

Agenda Item:

Request to Proceed to Public Hearing on Startup, Shutdown, and Malfunction State Implementation Plan (SIP) Call Rule Revisions (533)

Explanation:

The Environmental Management Commission (EMC) is requested to approve proceeding to public hearing on amendments to 15A NCAC 02D .0535, Excess Emissions Reporting and Malfunctions and adoption of 15A NCAC 02D .0545, Treatment of Malfunction Events and Work Practices for Startup and Shutdown Operations.

On May 22, 2015, the U.S. Environmental Protection Agency (EPA) issued a final action to ensure states have plans in place that are fully consistent with the Clean Air Act (CAA) and recent court decisions concerning startup, shutdown and malfunction (SSM) emission limit exemptions. EPA's final action responds to the Sierra Club Petition; clarifies the EPA's SSM Policy to assure consistency with the CAA and recent court decisions; and finalizes findings that the SSM provisions in the SIPs of 36 states including North Carolina that do not meet the requirements of the CAA and accordingly issues a "SIP call" for each of those states.

In issuing the SIP call action, the EPA directs the affected states to correct specific SSM provisions in their SIPs. The CAA allows a maximum of 18 months from the issuance of the final action to submit a SIP revision. The SIP submission deadline for each of the 36 states subject to the SIP call action is November 22, 2016.

As described in the February 2013 proposal, the Petitioner objected to two generally applicable provisions in the North Carolina SIP that provide exemptions for emissions exceeding otherwise applicable SIP emission limitations at the discretion of the state agency during malfunctions (15A NCAC 02D .0535(c)) and during startup and shutdown (15A NCAC 02D .0535(g)).

The EPA proposed to, and subsequently did, grant the Petition with respect to 15A NCAC 02D .0535(c) and (g), finding that 15A NCAC 02D .0535(c) and 15A NCAC 02D .0535(g) are substantially inadequate to meet CAA requirements. Consistent with its February 2013 proposal, EPA also proceeded to issue the final SIP call with respect to these provisions.

Since that time several states have entered into litigation over the validity of the SIP call. North Carolina is one of those states. Nonetheless, a requirement to submit a SIP revision by November 22, 2016 currently remains in effect. As a result and after consideration of possible options to address the identified concerns, the following rule revisions are proposed.

15A NCAC 02D .0535, Excess Emissions Reporting and Malfunctions, is proposed to be amended to include introductory language that indicates that Rule 02D .0535 is the rule that will be in effect if the states' lawsuits are successful.

A new rule 15A NCAC 02D .0545, Treatment of Malfunction Events and Work

Practices for Startup and Shutdown Operations, is proposed for adoption and would be in effect in the event that states' lawsuits are unsuccessful as indicated in its introductory language. Rule 02D .0545 eliminates the exemptions in paragraphs (c) and (g). For startup and shutdown, Rule 02D .0545 allows a facility to demonstrate compliance with the applicable existing emission limits, generally available work practice standards, work practice standards in analogous federal rules that a specific source may not otherwise be subject to, or a source specific startup and shutdown work practice standard permit limit. For malfunctions a facility may demonstrate compliance with the applicable existing limits or with a source specific malfunction work practice standard permit limit.

Recommendation: The Director recommends that the Commission approve proceeding to public hearing on the proposed amendment, adoption and fiscal note and that the Chairman appoint a hearing officer for this matter.