

Air Quality Committee Meeting Minutes**January 8, 2014**

The Air Quality Committee (AQC) of the Environmental Management Commission (EMC) met on January 8, 2014, in the Ground Floor Hearing Room of the Archdale Building. The AQC members present were: Chairman Charles Carter, Mr. Gerard Carroll, Mr. Thomas Craven, Mr. E.O. Ferrell, Mr. Benne Hutson, and Ms. Julie Wilsey. The Director and staff members of the Division of Air Quality (DAQ), Ms. Mary Lucasse of the North Carolina Attorney General's Office and the general public was also in attendance as was Water Quality Committee (WQC) Chairman Steve Tedder and Commissioner Dan Dawson.

CALL TO ORDER (Chairman Charles Carter)

Chairman Carter called the meeting to order at approximately 10:00 a.m. He recognized Chairman Tedder from the Water Quality Committee. Chairman Hutson introduced Commissioner Dan Dawson, a new member of the EMC from the Wilmington area who was appointed by the Governor to fill the Professional Engineers slot on the EMC and was sworn in by the Clerk of Court in New Hanover County.

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

Chairman Carter reminded the AQC members of the State Government Ethics Act regarding conflicts of interests or appearance of conflicts of interests. No member recused himself or herself at that time.

MINUTES (Chairman Charles Carter)**Agenda Item #2, Review and Approval of the November 13, 2013 AQC Meeting Minutes**

Chairman Carter entertained a motion to approve the November 13, 2013 AQC meeting minutes. Mr. Carroll made a motion, Mr. Ferrell seconded the motion, and the meeting minutes were approved. Chairman Carter recommended that minutes for future AQC meetings be written as a summary as opposed to a transcript. Chairman Hutson advised that a summary was acceptable to him and that the EMC would probably go to that format as well. Ms. Wilsey asked for clarification whether the recordings of the AQC meetings are preserved or discarded once the minutes are approved and signed. The DAQ staff noted that previous recordings have been retained and there is a records retention schedule that can be revised if necessary. Chairman Carter suggested that the records be maintained three to five years and perhaps stored at Archives after that as well.

CONCEPTS**Agenda Item #3, Revision to Ambient Standard for Particulate Matter (PM2.5) (524) (Joelle Burleson, DAQ)**

Ms. Burleson updated the Committee on a first step in the DAQ's SIP (State Implementation Plan) process regarding an update of the state's ambient air quality standards for particulate matter. The rule that contains the standard for particulate matter is 15A NCAC 02D .0410. On December 14, 2012, EPA strengthened the NAAQS for PM2.5 (fine particulate matter) by changing the annual standard from 15.0 $\mu\text{g}/\text{m}^3$, which was set in 1997, to 12.0 $\mu\text{g}/\text{m}^3$ and modifying the ambient air monitoring network design

requirements to include a near-road component to the PM_{2.5} monitoring network. EPA provided flexibility in its rule to allow states to relocate existing PM_{2.5} monitors to meet the requirements of this PM_{2.5} rule and the adjustment of the NAAQS. NC will have a Raleigh site and a Charlotte site to meet the near-road requirement. Ms. Burleson said this is an early step in the development of the SIP and NC is required to adopt this particular NAAQS into the State rules to have an approvable infrastructure SIP (iSIP). An iSIP deals with the basic, fundamental elements states are required to have to implement NAAQS. States have three years to get the iSIP in place for PM_{2.5} NAAQS changes. EPA plans to issue the remainder of its implementation rule in December 2014.

Chairman Carter asked whether there are any aspects of the EPA rule expected in December 2014 that would affect or govern going forward with this action. Ms. Burleson said no, but other rulemaking may be necessary in response to the implementation rule and would be dealt with once more information becomes available regarding those EPA requirements.

Mr. Craven asked what the anticipated consequences were for this change in the standard. Ms. Burleson said the changes we'll see are near-road monitoring for PM_{2.5}. The State has made its recommendation on nonattainment boundaries to EPA and we are not anticipating any nonattainment areas in NC; however, the State is waiting to hear back from EPA on their decision. Once EPA makes their decision on designations, we would have an opportunity to respond and once finalized, the State would move forward with the other aspects of implementation. At this time, the State is not anticipating significant requirements would be needed for this particular standard to be put in place. There are provisions that will have to be implemented through the state PSD (Prevention of Significant Sources) and NSR (New Source Review) program, which are other infrastructure elements, but EPA has to finalize their implementation rule requirements before the State can make those adjustments.

Mr. Ferrell asked why EPA is implementing this change and asked if it is health driven? Ms. Burleson explained that PM_{2.5} describes the size of the particle. These are fine particles that once inhaled are lodged deeply in the lungs and are difficult for the body to expel. PM_{2.5} causes respiratory and other issues such as increases in premature mortality. The reduction in the standard on a national scale is to deal with those health effects. EPA develops NAAQS on a five-year cycle. The Clean Air Science Advisory Council (CASAC) makes the recommendations after reviewing much data and through a public process. EPA makes their decisions based on what is necessary to address public health across the country.

Chairman Carter asked whether NC is expecting to have any nonattainment designations for PM_{2.5}. Ms. Burleson said we are not expecting any and the state has made its recommendation to EPA. Director Holman explained that after EPA finalizes a new NAAQS, the states evaluate whether their monitors are above or below the standard. For any monitors above the standard, the expectation is there will be an area designated as nonattainment, meaning the area is not meeting the health-based standard. Upon review, it was determined that all the monitors across NC are in compliance with the 2012 PM_{2.5} standard. Director Holman advised that on December 13, 2013, DENR Secretary Skvarla sent a letter to EPA on behalf of the governor recommending that all areas in NC be designated as attainment meeting the 2012 PM_{2.5} standard. Director Holman said it is anticipated that EPA would designate those areas as attainment.

Chairman Carter referred to the ongoing debate with EPA regarding the SO₂ standard noting that with respect to SO₂ attainment, there is an expectation by EPA to use modeling to make those determinations and asked whether that is also true for PM_{2.5}. Director Holman said that there was no indication that EPA would be looking at PM_{2.5} modeling. SO₂ is much easier to model as it is directly emitted and PM_{2.5} involves secondary formation and is much more difficult to model on a short-term basis. None of the states across the US, including NC, has a large SO₂ network which is why EPA introduced the option of modeling for SO₂ NAAQS.

DRAFT RULES

Repeal of Transportation Facilities Permitting Rules (523) (Patrick Knowlson, DAQ)

Mr. Knowlson explained that S.L.2013-413, or HB74, changed a part of the statute that says the Commission “may” (rather than shall) by rule establish criteria for controlling the effects of complex sources on air quality. In previous reviews of the air quality rules, the DAQ identified the Transportation Facilities Permitting rules as outdated requirements that are not providing environmental benefit. The rules focus on addressing carbon monoxide (CO) emissions and the State currently does not have any CO nonattainment areas. Currently, the CO monitors are measuring ambient concentrations at approximately 20 percent of the standard. There are twelve rules that DAQ is asking to repeal: five rules in 15A NCAC 02D .0800 which deal with the requirements for complex sources and seven rules in 15A NCAC 02Q .0600 which deal with permitting rules for transportation facilities. The other rules are to be amended because of cross-references to the aforementioned rules.

The rules don't require a fiscal note because they are repeals, but DAQ created a brief analysis because it is still necessary to obtain certification from OSBM (Office of State Budget & Management) as part of the rulemaking process in order to proceed to notice. Over the last ten years, DAQ has been receiving about six transportation permit applications per year. The repeals reduce the burden on facilities by eliminating the \$400 per permit application fee and the \$50 per change of ownership fee. DAQ is asking the AQC to approve these draft rules to bring before the EMC at the March 2013 meeting with a request to go to public hearing.

Chairman Hutson asked whether it would be easier to go under the Regulatory Reform Act (RRA) to classify these rules as unnecessary and once the report is approved by RRC (Rules Review Commission), the rules will disappear therefore avoiding having to go through the full rulemaking process for repeal. Director Holman said that after her consideration of the schedule that the air quality rules will go through as part of the HB74 process, which is scheduled for the beginning of next January, and the time required to complete the process, she felt it was important to go ahead and repeal the rules to eliminate this administrative burden.

A question was raised as to whether facilities that have already been permitted would be required to have a permit if the rules for those going forward will not require a permit. Mr. Glenn Sappie of DAQ explained that the requirements of that permit state that once construction is completed, there are no ongoing requirements. Chairman Carter further clarified that it is a one-time permit required at the outset with no renewal or further obligations. Chairman Hutson asked whether there were any facilities going

through the process currently. Mr. Knowslon said there was one facility that was just recently completed but he didn't think there were any others at this time. Chairman Carter asked DAQ staff to provide to the EMC a list of how many of these permits were issued by DAQ in the last year or two and Mr. Knowslon responded that there had been three issued per year for the past three years.

Chairman Carter commented about how low the state CO levels are compared to the standard. He said that NC has not had CO nonattainment areas since the 1990's (1995) and he assumes these reductions are due to the revised auto standards. Director Holman confirmed that roughly 90% of CO emissions were derived from the mobile sector so the benefits are due to both engine and fuel improvements. Chairman Carter commented that although this program had a well-intended purpose and was reasonably required when it was put in place, it is no longer necessary. He also asked whether once the federal obligation to put this in place was removed, was the State still able to get credit for having this in place in terms of CO SIPs. Director Holman said that whether reliance on emission reductions from this program was considered as part of the SIP was one of the issues considered when determining whether to repeal the rules. If reductions had been part of the SIP, the agency would be required to address a certain portion of the Clean Air Act (CAA), Section 110, which says that if you are going to remove a rule that has been relied on, you are required to demonstrate that it is no longer needed. From reviewing the most recent maintenance plans, it is clear that the DAQ did not rely on reductions from this program as part of the SIP.

Chairman Carter entertained a motion to approve the staff recommendation to bring a draft rule with request to go to public hearing at the March meeting. Ms. Wilsey made a motion to that effect, Mr. Carroll seconded, and the motion was approved.

JANUARY EMC AGENDA ITEMS

Agenda Item #5, Request for Approval of Correction to Inspection/Maintenance (IM) Rules Revision (517a) (Steve Schliesser, DAQ)

Mr. Schliesser requested the EMC to approve a correction of the recently approved amendments on the exemption of certain motor vehicles from emission inspections.

Rule amendments incorporating Session Law 2012-199 were approved at the November 2013 EMC meeting to amend the existing rule's exclusion of the current model year from emissions inspection to exclude vehicles of the three most recent model years with less than 70,000 miles on its odometer. The change involved amending four rules: 15A NCAC 02D .1002, Applicability; 15A NCAC 02D .1003, Definitions; 15A NCAC 02D .1005, On-Board Diagnostic Standards; and 15A NCAC 02D .1006, Sale and Service of Analyzers.

However, at the November meeting there was an inadvertent inconsistency in the Rule 02D .1003 language between Chapter 1- Summaries and Recommendations, and Chapter II – Amended Rules. A clerical error was made by not including the four-word phrase “or the registration card” in the definition of the new term “three most recent model years” in Chapter II, paragraph 10, as it was included correctly in Chapter I. The correct definition should read “For the purposes of this section, the term “Three most

recent model years” shall be calculated by adding three years to the vehicle’s model year obtained from the Vehicle Identification Number (VIN) *or the registration card* to determine the first calendar year an emissions inspection is required.” The Director’s recommendation was that the Commission approve the correction in Rule 02D .1003.

Mr. Ferrell made a motion to approve, Mr. Carroll seconded, and the motion was approved.

INFORMATION ITEMS

Agenda Item #6, National Ambient Air Quality Standards (NAAQS) and State Implementation Plans (SIP) (Sushma Masemore, DAQ)

Ms. Masemore gave an overview of the NAAQS process and the role that SIPs play in that process as reflected in her slides at http://www.ncair.org/Calendar/Planning/January_2014/Agenda_6.ppt.

She also referred to the website <http://www.epa.gov/air/criteria.html>, which is a good resource for obtaining information regarding what the standards are and where to get the citations that define the specifics related to the standard.

In response to her presentation, Chairman Carter referred to the slides for clarification of which counties were partial counties, noting that a portion of York County in SC is not indicated as part of the nonattainment area. Ms. Masemore confirmed that is correct.

Mr. Ferrell asked what the primary driver in that particular area was that is causing the area to be designated as nonattainment. Director Holman explained that ozone is formed in the atmosphere from reactions of volatile organic compounds (VOCs) with nitrogen oxides (NO_x). Studies show that the majority of the VOCs within NC are derived from vegetation and about 20% of VOCs are derived from manmade sources. In order to effectively address ozone in the area we have to regulate NO_x emissions. NO_x is a byproduct of combustion so the main sources that affect ozone formation are mobile sources, off-road engines and boilers, utility boilers and other industrial activities. Through the years, DAQ has focused on a NO_x strategy in the area. She said that area is dominated by mobile and off-road engines. She noted that a lot of the industries are well controlled. She said one of the things to consider is where best to look for more cost-effective NO_x reductions. Ms. Masemore added that DAQ’s 2010 inventory showed that over 70% of NO_x emissions are derived from the mobile sector.

Director Holman commented on the map on the slide that showed the blue versus green shading related to partial counties. She said that when the map was created, the area was also still designated as nonattainment for the 1997 ozone standard and those green townships indicated on the map were actually designated as nonattainment for the 1997 ozone standard, but just last month EPA finalized the redesignation of this areas to maintenance for the 1997 ozone standard.

Chairman Carter asked whether we are expecting lower NO_x standards for autos and off-road that would improve that situation. Director Holman said that she believes that the fuel economy and greenhouse gas engine standards may reduce NO_x from automobiles. She said that EPA is in the process of promulgating Tier III engine standards which will result in significant NO_x reductions. Ms. Masemore added that in the

near future those are the primary control strategies for this area. Chairman Carter asked whether the Tier III is for autos and light-duty. Director Holman confirmed. Director Holman added that we will continue to see NO_x reductions from those on-the-books rules as we see fleet turnovers for light-duty, heavy-duty and off-road engines. Ms. Masemore added that additional reductions might be seen from industrial and institutional boilers as a result of the NESHAPs (National Emission Standards for Hazardous Air Pollutants) which go into effect in 2014. Chairman Carter asked if that was due to the conversion to natural gas. Ms. Masemore said that some have already converted to natural gas and some are in the process of tuning up their engines.

Mr. Carroll asked how much of a reduction would be required to come into compliance percentage-wise. Ms. Masemore answered that we were going from about 0.082 ppm to 0.075 ppm with 2015 being the statutory deadline. Director Holman added that the most recent data includes 2013 which was a very clean season. There are two monitors that continue to violate at 0.078 ppb and 0.076 ppb. She said if another summer like 2012 when we had the major heat wave occurs, more ozone exceedances could also occur. She said that while the emission reductions help, there could also be anomalies in the weather that drive the numbers either up or down. Chairman Carter asked how many exceedance days are typical for that area. Director Holman said that over the last few years there were probably five to ten exceedance days although the summer of 2013 there weren't any. She said that DAQ could provide a chart to the Committee with that information. Chairman Carter asked how many exceedances there were in 2012. Ms. Masemore said that there weren't that many in 2012, but the ones that did occur were very high. Director Holman reminded everyone that the form of the standard is derived from the fourth highest value and the fourth highest value in 2012 was pretty high. Ms. Masemore said that most of the violations in 2012 occurred between a two-week-period.

Chairman Hutson asked who has lead authority regarding this stating that Mecklenburg County has its own air program and they have at times passed ordinances that would impose more stringent requirements. He said the most notable was when it would give 24-hour prior notices to businesses to inform them that a bad ozone day was coming and then suddenly employees weren't allowed to drive. Director Holman said that in terms of developing the SIP, the EMC and DAQ acting for you has the lead. Mecklenburg County is the most urbanized portion with the greatest emissions. The DAQ would work with the local program to determine what is necessary to bring the area into compliance. Chairman Carter asked for clarification that ultimately, the authority for that county to operate that separate program runs through the Commission. Director Holman confirmed.

Chairman Carter commented that the issue in the Charlotte area is NO_x rather than VOCs therefore, why do we need VOC RACT. He asked if there was anybody subject to VOC RACT at this point. Director Holman said that a RACT demonstration is required for larger sources as part of the attainment plan. She confirmed that the revisions that the state had to implement in order to be in compliance with the requirements of the CAA were to lower the threshold at which the RACT requirements applied from 100 tons/year down to whatever was specified in EPA's control techniques guidelines. Director Holman said that while she agrees that a rule revision was unnecessary from a technical standpoint to keep that area in compliance with the ozone standard, she understands language in the CAA and the requirement. She noted that DAQ worked hard with EPA to get the VOC RACT requirements into the contingency part of the maintenance plan meaning that they would only be triggered if DAQ determines that they are

necessary. Chairman Carter asked whether there were sources that were subject to all of the RACT categories in that nonattainment area. Director Holman said there were some in certain categories and we may have been able to do some negative declarations for certain source categories.

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

Director Holman asked Ms. Burleson to provide a quick update from the Rules Review Commission (RRC) meeting held in December 2013 where they considered the arsenic acceptable ambient level (AAL) rulemaking as well as parts of the Inspection and Maintenance (IM) rulemaking.

Ms. Burleson explained that once the rules are approved by the EMC under the state APA, the rules undergo another review by the RRC. The DAQ takes the rules through that process on behalf of the EMC. On December 19, 2013 at the RRC meeting, DAQ represented the EMC to deal with any adjustments to the rules that the DAQ or the RRC deemed necessary. The As AAL revision was approved by the RRC. Once the RRC approved the rules, the APA further allows that anybody not satisfied with those rules can object to the rules and subject them to legislative review. To do that, a written submission is required to be submitted to the RRC by close of business the day following the day the RRC approves an agency's rules. The RRC received sixteen letters of objection on the AAL revision, which is greater than the ten or more required under the statute for rules to be submitted to the legislature for review at their next session that starts at least twenty-five business days after review and approval by the RRC. Those rules are now in the hands of the legislature for their review at their upcoming session.

Chairman Hutson asked whether the sixteen parties who submitted letters also submitted comments on the rules when they were proposed. Ms. Burleson said she couldn't guarantee that all of them did but she was sure that some did. She said she'd be happy to review each of those and report back to the EMC. Chairman Hutson asked for clarification as to what happens at the legislature with these letters of objection. He asked whether there has to be a formal action by the legislature and if so, does that take actions by both houses. Ms. Burleson said that according to the APA process, once the ten or more letters of objection have been received, the rules go to the next legislative session meeting the twenty-five day advance criteria. Once at the legislature, if a bill is not introduced within the first thirty legislative days, the rules can go into effect on the thirty-first day. If a bill is introduced within those thirty days to amend the rules, it has to wait until an unfavorable action has been taken by the legislature or if no unfavorable action has been taken then adjournment is when the rules can become effective. Chairman Hutson asked for clarification regarding what happens if the session does not last for thirty days. General Counsel advised that if the short-session concludes and the legislature has taken no action, then the second part of what was described goes into effect, which is at the conclusion of the session without any action then the rule becomes effective.

Ms. Burleson said the IM rules were also submitted to the RRC, the RRC reviewed them and staff made any necessary technical corrections. All IM rules were approved with the exception of the rule that was presented earlier in today's meeting. That rule will be resubmitted to the RRC following the January EMC meeting for review at the January RRC meeting. Once reviewed, it will become effective the first of the following month. Once all those rules are effective as a package, DAQ will submit that package to EPA for their approval into the SIP. EPA will go through their standard comment period. Chairman Carter asked whether letters were received on the IM rules. Ms. Burleson said that there were none.

Status of Air Toxics Hearing Officer's Report

Director Holman said that after the November EMC meeting, the DAQ began to get into a more detailed level of comments and realized that more time was needed to consider and address all the comments. Therefore, this agenda item was pulled from the January AQC meeting and will be on the March meeting agenda.

Metrolina 1997 8-hour Ozone Nonattainment Area Redesignation Request Status

Director Holman provided an update earlier in the meeting regarding the Metrolina 1997 8-hour ozone nonattainment area redesignation status explaining that the EPA has approved that redesignation package. She thanked the DAQ staff, especially the Planning and Permits staff and also the EPA staff as well as the Mecklenburg Local Program for their work. She said that NC achieved attainment of the 1997 8-hour ozone standard in 2010, but it took a little longer for the actual redesignation to be effected. Mr. Ferrell asked what happened in those thirteen years that made attainment of the standard possible. Director Holman said it was a combination of things including NO_x reductions as a result of reductions of emissions from the utilities sector and the large industrial boiler sector. There was also the NO_x SIP Call that the EPA issued in the late 1990's. We also saw significant engine and fuel standards improvements.

Sulfur Dioxide (SO₂) National Ambient Air Quality Standards (NAAQS)

Director Holman said that EPA issued the 2010 SO₂ standard in June 2013. EPA, under the CAA has two years with the option of requesting one additional year before finalizing designations. They were due to finalize those designations in June 2013. EPA did not finalize those designations for areas other than nonattainment areas so there is a huge portion of the U.S. that has not been designated for the SO₂ standard. On June 4, 2013, the Sierra Club issued a notice of intent to sue for EPA's failure to do designations. The state of NC has also been considering what its options should be in consideration of EPA's failure to do designations. In August 2013, the Sierra Club filed a motion with the Northern District of California against EPA for its failure. At the time, NC was considering filing its own complaint here in NC so we proceeded to do two things: to file a motion to intervene in the Northern District of California and the Attorney General's (AG) Office also proceeded to file a complaint in the Eastern District of NC. Since that time the agency learned that a petition was filed in the DC District Court and we have also filed a motion to intervene in that case. NC has been granted its motion to intervene and the order that was issued with that granting ruled that EPA was liable for failing to designate and that the parties, which includes NC, were directed to meet and confer regarding the remedy. The parties are in negotiations at this time. The AG's office has asked that the NC case be held in abeyance and EPA has agreed. We do not know yet whether we will be granted a motion to intervene in the D.C. Circuit case. Chairman Carter asked who filed that case. Director Holman answered that it was the Sierra Club. Mr. Carroll asked why EPA failed to make its deadlines. Director Holman said that in February 2013, EPA sent its letters to governors across the country and issued a strategy paper. In that strategy paper, EPA indicated that they were only going to do designations for the nonattainment areas and they laid out a process by which the states would determine which strategies they would follow. That plan would have required all the modeling be done by 2017 and all the monitoring be done by 2020 and EPA would be conducting designations in 2017 based on modeling data and in 2020 based on monitoring data. Director Holman said the bottom line is that according to the CAA, that wouldn't comport with the three year period to take action. She said she hasn't received a clear answer as to why they didn't choose

the unclassifiable designation for the rest of the country and then move forward with getting additional information and doing follow-up designations.

Cross State Air Pollution Rule (CSAPR)/Transport Rule Status Update

Director Holman touched briefly on the CSAPR. She began by talking about transport under the ozone standard which is how any given state's pollution impacts a downwind state's ability to attain the ozone standard. The DC Circuit Court vacated the CSAPR. The court found that EPA did not apportion the reduction needed by the amount of pollution contributed by each upwind state. The EPA chose to appeal this case to the Supreme Court, oral arguments were heard on December 10, 2013, and a decision is expected within the next few months. Meanwhile, EPA recognized that the CSAPR did not address the 2008 ozone and the 2012 PM 2.5 standards so they began a technical analysis to develop a new transport rule. EPA announced that their projected emissions for the country for 2018 are available for review and comment.

Ozone Transport Region (OTR) States' Petition to U.S. Environmental Protection Agency

Director Holman updated the Committee that a group of northeastern states have filed a petition with EPA under Section 176A of the CAA to add NC as well as eight other states to the OTR. That would mean significant VOC controls for NC bringing RACT VOCs down to 50 tons/year and nonattainment NSR for VOC down to that threshold. A letter of invitation to join the OTR that came to Secretary Skvarla last spring and Secretary Skvarla's response is attached to the agenda package. DENR is currently evaluating their petition and determining a response. We are contemplating commenting to EPA on the petition.

Chairman Carter entertained a motion to adjourn. Ms. Wilsey made a motion, Mr. Ferrell seconded, and the meeting was adjourned.