

Burgos, Alexander N

From: Duke, Lawrence
Sent: Wednesday, August 16, 2023 11:30 AM
To: Everett, Jennifer; Rules, Oah
Cc: Burgos, Alexander N; Quinlan, Katherine L
Subject: RE: Letter Extending the Period of Review for EMC's 15A NCAC 02D & 02Q Rules

Jennifer,

Thank you for making these changes. These rules are good to go. I will be recommending approval.

Lawrence Duke

Counsel, NC Rules Review Commission
Office of Administrative Hearings
(984) 236-1938

From: Everett, Jennifer <jennifer.everett@deq.nc.gov>
Sent: Thursday, August 3, 2023 12:24 PM
To: Duke, Lawrence <lawrence.duke@oah.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Quinlan, Katherine L <katherine.quinlan@deq.nc.gov>
Subject: RE: Letter Extending the Period of Review for EMC's 15A NCAC 02D & 02Q Rules

Lawrence,

Attached are responses and re-written rules for 15A NCAC 02D and 02Q.

Jennifer

Jennifer Everett
DEQ Rulemaking Coordinator
N.C. Depart. Of Environmental Quality
Office of General Counsel
1601 Mail Service Center
Raleigh, NC 27699-1601
Tele: (919)-707-8595
<https://deq.nc.gov/permits-rules/rules-regulations/deq-proposed-rules>

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From: Duke, Lawrence <lawrence.duke@oah.nc.gov>
Sent: Thursday, June 15, 2023 3:05 PM
To: Everett, Jennifer <jennifer.everett@deq.nc.gov>; Quinlan, Katherine L <katherine.quinlan@deq.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: Letter Extending the Period of Review for EMC's 15A NCAC 02D & 02Q Rules

Jennifer,

Burgos, Alexander N

Subject: FW: Letter Extending the Period of Review for EMC's 15A NCAC 02D & 02Q Rules
Attachments: 15A NCAC 02D .0103.docx; 15A NCAC 02D .0501.docx; 15A NCAC 02D .0546.docx; 15A NCAC 02D .0605.docx; 15A NCAC 02D .1903.docx; 15A NCAC 02D .1904.docx; 15A NCAC 02D .1905.docx; 15A NCAC 02D .2203.docx; 15A NCAC 02Q .0104.docx; 15A NCAC 02Q .0105.docx; 15A NCAC 02Q .0206.docx; 15A NCAC 02Q .0304.docx; 15A NCAC 02Q .0305.docx; 15A NCAC 02Q .0307.docx; 15A NCAC 02Q .0505.docx; 15A NCAC 02Q .0507.docx; 15A NCAC 02Q .0508.docx; 15A NCAC 02Q .0710.docx; Environmental Management Commission - 06.2022 - 15A NCAC 02DQ - Change Requests.docx; Form_0400_for_Permanent_Rule_02D_0546.docx

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

Sent: Thursday, August 3, 2023 12:24 PM

To: Duke, Lawrence <lawrence.duke@oah.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Quinlan, Katherine L <katherine.quinlan@deq.nc.gov>

Subject: RE: Letter Extending the Period of Review for EMC's 15A NCAC 02D & 02Q Rules

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Attached are responses and re-written rules for 15A NCAC 02D and 02Q.

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REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Environmental Management Commission

RULE CITATION: ALL RULES

DEADLINE FOR RECEIPT: Tuesday, June 13, 2022

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

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

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

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

This rulemaking involves minor amendments to 18 rules out of a total of 315 rules across various Sections in Subchapters 02D and 02Q. To change the entirety of these 18 rules into active voice would require a substantial rewrite and subsequent internal review and has the potential to cause inadvertent changes in interpretation of the rules and discontinuity within each Section. The current instances of passive voice in these 18 rules do not pose any issue with authority, clarity, or ambiguity, and these rules are necessary, pursuant to N.C.G.S. 150B-21.9(a).

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

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02D .0103

DEADLINE FOR RECEIPT: Tuesday, June 13, 2022

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

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

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

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

The word “applicable” is changed to “the”.

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

The word “such” is changed to “referenced” and “each regional office” is revised to “the regional offices”.

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

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02D .0501

DEADLINE FOR RECEIPT: Tuesday, June 13, 2022

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

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

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

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

- Page 1, Line 7 – Change not made. The word “all”, as used in this sentence, is needed to clarify the applicability of the Rule.
- Page 1, Line 8 – The word “All” has been removed.
- Page 1, Lines 9 and 10 – These lines are revised to no longer include the words “any” or “such”.
- Page 1, Line 11 (now line 12) – This instance of “any” is necessary to clarify that all offsite impacts, regardless of the receptor type, must meet 02D .0400.
- Page 1, Line 29 (now line 30) – The inclusion of “all” at the beginning of Part (d)(1)(C) is necessary to clarify that upstream and downstream sources are also included in this determination of compliance (not only directly-impacted) sources.
- Page 1, Line 32 (now line 33) – the use of “any” in this instance is needed because a permit may or may not result out of the application review.
- Page 2, line 3 (now line 6) – this instance of “if any” is necessary because not all projects result in PSD increment consumed or created. Without the phrase “if any”, this provision of the rule would not allow approval of an alternative mix of controls for non-PSD projects (which do not create or consume PSD increment).
- Page 2, line 6 (now line 9) – The language has been revised.
- Page 2, line 10 (now line 14) – As cited in the following line of the rule, [44 FR 71784, Subdivision D.1.c.ii](#) states:

“Some criteria pollutants are also hazardous pollutants (e.g., vinyl chloride and benzene are hydrocarbons that have been designated as hazardous under section 112). Emissions of criteria pollutants that contain hazardous pollutants can be used in alternative emission control strategies subject to the following restrictions: ...”

To provide clarity, “some criteria pollutants” is revised to “criteria pollutants that contain hazardous air pollutants”

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Commission Counsel

Date submitted to agency: June 8, 2022

- Page 2, line 22 (now line 26) – removing or revising “each” in this context would alter the meaning. Therefore, this instance is not revised.
- Page 2, line 29 (now line 33) – “any” is revised to “the”.
- Page 3, line 14 (now line 17) – “any” is revised to “a”. Also, “and” is revised to “or” in this sentence.

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

Page 1, line 9 – The sentence is revised to no longer include the word “necessary”.

Page 1, line 12 (now line 13) – This instance of “applicable” clarifies that the requirements only apply to those emission control standards to which the source is subject. Section 02D .0500 contains Rules with emission control standards that apply broadly (e.g., 02D .0533, *Stack Height*, and 02D .0521, *Control of Visible Emissions*) and Rules that are specific to one industry type. Not all emission standards in 02D .0500 will be applicable to a source.

Page 1, line 27 (now line 29) – The term, “reasonable further progress” is defined in the Clean Air Act, Section 171(1) (42 U.S.C. §7501) as, “such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment of applicable national ambient air quality standard by the applicable date.” This term has been retained for consistency and clarity.

Page 1, line 30 (now line 32) – “applicable regulations” means the rules and emission standards to which the source is subject. As stated above, many rules and regulations may not apply to a source, so the emission source would not need to be in compliance with those regulations to apply for a mix of alternative controls under the Bubble Concept in paragraph (d) of this Rule.

Page 1, line 37 (now page 2, line 3) – the language is revised to no longer include “applicable”

Page 2, line 5 (now line 9) – see response relating to the term “reasonable further progress” for page 1, line 27 above.

Page 2, line 13 (now line 18) – the word “hereby” is removed.

Page 2, line 30 (now line 35) – the word “hereby” is removed.

Page 2, line 36 (now page 3, line 5) – this instance of “as applicable” is necessary because only one set of procedures will be applicable to a facility, depending on whether the permit is issued pursuant to 02Q .0300 (Construction and Operation Permits) or 02Q .0500 (Title V Procedures). Without the phrase “as applicable”, paragraph (e) could be read as allowing a facility to choose which procedures to follow. In this case, “as applicable” adds clarity to the rule, and has not been revised.

Page 3, lines 5 and 10 (now lines 10 and 15) – These instances of “otherwise applicable” are necessary because not all existing SIP requirements would apply to a facility. SIPs can contain many requirements that cover a variety of facility and industry types, but facilities only need to comply with those SIP requirements that apply to the facility.

Part (d)(2)(A) – the phrase “if any” is needed in this sentence because not every project would consume or create PSD increment.

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

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Commission Counsel

Date submitted to agency: June 8, 2022

The term “source” is defined in 15A NCAC 02D .0101(37) as “any stationary article, machine, process equipment, or other contrivance, singly or in combination, or any tank-truck, trailer, or railroad tank car, from which air pollutants emanate or are emitted, either directly or indirectly.” Further, the term “air pollutant” is defined in 15A NCAC 02D .0101(3) as “an air pollution agent or combination of such agents, including any physical, chemical, biological, or radioactive substance or matter emitted into or otherwise entering the ambient air.” The combination of these terms as “air pollution sources” or “sources of air pollution” is well-known within the air quality industry.

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

Paragraph (b) requires a new source to have everything in place (e.g., control devices performing at optimal levels) to comply with all applicable standards before commencing operations. In other words, this requirement has the effect of prohibiting a new source from starting operations if it does not have all required controls in place, and any source that violates this would be in violation from the date that it started operation (rather than the date of a stack test showing noncompliance, for example).

Paragraph (c) is the overarching requirement prohibiting exceedances of the National Ambient Air Quality Standards (NAAQS) that are adopted in Section 02D .0400. The paragraph requires sources to operate (e.g., install adequate controls) such that the NAAQS are not exceeded. In performing an air quality analysis, it may be determined that a source needs controls more stringent than the ones set forth under Section 02D .0500 to demonstrate that the source will not cause or contribute to a violation of the NAAQS, in which case the source’s permit must contain a condition requiring those controls. The NAAQS cannot be exceeded at any point beyond the facility premises.

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

EPA’s “bubble concept” “generally allows factories, refineries and other sources of air pollution to treat all their stacks and vents as though they are enclosed by a giant bubble, getting more pollution control on stacks that are easy to control in exchange for reduced controls on those that are expensive to control, so long as overall emissions are reduced by the same amount.” See EPA Statement on U.S. Supreme Court’s Ruling (Chevron U.S.A., Inc. v. NRDC, 467 US 837, June 25, 1984) on “Bubble” Policy to Control Air Pollution at: <https://www.epa.gov/archive/epa/aboutepa/statement-us-supreme-courts-ruling-june-25th-epas-bubble-policy-control-air-pollution.html>.

The Bubble Concept “policy allows plants in the same area to trade emissions of the same pollutant--particulates, sulfur dioxide or hydrocarbons. Emission trade-offs between more than one plant will be permitted as long as the overall air quality is unaffected. This type of trade, however, will require the company to make a more detailed showing of equivalence than would be required for a single plant trade.” (<https://www.epa.gov/archive/epa/aboutepa/bubble-policy-added-epas-cleanup-strategy.html>)

As shown, the “same area” is not a pre-defined measurement, but rather a case-by-case determination made by the State permitting authority to ensure that overall air quality is

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Date submitted to agency: June 8, 2022

unaffected. Therefore, the Director would make this determination based on case- and site-specific circumstances, considering individual factors such as the pollutant(s) of concern and airshed properties in the area of the facilities that apply for a different mix of controls under the Bubble Concept.

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

The rule is revised.

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

An attainment area is one that is not designated as nonattainment or unclassifiable in 40 CFR 81.334 for the pollutant for which EPA established a new or revised national ambient air quality standard. See the definition of nonattainment in 15A NCAC 02D .1902.

For each new or revised NAAQS each state follows a formal designation process (initial and final decisions are communicated between the EPA Administrator and the Governor of the state) at the end of which EPA designates areas as “attainment/unclassifiable” or “nonattainment”. This typically takes two years to complete. The final designations are contained in 40 CFR 81.334.

In Part (B) the phrase “or in an area that has been demonstrated to be attainment by the statutory deadlines with reasonable further progress toward attainment for those pollutants being considered,” refers to demonstrations made by States for redesignating ozone nonattainment areas to attainment (e.g., see [42 U.S.C. §7511a\(b\)](#)). These are demonstrations made by the State, not facilities. Since the redesignation process can take years, this phrase captures those areas for which the State has made a demonstration, but EPA has not yet made a final redesignation determination.

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

The language in Part (d)(1)(D) is revised as follows:

- “will” is revised to “shall”
- “on the part of the State” is revised to “of State funds”
- “other permits” is rewritten to “permits for the same sources at the facility or facilities without an alternative mix of controls.”

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

PSD refers to the EPA’s Prevention of Significant Deterioration (PSD) program. The following is an excerpt from EPA’s website: [Prevention of Significant Deterioration Basic Information | US EPA](#)

What is PSD Increment?

PSD increment is the amount of pollution an area is allowed to increase. PSD increments prevent the air quality in clean areas from deteriorating to the level set by the NAAQS. The NAAQS is a maximum allowable concentration "ceiling." A PSD increment, on the other hand, is the maximum allowable increase in concentration that is allowed to occur above a baseline concentration for a pollutant. The baseline concentration is defined for each pollutant and, in general, is the ambient concentration existing at the time that the first complete PSD permit application affecting the area is submitted. Significant deterioration is said to occur when the amount of new pollution would exceed the applicable PSD increment. It is important to note, however, that the air quality cannot deteriorate beyond the concentration allowed by the applicable NAAQS, even if not all of the PSD increment is consumed.

Clarifying language to cross reference Section 163 of the Clean Air Act has been added.

Delete the comma on page 2, line 6.

The comma is removed.

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

Part (d)(2)(C) is clarified.

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

The location and cost of 44 FR 71784 has been added to Part (d)(2)(D).

The phrase "in at least the same level of detail" in Part (D) refers to the equivalency demonstration made by a facility or facilities requesting an alternative mix of controls in lieu of existing SIP requirements, also known as the "bubble" policy, as noted at the beginning of Paragraph (d). The facility is requesting a permit with an alternative mix of controls to be added to the SIP as an appendix, and effectively replace existing SIP requirements for that facility. In order to meet the requirements of EPA's bubble policy, the facility must demonstrate that their alternative mix of controls is equivalent to the aggregate of the individual emission standards to which the facility would otherwise be subject (see Subparagraph (d)(2)), in terms of total allowed emissions, reliability, enforceability, and environmental impact, and the facility's demonstration must be in the same level of detail as the SIP demonstration from the State in obtaining EPA approval of the existing SIP requirements. These demonstrations are made and reviewed on a case-by-case basis.

"can" is changed to "shall".

"DAQ" is defined.

"If the facility involves another facility in the alternative strategy" refers to implementation of the bubble policy across multiple facilities in the same area. One facility is applying for

Lawrence R. Duke
Commission Counsel

Date submitted to agency: June 8, 2022

permit approval of the alternative strategy, which involves another facility that is covered by a separate permit.

Staff has reviewed Rule 10D .0103 and is unsure what language is suggested to replace the website reference.

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

The waiver referenced here is not an explicit waiver in the typical sense. Rather, Subparagraphs (d)(1)-(4) outline the bubble policy “generic rule”, but EPA’s bubble Policy Statement (see the Federal Register referenced in the rule) allows States to also submit individual SIP revisions that may implement trading under the bubble policy, but not meet its generic rule. To address each item listed in the comment:

(1) *how a waiver may be requested or state that the agency may initiate a waiver on its own;*

a waiver does not need to be explicitly requested. The requirements in (d)(1) through (4) outline the State’s “generic rule” for implementing EPA’s bubble policy. As stated in the Federal Register cited above, “many trades which could not be accomplished under a generic rule may be acceptable use individual SIP revisions.” Subparagraph (d)(5) pertains to these individual SIP revisions that may not meet the “generic rule”, and allows the Director to approve permits with an alternative mix of controls (i.e., the “bubble” policy) that may not meet the specific requirements of (d)(1)-(4), “up to the extent allowed by the Emissions Trading Policy Statement...” as long as the equivalency demonstration (“analysis required by Paragraph (e)”) supports it.

(2) *a list of factors used when deciding whether the agency can waive a rule;*

The Director considers whether the proposed alternative mix of controls still meets “the extent allowed by the Emissions Trading Policy Statement published in the Federal Register of April 7, 1982, pages 15076-15086,” and “that the analysis required by Paragraph (e) of this Rule supports the waiver or reduction of requirements.”

(3) *specify who gets to decide whether to grant the waiver;*

The Director decides whether the requirements can be waived or reduced, as specified in the opening phrase of the Subparagraph, and ultimately, any SIP revisions are submitted for approval by EPA.

(4) *if necessary based on context, clarify when the waiver will end.*

As long as the SIP requirement is approved by EPA, the waiver does not end.

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

The language is revised.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: June 8, 2022

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

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

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02D .0546

DEADLINE FOR RECEIPT: Tuesday, June 13, 2022

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

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

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

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

The form for 02D .0546 has been revised.

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

- Page 1, line 20, replaced "any" with "a"
- Page 1, line 23, the word "all" is removed, but "any" is retained for clarity.
- Page 1, line 24, replaced "any of" with "a", and changed plurality of the rest of the sentence for grammar consistency.
- Page 1, line 32, replaced "any" with "a"
- Page 1, line 33, replaced "at all times" with "permanently"
- Page 2, line 3 (now line 5), replaced "each" with "the"
- Page 2, line 8 (now line 10), replaced "each" with "the"
- Page 2, line 12 (now line 15), Part (f)(2)(E) is revised and no longer includes the word "any"

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

- Page 1, line 22, "reasonably" is retained. See the response to the next comment for explanation about this definition and who makes the determination of "reasonably" in this case.
- Page 1, line 37 (now Page 2, line 2), deleted "appropriate"

Lawrence R. Duke
Commission Counsel

Date submitted to agency: June 8, 2022

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

The definition in Subparagraph (b)(7) is intended to refer to a sidewalk or a path through a wooded area where people can walk or run. This would be determined by the local community. The word “can” is revised to “may”.

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

Paragraph (c) is revised to begin with “This Rule shall apply...”

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

Paragraph (f) articulates monitoring, recordkeeping, and reporting requirements specific to owners or operators of log fumigation operations and not included in other rules. The phrase “and the following requirements’ has been added at the end of paragraph (f) to clarify that the requirements are in addition to those in 15A NCAC 02D .0600.

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

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02D .0605

DEADLINE FOR RECEIPT: Tuesday, June 13, 2022

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

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

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

- Page 1, line 6-8, deleted “all”
- Page 1, line 9, deleted “any” and changed schedule to plural
- Page 1, line 19, changed “any” to “the”
- Page 1, line 20, deleted “any”
- Page 1, line 22, deleted “any”
- Page 1, line 24, “all” is removed.
- Page 1, line 28, “all” is removed.
- Page 1, line 32, deleted “any”
- Page 1, line 33, deleted “any”
- Page 1, line 35, “all” is removed.
- Page 1, line 36, “any” is revised to “a”
- Page 2, line 4, deleted “such time that”
- Page 2, line 6, changed “such” to “the electronic reporting”

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

- Page 1, line 10, changed “necessary” to “needed”
- Page 1, line 15, changed “, as necessary” to “needed”
- Page 1, line 20, changed “necessary” to “needed”
- Page 1, line 26 (now line 27), changed “necessary” to “needed”
- Page 2, line 3, deleted “, as appropriate”

Lawrence R. Duke
Commission Counsel

Date submitted to agency: June 8, 2022

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

Paragraph (a) – “this” is deleted.

Subparagraph (a)(3) – the comma is replaced with a semicolon.

Page 1, line 11 does not appear to contain a comma. However, the period before “02Q” has been deleted.

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

Paragraph (c) has been revised to remove the reference to evidence. Due to the wide variety of sources and processes covered by these rules, it is not feasible to list all of the information that may be required to evaluate a source’s compliance status. The Director would only require information that is needed to determine whether or not the source is in compliance.

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

Addressed by revising “generated in response to the requirements pursuant to...” to “required to demonstrate compliance with the requirements of...”

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

As explained on page 2 of this response document, the use of passive voice in this rule does not pose any issue with authority, clarity, or ambiguity pursuant to N.C.G.S. 150B-21.9(a) and could result in discontinuity across the Sections and Subchapters of these rules. Therefore, these instances of passive voice were retained.

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

“15A NCAC” is removed and “Subchapter” is inserted in the sentence.

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

Corrected “143-215-65” to “143-215.65”

Corrected “143-215.1078(a)(4)” to “143-215.107(a)(4)”

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

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02D .1903

DEADLINE FOR RECEIPT: Tuesday, June 13, 2022

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

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

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

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

Modified the above as shown in the revised rule, except as noted below:

Page 1, line 4, removed the word “all”.

Page 1, lines 16 and 23, see explanation for Subparagraph (b)(1) below (underneath the next comment) relating to Session Law (S.L.) 2014-120.

Page 1, line 29, “any” is retained for clarity that all areas that may be affected by the smoke, ash or other air pollutants, if there are any.

Page 1, line 32, and Page 2, lines 2, 5, 9, and 13 – see explanation for Part (b)(2)(B) below (underneath the next comment) relating to S.L. 2011-394.

Page 2, line 15 – “any” is deleted.

Page 2, lines 27, 28 and 31 - see explanation below (underneath the next comment) for Subpart (b)(2)(F)(ii) in relation to S.L. 2013-413. Further, “each” in line 31 needs to be retained to clarify that there could be one pile up to 20 feet in diameter and another pile up to 20 feet in diameter.

Page 4, line 14 – “Any” is removed.

Page 4, line 17 (now line 18) – “such as” is changed to “including”.

Page 4, lines 26 and 27 (now lines 27 and 28) – “any” is changed to “a” in both instances.

Page 4, line 28 (now line 29) – “all applicable” is removed and “any other governmental entity” is changed to “other governmental entities”.

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

Page 1, line 32, see explanation for Part (b)(2)(B) below relating to S.L. 2011-394.

Page 2, line 28, see explanation below for Subpart (b)(2)(F)(ii) in relation to S.L. 2013-413.

Page 3, line 2, “currently acceptable to” is revised to “the accepted practice of”

Page 3, line 4, “currently acceptable to” is revised to “the accepted practice of”

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Page 3, line 6, “currently acceptable to” is revised to “the accepted practice of”

Page 3, line 35, “appropriate” is removed.

Page 4, line 16, “at least” is change to “a minimum of”.

Page 4, line 28 (now line 29), removed “applicable”

Background for two change requests above, relating to language appearing in Subparagraph (b)(1), Part (b)(2)(B), and Subpart (b)(2)(F)(ii)

- Relating to Part (b)(2)(B) and Session Law 2011-394:

S.L. 2011-394 Section 2.(d) required the Commission to adopt a rule that “shall be substantively identical to the provisions of Section 2(c) of this act” which included the terms “at least” and “any” and required the Commission, the Department, and any other political subdivision of the State that implements 15A NCAC 02D .1903 to implement the language in Section 2(c) until the effective date of the rule required to be adopted pursuant to the Session Law. To avoid any misinterpretation or confusion, the identical language from the session law was used in the rule. Implementation of the session law changed the setback requirement from 1000 feet in the (then) existing Rule 02D .1903(b)(2)(B) to 500 feet, as cited in the session law. The rule provisions adopted pursuant to Section 2(d) became effective July 3, 2012, following the legislative review required by S.L. 2011-394 Section 2(d). To maintain consistency with the Session Law and ensure that the language is substantively identical, these instances of “at least,” “any,” “all,” “such,” and “each” were retained.

Link to text of S.L. 2011-394:

<https://www.ncleg.gov/EnactedLegislation/SessionLaws/HTML/2011-2012/SL2011-394.html>

Below is the relevant excerpt from S.L. 2011-394:

“SECTION 2.(a) Definitions. – The definitions set out in G.S. 143-212, G.S. 143-213, and 15A NCAC 02D .1902 (Definitions) apply to this section and its implementation.

SECTION 2.(b) 15A NCAC 02D .1903 (Open Burning Without An Air Quality Permit). – Until the effective date of the revised permanent rule that the Commission is required to adopt pursuant to Section 2(d) of this act, the Commission, the Department, and any other political subdivision of the State that implements 15A NCAC 02D .1903 (Open Burning Without An Air Quality Permit) shall implement the rule, as provided in Section 2(c) of this act.

SECTION 2.(c) Implementation. – Notwithstanding sub-subdivision (B) subdivision (2) of subsection (b) of 15A NCAC 02D .1903 (Open Burning Without An Air Quality Permit), open burning for land clearing or right-of-way maintenance is permissible without an air quality permit if the location of the burning is **at least** 500 feet from **any** dwelling, group of dwellings, or commercial or institutional establishment, or other occupied structure not located on the property on which the burning is conducted. The regional office supervisor may grant exceptions to the setback requirements if either of the following conditions is met:

1. 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

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agreement, the lessee or renter shall be the person from whom permission shall be gained prior to any burning.

2. An air curtain burner that complies with 15A NCAC 02D .1904 (Air Curtain Burners), as provided in this section, 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.

SECTION 2.(d) Additional Rule-Making Authority. – The Commission shall adopt a rule to amend 15A NCAC 02D .1903 (Open Burning Without An Air Quality Permit). Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be substantively identical to the provisions of Section 2(c) of this act. Rules adopted pursuant to this section are not subject to the publication of notice of text or public hearing requirements of G.S. 150B-21.2. Rules adopted pursuant to this section are not subject to G.S. 150B-21.9 through G.S. 150B-21.14. Rules adopted pursuant to this section shall become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received as provided by G.S. 150B-21.3(b2).”

- Relating to Subpart (b)(2)(F)(ii) of Rule 02D .1903 and S.L. 2013-413:

Session Law 2013-413 statutorily implemented and mandated amendments substantively identical to Section 28(b) be made to Rule .1903 to allow the transport of vegetative matter for outdoor burning. Changes implementing that requirement were made to Subpart (b)(2)(F)(ii) of Rule 02D .1903. Those rule revisions became effective March 19, 2015. The Session Law language in Section 28(b) to which the language in .1903 is required to be substantively identical included the terms “all,” “at least,” “any,” and “each.” To maintain consistency with the Session Law and ensure that the language is substantively identical, these instances of “all,” “any,” “such” and “each” were retained.

Below is an excerpt of the relevant Sections of S.L. 2013-413:

“AMEND THE RULES THAT PERTAIN TO OPEN BURNING FOR LAND CLEARING OR RIGHT-OF-WAY MAINTENANCE

SECTION 28.(a) 15A NCAC 02D .1903 (Open Burning Without an Air Quality Permit). – Until the effective date of the revised permanent rule that the Commission is required to adopt pursuant to Section 28(c) of this act, the Commission, the Department, and any other political subdivision of the State that implements 15A NCAC 02D .1903 (Open Burning Without an Air Quality Permit) shall implement the rule, as provided in Section 28(b) of this act.

SECTION 28.(b) Implementation. – Notwithstanding 15A NCAC 02D .1903(b)(2)(F) (Open Burning Without an Air Quality Permit), open burning for land clearing or right-of-way maintenance is permissible without an air quality permit if materials are not carried off site or transported over public roads for open burning unless the materials are carried or transported to:

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

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2. A location, where the material is burned not more than four times per year, that meets **all** of the following criteria:
 1. **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.
 2. There are no more than two piles, **each** 20 feet in diameter, being burned at one time.
3. The location is not a permitted solid waste management facility.

SECTION 28.(c) Additional Rule-Making Authority. – The Commission shall adopt a rule to amend 15A NCAC 02D .1903 (Open Burning Without an Air Quality Permit) consistent with Section 28(b) of this act. Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be substantively identical to the provisions of Section 28(b) of this act. Rules adopted pursuant to this section are not subject to G.S. 150B-21.8 through G.S. 150B-21.14. Rules adopted pursuant to this section shall become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received as provided by G.S. 150B-21.3(b2).

SECTION 28.(d) Sunset. – Section 28(b) of this act expires on the date that rules adopted pursuant to Section 28(c) of this act become effective.”

Link to S.L. 2013-413 text: <https://www.ncleg.gov/enactedlegislation/sessionlaws/html/2013-2014/sl2013-413.html>

- Relating to Subparagraph (b)(1) of Rule 02D .1903 and S.L. 2014-120:

The General Assembly enacted Session Law 2014-120 (S.L. 2014-120) on September 18, 2014 to require the EMC to adopt a rule that pertains to residential open burning without an air quality permit. Section 24.(b) of S.L. 2014-120 mandated that the EMC and the Division of Air Quality (DAQ) shall implement 15A NCAC 02D .1903, *Open Burning Without an Air Quality Permit*, as provided in Section 24.(c) of S.L. 2014-120, which added logs and stumps to the list of permissible open burning without an air quality permit and specified that burning of logs or stumps of any size shall not be considered to create a nuisance for purposes of the application of the open burning air quality permitting exceptions listed in Section 24.(c).

Amendments to the Rule 15A NCAC 02D .1903 were governed by Section 24.(d) of S.L. 2014-120 which dictates that: “The Commission shall adopt a rule to amend the Rule 15A NCAC 02D .1903 (Open Burning Without an Air Quality Permit) consistent with Section 24.(c) of S.L. 2014-120. Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be substantively identical to the provisions of Section 24.(c) of S.L. 2014-120 of this section”.

To maintain consistency with the Session Law, the occurrences of “such as” and “any” in Subparagraph (b)(1) of Rule 02D .1903 are not revised.

Below is an excerpt of the relevant portions of S.L. 2014-120:

“OPEN BURNING

SECTION 24.(a) The definitions set out in G.S. 143-212, G.S. 143-213, and 15A NCAC 02D .1902 (Definitions) apply to this section.

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SECTION 24.(b) 15A NCAC 02D .1903 (Open Burning Without an Air Quality Permit). – Until the effective date of the revised permanent rule that the Commission is required to adopt pursuant to Section 3.11(d) of this section, the Commission and the Department shall implement 15A NCAC 02D .1903 (Open Burning Without an Air Quality Permit) as provided in Section 3.11(c) of this section.

SECTION 24.(c) Implementation. – Notwithstanding Paragraph (b) of 15A NCAC 02D .1903 (Open Burning Without an Air Quality Permit), no air quality permit is required for the open burning of leaves, logs, stumps, tree branches, or yard trimmings if the following conditions are met:

4. The material burned originates on the premises of private residences and is burned on those premises.
5. There are no public pickup services available.
6. Nonvegetative materials, **such as** household garbage, lumber, or **any** other synthetic materials, are not burned.
7. The burning is initiated no earlier than 8:00 A.M. and no additional combustible material is added to the fire between 6:00 P.M. on one day and 8:00 A.M. on the following day.
8. The burning does not create a nuisance.
9. Material is not burned when the North Carolina Forest Service has banned burning for that area.

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

SECTION 24.(d) Additional Rule-Making Authority. – The Commission shall adopt a rule to amend 15A NCAC 02D .1903 (Open Burning Without an Air Quality Permit) consistent with Section 3.11(c) of this section. Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be substantively identical to the provisions of Section 24(c) of this section. Rules adopted pursuant to this section are not subject to Part 3 of Article 2A of Chapter 150B of the General Statutes. Rules adopted pursuant to this section shall become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received as provided by G.S. 150B-21.3(b2).

SECTION 24.(e) Sunset. – Section 24(c) of this section expires on the date that rules adopted pursuant to Section 24(d) of this section become effective.”

[Link to the full text of S.L. 2014-120:](https://www.ncleg.gov/enactedlegislation/sessionlaws/html/2013-2014/sl2014-120.html)

<https://www.ncleg.gov/enactedlegislation/sessionlaws/html/2013-2014/sl2014-120.html>

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

“Currently acceptable” has been revised to “the accepted practice of”.

In 02D .1903 (b)(8), “for the purpose of testing and developing” is revised to “to test or develop.”

A “standard qualification program” is revised to “written protocol for the testing or development process.”

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

Subpart (b)(11)(B)(ii) is specifying that the burning of previously demolished structures has no training value, to guard against someone burning such structures for disposal (prohibited

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by Subpart (i)) but claiming it is for training firefighting personnel. By this rule, previously demolished structures have no inherent training value.

Subpart (b)(11)(B)(iii) provides an allowance for what would normally be considered a salvageable item or synthetic material (prohibited by Subpart (i)). The person or persons conducting the burning must demonstrate to the Regional Office Supervisor how the burning of a motor vehicle is of value and not primarily to dispose of synthetic materials or refuse. The demonstration is case-specific. An example may be when a motor vehicle is burned over time by a training unit for firefighter training for their safety and the safety of parties involved in a live vehicle fire.

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

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02D .1904

DEADLINE FOR RECEIPT: Tuesday, June 13, 2022

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

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

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

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

Modified the above as shown in the revised rule, except as noted below:

Page 3, lines 14-24 (now lines 16-26) – S.L. 2011-394 Section 2.(g) required the Commission to adopt a rule that “shall be substantively identical to the provisions of Section 2(f) of this act” which included the terms “at least”, “any”, “each”, and “all” and required the Commission, the Department, and any other political subdivision of the State that implements 15A NCAC 02D .1904 to implement the language in Section 2(f) until the effective date of the rule required to be adopted pursuant to the Session Law. To avoid any misinterpretation or confusion, the identical language from the session law was used in the rule. The rule provisions adopted pursuant to Section 2(f) became effective July 3, 2012, following the legislative review required by S.L. 2011-394 Section 2(g). To maintain consistency with the Session Law and ensure that the language is substantively identical, these instances of “at least,” “any,” “all,” “such,” and “each” were retained.

Below is the relevant excerpt from S.L. 2011-394:

SECTION 2.(e) 15A NCAC 02D .1904 (Air Curtain Burners). - Until the effective date of the revised permanent rule that the Commission is required to adopt pursuant to Section 2(g) of this act, the Commission, the Department, and any other political subdivision of the State that implements 15A NCAC 02D .1904 (Air Curtain Burners) shall implement the rule, as provided in Section 2(f) of this act.

SECTION 2.(f) Implementation. - Notwithstanding subdivision (12) of subsection (b) of 15A NCAC 02D .1904 (Air Curtain Burners), the location of the air curtain 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

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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.

SECTION 2.(g) Additional Rule-Making Authority. - The Commission shall adopt a rule to amend 15A NCAC 02D .1904 (Air Curtain Burners). Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be substantively identical to the provisions of Section 2(f) of this act. Rules adopted pursuant to this section are not subject to the publication of notice of text or public hearing requirements of G.S. 150B-21.2. Rules adopted pursuant to this section are not subject to G.S. 150B-21.9 through G.S. 150B-21.14. Rules adopted pursuant to this section shall become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received as provided by G.S. 150B-21.3(b2).

Link to text of S.L. 2011-394:

<https://www.ncleg.gov/EnactedLegislation/SessionLaws/HTML/2011-2012/SL2011-394.html>

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

Modified the above as noted and shown within the revised rule, with the exception of those appearing in Subparagraph (c)(9), in order to maintain consistency with Session Law 2011-394, Section 2.(f), as described above in response to the previous comment.

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

The phrase “where a temporary air curtain incinerator is defined in Subparagraph (b)(6) of this Rule” is removed.

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

Corrected.

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

Corrected “will” to “shall”.

The examples are listed to align with 40 CFR 60.2969 and 40 CFR 60.3061, as referenced in Subparagraph (d)(2).

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40 CFR 60.3061 begins:

§ 60.3061 What are the requirements for temporary-use incinerators and air curtain incinerators used in disaster recovery?

Your incinerator or air curtain incinerator is excluded from the requirements of this subpart if it is used on a temporary basis to combust debris from a disaster or emergency such as a tornado, hurricane, flood, ice storm, high winds, or act of bioterrorism.

Similarly, 40 CFR 60.2969 begins:

§ 60.2969 What are the requirements for temporary-use incinerators and air curtain incinerators used in disaster recovery?

Your incinerator or air curtain incinerator is excluded from the requirements of this subpart if it is used on a temporary basis to combust debris from a disaster or emergency such as a tornado, hurricane, flood, ice storm, high winds, or act of bioterrorism.

To remain consistent with the referenced federal requirements, the list of examples has been retained.

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

Corrected.

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

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02D .1905

DEADLINE FOR RECEIPT: Tuesday, June 13, 2022

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

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

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

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

Line 4 has been rewritten and no longer includes the word "appropriate".

Line 5 (now line 6) - "Each" is changed to "the", "office" is changed to "offices" and "can" is revised to "may".

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

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

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02D .2203

DEADLINE FOR RECEIPT: Tuesday, June 13, 2022

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

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

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

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

- Page 1, line 5, changed “such” to “the”
- Page 1, line 9, deleted "any"
- Page 1, line 29, deleted "all"
- Page 2, line 5, deleted "all"
- Page 2, line 6, deleted "all"
- Page 2, line 9, replaced "Any" with "A" and deleted "all"
- Page 2, line 11, replaced "Any" with "A" and changed “such as” to “including”

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

- Page 1, line 5, changed “necessary” to “needed”
- Page 1, line 14, deleted “at least”
- Page 1, line 31, changed “at least” to “not less than”

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

This determination is made on a case-by-case basis. An example of this is when the Director requires a public hearing for a permit action (that does not otherwise require a public hearing) at a facility that has previously generated substantial public interest. Without the term “significant”, any type or amount of public interest would require a public hearing (e.g., even one comment that supports the permit and agency’s action).

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

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Commission Counsel

Date submitted to agency: June 8, 2022

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02Q .0104

DEADLINE FOR RECEIPT: Tuesday, June 13, 2022

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

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

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

These revisions have been made.

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

This revision has been made.

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

“Under” is revised to “pursuant to” in these three instances.

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

This revision has been made.

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

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02Q .0105

DEADLINE FOR RECEIPT: Tuesday, June 13, 2022

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

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

- Page 1, line 5, changed “such” to “the”
- Page 1, line 7, changed “each” to “the”

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

- Page 1, line 4, changed “applicable” to “the”

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

- Page 1, line 26, changed “can” to “may”

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

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02Q .0206

DEADLINE FOR RECEIPT: Tuesday, June 13, 2022

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

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

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

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

- Page 1, lines 7 and 8, deleted "as applicable"
- Page 1, line 17, deleted “applicable”
- Page 1, line 14 - this instance of "reasonable" relates to language required for Title V permit fees under 40 CFR Part 70, which states:

40 CFR 70.4(b) Elements of the initial program submission. Any State that seeks to administer a program under this part shall submit to the Administrator a letter of submittal from the Governor or his designee requesting EPA approval of the program and at least three copies of a program submission. The submission shall contain the following:

...
*(7): A demonstration, consistent with, that the permit fees required by the State program are sufficient to cover **permit program costs**.*

40 CFR 70.2 Definitions:

*Permit program costs means all **reasonable** (direct and indirect) costs required to develop and administer a permit program, as set forth in § 70.9(b) of this part (whether such costs are incurred by the permitting authority or other State or local agencies that do not issue permits directly, but that support permit issuance or administration).*

This instance of “reasonable” was not revised.

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

Page 1, paragraph (e), line 14, added reference to definition of synthetic minor facility “...as defined in 15A NCAC 02Q .0503, ...”

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

Lawrence R. Duke
Commission Counsel

Date submitted to agency: June 8, 2022

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02Q .0304

DEADLINE FOR RECEIPT: Tuesday, June 13, 2022

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

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

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

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

- Page 1, line 11, deleted "all"
- Page 1, line 22, the language from Subparagraph (b)(4) is directly from N.C.G.S. 143-215.108(c)(5a), which provides the EMC with the power:

“(5a) To require that an applicant satisfy the Department that the applicant, or any parent, subsidiary, or other affiliate of the applicant or parent:

- a. Is financially qualified to carry out the activity for which a permit is required under subsection (a); and*
- b. Has substantially complied with the air quality and emission control standards applicable to any activity in which the applicant has previously engaged, and has been in substantial compliance with federal and state laws, regulations, and rules for the protection of the environment.”*

To remain consistent with the Statute, the occurrences of “any” and “substantial” in Subparagraph (b)(4) were not revised.

- Page 1, line 26, deleted "all"
- Page 2, line 14, replaced "any" with "an"
- Page 2, line 17, replaced "each" with "the"
- Page 2, line 23, replaced "all" with "the"

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

- Page 1, lines 19, 21, and 22, This language is directly from N.C.G.S. 143-215.108(c)(5a). See response above to Page 1, line 22.
- Page 1, line 26, replaced "at least" with "no less than"

Lawrence R. Duke
Commission Counsel

Date submitted to agency: June 8, 2022

- Page 1, line 27, replaced "at least" with "no less than"
- Page 2, line 4, replaced "at least" with "no less than"
- Page 2, line 5/6, replaced "at least" with "no later than"
- Page 2, line 8, deleted "imminent"
- Page 2, line 13, deleted "necessary"
- Page 2, line 14, deleted "that is necessary"
- Page 2, line 15, deleted "applicable"

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

These comments have been addressed.

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

The items in Parts (A) and (B) of Subparagraph (b)(4) are directly from N.C.G.S. 143-215.108(c)(5a), which provides the EMC with the power:

- “(5a) To require that an applicant satisfy the Department that the applicant, or any parent, subsidiary, or other affiliate of the applicant or parent:*
- a. Is financially qualified to carry out the activity for which a permit is required under subsection (a); and*
 - b. Has substantially complied with the air quality and emission control standards applicable to any activity in which the applicant has previously engaged, and has been in substantial compliance with federal and state laws, regulations, and rules for the protection of the environment.”*

To remain consistent with the Statute, the language of Subparagraph (b)(4) was not revised.

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

- Page 2, line 22, replaced "for the duration of" with "during"

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

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02Q .0305

DEADLINE FOR RECEIPT: Tuesday, June 13, 2022

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

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

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

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

Reference to Rule 02Q .0507(d)(3) is added to 02Q .0305(1)(d). Additionally, N.C.G.S. 143-215.108(c)(5a) provides the EMC with the power:

“(5a) To require that an applicant satisfy the Department that the applicant, or any parent, subsidiary, or other affiliate of the applicant or parent:

- a. Is financially qualified to carry out the activity for which a permit is required under subsection (a); and*
- b. Has substantially complied with the air quality and emission control standards applicable to any activity in which the applicant has previously engaged, and has been in substantial compliance with federal and state laws, regulations, and rules for the protection of the environment.”*

To remain consistent with the Statute, the language of Subitem (d)(1) was not revised.

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

The cross reference to Paragraph (b) has been removed.

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

- Page 1, line 23, deleted “appropriate” and added reference to 15A NCAC 02Q .0104, which specifies the method for obtaining and filing forms.

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

- Page 1, line 24, replaced "any" with "the"

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

Lawrence R. Duke
Commission Counsel

Date submitted to agency: June 8, 2022

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02Q .0307

DEADLINE FOR RECEIPT: Tuesday, June 13, 2022

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

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

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

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

- Page 1, line 17, deleted both instances of “all”
- Page 1, line 20, changed “any emissions change involved in any permit modification” to “an emissions change involved in a permit modification”
- Page 1, line 24, replaced “any” with “the”
- Page 1, line 31, replaced “each” with “the”
- Page 1, line 32, replaced “each such” with “the”

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

- Page 1, line 25, changed “at least” to “not less than”
- Page 1, line 27, replaced “at least” to “not less than”
- Page 1, line 29, deleted “in at least one location”

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

This determination is made on a case-by-case basis. An example of this is when the Director requires a public hearing for a permit action (that does not otherwise require a public hearing) at a facility that has previously generated substantial public interest. Without the term “significant”, any type or amount of public interest would require a public hearing (e.g., even one comment that supports the permit and agency’s action).

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

Lawrence R. Duke
Commission Counsel

Date submitted to agency: June 8, 2022

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02Q .0505

DEADLINE FOR RECEIPT: Tuesday, June 13, 2022

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

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

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

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

Reference to Rule 02D .0507(d)(3) is added to 02D .0505(1)(d). Additionally, N.C.G.S. 143-215.108(c)(5a) provides the EMC with the power:

“(5a) To require that an applicant satisfy the Department that the applicant, or any parent, subsidiary, or other affiliate of the applicant or parent:

- a. Is financially qualified to carry out the activity for which a permit is required under subsection (a); and*
- b. Has substantially complied with the air quality and emission control standards applicable to any activity in which the applicant has previously engaged, and has been in substantial compliance with federal and state laws, regulations, and rules for the protection of the environment.”*

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

In Item (5), “any” is revised to “an”.

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

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02Q .0507

DEADLINE FOR RECEIPT: Tuesday, June 13, 2022

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

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

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

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

With the exception of the occurrences in Subparagraph (d)(3), these words have been removed or revised. The language in Parts (A) and (B) of Subparagraph (d)(3) reflects N.C.G.S. 143-215.108(c)(5a), which provides the EMC with the power:

- “(5a) To require that an applicant satisfy the Department that the applicant, or any parent, subsidiary, or other affiliate of the applicant or parent:*
- a. Is financially qualified to carry out the activity for which a permit is required under subsection (a); and*
 - b. Has substantially complied with the air quality and emission control standards applicable to any activity in which the applicant has previously engaged, and has been in substantial compliance with federal and state laws, regulations, and rules for the protection of the environment.”*

To maintain continuity with this N.C.G.S., the language in 02D .0507(d)(3)(A) and (B) was not revised.

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

Page 1, Line 20 – “giving all necessary data” is revised to “with complete data”

Page 1, line 22 - “to the extent necessary” is defined by the phrase that follows, “to evaluate the application”

Page 1, Line 23 – the word “any” is removed. The phrase “other information necessary” is defined by the phrase that follows, “to evaluate the source and its air pollution abatement equipment.”

Lawrence R. Duke
Commission Counsel

Date submitted to agency: June 8, 2022

Page 1, line 23 – “any” has been removed. “necessary” is defined by the phrase that follows, “to evaluate the source and its air pollution abatement equipment”.

Page 1, Lines 34 through 36 – this language is directly from N.C.G.S. 143-215.108(c)(5a). See additional information in the response to the previous comment. To maintain continuity with the N.C.G.S., the language in 02D .0507(d)(3)(A) and (B) was not revised.

Page 2, lines 9 and 10 – “as necessary” and “applicable” are removed.

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

Paragraph (a) has been revised to clarify that the language applies to both new and existing sources.

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

The language in Subparagraph (d)(3) is directly from N.C.G.S. 143-215.108(c)(5a), which provides that EMC has the power:

“(5a) To require that an applicant satisfy the Department that the applicant, or any parent, subsidiary, or other affiliate of the applicant or parent:

- a. Is financially qualified to carry out the activity for which a permit is required under subsection (a); and*
- b. Has substantially complied with the air quality and emission control standards applicable to any activity in which the applicant has previously engaged, and has been in substantial compliance with federal and state laws, regulations, and rules for the protection of the environment.”*

The Director might require this information in order to determine that a facility is substantially complying with the current permit and regulations to which it is subject, before issuing a new or modified permit to the facility.

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

This change has been made.

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

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02Q .0508

DEADLINE FOR RECEIPT: Tuesday, June 13, 2022

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

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

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

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

Modified the above as noted and shown in the revised rule, except as noted below:

Paragraph (b) is directly from 40 CFR 70.6(a)(1). To maintain consistency with the Title V requirements in Part 70, this language was not revised.

The language of paragraph (c) aligns with the requirements of 40 CFR 70.6(a)(1)(iii). Furthermore, this instance of “any” is necessary because there may not necessarily be a resulting emissions limit. Therefore, this language was not revised.

The language of paragraph (e) aligns with the requirements of 40 CFR 70.6(a)(2). The inclusion of the word, “all” adds clarity to this requirement.

Page 1, line 30, “any” is retained to maintain consistency with 40 CFR 70.6(a)(3)(iii)(B). Additionally, there may not always be a corrective action or preventive measure taken for a deviation.

Subparagraph (f)(3) – this language is required to maintain consistency with EPA’s Title V program requirements in 40 CFR 70.6(a)(3)(iii)(A). Additionally, inclusion of “all” eliminates any ambiguity around which deviations must be certified.

Subparagraph (i)(2) – this language aligns with 40 CFR 70.6(a)(5) and is needed to maintain consistency with EPA’s Title V program requirements.

Subparagraph (i)(4) – this language is directly from 40 CFR 70.6(a)(6)(ii) and is retained to maintain consistency with EPA’s Title V program requirements for State Operating Permit programs.

Subparagraph (i)(6) – this language is directly from 40 CFR 70.6(a)(6)(iii) and is retained to maintain consistency with EPA’s Title V program requirements for State Operating Permit programs.

Subparagraph (i)(8) – this language is directly from 40 CFR 70.6(a)(6)(iv) and is retained to maintain consistency with EPA’s Title V program requirements for State Operating Permit programs.

Lawrence R. Duke
Commission Counsel

Date submitted to agency: June 8, 2022

Part (i)(9)(A) – this language is directly from 40 CFR 70.6(a)(6)(v) and is retained to maintain consistency with EPA’s Title V program requirements for State Operating Permit programs. Part (j) – this language is directly from 40 CFR 70.6(a)(9) and retained to maintain consistency with EPA’s Title V program requirements for State Operating Permit programs, except for one change in Subparagraph (j)(2) that adds clarity.

Subparagraph (l)(2) – “any” is retained since this language is directly from 40 CFR 70.6(c)(2)(ii) and adds clarity to the requirement.

Subparagraph (m)(2) aligns with 40 CFR 70.6(b)(2). Additionally, these instances of “any” add clarity to the requirement since there may not be any dates that are not met, or preventive or corrective measures adopted.

Subparagraph (n)(3) aligns with 40 CFR 70.5(c)(5) and (6). To maintain consistency with EPA’s State Operating Permit program requirements, this language was largely kept intact.

Also, noted a typographical error in subparagraph (i)(14), and corrected “0207” to “.0207”.

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

Modified the above as shown in the revised rule, except as noted below:

“Applicable” is necessary because not all requirements are applicable to each source. The permit content only needs to address the requirements to which that source is subject. Further, “applicable requirements” is defined in 15A NCAC 02D .0605 and 02Q .0103, therefore this phrase was kept intact without modification.

Subparagraph (j), lines 7-8 - this language is directly from 40 CFR 70.6(a)(9) and is retained to ensure consistency with EPA’s requirements for State Operating Permit programs.

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

Paragraph (a) is directly from 40 CFR 70.6(a)(1)(i). To maintain consistency with the Title V requirements in Part 70, the phrase “each term or condition” has not been revised.

Page 2, line 6 – to maintain consistency with the language of Part 70 around “permit terms and conditions”, and the use of this phrase elsewhere in Rule 02Q .0508, this language was not revised.

The instances of “terms and conditions” in Subparagraph (j) are directly from 40 CFR 70.6(a)(9) and retained to ensure consistency with EPA’s requirements for State Operating Permit programs.

Part (k) is required by 40 CFR 70.6(b)(2), which uses “terms and conditions”. Therefore, this language is retained.

Paragraph (n) – “terms and conditions” is retained for consistency throughout the rule.

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

Modified, see new wording.

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

Modified to say, “no less frequent than every six months.” This provision provides a maximum timeframe in between reports, but some cases may require more frequent reporting. This could be due to another state or federal rule, or in a case-by-case decision agreed to by the permittee. In any case, reporting frequencies that differ from this 6-month timeframe are specified in the permit conditions that are agreed to by the permittee.

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

Modified as suggested.

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

Subparagraph (i)(9) - “Timely” is defined in 15A NCAC 02Q .0503. In this context, “timely” would refer to 15A NCAC 02Q .0503(18)(f), which states:

“(18) “Timely” means: ...

... (f) for requests for additional information, as specified by the Director in a request for additional information by the Director; ...”

Since these timelines are established on a case-by-case basis, there is no more specific date that can be specified in Subparagraph (i)(9). Therefore, this language was not changed.

Subparagraph (i)(11) has been clarified. “Section 502(b)(10) changes” refers to changes made pursuant to the provisions under Section 502(b)(10) of the Clean Air Act, which are also codified in 15A NCAC 02Q .0523(a).

Subparagraph (i)(16) was not removed. Sources are evaluated on a case-by-case basis by the Division. Since these rules are applied to a wide variety of sources and processes, certain conditions are determined on a case-by-case basis to address the specific needs of a facility.

N.C.G.S. 143.108(c)(1) provides the Commission the power to “grant and renew a permit with any conditions attached that the Commission believes necessary to achieve the purposes of this Article or the requirements of the Clean Air Act and implementing regulations adopted by the United States Environmental Protection Agency;” Since this language is established pursuant to 40 CFR 70.6(c)(6), it is necessary to achieve the purposes of the Clean Air Act and EPA implementing regulations.

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

Modified as suggested.

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

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

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02Q .0710

DEADLINE FOR RECEIPT: Tuesday, June 13, 2022

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

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

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

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

- Page 1, line 16, deleted “all other relevant supporting materials,”
- Page 1, line 17, deleted “all”
- Page 1, line 30, replaced "Any persons" with "A person"
- Page 1, line 31, deleted "for each page "

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

- Page 1, line 24, changed “at least” to “not less than”
- Page 1, line 26, changed “at least” to “not less than”
- Page 1, line 28, deleted “in at least one location”

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

This determination is made on a case-by-case basis. An example of this is when the Director requires a public hearing for a permit action (that does not otherwise require a public hearing) at a facility that has previously generated substantial public interest.

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

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

2
3 **15A NCAC 02D .0103 COPIES OF REFERENCED FEDERAL REGULATIONS**

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

9 (1) ~~Asheville Regional Office, 2090 Highway 70, Swannanoa, North Carolina 28778;~~

10 (2) ~~Winston-Salem Regional Office, 450 West Hanes Mill Road, Suite 300, Winston-Salem, NC~~
11 ~~27105;~~

12 (3) ~~Mooreville Regional Office, 610 East Center Avenue, Suite 301, Mooreville, North Carolina~~
13 ~~28115;~~

14 (4) ~~Raleigh Regional Office, 3800 Barrett Drive, Post Office Box 27687, Raleigh, North Carolina~~
15 ~~27609;~~

16 (5) ~~Fayetteville Regional Office, Systel Building, 225 Green Street, Suite 714, Fayetteville, North~~
17 ~~Carolina 28301;~~

18 (6) ~~Washington Regional Office, 943 Washington Square Mall, Washington, North Carolina 27889;~~
19 ~~and~~

20 (7) ~~Wilmington Regional Office, 127 Cardinal Drive Extension, Wilmington, North Carolina 28405.~~

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

23
24 *History Note: Authority G.S. 143-215.3; 150B-21.6;*

25 *Eff. December 1, 1976;*

26 *Amended Eff. December 1, 2005; December 1, 1992; August 1, 1991; July 1, 1988; July 1, 1987;*

27 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 5,*
28 *2016;*

29 *Amended Eff. September 1, 2023; January 1, 2018.*

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

2
3 **SECTION .0500 - EMISSION CONTROL STANDARDS**
4

5 **15A NCAC 02D .0501 COMPLIANCE WITH EMISSION CONTROL STANDARDS**

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

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

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

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

19 (1) In order for this mix of alternative controls to be permitted, the Director shall determine that the
20 following conditions are met:

21 (A) Sources pursuant to which 15A NCAC 02D .0524, .0530, .0531, ~~.1110~~ .1110 or .1111, the
22 federal New Source Performance Standards (NSPS), the federal National Emission
23 Standards for Hazardous Air Pollutants (NESHAP), regulations established pursuant to
24 Section 111(d) of the federal Clean Air Act, or state or federal Prevention of Significant
25 Deterioration (PSD) requirements ~~apply, apply~~ shall have emissions no larger than if there
26 were not an alternative mix of controls;

27 (B) The facility or facilities is located in an attainment ~~area or area~~, an unclassified area
28 unclassifiable area, or in an area that has been demonstrated to be attainment by the
29 statutory deadlines with reasonable further progress toward attainment for those pollutants
30 being considered;

31 (C) All of the emission sources affected by the alternative mix are in compliance with
32 applicable regulations or are in compliance with established compliance agreements; and

33 (D) The review of an application for the proposed mix of alternative controls and the
34 enforcement of any the resulting permit will shall not require expenditures ~~on the part~~ of
35 the State funds in excess of five times that which would otherwise be required for the
36 review and enforcement of ~~other permits, permits without an alternative mix of controls.~~

1 (2) The owners or operators of the facility or facilities shall demonstrate the alternative mix of controls
2 is equivalent in total allowed emissions, reliability, enforceability, and environmental impact to the
3 aggregate of the ~~otherwise applicable~~ individual emission ~~standards; standards to which the facility~~
4 ~~would be subject without the alternative mix of controls;~~ and

5 (A) that the alternative mix approach does not interfere with the attainment and maintenance
6 of the ambient air quality standards and does not interfere with the Prevention of
7 Significant Deterioration (PSD) PSD program, which shall include modeled calculations
8 of the amount, if any, of PSD increment consumed or ~~created; created as defined in Clean~~
9 Air Act Section 163;

10 (B) that the alternative mix approach conforms with reasonable further progress requirements
11 as defined in Clean Air Act Section ~~171(1), 171(1) if the source is located in any a~~
12 nonattainment area;

13 (C) that the emissions pursuant to the alternative mix approach are quantifiable, and emission
14 trades among ~~them~~ the sources involved in the alternative mix approach are equivalent;
15 and

16 (D) that the pollutants controlled pursuant to the alternative mix approach are of the same
17 criteria pollutant categories, except that emissions of ~~some~~ criteria pollutants that contain
18 hazardous pollutants and are used in alternative emission control strategies are subject to
19 the limitations as defined in 44 ~~FR-Fed. Reg.~~ 71784 (December 11, 1979), Subdivision
20 D.1.c.ii. The Federal Register referenced in this Part is ~~hereby~~ incorporated by reference
21 and does not include subsequent amendments or editions. A copy of 44 Fed. Reg. 71784
22 may be obtained free of charge and found online at
23 <https://www.govinfo.gov/content/pkg/FR-1979-12-11/pdf/FR-1979-12-11.pdf>.

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

31 (3) The emission rate limitations or control techniques of each source within the facility or facilities
32 subjected to the alternative mix of controls shall be specified in the facility's permit or facilities'
33 permits.

34 (4) Compliance schedules and enforcement actions shall not be affected because an application for an
35 alternative mix of controls is being prepared or is being reviewed.

36 (5) The Director may waive or reduce requirements in this Paragraph up to the extent allowed by the
37 Emissions Trading Policy Statement published in the Federal Register of April 7, 1982, pages

1 15076-15086, provided that the analysis required by Paragraph (e) of this Rule supports ~~any the~~
2 waiver or reduction of requirements. The Federal Register referenced in this Subparagraph is ~~hereby~~
3 incorporated by reference and does not include subsequent amendments or editions.

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

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

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

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

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

25
26 *History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);*
27 *Eff. February 1, 1976;*
28 *Amended Eff. August 1, 1991; October 1, 1989;*
29 *Temporary Amendment Eff. March 8, 1994 for a period of 180 days or until the permanent rule is*
30 *effective, whichever is sooner;*
31 *Amended Eff. June 1, 2008; April 1, 2001; April 1, 1999; July 1, 1996; February 1, 1995; July 1,*
32 *1994;*
33 *Readopted Eff. November 1, ~~2020-2020~~;*
34 *Amended Eff. September 1, 2023.*

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

2
3 **15A NCAC 02D .0546 CONTROL OF EMISSIONS FROM LOG FUMIGATION OPERATIONS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 (2) The owner or operator shall submit ~~a quarterly summary report, reports, signed by with the original~~
4 ~~signature of the permittee or the authorized responsible official, of the monitoring and recordkeeping~~
5 ~~activities. activities postmarked no~~ No later than Within 30 days after the end of ~~each~~ the calendar
6 year ~~quarter, quarter, reports shall be postmarked or received by the Division in accordance with~~
7 15A NCAC 02D .0605(i). The report shall contain the following:

8 (A) the company name, address, and facility ID number;

9 (B) the calendar year quarter represented by the report;

10 (C) the daily and total fumigant usage in pounds for the each quarter;

11 (D) a summary of the monitoring data required by the permit that was collected during the
12 quarter; and

13 (E) a summary of deviations from the monitoring parameters or allowable operating
14 exceedances from the levels established in the permit. permit that occurred during the
15 quarter of any monitoring parameters.

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

21
22 *History Note:* Authority G.S. 143-215.3(a)(1); 143-215.107(a)(4); 143-215.107(a)(5);

23 Eff. November 1, 2020, 2020;

24 Amended Eff. September 1, 2023.

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

2
3 **15A NCAC 02D .0605 GENERAL RECORDKEEPING AND REPORTING REQUIREMENTS**

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

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

12 (b) The permit shall specify:

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

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

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

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

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

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

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

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

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

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

8
9
10 History Note: Authority G.S. 143-215.3(a)(1); ~~143-215-65;~~ 143-215.65; 143-215.66; ~~143-215.107(a)(4);~~ 143-
11 215.107(a)(4);
12 Eff. February 1, 1976;
13 Amended Eff. January 1, 2007; April 1, 1999; July 1, 1984; June 18, 1976;
14 Readopted Eff. November 1, ~~2019;~~ 2019;
15 Amended Eff. September 1, 2023.
16
17

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

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

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

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

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

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

15 (B) there are no public pickup services available;

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

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

20 (E) the burning does not create a nuisance; and

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

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

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

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

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

36 (i) a signed, written statement waiving objections to the open burning associated with
37 the land clearing operation is obtained and submitted to, and the exception granted

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31
32 *History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); S.L. 2011-394, s.2;*

33 *Eff. July 1, 1996;*

34 *Amended Eff. June 13, 2016; March 19, 2015; July 3, 2012; July 1, 2007; December 1, 2005; June*
35 *1, 2004; July 1, 1998;*

36 *Readopted Eff. September 1, ~~2019-2019~~;*

37 *Amended Eff. September 1, 2023.*

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

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

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

- 5 (1) new and existing air curtain incinerators subject to 40 CFR 60.2245 through 60.2260 or 60.2970
6 through 60.2974 that combust the following materials:
7 (A) 100 percent wood waste;
8 (B) 100 percent clean lumber;
9 (C) 100 percent yard waste; or
10 (D) 100 percent mixture of only wood waste, clean lumber, and yard waste.
11 (2) new and existing temporary air curtain incinerators used at industrial, commercial, institutional, or
12 municipal ~~sites, sites where a temporary air curtain incinerator is defined in Subparagraph (b)(6) of~~
13 ~~this Rule.~~

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

- 15 (1) "Clean lumber" means wood or wood products that have been cut or shaped and include wet, air-
16 dried, and kiln-dried wood products. Clean lumber does not include wood or wood products that
17 have been painted, pigment-stained, or pressure treated, or manufactured wood products that contain
18 adhesives or resins.
19 (2) "Malfunction" means ~~any-an~~ unavoidable failure of air pollution control equipment, process
20 equipment, or a process to operate in a normal or usual manner. Failures caused entirely or in part
21 by poor maintenance, careless ~~operations operations,~~ or ~~any other another~~ upset condition within
22 the control of the emission source are not considered a malfunction.
23 (3) "New air curtain incinerator" means an air curtain incinerator that began operating on ~~or after~~ the
24 effective date of this ~~Rule, Rule or later.~~
25 (4) "Operator" means the person in operational control over the open burning.
26 (5) "Permanent air curtain incinerator" means an air curtain incinerator whose owner or operator
27 operates the air curtain incinerator at one facility or site during the term of the permit.
28 (6) "Temporary air curtain incinerator" means an air curtain incinerator whose owner or operator moves
29 the air curtain incinerator to another site and operates it for land clearing or right-of-way
30 maintenance at that site ~~at least once on one or more occasions~~ during the term of its permit.
31 (7) "Temporary-use air curtain incinerator used in disaster recovery" means an air curtain incinerator
32 that meets ~~all of~~ the following requirements:
33 (A) combusts less than 35 tons per day of debris consisting of the materials listed in Parts
34 (a)(1)(A) through (C) of this Rule;
35 (B) combusts debris within the boundaries of an area officially declared a disaster or
36 emergency by federal, ~~state state,~~ or local government; and

1 (C) combusts debris for less than 16 weeks unless the owner or operator submits a request for
2 additional time ~~at least no less than~~ 1 week prior to the end of the 16-week period and
3 provides the reasons that the additional time is needed. The Director ~~will shall~~ provide
4 written approval for the additional time if he or she finds that the additional time is
5 warranted based on the information provided in the request.

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

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

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

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

15 (C) clean lumber; and

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

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

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

23 (B) clean lumber; and

24 (C) wood waste.

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

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

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

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

- 1 (4) burning shall be conducted only between the hours of 8:00 a.m. and 6:00 p.m. No combustible
2 materials shall be added to the air curtain incinerator prior to or after this time period;
- 3 (5) The air curtain incinerator shall not be operated more than the maximum source operating hours-
4 per-day and days-per-week. The maximum source operating hours-per-day and days-per-week shall
5 be set to protect the ambient air quality standard and prevention of significant deterioration (PSD)
6 increment for particulate. The maximum source operating hours-per-day and days-per-week shall
7 be determined using the modeling procedures in 15A NCAC 02D .1106(b), (c), and (f). This
8 Subparagraph shall not apply to temporary air curtain incinerators;
- 9 (6) air curtain incinerators shall meet manufacturer's specifications for operation and upkeep to ensure
10 complete burning of material charged into the pit. Manufacturer's specifications shall be kept on site
11 and be available for inspection by Division staff;
- 12 (7) the owner or operator of an air curtain incinerator shall allow the ashes to cool and water the ash
13 prior to its removal to prevent the ash from becoming airborne;
- 14 (8) only distillate oil, kerosene, diesel fuel, natural gas, or liquefied petroleum gas may be used to start
15 the fire; and
- 16 (9) the location of the burning shall be at least 300 feet from any dwelling, group of dwellings, or
17 commercial or institutional establishment, or other occupied structure not located on the property
18 on which the burning is conducted. The regional office supervisor may grant exceptions to the
19 setback requirements if a signed, written statement waiving objections to the air curtain burning is
20 obtained from a resident or an owner of each dwelling, commercial or institutional establishment,
21 or other occupied structure within 300 feet of the burning site. In case of a lease or rental agreement,
22 the lessee or renter, and the property owner shall sign the statement waiving objections to the
23 burning. The statement shall be submitted to and approved by the regional office supervisor before
24 initiation of the burn. Factors that the regional supervisor shall consider in deciding to grant the
25 exception include: all the persons who need to sign the statement waiving the objection have signed
26 it; the location of the burn; and the type, amount, and nature of the combustible substances.

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

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

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

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

14 (f) Opacity limits.

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

26 (g) Performance tests.

- 27 (1) ~~All initial~~ Initial and annual opacity tests shall be conducted using 40 CFR 60 Appendix A-4 Test
28 Method 9 to determine compliance with the opacity limitations specified in Subparagraph (f)(1) of
29 this Rule.
- 30 (2) The owner or operator of an existing air curtain incinerator shall conduct an initial performance test
31 for opacity as specified in 40 CFR 60.8 ~~on or before~~ within 90 days after the effective date of this
32 rule.
- 33 (3) The owner or operator of a new air curtain incinerator shall conduct an initial performance test for
34 opacity as specified in 40 CFR 60.8 within 60 days after achieving the maximum charge rate at
35 which the affected air curtain incinerator will be operated, but not later than 180 days after initial
36 startup of the air curtain incinerator.

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

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

7 (h) Recordkeeping and Reporting Requirements.

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

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

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

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

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

- 27 (1) 40 CFR Part 60, Subpart CCCC, shall also comply with 40 CFR 60.2245 through 60.2260; or
28 (2) 40 CFR Part 60, Subpart EEEE, shall also comply with 40 CFR 60.2970 through 60.2974.

29
30 *History Note: Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5); 143-215.107(a)(10);*
31 *143-215.108; 40 CFR 60.2865; S.L. 2011-394, s.2;*
32 *Eff. July 1, 1996;*
33 *Amended Eff. July 3, 2012; July 1, 2007; December 1, 2005; August 1, 2004;*
34 *Readopted Eff. September 1, ~~2019-2019;~~*
35 *Amended Eff. September 1, 2023.*
36
37

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

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

4 ~~Inquiries, requests, and plans shall be handled by the appropriate~~The Department of Environmental Quality regional
5 ~~office.~~ offices shall handle inquiries, requests, and plans for facilities located in their respective regions. Contact
6 information for ~~each~~the regional ~~office~~offices ~~can~~may be found on the Division website at
7 <https://deq.nc.gov/about/divisions/air-quality/regional-offices>. ~~They are:~~

- 8 (1) ~~Asheville Regional Office, 2090 U.S. 70 Highway, Swannanoa, North Carolina 28778;~~
9 (2) ~~Winston Salem Regional Office, 450 West Hanes Mill Road, Suite 300, Winston Salem, North~~
10 ~~Carolina 27105;~~
11 (3) ~~Mooresville Regional Office, 610 East Center Avenue, Suite 301, Mooresville, North Carolina~~
12 ~~28115;~~
13 (4) ~~Raleigh Regional Office, 3800 Barrett Drive, Raleigh, North Carolina 27609;~~
14 (5) ~~Fayetteville Regional Office, 225 Green Street, Suite 714, Fayetteville, North 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;*
24 *Amended Eff. September 1, 2023; September 1, 2019.*
25
26

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

2
3 **15A NCAC 02D .2203 PUBLIC NOTICE**

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

7 (b) Notice of proposed Consent Order:

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

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

- 29 (1) The Director shall consider ~~all~~ requests for a public hearing, and if significant public interest for a
30 public hearing exists, then he or she shall hold a public hearing.
31 (2) The Director shall give notice of the public hearing at least not less than 30 days before the hearing.
32 (3) The notice shall be posted on the North Carolina Division of Air Quality web site at
33 <http://deq.nc.gov/about/divisions/air-quality/air-quality-enforcement/special-orders-by-consent>
34 and provided to those persons specified in G.S. 143-215.110(a1)(2) for air quality special orders.
35 (4) The notice shall include the information specified in Subparagraph (b)(4) of this Rule. It shall also
36 state the time and location for the hearing and the procedures for providing comment.

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

4 (A) a copy of the public notice;

5 (B) a copy of ~~all~~ the written comments and supporting documentation received;

6 (C) a summary of ~~all~~ the oral comments received;

7 (D) recommendations of the hearing officer to the Commission; and

8 (E) a proposed Consent Order for the Commission's consideration.

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

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

15
16 *History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.3(a)(3); 143-215.3(a)(4); 143-215.110;*

17 *Eff. April 1, 2004;*

18 *Readopted Eff. February 1, ~~2018~~, 2018;*

19 *Amended Eff. September 1, 2023.*

20

21

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

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

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

10 (b) An applicant for a permit or permit modification shall submit the application for permit or permit modification as
11 follows: ~~[Applications for a permit or permit modification shall be submitted as follows:]~~

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

16 (2) ~~Provide a hard copy of submittals [Any submittal to the Division required under] pursuant to 15A~~
17 ~~NCAC 02Q .0300 [shall be provided in hard copy format] with original signature of the responsible~~
18 ~~official, as defined in 15A NCAC 02Q .0303, to the [appropriate] regional office address for the~~
19 ~~region in which the facility is located in accordance with 15A NCAC 02Q .0105.~~

20 (3) ~~After [such time that] the Division makes available a system for receiving electronic submittals, as~~
21 ~~identified in Paragraph (c) of this Rule, applicants [submittals] may [be made] submit permit~~
22 ~~applications in electronic format following the procedures in Paragraph (c) of this Rule in lieu of~~
23 ~~the procedures in Subparagraphs (1) and (2) of this Paragraph.~~

24 (c) ~~[All electronic]~~ Electronic submittals shall meet the following requirements:

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

31 (2) ~~The applicant shall provide electronic submittals [Submittals to the Division] pursuant to 15A~~
32 ~~NCAC 02Q .0300 to the Division [shall be made] through the system identified in Subparagraph (1)~~
33 ~~of this Paragraph, or as otherwise specified by the Division on its permitting website at~~
34 ~~<https://deq.nc.gov/about/divisions/air-quality/air-quality-permitting>.~~

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

36
37 *History Note: Authority G.S. 143-215.3(a)(1); 143-215.108; 143-215.109;*

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Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;

Eff. July 1, 1994;

Amended Eff. January 1, 2015; August 1, 2002; July 1, 1997;

Readopted Eff. April 1, ~~2018-2018~~;

Amended Eff. September 1, 2023.

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

2
3 **15A NCAC 02Q .0105 COPIES OF REFERENCED DOCUMENTS**

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

9 (1) ~~Asheville Regional Office, 2090 Highway 70, Swannanoa, North Carolina 28778;~~

10 (2) ~~Winston-Salem Regional Office, 450 West Hanes Mill Road, Suite 300, Winston-Salem, NC 27105;~~

11 (3) ~~Mooresville Regional Office, 610 East Center Avenue, Suite 301, Mooresville, North Carolina~~
12 ~~28115;~~

13 (4) ~~Raleigh Regional Office, 3800 Barrett Drive, Post Office Box 27687, Raleigh, North Carolina~~
14 ~~27609;~~

15 (5) ~~Fayetteville Regional Office, Systel Building, 225 Green Street, Suite 714, Fayetteville, North~~
16 ~~Carolina 28301;~~

17 (6) ~~Washington Regional Office, 943 Washington Square Mall, Washington, North Carolina 27889;~~
18 ~~and~~

19 (7) ~~Wilmington Regional Office, 127 Cardinal Drive Extension, Wilmington, North Carolina 28403.~~

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

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

29
30 *History Note: Authority G.S. 143-215.3(a)(1); 150B-19(5);*

31 *Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule*
32 *becomes effective, whichever is sooner;*

33 *Eff. July 1, 1994;*

34 *Amended Eff. December 1, 2005;*

35 *Readopted Eff. April 1, 2018, 2018;*

36 *Amended Eff. September 1, 2023.*

37

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

2

3 **15A NCAC 02Q .0206 PAYMENT OF FEES**

4 (a) Payment of fees required pursuant to 15A NCAC 02Q .0200 may be by check or money order made payable to
5 the N.C. Department of Environmental Quality. Annual permit fee payments shall refer to the permit number.

6 (b) If, within 30 days after being billed, the permit holder fails to pay an annual fee required pursuant to 15A NCAC
7 02Q .0200, the Director may initiate action to terminate the permit pursuant to 15A NCAC 02Q .0309 or ~~.0519.~~
8 ~~.0519~~ as applicable.

9 (c) A holder of multiple permits may arrange to consolidate the payment of annual fees into one annual payment.

10 (d) The payment of the permit application fee required by 15A NCAC 02Q .0200 shall accompany the application
11 and is non-refundable.

12 (e) The Division shall annually prepare and make publicly available an accounting showing aggregate fee payments
13 collected pursuant to 15A NCAC 02Q .0200 from facilities that have obtained or will obtain permits pursuant to 15A
14 NCAC 02Q .0500 except synthetic minor facilities, as defined in 15A NCAC 02Q .0503, and showing a summary of
15 reasonable direct and indirect expenditures required to develop and administer the Title V permit program.

16 (f) In lieu of the procedures in Paragraph (a) of this Rule, fees required pursuant to 15A NCAC 02Q .0200 may be
17 paid electronically if an electronic payment option is available for the ~~applicable~~ fee, as provided on the Division of
18 Air Quality Permitting website at <https://deq.nc.gov/about/divisions/air-quality/air-quality-permitting>.

19

20 *History Note: Authority G.S. 143-215.3(a)(1),(1a),(1b),(1d);*

21 *Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule*
22 *becomes effective, whichever is sooner;*

23 *Eff. July 1, 1994;*

24 *Amended Eff. September 1, 2015;*

25 *Readopted Eff. April 1, ~~2018-2018~~;*

26 *Amended Eff. September 1, 2023.*

27

28

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

2
3 **15A NCAC 02Q .0304 APPLICATIONS**

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

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

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

10 (A) bears the date of receipt entered by the clerk of the local government; or

11 (B) consists of a letter from the local government indicating that ~~all~~ zoning or subdivision
12 ordinances are met by the facility;

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

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

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

21 (A) the applicant is financially qualified to carry out the permitted activities; or

22 (B) the applicant has substantially complied with the air quality and emissions standards
23 applicable to any activity in which the applicant has previously been engaged, and has been
24 in substantial compliance with federal and State environmental laws and rules.

25 (c) When to file application. For sources subject to the requirements of 15A NCAC 02D .0530 ~~(prevention of~~
26 ~~significant deterioration)~~ or ~~.0531, .0531 (new source review for sources in nonattainment areas)~~, applicants shall file
27 air permit applications ~~no less than at least~~ 180 days before the projected construction date. For ~~all~~ other sources,
28 applicants shall file air permit applications ~~no less than at least~~ 90 days before the projected date of construction of a
29 new source or modification of an existing source.

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

34 To make a name or ownership change, the applicant shall send the Director the ~~copies of letters content~~ specified in
35 15A NCAC 02Q ~~.0305(a)(3)~~ .0305(3) or (4) signed by the responsible official as defined in 15A NCAC 02Q .0303.

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

1 changes in construction or test dates or reporting procedures, the applicant shall send the Director the ~~copies of letters~~
2 letter specified in 15A NCAC 02Q-~~0305(a)(5)~~ .0305(5) signed by the responsible official as defined in 15A NCAC
3 02Q .0303.

4 (f) When to file applications for permit renewal. Applicants shall file applications for renewals ~~such that they are~~
5 mailed to the Director at the address as specified in 15A NCAC 02Q .0104.0104 ~~[at least]~~ no less than 90 days before
6 expiration of the permit. If a hard copy of the application is mailed to the Director, the application shall be and
7 postmarked at least no later than 90 days before expiration of the permit.

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

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

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

17 ~~(i)~~ (i) Application fee. With the exceptions specified in 15A NCAC 02Q .0203(i), a non-refundable permit application
18 processing fee shall accompany each the application. The permit application processing fees are listed in 15A NCAC
19 02Q .0200. A permit application shall be incomplete until the permit application processing fee is received.

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

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

26
27 *History Note: Authority G.S. 143-215.3(a)(1); 143-215.108;*

28 *Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule is*
29 *effective, whichever is sooner;*

30 *Eff. July 1, 1994;*

31 *Amended Eff. September 1, 2015; January 1, 2009; December 1, 2005; July 1, 1999;*

32 *Readopted Eff. April 1, 2018-2018;*

33 *Amended Eff. September 1, 2023.*

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

2

3 **15A NCAC 02Q .0305 APPLICATION SUBMITTAL CONTENT**

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

- 6 (1) for new facilities and modified facilities:
- 7 ~~(A)~~(a) an application fee required pursuant to 15A NCAC 02Q .0200;
 - 8 ~~(B)~~(b) a zoning consistency determination required pursuant to 15A NCAC 02Q .0304(b)(1);
 - 9 ~~(C)~~(c) the documentation required pursuant to 15A NCAC 02Q .0304(b)(2) if required;
 - 10 ~~(D)~~(d) a financial qualification or substantial compliance statement pursuant to 15A NCAC 02Q
11 .0507(d)(3), if required; and
 - 12 ~~(E)~~(e) applications required pursuant to 15A NCAC 02Q .0304(a) and Paragraph (b) of this Rule
13 and signed by the responsible official;
- 14 (2) for renewals: ~~one copy of the application required pursuant to 15A NCAC 02Q .0304(a) and (d) and~~
15 ~~(d)~~, signed by the responsible ~~official~~ official, and an emissions inventory that contains the
16 information specified pursuant to 15A NCAC 02D .0202, Registration of Air Pollution Sources;
- 17 (3) for a name change: ~~one copy a letter~~ signed by the responsible official indicating the current facility
18 name, the date on which the name change will occur, and the new facility name;
- 19 (4) for an ownership change: an application fee required pursuant to 15A NCAC 02Q .0200 and:
- 20 ~~(A)~~(a) ~~one copy of a letter signed by the seller and the buyer, indicating the change; or~~
 - 21 ~~(B)~~(b) ~~one copy of a letter bearing the signature of both the seller and buyer, containing a written~~
22 ~~agreement with a specific date for the transfer of permit responsibility, coverage, and~~
23 ~~liability between the current and new permittee; or~~
 - 24 ~~(C)~~(c) submit ~~one copy of the appropriate form provided by the~~ Division; Division pursuant to
25 15A NCAC 02Q .0104; and
- 26 (5) for corrections of typographical errors; changes in name, address, or telephone number of any~~the~~
27 individual identified in the permit; changes in test dates or construction dates; or similar minor
28 changes: ~~one copy of a letter signed by the responsible official describing the proposed change and~~
29 ~~explaining the need for the proposed change.~~

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

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

34

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

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Eff. July 1, 1994;

Amended Eff. December 1, 2005; April 1, 2004;

Readopted Eff. April 1, ~~2018-2018~~;

Amended Eff. September 1, 2023.

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

2

3 **15A NCAC 02Q .0307 PUBLIC PARTICIPATION PROCEDURES**

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

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

11 (c) The public notice shall identify:

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

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25 (d) The notice shall allow ~~not less than at least~~ 30 days for public and EPA comments.

26 (e) If the Director determines that significant public interest exists or that the public interest will be served, the
27 Director shall require a public hearing to be held on a draft permit. Notice of a public hearing shall be given ~~not less~~
28 than at least 30 days before the public hearing.

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

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

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

35

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

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

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8

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

2
3 **15A NCAC 02Q .0505 APPLICATION SUBMITTAL CONTENT**

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

- 6 (1) for new facilities and modified facilities:
- 7 (a) an application fee as required pursuant to 15A NCAC 02Q .0200;
 - 8 (b) a consistency determination as required pursuant to 15A NCAC 02Q .0507(d)(1);
 - 9 (c) the documentation required pursuant to 15A NCAC 02Q .0507(d)(2);
 - 10 (d) a financial qualification or substantial compliance statement pursuant to 15A NCAC 02Q
11 .0507(d)(3) if required; and
 - 12 (e) applications as required pursuant to 15A NCAC 02Q ~~.0507(a) and (e) and .0507(a)~~, signed
13 as required by 15A NCAC 02Q .0520;
- 14 (2) for renewals: applications as required pursuant to 15A NCAC 02Q ~~.0507(a) and (e) and .0507(a)~~,
15 signed as required by 15A NCAC 02Q .0520;
- 16 (3) for a name change: ~~three copies of~~ a letter signed by a responsible official in accordance with 15A
17 NCAC 02Q .0520 indicating the current facility name, the date on which the name change will
18 occur, and the new facility name;
- 19 (4) for an ownership change: an application fee as required pursuant to 15A NCAC 02Q .0200; and
20 ~~three copies of~~ a letter bearing the signature of both the seller and buyer and containing a written
21 agreement with a specific date for the transfer of permit responsibility, coverage, and liability
22 between the current and new permittee; and
- 23 (5) for corrections of typographical errors; changes of the name, address, or telephone number of an
24 any individual identified in the permit; changes in test dates or construction dates; or similar minor
25 changes: ~~three copies of~~ a letter signed by a responsible official in accordance with 15A NCAC 02Q
26 .0520 describing the proposed change and explaining the need for the proposed change.

27
28 *History Note: Authority G.S. 143-215.3(a)(1),(1a); 143-215.107(a)(10); 143-215.108;*
29 *Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule*
30 *becomes effective, whichever is sooner;*
31 *Eff. July 1, 1994;*
32 *Amended Eff. April 1, 2004;*
33 *Readopted Eff. April 1, 2018;*
34 *Amended Eff. September 1, 2023; September 1, 2022*
35

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

2
3 **15A NCAC 02Q .0507 APPLICATION**

4 (a) Except for:

- 5 (1) minor permit modifications covered pursuant to 15A NCAC 02Q .0515;
- 6 (2) significant modifications covered pursuant to 15A NCAC 02Q .0516(c); or
- 7 (3) renewals submitted pursuant to 15A NCAC 02Q .0513;

8 the owner or operator of a new or existing source shall have 12 months after the facility or source becomes subject to
9 the Title V operating permit program pursuant to 15A NCAC 02Q .0500 to file a complete application for a permit or
10 permit revision. However, the owner or operator of a source shall not begin construction or operation of a source until
11 he or she has obtained a construction and operation permit pursuant to 15A NCAC 02Q .0501(b) or (c) and 15A
12 NCAC 02Q .0504.

13 (b) An application shall include ~~all~~ the information described in 40 CFR 70.3(d) and 70.5(c), including a list of
14 insignificant activities because of size or production rate but not including insignificant activities because of category.
15 An application shall be certified by a responsible official for truth, accuracy, and completeness. In an application
16 submitted pursuant to this Rule, the applicant may attach copies of applications submitted pursuant to 15A NCAC
17 02Q .0400 or 15A NCAC 02D .0530 or .0531 if the information in those applications contains information required
18 in this Section and is current, accurate, and complete.

19 (c) Application for a permit, permit revision, or permit renewal shall be made in accordance with 15A NCAC 02Q
20 .0104 on forms of the Division and shall include plans and specifications giving all necessary with complete data and
21 information as required by this Rule. If the information provided on these forms does not describe the source or its air
22 pollution abatement equipment to the extent necessary to evaluate the application, the Director shall request that the
23 applicant provide ~~any~~ other information necessary to evaluate the source and its air pollution abatement equipment.

24 (d) Along with filing a complete application, the applicant shall also file the following:

- 25 (1) for a new facility or an expansion of existing facility, a consistency determination in accordance
26 with G.S. 143-215.108(f) that:
 - 27 (A) bears the date of receipt entered by the clerk of the local government; or
 - 28 (B) consists of a letter from the local government indicating that ~~all~~ zoning or subdivision
29 ordinances are met by the facility;
- 30 (2) for a new facility or an expansion of an existing facility in an area without zoning, an affidavit and
31 proof of publication of a legal notice as required pursuant to 15A NCAC 02Q .0113; and
- 32 (3) if required by the Director, information showing that:
 - 33 (A) the applicant is financially qualified to carry out the permitted activities; or
 - 34 (B) the applicant has substantially complied with the air quality and emissions standards
35 applicable to any activity in which the applicant has previously been engaged and has been
36 in substantial compliance with federal and State environmental laws and rules.

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

1 ~~(1) for sources subject to the requirements of 15A NCAC 02D .0530, .0531, or .1200, five copies plus~~
2 ~~one additional copy for each affected state that the Director has to notify pursuant to 15A NCAC~~
3 ~~02Q .0521 and 15A NCAC 02Q .0522;~~

4 ~~(2) for sources not subject to the requirements of 15A NCAC 02D .0530, .0531, or .1200, three copies~~
5 ~~plus one additional copy for each affected state that the Director has to notify pursuant to 15A NCAC~~
6 ~~02Q .0521 and 15A NCAC 02Q .0522.~~

7 ~~(f)(c) Any An~~ applicant who fails to submit ~~any~~ relevant facts or ~~who has submitted submits~~ incorrect information in
8 a permit application shall, upon becoming aware of ~~such the~~ failure or incorrect submittal, submit ~~such~~ supplementary
9 facts or corrected ~~information. information to resolve the deficiency.~~ In addition, an applicant shall provide additional
10 information ~~as necessary~~ to address ~~any~~ requirements ~~to which the source becomes subject that become applicable to~~
11 ~~the source~~ after the date the applicant filed a complete application but prior to release of a draft permit.

12 ~~(g) The applicant shall submit the same number of copies of additional information as required for the application~~
13 ~~package.~~

14 ~~(h)(f)~~ The submittal of a complete permit application shall not affect the requirement that ~~any a~~ facility have a permit
15 pursuant to 15A NCAC 02D .0530, .0531, or .0532 or pursuant to 15A NCAC 02Q .0400.

16 ~~(i)(g)~~ The Director shall give priority to permit applications containing early reduction demonstrations pursuant to
17 Section 112(i)(5) of the federal Clean Air Act. The Director shall take final action on ~~such these~~ permit applications
18 after receipt of the complete permit application.

19 ~~(j)(h)~~ Except as specified in 15A NCAC 02Q .0203(i), a non-refundable permit application processing fee, defined in
20 15A NCAC 02Q .0200, shall accompany ~~each the~~ application. ~~Each The~~ permit application shall be deemed
21 incomplete until the permit application processing fee is received.

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

24
25 *History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108;*

26 *Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule*
27 *becomes effective, whichever is sooner;*

28 *Eff. July 1, 1994;*

29 *Amended Eff. July 1, 1997; July 1, 1996; February 1, 1995;*

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

31 *Amended Eff. September 1, 2015; April 1, 2004; July 1, 2000;*

32 *Readopted Eff. April 1, 2018;*

33 *Amended Eff. September 1, 2023; September 1, 2022.*

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

2
3 **15A NCAC 02Q .0508 PERMIT CONTENT**

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

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

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

11 (d) A permit for sources using an alternative emission limit established in 15A NCAC 02D .0501(d) or 15A NCAC
12 02D .0952 shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be
13 quantifiable, accountable, enforceable, and based on replicable procedures.

14 (e) The expiration date of a permit shall be for a fixed term of five years for sources covered by Title IV and for a
15 term of no more than five years from the date of issuance for all other sources including solid waste incineration units
16 combusting municipal waste subject to standards in Section 129(e) of the federal Clean Air Act.

17 (f) A permit shall contain monitoring and related recordkeeping and reporting requirements as specified in 40 CFR
18 70.6(a)(3) and 70.6(c)(1), including conditions requiring:

19 (1) the permittee to submit reports of required monitoring at least no less frequent than every six months.

20 The permittee shall submit reports:

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

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

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

25 (2) the permittee to report:

26 (A) malfunctions, emergencies, and other upset conditions as prescribed in 15A NCAC 02D
27 .0524, .0535, .1110, or .1111; and

28 (B) deviations quarterly from permit requirements not covered by 15A NCAC 02D .0524,
29 .0535, .1110, or .1111. The permittee shall include the probable cause of ~~such the~~
30 deviations and any corrective actions or preventive measures taken; and

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

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

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

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

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

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

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

7 (i) A permit shall:

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

32 The permit shall also state that for information claimed to be confidential, the permittee may furnish
33 ~~such the confidential~~ records directly to EPA along with a claim of confidentiality;

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

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

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

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

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

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

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

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

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

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

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

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

22

23 *History Note: Authority G.S. 143-215.3(a)(1),(2); 143-215.65; 143-215.66; 143-215.107(a)(10); 143-215.108;*
24 *Temporary Rule Eff. March 8, 1994 for a period of 180 days or until the permanent rule is effective,*
25 *whichever is sooner;*
26 *Eff. July 1, 1994;*
27 *Amended Eff. July 1, 1996;*
28 *Temporary Amendment Eff. December 1, 1999;*
29 *Amended Eff. August 1, 2008; June 1, 2008; January 1, 2007; December 1, 2005; April 1, 2001;*
30 *July 1, 2000;*
31 *Readopted Eff. April 1, 2018;*
32 *Amended Eff. September 1, 2023; September 1, 2022*

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

2
3 **15A NCAC 02Q .0710 PUBLIC NOTICE AND OPPORTUNITY FOR PUBLIC HEARING**

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

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

10 (c) The public notice shall identify:

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

24 (d) The notice shall allow ~~not less than at least~~ not less than 30 days for public comments.

25 (e) If the Director determines that significant public interest exists or that the public interest will be served, the
26 Director shall require a public hearing to be held on a draft permit. Notice of a public hearing shall be given not less
27 than at least 30 days before the public hearing.

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


30 (g) ~~Any persons~~ A person requesting paper copies of material identified in Subparagraph (c)(4) of this Rule shall pay
31 ten cents (\$0.10) per page ~~for each page~~ copied. Confidential material shall be handled in accordance with 15A NCAC
32 02Q .0107.

33
34 *History Note: Authority G.S. 143-215.3(a)(1); 143-215.108; 143B-282; S.L. 1989, c. 168, s. 45;*
35 *Rule originally codified as part of 15A NCAC 2H .0610;*
36 *Eff. July 1, 1998;*
37 *Readopted Eff. July 1, ~~2018-2018~~;*

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Amended Eff. September 1, 2023.

SUBMISSION FOR PERMANENT RULE

1. Rule-Making Agency: Environmental Management Commission	
2. Rule citation & name (name not required for repeal): 15A NCAC 02D .0546, Control of Emissions from Log Fumigation Operations	
3. Action: <input type="checkbox"/> ADOPTION <input checked="" type="checkbox"/> AMENDMENT <input type="checkbox"/> REPEAL <input type="checkbox"/> READOPTIOIN <input type="checkbox"/> REPEAL through READOPTIOIN	
4. Rule exempt from RRC review? <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No	5. Rule automatically subject to legislative review? <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No
6. Notice for Proposed Rule: <input checked="" type="checkbox"/> Notice Required Notice of Text published on: 01/17/2023 Link to Agency notice: https://deq.nc.gov/about/divisions/air-quality/air-quality-rules/rules-hearing-process Hearing on: 02/21/2023 Adoption by Agency on: 05/11/2023 <input type="checkbox"/> Notice not required under G.S.: Adoption by Agency on:	
7. Rule establishes or increases a fee? (See G.S. 12-3.1) <input type="checkbox"/> Yes Agency submitted request for consultation on: Consultation not required. Cite authority: <input checked="" type="checkbox"/> No	8. Fiscal impact. Check all that apply. <input checked="" type="checkbox"/> This Rule was part of a combined analysis. <input checked="" type="checkbox"/> State funds affected <input checked="" type="checkbox"/> Local funds affected <input type="checkbox"/> Substantial economic impact (≥\$1,000,000) <input checked="" type="checkbox"/> Approved by OSBM <input type="checkbox"/> No fiscal note required
9. REASON FOR ACTION	
9A. What prompted this action? Check all that apply: <input checked="" type="checkbox"/> Agency <input type="checkbox"/> Court order / cite: <input type="checkbox"/> Federal statute / cite: <input type="checkbox"/> Federal regulation / cite: <input type="checkbox"/> Legislation enacted by the General Assembly Cite Session Law: <input type="checkbox"/> Petition for rule-making <input type="checkbox"/> Other:	
9B. Explain: Eighteen rules throughout 15A NCAC, Subchapters 02D and 02Q, are revised to allow electronic submittals of permit applications, reports, and other records, where hard copies are currently required or implied. The revisions also include other minor changes throughout to align with and complement the Department of Environmental Quality (DEQ) transition to an electronic records storage system, and to allow electronic fee payments.	
10. Rulemaking Coordinator: Jennifer Everett Phone: 919-707-8614 E-Mail: Jennifer.Everett@ncdenr.gov Additional agency contact, if any: Katherine Quinlan Phone: 919-707-8702 E-Mail: Katherine.Quinlan@ncdenr.gov	11. Signature of Agency Head* or Rule-making Coordinator:  *If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form. Typed Name: Jennifer Everett Title: Rulemaking Coordinator
RRC AND OAH USE ONLY	
Action taken: <input type="checkbox"/> RRC extended period of review: <input type="checkbox"/> RRC determined substantial changes: <input type="checkbox"/> Withdrawn by agency <input type="checkbox"/> Subject to Legislative Review <input type="checkbox"/> Other:	

Burgos, Alexander N

Subject: FW: Letter Extending the Period of Review for EMC's 15A NCAC 02D & 02Q Rules

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

Sent: Tuesday, July 11, 2023 3:05 PM

To: Everett, Jennifer <jennifer.everett@deq.nc.gov>; Quinlan, Katherine L <katherine.quinlan@deq.nc.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: RE: Letter Extending the Period of Review for EMC's 15A NCAC 02D & 02Q Rules

Jennifer,

Thanks for checking in on this. As stated in the extension letter, “[i]f the Environmental Management Commission intends for these rules to be reviewed at the July meeting, its notice and responses are due not later than July 6, 2023. Otherwise, its responses shall be due on August 3, 2023, and the rules will be reviewed at the August 2023 meeting.”

Let me know if you have any other questions. I look forward to getting EMC’s responses in time for the August meeting.

Lawrence Duke

Counsel, NC Rules Review Commission

Office of Administrative Hearings

(984) 236-1938

Burgos, Alexander N

Subject: FW: Letter Extending the Period of Review for EMC's 15A NCAC 02D & 02Q Rules

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

Sent: Tuesday, July 11, 2023 2:38 PM

To: Duke, Lawrence <lawrence.duke@oah.nc.gov>; Quinlan, Katherine L <katherine.quinlan@deq.nc.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: RE: Letter Extending the Period of Review for EMC's 15A NCAC 02D & 02Q Rules

Lawrence,

If we intend to have the EMC's 02D & 02Q rules reviewed by the RRC at its July or August meeting, please let us know what dates we need to get our responses to you.

Jennifer

Jennifer Everett

DEQ Rulemaking Coordinator

N.C. Depart. Of Environmental Quality

Office of General Counsel

1601 Mail Service Center

Raleigh, NC 27699-1601

Tele: (919)-707-8614

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

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Burgos, Alexander N

From: Duke, Lawrence
Sent: Thursday, June 15, 2023 3:05 PM
To: Everett, Jennifer; Quinlan, Katherine L
Cc: Burgos, Alexander N
Subject: Letter Extending the Period of Review for EMC's 15A NCAC 02D & 02Q Rules
Attachments: 06.2023 - EMC Extension Letter.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Jennifer,

Please see attached letter extending the period of review for the 15A NCAC 02D and 02Q rules granted the extension at today's meeting. As always, if you have any questions regarding the Commission's actions, please let me know.

Thank you,

Lawrence Duke



Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
Lawrence.Duke@oah.nc.gov
(919) 236-1938

Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

Burgos, Alexander N

Subject: FW: EMC 02D & 02Q Rules for June Meeting

From: Duke, Lawrence <lawrence.duke@oah.nc.gov>
Sent: Monday, June 12, 2023 9:55 AM
To: Everett, Jennifer <jennifer.everett@deq.nc.gov>
Cc: Quinlan, Katherine L <katherine.quinlan@deq.nc.gov>; Reynolds, Phillip T <preynolds@ncdoj.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: EMC 02D & 02Q Rules for June Meeting

Jennifer,

I will gladly advocate on behalf of EMC for an extension of time.

Lawrence Duke

Counsel, NC Rules Review Commission
Office of Administrative Hearings
(984) 236-1938

From: Everett, Jennifer <jennifer.everett@deq.nc.gov>
Sent: Friday, June 9, 2023 5:35 PM
To: Duke, Lawrence <lawrence.duke@oah.nc.gov>
Cc: Quinlan, Katherine L <katherine.quinlan@deq.nc.gov>; Reynolds, Phillip T <preynolds@ncdoj.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: EMC 02D & 02Q Rules for June Meeting

Lawrence,

We are kindly requesting an extension of the period of review. This will allow staff additional time to address your technical change requests.

Jennifer

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

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From: Duke, Lawrence <lawrence.duke@oah.nc.gov>
Sent: Thursday, June 8, 2023 2:05 PM

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

Cc: Quinlan, Katherine L <katherine.quinlan@deq.nc.gov>; Reynolds, Phillip T <preynolds@ncdoj.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: EMC 02D & 02Q Rules for June Meeting

Jennifer,

Please see attached change requests for EMC's 02D and 02Q rules submitted for the June 2023 meeting.

As always, if you have any questions, please let me know.

Lawrence Duke



Counsel to the North Carolina Rules Review Commission

Office of Administrative Hearings

Lawrence.Duke@oah.nc.gov

(984) 236-1938

Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.