

Agenda Item: 15-05 Stormwater Oil and Gas Rule – 15A NCAC 2H .1030 - Modifications to Respond to RRC Objection

Explanation:

At its November 2014 meeting the Environmental Management Commission (EMC) adopted a set of rules to establish requirements for the oil and gas exploration and production industry in North Carolina. These rules included changes to parts of the Commission's groundwater, land application and stormwater rules. The adopted rules were reviewed by the Rules Review Commission (RRC) at its December 17, 2014 meeting. The RRC approved all of the EMC rules with the exception of the stormwater rule (2H .1030). The RRC objected to this rule on the grounds that one portion of the adopted rule differed substantially from the rule language that was taken to public notice. In discussing this matter the RRC noted that the public review process had worked as intended in that the EMC and Division had received public comments and responded to those comments with changes/clarifications in the rules. The RRC's objection letter is included as Attachment 1. The language at issue is found in 15A NCAC 2H .1030 (c)(5), (6) and (7). This language relates to record keeping, self-inspection and self-reporting requirements.

The EMC may choose to address the objection in one of two ways. First, the EMC can publicly notice the rule language that was adopted at the November EMC meeting (Attachment 2) and receive public comments on it for 60 days. After this time the EMC would again consider any comments received, finalize and adopt the rule and send it back to the RRC for its review. This would address the objection by making the modified language available for public review/comment. Second, the EMC may address the objection by modifying the previously adopted rule to remove the added language and go back to the language that was taken out to public notice. This possible change is reflected in subparagraph (c)(5) as provided in Attachment 3. The EMC can make this change at the January meeting, adopt the rule and send it back to the RRC for review at its January 2015 meeting. This would address the objection by removing the language that was judged to be a substantial change.

Recommendation:

The EMC will be asked to take action on this item at the January meeting to direct staff on the next steps in moving forward with this rule.

Note: The attached rules reflect technical changes requested by the RRC staff. These changes are shown with highlighting.