

Agenda Item: 11-34 Request to Proceed to Public Hearing for a Temporary Rule to Defer Carbon Dioxide Emissions from Combustion of Biomass from Prevention of Significant Deterioration and Title V Requirements (496)

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.

15A NCAC 02D .0544, Prevention of Significant Deterioration Requirements for Greenhouse Gases, is proposed for temporary amendment to update the prevention of significant deterioration (PSD) for greenhouse gases (GHG) rule in order to reflect the three year federal deferral from consideration of carbon dioxide (CO₂) emissions from combustion of biomass.

On July 20, 2011, United State Environmental Protection Agency (EPA) promulgated a three year deferral period for consideration of CO₂ emissions from bioenergy and other biogenic sources when determining whether a stationary source meets the 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-GHG pollutants or other GHGs (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.

The adoption of the deferral for biogenic CO₂ emissions from PSD permitting programs 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.

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.

In order for the existing rule to be no more restrictive than the federal rule in accordance with G.S. 150B-19.3, NC DAQ needs to amend the state rule to incorporate the EPA deferral period for biogenic CO₂ emissions. Also 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.

A Temporary Rule is being presented to ensure that stationary sources would not have to complete a BACT analysis for biogenic CO₂ and possibly be required to install equipment to control emissions during the three year deferral period and during the permanent rulemaking process. EPA's future rulemaking is uncertain until EPA completes their review of the scientific and technical issues related to accounting for biogenic CO₂ emissions.

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).