

Agenda Item: 10-45 **Hearing Officer's Report on Amendments to the Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NA NSR) Rules to Include PM2.5**

Explanation:

A public hearing was held on August 31, 2010 on the proposed amendments to the Prevention of Significant Deterioration and Sources in Nonattainment Areas rules. The proposed rule amendments were published in the *North Carolina Register* on August 16, 2010 Volume 24, Issue 17. Commissioner Les Hall served as the hearing officer.

Amendments to New Source Review program Rules 15A NCAC 02D .0530, Prevention of Significant Deterioration, and .0531, Sources in Nonattainment Areas, are proposed to include particulate matter that is 2.5 microns or less in diameter (PM2.5) and regulated under the National Ambient Air Quality Standards. Together, 2D .0530 and .0531, represent North Carolina's New Source Review (NSR) permit programs.

The USEPA's Clean Air Fine Particulate Implementation Rule (72 FR 20586) guides the states in developing state implementation plans in response to annual and or daily PM2.5 nonattainment. It establishes a hierarchy of precursor pollutants: Sulfur Dioxide (SO2) is always considered a significant precursor, Nitrogen Oxide (NOx) is presumptively a significant precursor, and Volatile Organic Compounds (VOCs) and ammonia (NH3) are presumed not to be significant precursors.

Under both the PSD and NA NSR programs, primary, condensable, and precursors to PM2.5 are important. The NA NSR program is more restrictive than PSD. Local contributing offsets are required by new or major source modifications in the nonattainment area to ensure that the nonattainment area continues to work rapidly toward reaching attainment.

The proposed amendments set the significant level for NOx in North Carolina to 140 tpy instead of 40 tpy as listed in the federal emissions guidance document. North Carolina has monitoring and modeling data that demonstrates NOx to be a lesser contributor to the formation of PM2.5 than SO2 by a factor of 3.5. Additionally, the proposed amendments include technically modified rule language to better reflect USEPA's language structure regarding notification of Federal Land Managers of PSD permit applications that may affect visibility, language recommended by the EMC regarding notification to FLMs of all PSD permits received, and reinstates a part of a sentence that was inadvertently removed during an overlapping rule action.

No one commented at the hearing. The comment period on the proposed amendments closed October 15, 2010. Two people provided written comments.

The U.S. EPA commented that while the federal rule allows for demonstration that NO_x is not a significant precursor, it must evaluate whether there is allowance for establishing an alternative significance level. North Carolina has monitoring and modeling data supporting the proposed alternative threshold and no change to the proposed threshold is recommended.

The U.S. EPA recommended that the federal rule language be used for consistency regarding VOC and ammonia not being precursors. The proposed language reflects the current state of the science on the issue and no change to the rule language is recommended.

Regarding the proposed notification requirements, both the EPA and the U.S. Fish and Wildlife Service representative noted that the rule appeared to limit notification of permit applications to FLMs for Class I areas inside North Carolina. Rule language was amended to reflect that notification is not limited to only Class I areas in North Carolina. The U.S. EPA also commented that the notification requirements continue to meet the federal notification requirements regarding new or modified sources that may affect visibility. The U.S. Fish and Wildlife Service commented that the federal regulations require the FLMs receive notification 60 days prior to hearings on draft PSD permits. The state rule requirements meet that notification timeframe and no rule change is necessary. The U.S. Fish and Wildlife Service also commented that notification to the FLM for the nearest Class I area of permit applications received should not be assumed to meet the needs of all FLMs since they are with different federal agencies. Rule language was revised to reflect that notice would be sent to the FLMs with the U.S. Department of Interior and U.S. Department of Agriculture.

Recommendation:

The Hearing Officer recommends that the proposed amendments as presented in Chapter II of this hearing report be adopted by the Environmental Management Commission.