STATE OF CONNECTICUT
DEPARTMENT OF ENVIRONMENTAL PROTECTION

December 28, 2009

Lisa. P. Jackson, Administrator
U.S. Environmental Protection Agency
EPA Docket Center, EPA West (Air Docket)
Mail Code: 2822 T
1200 Pennsylvania Avenue, NW
Washington, DC 20460
Attention: Docket ID No. EPA-HQ-OAR-2009-0517

Re: Proposed Prevention of Significant Deterioration (PSD) and Title V Greenhouse Gas Tailoring Rule: Comments of Connecticut Department of Environmental Protection

Dear Administrator Jackson:

I am pleased to offer the Connecticut Department of Environmental Protection's (CTDEP's) comments on the U.S. Environmental Protection Agency's (EPA's) Notice of Proposed Rulemaking, entitled *Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule* [74 FR 55292-55365 (October 27, 2009)] (hereafter, the "Tailoring Rule"). CTDEP is a state agency devoted to conserving, improving and protecting the natural resources and environment of the State of Connecticut. Climate change is an economic and public health threat to Connecticut's citizens, and CTDEP has initiated a series of programs to mitigate greenhouse gas (GHG) emissions, particularly in the transportation and energy sectors. CTDEP's current mitigation efforts recognize that reducing GHG emissions requires a broad range of policies and programs to maximize the efficient use of energy among all sectors of the economy. With regard to the electric sector, CTDEP spearheaded the development of the Regional Greenhouse Gas Initiative (RGGI), the first program ever to regulate GHG from stationary sources using a market-based system rather than a command-and-control approach. A market-based approach was chosen to allow for innovation and flexibility in meeting the technical challenges posed by directly regulating carbon dioxide.

As a proactive, environmentally conscious agency with over 30 years of experience issuing individual permits for sources of air pollution, CTDEP offers the following comments to supplement comments of the Northeast States for Coordinated Air Use Management (NESCAUM). CTDEP participated with the air quality regulators in the other New England states, New Jersey and New York to prepare the NESCAUM comments, which were submitted in this docket on the states' behalf.

- **GHG metric.** CTDEP encourages EPA to regulate the six GHGs individually on a mass basis rather than collectively using a metric of carbon dioxide equivalency. Regulating each of the six GHGs individually on a mass basis provides a better, more immediate environmental result and is a more appropriate approach under the administrative necessity doctrine.

The administrative necessity doctrine requires an agency to adjust statutory requirements "in a manner that is as refined as possible so that the agency may continue to implement as fully as possible Congressional intent." [Tailoring Rule at 55315.] Since EPA is capable of regulating the five non-carbon dioxide GHG pollutants now and under the Clean Air Act (CAA) "major emitting facility" thresholds of 100 or 250 tons per year [CAA section 169; Tailoring Rule at 55297], the administrative necessity doctrine calls for such regulation over the less refined carbon dioxide equivalency. For example, EPA now regulates methane emitted from landfills as a separate pollutant under 40 CFR 60 Subpart WWW, and methane can now be controlled through existing technologies at levels of less than 100 tons per year. In permitting, regulating each pollutant individually would allow for meaningful technology reviews. For example, many sources emit both methane and carbon dioxide. Oxidation is a feasible control for methane but is not applicable to carbon dioxide control. However, the overall global warming potential of the source could be reduced through the use of oxidation to control methane.

By regulating the GHGs individually, the five pollutants that can now be controlled with existing control technologies and under current CAA thresholds can be addressed without delay or complication. Carbon dioxide, which is emitted in much higher quantities and which does not respond to traditional control techniques, can then receive necessary further attention to develop meaningful controls and regulatory approaches.

- **Presumptive Best Available Control Technology (BACT).** EPA proposes a stepwise process for implementing the administrative necessity doctrine. The first step calls for "streamlining administration as much as legally possible." [Tailoring Rule at 55315.] EPA identifies three tools for streamlining, one of which is establishing presumptive BACT levels for certain source categories. EPA suggests presumptive BACT as a way to eliminate the single most time consuming element of the PSD program, the determination of BACT. However, BACT is a valuable tool because it is determined on a case-by-case basis. Presumptive BACT has the potential to undermine the BACT review concept as it is now applied to sources of the existing regulated NSR pollutants and will reduce the technology forcing element of a BACT review.

  EPA suggests that presumptive BACT will "effectively balance the burdens on both the permitting authorities and the regulated community with the reductions achievable." [Tailoring Rule at 55305.] However, the control technology options for carbon dioxide are currently limited. Thus, the likely outcome, as EPA recognizes, is that states will issue hollow or empty permits that produce no environmental benefit at an administrative cost to the state agencies and the regulated sources. While we understand that EPA views this approach as temporary, that view would not prevent the institutionalization of presumptive BACT.

  Additionally, a presumptive BACT approach may have an unintended consequence of affecting longstanding policies and procedures with respect to the existing regulated NSR pollutants. Rather, EPA should consider strengthening the top-down BACT approach and developing white papers on the control or reduction of carbon dioxide before states are required to incorporate BACT for carbon dioxide into permits. Concurrently, EPA should revisit the existing BACT guidance on evaluating the energy, environmental and

economic impacts of technology reviews to better incorporate energy efficiency as advanced through demand-side management and plant-wide efficiency standards.

As a final matter, CTDEP notes that both its new source review (NSR) and Title V permitting programs are federally approved. However, the definitions of "criteria air pollutant" and "regulated air pollutant" used in Connecticut's NSR and Title V programs do not, upon EPA's action to regulate GHGs, automatically include GHGs. To revise its definitions and correct its State Implementation Plan (SIP) [Tailoring Rule at 55344], CTDEP will need to seek to revise its NSR and Title V program regulations and subsequently prepare and submit a SIP revision. As the regulatory adoption process in Connecticut is long, typically requiring 18 months for a relatively simple proposal, we request that EPA provide adequate time for state regulatory development and SIP revisions.

In summary, we recognize and are encouraged by EPA's efforts to seek a workable balance between the additional administrative burdens and desired environmental benefits encompassed by the Tailoring Rule. As this is new territory for EPA and state permitting authorities, we encourage you to consider the full range of options available to you and to take the necessary time to apply the CAA to greenhouse gases to avoid the unintentional consequences that limit or hinder regulation of the traditional pollutants. If you have any questions regarding the issues raised in this letter, please get in touch with Richard A. Pirolli at 860-424-4152.

Sincerely,

Anne Gobin

Anne R. Gobin, Chief
Bureau of Air Management