

**ENVIRONMENTAL MANAGEMENT COMMISSION
AIR QUALITY COMMITTEE MEETING SUMMARY
January 8, 2020
Archdale Building-Ground Floor Hearing Room
11:00 AM - 12:30 PM**



MEETING BRIEF

During their January 8, 2020 meeting, the Air Quality Committee (AQC) of the Environmental Management Commission (EMC):

- Heard an informational update on methyl bromide rulemaking and held a discussion on proposed rule, fiscal note and next steps for rulemaking.

AQC MEMBERS IN ATTENDANCE	
Ms. Shannon M. Arata, AQC Chair	Ms. Marion Deerhake
Mr. Charles S. Carter, AQC Vice-Chair	Dr. Suzanne Lazorick
Ms. Yvonne Bailey	Ms. Maggie Monast
Ms. Donna Davis	

OTHERS IN ATTENDANCE	
Dr. Stan Meiburg, EMC Chair	Mr. Mike Abraczinskas, DAQ Director
Mr. John McAdams, EMC	Mr. Michael Pjetraj, DAQ Deputy Director
Ms. Patricia Harris, EMC	Members of the public
Mr. Mitch Gillespie, EMC	DAQ Staff
Mr. Philip Reynolds, EMC Counsel	

PRELIMINARY MATTERS

Agenda Item I-1, Call to Order and the State Government Ethics Act, N.C.G.S. §138A-15

Chair Arata called the meeting to order and inquired, per General Statute §138A-15, as to whether any member knows of any known conflict of interest or appearance of conflict with respect to matters before the EMC’s AQC. No conflicts were identified.

Agenda Item I-2, Review and Approval of the November 13, 2019 Meeting Minutes

Chair Arata inquired if everyone had been able to review the minutes from the November meeting and if there were any changes or corrections. Minor changes or corrections to a name were needed but the specific name correction was not clear. Chair Arata asked for a motion to approve the November 13, 2019, meeting minutes. Commissioner Carter made a motion to approve the minutes with the requested revisions and Commissioner Monast seconded. The November minutes were unanimously approved.

RULEMAKING CONCEPTS

None.

ACTION ITEMS

None.

January EMC AGENDA ITEMS

***Agenda Item IV-1, Request for Approval of Proposed Rule Revisions, Fiscal Note and to Proceed to Public Hearing on Readoption of Group 6 Air Quality Rules 15A NCAC 02D .0403, .0500, .0900, .1400, .1700 and .2615 and Repeal of .0615 (549)**

***Agenda Item IV-2, Request Approval to Proceed to Public Hearing on an Additional Risk Management Option for Proposed Rule Adoption on Control of Emissions from Log Fumigation Operations, 15A NCAC 02D .0546 and Rule Amendment to Toxic Air Pollutant Guidelines, 15A NCAC 02D .1104 (548)**

Chair Arata stated the Committee may choose to wait to hear the agenda items containing an asterisk (*) during the full Commission. The Committee affirmed to hear the asterisked items during the full Commission meeting.

INFORMATIONAL ITEMS

Agenda Item V-1, Update on Methyl Bromide Rule-Making (Mike Abraczinskas, DAQ)

Description:

Chair Arata updated the AQC they were going to hear an update on methyl bromide rule making and Commissioner Deerhake made the following opening remarks.

In 1997 North Carolina General Assembly created the Air Toxics Working Group. The Working Group’s report of consensus recommendations explained the EMC should act as risk managers, seeking ranges of risks from the Science Advisory Board (SAB). The EMC should also consider options while weighing risk and impacts with the ultimate goal of the Air Toxics Program being to protect public health.

After considering the SAB recommendation of 0.002 - 0.005 mg/m³ with a 24-hour averaging time, the EMC in May voted to direct the DAQ to publish in notice of text; a proposed rule, seeking comment on 0.005 mg/m³ 24-hour average. The notice also stated, “The EMC is also requesting comment on a value within a range of 0.005 – 0.078 mg/m³ for methyl bromide.” Overall, the public was asked to comment on both the mg/m³ levels and the 24-hr averaging time.

She went over questions and answers the committee and commission has asked during the rule making process since the original request for temporary rule in 2018 including:

- Why can’t DAQ Director make a Director’s Call regarding individual permit’s status due to risk?

We learned a Director’s Call is not possible because methyl bromide is not an air toxic with an Acceptable Ambient Level (AAL). Such authority only applies with AAL-listed compounds.

- Why can’t DEQ use its authority to take protective action due to imminent risk?

We heard such actions are normally reserved when there are mortalities.

Commissioner Deerhake ended her remarks by stating the AQC was going to hear rulemaking progress from the DAQ. She stated the DAQ has kept her informed, and she had four or more meetings with staff and attended two SAB meetings in October and December, reviewed and commented on SAB meeting summaries, and kept AQC leadership including the EMC Chair Meiburg informed with meeting summaries via email and phone.

Deputy Director Pjetraj presented the methyl bromide rulemaking update. He summarized rulemaking activities to date, comments received during the initial public comment period, scientific background supporting the proposed averaging times, conclusions from the October and December SAB meetings, modeling results of all

policy options as the result of public comments and SAB feedback, and provided recommendations regarding the next steps in the rulemaking process. Deputy Director Pjetraj concluded his presentation by highlighting the EMC has already considered the 0.005 mg/m³ and 0.078 mg/m³ AALs with a 24-hour averaging time, and that the DAQ intends to present a third option of 0.078 mg/m³ for a 24-hour averaging time paired with 0.005 mg/m³ for an annual averaging time during the January 9, 2020 EMC meeting. The DAQ will request proceeding to public hearing with these risk management options, along with the fiscal note Addendum approved by OSBM on January 7, 2020.

Brad Nelson, Planning Section Engineer, presented updates to the fiscal note due to public comments and SAB feedback. He went over the fiscal note analysis for AAL of 0.078 mg/m³ 24-hour averaging time as well as AAL of 0.005 mg/m³ annual. He went over following values of total cost, current operating facilities cost and number of people who may benefit for both original proposal versus the additional AAL options that are being proposed. He also went over comments received on the fiscal note during the comment period and as follows: relocation of fumigation activities, job loss implications, USDA land lease cost data and other industry costs.

Discussion:

Commissioner Monast asked how to interpret the percentages represented in the modeling results table on slide 21 of the presentation. Deputy Director Pjetraj stated the percentages represented either compliance or an exceedance at currently operating facilities for each of the proposed risk management options. Director Abraczinskas followed up by emphasizing the modeling parameters and highlighted the assumptions represented in the table. He added the values are for single container release, and stated that to estimate multiple containers throughout the day would include a multiplicative factor. Commissioner Deerhake added this analysis was based on discussions with the DAQ's staff. She added if there was going to be a change from what was proposed regarding relative risk to the surrounding population, then a feasible answer would be to compare exceedances rather than risk impacts.

Commissioner Bailey asked for the aeration period's duration after the fumigation process is completed. Deputy Director Pjetraj stated the aeration period can last several hours, but the bulk of the emissions release is within the first hour. Commissioner Bailey asked how many containers are opened at one time for each facility. Deputy Director Pjetraj responded that it depends on the logistics and daily operations. He added that approximately one to ten containers could be opened during the day under current conditions. The DAQ has had discussions with facilities about staggering aeration periods throughout the day based on dispersion conditions. Commissioner Bailey asked whether compliance with methyl bromide's pesticide label is protective of ambient air quality. Deputy Director Pjetraj responded that after discussion with the United States Department of Agriculture (USDA), fumigation industry, and consulting the Animal and Plant Health Inspection Service (APHIS) manual, the DAQ believes compliance with the pesticide label and the buffer distance only provides protection for employees and bystanders.

Commissioner Lazorick asked to point out the values on the comparison reference values chart for the one-hour California REL (3.9 mg/m³)ⁱ to the proposed 0.078 mg/m³ 24-hour and the 0.005 mg/m³ annual averaging times. Deputy Director Pjetraj went over the values on the comparison reference values chart.

Commissioner Carter inquired about the lack of interaction between the DAQ and the EPA's pesticide program, specifically regarding the Draft Human Risk Assessment for Registration Review for methyl bromide. This draft document is a Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) pesticide re-registration review document. Deputy Director Pjetraj went over a list of agencies and contacts the DAQ was in contact with throughout the rulemaking process. He also described past meetings where the DAQ went over the re-registration and review document. Director Abraczinskas followed up by stating the re-registration and review document was presented to the SAB, and following considerable review and discussion, the advisory board's recommendation did not change as result of the draft document review.

EMC Chairperson Meiburg stated he understood fumigation activities utilizing methyl bromide would not typically occur at temperatures below 40 degrees since MeBr would not be in gaseous form. He asked whether fumigation activities were limited based on weather and seasonal variability. Deputy Director Pjetraj stated fumigation activities are typically infrequent in winter months compared to rest of the year due to the compound's chemical properties. EMC Chairperson Meiburg stated the EPA conducted a human health assessment and that the derivation of value with respect to its averaging time was close to the California's 3.9 mg/m³ one-hour averaging value and also stated there is risk at this level according to the assessment done in 2007. He also discussed the lack of data for setting a risk level based on limits recommended by the Agency for Toxic Substances and Disease Registry (ASTDR).

Commissioner Deerhake stated there were discussions at the June 2019 SAB meeting regarding the Office of Pesticide Programs (OPP) 2018 report, along with whether the term "bystander" is defined in the FIFRA report. Based on her assessment, the SAB did not express support for this particular document.

Commissioner Meiburg asked whether fumigated wood products were being exported from SC and VA. Staff engineer Mr. Nelson stated the DAQ was not aware of the types of wood being fumigated in other jurisdictions, but highlighted there is an active fumigation industry in both SC and VA.

Commissioner Lazorick asked why the "Number of People Who May Benefit" column decreased to 6,304 on slide 24 of the presentation presented as information item to AQC. Brad Nelson provided a brief summary of the table, calculations, and assumptions used to estimate the number of people who may benefit under the new scenario. Commissioner Deerhake added that this was a way of comparing the risk across different regulatory options and not measuring the health effects.

Chair Arata asked whether the SAB recommended the chronic and acute values due to methyl bromide's nature and its potential health effects. She also stated setting this particular AAL is not unlike other AAL's set in the past. Deputy Director Pjetraj concurred and added that it would include both the acute and chronic effects due to exposure and the nature in which it could be emitted by the source. He also added NC has other AAL's utilizing long-term and shorter-term values.

Commissioner Carter asked if AQC needed to hear this presentation as an action item and give approval prior to it going to the EMC. Chair Arata followed up and stated discussions were held on this topic and EMC Counsel Reynolds confirmed that since this topic has come before the EMC previously it may now proceed to the January 2020 EMC and does not require presentation for action before the AQC.

Commissioner Monast asked Deputy Director Pjetraj to compare the values in the Methyl Bromide usage chart on slide 31 of the presentation provided as an information item to the AQC. She asked him to point to the 10-ton limit so the Committee could visually see if the sources were in compliance and whether the drop off usages are anomalies. Deputy Director Pjetraj went over the chart and explained the values and how they were totaled and stated usages were monthly totals and stated another overlay would be need to show a cumulative amount that was being used or a rolling 12-month total. He also stated in general there may have been a singular violation of 10-ton limit at a facility and they were issue a notice of violation. He also stated the drop in usages were a function of global economics along with other factors.

Commissioner Deerhake noted she is prepared to make a motion during the full Commission to introduce a third risk management option and for continuation of the public comment period.

Commissioner Carter expressed concerns regarding the application of averaging times for the proposed risk management options. It was also noted the June 2019 SAB minutes indicated the "bystander" situation was not equivalent to an ambient exposure for air quality purposes. EMC Chairperson Meiburg stated much of the discussion regarding the registration of methyl bromide was about bystanders in the application of the chemical

to agricultural fields. Commissioner Carter questioned why this is different from a resident at a nearby home since it is still an inhalation exposure. EMC Chairperson Meiburg stated it is designed to protect against individuals on the property that are not applying the fumigant. Commissioner Carter stated that if someone is on the property where the application is taking place, it would be a higher or more extreme exposure than a nearby residence. Deputy Director Pjetraj read a quote from the June 2019 SAB minutes specifying that, “modeling indicated concentrations protective of residential bystanders were not achieved at the edge of the field” and asked whether it was the quote of interest. Commissioner Carter specified he was referring to the following text from the June 2019 SAB minutes, “the receptors addressed in the OPP evaluations, including those identified as “residential bystander” or “non-occupational spray-drift” and “bystander” exposures do not reflect exposure conditions that are of direct relevance for the chronic inhalation AAL.” Commissioner Deerhake also quoted the June 2019 SAB minutes to clarify the conversation by stating, “ambient bystander air exposures evaluated in the OPP reviews were assessed by collecting ambient air concentrations in agricultural application areas of California. The OPP noted there was uncertainty in the representativeness of this data.” Commissioner Carter stated it may or may not be representative of all areas, but it doesn’t mean its appropriate exposure data.

Commissioner Monast stated there were different units of measurement mentioned throughout the discussion that she would like to compare. Deputy Director Pjetraj specified the *Methyl Bromide: Comparison of Reference Values* chart on slide 20 would be appropriate since it compares each value in the same unit of measurement. Commissioner Monast stated the EPA pesticide figures are not on the chart and recommended that they be added although they are deemed to not be protective. EMC Chairperson Meiburg affirmed it would be ideal to update the chart. Deputy Director Pjetraj stated he would update the chart for January 2020 EMC meeting.

Commissioner Deerhake stated she attended the SAB meeting where they recommended the 0.078 mg/m³ value at a 24-hour average and rejected the 3.9 mg/m³ value at a 24-hour averaging since it was outdated. The SAB already considered the OPP document and did not have further discussions on it. Based on the SAB’s best scientific judgment, the 0.078 mg/m³ value at a 24-hour averaging time was deemed appropriate.

Chair Arata noted the Commission and Department received additional comments from Ecolab and wanted them to be part of the public record. Counsel Reynolds stated it would be appropriate to attach them to the minutes.

Director Abraczinskas stated all of the studies (IRIS risk assessment, draft ATSDR report, and the OPP risk assessment) conclude a very similar chronic value. He also added the DAQ evaluated many public comments regarding this rulemaking and it has taken a lot of time for a proper response. The DAQ continued dialogue with industry engaged in the fumigation activities in regard to the rulemaking timeline. Interim measures will be employed in late January while the DAQ is conducting rulemaking activities. In summary, the utilization of emissions stacks during the aeration process will make quite a difference. Commissioner Meiburg added in his review of comments, it represented a couple of the facilities would suspend operations. Director Abraczinskas affirmed that was the accurate; however, only one facility would suspend operation until the rulemaking was complete while the other facility’s permit was rescinded. Ecolab has agreed the remaining active facilities will comply with interim measures until the rulemaking process is complete.

Agenda Item V-2, Director’s Remarks (Mike Abraczinskas, DAQ)

Description:

Director Mike Abraczinskas gave quick updated on items that would come before the AQC and the EMC in 2020 and those items as follows:

- Hold stakeholder process for adjusting Title V permit fees. The DAQ is projecting shortfall in fees in future years (2021/2022) and will bring the rule action to the AQC and EMC for to readjusting Title V permit fees.

- Risk assessment and rulemaking for ethylene oxide and the DAQ will also engage the SAB on this topic and it will be on similar path to rulemaking of methyl bromide.
- Advance procedure on digitizing which may require rulemaking.
- Present an informational item on sulfur dioxide designation process as early as March of 2020.

CLOSING REMARKS AND MEETING ADJOURNMENT

Chair Arata asked for additional questions or comments, and upon hearing none, noted the next meeting of the AQC would be March 04, 2020. Chair Arata adjourned the meeting.

ⁱ <https://oehha.ca.gov/chemicals/methyl-bromide>