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C. Earl Hunter, Commissioner
Promoting and protecting the health of the public and the environment

November 24, 2009

United States Environmental Protection Agency
EPA Docket Center (EPA/DC)
Air and Radiation Docket, Mail Code 2822T
1200 Pennsylvania Avenue, NW.
Washington, DC 20460

Attention: Docket ID No. EPA–HQ–OAR–2009– 0472

Docket Management Facility, M–30
U.S. Department of Transportation
West Building, Ground Floor, Rm. W12–140
1200 New Jersey Avenue, SE.
Washington, DC 20590

Attention: NHTSA–2009–0059

Re: **Federal Register**/Vol. 74, No. 186/Monday, September 28, 2009/Proposed Rules
Proposed Rulemaking To Establish Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards

To Whom It May Concern:

Thank you for the opportunity to provide comments to the joint proposal by the United States Environmental Protection Agency (EPA) and the National Highway Transportation Safety Administration (NHTSA) to establish a National Program consisting of new standards for light-duty vehicles that will reduce greenhouse gas emissions and improve fuel economy (light-duty vehicle GHG proposal). EPA is proposing greenhouse gas emissions standards under the Clean Air Act, and NHTSA is proposing Corporate Average Fuel Economy (CAFE) standards under the Energy Policy and Conservation Act, as amended (EPCA). NHTSA and EPA request comment on all aspects of this joint proposed rule and while we understand that comments made to one docket will be considered submitted to the other, we have chosen to comment to both dockets.

We commend the EPA and the NHTSA for working together to develop a rule that will result in significant improvements in fuel economy. Our nation needs reduced emissions and energy security and we support these goals. In addition to reducing greenhouse gas emissions, improving fuel economy will have the very important benefit of reducing emissions and helping areas meet national ambient air quality standards for pollutants including ozone and particulate matter 2.5 and will also reduce urban air toxics. These air quality improvements will have a very positive impact on public health and the environment.

As such, we support NHTSA moving forward at this time with the CAFE standards as proposed. It is important to note that virtually all of the greenhouse gas emission reductions and air quality benefits will occur from the

new CAFE standards proposed by NHTSA. We do not, however, support EPA moving forward with greenhouse gas standards under the Clean Air Act at this time and request that EPA delay this action until adequate evaluation occurs on the collateral impact this decision would have on state and local air permitting authorities, small business and other stationary sources and additional time for public participation is allowed. The additional EPA regulation comes at an enormous cost with virtually no additional environmental benefits from greenhouse gas standards on light-duty vehicles. EPA acknowledges that the only way to reduce carbon dioxide (CO_2) emissions from light-duty vehicles is to increase fuel economy and, similarly, that there are no emission control technologies that reduce CO_2 emissions from light-duty vehicles.

The U.S. Supreme Court in *Massachusetts v. EPA* found that "Because greenhouse gases fit well within the Clean Air Act's capacious definition of "air pollutant," we hold that EPA has the statutory authority to regulate the emission of such gases from new motor vehicles." The court decision went on to say, "We need not and do not reach the question whether on remand EPA must make an endangerment finding, or whether policy concerns can inform EPA's actions in the event that it makes such a finding. We only hold that EPA must ground its reasons for action or inaction in the statute." It is important to note that the Supreme Court did not place deadlines on EPA to address their decision. The deadlines in the light-duty vehicle GHG proposal are being driven by NHTSA (as EPCA, as amended by the Energy Independence and Security Act of 2007, sets forth extensive requirements concerning the establishment of CAFE standards.) EPCA requires the Secretary of Transportation to establish average fuel economy standards at least 18 months before the beginning of the model year to which the change applies. Therefore, NHTSA can move forward to improve CAFE standards and bring about much needed air quality benefits without EPA moving forward with greenhouse gas standards on light-duty vehicles.

Since the Supreme Court decision, EPA has proposed and/or finalized many greenhouse gas related actions. These decisions and rules are very important, far reaching and complex. Understanding the impact and being able to provide meaningful comments under the very tight deadlines allowed is difficult. First, in April 2009, EPA proposed a finding that greenhouse gases contribute to air pollution that may endanger public health or welfare. This decision has not been finalized but we understand that the "endangerment finding" is currently at the Office of Management and Budget for review. Second, on September 28, 2009, EPA and NHTSA proposed the light-duty vehicle GHG proposal to improve fuel economy and regulate greenhouse gases from light-duty vehicles. Third, on September 30, 2009, EPA proposed to "reconsider" the previous administration's decision on whether or not CO_2 was a regulated pollutant under PSD. Fourth, EPA has now proposed a "tailoring rule" (October 27, 2009) to attempt to address the "absurd results" that will occur in the Title V and Prevention of Significant Deterioration (PSD) permitting programs for New Source Review regulated pollutants once the light-duty vehicle GHG rule is finalized. And finally, on October 30, 2009, EPA finalized a mandatory greenhouse gas reporting rule for large emitting sources.

We are concerned that EPA may not be as transparent as they should be and that they are sending mixed or confusing messages about the potential impact of the light-duty vehicle GHG proposal on all sources that could be impacted, in particular small business. EPA actually suggested to affected entities that they should not comment on the light-duty vehicle GHG proposal but should instead submit comments on the proposed

"tailoring rule." We believe that EPA was misleading to suggest this and that it may inappropriately influence small business, industry, and other affected entities to refrain from commenting on an important rulemaking.

EPA states in the light-duty vehicle GHG proposal: *"However, EPA recognizes that some small entities continue to be concerned about the potential impacts of the statutory imposition of PSD requirements that may occur given the various EPA rulemakings currently under consideration concerning greenhouse gas emissions. As explained in the preamble for the proposed PSD tailoring rule, EPA is using the discretion afforded to it under section 609(c) of the RFA to consult with OMB and SBA, with input from outreach to small entities, regarding the potential impacts of PSD regulatory requirements as that might occur as EPA considers regulations of GHGs. Concerns about the potential impacts of statutorily imposed PSD requirements on small entities will be the subject of deliberations in that consultation and outreach. Concerned small entities should direct any comments relating to potential adverse economic impacts on small entities from PSD requirements for GHG emissions to the docket for the PSD tailoring rule."*

EPA Administrator Jackson, before the Senate Committee on Environment and Public Works and in her January 23, 2009, memorandum to all EPA employees, expressed her commitment to uphold the values of transparency and openness in conducting EPA operations. She went on the say in her memo on transparency that, "The success of our environmental efforts depends on earning and maintaining the trust of the public we serve. The American people will not trust us to protect their health or their environment if they do not trust us to be transparent and inclusive in our decision-making. To earn this trust, we must conduct business with the public openly and fairly." We commend Administrator Jackson for her commitment to transparency and encourage EPA to consider this commitment as they determine the appropriate course of action for this proposed regulation.

It is critical that all potentially effected entities understand the impact of EPA regulating greenhouse gas emissions under the light-duty vehicle proposal. It will be too late to address any concerns that stationary (industrial) sources have in the "tailoring rule" as they will already be subject to PSD, as defined in the Clean Air Act, once EPA regulates greenhouse gases from light-duty vehicles. There are fundamental issues related to the "tailoring rule," and EPA's continued message of the "absurd results" and "administrative burden" of not moving forward with a "tailoring rule" only confuses the real situation as the thresholds being proposed are "illegal" under the Clean Air Act and violate many state laws across the country. Any permit issued with thresholds higher than those within the Clean Air Act and current state laws would be vulnerable to appeal and litigation, even though EPA attempts to justify the tailoring rule by saying that by not doing so would create results *"so illogical or contrary to sensible policy as to be beyond anything that Congress could reasonably have intended."* We do not understand how EPA could know this and not also know that there is no guarantee their legal interpretation to exempt small sources or set different thresholds in the tailoring rule will not be challenged or if challenged, upheld in court. We are very concerned with EPA moving forward in this direction.

Again, we have significant concerns about the collateral effects of EPA moving forward at this time to regulate greenhouse gas emissions from light-duty vehicles. EPA must fully evaluate the collateral impact this proposal would have on all other aspects of the Clean Air Act including, but not limited to, the impact on

state and local air permitting authorities, business, industry and the economy to all areas of the country, but in particular states like South Carolina who still employ many people in the manufacturing sector. As they have not fully evaluated the impact to state and local permitting authorities, EPA has not met the requirements under the Unfunded Mandates Reform Act of 2005 for the light-duty vehicle GHG proposal. EPA even states in the tailoring rule for stationary sources, "*State permitting authorities would be paralyzed by permit applications in numbers that are orders of magnitude greater than their current administrative resources could accommodate*" yet they have not taken this into consideration in the light-duty vehicle greenhouse gas proposal.

Finalizing this proposal would have a detrimental effect on our state's economy at a time when unemployment is currently at 12.1 % and is only expected to increase. Once EPA "regulates" greenhouse gas emissions from mobile sources, the Clean Air Act requires that stationary sources be regulated under the threshold requirements as specified within the Clean Air Act – regardless of any "tailoring rule" EPA develops – as those thresholds are specified within federal law. States and local permitting authorities are wholly unprepared for the millions of entities who will be required to comply with the Clean Air Act once greenhouse gas standards are set by EPA on light-duty vehicles. Bottom line, the permitting process will become so backlogged as to create a permitting moratorium. New business and industry will not be built; existing business will not expand; and, existing business and industry will not repair equipment if such repairs would require a permit. Again, detrimental effects and unintended consequences with the minimum environmental benefit that would occur from EPA greenhouse gas standards on light-duty vehicles, as almost all of the environmental benefit comes from NHTSA's CAFE standards.

EPA is now doing what it should have done much sooner; discussing these issues with state and local air permitting authorities. These state and local air permitting programs have the responsibility for carrying out the decisions that EPA is forcing at the federal level. EPA must realize how important it is to involve state and local air agencies as "co-regulators" and to learn from and utilize their vast knowledge and experience. It is very apparent by the discussions occurring in the many meetings and conference calls EPA is now having that there are many questions that EPA cannot answer. It appears yet again EPA is attempting to move forward significant regulations without a clear understanding of the far-reaching impact, without developing the needed guidance, and just as important without supporting the funding that state and local air programs will need to implement these requirements. Even though in the "tailoring rule" EPA *"proposes to make a concerted effort to assess and implement streamlining options, tools and guidance..."* EPA fails to commit to a timeframe for these to occur. Unfortunately, too many times EPA has failed to provide timely guidance and other tools necessary to implement federal mandates or to assist with complex issues such as this. A perfect example is that EPA has yet to develop all the guidance and tools needed to implement the particulate matter 2.5 standards that were promulgated in 1997.

Regarding the impact to state and local permitting authorities, one of the areas that EPA has not fully evaluated is that many states, including South Carolina, have state-specific rules that EPA has required be promulgated and approved into the State Implementation Plans that address threshold levels for NSR pollutants. What EPA has also failed to recognize is that regardless of the thresholds they establish in the "tailoring rule," business and industry (and possibly other sources) within a SIP approved state are still subject to the state specific regulations

– which comply with the federal Clean Air Act. This means that if a state were to move forward with issuing a permit utilizing the federal thresholds that are established under a tailoring rule, the permit would be ripe for appeal and litigation by third parties as the state rule is more stringent. To address this EPA has encouraged states to begin the process as soon as possible to revise these state specific requirements – even knowing that thresholds have no legal certainty because the federal Clean Air Act thresholds are more stringent. We cannot take a regulation to our state Legislature that violates federal law.

In addition, EPA has referenced the possibility of state and local air agencies being able to increase Title V fees consistent with the Clean Air Act requirement that permitting programs collect enough revenue to implement the program requirements. First, to increase fees would require revisions to existing state regulations which in itself is not a given. What EPA also doesn't seem to appreciate is that as a result of the significant budget issues that our state has been through over the last 1 and ½ years, our state budget has been decreased by over 40%. As a part of these reductions we have lost positions. Our government has set number of positions under the State's Appropriations Act and these positions are carefully controlled by the Budget and Control Board. Creation of new positions is difficult especially in tough budget times. Because of continued budget issues, we are only able to fill very critical vacancies. In addition, if funding was available and positions could be created and filled, hiring and training staff to issue these complicated permits would be a lengthy process and would take years to accomplish. The workload for permitting authorities will increase exponentially. Permits will not be issued in a timely manner (actually will not be issued for years as opposed to months) because we will not sacrifice public health protection by "rubber stamping" permits just to get them issued. This will stifle construction and much needed financial investments will not be made at a time when the economy is struggling to recover and unemployment rates continue to rise.

Another area that EPA has failed to carefully evaluate is related to the number of sources that could be affected once the light-duty vehicle GHG proposal goes into effect. While we continue to evaluate the specific impact to currently permitted SC sources and will make comment to this effect to the "tailoring rule," EPA has estimated that 12,000 sources in SC could become major sources and would become subject to Title V and PSD permitting as soon as greenhouse gases are regulated under light-duty vehicle greenhouse gas standards. In comparison SC currently has 281 Title V permitted facilities. In addition to all of the other associated impacts, even the smallest modification or expansion activity may trigger a PSD technology review and modeling analysis. The technology review would encompass all the triggered PSD pollutants, not just greenhouse gases. Economically, these facilities would have no choice but to abandon any new project or modification. It is interesting to note that many of these facilities would be subject to PSD and Title V because of natural gas combustion, which is considered to be a clean burning fuel. In addition, we would expect new construction to halt because of these new requirements.

We have struggled to make recommendations on options EPA may have that would minimize, or avoid the collateral impacts of EPA moving forward with this proposal in such a hasty manner and have yet to develop something that is legally supported by the Clean Air Act in the time that we have been given. A delay by EPA would also allow Congress the opportunity to develop a meaningful energy and climate policy that addresses the challenges at hand but still allows our nation's economic recovery. EPA Administrator Jackson even said at

a congressional hearing on April 22, 2009, that new legislation would be the best way to address global warming.

Thank you for the opportunity to provide comments on this significant action. Again, we ask that EPA not move forward until further review and understanding of the full collateral impact of regulating greenhouse gases from tailpipes is completed and appropriate public participation is allowed. We also challenge EPA to take this opportunity to develop a well thought out, comprehensive, holistic, common sense approach to air quality management that focuses on environmental results and not process. If you have questions, please don't hesitate to contact Myra Reece, Chief of the Bureau of Air Quality at 803-898-4123 or by email at reecemc@dhec.sc.gov.

Sincerely,

Myra C. Reece/for

Robert W. King, Jr., P.E.
Deputy Commissioner
Environmental Quality Control

cc: The Honorable Lindsey Graham
The Honorable Jim DeMint
The Honorable Henry Brown
The Honorable Joe Wilson
The Honorable Gresham Barrett
The Honorable Bob Inglis
The Honorable John Spratt
The Honorable James Clyburn
The Honorable Mark Sanford
Regina McCarthy, Assistant Administrator, EPA, OAR
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