

Agenda Item: 13-17 Hearing Officer's Report on Revisions to New Source Review and Prevention of Significant Deterioration (PSD) Nitrogen Oxides (NO_x) Significance Level for PM_{2.5} (512) and PM_{2.5} Increment (516)

Explanation:

A public hearing was held in Kannapolis, NC on January 15, 2013, to take public comments on amendments to 15A NCAC 02D .0530 and .0531. Mr. Benne Hutson of the Environmental Management Commission (EMC) was appointed and acted as the hearing officer for this hearing.

The EMC amended the New Source Review (NSR) and Prevention of Significant Deterioration (PSD) permitting rules in 2010 to establish the significance level for nitrogen oxides (NO_x) for fine particulate matter in North Carolina at 140 tons per year (tpy). Fine Particulate Matter (PM_{2.5}) is particles less than 2.5 micrometers in diameter and is interchangeably referred to as "fine" particles. This significance level was based on monitoring and modeling data indicating that NO_x is a lesser contributor to the formation of PM_{2.5} than sulfur dioxide (SO₂). As part of its rule review of North Carolina's state implementation plan (SIP), the United States Environmental Protection Agency (EPA) has determined that, while the federal rule allows for a demonstration that NO_x is not a significant precursor to formation of PM_{2.5}, there is not an allowance for states to establish an alternate significance level. As a result, the state significance level must be revised to reflect the federal 40 tpy significance level in the EPA PM_{2.5} Implementation Rule.

In 2010, the EPA added PM_{2.5} increments under the program. An increment is the maximum allowable increase in ambient pollutant concentration. Federal increments were established for 24-hour and annual averaging periods in Class I, Class II and Class III areas. Adoption of these federal increments is required in order for the EPA to approve North Carolina's SIP. The current date of incorporation in the state rule was proposed to be updated to reflect the current PM_{2.5} increments for the current annual and 24-hour NAAQS established by the EPA.

15A NCAC 02D .0530, Prevention of Significant Deterioration, is proposed for amendment to revise North Carolina's NO_x significance level from 140 tons per year to 40 tons per year and to update the federal cross-reference to reflect the current federal increments for PM_{2.5}.

15A NCAC 02D .0531 Sources in Nonattainment Areas, is proposed for amendment to revise North Carolina's NO_x significance level from 140 tons per year to 40 tons per year.

During the public comment period, two court decisions were issued on the implementation of PM_{2.5} regulations. The first court decision was the U.S. Court of Appeals for the District of Columbia Circuit, January 4, 2013,

Sierra Club vs. EPA, No. 08-1250. The petitioners challenged EPA's decision to promulgate its PM_{2.5} implementation rules pursuant to Subpart 1 of Part D of Title I which contains the implementation provisions for nonattainment areas in general rather than Subpart 4 of Part D of Title I which contains implementation provisions specific to PM₁₀. Subpart 4 is specific to PM₁₀. The court decision remanded the two implementation rules to EPA to repromulgate them pursuant to Subpart 4 of Part D of Title I of the Clean Air Act.

The second court decision was the U.S Court of Appeals for the District of Columbia Circuit, January 22, 2013, National Resources Defense Council and Sierra Club vs. EPA, No. 10-1413. The court reviewed of the PM_{2.5} Increments, Significant Impact Levels (SIL) and Significant Monitoring Concentration (SMC) final rule in 75 FR 64864 (October 20, 2010). The SILs set a de minimis ambient impact where a source's impact that is below a SIL is not required to conduct more extensive modeling to demonstrate its emission will not contribute to a violation of the NAAQS. The SMC sets a de minimis concentration where a source can show through modeling that its impacts are less than the SMC, eliminating the requirement to collect additional monitoring data. The court decision vacated and remanded the SILs for further consideration by EPA. The decision also vacated the parts of the rule establishing the SMCs due to EPA exceeding its statutory authority.

One person commented that the North Carolina Division of Air Quality (DAQ) delay or revise the October 20, 2010 incorporation by reference date in the proposed rule. One person requested that DAQ not continue rulemaking on adding the significant impact levels and significant monitoring concentration provisions to North Carolina PSD regulations. The proposed rule was amended to remove the incorporation by reference date of October 20, 2010 and keep the prehearing May 16, 2008 incorporation by reference date. DAQ also explicitly added the PM_{2.5} and PM₁₀ increments as indicators of particulate matter in Paragraph (v) of Rule 15A NCAC 02D .0530 since increments are a required minimum element for an approvable SIP.

One person asked DAQ to clarify "particulate emissions" in the definition of "regulated NSR pollutant" since Rule 15A NCAC 02D .0530 does not capture EPA's October 25, 2012 final rule amending the definition of "regulated NSR pollutant. DAQ relies on the test methods in Rule 15A NCAC 02D .2609 to determine the measurement of specific particulate matter pollutants. North Carolina DAQ will include a clarification letter with its SIP submittal.

One person commented that the proposed rule does not include the May 18, 2011 PM_{2.5} grandfathering provision repeal in 40 CFR 52.21(i)(1)(xi).

DAQ does not reference this grandfathering provision in its rules. No changes were made in the proposed rule.

The fiscal impact of SILs and SMC provisions in EPA's October 20, 2010 final PM_{2.5} implementation rule were included in the fiscal note for the proposed PSD rule. EPA's SILs and SMC provisions were vacated by the January 22, 2013 U.S. Court of Appeals decision. Removing the SILs and SMC from DAQ's proposed rule did not change the fiscal impact calculations in the approved fiscal note.

Recommendation: The Hearing Officer recommends that the Commission adopt the proposed rule as presented in Chapter II of the hearing record.