

**Air Quality Committee Meeting Minutes  
July 9, 2014**

The Air Quality Committee (AQC) of the Environmental Management Commission (EMC) met on July 9, 2014, in the Ground Floor Hearing Room of the Archdale Building. The AQC members present: Mr. Gerard Carroll, who served as acting chair, Mr. Thomas Craven, Mr. E.O. Ferrell, Mr. Benne Hutson, Ms. Julie Wilsey (by telephone) and Dr. Lawrence Raymond. 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 were also in attendance.

**CALL TO ORDER (Acting Chairman Gerard Carroll)**

Acting Chairman Carroll called the meeting to order at approximately 11:00 a.m.

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

Acting Chairman Carroll reminded the AQC members of the State Government Ethics Act regarding conflicts of interests or appearance of conflicts of interests. Hearing none, Acting Chairman Carroll proceeded.

**MINUTES**

**Agenda Item #2, Review and Approval of the March Meeting Minutes**

Acting Chairman Carroll entertained a motion to approve the March 2014 AQC meeting minutes. Mr. Hutson moved to approve the minutes and Mr. Ferrell made a second motion. The minutes were approved.

**Agenda Item #3, Review and Approval of the May 2014 AQC Meeting Minutes**

Acting Chairman Carroll entertained a motion to approve the May 2014 AQC meeting minutes. Mr. Hutson moved to approve the minutes and Mr. Ferrell made a second motion. The minutes were approved.

**CONCEPTS**

**Agenda Item #4, Streamlining of Permit Exemptions Rule (525) (Patrick Knowlson, DAQ)**

Mr. Knowlson presented on streamlining the permit exemptions rule. Rule 15A NCAC 02Q .0102, Activities Exempted From Permit Requirements governs activities exempted from air quality permit requirements. for non-Title V facilities. Over the years the rule has been amended a number of times and as it has been amended it has grown in size and complexity. As a result it is sometimes difficult for both regulated community and staff to use and understand the rule.

To address this issue the DAQ formed an internal subcommittee of its existing Permits Workgroup to go through the rule and try to simplify it for everyone. Through this process the rule has been reviewed a number of times internally. Next the Division ~~also~~ plans to bring draft rules to a stakeholder process to

seek external stakeholder input on the draft amendments later this summer. In addition to the simplified rule, there will also be a few new rules in Section 02Q .0900, permit exemptions for certain categories of facilities for which the Division will develop compliance assistance plans.

Mr. Carroll asked whether there was an estimated timeframe for the DAQ to complete its work. Director Holman advised that a stakeholder meeting is planned for August and DAQ will follow the meeting by developing the fiscal analysis. She said the fiscal analysis would be brought before the AQC at the earliest in November depending on how soon the fiscal analysis can be completed.

Acting Chairman Carroll advised to proceed with this concept.

**Agenda Item #5, Clerical Revision to 15A NCAC 02Q .0711 (526) (Patrick Knowlson, DAQ)**

Mr. Knowlson presented a concept on clerical revisions to 15A NCAC 02Q .0711. This is the rule that contains the Toxics Permitting Emissions Rates or TPERs. The EMC approved a group of air toxics rules in March 2014 which became effective May 1, 2014. During this process DAQ staff recognized that in the table in Paragraph (b) of 02Q .0711 for unobstructed vertical stacks, one value was in the wrong column, and two values were missing from the table. While this is a minor clerical revision, it is not included in what G.S. 150B-21.5 specifies can be changed as a technical correction.

The rule is proposed to be revised to reflect the TPER values for three pollutants in the appropriate columns. 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.

Mr. Carroll clarified that the DAQ would be back before the AQC in September with a proposal and the Committee will have the opportunity to vote in favor and the proposal can then be brought before the EMC. Mr. Knowlson said that a fiscal note would probably not be required since all of the impacts were included in the original rulemaking; however, it will require OSBM (Office of State Budget and Management) approval.

With no further comments or questions, Acting Chairman Carroll advised to proceed with this concept.

**DRAFT RULES**

**Agenda Item #6, Revisions to Open Burning Rules to Reflect S.L. 2013-413 (521) (Joelle Burleson, DAQ)**

Ms. Burleson welcomed Dr. Raymond to the AQC.

Ms. Burleson presented draft amendments to the open burning rules mandated by Session Law 2013-413. The amendments in 15A NCAC 02D .1903 allow open burning of land clearing and right of way maintenance materials offsite under certain setback and other criteria specified in the rule and are required

be substantively identical to the statutory language in Part V, Section 28 of the Session Law. A fiscal analysis was conducted pursuant to requirements of the Administrative Procedures Act (APA) and approved by Office of State Budget and Management and included in the AQC agenda. Also the draft amendments to 02D .1901 and .1902 update references to the North Carolina Forest Service to reflect its current name.

Ms. Burleson advised that the DAQ did expect to request the 30 day waiver from the EMC the following day pending AQC approval. If approved by the EMC, the DAQ plans to hold one hearing during the September timeframe. She advised that the Director recommends that the Commission approve the waiver, proposed rules and fiscal note along with authorizing a public hearing(s) on these items and that the Chairman appoint a member(s) of the Commission to serve as hearing officer(s).

Mr. Ferrell made a motion to approve the 30 day waiver and take this draft rule to the EMC. Ms. Wilsey seconded the motion. The motion was approved.

Mr. Ferrell made a motion to move to public hearing and approve the fiscal note. Ms. Wilsey seconded the motion. The motion was approved.

Ms. Burleson presented the following two agenda items.

**Agenda Item #7, Revise Permit Term to Reflect S.L. 2013-413 (522) (Steve Schliesser, DAQ)**

In Mr. Schliesser's absence, Ms. Burleson presented a proposed amendment to 15A NCAC 02Q .0308, Final Action on Permit Applications, noting that it was in response to Session Law 2014-413, Part V, Section 29. The session law requires that the agency extend the permit duration for non-Title V facilities from five years to eight years. The rule language is required to be substantively identical to the statutory language.

A fiscal note was developed and approved by the OSBM. The fiscal note estimates approximately 2400 facilities in the regulated community would be expected to receive some degree of relief from delay of periodic consultant charges to prepare items associated with permit renewals such as emissions inventories. The fiscal impact during the sixth through eight years, from 2019 through 2021, is estimated to be 0.6 million dollars to 1.4 million dollars, with no impact during the first five years (2014 to 2018). Because of its cyclical nature during the long period of analysis there are 15 years for which the fiscal impact ranges between 0 to 512,000 dollars additional costs when compared to the regulatory baseline. Maximum annual impacts occur in the seventh and eight years of the repeating eight-year cycles when total savings reach 1.5 million. Impacts to agency are a matter of prioritization of activities and shifting of workload rather than reduction in overall workload. The opportunity costs and savings to state and local government agencies, along with the private sector savings, cause substantial economic impacts under the APA; however, the rule change itself has no impact beyond that created by the underlying statute since its purpose is solely to bring the related rule into agreement with the revised statute. Ms. Burleson requested approval of the proposed amendment and fiscal note and 30 day waiver to proceed to the EMC to request to proceed to public hearing.

Mr. Ferrell asked whether there were any downsides to revising this rule. Ms. Burluson explained that something that is significant that requires a modification would be captured prior to a standard renewal. Director Holman added that during DAQ's inspection visits which are required for these sources every year or every other year, the inspectors are looking at any federal rules that may have passed and they communicate that information to the company. It may just be that the permit isn't caught up to reflect these federal requirements until that annual renewal.

Mr. Ferrell asked what the cost is for the permittee to go through the permitting process. Ms. Burluson advised that some of those costs are reflected in the fiscal note in terms of what it costs to prepare an emissions inventory. Ms. Burluson confirmed that those costs are reflected in the \$1.5 million total costs savings referred to in the fiscal analysis.

Mr. Hutson clarified that this was a legislative change where previously the statutory language had been changed which said permits "may be issued" for up to eight years. Some of the regulated community was concerned that although that discretion was given, not many permits had been issued for an eight-year term. This was a legislative result that made it mandatory. Director Holman explained that the rule currently said that the permit is to be issued for a period of five years and the legislature said the permit could be issued for up to eight years. Because of other priorities, such as the Air Toxics rule changes, the DAQ has not proceeded to make the rule change to allow a longer permit term. The legislation was changed again to say the permit term "shall be" issued for a term of eight years.

Ms. Wilsey asked whether the permit holders would be notified in writing of when their next renewal is due during the process of the change being made. Director Holman advised that since the legislation passed in 2013, all permit renewals for the next term will be for eight years. Therefore, all permit holders would be subject to the eight year term upon their next renewal.

Mr. Ferrell made a motion to approve the 30 day waiver to go to the EMC. Mr. Hutson seconded the motion. The motion was approved.

Mr. Hutson made a motion to proceed to public hearing and approve the fiscal note. Mr. Ferrell seconded the motion. The motion was approved.

### **July EMC Agenda Items**

#### **Agenda Item #8, Request for 30-day Waiver and Request to Proceed to Public Hearing on Revisions to Open Burning Rules to Reflect S.L. 2013-413 (521) (Joelle Burluson)**

No additional discussion. See agenda item 6 above for background.

#### **Agenda Item #9, Request for 30-day Waiver and Request to Proceed to Public Hearing to Revise Permit Term to Reflect S.L. 2013-413 (522) (Steve Schliesser, DAQ)**

No additional discussion. See agenda item 7 above for background.

## INFORMATION ITEMS

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

Director Holman thanked Mr. Carroll for serving as AQC chair in Chairman Carter's absence. She also extended her welcome to Dr. Raymond.

#### Approval of Relaxation of Federal Reid Vapor Pressure Requirements for the Triad and Triangle

Director Holman reminded the Committee that in the 1990's, these two areas were designated as nonattainment for the 1-hour ozone standard. One of the requirements for nonattainment areas at that time was that they have lower fuel volatility in the summer. As those areas came into compliance with the standard and later with the 8-hour standard, the Division was asked to evaluate whether those volatility requirements for the summer could be relaxed. The Division performed a technical analysis of the emissions changes due to relaxing the fuel volatility and provided that information to the EPA. On May 15, 2014, Administrator McCarthy approved the relaxation of the fuel volatility in these two areas. Director Holman said that the result should mean lower gasoline prices in the Triad and the Triangle during the summer months.

Mr. Dawson asked whether there is a downside. Director Holman replied that this was a control measure geared at reducing volatile organic compounds (VOCs) and because the majority of our VOCs in these areas derive from the vegetation, this minor change does not show that it would cause an increase in ozone concentrations.

Mr. Carroll asked whether in order for there to be some cost savings, there would have to be some change on the part of the fuel providers who are blending the fuel for North Carolina. Director Holman explained that those fuel providers were blending for these two areas plus Charlotte and the Reid Vapor Pressure requirement was 7.8 pounds per square inch, or psi, and in the rest of the state, the Reid Vapor Pressure requirement is 9.0 pounds per square inch. This action relaxes the Reid Vapor Pressure requirement from 7.8 to 9.0 psi.

Mr. Dawson asked whether this action has taken place and Director Holman confirmed it has. He asked whether the fuel prices had decreased in those areas. Director Holman said that fuel marketers in these two areas do report seeing decreased fuel prices.

Acting Chairman Carroll asked whether anyone in the industry has estimated the costs. Director Holman said that in 2010-2011, the lower volatility gasoline was costing 3 - 9 cents per gallon more.

#### SO2 Designations Litigation Update

Director Holman said that in 2010, EPA promulgated a new National Ambient Air Quality Standard (NAAQS) for sulfur dioxide (SO2). It is a 1-hour standard. The Clean Air Act (CAA) requires that within two years or up to three years if enough information is not available, areas should be designated as either attainment (meets the standard), nonattainment (does not meet the standard) or unclassifiable (not enough information to make a designation). The EPA had until June 2013 to designate areas for the SO2 standard. The EPA failed to do that and the SIERRA Club and the Natural Resources Defense Council

(NRDC) filed petitions because EPA failed to carry out their statutory duty. North Carolina and seven other states filed motions to intervene in this litigation. In December 2013, the case was filed with the Northern District of California. The court agreed that EPA had failed to carry out its statutory duty and directed all parties, including North Carolina to look for a remedy. Those discussions on a remedy continued until about mid-May at which time the SIERRA Club and the NRDC presented all parties with a consent decree which North Carolina and the other states decided not to sign on to. The agency put the consent decree out for public comment in June with the comment period ending on July 3 with nineteen comments being received. The next step is for EPA to study the comments and decide whether to take the consent decree back to the Northern California District Court and request it to be filed, at which time the DAQ would be asking for a hearing to lay out concerns regarding the consent decree. The consent decree would basically designate the largest sources sixteen months after the consent decree was filed. In 2017 those designations would occur for other sources. The states would have to perform modeling to determine whether the area was attaining or violating the standard and in 2020, if the states elected monitoring versus modeling, the state would have to provide the monitoring data and the final designations would occur in 2020. The basic concern is that this is not in compliance with the CAA requirements that the designations happen within three years of the standard being issued. The DAQ will continue to follow this case and will be part of the hearing process probably in August or September 2014.

#### Sulfur Dioxide (SO<sub>2</sub>) Data Requirements Rule

This is a rule that EPA has proposed to implement requirements of the new short-term standard. The EPA has laid out an emissions threshold proposal to direct states regarding which sources need to be evaluated. The EPA has proposed three options. The preferred option covers any sources that are greater than 1000 tons of SO<sub>2</sub> per year in metropolitan areas with populations greater than 1,000,000 and outside of those large urban areas states with sources greater than 2,000 tons per year. The second option would cover any metropolitan area with sources greater than 2,000 tons of SO<sub>2</sub> per year or outside of the urban areas of 5,000 tons per year. The third option would cover sources with greater than 3,000 tons per year of SO<sub>2</sub> year in the urban areas and sources greater than 10,000 tons per year elsewhere. This data requirements rule is currently out for comment with the comment period closing on July 14, 2014. The DAQ is in the process of reviewing and preparing comments regarding that rule. Director Holman explained the scope and the impact of that rule by saying that if the threshold is sources greater than 1,000 tons of SO<sub>2</sub> per year everywhere in North Carolina there would only be 10-12 sources that would need to be evaluated. Those would primarily include power plants and large paper mills. Director Holman explained that this rule is connected to the SO<sub>2</sub> litigation because these data requirements set the expectations for the sources the states need to evaluate.

#### Alternative Best Available Retrofit Technology (BART) Demonstration

Director Holman referred to EPA's 1999 Regional Haze rule which requires states to address the visibility impacts in the Class I areas. North Carolina was part of the ten-state effort in the southeast to evaluate regional haze and understand what is required to improved visibility in areas like the Great Smoky Mountains National Park. The DAQ submitted a Regional Haze Plan that included addressing these BART requirements. Those BART requirements were for those grandfathered sources that were not covered by the New Source Performance Standards (NSPS). DAQ's SIP followed EPA's recommendation that the transport rule was better than BART. EPA's analysis was that there were

greater emissions reductions and greater visibility benefits coming from the transport rule. The Clean Air Interstate Rule (CAIR) was litigated and remanded back to EPA which led to the Cross State Air Pollution Rule (CSAPR) which was litigated and vacated and most recently was re-instated. The reality is that relying on the CAIR other than BART leaves a deficiency in our Regional Haze SIP. Therefore, the DAQ has developed an alternative which relies more on the Clean Smokestacks Act (CSA). The DAQ has sent that analysis to EPA and the Federal Land Managers (FLM) for a sixty-day comment period. It will then go out for public comment later in August.

Mr. Ferrell asked what the likely result is for implementing this alternative. Director Holman said there was no different result on the ground expected and the impact to the state is that we finally have a complete and approvable Regional Haze SIP. She explained that there would not be a requirement for new control equipment. She believes that they will be able to demonstrate that the CSA as a whole was better than BART.

#### Transportation Facilities 110(l) Demonstration (anti-backsliding provision)

Director Holman reminded that the DAQ is currently going through rulemaking to eliminate transportation facilities permitting because that rulemaking is focused on the Carbon Monoxide (CO) emissions and has become a paperwork exercise not resulting in any additional CO emission reductions. She explained that in order to repeal the rule, the DAQ has to provide this anti-backsliding SIP to EPA. The DAQ has submitted a preliminary draft to EPA. Following receipt of comments, the DAQ will take that demonstration out to public comment later this summer.

#### Update on Transport

Director Holman advised that most recently, the Supreme Court did uphold the CSAPR rule and last week the EPA filed a motion with the DC Circuit to lift the stay on the CSAPR. The CSAPR had established statewide emissions budgets for 2012 and 2014. During the litigation the rule was stayed. The EPA is asking that the CSAPR emission budgets take effect January 1, 2015 and the 2014 budgets take effect January 1, 2017. The DAQ is evaluating whether it will file a court motion in response.

#### Section 111(d) Proposed Guideline

Director Holman said that in September 2013 the EPA promulgated New Source Performance Standards (NSPS) for greenhouse gas (GHG) emissions for new power plants. On June 2, 2014, the EPA proceeded to propose guidelines for GHG emissions for existing power plants. The EPA has created a guideline that is based on four building blocks. Those building blocks are:

1. improving efficiency of individual coal-fired units
2. increasing use of existing natural gas units in place of higher emitting coal-fired units
3. expanding low and zero carbon emissions generation such as renewable energy sources for nuclear energy
4. implementing the demand side energy efficiency

The EPA applied each building block to the pounds of carbon dioxide (CO<sub>2</sub>) megawatt emission rate based on the 2012 emission rate and created targets for both 2029 and 2030. The rule is over 600 pages of double-paged text. The DAQ is still in the process of evaluating the rule and beginning to prepare

comments. The EPA has given 120 days to provide comments and the typical comment period is around 30-60 days.

#### Court Ruling on Greenhouse Gas Permitting

On June 23, 2014, the Supreme Court issued their ruling on the EPA's GHG permitting interpretations. The EPA upheld the rule in certain parts but struck down other parts. The Supreme Court decision overturned EPA's rule to tailor the statutory thresholds that apply GHG requirements only to the largest emitters. The Supreme Court said that the EPA did not have the authority to change those emission thresholds. The EPA upheld that the GHG BACT (Best Achievable Control Technology) requirements apply to new or modified facilities already needing a permit due to the emission of conventional air pollutants. The DAQ is still studying the Supreme Court decision and will be making a determination whether to go forward with proposed rule changes to address the sources that would not have been subject to Prevention of Significant Deterioration and Title V permitting requirements except for the fact that they had GHG emissions. Director Holman advised that a proposal and action would be coming up in the September AQC meeting.

Mr. Ferrell asked what the process is for determining North Carolina's remarks to the proposed rules and how those comments are gathered. Director Holman explained that this situation with respect to 111(d) is somewhat unique in that it takes a CAA provision and forces the DAQ to look at energy policy. The DAQ will be coordinating with the stakeholders and also with the NC Utilities Commission (NCUC) and others. She said those discussions are just now beginning. She said that the Governor's Office will be involved as this is a very impactful rule in North Carolina and the DAQ will insure that all the necessary stakeholders are involved in the process.

#### Updates

Director Holman updated the Committee that William Willets who presented an overview at the May meeting has been named the Permits Section Chief for the DAQ.

Finally, Director Holman shared an update on the ozone data for the summer. To date, there has not been an exceedance of the 2008 8-hour ozone standard in North Carolina. She said we are about midway through the core part of the ozone season and she will provide another update at the September meeting.

Mr. Hutson asked whether there is anything of note pending in the proposed legislation in the General Assembly that may require changes in air quality rules. Director Holman said that there is proposed legislation in S734 which proposes to allow burning of any size logs or stumps in a residential setting which has no setback requirements. The legislation also declares that such burning would not create a nuisance.

With no comments or questions regarding the AQC and EMC calendar or the status of rulemaking hearings and rule development or otherwise, Acting Chairman Carroll advised that the next meeting is scheduled for September 10, 2014 and adjourned the meeting.