

Burgos, Alexander N

Subject: FW: DEQ 15A NCAC 01E - RRC Review

From: Duke, Lawrence <lawrence.duke@oah.nc.gov>

Sent: Wednesday, March 15, 2023 12:04 PM

To: Everett, Jennifer <jennifer.everett@ncdenr.gov>; Rules, Oah <oah.rules@oah.nc.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Wright, Alyssa N <Alyssa.Wright@ncdenr.gov>

Subject: RE: DEQ 15A NCAC 01E - RRC Review

Jennifer,

Thanks for making all these changes.

While the response given in the change request responses is true for 01E .0102(6) [now, (4)], it does not answer my question. Including pipeline in “oil refining facility” still seems to conflict with the definition of pipeline in statute. If a pipeline is used for “transporting or transferring oil”, how is also used “for the purpose of refining oil” as well?

In .0104(c)(12) [now (8)], Part (B) is still unclear. The subparagraph requires the affected person or their representative to indicate their concerns, but then Part (B) requires the applicant “discover their concerns”. This is contradictory and needs to be clarified.

In .0107(b)(2), can you please add “and” after the semicolon at the end?

Lawrence Duke

Counsel, NC Rules Review Commission

Office of Administrative Hearings

(984) 236-1938

Burgos, Alexander N

Subject: FW: DEQ 15A NCAC 01E - RRC Review
Attachments: 15A NCAC 01E .0101.docx; 15A NCAC 01E .0102.docx; 15A NCAC 01E .0103.docx; 15A NCAC 01E .0104.docx; 15A NCAC 01E .0105.docx; 15A NCAC 01E .0106.docx; 15A NCAC 01E .0107.docx; 15A NCAC 01E .0108.docx; 15A NCAC 01E .0110.docx; 15A NCAC 01E .0111.docx; 15A NCAC 01E .0113.docx; 15A NCAC 01E .0114.docx; 15A NCAC 01E .0115.docx; 15A NCAC 01E_Responses to Technical Corrections.docx

From: Everett, Jennifer <jennifer.everett@ncdenr.gov>
Sent: Friday, March 3, 2023 11:07 AM
To: Duke, Lawrence <lawrence.duke@oah.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Wright, Alyssa N <Alyssa.Wright@ncdenr.gov>
Subject: RE: DEQ 15A NCAC 01E - RRC Review

Lawrence,

Attached are the rewritten rules and responses to your technical change requests for 15A NCAC 01E.

Jennifer

Jennifer Everett
DEQ Rulemaking Coordinator
N.C. Depart. Of Environmental Quality
Office of General Counsel
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Raleigh, NC 27699-1601
Tele: (919)-707-8614
<https://deq.nc.gov/permits-rules/rules-regulations/deq-proposed-rules>

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REQUEST FOR § 150B-21.10 CHANGES

AGENCY: NC Department of Environmental Quality

RULE CITATION: 15A NCAC 01E .0101

DEADLINE FOR RECEIPT: Monday, January 16, 2023

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:

As the "Rule" text does not directly or substantially affect procedural or substantive rights or duties of a person not employed by the Department, how is this a Rule?

DEQ response: A rule as defined by G.S. 150B-2(8a) includes "any agency regulation, standard, or statement of general applicability that implements or interprets an enactment of the General Assembly[.]" DEQ intends to keep this rule in the administrative code as it indicates where in the regulated public would find the procedures implementing the Oil Refining Facilities Statute at G.S. 143-215.100–215.102.

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

Lawrence R. Duke
Commission Counsel
Date submitted to agency: January 10, 2023

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: NC Department of Environmental Quality

RULE CITATION: 15A NCAC 01E .0102

DEADLINE FOR RECEIPT: Monday, January 16, 2023

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:

In the first paragraph, “unless the context otherwise requires” is vague and creates ambiguity.

DEQ response: Deleted.

In Items (2), (4), and (5), terms are defined using the term at issue in each item. This is not a definition (i.e., “‘Oil’ means oil...”). This is not clear or reasonably necessary.

DEQ response: Deleted (4) and (5). For (2), “construction”, G.S. 143-215.77 and G.S. 143-215.100–215.102 do not define this term. This language further clarifies the language in G.S. 143-215.100 and is necessary to interpret an act of the General Assembly.

Is Item (4) necessary? It does not add clarity to the rules.

DEQ response: Deleted.

Item (6) expands what qualifies as an oil refining facility beyond what is defined in G.S. 215.77. For instance, “pipeline” is defined by statute and it is not an oil refining facility.

DEQ response: G.S. 143-215.77 and G.S. 143-215.100–215.102 do not define an oil refining facility. This language further clarifies the language in G.S. 143-215.100 and is necessary to interpret an act of the General Assembly.

Item (8) expands a definition that is specified in statute and attempts to delegate power through a definition. How is this justifiable?

DEQ response: Deleted the delegation provision.

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

Lawrence R. Duke
Commission Counsel

Date submitted to agency: January 10, 2023

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: NC Department of Environmental Quality

RULE CITATION: 15A NCAC 01E .0103

DEADLINE FOR RECEIPT: Monday, January 16, 2023

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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:

What is the specific statutory authority for Paragraph (b). This is neither clear nor unambiguous, particularly the vague use of "substantial" in line 11. Also, add a comma after "factors" on line 12.

DEQ Response: Deleted Paragraph (b).

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

Lawrence R. Duke
Commission Counsel

Date submitted to agency: January 10, 2023

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: NC Department of Environmental Quality

RULE CITATION: 15A NCAC 01E .0104

DEADLINE FOR RECEIPT: Monday, January 16, 2023

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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:

In Paragraph (c), delete “all of the following 16 elements”. It is unnecessary and incorrect (as there are 17 subparagraphs). Also, each subparagraph should start with a lower-case letter and end with a semi-colon.

DEQ response: The number “16” was removed in the rules as submitted to the RRC on December 7, it has a strikethrough. Deleted “all of the following elements” language and revised subparagraphs.

Subparagraph (c)(1) is unclear. Why not simply state “a one-page cover sheet that includes:” Part (B) of this Subparagraph should not have parentheticals or “i.e.”.

DEQ response: Revised.

What is the specific statutory authority for requiring Parts (c)(3), (4), (5), (6), (12), (14), (15), (16), and (17)? None of these are reasonably necessary to implement the statute empowering the Secretary to grant or deny permits, or to implement or interpret the Act.

DEQ response: Deleted (3)–(6). The rest are reasonably necessary to interpret an act of the General Assembly.

Regardless of statutory authority, define or delete “financial condition” in Part (c)(5) and (6). In Part (9) and (11), what is the criteria to determine what detail is “necessary”?

DEQ response: Deleted.

In Part (12), based on what criteria would the Secretary request this information?

DEQ response: If members of the public who are interested or affected persons have indicated they are concerned about environmental or health impacts of the proposed facility, the Secretary may require that the applicant prepare a listing of the environmental or health impacts of the facility as described in this rule.

Also, in Part (12), “shall make diligent efforts” is unclear and ambiguous; how would this be enforced?

DEQ response: Deleted.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: January 10, 2023

In Part (13), delete “to the appropriate authority”. In Part (14), change “which” to “that” in line 12.

DEQ response: Done.

Part (13), lines 14 and 15, is not clear and is ambiguous as to what it requires.

DEQ response: Part (13) does not include lines 14 and 15. If you mean Part (14), deleted lines 14 and 15.

In Part (15), what are “proposals for enhancing the quality of the environment” (unclear and ambiguous).

DEQ response: Deleted.

In Part (16), add a comma after “disciplines” and define or delete “where possible”.

DEQ response: Deleted.

Part (17) is unclear and ambiguous as to what is required.

DEQ response: Clarified.

In Paragraph (d), define “adequacy and completeness” or outline the criteria on which this would be based.

DEQ response: Clarified.

What is the statutory authority for Paragraph (e)? Define what “necessary” means; otherwise this is unclear and ambiguous.

DEQ response: G.S. 143-215.101(3) and (4) grant the Secretary the authority to grant permits and impose terms and conditions as the Secretary deems necessary to effectuate the purposes of the oil refining facility statute and to require installation of facilities or protective measures as the Secretary deems necessary to prevent oil discharges to the lands or waters of the State. Clarified.

In the History Note, Authority, how do G.S. 143-215.84 and 215.102 apply to this Rule? There does not appear to be any connection between these statutes and the Rule.

DEQ response: Deleted.

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

Lawrence R. Duke
Commission Counsel

Date submitted to agency: January 10, 2023

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: NC Department of Environmental Quality

RULE CITATION: 15A NCAC 01E .0105

DEADLINE FOR RECEIPT: Monday, January 16, 2023

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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:

In Paragraph (a), define such words as “necessary” or “sufficient” and lay out the criteria under which this will be determined. Otherwise, this is unclear and ambiguous.

DEQ response: Deleted “necessary” and “sufficient.”

How is Subparagraph (c)(12) reasonably necessary to implement or interpret a statute or federal regulation?

DEQ response: Deleted.

What is called for or required by Paragraph (e)? What does “appropriate” mean? Is the DEQ Public Participation Plan a internal policy of the Department or has it been enacted in Rule or Statute? If it is merely a policy, delete Paragraph (e).

DEQ response: Deleted.

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

Lawrence R. Duke
Commission Counsel

Date submitted to agency: January 10, 2023

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: NC Department of Environmental Quality

RULE CITATION: 15A NCAC 01E .0106

DEADLINE FOR RECEIPT: Monday, January 16, 2023

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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:

In Paragraph (b), by what criteria does “the Secretary deem” something “necessary”?

DEQ response: Deleted this portion.

In Paragraph (c), change “which” to “that”.

DEQ response: Done.

In Paragraph (e), what is the specific statutory authority for determining whether something is a contested case or not? Also, how is this paragraph a rule?

DEQ response: The NC Administrative Procedure Act at G.S. 150B-2(2) defines “contested case.” Paragraph (e) in this Rule is clarifying that the public hearing conducted under these Rules is not a contested case as defined in the NC Administrative Procedure Act.

What is the specific statutory authority for Paragraph (g)?

DEQ response: Deleted.

How does G.S. 143-215.101 grant statutory authority for this Rule? Please explain.

DEQ response: G.S. 143-215.100 grants the Secretary the authority to issue permits. G.S. 143-215.101 grants the Secretary the authority to adopt implementing rules. Added G.S. 143-215.100 to the History Note to clarify the basis of this authority.

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

Lawrence R. Duke
Commission Counsel

Date submitted to agency: January 10, 2023

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: NC Department of Environmental Quality

RULE CITATION: 15A NCAC 01E .0107

DEADLINE FOR RECEIPT: Monday, January 16, 2023

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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:

What is the specific statutory authority for Subparagraph (b)(1)?

DEQ response: Narrowed.

Subparagraph (b)(3) is vague, unclear, and ambiguous as to what is being required and how the Department is to “become aware”.

DEQ response: Deleted.

Delete “or” at the end of Subparagraph (c)(1).

DEQ response: Done.

How is Part (d)(1)(A) necessary to implement or interpret statute or a federal regulation?

DEQ response: G.S. 143-215.101(1) grants the Secretary the authority to adopt rules implementing the Oil Refining Facilities statute including requirements for submission of engineering reports, plans and specifications for the location and construction of oil terminal facilities. G.S. 143-215.101(4) grants the Secretary the authority to require the installation of such facilities and the employment of such protective measures and operating procedures as are deemed necessary to prevent any oil discharges to the waters or lands of the State. Further, G.S. 143-215.101(3) grants the Secretary the authority to impose terms and conditions in the permit as the Secretary deems necessary to effectuate the purposes of this Article, which is part of the Oil Pollution and Hazardous Substances Control Act. The purposes of the Oil Pollution and Hazardous Substances Control Act, G.S. 143-215.76, includes “to promote the health, safety, and welfare of the citizens of this State by protecting the land and the waters over which this State has jurisdiction from pollution by oil, oil products, oil by-products, and other hazardous substances.” The permits issued to the facility under other State and federal environmental laws identify and address potential impacts of the facility’s construction and operation upon the environment and serve as a notification of protective measures to prevent oil discharges to the waters and lands of the State. Thus, conditioning the issuance of a permit under these rules upon review of other environmental permits for the same facility effectuates the purposes of OPHSCA.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: January 10, 2023

Subparagraph (d)(2) is policy not a rule. Regardless, delete “Further” and “in making this annual report”. Switch “which” to “that”. Under what criteria shall the Secretary “deem it necessary” to request additional information? What is the specific statutory authority for this Subparagraph and why is it necessary?

DEQ response: Deleted.

How is Subparagraph (d)(3) a rule? Explain.

DEQ response: Deleted.

How does G.S. 143-215.108 apply to this Rule? Why is it listed as Authority? Explain.

DEQ response: Removed.

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

Lawrence R. Duke
Commission Counsel

Date submitted to agency: January 10, 2023

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: NC Department of Environmental Quality

RULE CITATION: 15A NCAC 01E .0108

DEADLINE FOR RECEIPT: Monday, January 16, 2023

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

G.S. 143-215.101 states that the Secretary may grant or deny a permit and set permit conditions. Under what authority can the Secretary suspend, revoke, or amend a permit? Where is the specific, explicit authority for this?

DEQ Response: This rule is no longer necessary and can be removed from the code.

Regardless, what is the statutory authority for Secretary's continuing right to impose additional terms and conditions on a permit, as stated in Paragraph (b)? By what criteria would "necessary and appropriate" be determined?

DEQ response: This rule is no longer necessary and can be removed from the code.

How is Paragraph (c) necessary and how does it qualify as a rule? Explain.

DEQ response: This rule is no longer necessary and can be removed from the code.

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

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: NC Department of Environmental Quality

RULE CITATION: 15A NCAC 01E .0110

DEADLINE FOR RECEIPT: Monday, January 16, 2023

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

Please explain the specific, explicit statutory authority for this Rule. Also, how does this qualify as a rule? Also, how is this Rule necessary to implement or interpret a statute or federal regulation?

DEQ response: This rule is no longer necessary and can be removed from the code.

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

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: NC Department of Environmental Quality

RULE CITATION: 15A NCAC 01E .0111

DEADLINE FOR RECEIPT: Monday, January 16, 2023

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

How does this qualify as a rule and not merely a statement concerning the internal management of the Department? It does not directly or substantially affect the procedural or substantive rights or duties of a person not employed by the Department.

DEQ response: This rule is no longer necessary and can be removed from the code.

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

Lawrence R. Duke
Commission Counsel

Date submitted to agency: January 10, 2023

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: NC Department of Environmental Quality

RULE CITATION: 15A NCAC 01E .0113

DEADLINE FOR RECEIPT: Monday, January 16, 2023

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

How does this qualify as a rule and not merely a statement concerning the internal management of the Department? It does not directly or substantially affect the procedural or substantive rights or duties of a person not employed by the Department.

DEQ response: This affects the timing of submissions to the Department by the applicant and affects the timing of decisions by the Secretary, which would affect the procedural and substantive rights of a person not employed by the Department.

Furthermore, the discretion to grant multiple extensions is under what specific statutory authority? This is neither clear nor ambiguous. Are there criteria that determine this?

DEQ response: G.S. 143-215.100 grants the Secretary the authority to issue permits. G.S. 143-215.101 grants the Secretary the authority to adopt implementing rules. Added G.S. 143-215.100 to the History Note to clarify the basis of this authority.

Also, this Rule seems in conflict with G.S. 143-215.108(h)(3) and (4). Are specific time periods required by statute? Please explain.

DEQ response: G.S. 143-215.108 relates to the Environmental Management Commission, specifically air pollution control; these Rules do not arise under the authority of the EMC.

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

Lawrence R. Duke
Commission Counsel

Date submitted to agency: January 10, 2023

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: NC Department of Environmental Quality

RULE CITATION: 15A NCAC 01E .0114

DEADLINE FOR RECEIPT: Monday, January 16, 2023

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

Under what explicit, specific statutory authority is the right to delegate authority granted to the Secretary? Also, under what statutory authority can the Secretary suspend, revoke, or amend a permit? Please explain.

DEQ response: This rule is no longer necessary and can be removed from the code.

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

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: NC Department of Environmental Quality

RULE CITATION: 15A NCAC 01E .0115

DEADLINE FOR RECEIPT: Monday, January 16, 2023

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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:

In what way shall an operator “report in writing” an unauthorized discharge? This should be clarified.

DEQ response: Clarified.

Under what explicit, specific statutory authority can an operator be required to publish the press release required in Paragraph (b).

DEQ response: Deleted.

What is “all” print and electronic news media?

DEQ response: Deleted.

What would be substantial compliance? What are “the details”? Should this be more specific?

DEQ response: Deleted.

Also, delete “has” on line 12: “that a discharge ~~has~~ occurred”.

DEQ response: Deleted.

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

Lawrence R. Duke
Commission Counsel

Date submitted to agency: January 10, 2023

1 **15A NCAC 01E .0101 IS READOPTED AS PUBLISHED IN 37:05 NCR 359 AS FOLLOWS:**

2

3 **15A NCAC 01E .0101 PURPOSE**

4 The purpose of this Subchapter is to establish procedures and standards under which permits for the construction and
5 operation of oil refining facilities will be issued or denied. ~~The permit decision is based on a full and fair discussion~~
6 ~~and assessment of effects which the refinery will or may have on the environment.~~

7

8 *History Note: Authority G.S. 143-215.101;*

9

Eff. June 16, 1980;

10

Amended Eff. October 1, 1984;

11

Readopted Eff. April 1, 2023.

12

13

1 **15A NCAC 01E .0102 IS READOPTED AS PUBLISHED IN 37:05 NCR 359 WITH CHANGES AS**
2 **FOLLOWS:**

3
4 **15A NCAC 01E .0102 DEFINITIONS**

5 As used in this Subchapter, unless the context otherwise requires:

6 (1) "Act" means the Oil Pollution and Hazardous Substances Control Act, Article 21A, Chapter 143,
7 General Statutes.

8 ~~(2) "Director" means the Director of the Division of Environmental Management.~~

9 ~~(3)~~(2) "Construction" means:

10 (a) construction and operation of a new oil refining facility;

11 (b) substantial enlargement and operation of an existing oil refining facility; or

12 (c) substantial change in the physical separation or chemical reaction process of an existing
13 oil refining facility and operation of such facility.

14 (3) "Department" means the Department of Environmental Quality.

15 ~~(4) "Environment" means man's total physical environment including but not limited to wildlife;~~
16 ~~freshwater, estuarine or marine fisheries; air quality; water quality; and publicly owned parks,~~
17 ~~forests, or recreation areas.~~

18 ~~(5) "Oil" means oil of any kind or in any form, including petroleum, fuel oil, sludge, oil refuse, oil~~
19 ~~mixed with wastes other than dredge spoil.]~~

20 ~~(5)~~~~(6)~~(4) "Oil refining facility" means any facility of any kind and related appurtenances located in, on,
21 or under the surface of any land, or water, including submerged lands, which is used or capable of
22 being used for the purpose of refining oil. The term "related appurtenances" includes pipelines.

23 ~~(6)~~~~(6)~~(5) "Publicly owned parks, forests, or recreation areas" means lands, including beaches, shorelines,
24 and submerged lands, and waters:

25 (a) ~~which that~~ are owned or controlled by a governmental body for purposes of conservation
26 of natural resources, public recreation, or general public use; or

27 (b) ~~which that~~ the public has a right to use for recreation or as a part of the natural environment.

28 ~~(8)~~(6) "Secretary" means the Secretary of the Department of Environmental Quality. ~~[Quality or the~~
29 ~~Secretary's designee.]~~

30 ~~(7)~~~~(9)~~(7) "Wildlife" means wild animals and plants.

31
32 *History Note: Authority G.S. 143-215.77; 143-215.101;*

33 *Eff. June 16, 1980;*

34 *Amended Eff. July 1, 1988; October 1, 1984;*

35 *Readopted Eff. April 1, 2023.*

1 **15A NCAC 01E .0103 IS READOPTED AS PUBLISHED IN 37:05 NCR 359 WITH CHANGES AS**
2 **FOLLOWS:**

3
4 **15A NCAC 01E .0103 OIL REFINING FACILITY PERMIT REQUIRED**

5 ~~(a) No person shall construct or operate an oil refining facility unless and until such person applies for and obtains an~~
6 ~~oil refining facility permit under these Rules. However, any person who is operating an oil refining facility on the~~
7 ~~effective date of these Rules and who applies for an oil refining facility permit within 60 days of the effective date of~~
8 ~~these Rules, unless that time is extended by the Assistant Secretary pursuant to Rule .0013 of this Subchapter, may~~
9 ~~continue to operate without a permit until a final agency decision to issue or deny the permit is made and until judicial~~
10 ~~review, if any, of that decision is completed.~~ this Subchapter.

11 ~~(b) The director~~ [Secretary] ~~shall determine upon request or upon his~~ [the Secretary's] ~~own initiative whether a~~
12 ~~proposed enlargement or process change [to an existing oil refining facility] is substantial. In making that~~
13 ~~determination, he~~ [the Secretary] ~~shall consider relevant factors including, but not limited to:~~

- 14 ~~(1) the number of employees which the enlargement or process change will add to the facility's~~
15 ~~permanent work force; and~~
16 ~~(2) the character and volume of the changes which will or may occur in the facility's process, products,~~
17 ~~by products, discharges, and emissions; and~~
18 ~~(3) the change in oil refining capacity which the facility will be designed to handle after its enlargement~~
19 ~~or process change.~~

20
21 *History Note: Authority G.S. 143-215.100; 143-215.101; 143B-10;*
22 *Eff. June 16, 1980;*
23 *Amended Eff. October 1, 1984;*
24 *Readopted Eff. April 1, 2023.*
25
26
27

1 **15A NCAC 01E .0104 IS READOPTED AS PUBLISHED IN 37:05 NCR 359 WITH CHANGES AS**
2 **FOLLOWS:**

3
4 **15A NCAC 01E .0104 PERMIT APPLICATION REQUIREMENTS**

5 (a) An application for a permit shall be in writing and shall be transmitted to the ~~director~~Secretary at the following
6 address:

7 ~~Director, Division of Environmental Management~~Secretary's Office
8 North Carolina Department of ~~Environment, Health,~~Environmental Quality
9 ~~and Natural Resources~~
10 ~~P.O. Box 27687~~1601 Mail Service Center
11 Raleigh, North Carolina ~~27611~~27699-1601

12 (b) An application shall be made by and in the names of all persons who will be owners or operators of a proposed
13 oil refining facility or who are owners or operators of an existing facility.

14 (c) To apply for an oil refining facility permit, a person or persons shall submit to the ~~director~~Secretary an application
15 which shall ~~contain all of the following 16 elements:~~ contain:

- 16 (1) ~~A a~~ A a cover sheet, ~~sheet which~~ sheet shall not exceed one page and ~~which~~ shall include:
- 17 (A) the title, APPLICATION FOR PERMIT TO CONSTRUCT OR OPERATE AN OIL
18 REFINING FACILITY; ~~and~~
 - 19 (B) a short statement of the activity for which the permit is sought (~~i.e., construction and~~
20 ~~operation, operation, enlargement and operation, or process change and operation~~) and the
21 name and location of the oil refining facility involved; ~~and~~
 - 22 (C) the complete name, address, and telephone number of each applicant; ~~and~~
 - 23 (D) the date of the application; ~~and~~
 - 24 (E) the name, address, and telephone number of the employee or agent of the applicant who
25 can supply further information; and
 - 26 (F) an abstract of the assessment of the effects which the construction or operation of the oil
27 refining facility will have on the ~~environment.~~ environment:
- 28 (2) ~~A a~~ A a table of ~~eontents,~~ contents:
- 29 (3) ~~A description of each applicant's interest in the ownership or role in the operation of the oil refining~~
30 ~~facility.~~ facility.
- 31 (4) ~~A description of each applicant's experience in the engineering, design, construction, and operation~~
32 ~~of oil refining facilities.~~ of oil refining facilities.
- 33 (5) ~~A description of any civil or criminal penalty assessment, any criminal conviction, or any prior or~~
34 ~~pending civil litigation or administrative proceeding relating to environmental activities or related~~
35 ~~to the~~ to the ~~[each]~~ [each] applicant's financial condition:
- 36 (A) ~~which arose out of the construction or operation of an oil refining facility by the applicant~~
37 ~~or by a person holding a substantial interest in the applicant; and~~

1 (B) — which involves alleged violations by the applicant or interest holder of federal or any state's
2 laws concerning the environment.

3 (6) — A description of each applicant's financial condition.

4 (7)(3) A a description of the proposed or existing oil refining facility, including but not limited to a
5 description of the following aspects of the facility's operation:

6 (A) kind of refining process;

7 (B) refining capacity;

8 (C) kind, character, and volume of raw materials, and the source(s) of their supply;

9 (D) kind, character, and volume of products;

10 (E) kind, character, and volume of by-products;

11 (F) kind, character, and volume of effluent discharges to waters or lands of the State;

12 (G) kind, character, and volume of emissions to air;

13 (H) number of persons in the facility's permanent work force; and

14 (I) cost of construction of the ~~facility.~~ facility;

15 (8)(4) If if construction is involved, a description of the construction process and the applicant's estimate
16 of the timetable for that ~~process.~~ process;

17 (9)(5) Two ~~[An]~~an electronic copy or two sets of paper copies of the most current reports, drawings, maps,
18 plans, and specifications ~~concerning~~describing the location, construction, and operation of the oil
19 refining ~~[facility.]~~ facility, in such detail as the Assistant Secretary deems necessary to decide to
20 issue or deny the permit. ~~facility.~~ facility;

21 (10)(6) A a description of the transfer of oil to and from the oil refining facility, including but not limited
22 to a statement of the amount and kind of vessel traffic which the facility's operation does or will
23 generate. ~~generate.~~ generate;

24 (11)(7) Two ~~[An]~~an electronic copy or two sets of paper copies of the most current reports, drawings, maps,
25 plans, specifications, and other information ~~concerning~~describing the transfer of oil (including oil,
26 including but not limited to vessel characteristics and ownership, vessel navigation to and from the
27 facility, oil loading equipment, and ~~pipelines~~)pipelines, in such detail as the Assistant Secretary
28 deems necessary to decide to issue or deny the ~~permit.~~ permit;

29 (12)(8) A ~~[Upon]~~upon request of the Secretary, a listing of the ~~effects~~environmental or health impacts which
30 interested or affected persons or their representatives have indicated are of ~~substantial~~ concern to
31 them and which the oil refining facility will or may have on the environment, ~~them.~~

32 (A) — To prepare such a listing, the applicant ~~shall make diligent efforts.~~ shall:

33 (i)(A) ~~to~~ inform about the facility those persons whom the facility will or may interest
34 or ~~affect;~~affect, including those living within one mile of any part of the facility;
35 and

36 (ii)(B) ~~to~~ discover their concerns about the effects of the facility and their suggestions
37 for meeting those concerns.

1 The applicant may coordinate his efforts in this regard with similar efforts required of him by other
2 statutes or regulations, federal or state, so as to reduce duplication of ~~effort.~~ effort.

3 (B) — In the case of an initial permit application for an oil refining facility which is operating on
4 the effective date of these Rules, this Subparagraph (12) of the application will not be
5 required.

6 ~~(13)(9)~~ (9) A a list of ~~state and federal~~ all federal, state, and local environmental quality permits or approvals
7 related to protection of the environment or environmental resources for which that the applicant has
8 applied or will apply, shall obtain for construction or operation of the oil refining facility, the date
9 on which each application was ~~or is expected to be~~ submitted to the appropriate authority, submitted,
10 a copy of each filed application, and the current status a copy of each application or permit permit
11 or approval showing that it has been ~~[issued.]~~ issued:

12 ~~(14)(10)~~ (10) An an analysis of the effects ~~which that~~ construction or operation of the facility, including ~~but not~~
13 ~~limited to~~ the transfer of oil to and from the ~~facility;~~facility, will or may have on the environment.
14 environment:

15 (A) ~~The applicant shall include in such analysis a description of the environment as it exists at~~
16 ~~the time the application is filed.~~ [filed, including all available data about the site.]

17 (B) ~~The applicant shall address in such analysis the relationship of people with the specified~~
18 ~~parts of the natural and physical environment. Therefore, if the construction or operation~~
19 ~~of the oil refining facility, including but not limited to the transfer of oil to and from the~~
20 ~~facility, will or may have a primary effect on the environment, the applicant shall address~~
21 ~~the secondary effects on public health, safety, and welfare which will or may result from~~
22 ~~those primary effects. Those secondary effects shall include but not be limited to social,~~
23 ~~economic, aesthetic, historic, and cultural effects.~~

24 ~~(15)(11)~~ (11) The the applicant's proposals for avoiding or minimizing the adverse effects of the construction and
25 operation of the oil refining facility and the transfer of oil to and from the facility on the environment
26 and proposals for enhancing the quality of the environment. The applicant's proposals shall ~~include~~
27 ~~but not be limited to:~~include:

28 (A) a description of the procedures, methods, means, and equipment, including ~~but not limited~~
29 ~~to~~ those relating to vessel navigation and design, which the applicant will use to prevent
30 any discharges to the waters or lands of the State; ~~and~~

31 (B) a description of the procedures, methods, means, and equipment by which the applicant
32 will detect and report discharges; ~~and~~

33 (C) a description of the procedures, methods, means, and equipment which the applicant will
34 use in the containment, removal, and cleaning up of discharges and in the restoration of
35 any lands or waters affected by a ~~discharge.~~ discharge; ~~and~~

36 (D) ~~a description and copies of any spill prevention and emergency response plans required~~
37 ~~under federal, State, or local laws and~~ [regulations.] regulations:

1 ~~(16)~~(12) A a list of the names of the persons who were primarily responsible for preparing the application or
2 any part thereof, together with their qualifications, including ~~but not limited to~~ their expertise,
3 experience, and professional disciplines. ~~disciplines, disciplines, and licenses.~~ Where possible, the
4 persons who were responsible for a particular analysis shall be ~~identified.~~ identified.

5 ~~(17)~~(13) A a statement and explanation by the applicant whether the proposed construction or operation of
6 the oil refining facility is subject to Article 1 of G.S. Chapter 113A, the North Carolina
7 Environmental Policy Act. ~~[or corresponding rules adopted by the Department of Environmental~~
8 ~~Quality or the Department of Administration.]~~

9 ~~(d) In fulfillment or partial fulfillment of any requirement of Paragraph (c) of this Rule, the applicant may adopt an~~
10 ~~oil refining facility permit application or portion thereof which any applicant has previously filed. The adopted~~
11 ~~application or portion thereof must meet the standards for an adequate and complete application under these Rules.~~

12 ~~(e)~~(d) The ~~director~~Secretary shall determine the adequacy and completeness of the submitted ~~application.~~ application
13 based on compliance with the requirements in Paragraph (c) and Paragraph (e) of this Rule.

14 ~~(f)~~(e) The applicant shall supply such other information as the ~~director~~Secretary deems necessary to impose
15 appropriate terms and conditions in the permit and to determine appropriate protective measures to prevent oil
16 discharges to the lands and waters of the State to ~~decide to issue or deny the permit.~~ permit according to the schedule
17 provided by the Secretary.

18
19 History Note: Authority G.S. ~~143-215.84;~~ 143-215.101; ~~143-215.102;~~
20 Eff. June 16, 1980;
21 Amended Eff. March 1, 1990; August 1, 1988; October 1, 1984;
22 Readopted Eff. April 1, 2023.
23
24

1 **15A NCAC 01E .0105 IS READOPTED AS PUBLISHED IN 37:05 NCR 359 WITH CHANGES AS**
2 **FOLLOWS:**

3
4 **15A NCAC 01E .0105 PERMIT APPLICATION PROCEDURE**

5 (a) ~~Upon receipt of an application for an oil refining facility permit, the director~~[Secretary] ~~shall determine whether~~
6 ~~the application contains the necessary parts and whether the content and detail of those parts is sufficient to enable~~
7 ~~him to decide to issue or deny the permit.~~ If ~~the Secretary determines~~ the application is incomplete ~~under Rule .0104(d)~~
8 ~~of this Section,~~ the ~~director~~Secretary shall within ~~3060~~ days of its receipt describe in writing to the applicant how the
9 application is incomplete. The applicant ~~shall~~shall, within 60 days, submit such additional information relating to the
10 oil refining facility ~~as the director~~[Secretary] ~~deems necessary for the application to be complete.~~ If the application is
11 complete, the ~~director~~Secretary shall so advise the applicant in writing within ~~3060~~ days of its receipt.

12 (b) Within ~~4530~~ days of ~~receiving~~giving notice to the applicant of a ~~complete~~completed application, ~~the director~~in
13 ~~accordance with [Rule .0105(a)]~~Paragraph (a) of this ~~[Section,]~~Rule, the Secretary shall give notice of the application
14 and of a public hearing to be held pursuant to Rule ~~.0006.0106~~ of this Subchapter to all of the following state agencies
15 and other persons:

- 16 (1) the North Carolina Coastal Resources Commission;
- 17 (2) the North Carolina Department of ~~Economic and Community Development;~~Commerce;
- 18 ~~(3) the North Carolina Commercial and Sports Fisheries Committee;~~
- 19 ~~(4)~~(3) the North Carolina Department of Natural and Cultural Resources;
- 20 ~~(5)~~(4) the North Carolina Environmental Management Commission;
- 21 ~~(6)~~(5) the North Carolina ~~Forestry Council;~~Forest Service;
- 22 ~~(7)~~(6) the North Carolina Department of Health and Human Resources;Services;
- 23 ~~(8)~~(7) the North Carolina Marine Fisheries Commission;
- 24 ~~(9) the North Carolina Parks and Recreation Council;~~
- 25 ~~(10)~~(8) the North Carolina Department of Transportation;
- 26 ~~(11)~~(9) the North Carolina State Ports Authority;
- 27 ~~(12)~~(10) the North Carolina Wildlife Resources Commission;
- 28 ~~(13)~~(11) the Boards of County Commissioners for the county in which the oil refining facility is located or
29 is proposed to be located and for contiguous counties;
- 30 ~~(14)~~(12) the governing body of any incorporated municipality within 50 miles of the oil refining facility;
- 31 ~~(15)~~(13) any person whose name is on the mailing list required in Rule ~~.0011.0111~~ of this ~~Subchapter;~~
32 Section;
- 33 ~~(16)~~(14) any owner of real property which is contiguous to the site of the oil refining facility; and
- 34 ~~(17)~~(15) the applicant.

35 (c) The notice ~~which~~ Paragraph (b) of this Rule requires shall contain the following information:

- 1 (1) The title "Notice of Application for Oil Refining Facility Permit," and a statement that the purpose
2 of the notice is to obtain ~~information, views, and arguments~~information or comments to assist the
3 ~~director~~Secretary in assessing the effects of the oil refining facility on the environment.
- 4 (2) The name and address of the applicants and a brief description of the name, character, location, and
5 capacity of the oil refining facility for which the permit is sought.
- 6 (3) A summary of the analysis of effects submitted in the application ~~as under Subparagraph (14) of~~
7 ~~Rule .0104(c) 0004(e) of this Subchapter. Section.~~
- 8 (4) An invitation to persons who may be interested or affected by the facility to present, either in writing
9 or at the public hearing held pursuant to Rule ~~.0006.0106~~ of this ~~Subchapter. Section.~~ their
10 ~~information, views, and arguments~~information or comments concerning the impacts of the
11 construction and operation of the oil refining facility, including ~~but not limited to~~ the effects of the
12 transfer of oil to and from the facility, on the environment.
- 13 (5) A statement that written ~~information, views, and arguments~~information or comments may be
14 submitted to the ~~director~~Secretary at a specified address at any time until 30 days after the close of
15 the public hearing on the application.
- 16 (6) An announcement of the date, time, and place of the public hearing held pursuant to Rule ~~.0006.0106~~
17 of this ~~Subchapter. Section.~~
- 18 (7) A list of the state agencies ~~which that~~ may review and comment on the ~~application;~~application
19 pursuant to Paragraph (b) of this Rule and the date by which the agencies' comments ~~should shall~~
20 be submitted to the ~~director~~Secretary, which shall be within 45 days of the date the notice is issued.
- 21 (8) The ~~addresses and telephone numbers of two locations, one at the Department's offices in Raleigh~~
22 ~~and the other at a public location reasonably close to the site or proposed site of the oil refining~~
23 ~~facility;~~address on the Department's website at which anyone may review the complete application.
- 24 (9) A reference to the particular sections of the North Carolina General Statutes and the North Carolina
25 Administrative Code applicable to the issuance or denial of oil refining facility permits.
- 26 (10) A description of the nature of the hearing and the rules ~~which will that shall~~ govern its conduct.
- 27 (11) The name, email address, and telephone number of a department official from whom additional
28 information may be obtained.

29 ~~[(12) Any other information provided by the Secretary.]~~

30 (d) The ~~director~~Secretary shall arrange for the publication of the notice in a regularly published newspaper of general
31 circulation:

- 32 (1) in the county containing the site of the oil refining facility; and
- 33 (2) in contiguous ~~counties; and~~counties.
- 34 ~~(3) in at least three different parts of the State. Publication shall occur at least 30 days before the~~
35 ~~hearing.~~

36 ~~[(e) The Secretary shall provide public notice in accordance with the appropriate portions of the DEQ Public~~
37 ~~Participation Plan.]~~

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History Note: Authority G.S. 143-215.101;
Eff. June 16, 1980;
Amended Eff. March 1, 1990; July 1, 1988; October 1, 1984.
Readopted Eff. April 1, 2023.

1 **15A NCAC 01E .0106 IS READOPTED AS PUBLISHED IN 37:05 NCR 359 WITH CHANGES AS**
2 **FOLLOWS:**

3
4 **15A NCAC 01E .0106 PUBLIC HEARING ON PERMIT APPLICATION**

5 (a) The ~~director~~Secretary shall hold a public hearing at which any person will be given a reasonable opportunity to
6 present ~~information, views, and arguments~~information or comments concerning the contents of the application and
7 the effects of the construction and operation of the oil refining facility, including ~~but not limited to~~ the effects of the
8 transfer of oil to and from the ~~facility~~facility on the environment.

9 (b) The hearing shall be held between ~~4560~~ and ~~6090~~ days after the date of the notice required by Rule
10 ~~.0005(b)~~.0105(b) of this ~~Subchapter~~ Section. ~~If the director~~Secretary] ~~deems it necessary, he~~[the Secretary] may
11 arrange for the sending or publication of a second, abbreviated notice shortly before the hearing.

12 (c) The state agencies listed in Rule ~~.0005(b)~~.0105(b) of this ~~Subchapter~~ Section may comment on the effects which
13 that construction or operation of an oil refining facility will or may have on the environment and in so doing should
14 address matters within their jurisdiction, authority, or expertise. An agency may reply that it has no comment.
15 Agencies ~~must~~shall submit any comments within the time period specified for comment in the notice.

16 (d) The hearing shall be held in the county where the oil refining facility for which the applicant seeks a permit is
17 located or is proposed to be located, unless the ~~director~~Secretary finds and directs that, for reasons of public
18 convenience, safety, or health, it should be held ~~elsewhere~~in a different location or through a virtual application.

19 (e) The hearing shall be informational in nature and shall not be a contested case as defined in G.S. ~~150A 2(2)~~.150B-
20 2. The ~~director~~Secretary shall hold the hearing or appoint a hearing officer to do so. The person holding the hearing
21 has the authority to set reasonable guidelines for the hearing, including ~~but not limited to~~ the length of the hearing and
22 the length of time a person may speak.

23 (f) The record of the hearing shall be open for written submissions until 30 days after the close of hearing. Any oral
24 or written ~~information, views, and arguments~~information or comments offered at the hearing and any further written
25 ~~information, views, and arguments~~information or comments submitted within 30 days after the close of the hearing
26 shall be made part of the record of the hearing.

27 [(g) Within 30 days after the close of the public comment period, the Secretary may request that the applicant provide
28 any information necessary to respond to public comments. The applicant shall have up to 90 days to submit the
29 requested information.]

30
31 *History Note: Authority G.S. 143-215.100; 143-215.101;*
32 *Eff. June 16, 1980;*
33 *Amended Eff. October 1, 1984;*
34 *Readopted Eff. April 1, 2023.*
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1 **15A NCAC 01E .0107 IS READOPTED AS PUBLISHED IN 37:05 NCR 359 WITH CHANGES AS**
2 **FOLLOWS:**

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4 **15A NCAC 01E .0107 DECISION TO ISSUE OR DENY PERMIT**

5 (a) Within ~~45~~60 days of the last day for submitting ~~information, views, and arguments~~ public comments about the
6 permit application, or the last day on which the applicant provides additional information requested by the Secretary
7 to respond to public comments, the ~~director~~Secretary shall issue or deny the ~~oil refining facility permit~~ permit for the
8 oil refining facility.

9 (b) In deciding to issue or deny the permit, the ~~director~~Secretary shall consider:

- 10 (1) the permit ~~application~~ application; ~~[and supporting relevant documents; documents such as site~~
11 ~~sampling, reports, and proposals for minimizing adverse effects on the environment.]~~
- 12 (2) the data, ~~information, views, and arguments~~ comments which have been submitted during the permit
13 process;
- 14 (3) ~~[all facts, information, or analyses of which judicial notice may be taken; the Department~~
15 ~~becomes aware, including any environmental permits issued by federal, State, or local authorities;~~
16 ~~and]~~
- 17 ~~(4)~~(3) other ~~facts~~ facts, information, or analyses within the specialized knowledge of the Department.

18 ~~(c) The director shall base his decision on the effects which the construction or operation of the oil refining facility,~~
19 ~~including the transfer of oil to and from the facility, will or may have on the environment. In evaluating those effects,~~
20 ~~the director shall consider the relationship of people with the specified parts of the natural and physical environment.~~
21 ~~This means that, if~~ The Secretary shall base the decision on the effects which the construction or operation of the oil
22 refining facility, including the transfer of oil to and from the facility, will or may have a ~~primary effect~~ on the
23 ~~environment, the director shall consider the secondary effects on public health, safety and welfare, including but not~~
24 ~~limited to social, economic, aesthetic, historic, and cultural effects, which will or may result from those primary~~
25 ~~effects.~~ environment.

26 ~~(d)~~(c) The ~~director~~Secretary shall deny the permit upon a finding that:

- 27 (1) The construction or operation of the oil refining facility, including ~~but not limited to~~ the transfer of
28 oil to and from the facility, will have substantial adverse effects on wildlife or on freshwater,
29 estuarine, or marine fisheries; ~~or~~
- 30 (2) The construction or operation of the oil refining facility, including ~~but not limited to~~ the transfer of
31 oil to and from the facility, will violate standards of air or water quality promulgated or administered
32 by the Environmental Management Commission; or
- 33 (3) The construction or operation of the oil refining facility, including ~~but not limited to~~ the transfer of
34 oil to and from the facility, will have a substantial adverse effect on a publicly owned park, forest,
35 or recreation area.

36 ~~(e)~~(d) In the absence of a finding described in ~~(d)~~ Paragraph (c) of this Rule, the ~~director~~Secretary shall issue the
37 permit.

1 (1) The ~~director~~Secretary shall impose on any permit he issues the following terms and conditions:

2 (A) The permit shall not be effective until the applicant has obtained ~~the~~all necessary
3 environmental permits, including without limitation, those permits required by G.S.
4 143-215.1, entitled "Control of sources of water pollution; permits required," and G.S.
5 143-215.108, entitled "Control of sources of air pollution; permits required."Articles 21,
6 21A, and 21B of G.S. Chapter 143, Article 9 of G.S. Chapter 130A, and Articles 4 and 7
7 of G.S. Chapter 113A. When the necessary ~~water and air pollution control~~ permits have
8 been obtained by the applicant, the ~~director~~Secretary upon the applicant's request shall
9 confirm the effective date of the oil refining facility permit.

10 (B) The applicant, on February 1 of each year following the year in which the applicant's permit
11 became effective, shall submit to the ~~director~~Secretary a description of the following
12 aspects of the facility's operation as of that date:

- 13 (i) as they are listed in Rule ~~.0004(e)(7), .0104(e)(7), .0104(c)(3)~~(A), (B), (C), (D), (E),
14 (F), (G), and ~~(H)~~; (H) of this Section; and
15 (ii) transfer of oil to and from the facility, including ~~but not limited to~~ a statement of
16 the amount and kind of vessel traffic which the facility's operation does or will
17 generate.

18 ~~(2) — Further, the applicant, in making this annual report, The applicant may adopt an oil refining facility~~
19 ~~permit application or portion thereof which that the applicant has previously filed. The filed, if the~~
20 ~~adopted application or portion thereof must meet the standards for an adequate response to this~~
21 ~~permit term. provides all of the required information in [Subpart] Part (1)(B) of this Paragraph. The~~
22 ~~applicant shall submit additional information about the facility's operation if the directorSecretary~~
23 ~~deems it necessary and requests it.]~~

24 ~~{(2)(3) — The directorSecretary has the authority to impose any additional terms and conditions on the permit~~
25 ~~which he deems necessary and appropriate to effectuate the purposes of the Act, including but not~~
26 ~~limited to terms and conditions requiring the installation of such facilities and the employment of~~
27 ~~such protective measures and operating procedures as he deemsdeemed reasonable and necessary~~
28 ~~to prevent, contain, and remove any discharges to the waters or lands of the State, and to restore,~~
29 ~~restock, and replenish said waters or lands.}~~

30
31 *History Note:* Authority G.S. 143-215.1; 143-215.101; 143-215.108;
32 Eff. June 16, 1980;
33 Amended Eff. October 1, 1984;
34 Readopted Eff. April 1, 2023.
35
36

1 **15A NCAC 01E .0108 WAS READOPTED AS PUBLISHED IN 37:05 NCR 359 BUT IS NOW REPEALED**
2 **AS FOLLOWS:**

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4 **15A NCAC 01E .0108 SUSPENSION: REVOCATION: OR AMENDMENT OF PERMITS**

5

6 *History Note: Authority G.S. 143-215.101; 150B-3;*

7

Eff. June 16, 1980;

8

Amended Eff. July 1, 1988; October 1, 1984;

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Repealed Eff. April 1, 2023.

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1 **15A NCAC 01E .0110 WAS READOPTED AS PUBLISHED IN 37:05 NCR 359 BUT IS NOW REPEALED**
2 **AS FOLLOWS:**

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4 **15A NCAC 01E .0110 SEVERABILITY**

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6 *History Note: Authority G.S. 143-215.101;*

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Eff. June 16, 1980;

8

Repealed Eff. April 1, 2023.

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1 **15A NCAC 01E .0111 WAS READOPTED AS PUBLISHED IN 37:05 NCR 359 BUT IS NOW REPEALED**
2 **AS FOLLOWS:**

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4 **15A NCAC 01E .0111 MAILING LIST**

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6 *History Note: Authority G.S. 143-215.101;*

7 *Eff. June 16, 1980;*

8 *Amended Eff. October 1, 1984;*

9 *Repealed Eff. April 1, 2023.*

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1 **15A NCAC 01E .0113 IS READOPTED AS PUBLISHED IN 37:05 NCR 359 WITH CHANGES AS**
2 **FOLLOWS:**

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4 **15A NCAC 01E .0113 EXTENSIONS OF TIME PERIODS**

5 The ~~director~~Secretary may extend any of the time periods prescribed by this Subchapter. Such an extension shall not
6 exceed 15 days. [~~The Secretary may issue multiple extensions at the Secretary's discretion.~~]

7

8 *History Note: Authority G.S. 143-215.100; 143-215.101;*

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Eff. June 16, 1980;

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Amended Eff. October 1, 1984;

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Readopted Eff. April 1, 2023.

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1 **15A NCAC 01E .0114 WAS READOPTED AS PUBLISHED IN 37:05 NCR 359 BUT IS NOW REPEALED**
2 **AS FOLLOWS:**

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4 **15A NCAC 01E .0114 DELEGATIONS**

5

6 *History Note: Authority G.S. 143-215.100; 143-215.101; 143B-10; 150B-2(2);*

7 *Eff. October 1, 1984;*

8 *Repealed Eff. April 1, 2023.*

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1 **15A NCAC 01E .0115 IS ADOPTED AS PUBLISHED IN 37:05 NCR 359 WITH CHANGES AS FOLLOWS:**

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3 **15A NCAC 01E .0115 UNAUTHORIZED DISCHARGES**

4 (a) In addition to any other reporting obligation under State, local, or federal law, the operator of any oil refining
5 facility shall report in writing via electronic mail, facsimile, or first class mail to the Secretary any unauthorized
6 discharge of oil of 500 gallons or more or other occurrence prohibited by the Act. Such reporting shall occur as soon
7 as practicable, but no later than 24 hours after the owner or operator becomes aware of the discharge or occurrence.
8 The report shall include an estimated volume of the discharge.

9 ~~(b) In the event of an unauthorized discharge of oil from an oil refining facility, the owner or operator of that oil~~
10 ~~refining facility shall issue a press release to all print and electronic news media that provide general coverage in the~~
11 ~~county where the discharge occurred setting out the details of the discharge. The owner or operator shall issue the~~
12 ~~press release within 24 hours after the owner or operator has determined that a discharge has occurred. The press~~
13 ~~release shall include an estimated volume of the discharge. The owner or operator shall provide a copy of the press~~
14 ~~release and a listing of the news media to whom the press release was issued to the Department.~~

15 ~~(e)~~(b) After an unauthorized discharge of oil, the owner or operator shall submit a report to the Secretary describing
16 the actions taken to respond to and contain the release. In the event that a release cannot be contained within 24 hours
17 after the owner or operator becomes aware, the owner or operator shall submit daily reports on the status of the
18 response as directed by the Department until the discharge is contained.

19
20 *History Note: Authority G.S. 143-215.101;*

21 *Adopted Eff. April 1, 2023.*

Burgos, Alexander N

Subject: FW: DEQ 15A NCAC 01E - RRC Review

From: Everett, Jennifer <jennifer.everett@ncdenr.gov>

Sent: Monday, February 13, 2023 1:19 PM

To: Duke, Lawrence <lawrence.duke@oah.nc.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Wright, Alyssa N <Alyssa.Wright@ncdenr.gov>

Subject: RE: DEQ 15A NCAC 01E - RRC Review

Yes, we will have responses to you in March.

Jennifer Everett

DEQ Rulemaking Coordinator

N.C. Depart. Of Environmental Quality

Office of General Counsel

1601 Mail Service Center

Raleigh, NC 27699-1601

Tele: (919)-707-8614

<https://deq.nc.gov/permits-rules/rules-regulations/deq-proposed-rules>

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Burgos, Alexander N

Subject: FW: DEQ 15A NCAC 01E - RRC Review

From: Duke, Lawrence <lawrence.duke@oah.nc.gov>

Sent: Monday, February 13, 2023 10:48 AM

To: Everett, Jennifer <jennifer.everett@ncdenr.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Wright, Alyssa N <Alyssa.Wright@ncdenr.gov>

Subject: RE: DEQ 15A NCAC 01E - RRC Review

Jennifer,

I just wanted to check in with you on these DEQ rules. They were granted an extension at the January RRC Meeting and, therefore, do not need to be addressed until the March RRC Meeting. Is this your understanding? If so, please have your responses in by March 3, 2023.

Thanks,

Lawrence Duke

Counsel, NC Rules Review Commission

Office of Administrative Hearings

(984) 236-1938

Burgos, Alexander N

Subject: FW: DEQ 15A NCAC 01E - Letter of Extension of the Period of Review
Attachments: 01.2023 - Dept. of Environmental Quality - Extension Letter.pdf

From: Duke, Lawrence <lawrence.duke@oah.nc.gov>
Sent: Friday, January 20, 2023 10:33 AM
To: Everett, Jennifer <jennifer.everett@ncdenr.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: DEQ 15A NCAC 01E - Letter of Extension of the Period of Review

Jennifer,

Please see attached letter extending the period of review for 15A NCAC 01E .0101 through .0115. As always, if you have any questions regarding the Commission's actions, please let me know.

Thank you,

Lawrence Duke



Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
Lawrence.Duke@oah.nc.gov
(984) 236-1938

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Burgos, Alexander N

Subject: FW: DEQ 15A NCAC 01E - RRC Review

From: Duke, Lawrence <lawrence.duke@oah.nc.gov>

Sent: Thursday, January 12, 2023 10:50 AM

To: Everett, Jennifer <jennifer.everett@ncdenr.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Wright, Alyssa N <Alyssa.Wright@ncdenr.gov>

Subject: RE: DEQ 15A NCAC 01E - RRC Review

Jennifer,

Thank you for this request. I will recommend and advocate in favor of granting an extension when these rules come before the RRC. If you would like for these rules to be addressed at the February Meeting, please have your responses to these change requests in by close of business on February 3, 2023, or, at the latest, have them ready by March 3, 2023.

Thanks,

Lawrence Duke

Counsel, NC Rules Review Commission

Office of Administrative Hearings

(984) 236-1938

Burgos, Alexander N

Subject: FW: DEQ 15A NCAC 01E - RRC Review

From: Everett, Jennifer <jennifer.everett@ncdenr.gov>

Sent: Wednesday, January 11, 2023 3:45 PM

To: Duke, Lawrence <lawrence.duke@oah.nc.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Wright, Alyssa N <Alyssa.Wright@ncdenr.gov>

Subject: RE: DEQ 15A NCAC 01E - RRC Review

Lawrence,

We are requesting an extension for the period of review for 15A NCAC 01E. This request will allow additional time for staff to address your technical change requests.

Thanks.

Jennifer Everett

DEQ Rulemaking Coordinator

N.C. Depart. Of Environmental Quality

Office of General Counsel

1601 Mail Service Center

Raleigh, NC 27699-1601

Tele: (919)-707-8614

<https://deq.nc.gov/permits-rules/rules-regulations/deq-proposed-rules>

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Burgos, Alexander N

From: Duke, Lawrence
Sent: Tuesday, January 10, 2023 2:45 PM
To: Everett, Jennifer
Cc: Burgos, Alexander N
Subject: DEQ 15A NCAC 01E - RRC Review
Attachments: DEQ - 01.2023 - 15A NCAC 01E - Change Requests.docx

Jennifer,

I hope your year is starting off well. I have been working on the 01E rules. They were quite messy – I apologize for getting them to you at this point in the month and I am happy to advocate for an extension if you need. Just let me know.

Lawrence Duke



Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
Lawrence.Duke@oah.nc.gov
(984) 236-1938

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