Agenda Item: **14-06** **Hearing Officer's Report on Air Toxics Rule Revisions (519) and Asbestos Acceptable Ambient (AAL) Correction (518)**

Explanation: A public hearing was held in Raleigh, NC on September 19, 2013, to take public comments on amendments to the toxic air pollutant procedures rules and a correction to the asbestos acceptable ambient level. Mr. Bradley Newland, Wilmington Regional Office Supervisor, was appointed and acted as the hearing officer for this hearing.

In 2012, the General Assembly amended the statutes that authorize the state air toxics rules. Section 1 of Session Law 2012-91 exempts from state air toxics emissions rules those sources of emissions that are:

(A) subject to an applicable requirement under 40 CFR Part 61, as amended;

(B) an affected source under 40 CFR Part 63, as amended; or

(C) subject to a case-by-case maximum achievable control technology (MACT) permit requirement issued by the Division pursuant to Paragraph (j) of 42 U.S.C. Section 7412, as amended.

The Session Law also requires the Division of Air Quality, upon receipt of a permit application for a new source or facility, or the modification of an existing source or facility, that would result in an increase in the emission of toxic air pollutants, to review the application to determine if the emissions from the source or facility would present an unacceptable risk to human health. Upon making a written finding that a source or facility presents or would present an unacceptable risk to human health, the Department shall require the source or facility to submit a permit application for any or all emissions of toxic air pollutants from the facility that eliminates the unacceptable risk to human health. The written finding may be based on modeling, epidemiological studies, actual monitoring data, or other information that indicates an unacceptable health risk.

Facilities are still required to submit either toxic pollutant emission rate (TPER) calculations or, if over the TPERs, demonstrations that model the toxic air pollutant emissions from sources that are not exempted by S.L. 2012-91 or Rule 15A NCAC 02Q .0702. It should be noted that the Division of Air Quality is always available to do that analysis for any facility.

Section 2 of the Session Law requires rule amendments consistent with Section 1. Section 3 of the Session Law requires the DAQ to review the existing air toxics rules and make recommendations on whether further changes could be made that would reduce unnecessary regulatory burden and increase the efficient use of Division resources while maintaining

public health protections. These recommendations were provided in a report to the Environmental Review Commission (ERC) on December 1, 2012.

Section 4 of the Session Law requires the DAQ to report to the ERC on implementation of the Session Law including an analysis of air toxic emission changes and a summary of results of the Division's analysis of air quality impacts. The reports are due to the ERC each December 1st of 2012, 2013, and 2014. The first two reports, Implementation of Session Law 2012-91, December 1, 2012, and Implementation of Session Law 2012-91, December 1, 2013, have been provided to the ERC and can be found in Chapter VI of this hearing record. Rules in Section 15A NCAC 02Q .0700 are proposed to be revised to incorporate Section 1 of Session Law 2012-91 and the rule changes resulting from the Section 3 report recommendations.

Additionally, a calculation error was recently found in the original determination of the acceptable ambient level (AAL) for asbestos made in the early 1990s. In September 2011, the SAB members observed a mathematical mistake during a recent review of AAL documentation that led to an error of five orders of magnitude (by not using the total average number of deaths per 100,000). Existing rule numerical values for the asbestos AAL in 15A NCAC 02D .1104 and the associated asbestos TPER in 02Q .0711 are proposed to be modified. The asbestos AAL should be 2.8×10^{-6} fibers per milliliter (f/mL) and not the 2.8×10^{-11} f/mL currently listed in 15A NCAC 02D .1104, Toxic Air Pollutant Guidelines. The associated asbestos TPER in 02Q .0711, Emission Rates Requiring a Permit, is proposed to be 5.7×10^{-3} lb/year. Forty five people submitted forty three comments on the proposed amendments to the toxic air pollutant rules during the comment period for the hearing record.

Thirty four people commented that they oppose to the changes in the state air toxics rules enacted by the 2012 General Assembly. The commenters expressed concern that allowing technology based, rather than health based, limits on toxic air pollutants was inadequate for protection of public health. Several commenters expressed concern that sources that are exempt from the toxic air pollutant rules would not be reviewed for unacceptable health risks by the DAQ. One person commented that the shift in responsibility for completing air toxics modeling from the applicant to DAQ is not what was contemplated by the General Assembly in passing the air toxics reform legislation.

Paragraph (b) of Rule 15A NCAC 02Q .0702 was amended to clarify what emission activities are included by the facility in determining compliance with the requirements of Section 02Q .0700. Additionally,

the following clarifying language - “provided that the terms of this exclusion shall not affect the authority of the Director under 15A NCAC 02Q .0712” – has been added to the end of 02Q .0702(b).

Three people commented that unacceptable risk to human health is undefined. The acceptable ambient air levels (AALs) in Rule 15A NCAC 02D .1104 sets the concentrations, above which could produce adverse health effects in sensitive subgroups of the general population beyond the property line of the facility. No changes were made to the rules.

Five people were opposed to the additional toxic pollutant emission rates (TPERs) for vertical, unobstructed emission points. The new TPERs were developed using conservative assumptions that took into consideration actual stack velocities and DAQ’s extensive experience with modeling analyses. The new TPERs do not alter the underlying AALs, therefore the health based guidelines remain the same. No changes were made to the rules.

Three people commented on the natural gas and propane-fired combustion source exemption. Two commenters oppose the exemption. One commenter requested that the exemption should include sources that burn liquid fuel during periods of gas curtailment. One commenter asked for a clarification on which sources should be included in the aggregate threshold calculation. The DAQ considers the exemption to be protective of public health since it is based on a threshold that is based on worst-case TPER values. The exemption would include combustion sources that burn liquid fuel during periods of gas curtailment since the definition for combustion sources subject to NC air toxics rules would be consistent with federal rules. No changes were made to the rules.

One person asked for a clarification to the emergency generator exemption. The exemption threshold is an aggregate threshold that includes all new and existing emergency engines at the facility. No changes were made to the rules.

Three people opposed the removal of the definition for unadulterated wood. Federal regulations for major and area source boilers and Commercial/Industrial Solid Waste Incinerators (CISWI) classify any combusted material (including wood) as either a fuel or a solid waste which makes further distinction in the state rules unnecessary. No changes were made to the rules.

One person commented that the public should be informed when there is a Director’s Call. The DAQ reports its written findings to the

Environmental Review Commission. No changes were made to the rules.

One person recommended that the EMC establish a de minimis threshold for very low levels of toxic air pollutant emissions. DAQ believe the comment has merit, but additional study is necessary to further develop this concept. Once a concept is further developed, DAQ can initiate a separate rule-making action at that time. No changes were made to the rules.

Four people commented that there should have been additional public hearings. The proposed changes to the rules went through an extensive stakeholder process where there were three opportunities to give input, including comment periods, on the proposed rule changes before the official public hearing comment period. The DAQ determined only one public hearing was required since the regulated community participated in this stakeholder process.

One person commented that the DAQ should consider the health care costs due to the proposed amendments. The fiscal note approved by the Office of State Budget and Management did consider the health care costs. The amendments do not change the ambient air level (AAL), health based standards designed to protect public health, for toxic air pollutants emitted from an affected facility.

One person commented that more permits would be modeled up to 90-plus percent of the AAL. AALs are set to protect public health. If the concentrations are below the AAL at the fence line, public health should be protected. No change to the rules is needed as a result of the comment.

One person commented on shale gas operations, one person commented on poultry litter facilities, three people asked DAQ to conduct health impact assessments and one person commented on arsenic emissions. These comments were out of scope for this hearing.

Two people commented that DAQ does not look at emissions from nearby polluting facilities when granting permits. The ability of the Division of Air Quality to access health risks from multiple facilities has not been affected or diminished by this rulemaking.

The fiscal note was approved by the Office of State Budget and Management (OSBM) on June 28, 2013. The fiscal note estimates fiscal impacts of approximately $140,000 annually, mostly in the form of regulatory relief that results from avoided cost to privately owned facilities and federal government facilities due to these rule

amendments. The regulatory relief is in the form of a partial reduction in fees from consulting firms to collect data and perform a modeling demonstration for their exempt sources. The same regulatory relief may also affect state or local government facilities. There are additional costs for the Division of Air Quality representing an increase in staff time due to additional modeling demonstrations to determine unnecessary risk to public health. This cost will be only partially offset by a decrease in staff time from a reduction in modeling effort for the natural gas and propane fired combustion sources and facilities with non-obstructed, vertically oriented emission release points.

Recommendation: The Hearing Officer recommends that the Commission adopt the proposed amendments and repeals as presented in Chapter II of the hearing record.