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January 14, 2008

U. S. Environmental Protection Agency
EPA Docket Center
Air and Radiation Docket
Mail Code 2822T
1200 Pennsylvania Avenue, NW
Washington, D.C. 20450
Re: Docket ID No. EPA-HQ-OAR-2004-0087

To Whom It May Concern:

On behalf of the National Association of Clean Air Agencies (NACAA), thank you for the opportunity to comment on the proposed rule, "Operating Permit Programs and Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR); Flexible Air Permitting Rule" (proposed Flexible Permit Rule), as published in the *Federal Register* on September 12, 2007 (72 *Federal Register* 52206). NACAA is the national association of air quality agencies in 53 states and territories and over 165 major metropolitan areas throughout the United States.

NACAA supports flexible and streamlined permitting. Increasing numbers of states and localities are undertaking permit streamlining efforts and achieving dramatic improvements in speed, efficiency, and relations with sources in their areas. As described in our attachment, many permitting authorities are using techniques such as lean, Kaizen, and Six Sigma, and advance-approval concepts to achieve streamlining and flexibility under the current rules. However, we are concerned that under the proposal, innovation will actually be stifled, and important air quality protections will be lost. In addition, the proposed rule adds complexity to an already complex permitting program. The current Prevention of Significant Deterioration (PSD) rules already include over 50 definitions. We question whether adding more definitions and regulations, as proposed in this rule, will really assist states and localities to be flexible and innovative.

While NACAA appreciates EPA's desire to enhance permit flexibility, we believe the agency's proposal could present significant problems for our agencies as they implement their air pollution control programs. We are especially troubled by the Green Group provisions, along with having specific concerns with the voluntary provisions. Accordingly, we offer the following general comments. We provide more detailed comments as an attachment.

First, NACAA opposes the requirements for Green Groups. The association is extremely concerned that facilities are exempted from important regulatory requirements. If we understand the proposal, regulated entities would be exempted from NSR modification requirements, exempted from requirements to commence construction 18 months after permit approval, allowed to bypass Best Available Control Technology (BACT) and Lowest Achievable Emissions Rate (LAER) rules, and allowed to qualify for permits that would be effective for a 10- to 15-year time period. This is especially troublesome in states that have or are near Class I areas. As EPA is aware, the Clean Air Act allows only minor degradation of air quality in Class I areas. These provisions could allow facilities, in essence, to reserve available increment for up to 15 years and freeze out development. It is critically important that states and localities have the ability to control air quality impacts within their boundaries. Moreover, the mandatory nature of this program appears to conflict with section 116 of the Clean Air Act, which allows states to be more stringent than EPA. Permitting authorities that do not believe that the Green Group concept is consistent with their air quality goals would nonetheless be required to undertake the lengthy effort of adding authority to accommodate it.

In addition, EPA states that the proposal is based on the agency's experience with six facilities that received permits in a Flexible Permit Pilot Program. NACAA does not agree, however, that the proposed provisions "build upon" the experiences of the Flexible Permit Pilot Program. Rather, they far exceed them. Significant differences separate the permits for these facilities from the Green Group proposal: The permits for the six facilities were in effect for five, not 10- to 15, years. Moreover, the permits all specified that increases in emissions that caused a Plantwide Applicability Limitation (PAL) cap to be exceeded would trigger NSR modification requirements. Although we support appropriate flexibilities, they should not serve as a shield from important NSR and control requirements.

Exempting Green Groups from NSR also raises serious legal concerns. NACAA sees little difference between increases in actual emissions nine years after installation of BACT that do not trigger NSR and the Clean Unit provisions that were struck down by the D.C. Circuit Court of Appeals in *State of New York v. EPA*, 413 F. 3d 3, 38-40 (D. C. Cir. 2005). We do not believe that the D.C. Circuit would find that the Green Group approach differs in any material way from the Clean Unit exemption. State and local air agencies have no wish to spend their limited resources on programmatic activities that are likely to be overturned. We also disagree strongly that improvements in technology do not occur within a 10- to 15-year period, and have

set forth numerous examples of significant emissions reductions advances that have occurred in such a time frame.

Second, NACAA questions whether other provisions in this rule are really necessary. Many air agencies already offer the flexibilities embodied in this proposal. For example, a number of agencies already advance-approve construction activities under their Minor NSR programs, as EPA noted in the Preamble to the proposed rule. Moreover, the state and local permitting authorities believe that current provisions at 40 CFR 70.6(a)(9) requiring "reasonably anticipated operating scenarios" in Title V permits already give us ample authority to allow sources to vary their operating practices as appropriate. EPA's attempt at codifying a precise definition of Alternative Operating Scenarios (AOSs) is likely to have the unwanted result of hampering and complicating our efforts to fashion flexible permits.

Third, codification of provisions for Alternative Replicable Methodologies (ARMs) raises serious questions and concerns. Changes in operating procedures appear to be allowed by ARMs that could result in increases in actual emissions beyond *de minimis* levels without triggering NSR. Increases in emissions should not hide behind monitoring methodologies and operational adjustments. Adding this problematic provision could undermine our permit programs and constrain our ability to meet our clean air obligations.

In sum, NACAA believes that layering on additional rules to the already complex NSR and Title V rules in the name of flexibility only adds greater complexity to these permit programs. In addition, the proposed flexibilities are likely to lead to emission increases that would not be accounted for in our State Implementation Plan process.

Thank you for considering these comments. If you have any questions or desire further information, please do not hesitate to contact one of us or Mary Stewart Douglas at NACAA.

Sincerely yours,



Bob Hodanbosi, Co-Chair
NACAA Permitting Committee



Ursula Kramer, Co-Chair
NACAA Permitting Committee