

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Environmental Management Commission

RULE CITATION: ALL RULES

DEADLINE FOR RECEIPT: Tuesday, June 13, 2022

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 changes be made:

Rules should be written in the active voice describing who shall do what. Please review each rule and make this change.

Please retype the rule accordingly and resubmit it to our office electronically.

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02D .0103

DEADLINE FOR RECEIPT: Tuesday, June 13, 2022

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

On line 4, please delete “applicable” and insert “the”.

On lines 5 and 6, “such” and “each” are to be avoided. Please change accordingly.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel
Date submitted to agency: June 8, 2022

1 15A NCAC 02D .0103 is amended as published in 37:14 NCR 980 as follows:

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15A NCAC 02D .0103 COPIES OF REFERENCED FEDERAL REGULATIONS

~~(a) Copies of applicable Code of Federal Regulations sections referred to in this Subchapter may be obtained free of charge online at <https://www.govinfo.gov/app/collection/cfr/>. Copies of such rules are also available for public inspection at Department of Environmental Quality regional offices upon request. The contact information for each regional office is provided on the Division of Air Quality website at <https://deq.nc.gov/about/divisions/air-quality/regional-offices>.~~ offices. They are:

- ~~(1) Asheville Regional Office, 2090 Highway 70, Swannanoa, North Carolina 28778;~~
- ~~(2) Winston-Salem Regional Office, 450 West Hanes Mill Road, Suite 300, Winston-Salem, NC 27105;~~
- ~~(3) Mooresville Regional Office, 610 East Center Avenue, Suite 301, Mooresville, North Carolina 28115;~~
- ~~(4) Raleigh Regional Office, 3800 Barrett Drive, Post Office Box 27687, Raleigh, North Carolina 27609;~~
- ~~(5) Fayetteville Regional Office, Systel Building, 225 Green Street, Suite 714, Fayetteville, North Carolina 28301;~~
- ~~(6) Washington Regional Office, 943 Washington Square Mall, Washington, North Carolina 27889;~~
- ~~and~~
- ~~(7) Wilmington Regional Office, 127 Cardinal Drive Extension, Wilmington, North Carolina 28405.~~

~~(b) Copies of such rules may be obtained free of charge online at <https://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>.~~

*History Note: Authority G.S. 143-215.3; 150B-21.6;
Eff. December 1, 1976;
Amended Eff. December 1, 2005; December 1, 1992; August 1, 1991; July 1, 1988; July 1, 1987;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 5, 2016;
Amended Eff. July 1, 2023; January 1, 2018.*

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02D .0501

DEADLINE FOR RECEIPT: Tuesday, June 13, 2022

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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 changes be made:

“Any”, “each”, “every”, “all”, “such”, and “some” should not be used if “a”, “an”, or “the” can be used with the same meaning or if the word can be omitted. These appear on page 1, lines 7, 8, 9, 10, 11, 29, 32; page 2, lines 36, 10, 22, 29; page 3, line 14.

“Necessary”, “hereby”, “applicable”, and “reasonable” should be avoided if possible. These appear on page 1, lines 9, 12, 27, 30, and 37; page 2, lines 5, 13, 30, and 36; page 3, lines 5 and 10.

In Paragraph (a) and (c), what are “air pollution sources” or “sources of air pollution”? This term is vague and needs to be narrowed and defined.

Paragraph (b) states, “all new sources (again, vague) shall be in compliance”. Compliance with what? This is vague and ambiguous. Paragraph (c) is similarly vague and ambiguous.

In Paragraph (d), what does “within the same area” mean? This is vague and ambiguous.

In Part (d)(1)(A), it should begin: “Sources pursuant to which...” Also, please add an oxford comma after “.1110” and delete the comma after “requirements apply” on line 24.

In Part (d)(1)(B), what is an “attainment area”? Please define. Also, Part (B) is unclear. Can this be remedied?

In Part (d)(1)(D), “will” should not be used. Please change to “shall”. Also, “require expenditures on the part of the State” may be made clearer if stated, “require the expenditure of State funds”. Also, what are “other permits”? This is vague.

In Part (d)(2)(A), be more specific as to what the “PSD program” is. “PSD increment consumed or created” is also unclear. Define.

Delete the comma on page 2, line 6.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: June 8, 2022

In Part (d)(2)(C), what does “trades among them” mean? To what does this refer? This is unclear.

In Part (d)(2)(D), where can the source referenced be found and at what cost? Part (D) is unclear. In the paragraph following Part (D), what does “with at least the same level of detail” mean? Be more specific. Also, “can” should be changed to “may” or “shall”. Also, “DAQ” refers to what? What does “If the facility involves another facility” mean? This is unclear. It may be better to use the same language from 10D .0103 to refer to the website.

Subparagraph (d)(5) is unclear and ambiguous in how it allows waiver of requirements. G.S. 150B-19(6) prevents an agency from adopting a rule “allow[ing] the agency to waive or modify a requirement set in a rule unless a rule establishes specific guidelines the agency must follow in determining whether to waive or modify the requirement.” Generally, the rule must set forth (1) how a waiver may be requested or state that the agency may initiate a waiver on its own; (2) a list of factors used when deciding whether the agency can waive a rule; (3) specify who gets to decide whether to grant the waiver; and (4) if necessary based on context, clarify when the waiver will end. This needs to be done here.

In Paragraph (e), line 35, instead of “an opportunity for a request for public hearing”, it would be clearer to state, “an opportunity to request a public hearing”.

Please retype the rule accordingly and resubmit it to our office electronically.

1 15A NCAC 02D .0501 is amended as published in 37:14 NCR 980 as follows:

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SECTION .0500 - EMISSION CONTROL STANDARDS

15A NCAC 02D .0501 COMPLIANCE WITH EMISSION CONTROL STANDARDS

(a) Purpose and Scope. The purpose of this Rule is to assure compliance with emission control standards found in this Section. This Rule shall apply to all air pollution sources, both combustion and non-combustion.

(b) All new sources shall be in compliance prior to beginning operations.

(c) In addition to any control or manner of operation necessary to meet emission standards in this Section, any source of air pollution shall be operated with such control or in such manner that the source shall not cause the ambient air quality standards pursuant to 15A NCAC 02D .0400 to be exceeded at any point beyond the premises on which the source is located. When controls more stringent than those named in the applicable emission standards in this Section are required to prevent violation of the ambient air quality standards or are required to create an offset, the permit shall contain a condition requiring these controls.

(d) The Bubble Concept. As provided in this Paragraph, a facility with multiple emission sources or multiple facilities within the same area may choose to meet the total emission limitation for a given pollutant through a different mix of controls than those required by the rules in 15A NCAC 02D .0500 or .0900.

- (1) In order for this mix of alternative controls to be permitted, the Director shall determine that the following conditions are met:
 - (A) Sources pursuant to 15A NCAC 02D .0524, .0530, .0531, .1110 or .1111, the federal New Source Performance Standards (NSPS), the federal National Emission Standards for Hazardous Air Pollutants (NESHAP), regulations established pursuant to Section 111(d) of the federal Clean Air Act, or state or federal Prevention of Significant Deterioration (PSD) requirements apply, shall have emissions no larger than if there were not an alternative mix of controls;
 - (B) The facility or facilities is located in an attainment area or an unclassified area or in an area that has been demonstrated to be attainment by the statutory deadlines with reasonable further progress toward attainment for those pollutants being considered;
 - (C) All of the emission sources affected by the alternative mix are in compliance with applicable regulations or are in compliance with established compliance agreements; and
 - (D) The review of an application for the proposed mix of alternative controls and the enforcement of any resulting permit will not require expenditures on the part of the State in excess of five times that which would otherwise be required for the review and enforcement of other permits.
- (2) The owners or operators of the facility or facilities shall demonstrate the alternative mix of controls is equivalent in total allowed emissions, reliability, enforceability, and environmental impact to the aggregate of the otherwise applicable individual emission standards; and

- 1 (A) that the alternative mix approach does not interfere with the attainment and maintenance
2 of the ambient air quality standards and does not interfere with the PSD program, which
3 shall include modeled calculations of the amount, if any, of PSD increment consumed or
4 created;
- 5 (B) that the alternative mix approach conforms with reasonable further progress requirements
6 as defined in Clean Air Act Section 171(1), in any nonattainment area;
- 7 (C) that the emissions pursuant to the alternative mix approach are quantifiable, and trades
8 among them are equivalent; and
- 9 (D) that the pollutants controlled pursuant to the alternative mix approach are of the same
10 criteria pollutant categories, except that emissions of some criteria pollutants used in
11 alternative emission control strategies are subject to the limitations as defined in 44 FR
12 71784 (December 11, 1979), Subdivision D.1.c.ii. The Federal Register referenced in this
13 Part is hereby incorporated by reference and does not include subsequent amendments or
14 editions.

15 The demonstrations of equivalence shall be performed with at least the same level of detail as State
16 Implementation Plan (SIP) demonstration of attainment for the area. A copy of the SIPs can be
17 found on the DAQ website at [https://deq.nc.gov/about/divisions/air-quality/air-quality-](https://deq.nc.gov/about/divisions/air-quality/air-quality-planning/state-implementation-plans)
18 [planning/state-implementation-plans](https://deq.nc.gov/about/divisions/air-quality/air-quality-planning/state-implementation-plans). If the facility involves another facility in the alternative
19 strategy, it shall complete a modeling demonstration to ensure that air quality is protected.
20 Demonstrations of equivalency shall take into account differences in the level of reliability of the
21 control measures or other uncertainties.

- 22 (3) The emission rate limitations or control techniques of each source within the facility or facilities
23 subjected to the alternative mix of controls shall be specified in the facility's permit or facilities'
24 permits.
- 25 (4) Compliance schedules and enforcement actions shall not be affected because an application for an
26 alternative mix of controls is being prepared or is being reviewed.
- 27 (5) The Director may waive or reduce requirements in this Paragraph up to the extent allowed by the
28 Emissions Trading Policy Statement published in the Federal Register of April 7, 1982, pages
29 15076-15086, provided that the analysis required by Paragraph (e) of this Rule supports any waiver
30 or reduction of requirements. The Federal Register referenced in this Subparagraph is hereby
31 incorporated by reference and does not include subsequent amendments or editions.

32 (e) In a permit application for an alternative mix of controls pursuant to Paragraph (d) of this Rule, the owner or
33 operator of the facility shall demonstrate the proposal is equivalent to the existing requirements of the SIP in total
34 allowed emissions, enforceability, reliability, and environmental impact. The Director shall provide for public notice
35 with an opportunity for a request for public hearing following the procedures pursuant to 15A NCAC 02Q .0300 or
36 .0500, as applicable.

1 (1) If a permit containing these conditions is issued pursuant to 15A NCAC 02Q .0300, it shall become
2 a part of the state implementation plan (SIP) as an appendix available for inspection ~~at the~~
3 ~~Department's regional offices as specified in 15A NCAC 02Q .0105.~~ Until the U.S. Environmental
4 Protection Agency (EPA) approves the SIP revision embodying the permit containing an alternative
5 mix of controls, the facility shall continue to meet the otherwise applicable existing SIP
6 requirements.

7 (2) If a permit containing these conditions is issued pursuant to 15A NCAC 02Q .0500 it shall be
8 available for inspection ~~at the Department's regional offices as specified in 15A NCAC 02Q .0105.~~
9 Until the EPA approves the Title V permit containing an alternative mix of controls, the facility
10 shall continue to meet the otherwise applicable existing SIP requirements.

11 The revision shall be submitted for approval by the EPA on the basis of the revision's consistency with EPA's "Policy
12 for Alternative Emission Reduction Options Within State Implementation Plans" as promulgated in the Federal
13 Register of December 11, 1979, pages 71780-71788, and subsequent rulings.

14 (f) If the owner or operator of any combustion and non-combustion source or control equipment subject to the
15 requirements of this Section is required to demonstrate compliance with a rule in this Section, source testing
16 procedures pursuant to 15A NCAC 02D .2600 shall be used.

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18 *History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);*
19 *Eff. February 1, 1976;*
20 *Amended Eff. August 1, 1991; October 1, 1989;*
21 *Temporary Amendment Eff. March 8, 1994 for a period of 180 days or until the permanent rule is*
22 *effective, whichever is sooner;*
23 *Amended Eff. June 1, 2008; April 1, 2001; April 1, 1999; July 1, 1996; February 1, 1995; July 1,*
24 *1994;*
25 *Readopted Eff. November 1, ~~2020-2020~~;*
26 *Amended Eff. July 1, 2023.*

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02D .0546

DEADLINE FOR RECEIPT: Tuesday, June 13, 2022

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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 changes be made:

On the "Submission for Permanent Rule" Form, in box 2, please put a space between "02D" and ".0546".

"Any", "each", "every", "all", "such", and "some" should not be used if "a", "an", or "the" can be used with the same meaning or if the word can be omitted. These appear on page 1, lines 20, 23, 24, 32, 33; page 2, lines 3, 8, 12.

"Appropriate", and "reasonably" should be avoided if possible. These appear on page 1, lines 22 and 37.

In Subparagraph (b)(7), what is "an access area"? Also, use "may" instead of "can".

In Paragraph (c), it may be clearer to begin, "This Rule shall apply..."

Is Paragraph (f) necessary? Is it merely a repetition of another Rule? If not, in Paragraph (f), add an oxford comma after "Recordkeeping". In Subparagraph (f)(2), is there a better way to express "No later than"?

Please retype the rule accordingly and resubmit it to our office electronically.

1 15A NCAC 02D .0546 is amended as published in 37:14 NCR 980 as follows:

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3 **15A NCAC 02D .0546 CONTROL OF EMISSIONS FROM LOG FUMIGATION OPERATIONS**

4 (a) Purpose. The purpose of this Rule is to establish emission control requirements for hazardous air pollutants and
5 toxic air pollutants from log fumigation operations.

6 (b) Definitions. For the purpose of this Rule, the following definitions and definitions in this Subchapter or 15A
7 NCAC 02Q apply:

8 (1) "Bulk or tarpaulin log fumigation" means the fumigation of logs that are placed in piles on an
9 impermeable surface and covered with a weighted-down tarpaulin.

10 (2) "Chamber log fumigation" means the fumigation of logs inside a sealed building or structure that is
11 specifically used for fumigation. Chambers used for fumigation may be either atmospheric or
12 vacuum type.

13 (3) "Container log fumigation" means the fumigation of logs inside a container where the doors of the
14 container are closed and sealed.

15 (4) "Fumigant" means the hazardous air pollutant or toxic air pollutant that is used to eliminate the pests
16 within the logs.

17 (5) "Fumigation operation" means the period of time that the fumigant is injected and retained in the
18 container, chamber, or bulk piles for the purposes of treating the logs for insects and other pests to
19 prevent the transfer of exotic organisms.

20 (6) "Hazardous air pollutant" means any pollutant listed under Section 112(b) of the federal Clean Air
21 Act in 42 U.S.C. 7412(b).

22 (7) "Public right-of-way" means an access area where people can reasonably be expected to be present
23 for any or all parts of a 24-hour period.

24 (8) "Toxic air pollutant" means any of the carcinogens, chronic toxicants, acute systemic toxicants, or
25 acute irritants that are listed in 15A NCAC 02D .1104.

26 (c) Applicability. This Rule applies to new, existing, and modified bulk, chamber, and container log fumigation
27 operations that use a hazardous air pollutant or toxic air pollutant as a fumigant.

28 (d) Emission Control Requirements. The owner or operator of a log fumigation operation shall comply with the Toxic
29 Air Pollutant Guidelines specified in 15A NCAC 02D .1104 and follow the procedures specified in 15A NCAC 02D
30 .1106, 15A NCAC 02Q .0709, and .0710.

31 (e) The owner or operator shall post signs notifying the public of fumigation operations. The signs shall be visible
32 and legible to the public at the fence or property line closest to any public right-of-way. The signs shall remain in
33 place at all times and shall conform to the format for placards mandated by the federally approved fumigant label.

34 (f) Monitoring, Recordkeeping and Reporting. The owner or operator of a bulk, chamber, or container log fumigation
35 operation shall comply with the requirements pursuant to 15A NCAC 02D .0600:

36 (1) The owner or operator shall send an initial notification of commencement of operations to the
37 appropriate Division of Air Quality regional office within 15 days of initial fumigation start-up.

1 (2) The owner or operator shall submit a quarterly summary ~~report, reports, signed by with the original~~
2 ~~signature of the permittee or the authorized responsible official, of the monitoring and recordkeeping~~
3 ~~activities, activities postmarked no No~~ later than 30 days after the end of each calendar year ~~quarter.~~
4 quarter, reports shall be postmarked or received by the Division in accordance with 15A NCAC 02D
5 .0605(i). The report shall contain the following:

- 6 (A) the company name, address, and facility ID number;
- 7 (B) the calendar year quarter represented by the report;
- 8 (C) the daily and total fumigant usage in pounds for each quarter;
- 9 (D) a summary of the monitoring data required by the permit that was collected during the
10 quarter; and
- 11 (E) a summary of exceedances from the levels established in the permit that occurred during
12 the quarter of any monitoring parameters.

13 (g) Compliance Schedule. The owner or operator of an existing log fumigation operation subject to this Rule shall
14 achieve compliance within 60 days after the Rule is effective or in accordance with an alternate compliance schedule
15 approved by the Director. In establishing an alternate compliance schedule, the Director shall consider whether the
16 compliance approach chosen by the facility involves the purchase and installation of a control device. New and
17 modified facilities shall achieve compliance with this Rule upon start-up.

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19 *History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(4); 143-215.107(a)(5);*
20 *Eff. November 1, ~~2020~~ 2020;*
21 *Amended Eff. July 1, 2023.*
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REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02D .0605

DEADLINE FOR RECEIPT: Tuesday, June 13, 2022

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

“Any”, “each”, “every”, “all”, “such”, and “some” should not be used if “a”, “an”, or “the” can be used with the same meaning or if the word can be omitted. These appear on page 1, lines 6-9, 19, 20, 22, 24, 28, 32, 33, 35, 36; page 2, lines 4, 6.

“Necessary” and “appropriate” should be avoided if possible. These appear on page 1, lines 10, 15, 20, 26; page 2, line 3.

In Paragraph (a), delete “this” in front of “Subchapters”. Use a semicolon instead of a comma at the end of Subparagraph (a)(3). Delete the comma on line 11.

In Paragraph (c), what does “If the Director has evidence” mean? What “evidence” is sufficient? Is there any way to challenge the “evidence”? This needs to be clarified. Also, based on what criteria or factors “may” the Director require the submission of “any information necessary”? This is vague and ambiguous.

In Paragraph (e), is there a better way to express “generated in response to the requirements pursuant to...”?

Paragraph (f) should be changed to active voice. Perhaps begin with “The owner or operator shall make available...”.

In Paragraph (h), delete “15A NCAC” and insert “Subchapter”.

The statutes listed in the History Note have errors. “143-215-65” and “143-215.1078(a)(4)” do not exist.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: June 8, 2022

1 15A NCAC 02D .0605 is amended as published in 37:14 NCR 980 as follows:

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3 **15A NCAC 02D .0605 GENERAL RECORDKEEPING AND REPORTING REQUIREMENTS**

4 (a) The owner or operator of a source subject to a requirement of this Subchapters 02D or 02Q of this Chapter shall
5 maintain:

- 6 (1) records detailing all malfunctions pursuant to 15A NCAC 02D .0535;
- 7 (2) records of all testing conducted pursuant to rules in Subchapter 02D;
- 8 (3) records of all monitoring conducted pursuant to Subchapters 02D or 02Q of this Chapter,
- 9 (4) records detailing activities relating to any compliance schedule in this Subchapter; and
- 10 (5) for unpermitted sources, records necessary to determine compliance with rules in Subchapters 02D
11 or .02Q of this Chapter.

12 (b) The permit shall specify:

- 13 (1) the type of monitoring required and the frequency of the monitoring;
- 14 (2) the type of records to be maintained; and
- 15 (3) the type of reports to be submitted and the frequency of submitting these reports, as necessary to
16 determine compliance with rules in Subchapters 02D or 02Q of this Chapter or with an emission
17 standard or permit condition.

18 (c) If the Director has evidence that a source is violating an emission standard or permit condition, the Director may
19 require the owner or operator of any source subject to the requirements in Subchapters 02D or 02Q of this Chapter to
20 submit to the Director any information necessary to determine the compliance status of the source.

21 (d) The owner or operator of a source of excess emissions that last for more than four hours and that results from a
22 malfunction, a breakdown of process or control equipment, or any other abnormal conditions shall report excess
23 emissions in accordance with the requirements of 15A NCAC 02D .0535.

24 (e) Copies of all records and reports generated in response to the requirements pursuant to 15A NCAC 02D .0600
25 shall be retained by the owner or operator for a period of two years after the date that the record was made or the report
26 submitted, except that the retention period shall be extended if necessary to comply with other State or federal
27 requirements.

28 (f) All records and reports generated in response to the requirements of 15A NCAC 02D .0600 shall be made available
29 to personnel of the Division for inspection.

30 (g) The owner or operator of a source subject to the requirements of 15A NCAC 02D .0600 shall comply with the
31 requirements of 15A NCAC 02D .0600 at his or her own cost.

32 (h) No person shall falsify any information required by a rule in Subchapter 02D or a permit issued pursuant to 15A
33 NCAC 02Q. No person shall knowingly submit any falsified information required by a rule in Subchapter 02D or a
34 permit issued pursuant to Subchapter 02Q of this Chapter.

35 (i) All reports, notifications, records, or other documentation required by 15A NCAC 02D and 02Q to be provided to
36 the Division or any regional office shall be submitted as follows:

1 (1) Except as specified in Subparagraph (2) of this Paragraph, submit the documents in hard copy format
2 to the Director, Division of Air Quality, 1641 Mail Service Center, Raleigh, North Carolina 27699-
3 1641, or regional office in accordance with 15A NCAC 02D .0103, as appropriate.

4 (2) After such time that the Division makes available a system for receiving electronic submittals, as
5 identified in 15A NCAC 02Q .0104(c)(1), documents may be submitted in electronic format through
6 such system in lieu of the procedures in Subparagraph (1) of this Paragraph.

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9 *History Note: Authority G.S. 143-215.3(a)(1); 143-215-65; 143-215.66; 143-215.1078(a)(4);*

10 *Eff. February 1, 1976;*

11 *Amended Eff. January 1, 2007; April 1, 1999; July 1, 1984; June 18, 1976;*

12 *Readopted Eff. November 1, ~~2019~~ 2019;*

13 *Amended Eff. July 1, 2023.*

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REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02D .1903

DEADLINE FOR RECEIPT: Tuesday, June 13, 2022

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

“Any”, “each”, “every”, “all”, “such”, and “some” should not be used if “a”, “an”, or “the” can be used with the same meaning or if the word can be omitted. These appear on page 1, lines 4, 16, 23, 29, 32; page 2, lines 2, 5, 9, 13, 15, 27, 28, 31; page 4, lines 14, 17, 26, 27, 28.

“At least”, “currently”, “acceptable”, “appropriate”, and “applicable” should be avoided if possible. These appear on page 1, line 32; page 2, line 28; page 3, lines 2, 4, 6, 35; page 4, lines 16, 28.

In Subparagraphs (b)(4), (5), and (6), what does “currently acceptable” mean? Define or delete. In (b)(8), instead of “for the purpose of testing and developing”, use “to test or develop”. Also in this Subparagraph, what is a “standard qualification program”? Please clarify.

In Subparts (b)(11)(B)(ii) and (iii), how is “training value” determined? By what criteria or factors?

Please retype the rule accordingly and resubmit it to our office electronically.

1 15A NCAC 02D .1903 is amended as published in 37:14 NCR 980 as follows:

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15A NCAC 02D .1903 OPEN BURNING WITHOUT AN AIR QUALITY PERMIT

(a) All open burning is prohibited except open burning allowed pursuant to Paragraph (b) of this Rule or 15A NCAC 02D .1904. Except as allowed pursuant to Subparagraphs (b)(3) through (b)(9) of this Rule, open burning shall not be initiated in a county that the Department or the Forsyth County Office of Environmental Assistance and Protection, has forecasted to be in an Air Quality Action Day Code "Orange" or above during the 24-hour time period covered by that Air Quality Action Day.

(b) The following types of open burning are permissible without an air quality permit.

- (1) The open burning of leaves, logs, stumps, tree branches, or yard trimmings, if the following conditions are met:
 - (A) the material burned originates on the premises of private residences and is burned on those premises and does not include material collected from multiple private residences and combined for burning;
 - (B) there are no public pickup services available;
 - (C) non-vegetative materials, such as household garbage, treated or coated wood, or any other synthetic materials are not burned;
 - (D) the burning is initiated no earlier than 8:00 a.m. and no additional combustible material is added to the fire between 6:00 p.m. on one day and 8:00 a.m. on the following day;
 - (E) the burning does not create a nuisance; and
 - (F) material is not burned when the North Carolina Forest Service or other government agencies have banned burning for that area.

The burning of logs or stumps of any size shall not be considered to create a nuisance for purposes of the application of the open burning air quality permitting exception described in this Subparagraph;

- (2) The open burning for land clearing or right-of-way maintenance if the following conditions are met:
 - (A) The wind direction at the time that the burning is initiated and the wind direction as forecasted by the National Weather Service at the time that the burning is initiated are away from any area, including public roads within 250 feet of the burning as measured from the edge of the pavement or other roadway surface, which may be affected by smoke, ash, or other air pollutants from the burning;
 - (B) The location of the burning is at least 500 feet from any dwelling, group of dwellings, or commercial or institutional establishment, or other occupied structure not located on the property where the burning is conducted. The regional office supervisor may grant exceptions to the setback requirements if:
 - (i) a signed, written statement waiving objections to the open burning associated with the land clearing operation is obtained and submitted to, and the exception granted

1 by, the regional office supervisor before the burning begins from a resident or an
2 owner of each dwelling, commercial or institutional establishment, or other
3 occupied structure within 500 feet of the open burning site. In the case of a lease
4 or rental agreement, the lessee or renter shall be the person from whom permission
5 shall be gained prior to any burning; or

6 (ii) an air curtain incinerator that complies with 15A NCAC 02D .1904 is utilized at
7 the open burning site.

8 Factors that the regional supervisor shall consider in deciding to grant the exception
9 include: all the persons who need to sign the statement waiving the objection have signed
10 it; the location of the burn; and the type, amount, and nature of the combustible substances.
11 The regional supervisor shall not grant a waiver if a college, school, licensed day care,
12 hospital, licensed rest home, or other similar institution is less than 500 feet from the
13 proposed burn site when such institution is occupied;

14 (C) Only land-cleared plant growth is burned. Heavy oils, items containing natural or synthetic
15 rubber, synthetic materials, or any materials other than plant growth shall not be burned;
16 however, kerosene, distillate oil, or diesel fuel may be used to start the fire;

17 (D) Initial burning begins only between the hours of 8:00 a.m. and 6:00 p.m., and no
18 combustible material is added to the fire between 6:00 p.m. on one day and 8:00 a.m. on
19 the following day;

20 (E) No fires are initiated or vegetation added to existing fires when the North Carolina Forest
21 Service or other government agencies have banned burning for that area; and

22 (F) Materials are not carried off-site or transported over public roads for open burning unless
23 the materials are carried or transported to:

24 (i) Facilities permitted in accordance with 15A NCAC 02D .1904 for the operation
25 of an air curtain incinerator at a permanent site; or

26 (ii) A location, where the material is burned not more than four times per calendar
27 year, which meets all of the following criteria:

28 (I) at least 500 feet from any dwelling, group of dwellings, or commercial
29 or institutional establishment, or other occupied structure not located on
30 the property on which the burning is conducted;

31 (II) there are no more than two piles, each no more than 20 feet in diameter,
32 being burned at one time; and

33 (III) the location is not a permitted solid waste management facility;

34 (3) camp fires and fires used solely for outdoor cooking and other recreational purposes, ceremonial
35 occasions, or for human warmth and comfort and that do not create a nuisance and do not use
36 synthetic materials, refuse, or salvageable materials for fuel;

- 1 (4) fires purposely set to public or private forest land for forest management practices for which burning
2 is currently acceptable to the North Carolina Forest Service;
- 3 (5) fires purposely set to agricultural lands for disease and pest control and fires set for other agricultural
4 or apicultural practices for which burning is currently acceptable to the North Carolina Department
5 of Agriculture and Consumer Services;
- 6 (6) fires purposely set for wildlife management practices for which burning is currently acceptable to
7 the Wildlife Resource Commission;
- 8 (7) fires for the disposal of dangerous materials when the Division has determined that it is the safest
9 and most practical method of disposal;
- 10 (8) fires purposely set by manufacturers of fire-extinguishing materials or equipment, testing
11 laboratories, or other persons, for the purpose of testing or developing these materials or equipment
12 in accordance with a standard qualification program;
- 13 (9) fires purposely set for the instruction and training of fire-fighting personnel at permanent fire-
14 fighting training facilities;
- 15 (10) fires purposely set for the instruction and training of fire-fighting personnel when conducted under
16 the supervision of or with the cooperation of one or more of the following agencies:
 - 17 (A) the North Carolina Forest Service;
 - 18 (B) the North Carolina Department of Insurance; or
 - 19 (C) North Carolina Community Colleges;
- 20 (11) fires not described in Subparagraphs (9) or (10) of this Paragraph, purposely set for the instruction
21 and training of fire-fighting personnel, provided that:
 - 22 (A) the regional office supervisor has been notified according to the procedures and deadlines
23 contained in the notification form and the regional office supervisor has granted permission
24 for the burning. The information required to be submitted in the form includes:
 - 25 (i) the address of the fire department that is requesting the training exercise;
 - 26 (ii) the location of the training exercise;
 - 27 (iii) a description of the type of structure or object and amount of materials to be
28 burned at the location of the training exercise;
 - 29 (iv) the dates that the training exercise will be performed; and
 - 30 (v) an inspection from a North Carolina Asbestos Inspector that the structure being
31 burned is free of asbestos.

32 The form shall be submitted 10 days prior to commencement of the burn. This form may
33 be obtained in electronic format at [https://deq.nc.gov/about/divisions/air-quality/air-](https://deq.nc.gov/about/divisions/air-quality/air-quality-enforcement/open-burning/firefighter-information)
34 [quality-enforcement/open-burning/firefighter-information](https://deq.nc.gov/about/divisions/air-quality/air-quality-enforcement/open-burning/firefighter-information) or by ~~writing~~ contacting the
35 appropriate regional office ~~at the address as specified~~ in 15A NCAC 02D .1905 and
36 requesting it.

(B) Factors that the regional office supervisor shall consider in granting permission for the burning include:

- (i) type, amount, and nature of combustible substances. The regional office supervisor shall not grant permission for the burning of salvageable items or if the primary purpose of the fire is to dispose of synthetic materials or refuse;
- (ii) the burning of previously demolished structures. The regional office supervisor shall not consider these structures as having training value;
- (iii) the burning of motor vehicles. The regional office supervisor may allow an exercise involving the burning of motor vehicles burned over a period of time by a training unit or by several related training units if he or she determines that they have training value; and
- (iv) the distance from the location of the fire training to residential, commercial, or institutional buildings or properties.

Any deviations from the dates and times of exercises, including additions, postponements, and deletions, submitted in the schedule in the approved plan shall be communicated verbally to the regional office supervisor at least one hour before the burn is scheduled.

(12) fires for the disposal of vegetative material generated as a result of a natural disaster, such as tornado, hurricane, or flood, if the regional office supervisor grants permission for the burning. The person desiring to do the burning shall document and provide written notification to the regional office supervisor that there is no other practical method of disposal of the waste. Factors that the regional office supervisor shall consider in granting permission for the burning include type, amount, location of the burning, and nature of combustible substances. The regional office supervisor shall not grant permission for the burning if the primary purpose of the fire is to dispose of synthetic materials or refuse or recovery of salvageable materials. Fires authorized under this Subparagraph shall comply with the conditions of Parts (b)(2)(A) through (E) of this Rule.

(c) The authority to conduct open burning pursuant to this Section does not exempt or excuse any person from the consequences, damages, or injuries that may result from this conduct. It does not excuse or exempt any person from complying with all applicable laws, ordinances, rules or orders of any other governmental entity having jurisdiction even though the open burning is conducted in compliance with this Section.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); S.L. 2011-394, s.2; Eff. July 1, 1996; Amended Eff. June 13, 2016; March 19, 2015; July 3, 2012; July 1, 2007; December 1, 2005; June 1, 2004; July 1, 1998; Readopted Eff. September 1, 2019-2019; Amended Eff. July 1, 2023.

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02D .1904

DEADLINE FOR RECEIPT: Tuesday, June 13, 2022

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 changes be made:

“Any”, “each”, “every”, “all”, “such”, and “some” should not be used if “a”, “an”, or “the” can be used with the same meaning or if the word can be omitted. These appear on page 1, lines 19, 21, 32; page 2, line 31; page 3, lines 14, 18, 23, 29, 32; page 4, lines 17, 23; page 5, lines 7, 9.

“On or after”, “on or before” “no later than”, “at least”, and “applicable” should be avoided if possible. These appear on page 1, lines 23, 30; page 2, line 2; page 3, lines 14, 30; page 4, lines 4, 9, 21, 26; page 5, lines 12, 15.

In Subparagraph (a)(2), “where a temporary air curtain incinerator is defined in Subparagraph (b)(6) of this Rule” seems unnecessary, or at least unclear.

In Subparagraph (b)(2), add an oxford comma after “careless operations”. Also add one in Part (b)(7)(B) after “state”.

In Part (b)(7)(C), change “The Director will” to “The Director shall”. The examples at the end of this Part are unnecessary and should be deleted.

Remove the parenthesis in Parts (f)(1)(A) and (B).

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: June 8, 2022

1 15A NCAC 02D .1904 is amended as published in 37:14 NCR 980 as follows:

2

3 **15A NCAC 02D .1904 AIR CURTAIN INCINERATORS**

4 (a) Applicability. This Rule applies to the following air curtain incinerators:

5 (1) new and existing air curtain incinerators subject to 40 CFR 60.2245 through 60.2260 or 60.2970
6 through 60.2974 that combust the following materials:

7 (A) 100 percent wood waste;

8 (B) 100 percent clean lumber;

9 (C) 100 percent yard waste; or

10 (D) 100 percent mixture of only wood waste, clean lumber, and yard waste.

11 (2) new and existing temporary air curtain incinerators used at industrial, commercial, institutional, or
12 municipal sites where a temporary air curtain incinerator is defined in Subparagraph (b)(6) of this
13 Rule.

14 (b) Definitions. For the purpose of this Rule, the following definitions apply:

15 (1) "Clean lumber" means wood or wood products that have been cut or shaped and include wet, air-
16 dried, and kiln-dried wood products. Clean lumber does not include wood or wood products that
17 have been painted, pigment-stained, or pressure treated, or manufactured wood products that contain
18 adhesives or resins.

19 (2) "Malfunction" means any unavoidable failure of air pollution control equipment, process equipment,
20 or a process to operate in a normal or usual manner. Failures caused entirely or in part by poor
21 maintenance, careless operations or any other upset condition within the control of the emission
22 source are not considered a malfunction.

23 (3) "New air curtain incinerator" means an air curtain incinerator that began operating on or after the
24 effective date of this Rule.

25 (4) "Operator" means the person in operational control over the open burning.

26 (5) "Permanent air curtain incinerator" means an air curtain incinerator whose owner or operator
27 operates the air curtain incinerator at one facility or site during the term of the permit.

28 (6) "Temporary air curtain incinerator" means an air curtain incinerator whose owner or operator moves
29 the air curtain incinerator to another site and operates it for land clearing or right-of-way
30 maintenance at that site at least once during the term of its permit.

31 (7) "Temporary-use air curtain incinerator used in disaster recovery" means an air curtain incinerator
32 that meets all of the following requirements:

33 (A) combusts less than 35 tons per day of debris consisting of the materials listed in Parts
34 (a)(1)(A) through (C) of this Rule;

35 (B) combusts debris within the boundaries of an area officially declared a disaster or
36 emergency by federal, state or local government; and

1 (C) combusts debris for less than 16 weeks unless the owner or operator submits a request for
2 additional time at least 1 week prior to the end of the 16-week period and provides the
3 reasons that the additional time is needed. The Director will provide written approval for
4 the additional time if he or she finds that the additional time is warranted based on the
5 information provided in the request.

6 Examples of disasters or emergencies include tornadoes, hurricanes, floods, ice storms,
7 high winds, or acts of bioterrorism.

8 (8) "Wood waste" means untreated wood and untreated wood products, including tree stumps (whole
9 or chipped), trees, tree limbs (whole or chipped), bark, sawdust, chips, scraps, slabs, millings, and
10 shavings. Wood waste does not include:

11 (A) grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs from
12 residential, commercial, institutional, or industrial sources as part of maintaining yards or
13 other private or public lands;

14 (B) construction, renovation, or demolition wastes;

15 (C) clean lumber; and

16 (D) treated wood and treated wood products, including wood products that have been painted,
17 pigment-stained, or pressure treated, or manufactured wood products that contain
18 adhesives or resins.

19 (9) "Yard waste" means grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs.
20 Yard waste comes from residential, commercial/retail, institutional, or industrial sources as part of
21 maintaining yards or other private or public lands. Yard waste does not include:

22 (A) construction, renovation, or demolition wastes;

23 (B) clean lumber; and

24 (C) wood waste.

25 (c) Air curtain incinerators shall comply with the following conditions and requirements:

26 (1) the operation of air curtain incinerators in particulate and ozone nonattainment areas shall cease in
27 a county that the Department or the Forsyth County Office of Environmental Assistance and
28 Protection has forecasted to be an Air Quality Action Day Code "Orange" or above during the 24-
29 hour time period covered by that Air Quality Action Day;

30 (2) the wind direction at the time that the burning is initiated and the wind direction as forecasted by
31 the National Weather Service during the time of the burning shall be away from any area, including
32 public roads within 250 feet of the burning as measured from the edge of the pavement or other
33 roadway surface, which may be affected by smoke, ash, or other air pollutants from the burning;

34 (3) no fires shall be started or material added to existing fires when the North Carolina Forest Service,
35 Fire Marshall, or other governmental agency has banned burning for that area;

36 (4) burning shall be conducted only between the hours of 8:00 a.m. and 6:00 p.m. No combustible
37 materials shall be added to the air curtain incinerator prior to or after this time period;

- 1 (5) The air curtain incinerator shall not be operated more than the maximum source operating hours-
2 per-day and days-per-week. The maximum source operating hours-per-day and days-per-week shall
3 be set to protect the ambient air quality standard and prevention of significant deterioration (PSD)
4 increment for particulate. The maximum source operating hours-per-day and days-per-week shall
5 be determined using the modeling procedures in 15A NCAC 02D .1106(b), (c), and (f). This
6 Subparagraph shall not apply to temporary air curtain incinerators;
- 7 (6) air curtain incinerators shall meet manufacturer's specifications for operation and upkeep to ensure
8 complete burning of material charged into the pit. Manufacturer's specifications shall be kept on site
9 and be available for inspection by Division staff;
- 10 (7) the owner or operator of an air curtain incinerator shall allow the ashes to cool and water the ash
11 prior to its removal to prevent the ash from becoming airborne;
- 12 (8) only distillate oil, kerosene, diesel fuel, natural gas, or liquefied petroleum gas may be used to start
13 the fire; and
- 14 (9) the location of the burning shall be at least 300 feet from any dwelling, group of dwellings, or
15 commercial or institutional establishment, or other occupied structure not located on the property
16 on which the burning is conducted. The regional office supervisor may grant exceptions to the
17 setback requirements if a signed, written statement waiving objections to the air curtain burning is
18 obtained from a resident or an owner of each dwelling, commercial or institutional establishment,
19 or other occupied structure within 300 feet of the burning site. In case of a lease or rental agreement,
20 the lessee or renter, and the property owner shall sign the statement waiving objections to the
21 burning. The statement shall be submitted to and approved by the regional office supervisor before
22 initiation of the burn. Factors that the regional supervisor shall consider in deciding to grant the
23 exception include: all the persons who need to sign the statement waiving the objection have signed
24 it; the location of the burn; and the type, amount, and nature of the combustible substances.

25 (d) Exemptions. Temporary-use air curtain incinerators used in disaster recovery are excluded from the requirements
26 of this Rule if the following conditions are met:

- 27 (1) the air curtain incinerator meets the definition of a temporary-use air curtain incinerators used in
28 disaster recovery as specified in Subparagraph (b)(7) of this Rule;
- 29 (2) the air curtain incinerator meets all the requirements pursuant to 40 CFR 60.2969 or 60.3061, as
30 applicable; and
- 31 (3) the air curtain incinerator is operated in a manner consistent with the operations manual for the air
32 curtain incinerator and the charge rate during all periods of operation is less than or equal to the
33 lesser of 35 tons per day or the maximum charge rate specified by the manufacturer of the air curtain
34 incinerator.

35 (e) Permitting. Air curtain incinerators shall be subject to 15A NCAC 02Q .0500.

- 36 (1) The owner or operator of a new or existing permanent air curtain incinerator shall obtain a General
37 Title V Operating Permit pursuant to 15A NCAC 02Q .0509.

1 (2) The owner or operator of a new or existing temporary air curtain incinerator shall obtain a General
2 Title V Operating Permit pursuant to 15A NCAC 02Q .0510.

3 (3) The owner or operator of an existing permanent or temporary air curtain incinerator shall complete
4 and submit a permit application no later than 12 months after the effective date of this Rule.

5 (4) The owner or operator of a new permanent or temporary air curtain incinerator shall complete and
6 submit a permit application 60 days prior to the date the unit commences operation.

7 (5) The owner or operator of an existing permanent or temporary air curtain incinerator that is planning
8 to close rather than obtaining a permit pursuant to 15A NCAC 02Q .0509 or 15A NCAC 02Q .0510
9 shall submit a closure notification to the Director no later than 12 months after the effective date of
10 this Rule.

11 (f) Opacity limits.

12 (1) The owner or operator of an existing air curtain incinerators shall meet the following opacity limits:

13 (A) Maintain opacity to less than or equal to 35 percent opacity (as determined by the average
14 of 3 1-hour blocks consisting of 10 6-minute average opacity values) during startup of the
15 air curtain incinerator, where startup is defined as the first 30 minutes of operation.

16 (B) Maintain opacity to less than or equal to 10 percent opacity (as determined by the average
17 of 3 1-hour blocks consisting of 10 6-minute average opacity values) at all times, other
18 than during startup or during malfunctions.

19 (2) The owner or operator of a new air curtain incinerator shall meet the opacity limits specified in
20 Subparagraph (f)(1) of this Rule within 60 days after air curtain incinerator reaches the charge rate
21 at which it will operate, but no later than 180 days after its initial startup.

22 (g) Performance tests.

23 (1) All initial and annual opacity tests shall be conducted using 40 CFR 60 Appendix A-4 Test Method
24 9 to determine compliance with the opacity limitations specified in Subparagraph (f)(1) of this Rule.

25 (2) The owner or operator of an existing air curtain incinerator shall conduct an initial performance test
26 for opacity as specified in 40 CFR 60.8 on or before 90 days after the effective date of this rule.

27 (3) The owner or operator of a new air curtain incinerator shall conduct an initial performance test for
28 opacity as specified in 40 CFR 60.8 within 60 days after achieving the maximum charge rate at
29 which the affected air curtain incinerator will be operated, but not later than 180 days after initial
30 startup of the air curtain incinerator.

31 (4) After the initial test for opacity, the owner or operator of a new or existing air curtain incinerator
32 subject to this Rule shall conduct annual opacity tests on the air curtain incinerator no more than 12
33 calendar months following the date of the previous test.

34 (5) The owner or operator of an existing air curtain incinerator that has ceased operations and is
35 restarting after more than 12 months since the previous test shall conduct an opacity test upon startup
36 of the unit.

37 (h) Recordkeeping and Reporting Requirements.

1 (1) Prior to commencing construction of an air curtain incinerator, the owner or operator of a new air
2 curtain incinerator shall submit the following information to the Director:

- 3 (A) a notification of intent to construct an air curtain incinerator;
- 4 (B) the planned initial startup date of the air curtain incinerator; and
- 5 (C) the materials planned to be combusted in the air curtain incinerator.

6 (2) The owner or operator of a new or existing air curtain incinerator shall do the following:

- 7 (A) keep records of results of all initial and annual opacity tests onsite in either paper copy or
8 electronic format for five years;
- 9 (B) make all records available for submission to the Director or for an inspector's onsite review;
- 10 (C) report the results of the initial and annual opacity tests as the average of 3 1-hour blocks
11 consisting of 10 6-minute average opacity values;
- 12 (D) submit initial opacity test results to the Division no later than 60 days following the initial
13 test and submit annual opacity test results within 12 months following the previous report;
- 14 (E) submit initial and annual opacity test reports to the Division as ~~electronic or paper copy~~
15 specified in 15A NCAC 02D .0605(i) on or before the applicable submittal date; and
- 16 (F) keep a copy of the initial and annual reports onsite for a period of five years.

17 (i) In addition to complying with the requirements of this Rule, an air curtain incinerator subject to:

- 18 (1) 40 CFR Part 60, Subpart CCCC, shall also comply with 40 CFR 60.2245 through 60.2260; or
- 19 (2) 40 CFR Part 60, Subpart EEEE, shall also comply with 40 CFR 60.2970 through 60.2974.

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21 *History Note: Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5); 143-215.107(a)(10);*
 22 *143-215.108; 40 CFR 60.2865; S.L. 2011-394, s.2;*
 23 *Eff. July 1, 1996;*
 24 *Amended Eff. July 3, 2012; July 1, 2007; December 1, 2005; August 1, 2004;*
 25 *Readopted Eff. September 1, ~~2019-2019~~;*
 26 *Amended Eff. July 1, 2023.*

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REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02D .1905

DEADLINE FOR RECEIPT: Tuesday, June 13, 2022

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 changes be made:

What does "appropriate" mean on line 4? On line 5, change "each" to "a" or "the". Change "can" to "may".

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: June 8, 2022

1 15A NCAC 02D .1905 is amended as published in 37:14 NCR 980 as follows:

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15A NCAC 02D .1905 REGIONAL OFFICE LOCATIONS

Inquiries, requests, and plans shall be handled by the appropriate Department of Environmental Quality regional office. Contact information for each regional office can be found on the Division website at <https://deq.nc.gov/about/divisions/air-quality/regional-offices>. ~~They are:~~

- ~~(1) Asheville Regional Office, 2090 U.S. 70 Highway, Swannanoa, North Carolina 28778;~~
- ~~(2) Winston Salem Regional Office, 450 West Hanes Mill Road, Suite 300, Winston Salem, North Carolina 27105;~~
- ~~(3) Mooresville Regional Office, 610 East Center Avenue, Suite 301, Mooresville, North Carolina 28115;~~
- ~~(4) Raleigh Regional Office, 3800 Barrett Drive, Raleigh, North Carolina 27609;~~
- ~~(5) Fayetteville Regional Office, 225 Green Street, Suite 714, Fayetteville, North Carolina 28301;~~
- ~~(6) Washington Regional Office, 943 Washington Square Mall, Washington, North Carolina 27889;~~
- ~~and~~
- ~~(7) Wilmington Regional Office, 127 Cardinal Drive Extension, Wilmington, North Carolina 28405.~~

*History Note: Authority G.S. 143-215.3(a)(1);
Eff. July 1, 1996;
Amended Eff. December 1, 2005;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 5, 2016;
Amended Eff. July 1, 2023; September 1, 2019.*

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02D .2203

DEADLINE FOR RECEIPT: Tuesday, June 13, 2022

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 changes be made:

“Any”, “each”, “every”, “all”, “such”, and “some” should not be used if “a”, “an”, or “the” can be used with the same meaning or if the word can be omitted. These appear on page 1, lines 5, 9, 29; page 2, lines 5, 6, 9, 11.

“Necessary” and “at least” should be avoided if possible. These appear on page 1, lines 5, 14, 31.

In Subparagraph (c)(1), what is “significant public interest”? How is that determined?

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: June 8, 2022

1 15A NCAC 02D .2203 is amended as published in 37:14 NCR 980 as follows:

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15A NCAC 02D .2203 PUBLIC NOTICE

(a) The requirements of this Rule for public notice and public hearing shall apply to Consent Orders. The Commission may specify other conditions for Special Orders issued without consent if such conditions are necessary to achieve or demonstrate compliance with a requirement under this Subchapter or 15A NCAC 02Q.

(b) Notice of proposed Consent Order:

- (1) The Director shall give notice pursuant to G.S. 143-215.110(a1).
- (2) The Director shall give notice of a proposed Consent Order 30 days prior to any final action regarding the Consent Order.
- (3) The notice shall be posted on the North Carolina Division of Air Quality web site at <http://deq.nc.gov/about/divisions/air-quality/air-quality-enforcement/special-orders-by-consent> and provided to those persons specified in G.S. 143-215.110(a1)(1) for air quality special orders.
- (4) The notice shall include at least the following:
 - (A) name, address, and telephone number of the Division;
 - (B) name and address of the person to whom the proposed order is directed;
 - (C) a brief summary of the conditions of the proposed order, including the period of time during which action must be taken to achieve compliance and the major permit conditions or emission standards that the source will be allowed to exceed during the pendency of the order;
 - (D) a brief description of the procedures to be followed by the Commission or Director in reaching a final decision on the proposed order, which shall include descriptions of the process for submitting comments and requesting a public hearing. The description shall specify that comments and requests for a public hearing are to be received by the Division within 30 days following the date of public notice; and
 - (E) a description of the information available for public review, where it can be found, and procedures for obtaining copies of pertinent documents.

(c) Notice of public hearing for proposed Consent Order:

- (1) The Director shall consider all requests for a public hearing, and if significant public interest for a public hearing exists, then he or she shall hold a public hearing.
- (2) The Director shall give notice of the public hearing at least 30 days before the hearing.
- (3) The notice shall be posted on the North Carolina Division of Air Quality web site at <http://deq.nc.gov/about/divisions/air-quality/air-quality-enforcement/special-orders-by-consent> and provided to those persons specified in G.S. 143-215.110(a1)(2) for air quality special orders.
- (4) The notice shall include the information specified in Subparagraph (b)(4) of this Rule. It shall also state the time and location for the hearing and the procedures for providing comment.

1 (5) The Chairman of the Commission or the Director shall appoint one or more hearing officers to
2 preside over the public hearing and to receive written and oral comments. The hearing officer shall
3 provide the Commission a written report of the hearing, which shall include:

- 4 (A) a copy of the public notice;
- 5 (B) a copy of all the written comments and supporting documentation received;
- 6 (C) a summary of all the oral comments received;
- 7 (D) recommendations of the hearing officer to the Commission; and
- 8 (E) a proposed Consent Order for the Commission's consideration.

9 (d) Any person may request to receive copies of all notices required by this Rule, and the Director shall ~~mail~~ provide
10 copies of notices to those who have submitted a request.

11 (e) Any Consent Order may be modified by the Director to incorporate minor modifications, such as modification of
12 standard conditions to reflect updated versions of federal or state regulations, correction of typographical errors, or
13 interim date extensions, without public notice provided that the modifications do not extend the final compliance date
14 by more than four months.

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16 *History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.3(a)(3); 143-215.3(a)(4); 143-215.110;*
17 *Eff. April 1, 2004;*
18 *Readopted Eff. February 1, ~~2018~~ 2018;*
19 *Amended Eff. July 1, 2023.*

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REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02Q .0104

DEADLINE FOR RECEIPT: Tuesday, June 13, 2022

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 changes be made:

“Any”, “each”, “every”, “all”, “such”, and “some” should not be used if “a”, “an”, or “the” can be used with the same meaning or if the word can be omitted. These appear on page 1, lines 7, 11, 15, 18, 22.

“Appropriate” should be avoided if possible. This appears on page 1, line 17.

“Under” should be avoided, if possible, and “pursuant to” should be used. These appear on page 1, line 11, 15, 25.

On line 26, “will” should be replaced with “may” or “shall”.

Please retype the rule accordingly and resubmit it to our office electronically.

1 15A NCAC 02Q .0104 is amended as published in 37:14 NCR 980 as follows:

2
3 **15A NCAC 02Q .0104 WHERE TO OBTAIN AND FILE PERMIT APPLICATIONS**

4 (a) Application forms for a permit or permit modification may be obtained ~~from and shall be filed with the Director,~~
5 ~~Division of Air Quality, 1641 Mail Service Center, Raleigh, North Carolina 27699~~ 1641 or any of the regional offices
6 ~~listed pursuant to 15A NCAC 02Q .0105,~~ from the Division of Air Quality website at
7 <https://deq.nc.gov/about/divisions/air-quality/air-quality-permitting>. Any person may request to receive copies of
8 application forms available on the Division of Air Quality website, and the Director shall provide copies of forms to
9 those who have submitted a request.

10 (b) Applications for a permit or permit modification shall be submitted as follows:

11 (1) Any submittal to the Division required under 15A NCAC 02Q .0500 shall be provided in hard copy
12 format with original signature of the responsible official, as defined in 15A NCAC 02Q .0503, to
13 the Director, Division of Air Quality, 1641 Mail Service Center, Raleigh, North Carolina 27699-
14 1641.

15 (2) Any submittal to the Division required under 15A NCAC 02Q .0300 shall be provided in hard copy
16 format with original signature of the responsible official, as defined in 15A NCAC 02Q .0303, to
17 the appropriate regional office address in accordance with 15A NCAC 02Q .0105.

18 (3) After such time that the Division makes available a system for receiving electronic submittals, as
19 identified in Paragraph (c) of this Rule, submittals may be made in electronic format following the
20 procedures in Paragraph (c) of this Rule in lieu of the procedures in Subparagraphs (1) and (2) of
21 this Paragraph.

22 (c) All electronic submittals shall meet the following requirements:

23 (1) Submittals to the Division pursuant to 15A NCAC 02Q .0500 shall be made through a system that
24 has been approved by EPA as compliant with the Cross Media Electronic Reporting Rule
25 (CROMERR) under 40 CFR Part 3. When available, a link to the approved electronic reporting
26 system will be made available on the Division of Air Quality permitting website at
27 <https://deq.nc.gov/about/divisions/air-quality/air-quality-permitting>.

28 (2) Submittals to the Division pursuant to 15A NCAC 02Q .0300 shall be made through the system
29 identified in Subparagraph (1) of this Paragraph, or as otherwise specified by the Division on its
30 permitting website at <https://deq.nc.gov/about/divisions/air-quality/air-quality-permitting>.

31 ~~(b) The number of copies of applications to be filed shall be specified in 15A NCAC 02Q .0305 and .0507.~~

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33 *History Note: Authority G.S. 143-215.3(a)(1); 143-215.108; 143-215.109;*
34 *Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule*
35 *becomes effective, whichever is sooner;*
36 *Eff. July 1, 1994;*
37 *Amended Eff. January 1, 2015; August 1, 2002; July 1, 1997;*

1 *Readopted Eff. April 1, ~~2018~~2018:*
2 *Amended Eff. July 1, 2023.*
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REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02Q .0105

DEADLINE FOR RECEIPT: Tuesday, June 13, 2022

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 changes be made:

“Any”, “each”, “every”, “all”, “such”, and “some” should not be used if “a”, “an”, or “the” can be used with the same meaning or if the word can be omitted. These appear on page 1, lines 5, 7.

“Applicable” should be avoided if possible. This appears on page 1, line 4.

On line 26, “can” should be replaced with “may” or “shall”.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel
Date submitted to agency: June 8, 2022

1 15A NCAC 02Q .0105 is amended as published in 37:14 NCR 980 as follows:

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15A NCAC 02Q .0105 COPIES OF REFERENCED DOCUMENTS

(a) Copies of applicable Code of Federal Regulations (CFR) sections referred to in this Subchapter may be obtained free of charge online at <https://www.govinfo.gov/app/collection/cfr/>. Copies of such rules are also available for public inspection at Department of Environmental Quality regional ~~offices~~, offices upon request. The contact information for each regional offices are; office is provided on the Division of Air Quality website at <https://deq.nc.gov/about/divisions/air-quality/regional-offices>.

- (1) ~~Asheville Regional Office, 2090 Highway 70, Swannanoa, North Carolina 28778;~~
- (2) ~~Winston Salem Regional Office, 450 West Hanes Mill Road, Suite 300, Winston Salem, NC 27105;~~
- (3) ~~Mooresville Regional Office, 610 East Center Avenue, Suite 301, Mooresville, North Carolina 28115;~~
- (4) ~~Raleigh Regional Office, 3800 Barrett Drive, Post Office Box 27687, Raleigh, North Carolina 27609;~~
- (5) ~~Fayetteville Regional Office, Systel Building, 225 Green Street, Suite 714, Fayetteville, North Carolina 28301;~~
- (6) ~~Washington Regional Office, 943 Washington Square Mall, Washington, North Carolina 27889;~~
and
- (7) ~~Wilmington Regional Office, 127 Cardinal Drive Extension, Wilmington, North Carolina 28403.~~

(b) Excluding information entitled to confidential treatment pursuant to 15A NCAC 02Q .0107, permit Permit applications and permits may be reviewed at the Central Files office in the Department of Environmental Quality, Green Square Office Building, 217 West Jones Street, Raleigh, North Carolina, 27603, electronically through the public access portal on the Division of Air Quality website or at a Department of Environmental Quality regional office, which may be contacted as specified in Paragraph (a) of this Rule. ~~excluding information entitled to confidential treatment pursuant to 15A NCAC 02Q .0107.~~

(c) ~~Copies~~Paper copies of permit applications and permits can be ~~made requested for pickup at a Department of Environmental Quality regional office for ten cents (\$0.10) per page. Copies of CFR may be obtained free of charge online at <https://www.gpo.gov/fdsys/browse/collectionCfr.action?collectioCode=CFR>.~~

*History Note: Authority G.S. 143-215.3(a)(1); 150B-19(5);
Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. July 1, 1994;
Amended Eff. December 1, 2005;
Readopted Eff. April 1, 2018, 2018;
Amended Eff. July 1, 2023.*

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02Q .0206

DEADLINE FOR RECEIPT: Tuesday, June 13, 2022

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 changes be made:

“Applicable” and “reasonable” should be avoided if possible. This appears on page 1, lines 8, 14, 17.

In Paragraph (e), what is a “synthetic minor facility”? Where is that defined?

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: June 8, 2022

1 15A NCAC 02Q .0206 is amended as published in 37:14 NCR 980 as follows:

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15A NCAC 02Q .0206 PAYMENT OF FEES

- (a) Payment of fees required pursuant to 15A NCAC 02Q .0200 may be by check or money order made payable to the N.C. Department of Environmental Quality. Annual permit fee payments shall refer to the permit number.
- (b) If, within 30 days after being billed, the permit holder fails to pay an annual fee required pursuant to 15A NCAC 02Q .0200, the Director may initiate action to terminate the permit pursuant to 15A NCAC 02Q .0309 or .0519 as applicable.
- (c) A holder of multiple permits may arrange to consolidate the payment of annual fees into one annual payment.
- (d) The payment of the permit application fee required by 15A NCAC 02Q .0200 shall accompany the application and is non-refundable.
- (e) The Division shall annually prepare and make publicly available an accounting showing aggregate fee payments collected pursuant to 15A NCAC 02Q .0200 from facilities that have obtained or will obtain permits pursuant to 15A NCAC 02Q .0500 except synthetic minor facilities, and showing a summary of reasonable direct and indirect expenditures required to develop and administer the Title V permit program.
- (f) In lieu of the procedures in Paragraph (a) of this Rule, fees required pursuant to 15A NCAC 02Q .0200 may be paid electronically if an electronic payment option is available for the applicable fee, as provided on the Division of Air Quality Permitting website at <https://deq.nc.gov/about/divisions/air-quality/air-quality-permitting>.

*History Note: Authority G.S. 143-215.3(a)(1),(1a),(1b),(1d);
Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. July 1, 1994;
Amended Eff. September 1, 2015;
Readopted Eff. April 1, ~~2018-2018~~;
Amended Eff. July 1, 2023.*

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02Q .0304

DEADLINE FOR RECEIPT: Tuesday, June 13, 2022

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 changes be made:

“Any”, “each”, “every”, “all”, “such”, and “some” should not be used if “a”, “an”, or “the” can be used with the same meaning or if the word can be omitted. These appear on page 1, lines 11, 22, 26; page 2, lines 14, 17, 23.

“Necessary”, “substantially”, “applicable”, “at least”, “imminent” and “applicable” should be avoided if possible, and defined if not possible. These appear on page 1, lines 19, 21, 22, 26, 27; page 2, lines 4, 5, 8, 13, 14, 15.

Delete parenthesis on page 1, lines 16, 17, 24, and 25 (although the phrases within parenthesis on lines 24 and 25 should be deleted as they are unnecessary).

Subparagraph (b)(4) is unclear and ambiguous. What is EMC’s authority for this requirement? At the very least, define “substantial compliance”; although this is such a vague term that it should be removed.

In Paragraph (k), instead of “for the duration of”, it would be clearer if “during” were used.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: June 8, 2022

1 15A NCAC 02Q .0304 is amended as published in 37:14 NCR 980 as follows:

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15A NCAC 02Q .0304 APPLICATIONS

(a) Obtaining and filing application. Permit, permit modification, or permit renewal applications may be obtained and shall be filed ~~in writing~~ according to 15A NCAC 02Q .0104.

(b) Information to accompany application. Along with filing a complete application form, the applicant shall also file the following:

(1) for a new facility or an expansion of existing facility, a zoning consistency determination according to G.S. 143-215.108(f) that:

- (A) bears the date of receipt entered by the clerk of the local government; or
- (B) consists of a letter from the local government indicating that all zoning or subdivision ordinances are met by the facility;

(2) for a new facility or an expansion of existing facility in an area without zoning, an affidavit and proof of publication of a legal notice as required pursuant to 15A NCAC 02Q .0113;

(3) for permit renewal, an emissions inventory that contains the information specified pursuant to 15A NCAC 02D .0202, Registration of Air Pollution Sources (the applicant shall use emission inventory forms or electronic data systems provided by the Division to satisfy this requirement); and

(4) documentation showing the applicant complies with Parts (A) or (B) of this Subparagraph if this information is necessary to evaluate the source, its air pollution abatement equipment, or the facility:

- (A) the applicant is financially qualified to carry out the permitted activities; or
- (B) the applicant has substantially complied with the air quality and emissions standards applicable to any activity in which the applicant has previously been engaged, and has been in substantial compliance with federal and State environmental laws and rules.

(c) When to file application. For sources subject to the requirements of 15A NCAC 02D .0530 (prevention of significant deterioration) or .0531 (new source review for sources in nonattainment areas), applicants shall file air permit applications at least 180 days before the projected construction date. For all other sources, applicants shall file air permit applications at least 90 days before the projected date of construction of a new source or modification of an existing source.

(d) Permit renewal, name, or ownership changes with no modifications. If no modification has been made to the originally permitted source, application for permit change may be made by application to the Director ~~at the address~~ as specified in 15A NCAC 02Q .0104. The permit renewal, name, or ownership change application shall state that there have been no changes in the permitted facility since the permit was last issued.

To make a name or ownership change, the applicant shall send the Director the ~~copies of letters content~~ specified in 15A NCAC 02Q ~~0305(a)(3)~~ .0305(3) or (4) signed by the responsible official as defined in 15A NCAC 02Q .0303.

(e) Applications for date and reporting changes. Application for changes in construction or test dates or reporting procedures may be made by letter to the Director ~~at the address~~ as specified in 15A NCAC 02Q .0104. To make changes in construction or test dates or reporting procedures, the applicant shall send the Director the ~~copies of letters~~

1 letter specified in 15A NCAC 02Q-~~0305(a)(5)~~ .0305(5) signed by the responsible official as defined in 15A NCAC
2 02Q .0303.

3 (f) When to file applications for permit renewal. Applicants shall file applications for renewals ~~such that they are~~
4 ~~mailed to the Director at the address as~~ specified in 15A NCAC 02Q ~~.0104~~.0104 at least 90 days before expiration of
5 the permit. If a hard copy of the application is mailed to the Director, the application shall be and postmarked at least
6 90 days before expiration of the permit.

7 (g) Name or ownership change. The permittee shall file requests for permit name or ownership changes when the
8 permittee is aware of the imminent name or ownership change.

9 ~~(h) Number of copies of additional information. The applicant shall submit the same number of copies of additional~~
10 ~~information as required for the application package.~~

11 ~~(h)~~ Requesting additional information. Whenever the information provided on the permit application forms does
12 not adequately describe the source or its air cleaning device, the Director may request that the applicant provide other
13 information necessary to evaluate the source or its air cleaning device. Before acting on a permit application, the
14 Director may request information from an applicant and conduct any inquiry or investigation that is necessary to
15 determine compliance with applicable standards.

16 ~~(i)~~ Application fee. With the exceptions specified in 15A NCAC 02Q .0203(i), a non-refundable permit application
17 processing fee shall accompany each application. The permit application processing fees are listed in 15A NCAC 02Q
18 .0200. A permit application shall be incomplete until the permit application processing fee is received.

19 ~~(j)~~ Correcting submittals of incorrect information. An applicant shall have a continuing obligation to submit
20 relevant facts pertaining to his or her permit application and to correct incorrect information in his or her permit
21 application.

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

24

25 *History Note: Authority G.S. 143-215.3(a)(1); 143-215.108;*
26 *Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule is*
27 *effective, whichever is sooner;*
28 *Eff. July 1, 1994;*
29 *Amended Eff. September 1, 2015; January 1, 2009; December 1, 2005; July 1, 1999;*
30 *Readopted Eff. April 1, ~~2018-2018~~;*
31 *Amended Eff. July 1, 2023.*
32

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02Q .0305

DEADLINE FOR RECEIPT: Tuesday, June 13, 2022

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 changes be made:

What is EMC's authority for requiring Subitem (1)(d)? Also, see last rule for the note on "substantial compliance".

In Subitem (1)(e), Paragraph (b) is referenced. There is no Paragraph (b).

In Subitem (4)(c), define or delete "appropriate". This referenced form is provided where?

In Item (5), change "any" to "a", "an", or "the".

Please retype the rule accordingly and resubmit it to our office electronically.

1 15A NCAC 02Q .0305 is amended as published in 37:14 NCR 980 as follows:

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15A NCAC 02Q .0305 APPLICATION SUBMITTAL CONTENT

~~(a)~~ If an applicant does not submit the following information with the application package, the application package shall be considered incomplete for processing:

- (1) for new facilities and modified facilities:
 - ~~(A)~~(a) an application fee required pursuant to 15A NCAC 02Q .0200;
 - ~~(B)~~(b) a zoning consistency determination required pursuant to 15A NCAC 02Q .0304(b)(1);
 - ~~(C)~~(c) the documentation required pursuant to 15A NCAC 02Q .0304(b)(2) if required;
 - ~~(D)~~(d) a financial qualification or substantial compliance statement if required; and
 - ~~(E)~~(e) applications required pursuant to 15A NCAC 02Q .0304(a) and Paragraph (b) of this Rule and signed by the responsible official;
- (2) for renewals: ~~one copy of the application required pursuant to 15A NCAC 02Q .0304(a) and (d) and~~ (d), signed by the responsible ~~official~~ official, and an emissions inventory that contains the information specified pursuant to 15A NCAC 02D .0202, Registration of Air Pollution Sources;
- (3) for a name change: ~~one copy a letter~~ signed by the responsible official indicating the current facility name, the date on which the name change will occur, and the new facility name;
- (4) for an ownership change: an application fee required pursuant to 15A NCAC 02Q .0200 and:
 - ~~(A)~~(a) ~~one copy of a letter signed by the seller and the buyer, indicating the change; or~~
 - ~~(B)~~(b) ~~one copy of a letter bearing the signature of both the seller and buyer, containing a written agreement with a specific date for the transfer of permit responsibility, coverage, and liability between the current and new permittee; or~~
 - ~~(C)~~(c) submit ~~one copy of the appropriate form provided by the Division; and~~
- (5) for corrections of typographical errors; changes in name, address, or telephone number of any individual identified in the permit; changes in test dates or construction dates; or similar minor changes: ~~one copy of a letter signed by the responsible official describing the proposed change and explaining the need for the proposed change.~~

~~(b) The applicant shall submit copies of the application package as follows:~~

- ~~(1) one copy for all applications;~~
- ~~(2) one additional copy for facilities demonstrating compliance through modeling analysis; and~~
- ~~(3) three additional copies for sources subject to the requirements of 15A NCAC 02D .0530 or .0531.~~

History Note: Authority G.S. 143-215.3(a)(1); 143-215.108;
Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. July 1, 1994;
Amended Eff. December 1, 2005; April 1, 2004;

1 *Readopted Eff. April 1, ~~2018~~2018:*
2 *Amended Eff. July 1, 2023.*
3
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REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02Q .0307

DEADLINE FOR RECEIPT: Tuesday, June 13, 2022

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 changes be made:

“Any”, “each”, “every”, “all”, “such”, and “some” should not be used if “a”, “an”, or “the” can be used with the same meaning or if the word can be omitted. These appear on page 1, lines 17, 20, 24, 31, 32.

“At least” should be avoided if possible. These appear on page 1, lines 25, 27, 29.

In Paragraph (e), by what criteria or factors, or based upon what information does “the Director” make this determination?

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel
Date submitted to agency: June 8, 2022

1 15A NCAC 02Q .0307 is amended as published in 37:14 NCR 980 as follows:

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15A NCAC 02Q .0307 PUBLIC PARTICIPATION PROCEDURES

(a) This Rule shall not apply to sources subject to the requirements of 15A NCAC 02D .0530 or .0531 or Appendix S of 40 CFR Part 51. For sources subject to the requirements of 15A NCAC 02D .0530 or .0531 or Appendix S of 40 CFR Part 51, the procedures in 15A NCAC 02D .0530 or .0531 or Appendix S of 40 CFR Part 51 shall be followed, respectively.

(b) Public notice shall be given by publication in a newspaper of general circulation in the area where the facility is located and shall be ~~mailed~~ provided to persons who are on the Division's ~~mailing~~ notification list for air quality permit notices and to the EPA.

(c) The public notice shall identify:

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

(d) The notice shall allow at least 30 days for public and EPA comments.

(e) If the Director determines that significant public interest exists or that the public interest will be served, the Director shall require a public hearing to be held on a draft permit. Notice of a public hearing shall be given at least 30 days before the public hearing.

(f) The Director shall make available for public inspection in at least one location in the region affected the information submitted by the permit applicant and the Division's analysis of that application.

(g) The Director shall send EPA a copy of each draft permit subject to public and EPA comment when sending EPA the notice of request for public comment for that permit and shall send EPA a copy of each such permit when it is issued.

(h) Confidential material shall be handled in accordance with 15A NCAC 02Q .0107.

History Note: Authority G.S. 143-215.3(a)(1),(3); 143-215.4(b); 143-215.108;

1 *Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule*
2 *becomes effective, whichever is sooner;*
3 *Eff. July 1, 1994;*
4 *Amended Eff. July 1, 1998;*
5 *Readopted Eff. April 1, ~~2018-2018~~;*
6 *Amended Eff. July 1, 2023.*

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REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02Q .0505

DEADLINE FOR RECEIPT: Tuesday, June 13, 2022

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 changes be made:

By what authority can EMC ask for the requirement in Subitem (1)(d)? See previous rule note regarding "substantial compliance".

In Item (5), "any" should be changed to "an" or "the".

Please retype the rule accordingly and resubmit it to our office electronically.

1 15A NCAC 02Q .0505 is amended as published in 37:14 NCR 980 as follows:

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15A NCAC 02Q .0505 APPLICATION SUBMITTAL CONTENT

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

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

*History Note: Authority G.S. 143-215.3(a)(1),(1a); 143-215.107(a)(10); 143-215.108;
Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. July 1, 1994;
Amended Eff. April 1, 2004;
Readopted Eff. April 1, 2018;
Amended Eff. July 1, 2023; September 1, 2022*

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02Q .0507

DEADLINE FOR RECEIPT: Tuesday, June 13, 2022

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 changes be made:

“Any”, “each”, “every”, “all”, “such”, and “some” should not be used if “a”, “an”, or “the” can be used with the same meaning or if the word can be omitted. These appear on page 1, lines 13, 20, 23, 28, 35; page 2, lines 7, 8, 9, 14, 17, 20, 23.

“Necessary”, “substantially”, “substantial compliance” and “applicable” should be avoided if possible, and defined if not possible. These appear on page 1, lines 20, 22, 23, 34, 35, 36; page 2, lines 9, 10.

In Paragraph (a), be specific whether a “source” is new or existing.

In Subparagraph (d)(3), by what criteria or factors is this required by “the Director”, particularly, Subparagraph (d)(3)(B)? By what authority are these items in Subparagraphs (A) and (B) required?

Change “for the duration of” to “during” in Paragraph (i).

Please retype the rule accordingly and resubmit it to our office electronically.

1 15A NCAC 02Q .0507 is amended as published in 37:14 NCR 980 as follows:

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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 facility or source becomes subject to the Title V
9 operating permit program pursuant to 15A NCAC 02Q .0500 to file a complete application for a permit or permit
10 revision. However, the owner or operator of a source shall not begin construction or operation of a source until he or
11 she has obtained a construction and operation permit pursuant to 15A NCAC 02Q .0501(b) or (c) and 15A NCAC
12 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)(c)~~ 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 the applicant filed a complete application but prior to
11 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)(f)~~ 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)(g)~~ 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)(h)~~ 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)(i)~~ 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.

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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;*
33 *Amended Eff. July 1, 2023; September 1, 2022.*
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REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02Q .0508

DEADLINE FOR RECEIPT: Tuesday, June 13, 2022

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 changes be made:

“Any”, “each”, “every”, “all”, “such”, and “some” should not be used if “a”, “an”, or “the” can be used with the same meaning or if the word can be omitted. These appear on page 1, lines 4, 7, 12, 15, 29, 30, 31, 33; page 2, lines 4, 8, 10, 12, 13, 22, 25, 30, 33; page 3, lines 1, 5, 12, 14, 20, 21, 30, 31; page 4, lines 4, 7, 9, 13, 15, 19, 21.

“Applicable”, “necessary”, “appropriate”, “reasonably”, “at least” should be avoided if possible, and defined if not possible. These appear on page 1, lines 5, 7, 8, 19, 37; page 2, lines 10, 17; page 3, lines 1, 6, 7, 14, 24, 26, 27, 36.

“Terms and conditions” should simply be “permit terms”. This appears on page 3, lines 7, 8, 12, 16, 33; page 4, line 5.

“In order to” maintain or “for the purpose of” maintaining should simply be “to maintain”. Examples are found on page 2, line 17; page 3, line 23.

In Subparagraph (f)(1), be more specific with this requirement than “at least every six months”. Give a more definite required timeframe.

“Will” should be changed to “may” or “shall”. It appears on page 2, lines 11, 24, 26; page 3, line 31.

In Subparagraph (i)(9), state a more specific date certain than “in a timely manner”. In Subparagraph (i)(11), Section 502(b)(10) is from what? Be more specific. Subparagraph (i)(16) is ambiguous and should be removed.

Remove the space on page 2, line 34. Fix the formatting error in the History Note, specifically the tab on line 24.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: June 8, 2022

1 15A NCAC 02Q .0508 is amended as published in 37:14 NCR 980 as follows:

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15A NCAC 02Q .0508 PERMIT CONTENT

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

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

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

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

(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 term of no more than five years from the date of issuance for all other sources including solid waste incineration units combusting municipal waste subject to standards in Section 129(e) of the federal Clean Air Act.

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

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

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

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

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

(2) the permittee to report:

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

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

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

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

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

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

(2) conditions that require the owner or operator of the facility to submit:

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

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

7 (i) A permit shall:

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

32 The permit shall also state that for information claimed to be confidential, the permittee may furnish

33 such records directly to EPA along with a claim of confidentiality;

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- 35 (10) contain a provision to ensure that the permittee pays fees required by 15A NCAC 02Q .0200;
- 36 (11) contain a condition that authorizes the permittee to make Section 502(b)(10) changes, off-permit
- 37 changes, or emission trades in accordance with 15A NCAC 02Q .0523;

- 1 (12) include all applicable requirements for all sources covered by the permit;
- 2 (13) include fugitive emissions in the same manner as stack emissions;
- 3 (14) contain a condition requiring annual reporting of actual emissions as required by 15A NCAC 02Q
- 4 0207;
- 5 (15) include all sources including insignificant activities; and
- 6 (16) contain other provisions the Director considers appropriate.

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

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

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

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

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

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

- 29 (1) dates for achieving the activities, milestones, or compliance required in the compliance schedule
- 30 and dates when such activities, milestones, or compliance were achieved; and
- 31 (2) an explanation of why any dates in the compliance schedule were not or will not be met and any
- 32 preventive or corrective measures adopted.

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

- 36 (1) the frequency, not less than annually or more frequently as specified in the applicable requirements,
- 37 of submissions of compliance certifications;

- 1 (2) a means for monitoring the compliance of the source with its emissions limitations, standards, and
- 2 work practices;
- 3 (3) a requirement that the compliance certification include:
 - 4 (A) the identification of each term or condition of the permit that is the basis of the certification;
 - 5 (B) the status of compliance with the terms and conditions of the permit for the period covered
 - 6 by the certification, based on the methods or means designated in 40 CFR
 - 7 70.6(c)(5)(iii)(B). The certification shall identify each deviation and take it into account in
 - 8 the compliance certification. The certification shall also identify as possible exceptions to
 - 9 compliance any periods during which compliance was required and in which an excursion
 - 10 or exceedance as defined in 40 CFR 64 occurred;
 - 11 (C) whether compliance was continuous or intermittent;
 - 12 (D) the identification of the methods or other means used by the owner and operator for
 - 13 determining the compliance status with each term and condition during the certification
 - 14 period; these methods shall include the methods and means required in 40 CFR Part
 - 15 70.6(a)(3). The owner or operator also shall identify any other material information that
 - 16 shall be included in the certification to comply with Section 113(c)(2) of the federal Clean
 - 17 Air Act, which prohibits knowingly making a false certification or omitting material
 - 18 information; and
 - 19 (E) such other facts as the Director may require to determine the compliance status of the
 - 20 source; and
- 21 (4) that all compliance certifications be submitted to EPA as well as to the Division.

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23 *History Note: Authority G.S. 143-215.3(a)(1),(2); 143-215.65; 143-215.66; 143-215.107(a)(10); 143-215.108;*

24 *Temporary Rule Eff. March 8, 1994 for a period of 180 days or until the permanent rule is effective, whichever is*

25 *sooner;*

26 *Eff. July 1, 1994;*

27 *Amended Eff. July 1, 1996;*

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

29 *Amended Eff. August 1, 2008; June 1, 2008; January 1, 2007; December 1, 2005; April 1, 2001;*

30 *July 1, 2000;*

31 *Readopted Eff. April 1, 2018;*

32 *Amended Eff. July 1, 2023; September 1, 2022*

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02Q .0710

DEADLINE FOR RECEIPT: Tuesday, June 13, 2022

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 changes be made:

“Any”, “each”, “every”, “all”, “such”, and “some” should not be used if “a”, “an”, or “the” can be used with the same meaning or if the word can be omitted. These appear on lines 16, 17, 30, and 31.

“At least” should be avoided if possible and defined more specifically if not possible. It appears on lines 24, 26, and 28.

In Paragraph (e), how is this determination made? By what criteria or factors? This is vague.

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel
Date submitted to agency: June 8, 2022

1 15A NCAC 02Q .0710 is amended as published in 37:14 NCR 980 as follows:

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15A NCAC 02Q .0710 PUBLIC NOTICE AND OPPORTUNITY FOR PUBLIC HEARING

(a) If the owner or operator of a facility chooses to make a demonstration pursuant to 15A NCAC 02Q .0709(a)(2) or (b), the Commission or its delegate shall approve or disapprove the permit after a public notice with an opportunity for a public hearing.

(b) The public notice shall be given by publication in a newspaper of general circulation in the area where the facility is located and shall be ~~mailed~~ provided to persons who are on the Division's ~~mailing~~ notification list for air quality permit notices.

(c) The public notice shall identify:

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

(d) The notice shall allow at least 30 days for public comments.

(e) If the Director determines that significant public interest exists or that the public interest will be served, the Director shall require a public hearing to be held on a draft permit. Notice of a public hearing shall be given at least 30 days before the public hearing.

(f) The Director shall make available for public inspection, in at least one location in the region affected, the information submitted by the permit applicant and the Division's analysis of that application.

(g) Any persons requesting paper copies of material identified in Subparagraph (c)(4) of this Rule shall pay ten cents (\$0.10) per page for each page copied. Confidential material shall be handled in accordance with 15A NCAC 02Q .0107.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.108; 143B-282; S.L. 1989, c. 168, s. 45;
Rule originally codified as part of 15A NCAC 2H .0610;
Eff. July 1, 1998;
Readopted Eff. July 1, ~~2018~~.2018;*

1 Amended Eff. July 1, 2023.
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