

Agenda Item: 14-39 Hearing Officer's Report on Temporary 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 October 1, 2014, to take public comments on amendments to Rule 15A NCAC 02D .0544, Prevention of Significant Deterioration Requirements for Greenhouse Gases. Mr. Charlie Carter was appointed and acted as the hearing officer during the hearing.

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.

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

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

Four people commented on the proposed amendments during the comment period for the hearing record. Three people provided written comments for the hearing record and one person provided oral comments without written comments during the public hearing.

Three people support the rule amendments. Two commenters asked the EMC to expedite passage of the proposed temporary rule to align DAQ rules with the recent Supreme Court decision. The temporary rulemaking process under the Administrative Procedure Act (APA) is the quickest way to implement a rule change for a change that does not qualify under the emergency rule procedures. The General Statutes specifies the steps an agency must take to adopt a temporary rule. The EMC is proceeding expeditiously through the temporary rulemaking process.

One person opposes the adoption of the proposed rules. The commenter states that DAQ is incorrect in its interpretation of the Supreme Court decision. The commenter also states that for sources to obtain a PSD permit, sources must be subject to BACT for greenhouse gases and that as an agreement state, North Carolina must now implement the provisions of the Clean Air Act to reduce greenhouse gas emissions. Its primary enforcement authority –primacy- does not allow the DAQ to issue permits which do not conform to the minimums of federal

regulations and does not allow the EMC to adopt rules less stringent than federal law. The Hearing Officer believes the proposed rules are consistent with the Supreme Court decision. No changes were made to the rules.

Recommendation:

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