



December 16, 2016

U.S. Environmental Protection Agency
Attention Docket ID No. EPA-HQ-OAR-2015-0355
EPA Docket Center, U.S. EPA, Mailcode: 28221T
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: Revisions to the Prevention of Significant Deterioration (PSD) and Title V Greenhouse Gas (GHG) Permitting Regulations and Establishment of a Significant Emission Rate (SER) for GHG Emissions Under the PSD Program, Proposed Rule, Docket ID No. EPA-HQ-OAR-2015-0355, 81 Fed. Reg. 68,110 (October 3, 2016)

Dear Sir or Madam:

The American Chemistry Council, American Coke and Coal Chemicals Institute, American Iron and Steel Institute, American Petroleum Institute, Council of Industrial Boiler Owners, Electricity Consumers Resource Council, National Association of Manufacturers, National Oilseed Processors Association, The Fertilizer Institute, and U.S. Chamber of Commerce (collectively, “the Associations”)¹ appreciate the opportunity to submit the following comments on the Environmental Protection Agency’s (“EPA’s”) proposed Revisions to the Prevention of Significant Deterioration (PSD) and Title V Greenhouse Gas (GHG) Permitting Regulations and Establishment of a Significant Emission Rate (SER) for GHG Emissions Under the PSD Program, Docket ID No. EPA-HQ-OAR-2015-0355, 81 Fed. Reg. 68,110 (Oct. 3, 2016) (“proposed SER rule”).

The Associations represent the nation’s leading energy and manufacturing sectors that form the backbone of the nation’s industrial ability to grow our economy and provide jobs in an environmentally sustainable and energy efficient manner. Significantly, the Associations both represent and are reliant upon power plants and other industrial stationary sources which may be regulated under the Clean Air Act’s Prevention of Significant Deterioration (“PSD”) permitting requirements for greenhouse gas (“GHG”) emissions and, thus, may be directly impacted by the

¹ A description of each Association is included in Appendix A.

proposed rule. Many of the Associations were among the petitioners that challenged EPA's Tailoring Rule, leading to the Supreme Court's decision in *Utility Air Regulatory Group* ("UARG") v. EPA, 134 S. Ct. 2427 (2014) that invalidated a portion of EPA's prior regulations for GHG emissions under the PSD program. Thus, the Associations are keenly interested in this proposal which responds to and seeks to implement the Supreme Court's decision.

Many of the Associations represent companies that are energy-intensive and trade-exposed ("EITE") and especially concerned with how GHG PSD regulations would adversely affect their competitiveness and viability. EITE companies are already subject to intense competition and pricing pressure from international manufacturers. The additional cost and permitting risk associated with the proposed GHG PSD regulations would place U.S. EITE companies at a significant disadvantage relative to their international counterparts, thereby risking U.S. manufacturing competitiveness and American jobs. Further, if rising compliance costs and permitting uncertainty causes U.S. manufacturers to construct or relocate their operations in other countries which do not have comparable GHG or environmental regulations, the net effect would be an increase in global GHG emissions, also known as "carbon leakage." U.S. manufacturers have been very successful in decreasing their GHG emissions while producing world-class efficiency and productivity levels. Placing additional GHG PSD burdens on U.S. EITE companies would not only reduce their competitiveness and risk American jobs, but also would likely result in increased global GHG emissions and exporting of higher levels of pollution to countries without comparable levels of environmental regulations.

At the outset, the Associations recognize that the incoming Administration has signaled an intent to review and, in some cases, reconsider existing and pending EPA regulations. Without waiving any rights that the Associations may have with respect to actions taken by the next Administration, to the extent that EPA continues to implement the GHG BACT requirements, the Associations support EPA's proposal to fully implement the Supreme Court's decision in *UARG* and eliminate all regulatory provisions that would require a stationary source to obtain a PSD or Title V permit based solely on the basis of its GHG emissions.

In addition, the Associations support EPA's proposal to establish a significant emission rate ("SER") for GHG emissions under the PSD permitting program based on the conclusion that GHG emissions below this threshold would be *de minimis*. If PSD permitting requirements are triggered for any pollutant as a result of new construction or a modification of an existing source, the permit applicant must conduct a best available control technology ("BACT") analysis for a pollutant if emissions will exceed the SER. If there is no SER for a given pollutant, a PSD BACT analysis is required for any increase in emissions. Thus, establishing an SER will provide some measure of regulatory relief for a stationary source whose emissions fall below the SER.

In the absence of an SER for GHGs, virtually any project subject to PSD permitting requirements could be required to conduct a BACT analysis for GHG emissions. EPA's legal authority to establish such *de minimis* SER thresholds under the Clean Air Act is well-established when the administrative and economic burdens associated with permitting are not justified by the trivial emissions reductions from sources that emit below the *de minimis* threshold. Thus, there is no legal barrier to establishing an appropriate SER for GHG emissions.

At the same time, however, the Associations have a number of concerns with EPA's proposal that should be addressed in the final rule. First, carbon capture and storage ("CCS") is not a commercially viable emission control for stationary sources and under no circumstances should it be used to establish a *de minimis* threshold. Second, EPA has unreasonably limited the potential range of *de minimis* thresholds by only considering values capped at 75,000 tons per year ("tpy"). EPA should consider broader comments on the proposed SER rule and establish a *de minimis* threshold above 75,000 tpy. Third, EPA should not establish a *de minimis* threshold below 75,000 tpy. Potential GHG emission reductions for such sources are trivial and cannot be justified in light of the administrative and economic burdens associated with the PSD BACT analysis.

Background

In 2009, EPA began the process of regulating GHGs under the Clean Air Act by publishing an endangerment determination that GHG emissions from new motor vehicles cause or contribute to the endangerment of public health and welfare. 74 Fed. Reg. at 66,496 (Dec. 15, 2009). Following the endangerment determination, EPA issued final standards for GHG emissions from light duty vehicles. 75 Fed. Reg. 25,324 (May 7, 2010). In 2010, EPA also issued the "Triggering Rule" in which EPA concluded that issuance of final standards for GHG emissions from light duty vehicles would trigger stationary source permitting requirements for GHG emissions under the PSD and Title V permitting programs. 75 Fed. Reg. 17,004 (Apr. 2, 2010).

Finally, in 2010, EPA issued the "Tailoring Rule" which addressed the regulation of GHG emissions from stationary sources under the PSD and Title V permitting programs. In that rule, EPA concluded that applying the Clean Air Act's default emissions thresholds to GHG emissions under the PSD and Title V permitting programs would dramatically expand those permitting programs and create significant administrative burdens on permitting agencies and on regulated industries. Applying several administrative law doctrines, EPA established new, higher GHG emissions thresholds of 75,000 and 100,000 tpy for triggering PSD and Title V permitting requirements for GHG emissions.

EPA implemented the Tailoring Rule thresholds over several steps. In the first step, stationary sources were only required to conduct a best available control technology ("BACT") analysis for GHG emissions if they were "anyway sources" that triggered PSD and Title V permitting requirements for emissions of other pollutants. In the second step, stationary sources were required to conduct a BACT analysis for GHG emissions for any source whose GHG emissions exceeded the Tailoring Rule thresholds, even if they did not trigger PSD and Title V permitting for any other pollutant. The Tailoring Rule was subsequently challenged by several petitioners.

In *UARG v. EPA*, the Supreme Court struck down parts of the Tailoring Rule. Specifically, the Court held that EPA could not interpret the Clean Air Act to require a stationary source to obtain a PSD or Title V permit based solely on the source's potential to emit GHGs. After concluding that the Clean Air Act's reference to "any air pollutant" did not compel EPA to require PSD and Title V permits based solely on a source's GHG emissions, the Court held that EPA's interpretation was "unreasonable because it would bring about an enormous and

transformative expansion of EPA’s regulatory authority without a clear congressional authorization. *UARG*, 134 S. Ct. at 2444. The Court went on to explain that “[w]hen an agency claims to discover in a long-extant statute an unheralded power to regulate ‘a significant portion of the American economy,’ ... we typically greet its announcement with a measure of skepticism.” *Id.* (internal quotation omitted). The Court also held that EPA could not rely on administrative law principles to limit the effect of its otherwise impermissible interpretation of the PSD and Title V permitting provisions. *Id.* at 244-46. The Court did, however, uphold EPA’s requirement that “anyway sources” conduct a BACT analysis for GHG emissions if they triggered PSD and Title V permitting requirements due to emissions of other pollutants. *Id.* at 2449. Finally, the Court held that EPA could establish emissions thresholds for excluding GHG emissions in BACT analysis based on *de minimis* grounds, but found that the thresholds established by EPA in the Tailoring Rule were not based on proper grounds. *Id.*

In response to *UARG*, the D.C. Circuit issued an amended judgment to implement the Supreme Court’s decision. Specifically, the court vacated the Tailoring Rule to the extent that it required stationary sources to obtain PSD and Title V permits based solely on their emissions of (or potential to emit) GHGs. The court also directed EPA to consider whether further revisions to the Tailoring Rule were appropriate in light of the Supreme Court’s decision in *UARG*. EPA subsequently issued a direct final rule that eliminated some portions of the Tailoring Rule that required stationary sources to obtain PSD permits based solely on their GHG emissions. EPA also issued a memorandum stating that it would undertake an additional rulemaking to further revise the PSD and Title V permitting requirements in light of *UARG* and would establish GHG emissions thresholds based on *de minimis* principles. This proposed rule is intended to complete that action.

I. The Associations Support EPA’s Proposal to Revise the PSD and Title V Permitting Regulations to Fully Implement the Supreme Court’s Decision in *UARG v. EPA*.

In the proposed SER rule, EPA states that it is making changes to the existing PSD and Title V permitting regulations to “conform those regulations with the U.S. Supreme Court’s decision in *UARG v. EPA*...” 81 Fed. Reg. at 68,111. The Associations support those changes and, to the extent EPA continues to include GHGs in the PSD program, urge EPA to implement them as soon as possible.

The Supreme Court’s decision in *UARG* represents an important limitation on EPA’s authority to regulate GHG emissions under the Clean Air Act and provides important protections to stationary sources that emit GHGs, but do not have significant emissions of pollutants otherwise regulated under the PSD and Title V permitting program. However, while EPA and the states have conformed their regulatory activities to the Supreme Court’s decision in *UARG*, and EPA has taken some action to rescind the unlawful portions of the Tailoring Rule, it is imperative that EPA’s regulations are revised in a manner that fully implements the Supreme Court’s decision and provides regulatory certainty to sources that might otherwise be subject to PSD and Title V permitting obligations on the sole basis of their GHG emissions. Finalizing these regulatory changes and providing certainty to the stationary sources must be a top priority of EPA’s regulatory agenda.

II. EPA Has Authority Under the Clean Air Act to Establish a *De Minimis* Threshold for GHG Emissions Under the PSD Program.

As EPA appropriately recognizes in the proposed SER rule, the agency has inherent authority under the Clean Air Act to establish *de minimis* emissions thresholds below which a source's emissions of a given pollutant need not be regulated. EPA has a long history of applying this *de minimis* principle under the PSD program by establishing SERs for regulated pollutants to ensure that stationary sources are not required to undergo costly BACT analyses that will not result in meaningful emissions reductions. It is imperative that EPA develop such a *de minimis* threshold for GHG emissions.

GHG emissions are emitted by a large number of stationary sources in the United States and, without regulatory relief in the form of a *de minimis* threshold, virtually any major source subject to PSD permitting would be required to conduct a GHG BACT analysis for any increase in GHG emissions. Such an outcome would be contrary to Congress' intent and would fail to produce meaningful emissions reductions in many cases.

EPA's authority to exclude *de minimis* emissions from regulation under the Clean Air Act is well-established and non-controversial. The Supreme Court recognized this fact in *UARG* and explicitly stated that EPA could establish a *de minimis* threshold for GHG emissions if based on "proper grounds." *UARG*, 134 S. Ct. at 2449. In supporting EPA's authority to exclude *de minimis* emissions, the Court referenced the D.C. Circuit's decision in *Alabama Power Co. v. EPA*, 636 F.2d 323 (D.C. Cir. 1979), another case addressing emissions under the PSD program.

In *Alabama Power*, the court explained that "the law does not concern itself with trifling matters," and stated that "[c]ourts should be reluctant to apply the literal terms of a statute to mandate pointless expenditures of effort. *Id.* at 360. "Unless Congress has been extraordinarily rigid, there is likely a basis for an implication of *de minimis* authority to provide exemption when the burdens of regulation yield a gain of trivial or no value." *Id.* at 360-61. Importantly, the D.C. Circuit also recognized that it was appropriate for EPA to consider "severe administrative burdens on EPA, as well as severe economic burdens on the construction of new facilities" when establishing *de minimis* thresholds. *Id.* at 405. Thus, it is clear that EPA has inherent authority under the Clean Air Act to exclude from regulation certain emissions sources when the gains from regulation are trivial in comparison to the administrative burdens on the regulating agency and the economic burdens imposed on the stationary source.

Equally important, the *Alabama Power* court found that EPA had authority to impose *de minimis* thresholds under the PSD program at issue here. The court recognized that the text of the Clean Air Act directed permitting agencies to conduct a PSD BACT analysis for each pollutant subject to regulation under the Clean Air Act once PSD permitting requirements were triggered at the stationary source. *Id.* at 405. The court held that EPA could establish *de minimis* thresholds below which PSD BACT was not required based on "the specific administrative burdens and specific regulatory context" that the agency faced. *Id.* EPA responded by establishing SERs for many of the pollutants that are subject to regulation under the PSD program. *See* 40 C.F.R. §§ 51.166(b)(23), 52.21(b)(23). These SERs appropriately limit the pollutants for which a source must conduct PSD BACT analyses once the PSD permitting requirements are triggered.

While these past examples provide important legal precedent for EPA to establish *de minimis* thresholds for GHG emissions under the PSD permitting program, it is also important to recognize the unique issues posed by GHG emissions. As the court in *Alabama Power* noted, the appropriate *de minimis* threshold “should vary depending on the specific pollutant and the danger posed by increases in its emission.” *Alabama Power*, 636 F.3d at 405. As EPA noted in the proposed SER rule, GHGs are fundamentally different from other pollutants because they are emitted in much larger quantities from a wide array of stationary sources. Further, they do not pose the same threat to public health and the environment as criteria pollutants and hazardous air pollutants for which EPA has previously established SERs. Thus, while those SERs establish important legal precedent for EPA’s authority to establish *de minimis* thresholds under the PSD program, they are of little value in determining what an appropriate *de minimis* threshold for GHG emissions should be. As described below, the *de minimis* threshold for GHGs should be much higher than those previously established by EPA for criteria and hazardous air pollutants.

III. Carbon Capture and Storage Is Not an Appropriate Control Technology for GHG Emissions and Should Not Be Used to Establish a *De Minimis* Threshold.

As EPA works to finalize the SER rule, it is imperative that the agency exclude CCS as a potential control option when determining whether conducting a PSD BACT analysis would yield trivial or no emissions reductions. CCS is not a commercially viable control technology as a practical matter and, thus, is not applicable to the development of a *de minimis* threshold for GHG emissions. Therefore, the Associations support EPA’s proposal to base the *de minimis* threshold on potential efficiency improvements at stationary sources and urge EPA to exclude CCS when issuing a final SER for GHG emissions.

At the outset, the Associations oppose EPA’s assertion in the proposed SER rule that CCS is a viable GHG control technology for any stationary sources under the PSD program. In the proposed SER rule, EPA erroneously asserts that CCS may be a viable BACT candidate for certain large CO₂ emission sources that exceed EPA’s proposed 75,000 tpy *de minimis* threshold. 81 Fed. Reg. at 68,135. That assertion is apparently based on EPA’s new source performance standards for GHG emissions from new coal-fired power plants, which are based on partial CCS. *Id.*

Several of the Associations have challenged those new source performance standards on the basis that even partial CCS is not an economically viable emission control strategy for GHG emissions and, thus, cannot be the “best system of emission reduction” for GHG emissions from new coal-fired power plants. *See* Opening Brief of Non-State Petitioners, *North Dakota et al. v. EPA*, Case No. 15-1381 (D.C. Cir. Oct. 13, 2016), ECF No. 1640984. The Associations incorporate those arguments herein by reference, and nothing in these comments is intended to waive any argument that the Associations have or will raise in that case. Thus, regardless of the *de minimis* threshold that EPA ultimately adopts in this rulemaking, it would be wholly inappropriate for EPA to consider emissions reductions that may be theoretically possible using CCS as a basis to set that level.

Further, even if EPA were correct that CCS may be available in some limited circumstances to a small subset of large GHG emitters, there is no basis to rely on CCS when setting a *de minimis* threshold. As EPA appropriately acknowledges, CCS technologies are not

“technically feasible or economically achievable for lower emitting stationary sources.” 81 Fed. Reg. at 68,135. Sources that emit GHG emissions at the 75,000-tpy level proposed by EPA (and even at much higher levels) are relatively small in comparison to the coal-fired power plants at issue in *North Dakota v. EPA*. Thus, even if a stationary source were located in an area where CCS was potentially available, the costs of installing CCS would be so disproportionate that CCS would fail under any BACT analysis for a source that may be a candidate for a *de minimis* exemption. Thus, EPA should continue to exclude CCS when establishing a *de minimis* threshold.

IV. EPA Should Establish a *De Minimis* Threshold that Exceeds 75,000 tpy of GHGs.

In the proposed SER rule, EPA impermissibly limits the potential *de minimis* thresholds to a range from 30,000 to 75,000 tpy and states that it is not considering an SER level outside of that range. 81 Fed. Reg. at 68,113. It is arbitrary for EPA to prejudge the outcome of this rulemaking and refuse to entertain comments that may support a higher *de minimis* threshold. Instead, EPA must consider the full range of potential *de minimis* thresholds—including those above 75,000 tpy—and select a final value based on all comments received. As described below, there is ample evidence to justify a threshold that is higher than 75,000 tpy.

First, nothing in the Supreme Court’s decision in *UARG* established 75,000 tpy as a ceiling on potential *de minimis* thresholds. Instead, the Court merely instructed EPA to justify its selection “on proper grounds.” *UARG*, 134 S. Ct. at 2449. While those “proper grounds” involve a substantive evaluation of potential thresholds, they also encompass the procedural requirements embodied in the Administrative Procedure Act. EPA cannot fulfill those procedural obligations if it prejudges the outcome of the rulemaking by only accepting and considering comments on a small range of alternative thresholds.

Instead, EPA must carefully consider all comments received in response to the proposed SER rule, including those that advocate for a threshold that exceeds 75,000 tpy. To the extent that such comments are justified and have a sound factual basis, EPA must consider establishing a final SER for GHG emissions that exceeds 75,000 tpy.

Second, while EPA relies in part on previously issued PSD permits when selecting the proposed range of *de minimis* thresholds, there is no indication that EPA actively solicited any information about permitting burden or potential emissions reductions from the regulated community. As a result, these comments represent the first opportunity for many affected industries to provide information to EPA that may be relevant to selecting an appropriate *de minimis* threshold. That information may well support a higher threshold under EPA’s proposed criteria. In the absence of information from such a critical set of stakeholders, it would be arbitrary and capricious for EPA to limit the potential range of SER values and refuse to consider comments on GHG emissions thresholds that fall outside of that range.

In past comments, several of the Associations have advocated for a *de minimis* threshold that exceeds 75,000 tpy. In addition, in comments on the proposed Step 3 of the Tailoring Rule, submitted on April 20, 2012, the Associations stressed that significantly increased PSD thresholds would lead to a tighter “fit” between PSD regulation of facilities based on emissions of criteria pollutants and GHG emissions, reconciling EPA’s interests in ameliorating climate

change with the goals of minimizing unnecessary permitting burdens on industry and state agencies. Other commenters have suggested that a GHG SER should be higher than 75,000 tpy as well. *See* Comment from Carbo Ceramics, Docket ID No. EPA-HQ-OAR-2009-0517-5077 (Dec. 28, 2009) (250,000-tpy threshold would mostly capture sources already subject to PSD permitting for criteria pollutants); Comment from Ameren Corporation, Docket ID No. EPA-HQ-OAR-2009-0517-5082 (Dec. 28, 2009) (250,000-tpy threshold would match the potential to emit CO₂ emissions of a 250 MMBtu/hr boiler).

Further, even facilities with CO₂ emissions over 250,000 tpy would, in some cases, be minor sources for other PSD pollutants and, thus, be permitted by states as minor sources. For example, a 600 million MMBtu/hr aggregate total combustion capacity natural gas-fired process heater with low-NO_x burners could emit 0.015 lb/MMBtu NO_x, equal to 39.4 tons NO_x, which is below the 40-tpy SER for NO_x under the PSD program. Using the U.S. Energy Information Administration's natural gas CO₂ emissions factor of 117 lb CO₂/MMBtu² would lead to an emissions estimate of 307,476 tpy CO₂, which clearly exceeds a *de minimis* threshold of 75,000 tons per year.³

These examples demonstrate that there is ample information available to support a *de minimis* threshold higher than 75,000 tpy. Rather than arbitrarily limiting the range of comments that it is accepting on the proposed SER Rule, EPA must carefully consider all comments—including those that advocate for a higher threshold. Thus, although EPA is proposing to set the *de minimis* threshold at 75,000 tpy, the Associations urge EPA to consider all evidence provided in these and other comments on the proposed SER rule. The Associations believe that fair consideration of the information received through comments in this and prior, related rulemakings should result in EPA establishing a threshold that is substantially higher than 75,000 tpy.

V. EPA Should Not Establish a *De Minimis* Threshold Below 75,000 tpy.

Finally, under no circumstances should EPA adopt a *de minimis* threshold below 75,000 tpy. As EPA recognizes in the proposed SER rule, the purpose of a *de minimis* threshold is to avoid imposing regulatory obligations that will not produce meaningful emissions reductions. The Associations support EPA's conclusion that meaningful GHG emissions reductions cannot be obtained from stationary sources that emit less than 75,000 tpy.

First, as EPA notes in the proposed SER rule, the vast majority of GHG emissions from stationary sources come from sources that emit far in excess of 75,000 tpy. In fact, all of the major source categories identified by EPA exceed this threshold. Thus, adopting a lower *de minimis* threshold would not have a meaningful impact on GHG emissions from stationary sources as a whole. Instead, it has the potential to dramatically increase the number of stationary sources that are subject to PSD BACT without providing significant incremental gains in

² *See* U.S. EIA, Frequently Asked Questions: How much carbon dioxide is produced when different fuels are burned?, available at <https://www.eia.gov/tools/faqs/faq.cfm?id=73&t=11>.

³ In addition, the Associations are aware of other commenters on the proposed SER rule who are presenting grounds to establish an SER threshold in excess of 300,000 tpy.

emission reductions. Under the circumstances, a lower *de minimis* threshold does not meet the criteria outlined in *Alabama Power* and adopted by EPA in the proposed SER rule.

Second, as EPA explained in the proposed SER rule, sources that emit less than 75,000 tpy of GHGs have limited opportunities to reduce emissions because, for all sources subject to PSD BACT, efficiency improvements are the primary—if not only—means of reducing GHG emissions.⁴ For some large sources, it may be possible to customize a source in a manner that reduces net GHG emissions in response to a BACT analysis. However, for small projects with lower capital costs and fewer GHG emissions, such customization is not possible. Instead, these sources typically rely on off-the-shelf technology that cannot be easily customized in order to reduce GHG emissions. Further, even if such customization were possible, it would, in most cases, be cost prohibitive for small, lower cost projects. Requiring such sources to install customized equipment designed to reduce GHG emissions likely would result in cancellation of the projects on economic grounds. That is not the purpose of the PSD program. Thus, even if a BACT analysis were required for sources emitting less than 75,000 tpy of GHGs, the outcome would produce few, if any, emissions reductions.

Third, as the size of stationary sources decreases and the opportunities for emissions reductions are diminished, the administrative and economic costs associated with a PSD BACT analysis increase dramatically in comparison to the expected emissions reductions. *Alabama Power* confirms that such costs are relevant to EPA's analysis and, at some point, the incremental benefits associated with the PSD BACT analysis cannot justify the costs imposed on permitting agencies and regulated entities. While the Associations have serious concerns about the administrative and economic burdens associated with requiring PSD BACT at levels at or even above 75,000 tpy of GHG emissions, we agree with EPA that those burdens are excessive when GHG emissions fall below 75,000 tpy. Thus, the Associations support EPA's conclusion that a *de minimis* threshold below 75,000 tpy is not warranted.

CONCLUSION

For the reasons described above, and subject to the caveats aforementioned, the Associations support EPA's proposal to fully implement the Supreme Court's decision in *UARG* and to establish *de minimis* thresholds for GHG emissions under the PSD and Title V programs. We further urge EPA to consider carefully the comments and other information provided by members of the regulated community when adopting a final SER value for GHG emissions.

⁴ In evaluating the potential emissions reductions that could be obtained through a BACT analysis, it is imperative that EPA consider both the technological and economic feasibility of potential emission reduction technologies. In some cases, emissions controls that are technically feasible may prove economically infeasible, particularly for smaller facilities. For example, for many nitric acid plants, efficiency improvements and leak detection and repair may constitute BACT because other control options such as secondary or tertiary abatement will prove economically infeasible in practice. If EPA fails to properly account for economic feasibility in this rulemaking, it could potentially impose PSD permitting obligations on sources that could only achieve trivial emissions reductions if a proper case-by-case BACT analysis was conducted.

Respectfully submitted,

American Chemistry Council

American Coke and Coal Chemicals Institute

American Iron and Steel Institute

American Petroleum Institute

Council of Industrial Boiler Owners

Electricity Consumers Resource Council

National Association of Manufacturers

National Oilseed Processors Association

The Fertilizer Institute

U.S. Chamber of Commerce

Appendix A

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 an \$812 billion enterprise and a key element of the nation's economy.

The **American Coke and Coal Chemicals Institute** (ACCCI), which was founded in 1944, is the international trade association that represents 100% of the U.S. producers of metallurgical coke used for iron and steelmaking, and 100% of the nation’s producers of coal chemicals, who combined have operations in 12 states. It also represents chemical processors, metallurgical coal producers, coal and coke sales agents, and suppliers of equipment, goods and services to the industry.

The **American Iron and Steel Institute** (AISI) serves as the voice of the North American steel industry in the public policy arena and advances the case for steel in the marketplace as the preferred material of choice. AISI also plays a lead role in the development and application of new steels and steelmaking technology. AISI is comprised of 19 member companies, including integrated and electric furnace steelmakers, and approximately 125 associate members who are suppliers to or customers of the steel industry.

The **American Petroleum Institute** (“API”) represents over 630 oil and natural gas companies, leaders of a technology-driven industry that supplies most of America’s energy, supports more than 9.8 million jobs and 8 percent of the U.S. economy, and, since 2000, has invested nearly \$2 trillion in U.S. capital projects to advance all forms of energy, including alternatives. API and its members are dedicated to meeting environmental requirements, while economically developing and supplying energy resources to meet consumer needs.

The **Council of Industrial Boiler Owners** (“CIBO”) is a trade association of industrial boiler owners, architect-engineers, related equipment manufacturers, and University affiliates representing 20 major industrial sectors. CIBO members have facilities in every region of the country and a representative distribution of almost every type of boiler and fuel combination currently in operation. CIBO was formed in 1978 to promote the exchange of information about issues affecting industrial boilers, including energy and environmental equipment, technology, operations, policies, laws and regulations.

The **Electricity Consumers Resource Council** (“ELCON”) is the national association representing large industrial consumers of electricity. ELCON member companies produce a wide range of industrial commodities and consumer goods from virtually every segment of the manufacturing community. ELCON members operate hundreds of major facilities in all regions of the United States. Many ELCON members also cogenerate electricity as a by-product to serving a manufacturing steam requirement.

The **National Association of Manufacturers** (“NAM”) is the largest manufacturing association in the United States, representing small and large manufacturers in every industrial sector and in all 50 states. Manufacturing employs nearly 12 million men and women, contributes more than \$1.8 trillion to the U.S. economy annually, has the largest economic

impact of any major sector and accounts for two-thirds of private-sector research and development. The NAM is the powerful voice of the manufacturing community and the leading advocate for a policy agenda that helps manufacturers compete in the global economy and create jobs across the United States.

The **National Oilseed Processors Association** (NOPA) is a national trade association that represents 13 companies engaged in the production of vegetable meals and vegetable oils from oilseeds, including soybeans. NOPA's member companies process more than 1.6 billion bushels of oilseeds annually at 63 plants in 19 states, including 57 plants which process soybeans.

The Fertilizer Institute (TFI) represents the nation's fertilizer industry including producers, importers, retailers, wholesalers and companies that provide services to the fertilizer industry. TFI's members provide nutrients that nourish the nation's crops, helping to ensure a stable and reliable food supply.

The **U.S. Chamber of Commerce** (the "Chamber") is the world's largest business federation representing the interests of more than 3 million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations. The Chamber is dedicated to promoting, protecting, and defending America's free enterprise system.