National Association of Clean Air Agencies

November 13, 2006

U. S. Environmental Protection Agency
Docket Center
Attention: EPA-HQ-OAR-2003-0064
Room B102
1301 Constitution Avenue, N.W.
Washington, D.C. 20004

To Whom It May Concern:

The National Association of Clean Air Agencies (NACAA), formerly STAPPA and ALAPCO, is pleased to submit comments on EPA's proposed rule, "Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Debottlenecking, Aggregation, and Project Netting." NACAA is the national association of air pollution control agencies in 54 states and territories and over 165 major metropolitan areas throughout the United States.

I. General Comments

A. EPA's Proposed Rule Ignores Executive Order 12866, which Requires Pre-Proposal Involvement of State and Local Agencies.

EPA states at the beginning of the proposed rule that the changes "reflect EPA's consideration of the Agency's 2002 Report to the President...as well as discussions with various stakeholders including representatives of environmental groups, State and local governments, and industry." Contrary to this statement, however, EPA did not consult with or discuss these proposals with NACAA or its members. Rather, NACAA members were briefed on the proposed changes in August 2006, after the proposal had been sent to the Office of Management & Budget. At this late stage, state and local officials were merely informed of the contents of the proposed rule. No meaningful opportunity was ever provided to state and local air pollution control officials to review and discuss the proposed rule, and to suggest changes, despite the fact that the debottlenecking, aggregation, and project netting proposals have been under development since 2002.

In fact, EPA is charged with a duty to consult with the state and local permitting authorities early in the process of rule development. Executive Order 12866 states, "…[B]efore issuing a notice of proposed rulemaking, each agency should, where appropriate,

444 North Capitol Street, NW • Suite 307 • Washington, DC 20001
Phone (202) 624-7864 • Fax (202) 624-7863 • www.4cleanair.org

seek the involvement of those who are intended to benefit from and those expected to be burdened by any regulation (including, specifically, State, local, and tribal officials)." (Emphasis added) With regard to EPA's proposal, the changes are likely to result in burdens to state and local officials, ranging from unreported increases in emissions and degradation of air quality (debottlenecking and project netting), to the imposition of problematic criteria for evaluating minor source projects (aggregation). Thus, early and meaningful involvement of state and local officials before issuance of the notice of proposed rulemaking was required by Executive Order 12866.

B. EPA's Proposed Rule Fails to Assess the Environmental Impacts That Will Result from the Changes to NSR Applicability Determinations

Executive Order 12866 also requires a Regulatory Impact Analysis of the impacts on the environment of the proposed rule if the regulatory action "is likely to result in a rule that may "have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments…" EPA's proposed rule states that "[e]ntities affected by this rule include sources in all industry groups. The majority of sources potentially affected are expected to be in the following industry groups: electric services, petroleum refining, industrial inorganic chemicals, industrial organic chemicals, miscellaneous chemical products, natural gas liquids, natural gas transport, pulp and paper mills, paper mills, automobile manufacturing, and pharmaceuticals."

EPA states, with regard to the debottlenecking provisions, "we recognize that the proposed emissions test for debottlenecked units, when finalized, may result in fewer projects undergoing major NSR than would the current actual-to-projected-actual emissions test with its wider view of causation." Regarding its proposed changes relating to project netting, EPA states "[W]hile it is conceivable that fewer projects would trigger major NSR as a result of allowing for project netting in Step 1 of the NSR applicability test, we do not have enough information to quantitatively analyze if an emissions increase will result from the proposed rule change." Thus, EPA concludes that its debottlenecking changes are likely to result in foregone installation of pollution control equipment, and that it has no information on the potential impacts of its project netting proposal. These statements lead logically to the conclusion that EPA must undertake an analysis of the impact of its proposed rule on the environment in accord with the mandate of Executive Order 12866, which requires regulatory agencies to base their rules on informed impact assessments rather than guesswork and admitted lack of information.

This conclusion is buttressed by the opinion of the D.C. Circuit Court in *New York vs. Environmental Protection Agency (NSR I)* in which the Court stated in that case that EPA should "monitor the emissions impacts of the rule" and "use the monitoring results to determine whether the rule has created adverse effects that the agency needs to address." The Court also said "[i]n light of our vacatur of the Clean Unit and PCP portions of the 2002 rule…on which EPA relied in concluding that '…the five NSR [provisions in the 2002 rule] will improve air quality…' there is a heightened need for EPA to have sufficient data to confirm that the remaining portions of the 2002 rule do not result in increased emissions that

harm air quality and public health." (Emphasis added) Applying the Court's admonition to these proposed, additional NSR changes, EPA must have sufficient data to confirm that the changed provisions for debottlenecking, aggregation and project netting do not result in increased emissions that harm air quality and public health. Therefore, the required analysis should be undertaken and included in the Administrative Record before finalization of the rule.

C. The Proposed Rule Relies On Speculation, Rather Than Data, to Support Its Claim of Increasing Energy Efficiency

EPA claims in the proposed rule that its past and current policies regarding debottlenecking "deter companies from undertaking projects that would increase energy efficiency and could potentially result in lower emissions per unit of production." The agency states that it expects that its debottlenecking changes will encourage sources to implement more energy-efficient or lower-emitting processes. However, EPA points to no evidence in support of this proposition.

Similar claims have been made in EPA's other NSR reform rules, and have been criticized as unsubstantiated. Specifically, the Government Accountability Office (GAO) Report titled "Clean Air Act: EPA Should Use Available Data to Monitor the Effects of its Revisions to the New Source Review Program" (GAO Report 03-947, August 25, 2003) stated: "[b]ecause EPA based its conclusion that NSR discouraged some energy efficiency projects on anecdotal information rather than a comprehensive survey or representative sample of industries subject to the program, its findings are not necessarily representative of the program's effect on energy efficiency projects throughout the industries subject to the program." In its proposal, EPA's claims that past debottlenecking policies have discouraged industry from initiating energy efficiency projects also appear to be based on anecdote.

NACAA requests that EPA substantiate this claim as directed by the GAO. Moreover, we believe that, contrary to the assertions made in the proposed rule, modifications, equipment replacement, and incorporation of pollution prevention measures undertaken by facilities in response to NSR requirements frequently improve energy efficiency. At any rate, a comprehensive survey or representative sample of industries that have been subject to NSR debottlenecking policies should be included in the rulemaking rather than mere speculation that NSR has deterred energy efficiency projects in the past.

D. No Record-keeping or Reporting Requirements Are Included in the Proposed Rule

NACAA is concerned that there are no provisions for sources to submit records to state and local permitting authorities substantiating the sources' determinations about NSR applicability under the proposed rule. On June 24, 2005, the D. C. Circuit Court of Appeals addressed the record-keeping issue in *New York v. Environmental Protection Agency.* EPA's 2002 NSR reform rule required sources to keep records of their determinations of NSR applicability when "[they] believe that there is a reasonable possibility that [the] project…may result in a significant emissions increase." The Court remanded this regulatory provision to EPA "to either provide an acceptable explanation for its 'reasonable possibility'

standard or to devise an appropriately supported alternative." Although the case was decided nearly one and one-half years ago, EPA has failed to comply with the remand. Nor does the current rule fill this gap. Determinations of when NSR applies to debottlenecking, aggregation, and project netting activities appear to be within the exclusive domain of the source and record-keeping and reporting are apparently undertaken, if at all, as a voluntary activity by the source.

For example, the proposed rule states, regarding debottlenecking, "*[u]nder this legal causation approach…no future emissions increase at the debottlenecked unit is considered to have been caused by the project for the purposes of an NSR determination. In such circumstances, the contribution from the debottlenecked unit to determining whether the project results in a significant emissions increase is zero. On the other hand, if the project is expected to cause the debottlenecked emissions unit to increase above its permitted emissions, then its actual-to-projected-actual emissions increase must be included in the emissions increase calculation. In addition, its underlying permit would require a change…which would in most cases trigger review by the permitting authority*." It is apparent that only the source's "expectations"—rather than any enforceable, objective reporting requirement or determination—would lead to inclusion of the emissions in the increase calculation. Moreover, the wording is unclear regarding when permit review is necessary, with notification appearing to be a voluntary action by the source rather than a regulatory requirement. NACAA urges EPA to clarify the source obligations, and to require reporting and recordkeeping requirements in the final rule.

With regard to aggregation, the proposal states, "*Determining whether a permit is needed necessarily requires a source to make certain evaluations about the nature of an activity. Thus when planning a physical or operational change, the source should always consider the rules and guidelines provided by EPA, and/or in the applicable SIP, in determining whether multiple projects should be aggregated. Nonetheless, the source's determination of the proposed project is not the final decision; rather, the reviewing authority is responsible for ensuring that sources in their jurisdiction abide by the applicable rules and guidance for aggregating projects. <u>This may require the reviewing authority to gather facts and request specific information from the source when further scrutiny is warranted.</u>*" (Emphasis added)

In effect, the Preamble suggests that a permitting authority must request—without any regulatory requirements—more facts in order to revisit and, possibly, change the source's determination on aggregation. NACAA objects to the lack of record-keeping and reporting requirements, and believes that the regulations should provide that a source submit relevant information on the project or projects to the permitting authority at the planning stage of development.

Similarly, there are no reporting or recordkeeping provisions at all with regard to provisions for project netting. EPA should add such provisions in the final rule.

E. The Proposed Rule Contravenes the Administrative Procedures Act in That Conforming Regulatory Language Will Be Added to the Already-Promulgated Appendix S Rule Without Notice and Opportunity to Comment

EPA states in the Preamble that it seeks comment on incorporating conforming changes relating to the debottlenecking, aggregation and project netting changes into 40 CFR part 51, Appendix S.[1] Furthermore, the agency notes that, "[t]his notice does not include specific regulatory language related to this section. Nonetheless, we intend to finalize these rule provisions in Appendix S, whether at the time we finalize the remainder of these proposed revisions, or at the time that we finalize changes to incorporate the 2002 NSR improvements into Appendix S" (the emissions offset interpretative ruling).

In accord with the 2005 opinion of the D.C. Circuit Court of Appeals overturning EPA's "Umbrella Monitoring" rule, *Environmental Integrity Project, et al vs. Environmental Protection Agency*, the notice and comment requirements of the Administrative Procedures Act (APA) are designed to ensure that agency regulations are tested via exposure to diverse public comment, to ensure fairness to affected parties, and to give affected parties an opportunity to develop evidence in the record to support their objections to the rule and thereby enhance the quality of judicial review. EPA's assertion that it does not intend to seek additional comments before taking final action on the Appendix S changes, despite the fact that the public will never have seen the specific regulatory language relating to the proposed rule, runs afoul of the purpose and intent of the APA. NACAA believes that EPA is required to propose regulatory language incorporating the Debottlenecking Rule changes into Appendix S, with notice and opportunity for public comment.

II. Debottlenecking

EPA has proposed to change the method of calculating emissions increases at debottlenecked units. The current method employs a physical causation "but for" test, in which the emissions increase from an unchanged debottlenecked unit that could not have increased its emissions but for the modification of another unit are added to the emissions from the debottlenecked unit for purposes of determining whether the total emissions trigger NSR. Under the "legal causation" test change proposed by EPA, however, the increases in emissions from the unchanged unit would not be added to those of the modified unit if the unchanged unit's emissions were within the limits of a permit that is enforceable as a practical matter (e.g., a Title V operating permit). NACAA opposes this proposed change and supports the previous physical causation approach to debottlenecking. The legal causation approach does not adequately account for the actual increased emissions resulting from the debottlenecked project.

Actual increases in emissions affect air quality and should not be ignored. The proposed legal causation test for debottlenecked units will result in fewer projects undergoing

[1] EPA seeks as well comment on changes to the regulations for "both the approval and promulgation of implementation plans and requirements for preparation, adoption, and submittal of implementation plans governing the NSR programs mandated by parts C and D of title I of the CAA."

major NSR than would the current practice. EPA has not conducted a Regulatory Impact Analysis of the environmental effects of this proposed rule, and we are concerned that, if finalized, it would allow many facilities to avoid NSR permit review, air quality analysis, and installation of pollution controls for the changed units, thereby causing adverse air quality impacts. Moreover, if EPA finalizes the legal causation approach as proposed, sources taking advantage of their new ability to avoid NSR applicability for the changed unit will make changes that significantly expand the universe of debottlenecked units as well.

Most importantly, the legal causation test as proposed conflicts with existing law. The D.C. Circuit Court of Appeals ruled in *New York vs. Environmental Protection Agency (NSR I)* that the Clean Air Act "unambiguously defines 'increases' in terms of actual emissions." (Emphasis added) The Court rejected EPA's Clean Unit provisions, which measured emissions increases in terms of allowable emissions for purposes of NSR applicability. In the same way, the proposed regulation changes a long-standing NSR requirement based on actual emissions to one based on permitted or allowable emissions, thus circumventing the directive of the D.C. Circuit Court. NACAA urges EPA to reject this departure from applicable law and to treat emissions from a debottlenecked unit as actual emissions within the meaning of the CAA definition of "modification."

If, however, EPA finalizes the proposed provisions for debottlenecking, it should do so only under strictly limited circumstances. For example, if a debottlenecked unit has gone through major NSR PSD permitting within the last five years, including air quality modeling of the unit at the highest rated capacity, installation of best available control technology (BACT), and, when appropriate, analysis of air quality related values (AQRV), the increased emissions of that unit need not be added to those of the emissions of the changed unit in order to determine NSR applicability of the changed unit. By the same token, if a debottlenecked unit has gone through major Nonattainment NSR permitting within the last five years, including air quality modeling of the unit at the highest rated capacity, installation of lowest achievable emissions reductions (LAER), and acquisition of offsets, the increased emissions of that unit need not be added to those of the emissions of the changed unit in order to determine NSR applicability of the changed unit.

Conversely, actual emissions increases of the debottlenecked unit *should* be added to the emissions of the changed unit when the debottlenecked unit has received only a minor source permit or an operating permit. State and local permitting authorities affirm that minor source permitting only infrequently requires modeling demonstrations that evaluate the impact of the project's emissions on the air quality increments or NAAQS. Nor do Title V operating permits require such modeling demonstrations. Therefore, minor source and operating permits provide insufficient protection from the increases in actual emissions from debottlenecked units. Moreover, actual emissions increases from the debottlenecked unit should be added to those of the changed unit when they were modeled with conditions attached, such as a lower potential to emit or physical or operational constraints—rather than at the highest rated capacity. Furthermore, actual emissions increases from the debottlenecked unit should be added to those of the changed unit when the debottlenecked unit has no practically enforceable limits, but was permitted only at the full potential to emit according to the vendor claims or at the maximum rated capacity, and did not go through

major NSR permitting. Finally, actual emissions increases of debottlenecked units should be added to those of the changed unit when the debottlenecked unit went through major NSR more than five years ago, thus indicating that its pollution controls may have been outstripped by recent technological advances.

A. EPA Should Change the Proposed Regulatory Language of §51.165 to Reflect NACAA's Concerns that Debottlenecking Changes Be Strictly Limited

NACAA strongly recommends that the regulatory language be changed to ensure that, if EPA adopts the legal causation test (which we oppose), it remains appropriately limited in scope. The proposed regulatory language at §51.165 (a) (1) (xxviii) (B) (5) states:

"For purposes of paragraph (a)(1)(xxviii)(B)(3) of this section, an emissions increase results from a project if, before the project, the emissions unit was legally incapable of operating at the post-change emissions rate without violating a legally and practically enforceable term or condition of any previously issued air quality permit."

This regulatory language does not carry out the apparent intent of the Preamble.[2] Moreover, the debottlenecked unit itself would be allowed to increase from its constrained potential to emit to its unconstrained potential to emit without having gone through permit review, including an evaluation of the need for BACT or LAER and air quality analysis. NACAA opposes this change, and urges redrafting of this language. Our revised language, set forth below: 1) reflects the Preamble; 2) adds specific limiting requirements contained in the Preamble; 3) and adds further limitations on debottlenecked units advocated by NACAA, shown in italics:

(b)(41)(ii)(e) For purposes of paragraph (a)(1)(xxviii)(B)(3) of this section, an emissions increase does not result from a project if, before the project, the emissions unit was legally capable of operating at the post-change emissions rate due to a legally and practically enforceable term or condition of a previous pre-construction air quality permit. In determining applicability under this paragraph, the permit must meet the following criteria:

- The unit's maximum emissions levels for each of the NSR pollutants in question is explicitly contained in a Title V permit;
- The Title V permit contains an allowable emissions limit (or operational limit that has the effect of constraining emissions) for the regulated NSR pollutant that is enforceable as a practical matter;
- The unit is unchanged;
- *The debottlenecked unit has gone through major NSR permitting (PSD or Nonattainment NSR) within the last five years, including air quality modeling of the unit at the highest*

[2] Specifically, a source could have a bottlenecked emissions unit that had received a permit containing no limitations. Because there were no limitations, there would have been no need for legally and practically enforceable terms or conditions in the permit. In such a case, there would be no "emissions increase," in accord with the regulatory language, and the increased emissions would need to be added to the emissions of the changed unit.

rated capacity, installation of BACT or LAER as appropriate, analysis of Air Quality Related Values, and acquisition of offsets if in a nonattainment area.

III. Aggregation

EPA's proposed rule claims to codify and clarify EPA's position on aggregation. The proposal states that when "a source *or* reviewing authority determines that a project is technically *or* economically dependent upon another project, the source or reviewing authority must consider the projects to be a single project and must aggregate all of the emissions increases for the individual projects in Step 1 of the major NSR applicability analysis." Although NACAA generally agrees that codification of aggregation procedures would be useful, the association opposes the new tests. Under the wording of the proposed rule, which is phrased in the disjunctive, a source, without the reviewing authority, could decide that a project was economically independent of another project. No reporting or record-keeping requirements would mandate that the source share the basis for its conclusion with the reviewing authority. State and local permitting authorities are likely to face an uphill battle in obtaining the internal corporate planning and balance-sheet information that would enable them to understand whether or not projects are genuinely economically dependent, and would have no recourse if information requests were ignored or given an inadequate response.

Specifically, the new tests pose the following interpretative and practical problems: First, the proposal does not define "technical dependence" or "economic dependence," leaving greater uncertainty than the previous, reasonably well-developed policy.[3] Second, we do not agree that "the economic test would obviate the need for case-by-case review of aggregation determinations by permitting authorities" because state and local agencies would not be able to apply the new economic test without examining relevant project funding and operational information on a case-specific basis. Third, the expertise of state and local air quality specialists simply does not extend to this kind of economic analysis. Fourth, questions have arisen concerning the consistency of the proposed aggregation rule with the debottlenecking rule that should be addressed before the rule is finalized.[4]

---

[3] The previous policy recognized the need to take into account the totality of circumstances when evaluating whether a source was circumventing NSR by dividing a project. EPA Guidance on this topic includes: October 21, 1986, memo titled, "Applicability of PSD to Portions of a Plant Constructed in Phases Without Permits;" June 13, 1989 memo titled, 'Limiting Potential to Emit in New Source Permitting;" June 28, 1989, *Federal Register* Notice Promulgating Revisions to 40 CFR Parts 51 and 52, (54 *Federal Register* 27274, 27280-27281); September 18, 1989, memo titled "Request for Clarification of Policy Regarding the Net Emission Increase;" October 1990 Draft NSR Workshop Manual, pages A.36 and A.37; June 17, 1993, memo titled, "Applicability of New Source Review Circumvention Guidance to 3M – Maplewood, Minnesota."

[4] Specifically, since the rule does not establish timeframes, the aggregation proposal seems to be at odds with the debottlenecking provision being proposed. As indicated in the preamble to the rule, "This assessment examines, and applies reasonable engineering assumptions to the planned operational levels…for the project. Thus, the technical viability of one project is ultimately contingent on another project being completed (i.e., it is technically dependent)." If, however, the technical viability of a project depends on the debottlenecking of an existing piece of equipment, then it is to be included due to aggregation. However, according to the proposed debottlenecking

Moreover, NACAA does not agree with EPA's elimination of NSR "circumvention" analysis as one relevant focus of an aggregation determination. Permitting authorities should continue to attempt to ascertain from all the circumstances, as they have in the past, whether or not a source's minor source permit applications demonstrate an effort to avoid major source NSR. If it appears that a facility is deliberately avoiding NSR, permitting authorities should be able to deny the permit. EPA spokespersons have stated that the proposed rule is intended to eliminate consideration by permitting authorities of NSR circumvention, leaving such an inquiry to enforcement authorities. Permitting, however, should not be divorced from enforcement in this way, particularly when enforcement actions are resource-intensive exercises that can be avoided in the first instance by permitting authorities.

NACAA proposes that EPA substitute for the proposed test, a test that more closely reflects the nature of the inquiry that permitting authorities are accustomed to make with regard to aggregation. This test would include the following elements:

- Any project that commences construction within 18 months following completion of construction of a previous project is assumed to be aggregated with the previous project for purposes of NSR applicability unless the permittee can demonstrate and the permitting authority agrees that the projects should not be aggregated based on, but not limited to, the following factors:

- For successive minor source project applications submitted more than 18 months apart, the following tests would be used by the permitting authority to determine whether aggregation is appropriate:

    1. Do the projects share common infrastructure that was constructed for the first project, including, but not limited to, the following?
        a. A land use permit was obtained for both projects;
        b. Land was cleared or facilities, such as buildings or foundations, were built for both projects;
        c. Electricity, water, sewer, wastewater treatment, or storm water treatment was constructed or upgraded for both projects?

    2. Do the projects depend on the same raw materials, products, intermediates, or byproducts, i.e. one project feeds the other, including but not limited to:
        a. Expanded raw material, byproduct, or product storage which services a previous project
        b. New production project that uses expanded raw material, byproduct or product storage
        c. New production project that uses intermediate from a previous production project
        d. New production project that supplies intermediate to a previous production project?

---

provisions, these emissions wouldn't be included. In such a case, the permitting authority would likely aggregate the two projects.

NACAA strongly encourages EPA to adopt the above tests, which are logical, consistent with present practice, clear, and which provide certainty for the regulated and the regulator alike.[5] Conversely, EPA's proposed language is likely to encourage virtually unilateral economic decision-making on emissions increases and project aggregation by sources, with the result that NSR requirements are triggered less often and air quality may be adversely affected.

IV. Project Netting

NACAA supports the current policy of facility-wide netting, and opposes project netting. If project netting is adopted, the association believes that NSR will apply less frequently to modifications, again with detrimental results for air quality. In particular, NACAA believes that sources could use the new project netting proposal to avoid NSR. Specifically, moving creditable decreases associated with the project from Step-2 (contemporaneous netting across the facility) to Step-1 would create an opportunity to circumvent NSR as demonstrated in the following example:

Hypothetical Example: An existing major stationary source has many emission units, including two emission units (X and Y). A project occurring at the facility results in an increase of 60 TPY of NOx emissions at unit X. Another unit is also modified resulting in a decrease of 30 TPY of NOx emissions at unit Y. The contemporaneous increases in NOx emissions from other units are 35 TPY. The significant threshold for NOx is 40 TPY. The following analysis would occur under the existing policy:

Step-1: Emission increases at X = 60 TPY. Because this amount exceeds the significance threshold of 40 TPY, Step 2 analysis of the whole facility is required.

Step-2:
Net emission increase:
+ 60 TPY from unit X
- 30 TPY decrease from unit Y
+ 35 TPY increases in contemporaneous emissions from other units[6] =65 TPY and NSR applicability

Analysis under the Proposed Rule:

If one moves the consideration of creditable decreases associated with the project from Step-2 to Step-1, this affords an opportunity to "cherry pick" emission decreases at unit Y and try to justify it as being part of project X.

[5] The 18-month test is consistent with existing NSR provisions for determining when projects that are permitted together shall be considered separate projects in accord with 40 CFR 52.21(r)(2).

[6] There is no limit to this contemporaneous increase if each project is less than 40 TPY. This increase only enters NSR applicability determination, as part of the contemporaneous netting determination, if a project subsequently exceeds 40 TPY, as is the case with project X here.

Step-1:

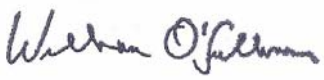
Emission increases:
+ 60 TPY (increases from unit X)
- 30 TPY (creditable decreases from Unit Y if the company claims modification Y is part of project X) = 30 TPY increase, leading to the conclusion that the project is not subject to NSR.

Step-2 Is Not Applicable, as the Project Has Netted Out under the First Step and NSR Is Not Triggered.

Conclusion: Unit X would have gone through NSR under EPA's current rule, but does not go though NSR under EPA's proposal. Neither air quality modeling nor installation of BACT/LAER would be required.

In sum, EPA's rule proposal on project netting is a relaxation of its current rule. Also, the proposal makes the rule more difficult to implement because sources are likely to separate and combine modifications into "projects" of less than 40 TPY in order to circumvent NSR. Moreover, the current approach is consistent with the holding of *Alabama Power v. Costle* and EPA's regulations at 40 CFR 52.21(b) (3) (i). Therefore, NACAA supports the current approach to project netting and urges EPA not to finalize the proposed change eliminating the requirement for facility-wide netting analysis.

NACAA appreciates the opportunity to comment on EPA's proposed rule, "Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Debottlenecking, Aggregation, and Project Netting." Please do not hesitate to contact one of us or Mary Stewart Douglas if we can be of assistance regarding these comments.



Bill O'Sullivan (New Jersey)
NSR Committee Co-Chair

John Paul (Dayton, OH)
NSR Committee Co-Chair