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Attn: DEP Docket Number: 07-21-11
New Jersey Department of Environmental Protection, Office of Legal Affairs
401 East State Street, 7th Floor
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Re: Comments on NJDEP Proposed Amendments and New Rules, Control and Prohibition of Carbon Dioxide Emissions, N.J.A.C. 7:27, 7:27A, 7:27F (DEP Docket Number 07-21-11, Proposal No. PRN 2021-117)

Dear Ms. Previte:

I am submitting these comments on behalf of the New Jersey Business & Industry Association, the nation's largest statewide business association whose members employ approximately one million people in the state of New Jersey. NJBIA members vary in size, from the largest corporations in the world to local Main Street businesses. Our members are both suppliers of energy, such as major utilities, wind and solar providers, as well as the consumers of that energy. As a result, our perspective seeks to balance the broad interests of our membership and seeks to promote the general welfare of the entire business community.

NJBIA is supportive of efforts to decarbonize our economy to the extent practicable and reasonable, taking into consideration the economic impacts on businesses and individuals as well as the need to keep our energy systems both reliable and affordable. We favor a human-centered policy on decarbonization. We recognize the difficulty the Department is facing in trying to propose regulations to meet the goals of the Global Warming Response Act as well as timeframes set forth in various Executive Orders. We appreciate the fact that the Department recognizes the need for the continued use of carbon-based fuels for, at least, the near future (we would argue for the necessity of a longer timeframe). We also appreciate that the Department is seeking a "measured" approach to decarbonization and recognizes the complexity of eliminating what are essentially necessary commodities from the marketplace and the fact that being part of the PJM interconnection makes these efforts all the more complicated. If decarbonization were simple and fossil fuels easy to replace, it would have been done already.

Also, as a general proposition, we support the fact that the Department is taking "first steps" in these efforts and are not heeding the irresponsible calls for bans on natural gas or rapid decarbonization efforts. While this may not be the venue for a detailed critique of many of the underlying supporting documents driving these

efforts (*i.e.* 20/50 Report) we will just note that the science supports our ability to take more time in our decarbonization efforts based on likely vs. unrealistic emission scenarios. This means that we do not need to rush to decarbonize, we do not need to make decisions based on existing technologies alone, and we do not need to lock ourselves into an all-electrification policy. By taking into account the human impacts of our energy policies and our ability to adapt to an ever-changing climate, we should first take measured approaches which are easier to achieve and which do not lock the state into bad energy decisions.

To some extent these proposals follow these cautious principles, and in other respects they seek to go too far, too quickly, without any significant environmental benefit. We will address each of the components of this rule proposal below.

Regulation of CO2 as a Pollutant

While we generally understand why the Department is seeking to make this change, a number of significant consequences were overlooked or ignored. If adopted in its existing form, we believe thousands of businesses, schools, hospitals, apartment buildings, hotels, and other facilities in New Jersey will be immediately out of compliance upon the effective date of the adopted rule for not having Title V/preconstruction air permits and emission limits in permits for CO2. This will only exacerbate over time causing significant impacts to the business community, and to the Department, without any commensurate environmental benefit. The fact that these issues were not addressed in the impact statements shows that the full impacts were not appreciated or understood by the Department. At the least, if our concerns are in error, the Department needs to clarify this proposal upon adoption.

These are precisely what led the U.S. Environmental Protection Agency (USEPA) to create the “Tailoring Rule” under its Clean Air Act regulations (*i.e.* to prevent triggering air pollution control requirements, New Source Review, and Title V air permitting for facilities and emission sources with emissions over 100 tons/year of CO2). Fees will also be astronomical under this proposal, beyond what has ever been contemplated or needed and will likely cause significant economic harm.

Neither the Department nor the USEPA intended the 100 tons/year trigger level to apply to a pollutant like CO2 that is emitted at levels that are orders of magnitude higher than levels of criteria pollutants. In fact, the USEPA ultimately set a major source threshold of 25,000 tons/year for CO2. Absent more realistic CO2 emission triggers, New Jersey cannot proceed with the proposed changes to the N.J.A.C. 7:27-1 definition of “air contaminant” without creating the “absurd results” outlined above.

We agree with our colleagues at the Chemistry Council of New Jersey, as well as other business associations, that the language in the proposal needs to be adjusted on adoption to negate the impacts we outlined above.

Electric Generating Units (EGUs)

NJBIA supports that these rules would allow for the continuation of existing carbon fueled EGUs and for the construction of new carbon based EGUs within a stricter emission scenario that is achievable with existing technologies. NJBIA is supportive of the tiered approach to this rule, which recognizes that not all EGUs should be treated the same and that time is necessary to either come into compliance with the new standards or to allow for replacement power. We also support the offramps provided in the proposal which would allow for the continued operation of these facilities where they are needed for the electrical grid reliability.

Carbon-based fuels account for over 50% of the in-state energy source for electricity generation. Almost all of this is from natural gas with minor amounts still being generated by oil and coal. Thus, eliminating any of these EGUs can have a significant effect on the state's energy system. This is especially true given the fact that the state's electrification policies for transportation and buildings will likely double, if not triple electrical demand, if fully implemented over the next 30 years.

Currently, New Jersey is a net exporter of electricity thanks to the deployment of a number of gas EGUs over the last decade or so. The switch from oil and coal to natural gas, along with our significant use of nuclear power EGUs has allowed New Jersey to greatly reduce its carbon output from the electric generation sector. It is why New Jersey was able to meet its 2020 goals under the Global Warming Response Act.

New Jersey has one of the cleanest electricity generation sectors in the nation and should serve as a national model. If the rest of the nation had our EGU carbon generation standards, the nation would be far advanced in its decarbonization efforts. What this rule seeks to do is squeeze evermore carbon reductions from a very clean energy sector. We are, in a sense, being punished for being so clean to start. The Department needs to be careful in its efforts and should continually analyze if it is acting in the state's best long-term interest.

We support the 25 MW baseline for rule applicability. We also support the fact that the rule does not apply to facilities that largely do not sell their electricity to the grid. We do, however, have a number of concerns with the timelines and we believe that there is a need for further exemptions or offramps.

While we recognize that Tier 1 facilities are the higher emitting facilities, are older, and only account for 3% of the state's generation, setting a compliance deadline of Jan. 1, 2024 seems unfair. In all likelihood, this rule will not be adopted until at least the second half of 2022. That gives these facilities a little over a year to determine if they can or should invest in upgrades or fuel switching or to terminate operations. Given the enormous investments involved, this deadline would create a burden disproportionate to the benefits gained. We believe another year for decision making is warranted.

The Department was correct to acknowledge that a loss of electrical generation capacity in New Jersey will lead to imports from PJM. The carbon intensity of PJM is higher than many of the EGU facilities that will have to upgrade or close under this rule. The Department assumes that the carbon intensity of the PJM grid will continue to improve along the same lines of prior improvements. This may or may not be the case. While recognizing the issue of pulling power from PJM and the concerns of leakage, the Department has not provided an offramp for facilities who emit carbon at lower levels than PJM should the Department's assumptions not materialize. We do not object to setting standards to 2027 or 2035 because they can be changed in future rulemakings and they advise the market of anticipated regulatory requirements. However, it is necessary to have this offramp for the same reasons. The Department should not lock itself into a regulatory policy that results in greater carbon emissions.

Similar to the need for an offramp for PJM carbon emissions, the Department should also have an offramp if in-state "clean" generation does not match the demand. While the Department does allow for exemptions for certain government mandates such as "must run" orders, these exemptions should not be so limited. The PJM may not issue these orders if other out-of-state generators can meet the demand, even if the energy being imported into New Jersey emits more carbon than the EGUs it is replacing. Again, given the electrification policies being promoted, we need to ensure that these policies result in less, not more carbon being emitted. There may also be certain EGUs that should qualify for an exemption due to the essential public benefit they provide and the limited impact of their operation on actual emissions. This may be the case where these facilities provide backup or emergency generation for transportation or safety systems or ensure the continuation of operations of a facility. While the 25 MW standard is based on nameplate capacity, the actual emissions from such facilities may be negligible but their societal benefit can be tremendous. A similar provision is in the boiler section but does not appear for EGUs. We ask that you further explore this potential exemption.

Banning of Numbers 4 and 6 Fuels

The Department recognizes, and we agree, that banning number 4 and 6 fuel oils will achieve very little carbon reduction given their very limited use in New Jersey. However, we have significant concerns with the proposal for several reasons and we request that the Department either not adopt it or make amendments to it upon adoption.

First, we question the Department's legal authority to adopt this rule. We are aware of no specific or implied authority in the "Air Pollution Control Act (1954) which authorizes the Department to simply ban the use of a fuel. The Department has never done so before using this authority and we are not aware of any other state that has taken similar action. The Act clearly allows the Department to set emission standards and require control devices on emitting facilities. It does not allow the Department to simply ban a fuel.

Similarly, while the proposal specifically lists the Global Warming Response Act as particular authority for its proposal, nothing in that Act authorizes this ban. That Act does allow the Department to develop strategies for carbon reduction and make recommendations, which can then be turned into legislative authorization. It does allow the Department to monitor and inventory carbon emissions. However, that Act does not give the Department blanket authority to take actions to limit carbon emissions absent further legislative authorization.

We are concerned about the precedent of this grab of authority, and what it can mean for future actions. Is the Department asserting an authority to ban any fuel at any time in order to limit carbon emissions? Is the Department asserting the authority to ban gasoline? Diesel? Number two fuel oil? Natural gas? The implications of this asserted authority can be tremendous and negates the essential role of the Legislature in such critical policymaking.

On a more practical note, this proposal is problematic because these fuels can be used as feedstock for other non-combustible uses such as in asphalt for road construction. These fuels may also be stored for sale to other states. Given the other uses of these fuels, the Department should clarify that they may be stored so long as they are not intended to be used for combustion in New Jersey.

Boilers

The provisions banning the use of new natural gas boilers is problematic for several reasons and the Department should refrain from adopting these requirements until a later time when the concerns we have are addressed. First, we do not see the environmental benefit of prohibiting natural gas-based generators. Natural gas has been the primary factor in reducing carbon emissions in New Jersey over the last 15 years and it will continue to be a source of clean energy into the future. The Department admits that these boilers currently emit less carbon than the replacement power coming from the PJM grid. Despite this admission, the Department is still seeking to require electric boilers (not specified but the current non-carbon alternative to natural gas). Even under the Department's optimistic projection of carbon emissions from the PJM grid, it will still take at least 10 or more years until the emissions are equal to current gas boiler emission levels.

Essentially what the Department is proposing will result in an increase in carbon emissions from new boilers for at least the next decade based on an assumption that the PJM grid will decarbonize enough to eventually have a net environmental benefit. Has the Department done an analysis of the total anticipated carbon emissions from these boilers given these assumptions and the useful life of the boilers? We would strongly suggest that the Department not adopt these provisions and refrain from proposing them again until the carbon emissions from the PJM grid are less than what would be emitted from these boilers.

We also note that electric boilers are more costly per unit, are more costly to operate, and have a lower useful life. Given these costs and the negative environmental

benefits we do not see how the Department can justify the adoption of these provisions.

If the Department does move forward with this rule, we note that we support limiting the rule to boilers between 1 MBTU and 5 MBTU consistent with existing permitting practices. It would be extraordinarily burdensome to apply this rule to smaller boilers. We are also supportive of the exemptions provided, although we would argue that even if adopted the rule should not take effect until the PJM can match the carbon emissions of the relevant boiler.

Social Cost of Carbon

NJBIA objects to the use of a social cost of carbon analysis as a basis to support the economic or social benefits of this rule. While this analysis may have been used by the Legislature to support a nuclear subsidy in a stand-alone piece of legislation, it did not authorize such a use in the Air Pollution Control Act (1954) nor in the Global Warming Response Act. Further, the social cost of carbon is based on a number of unrealistic assumptions, including unrealistic assumptions of emission projections, and does not in any way reflect the actual costs or benefits to the citizens of New Jersey.

We note, for instance, that of the 37,000 MMT of world carbon emissions, the entire United States emissions are just 6,600 MMT. Of that, New Jersey only accounts for 105 MMT. The New Jersey percentage of US carbon emissions is 1.59% and only 0.28% of world emissions. While these numbers are not being provided as a reason to not reduce carbon emissions in the state, they do reflect the enormous and global nature of the problem. To suggest that there will be a dollar per ton social cost of carbon benefit for carbon reductions in New Jersey is to ignore these facts and to engage in an academic versus real world exercise of costs and benefits. The Administrative Procedure Act does not allow for academic exercises but insists that the Department show the actual costs and benefits of the actions that it is taking.

Thank you again for the opportunity to comment on this rule proposal.