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December 22, 2009

Lisa. P. Jackson, Administrator
U.S. Environmental Protection Agency
EPA Docket Center, EPA West (Air Docket)
Mail Code: 2822 T
1200 Pennsylvania Avenue, NW
Washington, DC 20460
Attention: Docket ID No. EPA–HQ– OAR–2009–0517

Re: Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule – Proposed Rule

Dear Administrator Jackson:

The Northeast States for Coordinated Air Use Management (NESCAUM) offer the following comments on the U.S. Environmental Protection Agency's (EPA's) Notice of Proposed Rulemaking (NPR), published on October 27, 2009 in the Federal Register, entitled *Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule* [74 FR 55292-55365]. NESCAUM is the regional association of air pollution control agencies representing Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont.

We commend EPA for putting forth this proposed rulemaking that is responsive to EPA's obligations under the Clean Air Act's (CAA's) Prevention of Significant Deterioration (PSD) and title V requirements. We understand that EPA's proposed rulemaking seeks to incorporate greenhouse gas (GHG) considerations into PSD and title V permitting programs while addressing administrative burdens for state permitting authorities in keeping with the intent of the CAA.

In past comments to EPA, NESCAUM has supported EPA's proposed endangerment and cause or contribute findings for GHGs [74 FR 18886-18910]. NESCAUM also is supporting the EPA and U.S. Department of Transportation joint proposed rulemaking to establish light-duty vehicle GHG emission standards and corporate average fuel economy standards [74 FR 49454-49789]. These two rules respond to the Supreme Court's ruling in *Massachusetts v. EPA*, 127 S.Ct. 1438 (2007), which held that EPA was obliged under the law to issue an "endangerment" finding to determine whether GHGs "cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare" [CAA § 202(a)]. The EPA's proposed rule on PSD/title V GHG requirements is one of several approaches EPA may choose in moving forward from earlier proposed EPA rulemakings concerning GHGs.

NESCAUM recognizes that the scope of the climate change problem is large and complex. We support EPA's efforts to begin the necessary steps to address the threat of climate change with the available tools at hand in the Clean Air Act.

Below are our specific comments on elements of EPA's proposed tailoring rule.

1. Adequate time for state regulatory changes

While it is primarily a matter related to the "Johnson memo" [74 FR 51535 (October 7, 2009)], it is imperative that the effective date of the final rule resulting from this proposal allows states sufficient time to revise state regulations in accordance with EPA's final rule. Adequate time is a concern both for states that will automatically regulate GHGs upon EPA's promulgation of the light-duty vehicle rule and for states with "deficient" SIPs that either specifically list the pollutants regulated under the state PSD program or that interpret their regulations to apply only to pollutants regulated at the time the state program was adopted. While the nature of the regulatory changes will vary, state rulemaking processes require at least twelve, and in some cases many more, months to complete.

Furthermore, EPA has indicated that it will issue a separate regulatory action in the near future to identify those SIPs that are "deficient" and to address them. [74 FR 55344] EPA's method of addressing the deficient SIPs will presumably require programmatic changes and a SIP revision. If some NESCAUM states are deficient in EPA's estimation, NESCAUM reminds EPA that the necessary regulatory and SIP revisions are lengthy processes, both of which involve public participation elements. EPA should work with states so that its actions regarding deficient SIPs aligns with the timelines determined in the final tailoring rule.

Although not specifically addressed in the proposed tailoring rule, NESCAUM also points out that states will need adequate time to amend their Part 70 program requirements to incorporate GHGs into title V permits.

In sum, EPA needs to provide a path forward that provides sufficient time to states that implement their PSD and/or title V programs through SIP-approved state rules and regulations so that they may modify those state programs to be consistent with EPA's final tailoring rule. If states are not provided adequate time to modify their regulations, then the lower thresholds of 100 or 250 tons per year (tpy) may apply in those programs and the "administrative impossibility and absurd results" that EPA seeks to avoid in its rule may occur in those states. EPA's suggestion that it could delay the effective date of the new programs an additional 75 days after "promulgation" of the regulation on the basis of the review period provided by the Congressional Review Act does not provide sufficient time.

2. Listing of greenhouse gases

NESCAUM supports the listing of the six GHGs identified by EPA as air pollutants to be covered under the tailoring rule: carbon dioxide, methane, nitrous oxide, sulfur hexafluoride, hydrofluorocarbons, and perfluorocarbons. We recommend, however, that EPA explore regulating each of the GHG pollutants on an individual mass basis rather than collectively. We make this recommendation because it may be reasonable and feasible to regulate and control emissions of each of the listed pollutants, other than carbon dioxide, at the 100/250 tpy thresholds, or less if deemed necessary, in accordance with the established mechanisms of the Clean Air Act. Methane, for example, is already regulated as a separate pollutant under 40CFR60 Subpart WWW when emitted from landfills and can reasonably be controlled by existing technologies at levels of less than 100 tpy. Only carbon dioxide creates a distinct case that warrants the tailoring rule.

Furthermore, disaggregating the pollutants allows for more appropriate technology reviews. For example, many sources emit methane and carbon dioxide. Oxidation is a feasible control for methane but is not feasible for control of carbon dioxide. Nevertheless, the overall GHG warming potential would be reduced through the oxidation of methane from the source. In fact, effective control technology reviews could warrant evaluation of the GHGs individually, along with consideration of the resultant overall GHG warming potential.

We also encourage EPA to give consideration to black carbon and other short-lived climate forcers as air pollutants that contribute to climate change, especially as the level of understanding of their contributions increases. In particular, the growing recognition that black carbon is a potent and significant contributor to climate change calls for comparable consideration of its impacts within appropriate regulatory programs under the Clean Air Act.

3. Threshold for major sources

As a general matter, we support an approach to raise the threshold size for GHG major sources to address unreasonable administrative burdens. EPA's reasoned explanations for balancing the appropriate administrative burden with tangible environmental benefits are in line with the intent of the Clean Air Act and reflect our states' concerns and experiences in implementing effective permitting programs.

If EPA treats the six GHGs separately on a mass basis, per our comment above, we recommend that the increase in source threshold size be initially applied only to carbon dioxide emissions, with source thresholds of the remaining five GHGs set according to current CAA thresholds. For the non-CO_2 GHGs, consideration should also be given to setting major source thresholds below 100/250 tons to account for differences in global warming potentials. Consistent with EPA's goal in the proposed tailoring rule, this pragmatically seeks to avoid needless administrative burden created by expansion of the PSD/title V permit requirements to potentially millions of small GHG sources.

In the alternative, if EPA decides to treat all six GHGs collectively on a CO_2-equivalent basis, then a single raised threshold level should be applied across all GHG major sources.

With regard to the metric used in setting the threshold levels, NESCAUM supports using units of short tons rather than metric tons.

4. Threshold for significance levels

Based on the same reasoning to address administratively burdensome obstacles to running an environmentally effective GHG permitting program, NESCAUM supports EPA's reasoning for an increase in the significance level to trigger PSD. Of the range suggested by EPA, NESCAUM suggests adoption of a 25,000 ton significance level. If EPA were to treat the GHGs individually on a mass basis per our comment in section 2, then the 25,000 ton significance level should only apply to carbon dioxide, and EPA should set lower significance thresholds for the other five GHGs that take into account their different global warming potentials.

In the alternative, if EPA decides to treat all six GHGs collectively on a CO_2-equivalent basis, then a single significance level of 25,000 tons CO_2-equivalent should be applied across all GHG major sources.

With regard to the metric used in setting significance levels, NESCAUM supports using units of short tons rather than metric tons.

5. Guidance to states

It is imperative that EPA provide timely and sufficient guidance to states to assist permitting authorities in implementing sufficiently comprehensive and robust PSD and title V GHG permitting programs. EPA has an unfortunate history in failing to develop timely guidance for state programs. Permitting authorities are being tasked with the important challenge of incorporating a suite of new air pollutants (GHGs) within their permitting programs. Timely and clear guidance from EPA is a fundamental foundation on which states can construct solid GHG permitting programs. Should the final rule resemble the proposal, such guidance must also include top-down best available control technology (BACT) information for the full range of sources captured under the GHG permits, as well as feasible and appropriate GHG mitigation options.

6. Biomass combustion sources

The tailoring rule proposal provides insufficient information on how permitting authorities should consider biomass combustion sources for purposes of GHG PSD/title V permitting. For example, are the carbon dioxide emissions from facilities burning biomass to be treated on an equivalent basis as if from fossil fuel combustion? This would appear to be appropriate unless the biomass resource has been demonstrated to be harvested in a sustainable manner so that its use represents no net addition of GHGs to the atmosphere. However, because the definition of sustainable harvesting is not settled, we recommend that EPA establish a national standard on sustainability to avoid a multitude of many different standards around the country that will lead to confusion and ongoing controversy about the use of biomass as a fuel.

7. Potential to emit

NESCAUM has concerns about EPA's suggestion for modifications to the current approach on potential to emit (PTE) considerations used in permitting decisions. Alterations to current practice with PTE could upset longstanding policies and procedures in NSR permitting guidance, which might affect all of the regulated NSR pollutants. We are especially concerned that this approach could ultimately undermine existing state and federal rules for triggering thresholds for applicability of regulating the existing NSR pollutants. We prefer the current PTE approach to remain as is to avoid opening this area to challenge in NSR reviews.

8. Administrative resources and streamlining techniques

Given the additional resources that will be required to integrate GHG sources into the PSD/title V programs, it is imperative that EPA develop mechanisms that will create revenue streams to support permitting agencies for these efforts. NESCAUM suggests that EPA increase 105 program funding and require the collection of title V fees for GHGs. However, as with the traditional title V program, the ton per year fee funding level may vary significantly from agency to agency. A variety of factors will influence the level of funding necessary to implement this program. These factors include, but are not limited to, the number of affected sources and

mechanisms used to address affected sources. Therefore, NESCAUM recommends that EPA clearly detail permitting agencies' authority to collect fees under this program and provide them with general guidance and recommendations for fee structures.

As stated previously, NESCAUM is supportive of EPA's approach to set major source thresholds and significance levels in a manner that appropriately addresses unnecessary additional administrative burdens while capturing the environmental benefits intended by the Clean Air Act. We have some concerns that many states do not have sufficient information on hand with regard to potential GHG emissions levels (as opposed to actual emissions) to gauge accurately the true universe of GHG sources that may be covered under the proposed tailoring rule. EPA has proposed several streamlining efforts which might alleviate some of the workload.

Among the workload reducing proposals EPA suggests are the use of e-permitting and "lean" techniques as permit streamlining options. While these are viable workload reduction and streamlining techniques when applied to well-established procedures, we are not confident that they are appropriate to implement during a time of programmatic change as drastic and changeable as is being proposed by the tailoring rule. Moreover, we do not believe that the states will have the resources to implement these options during the current economic times.

We recommend that EPA evaluate the applicability of the current "top-down BACT" approach many states currently follow for criteria pollutants (and their precursors) and provide initial guidance to states on how such an approach (with modified thresholds as recommended in these comments) would be applicable to BACT determination for emissions of greenhouse gases. Additionally, we recommend that EPA prepare white papers that provide guidance on a range of control technologies and measures that can be applied in a cost-effective manner for major stationary source categories, such as power plants, cement kilns, glass furnaces, and other sources.

We also recommend that the long-term solution would be for EPA to establish New Source Performance Standards (NSPS) in a timely manner for major source categories of GHG emissions. In the near-term, however, the approach outlined above (white papers on cost-effective technologies and a top-down BACT approach for GHG emissions) should provide an acceptable near-term solution. State and local permitting authorities must still follow the approved process for determining BACT in a manner that is consistent with longstanding policies and procedures applied to sources of the existing regulated NSR pollutants.

9. Phase in period

We support EPA's approach to provide a first phase of five years in the PSD/title V tailoring rule with a sixth year to complete additional rulemaking. We recommend that during the first five years, implementation of permitting five of the six GHG proceeds consistent with the CAA. For carbon dioxide during the first five years, emission inventories should be built, control guidelines and performance standards should be evaluated and promulgated, and resources and programs should be developed such that fuller implementation of PSD and title V permitting of carbon dioxide sources by end of the sixth year can occur. With the experience that permitting agencies will gain in the administrability of GHG regulatory actions, the tailoring rule can be refined after the first phase to incorporate any changes needed to cover an appropriate scope of sources.

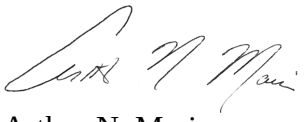
We do not support the alternative option of a "step-down" approach in which the threshold levels are reduced in regular predetermined step-down levels. Without the experience of administering the new GHG permitting requirements, predetermining the step-down increments is an uncertain exercise and potentially arbitrary in the step-down amounts. Permitting agencies need the benefit of actual experience in implementing their GHG permitting programs over time to gain a better sense of appropriate and administrable permitting thresholds. In addition, because permitting thresholds often have to be embodied in state law or regulation, a series of stepped down thresholds may place additional and unnecessary procedural burdens on state authorities who would be forced to engage in a lengthy cycle of regulatory revisions.

10. Summary

In summary, we commend EPA for its foresight in addressing GHG emissions under the PSD and title V provisions of the Clean Air Act. We recognize and appreciate EPA's efforts to seek a workable balance between the additional administrative burdens and the sought-after environmental benefits encompassed by this proposal while remaining consistent with the intent of the Clean Air Act. As demonstrated in the interplay of considerations taken in the tailoring rule, this is clearly a state and federal partnership towards achieving our shared environmental goals under the Clean Air Act. While this is new territory for EPA and the state permitting authorities, it provides another step along the path to addressing climate change.

If you or your staff has any questions regarding the issues raised in this letter, please contact Paul Miller of NESCAUM at 617-259-2016.

Sincerely,



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cc: NESCAUM directors