

APPENDIX 37 MISCELLANEOUS

MISSION STATEMENT FOR THE DIVISION OF AIR QUALITY

The mission of the Division of Air Quality is to conserve and protect North Carolina's air resources by administering state and federal regulations in accordance with applicable laws; provide a healthy and pleasant environment by maintaining the national air quality standards; and preserve the quality of clean air and the potential for continued economic growth through a program to prevent significant deterioration of air quality. This is accomplished by establishing ambient air quality standards, monitoring the air quality of the state, performing planning and modeling to determine appropriate controls to protect the air quality standards, inspecting and permitting stationary air emission sources, and establishing inspection/maintenance programs for mobile sources, such as motor vehicles.

STEPS IN DEVELOPING AND ADOPTING A RULE

Preconcept Stage:

1. Notify Sections, Regional Offices, and Local Programs of possible rulemaking and request participation on concept and rule drafting.

Concept Stage

1. Write concept and submit concept along with 101 form to Assistant Secretary for review and approval.

2. After approval from Assistant Secretary, discuss concept with Air Quality Committee.

Notice of Rulemaking Proceedings or Rulemaking Agenda

1. Prepare and submit a notice of rulemaking proceedings for publication in the North Carolina Register. The notice must include these items: (1) a statement of the subject matter of the proposed rulemaking, (2) a short explanation of the reason for the proposed action, (3) a citation to the law that gives the agency the authority to adopt a rule on the subject matter of the proposed rulemaking, and (4) the person to whom questions or written comments may be submitted. The Department usually takes care of this step based on information in the 101 concept.
2. Mail copy of Notice of Rulemaking Proceedings to persons on the official mailing list.

Draft Rule Stage

1. Draft rule or amendment.
2. Send draft to Sections, Regional Offices, and Local Programs for review and comment. (This step may be omitted if adoption is urgent and a time does not allow the use of this step, if the change is minor, such as cross-reference correction, or if the change does not involve enforcement questions or procedural matters, such as address corrections or information on where to obtain referenced material.) This step may be repeated several times.
3. Consult with "outside involvement committee," i.e., representatives of industries, consultants, environmental groups, and other interested parties. (The outside involvement committee is a standing body that meets periodically to discuss air quality issues.) For specific issues that only or primarily affect a particular industry, consult with representatives of that particular industry. This step is not always followed, but should be when time allows for all major issues and all issues that have the potential to be controversial. This step may be repeated several times.

4. Consult with the North Carolina Association of County Commissioners, the North Carolina League of Municipalities and representatives of county and city managers if the rule will (a) require a local government to carry out additional or modified responsibilities, (b) increase the cost of providing or delivering a public service funded by a local government, or (c) otherwise affect the expenditures or revenues of a local government.
5. Write State fiscal note and local fiscal note.
6. If rule may have substantial economic impact (cost of at least \$5 million in a 12-month period):
 - a. obtain fiscal note from Office of State Budget and Management (OSBM), or
 - b. prepare fiscal note and have it approved by Office of State Budget and Management.
(If the agency requests the OSBM to prepare the fiscal note and if it fails to do so within 90 days, the agency must then prepare the fiscal note; but the fiscal note does not need approval of OSBM. If the agency prepares the fiscal note, it must submit the note to OSBM for review. OSBM must review the fiscal note within 14 days. If OSBM disapproves the fiscal note, the agency must address OSBM's reasons for disapproval and resubmit the note.)
7. If no substantial economic impact is found, prepare an economic impact note to show that cost is below \$5 million or is otherwise exempted from a substantial economic impact note.
8. Send draft rule, economic impact fiscal note and State fiscal note for review and approval by:
 - a. Assistant Secretary, General Counsel, Division of Budget, Planning, & Analysis, and Rule-Making Coordinator (this step should occur before bringing draft to the Air Quality Committee);
 - b. General Counsel, Division of Budget, Planning, & Analysis, and Rule-Making Coordinator (this step may occur after bringing draft to the Air Quality Committee but must occur before filing with the North Carolina Register for publication); or
 - c. Rule-Making Coordinator (this step must occur before filing with the North Carolina Register for publication).Allow at least 30 days for review of State fiscal note.

9. Send copy of State fiscal note, local fiscal note, and draft rules to Office of State Budget and Management. (If the rule implements a federal law, is required by or necessary or compliance with a federal law, or is required as a condition to receive federal funds, send Office State Budget and Management a certification setting forth the reasons for why the proposed rule is required by law.) The Department usually takes care of this submittal.
10. Send copy of local fiscal note, final signed 101 form and draft rule to Governor's office. At least 30 days before the public notice with proposed text of the rule that would affect the expenditures or revenues of a local government is published in the North Carolina Register, submit to the Governor (1) the text of the proposed rule, (2) a short explanation of the reason for the proposed rule, (3) the local fiscal note.
11. Send copy of local fiscal note and draft rules to League of Municipalities, Association of County Governments, and Fiscal Research Division.
12. Discuss draft rule with the Air Quality Committee.

Public Hearing Stage

1. Prepare an agenda item, which includes proposed rule, for the EMC for request to go to public hearing. The agenda item must be prepared approximately three weeks before the EMC meeting. The earliest that this agenda item may be presented to the EMC is the month following discussing draft rules with Air Quality Committee.
2. Hearing Officers appointed and public hearing arranged.
3. Prepare public notice for newspapers. Public notice must appear in newspapers at least 30 days before public hearing to comply with federal notice requirements.
4. Prepare public notice for the North Carolina Register. Public notice must appear in the North Carolina Register at least 60 days after "Notice of Rulemaking Proceedings" and at least 15 days

before the public hearing and at least 30 days before close of comment period and EMC action if there is no substantial economic impact or at least 60 days before close of comment period and EMC action if there is a substantial economic impact.

5. Send copy of hearing notice and proposed rule to the EPA.
6. Send copy of hearing notice and proposed rule to persons on official mailing list.
7. Send copy of hearing notice to persons on the unofficial mailing list.
8. Send copy of hearing notice and proposed rule to Regional Offices and Local Programs.
9. Hold public hearing.
10. Comment period
 - a. Must allow at least 30 days before public hearing to submit comments to satisfy federal requirements (this is accomplished by publishing in newspapers at least 30 days before the public hearing).
 - b. Must accept comments on a notice of proposed rulemaking proceedings until the text of proposed rule that results from the notice is published.
 - c. Must accept comments on text of proposed rule that requires a substantial economic impact fiscal note for at least 60 days after the text is published in the North Carolina Register or until the date of the public hearing, whichever is longer.
 - d. Must accept comments on text of proposed rule that do not require a substantial economic impact fiscal note for at least 30 days after the text is published in the North Carolina Register or until the date of the public hearing, whichever is longer.

Adoption Stage

1. Prepare hearing record for hearing officer. Need to allow adequate time for review by Division Director. Need to allow adequate time

for the hearing officer to complete his review at least two weeks before the EMC meeting.

2. Prepare agenda item for the EMC at least three weeks before the EMC meeting.
3. Deliver copies of the approved hearing record to EMC's secretary at least 10 days before the EMC meeting for mailing.
4. EMC action. The EMC may not adopt the proposed rule if more than 12 months have elapsed since the close of the comment period.
5. Submit "Filing for the Code" form along with adopted rule to rulemaking coordinator by the 10th of the month.

Post Adoption Stage

1. File "Filing for the Code" form and adopted rule with Rules Review Commission (RRC) by the 20th of the month. (The RRC reviews rules to ensure (1) that the agency had the authority to adopt the rule, (2) that the rule is clear and unambiguous, (3) that the rule is reasonably necessary to fulfill a duty of the agency when considering the cumulative effect of all rules adopted by the agency related to that specific purpose and the legislative intent, and (4) that the agency followed all proper procedures in adopting the rule.)
2. Make any technical corrections and respond to any objections resulting from the RRC review. Technical corrections may be made at the meeting that the RRC reviews the rule. Rewritten rules in response to an objection of the RRC may not be submitted for consideration until the meeting following the meeting at which the RRC made the objection. The rewritten rule is returned to the RRC for consideration within 30 days after receiving the RRC's statement of objection or within 10 days after the EMC's next regularly scheduled meeting, whichever is later.

3. The RRC either approves or disapproves the rule. If the RRC disapproves (vetoes) the rule, the rule cannot go into effect, and the steps that follow do not apply.
4. Send copies of hearing record, adopted rule, newspaper notices, and OAH approved "Filing for the Code" form to EPA if rule is part of State Implementation Plan, Section 111 program (NSPS and 111(d)), hazardous air pollutant program (Section 112), or Title V permitting program.
5. Send copy of hearing record and adopted rule to each local program and EHNR library.
6. Send copy of adopted rule to each regional office and Section chief of the Division of Air Quality.

Effective Date of Rule

1. A rule becomes effect on the 31st legislative day of the next regular session of the General Assembly that begins 25 days after the date that the RRC approved the rule unless 2 or 3 below applies.
2. If a bill to disapprove the rule is introduced before the 31st legislative day, the rule becomes effective on:
 - a. the day that an unfavorable action is taken on the bill, or
 - b. the day that session of the General Assembly adjourns without ratifying the bill,whichever occurs first.
3. If the rule would disrupt the budget process of a local government, the rule becomes effective on July 1 following the date that the change would have become effective under 1 or 2 above.
4. The agency may set an effective date that is later than 1 or 2 above.

OZONE MAINTENANCE AREAS

- (1) Greensboro/Winston-Salem/High Point, consisting of Davidson, Forsyth, and Guilford Counties and that part of Davie County bounded

by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek and back to Yadkin River.

- (2) Raleigh/Durham, consisting of Durham and Wake Counties and Dutchville Township in Granville County.
- (3) Charlotte/Gastonia, consisting of Mecklenburg and Gaston Counties.

CARBON MONOXIDE MAINTENANCE AREAS

- (1) Forsyth County
- (2) Wake and Durham Counties
- (3) Mecklenburg County

REDESIGNATION DATES

Ozone Redesignation

AREA	REDESIGNATION	COMMENTS
DATE		EFFECTIVE
Greensboro/Winston-Salem/ High Point	November 8, 1993	direct final published Sept. 9, 1993
Raleigh/Durham	June 17, 1994	direct final published April 18, 1994
Charlotte/Gastonia	July 5, 1995	proposal published April 17, 1995; final published July 5, 1995

Carbon Monoxide Redesignation

AREA	REDESIGNATION EFFECTIVE DATE	COMMENTS
Winston-Salem	November 7, 1994	direct final published Sept. 21, 1994
Charlotte	September 18, 1995	direct final published August 2, 1995
Raleigh/Durham	September 18, 1995	direct final published August 2, 1995

TAX CERTIFICATIONS

The Division of Air Quality cannot issue tax certifications for particulate control devices that discharge into the workplace and whose primary purpose is worker protection. G.S. 143-215.9(1) denies the Environmental Management Commission (and by extension the Division of Air Quality) "jurisdiction or authority with respect to air contamination existing solely within commercial and industrial plants, works or shops". G.S. 105-122(d), 105-130.10, 105-147(13), and 105-275(8) govern the issuance of tax certification by the Department of Environment and Natural Resources. These laws specify that only air cleaning devices operating under approved conditions of the Environmental Management Commission can be granted tax certifications. Because the Division of Air Quality has no authority over emissions existing solely within a plant, it cannot issue tax certifications for control devices that exhaust inside a plant and whose exhaust remains within the plant. It can only issue tax certifications for devices that reduce the amount of air pollution resulting from the emissions of air contaminants into the outside atmosphere.¹

¹A. C. Turnage to Regional Supervisors, 22 Oct. 1979, "Division Authority for Air Emissions Solely Within a Plant" (memorandum).