

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

**November 4, 2015**

**Archdale Building-Ground Floor Hearing Room**

**2:00 – 4:00 PM**

The Air Quality Committee (AQC) of the Environmental Management Commission (EMC) met on November 4, 2015, in the Ground Floor Hearing Room of the Archdale Building. The AQC members in attendance were: Mr. Charlie Carter, Chairman, Mr. Gerald Carroll, Dr. Lawrence Raymond, Mr. E.O. Ferrell, J.D. Solomon, Steven Rowlan, David Anderson and Ms. Julie Wilsey, 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 (Charlie Carter)**

**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 (Charlie Carter)**

**DRAFT RULES**

**Agenda Item #2, September Meeting Minutes**

September meeting minutes were not available for the meeting. They will be presented at the next meeting.

**Agenda Item #3, Request for Recommendation of Waiver of 30 day Rule and for Approval to Proceed to EMC to Request Public Hearing on Proposed 15A NCAC 02D .2700, Standards of Performance for Existing Electric Utility Generating Units Under Clean Air Act Section 111(d) (531), and for Approval of Fiscal Note.**

Director Holman introduced the topic and order of the presentations on this topic. Chief Deputy Secretary John Evans started his remarks by thanking the DAQ staff for developing this rule package on a short timeline. Mr. Evans provided remarks on the Department's "primary plan" in response to the federal clean power plan. He noted that this primary plan continues this administration's effort to move toward a cleaner energy future. An explanation on the request for a 30 day waiver was provided as the only way the Department can meet the EPA's deadline to submit a plan – September 2016. Many times EPA imposes rules on states with deadlines that are not achievable because they do not recognize the deliberate rule-making process within the states. This is one of those instances.

Mr. Evans also announced the Department's plans to develop a "backup plan" that will include all 3 building blocks that EPA used in the development of their guidelines. Mr. Evans remarked that while we don't feel that the EPA approach is legal, it may be prudent as we move forward with the primary plan to have a backup plan. The development of the backup plan will begin February/March 2016 and involve all of the aspects of the federal clean power plan while doing our best to keep energy prices affordable. We hope to have a backup plan developed by June/July 2017 that's ready to go through rule-making and any

statutory changes. By summer of 2018 we're well positioned with a full backup plan only if we need it. Mr. Evans explained that having the primary plan and backup plan will give North Carolina more options from a legal and practical perspective.

Mr. Ferrell asked why there's so much interest in the Committee not issuing a 30-day waiver. Mr. Evans emphasized that we will not meet the EPA deadline without the 30-day waiver and that we will lose our opportunity for judicial review. Mr. Carroll asked how we will lose our opportunity for judicial review. Mr. Evans explained that he expects EPA to take actions to avoid or delay judicial review. If EPA is successful in opposing the judicial review in the DC Circuit, then the only chance for judicial review will be on a disapproval of North Carolina's primary plan. If we miss this deadline, there's nothing to appeal.

Mr. Carroll asked whether there is an option of asking EPA for an extension. Mr. Evans explained that if an extension is requested, then they won't review the primary plan. He also noted the example of EPA's Clean Air Mercury Rule that took 40 months for the courts to strike down. So getting a judge to look at this rule sooner than later avoids a lot of potential wasted time and effort chasing a rule that's illegal. Ultimately, if a judge looks at it and determines it is legal, then we'll comply. We'll have the backup plan ready to go.

Mr. Carter asked whether the Department had any insight on the letter the Commission received from the Attorney General. Mr. Evans explained that he found the letter to be confusing and reminded the committee that if we don't get the 30 day waiver, we miss the September 2016 deadline.

Dr. Raymond noted that it is a complex matter and questions whether avoiding the 30 day waiver is prudent given there are other options.

Mr. Solomon noted that he didn't see how the matter of granting the waiver impacted their ability to protect the health, safety and welfare of citizens.

Mr. Carter suggested that it's better get the rules out for public comment. Mr. Solomon agreed that it should get it out to the public.

Mr. Rowlan asked if EPA's intent was for us to miss the deadline. Mr. Evans suggested that some people think it was designed in that way and noted the delay between EPA Administrator's signature and it appearing in the Federal Register.

Next, Sushma Masemore, DAQ Planning Section Chief presented the material found here:

[http://www.ncair.org/Calendar/Planning/November2015AQC/Agenda\\_3.4.pptx](http://www.ncair.org/Calendar/Planning/November2015AQC/Agenda_3.4.pptx)

The fiscal note for the rules can be found here:

[http://www.ncair.org/Calendar/Planning/November2015AQC/Agenda\\_3.3.pdf](http://www.ncair.org/Calendar/Planning/November2015AQC/Agenda_3.3.pdf)

The more in-depth documentation and supporting basis for the rules can be found here:

[http://www.ncair.org/Calendar/Planning/November2015AQC/Agenda\\_3.2.pdf](http://www.ncair.org/Calendar/Planning/November2015AQC/Agenda_3.2.pdf)

Ms. Masemore's presentation focused on a recap of Clean Air Act Section 111 fundamentals, a summary of EPA's Clean Power Plan, DEQ's 111(d) primary plan approach, and an overview of the proposed rules in 02D .2700. The majority of Ms. Masemore's presentation focused on the technical approach followed for the development of the rules/primary plan. She emphasized that this primary plan is a building block 1 type plan in that it focus on improving the efficiency (or heat rate) at each unit subject to the rules. One

of the key points in the presentation included information about how North Carolina has the most efficient coal fleet in the nation thus limiting additional opportunities for additional heat rate improvements at some units. She also noted that DAQ's conclusions on the best system of emission reductions (BSER) for natural gas combined cycle (NGCC) units were consistent with EPA's. That is, efficient operation and maintenance of the NGCC using natural gas as fuel during normal operations is the BSER.

At coal-fired electric generating units, DAQ found 23 BSER measures spread across 5 facilities to be cost effective. Ms. Masemore provided a general explanation of each proposed measure designed to get heat rate (efficiency) improvements. Since many of the measures result in fuel savings after being implemented, the DAQ fiscal note showed a net annual savings of \$5,888,000. Again, details of the fiscal analysis can be found here:

[http://www.ncair.org/Calendar/Planning/November2015AQC/Agenda\\_3.3.pdf](http://www.ncair.org/Calendar/Planning/November2015AQC/Agenda_3.3.pdf)

Finally, the remainder of the rule-making schedule was provided for the primary plan. This included the announcement of 3 public hearings to be held on December 16, 17 and January 5 in Charlotte, Raleigh, and Wilmington, respectively.

Mr. Solomon and Mr. Carter both complimented DAQ staff for their technical analysis done in a relatively short period of time. Dr. Raymond also thanked staff and asked if certain measures would require a shutdown of the unit. Ms. Masemore indicated that shutdowns would be required, but the current thinking is that these measures can be installed during scheduled shutdown periods during the 3 year compliance period. She also noted that many of the coal units are not intermediate operations. Mr. Ferrell also complimented DAQ staff and noted that we've taken the nation's most efficient coal fleet and made it more efficient. Mr. Ferrell also asked about what it would take to meet the EPA goal. Ms. Masemore noted the goals in the federal clean power plan and Director Holman indicated that it is premature to speculate about how NC might meet those goals when the focus thus far for staff was on this primary plan.

Mr. Carter asked Mr. Carroll about the last sentence in 02D .2701, paragraph (f). There was agreement amongst the committee and DAQ staff that the sentence was unnecessary.

Dr. Raymond noted that the public comment period will span the holiday season. It was noted that there was no way to avoid that when trying to ensure that the September 2016 deadline is met.

A motion to approve moving it along to the EMC, with a request for a 30 day waiver and approval of the fiscal note was made by Mr. Solomon, seconded by Mr. Ferrell. The motion was approved unanimously. The motion included the removal of the last sentence in 02D .2701, paragraph (f).

## **November EMC AGENDA ITEMS**

Discussion on agenda items 4-6 were deferred until the full EMC meeting the next day.

## **INFORMATION ITEMS**

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

#### **1. Final 2015 ozone standard**

October 1, 2015, EPA set the new ozone standard at 70 parts per billion (ppb). The old 2008 standard was 75 ppb. Preliminary data for 2013-2015 indicates that all areas of North Carolina

are attaining this new standard. The highest design values are in the Charlotte area at 68 ppb. The state will submit boundary recommendations in October 2016.

**2. Startup, Shutdown, and Malfunction (SSM) SIP Call**

Staff is working on options on how to respond to the SIP call issued by EPA in May 2015. North Carolina was one of 36 states that EPA decided their SIPs did not comport with the CAA. Alternative emission standards for periods of startup and shutdown are being considered. We'll have another update in January.

**3. Transport Update**

Director Holman said that EPA is about to propose a new ozone transport rule for the 2008 standard. Also, DAQ has just submitted a SIP addressing transport under the 2008 standard. The entire submittal can be found here:

[http://www.ncair.org/planning/cert/ozone2008/Ozone\\_nc\\_cert.shtml](http://www.ncair.org/planning/cert/ozone2008/Ozone_nc_cert.shtml)

Mr. Carter asked for further comments and with no further comments, Mr. Carter adjourned the meeting.