NACAA
national association of clean air agencies

August 5, 2009

United States Senate
Washington, DC 20150

Dear Senator:

On behalf of the National Association of Clean Air Agencies (NACAA) – the association of air pollution control agencies in 53 states and territories and more than 165 metropolitan areas across the country – we write to offer our perspectives on climate change legislation that is currently under development in the Senate.

Global warming is the most pressing environmental issue facing our generation. As the world-renowned experts who comprise the Intergovernmental Panel on Climate Change have concluded, the evidence that global warming is already affecting the planet is "unequivocal." NACAA is pleased that the House of Representatives in late June passed the American Clean Energy and Security Act of 2009 (ACES), which contains a climate protection program based on core principles that we support, particularly related to issues such as emissions reduction targets, the rights of states and localities, mobile sources and transportation planning, energy efficiency and a renewable electricity standard. As the Senate drafts its climate proposal, NACAA urges that you begin with ACES as a baseline, retain certain fundamental elements and incorporate changes regarding several other significant provisions that will shore up the effectiveness of the legislation. In particular we recommend the following:

1) Retain the framework of an economy-wide program, including such components as strong emissions limits and a cap-and-trade program
2) Strengthen offset provisions, including for agriculture and forestry
3) Preserve state and local authorities, delineate specific implementation roles for states and localities and authorize funding for state/local implementation efforts
4) Retain important Clean Air Act programs for new and existing sources inside and outside the cap
5) Include a Low Carbon Fuel Standard and support the inclusion of indirect emissions in lifecycle greenhouse gas emissions analyses
6) Strengthen the transportation planning provisions
7) Strengthen the Renewable Electricity Standard

<u>Retain the framework of an economy-wide program, including such components as strong emissions limits and a cap-and-trade program</u>

NACAA endorses the framework of ACES – an economy-wide program with stringent greenhouse gas (GHG) emissions limits that uses market-based mechanisms, such as cap-and-trade, to reduce GHG emissions. We urge that the Senate retain this solid framework, and even build upon it. The scientific evidence

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demonstrating that global warming is occurring and already affecting our planet continues to accumulate, with new reports concluding that, if anything, we must reduce GHG emissions faster and more deeply than previously thought to avoid catastrophic effects in the future. Thus, we recommend that the Senate increase the 2020 reduction target to 20 percent. Further, we recommend that the level and timing of emissions reductions be periodically reviewed, as necessary, in light of new science.

Strengthen offset provisions, including for agriculture and forestry

Although offset provisions are a key cost containment measure for any GHG emissions reduction bill, such provisions must be carefully and thoughtfully constructed because every offset credit replaces a ton of actual GHG emissions reduction from a covered source. NACAA supports the ACES requirement that offsets must represent permanent additional reductions and must undergo third-party verification. We further support granting oversight of the offset program to EPA, an agency with a wealth of experience in ensuring environmental compliance. However, we offer three recommendations for revising the ACES offset provisions: 1) reduce the generous pool of 2 billion tons of offset credits, 2) reinstate the original provision in ACES that required a 5-to-4 turn-in ratio for all types of offset credits at all times and 3) retain EPA as the manager of the entire domestic offset program, including the development of regulations, and provide the U.S. Department of Agriculture with a consultative role on domestic agricultural and forestry offset credits. If the Senate were to create a separate program for domestic forestry and agricultural offsets, it would be critical that both programs contain the same requirements to ensure the integrity and equivalence of offsets.

Preserve state and local authorities, delineate specific implementation roles for states and localities and authorize funding for state/local implementation efforts

A successful national climate protection program must be predicated on a strong local-state-federal partnership. In order for our nation to meet our GHG emissions reduction targets, we must ensure that all levels of government are fully engaged in the design and implementation of this program. Accordingly, NACAA urges that the Senate bill preserve the authority of state and local governments to enact more stringent GHG emissions reduction programs, to complement, and serve as a backstop to, the federal program. The bill should also acknowledge that state and local air pollution control agencies have a key role to play in the implementation of the program.

We are especially pleased that ACES contains strong language preserving state and local rights and also recognizes the need for state and local governments to be able to require the retirement of allowances or offset credits in order to ensure that state and local GHG programs can reduce national GHG emissions. We do, however, have concerns with the provision requiring the dissolution of the regional cap-and-trade programs for six years, from 2012 and 2017. No compelling reason has been offered for this encroachment on states' rights. Although our strong preference is that this preemption not be included in the Senate bill, if it is retained, we urge that it be as narrowly delineated as in ACES, that it apply only to cap-and-trade programs and that it not take effect before the federal program actually begins.

With respect to the role of state and local air agencies in implementing the federal program, we recommend that the Senate bill explicitly recognize the important role these agencies will play in monitoring, inspections, enforcement and verification, and in working with EPA to design the implementation program. Moreover, in recognition of the additional work that will be required to implement a federal program, we urge that the Senate bill provide for increased funding for state and local air agencies, including a separate revenue source and specific authority that requires Title V permit fees for GHGs.

Retain important Clean Air Act programs for new and existing sources inside and outside the cap

NACAA is troubled by the elimination by ACES of several critical Clean Air Act tools. It is extremely important that the Senate preserve these programs in its bill and ensure that they apply to new and existing sources both inside and outside the cap. Under ACES, existing sources inside the cap would be exempt from New Source Performance Standards (NSPS). Without NSPS, existing sources such as power plants will be exempt from the imposition of performance standards, thus allowing older, dirtier plants to continue to operate free from GHG emissions limits or other requirements, like clean fuels or increased efficiency. Likewise, ACES exempts all GHG sources from New Source Review (NSR) no matter how large they are. We oppose this exemption and believe GHG sources should be subject to NSR, but with appropriate upward adjustments in the applicability thresholds. In this way, NSR can advance carbon reduction technology just as it has successfully spurred technological advances in the control of criteria pollutants.

Include a Low Carbon Fuel Standard and support the inclusion of indirect emissions in lifecycle greenhouse gas emissions analyses

A comprehensive national Low Carbon Fuel Standard (LCFS) that reduces the lifecycle GHG emissions intensity of transportation fuels would not only reduce our nation's reliance on oil but, when implemented as part of a broader GHG emissions reduction strategy, would also hold great potential for easing the transition to a low-carbon economy. California recently adopted a LCFS and at least 11 Northeast and mid-Atlantic states have joined together to develop a regional LCFS. Although ACES does not include an LCFS, NACAA recommends a well-structured, comprehensive program be incorporated into the Senate bill. In order for a federal LCFS to be viable, however, it is imperative that the long-term standard be at least as rigorous as what California has already adopted (i.e., a 10-percent reduction by 2020), that there be safeguards against backsliding in the near term, that the standard apply to all transportation fuels and, most significantly, that states other than California be assured of authority to adopt their own LCFS if they so choose.

Strengthen the transportation planning provisions

A successful national climate strategy must ensure that the transportation sector contribute its fair share of GHG emissions reductions. In addition to reducing emissions from vehicles, engines and fuels, such a strategy must also include alternative approaches for integrating transportation and land-use planning in a way that will ensure environmental benefits. NACAA is disappointed that virtually all of the key provisions that buttressed the transportation planning portion of ACES in the Energy and Commerce Committee-passed version of the bill were dropped before ACES was adopted by the House. We urge the Senate to base its transportation planning program on the Energy and Commerce Committee-passed version of ACES, restoring, among other things, a concurrence role for state and local air pollution control agencies in establishing state GHG emissions reduction goals and a source of funding for which state and local air agencies are eligible. We further recommend that the Senate include requirements to ensure that GHG emissions reduction plans, as required under the Energy and Commerce Committee-passed bill, be adequate to achieve the state goals, that the plans be implemented, and that the GHG emissions reduction goals – and interim progress toward meeting them – be achieved.

Strengthen the Renewable Electricity Standard

Increasing the amount of electricity generated from renewable sources would significantly reduce GHGs from the electricity generating sector. Twenty-nine states have already enacted standards for the use of renewables, and several others have put in place voluntary programs. NACAA supports the concept of the Renewable Electricity Standard (RES) under ACES, which requires that an increasing share of the electricity sold by retail electricity suppliers come from renewable sources, and particularly the fact ACES does not interfere with states' authority to require more stringent programs. We recommend, however, that the Senate institute a more rigorous standard, culminating in a renewable requirement of at least 25 percent by 2025.

As Senate leaders work over the next several weeks to complete a climate bill, we hope you will give serious consideration to NACAA's perspectives and recommendations. If you have questions or if we can be of any assistance, please do not hesitate to contact either of us or S. William Becker, NACAA's Executive Director.

Sincerely,

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