

**ENVIRONMENTAL MANAGEMENT COMMISSION
AIR QUALITY COMMITTEE MEETING SUMMARY
September 13, 2017
Archdale Building-Ground Floor Hearing Room
9:00 AM - 10:30 AM**

MEETING BRIEF

During their September 13, 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 temporary rulemaking to amend/extend the effective date of the startup, shutdown and malfunction (SSM) rules due to uncertainty over ongoing litigation in federal courts.
- Approved DAQ's request to go to the EMC for approval to proceed to public hearing on proposed rule revisions of Session Law 2013-413 (H74) Group 3 air quality rules 15A NCAC 02D .1100, .1201-.1203, .1205-.1208, and .1211-.1212 and 02Q Section .0700.
- Approved DAQ's request to go to the EMC for approval to proceed to public hearing on revisions to motor vehicle inspection and maintenance (I/M) rules to change applicability to only vehicles within 20 model years of the current year and for H74 readoption of 15A NCAC 02D .1000 rules.
- Received updates on Hurricane Irma's impacts to state air quality monitoring and DAQ's role the Atlantic Coast Pipeline project.

AQC MEMBERS IN ATTENDANCE

Dr. Stan Meiburg, AQC Chairman
Mr. Charles S. Carter, AQC Vice Chair
Mr. John D. "JD" Solomon, EMC Chairman
Mr. Gerard Carroll
Ms. Marion Deerhake
Dr. Suzanne Lazorick
Ms. Julie Wilsey

OTHERS IN ATTENDANCE

Mr. William "Bill" Puette, EMC
Dr. Albert R. Rubin, 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 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 July 12, 2017 Meeting Minutes

Chairman Meiburg inquired if everyone had been able to review the minutes from the July meeting and if there were any changes or corrections. Commissioner Deerhake cited a correction on page three, paragraph four, to incorporate her spoken request that the proposed rules include language for periodic review and assessment as to whether the list of exempt or non-exempt counties in the mobile source I&M program remains appropriate, given current air quality conditions or rule changes.

Commissioner Deerhake also stated that it would be helpful if future AQC minutes would state the speaker and summarize their comments. Chairman Meiburg asked for a motion to approve the amendments to the July 12, 2017 meeting minutes. Commissioner Deerhake made a motion to approve and Commissioner Lazoric seconded. The motion was unanimous.

Chairman Meiburg asked for a motion to approve the July 12, 2017 minutes as amended. Commissioner Carroll made a motion to approve the minutes and Commissioner Wilsey seconded. The minutes were unanimously approved.

RULEMAKING CONCEPTS**Agenda Item #3, Startup, Shutdown and Malfunction (SSM) SIP Call Temporary Rule (545)****Description:**

Joelle Bursleson, on behalf of DAQ, summarized the current state of the EPA SSM SIP call to correct specific provisions in state implementation plans and the resulting, ongoing litigation in federal courts. 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 (CAA) and recent court decisions concerning SSM emission limit exceptions. EPA objected to two generally applicable provisions in the North Carolina SIP that provide exemptions for emissions exceeding otherwise applicable SIP emission limitations at the discretion of the state agency during malfunctions (15A NCAC 02D .0535(c)) and startup and shutdown (15A NCAC 02D .0535(g)).

The CAA 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 states subject to the SIP call action was November 22, 2016. Several states including North Carolina disagreed with EPA regarding the validity of the SSM SIP call and entered litigation. Nonetheless, to meet its CAA obligation on September 8, 2016, the EMC adopted revised rules regarding SSM to address the SIP Call and DAQ submitted the rules by the November 22, 2016 deadline.

The rules consist of 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*. The rules include applicability language contingent on the outcome of the pending litigation. The rule amendments removed the exemption from existing 02D .0535(c) and (g) and do not include such exemptions in new Rule 02D .0545. For startup and shutdown, 02D .0545 allows a facility to demonstrate compliance with the applicable existing emission limits, generally available or analogous work practice standards, or source specific startup and shutdown work practice standard permit limits. For malfunctions, a facility may demonstrate compliance with the applicable existing limits or with source specific malfunction work practice standard permit limits.

15A NCAC 02D .0545 will go into effect and remain in effect in the event EPA's SIP call withstands ongoing litigation. In the event EPA's SIP call does not withstand the litigation, amended Rule 02D .0535 will be in effect. Any further rule changes needed as a result of the outcome of litigation would go through the rulemaking process with opportunity for public comment. Per instruction of the EMC to allow time for conclusion of

litigation prior to implementation, the rules were filed with an effective date of May 22, 2018 to align with the CAA 18-month timeframe for the EPA to act on state's SIP call submissions.

Given a recent court order holding oral arguments in abeyance indefinitely and a recent EPA report that stated the SSM SIP call is still under review, there is uncertainty as to whether the ongoing litigation will be resolved prior to the May 22, 2018 effective date of the state rules. To maintain the intent of the EMC that litigation be concluded prior to the rules becoming effective and to avoid potentially unnecessary use of resources preparing and processing source specific work practice standard submittals, a revision to the rules may be needed to adjust the effective date of the rules to better align with the outcome of the pending litigation. Due to the length of the regular rulemaking process, temporary rulemaking would need to be conducted to achieve such an adjustment prior to the current rules' effective date of May 22, 2018. Permanent rulemaking would also have to be completed by the EMC prior to expiration of the temporary rule for adjustments to remain in place and the permanent rule could be different than the temporary rule.

Discussion:

Chairman Meiburg asked for clarification as to whether 15A NCAC 02D .0545 will be approvable by the EPA. Ms. Burleson stated that the EPA provided comments stating their reservations with certain language in the rule, but the EMC did not incorporate their comments in the final rules submitted on November 22, 2016.

Chairman Meiburg asked whether Rule 15A NCAC 02D .0545 is still subject to potential adverse action by the EPA. Ms. Burleson stated that the DAQ hasn't received feedback since the final submittal. Director Abraczinskas clarified that it's hard to predict how the EPA may view the submittal; especially with the knowledge that the EPA is revisiting the initial policy action.

Chairman Meiburg asked if it was fair to assert that the DAQ is avoiding another rulemaking that will undo what the agency recently accomplished, and specifically whether the DAQ is creating a contingency plan if the EPA changes its mind with respect to the SSM rule's substance. He also clarified that he understands why there may be a need for administrative convenience. Ms. Burleson answered that the DAQ does not want to impose unnecessary regulatory burdens or ambiguity on facilities; as it is part of the mandates under North Carolina's Administrative Procedures Act (APA). Chairman Meiburg stated that while the EPA has taken the position to delay the litigation, the rule and obligations are still in effect. Ms. Burleson stated that the DAQ feels it has met its obligation under the November 22, 2016 submittal.

Commissioner Deerhake asked whether Ms. Burleson had notes on the EPA's comments. Ms. Burleson confirmed she had notes on the subject and stated the full hearing record is available on the EMC's website. Ms. Burleson specified that the EPA had concerns about the rescission clause (if/then statement in the rules) and wanted clarification that the Director's consideration of factors determining enforcement response do not limit the EPA or the public's ability to pursue enforcement. The EPA also wanted site-specific work practice standard permit limits to be approved into the SIP through the revision process (the DAQ disagrees).

Commissioner Solomon asked for clarification about the downside of not changing the effective date, especially since the DAQ has been through the Rules Review Commission (RRC) process, SSM exemption claims are not common, and the rules are on the books. Commissioner Solomon also wanted clarification on what happens if the rule lapses and the effects on industry. Commissioner Carter clarified that the plan has been submitted to the EPA but it has not been approved. However, there is still litigation and uncertainty about the substance of the EPA rule. Ms. Burleson stated that the lack of clarity for the applicability phrase translated to "extra effort and confusion" for potentially affected sources. Commissioner Solomon asked what "extra effort and confusion" meant. Director Abraczinskas answered that industry is preparing time and resources to comply with the new rule's potential May 2018 effective date. The uncertainty of the EPA's policy position, litigation, and stance on a future SIP submittal causes the DAQ to delay the effective date for customer service. Commissioner Carter stated that resources would be expended by both the regulated community and the regulators.

Commissioner Solomon expressed concerns about opening the rules for changes to the effective date, especially since resources have been allocated for debating the rules' contents in the past and the newly proposed changes will still cause speculation about the EPA's actions. Director Abraczinskas stated that the DAQ's position has not changed and that he believes the best practice is to delay the effective date until EPA's position is understood. Commissioner Carter summarized that the DAQ is delaying the effective date until there's finality in the EPA's decision. Chairman Meiburg expressed similar concerns as Commissioner Solomon. Chairman Meiburg also noted that while he sees the need to meet the May 2018 deadline with temporary rulemaking, it creates an additional cycle while EPA's stance is uncertain. Conversely, he does not want the state to be delayed indefinitely while waiting for a court decision.

Commissioner Carter wanted to clarify that the new rule imposes significant burdens; specifically, site-specific plans. The question is whether the state should impose the burdens on the regulated community and staff involved when the ultimate outcome is uncertain. Chairman Meiburg responded by stating he would feel uneasy if it were simply a matter of keeping in abeyance indefinitely.

Commissioner Deerhake asked whether the Commission believed the existing SSM rules are protective of North Carolina's citizens from a health and exposure standpoint; if not, the Commission is free to adopt the revised rules. While the present issue is procedural, it's not preventing the state from being more proactive and protective of air quality. Director Abraczinskas commented that the existing rule will remain in effect during the uncertainty; as it has for two decades in North Carolina. This rule only applies to a small universe of sources not subject to the federal emission standards. Commissioner Deerhake responded by stating that smaller sources need complete guidance because they may not have the internal capacity to prepare, may need more oversight, and may cause localized issues if there's a sudden release that wasn't oversighted by the state.

Commissioner Carroll asked whether the EPA was behind the rulemaking's original impetus and if they were reconsidering the initiative. Director Abraczinskas affirmed it originated from the EPA and is being reconsidered. Chairman Meiburg stated that the EPA has not exactly specified what they are doing; only that they're thinking about it. Commissioner Carroll specified that the state should defer action until the EPA's stance is known. Chairman Meiburg stated that the biggest concern is the potential exposure to air pollution for the citizens of North Carolina.

Commissioner Carroll asked whether the state could impose a rule that is more restrictive than federal requirements since the EPA already has a rule for this subject. Counsel Jennie Hauser answered that North Carolina's APA prohibits agencies from adopting regulations that are more stringent federal requirements. Chairman Meiburg stated that the Hardison amendment is a rule North Carolina imposed on itself, as the CAA does not prohibit it. Commissioner Carroll stated that the state would be constrained by the state law unless there was a legislative remedy. Director Abraczinskas stated that would be true if there was not a federal analogue. It may be considered an analogue since the EPA published their policy position in a SIP call, but the DAQ will research it. Commissioner Carroll stated that if the agency believed the current rules were not sufficiently protective, they could promulgate rules that would meet the deficiency. Director Abraczinskas stated that the DAQ would have brought something forward if there was a deficiency.

Commissioner Solomon stated that he is convinced to move forward if the rulemaking will only delay effective dates. Commissioner Wilsey stated that redundant comments could theoretically be addressed like the previous record if it is opened for complete rulemaking. Commissioner Deerhake stated that the AQC has historically reached consensus for concepts, not votes. She's not sure if there is consensus on this agenda item and will defer to the chairman for judgement. Chairman Meiburg specified that he understands from an administrative convenience standpoint why there is contingency rulemaking for the "if/then" provision and restated his concerns. Ms. Burleson clarified that the DAQ considered changing the rule language. It would not be functional to place a history note with "if/then" clauses.

DRAFT RULES**Agenda Item #4, Request for Approval of Proposed Rule Revisions and to Proceed to EMC for Approval to Proceed to Public Hearing on Proposed Rule Revisions 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)****Description:**

Joelle Burluson, on behalf of DAQ, requested AQC approval of proposed rule revisions for the readoption of several rules pursuant to S.L. 2013-413 (H74).

Rules 02D .1101 and .1108 are proposed for readoption without change. Rules 02D .1102, .1103, .1105, .1107, .1109 and .1112 are proposed without substantive changes and Rules .1104, .1106, .1100, and .1111 are proposed with substantive changes to update format of references, to remove obsolete language, and to remove the acceptable ambient levels (AALs) for six toxic air pollutants based on recommendations from the Secretary's Science Advisory Board on Toxic Air Pollutants (NCSAB).

Rules 02D .1203, .1205, .1207, .1211 and .1212 are proposed for readoption as a repeal to reflect the fact that the Division of Air Quality has not identified any existing sources subject to these rules. If a source subject of any these rules starts operations as a new or modified source, it will be subject to 15A NCAC 02D .0524, *New Source Performance Standards*. Two rules, 02D .1204, *Sewer Sludge Incineration Units*, and 02D .1210, *Commercial and Industrial Solid Waste Incineration Units* are being amended under separate rulemakings in accordance with EPA requirements. Rules 02D .1202 and .1208 are proposed for readoption without substantive changes, and Rule 02D .1201 and .1206 are proposed for readoption with substantive changes to update applicability statements, definitions, and the format of references, clarify exemptions, remove obsolete language, and make other language clarifications.

Rules 02Q .0701, .0707, and .0710 are proposed for readoption without substantive change. Rules 02Q .0701 through .0704, .0706, .0708, .0709, .0711 and .0712 are proposed for readoption with substantive changes. The proposed rule changes include updating the format of references, to replace a reference to language in 15A NCAC 02Q .0102 that was removed in a previous rulemaking, to remove the exemption for perchloroethylene dry cleaning because it is exempted by another exemption, to update the definition for combustion source and remove other unnecessary definitions, to clarify the Division of Air Quality is responsible for any toxics from sources exempt by 15A NCAC 02Q. 0702(a)(27), and to remove obsolete or redundant language. Rule 02Q .0713 is proposed for readoption as a repeal as the rule is deemed unnecessary.

Ms. Burluson also provided a list of additional recommended revisions to the rules that were not included in the September AQC agenda package and not yet posted to the DAQ website:

- In 15A NCAC 02D .1102, the reference in Paragraph (b) to Subchapter 02D is incorrect. The Paragraph should reference 02Q
- In 15A NCAC 02D .1105, the introductory statement should read "15A NCAC 02D .1105 is proposed for readoption without substantial changes as follows:"
- In 15A NCAC 02D .1202, the introductory statement should read "15A NCAC 02D .1202 is proposed for readoption with substantive changes as follows:"
- In 15A NCAC 02D .1206, the subparagraphs in Paragraph (d) of the rule need renumbering. Subparagraphs (d)(8) and (d)(9) should be (d)(7) and (d)(8)
- In 15A NCAC 02D .1208, subparagraph (e)(2), all references to 15A NCAC 02D .1201(c) should be changed to 15A NCAC 02D .1201(b) due to the proposed deletion of subparagraph (a) in 02D .1201

- In 15A NCAC 02Q .0702, subparagraph (18) should be edited to read, “combustion sources as defined in ~~Rule .0703 of this Section~~ 15A NCAC 02Q .0703, ~~except new or modified combustion sources permitted on or after July 10, 2010;~~ that are not exempt pursuant to Subparagraph (a)(27) of this Rule”
- In 15A NCAC 02Q .0712, the introductory statement should read “15A NCAC 02Q .0712 is proposed for readoption without substantive changes as follows:”

The Director recommends that the Committee approve the proposed rule revisions and readoptions for presentation to the EMC for approval to proceed to public hearing.

Discussion:

Commissioner Deerhake asked for more information about the stakeholder process and current participation. Ms. Burleson explained the stakeholder process and stated that the H74 Group 3 stakeholder meeting did not produce many comments and attendance has declined.

Commissioner Deerhake asked whether the NCSAB process removed chlorofluorocarbons (CFC’s). It was determined that the NCSAB process removed CFC’s since they are no longer produced. Commissioner Deerhake also asked whether the proposed removal of the combustor rules is due to the absence of applicable facilities in the near future for North Carolina. Ms. Burleson replied that the requirements of the rules of interest are for existing sources. Newer facilities will be required to comply with the New Source Performance Standards (NSPS). Commissioner Deerhake asked about the deletion of “ambient standards” from Rule 15A NCAC 02D .1206, Hospital, Medical, and Infectious Waste Incinerators. Ms. Burleson stated that this instance is seeking to incorporate the federal Emission Guidelines. The Hardison amendment requires state rules be no more stringent than federal rules when there is a federal analogue.

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 to request to proceed to public hearing. Commissioner Carter made a motion to approve and Commissioner Wilsey seconded. The agenda item was approved unanimously.

Agenda Item #5, Request for Approval of Proposed Rule Revisions and to Proceed to EMC for Approval 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)

Description:

Sushma Masemore, on behalf of DAQ, stated that the division is revising the I/M rules in accordance with Session Law 2017-10 to incorporate two key changes. First, Section 3.5(a) eliminates 26 of 48 counties from the I/M program. This change only required a revision to the N.C.G.S. and will become effective after the state submits a SIP modification with EPA’s approval. Subsequently, Section 3.5(b) changes vehicle model year coverage to a rolling 20-year period for vehicles older than three most recent model years, or vehicles with at least 70,000 miles on the odometer for the remaining 22 I/M counties.

A fiscal analysis was submitted to the Office of State Budget and Management (OSBM). OSBM determined that the rule revisions will affect the state government, local governments, the private sector, and will have a substantial impact. Ms. Masemore provided an overview of the fiscal impacts and explained technical details of the analysis. Overall, the costs and benefits are the same.

Rule 15A NCAC 02D .1002, Applicability is proposed for readoption with substantive changes consistent with the Session Law, while the remaining rules in 02D Section .1000 are proposed for readoption without substantive changes.

The Director recommends that the Committee approve the proposed rule revisions and readoptions for presentation to the EMC for approval to proceed to public hearing.

Discussion:

Chairman Meiburg asked whether EPA approved the SIP revision to remove 22 counties from the I/M program. Ms. Masemore replied that the DAQ provided a draft version and is diligently working on submitting the final version in the next couple of months. Chairman Meiburg also asked whether the DAQ has received preliminary feedback from the EPA regarding offsetting emissions reductions. Ms. Masemore stated that the EPA will not require offsetting since North Carolina is in attainment of all the NAAQS. The DAQ conducted air quality analysis to conclude the change would not interfere with the attainment or maintenance of the NAAQS. The DAQ's noninterference demonstration will be publicly noticed concurrently with rule revision. While there will be a NOx emissions increase of 0.8% in 2018, the impact will not negatively affect the ozone NAAQS. Director Abraczinskas commented that the emissions impact in future years will be lower due to vehicle fleet turnover and implementation of federal engine and fuel standards. Chairman Meiburg commented that there are not many vehicles in the fleet greater than 20 years old.

Motion:

Chairman Meiburg asked if there were any other questions for Ms. Masemore. No questions were identified. Chairman Meiburg asked for a motion to proceed to EMC to request to proceed to public hearing. Commissioner Carter made a motion to approve and Commissioner Carroll seconded. The agenda item was approved unanimously.

SEPTEMBER EMC AGENDA ITEMS

Agenda Item #6, Air Quality Agenda Items for the September EMC meeting – None.

INFORMATION ITEMS

Agenda Item #7, Director's Remarks

Director Abraczinskas stated that he wanted guidance on how to proceed with the third agenda item. Chairman Meiburg stated that the DAQ may proceed forward with draft rules, while keeping the major points of the Commission's discussion in mind. Director Abraczinskas also announced that Steve Hall recently rotated into the Rule Development Branch Supervisor role while Ms. Burlison leads the H74 readoption process.

The DAQ has received questions on Hurricane Irma's impacts to state air quality monitoring. Monitors in the Asheville and Mooresville region were shut down for hurricane preparedness. It turned out to be a great decision since there were several power outages in the region. The network will restart on September 13, 2017. As a side note, the Asheville Regional Office does not currently have power or telecommunications.

There's been interest in the Division's role regarding the Atlantic Coast Pipeline. The DAQ's involvement is limited to working on permitting a proposed compressor station in Northampton County. The three compressors and one emergency engine will be subject to the NSPS. There will be a public hearing and subsequent comment period for the proposed permit.

MEETING ADJOURNMENT

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