July 22, 2010

H. Curtis Spalding, Regional Administrator
EPA New England, Region 1,
5 Post Office Square - Suite 100
Boston, MA 02109-3912

Re: Vermont’s Implementation of the Tailoring Rule

Dear Regional Administrator Spalding:

I am writing in regard to the U.S. Environmental Protection Agency’s (EPA’s) “Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule,” which phases in Prevention of Significant Deterioration (PSD) and Title V permitting requirements for stationary sources of greenhouse gases. See 75 Fed. Reg. 31,514 (June 3, 2010).

Beginning on January 2, 2011, EPA’s Tailoring Rule requires a stationary source that would already be subject to PSD and/or Title V permitting requirements due to emissions of non-greenhouse gas pollutants to also comply with the PSD best available control technology (BACT) and other program requirements for greenhouse gas emissions if the source increases its greenhouse gas emissions by at least 75,000 tons per year (tpy) carbon dioxide equivalent (CO$_2$e) and/or to amend the source’s Title V permit to incorporate any greenhouse gas requirements. Id. at 31,523. Effective July 1, 2011, EPA’s Tailoring Rule expands the PSD and Title V permitting requirements to any stationary source with the potential to emit at least 100,000 tpy CO$_2$e and any modification of a major source that would result in an increase of greenhouse gas emissions of at least 75,000 tpy CO$_2$e, independent of whether the source exceeds the permitting thresholds for a non-greenhouse gas pollutant. Id. at 31,523-24.

With respect to implementation, EPA decided to incorporate the permitting thresholds for greenhouse gases by codifying a definition of the phrase “subject to regulation” so that the greenhouse gases emitted by sources that fall below the thresholds are not treated as “subject to regulation” and therefore do not trigger PSD and/or Title V. 75 Fed. Reg. at 31,579-81 and 31,583-84. EPA explained that such an approach would allow many states to immediately implement EPA’s permitting thresholds for greenhouse gases without having to make any changes to state laws or regulations. Id. at 31,580-81. In addition, EPA asked permitting authorities to submit a letter to EPA that explains whether the permitting authority will adopt an interpretation of the term “subject to regulation” that is consistent with EPA’s interpretation, and, if so, whether the permitting authority intends to adopt such interpretation without undertaking a regulatory or legislative process. Id. at 31,582 and 31,584.

The Vermont Department of Environmental Conservation’s Air Pollution Control Division (“APCD”) intends to adopt EPA’s interpretation of the term “subject to regulation.” However, amendments to Vermont’s air pollution control laws and regulations are necessary to ensure the permitting thresholds for GHGs in Vermont are consistent with those established by EPA’s Tailoring Rule. The necessary statutory amendments were adopted as part of Act 146 on June 1, 2010 and took effect on July 1, 2010. The relevant provisions of Act 146

To preserve, enhance, restore, and conserve Vermont’s natural resources, and protect human health, for the benefit of this and future generations.
are enclosed. The APCD anticipates adopting the necessary regulatory amendments to implement EPA’s tailoring approach for greenhouse gases by the end of this year.

If you have any questions, please feel free to contact Richard Valentinetti, APCD Director, at (802) 241-3840 or dick.valentinetti@state.vt.us.

Sincerely,

Justin G. Johnson
Commissioner

Cc: Richard Valentinetti, APCD Director
permits, registrations, or certificates for more than one year shall not extend to any program administered by the secretary where the annual fee is more than $125.00.

(14) require any person or entity regulated by the secretary under this title or Title 9 or 20 to file an affidavit under oath or affirmation that the person or entity or their regulated premises is in compliance with an assurance of discontinuance or other order or the terms and conditions of a license, permit, registration, certificate, or approval issued by or under the statutory authority of the secretary or rules adopted under such statutory authority. The secretary’s request for an affidavit of compliance under this subdivision may be delivered by hand or by certified mail. Failure to file such affidavit when requested or the material misrepresentation of a fact in the affidavit shall constitute a violation of the underlying regulatory program and grounds for revocation or assessment of administrative penalties or both under section 15 of this title.

* * * Agency of Natural Resources Permitting * * *

Sec. F8. 10 V.S.A. § 556 is amended to read:

§ 556. PERMITS FOR THE CONSTRUCTION OR MODIFICATION OF AIR CONTAMINANT SOURCES

* * *
(b) The secretary may require an applicant to submit any additional information which the secretary considers necessary to make the completeness determination required in subsection (a) of this section and shall not grant a permit until the information is furnished and evaluated. For air contaminant sources that have allowable emissions of more than ten tons per year of all contaminants, excluding greenhouse gases, upon making a determination that an application is complete to issue a draft permit, the secretary shall cause issue a notice, including that includes a brief description of the source and the address where a complete permit application and draft permit may be reviewed, to be published in a newspaper having general circulation in the area affected by the source, shall provide a 30-day public comment period on all draft permits, and shall hold a public informational meeting, if requested. The public comment period on a draft permit for a source that has allowable emissions of more than 10 tons per year, excluding greenhouse gases, shall be 30 days if the source constitutes a major stationary source or major modification under the rules of the secretary and shall otherwise be 10 days. For air contaminant sources that have allowable emissions of less than ten tons per year of all contaminants, the secretary may provide an opportunity for public comment or a public informational hearing, or both, before ruling on a proposed permit. In determining whether to provide for comment or a meeting, the secretary shall consider the degree of toxicity of the air
contaminant and the emission rate, the proximity of the source to residences, population centers and other sensitive human receptors, and emission dispersion characteristics at or near the source. The secretary shall fully consider all written and oral submissions concerning proposed permits prior to taking final action on those proposed permits.

* * *

Sec. F9. 10 V.S.A. § 556a is amended to read:

§ 556a. OPERATING PERMITS

(a) Upon a date specified in the rules adopted by the secretary to implement this section, it shall be unlawful for any person to operate an air contaminant source that has allowable emissions of more than ten tons per year of all contaminants, excluding greenhouse gases, except in compliance with a permit issued by the secretary under this section. The secretary may require that air contaminant sources with allowable emissions of ten tons or less per year obtain such a permit, upon determining that the toxicity and quantity of hazardous air contaminants emitted may adversely affect susceptible populations, or if deemed appropriate based on an evaluation of the requirements of the federal Clean Air Act.

* * *

(c) For air contaminant sources that have allowable emissions of more than ten tons per year of all contaminants, excluding greenhouse gases, upon
making a determination that an application is complete to issue a draft permit, the secretary shall cause issue a notice, including that includes a brief description of the source and the address where a complete permit application and a draft permit may be reviewed, to be published in a newspaper having general circulation in the area affected by the source; shall provide a 30-day public comment period on all draft permits, and shall hold a public informational meeting, if requested. The public comment period on a draft permit for a source that has allowable emissions of more than 10 tons per year, excluding greenhouse gases, shall be 30 days if the source is subject to subchapter V (permits) of 42 U.S.C. chapter 85 (air pollution prevention and control) and shall otherwise be 10 days. For air contaminant sources that have allowable emissions of less than ten tons per year of all contaminants, the secretary may provide an opportunity for public comment or a public informational hearing, or both, before ruling on a proposed permit. In determining whether to provide for comment or a meeting, the secretary shall consider the degree of toxicity of the air contaminant and the emission rate, the proximity of the source to residences, population centers and other sensitive human receptors, and emission dispersion characteristics at or near the source. The secretary shall fully consider all written and oral submissions concerning proposed permits prior to taking final action on those proposed permits.

* * *
(e) A permit issued under this section may be renewed upon application to the secretary for a fixed period of time, not to exceed five years.

(1) A permit being renewed shall be subject to the same procedural requirements, including those for public participation, that apply to initial permit issuance, except that a permit being renewed shall not be subject to the public notice and comment requirements of this chapter if all of the following apply:

(A) The secretary determines that no substantive changes have occurred at the air contaminant source that would affect emissions or require changes to the permit.

(B) The secretary determines no new statutory or regulatory requirements need to be added to the permit.

(C) The air contaminant source does not require a permit under subchapter V (permits) of 42 U.S.C. chapter 85 (air pollution prevention and control).

(2) The secretary shall not issue a permit renewal unless the applicant first demonstrates that the emissions from the subject source meet all applicable emission control requirements or are subject to, and in compliance with, an appropriate schedule of compliance.

* * *
(j) Except in compliance with a permit issued by the secretary under this section, it shall be unlawful for a person to operate an air contaminant source that has allowable emissions of greenhouse gases that equal or exceed any threshold established by the U.S. Environmental Protection Agency at or above which such emissions are subject to the requirements of subchapter V (permits) of 42 U.S.C. chapter 85 (air pollution prevention and control). Based on available emission control technologies or energy efficiency measures, or as otherwise appropriate to implement the provisions of this chapter, the secretary may adopt rules to require air contaminant sources with allowable emissions below such threshold to obtain a permit under this section.

Sec. F10. 10 V.S.A. § 6602 is amended to read:

§ 6602. DEFINITIONS

For the purposes of this chapter:

* * *

(26) “Household hazardous waste” means any waste from households that would be subject to regulation as hazardous wastes if it were not from households.

Sec. F11. 10 V.S.A. § 6605 is amended to read:

§ 6605. SOLID WASTE MANAGEMENT FACILITY CERTIFICATION

(a)(1) No person shall construct, substantially alter, or operate any solid waste management facility without first obtaining certification from the