

May 20, 2015

DENR Rule Comments  
1601 Mail Service Center  
Raleigh, NC 27699



Re: Initial Determination of the Necessity of Rules in 15A NCAC 2D

Dear Sir or Madam:

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.<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 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.

Our comments are motivated by the fact that rules designed to protect public health are deemed "unnecessary" will expire unless they were "adopted to conform to or implement federal law."<sup>2</sup> Elimination of the 27 rules in Subchapter 2D targeted by the agency for automatic expiration would deprive both the public and DENR's Division of Air Quality (DAQ) of useful regulatory guidance regarding the control of air pollution in North Carolina. We submit these comments in the hope that DENR will reconsider its decision to label these rules "unnecessary."

We encourage DENR to reconsider its initial determination to the contrary, and, in recognition of the importance of these rules, classify them as "necessary with substantive public interest."<sup>3</sup>

**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.

<sup>1</sup> N.C. Gen. Stat. § 150B-21.3A(a)(6) (defining "unnecessary").

<sup>2</sup> See N.C. Gen. Stat. § 150B-21.3A. With the exception of rules in Subchapter 12J, the rules addressed herein were adopted exclusively to implement state law.

<sup>3</sup> See N.C. Gen. Stat. § 150B-21.3A(a)(4) (defining "necessary without substantive public interest").

**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.<sup>4</sup>), 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.<sup>5</sup>) 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.

**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.<sup>6</sup> 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.<sup>7</sup>

## **Conclusion**

In the name of public health protections from exposure to pollutants, Title 15A of the North Carolina Administrative Code is important in guiding air quality programs of the Division of Air Quality. Clean Air Carolina disagrees 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.<sup>8</sup> Deactivating or classifying these rules as obsolete or redundant is not acceptable to protect public health. With over 200,000 cases of Asthma in North Carolina, it is clear that the existing rules presently do not do enough to protect the public health of North Carolina’s residents and most vulnerable populations and we encourage DENR to reconsider its initial determination to the contrary, and, in recognition of the importance of these rules, classify them as “necessary.”<sup>9</sup>

Terry Lansdell  
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<sup>4</sup> <http://www.epa.gov/groundlevelozone/health.html>

<sup>5</sup> EPA, Sulfur Dioxide - Health, available at <http://www.epa.gov/airquality/sulfurdioxide/health.html>; 75 Fed. Reg. at 35,525

<sup>6</sup> 15A NCAC 2D .1601(a).

<sup>7</sup> While the NC rule references provisions of the federal code which have been repealed (40 C.F.R. 51.852 to 860), the substance of these federal rules was reproduced in the EPA’s General Conformity Regulations (40 C.F.R. 93.150 et seq).

<sup>8</sup> N.C. Gen. Stat. § 150B-21.3A(a)(6) (defining “unnecessary”).

<sup>9</sup> See N.C. Gen. Stat. § 150B-21.3A(a)(4) (defining “necessary without substantive public interest”).

**Comment Regarding Rule:  
15A NCAC 02D.1104 Toxic Air Pollutant Guidelines**

Snyder's-Lance is a food manufacturing facility located at 8600 South Blvd., Charlotte, NC. As part of the food manufacturing process, Snyder's-Lance uses Ammonium Bicarbonate (ABC) as a leavening agent in the baking process. As a result, Snyder's-Lance emits ammonia into the atmosphere. These emissions are regulated through Mecklenburg County Air Quality Permit 13-038-682, pursuant to Rule 15A NCAC 02D.1104 (Toxic Air Pollutant Guidelines) (the "TAP Rule").

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.

**From:** [Ward, Nacosta](#)  
**To:** [Burleson, Joelle](#)  
**Cc:** [Benjamin, Lynorae](#); [Davis, Scott](#); [Bradley, Twunjala](#); [Farngalo, Zuri](#); [Masemore, Sushma](#); [Lakeman, Sean](#)  
**Subject:** Comment Responses posted on the NCDENR website RE: Periodic Review and Expiration of Rules Report - Air Quality Rules in 15A NCAC 02D  
**Date:** Friday, June 19, 2015 2:53:55 PM  
**Attachments:** [image001.png](#)

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Good Day Joelle,

USEPA, Region 4 submitted comments on the NC DENR website regarding the Periodic Review and Expiration of Rules Report. I have summarized our comments below and noted what sections of the existing North Carolina federally approved SIP these comments are applicable to (Rules 15A NCAC 02D .1601 - .1603 and .2401 - .2413). Let us know if you have any questions. Thank you for the opportunity to provide comments.

#### *General Conformity*

*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.*

#### *Clean Air Interstate Rules*

*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.*

Have a wonderful day!

Nacosta C. Ward, Environmental Scientist

U. S. Environmental Protection Agency, Region 4 | Air, Pesticides & Toxics Management Division

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**From:** [Burleson, Joelle](#)  
**To:** [Everett, Jennifer](#)  
**Subject:** FW: Comments on 02D and 02Q rules categorization  
**Date:** Thursday, June 18, 2015 10:42:17 AM

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fyi

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**From:** Allen Hardison [mailto:[allenhardison1@gmail.com](mailto:allenhardison1@gmail.com)]  
**Sent:** Thursday, June 18, 2015 10:41 AM  
**To:** Burleson, Joelle  
**Cc:** 'Leonard E. "Butch" Joyce'  
**Subject:** Comments on 02D and 02Q rules categorization

Ms. Burleson:

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.

Regards,

Allen Hardison  
Regulatory Consultant  
Joyce Engineering, Inc.



DENR Rule Comments  
1601 Mail Service Center  
Raleigh, NC 27699

June 18, 2015

RE: 15A NCAC 02D – AIR POLLUTION CONTROL REQUIREMENTS; 15A NCAC 02Q – AIR QUALITY PERMITS PROCEDURES

Dear Ladies and Gentlemen of the North Carolina Department of Environment and Natural Resources:

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.

Members of Medical Advocates for Healthy Air are especially concerned about the health of North Carolina’s children. State data currently indicates there are nearly 200,000 cases of pediatric asthma, a disease known to be exacerbated by poor air quality. Effects of air pollution have already taken a significant toll on children, older adults, people who are active outdoors, and people suffering from lung and heart disease, chronic obstructive pulmonary disease and diabetes. As one of the fastest growing states in the country, the number of people experiencing these health effects is predicted to increase dramatically if protective policies are not kept in place and strengthened as necessary.

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.



Sincerely,  
*Members of Medical Advocates for Healthy Air*

*Laura Wenzel, MSW  
Manager, Medical Advocates for Healthy Air  
Clean Air Carolina  
Chapel Hill, NC*

*Aaron Levy, MD  
Carolinas Medical Center  
Charlotte, NC*

*Jean Sykes, PhD, RD, LDN, CEDRD  
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*James Kenny, MD  
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*Lisa Johnson, RRT, RCP, BAS, AE-C  
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*Daniel Neuspiel, MD, MPH  
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# SOUTHERN ENVIRONMENTAL LAW CENTER

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June 19, 2015

## *Via First-Class Mail*

DENR Rule Comments  
1601 Mail Service Center  
Raleigh, NC 27699-1601

Re: Initial Determination of the Necessity of Rules in 15A N.C. Admin. Code 02D

Dear Sir or Madam:

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.

Our comments are motivated by the fact that rules deemed “unnecessary” will expire unless they were “adopted to conform to or implement federal law.”<sup>2</sup> Elimination of the 27 rules in Subchapter 02D targeted by the agency for automatic expiration would deprive both the public and DENR’s Division of Air Quality (DAQ) of useful regulatory guidance and authority to control air pollution in North Carolina.

Given the structure of the rules review process outlined in N.C. Gen. Stat. § 150B-21.3A, we emphasize at the outset that our objection to the rules at issue here is premised on our concern that they are not stringent enough and do not conform to federal requirements. The rules review process provides the opportunity for the agency to revise its “initial determination” in response to supportive public comment, even if that revision is not automatic. Accordingly, we submit these comments in the hope that DENR will reconsider its decision to label these rules “unnecessary.”

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<sup>1</sup> N.C. Gen. Stat. § 150B-21.3A(a)(6) (defining “unnecessary”).

<sup>2</sup> See N.C. Gen. Stat. § 150B-21.3A. With the exception of rules in Subchapter 12J, the rules addressed herein were adopted exclusively to implement state law.

Contrary to the agency's initial determination, we believe that these rules are necessary to implement state or federal law. Many of the rules on the agency's chopping block reflect decades of agency expertise and are critical to achieving the legislature's vision of environmental protection. 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

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<sup>3</sup> See N.C. Gen. Stat. § 150B-21.3A(a)(4) (defining "necessary without substantive public interest").

<sup>4</sup> National Research Council, *Toxicological Effects of Methylmercury* at 4 (2000); Grandjean et al., *Cognitive Deficit in 7-Year-Old Children with Prenatal Exposure to Methylmercury*, *Neurotoxicology and Teratology*, 1997 at 417-428); Steuerwald et al., *Maternal Seafood Diet, Methylmercury Exposure, and Neonatal Neurologic Function*, *Journal of Pediatrics*, May 2000, at 599-605).

<sup>5</sup> EPA, *Regulatory Impact Analysis of the Clean Air Mercury Rule: Final Report*, Appendix C (March 2005), OAR-2002-0056-6201; U.S. Environmental Protection Agency, *Mercury Study Report to Congress*, EPA-452/R-97-005, Vol. I, 3-24 (Dec. 1997); U.S. Environmental Protection Agency, *Study of Hazardous Air Pollutant Emissions from Electric Utility Steam Generating Units-Final Report to Congress*, Vol. 1 at 7-18 (Feb. 1998).

<sup>6</sup> National Emissions Standards for Hazardous Air Pollutants from Coal- and Oil-Fired Electric Utility Steam Generating Units, 77 Fed. Reg. 9304, 9304 (Feb. 16, 2012); see also EPA, *Mercury: Basic Information* (Dec. 2014) ("Coal-burning power plants are the largest human-caused source of mercury emissions to the air in the United States, accounting for over 50 percent of all domestic human-caused mercury emissions."), available at <http://www.epa.gov/mercury/about.htm>.

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

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<sup>7</sup> North Carolina Mercury Total Maximum Daily Load (“TMDL”) 4 (Sept. 13, 2012), *available at* [http://portal.ncdenr.org/c/document\\_library/get\\_file?uuid=aecb3619-c246-4b49-bfd8-fd5541775110&groupId=38364](http://portal.ncdenr.org/c/document_library/get_file?uuid=aecb3619-c246-4b49-bfd8-fd5541775110&groupId=38364).

<sup>8</sup> North Carolina Mercury Total Maximum Daily Load (“TMDL”) 8 (Sept. 13, 2012), *available at* [http://portal.ncdenr.org/c/document\\_library/get\\_file?uuid=aecb3619-c246-4b49-bfd8-fd5541775110&groupId=38364](http://portal.ncdenr.org/c/document_library/get_file?uuid=aecb3619-c246-4b49-bfd8-fd5541775110&groupId=38364).

<sup>9</sup> DENR, Commission Adopts Rules for Curbing Mercury Emissions (Nov. 9, 2006), *available at* [http://daq.state.nc.us/news/pr/2006/hg\\_rule\\_11092006.shtml](http://daq.state.nc.us/news/pr/2006/hg_rule_11092006.shtml).

<sup>10</sup> 15A N.C. Admin. Code 02D .2511 (2015).

<sup>11</sup> *New Jersey v. E.P.A.*, 517 F.3d 574 (D.C. Cir. 2008).

<sup>12</sup> National Emissions Standards for Hazardous Air Pollutants from Coal- and Oil-Fired Electric Utility Steam Generating Units, 77 Fed. Reg. 9304, 9304 (Feb. 16, 2012).

<sup>13</sup> EPA, *Fact Sheet: Mercury and Air Toxics Standards for Power Plants* 3 (Dec. 2012) (observing that the final standards will prevent “90 percent of the mercury in coal burned at power plants from being emitted into the air”), *available at* <http://www.epa.gov/mats/pdfs/20111221MATSummaryfs.pdf>.

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>16</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

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<sup>14</sup> *Michigan v. EPA*, 748 F.3d 1222 (D.C. Cir. 2014), *cert. granted*, 83 U.S.L.W. 3089 (U.S. Nov. 25, 2014) (No. 14-46).

<sup>15</sup> N.C. Gen. Stat. § 143-215.107(a), (a)(10) (The Commission must "adopt standards and plans necessary to implement requirements of the federal Clean Air Act and implementing regulations adopted by the United States Environmental Protection Agency").

<sup>16</sup> See 40 C.F.R. Part 63, Subpart UUUUU, §§ 63.9980 to .10042, tbls. 1-9, and app. A-B.

<sup>17</sup> 15A N.C. Admin. Code 02D .2501(e).

<sup>18</sup> Nat'l Ass'n of Clean Air Agencies, *Survey on MATS Compliance Extension Requests* (Mar. 17, 2015), available at [http://www.4cleanair.org/sites/default/files/Documents/MATS\\_extension\\_requests\\_table\\_March\\_2015.pdf](http://www.4cleanair.org/sites/default/files/Documents/MATS_extension_requests_table_March_2015.pdf).

<sup>19</sup> See N.C. Gen. Stat. § 150B-21.3A.

necessary by the Environmental Management Commission.<sup>20</sup> Therefore, regardless of the classification assigned to these rules, they will remain in place.

**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.**

Short-term exposure to sulfur dioxide, ranging from five minutes to 24 hours, causes an array of health problems, including premature death, worsening of respiratory diseases such as emphysema and bronchitis, aggravation of asthma, exacerbation of heart disease, chest tightness, and decrements in lung function.<sup>21</sup> These adverse health effects are more pronounced in people who exercise and play outdoors, especially those with asthma. Studies also show a connection between short-term sulfur dioxide exposure and increased hospitalizations, particularly in at-risk populations such as children, the elderly, and asthmatics.<sup>22</sup>

Nitrogen oxide is a precursor to ozone, which causes asthma, emphysema, bronchitis, and other breathing problems.<sup>23</sup> There are currently nearly 200,000 pediatric cases of asthma in North Carolina.<sup>24</sup>

Fine particles cause a significant number of premature deaths from heart disease and lung disease each year, as well as serious health problems such as heart attacks, asthma attacks, decreased lung function, bronchitis, and other respiratory problems.<sup>25</sup> Studies have shown there is no evidence of a safe level of exposure for PM<sub>2.5</sub>; therefore, any increase in PM<sub>2.5</sub> concentrations is likely to harm human health.<sup>26</sup> Reducing particulate pollution in the ambient air yields enormous public health and welfare benefits. Studies show that in cities such as Raleigh and Charlotte, approximately 15 percent of increased life expectancy in recent decades is

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<sup>20</sup> DENR, Mercury Emissions and Mercury Controls for Coal-Fired Electrical Utility Boilers, Final Report at V-1 (Sept. 1, 2005).

<sup>21</sup> EPA, Sulfur Dioxide -Health, available at <http://www.epa.gov/airquality/sulfurdioxide/health.html>; EPA, EP A/600/R-08/04 7F, Integrated Science Assessment for Sulfur Oxides-Health Criteria ch. 5 tbls. 5-1, 5-2 (2008); EPA, Primary National Ambient Air Quality Standard for Sulfur Dioxide Final Rule, 75 Fed. Reg. 35,520, 35,525 (June 22, 2010); EPA, Our Nation's Air: Status and Trends Through 2008 at 4 (2010), available at <http://www.epa.gov/airtrends/2010/report/fullrepmi.pdf>

<sup>22</sup> EPA, Sulfur Dioxide - Health, available at <http://www.epa.gov/airquality/sulfurdioxide/health.html>; 75 Fed. Reg. at 35,525.

<sup>23</sup> <http://www.epa.gov/groundlevelozone/health.html>.

<sup>24</sup> N.C. DHHS, Div. of Pub. Health, N.C. Asthma Program, *Asthma Coalition Update*, Summer 2010 at 2.

<sup>25</sup> EPA, National Ambient Air Quality Standards for PM<sub>2.5</sub>, 77 Fed. Reg. 38,890, 38,906–07 (proposed June 29, 2012); EPA, National Ambient Air Quality Standards for PM<sub>2.5</sub>, 78 Fed. Reg. 3086, 3108 (Jan. 15, 2013).

<sup>26</sup> 78 Fed. Reg. at 3098.

due to reductions in PM<sub>2.5</sub>.<sup>27</sup> EPA estimated that air quality standards for particulate matter would result in monetized health and welfare benefits ranging between \$20 billion and \$160 billion a year for the 1997 standards; an additional \$9 to \$76 billion a year due to the lower 2006 particulate-matter standards; and an additional \$3.6 to \$9.1 billion due to the updated 2012 PM<sub>2.5</sub> standard.<sup>28</sup>

**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.

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<sup>27</sup> Pope, C.A. III et al., *Fine-Particulate Air Pollution and Life Expectancy in the United States* at 360(4) *New Eng. J. Med.* 2009 376, 382–84 (2009).

<sup>28</sup> See EPA Fact Sheet *Regulatory Impact Analysis of EPA’s Final Revisions to the National Ambient Air Quality Standards for Particle Pollution (Particulate Matter) (2006)*, available at <http://www.epa.gov/air/particlepollution/fs20061006.html>; 78 Fed. Reg. at 3089.

<sup>29</sup> *EPA v. EME Homer City Generation*, 134 S.Ct. 1584 (2014).

<sup>30</sup> N.C. Gen. Stat. § 143-215.107(a), (a)(10) (The Commission must “adopt standards and plans necessary to implement requirements of the federal Clean Air Act and implementing regulations adopted by the United States Environmental Protection Agency”).

<sup>31</sup> See N.C. Gen. Stat. § 150B-21.3A.

**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>

**Conclusion**

As demonstrated above, Title 15A of the North Carolina Administrative Code is replete with important guidance regarding the administration of various air quality programs under the purview of the Division of Air Quality. Therefore, we urge the agency to reconsider its initial determination that the rules discussed above are “unnecessary,” and deem them instead “necessary without substantive public interest.” The agency should retain these rules, as they necessary to implement important federal air pollution control requirements, and for DAQ to fulfill its mandate to “administer the air quality program of the State.”<sup>34</sup>

We appreciate the opportunity to comment on this important rule review process. Thank you in advance for your thoughtful consideration of our concerns.

Respectfully,



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<sup>32</sup> 15A N.C. Admin. Code 02D .1601(a).

<sup>33</sup> While the North Carolina rule references provisions of the federal code which have been repealed (40 C.F.R. §§ 51.852 to 860), the substance of these federal rules was reproduced in the EPA's General Conformity Regulations (40 C.F.R. §§ 93.150 *et seq.*)).

<sup>34</sup> N.C. Gen. Stat. § 143-215.106.