

December 28, 2009

EPA Docket Center
EPA West (Air Docket)
Attention Docket ID No. EPA-HQ-OAR-2009-0517
US Environmental Protection Agency
Mail Code: 2822T
1200 Pennsylvania Ave., NW.
Washington, DC, 20460



Transmitted via email: a-and-r-docket@epa.gov

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

Dear Sir or Madam:

The National Steering Committee for the national network of state Small Business Ombudsman (SBO) and Small Business Environmental Assistance Programs (SBEAP) thanks you for the opportunity to comment on the proposed ***Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule***, which was published in the *Federal Register* on October 27, 2009 (pages 55292-55365) as Docket ID No. ***EPA-HQ-OAR-2009-0517***. The state Small Business Ombudsman and Small Business Environmental Assistance Programs (SBO/SBEAP) were created under section 507 of the Clean Air Act Amendments of 1990. For over 15 years, the SBO/SBEAPs have provided extensive, hands-on assistance to small businesses to help them understand environmental regulations such as the National Emissions Standards for Hazardous Air Pollutants (NESHAPs) and similar standards.

The SBO/SBEAPs have indicated to EPA, through the small business liaison at OAQPS, that we are interested in helping to investigate the business impact for as many of the federal rules as we have volunteers with time to participate. Our goal is to help EPA issue regulations that are clear and easy for small businesses to comply with, and are also rules that the SBO/SBEAPs and states can implement with their minimal (and in many states, dwindling) resources. The SBO/SBEAPs, through their Climate Change Subcommittee, stand ready to work with EPA to develop rules that small businesses can comply with, and implementation tools and templates that will benefit all affected small businesses. The National Steering Committee also appreciates U.S. EPA's recognition of the need to reduce emissions from mobile as well as stationary sources. The Climate Change Subcommittee's members come from across the country and represent 7 of the 10 EPA regions and 17 states. Comments from the National Steering Committee for SBO/SBEAPs reflect a wide range of experience with the efforts of small business to comply with many different standards.

The SBO/SBEAPs understand the necessity to change the existing applicability thresholds for Prevention of Significant Deterioration (PSD) and Title V requirements for greenhouse gas emissions, if greenhouse gas emissions are considered a regulated air pollutant under the Clean Air Act. We understand the urgency to change these levels before greenhouse gas emissions are considered an air pollutant that endangers public health and welfare under the "endangerment finding" as well as being controlled under vehicle emissions, since this will trigger the above PSD and Title V requirements, and appreciate EPA's willingness to consider higher triggering levels. However, we do have some serious concerns with the implementation of the proposed standards.

We question why applicability thresholds, as well as the significance level range, are based upon the same applicability level as the Greenhouse Gas Reporting Rule. Until the required reports are filed and analyzed from these sources, no one knows the real impact of these levels as applicability levels for PSD and Title V. The SBO/SBEAPs feel there is great concern with the Greenhouse Gas Reporting Rule as we believe it will have a significant impact on businesses due to the cumulative effect of the 30 mmBtu/hr (to 55 mmBtu/hr if the Tailoring Rule levels are taken into account as well) threshold total for combustion sources. Many small businesses have several operations that use boilers or process heaters less than 30 mmBtu/hr but total plant potential, or use, will exceed the 30 mmBtu/hr threshold and thus require reporting. In addition, these sources will trigger PSD and Title V requirements. These sources would be required to obtain a Federally Enforceable state operating permits to avoid PSD and Title V. Many small businesses do not have the money or resources to spend on environmental consultants to assist them in calculating their greenhouse gas emissions and do all the other cumbersome, and in some cases unnecessary paperwork that will be required under this proposal including determining BACT (including the three E's, energy, economics, and environmental), and doing the modeling required for the NAAQS, as well as the increment modeling. It should also be noted that NAAQS and increment levels, key components of the PSD program, are not set for the greenhouse gas pollutants.

The SBO/SBEAPs are also aware of the extreme burden that will be placed upon State agencies by this new regulation. States will be forced to modify their State Implementation Plans as well as receive all the permit applications while awaiting federal guidance on how to proceed with the permits. Not only will the flow of State agency permits become bottlenecked, but business growth and improvements to our economy will be stymied as businesses await permits to construct new sources. Many states will also be required to modify numerous rules through their state legislature or governing body. By the broad base of the Tailoring Rule, this rule will impact nearly every air regulation including NSPS and MACT requirements.

The SBO/SBEAPs have concerns over what will happen in the event that the needed guidance from EPA on BACT and emission factors for GHG sources are not available in time to provide adequate education and outreach to small businesses and/or to administer air permits in a timely manner. It is currently unclear how permitting agencies will be able to complete a BACT

analysis or review for GHG or CO2e based on current information and an extremely ambitious timeline for the implementation of these rules.

The regulatory impact analysis discussed in the preamble is substantially flawed. The notation that there will be “no direct economic impact” is incorrect. Each source that is potentially subject to the Tailoring Rule must face the daunting task of determining whether or not the rule applies. Additionally, we found no consideration of the impact on sources that will be subject to the rule due to a few small units that are aggregated together as discussed above. Classifying many current minor sources under the PSD program as major sources based solely on GHG emissions is also likely to result in a significant number of minor projects being subject to PSD review for non-GHG emissions. We are concerned that EPA is giving inadequate consideration to the significant resource burdens on small business owners and regulatory agencies, absent evidence that there will be a corresponding environmental benefit. Further, we do not agree that a program that will potentially subject new small business sources to PSD and Title V requirements in the short-term is the same as “providing regulatory relief.” The “cost saving” noted by EPA is similarly incorrect.

The direct economic impacts will be felt by the businesses throughout the United States, both small and large. Additionally, direct economic impacts will be felt by the regulatory agencies as substantial permitting burdens to not only the PSD and Title V programs, but also to the minor NSR permitting programs. At a time when most state governments are reeling under large deficits, the hiring of additional staff to meet this extreme permitting burden, we believe, will simply not take place. In addition, the new GHG Tailoring Rule will bring in new sources that have never been through NSR/Title V permitting. As a result, state agencies will need to educate these new sources on the need for a permit, on the permitting process and on program requirements. Many of these agencies will utilize the SBEA programs to perform this function. We believe the necessary and appropriate outreach, source education, and small business assistance effort will be substantial to ensure effective implementation of the GHG Reporting and Tailoring Rules. EPA must consider this when assessing resource burdens, administrative necessity and in evaluation of appropriate CO2e thresholds.

Therefore, we propose the following recommendations to help resolve most of these issues as options to reduce the burdensome nature of this rule:

Option 1: Since the program was not considered within the Clean Air Act of 1990, we feel that this Tailoring Rule is not appropriate under the auspices of that Act, and that greenhouse gas emissions should be encapsulated within a new statute or amendments. If this were to happen, we would propose that sources that would be subject to PSD and Title V due to only GHG emissions exceeding the thresholds would be exempted from those programs.

The SBEAPs/SBOs make the following suggestions for implementing the Tailoring Rule if EPA decides to move forward:

Option 2: To avoid the “Pandora’s Box” effect from subjecting potentially thousands of new and small sources to PSD and Title V under Phase I, we suggest that U.S. EPA consider setting the applicability thresholds at a higher level at the beginning of the program with a schedule to phase in a 50,000 tpy CO₂e (actual emissions not potential) threshold. Setting the early PSD and Title V programs at a level that that would correspond to the number of sources that are currently subject to Title V or PSD under the current CAA regulated air pollutant thresholds would provide time for compliance assistance providers and permitting agencies to gear up for an increased workload and provide time for source and staff education. Allowing permitting authorities and small business assistance providers an opportunity to develop GHG programs at a pace that more closely mirrors resources will help ensure that EPA’s GHG program results in economic and environmental success. Under the phase in scenario, a source that has experience with major source regulatory requirements can rely on its existing experience in implementing the Tailoring Rule within its current regulatory regime. Then after all the reports from the Greenhouse Gas reporting rule have been received and reviewed for a period of time under Phase II, the actual data can be used to determine appropriate applicability thresholds for each category or sector.

Option 3: If Option 1 or 2 cannot be achieved, then we highly recommend that the threshold for applicability for both Title V and PSD be increased. An increase from 25,000 tpy CO₂e to 50,000 tpy would only decrease sources subject to the Tailoring Rule by 3%. If this is increased to 100,000 tpy CO₂e, this decrease in subject sources is only 4% (according to EPA documentation). To prevent the unintended consequences and economic burden of the rule as written, we propose that the trigger levels be increased to at least 100,000 tpy CO₂e. Increases for both new construction and modification should be implemented.

Concurrently, the significance level for sources should never be a range (presently at 10,000 - 25,000 tpy CO₂e); this promotes disparity among the States and Regions such as what is occurring in the determination of how to calculate Potential to Emit for small and large businesses. As an alternative, we propose that the significance level should be raised to at least 50,000 tpy CO₂e, if not 100,000 tpy CO₂e. As stated in Option 2, these levels should be maintained during Phase I until the greenhouse gas reports have been received and reviewed for a few years, then, under Phase II, more appropriate applicability thresholds can be determined to fit each category or sector based on real data.

We **strongly recommend** that all sources be subject to this rule based upon **actual emissions**. Currently, the Tailoring Rule language is unclear whether thresholds will be based upon a source's Potential to Emit or actual emissions.

Option 4: : It should also be noted that sources such as agricultural, residential, and small businesses (as defined by the Small Business Administration) should be exempted from this rule during the first five to seven years to allow U.S. EPA and permitting authorities time to gain experience with the program. Small businesses 507 service providers must be provided with education, resources, and tools to help small business owners understand whether and how they will be impacted by the rule and how they can report and comply. Without this time and resource consideration, we believe implementation of this rule as written will cause undue hardships for small businesses.

We have additional concerns that important information contained in the preamble of the rule however not directly addressed in the rule requirements will leave room for misinterpretation and inconsistencies as States and Regions begin implementation of the rule requirements. We would prefer that the intent be covered within the requirements to alleviate this problem.

We appreciate the opportunity to comment on the proposed *Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule* on behalf of the State Small Business Environmental Assistance Programs and Small Business Ombudsmen. Please contact Jackie Sims of our National Steering Committee's Climate Change Subcommittee at 217-782-9333 if you need clarification or would like to discuss any of these issues.

Sincerely:



Annette Fulgenzi
Chair
National Steering Committee
State Small Business Environmental Assistance Programs

Cc: Jackie Sims, NSC Climate Change Subcommittee
SBO/SBEAP National Steering Committee