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Via Hand Delivery and Electronic Mail

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Michael A. Abraczinskas, Director
Division of Air Quality
North Carolina Department of Environmental Quality
1641 Mail Service Center
217 West Jones Street [27603]
Raleigh, North Carolina 27699-1641
Michael.abraczinskas@ncdenr.gov

Re: Petition to Initiate Rulemaking on 15A NCAC .0400

Dear Director Abraczinskas:

Enclosed is a Petition to Initiate Rulemaking requesting the Division of Air Quality to recommend to the Environmental Management Commission that it adopt a rule to revise 15A NCAC .0400.

Please contact me with any questions or for additional information needed to process this request.

Thank you for your consideration.

Respectfully submitted,

Charles S. Carter

cc: Lois Thomas
Recording Clerk, Environmental Management Commission
Director's Office
Division of Water Resources
1611 Mail Service Center
Raleigh, NC 27699-1611
EMCclerk@deq.nc.gov

BEFORE THE ENVIRONMENTAL MANAGEMENT COMMISSION

PETITION FOR RULEMAKING TO)
REVISE 15A NCAC .0400)
) PETITION TO INITIATE
Filed by:)
) RULEMAKING
)
CHARLES CARTER)

The North Carolina Administrative Procedure Act (“APA”) authorizes any person to petition an agency for adopt a rule.¹ The APA requires a petitioner to submit the proposed text of the requested rule and a statement of effect of the requested rule change. A petitioner may also submit written comments with a petition for rulemaking.

I. 15 NCAC 2I .0501(b)(1) – Text of the proposed rule for amendment –
15A NCAC 02D .0401 PURPOSE

(a) The purpose of ~~the ambient air quality standards set out in this~~ Section is to **adopt by reference the National Ambient Air Quality Standards in 40 CFR Part 50, including subsequent amendments and editions,** ~~establish certain maximum limits on parameters of air quality considered desirable~~ for the preservation and enhancement of the quality of the State's air resources. Furthermore, the objective of the Commission, consistent with the North Carolina Air Pollution Control Law, shall be to prevent significant deterioration in ambient air quality in any substantial portion of the State where existing air quality is better than the standards. An atmosphere in which these standards are not exceeded should provide for the protection of the public health, plant and animal life, and property. (b) Ground-level concentrations of pollutants shall be determined by sampling at fixed locations in areas beyond the premises on which a source is located. The standards shall be applicable at each such sampling location in the State. (c) No facility or source of air pollution shall cause any ambient air quality standard in this Section to be exceeded or contribute to a violation of any ambient air quality standard in this Section except as allowed by 15A NCAC 02D .0531 or .0532.

(b) 15A NCAC 02D .0402 through and including 15A NCAC 02D .0410 are hereby repealed as of the date of adoption of this rule amendment.

II. 15 NCAC 2I .0501(b)(2) – Adoption of the amendment to 15A NCAC .0400 and its included rules is to simplify and correct the prior practice of adoption of the National Ambient Air Quality Standards (NAAQS) into the North Carolina air rules. While adoption of the NAAQS and subsequent changes to them has been a routine since 1976, this practice is not required by the Federal Clean Air Act (“Act”). The Act requires adoption of State

¹ N.C. General Statute § 150B-20.

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Implementation Plans to attain and maintain each NAAQS but does not require adoption of those standards into a State's rules.

The result of this practice of routinely adopting each NAAQS in subsequent rulemakings has led to anomalous inclusions in 2D .0400 of standards such as 2D .0406 Hydrocarbons which was repealed in 1984 and 2D .0403 Total Suspended Particulates which was repealed by EPA in 1987 and replaced by PM 10 and PM 2.5 in 1997.

The current issue is the revised PM 2.5 Annual Standard of 9 ppm adopted into the air rules last year. This was done following the customary and unnecessary practice of including NAAQS. However, two months after Commission adopted the new PM 2.5 standard, EPA announced in March that it was reconsidering the new standard. In November, EPA request the D.C. Circuit to vacate the new standard in litigation challenging it. The agency stated that the new standard was not properly adopted and is legally and scientifically flawed.

Withdrawal of the new standard, likely to occur in the next several months, will result in reinstatement of the prior 12 ppm standard. However, with the new standard currently included in the air rules, it would continue to be enforceable as a State matter. Following prior practice and initiating rulemaking to remove the new standard from the air rules after withdrawal of the standard will likely require at least an additional year to complete with North Carolina sources unnecessarily subject to the new standard. With EPA's announced withdrawal, EMC should initiate an immediate rulemaking to remove the new standard, along with the other NAAQS in 2D .0400, from the air rules.

III. 15 NCAC 2I .0501(b)(3) – Revising 2D .0400 as requested in this petition would have no impact on existing rules including State Implementation Plans. Eliminating the NAAQS rules from the air rule and incorporating them by reference to the Federal rules simply eliminates any need for future rulemaking with respect to the Federal standards. Amending this rule will not impose any significant fiscal costs. As most, it will simply require modification of the text of 2D .0400.

IV. 15 NCAC 2I .0501(b)(4) – Petitioner's name and address:

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V. 15 NCAC 2I .0501(b)(5) – Petitioner requests a presentation to the Environmental Management Commission.