

Special Air Permit Appeals Committee Selection Procedure

Purpose: The purpose of this Selection Procedure is to satisfy the requirements of § 128 of the Clean Air Act (“CAA”) and, thereby, the requirements of § 110(a)(2)(E)(ii) of the CAA.

Delegation of authority to Special Air Permit Appeals Committee: Section 128(a)(2) of the CAA applies to “boards or bodies” or the “head executive agencies” approving permit or enforcement orders under the CAA. After adoption of Senate Bill 781 (Act of July 25, 2011, sec. 15-63, 2011 N.C. Sess. Laws 398 (an Act to increase regulatory efficiency), the North Carolina Office of Administrative Hearings (OAH), the North Carolina Department of Environment and Natural Resources (DENR)¹ and the United States Environmental Protection Agency, Region 4 (EPA) agreed that “DENR will remain the permit/enforcement issuing authority for matters arising under the CAA”. See August 9, 2012 letter to Dee Freeman, Secretary DENR and the Honorable Julian Mann, III, Chief Administrative Law Judge at the Office of Administrative Hearings from Mary J. Wilkes, Regional Counsel and Director, Office of Environmental Accountability, EPA. However, final decisions in contested cases regarding permits or enforcement orders under the CAA in which the petition instituting the case was filed before January 1, 2012 (the effective date of the relevant provisions in 2001 N.C. Sess. Laws, 398, sec. 15-55) are still made by the Environmental Management Commission (“EMC”). By Resolution dated January 10, 2013, the EMC delegated final decision-making authority in cases under the CAA to a Special Air Permit Appeals Committee. The members of this committee are appointed by the Chairman of the EMC (“Chairman”). See Resolution of the EMC dated January 10, 2013. Therefore, since the Special Air Permit Appeals Committee (Committee) is the final agency decision-maker under the CAA for those contested cases filed before January 1, 2012, it must comply with Section 128 of the CAA.

Selection of Members of Committee: In selecting the members of the Committee, the Chairman shall comply with the requirements of CAA § 128. Thus, a majority of the members of this Committee must “represent the public interest” and not “derive any significant portion of their income from persons subject to permits or enforcement orders under” the CAA.

Process: At the request of the Chairman, the members of the Commission will promptly complete and sign a Disclosure and/or Certification form (Disclosure Form). A copy of the Disclosure Form is attached. The completed Disclosure Form for each member of the

¹ General authority for administration of the CAA programs in North Carolina has been delegated to the Secretary of DENR by the North Carolina Environmental Management Commission.

Committee, including the Chairman, will be maintained in the official records of the EMC. As long as the completed Disclosure Form remains on file, it constitutes a continuous reaffirmation of the truth of the matters set forth therein. If circumstances change such that the information provided by the member and maintained in the official records is no longer complete and accurate, the member shall promptly submit a revised Disclosure Form to the Chairman.

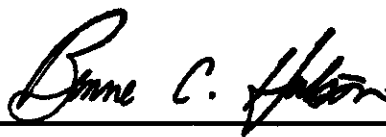
The Chairman shall monitor the composition of the Committee in light of the information provided in the Disclosure Forms and exercise his appointment authority to ensure that the requirements of CAA § 128 are met. The Chairman shall ensure that at all times, pursuant to CAA § 128, a majority of the Committee's members "represent the public interest," and do not "derive any significant portion of their income from persons subject to permits or enforcement orders under" the CAA.

Public Record: The completed Disclosure Forms submitted by the members of the Committee will be available for public inspection pursuant to the North Carolina Public Records Act NCGS § 132- 1 *et seq.*, in the office of the EMC's Recording Clerk.

Conflicts of Interest: Prior to each exercise of final decision authority by the Committee, each member of the Committee, including the Chairman, shall inform himself/herself of the identity of the parties involved in the matter coming before the Committee and promptly disclose and inform the Chairman of any actual or potential conflict of interest.

Any member with a potential conflict (including the Chairman) shall disclose the potential conflict of interest as a part of the public record in the contested case, which shall be available for public inspection pursuant to the North Carolina Public Records Act NCGS § 132-1 *et seq.*

Effective Date: Pursuant to the authority to appoint members of Committees as provided by the EMC's bylaws and the Resolution dated January 10, 2013, this Procedure is hereby adopted this the 2nd day of December, 2013, and shall be incorporated by reference in each State implementation plan submitted by DENR to EPA pursuant to the Clean Air Act.



Benne C. Hutson, Chairman

Revised December 2, 2013

DISCLOSURE FORM

*[To be completed by each member of the Environmental Management Commission
and submitted to the Chairman]*

For the purposes of this Disclosure Form, the following definitions apply:

- a. "Persons subject to permits or enforcement orders under this Act" includes any individual, corporation, partnership, or association who holds, is an applicant for, or is subject to any permit, or who is or may become subject to any enforcement order under the Clean Air Act, except that it does not include (1) an individual who is or may become subject to an enforcement order solely by reason of his or her ownership or operation of a motor vehicle, (2) any department or agency of a state, local, or regional government, or (3) any individual who is involved in the program of an institute of higher learning whose duties do not include the institute's compliance with the Clean Air Act.
- b. "Potential conflict of interest" includes (1) any income from "persons subject to permits or enforcement orders under the Clean Air Act," and (2) any interest or relationship that would preclude me from being considered one who "represents the public interest."
- c. "Represent the public interest" means that I do not own a controlling interest in, have 5 percent or more of my capital invested in, serve as attorney for, act as consultant for, serve as officer or director of, or hold any other official or contractual relationship with any person subject to permits or enforcement orders under the Clean Air Act or with any trade or business association of which I am a member.
- d. "Significant portion of income" means 10 percent or more of gross personal income for a calendar year, including retirement benefits, consultant fees, and stock dividends. Income derived from mutual-fund payments, or from other diversified investments as to which I do not know or control the identity of the primary sources of income, shall be considered part of my gross personal income but shall not be treated as income derived from persons subject to permits or enforcement orders under the Clean Air Act.

Revised December 2, 2013

CERTIFICATION AND/OR DISCLOSURE

(initial each applicable paragraph then sign and return to the Chairman)

_____ I understand the duties entrusted to me under the federal Clean Air Act with respect to making the final decision in a contested case pertaining to issuing permits or enforcement orders.

_____ In carrying out the duties entrusted to me under the federal Clean Air Act, I am able to “represent the public interest” as I do not own a controlling interest in, have 5 percent or more of my capital invested in, serve as attorney for, act as consultant for, serve as officer or director of, or hold any other official or contractual relationship with any person subject to permits or enforcement orders under the Clean Air Act or with any trade or business association of which I am a member.

_____ I do not derive any “significant portion of my income” from “persons or entities subject to permits or enforcement orders under the Clean Air Act.”

_____ I am not aware of any “potential conflicts of interest.”

_____ I am aware of the following “potential conflicts of interest.”
(Identify income source or relationship constituting potential conflict of interest and include or attach additional pages as necessary.)

_____ I understand that this certification and/or disclosure of potential conflict of interest will be maintained in the public records of the North Carolina Environmental Management Commission and made available for public inspection pursuant to the North Carolina Public Records Act, NCGS § 132-1 *et seq.*

_____ Prior to participating in the final decision in a contested case I shall inform myself of the identity of the parties appearing before the Committee and will promptly inform the Chairman of any potential conflict of interest.

_____ If at any time the representations contained in this Certification and/or Disclosure are no longer true, I will promptly submit a revised Certification and/or Disclosure as required by the procedure established by the Committee.

_____ **Date**

_____ **Name**

Revised December 2, 2013