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-120-05-29

RULE TITLE: "Operating Permits"

REASON FOR RULEMAKING: The purpose of this regulation is to specify operating permit requirements for stationary sources. RIDEM OAR is amending 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.

ANY FINDING REQUIRED BY LAW AS A PREREQUISITE TO THE

EFFECTIVENESS OF THE RULE: not applicable

TESTIMONY AND COMMENTS: USEPA commented that they had no comments.

CHANGE TO TEXT OF THE RULE: No changes

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

DATE THE FINAL RULE WAS SIGNED BY THE AGENCY HEAD: