In response to EPA's Advance Notice of Rulemaking (ANPR), we are writing to set forth the key principles that we believe EPA should follow in regulating greenhouse gas (GHG) emissions under the Clean Air Act.

Global warming is perhaps the most serious environmental challenge we have ever faced. There is an overwhelming scientific consensus that the earth's temperature is warming, that humans are responsible for this increase, and that the harms from global warming will likely be severe and widespread. The effects of climate change are already being felt. We need to take immediate corrective action if we are to avoid the worst projected impacts. The longer we delay, the more difficult, costly and disruptive the challenge becomes.

Congress can and should pass comprehensive climate change legislation. But even if this gets the priority it deserves, it may take several years for such legislation to be enacted and implementing regulations put in place. This is time we cannot afford to squander. In order to stabilize global CO2 concentrations at the level necessary to avoid dangerous climate disruption, the U.S. needs to slow, stop and reverse growth in GHG emissions as quickly as possible.

The Clean Air Act can and should be used right now to begin addressing global warming pollution. EPA has a legal obligation to fulfill: the Supreme Court in *Massachusetts v. EPA*, 549 U.S. 497 (2007), held that GHGs are air pollutants as defined under the Clean Air Act. EPA must respond to the court decision and cannot ignore its obligation to address GHG emissions under the statute. This means making the required endangerment determination for new motor vehicle emissions. It should also include phasing in a range of mobile and stationary source controls well suited for early implementation under the Act, including New Source Performance Standards, a national low-carbon fuel standard, Best Available Control Technology (BACT), and mobile source standards. Of course, the quickest and most effective action EPA can take is to grant a waiver of preemption for California's greenhouse gas automobile regulations, allowing California and the other states that have adopted these standards to enforce the program.

Action now under the Clean Air Act can serve as an effective bridge to a more comprehensive federal climate policy and allow us to begin building the regulatory infrastructure needed to transition to a low carbon economy. It can provide useful lessons as EPA works with Congress to craft new legislation, and provide for complementary measures to reduce GHG emissions even after new legislation is passed. It also can continue to reflect the Act's "cooperative federalism" structure, in which EPA sets minimum national standards while preserving states' rights to set more stringent standards.

The Clean Air Act one of our most successful regulatory programs. It has a proven track record of effectively dealing with complex air pollution problems that implicate a multitude of sources and a wide range of economic activities, and doing so without harming the economy. We strongly disagree with the claims by the departing Administrator that the Clean Air Act is "ill-suited" to the task of regulating greenhouse gases. As the analysis by EPA's professional staff in the ANPR repeatedly points out, the Clean Air Act provides EPA with flexibility to regulate through a variety of approaches, including performance standards, operational controls, market based incentives and other measures, and also to tailor its traditional strategies to suit the

particular challenges posed by GHG emissions. Moreover, EPA has the discretion to prioritize its regulatory actions, first focusing on the largest emitters and those areas that will produce the greatest benefit, and crafting responses to avoid burdening smaller sources. While EPA cannot unreasonably delay exercising its GHG authority, EPA need not address all issues under the Act at once.

Finally, contrary to the unsupported claims made by commenting agencies in the ANPR, controlling greenhouse gas emissions under the Act can be done in a cost effective manner. As the ANPR acknowledges, the Act has encouraged significant technological innovation, in many cases leading to emission reductions achieved at far less cost than originally estimated. Moreover, controlling greenhouse gases provides significant opportunities for savings through greater efficiency and other means. Indeed, a recent economic analysis by the California Air Resources Board found that implementing the economy-wide reductions called for by California's AB 32 will result in a net *positive* effect on California's economic growth.[1]

Conclusion

As EPA's own endangerment analysis shows, climate science continues to build the case for immediate action to address global warming. We cannot continue with a business as usual approach while the quest for a perfect regulatory regime proceeds. Decisive, early regulation of major GHG sources under the Clean Air Act is critical and achievable while Congress considers more comprehensive measures.

[1] California Air Resources Board, Climate Change Proposed Scoping Plan at 22 (Oct. 2008).