UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
5 POST OFFICE SQUARE SUITE 100
BOSTON, MASSACHUSETTS 02109-3912

November 29, 2018

Karen Slattery
Office of Air Resources
Rhode Island Department of Environmental Management
235 Promenade Street
Providence, RI 02908

Dear Ms. Slattery:

Thank you for the opportunity to review proposed revisions for Air Pollution Control Regulations (APCR), Part 28 – Operating Permit Fees and Part 29 – Operating Permits. A state's major source operating permit program is required by Title V of the Clean Air Act and must meet the requirements set forth for such a program in 40 C.F.R. part 70. Unlike state regulations that become part of a state implementation plan, the EPA does not incorporate by reference a state's Title V permit regulations. When a state revises its Title V permit regulations, it is required to notify the EPA that it is revising the regulations. *See* 40 C.F.R. § 70.4(i).

Enclosed are the EPA's comments regarding the proposed changes to APCR Part 29. If you have any questions regarding these comments, please contact Donald Dahl of my staff at dahl.donald@epa.gov or (617) 918-1657.

Sincerely,

Donald F Dahl, for

Leiran Biton, Acting Manager
Air Permits, Toxics, and Indoor Programs Unit

Enclosure

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1. Rhode Island must leave in the reference year of 1987 in the definition of Major Source for the SIC code since this is the fundamental method for determining how to group industrial sources when determining the Title V source.

2. In APCR 29.5.A.28(a), the proposed revision from 100,000 tons per year to 75,000 tons per year of greenhouse gases (GHG) is inconsistent with 40 CFR § 70.2 which states the emission level as 100,000 tons per year. Additionally, Step 2 of the GHG Tailoring Rule, which applied as of July 1, 2011, the prevention of significant deterioration (PSD) and Title V permitting program requirements applied to some sources that were classified as major sources based solely on their GHG emissions or potential to emit GHGs. The EPA generally described the sources covered by Title V during Step 2 of the GHG Tailoring Rule as "Step 2 sources" or "GHG-only sources." The United States Supreme Court invalidated the EPA's regulation of Step 2 sources in Utility Air Regulatory Group (UARG) v. EPA, 134 S Ct. 2427 (2014). In accordance with that decision, the United States Court of Appeals for the District of Columbia Circuit vacated the federal regulations that implemented Step 2 of the GHG Tailoring Rule. *See* Coalition for Responsible Regulation, Inc. v. EPA, 606 Fed. Appx. 6, 7 (D.C. Cir. 2015). Rhode Island should no longer require a source to obtain a Title V permit solely due to its GHG emissions.

3. In APCR 28, please be aware that when the EPA adopted the GHG Tailoring rule, the EPA revised 40 CFR part 70 to address GHG emissions impact on the Title V fee structure. When determining the presumptive minimum fee amount according to 40 CFR § 70.8(b)(2)(i), a state is required to add a GHG adjustment factor. *See* 40 CFR § 70.8(b)(2)(v). Based on EPA's recent Title V program evaluation, the lack of a GHG adjustment factor in APCR 28 is not an issue at this time.