



August 3, 2020

The Honorable Andrew Wheeler, Administrator  
Ms. Anne Idsal, Principal Deputy Assistant Administrator  
1200 Pennsylvania Avenue NW  
Washington, DC 20004  
U.S. Environmental Protection Agency

Re: Notice of Proposed Rulemaking  
Docket ID No. EPA-HQ-OAR-2020-00044

Dear Administrator Wheeler and Principal Deputy Assistant Administrator Idsal,

ConservAmerica, a non-profit organization dedicated to environmental protection and conservation through thoughtful rules and market-based policies, appreciates this opportunity to write in support of the U.S. Environmental Protection Agency's (EPA) proposed rulemaking to increase the consistency and transparency in considering the costs and benefits for future Clean Air Act (CAA) rules. Moreover, given the importance of cost-benefit analysis (CBA) to producing cost-effective and sustainable rules, we urge the Agency to apply such considerations across all of EPA's programmatic programs.

### **EPA's Proposal**

EPA's proposal consists of three elements: (1) preparation of a cost-benefit analysis (CBA) for all future significant proposed and final regulations under the CAA; (2) use of best available scientific information and in accordance with best practices from the economic, engineering, physical, and biological sciences; and (3) adoption of additional procedural requirements to increase transparency in the presentation of the CBA results.

### **Comments**

Consistency and transparency are hallmarks of sound policymaking, and we applaud the Agency for striving to achieve those principles. We firmly believe that a thorough economic analysis is essential for developing sound environmental policies and, if done correctly, can enhance the effectiveness of environmental policy decisions by providing policymakers and the public with

information needed to systematically assess the likely consequences of various actions or options.

1. EPA Should Consider and Disaggregate All Benefits, Both Direct and Indirect, Associated with Future Rulemakings

We urge the Agency to fully consider all benefits associated with a specific rulemaking, including indirect benefits (a/k/a co-benefits). Such consideration of indirect benefits is consistent with longstanding OMB guidance (*i.e.*, Circular A-4) on CBA as well as decades of regulatory precedent.

Moreover, the U.S. Court of Appeals for the D.C. Circuit in *American Trucking Associations v. EPA*, 175 F.3d 1027, 1051 (D.C. Cir. 1999), directed the EPA as part of the Agency's proposed ozone National Ambient Air Quality Standard (NAAQS) to consider the indirect benefits (*i.e.*, tropospheric ozone as a shield to harmful effect of the sun's UV rays) even though the indirect effects were not the focus of the rule. As the Court noted, under the CAA, EPA's ambient standards for any pollutant are to be "based on [the] criteria" that EPA has published for that pollutant. As the Court opined:

*"The criteria are to 'reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of such pollutant in the ambient air, in varying quantities.' The reference to 'all identifiable effects' would seem on its face to include beneficial effects."* (citations omitted)

While EPA's direction on the treatment of indirect benefits under the proposal is unclear, the preamble suggests the Agency supports the consideration of all benefits, although it would prefer to disaggregate them from direct benefits.<sup>1</sup> We too support such effort and believe that it will lead to more informed and better rules going forward.

2. Consideration of All Benefits, Both Direct and Indirect, is Essential to Inform Environmental Markets and Drive Market Interactions

Even if indirect benefits are not the primary focus of a regulation, there are important reasons nonetheless to factor them into any rulemaking. Hereto, as the marginal costs of reducing the next molecule of pollutant continue to rise exponentially across all of EPA's programs (air,

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<sup>1</sup> According to the NOPR:

*Disaggregating benefits into those targeted and ancillary to the statutory objective of the regulation may cause the EPA to explore whether there may be more efficient, lawful and defensible, or otherwise appropriate ways of obtaining ancillary benefits, as they may be the primary target of an alternative regulation that may more efficiently address such pollutants, through a more flexible regulatory mechanism, better geographic focus, or other factors. This may be relevant when certain benefits are the result of changes in pollutants that the EPA regulates under a different section of the CAA or under another statute.*

water, and waste), we firmly believe and agree with EPA on the need to find more efficient and flexible approaches to reducing emissions. That is, the “low hanging fruit” of reducing emissions is gone, and the costs of traditional command-and-control rulemaking will significantly increase the costs of compliance.

Thus, failure to consider all benefits of a regulation would deprive the public of fully understanding and recognizing the economic, engineering, physical, biological, and ancillary impacts of a new regulation, and keep them from using that information to craft better rules, such as market-based approaches for achieving more cost-effective outcomes. American businesses, entrepreneurs, and technology companies depend upon this information when considering market opportunities.

Thoughtfully crafted regulations often serve as a regulatory driver for more efficient and effective technologies that reduce the cost of compliance. For example, the CAA’s requirements for scrubbers to be installed on certain major emitters have indirectly had a positive impact on water quality where emissions of NO<sub>x</sub> and mercury, major sources of water quality impairments in certain regions, are reduced. Up to 8 percent of the total nitrogen load delivered to the Chesapeake Bay comes from atmospheric deposition. While atmospheric deposition is an explicit part of the Clean Water Act’s (CWA) total maximum daily load reductions, the CWA provides no authority to regulate atmospheric deposition.

3. While Indirect Benefits Should not be the Primary Focus of a CAA Rulemaking, They Should be Used as the Basis for Establishing More Flexible and Cost-Effective Market-Based Approaches

As expressed in the preamble, EPA is considering the disaggregation of direct and indirect benefits to explore whether more efficient, lawful, and defensible ways of obtaining ancillary benefits are available. We think this is appropriate for the purposes of elucidating the benefits of a rulemaking. As discussed above, there have been many ancillary improvements to water quality from certain CAA regulations resulting from the reduction of atmospheric deposition of SO<sub>x</sub>, NO<sub>x</sub>, nitrate, phosphorus, and mercury.<sup>2</sup> However, many waterbodies across the U.S. continue to be impaired and noncompliant with state water quality standards. In those cases, the EPA should consider whether the national or regional application of a new CAA regulation may help achieve compliance through emission trading or some other market-based approach.

We would encourage the Agency to consider assessing and establishing markets that, in turn, encourage such cross-statutory pollutant trading. For example, CAA scrubbers are often only required to be operational seasonally depending upon air quality. However, if those same scrubbers were made operational year-round, there likely would be marked improvements in ambient water quality in some regions. While the CAA would not authorize the Agency from mandating year-around operation, the Agency should consider establishing policy framework

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<sup>2</sup> See GAO, Water Quality: EPA Faces Challenges in Addressing Damage Caused by Airborne Pollutants, GAO-13-39 (2013), available here: <https://www.gao.gov/products/GAO-13-39>.

by which dischargers under the CWA could pay CAA permitted sources to have those scrubbers operate for longer periods of time. This could likely be achieved under the Office of Water's water quality trading program.<sup>3</sup>

4. Contingency Valuation Analysis (CVA) Should be Used Cautiously and Sparingly, as it is Prone to Significant Errors

ConservAmerica recognizes that the welfare regulations, such as the reduction of pollutants and protection of natural resources may not always have a direct market value and, therefore, for the Agency is to conduct a rigorous economic analysis, it must monetize or derive a value for such action. Toward this end, the EPA has stated its preference for using CVA also known as "Willingness To Pay" (WTP) as the correct measure of changes in well-being, and social costs associate with a rulemaking and according to EPA, CVA "provides a full accounting of an individual's preference for an outcome by identifying what the individual would give up to attain that outcome."

The logic behind CVA is to ask consumers their hypothetical willingness to pay a certain amount for a reduction in pollution or protection of some resource. While CVA has been used in more recent years to monetize the social welfare of certain policy decisions, we caution EPA about its use of CVA or revealed preferences as studies have demonstrated inherent bias in this methodology. It has been referred to by some economists as a crude proxy for social welfare, because it is subject to producing significant errors.<sup>4</sup> It has been well documented that individuals being surveyed and asked hypothetical questions are far more likely to exaggerate their stated value versus true values and what they actually are willing to pay. Bias in CVA can also result from poorly designed questions and deficiencies involving the implementation of the surveys. Therefore, EPA must account for such bias and errors.

In closing, we would like to reiterate our strong support for the proposal, and thank you for your consideration.

Sincerely,



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ConservAmerica

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<sup>3</sup> Available here: <https://www.epa.gov/nutrient-policy-data/collaborative-approaches-reducing-excess-nutrients>.

<sup>4</sup> See Cass R. Sunstein, *Willingness to Pay v. Welfare*, 1 Harv. L. & Pol'y Rev. 303 (2007), available at <https://dash.harvard.edu/bitstream/handle/1/13753867/SunsteinWillingnessToPay.pdf?sequence=3>.