

**ENVIRONMENTAL MANAGEMENT COMMISSION
GROUNDWATER AND WASTE MANAGEMENT COMMITTEE
SUMMARY**

**July 11, 2019
11:15 a.m. – 12:00 p.m.
Bill Puette, Chairman, Presiding**

The Groundwater and Waste Management Committee (GWWMC) of the North Carolina Environmental Management Commission (EMC) addressed the following at its July 11, 2018 meeting:

- Update on Rule Readoption TimeLine for 15A NCAC Subchapter 02N “Underground Storage Tanks” Subchapter 02O “Financial Responsibility Requirements for Owners and Operators of Underground Storage Tanks”, and Subchapter 02P “Leaking Petroleum Underground Storage Tank Cleanup Funds” (Ruth Strauss, DWM-UST)
- Information on Proposing 15A NCAC 02L .0202 Revisions to Incorporate Interim Maximum Allowable Concentrations (IMACs) (Bridget Flaherty, DWR)

On July 11, 2018, the GWWMC met in the Ground Floor Hearing Room at the Archdale Building in Raleigh, North Carolina.

GWWMC Members in Attendance:

Mr. Bill Puette, Committee Chairman
Mr. Steve Keen, Committee Vice-Chairman
Dr. Albert R. Rubin, WQC Chairman

Mr. Charles “Boots” Elam
Mr. David W. Anderson

Other Commissioners Who Attended:

Mr. Charles Carter, AQC Chairman
Dr. Stan Meiburg
Mr. John D. “J.D.” Solomon, EMC Chairman
Marion Deerhake

Ms. Shannon M. Arata
Mr. George H. Pettus
Ms. Julie Wilsey, WQC Chairwoman

Preliminary Matters:

In accordance to North Carolina General Statute § 138A-15, **Chairman Bill Puette** asked if any GWWMC member knew of any known conflict of interest or appearance of conflict with respect to any item on the July 11, 2018 GWWMC agenda. None of the members stated there was a conflict.

Commissioner Keen made a motion to approve the minutes from the May 9, 2018 GWWMC meeting. **Commissioner Rubin** seconded the motion. The minutes were approved as written.

Information Item:

1. Update on Rule Readoption Timeline for 15A NCAC Subchapter 02N “Underground Storage Tanks”, Subchapter 02O “Financial Responsibility Requirements for Owners and Operators of Underground Storage Tanks”, and Subchapter 02P “Leaking Petroleum Underground Storage Tank Cleanup Funds”. (Ruth Strauss, DWM-UST)

Ms. Ruth Strauss, from the Division of Waste Management, Underground Storage Tank Section, provided an update on the readoption process timeline and proposed readoption deadline for the 15A NCAC 02N, 02O, and 02P rules. Pursuant to G.S. 150B-21.3A, the Rules Review Commission approved the Periodic Review Existing Rules Report for 15A NCAC 02N, 02O, and 02P at the February 15, 2018 meeting and the report became effective on March 6, 2018.

Ms. Strauss stated that 42 rules in 02N, 18 rules in 02O and 12 rules in 02P were determined to be necessary with substantive interest. She then presented a timeline and stated that she believed they would return to the GWWMC in November 2019 to request approval of the rule text, the fiscal note preparation, and approval to go to public hearing. She also stated that there was a proposed effective date of September 2020 and a proposed readoption deadline of January 2023. The 2023 deadline includes a buffer for stakeholder discussion and to allow for public comment and to return to the EMC with changes, should the need arise.

In addition, Ms. Strauss announced that HB374 passed and is now known as SL 2018-114 and mandates changes to 02N rules. These changes are to rules that govern the operation and maintenance of USTs. Sections 19A through E of SL 2018-114 changed overfill protection equipment testing requirements from annual testing to triennial testing. Sections 19.1A through 19.1E require DEQ to allow the use of testing methods and equipment that were approved by the EPA. These changes will be incorporated into the rules during the readoption process but will not be required to go before the RRC. This concluded Ms. Strauss’ presentation.

Following the presentation, **Chairman Puette** and **Commissioner Solomon** both questioned the lengthy timeframe of the schedule and Ms. Strauss stated that it is their intent to have an effective date of September 2020 but considering the rules have potential to generate a lot of public comment, they wanted to make sure to allow for additional time, if needed, for informal stakeholder meetings and in the event they have to go back to public hearing for comments. Ms. Strauss also clarified that the changes made this summer by the General Assembly go into effect immediately so there will be no delay with those changes.

Rulemaking Coordinator, Jennifer Everette, also spoke and said she had consulted with staff regarding the date and discussed the potential controversial issues, and the steps that would need to be taken if there were additional changes to the rules and the fiscal note in order to go back out to public comment. It was felt that the longer timeline of 2023 needed to be requested.

However, Ms. Everette reiterated that the plan was to have these rules back to the Committee for readoption well before 2023.

Chairman Puette requested that the Committee be kept informed, every other meeting, as to any changes. This is to be in the form of an update; no formal presentation should be necessary.

2. Information on Proposing 15A NCAC 02L .0202 Revisions to Incorporate Interim Maximum Allowable Concentrations (IMACs) (Bridget Flaherty, DWR)

Summary of presentation:

Attachments included for this presentation:

1. A list of the IMACs that are established under the 02L .202 rule. This is an up to date list of the IMACs that are currently approved by the Director.
2. List of IMACs that will be recommended for rulemaking, to be withdrawn, and to be retained.
3. Detailed table of proposed groundwater standards, which includes the original IMAC value, the proposed groundwater standard value, and the basis of these values.
4. Example of a Groundwater Standard Summary Document. There is a document similar to this for all IMACs that we are proposing as groundwater standards. This document includes a health effects summary, a summary of the available data that was used to calculate a groundwater standard, and a recommended standard value.
5. Example of an IMAC Calculation Worksheet. There is a worksheet similar to this for all IMACs that we will be proposing as groundwater standards. This worksheet goes into more detail on how the calculations are done, and includes references for the data sources.

15A NCAC 02L:

15A NCAC 02L .0200 includes standards for the protection of groundwaters of the state as a resource and to protect human health.

When a groundwater standard has not been established under the rule, IMACs may be established by the Director. We currently have 60 IMACs that have been established. Most were requested by DWM, but any person can request an IMAC to be established, so long as they follow the guidance in 15A NCAC 02L .0202.

If there is not an established standard for a substance, then that substance is not permitted in groundwater above the Practical Quantitation Limit (PQL). The PQL is not health based and may be quite stringent. Therefore, the existence and establishment of IMACs are valuable for the regulated community.

IMAC Review Process:

Once staff receives these IMAC requests, they gather and review toxicological research and literature for each chemical. A report is then prepared and reviewed internally by staff. A

prepared proposal is then sent to DWM and DHHS for their comments and for further discussion or concurrence.

An appropriate course of action is then determined. This may be a recommendation to the Director to adopt an IMAC, or a request for additional information from the applicant, or a request for assistance from the EPA if needed.

Comparison of IMACs and GW Standards:

They are both legally enforceable and require public notification. IMACs are temporary, they do not require public comment, public hearing, or fiscal analysis, while groundwater standards in O2L do require these. IMACs are established by the Division of Water Resources Director, while groundwater standards are approved into rule by the EMC.

IMAC to GW Process:

The process begins by reviewing current IMAC values and updating these values as appropriate, based on the current available data. These values are then recommended as groundwater standards. The recommended standards do need a fiscal analysis, and this includes working with and receiving input from DWM, and others as appropriate, to determine how many sites will be impacted by establishing these standards.

A formal proposal with the recommended groundwater standards will be presented to the Groundwater and Waste Management Committee of the EMC to commence with rulemaking.

Next Steps:

As shown in the attachments, we will be recommending 48 IMACs to go to rulemaking. Three constituents do not have established IMACs but we will be recommending standards. Four IMACs will be recommended to be withdrawn. This is due to insufficient information.

We will be recommending that 4 IMACs be retained, so they stay as IMACs. This is because they are currently undergoing assessment from the EPA and we are waiting on that information.

9 IMACs need further review before we will recommend a standard for them. Also, we currently have several pending requests for IMACs.

Anticipated Timeline:

We expect that the fiscal analysis for these proposed standards will take around 6 months. Once that is complete, we will present a proposal to the Groundwater and Waste Management Committee in March 2019, and, if approved, to the EMC in May 2019. If the EMC approves, we will go to public hearing and comment with the public comment period expected to occur from June to August 2019. We expect RRC approval of rule in December 2019 and a proposed effective date in January 2020.

Summary of questions and key issues discussed:

Commissioner Deerhake asked if DHHS still plays a role in the health evaluations of the proposed standards. Ms. Flaherty responded that as part of the review process, a report is sent to DHHS for their comments. **Commissioner Deerhake** asked if the SAB (Science Advisory Board) also plays a role in the health evaluations. Ms. Flaherty responded that they also provide input for certain substances, such as GenX. **Commissioner Deerhake** asked if ATSDR Toxicological Profiles are used and asks for more details on the literature review process, especially if there is no IRIS (Integrated Risk Information System) value available. Connie Brower (DWR) responded that the review process is quite extensive. In rule, there is an order in which resources are looked at. IRIS is looked at first, but a lot of the time EPA has not published an IRIS value. Therefore, staff looks at anything that they may find. Sometime that gets to be quite challenging because there is not a lot of information available. As mentioned with respect to the SAB, that is the issue for GenX where there is not a lot of information available. Ms. Brower added that ATSDR is one of the sources that are used during the literature review.

Chairman Solomon stated that a lot of the IMACs have been developed over the years because of special clean up considerations or something found on a site, which could be handled by the IMAC or maybe a special order of consent. There is not a lot of federal standards for these IMACs, so they are adopting these new state standards under 02L. **Chairman Solomon** asked how to determine what needs to be part of a rule for statewide standards out of these 60 IMACs.

Chairman Solomon stated that 48 IMACs have been determined to be statewide groundwater standards, even though there is no federal standard and even though these IMACs may have been originally established to help clean up one site. **Chairman Solomon** asked what is the logic to that; how is this process mapped out on a decision tree; who makes that decision? Jeff Manning (DWR) answered that the rules are applicable statewide and that so far all of the groundwater standards apply statewide. There was a framework set up decades ago for using a classification system for groundwater, which would be one way to have different standards apply.

Chairman Solomon asked how did staff decide that 48 IMACs needed to be made more permanent into the 02L rule. He stated that he worked on an IMAC not long ago with Interim Director Linda Culpepper and they looked at information from 1972, which was the most recent science available. He stated that this seems odd to take an IMAC into 02L that uses this information. Mr. Manning answered that otherwise the PQL is used if there is no standard, which could be a lot more stringent. **Chairman Solomon** asked why the standard needs to be established in 02L versus done on a site-by-site cleanup level. He asked if there is a mechanism to keep these IMACs temporary rather than make them part of the 02L rule and how it is determined who decides to make these standards permanent or not. He noted that if General

Assembly gets involved, a logic tree will need to be mapped out for what needs to be permanent versus temporary.

Mr. Manning stated that there are 4 IMACs that staff do not feel the information justifies setting them as a standard, so those will not be proposed as standards. **Chairman Solomon** noted that 48 out of 60 IMACs are going to be proposed as standards, which is a big number at 80%. Mr. Manning stated that it is good that we have the information to feel good about a proposal for these 48 IMACs. **Chairman Solomon** stated that there will likely be more conversation, and that he questioned bothering going to permanent rules for these standards.

Chairman Puette asked which IMACs are not being recommended for O2L standards. Ms. Flaherty directed to the second bullet point on the slide. Committee Chair Puette asked about a chart that was passed out during the coal combustion residuals (CCR) rules prior meeting, where there were several groundwater parameters for which there were no IMACs and what happened to those. Lithium and radium were given as examples. He asked what is the status of these, since they are a concern on the residuals rule. Michael Scott, Director of Division of Waste Management, answered that these are the analytes identified associated with the CCR rule that will be proposed before the full commission on the next day. He explained that these are analytes where standards don't exist and the question will be whether they need to request IMACs or what is the path forward for these. They will dive more into this question the next day before the full commission.

Following Ms. Flaherty's presentation, **Chairman Puette** adjourned the meeting.