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AGC of America
THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA
Quality People. Quality Projects.



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December 23, 2009

EPA Docket Center, EPA West (Air Docket)
Attention Docket ID No. EPA-HQ-OAR-2009-0517
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W. (Mailcode: 2822T)
Washington, D.C. 20460

RE: EPA-HQ-OAR-2009-0517: Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule, Proposed Rule, 74 Fed. Reg. 55292 (October 27, 2009)

Dear Sir/Madam:

The Associated General Contractors of America (AGC) submits this letter in response to the U.S. Environmental Protection Agency's (EPA) proposed tailoring rule for the Prevention of Significant Deterioration and Title V programs as they would apply to greenhouse gases under the Clean Air Act (CAA). AGC incorporates by reference its arguments outlined in its previous comment letters submitted to the EPA on June 23, 2009, and November 26, 2008, respectively, on the proposed endangerment finding for greenhouse gases (EPA-HQ-OAR-2009-0171) and the advance notice of proposed rulemaking (ANPR) on regulating greenhouse gases under the CAA (EPA-HQ-OAR-2008-0318). In accordance with previous letters, AGC restates its overall concerns with the regulation of greenhouse gases under the CAA—concerns that AGC shares with many states, industry and legal experts, and government agencies, including the EPA.

AGC has consistently urged the EPA not to move forward with the regulation of greenhouse gases under the CAA, maintaining that the Act is not the appropriate tool to address the nature of greenhouse gas emissions. AGC has warned that any action to regulate greenhouse gases under the CAA would lead to widespread regulation of the gases under other sections of the CAA—covering new on-road vehicles, off-road equipment, commercial buildings and other stationary sources. It is this very concern that has led the agency to propose the tailoring rule for the Prevention of Significant Deterioration (new construction and major upgrade permits) and the Title V (operating permits) programs for stationary sources. EPA admits that without the proposed tailoring rule the permitting agencies that administer these programs would be overwhelmed by the vast number of newly-required permits and that the results would be “absurd.”

EPA claims that by raising the applicability threshold (initially) to 25,000 metric tons per year of carbon dioxide equivalent (tpy CO₂e) the majority of small sources would *not* be required to obtain permits for a new construction project, or to renovate or operate their facilities. The Small Business Administration (SBA) is not confident, however, that small businesses would be

protected by raising the threshold to 25,000. As an alternative, SBA recommends that EPA raise the applicability threshold to 100,000 and the significance threshold to 50,000. AGC agrees that EPA should adopt higher tailoring thresholds in the GHG Tailoring Rule. EPA also should consider longer phase-in periods for these applicability and significance thresholds to apply.

For the commercial buildings category alone, EPA estimates that some healthcare, education, lodging, warehouses, office and public assembly facilities will need to obtain permits at the 25,000 threshold. Inpatient healthcare facilities are heavily affected. EPA also is considering a 10,000 metric tpy CO₂e threshold (either immediately or phased in)—at which the amount of commercial buildings that would require permits increases dramatically and includes laboratories, malls and service facilities, as well as nursing facilities and other buildings. *See* EPA-HQ-OAR-2009-0517-0004.8. These thresholds are too low and would significantly impact a large number of small entities. Furthermore, EPA intends to review the threshold levels in a few years and may decide to lower the thresholds, thereby exposing many more small businesses with each lowering of the threshold. This is unacceptable to industry.

AGC can appreciate that EPA seeks to raise the threshold to reduce and/or delay the impact on businesses; however, the fact that tailoring the rule is necessary only serves to strengthen the argument that the CAA is not the correct tool to regulate these emissions. If EPA is unsuccessful in modifying the thresholds, and many question the agency's legal authority to do so, the number of affected facilities would be in the millions. EPA estimates there would be an increase of 140-fold for PSD permits from 280 permits issued each year to approximately 41,000 yearly. More than 6 million newly-regulated facilities would have to obtain Title V permits and the nearly 15,000 existing permits would require revisions. *See 74 Federal Register 55301-55302.*

State permitting authorities expressed concern over the amount of staff time and expense needed to process the permits and other support related activities. Forty-three state and local permitting agencies responded to a survey about the additional resource and burden considerations if EPA were to include greenhouse gases as a "regulated pollutant" that is subject to PSD and Title V permitting. Currently, the average time for an agency to process a PSD permit (from date of receipt of application to the issuance of the permit) is 319 days. If the agencies do not add additional staff, the average time could increase to 993 days should the agencies receive a 10-fold increase in permit applications. Without additional staff to process a 40-fold rise in Title V permit applications, the permitting requests could lead to delays as long as 10 years. Agencies have reported that it would take approximately 2 years to add the necessary staff and even more time for training. Approximately 25 percent of the respondents to the survey indicated that a hiring freeze is in effect. *See 74 Federal Register 55301-55302 and EPA-HQ-OAR-2009-0517-0009.1.*

AGC is concerned that the amount of newly required permits and delays in issuing those permits would effectively bring to a halt the construction and major renovation of many buildings. AGC members own and/or operate buildings and other facilities as well as large stationary and mobile equipment and vehicle fleets; and they are dependent on other businesses for new work and for materials. AGC members are engaged in the construction of commercial buildings, factories,

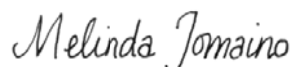
warehouses, highways, bridges, airports, waterworks facilities, waste treatment facilities, dams, water conservation projects, defense facilities, and multi-family housing projects, and in-site preparation and utilities installation for housing developments. Future controls of greenhouse gas emissions from stationary sources could have a direct negative effect on contractors' daily operations, ability to secure future construction work, and the costs of materials and equipment used in their projects.

The nation is experiencing the worst recession in its history since the 1930s, and EPA's continued pursuit of regulation of greenhouse gases under the CAA threatens to undermine many of the initiatives underway that seek to improve economic conditions. The construction industry itself is facing a 19.4 percent unemployment rate, the highest of any industry. The future of construction employment continues to look bleak as employment in architectural and engineering services again fell during November 2009. AGC members stand ready to build a more energy efficient future, but that future will have to wait if the nation's businesses cannot get permits for and/or cannot afford to construct new facilities and improve their existing facilities.

Furthermore, AGC continues to assert that it is the role of legislators to draft an approach that specifically addresses the unique attributes of greenhouse gas emissions. Legislation and programs specifically tailored to address the unique aspects of greenhouse gases would be more effective at reducing those emissions with potentially less harm on the economy, making that a more suitable route for future controls than the CAA. Both the U.S. House of Representatives and the U.S. Senate have addressed greenhouse gas emissions in comprehensive climate change and energy bills during 2009. Whereas, AGC could not support every element of the comprehensive bills drafted, the association was encouraged by the provisions to increase the energy efficiency of the nation's infrastructure and build more energy security through diversified and lower-emitting energy sources. AGC urges EPA to wait for Congressional action on greenhouse gases that would specifically address those emissions. The agency and public can be confident that our legislators are debating and addressing greenhouse gas emissions.

In addition to legislative efforts, voluntary and mandatory requirements exist at all levels of government to reduce greenhouse gas emissions through the advancement of green power, green jobs, green or high performing buildings, as well as energy efficient vehicles, equipment and appliances. The market has driven increases in energy efficiency in buildings and in manufacturing without heavy-handed regulation.

Sincerely,



Melinda L. Tomaino
Director, Green Construction