Ohio Environmental Council

[UNLEASHING THE POWER OF GREEN]

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Written testimony of Will Reisinger, staff attorney for the Ohio Environmental Council ("OEC"), delivered on behalf of the OEC in support of proposed greenhouse gas ("GHG") rules, Rules 3745-31-34, et. seq.

Before the Ohio Environmental Protection Agency ("OEPA").

February 11, 2011

Good afternoon. My name is Will Reisinger and I am a Staff Attorney for the Ohio Environmental Council. On behalf of the OEC, I want to thank you for the opportunity to present comments in support of OEPA's proposed greenhouse gas rules. The OEC is a non-profit network of more than 100 local and state environmental-conservation organizations and represents thousands of citizen members throughout the state of Ohio. Our mission is to secure healthy air, land, and water for all who call Ohio home.

The OEC believes that the proposed rules are a fair, reasonable, and prudent first step to curb greenhouse gas ("GHG") emissions from major sources within Ohio. These rules represent a reasonable interpretation of the mandate imposed by the United States Supreme Court in 2007. The OEC urges Ohio EPA to permanently adopt this rule package.

This balanced rule package, modeled after the federal "Tailoring Rule," will allow industries and OEPA the necessary time to prepare for the remainder of the GHG regulation requirements in the future. These rules initially will apply only to those sources responsible for GHG emissions in excess of 75,000 tons annually. Only these large sources will be required to obtain permits pursuant to Title V of the federal Clean Air Act.

In addition to voicing support for these rules, I also want to make clear for the public record that this rulemaking was not a discretionary action by OEPA or the U.S. EPA. As you know, these rules were drafted in response to the clear mandate established by the United States Supreme Court in the case *Massachusetts v. EPA*, decided in April of 2007.

The *Massachusetts* ruling required the federal EPA, in accordance with the Clean Air Act, to determine whether GHG emissions constituted a danger to public health. Section 108 of the Clean Air Act requires the EPA Administrator to list each air pollutant which "cause[s] or contributes to air pollution which may reasonably be anticipated to endanger public health or welfare."

The Court directed the agency to promulgate rules pursuant to the Clean Air Act in the event that the U.S. EPA determined that GHG emissions do represent a danger to public health. After exhaustive scientific study, the U.S. EPA issued that "endangerment finding" for the GHG emissions responsible for climate change. The endangerment finding concluded "that the current and projected concentrations of the six key well-mixed greenhouse gases — carbon dioxide (CO_2), methane (CH_4), nitrous oxide (N_2O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF_6) — in the atmosphere threaten the public health and welfare of current and future generations."

Therefore, the U.S. Supreme Court said very clearly that if an air pollutant is a threat to the health and welfare of Americans, the federal EPA must take action under the Clean Air Act. After much delay, U.S. EPA and its state counterparts are finally doing just that.

Those who criticize these rules should not direct their blame at OEPA or at the federal EPA, but at the United States Supreme Court and the United States Congress. While some detractors have suggested that these rules exceed the scope of authority of OEPA and the federal EPA, those critics fundamentally misunderstand the Clean Air Act and the Supreme Court's ruling in *Massachusetts v. EPA*.

When Congress enacted the Clean Air Act, and the Title V Amendments, it established a framework for addressing dangerous air pollution. The Supreme Court examined that law and directed the federal EPA to determine if GHG pollution is dangerous.

For critics to now argue that OEPA has exceeded its authority when drafting this rule package is to argue that the United States Supreme Court does not have the authority to interpret U.S. law and the federal Constitution. Such an argument is untenable.

In conclusion, I thank you again for the opportunity to present comments. The OEC supports these proposed rules and ask that they be permanently adopted.

If you would like additional information for the record, please contact me at (614) 487-5841 or Will@theOEC.org.