

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

REPORT OF PROCEEDINGS OF PUBLIC HEARING ON  
PROPOSED ADJUSTMENT OF EFFECTIVE DATE OF 15A NCAC 02D .0535  
AND .0545

MARCH 20, 2018  
RALEIGH, NC

ENVIRONMENTAL MANAGEMENT COMMISSION

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## I-1

## CHAPTER I

**Summaries and Recommendations**

Proposed adjustment of effective date of 15A NCAC 02D .0535 and .0545

**BACKGROUND AND SUMMARY**

On September 8, 2016, the EMC adopted revised rules regarding startup, shutdown, and malfunction to address the SSM SIP Call issued by EPA. The rules contain applicability language contingent on outcome of the Court decision and were given a future effective date of May 22, 2018, to allow time for litigation on the SSM SIP Call to be completed. On April 24, 2017, the U.S. Court of Appeals for the D.C. Circuit issued an order at EPA's request, placing oral arguments in the case in abeyance indefinitely and requiring status updates from EPA on its review of the SSM SIP Call for reconsideration every ninety days. On July 24, 2017, EPA filed its first 90-day status report stating that EPA is continuing to review the SSM Action to determine whether the agency will reconsider all or part of the action.

Given the recent court order holding oral arguments in abeyance indefinitely and EPA's subsequent 90-day reports that the matter is still under review, there is uncertainty as to whether the litigation will be resolved prior to the May 22, 2018 effective date of the state SSM rules. As a result, to maintain intent of the EMC that litigation be concluded prior to the state SSM rules becoming effective, to provide regulatory certainty, and to avoid potentially unnecessary use of resources preparing and processing source specific work practice standard submittals, a revision of the rules' effective date is needed to better align with outcome of the pending litigation.

Pursuant to G.S. 150B-21.3, which provides that an agency may specify a later rule effective date, the effective date in the history note of the rules is proposed to be revised to "Amended Eff. on effective date of EPA approval into North Carolina's State Implementation Plan".

**PROPOSED ADJUSTMENT**

The history note of 15A NCAC 02D .0535, Excess Emissions Reporting and Malfunctions, is proposed for revision from "Amended Eff. May 22, 2018" to "Amended Eff. on effective date of EPA approval into North Carolina's State Implementation Plan".

The history note of 15A NCAC 02D .0545, Treatment Of Malfunction Events and Work Practices for Start-Up And Shut-Down Operations, is proposed for revision from "Eff. May 22, 2018" to "Eff. on effective date of EPA approval into North Carolina's State Implementation Plan".

**PUBLIC COMMENTS AND RESPONSES THERETO**

No public comments were received at the hearing or during the comment period.

**CONCLUSION**

No comments were received at the hearing or during the comment period on proposed adjustment of the effective date of the rules in the history note.

**HEARING OFFICER'S' RECOMMENDATION**

The Hearing Officer recommends that the proposed adjustment of the history note of rules 15A NCAC 02D .0535 and .0545 as presented in Chapter II of this hearing report be adopted by the Environmental Management Commission.

## CHAPTER II

### Change Formatting Key

Chapter IV of this hearing record represents the proposed text as noticed for public comment.

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

For Amendments:

~~Text~~ = deleted text

Text = added text

~~Text~~ = existing text in what was published that is proposed to be deleted following the comment period

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

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

{Text} = text proposed to be added that is deleted following the comment period

History Note Adjustment

The history note of 15A NCAC 02D .0535 is proposed to be revised to adjust the effective date as follows:

*History Note:* Authority G.S. 143-215.3(a)(1);143-215.107(a)(4); 143-215.107(a)(5);  
Eff. March 1, 1983;  
Amended Eff. ~~May 22, 2018~~; on effective date of EPA approval into North Carolina's State  
Implementation Plan; June 1, 2008; April 1, 2001; July 1, 1998; July 1, 1996; October 1, 1991;  
May 1, 1990; April 1, 1986; July 1, 1984.

The history note of 15A NCAC 02D .0545 is proposed to be revised to adjust the effective date as follows:

*History Note:* Authority G.S. 143-215.3(a)(1);143-215.107(a)(4); 143-215.107(a)(5);  
Eff. ~~May 22, 2018~~; on effective date of EPA approval into North Carolina's State Implementation  
Plan.

CHAPTER III  
REPORT OF PROCEEDINGS

**Introduction**

The Department of Environmental Quality, Division of Air Quality, held a public hearing on March 20, 2018 at 6:00 p.m. in Raleigh, NC. The hearing considered the proposed revision of the effective date in the history note of 15A NCAC 02D .0535 and .0545.

Commissioner Charlie Carter was appointed to be hearing officer for the hearing.

The proposed effective date for these rules is projected to be on the effective date of EPA approval into North Carolina's State Implementation Plan.

A public notice announcing this hearing was emailed to each person on the interested party email distribution list and was also 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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**Steve Keen**

**Dr. Suzanne Lazorick**  
**Dr. Stan Meiburg**  
**Manning Puette**  
**Dr. Albert R. Rubin**  
**Clyde E. Smith, Jr.**  
**Richard Whisnant**

February 14, 2018

**To:** Charlie Carter  
**From:** J. D. Solomon  
**Subject:** Hearing Officer Appointment

A handwritten signature in black ink, appearing to be "JD Solomon", written over the "From:" line of the email header.

A public hearing has been scheduled for March 20, 2018 at 6:00 p.m. in the DEQ Green Square Office Building, 217 West Jones Street, in Raleigh NC. The purpose of the hearing is to receive comments on the narrow matter of adjustment of the effective date in the history note of 15A NCAC 02Q .0535 and .0545. The public notice for this hearing is attached.

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 Burleson and Mr. Steve Hall will provide staff support for you.

If you have any questions, please feel free to contact Joelle Burleson at (919) 707-8720, Steve Hall at (919) 707-8404, or me.

**Attachment**

**cc:** Mike Abraczinskas  
Lois Thomas  
Hearing Record File

## NORTH CAROLINA ENVIRONMENTAL MANAGEMENT COMMISSION

## PUBLIC NOTICE

Notice is hereby given for a public hearing to be heard by the North Carolina Department of Environmental Quality, Division of Air Quality concerning the proposed adjustment of effective date of air quality rules.

**PURPOSE:**

To receive comments on the narrow matter of proposed adjustment of the effective date of 15A NCAC 02D .0535 and .0545.

On September 8, 2016, the EMC adopted revised rules regarding startup, shutdown, and malfunction (SSM) to address the SSM State Implementation Plan (SIP) Call issued by EPA. The rules contain applicability language contingent on outcome of the Court decision on SSM SIP Call litigation and were given a future effective date of May 22, 2018, to allow time for litigation on the SSM SIP Call to be completed. On April 24, 2017, the U.S. Court of Appeals for the D.C. Circuit issued an order at EPA's request, placing oral arguments in the case in abeyance indefinitely and requiring status updates from EPA on its review of the SSM SIP Call for reconsideration every ninety days. On July 24, 2017, EPA filed its first 90-day status report stating that EPA is continuing to review the SSM Action to determine whether the agency will reconsider all or part of the action.

Given the court order holding oral arguments in abeyance indefinitely and EPA's subsequent 90-day reports that the matter is still under review, there is uncertainty as to whether the litigation will be resolved prior to the May 22, 2018 effective date of the state SSM rules. As a result, to maintain intent of the EMC that litigation be concluded prior to the state SSM rules becoming effective, to provide regulatory certainty, and to avoid potentially unnecessary use of resources preparing and processing source specific work practice standard submittals, a revision of the rules' effective date is needed to better align with outcome of the pending litigation.

Pursuant to G.S. 150B-21.3, which provides that an agency may specify a later rule effective date, the effective date in the history note is proposed to be revised to "Amended Eff. on effective date of EPA approval into North Carolina's State Implementation Plan."

**NOTE:** The proposed revision considered in this hearing, if adopted, will be effective statewide and submitted to the United States Environmental Protection Agency to be included in the North Carolina State Implementation Plan;

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 LOCATIONS:

March 20, 2018, 6:00 P.M.  
Room 1210, DEQ Green Square Office Building  
217 W. 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 is requested to submit a written statement for inclusion in the record of proceedings at the public hearing.** The hearing officer may limit the length of oral presentations if many people want to speak. The hearing record will remain open until March 20, 2018 to receive additional written statements. To be included, the statement must be received by the Division by March 20, 2018.

INFORMATION:

Copies of the proposed adjustment may be downloaded from <http://deq.nc.gov/about/divisions/air-quality/air-quality-rules/rules-hearing-process>. Copies of the proposal may also be reviewed at the regional offices of the North Carolina Department of Environmental Quality, 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  
217 West Jones Street  
1641 Mail Service Center  
Raleigh, North Carolina 27699-1641  
(919) 707-8720 Phone/Fax  
[daq.publiccomments@ncdenr.gov](mailto:daq.publiccomments@ncdenr.gov)  
(Please type "March 20, 2018 Hearing" in subject line.)

DATE: 2/14/18

  
Michael A. Abraczinskas,  
DAQ Director

## **Transcript**

### **Raleigh Hearing**

A transcript of the March 20, 2018 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 Raleigh hearing are as follows:

#### **Hearing Officer:**

Charlie Carter, Environmental Management Commission

#### **Staff Members of the Division of Air Quality or other state employees:**

Mr. Steve Hall, DAQ, DEQ

Ms. Joelle Burleson, DAQ, DAQ

Mr. Rahatul Ashique, DAQ, DEQ

#### **Members of the General Public**

No members of the general public attended the hearing.

History Note Adjustment

The history note of 15A NCAC 02D .0535 is proposed to be revised to adjust the effective date as follows:

*History Note:* Authority G.S. 143-215.3(a)(1);143-215.107(a)(4); 143-215.107(a)(5);  
Eff. March 1, 1983;  
Amended Eff. ~~May 22, 2018;~~on effective date of EPA approval into North Carolina's State  
Implementation Plan; June 1, 2008; April 1, 2001; July 1, 1998; July 1, 1996; October 1, 1991;  
May 1, 1990; April 1, 1986; July 1, 1984.

The history note of 15A NCAC 02D .0545 is proposed to be revised to adjust the effective date as follows:

*History Note:* Authority G.S. 143-215.3(a)(1);143-215.107(a)(4); 143-215.107(a)(5);  
Eff. ~~May 22, 2018;~~on effective date of EPA approval into North Carolina's State Implementation  
Plan.

## **Suggested Hearing Officer's Comments**

### INTRODUCTION

[Hearing officer]:

Good evening ladies and gentlemen. My name is Charlie Carter. I am a member of the North Carolina Environmental Management Commission. My role as hearing officer is to listen to all relevant comments from these proceedings and report them to the full Commission. Here with me tonight is Mrs. Joelle Bursleson from the North Carolina Division of Air Quality's Planning Section.

Some other Division of Air Quality staff members are also here tonight to assist. Mrs. Bursleson, please introduce the staff present.

[Mrs. Bursleson]: (Introduces staff.)

[Hearing officer]:

This evening we will be conducting one hearing. During the hearing, we will take comments on the narrow matter of the proposed adjustment of the effective date of 15A NCAC 02D .0535 and .0545. The hearing will be held in accordance with the North Carolina Administrative Procedures Act.

Public notice for the hearing has been published on the Division of Air Quality website. The public notice also has been emailed to those on the Division of Air Quality's rulemaking distribution list. I will enter the public notice and the proposed rule changes into the hearing record without reading them at this time.

It would be helpful if any person desiring to comment during these hearings would also submit a written statement for inclusion into the hearing record. Once called to speak, please come to the podium and state your name clearly, whom you represent, and identify the rule or rules you are commenting on.

### HEARING

I will now open the hearing and take relevant comments on the proposed adjustment of the effective date of 15A NCAC 02D .0535 and .0545.

The effective date of 15A NCAC 02D .0535, Excess Emissions Reporting and Malfunctions, and .0545, Treatment of Malfunction Events and Work Practices for Start-Up and Shut-Down Operations, in the rules' history note is proposed to be adjusted.

On September 8, 2016, the EMC adopted revised rules regarding startup, shutdown, and malfunction (SSM) to address the SSM State Implementation Plan (SIP) Call issued by EPA. The rules contain applicability language contingent on outcome of the Court decision on SSM SIP Call litigation and were given a future effective date of May 22, 2018, to allow time for litigation on the SSM SIP Call to be completed. On April 24, 2017, the U.S. Court of Appeals for the D.C. Circuit issued an order at EPA's request, placing oral arguments in the case in abeyance indefinitely and requiring status updates from EPA on its review of the SSM SIP Call for reconsideration every ninety days. On July 24, 2017, EPA filed its first 90-day status report stating that EPA is continuing to review the SSM Action to determine whether the agency will reconsider all or part of the action.

Given the court order holding oral arguments in abeyance indefinitely and EPA's subsequent 90-day reports that the matter is still under review, there is uncertainty as to whether the litigation will be resolved prior to the May 22, 2018 effective date of the state SSM rules. As a result, to maintain intent of the EMC that litigation be concluded prior to the state SSM rules becoming effective, to provide regulatory certainty, and to avoid potentially unnecessary use of resources preparing and processing source specific work practice standard submittals, a revision of the rules' effective date is needed to better align with outcome of the pending litigation.

Pursuant to G.S. 150B-21.3, which provides that an agency may specify a later rule effective date, the effective date in the history note is proposed to be revised to read "Amended Eff. on effective date of EPA approval into North Carolina's State Implementation Plan."

[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 public comment period will remain open until March 20, 2018, for additional written comments.

CHAPTER V

COMMENTS DURING THE COMMENT PERIOD

INDEX OF COMMENTERS

NAME

REPRESENTING

PAGE

No one commented during the comment period.

CHAPTER VI  
INDEX OF ATTACHMENTS

ATTACHMENTS

PAGE

There are not attachments for this hearing.

Chapter VII

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

1. Memorandum transmitting hearing notice and proposal to regional offices for public inspection.
2. Memorandum transmitting hearing notice and proposal to local programs.
3. Letter notifying EPA of hearing.
4. Letter transmitting hearing record to EPA.

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