Air Quality Committee Meeting Minutes

November 13, 2013

The Air Quality Committee (AQC) of the Environmental Management Commission (EMC) met on November 13, 2013, 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 were also in attendance.

Agenda Item #1, Call to Order and the State Government Ethics Act, N.C.G.S. §138-A-15(e)
Chairman Carter called the meeting to order at approximately 3:30 p.m. He reminded the AQC members of the State Government Ethics Act regarding conflicts of interests or appearance of conflicts of interests.

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

Mr. Ferrell made the motion to approve the minutes. Mr. Carroll seconded the motion. The minutes were approved.

CONCEPTS

Agenda Item #3, Revisions to Open Burning Rules to Reflect S.L.2013-413 (521) (Joelle Burleson, DAQ)

Joelle Burleson:
I'm Joelle Burleson. I'm with the Division of Air Quality's Rules Development Branch. Today I will be presenting three concepts. Procedurally and historically, we have brought concepts to the Committee to basically give you a heads up about the items we intend to work on, and typically in the past, the Committee has voted on whether or not there was a consensus to move forward to further develop these items and come back to you later with draft rules, economic assessments or fiscal notes as well as any other information you might request.

The first item is on revisions to the open burning rules to reflect requirements of S.L.2013-413. S.L.2013-413 has many provisions but today I am only going to speak on a couple of those. In this particular instance, the session law is very explicit and has requirements for the Commission to adopt rule changes to reflect adjustments in the statutory language. Those adjustments are found in part V of section 28 of the session law. They pertain to admissible open burning for land clearing and right of way maintenance and basically add an option to allow materials to be transported to a location off–site where materials are burned no more than four times per year. Materials must be at least 500 feet from any dwelling or occupied property and there must be no more than two piles, each 20 feet in diameter, burned at any one time. The facility cannot be a permitted solid waste management facility. The session law is explicit that the language that is adopted in the rules by the Commission is to be substantively identical to statutory language which is somewhat unusual. Usually, you are not supposed to repeat statutory

language, but in this case they were explicit. Today, I'm here to let you know about this and get any questions or feedback you might have on us moving forward with these rule changes. The particular rule that would be changed is 15A NCAC 02D .1903, Open Burning Without an Air Quality Permit. In addition, there are a couple of places in the section where we still need to update the name of the former Division of Forest Resources to reflect its current name of North Carolina Forest Service. If there are any questions, I'll be happy to take them.

Thomas Craven:
How are you going to enforce the four times a year?

Joelle Burleson:
These rules are typically complaint driven so when someone complains about open burning in an area, our regional office staff respond to those complaints and investigate and determine whether or not there has been a violation of the rule. If this is something that is occurring more than four times a year in an area where people would be impacted, we would likely hear about it.

Director Holman:
DAQ has a very good working relationship with many of the fire departments across the state so we can also work with the fire chiefs to understand how often burning may be occurring at that given property. It will be a combination of both the complaints as well as working with the fire departments to understand how often open burning may be occurring at a given location.

E.O. Ferrell:
You said that this is to update the rule. Is this driven by actual complaints and instances or just trying to preclude that going forward?

Joelle Burleson:
This particular change?

E.O. Ferrell:
Yes.

Joelle Burleson:
I'm not completely familiar with the history behind the legislative change.

Director Holman:
I think there were situations where land clearing practices were occurring within a city limit that had an open burning ordinance and it was a way to allow that material to be legally burned off-site. The current rules would not allow transport to another location. This would be taking debris and moving it to another location where the proper set-backs could be achieved and also outside of city or town limits where there might be an all-out open burning ban.

Agenda Item #4, Revise Permit Term to Reflect S.L.2013-413 (522) (Joelle Burleson, DAQ)

Joelle Burleson:
Agenda item #4 is another concept. This one is to revise the permit term to reflect the requirements of S.L.2013-413. At the conclusion of the last legislative session, the General Assembly did amend the session law in Part V, Section 29 to require non-Title V air quality permits to be issued for a term of eight years. The Clean Air Act (CAA) requires Title V permits be issued for five years, therefore, those permits were not affected by this. However, the non-Title V state permitting rules in 15A NCAC 02Q do need to be revised to reflect this change in the length of permit term for consistency with the statute.

Chairman Carter:
Regarding the reference that Ms. Burleson made to Title V; that is actually the federal program that the state administers. It refers to all the major sources of air pollution, basically the larger sources, large plants and power plants and the like. Those are required to get a Title V federal operating permit. Those are governed by the federal requirements which set a maximum of a five-year permit term. Smaller sources are governed strictly under state statutes. So this basically is the legislature saying we believe it is appropriate to set a longer term for those smaller sources so that they don't have to come in as frequently simply for renewal. If you need to come back and get a change for your permit, that's very different. This is simply a question of how long is your permit going to last once you get it and how often would you have to come back and renew it.

Agenda Item #5, Repeal of Transportation Facilities Permitting Rules (523) (Joelle Burleson, DAQ)

Joelle Burleson:
Agenda item #5 is a proposed repeal of transportation facilities permitting rules. In this case, we are seeking to repeal some requirements that are no longer thought to be necessary by the Division. Previously the Division has taken a look at some of their rules internally and determined that these requirements are outdated and not providing environmental benefit. The rules focus on addressing carbon monoxide (CO) emissions and have been in place for quite some time. However, North Carolina no longer has any CO non-attainment areas under the federal requirements. Our last area was redesignated previously and the maintenance plan was approved within the last year. We have not had an actual non-attainment area for some time. The CO monitors are currently monitoring ambient concentrations at about 20% of the standard across the state. Federal engine standards over time have resulted in significant CO reductions from mobile sources. Also, evaluations of transportation facility applications that have been conducted in the past haven't resulted in those facilities having to do something in order to obtain the permit. It has become more of a paperwork exercise. The types of transportation facilities permitting are essentially parking decks and garages. At the end of the 2013 legislative session, in the same session law, S.L.2013-413, the General Assembly in part V, section 27, gave EMC the authority to determine whether rules for controlling the effects of these sources on air quality are necessary or not.

Chairman Carter:
This is a program that I have had some dealings with in the past. It is sort of an odd program in that back in the early days of the CAA, when we had a much more significant CO problem; this was actually a federally required part of the State Implementation Plan (SIP). Back in the late 1970's that federal

requirement was eliminated, but the state chose to continue this program. It's been totally a state matter since then. The EPA has no interest whatsoever. Most importantly, as Ms. Burleson just mentioned, CO is for the most part a mobile source problem and typically not a stationary source problem to any great degree. The ambient problems that were experienced back when areas in the state that were not meeting the level of that standard did need some attention. More recently, this has just become a paperwork exercise and a trap for the unwary. One of which most recently turned out to be the Department of Administration (DOA) which was somewhat embarrassed when the Green Square building that the Department is in now was built and the adjacent parking deck across the street was large enough to cross the threshold for requiring a permit but the DOA was not aware of that requirement. As far as I understood, the deck was essentially completed before anyone asked did we get a permit for that. I think at this point it's definitely a program that has run well past its usefulness and there weren't any substantive requirements. It was a paperwork exercise. Once in awhile if you have a very heavy traffic area there might have been a requirement to actually install a CO monitor. Other than that, I don't know of anything else that has ever been required to receive one of these permits. Did Crabtree Valley Mall run one?

Director Holman:
The state ran one at Crabtree.

Chairman Carter:
This is certainly something that needs to be cleaned up and removed from the regulations at this point.

Benne Huston:
Ms. Burleson or Director Holman, once we finish this rulemaking, is there a mechanism in place that then requires the local programs; Mecklenburg County, Buncombe, Guilford and the like to adopt these rules to be consistent with what we have at the state level?

Joelle Burleson:
I will note that the Commission does have oversight over the local programs and we do review their rules for consistency. In the past they have been allowed to be more stringent. I believe there were some adjustments and efforts toward adjustments relative to their stringency versus federal and state requirements during the last session as part of H74.

Director Holman:
I would recommend that the Division talk with the local air programs about our plans to repeal this rule and get their input as to what they would be thinking. I would assume most of them will choose to go ahead and repeal, but let's have that conversation and go from there.

Chairman Carter:
You're making an excellent point because as a more generic matter, this is just one example. As the Division goes forward with the rule changes that we expect to occur and eliminating obsolete rules and so forth, the same situation will occur there. I am not aware of either a statute or a rule that requires the local programs to precisely mirror the rules that this Commission adopts. They generally tend to do that, but I don't know that they are actually required to do so.

Benne Hutson:
Could I ask Director, if you would check with the Assistant Secretary? There is a study commission at the legislature that was enacted along with the statute that placed a moratorium on local environmental regulations and I request that the study commission be brought to their attention so that if it is required by legislation to have consistency or automatic adoption of changes in air rules, that it would be addressed by that study commission as well.

DRAFT RULES

None.

NOVEMBER EMC AGENDA ITEMS

Chairman Carter asked whether the other members have seen the Beyond CSA report that was electronically distributed.

Director Holman:
I distributed that report via email in October. You will receive an overview from Sushma Masemore later today.

Chairman Carter:
Do any of the members of the Committee have any questions with respect to that report? We do need to vote whether to move forward with a recommendation.

Are we going to deal with those other two agenda items?

Director Holman:
It is my understanding that you wanted a roughly five or ten minute presentation on each of those so that if there were any questions that the other Committee members had today, we could work through those.

Chairman Carter:
That will be fine.

Agenda Item #6, Hearing Officer's Report on Revision of Arsenic Acceptable Ambient Level (AAL) (514) (Donnie Redmond, DAQ)

Donnie Redmond:
Thank you Mr. Chairman. Good afternoon members of the Committee. I'm Donnie Redmond. I'm the Ambient Monitoring Section Chief with the Division of Air Quality. I'm here to give a short version of the full report that I'll give to the EMC tomorrow. This is regarding the hearing on two rules to change the AAL and the TPERs for arsenic. Tomorrow, Lori Cherry is going to give a short presentation on the Science Advisory Board (SAB).

Director Holman:
Director Holman reminded Mr. Redmond to stay away from our acronyms until everyone learns what an AAL and TPER is.

Donnie Redmond:
Lori will talk about these acronyms tomorrow. Initially, there were two hearing officers. Mr. Chris Ayers who was a member of the AQC had to recuse himself at the beginning of the hearing. I'm going to read the two rules tomorrow. I'm going to talk a little bit about some background of arsenic. Most of the arsenic in ambient air in North Carolina is from background sources, either from natural sources or it blows in from someplace else. The emissions that come from North Carolina are mostly from burning coal for producing power. There are about 450 facilities that are subject to the current rule. If the proposed rule is passed, about one fourth of those would no longer be subject to the rule. This process started about three years ago when the Director asked the SAB to review the acceptable ambient limit for arsenic. Part of that was because our monitoring had shown that concentrations in the air already exceeded the acceptable ambient level. Was it a health concern or was it because the AAL needed to be reviewed? Usually when we talk about standards, these are EPA standards that they set for national standards for ozone or PM and those sorts of things. The toxics are different. They are set by the EMC and the rules only apply to North Carolina. There is some confusion sometimes about these rules versus the EPA rules. The Science Advisory Board met a number of times in 2011 to come up with a recommendation. By October 2011 they had a recommendation. They unanimously voted to send that out for public comment. They took public comment about two years ago. They met a couple more times to review those comments. They didn't change their recommendation. They unanimously approved it and sent it on to the AQC. In the past two years it has completed the concept phase. Earlier this year, it was approved by the AQC and the EMC to go to public hearing. That public hearing was held on May 14 of this year. My approach in conducting a hearing wasn't to second guess the expertise of the SAB and go back and look at the studies and rerun the models. My approach was to take comments from the public to see if there were any that the SAB or the EMC should have considered but didn't. At the hearing we had one speaker. We did receive written comments from five other groups, some from industry supporting the rule change, a couple from environmental groups that did not agree with the rule change. There reasons for disagreeing with the rule included; they questioned the studies and models used by the SAB, they thought that the SAB should have considered ingestion of arsenic in addition to inhalation of it, they thought we should not change the arsenic AAL at the same time other changes to state toxics program are being implemented, and they thought the SAB should consider the background concentrations in applying the AAL. With each of these comments, I looked to see whether the SAB had already considered them during their public comment period two years ago. Was it in the scope of this hearing or was it fundamental changes with the toxics program that would be beyond the scope of these particular rules? EPA is also initiating a study of their own on arsenic which they expect to be done by 2016. Part of my consideration was whether we should wait for EPA to do their thing or should we move ahead. I'll talk in more detail tomorrow about why we should or shouldn't. I came back on July 10 and presented my recommendation to the AQC and on July 11 to the EMC. I recommended approving the rule. My reasons included that it wasn't a relaxation of the health standard. By definition, this rule change is equally protective of the old rule. The measures of concentrations of arsenic in air are trending downward. The largest sources of arsenic are still subject to this rule. If EPA came back with a different

recommendation than we did in 2016, we could always adjust what we've done. At the July meeting, there was a lengthy discussion about some of the processes that the SAB had gone through. I wasn't able to answer some of those questions because I wasn't involved in their process that occurred two years ago. Tomorrow, Dr. Starr will come and answer some of those questions that were raised.

Director Holman:
Dr. Thomas Starr is chair of the Science Advisory Board and led the technical evaluation that resulted in the recommendation for the change in the acceptable ambient level.

E.O. Ferrell:
In practical terms, what is the impact of the change? Who's going to change what they're doing today?

Donnie Redmond:
It involves the permitting of facilities if they are going to change a process-how much evaluation they have to do and what control measures they have to put on. Some of the smaller sources won't have to do anything.

E.O. Ferrell:
So, is it generally going to be a lessening of work required to comply for some smaller emitters? I think I heard you say that power plants did most of it and it wouldn't impact them?

Donnie Redmond:
They would still be subject to the rule. Some of the smaller sources would no longer be subject to this rule so they wouldn't have to go through the same process to prove compliance with the rule.

Gerard Carroll:
I have an indirect question and I'm not sure if this is the appropriate place. It has to do with the issue of ingestion and deposition of groundwater which I understand this group said wasn't part of its purview. My question is, who is responsible for that part of looking at arsenic and how does that relate to the ambient air limitations and so forth? From reading the material, I never got an answer. I understood that group wasn't going to do it, but they didn't say who was going to look at it, or who does, or if anybody does.

Donnie Redmond:
Tomorrow, a lady from Water Quality is going to talk about deposition and impact on fish.

Director Holman:
Donnie, you are correct. I think Kathy Stecker from the Division of Water Resources will be here tomorrow to talk about the work the Division of Water Resources has done to understand arsenic in water. Your question Mr. Carroll, is an appropriate one and I think it's a difficult one that North Carolina struggles with not only on arsenic but on many pollutants. The reality is that a lot of our statutory authority comes from federal acts, like the CAA and the Clean Water Act, and so we focus on our area of expertise and the way the Secretary's SAB was structured was to look at the appropriate air concentration levels and that is how the program has evolved over time. I think that if the EMC wants to take up an

evaluation of multi-pollutant pathways, there needs to be a lot of careful consideration and deliberation about how we would move forward doing that.

Gerard Carroll:
I'm not suggesting anything in particular, but it does seem it's sort of like a silo analysis in the way that we look at a piece of it. I thought their argument had some validity to it in the sense that it could be in the air and then deposited in the water and now it's a water issue. Who actually evaluates that if the source is an airborne source but it's in the water? Do the water people then go back to try to regulate that somehow? I'm not sure how that works. We don't have to actually explain that now. I'm just kind of curious.

Director Holman:
North Carolina has done a lot over the years in trying to provide information across the two divisions, particularly air and water. For example; as the Falls Lake rules were developed, one of the questions the then Division of Water Quality and the Division of Air Quality had was understanding the amount of nitrogen that was being deposited into the waterways or onto the land and then going into the waterways. We've attempted to try to bridge some of the technical analyses over time. When it comes back to the acceptable ambient air levels, what we're looking at is an acceptable air concentration and so historically, the way the SAB has evaluated that would be through the inhalation pathway. I think it becomes more complicated when you consider the other pathways and then try to figure out how to define acceptable ambient air concentrations.

Gerard Carroll:
I understand.

Director Holman:
It is a very complicated situation.

Benne Hutson:
I would just add that there has been much litigation going on, especially in poultry farming operations, as to whether or not dust and feathers that might eventually reach a stream can be regulated under a water permit or not. There is considerable litigation. In fact, there is one case still pending here in North Carolina. It is the Rose Hill case which went through this Commission a number of years ago and it may come back to us with where is the extent of authority of these programs. I'm not sure there is an easy answer to that.

Chairman Carter:
Mr. Redmond, you mentioned natural sources. Did I understand correctly that you're seeing declines in the levels of ambient arsenic?

Donnie Redmond:
Yes sir. Over the past ten years we've had more monitors out there and we're seeing a steady decline in ambient air concentration.

Chairman Carter:
Would I be correct in assuming that it is at least in part due to the emission controls on the coal-fired power plants under the Clean Smokestacks Act (CSA)?

Donnie Redmond:
I think that would be a good explanation.

Director Holman:
We've also looked at the emissions of arsenic from the regulated facilities and those have also declined in that same timeframe that we've seen the ambient concentrations of arsenic decline in North Carolina.

Julie Wilsey:
My question is if the EPA is going to be looking at this and we make a change and relax it and they come back with an answer different than the SAB's answer and we have to go back and increase our levels, what is the risk or the impact during that time there is a lapse?

Donnie Redmond:
We could always go back and adjust it. Part of my discussion tomorrow is about how our science people just evaluated it and EPA will likely be looking at a lot of the same data. Hopefully, their conclusions wouldn't be significantly different from our science people's.

Julie Wilsey:
Even though we're debating whether or not they studied the right method? If they chose the other method, their answers might be different.

Donnie Redmond:
Yes.

Agenda Item #7, Hearing Officer's Report on Inspection/Maintenance (IM) Rules Revision (517) (Steven Vozzo, DAQ)

Steven Vozzo:
Thank you Mr. Chairman. Good afternoon members of the Committee. My name is Steven Vozzo. I'm the Air Quality regional supervisor in DENR's Fayetteville Regional Office. I was appointed by the EMC to be the hearing officer for the public hearing on the amendments to the Motor Vehicles Emissions Control Standards rules. I want to thank Steve Schliesser and Joelle Burleson and the staff of the Division of Air Quality's Planning Branch for their coordination of the hearing process and their support and assistance in producing the hearing record and today's presentation. The Division of Air Quality was tasked to propose modifications to 15A NCAC 02D environmental regulations governing the emissions inspection program. These changes are based on a session law passed by the General Assembly in 2012. This law was entitled "An Act to Exempt Vehicles of the Three Newest Model Years and With Less Than 70,000 Miles from Emissions Inspections". There are three main components; change the emissions testing program for newer vehicles, incorporate a revised exemption of the three most recent model year

vehicles with less than 70,000 miles from emissions inspections, and to still require safety inspection with visual inspection of a vehicle's emission components.

A public hearing was held in Raleigh on September 18, 2013. Comments were received through October 14, 2013. Five specific rules would be addressed. Five rules are proposed to be changed to be aligned with the statute. 02D .1002 is the applicability section. The proposal for amendment is to extend the exemption from the current model year vehicles to the three most recent model years and with less than 70,000 miles. 02D .1003 is the definitions section. The proposed changes are to consolidate, add and modify definitions also to include new terminology that reflect the advancements in new technologies. 02D .1005 is the on-board diagnostic standards section. There is a need to make changes to align the rule with the new statute and to update language for hybrid electric and fuel-cell vehicles. 02D .1006 is the section involving the sale and service of analyzers. Changes are to update the language reflecting advancement in capabilities and to track emissions inspection analyzer vendor service calls. The remaining section is 02D .1009 that dealt with the model year 2008 and subsequent model year heavy-duty diesel vehicle requirements. The proposal is to repeal this section since according to the USEPA rules it is no longer necessary. During the hearing process, fifteen comments were received on the proposed rules. Over the last fifteen to twenty years, the DAQ has worked closely with the NC Division of Motor Vehicles (DMV) in the implementation of these 02D regulations. The DAQ again worked closely with DMV in responding to these comments. The first topic deals with the less than 2,000 mile provision to the exemption. The questions were, how will the provision be enforced, what preparations are needed to be made to enforce by effective date, and how an inspection station is going to police themselves? Much of this response falls into the DMV assignments and how they plan to inspect the inspection stations. They will use education and oversight to enforce the new program including providing updated materials and certification courses to address changes, provide oversight with audits, checks and safeguards to minimize fraud, holding accountable for performing valid inspections. If fraud is identified, DMV will prosecute. The second topic deals with applicability. The comments here were that the exemption was like a tax break for the more affluent, why exempt only three most recent model years, it claims that inspections are a waste of money and a scam, and why are there inspections only in certain counties? The responses to these questions were directed to a study. A year before passing Session Law 2012-199, the NC General Assembly directed DMV and DAQ to conduct a joint study to determine the impacts of exempting the three newest model year vehicles and all vehicles from the emissions inspections requirement. They also evaluated whether air quality standards would be violated based on existing or future air quality standards being considered for adoption by the USEPA and they evaluated what the fiscal impacts would be for the motor vehicle owners, inspection stations, the DMV and for the DAQ. Based on the detailed results of that study and its cost impacts, the General Assembly passed S.L. 2012-199. The responses to the questions are:first that the study revealed emission controls on newer cars seldom fail, the study concluded exemption from emissions tests in the first three model years save consumers, there were negligible effects on air quality, and modeling analysis showed that the exemption would not interfere with the air quality standards. To answer the last part of why emissions inspections are only required in certain counties, that is that the General Assembly previously identified these forty-eight counties based on population and the existing air quality at that time. The next set of comments dealt with tampering with the emission controls. The simple answer here is that tampering with emission controls is a violation of the federal and state laws. The on-board diagnostics called OBDII have been on all gas-powered vehicles since the 1996 model year. Mechanics use certified analyzers as

well as perform visual inspections. There was a comment on inspecting an exempt vehicle with its check engine light on. All vehicles will still be getting the annual safety inspection. Therefore, during this test, if the inspector noted that the check engine light was on, they would be letting the customer know that there was an issue. It would be in the customer's best interest know this and get it evaluated, especially since this is a new vehicle with low miles and most likely under warranty. There was a comment on how the state's agencies will deal with the $11 million in lost revenue over the next few years. Whereas there will be a financial savings to the motor vehicle owners, the agencies will lose some revenue. The response was that the agencies will absorb the losses by planning and adjustments. Some of the adjustments were enabled by the e-sticker program completion and investments in the state information systems, and there will be an increase in the number of future vehicles that will offset some of this loss. The DMV also has a new system that will reduce the state's operating costs by about $5.7 per year and over time it will pay for itself. A comment was received from the Department of the Army objecting the rules applying on federal lands and their claim of sovereign immunity. They request repeal in the applicability of the 02D .1002 rules to federal installations. This issue was also raised in 1998 and at that time the USEPA concluded the CAA amendment applied to federal facilities in inspection and maintenance counties. The proposed rule is consistent with the current North Carolina statute. However, the Division has begun investigating this request further. At this time, North Carolina cannot accommodate the federal request to repeal the rule, but it is recommended that DAQ further study this and consult with the USEPA and the Department of Defense to evaluate this further. There were also two comments on the rule implementation. The first comment was that the rule was too ambiguous without an electronic equipment system to determine whether emission inspections were required. To handle this, changes in two definitions were made to clarify the inspection requirements and DMV developed detailed flow charts to determine when inspection is required. Qualified staff management will become familiar with the flow chart to consistently implement this rule. The second comment was in the area of the opposition to relax the OBD specifications in rule 02D .1006. The DAQ agreed with this comment and concluded that existing rule language best carries out the legislative intent.

The hearing officer's recommendations are to recommend that the proposed amendments with changes as presented in Chapter II be adopted by the EMC. I also recommend that DAQ study the concerns of sovereign immunity at federal installations as expressed by the Department of the Army. I propose that DAQ report back to the AQC and the EMC no later than March 2014 and if needed, they will provide a concept for a rule change.

Thomas Craven:
Is the Department of Defense saying that the facility itself should be exempt or that the vehicle should be exempt? If the vehicle leaves the facility, is it subject to these rules?

Steven Vozzo:
Some vehicles are already exempt. The military vehicles that are used on the fields are all exempt. It is the vehicles that are coming to the base that are required to pass the emission inspection.

Thomas Craven:
Private vehicles?

Steven Vozzo:
Private vehicles.

Thomas Craven:
Owned by North Carolinians or military that may be registered in other states?

Steven Vozzo:
People who are assigned to that facility. Director, is it the vehicles from other states as well?

Director Holman:
That is correct. The federal rule seems to apply to any vehicle traveling onto the base and in certain cases you could have North Carolina registered vehicles registered in a county that is not a vehicle emissions inspection county driving to the base or you could have someone moving in from out of state. The point is that all vehicles traveling onto the base, under the federal rule, are supposed to be tested. In 1998, the Department of Justice issued an opinion that EPA had overextended its authority on those points and EPA began the process of revising the federal rule but they never finalized it. We have relooked at the situation and this applies only where the areas were designated as a moderate level ozone area or a moderate level carbon monoxide area. It doesn't apply in all forty-eight counties in NC. We have clarified to the bases which ones of those federal installations are where this is a mandatory requirement. We are working on this issue, but the problem is that our general statute actually mirrors the federal language so we've got to go back and work with EPA on this issue as well as possibly have a statutory change here in NC.

Chairman Carter:
Should the recommendation to report back to the Committee in March be along those lines if you think there is some further change needed even and up to including a statutory recommendation?

Steven Vozzo:
Yes Sir.

Chairman Carter:
Is everyone (AQC members) generally aware of what we're talking about with the inspection and maintenance program? If you don't live in one of the forty-eight counties, you may not have ever encountered this. (Hearing no questions, he proceeded).

Agenda Item #8, Request for Approval of Emissions Reductions Beyond Clean Smokestacks Act 2013 Report (Sushma Masemore, DAQ) – *Action Item*

Chairman Hutson:
I hope everyone has had a chance to take a look at this document. Are there any questions to the staff related to that report?

Benne Hutson:
This is an every two-year report. It was submitted to me and was supposed to be going to the legislature in September and I saw that the report was from the Commission and I did not think it was appropriate in my role as chairman to sign a report that reported to be on behalf of the Commission so that is why I requested that it be brought to this Committee and then to the full Commission to give me authorization to sign the report knowing the full Commission had approved it. If there are any other instances where there is a report required of the Commission, I will do the same thing and bring it to the appropriate committee for review and approval by the Commission and then I'll sign.

Chairman Carter:
I think that is entirely appropriate. We do have a brief summary of the report by Ms. Masemore.

Sushma Masemore:
Thank you, Chairman Carter and members of the Committee. I'm going to give you a brief background on the Clean Smokestacks Act as a benefit to the new Committee members, on its intent, where the implementation is, what they reported about, and what the recommendation of the Department is as well as what the EMC report says. The Clean Smokestacks Act, which we refer to often as the CSA or the act, was passed by the North Carolina General Assembly in 2002. It was intended to improve air quality in the state by imposing emission limits of certain pollutants from coal-fired generating units. These generating units were subject to requirements provided they were over 25 MW in power generating capacity. It is considered a landmark legislation that resulted in early action installation of state-of-the-art air pollution control technologies at coal-fired power plants. It was based on a multi-pollutant regional study called the Southern Appalachian Mountains Initiative that showed that each state would benefit most from reducing emissions within its own boundaries. The act specified entity-wide (the companies that operated those EGUs) emission limits for nitrogen oxides or NOx. NOx is the primary pollutant responsible for the ozone formation in the South. The act also set entity-wide emission limits for sulfur dioxide or SO2. SO2 causes acid rain and is involved in secondary formation of particle pollution and regional haze. Since the passage of the CSA, EPA has strengthened the primary national ambient air quality standards for NO2 and SO2. We currently have 1-hour SO2 and NO2 limits which are also emitted by these power plants. The act specified a schedule for meeting NOx and SO2 emission limits. 2007 was the first year NOx emission limits were required to be met. By 2009, the emission cap was reduced to 56,000 tons, where it must remain at that level for future years. For SO2, 2009 was the first year for meeting the emission limits. The final stage of implementation requires SO2 emissions to be met at 130,000 tons by the end of this year. Collectively, the act was designed to reduce 78 % reductions in NOx from 1998 levels and 74% reductions in SO2 levels. One other key component regarding state legislation was that these reductions had to occur through actual reductions and not by buying or trading credits within utilities in other states. It also contained a cost recovery provision for the utilities to recover the cost of add-on pollution controls. This map shows the fourteen coal-fired power plants, operated by Duke Power and formerly Progress Energy that were subject to the legislation. By 2014, all but seven of the coal-fired power plants will be in operation and four will be converted to natural gas. Three smaller plants have already been retired. One plant is scheduled to convert to natural gas later this year. Since its inception, DENR and the NC Utilities Commission have been required to jointly prepare an annual compliance report that documents the status of the CSA related activities and the cost of the program. In our June 2013 report, we documented that all permitting, construction, and equipment

related activities had been completed and that the total compliance cost for the program was reported to be $2.89 billion. Regarding the actual reductions achieved, the two charts below show actual emissions for the two utilities. The chart on the left shows tons of NOx emitted in 1998 and the last three years. The chart on the right shows similar data for SO2. Actual emissions for both pollutants are well below the emission caps, and the utilities are already meeting the 2013 SO2 target. Based on the compliance report submitted by Duke Power this year, it is estimated that the 2014 emission levels will be well below any levels seen so far since 1998. Collectively, the two utilities have reduced NOx emissions by 83% and SO2 emissions by 89% relative to 1998 emission levels. These rates are much higher than projected reductions expected during the passage of the act.

The CSA is considered one of key contributing programs that have helped the state achieve declined levels of ozone concentrations. The first controls came on line in 2003 at the Belews Creek Plant. Over the years, our NOx levels have declined, which relates to the ozone levels. Currently, we have only one area designated non-attainment for the 2008 ozone standard and that is our Charlotte area. The CSA related controls and associated emission reductions have helped North Carolina meet its state implementation requirements for a variety of pollutants. For example, SO2 reductions supported redesignation of the fine particulate matter standard for two areas in the Triad region. Based on this demonstration, the EPA adopted CSA specific provisions for the emission caps into NC's State Implementation Plan. The CSA also helped meet regional haze requirements in NC's national parks and wilderness areas. According to the 2012 five-year progress report, we concluded that all Class I areas are on track to meet visibility goals. Most importantly, the CSA also allowed NC utilities to be well positioned to comply with various federal rules. This includes the Clean Air Interstate Rule (CAIR) and its replacement Cross State Air Pollution Rule. Both of these rules were designed to address interstate pollution transport from one state to another. Additionally, the scrubbers placed on the coal-fired units are expected to help comply with EPA's Mercury and Air Toxics rule which set emission limits for hazardous air pollutants like mercury, heavy metals, and acid gases. Utilities in other states will have three to five years to comply while NC utilities have been able spread out the compliance costs over eleven years.

There have been several studies conducted in recent years. I have listed two. The first one talks about the benefits to the NC rate payers as a result of early state action related to the CSA. This report was prepared by the Duke Nicholas School about a year ago and they concluded that the CSA allowed NC to stagger the cost of pollution control technologies over a longer period and that as a result of the mandate in new pollution controls required to be installed in these coal-fired units, that a 25% compliance cost escalation would result in lower compliance costs with the CSA for NC rate payers. They also concluded that NC residents have enjoyed health and environmental benefits much earlier compared to other states. Another more recent paper is being published by a group of medical doctors from the Duke University Medical School. It looks at the mortality rate from different diseases that are not associated with the changes in air quality. They are looking at all state programs that have been in effect in NC since the mid-1990s. In Section 11 of the act it requires the EMC to bi-annually look at further need for reductions for NOx and SO2. The first report was to be submitted biennially starting Sept. 1, 2011. In the September 2011 report, DENR stated and the EMC finalized that there are many factors influencing the decision at the time. Those factors were related to programs at local, regional and national levels. The CSA units were still being modified and shutting down or converted. There was also significant activity

occurring in our neighboring state with the TVA settlement and the Cross State and the Clean Air Interstate rules were still pending as to the final outcome. The MATS rule was just being implemented. So, it was still unclear what the existing coal and oil fired units would be doing. That report recommended that further state actions be presented two years later in September 1, 2013. In the "2013 Beyond CSA Report", DENR is stating that key federal judicial decisions and rulemaking actions still remain unresolved. First, there is still significant uncertainty regarding the fate of the transport rules. Second, the electric utility, mercury and air toxics rules are just being implemented and many power plants in our neighboring states will continue to be undergoing significant changes and perhaps even shutting down some of their smaller units. Most importantly from an air quality planning point of view, EPA has delayed revisions to its ozone standards to late 2015. This decision could have a profound impact on NC and whether we see additional reductions needed. One other part I want to point out is that there is also implementation related to NO2 and SO2 that is just coming on line through rulemaking by EPA. Collectively, since each of these programs has the potential to affect our coal-fired power plants that are also subject to the CSA, the need for additional reductions beyond the CSA is unclear. In conclusion, the "2013 Beyond CSA Report" recommends that significant reductions have already been achieved by NC electric generating units and that pollution transport from electric generating units in neighboring states will be reduced as these units begin to install new pollution controls and/or close smaller plants. Whether or not the reductions from all these programs are sufficient cannot be determined until the new ozone standard is proposed or promulgated. Based on this reasoning, it is concluded that a bi-annual reporting is no longer necessary. However, the Department does plan to evaluate the need for reductions beyond CSA to attain and maintain the NAAQS. If additional controls are deemed necessary, DENR will initiate necessary rule changes or open specific air permits to include new emission limits, or a combination of both strategies.

Benne Hutson:
To eliminate the bi-annual report, does that require a statutory change?

Director Holman:
It will, and the Department will include that in its recommendation for legislative changes.

Chairman Carter asked whether there was any further discussion regarding the report and with no further discussion, he entertained a motion to recommend the report to go forward. Mr. Ferrell made the motion and Mr. Carroll seconded the motion. With all in favor, the motion carried.

Agenda Item #9, Shale Gas Development and Air Quality (Mike Abraczinskas, DAQ)

Chairman Carter:
The next item on the agenda is the Shale Gas Development and Air Quality but we don't have a presentation scheduled for today. If anyone on the Committee has a question about the status of any part of that program, the staff is prepared to answer questions otherwise we are not planning to make a presentation on that.

Benne Hutson:
As Chair, I asked for that presentation at the last meeting. You were handed a package of materials from the Blue Ridge Environmental Defense League regarding their request for more stringent requirements. My decision as Chair was in order to put that in the proper perspective the entire Commission needed some background as to what the current regulatory status is and what are the anticipated changes. That will be covered tomorrow.

INFORMATION ITEMS

Agenda Item #10, Update on Air Toxics Rule Revisions (Patrick Knowlson, DAQ)

Patrick Knowlson:
Thank you Mr. Chairman. I'm just going to provide a brief status on the public hearing we had for the air toxics rules. In July, the EMC approved these rules to go to hearing. The rules were published in the state register on August 15, 2013 with a 60-day comment period. That comment period ended on October 14, 2013. Brad Newland who is the Wilmington Air Quality Regional Office supervisor, served as the hearing officer for this hearing. The hearing was held at the DENR Green Square building on September 19, 2013 at 3:00. Approximately fifty people showed up. We had fifteen speakers. During the written part of the comment period, we received forty-three comments from forty-five commenters. Due to the closing of the comment period being so close to the EMC meeting and the extensive number of comments, we are going to bring these rules back to the January EMC meeting. We are reviewing responses and still do not have any comments on responses right now. We will be meeting with management later this week to discuss those responses.

Agenda Item #11, Air Quality Acronym List

Director Holman:
The acronym list is provided for your information as you are getting oriented to the air quality program. We will do our best to try to explain what those acronyms are.

Agenda Item #12, Director's Remarks (Sheila Holman, DAQ)

Director Holman:
First of all, I want to say welcome to each of the new Air Quality Committee members. I certainly look forward to working with you. I want to reiterate something I said at the September orientation meeting and that is that the staff are here as a resource to you so as you hear things or see things that you have questions about, don't hesitate to reach out to us and ask us questions and certainly on the really complicated issues when you're hearing lots of different perspectives, if you have questions about the Department's perspective on anything, please reach out and we'll talk through any issues that we need to discuss. What I normally do for the Director's Remarks is basically talk through anything that is happening at the national level that may ultimately impact you and the work that you do here on the Committee and the Commission.

The first item is the Sulfur Dioxide (SO2) National Ambient Air Quality Standards (NAAQS). EPA finalized that standard in June 2010. The normal process is that once EPA establishes a health-based standard, the states then look at our ambient data to determine whether all of our monitors are in compliance with those standards. The next step would be to recommend what boundaries should be designated as non-attainment for any areas where we have a violating monitor. That process has already happened. The state submitted recommendations in 2012. We updated them in 2013 and Secretary Skvarla sent a revised update to EPA in April of this year. EPA did not proceed with actually designating areas in the country except for those areas where there were violating monitors. This is unusual. Typically, EPA would designate those areas violating as non-attainment. They would designate areas that showed compliance as attainment or if there wasn't enough information they would designate areas as unclassifiable. Those are the three basic classifications that are laid out under the Clean Air Act. EPA chose to only designate the violating monitors. Their three-year deadline expired on June 3, 2013. On June 4, there was a notice of intent to sue filed by the Sierra Club. At that time, NC started thinking about what we should do. In recent weeks, the Attorney General's Office, on behalf of DENR, has taken two actions. The first, following the Sierra Club's notice of intent to sue, after 60 days the Sierra Club filed a complaint in the northern district of northern California. Basically, the complaint is that EPA had failed to fulfill its statutory duty to designate areas as non-attainment, attainment or unclassifiable. The Attorney General's Office in NC filed a motion to intervene in that complaint. Additionally, in August we filed our own notice of intent to sue and in October the Attorney General's office filed a complaint in the eastern district of NC. The reason is that we believe first and foremost that EPA did in fact fail to fulfill its statutory duty. Second, we believe that failure has created some confusion and regulatory uncertainty. Third, we would like to be at the table in discussing how designations will proceed under this litigation.

Chairman Carter:
I wanted to add that I believe a third lawsuit was filed in North Dakota and in Texas and at least two other states basically on the same grounds. For the members of the Committee, the key concern here is that what has happened quite frequently in recent years is EPA will be sued by a group, in this case the Sierra Club, over some actions failed to take. They will enter into negotiations to reach a settlement which typically includes a schedule and the requirement for them to meet to resolve the lawsuit. The judge blesses that resolution and it is basically simply an agreement between those two parties or those few parties that are part of the lawsuit. That is the point Director Holman was making with respect to a seat at the table because if you're not involved in the litigation, you are essentially excluded. There is a public comment opportunity once the agreement is reached, but the reality is the deal is done by that point. I applaud the Department and the Attorney General's Office for taking the steps that have been needed for some time to get actively engaged in this and basically defend the State's interests. The other point I would make so that everyone is clear about this is that this is not a situation where there was any failure on the part of this state or as far as I know any other state. It has to do with what they were required to do under the Act. In NC, recommendations were made and EPA had everything they needed to make designations and simply refused to do so. In fact, the letter they sent to Secretary Skvarla or the Governor said they weren't going to do it.

Director Holman:
They sent it to the Governor.

Chairman Carter:
It's almost condescending in the way of saying I know you sent us some data, but we don't really care. We're not going to do it. We've chosen to go about it in a different way and we're going to go with the statute. We're going to ignore your recommendations. I wouldn't suggest that this litigation is likely to change that manner of conducting itself, but the frank ethics say we have no other choice in this case but to jump in and take an active role.

Director Holman:
I will also say that in my twenty-year history at the Division of Air Quality, this is the first time we've seen EPA designate for just non-attainment areas and defer all other locations. It's an unusual move on their part.

I would like to give you an update on some good news for the greater Charlotte or Metrolina area. We talked about non-attainment designations. When you have monitoring data showing that there is a violation, areas are designated as non-attainment. Then the state is required to develop a plan of how to bring the area back into compliance with that health-based standard. NC has done that for the greater Charlotte area for the 1997 ozone standard and EPA is about to finalize the last step to move the greater Charlotte area to maintenance for the 1997 standard. Most of that area is still designated as non-attainment for the 2008 standard. This is a huge milestone in showing that we have achieved that 1997 ozone standard. We may be seeing a press announcement either later this week or early next week.

For the 2013 ozone season, we had the cleanest data again on record in my history of being with the Division. It was a cooler and wetter summer than normal and that means lower ozone levels. I've said in certain audiences that after the summer of 2012 when we had the heat wave and record temperatures set at Raleigh-Durham Airport of 105 degrees three days in a row, I think we were due a cooler weather summer. The good news is that with this data, we currently only have two monitors that violate the 2008 ozone standard. Those monitors are located in the Charlotte area and they are marginally over the standard. We are continuing to see ozone improvements. Obviously, it is somewhat reflective of an atypical summer for NC.

Chairman Carter:
But isn't also the progress we saw with the CSA a very large contributing factor?

Director Holman:
Yes. There have been significant emissions reductions in the state.

Next is a discussion of the recommendation on NC's PM2.5 or fine particles for particulate matter boundaries. EPA promulgated a new fine particle standard in December 2012. They lowered the annual standard from $15\mu g/m^3$ to $12\mu g/m^3$. I am happy to report that all monitors in NC are showing compliance with this standard. When the Secretary on behalf of Governor McCrory submits a recommendation to EPA in December, we will be recommending that all counties in NC be designated as attainment for the new standard. That is credit to a lot of the work that was done on the Clean Smokestacks Act and the sulfur dioxide reductions that were achieved.

One other item as we bring in new AQC members, in the past we have done an orientation on particular topic areas. For example, do you want to know more about the ozone monitoring network in NC? Do you want to know more about how we do permitting? Do you want to know more about how we develop these air quality plans when we have a violating monitor? Any of those topic areas that you would like to know more about, we can schedule a ten to fifteen minute informational item. I wanted to let ya'll know that so you can be thinking and provide feedback to Chairman Carter or to me.

Chairman Carter:
Is there any new business?

Benne Hutson:
I would just note that the date for the next meeting for this Committee should be January 8. The 9th is the Commission meeting so the Committee will meet on the 8th.

Chairman Carter entertained a motion to conclude the meeting. Ms. Wilsey made a motion and Mr. Hutson seconded the motion. The meeting was adjourned.