

NAM URGES EPA TO DEFER TO LEGISLATIVE PROCESS TO ADDRESS CLIMATE DEBATE

My name is Bryan Brendle, the Director of Energy and Resources Policy for the National Association of Manufacturers, headquartered in Washington, DC. By way of background, the NAM is the nation's largest industrial trade association representing more than 11,000 small, medium and large manufacturers in all industrial sectors and in all 50 states. The NAM is the country's leading voice for the manufacturing sector, which employs several million workers in the U.S.

Thank you for the opportunity to comment on the Environmental Protection Agency's proposal to impose first-time ever greenhouse gas (GHG) emission controls on industrial facilities through the Prevention of Significant Deterioration (PSD) and Title V permitting programs, also known as the EPA's "Tailoring Rule." The NAM has long urged the EPA to defer to Congress when considering establishment of a federal climate policy, especially one that uses the Clean Air Act as a tool with which to regulate emissions from stationary sources. As Congress continues to debate the outlines for a comprehensive federal climate policy, the NAM urges the Administration not to circumvent the ongoing legislative debate on an issue that would impact all sectors of an economy struggling to regain its equilibrium. The NAM opposes regulation of large stationary sources, those emitting more than 25,000 tons per year of carbon equivalent (TPY) as outlined by the tailoring proposal, under the decades-old PSD program. Additionally, manufacturers have serious concerns about the legal foundation on which EPA structures its proposal.

EPA's Strategy Has Legal Flaws, Creates Uncertainty

The EPA is entering uncertain legal territory by proposing to regulate very large facilities at the 25,000 ton per year (TPY) emissions level for GHGs under programs that federal law requires to be regulated at the 100 - 250 TPY level. At the same time, EPA proposes to establish a process by which it will consider ways to regulate even smaller sources, therefore laying the groundwork for even greater expansion of its regulatory power. Furthermore, litigation offers another avenue to regulation of small and mid-sized manufacturers as litigants force EPA to adhere to the requirements of federal law. The CAA does not allow EPA unilaterally to raise the PSD threshold, because the CAA explicitly states that PSD includes "any. . . source with the potential to emit two hundred and fifty tons per year or more of any air pollutant." 42 U.S.C. § 7479(1). To add to the uncertainty, the tailoring proposal also allows states to move forward with more stringent permitting requirements, which would lead to the creation of a patchwork of state regulatory programs, leading to compliance obstacles for what would amount to first-time regulations.

Scope of Proposed Rule

According to EPA, the "tailoring rule" will directly impact approximately 13,000 facilities. The scope is actually greater because sources below the proposed 25,000 TPY threshold will also eventually be covered by the proposed rule. Despite the relatively limited

scope claimed by EPA, unfortunately for manufacturers, the 25,000 TPY threshold requirement and the uncertainty in what will be required to obtain required permits, will result in the inability of the manufacturing industry to plan and expand their operations and facilities and subsequently result in a continued loss of potential revenue, jobs and improvement of the U.S. economy. Such a “one-size fits all” standard will also not take into account impacts on energy markets, to which manufacturers are especially vulnerable. Between 2000 and mid-2008, energy price volatility contributed to the loss of approximately 3.7 million high-wage manufacturing jobs in the U.S. New mandates from EPA, especially establishing permitting requirements on GHG emissions, using programs designed to limit criteria pollutants, will further erode U.S. industrial competitiveness and eliminate jobs by limiting energy sources available to consumers.

New Technology Mandates

Along with lengthier permit processing, EPA would also mandate “Best Available Control Technology (BACT)” on all plants subject to the new requirements. This may mandate controls ranging from increased energy efficiency, co-firing of biomass to generate electricity, fuel switching to natural gas and possibly Carbon Capture and Sequestration technology, which is still being developed for wide-scale commercial viability. Sorting through the definition of “BACT” and imposing technology requirements on a case-by-case basis, as outlined by federal law, will further add to project uncertainty and increase costs to facilities subject to the new rule. The NAM would like to point out that with respect to the Clean Air Act amendments of 1990 and EPA’s implementing programs, the technology necessary to reduce the target pollutants - including the impacts of “acid rain” - already existed and were largely commercially viable.

Conclusion

The Administration must allow elected officials to address the climate change issue through public and transparent debate and craft a comprehensive federal policy that will achieve environmental results while inflicting no economic harm. By resorting to decades old programs under the Clean Air Act, which were designed to reduce emissions of local pollutants rather than more globally distributed concentrations of GHGs, the EPA is not embarking on a course that will adequately address the complex issue of climate change. The U.S. needs a modern, comprehensive and thorough policy based on innovative approaches vetted through the legislative process. The manufacturing sector urges the Administration not to circumvent that process. The NAM looks forward to continuing to work with Congress and President Obama’s Administration to discuss a modern and comprehensive climate policy that will achieve environmental objectives without inflicting harm on an economy attempting to recover and grow again. Thank you for the opportunity to offer input on this very important issue for American manufacturers.