

Air Quality Committee Meeting Minutes

November 7, 2012

The Air Quality Committee (AQC) of the Environmental Management Commission (EMC) met on November 7, 2012, in the Ground Floor Hearing Room of the Archdale Building. The AQC members present: Chairman Marion Deerhake, Mr. Christopher Ayers, Mr. Marvin Cavanaugh, Dr. Ernest Larkin, Mayor Darryl D. Moss, Dr. David Peden, and Mr. Stephen Smith. The Director and staff members of the Division of Air Quality (DAQ), Mr. Frank Crawley 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 Deerhake called the meeting to order at approximately 10:00 a.m. Chairman Deerhake reminded the AQC members of the State Government Ethics Act regarding conflicts of interests or appearance of conflicts of interests.

Chairman Deerhake remembered Laura Boothe who recently passed away. Ms. Boothe was the DAQ Attainment Planning Branch Manager and had served in DAQ for twenty years. Chairman Deerhake offered sympathies to Ms. Boothe's family and to the Division. Chairman Deerhake said that Ms. Boothe brought a lot of valuable talents and skills to the Division and for the EMC.

Director Holman took a moment to reflect on all that Ms. Boothe brought to the Division in her work with the State. Director Holman said that Ms. Boothe started with the Division in 1992 and had a major role in all the Division's attainment demonstrations and redesignation requests throughout the years. Ms. Boothe was also the lead on the Emission Inventory group when the Division first began developing state-wide emission inventories and was a main player in the Division's air quality modeling efforts. Director Holman acknowledged that the Division and its capabilities today are due in large part to Ms. Boothe's contribution and she will definitely be missed.

Agenda Item #2, Review and Approval of the September 2012 AQC Meeting Minutes

Dr. Larkin moved for approval of the minutes. Mayor Moss seconded the motion. The motion passed to approve the minutes.

DRAFT RULES

Agenda Item#3, Request for 30-day Waiver and Request to Proceed to Hearing on Revision of Volatile Organic Compound (VOC) Reasonably Available Control Technology (RACT) Rules Applicability (513) (Joelle Burseson, DAQ)

Ms. Burlison began by saying that the request for draft amendments to the VOC RACT rule is in response to the applicability issue that the Environmental Protection Agency (EPA) identified while it was reviewing the redesignation request for the Metrolina area. The DAQ requested approval of the associated economic assessment (EA) which was revised in response to EPA's comments and also requested to move forward to the EMC the following day with a request for a waiver of the 30-day rule, so that the DAQ could proceed to public notice with both the rule and the EA in a manner that would allow adequate time to 1) complete the rulemaking process and 2) for EPA to complete their processing of the request in order to redesignate the area prior to any revocation of the standard that could occur as early as July 2013.

Ms. Burlison reviewed background information and said the DAQ received a clean data determination for the Metrolina nonattainment area. That determination means that monitoring data has shown that the area is consistently meeting the 1997 8-hour ozone standard of 0.08 ppm. That determination was based on 2009 through 2011 monitoring data. Despite that fact, Section 182(b)(2) of the Clean Air Act (CAA) requires RACT for all sources addressed by control technique guideline (CTG) documents issued by EPA in areas classified as moderate nonattainment such as the Metrolina nonattainment area. EPA does not have the flexibility to waive this requirement, but EPA procedures do allow for requirements that have not yet been implemented in areas that are being redesignated to be shifted to contingency measures when that redesignation occurs. DAQ has drafted its rules with this in mind and has incorporated provisions shifting requirements to contingency measures for compliance purposes in the language of rule .0902, .0909 and the rest of the package.

Ms. Burlison continued by saying that in September 2012, as Chairman Deerhake noted that concerns were received from two particular industry categories regarding these rules. The two rules of interest were rules 02D .0961 which is related to the offset lithographic and letter press printing, and 02D .0962 which is related to industrial solvent cleaning. Those rules were not part of the package at that time. Those rules were pending clarifications and were not as high in priority until the applicability; the threshold change resulted in the potential for more impact and the need for the clarifications in the unlikely event that these rules would have to be complied with under a contingency measure scenario. Since that time, the DAQ has been working to gather more information relative to the two industrial sectors' concerns, to understand their technical concerns better, and to review the work to date, as well as coordinate with EPA Region 4 to ensure that DAQ's proposed changes will be approvable. Ms. Burlison acknowledged the industry association representatives for their technical information and the DENR (Department of Environment and Natural Resources) and OSBM fiscal analysts who assisted in improving the EA. She noted that the EA was changed to include a shift in the discussion about the unlikely scenario into the risk analysis portion. DAQ does not expect these rule changes to have immediate impact because the DAQ does expect EPA to redesignate the area from

“nonattainment” to attainment making it a “maintenance” area once the rule changes, extending applicability to all sources in the CTG industrial sector (“source”) categories are approved and processed by EPA.

Ms. Burlison said that there is language in rules 02D .0902 to adjust the applicability threshold to cover the less than 100 tons per year sources that are in source categories for which EPA produced a CTG. There is also language to shift the requirements of contingency measures upon redesignation of an area, and 02D .0909 provides a schedule for compliance for newly affected facilities in that unlikely event that the area is not redesignated. EPA requested in paragraph “b” of 02D .0909 addition of a clarifying phrase that sources subject to state-wide rules listed in 02D .0902(e) are to comply in accordance with the requirements in those rules as opposed to the new compliance schedule.

In 02D .0951, DAQ has provided language that amends the rule to provide flexibility to sources to comply either with the source category specific rules or case-by-case Reasonably Available Control Technology (RACT) determinations that would be approved by both the state and EPA.

Concerns identified by the two industry associations regarding 02D .0961 are addressed. DAQ has added language that clarifies much of the language to make it more consistent with the underlying CTG recommendations. The language provides for an equivalent rolling 12-month applicability threshold which provides relief from a record keeping standpoint. Ms. Burlison said that the industry association had also asked for more information that was not previously reflected in the rules. DAQ added appropriate language in 02D .0961. 02D .0962, including an alternative VOC content level and compliance options for industrial solvents use for a particular subset category (cleaning of resins, inks, and coating manufacturing equipment). Work practices are also included as an option. These changes are consistent with the CTG recommendations.

02D .0903 includes minor wording that allows the less than daily record keeping change.

02Q .0102 includes a cross-reference change as a result of the paragraphs being relabeled in other rules.

DAQ analyzed the emissions inventory and other information with respect to the industry association’s technical concerns and concluded that there will not be a widespread impact to industry at the present time. Part of the concern that the industry association had was that if these rules at some future date (under a new standard) were to apply, then there might be a broader impact. That is not the scope of this particular rulemaking. This rulemaking is limited to the Metrolina nonattainment area, and the changes that are being proposed would hopefully avoid any consequences that would have otherwise occurred in the future. Another rulemaking process and another EA would have to occur pursuant to whatever the requirements of the

Administrative Procedures Act (APA) might be at that time for the next round of rulemaking that would require RACT for CTG sources that are in a nonattainment area.

Ms. Burleson clarified that for the 2008 8-hour ozone standard that will become effective at a later date, RACT is not required for marginal nonattainment areas and North Carolina's (NC) areas are currently designated as marginal for that standard. She added that ozone is a product of NO_x, VOC, and photochemical reactions in the atmosphere. In NC and the southeast, NO_x is a limiting factor and our state has an abundance of biogenic VOC emissions; therefore, the key pollutant is NO_x as opposed to VOCs. Thus, even in the unlikely event that the state were to see a violation of the 1997 8-hour ozone standard at some point, an analysis would be required to determine what contingency measures would need to be put in place. Given the current science, DAQ would not anticipate that analysis to result in the implementation of the VOC control requirement.

Ms. Burleson said that much of the potential costs associated with the unlikely scenario of a future violation moved into the risk analyses section of the EA. The OSBM and DENR reviewers concluded that was a more appropriate place for that discussion. A summary table of impacts under that unlikely scenario was also added to the EA. The last column of Table ? on page 23 of the EA refers to the annual aggregate impact in millions of U.S. dollars and is basically the value being compared to the \$500,000 threshold in the Administrative Procedures Act (APA) to determine whether overall impact is considered substantial. In conclusion Ms. Burleson said that the DAQ expects the Metrolina area to be redesignated to attainment once the amendment to extend the applicability of the rules to all sources in CTG categories is adopted and processed through EPA. DAQ does not expect that there will be direct impacts of the rule changes to potentially affected facilities and even under the unlikely worst-case scenario, impacts are not expected.

Chairman Deerhake asked for clarification whether the designation in the Metrolina area was moving from "moderate nonattainment" to "marginal nonattainment". Ms. Burleson explained that for the 1997 8-hour ozone standard, the area would become "maintenance" and the area is attaining the 1997 8-hour standard. Under the 2008 8-hour ozone standard the area is currently designated as "marginal" and that classification does not impose the same RACT requirements. Ms. Burleson said that DAQ has coordinated with EPA, and EPA has reviewed a preliminary version of these rules and found them to be acceptable for DAQ to bring before the EMC.

Chairman Deerhake asked Ms. Burleson whether she would like to address the 30-day waiver. Ms. Burleson said that there was a need to proceed quickly in order to avoid the potential that there is not an ozone standard to redesignate against in July 2013. She said that if DAQ is able to receive the 30-day waiver, they would proceed with public notice and public hearing on the rules and the EA. A public hearing could be held in January 2013, and the Hearing Officer's

report would be presented to the EMC in March 2013 and to the RRC (Rules Review Commission) in April 2013 with an effective rule date in May 2013. Chairman Deerhake clarified that this rule amendment has to be in place by May 2013 for redesignation by July 2013. Ms. Burleson confirmed.

Chairman Deerhake entertained a motion to waive the 30-day rule. Mayor Darryl Moss made that motion, and Mr. Cavanaugh seconded the motion. The AQC approved the motion. Mayor Darryl Moss made a motion to carry to the package to the EMC for approval to take to public hearing, and Mr. Cavanaugh seconded the motion. The AQC approved the motion.

EMC AGENDA

Chairman Deerhake reminded the AQC that there were two agenda items to carry to the EMC the following day. One was the item Ms. Burleson just discussed, and the other was the revisions to New Source Review (NSR) and Prevention of Significant Deterioration (PSD) Nitrogen Oxides (NO_x) Significance Level for PM_{2.5} and PM_{2.5} Increment. Chairman Deerhake noted that the AQC had been well-briefed on this item in previous committee meetings.

INFORMATION ITEMS

Agenda Item #6, Update on Air Toxics Legislation Stakeholder Meeting (Mike Abraczinskas, DAQ)

Mr. Abraczinskas began by reminding the AQC that at the July meeting, DAQ presented a summary of the legislation that passed in the 2012 session of the General Assembly (GA) that made amendments to the state air toxics rules. A summary of reporting requirements that the DAQ must respond to by December 1, 2012, was included in that presentation. Specifically, in section 3 of the legislation, there is a requirement that the DAQ provide a report of the review of the existing air toxics rules and their implementation and explore whether changes could be made to those rules to reduce unnecessary burden, increase efficient use of DAQ resources, while maintaining protection of public health. That law was signed into effect at the end of June 2012. In early July 2012, DAQ brought its management team together to discuss this review of the rules as required by the law. Mr. Abraczinskas said they talked about ideas, given DAQ's twenty plus years of experience in implementing this program, that might fit the criteria required in the law. DAQ asked for feedback from the three internal working groups which were made up from the areas of permitting, compliance, and implementation of state and federal air toxics rules in order to get down to a grassroots level within the Division.

Mr. Abraczinskas said that the law also required that the Division consult with interested parties throughout this review. He said that at every opportunity DAQ has been provided or that DAQ

has designed through the summer, DAQ has made efforts to ask its stakeholders for ideas and thoughts regarding the rules, focused on the requirements and conditions listed in the law. One such opportunity was the Outside Involvement Committee (OIC) meeting DAQ held in August which is a quarterly meeting DAQ holds for a diverse set of DAQ stakeholders usually made up from industry, consulting, and environmental groups representatives that provides an opportunity to discuss the complex and ever changing world of air quality regulations and the current issues in NC.

On September 7, 2012, DAQ announced a formal stakeholder meeting where DAQ could have a discussion with interested parties. That stakeholder meeting was held on September 25, 2012. Upon announcing the stakeholder meeting, DAQ opened a 32-day public comment period to give an opportunity to provide written comments. That comment period ended in early October. Approximately 30 individuals attended the stakeholder meeting representing the full spectrum of interested parties from industry, consultants, and environmental groups. Mr. Abraczinskas said that at the meeting, DAQ presented seven concepts designed to stimulate discussion on the subject. Those concepts did not represent an exhaustive list of ideas, but were ideas gathered from DAQ's experience and from the experiences of those who have permits to comply with the state air toxics rules. At the end of the written comment period, 18 sets of written comments were received. Ten of those comments were from individual citizens, five were from the regulated community, two were from environmental groups, and one comment was from local government. Of the 18 written comments, some generally supported the general concepts the DAQ presented for discussion during the stakeholder meeting and some did not. Some of the comments provided additional thoughts or ideas for DAQ to explore and others did not.

Mr. Abraczinskas said that the DAQ is rapidly approaching the December 1, 2012 reporting deadline to report to the Environmental Review Commission (ERC) and at this time are working on finalizing a draft of the report. The draft report will include recommendations as required by the law.

Mr. Abraczinskas noted that there is a second reporting requirement which will also be submitted on December 1, 2012, that requires DAQ to look at how implementation of the law is going and to review the status of air toxics emissions in annual inventory updates. This report is also under development.

Mr. Abraczinskas said that once the draft report becomes final, DAQ will share the document with the AQC. He said that the report could be discussed at the January AQC meeting. He said that the DAQ envisions the rulemaking process to begin in its conceptual stage at the January 2013 meeting to respond to the first two sections of the law which requires changes to the rules but also roll in some of the recommendations that are brought forward in DAQ's report.

Chairman Deerhake stated that it was unfortunate that the timetable did not allow more opportunity for the EMC to understand the concepts and the public comments that are being received. She asked Mr. Abraczinskas to share with the AQC the list of the seven concepts. Mr. Abraczinskas explained the concepts as follows.

1. Re-evaluate toxic permitting emission rates (TPERs)
2. Exempt natural gas and propane combustion units
3. Exempt emergency engines
4. Register rather than permit sources less than certain emissions thresholds
5. Do not retain SIC (Standard Industrial Classification) call
6. Maximum Feasible Control = Maximum Achievable Control
7. Evaluate projected actual emissions

Director Holman asked Mr. Abraczinskas to confirm whether the presentation which explained the seven options was posted on the DAQ website. He confirmed and said the presentation could be found at www.ncair.org/rules/toxics. Director Holman added that a summary of the comments received could also be provided and the actual comments can be shared as well.

Chairman Deerhake asked what follows the ERC's consideration of this report. She asked if there was an expectation of the ERC drafting legislation or coming back to the Division to consider concepts before the EMC. Mr. Abraczinskas said the DAQ is committed to coming back before the AQC to begin the process of amending the rules to be consistent with the changes made within the law and also roll in the recommendations that have been brought forth as a result of this reporting requirement.

Dr. Larkin asked whether the report the DAQ provides to the ERC will include recommendations as to what DAQ plans to do regarding the comments and findings that resulted from DAQ's investigation and whether those comments and findings are going to lead to some actions and whether those proposed actions will also be included as part of the report. Mr. Abraczinskas said the DAQ plans to include a set of recommendations in the report that DAQ feels reduces unnecessary regulatory burden, increased efficient use of DAQ resources, while maintaining protection of public health as the law requires. He said there is potential to make some changes consistent with what the law requires.

Agenda Item #7, Director's Remarks (Sheila Holman, DAQ Director)

Director Holman began by providing an update on the Cross-state Air Pollution Rule (CSAPR). She reminded the AQC that at the last meeting, she discussed the decision that was set forth by the U.S. Court of Appeals of the D.C. Circuit. She said that shortly after the September meeting, EPA decided to request a re-hearing of the full panel.

Director Holman then talked about the Sulfur Dioxide (SO₂) designation process. She said that the Governor's Office has not yet received a letter from EPA relative to the monitors in the state. The monitor in the Wilmington area has been violating the short-term SO₂ standard and DAQ has taken action to address some of the nearby emission sources that were impacting that monitor. Director Holman said she was happy to report that according to the latest update of DAQ's data through November 4, 2012, there have been no exceedances of the SO₂ standard. She said she continues to believe that by the end of 2012, the Wilmington monitor will be measuring attainment of the short-term SO₂ standard. DAQ continues to expect a letter from EPA on designations. Director Holman noted that the bigger question with SO₂ is not necessarily where the monitors are located but where monitors are not. EPA has to make a decision about how to handle the designation process for areas where EPA doesn't believe adequate monitoring data is available, and they have to make that decision by June 2013.

Director Holman reminded the AQC that EPA is under a court-ordered deadline to issue new PM_{2.5} National Ambient Air Quality Standards (NAAQS) by December 14, 2012. In their action in June, EPA proposed to change the annual standard that is currently set at 0.15 micrograms/m³ to somewhere in the range of 0.12 to 0.13. EPA is accepting comments of a standard as low as 0.11. EPA also proposed leaving the daily standard at 0.35 micrograms/m³ and they proposed a secondary urban visibility standard. Director Holman said that by the January 2013 meeting, DAQ should know what the final PM_{2.5} standard is and can share with the AQC what the potential impacts on NC may be at the January 2013 meeting.

Chairman Deerhake asked if the secondary visibility standard is comparable to secondary standards for ozone, NO_x, and SO_x where public welfare rather than human health is the focus. Director Holman confirmed that the secondary standards are always focused on public welfare and the primary standards are focused on human health protection. She further explained that the urban visibility standard would be the secondary visibility standard for PM_{2.5}.

Chairman Deerhake adjourned the meeting.