**The Clean Air Act: Not the Right Tool for**

**Regulating Greenhouse Gases**

**Introduction**

NRECA believes the Clean Air Act (CAA) is ill-suited for controlling greenhouse gas (GHG) emissions, including carbon dioxide, for stationary sources like power plants, and should not be used in such a capacity. One of the law’s principal authors, Rep. John Dingell (D-MI) famously said using the CAA to regulate greenhouse gases would result in a “glorious mess.” We agree, and urge Congress and the Administration to step in and prevent the Environmental Protection Agency (EPA) from using the CAA as a tool for reducing greenhouse gas emissions from stationary sources.

Generally speaking, the CAA was enacted to control pollutants on a local and regional scale that cause direct health effects. Congress did not intend it to be used to require reductions or limitations on greenhouse gases blamed for global warming or climate change. Climate change arises from global concentrations of GHGs, caused from sources around the world. Given the design of the CAA and its focus on local and regional pollution, it is poorly designed to address greenhouse gases. The nature of the climate change issue demands a different response. Congress, not a government agency, has the responsibility for this issue

***Using the CAA to regulate greenhouse gases would be like using a hammer to tighten a screw – it may be theoretically possible to do it, but the hammer is not the right tool for the job. Likewise, the CAA is not the right tool for the job of addressing climate change. Congress and the White House must step in to prevent the use of an inappropriate tool to force emission reductions from stationary sources. Congress should decide this issue, not the EPA.***

**Background**

In 2007, the U.S. Supreme Court determined the definition of “pollutant” in the Clean Air Act is so broad that it includes emissions of greenhouse gases, and directed EPA to make a determination as to whether or not emissions of these gases from new automobiles “endangered” public health and welfare, and therefore should be regulated under the existing statute. However, the Court did not impose any deadlines on EPA, nor did it indicate that EPA must regulate greenhouse gases. It also did not address regulating emissions from stationary sources.

EPA has finalized the agency’s endangerment finding, which opened the door to using the CAA to regulate GHGs from motor vehicles, and plans to issue a final motor vehicle rule in March. However, any regulation of GHGs under the mobile source provisions of the existing CAA must recognize the cascading regulatory effects on other programs, including the prevention of significant deterioration (“PSD”) and Title V permitting programs, and how those effects would impact the electric power and other sectors.

According to EPA, using the CAA to regulate emissions from motor vehicles will automatically trigger PSD and Title V for stationary sources, including power plants, industrial facilities, etc. The most immediate concerns result from applying the PSD program to stationary sources – a program that requires extensive analysis of the impacts of any new or modified sources in order to receive a pre-construction permit.

Generally, the CAA sets a statutory threshold of 250 tons/year of any pollutant as the basis for when PSD applies. Therefore, any facility capable of emitting more than 250 tons/year is subject to PSD requirements for new or modified sources. If applied to greenhouse gases, especially carbon dioxide, this would affect potentially millions of sources, and even small commercial or industrial facilities would be required to get the same permit as a new power plant.

EPA, in an effort to avoid a permitting nightmare and not have the PSD program apply to hundreds of thousands of small sources, has proposed its greenhouse gas “Tailoring Rule.” The rule, as proposed, would apply PSD requirements only to sources emitting more than 25,000 tons/year of carbon dioxide, or other gases with an equivalent warming potential.

However, it is unclear whether or not this rule will actually protect “small emitters” because many states have their own laws or regulations setting 250 tons/year as the threshold for when PSD applies, and those laws would not automatically change just because EPA attempted to change the threshold. Further, EPA’s plans to minimize the adverse impacts are sure to be tested in court, and may result in unwanted mandates to regulate in less efficient and more costly ways. The uncertainty created will result in Rep. Dingell’s “glorious mess” scenario.

Additionally, there are other provisions of the CAA that EPA could use, or be forced to use through the Courts, to regulate greenhouse gases including New Source Performance Standards and National Ambient Air Quality Standards.

**Legislative Proposals**

Several Members of the House and Senate have introduced, or are developing, proposals to limit the use of the Clean Air Act to regulate CO2 and other greenhouse gas emissions.

* Rep. Earl Pomeroy (D-ND) has introduced legislation (H.R. 4396) that would remove six greenhouse gases (including C02) from the definition of the word “pollutant” in the Clean Air Act, thereby leaving it to Congress to establish new law governing greenhouse gas emissions.
* Rep. Ike Skelton (D-MO) has introduced legislation (H.R. 4572) that takes a more narrow perspective. The bill would remove six greenhouse gases (including C02) from the definition of the word “pollutant” in the Clean Air Act thereby leaving it to Congress to establish new law governing greenhouse gas emissions. However, Rep. Skelton’s bill would limit the removal of these greenhouse gases “solely” on the basis of their “effects on global climate change”.
* Rep. Ike Skelton (D-MO), Rep. Collin Peterson (D-MN) and Rep. Jo Ann Emerson (R-MO) have introduced legislation (H.J. Res. 76) that would “disapprove” of the EPA endangerment finding concluded in December 2009, thereby closing the door to CAA regulation of greenhouse gases.
* Rep. Joe Barton (R-TX) has introduced legislation (H.J. Res. 77) that would disapprove of the EPA endangerment finding concluded in December 2009, thereby closing the door to CAA regulation of greenhouse gases.
* Sen. Lisa Murkowski (R-AK) and Sen. Blanche Lincoln (D-AR) have introduced legislation (S.J. Res. 26) that would “disapprove” of the endangerment finding EPA concluded in December 2009, thereby closing the door to CAA regulation of greenhouse gases.
* Other Senators and Representatives are reportedly working on proposals that would delay any regulations developed under the CAA to provide a “time-out” that would allow Congress more time to develop comprehensive energy and climate change legislation. Others are reportedly considering plans that would allow the transportation rules to move forward, but prevent the unintended consequences of rules being applied to stationary sources.

***NRECA will support these proposals and similar efforts to develop a responsible resolution to the issue of how the nation will address climate change concerns. We urge Senators and Representatives to work with the Administration to prevent the use of an inappropriate tool to reduce greenhouse gas emissions.***