

RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: Environmental Management Commission (EMC)

RULE CITATION: 15A NCAC 02Q .0114; 15A NCAC 02Q .0501 and .0507

RECOMMENDATION DATE: April 26, 2026

RECOMMENDED ACTION:

No action

X Approve, but note staff's comment

Object, based on:

Lack of statutory authority

Unclear or ambiguous

Unnecessary

Failure to comply with the APA

Extend the period of review

COMMENT:

The three rules in question could be argued as running afoul of the RRC's review criteria set forth in G.S. 150B-21.9(a). However, in my opinion, the RRC should allow the rules to move forward and approve them for the reasons discussed below.

Prong 1: Statutory Authority

Per G.S. 150B-21.9(a)(1), the RRC must determine whether rules are within the authority delegated to the agency by the General Assembly.

These three rules (one new rule proposed for adoption and two existing rules proposed for amendment) aim to implement the pre-permitting construction provisions of S.L. 2023-134, as amended by S.L. 2024-1.

In relevant part, Section 12.11.(e) of S.L. 2023-134 rewrites G.S. 143-215.108A by allowing for the construction of emission sources prior to receipt of an air quality permit upon a determination that an administratively complete permit application has been submitted to the EMC. An excerpt of the relevant text of the law can be found in Appendix B.

Section 4.13.(a) of S.L. 2024-1 later added language to Section 12.11 of S.L. 2023-134 that attempts to clarify timing requirements for the implementation of the statutory changes to the State's air permitting program. This law states:

SECTION 12.11.(f) *No later than July 1, 2025, the Department of Environmental Quality shall prepare and submit to the United States Environmental Protection Agency for approval by that agency a proposed North Carolina State Implementation Plan amendment based on the changes to the air permitting program provided in this section.*

SECTION 12.11.(g) *This section becomes effective on the first day of a month that is 60 days after the Secretary of the Department of Environmental Quality certifies to the Revisor of Statutes that the United States Environmental Protection Agency has approved an amendment to the North Carolina State Implementation Plan submitted as required by subsection (f) of this section. The Secretary shall provide this notice along with the effective date of this act on its website and by written or electronic notice to current holders of air permits issued by the Department. This section applies to applications for new air permits and for modifications of existing permits received on or after the effective date specified in this subsection.*

These timing requirements put the RRC in a bit of an awkward position. The RRC is tasked with determining whether the proposed rules are within the agency's statutory authority. However, the statutory changes that these rules rely upon and implement are wholly contingent and only become effective upon U.S. EPA approval. So, does the EMC have statutory authority to adopt the substance of these rules? Perhaps not at this time (because they would conflict with the current version of G.S. 143-215.108A), but the EMC may have the required authority in the future if the U.S. EPA approves the agency's SIP amendment. The RRC cannot predict if the U.S. EPA will approve these changes, especially given the preliminary comments that the EMC received from the U.S. EPA on draft SIP changes in September 2024.¹

In response to RRC Staff requests² and in a separate letter related to a 2025 Pre-Review request,³ the EMC contends that "[i]n order to amend a SIP, the changes must go through a public process to receive comments. Because statutory changes and session laws do not go through a public process, rulemaking is generally how a SIP is changed. The adoption of this rule complies with the federal requirement to go through a public process and thus allows the EPA to consider whether the SIP amendment based on the rule complies with the Clean Air Act. If EPA determines the rule complies with the Clean Air Act, it will allow the SIP amendment, which in turn allows N.C.G.S. §

¹ See <https://perma.cc/QV22-B44J>.

² See <https://www.oah.nc.gov/media/18265/download?attachment>.

³ Letter attached as Appendix D.

143.215.108A to change and the rules in this rulemaking package to become effective.” The EMC further contends that the U.S. EPA “reviews only final rules that have completed the State’s rulemaking process”.

The circular process set forth in S.L. 2024-1 essentially requires a final rule to be adopted before it can be determined whether statutory changes can take effect. However, assuming the EMC’s assertions as true, it seems as if this route may be the only way that the agency can carry out the Legislature’s mandates as written in S.L. 2024-1. Because of this, I am inclined to recommend approval of these rules.

In addition, the EMC has built safeguards into the rules to account for the possibility of the U.S. EPA declining the State’s SIP amendments. Specifically, the rules only become effective “[o]n the first day of a month that is 60 days after the Secretary of the Department of Environmental Quality certifies to the Revisor of Statutes that the U.S. Environmental Protection Agency has approved the amended rule into the North Carolina State Implementation Plan”. Thus, if the U.S. EPA ends up declining the State’s SIP amendments, then the rules will never go into effect. However, the Codifier may still have to note the rules as “void” in the Code to make the public aware of the procedural history of these rules.⁴

I also note that the RRC has recently reviewed and approved similar “contingent” rule language. For example, please see rules 15A NCAC 02Q .0303, .0304, .0305, and .0312, as reviewed in April 2025.⁵ As of today, these amended rules have yet to go into effect.

Prong 2: Clear and Unambiguous

G.S. 150B-21.9(a)(2) requires rules to be clear and unambiguous.

Staff initially had concerns regarding the clarity of the effective dates built into the draft rules. As mentioned above, the EMC proposes the following language: “Eff. (Pending On the first day of a month that is 60 days after the Secretary of the Department of Environmental Quality certifies to the Revisor of Statutes that the U.S. Environmental Protection Agency has approved the amended rule into the North Carolina State Implementation Plan pursuant to S.L. 2023-134, Section 12.11, as amended by S.L 2024-1, Section 4.13.).” On its face, this language may not provide clear guidance to the regulated public as to when the rules will in fact go into effect (or if at all).

In the EMC’s responses to RRC Staff, the agency asserts that the “EPA must make a completeness determination on the proposed SIP amendment within 6 months of receipt and must make a final determination on approval of the SIP amendment within 12 months of the completeness

⁴ In 2016, the Codifier of Rules (Ashley Snyder) dealt with contingent rules that ultimately failed due to the U.S. EPA withdrawing a call for the State’s SIP. G.S. 150B-21.3 does not grant the Codifier authority to permanently hold rules and prevent them from being entered into the Code. In this instance, the Codifier denoted the rules as “void” in the Code. See 15A NCAC 02D .0535 and .0545.

⁵ The April 2025 agenda can be accessed at <https://www.oah.nc.gov/news/events/rrc-meeting-agenda-april-2025>.

determination. 42 U.S.C. §7410(k).” So, at a maximum, there would be a final determination from the U.S. EPA on the statute and rules within 18 months’ time from submission.

This finality helps to alleviate some of my concerns regarding the clarity of the proposed rules’ effective dates. However, in the past, the RRC has generally frowned upon significantly delayed effective dates (i.e. more than a few months). This is because these lengthy delays can be contrary to the notice and comment requirements of the APA. For example, if the U.S. EPA takes it’s time to opine on the SIP amendment, would the public comments received by the agency still be timely and relevant if the rules do not kick in until late 2027? We do not know how long the U.S. EPA’s review will actually take, but this is something the Commission may want to consider.

Prongs 3 and 4: Reasonably Necessary and APA Requirements

G.S. 150B-19(4) prohibits an agency from repeating in rule the contents of a law. This is also prohibited by G.S. 150B-21.9(a)(3).

Rule 15A NCAC 02Q .0114 is nearly a verbatim adoption of the language used by the General Assembly in G.S. 143-215.108A as amended by S.L. 2023-134.

In a letter to RRC Staff, the EMC contends that “the rule is consistent with the broader scheme of the APA.” First, the EMC states that “the rule is necessary to incorporate the legislative change set out in Session Law 2023-134 into North Carolina’s SIP, and in turn ensure that North Carolina remains in compliance with the federal Clean Air Act.” Second, the EMC states that “the rule is a brief statement informing the public of a requirement imposed by law pursuant to G.S. § 150B-19(4)” and “should be permissible under the APA as necessary to fulfill the rule’s purpose to make pre-permitting construction regulations accessible to the regulated public while also incorporating those requirements into the SIP.” The EMC’s letter is included in Appendix D.

We find the EMC’s arguments to be compelling. And as discussed above, it seems as if this may be the only way for the EMC to carry out the statutory mandates as set forth in S.L. 2024-1. As such, the rule could be viewed as “reasonably necessary to implement or interpret an enactment of the General Assembly” despite the repetitive nature of the rule. If the RRC objected, it may be preventing the rules from moving forward as intended by the General Assembly.

I also note that during the Pre-Review stage, RRC staff preliminarily determined that the rule would not run afoul of G.S. 150B-19.1 or 150B-21.9.

Conclusion

I recommend that the RRC approve the final revised versions of rules 15A NCAC 02Q .0114, .0501, and .0507. My recommendation is primarily based on the fact that the EMC may not have any other feasible option to implement the statute as written. However, I recognize that it may be difficult for the RRC to conduct a complete review given the contingencies built into the statute and rules.

APPENDIX A:
§ 150B-21.9. Standards and timetable for review by Commission.

(a) Standards. - The Commission must determine whether a rule meets all of the following criteria:

- (1) It is within the authority delegated to the agency by the General Assembly.
- (2) It is clear and unambiguous.
- (3) It is reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency. The Commission shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed.
- (4) It was adopted in accordance with Part 2 of this Article.

The Commission shall not consider questions relating to the quality or efficacy of the rule but shall restrict its review to determination of the standards set forth in this subsection.

The Commission may ask the Office of State Budget and Management to determine if a rule has a substantial economic impact and is therefore required to have a fiscal note. The Commission must ask the Office of State Budget and Management to make this determination if a fiscal note was not prepared for a rule and the Commission receives a written request for a determination of whether the rule has a substantial economic impact.

In the event that a proposed temporary or permanent rule fails to comply with any of the standards set forth in this section, the Commission shall object to the temporary or permanent rule.

(a1) Repealed by Session Laws 2023-134, s. 21.2(g), effective October 3, 2023.

(b) Timetable. - The Commission must review a permanent rule submitted to it on or before the twentieth of a month by the last day of the next month. The Commission must review a rule submitted to it after the twentieth of a month by the last day of the second subsequent month. The Commission must review a temporary rule in accordance with the timetable and procedure set forth in G.S. 150B-21.1. (1991, c. 418, s. 1; 1995, c. 507, s. 27.8(f); 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2003-229, s. 9; 2023-134, s. 21.2(g).)

**APPENDIX B:
Excerpt of Session Law 2023-134, Section 12.11**

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023**

**SESSION LAW 2023-134
HOUSE BILL 259**

AN ACT TO MAKE BASE BUDGET APPROPRIATIONS FOR CURRENT OPERATIONS OF
STATE AGENCIES, DEPARTMENTS, AND INSTITUTIONS.

The General Assembly of North Carolina enacts:

PART I. TITLE AND INTRODUCTION

TITLE OF ACT

SECTION 1.1. This act shall be known as the "Current Operations Appropriations Act of 2023."

INTRODUCTION

SECTION 1.2. The appropriations made in this act are for maximum amounts necessary to provide the services and accomplish the purposes described in the budget in accordance with the State Budget Act. Savings shall be effected where the total amounts appropriated are not required to perform these services and accomplish these purposes, and the savings shall revert to the appropriate fund at the end of each fiscal year, except as otherwise provided by law.

AIR PERMITTING REVISIONS

AIR PERMITTING REVIEW AND ISSUANCE TIME LINES

SECTION 12.11.(a) G.S. 143-215.108(d)(2) reads as rewritten:

"(2) The Commission shall adopt rules specifying the times within which it must act upon applications for permits required by Title V and other permits required by this section. ~~The times specified shall be extended for the period during which the Commission is prohibited from issuing a permit under subdivisions (3) and (4) of this subsection.~~ The rules shall provide, at a minimum, that the Department shall issue the permit, deny the permit, or publish the permit for public notice and comment within 90 calendar days of receipt of an administratively complete application for a minor modification, or within 270 calendar days of receipt of an administratively complete application for a major modification. The Commission shall inform a permit applicant as to whether or not the application is complete within the time specified in the rules for action on the application. If the Commission fails to act on an application for a permit required by Title V or this

~~section within the time period specified, the failure to act on the application constitutes a final agency decision to deny the permit. A permit applicant, permittee, or other person aggrieved, as defined in G.S. 150B-2, may seek judicial review of a failure to act on the application as provided in G.S. 143-215.5 and Article 4 of Chapter 150B of the General Statutes. Notwithstanding the provisions of G.S. 150B-51, upon review of a failure to act on an application for a permit required by Title V or this section, a court may either: (i) affirm the denial of the permit or (ii) remand the application to the Commission for action upon the application within a specified time. the permit applicant, permittee, or other person aggrieved, as defined in G.S. 150B-2, may commence a contested case under G.S. 150B-23(a4)."~~

SECTION 12.11.(b) G.S. 143-213(1) is recodified as G.S. 143-213(1a).

SECTION 12.11.(c) G.S. 143-213, as recodified by subsection (b) of this section, is amended by adding a new subdivision to read:

"(1) The term "administratively complete" means that all information required by statute, regulation, or application form has been submitted to the Department for the purpose of processing a permit application."

TITLE V RESEARCH AND DEVELOPMENT EXEMPTION

SECTION 12.11.(d) The Environmental Management Commission shall begin rulemaking to create a Title V permit exemption for non-major research and development activities consistent with the Environmental Protection Agency's position regarding exemption for such activities as set forth in the July 10, 1995, "White Paper for Streamlined Development of Part 70 Permit Applications." The rules shall include, at a minimum, allowance levels and minor permit modification thresholds to promote greater flexibility in research and development activities and to allow facilities subject to Title V permit requirements flexibility to work with the Department of Environmental Quality and notify them of research activities with a minor permit modification to maintain compliance. The Commission shall complete draft rulemaking activities and submit a Title V program amendment request to the Environmental Protection Agency no later than July 1, 2025.

PRE-PERMITTING ACTIVITIES

SECTION 12.11.(e) G.S. 143-215.108A reads as rewritten:

"§ 143-215.108A. Control of sources of air pollution; construction of new facilities; alteration or expansion of existing facilities.

(a) **New Facilities.** – ~~A~~ Except as provided in subsection (b1) of this section, a person may not, without obtaining a permit under G.S. 143-215.108, construct or operate an air contaminant source, equipment, or associated air cleaning device at a site or facility where, at the time of the construction, there is no other air contaminant source, equipment, or associated air cleaning device for which a permit is required under G.S. 143-215.108. ~~A person may, however, undertake the following activities prior to obtaining a permit if the person complies with the requirements of this section:~~

- ~~(1) Clearing and grading.~~
- ~~(2) Construction of access roads, driveways, and parking lots.~~
- ~~(3) Construction and installation of underground pipe work, including water, sewer, electric, and telecommunications utilities.~~

- (4) ~~Construction of ancillary structures, including fences and office buildings, that are not a necessary component of an air contaminant source, equipment, or associated air cleaning device for which a permit is required under G.S. 143-215.108.~~

(b) Permitted Facilities. – A person who holds a permit under G.S. 143-215.108 may apply to the Commission for a modification of the permit to allow the person to alter or expand the physical arrangement or operation of an air contaminant source, equipment, or associated air cleaning device in a manner that alters the emission of air contaminants. The Except as provided in subsection (b1) of this section, the permittee may not operate the altered, expanded, or additional air contaminant source, equipment, or associated air cleaning device in a manner that alters the emission of any air contaminant without obtaining a permit modification under G.S. 143-215.108. A permittee may, however, alter or expand the physical arrangement or operation of an air contaminant source, equipment, or associated air cleaning device at a facility permitted under G.S. 143-215.108 if the permittee complies with the requirements of this section. At least 15 days prior to commencing alteration or expansion under this subsection, the permittee shall give notice by publication and shall submit to the Commission a notice of the permittee's intent to alter or expand the physical arrangement or operation of an air contaminant source, equipment, or associated air cleaning device. Notice by publication shall be in a newspaper having general circulation in the county or counties where the facility is to be located; shall be at the permittee's own expense; shall include a statement that written comment may be submitted to the Commission, that the Commission will consider any comment that it receives, and the Commission's address for submission of written comment; and shall include all the information required by subdivisions (1) through (6) of this subsection. The permittee shall submit a proof of publication of the notice to the Commission within 15 days of the date of publication. The notice of intent to the Commission shall include all of the following:

...

(b1) A person who (i) has filed an application under this Article to construct or operate an air contaminant source, equipment, or associated air cleaning device at a site or facility or (ii) holds a permit under G.S. 143-215.108 and who has applied to the Commission for a modification of the permit to allow the person to alter or expand the physical arrangement or operation of an air contaminant source, equipment, or associated air cleaning device in a manner that alters the emission of air contaminants may undertake the following activities prior to obtaining a permit if the person complies with the requirements of this section:

- (1) Clearing and grading.
- (2) Construction of access roads, driveways, and parking lots.
- (3) Construction and installation of underground pipe work, including water, sewer, electric, and telecommunications utilities.
- (4) Construction of ancillary structures, including fences and office buildings, that are not a necessary component of an air contaminant source, equipment, or associated air cleaning device for which a permit is required under G.S. 143-215.108.
- (5) Upon determination that an application for a permit or permit modification is administratively complete, the construction (but not operation) of a new air contaminant source, equipment, or associated air cleaning or emissions control devices prior to permit issuance. The exception in this subdivision applies only to an application for the addition or modification of an emissions source that is not subject to (i) permit limits set pursuant to programs for the prevention of

significant deterioration and for the attainment of air quality standards in nonattainment areas under G.S. 143-215.107(a)(7), (ii) a residual risk-based hazardous air pollutant standard under 42 U.S.C. § 7412(f), as amended, or (iii) a case-by-case maximum achievable control technology (MACT) permit requirement issued by the Department pursuant to 42 U.S.C. § 7412(j), as amended. The undertaking of pre permitting activities under this subdivision shall not entitle the permit or permit modification applicant to operate any air contaminant source, equipment, or associated air cleaning or emissions control devices prior to permit issuance.

...."

APPENDIX C:
Excerpt of Session Law 2024-1, Section 4.13

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

SESSION LAW 2024-1
SENATE BILL 508

AN ACT TO MAKE TECHNICAL, CLARIFYING, AND OTHER AMENDATORY
MODIFICATIONS TO THE CURRENT OPERATIONS APPROPRIATIONS ACT
OF 2023 AND TO OTHER LEGISLATION.

The General Assembly of North Carolina enacts:

PRE-PERMITTING ACTIVITIES AMENDMENT

SECTION 4.13.(a) Section 12.11 of S.L. 2023-134 is amended by adding two new subsections to read:

"SECTION 12.11.(f) No later than July 1, 2025, the Department of Environmental Quality shall prepare and submit to the United States Environmental Protection Agency for approval by that agency a proposed North Carolina State Implementation Plan amendment based on the changes to the air permitting program provided in this section.

"SECTION 12.11.(g) This section becomes effective on the first day of a month that is 60 days after the Secretary of the Department of Environmental Quality certifies to the Revisor of Statutes that the United States Environmental Protection Agency has approved an amendment to the North Carolina State Implementation Plan submitted as required by subsection (f) of this section. The Secretary shall provide this notice along with the effective date of this act on its website and by written or electronic notice to current holders of air permits issued by the Department. This section applies to applications for new air permits and for modifications of existing permits received on or after the effective date specified in this subsection."

SECTION 4.13.(b) This section is effective retroactive to July 1, 2023.

APPENDIX D:
EMC's Letter to RRC Staff
Re: Explanation of the Need for a Pre-Review regarding 15A NCAC 02Q .0114



ENVIRONMENTAL MANAGEMENT COMMISSION

NORTH CAROLINA DEPARTMENT OF ENVIRONMENTAL QUALITY

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EMC Chair

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Kevin Tweedy
Elizabeth Jill Weese
Bill Yarborough

Office of Administrative Hearings
Rules Review Commission
1711 New Hope Church Road
Raleigh, NC 27609

Re: Explanation of the Need for a Pre-Review regarding 15A NCAC 02Q .0114

Counsel to Rules Review Commission,

North Carolina Session Law 2023-134, section 12.11, as amended by Session Law 2024-1, revises General Statute § 143-215.108A(b1)(5) to allow construction (though not operation) of new air contaminant sources, equipment, or the associated air cleaning or emissions control devices prior to issuance of an air quality permit. The change in statute goes into effect on the first day of a month that is 60 days after the Environmental Protection Agency (EPA) approves an amendment to North Carolina's air quality State Implementation Plan (SIP) reflecting the change in statute. S.L. 2024-1, sec. 4.13(a).

States are required to adopt SIPs under the Clean Air Act. 42 U.S.C. § 7410. The EPA is responsible for approving SIPs to ensure they meet federal statutory requirements. 42 U.S.C. § 7410(k)(3). One of the statutory requirements states must meet is 40 C.F.R. § 51.160. Therein, states are required to adopt legally enforceable procedures enabling the State to determine "whether the construction or modification of a facility, building, structure or installation, or combination of these will result in [] [a] violation of applicable portions of the control strategy." *Id.* Control strategy is further defined at 40 C.F.R. § 51.100(n) as "a combination of measures designed to achieve the aggregate reduction of emissions necessary for attainment and maintenance of national standards "

General Statute § 143-215.108A changes North Carolina's "legally enforceable procedure" for determining whether construction will result in violation of a control strategy. If a change in State law affects an approved SIP, the State is required to submit to EPA a proposed amendment to its SIP for EPA's approval. 40 C.F.R. § 51.104.

Pursuant to Section 110(a) of the Clean Air Act, the original SIP and any subsequent amendments must be publicly noticed and a public hearing held before the state can adopt the SIP or SIP amendments. 42 U.S.C. § 7410(a); *see also* 40 C.F.R. § 51.102 (outlining the federal requirements for public hearings). Because session laws and statutory text may be changed without any public notice or hearing, it is state

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919-707-9023

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rules and regulations that make up the bulk of North Carolina's approved SIP as they are required to proceed through public notice and hearing as part of the administrative process.

In order to comply with federal requirements for SIP amendments and Session Law 2023-134, the EMC drafted a new rule, 15A NCAC 02Q .0114, as part of its regulatory program that comprises North Carolina's SIP. The text of that rule would be submitted to the EPA for approval as part of the SIP. However, the text of the rule closely mirrors that of the proposed statutory language in G.S. § 143-215.108A as amended by Session Law 2023-134. This alignment between proposed rule and statute is simply due to the clarity and precision with which the legislature drafted the law.

The EMC recognizes the potential for this rule to conflict with the NC APA, in particular G.S. § 150B-19(4), which prohibits an agency from repeating in rule the contents of a law. However, the EMC submits that the rule is consistent with the broader scheme of the APA. First, the rule is necessary to incorporate the legislative change set out in Session Law 2023-134 into North Carolina's SIP, and in turn ensure that North Carolina remains in compliance with the federal Clean Air Act. The rule thus complies with G.S. § 150B-19.1(a)(3). *See also*, N.C.G.S. § 150B-21.9(3) (requiring the RRC to consider whether a rule is necessary to implement an enactment of the General Assembly or of Congress). Second, the rule is a brief statement informing the public of a requirement imposed by law pursuant to G.S. § 150B-19(4), and thus, while it may be repetitive of statute, it should be permissible under the APA as necessary to fulfill the rule's purpose to make pre-permitting construction regulations accessible to the regulated public *while also* incorporating those requirements into the SIP.

Recognizing the potential discord this proposed rule presents with regard to adoption under the APA, the EMC is seeking the RRC's review prior to adoption of the rule and submission to the RRC. Please direct any questions or concerns to EMC Counsel, Elly Young, at esyoun@ncdoj.gov or 919-716-6944. The EMC thanks you for your time and consideration.

Respectfully submitted,



Elly S. Young
Counsel, Environmental Management

Commission Cc: oah.rules@oah.nc.gov

Encl: 15A NCAC 02Q .0114 Draft Rule
Session Law 2023-134, Section
12.11
Session Law 2024-1, Section 4.13
42 U.S.C. § 7410
40 C.F.R. § 51.100
40 C.F.R. § 51.102
40 C.F.R. § 51.104
40 C.F.R. § 51.160

Christopher S. Miller
Rules Review Commission Counsel

1 15A NCAC 02Q .0114 is adopted as published in 40:08 NCR 732 and 40:12 NCR 1008 as follows:

2
3 **15A NCAC 02Q .0114 ACTIVITIES ALLOWED PRIOR TO PERMIT ISSUANCE**

4 Upon determination that an application for a permit or permit modification contains all information required by statute,
5 regulation, and application form, consistent with G.S. 143-213, the construction, but not operation, of a new air
6 contaminant source, equipment, or associated air cleaning or emission control devices may commence prior to permit
7 issuance if the emissions source is not subject to:

8 (1) permit limits set pursuant to programs for prevention of significant deterioration pursuant 15A
9 NCAC 02D .0530 and for the attainment of air quality standards in nonattainment areas pursuant to
10 15A NCAC 02D .0531;

11 (2) a residual risk-based hazardous air pollutant standard pursuant to 15A NCAC 02D .1111; or

12 (3) a case-by-case maximum achievable control technology (MACT) permit requirement issued by the
13 Division pursuant to 15A NCAC 02D .1109 and Rule .0526 of this Subchapter.

14 The undertaking of pre-permitting activities pursuant to this Rule shall not entitle the applicant to operate any air
15 contaminant source, equipment, or associated air cleaning or emissions control devices prior to permit issuance.

16
17
18 *History Note: Authority G.S. 143-212; 143-213; 143-215.3(a)(1); 143-215.108A;*

19 *Adoption Eff. (Pending On the first day of a month that is 60 days after the Secretary of the*
20 *Department of Environmental Quality certifies to the Revisor of Statutes that the U.S. Environmental*
21 *Protection Agency has approved the amended rule into the North Carolina State Implementation*
22 *Plan pursuant to S.L. 2023-134, Section 12.11, as amended by S.L. 2024-1, Section 4.13.)*

1 15A NCAC 02Q .0501 is amended as published in 40:08 NCR 732 and 40:12 NCR 1008 as follows:

2
3 **SECTION .0500 - TITLE V PROCEDURES**
4

5 **15A NCAC 02Q .0501 PURPOSE OF SECTION AND REQUIREMENT FOR A PERMIT**

6 (a) The purpose of this Section is to establish an air quality permitting program as required pursuant to Title V of the
7 Clean Air Act and 40 CFR Part 70.

8 (b) With the exception in Paragraph (c) of this ~~Rule~~, Rule and the provisions of 15A NCAC 02Q .0114, the owner or
9 operator of an existing facility, new facility, or modification of an existing facility (except for minor modifications
10 pursuant to 15A NCAC 02Q .0515), including significant modifications that would not contravene or conflict with a
11 condition in the existing permit, shall not begin construction without first obtaining:

- 12 (1) a construction and operation permit following the procedures set forth in this Section (except for
13 15A NCAC 02Q .0504), or
14 (2) a construction and operation permit following the procedures set forth in 15A NCAC 02Q .0504
15 and filing a complete application within 12 months after commencing operation to modify the
16 construction and operation permit to meet the requirements of this Section.

17 (c) With the exception provided in the provisions of 15A NCAC 02Q .0114, ~~if~~ If the owner or operator proposes to
18 make a significant modification pursuant to 15A NCAC 02Q .0516 that would contravene or conflict with a condition
19 in the existing permit, the owner or operator shall not begin construction or make the modification until the owner or
20 operator has obtained:

- 21 (1) a construction and operation permit following the procedures set forth in this Section (except for
22 15A NCAC 02Q .0504); or
23 (2) a construction and operation permit following the procedures set forth in 15A NCAC 02Q .0504
24 and, before beginning operation, files an application and obtains a permit modifying the construction
25 and operation permit to meet the requirements of this Section (except for 15A NCAC 02Q .0504).

26 (d) All facilities subject to this Section shall have a permit to operate that assures compliance with 40 CFR Part 70
27 and all applicable federal and State requirements.

28 (e) Except as allowed pursuant to 15A NCAC 02Q .0515(f) (minor modifications), no facility subject to the
29 requirements of this Section may operate after the time that it is required to submit a timely and complete application
30 pursuant to this Section except in compliance with a permit issued pursuant to this Section. This Paragraph does not
31 apply to ~~to~~ permit renewals pursuant to 15A NCAC 02Q .0513.

32 (f) If the conditions of 15A NCAC 02Q .0512(b) (application shield) are met, the facility's failure to have a permit
33 pursuant to this Section shall not be a violation of operating without a permit.

34 (g) If the owner or operator of a facility subject to the requirements of this Section submits an application for a revision
35 to his permit before receiving the initial permit pursuant to this Section, the application for the revision shall be
36 processed pursuant to 15A NCAC 02Q .0300.

- 1 (h) The owner or operator of a facility or source subject to the requirements of this Section may also be subject to the
2 toxic air pollutant procedures set forth in 15A NCAC 2Q .0700.
- 3 (i) The owner or operator of an affected unit subject to the acid rain program requirements of Title IV is also subject
4 to the procedures pursuant to 15A NCAC 02Q .0400.
- 5 (j) The owner or operator of a facility subject to the requirements of this Section shall pay permit fees in accordance
6 with the requirements of 15A NCAC 02Q .0200.

7

8 *History Note:* Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108; 143-215.108A;
9 *Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule*
10 *becomes effective, whichever is sooner;*
11 *Eff. July 1, 1994;*
12 *Amended Eff. July 1, 1998; July 1, 1996;*
13 *Readopted Eff. April 1, ~~2018~~, 2018;*
14 *Amended Eff. (Pending On the first day of a month that is 60 days after the Secretary of the*
15 *Department of Environmental Quality certifies to the Revisor of Statutes that the U.S. Environmental*
16 *Protection Agency has approved the amended rule into the North Carolina State Implementation*
17 *Plan pursuant to S.L. 2023-134, Section 12.11, as amended by S.L. 2024-1, Section 4.13.)*