Blue Ridge Environmental Defense League

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Benne C. Hutson, Chairman
NC Environmental Management Commission
1617 Mail Service Center
Raleigh, NC 27699-1617

RE: Toxic Air Procedures Rules Incorporating S.L. 2012-91

On behalf of the Blue Ridge Environmental Defense League, I write to comment on the proposed amendments to the state air toxics regulations. In brief, we oppose any changes which reduce the stateôs ability to limit the impact of toxic air pollutants on public health in North Carolina. The proposed rules will have such an impact and we oppose adoption.

Background

The proposed changes would: exempt from state law a group of toxic air pollutant sources which may be subject to:

- Maximum achievable control technology (MACT)
- Generally available control technology (GACT)
- Case-by-case emission limits under CAA Section 112j or
- 40 CFR Part 61 (NESHAP)

Supposedly, the Division would determine that the higher levels of emissions do not pose an ñunacceptable risk to human healthò before allowing the exemptions. Also, the rule changes would:

- Establish new emission rates for triggering permit thresholds (TPER) for emission sources with vertical stacks
- Exempt certain natural gas-fired combustion units
- Exempt emissions from emergency generators

Further, the changes would repeal the SIC code rule, redefine ñactual rate of emissions,ò eliminate the term ñunadulterated wood,ò and alter the asbestos TPER and AAL.

MACT, GACT, NESHAP

First, North Carolinaôs health-based air toxics rules and the elusive federal MACT are neither duplicative nor equivalent. The federal Clean Air Act regulates hazardous air pollutants by imposing a technology standard on industrial facilities, not health standards.[1] The Environmental Protection Agencyôs method of setting maximum

[1] The federal Clean Air Act makes health impacts from hazardous air pollutants optional. It states: ñWith respect to pollutants for which a health threshold has been established, the Administrator may consider such threshold level, with an ample margin of safety, when establishing emission standards under this

achievable control technologies for the reduction of toxins does not do what North Carolinaôs health-based standards do. For example, the federal Industrial Boiler MACT does not impose numerical HAP emission limits, only work practice requirements. An Environmental Review Commission study of the state TAP program agreed:

> The AALs [acceptable ambient limits] implemented by the North Carolina Air Toxics Program are specifically designed and established to protect human health. Federal MACT standards, in contrast, merely implement currently available technology in selected industries emitting large quantities of HAPs nationally. The MACT standards are not based upon a measurement of hazardous air pollutant concentratio0n outside the premises of the permitteeôs facility, as the North Carolina AALs are.[2]

In North Carolina, controls emissions by setting a health-based maximum level of pollution in the atmosphere. North Carolinaôs acceptable ambient levels take into account the distance of smokestacks from property lines and hence from people. In fact, full implementation of the state toxics limits, without exemptions, is the best such protection available to the residents of this state. It also comports with the basic charge of the Environmental Management Commission; i.e., ñStandards of water and air purity shall be designed to protect human health, to prevent injury to plant and animal life, to prevent damage to public and private property, to insure the continued enjoyment of the natural attractions of the State, to encourage the expansion of employment opportunities, to provide a permanent foundation for healthy industrial development and to secure for the people of North Carolina, now and in the future, the beneficial uses of these great natural resources.ò[3] (emphasis added)

Further, the Clean Air Act lists 188 compounds as hazardous air pollutants. The North Carolina toxic air pollutant regulations currently list 97 substances as carcinogens, chronic or acute toxicants and irritants that may adversely affect human health.[4] The two lists contain many of the same substances, but the NC TAP regulation has 19 toxics which are not on the federal list and, therefore, are not regulated under the federal program. In other words, the toxics listed in the table attached to this letter are not controlled by national emission standards for hazardous air pollutants (NESHAP). If the proposed exemption were to be approved, there would be no limits on these toxics.

Second, if this rulemaking is adopted by the Environmental Management Commission, it will be complicitð along with the General Assembly, the Governor and the Division of Air Qualityð in making a total hash of toxic air pollution control in North Carolina. This will be a virtual lawyersô employment program because opposing groups, both the regulated industry and public interest organizations, will have myriad opportunities for

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subsection.ò See 42 USC § 7412 (d)(4) - Hazardous Air Pollutants, Emission Standards, Health Threshold.

[2] *Final Report to the North Carolina Environmental Management Commission*, Air Toxics Working Group, A Study Directed by the Environmental Review Commission Pursuant to the Studies Act of 1995

[3] Article 21 § 143-211, Part 1, Water and Air Resources, Organization and Powers Generally, Control of Pollution, Declaration of public policy.

[4] 15A NCAC 02D .1104 TOXIC AIR POLLUTANT GUIDELINES, Amended Eff. June 1, 2008

litigation.

The instant problem began with North Carolina Session Law 2012-91 which exempted from state toxic air pollutant rules sources subject to federal maximum achievable control technology (MACT), generally available control technology (GACT), case-by-case emission limits under CAA Section 112(j) or 40 CFR Part 61 (NESHAP). However, the federal Clean Air Actôs Section 112(j) requires the states to develop standards if EPA misses deadlines; hence, it is dubbed the ñMACT Hammer.ò Also, in 2005 EPA revised its findings regarding CAA 112(c) 40 CFR Part 63 for power plants and removed electric utilities from CAA Section 112 altogether. See 70 FR 15994, March 29, 2005. In general, EPA does not delegate to state or local agencies the authority to make decisions that reduce the stringency of the underlying standards.

The EMC cannot enforce one part of the law and not the other. Question: Did the fiscal note for this rulemaking do an assessment of funding for the Attorney Generalôs office versus the DAQôs air modeling section?

Vertical Stacks

For permitting purposes, the DAQ has proposed to develop a separate set of screening thresholds for analyzing toxic air pollutants emitted from unobstructed vertical emission release points (stacks). According to Recommendation 1, the DAQ reviewed various types of facilities which have vertical stacks which would be subject to this exemption, including chemical manufacturing, pulp and paper mills, concrete and asphalt production, furniture manufacturing, brick production, and electric power generation.

In our experience, every asphalt plant permit which we have reviewed has a vertical stack with no obstruction or rain cap, the very type contemplated in this exemption. The problem here is that the Division will not find excessive levels unless it looks for them. For years, owner-operators of industrial air pollution sources have had the option of either doing their own computerized modeling to estimate pollution impacts, or have the Division of Air Quality to do one. This is hardly a burden to the permit applicants because the state analysis costs them nothing. It is no burden for the people of North Carolina because the screening is designed to catch potential sources of air pollutants such as arsenic, benzene, cadmium and formaldehyde. These are toxic and/or carcinogenic substances which no one would find acceptable to breathe.

Natural Gas-fired Combustion Units

Under the proposed rule change, natural gas and propane burners would be added to the list of toxic air pollution emitting facilities for which a ñpermit to emit toxic air pollutants shall not be required.ò[5] The discussion of TPER in Recommendation 2 is a red herring. The exemption would apply regardless of the permit threshold rate, the TPER, which is the determining factor for whether the Division performs air modeling, not permitting.

[5] NCAC 2Q .0702

The exemption from air toxics rules of natural gas- and propane-fired plants with a heat input value below 450 mmBtu/hour would allow higher levels of pollution because it exempts a significant number of sources within certain facilities. For example, the Richmond County Combustion Turbines have nineteen emission units, ten of which have heat inputs below the 450 mmBtu/hour threshold. The ten sources burn natural gas with a combined heat input of 80 mmBtu/hour and 700,187 mmBtu/year. The maximum facility-wide annual natural gas heat input is 3.18E+07, which means the ten exempted unit emit about 2% of the facilityôs air pollution while using natural gas for fuel.

$$7.0\ E{+}05 \div 3.19\ E{+}07 = 0.022$$

However, if approved by the EMC, this exemption would allow about 497 more pounds of formaldehyde to be emitted from the RCCT facility annually; also, 91 pounds of toluene, 8 pounds of benzene and lesser amounts of acetaldehyde, ethylbenzene, naphthalene, PAH and xylene. Duke Energy Progress, the owner-operator of the RCCT plant, is already seeking to escape the inclusion of emissions from six of these pollution sources in its permit. As a result, pollution will increase by this amount because the extra margin of toxic air pollution will be available to the remaining, larger units. If the proposed exemption is approved, this scenario would be repeated perhaps hundreds of times across the state.

Conclusion

At the behest of the regulated community, the legislature has made mischief for the stateôs environmental agencies during the last few years. Nevertheless, the EMC should use its considerable resources to protect the people and the environment of North Carolina first and not allow rollbacks, loopholes and exemptions to destroy the exemplary North Carolina Toxic Air Pollutant Program.

Respectfully,

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Attachment

North Carolina Toxics Not Regulated as Federal Hazardous Air Pollutants

Toxic air pollutant	**CAS Number**	**Carcinogen**	**Acute/chronic toxic/irritant**
Acetic Acid	64-19-7		✓
Ammonia	7664-41-7		✓
Bromine	7726-95-6		✓
Dichlorodifluoromethane	75-71-8		✓
Dichlorofluoromethane	75-43-4		✓
Ethyl acetate	141-78-6		✓
Ethyl mercaptan	75-08-1		✓
Ethylene glycol monoethyl ether	110-80-5		✓
Ethylene diamine	107-15-3		✓
Hexachlorodibenzo-p-dioxin	57653-85-7	✓	
Hexane isomers			✓
Mercury vapor	7439-97-6		✓
Methyl mercaptan	74-93-1		✓
Nickel metal	7440-02-0		✓
Nitric acid	7697-37-2		✓
Sulfuric acid	7664-93-9		✓
Tetrachloro-1,2-difluoroethane 1,1,2,2	76-12-0		✓
Tetrachloro-2,2-difluoroethane 1,1,1,2	76-11-9		✓
Trichlorofluoromethane	75-69-4		✓