

Agenda Item: 10-44 **Hearing Officer’s Report on Federal Greenhouse Gas Tailoring Rule Amendments**

Explanation:

Hearing Officer’s Report on Federal Greenhouse Gas Tailoring Rule Amendments

On August 31, 2010, Mr. Les Hall held a hearing on adoption of federal Greenhouse Gas (GHG) Tailoring provisions to provide regulatory burden relief from requirements that would otherwise become applicable on Jan 2, 2011.

On May 13, 2010 the U.S. Environmental Protection Agency Administrator Jackson signed the final Greenhouse Gas Tailoring Rule and published it in the *Federal Register* on June 2, 2010.

The effective date of that rule was August 2, 2010. GHGs are emitted in much greater mass than conventional pollutants. At the current PSD and Title V applicability levels of GHG emissions, numerous sources, including many small sources that would not otherwise be required to hold air quality permits, would be required to be permitted for GHG emissions. Recognizing that tailoring of the PSD and Title V permitting programs 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, EPA developed a tailoring rule.

Under the final federal regulation, EPA defines the terms “subject to regulation”, “greenhouse gases”, “CO₂ equivalent emissions”, “emissions increase” and “significant” and establishes related thresholds, and amends the definition of “major source” relative to GHGs. The final federal tailoring rule regulates permitting of sources of GHG emissions in two steps. In the first step, new major stationary sources of a regulated new source review (NSR) pollutant other than GHG that also have the potential to emit or will emit GHG emissions \geq 75,000 tons per year (tpy) CO₂e and existing major stationary sources for non-GHGs that have an emissions increase of a regulated NSR pollutant and an emissions increase of CO₂e of 75,000 tons per year or more are required to undergo PSD review and to obtain Title V permits. In step two new stationary sources that will emit or have the potential to emit 100,000 tpy CO₂e and at existing stationary sources, that emit or have the potential to emit 100,000 tpy CO₂e, modifications that will result in an emission increase of 75,000 tpy CO₂e or more are required to undergo PSD review and to obtain Title V permits. Under the final federal regulation, EPA considers GHGs subject to regulation beginning January 2, 2011.

North Carolina has its own approved PSD program and does 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. The rule amendments are proposed to add tailoring provisions to the state rules. To potentially have tailoring provisions in place in North Carolina by January 2, 2011 without a special meeting of the EMC and to avoid the impact the federal tailoring rule is designed to address, waiver of the EMC's 30-day rule is necessary.

As of October 15, 2010, when the comment period ended, four persons have provided written comments concerning the proposed Federal GHG Tailoring amendments.

Three comments generally supported the GHG tailoring provisions. The comments from Manufacturers and Chemical Industry Council of North Carolina (MCIC) added concerns about likely legal challenges and court stays that may leave North Carolina businesses at a competitive disadvantage when compared to other states where Federal Implementation Plans assure that these rules become effective by Jan. 2, 2011. North Carolina has state-adopted rules for its PSD and Nonattainment NSR programs, which do not include any subsequent amendments or editions to referenced materials. A stay or vacatur of the federal tailoring rule has no immediate effect on North Carolina's rule. If the federal tailoring rule is stayed or vacated, then North Carolina will evaluate its position and take appropriate action.

US Environmental Protection Agency also suggested clarification of the referenced materials and emphasis was added to include the August 2, 2010 effective date to the referenced version of the CFR.

Recommendation:

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