ENVIRONMENTAL MANAGEMENT COMMISSION
AIR QUALITY COMMITTEE MEETING SUMMARY
July 8, 2020
Virtual Hearing
9:30 AM - 11:30 AM

MEETING BRIEF

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

- Heard a concept for the Adoption of Standards of Performance for Greenhouse Gas (GHG) Emissions from Existing Electric Generating Units (EGU) under Clean Air Act Section 111(d) presented by Patrick Knowlson, Rules Development Branch Supervisor (DAQ).
- Heard a concept for Fee Structure Revisions for North Carolina's Title V Operating Permit Program presented by Mike Abraczinskas, Director (DAQ).
- Discussed the approval of Hearing Officers Report on Session Law 2013-413 (H74) Readoption of Group 6 Rules 15A NCAC 02D .0403, .0500, .0900, .1400, .1700, .2615, repeal of .0615, and final approval of Fiscal Note.
- Director's Remarks from Mike Abraczinskas, Director (DAQ).

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

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

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 January 8, 2020 Meeting Minutes

Chair Arata inquired if everyone agreed with the revisions to the minutes from the January 8, 2020 meeting and if there were any additional changes or corrections. Members had no additional corrections and **Commissioner Bailey** motioned to approve the minutes. **Commissioner Davis** seconded the motion and the motion was unanimously approved. **Chair Arata** asked the committee if they were able to review the minutes from the March 4, 2020 meeting. **Commissioner Deerhake** offered a few typographical changes and **Commissioner Davis** motioned to approve the meeting minutes. **Commissioner Deerhake** seconded the motion and the motion was unanimously approved.

<u>RULEMAKING CONCEPTS</u>

Agenda Item II-1, Adoption of Standards of Performance for Greenhouse Gas (GHG) Emissions from Existing Electric Generating Units (EGU) under Clean Air Act Section 111(d) (Patrick Knowlson, DAQ).

Description:
Patrick Knowlson, DAQ Rules Development Supervisor, presented the concept for the Affordable Clean Energy (ACE) rule (84 FR 32520, July 8, 2019). This EPA rule repeals the Clean Power Plan (CPP) and provides emission guidelines for existing utility electric generating units (EGU). The emission guidelines identify the Best System of Emission Reduction (BSER) for EGUs to reduce emissions of Greenhouse Gases (GHG), allows states to establish standards of performance for these EGUs based on the application of BSER, and requires these EGU sources to comply with the standard(s). For this rule, a designated EGU is one that commenced construction before January 8, 2014, is connected to a utility power distribution system with a nameplate capacity of greater than 25 net megawatts, has a design heat input greater than 250 million British thermal units per hour, and burned coal for an average of at least 10 percent of the heat input during the 3 previous years.

The rule identified seven heat rate improvements (HRI) as BSER for regulating GHGs and include: Neural Network/Intelligent Sootblowers; Boiler Feed Pumps; Air Heater and Duct Leakage Control; Variable Frequency Drives; Blade Path Upgrade for the Steam Turbine; Redesign/Replace Economizer; and Operating and maintenance practices. The EPA provided ranges of expected HRI and costs for each of these technologies. The standard of performance for this rule will be based on the application of BSER to the baseline emission rate which reflects future operating conditions. The standard of performance will be in the form of CO_2 emissions per unit of gross or net energy (e.g., pounds of CO_2 per megawatt-hour). States will be allowed to consider remaining useful life, cost, and technical feasibility when determining an emission standard.

There are currently 21 affected EGUs in North Carolina owned by Duke Energy Carolinas and Duke Energy Progress. These sources will be required to meet the emission standard within 24 months of the state plan submittal (no later than July 2024). The DAQ has submitted an Information Collection Request to Duke Energy requesting a recommendation of a baseline emissions rate, an evaluation of each of the HRI technologies, a cumulative analysis of the HRI technologies, a recommendation for a standard of performance, and information related to compliance demonstration for the emission standard.

A draft schedule for development of the ACE rule was presented. A draft rule and fiscal note will be presented to the AQC in March 2021, and a request to proceed to public hearing from the EMC is scheduled for May 2021. Adoption of the rule, hearing record, and fiscal note by the EMC is anticipated in Jan 2022, and the state plan developed and submitted to the EPA by July 8, 2022. The EPA has 6 months to make a completeness determination of the state plan and 12 months to approve or disapprove of the state plan.

Discussion:
Commissioner Meiburg asked what the estimated reductions of CO_2 emissions from the implementation of this rule would be. The DAQ stated that the reductions would vary depending on the HRI installed; however,

reductions are estimated to be roughly 4-5 percent. **Commissioner Monast** stated that this rule is intended to make coal-fired EGUs more efficient and may create an incentive to operate these EGUs more. She asked if the DEQ has looked at what effect this may have on criteria pollutants and GHG. The DAQ responded that once an emission standard is finalized, the facilities can use whatever resources available to meet the standard. This may include replacing coal with natural gas. **Commissioner Monast** asked how this rule interacts with Executive Order 80 (EO 80) and the Clean Energy Plan. Director Abraczinskas noted that the DAQ is in the information gathering stage and that information gathered during this planning phase will drive the analysis. He noted that the DAQ has done this analysis in the past for the Clean Power Plan and will use the lessons learned from that analysis for development of the ACE standards. Director Abraczinskas added the HRIs that are being evaluated are sensitive to projected utilization rate in the future and remaining useful life of each unit. These sensitivities within the analysis change frequently as the regulated stakeholders move towards cleaner energy production. Director Abraczinskas noted this rule is a small step towards achieving to the goals of EO 80, and staff calculates modest emission reductions associated with the implementation of the ACE rule. The DAQ expects more meaningful reductions will occur as a result of the EO 80 and other voluntary measures.

Commissioner Deerhake asked if the DAQ should do an independent assessment of the emission standard to compare with the recommendation from Duke Energy. Director Abraczinskas stated that the DAQ is not requesting an analysis from Duke Energy but is requesting information that allows the Division to assess the technical and fiscal feasibility of the HRI technologies. **Commissioner Deerhake** asked when will the draft rule and fiscal note be presented to the AQC. Mr. Knowlson stated that the draft rule and fiscal note will be presented at the March 2021 AQC meeting. **Commissioner Deerhake** noted that there appeared to be a lot of flexibility in considering the age of the facility when evaluating these HRI technologies. She commented in other regulations it was believed that some of these EGUs would retire as a result of NO_X and SO_X regulations; however, they continue to operate and require additional regulations. **Commissioner Deerhake** asked if there was enough information in the Background Information Document to allow the DAQ to perform the analysis, or will other resources be needed. Director Abraczinskas responded that the DAQ will use information from the EPA, as well as other sources of reliable information resulting in the Division to complete a thorough analysis of the HRI. In addition, the DAQ will rely on staff expertise and interaction with stakeholders from Duke Energy and other operators of these units. He added that this analysis begins with this baseline information then transitions and prepares staff to develop the full technical analysis. **Chair Arata** asked what the average age of the 21 operating EGUs in North Carolina is. Mr. Knowlson responded that the DAQ knows the age and expected retirement age of each of the EGUs but does not have that information available at this time. **Chair Arata** stated that information would be helpful to the Committee. The DAQ can provide that information to the Committee after Duke has complete its responses to DAQ’s information request letter for the ACE rule

Agenda Item II-2, Fee Structure Revisions for North Carolina’s Title V Operating Permit Program (Mike Abraczinskas, DAQ and Brendan Davey, DAQ).

Description:
Mike Abraczinskas, Director of the Division of Air Quality, provided a presentation on the proposed update to the fee structure for North Carolina’s Title V operating program. He stated the Clean Air Act Section 502(b)(3) requires air agencies to collect fees “sufficient to cover all reasonable (direct and indirect) costs required to develop and administer” its Title V program. In addition, 40 CFR Part 70 contains details regarding Title V fees such as: preparing regulations; reviewing and acting on permits; administration costs of operating a Title V program; implementation and enforcement; emissions and ambient monitoring; modeling; inventories; and small business assistance. North Carolina’s last action for fee updates was on March 1, 2008 allowing a phase-in of increasing emission tonnage fees through 2011. Also, Consumer Price Index (CPI) adjustments are allowed by the current rule to adjust the emission tonnage fee, which as of January 1, 2020 is $34.25 per ton. Director Abraczinskas provided a graph showing the reduction in cash receipts and disbursements since the 2011 fee adjustments, as well as the Title V balance of funds for the DAQ. He added that since 2006, the DAQ staffing has also been reduced from 303 employees to 209 as of the date of this presentation.

Brendan Davey, Asheville Regional Office Supervisor commented emissions are down in North Carolina; however, the workload burden on the DAQ remains the same. Even though there are 13 percent fewer Title V facilities since the last fee change, there are more complex programs requiring DAQ personnel work hours to complete. This includes revised NAAQS requirements; amendments or new federal requirements; increased public engagement in the permitting process; increased stack testing; emerging compounds; and an increase in the number of PSD applications. Mr. Davey provided a pie chart of the sources of DAQ revenues for Fiscal Year 2019-2020. In this chart the percentages are as follows: 31 percent of the revenues come from Title V fees; 5 percent from non-Title V fees; 11 percent from the Inspection and Maintenance program; 39 percent from the fuel tax; 11 percent from Section 105 grants; and 3 percent from Section 103 grants. Mr. Davey noted there has been a decline in revenues of 27 percent from Title V annual fees since 2009-2010 fiscal year. This decline in revenues is due to the decrease in emissions billed each year (57 percent total) since 2008. The DAQ also looked at the top and bottom tiers of the Title V revenues. For the highest emitters, Title V revenues dropped 41 percent since 2009; however, there was a 13 percent increase in revenues from the bottom 100 emitters. Finally, there has been a 30 percent decrease in total invoiced Title V fees since 2009, and a 56 percent decrease in total invoiced Title V fees for electric generating units since 2009.

Director Abraczinskas stated that for the 2018-2109 fiscal year, the total revenue was $6.4 million from 279 Title V sources with 64 percent of the revenue coming from the tonnage fee, 32 percent from the base fee, and 4 percent from permit applications. The projection for 2020-2021 shows a gap of approximately $1.6 million between cash disbursements and cash receipts as a result of an audit revealing the DAQ is under-charging staff time to the Title V account. Currently the Title V program funds 92.5 full time employees (FTE), most of them are in the permitting (26.7 FTE), compliance (25.9 FTE), and monitoring (21.4 FTE) branches of the DAQ. In addition, Director Abraczinskas stated the DAQ needs to create and maintain competitive salaries, recruit new employees, and prepare for retirements of many older staff which were hired circa 1990 as a result of the Clean Air Act Amendments. To implement the DAQ’s Salary Administration Policy, a total of $1.32 million is needed and $0.58 million of that would come from the Title V program. So, with the inclusion of the $0.58 million, the total Title V funding gap is projected to be $2.3 million.

Mr. Davey continued the presentation by providing a comparison of what other states in our region are doing. Currently, North Carolina’s Title V tonnage fee is one of the lowest in the southeastern region at $34.25 per ton. The other states in the region range from $30 (Florida) to $98.61 (Kentucky). Other states are looking at increasing Title V funding from facilities with the most common sources of funding coming from an annual base fee, a tonnage emission fee, and a permit application fee. Other funding options available include: tonnage fee for hazardous air pollutants (HAP); “a la carte” compliance fees; “a la carte” permitting fees; hourly processing and review fees; and CPI adjustments. For North Carolina, the DAQ is considering increasing the tonnage fee, adjusting the base annual fee (addresses the complexity of developing the permit), and increasing some of the permit application fees. The increase to the tonnage fee being considered is approximately $43 per ton; this is still below the tonnage fees from other states in the southeast.

Mr. Davey noted that billable emission projections are expected to decrease 17 percent from 2019 to 2025, and provided an example demonstrating the issue of not capturing the complexity of permits for fees charged to different facilities large and small. A bakery receives an annual invoice of $12,831 as a result of emitting 166 tons of volatile organic compounds (VOC), but otherwise has no other federal requirements to include in the permit. Whereas, a chemical plant has an annual invoice of $8,394 with 17 tons of VOCs and 10 tons of HAP. However, the chemical plant is subject to numerous New Source Performance Standards (NSPS), Maximum Achievable Control Technology (MACT), and Accidental Release/Risk Management (112r) requirements making the writing of the chemical plant permit more complex. There are currently 29 facilities subject to a high number (7 to 15) of these regulatory programs, and 129 facilities subject to a moderate number (3 to 6) of these regulatory programs. Mr. Davey stated not all regulatory programs are highly complex, and therefore staff are looking at ways to assess this fairly in the fee schedule. He stated that the current permit modification fee is

$988 and is lower than others states in the region charging a permit modification fee. Mr. Davey adds that five states in the region do not charge a permit modification fee.

Director Abraczinskas stated the DAQ formed a stakeholder group to discuss permit fees and explore various options that intended for recommendation to the AQC and EMC. The stakeholders include company and industry representatives, as well as environmental groups. The stakeholder group held 4 meetings in May and June where they came up with some key tenants which include: relying less on tonnage fee; link fees to complexity of the permit; phase in over 3 years the amount needed for DAQ's salary administration plan; require the DAQ to conduct an accountability report in the next 2 years (includes workload analysis and staffing needs); and DAQ management of cash flow to address Legislative pay increases. Based on the outcome of the stakeholder process, the DAQ proposes to increase the annual fee from $7,423 to $10,000. The proposal includes an increase in the tonnage fee from $34.25 to $40, minor modification fee from $988 to $3,000, significant modification fee from $988 to $7,000, and include a complexity fee of $2,500 for sources subject to 3 to 6 federal requirements and $7,500 for sources subject to more than 7 federal requirements. These changes are projected to increase the Title V revenues in 2021 to $8.4 million, in other words an increase of approximately $1.9 million from the current 2020 revenues. Subsequent years would see relatively the same revenues when projected CPI and emissions adjustments are included. This provides for a steady sustainable trendline for program funding.

Director Abraczinskas provided a schedule for the rulemaking which includes presenting the concept to the AQC and reaching out to the regulated community about the proposed changes to the permitting fees in July. At the September AQC meeting, the DAQ will provide the proposed rule text and a fiscal note to the committee for review. The DAQ will request to proceed to public hearing at either the September or November EMC meeting depending on whether they can receive a 30-day waiver. The hearing record will be presented to the EMC in early 2021 and the rule would become effective sometime in the Spring of 2021.

Discussion:
Commissioner Lazorick asked if any facility may feel unfairly burdened by the increases to the permit fees. Director Abraczinskas stated that he has not received input from all the roughly 280 Title V facilities in North Carolina. He believes the increases are necessary to provide the level of service to the public and the regulated community. In addition, he added that these proposed costs are competitive with Title V fees from other southeastern states. **Commissioner Lazorick** asked if the number of Title V facilities is expected to remain constant over the next five to ten years. Director Abraczinskas responded that for the 5-year projection staff assumed the number of Title V facilities would remain the same, based on past data. **Commissioner Lazorick** noted that one of the agenda items for the EMC meeting tomorrow was removed and suggested that this Title V fee concept be added to the agenda as an informational item. This may help in the commission's decision to give a 30-day waiver for the proposed rule. **Commissioner Meiburg** asked if **Commissioner Carter** had any input on this suggestion noting that some of the Commissioners are sensitive to the use of the 30-day waiver. **Commissioner Carter** stated that it would not be something he would oppose, and it makes sense to provide this information to the full Commission because it is time sensitive.

Commissioner Meiburg recommends the Committee consider the 30-day waiver depending on the DAQ's willingness to give this presentation to the full Commission tomorrow as an information agenda item, noting the urgency of the funding needed by the DAQ. **Commissioner Carter** agreed with the assessment stating there appears to be a strong consensus among stakeholders about moving forward with these proposed changes. He commented that the presentation should be included as an informational agenda item to get feedback from all Commissioners as soon as possible. **Chair Arata** noted that the complexity of this rulemaking is different from other rulemakings they have heard, but still the Commission should be able to comprehend the scope of this effort with the opportunity to receive this presentation. **Commissioner Deerhake** cautioned that if a significant change is made to the proposed rulemaking prior to the September meeting that could hurt the chances for a 30-day waiver. **Commissioner Deerhake** recommended the proposed rule include a frequency of review rather than reviewing when there are shortages in the DAQ budget. **Commissioner Deerhake** also stated that the retirement of coal-fired EGUs should be factored into the DAQ's projections. **Commissioner Deerhake** asked how this changes the distribution between mobile and stationary source contributions to the DAQ revenue. Director Abraczinskas responded that the DAQ included all known information regarding closures and emission reductions during the five-year projection. Regarding the mobile and stationary source distributions, Director Abraczinskas stated that he did not have that information at present but could provide it during the September meeting. Regarding including a review frequency in the proposed rule, Director Abraczinskas stated that the DAQ would need to think about that option. He noted that the DAQ is continuously reviewing budgetary requirements and revenues and believes that the DAQ should make updates as needed. **Commissioner Deerhake** asked if CO_2 might become a Title V pollutant. Director Abraczinskas stated that the DAQ would look for federal guidance on that, but at this time CO_2 is not under consideration as a Title V pollutant.

Commissioner Lazorick liked the idea of including complexity in the Title V permitting cost but asked if facilities with simple permits will see their fees go down. Mr. Davey stated that fees for sources would increase, but in the example of the bakery and chemical plant provided in the presentation, the fees for the chemical plant would be higher than the bakery under the proposed rule. **Chair Arata** asked if the DAQ has seen a shortage of revenue from non-Title V permit fees. Director Abraczinskas stated that the Clean Air Act requires that Title V expenses be covered by Title V revenues. For the State's permitting programs for minor and synthetic minor sources, the DAQ does not have similar restrictions. He noted that the DAQ uses other revenues to cover the costs for these programs, however the DAQ plans to review funding these operating costs at a later time.

ACTION ITEMS

None.

MARCH EMC AGENDA ITEMS

Agenda Item IV-1, Request Approval of Hearing Officer's Report on Session Law 2013-413 (H74) Readoption of Group 6 Rules, 15A NCAC 02D .0403, .0500, .0900, .1400, .1700, and .2615 and Repeal of 0615, and Final Approval of Fiscal Note. (Joelle Burleson, DAQ)

Description:
The hearing officer recommends the proposed Group 6 readoptions and repeals, with the recommended changes, as presented in Chapter II of this hearing report, and the OSBM-approved fiscal note in Chapter IV of this hearing report be adopted by the Environmental Management Commission.

Discussion:
Commissioner Davis thanked the DAQ staff for their help in putting together the virtual public hearing for this readoption package and she reserved her other comments for the full EMC meeting.

Motion:
No motion required.

INFORMATIONAL ITEMS

Agenda Item V-1, Director's Remarks (Mike Abraczinskas, DAQ)

Description:
Director Abraczinskas stated that on July 1, 2020, Governor Cooper signed HB-1087 into law that appropriates \$30 million dollars to DEQ to fund Phase I of DAQ's Beneficiary Mitigation Plan under the Volkswagen Environmental Mitigation Trust. He praised work completed by the DAQ staff regarding this project, especially

Brian Phillips whom lead the effort over the past three and a half years. Director Abraczinskas was thankful the Division can now move forward on this project putting the money to work for North Carolina at a time when it is needed while providing beneficial NO_X reductions to improve public health. He added that the DAQ is hoping to make public announcements about Phase I awards in the next 30 days.

CLOSING REMARKS AND MEETING ADJOURNMENT

Chair Arata asked for additional questions or comments, and upon hearing none, noted that the next meeting of the AQC would be September 9, 2020. **Chair Arata** adjourned the meeting.