

Agenda Item: 11-01 Request the NCEMC to Approve Mecklenburg County’s Local Rule regarding Hospital Medical and Infectious Waste Incinerators

Explanation:

On November 16, 2010, the Mecklenburg County Board of Commissioners held a public hearing and unanimously adopted amendments to the Mecklenburg County Air Pollution Control Ordinance (MCAPCO) to include MCAPCO Regulation 2.1206 - “Hospital, Medical and Infectious Waste Incinerators.” The Board received one comment at the hearing. The comment was in favor of the proposed rules.

MCAPCO Regulation 2.1206 “Hospital, Medical and Infectious Waste Incinerators” as adopted details the emission standards/ limits, and testing, monitoring, recordkeeping, and reporting requirements for hospital, medical and infectious waste incinerators in Mecklenburg County, according to the Environmental Protection Agency’s (EPA’s) *Guidelines for Hospital Medical and Infectious Waste Incinerators* as listed in 40 CFR 60 Subpart Ce – “Emission Guidelines and Compliance Times for Hospital/ Medical/Infectious Waste Incinerators”. The revision implements EPA’s October 6, 2009 revisions to 40 CFR 60 Subpart Ce. While EPA allowed compliance date no later than October 6, 2014 for the new requirements, the Mecklenburg County revision to 2.1206 requires a hospital medical and infectious waste incinerator (HMIWI) to be in compliance with EPA’s revised requirements by October 6, 2012. The earlier compliance date was directed by the Mecklenburg Board of County Commissioners in its resolution of April 20, 2010. Other revisions to MCAPCO 2.1206 require that equipment inspections and control device inspections be increased from annual to semi-annual and that a fully trained and qualified HMIWI operator is required to be at the facility at all times, whenever the HMIWI is operating.

North Carolina General Statutes provide for local air pollution control programs to be certified by the North Carolina Environmental Management Commission (NCEMC or Commission) and further allows these programs to adopt a particular class of air contaminant regulations which would result in more effective air pollution control than applicable standards or rules promulgated by the Commission; with Commission approval; to wit:

§ 143 215.112. Local air pollution control programs.

(a) The Commission is authorized and directed to review and have general oversight and supervision over all local air pollution control programs and to this end shall review and certify such programs as being adequate to meet the requirements of this Article and Article 21 of this Chapter and any applicable standards and rules adopted pursuant thereto. The Commission shall certify any local program which:

(1) Provides by ordinance or local law for requirements compatible with those imposed by the provisions of this Article and Article 21 of this Chapter, and the standards and rules issued pursuant thereto; provided, however, the Commission upon request of a municipality or other local unit may grant special permission for the governing body of such unit to adopt a particular class of air contaminant regulations which would result in more effective air pollution control than applicable standards or rules promulgated by the Commission. (emphasis added)

MCAQ has been certified to administer the air quality program in Mecklenburg County, North Carolina. Such authority has been delegated to the State of North Carolina pursuant to the federal Clean Air Act (42 U.S.C. 7401 et seq.) and originally was granted by the State of North Carolina to MCAQ by certification through the North Carolina Office of Water and Air Resources on March 15, 1973. MCAQ was recertified through the North Carolina Environmental Management Commission on April 11, 1985, as Resolution No. 85-8, on May 14, 1992 as Resolution No. 92-04, on September 8, 1994 as Resolution No. 94-14 (G.S. 143-215.112) and on October 10, 2002 as Resolution No. 03-02.

On September 7, 2010, the NCEMC held a hearing on amendments to the North Carolina Hospital, Medical and Infectious Waste Incinerator (HWIMI) Rule (15A NCAC 02D .1206).

The NCEMC received comments from sixty five people on the proposed Hospital, Medical and Infectious Waste Incinerator rule during the comment period for the hearing record.

Sixty three people supported a compliance date of October 6, 2012. Resolutions supporting the October 6, 2012 were also received from four counties including Mecklenburg and ten towns and cities including Matthews and Stallings in North Carolina.

Healthcare Waste Solutions (HWS), owner of BMWNC, Inc submitted comments to the NCEMC in writing dated October 14, 2010. HWS recommended an October 6, 2014 compliance date. HWS made three detailed comments in support of the latest possible compliance date. In summary these comments concerned the difficulties and time needed to design, build, test and permit a new incinerator.

On November 18, 2010, the NCEMC adopted revisions to Rule 15A NCAC 02D .1206, Hospital, Medical, and Infectious Waste Incinerators, requiring compliance with the new federal emission limits, operating procedure requirements, recordkeeping and reporting requirements with an implementation date of July 1, 2013.

Existing facilities have received adequate notice of new requirements. On October 6, 2009 EPA published 40 CFR 60 Subpart Ce – “Emission Guidelines and Compliance Times for Hospital/Medical/Infectious Waste Incinerators” requiring states to promulgate rules for existing facilities. EPA included two years for states to promulgate a rule and for EPA to approve the state rule. The guidelines established a compliance date of no later than October 6, 2014, while allowing for states to propose an earlier date. EPA’s action effectively provided notice that emission standards and other requirements would change. Requiring compliance by October 6, 2012, would be consistent with EPA’s approach in regulating existing affected sources under the MACT program (typically allowing three years).

On July 15, 2010 NCEMC authorized NCDAQ to proceed to public hearing with a proposed state rule implementing the federal rules, again providing notice of new rules. The public notice specifically requests comments on a compliance date of October 6, 2012. State rules will not be any less stringent than the federal guidelines. Owners of existing facilities are once again put on notice of future requirements and should be planning to comply.

Notice began on October 6, 2009. The rulemaking process allowed knowledgeable companies to be aware prior to that. MCAQ believes that two years is adequate time for planning, designing, purchasing and installing new equipment. Requiring compliance by October 2012 gives three years – one more than practically needed.

Companies that are committed to the air quality of this state and the health of adjacent communities have received adequate notice. State economic analysis shows that there is only a marginal economic impact to BMWNC for complying in 2012.

Public fears due to non-consensual risk and concerns over unnecessary exposures to toxic pollutants whether real or perceived coupled with EPA’s lowering of emission standards should be given credence.

The citizens of Mecklenburg County and its duly elected officials have considered this matter and believe that a compliance date of October 6, 2012 is in the best interest of public health and the environment.

MCAQ has been certified by the NCEMC to administer the air quality program in Mecklenburg County, North Carolina. MCAQ has been certified to adopt local air pollution rules. The NCEMC has the authority to grant special permission for Mecklenburg County to adopt a particular class of air contaminant regulations which would result in more effective

air pollution control than applicable standards or rules promulgated by the Commission. The adopted local regulation would reduce air pollution levels earlier than the rules promulgated by the Commission.

Recommendation:

Pursuant to §143 215.112 Local air pollution control programs, Paragraph (a)(1), Mecklenburg County requests that the NCEMC approve the revised MCAPCO 2.1206 as adopted by the Mecklenburg County Board of Commissioners on November 16, 2010.