

December 12, 2007

TO THE MEMBERS OF THE UNITED STATES CONGRESS:

The undersigned trade associations applaud the inclusion of a Clean Air Act (CAA) savings clause provision wisely inserted by its drafters into the renewable fuels title of H.R. 6, the House energy bill.¹ The savings clause ensures that the regulation of carbon dioxide (CO₂) required by the renewable fuels standard in the bill does not trigger costly, onerous stationary source control requirements for hundreds of thousands of buildings throughout the United States.

However, greenhouse gas vehicle and fuel regulations expected to be proposed by the Environmental Protection Agency (EPA) this year may trigger the very same stationary source controls, and, as a result, construction on any new or existing source with the potential to emit over 250 tons of CO₂ per year—which captures most large buildings—could come to a screeching halt. The only effective way to prevent such a problem is through a legislative fix exempting CO₂ and all other greenhouse gases from Prevention of Significant Deterioration (PSD) permitting authority under section 165 of the CAA.

Under the CAA, should CO₂ be deemed “regulated” under the Act—even if the regulation is for vehicles or fuels and is specifically not directed at stationary sources—no new or existing “major” stationary source of CO₂ can be built or modified (if the modification increases net emissions) without first obtaining a PSD permit. 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.² This latter category is particularly troublesome, because 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 CO₂ naturally as a component of its operations (soda manufacturers, bakers, breweries, wineries) may exceed the 250-ton-per-year threshold for CO₂ emissions.³

The PSD permit process is incredibly costly and time consuming. 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 take 12-18 months.⁴ 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.

¹ The savings clause is found at section 210(b) of the bill.

² To put this in perspective, a neighborhood of 13 average single family homes in New England heated with home heating oil emit more than 100 tons of CO₂ per year.

³ The ton-per-year threshold is calculated as *potential* emissions, so 24-hour-a-day operations are presumed and actual emissions are irrelevant.

⁴ Even more troubling is the fact that BACT is determined at the state level (and will thus vary from state to state), and BACT for CO₂ will be subject to a great deal of interpretation. Some states may decide that BACT requires energy efficiency measures, while others could conceivably decide that BACT for a coal-fired power plant requires replacement with a wind farm.

Once a source is classified as a “major” source for one pollutant, it is considered a major source for all other regulated pollutants under the CAA. As a result, the hundreds of thousands (possibly millions) of covered sources may now have to install BACT not only for CO₂, but also potentially for nitrous oxide, particulate matter, lead, mercury, sulfur dioxide, and other pollutants prior to any new construction. The regulatory burden is so enormous, and the number of required PSD permits so staggering, that construction in cities throughout the nation will literally stop the minute CO₂ is “regulated” under the Act.

Should EPA decide to regulate CO₂ in vehicles and fuels—which is likely, given the Supreme Court’s holding in *Massachusetts v. EPA*—PSD will immediately be triggered for all stationary sources that meet the 100/250 ton-per-year “major” source threshold. The 100/250 ton-per-year threshold was originally set based on emission levels of traditional pollutants, such as particulate matter, nitrogen oxides and sulfur dioxide. Emissions above this threshold were considered to be significant enough to trigger a need for regulation. CO₂ differs from traditional pollutants in that 100 or 250 tons per year is not an unusually large amount significant enough to trigger that same need for regulation. The 100/250 ton-per-year PSD threshold was clearly not meant to cover CO₂ emissions.

EPA is considering addressing the problem through various regulatory options, but none is nearly as clean or effective as a pure legislative fix. The undersigned trade associations call on Congress to step in and solve the PSD quandary through legislation exempting CO₂ and all other greenhouse gases from PSD permitting authority under CAA section 165.

Sincerely,

American Chemistry Council
American Coke and Coal Chemicals Institute
American Forest and Paper Association
American Iron and Steel Institute
American Petroleum Institute
Associated General Contractors of America
Consumer Energy Alliance
Industrial Energy Consumers of America
Interstate Natural Gas Association of America
National Association of Manufacturers
National Black Chamber of Commerce
National Mining Association
National Oilseed Processors Association
National Small Business Association
Portland Cement Association
Rubber Manufacturers Association
Salt Institute
U.S. Chamber of Commerce
Wine and Spirits Wholesalers of America