

**ENVIRONMENTAL MANAGEMENT COMMISSION
AIR QUALITY COMMITTEE MEETING SUMMARY**

November 12, 2014

Archdale Building-Ground Floor Hearing Room

4:00 – 5:30 PM

The Air Quality Committee (AQC) of the Environmental Management Commission (EMC) met on November 12, 2014, in the Ground Floor Hearing Room of the Archdale Building. The AQC members in attendance were: Mr. Gerard Carroll, who served as chair, Dr. Lawrence Raymond, Mr. E.O. Ferrell, EMC Chairman Benne Hutson, and Ms. Julie Wilsey. Chairman Charles Carter attended by phone. Mr. Steven Tedder, the Director and staff members of the Division of Air Quality (DAQ), Ms. Jennie Hauser of the North Carolina Attorney General's Office and the general public was also in attendance.

CALL TO ORDER (Gerard Carroll)

Mr. Carroll advised that Chairman Carter would be participating in the meeting by phone.

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

General Statute §138A-15(e) mandates that the Chairman inquire as to whether any member knows of any known conflict of interest or appearance of conflict with respect to matters before the Environmental Management Commission's Air Quality Committee. No conflicts were identified.

MINUTES (Gerard Carroll)

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

Chairman Carter advised that he had reviewed the minutes and that Ms. Burleson had made the suggested changes. Mr. Carroll entertained a motion to approve the September meeting minutes. Dr. Raymond made a motion to approve the minutes and Ms. Wilsey seconded the motion. The motion to approve the minutes was unanimously approved.

CONCEPTS

Agenda Item #3, Revisions to Reflect S.L. 2014-120 Repeal of Source Reduction and Recycling Report Requirements (Joelle Burleson, DAQ)

Ms. Burleson explained that at the end of the General Assembly Session, there was a provision to eliminate a source reduction and recycling reporting form that was part of the permit application because the material and information is better handled through the Division of Environmental Assistance and Customer Service of DENR. DAQ is proposing to make the rules consistent with this change.

15A NCAC 02Q .0304, Applications, and .0507, Application, need to be amended to reflect the session law repeal of the requirement. Other rules that cross reference these rules may need to be amended to reflect paragraph renumbering.

Agenda Item #4, Revisions to Open Burning Rules to Reflect S.L. 2014-120 (Joelle Burleson, DAQ)

Ms. Burleson explained that this change is to allow open burning of stumps and logs as an allowable activity for residential burning. The DAQ requested to revise the Open Burning rules to reflect changes resulting from S.L. 2014-120.

Ms. Burleson explained that Section 24 of S.L. 2014-120 amends the requirements that pertain to residential open burning. In addition to the already permissible residential open burning of leaves, tree branches, or yard trimmings under the conditions specified in the rule, the amendments allow open burning of logs and stumps. The statutory amendments also specify that burning of stumps and logs shall not be considered to create a nuisance. It also requires that the language should be substantively identical to the Session Law provisions. The changes will not become effective until the General Assembly has had the opportunity to review the action taken by the EMC.

Discussion:

Mr. Carroll asked when these revisions were to come back to the Committee. Ms. Burleson said it would possibly come back in January or March 2015 depending on the extent of the fiscal note requirements and in consideration of the upcoming holidays.

Mr. Ferrell asked for clarification whether this change essentially allows the burning of stumps without a permit. Ms. Burleson confirmed.

Director Holman explained that the current rules would not allow the burning of stumps and logs greater than six inches in diameter in a residential setting and the Session Law changed that, and this action would align the change with the statutory requirement.

Mr. Carroll indicated that the Committee was okay to proceed with revising the rule.

NOVEMBER EMC AGENDA ITEMS

Agenda Item #5, Hearing Officer's Report to Open Burning Rules to Reflect S.L. 2013-413 (522)(Joelle Burleson, DAQ)

Ms. Burleson advised that the Hearing Officer's report on the revision to the open burning rules related to S.L. 2013-413 would be heard at the November EMC meeting. Ms. Burleson explained that these revisions specify what open burning is allowed without a permit. The particular changes are related to land clearing and debris burning operations as opposed to residential. This change is being proposed to align the rules with the Session Law requirements.

Ms. Burleson advised that the rules went to hearing and the comment period is closed. Technical changes were made to update the name of the former Division of Forest Resources to reflect its current name, the North Carolina Forest Service, and also to update the references to the General Statute.

The EPA (Environmental Protection Agency) provided the only comment on the proposed rule amendments. EPA recommended including language in the hearing record to clarify that the amendments to the open burning rules do not interfere with the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS). The clarification was included in the response to EPA's comment. No changes were made to the proposed rules as presented in Chapter IV of this hearing record.

The Hearing Officer recommends that the proposed amendments as presented in Chapter II of the hearing report be adopted by the EMC.

Agenda Item #6, Hearing Officer's Report on Amendment to Revise Permit Term to Reflect S.L.2013-413 (522) (Joelle Burleson, DAQ)

Ms. Burleson explained that in Part V, Section 29 of S.L.2013-143, the EMC proposed a change to its permitting rule 15A NCAC 02Q .0308, Final Action on Permit Applications, to align the rule with the statute. The rule establishes the term or time period for which the permit is in effect before it expires and

must be renewed. The session law specified in G.S. 143-215 .108 that non-Title V permits “shall be issued for a term of eight years.” The existing rule requires that a Title V permit and a non-Title V permit be issued for a period of five years. The EPA provided the only comment on the proposed rule amendment. EPA did not recommend any changes. No changes were made to the proposed rule as presented in Chapter IV of this hearing record.

The Hearing Officer recommends that the proposed amendments and repeals as presented in Chapter II of this hearing report be adopted by the EMC.

Discussion:

Chairman Carter commented that he had reviewed both of the Hearing Officer’s Reports that Ms. Burleson had described and that they were both ready to go before the EMC.

Agenda Item #7, Hearing Officer’s Report on Repeal of Transportation Facilities permitting Rules (523) (Patrick Knowlson, DAQ)

Mr. Knowlson said that these rules are from Sections 15A NCAC 02D .0800 and 02Q .0600. He explained that DAQ identified that these rules do not provide any environmental benefit as they are geared toward reducing CO emissions from transportation facilities.

Mr. Knowlson advised that two people provided comments on the proposed repeal during the comment period and those comments are included in the hearing record. Those comments did not result in any changes to the rule.

The Hearing Officer recommends that the proposed amendments and repeals as presented in Chapter II of this hearing report be adopted by the EMC.

Agenda Item #8, Hearing Officer’s Report on Temporary Amendments to Clarify Applicability of Prevention of Significant Deterioration (PSD) Rule for Greenhouse Gases and Title V Applicability Rule (528) (Patrick Knowlson, DAQ)

Mr. Knowlson explained that on June 23, 2014, the United States Supreme Court issued a decision in *Utility Air Regulatory Group (UARG) v. EPA* addressing the application of stationary source permitting requirements to greenhouse gas (GHG) emissions. In its decision, the Supreme Court said that the EPA may not treat GHG as an air pollutant for the purposes of determining whether a source is a major source required to obtain a PSD or Title V permit.

The Hearing Officer recommends the proposed amendment to remove the requirements that major stationary sources obtain a PSD permit on the sole basis of its GHG emissions as presented in Chapter II of this hearing report be adopted by the EMC. Mr. Knowlson said that a similar change is also being proposed in a Title V rule.

Mr. Knowlson advised that four comments were received regarding these proposed rule amendments. No changes were made to the rules as a result of these comments.

This rule revision received a pre-Rules Review Commission (RRC) meeting review. In paragraph (n) of the last page of the rule, an issue was indicated where the RRC staff attorney thought there was some lack of clarity regarding the incorporation by reference for the public. The rule only referenced the July 20, 2011 Federal Register. The link in the rule needed to be updated to include all incorporated material, including subparagraphs of 40 CFR 51.166 that were not amended by the July 20, 2011 Federal Register. RRC staff recommended that the rule be amended to reference the full 2011 version of the 40 CFR 51.166 and 52.21 and the page where the July 20, 2011 amendments to the CFR are located. Mr. Knowlson gave

a visual explanation of how to replace the revised rule in the 2011 version of the CFR (Code of Federal Regulations).

Discussion:

Chairman Carter, who served as hearing officer for items 6, 7, and 8, commented that the repeal of the Transportation Facilities Permitting Rules was long overdue.

Regarding the temporary GHG rule changes, he approved the technical change that Ms. Burleson described. He also advised that there was one comment regarding the temporary amendments to clarify applicability of the PSD rule for GHG and Title V applicability rule, but it was not that substantive. He said that the proposed rules are consistent with the Supreme Court decision and with EPA's guidance to the state.

Agenda Item #9, Request to Proceed to Hearing on Revision to Ambient Standard for Particulate Matter (PM2.5) (524) (Joelle Burleson, DAQ)

Ms. Burleson explained that this action started at the beginning of the year as a concept to the Committee. The DAQ worked on this proposed rule between other activities. The approval of the fiscal note was received on August 15, 2014. At the last AQC meeting, the Committee approved moving forward to the EMC and not pursuing a 30-day waiver. She said that the DAQ would be requesting to proceed to hearing at the November EMC meeting.

This action is to update the state standards with the 2012 PM2.5 NAAQS. A fiscal note was determined not to be required.

Ms. Burleson noted that there is flexibility in how quickly we move forward and it may be an opportunity, depending how quickly other actions move along, to save some Hearing Officer time.

INFORMATION ITEMS**Agenda Item # 10, Director's Remarks (Sheila Holman, DAQ)****1. Section 111(d) Proposed Guidelines**

Director Holman talked about DENR's work regarding the comments relative to the 111(d) proposal on the GHG limits for existing power plants. She reminded that the comments on those proposed rules are due December 1, 2014. She said that the DAQ has been working a significant number of hours understanding this complicated rule. The DAQ's comments are growing in volume and the DAQ plans to submit comments on behalf of DENR on December 1, 2014.

Director Holman advised that recently, the EPA has released two additional documents. A document on data availability was released on October 30, 2014 asking for additional thoughts on several items that they have received comments on during their stakeholder process, including; current interim goals for the period 2020-2029, the application of what is called Building Block II which, is the dispatch of coal generation to natural gas generation, the treatment of renewable energy, and the 2012 base year that was selected. They are asking questions about a multi-year average or another year for the base year. She further advised that in November, EPA released a technical support document on how states can convert the current rate target to a mass based equivalent. Director Holman advised that once the comments are finalized, the DAQ would make them available to the Committee.

2. Ozone Season Update

Director Holman said that the 2014 ozone season was the cleanest ozone season on record in NC with no reported exceedances. While weather played a role, the emissions reductions that have been occurring also played a role. In comparison to the data records on meteorological factor, during the 2014 ozone season, there was near normal precipitation, but it was the 38th coolest summer on record. Director Holman also noted that all monitors in NC are measuring attainment for the 2008 ozone standard. Two monitors in Charlotte were violating the standard but are now in compliance. This means that the DAQ can move forward with asking for the Charlotte area to be redesignated for the 2008 ozone standard.

Director Holman referred to a slide with a map reflecting the latest design values. She explained that ozone is evaluated over a three-year average and the highest value continues to be in Charlotte, but the map shows many values in the 60 ppb range across the central part of the state. NC now has two monitors measuring below 60 ppb, one in Pittsboro in Chatham County, and one in Bryson City in Swain County.

Director Holman advised that the 2014 data is still undergoing quality assurance procedures and has not yet been certified.

3. Ozone Standard Update

Director Holman reminded that EPA is currently undergoing the review of the ozone standard. The EPA is due to propose a new standard on December 1, 2014. EPA's Clean Air Scientific Advisory Committee has recommended that the primary standard set to protect the public's health be set in a range of 60 to 70 ppb and that EPA establish a separate and distinct secondary standard for protection of public welfare. Once the proposal is out in December, the DAQ will be able to talk in more detail about the proposal and how that proposal might affect NC.

4. Sulfur Dioxide (SO₂) Designations Update

Director Holman advised that Judge Illston of the U.S. District Court for the Northern District of California heard arguments in the SO₂ designations case on October 28, 2014. The court allowed all issues to be presented. The issues are whether the court had jurisdiction, whether the court should enter the proposed consent decree and what the remedy should otherwise be assuming the court rules that the consent decree should not be entered or even if it is entered that it does not resolve all issues of all parties. The court did not rule on any issue on October 28, 2014, but indicated that we would hear back soon.

5. Update on 02Q .0102 Revisions Stakeholder Process

Director Holman advised that the DAQ conducted a stakeholder meeting on November 6, 2014 on some proposed permit rule revisions. There was representation from industry, environmental groups, and the three local air programs in NC. Several good questions and comments were presented. The DAQ has encouraged everyone to take a closer look at the rule revisions and provide input to the DAQ by December 6, 2014. The DAQ anticipates bringing draft rules before the Committee in either March or May 2015.

6. Air Quality Update Given to Mining and Energy Commission (MEC)

Director Holman advised that on August 8, 2014, BREDL (Blue Ridge Environmental Defense League) submitted a petition to the NC Mining and Energy Commission (MEC). BREDL made a number of requests to the MEC focused on air emissions from oil and gas operations. DAQ and DEMLR were invited by the MEC's Special Petition Committee to present information on this topic at a meeting on October 17, 2014.

Deputy Director Mike Abraczinskas presented on behalf of DAQ at the Committee meeting. The key items that DAQ presented include:

- a. The regulatory framework that is in place for this type of activity;
- b. Acknowledgement that a number of factors must be considered when considering whether additional rules are necessary, such as:
 - i. Existing regulatory framework – noting that we will be starting from an entirely different regulatory baseline than what other states started from
 - ii. The evolution of best practices and improving technology that are utilized and the impact they have on reducing air emissions
 - iii. Additional federal action likely – announcements coming in November/December from USEPA
 - iv. Baseline ambient conditions
 - v. Amount and density of activity expected;
- c. So when considering all of these factors together, DAQ does not recommend any new rules or modifications to rules at this time.
- d. DAQ continues to review studies and information on air emissions from oil and gas operations.

DAQ is working on the assessment required to “determine the impact on ozone levels”. This was part of Session Law 2012-143. It is our understanding that the MEC’s Special Petition Committee may meet once more prior to making recommendations to the full MEC. The MEC must make a decision by Dec 7, 2014.

Discussion

Mr. Ferrell commented that Deputy Director Abraczinskas did a fine job presenting to MEC’s Special Petition Committee and that the Committee would probably get together on December 14, 2014 and will make a recommendation to the EMC prior to the 60-day deadline.

Chairman Hutson commented that when many of the Commissioners started at their first meeting in September 2013, the Committee was presented with a folder of materials from the BREDL regarding this issue. At the following meeting, Deputy Director Abraczinskas made a comparable presentation. Chairman Hutson advised that at no time has the EMC received from BREDL a petition for rulemaking. He said that the Commission has followed the recommendation of the DAQ. He also advised MEC can make recommendations to the EMC regarding whether or not additional regulatory actions should be taken regarding air emissions. The EMC has not received those recommendations yet. Chairman Hutson advised that this rulemaking authority is lodged with the EMC not with the MEC. He said that the statute establishes a deadline that any such oil and gas rules are to be adopted by January and obviously even if recommendations are received from the MEC, that deadline would not be met and he wasn’t clear on what the legal consequences would be.

Mr. Carroll reminded the Commission that the status of rulemaking hearings and rule development was included in the meeting agenda and that the next meeting is scheduled for January 7, 2015. With no further comments, Mr. Carroll adjourned the meeting.