



**MICHAEL P. WALLS**  
VICE PRESIDENT  
REGULATORY & TECHNICAL AFFAIRS

December 11, 2012

Mr. Boris Bershteyn  
Assistant Administrator  
Office of Information and Regulatory Affairs  
Office of Management and Budget

RE: National Ambient Air Quality Standards for Particulate Matter: Docket ID No. EPA-HQ-OAR-2007-0492

Dear Mr. Bershteyn:

The American Chemistry Council (ACC)<sup>1</sup> has previously commented on the U.S. Environmental Protection Agency's (EPA) proposed rule for the National Ambient Air Quality Standard (NAAQS) for particulate matter (PM)<sup>2</sup>. 77 Fed. Reg. 38890, June 29, 2012. Our comments focused on both our concerns with the science as well as issues associated with the implementation of a lowered NAAQS. We would like to direct your attention to the potential for a severe permitting challenge that could stymie business development for the next few years.

A number of ACC members are planning to take advantage of certain market developments, notably access to affordable, reliable supplies of unconventional natural gas. These members are planning on building new production capacity in both attainment and non-attainment areas. ACC is aware of at least a dozen such projects being planned by members. Many of these projects will require New Source Review (NSR) or Prevention of Significant Deterioration (PSD) permits. ACC is concerned that EPA will again promulgate a revised NAAQS without also issuing adequate implementation rules, guidance and tools to facilitate permitting by both the facilities and the permitting authorities – and thereby impose an unwarranted barrier to the investment and jobs that these new projects represent.

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<sup>1</sup>The American Chemistry Council (ACC) represents the leading companies engaged in the business of chemistry. ACC members apply the science of chemistry to make innovative products and services that make people's lives better, healthier and safer. ACC is committed to improved environmental, health and safety performance through Responsible Care®, common sense advocacy designed to address major public policy issues, and health and environmental research and product testing. The business of chemistry is a \$760 billion enterprise and a key element of the nation's economy. It is the largest exporting sector in the U.S., accounting for 12 percent of U.S. exports. Chemistry companies are among the largest investors in research and development. Safety and security have always been primary concerns of ACC members, and they have intensified their efforts, working closely with government agencies to improve security and to defend against any threat to the nation's critical infrastructure.

<sup>2</sup> See EPA-HQ-OAR-2007-0492-9295



EPA is proposing to add a grandfathering provision to the federal PSD program that would apply to certain PSD permit applications that are pending on the effective date of the revised PM<sub>2.5</sub> NAAQS. Specifically, EPA is proposing that the grandfathering provision apply only to those pending PSD permit applications that have been issued for notice for public comment before the effective date of the revised NAAQS. While ACC supports the grandfathering approach, we believe that all permit applications deemed “complete” by the permitting authority prior to the effective date of the revised NAAQS should be grandfathered. Facilities that apply for PSD permits spend considerable resources conducting required modeling, and this modeling would have to be completely redone if a NAAQS was revised after a permit was submitted.

There is precedence for ACC’s preferred approach. In the 1987 PM<sub>10</sub> NAAQS revision, EPA allowed for the grandfathering for all PSD permit applications deemed complete prior to the effective date of the NAAQS. (*See*, 40 C.F.R 52.21(c)(4)(ix) and (x), and 52 Fed. Reg. 24714, July 1, 1987.) More recently, EPA grandfathered Avenal Power’s PSD permit application for the revised NO<sub>2</sub> NAAQS. (*See* “Declaration of Regina McCarthy” in *Avenal Power Center LLC v EPA*, Case No.: 1:10-cv-00383-RJL, January 31, 2011. This declaration reversed the policy laid out by the EPA after the promulgation of the NO<sub>2</sub> NAAQS in “Applicability of the Federal Prevention of Significant Deterioration Permit Requirements to New and Revised National Ambient Air Quality Standards,” Director, Office of Air Quality Planning and Standards, April 1, 2010.)

In addition, under the proposed PM<sub>2.5</sub> NAAQS, ACC expects that some areas currently in attainment would have monitored PM<sub>2.5</sub> values at or above the proposed NAAQS. New permitting projects in these areas with significant net increases in emissions of PM<sub>2.5</sub> would face a potential “CONSTRUCTION MORATORIUM” based on the required permit modeling. Many permit applicants model the potential impacts of projects above the significant impact level (SIL) for the annual PM<sub>2.5</sub> of 0.3 µg/m<sup>3</sup>, which results in the need to conduct a cumulative modeling analysis to demonstrate that these projects would not “cause or contribute to a violation of any NAAQS.” However, since background monitored PM<sub>2.5</sub> concentrations are above the proposed NAAQS, these applicants would be unable to make this demonstration and therefore unable to obtain a PSD permit. And since these areas would not yet be designated as nonattainment for the new PM<sub>2.5</sub> NAAQS, the applicants would be unable to apply for a nonattainment new source review (NNSR) permits for proposed projects in a timely manner.

As a result, ACC recommends that EPA provide either of the following transitional provisions if it finalizes the proposed PM<sub>2.5</sub> NAAQS for the time period starting from the effective date of the revised NAAQS until the effective date of the nonattainment designations for the new NAAQS:

- 1) Allow PSD permit applicants to utilize the modeled compliance demonstration with the existing PM<sub>2.5</sub> NAAQS as a surrogate for the new PM<sub>2.5</sub> NAAQS; or
- 2) Allow PSD permit applicants to provide either internal or external emission offsets to compensate for the increased emissions from the proposed project to demonstrate reasonable progress towards attainment of the new NAAQS.

By providing a transitional period, EPA would ensure that it is protecting public health without impeding economic growth.

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If you would like to discuss any of the comments in more detail, please contact Lorraine Gershman at (202) 249-6411 or [lorraine\\_gershman@americanchemistry.com](mailto:lorraine_gershman@americanchemistry.com).

Sincerely,

A handwritten signature in black ink that reads "Michael P. Walls". The signature is written in a cursive style and is set against a light blue rectangular background.

Michael P. Walls  
Vice President  
Regulatory & Technical Affairs

Cc: Kevin Neyland, Office of Information and Regulatory Affairs  
Dom Mancini, Office of Information and Regulatory Affairs  
Anna Marie Wood, EPA Air Quality Policy Division