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S. William Becker

May 14, 2010

Docket ID No. EPA-HQ-OAR-2003-0064

Air and Radiation Docket
Environmental Protection Agency
Mail Code 6102T
1200 Pennsylvania Avenue NW
Washington, DC 20460

Dear Sir/Madam:

On behalf of the National Association of Clean Air Agencies (NACAA), thank you for this opportunity to comment on Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Aggregation; Reconsideration (“Aggregation Reconsideration Proposal”), which was published in the *Federal Register* on April 15, 2010 (75 *Federal Register* 19567). NACAA is the national association of air pollution control agencies in 53 states and territories and over 165 metropolitan areas across the country.

NACAA supports EPA’s Aggregation Reconsideration Proposal, which would revoke the NSR Aggregation Amendments promulgated by the agency in early 2009.¹ The Amendments narrowed the circumstances for combining nominally-separate physical or operational changes into a single project for the purposes of NSR. The final rule directed permitting authorities to aggregate emissions from nominally-separate changes at a source only when those changes are “substantially related” and established a rebuttable presumption against aggregation when such changes occur three or more years apart. The NSR Aggregation Amendments have been under an administrative stay by EPA since shortly after promulgation. Pursuant to granting a petition for reconsideration of the final rule, EPA is now proposing to revoke the NSR Aggregation Amendments and revert to its pre-existing policy on aggregation.

Due to the following concerns with the NSR Aggregation Amendments, which we expressed in our original comments when the Amendments were

¹Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Aggregation and Project Netting, 74 *Federal Register* 2376 (January 15, 2009).

proposed in 2006,² NACAA agrees that the stayed Amendments should not be implemented. The NSR Aggregation Amendments would impermissibly narrow the circumstances for aggregation and result in greater uncertainty for permitting authorities. The “substantially related” test articulated in the NSR Aggregation Amendments constricts the scope of the aggregation analysis by instructing permitting authorities to evaluate aggregation based only on apparent technical or economic interconnectivity and/or a complementary relationship between physical or operational changes at a source. Conversely, EPA’s pre-existing aggregation policy recognized the need for permitting authorities to evaluate whether a source is attempting to circumvent NSR by separating a modification into several smaller projects (“circumvention analysis”). Prior to the NSR Aggregation Amendments, permitting authorities were directed to consider a number of factors, summarized in the oft-cited 3M Memo,³ in their evaluation, including timing, funding, consumer and production reports, representatives’ statements, economic realities, and the relationship of the individual changes to the overall basic purpose of the facility. The new test articulated in the NSR Aggregation Amendments would jettison many of the factors summarized in the 3M Memo, and effectively eliminate the circumvention analysis.

NACAA also believes that the “substantially related” test would result in greater uncertainty for permitting authorities. Though the test clearly repudiates many of the factors traditionally used to evaluate whether nominally-separate changes should be aggregated, it does not clearly identify substitute factors. Apparent technical or economic interconnectivity and/or a complementary relationship are offered as evidence of a substantial relationship, but are not clearly defined. The current case-by-case analysis conducted by permitting authorities under existing aggregation policy offers more certainty and clarity.

Finally, NACAA opposes the rebuttable presumption against aggregation contained in the NSR Aggregation Amendments. The Amendments created a further hurdle for permitting authorities by establishing that physical or operational changes undertaken three or more years apart are not “substantially related” unless shown otherwise. Such a presumption shifts the burden of justifying aggregation for changes occurring three or more years apart onto permitting authorities, making it easier for sources to evade NSR. Permitting authorities need to be able to consider the entire project for purposes of aggregation. The presumption against aggregation should not be retained.

For the reasons articulated above, NACAA supports EPA’s Aggregation Reconsideration Proposal and the option to revoke the NSR Aggregation Amendments. Thank you for this

² NACAA Comments on Debottlenecking, Aggregation, and Project Netting Proposal (November 13, 2006), Docket ID EPA-HQ-OAR-2003-0064-0102.1; *See also Change Is in the Air: Recommendations from the National Association of Clean Air Agencies to President-Elect Obama’s Administration on Improving Our Nation’s Clean Air Program* (December 16, 2008).

³ Memo from John B. Rasnic, Director, Stationary Source Compliance Division, Office of Air Quality Planning and Standards, to George T. Czerniak, Chief, Air Enforcement Branch, Region V, “Applicability of New Source Review Circumvention Guidance to 3M – Maplewood, Minnesota” (June 19, 1993); *see also* discussion of EPA’s pre-existing aggregation policy in Aggregation Reconsideration Proposal at 19570-19571.

opportunity to comment on the proposal. Please do not hesitate to contact either of us or Misti Duvall of NACAA if you have any questions or need further information.

Sincerely,



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Dayton, OH
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NACAA New Source Review Committee



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