

Agenda Item: 14-21 **Request for 30-Day Waiver and to Proceed to Comment and Hearing on Revisions to Open Burning Rules to Reflect S.L. 2013-413 (521)**

Explanation:

The Environmental Management Commission (EMC) is requested to approve a waiver of its 30-day rule and one or more public hearings to consider amendments to the Open Burning rules.

The General Assembly enacted S.L. 2013-413, An Act to Improve and Streamline the Regulatory Process in Order to Stimulate Job Creation, to Eliminate Unnecessary Regulation, to Make Various Other Statutory Changes, and to Amend Certain Environmental and Natural Resources Laws. Part V, Section 28 of the Session Law amends the requirements that pertain to permissible open burning for land clearing or right-of-way maintenance. The amendments add an option that allows land clearing or right-of-way maintenance materials to be carried or transported to a location, where the material is burned not more than four times per year, that is: 1) at least 500 feet from any dwelling, group of dwellings, or commercial or institutional establishment, or other occupied structure not located on the property where the burning is conducted; 2) where there are no more than two piles, each 20 feet in diameter, burned at one time; and 3) not a permitted solid waste management facility.

Section 28(c) of the Session Law requires the Commission to adopt amendments to 15A NCAC 02D .1903, Open Burning Without an Air Quality Permit, that are substantively identical to the Session Law provisions. Per the Session Law, these rule amendments are not subject to review by the Rules Review Commission under the Administrative Procedures Act. The amendments are to become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received and thus would become effective following opportunity for legislative review by the next regular session of the General Assembly that begins at least 25 days following adoption of the amendments provided by G.S. 150B-21.3(b2).

15A NCAC 02D .1901 and .1902 are proposed to be revised to update the name of the former Division of Forest Resources to reflect its current name, the North Carolina Forest Service.

The Division of Air Quality prepared a fiscal note on the impacts of the rule changes mandated by the statute. The change provides flexibility to those conducting land clearing operations by allowing offsite burning of landclearing debris when setback, frequency and pile size criteria are met. Based on the limited available data and staff observations since the implementation of the statute began, this option is expected to be used in limited situations such as where setback requirements can't be met on the landclearing site or where other local restrictions prevent on-site burning. The degree to which this option would be beneficial is site specific in nature and a function in part of transportation

costs relative to other available use or disposal options. The amendments are de minimis with little impact on state or local funds or private entities and do not cause substantial economic impacts as defined in N.C.G.S. 150B-21.4 of the Administrative Procedures Act.

Recommendation:

The Director recommends that the Commission approve the waiver, proposed rules and fiscal note along with authorizing a public hearing(s) on these items and that the Chairman appoint a member(s) of the Commission to serve as hearing officer(s).