



November 25, 2009

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

Re: Docket ID No. EPA-HQ-OAR-2009-0472

Dear Docket Coordinator:

This letter is being sent by Metro 4, Inc. (Metro 4) and Southeastern States Air Resource Managers, Inc. (SESARM) on behalf of fourteen local and state air pollution control agencies listed in Attachment I to this letter for the purpose of transmitting their comments on the "Proposed Rulemaking To Establish Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards" (Light-Duty Vehicle GHG Standards). Metro 4 and SESARM are nonprofit organizations formed by the local and state air pollution control agencies in the Southeast in part to assist with collective communications of this type.

We commend the U. S. Environmental Protection Agency (EPA) for working closely with the National Highway Traffic Safety Administration (NHTSA) 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. Through gubernatorial and/or legislative mandates, some of our agencies are required to consider effective methods of mitigating greenhouse gas (GHG) emissions, provided the measures do not result in adverse impacts to the economy, environment, or jobs. We support emission reduction programs that are well designed, complementary, and coordinated.

We do, however, have significant concerns with the subject rule as currently proposed, primarily due to expected impacts from it triggering other sections of the Clean Air Act, specifically New Source Review (NSR) and Title V permitting. We do not believe that EPA has thoroughly examined these impacts. We further do not believe that EPA has adequately evaluated the options for minimizing, or avoiding, these collateral impacts. Our concerns are described herein along with recommended changes that will still produce the intended results of the proposed rule while minimizing or avoiding these collateral impacts.

1. EPA must evaluate, as a part of this rulemaking, whether or not other sections of the Clean Air Act will be triggered by this rule. If so, EPA must evaluate as part of this rulemaking the impacts of such triggering. Our understanding is that this rulemaking is the action that will trigger future requirements for permitting of GHGs under the NSR and Title V programs. However, in the proposed rule, EPA actually suggested that "small entities" should not comment on the triggering issue in this rulemaking, but should instead submit comments on the proposed "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule" (GHG Tailoring Rule).¹ We believe that EPA was in error to suggest this point and that it may inappropriately influence small entities, other affected sources, and permitting agencies to refrain from commenting on an important rulemaking. The EPA GHG Tailoring Rule is a wholly independent rulemaking from the Light-Duty Vehicle GHG Standards Rule. The GHG Tailoring Rule does not trigger the NSR and Title V permitting requirements; the Light-Duty Vehicle GHG Standards Rule does. EPA must not rely upon the GHG Tailoring Rule to address this issue, particularly in light of the fact that the GHG Tailoring Rule may not be in place at the time that EPA finalizes the Light-Duty Vehicle GHG Standards Rule. EPA has clearly stated its intent to finalize the Light-Duty Vehicle GHG Standards Rule by the end of March 2010. The public comment period on the GHG Tailoring Rule ends on December 28, 2009. EPA is expected to get thousands of comments on the GHG Tailoring Rule and it would have only three months to address those comments and finalize the rule. This appears to be a monumental and insurmountable task if EPA is going to adequately review all of the comments and make necessary revisions to the proposed rule in response to critical comments received. EPA can not assume, as part of this rulemaking, that the GHG Tailoring Rule will be finalized on, or before, the Light-Duty Vehicle GHG Standards Rule is finalized.
2. EPA failed to take into account in the Light-Duty Vehicle GHG Standards Rule the length of time that it may take for permitting authorities with SIP-approved NSR programs to go through rulemaking (which requires approval of state legislatures in some cases), hiring, and training in order to implement the mandate of regulating GHG emissions under the NSR and Title V permitting programs. In some cases, rulemaking may be required in order to validate new GHG emission thresholds. Rulemaking may also be needed in order to increase Title V fees consistent with the Clean Air Act requirement that permitting programs collect enough revenue to implement the program. Then, permitting authorities may need to hire and train staff to issue these complex permits. Full implementation could take up to two years after the requirement is triggered. Given the current state of the economy and limitations

¹ "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." [74 FR 49629]

on increasing agency budgets and staffing in our region and across the country, this issue should not be taken lightly.

3. The GHG Tailoring Rule appears to be legally vulnerable and may not provide intended relief from the NSR Prevention of Significant Deterioration (PSD) and Title V statutory permitting thresholds. If the GHG Tailoring Rule is not finalized in time or is stayed or vacated by the courts, the workload for permitting authorities will increase exponentially at a time when state and local governments are experiencing severe budgetary challenges due to the current economic climate. The effect on the nascent universe of stationary sources subject to GHG permitting requirements could be even more dramatic, stifling construction and crippling investment at a time when the economy is struggling to recover from the worst recession in memory, with unemployment still rising. In the preamble to the proposed Light-Duty Vehicle GHG Standards Rule, EPA provides a lengthy justification for adjusting the PSD and Title V statutory permitting thresholds, relying on the legal doctrines of “administrative necessity” and “absurd results.” However, if this rule is challenged, the D. C. Circuit Court of Appeals could hold that these arguments are unpersuasive given the circumstances. The Court could conclude that the proper way to address an excessive burden imposed by statute is to ask Congress to amend the statute. The existence of an excessive burden does not empower an administrative agency to rewrite the statute. The fact that EPA knowingly promulgated regulations that triggered the need for discussions in the rulemaking about administrative necessity and absurd results, when equivalent reductions in GHG emissions from vehicles could have been achieved without these collateral impacts, may weaken EPA’s legal justification for the GHG Tailoring Rule even further. The recommended approach is to tailor the GHG and CAFE standards in a way that avoids triggering the permitting requirements, not by attempting to amend the statutory permitting requirements through an administrative process.
4. EPA has failed to evaluate and quantify fully the effects of the proposed Light-Duty Vehicle GHG Standards Rule on state and local air permitting authorities. More specifically, EPA does not appear to have complied fully with the Unfunded Mandates Reform Act of 1995. EPA states in the preamble that this rule only affects manufacturers of cars and light trucks.² However, the proposed rule, if finalized as currently proposed, has the potential to affect state and local air permitting authorities immensely because it would cause GHG emissions to become regulated under the NSR and Title V permitting programs. The proposed rule does not take this into account. The potential impact to state and local air permitting authorities is unprecedented and enormous. In fact, EPA acknowledges in the GHG Tailoring Rule preamble that, at the 250 ton per year threshold, “State permitting authorities

² “This action affects companies that manufacture or sell new light-duty vehicles, light-duty trucks, and medium-duty passenger vehicles, as defined under EPA’s CAA regulations, and passenger automobiles (passenger cars) and non-passenger automobiles (light trucks) as defined under NHTSA’s CAFE regulations.” [74 FR 49454]

would be paralyzed by permit applications in numbers that are orders of magnitude greater than their current administrative resources could accommodate.”³

5. EPA claims that the proposed Light-Duty Vehicle GHG Standards Rule imposes no enforceable duty on any state, local or tribal governments⁴. While the rule may not impose duties on governments as regulated entities, the negative impact of the rule on state and local permitting agencies cannot be overemphasized. As stated previously, the GHG Tailoring Rule acknowledges that state permitting authorities will be “paralyzed” by the workload created by the triggering of the NSR and Title V permitting provisions for GHG emissions. In the GHG Tailoring Rule, EPA purports to reduce this burden by arbitrarily selecting new GHG emission thresholds of 25,000 tons per year CO₂ equivalent (or in some cases 10,000 tons per year). Even if the GHG Tailoring Rule is finalized as EPA has proposed it, we believe that EPA may have significantly underestimated the number of sources that will become subject to the NSR and Title V permitting provisions due to the finalization of the GHG emission standards required by the Light-Duty Vehicle GHG Standards Rule, especially if the options to streamline permitting are not exercised, e.g., general permits and/or use of synthetic or conditional permit limits. We will be submitting separate comments to the docket for the GHG Tailoring Rule that address this issue. However, the GHG Tailoring Rule does not trigger the NSR and Title V permitting provisions for GHG emissions; it only attempts to reduce the burden of that triggering effect.
6. In the final Light-Duty Vehicle GHG Standards Rule, EPA should avoid or minimize the impacts of the triggering effect. EPA can accomplish the goals of this rule without triggering NSR and Title V permitting. EPA stated in the preamble that the primary goals of this rule were to achieve substantial reductions of greenhouse gas (GHG) emissions and improvements in fuel economy.⁵ EPA, as a policy decision, should therefore consider not establishing GHG emission limits under Section 202(a) of the Clean Air Act at this time. EPA and NHTSA should, instead, establish fuel economy standards that accomplish the desired goals of substantial reductions in GHG emissions and improvements in fuel economy without triggering NSR and Title V permitting. EPA is under neither a Clean Air Act mandate nor a court obligation to finalize GHG emission limits under Section 202(a) of the Clean Air Act at this time. The preamble states that “EPA has the discretion to take into consideration

³ “This proposal is necessary because EPA expects soon to promulgate regulations under the CAA to control GHG emissions and, as a result, trigger PSD and Title V applicability requirements for GHG emissions. If PSD and Title V requirements apply at the applicability levels provided under the CAA, State permitting authorities would be paralyzed by permit applications in numbers that are orders of magnitude greater than their current administrative resources could accommodate.” [74 FR 55292]

⁴ “This proposal contains no federal mandates (under the regulatory provisions of Title II of the UMRA) for state, local, or tribal governments. The rule imposes no enforceable duty on any state, local or tribal governments.” [74 FR 49630]

⁵ “The National Highway Traffic Safety Administration (NHTSA) and the Environmental Protection Agency (EPA) are each announcing proposed rules whose benefits would address the urgent and closely intertwined challenges of energy independence and security and global warming.... The proposed rules can achieve substantial reductions of greenhouse gas (GHG) emissions and improvements in fuel economy from the light-duty vehicle part of the transportation sector...” [74 FR 49458]

NHTSA's CAFE standards in determining appropriate action under Section 202(a)⁶ and we agree. EPA should take into consideration that the new NHTSA CAFE standards will accomplish the goals of the rule and EPA should not finalize any GHG emission standards under the authority of the Clean Air Act at this time. This action will satisfy the intended goal of reducing GHG emissions because the emission reductions will come primarily from improvements in the CAFE standards. The benefits of such action are: (1) other sections of the Clean Air Act will not be triggered, (2) the need to amend administratively the statutory permitting requirements will be avoided, and (3) EPA will have adequate time for thorough planning and implementation of regulatory programs for major stationary sources.

7. Virtually all of the GHG emission reductions required by the proposed Light-Duty Vehicle GHG Standards Rule will come from improvements in NHTSA's CAFE standards. EPA acknowledges that the only way to reduce CO₂ emissions from light-duty vehicles is to increase fuel economy and that there are no emission control technologies that reduce CO₂ emissions from light-duty vehicles.⁷ EPA states in the proposed rule that N₂O and CH₄ emissions are low and that the proposed rule is not designed to require technology to reduce emissions of these compounds.⁸ EPA then justifies the inclusion of the proposed emission standards with a seemingly conflicting statement that the agency is concerned about those emissions increasing in the future.⁹ Because of the enormous collateral consequences of regulating GHG emissions under the Clean Air Act at this time and because the proposed rule does not require reductions of N₂O or CH₄ emissions, EPA should not finalize emission standards for N₂O or CH₄ as part of this rulemaking.
8. As an alternative, should EPA promulgate GHG emission limits under Section 202(a) of the CAA, it may be possible to defer regulation of GHG emissions until the first vehicle model year required by the Light-Duty Vehicle GHG Standards Rule. This would allow the emissions limits to take effect in the appropriate model year while at the same time allowing EPA to address the implications of the rule on the NSR and

⁶ "Finally, each agency has the authority to take into consideration impacts of the standards of the other agency. EPCA calls for NHTSA to take into consideration the effects of EPA's emissions standards on fuel economy capability (see 49 U.S.C. 32902 (f)), and EPA has the discretion to take into consideration NHTSA's CAFE standards in determining appropriate action under section 202(a). This is consistent with the Supreme Court's statement that EPA's mandate to protect public health and welfare is wholly independent from NHTSA's mandate to promote energy efficiency, but there is no reason to think the two agencies cannot both administer their obligations and yet avoid inconsistency. *Massachusetts v. EPA*, 549 U.S. 497, 532 (2007)." [74 FR 49466]

⁷ "The National Program is both needed and possible because the relationship between improving fuel economy and reducing CO₂ tailpipe emissions is a very direct and close one. The amount of those CO₂ emissions is essentially constant per gallon combusted of a given type of fuel. Thus, the more fuel efficient a vehicle is, the less fuel it burns to travel a given distance. The less fuel it burns, the less CO₂ it emits in traveling that distance. While there are emission control technologies that reduce the pollutants (e.g., carbon monoxide) produced by imperfect combustion of fuel by capturing or destroying them, there is no such technology for CO₂. Further, while some of those pollutants can also be reduced by achieving a more complete combustion of fuel, doing so only increases the tailpipe emissions of CO₂." [74 FR 49458]

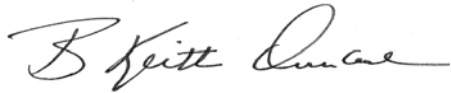
⁸ "Almost universally across current car and truck designs, both gasoline- and diesel-fueled, these emissions are relatively low, and our intent is to not require manufacturers to make technological improvements in order to reduce N₂O and CH₄ at this time." [74 FR 49524]

⁹ "However, it is important that future vehicle technologies or fuels do not result in increases in these emissions, and this is the intent of the proposed "cap" standards." [74 FR 49524]

Title V programs. It would also give air agencies sufficient time to initiate the rulemaking process and hire and train staff to respond to permitting requirements.

In conclusion, we recognize climate change is a complex issue. Mitigating greenhouse gas emissions will require sufficient time for careful development and implementation of programs that result in positive benefits to the health of our citizens and the quality of our environment. We support well thought-out programs that minimize unnecessary impacts on the regulated community and our regulatory agencies and that sustain our economy. We thank you for the opportunity to comment on this important rulemaking. If there are any questions about these comments, please contact our Executive Director, John Hornback, at 404-361-4000 or via e-mail at hornback@metro4-sesarm.org.

Sincerely,



B. Keith Overcash
Chair, SESARM
Director, NC Div. of Air Quality



David A. Brigman
President, Metro 4
Director, Western NC Regional Air Quality Agency

Attachment I

Southeastern State and Local Agencies Supporting these Comments

A. State Agencies

1. Alabama – Air Division
2. Georgia – Air Protection Branch
3. Kentucky – Division for Air Quality
4. Mississippi – Air Division
5. North Carolina – Division of Air Quality
6. South Carolina – Bureau of Air Quality
7. Tennessee – Division of Air Pollution Control

B. Local Agencies

1. Chattanooga-Hamilton County, Tennessee – Air Pollution Control Bureau
2. Huntsville, Alabama – Division of Natural Resources
3. Jefferson County, Alabama – Bureau of Environmental Health Services
4. Mecklenburg County, North Carolina – Land Use/Environmental Services Agency
5. Memphis-Shelby County, Tennessee – Pollution Control Section
6. Metropolitan Government of Nashville/Davidson County, Tennessee – Pollution Control Division
7. Western North Carolina – Regional Air Quality Agency