

**ENVIRONMENTAL MANAGEMENT COMMISSION
AIR QUALITY COMMITTEE MEETING SUMMARY
November 8, 2017
Archdale Building-Ground Floor Hearing Room
3:30 PM - 4:30 PM**

MEETING BRIEF

During their November 8, 2017 meeting, the Air Quality Committee (AQC) of the Environmental Management Commission (EMC):

- Provided comments for DAQ staff to consider as they to proceed with rulemaking to readopt Group 4 air quality rules.
- Approved DAQ's request to go to the EMC for approval of its approach to adjust the effective date of 15A NCAC 02D .0535 and .0545.
- Received updates on recent DAQ staffing changes and on North Carolina's designation of "Attainment/Unclassifiable" for the 2015 ozone national ambient ozone standards.

AQC MEMBERS IN ATTENDANCE

Dr. Stan Meiburg, AQC Chairman
Mr. Charles S. Carter, AQC Vice Chair
Mr. Gerard Carroll
Ms. Marion Deerhake
Dr. Suzanne Lazorick
Ms. Julie Wilsey

OTHERS IN ATTENDANCE

Mr. William "Bill" Puette, EMC
Ms. Jennie Hauser, Attorney General Office
Mr. Mike Abraczinskas, Division of Air Quality Director

PRELIMINARY ITEMS

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

Chairman Meiburg called the meeting to order and inquired, per General Statute §138A-15(e), 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.

Agenda Item #2, Review and Approval of the September 13, 2017 Meeting Minutes

Chairman Meiburg inquired if everyone had been able to review the minutes from the September meeting and if there were any changes or corrections. He also commended DAQ staff for providing detailed meeting minutes. No changes were cited. Chairman Meiburg asked for a motion to approve the September 13, 2017 minutes. Commissioner Carroll made a motion to approve the minutes and Commissioner Wilsey seconded. The minutes were unanimously approved.

RULEMAKING CONCEPTS**Agenda Item #3, Proposed Rule Revisions and Session Law 2013-413 (H74) Readoption of Group 4 Air Quality Rules 15A NCAC 02D .0540, .1800, and .1900 (546) (Steve Hall, DAQ)****Description:**

Mr. Hall stated that the DAQ is currently working on the fourth group of air quality rules to be considered for readoption. Group 4 contains Rule 15A NCAC 02D .0540, *Particulates from Fugitive Dust Emission Sources*, Section .1800, *Control of Odors*, and Section .1900, *Open Burning*.

Anticipated changes for the Group 4 package 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. Also, the DAQ is researching 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.

A stakeholder meeting is tentatively planned for February 2018. 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.

Discussion:

Chairman Meiburg inquired how much interest is expected from the stakeholder community since the areas of interest are not generally covered under federal law and tend to be controversial to individuals near sources. Chairman Meiburg also commented that federal law gives state and local agencies authority to administer complaint-driven rules. Mr. Hall stated that DAQ regional office staff are interested in making the rules more workable from an enforcement standpoint, and the DAQ may receive some interest from hog farm owners and neighbors. Chairman Meiburg stated that he anticipated that there might be significant stakeholder interest and asked whether his statement was correct. Mr. Hall concluded that it's unclear how much interest is expected from stakeholders at this point.

Commissioner Deerhake asked whether the animal odor rules were still the original objectionable odor rules adopted around 2000, and if so, whether they have been modified in the past four years. Mr. Hall responded that the rules have not undergone major or substantive changes since they were adopted. Commissioner Deerhake noted that she was one of two hearing officers for the odor rules.

Chairman Meiburg asked if there were any other questions. No questions were identified.

Motion:

No motion required.

DRAFT RULES**Agenda Item #4, Request to Proceed to EMC for Approval of Approach to Adjust Effective Date of 15A NCAC 02D .0535 and .0545 (545) (Michael Pjetraj and Joelle Burleson, DAQ)****Description:**

Mr. Pjetraj stated that the AQC is requested to approve proceeding to the EMC for approval of the proposed approach to adjust the effective date of Rules 02D .0535 and .0545 previously adopted in response to the Startup, Shutdown and Malfunction State Implementation Plan (SSM SIP) Call.

On September 8, 2016, the EMC adopted revised rules regarding startup, shutdown, and malfunction to address the SIP Call issued by the United States Environmental Protection Agency (EPA). The current state rules contain applicability language contingent on outcome of the Court decision and were given a future effective date of May 22, 2018 to allow time for litigation on the SIP Call to be completed. On April 24, 2017, the U.S. Court of Appeals for the D.C. Circuit issued an order at EPA's request, placing oral arguments in the case in abeyance indefinitely, and requiring status updates from EPA on its review of the SIP Call for reconsideration every ninety days. On July 24, 2017 EPA filed its first 90-day status report stating that EPA is continuing to review the SSM SIP action to determine whether the agency will reconsider all or part of the action.

Given the recent Court Order holding oral arguments in abeyance indefinitely and EPA's first 90-day report that the matter is still under review, there is uncertainty as to whether the litigation will be resolved prior to the May 22, 2018 effective date of the state rules. To maintain the expressed intent of the EMC that litigation be concluded prior to the rules becoming effective, to provide regulatory certainty, and to avoid potentially unnecessary use of resources preparing and processing source specific work practice standard submittals, a revision of the rules' effective date is needed to better align with outcome of the pending litigation. A request to the Office of Administrative Hearings (OAH) Codifier of Rules to adjust the effective date is recommended.

Currently, 02D .0535 recognizes that many larger sources are covered under the Maximum Achievable Control Technology (MACT) or New Source Performance Standards program, and as result, it affects/focuses on a smaller subset of sources subject to SIP requirements that also tend to be smaller sources. It also has a process for addressing excess emissions, is not an automatic or absolute exemption, and requires sources to report excess emissions. The Director considers seven factors like those in EPA's startup, shutdown and malfunction policy to determine if excess emissions are the result of a malfunction. For startup and shutdown, the Director also considers a subset of factors that are relevant to startup and shutdown periods.

North Carolina continues to attain all national ambient air quality standards and has not seen many SSM cases over the years. Historically, from 2004 to 2017, there were 73 instances of potential excess emissions due to startup, shutdown, or malfunctions. Also, 40 instances of potential excess emissions have been reported since 2010. The size and industrial categories of the affected facilities vary.

Ms. Burleson provided a summary of the state's regulatory impact analysis for the SSM SIP Call which included the type of facility, total number of affected facilities, number of inspected facilities, percentage of facility type/total facilities, state permit modification fee revenue, state opportunity cost of staff time, affected sources costs, and the total state impact.

Ms. Burleson provided the rulemaking schedule and noted that based on recent and narrowed Rules Review Commission (RRC) discussions of what qualifies for temporary rulemaking under Administrative Procedures Act (APA), the current scenario may not meet that criteria. The DAQ will follow an alternative approach per G.S. 150B-21.3, which provides that an agency may specify a later rule effective date by revising the effective date in the History Note along lines of: "Amended Eff. on effective date of EPA approval into North Carolina's State Implementation Plan."

Discussion:

Chairman Meiburg welcomed the fact that the presentation contained sizes and industrial categories since he had asked about that topic earlier. The regulatory impact analysis provides context for considering the opportunity cost of staff time and number of affected facilities. Chairman Meiburg noted, however, that even if only a small number of sources are affected, it can still be very important to individuals who live near a source with SSM issues.

Commissioner Carroll asked whether the DAQ calculated a benefit deriving from the rule revisions. Ms. Burleson responded that this regulatory impact analysis did not include a calculated benefit. This is due to the

difficulty of estimating where, when, the duration, or the nature of exceedances that would occur. Chairman Meiburg affirmed the difficulty of calculating various benefits since they depend upon the location of the excess emissions. He also he noted that this rulemaking is more of a compliance issue.

Commissioner Carroll asked whether this rulemaking was only for moving the effective date. Ms. Burleson confirmed that this rulemaking process is to adjust the effective date.

Motion:

Chairman Meiburg asked if there were any other questions for Ms. Burleson. No questions were identified. Chairman Meiburg asked for a motion to proceed to EMC for approval to adjust the effective date of 15A NCAC 02D .0535 and .0545. Commissioner Carroll made a motion to approve and Commissioner Wilsey seconded. The agenda item was approved unanimously.

NOVEMBER EMC AGENDA ITEMS

Agenda Item #5, Request for Approval of Proposed Rule Revisions, Regulatory Impact Analysis, and to Proceed to Public Hearing on Session Law 2013-413 (H74) Readoption of Group 3 Air Quality Rules 15A NCAC 02D .1100, .1201-.1203, .1205-.1208, and .1211-.1212 and 02Q Section .0700 (543) (Joelle Burleson, DAQ)

Description:

Ms. Burleson presented a brief overview of the DAQ's request to proceed to public hearing on the proposed readoption of 33 air quality rules in 15A NCAC 02D Sections .1100, and .1200, and 02Q Section .0700. Pursuant to S.L. 2013-413, rules in the Group 3 package are proposed for readoption with primarily minor administrative updates, while certain unnecessary rules are proposed for readoption as a repeal.

Ms. Burleson noted that a stakeholder meeting was held in June 2017 to receive input on needed changes. The draft rules were approved at the July 2017 AQC meeting. Also, a regulatory impact analysis was submitted to the Office of State Budget and Management (OSBM). On October 9, 2017, OSBM determined the rule changes have little to no impact on state or local governments and no substantial economic impact.

Discussion:

Commissioner Wilsey asked for potential impacts across the state regarding hearings and hearing officers. Mr. Hall stated that the DAQ recommends having one hearing officer at one hearing location on the same date in Raleigh for the I/M and CISWI rule revisions. They also recommend having one hearing officer conduct two hearings for the Group 3 rules; one hearing in Charlotte and Raleigh.

Chairman Meiburg asked Counsel Jennie Hauser whether the hearing officer needs to be a member of the Committee, Commission, or DAQ staff. Counsel Jennie Hauser stated that it depends on the decision body and the Chairman, and noted that high profile cases traditionally have a member of the Commission conduct the hearing.

Chairman Meiburg asked if there were any other questions for Ms. Burleson. No questions were identified.

Motion:

No motion required.

Agenda Item #6, Request for Approval of Proposed Rule Revisions, Regulatory Impact Analysis, and to Proceed to Public Hearing on Adoption of Final Emission Guidelines for Existing Commercial and Industrial Solid Waste Incinerators (539) (Sushma Masemore, DAQ)

Description:

Ms. Masemore presented the request to proceed to public hearing on the proposed adoption of final Emission Guidelines for existing Commercial and Industrial Solid Waste Incinerators (CISWI) under Section 129 of the Clean Air Act. In this rulemaking action, 15A NCAC 02D .1210 has been updated to reflect EPA's revised emissions guidelines, including 1) revised emissions limits, operational standards, and monitoring recordkeeping and reporting requirements, 2) the new definition of solid waste, and 3) the applicability of the rule to additional combustion sources burning solid waste.

There are four affected CISWI facilities. Also, ten affected non-CISWI units will be required to modify their permits to ensure that they do not burn or combust solid waste in the future. The four affected CISWI facilities have been contacted and the DAQ gave them three options for compliance: 1) to install air pollution control equipment, 2) dispose of the secondary hazardous material through landfilling or incinerating at a permitted third-party facility, or 3) apply for and achieve a determination that their waste is not solid waste.

A regulatory impact analysis was submitted to OSBM. OSBM has reviewed the DAQ proposed changes to Rule 15A NCAC 02D .1210 in accordance with G.S. 150B-21.4. On October 6, 2017, OSBM approved the regulatory impact analysis and has determined the rule changes do not result in a substantial economic impact to North Carolina under the most likely regulatory outcome. However, sensitivity analysis indicates that specific compliance pathways chosen by affected sources may result in substantial cost to the regulated facilities but also result in some monetary benefits for private companies and public health benefits.

Discussion:

Ms. Masemore asked whether the Committee wanted to see a highlighted and condensed version of the rulemaking since it would be presented to the full Commission the following day. Chairman Meiburg stated that a condensed version would be appropriate since the Commission will see it again. Commissioner Deerhake noted that in the past, the Committee provided a consent agenda at the beginning of each AQC meeting for repeated agenda items to streamline the process. Chairman Meiburg stated Commissioner Deerhake had a great point.

Commissioner Deerhake thanked the DAQ for providing health benefits in the fiscal analysis and asked whether they were generated in the state or from a national assessment. Ms. Masemore stated that the DAQ used EPA's national level assessment numbers, scaled it to 2017 dollars, and applied it to the four affected CISWI facilities. Commissioner Deerhake noted that it is difficult for the state to derive public health benefits and apply them. She also noted that the state should strive to provide and produce public health benefits in future rulemaking. Commissioner Carroll asked whether the state could use federal numbers on a consistent basis on other rules for health benefits. Ms. Masemore provided a brief synopsis of the complex process for deriving health benefits. Commissioner Meiburg provided three points for why it is complicated to derive health benefits. 1) Most of the standards relating to toxic air pollutants were based on a MACT standard. The calculation of a human health cost/benefit was not a primary factor of setting the standard. 2) The EPA's estimates benefit from the law of large numbers. When the EPA develops national-level data, it levels out variations that would occur when attempting to bring it down to the facility level. 3) There are high quality data on health benefits of particle pollution, but there is significant debate in the scientific literature regarding what fraction of the particulates are most hazardous. Thus, these factors make it difficult for states to provide state-level estimates. The provided numbers by DAQ are informative. Ms. Masemore stated that the DAQ's numbers are a ballpark figure and should be seen as best available estimates. Director Abraczinskas noted that the DAQ frequently uses the EPA's data if it's available. However, the state would never meet important time-sensitive deadlines if a more robust health benefit calculation process was required at the state level for each rulemaking. Commissioner Deerhake

noted that there was a symposium with OSBM to strengthen technical resources from academia and researchers to study and build a product that the state could utilize. There are many researchers across the state that would like to study the issues in-depth to provide the state more information.

Chairman Meiburg asked if there were any other questions for Ms. Masemore. No questions were identified.

Motion:

No motion required.

***Agenda Item #7, Request for Approval of Proposed Rule Revisions, Fiscal Note, and to Proceed to Public Hearing on Inspection/Maintenance (I/M) Rules to Incorporate Session Law 2017-10 Section 3.5 Applicability to Vehicles with Model Year within 20 Years of Current Year and for Readoption of 15A NCAC 02D Section .1000 (544) (Steve Hall, DAQ)**

***Agenda Item #8, Request for Approval of Hearing Officer's Report on Session Law 2013-413 (H74) Readoption of Group 1 Air Quality Rules 15ANCAC 02D Sections .0100, .0200, .0300, 0400, .1300, .2000, and .2200 (537) (Joelle Burleson, DAQ)**

***Agenda Item #9, Request for Approval of Hearing Officer's Report on the Ambient Air Quality Standards to Incorporate the 2015 Ozone National Ambient Air Quality Standards (534) (Joelle Burleson, DAQ)**

Chairman Meiburg stated that the Committee may choose to wait to hear the agenda items containing an asterisk (*) during the full Commission. The Committee affirmed to hear the asterisked items during the full Commission meeting the following day.

Commissioner Deerhake noted that she provided the DAQ with a list of questions for Group 1 rules that she wanted to be addressed during the full Commission.

INFORMATION ITEMS

Agenda Item #10, Director's Remarks

Director Abraczinskas thanked staff for their hard work on preparing all the agenda items. He also announced a staffing update that Ms. Burleson will now serve as the DAQ's Senior Regulatory Advisor for the Planning Section. She will be the Division's contact for complex state rulemaking projects; including but not limited to the H74 process. Also, she'll be responsible for reviewing and initiating new or proposed rules from the federal-level. The DAQ will be working on filling the Rules Development Supervisor position in the upcoming months.

The entire State of North Carolina was designated as "Attainment/Unclassifiable" for the 2015 national ambient air quality standards for ozone. This was supported by official 2014 – 2016 air quality data and preliminary 2015 – 2017 data.

MEETING ADJOURNMENT

Chairman Meiburg asked for additional questions or comments, and upon hearing none, noted that the next meeting of the AQC would be January 10, 2018. [Note: as there were no action agenda items, the Air Quality Committee did not meet in January.] Chairman Meiburg adjourned the meeting.