STATE OF CONNECTICUT
DEPARTMENT OF ENVIRONMENTAL PROTECTION

July 20, 2010

H. Curtis Spalding
Regional Administrator
U.S. Environmental Protection Agency
5 Post Office Square - Suite 100
Boston, MA 02109-3912

Re: Notification under the Greenhouse Gas Tailoring Rule for the Prevention of Significant Deterioration and Title V Permitting Programs

Dear Mr. Spalding:

Pursuant to *Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule* [75 FR 31514; June 3, 2010; hereinafter, the Tailoring Rule], the Connecticut Department of Environmental Protection (CTDEP) is notifying you of its intention to seek revisions to Connecticut's Title V and new source review (NSR) prevention of significant deterioration (PSD) permit programs to include greenhouse gas (GHG) emissions in the Title V and NSR PSD permit programs at the applicability thresholds defined in the Tailoring Rule.

CTDEP supports EPA's actions to regulate GHGs, and we have every intention of building the necessary infrastructure to incorporate GHG permitting into our EPA-approved criteria air pollution control permitting program. We appreciate that EPA's intention in developing the Tailoring Rule is to prevent states from being required to administer a permit program, as of January 1, 2011, for PSD and Title V for a vast number of small sources, thereby imposing undue costs on small sources and overwhelming state permitting programs. However, EPA's underlying supposition is not accurate with respect to Connecticut because neither our Title V nor our PSD program regulations allow for the automatic regulation of GHGs, and hence CTDEP will not be faced with an overwhelming permitting burden as of January 1, 2011.

To help you understand Connecticut's situation, this letter provides background about Connecticut's regulatory adoption process, describes our intended implementation of the tailoring approach, provides an estimate of the time to complete the regulatory revisions necessary to issue PSD and Title V permits for GHG sources and identifies a permit streamlining technique that we plan to implement to limit the creation of new Title V sources.

To understand our approach to implementing the Tailoring Rule, you must be aware of the Connecticut General Assembly's presumption against prospective incorporation of federal requirements. In Connecticut's regulatory adoption process, the final authority that performs a substantive review and approval of a proposed regulatory amendment or adoption is the Regulation Review Committee, a standing bipartisan committee of the Connecticut General Assembly. The Regulation Review Committee has limited statutory authority, which is

exercised on a voluntary basis,[1] to approve the prospective incorporation by reference of federal regulations. A necessary condition for such an approval is that a federal statute requires that a Connecticut regulation at all times remain identical to that federal statute or regulation. Given that the required identicality condition is not present in this circumstance, CTDEP must seek approval and go through the Connecticut regulatory adoption process to effectuate a regulatory change to address the Tailoring Rule.

CTDEP intends to undertake a regulatory adoption process to revise both Connecticut's Title V and NSR permit programs to incorporate provisions to require permits for GHG sources consistent with the Tailoring Rule. Connecticut's current Title V program regulation defines a Title V source as a source that emits a certain amount of a "regulated air pollutant,"[2] but GHGs are not among the pollutants identified as "regulated air pollutants." CTDEP is thus notifying EPA, as recommended in the Tailoring Rule, that Connecticut's existing regulations do not convey authority to issue Title V permits to GHG sources. CTDEP intends to revise its Title V program regulation to add GHGs to the applicability and other provisions, as necessary to require and allow us to issue permits to sources of GHG emissions consistent with the Tailoring Rule.

Connecticut's NSR PSD program similarly applies to "each criteria air pollutant"[3] and fails to authorize the issuance of PSD permits for sources of GHGs. CTDEP intends to revise the PSD thresholds consistent with the Tailoring Rule and to revise the NSR program to require the application of best available control technology reviews consistent with the Tailoring Rule.

Connecticut's regulatory adoption process is lengthy and involves reviews and approvals from other Connecticut agencies. The typical process takes 14 - 20 months to complete. We estimate that approval for revisions responsive to the Tailoring Rule could be achieved by late summer or early autumn of 2011, based on current resources. It is our intent to make a reasonable effort to expedite these regulations; however, many of the approvals needed are not within our control. We look forward to EPA staff partnering with us to assist in the regulation development process.

In conference calls with EPA staff, we have become aware of EPA's intention to propose a GHG PSD Federal Implementation Plan (FIP) in August 2010 with a final FIP following in December 2010. Presumably, such a FIP would assign responsibility for PSD permit issuance for GHGs emissions consistent with the Tailoring Rule to EPA for states like Connecticut that will not have sufficient PSD programs as of January 1, 2011. I am surprised to learn that the anticipated FIP may reach beyond GHGs to include criteria pollutants. This possibility of the inclusion of criteria pollutants in the FIP would cause undue confusion and disruption in our current permitting processes and require a complete overhaul of our forms and related activities and may require permit applicants to obtain duplicative permits from both EPA and CTDEP. Such a reconfiguration of our programs is particularly ill-timed as we are partly through a Title V and NSR program review designed to reduce permitting timeframes and improve process efficiencies. That efficiency review is mandated by the Connecticut General Assembly in Public Act 10-158. All Connecticut stakeholders would be deeply disappointed to see unnecessary and ill conceived obstacles to the anticipated program improvements and to the efficiencies already

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1 *See* section 4-170(b) of the Connecticut General Statutes, available at: http://www.cga.ct.gov/2009/pub/chap054.htm#Sec4-170.htm

2 As defined in section 22a-174-33(a)(7) of the Regulations of Connecticut State Agencies (RCSA).

3 *See* RCSA section 22a-174-3a(k)(1) and RCSA section 22a-174-1(30).

realized. Should EPA decide to proceed with a FIP, the FIP should focus solely on GHG permitting.

We understand that EPA is interested in streamlining GHG permitting and in state experiences with such efficiencies.[4] To this end, please note CTDEP's intention to use a general permit to reduce the number of new Title V sources that could potentially result from the additions to Connecticut's Title V regulated air pollutant thresholds in response to the Tailoring Rule. CTDEP is including a cap on greenhouse gas emissions of 100,000 tons CO2e in its renewal of the General Permit to Limit Potential to Emit from Major Stationary Sources of Air Pollution (GPLPE). The GPLPE is a practicably enforceable permit designed for facilities with potential emissions of a regulated air pollutant equal to or greater than the Title V thresholds defined in Connecticut's Title V program regulation, but with actual emissions below the thresholds. The current GPLPE is scheduled to expire on February 24, 2011, so we intend to have the reissuance completed by winter of 2010.

Should you or your staff have any questions regarding this submittal, please contact me at 860-424-3026.

Sincerely yours,

Anne Gobin

Anne R. Gobin, Chief
Bureau of Air Management

cc: David Conroy, U.S. EPA, Region 1

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4 *See* the Tailoring Rule at 31586.