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VIA ELECTRONIC FORMAT

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Alice A. Previte, Esq.

Attn: DEP Docket Number: 07-21-11

New Jersey Department of Environmental Protection, Office of Legal Affairs

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Trenton, New Jersey 08625-0402

Re: Comments on NJDEP Proposed Amendments and New Rules, Control and Prohibition of Carbon Dioxide Emissions, N.J.A.C. 7:27, 7:27A, 7:27F (DEP Docket Number 07-21-11, Proposal No. PRN 2021-117)

Dear Ms. Previte,

On behalf of our members, the Chemistry Council of New Jersey (CCNJ) appreciates the opportunity to provide comments to the New Jersey Department of Environmental Protection (NJDEP) on the proposed amendments and new rules regarding the carbon dioxide (CO₂) emissions requirements published in the New Jersey Register on December 6, 2021. Below are CCNJ's general and specific comments on this rule proposal for your review and consideration:

General

To reiterate our March 10, 2020 comments to the NJDEP, the business of chemistry is committed to promoting a cleaner environment. The industry has made changes to its operations that have resulted in a reduction of its Toxic Release Inventory (TRI) emissions by more than 94 percent since 1988. Chemical industry products and technologies support the fight against climate change in applications such as renewable energy sources, electric and high-efficiency vehicles, and building materials that reduce energy consumption. While we are an energy-intensive industry, we are an industry that manufactures the very products that will allow other industries and the general public to become more energy efficient and help reduce their greenhouse gas (GHG) footprint; for every ton of CO₂ emitted in manufacturing the products of chemistry, two tons of CO₂ emissions are saved.

CCNJ, founded in 1955, is the trade and advocacy organization representing the interests of more than 100 manufacturers and firms engaged in the business of chemistry. Our membership consists of large and small companies that are part of New Jersey's chemical, pharmaceutical, consumer packaged goods, petroleum, flavor & fragrances, and precious metals industries. As stated in our previous comment

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letters, CCNJ member companies are committed to conducting operations in a sustainable and environmentally responsible manner. For years, our members have been reducing their GHG emissions on a voluntary basis by investing in energy efficiency and renewable energy.

At the same time, we are focused on pursuing business goals that add to New Jersey's economic recovery. With 96 percent of all manufactured goods directly touched by chemistry, New Jersey's economy is dependent on the products created by the members of CCNJ; this was made even more evident during the COVID-19 health emergency. CCNJ and its members support the global goal of achieving meaningful GHG emissions reduction in a cost-effective way, which includes ensuring that all fuels and technologies can compete to achieve emissions reduction in the most technologically, economically, and logistically efficient manner. We strongly believe that ignoring cost and practicality can impair emissions reduction while imposing significant costs to the citizens and business interests in New Jersey.

Overall, CCNJ does not see significant GHG emissions reduction or benefits to public health and the environment in this rule proposal. Again, as stated in our March 2020 letter, the NJDEP has acknowledged that most of New Jersey's air pollution, including GHGs, comes from mobile and out-of-state sources; as such, this rulemaking will be ineffective in accomplishing material GHG reductions due to the mobile and trans-border characteristics of GHGs and their impacts. When you evaluate the data, which shows that emissions from major facilities are decreasing because of economic drivers, better controls/pollution prevention, and process improvements, it is clear that the point sources in New Jersey that are the subject of this proposed regulation are not the problem. Despite these realities, this rule proposal will create material new costs for New Jersey businesses and citizens, as well as business uncertainty and compliance risk for the regulated community, with little or no GHG and climate change benefit in return. The NJDEP is embarking in numerous regulatory proposals as part of the New Jersey Protecting Against Climate Threats (NJPACT) initiative. Department and corporate funds spent and resources used to implement requirements from this proposal that result in little environmental benefit would not be available to implement other programs.

Regulation of CO₂

CCNJ is deeply concerned about the NJDEP's proposal to define CO₂ an air contaminant. The elimination of rule language under N.J.A.C. 7:27-1 will result in what we assume to be unintended consequences. In order to prevent immediate non-compliance, we strongly recommend that the NJDEP leave the following provisions intact with one addition to clarify that the treatment of CO₂ as an air contaminant only pertains to the requirements of N.J.A.C. 7:27-21 and N.J.A.C. 7:27F. Otherwise, we believe that thousands of businesses, schools, hospitals, apartment buildings, hotels, and other facilities in New Jersey will be immediately out of compliance upon the effective date of the adopted rule for not having Title V/preconstruction air permits and emission limits in permits for CO₂. These "absurd results" are precisely what led the United States Environmental Protection Agency (USEPA) to create the "Tailoring Rule" under its Clean Air Act regulations (i.e. to prevent triggering air pollution control requirements, New Source Review, and Title V air permitting for facilities and emission sources with emissions over 100 tons/year of CO₂). Neither the NJDEP nor the USEPA intended the 100 tons/year trigger level to apply to a pollutant like CO₂ that is emitted at levels that are orders of magnitude higher than levels of criteria pollutants. In fact, the USEPA ultimately set a major source threshold of 25,000 tons/year for CO₂. Absent more realistic CO₂ emission triggers, New Jersey cannot proceed with the proposed changes to the N.J.A.C. 7:27-1 definition of "air contaminant" without creating the "absurd results" outlined above. A simple solution to accomplish the regulation of CO₂ as an air contaminant would be to retain the existing definition of "air contaminant" with one simple change (highlighted

below):

“... actual emissions of CO₂ or potential emissions of CO₂...is not a basis for any of the following under this chapter:

1. A requirement to include in a permit application information about CO₂ emissions;
2. A requirement to obtain a permit under N.J.A.C. 7:27-8 or -22;
3. A limitation on CO₂ emissions in a permit;
4. A requirement for state-of-the-art analysis with respect to the control of CO₂ emissions;
5. A fee;
6. A facility being considered a “major facility”;
7. An item of equipment or a source operation being considered a “significant source”; or
8. The applicability of any other requirement under this chapter, other than the requirements of N.J.A.C. 7:27-21 and N.J.A.C. 7:27F.”

Electric Generating Units (EGUs)

CCNJ appreciates the NJDEP’s EGU size limitation of 25 megawatts (MW) or greater for a single unit or aggregate capacity of units since this approach aligns with the current Regional Greenhouse Gas Initiative (RGGI) applicability to regulated sources. However, as previously recommended in our October 18, 2020 comments, we urge the NJDEP to exclude/exempt larger “inside the fence” power plants that sell less than a certain percentage (e.g. 25%) of their power to the grid. In addition, CCNJ strongly recommends that EGUs located at critical infrastructure manufacturing facilities also be exempt as these units are part of disaster recovery plans.

Boilers

The NJDEP’s proposed approach to regulate fossil fuel boilers is unnecessary and far-reaching. One of the points made in our October 2020 letter that we would like to reiterate is the fact that the market-driven switch to natural gas has netted New Jersey significant GHG reductions over the last 10 years, and there is no reason to believe this will not continue through future boiler replacements. Presently, natural gas boilers emit less GHGs than the average emissions associated with the equivalent amount of electricity from the PJM grid. We are not at a point where requiring electric boilers will result in a net reduction in GHG emissions, and no one knows when that crossover point will come. The proposed rule will create expense, investment uncertainty, and compliance risk for a broad range of businesses, schools, apartment complexes, and other important parts of New Jersey’s economy. With that additional stress, more good employers and good corporate citizens will leave the state. Is that risk worth it when there are no emissions reductions to show for it?

In addition to the proposed requirements for boiler electrification, CCNJ is also very concerned about the uncertainty with future permitting, economic feasibility, and the ultimate direction the NJDEP is headed with boiler fleet reporting.

We do agree with the NJDEP not specifying the types of fossil fuel-free heating mechanisms that would qualify as non-fossil-fuel-fired technology since there are other options available beyond electrification, such as use of hydrogen fuel. In order to provide even more flexibility, if the NJDEP decides to move forward with this portion of the rule proposal, CCNJ recommends that new and emerging technologies such as carbon capture/sequestration be included in the rulemaking framework as well.

Many CCNJ members have made aggressive carbon commitments and are actively reducing their GHG emissions in ways that are sustainable for their businesses and that go far beyond what the NJDEP's boiler electrification framework would create. The NJDEP should recognize and endorse these corporate carbon commitments rather than layer on ineffective measures that draw investment away from higher potential emissions reduction strategies. As it relates to this rulemaking effort if it were to proceed as proposed, we believe that there should be some sort of consideration (e.g. equivalence) for facilities that have already taken the initiative and made significant strides to reduce their CO₂ emissions as it does not seem fair that they be penalized with mandatory expenses that do not reduce emissions.

Nos. 4 & 6 Fuel Oils

Though CCNJ appreciates the exemption for ocean-going vessels, we are concerned with the NJDEP's outright ban on Nos. 4 and 6 fuel oils, which are a byproduct of refinery operations. Given the fact that storage of these heavy oils results in inherently minimal emissions and regulations would permit storage of Nos. 4 and 6 fuel oils for sale for marine consumption, we recommend that a provision be included that allows for storage and use outside of New Jersey, and for sale and use within New Jersey for non-combustion uses (e.g. raw material feedstock).

We would like the record to reflect our support of any comments submitted by CCNJ member companies.

Thank you for your consideration of our comments on this very important rulemaking effort. Together, we believe we can work collaboratively to both be protective and allow businesses to continue to operate in the state and provide benefits to the citizens of New Jersey. If I can be of further assistance, please let me know.

Sincerely,



Dennis Hart
Executive Director