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April 20, 2012

**Docket ID No. EPA-HQ-OAR-2009-0517**

Air and Radiation Docket Information Center

Mail Code 2822T

U.S. Environmental Protection Agency

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 and Title V Greenhouse Gas Tailoring Rule Step 3, GHG Plantwide Applicability Limitations and GHG Synthetic Minor Limits (“Proposed Step 3 Rule”), which was published in the *Federal Register* on March 8, 2012 (77 *Federal Register* 14226). NACAA is a national, non-partisan, non-profit association of air pollution control agencies in 45 states, the District of Columbia, four territories and over 165 metropolitan areas. The air quality professionals in our member agencies have vast experience dedicated to improving air quality in the U.S. The comments we offer are based upon that experience. The views expressed in these comments do not necessarily represent the positions of every state and local air pollution control agency in the country.

In the Greenhouse Gas (GHG) Tailoring Rule,<sup>1</sup> EPA established a phased approach for implementing GHG permitting requirements under the Clean Air Act’s Prevention of Significant Deterioration (PSD) and Title V programs. Under Step 1 of the GHG Tailoring Rule, sources that increase GHG emissions by 75,000 tons per year (tpy) or more carbon dioxide equivalent (CO<sub>2</sub>e) and are already subject to the permitting process because of emissions of other pollutants are required to address GHGs. Under Step 2, the PSD program was extended to new facilities expected to emit at least 100,000 tpy CO<sub>2</sub>e and existing facilities that increase CO<sub>2</sub>e by 75,000 tpy or more, even if they are not subject to PSD for other pollutants. Similarly, sources emitting 100,000 tpy or more CO<sub>2</sub>e became subject to the Title V program, even if they are not subject to Title V for other pollutants. As part of the GHG Tailoring Rule, EPA also committed to evaluate a Step 3 to lower these thresholds through proposing and finalizing a Step 3 rule by July 1, 2012 and to identify and evaluate potential streamlining approaches to GHG permitting.

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<sup>1</sup> Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule, 75 *Federal Register* 31514 (June 3, 2010).

Accordingly, in the Proposed Step 3 Rule EPA has evaluated the implementation of GHG permitting requirements thus far, and is proposing to retain the current GHG permitting thresholds of 100,000 / 75,000 tpy CO<sub>2</sub>e. NACAA supports this approach.

EPA is also proposing two streamlining approaches for GHG permitting in the current rulemaking, while identifying a number of potential streamlining approaches for further discussion and evaluation. The first approach proposed by EPA in the Proposed Step 3 Rule would increase flexibility for the use of Plantwide Applicability Limitations (PALs) for GHGs. The agency is proposing to increase this flexibility by: 1) allowing the issuance of PALs to GHG only sources; 2) allowing the issuance of GHG PALs on either a mass or CO<sub>2</sub>e basis; 3) establishing a CO<sub>2</sub>e threshold of 75,000 tpy; and 4) allowing compliance with GHG PALs as an alternative applicability approach. EPA further proposes potential options for allowing GHG only sources to obtain a GHG PAL. However, the agency does not propose specific rule language, instead relying on a preamble discussion of possible rule changes. While NACAA generally supports the provision of increased flexibility for the use of GHG PALs, we ask that EPA clarify its proposed approach by proposing specific rule language for review and comment. EPA must also ensure that the use of GHG PALs remains subject to the discretion of individual permitting authorities.

The second streamlining approach proposed by EPA in the Proposed Step 3 Rule would allow EPA to issue GHG synthetic minor permits in areas where EPA is the PSD permitting authority. NACAA generally supports this approach; however, we note that the rule language proposed by EPA appears to be overly detailed and may result in overly complex permits rather than providing the necessary flexibility. The association also requests that EPA clarify whether, if a state or local agency with a delegated PSD program already has authority to issue synthetic minor permits, EPA will require the delegated state or local agency to implement the requirements contained in EPA's proposed 40 C.F.R. 52.21(dd). In addition, the association requests that EPA make clear that these requirements do not apply to states and localities with existing authority to issue synthetic minor permits.

In the preamble to the Proposed Step 3 Rule, EPA also identifies a number of potential streamlining approaches for discussion, including defining potential to emit (PTE) for various source categories, establishing presumptive best available control technology (BACT) for various source categories, and establishing procedures for the use of general permits. While there is not enough information provided to comment on these identified options at this time, NACAA looks forward to working with EPA to evaluate these and other potential streamlining approaches as GHG permitting implementation moves forward.

There is one option on which NACAA recommends EPA move forward as soon as possible. In the Proposed Step 3 Rule, EPA identified a possible exclusion for "empty permits" as a possible means for alleviating the potential burden of Title V permitting for GHG sources.<sup>2</sup> EPA stated that empty permits may occur because the applicability for Title V is in part based on major source status, yet there may not be any applicable requirements that apply. NACAA supports this concept as a streamlining measure that could reduce the resources required to

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<sup>2</sup> EPA specifically requested comment on "whether the EPA can, and should, interpret Title V as not requiring "empty permits," and if so whether state program revisions, approved by the EPA, would, or should, be necessary to exclude such sources from Title V permit requirements." *77 Federal Register* at 14257.

administer the Title V permitting program without sacrificing environmental protection. We believe that EPA can, and should, revise the Title V requirements such that empty permits are not required, and ask that the agency propose specific rule language to this effect for public review and comment.

We recognize that, given the fact that most state Title V programs include EPA's current definition of "subject to regulation" for GHGs, state program revisions may be necessary to incorporate this change. However, we encourage EPA to provide an alternative mechanism that would provide the same burden reduction without requiring state program revisions. Since Title V applications for newly applicable sources, including those that would receive empty permits, are due on July 1, 2012, and states are required to issue those permits no later than January 1, 2014, it is useful for EPA to provide this burden reduction as expeditiously as possible.

Finally, in the preamble to the Proposed Step 3 Rule, EPA directs states to submit answers to a series of in depth questions to their EPA Regional Administrator within the public comment period.<sup>3</sup> This survey is unnecessary, as EPA already has, and references in the preamble, quite a lot of information regarding current state and local resource burdens. To the extent that EPA requires additional information for the purposes of this rulemaking, it would be more efficient and appropriate to gather the desired information from a subset of states, rather than requiring all states to provide additional information during the public comment period. We note that EPA has already conducted an information gathering exercise with a subset of states and EPA Regional Offices, as noted in the preamble.<sup>4</sup> Should EPA require additional information beyond what was collected during this exercise, we recommend that the agency work with NACAA to identify less burdensome options for doing so.

Thank you for this opportunity to comment on the Proposed Step 3 Rule. Please do not hesitate to contact any of us or Misti Duvall of NACAA if you have any questions or need further information.

Sincerely,



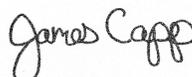
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<sup>3</sup> 77 *Federal Register* at 14255.

<sup>4</sup> Memo from Michael S. Brooks: Information Gathering Exercise for Tailoring Rule Step 3. Document ID No. EPA-HQ-OAR-2009-0517-19235 (added to the public docket March 8, 2012).