

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?

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. February 1, 2023.*

12

13

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

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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.

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.

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

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.

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

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

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

2
3 **15A NCAC 01E .0102 DEFINITIONS**

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

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

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

8 ~~(3)~~(2) "Construction" means:

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

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

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

13 ~~(3)~~ "Department" means the Department of Environmental Quality.

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

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

19 ~~(5)~~(6) "Oil refining facility" means any facility of any kind and related appurtenances located in, on, or
20 under the surface of any land, or water, including submerged lands, which is used or capable of
21 being used for the purpose of refining oil. The term "related appurtenances" includes pipelines.

22 ~~(6)~~(7) "Publicly owned parks, forests, or recreation areas" means lands, including beaches, shorelines, and
23 submerged lands, and waters:

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

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

27 ~~(8)~~ "Secretary" means the Secretary of the Department of Environmental Quality or the Secretary's
28 designee.

29 ~~(7)~~(9) "Wildlife" means wild animals and plants.

30
31 *History Note: Authority G.S. 143-215.77; 143-215.101;*

32 *Eff. June 16, 1980;*

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

34 *Readopted Eff. February 1, 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.

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 .0103 IS READOPTED AS PUBLISHED IN 37:05 NCR 359 AS FOLLOWS:**

2
3 **15A NCAC 01E .0103 OIL REFINING FACILITY PERMIT REQUIRED**

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

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

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

19
20 *History Note: Authority G.S. 143-215.100; 143-215.101; 143B-10;*
21 *Eff. June 16, 1980;*
22 *Amended Eff. October 1, 1984;*
23 *Readopted Eff. February 1, 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

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

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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.

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.”.

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.

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”? In Part (12), based on what criteria would the Secretary request this information? Also, in Part (12), “shall make diligent efforts” is unclear and ambiguous; how would this be enforced? In Part (13), delete “to the appropriate authority”. In Part (14), change “which” to “that” in line 12. Part (13), lines 14 and 15, is not clear and is ambiguous as to what it requires. In Part (15), what are “proposals for enhancing the quality of the environment” (unclear and ambiguous). In Part (16), add a comma after “disciplines” and define or delete “where possible”. Part (17) is unclear and ambiguous as to what is required.

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

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

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.

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 .0104 IS READOPTED AS PUBLISHED IN 37:05 NCR 359 AS FOLLOWS:**

2
3 **15A NCAC 01E .0104 PERMIT APPLICATION REQUIREMENTS**

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

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

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

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

- 15 (1) A cover ~~sheet, sheet which~~ shall not exceed one page and ~~which~~ shall include:
- 16 (A) the title, APPLICATION FOR PERMIT TO CONSTRUCT OR OPERATE AN OIL
17 REFINING FACILITY; ~~and~~
 - 18 (B) a short statement of the activity for which the permit is sought (i.e., construction and
19 operation, operation, enlargement and operation, or process change and operation) and the
20 name and location of the oil refining facility involved; ~~and~~
 - 21 (C) the complete name, address, and telephone number of each applicant; ~~and~~
 - 22 (D) the date of the application; ~~and~~
 - 23 (E) the name, address, and telephone number of the employee or agent of the applicant who
24 can supply further information; and
 - 25 (F) an abstract of the assessment of the effects which the construction or operation of the oil
26 refining facility will have on the environment.
- 27 (2) A table of contents.
- 28 (3) A description of each applicant's interest in the ownership or role in the operation of the oil refining
29 facility.
- 30 (4) A description of each applicant's experience in the engineering, design, construction, and operation
31 of oil refining facilities.
- 32 (5) A description of any civil or criminal penalty assessment, any criminal conviction, or any prior or
33 pending civil litigation or administrative proceeding relating to environmental activities or related
34 to ~~the~~each applicant's financial condition.
- 35 (A) which arose out of the construction or operation of an oil refining facility by the applicant
36 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) 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.
- 15 (8) If construction is involved, a description of the construction process and the applicant's estimate of
16 the timetable for that process.
- 17 (9) ~~Two~~ 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, in such detail as the ~~Assistant~~ Secretary deems necessary to decide to issue or deny
20 the permit.
- 21 (10) A description of the transfer of oil to and from the oil refining facility, including ~~but not limited to~~
22 a statement of the amount and kind of vessel traffic which the facility's operation does or will
23 generate.
- 24 (11) ~~Two~~ 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.
- 29 (12) ~~A~~ 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~~
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:
- 33 (i) ~~(A)~~ (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)~~ (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.

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) 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, a copy of
10 each filed application, and ~~the current status a copy of each application or permit.~~ permit or approval
11 showing that it has been issued.

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

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

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

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

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

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

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

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

1 (16) 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 and licenses. Where possible, the persons who
4 were responsible for a particular analysis shall be identified.

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

13 ~~(f)~~(c) The applicant shall supply such other information as the ~~director~~Secretary deems necessary to decide to issue
14 or deny the ~~permit~~permit according to the schedule provided by the Secretary.

15
16 *History Note: Authority G.S. 143-215.84; 143-215.101; 143-215.102;*
17 *Eff. June 16, 1980;*
18 *Amended Eff. March 1, 1990; August 1, 1988; October 1, 1984;*
19 *Readopted Eff. February 1, 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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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.

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

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).

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 .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 the
6 application contains the necessary parts and whether the content and detail of those parts is sufficient to ~~enable him to~~
7 decide to issue or deny the permit. If the application is incomplete, the ~~director~~Secretary shall within ~~3060~~ days of its
8 receipt describe in writing to the applicant how the application is incomplete. The applicant ~~shall~~shall, within 60 days,
9 submit such additional information relating to the oil refining facility as the ~~director~~Secretary deems necessary. If the
10 application is complete, the ~~director~~Secretary shall so advise the applicant in writing within ~~3060~~ days of its receipt.

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

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

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

- 35 (1) The title "Notice of Application for Oil Refining Facility Permit," and a statement that the purpose
36 of the notice is to obtain ~~information, views, and arguments~~information or comments to assist the
37 ~~director~~Secretary in assessing the effects of the oil refining facility on the environment.

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

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

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

33 (e) The Secretary shall provide public notice in accordance with the appropriate portions of the DEQ Public
34 Participation Plan.

35
36 *History Note: Authority G.S. 143-215.101;*
37 *Eff. June 16, 1980;*
38 *Amended Eff. March 1, 1990; July 1, 1988; October 1, 1984.*

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Readopted Eff. February 1, 2023.

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: NC Department of Environmental Quality

RULE CITATION: 15A NCAC 01E .0106

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

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

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

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?

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

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

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 .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 arrange
11 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 construction or operation of an oil refining facility will or may have on the environment and in so doing should address
14 matters within their jurisdiction, authority, or expertise. An agency may reply that it has no comment. Agencies
15 ~~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. 143-215.101;*
32 *Eff. June 16, 1980;*
33 *Amended Eff. October 1, 1984;*
34 *Readopted Eff. February 1, 2023.*
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37

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

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

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

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

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

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?

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

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

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 .0107 IS READOPTED AS PUBLISHED IN 37:05 NCR 359 WITH CHANGES AS**
2 **FOLLOWS:**

3
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 and ~~supporting relevant documents;~~documents such as site sampling, reports,
11 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~~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) 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~~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(c)(7)~~ (A), (B), (C), (D), (E), (F), (G),
- 14 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, may adopt an oil refining facility permit
- 19 application or portion thereof which the applicant has previously ~~filed~~. ~~The filed, if the~~ adopted
- 20 application or portion thereof ~~must meet the standards for an adequate response to this permit term.~~
- 21 provides all of the required information in [Subpart] Part (1)(B) of this Paragraph. The applicant
- 22 shall submit additional information about the facility's operation if the ~~director~~Secretary deems it
- 23 necessary and requests it.
- 24 ~~(2)(3)~~ The ~~director~~Secretary 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 deems deemed~~ 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. February 1, 2023.*

35
36

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

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:

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?

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?

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

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 .0108 IS READOPTED AS PUBLISHED IN 37:05 NCR 359 AS FOLLOWS:**

2
3 **15A NCAC 01E .0108 SUSPENSION: REVOCATION: OR AMENDMENT OF PERMITS**

4 (a) The ~~director~~Secretary may suspend, revoke, or amend the permittee's oil refining facility permit if:

- 5 (1) a permittee violates any provision of the Act, ~~or~~ any rule, regulation, or order made pursuant to ~~Part~~
6 ~~4~~ of the Act, ~~entitled "Oil Refining Facility Permits,"~~ or any provision, term, or condition of the
7 ~~permit; permit, or any other environmental permit issued to the facility;~~ or
8 (2) a permittee intentionally misrepresented or failed to disclose material facts which were required to
9 be included in the application.

10 (b) The ~~director~~Secretary may, on a continuing basis, amend the permit under Rules .0105 and .0106 of this Section
11 to impose such terms and conditions thereon as ~~he deems~~ necessary and appropriate to effectuate the purposes of the
12 Act.

13 (c) G.S. 150B-3, entitled "Special Provisions on Licensing," shall apply to any suspension, revocation, or amendment
14 of a permit.

15
16 *History Note: Authority G.S. 143-215.101; 150B-3;*
17 *Eff. June 16, 1980;*
18 *Amended Eff. July 1, 1988; October 1, 1984;*
19 *Readopted Eff. February 1, 2023.*
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21
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23

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

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:

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?

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

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

2

3 **15A NCAC 01E .0110 SEVERABILITY**

4 If any provision of this Subchapter or its application to any person or circumstance is held invalid, such invalid
5 provision or application shall not affect the validity of other provisions or applications of this Subchapter; and to this
6 end the provisions of this Subchapter are declared to be severable.

7

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

9

Eff. June 16, 1980;

10

Readopted Eff. February 1, 2023.

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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

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:

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.

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

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

2

3 **15A NCAC 01E .0111 MAILING LIST**

4 The ~~director~~Secretary shall establish and maintain a mailing list of all persons desiring to receive any notices required
5 by this Subchapter, and notices required to be given shall be given to all such persons whose names are on this mailing
6 list.

7

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

9

Eff. June 16, 1980;

10

Amended Eff. October 1, 1984;

11

Readopted Eff. February 1, 2023.

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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

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:

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.

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?

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.

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

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

2

3 **15A NCAC 01E .0113 EXTENSIONS OF TIME PERIODS**

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

6

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

8

Eff. June 16, 1980;

9

Amended Eff. October 1, 1984;

10

Readopted Eff. February 1, 2023.

11

12

13

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

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:

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.

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

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

2

3 **15A NCAC 01E .0114 DELEGATIONS**

4 The ~~secretary~~Secretary hereby delegates to the ~~director~~Assistant Secretary the authority to issue, deny, suspend,
5 revoke, or amend oil refining facility permits, ~~except that the secretary retains the authority to make the final agency~~
6 ~~decision in contested cases as applied by 15A NCAC 1B .0200 — Contested Case Procedures.~~permits.

7

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

9

Eff. October 1, 1984;

10

Readopted Eff. February 1, 2023.

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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

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

Under what explicit, specific statutory authority can an operator be required to publish the press release required in Paragraph (b). What is “all” print and electronic news media? What would be substantial compliance? What are “the details”? Should this be more specific? Also, delete “has” on line 12: “that a discharge ~~has~~ occurred”.

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 .0115 IS ADOPTED AS PUBLISHED IN 37:05 NCR 359 AS FOLLOWS:**

2
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 to the Secretary any unauthorized discharge of oil of 500 gallons or more or other
6 occurrence prohibited by the Act. Such reporting shall occur as soon as practicable, but no later than 24 hours after
7 the owner or operator becomes aware of the discharge or occurrence. The report shall include an estimated volume of
8 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 (c) After an unauthorized discharge of oil, the owner or operator shall submit a report to the Secretary describing the
16 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. February 1, 2023.*