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Environmental Protection Agency
EPA Docket Center (EPA/DC)
Mailcode 6102T
Attention Docket ID No. EPA-HQ-OAR-2008-0508
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Docket ID No. EPA-HQ-OAR-2008-0508

Dear Sir/Madam:

The New Jersey Department of Environmental Protection (NJDEP) is pleased to submit these comments to the Environmental Protection Agency (USEPA) on the proposed rule for Mandatory Reporting of Greenhouse Gases. New Jersey and other states have led the way in implementing programs to address greenhouse gases and we look forward to a partnership with the federal government to address these pressing issues. These comments are intended to enable states to continue in their leadership role and to effectively coordinate with the developing national greenhouse gas program. New Jersey has significant experience with mandatory reporting of greenhouse gases, with reporting starting in 2003. This experience is discussed throughout these comments.

1. The USEPA should work closely with states in revising and finalizing this rule to ensure the federal program is coordinated with existing state requirements for greenhouse gas reporting.

As discussed in the preamble, USEPA acknowledges that several states, including New Jersey, are already implementing mandatory greenhouse gas reporting programs. New Jersey rules have required certain stationary sources to report releases of carbon dioxide and methane since 2003. Pursuant to New Jersey's Global Warming response Act, NJDEP proposed expanded reporting covering additional greenhouse gases and upstream fossil fuel suppliers (See 41 N.J.R. 337(a)). The proposed USEPA rule is not consistent with New Jersey's existing and proposed requirements. Below, we offer detailed comments on how USEPA's rule can be modified to be more consistent with New Jersey's requirements, reduce redundant reporting, and be a more effective and efficient reporting program for states and facilities that currently report greenhouse gas information. We have already heard concerns from the regulated community stressing the need to reduce redundant reporting and to increase coordination between state and federal

programs. We urge USEPA to reach out to the states as they finalize this rule to address these concerns.

2. The USEPA rule should require reporting of state-level quantities for upstream sources of fossil fuel and industrial gases.

The proposed reporting requirements for “upstream” sources do not provide needed information at the state level. The information required under proposed Subparts KK through PP is limited to national level quantities. This is a significant gap and will reduce the ability of the states to use the data to develop complete statewide inventories of greenhouse gases. Subparts KK through PP should require reporting of state level information similar to that required by the Energy Information Administration, including fossil fuel use reported separately for end use energy sectors (transportation, residential, commercial, industrial, electricity generation).

3. The Inventory of U.S. Greenhouse Gas Emissions and Sinks submitted annually by USEPA to the UNFCCC should not be used to satisfy the requirement for a mandatory greenhouse gas reporting rule under the FY2008 Consolidated Appropriations Act.

On page 16455, USEPA solicits comment on whether the submission of the Inventory to the UNFCCC could be utilized to satisfy the requirements of the rule promulgated by USEPA pursuant to the FY2008 Consolidated Appropriations Act. The NJDEP believes that the Inventory of U.S. Greenhouse Gas Emissions and Sinks submitted annually by USEPA to the UNFCCC should not be used to satisfy the requirement for a mandatory greenhouse gas reporting rule under the FY2008 Consolidated Appropriations Act. A “bottom up” inventory for specific sources is needed for the USEPA and the states to develop complete, accurate inventories of greenhouse gases develop cost effective reduction strategies.

4. The rule should provide the basis for national and state greenhouse gas inventories for general policy planning purposes. The rule should not be designed to solely implement specific regulatory programs such as emission offsets.

The overall goal for the reporting program should be to develop information on greenhouse gases similar to the data for criteria air pollutants goal in the National Emission Inventory (NEI). This will allow USEPA and the states to develop consistent inventories and to develop effective strategies to reduce greenhouse gas releases. It is likely that more detailed information and reporting will be needed as specific strategies are developed and implemented and states and USEPA should be able to add these requirements in the future.

5. The USEPA should make all data reported under the rule readily available to states and the public using familiar data formats.

The proposed USEPA reporting program is a federal program. Facilities report directly to USEPA, with no data reported to the states. However, the proposed rule is unclear on the methods facilities will use to report data to the USEPA. As such, it is next to impossible for states to comment on accessibility of the data for state programs. The proposed rule is also unclear what methods USEPA will use to share data with states and other stakeholders. The

USEPA should use the existing electronic formats, such as the NEI and the Environmental Exchange Network, to share data with the states. States and facilities are familiar with these data requirements and formats and have invested significant resources into developing and using these methods. These methods have been proven effective at sharing data between the states and USEPA and should be used for the greenhouse gas information.

6. The rule should not directly apply the voluntary reporting methods or mechanisms of The Climate Registry (TCR) as the structure for a mandatory national reporting system.

The NJDEP supports the goals of TCR for establishing a voluntary reporting program that encourages companies to take a full assessment of greenhouse gas emissions and to develop effective strategies to reduce these emissions. In fact, New Jersey is a member of TCR and has been involved in TCR since its inception. TCR has been successful in developing a reporting protocol to help ensure that volunteer reporters use consistent methods to quantify releases from various sources. The USEPA rule should take advantage of TCR's quantification protocols for developing data. However, TCR has yet to establish a mandatory reporting program that specifies required elements to be reported. The current voluntary reporting program was not designed to fulfill the needs of a regulatory program. It is premature to mandate that facilities and states use TCR as the method to report or to act as the primary database for national, mandatory greenhouse gas information. Instead, the mechanism should build upon existing regulatory tools such as the NEI as discussed above.

7. To improve efficiency and effectiveness, reporting of greenhouse gas information should be consolidated with other environmental reporting requirements.

The proposed rule appears to establish a separate, stand alone reporting requirement with its own reporting methods and reporting schedules that are not consistent with other environmental reporting requirements. Facilities covered under USEPA's proposed greenhouse gas rule already report various environmental data to state and federal programs. Greenhouse gas reporting should build upon this existing reporting. Greenhouse gas reporting in New Jersey is currently implemented through the existing Emission Statement program. On page 16461 of the proposed rule, USEPA seeks comment on "whether the conclusions drawn during its review of existing programs are accurate and invites data to demonstrate if, and if so how, the goals and objectives of this proposed mandatory reporting system could be met through existing programs. In particular, comments should address how existing programs meet the breadth of sources reporting, thresholds for reporting, consistency and stringency of methods for reporting, level of reporting, frequency of reporting and verification of reports included in this proposal."

Below, additional details are provided on NJDEP's greenhouse gas reporting program not completely captured in the USEPA preamble or Technical Support Documents EPA-HQ-OAR-2008-0508-054 and 56.

New Jersey rules (N.J.A.C. 7:27-21.3(b)) have required reporting of CO₂ and methane since 2003. The NJDEP approach to thresholds consolidates reporting of greenhouse gas information with other environmental reporting. Reporting for CO₂ and methane is based on releases of other criteria air pollutants. If a facility exceeds thresholds for other air contaminants, it must report

CO₂ and methane regardless of the quantity released. This approach to thresholds relies on existing reporters. It does not add “new reporters” as USEPA is concerned about. Facilities are already reporting data to the NJDEP and are tracking the necessary data, such as fuel use, to be able to readily calculate greenhouse gas releases.

The NJDEP recently proposed additional reporting for greenhouse gases pursuant to the Global Warming Response Act (see 41 N.J.R. 37(a)). The proposed new rules include three new reporting requirements: (1) reporting of releases by stationary sources of greenhouse gases other than CO₂ above a threshold of 2,500 tons/yr; (2) reporting of fossil fuel use by manufacturers and distributors of fossil fuel, including prime suppliers, gas public utilities, and natural gas pipeline operators; and (3) reporting of storage quantities of greenhouse gases (other than CO₂ and methane) above threshold quantities. This proposed reporting is also implemented through existing reporting mechanisms. Reporting of releases by stationary sources is implemented through the Emission Statement program. Reporting of fossil fuel use and quantities of greenhouse gases stored is proposed to be implemented through New Jersey’s Worker and Community Right to Know program.

On page 16463, USEPA expresses interested in receiving data and analyses on thresholds. In particular, USEPA solicits comments on whether the thresholds proposed are appropriate for each source category or whether other emissions or capacity based thresholds should be applied and how they would achieve broad emissions coverage and result in a reasonable number of reporters.

The NJDEP provides the following statistics on CO₂ and methane releases reported for calendar year 2007. These data show that New Jersey’s approach to thresholds covers the same universe of downstream sources of greenhouse gases proposed by USEPA plus additional facilities that are already reporting environmental data to the NJDEP.

- Approximately 290 facilities reported CO₂ or methane
 - Total releases of 42,654,050 Tons CO₂e/yr

- Approximately 100 facilities reported releases over 25,000 tons/year
 - Total of 41,041,200 Tons CO₂e/yr reported (96.2 % of releases)
 - Top 10 facilities reported releases of 26,964,475 (63.2%)
 - Top 20 facilities reported release of 34,423,650 (80.7%)

- Approximately 190 facilities reported releases less than 25,000 tons CO₂e/yr
 - Total of 1,612,850 Tons/yr (3.8%)
 - If top 10 facilities are excluded, accounts for 10.2% of the reported releases
 - If top 20 facilities are excluded, accounts for 19.6% of reported releases

These data show that emissions per facility drop off significantly after the first 10 to 20 large facilities. USEPA’s analysis of thresholds focused on four different levels: 1,000 tons/yr, 10,000 tons/yr, 25,000 tons/yr and 100,000 tons/yr. Small changes in CO₂ thresholds, such as those analyzed by USEPA, can have significant impacts on the numbers of facilities required to report.

Rather than attempting to pick the perfect threshold based on CO₂ alone, it is more efficient and effective to require existing reporters to report greenhouse gas information.

8. The USEPA should provide states with resources for any activities conducted to support implementation of USEPA's greenhouse gas monitoring program.

In the preamble on page 16595, USEPA discusses roles states may play in implementing USEPA's mandatory greenhouse gas reporting program including "...communicating the requirements of the rule and providing compliance assistance," and "...educating facilities and assuring compliance at facilities subject to this rule." Additional roles could also include assisting in QA/QC of the data to ensure accuracy, particularly for industrial and commercial sources not covered under the Acid Rain Program, where states might know more than USEPA about specific operations and releases. As discussed throughout these comments, New Jersey, and other states, have been on the forefront of greenhouse gas regulation over the last several years. States have significant knowledge concerning greenhouse gas sources in their areas and can assist and coordinate with USEPA in implementing reporting programs and other strategies. The USEPA should provide resources to assist states in performing any of these potential roles.

The NJDEP appreciates the opportunity to comment USEPA's proposed rule. NJDEP stands ready to work with USEPA to address these issues.

Sincerely,

Jeanne Herb
Director

c: Nancy Wittenberg
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