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Attention Docket ID No. EPA-HQ-OAR-2010-0223
EPA Docket Center
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Sir/Madam:

The National Association of Clean Air Agencies (NACAA) appreciates the opportunity to comment on EPA's Advanced Notice of Proposed Rulemaking (ANPR) on New Source Performance Standards (NSPS) Review, published in the *Federal Register* on October 24, 2011 (76 *Federal Register* 65653). NACAA is an association of air pollution control agencies in 50 states and territories and over 165 major metropolitan areas in the country.

NACAA recognizes the need for EPA to manage the process of reviewing NSPS, given the statutory requirement to review NSPS every eight years and that there are currently 70 NSPS covering 59 source categories.

NACAA generally agrees with the three criteria laid out by EPA for managing reviews of NSPS:

- The first criterion considers whether there is new or updated control technology. According to the ANPR, "if available information on control technology indicates that review of the standard would not result in more stringent emission limits or no greater level of control, and would not provide improvements in air quality and health and welfare benefits, such standard would be listed as a potential candidate for no review."¹
- The second criterion considers whether any new, modified or reconstructed sources are anticipated in a source category, which would trigger applicability under the NSPS in question over the next eight years.²
- The third criterion asks whether there are other regulatory requirements that are applicable to the same pollutants (either directly or as surrogates)

¹ 76 *Federal Register* 65658.

such that a revision of the NSPS would not result in the imposition of any more stringent reduction requirements.³ EPA suggests that the existence of Maximum Achievable Control Technology requirements or permitting requirements could be a consideration under this criterion.⁴

NACAA has two suggestions for improving the NSPS review process outlined in EPA's ANPR.

First, EPA should explicitly add to its criteria a consideration of whether the NSPS includes all of the pollutants of concern from the source category or a source subcategory. There may be pollutants emitted by a source category that have over time increased in importance as precursors or which EPA has not previously regulated, and it may be prudent to revise an NSPS to include these pollutants even though all or any of the three other criteria are met indicating no review is necessary.


Second, EPA needs to explain more clearly how permitting considerations factor in the third criterion. The third criterion used by EPA in deciding whether an NSPS needs to be reviewed is whether another regulatory requirement of the Act provides a more stringent level of control than what would be required under an updated NSPS. In the proposal, EPA suggests that permitting requirements (including Best Available Control Technology (BACT), offset and netting regulations) might be considered when determining whether emissions covered by an NSPS are already adequately regulated by another part of the Act. However, NACAA is concerned that this line of argument could be used to decide that an NSPS never needs to be updated. NSPS serve as the floor for any BACT determination, so any BACT determination would necessarily be more stringent – or at least as stringent – as the NSPS being reviewed. EPA should therefore lay out very specifically how permitting requirements factor into this criterion. For example, even if EPA were to find that every BACT determination in the past two or three years led to the imposition of stringent emissions controls, that does not necessarily mean there is no need to update the NSPS to reflect that level of control. Updating the NSPS to reflect those stringent control requirements would ensure a tighter level of control as a baseline for future BACT determinations.

Thank you for this opportunity to comment on the proposal. Please contact us if we can provide additional information.

Sincerely,



Tad Aburn
Maryland
Co-Chair, Criteria Pollutants Committee



Lynne A. Liddington
Knoxville, Tennessee
Co-chair, Criteria Pollutants Committee

³ Id.

⁴ 76 *Federal Register* 65658-9.