UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

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OFFICE OF CONGRESSIONAL
AND INTERGOVERNMENTAL RELATIONS

The Honorable Stephen L. Johnson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

RE: ***"EPA's Advanced Notice of Proposed Rulemaking"***

Dear Administrator Johnson:

First of all, the Local Government Advisory Committee (LGAC) wishes to thank you for your tremendous and long service to the people of the United States to both protect and enhance the environment for the present and for future generations. Your many contributions are sincerely appreciated. Moreover, we have greatly appreciated your willingness to seek advice from the LGAC. We wish you well and good fortune in all of your future endeavors.

The Environmental Protection Agency (EPA) issued an "***Advanced Notice of Proposed Rulemaking***" (***Advanced Notice***) to regulate greenhouse gas pollution under the Clean Air Act. The LGAC has reviewed and considered the Advanced Notice and provides the following comments.

The time has come for EPA to take a leadership role to address the manner and methods for regulating greenhouse gas emissions due to their role in climate change. Yet EPA's *Advanced Notice* does not provide the necessary leadership in this area, nor does it provide a clear, definitive strategy for regulating greenhouse gas emissions. Rather, the *Advanced Notice* is a voluminous statement of issues and questions related to how the Clean Air Act might apply. A clear, definitive approach is required and EPA should hesitate no further.

The LGAC believes that EPA must immediately begin implementing a sensible climate change policy in order to ensure a smooth transition to a low carbon-based economy as delays will likely result in greater economic and environmental disruptions. By acting now, our nation can become the leader in the development of new climate change related technologies and

allow our manufacturing sector to reap the benefits of such leadership. We have the opportunity to achieve competitive advantage in the field of climate change technologies by acting now, or we can condemn ourselves to playing catch-up.
Moreover, if our nation is able to demonstrate that greenhouse gases can be reduced without major economic disruptions, it is very likely that other countries will follow our lead.

We believe the use of the Clean Air Act to regulate greenhouse gases presents significant challenges, and to be used properly will require new approaches to implementation and major revisions. There are a number of reasons why the LGAC believes this to be the case. First, as the EPA acknowledges in this *Advanced Notice*, the Clean Air Act was originally designed to reduce air pollutants of a regional nature that cause a direct health effect. Clearly that is not the case with greenhouse gases. As one example, the Clean Air Act regulates pollutants that can be controlled at the source, such as a vehicle's tailpipe. In the case of buildings, local governments are estimating the quantity of greenhouse gas emissions from buildings including electrical consumption. The generation of this power, generally not under the control of the local government, may be generated hundreds of miles away. The only control a local government has over emission reductions from a building source would be reducing consumption or through the purchase of renewables. Another reason why the Clean Air Act is ill-equipped to regulate greenhouse gases is that its success, in large part, is due to the fact that those who have been bearing the primary costs of controlling the pollutants are also those who reap most of the benefits. This relationship between bearers of costs and benefits is much weaker for greenhouse gases as their effects are global and long-lived making it quite difficult to directly connect the bearers of costs and benefits. Finally, the economic and financial challenges posed by the regulation of greenhouse gases far surpasses the impacts than effects of regulations with other air pollutants. Clearly, new approaches are needed.

If EPA decides to utilize the Clean Air Act in addressing greenhouse gases for stationary sources, the LGAC believes that Section 111 provides EPA with the best alternative for addressing greenhouse gases emissions with relative speed and effectiveness. Regulating greenhouse gases as a criteria air pollutant, and setting a NAAQS is too restrictive--it doesn't address the global impacts of greenhouse gases, and will take much too long to implement. Additionally, the LGAC believes that if EPA uses the Clean Air Act for regulation of greenhouse gases, the EPA should consider an amendment to state that greenhouse gases are not criteria air pollutants and that a NAAQS will not be set. Regulating greenhouse gases as a Hazardous Air Pollutant option is inflexible and insensitive to the economic costs of reducing greenhouse gases. Section 111 is preferable

because EPA could use its discretion to determine what sources should be regulated and how a new program could be designed for maximum effect.

For mobile sources, the EPA could set engine and fuel standards to reduce greenhouse gas emissions. EPA should establish reasonable planning horizons and flexibility for vehicle manufacturers in order to develop and deploy new technologies. However, these emission and fuel standards must be set in a manner that will not impede progress on attainment with the NAAQS. The EPA should also reevaluate its diesel retrofit technology verification program to expedite retrofits that not only may benefit greenhouse gas emissions but for other pollutants as well. As the program exists today, it is too costly and lengthy to assist vendors with verification and use of their technologies.

Additionally, the LGAC would like to comment on a statement in the *Advanced Notice* found on page 116, "*the spatial nature of traditional air pollution has made it appropriate to place the primary responsibility for planning controls on state, tribal, or local governments.*" The LGAC strongly disagrees with this statement in relation to the regulation of greenhouse gases and criteria air pollutants currently regulated under the Clean Air Act for two reasons: transport and federal preemption. Today more than ever we understand transport of air pollutants not only from state to state but across our borders. With the lowering of the ozone standard, local governments and states will need to regulate and quantify reductions from sources outside their designated non-attainment area. Additionally, the EPA must expedite engine and fuel standards, as well as incentivize retrofits (e.g. diesel retrofit grants, etc.) in order to assist regions with meeting the new ozone standard. As an example, New York City passed an ordinance to require 30 miles per gallon or better fuel efficiency standards taxi cabs by 2012. The federal judge ruled that the City was federally preempted from regulating these sources.

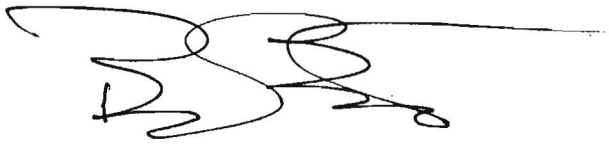
While the Clean Air Act may be used to begin our efforts to reduce greenhouse gas emissions, the LGAC believes that new legislation is necessary for the proper regulation of greenhouse gas emissions. New legislation is required because of the nature of greenhouse gas emissions; they are global and long-lived as opposed to regional and point sourced. Thus a new regulatory regime is in order. Creative and innovative approaches are necessary to limit undue burdens on the nation's economy. It will also be necessary for EPA to remain flexible because significant reductions to greenhouse gas emissions will require technologies that do not exist today. Moreover, EPA will need a more flexible approach to setting and, more important, adjusting, emission reduction targets so that targets are better aligned with market prices and technology development.

In conclusion, the LGAC recommends that the EPA take a leadership role in the development and execution of climate change policy for our nation. Actions need to be taken today by using relevant parts of the Clean Air Act. For instance, EPA should use fuel economy standards for mobile sources and establish longer planning horizons and more flexibility for vehicle manufacturers to develop and deploy new technologies. Aspects of the Clean Air Act that address engines and fuels should also be used to create additional incentives for technologies that are clearly beneficial in not only reducing greenhouse gas emissions, but criteria air pollutants as well. Other actions are noted previously.

Ultimately, the LGAC believes that new legislation is needed and should be developed and considered by Congress to provide a comprehensive and nimble approach to reduce greenhouse gas emissions. We must develop a new tool to address this new problem.

The LGAC thanks EPA Administrator Johnson for the opportunity to provide comments on the "*Advanced Notice of Proposed Rulemaking.*" Please let us know if you have any questions or require further explanation.

Sincerely,



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