

Air Quality Committee Meeting Minutes

March 12, 2014

The Air Quality Committee (AQC) of the Environmental Management Commission (EMC) met on March 12, 2014, in the Ground Floor Hearing Room of the Archdale Building. The AQC members present: Chairman Charles Carter, Mr. Gerard Carroll, Mr. Thomas Craven, Mr. E.O. Ferrell, Mr. Benne Hutson, and Ms. Julie Wilsey. The Director and staff members of the Division of Air Quality (DAQ), Ms. Mary Lucasse of the North Carolina Attorney General's Office and the general public was also in attendance.

CALL TO ORDER (Chairman Charles Carter)

Chairman Carter called the meeting to order at approximately 11:00 a.m.

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

Chairman Carter reminded the AQC members of the State Government Ethics Act regarding conflicts of interests or appearance of conflicts of interests. Hearing none, Chairman Carter proceeded.

MINUTES

Agenda Item #2, Review and Approval of the November 13, 2013 AQC Meeting Minutes

Chairman Carter entertained a motion to approve the November 13, 2013 AQC meeting minutes. Mr. Craven moved to approve the minutes and Mr. Ferrell made a second motion. The minutes were approved.

CONCEPTS

None

DRAFT RULES

None

MARCH EMC AGENDA ITEMS

Agenda Item #3, Hearing Officer's Report on Air Toxics Rule Revisions (519) and Asbestos Acceptable Ambient Levels (AAL) Correction (518) (Brad Newland, DAQ)

Mike Abraczinskas, Deputy Director, DAQ presented a brief slide presentation overview of these rule revisions.

Mr. Abraczinskas used a slide to illustration to update on how the implementation of the session law that made changes to the Air Toxics rules has been going since June 2012 when that bill became law. Part of this information is required in a report back to the General Assembly's Environmental Review Commission (ERC) annually.

- 960 permits issued, revised or renewed from June 28, 2012 – September 30, 2013
- 36 applications with increase in toxic emissions
- 9 facilities below TPER
- 16 facilities DAQ reviewed existing information
- 7 facilities voluntarily provided modeling
- 4 facilities agency performed modeling
- Zero Director's Calls
- Prior to session law, all 27 of these facilities would have performed modeling to submit to DAQ

Mr. Ferrell asked what the make-up of those facilities was. Mr. Abraczinskas said that he would be prepared to provide that information at the EMC meeting.

Mr. Brad Newland gave a brief personal background:

- CE degree from UNC Charlotte
- PE in NC.
- w/ DAQ for 18 years.
- During that time he's worked in both permitting and compliance and now as the Regional Supervisor in Wilmington.
- He also has experience with a manufacturing facility and two environmental consulting firms as an environmental Engineer.

Mr. Newland read a brief summary of the hearing record and then opened the floor for questions.

A public hearing was held in Raleigh, NC on September 19, 2013, to take public comments on proposed amendments to the toxic air pollutant procedures rules and a correction to the asbestos acceptable ambient level.

In 2012, the General Assembly amended the statutes that authorize the state air toxics rules. Section 1 of Session Law 2012-91 exempts from state air toxics rules those sources of emissions subject to the various Federal Hazardous Air Pollutant regulations.

The Session Law also requires the Division of Air Quality to review permit applications resulting in an increase of toxic emissions to determine if the emissions present an unacceptable risk to

human health. Upon making a written finding of such, the Department shall require the source or facility to submit a permit application which eliminates the unacceptable risk. The written finding may be based on modeling, epidemiological studies, actual monitoring data, or any other information.

Facilities not subject to the federal Hazardous Air Pollutant Regulations are still required to follow the NC Toxic regulations as presented before you. It should be noted that the Division of Air Quality is always available to perform toxic modeling for any facility when necessary.

Section 2 of the Session Law requires rule amendments consistent with Section 1 which brings us here today. Section 3 of the Law requires the DAQ to review the existing air toxics rules and make recommendations on whether further changes could be made to reduce unnecessary regulatory burden and increase the efficient use of Division resources while maintaining public health protections. These recommendations were provided in a report to the ERC on December 1, 2012.

Section 4 of the Law requires the DAQ to report to the ERC on implementation of the Law including an analysis of air toxic emission changes and a summary of the Division's analysis of air quality impacts. Three annual reports are due in December. The first two reports have been submitted and can be found in Chapter 6 of this hearing record.

The proposed rule changes found in Chapter 2 of this record represent the changes mandated by Section 1 of the law as well as the Divisions recommendations from the Section 3 ERC reports.

Additionally, a calculation error was found in the original acceptable ambient level (AAL) for asbestos. That error is also corrected in these proposed revisions.

15 people spoke at the hearing in opposition to the proposed rule changes mandated by Section 1 of the Session Law as well as some of the Divisions recommended changes resulting from Section 3 of the law. This group was comprised of medical and environmental advocate groups as well as individuals.

Forty five people submitted forty three written comments on the proposed amendments to the toxic air pollutant rules. The vast majority of written comments were opposed to the proposed rule changes mandated by the Session Law as well as some of the Division's recommended changes. After careful consideration of the comments regarding the Section 3 proposed rule changes it was determined that they achieve the goal of reducing regulatory burden, increasing the efficient use of DAQ resources while continuing to protect public health. Section 1 changes in the rule are mandated by the Session Law.

One commenter representing a manufacturing trade group generally supported the proposed changes while also requesting some modifications and additions to the proposed rules. One of these modifications was viewed as an uncontroversial clarification of the Directors authority and

it was incorporated into the proposed revisions. One of the “additions” requested warranted further study which could potentially result in additional rulemaking in the future.

One commenter representing a local air quality regulatory program requested clarification of the proposed rules. These issues were addressed in the hearing record however no changes in the proposed rule were recommended as a result.

The fiscal note was approved by the Office of State Budget and Management (OSBM) on June 28, 2013.

Mr. Newland’s recommendation is that the Commission adopts the proposed amendments and repeals as they are presented in Chapter II of the hearing record.

Chairman Carter noted that he and Chairman Hutson, Director Holman and Mr. Abraczinskas reviewed the draft hearing officer’s report and request one small change to the recommended rules changes as they are written in the report. Chairman Carter advised that he would move to make a change on page II-10, section 702b, lines 10 and 12 where the report reads “by the facility”. He recommends that phrase be removed because the term could possibly lead to some ambiguity.

Agenda Item #4, Request to Proceed to Hearing on Repeal of Transportation Facilities Permitting Rules (523) Patrick Knowlson, DAQ)

Since the draft rules were presented at the January AQC meeting, Chairman Carter elected not to have a discussion on the rules at this meeting. Mr. Knowlson provided the following update on current transportation facility permits. During the last five years, both the state Division of Air Quality and Mecklenburg County Air Quality have averaged 3 transportation facility permits per year. The other two local programs, Forsyth County and Western NC have not issued any permits. DAQ has issued one permit in January of this year and is ready to issue a second one this month. Mecklenburg County Air Quality has issued one permit in January, is reviewing one permit right now and has three projects actively working through the pre-application process.

INFORMATION ITEMS

Agenda Item #5, Vehicle Inspection Maintenance (I/M) Applicability to Military Installations (Steve Schliesser, DAQ)

Mr. Schliesser used a slide presentation to report on a DAQ study addressing the concerns raised by the US Army and Department of Defense (DoD) regarding whether there was a need for a rule change in 15 NCAC 02D .1002(a)(3). The Army and DoD submitted comment objecting to the requirement that the Inspection and Maintenance (I/M) rule would apply to vehicles operated on a federal installation located in one of the 48 designated counties of the I/M program. The CAA Section 118(c) and (d) both apply to Federal facilities located in vehicle I/M program areas

designated nonattainment for ozone (O₃) or carbon monoxide (CO). The provisions of 15A NCAC 02D .1002, G.S. 20-183.2 and 40 CFR 51.356 all must meet the requirements in 40 CFR 51.350 which requires I/M programs in both O₃ and CO nonattainment areas. The presentation covered the following points and information:

- **1999 EPA Draft Guidance on CAA 118**

In 1999 the U.S Environmental Protection Agency (EPA) committed to change its rule to exempt I/M requirements for vehicles not currently registered in I/M counties which were designated nonattainment for O₃ or CO. However, EPA has not followed through with its commitment yet.

- **Discussions with EPA Region 4**

EPA headquarters is waiting on a DoD letter identifying their issues and concerns before making some form of response in changing its interpretation of the I/M rule.

- **Practices in other States**

There is variability among states in how they implement the I/M rule. Several states were contacted and indicated that they exempt federal facilities from the I/M requirements.

- **Rule Change Impasse**

The DAQ rule 15A NCAC 02D .1002(a)(3) and the North Carolina state statute (G.S. 20-183.2) on I/M requirements were established to be consistent with the EPA rule (40 CFR 51.356). The DAQ rule and the State statute cannot be changed until after EPA changes its rule, which it has not done yet.

- **Rule Change Recommendation**

Counties with military bases have not been designated nonattainment, thus the eight military bases in North Carolina are considered to be exempt from 02D .1002 requirements for vehicles not currently registered in IM counties. DAQ has sent letters to the eight military bases stating this is how the rule is being implemented. While DAQ rule implementation appears suitable, the Army and DoD would prefer that 02D .1002(a)(iii) be removed to preclude a contrary interpretation and insists on the EPA rule being changed. DAQ will continue to encourage EPA to make changes to its 40 CFR 51.356 rule.

Chairman Carter asked whether a state that doesn't have an I/M program, does that suggest that they do not have non-attainment areas and why would they need an I/M requirement on a federal facility. He asked what the driver is for North Carolina regarding this matter. Director Holman explained that currently North Carolina is in sync with EPA's federal rule. The problem is that EPA has not moved forward to make necessary changes in the federal rule. She said that the DAQ received a comment from the US Department of Defense on the I/M rule when it went out for public comment and the DAQ felt like further research was appropriate. The DAQ believes it has practically addressed the issue in North Carolina and because the federal rule stands in NC's current general statute, there is actually limited ability in NC to make those changes.

Mr. Carroll asked whether NC's rule is pending or in effect. Director Holman said that the NC rule is in effect. She further explained that the EMC elected to move forward with the recommendation that the DAQ would carefully study that particular comment and report back to the EMC. Mr. Carroll asked if the language in the NC rule that stipulates requirements for federal facilities necessary. Director Holman said that the dilemma is that if it is removed from the NC rule while it remains as a requirement in the federal rule, we may have the I/M program or parts thereof disapproved by EPA. Chairman Carter commented that there was essentially no practical effect in removing this rule unless EPA would be in agreement. Chairman Hutson asked for confirmation that when a rule is adopted, there is recourse for a party that does not like the rule to either file objection with the Rules Review Commission (RRC) or file a civil action to challenge the rule. Director Holman confirmed. He asked whether the US DoD had done so. Director Holman answered not to her knowledge. Mr. Schliesser noted that Director Holman had signed a letter to those military bases explaining the situation last year. Mr. Carroll asked that regardless of the NC rule, does the federal rule allow facilities to implement their own rule for their own facilities. Chairman Carter confirmed they could. He said the reality is that in NC it doesn't have any impact currently because we do not have any non-attainment areas. However, in a couple of years, if EPA lowers the ozone standard, this may become an operative issue for NC.

Mr. Craven asked for clarity that the definition for federal vehicles includes privately owned vehicles driven by military members onto base. Mr. Schliesser said that federal vehicles are those owned by the federal government. However, at these federal installations, they have many civilian employees that bring their personal vehicles on the base. Mr. Craven asked whether this exclusion applies to those privately owned vehicles. Mr. Schliesser confirmed. Mr. Craven asked whether a military member or civilian employee who is in Wake County, which does have an I/M program, would be covered by the federal requirements and be exempted from the state requirements. Chairman Carter explained that although Wake County is not currently non-attainment, an I/M program remains in effect because of the maintenance plan. Director Holman explained the requirement would not be an issue because it would have been subject to the I/M program. We are not asking bases to inspect all those private vehicles driving on to the base from surrounding counties that may not have an I/M program. Chairman Carter commented that the oddity of this program is that it can impose an obligation on federal authorities to do I/M for a civilian vehicle that is coming from a county that is not non-attainment and does not have an I/M program, but because of the way the old rule is written, it could require the federal authorities to run that vehicle through their own I/M program even though there is otherwise no requirement in the state.

Mr. Carroll asked for confirmation that the NC rule is in effect and we are happy with it and going forward, the DAQ will keep the AQC advised of any further objections. Director Holman confirmed.

Agenda Item #6, Director's Remarks (Sheila Holman, DAQ)

Director Holman began by advising that EPA is in the middle of its scientific review to determine whether the current ozone standard is adequate to protect public health. The Clean Air Scientific Advisory Committee for Ozone is scheduled to meet in Chapel Hill on March 15, 2015. They will be moving forward to make a recommendation back to the agency regarding whether the current ozone standard should be changed.

Director Holman advised that the U.S. Supreme Court did take up the question relative to greenhouse gas (GHG) regulation specific to whether the EPA automatically triggered greenhouse gas permitting for stationary sources when it issued GHG rules for motor vehicles. Oral arguments were heard on February 24, 2014 and a decision is expected later by the end of June 2014.

Chairman Carter added that because of the nature of the issue and the number of parties involved, they had an extended oral argument period. The issue is highly contested with a great deal of significance. The court generally recesses around the end of June or early July and return around October. Given the nature of this issue, it would probably be late June before they issue a decision.

Director Holman advised that the DAQ has been involved in a Clean School Bus Initiative with the Department of Public Instruction (DPI). It is a "Kids Breathe Here" idle reduction policy with the schools. The EPA selected this initiative for an excellence award. We retrofitted over 1,890 school buses over the last few years in addition to having the idle reduction policies in place leading to a cleaner environment for the children. This initiative will be recognized on April 2, 2014 in Washington, DC.

Mr. Abraczinskas answered the previous question by Commissioner Ferrell regarding the type of facilities that underwent the air toxics permitting review. He said that the primary source categories amongst those reviewed of the thirty-six facilities included landfills, electric generating facilities, lumber mills, pulp and paper mills, wood products facilities, incinerators, tire and chemical manufacturers.

Mr. Ferrell asked how many school buses NC has. Director Holman said that the modeling included all buses that were going to be driven over a significant number of years.

Chairman Carter adjourned the meeting.