

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02D .0540

DEADLINE FOR RECEIPT: August 7, 2019

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

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

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

In (a)(2), at line 11, you use both "stockpile" and "stock-pile." Please be consistent.

In (a)(2), at line 12, please remove the parentheses and insert a comma before "including."

In (a)(3)(E), please replace "them" with "crops" if that is what you mean.

In (a)(3)(E), what practices are acceptable? Is there a citation you could provide to statutes or rules?

In (b)(1) and (2), your previous citation to "Rule X of this Section" was correct. Please undo the proposed changes to the form of these citations.

In (b)(4), is "land disturbing activities" defined?

At lines 31 and 35, please refer to "this Subchapter" instead of "15A NCAC 02D."

In (c), does "owner or operator" modify "source?"

In (c), please delete the comma after "substantive complaints."

In (d)(1), two substantive complaints trigger a requirement. The definition of "substantive complaint" includes verification by the Division. Does this mean the Division inspects areas adjacent to the facility upon complaint and verifies the complaints before the (d)(1) requirement is triggered? If so, please make that clear.

In (d)(3), please consider adding a reference to (g).

In (e)(2), please incorporate the CFR and Appendix by reference in accordance with G.S. 150B-21.6.

Ashley Snyder
Commission Counsel
Date submitted to agency: July 24, 2019

What are you requiring in (g)(2)? What do you mean by “in accordance with the timeliness for implementing the proposed method or equipment?”

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

Ashley Snyder
Commission Counsel
Date submitted to agency: July 24, 2019

1 15A NCAC 02D .0540 is readopted as published in 33:12 NCR 1279 as follows:

2
3 **15A NCAC 02D .0540 PARTICULATES FROM FUGITIVE DUST EMISSION SOURCES**

4 (a) For the purpose of this Rule the following definitions apply:

5 (1) "Excess fugitive dust emissions" means:

6 (A) ~~Fugitive~~ fugitive dust is visible extending beyond the facility's property ~~line~~, line; or

7 (B) ~~Upon~~ upon inspection of settled dust on adjacent property, the Division finds that the dust
8 came from the adjacent facility.

9 (2) "Fugitive dust emissions" means particulate matter that does not pass through a process stack or
10 vent and that is generated within plant property boundaries from activities such as unloading and
11 loading areas, process areas, stockpiles, stock-pile working, plant parking lots, and plant roads
12 (including access roads and haul roads).

13 (3) "Production of crops" means:

14 (A) cultivation of land for crop planting;

15 (B) crop irrigation;

16 (C) harvesting;

17 (D) on site curing, storage, or preparation of crops; or

18 (E) protecting them from damage or disease conducted according to practices acceptable to the
19 North Carolina Department of Agriculture and Consumer Services.

20 (4) "Public parking" means an area dedicated to or maintained for the parking of vehicles by the general
21 public.

22 (5) "Public road" means any road that is part of the State highway system or any road, street, or right-
23 of-way dedicated or maintained for public use.

24 (6) "Substantive complaints" means complaints that are verified by the Division with physical ~~evidence.~~
25 evidence of excess fugitive dust emissions.

26 (b) This Rule does not apply to:

27 (1) abrasive blasting covered ~~under by Rule 15A NCAC 02D .0541; .0541 of this Section;~~

28 (2) cotton ginning operations covered ~~under by Rule 15A NCAC 02D .0542; .0542 of this Section;~~

29 (3) non-production military base operations;

30 (4) land disturbing activities, activities that do not require a permit pursuant to 15A NCAC 02Q or are
31 not subject to a requirement pursuant to 15A NCAC 02D, such as clearing, grading, or digging, and
32 related activities such as hauling fill and cut material, building material, or equipment; or

33 (5) public roads, public parking, timber harvesting, or production of crops.

34 (c) The owner or operator of a facility required to have a permit ~~under pursuant to~~ 15A NCAC 02Q or ~~of a~~ source
35 subject to a requirement ~~under pursuant to~~ 15A NCAC 02D shall not cause or allow fugitive dust emissions to cause
36 or contribute to substantive complaints, or visible emissions in excess of that allowed ~~under pursuant to~~ Paragraph (e)
37 of this Rule.

(d) If fugitive dust emissions from a facility required to comply with this Rule cause or contribute to substantive complaints, the owner or operator of the facility shall:

- (1) within 30 days upon receipt of written notification from the Director of a second substantive complaint in a 12-month period, submit to the Director a written report that includes the identification of the probable ~~source(s)~~ sources of the fugitive dust emissions causing complaints and what measures can be made to abate the fugitive emissions;
- (2) within 60 days of the initial report submitted ~~under~~ pursuant to Subparagraph (1) of this Paragraph, submit to the Director a fugitive dust control plan as described in Paragraph (f) of this Rule; and
- (3) within 30 days after the Director approves the plan, be in compliance with the plan.

~~(c) If there is sufficient environmental benefit to justify a fugitive dust control plan, the~~ The Director shall require that the owner or operator of a facility covered by Paragraph (c) of this Rule develop and submit a fugitive dust control plan as described in Paragraph (f) of this Rule if:

- (1) ambient air quality measurements or dispersion modeling as provided in 15A NCAC 02D .1106(e) ~~show that the excess fugitive dust emissions cause the~~ show violation or a potential for a violation of an ambient air quality standard for particulates in 15A NCAC 02D ~~.0400;~~ .0400 to be exceeded; or
- (2) the Division observes ~~excessive~~ excess fugitive dust emissions from the facility beyond the property boundaries for six minutes in any one hour using Reference Method 22 in 40 CFR 60, Appendix A.

(f) The fugitive dust control plan shall:

- (1) identify the sources of fugitive dust emissions within the facility;
- (2) describe how fugitive dust will be controlled from each identified source;
- (3) contain a schedule by which the plan will be implemented;
- (4) describe how the plan will be implemented, including training of facility personnel; and
- (5) ~~describe methods~~ propose any methods that will be used to verify compliance with the plan.

(g) The Director shall approve the plan if he or she finds that:

- (1) the plan contains all required elements in Paragraph (f) of this Rule;
- (2) the proposed schedule contained in the plan will reduce fugitive dust emissions ~~in a timely manner;~~ in accordance with the timeliness for implementing the proposed method or equipment;
- (3) the methods used to control fugitive dust emissions ~~are sufficient to prevent~~ fugitive dust emissions from causing or contributing to a violation of the ambient air quality standards for particulates; and
- (4) the ~~described~~ proposed compliance verification methods ~~are sufficient to verify~~ compliance with the fugitive dust control plan.

If the Director finds that the proposed plan does not meet the requirements of this ~~Paragraph~~ Paragraph, he or she shall notify the owner or operator of the facility of any deficiencies in the proposed plan. The owner or operator shall have 30 days after receiving written notification from the Director to correct the deficiencies or submit a schedule describing actions to be taken and the time by which they will be implemented.

(h) If after a plan has been implemented, the Director finds that the plan ~~inadequately controls~~ fails to control excess fugitive dust emissions, he or she shall require the owner or operator of the facility to correct the deficiencies in the

1 plan. Within 90 days after receiving written notification from the Director identifying the deficiency, the owner or
2 operator of the facility shall submit a revision to his or her plan to correct the deficiencies.

3
4 *History Note:* Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); 143-215.108(c)(7);
5 Eff. July 1, 1998;
6 Amended Eff. July 10, 2010; August 1, ~~2007~~2007;
7 Readopted Eff. September 1, 2019.
8
9

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02D .1800

DEADLINE FOR RECEIPT: August 7, 2019

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

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

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

EMC listed two notices of text for the 15A NCAC 02D .1800 rules – one dated December 17, 2018 and the second March 15, 2019. In the March 15, 2019 Register, the “Reason for Proposed Action” published by EMC explained the rules were republished due to the incorrect regulatory impact analysis being posted on EMC’s website. However, the “no fiscal note required” box was checked in the NC Register and in the Submission for Permanent Rule forms. Was this done intentionally?

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

Ashley Snyder
Commission Counsel
Date submitted to agency: July 24, 2019

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02D .1801

DEADLINE FOR RECEIPT: August 7, 2019

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

In (2), "child care center" is not defined in G.S. 110-86. Do you mean "child care facility?"

In (3), please remove the parentheses and replace them with commas.

In (4), define "economically feasible."

In (9), delete or define "unreasonably."

At line 29, what do you mean by the "comfortable use and enjoyment of life or property?"

In (11), please add "the" before "State Park System."

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

Ashley Snyder
Commission Counsel
Date submitted to agency: July 24, 2019

1 15A NCAC 02D .1801 is readopted as published in 33:12 NCR 1280 and 33:18 NCR 1865 as follows:

2
3 **SECTION .1800 - CONTROL OF ODORS**
4

5 **15A NCAC 02D .1801 DEFINITIONS**

6 For the purpose of this Section, the following definitions apply:

- 7 (1) "Animal operation" means animal operation as defined in G.S. 143-215.10B.
- 8 (2) "Child care center" means child care centers as defined in G.S. 110-86 and licensed under pursuant
9 to G.S. 110, Article 7.
- 10 (3) "Construction" means any physical change (including fabrication, erection, installation,
11 replacement, demolition, excavation, or other modification) at any contiguous area under-in
12 common control.
- 13 (4) "Control technology" means economically feasible control devices installed to ~~effectively~~ reduce
14 objectionable odors from animal operations.
- 15 (5) "Existing animal operation" means an animal operation that is in operation or commences
16 construction on or before February 28, 1999.
- 17 (6) "Historic properties" means historic properties acquired by the State pursuant to G.S. 121-9 or listed
18 in the North Carolina Register of Historic Places pursuant to G.S. 121-4.1.
- 19 (7) "Modified animal operation" means an animal operation that commences construction after
20 February 28, 1999, to increase the steady state live weight that can be housed at that animal
21 operation. Modified animal operation does not include renovating existing barns, relocating barns,
22 or replacing existing lagoons or barns if the new barn or lagoon is no closer to the nearest property
23 and if the new barn or lagoon does not increase the steady state live weight that can be housed at
24 that animal operation.
- 25 (8) "New animal operation" means an animal operation that commences construction after February 28,
26 1999.
- 27 (9) "Objectionable odor" means any odor present in the ambient air that by itself, or in combination
28 with other odors, is or may be harmful or injurious to human health or welfare, or may unreasonably
29 interfere with the comfortable use and enjoyment of life or property. Odors are harmful or injurious
30 to human health if they tend to lessen human food and water intake, interfere with sleep, upset
31 appetite, produce irritation of the upper respiratory tract, ~~or~~ cause symptoms of nausea, or if their
32 chemical or physical nature is, or may be, detrimental or dangerous to human health.
- 33 (10) "Occupied residence" means occupied residence as defined in G.S. 106-802.
- 34 (11) "State Parks" means State Parks System as defined in G.S. ~~113-44.9, 143B-135.44.~~
- 35 (12) "Technologically feasible" means that an odor control device or a proposed solution to an odor
36 problem has previously been demonstrated to accomplish its intended objective, and is generally
37 accepted within the technical community. It is possible for technologically feasible solutions to

1 have demonstrated their suitability on similar, but not identical, sources for which they are proposed
2 to control.

3
4 *History Note:* *Authority G.S. ~~143-213~~; 143-215.3(a)(1); 143-215.107(a)(11);*
5 *Temporary Adoption Eff. April 27, 1999; March 1, 1999;*
6 *Eff. July 1, ~~2000~~, 2000;*
7 *Readopted Eff. September 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02D .1802

DEADLINE FOR RECEIPT: August 7, 2019

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

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

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

Throughout this Rule, do you intend to use the word "odor" or the term "objectionable odor" as defined in .1801?

Is (a) necessary?

In (c)(2), what is the Swine Waste Operation General Permit? Please provide a reference to the applicable rules or statutes.

In (c)(3), define "near."

In (d), at lines 33-34, please add the requirement to describe how odors are currently being controlled and will be controlled in the future to the list beginning at line 37.

In (d), line 36, when do animal operators have to submit an odor management plan? Is there a required due date or timeline?

In (d)(2), who is required to file the plan? Is it someone other than the owner/operator?

In (d)(5), delete or define "recent" and "updated" at line 11.

In (d)(5), are you saying a photograph may be provided if it shows all structures or a photograph shall be provided if it shows all structures? Please clarify.

In the chart and at line 22, "State parks" should be "State Park" to match the singular "property."

At line 20, is a "barn" different from an "animal house" as used in (d)(4)(A)?

Why is the requirement at lines 27-30 necessary? Operations with at least 40,000 meet the criteria in the table and already have to submit an odor management plan in accordance with (d). Is this different?

Ashley Snyder
Commission Counsel
Date submitted to agency: July 24, 2019

At line 28, just to be sure, an operation with 1,000,100 pounds of steady state live weight would not have to follow this requirement, correct?

At line 30, under what circumstances would the Director require a BMP?

On page 3, line 1, please refer to "Rule .1803 of this Section."

In (e), how are determinations made for existing operations that do meet the siting requirements?

In (e)(1), what is 1,500 feet from an occupied residence? What are you measuring from – the property line, a lagoon, barn, etc.?

In (g)(3), does your regulated public know what would be considered an "odor causing compound?"

Just to be sure, in (h), "If the Director determines that an existing animal operation is causing or contributing to an objectionable odor" refers back to (g), correct?

In (h)(1), please undo the proposed change to keep "Rule .1803 of this Section."

In (h)(2), consider changing "be in compliance" to "comply."

In (h)(2), you introduced the initialism "BMP" on page 3, line 1. Please continue to use the initialism throughout this Rule.

In (h)(2), what is an "approved compliance schedule" and under what circumstances does the Director approve a compliance schedule instead of a BMP?

Is there a reason (h), (i), and (j) are not in .1803?

In (i), line 17, delete or define "properly."

In (i)(2), what is the meaning of the language in parentheses? Please clarify.

In (j), the first sentence, what happens after the BMP has been implemented and revised? This sentence is not complete.

What do you mean by "a plan failure shall constitute a finding by the Director?" And how does this relate to Paragraph (g)?

In (j), under what circumstances does a plan failure occur?

In (j)(1), line 28, delete or define "effectively."

In (k)(1)(B), please change "State parks" to "State Park."

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

1 15A NCAC 02D .1802 is readopted with changes as published in 33:12 NCR 1280 and 33:18 NCR 1865 as follows:

2
3 **15A NCAC 02D .1802 CONTROL OF ODORS FROM ANIMAL OPERATIONS USING LIQUID**
4 **ANIMAL WASTE MANAGEMENT SYSTEMS**

5 (a) Purpose. The purpose of this Rule is to control objectionable odors from animal operations beyond the boundaries
6 of animal operations.

7 (b) Applicability. This Rule shall apply to all animal ~~operations.~~ operations using liquid animal waste management
8 systems.

9 (c) Required management practices. All animal operations shall be required to implement applicable management
10 practices for the control of odors as follows:

11 (1) ~~The the~~ carcasses of dead animals shall be disposed ~~of within 24 hours after becoming aware of the~~
12 ~~death of the animal according to the methods approved by the State Veterinarian for disposal of~~
13 ~~dead domesticated animals under [pursuant to] in accordance with G.S. 106-403; G.S. 106-403 and~~
14 ~~02 NCAC 52C .0102. The Rule 02 NCAC 52C .0102 is hereby incorporated by reference and~~
15 includes subsequent amendments or editions;

16 (2) ~~Waste waste~~ from animal wastewater application spray systems shall be applied in such a manner
17 and ~~under pursuant to~~ such conditions to prevent drift from the irrigation field of the wastewater
18 spray beyond the boundary of the animal operation, except waste from application spray systems
19 may be applied in an emergency to maintain safe lagoon freeboard if the owner or operator notifies
20 the Department and resolves the emergency with the Department as written in ~~Section III.6 [III.13] of~~
21 the Swine Waste Operation General Permit;

22 (3) ~~Animal animal~~ wastewater application spray system intakes shall be located near the liquid surface
23 of the animal wastewater lagoon;

24 (4) ~~Ventilation ventilation~~ fans shall be maintained according to the ~~manufacturer's~~ manufacturer's
25 specifications; and

26 (5) ~~Animal animal~~ feed storage containers located outside of animal containment buildings shall be
27 covered except when ~~necessary to remove or add feed; removing or adding feed. this~~ This
28 Subparagraph ~~does shall~~ not apply to the storage of silage or hay or to commodity boxes with ~~roofs;~~
29 and roofs.

30 ~~All animal operations shall be in compliance with this Paragraph by June 1, 1999.~~

31 (d) Odor management plan (OMP) for existing animal operations for swine. Animal operations for swine that meet
32 the criteria in the table in this Paragraph shall submit an odor management plan to the ~~Director according to the~~
33 ~~schedule in the table in this Paragraph.~~ Director. The odor management plan shall describe how odors are currently
34 being controlled and how these odors will be controlled in the future. ~~The odor management plan shall contain the~~
35 ~~elements described in Rule .1803(a) of this Section.~~ The animal operation shall be required to submit its odor
36 management plan only once. The odor management plan shall:

37 (1) identify the name, location, and owner of the animal operation;

- (2) identify the name, title, address, and telephone number of the person filing the plan;
- (3) identify the sources of odor within the animal operation;
- (4) describe how odor will be controlled from:
 - (A) the animal houses;
 - (B) the animal wastewater lagoon, if used;
 - (C) the animal wastewater application lands, if used;
 - (D) waste conveyances and temporary accumulation points; and
 - (E) other possible sources of odor within the animal operation;
- (5) contain a diagram showing all structures and lagoons at the animal operation, forced air directions, and approximate distances to structures or groups of structures within 3,000 feet of the property line of the animal operation; a recent or updated aerial photograph instead of a diagram provided the items required by this Subparagraph are shown;
- (6) for existing animal operations, contain a schedule not to exceed six months by which the plan will be implemented;
- (7) describe how the plan will be implemented, including training of personnel;
- (8) describe inspection and maintenance procedures; and
- (9) describe methods of monitoring and recordkeeping to verify compliance with the plan.

100 pounds steady state live weight of swine		Distance in feet to the boundary of the nearest neighboring occupied property with an inhabitable structure, business, school, hospital, church, outdoor recreational facility, national park, State Park <u>parks</u> , historic property, or child care center	Date by when the odor management plan is to be submitted
at least	but less than		
10,000	20,000	less than or equal to 3,000	January 15, 2002
20,000	40,000	less than or equal to 4,000	July 15, 2001
40,000		less than or equal to 5,000	January 15, 2001

For the purposes of this Rule, the distance shall be measured from the edge of the barn or lagoon, whichever is closer, to the boundary of the neighboring occupied property with an inhabitable structure, business, school, hospital, church, outdoor recreational facility, national park, State ~~Park~~ parks, historic property, or child care center. All animal operations for swine that are of the capacity size in the table in this Paragraph shall submit ~~by the date specified in this table~~ either an odor management plan or documentation that no neighboring occupied property with an inhabitable structure, business, school, hospital, church, outdoor recreational facility, national park, State ~~Park~~ parks, historic property, or child care center is within the distances specified in the ~~table as of the date that the submittal is due. table.~~ table. After July 15, 2002, the The Director may require existing animal operations for swine with a steady state live weight of swine between ~~1,000~~ 100,000 to ~~10,000~~ 1,000,000 pounds steady state live weight ~~hundredweights~~ to submit an odor management plan if the Director determines pursuant to Paragraph (g) of this Rule that these animal operations ~~may~~ cause or contribute to an objectionable odor. The Director may require an existing animal operation to submit a best

1 management plan (BMP) pursuant to 15A NCAC 02D .1803, ~~under then submit the BMP pursuant to Paragraph (h)~~
2 of this Rule if the existing animal operation fails to submit an odor management ~~plan by the schedule in this Paragraph~~
3 ~~of this Rule. plan.~~

4 (e) Location of objectionable odor determinations.

5 (1) For an existing animal operation that does not meet the following siting requirements:

6 (A) at least ~~1500~~ 1,500 feet from any occupied residence not owned by the owner of the animal
7 operation;

8 (B) at least ~~2500~~ 2,500 feet from any school, hospital, church, outdoor recreation ~~facility.~~
9 ~~Facility,~~ national ~~park,~~ parks, State ~~Park,~~ parks, historic property, or child care center; and

10 (C) at least 500 feet from any property boundary;

11 objectionable odors shall be determined at neighboring occupied property not owned by the owner
12 of the animal operation, such as businesses, schools, hospitals, churches, outdoor recreation
13 facilities, national parks, State ~~Parks,~~ parks, historic properties, or child care centers that are
14 affected.

15 (2) For a new animal operation or existing animal operation that meets the siting requirements in
16 Subparagraph (1) of this Paragraph, objectionable odors shall be determined beyond the boundary
17 of the animal operation.

18 (f) Complaints. The Director shall respond to complaints about objectionable odors from animal operations as follows:

19 (1) Complaints shall be ~~investigated to the extent practicable.~~ investigated;

20 (2) Complaints may be used to assist in determination of a best management plan failure or a control
21 technology ~~failure.~~ failure;

22 (3) The Director shall respond to complaints within 30 ~~days.~~ days of receipt of the complaint;

23 (4) Complaint response shall ~~at least include a written response of the Director's evaluation of the~~
24 ~~complaint.~~ complaint;

25 (5) The investigation of a complaint shall be completed as expeditiously as possible considering the
26 meteorology, activities at the animal operation, and other conditions occurring at the time of the
27 ~~complain.~~ complaint.

28 (g) Determination of the existence of an objectionable odor. In ~~deciding~~ determining if an animal operation is causing
29 or contributing to an objectionable odor, the factors the Director may consider ~~one or more of the following;~~ include:

30 (1) the nature, intensity, frequency, pervasiveness, and duration of the odors from the animal operation;

31 (2) complaints received about objectionable odors from the animal operation;

32 (3) emissions from the animal operation of known odor causing compounds, such as ammonia, total
33 volatile organics, hydrogen ~~sulfide~~ sulfide, or other sulfur compounds at levels that could cause or
34 contribute to an objectionable odor;

35 (4) any epidemiological studies associating health problems with odors from the animal operation or
36 documented health problems associated with odors from the animal operation provided by the State
37 Health Director; or

- 1 (5) any other evidence, including records maintained by neighbors, that show that the animal operation
2 is causing or contributing to an objectionable odor.
- 3 (h) ~~Requirement~~ Requirements for a best management plan for ~~controlling control of~~ odors from existing animal
4 operations. If the Director ~~finds~~ determines that an existing animal operation is causing or contributing to an
5 objectionable odor, the owner or operator of the animal operation shall:
- 6 (1) submit to the Director as soon as practical, but not to exceed 90 days after receipt of written
7 notification from the Director that the animal operation is causing or contributing to an objectionable
8 odor, a best management plan for odor control as described in 15A NCAC 02D .1803; Rule .1803
9 ~~of this Section;~~ and
- 10 (2) be in compliance with the terms of the best management plan within 30 days after the Director
11 approves the best management ~~plan~~ plan, or an approved compliance schedule by the Director
12 (approved compliance schedule is an alternate schedule to 30 days). ~~(compliance with an approved~~
13 ~~compliance schedule in the best management plan is deemed to be in compliance with the plan).~~
- 14 (i) Requirement for amendment to the best management plan. No later than 60 days from completion of a compliance
15 schedule in an approved best management plan or if the best management plan contains no compliance schedule, no
16 later than 60 days from the implementation date of the best management plan, the Director shall determine whether
17 the plan has been properly implemented. If the Director determines at any time that a plan submitted ~~under~~ pursuant
18 to Paragraph (h) of this Rule does not control objectionable odors from the animal operation, the Director shall require
19 the owner or operator of the animal operation to amend the plan to incorporate additional or alternative measures to
20 control objectionable odors from the animal operation. The owner or operator shall:
- 21 (1) submit a revised best management plan to the Director as soon as practical but not later than 60 days
22 after receipt of written notification from the Director that the plan is inadequate; and
- 23 (2) be in compliance with the revised best management plan within 30 days after the Director approves
24 the revisions to the best management ~~plan~~ plan (approved compliance schedule is an alternate
25 schedule to 30 days). ~~(compliance with an approved compliance schedule in the best management~~
26 ~~plan is deemed to be in compliance with the plan).~~
- 27 (j) ~~Plan failure. Any of the following conditions shall constitute failure of a best management plan:~~
- 28 (1) ~~failing to submit the initial best management plan required under Paragraph (h) of this Rule within~~
29 ~~90 days of receipt of written notification from the Director that the animal operation is causing or~~
30 ~~contributing to an objectionable odor;~~
- 31 (2) ~~failing to submit a revised best management plan required under Paragraph (i) of this Rule within~~
32 ~~60 days of receipt of written notification from the Director that the animal operation is causing or~~
33 ~~contributing to an objectionable odor;~~
- 34 (3) ~~failing to correct all deficiencies in a submitted best management plan under Rule .1803(c) of this~~
35 ~~Section within 30 days of receipt of written notification from the Director to correct these~~
36 ~~deficiencies;~~
- 37 (4) ~~failing to implement the best management plan after it has been approved; or~~

~~(5) finding by the Director, using the criteria under Paragraph (g) of this Rule, that, after the best management plan has been implemented and revised no more than one time (voluntary revisions and revisions made pursuant to 15A NCAC 2D .1803(c) shall not be counted as revisions under this Subparagraph); the best management plan does not adequately control objectionable odors from the animal operation and will not adequately control objectionable odors even with further amendments.~~

~~(j)(k)~~ Requirements for control technology. After the best management plan has been implemented and revised no more than one time excluding voluntary revisions and revisions made pursuant to 15A NCAC 2D .1803(c). If a plan failure occurs, shall constitute a finding by the Director, using the criteria pursuant to Paragraph (g) of this Rule. If a plan failure occurs, the Director shall require the owner or operator of the animal operation to install control technology to control odor from the animal operation. ~~The owner or operator shall submit within~~ Within 90 days from receipt of written notification from the Director of a plan failure, the owner or operator shall submit a permit application for control technology and an installation schedule. If the owner or operator demonstrates to the Director that a permit application cannot be submitted within 90 days, the Director ~~may shall~~ shall extend the time for submittal up to an additional 90 ~~days.~~ days if the owner or operator demonstrates the delay in submitting the application was beyond his or her control. Control technology shall be determined according to Subparagraph (1) of this Paragraph. The installation schedule shall contain the increments of progress described in Subparagraph (2) of this Paragraph. The owner or operator may at any time request adjustments in the installation schedule and shall in his or her request explain why the schedule cannot be met. If the Director finds ~~that the request reason for not meeting the schedule is valid, to be accurate,~~ the Director shall revise the installation schedule as requested; however, the Director shall not extend the final compliance date beyond 24 months from the date that the permit was first issued for the control technology. The owner or operator shall certify to the Director within five days after the deadline for each increment of progress described in Subparagraph (2) of this Paragraph whether the required increment of progress has been met.

(1) Control technology. The owner or operator of an animal operation shall identify control technologies that are technologically feasible for his or her animal operation and shall select the control technology or control technologies that results in the greatest reduction of odors considering human health, energy, environmental, and economic impacts and other costs. The owner or operator shall explain the reasons for selecting the control technology or control technologies. If the Director finds that the selected control technology or control technologies will effectively control odors following the procedures in 15A NCAC ~~2Q 02Q~~ .0300 or .0500, he or she shall approve the installation of the control technology or control technologies for this animal operation upon permit issuance. The owner or operator of the animal operation shall comply with all terms and conditions in the permit.

(2) Installation schedule. The installation schedule for control technology shall contain the following increments of progress:

(A) a date by which contracts for odor control technology shall be awarded or orders shall be issued for purchase of component ~~parts;~~ parts or materials;

(B) a date by which on-site construction or installation of the odor control technology shall begin;

(C) a date by which on-site construction or installation of the odor control technology shall be completed; and

(D) a date by which final compliance shall be achieved.

Control technology shall be in place and operating as soon as practical but not to exceed 12 months from the date that the permit is issued for control technology.

~~(k)(4) New or modified animal operations. This Paragraph does not apply to activities exempted from the moratorium on construction or expansion of swine farms in S.L. 1997, c. 458, s. 1.1 provided that the owner or operator demonstrates to the Director that the activity will not result in an objectionable odor. The following requirements shall apply to new or modified animal operations:~~

(1) Before beginning construction, the owner or operator of a new or modified animal operation raising or producing swine shall submit and have an approved best management plan and shall meet the following: ~~following setbacks.~~ A house or lagoon that is a component of an animal operation shall be constructed:

(A) at least ~~1500~~ 1,500 feet from any occupied residence not owned by the owner of the animal operation;

(B) at least ~~2500~~ 2,500 feet from any school, hospital, church, outdoor recreation facility, national park, State Park, ~~parks~~, historic property, or child care center; and

(C) at least 500 feet from any property boundary;

(2) Before beginning construction, the owner or operator of a new or modified animal operation other than swine shall submit and have an approved best management plan.

(3) For new or modified animal operations raising or producing swine, the outer perimeter of the land area onto which waste is applied that is a component of an animal operation shall be:

(A) at least 75 feet from any boundary of property on which an occupied residence not owned by the owner of the animal operation is ~~located~~, located; and

(B) at least 200 feet from any occupied residence not owned by the owner of the animal operation.

(4) The Director shall either approve or disapprove the best management plan submitted ~~under~~ pursuant to this Paragraph within 90 days after receipt of the plan. If the Director disapproves the plan, he or she shall identify the ~~plan's~~ plan's deficiency.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(11); 143-215.108(a); 150B-21.6; Temporary Adoption Eff. April 27, 1999; March 1, 1999; Eff. July 1, ~~2000~~ 2000; Readopted Eff. September 1, 2019.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02D .1803

DEADLINE FOR RECEIPT: August 7, 2019

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

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

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

In (a)(4)(D), does your regulated public know the meaning of "temporary accumulation points?"

In (a)(5), delete or define "recent" and "updated."

In (b), line 26, you could delete "of the submittal" to make this sentence more concise.

In (b)(2) and (3), when is an application "partially incomplete" vs. "incomplete?" Please define "partially" to clarify when additional information vs. a rewritten application is required.

In (c)(2), define "timely."

In (c)(3), define "likely."

In (c)(3), please delete the parentheses.

In (c)(4), under what circumstances are compliance verification methods "sufficient."

At line 14, please review the addition of "was approved" at the end of the sentence. It may be unnecessary.

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

Ashley Snyder
Commission Counsel
Date submitted to agency: July 24, 2019

1 15A NCAC 02D .1803 is readopted with changes as published in 33:12 NCR 1283 and 33:18 NCR 1868 as follows:

2
3 **15A NCAC 02D .1803 BEST MANAGEMENT PLANS FOR ANIMAL OPERATIONS**

4 (a) Contents of a best management plan. The best management plan for animal operations shall:

- 5 (1) identify the name, location, and owner of the animal operation;
- 6 (2) identify the name, title, address, and telephone number of the person filing the plan;
- 7 (3) identify the sources of odor within the animal operation;
- 8 (4) describe how odor will be controlled from:
- 9 (A) the animal houses;
- 10 (B) the animal wastewater lagoon, if used;
- 11 (C) the animal wastewater application lands, if used;
- 12 (D) waste conveyances and temporary accumulation points; and
- 13 (E) other possible sources of odor within the animal operation;
- 14 (5) contain a diagram showing all structures and lagoons at the animal operation, forced air directions,
- 15 and approximate distances to structures or groups of structures within 3000 feet of the property line
- 16 of the animal operation; a recent or updated aerial photograph may be submitted in place of a
- 17 diagram provided the items required ~~under~~ in accordance with this Subparagraph of this Rule are
- 18 shown;
- 19 (6) for existing animal operations, contain a schedule not to exceed six months by which the plan will
- 20 be ~~implemented~~ implemented. ~~(a A new animal operation is to have shall~~ and be in compliance with
- 21 its best management plan when it begins ~~operation~~; operations. ~~for~~ For an amended best
- 22 management plan, the implementation schedule shall not exceed six months;
- 23 (7) describe how the plan will be implemented, including training of personnel;
- 24 (8) describe inspection and maintenance procedures; and
- 25 (9) describe methods of monitoring and recordkeeping to verify compliance with the plan.

26 (b) The Division shall review all best management plan submittals within 30 days of receipt of the submittal to

27 determine if the submittal is complete or incomplete for processing purposes. To be complete, the submittal shall

28 contain all the elements listed in Paragraph (a) of this Rule. The Division shall notify the person submitting the plan

29 by letter stating that:

- 30 (1) the submittal is ~~complete~~, complete;
- 31 (2) the submittal is partially incomplete and identifying the missing elements and a date by which the
- 32 missing elements need to be submitted to the ~~Division~~, Division; or
- 33 (3) the best management plan is incomplete and requesting that the person rewrite and resubmit the
- 34 plan.

35 (c) Approval of the best management plan. The Director shall approve the plan if he or she finds that:

- 36 (1) the plan contains all the required elements in Paragraph (a) of this Rule;
- 37 (2) the proposed schedule contained in the plan will reduce objectionable odors in a timely manner;

1 (3) the methods used to control objectionable odors are likely to prevent objectionable odors beyond
2 the property lines of the animal ~~operation~~ operation. ~~(the~~ The Director shall not consider impacts of
3 objectionable odors on neighboring property if the owner of the neighboring property agrees in
4 writing that he or she does not object to objectionable odors on his or her property and this written
5 statement is included with the proposed best management ~~plan;~~ plan. ~~this~~ This agreement becomes
6 void if the neighboring property changes ownership. If the neighboring property changes
7 ownership, the plan shall be revised, if necessary, to prevent objectionable odors on this property
8 unless the new owner agrees in writing that he or she does not object to objectionable odors on his
9 property); and

10 (4) the described compliance verification methods are sufficient to verify compliance with the plan.
11 Within 90 days after receipt of a plan, the Director shall determine whether the proposed plan meets the requirements
12 of this ~~Paragraph of this Rule. Paragraph.~~ If the Director finds that the proposed plan does not meet the requirements
13 of this Paragraph, he or she shall notify the owner or operator of the animal operation in writing of the deficiencies in
14 the proposed ~~plan.~~ plan was approved. The owner or operator shall have 30 days after receiving written notification
15 from the Director to correct the deficiencies. If the Director finds that the proposed plan is acceptable, he or she shall
16 notify the owner or operator in writing that the proposed plan has been approved.

17
18 *History Note: Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(11);*
19 *Temporary Adoption Eff. April 27, 1999; March 1, 1999;*
20 *Eff. July 1, 2000; 2000;*
21 *Readopted Eff. September 1, 2019.*
22

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02D .1804

DEADLINE FOR RECEIPT: August 7, 2019

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

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

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

Under what circumstances does the Department require the listed information?

At line 5, when is it "necessary" to submit the information?

When is it "necessary" to investigate an odor complaint?

Compare (2) and lines 14-15. Is the owner or operator the same as the "person reporting?"

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

Ashley Snyder
Commission Counsel
Date submitted to agency: July 24, 2019

1 15A NCAC 02D .1804 is readopted as published in 33:12 NCR 1284 and 33:18 NCR 1868 as follows:

2
3 **15A NCAC 02D .1804 REPORTING REQUIREMENTS FOR ANIMAL OPERATIONS**

4 If the Department receives an odor complaint about an animal operation, the Department may require the owner or
5 operator of the animal operation to submit the following ~~information:~~ information if necessary to investigate the odor
6 compliant:

- 7 (1) the name and location of the animal operation;
8 (2) the name, title, address, and telephone number of the person reporting; ~~filing the report;~~
9 (3) the type and number of animals at the animal operation;
10 (4) potential sources of odors, such as animal housing structures, lagoons, collection and handling
11 devices, and storage containers, with a physical description of these sources;
12 (5) waste water land application procedures; and
13 (6) measures taken to reduce odors.

14 The owner or operator shall submit this ~~This information shall be submitted~~ to the Division within 15 days after
15 receipt of the request.

16
17 *History Note: Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; ~~143-215-215.107(a)(11); 143-~~*
18 *215.107(a)(11)*
19 *Temporary Adoption Eff. March 1, 1999;*
20 *Eff. July 1, ~~2000~~; 2000;*
21 *Readopted Eff. September 1, 2019.*
22

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02D .1806

DEADLINE FOR RECEIPT: August 7, 2019

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

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

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

Is (a) necessary?

In (b)(2), active in continuous duration or active any 30 days within a calendar year?

In (c), please use the defined term "animal operations" instead of "operations."

In (d)(1), do you need to reference .0508?

Throughout this Rule, please refer to rules within 15A NCAC 02D as "Rule .xxxx of this Subchapter."

Just to be sure, in (d)(4), is the citation to .1804 correct?

In (e), define "management practices."

In (f), you refer to Paragraph (i) twice – at lines 34 and 36. Please delete one of the references because it is unnecessary to have both.

On page 2, line 10, when is a plan "insufficient?"

At line 14, delete or define "repeatedly."

In (g), how does the Director make this determination? Does he or she consider a set of factors?

In (i), please compare this list to the list in .1802(g). Did you intentionally leave out the equivalent of .1802(g)(2) and (g)(5)?

In (i)(1), please delete or define "other pertinent factors."

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

Ashley Snyder
Commission Counsel
Date submitted to agency: July 24, 2019

1 15A NCAC 02D .1806 is readopted as published in 33:12 NCR 1284 and 33:18 NCR 1868 as follows:

2
3 **15A NCAC 02D .1806 CONTROL AND PROHIBITION OF ODOROUS EMISSIONS**

4 (a) Purpose. The purpose of this Rule is to provide for the control and prohibition of objectionable odorous emissions.

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

6 (1) "Commercial purposes" means activities that require a ~~state~~ State or local business license to operate.

7 (2) "Temporary activities or operations" means activities or operations that are less than 30 days in
8 duration during the course of a calendar year and do not require an air quality permit.

9 (c) Applicability. With the ~~exceptions~~ exemptions in Paragraph (d) of this Rule, this Rule shall apply to all operations
10 that ~~may~~ produce odorous emissions that can cause or contribute to objectionable odors beyond the facility's
11 boundaries.

12 (d) Exemptions. The requirements of this Rule do not apply to:

13 (1) processes at kraft pulp mills identified in 15A NCAC 02D Rule .0528 of this Section, and ~~covered~~
14 ~~under subject to Rule~~ 15A NCAC 02D .0524 or .0528 of this Section; .0528;

15 (2) processes at facilities that produce feed-grade animal proteins or feed-grade animal fats and oils
16 identified in ~~and covered under Rule .0539;~~ 15A NCAC 02D .0539;

17 (3) motor vehicles and transportation facilities;

18 (4) all on-farm animal and agricultural operations, including dry litter operations and operations ~~covered~~
19 ~~under Rule .1804 of this Section;~~ subject to 15A NCAC 02D .1804;

20 (5) municipal wastewater treatment plants and municipal wastewater handling systems;

21 (6) restaurants and food preparation facilities that prepare and serve food on site;

22 (7) single family dwellings not used for commercial purposes;

23 (8) materials odorized for safety purposes;

24 (9) painting and coating operations that do not require a business license; ~~or~~

25 (10) all temporary activities or ~~operations.~~ operations; or

26 (11) any facility that stores products that are grown, produced, or generated on one or more agricultural
27 operations and that are "renewable energy resources," as defined in G.S. 62-133.8(a)(8) if the facility
28 identifies the sources of potential odor emissions and specifies odor management practices in their
29 permit pursuant to 15A NCAC 02Q .0300 or .0500 to minimize objectionable odor beyond the
30 property lines.

31 (e) Control Requirements. The owner or operator of a facility subject to this Rule shall not operate the facility without
32 implementing management practices or installing and operating odor control equipment sufficient to prevent odorous
33 emissions from the facility from causing or contributing to objectionable odors beyond the facility's boundary.

34 (f) Odor management plan. If the Director determines, pursuant to Paragraph (i) of this Rule, that a source or facility
35 subject to this Rule is causing or contributing to objectionable odors beyond its property boundary by the procedures
36 described in Paragraph (i) of this Rule, the owner or operator shall develop and submit an odor management plan

1 within 60 days of receipt of written notification from the Director of an objectionable odor determination. The odor
2 management plan shall:

- 3 (1) identify the sources of odorous emissions;
- 4 (2) describe how odorous emissions will be controlled from each identified source;
- 5 (3) describe how the plan will be implemented; and
- 6 (4) contain a schedule by which the plan will be implemented.

7 Upon receipt of an approval letter from the Director for the odor management plan, the source or facility shall
8 implement the approved plan within 30 days, unless an alternative schedule of implementation is approved as part of
9 the odor management plan submittal. If the Director finds that the odor management plan does not meet the
10 requirements of this Paragraph or that the plan is insufficient to address the specific odor concerns, he or she shall
11 notify the owner or operator of any deficiencies in the proposed plan. The owner or operator shall have 30 days after
12 receipt of written notification from the Director to resubmit the odor management plan correcting the stated
13 deficiencies with the plan or the schedule of implementation. If the owner or operator fails to correct the plan
14 deficiencies with the second draft plan submittal or repeatedly fails to meet the deadlines set forth in this Paragraph
15 or Paragraph (g) of this Rule, the Director shall notify the owner or operator in writing that they are required to comply
16 with the maximum feasible control requirements in Paragraph (h) of this Rule.

17 (g) Odor management plan revision. If after the odor management plan has been implemented, the Director determines
18 that the plan fails to eliminate objectionable odor emissions from a source or facility using the procedures described
19 in Paragraph (i) of this Rule, he or she shall require the owner or operator of the facility to submit a revised plan.
20 Within 60 days after receiving written notification from the Director of a new objectionable odor determination, the
21 owner or operator of the facility shall submit a revision to their odor management plan following the procedures and
22 timelines in Paragraph (f) of this Rule. If the revised plan, once implemented, fails to eliminate objectionable odors,
23 then the source or facility shall comply with requirements in Paragraph (h) of this Rule.

24 (h)(f) Maximum feasible controls. If an amended odor management plan does not prevent objectionable odors beyond
25 the facility's boundary, If the Director determines that a source or facility subject to this Rule is emitting an
26 objectionable odor by the procedures described in Paragraph (g) of this Rule, the Director shall require the owner or
27 operator to implement maximum feasible controls for the control of odorous emissions. (Maximum Maximum feasible
28 controls shall be determined according to the procedures in Rule .1807 of this Section.) 15A NCAC 02D .1807. The
29 owner or operator shall:

- 30 (1) within 180 days of receipt of written notification from the Director of the requirement to implement
31 maximum feasible controls, complete the determination process outlined in 15A NCAC 2D .1807
32 and submit the completed maximum feasible control determination process along with a permit
33 application for maximum feasible controls and a compliance schedule to the Division of Air Quality;
34 the compliance schedule shall contain the following increments of progress: complete the process
35 outlined in 15A NCAC 02D .1807 and submit a complete permit application according to 15A
36 NCAC 02Q .0300 or 15A NCAC 02Q .0500, as applicable, within 180 days of receipt of written

notice from the Director requiring implementation of maximum feasible controls. The application shall include a compliance schedule containing the following increments of progress:

- (A) a date by which contracts for the odorous emission control systems and equipment shall be awarded or orders shall be issued for purchase of component parts;
- (B) a date by which on-site construction or installation of the odorous emission control systems and equipment shall begin;
- (C) a date by which on-site construction or installation of the odorous emission control systems and equipment shall be completed; and
- (D) a date by which final compliance shall be achieved.

- (2) install and begin operating maximum feasible controls within 18 months after receiving written notification from the Director of the requirement to implement maximum feasible controls, ~~have installed and begun operating maximum feasible controls.~~ The owner or operator may request an extension to implement maximum feasible controls. The Director shall approve an extension request if he or she finds that the extension request is the result of circumstances beyond the control of the owner or operator.

The owner or operator shall certify to the Director within five days after the deadline for each increment of progress in this Paragraph whether the required increment of progress has been met.

~~(i)(g)~~ Determination of the existence of an objectionable odor. A source or facility is causing or contributing to an objectionable odor when:

- (1) ~~A~~ a member of the Division staff determines by field investigation that an objectionable odor is present by taking into account the nature, intensity, pervasiveness, duration, and source of the odor and other pertinent factors;
- (2) ~~The~~ the source or facility emits known ~~odor-causing~~ odor-causing compounds such as ammonia, total volatile organics, hydrogen sulfide, or other sulfur compounds at levels that cause objectionable odors beyond the property line of that source or facility; or
- (3) ~~The~~ the Division receives from the State Health Director epidemiological studies associating health problems with odors from the source or ~~facility~~ facility, ~~or evidence of documented health problems associated with odors from the source or facility provided by the State Health Director.~~

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);

Eff. April 1, 2001-2001;

Readopted Eff. September 1, 2019.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02D .1807

DEADLINE FOR RECEIPT: August 7, 2019

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

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

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

In (b)(1), under what circumstances does a technology have the "practical potential" to control, reduce, or minimize odorous emissions?

In (b)(1), line 12, in which specific cases?

In (b)(2), line 19, delete or define "clearly."

In (b)(3)(B), please delete the parentheses and clarify your intent. Did you intend to mean "economic impacts, including cost effectiveness" or "economic impacts, meaning cost effectiveness."

In (b)(3)(C), please delete or define "significant."

On page 2, line 15, delete or define "fully."

At line 17, did you intend to say "primary alternative?"

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

Ashley Snyder
Commission Counsel
Date submitted to agency: July 24, 2019

1 15A NCAC 02D .1807 is readopted as published in 33:12 NCR 1285 and 33:18 NCR 1870 as follows:

2
3 **15A NCAC 02D .1807 DETERMINATION OF MAXIMUM FEASIBLE CONTROLS FOR ODOROUS**
4 **EMISSIONS**

5 (a) Scope. This Rule sets out procedures for determining maximum feasible controls for odorous emissions. The
6 owner or operator of the facility shall be responsible for providing the maximum feasible control determination.

7 (b) Process for maximum feasible control determinations. The following sequential process shall be used on a case-
8 by-case basis to determine maximum feasible controls:

9 (1) Identify all available control technologies. In the first step, all available options for the control of
10 odorous emissions shall be listed. Available options include all possible control technologies or
11 techniques with a practical potential to control, reduce, or minimize odorous emissions. For the
12 purposes of this document, in some specific cases a comprehensive, effective odor control plan ~~can~~
13 may be listed among the possible odor control technologies as a viable and satisfactory maximum
14 feasible control technology option. All available control technologies shall be included on this list
15 regardless of their technical feasibility or potential energy, human health, economic, or
16 environmental impacts.

17 (2) Eliminate technically infeasible options. In the second step, the technical feasibility of all the control
18 options identified ~~under-pursuant to~~ Subparagraph (b)(1) of this Rule shall be evaluated with respect
19 to source specific factors. A demonstration of technical infeasibility shall be clearly documented
20 and shall show, based on physical, chemical, or engineering principles, that technical difficulties
21 preclude the successful use of the control option under review. Technically infeasible control
22 options shall then be eliminated from further consideration as maximum feasible controls.

23 (3) Rank remaining control technologies by control effectiveness. All the remaining control
24 technologies, which have not been eliminated ~~under-pursuant to~~ Subparagraph (b)(2) of this Rule,
25 shall be ranked and then listed in order of their ability to control odorous emissions, with the most
26 effective control option at the top of the list. The list shall present all the control technologies that
27 have not been previously eliminated and shall include the following information:

28 (A) control effectiveness;

29 (B) economic impacts (cost effectiveness);

30 (C) environmental impacts: this shall include any significant ~~or unusual other~~ media impacts
31 (for example, water or solid waste), ~~and~~, at a ~~minimum, minimum~~ the impact of each
32 control alternative on emissions of toxic or hazardous air pollutants;

33 (D) human health impacts; and

34 (E) energy impacts.

35 However, an owner or operator proposing to implement the most stringent alternative, in terms of
36 control effectiveness, need not provide detailed information concerning the other control options.

37 In such cases, the owner or operator shall ~~only document, to the satisfaction of the Director,~~ provide

documentation to the Director ~~that~~ the proposed control option is ~~indeed~~ the most efficient, in terms of control effectiveness, and provide a review of collateral environmental impacts.

- (4) Evaluate most effective controls and document results. Following the delineation of all available and technically feasible control technology options ~~under-pursuant to~~ Subparagraph (b)(3) of this Rule, the energy, human health, environmental, and economic impacts shall be considered in order to arrive at the maximum feasible controls. An analysis of the predicted and associated impacts for each option shall be conducted. The owner or operator shall present an objective evaluation of the impacts of each alternative. Beneficial and adverse impacts shall be analyzed and, if possible, quantified. If the owner or operator ~~has~~ proposed to select the most stringent alternative, in terms of control effectiveness, as maximum feasible controls, he or she shall evaluate whether impacts of unregulated air pollutants or environmental impacts in other media would justify selection of an alternative control technology. If there are no concerns regarding collateral environmental impacts, the analysis is ended and this proposed option is selected as maximum feasible controls. In the event the most stringent alternative is inappropriate, due to energy, human health, environmental, or economic impacts, the justification for this conclusion shall be fully ~~documented; documented, and~~ documented. ~~The~~ The next most stringent option, in terms of control effectiveness, ~~becomes the primary alternative and is similarly evaluated,~~ shall become the primary alternative and be similarly evaluated. This process shall continue until the control technology evaluated ~~can not cannot~~ be eliminated due to source-specific environmental, human health, energy, or economic impacts.
- (5) Select maximum feasible controls. The most stringent option, in terms of control ~~effectiveness,~~ effectiveness, that is not eliminated ~~under-pursuant to~~ Subparagraph (b)(4) of this Rule shall be selected as maximum feasible controls.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);
Eff. April 1, ~~2001-2001~~;
Readopted Eff. September 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02D .1808

DEADLINE FOR RECEIPT: August 7, 2019

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

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

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

Is (a) necessary?

In (d)(1), please refer to "Rule .1802(e) of this Section."

In (d)(2), what is ASTM 544-99? Can you please provide a reference or link? If this is an outside regulation or material, please incorporate it by reference in accordance with G.S. 150B-21.6.

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

Ashley Snyder
Commission Counsel
Date submitted to agency: July 24, 2019

1 15A NCAC 02D .1808 is readopted as published in 33:12 NCR 1285 and 33:18 NCR 1870 as follows:

2
3 **15A NCAC 02D .1808 EVALUATION OF NEW OR MODIFIED SWINE FARMS**

4 (a) Purpose. The purpose of this Rule is to specify the methods for evaluating new or modified swine farms for
5 compliance with the performance standard in G.S. 143-215.10I (b)(3).

6 (b) Applicability. This Rule applies to new or modified swine farms required by G.S. 143-215.10I to meet the
7 performance standard in G.S. 143-215.10I (b)(3).

8 (c) Requirements. New or modified swine farms subject to this ~~rule~~ Rule shall comply with the requirements in this
9 Section.

10 (d) Evaluation of new or modified swine farms. For the purpose of evaluating odor at new or modified swine farms
11 for compliance with the performance standard in G.S. 143-215.10I (b)(3), the following shall apply:

- 12 (1) When a field olfactometry method and instrumentation is used to determine odor intensity at the
13 designated evaluation location, as specified in ~~Rule .1802(e) of this Section~~ 15A NCAC 02D
14 .1802(e), the measured dilution-to-threshold ratio shall be less than or equal to 7:1 as determined
15 using the manufacturer's instrument procedures and instructions; or
16 (2) When odor intensity is determined using an Odor Intensity Referencing Scale (OIRS) as specified
17 in ASTM 544-99, the instantaneous observed level shall be less than the equivalent of 225 parts per
18 million n-butanol in air. In addition, the average of 30 consecutive observations conducted over a
19 minimum of 30-minutes at designated evaluation locations shall be less than the equivalent of 75
20 parts per million n-butanol in air and a minimum of ~~four~~ 4 readings out of the minimum 30 readings
21 shall be less than or equal to the equivalent 25 parts per million n-butanol in air.

22
23 *History Note: Authority G.S. 143-215.10I; 143-215.3(a)(1); 143-215.107(a)(11); 143-215.108(a);*
24 *Eff. January 1, ~~2009~~ 2009;*
25 *Readopted Eff. September 1, 2019.*
26

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02D .1901

DEADLINE FOR RECEIPT: August 7, 2019

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

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

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

In (a), please change the references to .1903 and .1904 back to "Rule .1903 and Rule .1904 of this Section."

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

Ashley Snyder
Commission Counsel
Date submitted to agency: July 24, 2019

1 15A NCAC 02D .1901 is readopted as published in 33:12 NCR 1285 as follows:

2
3 **SECTION .1900 – OPEN BURNING**
4

5 **15A NCAC 02D .1901 OPEN BURNING: PURPOSE: SCOPE**

6 (a) Open Burning Prohibited. A person shall not cause, allow, or permit open burning of combustible material except
7 as allowed by ~~Rule 15A NCAC 02D .1903 and Rule .1904 of this Section .1904.~~

8 (b) Purpose. The purpose of this Section is to control air pollution resulting from the open burning of combustible
9 materials and to protect the air quality in the immediate area of the open burning.

10 (c) Scope. This Section applies to all operations involving open burning. This Section does not authorize any open
11 burning that is a crime ~~under~~ pursuant to G.S. 14-136, G.S. 14-137, G.S. 14-138.1 and G.S. 14-140.1, or affect the
12 authority of the North Carolina Forest Service to issue or deny permits for open burning in or adjacent to woodlands
13 as provided in G.S. 106-940 through G.S. 106-950. This Section does not affect the authority of any local government
14 to regulate open burning through its fire codes or other ordinances. The issuance of any open burning permit by the
15 North Carolina Forest Service or any local government does not relieve any person from the necessity of complying
16 with this Section or any other air quality rule.

17
18 *History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);*

19 *Eff. July 1, 1996;*

20 *Amended Eff. January 1, 2015; July 1, 2007; June 1, ~~2004~~ 2004;*

21 *Readopted Eff. September 1, 2019.*
22
23

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02D .1902

DEADLINE FOR RECEIPT: August 7, 2019

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

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

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

In (1), does your regulated public understand the meaning of a "conventional combustion device?"

Throughout this Rule, please incorporate the CFRs by reference in accordance with G.S. 150B-21.6 if they are not incorporated elsewhere in your rules.

In (7), is the proper term "identified" or "designated"? The referenced CFR says "designated."

In (7), does your regulated public understand the meaning of "nonattainment?"

In (12), please refer to "Rule .1901 of this Section."

In (12), if this definition is only used in .1901, why is it listed here? On page 1, line 4, the Rule states these definitions apply to this Section.

In (12)(b), how does the Division make this determination? Is this in rule?

In (18), please add a comma after "tree trimming" and please change "tree/brush" to "tree and brush."

In your history note, why do you cite G.S. 143-212 and 143-213? They do not confer the Commission any rulemaking authority and are therefore not necessary. G.S. 143-215.3(a)(1) is sufficient.

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

Ashley Snyder
Commission Counsel
Date submitted to agency: July 24, 2019

1 15A NCAC 02D .1902 is readopted as published in 33:12 NCR 1285 as follows:

2
3 **15A NCAC 02D .1902 DEFINITIONS**

4 For the purpose of this Section, the following definitions apply:

- 5 (1) "Air Curtain ~~Burner~~"Incinerator" means a stationary or portable combustion device that operates by
6 directs~~directing~~ a plane of high velocity forced draft air through a manifold head ~~into a pit~~ onto an
7 open chamber, pit, or container with vertical walls ~~in such a manner as~~ to maintain a curtain of air
8 over the surface of the pit and a recirculating motion of air under the curtain. These incinerators can
9 be built above or below ground and be constructed with or without refractory walls and floors. These
10 shall not include conventional combustion devices with enclosed fireboxes or controlled air
11 technology such as mass burn, modular, or fluidized bed combustors.
- 12 (2) "Air Quality Action Day Code 'Orange' or above" means an air quality index of 101 or greater than
13 100 as defined in 40 CFR Part 58, Appendix G. This includes Codes Orange, Red, Purple, and
14 Maroon.
- 15 (3) ~~"Air quality forecast area" means for:~~
- 16 (a) ~~Asheville air quality forecast area: Buncombe, Haywood, Henderson, Jackson, Madison, Swain,~~
17 ~~Transylvania, and Yancey Counties;~~
- 18 (b) ~~Charlotte air quality forecast area: Cabarrus, Gaston, Iredell South of Interstate 40, Lincoln,~~
19 ~~Mecklenburg, Rowan, and Union Counties;~~
- 20 (c) ~~Hickory air quality forecast area: Alexander, Burke, Caldwell, and Catawba Counties;~~
- 21 (d) ~~Fayetteville air quality forecast area: Cumberland and Harnett Counties;~~
- 22 (e) ~~Rocky Mount air quality forecast area: Edgecombe and Nash Counties;~~
- 23 (f) ~~Triad air quality forecast area: Alamance, Caswell, Davidson, Davie, Forsyth, Guilford,~~
24 ~~Randolph, Rockingham, and Stokes Counties; and~~
- 25 (g) ~~Triangle air quality forecast area: Chatham, Durham, Franklin, Granville, Johnston,~~
26 ~~Person, Orange, Vance, and Wake Counties.~~
- 27 (4)(3) "Dangerous materials" means explosives or containers used in the holding or transporting of
28 explosives.
- 29 (5)(4) "Initiated" means to start or ignite a fire or reignite or rekindle a fire.
- 30 (6) ~~"HHCU" means the Health Hazards Control Unit of the Division of Public Health.~~
- 31 (7)(5) "Land clearing" means the uprooting or clearing of vegetation in connection with construction for
32 buildings; ~~right of way maintenance;~~ agricultural, residential, commercial, institutional, or
33 industrial development; mining activities; or the initial clearing of vegetation to enhance property
34 ~~value; but value. This term~~ does not include ~~routine~~ regularly scheduled maintenance or property
35 clean-up activities.
- 36 (8)(6) "Log" means any limb or trunk whose diameter exceeds six inches.
- 37 (9)(7) "Nonattainment area" means an area designated in 40 CFR 81.334 as nonattainment.

- (10)(8) "Nuisance" means causing physical irritation exacerbating a documented medical condition, visibility impairment, or evidence of soot or ash on property or structure other than the property on which the burning is done.
- (11)(9) "Occupied structure" means a building ~~in which~~where people ~~may live or work, can be reasonably expected to be present or one intended~~a building used for housing farm or ~~other~~ domestic animals.
- (12)(10) "Off-site" means any area not on the premises of the land-clearing activities.
- (13)(11) "Open burning" means the burning of any matter in such a manner that the products of combustion resulting from the burning are emitted directly into the atmosphere without passing through a stack, chimney, or a permitted air pollution control device.
- (14) ~~"Operator" as used in .1904(b)(6) and .1904(b)(2)(D) of this Section, means the person in operational control over the open burning.~~
- (15) ~~"Permanent site" means for an air curtain burner, a place where an air curtain burner is operated for more than nine months.~~
- (16)(12) "Person" as used in 15A NCAC 02D .1901(e), 1901 means:
- (a) the person in operational control over the open burning; or
 - (b) the landowner or person in possession or control of the land when he or she has directly or indirectly allowed the open burning or the Division determined that the land owner has benefited from it.
- (17)(13) "Pile" means a quantity of combustible material assembled together in ~~a mass.~~one place.
- (18)(14) "Public pick-up" means the removal of refuse, yard trimmings, limbs, or other plant material from a residence by a governmental agency, private company contracted by a governmental agency, or municipal service.
- (19)(15) "Public road" means any road that is part of the State highway ~~system;~~system or any road, street, or right-of-way dedicated or maintained for public use.
- (20) ~~"RACM" means regulated asbestos containing material as defined in 40 CFR 61.142.~~
- (21)(16) "Refuse" means any garbage, rubbish, or trade waste.
- (22)(17) "Regional Office Supervisor" means the supervisor of personnel of the Division of Air Quality in a regional office of the Department of ~~Environment and Natural Resources.~~Environmental Quality.
- (18) "Right-of-way maintenance" means vegetation management, including grass cutting, weed abatement, tree trimming and tree/brush removal of existing streets, highways, and public places.
- (23)(19) "Salvageable items" means any product or material that was first discarded or damaged and then ~~all, or part,~~all or part was ~~saved~~recovered for future ~~use, use, and~~Examples of these items include insulated wire, electric motors, and electric transformers.
- (24)(20) "Smoke management plan" means the plan developed following the North Carolina Forest Service's smoke management program and approved by the North Carolina Forest Service. The purpose of the smoke management plan is to manage smoke from prescribed burns of public and private forests to minimize the impact of smoke on air quality and visibility.

(25)(21) "Synthetic material" means man-made material, including tires, asphalt materials such as shingles or asphaltic roofing materials, construction materials, packaging for construction materials, wire, electrical insulation, and treated or coated wood.

*History Note: Authority G.S. 143-212; 143-213; 143-215.3(a)(1);
Eff. July 1, 1996;
Amended Eff. January 1, 2015; July 1, 2007; December 1, 2005; June 1, 2004; July 1, 1998; 1998;
Readopted Eff. September 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02D .1903

DEADLINE FOR RECEIPT: August 7, 2019

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

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

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

In (a) and (b)(2)(B)(ii), please change the reference to .1904 back to the original wording.

On page 2, in (F)(i), please cite to "Rule .1904 of this Section."

Page 2, line 31, change "that" to "which."

Page 3, in (7), how does the Division make this determination? What factors are considered?

In (10)(B), please change "North Carolina Insurance Department" to "North Carolina Department of Insurance."

Page 4, line 9, please refer to "Rule .1905 of this Section."

In your history note, is the citation to S.L. 2011-394 still necessary?

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

Ashley Snyder
Commission Counsel
Date submitted to agency: July 24, 2019

1 15A NCAC 02D .1903 is readopted with changes as published in 33:12 NCR 1287 as follows:

2
3 **15A NCAC 02D .1903 OPEN BURNING WITHOUT AN AIR QUALITY PERMIT**

4 (a) All open burning is prohibited except open burning allowed ~~under pursuant to~~ Paragraph (b) of this Rule or ~~Rule~~
5 ~~.1904 of this Section. 15A NCAC 02D .1904.~~ Except as allowed ~~under Paragraphs pursuant to Subparagraphs~~ (b)(3)
6 through (b)(9) of this Rule, open burning shall not be initiated in ~~an air quality forecast area a county~~ that the
7 ~~Department, Department~~ or the Forsyth County Office of Environmental Assistance and Protection Environmental
8 ~~Affairs Department for the Triad air quality forecast area,~~ has forecasted to be in an Air Quality Action Day Code
9 "Orange" or above during the 24-hour time period covered by that ~~forecast.~~ Air Quality Action Day.

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

11 (1) The open burning of leaves, logs, stumps, tree ~~branches~~ branches, or yard trimmings, if the following
12 conditions are met:

13 (A) ~~The the~~ material burned originates on the premises of private residences and is burned on
14 those ~~premises;~~ premises and does not include material collected from multiple private
15 residences and combined for burning;

16 (B) ~~There there~~ are no public pickup services available;

17 (C) ~~Non-vegetative non-vegetative~~ materials, such as household garbage, ~~lumber, treated or~~
18 coated wood, or any other synthetic materials are not burned;

19 (D) ~~The the~~ burning is initiated no earlier than 8:00 a.m. and no additional combustible material
20 is added to the fire between 6:00 p.m. on one day and 8:00 a.m. on the following day;

21 (E) ~~The the~~ burning does not create a nuisance; and

22 (F) ~~Material material~~ is not burned when the North Carolina Forest Service or other
23 government agencies ~~has have~~ banned burning for that area.

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

27 (2) The open burning for land clearing or right-of-way maintenance if the following conditions are met:

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

33 (B) The location of the burning is at least 500 feet from any dwelling, group of dwellings, or
34 commercial or institutional establishment, or other occupied structure not located on the
35 property ~~on which~~ where the burning is conducted. The regional office supervisor may
36 grant exceptions to the setback requirements if:

(i) a signed, written statement waiving objections to the open burning associated with the land clearing operation is obtained and submitted to, and the exception granted by, the regional office supervisor before the burning begins from a resident or an owner of each dwelling, commercial or institutional establishment, or other occupied structure within 500 feet of the open burning site. In the case of a lease or rental agreement, the lessee or renter shall be the person from whom permission shall be gained prior to any burning; or

(ii) an air curtain ~~burner-incinerator~~ that complies with ~~Rule .1904 of this Section, 15A NCAC 02D .1904~~ is utilized at the open burning site.

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

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

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

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

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

(i) Facilities permitted in accordance with 15A NCAC 02D .1904 (~~Air-Curtain Burners~~) for the operation of an air curtain ~~burner-incinerator~~ at a permanent site; or

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

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

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

- (III) ~~The~~the location is not a permitted solid waste management ~~facility.~~
facility;
- (3) camp fires and fires used solely for outdoor cooking and other recreational purposes, ~~or for~~
ceremonial occasions, or for human warmth and comfort and ~~which that~~ do not create a nuisance and
do not use synthetic ~~materials~~materials, ~~or refuse~~refuse, or salvageable materials for fuel;
- (4) fires purposely set to public or private forest land for forest management practices for which burning
is currently acceptable to the North Carolina Forest Service; ~~Service and which follow the smoke~~
~~management plan as outlined in the North Carolina Forest Service's smoke management program;~~
- (5) fires purposely set to agricultural lands for disease and pest control and fires set for other agricultural
or apicultural practices for which burning is currently acceptable to the Department of ~~Agriculture~~;
Agriculture and Consumer Services;
- (6) fires purposely set for wildlife management practices for which burning is currently acceptable to
the Wildlife Resource Commission;
- (7) fires for the disposal of dangerous materials when the [Divisions] Division has determined that it is
the safest and most practical method of disposal;
- (8) fires purposely set by manufacturers of fire-extinguishing materials or equipment, testing
laboratories, or other persons, for the purpose of testing or developing these materials or equipment
in accordance with a standard qualification program;
- (9) fires purposely set for the instruction and training of fire-fighting personnel at permanent fire-
fighting training facilities;
- (10) fires purposely set for the instruction and training of fire-fighting personnel when conducted under
the supervision of or with the cooperation of one or more of the following agencies:
- (A) the North Carolina Forest Service;
- (B) the North Carolina Insurance Department; or
- ~~(C) — North Carolina technical institutes; or~~
- ~~(D)(C) North Carolina community Community colleges, Colleges; including:~~
- (i) ~~the North Carolina Fire College; or~~
- (ii) ~~the North Carolina Rescue College;~~
- (11) fires not described in Subparagraphs (9) or (10) of this Paragraph, purposely set for the instruction
and training of fire-fighting personnel, provided that:
- (A) ~~The~~the regional office supervisor ~~of the appropriate regional office and the HHCB have~~has
been notified according to the procedures and deadlines contained in the notification
~~appropriate regional notification form. form and the regional office supervisor has granted~~
permission for the burning. The information required to be submitted in the form
[include:]includes:
- (i) the address of the fire department that is requesting the training exercise;
- (ii) the location of the training exercise;

- (iii) a description of the type of structure or object and amount of materials to be burned at the location of the training exercise;
- (iv) the dates that the training exercise will be performed; and
- (v) an inspection from a North Carolina Asbestos Inspector that the structure being burned is free of asbestos.

The form shall be submitted 10 days prior to commencement of the burn. This form may be obtained in electronic format at <https://deq.nc.gov/about/divisions/air-quality/air-quality-enforcement/open-burning/firefighter-information> or by writing the appropriate regional office at the address in Rule 15A NCAC 02D .1905 of this Section and requesting it, and it.

(B) ~~The regional office supervisor has granted permission for the burning. Factors that the regional office supervisor shall consider in granting permission for the burning include~~ include: type, amount, and nature of combustible substances. The regional office supervisor shall not grant permission for the burning of salvageable items, such as insulated wire and electric motors or if the primary purpose of the fire is to dispose of synthetic materials or refuse. The regional office supervisor of the appropriate regional office shall not consider previously demolished structures as having training value. However, the regional office supervisor of the appropriate regional office may allow an exercise involving the burning of motor vehicles burned over a period of time by a training unit or by several related training units. Any deviations from the dates and times of exercises, including additions, postponements, and deletions, submitted in the schedule in the approved plan shall be communicated verbally to the regional office supervisor of the appropriate regional office at least one hour before the burn is scheduled; and

(i) type, amount, and nature of combustible substances. The regional office supervisor shall not grant permission for the burning of salvageable items or if the primary purpose of the fire is to dispose of synthetic materials or refuse;

(ii) the burning of previously demolished structures. The regional office supervisor shall not consider these structures as having training value;

(iii) the burning of motor vehicles. The regional office supervisor may allow an exercise involving the burning of motor vehicles burned over a period of time by a training unit or by several related training units if he or she determines that they have training value; and

(iv) the distance from the location of the fire training to residential, commercial, or institutional buildings or properties.

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

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

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

15
16 *History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); S.L. 2011-394, s.2;*

17 *Eff. July 1, 1996;*

18 *Amended Eff. June 13, 2016; March 19, 2015; July 3, 2012; July 1, 2007; December 1, 2005; June*
19 *1, 2004; July 1, ~~1998-1998~~;*

20 *Readopted Eff. September 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02D .1904

DEADLINE FOR RECEIPT: August 7, 2019

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

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

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

In (a), please make this Paragraph a full sentence or introductory statement. Consider:

“(a) This Rule applies to the following air curtain incinerators:

- (1) New and existing air curtain incinerators . . .
 - (A) . . .
- (2) New and existing temporary air curtain incinerators . . .”

In (a)(1), please incorporate the CFRs by reference in accordance with G.S. 150B-21.6.

In (a)(1)(B), was “clean lumber” added in response to public comment?

In (b)(3), note 40 CFR 60.2886 defines “new incineration unit.” Are you intentionally setting a different commencement date for “new” units?

If you keep (b)(3) as written, by “effective date of this Rule” do you mean July 1, 1996 or September 1, 2019? Please clarify by specifying the “original effective date of this Rule” or “the most recent effective date of this Rule.”

In (b)(7)(A), please use the term “Subparagraphs” instead of “Parts.”

In (b)(7)(B), please capitalize “State” if you are only referring to the State of North Carolina.

Were the amendments in (b)(9) made since publication made in response to public comment?

Page 3, line 24, delete or define “significant.”

Page 3, in (5), please undo the proposed change to the rule citation.

Ashley Snyder
Commission Counsel
Date submitted to agency: July 24, 2019

Page 5, in (d)(2), please incorporate CFRs by reference in accordance with G.S. 150B-21.6 if they have not already been incorporated elsewhere in rule.

In (e)(2), please delete the title of the Rule "Permitting of Facilities at Multiple Temporary Sites." It is not necessary.

In (e)(3), by "effective date of this Rule" do you mean July 1, 1996 or September 1, 2019? Please clarify by specifying the "original effective date of this Rule" or "the most recent effective date of this Rule."

In (g) and (i), please incorporate CFRs by reference in accordance with G.S. 150B-21.6 unless it is already incorporated elsewhere in rule.

Page 7, in (h)(1), just to be clear, the Director does not have to issue an approval, this is just a reporting requirement, correct?

In your history note, do you still need S.L. 2011-394?

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

1 15A NCAC 02D .1904 is readopted with changes as published in 33:12 NCR 1290 as follows:

2
3 **15A NCAC 02D .1904 AIR CURTAIN ~~BURNERS~~INCINERATORS**

4 (a) Applicability. ~~Air quality permits are required for air curtain burners subject to 40 CFR 60.2245 through~~
5 ~~60.2265, 60.2810 through 60.2870, 60.2970 through 60.2975, or 60.3062 through 60.3069 or located at permanent~~
6 ~~sites or where materials are transported in from another site. Air quality permits are not required for air curtain~~
7 ~~burners located at temporary land clearing or right of way maintenance sites for less than nine months unless they~~
8 ~~are subject to 40 CFR 60.2245 through 60.2265, 60.2810 through 60.2870, 60.2970 through 60.2975, or 60.3062~~
9 ~~through 60.3069. The operation of air curtain burners in particulate and ozone nonattainment areas shall cease in~~
10 ~~any area that has been forecasted by the Department, or the Forsyth County Environmental Affairs Department for~~
11 ~~the Triad air quality forecast area, to be in an Air Quality Action Day Code "Orange" or above during the time~~
12 ~~period covered by that forecast.~~

13 (1) This Rule applies to all new and existing air curtain incinerators subject to 40 CFR 60.2245
14 through ~~60.2265,~~ 60.2260 or ~~60.2810 through 60.2870, 60.2970 through 60.2975, or 60.3062~~
15 ~~through 60.3069~~ 60.2970 through 60.2974 that combust the following materials:

16 (A) 100 percent wood waste;

17 (B) 100 percent clean lumber;

18 ~~[(B)](C)~~ 100 percent yard waste; or

19 ~~[(C)](D)~~ 100 percent mixture of only wood ~~waste~~ waste, clean lumber, and yard waste.

20 (2) This Rule applies to new and existing temporary air curtain incinerators used at industrial,
21 commercial, institutional, or municipal sites where a temporary air curtain incinerator is defined in
22 Subparagraph ~~(b)(5).~~ (b)(6) of this Rule.

23 ~~[(3)]~~ Air curtain incinerators that combust materials other than those listed in Parts (a)(1)(A) through
24 (C) are subject to the following requirements;

25 ~~[(A)]~~ 40 CFR 60 Subpart CCCC or 40 CFR 60 Subpart DDDD, for air curtain incinerators that
26 have a charge rate of greater than or equal to 35 tons per day; or]

27 ~~[(B)]~~ 40 CFR 60 Subpart EEEE or 40 CFR 60 Subpart FFFF, for air curtain incinerators that
28 have a charge rate of less than 35 tons per day.]

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

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

34 ~~[(1)](2)~~ "Malfunction" means any unavoidable failure of air pollution control equipment, process
35 equipment, or a process to operate in a normal or usual manner. Failures caused entirely or in part
36 by poor maintenance, careless operations or any other upset condition within the control of the
37 emission source are not considered a malfunction.

1 ~~[(2)]~~(3) “New air curtain incinerator” means an air curtain incinerator that began operating on or after the
2 effective date of this Rule.

3 ~~[(3)]~~(4) “Operator” means the person in operational control over the open burning.

4 ~~[(4)]~~(5) “Permanent air curtain incinerator” means an air curtain incinerator whose owner or operator
5 operates the air curtain incinerator at one facility or site during the term of the permit.

6 ~~[(5)]~~(6) “Temporary air curtain incinerator” means an air curtain incinerator whose owner or operator
7 moves the air curtain incinerator to another site and operates it for land clearing or right-of-way
8 maintenance at that site at least once during the term of its permit.

9 ~~[(6)]~~(7) “Temporary-use air curtain incinerator used in disaster recovery” means an air curtain incinerator
10 that meets all of the following requirements:

11 (A) combusts less than 35 tons per day of debris consisting of the materials listed in Parts
12 (a)(1)(A) through ~~[(C)]~~ (C) of this Rule;

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

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

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

22 ~~[(7)]~~(8) “Wood waste” means untreated wood and untreated wood products, including tree stumps (whole
23 or chipped), trees, tree limbs (whole or chipped), bark, sawdust, chips, scraps, slabs, millings, and
24 shavings. Wood waste does not ~~include treated or untreated wood products, construction waste,~~
25 ~~renovation waste, or demolition waste.~~ include:

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

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

30 (C) clean lumber; and

31 (D) treated wood and treated wood products, including wood products that have been painted,
32 pigment-stained, or pressure treated, or manufactured wood products that contain
33 adhesives or resins.

34 ~~[(8)]~~(9) “Yard waste” means grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs.
35 Yard waste comes from residential, commercial/retail, institutional, or industrial sources as part of
36 maintaining yards or other private or public lands. ~~This does not include grass, grass clippings, or~~
37 ~~collected leaves.~~ Yard waste does not include:

(A) construction, renovation, or demolition wastes;

(B) clean lumber; and

(C) wood waste.

~~(b)(c)~~ Air curtain ~~burners-incinerators~~ shall comply with the following conditions and ~~stipulations;requirements:~~

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

~~(1)(2)~~ The~~the~~ wind direction at the time that the burning is initiated and the wind direction as forecasted by the National Weather Service during the time of the burning shall be away from any area, including public roads within 250 feet of the burning as measured from the edge of the pavement or other roadway surface, which may be affected by smoke, ash, or other air pollutants from the burning;

~~(2)~~ Only collected land clearing and yard waste materials may be burned. Heavy oils, asphaltic materials, items containing natural or synthetic rubber, tires, grass clippings, collected leaves, paper products, plastics, general trash, garbage, or any materials containing painted or treated wood materials shall not be burned. Leaves still on trees or brush may be burned;

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

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

(5) The air curtain ~~burner~~ incinerator shall not be operated more than the maximum source operating hours-per-day and days-per-week. The maximum source operating hours-per-day and days-per-week shall be set to protect the ambient air quality standard and prevention of significant deterioration (PSD) increment for particulate. The maximum source operating hours-per-day and days-per-week shall be determined using the modeling procedures in Rule 15A NCAC 02D .1106(b), (c), and (f) of this Subchapter. (f). This Subparagraph shall not apply to temporary air curtain ~~burners; incinerators;~~

~~(6)~~ An air curtain burner with an air quality permit shall have onsite at all times during operation of the burner a visible emissions reader certified according to 40 CFR Part 60, Method 9 to read visible emissions, and the facility shall test for visible emissions within five days after initial operation and within 90 days before permit expiration;

~~(7)(6)~~ Air~~air~~ curtain ~~burners-incinerators~~ shall meet manufacturer's specifications for operation and upkeep to ensure complete burning of material charged into the pit. Manufacturer's specifications shall be kept on site and be available for inspection by Division staff;

~~(8)~~ Except during start up, visible emissions shall not exceed ten percent opacity when averaged over a six minute period except that one six minute period with an average opacity of more than ten

percent but no more than 35 percent shall be allowed for any one hour period. During start up, the visible emissions shall not exceed 35 percent opacity when averaged over a six minute period. Start up shall not last for more than 45 minutes, and there shall be no more than one start up per day. Instead of complying with the opacity standards in this Subparagraph, air curtain burners subject to:

(A) 40 CFR 60.2245 through 60.2265 shall comply with the opacity standards in 40 CFR 60.2250;

(B) 40 CFR 60.2810 through 60.2870 shall comply with the opacity standards in 40 CFR 60.2860;

(C) 40 CFR 60.2970 through 60.2975 shall comply with the opacity standards in 40 CFR 60.2971; or

(D) 40 CFR 60.3062 through 60.3069 shall comply with the opacity standards in 40 CFR 60.3066;

(9)(7) The owner or operator of an air curtain burner shall not allow ash to build up in the pit to a depth higher than one third of the depth of the pit or to the point where the ash begins to impede combustion, whichever occurs first. The owner or operator of an air curtain burner incinerator shall allow the ashes to cool and water the ash prior to its removal to prevent the ash from becoming airborne;

(10) The owner or operator of an air curtain burner shall not load material into the air curtain burner such that it will protrude above the air curtain;

(11)(8) Only distillate oil, kerosene, diesel fuel, natural gas, or liquefied petroleum gas may be used to start the fire; and

(12)(9) The location of the burning shall be at least 300 feet from any dwelling, group of dwellings, or commercial or institutional establishment, or other occupied structure not located on the property on which the burning is conducted. The regional office supervisor may grant exceptions to the setback requirements if a signed, written statement waiving objections to the air curtain burning is obtained from a resident or an owner of each dwelling, commercial or institutional establishment, or other occupied structure within 300 feet of the burning site. In case of a lease or rental agreement, the lessee or renter, and the property owner shall sign the statement waiving objections to the burning. The statement shall be submitted to and approved by the regional office supervisor before initiation of the burn. Factors that the regional supervisor shall consider in deciding to grant the exception include: all the persons who need to sign the statement waiving the objection have signed it; the location of the burn; and the type, amount, and nature of the combustible substances.

~~Compliance with this Rule does not relieve any owner or operator of an air curtain burner from the necessity of complying with other rules in this Section or any other air quality rules.~~

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

- (1) the air curtain incinerator meets the definition of a temporary-use air curtain incinerators used in disaster recovery as specified in Subparagraph ~~(d)(5)~~ (b)(7) of this Rule;
- (2) the air curtain incinerator meets all the requirements pursuant to 40 CFR 60.2969 or 60.3061, as applicable; and
- (3) the air curtain incinerator is operated in a manner consistent with the operations manual for the air curtain incinerator and the charge rate during all periods of operation is less than or equal to the lesser of 35 tons per day or the maximum charge rate specified by the manufacturer of the air curtain incinerator.

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

- (1) The owner or operator of a new or existing permanent air curtain incinerator shall obtain a General Title V Operating Permit pursuant to 15A NCAC 02Q .0509.
- (2) The owner or operator of a new or existing temporary air curtain incinerator shall obtain a General Title V Operating Permit pursuant to 15A NCAC 02Q .0510 Permitting of Facilities at Multiple Temporary Sites.
- (3) The owner or operator of an existing permanent or temporary air curtain incinerator shall complete and submit a permit application no later than 12 months after the effective date of this Rule.
- (4) The owner or operator of a new permanent or temporary air curtain incinerator shall complete and submit a permit application 60 days prior to the date the unit commences operation.
- (5) The owner or operator of an existing permanent or temporary air curtain incinerator that is planning to close rather than obtaining a permit pursuant to 15A NCAC 02Q .0509 or 15A NCAC 02Q .0510 shall submit a closure notification to the Director no later than 12 months after the effective date of this Rule.

(f) Opacity limits.

- (1) The owner or operator of an existing air curtain incinerators shall meet the following opacity limits:
 - (A) Maintain opacity to less than or equal to 35 percent opacity (as determined by the average of 3 1-hour blocks consisting of 10 6-minute average opacity values) during startup of the air curtain incinerator, where startup is defined as the first 30 minutes of operation.
 - (B) Maintain opacity to less than or equal to 10 percent opacity (as determined by the average of 3 1-hour blocks consisting of 10 6-minute average opacity values) at all times, other than during startup or during malfunctions.
- (2) The owner or operator of a new air curtain incinerator shall meet the opacity limits specified in Subparagraph (f)(1) of this Rule within 60 days after air curtain incinerator reaches the charge rate at which it will operate, but no later than 180 days after its initial startup.

(g) Performance tests.

- (1) All initial and annual opacity tests shall be conducted using 40 CFR 60 Appendix A-4 Test Method 9 to determine compliance with the opacity limitations specified in Subparagraph (f)(1) of this Rule.
- (2) The owner or operator of an existing air curtain incinerator shall conduct an initial performance test for opacity as specified in 40 CFR 60.8 on or before 90 days after the effective date of this rule.
- (3) The owner or operator of a new air curtain incinerator shall conduct an initial performance test for opacity as specified in 40 CFR 60.8 within 60 days after achieving the maximum charge rate at which the affected air curtain incinerator will be operated, but not later than 180 days after initial startup of the air curtain incinerator.
- (4) After the initial test for opacity, the owner or operator of a new or existing air curtain incinerator subject to this Rule shall conduct annual opacity tests on the air curtain incinerator no more than 12 calendar months following the date of the previous test.
- (5) The owner or operator of an existing air curtain incinerator that has ceased operations and is restarting after more than 12 months since the previous test shall conduct an opacity test upon startup of the unit.
- ~~[(h) — Increments of Progress and Compliance Requirements.]~~
- ~~[(1) — The owner or operator of an air curtain incinerator subject to this Rule that has a charge rate of greater than 35 tons per day shall meet the increments of progress according to 40 CFR 60.2815 through 60.2845.]~~
- ~~[(2) — The owner or operator of an air curtain incinerator subject to this Rule shall demonstrate compliance with the emission limits in Subparagraph (f)(1) of this Rule.]~~
- ~~(e)[(i)](h) Recordkeeping and Reporting Requirements. The owner or operator of an air curtain burner at a permanent site shall keep a daily log of specific materials burned and amounts of material burned in pounds per hour and tons per year. The logs at a permanent air curtain burner site shall be maintained on site for a minimum of two years and shall be available at all times for inspection by the Division of Air Quality. The owner or operator of an air curtain burner at a temporary site shall keep a log of total number of tons burned per temporary site. Additionally, the owner or operator of air curtain burner subject to:~~
- ~~(1) — 40 CFR 60.2245 through 60.2265 shall comply with the monitoring, recordkeeping, and reporting requirements in 40 CFR 60.2245 through 60.2265;~~
- ~~(2) — 40 CFR 60.2810 through 60.2870 shall comply with the monitoring, recordkeeping, and reporting requirements in 40 CFR 60.2810 through 60.2870;~~
- ~~(3) — 40 CFR 60.2970 through 60.2975 shall comply with the monitoring, recordkeeping, and reporting requirements in 40 CFR 60.2970 through 60.2975; or~~
- ~~(4) — 40 CFR 60.3062 through 60.3069 shall comply with the monitoring, recordkeeping, and reporting requirements in 40 CFR 60.3062 through 60.3069.~~

- (1) Prior to commencing construction of an air curtain incinerator, the owner or operator of a new air curtain incinerator shall submit the following information to the Director:
- (A) a notification of intent to construct an air curtain incinerator;
- (B) the planned initial startup date of the air curtain incinerator; and
- (C) the materials planned to be combusted in the air curtain incinerator.
- (2) The owner or operator of a new or existing air curtain incinerator shall do the following:
- (A) keep records of results of all initial and annual opacity tests onsite in either paper copy or electronic format for five years;
- (B) make all records available for submission to the Director or for an inspector's onsite review;
- (C) report the results of the initial and annual opacity tests as the average of 3 1-hour blocks consisting of 10 6-minute average opacity values;
- (D) submit initial opacity test results to the Division no later than 60 days following the initial test and submit annual opacity test results within 12 months following the previous report;
- (E) submit initial and annual opacity test reports to the Division as electronic or paper copy on or before the applicable submittal date; and
- (F) keep a copy of the initial and annual reports onsite for a period of five years.
- (d) ~~Title V Considerations. Burners that have the potential to burn 8,100 tons of material or more per year may be subject to Section 15A NCAC 02Q .0500, Title V Procedures.~~
- (e) ~~Prevention of Significant Deterioration Consideration. Burners that burn 16,200 tons per year or more may be subject to 15A NCAC 02D .0530, Prevention of Significant Deterioration.~~
- (f) ~~A person may use a burner using a different technology or method of operation than an air curtain burner as defined under Rule .1902 of this Section if he demonstrates to the Director that the burner is at least as effective as an air curtain burner in reducing emissions and if the Director approves the use of the burner. The Director shall approve the burner if he finds that it is at least as effective as an air curtain burner. This burner shall comply with all the requirements of this Rule.~~
- (g)(i) In addition to complying with the requirements of this Rule, an air curtain ~~burner~~incinerator subject to:
- (1) ~~40 CFR Part 60, Subpart CCCC that commenced construction after November 30, 1999, or that commenced reconstruction or modification on or after June 1, 2001, shall also comply with 40 CFR 60.2245 through 60.2265, or~~ 60.2265; 60.2260; or
- (2) ~~40 CFR Part 60, Subpart EEEE that commenced construction after December 9, 2004, or that commenced reconstruction or modification on or after June 16, 2006, shall also comply with 40 CFR 60.2970 through 60.2975.~~ 60.2975; or 60.2974.
- ~~[(3) 40 CFR Subpart FFFF shall also comply with 40 CFR 60.3062 through 60.3069.]~~

1 *History Note:* *Authority G.S. 143-215.3(a)(1); ~~143-215.107(a)(5), (10); 143-215.65;~~ 143-215.66; ~~143-~~*
2 *215.107(a)(5); 143-215.107(a)(10); 143-215.108; 40 CFR 60.2865; S.L. 2011-394, s.2;*
3 *Eff. July 1, 1996;*
4 *Amended Eff. July 3, 2012; July 1, 2007; December 1, 2005; August 1, ~~2004~~2004;*
5 *Readopted Eff. September 1, 2019.*
6
7

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02D .1905

DEADLINE FOR RECEIPT: August 7, 2019

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

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

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

In your introductory statement, please replace "readopted" with "amended."

At line 4, please delete or define "appropriate."

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

Ashley Snyder
Commission Counsel
Date submitted to agency: July 24, 2019

1 15A NCAC 02D .1905 is readopted as published in 33:12 NCR 1293 as follows:

2
3 **15A NCAC 02D .1905 REGIONAL OFFICE LOCATIONS**

4 Inquiries, ~~requests~~requests, and plans shall be handled by the appropriate Department of ~~Environment and Natural~~
5 ~~Resources~~Environmental Quality regional ~~offices~~office. They are:

- 6 (1) Asheville Regional Office, 2090 ~~U.S. 70 Highway~~Highway 70, Swannanoa, North Carolina
7 ~~28778~~28778;
- 8 (2) Winston-Salem Regional Office, ~~585 Waughtown Street~~450 West Hanes Mill Road, Suite 300,
9 Winston-Salem, North Carolina ~~27107~~27105;
- 10 (3) Mooresville Regional Office, 610 East Center Avenue, Suite 301, Mooresville, North Carolina
11 28115;
- 12 (4) Raleigh Regional Office, 3800 Barrett Drive, Raleigh, North Carolina ~~27611~~27609;
- 13 (5) Fayetteville Regional Office, ~~Systel Building~~225 Green Street, Suite 714, Fayetteville, North
14 Carolina 28301;
- 15 (6) Washington Regional Office, 943 Washington Square Mall, Washington, North Carolina 27889;
16 and
- 17 (7) Wilmington Regional Office, 127 Cardinal Drive Extension, Wilmington, North Carolina 28405.

18
19 *History Note: Authority G.S. 143-215.3(a)(1);*
20 *Eff. July 1, 1996;*
21 *Amended Eff. December 1, 2005;*
22 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 5,*
23 *~~2016-2016~~;*
24 *Amended Eff. September 1, 2019.*
25
26

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02D .1906

DEADLINE FOR RECEIPT: August 7, 2019

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

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

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

In (b), since you deleted the list of requirements in (a), consider referring to "the requirements in G.S. 143-215.112" at lines 12 and 14.

In (c), please refer to "Rule .1904 of this Section."

Just to be sure, in (d), these local programs meet the requirements in G.S. 143-215.112(c)(2a) and (c)(5), correct?

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

Ashley Snyder
Commission Counsel
Date submitted to agency: July 24, 2019

1 15A NCAC 02D .1906 is readopted as published in 33:12 NCR 1294 as follows:

2
3 **15A NCAC 02D .1906 DELEGATION TO COUNTY GOVERNMENTS**

4 (a) The governing body of any county or municipality or group of counties or municipalities may establish a partial
5 air pollution control program to implement and enforce this Section provided ~~that:~~that the program complies with G.S.
6 143-215.112.

7 (1) ~~It has the administrative organization, staff, financial and other resources necessary to carry out such~~
8 ~~a program;~~

9 (2) ~~It has adopted appropriate ordinances, resolutions, and regulations to establish and maintain such a~~
10 ~~program; and~~

11 (3) ~~It has otherwise complied with G.S. 143-215.112 "Local Air Pollution Control Programs."~~

12 (b) The governing body shall submit to the Director documentation demonstrating that the requirements of Paragraph
13 (a) of this Rule have been met. Within 90 days after receiving the ~~submittal~~submission from the governing body, the
14 Director shall review the documentation to determine if the requirements of Paragraph (a) of this Rule have been met
15 and shall present his or her findings to the Commission. If the Commission determines that the air pollution program
16 ~~is adequate,~~meets the requirements in G.S. 143-215.112, it shall certify the local air pollution program to implement
17 and enforce this Section within its area of jurisdiction.

18 (c) County and municipal governments shall not have the authority to issue permits for air curtain ~~burners~~incinerators
19 at a permanent site as defined in 15A NCAC 02D .1904.

20 (d) The three certified local air pollution programs, the Western North Carolina Regional Air Quality ~~Control~~ Agency,
21 the Forsyth County Office of Environmental Assistance and Protection~~Environmental Affairs Department~~, and
22 Mecklenburg County Air Quality, a Division of Land Use and Environmental Services Agency, shall continue to
23 enforce open burning rules and have the authority to issue permits for air curtain incinerators as part of their local air
24 pollution programs.

25
26 *History Note: Authority G.S. 143-215.3(a)(1); 143-215.112;*
27 *Eff. July 1, 1996;*
28 *Amended Eff. December 1, 2005; June 1, ~~2004~~2004;*
29 *Readopted Eff. September 1, 2019.*
30
31

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02D .1907

DEADLINE FOR RECEIPT: August 7, 2019

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

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

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

In (a), why do you use the term "multiple violations?" Could you say "Each violation arising from a single episode of open burning . . .?"

In (a), what do you mean by "determining the number of violations" at line 6? Why are factors used to determine the number of violations?

In (a)(4), why is the amount the Commission can assess under the second penalty in G.S. 143-215.3(a)(9) listed as a factor in determining the number of violations?

Overall, please clarify how the Director determines the number of violations.

In (b), please refer to "Rule .1903(b)(2) of this Section."

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

Ashley Snyder
Commission Counsel
Date submitted to agency: July 24, 2019

1 15A NCAC 02D .1907 is readopted as published in 33:12 NCR 1294 as follows:

2
3 **15A NCAC 02D .1907 MULTIPLE VIOLATIONS ARISING FROM A SINGLE EPISODE**

4 (a) Multiple violations arising from a single episode of open burning may ~~result in multiple civil penalties, be assessed~~
5 ~~multiple penalties using the procedures set forth in G.S. 143-215.3(a)(9).~~ Factors the Director shall consider in
6 determining the number of violations per episode of open burning include:

- 7 (1) the type of material ~~burned, burned;~~
8 (2) the amount of material ~~burned, burned;~~
9 (3) the location of the ~~burn, burn;~~ and
10 (4) any necessary costs incurred by the State in removing, correcting or abating any adverse effects
11 upon the air quality resulting from the unauthorized discharge. ~~other factor relevant to air pollution~~
12 ~~control or air quality.~~

13 (b) Each pile of land clearing or ~~road~~ right-of-way maintenance debris that does not comply with the specifications of
14 15A NCAC 02D .1903(b)(2) shall constitute a separate violation.

15
16 *History Note:* Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);

17 Eff. July 1, 2007, 2007;

18 Readopted Eff. September 1, 2019.
19
20