pennsylvania
DEPARTMENT OF ENVIRONMENTAL PROTECTION
SECRETARY

June 25, 2012

Air and Radiation Docket and Information Center
U.S. Environmental Protection Agency
Mailcode: 2822 T
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Attention: Docket ID No. EPA-HQ-OAR-2011-0660

Re: Standards of Performance for Greenhouse Gas Emissions for New Stationary Sources: Electric Utility Generating Units (77 Fed. Reg. 22392, April 13, 2012)

To Whom It May Concern:

The Department of Environmental Protection (DEP) appreciates the opportunity to submit comments on the U. S. Environmental Protections Agency's (EPA) proposed rule concerning the Standards of Performance for Greenhouse Gas Emissions for New Stationary Sources: Electric Utility Generating Units. 77 Fed. Reg. 22392, April 13, 2012. As more fully explained below, DEP questions the necessity for such a regulation, as well as some of the technical and practical aspects found within the proposal itself.

General Introductory Comments

EPA admits that there are no environmental benefits from this proposed rulemaking, based on the assumption that no new coal plants would be built in future years even in the absence of this proposed Rule. We ask, then, what is the reason for this particular proposed Rule at this time? The purpose of this proposed Rule is clear—to drive all new fossil fuel-fired facilities that might be built in the future to a particular forced technology. A technology that is not commercially viable or proven on a broad scale at this time. This is a prime example of the inappropriate practice of federal energy policy being driven by environmental regulation. Such a major energy policy as is embodied in this proposed Rule should be left to Congress, not the federal EPA acting preemptively.

Even as energy policy, the proposed Rule is not on the right track. First, this proposed Rule picks winners and losers. The proposed Rule has the effect of directing future near term investment decisions for electric generation by diminishing coal generation investments and stimulating natural gas fired electricity generation. This limits the nation's future potential energy sources by implementing environmental regulations and conceptual changes to the regulatory process that preclude the opportunity to use coal, or natural gas with a future re-proposed NSPS for that matter, as a source of future electricity generation.

Second, we would also appreciate your letting us know what, if any, study or data EPA may have on what impact this proposed Rule would have on overall grid reliability or local grid security/reliability. We would respectfully suggest that a full grasp on any impact of such a rule on grid reliability and/or grid security should be fully analyzed by the appropriate entities prior to implementing such a Rule. Before this proposed Rule were to proceed any further EPA

should devise a transparent methodology with state and stakeholder input to perform a full costs-benefits analysis for this proposed Rule. Then EPA should perform such a cost-benefit analysis and make it part of the discussion of this proposed Rule so that meaningful discussion could be had, based on costs versus benefits, whether the proposed Rule should become a final rule at all.

Also an issue of considerable concern to the DEP is that in this proposal, the regulatory concept of "best demonstrated technology" has been changed to require the degree of emission limitation achievable through the "best system of emission reduction" (BSER). BSER is contrary to the clear precedent of New Source Review which has historically established the most current pollution control technologies and limits applicable to the projects which companies or investors decide to build. BSER allows EPA, or third parties, to determine what gets built as this proposal establishes a performance standard for fossil fueled electric generating units (EGUs) that, at this time, can only be met by a natural gas combined cycle (NGCC) unit. We respectfully ask if the intent of the proposed Rule is to allow EPA or third parties to require the construction of alternative energy electric generating sources or require renewable energy sources rather than the projects selected by the private sector because, as proposed, that is a distinct possibility.

This proposed Rule further demonstrates that the Clean Air Act (CAA) is not well suited for addressing climate change. In addition, we would ask that EPA explain why this type of Rule is not rendered unnecessary on account of the Tailoring Rule and "best available control technology" which themselves result in a functional CO2 standard. That is, carbon capture and storage (CCS) will become the best available control technology to reduce CO2 emissions for both coal-fired and natural gas-fired power plants when it becomes an economically feasible control technology.

Specific Department Comments Related to EPA's Proposed CO2 NSPS

Section 111 and the Application of the "best system of emission reduction" that "has been adequately demonstrated."

EPA has developed New Source Performance Standards (NSPS) for numerous industrial source categories such as municipal waste combustors, solid waste landfills, medical waste incinerators, cement plants, nitric oxide plants, copper smelters, steel plants, pulp mills, coal utility boilers, auto and truck surface coating operations, and natural gas turbines. With all of these standards, EPA made distinctions based on fuel type and developed a standard that prevented the construction of certain units. However, under this proposal, EPA wants to deviate from its long-established practice and promulgate a NSPS that does not distinguish between EGUs based on their fuel type, and effectively prevents the construction of new EGUs that burn coal or petroleum coke without CCS.

The DEP asks that EPA explain where Congress provided EPA the authority to preclude the construction of any type of facility that does not employ a specific technology. Although the proposed NSPS would allow construction of such EGUs if an owner or operator commits to install CCS, it is uncertain whether EPA has the legal authority to delay compliance with the applicable performance standard until a future date in which CCS technology becomes technically demonstrated and economically viable.

Generally, NSPS are less stringent than "best available control technology" (BACT) standards, the individually tailored emission control requirements owners or operators must meet to obtain

a CAA preconstruction permit to build or modify a major emitting facility. NSPS establishes the minimum emission control standard or "floor" for determining a facility's BACT requirements. Under section 169(3) of the CAA, application of BACT may not result in emissions that exceed those allowed by the applicable NSPS. The point of BACT is to push individual sources to make deeper emission reductions than required for the category-wide performance standards.

As EPA noted:

> The NSPS are established after long and careful consideration of a standard that can be reasonably achieved by a new source anywhere in the nation. This means that even a very recent NSPS does not represent the best technology available; it instead represents the best technology available nationwide, regardless of climate, water availability, and many other highly variable case-specific factors. The NSPS is the least common denominator and must be met; there are no variances. The BACT requirement, on the other hand, is the greatest degree of emissions control that can be achieved at a specific source and accounts for site-specific variables on a case-by-case basis. Since an applicable NSPS must always be met, it provides a legal "floor" for the BACT, which cannot be less stringent. A BACT determination should nearly always be more stringent than the NSPS because the NSPS establishes what every source can achieve, not the best that a source could do.[1]

On June 3, 2010, EPA finalized the Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule. 75 Fed. Reg. 31514. In the guidance document for the Tailoring Rule, EPA stated that BACT for CO2 will not require fuel switching, nor will EPA "redefine the source" such that coal boilers are held to the same standard as gas turbines: "when an applicant proposes to construct a coal-fired steam electric generating unit, EPA continues to believe that permitting authorities can show in most cases that the option of using natural gas as a primary fuel would fundamentally redefine a coal-fired electric generating unit."[2]

Yet despite EPA's assurance that BACT, which usually is more stringent than NSPS, will not require fuel switching or redefine coal power plants into the same source category as natural gas power plants, EPA's proposed "carbon dioxide pollution standard" does exactly that. Under the proposed standard, new fossil-fuel power plants may emit no more than 1,000 lbs of CO2/MWh. About 95 percent of all NGCC power plants already meet the standard. Because CCS is prohibitively expensive, raising the cost of a conventional coal plant by 80 percent, the only feasible way for a new coal power plant to comply is to be something other than what it is—a natural gas-fired power plant.

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[1] Letter to Mr. Richard E. Grusnick, Chief, Air Division, Alabama Department of Environmental Management from Gary McCutchen , Chief, New Source Review Section, U.S. EPA, July 28, 1987.

[2] PSD and Title V Permitting Guidance for Greenhouse Gases (EPA-457/B-11-001), March 2011.

Moreover, it appears from the record that CCS is not the best system of emission reduction adequately demonstrated.[3] The Carbon Capture and Sequestration Alliance points out that there are fewer than a handful of sites worldwide at which more than one million tons per year of CO2 has been injected, and none at which CO2 has been injected at a rate equal to the CO2 likely to be generated annually by a 250 MW electric generation facility. There are 320 units of that size or larger in the United States, comprising the vast majority of U.S. coal-fired generating capacity. The Carbon Capture and Sequestration Alliance says that there is not the level of experience with CCS with any geologic formation, let alone a breadth of experience across a range of geologic formations and other site-specific conditions, necessary to make a determination that CCS has been adequately demonstrated. Existing fossil-fueled plants may be located nowhere near suitable sequestration sites, and CO2 pipeline networks are not widely available, even if lengthy transport was cost effective.

In order for CCS to be economically viable without the use of outside funding sources, the owners and operators of coal-fired EGUs must find an appropriate outlet for the captured CO2. Only certain industries, such as enhanced oil recovery, have a practical use for captured CO2. These industries tend to be located in geographic areas that are a considerable distance from coal-producing areas. The cost of storage and transportation of CO2 via pipeline or other mechanism to these areas is cumbersome and cost prohibitive. CCS is not a cost effective technology that can be utilized at a coal-fired EGU for the capture of CO2. According to a paper published for the 32nd International Technical Conference on Coal Utilization & Fuel Systems (June 10-15, 2007), CCS adds more than 80 percent to the pulverized coal plant electricity production cost. CCS is only economically viable through subsidies. However, since there are limited subsidies available for CCS technology, it would be very difficult to construct new coal-fired EGUs that utilize CCS to control CO2 emissions down to the proposed maximum emission rate of 1,000 lb/MWh of electricity generated on a gross basis.

Additionally, the Congressional Research Service notes that to date, there are no commercial ventures in the United States that capture, transport, and inject industrial-scale quantities of CO2 solely for the purposes of carbon sequestration.[4] However, CCS R&D in 2012 is just now embarking on commercial-scale demonstration projects for CO2 capture, injection, and storage. The success of these projects will likely bear heavily on the future outlook for widespread deployment of CCS technologies as a strategy for preventing large quantities of CO2 from reaching the atmosphere while U.S. power plants continue to burn fossil fuels, mainly coal. *Id.* Consequently, it is premature for EPA to pronounce that CCS is the best system of emission reduction that has been adequately demonstrated; the status of commercial-scale CCS demonstration projects should not serve as the basis for such pronouncements.

EPA should set a performance standard of 1,150 lbs CO2/MWh (gross) on a 12-month annual average basis for NGCC and 1,800 lbs CO2/MWh (gross) on a 12-month annual average basis for coal-fired units. After it becomes an economically feasible control technology, CCS will become the BACT to reduce CO2 emissions for both coal-fired and natural gas-fired power plants.

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[3] Letter to Air and Radiation Docket and Information Center from Frederick R. Eames, Counsel for Carbon Capture and Sequestration Alliance, March 18, 2011.

[4] *Carbon Capture and Sequestration: Research, Development, and Demonstration at the U.S. Department of Energy,* Congressional Research Service, April 23, 2012.

EPA's Combination of Source Categories

We are concerned and puzzled by the Agency's decision to combine two distinct technologies—coal-fired EGUs and NGCC EGUs—into one regulated source category is contrary to decades of established clean air policy. This may be contrary to the Clean Air Act and is contrary to decades of practice.

We question whether EPA has the authority under CAA § 111(b) to combine disparate source categories, natural gas and coal-fired facilities, into one category of EGUs. The CAA requires EPA to set a standard of performance that reflects the "best demonstrated technology" at the time of promulgation. In this proposal, "best demonstrated technology" has been changed to require the degree of emission limitation achievable through the "best system of emission reduction" that has been adequately demonstrated. However, NGCC units are not a system of emission reduction; rather, they are a type of power plant. As EPA has long recognized, coal plants and gas plants are wholly different classes and types of power plants. By setting a performance standard that can only be met by a NGCC unit, EPA has unlawfully construed performance standard to mean that a distinct type of facility must be something wholly different than what it actually is; in other words, a coal plant must be a NGCC plant.

Historically EPA has always placed coal, oil, and gas facilities into separate categories for the NSPS program. Furthermore, EPA has set separate standards within the coal category for different types of coal. These separate categories exist because, as EPA acknowledges in this proposed Rule, the control options for these different electricity generation technologies simply cannot achieve the same emission standards. The same reasoning applies with equal force to this proposal. The only control option EPA focuses upon—CCS for coal-fired units—is commercially unavailable at this time. If and when CCS becomes commercially viable in the future, there is no reason to believe that it would not be available for NGCC units as well, and then the Agency would be able to conduct a rulemaking to set appropriate NSPS across both source categories. EPA should consider postponing any rulemaking like this until that time.

EPA's Methodology For Setting CO2 NSPS Is A Departure From Past Practice

EPA's proposed methodology for setting the CO2 NSPS is a significant departure from the methodology it has used historically to establish performance standards for new fossil-fueled power plants. There is no explanation or justification of this about-face and there should be. The upshot of this new methodology results in a Rule that is not fuel neutral which it should be.

In past NSPS rulemakings for power plants, EPA has set either different performance standards for each specific type of fuel burned (e.g., coal, oil, natural gas) or a single performance standard for all fuels based on the emissions control levels achievable through application of the "best demonstrated technology" at all power plants, regardless of the fuels used. The latter is identified as being a "fuel neutral" standard because it can be met by the highest emitting fuel, properly controlled, and by other fuel types with inherently lower emissions. However, this proposal is not "fuel neutral" as it precludes the consideration of one of the fuels being considered because the specified control technology is simply not available at this time.

Historically, EPA has not set a single performance standard for all power plants based on emission rates achievable only by the fuels with the lowest inherent emissions. Yet, that is precisely what EPA has done by proposing to establish a CO2 performance standard that is

achievable only by NGCC facilities. In other words, one standard is being advanced that will apply to all new EGUs, but the proposed Rule effectively prevents the construction of new EGUs that burn coal or petroleum coke unless they use CCS.

30-Year Averaging Period

EPA proposes a 30-year averaging compliance option under which affected coal- and petroleum coke-fired sources could comply with the 1,000 lbs CO2/MWh standard on a 30-year average basis. Coal- and petroleum coke-fired EGUs that use this compliance alternative must meet an immediate performance standard of 1,800 lbs CO2/MWh (gross) on a 12-month annual average basis, which can be achieved by a "supercritical" efficiency level, during the period before installation of CCS. By no later than the beginning of the 11th year, the facility would be required to meet a reduced CO2 emission limit of no more than 600 lbs CO2/MWh (gross) on a 12-month annual average basis for the remaining 20 years of the 30-year period, such that the weighted average CO2 emissions rate from the facility over the 30-year time period would be equivalent to the proposed standard of performance of 1,000 lbs CO2/MWh.

The DEP believes that the 30-year averaging period should allow more flexibility in how a facility owner or operator could demonstrate compliance with a 30-year average, including averaging all affected units within a facility. In addition, the 30-year compliance option should provide for some relief if CCS technology is delayed in its development and/or economic viability within the 10-year time frame that is assumed in the proposed Rule by EPA. DEP also believes that the 30-year compliance option should be expanded to 50 years to better reflect the life of a coal-fired EGU facility, or the plant life of the facility, whichever is less.

Moreover, DEP believes that the 30-year option is a "false opportunity" in restructured electricity markets. No one will provide financing to any company with the hope that it will become compliant with carbon regulatory requirements by using an undemonstrated technology like CCS.

Use of the 2009 Endangerment Finding as the Basis of EPA's Proposed Rule

Before EPA can regulate a source category under the Section 111 of the CAA (relating to new source performance standards) to reduce pollution, it must first determine if that source category causes or contributes significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. This is otherwise known as an "endangerment and cause-or-contribute-significantly finding".

EPA is proposing new source performance standards for CO2 emissions for new fossil fuel-fired electric generating units. As a result it proposed several interpretations for whether Section 111 includes perquisites to the rulemaking that involve an endangerment and cause-or-contribute-significantly finding. 77 Fed. Reg. at 22411.

Under EPA's traditional interpretation, once EPA has listed a source category and proceeds to regulate particular pollutants from that source category, Section 111 does not require EPA to make another endangerment finding for the relevant air pollutants from that source category. This is EPA's preferred approach since it has already made this finding in previous rulemakings for new fossil fuel-fired electric generating units. However, EPA is soliciting comment of two alternative approaches.

Under the first alternative interpretation, Section 111 requires EPA to make another endangerment finding for the relevant air pollutants from that source category. The relevant air pollutant in this case would be CO2. This can be satisfied in one of two ways – use the 2009 Greenhouse Gas Endangerment Finding under Section 202 (relating to light-duty vehicles) and the 2010 Denial of Petitions for Reconsideration (relating to that 2009 finding) to fulfill the Section 111 requirement; or make a separate endangerment finding under this proposed rulemaking based on the large amounts of CO2 emissions coming from the affected facilities.

Under the second alternative approach, EPA would establish a rational basis for regulating CO2 emissions from affected EGUs under Section 111. This can be satisfied in one of two ways - use the 2009 Endangerment Finding under Section 202, the 2010 Denial of Petitions for Reconsideration, and the large amounts of CO2 emissions from the affected facilities to fulfill the requirement; or use the 2009 Endangerment Finding, the 2010 Denial of Petitions for Reconsideration, and the 2010 and 2011 National Academies of Science reports which support the 2009 Endangerment Finding.

Should EPA decide to forgo its traditional interpretation and rely on either its first or second interpretation, DEP believes that EPA should make an independent finding that greenhouse gases (GHGs) or CO2 emissions from EGUs cause or contribute significantly to endangerment of the public health or welfare.

To this end, the 2009 Endangerment Finding is critical to EPA's ability to regulate GHGs from power plants under the proposed NSPS for EGUs. Without that Endangerment Finding, EPA would need additional support to justify its determination with respect to GHGs' endangerment of the public health or welfare. EPA may need to require additional support for this proposition if the U.S. Court of Appeals for the D.C. Circuit rules in favor of the petitioners in *Coalition for Responsible Regulation v. EPA,* D.C. Cir., No. 09-1322; and *Coalition for Responsible Regulation v. EPA,* D.C. Cir., No. 10-1073. As you know, petitioners challenged the scientific data upon which EPA relied when it issued its Endangerment Finding, its choice to regulate six GHGs, and its determination that regulating vehicle emissions automatically triggered a requirement to issue similar rules for stationary sources. While DEP does not express an opinion as to whether these arguments have merit, EPA should not rely solely on the Endangerment Finding as support for this rulemaking. Rather EPA should make an independent finding that GHGs or CO2 emissions from EGUs cause or contribute significantly to endangerment of the public health or welfare.

Exceptions

The proposed NSPS would apply only to fossil fuel-fired steam and combined cycle EGUs with an electric generating capacity of greater than 25 megawatts located in the continental United States. Simple-cycle turbines burning fossil fuels, biomass-fired EGUs, and EGUs using other non-fossil fuel resources would not be subject to the proposed NSPS. 77 Fed. Reg. at 22398. In addition, EPA proposes to exempt new fossil fuel-fired EGUs that have obtained preconstruction permits as of the date the proposal is published in the *Federal Register* – provided that those EGUs commence construction within twelve months of the date of *Federal Register* publication. *Id. at 22400.* EPA estimates that approximately 15 coal-fired power projects would be able to take advantage of this exemption given that the projects have obtained their preconstruction permits and are near to commencing construction. DEP agrees that transitional units should be

exempt from the carbon standards, however, the date which triggers the 12-month window to commence construction should be the date of publication of the *final* regulation.

CO2 NSPS May Trigger the Applicability of Title V emission fees

Section 502 of the CAA and implementing regulations in 40 CFR Part 70 establish the minimum elements of the Title V permit programs administered by state and local agencies. As defined in section 502(b)(3)(ii) of the CAA, the term "regulated pollutant" means (I) a volatile organic compound; (II) each pollutant regulated under section 111 or 112; and (III) each pollutant for which a national primary ambient air quality standard has been promulgated (except that carbon monoxide shall be excluded from this reference). Consequently, the promulgation of final CO2 NSPS emission standards for EGUs could trigger the applicability of Title V emission fees for major stationary sources.

According to an April 26, 1993 memorandum from Lydia N. Wegman to EPA Air Division Directors, concerning the Definition of Regulated Air Pollutant for Purposes of Title V, "...if a pollutant is regulated for one source category by a standard or other requirement, then the pollutant is considered a regulated pollutant for all source categories."[5] While this 1993 memorandum did not contemplate the regulation of greenhouse gases under the CAA, EPA should clarify its current interpretation of the statutory term "regulated pollutant" in light of the Title V emission fee implications once the final CO2 emission standards for EGUs are promulgated.

Under the Tailoring Rule EPA did not propose changes to this fee for GHGs or mandate revisions to state programs to account for these emissions. EPA reasoned that it would be difficult to apply this fee to GHGs, based on the large amount of GHG emissions relative to other pollutants and the need for better data to establish a GHG-specific fee amount. *Id.* However, EPA did commit to addressing this issue in future rulemaking and to work with states to develop a workable fee approach.

The Tailoring Rule did not change the definition of "regulated pollutant" to include GHGs for fee purposes. However, EPA did acknowledge that GHGs may be covered as a "regulated pollutant' in the future. Moreover, EPA noted that section 502(b)(3) of the CAA, upon which the fee regulations are based, does not specifically require fees for GHGs, and does not specifically require fees for every regulated air pollutant; it just requires adequate fees to cover costs. If EPA's rationale set forth in the Tailoring Rule preamble for deferring action on a rulemaking concerning Title V emission fees for GHG emissions also applies to the NSPS CO2 standards for EGUs, the agency's rationale should be explained in the preamble for the final CO2 NSPS rulemaking.

The proposed NSPS were developed under section 111 of the CAA and only address CO2 emissions at new sources. As defined in section 111 of the CAA, the term "new source" means any stationary source, the construction or modification of which is commenced after the publication of regulations (or, if earlier, proposed regulations) prescribing a standard of performance under this section that will be applicable to such source. The proposed Rule does not address any other GHGs or impose standards for modified or reconstructed sources.

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[5] Definition of Regulated Air Pollutant for Purposes of Title V, Lydia N. Wegman, Deputy Director Office of Air Quality Planning and Standards, Air Division Director, Regions I – X.

Additionally, the proposal does not discuss the issue of emissions fees or how this proposal effects the statutory definition of "regulated pollutant" for fee purposes. To this end, the DEP is requesting that EPA provide an explanation in the preamble as to whether the promulgation of final CO2 standards under section 111 of the CAA would trigger Title V emission fee requirements for EGUs and other major stationary source categories.

Establish a Subcategory for Waste Coal Facilities

Pennsylvania is home to 15 facilities that utilize coal refuse as their primary fuel source, accounting for approximately 1,450 MW of generating capacity. These facilities are literally helping to clean up the legacy scars across Pennsylvania from historic coal mining practices that preceded today's stringent environmental standards and oversight. Since 1988, these facilities have removed over 171 million tons of coal refuse, reclaimed over 5,000 acres of lands and restored hundreds of miles of streams that were impacted from acid mine runoff. More than 1,000 people are directly or indirectly employed by this industry, with an economic impact to the Commonwealth in excess of $100 million.

Due to the multiple environmental benefits of remediating coal refuse piles, EPA should establish a subcategory for EGUs that burn over 75 percent coal refuse on an annual basis. There are tremendous advantages in utilizing coal refuse to create electricity. If net emissions caused by using mining waste to generate electricity are calculated, then a mining waste facility would produce no net GHG emissions in the long term and emissions would be no greater than the short term emissions of a combined cycle gas plant. Due to the size of the piles, mining waste pile exposure to atmospheric oxygen and pressure promotes heat generating reactions, primarily oxidation of the mining waste itself (i.e., the coal refuse piles are slowly burning). This process emits CO2 and other air pollutants. Remediation would stop current and future CO2 emissions resulting from the uncontrolled combustion of waste piles. Given the significant environmental, economic and energy security advantages of utilizing coal refuse, it is imperative that these unique facilities be considered a subcategory in and of themselves to ensure their long-term viability.

Exclusion of Pollution Control Projects

EPA asserts in the preamble that it expects few "modifications" to power plants in coming years because a large proportion of physical or operational changes will be emission control retrofits that can benefit from the "pollution control project" (PCP) exclusion from the definition of a "modification." PCPs are the class of EGU modifications most likely to result in increases in hourly emissions due to the direct release of CO2 emissions from the operation of scrubber or other emissions control system.

EPA acknowledges in the preamble that there is room for doubt as to whether the PCP exemption in the NSPS regulations is legally valid. In 2005, the D.C. Circuit vacated a similarly worded PCP exemption that EPA inserted in its Prevention of Significant Deterioration (PSD) regulations in a 2003 rulemaking, on the grounds that the exemption was inconsistent with the broad CAA definition of "modification." Although the case, *New York v. EPA*, did not involve challenges to the PCP exemption in the NSPS regulations, the CAA defines "modifications" identically for purposes of both PSD and NSPS. On the other hand, the Supreme Court has previously held that EPA's implementation of the definition of "modification" may differ in the NSPS and the PSD programs.

The PCP exemption in EPA's NSPS regulations has been in place for many years, and the 60-day period for filing a legal challenge to that exemption has long since passed. However, EPA nonetheless solicits comment on the continuing validity of the PCP exemption in light of the *New York* decision and "what course of action, if any, would be appropriate for the EPA to take." DEP believes that EPA does not have the authority to issue PCP exemptions based on the *New York* decision. Nevertheless, should EPA retain this exemption, it should be made available only for those projects that result in emission reductions.

Thank you for the opportunity to comment on the proposed NSPS. Should you have questions or need additional information, please contact Vincent J. Brisini, Deputy Secretary for Waste, Air, Radiation and Remediation, by e-mail at vbrisini@pa.gov or by telephone at 717.772.2724. You may also contact Joyce E. Epps, Director of the Bureau of Air Quality, by e-mail at jeepps@pa.gov or by telephone at 717.787.9702.

Sincerely,

Michael L. Krancer
Secretary