INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
We Protect Hoosiers and Our Environment.

Mitchell E. Daniels Jr.
Governor

Thomas W. Easterly
Commissioner

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July 23, 2010

Ms. Susan Hedman
Regional Administrator
U.S. Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3950

Dear Ms. Hedman:

Re: Request for Information Regarding Indiana's Authority to Implement Prevention of Significant Deterioration and Title V Permitting Programs for Greenhouse Gases

As requested, the State of Indiana has prepared this letter to inform the United States Environmental Protection Agency (U.S. EPA) that it intends to apply U.S. EPA's meaning of the term "subject to regulation". Current Indiana rules require regulating greenhouse gases (GHGs) at the existing threshold of 100 or 250 tons. In addition, any increase in GHGs would be significant and subject to more stringent permitting requirements.

To address this regulatory threshold issue, Indiana will need to undertake a rulemaking process to revise state regulations to be consistent with the GHG applicability thresholds and definitions established in the final federal rule. This rulemaking is necessary because Prevention of Significant Deterioration (PSD) and Title V requirements, as currently written, would apply to all stationary sources in Indiana that emit or have the potential to emit more than 100 or 250 tons of GHGs per year.

Indiana is planning to initiate an expedited rulemaking process in order to make the necessary revisions to allow for timely adoption and implementation of U.S. EPA's GHG tailoring approach. An estimate of time needed to undertake a Section 8 Rulemaking, an expedited rulemaking process, is as follows:

- Section 8 Notice published – mid-August 2010
- 30 day comment period end date – mid-September 2010
- Final rule adopted – November 2010
- Rule effective date – March 2011

Indiana also plans to use its emergency rulemaking process as an interim measure to make the GHG regulatory threshold changes effective on January 2, 2011.

The State of Indiana has the legal authority to regulate GHGs as substances determined to be air pollutants that are regulated by U.S. EPA under authority of the Clean Air Act. Specifically, Indiana Code (IC) 13-15-1-1 states that the Air Pollution Control Board (APCB) shall establish requirements for the issuance of permits to control air pollution. Under IC 13-15-2-2(e), the boards (including the APCB) may adopt rules to allow the department to issue permits when the rules adopted are consistent with federal law for federally authorized or delegated permit programs. IC 13-17-3-6 states that the APCB shall adopt rules that are necessary for the implementation of the federal Clean Air Act. There are no prohibitions on regulating GHG emissions in Indiana statutes or rules. The regulation of GHGs is allowed under the definitions of "major stationary source" in 326 IAC 2-2-1(gg), "regulated NSR pollutant" in 326 IAC 2-2-1(uu) and "significant" in 326 IAC 2-2-1(xx).

If you have any questions or need additional information regarding Indiana's planned approach to adopting/implementing U.S. EPA's GHG tailoring rule, please contact me directly at (317) 232-8611 or by e-mail at teasterly@idem.in.gov. Thank you for your consideration of this matter.

Sincerely,

Thomas W. Easterly
Commissioner

TWE/kb/sd/ghf

cc: Bharat Mathur, U.S. EPA Region 5
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