

Agenda Item: **Request for Approval of Hearing Officer's Report on Amendment to Rule 15A NCAC 02D .0902, Applicability.**

Explanation: The Environmental Management Commission held a public hearing on May 25, 2016 at 3:00 pm in Raleigh, NC. Lori Cherry, Program Consultant with the Division of Air Quality Ambient Monitoring Section served as hearing officer for the hearing.

The hearings considered the proposed amendment to Rule 15A NCAC 02D .0902, Applicability, to narrow the applicability of 15A NCAC 02D .0958, Work Practices for Sources of Volatile Organic Compounds, from statewide to the maintenance area for the 1997 8-hour ozone standard. The proposed amendment removes the Rule .0958 from the list of rules that apply statewide in Paragraph (e) of Rule 02D .0902, to comply with provisions of G.S.150B-19.1(a) to remove unnecessary requirements that are not expressly authorized by federal or State law and that are not necessary to serve the public interest and thus reduce burden upon regulated facilities.

In North Carolina there is an abundance of biogenic volatile organic compound (VOC) emissions. As a result, VOCs' impact on the atmospheric chemistry for ozone formation in North Carolina is limited by the amount of available nitrogen oxides (NOx) emissions for the VOCs to react with. Thus, reducing VOCs has negligible impact on ozone formation in North Carolina.

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.

Provisions of the Clean Air Act require that the VOC requirements previously implemented in an ozone nonattainment area prior to redesignation of the area to attainment remain in place; however, facilities outside the maintenance area counties for the 1997 8-hour ozone standard would no longer be required to comply with the work practice standards in 02D .0958.

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. In addition, these facilities would not have to conduct monthly visual inspections during normal operations, record results in a logbook, and provide a summary report of inspection observations semi-annually for the purposes of this rule. The time it takes to conduct these activities would be available for other work.

Two persons provided comments on the proposed amendments to Rule 15A NCAC 02D .0902, Applicability, during the comment period for the hearing record.

One person noted that more information and clarity is needed to make the demonstration that this change will not interfere with air quality or another other relevant requirement of the Clean Air Act. The Division anticipates that if there is a VOC emissions increase, it would not be expected to impact compliance with the ozone NAAQS because North Carolina is in a NOx limited environment for formation of ozone. The DAQ will provide any necessary demonstration of noninterference with attainment or maintenance of the NAAQS as part of the final submittal to EPA.

The second person indicated that federal guidelines, such as OSHA's HCS, do not create legal obligations for facilities housing VOCs and is not enough to ensure worker safety in facilities. OSHA notes on its web site that the Hazard Communication Standard is of critical importance to ensuring that hazardous chemicals are identified, and that proper measures are implemented in workplaces to achieve safe use and handling. While good work practices may result in benefits to workers, the purpose of the work practices in 02D .0958 is to assist in addressing ambient air quality matters.

No changes were made to the rule as a result of the comments.

Recommendation:

The Hearing Officer recommends that the proposed amendment as presented in Chapter II of this hearing report be adopted by the Environmental Management Commission.

STATE OF NORTH CAROLINA
DEPARTMENT OF ENVIRONMENTAL QUALITY
DIVISION OF AIR QUALITY

REPORT OF PROCEEDINGS OF PUBLIC HEARING
ON AMENDMENT TO RULE 15A NCAC 02D .0902,
APPLICABILITY

May 25, 2016
RALEIGH, NC

ENVIRONMENTAL MANAGEMENT COMMISSION

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CHAPTER I

Summaries and Recommendations

Proposed amendment to Rule 15A NCAC 02D .0902, Applicability

BACKGROUND AND SUMMARY

A public hearing was held in Raleigh, NC on May 25, 2016 to receive public comments on amendment to Rule 15A NCAC 02D .0902, Applicability. The rule is proposed to be amended to remove unnecessary burden associated with permitting and complying with the work practice standards in the Rule 15A NCAC 02D .0958, Work Practices for Sources of Volatile Organic Compounds.

Rule 15A NCAC 02D .0902, Applicability, defines the general applicability of the various VOC related rules in Section .0900 in terms of generally applicable thresholds, geographic extent, and attainment status of a location relative to the ozone national ambient air quality standards (NAAQS). The bulk of the rules in the Section establish reasonably available control technology (RACT) requirements based on EPA control technique guidelines (CTGs) applicable to sources that are in areas not attaining the NAAQS for ozone. Such areas are referred to as nonattainment areas. Former nonattainment areas that have come into attainment with a NAAQS after applying RACT requirements are referred to as maintenance areas. Some of the rules in the Section such as the Rule 15A NCAC 02D .0958, apply statewide while others only apply to ozone nonattainment or subsequent maintenance areas. Currently, all areas of North Carolina are in attainment for the 1997 and subsequent ozone NAAQS; however, a maintenance plan for the 1997 8-hour ozone standard remains in place for the Charlotte area. Anti-backsliding provisions of the Clean Air Act require that RACT requirements implemented in an area prior to an area being re-designated to attainment of the NAAQS subsequently remain in place.

The work practices in .0958 are essentially designed to minimize or keep volatile organic compound (VOC) containing product evaporative losses down and include actions such as storing VOC materials in containers with tight lids when they are not in use, cleaning up spills as soon as possible, storing wipe rags in closed containers, and not splashing solvent during a cleaning process.

The proposed amendment narrows the current statewide applicability of work practice requirements under .0958 for the facilities with less than 100 tpy VOC emissions from statewide to the former Charlotte moderate nonattainment area for the 1997 8-hour ozone national ambient air quality standard (NAAQS), consisting of Cabarrus, Gaston, Lincoln, Mecklenburg, Rowan, Union counties and Davidson Township and Coddle Creek Township in Iredell County, which has become a maintenance area after applying RACT requirements. Anti-backsliding provisions of the Clean Air Act require that the VOC RACT requirements previously implemented in a nonattainment area prior to redesignation of the area to attainment remain in place. Rule 02D .0958 was implemented as part of the RACT requirements applicable to most sources of VOC prior to

the area's redesignation. As a result, sources in the maintenance area required to implement RACT requirements by a compliance deadline that preceded redesignation of the area to attainment and establishment of the maintenance plan for the 1997 8-hour ozone standard must continue to implement those requirements.

The amendments also make conforming changes to Paragraph (f) to update the current status of the area by adding the phrase "prior to January 2, 2014" to indicate that this area was designated as nonattainment only prior to January 2, 2014 which is the effective date of the redesignation. The current rule became effective prior to this date when this area still was designated as nonattainment. Finally, the amendments clarify the new status of the Rule 02D .0958 as applicable to facilities subject to RACT requirements by specifically including this rule in the list of the rules which are part of RACT requirements in Rule 02D .0902(f).

Provisions of the Clean Air Act require that the VOC requirements previously implemented in an ozone nonattainment area prior to redesignation of the area to attainment remain in place; however, facilities outside the maintenance area counties for the 1997 8-hour ozone standard would no longer be required to comply with the work practice standards in 02D .0958.

As a result of the amendments, affected facilities outside the maintenance area may incur some minimal savings of time due to elimination of monthly visual observation of work practices, monthly recording of those observations, and semi-annual reporting of the recorded observations for purposes of Rule 02D .0958. However, the affected sources will likely continue to maintain work practices for sources of VOC because they are also part of the manufacturers' Safety Data Sheets (SDS) that are enforceable by OSHA under the Hazard Communication Standard program and are longstanding, generally accepted industry good housekeeping type practices. The Division of Air Quality (DAQ) may experience some minimal time savings from having one less permit condition to include or inspect for compliance at a facility; however, most facilities have many other applicable requirements for which the agency would continue to permit, inspect, and provide compliance assistance.

The removal of the Rule .0958 from the list of rules that apply statewide in Paragraph (e) of Rule 02D .0902, meets provisions of G.S.150B-19.1(a) to remove unnecessary requirements that are not required by federal or State law and thus reduce burden upon regulated facilities.

PUBLIC COMMENTS AND RESPONSES THERETO

Comment: Mr. R. Scott Davis, Chief, Air Planning and Implementation Branch, noted that more information and clarity is needed to make the demonstration that this change will not interfere with air quality or another other relevant requirement of the Clean Air Act. He particularly paid attention to pages 6-7 of the Regulatory Impact Analysis suggesting that there may be an environmental impact besides a "time" impact that cannot be determined by the information described in this paragraph. While the VOC increase from this change is described in the Regulatory Impact Analysis, there should be more explanation on the impact of this increase in the final submission.

Response: Page 5 of the Regulatory Impact Analysis indicates that affected sources will likely continue to maintain work practices for sources of VOC even after they are no longer enforceable

by the Rule .0958 because they are also a part of such similar programs as the manufacturers' Safety Data Sheets (SDS) that are enforceable by OSHA under the Hazard Communication Standard program and are longstanding, generally accepted industry good housekeeping type practices. The minor time savings is estimated to total approximately 265 hours of DAQ staff time redirected to compliance with other applicable requirements during the inspections and 3175 hours of facility time over all facilities in a twelve-month period. The DAQ assumes that the affected facilities will continue to maintain the same work practices after the amendments will be implemented. DAQ inspectors will continue to inspect affected facilities' compliance with Section .0900 - Volatile Organic Compounds. The will notify the state agency responsible for OSHA – approved state plan, if the notice any violations of work practices for sources of volatile organic compounds as a part of good inspector's practice.

The amendment do not impose additional costs to state government or require the expenditure or distribution of state funds. They also do not impose costs or affect the expenditure or revenues of local government.

Comment: Ms. Jamie Cole, Policy Advocate, NC Conservation Network, noted that if the EMC allows these provisions to be loosened, worker's health will be endangered and there will be no adequate requirements in place to ensure compliance with proper handling of VOCs. Federal guidelines, such as OSHA's HCS, do not create legal obligations for facilities housing VOCs. Instead, the administration provides guidance for facilities to avoid indoor air quality problems and solutions for those problems if they arise. Using OSHA's HCS program is not enough to ensure worker safety in facilities. The facility's handling of VOCs will be effectively unregulated if the state relies on these federal provisions.

Response: The amendments removes the Rule .0958 from the list of rules that apply statewide in Paragraph (e) of Rule 02D .0902, to comply with provisions of G.S.150B-19.1(a) to remove unnecessary requirements that are not expressly authorized by federal or State law and that are not necessary to serve the public interest and thus reduce burden upon regulated facilities. However, the amendment does not affect facilities with 100 tpy or more VOC emissions located statewide and which have more chances to affect worker's health, as they will continue to comply with the Rule 02D .0958 without any changes. Nevertheless, affected sources will likely continue to maintain work practices for sources of VOC because they are also part of the manufacturers' Safety Data Sheets (SDS) that are enforceable by the state agency responsible for the OSHA-approved state plan under the [Hazard Communication Standard program](#) that is longstanding, generally accepted industry good housekeeping type practices. OSHA believes that the Hazard Communication Standard is of critical importance to ensuring that hazardous chemicals are identified, and that proper measures are implemented in workplaces to achieve safe use and handling. DAQ inspectors will continue to inspect affected facilities' compliance with Section .0900 - Volatile Organic Compounds. The will notify the state agency responsible for OSHA – approved state plan, if the notice any violations of work practices for sources of volatile organic compounds as a part of good inspector's practice.

SUMMARY OF COMMENTS AND RESPONSES

<u>Comment</u>	<u>Response</u>
<p>The amendment may trigger an environmental impact that cannot be determined besides a "time" impact. More explanation on the impact of this increase should be presented in the final submission.</p>	<p>The Division anticipates that if there is a VOC emissions increase, it would not be expected to impact compliance with the ozone NAAQS because North Carolina is in a NOx limited environment for formation of ozone. The DAQ will provide any necessary demonstration of noninterference with attainment or maintenance of the NAAQS as part of the final submittal to EPA.</p>
<u>Comment</u>	<u>Response</u>
<p>Federal guidelines, such as OSHA’s HCS, do not create legal obligations for facilities housing VOCs. Using OSHA’s HCS program is not enough to ensure worker safety in facilities.</p>	<p>OSHA notes that the Hazard Communication Standard is of critical importance to ensuring that proper measures are implemented in workplaces to achieve safe use and handling. DAQ inspectors will continue to inspect affected facilities’ compliance with Section .0900 - Volatile Organic Compounds. They will notify the state agency responsible for OSHA – approved state plan, if the notice any violations of work practices. While good work practices may result in benefits to workers, the purpose of the work practices in 02D .0958 is to assist in addressing ambient air quality matters.</p>

CONCLUSION

Two persons provided comments on the proposed amendments to the Rule 15A NCAC 02D .0902, Applicability, during the comment period for the hearing record.

One person noted that more information and clarity is needed to make the demonstration that this change will not interfere with air quality or another relevant requirement of the Clean Air Act. The Division anticipates that if there is a VOC emissions increase, it would not be expected to impact compliance with the ozone NAAQS because North Carolina is in a NOx limited environment for formation of ozone. The affected sources will likely continue to maintain work practices for sources of VOC without changes even after they are no longer enforceable by the Rule .0958 because they are also part of the manufacturers’ Safety Data Sheets (SDS) and longstanding industry good work practices. The DAQ will provide any necessary demonstration of noninterference with attainment or maintenance of the NAAQS as part of the final submittal to EPA.

The second person noted that Federal guidelines, such as OSHA’s HCS, do not create legal obligations for facilities housing VOCs and are not enough to ensure worker safety in facilities. OSHA notes on its web site that the Hazard Communication Standard is of critical importance to ensuring that hazardous chemicals are identified, and that proper measures are implemented in workplaces to achieve safe use and handling. While good work practices

may result in benefits to workers, the purpose of the work practices in 02D .0958 is to assist in addressing ambient air quality matters.

No changes to the proposed rule have been made in response to the comments received.

HEARING OFFICER'S RECOMMENDATION

The Hearing Officer recommends that the proposed amendments as presented in Chapter II of this hearing report be adopted by the Environmental Management Commission.

CHAPTER II

Rule Change Formatting Key

Chapter IV of this hearing record represents the proposed rules as noticed in the *North Carolina Register* for public comment.

Chapter II represents the proposed rules as published with changes made in response to comments received during the public comment period incorporated.

For Rule Amendments:

~~Text~~ = deleted text

Text = added text

~~Text~~ = existing text in what was published in the *North Carolina Register* (NCR) that is proposed to be deleted following the comment period

Text = text proposed to be added to what was published in the NCR following the comment period

Text = text initially proposed in the NCR to be deleted that is restored following the comment period

~~Text~~ = text proposed in the NCR to be added that is deleted following the comment period

Note: For new rules proposed for adoption, all text is initially underlined. If there are changes to the proposed new rule following publication in the NCR, the underlining is removed, deleted text is struck through, added text is underlined, and there is no highlighting.

1 15A NCAC 02D .0902 is proposed for amendment as follows:
2

3 **15A NCAC 02D .0902 APPLICABILITY**

4 (a) The rules in this Section do not apply except as specifically set out in this Rule.

5 (b) This Section applies to sources that emit greater than or equal to 15 pounds of volatile organic compounds per day
6 unless specified otherwise in this Section.

7 (c) Rules .0925, .0926, .0927, .0928, .0931, .0932, .0933, and .0958 of this Section apply regardless of the level of
8 emissions of volatile organic compounds unless provisions specified in Paragraph (d)(1) of this Rule are applied.

9 (d) This Section does not apply to:

10 (1) sources that emit less than 800 pounds of volatile organic compounds per calendar month and that are:

11 (A) bench-scale, on-site equipment used exclusively for chemical or physical analysis for quality
12 control purposes, staff instruction, water or wastewater analyses, or non-production
13 environmental compliance assessments;

14 (B) bench-scale experimentation, chemical or physical analyses, training or instruction from not-
15 for-profit, non-production educational laboratories;

16 (C) bench-scale experimentation, chemical or physical analyses, training or instruction from
17 hospitals or health laboratories pursuant to the determination or diagnoses of illness; or

18 (D) research and development laboratory activities, provided the activity produces no commercial
19 product or feedstock material; or

20 (2) emissions of volatile organic compounds during startup or shutdown operations from sources which
21 use incineration or other types of combustion to control emissions of volatile organic compounds
22 whenever the off-gas contains an explosive mixture during the startup or shutdown operation if the
23 exemption is approved by the Director as meeting the requirements of this Subparagraph.

24 (e) The following rules of this Section apply to facilities located statewide:

25 (1) .0925, Petroleum Liquid Storage in Fixed Roof Tanks, for fixed roof tanks at gasoline bulk plants and
26 gasoline bulk terminals;

27 (2) .0926, Bulk Gasoline Plants;

28 (3) .0927, Bulk Gasoline Terminals;

29 (4) .0928, Gasoline Service Stations Stage I;

30 (5) .0932, Gasoline Truck Tanks and Vapor Collection Systems;

31 (6) .0933, Petroleum Liquid Storage in External Floating Roof Tanks, for external floating roof tanks at
32 bulk gasoline plants and bulk gasoline terminals;

33 (7) .0948, VOC Emissions from Transfer Operations;

34 (8) .0949, Storage of Miscellaneous Volatile Organic Compounds; and

35 ~~(9) .0958, Work Practices for Sources of Volatile Organic Compounds.~~

36 (f) Except as provided in Paragraph (e) of this Rule, the rules in this Section apply to facilities subject to Section
37 182(b)(2) of the Clean Air Act with potential to emit 100 or more tons per year of VOC and to facilities with potential to

1 emit less than 100 tons per year of volatile organic compounds in categories for which the United States Environmental
2 Protection Agency has issued Control Technique Guidelines that are located in the following moderate nonattainment
3 areas for the 1997 8-hour ozone standard as designated in 40 CFR ~~81.334~~:81.334 prior to January 2, 2014:

- 4 (1) Cabarrus County;
- 5 (2) Gaston County;
- 6 (3) Lincoln County;
- 7 (4) Mecklenburg County;
- 8 (5) Rowan County;
- 9 (6) Union County; and
- 10 (7) Davidson Township and Coddle Creek Township in Iredell County.

11 These facilities are subject to reasonably available control technology requirements under this Section and shall comply
12 with these requirements in accordance with Rule .0909 of this Section through use of Rule .0951 of this ~~Section~~Section
13 and with Rule .0958 of this Section.

14 (g) If any county or part of a county to which this Section applies is later designated in 40 CFR 81.334 as attainment and
15 becomes a maintenance area for the 1997 8-hour ozone standard, all sources in that county or part of county subject to
16 Paragraph (f) of this Rule that achieved compliance in accordance with Rule .0909 of this Section shall continue to
17 comply with this Section. Facilities with potential to emit less than 100 tons of volatile organic compounds per year for
18 which the compliance date in Rule .0909 of this Section has not passed before redesignation of the area to attainment for
19 the 1997 ozone standard shall comply in accordance with Paragraph (h) of this Rule.

20 (h) If a violation of the 1997 ambient air quality standard for ozone occurs when the areas listed in Paragraph (f) become
21 ozone maintenance area, no later than 10 days after the violation occurs, the Director shall initiate technical analysis to
22 determine the control measures needed to attain and maintain the 1997 8-hour ambient air quality standard for ozone. By
23 the following May 1, the Director shall implement the specific stationary source control measures contained in this
24 Section that are required as part of the control strategy necessary to bring the area into compliance and to maintain
25 compliance with the 1997 8-hour ambient air quality standard for ozone. The Director shall implement the rules in this
26 Section identified as being necessary by the analysis by notice in the North Carolina Register. The notice shall identify
27 the rules that are to be implemented and shall identify whether the Rules implemented are to apply in the areas listed in
28 Paragraph (f) of this Rule. At least one week before the scheduled publication date of the North Carolina Register
29 containing the Director's notice implementing rules in this Section, the Director shall send written notification to all
30 permitted facilities within the counties in which the Rules of this Section are being implemented notifying them that they
31 are or may be subject to the requirements defined in Rule .0909 of this Section.

32 For Mecklenburg County, "Director" means, for the purpose of notifying permitted facilities in Mecklenburg County, the
33 Director of the Mecklenburg County local air pollution control program.

34 (i) Sources whose emissions of volatile organic compounds are not subject to limitation under this Section may still be
35 subject to emission limits on volatile organic compounds in Rules .0524, .1110, or .1111 of this Subchapter.

36
37 *History Note:* Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);

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Eff. July 1, 1979;
Amended Eff. _____; May 1, 2013; September 1, 2010; January 1, 2009; July 1, 2007; March 1,
2007; August 1, 2004; July 1, 2000; April 1, 1997; July 1, 1996; July 1, 1995; May 1, 1995; July 1,
1994.

CHAPTER III
REPORT OF PROCEEDINGS

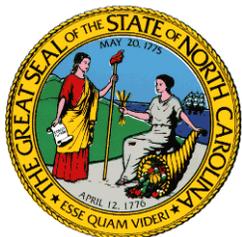
Introduction

The Department of Environmental Quality, Division of Air Quality, held a public hearing on May 25, 2016 at 3:00pm in Raleigh, NC.

The hearing considered the proposed amendment to the Rule 15A NCAC 02D .0902, Applicability.

The proposed effective date for this rule is September 1, 2016.

A public notice announcing this hearing was mailed to each person on the official mailing list for rule-making hearings. The public notice was also published in the North Carolina Register at least 15 days before the public hearing and posted on the North Carolina Division of Air Quality website at least 30 days prior to the public hearing.



ENVIRONMENTAL MANAGEMENT COMMISSION

NORTH CAROLINA DEPARTMENT OF ENVIRONMENTAL QUALITY

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March 24, 2016

MEMORANDUM

To: Lori Cherry

From: Steven J. Rowlan

Subject: Hearing Officer Appointment

A public hearing has been scheduled for May 25, 2016 at 3:00 p.m. in the Training Room (#1210) in the Green Square Building in Raleigh to receive public comments on the revisions to the volatile organic compound rules and the repeal of the heavy duty idling restrictions rule. The attached public notice describes the hearing's purpose.

I am hereby appointing you to serve as hearing officer for this hearing. Please receive all relevant public comment and report your findings and recommendations to the Environmental Management Commission. Ms. Joelle Burlison will provide staff support for you.

If you have any questions, please feel free to contact Joelle Burlison at (919) 707-8720, or me.

SCH/jb

Attachment

cc: Sheila Holman
Lois Thomas
Hearing Record File

NORTH CAROLINA ENVIRONMENTAL MANAGEMENT COMMISSION**PUBLIC NOTICE**

Notice is hereby given for two public hearings to be heard by the North Carolina Department of Environmental Quality, Division of Air Quality concerning the proposed repeal and amendments to air quality rules.

PURPOSE:

Hearing 1: To receive comments on behalf of the Environmental Management Commission and the Secretary of the Department Environmental Quality on repeal of 15A NCAC 02D .1010, Heavy-Duty Vehicle Idling Restrictions, pursuant to Section 4.24 of Session Law 2015-286 which mandates the Secretary of the Department Environmental Quality repeal 15A NCAC 02D .1010. Until the effective date of the repeal, 15A NCAC 02D .1010 shall not be implemented or enforced.

Hearing 2: To receive comments on behalf of the Environmental Management Commission on amendment to Rule 15A NCAC 02D .0902, Applicability, to narrow the applicability of 15A NCAC 02D .0958, Work Practices for Sources of Volatile Organic Compounds, from statewide to the maintenance area for the 1997 8-hour ozone standard. The proposed amendments will remove unnecessary burden associated with permitting and complying with the work practice standards in 15A NCAC 02D .0958.

Provisions of the Clean Air Act require that the VOC requirements previously implemented in an ozone nonattainment area prior to redesignation of the area to attainment remain in place; however, facilities outside the maintenance area counties for the 1997 8-hour ozone standard would no longer be required to comply with the work practice standards in 15A NCAC 02D .0958.

NOTE: The proposed amendments considered in these hearings, if adopted, will be effective statewide and 15A NCAC 02D .0902 will be submitted to the United States Environmental Protection Agency to be included in the North Carolina State Implementation Plan (SIP); if they are later adopted by a local air pollution control agency, then that agency will enforce them in its area of jurisdiction.

DATES AND LOCATION:

May 25, 2016, 3:00 P.M.
Training Room (#1210), DENR Green Square Office

Building, 217 West Jones Street, Raleigh, NC 27603

COMMENT PROCEDURES: All persons interested in these matters are invited to attend the public hearings. Any person desiring to comment on the rules or fiscal analyses is requested to submit a written statement for inclusion in the record of proceedings at the public hearing. The hearing officer may limit oral presentation lengths if many people want to speak. The hearing record will remain open until June 14, 2016 to receive additional written statements. To be included, the statement must be received by the Division of Air Quality by June 14, 2016.

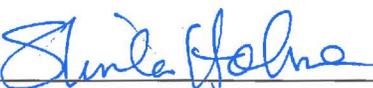
INFORMATION: Copies of the proposed rule changes may be downloaded at <http://daq.state.nc.us/Rules/Hearing/>. Copies of the proposals may also be reviewed at the regional offices of the North Carolina Department of Environment and Natural Resources, Division of Air Quality, located at the following cities:

Asheville	828/296-4500
Fayetteville	910/433-3300
Mooresville	704/663-1699
Raleigh	919/791-4200
Washington	252/946-6481
Wilmington	910/796-7215
Winston-Salem	336/776-9800

Comments should be sent to and additional information concerning the hearings or the proposals may be obtained by contacting:

Ms. Joelle Burleson
 Division of Air Quality
 1641 Mail Service Center
 Raleigh, North Carolina 27699-1641
 (919) 707-8720 Phone/Fax
daq.publiccomments@ncdenr.gov
 (please type May 25, 2016 Hearing in subject line)

DATE: 3/24/16



 Sheila Holman,
 DAQ Director

Transcript

A transcript of the May 25, 2016 hearing has not been prepared; however, an audio recording of the proceeding will be kept on file with the Division of Air Quality for one year from the date of the final actions by the Environmental Management Commission.

A list of those attending the hearing as follows:

Hearing Officer

Ms. Lori Cherry, a Program Consultant at the Division of Air Quality

Staff Members

Ms. Joelle Burlison, DAQ, DENR

Mr. Patrick Knowlson, DAQ, DEQ

Mr. Glenn Sappie, DAQ, DENR

Mr. Vladimir Zaytsev, DAQ, DENR

Mr. Joseph Pendola, DEQ, Environmental Assistance Outreach

Members of the General Public

Ms. Laura Wenzel, Medical Advocates for Healthy Air

Mr. Jamie Cole, NC Conservation Network

Mr. Clementina Sraha, Medical Advocates for Healthy Air

Ms. Natalie Smith, Independent

Mr. Mathew Arsenault, Sierra Club, (NC)

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CHAPTER IV

EXHIBITS

<u>EXHIBIT</u>	<u>PAGE</u>
Proposed Regulations as Published in the North Carolina Register and Presented at the Hearing	IV-2
Hearing Officer comments at the public hearing	IV- 6

(F)	Notetaking and Report Writing	6 hours
(G)	Communication Skills	5 hours
	UNIT TOTAL	39 hours
(4)	MEDICAL UNIT	
(A)	First Aid and CPR	8 hours
(B)	Medical Care in the Jail	6 hours
(C)	Stress	3 hours
(D)	Subject Control Techniques	2 hours
(E)	Physical Fitness for Detention Officers	22 hours
	UNIT TOTAL	71 hours
(5)	REVIEW AND TESTING	7 hours
(6)	STATE EXAM	3 hours
	TOTAL HOURS	172 174 HOURS

(c) Consistent with the curriculum development policy of the Commission as published in the "Detention Officer Certification Course Management Guide," the Commission shall designate the developer of the Detention Officer Certification Course curricula and such designation shall be deemed by the Commission as approval for the developer to conduct pilot Detention Officer Certification Courses. Individuals who complete such a pilot Detention Officer Certification Course offering shall be deemed to have complied with and satisfied the minimum training requirement.

(d) The "Detention Officer Certification Training Manual" published by the North Carolina Justice Academy shall be used as the basic curriculum for the Detention Officer Certification Course. Copies of this manual may be obtained by contacting the North Carolina Justice Academy, Post Office Box 99, Salemburg, North Carolina 28385-0099. The cost of this manual, CD, indexes and binder is fifty-one dollars and seventy-five cents (\$51.75) at the time of adoption of this Rule.

(e) The "Detention Officer Certification Course Management Guide" published by the North Carolina Justice Academy is hereby incorporated by reference and shall include any later amendments or editions of the incorporated matter to be used by school directors in planning, implementing and delivering basic detention officer training. The standards and requirements established by the "Detention Officer Certification Course Management Guide" must be adhered to by the school director. The Justice Academy shall issue to each certified school director a copy of the guide at the time of certification at no cost to the certified school.

Authority G.S. 17E-4(a).

TITLE 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY

Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to amend the rule cited as 15A NCAC 02D .0902, and the Environmental Management Commission and Department of Environmental Quality intends to repeal the rule cited as 15A NCAC 02D .1010.

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://deq.nc.gov/about/divisions/air-quality/air-quality-rules/rules-hearing-process>

Proposed Effective Date: September 1, 2016

Public Hearing:

Date: May 25, 2016

Time: 3:00 p.m.

Location: Training Room (#1210), DENR Green Square Office Building, 217 West Jones Street, Raleigh, NC 27603

Reason for Proposed Action:

Hearing 1: To receive comments on behalf of the Environmental Management Commission and the Secretary of the Department of Environmental Quality on repeal of 15A NCAC 02D .1010, Heavy-Duty Vehicle Idling Restrictions, pursuant to Section 4.24 of Session Law 2015-286 which mandates the Secretary of the Department of Environmental Quality repeal 15A NCAC 02D .1010. Until the effective date of the repeal, 15A NCAC 02D .1010 shall not be implemented or enforced.

Hearing 2: To receive comments on behalf of the Environmental Management Commission on amendment to Rule 15A NCAC 02D .0902, Applicability, to narrow the applicability of 15A NCAC 02D .0958, Work Practices for Sources of Volatile Organic Compounds (VOC), from statewide to the maintenance area for the 1997 8-hour ozone standard. The proposed amendments will remove unnecessary burden associated with permitting and complying with the work practice standards in 15A NCAC 02D .0958.

Provisions of the Clean Air Act require that the VOC requirements previously implemented in an ozone nonattainment area prior to redesignation of the area to attainment remain in place; however, facilities outside the maintenance area counties for the 1997 8-hour ozone standard would no longer be required to comply with the work practice standards in 15A NCAC 02D .0958.

Comments may be submitted to: Joelle Burlison, 1641 Mail Service Center, Raleigh, NC 27699-1641, phone (919) 707-8720, fax (919) 707-8720, email daq.publiccomments@ncdenr.gov (please type May 25, 2016 hearings in the subject line).

Comment period ends: June 14, 2016

Procedure for Subjecting a Proposed Rule to Legislative Review:

If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery

service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact (check all that apply).

- State funds affected
- Environmental permitting of DOT affected Analysis submitted to Board of Transportation
- Local funds affected
- Substantial economic impact (≥\$1,000,000)
- Approved by OSBM
- No fiscal note required by G.S. 150B-21.4

CHAPTER 02 – ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 02D – AIR POLLUTION CONTROL REQUIREMENTS

SECTION .0900 – VOLATILE ORGANIC COMPOUNDS

15A NCAC 02D .0902 APPLICABILITY

(a) The rules in this Section do not apply except as specifically set out in this Rule.

(b) This Section applies to sources that emit greater than or equal to 15 pounds of volatile organic compounds per day unless specified otherwise in this Section.

(c) Rules .0925, .0926, .0927, .0928, .0931, .0932, .0933, and .0958 of this Section apply regardless of the level of emissions of volatile organic compounds unless provisions specified in Paragraph (d)(1) of this Rule are applied.

(d) This Section does not apply to:

- (1) sources that emit less than 800 pounds of volatile organic compounds per calendar month and that are:
 - (A) bench-scale, on-site equipment used exclusively for chemical or physical analysis for quality control purposes, staff instruction, water or wastewater analyses, or non-production environmental compliance assessments;
 - (B) bench-scale experimentation, chemical or physical analyses, training or instruction from not-for-profit, non-production educational laboratories;
 - (C) bench-scale experimentation, chemical or physical analyses, training or instruction from hospitals or health laboratories pursuant to the determination or diagnoses of illness; or
 - (D) research and development laboratory activities, provided the activity produces no commercial product or feedstock material; or
- (2) emissions of volatile organic compounds during startup or shutdown operations from sources which use incineration or other types of

combustion to control emissions of volatile organic compounds whenever the off-gas contains an explosive mixture during the startup or shutdown operation if the exemption is approved by the Director as meeting the requirements of this Subparagraph.

(e) The following rules of this Section apply to facilities located statewide:

- (1) .0925, Petroleum Liquid Storage in Fixed Roof Tanks, for fixed roof tanks at gasoline bulk plants and gasoline bulk terminals;
- (2) .0926, Bulk Gasoline Plants;
- (3) .0927, Bulk Gasoline Terminals;
- (4) .0928, Gasoline Service Stations Stage I;
- (5) .0932, Gasoline Truck Tanks and Vapor Collection Systems;
- (6) .0933, Petroleum Liquid Storage in External Floating Roof Tanks, for external floating roof tanks at bulk gasoline plants and bulk gasoline terminals;
- (7) .0948, VOC Emissions from Transfer Operations; and
- (8) .0949, Storage of Miscellaneous Volatile Organic Compounds; and Compounds.
- ~~(9) .0958, Work Practices for Sources of Volatile Organic Compounds.~~

(f) Except as provided in Paragraph (e) of this Rule, the rules in this Section apply to facilities subject to Section 182(b)(2) of the Clean Air Act with potential to emit 100 or more tons per year of VOC and to facilities with potential to emit less than 100 tons per year of volatile organic compounds in categories for which the United States Environmental Protection Agency has issued Control Technique Guidelines that are located in the following moderate nonattainment areas for the 1997 8-hour ozone standard as designated in 40 CFR ~~81.334~~ 81.334 prior to January 2, 2014:

- (1) Cabarrus County;
- (2) Gaston County;
- (3) Lincoln County;
- (4) Mecklenburg County;
- (5) Rowan County;
- (6) Union County; and
- (7) Davidson Township and Coddle Creek Township in Iredell County.

These facilities are subject to reasonably available control technology requirements under this Section and shall comply with these requirements in accordance with Rule .0909 of this Section through use of Rule .0951 of this ~~Section~~ Section and with Rule .0958 of this Section.

(g) If any county or part of a county to which this Section applies is later designated in 40 CFR 81.334 as attainment and becomes a maintenance area for the 1997 8-hour ozone standard, all sources in that county or part of county subject to Paragraph (f) of this Rule that achieved compliance in accordance with Rule .0909 of this Section shall continue to comply with this Section. Facilities with potential to emit less than 100 tons of volatile organic compounds per year for which the compliance date in Rule .0909 of this Section has not passed before redesignation of the area to attainment for the 1997 ozone standard shall comply in accordance with Paragraph (h) of this Rule.

(h) If a violation of the 1997 ambient air quality standard for ozone occurs when the areas listed in Paragraph (f) become ozone maintenance area, no later than 10 days after the violation occurs, the Director shall initiate technical analysis to determine the control measures needed to attain and maintain the 1997 8-hour ambient air quality standard for ozone. By the following May 1, the Director shall implement the specific stationary source control measures contained in this Section that are required as part of the control strategy necessary to bring the area into compliance and to maintain compliance with the 1997 8-hour ambient air quality standard for ozone. The Director shall implement the rules in this Section identified as being necessary by the analysis by notice in the North Carolina Register. The notice shall identify the rules that are to be implemented and shall identify whether the Rules implemented are to apply in the areas listed in Paragraph (f) of this Rule. At least one week before the scheduled publication date of the North Carolina Register containing the Director's notice implementing rules in this Section, the Director shall send written notification to all permitted facilities within the counties in which the Rules of this Section are being implemented notifying them that they are or may be subject to the requirements defined in Rule .0909 of this Section.

For Mecklenburg County, "Director" means, for the purpose of notifying permitted facilities in Mecklenburg County, the Director of the Mecklenburg County local air pollution control program.

(i) Sources whose emissions of volatile organic compounds are not subject to limitation under this Section may still be subject to emission limits on volatile organic compounds in Rules .0524, .1110, or .1111 of this Subchapter.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

15A NCAC 02D .1010 HEAVY-DUTY VEHICLE IDLING RESTRICTIONS

~~(a) Applicability. The requirements of this Rule apply to on road heavy duty vehicles powered in part or entirely by an internal combustion engine.~~

~~(b) Definitions. For the purposes of this Rule, the following definitions apply:~~

- ~~(1) "Auxiliary power unit" means a mechanical or electrical device affixed to a vehicle that is designed to be used to generate an alternative source of power for any of the vehicle's systems other than the primary propulsion engine;~~
- ~~(2) "Congestion" means a situation that occurs when the volume of traffic exceeds the capacity of a roadway;~~
- ~~(3) "Emergency" means a situation that poses an immediate risk to health, life, property, or environment;~~
- ~~(4) "Emergency vehicle" means any vehicle that responds to or supports an emergency. These vehicles are operated by part of the government, charities, non governmental organizations, and commercial companies;~~

~~(5) "Gross vehicle weight rating" means the weight specified by the manufacturer as the loaded weight of a single vehicle;~~

~~(6) "Farm vehicle" means a vehicle used exclusively for farm use and operated within 150 miles of the farmer's farm by the farmer or the farmer's employee to transport either agricultural product, farm machinery, or farm supplies. It is not used in the operations of a for-hire motor carrier.~~

~~(7) "Heavy duty vehicle" means a motor vehicle (excluding trailer(s)) with a gross vehicle weight rating of 10,001 pounds or greater for the purpose of this Rule;~~

~~(8) "Idling" means the operation of a motor vehicle's propulsion engine while the vehicle is stationary;~~

~~(9) "Military vehicle" means a motor vehicle owned by the U.S. Department of Defense;~~

~~(10) "Motor vehicle" means any self propelled vehicle used for transporting property or persons;~~

~~(11) "On road vehicle" means a self propelled vehicle that is designed for use on a highway.~~

~~(12) "Passenger bus" means any bus, including school buses, which is designed to carry sixteen or more passengers;~~

~~(13) "Power take off" means a device used to transfer mechanical energy from a heavy duty vehicle's~~

~~propulsion engine to equipment that supplies mechanical, pneumatic, hydraulic, or electric power to non vehicular mechanical, pneumatic, hydraulic, or electrically operated devices; and~~

~~(14) "Queue area" means an area used by heavy duty vehicles waiting to provide or receive services.~~

~~(e) Exemptions. The following exemptions to idle restrictions apply to this Rule:~~

~~(1) Heavy duty vehicles may idle if they remain motionless due to traffic conditions, traffic control devices or signals, congestion, or at the direction of law enforcement officials;~~

~~(2) Emergency vehicles may idle while performing an emergency or training function. This exemption does not apply when idling only for driver comfort;~~

~~(3) Military vehicles;~~

~~(4) Heavy duty vehicles may idle main propulsion engines to operate power take offs to perform the heavy duty vehicle's designed functions (e.g., refrigeration of cargo, processing of cargo, dumping, lifting, hoisting, drilling, mixing, loading, unloading, other operations requiring the use of power take offs). This exemption does not apply when idling only for driver comfort;~~

~~(5) Heavy duty vehicles may idle if following manufacturer's recommendations for cold engine~~

~~startup and engine cool down, maintenance, inspection, servicing, repairing, or diagnostic purposes, if idling is required for such activity;~~

~~(6) Heavy duty vehicles with an occupied sleeper berth compartment may idle for the purposes of air conditioning or heating during federally mandated rest or sleep periods. This exemption shall expire on May 1, 2011;~~

~~(7) Auxiliary power units;~~

~~(8) Heavy duty vehicles with a primary diesel engine meeting the nitrogen oxide idling emission standard in Title 13, of the California Code of Regulations, Section 1956.8(a)(6)(C);~~

~~(9) A passenger bus when non-driver passengers are on board the vehicle and up to 20 minutes prior to passengers boarding;~~

~~(10) Heavy duty vehicles may idle to provide customer climate controlled comfort during periods of providing customer services (e.g., library bookmobile, blood mobile, safety shoe and safety glasses vendors). This exemption does not apply when idling only for driver comfort; and~~

~~(11) Heavy duty vehicles may idle if defrosters, heaters, air conditioners, or other equipment are operating solely to prevent a safety or health emergency.~~

~~(12) Heavy duty farm vehicles.~~

~~(d) Requirements.~~

~~(1) No person who operates a heavy duty vehicle shall cause, let, permit, suffer or allow idling for a period of time in excess of 5 consecutive minutes in any 60 minute period.~~

~~(2) Heavy duty vehicles located in a queue area are not exempted from this Rule. 27.~~

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); 143-215.107(a)(7); 143-215.107(b).

Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to adopt the rule cited as 15A NCAC 13B .0207 and amend the rules cited as 15A NCAC 13B .0201 and .0206.

Link to agency website pursuant to G.S. 150B-19.1(c): <http://deq.nc.gov/permits-regulations/rules-regulations/proposed-main>

Proposed Effective Date: September 1, 2016

Public Hearing:

Date: May 4, 2016

Time: 2:00 p.m.

Location: NC Department of Environmental Quality, 217 West Jones Street, Raleigh, NC 27603, Room 1210

Reason for Proposed Action: Legislative requirement per Session Law 2015-241 (HB97) Landfill Changes, as amended by Session Law 2015-286 (HB765) Modify Effective Date for Life-of-Site Permits for Sanitary Landfills and Transfer Stations and Make Other Technical, Clarifying, and Conforming Changes. Session Law 2015-241 (HB97) states "No later than July 1, 2016, the Environmental Management Commission shall adopt rules to allow applicants for permits for sanitary landfills to apply for a permit for the life-of-site of the facility. No later than July 1, 2016, the Commission shall also adopt rules to allow applicants for permits for transfer stations to apply for a permit to construct and operate a transfer station for the life-of site of the station."

Comments may be submitted to: Jessica Montie, 1646 Mail Service Center, Raleigh, NC 27699-1646, phone (919) 707-8247, fax (919) 707-8247, email Jessica.montie@ncdenr.gov

Comment period ends: June 14, 2016

Procedure for Subjecting a Proposed Rule to Legislative Review:

If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact (check all that apply).

- State funds affected 15A NCAC 13B .0206 and .0207
- Environmental permitting of DOT affected
- Analysis submitted to Board of Transportation
- Local funds affected
- Substantial economic impact (≥\$1,000,000)
- Approved by OSBM
- No fiscal note required by G.S. 150B-21.4 15A NCAC 13B .0201

CHAPTER 13 – SOLID WASTE MANAGEMENT

SUBCHAPTER 13B – SOLID WASTE MANAGEMENT

SECTION .0200 - PERMITS FOR SOLID WASTE MANAGEMENT FACILITIES

15A NCAC 13B .0201 PERMIT REQUIRED

(a) No person shall treat, process, store, or dispose of solid waste or arrange for the treatment, processing, ~~storage~~ storage, or disposal of solid waste except at a solid waste management facility permitted by the Division for such activity, except as provided in G.S. 130A-294(b).

Hearing Officer's Introduction

INTRODUCTION

[Hearing officer]:

Good evening ladies and gentlemen. My name is Lori Cherry. I am a Program Consultant at the Division of Air Quality. My role as hearing officer is to receive and listen to comments provided by the public on today's proceedings and report them to the Environmental Management Commission. Sitting with me is Ms. Joelle Burleson who is the Supervisor of the Rules Development Branch with the North Carolina Division of Air Quality, Planning Section.

Additionally, there are staff from the Division of Air Quality here to assist. Ms. Burleson, please introduce the staff present.

[Ms. Burleson] (Introduces staff)

[Hearing officer]:

Today, we are conducting two separate public hearings. During Hearing 1, we will take comments on behalf of the Environmental Management Commission and the Secretary of the Department of Environmental Quality concerning the proposed repeal of the *Heavy-Duty Vehicle Idling Restrictions* rule in rule 15A of the North Carolina Administrative Code (hereinafter, NCAC), 02D.1010. This action is directed by Session Law 2015-286.

During Hearing 2, we will take comments on a proposed amendment to rule 15A NCAC 02D.0902, *Applicability*, to remove certain unnecessary permitting and compliance work practice standards associated with the rule 15A NCAC 02D.0958, *Work Practice Standards for Sources of Volatile Organic Compounds*. This action is being proposed to satisfy requirements under the North Carolina General Statutes, Chapter 150B, *Administrative Procedure Act* and Executive Order 70, Rules Modification and Improvement Program, dated October 21, 2010 as amended by E.O. 48 dated April 9, 2014.

Fiscal notes are not required for the proposed rule repeal in Hearing 1 nor the proposed rule amendments in Hearing 2.

The public notice for these hearings was published in Volume 30, Issue 20 of the North Carolina Register on April 15, 2016 and the public notice was posted on the Division of Air Quality website on April 5, 2016. Copies of the notice were sent on April 14, 2016 to those on the official DAQ mailing list.

I am entering the public notice, the proposed language for the rule repeal in Hearing 1 and rule amendment in Hearing 2 into the hearing records without reading them at this time. Please note that after today's hearing, the hearing record will remain open until June 14, 2016 to receive additional written statements. Statements must be received by the Division of Air Quality by this date, June 14, 2016, and can be mailed to the Division of Air Quality or sent electronically to daq.publiccomments@ncdenr.gov.

If you have registered to speak today, it would be helpful to have a written statement of your comments for inclusion into the hearing record. Once called to speak, please come to the podium and state your name clearly, identify the rule or rules you are commenting on, and whom you represent.

[Hearing 1]:

I will now open the first hearing and take relevant comments on the proposed repeal of the *Heavy-Duty Vehicle Idling Restrictions* rule.

At the conclusion of the 2015 legislative session, Session Law 2015-286 was enacted by the General Assembly. Section 4.24 of this Session Law requires the Secretary of Environment and Natural Resources to repeal the Rule 15A NCAC 02D .1010, *Heavy-Duty Vehicle Idling Restrictions*, on or before March 1, 2016. The Session Law also specifies that the State shall not implement or enforce the rule during the interim until its repeal.

The *Heavy-Duty Vehicle Idling Restrictions* rule is a complaint-driven rule that is focused on addressing nitrogen oxide (hereinafter, NOx) and particulate matter emissions from heavy-duty trucks (both gasoline and diesel fueled) by reducing unnecessary engine idling. However, North

Carolina does not have any nitrogen oxide (NOx) or particulate matter nonattainment areas. This means that North Carolina is meeting the federal ambient air quality standards for NOx and for particulate matter. This is confirmed by air quality monitors operated throughout the state that are measuring ambient concentrations lower than the federal ambient air quality standards and by Environmental Protection Agency review and affirmation that North Carolina is attaining these air quality standards.

Additionally, idling can be costly for trucking companies which often enforce their own restrictions on engine idling.

Rule 15A NCAC 02D .1010, *Heavy-Duty Vehicle Idling Restrictions*, is proposed for repeal to meet Section 4.24 of the Session Law 2015-286 requirements.

{ optional script if there are a large number of speakers }

[Hearing officer]: Optional Time Limit

Due to time constraints, speakers' presentations will be limited to 3 minutes. AS a reminder, it would be helpful if speakers would submit a written statement by the close of the comment period for inclusion into the hearing record.

[Hearing officer]:

I will now take any comments that you may have.

[SPEAKERS]

[Hearing officer]:

Is there anyone else who would like to comment? If there are no more comments, then this hearing is closed. As previously stated, the hearing record will remain open until June 14, 2016, for additional written comments.

[Hearing 2]:

I will now open the second hearing and take relevant comments on the proposed amendments to the applicability rule associated with the work practice standards for sources of volatile organic compounds (hereinafter, VOC). Rule 15A NCAC 02D .0902, *Applicability*, is proposed to be amended to remove unneeded permitting and compliance requirements for work practice standards indicated in rule 15A NCAC 02D .0958, *Work Practices for Sources of Volatile Organic Compounds*.

The compilation of rules contained in 15A NCAC 02D .0900 address air pollution control requirements of stationary source VOC emissions from industrial processes. These VOC emission control rules are related to the Clean Air Act requirements to meet, or attain, the National Ambient Air Quality Standard for ozone. Ozone is formed through a series of complex chemical and physical interactions that involves VOCs. Thus, suppressing VOC emissions is one way used to control the formation of ozone. However due to the abundance of natural VOC emissions in North Carolina, reductions in nitrogen oxides are the driving factor in reducing ozone formation.

Thus, rule 15A NCAC 02D.0902, *Applicability*, defines the general applicability of various VOC rules in section 15A NCAC 02D.0900 in terms of thresholds, geographic extent and attainment status of a location relative to the ozone standard.

In July 2000, 15A NCAC 02D .0958, *Work Practices for Sources of Volatile Organic Compounds*, established requirements for certain work practices to apply to facilities using or manufacturing products containing VOCs for the purpose of minimizing or suppressing VOC evaporative losses. At the time, North Carolina was facing potential designation of multiple areas within the state as not attaining compliance with the 1997 ozone standard that was in effect at that time.

Since then North Carolina has achieved designation by EPA as meeting, or attaining the 1997 ozone standard except for the Charlotte area which was designated as nonattainment for 1997 ozone standard. Charlotte has now been redesignated as attainment but has a maintenance plan in effect as required by the antibacksliding provisions of the Clean Air Act. These provisions compel air pollution control requirements previously implemented in a nonattainment area prior to its redesignation to attainment, remain in place. The rule 15A NCAC 02D .0958 *Work Practices for Sources of Volatile Organic Compounds*, was implemented as part of the Reasonably

Available Control Technology or RACT requirements applicable to major sources of VOC prior to the area’s redesignation and has to remain in place in the Charlotte area. Now, since Rule 15A NCAC 02D .0958, *Work Practices for Sources of Volatile Organic Compounds*, is only required in the Charlotte maintenance area, it is proposed that paragraph (e)(9) of rule 15A NCAC 02D .0902, *Applicability*, be amended and applicability narrowed so that the work practices specified in 15A NCAC 02D .0958 apply only to the Charlotte maintenance area.

After the proposed amendments become effective, the requirements of the Rule 02D .0958 *Work Practices for Sources of Volatile Organic Compounds* will apply to the affected sources in the maintenance area for the 1997 8-hour ozone standard; however, facilities outside the maintenance area counties for the 1997 8-hour ozone standard would no longer be required to comply with the work practice standards in 02D .0958.

{ optional script if there are a large number of speakers }

[Hearing officer]: Optional Time Limit

Due to time constraints, speakers’ presentations will be limited to 3 minutes. It would be helpful if speakers would also submit a written statement by the close of the comment period for inclusion into the hearing record.

[Hearing officer]:

I will now take any comments that you may have.

[SPEAKERS]

[Hearing officer]:

Is there anyone else who would like to comment? If there are no more comments, then this hearing is closed. The hearing record will remain open until June 14, 2016, for additional written comments.

CHAPTER V

COMMENTS DURING THE COMMENT PERIOD

INDEX OF COMMENTERS

<u>NAME</u>	<u>REPRESENTING</u>	<u>PAGE</u>
R. Scott Davis	EPA Region 4, Air Planning and Implementation Branch	V-2
Jamie Cole	NC Conservation Network • Clean Air Carolina	V-6

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

REGION 4

ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

June 14, 2016

Ms. Sheila C. Holman
Director
North Carolina Department of Environmental Quality
Division of Air Quality
1641 Mail Service Center
Raleigh, North Carolina 27699-1641

Dear Ms. Holman:

Thank you for your letter dated April 13, 2016, transmitting a prehearing package regarding North Carolina's State Implementation Plan (SIP) submittal addressing changes to North Carolina's Revision to Volatile Organic Compound (VOC) Rules. We understand that this submittal is the subject of a public hearing on June 14, 2016, if requested, with written comments due by the close of business on June 14, 2016. We have completed our review of the prehearing submittal and have comments included in the enclosure.

We look forward to continuing to work with you and your staff. If you have any questions, please contact Ms. Lynorae Benjamin, Chief, Air Regulatory Management Section at (404) 562-9040, or have your staff contact Ms. Tiereny Bell at (404) 562-9088.

Sincerely,

A handwritten signature in black ink that reads "R. Scott Davis".

R. Scott Davis
Chief, Air Planning and Implementation Branch

Enclosure

U.S. Environmental Protection Agency's Comments on North Carolina's Prehearing Submission for Revisions to VOC Rule

I. Key Comments:

- **Executive Summary and Background**

The nitrogen oxide (NOx) limited explanation included in the Regulatory Impact Analysis appears to provide some technical context that could be used to support a 110(l) demonstration for the changes for this SIP revision. However, more information and clarity is needed to make the demonstration that this change will not interfere with air quality or another other relevant requirement of the Clean Air Act. While the VOC increase from this change is described in the Regulatory Impact Analysis, there should be more explanation on the impact of this increase in the final submission.

II. General Comments:

The following comments relate to the Regulatory Impact Analysis that was provided with the submission.

- **Cost and Benefits by Affected Party**

State Impacts

On page 6, in the last sentence of the top paragraph, the EPA suggests that North Carolina consider specifying that the impact that is referenced here is a "time" impact, not an environmental impact. Please note that there may be an environmental impact that cannot be determined by the information described in this paragraph.

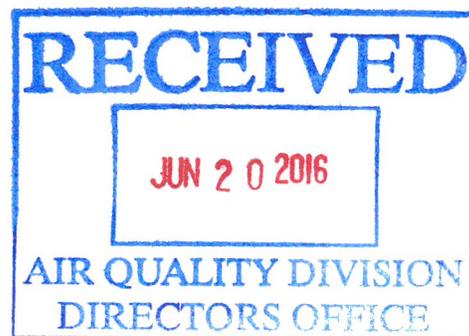
Affected Sources

On page 6-7, the last sentence of the affected sources section, the EPA suggests that North Carolina consider specifying that the impact referenced here is a "time" impact, not an environmental impact. Please note that there may be an environmental impact that cannot be determined by the information described in this paragraph.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
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ATLANTA, GEORGIA 30303-8960



June 14, 2016

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Director
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Division of Air Quality
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R. Scott Davis
Chief, Air Planning and Implementation Branch

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Ms. Joelle Burleson
Division of Air Quality
1641 Mail Service Center
Raleigh, NC 27699-1641

June 14, 2016

**Re: Comments on amendments to Rule 15A NCAC 02D .0902,
Applicability and the narrowing of applicability of 15A NCAC 02D
.0958, Work Practices for Sources of Volatile Organic Compounds**

Dear Ms. Burleson,

Thank you for the opportunity to comment on 1) amendments to 15A NCAC 02D .0902 - Applicability, and 2) the narrowing of the applicability of 15A NCAC 02D .0958 - Work Practices for Sources of Volatile Organic Compounds (VOCs). The NC Conservation Network (NCCN) is a state-level advocacy group working in partnership with 70 affiliate organizations and over 130,000 supporters to protect public health and the environment across North Carolina. We call on the Environmental Management Commission (EMC) to acknowledge that these rule requirements are not unnecessary burdens but, in fact, necessary to protect the health of workers and visitors of facilities using and storing VOCs.

The current versions of Rule 02D .0902 and .0985 maintain high standards for workplaces dealing with VOCs. These standards include common sense practices that all facilities should be held accountable for. These simple practices include properly storing materials containing VOCs and cleaning up spills as soon as possible. Compliance is determined by visual observations during routine monthly source inspections by facility personnel and the review of these monthly inspections by DAQ inspectors. Visual inspections are to be performed once per month of all operations and processes utilizing VOCs. All inspection results are kept in a logbook and those facilities requiring a permit are required to also have a semiannual reporting of the observations in order to comply with permit requirements. These simple, routine inspections are necessary to keep facilities in compliance with straightforward safety provisions that help protect workers and the surrounding populations from the harmful effects of VOCs. There are no other reliable mechanisms, federal or state, that will provide facilities that emit the qualifying level of VOCs with regular oversight.

If the EMC allows these provisions to be loosened, worker's health will be endangered and there will be no adequate requirements in place to ensure compliance with proper handling of VOCs.

Endangering Worker's Health. The cost and time savings that facilities and DAQ would experience are outweighed by the potential negative impact on human health. Workers and visitors of facilities that handle and house VOCs are the most impacted by these rule changes. Inhaling low levels of VOCs for long periods of time may increase a person's risk of health problems. Exposure to VOCs may make symptoms worse in people who have asthma or are particularly sensitive to chemicals. Short-term effects of high levels of VOCs include: eye, nose, and throat irritation; headaches; nausea/vomiting; dizziness; worsening of asthma symptoms. Long-term effects of being exposed to high levels of VOCs include: cancer; liver damage; kidney damage; and central nervous system damage. Scientists agree that the best health protection measure is to limit exposure to products and materials that contain VOCs when possible. While most health related studies have been conducted on single VOC chemicals, less is known about the health effects of exposure to combinations of chemicals which makes oversight all the more important.¹

Federal Standards. DAQ argues that maintaining .0958 work practice requirements is unnecessary - partly because of existing federal standards. DAQ specifically identifies practice requirements of the manufacturers Safety Data Sheet (SDS) for mixing, and storing VOC content material or using VOC content material for cleaning that are enforceable by the Occupational Safety and Health Administration (OSHA) under its Hazard Communication Standard (HCS) program. We have fundamental issues with using OSHA's HCS as the fall back for facilities if .0958 is narrowed. Federal guidelines, such as OSHA's HCS, do not create legal obligations for facilities housing VOCs. Instead, the administration provides guidance for facilities to avoid indoor air quality problems and solutions for those problems if they arise.² Using OSHA's HCS program is not enough to ensure worker safety in facilities. This program simply places the burden on the facility and the manufacturer of the chemicals to inform workers of hazardous chemicals in their workplaces. Under the program, employers are required to obtain manufacturers Safety Data Sheets (SDS) - if not provided by the manufacturer, importer or distributor and take other steps to communicate hazard information to their employees.³ This does not rise to the level of accountability of .0902 and .0958 regarding the proper clean up and storage of VOCs and does not require regular oversight for compliance assurance. The facility's handling of VOCs will be effectively unregulated if the state relies on these federal provisions.

Without the work place standards that are currently in place, we can assume some facilities monitoring of these standards will become relaxed, causing more spills, less thorough clean-up, and more chances for human exposure to high levels of VOCs. DAQ contends that many sources subject to Rule 02D .0958 have become subject to federal Maximum Achievable Control Technology (MACT), Generally Available Control Technology (GACT), New Source Performance Standard (NSPS) or other requirements containing similar work practices that contain similar work practices - and will need to continue those work standards if .0902 and .0958 are no longer applicable. We do not have an issue with that assertion, but

¹ Volatile Organic Compounds' Impact on Indoor Air Quality EPA, <http://www.epa.gov/indoor-air-quality-iaq/volatile-organic-compounds-impact-indoor-air-quality> (last visited Jun. 14, 2016).

² Indoor Air Quality in Commercial and Institutional Buildings, (U.S. Dept. of Labor, Occupational Safety and Health Administration) (2011).

³ Chemical Hazard Communication, (U.S. Dept. of Labor, Occupational Safety and Health Administration) (1998).

the fact remains that many facilities will not maintain the same level of oversight as they do under current rules.

Thank you for the opportunity to comment of this proposed rule change. We ask the EMC to keep the current VOC work place standards applicable to facilities across NC. The burden of enforcing common-sense precautions designed to keep workers safe and prevent pollution is extremely low, while the cost of repealing standards is high. Work place standards are not unnecessary and should continue to be applied state wide.

Thank you,

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CHAPTER VI
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Regulatory Impact Analysis

Rule Topic: Revisions to Volatile Organic Compound (VOC) Rules (532)

RULE CITATION: 15A NCAC 02D .0902 Applicability

DENR Division: Division of Air Quality

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Impact Summary: State government: No
 Local government: No
 Substantial impact: No
 Federal government: No

Authority: G.S. 143-215.3(a) (1); 143-215.107(a) (5); 62-133.8; S.L. 2013-413. G.S.150B-19.1(a).

Necessity: The Rule 15A NCAC 02D .0902, Applicability, needs to be amended to remove unnecessary requirements and reduce burden upon those persons or entities who must comply with this Rule in accordance with requirements of G.S.150B-19.1(a).

I. Executive Summary

The purpose of this document is to provide a regulatory impact analysis of proposed amendments to the Rule 15A NCAC 02D .0902, Applicability, to satisfy the requirements under N.C.G.S. Chapter 150B and E.O. 70.

Rule 15A NCAC 02D .0902, Applicability, is proposed to be amended to remove unnecessary burden associated with permitting and complying with the work practice standards in 15A NCAC 02D .0958, Work Practices for Sources of Volatile Organic Compounds. The work practices are essentially designed to minimize or keep volatile organic compound (VOC) containing product evaporative losses down and include actions such as storing VOC materials in containers with tight lids when not in use, cleaning up spills as soon as possible, storing wipe rags in closed containers, and not splashing solvent when cleaning parts.

To effect this change, Rule 02D .0902 is proposed to be amended to narrow the current statewide applicability of work practice requirements under Rule 02D .0958 to the former Charlotte moderate

nonattainment area for the 1997 8-hour ozone national ambient air quality standard (NAAQS), now a maintenance area, where Clean Air Act (CAA) anti-backsliding provisions and maintenance requirements for the ozone standard currently continue to apply.

As a result of the amendments, affected facilities outside the maintenance area may incur some minimal savings of time due to elimination of monthly visual observation of work practices, monthly recording of those observations, and semi-annual reporting of the recorded observations for purposes of Rule 02D .0958. However, the work practices may continue in practice at facilities because of similar requirements under other applicable federal standards, the incentive of potential savings inherent from minimizing material losses, and compliance with worker safety practices included on material Safety Data Sheets under Office of Safety and Health Administration (OSHA) requirements. The Division of Air Quality (DAQ) may experience some minimal time savings from having one less permit condition to include or inspect for compliance at a facility; however, most facilities have many other applicable requirements for which the agency would continue to permit, inspect, and provide compliance assistance.

These rule amendments do not cause substantial economic impacts, as defined in the Administrative Procedure Act in N.C.G.S. 150B-21.4, meaning that the estimated impact does not exceed \$1,000,000 in a 12-month period. The proposed amendments are not estimated to impact the expenditure or distribution of state funds or expenditure or revenue of local government.

II. Background

The rules in 15A NCAC 02D Section .0900 address VOC emissions and are largely based on requirements of the Clean Air Act (CAA) related to attainment of the NAAQS for ozone. Ozone is formed by a complex set of chemical reactions involving VOCs, nitrogen oxides (NO_x), and sunlight. VOCs are emitted by various sources including industrial processes, mobile sources, and even natural sources such as trees. The rules in 02D .0900 address stationary source VOC emissions from industrial processes.

Rule 15A NCAC 02D .0902, Applicability, defines the general applicability of the various VOC related rules in Section .0900 in terms of generally applicable thresholds, geographic extent, and attainment status of a location relative to the ozone NAAQS. The bulk of the rules in the Section establish reasonably available control technology (RACT) requirements based on EPA Control Technique Guidelines (CTGs) applicable to sources that are in areas not attaining the NAAQS for ozone. Such areas are referred to as nonattainment areas. Former nonattainment areas that have come into attainment with a NAAQS are referred to as maintenance areas. Some of the rules in the Section apply statewide while others only apply to ozone nonattainment or subsequent maintenance areas.

Rule 02D .0902, Applicability, was amended effective July 1, 2000 to add a reference to newly adopted Rule 02D .0958, Work Practices for Sources of Volatile Organic Compounds, to the list of rules in Paragraph (e) that apply statewide. Rule 02D .0958 established work practice standards for all facilities that use volatile organic compounds as solvents, carriers, material processing media, industrial chemical reactants, or in similar uses that mix, blend, or manufacture VOC. At the time, North Carolina was facing the potential designation of multiple areas within the state as nonattainment for ozone relative to the 1997 NAAQS.

Currently, all areas of North Carolina are in attainment for the 1997 and subsequent ozone NAAQS; however, a maintenance plan for the 1997 8-hour ozone standard remains in place for the Charlotte area. Anti-backsliding provisions of the Clean Air Act require that RACT requirements implemented in an area prior to an area being re-designated to attainment of the NAAQS subsequently remain in place.

On April 30, 2004, the Environmental Protection Agency (EPA) designated the Charlotte area as a moderate nonattainment area with respect to the 1997 8-hour ozone NAAQS. As a result of this moderate nonattainment designation, North Carolina was required to amend its state implementation plan (SIP) to satisfy the requirements of section 182 of the Clean Air Act.

After the State had clean data demonstrating the NAAQS was being met and submitted an amended Rule 02D.0902 to the EPA as a part of a SIP revision, on December 2, 2013 the EPA approved the redesignation request and maintenance plan and published a notice in the *Federal Register* designating the area as having achieved attainment with the 1997 ozone standard. Per the maintenance plan and .0902, facilities with emissions of VOC will continue to comply with the RACT requirements implemented prior to redesignation including Rule 02D .0958 requirements. Under the maintenance plan provisions of Rule 02D.0902(f), rules in Section .0900, Volatile Organic Compounds, will apply to facilities located in the maintenance area with potential to emit less than 100 tons per year of VOCs in categories for which the EPA has issued CTGs only if the area has a violation of the 1997 8-hour ozone standard after redesignation and such measures are required to be implemented as a result of technical analysis triggered under the contingency plan provisions described in Rule 02D .0902(h). Provisions of the Rule 02D .0958 are part of the RACT requirements applicable to major sources and are based on CTGs issued as a part of EPA's recommendation of the RACT requirements.

III. Description of Existing Rules 15A NCAC 02D .0902 and .0958

Rule 15A NCAC 02D .0902, Applicability, defines the general applicability of the various volatile organic compound (VOC) related rules in Section .0900. Under the current version of Rule 15A NCAC 02D .0902, Applicability, Rule 15A NCAC 02D .0958, is listed as a rule that applies to any facility with VOC emissions greater than or equal to 15 pounds per day located statewide with the exception of architectural or maintenance coating or sources subject to National Emission Standards for Hazardous Air Pollutants for Wood Furniture Manufacturing defined in 40 CFR Part 63, Subpart JJ. The Rule 02D .0958 regulates work practice standards such as VOC storage, mixing, and cleaning using VOC content material. 02D .0958 requires actions such as storing VOC materials in containers with tight lids when not in use, cleaning up spills as soon as possible, storing wipe rags in closed containers, and not splashing solvent when cleaning parts. Compliance with these work practice standards is determined by visual observations during routine source inspections and review of records of monthly visual inspections conducted by facility personnel by DAQ inspectors.

IV. Establishment of the Regulatory Baseline

The State of North Carolina Budget Manual identifies "Baseline" as the best assessment of the way the world would look absent the proposed rule change. The current VOC work practice requirements in the Rule 02D .0902 that are enforceable by DAQ inspections and work practice requirements of the manufacturers' Safety Data Sheet (SDS) for mixing, and storing VOC content material or using VOC

content material for cleaning that are enforceable by OSHA under its Hazard Communication Standard (HCS) program are selected as the baseline for these amendments.

The regulatory baseline also includes a visual inspection that affected sources shall perform once per month of all operations and processes utilizing VOCs, keeping a logbook of the results of the inspections, and semiannual reporting of the observations to comply with permit requirements for those facilities required to have a permit.

Over time, many sources subject to Rule 02D .0958 have also become subject to federal Maximum Achievable Control Technology (MACT), Generally Available Control Technology (GACT), New Source Performance Standard (NSPS) or other requirements containing similar work practices and will have to continue any work practice requirements specified in those standards.

V. Changes from the Baseline

The proposed amendments remove Rule 02D .0958, Work Practices for Sources of Volatile Organic Compounds, from the list of rules that apply statewide as regulated in Paragraph (e) of Rule 02D .0902 and thus narrow its applicability to the maintenance area for the 1997 8-hour ozone NAAQS consisting of Cabarrus, Gaston, Lincoln, Mecklenburg, Rowan, Union counties and Davidson Township and Coddle Creek Township in Iredell County. Antibacksliding provisions of the Clean Air Act require that the VOC RACT requirements previously implemented in a nonattainment area prior to redesignation of the area to attainment remain in place. Rule 02D .0958 was implemented as part of the RACT requirements applicable to major sources of VOC prior to the area's redesignation. As a result, sources in the maintenance area required to implement RACT requirements by a compliance deadline that preceded redesignation of the area to attainment and establishment of the maintenance plan for the 1997 8-hour ozone standard must continue to implement those requirements.

After the proposed amendments become effective, the requirements of the Rule 02D .0958 will apply to the affected sources with less than 100 tpy VOC emissions only if the area where the facility is located violates the 1997 ozone standard and requirements on less than 100 tpy sources are implemented as part of the contingency plan provisions. The amendment does not affect facilities with 100 tpy or more VOC emissions located in the area, as they will continue to comply with the Rule 02D .0958 without any changes because they were required to comply as part of RACT prior to the area being redesignated. All facilities with VOC emissions greater than or equal to 15 pounds per day located outside the maintenance area will no longer need to comply with the Rule 02D .0958.

That means that the current VOC work practice requirements referenced in the Rule 02D .0902(e) that are enforceable by DAQ inspections will no longer be part of permit conditions applicable for affected sources.

The amendments also make conforming changes to Paragraph (f) to update the current status of the area by adding the phrase "prior to January 2, 2014" to indicate that this area was designated as nonattainment only prior to January 2, 2014 which is the effective date of the redesignation. The current rule became effective prior to this date when this area still was designated as nonattainment. Finally, the amendments clarify the new status of the Rule 02D .0958 as applicable only to facilities subject to RACT requirements by specifically including this rule in the list of the rules which are part of RACT requirements in Rule 02D .0902(f).

VI. Motivation for the Proposed Changes

As part of the ongoing review of rules to identify unnecessary requirements, Rule 02D .0958 was identified by DAQ staff as imposing unnecessary requirements.

Over time, the state of science and understanding of ozone formation has progressed. It has become more widely recognized that ozone formation in the Southeast is limited by the availability of NO_x rather than VOCs. Ozone formation is promoted by strong sunlight, warm temperatures, and light winds. High concentrations tend to be a problem in the eastern United States only during the hot summer months when these conditions frequently occur. In its planning efforts the DAQ has examined both the manmade and natural sources of VOC emissions and their contribution to ozone formation in North Carolina. Because of the generally warm and moist climate of North Carolina, vegetation abounds in many forms, and forested lands naturally cover much of the state. As a result, the biogenic sector is the most abundant source of VOCs in North Carolina and accounts for approximately 90% of the total VOC emissions statewide. The overwhelming abundance of biogenic VOCs makes the majority of North Carolina a NO_x limited environment for the formation of ozone. This is supported by a study published in the Journal of Environmental Management that concludes that the sensitivity of ozone to anthropogenic, or manmade, VOC emissions in the Southeastern United States is 2-3 orders of magnitude smaller than the sensitivity of ozone to NO_x emissions, primarily due to the abundance of biogenic VOC emissions in this region.¹ As a result, controlling manmade VOC emissions in the Southeast is far less effective than controlling NO_x emissions for purposes of reducing ozone levels.¹

The removal of the Rule .0958 from the list of rules that apply statewide in Paragraph (e) of Rule 02D .0902, meets provisions of G.S.150B-19.1(a) to remove unnecessary requirements that are not required by federal or State law and thus reduce burden upon regulated facilities.

However, affected sources will likely continue to maintain work practices for sources of VOC because they are also part of the manufacturers' Safety Data Sheets (SDS) that are enforceable by OSHA under the Hazard Communication Standard program and are longstanding, generally accepted industry good housekeeping type practices.

VII. Costs and Benefits by Affected Party

State Impacts

Under the current Rule 02D .0902, VOC work practice standards are enforced by DAQ visual observations during routine source inspections. Based on discussion with DAQ compliance staff, visual observation and review of a facility's observation records are very simple and quick. The overall inspection time for all requirements varies from one hour for a small facility to 8 hours for a Title V facility. For purposes of this analysis, an estimated average time of 4 hours for inspection per facility was used. Based on discussion with DAQ compliance staff, staff estimates that 5% of the average inspection time is spent on determining compliance with 02D .0958. Thus approximate savings could be between 2 to 12 minutes on each facility annually. Such inspections are generally conducted every other year for non-Title V facilities and each year for the Title V facilities. The amount of time spent

¹ Odman, M Talat et al., *Quantifying the sources of ozone, fine particulate matter, and regional haze in the Southeastern United States*, 90 Journal of Environmental Management 3155-3168 (2009).

on inspection for any given facility relative to 02D .0958 can vary depending on the number of subject sources present at the facility.

A query of the DAQ's iBEAM database indicates that DAQ has approximately 1323 facilities reporting VOC emissions outside the maintenance area. The database indicates that 629 have Rule 02D .0958 permit conditions. Conservatively assuming all the facilities reporting VOC emissions are subject to Rule 02D .0958 and inspected by DAQ staff annually, at an average inspection time of 4 hours; and 5% of inspection time is spent on observations of work practices and record review to determine compliance with Rule 02D .0958, staff estimates the overall value of time saved by DAQ in a 12 month period to be approximately 265 hours. Although this is direct savings, the small fraction of time saved would likely be used to ensure compliance with other applicable requirements at the facility, so on net there would be little to no time saved. Therefore, the impact is minimal.

The proposed amendments would not require the expenditure or distribution of funds subject to the State Budget Act and are not expected to cause any additional costs to the state or change the allocation of state funds.

Local Government

The impact to state and local government facilities is expected to be minimal. Any state, local or federally owned facilities would experience similar burden reduction as a private sector source. 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. Any state, local or federally owned or operated facilities with sources subject to Rule 02D .0958 would be expected to receive the same type of benefits of burden reduction estimated for affected sources overall below.

There is one local air quality program, Mecklenburg County Air Quality, in the maintenance area and sources that previously had to comply with RACT prior to redesignation of the area to maintenance would have to continue to comply in that jurisdiction. There are two local air quality programs outside the maintenance area that implement 02D .0958 requirements in their areas of jurisdiction; however, impacts to the local air permitting programs are not included in this analysis because the DAQ cannot determine how the local programs will change their regulatory structure as a result of the changes to 02D .0902.

The rule change reduces burden on the regulated sources and no additional costs to local government are imposed.

Affected Sources

All facilities with VOC emissions, except facilities located in the Charlotte maintenance area, will no longer be required to perform a visual observation once per month of all operations and processes utilizing VOCs, maintain the results of the observations in a logbook, and submit semiannual summary reports of the VOC work practice observations to comply with permit requirements solely for the purposes of 02D .0958. Sources subject to federal maximum achievable control technology (MACT), generally available control technology (GACT), new source performance standard (NSPS) or other requirements will have to continue any similar work practice requirements specified in those standards.

As a maximum impact scenario, assuming all 1323 facilities reporting VOC emissions are subject to 02D .0958 recordkeeping and reporting requirements associated with permit conditions, facility staff

observations, recording, and reporting take the same amount of time as DAQ inspections. For purposes of this analysis, it is estimated that the overall time saved in a 12-month period to be a total of 3175 hours across all facilities. Therefore, the impact is minimal.

VIII. Conclusions

The proposed rule amendments serve to reduce unnecessary burden associated with compliance with VOC work practice requirements. Overall, regulated sources and the DAQ may see minor savings of time related to reducing the unnecessary burden associated with visual observations, reporting, recordkeeping and inspection of VOC sources currently subject to work practice standards under Rule 02D .0958. Because the observation, the recordkeeping, and the reporting of VOC work practices is generally only a small part of the overall observation, recordkeeping, and reporting for all permit requirements, the savings is small. The minor time savings is estimated to total approximately 265 hours of DAQ staff time redirected to compliance with other applicable requirements during the inspections and 3175 hours of facility time over all facilities in a twelve month period.

The rule amendments do not impose additional costs to state government or require the expenditure or distribution of state funds.

The rule amendments do not impose costs or affect the expenditure or revenues of local government.

These rule amendments do not cause substantial economic impacts, as defined in the Administrative Procedure Act in N.C.G.S. 150B-21.4, meaning that the estimated impact does not exceed \$1,000,000 in a 12-month period.

1 15A NCAC 02D .0902 is proposed for amendment as follows:
2

3 **15A NCAC 02D .0902 APPLICABILITY**

4 (a) The rules in this Section do not apply except as specifically set out in this Rule.

5 (b) This Section applies to sources that emit greater than or equal to 15 pounds of volatile organic compounds per day
6 unless specified otherwise in this Section.

7 (c) Rules .0925, .0926, .0927, .0928, .0931, .0932, .0933, and .0958 of this Section apply regardless of the level of
8 emissions of volatile organic compounds unless provisions specified in Paragraph (d)(1) of this Rule are applied.

9 (d) This Section does not apply to:

10 (1) sources that emit less than 800 pounds of volatile organic compounds per calendar month and that are:

11 (A) bench-scale, on-site equipment used exclusively for chemical or physical analysis for quality
12 control purposes, staff instruction, water or wastewater analyses, or non-production
13 environmental compliance assessments;

14 (B) bench-scale experimentation, chemical or physical analyses, training or instruction from not-
15 for-profit, non-production educational laboratories;

16 (C) bench-scale experimentation, chemical or physical analyses, training or instruction from
17 hospitals or health laboratories pursuant to the determination or diagnoses of illness; or

18 (D) research and development laboratory activities, provided the activity produces no commercial
19 product or feedstock material; or

20 (2) emissions of volatile organic compounds during startup or shutdown operations from sources which
21 use incineration or other types of combustion to control emissions of volatile organic compounds
22 whenever the off-gas contains an explosive mixture during the startup or shutdown operation if the
23 exemption is approved by the Director as meeting the requirements of this Subparagraph.

24 (e) The following rules of this Section apply to facilities located statewide:

25 (1) .0925, Petroleum Liquid Storage in Fixed Roof Tanks, for fixed roof tanks at gasoline bulk plants and
26 gasoline bulk terminals;

27 (2) .0926, Bulk Gasoline Plants;

28 (3) .0927, Bulk Gasoline Terminals;

29 (4) .0928, Gasoline Service Stations Stage I;

30 (5) .0932, Gasoline Truck Tanks and Vapor Collection Systems;

31 (6) .0933, Petroleum Liquid Storage in External Floating Roof Tanks, for external floating roof tanks at
32 bulk gasoline plants and bulk gasoline terminals;

33 (7) .0948, VOC Emissions from Transfer Operations;

34 (8) .0949, Storage of Miscellaneous Volatile Organic Compounds; and

35 ~~(9) .0958, Work Practices for Sources of Volatile Organic Compounds.~~

36 (f) Except as provided in Paragraph (e) of this Rule, the rules in this Section apply to facilities subject to Section
37 182(b)(2) of the Clean Air Act with potential to emit 100 or more tons per year of VOC and to facilities with potential to

1 emit less than 100 tons per year of volatile organic compounds in categories for which the United States Environmental
 2 Protection Agency has issued Control Technique Guidelines that are located in the following moderate nonattainment
 3 areas for the 1997 8-hour ozone standard as designated in 40 CFR ~~81.334~~: 81.334 prior to January 2, 2014:

- 4 (1) Cabarrus County;
- 5 (2) Gaston County;
- 6 (3) Lincoln County;
- 7 (4) Mecklenburg County;
- 8 (5) Rowan County;
- 9 (6) Union County; and
- 10 (7) Davidson Township and Coddle Creek Township in Iredell County.

11 These facilities are subject to reasonably available control technology requirements under this Section and shall comply
 12 with these requirements in accordance with Rule .0909 of this Section through use of Rule .0951 of this ~~Section~~. Section
 13 and with Rule .0958 of this Section.

14 (g) If any county or part of a county to which this Section applies is later designated in 40 CFR 81.334 as attainment and
 15 becomes a maintenance area for the 1997 8-hour ozone standard, all sources in that county or part of county subject to
 16 Paragraph (f) of this Rule that achieved compliance in accordance with Rule .0909 of this Section shall continue to
 17 comply with this Section. Facilities with potential to emit less than 100 tons of volatile organic compounds per year for
 18 which the compliance date in Rule .0909 of this Section has not passed before redesignation of the area to attainment for
 19 the 1997 ozone standard shall comply in accordance with Paragraph (h) of this Rule.

20 (h) If a violation of the 1997 ambient air quality standard for ozone occurs when the areas listed in Paragraph (f) become
 21 ozone maintenance area, no later than 10 days after the violation occurs, the Director shall initiate technical analysis to
 22 determine the control measures needed to attain and maintain the 1997 8-hour ambient air quality standard for ozone. By
 23 the following May 1, the Director shall implement the specific stationary source control measures contained in this
 24 Section that are required as part of the control strategy necessary to bring the area into compliance and to maintain
 25 compliance with the 1997 8-hour ambient air quality standard for ozone. The Director shall implement the rules in this
 26 Section identified as being necessary by the analysis by notice in the North Carolina Register. The notice shall identify
 27 the rules that are to be implemented and shall identify whether the Rules implemented are to apply in the areas listed in
 28 Paragraph (f) of this Rule. At least one week before the scheduled publication date of the North Carolina Register
 29 containing the Director's notice implementing rules in this Section, the Director shall send written notification to all
 30 permitted facilities within the counties in which the Rules of this Section are being implemented notifying them that they
 31 are or may be subject to the requirements defined in Rule .0909 of this Section.

32 For Mecklenburg County, "Director" means, for the purpose of notifying permitted facilities in Mecklenburg County, the
 33 Director of the Mecklenburg County local air pollution control program.

34 (i) Sources whose emissions of volatile organic compounds are not subject to limitation under this Section may still be
 35 subject to emission limits on volatile organic compounds in Rules .0524, .1110, or .1111 of this Subchapter.

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 37 *History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);*

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Eff. July 1, 1979;
Amended Eff. _____; May 1, 2013; September 1, 2010; January 1, 2009; July 1, 2007; March
1, 2007; August 1, 2004; July 1, 2000; April 1, 1997; July 1, 1996; July 1, 1995; May 1, 1995; July 1,
1994.

§ 150B-19.1. Requirements for agencies in the rule-making process.

(a) In developing and drafting rules for adoption in accordance with this Article, agencies shall adhere to the following principles:

- (1) An agency may adopt only rules that are expressly authorized by federal or State law and that are necessary to serve the public interest.
- (2) An agency shall seek to reduce the burden upon those persons or entities who must comply with the rule.
- (3) Rules shall be written in a clear and unambiguous manner and must be reasonably necessary to implement or interpret federal or State law.
- (4) An agency shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed. The agency shall not adopt a rule that is unnecessary or redundant.
- (5) When appropriate, rules shall be based on sound, reasonably available scientific, technical, economic, and other relevant information. Agencies shall include a reference to this information in the notice of text required by G.S. 150B-21.2(c).
- (6) Rules shall be designed to achieve the regulatory objective in a cost-effective and timely manner.

(b) Each agency subject to this Article shall conduct an annual review of its rules to identify existing rules that are unnecessary, unduly burdensome, or inconsistent with the principles set forth in subsection (a) of this section. The agency shall repeal any rule identified by this review.

(c) Each agency subject to this Article shall post on its Web site, no later than the publication date of the notice of text in the North Carolina Register, all of the following:

- (1) The text of a proposed rule.
- (2) An explanation of the proposed rule and the reason for the proposed rule.
- (3) The federal certification required by subsection (g) of this section.
- (4) Instructions on how and where to submit oral or written comments on the proposed rule, including a description of the procedure by which a person can object to a proposed rule and subject the proposed rule to legislative review.
- (5) Any fiscal note that has been prepared for the proposed rule.

If an agency proposes any change to a rule or fiscal note prior to the date it proposes to adopt a rule, the agency shall publish the proposed change on its Web site as soon as practicable after the change is drafted. If an agency's staff proposes any such change to be presented to the rule-making agency, the staff shall publish the proposed change on the agency's Web site as soon as practicable after the change is drafted.

(d) Each agency shall determine whether its policies and programs overlap with the policies and programs of another agency. In the event two or more agencies' policies and programs overlap, the agencies shall coordinate the rules adopted by each agency to avoid unnecessary, unduly burdensome, or inconsistent rules.

(e) Each agency shall quantify the costs and benefits to all parties of a proposed rule to the greatest extent possible. Prior to submission of a proposed rule for publication in accordance with G.S. 150B-21.2, the agency shall review the details of any fiscal note prepared in connection with the proposed rule and approve the fiscal note before submission.

(f) If the agency determines that a proposed rule will have a substantial economic impact as defined in G.S. 150B-21.4(b1), the agency shall consider at least two alternatives to the proposed rule. The alternatives may have been identified by the agency or by members of the public.

(g) Whenever an agency proposes a rule that is purported to implement a federal law, or required by or necessary for compliance with federal law, or on which the receipt of federal funds is conditioned, the agency shall:

- (1) Prepare a certification identifying the federal law requiring adoption of the proposed rule. The certification shall contain a statement setting forth the reasons why the proposed rule is required by federal law. If all or part of the proposed rule is not required by federal law or exceeds the requirements of federal law, then the certification shall state the reasons for that opinion.
- (2) Post the certification on the agency Web site in accordance with subsection (c) of this section.
- (3) Maintain a copy of the federal law and provide to the Office of State Budget and Management the citation to the federal law requiring or pertaining to the proposed rule.

(h) Repealed by Session Laws 2014-120, s. 6(a), effective September 18, 2014, and applicable to proposed rules published on or after that date. (2011-398, s. 2; 2012-187, s. 3; 2013-143, s. 1.1; 2014-120, s. 6(a).)

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Chapter VII

The following documentation of filing and notification is incorporated as part of this hearing record and is maintained on file:

1. ENR 101 Internal Approval Form.
2. Submission for Notice Form and material submitted to the Office of Administrative Hearings.
3. The public notice as it appears in *The North Carolina Register* Volume 30, Issue 20, pages 2136-2139.
4. Memorandum transmitting hearing notice and proposal to regional offices for public inspection.
5. Memorandum transmitting hearing notice and proposal to local programs.
6. Submission of Filing Forms and material filed with Office of Administrative Hearings.
7. Executive Order No. 70 Certification Form
8. Letter notifying EPA of hearing.
9. Letter transmitting hearing record to EPA.

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