

BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE

332 Shady Grove Church Road Winston-Salem, NC 27107

Tel (336) 769-0955 - Fax (336) 769-9198 - E-mail: davidmickey@bellsouth.net

www.bredl.org

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Michael Abraczinskas
Division of Air Quality
1641 Mail Service Center
Raleigh, NC 27699-1641

Re: Combustion Source Exemptions From Air Toxics 15 NCAC 02Q .0700

Commissioners:

I write to provide comments on the proposed rules amending North Carolina's Air Toxics Program. The rules as proposed would amend, but not remove, the state's exemptions from air toxics for some of the combustions sources, or boilers, across the state. This exemption should be eliminated, not amended.

Currently North Carolina does not require a permit for 28 categories of toxic air pollution sources. The proposed amendments address only those combustion sources described as "boilers, space heaters, process heaters, internal combustion engines, and combustion turbines, which burn only unadulterated wood or unadulterated fossil fuel (15A NCAC 02Q .0703). This exemption has been in place now for ten years while the state has waited for the EPA to adopt a technology-based standard for these polluters. The rules are still in limbo, but the pollution continues.

And now that the federal rules are on hold for the indefinite future, North Carolina has the opportunity to expand its health-based program to include *all* combustion sources in this category. Yet we see that in the draft rules many loopholes will remain.

The "three-pronged approach" outlined in the June 27, 2008 Air Quality Committee meeting acknowledges that some of these sources do pose a risk to public health. The Division has already prepared a short list of 37 facilities (the Director's Call) and is in the process of looking at their emissions. In addition the proposed rules for new and modified sources bring those sources in and a five-year periodic review beginning in 2014 would re-assess risks statewide. This piecemeal attempt to regulate combustion sources still allows an undetermined number of currently exempt sources to remain unregulated. It does not protect the public.

In 1986 the North Carolina Academy of Sciences described an Acceptable Ambient Level for air toxics as "below the concentration that would produce adverse health effects in sensitive subgroups of the general population". This health-based program sets North

Carolina apart from the technology approach of the EPA that would require facilities to employ Maximum Achievable Control Technology to reduce pollution. The current combustion source exemption has for ten years handicapped the state's Air Toxics Program by excluding sources, large and small, from compliance. Exemptions in the new rules unnecessarily perpetuate this policy.

It should be pointed out that the exemption for sources that burn "unadulterated fossil fuel" also allows the use of "recycled oil" as an unadulterated fuel. This loophole within a loophole further exacerbates the impact of toxic air pollution by allowing the use of oils contaminated with higher levels of toxic organic compounds and heavy metals. Such fuels are "deemed equivalent" in the Division of Air Quality's Recycled Oil Program as long as "toxics are demonstrated to be at a level of no greater concern than those of unadulterated fuels". Sampling, analysis and record keeping are considered sufficient to protect the public when these fuels are burned in the currently exempt boilers.

The recent USA Today series, "The Smokestack Effect-Toxic Air and America's Schools", attracted a great deal of attention in North Carolina, including the Division of Air Quality, and across the country. As the report acknowledges, it does not reach conclusions about risk from air toxics at specific schools.

"Because it is based on reports from 2005 and includes only some potential sources of pollution, the model may not fully reflect the current situation at each school. For example, some facilities have closed since 2005, and others have opened. Also, large industrial sites account for only a fraction of the nation's toxic air pollution. The EPA estimates that in 2002, cars, smaller businesses and other sources accounted for 85% of the toxic chemicals in the nation's air."

<http://content.usatoday.com/news/nation/environment/smokestack/index>

In fact, the report overlooks all mobile sources of air toxics as well as facilities like waste incinerators, asphalt plants and any other source that does not report its *estimated* emissions to the EPA. Conditions at specific schools could be better or worse than the report indicates. The report and reactions to the report do however raise awareness to the issue of air toxics and risks to children. Removing the combustion source exemption is a good first step toward reducing those risks.

The "Technical Infeasibility and Economic Hardship" provision should not be available to previously exempt sources. Facilities that cannot demonstrate through modeling that their emissions will not impact human health should be required to take the steps necessary to reduce their emissions to an acceptable level safe level. If amended and expanded to include additional sources, the state is recognizing industry's right to pollute. Such a provision does not belong in a health-based program.

It is the intent of North Carolina's Air Toxics Program to protect human health. Exemptions to the rules have prolonged the exposure to toxic air pollution for an untold number of people living in communities near the exempt combustion sources. Steps have

been taken to limit the exemption, but it is time now to eliminate this loophole. Only a comprehensive program that includes all sources can truly protect everyone.

Thank you for the opportunity to provide these comments.

Sincerely,

David Mickey
Blue Ridge Environmental Defense League