FACT SHEET

In re: Proposed revisions to 250-RICR-120-05-29, "Operating Permits"

Introduction

The Department of Environmental Management (DEM), Office of Air Resources (OAR), is proposing to revise 250-RICR-120-05-29 (Part 29), "Operating Permits". Part 29 specifies operating permit requirements for major stationary sources.

Description of Proposed Amendments

RIDEM OAR is proposing to amend 250-RICR-120-05-29 to remove affirmative defense provisions contained in Part 29. Specifically RIDEM OAR is proposing to remove §29.10 (K) which currently allows sources to exceed permitted emissions levels during an emergency.

Demonstration of Need

On July 12, 2023 the Environmental Protection Agency (EPA) finalized the removal of the "emergency" affirmative defense provisions from the EPA's title V operating permit program regulations. These provisions allowed sources to avoid liability in enforcement proceedings by demonstrating that violations of certain emissions limitations in a title V permit were caused by an "emergency " situation. The title V affirmative defense provisions are inconsistent with EPA's interpretation of the Clean Air Act's enforcement structure, following the 2014 D.C. Circuits NRDC v. EPA (749 F.3d 1055) decision, and are considered a violation of the Clean Air Act. This decision published July 12 2023, effective August 21, 2023, requires states to remove affirmative defense provisions from EPA-approved state operating permit programs by August 21, 2024. Affirmative defense provisions contained in individual operating permits must be removed as soon as possible or during periodic permit renewal or modification.

Alternative Approaches Considered

There are no alternative options.

Identification of Overlapped or Duplicated State Regulations

The Office of Air Resources has identified no state regulations that overlap or duplicate the proposed amendments.

Determination of Significant Adverse Economic Impact on Small Business or Any City or Town

It is not anticipated that the proposed revisions will have any significant adverse economic impact on regulated entities including small businesses or any city or town.

For more information contact:

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