

April 1, 2008

**BOARD OF DIRECTORS**

**Co-Presidents**

Andrew Ginsburg  
Oregon  
Ursula Kramer  
Tucson, AZ

**Co-Vice Presidents**

Colleen Cripps  
Nevada  
Arturo J. Blanco  
Houston, TX

**Co-Treasurers**

G. Vinson Hellwig  
Michigan  
Larry Greene  
Sacramento, CA

**Past Co-Presidents**

John Paul  
Dayton, OH  
Shelley Kaderly  
Nebraska

**Directors**

Robert D. Elliott  
Vancouver, WA  
Joyce E. Epps  
Pennsylvania  
Anne Gobin  
Connecticut  
James Hodina  
Cedar Rapids, IA  
Lynne A. Liddington  
Knoxville, TN  
Keith Overcash  
North Carolina  
David J. Shaw  
New York  
Paul Tourangeau  
Colorado  
Mary Uhl  
New Mexico

**Executive Director**

S. William Becker

Jerry Kurtzweg  
Director  
Office of Program Management Operations  
Office of Air and Radiation  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

Dear Jerry:

On behalf of the National Association of Clean Air Agencies (NACAA), thank you for this opportunity to provide comments on the “Environmental Protection Agency (EPA) Office of Air and Radiation Draft FY 2009 National Program and Grant Guidance,” dated February 20, 2008. This guidance pertains to the President’s budget request for FY 2009, which proposes to reduce funding for state and local air quality grants by \$31.2 million from FY 2008 levels (from \$216.8 million to \$185.6 million).

The most important point we wish to make is that the proposed budget is wholly inadequate to support the activities of state and local air quality agencies. As you know, Section 103 and Section 105 grants are critical to state and local agency efforts to implement the many complex requirements of our nation’s clean air program. The reductions in the proposed budget would have a devastating effect on our clean air efforts across the country. When EPA proposed similar cuts in each of the last two years, NACAA members analyzed the specific impacts the reductions would have on their programs and reported very disturbing results. Because the proposed budget for FY 2009 is the same, similar negative impacts would be expected. For example, most state and local air agencies reported that the reductions would force them to lay off valuable staff or leave current vacancies unfilled. Many agencies would shut down existing monitors or otherwise curtail monitoring programs. Many inspection and enforcement activities would be impaired. Permits for minor sources would take longer to process and customer services would diminish. Some agencies could be forced to return portions of their programs to EPA due to a lack of funds to carry them out, placing an additional burden on EPA. Finally, some smaller local agencies might even be forced to cease operations entirely – a loss with significant negative consequences for those areas.

The impact of the proposed decreases would be exacerbated by the proposal to shift grants for the fine particulate matter (PM<sub>2.5</sub>) monitoring program from Section 103 authority to Section 105 authority and to cut those funds by the amount of the 40-percent match. State and local agencies would need to supply additional matching funds in order to keep the program whole and to accept the federal monitoring grants. However, many agencies are currently overmatched and would not be required (or able) to increase their contributions and, therefore, may not infuse additional funds targeted to the PM<sub>2.5</sub> monitoring program. Further, other agencies that do not currently have additional resources for the match could not make up the difference and may possibly be forced to turn away much-needed grant funds. Shifting the monitoring program to Section 105 authority could result in significant cuts to this important program that state and local air agencies would not be able to replace.

Not only does the budget request fail to recognize the current funding needs, it does not account for all the additional activities that state and local agencies will face. For example, state and local agencies are in the process of developing State Implementation Plans (SIPs) for haze, PM<sub>2.5</sub> and ozone, requiring new activities for each program, all of which are time-consuming, labor intensive and costly. Additionally, EPA has just tightened both the PM<sub>2.5</sub> and ozone standards, which will require states and localities to greatly expand their ambient monitoring networks, necessitating additional equipment and staff. EPA is also issuing 50 standards to reduce HAP emissions from area sources that, in the aggregate, are responsible for significant emissions. For state and local agencies that will implement the standards, identifying facilities, providing compliance assistance and outreach, permitting and carrying out enforcement activities will be labor intensive. Because most of these sources are too small for the Title V permit program, they will not pay permit fees. Many states and localities are concerned that they simply do not have the resources to implement some or all of the area source programs. If they are to take delegation of these new regulations, they will clearly need additional grant funds.

In addition to our overarching concern about the total funding level, we have the following comments on specific elements of the draft guidance.

#### Reductions in Pollutant-Specific Activities

The proposed budget reductions are compounded by EPA's intention to target reductions based on the premise that state and local agencies have completed work related to attaining the health-based standards for sulfur dioxide, nitrogen dioxide, carbon monoxide and lead and, therefore, have unused resources to be redirected. This assumption is incorrect. First, while air quality related to the four pollutants may have improved in some areas, at least nitrogen dioxide and sulfur dioxide are precursors to fine particulate matter and it is important for many areas to continue addressing them. Second, we have heard from state and local air agencies that, to the extent that problems related to the four pollutants were ameliorated, many of them shifted the funding related to those activities into higher-priority work. This was done with the knowledge and concurrence of EPA, including the Regional Offices, through workplans that state and local agencies negotiate with EPA. Therefore, the proposed reductions will in fact decrease funding to current high-priority air quality concerns.

EPA is currently developing a revised formula for allocating state and local air grants. EPA's process for determining a new formula is designed to consider the allocation criteria in the Clean Air Act and would include an implementation plan that will avoid major shifts in state and local agency budgets. In light of the fact that EPA is attempting to develop a new allocation formula in a thoughtful manner and devise an implementation plan that makes sense, it would be premature for the agency to distribute grants based on four pollutants in FY 2009, since that would effectively be a reallocation in and of itself. Additionally, for many years, NACAA has recommended that any reallocation be applied when there is a significant increase in grants and in such a way that no agency experiences an actual reduction in funding due to a change in the formula. Using the four-pollutant approach, particularly when grants are in decline, will not meet that goal. NACAA strongly urges EPA to allocate FY 2009 grants to the regions in the same proportion as in FY 2006, before the four-pollutant strategy was introduced. This would help ensure that the funding distribution does not unfairly exacerbate the already difficult conditions that state and local agencies face.

#### National Set-Asides Held "Off the Top"

Typically, a portion of the Section 103 and 105 funds are set aside at the national level to support a range of activities. This is an efficient way to fund priorities upon which federal, state and local agencies have agreed. Since Sections 103 and 105 grants are provided to state and local air agencies, funds should be set aside only if state and local agencies concur. Accordingly, we were pleased to see in the grant guidance the following statement: "It is the policy of OAR and the Regions to seek prior consultation with its partners on the allocation and use of grant resources" (page 31), although we would have preferred it if the term "concurrence" had been used. Unfortunately, there are several elements in the draft grant guidance that are inconsistent with even a policy of consultation.

EPA has proposed earmarking \$3.9 million – heretofore used to fund the Regional Planning Organizations (RPOs), the Great Lakes Program, and the U.S.-Mexico Border Program – for an initiative on "Air Quality and Energy Development." Few details about this effort are provided in the draft. We are very concerned about this proposal for two reasons. First, EPA is recommending that state and local air grants be set aside for an EPA initiative without having first consulted with state and local air agencies to see if this is an effort that they would support. This is counter to EPA's stated policy of seeking "prior consultation with its partners on the allocation and use of grant resources." Second, when the administration is recommending further cuts to already-strained state and local air grants, it is an inopportune time for EPA to recommend additional set-asides for vaguely defined new programs. We recommend that EPA not earmark the \$3.9 million for the new program. Rather, these funds should be used to support the RPOs (see below) and be provided to the base activities under Section 105.

With respect to the elimination of funds for the RPOs, NACAA is very concerned that this strategy will deprive the RPOs of necessary tools and resources to help state and local agencies carry out technical activities related to regional haze. The need for the services that the RPOs provide is ongoing. In fact, in the draft grant guidance, EPA states that it will support the efforts of states and multi-jurisdictional organizations (MJOs) to address regional haze. Funding

for the RPOs should be included as one of these efforts. Accordingly, NACAA recommends that EPA provide \$2.5 million in FY 2009 for the RPOs.

Regarding air toxics monitoring, NACAA recommends that the NATTS program be funded. However, the remainder of the air toxics monitoring funds (currently targeted for the community-based monitoring program) should be shifted to the base grants in the Section 105 account. While community-based efforts are often worthwhile, during a time of limited funds, difficult choices such as this one must be made. State and local agencies that wish to use funds for community-based monitoring efforts can do so with the regular grant funds allocated to them.

The draft calls for \$2.3 million to be held off-the-top for the NO<sub>x</sub>/CAIR Budget system. Several years ago, the states participating in the NO<sub>x</sub> SIP call agreed to off-the-top funding for this program because it was a state initiative used as a SIP strategy that was more efficiently funded that way. Now that EPA has adopted the CAIR program, we believe EPA should take responsibility for administering the program in the same way that the agency administers the Acid Rain program. The cost for administering CAIR should be absorbed by EPA's budget, not from Section 105 grants.

As for the PM<sub>2.5</sub> associated program costs (e.g., lab costs and quality assurance/quality control), we believe the total set-aside should be decreased to reflect the reduced size of the network. Further, we agreed to support this set-aside when there was sufficient funding. Now that reductions have been proposed, we believe EPA should shoulder these costs.

For many years NACAA has recommended that EPA fund training from its own budget, and we have agreed to match EPA's expenditures for training from the Section 105 grant during the transition to full EPA funding. Reductions in training funds will result in a loss of training infrastructure that will be very difficult to replace later. Further, elimination of training is not a wise funding choice as it will reduce the effectiveness of federal, state and local programs in the long run. NACAA recommends that EPA hold \$1,995,000 off the top for training and urges the agency to at least match the Section 105 grant funding for training from EPA's own budget.

#### Other Monitoring Issues

With respect to monitoring for particulate matter, numerous small towns – particularly in the western states – have expanded beyond the 50,000 population level and are now subject to minimum federal PM<sub>2.5</sub> monitoring requirements. EPA should address this problem and provide funding as appropriate.

NACAA supports reductions of redundant protocol and IMPROVE monitors. These funds could be better used to support other monitoring activities.

EPA states that there are an appropriate number of monitoring sites nationally to support the existing National Ambient Air Quality Standards (NAAQS) program (p. A-26). We disagree that there are an appropriate number of monitors for ozone. Since EPA issued the proposed primary health standard of 0.075 parts per million for ozone, many areas will be thrown into uncertainty and will need ozone monitors to ascertain compliance.

If EPA includes in its final rule revising the Lead NAAQS a requirement for low-volume PM<sub>10</sub> monitors, the agency should provide adequate additional funding for the purchase and operation of these new monitors.

#### Diesel Emission Reduction Program

NACAA recommends that EPA provide \$70 million to support the Diesel Emission Reduction (DERA) provisions of the Energy Policy Act of 2005. However, we do not believe the DERA funds should be part of the STAG account, since many of the funds are not provided to state and local governments. We recommend that the funds be provided through one of EPA's other accounts.

With respect to the distribution of the diesel funds, NACAA is pleased that EPA does not plan to limit the program to only nonattainment areas. Many state and local agencies have active diesel emission reduction programs that apply outside of nonattainment areas to reduce air toxics, greenhouse gases and haze.

#### Performance Track

NACAA believes that the Performance Track program should be reevaluated and adjustments made (p 25). At a minimum, incentives proposed for inclusion in State/EPA Memoranda of Agreement, or Regional Performance Partnership Agreements or Grants must be adequately noticed and opportunity for public comment given on this and all other aspects of the program. We also encourage EPA to: 1) raise the standards for admission; 2) insure a consistently high level of achievement among members; 3) evaluate facilities applying for membership in a holistic fashion, rather than enabling them to cull four activities from an environmental performance table in order to demonstrate environmental benefit; 4) monitor compliance with the members' environmental commitments; and 5) require inspections of Performance Track facilities in accord with the terms of EPA's Compliance Monitoring Strategy, rather than allowing longer intervals between inspections, as is the current practice. Finally, we encourage EPA to improve communications with state and local air agencies about the Performance Track program and actions the agency has taken.

#### Co-Regulator Organizations

EPA states in the draft that, "each direct-funded state and local air pollution agency must provide an assurance to its Regional Office that the state's environmental commissioner has been involved in the co-regulator funding process and has provided prior concurrence before any of the state's STAG funds can be taken off-the-top to fund a co-regulator organization via a direct grant" (page A-5). It does not make sense that a local agency that is not part of the state government would have to obtain concurrence from the state's environmental commissioner in order to direct its STAG funds to a co-regulator organization. We recommend this requirement be eliminated for direct-funded local agencies.

With respect to grant competition, EPA notes that co-regulator status is no longer available as an exception to competition for grants for MJOs. As we have indicated in previous comments, we disagree with this view and believe that co-regulator organizations, such as NACAA and the MJOs, should continue to be treated under an exception to competition requirements. It would be very inefficient for EPA and those organizations to go through a competitive process when those entities are each uniquely qualified to perform their missions and were established by their members for this express purpose. There are no other organizations that directly represent their members and are able to carry out the national and regional environmental and public health objectives of their members.

Finally, we wish to make one minor clarification: as part of NACAA's name change, the association's office in Washington, DC is now known as the "Headquarters", rather than the "Secretariat" (Page A-14).

#### Section 105 Grant Guidance

EPA stated that it has developed consolidated guidance covering the overall administration of the Section 105 air grant program, which will be final in March 2008 (p. A-9). Since Congress provides Section 105 grants for the support of state and local air agencies and they are of critical importance to us, we believe that we should have the opportunity to review and comment on this draft before it becomes final.

#### Importance of State and Local Agency Efforts

The draft guidance states, "State, local, and tribal agencies can best address regional and local problems that remain after federal measures are applied" (p. 30). We believe this statement (undoubtedly unintentionally) understates the importance of state and local air agency efforts to improve and maintain air quality and protect public health. The wording of the statement makes it seem as if state and local air programs are trivial and merely serve to fill in the gaps in the federal program. In fact, Congress conferred primary responsibility for implementing the Clean Air Act on state and local governments. Their efforts are of critical importance and we recommend the statement in the guidance be reworded to reflect this.

Thank you for your consideration of our recommendations. Please do not hesitate to contact us if you need additional information.

Sincerely,



Andy Ginsburg  
Oregon  
Co-President of NACAA



Ursula Kramer  
Pima County, Arizona  
Co-President of NACAA