

**Agenda Item: 11-14 Presentation of Administrative Law Judge's Recommended Decision, US Dept. of Interior, Fish and Wildlife Service v. NC DENR, DAO and PCS Phosphate Company, Inc., Intervenor, 08 EHR 1067**

**Explanation:**

Petitioner US Dept. of the Interior filed this contested case challenging the PSD Permit issued to PCS Phosphate Company, Inc. The U. S. Department of the Interior contends that DENR did not provide proper notification to the Federal Land Manager (“FLM”) of potential impacts to visibility at the Swanquarter Class I area from the proposed major modification to the PCS Phosphate Company’s sulfuric acid manufacturing facility and also did not provide a modeling analysis that used a visual range corresponding to “natural conditions” of potential impacts to air quality related values at the Swanquarter Class I area that would enable the FLM to predict whether the proposed modification would have an adverse impact on visibility.

At the July 2009 meeting, the Commission considered the parties cross-motions for summary judgment, rejected the ALJ’s decision granting summary judgment to the US Dept. of the Interior, and held the contested case was moot because visibility modeling using “natural conditions” as the background visual range was submitted to the FLM for review and that the FLM determined that the emissions expected to be produced as the result of the subject permit would not cause an adverse impact on visibility at Swanquarter. The case was remanded to the ALJ with instructions to enter a decision recommending dismissal of the case consistent with the finding of mootness.

The Administrative Law Judge conducted an administrative hearing, denied DENR’s motion to dismiss for mootness, and entered a Decision recommending that the EMC enter a final decision in favor of the US Dept. of the Interior and, in addition, that “the subject permit not be suspended or revoked because the FLM has determined that emissions from the proposed source will not have an adverse impact on the Class I area.”

Under the APA, the Commission shall adopt the ALJ's decision unless it demonstrates that the ALJ's decision is clearly contrary to the preponderance of the admissible evidence or the law; modify the decision or reject the decision with a statement of reasons and corresponding evidence in the record relied upon by the agency.