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

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

DECISION

Introduction

On December 1, 2023 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 250-RICR-120-05-29, "Operating Permits" (Part 29). 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. No request for a public hearing were received. The public comment period ended at 4:00 PM on January 3, 2024.

The purpose of this regulation is to specify operating permit requirements for stationary sources. RIDEM OAR is proposing to amend 250-RICR-120-05-29 to remove affirmative defense provisions contained in §29.10 (K) which violate the Clean Air Act.

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.

The proposed amendments will not have any significant adverse economic impact on regulated entities including small businesses or any city or town.

The only written comment received was from the United States Environmental Protection Agency stating they had no comments on the regulation as proposed.

Decision

It is the decision of the Department to amend the draft Air Pollution Control Regulation, 250-RICR-120-05-29, "Operating Permits" as proposed. The final amended regulations are appended to this Decision.

Karen Slattery Digitally signed by Karen Slattery Date: 2024.01.30 16:48:21 -05'00'

Date

Karen Slattery, Deputy Administrator
Office or Air Resources