

ROY COOPER

Governor

ELIZABETH S. BISER

Secretary

MICHAEL ABRACZINSKAS

Director



NORTH CAROLINA  
Environmental Quality

November 28, 2022

Daniel Blackman, Regional Administrator  
USEPA Region 4  
Atlanta Federal Center  
61 Forsyth Street, SW  
Atlanta, GA 30303-8960

Subject: Request for Approval of Revisions to the Forsyth County Air Quality Control Ordinance and Technical Code and Incorporation into North Carolina State Implementation Plan-Section 3D-0535

Dear Mr. Blackman:

The North Carolina Division of Air Quality (DAQ) hereby submits revisions to the Forsyth County Air Quality Control Ordinance and Technical Code (FCAQCOTC) for incorporation into the State Implementation Plan (SIP). On January 4, 2022, the U.S. Environmental Protection Agency (EPA) issued a Finding of Failure to Submit State Implementation Plan Revisions to Amend Provisions Applying to Excess Emissions during Periods of Startup, Shutdown and Malfunction (SSM) to twelve state and local jurisdictions including Forsyth County.

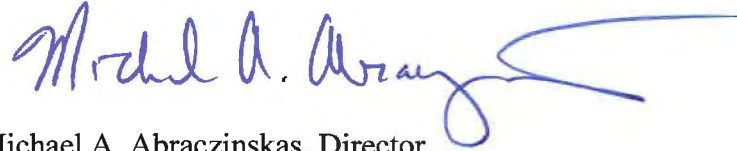
After consulting with the EPA and with the DAQ, the Forsyth County Office of Environmental Assistance and Protection (FCEAP) has completed rulemaking in response to the 2015 SSM SIP Call to address this issue. This submittal includes the August 2, 2022, submission from the FCEAP to the DAQ of revisions to Section 3D-0535 of the FCAQCOTC to address EPA's finding of substantial inadequacy with respect to the treatment of excess emissions during periods of startup, shutdown and malfunction and the associated supporting documentation. The revisions amend Section 3D-0535 to remove earlier rule changes concerning SSM that have not been submitted for inclusion due to the subsequent litigation and uncertainty around this issue in order to match the previously approved Forsyth County rule. In addition, Forsyth County requests EPA to remove Sec. 3D-0535 paragraphs (c) and (g), which provide excess emissions during malfunctions and startup and shutdown, respectively, may not be violations under certain criteria, from the Forsyth County portion of the approved SIP. Please proceed to approve these FCAQCOTC revisions into the SIP.



North Carolina Department of Environmental Quality | Division of Air Quality  
217 West Jones Street | 1641 Mail Service Center | Raleigh, North Carolina 27699-1641  
919.707.8400

Thank you for your attention to this matter. If you should have any questions or need additional information, please contact Joelle Burleson of my staff, at (919) 707-8720 or [joelle.burleson@ncdenr.gov](mailto:joelle.burleson@ncdenr.gov), or Randy Strait at (919) 707-8721 or [randy.strait@ncdenr.gov](mailto:randy.strait@ncdenr.gov).

Sincerely,



Michael A. Abraczinskas, Director  
Division of Air Quality, NCDEQ

MAA/jbb

Attachments

cc: Lynorae Benjamin, USEPA  
Evan Adams, USEPA  
Brad Akers, USEPA  
Pearlene Williams, USEPA  
Minor Barnette, Forsyth County Environmental Assistance and Protection  
Peter Lloyd, Forsyth County Environmental Assistance and Protection  
Leslie Rhodes, Mecklenburg County Air Quality  
Jason Rayfield, Mecklenburg County Air Quality  
Ashley Featherstone, Asheville-Buncombe Air Quality  
Michael Pjetraj, NCDAQ  
Taylor Hartsfield, NCDAQ  
Randy Strait, NCDAQ





**Forsyth County**  
*Office of Environmental Assistance and Protection*  
Minor Barnette, Director

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August 2, 2022

Michael Abraczinskas  
Director, Division of Air Quality  
Dept. of Environment and Natural Resources  
217 West Jones Street  
Raleigh, NC 27603

RE: Forsyth County Implementation Plan Revisions

Dear Mr. Abraczinskas:

The Forsyth County Office of Environmental Assistance and Protection submits the attached documents for inclusion in Forsyth County's portion of the State Implementation Plan. Please review the enclosed documents and submit to EPA Region IV for revision to Forsyth County's portion of the State Implementation Plan.

Please submit any comments or questions to Peter Lloyd, Programs Manager. Thank you for your attention to this matter.

Sincerely,

Minor Barnette, Director

c: Peter Lloyd

Enclosures

Revisions to the  
Forsyth County Implementation Plan,  
Due to Modification of the  
Air Quality Control Ordinance  
and Technical Code

Effective July 14, 2022

Submitted by

Forsyth County, North Carolina  
Office of Environmental Assistance and Protection

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## **PROPOSED IMPLEMENTATION PLAN REVISION**

This submittal documents the processes and procedures undertaken for modification of the Forsyth County Air Quality Control Ordinance and Technical Code (FCAQCOTC), which is hereby submitted for revision of Forsyth County's portion of the State Implementation Plan, also referred to as the Local Implementation Plan (LIP). The Forsyth County Office of Environmental Assistance and Protection (FCEAP) recommends that the Environmental Protection Agency (EPA) approve the modification of Sec. 3D-0535 of the FCAQCOTC to remove paragraphs (c) and (g) from Forsyth County's LIP.

The requested changes to Forsyth County's LIP are intended to address the EPA's finding of substantial inadequacy with respect to the treatment of excess emissions during periods of startup, shutdown and malfunction (SSM), also known as the SSM SIP Call. The FCEAP conducted rulemaking to remove earlier rule changes that were made consistent with rules adopted by the North Carolina Division of Air Quality (NCDAQ) to address the SSM SIP Call. Those rules were not submitted for inclusion in the Forsyth County LIP due to the subsequent litigation and uncertainty around this issue. The rulemaking included Forsyth County's intention to remove paragraphs (c) and (g) of Sec. 3D-0535 from the LIP while retaining those provisions in the local ordinance in order to be compatible with the State of North Carolina as required in N.C.G.S. 143-215.112.

This change would have little, if any, practical effect on the FCEAP's enforcement of the FCAQCOTC. There are no air emission sources in Forsyth County that have caused excess emissions during a malfunction that have requested consideration of those excess emissions under paragraph (c) of Sec. 3D-0535. There are also no air emission sources in Forsyth County that have requested or been granted a startup or shutdown plan allowing excess emissions under paragraph (g) of Sec. 3D-0535. However, in the event that FCEAP determines excess emissions not to be a violation under Sec. 3D-0535(c) or (g), EPA and the public would have the opportunity to pursue enforcement for those excess emissions.

## **PROCESS AND RECOMMENDATION**

The public notice for this rulemaking was published in the Winston-Salem Journal on March 25, 2022 and posted on the FCEAP website. The public comment period ran from March 25, 2022, through April 27, 2022, and the public hearing was conducted by the Forsyth County Environmental Assistance and Protection Advisory Board (FCEAP Advisory Board) on April 26, 2022. Public comments concerning this rulemaking were received during the public comment period resulting in minor revisions. The comments and responses are provided below. The FCEAP Advisory Board approved a motion recommending adoption of the rule change to the Forsyth County Commissioners after the public hearing. The modified rule was adopted by the Forsyth County Commissioners and became effective on July 14, 2022. The FCEAP

recommends adoption of the following rule, including the removal of paragraphs (c) and (g), in Forsyth County's LIP.

**Sec. 3D-0535. Excess emissions reporting and malfunctions**

(a) For the purposes of this Rule the following definitions apply:

- (1) "Excess Emissions" means an emission rate that exceeds any applicable emission limitation or standard allowed by any Rule in Sections 3D-0500, 0900, 1200 or 1400; or by a permit condition; or that exceeds an emission limit established in a permit issued under Forsyth County Code, Section 3Q-0700.
- (2) "Malfunction" means any unavoidable failure of air pollution control equipment, process equipment, or process to operate in a normal and usual manner that results in excess emissions. Excess emissions during periods of routine start-up and shut-down of process equipment shall not be considered a malfunction. Failures caused entirely or in part by poor maintenance, careless operations or any other upset condition within the control of the emission source are not considered a malfunction.
- (3) "Start-up" means the commencement of operation of any source that has shut-down or ceased operation for a period of time sufficient to cause temperature, pressure, process, chemical, or pollution control device imbalance that would result in excess emissions.
- (4) "Shut-down" means the cessation of the operation of any source for any purpose.

(b) This Rule does not apply to sources to which Sec. 3D-0524, 1110 or 1111 applies unless excess emissions exceed an emission limit established in a permit issued under Forsyth County Code, Section 3Q-0700 that is more stringent than the emission limit set by Sec. 3D-0524, 1110 or 1111.

(c) (Paragraph (c) is not included in Forsyth County's portion of the State Implementation Plan.)

(d) All electric utility boiler units shall have a malfunction abatement plan approved by the Director as satisfying the requirements of Subparagraphs (1) through (3) of this Paragraph. In addition, the Director may require any other source to have a malfunction abatement plan approved by the Director as satisfying the requirements of Subparagraphs (1) through (3) of this Paragraph. If the Director requires a malfunction abatement plan for a source other than an electric utility boiler, the owner or operator of that source shall submit a malfunction abatement plan within 60 days after receipt of the Director's request. The malfunction abatement plans of electric utility boiler units and of other sources required to have them shall be implemented when a malfunction or other breakdown occurs. The purpose of the malfunction abatement plan is to prevent, detect, and correct malfunctions or equipment failures that could result in excess emissions. A malfunction abatement plan shall contain:

- (1) a complete preventive maintenance program including:
  - (A) the identification of individuals or positions responsible for inspecting, maintaining and repairing air cleaning devices;
  - (B) a description of the items or conditions that will be inspected and maintained;
  - (C) the frequency of the inspection, maintenance services, and repairs; and

- (D) an identification and quantities of the replacement parts that shall be maintained in inventory for quick replacement;
- (2) an identification of the source and air cleaning operating variables and outlet variables, such as opacity, grain loading, and pollutant concentration, that may be monitored to detect a malfunction or failure; the normal operating range of these variables and a description of the method of monitoring or surveillance procedures and of informing operating personnel of any malfunctions, including alarm systems, lights or other indicators; and
- (3) a description of the corrective procedures that the owner or operator will take in case of a malfunction or failure to achieve compliance with the applicable rule as expeditiously as practicable but no longer than the next boiler or process outage that would provide for an orderly repair or correction of the malfunction or 15 days, whichever is shorter. If the owner or operator anticipates that the malfunction would continue for more than 15 days, a case-by-case repair schedule shall be established by the Director with the source.

The owner or operator shall maintain logs to show that the operation and maintenance parts of the malfunction abatement plan are implemented. These logs are subject to inspection by the Director or his designee upon request during business hours.

(e) The owner or operator of any source required by the Director to have a malfunction abatement plan shall submit a malfunction abatement plan to the Director within six months after it has been required by the Director. The malfunction abatement plan and any amendment to it shall be reviewed by the Director or his designee. If the plan includes the objectives described by Paragraph (d) of this Rule, the Director shall approve it. If the plan does not carry out the objectives described by Paragraph (d) of this Rule, the Director shall disapprove the plan. The Director shall state his reasons for the disapproval. The person who submits the plan shall submit an amendment to the plan to satisfy the reasons for the Director's disapproval within 30 days of receipt of the Director's notification of disapproval. Any person having an approved malfunction abatement plan shall submit to the Director for his approval amendments reflecting changes in any element of the plan required by Paragraph (d) of this Rule or amendments when requested by the Director. The malfunction abatement plan and amendments to it shall be implemented within 90 days upon receipt of written notice of approval.

(f) The owner or operator of a source of excess emissions that last for more than four hours and that results from a malfunction, a breakdown of process or control equipment, or any other abnormal conditions, shall:

- (1) notify the Director or his designee of any such occurrence by 9:00 a.m. Eastern time of the Office's next business day of becoming aware of the occurrence and describe:
  - (A) name and location of the facility;
  - (B) the nature and cause of the malfunction or breakdown;
  - (C) the time when the malfunction or breakdown is first observed;
  - (D) the expected duration; and
  - (E) an estimated rate of emissions;



- (2) notify the Director or his designee after the corrective measures have been accomplished;
- (3) submit to the Director within 15 days after the request a written report that includes:
  - (A) name and location of the facility;
  - (B) identification or description of the processes and control devices involved in the malfunction or breakdown;
  - (C) the cause and nature of the event;
  - (D) time and duration of the violation or the expected duration of the excess emissions if the malfunction or breakdown has not been fixed;
  - (E) estimated quantity of pollutant emitted;
  - (F) steps taken to control the emissions and to prevent recurrences and if the malfunction or breakdown has not been fixed, steps planned to be taken; and
  - (G) any other pertinent information requested by the Director.

After the malfunction or breakdown has been corrected, the Director may require the owner or operator of the source to test the source in accordance with Section 3D-2600 to demonstrate compliance.

(g) (Paragraph (g) is not included in Forsyth County's portion of the State Implementation Plan.)

This document includes evidence of the rule making processes and procedures undertaken during the revisions of the FCAQCOTC regulations. All legal requirements pertaining to public notice and hearing relative to these code amendments and LIP revision have been met. Documentation of adoption of this rule change by the Forsyth County Commissioners is provided in Appendix A. Documentation of pre-hearing communications, the public notice and hearing process are provided in Appendix B.

## **PUBLIC COMMENTS**

The U.S. EPA, Region 4, provided a general comment during the public comment period stating:

The language added to the end of both SIP-called provisions will be helpful in clarifying that the provisions are not in the SIP. The EPA suggests that "and only applies locally" could be removed for further clarity and simplicity.

The suggested change was incorporated in the rule proposed for adoption.

The U.S. EPA, Region 4 also informally commented that the word "paragraph" in the language added to paragraphs (c) and (g) should be corrected to "paragraph." This correction was made in the rule proposed for adoption.

No additional comments were received during the public comment period.

## INTERVENING RULE AMENDMENTS

The version of Sec. 3Q-0535 currently approved in the LIP became effective on September 14, 1998 and the LIP approval was published in the Federal Register on December 31, 1998 at 65 FR 8053. Since the approval, modifications have been made to this rule that have either not been submitted for LIP approval or have been submitted for LIP approval, but have not been acted on. All of these intervening changes were made to maintain consistency between Forsyth County's and North Carolina's rules. The following markup of Sec. 3D-0535 shows the changes in the rule submitted here from the rule currently approved in Forsyth County's LIP.

### Sec. 3D-0535. Excess emissions reporting and malfunctions

- (a) For the purpose of this Rule the following definitions apply:
- (1) "Excess Emissions" means an emission rate that exceeds any applicable emission limitation or standard allowed by any Rule in Sections ~~.0500~~ 3D-0500, -0900, -1200, or -1400 ~~of this Subchapter~~; or by a permit condition; or that exceeds an emission limit established in a permit issued under Forsyth County Code, Subchapter ~~3Q-0700~~ 3Q-0700.
  - (2) "Malfunction" means any unavoidable failure of air pollution control equipment, process equipment, or process to operate in a normal and usual manner that results in excess emissions. Excess emissions during periods of routine start-up and shut-down of process equipment shall not be considered a malfunction. Failures caused entirely or in part by poor maintenance, careless operations or any other upset condition within the control of the emission source ~~shall~~ are not be considered a malfunction.
  - (3) "Start-up" means the commencement of operation of any source that has shut-down or ceased operation for a period of time sufficient to cause temperature, pressure, process, chemical, or pollution control device imbalance that would result in excess emission.
  - (4) "Shut-down" means the cessation of the operation of any source for any purpose.
- (b) This Rule does not apply to sources to which ~~Rules -Sec. 0524, -1110, or -1111 of this Subchapter~~ applies unless excess emissions exceed an emission limit established in a permit issued under Forsyth County Code, ~~Subchapter 3Q-0700~~ Section 3D-0700 that is more stringent than the emission limit set by ~~Rules -0524~~ Sec 3D-0524, -1110, or -1111 ~~of this Subchapter~~.
- (c) ~~Any excess emissions that do not occur during start-up or shut-down shall be~~ are ~~considered a violation of the appropriate rule unless the owner or operator of the source of excess emissions demonstrates to the Director, that the excess emissions are the result of a malfunction. To determine if the excess emissions are the result of a malfunction, the Director shall consider, along with any other pertinent information, the following:~~
- ~~(1) The air cleaning device, process equipment, or process has been maintained and operated, to the maximum extent practicable, consistent with good practice for minimizing emissions;~~
  - ~~(2) Repairs have been made expeditiously when the emission limits have been exceeded;~~

- ~~(3) The amount and duration of the excess emissions, including any bypass, have been minimized to the maximum extent practicable;~~
- ~~(4) All practical steps have been taken to minimize the impact of the excess emissions on ambient air quality;~~
- ~~(5) The excess emissions are not part of a recurring pattern indicative of inadequate design, operation, or maintenance;~~
- ~~(6) The requirements of Paragraph (f) of this Rule have been met; and~~
- ~~(7) If the source is required to have a malfunction abatement plan, it has followed that plan.~~

~~All malfunctions shall be repaired as expeditiously as practicable. However, the Director shall not excuse excess emissions caused by malfunctions from a source for more than 15 percent of the operating time during each calendar year. The Director may require the owner or operator of a facility to maintain records of the time that a source operates when it or its air pollution control equipment is malfunctioning or otherwise has excess emissions. (Paragraph (c) is not included in Forsyth County's portion of the State Implementation Plan.)~~

(d) All electric utility boiler units shall have a malfunction abatement plan approved by the Director as satisfying the requirements of Subparagraphs (1) through (3) of this Paragraph. In addition, the Director may require any other source to have a malfunction abatement plan approved by the Director as satisfying the requirements of Subparagraphs (1) through (3) of this Paragraph. If the Director requires a malfunction abatement plan for a source other than an electric utility boiler, the owner or operator of that source shall submit a malfunction abatement plan within 60 days after receipt of the Director's request. The malfunction abatement plans of electric utility boiler units and of other sources required to have them shall be implemented when a malfunction or other breakdown occurs. The purpose of the malfunction abatement plan is to prevent, detect, and correct malfunctions or equipment failures that could result in excess emissions. A malfunction abatement plan shall contain ~~as a minimum:~~

- (1) a complete preventive maintenance program including:
  - (A) the identification of individuals or positions responsible for inspecting, maintaining and repairing air cleaning devices;
  - (B) a description of the items or conditions that will be inspected and maintained;
  - (C) the frequency of the inspection, maintenance services, and repairs; and
  - (D) an identification and quantities of the replacement parts that shall be maintained in inventory for quick replacement;
- (2) an identification of the source and air cleaning operating variables and outlet variables, such as opacity, grain loading, and pollutant concentration, that may be monitored to detect a malfunction or failure; the normal operating range of these variables and a description of the method of monitoring or surveillance procedures and of informing operating personnel of any malfunctions, including alarm systems, lights or other indicators; and
- (3) a description of the corrective procedures that the owner or operator will take in case of a malfunction or failure to achieve compliance with the applicable rule as expeditiously as practicable but no longer than the next boiler or process outage that

would provide for an orderly repair or correction of the malfunction or 15 days, whichever is shorter. If the owner or operator anticipates that the malfunction would continue for more than 15 days, a case-by-case repair schedule ~~will~~ shall be established by the Director with the source.

The owner or operator shall maintain logs to show that the operation and maintenance parts of the malfunction abatement plan are implemented. These logs shall be subject to inspection by the Director or his designee upon request during business hours.

(e) ~~The owner or operator of any electric utility boiler unit required to have a malfunction abatement plan shall submit a malfunction abatement plan to the Director within 60 days of the effective date of this Rule.~~ The owner or operator of any ~~other~~ source required by the Director to have a malfunction abatement plan shall submit a malfunction abatement plan to the Director within six months after it has been required by the Director. The malfunction abatement plan and any amendment to it shall be reviewed by the Director or his designee. If the plan includes the objectives described by Paragraph (d) of this Rule, the Director shall approve it. If the plan does not carry out the objectives described by Paragraph (d) of this Rule, the Director shall disapprove the plan. The Director shall state his reasons for ~~his~~ the disapproval. The person who submits the plan shall submit an amendment to the plan to satisfy the reasons for the Director's disapproval within ~~a time prescribed by the Director~~ 30 days of receipt of the Director's notification of disapproval. Any person having an approved malfunction abatement plan shall submit to the Director for his approval amendments reflecting changes in any element of the plan required by Paragraph (d) of this Rule or amendments when requested by the Director. The malfunction abatement plan and amendments to it shall be implemented within 90 days upon receipt of written notice of approval.

(f) The owner or operator of a source of excess emissions that last for more than four hours and that results from a malfunction, a breakdown of process or control equipment or any other abnormal conditions, shall:

- (1) notify the Director or his designee of any such occurrence by 9:00 a.m. Eastern time of the ~~Department's Office's~~ next business day of becoming aware of the occurrence and describe:
  - (A) name and location of the facility,
  - (B) the nature and cause of the malfunction or breakdown,
  - (C) the time when the malfunction or breakdown is first observed,
  - (D) the expected duration, and
  - (E) an estimated rate of emissions;
- (2) notify the Director or his designee ~~immediately when~~ after the corrective measures have been accomplished;
- (3) submit to the Director within 15 days after the request a written report that includes:
  - (A) name and location of the facility,
  - (B) identification or description of the processes and control devices involved in the malfunction or breakdown,
  - (C) the cause and nature of the event,

- (D) time and duration of the violation or the expected duration of the excess ~~emission~~ emissions if the malfunction or breakdown has not been fixed,
- (E) estimated quantity of pollutant emitted,
- (F) steps taken to control the emissions and to prevent recurrences and if the malfunction or breakdown has not been fixed, steps planned to be taken, and
- (G) any other pertinent information requested by the Director.

After the malfunction or breakdown has been corrected, the Director may require the owner or operator of the source to test the source in accordance with ~~Rule .0501 of this Section~~ Section 3D-2600 to demonstrate compliance.

~~(g) Start up and shut down. Excess emissions during start up and shut down shall be considered a violation of the appropriate rule if the owner or operator cannot demonstrate that the excess emissions are unavoidable. To determine if excess emissions are unavoidable during startup or shutdown the Director shall consider the items listed in Paragraphs (c)(1), (c)(3), (c)(4), (c)(5), and (c)(7) of this Rule along with any other pertinent information. The Director may specify for a particular source the amount, time, and duration of emissions allowed during start up or shut down. The owner or operator shall, to the extent practicable, operate the source and any associated air pollution control equipment or monitoring equipment in a manner consistent with best practicable air pollution control practices to minimize emissions during start up and shut down. (Paragraph (g) is not included in Forsyth County's portion of the State Implementation Plan.)~~

## **Appendix A: Rule Adoption**

**FORSYTH COUNTY, NORTH CAROLINA**  
**ORDINANCE REVISING CHAPTER 3 OF THE FORSYTH COUNTY CODE ENTITLED "AIR**  
**QUALITY CONTROL"**

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**FROM:** Environmental Assistance and Protection

**MEETING DATE:**

July 14, 2022

**BE IT ORDAINED** by the Forsyth County Board of Commissioners that Chapter 3 of the Forsyth County Code, entitled "Air Quality Control" consisting of Sections 3-0100 through 3-0401 and Subchapters 3D and 3Q, is hereby revised as shown in the attached Sections 3D-0535 and 3D-0545.

**BE IT FURTHER ORDAINED** that this ordinance shall become effective upon adoption.

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**REVISED RULES REGARDING STARTUP, SHUTDOWN, AND**  
**MALFUNCTION (SSM)**

**SUBCHAPTER 3D AIR POLLUTION CONTROL REQUIREMENTS**

**SECTION 3D-0500. EMISSION CONTROL STANDARDS**

**Sec. 3D-0535. Excess emissions reporting and malfunctions**

- (a) For the purposes of this Rule the following definitions apply:
- (1) "Excess Emissions" means an emission rate that exceeds any applicable emission limitation or standard allowed by any Rule in Sections 3D-0500, 0900, 1200 or 1400; or by a permit condition; or that exceeds an emission limit established in a permit issued under Forsyth County Code, Section 3Q-0700.
  - (2) "Malfunction" means any unavoidable failure of air pollution control equipment, process equipment, or process to operate in a normal and usual manner that results in excess emissions. Excess emissions during periods of routine start-up and shut-down of process equipment shall not be considered a malfunction. Failures caused entirely or in part by poor maintenance, careless operations or any other upset condition within the control of the emission source are not considered a malfunction.
  - (3) "Start-up" means the ~~initial~~ commencement of operation of any source that has shut-down or ceased operation for a period of time sufficient to cause temperature, pressure, process, chemical, or pollution control device imbalance that would result in excess emissions.
  - (4) "Shut-down" means the cessation of the operation of any source for any purpose.
- (b) This Rule does not apply to sources to which Sec. 3D-0524, 1110 or 1111 applies unless excess emissions exceed an emission limit established in a permit issued under Forsyth County

Ordinance Revising Chapter 3 of the Forsyth County Code Code, Section 3Q-0700 that is more stringent than the emission limit set by Sec. 3D-0524, 1110 or 1111.

- (c) Any excess emissions that do not occur during start-up or shut-down are considered a violation of the appropriate rule unless the owner or operator of the source of excess emissions demonstrates to the Director, that the excess emissions are the result of a malfunction. To determine if the excess emissions are the result of a malfunction, the Director shall consider, along with any other pertinent information, the following:
- (1) the air cleaning device, process equipment, or process has been maintained and operated, to the maximum extent practicable, consistent with good practice for minimizing emissions;
  - (2) repairs have been made expeditiously when the emission limits have been exceeded;
  - (3) the amount and duration of the excess emissions, including any bypass, have been minimized to the maximum extent practicable;
  - (4) all practical steps have been taken to minimize the impact of the excess emissions on ambient air quality;
  - (5) the excess emissions are not part of a recurring pattern indicative of inadequate design, operation, or maintenance;
  - (6) the requirements of Paragraph (f) of this Rule have been met; and
  - (7) if the source is required to have a malfunction abatement plan, it has followed that plan.

All malfunctions shall be repaired as expeditiously as practicable. However, the Director shall not excuse excess emissions caused by malfunctions from a source for more than 15 percent of the operating time during each calendar year. The owner or operator of a facility ~~to~~ shall maintain records of the time that a source operates when it or its air pollution control equipment is malfunctioning or otherwise has excess emissions. (Paragraph (c) is not included in Forsyth County's portion of the State Implementation Plan.)

- (d) All electric utility boiler units shall have a malfunction abatement plan approved by the Director as satisfying the requirements of Subparagraphs (1) through (3) of this Paragraph. In addition, the Director may require any other source to have a malfunction abatement plan approved by the Director as satisfying the requirements of Subparagraphs (1) through (3) of this Paragraph. If the Director requires a malfunction abatement plan for a source other than an electric utility boiler, the owner or operator of that source shall submit a malfunction abatement plan within 60 days after receipt of the Director's request. The malfunction abatement plans of electric utility boiler units and of other sources required to have them shall be implemented when a malfunction or other breakdown occurs. The purpose of the malfunction abatement plan is to prevent, detect, and correct malfunctions or equipment failures that could result in excess emissions. A malfunction abatement plan shall contain:
- (1) a complete preventive maintenance program including:
    - (A) the identification of individuals or positions responsible for inspecting, maintaining and repairing air cleaning devices;
    - (B) a description of the items or conditions that will be inspected and maintained;
    - (C) the frequency of the inspection, maintenance services, and repairs; and
    - (D) an identification and quantities of the replacement parts that shall be maintained in inventory for quick replacement;
  - (2) an identification of the source and air cleaning operating variables and outlet variables, such as opacity, grain loading, and pollutant concentration, that may be monitored to detect a malfunction or failure; the normal operating range of these variables and a description of the method of monitoring or surveillance



Ordinance Revising Chapter 3 of the Forsyth County Code procedures and of informing operating personnel of any malfunctions, including alarm systems, lights or other indicators; and

- (3) a description of the corrective procedures that the owner or operator will take in case of a malfunction or failure to achieve compliance with the applicable rule as expeditiously as practicable but no longer than the next boiler or process outage that would provide for an orderly repair or correction of the malfunction or 15 days, whichever is shorter. If the owner or operator anticipates that the malfunction would continue for more than 15 days, a case-by-case repair schedule shall be established by the Director with the source.

The owner or operator shall maintain logs to show that the operation and maintenance parts of the malfunction abatement plan are implemented. These logs are subject to inspection by the Director or his designee upon request during business hours.

- (e) The owner or operator of any source required by the Director to have a malfunction abatement plan shall submit a malfunction abatement plan to the Director within six months after it has been required by the Director. The malfunction abatement plan and any amendment to it shall be reviewed by the Director or his designee. If the plan includes the objectives described by Paragraph (d) of this Rule, the Director shall approve it. If the plan does not carry out the objectives described by Paragraph (d) of this Rule, the Director shall disapprove the plan. The Director shall state his reasons for the disapproval. The person who submits the plan shall submit an amendment to the plan to satisfy the reasons for the Director's disapproval within 30 days of receipt of the Director's notification of disapproval. Any person having an approved malfunction abatement plan shall submit to the Director for his approval amendments reflecting changes in any element of the plan required by Paragraph (d) of this Rule or amendments when requested by the Director. The malfunction abatement plan and amendments to it shall be implemented within 90 days upon receipt of written notice of approval.

- (f) The owner or operator of a source of excess emissions that last for more than four hours and that results from a malfunction, a breakdown of process or control equipment, or any other abnormal conditions, shall:

- (1) notify the Director or his designee of any such occurrence by 9:00 a.m. Eastern time of the Office's next business day of becoming aware of the occurrence and describe:
  - (A) name and location of the facility;
  - (B) the nature and cause of the malfunction or breakdown;
  - (C) the time when the malfunction or breakdown is first observed;
  - (D) the expected duration; and
  - (E) an estimated rate of emissions;
- (2) notify the Director or his designee after the corrective measures have been accomplished;
- (3) submit to the Director within 15 days after the request a written report that includes:
  - (A) name and location of the facility;
  - (B) identification or description of the processes and control devices involved in the malfunction or breakdown;
  - (C) the cause and nature of the event;
  - (D) time and duration of the violation or the expected duration of the excess emissions if the malfunction or breakdown has not been fixed;
  - (E) estimated quantity of pollutant emitted;
  - (F) steps taken to control the emissions and to prevent recurrences and if the malfunction or breakdown has not been fixed, steps planned to be taken; and

(G) any other pertinent information requested by the Director.

After the malfunction or breakdown has been corrected, the Director may require the owner or operator of the source to test the source in accordance with Section 3D-2600 to demonstrate compliance.

(g) Start-up and shut-down. Excess emissions during start-up and shut-down are considered a violation of the applicable rule if the owner or operator cannot demonstrate that the excess emissions are unavoidable. To determine if excess emissions are unavoidable during start-up or shut-down the Director shall consider the items listed in Subparagraphs (c)(1), (c)(3), (c)(4), (c)(5), and (c)(7) of this Rule along with any other pertinent information. The Director may specify for a particular source the amount, time, and duration of emissions allowed during start-up or shut-down if necessary to limit excess emissions and protect the NAAQS. The owner or operator shall, to the extent practicable, operate the source and any associated air pollution control equipment or monitoring equipment in a manner consistent with best practicable air pollution control practices to minimize emissions during start-up and shut-down. (Paragraph (g) is not included in Forsyth County’s portion of the State Implementation Plan.)

...

[Sec. 3D-0545](#).Reserved

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NATURE OF TRANSACTION:  
Other

APPROVED BY BOARD OF COUNTY  
COMMISSIONERS AND ENTERED ON:  
July 14, 2022

PROPOSED REVISIONS TO CHAPTER 3 OF THE  
FORSYTH COUNTY CODE AND AIR QUALITY  
CONTROL TECHNICAL CODE

FORSYTH COUNTY  
BOARD OF COMMISSIONERS  
MEETING  
2:00 PM, July 14, 2022

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## **IMPLEMENTATION PLAN AND RULE CHANGES BEING CONSIDERED**

The Environmental Assistance and Protection Advisory Board conducted a public hearing for a proposed change to the Forsyth County Local Implementation Plan and the adoption of revisions to Chapter 3 of the Forsyth County Air Quality Control Ordinance and Technical Code (FCAQTC). The Forsyth County Local Implementation Plan is included as an appendix to the North Carolina State Implementation Plan (SIP).

The hearing requested comments on proposed changes to the Forsyth County Local Implementation Plan and the FCAQTC to address the Environmental Protection Agency's finding of substantial inadequacy with respect to the treatment of excess emissions during periods of startup, shutdown and malfunction (SSM), also known as the SSM SIP Call. The current rules governing SSM in the FCAQTC were adopted in response to EPA's SSM SIP Call consistent with the North Carolina Division of Air Quality (NCDAQ). These rules have not been submitted for inclusion in the Forsyth County LIP due to the subsequent litigation and uncertainty around this issue. The changes to the FCAQTC currently proposed would remove the earlier rule changes concerning SSM to match the rule previously approved in the Forsyth County LIP, Sec. 3D-0535.

In addition, Forsyth County proposes to request EPA to remove paragraphs (c) and (g) of Sec. 3D-0535 from Forsyth County's approved LIP. These are the portions of the rule that EPA found inadequately treated excess SSM emissions. Paragraph (c) provides that excess emissions during malfunctions may not be violations if certain criteria are met. Similarly, paragraph (g) provides that excess emissions during startup or shutdown may not be violations if certain criteria are met.

This change would have little, if any, practical effect on the Office of Environmental Assistance Protection's enforcement of the FCAQTC. There are no air emission sources in Forsyth County that have caused excess emissions during a malfunction that have requested consideration of those excess emissions under paragraph (c) of Sec 3D-0535. There are also no air emission sources in Forsyth County that have requested or been granted a startup or shutdown plan allowing excess emissions under paragraph (g) of Sec. 3D-0535. However, in the event that FCEAP determines excess emissions not to be a violation under Sec. 3D-0535(c) or (g), EPA and the public would have the opportunity to pursue enforcement for those excess emissions.

## PUBLIC COMMENTS

The U.S. EPA, Region 4, provided a general comment during the public comment period stating:

- The language added to the end of both SIP-called provisions will be helpful in clarifying that the provisions are not in the SIP. The EPA suggests that “and only applies locally” could be removed for further clarity and simplicity.

The suggested change was incorporated in the rule proposed for adoption.

The U.S. EPA, Region 4 also informally commented that the word “parapraph” in the language added to paragraphs (c) and (g) should be corrected to “paragraph.” This correction was made in the rule proposed for adoption.

No additional comments were received during the public comment period.

## INSTRUCTIONS FOR UNDERSTANDING CHANGES

Additions: Words, sentences, or entire paragraphs to be added are underlined. For example:  
Area sources mean all sources other than point sources.

~~Deletions~~: Words, sentences, or entire paragraphs to be deleted are struck through. For example:

~~Area sources mean all sources other than point sources.~~

Additions/Deletions: Words, sentences, or entire paragraphs that have been changed as a result of comments received prior to, or during, the public comment period or during the public hearing. For example:

July 1, 2009~~10, 2009~~

## REVISED RULES REGARDING STARTUP, SHUTDOWN, AND MALFUNCTION (SSM)

### SUBCHAPTER 3D AIR POLLUTION CONTROL REQUIREMENTS

#### SECTION 3D-0500. EMISSION CONTROL STANDARDS

##### Sec. 3D-0535. Excess emissions reporting and malfunctions

~~(a) Applicability: 15A NCAC 02D .0535 shall not be in effect if 15A NCAC 02D .0545 is valid. This Rule shall not apply to sources to which Rule .0524, .1110, or .1111 of this Subchapter applies. In the event that United States Environmental Protection Agency's regulation, State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction, published in the Code of Federal Regulations (CFR) at 40 CFR 52 on June 12, 2015, is:~~

- ~~(1) declared or adjudged to be invalid or unconstitutional or stayed by the United States Court of Appeals for the Fourth Circuit, by the District of Columbia Circuit, or by the United States Supreme Court; or~~
- ~~(2) withdrawn, repealed, revoked, or otherwise rendered of no force and effect by the United States Environmental Protection Agency, Congress, or Presidential Executive Order;~~

~~such action shall render Rule .0545 of this Subchapter as invalid, void, stayed, or otherwise without force and effect upon the date such action becomes final and effective. At the time of such action, sources that were subject to Rule .0545 of this Subchapter shall be subject to this Rule.~~

~~(a)(b)~~ For the purposes of this ~~Rule~~, Rule the following definitions apply:

- (1) "Excess Emissions" means an emission rate that exceeds any applicable emission limitation or standard allowed by any Rule in Sections 3D-0500, 0900, 1200 or 1400; or by a permit condition; or that exceeds an emission limit established in a permit issued under Forsyth County Code, Section 3Q-0700.
- (2) "Malfunction" means any unavoidable failure of air pollution control equipment, process equipment, or process to operate in a normal and usual manner that results in excess emissions. Excess emissions during periods of routine start-up and shut-down of process equipment shall not be considered a malfunction. Failures caused entirely or in part by poor maintenance, careless ~~operations~~, operations or any other upset condition within the control of the emission source are not considered a malfunction.
- (3) "Start-up" means the ~~initial~~ commencement ~~or subsequent commencement~~ of operation of any source that has shut-down or ceased operation for a period of time

sufficient to cause temperature, pressure, process, chemical, or pollution control device imbalance that would result in excess ~~emission~~ emissions.

(4) "Shut-down" means the cessation of the operation of any source for any purpose.

(b) This Rule does not apply to sources to which Sec. 3D-0524, 1110 or 1111 applies unless excess emissions exceed an emission limit established in a permit issued under Forsyth County Code, Section 3Q-0700 that is more stringent than the emission limit set by Sec. 3D-0524, 1110 or 1111.

(c) Any excess emissions that do not occur during start-up or shut-down are considered a violation of the ~~applicable~~ appropriate rule unless the owner or operator of the source of excess emissions demonstrates to the Director, that the excess emissions are the result of a malfunction. To determine if the excess emissions are the result of a malfunction, the Director shall consider, along with any other pertinent information, the following:

- (1) the air cleaning device, process equipment, or process has been maintained and operated, to the maximum extent practicable, consistent with good practice for minimizing emissions;
- (2) repairs have been made expeditiously when the emission limits have been exceeded;
- (3) the amount and duration of the excess emissions, including any bypass, have been minimized to the maximum extent practicable;
- (4) all practical steps have been taken to minimize the impact of the excess emissions on ambient air quality;
- (5) the excess emissions are not part of a recurring pattern indicative of inadequate design, operation, or maintenance;
- (6) the requirements of Paragraph (f) of this Rule have been met; and
- (7) if the source is required to have a malfunction abatement plan, it has followed that plan.

All malfunctions shall be repaired as expeditiously as practicable. ~~The~~ However, the Director shall not excuse excess emissions caused by malfunctions from a source for more than 15 percent of the operating time during each calendar year. ~~The Director may require the~~ The owner or operator of a facility ~~to~~ shall maintain records of the time that a source operates when it or its air pollution control equipment is malfunctioning or otherwise has excess emissions. ~~(Paragraph (c) is not included in Forsyth County's portion of the State Implementation Plan. and only applies locally.)~~

(d) All electric utility boiler units shall have a malfunction abatement plan approved by the Director as satisfying the requirements of Subparagraphs ~~(d)~~(1) through ~~(d)~~(3) of this ~~Rule~~ Paragraph. In addition, the Director may require any other source to have a malfunction abatement plan approved by the Director as satisfying the requirements of Subparagraphs ~~(d)~~(1) through ~~(d)~~(3) of this ~~Rule~~ Paragraph. If the Director requires a malfunction abatement plan for a source other than an electric utility boiler, the owner or operator of that source shall submit a malfunction abatement plan within 60 days after receipt of the Director's request. The malfunction abatement plans of electric utility boiler units and of other sources required to have them shall be implemented ~~at all times~~ when a malfunction or other breakdown



occurs. The purpose of the malfunction abatement plan is to prevent, detect, and correct malfunctions or equipment failures that could result in excess emissions. A malfunction abatement plan shall contain:

- (1) a complete preventive maintenance program including:
  - (A) the identification of individuals or positions responsible for inspecting, ~~maintaining, maintaining~~ and repairing air cleaning devices;
  - (B) a description of the items or conditions that will be inspected and maintained;
  - (C) the frequency of the inspection, maintenance services, and repairs; and
  - (D) an identification and quantities of the replacement parts that shall be maintained in inventory for quick replacement;
- (2) an identification of the source and air cleaning operating variables and outlet variables, such as opacity, grain loading, and pollutant concentration, that may be monitored to detect a malfunction or failure; the normal operating range of these variables and a description of the method of monitoring or surveillance procedures and of informing operating personnel of any malfunctions, including alarm systems, ~~lights, lights~~ or other indicators; and
- (3) a description of the corrective procedures that the owner or operator will take in case of a malfunction or failure to achieve compliance with the applicable rule as expeditiously as ~~practicable, practicable~~ but no longer than the next boiler or process outage that would provide for an orderly repair or correction of the malfunction or 15 days, whichever is shorter. If the owner or operator anticipates that the malfunction would continue for more than 15 days, a case-by-case repair schedule shall be established by the Director with the source.

The owner or operator shall maintain logs to show that the operation and maintenance parts of the malfunction abatement plan are implemented. These logs are subject to inspection by the Director or his designee upon request during business hours.

(e) The owner or operator of any source required by the Director to have a malfunction abatement plan shall submit a malfunction abatement plan to the Director within ~~60 days~~ six months after it has been required by the Director. The malfunction abatement plan and any amendment to it shall be reviewed by the Director or his designee. If the plan includes the objectives described by Paragraph (d) of this Rule, the Director shall approve it. If the plan does not carry out the objectives described by Paragraph (d) of this Rule, the Director shall disapprove the plan. The Director shall state ~~the~~ his reasons for the disapproval. The person who submits the plan shall submit an amendment to the plan to satisfy the reasons for the Director's disapproval within 30 days of receipt of the Director's notification of disapproval. Any person having an approved malfunction abatement plan shall submit to the Director for his approval amendments reflecting changes in any element of the plan required by Paragraph (d) of this Rule or amendments when requested by the Director. The malfunction abatement plan and amendments to it shall be implemented within 90 days upon receipt of written notice of approval.

(f) The owner or operator of a source of excess emissions that last for more than four hours and that results from a malfunction, a breakdown of process or control equipment, or any other abnormal conditions, shall:

- (1) notify the Director or his designee of any such occurrence by 9:00 a.m. Eastern time of the Office's next business day of becoming aware of the occurrence and describe:
  - (A) name and location of the facility;
  - (B) the nature and cause of the malfunction or breakdown;
  - (C) the time when the malfunction or breakdown is first observed;
  - (D) the expected duration; and
  - (E) an estimated rate of emissions;
- (2) notify the Director or his designee ~~immediately by 9:00 a.m. Eastern time of the Office's next business day~~ when after the corrective measures have been accomplished;
- (3) submit to the Director within 15 days after the ~~notification in Subparagraph (f)(1) of this Rule,~~ request a written report that includes:
  - (A) name and location of the facility;
  - (B) identification or description of the processes and control devices involved in the malfunction or breakdown;
  - (C) the cause and nature of the event;
  - (D) time and duration of the violation or the expected duration of the excess ~~emission~~ emissions if the malfunction or breakdown has not been fixed;
  - (E) estimated quantity of pollutant emitted;
  - (F) steps taken to control the emissions and to prevent recurrences and if the malfunction or breakdown has not been fixed, steps planned to be taken; and
  - (G) any other pertinent information requested by the Director.

After the malfunction or breakdown has been corrected, the Director may require the owner or operator of the source to test the source in accordance with Section 3D-2600 to demonstrate compliance.

(g) Start-up and shut-down. Excess emissions during start-up and shut-down are considered a violation of the ~~appropriate~~ applicable rule if the owner or operator cannot demonstrate that the excess emissions are unavoidable. To determine if excess emissions are unavoidable during start-up or shut-down the Director shall consider the items listed in Subparagraphs (c)(1), (c)(3), (c)(4), (c)(5), and (c)(7) of this Rule along with any other pertinent information. The Director may specify for a particular source the amount, time, and duration of emissions allowed during start-up or shut-down if necessary to limit excess emissions and protect the NAAQS. The owner or operator shall, to the extent practicable, operate the source and any associated air pollution control equipment or monitoring equipment in a manner consistent with best practicable air pollution control practices to minimize emissions during start-up and shut-down. ~~(Paragraph (g) is not included in Forsyth County's portion of the State Implementation Plan, and only applies locally.)~~ (Ord. No. 9-94, 12-19-94, 11-11-96, 9-14-98, 5-14-01)

**Sec. 3D-0545. Treatment for malfunction events and work practices for start-up and shut-down operations**~~Reserved~~

(a) ~~Applicability. In the event that United States Environmental Protection Agency's regulation, State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction, published in the Code of Federal Regulations (CFR) at 40 CFR 52 on June 12, 2015, is:~~

- (1) ~~declared or adjudged to be invalid or unconstitutional or stayed by the United States Court of Appeals for the Fourth Circuit, by the District of Columbia Circuit, or by the United States Supreme Court; or~~
- (2) ~~withdrawn, repealed, revoked, or otherwise rendered of no force and effect by the United States Environmental Protection Agency, Congress, or Presidential Executive Order;~~

~~such action shall render this Rule as invalid, void, stayed, or otherwise without force and effect upon the date such action becomes final and effective. At the time of such action, sources that were subject to this Rule shall be subject to Sec 3D-0535 of this Subchapter. This Rule shall not apply to sources to which Sec 3D-0524, 1110, or 1111 of this Subchapter applies.~~

(b) ~~For the purposes of this Rule, the following definitions apply:~~

- (1) ~~"Excess Emissions" means an emission rate that exceeds any applicable emission limitation or standard allowed by any rule in Sections 0500, 0900, 1200, or 1400 of this Subchapter; by a permit condition; or that exceeds an emission limit established in a permit issued pursuant to Section 3Q-0700 of Subchapter 3Q.~~
- (2) ~~"Malfunction" means any unavoidable failure of air pollution control equipment, process equipment, or process to operate in a normal and usual manner. Failures caused entirely or in part by poor maintenance, careless operations or any other upset condition within the control of the emission source shall not be considered a malfunction.~~
- (3) ~~"Start up" means the initial commencement of operation or subsequent commencement of operation of any source that has shut down or ceased operation for a period sufficient to cause temperature, pressure, process, chemical, or a pollution control device imbalance that would result in excess emissions.~~
- (4) ~~"Shut down" means the cessation of the operation of any source for any purpose.~~

(c) ~~Malfunctions. All facilities subject to this rule shall:~~

- (1) ~~Comply with the otherwise applicable emissions limits; or~~
- (2) ~~Comply with the source specific malfunction work practice standard permit condition described in Paragraph (d) of this Rule.~~

~~(d) Source Specific Malfunction Work Practice Standard Permit Condition.~~

- ~~(1) A facility may request a source specific malfunction work practice standard to be included in the state and federal enforceable section of its air permit, after review by EPA and the public.~~
- ~~(2) The source specific malfunction work practice standard shall minimize emissions during the malfunction event and require the malfunction duration to be minimized.~~
- ~~(3) Subparagraphs (e)(1) and (e)(5) of this Rule shall be addressed in the source specific malfunction work practice standard. Any facility requesting a source specific malfunction work practice standard shall meet the requirements of Subparagraphs (f)(1) through (f)(3) of this Rule.~~
- ~~(4) Requests shall be made through the application for a permit, permit modification, or permit renewal pursuant to the permit application requirements in Sections 3Q-0300 or 3Q-0500 of Subchapter 3Q. The public notice requirements specified in Sec. 3Q-0306 and 0307 of Subchapter 3Q shall be followed for all proposed work practice standards in non Title V permits. Public notice requirements specified in Sec. 3Q-0521 of Subchapter 3Q shall be followed for all proposed work practice standards in Title V permits.~~
- ~~(5) At all times, the source shall be operated in a manner consistent with good practice for minimizing emissions and the owner or operator shall use their best efforts regarding planning, design, and operating procedures. The owner or operator's actions during malfunction periods shall be documented by properly signed, contemporaneous operating logs or other relevant evidence.~~
- ~~(6) Failure to implement or follow the Source Specific Malfunction Work Practice Standard Permit Condition shall be a violation of Paragraph (d) of this Rule.~~
- ~~(7) Facilities that follow a Source Specific Malfunction Work Practice Standard Permit Condition during a malfunction that has been addressed in the Source Specific Malfunction Work Practice Standard Permit Condition shall be deemed in compliance.~~

~~(e) The Director shall determine the appropriate enforcement response for excess emissions due to a malfunction. The Director shall consider, along with any other pertinent information, the following:~~

- ~~(1) The air cleaning device, process equipment, or process has been maintained and operated, to the maximum extent practicable, consistent with good practice for minimizing emissions;~~
- ~~(2) Repairs have been made expeditiously when the emission limits have been exceeded;~~
- ~~(3) The amount and duration of the excess emissions, including any bypass, have been minimized to the maximum extent practicable;~~

- (4) ~~All practical steps have been taken to minimize the impact of the excess emissions on ambient air quality;~~
- (5) ~~The excess emissions are not part of a recurring pattern indicative of inadequate design, operation, or maintenance;~~
- (6) ~~The requirements of Paragraph (h) of this Rule have been met; and~~
- (7) ~~If the source is required to have a malfunction abatement plan, the source has followed that plan. All malfunctions shall be repaired as expeditiously as practicable. The facility shall maintain records of the time that a source operates when it or its air pollution control equipment is malfunctioning or otherwise has excess emissions.~~

(f) ~~All electric utility boiler units shall have a malfunction abatement plan approved by the Director as satisfying the requirements of Subparagraphs (f)(1) through (f)(3) of this Rule. In addition, the Director may require any other source to have a malfunction abatement plan approved by the Director as satisfying the requirements of Subparagraphs (f)(1) through (f)(3) of this Rule. If the Director requires a malfunction abatement plan for a source other than an electric utility boiler, the owner or operator of that source shall submit a malfunction abatement plan within 60 days after receipt of the Director's request. The malfunction abatement plans of electric utility boiler units and of other sources required to have malfunction abatement plans shall be implemented at all times. The purpose of the malfunction abatement plan is to prevent, detect, and correct malfunctions that may result in excess emissions. A malfunction abatement plan shall contain:~~

- (1) ~~a preventive maintenance program including:~~
  - (A) ~~the identification of individuals or positions responsible for inspecting, maintaining, and repairing air cleaning devices;~~
  - (B) ~~a description of the items or conditions that will be inspected and maintained;~~
  - (C) ~~the frequency of the inspection, maintenance services, and repairs; and~~
  - (D) ~~an identification and quantities of the replacement parts that shall be maintained in inventory for quick replacement;~~
- (2) ~~an identification of the source and air cleaning operating variables and outlet variables that may be monitored to detect a malfunction; the normal operating range of these variables and a description of the method of monitoring and of informing operating personnel of any malfunctions; and~~
- (3) ~~a description of the corrective procedures that the owner or operator will take in case of a malfunction or failure to achieve compliance with the applicable rule as expeditiously as practicable. The owner or operator shall maintain logs to show that the operation and maintenance parts of the malfunction abatement plan are implemented.~~

(g) ~~The owner or operator of any source required by the Director to have a malfunction abatement plan shall submit a malfunction abatement plan to the Director within 60 days after it has been required by the Director. The malfunction abatement plan and any amendment to it shall be reviewed by~~

the Director. If the plan carries out the objectives described by Paragraph (f) of this Rule, the Director shall approve it. If the plan does not carry out the objectives described by Paragraph (f) of this Rule, the Director shall disapprove the plan. The owner or operator shall submit an amendment to the plan to satisfy the plan requirements within 30 days of receipt of the Director's notification. Any person having an approved malfunction abatement plan shall submit to the Director for approval amendments reflecting changes in any element of the malfunction abatement plan required by Paragraph (f) of this Rule or amendments when requested by the Director. The malfunction abatement plan and amendments to it shall be implemented within 90 days upon receipt of written notice of approval.

(h) ~~————~~ The owner or operator of a source of excess emissions that last for more than four hours and that results from a malfunction shall:

- (1) ~~————~~ notify the Director of any such occurrence by 9:00 a.m. Eastern time of the Division's Office's next business day of becoming aware of the occurrence and describe:
  - (A) ~~————~~ name and location of the facility;
  - (B) ~~————~~ the nature and cause of the malfunction;
  - (C) ~~————~~ the time when the malfunction is first observed;
  - (D) ~~————~~ the expected duration; and
  - (E) ~~————~~ an estimated rate of emissions;
- (2) ~~————~~ notify the Director by 9:00 a.m. Eastern time of the Division's Office's next business day when the corrective measures have been accomplished;
- (3) ~~————~~ submit to the Director, within 15 days after the notification in Subparagraph (h)(1) of this Paragraph, a written report that includes:
  - (A) ~~————~~ name and location of the facility;
  - (B) ~~————~~ identification or description of the processes and control devices involved in the malfunction;
  - (C) ~~————~~ the cause and nature of the event;
  - (D) ~~————~~ time and duration of the violation or the expected duration of the excess emission if the malfunction has not been fixed;
  - (E) ~~————~~ estimated quantity of pollutant emitted;
  - (F) ~~————~~ steps taken to control the emissions and to prevent recurrences and if the malfunction has not been fixed, steps planned to be taken; and
  - (G) ~~————~~ any other pertinent information requested by the Director.

After the malfunction has been corrected, the Director may require the owner or operator of the source to test the source in accordance with Section 3D-2600 of this Subchapter to demonstrate compliance.

(i) ~~————~~ Start up and Shut down: During periods of start up and shut down, sources at facilities subject to this Rule shall comply with any one of the following:

- (1) ~~————~~ the applicable SIP emission limit in the Subchapter 3D rules, or a permit limit established in a permit issued pursuant to Section 3Q-0700 of Subchapter 3Q;

- ~~(2) the applicable work practice standards in Subparagraphs (j)(1) through (j)(13) of this Rule;~~
- ~~(3) work practice standards currently in effect for federal rules promulgated since 2009 that address compliance during start-up and shut-down operations for equipment that would be subject to the federal rule except for rule applicability exemptions; or~~
- ~~(4) source specific start-up and shut-down work practice standard permit conditions described in Paragraph (k) of this Rule.~~

~~Excess emissions during start-up and shut-down shall be considered a violation of the applicable rule if the owner or operator cannot demonstrate that the work practice standards in Subparagraphs (i)(2), (i)(3), or (i)(4) of this Rule were followed. Facilities may comply with Subparagraphs (i)(1) or (i)(2) of this Rule during start-up and shut-down without a specific permit condition. Facilities that choose to comply with Subparagraph (i)(3) of this Rule during start-up and shut-down shall apply for and receive a permit condition that indicates the specific federal work practice standard that shall be followed. Failure to implement or follow the work practice standard shall be considered a violation of Subparagraph (i)(3) of this Rule. Facilities that choose to comply with Subparagraph (i)(4) of this Rule during start-up and shut-down shall apply for and receive a permit condition described in Paragraph (k) of this Rule. Failure to implement or follow the work practice standard shall be considered a violation of Subparagraph (i)(4) of this Rule.~~

~~(j) Generally Available Work Practices for Start-Up and Shut-Down Operations. The owner or operator shall, to the extent practicable, operate the source and any associated air pollution control equipment or monitoring equipment in a manner consistent with best practicable air pollution control practices to minimize emissions during start-up and shut-down. The following generally available work practice standards shall be followed:~~

- ~~(1) Periods of start-up and shut-down shall be documented in a permanent form suitable for inspection and submission to the Office. Documentation of start-ups and shut-downs shall include specific identification of each period of start-up or shut-down where a work practice standard is used and information required to demonstrate compliance with the applicable work practices. Start-up and shut-down operations shall occur as expeditiously as possible while minimizing emissions.~~
- ~~(2) Boilers and other combustion sources. All combustion sources shall commence operations while firing on the cleanest permitted fuel, to the extent practicable. The source shall minimize the start-up and shut-down periods to the extent practicable.~~
  - ~~(A) For sources for which the manufacturer has established recommended procedures for start-ups and shut-downs, the source shall follow the manufacturer's recommended procedures.~~
  - ~~(B) For sources for which there is no manufacturer recommended procedures for start-ups and shut-downs, the source shall follow recommended procedures for~~

a unit of similar design for which manufacturer's recommended procedures are available.

- (3) ~~Baghouses shall be operated upon start up of emission unit, or when baghouse temperature exceeds the dew point, whichever occurs later, or as specified by manufacturer.~~
- (4) ~~Cyclones shall be operated at all times, including start up and shut down of the emission unit.~~
- (5) ~~Electrostatic precipitators (ESP) shall be operated upon start up of emission unit, or when effluent temperature exceeds the dew point, whichever occurs later, or as specified by manufacturer.~~
- (6) ~~Selective catalytic reduction (SCR) units shall be operated if catalyst bed temperature is greater than 400°F, or as specified by manufacturer.~~
- (7) ~~Non selective catalytic reduction (NSCR) units shall be operated when the effluent temperature is between 700°F and 1500°F, or as specified by manufacturer.~~
- (8) ~~Scrubbers shall be operated at all times from initialization of start up to completion of shut down.~~
- (9) ~~Carbon adsorption shall be operated at all times from initialization of start up to completion of shut down.~~
- (10) ~~Biofilters shall be operated at all times from initialization of start up to completion of shut down.~~
- (11) ~~Sorbent injection shall be operated at all times the gas stream temperature is greater than 300°F, or as specified by manufacturer.~~
- (12) ~~Regenerative Thermal Oxidizers (RTO), thermal, and catalytic oxidizers shall be operated at all times from initialization of start up to completion of shut down.~~
- (13) ~~Safety and fire protection protocols shall be followed during start up and shut down of all sources.~~

(k) ~~Source Specific Start Up and Shut Down Work Practice Standard Permit Condition. A facility may request a source specific start up and shut down work practice standard be included in the state and federal enforceable section of their air permit, after review by EPA and the public. Such requests shall be made through the application for a permit, permit modification, or permit renewal pursuant to the permit application requirements in Section 3Q-0300 or 0500 of Subchapter 3Q. The public notice requirements specified in Sec.3Q-0306 and 0307 of Subchapter 3Q shall be followed for all proposed work practice standards in non Title V permits. Public notice requirements specified in Sec 3Q-0521 of Subchapter 3Q shall be followed for all proposed work practice standards in Title V permits. Requests for work practice standards for periods of start up and shut down shall include the following considerations:~~

- (1) ~~the work practice standard is specific to a source and the associated control strategy;~~



- ~~(2) demonstration that the use of the control strategy for the source is technically infeasible during start up or shut down periods;~~
- ~~(3) the work practice standard requires that the frequency and duration of operation in start up or shut down mode are minimized to the greatest extent practicable;~~
- ~~(4) at all times, the source shall be operated in a manner consistent with good practice for minimizing emissions and the source uses best efforts regarding planning, design, and operating procedures; and~~
- ~~(5) the owner or operator's actions during start up and shut down periods shall be documented by properly signed, contemporaneous operating logs or other relevant evidence.~~

~~Any source without a start up and shut down work practice standard permit condition shall be required to comply with any applicable emission limit. Facilities that follow a source specific start up and shut down work practice standard permit condition during start up and shut down shall be deemed in compliance.~~

## **ATTACHMENTS**

**PUBLIC HEARING AND OPPORTUNITY FOR PUBLIC COMMENT  
FORSYTH COUNTY OFFICE OF ENVIRONMENTAL ASSISTANCE AND PROTECTION  
WINSTON-SALEM, NC**

The Forsyth County Environmental Assistance and Protection Advisory Board will hold a virtual public hearing on Tuesday, April 26, 2022 at 10:00 a.m. concerning proposed changes to Forsyth County's portion of North Carolina's State Implementation Plan (SIP) and amendments to the Forsyth County Air Quality Control Ordinance. The proposed changes to the North Carolina SIP and rule amendments address the Environmental Protection Agency's finding of substantial inadequacy with respect to the treatment of excess emissions during periods of startup, shutdown and malfunction (SSM).

Any person may appear before the Environmental Assistance and Protection Advisory Board and bring representatives, consultants, and witnesses to be heard relative to the matters for which action by the Board is sought, provided advance notice is given to the Office Director of such matter to be considered. Persons wishing to attend may call this Office at 336-703-2440 or visit our website for more information.

The proposed rule changes are available at [http://www.forsyth.cc/EAP/public\\_notices.aspx](http://www.forsyth.cc/EAP/public_notices.aspx) and at the Forsyth County Office of Environmental Assistance and Protection on the fifth floor of the Forsyth County Government Center at 201 North Chestnut Street in Winston-Salem, North Carolina. The public comment period begins today and ends on April 27, 2022. Date: March 25, 2022

*Minor Barnette*

---

Minor Barnette, Director

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Date  
March 25, 2022

FORSYTH COUNTY GOVERNMENT  
201 N. CHESTNUT ST.  
WINSTON SALEM, NC 27101

PO Number	Order	Category	Description
	0000773658	Legal Notices	PUBLIC HEARING AND OPPORTUNITY FOR PUBLIC COMMENT FORSYTH CC

**Publisher of the  
Winston-Salem Journal**

Before the undersigned, a Notary Public duly commissioned, qualified, and authorized by law to administer oaths, personally appeared the Publisher's Representative who by being duly sworn deposes and says: that he/she is authorized to make this affidavit and sworn statement; that the notice or other legal advertisement, a copy of which is attached hereto, was published in the Winston-Salem Journal on the following dates:

03/25/2022

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ATTACHED

and that the said newspaper in which such notice, paper document, or legal advertisement was published, was at the time of each and every such publication, a newspaper meeting all the requirements and qualifications of Section 1-597 of the General Statutes of North Carolina.

*[Handwritten Signature]*  
(signature of person making affidavit)

Sworn to and subscribed before me the 25th day of March, 2022.

*[Handwritten Signature]*  
(Notary Public)

State of ~~Virginia~~ *North Carolina*  
County of ~~Henrico~~ *Iredell*

My commission expires: May 27, 2022



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**PUBLIC HEARING AND  
OPPORTUNITY FOR  
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FORSYTH COUNTY OFFICE OF  
ENVIRONMENTAL ASSISTANCE  
AND PROTECTION  
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Minor Barnette, Director

WSJ: March 25, 2022.

**OFFICE OF ENVIRONMENTAL  
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PROTECTION**

**MINOR BARNETTE  
DIRECTOR**



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REID W. HUTCHINS  
NICOLE MATHIS  
CHARLES E. WILSON**

**ENVIRONMENTAL ASSISTANCE AND PROTECTION ADVISORY BOARD**

**April 26, 2022  
10:00 a.m.**

**LOCATION:**

**FORSYTH COUNTY GOVERNMENT CENTER BER MEETING ROOM,  
201 NORTH CHESTNUT STREET**

**-OR-**

**[MICROSOFT TEAMS](#)**

**-OR-**

**CALL IN**

**+1 469-217-7806 (Meeting ID 226 119 203#)**

**AGENDA**

- I. Call to Order**
- II. Approval of the January 18, 2022 Meeting Minutes**
- III. Public Hearing on SOC Agreement between the Environmental Affairs Department and Wilson-Cook Medical, Inc.**
- IV. Director's Update**
- V. Other Business**
- VI. Next Tentative Meeting is July 19, 2022**
- VII. Adjournment**

**Forsyth County Government Center, 201 North Chestnut Street, Winston-Salem, NC 27101-4120  
Phone 336-703-2440 Fax 336-727-2777**

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**AGENDA ABSTRACT ITEM III**  
**March 26, 2022**

**PUBLIC HEARING ON A SPECIAL ORDER BY CONSENT (SOC) AGREEMENT  
BETWEEN THE ENVIRONMENTAL AFFAIRS DEPARTMENT AND  
WILSON-COOK MEDICAL, INC.**

Pursuant to Forsyth County Air Quality Control Ordinance and Technical Code, Section 3A .0300, et seq., a public hearing on the above-noted SOC is required to be held at a regularly scheduled Advisory Board meeting.

Wilson-Cook Medical, Inc. performed a stack test on October 24 -25, 2001 at their facility to comply with the ethylene oxide sterilization requirements in 40 CFR Part 63, Subpart O (Ethylene Oxide Emissions Standards for Sterilization Facilities), also known as MAC T requirements. They chose the acid-water scrubber liquor tank level as the site-specific operating parameter to show continuous compliance with the MACT requirements. However, the test was performed only eight months after they had emptied the scrubber tank and refilled it with new solution. They realized they would not be able to operate the system as long as they would have had they tested when the scrubber liquor tank level was at its' maximum level. The subject SOC will allow the company to continue operation of their sterilizer equipment while sampling the scrubber tank's ethylene glycol concentration to be used to determine when to retest the system and reestablish the maximum scrubber tank liquor level.

The Board is to act as a fact-finding body. **Such findings of fact are to be incorporated into the SOC.**

The agenda for the April 26, 2022 included the incorrect information for the public hearing in item III. The public hearing description intended for item III is the following:

**AGENDA ITEM III**

**April 26, 2022**

**III. Public Hearing - Proposed Amendments To Forsyth County's Air Quality Control Ordinance And Implementation Plan Regarding Startup, Shutdown and Malfunction (SSM)**

**ACTION: The Board is requested to consider comments presented at the public hearings and make recommendations to the Director on the adoption of the proposed rule changes.**





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

April 26, 2022

Mr. William M. Barnette  
Director  
Forsyth County Government Center  
201 North Chestnut Street  
Winston-Salem, North Carolina 27101

Dear Mr. Barnette:

Thank you for your letter dated March 25, 2022, transmitting a prehearing package regarding the changes to Chapter 3 of the Forsyth County Code and Air Quality Control Technical Code: Startup, Shutdown, and Malfunction State Implementation Plan Call. These changes were the **subject of a public hearing via Cisco's WebEx teleconference** on April 26, 2022. We have completed our review of the submittal and offer the attached comments at this time.

We look forward to continuing to work with you and your staff. If you have any questions, please contact Mr. Joel Huey, Acting Chief, Air Regulatory Management Section at (404) 562-9104, or have your staff contact Mr. Evan Adams at (404) 562-9009.

Sincerely,

**LYNORAE BENJAMIN**

Digitally signed by LYNORAE  
BENJAMIN  
Date: 2022.04.26 19:38:24 -04'00'

Lynorae Benjamin  
Chief  
Air Planning and Implementation Branch

**The U.S. Environmental Protection Agency Comments on the Forsyth County, North Carolina Prehearing SIP Revision Regarding SSM Regulations**

**General Comment**

- The language added to the end of both SIP-called provisions will be helpful in clarifying that the provisions are not in the SIP. The EPA suggests that **“and only applies locally”** could be removed for further clarity and simplicity.

## RE: Forsyth SSM Prehearing

Akers, Brad <Akers.Brad@epa.gov>

Mon 4/25/2022 2:35 PM

To: Lloyd, Peter B <lloydpb@forsyth.cc>

Cc: Adams, Evan <adams.evan@epa.gov>

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Hi Peter,

Thanks again for your flexibility in meeting to quickly catch up today. I forgot to mention one thing, which we do not feel the need to include in official prehearing comments. The local-only language added to paragraphs (c) and (g) have a typo: paragraph is written as "parapraph" in both instances.

Brad

-----Original Appointment-----

**From:** Akers, Brad

**Sent:** Monday, April 25, 2022 11:47 AM

**To:** lloydpb@forsyth.cc

**Cc:** Adams, Evan

**Subject:** Forsyth SSM Prehearing

**When:** Monday, April 25, 2022 1:30 PM-2:00 PM (UTC-05:00) Eastern Time (US & Canada).

**Where:** Microsoft Teams Meeting

Hi Peter,

Let's talk briefly about the prehearing which for which the hearing is tomorrow, 4/26, and the comment period ends Wednesday, 4/27.

Thanks,  
Brad

---

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**FORSYTH COUNTY**


**FORSYTH COUNTY ENVIRONMENTAL ASSISTANCE AND PROTECTION ADVISORY BOARD  
RESOLUTION**

**RECOMMENDING REVISIONS TO CHAPTER 3 OF THE  
FORSYTH COUNTY CODE ENTITLED, AIR QUALITY CONTROL, AND TO  
THE FORSYTH COUNTY AIR QUALITY TECHNICAL CODE**

NOW, THEREFORE, BE IT RESOLVED, that the Forsyth County Environmental Assistance and Protection Advisory Board recommends to the Forsyth County Commissioners that they amend Chapter 3 of the Forsyth County Code entitled, Air Quality Control, and the Forsyth County Air Quality Technical Code by adopting the sections enumerated in the submitted material.

The Forsyth County Environmental Affairs Advisory Board has considered the attached proposed revisions at its April 26, 2022 meeting and finds them to be appropriate for application in Forsyth County.

Dated:

  
~~Mr. Richard Sieg, Chairman~~ **B. Rockett, Vice Chairman**  
Forsyth County  
Environmental Assistance and Protection Advisory Board

Forsyth County Government Center, 201 North Chestnut Street, Winston-Salem, NC 27101-4120  
Phone 336-703-2440 Fax 336-727-2777

## **Appendix B: Public Notice and Hearing**

**OFFICE OF ENVIRONMENTAL  
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Forsyth County  
Environmental Assistance and Protection Advisory Board

Forsyth County Government Center, 201 North Chestnut Street, Winston-Salem, NC 27101-4120  
Phone 336-703-2440 Fax 336-727-2777

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REID W. HUTCHINS  
NICOLE MATHIS  
CHARLES E. WILSON**

**FORSYTH COUNTY ENVIRONMENTAL ASSISTANCE and PROTECTION  
ADVISORY BOARD MEETING**

The Forsyth County Environmental Assistance and Protection Advisory Board met on April 26, 2022 at 10:00 a.m. via online meeting through the Microsoft Teams platform and in the BER Room of the Government Center.

**MEMBERS PRESENT:**

Susan Appt  
Gayle Goldsmith  
Reid Hutchins  
Nicole Mathis

Brent Rockett  
Richard Sieg  
Charles Wilson

**MEMBERS ABSENT:**

**FCEAP PRESENT:**

Minor Barnette  
Amanda Bashor  
Peter Lloyd

Steve Lyda  
Paul Martin  
Valerie Shores

**I. Call to Order**

Mr. Sieg called the meeting to order.

**II. Approval of the January 19, 2022 Board Meeting Minutes:**

Mr. Sieg opened the discussion to approve the January 19, 2022 meeting minutes. Mr. Rockett made a motion to accept. Ms. Goldsmith seconded the motion, all members of the

**Forsyth County Government Center, 201 North Chestnut Street, Winston-Salem, NC 27101-4120  
Phone 336-713-2440 Fax 336-727-2777**

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### **III. Public Hearing Revisions to Chapter 3 of the Forsyth County Code - Air Quality Control and the Forsyth County Air Quality Technical Code**

A second Public Hearing discussion of proposed revisions to the Local Implementation Plan addressing excess emissions during start up and shut down in response to 2015 call put forth by the EPA for revisions to State Implementation Plans. This is a necessary academic measure to align local guidelines with state guidelines with no anticipated practical impacts at this time.

Ms. Goldsmith motioned to accept changes, Mr. Rockett seconded. Vote by roll call was unanimous approval.

Ms. Goldsmith motioned to close public hearing, Mr. Rockett seconded. Vote by roll call was unanimous and the Public Hearing was closed.

### **IV. Director's Update**

Mr. Barnette gave a presentation overview of the Winston Weaver fertilizer fire and its impact on the community. Thousands of tons of materials were onsite when the fire started. Enhanced air monitoring by the EPA Emergency Response Team around the incident shows hazardous conditions Monday 1/31/22 through Wednesday 2/2/22, unhealthy conditions through early Friday 2/4/22 and back to normal by Saturday 2/5/22, after which moderate PM levels were measured intermittently in a few limited areas. We were able to get through a very major incident without any serious injuries or fatalities. The outcome could have been a lot worse.

Mr. Barnette discussed areas of local streams where water quality samples were collected. Samples collected upstream from the incident revealed results that were not expected. Winston Weaver owned property in another location which had bulk material storage. The raw materials were not properly contained. Rainfall events created runoff from the stored compounds used to make fertilizer. This runoff went into the stream. A notice of violation with a civil penalty was issued from The City of Winston-Salem Stormwater Department to Winston Weaver for violations at that location.

Mr. Seig and Ms. Goldsmith thanked Mr. Barnette for his dedication and the agency's mission to protect the environment and the citizens of Forsyth County.

Mr. Barnette informed the Advisory Board about staff changes and challenges for various pending sustainability projects. There was a brief discussion about charging stations. Ms. Appt inquired about funds from the Volkswagen settlement and whether the funds can help support these initiatives. Mr. Barnette said that North Carolina's share of the Volkswagen settlement was about \$92,000,000. It is being allocated to fund different types of projects to mitigate the emissions of oxides of nitrogen. Excess NOx emissions were the basis for the penalty that was levied against VW. There are various projects that are being funded with this money. Phase I of the North Carolina Mitigation Plan has been completed and the money has been distributed. Phase II of the plan is currently underway. Information about the projects and fund allocation is available from the NCDEQ.

### **V. Other Business**

Mr. Wilson, Mr. Seig and Mr. Barnette discussed Tier 2 reports and the potential risks which exist in many communities that have significant quantities of materials and reactive compounds in storage. We hope the more we learn, the more precautions we can practice in the future.

**VI. Next Tentative Quarterly Meeting:**

**Date:** July 19, 2022

**Location:** 201 North Chestnut St. Winston-Salem, N.C.

**VII. Adjournment**

Ms. Goldsmith motioned to adjourn. Ms. Mathis seconded. Mr. Sieg adjourned the meeting.

*Minor Barnette*

**Dated:** 7/7/2022

\_\_\_\_\_  
Minor Barnette, Director

**Approved:** *Brent S. Rockett* Brent Rockett, Vice Chairman



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

April 26, 2022

Mr. William M. Barnette  
Director  
Forsyth County Government Center  
201 North Chestnut Street  
Winston-Salem, North Carolina 27101

Dear Mr. Barnette:

Thank you for your letter dated March 25, 2022, transmitting a prehearing package regarding the changes to Chapter 3 of the Forsyth County Code and Air Quality Control Technical Code: Startup, Shutdown, and Malfunction State Implementation Plan Call. These changes were the **subject of a public hearing via Cisco's WebEx teleconference** on April 26, 2022. We have completed our review of the submittal and offer the attached comments at this time.

We look forward to continuing to work with you and your staff. If you have any questions, please contact Mr. Joel Huey, Acting Chief, Air Regulatory Management Section at (404) 562-9104, or have your staff contact Mr. Evan Adams at (404) 562-9009.

Sincerely,

**LYNORAE BENJAMIN**

Digitally signed by LYNORAE  
BENJAMIN  
Date: 2022.04.26 19:38:24 -04'00'

Lynorae Benjamin  
Chief  
Air Planning and Implementation Branch

**The U.S. Environmental Protection Agency Comments on the Forsyth County, North Carolina Prehearing SIP Revision Regarding SSM Regulations**

**General Comment**

- The language added to the end of both SIP-called provisions will be helpful in clarifying that the provisions are not in the SIP. The EPA suggests that **“and only applies locally”** could be removed for further clarity and simplicity.

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Akers, Brad <Akers.Brad@epa.gov>

Mon 4/25/2022 2:35 PM

To: Lloyd, Peter B <lloydpb@forsyth.cc>

Cc: Adams, Evan <adams.evan@epa.gov>

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**Sent:** Monday, April 25, 2022 11:47 AM

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**Cc:** Adams, Evan

**Subject:** Forsyth SSM Prehearing

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Brad

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## Microsoft Teams meeting

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PROPOSED REVISIONS TO CHAPTER 3 OF THE  
FORSYTH COUNTY CODE AND AIR QUALITY  
CONTROL TECHNICAL CODE

PUBLIC HEARING TIME & DATES  
10 AM, April 26, 2022

Telephone Number: (336) 703-2440

Fax Number: (336) 703- 2777

Proposed rule revision are available on our website at:  
[http://www.forsyth.cc/EAP/public\\_notices.aspx](http://www.forsyth.cc/EAP/public_notices.aspx)

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## BACKGROUND

The State of North Carolina has four federally funded air pollution control agencies including the state agency, NC Division of Air Quality (NCDAQ), and three local programs operating in major metropolitan areas.<sup>1</sup> All of these agencies have been authorized by the North Carolina Environmental Management Commission (EMC) to operate independent, comprehensive, air pollution control programs within their jurisdictions.<sup>2</sup> Local programs are responsible for adopting and enforcing their own regulations pertaining to stationary air emission sources. The regulations adopted by local programs must be comparable and consistent with those adopted by the state agency. The implementing regulations used by the local programs were first adopted into North Carolina's State Implementation Plan (SIP) on May 2, 1991.<sup>3</sup>

On June 12, 2015 the US Environmental Protection Agency (EPA) issued a SIP call and finding of substantial inadequacy with respect to the treatment of excess emissions during periods of startup, shutdown and malfunction (SSM) for 45 states and local jurisdictions including the State of North Carolina and Forsyth County. This action, the SSM SIP call, has been challenged by several parties, including the State of North Carolina, in the US Court of Appeals for the District of Columbia and remains under litigation.

On April 2, 2020 EPA Region 4 signed a final rule withdrawing the SSM SIP call for the state of North Carolina. This withdrawal did not include Forsyth County. Subsequently, in October 2020, EPA issued new national policy allowing certain provisions governing SSM periods in SIPs including exemption and affirmative defense provisions. However, EPA withdrew this guidance in September 2021 and returned to the policy articulated in the 2015 SSM SIP call. EPA has also indicated that it plans to revisit the withdrawal of the SSM SIP call for the State of North Carolina.

On January 4, 2022 the US EPA issued a Finding of Failure to Submit State Implementation Plan Revisions to Amend Provisions Applying to Excess Emission during Periods of Startup, Shutdown and Malfunction to 12 state and local jurisdictions including Forsyth County. The current rules governing SSM in the Forsyth County Air Quality Technical Code (FCAQTC) were adopted in response to EPA's June 12, 2015 SSM SIP call consistent with the NCDAQ. These rules have not been submitted for inclusion in the Forsyth County portion of the SIP due to the subsequent litigation and uncertainty around this issue.

The Forsyth County Environmental Assistance and Protection Advisory Board conducted a public hearing on January 18, 2022 to consider rule revisions to address the SSM SIP call and address approvability concerns identified by EPA in earlier comments to the NCDAQ. At the conclusion of the Forsyth County EAP Advisory Board hearing on SSM rules, the North Carolina Division of Air Quality submitted comments explaining:

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1 Local air quality programs are authorized in Buncombe County, Asheville-Buncombe Air Quality Agency; Forsyth County, Office of Environmental Assistance and Protection; and Mecklenburg County, Land Use and Environmental Services Agency-Air Quality.

2 Each local program has jurisdiction within its county and the NCDAQ has jurisdiction in the remaining 97 counties in North Carolina.

3 56 FR 20140

“...the North Carolina General Statutes allow that local program air quality rules may differ from the state rules so long as they are compatible and no less stringent and rules that are more stringent require approval by the Environmental Management Commission.”

The NC Division of Air Quality also emphasized the continuing uncertainty surrounding SSM stating:

“Given the ongoing evolution of actions related to EPA’s Startup, Shutdown, Malfunction State Implementation Plan Call, the Division of Air Quality finds it prudent to continue dialogue with FCEAP and EPA to provide appropriate guidance and work toward resolution of issues raised.”

The rule governing excess emissions from startup, shutdown, and malfunction for the NCDAQ is 15A NCAC 02D .0535. This rule was adopted by North Carolina on July 1, 1996 and was approved into North Carolina’s SIP on August 1, 1997. The rules governing SSM considered at the January 18, 2022 EAP Advisory Board meeting would differ substantially from North Carolina’s SSM rule and would likely be considered more stringent. Consequently, these rules would likely require consideration and approval by the North Carolina Environmental Management Commission before they could be submitted to EPA to satisfy the SIP call. Furthermore, any rules Forsyth County adopts to address SSM will probably require further revision considering ongoing litigation and EPA’s current position reconsidering the withdrawal of the SSM SIP Call for North Carolina.

As a result, Forsyth County consulted with the North Carolina Division of Air Quality and the US EPA, Region 4 to identify a solution to adequately address EPA’s SSM SIP call while deviating as little as possible from North Carolina’s rules to allow the submission. These discussions lead the Forsyth County OEAP Advisory Board to withdraw the SSM rules proposed at the January 18, 2022 hearing. As the alternative, the Forsyth County OEAP Advisory Board proposes to make no changes to the existing SSM rule, Sec. 3D-0535, in the Forsyth County Air Quality Control Ordinance and Technical Code and request the USEPA remove paragraphs (c) and (g) of this rule from Forsyth County’s Local Implementation Plan within the North Carolina SIP.

This change would have no effect on the Office of Environmental Assistance and Protection’s implementation of their program and the implementation would not differ from that of NCDAQ. As a result, this change would not require consideration and review by the NC EMC. However, the change would clarify the right for citizens and/or the US EPA to pursue enforcement for excess emissions during SSM events.

## **IMPLEMENTATION PLAN AND RULE CHANGES BEING CONSIDERED**

The Environmental Assistance and Protection Advisory Board is conducting a public hearing for a proposed change to the Forsyth County Local Implementation Plan and the adoption of revisions to Chapter 3 of the Forsyth County Air Quality Control Ordinance and Technical Code (FCAQTC). The Forsyth County Local Implementation Plan is included as an appendix to the North Carolina State Implementation Plan (SIP).

The hearing is to receive comments on proposed changes to the Forsyth County Local Implementation Plan and the FCAQTC to address the Environmental Protection Agency's finding of substantial inadequacy with respect to the treatment of excess emissions during periods of startup, shutdown and malfunction (SSM), also known as the SSM SIP Call. The current rules governing SSM in the FCAQTC were adopted in response to EPA's SSM SIP Call consistent with the North Carolina Division of Air Quality (NCDAQ). These rules have not been submitted for inclusion in the Forsyth County LIP due to the subsequent litigation and uncertainty around this issue. The changes to the FCAQTC currently proposed would remove the earlier rule changes concerning SSM to match the rule previously approved in the Forsyth County LIP, Sec. 3D-0535.

In addition, Forsyth County proposes to request EPA to remove paragraphs (c) and (g) of Sec. 3D-0535 from Forsyth County's approved LIP. These are the portions of the rule that EPA found inadequately treated excess SSM emissions. Paragraph (c) provides that excess emissions during malfunctions may not be violations if certain criteria are met. Similarly, paragraph (g) provides that excess emissions during startup or shutdown may not be violations if certain criteria are met.

This change would have little, if any, practical effect on the Office of Environmental Assistance Protection's enforcement of the FCAQTC. There are no air emission sources in Forsyth County that have caused excess emissions during a malfunction that have requested consideration of those excess emissions under paragraph (c) of Sec 3D-0535. There are also no air emission sources in Forsyth County that have requested or been granted a startup or shutdown plan allowing excess emissions under paragraph (g) of Sec. 3D-0535. However, in the event that FCEAP determines excess emissions not to be a violation under Sec. 3D-0535(c) or (g), EPA and the public would have the opportunity to pursue enforcement for those excess emissions.

## INSTRUCTIONS FOR UNDERSTANDING CHANGES

Additions: Words, sentences, or entire paragraphs to be added are underlined. For example:  
Area sources mean all sources other than point sources.

~~Deletions~~: Words, sentences, or entire paragraphs to be deleted are struck through. For example:

~~Area sources mean all sources other than point sources.~~

Additions/Deletions: Words, sentences, or entire paragraphs that have been changed as a result of comments received prior to, or during, the public comment period or during the public hearing. For example:

~~July 1, 2009~~10, 2009

# HEARING: Adoption of Revised Rules Regarding startup, Shutdown, and Malfunction (SSM)

## SUBCHAPTER 3D AIR POLLUTION CONTROL REQUIREMENTS

### SECTION 3D-0500. EMISSION CONTROL STANDARDS

#### Sec. 3D-0535. Excess emissions reporting and malfunctions

~~(a) Applicability: 15A NCAC 02D .0535 shall not be in effect if 15A NCAC 02D .0545 is valid. This Rule shall not apply to sources to which Rule .0524, .1110, or .1111 of this Subchapter applies. In the event that United States Environmental Protection Agency's regulation, State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction, published in the Code of Federal Regulations (CFR) at 40 CFR 52 on June 12, 2015, is:~~

- ~~(1) declared or adjudged to be invalid or unconstitutional or stayed by the United States Court of Appeals for the Fourth Circuit, by the District of Columbia Circuit, or by the United States Supreme Court; or~~
- ~~(2) withdrawn, repealed, revoked, or otherwise rendered of no force and effect by the United States Environmental Protection Agency, Congress, or Presidential Executive Order;~~

~~such action shall render Rule .0545 of this Subchapter as invalid, void, stayed, or otherwise without force and effect upon the date such action becomes final and effective. At the time of such action, sources that were subject to Rule .0545 of this Subchapter shall be subject to this Rule.~~

~~(a)~~(b) For the purposes of this Rule, Rule the following definitions apply:

- (1) "Excess Emissions" means an emission rate that exceeds any applicable emission limitation or standard allowed by any Rule in Sections 3D-0500, 0900, 1200 or 1400; or by a permit condition; or that exceeds an emission limit established in a permit issued under Forsyth County Code, Section 3Q-0700.
- (2) "Malfunction" means any unavoidable failure of air pollution control equipment, process equipment, or process to operate in a normal and usual manner that results in excess emissions. Excess emissions during periods of routine start-up and shut-down of process equipment shall not be considered a malfunction. Failures caused entirely or in part by poor maintenance, careless ~~operations~~, operations or any other upset condition within the control of the emission source are not considered a malfunction.
- (3) "Start-up" means the ~~initial~~ commencement ~~or subsequent commencement~~ of operation of any source that has shut-down or ceased operation for a period of time sufficient to cause temperature, pressure, process, chemical, or pollution control device imbalance that would result in excess ~~emission~~ emissions.
- (4) "Shut-down" means the cessation of the operation of any source for any purpose.

(b) This Rule does not apply to sources to which Sec. 3D-0524, 1110 or 1111 applies unless excess emissions exceed an emission limit established in a permit issued under Forsyth County Code, Section 3Q-0700 that is more stringent than the emission limit set by Sec. 3D-0524, 1110 or 1111.

(c) Any excess emissions that do not occur during start-up or shut-down are considered a violation of the ~~applicable~~ appropriate rule unless the owner or operator of the source of excess emissions demonstrates to the Director, that the excess emissions are the result of a malfunction. To determine if the excess emissions are the result of a malfunction, the Director shall consider, along with any other pertinent information, the following:

- (1) the air cleaning device, process equipment, or process has been maintained and operated, to the maximum extent practicable, consistent with good practice for minimizing emissions;
- (2) repairs have been made expeditiously when the emission limits have been exceeded;
- (3) the amount and duration of the excess emissions, including any bypass, have been minimized to the maximum extent practicable;
- (4) all practical steps have been taken to minimize the impact of the excess emissions on ambient air quality;
- (5) the excess emissions are not part of a recurring pattern indicative of inadequate design, operation, or maintenance;
- (6) the requirements of Paragraph (f) of this Rule have been met; and
- (7) if the source is required to have a malfunction abatement plan, it has followed that plan.

All malfunctions shall be repaired as expeditiously as practicable. ~~The~~ However, the Director shall not excuse excess emissions caused by malfunctions from a source for more than 15 percent of the operating time during each calendar year. ~~The Director may require the~~ The owner or operator of a facility to shall maintain records of the time that a source operates when it or its air pollution control equipment is malfunctioning or otherwise has excess emissions. (Paragraph (c) is not included in Forsyth County's portion of the State Implementation Plan and only applies locally.)

(d) All electric utility boiler units shall have a malfunction abatement plan approved by the Director as satisfying the requirements of Subparagraphs (d)(1) through (d)(3) of this Rule Paragraph. In addition, the Director may require any other source to have a malfunction abatement plan approved by the Director as satisfying the requirements of Subparagraphs (d)(1) through (d)(3) of this Rule Paragraph. If the Director requires a malfunction abatement plan for a source other than an electric utility boiler, the owner or operator of that source shall submit a malfunction abatement plan within 60 days after receipt of the Director's request. The malfunction abatement plans of electric utility boiler units and of other sources required to have them shall be implemented at all times when a malfunction or other breakdown occurs. The purpose of the malfunction abatement plan is to prevent, detect, and correct malfunctions or equipment failures that could result in excess emissions. A malfunction abatement plan shall contain:

- (1) a complete preventive maintenance program including:
  - (A) the identification of individuals or positions responsible for inspecting, ~~maintaining, maintaining~~ and repairing air cleaning devices;

- (B) a description of the items or conditions that will be inspected and maintained;
  - (C) the frequency of the inspection, maintenance services, and repairs; and
  - (D) an identification and quantities of the replacement parts that shall be maintained in inventory for quick replacement;
- (2) an identification of the source and air cleaning operating variables and outlet variables, such as opacity, grain loading, and pollutant concentration, that may be monitored to detect a malfunction or failure; the normal operating range of these variables and a description of the method of monitoring or surveillance procedures and of informing operating personnel of any malfunctions, including alarm systems, ~~lights,~~ lights or other indicators; and
- (3) a description of the corrective procedures that the owner or operator will take in case of a malfunction or failure to achieve compliance with the applicable rule as expeditiously as ~~practicable,~~ practicable but no longer than the next boiler or process outage that would provide for an orderly repair or correction of the malfunction or 15 days, whichever is shorter. If the owner or operator anticipates that the malfunction would continue for more than 15 days, a case-by-case repair schedule shall be established by the Director with the source.

The owner or operator shall maintain logs to show that the operation and maintenance parts of the malfunction abatement plan are implemented. These logs are subject to inspection by the Director or his designee upon request during business hours.

(e) The owner or operator of any source required by the Director to have a malfunction abatement plan shall submit a malfunction abatement plan to the Director within ~~60 days~~ six months after it has been required by the Director. The malfunction abatement plan and any amendment to it shall be reviewed by the Director or his designee. If the plan includes the objectives described by Paragraph (d) of this Rule, the Director shall approve it. If the plan does not carry out the objectives described by Paragraph (d) of this Rule, the Director shall disapprove the plan. The Director shall state ~~the~~ his reasons for the disapproval. The person who submits the plan shall submit an amendment to the plan to satisfy the reasons for the Director's disapproval within 30 days of receipt of the Director's notification of disapproval. Any person having an approved malfunction abatement plan shall submit to the Director for his approval amendments reflecting changes in any element of the plan required by Paragraph (d) of this Rule or amendments when requested by the Director. The malfunction abatement plan and amendments to it shall be implemented within 90 days upon receipt of written notice of approval.

(f) The owner or operator of a source of excess emissions that last for more than four hours and that results from a malfunction, a breakdown of process or control equipment, or any other abnormal conditions, shall:

- (1) notify the Director or his designee of any such occurrence by 9:00 a.m. Eastern time of the Office's next business day of becoming aware of the occurrence and describe:
  - (A) name and location of the facility;
  - (B) the nature and cause of the malfunction or breakdown;
  - (C) the time when the malfunction or breakdown is first observed;

- (D) the expected duration; and
- (E) an estimated rate of emissions;
- (2) notify the Director or his designee immediately by 9:00 a.m. Eastern time of the Office's next business day when ~~immediately by 9:00 a.m. Eastern time of the Office's next business day when~~ after the corrective measures have been accomplished;
- (3) submit to the Director within 15 days after the ~~notification in Subparagraph (f)(1) of this Rule,~~ request a written report that includes:
  - (A) name and location of the facility;
  - (B) identification or description of the processes and control devices involved in the malfunction or breakdown;
  - (C) the cause and nature of the event;
  - (D) time and duration of the violation or the expected duration of the excess ~~emission~~ emissions if the malfunction or breakdown has not been fixed;
  - (E) estimated quantity of pollutant emitted;
  - (F) steps taken to control the emissions and to prevent recurrences and if the malfunction or breakdown has not been fixed, steps planned to be taken; and
  - (G) any other pertinent information requested by the Director.

After the malfunction or breakdown has been corrected, the Director may require the owner or operator of the source to test the source in accordance with Section 3D-2600 to demonstrate compliance.

(g) Start-up and shut-down. Excess emissions during start-up and shut-down are considered a violation of the ~~appropriate~~ applicable rule if the owner or operator cannot demonstrate that the excess emissions are unavoidable. To determine if excess emissions are unavoidable during start-up or shut-down the Director shall consider the items listed in Subparagraphs (c)(1), (c)(3), (c)(4), (c)(5), and (c)(7) of this Rule along with any other pertinent information. The Director may specify for a particular source the amount, time, and duration of emissions allowed during start-up or shut-down if necessary to limit excess emissions and protect the NAAQS. The owner or operator shall, to the extent practicable, operate the source and any associated air pollution control equipment or monitoring equipment in a manner consistent with best practicable air pollution control practices to minimize emissions during start-up and shut-down. (Paragraph (g) is not included in Forsyth County's portion of the State Implementation Plan and only applies locally.)~~(Ord. No. 9-94, 12-19-94, 11-11-96, 9-14-98, 5-14-01)~~

**Sec. 3D-0545. ~~Treatment for malfunction events and work practices for start-up and shut-down operations~~Reserved**

(a) ~~Applicability. In the event that United States Environmental Protection Agency's regulation, State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction, published in the Code of Federal Regulations (CFR) at 40 CFR 52 on June 12, 2015, is:~~



- (1) ~~declared or adjudged to be invalid or unconstitutional or stayed by the United States Court of Appeals for the Fourth Circuit, by the District of Columbia Circuit, or by the United States Supreme Court; or~~
- (2) ~~withdrawn, repealed, revoked, or otherwise rendered of no force and effect by the United States Environmental Protection Agency, Congress, or Presidential Executive Order;~~

~~such action shall render this Rule as invalid, void, stayed, or otherwise without force and effect upon the date such action becomes final and effective. At the time of such action, sources that were subject to this Rule shall be subject to Sec 3D-0535 of this Subchapter. This Rule shall not apply to sources to which Sec 3D-0524, 1110, or 1111 of this Subchapter applies.~~

~~(b) For the purposes of this Rule, the following definitions apply:~~

- (1) ~~"Excess Emissions" means an emission rate that exceeds any applicable emission limitation or standard allowed by any rule in Sections 0500, 0900, 1200, or 1400 of this Subchapter; by a permit condition; or that exceeds an emission limit established in a permit issued pursuant to Section 3Q-0700 of Subchapter 3Q.~~
- (2) ~~"Malfunction" means any unavoidable failure of air pollution control equipment, process equipment, or process to operate in a normal and usual manner. Failures caused entirely or in part by poor maintenance, careless operations or any other upset condition within the control of the emission source shall not be considered a malfunction.~~
- (3) ~~"Start-up" means the initial commencement of operation or subsequent commencement of operation of any source that has shut-down or ceased operation for a period sufficient to cause temperature, pressure, process, chemical, or a pollution control device imbalance that would result in excess emissions.~~
- (4) ~~"Shut-down" means the cessation of the operation of any source for any purpose.~~

~~(e) Malfunctions. All facilities subject to this rule shall:~~

- (1) ~~Comply with the otherwise applicable emissions limits; or~~
- (2) ~~Comply with the source specific malfunction work practice standard permit condition described in Paragraph (d) of this Rule.~~

~~(d) Source Specific Malfunction Work Practice Standard Permit Condition.~~

- (1) ~~A facility may request a source specific malfunction work practice standard to be included in the state and federal enforceable section of its air permit, after review by EPA and the public.~~
- (2) ~~The source specific malfunction work practice standard shall minimize emissions during the malfunction event and require the malfunction duration to be minimized.~~
- (3) ~~Subparagraphs (e)(1) and (e)(5) of this Rule shall be addressed in the source specific malfunction work practice standard. Any facility requesting a source specific malfunction work practice standard shall meet the requirements of Subparagraphs (f)(1) through (f)(3) of this Rule.~~

- ~~(4) Requests shall be made through the application for a permit, permit modification, or permit renewal pursuant to the permit application requirements in Sections 3Q-0300 or 3Q-0500 of Subchapter 3Q. The public notice requirements specified in Sec. 3Q-0306 and 0307 of Subchapter 3Q shall be followed for all proposed work practice standards in non Title V permits. Public notice requirements specified in Sec. 3Q-0521 of Subchapter 3Q shall be followed for all proposed work practice standards in Title V permits.~~
- ~~(5) At all times, the source shall be operated in a manner consistent with good practice for minimizing emissions and the owner or operator shall use their best efforts regarding planning, design, and operating procedures. The owner or operator's actions during malfunction periods shall be documented by properly signed, contemporaneous operating logs or other relevant evidence.~~
- ~~(6) Failure to implement or follow the Source Specific Malfunction Work Practice Standard Permit Condition shall be a violation of Paragraph (d) of this Rule.~~
- ~~(7) Facilities that follow a Source Specific Malfunction Work Practice Standard Permit Condition during a malfunction that has been addressed in the Source Specific Malfunction Work Practice Standard Permit Condition shall be deemed in compliance.~~

~~(e) The Director shall determine the appropriate enforcement response for excess emissions due to a malfunction. The Director shall consider, along with any other pertinent information, the following:~~

- ~~(1) The air cleaning device, process equipment, or process has been maintained and operated, to the maximum extent practicable, consistent with good practice for minimizing emissions;~~
- ~~(2) Repairs have been made expeditiously when the emission limits have been exceeded;~~
- ~~(3) The amount and duration of the excess emissions, including any bypass, have been minimized to the maximum extent practicable;~~
- ~~(4) All practical steps have been taken to minimize the impact of the excess emissions on ambient air quality;~~
- ~~(5) The excess emissions are not part of a recurring pattern indicative of inadequate design, operation, or maintenance;~~
- ~~(6) The requirements of Paragraph (h) of this Rule have been met; and~~
- ~~(7) If the source is required to have a malfunction abatement plan, the source has followed that plan. All malfunctions shall be repaired as expeditiously as practicable. The facility shall maintain records of the time that a source operates when it or its air pollution control equipment is malfunctioning or otherwise has excess emissions.~~

~~(f) All electric utility boiler units shall have a malfunction abatement plan approved by the Director as satisfying the requirements of Subparagraphs (f)(1) through (f)(3) of this Rule. In addition, the Director may require any other source to have a malfunction abatement plan approved by the Director as satisfying the requirements of Subparagraphs (f)(1) through (f)(3) of this Rule. If the Director requires a~~

~~malfunction abatement plan for a source other than an electric utility boiler, the owner or operator of that source shall submit a malfunction abatement plan within 60 days after receipt of the Director's request. The malfunction abatement plans of electric utility boiler units and of other sources required to have malfunction abatement plans shall be implemented at all times. The purpose of the malfunction abatement plan is to prevent, detect, and correct malfunctions that may result in excess emissions. A malfunction abatement plan shall contain:~~

- ~~(1) a preventive maintenance program including:
 
  - ~~(A) the identification of individuals or positions responsible for inspecting, maintaining, and repairing air cleaning devices;~~
  - ~~(B) a description of the items or conditions that will be inspected and maintained;~~
  - ~~(C) the frequency of the inspection, maintenance services, and repairs; and~~
  - ~~(D) an identification and quantities of the replacement parts that shall be maintained in inventory for quick replacement;~~~~
- ~~(2) an identification of the source and air cleaning operating variables and outlet variables that may be monitored to detect a malfunction; the normal operating range of these variables and a description of the method of monitoring and of informing operating personnel of any malfunctions; and~~
- ~~(3) a description of the corrective procedures that the owner or operator will take in case of a malfunction or failure to achieve compliance with the applicable rule as expeditiously as practicable. The owner or operator shall maintain logs to show that the operation and maintenance parts of the malfunction abatement plan are implemented.~~

~~(g) The owner or operator of any source required by the Director to have a malfunction abatement plan shall submit a malfunction abatement plan to the Director within 60 days after it has been required by the Director. The malfunction abatement plan and any amendment to it shall be reviewed by the Director. If the plan carries out the objectives described by Paragraph (f) of this Rule, the Director shall approve it. If the plan does not carry out the objectives described by Paragraph (f) of this Rule, the Director shall disapprove the plan. The owner or operator shall submit an amendment to the plan to satisfy the plan requirements within 30 days of receipt of the Director's notification. Any person having an approved malfunction abatement plan shall submit to the Director for approval amendments reflecting changes in any element of the malfunction abatement plan required by Paragraph (f) of this Rule or amendments when requested by the Director. The malfunction abatement plan and amendments to it shall be implemented within 90 days upon receipt of written notice of approval.~~

~~(h) The owner or operator of a source of excess emissions that last for more than four hours and that results from a malfunction shall:~~

- ~~(1) notify the Director of any such occurrence by 9:00 a.m. Eastern time of the Division's Office's next business day of becoming aware of the occurrence and describe:
 
  - ~~(A) name and location of the facility;~~
  - ~~(B) the nature and cause of the malfunction;~~
  - ~~(C) the time when the malfunction is first observed;~~~~

- ~~(D) the expected duration; and~~
- ~~(E) an estimated rate of emissions;~~
- ~~(2) notify the Director by 9:00 a.m. Eastern time of the Division's Office's next business day when the corrective measures have been accomplished;~~
- ~~(3) submit to the Director, within 15 days after the notification in Subparagraph (h)(1) of this Paragraph, a written report that includes:~~
  - ~~(A) name and location of the facility;~~
  - ~~(B) identification or description of the processes and control devices involved in the malfunction;~~
  - ~~(C) the cause and nature of the event;~~
  - ~~(D) time and duration of the violation or the expected duration of the excess emission if the malfunction has not been fixed;~~
  - ~~(E) estimated quantity of pollutant emitted;~~
  - ~~(F) steps taken to control the emissions and to prevent recurrences and if the malfunction has not been fixed, steps planned to be taken; and~~
  - ~~(G) any other pertinent information requested by the Director.~~

~~After the malfunction has been corrected, the Director may require the owner or operator of the source to test the source in accordance with Section 3D-2600 of this Subchapter to demonstrate compliance.~~

~~(i) Start up and Shut down: During periods of start up and shut down, sources at facilities subject to this Rule shall comply with any one of the following:~~

- ~~(1) the applicable SIP emission limit in the Subchapter 3D rules, or a permit limit established in a permit issued pursuant to Section 3Q-0700 of Subchapter 3Q;~~
- ~~(2) the applicable work practice standards in Subparagraphs (j)(1) through (j)(13) of this Rule;~~
- ~~(3) work practice standards currently in effect for federal rules promulgated since 2009 that address compliance during start-up and shut-down operations for equipment that would be subject to the federal rule except for rule applicability exemptions; or~~
- ~~(4) source specific start-up and shut-down work practice standard permit conditions described in Paragraph (k) of this Rule.~~

~~Excess emissions during start-up and shut-down shall be considered a violation of the applicable rule if the owner or operator cannot demonstrate that the work practice standards in Subparagraphs (i)(2), (i)(3), or (i)(4) of this Rule were followed. Facilities may comply with Subparagraphs (i)(1) or (i)(2) of this Rule during start-up and shut-down without a specific permit condition. Facilities that choose to comply with Subparagraph (i)(3) of this Rule during start-up and shut-down shall apply for and receive a permit condition that indicates the specific federal work practice standard that shall be followed. Failure to implement or follow the work practice standard shall be considered a violation of Subparagraph (i)(3) of this Rule. Facilities that choose to comply with Subparagraph (i)(4) of this Rule during start-up and shut-down shall apply for and receive a permit condition described in Paragraph (k) of this Rule. Failure to implement or follow the work practice standard shall be considered a violation of Subparagraph (i)(4) of this Rule.~~

~~(j) — Generally Available Work Practices for Start-Up and Shut-Down Operations. The owner or operator shall, to the extent practicable, operate the source and any associated air pollution control equipment or monitoring equipment in a manner consistent with best practicable air pollution control practices to minimize emissions during start-up and shut-down. The following generally available work practice standards shall be followed:~~

- ~~(1) — Periods of start-up and shut-down shall be documented in a permanent form suitable for inspection and submission to the Office. Documentation of start-ups and shut-downs shall include specific identification of each period of start-up or shut-down where a work practice standard is used and information required to demonstrate compliance with the applicable work practices. Start-up and shut-down operations shall occur as expeditiously as possible while minimizing emissions.~~
- ~~(2) — Boilers and other combustion sources. All combustion sources shall commence operations while firing on the cleanest permitted fuel, to the extent practicable. The source shall minimize the start-up and shut-down periods to the extent practicable.
 
  - ~~(A) — For sources for which the manufacturer has established recommended procedures for start-ups and shut-downs, the source shall follow the manufacturer's recommended procedures.~~
  - ~~(B) — For sources for which there is no manufacturer recommended procedures for start-ups and shut-downs, the source shall follow recommended procedures for a unit of similar design for which manufacturer's recommended procedures are available.~~~~
- ~~(3) — Baghouses shall be operated upon start-up of emission unit, or when baghouse temperature exceeds the dew point, whichever occurs later, or as specified by manufacturer.~~
- ~~(4) — Cyclones shall be operated at all times, including start-up and shut-down of the emission unit.~~
- ~~(5) — Electrostatic precipitators (ESP) shall be operated upon start-up of emission unit, or when effluent temperature exceeds the dew point, whichever occurs later, or as specified by manufacturer.~~
- ~~(6) — Selective catalytic reduction (SCR) units shall be operated if catalyst bed temperature is greater than 400°F, or as specified by manufacturer.~~
- ~~(7) — Non-selective catalytic reduction (NSCR) units shall be operated when the effluent temperature is between 700°F and 1500°F, or as specified by manufacturer.~~
- ~~(8) — Scrubbers shall be operated at all times from initialization of start-up to completion of shut-down.~~
- ~~(9) — Carbon adsorption shall be operated at all times from initialization of start-up to completion of shut-down.~~
- ~~(10) — Biofilters shall be operated at all times from initialization of start-up to completion of shut-down.~~

- ~~(11) Sorbent injection shall be operated at all times the gas stream temperature is greater than 300°F, or as specified by manufacturer.~~
- ~~(12) Regenerative Thermal Oxidizers (RTO), thermal, and catalytic oxidizers shall be operated at all times from initialization of start-up to completion of shut-down.~~
- ~~(13) Safety and fire protection protocols shall be followed during start-up and shut-down of all sources.~~

~~(k) Source Specific Start-Up and Shut-Down Work Practice Standard Permit Condition. A facility may request a source specific start-up and shut-down work practice standard be included in the state and federal enforceable section of their air permit, after review by EPA and the public. Such requests shall be made through the application for a permit, permit modification, or permit renewal pursuant to the permit application requirements in Section 3Q-0300 or 0500 of Subchapter 3Q. The public notice requirements specified in Sec.3Q-0306 and 0307 of Subchapter 3Q shall be followed for all proposed work practice standards in non-Title V permits. Public notice requirements specified in Sec 3Q-0521 of Subchapter 3Q shall be followed for all proposed work practice standards in Title V permits. Requests for work practice standards for periods of start-up and shut-down shall include the following considerations:~~

- ~~(1) the work practice standard is specific to a source and the associated control strategy;~~
- ~~(2) demonstration that the use of the control strategy for the source is technically infeasible during start-up or shut-down periods;~~
- ~~(3) the work practice standard requires that the frequency and duration of operation in start-up or shut-down mode are minimized to the greatest extent practicable;~~
- ~~(4) at all times, the source shall be operated in a manner consistent with good practice for minimizing emissions and the source uses best efforts regarding planning, design, and operating procedures; and~~
- ~~(5) the owner or operator's actions during start-up and shut-down periods shall be documented by properly signed, contemporaneous operating logs or other relevant evidence.~~

~~Any source without a start-up and shut-down work practice standard permit condition shall be required to comply with any applicable emission limit. Facilities that follow a source specific start-up and shut-down work practice standard permit condition during start-up and shut-down shall be deemed in compliance.~~

Winston-Salem Journal

Advertising Affidavit

Account Number  
3655815

P.O Box 3159  
Winston-Salem, NC 27102

Date  
March 25, 2022

FORSYTH COUNTY GOVERNMENT  
201 N. CHESTNUT ST.  
WINSTON SALEM, NC 27101

PO Number	Order	Category	Description
	0000773658	Legal Notices	PUBLIC HEARING AND OPPORTUNITY FOR PUBLIC COMMENT FORSYTH CC

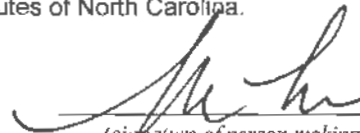
**Publisher of the  
Winston-Salem Journal**

Before the undersigned, a Notary Public duly commissioned, qualified, and authorized by law to administer oaths, personally appeared the Publisher's Representative who by being duly sworn deposes and says: that he/she is authorized to make this affidavit and sworn statement; that the notice or other legal advertisement, a copy of which is attached hereto, was published in the Winston-Salem Journal on the following dates:

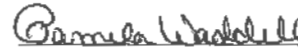
03/25/2022

PLEASE  
SEE  
ATTACHED

and that the said newspaper in which such notice, paper document, or legal advertisement was published, was at the time of each and every such publication, a newspaper meeting all the requirements and qualifications of Section 1-597 of the General Statutes of North Carolina.

  
(signature of person making affidavit)

Sworn to and subscribed before me the 25th day of March, 2022.

  
(Notary Public)

State of North Carolina  
County of Iredell

My commission expires: May 27, 2022



THIS IS NOT A BILL. PLEASE PAY FROM INVOICE. THANK YOU

**PUBLIC HEARING AND  
OPPORTUNITY FOR  
PUBLIC COMMENT  
FORSYTH COUNTY OFFICE OF  
ENVIRONMENTAL ASSISTANCE  
AND PROTECTION  
WINSTON-SALEM, NC**

The Forsyth County Environmental Assistance and Protection Advisory Board will hold a virtual public hearing on Tuesday, April 26, 2022 at 10:00 a.m. concerning proposed changes to Forsyth County's portion of North Carolina's State Implementation Plan (SIP) and amendments to the Forsyth County Air Quality Control Ordinance. The proposed changes to the North Carolina SIP and rule amendments address the Environmental Protection Agency's finding of substantial inadequacy with respect to the treatment of excess emissions during periods of startup, shutdown and malfunction (SSM).

Any person may appear before the Environmental Assistance and Protection Advisory Board and bring representatives, consultants, and witnesses to be heard relative to the matters for which action by the Board is sought, provided advance notice is given to the Office Director of such matter to be considered. Persons wishing to attend may call this Office at 336-703-2440 or visit our website for more information.

The proposed rule changes are available at [http://www.forsyth.cc/EAP/public\\_notices.aspx](http://www.forsyth.cc/EAP/public_notices.aspx) and at the Forsyth County Office of Environmental Assistance and Protection on the fifth floor of the Forsyth County Government Center at 201 North Chestnut Street in Winston-Salem, North Carolina. The public comment period begins today and ends on April 27, 2022. Date: March 25, 2022

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Minor Barnette, Director

WSJ: March 25, 2022.



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*Minor Barnette*

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Minor Barnette, Director

## SSM Notice and Hearing

Lloyd, Peter B <lloydpb@forsyth.cc>

Fri 3/25/2022 4:11 PM

To: Burleson, Joelle <joelle.burleson@ncdenr.gov>; Evan Adams <adams.evan@epa.gov>; Akers, Brad <Akers.Brad@epa.gov>

The public notice for an April 26, 2022 public hearing for proposed rule and LIP changes was published today in the Winston-Salem Journal. The notice is also published on our website at:

[Public Notices Regarding the Issuance of Air Quality Permits \(forsyth.cc\)](#)

The comment period ends on April 27, 2022.

Please let me know if you have any comments or concerns, or need additional information. I attempted to address Evan's first comment from the prehearing review.

Thanks to you all for your help,

Peter

><>J

**RE: SSM Hearing Package**

Adams, Evan <adams.ewan@epa.gov>

Thu 3/24/2022 2:20 PM

To: Lloyd, Peter B <lloydpb@forsyth.cc>

Cc: Barnette, William M (Minor) <barnetwm@forsyth.cc>; Akers, Brad <Akers.Brad@epa.gov>; Huey, Joel <Huey.Joel@epa.gov>

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good afternoon Peter,

Thanks again for the opportunity to review these rules for Forsyth. Please see below several comments for your consideration. Please let us know if you have any follow-up questions or if you would like to set up a call. We are happy to assist.

**General Comments:**

1. EPA understands Forsyth is asking that EPA remove paragraphs (c) and (g) from Rule 3D-0535, which would eliminate the SIP-called provisions from the LIP. EPA notes that it could be beneficial to add clarifying language to these paragraphs in the local regulations to clearly describe these as local-only considerations for enforcement discretion, as the draft public notice clearly explains.
2. EPA suggests including a "LIP-only" redline showing the removal of paragraphs (c) and (g) from Rule 3D-0535 in addition to the other materials already included. The history of these rules is complicated, and it could be helpful to point to a clear redline showing the desired change to the actual LIP.

Thank you,  
Evan

**From:** Lloyd, Peter B <lloydpb@forsyth.cc>  
**Sent:** Thursday, March 17, 2022 10:34 AM  
**To:** Adams, Evan <adams.ewan@epa.gov>; Akers, Brad <Akers.Brad@epa.gov>  
**Cc:** barnetwm@forsyth.cc  
**Subject:** SSM Hearing Package

Good morning. I hope you all are well.

I've attached the notice and hearing that will go to notice next Friday, 3/26. NC DAQ has reviewed the information and haven't identified any inconsistencies with the state's rules.

Please let me know if you have any questions or would like to discuss the proposal.

Thank you,  
Peter Lloyd  
Program Manager  
FCEAP