

AGENDA ITEM 8

Agenda Item: Request for Approval of Hearing Officer's Report on and Adoption of Streamlining of Permit Exemptions Rule 15A NCAC 02Q .0102 and Related Rules Revisions (525)

Explanation: A public hearing was held in Raleigh, North Carolina on November 4, 2015, to take public comments on the streamlining of the permit exemptions rule. The specific rules being considered are listed above. Mr. Charles Carter, Environmental Management Commissioner and Air Quality Committee Chairman, was appointed and acted as the hearing officer during the hearing.

Rule 15A NCAC 02Q .0102 governs activities that do not require an air quality permit for non-Title V (small and synthetic minor) facilities. The agency has amended the rule several times through the years to address specific issues. As a result, the overall size and structure of the rule has evolved in a way that makes it difficult to read, understand and implement, and it has become a source of frustration for both Division of Air Quality (DAQ) staff and the regulated community. To address this issue, the DAQ formed an internal subcommittee of its existing Permits Workgroup to review and recommend revisions to the rule to make it easier to understand and use by affected facilities and DAQ staff.

As the process of simplifying the permit exemptions rule progressed, the DAQ looked to new ways to reduce administrative burden while maintaining a high compliance rate amongst the non-Title V facilities. The administrative effort is relatively high for a large number of facilities with very low emissions. During the rule drafting process, there were 1,601 small permitted facilities, 648 synthetic minor permitted facilities and 301 Title V permitted facilities. The small permitted facilities made up 63% of the total number of permitted facilities but contributed only 3.4% of the total criteria emissions.

The DAQ sought external stakeholder input on the initial draft amendments on November 6, 2014. The Division received by February comments suggesting additional approaches, including tiered approaches with alternative exemption thresholds and a registration option for certain levels of emissions. The DAQ reviewed that feedback and considered alternatives to its initial approach. The DAQ discussed the feedback received and its considerations with the AQC at its May 6, 2015 meeting. Using feedback from commissioners at the AQC meeting, the DAQ presented updated draft rules to the AQC at its July 8, 2015 meeting. The resulting proposed rule changes from that review process should provide some administrative relief to a large number of small facilities that have very low emissions.

Rule 15A NCAC 02Q.0102, Activities Exempted From Permit Requirements, is proposed for amendment to simplify the rule to make it easier to understand. New exemption requirements are also added. Facilities with actual emissions less than five tons per year of each specified pollutant and total aggregate actual emissions of 10 tons per year would be exempt from permitting. Facilities that are not exempt and have total aggregate actual emissions less than 25 tons per year would be

AGENDA ITEM 8

eligible for registration instead of obtaining a permit.

Rule 15A NCAC 02Q .0302, Facilities Not Likely To Contravene Demonstration, is proposed for repeal since the rule is duplicative of the requirements contained in the revised Rule 15A NCAC 02Q .0102.

Rule 15A NCAC 02Q .0318, Changes Not Requiring Permit Revisions, is proposed for adoption to allow facilities to make minor changes without first modifying their permit.

Rule 15A NCAC 02Q .0903, Emergency Generators And Stationary Reciprocating Internal Combustion Engines, is proposed for amendment to add an exemption from permitting for stationary reciprocating internal combustion engines if the engine is the only source of emissions at the facility.

1606 comments by 1616 commenters were received on the proposed amendments during the comment period for the hearing record. Five commenters supported the proposed rules.

The U.S. Environmental Protection Agency (EPA) provided several comments on the proposed rules. EPA asked how the DAQ will track exempt and registered facilities. EPA commented that a Section 110(l) demonstration should be included with the rule revisions. EPA asked for a clarification of the Director discretion language. EPA commented that some activities could not be excluded from aggregation of emissions for determining Title V and prevention of significant deterioration (PSD) applicability. EPA also recommended revising the background information in the fiscal note for individual criteria pollutants. DAQ will submit a Section 110(l) demonstration as requested. Paragraph (g) of 15A NCAC 02Q .0102 was revised to remove the language on activities not included in determining applicability that requires facility-wide aggregation of source emissions to remove any inconsistency with the Title V, PSD and Air Toxics permitting programs.

1600 commenters opposed the proposed rule revisions. The commenters stated that the permit exemption for facilities that emit toxic air pollutants (TAPs) are a concern. The TAP's are potentially harmful and the EMC should not extend exemptions to TAPs. The commenters commented that the rule revisions reduce oversight of emitters in NC. Exempt facilities have less incentive to comply with their requirements. The rules lack a compliance assurance strategy. The state air toxics program, including the toxic pollutant emission rates in 15A NCAC 02Q .0711 and the ambient air levels in 15A NCAC 02D .1104 are unchanged with this rule-making. Facilities with sources that are part of a modeling demonstration under Section 15A NCAC 02D .1100 are still required to be permitted. The DAQ is actively developing a compliance assurance plan. Compliance assurance visits will be an important element of a comprehensive compliance assurance plan.

Nine commenters stated that the proposed rule revisions pose environmental justice concerns. Rule revisions do not change any emission limits or required control

AGENDA ITEM 8

equipment. If compliance become an issue with any exempt facility, the DAQ retains all tools to correct the deficiency.

One commenter comments that the State is required to enforce NAAQS. Rule revisions are unconstitutional under G.S. 143-215.108. The commenter also opposes the exemption for large natural gas compressor stations in 15A NCAC 02Q .0903. The state is currently in attainment for all NAAQS statewide and air quality is steadily improving. The rule revisions do not change any emission limits. G.S. 143-215.107 provides the EMC the authority to establish emission control standards including permitting exemption thresholds. Section 15A NCAC 02Q .0900 rules are permit by rules in lieu of air permits. 15A NCAC 02Q .0903 provides an exemption from permitting for stationary reciprocating internal combustion engines if the RICE engine complies with the requirements in the rule. If a natural gas compressor does not meet the requirements, it will still be required to be permitted.

One commenter stated the current definition for graphic arts does not include screen or digital image technologies. 15A NCAC 02Q .0803 was not part of the rule revisions. The DAQ will review the concern and any revisions could be included in the existing rule re-adoption process.

One commenter commented that the fiscal note does not include health impacts due to noncompliance with the rules. Fiscal notes estimate the change in basis from current rules to the proposed rule changes. Fiscal notes do not estimate noncompliance. The proposed rules do not change emission limits or required control equipment. All exempt facilities are still required to comply with all state and federal regulations. The fiscal note was approved by the Office of State Budget and Management on August 18, 2015.

Recommendation: The Hearing Officer recommends that the proposed amendment as presented in Chapter II of this hearing report be adopted by the Environmental Management Commission.