NACAA
national association of clean air agencies

June 14, 2007

Air and Radiation Docket (6102T)
Docket ID No. EPA-HQ-OAR-2006-0859
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Sir/Madam:

On behalf of the National Association of Clean Air Agencies, thank you for this opportunity to comment on the Advance Notice of Proposed Rulemaking (ANPRM) on the Risk and Technology Review, Phase II, Group 2, which was published in the *Federal Register* on March 29, 2007 (72 *Federal Register* 14734). The National Association of Clean Air Agencies (NACAA), formerly known as STAPPA and ALAPCO, is the national association of air pollution control agencies in 54 states and territories and over 165 metropolitan areas across the country.

EPA's efforts to compile data on hazardous air pollutant (HAP) emissions and other model input data to use in assessing risk from emissions from industrial source categories is of critical importance. These data will serve as the foundation for EPA's estimates of the risk that remains after the implementation of the Maximum Achievable Control Technology (MACT) standard, for purposes of establishing Residual Risk standards under Section 112(f). Therefore, it is essential that the data be of the highest quality and as complete as possible. If the data are flawed, then the resulting assessments of risk will be inadequate. Additionally, these data will be useful in the agency's effort to review the technology requirements under the MACT standards to determine if additional controls should be required.

In light of the importance of these data, we are pleased that EPA is seeking the input of state and local agencies and sources in improving the information the agency has at its disposal. However, we have serious concerns about the process EPA is using. The agency has not established data-quality standards for filing HAP emissions estimates for the National Emissions Inventory (NEI) and, in fact, does not require that states file any HAP emission estimates. Further, EPA and the states are not required to ensure that the 2002 data are accurate. Therefore, the emissions inventories contained in the 2002 NEI are incomplete and vary widely in quality.

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Additionally, under the approach EPA is using to gather data, sources and states are not required to respond to the Advance Notice of Proposed Rulemaking to correct emissions data. Therefore, there is no incentive for sources to correct the inventory if their emissions have been underreported and the burden on states to insure this information is correct is large, given the lack of federal emission reporting requirements. In NACAA's April 26, 2006 comments concerning the development of the Air Emissions Reporting Requirements (AERR), the association said, "[w]e strongly encourage EPA to include in the AERR a specific requirement for hazardous air pollutants (HAPs) emissions data for Title V facilities and support the consolidation and periodic update of HAPs data in an inclusive, integrated federal database. This information will enable the collection of the information needed to perform air quality assessments necessary to properly develop HAP programs. Without those requirements, however, the end result is a program that will not have the best possible emissions inventory information to make important air pollution control decisions under the Residual Risk program.

In light of this serious short-coming in the data-collection program, we strongly believe EPA should issue legally enforceable "Section 114 letters" for gathering more complete information about sources and their emissions using the authority provided by Section 114 of the Clean Air Act. Through Section 114 letters that request information from sources, EPA could collect quality data that would be useful in conducting the residual risk assessments. We recommend that EPA use this tool at its disposal to ensure that the data underlying the residual risk assessments is of the best possible quality.

We are also concerned about EPA's use of Toxic Release Inventory (TRI) data for the purposes of residual risk assessments. We recognize that the use of TRI data is an attempt to employ all available data in the absence of other information. However, since this is not the intended use of the TRI data, we are concerned about their suitability for this purpose. NACAA is pleased that these data have at least been flagged. However, we believe that still more is necessary to ensure that they are not used improperly. At the very least, we suggest that if TRI data has been used for a pollutant that is an important risk driver, EPA request additional information from the state or local agencies and the sources in an attempt to procure data that are more accurate than those in the TRI.

With respect to the interface to evaluate the data that EPA provided, there are several areas where the existing data cannot be changed or updated. For instance, the emission release point identification cannot be altered, nor can a revision be suggested in any field other than a general comment field. While these data should not change from year to year this information needs to be as accurate as the emissions data and the stack information, especially if the states are to make further comments. EPA needs to provide more flexibility in its interface allowing for *any* field to have a revision column, and not just the few in which EPA is most interested.

Additionally, the inventory available for assessment is the 2002 NEI and any errors associated with that inventory could have been corrected in the 2005 NEI submissions. Yet EPA did not provide the most current inventory to the states, which leaves the states reviewing data that are five years old. EPA has mentioned that the states are more than welcome to use more up-to-date inventory data, however to enter those data into EPA's interface is a time-consuming and daunting task, for which most states do not have resources.

Adding facilities and their associated emissions to the EPA database using the interface is extremely difficult as well. Each emission release point, associated emissions and stack location

must be added individually, line-by-line. EPA should allow states to submit additions to their database as whole files (i.e., Excel or Access) and then EPA should use its own resources to fit the inventory to the database.

NACAA is very concerned about the preliminary risk assessments that EPA has conducted and has made available in the public information docket associated with the ANPRM. We strongly recommend that, prior to issuing a proposed rule, EPA not only incorporate the improved data that are collected through the ANPRM but also address and correct the issues identified below in the new round of risk assessments for these source categories.

Acute Exposure – NACAA does not endorse the use of Acute Exposure Guideline Levels (AEGLs), Emergency Response Planning Guidelines (ERPGs) or Immediately Dangerous to Life or Health (IDLH) values to address acute exposures in the residual risk assessments. These limits were developed for accident release emergency planning and are not appropriate for assessing daily human exposure scenarios. In the December 2002 EPA document, "A Review of the Reference Dose and Reference Concentration Processes", EPA states that the primary purpose of the AEGL program is to develop guidelines for once-in-a-lifetime short-term exposures to airborne concentrations of acutely toxic chemicals. They are not meant to evaluate the acute impacts from routine emissions that occur over the life of a facility. Unlike the reference concentrations (RfCs) for chronic exposures, the AEGLs do not include *adequate* safety and uncertainty factors and cannot be relied upon to protect the public from the adverse effects of exposure to toxic air pollutants. The use of AEGLs in residual risk assessments is not appropriate and does not ensure that public health is adequately protected from the acute impacts of HAP exposure.

Actual Emissions – In evaluating residual risk in the preliminary assessments, EPA considered actual reported emissions instead of potential or allowable emissions. Since facility emissions could increase over time for a variety of reasons, and with them the associated impacts, EPA should consider the risks based on potential or allowable emissions. We believe EPA's analysis, based on actual emissions, from a single point in time underestimates the residual risk from a source category. Further, the major source hazardous air pollutant thresholds are based on maximum potential-to-emit, as opposed to actual emissions, and air agencies issue permits based on potential emissions. Limiting the scope of a risk evaluation to actual emissions would be inconsistent with the applicability section of Part 63 rules. We recommend that EPA conduct residual risk assessments using up-to-date data on potential or allowable emissions. Residual risk assessments must be performed on potential or allowable emissions to fully understand the potential public health implications for a source category.

If EPA nevertheless uses actual emissions, which we oppose, we recommend that the data be treated conservatively. Specifically, an upper confidence limit should be used for annual emission data and the highest rate reported for hourly emission data whenever aggregate data will be assessed. This is particularly relevant as the modeling protocol has stated that no annual fluctuations of emissions will be assumed.

The ANPRM asks commenters to specify mercury speciation for each source category; however, the HEM-3 protocol implies that a 50-50 assumption (divalent and elemental mercury) will be applied. It is unclear which assumptions are intended to be used in the assessments. We suggest that mercury speciation also account for a particle-bound component, establishing three different speciated values.

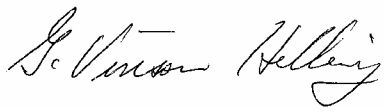
Property-line Concentrations – In assessing the cancer risks related to the source category, EPA used long-term concentrations affecting the most highly-exposed census block for each facility. This analysis dilutes the effect of sources' emissions by estimating the impact at the centroid of the census block instead of at the property line. Census blocks can be large geographically, depending on the population density, so the maximum point of impact can be far from the centroid, including at or near the property line where people may live or work. Further, even if the area near the property line is not developed, over time homes and businesses could locate closer to the facility. While it is possible that population distribution is homogenous over a census block, this assumption is not necessarily accurate in considering the predicted impacts from a nearby point source. Accordingly, NACAA recommends that the impact from all of the sources in a source category be calculated based on concentrations at the property line and beyond and take into account the maximum exposed individual.

State Programs – Some state and local agencies have comprehensive air toxics programs already in place. Under these programs, facilities may have already conducted a site-specific health risk assessment (HRA). Where facilities have existing HRAs under state and local programs, these HRAs should supersede the HRAs conducted by EPA under the Risk and Technology Review (RTR). In California, for example, under the "Hot Spots" program, HRAs are conducted using approved inventories and site-specific data rather than default data presented in the NEI. Unlike the HRAs in the RTR, these HRAs go through a rigorous review and approval process through the local air pollution control district and the Office of Environmental Health Hazard Assessment under the California Environmental Protection Agency. As another example, a similar process is employed in Minnesota as well.

EPA should recognize different HRA methodologies and potency factors, especially if they have gone through public comment and scientific peer review. Because risk results can vary significantly between the state/local HRA and the EPA RTR risk assessment, EPA should allow the more refined state/local HRA to be used in place of the RTR HRA. Presenting two different HRA results will confuse the public and will make risk communication and risk management highly problematic.

Thank you for this opportunity to comment on the proposal. Please contact us if we can provide additional information.

Sincerely,



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