

## 15A NCAC 02D Air Pollution Control Requirements

### 15A NCAC 02D .0402 SULFUR OXIDES

**Commenter Name: Terry Lansdell**

Company/Organization: Clean Air Carolina

Email: [terry@cleanaircarolina.org](mailto:terry@cleanaircarolina.org)

Zip: 28217

Do I agree with the Agency's determination? No

I would determine this rule's classification as: Necessary without substantive public interest

Do I want to submit a written comment on this rule? Yes

My comment type on this rule is: Another type of comment

Do I want to enter a comment, or submit a file? Submit a file

Comment Received in letter:

Clean Air Carolina submits these comments, with thanks and acknowledgments of Southern Environmental Law Center's language and source material, in response to the initial determination by the North Carolina Department of Environmental and Natural Resources (DENR) that numerous rules in Subchapter 2D of Title 15A of the North Carolina Administrative Code are "unnecessary." We also disagree with the agency's underlying conclusion that these rules are "obsolete, redundant, or otherwise not needed," and object to these rules as not protective enough to protect public health.

In particular, the comments below explain that (1) North Carolina's rules protecting North Carolinians from mercury emissions (15A N.C. Admin. Code 2D .2501 to .2511) are necessary, and should be strengthened rather than eliminated; (2) rules implementing the federal Clean Air Interstate Rule (15A NCAC 2D .2401 to .2413) are necessary, and should be updated to include the more protective Cross-State Air Pollution Rule; and (3) rules codifying federal conformity requirements (15A NCAC 2D .1601, .1602, & .1603) must be retained.

The Rules Implementing the Clean Air Interstate Rule (15A NCAC 2D .2401 to .2413) are necessary and should be updated to include more stringent federal requirements.

DENR also proposes to designate protections against nitrogen oxides, sulfur dioxide, ozone, and fine particle pollution as "unnecessary," without putting in place the more stringent federal requirements that are now in effect. Indicators and monitoring activities across the state, indicate levels of ozone, nitrogen oxides (Nitrogen oxide is a precursor to ozone, which causes asthma, emphysema, bronchitis, and other breathing problems. ), sulfur dioxides (exposure affects healthy adults as well as those who work or exercise outdoors and have greater effects on at-risk populations such as children, the elderly, and asthmatics.) and particulate matter emissions continually affect public health. Asthma diagnosis's and other health impacts continue to strain our workforce, educational and health care systems, DENR should revisit these rules and categorize them as necessary instead.

**Agency Response:**

The agency's selected determination is "necessary with substantive public interest." Comments will be considered during the readoption process.

**15A NCAC 02D .0405 OZONE**

**Commenter Name: Terry Lansdell**

Company/Organization: Clean Air Carolina

Email: [terry@cleanaircarolina.org](mailto:terry@cleanaircarolina.org)

Zip: 28217

Do I agree with the Agency's determination? No

I would determine this rule's classification as: Necessary without substantive public interest

Do I want to submit a written comment on this rule? Yes

My comment type on this rule is: An objection to the rule

Do I want to enter a comment, or submit a file? Submit a file

**Comment Received in letter:**

Clean Air Carolina submits these comments, with thanks and acknowledgments of Southern Environmental Law Center's language and source material, in response to the initial determination by the North Carolina Department of Environmental and Natural Resources (DENR) that numerous rules in Subchapter 2D of Title 15A of the North Carolina Administrative Code are "unnecessary." We also disagree with the agency's underlying conclusion that these rules are "obsolete, redundant, or otherwise not needed," and object to these rules as not protective enough to protect public health.

In particular, the comments below explain that (1) North Carolina's rules protecting North Carolinians from mercury emissions (15A N.C. Admin. Code 2D .2501 to .2511) are necessary, and should be strengthened rather than eliminated; (2) rules implementing the federal Clean Air Interstate Rule (15A NCAC 2D .2401 to .2413) are necessary, and should be updated to include the more protective Cross-State Air Pollution Rule; and (3) rules codifying federal conformity requirements (15A NCAC 2D .1601, .1602, & .1603) must be retained.

The Rules Implementing the Clean Air Interstate Rule (15A NCAC 2D .2401 to .2413) are necessary and should be updated to include more stringent federal requirements.

DENR also proposes to designate protections against nitrogen oxides, sulfur dioxide, ozone, and fine particle pollution as "unnecessary," without putting in place the more stringent federal requirements that are now in effect. Indicators and monitoring activities across the state, indicate levels of ozone, nitrogen oxides (Nitrogen oxide is a precursor to ozone, which causes asthma, emphysema, bronchitis, and other breathing problems. ), sulfur dioxides (exposure affects healthy adults as well as those who work or exercise outdoors and have greater effects on at-risk populations such as children, the elderly, and asthmatics. ) and particulate matter emissions continually affect public health. Asthma diagnosis's and other health impacts continue to strain our workforce, educational and health care systems, DENR should revisit these rules and categorize them as necessary instead.

**Agency Response:**

The agency's selected determination is "necessary with substantive public interest." Comments will be considered during the readoption process.

**15A NCAC 02D .0536 PARTICULATE EMISSIONS FROM ELECTRIC UTILITY BOILERS**

**Commenter Name: Mark McIntire**

Company/Organization: Duke Energy

Email: [mark.mcintire@duke-energy.com](mailto:mark.mcintire@duke-energy.com)

Zip: 27601

Do I agree with the Agency's determination? No

I would determine this rule's classification as: Unnecessary

Do I want to submit a written comment on this rule? Yes

My comment type on this rule is: An objection to the rule

Do I want to enter a comment, or submit a file? Enter a comment

My Comment Text: Since the implementation of Clean Smokestacks, all of Duke Energy Progress and Duke Energy Carolinas coal fired boilers include advanced air pollution control equipment (SCRs/SNCRs, ESP, scrubbers). In addition, these units are equipped with PM CEMS for monitoring compliance with particulate standards. As such, it is our belief that 2D .0536 as it pertains to AAO is unnecessary, obsolete and imposes additional burden on operations. Duke Energy therefore requests that the NC DENR consider reclassifying this rule as unnecessary.

Thank you.NaNNaN

**Agency Response:**

The agency's selected determination is "necessary with substantive public interest." Comments will be considered during the readoption process.

## 15A NCAC 02D .1104 TOXIC AIR POLLUTANT GUIDELINES

Commenter Name: Joe Sgroi  
Company/Organization: Snyder's-Lance  
Email: [jsgroi@snyderslance.com](mailto:jsgroi@snyderslance.com)  
Zip: 28273

Do I agree with the Agency's determination? No

I would determine this rule's classification as: Unnecessary

Do I want to submit a written comment on this rule? Yes

My comment type on this rule is: An objection to the rule

Do I want to enter a comment, or submit a file? Submit a file

Comment Received in letter:

Snyder's- Lance respectfully objects to the TAP Rule's ammonia emission limit of 2.7 mg/m<sup>3</sup> as a 1-hour acute standard. The objection is based, in part, on the following:

1) Regulation of ammonia emissions is not necessary. Ammonia is not among the federal Environmental Protection Agency's 187 "toxic air pollutants" regulated under Section 112(a) of the Clean Air Act. In addition, the majority of states do not regulate ammonia as a toxic air pollutant, including all of North Carolina's neighboring states.

2) Even if North Carolina continues to regulate ammonia, the current emissions limit of 2.7 mg/m<sup>3</sup> is far too low. By comparison, the OSHA Permissible Exposure Limit for Ammonia inside the workplace of a general industry is 35 mg/m<sup>3</sup>, more than ten times the North Carolina ammonia emission limit. Snyder's-Lance is a significant employer in Mecklenburg County and in North Carolina. The ammonia emissions limit has an impact on the company's ability to expand baking operations and increase production of food products that are in demand. This also could impact our ability to increase staffing at the facility.

The ammonia emissions limit in 15A NCAC 02D.1104 is not necessary and is substantively erroneous. This rule is a matter of significant public interest and substantive public interest. DENR should determine that this rule is unnecessary or, alternatively, a rule having substantive public interest.

### Agency Response:

The agency's selected determination is "necessary with substantive public interest." Comments will be considered during the readoption process.

## 15A NCAC 02D .1601 PURPOSE, SCOPE AND APPLICABILITY

**Commenter Name: USEPA, Region 4**

Company/Organization: USEPA, Region 4

Email: [R4-ARMS@epa.gov](mailto:R4-ARMS@epa.gov)

Zip: 30303

Do I agree with the Agency's determination? Yes

I would determine this rule's classification as: undefined

Do I want to submit a written comment on this rule? Yes

My comment type on this rule is: Another type of comment

Do I want to enter a comment, or submit a file? Enter a comment

My Comment Text: Please note that any changes to the general conformity regulations at the state level, once state effective, will also need to be submitted to EPA for approval into the federally-approved SIP in the form of a final SIP revision.

This comment is applicable for General Conformity Rules 15A NCAC 02D .1601 - .1603.

**Commenter Name: Terry Lansdell**

Company/Organization: Clean Air Carolina

Comment received in letter:

Clean Air Carolina submits these comments, with thanks and acknowledgments of Southern Environmental Law Center's language and source material, in response to the initial determination by the North Carolina Department of Environmental and Natural Resources (DENR) that numerous rules in Subchapter 2D of Title 15A of the North Carolina Administrative Code are "unnecessary." We also disagree with the agency's underlying conclusion that these rules are "obsolete, redundant, or otherwise not needed," and object to these rules as not protective enough to protect public health.

In particular, the comments below explain that (1) North Carolina's rules protecting North Carolinians from mercury emissions (15A N.C. Admin. Code 2D .2501 to .2511) are necessary, and should be strengthened rather than eliminated; (2) rules implementing the federal Clean Air Interstate Rule (15A NCAC 2D .2401 to .2413) are necessary, and should be updated to include the more protective Cross-State Air Pollution Rule; and (3) rules codifying federal conformity requirements (15A NCAC 2D .1601, .1602, & .1603) must be retained.

North Carolina's rules to ensure that federal actions conform to air quality maintenance plans (15A NCAC 2D .1601, .1602, & .1603) should be retained.

DENR should retain rules that are currently in place to guarantee that federal actions do not conflict with plans to attain or maintain air quality standards in areas with a history of or ongoing air pollution problems. These rules prohibit federal governmental entities from permitting, providing financial assistance for, or otherwise supporting any activity that contravenes these plans. Not only are these requirements still important to protect against increases in dangerous air pollutants, they are also still required by federal law, even though the location of the requirements in the federal code has changed.

**Commenter Name: Myra Blake**

Company/Organization: Southern Environmental Law Center

Comment received in letter:

III. North Carolina's rules to ensure that federal actions conform to air quality maintenance plans (15A N.C. Admin. Code 02D .1601, .1602, and .1603) should be retained.

DENR should retain rules that are currently in place to guarantee that federal actions do not conflict with plans to attain or maintain air quality standards in areas with a history of or ongoing air pollution problems. These rules prohibit federal governmental entities from permitting , providing financial assistance for, or otherwise supporting any activity that contravenes these plans.<sup>32</sup> Not only are these requirements still important to prevent increases in dangerous air pollutants, they are also still required by federal law, even though the location of the requirements in the federal code has changed.<sup>33</sup>

**Agency Response:**

The agency's selected determination is "unnecessary." These rules are no longer necessary since on August 10, 2005, the establishment of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) transportation act was signed into law and removed the requirement for states to maintain general conformity regulations. Among other things, it amended the Clean Air Act (CAA) to eliminate the requirement for states to adopt and submit general conformity state implementation plans (SIPs). On April 5, 2010 (75 FR 17254), EPA updated the general conformity SIP regulations to be consistent with the transportation act by eliminating the federal regulatory requirement for states to adopt and submit general conformity SIPs. See 40 CFR 51.851.

**15A NCAC 02D .1802 CONTROL OF ODORS FROM ANIMAL OPERATIONS USING LIQUID ANIMAL WASTE MANAGEMENT SYSTEMS**

**Commenter Name: David Brigman**

Company/Organization: WNC Regional Air Quality Agency

Email: [david.brigman@buncombecounty.org](mailto:david.brigman@buncombecounty.org)

Zip: 28806

Do I agree with the Agency's determination? No

I would determine this rule's classification as: Unnecessary

Do I want to submit a written comment on this rule? Yes

My comment type on this rule is: Another type of comment

Do I want to enter a comment, or submit a file? Enter a comment

My Comment Text: Comment on 2D .1802 CONTROL OF ODORS FROM ANIMAL OPERATIONS USING LIQUID ANIMAL WASTE MANAGEMENT SYSTEMS. Our agency is required to apply this rule to animal operations that use liquid animal waste management systems. We have required a local farmer to submit a best management plan to reduce odors from his farm. There is very little that can be done to control the odors from the feedlot and the lagoon that is economically and technologically feasible. As the area becomes more populated, this is more of an issue, and we receive a large number of complaints from neighbors. Taking staff time and resources to ensure the BMP is being followed is a burden. We think that small operations, such as this, with approximately 300 cattle, should be exempt from this rule, even though they do have a liquid animal waste management system and are required to have a water quality permit. Addressing the odors through Division of Water Quality, the permitting authority, would be more appropriate, since that agency is more familiar with the operation and is already required to inspect and regulate this operation.

**Agency Response:**

The agency's selected determination is "necessary with substantive public interest." Comments will be considered during the readoption process.

## 15A NCAC 02D .2401 PURPOSE AND APPLICABILITY

**Commenter Name: USEPA, Region 4**

Company/Organization: USEPA, Region 4

Email: [R4-ARMS@epa.gov](mailto:R4-ARMS@epa.gov)

Zip: 30303

Do I agree with the Agency's determination? No

I would determine this rule's classification as: Necessary with substantive public interest

Do I want to submit a written comment on this rule? Yes

My comment type on this rule is: Another type of comment

Do I want to enter a comment, or submit a file? Enter a comment

My Comment Text: There is ongoing CSAPR litigation involving multiple issues challenging EPA's legal authority and technical analysis. Repeal of CAIR regulations at this time is not recommended until such time as the remaining challenges to the CSAPR in the D.C. Circuit are resolved. Please note that any changes to the CAIR regulations at the state level, once state effective, will also need to be submitted to EPA for approval into the federally-approved SIP in the form of a final SIP revision.

This comment is applicable for Clean Air Interstate Rules 15A NCAC 02D .2401 - 2413.

**Commenter Name: Myra Blake**

Company/Organization: Southern Environmental Law Center

Comment received in letter:

The Southern Environmental Law Center submits these comments in response to the initial determination by the North Carolina Department of Environment and Natural Resources (DENR) that numerous rules in Subchapter 02D of Title 15A of the North Carolina Administrative Code are "unnecessary." We disagree with the agency's underlying conclusion that these rules are "obsolete, redundant, or otherwise not needed," and object to these rules as not protective enough.

In particular, the comments below explain that (1) North Carolina's rules protecting North Carolinians from mercury emissions (15A N.C. Admin. Code 02D .2501 to .2511) are necessary, and should be strengthened rather than eliminated; (2) rules implementing the federal Clean Air Interstate Rule (15A N.C. Admin. Code 02D .2401 to .2413) are necessary, and should be updated to include the more protective Cross-State Air Pollution Rule; and (3) rules codifying federal conformity requirements (15A N.C. Admin. Code 02D .1601, .1602, and .1603) must be retained.

II. The rules implementing the Clean Air Interstate Rule (15A N.C. Admin. Code 02D .2401 to .2413) are necessary and should be updated to include more stringent federal requirements.

DENR also proposes to designate protections against nitrogen oxides, sulfur dioxide, ozone, and fine particle pollution as "unnecessary," without putting in place the more stringent federal requirements that are now in effect. DENR should revisit these rules and categorize them as necessary instead.

A. The pollutants covered by these rules cause widespread health problems.

B. Federal and state regulations were put in place to combat these dangers.

In 2005, EPA issued the Clean Air Interstate Rule ("CAIR") to curb unhealthy levels of fine particles and ozone by reducing sulfur dioxide and nitrogen oxide emissions. In 2008, the D.C. Circuit vacated CAIR, but ordered EPA to continue implementing CAIR until it re-promulgated a lawful replacement. In 2011, EPA promulgated a replacement program known as the Cross State Air Pollution Rule ("CSAPR"), and in 2014 the Supreme Court upheld EPA's reliance on costs in CSAPR and overturned the D.C. Circuit's decision on this issue.<sup>29</sup>

On January 1, 2015, CSAPR went into effect and replaced CAIR. The D.C. Circuit is currently considering other issues related to CSAPR on remand, and a decision on these issues is pending.

C. DENR should update its rules to include CSAPR requirements, rather than simply striking the CAIR requirements.

In order to avoid any implementation gap, DENR should promptly issue rules that implement the CSAPR requirements, rather than eliminating the rules designed to implement CAIR without any replacement. As explained above, the Environmental Management Commission has a duty to adopt rules implementing CSAPR "as rapidly as possible."<sup>30</sup> North Carolina's rules need to be revised to reflect all CSAPR requirements. The North Carolina rules implementing CAIR should remain in place until the current federal CSAPR litigation is resolved and the State issues rules implementing CSAPR.

In addition, the North Carolina rules were adopted to conform to the federal CAIR regulations, and therefore cannot automatically expire. Under North Carolina's rules review process, even rules that are classified as "unnecessary" "shall not expire" if they were "adopted to conform to or implement federal law."<sup>31</sup> Therefore, regardless of the classification assigned to these rules, they cannot expire under the rules review process.

**Agency Response:**

The agency's selected determination is "unnecessary." The Clean Air Interstate Rules were struck down and the Cross State Air Pollution Rules are currently being implemented. The Division does not anticipate that resolution of pending CSAPR related litigation would result in the CAIR rules being reinstated.

## 15A NCAC 02D .2403 NITROGEN OXIDE EMISSIONS

**Commenter Name: Terry Lansdell**

Company/Organization: Clean Air Carolina

Email: [terry@cleanaircarolina.org](mailto:terry@cleanaircarolina.org)

Zip: 28217

Do I agree with the Agency's determination? No

I would determine this rule's classification as: Necessary with substantive public interest

Do I want to submit a written comment on this rule? Yes

My comment type on this rule is: Another type of comment

Do I want to enter a comment, or submit a file? Submit a file

**Commenter Name: Terry Lansdell**

Company/Organization: Clean Air Carolina

Comment received in letter:

Clean Air Carolina submits these comments, with thanks and acknowledgments of Southern Environmental Law Center's language and source material, in response to the initial determination by the North Carolina Department of Environmental and Natural Resources (DENR) that numerous rules in Subchapter 2D of Title 15A of the North Carolina Administrative Code are "unnecessary." We also disagree with the agency's underlying conclusion that these rules are "obsolete, redundant, or otherwise not needed," and object to these rules as not protective enough to protect public health.

In particular, the comments below explain that (1) North Carolina's rules protecting North Carolinians from mercury emissions (15A N.C. Admin. Code 2D .2501 to .2511) are necessary, and should be strengthened rather than eliminated; (2) rules implementing the federal Clean Air Interstate Rule (15A NCAC 2D .2401 to .2413) are necessary, and should be updated to include the more protective Cross-State Air Pollution Rule; and (3) rules codifying federal conformity requirements (15A NCAC 2D .1601, .1602, & .1603) must be retained.

The Rules Implementing the Clean Air Interstate Rule (15A NCAC 2D .2401 to .2413) are necessary and should be updated to include more stringent federal requirements.

DENR also proposes to designate protections against nitrogen oxides, sulfur dioxide, ozone, and fine particle pollution as "unnecessary," without putting in place the more stringent federal requirements that are now in effect. Indicators and monitoring activities across the state, indicate levels of ozone, nitrogen oxides (Nitrogen oxide is a precursor to ozone, which causes asthma, emphysema, bronchitis, and other breathing problems. ), sulfur dioxides (exposure affects healthy adults as well as those who work or exercise outdoors and have greater effects on at-risk populations such as children, the elderly, and asthmatics. ) and particulate matter emissions continually affect public health. Asthma diagnosis's and other health impacts continue to strain our workforce, educational and health care systems, DENR should revisit these rules and categorize them as necessary instead.

**Agency Response:**

The agency's selected determination is "unnecessary." The Clean Air Interstate Rules were struck down and the replacement Cross State Air Pollution Rules are currently being implemented. The Division does not anticipate that resolution of pending CSAPR related litigation would result in the CAIR rules being reinstated.

## 15A NCAC 02D .2404 SULFUR DIOXIDE

**Commenter Name: Terry Lansdell**

Company/Organization: Clean Air Carolina

Email: [terry@cleanaircarolina.org](mailto:terry@cleanaircarolina.org)

Zip: 28217

Do I agree with the Agency's determination? No

I would determine this rule's classification as: Necessary with substantive public interest

Do I want to submit a written comment on this rule? Yes

My comment type on this rule is: Another type of comment

Do I want to enter a comment, or submit a file? Submit a file

**Commenter Name: Terry Lansdell**

Company/Organization: Clean Air Carolina

Comment received in letter:

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In particular, the comments below explain that (1) North Carolina's rules protecting North Carolinians from mercury emissions (15A N.C. Admin. Code 2D .2501 to .2511) are necessary, and should be strengthened rather than eliminated; (2) rules implementing the federal Clean Air Interstate Rule (15A NCAC 2D .2401 to .2413) are necessary, and should be updated to include the more protective Cross-State Air Pollution Rule; and (3) rules codifying federal conformity requirements (15A NCAC 2D .1601, .1602, & .1603) must be retained.

The Rules Implementing the Clean Air Interstate Rule (15A NCAC 2D .2401 to .2413) are necessary and should be updated to include more stringent federal requirements.

DENR also proposes to designate protections against nitrogen oxides, sulfur dioxide, ozone, and fine particle pollution as "unnecessary," without putting in place the more stringent federal requirements that are now in effect. Indicators and monitoring activities across the state, indicate levels of ozone, nitrogen oxides (Nitrogen oxide is a precursor to ozone, which causes asthma, emphysema, bronchitis, and other breathing problems. ), sulfur dioxides (exposure affects healthy adults as well as those who work or exercise outdoors and have greater effects on at-risk populations such as children, the elderly, and asthmatics. ) and particulate matter emissions continually affect public health. Asthma diagnosis's and other health impacts continue to strain our workforce, educational and health care systems, DENR should revisit these rules and categorize them as necessary instead.

**Agency Response:**

The agency's selected determination is "unnecessary." The Clean Air Interstate Rules were struck down and the Cross State Air Pollution Rules are currently being implemented. The Division does not anticipate that resolution of pending CSAPR related litigation would result in the CAIR rules being reinstated.

## **15A NCAC 02D .2500 Mercury Rules for Electric Generators**

### **Commenter Name: Terry Lansdell**

Company/Organization: Clean Air Carolina

Comment Received in letter:

Clean Air Carolina submits these comments, with thanks and acknowledgments of Southern Environmental Law Center's language and source material, in response to the initial determination by the North Carolina Department of Environmental and Natural Resources (DENR) that numerous rules in Subchapter 2D of Title 15A of the North Carolina Administrative Code are "unnecessary." We also disagree with the agency's underlying conclusion that these rules are "obsolete, redundant, or otherwise not needed," and object to these rules as not protective enough to protect public health.

In particular, the comments below explain that (1) North Carolina's rules protecting North Carolinians from mercury emissions (15A N.C. Admin. Code 2D .2501 to .2511) are necessary, and should be strengthened rather than eliminated; (2) rules implementing the federal Clean Air Interstate Rule (15A NCAC 2D .2401 to .2413) are necessary, and should be updated to include the more protective Cross-State Air Pollution Rule; and (3) rules codifying federal conformity requirements (15A NCAC 2D .1601, .1602, & .1603) must be retained.

The Rules protecting North Carolinians from mercury emissions (15A N.C. Admin. Code 2D .2501 to .2511) are necessary, and should be strengthened rather than eliminated. Mercury emissions from power plants pose grave health threats and state rules must reflect increasingly stringent federal rules. DENR needs to strengthen, rather than eliminate, North Carolina's mercury protections.

DENR proposes to classify as "unnecessary" rules put in place to protect people from harmful mercury emissions from coal-fired power plants, 15A N.C. Admin. Code 2D .2501 to .2511 (the "North Carolina Mercury Rules"). Until all coal plants are decommissioned or repurposed, these rules are critical to protect the health of North Carolinians from mercury emissions.

### **Commenter Name: Myra Blake**

Company/Organization: Southern Environmental Law Center

Comment received in letter:

The Southern Environmental Law Center submits these comments in response to the initial determination by the North Carolina Department of Environment and Natural Resources (DENR) that numerous rules in Subchapter 02D of Title 15A of the North Carolina Administrative Code are "unnecessary." We disagree with the agency's underlying conclusion that these rules are "obsolete, redundant, or otherwise not needed," and object to these rules as not protective enough.<sup>1</sup>

In particular, the comments below explain that (1) North Carolina's rules protecting North Carolinians from mercury emissions (15A N.C. Admin. Code 02D .2501 to .2511) are necessary, and should be strengthened rather than eliminated; (2) rules implementing the federal Clean Air Interstate Rule (15A N.C. Admin. Code 02D .2401 to .2413) are necessary, and should be updated to include the more protective Cross-State Air Pollution Rule; and (3) rules codifying federal conformity requirements (15A N.C. Admin. Code 02D .1601, .1602, and .1603) must be retained.

We therefore encourage the agency to reconsider its decision to label these rules "unnecessary," and, in recognition of the importance of these rules, classify them as "necessary with substantive public interest."<sup>3</sup>

I. The Rules protecting North Carolinians from mercury emissions (15A N.C. Admin. Code 02D .2501 to .2511) are necessary, and should be strengthened rather than eliminated.

DENR proposes to classify as "unnecessary" rules put in place to protect people from harmful mercury emissions from coal-fired power plants, 15A N.C. Admin. Code 2D .2501 to .2511 (the "North Carolina Mercury Rules"). As explained below, this classification is incorrect and a disservice to the people of North Carolina. The North Carolina Mercury Rules are necessary and important, given the dangers posed by mercury and by DENR's ongoing delay in adopting more stringent mercury protections required to implement the federal Mercury and Air Toxics Standards.

A. Mercury emissions from power plants pose grave health threats.

Mercury is a neurotoxin that can cause lowered intelligence and learning disabilities in unborn children, breast-fed infants, and young children.<sup>4</sup> Adults exposed to even low amounts of mercury may also be at higher risk for heart disease and heart attacks, altered sensation, impaired hearing and vision, and motor disturbances linked directly to exposure from eating contaminated fish.<sup>5</sup>

Coal-fired power plants are the leading source of mercury pollution,<sup>6</sup> which is emitted into the air and deposited in water bodies where it is consumed by fish before it works its way up the food chain. All river basins in North Carolina are currently listed as impaired due to mercury contamination.<sup>7</sup> As a result, a state-wide fish consumption advisory is in place, which warns people to limit consumption of or to avoid eating fish caught in North Carolina waters.<sup>8</sup>

B. To protect against these threats, a series of increasingly stringent federal and state rules has been adopted.

In 2005, EPA issued the Clean Air Mercury Rule ("CAMR"), which created a cap-and-trade system to reduce nation-wide mercury emissions from power plants.

In 2006, the North Carolina Environmental Management Commission established the North Carolina Mercury Rules, which contain requirements that are more protective than CAMR's.<sup>9</sup> In addition to implementing the cap-and-trade system of CAMR, the North Carolina Mercury Rules require a unit-by-unit analysis of the "maximum mercury reductions that are technically and economically feasible at each unit," with a 2017 deadline for implementing controls to achieve those reductions.<sup>10</sup>

In 2008, the U.S. Court of Appeals for the D.C. Circuit vacated CAMR (along with EPA's prior decision to remove power plants from the list of sources of hazardous air pollutants).<sup>11</sup>

In 2012, EPA established federal Mercury and Air Toxics Standards ("MATS"), which protect against emissions of toxic air pollutants from coal and oil-fired power plants.<sup>12</sup> The new standards are expected to cut 90% of the mercury emitted by uncontrolled coal-fired power plants.<sup>13</sup> In North Carolina, implementation of MATS will prevent up to 480 premature deaths, while creating up to \$3.9 billion in health benefits in 2016 alone. The MATS rules became effective on April 16, 2012, with a compliance deadline for existing sources of April 16, 2015, and the possibility of a one-year extension under certain circumstances.

On April 15, 2014, the U.S. Court of Appeals for the D.C. Circuit Court upheld the EPA EGU MATS rule against legal challenges. The U.S. Supreme Court granted certiorari on the limited issue of whether the Environmental Protection Agency properly refused to consider costs when determining that it was appropriate to regulate hazardous air pollution from power plants.<sup>14</sup>

A decision from the Court is pending.

C. DENR needs to strengthen, rather than eliminate, North Carolina's mercury protections. Right now, DENR should be strengthening the mercury rules to conform to the MATS requirements, rather than repealing the existing mercury protections. Under North Carolina law, the Environmental Management Commission has a duty to adopt rules implementing MATS "as rapidly as possible."<sup>15</sup> More than three years after the MATS rules took effect, North Carolina has yet to incorporate these requirements into its regulations. North Carolina's rules need to be strengthened immediately to include all MATS components, including emission and operating limits and testing, monitoring, recording, and reporting requirements.<sup>6</sup> With the new MATS rules already in effect and yet to be adopted in North Carolina, it is particularly troubling that DENR would choose to eliminate (rather than revise and improve) current state protections against mercury. The North Carolina Mercury Rules should remain in place until the current federal MATS litigation is resolved and the State promulgates rules implementing MATS.

Importantly, any provisions of the North Carolina Mercury Rules that provide protections that are additional to MATS should be retained. For example, the Rules provide that "[t]he Commission shall require additional reductions in mercury emissions when needed to reduce mercury concentrations to levels that do not cause or contribute to mercury-related health problems."<sup>17</sup> With all of North Carolina's waters still impaired due to mercury contamination, and with a state-wide caution in effect against eating fish caught in any of the state's waters, this duty to eliminate emissions that cause health problems is not "obsolete, redundant, or otherwise not needed," and must be retained. In addition, while the initial deadline for MATS compliance has passed, some facilities have obtained a one-year extension until April 16, 2016, to come into compliance.<sup>18</sup> These facilities must continue to comply with the emission limits in North Carolina Mercury Rules in the interim.

Finally, the North Carolina Mercury Rules were adopted to conform to federal regulations (CAMR), and therefore cannot automatically expire. Under North Carolina's rules review process, even rules that are classified as "unnecessary" "shall not expire" if they were "adopted to conform to or implement federal law."<sup>19</sup> The North Carolina Mercury Rules were adopted to implement the CAMR requirements and any additional requirements deemed necessary by the Environmental Management Commission.<sup>20</sup> Therefore, regardless of the classification assigned to these rules, they will remain in place.

#### **Agency Response:**

The agency's selected determination is "unnecessary." The Clean Air Mercury Rules upon which the state rules in 15A NCAC 02D .2500 were based were vacated by the U.S. Court of Appeals for the D.C. Circuit February 8, 2008. Those federal rules were later replaced by the Mercury and Air Toxics Standards (MATS) in 40 CFR 63 Subpart UUUU which the state automatically adopts via 15A NCAC 02D .1111 and implements.

As described in the Division's 2012 Mercury Report to the EMC, North Carolina electric generating units' emissions have decreased 89% from 2002 through 2013. Atmospheric deposition modeling estimated that by 2016 mercury from all sources in North Carolina contribute 3.6% of the mercury deposited in North Carolina.

The commenter referenced that the rules require a unit-by-unit analysis of the "maximum mercury reductions that are technically and economically feasible at each unit," with a 2017 deadline for implementing controls to achieve those reductions. The Division agrees that those requirements of .2511 (b) through (d) haven't all been addressed. The compliance plans required by the rule were submitted and the agency is completing its review to take to the Air Quality Committee in September and the Environmental

Management Commission in November. All of the units subject to the requirements have either installed mercury controls suitable to meet the Mercury and Air Toxics Standards or shut down as of December 2013.

## General Comments on 15A NCAC Chapter 02D

Comment received in email:

**Commenter Name: Allen Hardison**

Company/Organization: Joyce Engineering, Inc./North Carolina Chapter of the National Waste and Recycling Association

I hope you are doing well. I was pleased to meet you at the EMC committee meetings a few weeks back. As I indicated at the time and in emails, I am working with Joyce Engineering, Inc. on a project for the North Carolina chapter of the National Waste and Recycling Association to monitor and provide assistance in the Periodic Review of Existing Rules.

The legislative committee of the chapter, that also deals with administrative rules and other regulatory issues, has reviewed the categories of the 15 NCAC 02D and 15 NCAC 02Q rules as published on the Office of Administrative Hearings' website. We concur with the categorizations of the rules as presented.

We look forward to a continued engagement with the Division as the rules move forward to the re-adoption stage.

**Agency Response:**

The agency has no selected determination for general comments. Comments will be considered during Commission discussion related to the rule readoption process.

**Commenter Name: Members of Medical Advocates for Healthy Air**

Company/Organization: Members of Medical Advocates for Healthy Air

Comment received in letter:

As medical and health professionals who work and live in North Carolina, we are writing to express our strong opposition to the initial determination by the North Carolina Department of Environmental and Natural Resources (DENR) that numerous rules in Subchapter 2D of Title 15A of the North Carolina Administrative Code are "unnecessary, obsolete, redundant, or otherwise not needed." In fact, the 27 rules targeted by the agency for elimination would ultimately deprive both the public and DENR's Division of Air Quality of useful regulatory guidance regarding the control of air pollution in North Carolina. These protective rules are critical and should not only be deemed "necessary with substantive public interest" but updated and strengthened to adequately protect public health under stringent federal requirements.

We urge DENR to reconsider its initial determination to the contrary, and, in recognition of the importance of these rules, classify them as "necessary with public interest." Thank you for your consideration.

**Agency Response:**

The agency has no selected determination for general comments. Comments will be considered during Commission discussion related to the rule readoption process.