January 20, 2024

Charles Lee
Office of Environmental Justice and External Civil Rights (2201A)
Environmental Protection Agency
1200 Pennsylvania Ave. NW
Washington, DC 20460

*Submitted electronically via Federal eRulemaking Portal: www.regulations.gov*

**Re: Interim Framework for Advancing Consideration of Cumulative Impacts; Request for Comments (Docket ID: EPA-HQ-OLEM-2024-0360)**

Dear Mr. Lee:

Clean Air Task Force ("CATF") respectfully submits these comments on the Environmental Protection Agency's ("EPA") Interim Framework for Advancing Consideration of Cumulative Impacts; Request for Comments (Docket ID: EPA-HQ-OLEM-2024-0360).[1]

CATF is a nonprofit organization dedicated to advancing the policy and technology changes necessary to achieve a zero-emissions high-energy planet at an affordable cost. With more than 25 years of internationally recognized expertise on environmental policy and law, and a commitment to exploring all potential solutions, CATF is a pragmatic, non-ideological advocacy group with the bold ideas needed to address climate change and air pollution. CATF has offices in Boston, Washington, D.C., and Brussels, with staff working remotely around the world.

Cumulative impacts from exposure to pollution harm public health. As a result, it is important to consider cumulative impacts when developing pollution control standards, evaluating permit applications, and in other contexts, as appropriate under statutory authority. CATF supports EPA's development and finalization of a framework for addressing consideration of cumulative impacts and submits this comment with recommendations on how to improve development and implementation of this framework.

**CATF supports EPA's development of a framework for consideration of cumulative impacts as a way to protect public health, the environment, and the climate.** As EPA has previously defined the term, cumulative impacts "include contemporaneous exposure to multiple stressors as well as exposures throughout a person's lifetime."[2] The totality of these exposures and other risk factors can cause adverse health impacts.[3] These impacts often fall

[1] Interim Framework for Advancing Consideration of Cumulative Impacts; Request for Comments, 89 Fed. Reg. 92,125 (Nov. 21, 2024).
[2] EPA, Off. Rsch. & Dev., Cumulative Impacts Research: Recommendations for EPA's Office of Research and Development at 5 (Sept. 30, 2022), https://www.epa.gov/system/files/documents/2022-09/Cumulative Impacts Research Final Report_FINAL-EPA 600-R-22-014a.pdf.
[3] *See* American Lung Ass'n, Cumulative Health Impacts Assessment and the National Ambient Air Quality Standards at 2 (Dec. 17, 2024), https://www.lung.org/getmedia/f0122ec4-095c-4eb3-9fa5-0a4cc47437ad/Lung-Association-Cumulative-Impacts-Assessment-Criteria-Air-Pollution-White-Paper.pdf.

disproportionately on certain communities. According to a study by CATF and the NAACP, for instance, many African American communities face high levels of pollution from various sources, such as power plants, chemical plants, and hazardous waste facilities, that may be exacerbated by oil and gas development.[4] Addressing the cumulative impacts of pollution in these and other communities is necessary to fulfill EPA's mission.[5]

Cumulative impacts of multiple air pollutants can burden communities, and CATF has previously called on EPA to consider these impacts in rulemakings. The national ambient air quality standards for particulate matter ("PM2.5 NAAQS") offer one example. Multiple compounds, including sulfates, nitrates, carbonaceous aerosol, and metals, including lead, make up particulate matter. Each of these compounds has multiple pathways of exposure and may also interact with other pollutants. Thus, CATF argued that to truly safeguard public health EPA must set the PM2.5 NAAQS at the most protective scientifically supported level to minimize or limit negative cumulative exposures.[6] CATF has made similar recommendations in several other contexts:

- We recommended EPA undertake a cumulative impacts analysis when setting carbon pollution emissions limits for power plants and repeated that recommendation in the nonregulatory docket on existing gas combustion turbines last year.[7]
- In comments on setting renewable fuel standards, we explained that EPA must holistically examine the impacts of volume obligations on marginalized communities and referenced the Clean Air Act's purpose and Executive Order 14008.[8]
- And in comments on EPA's implementing regulations for section 111(d) of the Clean Air Act, we asked EPA to require analysis of whether there are cumulative impacts when a source is co-located with other significant air pollution sources or emits multiple harmful air pollutants.[9]

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[4] Clean Air Task Force & NAACP, *Fumes Across the Fence-Line: The Health Impacts of Air Pollution from Oil and Gas Facilities on African American Communities* at 8 (Nov. 2017), https://www.catf.us/wp-content/uploads/2017/11/CATF_Pub_FumesAcrossTheFenceLine.pdf.

[5] *See* EPA, *supra* note 2, at 1.

[6] Comments of Clean Air Task Force et al., Reconsideration of the National Ambient Air Quality Standards for Particulate Matter, Docket No. EPA-HQ-OAR-2015-0072 at 10 (Jan. 27, 2023), https://cdn.catf.us/wp-content/uploads/2023/03/29182002/epa-naaqs-particulate-matter-comments.pdf.

[7] *See* Comments of Clean Air Task Force, Natural Resources Defense Council & The Nature Conservancy, New Source Performance Standards for Greenhouse Gas Emissions, Docket No. EPA-HQ-OAR-2023-0072 at 121-122 (Aug. 8, 2023), https://www.regulations.gov/comment/EPA-HQ-OAR-2023-0072-0893; Comments of Clean Air Task Force, Nonregulatory Public Docket: Reducing Greenhouse Gas Emissions from Existing Turbines at Power Plants, EPA-HQ-OAR-2024-0135 at 19 (May 28, 2024), https://www.regulations.gov/comment/EPA-HQ-OAR-2024-0135-0054.

[8] Comments of Clean Air Task Force, Renewable Fuel Standard Program, Docket No. EPA-HQ-OAR-2021-0427 (Feb. 10, 2023), https://cdn.catf.us/wp-content/uploads/2023/03/07163853/catf-comments-renewable-fuel-standard.pdf.

[9] Comments of Clean Air Task Force, et al., Adoption and Submittal of State Plans for Designated Facilities: Implementing Regulations Under Clean Air Act Section 111(d), Docket No. EPA-HQ-OAR-2021-0527 at 12 (Feb. 27, 2023), https://www.edf.org/sites/default/files/2023-11/Joint Environmental Commenters - CAA section 111%28d%29 implementing regulations.pdf.

- At the level of EPA's strategic plan, CATF argued in comments that EPA's permitting actions must consider not only the isolated impact of a single source being permitted, but the cumulative impact on communities.[10]

Here, we echo our earlier call that EPA should require cumulative impacts analyses with rulemakings, permit reviews, and other contexts where legally permissible. In addition, we encourage EPA to help staff, states, and other parties conduct such analyses and incorporate cumulative impacts requirements into their regulatory and permitting actions by providing EPA guidance and useful tools for estimating, assessing, and enforcing cumulative impacts.

**CATF emphasizes that EPA should consider cumulative impacts in a manner that is consistent with the agency's statutory authority.** As the interim framework recognizes, cumulative impact assessments should meet the requirements of EPA's statutory authorities and processes.[11]

Where statutes direct EPA to protect public health and welfare, consideration of cumulative impacts is particularly appropriate. For instance, the Clean Air Act requires EPA to consider for criteria pollutants "those variable factors … which of themselves or *in combination with other factors* may alter the effects on public health or welfare of such air pollutant" and the interaction of air pollutants to produce adverse effects on public health or welfare.[12] As the D.C. Circuit has held, that statute prohibits EPA from "adjusting for background" levels of pollution when setting NAAQS, requiring instead that EPA must rely entirely on public health and welfare factors.[13] And under section 111, the Clean Air Act requires EPA to consider health impacts when setting standards[14] and defines "modification" to include a change of a stationary source which "increases the amount of *any* air pollutant emitted by such source or which results in the emission of *any* air pollutant not previously emitted."[15]

These and other statutory provisions provide EPA with authority to consider cumulative impacts from exposure to multiple pollutants. However, EPA should evaluate each individual rulemaking or permitting context to determine whether and how it is appropriate to consider cumulative impacts. As a result, CATF supports the flexible approach in the interim framework that considers statutory requirements.[16]

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[10] Comments of Clean Air Task Force, Draft FY 2022-2026 Environmental Protection Agency Strategic Plan, Docket No. EPA-HQ-OAR-2021-0403 at 5 (Oct. 1, 2021), https://cdn.catf.us/wp-content/uploads/2021/11/15114222/CATF-Draft-Strategic-Plan-Comments.pdf.

[11] *See* Environmental Protection Agency, Interim Framework For Advancing Consideration of Cumulative Impacts (Nov. 2024) at 11. https://www.epa.gov/system/files/documents/2024-11/epa-interim-cumulative-impacts-framework-november-2024.pdf.

[12] 42 U.S.C. § 7408(a)(2)(A)-(B) (emphasis added); *see also id.* § 7409(b), (d) (process for setting NAAQS based on public health and welfare).

[13] *See Murray Energy Corp. v. EPA*, 936 F.3d 597, 624 (D.C. Cir. 2019); *see also Whitman v. Am. Tucking Ass'ns*, 531 U.S. 457, 465-71 (2001) (describing factors EPA must consider when setting NAAQS).

[14] 42 U.S.C. § 7411(a)(1); *see also Portland Cement Ass'n v. EPA*, 665 F.3d 177, 183 (D.C. Cir. 2011).

[15] 42 U.S.C. § 7411(a)(4) (emphasis added).

[16] *See* Interim Framework, *supra* note 11, at 7.

**The framework would benefit from adding a discussion on coordination across federal agencies and levels of government and how complementary policies can address cumulative impacts.** One benefit of the framework, and an improved common understanding of how to consider cumulative impacts, is that it could enable more coordinated policymaking. Including more information on how to coordinate across federal agencies and levels of government in the framework would further strengthen this benefit.

A commentary co-authored by CATF staff on opportunities for health- and equity-improving energy decisions recommends ways to better coordinate policymaking in this area.[17] Building on a 2023 workshop, the authors of that commentary identified a wide range of government agencies, including EPA, with policymaking authority related to air quality, energy, and health. Using implementation of the Inflation Reduction Act as an example, this group identified potential synergies across programs that would improve health or equity outcomes. Improved coordination, such as through interagency initiatives between EPA and the Department of Energy, can better align agency policies and provide a means to identify and mitigate undesirable tradeoffs between economic, health, and equity objectives. To accomplish those objectives, the framework would benefit from adding a discussion of how consideration of cumulative impacts can be done across federal agencies.

**States that have or are considering policies requiring analysis of cumulative impacts will benefit from EPA's framework.** At least four states have enacted laws requiring some form of analysis of cumulative impacts in permits or rulemakings, and other states have guidance documents or tools on cumulative impacts.[18] These states, and those that are considering cumulative impact requirements or tools, would benefit from EPA's framework.

Implementation of state-level cumulative impact policies intersects with the cooperative federalism framework of many environmental laws. For example, New Jersey's Department of Environmental Protection ("NJDEP") may deny permits or impose health-protecting conditions on permits for facilities upon a finding that permit approval would "together with other environmental or public health stressors affecting [an] overburdened community, cause or contribute to adverse cumulative environmental or public health stressors … that are higher than those borne by other communities."[19] Last July, NJDEP imposed conditions under that state process on a draft Title V permit for a backup powerplant at a sewage treatment facility in the state's Ironbound community.[20] The Ironbound community already has three fossil-fuel power plants, a waste incinerator, traffic from diesel trucks accessing the Port of Newark, and

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[17] Wei Peng, et al., *Seizing the policy opportunities for health- and equity-improving energy decisions*, OneEarth (Jan. 20, 2025), https://doi.org/10.1016/j.oneear.2024.12.007

[18] *See* Ana Baptista, et al., *Understanding the Evolution of Cumulative Impacts: Definitions and Policies in the U.S.*, Tishman Environment and Design Center at 5, 12 (Aug. 2022), available for download at: https://www.tishmancenter.org/blog/new-research-understanding-the-evolution-of-cumulative-impacts-definitions-and-policies-in-the-us.; to see an updated list, *see id.,* Cumulative Impacts Spreadsheet (available for download).

[19] N.J. Stat. § 13:1D-160(c), (d).

[20] New Jersey Department of Environmental Protection, Environmental Justice Decision and Imposition of Special Conditions pursuant to Administrative Order No. 2021-25, Title V Operating Permit Modification and Renewal BOP 210002, Standby Power Generating Facility (July 18, 2024), https://dep.nj.gov/wp-content/uploads/ej/ej-decision-pvsc-backup-power-facility-20240718.pdf.

abnormally high rates of asthma and illness from carcinogenic vapors.[21] Whether that process adequately addressed cumulative impacts is controversial, and final approval of the plant is still pending.[22] Regardless of the outcome of this specific example, it illustrates how state-level cumulative impact policies are intertwined with cooperative federalism implementation of EPA authorities and why states would benefit from finalization of this framework.

**Conclusion**

CATF appreciates the opportunity to comment on EPA's Interim Framework for Advancing Consideration of Cumulative Impacts. We urge EPA to finalize this framework, continue to research and develop resources for consideration of cumulative impacts, and consider cumulative impacts when consistent with statutory authority.

Respectfully submitted,

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[21] Clean Air Task Force, *Community Perspectives: The Ironbound Community* at 18 (Sept. 2024), https://static1.squarespace.com/static/65c7ad00f5a65179979c06b5/t/66f06edc8a14754d7c42c0e2/1727033054471/cei-community-perspectives-ironbound.pdf.

[22] *See* Emilie Lounsberry, With NJ's Tough New Environmental Justice Law in Place, Why Is Newark in Line for Another Power Plant?, Inside Climate News (Nov. 15, 2024), https://insideclimatenews.org/news/15112024/newark-new-jersey-ironbound-neighborhood-environmental-justice/; Michael Sol Warren, NJ paves way for power plant in area stressed by pollution, NJ Spotlight News (July 19, 2024), https://www.njspotlightnews.org/2024/07/nj-paves-way-for-power-plant-in-area-stressed-by-pollution/.