

## Agenda Item 2

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### Air Quality Committee Meeting Minutes

January 7, 2009

The Air Quality Committee (AQC) of the Environmental Management Commission (EMC) met on January 7, 2009; Ground Floor Hearing Room, Archdale Building. The Committee members present: Chairman Marion Deerhake, Mr. Thomas F. Cecich, Mr. Darryl D. Moss, Mr. John Curry, Dr. David B. Peden, Mr. Stephen Smith, and Mr. Steven Weber. Staff members of the Division of Air Quality (DAQ) and the general public were also in attendance.

Chairman Marion Deerhake called the AQC meeting to order at approximately 4 p.m.

**Agenda Item 1**, Chairman Deerhake reminded the Committee members of the Governor's Ethics Executive Order Number One. She asked if any members had a conflict or appearance of conflict of interest with any items on the agenda. No Committee members identified conflicts of interest.

**Agenda Item 2**, Review and Approval of the November AQC Meeting Minutes. Chairman Deerhake asked if there were any questions or changes to the November AQC meeting minutes. Mr. Curry made the motion to accept the minutes. Mr. Cecich seconded the motion. The motion passed.

Chairman Deerhake informed the Committee that agenda item 4 is no longer an action item but it will remain in place for the presentation of new information. Agenda 6 is an EMC action directly related to agenda 4. Agenda 6 will be removed from the agenda for the EMC January meeting.

#### DRAFT RULES

Agenda item 3, Amendments to the Fugitive Dust Rule was presented by Mr. Mike Abraczinskas. The proposed rule amendment removes the three words "from process operations" that were inadvertently added back during a 2007 rule action to fugitive dust rule. Mr. Cecich asked if there has been any comments or responses to removing the three words. Mr. Abraczinskas said there have been no discussions with stakeholders yet; but as a definition, including those three words increases confusion. Mr. Curry made a motion to carry a recommendation to the EMC to take the Rule to public hearing. Dr. Peden seconded the motion. There was no additional discussion. The motion carried.

Agenda item 4, Amendments to the NOx SIP Call Rules for 2009 and Later, was discussed by Mr. Abraczinskas and Mr. Mark Bernstein. Mr. Abraczinskas reported that on December 23, 2008, the U.S. Circuit Court remanded the Clean Air Interstate Rule (CAIR) back to the USEPA without vacature. This means CAIR became effective on January 1, 2009. No additional work will be done on the permanent Nitrogen Oxide State Implementation Plan (NOx SIP) rules that were to replace the NOx SIP temporary rules. The temporary 15A NCAC 02D .1400 rules will be allowed to expire, automatically being replaced by the permanent rules that were effective prior to the temporary rules taking their place. There will be one rule, 02D .1402, Applicability, which will be brought before the AQC as a draft amendment to rule at the March AQC meeting to correct two cross-reference errors. Currently in the temporary rule, there is a paragraph related

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to the conditional applicability of NO<sub>x</sub> SIP rules and CAIR. The proposed amendment will also replace that paragraph with one that relates NO<sub>x</sub> SIP rule applicability to sources now under the CAIR program.

Mr. Mark Bernstein from the NC Attorney General's office said that the CAIR is now in a more stable position after the Court remanded CAIR back to the USEPA without vacature but with instructions to fix CAIR. He discussed North Carolina's petition under Section 126 of the Clean Air Act. The briefings to be provided to the Court have been submitted and the next step is for the Court to hear oral arguments and a possible ruling be handed down this summer. Chairman Deerhake asked if there is a date by which USEPA will correct the CAIR deficiencies. Mr. Bernstein said the State's Attorney General's office had requested July 10, 2009. The Court did not set a hard date but did make a point to remind the parties of the 'mandamus' process by which they can take action if they don't think the EPA is acting quickly enough. Mr. Bernstein said that if USEPA plans to only propose a CAIR fix in the Federal Register by July 2010, then North Carolina would lose by process what the State won in court; that would impact North Carolina's National Ambient Air Quality Standards for Ozone and fine particulates (PM<sub>2.5</sub>) in 2009 and 2010, respectively. He added that North Carolina would watch and take the appropriate action after evaluating if USEPA is acting in good faith. Chairman Deerhake asked if there is a court ordered schedule. Mr. Bernstein said that the Court did not order a schedule. Mr. Weber asked if the State had evaluated starting a mandamus process now to shorten the State's response time if USEPA is found to be too slow with their response. Mr. Bernstein said that the Court did include the mandamus process in their order. He added that initiating the mandamus process now might be considered by the Court as premature. He indicated the new administration might be reviewing the USEPA's past actions and modifying their responses. Mr. Bernstein said he anticipates a lot of movement in the next few months. Chairman Deerhake asked how the Court viewed trading emissions. Mr. Bernstein said the court agreed with North Carolina's position that downwind maintenance areas must be considered in allowing trading credits. Chairman Deerhake asked if the DAQ anticipates a major reallocation of NO<sub>x</sub> allocations if the downwind issue of maintenance areas is modified in CAIR. Mr. Bernstein said the issue is unresolved.

Chairman Deerhake said that the NO<sub>x</sub> allocations in the NO<sub>x</sub> SIP proposed permanent rule modifications were designed to be less than the NO<sub>x</sub> allocations in CAIR. Now that the NO<sub>x</sub> SIP rules are no longer effective, she asked if the DAQ is evaluating the effects of the larger CAIR NO<sub>x</sub> allocations to increased ozone generation. Mr. Abraczinskas said the DAQ had already modeled the CAIR level of control. He added that Ms. Laura Boothe is scheduled to make a presentation on this subject during this meeting. This ended discussion on this subject.

### JANUARY EMC AGENDA ITEMS

Agenda item 5, Request to Proceed to Public Hearing to Amend Permit Noticing Requirements, will be discussed at the January EMC meeting by Mr. Abraczinskas. No presentation was made.

Agenda item 6, Request to Proceed to Public Hearing to Amend the NO<sub>x</sub> SIP Call Rules for 2009 and later Mr. Abraczinskas and Ms. Joelle Burleson was not discussed. Chairman Deerhake said that agenda 6 would be removed from the agenda for the EMC January meeting.

Agenda item 7, Request to Proceed to Public Hearing to Adopt Heavy-Duty Idle Restrictions, was presented by Mr. Paul Grable. He explained requesting a second approval to take the Rule to

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public hearing involves a substantial change to the proposed rule that has been approved by the EMC to go to public hearing. Based on a review of EMC authority granted by Statute, the conclusion was reached that requiring a facility that did not have an air permit and is not placing the public at risk could not be required to take an action required in an air quality rule. Thus, Subparagraph (d)(2) is proposed for removal from the Rule. This removes the requirement for facilities to act by mounting anti-idling signs and distributing anti-idling literature. Mr. Moss made a motion to request a 30-day waiver from the EMC and to recommend that the EMC approve the rule for a hearing to collect public comment. Dr. Peden seconded the motion. There was no discussion. The motion passed.

Mr. Curry asked what actions to educate the heavy-duty operators to the requirements of the rule requirements. Mr. Abraczinskas said that a major outreach program is in development to get voluntary participation in place of the required participation.

### REPORTS

Agenda item 8, An Update from the Science Advisory Board on Toxic Air Pollutants was presented to the AQC by Dr. Reginald Jordan. He provided the Committee with the 2009 schedule of work for the Science Advisory Board (SAB) and a description of the status of current work. He added that the SAB works on one AAL at a time and meets monthly in a teleconference. Chairman Deerhake asked for a description of the level of effort taken by the SAB. Dr. Jordan said the literature is extensively searched and reviewed on the subject. A draft document is written and then spiritedly discussed. The process is very thorough with a second and third review of literary studies often takes place to ensure the work is correct prior to sharing it with the AQC and the public. Chairman Deerhake asked for a description of the process that is followed when assigning priority to the list of work. Dr. Jordan said the order of priority is toxicity, age since last revision, and evaluation efficiency. Chairman Deerhake asked if the SAB would be more productive if it works on more than one chemical at a time. Dr. Jordan said it would be but is prevented by the availability of the SAB and staff. The SAB has shifted its process and is depending more on staff to develop the draft document, which is then evaluated by the SAB and revised accordingly by staff. Chairman Deerhake said that the Committee welcomes any ideas that might increase the pace. She realizes the SAB operates completely in a voluntary role and that the Committee appreciates the all their work.

Agenda item 9, Local Air Quality Program Update – Forsyth County Environmental Affairs Department, was presented by Mr. Patrick Reagan. Mr. Reagan showed a video that provided a review of the Forsyth County Environmental Affairs Department. He provided each member a flash drive with the video installed. After the presentation, Chairman Deerhake asked about the attainment of ozone levels last summer. Mr. Reagan said meeting the ozone ambient air quality standard was more difficult last summer, primarily due to the new lower standard. Reducing ozone in the Forsyth County will be a challenge. Chairman Deerhake asked about the benefits of having the early action compacts. Mr. Reagan said the early action compacts encouraged the local agencies and municipalities to communicate and coordinate actions. The main thrust has been to encourage car and van pools to form and to get the general public to try different modes of travel. Chairman Deerhake asked about the area the local program covers. Mr. Reagan said that enforcement, permitting, and monitoring is limited to Forsyth County, but the outreach programs extend into the entire Triad area.

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Agenda item 10, Preliminary 8-hour Ozone Nonattainment Boundaries, was presented by Ms. Laura Boothe. She described the outreach effort to explain the designations throughout the State. She presented the draft proposal indicating the State's proposed areas. The USEPA will take the recommendations and designate areas that are in or out of compliance with the ambient air quality standards. After the presentation, Mr. Curry asked what are the implications of raising the elevation of areas in nonattainment in the western mountains. Ms. Boothe said it would reduce the area of nonattainment designation. Nonattainment areas have to operate under the restrictions caused by nonattainment designation. The lower elevations in the western mountains have been found to be in compliance. Chairman Deerhake asked for an update at the March AQC meeting. She also asked why only part of Johnston County is attached to Wake County and not the entire County given the growth and home development. The southeastern portion of Johnston County is rural and does not represent the heavy traffic commuting into Wake County. That ended the report discussion.

Mr. Keith Overcash asked to provide the Committee two informational items. The first was a report written and presented to the Joint Legislative Process and Evaluation Committee. The report covered an evaluation of the motor vehicle safety and emission inspections. The Process and Evaluation Division prepared it. Their report recommends the safety inspection program be discontinued and the emission testing of new vehicles be delayed until the end of the third year instead of the current end of the first year. DAQ is concerned about the recommendation to delay the emission inspections until the third year. The USEPA takes into account the current inspection schedule when evaluating the State Implementation Plan. If the scheduled inspection period is lengthened to the end of the third year, credit for emissions reductions would be lost and the needed emission reduction burden would have to be shifted to the industrial point sources. The Committee took no action on the report. The Legislature Environmental Review Committee has requested a report from DAQ on this issue.

The second informational item concerns the permitting of a cement plant in New Hanover County. We have received and are evaluating their permit application. The Department has determined that the plant will not be subject to State Environmental Policy Act (SEPA) Program.<sup>1</sup> DAQ is proceeding to evaluate the permit application. When the draft permit is completed, it will be made available on DAQ's website and both the draft permit and a hearing will be noticed in the North Carolina Register. Mr. Overcash said that he has received 1,140 emails asking that the permit not be issued.

Chairman Deerhake commented that in the Water Quality Committee there was a discussion that indicated nitrogen deposition was not being addressed in the Neuse River Basin planning. She requested that DAQ work with the Neuse River Basin planners to provide them with deposition monitoring and modeling data so such information may be included. Ms. Sheila Holman, Deputy Director of DAQ, said that DAQ has discussed deposition tools available to the Division of Water Quality (DWQ) with DWQ staff. She said they discussed a tool that USEPA has released that converts Community Multi-scale Air Quality (CMAQ) Modeling results into data that may

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<sup>1</sup> The North Carolina (or State) Environmental Policy Act of 1971 (SEPA) (G.S. 113A, Article 1) requires state agencies to review and report the environmental effects of all activities that involve an action by a state agency, an expenditure of public monies or private use of public land, and that may have a potential negative environmental effect upon natural resources, public health and safety, natural beauty, or historical or cultural elements of the state.

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be used in water quality programs. Ms. Holman indicated she would perform a follow up with DWQ.

There was no further business. Chairman Deerhake adjourned the Committee meeting at approximately 5:45 P.M. The next meeting is scheduled for 2:00 p.m., March 11, 2009.