STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

CONCISE EXPLANATORY STATEMENT

AGENCY: Department of Environmental Management

DIVISION: Office of Air Resources

RULE IDENTIFIER: 250-RICR-120-05-16

RULE TITLE: Part 36 "Operation of Air Pollution Control Systems"

REASON FOR RULEMAKING: OAR is amending 250-RICR-120-05-16, in response to the EPA's final action, Findings of Failure to Submit (FFS) State Implementation Plan (SIP) Revisions in Response to the 2015 Findings of Substantial Inadequacy and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction, 87 Fed. Reg. 1680 (January 12, 2022). The final FFS action went into effect on February 11, 2022, and gave DEM OAR 18 months from that date to submit an amendment to DEM OAR's SIP or face sanctions under Clean Air Act § 109. The EPA issued the FFS because DEM OAR had not submitted an amendment to its SIP in response to the Startup, Shutdown, and Malfunction SIP Call ("SSM SIP Call"). The SSM SIP Call resulted from a settlement agreement entered November 30, 2011 to settle a lawsuit filed by Sierra Club and WildEarth Guardians, Sierra Club v. E.P.A., 699 F.3d 530 (D.C. Cir. 2012). In the FFS, EPA stated that DEM OAR had SSM-related deficiencies in its SIP and, therefore, did not meet CAA requirements. Specifically 250-RICR-120-05-16.3, which addresses malfunctions, does not meet the requirements of the Clean Air Act.

ANY FINDING REQUIRED BY LAW AS A PREREQUISITE TO THE

EFFECTIVENESS OF THE RULE: not applicable

TESTIMONY AND COMMENTS: Comments were received from the US Environmental Protection Agency. The Decision addressing the comments is attached.

CHANGE TO TEXT OF THE RULE: No changes were made as a result of comments.

REGULATORY ANALYSIS: Pursuant to CAA § 179(a) and (b) and 40 CFR 52.31, the offset sanction identified in CAA section 179(b)(2) will apply in RI until the deficiency in Part 16 is corrected. Effective Aug 11, 2023, the 2-to-1 emission offset requirement for all new and modified major sources subject to the new source review program is in place until the Part 16 is revised and incorporated in into the RI SIP.

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 significant adverse economic impact.

DATE THE FINAL RULE WAS SIGNED BY THE AGENCY HEAD: