

State of Rhode Island
Department of Environmental Management
Office of Air Resources

**In re: Proposed revisions to Air Pollution Control Regulation
No. 29, “Operating Permits”**

DECISION

Introduction

On October 30, 2018 a notice was posted on the websites of the Rhode Island Department of Environmental Management (RI DEM) and the Rhode Island Office of Secretary of State and was sent to interested parties announcing a public comment period to accept comments on the adoption of proposed revisions to Air Pollution Control Regulation No. 29, “Operating Permits” (250-RICR-120-05-29). Although R.I. Gen. Laws § 42-35-2.8, require that an oral hearing be granted if requested by twenty-five (25) persons, by an agency or by an association having at least twenty-five (25) members, an oral hearing will be granted if requested by one (1) or more persons during the public comment period. The public comment period ended at 4:00 PM on November 30, 2018.

The purpose of this regulation is to specify operating permit requirements for stationary sources. The proposed revisions are intended relieve regulatory requirements for affected facilities by allowing them the opportunity to apply for an emissions cap in lieu a complex operating permit, if applicable. Portions of the regulation that no longer apply are proposed to be eliminated. Additionally, the regulation has been updated to current RI Code of Regulations (RICR) format which required the addition of an incorporated materials section. The proposed revisions do not impose any new requirements on regulated entities including any small businesses or any city or town; therefore, there is no adverse economic impact.

Written comments were received from the United States Environmental Protection Agency. The following is the Office of Air Resources' responses to the comments received:

Response to Comments

Comment: Rhode Island must leave in the reference year of 1987 in the definition of Major Source for the SIC code since this is the fundamental method for determining how to group industrial sources when determining the Title V source.

Response: The reference year of 1987 in the definition of Major Source for the SIC code will be retained in the final regulation.

Comment: In APCR 29.5.A.28(a), the proposed revision from 100,000 tons per year to 75,000 tons per year of greenhouse gases (GHG) is inconsistent with 40 CFR § 70.2 which states the emission level as 100,000 tons per year. Additionally, Step 2 of the GHG


Tailoring Rule, which applied as of July 1, 2011, the prevention of significant deterioration (PSD) and Title V permitting program requirements applied to some sources that were classified as major sources based solely on their GHG emissions or potential to emit GHGs. The EPA generally described the sources covered by Title V during Step 2 of the GHG Tailoring Rule as “Step 2 sources” or “GHG-only sources.” The United States Supreme Court invalidated the EPA’s regulation of Step 2 sources in Utility Air Regulatory Group (UARG) v. EPA, 134 S Ct. 2427 (2014). In accordance with that decision, the United States Court of Appeals for the District of Columbia Circuit vacated the federal regulations that implemented Step 2 of the GHG Tailoring Rule. See Coalition for Responsible Regulation, Inc. v. EPA, 606 Fed. Appx. 6, 7 (D.C. Cir. 2015). Rhode Island should no longer require a source to obtain a Title V permit solely due to its GHG emissions.

Response: Consistent with 40 CFR § 70.2 the GHG applicability emission level will remain at 100,000 tons per year. On August 26, 2016, EPA proposed changes needed to bring EPA’s air permitting regulations in line with Supreme Court and D.C. Circuit decisions on greenhouse gas permitting, specifically the June 23, 2014, Supreme Court decision in Utility Air Regulatory Group (UARG) v. EPA and the April 10, 2015, Court of Appeals for the District of Columbia (D.C. Circuit) Coalition for Responsible Regulation v EPA Amended Judgment. EPA’s proposed revisions to the title V regulations intend to ensure that a stationary source will not be required to obtain a title V permit solely because the source emits or has the potential to emit GHGs above the major source thresholds. When EPA finalizes these regulations, RI will incorporate the changes into Part 29.

Decision

It is the decision of the Department to amend the draft Air Pollution Control Regulation, 250-RICR-120-05-29, “Operating Permits” as indicated in the response to comments above. The final amended regulations are appended to this Decision.

12/10/18
Date


Laurie A. Grandchamp, P.E.
Administrator, Environmental Protection