

Information Item: 10-03 **Special April EMC Meeting to Address Greenhouse Gas (GHG) Tailoring Rule**

Explanation:

At the January Air Quality Committee meeting the Division of Air Quality presented a concept to revise the Prevention of Significant Deterioration (PSD) and state air permitting rules to incorporate GHG as a regulated pollutant and to implement tailoring provisions to allow DAQ to efficiently and effectively implement the associated PSD and Title V permitting program requirements. The concept was presented in response to recent US EPA actions to regulate GHGs which are scheduled to be finalized by the end of March. The DAQ plans to present draft rules to address the recent EPA actions at the March Air Quality Committee meeting; however, EPA's final rules will not be available prior to the March meeting. In order to be prepared to address the issues raised by the pending EPA rulemaking action as quickly as possible, a special meeting of the EMC in April to approve proceeding to hearing with temporary and permanent rules is needed. Additional background information on the issue follows.

On December 7, 2009 EPA issued its final Endangerment Finding and Cause and Contribute Finding regarding GHG emissions. That action allows EPA to finalize its light duty vehicle (LDV) rule regulating GHG emissions. EPA plans to finalize the LDV rule by March 31, 2010. At that time GHG will become a "regulated pollutant" under the CAA. Status as a regulated pollutant immediately triggers applicability of the PSD and Title V program requirements for major sources (100 or 250 tons per year potential to emit (PTE) for PSD depending on source category and 100 tons per year PTE for Title V) and major modifications (*any* increase in emissions).

GHGs are emitted in much greater mass than conventional pollutants. At these current PSD and Title V applicability levels of GHG emissions numerous sources, including many small sources that would not otherwise have air quality permits, would become subject to PSD (EPA estimates 40,000 sources nationally) and Title V (EPA estimates 6.1 million sources nationally) requirements creating a significant, unmanageable workload for permitting agencies and burden to the regulated community with limited environmental benefit resulting from some portion of the affected source population.

EPA recognizes that "tailoring" of these programs to address the large number of small sources is necessary to provide a common sense approach to GHG regulation that effectively balances the burdens on both the permitting authorities and the regulated community with the reductions achievable. As a result, EPA proposed its Tailoring Rule which it plans to finalize by the same time as the Light Duty Vehicle Rule. In its Tailoring Rule, EPA

proposes to use a phased approach to achieve full compliance with the NSR and PSD requirements. For Phase I, to last 5 years, EPA proposes to: establish PSD and Title V major source threshold of 25,000 tons CO₂e per year PTE; establish a PSD significance level in the range of 10,000-25,000 tons CO₂e per year PTE; evaluate the feasibility of administering the program at lower GHG thresholds within 5 years; and undertake efforts to streamline administering the programs. At these levels, 70% of stationary source GHG emissions nationally would be covered. In Phase II, EPA will complete rulemaking in year 6 to either confirm the need to maintain the GHG permitting thresholds or establish different thresholds. The EPA proposal leaves permit fees to states to address.

North Carolina has its own approved PSD program and would not automatically pick up the federal tailoring provisions. Rulemaking is necessary to incorporate GHG as a regulated pollutant and to implement tailoring provisions to allow DAQ to efficiently and effectively implement its PSD and Title V permitting programs.

Some uncertainty exists regarding how EPA will regulate GHG in the final rule and what the ultimate effective date will be; however, if events unfold as EPA proposes, GHG could be a regulated pollutant triggering PSD and Title V permitting requirements by the end of March 2010.

Recommendation:

The Director recommends that the Commission consider holding a special EMC meeting in April to consider a request to proceed to hearing on state GHG tailoring rule provisions.