

Agenda Item: 15-23 Hearing Officer's Report on Permanent Amendments to Clarify Applicability of Prevention of Significant Deterioration (PSD) Rule for Greenhouse Gases and Title V Applicability Rule (528)

Explanation:

A public hearing was held in Raleigh, North Carolina on June 9, 2015, to take public comments on permanent amendments to Rule 15A NCAC 02D .0544, Prevention of Significant Deterioration Requirements for Greenhouse Gases and Rule 15A NCAC 02Q .0502, Applicability. Mr. Ray Stewart, Winston-Salem Regional Office Compliance Supervisor, was appointed and acted as the hearing officer during the hearing. These rules were adopted as temporary amendments that became effective on December 2, 2014. The public comment period for the permanent amendments closed on June 15, 2015.

On June 23, 2014, the United States Supreme Court issued a decision in Utility Air Regulatory Group (UARG) v. Environmental Protection Agency (EPA) addressing the application of stationary source permitting requirements to greenhouse gas (GHG) emissions. In its decision, the Supreme Court said that the EPA may not treat greenhouse gases as an air pollutant for the purposes of determining whether a source is a major source required to obtain a Prevention of Significant Deterioration (PSD) or Title V permit.

Currently, sources are required to obtain a PSD permit as follows:

- new facilities emitting GHGs in excess of 100,000 tons per year (TPY) carbon dioxide equivalent (CO₂e)
- existing sources that are minor for PSD (including GHGs) before the modification and actual or potential emissions of GHGs from the modification alone would be equal to or greater than 100,000 TPY on a CO₂e basis and equal to or greater than 100/250 TPY on a mass basis
- existing sources whose potential to emit (PTE) for GHGs is equal to or greater than 100,000 TPY on a CO₂e basis and is equal to or greater than 100/250 TPY (depending on the source category) on a mass basis emissions increase and the net emissions increase of GHGs from the modification would be equal to or greater than 75,000 TPY on a CO₂e basis and greater than zero TPY on a mass basis.

Title V permits are required for all sources that emit at least 100,000 tons of GHG per year on a CO₂e basis.

15A NCAC 02D .0544, Prevention of Significant Deterioration Requirements for Greenhouse Gases, is proposed for amendment to remove the requirement that major stationary sources obtain a PSD permit on the sole basis of its GHG emissions. The rule is also proposed for amendment to update the global warming potentials for GHGs.

15A NCAC 02Q .0502, Applicability, is proposed for amendment to remove the requirement that facilities obtain a Title V permit on the sole basis of its GHG emissions.

On July 24, 2014, Janet G. McCabe, Acting Assistant Administrator, EPA Office of Air and Radiation, and Cynthia Giles, Assistant Administrator, EPA Office of Enforcement and Compliance Assurance, issued a memo outlining EPA's next steps for the agency's GHG permit program. In the memo, they wrote that the EPA will not apply or enforce the following regulatory requirements:

- Federal regulations or the EPA-approved PSD State Implementation Plan (SIP) provisions that require a stationary source to obtain a PSD permit if GHG are the only pollutant (i) that the source emits or has the potential to emit above the major source thresholds, or (ii) for which there is a significant emissions increase and a significant net emissions increase from a modification (e.g., 40 CFR 52.21 (b)(49)(v)).
- Federal regulations or provisions in the EPA-approved Title V programs that require a stationary source to obtain a Title V permit solely because the source emits or has the potential to emit GHG above the major source thresholds.

The EPA does not interpret the Supreme Court decision to preclude states from retaining permitting requirements for sources of GHG emissions that apply independently under state law even where those requirements are no longer required under federal law.

However, under North Carolina G.S. 150B-19.3(a), an agency may not adopt a rule that imposes a more restrictive standard, limitation or requirement than those imposed by federal law or rule. Under G.S. 150B-19.1(a)(2), an agency shall seek to reduce the burden upon those persons or entities who must comply with the rule. Under G.S. 150B-19.1(a)(6), rules shall be designed to achieve the regulatory objective in a cost-effective and timely manner.

The fiscal note was approved by the Office of State Budget and Management (OSBM) on March 13, 2015. The fiscal note estimates fiscal impacts of approximately \$46,000 annually starting in 2015 and increasing with inflation each following year. An affected facility's annual cost savings would be the difference between that year's Title V permit fee and the \$1,500 annual synthetic minor permit fee. The fiscal impact to the State would be the equivalent loss of those annual Title V permit fees for the facilities that were required to submit a Title V application under the current rule.

One comment was received on the proposed rule amendments during the public comment period. The commenter commented that North Carolina's revisions to its rules appear consistent with the U.S. Supreme Court decision but cannot confirm DAQ's rule revisions will be sufficient to obtain EPA's approval until EPA

undertakes its own revisions to federal regulations to address the Supreme Court's decision. No changes were made to the proposed amendments as presented in Chapter IV of this hearing record.

Recommendation: The Hearing Officer recommends that the proposed amendments as presented in Chapter II of this hearing report be adopted by the Environmental Management Commission.