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Public Notice/Clean Air Act Permitting: National Association of Clean Air Agencies February 29th Comments on U.S. Environmental Protection Agency Proposed Revisions

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The National Association of Clean Air Agencies (“NACAA”) submitted February 29th comments to the United States Environmental Protection Agency (“EPA”) on the proposed rule entitled *Revisions to the Public Notice Provisions in Clean Air Act Permitting Programs*. See 80 Fed. Reg. 81,234 (Dec. 29, 2015).

The NACAA describes itself as a national, non-partisan association of air pollution control agencies in 40 states, the District of Columbia, four territories and 116 metropolitan areas.

EPA’s proposed rule would remove the mandatory requirement to provide public notice of draft Clean Air Act permits and certain other permitting program actions through publication in a newspaper. It would instead allow for electronic noticing (e-notice) of such actions.

NACAA notes that the proposed rule would apply to major source permits issued by EPA, EPA-delegated air agencies, and by air agencies with EPA-approved programs. The proposed rule would extend to New Source Review, Title V and Outer Continental Shelf permitting programs.

The NACAA states by way of initial summary that it:

... has long recommended that EPA undertake rulemaking to enable state and local air agencies to provide public notice of Clean Air Act permitting actions in a way that would be more effective and less costly than the traditional method of publication in a newspaper. Information technology has progressed to the point where electronic noticing will, in most cases, reach a much larger and wider audience than noticing in printed newspaper, thus allowing for greater, informed public participation in permitting actions at lower cost to state and local agencies. We therefore welcome EPA’s e-notice proposal and believe it promises significant improvements over the current notice requirements in the Clean Air Act permitting program rules.

The organization states that its comments on the proposed rule are guided by “two overarching observations” which include:

First, we believe that EPA’s rules should be designed to facilitate public access to permit information in a way that is easy to use, efficient, and cost-effective. In *most* cases, these goals would be best achieved by providing electronic notice of permitting actions and electronic access to draft permits. Indeed, many

state and local agencies already provide e-notice of permitting actions on a routine basis, in addition to the requisite newspaper notices. However, our members also know that there are occasional situations in which an alternative form of notice, such as newspaper publication, are necessary to reach community members affected by a particular permitting action. We believe EPA's rules should not in any way hinder state and local agencies from using multiple forms of notice where they believe it to be appropriate.

The issues addressed by NACAA's comments include:

- Mandatory E-Notice for Federal Permitting Programs
- "Consistent Noticing Method" Requirement for Agencies Implementing Approved Programs
- E-Notice Coupled with E-Access
- Alternative Noticing Method in Event of Website Outage
- Documentation of E-Notice

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