

AGENDA ITEM 2

ENVIRONMENTAL MANAGEMENT COMMISSION AIR QUALITY COMMITTEE MEETING SUMMARY

September 10, 2014

Archdale Building-Ground Floor Hearing Room

11:00 AM – 12:30 PM

The Air Quality Committee (AQC) of the Environmental Management Commission (EMC) met on September 10, 2014, in the Ground Floor Hearing Room of the Archdale Building. The AQC members in attendance were: Chairman Charles Carter, Mr. Gerard Carroll, Dr. Lawrence Raymond, Mr. E.O. Ferrell, Chairman Benne Hutson, and Ms. Julie Wilsey. Mr. Steven Tedder, 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.

Agenda Item #1, Call to Order (Chairman Charles Carter)

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 of interest were stated.

MINUTES

Agenda Item #2, Approval of July Meeting Minutes

Chairman Carter thanked Commissioner Carroll for chairing the July 9, 2014 AQC meeting and advised that Ms. Burleson had sent revised minutes to the Committee. He entertained a motion to approve the July meeting minutes. Commissioner Raymond made a motion to approve the minutes and Commissioner Carroll seconded the motion. The motion to approve the minutes was unanimously approved.

CONCEPTS

Agenda Item #3, Revise Definition of Emergency Generator (527) (Joelle Burleson, DAQ)

The DAQ staff recommended a rule amendment to revise the definition of emergency generator in the state permitting rule to remove the words "at the facility" to align the definition with current treatment of the term emergency under the more recent National Emission Standards for Hazardous Air Pollutants (NESHAP) requirements. The revision would allow emergency generators meeting the operational requirements of the NESHAP that also meet the fuel consumption limits and obligations in 02Q.0903 to operate under emergency limitations without requiring a permit regardless of whether the generator is at the site where the emergency power will be used or the unit is contractually providing power to the grid for reliability purposes.

Discussion:

Chairman Carter asked whether these changes would be part of the revisions to the exemptions in 02Q .0102.

Ms. Burleson said that the DAQ is moving forward with those 02Q .0102 revisions and will come back before the Committee at a future date, and if deemed appropriate, can consider whether the two revisions should be combined.

Chairman Carter asked whether the general approach is to start the stakeholder process this fall regarding 02Q .0102.

Ms. Burleson said that the DAQ is planning to hold the first stakeholder meeting in early November.

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Chairman Carter asked whether there was a particular reason for not waiting to combine the two revisions in one process.

Ms. Burleson explained that one facility may already be in a situation where they need to be able to take advantage of this change sooner rather than later.

Chairman Carter questioned whether this revision was triggered by a particular situation.

Ms. Burleson clarified that a particular situation is probably what brought it to the attention of a regional office who recommended it to the Division, but there could be other facilities that may be able to benefit from this rule change.

Chairman Carter concluded that the DAQ had good reason to proceed to make the revisions.

Agenda Item #4, Request for 30-day Waiver and to Proceed to Public Hearing on Clerical Revision to 15A NCAC 02Q.0711 (526) (Patrick Knowlson, DAQ)

The DAQ requested the AQC's approval to proceed to the EMC to request approval of the 30-day waiver and to proceed to public hearing to revise clerical issues identified by DAQ staff in the spreadsheet used to calculate the toxic air pollutant emission rates (TPER) values that was transferred into the table in Paragraph (b) of the rule.

Earlier this year as a result of Session Law 2012-91, Rule 15A NCAC 02Q .0711 was amended to add an additional set of TPERs that would apply to situations where air pollutant emissions release points at a given facility are non-obstructed and vertically oriented. The rule is proposed to be revised to reflect the TPER values for three pollutants in the appropriate columns as follows. The value of 2.0 lb/hr for ethylene glycol monoethyl ether is to be reflected in the acute systemic column instead of the acute irritant column. The value of 31.59 lb/hr for methyl isobutyl ketone is to be reflected in the column for acute irritants and the value of 197.96 lb/day for toluene in the column for chronic toxicants. The Office of State Budget and Management (OSBM) reviewed an analysis for the proposed amendment and the analysis was certified by OSBM on July 30, 2014. The proposed amendment was determined to not require a fiscal note.

Discussion:

Chairman Carter asked whether there is any need for a public hearing for this process.

Mr. Knowlson said there is no need.

Chairman Carter clarified that the change is basically to correct typographical errors.

Mr. Knowlson confirmed.

Chairman Hutson advised that he would not be appointing a Committee member to be the hearing officer and recommended that Director Holman appoint someone within the Division.

Motion:

Commissioner Wilsey made a motion that the DAQ proceed to the EMC to request approval of the 30-day waiver to revise clerical issues in the spreadsheet used to calculate the TPER values that was transferred into the table in Paragraph (b) of the rule as identified by DAQ staff. Commissioner Raymond seconded the motion. The motion was unanimously approved by the Committee.

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Commissioner Raymond made a motion that the DAQ proceed to the EMC to request approval to proceed to public hearing regarding this clerical revision. Commissioner Ferrell seconded the motion. The motion was unanimously approved by the Committee.

Agenda Item #5, Request for 30-day Waiver and to Proceed to Hearing on Temporary Amendments to Clarify Applicability of Prevention of Significant Deterioration (PSD) Rule for Greenhouse Gases and Title V Applicability Rule (528) (Joelle Burleson, DAQ)

The DAQ requested the AQC's approval to proceed to the EMC to request approval of the 30-day waiver and to proceed to hearing on temporary amendments to clarify applicability of the PSD rule for greenhouse gases and the Title V applicability rule.

As a result of the June 23, 2014 Supreme Court decision Rule 15A NCAC 02D .0544, Prevention of Significant Deterioration Requirements for Greenhouse Gases, is proposed for temporary amendment to remove the requirement that major stationary sources obtain a PSD permit on the sole basis of its GHG emissions. 15A NCAC 02Q .0502, Applicability, is proposed for temporary amendment to remove the requirement that facilities obtain a Title V permit on the sole basis of its GHG emissions.

The EPA does not interpret the June 23, 2014 Supreme Court decision to preclude the state from retaining permitting requirements for sources of GHG emissions that apply independently under state law even where those requirements are no longer required under federal law. However, under NC G.S. 150B-19.3(a), an agency may not adopt a rule that imposes a more restrictive standard, limitation or requirement than those imposed by federal law or rule. Under N. C. G. S. 150B-19.1(a)(2), an agency shall seek to reduce the burden upon those persons or entities who must comply with the rule. Under NC G.S. 150B-19.1(a)(6), rules shall be designed to achieve the regulatory objective in a cost-effective and timely manner. Adhering to the notice and hearing requirements for a permanent rule in NC G.S. 150B-21.2 would not result in a cost-effective and timely manner. Therefore, a temporary rule is necessary to ensure that stationary sources would not be required to unnecessarily obtain a PSD or Title V permit on the sole basis of their GHG emission while the EMC completes the permanent rulemaking process. The DAQ Director recommends that the Commission approve a public hearing and that the Chairman appoint a member of the Commission to serve as hearing officer.

Discussion:

Chairman Carter added that the Supreme Court has stated that the EPA rule is illegal under the Clean Air Act. Thus we have a rule on the North Carolina books that the Supreme Court says is incorrect. In the normal rulemaking process, it will take until sometime well into next year to revise that rule while there are sources that would be subject to the rule despite the Supreme Court's decision. We're trying to move quickly to suspend the applicability of this rule as to not waste the time and resources of the agency receiving applications as well as the sources because the rule says they are required to file an application. Chairman Carter reminded that Chairman Hutson had sent email notification advising that a special meeting could be called to possibly speed up the process, but after careful review of the Administrative Procedures Act (APA) by staff, it was determined that only a few days would be saved by calling a special meeting and it was determined that the Committee would follow the usual process with the exception of the 30-day waiver to proceed to public hearing. He advised that the public hearing, if approved by the EMC, is scheduled for October 1, 2014.

Ms. Wilsey asked whether the Committee would receive further guidance regarding other issues that came out of the lawsuit and if they would face this again for other issues.

Chairman Carter explained that they would want to follow on with a permanent rule revision because the temporary suspension has a limited timeframe, so further action is necessary. He said that it is anticipated

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that the EPA will issue more guidance. He asked Ms. Burleson if she had a timeline for the permanent rule change.

Ms. Burleson said that in order to prevent the temporary rule from expiring under the APA, a rule would need to be in place by September 11, 2015 to allow opportunity for the Rules Review Commission to object, which means that the Commission would need to adopt a rule by the May 2015 meeting or as late as the July 2015 meeting if there are no concerns about receiving objections. Ms. Burleson added that the permanent rule can incorporate provisions besides what is in the temporary rule and it is not known whether the EPA's rule changes or guidance will be available within that timeframe.

Chairman Hutson clarified that no fiscal note is required for the temporary rule but is required for the permanent rule.

Ms. Burleson confirmed.

Motion:

Commission Ferrell made a motion that the DAQ proceed to the EMC to consider temporary rule amendments to the PSD rule for GHG and the Title V permit applicability rule. Commissioner Wilsey seconded the motion. The motion was unanimously approved by the Committee.

Commissioner Raymond made a motion that the DAQ proceed to the EMC to request approval to proceed to public hearing and that the Chairman appoint a member of the Commission to serve as a hearing officer regarding this temporary amendment. Commissioner Carroll seconded the motion. The motion was unanimously approved by the Committee.

Agenda Item #6, Request to Proceed to Hearing on Revision to Ambient Standard for Particulate Matter (PM2.5) (524) (Joelle Burleson, DAQ)

The DAQ requested the AQC's approval to proceed to the EMC to request to proceed to public hearing to consider an amendment to Rule 15A NCAC 02D .0410 to update the ambient standards for PM2.5 to reflect the 2012 standard.

The revisions are the result of the EPA's every five year review of the National Ambient Air Quality Standards (NAAQS) required under the Clean Air Act (CAA) and also responded to a court remand of portions of the agency's 2006 decision on the PM2.5 standards. State implementation plans (SIPs) demonstrating that the state has the infrastructure in place to address attainment and maintenance of the NAAQS are required to be submitted to the EPA within three years of revision of the NAAQS. Amendments to 15A NCAC 02D .0410 are necessary to reflect the revised NAAQS for PM2.5 in the state ambient air quality standards rule as part of that process. The OSBM reviewed an analysis for the proposed amendment to the rule and the analysis was certified by OSBM on August 15, 2014. The proposed rule amendment was determined not to require a fiscal note.

Discussion:

Chairman Hutson asked whether the local programs have to change their regulations and standards and whether the EMC has to approve those changes.

Ms. Burleson clarified that the local programs tend to adopt the rules that are the same as they are adopted at the state level. Once the state adopts its rule, the local programs will go through their rulemaking process to adopt the same as what the state has adopted. If the local programs desire to make a significant change that would be more stringent, they would need to come to the Commission to make those changes. The DAQ would have to review those actions as proposed and when finalized forward them to the EPA

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for incorporation into the SIP. Unless the local programs want to impose more stringent rules, it is not anticipated that those rules would come back before the Commission.

Chairman Huston also asked whether the local programs are doing a temporary rule change regarding the GHG to insure that applicants and the regulated community in those counties are not going to be subject to rules that they haven't changed.

Director Holman said she would look into it and report back to the Committee and the Commission.

Chairman Carter commented that this issue was briefly discussed at the public hearing. He said the process isn't exactly clear. He said each of those programs probably have different procedures. He said it might be worth taking a look at how that interaction works. He mentioned that there had been some issue with the Title V rules and the Title V permit fees but he doesn't recall any other issues since then. He suggested it would be worthwhile to consider that process as there are people who will be affected by the GHG and PM2.5 rules. He added that all areas are currently in attainment for the standard, which is an improvement.

Ms. Burleson noted that there are participants in DAQ's internal workgroups from the local programs. They are aware of the actions being prepared to put forth to the EMC.

Chairman Carter asked whether the local programs receive notice of rule changes that are adopted by the Commission.

Ms. Burleson confirmed that the local programs are on the DAQ's mailing list to receive notices of rule changes in addition to the internal meetings they participate in.

A commissioner had a question regarding the statement that the cost implications of the relocation of the monitoring station in Mecklenburg County will be negligible. He asked whether the attainment will be affected by the relocation.

Ms. Burleson said that the DAQ does not believe that the relocation will affect the attainment status.

Director Holman added that we see consistent values across the Piedmont area of the state and would anticipate similar readings compared to other monitors. New violations are not expected as a result of moving the monitor.

Motion:

Commissioner Raymond made a motion that the DAQ proceed to the EMC to request approval to proceed to public hearing regarding this revision. Commissioner Carroll seconded the motion. The motion was unanimously approved by the Committee.

Agenda Item #9, Director's Remarks (Sheila Holman, DAQ)

Director Holman advised that we have clean PM2.5 monitors throughout North Carolina. On August 19, 2014, Governor McCrory received a letter from the EPA acknowledging the clean PM2.5 monitors and indicating that the EPA agrees with the state's recommendation to designate all areas as attainment for the 2012 PM2.5 standard.

1. Sulfur Dioxide (SO₂) Designations Litigation

The EPA has put out for comment a proposed consent decree agreed to by the EPA and two of the petitioners in the case. It was not agreed to by North Carolina or the other intervening states. EPA took comments on that proposed consent decree. The decree would set a designation schedule to designate some areas within sixteen months of the consent decree being entered. Most areas would be

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designated in either 2017 or 2020. North Carolina opposes the consent decree primarily because it does not conform with the requirement under the CAA that all areas be designated no later than three years following the promulgation of the standard. The SO₂ standard was finalized by EPA in June 2010. The EPA filed the proposed consent decree with the Northern District of California Court on August 8, 2014. North Carolina filed a motion opposing the consent decree on August 22, 2014. A hearing is scheduled for October 17, 2014.

Discussion:

Chairman Carter asked who was representing the state in this litigation.

General Counsel Mary Lucasse answered that it was Amy Bircher's section in the Department of Justice.

2. Section 111(d) Proposed Guidelines

The complex nature of this rule was noted during the July meeting. The DAQ continues to review the details of the proposed rules. Director Holman submitted testimony at an EPA hearing in late July and those hearing comments are posted on the DAQ's website noting some of the legal issues with the rulemaking and also suggesting that the state requirements for developing plans be put in abeyance until all the upcoming legal challenges are resolved in order to reserve limited state resources. The DENR Secretary Skvarla submitted a letter to the EPA requesting an extension of the comment deadline by 90 days.

3. Ozone Season Update

NC is almost through the main part of the ozone season and hasn't had any exceedances of the 2008 ozone standard. If the season ended today, even the Charlotte area would be in attainment of the 2008 standard. The DAQ hopes to move forward with the redesignation request for the Charlotte area, which is the only nonattainment area in NC currently.

Commissioner Ferrell asked whether the ozone season can be normalized for weather. He asked if we actually improved or was the weather a factor.

Director Holman clarified that the weather is always a factor. We have been cooler and wetter than normal which is conducive to low ozone levels. It is hard to normalize; however, the standard is based on a three-year average.

Chairman Carter reminded the Committee that the AQC and EMC Calendars and the Status of Rulemakings Hearing and Rule Development were available in their agenda packages. He also reminded the AQC that the next meeting is scheduled for November 12, 2014. Chairman Carter adjourned the meeting.