

**ENVIRONMENTAL MANAGEMENT COMMISSION  
AIR QUALITY COMMITTEE MEETING SUMMARY**

**March 11, 2015**

**Archdale Building-Ground Floor Hearing Room**

**3:30 – 5:00 PM**

The Air Quality Committee (AQC) of the Environmental Management Commission (EMC) met on March 11, 2015, in the Ground Floor Hearing Room of the Archdale Building. The AQC members in attendance were: Chairman Charles Carter, Chair, Mr. Gerard Carroll, Dr. Lawrence Raymond, Mr. E.O. Ferrell and Ms. Julie Wilsey. The Deputy Director and staff members of the Division of Air Quality (DAQ), Ms. Jennie Hauser of the North Carolina Attorney General's Office and the general public was also in attendance.

**CALL TO ORDER (Chairman Charles Carter)**

**Agenda Item #1, Call to Order and the State Government Ethics Act, N.C.G.S. §138A-15(e)**

General Statute §138A-15(e) mandates that the Chairman inquire as to whether any member knows of any known conflict of interest or appearance of conflict with respect to matters before the Environmental Management Commission's Air Quality Committee. No conflicts were identified.

**MINUTES (Chairman Carter)**

**Agenda Item #2, Review and Approval of January Meeting Summary**

Ms. Joelle Burleson indicated that the January AQC meeting summary was not included in the March AQC meeting agenda package for the Committee's review. Chairman Carter advised that the request for approval of the January meeting summary would be deferred to the May meeting.

**CONCEPTS**

**NONE**

**DRAFT RULES**

**Agenda Item #3, Request for 30 day Waiver and to Proceed to Hearing on Permanent Amendments to Clarify Applicability of Prevention of Significant Deterioration (PSD) Rule for Greenhouse Gases and Title V Applicability Rule (528) (Joelle Burleson, DAQ)**

Ms. Hauser clarified that the AQC was not going to take action on the 30 day waiver, but it would actually go before the EMC tomorrow. She advised that the recommendation to the AQC today was appropriate.

Ms. Burleson asked for the Committee's consideration to move forward to send this item before the EMC for their consideration and approval of the 30 day waiver and moving forward to public comment. She reminded that in November 2014, the Commission approved the temporary rule to enact the majority of these requirements with one change. The temporary rule went into effect on December 2, 2014. Ms. Burleson clarified that in the explanation of agenda item #3, it says "Currently, sources are required...", but more accurately, it should say, "Absent, sources are required..." She explained that the reason for the temporary rule was to avoid the inappropriate application of the existing rule given EPA's recent change

in stance based on the URAG vs EPA's decision last June – July timeframe. She advised that the request before the Committee is to adopt a permanent rule to replace the temporary rule and not allow it to expire.

15A NCAC 02D 0.544, Prevention of Significant Deterioration Requirements for Greenhouses Gases, is proposed for amendment to remove the requirement that major stationary sources obtain a PSD permit on the sole basis of its GHG emissions. The rule is also proposed for amendment to update the global warming potentials for GHGs.

15A NCAC 02Q .0502, Applicability, is proposed for amendment to remove the requirement that facilities obtain a Title V permit on the sole basis of its GHG emissions.

Ms. Burleson advised that a fiscal note assessment was developed for this rulemaking resulting in no significant impacts to the agency or the sources. The OSBM has reviewed the fiscal note at the staff level and has made minor adjustments related to the language. The OSBM also requested that the dollar figures in the assessment be brought up to 2015 dollars. Those changes were made and are reflected. The impact to facilities was cost savings in annual Title V fees for the facilities required to submit a Title V application. There were no fiscal impact for PSD permitting. There were no impacts for the local programs. The fiscal note is still in draft.

Mr. Carroll asked why the fiscal note was required.

Ms. Burleson explained that when there is potential for local impacts, a fiscal note is required. Even though those impacts were not anything substantial, they still had to be considered under the APA. A fiscal note is required for OSBM when the state budget is affected.

Chairman Carter asked whether there is a numerical cut-off regarding when a fiscal note is required.

Ms. Burleson said that the APA does cite a level in the amount of \$1,000,000 over a 12 month period, but when there is impact on the state or local level, a dollar amount is not required. Commission Counsel confirmed.

Ms. Burleson noted that on page B-2, in attachment B, agenda item #3, paragraph (d) is duplicated. She requested approval for making that correction to re-letter the subsequent paragraphs.

Ms. Burleson said that the EMC needs to adopt the rule by September 10, 2015 to keep the temporary rule from expiring.

#### **MOTION**

Mr. Ferrell made a motion to approve request for a 30 day waiver and to proceed to hearing on the permanent rules to clarify applicability of PSD for GHG and Title V Applicability rules. Commissioner Wilsey made a second motion. Ms. Hauser clarified that Mr. Ferrell's motion was to approve the text with the change as pointed out by Ms. Burleson and the approval includes the fiscal note contingent upon final OSBM approval for the text to go to publication in the Register to begin the public comment period. Mr. Ferrell confirmed as well as Ms. Wilsey.

Chairman Carter asked whether there were indications when the fiscal note process might be completed.

Ms. Burleson said that although she cannot assure the timeline, the indications from OSBM staff have been that it should be completed by March 24, 2015.

Chairman Carter asked Ms. Hauser whether there is a timing issue.

Ms. Hauser confirmed that the fiscal note needs to be in final form before notice of text can be published. Chairman Carter asked what the typical timeframe is once initial approval is received to get an action published in the NC Register.

Ms. Burleson explained that it depends on where that action falls relative to the next filing date available in the Register. The next filing date will be March 24, 2015. If it doesn't get filed on March 24, it would probably occur in the mid or late April timeframe.

Ms. Hauser clarified that Mr. Ferrell's motion included the recommendation to the EMC for the 30 day waiver.

The motion passed unanimously.

**Agenda Item #4, Request for 30 day Waiver and to Proceed to Hearing on Revisions to Reflect S.L. 2014-120 Repeal of Source Reduction and Recycling Reporting Requirement (530) (Steve Schliesser, DAQ)**

Mr. Schliesser explained that the EMC is requested to approve one or more public hearings to consider rule amendments to reflect repeal of the source reduction and recycling reporting requirement. Session Law 2014-120 included provisions repealing these reporting requirements.

The existing rules contain language requiring permitted sources to submit a written description of current and projected plans to reduce air contaminant emissions by source reduction and recycling. The description shall include:

- for an existing facility, a summary of activities related to source reduction and recycling and a quantification of emissions reduced and material recycled during the previous year and a summary of plans for further source reduction and recycling, or
- for a new facility, a summary of activities related to and plans for source reduction and recycling.

Three rules contain the reporting requirements for source reduction and recycling, as follow:

- 15A NCAC 02Q .0206, Payment of Fees, is proposed for amendment to repeal the requirement that permit holders report their plans for source reduction and recycling along with the annual permit fee payment.
- 15A NCAC 02Q .0304, Applications, is proposed for amendment to repeal the requirement that non-Title V permit holders report their plans for source reduction and recycling along with the permit application.
- 15A NCAC 02Q .0507, Application, is proposed for amendment to repeal the requirement that Title V permit holders report their plans for source reduction and recycling along with the permit application.

The intent of the reporting requirement in the three rules above was to encourage facilities to consider source reduction and recycling as a means of pollution prevention. Now many secondary materials have enough value to make recycling worthwhile without government intervention. Instead of facilities reporting information to the State, the NC Department of Environment and Natural Resources has developed web sites to help connect those that produce recyclable materials and fuels with matching collectors, processors, and end users. The DAQ began implementing the provisions of the statutory repeal

when it became effective on September 18, 2014 by discontinuing the requirement for permit holders to report their source reduction and recycling plans.

The Office of State Budget and Management (OSBM) reviewed an analysis for the proposed amendments to Rules 15A NCAC 02Q .0206, .0304, and .0507 in accordance with G.S. 150B-19.1, 150B-21.4, and E.O. 70. The analysis was determined by OSBM not to require a fiscal note on January 26, 2015.

The Director recommends that the Commission approve the waiver and the proposed rule amendments along with authorizing a public hearing(s) on these items and that the Chairman appoint a member(s) of the Commission to serve as hearing officer(s).

Chairman Carter asked whether the application forms would eliminate the requirement. Mr. Schliesser confirmed.

Deputy Director Abraczinskas added that DENR's Division of Environmental Assistance Customer Service (DEACS) have been compiling this information for years. The programs that focus on waste reduction and recycling are more efficient than this requirement. DEACS has programs that focus on direct assistance and engagement with folks in the regulated community. These issues are not being ignored but are instead being handled by another Division with far more effective ways of promoting this type of activity.

Mr. Schliesser further explained that DEACS has developed a web page that helps the producers of these waste materials by matching processors and collectors with users.

#### **MOTION**

Dr. Raymond made a motion to approve the waiver and the proposed amendments along with authorizing a public hearing(s) on these items and that the Chairman appoint a member(s) of the Commission to serve as hearing officer(s).

Mr. Ferrell made a second motion.

The motion was unanimously approved.

#### **Agenda Item #5, Request for 30 day Waiver and to Proceed to Hearing on Revisions to Open Burning Rules to Reflect S.L. 2014-120 (529) (Joelle Burleson, DAQ)**

Ms. Burleson noted that per discussion with EMC Chairman Carroll, the request for the 30 day waiver was removed.

Section 24(d) of the Session Law requires the Commission to adopt amendments to 15A NCAC 02D .1903, Open Burning Without and Air Quality Permit, that are substantively identical to the Session Law provisions. Per the Session Law, these rule amendments are not subject to review by the Rules Review Commission under the APA. The amendments are to become effective as provided in G.S. 150B-21.3(b) as though 10 or more written objections had been received and thus would become effective following opportunity for legislative review.

In addition to the already permissible residential open burning of leave, tree branches, or yard trimmings under the conditions specified in the rule, the amendments allow residential open burning of logs and

stumps. The statutory amendments also specify that burning of stumps and logs shall not be considered to create a nuisance.

Rule 15A NCACA 02D .1903, is proposed for amendment to reflect these provisions. Rule 15A NCAC 02D .1902 is proposed for amendment to remove the definition of the term nuisance for consistency with the changes to 02D .1903.

The DAQ completed a regulatory impact analysis per the requirements of the APA. The analysis was reviewed by OSBM and determined not to require a fiscal note. The rule amendments do not cause substantial economic impacts as defined in the APA N.C.G.S. 150B-21.4(b1), and have little to no impact on state or local governments.

The Director recommends that the Commission approve the proposed rule along with authorizing a public hearing(s) on these items and that the Chairman appoint a member(s) of the Commission to serve as a hearing officer(s).

Ms. Burleson talked about various changes in the language and also renumbering of paragraphs. In consideration of the Session Law, the Division recognized from its experience in implementing the rule, that logs tend to burn longer than other permissible open burning materials and from an equity standpoint, it seemed appropriate to not deem those items as a nuisance.

Chairman Carter explained that the Legislature took an action that explicitly determined that burning stumps and logs is not nuisance as a definitive matter. However, they did leave in the statute, a reference to not creating a nuisance. This left the Division in a conundrum in determining what a nuisance is and it provided the opportunity for that determination to be subjective. This action by the Legislature though intended to improve the situation, should have deleted any reference to the word “nuisance”. Chairman Carter noted that in his discussion with Director Holman, she advised that this is an attempt to streamline this conflicting provision to make it more workable. This was originally in a request to recommend a 30 day waiver to go before the EMC, but it was determined that there was no particular reason to do that. In consultation with Chairman Carroll, it was decided to remove the 30 day waiver request and give the EMC members more time to consider how to move forward. This will be part of what we will receive comment on if this goes to public hearing. At this point, it is simply a typical request to go to public hearing and proceed to public comment on the proposed changes that the staff has come forward with.

Mr. Carroll asked a question about the language in the statute that says that the new regulations will be substantively identical to what is written in the statute, which includes item #5 which says the burning does not create a nuisance. That language is in the statute and we are taking it out. Does that comply with “substantially identical”? He also asked a question regarding logs and stumps having more potential to be a nuisance. He said it doesn’t logically necessarily follow that nothing else can be a nuisance. He said that there was concern that by removing the language, it also removes a potential remedy which may create problems for the neighbor or whoever is affected. These things considered, he said he would leave the language as is and not make the changes. He said he would not remove the word “nuisance” and would leave the rest of the language as is and let the compliance officer use his own judgment.

Dr. Raymond commented that he was having trouble grappling with the idea of what is a nuisance and what is determined impairment in local air quality. He said that if there is an inversion in his neighborhood in Charlotte, which might occur if someone next door were burning a log or little tree, he would feel very aggrieved because that would be impacting his air quality at a local level. He said the problem is that it's not a nuisance, but it is hurting his health. He asked if the Committee is being asked to put this item on a fast track by waiving the 30 day waiver period.

Chairman Carter confirmed that the 30 day waiver recommendations was removed. Dr. Raymond said he is still left with the quandary that if the open burning hurts his breathing, he doesn't care whether it is called a nuisance or not, but he objects to it.

Mr. Carroll responded that the way the legislation is written by definition is that if it is a large log or a stump, it cannot be a nuisance no matter how bad you feel about it. He said he thinks it would be better to leave the existing language and proceed with what is in the statute.

Deputy Director Abraczinskas commented that he agreed with Chairman Carter about how he characterized this odd situation. He said it is a difficult conundrum and he appreciates Mr. Carroll's comments. He said he welcomes additional guidance from Mr. Carroll and Counsel regarding the "substantially identical" issue. He also said that he agrees that this is a fairness issue and a practical issue. Clearly the law has stated that the burning of logs and stumps will not create a nuisance and that type of burning has the potential to be higher impact events in terms of magnitude and duration than the burning of other vegetative debris. He further explained that the DAQ staff does not witness this type of burning. In first time complaints, the DAQ sends information to the alleged burner. It is not practical for staff to routinely investigate on the first complaint for residential burning. Repeat complaints are investigated, but the investigators often arrive only to see a burn scar and pile of ashes and it's difficult to determine what was burned.

Mr. Ferrell said that he agrees with Dr. Raymond and that in drafting a regulation that fits the Session Law it is taking away the ability for folks to address what is actually happening . He asked what the options are.

Chairman Carter explained that part of the proposed changes specifically reflect the Session Law regarding logs and stumps but some of the other parts do not. He said that what might be the best way to proceed is to send this up and highlight it as a request for specific comments focused on this particular change as well as any other language that might create interests. He said he would suggest recommending approval to go to public notice and get the public comment to see what reactions are received.

Mr. Carroll asked Committee Counsel, Ms. Hauser, whether there is an opinion on the "substantially identical" language and whether this change would comply with that.

Ms. Hauser explained that usually Counsel doesn't inject him or herself in the substance of the rulemaking policy but helps with the process. She said regarding the legislative language "substantially identical", that she sees that as a signal to the Rules Review Commission (RRC) giving you the ability to use the exact language. There might be some question, but she understood Ms. Burleson and Mr. Abraczinskas to say that the Division had tried to look comprehensively at this rule and remove what appeared to be logical difficulties and inconsistencies in implementing the rule. She said it was in the

purpose of the Commission to do that in order to make the rule make sense. What has to be substantially identical are those six items that are enumerated in the statute in order to meet the legislative intent.

Mr. Carroll pointed out that one of the six items is the sentence says that the burning does not create a nuisance.

Ms. Hauser said she understood that the changes were to reflect that they were taking out things that would refer to that as a nuisance.

Ms. Burleson confirmed that is correct.

Mr. Carroll said that in the revised language, none of this burning can be a nuisance. He said that he just wanted to have this discussion and raise those questions. He asked if this was going to public hearing for comment.

Ms. Burleson said it would go to hearing for public comment once the EMC approves moving forward with a version of the rule.

Mr. Carroll said he is okay with letting the public comment on these proposed rules. He said he understands the rationale, but he looks at it a little differently.

### **MOTION**

Mr. Ferrell made a motion to request to proceed to move to hearings with the revisions.

Mr. Carroll made a second motion.

Ms. Burleson asked for clarification of the motion.

Ms. Hauser explained that the recommendation was for the Committee to proceed to hearing to revise the text. She said she did not hear that the highlighting in the notice was part of the motion.

Chairman Carter said it was not part of the motion, but it was something that could be discussed before the May Commission meeting.

The motion was approved. Dr. Raymond abstained.

### **MARCH EMC AGENDA ITEMS**

#### **Agenda Item #6, Hearing Officer's Report on Clerical Revision to 15A NCAC 02Q.0711 (526) (Robin Barrows)**

Ms. Burleson explained that this change is related to a clerical correction to correct the three pollutants that were in the wrong column.

#### **Agenda Item #10, Request for Approval to Proceed to Public Comment on S.L. 2013-413 (H74) Periodic Review of Rules Report for 15A NCAC 02D and 02Q**

Chairman Carter said that this is the first major step of the rules review process required by the General Assembly.

Ms. Burleson explained that this is a compilation of all the 02D and 02Q rules that categorized everything into either "necessary with substantive public interest" or "necessary without substantive public interest" or "unecessary". She continued explaining the process and said that if the EMC moves this process forward, the spreadsheets will be available on the DENR website where there is an electronic application where people can comment publically. There would be a 60 day comment period and the Division would plan to come back to the Committee in the July timeframe with an update regarding comments and then go to the EMC in September. The report has to be submitted to the RRC by November 15, 2015 for

consideration at their December 17, 2015 meeting. Any rules that were deemed unnecessary become repealed in the first quarter of 2016. The rules that remain that need readopting by the Commission would require a regular rulemaking and perhaps a stakeholder process similar to what DWR is doing.

Chairman Carter said that he noticed that some rules were listed as “necessary with substantive public interest” but were not federally required. He said he was curious about that. He asked if those rules were considered necessary in those cases because of the state statute.

Ms. Burleson said it would depend on the particular rule. She said the two or not necessarily tied together. The purpose of the “federally required” part is to ensure that rules that otherwise would expire if you did not complete rulemaking by the schedule did not automatically disappear from the Code.

Chairman Carter referred to the 02Q .0700 rules which are not federally required.

Ms. Burleson said that the majority of the rules are federally required or federally approved.

Ms. Burleson said that last month the Division indicated that there were updates that needed to be made to the spreadsheet to reflect the rules that had been repealed or cross-referenced in those repeals or amendments that became effective in January. Those updates were made.

Mr. Carroll asked whether public hearings will be associated with the comment period for these rules.

Ms. Burleson said that the H74 process does not mandate hearings.

#### **Agenda Item # 11, Director’s Remarks (Mike Abraczinskas, DAQ)**

##### **Vehicle Emissions Inspection/Maintenance (I/M) Program Three Year Exemption Update**

EPA approved our vehicle emissions inspection and maintenance SIP to exempt the three newest model years from the program. The certifications to the reviser of statutes occurred in February by DENR and DMV. Thus this exemption will go into place on April 1, 2015.

##### **Charlotte Redesignation Request Process**

We’re attaining the 2008 ozone standard in Charlotte. We’ve put together the required maintenance plan that puts us on a path to getting the area redesignated. That plan was just put out for public comment this week. The comment period closes on April 10. Also included in that package and also out for public comment is a Clean Air Act Section 110 (l) demonstration requesting the relaxation of the Reid Vapor Pressure (RVP) requirements for Mecklenburg and Gaston Counties.

##### **Update on Air Related Mining and Energy Commission (MEC) Actions**

At the January 16 meeting of the ESC of the MEC, DAQ staff presented a review of the existing regulatory framework for oil and gas operations; an examination of the definitions of wildcat and delineation wells in the federal air quality rules; a comparison of air quality rules in other oil and gas states; and an update on EPA’s strategy for expanding federal air rules for oil and gas.

The next meeting is March 26 and the focus will be on different forms of air quality monitoring in context of compliance with requirements and ambient air quality.

Mr. Ferrell added that there is a series of four Environmental Standards Committee meetings scheduled that will cover air quality issues and emerging techniques. He said that MEC’s goal is to determine whether there will be gaps in current rules related to the oil and gas industry that need to be addressed.

##### **Ozone implementation rule for the 2008 ozone standard**



The standard was released by USEPA on Feb 13, 2015. Again a bit late to be all that useful to us here provided that we've just put our redesignation/maintenance plan out for public comment. Nonetheless, we're reviewing the final rule. The most notable thing I've seen thus far is that this rule includes a total repeal of the 1997 ozone standard, which is significant because in there was a recent DC Circuit decision that created potential problems for state air quality agencies. The total repeal of the 1997 standard satisfies those concerns.

Deputy Director Abraczinskas commented on the SO2 designations litigations. He said that earlier last week, the court in Northern District of California accepted the Consent Decree entered by certain environmental groups and EPA that put EPA on a particular schedule to do SO2 designations by July 2016 for areas that are undesignated and that have monitored violations of the standard for the three preceding years. There are other conditions included in that Consent Decree. This is the case that Director Holman had informed the Committee that the state had intervened on.

Regarding the agreement between the agency and the environmental groups, Chairman Carter asked whether the states, like North Carolina, were involved before the agreement was constructed. Mr. Abraczinskas explained that there were discussions among all parties involved, but the states that intervened didn't get all their concerns included in this ruling.

Chairman Carter asked Mr. Abraczinskas for information regarding the meeting to be held on April 7 or 8 at the EPA offices on the 176 petition.

Mr. Abraczinskas explained that the Air Quality Transport meeting was being held between state agencies to discuss next steps following the Cross-State Air Pollution Rule being upheld and also to discuss EPA's most recent transport modeling and technical analysis which they have provided to the states as tool and a dataset that can be used to satisfy the transport elements of our SIPs. EPA has indicated they will be reworking the technical analysis with the updated data they received from NC and other states. EPA's preliminary analysis does not show any significant contribution from NC to any downwind area, which is consistent with another similar technical analysis done among the southeastern states recently. Mr. Abraczinskas said that if the 176 petition is part of the objective for this meeting, he hopes the discussion is focused on EPA not taking action on that. NC does not think there is any benefit in this being included. If EPA granted it, it would put in place control programs statewide that aren't necessary and that won't be beneficial in reducing ozone concentrations. He said that he is not aware that the 176 will be a topic of discussion at this meeting, but he is anticipating the meeting to be broader in terms of EPA's next steps related to technical analysis of transport and what they have in mind regarding potential future rulemaking. He reminded that the Cross-State Air Pollution Rule addressed the 2008 ozone standard and there is potential for a new standard.

Chairman Carter commented that as far as the modeling, it would seem that any actions to approve the 176 petition would be inconsistent with the results of the modeling. He asked whether the modeling is strictly ozone modeling.

Mr. Abraczinskas said that the modeling is comprehensive with the primary focus on ozone. He said that NC has a nice body of evidence with the modeling and other technical analyses showing that we're in good shape with regard to transport and good neighbor provisions of the CAA.

Chairman Carter asked regarding agenda item #13, Status of Rulemaking, whether there is anything currently in the rulemaking process other than what is on the EMC agenda.

Ms. Burleson clarified that currently we do not have anything out to notice or in the rulemaking process. The next items that are up will depend on how the EMC chooses to act in regards to possibly grouping items to save on Commission resources for the items that are ready to go at the same time. In November, the EMC approved moving forward with the PM2.5 2012 NAAQS update, which would be lumped in with the others for the upcoming hearings.

Mr. Abraczinskas asked Ms. Burleson whether the concepts for the 02Q .0102 improvements had been done. Ms. Burleson confirmed that one had been done, but it probably needs to be updated.

Mr. Abraczinskas said that they are actively working on improvements to the permit exemption rule that applies to non-Title V sources, which is forthcoming but may not be ready at the May meeting. A stakeholder meeting was held to receive ideas and feedback on the concepts and DAQ is continuing to work through and consider that feedback.

Chairman Carter reminded the Commission that the next meeting is scheduled for May 13, 2015. With no further comments, Chairman Carter adjourned the meeting.