

# Alliance for ENERGY & ECONOMIC GROWTH

*Energy to secure America's future.*

April 21, 2008

The Honorable Rick Boucher  
Chairman  
Subcommittee on Energy and Air Quality  
Committee on Energy of Commerce  
United States House of Representatives  
Washington, DC 20515

The Honorable Fred Upton  
Ranking Member  
Subcommittee on Energy and Air Quality  
Committee on Energy of Commerce  
United States House of Representatives  
Washington, DC 20515

Dear Chairman Boucher and Ranking Member Upton:

The Alliance for Energy and Economic Growth (AEEG), a coalition of energy producers and consumers who support energy policies that recognize the fundamental necessity of reliable energy supplies for strong economic growth, applauds your decision to analyze the strengths and weaknesses of regulating greenhouse gas emissions using existing Clean Air Act (CAA) authorities. Raymond Ludwiszewski, former general counsel of the Environmental Protection Agency (EPA), stated in his written testimony to the Subcommittee, “the existing Clean Air Act authorities were not designed for and are not well-suited to addressing global pollution problems such as climate change.” AEEG agrees with this statement and believes the CAA, as currently written, is incompatible with regulation of greenhouse gases.

**I. Existing CAA programs are not flexible enough to handle greenhouse gases.**

Although the Supreme Court’s ruling may allow for some form of greenhouse gas regulation under the CAA – the “hideous mistake” referred to by Chairman Dingell – that does not mean the CAA is necessarily an *appropriate* [emphasis added] legislative vehicle for addressing greenhouse gas emissions. The CAA is rigid and inflexible, and many of its existing programs will not easily apply to greenhouse gases.

For instance, according to EPA Deputy Assistant Administrator Robert Meyers, the CAA’s National Ambient Air Quality Standards (NAAQS)—the program the courts refer to as “central” and the “centerpiece” of the CAA’s regulatory scheme—could take a decade to write and implement, with additional scientific reviews every five years.

Moreover, the level of greenhouse gases in the atmosphere is driven by the *sum* [emphasis added] of global emissions, and requires action by all emitters worldwide if reductions are to have any effect. The CAA as written has no global reach, and presents no opportunity to coordinate a domestic response with the actions of other nations.

## **II. Trigger of PSD could halt construction nationwide.**

If CO<sub>2</sub> is deemed “regulated” under the Act—even if the scope of the regulation is limited to mobile sources or fuels—no new or existing “major” stationary source of CO<sub>2</sub> can be built or modified (if the modification increases net emissions) without first obtaining a Prevention of Significant Deterioration (PSD) permit under Section 165 of the CAA. Major sources are defined as either a source in one of 28 listed categories (mostly industrial manufacturers and energy producers) that emits at least 100 tons per year of an air pollutant, or *any other source with the potential to emit 250 tons per year* [emphasis added] of an air pollutant.

The 250-ton-per-year threshold is generally a non-issue for most regulated pollutants; few non-industrial stationary sources typically reach this ceiling for pollutants such as lead, carbon monoxide or particulate matter. However, CO<sub>2</sub> is a completely different animal. With respect to CO<sub>2</sub>, those that could easily exceed the 250-ton-per-year threshold for CO<sub>2</sub> emissions and trigger PSD include: most large buildings heated by furnaces using fossil fuels (office and apartment buildings, even some very large homes), or buildings of any size using natural gas as a cooking source in a commercial kitchen (such as restaurants, hotels, for-profit hospitals and nursing homes, malls, sports arenas), or businesses that generate or use CO<sub>2</sub> naturally as a component of its operations (soda manufacturers, bakers, breweries, wineries).

PSD permitting review will be extraordinarily costly and inefficient for ordinary buildings. It is not uncommon for PSD permits for major sources to cost hundreds of thousands or even millions of dollars and take years to complete. PSD permittees will be required to use best available control technology (BACT), determined on a case-by-case basis by the permitting agency; BACT is determined at the state level and currently takes 12-18 months for major sources. Agencies will be crippled by the additional hundreds of thousands (possibly millions) of new PSD permits for which BACT must be determined on a case-by-case basis.

Once a facility or source meets the test of “major” source for a regulated air pollutant, all of its emissions are potentially subject to preconstruction PSD requirements, such as BACT. Since there is no history of making BACT determinations for greenhouse gases (such as CO<sub>2</sub>), no reliable precedent or guidance exists. Entities wanting to build or modify sources would have no basis for planning how to meet unknown requirements. The regulatory burden would be so enormous, and the number of required PSD permits so staggering, that construction in cities throughout the nation will stop once CO<sub>2</sub> is regulated under the Act.

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AEEG strongly supports EPA’s decision to seek an Advance Notice of Proposed Rulemaking (ANPR) in response to the U.S. Supreme Court’s remand of *Massachusetts v. EPA*, in lieu of an endangerment finding or a proposed rule regulating greenhouse gases under the CAA. As the Subcommittee correctly recognizes, regulation of greenhouse gases under the CAA could result in a great deal of detrimental side-effects to America’s economy, and these detriments may outweigh any potential benefits of regulation. In fact, some Clean Air programs increase greenhouse gas emissions as they zealously seek smaller and smaller reductions of other pollutants. An ANPR allows interested parties the opportunity to include all the facts in the

record and have an honest discussion of the consequences of greenhouse gas regulation under the CAA.

As Congress works to craft legislation aimed at curbing greenhouse gas emissions, legislators must be careful not to assume they alone are working to address the issue. Alongside climate change legislation, agency action to regulate greenhouse gases under the CAA could result in a quagmire of overlapping federal laws and regulations and cripple the nation's economy. What is needed is a legislative prevention of triggering an expansion of the Clean Air Act.

AEEG thanks the Subcommittee for giving this very serious issue the attention and careful analysis it deserves.

Sincerely,

Alliance for Energy & Economic Growth

Cc: U.S. House of Representatives Committee on Energy and Commerce