

Agenda Item: 11-36 **Hearing Officer's Report on Temporary Rule to Defer Carbon Dioxide Emissions from Combustion of Biomass from Prevention of Significant Deterioration and Title V Requirements (496)**

Explanation:

A public hearing was held in Raleigh, North Carolina, on September 28, 2011, to take public comments on amendments to Rule 15A NCAC 02D .0544, Prevention of Significant Deterioration Requirements for Greenhouse Gases. Mr. Donnie Brewer and Mr. Christopher Ayers were appointed and acted as hearing officers during the hearing.

On July 20, 2011, United State Environmental Protection Agency (EPA) promulgated a three year deferral period for consideration of carbon dioxide (CO₂) emissions from bioenergy and other biogenic sources when determining whether a stationary source meets prevention of significant deterioration (PSD) and Title V applicability thresholds, including those for the application of best available control technology (BACT). Stationary sources that combust biomass (or otherwise emit biogenic CO₂ emissions) and construct or modify during the deferral period will avoid the application of PSD to the biogenic CO₂ emissions resulting from those actions. This deferral applies only to biogenic CO₂ emissions and does not affect non-greenhouse pollutants or other greenhouse gases (GHG) (e.g., methane (CH₄) and nitrous oxide (N₂O)) emitted from the combustion of biomass fuel. Also, this deferral only pertains to biogenic CO₂ emissions in the PSD and Title V programs and does not pertain to any other EPA programs such as the GHG Reporting Program. EPA intends for the deferral to be temporary while the agency completes its science and technical review of the issue of accounting for the net atmospheric impact of biogenic CO₂ emissions.

The adoption of the deferral for biogenic CO₂ emissions from PSD permitting programs in 40 CFR 51.166 is optional for any state, local, or tribal permitting authority. Although the biogenic CO₂ emissions deferral is optional, EPA wrote in the promulgation that it expected states to need more time to determine how best to address technical, scientific and practical issues related to biogenic CO₂ without disrupting the proper functioning and timeliness of the permitting programs. A rule amendment is proposed to reflect the federal deferral while the uncertainty surrounding the impact of biogenic CO₂ emissions and how such emissions will be handled in the overall GHG framework is being resolved.

NC Division of Air Quality (DAQ) does not implement the new federal deferral automatically by reference. Currently, the version of the Code of Federal Regulations (CFR) incorporated in this Rule is that published in the Federal Register June 3, 2010 and effective August 2, 2010 and

does not include any subsequent amendments or editions to the referenced material.

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 that is being adopted. Deferring biogenic CO₂ emissions will reduce the regulatory burden on affected facilities by eliminating biogenic CO₂ emissions when determining whether a stationary source meets the PSD and Title V applicability thresholds, including those for the application of BACT.

15A NCAC 02D .0544, Prevention of Significant Deterioration Requirements for Greenhouse Gases, is proposed for temporary amendment to update the PSD for GHG rule in order to reflect the three year federal deferral from consideration of CO₂ emissions from combustion of biomass. The temporary amendment ensures that stationary sources would not have to unnecessarily complete a BACT analysis for biogenic CO₂ and possibly be required to install equipment to control emissions during the three year deferral. EPA's future rulemaking is uncertain until EPA completes their review of the scientific and technical issues related to accounting for biogenic CO₂ emissions.

Two persons commented on the proposed temporary rule during the comment period for the hearing record. One commenter did not support the adoption of the temporary rule at this time. One commenter commented on the issue of not controlling biogenic CO₂ emissions being a threat to the survival of the planet. One commenter commented that the temporary rule was being rushed through the EMC. One commenter commented on the potential environmental justice impact of the rule. One commenter supported the rule amendments. One commenter said the PSD permits issued during the deferral should not be revised. No changes were made to the rule as a result of these comments.

Recommendation:

The Hearing Officers recommend that the Commission adopt the proposed rules as presented in Chapter II of the hearing record.