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William F. Cass
Executive Director

RE: COMMENTS ON WHITE PAPER 3

Dear Mr. Trutna,

The Northeast States for Coordinated Air Use Management (NESCAUM) and the Northeast Waste Management Officials' Association (NEWMOA) offer the following comments and suggestions for improving EPA's draft *White Paper 3*, dated August 14, 2000. NESCAUM is a regional association of the state air quality management agencies in Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont. NEWMOA is a nonprofit, nonpartisan interstate association with membership composed of the hazardous waste, solid waste, waste site cleanup and pollution prevention program directors for the environmental agencies in Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont. Both NEWMOA and NESCAUM have been actively involved in assisting member states on a variety of permitting and compliance issues at the state, regional and federal level. We are also coordinating P4 evaluation and training efforts for the northeast states.

The northeast states believe that flexible permits can benefit the environment regulated industry and the permitting agencies. We enthusiastically support the general concepts outlined in the White Paper 3 to the extent that they promote the dual goals of enhancing regulatory flexibility and environmental protection. If properly utilized, the concepts and mechanisms outlined in the White Paper could help to maximize economic competitiveness in a manner that is environmentally beneficial. It is our hope and expectation that permit writers and the regulated industry in the Northeast will look for opportunities to incorporate the innovative strategies and tools detailed in the White Paper into the permitting process.

The northeast states are, however, concerned that pollution prevention, a basic tenet of the P4 initiative, is largely disregarded in White Paper 3. Flexible permits need to incorporate strategies to maximize the environmental benefits and the effective use of P2 is a key to achieving this outcome. The White Paper should include both guidance and specific tools to increase the use of P2 in flexible permits. We offer the following comments and recommendations for improving White Paper 3.

Comment 1: Increased Environmental Benefit/Use of Pollution Prevention

The introduction of White Paper 3 lists pollution prevention as a high priority for EPA and a goal of flexible permits programs. Unfortunately, while the White Paper generally encourages pollution prevention, it passes up numerous opportunities to provide permit writers with specific guidance on how to craft flexible permits that promote P2. We offer the



following recommendations for strengthening and institutionalizing pollution prevention in flexible permitting. We believe that such changes will increase the likelihood that flexible permits will provide environmental benefit for the community.

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1. Compelling firms to evaluate alternative process chemicals or materials, processes, or operating parameters, would encourage them to explore pollution prevention alternatives when analyzing their flexibility needs and developing alternative operating scenarios. This type of options analysis can be required under existing regulations and has been in some of the P4 pilot projects. Language should be added to the Introduction/Overview section to introduce this concept.
2. In Section III, Replacement Conditions, there is discussion of the terms used in some minor NSR permits and how they might be modified to provide increased flexibility. The guidance suggests eliminating specific restrictions on materials usage and VOC content. Although such limits might be an impediment to flexibility and in some cases might even impede pollution prevention, categorically eliminating such restrictions would reduce overall opportunities for pollution prevention. The northeast states believe that such limits should be determined on a case-by-case basis. In some cases, a better option might be a formula based upon emissions and use that would compel companies to use higher emitting products sparingly and encourage the use of lower emitting products.
3. Section IV should include a discussion of the merits of an upfront analysis of alternative operating scenarios by an applicant seeking advanced approval. This analysis would include an evaluation of alternative process chemicals or materials, processes, or operating parameters that are less polluting. A primary rationale for the states in investing the additional upfront resources into crafting flexible permits is the prospect of environmental benefits. By requiring this analysis of advanced approvals, states would be assured that pollution prevention options relative to an operation have been adequately evaluated and will be appropriately utilized by the applicant.
4. In Section IV, between subsection C and D, a new section should be added on Options Analysis. This section should define the components of an alternative operating scenarios analysis for applicants seeking advanced approval. The applicant should be required to describe the steps taken to evaluate alternative process chemicals or materials, processes, or operating parameters.
5. In Section IV, Described Change Categories and Replicable Operating Procedures (Subsection D), Menu Choices, options analysis should be included in this menu.

Comment 2: Creating Resources to Support Implementation of White Paper 3 Concepts
While we support the concepts outlined in White Paper 3, proper implementation of these concepts is critical. In order to assure proper implementation, both the states and EPA



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regional offices will need to develop expertise regarding the issues and boundaries surrounding flexible permits. It is incumbent upon EPA to provide adequate resources for both the states and the EPA regional offices to develop the expertise needed to develop and enforce effective flexible permits.

EPA Regional Offices

Title V, NSR and enforcement personnel from the EPA regional offices need to be trained on the goals and uses of White Paper 3 so that they may appropriately promote the flexibility concepts while ensuring continued compliance with all applicable requirements. Furthermore, training of regional staff will create a baseline of understanding at the regional office level that will enhance the likelihood of consistent interpretation across EPA regions.

In addition to general training of its regional staff, NESCAUM and NEWMOA recommend that EPA designate at least two staff per regional office to assist states in the development and review of flexible permits. The Northeast experience has shown that the development of flexible permits that are enforceable and acceptable to EPA requires substantial coordination with the regional office in the areas of Title V, NSR and enforcement. EPA involvement during the initial stages of permit development is likely to decrease the number of issues that arise and the time it takes to issue the permit. Providing adequate resources at the EPA regional offices should significantly decrease the amount of time it takes to write these permits, while increasing the quality of the permit.

States

State staff will also require training to develop the skills needed to write enforceable and all encompassing, flexible permits. We strongly recommend that EPA develop the tools and resources needed to assist states in developing effective permits. While the case studies highlighted in the White Paper are helpful in understanding the concepts, more detailed information and examples will be required to assure that the flexible permits meet the same standards as traditional Title V permits. The NESCAUM states strongly support the development of training opportunities and resources such as workbooks to educate state staff on how to write and enforce flexible permits.

Comment 3: Criteria to Reject Facilities

The White Paper goes into considerable detail regarding the types of facilities that are appropriate for flexible permitting. The northeast states believe it is equally important the EPA make it clear that these flexibility mechanisms are not suitable for all Title V permits. Furthermore, the states would support the addition of criteria that states could use at their discretion to determine which facilities are not appropriate for flexible permits. Suggested criteria include:

- *Compliance history:* The northeast states feel that the compliance history is an important indicator as to whether or not a facility is an appropriate candidate for flexible permits. While blemishes on a facility compliance history may not be a reason to rule out the option of a flexible permit, significant violations could represent the inability for a facility to properly control emissions.



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- *Status of Title 5 permit:* The northeast states suggest that, generally, facilities with an existing Title 5 permit would only be eligible for a flexible permit at renewal or if reopened for a major modification. This would assure that approaches outlined in this White Paper would not interfere with the Title 5 issuance rates. States should, however, retain the right to reopen issued Title 5 permits at their discretion.
- *Resources to maintain monitoring and reporting requirements:* One of the major requirements in crafting flexible permits is ensuring that the facilities are complying with their emission limits. In most cases, this requires additional monitoring and record keeping. If a facility lacks the resources to adequately address these requirements, they could be deemed an unsuitable candidate.
- *Clear need for flexibility:* Additional resources are needed to develop flexible permits. States should utilize their limited resources on those facilities most in need of flexibility and most willing to incorporate P2 and other environmentally advantageous approaches.

Comment 4: Collection of Additional Fees

The northeast states agree with EPA that flexible permits require additional resources to develop and support the suggestion that states should seek additional fees for the development of such permits. However, the draft fails to recognize the difficulty permitting authorities have in obtaining additional resources through Title V fee increases. The ability to collect additional fees often requires approval from the state legislature. EPA could assist the states in their permit restructuring efforts by establishing an average additional cost per ton of pollutant or cost per permit that could be collected to cover the costs associated with writing a flexible permit. This information would provide states with an independent basis for asking their legislatures to support additional fees for flexible permits.

Comment 5: Clean Building/MOM Concept/Cap & Track

White Paper 3 outlines several concepts that have not yet been piloted. These concepts include the Clean Building/Unit Provision, Minor Ongoing Modification Concept and the Cap and Track program. While intrigued by these possible approaches and interested in exploring them further, the northeast states believe that it is premature to incorporate them into official EPA policy. The states need to develop a better understanding of the implementation issues associated with these concepts before fully endorsing them. The northeast states, however, support testing these concepts in pilot applications. If successful, detailed guidance for these approaches, such as that provided in White Paper 3 for pre-approvals, could be created.

Comment 6: PALs and NSR Reform

The White Paper states, "We anticipate that any PALs issued under current regulations would need to be reevaluated and updated consistent with final NSR rule (p.39)". While the states understand that revision to the NSR program may change the formula that PALs are based upon, the states feel that the PALs should not be revised immediately due to any rule change. Instead, the northeast states suggest that a transition period be established in accordance with Title V requirements for revising permits based upon rule changes. This would mean that any permit with at least 24 months remaining would have its PAL reviewed at renewal. We also suggest that all remaining permits be reviewed within a 24-month period, or at reopening, for a major modification.



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Comment 7: Interim Use of AP-42 Emission Factors

In the draft paper, EPA states that AP-42 emission factors should only be used until actual emissions can be determined. According to the draft White Paper, AP-42 emission factors can be used on an interim basis to determine PALs. The draft paper further states that when facilities determine their actual emissions for purposes of reporting to the permitting authority, those units still relying on AP-42 factors must be doubled to determine actual emissions under the PAL.

While the northeast states agree that actual emissions are preferable to emission estimates, the states feel that there are some small emission units that should be allowed to continue using AP-42 throughout the permit term. Stack testing for small emission units can be expensive. To provide this flexibility while ensuring a high degree of certainty about the overall emissions from a facility, NESCAUM and NEWMOA recommend that EPA set a de minimus level for emission units under which AP-42 emission factors could be used on a one-for-one basis. In calculating actual emissions for reporting purposes, those units under the de minimus level would count emissions on a one-to-one basis. This would eliminate the need for facilities to perform stack tests for very small emission units. Additionally, the states want to retain their ability to use source-specific emission factors at their discretion. To ensure a high level of certainty in emission estimates, the northeast states recommend that no more than 20 percent of total emissions under a PAL be allowed to fall under the de minimus level.

Comment 8: PALs to drive environmental performance

The northeast states applaud EPA for embracing the PAL concept. The PALs, as currently outlined, provide mechanisms to ensure that they meet existing environmental protection standards. The northeast states encourage EPA to go beyond the status quo and support approaches that utilize PALs to improve environmental performance. Such approaches might include declining PALs and performance goals to eliminate the use of HAPs.

Comment 9: Air Toxics

From a public health perspective, it is incumbent upon the states and EPA to ensure that the use of PALs and pre-approvals does not result in increased risk to local populations associated with exposure to HAP emissions. Of concern to the northeast states is the potential for facilities to stay below their permitted emissions level while increasing the relative toxicity of the emissions. In this situation, adverse local impacts could occur, even though a facility was in compliance with the regulatory requirements outlined in White Paper 3.

As EPA points out in White Paper 3, state air toxic control programs have risk screening requirements as part of the pre-construction review process to ensure that potential emissions do not exceed health-based risk guideline values for HAPs. NESCAUM and NEWMOA recommend that EPA expand the discussion of "state-only control programs" (p. 26 of White Paper 3) to include implications for flexible permits under the federal risk-based toxics programs. We also believe that the paper should include a discussion of: (1) the possible use of risk screening for PALs and (2) pre-screening to evaluate potential increases in the relative



toxicity of emissions from changes in operations to ensure that ambient impacts do not pose additional risks to public health near the facility.

Comment 10: Clarification requests

NESCAUM and NEWMOA also seek clarification regarding the following issues discussed in White Paper 3:

1. **Baseline/Pollutant (page 31)** The language regarding the use of baseline emissions to develop a PAL is unclear. As currently interpreted, the baseline must be set using actual emissions. In some cases, actual emissions may be higher than permitted actual. Therefore, we suggested that the language be changed such that the PAL should be set based upon permitted actual emissions so that baseline credit is not given for emissions above allowed threshold.
2. **Making Changes (page 33)** The second bullet seems to make one facility two separate sources. Is such an action allowed under Title V?

We would like to thank EPA for enabling representatives from the northeast states to meet with key members of your staff in advance of the formal release of the White Paper. These discussions provided us with a better understanding of the issues and underlying concepts detailed in White Paper 3. We look forward to working with you on finalizing this strategy. NESCAUM and NEWMOA remain committed to working with EPA to develop methods for permit flexibility and are encouraged by your efforts to date.

If you have any questions or desire additional information, please contact either of us or Lisa Rector of NESCAUM

Sincerely,

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