

AGENDA ITEM 4

Agenda Item: **Request to Proceed to EMC for Approval of Approach to Adjust Effective Date of 15A NCAC 02D .0535 and .0545 (545)**

Explanation: The Air Quality Committee 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 (SIP) Call.

On September 8, 2016, the EMC adopted revised rules regarding startup, shutdown, and malfunction to address the SIP Call issued by EPA. The 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 complete. 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 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 rule. As a result, to maintain intent of the EMC that litigation be concluded prior to the rules becoming effective, 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.

Recommendation: The Director recommends that the Air Quality Committee approve the proposed approach to adjust the effective date of 15A NCAC 02D .0535 and .0545 to proceed to the Environmental Management Commission for approval.