Agenda Item: 11-38 Request for 30-day Waiver and Request for Adoption of Amendments to Open Burning Rules to Incorporate Session Law 2011-394 Requirements (507)

Explanation: The Environmental Management Commission (EMC) is requested to approve a waiver of its 30-day rule and adotp amendments to the open burning rules required by Session Law 2011-394 and to update the name of the former Division of Forest Resources.

During the 2011 legislative session, the General Assembly enacted S.L. 2011-394, An Act to Amend Certain Environmental Laws, which adjusted the setback requirements for permissible open burning. Amendments to 15A NCAC 02D .1900 are necessary to reflect the changes resulting from S.L. 2011-394 for consistency with the General Statutes in order to avoid confusion; however, per the S.L. 2011-394 Sections 2.(d) and 2.(g), these amendments are not subject to the publication of notice of text and public hearing requirements of the Administrative Procedures Act (APA) found in G.S. 150B-21.2 or review by the Rules Review Commission (RRC) found in G.S. 150B 21.9 - 21.14. 15A NCAC 02D .1903, Open Burning Without An Air Quality Permit, is to be amended to change the setback requirement to 500 feet per S.L. 2011-394 Section 2.(d). 15A NCAC 02D .1904, Air Curtain Burners, is to be amended to change the setback requirement for air curtain burners to 300 feet per S.L. 2011-394 Section 2.(g). S.L. 2011-394 Sections 2.(d) and 2.(g) specify that the rule amendments adopted to implement these provisions in 2D .1903 and .1904 are to be substantively identical to S. L. 2011-394 Section 2.(c) and Section 2.(f), respectively.

In addition, an amendment updating the reference to the former Division of Forest Resources to reflect its new name, the North Carolina Forest Service, is proposed for adoption. The amendment does not require notice of text or hearing pursuant to G.S. 150B 21.5(a)(2); however, it does undergo review by the Rules Review Commission.

Recommendation: The Director recommends that the Commission adopt the proposed amendments.