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March 7, 2011

**Docket ID No. EPA-HQ-OAR-2010-0929**

Environmental Protection Agency  
EPA Docket Center (EPA/DC)  
Mail Code 2822T  
1200 Pennsylvania Avenue NW  
Washington, DC 20004

Dear Sir/Madam:

On behalf of the National Association of Clean Air Agencies (NACAA), thank you for this opportunity to comment on Change to the Reporting Date for Certain Data Elements Required Under the Mandatory Reporting of Greenhouse Gases Rule; Proposed Rule (“Proposed GHG Reporting Deferral”), which was published in the *Federal Register* on December 27, 2010 (75 *Federal Register* 81350). NACAA is the national association of air pollution control agencies in 51 states and territories and over 165 metropolitan areas across the country.

For the reasons set forth in this letter, NACAA strongly disagrees with EPA’s Proposed GHG Reporting Deferral, which would defer reporting of data elements that are inputs to emissions equations from direct emitters under the agency’s Mandatory Greenhouse Gas Reporting Program (GHGRP). The agency proposed to defer reporting of these data elements for three years while it further considers whether or not data elements that are inputs to emissions equations may qualify as confidential business information (CBI) and be withheld from public release. NACAA urges EPA to reconsider its proposal, and to collect and publicly release this information as required by the Clean Air Act.

Pursuant to a mandate from Congress, EPA established the GHGRP in late 2009.<sup>1</sup> Under the program, sources from a broad range of industry sectors are required to report information to EPA regarding their greenhouse gas (GHG)

<sup>1</sup> See Mandatory Reporting of Greenhouse Gases; Final Rule, 74 *Federal Register* 56260 (October 30, 2009).

emissions. In July 2010, EPA proposed confidentiality determinations for categories of data submitted under the rule,<sup>2</sup> including data elements that are inputs to emissions equations, in order to classify data that may be withheld as CBI. Consistent with longstanding policy, the agency proposed to classify data elements that are inputs to emissions equations – information used to calculate or determine emissions from sources directly emitting GHGs – as emissions data and publicly release this information as required by the Clean Air Act.

However, after receiving comments on its proposed confidentiality determinations, EPA issued the Proposed GHG Reporting Deferral, which would broadly defer reporting of data elements that are inputs to emissions equations under the GHGRP until March 31, 2014. This would affect data for calendar years 2010, 2011, and 2012. In two related actions, EPA issued an interim final rule deferring reporting of data elements that are inputs to emission equations until August 31, 2011, and requested “information and comment to assist in evaluating issues related to reporting and public availability of inputs to emission equations.”<sup>3</sup>

NACAA has several concerns with the Proposed GHG Reporting Deferral. Chief among these is that the proposal is overly broad and would inappropriately allow sources to effectively withhold emissions data that are integral to the GHGRP and other reporting programs and required to be released to the public. Under section 114 of the Clean Air Act, “records, reports, or information” obtained must be made available to the public. While section 114 allows for certain information to be withheld as confidential, it explicitly prohibits the agency from withholding emissions data. Any information that constitutes emissions data cannot be classified as CBI and must be publicly released. This includes data elements that are inputs to emissions equations, which EPA properly described as “information necessary to determine the identity, amount, frequency, concentration ... of any emission which has been emitted by the source”<sup>4</sup> under 40 CFR 2.301(a)(2)(i).

Given the Clean Air Act requirement to publicly release emissions data, including data elements that are inputs to emissions equations, EPA oversteps its bounds by proposing to defer the reporting of all data elements that are inputs to emissions equations under the GHGRP while it considers confidentiality determinations. Such a broad deferral is unnecessary and unwarranted. Emissions data may not be withheld as confidential under section 114 and must be released to the public. If a data element is not emissions data, the burden is on the source to demonstrate that the data element is CBI and may be properly withheld under section 114.

Furthermore, no data element should be deferred from reporting if it is already publicly available. While again stressing that the burden is on the source seeking an exemption to demonstrate CBI, NACAA notes that it appears that the Proposed GHG Reporting Deferral includes several data elements that are already available to the public. These include basic data

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<sup>2</sup> See Proposed Confidentiality Determinations for Data Required Under the Mandatory Greenhouse Gas Reporting Rule and Proposed Amendment to Special Rules Governing Certain Information Obtained Under the Clean Air Act, *75 Federal Register* 39094 (July 7, 2010).

<sup>3</sup> See Interim Final Rule Deferring the Reporting Date for Certain Data Elements Required Under the Mandatory Reporting of Greenhouse Gases Rule, *75 Federal Register* 81338 (December 27, 2010) and Call for Information on Inputs to Emission Equations Under the Mandatory Reporting of Greenhouse Gases Rule, *75 Federal Register* 81366 (December 27, 2010).

<sup>4</sup> *75 Federal Register* at 39109.

elements, for example throughput information such as fuel consumption, that are collected and made available through a number of sources including state reporting registries, the U.S. Energy Information Administration, and the Department of Energy, as well as EPA and Clean Air Act programs such as the Consolidated Emissions Reporting Rule. If EPA allows sources to claim this information is potential CBI and withhold or defer reporting under the GHGRP, NACAA is concerned that the same argument will be made with regard to other emissions reporting programs that have long collected this data. EPA should ensure that no information that is already publicly available is deferred from GHGRP reporting.

NACAA is also concerned with the effects that the Proposed GHG Reporting Deferral would have on the integrity and goals of the GHGRP. Deferring the reporting of inputs to emissions equations would deprive the GHGRP of the full set of data necessary for implementing the stated goal of the program to obtain quality data that can be used to inform future policies and regulations. As EPA noted when it established the GHGRP, facility-specific information is necessary in order to better understand factors influencing GHG emission rates (e.g. fuel use efficiency), catalogue actions undertaken by facilities to reduce emissions, and compare facility information.<sup>5</sup>

Finally, the Proposed GHG Reporting Deferral would impede data verification efforts by making information critical to the verification process unavailable for three years. While EPA notes in the proposal that it intends to place additional emphasis on direct follow-up with sources during the deferral period, the agency does not provide details. A number of questions, most pressing whether or not EPA has sufficient resources to directly follow up with the large number of facilities that will not be reporting the necessary data elements for electronic verification, remain unanswered. This is particularly troubling given that the GHGRP does not mandate third-party verification of data, instead requiring self-certification with EPA verification. EPA, as well as the public, need to have specific information regarding data elements that are inputs to emissions equations if this system is to continue, as failure to provide data elements necessary for verification undermines the integrity of the GHGRP. If EPA does defer data elements necessary for verification, the agency should require third-party verification through the deferral period.

NACAA urges EPA to retract its proposal to defer reporting of data elements that are inputs to emissions equations for three years. The association stresses that emissions data, including inputs to emissions equations, must be made publicly available as required by the Clean Air Act; specific data elements should only be deferred or withheld if a source has demonstrated that they are not emissions data, not already publicly available, and properly qualify as CBI. However, if EPA does finalize a reporting deferral for data elements that are inputs to emissions equations, the deferral period should be no longer than one year and must not include information that is already publicly available.

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<sup>5</sup> 74 *Federal Register* at 56265.

Thank you for this 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,



David Thornton  
Minnesota  
Co-Chair  
NACAA Emissions & Modeling Committee



James Hodina  
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Co-Chair  
NACAA Emissions & Modeling Committee