

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02Q .0103

DEADLINE FOR RECEIPT: Friday, June 10, 2019

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

Subitem (1)(b), is the EPA “delegation or approval” found in a document? What is the document? Where is it found? Should it be incorporated by reference?

Subitem (5)(b), is the “implementation plan” in the federal regs.? If not, should this be incorporated by reference?

Subitem (9)(d), what makes something a “necessary component”? Please define or change.

Subitem (21)(b), what does “or may be subject to”? Define or delete.

Subitem (30)(d), what is “standard” and where is it found? If in the federal regs., should these be incorporated by reference? What are the “other requirements”? Where are these found? Also, delete the open parenthesis on line 17: “(but”.

Item (33), what “Act”? The Clean Air Act? Is “applicable” necessary for the definition?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Lawrence R. Duke
Commission Counsel
Date submitted to agency: June 3, 2022

1 15A NCAC 02Q .0103 is amended as published in 36:14 NCR 1202 as follows:

2
3 **15A NCAC 02Q .0103 DEFINITIONS**

4 For the purposes of this Subchapter, the definitions in G.S. 143-212 and G.S. 143-213 and the following definitions
5 apply:

- 6 (1) "Administrator" means, when it appears in any Code of Federal Regulation incorporated by
7 reference in 15A NCAC 02Q, the Director of the Division of Air Quality unless:
8 (a) a specific rule in this Subchapter specifies otherwise, or
9 (b) the U.S. Environmental Protection Agency in its delegation or approval states that a
10 specific authority of the Administrator of the Environmental Protection Agency is not
11 included in its delegation or approval.
- 12 (2) "Air Pollutant" means an air pollution agent or combination of such agents, including any physical,
13 chemical, biological, radioactive substance, or matter that is emitted into or otherwise enters the
14 ambient air. Water vapor shall not be considered an air pollutant.
- 15 (3) "Allowable emissions" means the maximum emissions allowed by the applicable rules set forth in
16 15A NCAC 02D or by permit conditions if the permit limits emissions to a lesser amount.
- 17 (4) "Alter or change" means to make a modification.
- 18 (5) "Applicable requirements" means:
19 (a) any requirement of 15A NCAC 02Q .0500;
20 (b) any standard or other requirement provided for in the implementation plan approved or
21 promulgated by EPA through rulemaking pursuant to Title I of the federal Clean Air Act,
22 that implements the relevant requirements of the federal Clean Air Act including any
23 revisions to 40 CFR Part 52;
24 (c) any term or condition of a construction permit issued to a facility pursuant to 15A NCAC
25 02D .0530, .0531, or .0532;
26 (d) any standard or other requirement pursuant to Section 111 or 112 of the federal Clean Air
27 Act, but not including the contents of any risk management plan required pursuant to
28 Section 112 of the federal Clean Air Act;
29 (e) any standard or other requirement pursuant to Title IV of the federal Clean Air Act;
30 (f) any standard or other requirement governing solid waste incineration pursuant to Section
31 129 of the federal Clean Air Act;
32 (g) any standard or other requirement pursuant to Section 183(e), 183(f), or 328 of the federal
33 Clean Air Act;
34 (h) any standard or requirement pursuant to Title VI of the federal Clean Air Act unless a
35 permit for such requirement is not required pursuant to this Section;
36 (i) any requirement pursuant to Section 504(b) or 114(a)(3) of the federal Clean Air Act; or

- 1 (j) any national ambient air quality standard or increment or visibility requirement pursuant
2 to Part C of Title I of the federal Clean Air Act, but only as it would apply to temporary
3 sources permitted pursuant to Section 504(e) of the federal Clean Air Act.
- 4 (6) "Applicant" means a person who is applying for an air quality permit from the Division.
- 5 (7) "Application package" means all elements or documents required to make an application complete.
- 6 (8) "CFR" means the Code of Federal Regulations.
- 7 (9) "Construction" means change in the method of operation or any physical change, including on-site
8 fabrication, erection, installation, replacement, demolition, or modification of a source, that results
9 in a change in emissions or affects the compliance status. The following activities shall not be
10 considered construction:
- 11 (a) clearing and grading;
- 12 (b) building access roads, driveways, and parking lots;
- 13 (c) building and installing underground pipe work, including water, sewer, electric, and
14 telecommunications utilities; or
- 15 (d) building ancillary structures, including fences and office buildings that are not a necessary
16 component of an air contaminant source, equipment, or associated air cleaning device for
17 which a permit is required pursuant to G.S. 143-215.108.
- 18 (10) "Director" means the Director of the Division of Air Quality.
- 19 (11) "Division" means the Division of Air Quality.
- 20 (12) "EPA" means the United States Environmental Protection Agency or the Administrator of the
21 Environmental Protection Agency.
- 22 (13) "EPA approves" means full approval, interim approval, or partial approval by EPA.
- 23 (14) "Equivalent unadulterated fuels" means used oils that have been refined such that the content of
24 toxic additives or contaminants in the oil are no greater than those in unadulterated fossil fuels.
- 25 (15) "Facility" means all of the pollutant-emitting activities, except transportation facilities, that are
26 located on one or more adjacent properties under common control.
- 27 (16) ~~"Federally enforceable" or "federal enforceable"~~ "Federally-enforceable" means enforceable by
28 EPA, EPA, Administrator as defined in Item (1) of this Rule, and citizens under the federal Clean
29 Air Act.
- 30 (17) "Fuel combustion equipment" means any fuel burning source covered pursuant to 15A NCAC 02D
31 .0503, .0504, .0536, or 40 CFR Part 60 Subpart D, Da, Db, or Dc.
- 32 (18) "Green wood" means wood with a moisture content of 18% or more.
- 33 (19) "Hazardous air pollutant" means any pollutant that has been listed pursuant to Section 112(b) of the
34 federal Clean Air Act. Pollutants listed only in 15A NCAC 02D .1104 (Toxic Air Pollutant
35 Guidelines), but not pursuant to Section 112(b), shall not be included in this definition.
- 36 (20) "Insignificant activities" means activities defined as insignificant activities because of category or
37 as insignificant activities because of size or production rate pursuant to 15A NCAC 02Q .0503.

- 1 (21) "Lesser quantity cutoff" means:
- 2 (a) for a source subject to the requirements of Section 112(d) or (j) of the federal Clean Air
- 3 Act, the level of emissions of hazardous air pollutants below which the following are not
- 4 required:
- 5 (i) maximum achievable control technology (MACT) or generally available control
- 6 technology (GACT), including work practice standards, pursuant to Section
- 7 112(d) of the federal Clean Air Act;
- 8 (ii) a MACT standard established pursuant to Section 112(j) of the federal Clean Air
- 9 Act; or
- 10 (iii) substitute MACT or GACT adopted pursuant to Section 112(l) of the federal
- 11 Clean Air Act;
- 12 (b) for modification of a source subject to, or that may be subject to, the requirements of
- 13 Section 112(g) of the federal Clean Air Act, the level of emissions of hazardous air
- 14 pollutants below which MACT is not required to be applied pursuant to Section 112(g) of
- 15 the federal Clean Air Act; or
- 16 (c) for all other sources, potential emissions of each hazardous air pollutant below 10 tons per
- 17 year and the aggregate potential emissions of all hazardous air pollutants below 25 tons per
- 18 year.
- 19 (22) "Major facility" means a major source as defined pursuant to 40 CFR 70.2.
- 20 (23) "Modification" means any physical change or change in method of operation that results in a change
- 21 in emissions or affects compliance status of the source or facility.
- 22 (24) "Owner or operator" means any person who owns, leases, operates, controls, or supervises a facility,
- 23 source, or air pollution control equipment.
- 24 (25) "Peak shaving generator" means a generator that is located at a facility and is used only to serve that
- 25 facility's on-site electrical load during peak demand periods for the purpose of reducing the cost of
- 26 electricity; it does not generate electricity for resale. A peak shaving generator may also be used for
- 27 emergency backup.
- 28 (26) "Permit" means the binding written document, including any revisions thereto, issued pursuant to
- 29 G.S. 143-215.108 to the owner or operator of a facility or source that emits one or more air pollutants
- 30 and that allows that facility or source to operate in compliance with G.S. 143-215.108. This
- 31 document shall specify the requirements applicable to the facility or source and to the permittee.
- 32 (27) "Permittee" means the person who has been issued an air quality permit from the Division.
- 33 (28) "Potential emissions" means the rate of emissions of any air pollutant that would occur at the
- 34 facility's maximum capacity to emit any air pollutant under its physical and operational design. Any
- 35 physical or operational limitation on the capacity of a facility to emit an air pollutant shall be treated
- 36 as a part of its design if the limitation is federally enforceable. Such physical or operational
- 37 limitations shall include air pollution control equipment and restrictions on hours of operation or on

1 the type or amount of material combusted, stored, or processed. Potential emissions shall include
2 fugitive emissions as specified in the definition of major source in 40 CFR 70.2. Potential emissions
3 shall not include a facility's secondary emissions such as those from motor vehicles associated with
4 the facility and shall not include emissions from insignificant activities because of category as
5 defined in 15A NCAC 02Q .0503. If a rule in 40 CFR Part 63 uses a different methodology to
6 calculate potential emissions, that methodology shall be used for sources and pollutants regulated
7 pursuant to that rule.

8 (29) "Portable generator" means a generator permanently mounted on a trailer or a frame with wheels.

9 (30) "Regulated air pollutant" means:

10 (a) nitrogen oxides or any volatile organic compound as defined pursuant to 40 CFR 51.100;

11 (b) any pollutant for which there is an ambient air quality standard pursuant to 40 CFR Part
12 50;

13 (c) any pollutant regulated pursuant to 15A NCAC 02D .0524, .1110, or .1111; or 40 CFR Part
14 60, 61, or 63;

15 (d) any pollutant subject to a standard promulgated pursuant to Section 112 of the federal
16 Clean Air Act or other requirements established pursuant to Section 112 of the federal
17 Clean Air Act, including Section 112(g) (but only for the facility subject to Section
18 112(g)(2) of the federal Clean Air Act), (j), or (r) of the federal Clean Air Act; or

19 (e) any Class I or II substance listed pursuant to Section 602 of the federal Clean Air Act.

20 (31) "Sawmill" means a place or operation where logs are sawed into lumber consisting of one or more
21 of these activities: debarking, sawing, and sawdust handling. Activities that shall not be considered
22 part of a sawmill include chipping, sanding, planing, routing, lathing, and drilling.

23 (32) "Source" means any stationary article, machine, process equipment, or other contrivance, or
24 combination thereof, from which air pollutants emanate or are emitted, either directly or indirectly.

25 (33) "State-enforceable only" means terms and conditions that are not required under the Act or under
26 any of its applicable requirements. Terms and conditions designated as State-enforceable only are
27 not subject to the requirements of 40 CFR Part 70.

28 ~~(33)~~(34) "Toxic air pollutant" means any of the carcinogens, chronic toxicants, acute systemic toxicants, or
29 acute irritants that are listed in 15A NCAC 02D .1104.

30 ~~(34)~~(35) "Transportation facility" shall be considered a complex source as defined in G.S. 143-213(22).

31 ~~(35)~~(36) "Unadulterated fossil fuel" means fuel oils, coal, natural gas, or liquefied petroleum gas to which no
32 toxic additives have been added that may result in the emissions of a toxic air pollutant listed
33 pursuant to 15A NCAC 02D .1104.

34
35 *History Note: Authority G.S. 143-212; 143-213; 143-215.3(a)(1);*

36 *Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule*
37 *becomes effective, whichever is sooner;*

1 *Eff. July 1, 1994;*
2 *Amended Eff. April 1, 1999; July 1, 1998; July 1, 1996;*
3 *Temporary Amendment Eff. December 1, 1999;*
4 *Amended Eff. January 1, 2015; December 1, 2005; July 1, 2000;*
5 *Readopted Eff. April 1, ~~2018-2018~~;*
6 *Amended Eff. July 1, 2022*
7

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02Q .0503

DEADLINE FOR RECEIPT: Friday, June 10, 2019

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

Item (2), what is “such other information that is necessary to determine compliance with all applicable federal and State requirements”? Is this clarified in another rule? Should that rule be referenced?

Item (4), please remove parenthesis and “applicable”.

Item (6), define or delete “reasonably”.

Subitem (7)(b), is “applicable requirements pursuant to” necessary?

Item (8), is “applicable” necessary?

Item (9), where is “major facility” defined?

What does item (14) mean? This is unclear and vague.

Item (16), again, “applicable”, and also remove parenthesis.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Lawrence R. Duke
Commission Counsel
Date submitted to agency: June 3, 2022

1 15A NCAC 02Q .0503 is amended as published in 36:14 NCR 1202 as follows:

2
3 **15A NCAC 02Q .0503 DEFINITIONS**

4 For the purposes of this Section, the definitions in G.S. 143-212, G.S. 143-213, 15A NCAC 02Q .0103, and the
5 following definitions apply:

- 6 (1) "Affected States" means all states or local air pollution control agencies whose areas of jurisdiction
7 are:
8 (a) contiguous to North Carolina and located less than $D=Q/12.5$ from the facility, where:
9 (i) Q = emissions of the pollutant emitted at the highest permitted rate in tons per
10 year, and
11 (ii) D = distance from the facility to the contiguous state or local air pollution control
12 agency in miles unless the applicant can demonstrate that the ambient impact in
13 the contiguous states or local air pollution control agencies is less than the
14 incremental ambient levels in 15A NCAC 02D .0532(c)(5); or
15 (b) within 50 miles of the permitted facility.
16 (2) "Complete application" means an application that provides all information described in 40 CFR
17 70.5(c) and such other information that is necessary to determine compliance with all applicable
18 federal and State requirements.
19 (3) "Draft permit" means the version of a permit that the Division offers for public participation
20 pursuant to 15A NCAC 02Q .0521 or affected ~~State~~ state review pursuant to 15A NCAC 02Q .0522.
21 (4) "Emissions allowable under the permit" means an emissions limit (including a work practice
22 standard) established by a federally enforceable permit term or condition, or a federally enforceable
23 emissions cap that the facility has assumed to avoid an applicable requirement to which the facility
24 would otherwise be subject.
25 (5) "Final permit" means the version of a permit that the Director issues that has completed all review
26 procedures required pursuant to this Section if the permittee does not file a petition pursuant to
27 Article 3 of G.S. 150B that is related to the permit.
28 (6) "Fugitive emissions" means those emissions which could not reasonably pass through a stack,
29 chimney, vent, or other functionally-equivalent opening.
30 (7) "Insignificant activities because of category" means:
31 (a) mobile sources;
32 (b) air-conditioning units used for human comfort that are not subject to applicable
33 requirements pursuant to Title VI of the federal Clean Air Act and do not exhaust air
34 pollutants into the ambient air from any manufacturing or other industrial process;
35 (c) ventilating units used for human comfort that do not exhaust air pollutants into the ambient
36 air from any manufacturing or other industrial process;

- 1 (d) heating units used for human comfort that have a heat input of less than 10,000,000 Btu
2 per hour and that do not provide heat for any manufacturing or other industrial process;
- 3 (e) noncommercial food preparation;
- 4 (f) consumer use of office equipment and products;
- 5 (g) janitorial services and consumer use of janitorial products;
- 6 (h) internal combustion engines used for landscaping purposes;
- 7 (i) new residential wood heaters subject to 40 CFR Part 60, Subpart AAA; and
- 8 (j) demolition and renovation activities covered solely pursuant to 40 CFR Part 61, Subpart
9 M.
- 10 (8) "Insignificant activities because of size or production rate" means any activity whose emissions
11 would not violate any applicable emissions standard and whose potential emission of particulate,
12 sulfur dioxide, nitrogen oxides, volatile organic compounds, and carbon monoxide before air
13 pollution control devices, are each no more than five tons per year and whose potential emissions
14 of hazardous air pollutants before air pollution control devices, are each below 1000 pounds per
15 year.
- 16 (9) "Minor facility" means any facility that is not a major facility.
- 17 (10) "Operation" means the use of equipment that emits regulated pollutants.
- 18 (11) "Permit renewal" means the process by which a permit is reissued at the end of its term.
- 19 (12) "Permit revision" means any permit modification pursuant to 15A NCAC 02Q .0515, .0516, or .0517
20 or any administrative permit amendment pursuant to 15A NCAC 02Q .0514.
- 21 (13) "Proposed permit" means the version of a permit that the Director proposes to issue and forwards to
22 EPA for review pursuant to 15A NCAC 02Q .0522.
- 23 (14) "Relevant source" means only those sources that are subject to applicable requirements.
- 24 (15) "Responsible official" means a responsible official as defined in 40 CFR 70.2.
- 25 (16) "Section 502(b)(10) changes" means changes that contravene an express permit term or condition.
26 Such changes shall not include changes that would violate applicable requirements or contravene
27 federally enforceable permit terms and conditions that are monitoring (including test methods),
28 recordkeeping, reporting, or compliance certification requirements.
- 29 (17) "Synthetic minor facility" means a facility that would otherwise be required to follow the procedures
30 of this Section except that the potential to emit is restricted by one or more federally enforceable
31 physical or operational limitations, including air pollution control equipment and restrictions on
32 hours or operation, the type or amount of material combusted, stored, or processed, or similar
33 parameters.
- 34 (18) "Timely" means:
- 35 (a) for a new facility or newly subject facility, 12 months from the date that the facility or
36 source becomes subject to the Title V operating permit program pursuant to 15A NCAC
37 02Q .0500; one year after commencing operation;

- 1 (b) for renewal of a permit previously issued pursuant to this Section, six months before the
2 expiration of that permit;
- 3 (c) for a minor modification pursuant to 15A NCAC 02Q .0515, before commencing the
4 modification;
- 5 (d) for a significant modification pursuant to 15A NCAC 02Q .0516 where the change would
6 not contravene or conflict with a condition in the existing permit, 12 months after
7 commencing operation;
- 8 (e) for reopening for cause pursuant to 15A NCAC 02Q .0517, as specified by the Director in
9 a request for additional information by the Director;
- 10 (f) for requests for additional information, as specified by the Director in a request for
11 additional information by the Director; or
- 12 (g) for modifications made pursuant to Section 112(j) of the federal Clean Air Act, 18 months
13 after EPA fails to promulgate a standard for that category of source pursuant to Section
14 112 of the federal Clean Air Act by the date established pursuant to Section 112(e)(1) or
15 (3) of the federal Clean Air Act.

16
17 *History Note: Authority G.S. 143-215.3(a)(1); 143-212; 143-213;*
18 *Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule*
19 *becomes effective, whichever is sooner;*
20 *Eff. July 1, 1994;*
21 *Amended Eff. July 1, 1996;*
22 *Temporary Amendment Eff. December 1, 1999;*
23 *Amended Eff. January 1, 2007; July 1, 2000;*
24 *Readopted Eff. April 1, ~~2018-2018~~;*
25 *Amended Eff. July 1, 2022*
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REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02Q .0504

DEADLINE FOR RECEIPT: Friday, June 10, 2019

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

Paragraph (a), use "shall" instead of "must".

Paragraph (b), use "his or her permit" instead of "his permit". Also, what are the procedures "in this Rule." Should the be "in this Section."?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Lawrence R. Duke
Commission Counsel
Date submitted to agency: June 3, 2022

1 15A NCAC 02Q .0504 is amended with changes as published in 36:14 NCR 1202 as follows:

2
3 **15A NCAC 02Q .0504 OPTION FOR OBTAINING CONSTRUCTION AND OPERATION PERMIT**

4 (a) Pursuant to 15A NCAC 02Q ~~.0501(e)(2)~~,0501(b)(2) or ~~(d)(2)(c)(2)~~, the owner or operator of a new or modified
5 facility subject to the requirements of this Section that chooses to obtain a construction and operation permit before
6 the facility must obtain a permit pursuant to this Section may file an application pursuant to 15A NCAC 02Q .0300.

7 (b) The applicant shall state in his permit application that he or she wishes to follow the procedures in this Rule.

8 ~~(c) If the option allowed pursuant to 15A NCAC 02Q .0501(b)(1) is used, then the application processing procedures~~
9 ~~for prevention of significant deterioration in 15A NCAC 02D .0530 and new source review for nonattainment areas~~
10 ~~in 15A NCAC 02D .0531 do not apply. If the option allowed pursuant to 15A NCAC 02Q .0501(b)(2) is used, then~~
11 ~~the application processing procedures in this Section and in either of the following rules shall apply:~~

12 ~~(1) 15A NCAC 02D .0530 for prevention of significant deterioration; or~~

13 ~~(2) 15A NCAC 02D .0531 for new source review for nonattainment areas.~~

14 ~~(d)(c)~~ If the procedures in 15A NCAC 02Q .0300 are followed, the permittee shall have ~~one year~~12 months after the
15 facility or source becomes subject to the permit program in 15A NCAC 02Q .0500 if the permittee is applying for a
16 Title V permit for the first time. Otherwise, the permittee shall have ~~from~~ 12 months from the date of beginning
17 operation of the modified facility or source to file an amended application following the procedures in this Section.
18 The Director shall place a condition in the construction and operation permit stating this requirement.

19
20 *History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108;*

21 *Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule*
22 *becomes effective, whichever is sooner;*

23 *Eff. July 1, 1994;*

24 *Readopted Eff. April 1, ~~2018-2018~~;*

25 *Amended Eff. July 1, 2022*

26

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02Q .0505

DEADLINE FOR RECEIPT: Friday, June 10, 2019

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The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In the opening Paragraph, remove the comma following "submit".

What is the statutory authority for the fee in Item (4)? It may be in N.C. Gen. Stat. § 143-215.3(a)(1a), but that is not listed in the History Note.

Does an ownership change require a new application fee, or is it considered a modification by federal regs. (see 40 CFR 70.7(d)(iv)).

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Lawrence R. Duke
Commission Counsel
Date submitted to agency: June 3, 2022

1 15A NCAC 02Q .0505 is amended as published in 36:14 NCR 1202 as follows:

2
3 **15A NCAC 02Q .0505 APPLICATION SUBMITTAL CONTENT**

4 If an applicant does not submit, the following information with its application package, the application package shall
5 be returned:

- 6 (1) for new facilities and modified facilities:
- 7 (a) an application fee as required pursuant to 15A NCAC 02Q .0200;
 - 8 (b) a consistency determination as required pursuant to 15A NCAC 02Q .0507(d)(1);
 - 9 (c) the documentation required pursuant to 15A NCAC 02Q .0507(d)(2);
 - 10 (d) a financial qualification or substantial compliance statement if required; and
 - 11 (e) applications as required pursuant to 15A NCAC 02Q .0507(a) and (e) and signed as
12 required by 15A NCAC 02Q .0520;
- 13 (2) for renewals: applications as required pursuant to 15A NCAC 02Q .0507(a) and (e) and signed as
14 required by 15A NCAC 02Q .0520;
- 15 (3) for a name change: three copies of a letter signed by a responsible official in accordance with 15A
16 NCAC 02Q .0520 indicating the current facility name, the date on which the name change will
17 occur, and the new facility name;
- 18 (4) for an ownership change: an application fee as required pursuant to 15A NCAC 02Q .0200;~~and;~~
19 and three copies of a letter bearing the signature of both the seller and buyer and containing a written
20 agreement with a specific date for the transfer of permit responsibility, coverage, and liability
21 between the current and new permittee; and
22 (a) ~~three copies of a letters signed by the seller and the buyer indicating the change; or~~
23 (b) ~~three copies of a letter bearing the signature of both the seller and buyer and containing a~~
24 ~~written agreement with a specific date for the transfer of permit responsibility, coverage,~~
25 ~~and liability between the current and new permittee; and~~
- 26 (5) for corrections of typographical errors; changes of the name, address, or telephone number of any
27 individual identified in the permit; changes in test dates or construction dates; or similar minor
28 changes: three copies of a letter signed by a responsible official in accordance with 15A NCAC 02Q
29 .0520 describing the proposed change and explaining the need for the proposed change.

30
31 *History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108;*
32 *Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule*
33 *becomes effective, whichever is sooner;*
34 *Eff. July 1, 1994;*
35 *Amended Eff. April 1, 2004;*
36 *Readopted Eff. April 1, 2018-2018;*
37 *Amended Eff. July 1, 2022*

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02Q .0507

DEADLINE FOR RECEIPT: Friday, June 10, 2019

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In reviewing this Rule, the staff recommends the following technical changes be made:

Paragraph (b), instead of “An application shall be certified by a responsible official”, consider “A responsible official shall certify an application”.

Paragraph (c), what does “to the extent necessary to” mean? What does “the Director shall request that the applicant provide any other information necessary” mean? If requested, is it required to provide this “any other information”? This is too vague.

Paragraph (d), is “Along with filing a complete application” necessary? In Subparagraph (d)(3), when would this information be required? Why would it be required? In Part (d)(3)(A), what does “financially qualified” mean and where is it defined? In Part (d)(3)(B), what is “substantial” compliance? Also, capitalize “State” if only referring to NC.

Subparagraphs (e)(1) and (2), are the “five copies” and “three copies” still accurate? Or is submission now done electronically?

Paragraph (f), “as necessary to address any requirements that become applicable to the source after the date the applicant filed a complete application but prior to release of a draft permit” is too vague. Please clarify.

In Paragraph (i), is “Section 112(i)(5) of the federal Clean Air Act” still in force? Where is it found? I could not find.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: June 3, 2022

1 15A NCAC 02Q .0507 is amended as published in 36:14 NCR 1202 as follows:

2
3 **15A NCAC 02Q .0507 APPLICATION**

4 (a) Except for:

- 5 (1) minor permit modifications covered pursuant to 15A NCAC 02Q .0515;
- 6 (2) significant modifications covered pursuant to 15A NCAC 02Q .0516(c); or
- 7 (3) renewals submitted pursuant to 15A NCAC 02Q .0513;

8 the owner or operator of a source shall have 12 months after the one year from the date of beginning of operation of a
9 source that facility or source becomes subject to the Title V operating permit program pursuant to 15A NCAC 02Q
10 .0500 to file a complete application for a permit or permit revision. However, the owner or operator of a source shall
11 not begin construction or operation of a source until he or she has obtained a construction and operation permit
12 pursuant to 15A NCAC 02Q ~~.0501(e)~~, 0501(b) or ~~(d)~~(c) and 15A NCAC 02Q .0504.

13 (b) An application shall include all the information described in 40 CFR 70.3(d) and 70.5(c), including a list of
14 insignificant activities because of size or production rate but not including insignificant activities because of category.
15 An application shall be certified by a responsible official for truth, accuracy, and completeness. In an application
16 submitted pursuant to this Rule, the applicant may attach copies of applications submitted pursuant to 15A NCAC
17 02Q .0400 or 15A NCAC 02D .0530 or .0531 if the information in those applications contains information required
18 in this Section and is current, accurate, and complete.

19 (c) Application for a permit, permit revision, or permit renewal shall be made in accordance with 15A NCAC 02Q
20 .0104 on forms of the Division and shall include plans and specifications giving all necessary data and information as
21 required by this Rule. If the information provided on these forms does not describe the source or its air pollution
22 abatement equipment to the extent necessary to evaluate the application, the Director shall request that the applicant
23 provide any other information necessary to evaluate the source and its air pollution abatement equipment.

24 (d) Along with filing a complete application, the applicant shall also file the following:

- 25 (1) for a new facility or an expansion of existing facility, a consistency determination in accordance
26 with G.S. 143-215.108(f) that:
 - 27 (A) bears the date of receipt entered by the clerk of the local government; or
 - 28 (B) consists of a letter from the local government indicating that all zoning or subdivision
29 ordinances are met by the facility;
- 30 (2) for a new facility or an expansion of an existing facility in an area without zoning, an affidavit and
31 proof of publication of a legal notice as required pursuant to 15A NCAC 02Q .0113; and
- 32 (3) if required by the Director, information showing that:
 - 33 (A) the applicant is financially qualified to carry out the permitted activities; or
 - 34 (B) the applicant has substantially complied with the air quality and emissions standards
35 applicable to any activity in which the applicant has previously been engaged and has been
36 in substantial compliance with federal and state environmental laws and rules.

37 (e) The applicant shall submit copies of the application package as follows:

1 (1) for sources subject to the requirements of 15A NCAC 02D .0530, .0531, or .1200, five copies plus
2 one additional copy for each affected state that the Director has to notify pursuant to 15A NCAC
3 02Q .0521 and 15A NCAC 02Q .0522;

4 (2) for sources not subject to the requirements of 15A NCAC 02D .0530, .0531, or .1200, three copies
5 plus one additional copy for each affected state that the Director has to notify pursuant to 15A NCAC
6 02Q .0521 and 15A NCAC 02Q .0522.

7 (f) Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit
8 application shall, upon becoming aware of such failure or incorrect submittal, submit such supplementary facts or
9 corrected information. In addition, an applicant shall provide additional information as necessary to address any
10 requirements that become applicable to the source after the date ~~he~~ the applicant filed a complete application but prior
11 to release of a draft permit.

12 (g) The applicant shall submit the same number of copies of additional information as required for the application
13 package.

14 (h) The submittal of a complete permit application shall not affect the requirement that any facility have a permit
15 pursuant to 15A NCAC 02D .0530, .0531, or .0532 or pursuant to 15A NCAC 02Q .0400.

16 (i) The Director shall give priority to permit applications containing early reduction demonstrations pursuant to
17 Section 112(i)(5) of the federal Clean Air Act. The Director shall take final action on such permit applications after
18 receipt of the complete permit application.

19 (j) Except as specified in 15A NCAC 02Q .0203(i), a non-refundable permit application processing fee, defined in
20 15A NCAC 02Q .0200, shall accompany each application. Each permit application shall be deemed incomplete until
21 the permit application processing fee is received.

22 (k) The applicant shall retain for the duration of the permit term one complete copy of the application package and
23 all information submitted in support of the application package.

24
25 *History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108;*

26 *Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule*
27 *becomes effective, whichever is sooner;*

28 *Eff. July 1, 1994;*

29 *Amended Eff. July 1, 1997; July 1, 1996; February 1, 1995;*

30 *Temporary Amendment Eff. December 1, 1999;*

31 *Amended Eff. September 1, 2015; April 1, 2004; July 1, 2000;*

32 *Readopted Eff. April 1, ~~2018-2018~~;*

33 *Amended Eff. July 1, 2022*

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02Q .0508

DEADLINE FOR RECEIPT: Friday, June 10, 2019

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

Throughout, “applicable requirement” is used. Is “applicable” necessary?

Paragraph (a), what does “shall identify any differences compared to the applicable requirements on which the term or condition is based” mean? Does it mean the permit can identify differences between permit requirements and the law? What is the authority for this?

Do the forms referenced in Part (f)(1)(A) require information from the regs. Referenced on lines 17 and 18? Clarify?

Subparagraph (i)(3), what is the authority for this requirement?

Subparagraph (i)(9), what does does “timely” mean? Please define. Part (i)(9)(A), “any information that the Director may request in writing” is much too broad. Should the paragraph on lines 33-35, Part (i)(9)(B), be listed as Subparagraph (i)(10)? If so, renumber Subparagraphs that come after.

Subparagraph (i)(11), what are “off-permit changes”? What does this mean and what is the authority to require?

Subparagraph (i)(12), does “all applicable requirements” refer to regs. set in rule, regulation, other law?

What does Subparagraph (i)(16) mean? Authority?

Paragraph (k), if a permit term or condition is enforceable by the Division only, would that mean the requirements are more restrictive than the Clean Air Act? What would be “Division only”? If a requirement is more restrictive, this would violate 150B-19.3. Please clarify.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: June 3, 2022

Subparagraph (l)(1), if 143-215.66 requires monitoring, where is the authority to enter premises and inspect? Please remove parenthesis in Subparagraph (l)(3).

Paragraph (m), “at least” and “more frequently” mean what?

Subparagraph (n)(1), please remove parenthesis.

Part (n)(3)(D), please delete “If necessary” and change “must” to “shall”. Also, this is vague. Under what authority can “any other material information” be required? What is material? Can the State demand but not identify what “must be included”? This is 150B-21.9(a)(2) objectionable.

Under what circumstances can Part (n)(3)(E) be required?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

1 15A NCAC 02Q .0508 is amended as published in 36:14 NCR 1202 as follows:

2
3 **15A NCAC 02Q .0508 PERMIT CONTENT**

4 (a) A permit shall specify and reference the origin and authority for each term or condition and shall identify any
5 differences compared to the applicable requirement on which the term or condition is based.

6 (b) A permit shall specify emission limitations and standards, including operational requirements and limitations, that
7 assure compliance with all applicable requirements at the time of permit issuance.

8 (c) Where an applicable requirement of the federal Clean Air Act is more stringent than an applicable requirement of
9 rules promulgated pursuant to Title IV, both provisions shall be placed in a permit. A permit shall state that both
10 provisions are enforceable by EPA.

11 (d) A permit for sources using an alternative emission limit established in 15A NCAC 02D .0501 (d) or 15A NCAC
12 02D .0952 shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be
13 quantifiable, accountable, enforceable, and based on replicable procedures.

14 (e) The expiration date of a permit shall be for a fixed term of five years for sources covered by Title IV and for a
15 term of no more than five years from the date of issuance for all other sources including solid waste incineration units
16 combusting municipal waste subject to standards in Section 129(e) of the federal Clean Air Act.

17 (f) A permit shall contain monitoring and related recordkeeping and reporting requirements as specified in 40 CFR
18 70.6(a)(3) and 70.6(c)(1), including conditions requiring:

19 (1) the permittee to submit reports of required monitoring at least every six months. The permittee shall
20 submit reports:

21 (A) on forms obtained from the Division at the address in 15A NCAC 02Q .0104;

22 (B) in a manner as specified by a permit condition; or

23 (C) on other forms that contain the information required by this Subchapter or as specified by
24 a permit condition;

25 (2) the permittee to report:

26 (A) malfunctions, emergencies, and other upset conditions as prescribed in 15A NCAC 02D
27 .0524, .0535, .1110, or .1111; and

28 (B) deviations quarterly from permit requirements not covered by 15A NCAC 02D .0524,
29 .0535, .1110, or .1111. The permittee shall include the probable cause of such deviations
30 and any corrective actions or preventive measures taken; and

31 (3) the responsible official to certify all deviations from permit requirements.

32 (g) At the request of a permittee, the Director may allow records to be maintained in electronic form in lieu of
33 maintaining paper records. The Director shall make this decision based on factors such as whether the electronic
34 records contain the same information as the paper records and the availability of the electronic records for inspection
35 to demonstrate compliance.

36 (h) A permit for facilities covered by 15A NCAC 02D .2100, Risk Management Program, shall contain:

37 (1) a statement listing 15A NCAC 02D .2100 as an applicable requirement; and

- 1 (2) conditions that require the owner or operator of the facility to submit:
- 2 (A) a compliance schedule for meeting the requirements of 15A NCAC 02D .2100 by the dates
- 3 provided in 15A NCAC 02D .2101(a); or
- 4 (B) as part of the compliance certification required by Paragraph (n) of this Rule, a certification
- 5 statement that the source is in compliance with all requirements of 15A NCAC 02D .2100,
- 6 including the registration and submission of the risk management plan.

7 The content of the risk management plan need not be incorporated as a permit term or condition.

8 (i) A permit shall:

- 9 (1) contain a condition prohibiting emissions exceeding any allowances that a facility lawfully holds
- 10 pursuant to Title IV but shall not limit the number of allowances held by a permittee. A permittee
- 11 shall not use allowances as a defense to noncompliance with any other applicable requirement;
- 12 (2) contain a severability clause so that various permit requirements will continue to be valid in the
- 13 event of a challenge to any other portion of the permit;
- 14 (3) state that noncompliance with any condition of the permit constitutes a violation of the Act and is
- 15 grounds for enforcement action; for permit termination, revocation and reissuance, or modification;
- 16 or for denial of a permit renewal application;
- 17 (4) state that the permittee may not use as a defense in an enforcement action that it would have been
- 18 necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions
- 19 of the permit;
- 20 (5) state that the Director may reopen, modify, revoke and reissue, or terminate the permit for reasons
- 21 specified in 15A NCAC 02Q .0517 or ~~0519~~ .0519;
- 22 (6) state that the filing of a request by the permittee for a permit revision, revocation and reissuance,
- 23 termination, notification of planned changes, or anticipated noncompliance does not stay any permit
- 24 condition;
- 25 (7) specify the conditions in which the permit will be reopened before the expiration of the permit;
- 26 (8) state that the permit does not convey any property rights of any sort, or any exclusive privileges;
- 27 (9) state that the permittee will furnish to the Division, in a timely manner:
- 28 (A) any information that the Director may request in writing to determine whether cause exists
- 29 for modifying, revoking and reissuing, or terminating the permit or to determine
- 30 compliance with the permit, and
- 31 (B) copies of records required to be kept by the permit when such copies are requested by the
- 32 Director.
- 33 ~~(The~~ The permit shall also state that for information claimed to be confidential, the
- 34 permittee may furnish such records directly to EPA along with a claim of
- 35 ~~confidentiality.)~~ confidentiality;
- 36 (10) contain a provision to ensure that the permittee pays fees required by 15A NCAC 02Q .0200;

- 1 (11) contain a condition that authorizes the permittee to make Section 502(b)(10) changes, off-permit
- 2 changes, or emission trades in accordance with 15A NCAC 02Q .0523;
- 3 (12) include all applicable requirements for all sources covered by the permit;
- 4 (13) include fugitive ~~emissions~~ emissions, if regulated, in the same manner as stack emissions;
- 5 (14) contain a condition requiring annual reporting of actual emissions as required by 15A NCAC 02Q
- 6 0207;
- 7 (15) include all sources including insignificant activities; and
- 8 (16) contain other provisions the Director considers appropriate.

9 (j) A permit shall state the terms and conditions for reasonably anticipated operating scenarios identified by the
10 applicant in the application. These terms and conditions shall:

- 11 (1) require the permittee, contemporaneously with making a change from one operating scenario to
- 12 another, to record in a log at the permitted facility a record of the operating scenario in which it is
- 13 operating;
- 14 (2) extend the permit shield described in 15A NCAC 02Q .0512 to all terms and conditions in each such
- 15 operating scenario; and
- 16 (3) ensure that each operating scenario meets all applicable requirements of Subchapter 02D of this
- 17 Chapter and of this Section.

18 (k) A permit shall identify which terms and conditions are enforceable ~~by:~~ by the Division only.

- 19 (1) ~~both EPA and the Division;~~
- 20 (2) ~~the Division only; and~~
- 21 (3) ~~EPA only and~~
- 22 (4) ~~citizens pursuant to the federal Clean Air Act.~~

23 (l) A permit shall state that the permittee will allow personnel of the Division to:

- 24 (1) enter the permittee's premises where the permitted facility is located or emissions-related activity is
- 25 conducted, or where records are kept by the conditions of the permit;
- 26 (2) have access to and copy any records that are required to be kept by the conditions of the permit;
- 27 (3) inspect any source, equipment (including monitoring and air pollution control equipment), practices,
- 28 or operations regulated or required by the permit; and
- 29 (4) sample or monitor substances or parameters, for the purpose of assuring compliance with the permit
- 30 or applicable requirements.

31 (m) When a compliance schedule is required by 40 CFR 70.5(c)(8) or by a rule contained in Subchapter 02D of this
32 Chapter, the permit shall contain the compliance schedule and shall state that the permittee shall submit at least
33 semiannually, or more frequently if specified in the applicable requirement, a progress report. The progress report
34 shall contain:

- 35 (1) dates for achieving the activities, milestones, or compliance required in the compliance schedule
- 36 and dates when such activities, milestones, or compliance were achieved; and

1 (2) an explanation of why any dates in the compliance schedule were not or will not be met and any
2 preventive or corrective measures adopted.

3 (n) The permit shall contain requirements for compliance certification with the terms and conditions in the permit
4 that are enforceable by EPA pursuant to Title V of the federal Clean Air Act, including emissions limitations,
5 standards, and work practices. The permit shall specify:

6 (1) the frequency (not less than annually or more frequently as specified in the applicable requirements)
7 of submissions of compliance certifications;

8 (2) a means for monitoring the compliance of the source with its emissions limitations, standards, and
9 work practices; ~~and~~

10 (3) a requirement that the compliance certification include:

11 (A) the identification of each term or condition of the permit that is the basis of the certification;

12 (B) the status of compliance with the terms and conditions of the permit for the period covered
13 by the certification, based on the methods or means designated in 40 CFR
14 70.6(c)(5)(iii)(B). The certification shall identify each deviation and take it into account in
15 the compliance certification. The certification shall also identify as possible exceptions to
16 compliance any periods during which compliance was required and in which an excursion
17 or exceedance as defined in 40 CFR 64 occurred;

18 (C) whether compliance was continuous or intermittent;

19 (D) the identification of the methods or other means used by the owner and operator for
20 determining the compliance status with each term and condition during the certification
21 period; these methods shall include the methods and means required in 40 CFR Part
22 ~~70.6(a)(3);70.6(a)(3)~~. If necessary, the owner or operator also shall identify any other
23 material information that must be included in the certification to comply with Section
24 113(c)(2) of the federal Clean Air Act, which prohibits knowingly making a false
25 certification or omitting material information; and

26 (E) such other facts as the Director may require to determine the compliance status of the
27 source; and

28 (4) that all compliance certifications be submitted to EPA as well as to the Division.
29

30 *History Note: Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(10); 143-215.108;*
31 *Temporary Rule Eff. March 8, 1994 for a period of 180 days or until the permanent rule is effective,*
32 *whichever is sooner;*
33 *Eff. July 1, 1994;*
34 *Amended Eff. July 1, 1996;*
35 *Temporary Amendment Eff. December 1, 1999;*
36 *Amended Eff. August 1, 2008; June 1, 2008; January 1, 2007; December 1, 2005; April 1, 2001;*
37 *July 1, 2000;*

1 *Readopted Eff. April 1, ~~2018~~2018:*
2 *Amended Eff. July 1, 2022*

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02Q .0509

DEADLINE FOR RECEIPT: Friday, June 10, 2019

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

Paragraph (a), when are facilities “similar”? Is this addressed in (d)?

Subparagraph (b)(2), what is “no unique analysis”? What does this mean?

Paragraph (e), what is the authority for an “enforcement action for operating without a permit” if it “is later determined not to qualify”? Is there a provision providing for notice and a chance to come into compliance?

Paragraph (h), if this is not final, then what is? Issuance of the original permit? How does this fit with .0518 of this Section?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Lawrence R. Duke
Commission Counsel
Date submitted to agency: June 3, 2022

1 15A NCAC 02Q .0509 is amended as published in 36:14 NCR 1202 as follows:

2
3 **15A NCAC 02Q .0509 PERMITTING OF NUMEROUS SIMILAR FACILITIES**

4 (a) The Director shall not issue a single permit to cover numerous similar facilities or sources unless a notice and
5 opportunity for public participation has been provided as required by 15A NCAC 02Q .0521.

6 (b) The Director shall not issue a single permit for numerous similar facilities and sources pursuant to this Rule unless:

7 (1) there is no difference between the facilities or sources that would require special permit conditions
8 for any individual facility or source; and

9 (2) no unique analysis is required for any facility or source covered by the permit.

10 (c) A permit issued pursuant to this Rule shall comply with all the requirements of this Section.

11 (d) A permit issued pursuant to this Rule shall identify criteria by which facilities or sources may qualify for the
12 permit. To facilities or sources that qualify, the Director shall grant the terms and conditions of the permit.

13 (e) The facility or source shall be subject to enforcement action for operating without a permit if the facility or source
14 is later determined not to qualify for the terms and conditions of the permit issued pursuant to this Rule.

15 (f) Sources subject to Title IV shall not be eligible for a permit issued pursuant to this Rule.

16 (g) The owner or operator of a facility or source that qualifies for a permit issued pursuant to this Rule shall apply for
17 coverage by the terms of the permit issued pursuant to this Rule or shall apply for a standard permit for each facility
18 or source pursuant to this Section.

19 (h) The Division need not repeat the public participation procedures pursuant to 15A NCAC 02Q .0521 if it grants a
20 request by a permit applicant to operate by a permit issued pursuant to this ~~Rule~~. Rule, but such a grant shall not be a
21 final permit action for purposes of judicial review.

22
23 *History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108;*

24 *Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule*
25 *becomes effective, whichever is sooner;*

26 *Eff. July 1, 1994;*

27 *Readopted Eff. April 1, ~~2018~~ 2018;*

28 *Amended Eff. July 1, 2022*

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02Q .0514

DEADLINE FOR RECEIPT: Friday, June 10, 2019

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

Throughout, similar to .0508, “applicable requirement” or “applicable permit” is used. Is “applicable” necessary?

How does this Rule, and specifically Paragraph (a), compare to 40 CFR 70.7(d)?

Are Paragraphs (b) and (c) necessary? Don't they repeat 40 CFR 70.7(d)(3)? In paragraph (c), define or delete “immediately”.

Paragraph (e), capitalize “State” if referring to NC only. Or, at least be consistent.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Lawrence R. Duke
Commission Counsel
Date submitted to agency: June 3, 2022

1 15A NCAC 02Q .0514 is amended as published in 36:14 NCR 1202 as follows:

2
3 **15A NCAC 02Q .0514 ADMINISTRATIVE PERMIT AMENDMENTS**

4 (a) An "administrative permit amendment" means a permit revision that:

- 5 (1) corrects typographical errors;
- 6 (2) identifies a change in the name, address, or telephone number of any individual identified in the
7 permit or provides a similar minor administrative change at the facility;
- 8 (3) requires more frequent monitoring or reporting by the permittee;
- 9 (4) changes test dates or construction dates provided that no applicable requirements are violated by the
10 change in test dates or construction dates;
- 11 (5) ~~moves~~ removes designation of State-enforceable only from terms and conditions ~~from the~~
12 ~~State enforceable only portion of a permit to the State and federal enforceable portion of the permit~~
13 provided that the terms and conditions ~~being moved~~ have become federally enforceable through
14 Section 110, 111, or 112 or other parts of the federal Clean Air Act;
- 15 ~~(6) moves terms and conditions from the federal enforceable only portion of a permit to the State and~~
16 ~~federal enforceable portion of the permit;~~
- 17 ~~(7)~~(6) changes the permit number without changing any portion of the permit ~~that is federally enforceable~~
18 that would not otherwise qualify as an administrative amendment; or
- 19 ~~(8)~~(7) removes references and non-applicable permit conditions; requirements for equipment that has been
20 permanently removed from service. ~~or~~
- 21 ~~(9) removes references to equipment that has been permanently removed from service.~~

22 (b) In making administrative permit amendments, the Director:

- 23 (1) shall take final action on a request for an administrative permit amendment within 60 days after
24 receiving such request;
- 25 (2) may make administrative amendments without providing notice to the public or any affected states
26 pursuant to 15A NCAC 02Q .0521(a), provided he or she designates any such permit revision as
27 having been made pursuant to this Rule; and
- 28 (3) shall submit a copy of the revised permit to EPA.

29 (c) The permittee may implement the changes addressed in the request for an administrative amendment immediately
30 upon submittal of the request.

31 ~~(d) Upon taking final action granting a request for an administrative permit amendment, the Director shall allow~~
32 ~~coverage by the permit shield pursuant to 15A NCAC 02Q .0512 for the administrative permit amendments made.~~

33 ~~(e)~~(d) Administrative amendments for sources covered pursuant to Title IV shall be governed by rules in 15A NCAC
34 02Q .0400.

35 ~~(f)~~(e) This Rule shall not apply to the state-enforceable only part of a Title V permit. For the ~~state-enforceable State-~~
36 enforceable only part of a Title V permit, 15A NCAC 02Q .0316 shall govern administrative permit amendments.

1 *History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108;*
2 *Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule*
3 *becomes effective, whichever is sooner;*
4 *Eff. July 1, 1994;*
5 *Amended Eff. January 1, 2007; July 1, 1997;*
6 *Readopted Eff. April 1, ~~2018-2018~~;*
7 *Amended Eff. July 1, 2022*

1 15A NCAC 02Q .0516 is amended as published in 36:14 NCR 1202 as follows:

2

3 **15A NCAC 02Q .0516 SIGNIFICANT PERMIT MODIFICATION**

4 (a) The procedures set out in this Rule shall apply to applications requesting permit modifications pursuant to this
5 Rule or permit modifications that are not governed by 15A NCAC 02Q .0514, .0515, .0523, or .0524.

6 (b) An application for a significant permit modification that would contravene or conflict with an existing permit
7 shall be processed following the procedure set out in 15A NCAC 02Q .0501(c).

8 (c) An application for a significant permit modification that does not contravene or conflict with an existing permit
9 shall be processed following the procedure set out in 15A NCAC 02Q .0501(b).

10 (d) This Rule shall not preclude the permittee from making changes consistent with this Section that would render
11 existing permit compliance terms and conditions irrelevant.

12 (e) Except for the State-enforceable only portion of the permit, the procedures set out in 15A NCAC 02Q .0507,
13 .0521, or .0522 shall be followed to revise a permit pursuant to this Rule. If the State-enforceable only portion of the
14 permit is revised, the procedures in 15A NCAC 02Q .0300 shall be followed. The proceedings shall affect only those
15 parts of the permit related to the significant modification.

16 (f) Significant permit modifications shall be covered by the permit shield in accordance with 15A NCAC 02Q .0512.

17 (g) Significant permit modifications shall be processed in accordance with 15A NCAC 02Q .0525.

18

19 *History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108;*

20 *Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule*
21 *becomes effective, whichever is sooner;*

22 *Eff. July 1, 1994;*

23 *Readopted Eff. April 1, ~~2018-2018~~;*

24 *Amended Eff. July 1, 2022*

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02Q .0518

DEADLINE FOR RECEIPT: Friday, June 10, 2019

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

Subparagraphs (a)(1) and (a)(3), what does “carry out the purposes” mean? Shall the Director generally “carry out the purposes” or comply with the law?

Paragraph (b), is “permit revision” correct, or should it be “permit modification”?

Considering 40 CFR 70.7(g)(4), is Paragraph (c) necessary?

Considering 40 CFR 70.7(e)(iv)(2), is Paragraph (f) necessary?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Lawrence R. Duke
Commission Counsel
Date submitted to agency: June 3, 2022

1 15A NCAC 02Q .0518 is amended as published in 36:14 NCR 1202 as follows:

2
3 **15A NCAC 02Q .0518 FINAL ACTION**

4 (a) The Director ~~may~~ shall:

- 5 (1) issue a permit, permit revision, or renewal containing the conditions necessary to carry out the
6 purposes of G.S. 143, Article 21B and the federal Clean Air Act;
7 (2) rescind a permit upon request by the permittee; or
8 (3) deny a permit application when necessary to carry out the purposes of G.S. 143, Article 21B and the
9 federal Clean Air Act.

10 (b) The Director ~~may~~ shall not issue a final permit or permit revision, except administrative permit amendments
11 pursuant to 15A NCAC 02Q ~~.0514, .0514 and .0524~~, until 15 days after the end of EPA's 45-day review period has
12 ~~expired~~ or until EPA has notified the Director that EPA will not object to issuance of the permit or permit revision,
13 whichever occurs first. ~~The Director shall issue the permit or permit revision within five days of receipt of notification~~
14 ~~from EPA that it will not object to issuance or of the expiration of EPA's 45 day review period, whichever occurs first.~~

15 (c) If EPA objects to a proposed permit, the Director shall respond to EPA's objection within 90 days after receipt of
16 EPA's objection. The Director shall not issue a permit pursuant to this Section over EPA's objection.

17 (d) If EPA does not object in writing to the issuance of a permit, any person may petition EPA to make such objections
18 by following the procedures and meeting the requirements of 40 CFR 70.8(d).

19 (e) No permit shall be issued, revised, or renewed pursuant to this Section unless all the procedures set out in this
20 Section have been followed and all the requirements of this Section have been met. The Director shall not issue any
21 permit, permit revision, or permit renewal pursuant to this Section by default.

22 (f) Notwithstanding the application processing schedules set forth in 15A NCAC 02Q .0514, .0515, and .0524, the
23 Division shall take final action on each permit application, including a request for permit modification or renewal,
24 within 18 months of receipt of a complete application.

25 ~~(g)~~ Thirty days after issuing a permit, including a permit issued pursuant to 15A NCAC 02Q .0509, that is not
26 challenged by the applicant, the Director shall notice the issuance of the final permit. The notice shall be issued on the
27 North Carolina Division of Air Quality web site at <http://deq.nc.gov/about/divisions/air-quality>. The notice shall
28 include the name and address of the facility and the permit number.

29
30 *History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108;*

31 *Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule*
32 *becomes effective, whichever is sooner;*

33 *Eff. July 1, 1994;*

34 *Amended Eff. January 1, 2010; February 1, 1995;*

35 *Readopted Eff. April 1, ~~2018, 2018~~;*

36 *Amended Eff. July 1, 2022*

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02Q .0521

DEADLINE FOR RECEIPT: Friday, June 10, 2019

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

Paragraph (a), how does the Director make the determination of what “is in the best interest of the public”? Are there factors for this determination?

Paragraph (c), is the notice for modification of permits? Or what?

How is Paragraph (d) necessary if it is covered by 40 CFR 70.7(h)(2)?

Paragraph (h), is this necessary if it is covered by 40 CFR 70.7(h)(5)? Is the paragraph, lines 1 and 2 on page 2, necessary? Don't public records laws already cover this?

Paragraph (i), please delete “such” in the two instances on line 4. Please delete “if applicable”. Is this paragraph necessary as it repeats 40 CFR 70.7(h)(6)?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: June 3, 2022

1 15A NCAC 02Q .0521 is amended as published in 36:14 NCR 1202 as follows:

2
3 **15A NCAC 02Q .0521 PUBLIC PARTICIPATION**

4 (a) The Director shall give public notice with an opportunity for comments and a hearing on all draft permits and
5 permit revisions except permit revisions issued pursuant to 15A NCAC 02Q .0514, .0515, and .0524. The Director
6 shall give public notice with an opportunity for comments and a hearing on draft permit revisions issued pursuant to
7 15A NCAC 02Q .0514, .0515, and .0524 if the Director finds it is in the best interest of the public.

8 (b) Notice of any draft permit for an existing facility for which a public hearing is scheduled or for a new facility shall
9 be given by publication in a newspaper of general circulation in the area where the facility is located, posted on the
10 North Carolina Division of Air Quality web site at ~~http://deq.nc.gov/about/divisions/air-quality,~~
11 http://deq.nc.gov/about/divisions/air-quality for the duration of the public comment period, and emailed to persons
12 who are on the Division's emailing list for air quality permits.

13 (c) Notice for existing facilities for which a public hearing is not scheduled shall be given by posting the draft permit
14 on the North Carolina Division of Air Quality web site at http://deq.nc.gov/about/divisions/air-quality for the duration
15 of the public comment period and shall be emailed to persons who are on the Division's emailing list for air quality
16 permit notices.

17 (d) The notice shall identify:

- 18 (1) the affected facility;
- 19 (2) the name and address of the permittee;
- 20 (3) the name and address of the person to whom to send comments and requests for public hearing;
- 21 (4) the name, address, and telephone number of Divisional staff from whom interested persons may
22 obtain additional information, including copies of the permit draft, the application, compliance plan,
23 monitoring and compliance reports, all other relevant supporting materials, and all other materials
24 available to Division that are relevant to the permit decision;
- 25 (5) the activity or activities involved in the permitted action;
- 26 (6) any emissions change involved in any permit modification;
- 27 (7) a brief description of the comment procedures;
- 28 (8) the procedures to follow to request a hearing unless a hearing has already been scheduled; and
- 29 (9) the time and place of all hearing that have already been scheduled.

30 (e) The Director shall send a copy of the notice to affected states and EPA.

31 (f) The notice shall allow 30 days for public comments.

32 (g) ~~If the Director finds that a public hearing is in the best interest of the public, the Director shall require a public~~
33 ~~hearing to be held on a draft permit.~~ Notice of a any public hearing shall be given at least 30 days before the hearing.

34 (h) The Division shall keep a record of the public participation process, including the following:

- 35 (1) the names of all commenters;
- 36 (2) the issues raised during the public participation process; and
- 37 (3) all written comments submitted during the public participation process.

1 If EPA requests a record of the comments and of the issues raised during the public participation process, the Director
2 shall provide EPA this record.

3 (i) The Division shall respond in writing to comments raised during the public participation process, including any
4 such written comments submitted during the public comment period and any such comments raised during any public
5 hearing on the permit. The response to comments shall be included in the statement of basis and a Hearing Officer's
6 report, if applicable.

7 ~~(j)~~ (j) Persons who desire to be placed on the Division's email notification list for air quality permit notices shall
8 subscribe to the permits email list serve at <http://deq.nc.gov/about/divisions/air-quality>.

9
10 *History Note: Authority G.S. 143-215.3(a)(1),(3); 143-215.107(a)(10); 143-215.108; 143-215.111(4);*
11 *Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule*
12 *becomes effective, whichever is sooner;*
13 *Eff. July 1, 1994;*
14 *Amended Eff. January 1, 2010; July 1, 1998;*
15 *Readopted Eff. April 1, ~~2018~~ 2018;*
16 *Amended Eff. July 1, 2022*

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REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02Q .0522

DEADLINE FOR RECEIPT: Friday, June 10, 2019

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

Paragraph (b), "applicable".

Paragraph (d), is retention for public records only five years?

Paragraph (g), please delete "To the extent practicable".

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Lawrence R. Duke
Commission Counsel
Date submitted to agency: June 3, 2022

1 15A NCAC 02Q .0522 is amended as published in 36:14 NCR 1202 as follows:

2
3 **15A NCAC 02Q .0522 REVIEW BY EPA AND AFFECTED STATES**

4 (a) The Director shall provide EPA with a copy of each permit application, including any application for permit
5 revision, the statement of basis required under Paragraph (b) of this Rule, each proposed permit, and each final permit
6 issued pursuant to this Section. If EPA has informed the Director that a permit application summary and relevant
7 portion of the permit application and compliance plan are sufficient, the Director may provide these documents instead
8 of the complete application.

9 (b) The Division shall provide a statement that sets forth the legal and factual basis for the draft permit conditions,
10 including references for the applicable statutory or regulatory provisions. The Division shall provide this statement to
11 EPA and any other person who requests it.

12 (c) If comments are received during the public participation process, the written responses shall be provided to EPA
13 through submittal of a statement of basis, required pursuant to 15A NCAC 02Q .0521, with an explanation of how
14 those public comments and the Division's responses are available to the public.

15 ~~(b)(d)~~ The Division shall retain for five years a copy of all permit applications, permits, and other related material
16 submitted to or issued by the Division pursuant to this Section.

17 ~~(e)(e)~~ The Director shall provide notice to each affected state of each draft permit at or before the time notice is
18 provided to the public pursuant to 15A NCAC 02Q .0521.

19 ~~(d)(f)~~ The Director, in writing, shall notify EPA and any affected state of any refusal by the Division to accept all
20 recommendations for the proposed permit that the affected state submitted during the public or affected state review
21 period and shall state the reasons for not accepting any such recommendations.

22 (g) To the extent practicable, the information specified in Paragraphs (a) through (c) of this Rule shall be provided to
23 EPA in a computer-readable format compatible with EPA's national database management system.

24
25 *History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108; 143-215.111(5);*
26 *Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule*
27 *becomes effective, whichever is sooner;*
28 *Eff. July 1, 1994;*
29 *Readopted Eff. April 1, ~~2018-2018~~;*
30 *Amended Eff. July 1, 2022*
31

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02Q .0525

DEADLINE FOR RECEIPT: Friday, June 10, 2019

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

It may make sense to move "A completeness determination shall not be necessary for minor modifications pursuant to 15A NCAC 02Q .0515." up to the first paragraph of Item (2) where it says, "The Division shall review all permit applications..."

In Subitem (2)(b), does "necessary to conduct the technical review" include information required in rule/regs?

What does "if such information is necessary to properly evaluate" on line 19 mean?

In Item (4), when or how is the public hearing "approved by the Director"?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Lawrence R. Duke
Commission Counsel
Date submitted to agency: June 3, 2022

1 15A NCAC 02Q .0525 is amended as published in 36:14 NCR 1202 as follows:

2
3 **15A NCAC 02Q .0525 APPLICATION PROCESSING SCHEDULE**

4 The Division shall adhere to the following schedule in processing permit applications:

- 5 (1) The Division shall send written acknowledgment of receipt of an application to the applicant within
6 10 days of receipt of the application.
- 7 (2) The Division shall review all permit applications within 60 days of receipt of the application to
8 determine whether the application is complete or incomplete. The Division shall notify the applicant
9 by letter:
- 10 (a) stating that the application as submitted is complete and specifying the completeness date;
- 11 (b) stating that the application is incomplete, requesting additional ~~information~~, information
12 necessary to conduct the technical review of the application, and specifying the date by
13 which the requested information is required to be received by the Division; or
- 14 (c) stating that the application is incomplete and requesting that the applicant rewrite and
15 resubmit the application.

16 If the Division does not notify the applicant by letter dated within 60 days of receipt of the
17 application that the application is incomplete, the application shall be deemed complete. A
18 completeness determination shall not prevent the Director from requesting additional information
19 at a later date if such information is necessary to properly evaluate the source, its air pollution
20 abatement equipment, or the facility. If the applicant has not provided the requested additional
21 information by the date specified in the letter requesting additional information, the Director shall
22 cease processing the application until additional information is provided. The applicant may request
23 a time extension for submittal of the requested additional information. A completeness
24 determination shall not be necessary for minor modifications pursuant to 15A NCAC 02Q .0515.

- 25 (3) ~~The Division shall determine within 60 days of receipt of a complete application if any additional~~
26 ~~information is needed to conduct the technical review of the application. A technical completeness~~
27 ~~determination shall not prevent the Director from requesting additional information at a later date~~
28 ~~when such information is necessary to properly evaluate the source, its air pollution abatement~~
29 ~~equipment or the facility. The Division shall complete the technical review of significant~~
30 ~~modifications received pursuant to 15A NCAC 02Q .0516 in accordance with 40 CFR 70.7(e)(4)(ii).~~
31 ~~within 270 days of receipt of a complete application or 10 days after receipt of requested additional~~
32 ~~information, whichever is later.~~
- 33 (4) The Division shall provide for public participation in accordance with 15A NCAC 02Q .0521. The
34 Director shall send the public notice for public comment on the draft permit to affected states, to
35 EPA, and to persons on the mailing list within 270 days after receipt of a complete application or
36 10 days after receipt of requested additional information, whichever is later. If a public hearing is

1 required and approved by the Director for a draft permit, it shall be held within 45 days of the
2 Director's decision to hold a public hearing.

3 ~~(5) — If a public hearing is requested and approved by the Director for a draft permit, it shall be held~~
4 ~~within 45 days of the Director's decision to hold a public hearing.~~

5 ~~(6)(5)~~ The Director shall complete the review of the record and send the proposed permit to ~~EPA~~; EPA
6 and affected states in accordance with 15A NCAC 02Q .0522.

7 ~~(a) — within 30 days after the close of the public comment period if there is no public hearing on~~
8 ~~the draft permit; or~~

9 ~~(b) — within 45 days after the close of the public hearing if there is a public hearing on the draft~~
10 ~~permit.~~

11 ~~(7) — If EPA does not object to the proposed permit, the Director shall issue the permit within five days~~
12 ~~after:~~

13 ~~(a) — expiration of EPA 45 day review period; or~~

14 ~~(b) — receipt of notice from EPA that it will not object to issuance, whichever comes first.~~

15 ~~(8) — If EPA objects to the proposed permit, the Director shall respond to EPA's objection within 90 days~~
16 ~~after receipt of EPA's objections~~

17 (6) Final permit action shall be taken in accordance with 15A NCAC 02Q .0518.

18
19 *History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108;*
20 *Eff. February 1, 1995;*
21 *Amended Eff. July 1, 1998;*
22 *Readopted Eff. April 1, ~~2018~~, 2018;*
23 *Amended Eff. July 1, 2022*
24
25

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02Q .0526

DEADLINE FOR RECEIPT: Friday, June 10, 2019

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

Throughout, “applicable”.

Subparagraph (d)(1), what does “reasonably” mean? Define or delete.

In Part (a)(3)(A), what does “substantially” mean? Define or delete. On line 12, “If the Division determines...”, how does the Division determine?

In Part (a)(3)(B), what does “substantially” mean? Define or delete in both instances.

In Part (a)(3)(A), what does “substantially” mean? Define or delete.

In Subparagraph (e)(1), what does “substantially” mean? Define or delete. Also, remove parenthesis. Also, line 15, “If the Division determines...”, how does the Division determine?

In Subparagraphs (e)(3), (4), and (f)(2), please remove parenthesis.

In Subparagraph (h)(2), what does “substantially as effective” mean? Define or delete all three instances. Also, line 35 and line 2, “If the Director determines...”, how does the Director determine? Also, line 6, what is an “appropriate equivalent emission limitation”?

Paragraph (j), what does “timely” mean? Please delete or define both instances.

Paragraph (n), what does “if it is sufficient to begin processing the application” mean? When is it sufficient? What is required?

Subparagraph (o)(3), if “the Division shall not be required to incorporate a less stringent emission limitation of the promulgated standards after considering the effects on air quality”, does this mean the Division may incorporate less stringent standards or limitations? When

Lawrence R. Duke
Commission Counsel

Date submitted to agency: June 3, 2022

and on what basis? Also, what does “as necessary to protect air quality” mean? Define, set factors, or delete.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Lawrence R. Duke
Commission Counsel
Date submitted to agency: June 3, 2022

1 15A NCAC 02Q .0526 is amended as published in 36:14 NCR 1202 as follows:

2
3 **15A NCAC 02Q .0526 112(J) CASE-BY-CASE MACT PROCEDURES**

4 (a) An owner or operator of a source required to apply maximum achievable control technology (MACT) pursuant
5 to 15A NCAC 02D .1109 shall follow the permit procedures set out in this Rule.

6 (b) For the purposes of this Rule, the definitions in 15A NCAC 02D .1109, 40 CFR 63.51, 40 CFR 63.2, and the
7 following definitions apply:

8 (1) "Equivalent emission limitation" means an emission limitation, established pursuant to Section
9 112(j) of the federal Clean Air Act, that is equivalent to the MACT standard that EPA would have
10 promulgated pursuant to Section 112(d) or (h) of the federal Clean Air Act.

11 (2) "Source category schedule for standards" means the schedule for promulgating MACT standards
12 issued pursuant to Section 112(e) of the federal Clean Air Act.

13 (3) "Title V permit" means a permit issued pursuant to this Section.

14 (c) Except as provided for in Paragraph (d) or (e) of this Rule, the owner or operator of a source required to apply
15 MACT pursuant to 15A NCAC 02D .1109 shall submit an application for a permit or for a significant permit
16 revision, as applicable pursuant to this Section.

17 (d) Approval process for new and existing affected sources that are subject to Section 112(j) as of the Section 112(j)
18 deadline. The requirements of Subparagraphs (d)(1) and (2) of this Paragraph shall apply to major sources that
19 include, as of the Section 112(j) deadline, one or more sources in a category or subcategory for which the EPA has
20 failed to promulgate an emission standard pursuant to 40 CFR Part 63 on or before an applicable Section 112(j)
21 deadline. Existing source MACT requirements (including relevant compliance deadlines), as specified in a Title V
22 permit issued to the facility pursuant to the requirements of 40 CFR Part 63, Subpart B, shall apply to such sources.

23 (1) The owner or operator shall submit an application for a permit or for a revision to an existing Title
24 V permit issued or a pending Title V permit that meets the requirements of Subparagraph (m)(1)
25 of this Rule by the Section 112(j) deadline if the owner or operator can reasonably determine that
26 one or more sources at the facility belong in a category or subcategory subject to Section 112(j) of
27 the federal Clean Air Act.

28 (2) The owner or operator of a source that does not submit an application pursuant to Subparagraph
29 ~~(d)(1)(A)~~(d)(1) of this Rule and is notified in writing by the Division that one or more sources at
30 the facility belong to a category or subcategory subject to Section 112(j) of the federal Clean Air
31 Act shall submit an application for a Title V permit or for a revision to an existing Title V permit
32 that meets the requirements of Paragraph (m)(1) of this Rule within 30 days after being notified in
33 writing by the Division. The Division shall not be required to make this notification.

34 (3) The requirements in Parts (A) and (B) of this Subparagraph shall apply if the owner or operator
35 has obtained a Title V permit that incorporates a Section 112(g) case-by-case MACT
36 determination by the Division pursuant to 15A NCAC 02D .1112, but has not submitted an

1 application for a Title V permit revision that addresses the emission limitation requirements of
2 Section 112(j) of the federal Clean Air Act.

3 (A) If the owner or operator has a Title V permit that incorporates a Section 112(g) case-by-
4 case MACT determination pursuant to 15A NCAC 02D .1112, the owner or operator
5 shall submit an application that meets the requirements of Paragraph (m)(1) of this Rule
6 for a Title V permit revision within 30 days of the Section 112(j) deadline or within 30
7 days of being notified in writing by the Division that one or more sources at the major
8 facility belong in such category or subcategory. The Division shall use the procedures in
9 40 CFR 63.52(e) to determine whether the emission limitations adopted pursuant to the
10 prior 112(g) case-by-case MACT determination are substantially as effective as the
11 emission limitations that Division would otherwise adopt pursuant to Section 112(j) of
12 the federal Clean Air Act for the source in question. If the Division determines the
13 previously adopted 112(g) emission limitations are substantially as effective, then the
14 Division shall retain the existing limitations in the permit to effectuate Section 112(j) of
15 the federal Clean Air Act. If the Division does not retain the previously adopted 112(g)
16 emission limitations, the MACT requirements of this Rule shall be satisfied upon
17 issuance of a revised Title V permit incorporating any additional Section 112(j)
18 requirements.

19 (B) If the owner or operator that has submitted a Title V permit application that incorporates
20 a Section 112(g) case-by-case MACT determination by the Division pursuant to 15A
21 NCAC 02D .1112, but has not received the permit incorporating the Section 112(g)
22 requirements, the owner or operator shall continue to apply for a Title V permit that
23 addresses the requirements of Section 112(g) of the federal Clean Air Act. The owner or
24 operator shall submit a permit application meeting the requirements of Paragraph (m)(1)
25 of this Rule within 30 days of issuance of that Title V permit. The Division shall use the
26 procedures in 40 CFR 63.52(e) to determine whether the emissions limitations adopted
27 pursuant to the prior 112(g) case-by-case MACT determination are substantially as
28 effective as the emission limitations that the Division would otherwise adopt pursuant to
29 Section 112(j) of the federal Clean Air Act for the source in question. If the Division
30 determines that the previously adopted 112(g) emission limitations are substantially as
31 effective, then the Director shall retain the existing emission limitations to effectuate
32 Section 112(j) of the federal Clean Air Act and revise the permit accordingly. If the
33 Division does not retain the previously adopted 112(g) emission limitations, the MACT
34 requirements of this Rule shall be satisfied upon issuance of a revised Title V permit
35 incorporating any additional Section 112(j) requirements.

36 (e) Sources that become subject to Section 112(j) of the federal Clean Air Act after the Section 112(j) deadline and
37 that do not have a Title V permit addressing Section 112(j) requirements. The requirements of this Paragraph shall

1 apply to sources that do not meet the criteria in Paragraph (d) of this Rule on the Section 112(j) deadline and are not
2 subject to Section 112(j) of the federal Clean Air Act on that date, but subsequent to the Section 112 (j) deadline the
3 source becomes subject to the requirements of this Rule and the source does not have a Title V permit that addresses
4 the requirements of Section 112(j) of the federal Clean Air Act.

5 (1) If one or more sources in a category or subcategory subject to the requirements of this Rule are
6 installed at a major source or result in the source becoming a major source due to the installation,
7 and the installation does not invoke Section 112(g) requirements in 15A NCAC 02D .1112, the
8 owner or operator shall submit an application meeting the requirements of Paragraph (m)(1) of this
9 Rule within 30 days of startup of the source. Existing source MACT requirements (including
10 relevant compliance deadlines), as specified in a Title V permit issued pursuant to the
11 requirements of this Rule, shall apply to such sources. The Division shall use the procedures in 40
12 CFR 63.52(e) to determine whether the emissions limitations adopted pursuant to the prior 112(g)
13 case-by-case MACT determination are substantially as effective as the emission limitations that
14 the Division would otherwise adopt pursuant to Section 112(j) of the federal Clean Air Act for the
15 source in question. If the Division determines the previously adopted 112(g) emission limitations
16 are substantially as effective, then the Division shall retain the existing emission limitations to
17 effectuate Section 112(j) of the federal Clean Air Act and revise the permit accordingly. If the
18 Division does not retain the previously adopted 112(g) emission limitations, the MACT
19 requirements of this Rule shall be satisfied upon issuance of a revised Title V permit incorporating
20 any additional Section 112(j) requirements.

21 (2) If one or more sources in a category or subcategory subject to 112(j) requirements are installed at
22 a major source or result in the source becoming a major source due to the installation, and the
23 installation requires 112(g) emission limitations to be established and permitted pursuant to 15A
24 NCAC 02Q .0528 and the owner or operator has not submitted an application for a Title V permit
25 revision that addresses the emission limitation requirements of Section 112(j) of the federal Clean
26 Air Act, the owner or operator shall apply for and obtain a Title V permit that addresses the
27 emission limitation requirements of Section 112(g) of the federal Clean Air Act. Within 30 days of
28 issuance of that Title V permit, the owner or operator shall submit an application that meets the
29 requirements of Paragraph (m)(1) of this Rule for a revision to the existing Title V permit. The
30 Division shall determine whether the emissions limitations adopted pursuant to the prior 112(g)
31 case-by-case MACT determination are substantially as effective as the emission limitations that
32 the Division would otherwise adopt pursuant to Section 112(j) of the federal Clean Air Act for the
33 source in question. If the Division determines the previously adopted 112(g) emission limitations
34 are substantially as effective, then the Division shall retain the existing emission limitations to
35 effectuate Section 112(j) of the federal Clean Air Act and revise the permit accordingly. If the
36 Division does not retain the previously adopted 112(g) emission limitations, the permit shall be
37 revised to incorporate any additional Section 112(j) requirements.

1 (3) The owner or operator of an area source that, due to a relaxation in any federally enforceable
2 emission limitation (such as a restriction on hours of operation) increases its potential to emit
3 hazardous air pollutants such that the source becomes a major source that is subject to this Rule,
4 shall submit an application meeting the requirements of Paragraph (m)(1) of this Rule within 30
5 days after the date that such source becomes a major source. The Director shall use the procedures
6 in Paragraph (n) of this Rule in reviewing the application. The existing source MACT
7 requirements (including relevant compliance deadlines) shall apply to such sources.

8 (4) If EPA establishes a lesser quantity emission rate pursuant to Section 112(a)(1) of the Federal
9 Clean Air Act that results in an area source becoming a major source that is subject to this Rule,
10 then the owner or operator of such a major source shall submit an application that meets the
11 requirements of Paragraph (m)(1) of this Rule on or before the date six months after the date that
12 such source becomes a major source. Existing source MACT requirements (including relevant
13 compliance deadlines), as specified in a Title V permit issued pursuant to the requirements of this
14 Rule, shall apply to such sources.

15 (f) Sources that have a Title V permit addressing Section 112(j) requirements. The requirements of this Paragraph
16 apply to major sources that include one or more sources in a category or subcategory for which EPA fails to
17 promulgate an emission standard on or before the Section 112(j) deadline, the owner or operator has a permit
18 meeting the Section 112(j) requirements, and if changes occur at the major source to equipment, activities, or both
19 subsequent to the Section 112(j) deadline.

20 (1) If the Title V permit already provides the requirements that address the events described in this
21 Paragraph subsequent to the Section 112(j) deadline, then the source shall comply with the
22 applicable new source MACT or existing source MACT requirements as specified in the permit,
23 and the Section 112(j) requirements shall be deemed satisfied.

24 (2) If the Title V permit does not contain the requirements that address the events described in this
25 Paragraph subsequent to the Section 112(j) deadline, then the owner operator shall submit an
26 application for a revision of the existing Title V permit that meets the requirements of Paragraph
27 (m)(1) of this Rule within 30 days of beginning construction. Existing source MACT requirements
28 (including relevant compliance deadlines), as specified in a Title V permit issued pursuant to the
29 requirements of this Rule, shall apply to such sources.

30 (g) Requests for applicability determination. An owner or operator who is unsure of whether one or more sources at
31 a major source belong in a category or subcategory for which EPA has failed to promulgate an emission standard
32 pursuant to 40 CFR Part 63 may, on or before an applicable Section 112(j) deadline, request an applicability
33 determination from the Division by submitting an application that meets the requirements of Paragraph (m)(1) of
34 this Rule by the applicable deadlines specified in Paragraphs (d), (e), or (f) of this Rule.

35 (h) An owner or operator who submits a Part 1 MACT application that meets the requirements of Paragraph (m)(1)
36 of this Rule shall submit a Part 2 MACT application that meets the requirements of Paragraph (m)(2) of this Rule no
37 later than the applicable date specified in 40 CFR 63 Subpart B Table 1. The submission date specified in 40 CFR

1 63 Subpart B Table 1 for Miscellaneous Organic Chemical Manufacturing shall apply to sources in each of the
2 source categories listed in 40 CFR 63 Subpart B Table 2. If an owner or operator is required by 15A NCAC 02D
3 .1109 and this Rule to submit an application meeting the requirements of Paragraph (m)(1) of this Rule by a date
4 that is after the date for a Part 2 MACT application for sources in the category or subcategory in question
5 established by 40 CFR 63 Subpart B Table 1, the owner or operator shall submit a Part 2 MACT application meeting
6 the requirements of Paragraph (m)(2) of this Rule within 60 additional days after the applicable deadline for
7 submission of the Part 1 MACT application. The Part 2 applications shall be reviewed by the Division according to
8 the procedures established in 40 CFR 63.55.

9 (1) Any owner or operator who submitted a request for an applicability determination on or before
10 May 15, 2002, that remained pending as of May 30, 2003, and who still wishes to obtain such a
11 determination shall resubmit that request by the date that is 60 days after the Administrator
12 publishes in the Federal Register a proposed standard pursuant to Section 112(d) or 112(h) of the
13 Clean Air Act for the category or subcategory in question. Such a resubmitted request shall be
14 supplemented to discuss the relation between the sources in question and the applicability
15 provision in the proposed standard for the category or subcategory in question, and to explain why
16 there may still be uncertainties that require a determination of applicability. The Director shall
17 take action on each supplemented and resubmitted request within an additional 60 days after the
18 applicable deadline for the resubmitted request. If more than three years remain on the current
19 Title V permit, the owner or operator shall submit an application for a Title V permit revision to
20 make any conforming changes in the permit required to adopt the existing emission limitations as
21 the Section 112(j) MACT emission limitations. If less than three years remain on the current Title
22 V permit, any required conforming changes shall be made when the permit is renewed. If the
23 applicability determination is positive, the owner or operator shall submit a Part 2 MACT
24 application meeting the requirements of Paragraph (m)(2) of this Rule by the date specified for the
25 category or subcategory in question in 40 CFR 63 Subpart B Table 1. If the applicability
26 determination is negative, no further action by the owner or operator shall be necessary.

27 (2) An owner or operator who has submitted an application that meets the requirements of Paragraph
28 (m)(1) of this Rule may request a determination of whether emission limitations adopted pursuant
29 to a prior case-by-case MACT determination pursuant to Section 112(g) that apply to one or more
30 sources in a relevant category or subcategory are substantially as effective as the emission
31 limitations that the Division would otherwise adopt pursuant to this Rule for the source in
32 question. Such a request must be submitted by the date for the category or subcategory in question
33 specified in 40 CFR 63 Subpart B Table 1. Each request for a determination pursuant to this
34 Paragraph shall be construed as a complete application for an equivalent emission limitation
35 pursuant to this Rule. If the Director determines that the emission limitations in the prior case-by-
36 case MACT determination are substantially as effective as the emission limitations the Director
37 would otherwise adopt pursuant to this Rule, then the Director shall adopt the existing emission

1 limitations in the permit as the emission limitations to effectuate Section 112(j) for the source in
2 question. If the Director determines that the emission limitations in the prior case-by-case MACT
3 determination pursuant to Section 112(g) are not substantially as effective as the emission
4 limitations that the Director would otherwise adopt for the source in question pursuant to this
5 Rule, the Director shall make a new MACT determination and adopt a Title V permit
6 incorporating an appropriate equivalent emission limitation pursuant to this Rule. The Division
7 shall use the procedures in 40 CFR 63.52(e) to determine whether the emission limitations adopted
8 pursuant to the prior 112(g) case-by-case MACT determination are substantially as effective as the
9 emission limitations which Division would otherwise adopt pursuant to Section 112(j) of the
10 federal Clean Air Act for the source in question.

11 (i) If the Director disapproves a permit application submitted pursuant to this Rule or determines that the
12 application is incomplete, the owner or operator shall revise and resubmit the application to meet the Director's
13 objections not later than six months after first receiving notification that the application has been disapproved or is
14 incomplete.

15 (j) If the owner or operator of a source subject to this Rule has submitted a timely and complete application for a
16 permit, significant permit revision, or administrative amendment required by this Rule, any failure to have this
17 permit shall not be a violation of the requirements of this Rule unless the delay in final action is due to the failure of
18 the applicant to submit, in a timely manner, information required or requested to process the application.

19 (k) The permit shall contain the items specified in 40 CFR 63.52 including:

- 20 (1) specification of the affected source and the new affected source;
- 21 (2) emission limitations or emission standards equivalent to existing source MACT and emission
22 limitations equivalent to new source MACT for control of emissions of hazardous air pollutants
23 for that category or subcategory determined according to 40 CFR 63.55(a) on a case-by-case basis;
- 24 (3) emission limits, production limits, operational limits, or other terms and conditions necessary to
25 ensure practicable enforceability of the MACT emission limitation;
- 26 (4) notification, operation and maintenance, performance testing, monitoring, reporting, and
27 recordkeeping requirements; and
- 28 (5) compliance dates by which the owner or operator of an existing source is required to be in
29 compliance with the MACT emission limitation and all other applicable terms and conditions of
30 the permit, not to exceed three years from the date of issuance of the permit. The owner or
31 operator of a new affected source shall comply with a new source MACT level of control
32 immediately upon startup.

33 (l) Early reductions made pursuant to Section 112(i)(5)(A) of the federal Clean Air Act shall be achieved not later
34 than the date on which the relevant standard should have been promulgated according to the source category
35 schedule for standards.

36 (m) A permit application for a MACT determination shall consist of two parts.

1 (1) The Part 1 application shall contain the information required by 40 CFR 63.53(a) and shall be
2 submitted by the applicable deadline specified in Paragraph (d), (e), or (f) of this Rule.

3 (2) The Part 2 application shall contain the information required by 40 CFR 63.53(b) and shall be
4 submitted no later than the deadline in 40 CFR 63 Subpart B Table 1.

5 (n) Permit application review. The Director shall follow 40 CFR 63.55(a) in reviewing permit applications for
6 MACT. The resulting MACT determination shall be incorporated into the facility's Title V permit according to the
7 procedures established in this Section. Following submittal of a Part 1 or Part 2 MACT application, the Director
8 may request, pursuant to 15A NCAC 02Q .0507(c) and .0525(a), additional information from the owner or operator;
9 and the owner or operator shall submit the requested information within 30 days. A Part 2 MACT application shall
10 be deemed complete if it is sufficient to begin processing the application for a Title V permit addressing Section
11 112(j) requirements. If the Division disapproves a permit application or determines that the application is
12 incomplete, the owner or operator shall revise and resubmit the application to meet the objections of the Division
13 within the time period specified by the Division, which shall not exceed six months from the date that the owner or
14 operator is first notified that the application has been disapproved or is incomplete. After receipt of a complete Part
15 2 MACT application that is subsequently approved by the Division, the Director shall issue a Title V permit that
16 meets Section 112(j) requirements, following the schedule in 15A NCAC 02Q .0525.

17 (o) The following requirements shall apply to case-by-case determinations of equivalent emission limitations when
18 a MACT standard is subsequently promulgated:

19 (1) If EPA promulgates an emission standard that is applicable to one or more sources within a major
20 facility before the date a proposed permit pursuant to this Rule is approved, the permit shall
21 contain the promulgated standard rather than the emission limitation determined pursuant to 15A
22 NCAC 02D .1109, and the owner or operator of the source shall comply with the promulgated
23 standard by the compliance date in the promulgated standard.

24 (2) If EPA promulgates an emission standard that is applicable to a source after the date that a permit
25 is issued pursuant to this Rule, the Director shall revise the permit on its next renewal to reflect the
26 promulgated standard. Subparagraph (a)(1) of 15A NCAC 02Q .0517 shall not apply to
27 requirements established pursuant to this Rule. The Director shall establish a compliance date in
28 the revised permit that assures that the owner or operator complies with the promulgated standard
29 within a reasonable time, but no longer than eight years after such standard is promulgated or eight
30 years after the date by which the owner or operator was first required to comply with the emission
31 limitation established by permit, whichever is earlier. The period for compliance for existing
32 sources shall not be shorter than that provided for existing sources in the promulgated standard.

33 (3) Notwithstanding the requirements of Subparagraphs (1) or (2) of this Paragraph, if EPA
34 promulgates an emission standard that is applicable to a source after the date a proposed permit is
35 approved, the Director shall not be required to change the emission limitation in the permit to
36 reflect the promulgated standard if the level of control required by the emission limitation in the
37 permit is as effective as that required by the promulgated standard. If EPA promulgates an

1 emission standard that is applicable to an affected source after the date a permit application is
2 approved and the level of control required by the promulgated standard is less stringent than the
3 level of control required by an emission limitation in the prior MACT determination, the Division
4 shall not be required to incorporate a less stringent emission limitation of the promulgated
5 standards after considering the effects on air quality. The Division may consider any more
6 stringent provision of the MACT determination to be applicable legal requirements, as necessary
7 to protect air quality, when issuing or revising such a Title V permit.

8
9 *History Note:* *Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108;*
10 *Eff. July 1, 1996;*
11 *Amended Eff. February 1, 2004;*
12 *Readopted Eff. April 1, ~~2018~~2018;*
13 *Amended Eff. July 1, 2022*
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