Coalition for Emission Reduction Projects
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COMMENTS ON EPA'S PROPOSED RULE: PREVENTION OF SIGNIFICANT DETERIORATION AND TITLE V GREENHOUSE GAS TAILORING RULE

Proposed Amendments to 40 CFR Parts 51, 52, 70, et al.

74 Fed. Reg. 55,292 (proposed Oct. 27, 2009)

Submitted by:

Coalition for Emission Reduction Projects (CERP)

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U.S. Environmental Protection Agency

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I. Executive Summary.

The Coalition for Emission Reduction Projects (CERP) appreciates this opportunity to comment on the Environmental Protection Agency's Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule, 74 Fed. Reg. 55,292 (proposed Oct. 27, 2009). These comments make the following points:

The use of command-and-control regulation under the Clean Air Act[1] to reduce greenhouse gas ("GHG") emissions rather than a market-based system will result in serious inefficiencies and costs to the U.S. economy, and could hinder the efficiency of a future cap-and-trade program.

CERP urges the Environmental Protection Agency ("EPA" or the "Agency") to use its discretion under the Act on the timing of Prevention of Significant Deterioration ("PSD") and title V regulation to allow time for Congress to take action. CERP and others are working assiduously with members of Congress to expedite their efforts to design and enact effective market-based climate change legislation.

Furthermore, if and when EPA proceeds with regulation under the Act, CERP recommends that the Agency use its discretion to minimize command-and-control regulation and to maximize administrative and economic efficiency in the design and implementation of such regulations.

To these ends, CERP urges EPA to consider the following three design elements in implementing the Tailoring Rule:

1. **Allow offset credits submitted by a facility to be counted in determining the GHG emissions of a "source" for purposes of the PSD and title V programs.** **(See page 6.)**

2. **Give facilities the flexibility to use offset credits as a means of contributing to compliance with Best Available Control Technology requirements under the PSD program.** **(See page 7.)**

3. **Exclude certain methane emissions from the applicability and significance determinations under the PSD program.** **(See page 8.)**

[1] 42 U.S.C. § 7401 *et seq.* (2007) (hereinafter the "Clean Air Act" or the "Act").

II. Introduction to CERP.

CERP is a coalition of companies that develop and finance GHG offset projects as well as companies that expect to be regulated under carbon regulation, and would want the ability to use offsets to meet their compliance obligations. CERP's mission is to educate policy-makers and the general public about the benefits of using offset credits from GHG emission reduction projects[2] in uncapped sectors of the economy and in other countries as a means of meeting U.S. emission reduction goals. Utilizing offset projects expands the universe of mitigation opportunities, which can substantially lower the costs of mitigating the risk of climate change.

CERP's aim is to be a constructive voice in ongoing policy design efforts. Our members have diverse interests and views on climate change policy, but are united around the following principles:

- The United States needs a reasonable and well-designed federal program to limit GHG emissions.
- Any such GHG reduction program should be market-based in its approach.
- Any program should allow regulated entities to meet their reduction requirements through the use of offset credits from a range of domestic and international emission reduction activities.

CERP believes that offset credits only should be available for projects that achieve emission reductions that are additional, permanent, independently verified, enforceable, and measurable.

A list of CERP's members is provided in Appendix A to these comments. CERP's recommended policy principles on offsets are provided in Appendix B to these comments.

III. The use of command-and-control regulation under the Clean Air Act to reduce GHG emissions rather than a market-based system has significant drawbacks.

As EPA itself noted in its Advance Notice of Proposed Rulemaking on Regulating Greenhouse Gas Emissions Under the Clean Air Act:

> [M]arket-oriented regulatory approaches, when well-suited to the environmental problem, offer important advantages over non-market-oriented approaches. . . . The primary regulatory advantage of a market-oriented approach

[2] Unless otherwise stated, references in these comments to "emission reduction projects" describe projects involving the reduction, avoidance, sequestration, or destruction of GHG emissions.

> is that it can achieve a particular emissions target at a lower social cost than a non-market-oriented approach. This is because market-oriented approaches leave the method for reducing pollution to the emitter, and emitters have an incentive to find the least cost way of achieving the regulatory requirement.
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> . . . .
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> . . . Another advantage of market-oriented approaches is that they generally provide a greater incentive to develop new ways to reduce pollution than non-market-oriented approaches.
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> . . . .
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> Market-oriented approaches are relatively well-suited to controlling GHG emissions. Since emissions of the major GHGs are globally well-mixed, a unit of GHG emissions generally has the same effect on global climate regardless of where it occurs. . . . Providing flexibility on the method, location and precise timing of GHG reduction would not significantly affect the global climate protection benefits of a GHG control program (assuming effective enforcement mechanisms), but could substantially reduce the cost and encourage technology innovation (citation omitted).[3]

We strongly support EPA's conclusion that a market-based program to control GHG emissions is superior to a command-and-control approach. GHG emission sources are highly diverse. Many of the technologies needed to reduce emissions at different source types have yet to be developed or commercialized. The nature of Best Available Control Technology ("BACT") and the cost of reducing emissions at most sources, therefore, are highly uncertain. Yet, it is clear that emission reduction costs will vary widely among different sources.

In this context, the use of command-and-control regulation to control GHG emissions rather than a market-based system is particularly inefficient and costly. A command-and-control regulatory program under the Clean Air Act will require all regulated sources to install particular emission-control technologies, regardless of the relative efficiency or inefficiency of reducing emissions at a specific source. In addition, the nascent nature of carbon control technologies will make the process of establishing BACT or other technology standards extremely difficult and time-consuming, with a high likelihood that emission sources will be either inefficiently under-controlling or inefficiently over-controlling emissions.

[3] Regulating Greenhouse Gas Emissions Under the Clean Air Act, 73 Fed. Reg. 44,354, 44,409-410 (proposed July 30, 2008) (to be codified at 40 C.F.R. Chapter 1) (hereinafter, GHG ANPR).

A market-based system, in contrast, places a uniform price on emission reductions. The price will mobilize the power of the market to seek out the most efficient emission reduction opportunities and to drive private investment into the most promising low-carbon technologies. As EPA noted in the above quotation, by generating more efficient emission reductions, a market-based system of GHG emission controls would dramatically reduce the costs of carbon control borne by American families and businesses.

Furthermore, implementing command-and-control regulations now could hinder the effectiveness and efficiency of a future market-based program. For example, the imposition of command-and-control regulations on potential offset sources could reduce their capacity to generate offsets for use in containing costs under a cap-and-trade program. Uncertainty about the regulatory status of a source or activity could deter investment in offset projects. In order to develop a sufficient supply of offsets to provide cost containment in the early years of a cap-and-trade program, offsets developers need more regulatory predictability. By instating command-and-control regulations under the Clean Air Act, EPA is instead ratcheting up the level of uncertainty in this sector, and further delaying development of a robust supply of offsets.

Offsets are projected to play a critical efficiency-enhancing and cost-containing role in a market-based GHG emissions mitigation program. One of the key design hallmarks of a cap-and-trade program is the inclusion of large emission sources within the cap, and the use of an offsets program to communicate the value of emission reduction project opportunities to uncapped sectors of the economy. By directly regulating only the larger emission sources, a cap-and-trade program dramatically reduces administrative costs—while using a market price signal to leverage efficient emission reductions throughout the uncapped sectors via offsets projects. Because certain emission reduction opportunities in the uncapped sectors of the economy can be implemented at significantly lower costs than in the capped sector, offsets dramatically reduce the costs of a cap-and-trade program. The Congressional Budget Office's analysis of H.R. 2454 projected annual savings from offsets to be approximately 70%.[4]

For all of these reasons, we urge EPA to use its discretion on timing of regulation under the Clean Air Act in order to allow Congress to legislate market-based GHG emission controls. Furthermore, if and when EPA proceeds with regulation under the Clean Air Act, we urge the Agency to use its discretion to minimize the use of command-and-control regulations, and to maximize the use of market-based systems.

IV. Any regulation of GHGs under the Clean Air Act should be designed to maximize administrative and economic efficiency.

[4] CONGRESSIONAL BUDGET OFFICE, THE USE OF OFFSETS TO REDUCE GREENHOUSE GASES 8 (Aug. 3, 2009).

We appreciate that, in the context of the proposed Tailoring Rule, EPA is requesting comment on strategies for implementation of the PSD and title V programs as applied to GHG emissions. Specifically, EPA has requested comment on any "tools or options that could address or reduce the administrative burden of implementing PSD and title V for major GHG sources and reduce the burdens on the sources."[5]

To this end, CERP urges EPA to consider the following three policy approaches that are within the Agency's statutory authority and would effectively promote administrative and economic efficiency.

A. Allow offset credits submitted by a facility to be counted in determining the GHG emissions of a "source" for purposes of the PSD and title V programs.

EPA is proposing to establish a temporary applicability threshold for the PSD and title V programs of 25,000 tons of CO_2e per year, and a temporary PSD significance level of between 10,000 and 25,000 tpy of CO_2e to identify major modifications.[6]

As EPA has noted, GHG emissions have the same effect on the atmosphere regardless of where they are emitted. Because of this unique characteristic of GHGs, allowing flexibility in the location and mechanism of emission reductions provides positive efficiency benefits without any negative environmental consequences. By including offsets submitted by a facility in determining the GHG emissions of the "source," EPA could dramatically improve the administrative and economic efficiency of this regulation.

Under the Clean Air Act, the PSD preconstruction permit requirements apply to a "major emitting facility."[7] The term "major emitting facility" is defined to include specified "stationary sources" of air pollutants.[8] The Act defines the term "stationary source" as "generally any source of an air pollutant except those emissions resulting directly from an internal combustion engine for transportation purposes or from a nonroad engine or nonroad vehicle as defined in section 7550 of this title."[9]

The statutory definition of "source" is broad and ambiguous with respect to delineating the boundaries of each source and its associated emissions. In the context of GHGs, we urge EPA to exercise its authority to interpret the term "source" and a source's emissions to account for any offset credits submitted by a regulated facility.

[5] 74 Fed. Reg. 55,320 (proposed Oct. 27, 2009).
[6] 74 Fed. Reg. 55,292 (proposed Oct. 27, 2009).
[7] 42 U.S.C. § 7475(a).
[8] 42 U.S.C. § 7479(1).
[9] 42 U.S.C. § 7602(z).

Under this approach, new facilities will be able to obtain and submit offset credits to avoid triggering the PSD and title V applicability thresholds. In addition, existing facilities will be able to submit offset credits to avoid triggering the PSD significance level when undergoing a modification, *i.e.*, by applying the reductions represented by the offset credits against emissions associated with the modification.

Indeed, this approach is a logical extension of EPA's long-standing netting policies. Given that GHG emissions have the same effect on the atmosphere regardless of the location of the source, it makes sense to apply netting in this manner for GHG emissions.

The use of offsets within the PSD program will reduce the burden on regulated sources and on the American economy. Instead of being forced to install BACT—when many carbon abatement technologies are yet to be fully developed or commercialized—sources will have the option of obtaining efficient emission reductions from offset projects. The resulting demand for offset credits will drive investment into low-carbon technology development and efficient carbon-reduction projects throughout the economy.[10] Using offset projects to achieve emission reductions can produce dramatic cost savings because some emission reduction project opportunities outside of regulated sectors are significantly less expensive than options for reducing emissions inside regulated sectors—especially during the early years of a carbon control program while carbon control technologies are being developed.

B. Give facilities the flexibility to use offset credits to contribute to compliance with BACT requirements.

CERP urges EPA to authorize investment in offset credits as a means of compliance with BACT requirements. Under this approach, offset credits could contribute to reducing a source's emissions to the level of the required BACT emissions limitation.

Offset credits can be generated by any unregulated source going beyond a business-as-usual activity or by any regulated source reducing emissions beyond a regulatory obligation. As such, the inclusion of offsets in calculating emissions of the "source" would make the PSD program a more market-oriented program and would generate efficient emission reductions across the economy. Offset projects can provide lower cost emission reductions than many of the mitigation options otherwise applicable to large sources. Allowing facilities to use offsets to meet BACT requirements would produce the same environmental result, but at less cost to regulated facilities. This

[10] The incentive to develop potential BACT for regulated sources, however, will be undiminished: once low-carbon technologies are commercially available for major greenhouse gas sources, EPA and the state permitting programs presumably will designate those technologies as BACT, thereby creating a market for the technologies and financial rewards for the technology developers.

approach would lower the compliance costs passed on to American families and businesses. By reducing costs for businesses, offsets will also reduce the potential for negative impacts of carbon regulation on the competitiveness of American industry.

An additional advantage of using offsets in the context of the PSD program is that offset projects will lead to near-term emission reductions from the smaller emission sources not covered by the tailoring rule proposal. The demand for offsets will drive the development of technologies to reduce or sequester emissions at uncovered sources, and generate information about where and how emissions can be reduced efficiently at these sources. This will further EPA's goal of achieving cost-effective, administratively feasible emission reductions at smaller sources.[11]

We acknowledge that the use of offset credits as BACT is a significant departure from past EPA policy, and that it creates a degree of tension with the relevant statutory language.[12] However, EPA itself has made the point that GHG emissions have unique characteristics and merit departures from previous Agency approaches.

Our understanding is that the Clean Air Scientific Advisory Committee ("CASAC") is considering ways of incorporating offsets into the PSD program for GHG emissions. We would be pleased to work with the Agency or the CASAC on ways to make this possible.

C. Exclude certain methane emissions from the determination of the PSD applicability and significance thresholds.

Methane emissions are generated by numerous and highly diverse sources. The feasibility and cost of reducing methane emissions from such sources is likewise expected to vary considerably. As such, methane emission reductions can be accomplished much more efficiently via market-based programs, which identify cost-effective reduction opportunities, than by command-and-control regulation. In addition, methane reduction offset projects are projected to be an important source of domestic offset credits under a cap-and-trade program. EPA's analysis of proposed climate legislation has shown that eliminating methane reduction offset projects through the imposition of performance standards on fugitive methane sources would reduce the

[11] 74 Fed. Reg. 55,326 (proposed Oct. 27, 2009). A further benefit of using offsets within the PSD program is that it would allow the Agency to begin to develop the offset project methodologies and evaluation frameworks that will be essential to creating an effective and environmentally rigorous offsets program under any future market-oriented greenhouse gas regulatory regime. Appendix B outlines CERP's recommended principles for the design of offset policies.

[12] The Clean Air Act defines a facility's BACT as an emission limitation determined "for such facility through application of production processes and available methods, systems, and techniques, including fuel cleaning, clean fuels, or treatment or innovative fuel combustion techniques." 42 U.S.C. § 7479(3).

domestic offset supply by 45% and increase allowance prices by 9%.[13] There are two specific steps EPA can take to avoid inefficient regulation of methane emissions.

First, EPA should maintain its current policy of excluding fugitive emissions from applicability and significance determinations under the PSD program, unless the source belongs to one of the 28 categories specified in 40 C.F.R. § 51.165(a)(1)(iv)(C). The high variability of fugitive methane emissions from sources and lack of commercially available control technologies would make BACT determinations for fugitive emissions very difficult. In addition, controlling fugitive emissions from small and varied sources within a facility is likely to be very costly in some cases, thereby imposing excessive burdens on permitting agencies and regulated entities, and detracting from efforts to regulate large sources of emissions.

Yet, if EPA incorporates offsets into the PSD program, as recommended above, the resulting offsets market will channel investment into reducing fugitive methane emissions where reductions can be achieved most efficiently. In the process, the offsets market will generate information about where and how cost-effective fugitive methane emission reductions can be achieved.

Second, EPA should also exclude consideration of vented methane emissions from oil and gas systems and underground coal mines in the context of the PSD program, at least until the Agency promulgates a final methodology for estimating these methane emissions in the context of the GHG reporting rule. As EPA recognized in developing the reporting rule, quantifying vented methane emissions from the large number of non-uniform sources at oil and gas systems and at underground coal mines is currently difficult and imprecise. EPA has retracted the components of the reporting rule, Subparts W and FF, which would have required oil and gas systems and underground coal mines to quantify and report vented methane emissions in order to perform additional analysis and consider alternatives.[14] If these emissions are not similarly excluded from consideration in the context of the PSD program thresholds, state permitting authorities will be forced to expend resources developing accounting methodologies that will be duplicative of efforts already underway at EPA, resulting in wasted resources and a hodgepodge of accounting methodologies and compliance obligations.

For all of these reasons, we urge EPA to continue excluding fugitive emissions from major stationary source applicability and significance determinations under the PSD program except for sources in the specified categories, and to exclude consideration of vented methane emissions from oil and gas systems and underground coal mines in the context of the PSD program until a standardized quantification methodology has been developed.

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[13] ENVIRONMENTAL PROTECTION AGENCY, ANALYSIS OF THE WAXMAN-MARKEY DISCUSSION DRAFT: THE AMERICAN CLEAN ENERGY AND SECURITY ACT OF 2009: EXECUTIVE SUMMARY 6 (April 20, 2009).
[14] Mandatory Reporting of Greenhouse Gases, 74 Fed. Reg. 56,260, 56,319, 56,333 (Oct. 30, 2009).

V. Conclusion.

We appreciate your consideration of our comments, and look forward to working with you to maximize the efficiency of any regulatory program to control GHG emissions.

For more information, please contact:

Kyle Danish
Counsel to CERP
Van Ness Feldman
1050 Thomas Jefferson Street NW
Washington, D.C. 20007
kwd@vnf.com
(202) 298-1876

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Appendix A

Members of the Coalition for Emission Reduction Projects

Alpha Natural Resources

American Electric Power

Blue Source

Camco

C-Trade

C-Quest Capital

Deutsche Bank

Dominion

DTE Energy

Duke Energy

EcoSecurities

Element Markets

El Paso Corporation

Environmental Credit Corp.

Equator, LLC

John Deere

Leaf Clean Energy Company

Macquarie Bank

Natsource

Noble Carbon Credits

PG&E Corporation

Verdeo Group

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Appendix B

CERP Statement of Principles

The mission of the Coalition for Emission Reduction Projects (CERP) is to educate policy-makers and the general public about the benefits of using offset allowances from domestic and international greenhouse gas (GHG) emission reduction projects as a means for regulated entities to meet their compliance obligations under a U.S. federal GHG cap-and-trade program.

CERP believes that any U.S. federal GHG regulatory program should adhere to the following principles:

1. Entities regulated under a U.S. cap-and-trade program should have the ability to achieve their compliance obligations through the use of offset allowances from qualifying emission reduction projects.

Regulated entities should have the flexibility to help meet their compliance obligations by using emission reductions from projects that are not otherwise subject to the emissions cap. Multiple studies have shown that allowing use of such offset allowances can: (1) lower costs of compliance for regulated entities and costs of GHG regulation for society as a whole; (2) create greater incentives for development and deployment of emission reduction technologies; and (3) achieve emissions reductions from sources that would not otherwise occur.

2. Offset allowances should be available only for projects that achieve emission reductions that are additional, permanent, independently verified, enforceable, and measurable.

A U.S cap-and-trade program should include clear and rigorous rules for approval of projects and issuance of offset allowances. A credible authority should oversee administration of the offset program, with support from independent accredited third-party verifiers.

3. The project approval process should be transparent and rely on established, approved project types and methodologies, with clear procedures to approve new methodologies and project types.

The project approval process should achieve three objectives: (1) ensuring environmental integrity; (2) controlling administrative and transaction costs; and (3) providing for investment certainty as early as possible. Adoption of pre-approved methodologies and a preferred list of project types eligible for streamlined approvals will reduce compliance costs and investment risks, thus encouraging greater market participation. Similarly, a streamlined and transparent process for approval of new methodologies will provide necessary incentives for the development and deployment of new technologies.

4. Offset allowances should be available from an expansive set of sectors, activities, and countries.

A U.S. emissions reduction program should focus on environmental integrity of projects and their compliance with the relevant standards created by the program. All project types that are not otherwise subject to emissions limits and that can comply with the applicable standards should be eligible.

5. A U.S. GHG regulatory program should allow for the use of offset allowances from international projects.

Climate change is a global environmental issue. As such, geographic location should not limit the ability of a project to qualify under a GHG regulatory program. Indeed, many low cost opportunities for reducing emissions are in developing countries. Accordingly, allowing for the use of reductions from such countries not only will lower the costs of compliance with the U.S. program, it will provide a means of transferring U.S. clean energy technologies and expertise to the developing world. Importantly, allowing use of international offset allowances for compliance purposes provides an opportunity for the U.S. to demonstrate its leadership on the issue of climate change and to engage with the global community in reducing emissions.

6. Entities that implement emission reduction projects prior to the establishment of a U.S. regulatory program, and that meet the applicable standards for project eligibility, should be awarded offset credits.

Entities (not just those subject to emissions limits) that implement otherwise-qualifying projects should be provided offset credits for reductions achieved by those projects prior to enactment of Federal legislation.