

BOARD OF DIRECTORS

**Co-Presidents**

Stuart A. Clark  
Washington

Ursula Nelson  
Tucson, AZ

**Co-Vice Presidents**

David Klemp  
Montana

Craig T. Kenworthy  
Seattle, WA

**Co-Treasurers**

Bart A. Sponseller  
Wisconsin

Sam Rubens  
Akron, OH

**Past Co-Presidents**

George S. Aburn, Jr.  
Maryland

Merlyn Hough  
Springfield, OR

**Directors**

Rick Brunetti  
Kansas

Robert H. Colby  
Chattanooga, TN

Richard Corey  
California

Anne Gobin  
Connecticut

David J. Shaw  
New York

Chris Schroeder  
Lincoln, NE

Stuart Spencer  
Arkansas

Barry Stephens  
Tennessee

Richard A. Stedman  
Monterey, CA

**Executive Director**

S. William Becker

February 29, 2016

U.S. Environmental Protection Agency  
EPA Docket Center  
Attn. Docket ID No. EPA-HQ-OAR-2015-0090  
Mailcode: 28221T  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

To Whom It May Concern:

The National Association of Clean Air Agencies (NACAA) appreciates this opportunity to comment on the U.S. Environmental Protection Agency's (EPA's) proposed rule entitled *Revisions to the Public Notice Provisions in Clean Air Act Permitting Programs*, which was published in the *Federal Register* on December 29, 2015 (80 Fed. Reg. 81,234). 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 United States. 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.

EPA's proposal 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, and would instead allow for electronic noticing (e-notice) of these actions. The proposal applies to major source permits issued by EPA, by EPA-delegated air agencies, and by air agencies with EPA-approved programs. The proposed rule revisions would extend to the New Source Review (NSR), Title V and Outer Continental Shelf (OCS) permitting programs.

NACAA 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 newspapers, 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.

NACAA's comments on the e-notice proposal are guided by two overarching observations. 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.

With those principles in mind, below we provide comments and recommendations regarding several key aspects of this proposal.

#### Mandatory E-Notice for Federal Permitting Programs

Under EPA's proposal, all federal permitting programs would move strictly to e-notice. Thus, for permits issued by EPA itself, as well as federal permits issued by delegated state and local air agencies, the newspaper notice requirement will be replaced by a requirement to post notice of a draft permit on a public website for the duration of the comment period, along with the draft permit itself and information on how to obtain access to the administrative record (EPA refers to the requirement to post an electronic copy of the draft permit as "e-access"). Of note, in addition to delegated agencies, these requirements would apply to agencies implementing federal permitting rules (such as 40 C.F.R. part 52.21) that have been incorporated by reference into their approved state programs.

NACAA believes it is important that agencies implementing federal NSR and Title V permit program rules retain the ability to provide alternative forms of notice, such as newspaper publication or other methods of communication, in *addition* to the mandatory e-notice and e-access requirements. This is especially important in areas where socio-economic factors may result in reduced access to computers by the affected public. The preamble to the proposal indicates that EPA intends for the rules to accommodate supplemental forms of notice (e.g., "if an agency is satisfying the requirements of e-notice and e-access, the permitting authority would retain the discretion to supplement the e-notice with any other noticing method," 80 Fed. Reg. at 81,241). However, the proposed regulatory language for 40 C.F.R. part 124.10(c)(2)(B) and (C) is less clear on this point, stating only that e-notice and e-access shall be provided "in lieu of" the current requirements. In contrast, the rules for air agencies issuing permits under their own EPA-approved programs affirmatively state that an agency's noticing method "can be supplemented by other methods on individual permits at the discretion of the reviewing authority." We recommend that EPA add similar language to the part 124 provisions governing the federal programs.

### “Consistent Noticing Method” Requirement for Agencies Implementing Approved Programs

Under EPA’s proposal, for air agencies administering their own approved permitting programs under 40 C.F.R. part 51 or 70, e-noticing of permit actions would be optional; these agencies would have the choice of continuing to provide notice by newspaper in lieu of electronic notice. They would, however, be required to adopt a single, “consistent noticing method” to be used for *all* of their major source permits.

NACAA agrees that it would be easier and less confusing for the public to access permit information if agencies adopt one consistent method by which all major source permits are noticed. As stated above, we also believe it is critical that agencies be allowed to use supplementary notice methods where they believe it is necessary to reach members of the public affected by a particular permit action (which the proposed rule language would accommodate). In addition, we recommend that EPA make clear that if an agency chooses e-notice as its “consistent noticing method,” the consistency requirement should be limited to one particular place on a website. In other words, an agency should be able to post e-notice of some, but not necessarily all, permits in more than one place on the web where it believes this to be warranted, so long as one particular website (or webpage) is used for all permits.

### E-Notice Coupled with E-Access

The proposal requires that, when a permitting authority implementing an approved program adopts the “e-notice” approach as its consistent noticing method, it must also provide “e-access,” meaning that it must make the draft permit available electronically for the duration of the public comment period. The agency would not be required to post the administrative record electronically, so long as it posts information on how that information can be accessed. NACAA agrees that this approach is sound. In particular, we agree that decisions as to whether or how much of the administrative record (including the permit application) is posted electronically should be left to the state and local agencies, many of which face resource constraints that make posting of this information prohibitive.

### Alternative Noticing Method in Event of Website Outage

The proposed e-notice requirements would require the permit notice and draft permit to be posted “for the duration of the comment period.” EPA requests comment on whether it should include a provision in the regulations that would allow air agencies to temporarily use an alternative noticing method if their website is unavailable for a period of time (such as during malfunctions, transition to a new website, or a prolonged electrical outage). EPA also notes in the preamble that it “[does] not interpret ‘the duration of the comment period’ to be a requirement for uninterrupted web access, but rather to mean that, to the extent that interruptions to the accessibility of the posted notice and draft permit occur, they would be short and infrequent.” NACAA believes that this definition of “duration of the comment period” should be incorporated into the regulations. If it is, additional rules for alternative noticing should not be necessary.

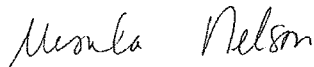
Documentation of E-Notice

EPA's proposal does not address how agencies would document in the administrative record that e-notice requirements for a permitting action were satisfied. NACAA believes EPA should address this issue in its list of "best practices" for e-notice. A certification signed by a knowledgeable agency employee that e-notice requirements were satisfied is one potential approach. EPA should confirm whether this, or another method of proof of e-notice, is sufficient. It is critical that states be able to document this information in the administrative record in the event a permit decision is challenged on this point at some time in the future.


\* \* \* \* \*

Once again, we thank you for this opportunity to provide NACAA's views on the e-notice proposal. If you have any questions, feel free to contact either of us or NACAA Senior Staff Associate Karen Mongoven ([kmongoven@4cleanair.org](mailto:kmongoven@4cleanair.org)).

Sincerely,



Ursula Nelson  
(Pima County, AZ)  
Co-Chair  
NACAA Permitting and NSR Committee



Ali Mirzakhilili  
(Delaware)  
Co-Chair  
NACAA Permitting and NSR Committee