

**ENVIRONMENTAL MANAGEMENT COMMISSION  
AIR QUALITY COMMITTEE MEETING SUMMARY  
January 11, 2017  
Archdale Building-Ground Floor Hearing Room  
10:30 AM - 12:00 PM**

The Air Quality Committee (AQC) of the Environmental Management Commission (EMC) met on January 11, 2017, in the Ground Floor Hearing Room of the Archdale Building. Attendees of the meeting were as follows: Charles S. Carter, Gerard “Jerry” Carroll, E.O. Ferrell, Dr. Lawrence W. Raymond, Julie Wilsey, Bill Puette, Steve W. Tedder, the Director and staff members of the Division of Air Quality (DAQ), and the general public. Steven J. Rowlan resigned from the commission and chairmanship due to commuting difficulties.

**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)**

**Agenda Item #2, Review and Approval of September 7, 2016 Meeting Minutes**

Chairman Carter inquired if everyone had been able to review the minutes from the September meeting and if there were any changes or corrections. No changes were cited. Chairman Carter asked for a motion to approve the minutes. Dr. Raymond made a motion to approve the minutes and Mr. Ferrell seconded. The minutes were unanimously approved.

**CONCEPTS**

**Agenda Item #3, Session Law 2013-413 (H74) Readoption of Air Quality Rules 15A NCAC 02D Sections .0100, .0200, .0300, .0400, .1300, .2000, .2200, and .2300 (537) (Joelle Burleson, DAQ)**

G.S. 150B-21.3A requires agencies to review and update their rules every 10 years.

Ms. Burleson stated that all 320 existing air quality rules in 15A NCAC 02D and 02Q are to be readopted by the EMC by December 31, 2020. To accomplish this task, the DAQ has initially divided the rules into six groups of rule sections to receive comment on from stakeholders and take through the rulemaking process. (Some rules in the sections in a given group may need to be shifted to other groups depending on the nature of potential changes identified or the associated review needed.)

The DAQ held its first stakeholder meeting on Group 1 rules to obtain feedback from the regulated community, environmental groups, and others who follow air quality rulemaking. A brief meeting summary has been posted to the DAQ website. The first group of rules for consideration, Group 1, includes the following:

- 15A NCAC 02D           SECTION .0100 - DEFINITIONS AND REFERENCES
- SECTION .0200 - AIR POLLUTION SOURCES
- SECTION .0300 - AIR POLLUTION EMERGENCIES

SECTION .0400 - AMBIENT AIR QUALITY STANDARDS  
SECTION .1300 - OXYGENATED GASOLINE STANDARD  
SECTION .2000 - TRANSPORTATION CONFORMITY  
SECTION .2200 – SPECIAL ORDERS  
SECTION .2300 – BANKING EMISSION REDUCTION CREDITS

Changes anticipated throughout include administrative updates such as updating agency names and addresses, updating regulatory references, any needed updates to reflect the current electronic nature of business, and updating rule formatting for consistency with current publication requirements. Other anticipated revisions include incorporation of the 2015 ozone National Ambient Air Quality Standards (NAAQS) into the state standards in 02D .0405 and clarifying the pollutant of concern in the Transportation Conformity rules in 02D .2001. Other considerations include whether the 02D .1300 oxygenated fuel standards rules remain necessary, whether the Section .2300 Banking Emissions Reduction Credits rules need updating to reflect attainment status of areas or any more recent trading program rules, and whether any other existing language needs to be clarified or updated for approvability based on agency experience with review of rules by the Rules Review Commission and its staff. Any rule deemed unnecessary will go through public notice and will require a 110(l) demonstration to repeal.

Additional amendments may be identified as stakeholder input continues. Amendments to some rules in the identified sections may be delayed until a later group depending on the nature of analysis needed, the nature of comments received and associated time needed to address them as well as other factors such as subject matter related litigation at the state or federal level or issuance of new related federal or state legislative requirements. Ms. Burluson stated that the DAQ requested stakeholders to provide comments before January 13, 2017 for consideration and incorporation into upcoming draft rules.

Chairman Carter asked if there were any questions for Ms. Burluson. No questions were identified.

**Agenda Item #4, Implementing E-notice provisions in Permitting Rules (538) (Mark Cuilla, DAQ)**

Chairman Carter stated that he sent a note regarding the rescheduled meeting with news organizations. The note contained text of a cover letter along with additional letters of various news organizations opposing this concept. Director Holman acknowledged that she's scheduled a meeting the following week to meet with news organizations opposing the concept.

Mr. Cuilla specified that he is the Title V Supervisor on rotation to the Rules Development Branch Supervisor. He went on to state that on October 5, 2016, the EPA signed a final rule that finalized revisions to the public notice provisions of the New Source Review (NSR), Prevention of Significant Deterioration (PSD), Title V and Outer Continental Shelf (OCS) permit programs of the Clean Air Act (CAA). This action removes the mandatory requirement to provide public notice for draft permits (and certain other program actions) by newspaper publication and instead provides for electronic-notice (e-notice) of these actions. Permitting agencies that implement e-notice are also required to post the draft permit on a website (e-access). E-notice, which is already being practiced by the EPA and many other permitting agencies, results in cost savings over newspaper publication and enables agencies to provide notice of draft permits and other affected actions more quickly and efficiently. Several permitting rules including 15A NCAC 02Q .0521, and 02D .0530, .0531 and .0544 may need to be amended to remove the requirement to publish a public notice for draft permits in a local newspaper. The DAQ is plans to draft the rules in the spring of 2017. The Division has received some letters of objection for this concept.

There was discussion about the current public notice practice for air permits. Currently, the Title V program only notices draft permits for "Greenfield" facilities. The DAQ has issued 40 PSD permits since

2010, which is roughly five newspaper postings per year. Other permits such as renewals and significant modifications are handled strictly through the DAQ website and email. Synthetic minors and state permits aren't routinely noticed. However, the director has the option to notice these permits if there's significant public interest.

There was discussion regarding research DAQ staff should conduct regarding e-noticing for the commission:

- 1) A numerical estimate of affected Title V permits.
- 2) An estimate of cost savings to the DAQ for moving to e-noticing.
- 3) Conduct research on older citizens, rural citizens, different social classes, and various other demographics. Provide information as to whether the DAQ is leaving a group out by moving to e-noticing.

Director Holman stated that a survey was conducted by the DAQ when moving to e-noticing for Non-Greenfield Title V facilities. These public surveys were conducted during public hearings to understand where their source of information was from. Approximately 5% of the surveyed individuals were obtaining their information from the legal notices, while 95% were obtaining information from email distribution lists or the website. The DAQ continues to research the best method to make the public aware of public hearings and permit actions.

There was also discussion regarding e-noticing being a step in the right direction if LISTSERVs are utilized. Checking a webpage isn't efficient because the information doesn't get distributed in a timely manner to the public.

Chairman Carter asked if there were any other questions for Mr. Cuilla. No questions were identified.

#### **Agenda Item #5, Adoption of Final Emission Guidelines for Existing Commercial Industrial Solid Waste Incinerators (539) (Mark Cuilla, DAQ)**

Mr. Cuilla stated that on March 21, 2011, the United States Environmental Protection Agency (EPA) finalized revised New Source Performance Standards (NSPS) and Emissions Guidelines (EG) for Commercial and Industrial Solid Waste Incinerators (CISWI) in conjunction with the Identification of Non-Hazardous Secondary Materials (NHSM) rule. North Carolina automatically adopts the NSPS; however, rulemaking is necessary to incorporate Emissions Guidelines which apply to existing sources into the state rules.

The guidelines establish updated particulate matter (total and fine), opacity (as appropriate), sulfur dioxide, hydrogen chloride, oxides of nitrogen, carbon monoxide, lead, cadmium, mercury, dioxins and dibenzofurans emission standards. Because some energy recovery units, such as boilers, burn secondary materials, the definition of solid waste is integral in determining whether a unit will ultimately be regulated under CISWI as an incinerator or as a boiler under the Section 112 MACT requirements. The NHSM identification rule is key in this determination because it defines what is considered solid waste for purposes of the air emissions guidelines under Section 129.

At the same time EPA issued the set of rules, the agency issued a notice of reconsideration of the final rules. On May 18, 2011, EPA issued a delay of the effective date of the rules until the proceedings for judicial review of these rules were completed or the EPA completed its reconsideration of the rules, whichever was earlier. On December 23, 2011, EPA published its reconsideration proposals. Under the emissions guidelines, states were required to revise their plans to implement the CISWI requirements. On January 9, 2012, the U.S. District Court for the D.C. Circuit vacated the EPA's delay of the effective date of the 2011 CISWI rule.

On February 7, 2013, EPA published its final action on the issues for which it granted reconsideration in December 2011 which pertain to the March 21, 2011 final rule. Subsequently, EPA received petitions to further reconsider certain provisions of the 2013 NSPS and EG for CISWI units. On January 21, 2015, EPA granted reconsideration on four specific issues and finalized the reconsideration of the CISWI NSPS and EG on June 2, 2016.

North Carolina's rules that incorporate standards for CISWI are found in 15A NCAC 02D .1200. The state rules will need to be updated to reflect the revised emissions guidelines and changes in definitions resulting from EPA's reconsideration process.

Chairman Carter asked if there were any questions for Mr. Cuilla. No questions were identified.

**Agenda Item #6, Adoption of Final Emission Guidelines for Existing Landfills (540) (Mark Cuilla, DAQ)**

On August 29, 2016 (81 FR 59332), EPA finalized changes to the Standards of Performance for Municipal Solid Waste (MSW) Landfills (landfills new source performance standards or landfills NSPS) resulting from the EPA's review of the landfills NSPS under Clean Air Act (CAA) Section 111. The EPA's review identified a number of advances in technology and operating practices for reducing emissions of landfill gas (LFG). In order to avoid possible confusion regarding which MSW landfills would actually be subject to these requirements, the EPA established a new Subpart XXX (40 CFR part 60, Subpart XXX) rather than merely updating the existing Subpart WWW (40 CFR part 60, Subpart WWW). The requirements in new Subpart XXX apply to MSW landfills for which construction, reconstruction, or modification commenced after July 17, 2014, the date of the proposed rule. New NSPS are automatically adopted through 15A NCAC 02D .0524. The requirements in Subpart WWW continue to apply to MSW landfills for which construction, reconstruction, or modification was commenced on or after May 30, 1991 and on or before July 17, 2014.

On August 29, 2016 (81 FR 59276), EPA also finalized changes to the MSW landfills Emission Guidelines resulting from the EPA's review of the Emission Guidelines under CAA Section 111. The final Emission Guidelines apply to landfills that accepted waste after November 8, 1987 and that commenced construction, reconstruction, or modification on or before July 17, 2014 (the date of publication of proposed revisions to the landfills NSPS, 40 CFR part 60, Subpart XXX). The EPA reviewed the Emission Guidelines to determine the potential for achieving additional reductions in emissions of LFG. Significant changes have occurred in the landfill industry over time, including changes to the size and number of existing landfills, industry practices, and gas control methods and technologies.

The rules in Section 15A NCAC 02Q .1700 may need to be revised to implement the revisions to the Emission Guidelines for MSW Landfills. These amendments are being proposed by staff for consideration this spring.

Chairman Carter wanted clarification on the Emission Guideline applicability.

Mr. Cuilla stated that the emission guideline portion applies to existing sources as of the promulgation.

Chairman Carter asked if there were any other questions for Mr. Cuilla. No questions were identified.

**Agenda Item #7, Revisions to the Prevention of Significant Deterioration and New Source Review Rules (541) (Mark Cuilla, DAQ)**

Mr. Cuilla specified that on October 20, 2010 (75 FR 64864), EPA promulgated key components for making PSD permitting determinations for fine particle pollution (PM<sub>2.5</sub>) - increments, significant impact levels (SILs), and a significant monitoring concentration (SMC). The Environmental Management

Commission (EMC) approved the amended PSD and NSR rules on July 11, 2013. The EMC adopted in its State Implementation Plan (SIP) some provisions of this federal regulation, but not all. Specifically, through paragraphs (q) and (v) of Rule 15A NCAC 02D .0530, the EMC revised the rule to incorporate the federally required numerical PM2.5 increments, but not include other federally required provisions needed to implement the PM2.5 increments. The excluded provisions include definitions for major source baseline date, minor source baseline date, and baseline area.

On September 14, 2016 (81 FR 63107), EPA published its disapproval of North Carolina's SIP submittal. EPA concluded that NC's PSD regulations do not require the PSD sources to conduct the appropriate analyses demonstrating that emissions from proposed construction of new major stationary sources or major modifications will not cause or contribute to air quality deterioration beyond the amount allowed by the PM2.5 increments. Therefore, the EPA disapproved all of the PM2.5 increment provisions set forth in NC's SIP submittal with respect to PM2.5-related changes to 15A NCAC 02D .0530 at Paragraphs (e), (q), and (v).

This disapproval triggers the requirement for EPA to promulgate a Federal Implementation Plan (FIP) no later than two years from the date of the disapproval unless the State corrects the deficiencies through a SIP revision and EPA approves the SIP revision before EPA promulgates such a FIP. The DAQ has developed two approaches to correct the deficiency identified by EPA in its SIP.

The first approach is to incorporate by reference the revisions to §51.165 and §51.166 of the CAA as of October 18, 2016. Those revisions include the increments and SILs in the October 20, 2010 final rule, the clarification that condensable particulate matter be included in the measurements of PM2.5 and PM10 in the October 25, 2012 final rule, and the removal of the vacated SMC provisions in the December 9, 2013 final rule. The adoption of the e-notice provisions in the October 18, 2016 final rule is being presented as a separate concept.

The second approach is to make a demonstration to the EPA under §166(e) of the CAA, considering all approved provisions (whether already part of NC's SIP or currently submitted for approval to the EPA) under PSD or non-PSD programs, that the state does not need to adopt the increments for PM2.5 when these other approved provisions are looked at in totality, as they serve the purposes of §160 as effectively. CAA §166(e) reads as follows: With respect to any air pollutant for which a national ambient air quality standard is established other than sulfur oxides or particulate matter, an area classification plan shall not be required under this section if the implementation plan adopted by the State and submitted for the Administrator's approval or promulgated by the Administrator under section 110(c) of this title contains other provisions which when considered as a whole, the Administrator finds will carry out the purposes in CAA §160 at least as effectively as an area classification plan for such pollutant. Such other provisions referred to in the preceding sentence need not require the establishment of maximum allowable increases with respect to such pollutant for any area to which this section applies.

The DAQ recommends utilizing the first approach and an elimination of the second in order to comply with FIP time constraint. The second approach has not been tested by NC or other neighboring states.

There was discussion as to whether other states have been successful utilizing an equivalent of the first approach, whether all other states with the exception of NC have adopted the new guideline, and whether there's a possible consequence for the people, industry, or anyone of NC.

Director Holman specified that there was a 2014 D.C. Circuit decision in which the court decided PM2.5 is not a new pollutant and is subset of PM10. The DAQ expected EPA would revise the 2010 rule to reflect that. Ultimately, the EPA chose not to revise it. There's a 2010 rule that establishes a new baseline for PM2.5. She believed all other states have adopted that new baseline. The DAQ assessed CAA Section

166(e) and couldn't find an example of another state utilizing it. The DAQ recommends utilizing the first approach since the FIP clock is ticking. This approach provides clarity which rules should be followed and would be approvable by EPA.

Chairman Carter clarified that when EPA proceeded with this, they took the position that PM2.5 was a different pollutant than the previous PM standard. That's where the debate and litigation was framed.

Chairman Carter asked if there were any other questions for Mr. Cuilla. No questions were identified.

## **DRAFT RULES**

None.

## **JANUARY EMC AGENDA ITEMS**

### **Agenda Item #8, Hearing Officer's Report on Odor Control of Feed Ingredient Manufacturing Plants Rule per S.L. 2015-263 (536) (Brian Phillips, DAQ)**

Mr. Brian Phillips, the Mobile Sources Compliance Branch Supervisor at the Division of Air Quality, was appointed and acted as the hearing officer during the hearing. A public hearing was held in Raleigh, North Carolina, on September 22, 2016 to take public comments on the Request for Approval of Hearing Officer's Report on Revision of Odor Control of Feed Ingredient Manufacturing Plants Rule per S.L. 2015-263.

Section 18.(d) of the S.L. 2015-263 requires the Environmental Management Commission to adopt amendments to the Rule 15A NCAC 02D .0539, Odor Control of Feed Ingredient Manufacturing Plants, that are substantively identical to the S.L. 2015-263 provisions. The statutory amendments adjust the timeframe after which raw material has been unloaded at a facility or located at the facility from 24 to 36 hours. The amendments also add timeframes by which a vehicle or container holding raw material that has not been unloaded inside or parked inside an odor controlled area within the facility shall be unloaded for processing. For feathers with trace amounts of blood this timeframe is no later than 48 hours after being weighed upon arrival at the facility. For used cooking oil in sealed tankers it is no later than 96 hours after the load being weighed upon arrival at the facility.

Pursuant to the S.L. 2015-263, these amendments are not subject to review by the Rules Review Commission under the Administrative Procedures Act. The amendments are to become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received and thus would become effective following opportunity for legislative review.

A regulatory impact analysis was developed and the Office of State Budget and Management determined the rule change has no impact on state or local government, no substantial economic impact and does not require a fiscal note.

No presentations were delivered at the public hearing and no comments were submitted during the comment period.

The Hearing Officer recommends that the proposed amendment as presented in Chapter II of the hearing report be adopted by the Environmental Management Commission.

Chairman Carter asked if there were any questions for Mr. Phillips. No questions were identified.

**INFORMATION ITEMS**

**Agenda Item #9, Status of Request for Delegation of Federal Plan 40 CFR 62 Subpart LLL – Federal Plan Requirements for Sewage Sludge Incineration Units Constructed on or Before October 14, 2010 (Sheila Holman, DAQ)**

Director Holman specified that a public hearing for the delegation request was held on November 29, 2016. The public comment period also ended on November 29, 2016, in which no written comments were received. Subsequently, the DAQ submitted the package to EPA for approval.

Four sewage sludge incinerators are located in NC. Three of the incinerators are managed by the DAQ, while one incinerator is managed by the Western NC local program. The facilities are aware of the delegation request and have obtained training and interaction from DAQ staff inspectors.

The DAQ is developing rule changes for adopting the federal plan into NC's state rules. The commission should expect to see drafts of the amendments during the March meeting.

**Agenda Item#10, Director's Remarks (Sheila Holman, DAQ)**

Director Holman stated that she will be absent from the Environmental Management Commission meeting. She will be testifying before the Joint Legislative Emergency Management Oversight Committee on the impacts of Western NC wildfires. Mike Abraczinskas will be present at the meeting to answer questions.

Chairman Carter asked for additional questions or comments, and upon hearing none, noted that the next meeting of the AQC would be March 8, 2017. Chairman Carter adjourned the meeting.