

AGENDA ITEM :

Hearing Officer's Report on Permanent Rule Amendment to Defer Carbon Dioxide Emissions from Biomass from Prevention of Significant Deterioration Requirements (496)

EXPLANATION:

A public hearing was held in Raleigh, North Carolina, on March 14, 2012, to take public comments on amendments to Rule 15A NCAC 02D .0544, Prevention of Significant Deterioration Requirements for Greenhouse Gases. Mr. Donnie Brewer and Mr. Christopher Ayers were appointed and acted as hearing officers for this hearing.

On July 20, 2011, United States Environmental Protection Agency (EPA) promulgated a three year deferral period for consideration of carbon dioxide (CO₂) emissions from bioenergy and other biogenic sources when determining whether a stationary source meets prevention of significant deterioration (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-greenhouse pollutants or other greenhouse gases (GHG) (e.g., methane (CH₄) and nitrous oxide (N₂O)) emitted from the bioenergy sources. The deferral only pertains to biogenic CO₂ emissions in the PSD and Title V programs. EPA intends for the deferral to be temporary while the agency completes its science and technical review of the issue of accounting for the net atmospheric impact of biogenic CO₂ emissions.

Adoption of the deferral in 40 CFR 51.166 is optional for any state, local, or tribal permitting authority; however 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.

The NC rules did not implement the new federal deferral automatically by reference. The version of the Code of Federal Regulations (CFR) incorporated in the rule was that published in the Federal Register June 3, 2010 and effective August 2, 2010 and did not include any subsequent amendments or editions to the referenced material. The State rule amendment is proposed to reflect the federal deferral while the uncertainty surrounding the impact of biogenic CO₂ emissions and how such emissions will be

handled in the overall GHG framework is being resolved. A temporary rule amendment to implement the new federal deferral became effective on December 23, 2011.

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.

The amendment ensures that stationary sources would not have to unnecessarily complete a BACT analysis for biogenic CO₂ and possibly be required to install equipment to control emissions during the three year deferral. EPA's future rulemaking is uncertain until EPA completes their review of the scientific and technical issues related to accounting for biogenic CO₂ emissions.

15A NCAC 02D .0544, Prevention of Significant Deterioration Requirements for Greenhouse Gases, is proposed for amendment to update the PSD for GHG rule in order to reflect the three year federal deferral from consideration of CO₂ emissions from bioenergy sources as a permanent rule amendment.

Two persons commented on the proposed rule amendment during the comment period for the hearing record. One commenter did not support the adoption of the rule amendment. One commenter commented that not controlling biogenic CO₂ emissions being a threat to the survival of the planet. One commenter commented on the rule's disproportionate impact to People of Color and the poor. One commenter commented that tire-derived fuel is considered biomass. One commenter reviewed the rule amendment and did not suggest any changes to the amendment. No changes were made to the rule as a result of these comments.

The Environmental Management Commission requested comment on the economic assessment. Several EMC members requested information relative to the costs and benefits to all parties resulting from the proposed action, in particular, human health effects and impacts to ecosystem services associated with variation in carbon dioxide and other pollutant emissions from biomass sources. The costs and benefits to all parties related to health effects and ecosystem services are sufficiently speculative and tenuous that no meaningful cost/benefit analysis can be provided with respect thereto. The economic assessment was approved by the North

Carolina Office of State Budget and Management on November 16, 2011. No comments were received during the hearing process. No changes were made to the approved economic assessment.

Recommendation:

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