NACAA
national association of clean air agencies

August 16, 2007

U. S. Environmental Protection Agency
EPA West (Air Docket)
1200 Pennsylvania Avenue, NW
Mail Code: 6102T
Washington, DC 20460

Re: Docket ID No. EPA-HQ-OAR-2005-0163

To Whom It May Concern:

On August 3, 2007, the National Association of Clean Air Agencies (NACAA) submitted comments to the docket on EPA's "Supplemental Notice of Proposed Rulemaking for Prevention of Significant Deterioration and Nonattainment New Source Review: Emissions Increases for Electric Generating Units." The association hereby submits an additional comment on this proposed rule. 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.

An Hourly Test Would Be Ineffective at Reducing Emissions and Extremely Difficult (If Not Impossible) for Permitting Authorities to Enforce

EPA's proposed rule states that it will provide "streamlined" and "effective" environmental protection (72 *Federal Register* 26223). NACAA strongly disagrees. The proposed rule will not be "effective" because it will rarely, if ever, result in reductions of annual, tons-per-year emissions. Nor do state and local permitting authorities view enforcement of the hourly rules that have been proposed as "streamlined" in any way. In fact, an analysis by EPA's Office of Enforcement and Compliance Assurance (OECA), with which we agree, reaches contrary conclusions.[1]

OECA's analysis demonstrates that it would be extremely rare that either EPA's proposed "achievable" or "achieved" maximum hourly emissions tests would ever trigger NSR. With regard to the "achievable" test, OECA found that baseline hourly emission rates were more than ten times higher than the

[1] Memorandum of Adam M. Kushner, Director, Air Enforcement Division, U.S. EPA, to William Harnett, Director, Information Transfer and Program Integration Division, Office of Air Quality Planning and Standards, U.S.EPA, Aug. 25, 2005.

average hourly emission rates in the five-year period prior to the change, making it highly improbable that a unit would increase its emissions above the baseline. OECA concluded that, "one can only conclude from application of the so-called "achievable" test that no "change" causing an emissions increase (capacity or otherwise) at an EGU would trigger NSR, requiring the source to seek a pre-construction permit from its permitting authority and install pollution controls."

Similarly, with regard to the maximum hourly "achieved" emissions test, OECA found that "only under the rarest of operational circumstances would a change causing an emissions increase (capacity or otherwise) at an electric generating unit (EGU) trigger NSR." Thus, the proposed rule would certainly not be effective in reducing emissions, but rather would result in harmful increases in uncontrolled pollutants.[2]

Furthermore, assuming for the sake of argument that an EGU might make a change in its hourly rates of emission that would trigger NSR, a permitting authority would have an exceedingly difficult time assessing whether or not the change triggered NSR. The OECA memorandum states: *"[A] utility would have many ways to show that a particular capacity is or was theoretically achievable, which makes analysis of the impact of the test difficult and application of the test largely unenforceable. [M]ost of the information and data that might inform application of the test would be solely in the possession of the EGU. Thus, this theoretical achievable test creates a subjective test leading to a 'battle of the experts,' and consequently greatly handicaps the efficient administration of a meaningful pre-construction permitting program. The proposed test will make it difficult for both a utility and the regulators to assess the compliance status of an EGU."*

In sum, the proposed rule will create tremendous burdens for air agencies, and cannot reasonably be characterized as "streamlined." Rather, it is complicated, time-consuming, and technically questionable to implement. As just one example, the use of a statistical approach to calculate past hourly levels of emissions, including the Equation 3 at 72 *Federal Register* 26225, would require a high level of effort and expertise, and raises a host of technical and legal issues. These complexities and uncertainties are likely to lead to frustration for industry and for air agency personnel if the rule is promulgated.

Therefore, if this rule is finalized, it will be virtually impossible for air agencies to implement the hourly tests, assess compliance, and bring enforcement actions. Most importantly, as NACAA pointed out in our August 3, 2007 docket comments, the increases in emissions that are sanctioned by the proposal will pose tremendous—in some cases, likely insurmountable—difficulties for states and localities working to achieve and maintain air quality standards.

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[2] In contrast, the NSR enforcement cases have been remarkably effective at reducing emissions. A recent report from EPA's Office of the Inspector General found that "the settlement of a few large [NSR] power plant cases resulted in a marked increase in total estimated reductions for Fiscal Years 2004-2005." Specifically, two power plant cases in FY 2004 account for over 600 million lbs. in reductions—approximately 60 percent of the FY 2004 total. Two other power plant cases in FY 2005 account for over 535 million lbs. reductions—almost 50 percent of the FY 2005 total. "Assessment of EPA's Projected Pollutant Reductions Resulting from Enforcement Actions and Settlements," Report No. 2007-B-00002, July 24, 2007.

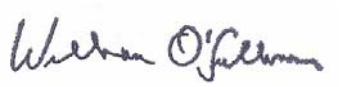
States and Localities Are Free to Ignore This Rule, If Promulgated, Because It Constitutes a Significant Relaxation of the Existing NSR Program

Pursuant to §116 of the Clean Air Act, states and localities are free to adopt any pollution standard or requirement that is not less stringent than requirements of the Act or EPA. In this case, however, EPA's rule is a significant relaxation of the existing Clean Air Act requirements, and state and local agencies are not required to adopt it. EPA's proposal requires that states adopt the EGU hourly requirements, and that "deviations…will be approved only if the State or Tribe demonstrates that the substituted provisions are at least as stringent in all respects…" as the new rules (72 *Federal Register* 26223). This language, however, does not fit the facts and circumstances of the proposed rule. The proposal eliminates NSR for existing EGUs. It is, therefore, a relaxation of existing law. Section 116 allows state and local authorities to adopt their own requirements as long as they are as stringent as EPA's; it does not mandate that states follow EPA's current laxity.

The very title of the proposed rule, "Supplemental Notice…**Emissions Increases** for [EGUs]" admits that the rule will allow and result in greater emissions. The docket comments of the New York Attorney General summarize EPA's own predictions: 405 counties will experience NO_x increases; 338 counties will experience SO_x increases; 384 will experience particulate emission increases; 380 will experience CO increases; and 296 will experience VOC increases. EPA's conclusion that states and localities must incorporate the new tests into their State Implementation Plans for EGUs is incorrect under the present circumstances.

NACAA appreciates the opportunity to provide these additional comments on EPA's Supplemental proposed rulemaking that would change the emissions test for EGUs under the NSR program of the Clean Air Act. If you have any questions about these comments, or desire further information, please do not hesitate to contact one of us or Mary Stewart Douglas of NACAA.

Sincerely,



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