

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

**March 9, 2016**

**Archdale Building-Ground Floor Hearing Room**

**3:00 – 5:00 PM**

The Air Quality Committee (AQC) of the Environmental Management Commission (EMC) met on March 9, 2016, 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, Mr. J.D. Solomon, Mr. Steven Rowlan, Mr. 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)**

**Agenda Item #2, Review and Approval of September 2015 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. Ms. Wilsey made a motion to approve the minutes and Mr. Solomon seconded. The minutes were unanimously approved.

**Agenda Item #3, Review and Approval of November 2015 Meeting Minutes**

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

**Agenda Item #4, Review and Approval of January 2016 Meeting Minutes**

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

**CONCEPTS**

**Agenda Item #5, Revision of Odor Control of Feed Ingredient Manufacturing Plants Rule per S.L. 2015-263 (536) (Joelle Burleson, DAQ)**

Ms. Joelle Burleson, Rule Development Branch of the Division of Air Quality, presented a concept. During the 2015 legislative session, the General Assembly enacted S.L. 2015-263, An Act to Provide Regulatory Relief to the Agricultural Community of North Carolina By Providing for Various Transportation and Environmental Reforms and By Making Various Other Statutory Changes. Section 18 of the Session Law, Modify Implementation of the Odor Control of Feed Ingredient Manufacturing Plants Rule, amends the requirements that pertain to the control of odor from feed ingredient manufacturing plants. 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 the timeframe is no later than 48 hours after being weighed upon arrival at the facility. For used cooking oil in sealed tankers the timeframe is no later than 96 hours after being weighed upon arrival at the facility.

There was discussion as to whether there was a deadline associated with this action. There is not a deadline in the session law. There was also discussion regarding how enforcement is typically handled and if it is complaint driven or part of the regular inspection process. Rendering plants are inspected on a regular basis and frequency based on size, and DAQ responds to complaints of extreme odors from neighbors, so it is a combination of routine inspections and complaint investigation.

## **DRAFT RULES**

### **Agenda Item #6, Startup, Shutdown, Malfunction (SSM) State Implementation Plan (SIP) Call Rule Revisions / Presentation (533) (Michael Pjetraj, DAQ)**

Mr. Michael Pjetraj, Stationary Source Compliance Branch Supervisor of the Division of Air Quality, presented the draft rules related to Startup, Shutdown, and Malfunction (SSM) State Implementation Plan (SIP) Call Rule Revisions. The Air Quality Committee (AQC) was requested to approve proceeding to the Environmental Management Commission (EMC) to request approval to proceed to public hearing on amendments to 15A NCAC 02D .0535, Excess Emissions Reporting and Malfunctions and adoption of 02D .0545, Treatment of Malfunction Events and Work Practices for Startup and Shutdown Operations.

On May 22, 2015, the U.S. Environmental Protection Agency (EPA) issued a final action to ensure states have plans in place that are fully consistent with the Clean Air Act and recent court decisions concerning startup, shutdown and malfunction (SSM) emission limit exemptions. EPA's final action responds to the Sierra Club Petition; clarifies the EPA's SSM Policy to assure consistency with the Clean Air Act and recent court decisions; and finalizes findings that the SSM provisions in the SIPs of 36 states including North Carolina that do not meet the requirements of the Clean Air Act (CAA) and accordingly issued a "SIP call" for each of those states.

In issuing the SIP call action, the EPA directs the affected states to correct specific SSM provisions in their SIPs. The Clean Air Act allows a maximum of 18 months from the issuance of the final action to submit a SIP revision. The SIP submission deadline for each of the 36 states subject to the SIP call action is November 22, 2016.

There was discussion as to whether the deadline can be met. It can be met assuming that there are not ten letters of objection received by Rules Review Commission. The schedule requires approval of the fiscal analysis by Office of State Budget and Management (OSBM), and approval by the Environmental Management Commission at its meeting in May.

Several states have entered into litigation over the validity of the SIP call. North Carolina is one of those states. Nonetheless, a requirement to submit a SIP revision by November 22, 2016 currently remains in effect. As a result, and after consideration of possible options to address the identified concerns, the following rule revisions are proposed.

15A NCAC 02D .0535 is proposed to be amended to include introductory language that indicates that 02D .0535 is the rule that will be in effect if the states' lawsuits are successful.

A new rule 15A NCAC 02D .0545, Treatment of Malfunction Events and Work Practices for Startup and Shutdown Operations, is proposed for adoption and would be in effect in the event that states' lawsuits are unsuccessful. For startup and shutdown, 02D .0545 allows a facility to demonstrate compliance with

the applicable existing numeric emission limits, generally available work practice standards, work practice standards in analogous federal rules that a specific source may not otherwise be subject to, or source specific startup and shutdown work practice standard permit limit. For malfunctions a facility may demonstrate compliance with the applicable existing limits or with a source specific malfunction work practice standard permit limit.

It was noted that there was a great deal of variability in that many other states had developed their rules over many years and that many of them were found to be inadequate with respect to the objections raised by the lawsuit. Regarding the rule development process relative to other states, North Carolina was ahead of many other states at this time.

Mr. Solomon made a motion to forward these rules on to the full commission for approval in May and Mr. Carroll seconded. The motion was unanimously approved.

### **MARCH EMC AGENDA ITEMS**

#### **Agenda Item #7, Request for Approval to Proceed to Hearing on Revisions to Volatile Organic Compound (VOC) Rules in 15A NCAC 02D .0902 (532) (Joelle Burleson, DAQ)**

Ms. Joelle Burleson, Rule Development Branch of the Division of Air Quality, reminded members of a previous AQC agenda item before the EMC the following day, the request to approve the rule revisions and regulatory impact analysis on amendments to the Volatile Organic Compound (VOC) Rule 15A NCAC 02D .0902 to narrow applicability of work practice standards in 15A NCAC 02D .0958. Rule 15A NCAC 02D .0902 is proposed for amendment to narrow the applicability of 15A NCAC 02D .0958 from statewide to the maintenance area for the 1997 8-hour ozone standard. Facilities in areas outside of the Charlotte maintenance area for the 1997 8-hour ozone standard that use VOCs as solvents, carriers, material processing media, industrial chemical reactants, or similar uses, or that mix, blend, or manufacture VOCs or emit VOCs as a product of chemical reactions would no longer be required by the state rule to implement the VOC work practice standards in 15A NCAC 02D .0958 nor to have those sources permitted if they would otherwise be exempt from permitting.

Some regulatory relief for facilities comes from not having to list those sources on the permit if no other rules would require them to be permitted. The impact to state and local government is estimated to be minimal as no additional costs are imposed. There would be one less permit condition to include in a facility's permit and one less applicable requirement per subject source for which compliance must be determined. Overall, the aggregate impacts to affected parties are estimated to be non-substantial.

#### **Agenda Item #8, Request for Approval to Proceed to Public Comment on Repeal of 15A NCAC 02D .1010 Heavy-Duty Vehicle Idling Restrictions (535) (Joelle Burleson, DAQ)**

Ms. Joelle Burleson, Rule Development Branch of the Division of Air Quality, noted that a request to proceed to public comment on repeal of the Heavy Duty Vehicle Idling Restrictions approved at the January AQC was a March EMC agenda item. Section 4.24 of the Session Law 2015-286 requires the Secretary of the Department of Environmental Quality to repeal the Rule 15A NCAC 02D .1010, Heavy-Duty Vehicle Idling Restrictions, on or before March 1, 2016. Given that it is an Environmental Management Commission rule, a single comment period would be held on behalf of both the EMC and the Secretary to facilitate concurrent adoption of the repeal. The session law also mandates that until the effective date of the repeal, the rule shall not be implemented or enforced.

The heavy-duty vehicle idling restrictions rule is a complaint-driven rule that is focused on addressing nitrogen oxide (NOx) and particulate emissions from heavy-duty trucks through the reduction of unnecessary idling. North Carolina does not have any ozone and particulate emissions nonattainment areas. Currently, the ozone and particulate matter monitors are measuring ambient concentrations lower

than the NAAQS. Additionally, idling can be costly for trucking companies which provides companies an incentive to enforce their own restrictions on idling.

## INFORMATION ITEMS

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

1. 111(d) Update. The “Stay” by the United States Supreme Court is in effect. The briefing schedule is laid out such that the case is scheduled to be heard by the D.C. Circuit on June 2, 2016. The stay may likely be in effect until 2017 or as late as 2018, depending on the D.C. Circuit Court’s decision, or later if appealed to the United States Supreme Court. DAQ is not proceeding with the stakeholder process or the backup plan until the litigation is decided and will then examine any federal rule at that time.
2. Permit Exemption Streamlining Rules Update. The Rule Review Commission (RRC) approved the Permit Exemption Streamlining rule at their February 18, 2016 meeting. RRC received ten letters of objection and the three rules are awaiting legislative review during the short session. DAQ addressed several technical changes from the Rules Review Commission.
3. Periodic Review of Rules Update. Director Holman introduced the topic of rule categorization under H74, legislation that requires the periodic review of rules, and asked Ms. Joelle Burleson to present the re-adoption schedule.

Ms. Joelle Burleson, Rule Development Branch of the Division of Air Quality, stated that at the EMC meeting in November reports were filed with the Rule Review Commission (RRC), and approved on December 17, 2015. The Joint Legislative Oversight Committee met on January 5, and any rules that were deemed as unnecessary were removed from the administrative code effective as of the beginning of February. There were four rules that were necessary without substantive public interest and their history note has been updated to reflect that schedule. There were 321 rules that have to be readopted. Next phase is development of a time frame for completion of the re-adoption.

The process could then move forward after consultation with the Rule Review Commission’s staff council, Department of Environmental Quality’s rulemaking coordinator, and OSBM about the recommendation of a schedule. One or more rules also need to be coordinated with EPA and that can require additional time. Several rules require approval at the federal level, and some are being litigated, and that can require additional time for resolution. Discussions at this time have pointed toward a four-year schedule.

With respect to a previous question about an appropriate stakeholder process for this rule re-adoption, that process would include the Outside Involvement Committee meetings and other dedicated stakeholder group meetings as necessary. Other considerations concern a logical grouping of rules within that schedule.

Chairman Carter mentioned how other groups have done their periodic review, noting that there is a tradeoff, such that the longer the rules sit out there before being re-adopted, then the more likely it is that the General Assembly gets involved with additional changes and therefore a quicker process may be better.

Chairman Carter asked for additional questions or comments, and upon hearing none, adjourned the meeting.