



DAQEM

DEPARTMENT OF AIR QUALITY & ENVIRONMENTAL MANAGEMENT

500 S Grand Central Parkway 1st Floor • Box 555210 • Las Vegas, NV 89155-5210

(702) 455-5942 • Fax (702) 383-9994

Lewis Wallenmeyer Director • Tina Gingras Assistant Director

October 4, 2010

Docket ID No. EPA-HQ-OAR-2010-0107
U.S. Environmental Protection Agency
EPA West (Air Docket)
1200 Pennsylvania Avenue, NW
Mail Code: 6102T
Washington, D.C. 20460

RE: Comments from Clark County, Nevada, on 75 FR 53892, “Action to Ensure Authority to Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Substantial Inadequacy and SIP Call”

Clark County, Nevada, is providing these comments in response to the notice EPA published on September 2, 2010, in the *Federal Register*, “Action to Ensure Authority to Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Substantial Inadequacy and SIP Call” (75 FR 53892). We appreciate the opportunity to provide comments for the record.

In May 2010, the Clark County Board of County Commissioners (BCC), the governing body with authority to adopt, amend, and repeal air quality regulations, substantially revised the Prevention Of Signification Deterioration (PSD) applicability provisions in Section 12 of the Clark County Air Quality Regulations (AQRs) and related provisions in Section 0, “Definitions.” These revisions became locally effective on July 1, 2010, and were submitted to EPA Region 9 on September 1, 2010, for approval into the Nevada SIP. Because the current state implementation plan (SIP) PSD rules are no longer part of the AQRs, and the County has submitted new rules for SIP approval, discussing the current SIP PSD applicability provisions is not relevant to EPA concerns about Clark County’s ability to issue PSD permits for greenhouse gas (GHG) sources beginning January 2, 2011.

BOARD OF COUNTY COMMISSIONERS

Rory Reid Chairman • Susan Brager Vice-Chairman

Larry Brown, Tom Collins, Chris Giunchigliani, Steve Sisolak, Lawrence Weekly

Virginia Valentine, PE, County Manager

As stated above, the County has submitted SIP revisions to EPA that the BCC adopted in May 2010. EPA approval of this SIP submittal is necessary to ensure that the County obtains authority to issue PSD permits to GHG sources. Additionally, as discussed below, Clark County must complete another rulemaking that EPA will need to approve into the SIP before it will have the authority to issue PSD permits to GHG sources.

The PSD applicability provisions that have been submitted for SIP approval are found in AQR Section 12.2. This rule tracks the federal PSD regulations and includes the term “subject to regulation” in its definition of “regulated NSR pollutant” (AQR Section 12.2.2(pp)(4)). In the proposed and final rules EPA has promulgated regarding GHGs, EPA suggests that a local governmental entity such as the County may have the authority to interpret “subject to regulation” to include GHGs without any rulemaking. Further, EPA suggests that the interpretation of this phrase as outlined in the Tailoring Rule will allow the County to incorporate future pollutants that become subject to regulation under the Clean Air Act without any additional rulemaking (75 FR 53892, 53903).

Unfortunately, the County does not have statutory authority to adopt rules that will automatically update, including when changes are made to the federal PSD program. The County is subject to Dillon’s Rule, meaning it has only that authority provided in the Nevada Revised Statutes (NRS). While there is no language in the NRS that explicitly limits the applicability of the PSD program to pollutants identified at a certain point in time, more importantly, there is no language that allows or authorizes the County to adopt air quality regulations that could prospectively incorporate new pollutants as they become subject to regulation in the future.

For the most part, NRS Chapters 237, 244, and 445B set forth the statutory requirements to adopt, amend, repeal, or otherwise revise air quality regulations. NRS Chapter 445B provides the County with authority to regulate GHGs upon the adoption of rules into its air quality program. This chapter, as well as Chapters 237 and 445, describe the process the County must use to adopt rules into its air quality program, including PSD rules. This process includes a notice to the public, a business impact review, and a public hearing. Until the County goes through the rulemaking process to adopt a provision into the AQRs, it does not have a rule it can enforce.

When the BCC adopted revisions to the PSD program in Sections 0 and 12 of the AQRs in May 2010, EPA had not yet adopted the Greenhouse Gas Tailoring Rule. The newly adopted regulations do not contain any mention of GHGs. Furthermore, nothing in the notices, during the public hearing, or from the administrative record indicates that these regulations were meant to apply to GHG emissions. Although the revised regulations contain the phrase “subject to regulation” in their definitions of “regulated NSR pollutant,” this phrase and EPA’s subsequent adoption of the Tailoring Rule are not sufficient to trigger a revision to the regulation because they do not satisfy the state law requirements applicable to the County.

Fortunately, the County is in the process of amending Sections 0 and 12 of the AQRs to incorporate the applicable provisions of the Tailoring Rule (Enclosure 1, "Notice of Public Hearing/Notice of 30 Day Public Review and Comment Period"). The County anticipates that the BCC will consider these revisions on November 16, 2010. Upon BCC approval, the County will submit these revisions to EPA Region 9 by December 1, 2010, for approval into the SIP.

As stated previously, the County has already submitted SIP revisions from the BCC's May 2010 rule adoption. Upon the County's submittal of additional SIP revisions to incorporate the Tailoring Rule by December 1, 2010, EPA will not need to finalize a finding of substantial inadequacy or issue a SIP call for Clark County (75 FR 53901). If, due to unforeseen circumstances, the County does not submit its SIP revision by December 1, 2010, it would accept a SIP submittal deadline of July 1, 2011.

Upon approval of both SIP revisions, the County will have the authority it needs to issue federally enforceable PSD permits to GHG sources.

We appreciate the opportunity to comment on the proposed GHG SIP Call. Please contact Russell Roberts at (702) 455-1611 or rroberts@co.clark.nv.us if you have questions or need additional information.

Sincerely,

Tina Gingras
for Lewis Wallenmeyer, Director

Enclosure:

Notice of public hearing publication

cc:

Deborah Jordan, EPA Region 9

Amy Zimpfer, EPA Region 9

Gerardo Rios, EPA Region 9

Mike Elges, NDEP

Tina Gingras, DAQEM

Russell Roberts, DAQEM

Catherine Jorgenson, Deputy District Attorney, DAO

ENCLOSURE 1

NOTICE OF PUBLIC HEARING NOTICE OF 30 DAY PUBLIC REVIEW AND COMMENT PERIOD

PROPOSED REVISIONS TO CLARK COUNTY AIR QUALITY REGULATIONS

Notice is hereby given that the Board of County Commissioners (Board) will consider revising Sections 0 and 12.2 of the Clark County Air Quality Regulations. The Board will consider these proposed changes at a public hearing to be scheduled for 10:00 AM on November 16, 2010 at the Commission Chambers, 500 S. Grand Central Parkway, Las Vegas, Nevada.

SUMMARY OF THE PROPOSED REVISIONS:

General: On June 3, 2010, the U.S. Environmental Protection Agency published a final rule in the Federal Register (75 Federal Register 31514) that applies new requirements to stationary sources that emit Greenhouse Gases (GHG). This new federal rule, commonly known as the Greenhouse Gas Tailoring Rule, defines the applicability requirements that determine which stationary sources and modification projects become subject to permitting requirements for GHG emissions under the Federal Prevention of Significant Deterioration (PSD) and title V programs. The first phase of the rule takes effect January 2, 2011. In order for Clark County to continue to have authority after January 2, 2011 to issue PSD and title V permits, several existing definitions and applicability criteria in the Clark County Air Quality Regulations must be amended to incorporate the GHG Tailoring Rule requirements. The following changes are proposed:

1. Generally amend the Air Quality Regulations to incorporate by reference the provisions of the GHG Tailoring Rule that amend 40 C.F.R §§ 52.21 and 70.2.
2. Amend the AQR Section 0 definition of “Part 70 Source” to include an effective date that clarifies that the term includes the definition of a major source as amended by the GHG Tailoring rule in 40 C.F.R. § 70.2 as of July 1, 2010.
3. Correct minor section reference errors in the AQR Section 0 definitions of “Part 70 Source” and “Regulated Air Pollutant”.
4. Amend the definition of the AQR Section 12.2(ff)(1) definition of “Major Stationary Source” revising Section 12.2.2(ff)(1)(B) to clarify the reference to Section 12.2.2(ff)(1) by changing the reference to Section 12.2.2(ff)(1)(A). Further, it is proposed to add a new Section (C) to Section 12.2.2(ff)(1) to amend the same definition to include stationary sources that emit GHGs that are subject to regulation as defined in 40 C.F.R. § 52.21(b)(49) as of July 1, 2010. Existing AQR Section 12.2.2(ff)(1)(C) is proposed to be re-positioned as Section 12.2.2(ff)(1)(D).
5. Amend the AQR Section 12.2.2(pp) definition of “Regulated NSR pollutant” by revising Section 12.2.2(pp)(4) to clarify that the definition includes any pollutant subject to regulation under the Act “as defined in 40 C.F.R. § 52.21(b)(49) as of

ENCLOSURE 1

July 1, 2010", to ensure that the definition includes the GHG Tailoring Rule requirements.

6. Amend the AQR Section 12.2.2(uu) definition of "Significant" by adding mass based and Carbon Dioxide Equivalent thresholds as defined in 40 C.F.R. § 52.21(b)(49) as of July 1, 2010.

A 30 day public comment period will be conducted starting on October 1, 2010 and ending at 5:00 PM on November 1, 2010.

Copies of the draft ordinance that includes the proposed revisions may be reviewed at the Department of Air Quality and Environmental Management Main Office, first floor, Clark County Government Center, 500 S. Grand Central Parkway, Las Vegas, Nevada. Alternatively, the draft rules are available for review at the DAQEM website at:

http://accessclarkcounty.com/depts/daqem/aq/rules/pages/draft_regs.aspx.

Copies may also be obtained by contacting Mr. Russell A. Roberts @ 455-1611 or via email @ rroberts@co.clark.nv.us.

Comments may be submitted no later than 5:00 PM on November 1, 2010. Written comments may be submitted to the Department at this address:

Clark County Department of Air Quality and Environmental Management
500 S. Grand Central Parkway
PO Box 555210
Las Vegas, NV 89155-5210

Comments may also be submitted via email at this address: rroberts@co.clark.nv.us

Publish: 10/1, 10/10 and 10/17/2010