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Washington, DC 20460

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**Re: Docket ID No. EPA-HQ-OAR-2009-0517**

The National Association of Clean Water Agencies (NACWA) appreciates the opportunity to comment on the *Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule* ("Proposed Tailoring Rule"). NACWA's public wastewater treatment agency members treat and reclaim a majority of the wastewater generated each day nationwide and are committed to ensuring that they minimize the impacts of their operations on the environment. As concerns over climate change have increased in recent years, clean water agencies are working to ensure that they manage the energy and resources they use even more efficiently and look for ways to decrease their carbon footprints. Though emissions from the municipal wastewater treatment process are minimal when compared to other sources, clean water agencies continue to look for ways to offset their resource demands through the use of biogas for facility heating and electricity generation, and other energy conserving measures.

NACWA believes that the Clean Air Act (CAA) in its current form may not be the best tool for regulating greenhouse gases (GHGs). While all local and regional efforts to reduce GHG emissions are important, their effect on climate change will be negated if emissions continue to increase in other areas. The CAA was meant to address pollutants on a local or regional basis with a focus on improving public health, and its framework cannot account for the global nature of GHG emissions and climate change. Instead, a new framework for regulating GHGs should be developed that recognizes the strong interrelationship between climate change and water resources. This new framework should consider issues involving water supply, stormwater, and wastewater; the unique environmental effects of GHG emissions; the economic impacts of the regulations; and additional government actions that may be necessary for the nation to deal with climate change, such as increased research on climate change impacts on water resources and adaptation measures. NACWA believes that congressional action will be required to establish this new framework or to sufficiently modify the existing CAA to independently

accommodate the unique aspects of GHG emissions. NACWA therefore encourages EPA not to create regulations ahead of congressional action, which will likely result in unnecessary challenges and inefficiencies for both permitting authorities and the regulated community.

If EPA does promulgate regulations under the CAA to control GHG emissions, as it plans to do soon for light-duty motor vehicles, then “tailoring” of the Prevention of Significant Deterioration (PSD) and Title V thresholds for GHGs is absolutely necessary to prevent permitting authorities from being overwhelmed by both new permit applications and frequent re-openings of the Title V permit to address facility modifications and new regulatory requirements. In the Proposed Tailoring Rule, EPA recommends a GHG emissions threshold of 25,000 tons per year (tpy) on a carbon dioxide equivalent basis (CO<sub>2</sub>e) for PSD and Title V applicability, with a PSD significance level for GHG emission of between 10,000 and 25,000 tpy CO<sub>2</sub>e. NACWA recommends that EPA clarify several aspects of the Proposed Tailoring Rule before it is finalized, and that EPA reconsider the GHG emissions thresholds for the PSD and Title V programs. NACWA’s specific comments are detailed below.

### Proposed Thresholds and Limits for PSD and Title V Permitting

While EPA’s proposed thresholds for PSD and Title V permitting are an improvement over the current threshold of 100 tpy of a pollutant, NACWA is concerned that EPA has significantly underestimated the number of facilities that will exceed the proposed 25,000 tpy CO<sub>2</sub>e threshold. The threshold is based on the potential to emit (PTE), which for many facilities – including publicly owned treatment works (POTWs) – will be much higher than their actual GHG emissions. Most POTWs do not frequently operate at their design capacities, and, therefore, their PTE will be much higher than their actual emissions. It is not clear how EPA has considered POTWs in its estimates of the number of facilities that would exceed each of the threshold levels evaluated. The *Technical Support Document for Greenhouse Gas Emissions Thresholds Evaluation* states that fugitive emissions from municipal wastewater treatment are excluded from the PTE estimates and that combustion at wastewater treatment plants is accounted for in the commercial sector analysis. No explanation is given for how the PTE, as compared to actual emissions, was handled for the specific case of wastewater treatment facilities. While there are many options for calculating PTE at POTWs, using the population served may be the most practical method. Depending on exactly how individual facilities must calculate emissions to determine if they exceed the permitting threshold (see comments on “Calculation of Facility GHG Emissions” below), a much larger number of POTWs may exceed the proposed 25,000 tpy CO<sub>2</sub>e threshold than EPA has estimated.

Given that EPA may have underestimated the number of facilities exceeding the thresholds, and the uncertainty involved in these types of estimates, it would be prudent for EPA to choose a higher initial threshold rather than have the permitting system overwhelmed by huge numbers of applications for GHG emissions. NACWA recommends that EPA use an initial threshold of 100,000 tpy CO<sub>2</sub>e, which would result in a smaller number of permit applications, and then consider whether revising the threshold to a lower number is appropriate after an assessment is conducted of the number of affected facilities and the administrative burden placed on the permitting authorities. This would give EPA time to develop streamlining procedures, evaluate best available control technologies (BACT) required for PSD permits, and increase the capacity of the permitting systems. It would also allow EPA to evaluate the information provided by facilities starting next year under the *Greenhouse Gas Mandatory Reporting Rule (Reporting Rule)*. This information will give EPA better estimates of the number and type of facilities with GHG emissions exceeding 25,000 tpy CO<sub>2</sub>e.

NACWA's recommendation for using a 100,000 tpy CO<sub>2</sub>e threshold is based on EPA's estimate that the number of existing facilities exceeding the proposed 25,000 tpy CO<sub>2</sub>e threshold is 13,661, representing 68 percent of national stationary source GHG emissions, while only 4,850 facilities would exceed a 100,000 tpy CO<sub>2</sub>e threshold. This significantly lower number of facilities for the 100,000 tpy CO<sub>2</sub>e threshold still represents 64 percent of national stationary source GHG emissions. If the comparisons between these two threshold levels are accurate, then the 100,000 tpy CO<sub>2</sub>e threshold is proven to be much more practical than the 25,000 tpy CO<sub>2</sub>e threshold. Using the higher threshold will subject less than half the number of facilities to permitting requirements, but only a small percentage of the national GHG emissions will be excluded from permitting requirements with the higher threshold. Again, this would give EPA time to make appropriate assessments and adjustments of the permitting program, and the threshold could then be lowered if needed at a later date.

### Calculation of Facility GHG Emissions

EPA will need to provide much more detailed guidance than is currently given in the Proposed Tailoring Rule for how facilities should calculate their GHG emissions to determine if they fall under the PSD and Title V programs. The Proposed Tailoring Rule states that guidance on how to calculate a source's emissions can be found in EPA's *Inventory of U.S. Greenhouse Gas Emissions and Sinks (Inventory)*. The *Inventory* is meant to provide a national estimate of GHG emissions from various emitter categories, not to provide a method for calculating GHG emissions from individual sources, and will not provide proper guidance for facilities to determine if their emissions exceed the PSD and Title V thresholds.

Discrepancies exist between the CAA requirements and how the *Inventory* estimates emissions. The PSD and Title V thresholds are based on PTE, while the *Inventory* estimates actual emissions and does not give any guidelines for how to adjust to PTE. The *Inventory* also excludes biogenic emissions, or emissions that are considered a part of the natural carbon cycle, from its estimates. It is not clear if the Proposed Tailoring Rule intends to omit biogenic emissions from its threshold determinations. NACWA recommends that all biogenic emissions be excluded from emissions calculations. It is also not clear how fugitive emissions from wastewater treatment should be accounted for in calculations, since they are included in the *Inventory* estimates but are exempt under the PSD rules.

EPA's *Greenhouse Gas Mandatory Reporting Rule* recognizes that using the estimation methods provided in the *Inventory*, the GHG emissions from the wastewater treatment process at most facilities will be below the 25,000 tpy CO<sub>2</sub>e threshold and thus not subject to reporting requirements. Therefore, the *Reporting Rule* specifically excludes emissions from the wastewater treatment process from reporting requirements. However, POTWs may still be subject to reporting requirements in the *Reporting Rule* based on stationary source combustion of fuels other than biogas. The Tailoring Rule should contain clear instructions for the types of emissions that must be included in a facility's calculation. NACWA recommends that the Tailoring Rule be as consistent as possible with the *Reporting Rule* to reduce the burden on facilities that must calculate their GHG emissions and to allow the *Reporting Rule* to inform the development of regulations involving GHG emissions.

### GHG Emission Controls and Reporting Requirements

For facilities required to use best available control technologies (BACT) to limit GHG emissions under PSD permitting requirements, EPA will in effect be instituting a GHG "cap" without allowing trading of emissions

between entities. Congress is considering cap-and-trade programs to limit national GHG emissions, and states and regional organizations are also considering different types of emission-limiting programs. NACWA is

concerned that these programs may have duplicative, contradictory, or overlapping requirements that will make compliance difficult for facilities. EPA needs to clarify where permitting authority will reside for GHG emissions and coordinate with other GHG emission programs. EPA also needs to clarify the goals of BACT requirements, since there are no national air quality standards for GHGs.

NACWA has several concerns with the possibility of GHG limits that may be placed on POTWs as a result of the Tailoring Rule. First, limiting GHG emissions is a particular problem to POTWs, which must protect the environment and public health while meeting the needs of a growing population. POTWs cannot choose to limit their Clean Water Act-mandated treatment requirements to keep GHG emissions low. Second, the *Inventory* emission estimates are not representative of a POTW's PTE and thus would place a POTW in risk of non-compliance of their Title V permit simply based upon the annual variation in influent flows. Third, establishing a limit is in effect creating a "cap" for POTWs. With the expectation that EPA will require reductions in current emission caps to achieve 1990 national emission levels, NACWA wants to again emphasize the importance of ensuring that a POTW's cap is representative of its PTE and that due to the nature of our business (essential public service) and the requirement to provide service for a growing population, POTWs should be excluded from a declining emission inventory cap and trade program. Rather than instituting PSD permitting requirements, EPA could achieve better results for limiting GHG emissions at POTWs by providing incentives for utilities to increase energy efficiency, to reuse biosolids and biogas generated through the wastewater treatment process as fuel, and to adjust treatment processes when viable to reduce emissions.

For the Title V and PSD programs, EPA should clarify how facilities will be subject to requirements for other pollutants if they exceed the GHG emissions threshold. EPA should make it explicitly clear that when facilities trip the GHG emissions threshold, they will not be subject to permitting requirements for other pollutants unless they also exceed the specified thresholds for those pollutants.

EPA should make a clear distinction between health-based criteria pollutants and health effects caused indirectly by greenhouse gases, and the health-based objectives should take precedence. Current federal air criteria and pollutant control measures should not be diminished if a conflict arises between implementing a recognized federal health standard and a GHG reduction. An example of how the federal health standard should take precedence over GHG reduction is a boiler regulated for NO<sub>x</sub>, a precursor to ozone and a regulated federal criteria air pollutant. In the process of ratcheting down on the NO<sub>x</sub> that is emitted, boiler efficiency is negatively impacted. Decreased boiler efficiency means an increase in exhaust in the form of combustion end-products, including CO<sub>2</sub> – a GHG. The State of California and the South Coast Air Quality Management District have made the deliberate decision that if a health-based objective conflicts with a GHG goal, the health-based derived objective will always take precedence. EPA should also make this precedence clear, and should also be certain that health-based objectives are achieved rather than seeking a compromise solution, where neither goal is sufficiently satisfied.

Lastly, NACWA supports EPA's proposal to add GHG requirements to existing Title V facilities during the next 5-year permit cycle rather than opening the permit to incorporate new GHG provisions at an earlier time. This

approach will give EPA time to collect further data and conduct the necessary analysis to determine the breadth and depth of requirements that should be incorporated.

Thank you for your consideration of NACWA's comments on the Proposed Tailoring Rule. Please contact me at 202/296-9836 or [cfinley@nacwa.org](mailto:cfinley@nacwa.org) if you have any questions.

Sincerely,

A handwritten signature in cursive script, reading "Cynthia A. Finley". The ink is dark and the signature is fluid, with the first and last names being more prominent than the middle initial.

Cynthia A. Finley  
Director, Regulatory Affairs