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State of Louisiana

DEPARTMENT OF ENVIRONMENTAL QUALITY
OFFICE OF THE SECRETARY

December 15, 2009

Ms. Lisa Jackson, Administrator
United States Environmental Protection Agency
Ariel Rios Building Mail Code: 1101A
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Re: Regulation of Greenhouse Gases

Dear Administrator Jackson:

The Louisiana Department of Environmental Quality (LDEQ) objects to Environmental Protection Agency's (EPA's) decision to move forward with the regulation of greenhouse gases (GHGs) through administrative policy rather than through constitutional means of amending the Clean Air Act (CAA) through legislation. The issue of global climate change resulting from the emissions of GHGs should be addressed through comprehensive federal legislation, full public debate, and American political consensus rather than through unilateral agency policy under the auspices of EPA.

As the chief environmental steward of Louisiana, a state critical to the commercial and industrial infrastructure of our nation, LDEQ supports scientifically sound, economically feasible, and sustainably manageable objectives. We understand Congress is currently considering legislation directly addressing GHGs and global warming. We believe this is the appropriate mechanism to address this issue rather than under agency policy devoid of public participation and consensus. Based on the absence of any reports, data, or economic analyses, we are concerned EPA has not adequately evaluated the collateral impact of its recent GHG proposed rules, specifically, the impact on the states and permitting authorities.

The maintenance of the concentrated and wide-ranging industrial and production sectors based in Louisiana is vital to the national security of the United States. The fuel crises which nearly paralyzed the country with the Louisiana landfalls of Hurricanes Katrina, Rita, Gustav and Ike in the recent years clearly illustrated the significance of this base in Louisiana and its impact on the energy lifeline upon which America depends. Any environmental policy initiated without regard for its economic consequences will most certainly impact every American.

Despite a clear need to proceed with the utmost caution in this important area, EPA has recently proposed a series of rulemaking and other policy actions addressing GHG emissions, which together will likely have dramatic and far-reaching negative impacts on the state of Louisiana and other states in our nation. We join other states such as South Carolina and Texas in voicing our concerns and go further by requesting EPA to immediately withdraw its "endangerment" edict, and proceed not through an administrative process, but rather through Congressional legislation.

LDEQ particularly questions EPA's proposed use of policy and rulemaking administrative processes as appropriate mechanisms to address global warming. The CAA requires EPA to identify *specific* pollutants. While precursors of specific pollutants may be regulated, CO_2 equivalents are not precursors and no specific criteria pollutant has been identified. To use CAA policy and rulemaking, without formal legislative approval through Congress, as a vehicle to regulate GHGs, each pollutant would need to be specifically identified with the technical support to justify its inclusion.

Louisiana supports proactive regulation based on sound science. In Louisiana, where necessary, we have adopted state regulations which are more stringent than federal regulations. An example is Louisiana's Ambient Air Standards for toxic air pollutants established nearly twenty years ago. These standards are designed to provide an additional layer of human health protection for the citizens of Louisiana while providing a level playing field for Louisiana businesses.

Without the cooperation of a significant portion of the international community, regulation of greenhouse gases under the CAA puts United States businesses at an economic disadvantage with no demonstrated corresponding environmental benefit. Unlike most traditional air pollutants, GHGs become well mixed throughout the global atmosphere so that the long-term distribution of GHG concentrations is not dependent on local emission sources. Instead, GHG concentrations tend to be relatively uniform around the world. As a result of this global mixing, GHGs emitted anywhere in the world affect climates everywhere in the world. U.S. GHG emissions have climatic effects not only in the U.S., but in all parts of the world, and GHG emissions from other countries have climatic effects in the U.S.[1]

In fact, this reality was recognized by Supreme Court Justice Scalia in his dissenting opinion in *Massachusetts v. EPA*.[2]

> Considering the large populations and growing economies of some developing countries, increases in their [greenhouse gas] emissions could quickly overwhelm the effects of [greenhouse gas] reduction measures in developed countries. Any potential benefit of EPA regulation could be lost to the extent other nations decided to let their emissions significantly increase in view of U.S. emissions reductions.

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[1] 73 FR 44401

[2] 549 US 497, 127 S. Ct. 1438, 167 L.Ed.2d 248 No. 03-1361 (D.C. Cir. 6/26/08) Dissenting Op. 549 US at 551.

Prior to the promulgation of any rule or final policy action that could result in the regulation of GHG emissions at stationary sources, we are requesting EPA quantify the costs to federal, state, and local governments and the regulated community, assess the benefits associated with reduction of GHG emissions, and show that the benefits to American citizens of such regulations outweigh the costs. Costs associated with some of EPA's recent actions on greenhouse gases, potentially place Louisiana and American jobs at grave risk and pose a detrimental effect to our state's economy during a time of recession and historic unemployment nationwide.

The applicability of the PSD program must be based on the attainment status of the area for the pollutant in question. If there is no NAAQS, there can be no attainment status, and therefore, the fact that a source has major emissions of a non-NAAQS pollutant does not make it a PSD major source. Attempting to regulate GHGs through the CAA, as proposed, is attempting to fit a square peg into a round hole.

If EPA chooses to identify specific pollutants for regulation pursuant to the CAA, it should adopt and promulgate comprehensive regulations necessary for the states and permitting agencies to administer and implement the program from initial promulgation. Piecemeal promulgation of the program by simply identifying "regulated pollutants" without establishing criteria, modeling protocol, significant impact levels (SILs), significant monitoring concentrations (SMCs), and other tools necessary to issue Prevention of Significant Deterioration, and/or Title V permits handicaps the states and permitting agencies. The problems with such an attempt are evident by the states' response to EPA's recent decision concerning the use of PM 10 as a surrogate for PM 2.5. Further, EPA has no guidance or proposed rules on Best Available Control Technology (BACT) determinations.

Additionally, the proposed "tailoring" rule is unclear as to whether it would modify permitting programs operated in states with the EPA approved state implementation plans (SIPs). Until the SIP is revised, do the current statutory thresholds for PSD and Title V apply? Sufficient time must be given to local permitting authorities to modify their affected programs to achieve consistency with the proposed rule. Without clarification on the impact of EPA's proposed actions on existing state regulations and sufficient time for the states to address these changes, the administrative impossibility that EPA seeks to avoid in its proposed tailoring rule will inevitably occur. Why is EPA "tailoring" its policy and regulations?

Currently, Louisiana has an estimated 757 affected Title V permits and more than 6,000 permitted minor sources which will be impacted by these proposed rules. However, permitting requirements under PSD and Title V are based upon potential to emit (PTE). The universe of sources subject to regulation under the tailoring rule could be significantly larger than EPA estimates, depending upon the sources' PTE.

Any new or revised program adds additional administrative requirements concerning inspection and enforcement. Inspection staff would be required to inspect facilities for compliance with new requirements and refer to enforcement those that are not in compliance with regulations. While

this is the normal order of operations, these proposed rules add another component to required inspections, one that is not accounted for in the discussion of administrative burden. Is EPA providing funding for these activities resulting from its actions or is this another unfunded mandate?

While Title V requires permit fees to be sufficient to fund the program, many permitting agencies like LDEQ are subject to statutory limitations on fee increases and existing fees will likely be insufficient to address the increased workload. The uncertainty surrounding this program is reminiscent of the confusion resulting from the judicial review of EPA's Phase I regulation and the *South Coast* decision.

Further, it should be noted that this is not the first letter LDEQ has sent to EPA requesting guidance on proposed regulations. On October 2, 2009, the LDEQ sent a letter to EPA concerning PM 2.5 regulations, with no response. We request that EPA respond to this letter and provide much needed guidance to Louisiana, and not simply push the regulation on us as yet another unfunded EPA mandate.

In summary, we are concerned EPA's recent actions on greenhouse gases have not adequately considered or addressed the impact on state and permitting authorities. We ask EPA to provide us with more information on why it has taken these recent actions on greenhouse gases. In particular, did EPA consider the effects of these actions on state governments, permitting authorities and its potential for devastating economic impact upon the citizens of our state and the nation as a whole? If so, we ask EPA to identify these effects upon our citizens, specifically those in Louisiana. If not, we challenge EPA to do so and work to develop a comprehensive, programmatically manageable, and economically feasible approach to greenhouse gas legislation and regulation.

We look forward to the initiation of dialogue on the issues addressed in this letter and would be happy to answer any questions which this correspondence may raise.

With kindest regards,

Harold Leggett, Ph.D.
Secretary