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New Jersey Department of Environmental Protection  
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Dear Division of Air Quality: PACT Rule Team,

Thank you for the opportunity to comment on the Department of Environmental Protection's efforts to craft regulations to reduce greenhouse gas emissions from stationary sources.

This effort has been termed Protecting Against Climate Threats (PACT). The PACT rules are intended to implement the provisions of the State's recently-adopted Energy Master Plan, the Governor's Executive Order No. 100, and the Commissioner's Administrative Order No. 2020-01 of 2020. Our comments will not be technical in nature, but will take a broader overview of this effort.

This letter will discuss process, timing, and then offer some recommendations on what has been presented at the stakeholder meetings.

Process - While the comments we are submitting today are general in nature, we feel strongly that the Department would greatly benefit from discussions with industry experts on the technicalities and implications of these rules, especially if the Department intends to propose any of the items it has outlined in its stakeholder meetings. We credit the Department for holding these stakeholder meetings in the first place. They are useful tools in gathering information and an appropriate start to the process. We are also confident that the solicitation of comments from the regulated and other communities will further provide insight into how to accomplish the Department's goals.

However, these efforts are complicated both in the manner of how to craft an actual, workable rule and in their potential implications on the economy and the wider society. Unfortunately, our experience has clearly shown us that the manner in which the Department is currently seeking to craft these rules, especially in a truncated timeframe, will lead to rushed judgements, decisions based on insufficient data, and ultimately a failure to achieve sought after goals. There is also the very real possibility of significant, unintended consequences.

The air program within the Department has a long history of measured and contemplative rule and decision making. It is a reason why New Jersey has made tremendous strides in cleaning up its air pollution and why the regulated community respects the integrity of the program. This is not to say that the program has always made the right decisions in our views, or that it is otherwise perfect in its operation. But the regulations and permits adopted by the air program have always been well considered, researched, and have accomplished what was intended. We fear that this current process as it is unfolding will not uphold the same standards that have been the hallmark of one of the best air regulatory programs in the nation.

Our concerns are compounded by the number of rules being contemplated, the expeditious timeframe that has been established, and the lack of a meaningful stakeholder process. While we agree that the stakeholder meetings that were held and the comments submitted are a good first step in the process, they are not sufficient for a rule making of this magnitude.

As the largest business association in New Jersey, we have requested that the Department allow us to assemble a smaller, representative group of businesses which would meet with the relevant managers within the air program in order to have more focused discussions on the potential proposals. This meeting, and we believe that more than one would be advisable, would be intended to better inform the Department on how to accomplish their goals, to discuss what proposals would work and which would not, to discuss costs and impacts, and to ensure the Department proposes the most workable regulatory changes that are feasible. Unfortunately, despite multiple requests, we have not received a response to our proposal. .

Even with additional and meaningful stakeholdering, I also suggest the Department use the official pre-proposal process or circulate proposed regulatory language. The Administrative Procedure Act (APA), as you are well aware, does not allow for significant substantive changes upon adoption. This limitation makes it all the more important that the language crafted and proposed be as precise as possible. Allowing the regulated community and others to review and comment on rule language before it is officially proposed in the Register will give the Department a tool to craft a better rule. In fact, the APA specifically authorizes a pre-proposal process.

Timing – Perhaps what may be most troubling about this process is the timing in which the Department is seeking to propose several, potentially far-reaching rule proposals. We understand the directive of the Governor and the Commissioner to propose regulations to implement the EMP and the Governor's climate change goals as well as the mandates of the Global Warming Response Act. These goals seek an 80% carbon reduction under the mandates of the Global Warming Response Act and Governor Murphy's goal of 100% clean energy by 2050, defined as 100% carbon neutral or net zero carbon emissions.

While NJBIA is supportive of these goals, the issue is one of timing, costs, and impacts. We address many of our issues in our comments to the Energy Master Plan during its public hearing and comment process. Because our concerns to the implementation of the EMP are relevant to the PACT rule making, we are attaching our comments to this letter.

What the Department ultimately proposes and when it will be effective can have significant impacts to the residents and businesses of the state. The Department is well aware of the complexity of the regulatory process and should be concerned with trying to do too much, too soon with too little input.

To quote a lesson we all learned as children from the Tortoise and the Hare, “slow and steady wins the race.”

There is no need to move as quickly on as many significant regulatory proposals as the Department is currently contemplating. While it may be useful to take some immediate actions, such as strengthening CO2 inventories, banning HFCs, and several other win-now, low-hanging fruit, many of the proposals the Department has just thrown out there in the PACT stakeholder process are complex and have not been well thought out in implementation, impacts, and language. The Department should take incremental steps and continue to study the various issues, wait for technological advances and cost improvements, and then act as appropriate.

The state’s energy and climate goals are long term, 30 years out. Significant changes in technology and our understanding of climate systems will evolve over time making decision making more effective and less negatively impactful. While the Department has stated repeatedly the need to implement the EMP, the fact of the matter is that the EMP is largely aspirational and its recommended solutions are not achievable at anywhere near affordable costs with current technology, if they are achievable at all.

Further, the assumptions proffered by the consultant to the EMP under its Integrated Energy Plan, the Rocky Mountain Institute (RMI), are not realistic, are not achievable, and did not consider various scenarios that could largely achieve the goals of the EMP and the Governor at lesser costs.

While the fundamental flaws in the EMP are clear, that document is not legally binding and was not required to follow precise laws and legal requirements. The EMP can be as aspirational as it wants. The Department, in its adoption of regulations, cannot. Nor was it the intent of the RMI that the state take immediate actions to implement its 30-year aspirational goals and recommendations.

During the stakeholder process for the IEP, RMI also stated that the results of its modeling, predicting energy supply and usage to 2050, relies on “assumptions that are highly uncertain” in that long timeframe and that the findings should only support investments to be made in the next 1-3 years.

NJBIA has been advocating that any decisions on our future energy consumption be based on what is viable in the near term and to revisit those decisions when the EMP is updated every three years. Likewise, the Department should not propose regulatory changes to stationary sources to limit carbon at this time - unless those changes are cost effective, will not significantly disrupt economic activity, and will have meaningful benefits. To act just to act is not the way the Department should act.

Specific Proposals – It is difficult to provide specific comments because the Department has only outlined broad areas of potential regulations and has asked general questions on what should or should not be done and why. It is difficult to provide comments in this manner without a more definitive proposal or language. While we have been afforded the opportunity to submit comments, without merely doing a literature dump, which we can do and we are sure others have, the best we can do is offer some general comments.

Electric Generating Units (EGU) – The Department is considering several proposals to set a carbon output emission limit for EGUs. We would advise not pursuing this concept. While there is no doubt that New Jersey must reduce its carbon emissions from EGUs in order to meet its carbon goals, what the Department seems to be contemplating is another mechanism to subsidize solar or other renewable energy sources. We do not see much benefit from pursuing this proposal, but it could increase costs.

How New Jersey generates electricity is a complicated matter involving economics, reliability, regional decision making, engineering, and physics. It requires comprehensive thought and planning, not merely another method to subsidize renewables or attempt to decrease electricity production from natural gas. Unfortunately, the EMP itself is more aspirational than a plan and neither it nor this proposal seems to consider practicality or cost very well.

The EMP also clearly states that, even in an aspirational world, natural gas will be needed at least for the next 15 years, or longer. New Jersey depends on a wide range of fuels to support its electric generation, but natural gas has been a significant and growing contributor over the last decade. Its use has not only reduced carbon emissions by supplanting other, more polluting sources of energy, but it has provided cost effective and reliable energy.

Costs of energy production cannot be ignored for several reasons. One, it helps drive the economy which is obviously essential for the very survival of this state and its residents. As energy costs rise, it drives manufacturing and other high energy users away. High costs of energy also harm individuals who are already struggling to pay their electric and other bills. We cannot and should not ignore or dismiss these very real impacts.

If we are truly concerned with protecting people from the impacts of climate change, the best way to provide resilience and save lives is to make sure that residents can air condition their homes in the summer and that the state has the resources to build the infrastructure needed for a changing world.

We also cannot ignore the very real risk of leakage. As New Jersey drives up the cost of electrical production in our state, under the PJM system, lower cost, and dirtier energy is put into the grid from other states. We cannot claim to be climate virtuous in our state when the net effect is that more carbon is ultimately released into the atmosphere. As we previously stated, these are complex issues demanding comprehensive and regional solutions and well thought out plans. Merely trying to do something to lower carbon from EGUs is a shortsighted solution.

The Department should also be mindful if this proposal is even necessary given all the other existing programs that already seek to reduce carbon emissions from EGUs and to enhance solar and wind generation. RGGI is in place to specifically reduce carbon from EGUs. The BPU has several programs intended to promote renewables. The state already has a renewable portfolio standard and we are well along with the Governor's goals to create 7500 GW of energy from offshore wind. Where would the Department's proposals fit into this existing regulatory and statutory scheme? Is it even needed to achieve the goals of promoting renewable energy and at what cost?

Boiler electrification – Addressing carbon from the building sector is an essential goal. As technology improves, moving toward electrifying this sector may make sense. However, we would caution the Department not to move in this direction without a firm understanding of feasibility, costs, and impacts. Any proposal to ban new carbon based boilers, or to deny renewals, without a cost effective substitute clearly being viable, will only further drive manufacturing and other businesses out of the state.

We also question whether boiler fleets that are spread out over a large area, can be easily or cost effectively converted. This seems to be an area where technology will resolve the issue without the need for regulations.

Carbon intensity of fuels – The Department concedes that no other state has enacted a similar proposal. There may be good reason for that. Looking at the total carbon output of the fuels that the Department is considering to immediately set standards from, *e.g.* coal and #4 and #6 fuel oils, there is little benefit and likely not significant impacts if timed correctly. The problem we have is that this proposal can set the stage for limiting #2 fuel oil as well as natural gas. As we have previously stated, the state needs these fuels in the short term and perhaps indefinitely. Arbitrary carbon limits will not serve the state well.

While the Department seems to be proposing to only limit minor fuels in the short term, we are concerned that this will set the regulatory paradigm for limiting more prevalent fuels. Given the magnitude of such a change, we do not believe it appropriate to establish such a regulatory process at this point in time.

Conclusion – In summary, energy policy is complex. It involves hundreds of billions of dollars of investments and complicated regulatory and economic systems. Energy drives our economy and has allowed all of us the quality of life we live and will allow us to provide resilience to meet the coming challenges. While we understand the need to address these and other issues to respond to climate change challenges, we should not be moving regulations merely to be seen as doing something positive, at least not as is being currently contemplated in these proposals. We need a much more comprehensive plan with clear and realistic goals that also ensures that energy will continue to be affordable and reliable. We request, as is contemplated by the EMP, that the Department move slowly on any proposal that would have a significant long-term impacts, especially if the benefits are relatively minimal.

We also reiterate our request for a more limited, and focused, meeting between the Department and industry leaders to further discuss these proposals.

A handwritten signature in black ink, appearing to read "Ray Cantor", with a long horizontal stroke extending to the right.

Ray Cantor  
Vice President, Government Affairs