

November 18, 2009

**Statement of Michael Ling
Air Quality Policy Division
Office of Air Quality Planning and Standards
U.S. Environmental Protection Agency**

Public Hearing on the Proposed Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule

**Hyatt Regency Crystal City
Crystal City, VA**

Good morning and thank you for attending the first of two public hearings to take comment on EPA's proposed Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule. We will hold a second hearing tomorrow in the Chicago area.

My name is Michael Ling, and I am an Associate Division Director in EPA's Office Air Quality Planning and Standards. I will be chairing today's hearing. Joining me on the panel are Juan Santiago, Leader of the Operating Permits Group, and Howard Hoffman from our Office of General Counsel.

We are here today to listen to your comments on EPA's rule proposing greenhouse gas emissions (GHG) thresholds that would define when Clean Air Act permits under the New Source Review (NSR) and title V operating permits programs would be required for new or existing industrial facilities. This is an opportunity for the public to comment on EPA's proposed rule. The panel members may answer questions that seek to clarify what we have proposed but the purpose of this hearing is to listen to your comments, not to discuss or debate the proposal.

Before we move to the comment period, I would like to briefly describe the proposed rule that is the subject of today's hearing. The proposal was published in the Federal Register on October 27, 2009.

The proposed thresholds would "tailor" the permit programs to limit which facilities would be required to obtain NSR and title V permits and would ensure that the permit programs will apply to sources that emit nearly 70 percent of the national GHGs that come from stationary sources, including those from the

nation's largest GHG emitters—power plants, refineries, and cement production facilities. Under the proposal, numerous small farms, restaurants and many other types of small facilities would not be subject to these permitting programs.

This proposal addresses the emissions of the group of six greenhouse gases that may be covered by an EPA rule controlling or limiting their emissions:

1. Carbon dioxide (CO₂)
2. Methane (CH₄)
3. Nitrous oxide (N₂O)
4. Hydrofluorocarbons (HFCs)
5. Perfluorocarbons (PFCs)
6. Sulfur hexafluoride (SF₆)

EPA is proposing carbon dioxide equivalent (CO₂e) as the preferred metric for determining GHG emissions rates for any combination of these six GHGs, but we are requesting comment on alternatives.

Under the operating permits program, EPA is proposing a major source emissions applicability threshold of 25,000 tons per year (tpy) of CO₂e for existing industrial facilities. Facilities with GHG emissions below this threshold would not be required to obtain an operating permit.

Under the Prevention of Significant Deterioration (PSD) program – one component of the NSR permitting program -- EPA is proposing a major stationary source threshold of 25,000 tpy CO₂e. This threshold would be used to determine if a new facility or a major modification at an existing facility would trigger PSD permitting requirements. EPA is proposing to establish a significance level between 10,000 and 25,000 tpy CO₂e. Existing major sources making modifications that result in an increase of emissions above the significance level would be required to obtain a PSD permit for that modification. We are requesting comment on a range of values in this proposal, with the intent of selecting a single value for the GHG significance level.

Under the proposed emissions thresholds, EPA estimates that 400 new sources and modifications would be subject to PSD review each year for GHG emissions. Because most of these would already need a PSD permit for other pollutants, we estimate that fewer than 100 of these would be newly subject to PSD. In

total, approximately 14,000 large sources would need to obtain operating permits for GHG emissions under the operating permits program. Again, since most of these already have operating permits, we estimate that about 3,000 of these sources would be newly subject to Clean Air Act operating permit requirements as a result their GHG emissions.

The proposed thresholds would continue to preserve the ability of the NSR and title V operating permit programs to achieve and maintain public health and environmental protection goals while avoiding an administrative burden that would prevent state and local permitting authorities from processing Clean Air Act permits efficiently.

Under the approach laid out in the proposal EPA would re-evaluate the final GHG emissions thresholds after an initial phase, during which PSD and title V permitting authorities will gain experience in issuing permits to larger GHG sources and develop approaches for tailoring permitting to address smaller sources. By the end of the first phase, which is proposed to last 5 years, we are proposing to complete a study to evaluate whether it is administratively feasible for PSD and title V permitting authorities to adequately administer their programs at lower GHG thresholds.

After reviewing the study results, EPA will complete a follow-on regulatory action, within 1 year. The follow-on rule will establish thresholds during the second phase, by either:

1. Confirming the need to retain the GHG permitting thresholds for PSD and/or title V at the levels promulgated with this rulemaking; or
2. Establishing different GHG thresholds that more accurately reflect the administrative capabilities of permitting authorities to address GHGs.

EPA also plans to develop supporting information to assist permitting authorities as they begin to address permitting actions for GHG emissions for the first time. The guidance would initially focus on source categories where permits will be needed soonest – those with sources that emit GHGs at levels exceeding the thresholds established through this rulemaking. A key topic addressed by this effort – which is being done separately from this rule -- will be how to complete Best Available Control Technology determinations as required for a PSD permit. We invite comment on the specific elements of the proposal I described, as well as any other issues raised by the proposal.

Now, let me describe how this hearing will operate and how to comment. Today, we will be accepting oral comments on our proposal and we will be preparing a written transcript of this hearing. The transcript will be available as part of the official record for this rule and EPA will consider it as we move forward. We are also accepting written comments for the proposed rule until December 28, 2009. We have a fact sheet available in the registration area that contains detailed information for submitting written comments.

For those who will be providing oral comments today, I will call the scheduled speakers to the microphone in pairs. When it is your turn to speak, please state your name and your affiliation. It will help our court reporter if you also spell your name.

In order to be fair to everyone, we are asking that you limit your testimony to 5 minutes each and to remain at the microphone until both speakers in a pair have finished. After you finish your testimony, a panel member may ask clarifying questions. If, in addition to the transcript, you would also like us to put the full text of your written comments into the docket, please be sure to give a copy of any written comments to our staff at the registration table.

We have a timekeeping system consisting of green, yellow, and red lights. When you begin speaking, the green light will come on. You will have 5 minutes to speak. The yellow light will signal that you will have 2 minutes left to speak. I will ask you to stop speaking when the red light comes on.

We intend to stay into the evening until everyone has an opportunity to comment. If you would like to testify but have not yet registered to do so, please sign up at the registration table. For those who have already registered to speak, we have tried to accommodate your requests for specific time slots. We ask for your patience as we proceed through the list. We may need to make some adjustments as the day progresses.

I would like to thank you all again for participating today. Let's get started.

TALKING POINTS
TAILORING RULE PUBLIC HEARING

- Good morning/afternoon. And thank you for having us here today to speak on a topic that is of the utmost importance in our nation's effort to transition to clean, renewable energy and to solve the climate crisis.
- My name is Lindsay Arends and I work for the Alliance for Climate Protection's Repower America campaign here in Virginia.
- I would like to speak in support of the Environmental Protection Agency's new proposed permitting requirements for large sources of greenhouse gas emissions, or "Tailoring Rule" as it is called.
- The Greenhouse Gas Tailoring Rule is yet another important step in federal efforts to enact smart, sound policies to limit the harmful greenhouse gas emissions from the largest sources causing the climate crisis.
- And by taking the steps to shield small sources of emissions through this rule, the EPA is wisely utilizing a cost-effective approach, focusing on the largest polluters who account for the most emissions.
- Alongside enacting comprehensive clean energy and climate policies, enacting this rule and putting the Clean Air Act to work to cut pollution is a powerful tool for transitioning to a clean energy economy and solving the global climate crisis.
- Transitioning from dirty fossil fuels like coal, oil and gas to renewable energy sources like wind and solar reduce greenhouse gas emissions — the number one cause of the climate crisis.
- Despite efforts by fossil fuel interests and their front groups to weaken and undermine the Clean Air Act and block progress toward America's transition to clean energy, we know that the Act has protected the health and welfare of Americans, especially our most vulnerable, from harmful pollutants for nearly four decades.
- We need to strengthen this commitment to enforcing the Clean Air Act and supporting the Tailoring Rule is a critical component of those efforts.
- Everything we love about America is affected by the climate crisis. And what we do in the next few years will determine everything about our country's future and the world our future generations will inherit.

- Coupled with the recent EPA decision to develop a first-of-its-kind reporting system for greenhouse gas emissions and recent efforts to increase fuel efficiency standards and set pollution limits for cars, the EPA has stepped up to do what is necessary to protect the health of both the American people and the planet.
- Thank you.

Testimony and Official Comments

Mary Anne Hitt, Deputy Campaign Director

Sierra Club, Beyond Coal Campaign

EPA Tailoring Rule Public Hearing

Arlington, Virginia, November 18, 2009

On behalf of the Sierra Club, I am pleased to offer our official support at this public hearing for the EPA's proposal to require the nation's biggest sources of greenhouse gas pollution to address their emissions when they build or modify a facility. The Sierra Club is the nation's largest grassroots environmental organization, with over 1 million supporters nationwide. Our members are deeply committed to stopping global warming, moving beyond coal, and putting this nation on a path to a clean energy future. We believe the EPA's proposal to target large sources first is an important, common-sense step that is essential to move this nation in the right direction, and to ensure the safety and prosperity of future generations of Americans.

In their 2007 decision in *Massachusetts vs. EPA*, the Supreme Court ruled that the EPA has the authority to regulate global warming pollution under the Clean Air Act. The Bush Administration did everything it could to ignore that finding. The Obama Administration has, thankfully, changed course and has finally begun moving forward to act on the findings of the Supreme Court and the consensus of the scientific community, both here in the US and around the world. Having issued a draft finding earlier this year that global warming does, indeed, endanger public health and welfare, the EPA has taken

the essential and logical next step – preventing increased emissions from our largest sources of global warming pollution.

The Sierra Club supports requiring large new sources of global warming pollution to install the best available pollution controls, and to require large existing sources to update pollution controls when they increase their emissions. The New Source Review provisions of the Clean Air Act have proven successful in reducing other forms of pollution, by requiring that new sources install the best available control technology for specific pollutants. Given the severe and imminent danger that global warming pollution poses to current and future generations of Americans, it is only reasonable that the EPA would seek to address this new pollution threat using such time-tested methods.

It is also eminently reasonable that the EPA is starting with the largest sources, which each emit 25,000 tons or more of global warming pollution annually. These large sources account for over half of global warming pollution, and they should be the first to clean up.

It is important to recognize that the Prevention of Significant Deterioration, or PSD, program targets increases in pollution from today's levels. It applies only to new sources of pollution or existing facilities that increase their emissions. The level of greenhouse gases in our atmosphere is already too high, and we need to do everything we can to reduce those levels. This first step that EPA is taking is modest, in that it is simply designed to limit increases in greenhouse gas pollution, not to reduce existing levels.

Moreover, the PSD program is not unduly burdensome to businesses. It requires improved controls that are economically feasible only when new facilities are built or existing facilities are modified, allowing businesses to plan for appropriate pollution

controls as part of their larger planning processes when they build or modify their facilities.

In conclusion, on behalf of the Sierra Club, it is my pleasure to offer our support for the EPA's proposed tailoring rule. Every day, the steady drumbeat of increasingly alarming information about global warming grows louder. Every day, our window of opportunity to avert a climate crisis closes a little bit more. The time for leadership and action is long overdue. This proposed rule marks a welcome return to science and the rule of law, and it is an important step towards creating a clean energy future for this country. Thank you.

A.G. Randol

Oral Statement
A.G. Randol III, Ph.D.
EPA Tailoring Rule
Docket ID No. EPA-HQ-OAR-2009-0517

Thank you for the opportunity to provide a brief statement.

In June, I submitted comments on EPA's proposed Endangerment Finding (Docket ID No. EPA-HQ-OAR-2009-0171).

To date, there has been no response to the public comments.

And, we have recently learned that EPA has suppressed internal dissent on this issue

...and this from an organization that committed to make decisions based on science and transparency!

Unfortunately EPA is proceeding without any validation.

This process is a total waste of taxpayer funds.

I would like to make three points today:

First,

The inconvenient fact: the climate models that EPA uses are fatally flawed.

The models predict warming,

but the atmosphere and the surface have been cooling since 1998

...we are now at roughly 1988 levels.

The Europeans are predicting cooling for another 20 years.

If the New York Times knows this, why doesn't EPA?

The question then: if the basis for the rule is without merit, how can EPA justify action?

Second,

EPA's recent analysis shows that greenhouse gas concentrations will continue to increase no matter what we do.

Here's an excerpt from Page 25 in the October 23 report to the Senate:

"EPA has now analyzed ... how U.S. targets ... combined with international action ... could affect global ... concentrations ..."

" ... It should be noted that carbon dioxide equivalent concentrations are not stabilized in these scenarios."

Thus, EPA's current analysis demonstrates that we have no control over global concentrations.

How can EPA propose to "control ambient concentrations" by controlling a limited number of U.S. sources?

The staff responsible for this rule need to digest the October 23 report.

Third,

EPA can't cherry-pick which sources it will regulate.

In the ANPR, EPA contends that ANY greenhouse gas emission at

ANY level creates a problem.

Even though EPA claims that there is no standard, the current policy is headed toward a GHG NAAQS with the entire country in non-attainment.

Under NAAQS, EPA must reduce concentrations of the "pollutant" to a level that protects the public.

Some have argued that current greenhouse gas levels are already harmful.

What would it take to actually lower GLOBAL concentration levels?

A perpetual recession leading to a depression will not be enough to decrease concentrations.

The only question, then:

Is 450 ppm carbon dioxide equivalent "harmful"

...if it is, we are already at the threshold.

If EPA proceeds with this rule, it must evaluate the impact of triggering a greenhouse gas NAAQS.

Thank you.

Endangerment Finding Issue Summary

A. Information Quality Act Requirements Ignored by EPA

A.1. EPA cannot rely on documents, data and model analyses that fail to meet requirements of the Information Quality Act

GREENPEACE

November 18, 2009

RE: Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule, Docket ID No. EPA-HQ-OAR-2009-0517

Thank you for the opportunity to testify before you today on the EPA's proposed rule to regulate greenhouse gas emissions from large stationary sources. My name is Joe Smyth and I am a spokesperson for Greenpeace USA. Greenpeace is an independent campaigning organization that uses peaceful direct action and creative communication to expose global environmental problems and to promote solutions that are essential to a green and peaceful future. My comments today will be relatively brief as Greenpeace plans to submit more substantive remarks on this rule in writing.

Global climate disruption is the greatest environmental, humanitarian and economic challenge the world has ever faced. Millions of people are already feeling the impacts of climate change, and an estimated 300,000 people die each year from its effects. Avoiding the worst of climate change, including widespread drought, flooding and massive population displacement caused by rising sea levels, means that temperature increases must peak as far below 2°C as possible (compared to pre-industrial levels). The Intergovernmental Panel on Climate Change (IPCC) in its Fourth Assessment Report states that avoiding a temperature rise above 2°C requires that global greenhouse gas emissions peak by 2015 or sooner. By 2020, developed countries like the United States will need to have cut emissions by at least 40% from 1990 levels.

Greenpeace applauds the EPA's efforts to regulate greenhouse gas emissions. In April 2007, the Supreme Court determined in its landmark ruling in *Massachusetts v. EPA* that the Agency has the authority to regulate greenhouse gas (GHG) emissions under the Clean Air Act. It is encouraging to now see the EPA moving forward with this proposed rule. Action on this matter is long overdue.

The stationary sources covered by this proposed rule account for a third of all US greenhouse gas emissions. Greenpeace supports the Agency's decision to address a group of six greenhouse gases: carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF₆). We also support the proposal to use carbon dioxide equivalents (CO₂e) as the preferred metric for determining greenhouse gas emissions rates for any combination of these six gasses.

It is important to note that as a first step, a majority of sources covered by this rule can dramatically reduce emissions with currently available pollution control technology, as well as energy efficiency. As noted by Administrator Lisa Jackson in her announcement of the rule, "We have the tools and the technology to move forward today, and we are using them."

Energy efficiency, in particular, has enormous potential to reduce greenhouse gas emissions yet we have only harnessed a fraction of its potential. A detailed study released earlier this year by McKinsey and Company on the potential of energy efficiency to cut emissions reveals that an integrated set of energy efficiency investments and solutions would reduce non-transportation energy consumption 23%. This translates into a CO₂ abatement of 1.1 gigatons. In other words, through energy efficiency alone, the potential exists to surpass the proposed carbon caps in the Congressional climate bills many times over. The icing on the cake is that these investments would come at virtually no cost.

On top of promoting smarter energy use, this proposed rule would also create incentives to producers and innovators of green technology, as well as give preference to clean renewable energy, which will lead to further emissions reductions in the near future. The potential for renewable energy technologies to curtail CO₂ emissions is vast. A 2007 study by the American Solar Energy Society outlines how deployment of a suite of clean energy technologies would cut US emissions by 1.9 gigatons by 2030—more than 15% of current annual US emissions.ⁱ What's more, other renewable energy forms, such as marine (wave and tidal) power, are nearing commercialization. When they become available, their deployment could allow the US to cut emissions even further and re-power the economy even faster.

And despite what some opponents have said, regulating greenhouse gas emissions will not ruin the American economy. On the contrary, studies show that strong federal climate policy will help the economy get back on its feet. A recent report from the University of California- Berkley shows that under comprehensive energy and climate policy, the US could gain 918,000 to 1.9 million jobs and grow household income by \$488 to \$1,176 by 2020.ⁱⁱⁱ

In fact, according to the International Energy Agency (IEA), it is the postponing of transitioning the energy sector to renewables and greater efficiency that will be costly — not to mention the exorbitant costs that will come with doing nothing to mitigate climate change. The IEA concluded in a recent report that the economic downturn has "created an opportunity to put the global energy system on a trajectory to stabilise greenhouse gas emissions....". Investing in important technologies and efficiency will be cheapest now. IEA Executive Director Nobuo Tanaka notes that "this gives us a chance to make real progress towards a clean-energy future, but only if the right policies are put in place promptly."^{iv}

Finally, it is critical to realize the regulation of greenhouse gases by the EPA and a cap-and-trade program, as proposed by Congress, are not mutually exclusive. Emission limits and requirements for Best Available Control Technologies (BACT) for greenhouse gasses are complimentary to and can even facilitate implementation of a legislatively mandated cap-and-trade program. Therefore, regardless of the action by Congress, we urge the EPA to move toward finalizing this rule sooner rather than later.

Thank you for taking our comments into consideration.

Sincerely,

Joe Smyth

Greenpeace USA

ⁱ Administrator Lisa P. Jackson, Remarks to the 2nd Annual Governors' Global Climate Summit, As Prepared, <http://yosemite.epa.gov/opa/admpress.nsf/12a744ff56dbff8585257590004750b6/dfb9d60add641fac852576410070a78d!OpenDocument>

ⁱⁱ Kutcher, C., Ed., 2007. Tackling Climate Change in the U.S. American Solar Energy Society, January 2007. Available at: http://www.ases.org/images/stories/file/ASES/climate_change.pdf.

ⁱⁱⁱ Roland-Holst, D and Kahl, F., 2009. Clean Energy and Climate Policy for U.S. Growth and Job Creation. UC Berkley. Available at: http://are.berkeley.edu/~dwrh/CERES_Web/Docs/ES_DRHFK091025.pdf

^{iv} Excerpt from press release on 6 October 2009, for World Energy Outlook 2009, International Energy Agency, Available at: http://www.iea.org/press/pressdetail.asp?PRESS_REL_ID=290

PRESENTATION TO U.S. Environmental Protection Agency, November 17, 2009, Subj: Greenhouse Gas Tailoring Rule

For the record, my name is Timothy Wise, and I live in Arlington County, Virginia.

Although many think I'm a global warming skeptic, I must say that I keep looking for evidence of global warming, but the best explanations are those of the skeptics. The problem, in my view, is the introduction of politics rather than the analysis of quality science. In the words of Kristen Byrnes:

"When a scientist publishes a study, that study should be reviewed by another or group of scientists who then publish their review. The initial scientist then has an opportunity to refute anything in the review. A separate group of scientists should then publish an objective finding of what was learned. This process would ensure a much more effective advancement of science and learning. But unfortunately this is not the case."

In many ways, mankind has made tremendous progress in the 400 years since Gallileo was almost burned at the stake for arguing the sun, and not the earth, was the center of the solar system. However, it seems in some ways mankind has made virtually no progress. Scientists Willie Soon and David Legates have a column in today's Townhall.com. In it, they discuss how were invited, and then

disinvited to host a session at the Fall 2009 meeting of the American Geophysical Union in San Francisco. It involved "an integrated assessment of the vast array of disciplines that affect, and in turn are affected by the Earth's climate. As Soon and Legates write:

"Scientific inquiry has once again been silenced . . . just as it was 400 years ago.

"The AGU should be ashamed. Its members should be outraged."

From the stories i see written by the science/climate reporters of the New York Times and the Washington Post, there is none of this scientific method in climate science. Even worse are the stories blaming this catastrophe or that calamity on global warming. Just yesterday, I saw a list of 100 items "caused" by global warming, e.g., the deaths of Aspen trees in the West or the incredible shrinking sheep. If high quality good quality science was being practiced, such stories could not survive.

While I don't know the scientific practices of EPA scientists, it appears someone needs to assess those practices. For example, on pages 112-113 of Dr. Fred Singer's book, "Unstoppable Global Warming Every 1500 Years," he reports on the huge climatic heat vent found by MIT's Richard Lindzen and a team of NASA scientists. The existence of this heat vent has been confirmed by two other teams. However, a search of EPA's climate change webpages found no mention of these climatic heat vents. I find that especially troubling.

In addition, I also find the EPA's climate change webpages incomplete with regard to the last 2000 years of climate change. Like the infamous documentary, the 2000-year EPA cutoff seems to be a convenient occurrence. Why? On pages xxi and xxii of Dr. Singer's book, he mentions an unnamed cold period from 600 to 200 B.C., which preceded the Roman Warming, which itself lasted from 200 B.C. until 600 A.D. Also missing from the EPA list is the 300 years of the Dark Ages cold period. It is important to ask at this point is what causes these warming periods since humans were not burning fossil fuels to release CO₂? And what happened to "flip" the earth from cooling to warming? If we know, the Post's and the Times reporters haven't written about it.

In closing, it seems the essential issue of the "Tailoring Rule" is whether ANY regulation of greenhouse gases, especially CO₂, is justified by the science.



Statement of the American Farm Bureau Federation

**TO THE ENVIRONMENTAL PROTECTION AGENCY
REGARDING PROPOSED TAILORING RULE**

November 18, 2009

**Presented By:
Rick Krause**

*AFBF is the unified national voice of agriculture
working through our grassroots organizations to enhance
and strengthen the lives of rural Americans and to build strong,
prosperous agricultural communities.*

Farm Bureau represents more than 6,000,000 member families across the nation and Puerto Rico with organizations in approximately 2,500 counties.

Farm Bureau is an independent, non-governmental, voluntary organization of families united for the purpose of analyzing their problems and formulating action to achieve educational improvement, economic opportunity and social advancement and, thereby, to promote the national well-being.

Farm Bureau is local, county, state, national and international in its scope and influence and works with both major political parties to achieve the policy objectives outlined by its members.

Farm Bureau is people in action. Its activities are based on policies decided by voting delegates at the county, state and national levels. The American Farm Bureau Federation policies are decided each year by voting delegates at an annual meeting in January.

I am Richard Krause, Senior Director of Congressional Relations for the American Farm Bureau Federation. I appreciate your holding this hearing and providing us the opportunity to comment on the proposed tailoring rule.

The tailoring rule is an attempt to mitigate the indisputable economic and regulatory burdens of applying the New Source Review (NSR)/Prevention of Significant Deterioration (PSD) and Title V programs to the regulation of greenhouse gases under the Clean Air Act. This mitigation would presumably result by administratively raising statutorily mandated thresholds of 100 or 250 tons of emissions per year to 25,000 tons per year for a period of at least five years. The rule does not replace the statutory thresholds, but seeks to delay implementation of those thresholds until the highest level emitters have been permitted.

Regulation of greenhouse gases under the Clean Air Act will have significant adverse consequences for agriculture. Our analysis indicates that application of Title V alone will significantly burden over 90 percent of the livestock production in the United States. Application of NSR/PSD will regulate many dairy barns, greenhouses and other agricultural structures for the first time. It is difficult to determine the precise impacts, because the Environmental Protection Agency (EPA) failed to conduct a proper regulatory impact analysis on the rulemaking as it is required to do.

We agree with President Obama and Administrator Jackson that regulation of greenhouse gases by EPA is not the appropriate way to proceed. We oppose such regulation. Moreover, we have significant concerns with this tailoring rule.

First, we have fundamental doubts about the legality of an agency seeking administratively to raise statutorily-mandated thresholds. The threshold levels of 100/250 tons and 100 tons for Title V are clearly set forth in the Clean Air Act. The agency's reliance on two very narrow and limited judicial exceptions such as "absurd results" and "administrative necessity" that are not generally favored by the courts is further cause for concern. Our doubts are further strengthened by the fact that, while the rule cites some cases to define "administrative necessity," that argument did not pass muster in the court.

This is manifestly not a case in which Congressional action caused the agency to invoke the doctrines in question. In this case, EPA freely chose to regulate – a posture not adopted by the previous administration – and it did so knowing full well the statutory requirements. If regulation would produce absurd results or create an administrative nightmare, the answer is clear—defer the endangerment finding and don't regulate until the agency receives policy guidance from Congress. EPA clearly has that option; unfortunately, it has declined to pursue it.

But even if the rule were legal, it would appear to have limited effect on small entities. While EPA approves state implementation plans (or SIPs), PSD and Title V programs are largely administered under state law, and small entities would still be subject to permit requirements in virtually all of the 43 states that administer their own programs when greenhouse gases are

regulated. For these small entities, nothing would change. They would still be required to obtain PSD or Title V permits unless and until the state changed its law.

Thus, the tailoring rule may well be of limited utility in avoiding exactly the kind of 'absurd' results the agency purports to want to avoid. As now appears likely, the very catastrophic economic impacts to small entities and the extreme administrative burdens faced by states in administering these programs would remain and would not be fixed by the tailoring rule. Because PSD requires a permit before construction can begin, this situation will bring a halt to construction until the backlog is cleared.

EPA regulation of greenhouse gases under the Clean Air Act will result in millions of small entities being unwittingly swept into the regulatory nightmare that is PSD and Title V. At best, the tailoring rule will only delay the inevitable regulation of these small entities. At worst, it will have no effect because these entities would still be subject to state law or the tailoring rule could be found to be illegal.

We appreciate this opportunity to provide our comments and will provide more detailed remarks prior to the comment deadline.

Hello, I am Ellen Bateman, I am a student of Environmental Conflict Resolution, a concerned citizen, and an advocate of green jobs and renewable energy technologies.

- **I am also parent of two youngsters who love the outdoors. I'll tell you about the time I took them to visit Cumberland Falls in Corbin, Kentucky.**
- **We drove to Daniel Boone National Forest from Central North Carolina one summer weekend to get a glimpse the famed "Moonbow" a phenomena that appears each month when the full moon shines over Cumberland Falls, referred to as the Niagara Falls of the South. The drive was memorable, we passed through Pisgah National Forest, ascending the mountains slowly, passing Nantahala National Forest, continuing on to Daniel Boone National Forest, named for the heralded pioneer.**
- **When we arrived and set up camp, I was surprised by the hazy conditions and close, humid air quality. I expected to breathe more deeply and refreshingly. We enjoyed the beauty of the mountain ecosystem though sleeping in a tent in sleeping bags was a hard experience. We crowded the trails to the Falls at midnight with the other tourists, but didn't see the Moonbow. We enjoyed the trip and I'll never forget the sound of the toy long rifle my son got at the gift shop. We also can't forget the image of those rolling green mountains, covered with haze.**
- **Ladies and Gentlemen, only a handful of sources, including coal power plants, are responsible**

for more than half of all of the global warming pollution in the United States.

- **These mega-polluters should be held responsible for their share.**

• **The EPA is proposing a rule to clean up these Big Polluters under the Clean Air Act.**

• **By targeting the worst offenders, the Big Polluters rule will quickly cut global warming pollution while still helping our economy grow.**

• **The rule would only apply to offenders emitting at least 25,000 tons of greenhouse gases each year,**

• **Under the Big Polluters rule—the worst offenders—like new coal plants and other big polluters-- would have to install technology to clean up pollution that causes global warming**

- **I hope you will help transform the energy future of our nation by supporting the Big Polluters rule, eliminating mountaintop removal and creating green jobs.**

- **Thank you for your consideration.**

Speech to the EPA on 19 November 2009

The federal government has the authority to shut down coal fired power plants withOUT the Clean Air Act. All you have to do is to apply the law that applies to nuclear power plants to coal fired power plants as well, and acknowledge the fact that coal contains uranium. Coal fired power plants put 100 to 400 times the legal limit of radiation into the air and environment. I am requesting that you apply the nuclear power law to coal fired power plants and shut down all of the coal fired power plants.

Reference the following U.S. government document which I downloaded from:

<http://www.ornl.gov/info/ornlreview/rev26-34/text/colmain.html>

"Coal Combustion: Nuclear Resource or Danger?" by Alex Gabbard from the Oak Ridge National Laboratory Review, Volume 26 Numbers Three and Four, 1993

Reference also some other papers by the same author and other sources, mostly books. Reference the laws that the Nuclear Regulatory Commission enforces.

Coal contains: **URANIUM, ARSENIC and LEAD** as well as **MERCURY**, Antimony, Cobalt, Nickel, Copper, Selenium, Barium, Fluorine, Silver, Beryllium, Iron, Sulfur, Boron, Titanium, Cadmium, Magnesium, **THORIUM**, Calcium, Manganese, Vanadium, Chlorine, Aluminum, Chromium, Molybdenum and Zinc. There is so much of these elements in coal that cinders and coal fly ash are actually valuable ores. We should be able to get all the uranium and thorium we need to fuel nuclear power plants for centuries by using cinders and fly ash as ore. Remember that, to get a given amount of energy, you need on the order of 100 MILLION TIMES as much coal as uranium. That means the coal mine has to be 100 million times larger than the uranium mine, not counting the fact that nuclear fuel can be recycled. Since coal contains uranium, coal also contains all of the elements in the decay chain of uranium, such as the super-poison Polonium. Coal ash and cinders outgas radon, the radioactive gas that decays into polonium. Unburned Coal also contains **BENZENE**. Benzene is a very strong carcinogen. Unburned coal should be treated as a carcinogen. Burning the coal burns up the benzene and concentrates

the uranium and the poisons. The carbon content of coal ranges from 96% down to 25%, the remainder being rock of whatever kind.

The truth is, all natural rocks contain all natural elements. Coal is a rock. The average concentration of uranium in coal is 1 or 2 parts per million. Illinois coal contains up to 103 parts per million uranium. A 1 billion watt coal fired power plant burns 4 million tons of coal carbon each year. If you multiply 4 million tons by 1 part per million, you get 4 tons of uranium. Most of that is U238. About .7% is U235. 4 tons = 8000 pounds. 8000 pounds times .7% = 56 pounds of U235. An average 1 billion watt coal fired power plant puts out 56 to 112 pounds of U235 every year. There are only 2 places the uranium can go: Up the stack or into the cinders and captured ash.

Of the uranium that goes up the stack, 97% is captured and 3% gets into the air. That 3% that gets into the air is 100 to 400 times the legal radiation limit for a nuclear power plant. I have read this from multiple other sources. The cinders and captured fly ash are trucked away but not disposed of as radioactive waste. Cinders and captured fly ash are radioactive and poisonous waste and should be treated as such.

I propose that the EPA and the Nuclear Regulatory Commission should impose the same requirements on coal fired power plants as are imposed on nuclear power plants. Coal fired power plants cannot meet NRC regulations and must be shut down. Cinders and captured fly ash should be treated the same as all radioactive and poisonous waste. Already accumulated cinders and fly ash should be used as ore for all of the metals in it. Coal cinders and ash should not be used as building materials because of all of the hazardous materials that coal ash contains. Coal miners and other workers who deal with coal and coal ashes should be given the same protections as radiation workers and workers who deal with hazardous substances.

The American people should be told the above so that they can decide the schedule for closing all coal fired power plants.

Edward R. Greisch



To: EPA Docket Center
RE: Public Comment- Docket ID No. EPA-HQ-OAR-2009-0517
Date: November 18, 2009
Prepared by: Katherine Smolski and Matt Praske, US Climate Action Network

My name is Katherine Smolski and I am the Domestic Policy Director at the U.S. Climate Action Network (USCAN). I am here to express the support of USCAN and its member groups for the EPA's proposed Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule or 'the Tailoring Rule'.

USCAN is the largest US network of organizations focused on climate change, with over 80 member groups. USCAN works to connect organizations working toward similar goals across the country at all levels of the debate: local, state, federal and international. The goal of this coalition is to support the design and development of an effective, equitable, and sustainable global strategy to reduce greenhouse gas emissions. We strongly believe the EPA's proposal on greenhouse gas polluters supports this mission and therefore urge you to finalize this rule to help move us toward a clean energy future.

First, the rule proposes a regulatory method that has been proven as an effective means of achieving pollution reduction. EPA analysis has found the Clean Air Act has achieved cost-effective reductions in sulfur dioxide, nitrogen oxides, and particulate matters, with an economic benefit demonstrated to be 42 times greater than the costs of compliance. Therefore, applying best-available control technology standards under the Clean Air Act to greenhouse gas emissions continues the legacy of a demonstrably successful program to now meet the grave threats of global climate change and energy independence.

Second, the rule establishes an equitable framework, by setting a regulatory threshold that holds the largest polluters accountable while protecting the nation's schools, farms, and small businesses. This arrangement would most fairly assign responsibility to the small handful of big polluters who account for a majority of the nation's global warming pollution. This allows the EPA to achieve the greatest impact with the fewest agency resources in the short timeframe needed to protect the public from the risks to health and welfare posed by climate change.

Next, the finalization of this rule facilitates a sustainable energy strategy for the country's future. By applying New Source Review standards for greenhouse emissions, the EPA sends a strong signal of support for the clean energy industry. No longer will fossil-fuel facilities reap the unfair advantage of being financially unaccountable for the costs of

their pollution. Such signals are necessary to drive investment in low-carbon technologies that will spur sustainable growth and create valuable jobs.

Finally, climate change is a global problem and requires a global solution- as nations gather at the United Nations Framework Convention on Climate Change this December it is imperative that the U.S. re-establish itself as a world leader in solving the complex challenges posed by climate change. The U.S. must do our fair share to reduce domestic emissions as quickly as possible and that requires we use all means at our disposal from both the executive and legislative branches of government plus state and local action. In addition to answering the call of the science- strong US emission reduction commitments will enable a wide range of developing economies to take more ambitious domestic actions and create new markets to grow the global green economy from which we will all benefit.

For these reasons, I am here on behalf of the US Climate Action Network to applaud the EPA for their intent to regulate major greenhouse gas polluters, and urge the EPA to take the final steps to implement a strong rule to aid in our transition to a clean energy economy.

EPA TESTIMONY – November 18, 2009

Kenneth A. Haapala, Nongovernmental International Panel on Climate Change. Epistemology, computer modeling, economics.

400 years ago educated Europeans strongly disagreed as to what determined scientific knowledge. Was it statements by authorities such as Aristotle or religious leaders? Or was it physical evidence as advocated by Galileo.

Since then, the miracle of Western science was built on the dictum that **Science must never ignore physical evidence.**

Unfortunately, the EPA has reverted to Medieval science.

The EPA has failed to present any compelling physical evidence that man's emissions of Greenhouse Gases caused the 20th Century warming. Instead, it has relied on the UN Intergovernmental Panel on Climate Change and its faulty computer models that are biased, obsolete, and wrong.

Atmospheric carbon dioxide continues to rise, but the globe stopped warming over a decade ago. The science used by the EPA cannot explain why.

Prior to the formation of the IPCC, it was widely ^{RECOGNIZED} accepted by those who studied the physical evidence that the earth's climate is constantly changing. Since the last Ice Age, there have been periods of warming and cooling, the most striking warm period, at least for the Northern Hemisphere, was one of over 3,000 years when it was about 5 degrees F warmer than today. These

scientists concluded that, generally, warm periods were beneficial to humanity and cold periods harmful.

This physical evidence has continued to grow enormously, yet it is ignored or dismissed by the EPA.

The earth's climate is subject to natural variation the EPA ignores. The oceans have natural oscillations which the EPA ignores. In the first part of the 20th Century, there were four major disappearances of Arctic ice which the EPA ignores. The most powerful force in the Solar System, the Sun, upon which the Earth's climate depends, is changing in ways the EPA never considered even though observations of such changes have been made since Galileo pointed his telescope towards the sun.

These and other physical evidence ignored by the EPA and the IPCC are discussed in two reports by the Nongovernmental International Panel on Climate Change: the 2008 Summary; Nature, Not Human Activity, Rules the Climate; and the extensive 2009 report; Climate Change Reconsidered.

The EPA regulations before you assume, without physical evidence, that increased atmospheric carbon dioxide is harmful to public health and welfare. This assumption is contradicted by the physical evidence. Carbon dioxide is a necessary food for green plants, thus necessary for life on this planet as we generally recognize it. As discussed in the second report, thousands of experiments and observations show that virtually all food crops and green plants thrive better in an atmosphere enriched in carbon dioxide and better resist stress such as draught, or insect attacks. Contrary to EPA

claims, Carbon dioxide enrichment, condemned by these regulations, is a benefit to agriculture, humanity, and the planet.

Thank you. I submit these reports as part of my testimony.

NAM URGES EPA TO DEFER TO LEGISLATIVE PROCESS TO ADDRESS CLIMATE DEBATE

My name is Bryan Brendle, the Director of Energy and Resources Policy for the National Association of Manufacturers, headquartered in Washington, DC. By way of background, the NAM is the nation's largest industrial trade association representing more than 11,000 small, medium and large manufacturers in all industrial sectors and in all 50 states. The NAM is the country's leading voice for the manufacturing sector, which employs several million workers in the U.S.

Thank you for the opportunity to comment on the Environmental Protection Agency's proposal to impose first-time ever greenhouse gas (GHG) emission controls on industrial facilities through the Prevention of Significant Deterioration (PSD) and Title V permitting programs, also known as the EPA's "Tailoring Rule." The NAM has long urged the EPA to defer to Congress when considering establishment of a federal climate policy, especially one that uses the Clean Air Act as a tool with which to regulate emissions from stationary sources. As Congress continues to debate the outlines for a comprehensive federal climate policy, the NAM urges the Administration not to circumvent the ongoing legislative debate on an issue that would impact all sectors of an economy struggling to regain its equilibrium. The NAM opposes regulation of large stationary sources, those emitting more than 25,000 tons per year of carbon equivalent (TPY) as outlined by the tailoring proposal, under the decades-old PSD program. Additionally, manufacturers have serious concerns about the legal foundation on which EPA structures its proposal.

EPA's Strategy Has Legal Flaws, Creates Uncertainty

The EPA is entering uncertain legal territory by proposing to regulate very large facilities at the 25,000 ton per year (TPY) emissions level for GHGs under programs that federal law requires to be regulated at the 100 - 250 TPY level. At the same time, EPA proposes to establish a process by which it will consider ways to regulate even smaller sources, therefore laying the groundwork for even greater expansion of its regulatory power. Furthermore, litigation offers another avenue to regulation of small and mid-sized manufacturers as litigants force EPA to adhere to the requirements of federal law. Federal law does not allow EPA unilaterally to raise the PSD threshold. The Clean Air Act explicitly states that PSD includes "any. . . source with the potential to emit two hundred and fifty tons per year or more of any air pollutant." 42 U.S.C. § 7479(1). To add to the uncertainty, the tailoring proposal also allows states to move forward with more stringent permitting requirements, which would lead to the creation of a patchwork of state regulatory programs, leading to compliance obstacles for what would amount to first-time regulations.

Scope of Proposed Rule

According to EPA, the "tailoring rule" will directly impact approximately 13,000 facilities. The scope is actually greater because sources below the proposed 25,000 TPY threshold will also eventually be covered by the proposed rule. Despite the relatively limited scope claimed by EPA, unfortunately for manufacturers, the 25,000 TPY threshold requirement and the uncertainty in what will be required to obtain ~~required~~ permits, will result in the inability of ~~the manufacturing~~ industry to plan and expand their operations and facilities and subsequently result in a continued loss of potential revenue, jobs and improvement of the U.S. economy. Such a "one-size fits all" standard will also not take into account impacts on energy markets, to which manufacturers are especially vulnerable. Between 2000 and mid-2008, energy price volatility contributed to the loss of approximately 3.7 million high-wage manufacturing jobs in the U.S. New mandates from EPA, especially establishing permitting requirements on GHG emissions, using programs designed to limit criteria pollutants, will further erode U.S. industrial competitiveness and eliminate jobs by limiting energy choices available to consumers.

New Technology Mandates

Along with lengthier permit processing, EPA would also mandate "Best Available Control Technology (BACT)" on all plants subject to the new requirements. This may mandate controls ranging from increased energy efficiency, co-firing of biomass to generate electricity, fuel switching to natural gas and possibly Carbon Capture and Sequestration technology, which is still being developed for wide-scale commercial viability. Sorting through the definition of "BACT" and imposing technology requirements on a case-by-case basis, as outlined by federal law, will further add to project uncertainty and increase costs to facilities subject to the new rule. The NAM would like to point out that with respect to the Clean Air Act amendments of 1990 and EPA's implementing programs, the technology necessary to reduce the target pollutants - including the impacts of "acid rain" - already existed and were largely commercially viable.

Conclusion

The Administration must allow elected officials to address the climate change issue through public and transparent debate and craft a comprehensive federal policy that will achieve environmental results while inflicting no economic harm. By resorting to decades old programs under the Clean Air Act, which were designed to reduce emissions of local pollutants rather than more globally distributed concentrations of GHGs, the EPA is not embarking on a course that will adequately address the complex issue of climate change. The U.S. needs a modern, comprehensive and thorough policy based on innovative approaches vetted through the legislative process. The manufacturing sector urges the Administration not to circumvent that process. The NAM looks forward to continuing to work with Congress and President Obama's Administration to discuss a modern and comprehensive climate policy that will achieve environmental objectives without inflicting harm on an economy attempting to recover and grow again. Thank you for the opportunity to offer input on this very important issue for American manufacturers.



NATIONAL WILDLIFE FEDERATION®

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Testimony by Catherine Bowes, NWF Climate Policy Representative
Before the U.S Environmental Protection Agency

Re: Docket No. EPA-HQ-OAR-2009-0517,

Proposed Prevention of Significant Deterioration & Title V Greenhouse Gas Tailoring Rule
November 18, 2009

Thank you for holding this hearing, and for the opportunity to testify on this issue of critical importance to the National Wildlife Federation and our four million members and supporters across the country.

Let me start by applauding Administrator Jackson for directing the Environmental Protection Agency to fulfill its statutory obligations under the Clean Air Act to limit emissions of greenhouse gases. It is clear that the EPA has a renewed sense of duty to develop and implement regulations necessary to protect public health and the environment from the dangers of climate change, and it couldn't come at more critical time. This new leadership from the Obama Administration to confront global warming is long overdue and very much welcomed.

National Wildlife Federation strongly supports the proposed Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule at issue today. We believe that EPA has developed a common sense regulatory approach for tackling the country's largest sources of greenhouse gas emissions. Clarifying the scope of coverage in regulating these sources provides both large and small businesses with much-needed certainty in this challenging economy, while ensuring that nearly 70 percent of US global warming pollution from stationary sources is addressed.

NWF believes that focusing regulation at this time on the sources most responsible for our global warming pollution makes both economic and environmental sense. The vast majority of sources that would fall under the threshold for regulation that EPA has proposed are longstanding members of the "regulated community." The owners and operators of these plants are very familiar with emissions regulations and in seeking cost-effective reductions to comply with their permits. As history has shown time and again, American ingenuity and innovation will lead to dramatic pollution reductions at much lower costs than initially projected. Placing a firm limit on greenhouse gas emissions from these large sources is essential for ushering in a clean energy future for America. Companies across the country will respond with substantial investments in new energy and efficiency technologies that will create jobs and drive our economic recovery.

Quite simply, Americans need a better way to power our future and protect the planet. We must move swiftly and effectively, for it is not an exaggeration to call what we are facing a climate crisis. This is the defining challenge of the 21st century. For years, commentators have framed climate changes such as the melting of Arctic sea ice and rising of the seas as mere possible outcomes in the distant future. In fact, these and other profound ecosystem changes and climate feedbacks are well underway and are occurring far more rapidly than scientists recently projected. The fourth report from the Intergovernmental Panel on Climate Change warns that in the lifetime of a child born today, 20 to 30 percent of the world's plant and animal species will be on the brink of extinction if we don't take bold action now.

National regulation of greenhouse gas emissions in the U.S. is long overdue. For decades, scientists have been warning of significant, catastrophic threats to our human health and welfare from unchecked global warming. As clarified by the Supreme Court in 2007, EPA has the authority – and obligation – to respond to this threat with appropriate regulatory actions. It is refreshing to see EPA finally step up and pursue sensible policies to make up for lost time. In particular, National Wildlife Federation looks forward to the final issuance of a positive endangerment finding in order to truly kickstart a new era of national policy action to address global warming.

In conclusion, on behalf of National Wildlife Federation and our four million members and supporters, I would like to again thank the Obama Administration for proposing this regulation and taking an essential step forward in crafting effective, common sense policies to cut greenhouse gas emissions. It is clear that Administrator Jackson has brought a fundamentally different approach to the agency in responding to this urgent issue, and NWF looks forward to the opportunity to work together to advance our shared goal of solving the climate crisis.

For more information, contact:

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Good Afternoon, *Morning*

My name is Norman Hall and I am a parent, an educator and an avid follower of public policy issues ^{thanks} due to the way I was raised by my parents. I am here today because I have been taught, and try to teach to my students the importance of speaking your mind about what your values tell you matters. Today, this means that I feel committed to connect lessons about science with public policy concerning the effects of global warming.

Before making a final decision about coming here today, I sent my son Zach an e-mail asking him whether I should do this. Zach is a freshman at Macalester College and is for now anyway, majoring in Biology. Zach replied within minutes, saying "Yes, you should testify". If you've worked with young people the way I have, you're prepared for a short answer. But he elaborated on what I might say, adding that while he didn't have specific technical points I should stress, all his thinking about the environment recently has been about how poor air quality relates to health, contributing to an enormous number of chronic illnesses.

Let me mention that he, my daughter Rachel and my wife Susan all have asthma. I have learned to be aware of asthma triggers and how outdoor trips can change quickly from moments of spontaneous wonder to concern about whether and where we packed the inhaler, just in case it's needed.

I grew up with a strong interest and belief in the fields of science. Following a graduate degree and career in public transportation, I have turned to a second career in education. I have maintained an interest in making sure that people of all ages have choices to live their lives in a way that is true to their personal nature and protects the earth for future generations. And in my mind, the path to a bright global future requires that everybody with the capacity to follow the issues relating to global warning has the obligation to do so. I teach the importance of critical thinking: today, it's time for me to practice what I teach.

When I started my transit career, a major issue I worked on, before the Americans with Disabilities Act, concerned the decision to buy wheelchair-accessible buses, or hold off for other choices. Today nobody seriously considers this a legitimate choice.

Around the same time that the Americans with Disabilities Act became law, there were Clean Air Act amendments, which were another means by which our nation made laws to protect the public. Unfortunately, this legislation has not been as complete in meeting its goal over

objections of those who would say it would cost too much. Others say we should wait for a better time to impose reductions in GHG emissions. I say a reasonable scientific approach should trump concerns over cost. It's not about who owns the industrial facilities that are the subject of today's rule, it's about who owns the air, the layers of the atmosphere whose chemistry is affected. That is to say, it's everybody's. Everybody who breathes, and that includes those with respiratory diseases and asthma.

With that in mind, let's consider that right now, only a handful of sources, including coal power plants, are responsible for more than half of all of the global warming pollution in the United States. Older energy facilities, like the older buses that related to my work twenty years ago, need to be set up with current and future needs in mind. We cannot wait. We cannot justify inaction by these operators while smaller emission sources are held to higher standards.

Under the proposed rule, 25,000 tpy CO₂e is what would be known as the major stationary source threshold facing new or modified existing facilities. Facilities with a lower significance level somewhere between 10,000 and 25,000 tpy CO₂e would also need a PSD permit should plant modifications be made. I'm no expert on what this value should be, but I'm sure that the testimony EPA seeks will include compelling arguments based on science for setting this number.

It's good to have the opportunity to discuss this issue today, because science matters. And numbers matter too. For while we should consider every source of GHG emissions in the plans we make, it's clear that the biggest impact we can have on cutting back emissions starts with those who make the most. Let's say I'm the manager responsible for running a large bus garage and want to show my riders that I care about their service through a meet-and-greet campaign. I wouldn't go about doing this through small ridership bus runs. I would go where ridership statistics show most of my riders will be.

As a teacher, I don't work with the students who are the easiest to find to give them extra homework help: I track down those who need the most help based on their under-performance. I suggest that it's time that we encourage the EPA to do likewise when it comes to these proposed rules. It looks like they're off to a great start.

Thank you very much



**Public Comments of Safety-Kleen Systems, Inc. on
The U.S. Environmental Protection Agency's Proposed Rule
"Prevention of Significant Deterioration and Title V Greenhouse Gas
Tailoring Rule"**

Good morning. My name is Mike Fusco and I represent Safety-Kleen Systems, Inc. I am here to provide comments on the EPA's proposed rule "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule".

I would like to thank the EPA for holding this public meeting and providing the opportunity for stakeholders like Safety-Kleen to give comments on this proposed rule. My company believes that regulation of greenhouse gas (GHG) emissions is a major issue that will dominate the environmental regulatory and legislative strategy for years to come, and will have a significant impact on industry, our economy and society in general.

We are here to highlight the importance of lifecycle analysis in achieving national GHG management objectives. In many cases, a focus on facility level emissions may serve to inhibit much larger scale emission reduction achievements. Our industry, the recycling business, serves as a model case in point where an increase in facility level emissions may realistically represent a net decrease in national level emissions.

Safety-Kleen's is principally involved in the recycling of used oil and various petroleum-based chemicals generally used as cleaning solvents. Safety Kleen is the largest used oil re-refiner and is one of the largest solvent recyclers in North America. During 2008 our East Chicago, IN facility re-refined or produced approximately 109 million gallons of used oil into base oil. This base oil is then enhanced to make lube crank case oils, hydraulic oils and oils for other industrial applications. The products of this re-refining meet the very same standards as the identical products derived from virgin crude oil. In addition, the company has five recycle centers that recycled in 2008 approximately 13 million gallons of used mineral spirits solvent into a recycled solvent product.

It is likely that our East Chicago re-refinery may be regulated under a final tailoring rule as a stationary source since its GHG emissions from stationary sources will likely exceed 25,000 tons of CO_{2e} annually. Safety-Kleen understands the rationale for regulating this site for its GHG emissions. However, we want to make sure that as the EPA reviews and considers

comments on this proposal that the total GHG mitigation benefits of re-refining and recycling businesses be considered. Let me explain this further.

Earlier this year, Safety-Kleen hired Environ Corp., a consulting firm with extensive experience in conducting GHG studies, to complete a full life-cycle analysis ("LCA") of our re-refining and solvent recycling product operations. This LCA was conducted and peer-reviewed in conformance with ISO standards, the first LCA on re-refining in the United States to meet these standards, to my knowledge. It concluded that re-refining resulted in 81% fewer GHG emissions than refining lube oil from crude and combusting the resulting used oil. The total GHG emission savings from Safety-Kleen's re-refinery operations was calculated to be over 1 million metric tons of CO_{2e} per year, the equivalent of the annual emissions of 190,000 vehicles or the consumption of more than 100 million gallons of diesel.

The EPA has long recognized the environmental benefits of re-refining used oil and recycling spent solvent, and calls re-refining on its web site "the preferred option because it closes the recycling loop by reusing the oil to make the same product that it was when it started out, and therefore uses less energy and less virgin oil."

Our concern is that companies that burn significant volumes of used oil as a fuel source may not burn enough at any one location to trigger the reporting and new source review or PSD requirements in the proposed tailoring rule. Also, since burning is a secondary end use of lube oil, it will not be included in emissions charged to the refiners that produce the oil in the first place. If so, the burning of used oil, which accounts for over 57 percent of all end uses of recovered used oil in the form of recycled fuel oil, will not be subject to the tailoring rule. If only those companies that re-refine used oil are subject to the tailoring rule, there is the potential to create a significant disincentive for what numerous governmental studies have shown to be the environmentally preferable choice. The Agency is on record many times supporting recycling, we are concerned for our industry that this proposal will have the opposite effect.

Regulating GHG emissions at our facilities, without giving those facilities credit for other GHG emission reductions and taking into consideration other environmental benefits, may actually discourage re-refining and recycling and result in higher GHG emissions overall. It will certainly present barriers for Safety-Kleen when considering expansion of our facilities to increase re-refining used oil capacity.

In order to incent increased used oil re-refining and spent solvent recycling, along with their GHG emission reduction effect, we advocate that:

- (a) Combustion of used oil be subject to the tailoring rule by allocating the emissions from used oil burning to the refiner of the oil from virgin crude; and
- (b) Requiring that emissions from the recycling process sector consider the net environmental benefit in the Agency's regulatory structure. There are a number of methods of doing this, one of which is to exempt recycling facilities which reduce GHG emissions on a lifecycle basis from the rule and another is to allow the recycler to capture its lifecycle carbon credits when calculating emissions for the site.

Finally, there is one other issue I'd like to address. The proposed Tailoring rule accounts for GHG emissions differently than the GHG Reporting rule. Safety-Kleen believes this will confuse the field and add unnecessary complexity to an already complicated regulatory regime. We recommend that the Agency reconcile these differences and finalize a uniform accounting standard for GHG emissions.

Thank you very much for the opportunity to speak today and present our comments.

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**STATEMENT OF THE NATIONAL PETROCHEMICAL AND REFINERS
ASSOCIATION (NPRA)**

**HEARING ON THE PROPOSED PREVENTION OF SIGNIFICANT
DETERIORATION AND TITLE V GREENHOUSE GAS TAILORING RULE**

ARLINGTON, VIRGINIA

NOVEMBER 18, 2009

Good morning.

I am David Friedman, Director, Environmental Affairs for the National Petrochemical & Refiners Association (NPRA).

NPRA is a national trade association comprised of more than 450 companies, including virtually all US refiners and petrochemical manufacturers that supply consumers with a wide variety of products and services used daily in homes and businesses. These products include: gasoline, diesel fuel, home heating oil, jet fuel, asphalt products, and the chemicals that are "building blocks" in making everything from plastics to clothing to medicine to computers.

The proposed Greenhouse Gas Tailoring Rule will have a significant impact on NPRA members and we appreciate the opportunity to express our views on the issue. While NPRA always values the Agency's efforts to streamline regulations and reduce permitting burdens, we have major concerns with this rulemaking. We would like to address the following key concerns regarding the rule, namely that it: 1) it is unnecessary and violates the statutory authority of the Clean Air Act; 2) it is not a relief rule and does not account for all sources of greenhouse gases; 3) does not adequately assess the costs and benefits; 4) will not preclude states from permitting smaller sources and creates regulatory uncertainty.

The Tailoring Rule Is Unnecessary and Conflicts with Statutory Authority

The Tailoring Rule, which does not have a statutory basis in the Clean Air Act ("CAA") and which rests entirely on uncodified administrative law doctrines, is being proposed since EPA has decided to promulgate final greenhouse gas ("GHG") regulations for light duty vehicles under section 202 of the CAA. NPRA believes there is a straightforward way to avoid the fundamentally flawed legal position that EPA puts forward in the Tailoring Rule while obtaining 95% of the greenhouse gas reduction benefits projected for the section 202 rule. EPA should delay promulgation of the light duty rule while the National Highway Traffic Safety Administration finalizes its portion of the rule early next year. This result would avoid reliance on EPA's erroneous conclusion that PSD is automatically triggered for all sources upon the effective date of the section 202 light duty vehicle rule.

The Clean Air Act stipulates unequivocally that the threshold to permit major stationary sources is 250 tons.. EPA lacks the legal authority to categorically exempt sources that exceed the Clean Air Act's major source threshold from permitting requirements, and taking such action would create a troubling precedent for other Agency actions in the future. The Agency's streamlining techniques outlined in the Tailoring Rule are also inconsistent with long standing federal policies on implementing the requirements of the PSD and Title V programs. This would result in continuing regulatory uncertainty.

Therefore, altogether, the proposal highlights the perils of forcing greenhouse gas regulations into the Clean Air Act. You shouldn't try to fit a square peg in a round hole.

It is also unclear how the regulation of greenhouse gases will be implemented in the context of other Clean Air Act procedural requirements and air pollutant regulatory frameworks, such as those required for National Ambient Air Quality Standards (NAAQS), per-ton fees for permits, and state PSD program approvals.

The Tailoring Rule is Not a Relief Rule

The tailoring rule is not a relief rule. Currently, there are approximately 300-400 PSD applications annually under the Clean Air Act, so the overall effect of the Tailoring Rule would increase PSD nearly fortyfold to more than 13,000 facilities. EPA's broad interpretation of pollutants subject to regulation greatly expands the PSD program and is done without a proper assessment of the costs and benefits of such a regulatory expansion. According to EPA, a PSD permit costs \$125,000 and 866 hours to complete. That means the cost to industry for the more than 13,000 facilities to file PSD permits will be more than \$1.6 billion. These costs were not considered as "costs" but rather as "cost savings" in the rule's cost/benefit analysis.

In addition, it is not as if smaller GHG sources will be exempted from these significant filing cost impacts. EPA makes clear in the proposed rulemaking that it intends to eventually phase smaller sources into the permitting process. Huge costs will reach smaller facilities, just a few years after our facilities pay these costs. We are simply kicking the can down the road and paying later. This program does not save the \$54 billion as calculated in the cost/benefit analysis, at most it simply delays the \$54 billion that the US economy will have to pay to comply with a PSD program.

Conflict with State Programs

The tailoring proposal will also generate a great deal of uncertainty as State GHG permitting thresholds in some cases are below the 25,000 ton limit. Additionally, the preamble discussion leaves many unanswered questions as to how EPA can achieve a transition for those states with fully approved PSD and Title V permit programs. The adjustments for the new applicability thresholds under the tailoring rule could be delayed as the states have to go through notice and comment rulemaking in order to incorporate new federal requirements and policies into state programs and raise their permitting thresholds to match the federal program. Instead of streamlining the permitting program, these factors will mean that the Tailoring Rule will only provide an additional level of uncertainty for facilities operating throughout the nation.

Also, we would also like to add a point about timing. This rulemaking along with the tailpipe rule, the endangerment rule and the GHG reporting rule are among some of the most important and far reaching rules that EPA addressed in the past few years. These rules are complex, often interrelated and we believe that the comment periods have been too brief for affected parties to fully ascertain their impacts and to provide complete and meaningful comments, including suggestions for improvement. Industry's efforts to extend comment periods on these rules have been uniformly rejected. We strongly believe that it is more important that these rules be done right and not that they fit into an artificial deadline. These rules are too important to be rushed only to find flaws and unintended consequences. We are only seeking these short comment extensions in order to produce a useful and meaningful end product that benefits both industry and society as a whole.

Thank you for giving me the opportunity to speak and we will be providing you with more detailed comments in the coming weeks. I would be happy to answer any questions you may have about our testimony.