

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02Q .0203

DEADLINE FOR RECEIPT: Friday, February 12, 2021

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 call our office to inquire concerning the staff recommendation.

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

Throughout this Rule, there have been several changes made to the costs associated with the permit fees post-publication. I note that the Title V Basic Permit Fee decreased; however, the rest of the fees that were changed post-publication have increased. I am concerned that the increases have resulted in a substantial change pursuant to G.S. 150B-21.2(g). Please provide additional information as to why these changes were made post-publication.

In (a) and (d), with regard to the Synthetic Minor, Small, and General, what is the "otherwise applicable fee"? Is this clear elsewhere in rule or statute? I assume that G.S. 143-215.3(a)(1b) would apply here so I want to verify that these fees are within the amount authorized by the General Assembly.

In (a), given .0205 of this Section, are lines 6-7 ("A facility... as described in 15A NCAC 02Q .205(a)"). This language appears to be duplicative.

In (a), given .0204 of this Section, are lines 7-8 ("Annual permit fees... 15A NCAC 02Q .0204") necessary? This language appears to be duplicative.

In (a), lines 11-12, just to be clear, the "tonnage factor fee" is that which is provided in Paragraph (g) and "the nonattainment fee" is that which is provided in Paragraph (h)? What about the complexity fee as provided in Paragraph (b)? Is this not appropriate to include this here as well? Perhaps not with the "in addition to" language in (b).

Please begin (b)(1) and (2) and (c)(1) through (5) with lower case letters.

In (c), please consider changing "Each of the programs and regulations identified in Subparagraphs (1) through (5) of this Paragraph are considered... of this Rule" to "For purposes of Paragraph (b) of this Rule, each of the following shall be considered a federal program for the purposes of determining annual complexity fees:"

Amber May
Commission Counsel
Date submitted to agency: Friday, January 29, 2021

Is Paragraph (d) applicable to all facilities or just Title V? I ask because the annual complexity fee is only applicable to Title V facilities, but Paragraph (d) appears to be applicable to facilities other than, but in addition to, Title V facilities.

What is the overall intent of (e)? Is this intended to simply provide notice? Are these the fees with the inflation posted? Please confirm that actual fee is set by rule, not by the online posting.

In (g), line 11, I assume that this is to get to G.S. 143-215.3(1d)a.?

In (g), in “and the actual emissions of pollutants listed in Subparagraphs (1) through (4) of this Paragraph as follows.” Should “and” be “nor”? I assume the intent is that neither of these count?

In (g), please consider changing “... actual emissions of pollutants listed in Subparagraphs (1) through (4) of this Paragraph as follows.” to “... actual emissions of the following pollutants.”

In (h)(1), please change the comma at the end of “nonattainment” to a semi-colon.

In Paragraph (i) and (l), why is the title of the rule in parenthesis? Is this necessary given that you’ve not done it elsewhere when cross-referenced rules? I note that you’ve provided a title in (m), but that referenced the Section Title.

In (k), when are permit applications “group processed”? Is your regulated public familiar when this would occur? Is it clear elsewhere in rule or statute?

In (m) and (n), is there a more specific cross-reference for the applicable fee than the entire Section?

Please review Paragraph (n) for clarity. I don’t understand the reference to .0504 and then to the entire Section of .0500. Also, please consider breaking this up into multiple sentences.

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

Amber May
Commission Counsel
Date submitted to agency: Friday, January 29, 2021

1 15A NCAC 02Q .0203 is amended with changes as published in 35:07 NCR 756-758 as follows:

3 **15A NCAC 02Q .0203 PERMIT AND APPLICATION FEES**

4 (a) The owner or operator of any facility holding a permit shall pay the following annual permit fees:

ANNUAL PERMIT FEES (FEES FOR CALENDAR YEAR 2014 <u>2021</u>)			
Facility Category	Tonnage Factor	Basic Permit Fee	Nonattainment Area Added Fee
Title V	\$30.00 <u>\$40.00</u>	\$6,500 <u>\$10,000</u> <u>\$8,775</u>	\$3,500 <u>\$3,998</u> <u>\$4,056</u>
Synthetic Minor		\$1,500	
Small		\$250	
General	50% of the otherwise applicable fee		
<u>General Title V ACI</u>	<u>10% of the otherwise applicable fee</u>		

5 ~~[(Note: fee shaded in gray is fee for calendar year 2020, not adjusted for inflation for 2021)]~~

6 A facility, other than a Title V facility, that has been in compliance is eligible for a 25 percent discount from the annual
7 permit fees as described in ~~Paragraph (a) of~~ 15A NCAC 02Q .0205(a). Annual permit fees for Title V facilities in this
8 Paragraph shall be adjusted for inflation as described in 15A NCAC 02Q .0204. ~~Annual permit fees for Title V~~
9 ~~facilities consist of the sum of the applicable fee elements. The current annual permit fees shall be found on the~~
10 ~~Division's website at [https://dec.nc.gov/about/divisions/air-quality/air-quality-permits/modifying-applying-for-air](https://dec.nc.gov/about/divisions/air-quality/air-quality-permits/modifying-applying-for-air-quality-permit)~~
11 ~~quality-permit.~~ Annual permit fees for Title V facilities in this Paragraph are equal to the sum of the basic permit fee,
12 tonnage factor fee, and nonattainment area added fee, as applicable.

13 (b) In addition to the annual permit fees required by Paragraph (a) of this Rule, the owner or operator of a Title V
14 facility shall pay the following annual complexity fee, as applicable:

15 (1) For facilities subject to at least three and no greater than six of the federal programs identified in
16 Paragraph (c) of this Rule, the added annual complexity fee shall be two thousand five hundred
17 dollars (\$2,500); or

18 (2) For facilities subject to seven or greater of the federal programs identified in Paragraph (c) of this
19 Rule, the added annual complexity fee shall be seven thousand five hundred dollars (\$7,500).

20 Annual complexity fees for Title V facilities shall be adjusted for inflation as described in 15A NCAC 02Q .0204.

21 (c) Each of the programs and regulations identified in Subparagraphs (1) through (5) of this Paragraph are considered
22 a federal program for the purposes of determining annual complexity fees under Paragraph (b) of this Rule:

23 (1) The PSD program is considered one federal program for any facility that is subject to 15A NCAC
24 02D .0530;

(2) The Risk Management Program under Section 112r of the Clean Air Act is considered one federal program for any facility that is subject to 15A NCAC 02D .2100;

(3) Each Subpart under 40 CFR Part 60, New Source Performance Standards (NSPS) is considered one federal program, with the exception of Subparts A, B, Ba, and C;

(4) Each Subpart under 40 CFR Part 61, National Emission Standards for Hazardous Air Pollutants (NESHAP) is considered one federal program, with the exception of Subpart A; and

(5) Each Subpart under 40 CFR Part 63, NESHAP for Source Categories, is considered one federal program, with the exception of Subparts A, B, C, D, and E.

The sum of all applicable federal programs identified in Subparagraphs (1) through (5) of this Paragraph shall be used to determine the annual complexity fee in accordance with Paragraph (b) of this Rule.

(b)(d) In addition to the annual permit fee, fee and annual complexity fee, a permit applicant shall pay a non-refundable permit application fee as follows:

PERMIT APPLICATION FEES
(FEES FOR CALENDAR YEAR ~~1994~~2021)

Facility Category	New or Modification	New or Significant Modification	<u>Significant</u> Modification	Minor Modification	Ownership Change
Title V		\$7,200 \$10,177 \$10,325	<u>\$7,000</u>	\$700 <u>\$3,000</u>	\$50 <u>\$60</u>
Title V (PSD or NSR/NAA)	\$10,900 \$15,406 \$15,631				\$50 <u>\$60</u>
Title V (PSD and NSR/NAA)	\$21,200 \$29,965 \$30,402				\$50 <u>\$60</u>
Synthetic Minor	\$400				\$50
Small	\$50				\$50
General		50% of the otherwise applicable fee			\$25
<u>General Title V ACI</u>		10% of the otherwise applicable fee			

[(Note: fees shaded in gray are fees for calendar year 2020, not adjusted for inflation for 2021)]

Permit application fees for Title V facilities shall be adjusted for inflation as described in 15A NCAC 02Q .0204. The current permit application fees shall be found on the Division's website at <https://deq.nc.gov/about/divisions/air-quality/air-quality-permits/modifying-applying-for-air-quality-permit>.

(e) The current annual permit fees, annual complexity fees, and permit application fees shall be found on the Division's website at <https://deq.nc.gov/about/divisions/air-quality/air-quality-permits/modifying-applying-for-air-quality-permit>.

~~(e)~~(f) If a facility, other than a general facility, belongs to more than one facility category, the fees shall be those of the applicable category with the highest fees. If a permit application belongs to more than one type of application, the fee shall be that of the applicable permit application type with the highest fee.

~~(d)~~(g) The tonnage factor fee shall be applicable only to Title V facilities. It shall be computed by multiplying the tonnage factor indicated in the table in Paragraph (a) of this Rule by the facility's combined total actual emissions of all regulated air pollutants, rounded to the nearest ton, contained in the latest emissions inventory that has been completed by the Division. The calculation shall not ~~include~~ include the amount of actual emissions of each pollutant that exceeds 4,000 tons per year and the actual emissions of pollutants listed in Subparagraphs (1) through (4) of this Paragraph as follows:

- (1) carbon monoxide;
- (2) any pollutant that is regulated solely because it is a Class I or II substance listed pursuant to Section 602 of the federal Clean Air Act (ozone depleters);
- (3) any pollutant that is regulated solely because it is subject to a regulation or standard pursuant to Section 112(r) of the federal Clean Air Act (accidental releases); and
- ~~(4) —the amount of actual emissions of each pollutant that exceeds 4,000 tons per year.~~
- (4) greenhouse gases.

Even though a pollutant may be classified in more than one pollutant category, the amount of pollutant emitted shall be counted only once for tonnage factor fee purposes and in a pollutant category chosen by the permittee. If a facility has more than one permit, the tonnage factor fee for the facility's combined total actual emissions as described in this Paragraph shall be paid only on the permit whose anniversary date first occurs on or after July 1.

~~(e)~~(h) The nonattainment area added fee shall be applicable only to Title V facilities required to comply with 15A NCAC 02D .0531 (Sources in Nonattainment Areas), 15A NCAC 02D .0900 (Volatile Organic Compounds), or 15A NCAC 02D .1400 (Nitrogen Oxides) and either:

- (1) are in an area designated in 40 CFR 81.334 as nonattainment, or
- (2) are covered by a nonattainment or maintenance State Implementation Plan submitted for approval or approved as part of 40 CFR Part 52, Subpart II.

~~(f)~~(i) The facility category, Title V (PSD or NSR/NAA), in the permit application fees table in Paragraph ~~(b)~~(d) of this Rule means a facility whose application shall be subject to review pursuant to 15A NCAC 02D .0530 (Prevention of Significant Deterioration) or 15A NCAC 02D .0531.

~~(g)~~(j) The facility category, Title V (PSD and NSR/NAA), in the permit application fees table in Paragraph ~~(b)~~(d) of this Rule means a facility whose application shall be subject to review pursuant to 15A NCAC 02D .0530 and .0531.

~~(h)~~(k) Minor modification permit applications that are group processed shall require the payment of only one permit application fee per facility included in the group.

1 ~~(+)(l)~~ No permit application fee shall be required for renewal of an existing permit, for changes to an unexpired permit
2 when the only reason for the changes is initiated by the Director or the Commission, for a name change with no
3 ownership change, for a change pursuant to 15A NCAC 02Q .0523 (Changes Not Requiring Permit Revisions), or for
4 a construction date change, a test date change, a reporting procedure change, or a similar change.

5 ~~(+)(m)~~ The permit application fee paid for modifications pursuant to 15A NCAC 02Q .0400, Acid Rain Procedures,
6 shall be the fee for the same modification if it were subject to 15A NCAC 02Q .0500, Title V Procedures.

7 ~~(+)(n)~~ An applicant who files permit applications pursuant to 15A NCAC 02Q .0504 shall pay an application fee equal
8 to the application fee for the permit required pursuant to 15A NCAC 02Q .0500; this fee shall cover both applications,
9 provided that the second application covers only what is covered under the first application. If permit terms or
10 conditions in an existing or future permit issued pursuant to 15A NCAC 02Q .0500 are established or modified by an
11 application for a modification and if these terms or conditions are enforceable by the Division only, then the applicant
12 shall pay the fee under the column entitled "Minor Modification" in the table in Paragraph ~~(+)(d)~~ of this Rule.

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14 *History Note: Authority G.S. 143-215.3(a)(1),(1a),(1b),(1d);*
15 *Temporary Rule Eff. March 8, 1994 for a period of 180 days or until the permanent rule is effective,*
16 *whichever is sooner.*
17 *Eff. July 1, 1994;*
18 *Amended Eff. January 1, 2015; March 1, 2008; April 1, 2004; April 1, 2001; July 1, 1996;*
19 *Readopted Eff. April 1, ~~2018~~; 2018;*
20 *Amended Eff. March 1, 2021.*
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