

Agenda Item: 14-28 **Request for 30 day Waiver and to Proceed to Hearing on Temporary Amendments to Clarify Applicability of Prevention of Significant Deterioration (PSD) Rule for Greenhouse Gases and Title V Applicability Rule (528)**

Explanation:

The Environmental Management Commission (EMC) is requested to approve one or more public hearings to consider temporary rule amendments to the prevention of significant deterioration rule for greenhouse gases (GHG) and Title V permit applicability rule.

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

- new facilities emitting GHGs in excess of 100,000 tons of 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 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.

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 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 PSD or Title V permit.

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, wrote 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 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 CFR52.21 (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.

Adherence to the notice and hearing requirements for a permanent rule in G.S. 150B-21.2 would not result in a cost-effective and timely manner. Therefore, a temporary rule is necessary to ensure that stationary sources would not be required to unnecessarily obtain a PSD or Title V permit on the sole basis of their GHG emissions while the EMC completes the permanent rulemaking process. Without the temporary rule, there would also be an inefficient use of DAQ staff resources.

Recommendation:

The Director recommends that the Commission authorize a public hearing(s) on these items and that the Chairman appoint a member(s) of the Commission to serve as hearing officer(s).