/sites/default/files/Documents/Phase2\\_NACAA\\_Comments\\_092915.pdf](http://www.4cleanair.org/sites/default/files/Documents/Phase2_NACAA_Comments_092915.pdf).

*Memorandum Discussing Issues Pertaining to Trailers, Glider Vehicles, and Glider Kits under the Clean Air Act*; and 3) December 28, 2015 comments submitted to the docket by the Specialty Equipment Market Association (SEMA) related to light-duty motor vehicles used for competition racing.

1. February 19, 2016 EPA memorandum, *Additional Discussion of Selective Enforcement Audit and Confirmatory Testing for Aerodynamic Parameters for Combination Tractors and for Trailers*

On February 19, 2016, EPA issued a memorandum, *Additional Discussion of Selective Enforcement Audit and Confirmatory Testing for Aerodynamic Parameters for Combination Tractors and for Trailers*, discussing potential approaches to applying the longstanding principles behind selective enforcement audits and confirmatory testing for aerodynamic measurements. In our September 29, 2015 comments on the Phase 2 proposal, NACAA urged EPA “to do everything feasible to implement in-use compliance.” We believe firmly that the integrity of the Phase 2 program and achieving the associated emissions reductions rely upon strong enforcement and compliance tools and that it is imperative for EPA to finalize a program that is enforceable and auditable and includes confirmatory testing. We are, therefore, pleased that the agency has issued this memorandum to provide further insight into enforcement of and compliance with the Phase 2 program (and, potentially, the Phase 1 tractor program).

2. February 2016 draft EPA *Legal Memorandum Discussing Issues Pertaining to Trailers, Glider Vehicles, and Glider Kits under the Clean Air Act*

NACAA is a strong proponent of regulating greenhouse gas emissions associated with trailers. In our September 29, 2015 comments, we commended the agency for proposing such regulations for the first time at the national level. In fact, we noted our belief that EPA’s proposed trailer provisions missed several opportunities to maximize fuel efficiency technologies in the heavy-duty trailer sector and urged the agency to consider our recommendations for additional provisions in the final rule. NACAA has also expressed support for the agency’s proposal to close the existing loophole for glider kits and glider vehicles, under which pre-2013 engines – with no limit on age – may be installed into new glider kits without meeting applicable standards. We believe EPA has the environmental obligation to regulate trailers, glider vehicles and glider kits, as well as the legal authority to do so in the way it proposes and, in fact, could go further. NACAA, therefore, welcomes the agency’s draft legal memorandum on this issue that provides clarification of the firm legal basis for its proposed actions.

3. December 28, 2015 comments from SEMA related to light-duty motor vehicles used for competition racing

NACAA is troubled by the December 28, 2015 comments submitted by SEMA to the Phase 2 docket, which we believe misconstrue EPA’s intent, existing rules and policy and the Clean Air Act. In its comments, SEMA takes issue with language in the proposed Phase 2 rule where EPA seeks to clarify that certain regulatory provisions related to nonroad vehicles do not, and cannot under the Clean Air Act, apply to onroad vehicles. Under the Clean Air Act, EPA has discretion to allow certified nonroad vehicles to be modified and used for competition. The statute does not provide EPA discretion for certified onroad vehicles. Certified onroad vehicles that are outfitted with aftermarket parts such as those that defeat or delete emission controls are illegal under the Clean Air Act, even if the intention is to use such converted vehicles only for the purposes of competition.

The proposed language in the Phase 2 rule is intended to clarify this distinction; it does not, in any way, change any existing rule or policy. In explaining this provision, EPA is clear that it does not apply to dedicated racecar vehicles – such as NASCAR and Indy vehicles – originally manufactured for the purpose of competition (and, therefore, never certified for onroad use). EPA has also been clear that the Clean Air Act plainly prohibits tampering and the agency has always had the authority to enforce against individual vehicles/owners that violate this law. EPA has never pursued an enforcement case against an individual, as SEMA implies the agency will in the future. Instead, EPA's primary concern is the proliferation and increasing sales and installation of aftermarket parts that defeat or delete emission controls on cars and trucks used on the road in every state across the nation. These parts are readily available for sale online to anyone who wishes to purchase them for any purpose. (Though some of these conversions are intended for creating vehicles that will be used only for competition, many others are done on vehicles intended for continued use on the road. In either case, though, they are not allowed under the Clean Air Act.)

Once again, NACAA appreciates the opportunity to provide comments on these issues raised in the EPA-NHTSA NODA. If you have any questions, please contact me or Nancy Kruger, Deputy Director of NACAA, at (202) 624-7864.

Sincerely,

A handwritten signature in blue ink that reads "Nancy L. Seidman". The signature is written in a cursive style with a large initial 'N'.

Nancy L. Seidman  
Massachusetts  
Chair  
NACAA Mobile Sources and Fuels Committee