

Burgos, Alexander N

Subject: FW: EMC 02Q Change Requests

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

Sent: Wednesday, August 17, 2022 3:38 PM

To: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Quinlan, Katherine L <katherine.quinlan@ncdenr.gov>; Everett, Jennifer <jennifer.everett@ncdenr.gov>; Rules, Oah <oah.rules@oah.nc.gov>

Cc: Knowlson, Patrick <patrick.knowlson@ncdenr.gov>; Cuilla, Mark <mark.cuilla@ncdenr.gov>; Reynolds, Phillip T <preynolds@ncdoj.gov>

Subject: RE: EMC 02Q Change Requests

Katherine,

Thank you for revising these. This is sufficient.

Lawrence Duke

Counsel, NC Rules Review Commission

Office of Administrative Hearings

(984) 236-1938

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

Sent: Wednesday, August 17, 2022 1:36 PM

To: Quinlan, Katherine L <katherine.quinlan@ncdenr.gov>; Everett, Jennifer <jennifer.everett@ncdenr.gov>; Duke, Lawrence <lawrence.duke@oah.nc.gov>

Cc: Knowlson, Patrick <patrick.knowlson@ncdenr.gov>; Cuilla, Mark <mark.cuilla@ncdenr.gov>; Reynolds, Phillip T <preynolds@ncdoj.gov>

Subject: RE: EMC 02Q Change Requests

Copying Lawrence. Thanks Katherine.

Alexander Burgos

Paralegal

Office of Administrative Hearings

1711 New Hope Church Road

Raleigh NC, 27609

(984) 236-1940

Alexander.burgos@oah.nc.gov

From: Quinlan, Katherine L <katherine.quinlan@ncdenr.gov>

Sent: Wednesday, August 17, 2022 1:35 PM

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

Cc: Knowlson, Patrick <patrick.knowlson@ncdenr.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Cuilla, Mark <mark.cuilla@ncdenr.gov>; Reynolds, Phillip T <preynolds@ncdoj.gov>

Subject: RE: EMC 02Q Change Requests

Jennifer,

Please find the responses below and attached revised rules 02Q .0508 and 02Q .0521.

02Q .0508:

- Subparagraph (l)(1) authority cited as N.C.G.S. 143-215.3(a)(2). Needs to be added as History Note: Authority.

The history note in Rule 02Q .0508 has been updated to include N.C.G.S. 143-215.3(a)(2). The revised Rule is attached.

- Part (n)(3)(D) language on “any other material information” was unchanged and N.C.G.S. 143-215.114B(i) was cited to as authority. The language is a mirror of 40 CFR 70.5(c)(5)(iii)(B). The issue at hand was not specifically addressed by the agency. “Material information” is not defined and is not narrowed in scope. Objectionable.

The reference should be to 40 CFR 70.6(c)(5)(iii)(B). These requirements are necessary elements to a Part 70 permit, per 70.6(c), which begins with: “(c) *Compliance requirements*. All Part 70 Permits shall contain the following elements with respect to compliance: ...”

Further, the scope was narrowed with the language “to comply with Section 113(c)(2) of the federal Clean Air Act.”

- Similarly, Part (n)(3)(E) was unchanged and broad, and mirrors 40 CFR 70.6(c)(5)(iii)(D). The agency did not cite to actual authority to request such information, like 15A NCAC 02Q .0507(c).

Consistent with the response above, these requirements are necessary elements to a Part 70 permit, per 70.6(c), which begins with: “(c) *Compliance requirements*. All Part 70 Permits shall contain the following elements with respect to compliance: ...”

The Rule is not too broad since the language narrows the facts the Director can request to facts “to determine the compliance status of the source;”. This is similar to language in 02Q .0507(c).

02Q .0521

- Paragraph (a) the language “The Director shall give public notice with an opportunity for comments and a hearing... if the Director finds it is in the best interest of the public” was maintained. No factors or considerations were listed by the agency. Merely a case-by-case basis determination by the Director. Possible objection for ambiguity and lack of a “rule.”

The language has been revised to align with that in 02Q .0306(a)(1), which limits the basis of the determination to “public interest relevant to air quality.”

Thank you,

Katherine Quinlan
Rule Development Branch
Division of Air Quality, Planning Section
North Carolina Department of Environmental Quality

(919) 707-8702 (office)
katherine.quinlan@ncdenr.gov

217 West Jones Street
1641 Mail Service Center
Raleigh, NC 27699-1641



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Burgos, Alexander N

Subject: FW: EMC 02Q Change Requests

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

Sent: Wednesday, August 17, 2022 11:58 AM

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

Cc: Knowlson, Patrick <patrick.knowlson@ncdenr.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Quinlan, Katherine L <katherine.quinlan@ncdenr.gov>; Cuilla, Mark <mark.cuilla@ncdenr.gov>; Reynolds, Phillip T <preynolds@ncdoj.gov>

Subject: RE: EMC 02Q Change Requests

Of course. As soon as you can get them to me, I'll review. I know you have a lot on your plate for the meeting tomorrow.

Lawrence Duke

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

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

Sent: Wednesday, August 17, 2022 11:54 AM

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

Cc: Knowlson, Patrick <patrick.knowlson@ncdenr.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Quinlan, Katherine L <katherine.quinlan@ncdenr.gov>; Cuilla, Mark <mark.cuilla@ncdenr.gov>; Reynolds, Phillip T <preynolds@ncdoj.gov>

Subject: RE: EMC 02Q Change Requests

Lawrence,

Thanks for the voicemail message yesterday. We are currently addressing these remaining items on the 02Q rules. Given it is Wednesday, would you still review if we submitted responses and rewritten rules to you today by 5:00?

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: Tuesday, August 16, 2022 5:48 PM
To: Everett, Jennifer
Cc: Knowlson, Patrick; Burgos, Alexander N; Quinlan, Katherine L; Cuilla, Mark; Reynolds, Phillip T
Subject: RE: EMC 02Q Change Requests

Jennifer,

These are fine for the most part. The few things to address:

02Q .0508:

- Subparagraph (l)(1) authority cited as N.C.G.S. 143-215.3(a)(2). Needs to be added as History Note: Authority.
- Part (n)(3)(D) language on “any other material information” was unchanged and N.C.G.S. 143-215.114B(i) was cited to as authority. The language is a mirror of 40 CFR 70.5(c)(5)(iii)(B). The issue at hand was not specifically addressed by the agency. “Material information” is not defined and is not narrowed in scope. Objectionable.
- Similarly, Part (n)(3)(E) was unchanged and broad, and mirrors 40 CFR 70.6(c)(5)(iii)(D). The agency did not cite to actual authority to request such information, like 15A NCAC 02Q .0507(c).

02Q .0521

- Paragraph (a) the language “The Director shall give public notice with an opportunity for comments and a hearing... if the Director finds it is in the best interest of the public” was maintained. No factors or considerations were listed by the agency. Merely a case-by-case basis determination by the Director. Possible objection for ambiguity and lack of a “rule.”

Let me know what y’all want to do about these issues.

Lawrence Duke

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

From: Everett, Jennifer <jennifer.everett@ncdenr.gov>
Sent: Sunday, August 7, 2022 6:24 PM
To: Duke, Lawrence <lawrence.duke@oah.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>
Cc: Knowlson, Patrick <patrick.knowlson@ncdenr.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Quinlan, Katherine L <katherine.quinlan@ncdenr.gov>; Cuilla, Mark <mark.cuilla@ncdenr.gov>; Reynolds, Phillip T <preynolds@ncdoj.gov>
Subject: RE: EMC 02Q Change Requests

Lawrence,

Attached are responses and rewritten rules in 15A NCAC 02Q. Additionally, attached are rules that did not have any requests but we updated the effective date in the history note to September 1.

Jennifer

Jennifer Everett
DEQ Rulemaking Coordinator
N.C. Depart. Of Environmental Quality
Office of General Counsel
1601 Mail Service Center
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Tele: (919)-707-8614
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From: Duke, Lawrence <lawrence.duke@oah.nc.gov>
Sent: Friday, June 3, 2022 5:37 PM
To: Everett, Jennifer <jennifer.everett@ncdenr.gov>
Cc: Knowlson, Patrick <patrick.knowlson@ncdenr.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: EMC 02Q Change Requests

Jennifer,

I have reviewed the Rules submitted by the Environmental Management Commission for the June 2022 RRC meeting. The RRC will formally review these Rules at its meeting on Thursday, June 16, 2022, at 9:00 a.m. The meeting will be a hybrid of in-person and WebEx attendance, and an evite should be sent to you as we get closer to the meeting. If there are any other representatives from your agency who will want to attend virtually, let me know prior to the meeting, and we will get evites out to them as well.

I have attached my requests for changes. Please submit the revised Rules and forms to me via email, no later than 5:00 p.m. on Friday, June 10, 2022. In the meantime, please let me know if you have any questions or concerns.

Thanks,

Lawrence Duke

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

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Burgos, Alexander N

Subject: FW: EMC 02Q Change Requests

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

Sent: Thursday, August 11, 2022 5:07 PM

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

Cc: Knowlson, Patrick <patrick.knowlson@ncdenr.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Quinlan, Katherine L <katherine.quinlan@ncdenr.gov>; Cuilla, Mark <mark.cuilla@ncdenr.gov>; Reynolds, Phillip T <preynolds@ncdoj.gov>

Subject: RE: EMC 02Q Change Requests

Hi Lawrence,

Checking in on your status of recommending approval of the 02Q rules.

Thanks.

Jennifer Everett

DEQ Rulemaking Coordinator

N.C. Depart. Of Environmental Quality

Office of General Counsel

1601 Mail Service Center

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

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Burgos, Alexander N

Subject: FW: EMC 02Q Change Requests
Attachments: 15A NCAC 02Q .0103.docx; 15A NCAC 02Q .0503.docx; 15A NCAC 02Q .0504.docx; 15A NCAC 02Q .0505.docx; 15A NCAC 02Q .0507.docx; 15A NCAC 02Q .0508.docx; 15A NCAC 02Q .0509.docx; 15A NCAC 02Q .0514.docx; 15A NCAC 02Q .0516.docx; 15A NCAC 02Q .0518.docx; 15A NCAC 02Q .0521.docx; 15A NCAC 02Q .0522.docx; 15A NCAC 02Q .0525.docx; 15A NCAC 02Q .0526.docx; EMC - 06.2022 - 02Q Change Request Responses.docx

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

Sent: Sunday, August 7, 2022 6:24 PM

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

Cc: Knowlson, Patrick <patrick.knowlson@ncdenr.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Quinlan, Katherine L <katherine.quinlan@ncdenr.gov>; Cuilla, Mark <mark.cuilla@ncdenr.gov>; Reynolds, Phillip T <preynolds@ncdoj.gov>

Subject: RE: EMC 02Q Change Requests

Lawrence,

Attached are responses and rewritten rules in 15A NCAC 02Q. Additionally, attached are rules that did not have any requests but we updated the effective date in the history note to September 1.

Jennifer

Jennifer Everett
DEQ Rulemaking Coordinator
N.C. Depart. Of Environmental Quality
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REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02Q .0103

DEADLINE FOR RECEIPT: Friday, June 10, 2019

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

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

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

Subitem (1)(b), is the EPA “delegation or approval” found in a document? What is the document? Where is it found? Should it be incorporated by reference?

Per EPA’s website (<https://www.epa.gov/caa-permitting/delegation-clean-air-act-authority>), “delegation” refers to EPA’s transfer of authority for primary implementation and enforcement for most of the federal standards, as allowed by the Clean Air Act, Sections 111 and 112. The authority is transferred to state, local, or tribal agencies. “Approval” refers to EPA’s approval of a State Plan submitted under Section 111(d) of the Clean Air Act, which are required for Emission Guidelines promulgated by EPA in 40 CFR Part 60.

Even after delegation of authority or approval of a State Plan, EPA can retain authority over certain aspects of their regulations, as specifically identified in the regulations.

The terms “delegation” and “approval” are well understood within the regulated community.

SIP-approved regulations are in 40 CFR 52.1770 for NC. EPA delegation to NC is in Rules 02D .0524(c) (for implementing New Source Performance Standards (NSPS) under Part 60), 02D .1110(c) (for implementing National Emissions Standards for Hazardous Air Pollutants (NESHAP) under Part 61), 02D .1111(c) (for implementing MACT standards under Part 63), 02D .1109(c) (for implementing CAA Section 112(j)), and 02D .1112 (for implementing CAA Section 112(g)).

Subitem (5)(b), is the “implementation plan” in the federal regs.? If not, should this be incorporated by reference?

“Implementation plan” refers to the State Implementation Plan (SIP). EPA describes a SIP as “a collection of regulations and documents used by a state, territory, or local air district to implement, maintain, and enforce the National Ambient Air Quality Standards, or NAAQS, and to fulfill other requirements of the Clean Air Act” (<https://www.epa.gov/air-quality->

Lawrence R. Duke
Commission Counsel

Date submitted to agency: June 3, 2022

[implementation-plans/basic-information-about-air-quality-sips](#)). This term is well-understood within the industry. Information on implementation plans can be found on EPA's website at: <https://www.epa.gov/air-quality-implementation-plans>

Subitem (9)(d), what makes something a “necessary component”? Please define or change.

This language is from N.C.G.S. 143-215.108A(a)(4). Further information about an applicant's intent to construct can be found at: <https://deq.nc.gov/about/divisions/air-quality/air-quality-permits/intent-to-construct>

Subitem (21)(b), what does “or may be subject to”? Define or delete.

We have removed the phrase “or may be subject to”.

Subitem (30)(d), what is “standard” and where is it found? If in the federal regs., should these be incorporated by reference? What are the “other requirements”? Where are these found? Also, delete the open parenthesis on line 17: “(but”.

In subitem (30)(d), “standard” refers to the National Emission Standards for Hazardous Air Pollutants (NESHAP), or NESHAP, for Source Categories (also known as MACT standards), promulgated under 40 CFR Part 63 pursuant to Section 112 of the Clean Air Act, as stated in the rule language. The term “standard” in this context is understood within the industry. “Other requirements” in this subitem refers to any requirement in Section 112 that is not promulgated as a “standard”, such as case-by-case MACT determinations made pursuant to Sections 112(g) or 112(j), or pollutants subject to Section 112(r), which pertains accidental release prevention and risk management plans.

The open parenthesis on line 17 “(but” is closed on line 18 with “Act)”. The language in the parentheses clarifies the applicability of this definition to facilities subject to Section 112(g). We have revised the language to remove the parentheses.

Item (33), what “Act”? The Clean Air Act? Is “applicable” necessary for the definition?

Item (33) has been revised to clarify that “Act” refers to the Clean Air Act. This definition aligns with the language of 40 CFR 70.6(b)(2). Additionally, “applicable requirements” is a defined term in this Rule.

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

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02Q .0503

DEADLINE FOR RECEIPT: Friday, June 10, 2019

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

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

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

Item (2), what is “such other information that is necessary to determine compliance with all applicable federal and State requirements”? Is this clarified in another rule? Should that rule be referenced?

“Such other information” mirrors the language used in Part 70 (e.g., 40 CFR 70.6(c)(5)(iii)(D) and 70.4(b)(6)). This information varies by source and is determined by the DAQ on a case-by-case basis.

Item (4), please remove parenthesis and “applicable”.

The parentheses have been removed. The language of this definition, including the term “applicable requirement”, reflects the definition of this phrase in 40 CFR 70.2. The term “applicable requirement” is also defined in the same federal rule and Rule 02Q .0103. Since this term is necessary, it was not removed.

Item (6), define or delete “reasonably”.

The language of this definition is consistent with that of 40 CFR 70.2 for the term “fugitive emissions”. Examples of emissions that could not reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening might include those from material stockpiles or vapor leaks from piping connections (such as valves and flanges). The wide variety of potential operations at facilities require these determinations to be made on a case-by-case basis.

Subitem (7)(b), is “applicable requirements pursuant to” necessary?

This phrase is necessary since Title VI of the Clean Air Act does not apply to units or facilities directly. Rather, Title VI of the Clean Air Act places requirements on the EPA to develop and implement regulations to phase out ozone-depleting substances. Such regulations that EPA

Lawrence R. Duke
Commission Counsel
Date submitted to agency: June 3, 2022

implements pursuant to Title VI would be the “applicable requirements pursuant to” in this definition.

Item (8), is “applicable” necessary?

In line 11, “applicable” is necessary because not all emissions standards would apply to every source or activity. Therefore, the only emission standards against which the activity’s emissions need to be compared are those emission standards that are applicable to that activity.

Item (9), where is “major facility” defined?

“Major facility” is defined in 15A NCAC 02Q .0103.

What does item (14) mean? This is unclear and vague.

The term “relevant source” is not used in the current 02Q .0500 Rules. Therefore, we have removed this definition from the rule and renumbered the subsequent definitions.

Item (16), again, “applicable”, and also remove parenthesis.

This definition aligns with that in 40 CFR 70.2. The parentheses have been removed.

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

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02Q .0504

DEADLINE FOR RECEIPT: Friday, June 10, 2019

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

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

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

Paragraph (a), use “shall” instead of “must”.

This language is pertaining to the deadline by which the applicant is required to submit the application. The word “must” has been revised to “is required to”.

Paragraph (b), use “his or her permit” instead of “his permit”. Also, what are the procedures “in this Rule.” Should the be “in this Section.”?

“His permit” has been revised to “his or her permit”.

The phrase “in this Rule” is correct and pertains to the 2-step permit application procedures covered under 15A NCAC 02Q .0504. To clarify, we have revised paragraph (b) to reference the procedures in paragraph (a) of this Rule.

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

Lawrence R. Duke
Commission Counsel
Date submitted to agency: June 3, 2022

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02Q .0505

DEADLINE FOR RECEIPT: Friday, June 10, 2019

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

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

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

In the opening Paragraph, remove the comma following “submit”.

The comma following “submit” has been removed.

What is the statutory authority for the fee in Item (4)? It may be in N.C. Gen. Stat. § 143-215.3(a)(1a), but that is not listed in the History Note.

The History Note has been revised to add the citation for 143-213.3(a)(1a).

Does an ownership change require a new application fee, or is it considered a modification by federal regs. (see 40 CFR 70.7(d)(iv)).

An ownership change is considered an administrative amendment in the federal regulations (40 CFR 70.7(d)) and has a specific fee listed in 15A NCAC 02Q .0203(d). Additionally, the DAQ posts the specific fees each year (after applying inflationary increases in accordance with 15A NCAC 02Q .0203(d)) on its website at <https://deq.nc.gov/about/divisions/air-quality/air-quality-permitting/modifying-or-applying-air-quality-permit>.

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

Lawrence R. Duke
Commission Counsel
Date submitted to agency: June 3, 2022

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02Q .0507

DEADLINE FOR RECEIPT: Friday, June 10, 2019

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

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

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

Paragraph (b), instead of “An application shall be certified by a responsible official”, consider “A responsible official shall certify an application”.

The phrasing of this language is consistent with 40 CFR 70.5(d). Therefore, the language was not modified.

Paragraph (c), what does “to the extent necessary to” mean? What does “the Director shall request that the applicant provide any other information necessary” mean? If requested, is it required to provide this “any other information”? This is too vague.

This language allows the DAQ to request additional information that may be necessary to fully evaluate the source. Due to the significant variability in facilities and processes that are subject to these rules, it would be impractical to list on a form every potential piece of information that the DAQ may require from a source in the state. This aligns with language in 40 CFR 70.5(a)(2), which states “If, while processing an application that has been determined or deemed to be complete, the permitting authority determines that additional information is necessary to evaluate or take final action on that application, it may request such information in writing and set a reasonable deadline for a response.”

Rule 02Q .0503 defines a “complete application” as one that provides information necessary to determine compliance with all applicable federal and State requirements.

Paragraph (d), is “Along with filing a complete application” necessary? In Subparagraph (d)(3), when would this information be required? Why would it be required? In Part (d)(3)(A), what does “financially qualified” mean and where is it defined? In Part (d)(3)(B), what is “substantial” compliance? Also, capitalize “State” if only referring to NC.

Lawrence R. Duke
Commission Counsel
Date submitted to agency: June 3, 2022

The phrase “along with filing a complete application” notifies the applicant of the items necessary for submitting an application for a new permit, a permit revision, or a permit renewal, and provides additional clarity for the regulated community.

The language in Subparagraph (d)(3) reflects that in N.C.G.S. 143-215.108(c)(5a), which gives the EMC 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. ...”

“State” has been capitalized in Part (d)(3)(b).

Subparagraphs (e)(1) and (2), are the “five copies” and “three copies” still accurate? Or is submission now done electronically?

Currently, these copies are still required. The DAQ is undergoing a separate rulemaking to allow for digital submissions. In the meantime, multiple paper copies are still required.

Paragraph (f), “as necessary to address any requirements that become applicable to the source after the date the applicant filed a complete application but prior to release of a draft permit” is too vague. Please clarify.

This is intended to capture any requirements that were not addressed with the initial permit application submittal but are applicable at the time of issuance. In some cases, new requirements may be triggered by the source during the permit review, possibly due to change in scope of the source or modification. Permit reviews can take up to 18 months and the scope of the project may change, thus triggering new requirements. Additionally, new rules or rule amendments may become effective during this time and would need to be addressed.

In Paragraph (i), is “Section 112(i)(5) of the federal Clean Air Act” still in force? Where is it found? I could not find.

Section 112(i)(5) of the Clean Air Act addresses early reductions. Section 112 of the Clean Air Act can be found at:

<https://www.govinfo.gov/content/pkg/USCODE-2013-title42/html/USCODE-2013-title42-chap85-subchapI-partA-sec7412.htm>

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

Lawrence R. Duke
Commission Counsel

Date submitted to agency: June 3, 2022

Lawrence R. Duke
Commission Counsel
Date submitted to agency: June 3, 2022

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02Q .0508

DEADLINE FOR RECEIPT: Friday, June 10, 2019

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

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

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

Throughout, “applicable requirement” is used. Is “applicable” necessary?

“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.

Paragraph (a), what does “shall identify any differences compared to the applicable requirements on which the term or condition is based” mean? Does it mean the permit can identify differences between permit requirements and the law? What is the authority for this?

This language aligns with 40 CFR 70.6(a)(1)(i). “Applicable requirement” is defined in Rule 02Q .0103.

Do the forms referenced in Part (f)(1)(A) require information from the regs. Referenced on lines 17 and 18? Clarify?

I’m unsure of the question. If your question is “(f)(1)(A) requires the use of a form. Pursuant to G.S. 150B-2(8a)(d), the form itself does not need to be in a rule, but the contents of the form must be in rule or law. Are the substantive contents of the form set forth in rule or law?”

Yes, the substantive contents of the forms specified in this rule are set forth in the rules or law. The forms are readily available on the DAQ website:

<https://deq.nc.gov/about/divisions/air-quality/air-quality-permitting>

Subparagraph (i)(3), what is the authority for this requirement?

40 CFR 70.1(a) states “The regulations in this part provide for the establishment of comprehensive State air quality permitting systems consistent with the requirements of title V of the Clean Air Act (Act) (42 U.S.C. 7401, et seq.). These regulations define the minimum elements required by the Act for State operating permit programs and the corresponding

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standards and procedures by which the Administrator will approve, oversee, and withdraw approval of State operating permit programs.”

One of the minimum elements required by the Clean Air Act for the State Title V operating permit program are the provisions specified in 40 CFR 70.6). Specifically, EPA noted in its review of the North Carolina Title V permitting program that the NC rules did not contain the language “constitutes a violation of the Act” in its rule in 15A NCAC 02Q .0508(i)(3) as specified in the provision in 40 CFR 70.6(a)(6)(i). This is one of the minimum elements required by the Clean Air Act for a State operating permit program.

Subparagraph (i)(9), what does does “timely” mean? Please define. Part (i)(9)(A), “any information that the Director may request in writing” is much too broad. Should the paragraph on lines 33-35, Part (i)(9)(B), be listed as Subparagraph (i)(10)? If so, renumber Subparagraphs that come after.

“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; ...”

Regarding (i)(9)(A), facilities are evaluated on a case-by-case basis. 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. N.C.G.S. 143-215.108(c)(5) and (d)(1) provide the authority for this.

The paragraph on lines 33-35 is a continuation of Subparagraph (i)(9). The rule has been revised accordingly.

Subparagraph (i)(11), what are “off-permit changes”? What does this mean and what is the authority to require?

“Off-permit changes” are defined in 15A NCAC 02Q .0523(b):

(b) Off-permit changes. A permittee may make changes in his or her operation or emissions without revising his or her permit if:

- (1) the change affects only insignificant activities and the activities remain insignificant after the change;*
- (2) the change is not covered by any applicable requirement; and*
- (3) the changes are consistent with this Section and would not render existing permit compliance terms and conditions irrelevant*

These are changes to insignificant activities and do not require a permit revision. Subparagraph (i)(11) requires that the permit contain a condition that allows the permittee to make these types of changes.

Subparagraph (i)(12), does “all applicable requirements” refer to regs. set in rule, regulation, other law?

“Applicable requirements” is defined in 15A NCAC 02Q .0103.

What does Subparagraph (i)(16) mean? Authority?

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.

Paragraph (k), if a permit term or condition is enforceable by the Division only, would that mean the requirements are more restrictive than the Clean Air Act? What would be “Division only”? If a requirement is more restrictive, this would violate 150B-19.3. Please clarify.

Per 40 CFR 70.6(b)(2), States issuing Title V permits must “specifically designate as not being federally enforceable under the Act any terms and conditions included in the permit that are not required under the Act or under any of its applicable requirements.” Such conditions may be those that only pertain to state requirements, such as rules pertaining to dust, odor, and air toxics. These are not more restrictive than federal requirements. Rather, they pertain to subjects not covered by federal requirements.

Subparagraph (l)(1), if 143-215.66 requires monitoring, where is the authority to enter premises and inspect? Please remove parenthesis in Subparagraph (l)(3).

N.C.G.S. 143-215.3(a)(2) provides the authority to enter premises and inspect. The language of Subparagraph (l)(1) aligns with the requirements of 40 CFR 70.6(c)(2)(iii).

The parentheses in Subparagraph (l)(3) have been removed.

Paragraph (m), “at least” and “more frequently” mean what?

This language means that the compliance schedule shall require progress reports no less frequently than semiannually, but the Division can specify a more frequent reporting requirement. This language implements the requirements of 40 CFR 70.6(c)(4).

Subparagraph (n)(1), please remove parenthesis.

The parentheses have been removed from Subparagraph (n)(1).

Part (n)(3)(D), please delete “If necessary” and change “must” to “shall”. Also, this is vague. Under what authority can “any other material information” be required? What is material? Can the State demand but not identify what “must be included”? This is 150B-21.9(a)(2) objectionable.

“If necessary” has been deleted and “must” has been changed to “shall”.

The language added to (n)(3)(D) is from 40 CFR 70.5(c)(5)(iii)(B). Part (n)(3) of this Rule specifies that the permit must contain a requirement for compliance certification for the federally-enforceable conditions of the permit. N.C.G.S. 143-215.114B(i) allows for enforcement on “*Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Article or Article 21, or a rule implementing this Article or Article 21; ...*”.

Under what circumstances can Part (n)(3)(E) be required?

This language is from 40 CFR 70.6(c)(5)(iii)(D) and allows the Director to request the information necessary to determine if the source is in compliance. These determinations are made on a case-by-case basis.

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

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02Q .0509

DEADLINE FOR RECEIPT: Friday, June 10, 2019

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

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

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

Paragraph (a), when are facilities “similar”? Is this addressed in (d)?

This is addressed in paragraph (b). “Similar” facilities would be those that do not require special permit conditions or unique analysis.

Subparagraph (b)(2), what is “no unique analysis”? What does this mean?

This Rule outlines the requirements for General Title V Permits, per 40 CFR 70.6(d). The DAQ has developed General Title V Permits for new and existing air curtain incinerators (ACIs), and several General Permits for non-Title V sources. An ACI requiring a Title V permit can apply for coverage under the ACI General Permit, provided it meets the requirements of the General Permit. If a source does not meet any requirement of the General Permit, it is considered needing a unique analysis that requires a case-by-case permit.

Paragraph (e), what is the authority for an “enforcement action for operating without a permit” if it “is later determined not to qualify”? Is there a provision providing for notice and a chance to come into compliance?

This language is required per 40 CFR 70.6(d)(2). Additionally, N.C.G.S. 143-215.114A allows for enforcement procedures for failing to secure a permit or act in accordance with the terms, conditions, or requirements of such permit. There is no rule provision providing for notice and a chance to come into compliance.

Paragraph (h), if this is not final, then what is? Issuance of the original permit? How does this fit with .0518 of this Section?

This language is required per 40 CFR 70.6(d)(2), and only pertains to the judicial review procedures for permits issued under this rule (General Permits). The issuance is still considered a final action for all other purposes. Rule 02Q .0518 is unaffected by this language.

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Date submitted to agency: June 3, 2022

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

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Date submitted to agency: June 3, 2022

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02Q .0514

DEADLINE FOR RECEIPT: Friday, June 10, 2019

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

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

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

Throughout, similar to .0508, “applicable requirement” or “applicable permit” is used. Is “applicable” necessary?

Yes, “applicable requirement” is necessary because not all requirements apply to every source. Additionally, this term is defined in 15A NCAC 02Q .0103 and used throughout 40 CFR Part 70. The term “non-applicable permit requirements” means requirements in permits that are not “applicable requirements” (e.g., for equipment that has been shut down).

How does this Rule, and specifically Paragraph (a), compare to 40 CFR 70.7(d)?

Subparagraphs (a)(1) – (3) align with 40 CFR 70.7(d)(1)(i) – (iii) directly.

Subparagraphs (a)(4) – (7) are established pursuant to 40 CFR 70.7(d)(1)(vi). Paragraph (a) does not have requirements pursuant to 70.7(d)(1)(iv) or (v). 40 CFR 70.7(d)(1)(iv) is incorporated into Rule 02Q .0524. Rule 02Q .0514 does not incorporate 40 CFR 70.7(d)(1)(v).

Are Paragraphs (b) and (c) necessary? Don’t they repeat 40 CFR 70.7(d)(3)? In paragraph (c), define or delete “immediately”.

Yes, these paragraphs implement the requirements of 40 CFR 70.7(d)(3) and are necessary because the requirements of Part 70 do not apply to facilities directly. Rather, they specify the requirements of the State’s Title V program to remain EPA-approved.

“Immediately” is defined in the subsequent language as “upon submittal of the request.” This language is from 40 CFR 70.7(d)(3)(iii). It allows a permittee to “immediately” implement certain administrative permit amendments requested by the permittee without having to first wait for authorization by the Director. The language contained in the rule provides clarity to the permittee as to which changes may be implemented without first receiving

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Date submitted to agency: June 3, 2022

authorization, as opposed to those instances wherein modifications can only be implemented after receiving approval from the Director.

Paragraph (e), capitalize “State” if referring to NC only. Or, at least be consistent.

“State-enforceable” has been capitalized in paragraph (e).

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

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02Q .0518

DEADLINE FOR RECEIPT: Friday, June 10, 2019

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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 technical changes be made:

Subparagraphs (a)(1) and (a)(3), what does “carry out the purposes” mean? Shall the Director generally “carry out the purposes” or comply with the law?

In these subparagraphs, “carry out the purposes” means the Director shall comply with the referenced General Statutes and federal Clean Air Act when making decisions to issue or deny permit applications.

Paragraph (b), is “permit revision” correct, or should it be “permit modification”?

“Permit revision” is correctly used and defined in 15A NCAC 02Q .0503 as follows:

(12) "Permit revision" means any permit modification pursuant to 15A NCAC 02Q .0515, .0516, or .0517 or any administrative permit amendment pursuant to 15A NCAC 02Q .0514.

Considering 40 CFR 70.7(g)(4), is Paragraph (c) necessary?

Yes, paragraph (c) is implementing the requirements of 40 CFR 70.7(g)(4) as part of the EPA-approved Title V program for North Carolina. The requirements of Part 70 do not apply to facilities directly. Rather, they specify the requirements for the State-approved Title V program.

Considering 40 CFR 70.7(e)(iv)(2), is Paragraph (f) necessary?

The language of paragraph (f) implements the requirements of 40 CFR 70.7(a)(2), which requires the permitting authority to take final action of each permit application within 18 months of receiving a complete application. The requirements of Part 70 do not apply to facilities directly. Rather, they specify the requirements for the State-approved Title V program.

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

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Date submitted to agency: June 3, 2022

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02Q .0521

DEADLINE FOR RECEIPT: Friday, June 10, 2019

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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 technical changes be made:

Paragraph (a), how does the Director make the determination of what “is in the best interest of the public”? Are there factors for this determination?

This determination is made on a case-by-case basis. An example of this is when 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.

Paragraph (c), is the notice for modification of permits? Or what?

Paragraph (c) pertains to any action on a Title V permit for an existing facility going through a significant modification, renewal, or reopen for cause, that does not have a scheduled public hearing.

How is Paragraph (d) necessary if it is covered by 40 CFR 70.7(h)(2)?

40 CFR Part 70 specifies the requirements that a State must implement to be granted and maintain EPA-approval to implement a Title V program. The requirements in 40 CFR Part 70 do not apply to sources directly. DAQ incorporates the Part 70 requirements into rules, primarily in 15A NCAC 02Q .0500.

Paragraph (h), is this necessary if it is covered by 40 CFR 70.7(h)(5)? Is the paragraph, lines 1 and 2 on page 2, necessary? Don't public records laws already cover this?

This language is required to implement the requirements of 40 CFR 70.7(h)(5) since Part 70 outlines the requirements of the permitting authority's Title V program but does not place requirements on facilities directly. DAQ incorporates the Part 70 requirements into rules, primarily in 15A NCAC 02Q .0500.

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Paragraph (i), please delete “such” in the two instances on line 4. Please delete “if applicable”. Is this paragraph necessary as it repeats 40 CFR 70.7(h)(6)?

The two instances of “such” have been deleted from this paragraph. The phrase “if applicable” differentiates between comments received under paragraphs (b) and (c) of this rule. Comments received under paragraph (b) of this rule would be handled in a Hearing Officer’s report, since paragraph (b) pertains to public notice with a scheduled public hearing. Comments received under paragraph (c) of this rule would instead be handled in the Statement of Basis, since paragraph (c) pertains to public notice without a scheduled public hearing. We have revised this language to state “...and any Hearing Officer’s report” for clarity.

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

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Commission Counsel
Date submitted to agency: June 3, 2022

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02Q .0522

DEADLINE FOR RECEIPT: Friday, June 10, 2019

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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 technical changes be made:

Paragraph (b), “applicable”.

The term “applicable” on line 10 is necessary because not all statutory or regulatory provisions would be referenced in the facility’s draft permit, only the provisions that are relevant to the source or activity.

Paragraph (d), is retention for public records only five years?

Yes, in 40 CFR Part 70.8(a)(3), the EPA only requires a five-year retention of records submitted to the Administrator.

Paragraph (g), please delete “To the extent practicable”.

The phrase “To the extent practicable,” was deleted from Paragraph (g), line 22.

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

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Date submitted to agency: June 3, 2022

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02Q .0525

DEADLINE FOR RECEIPT: Friday, June 10, 2019

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

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

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

It may make sense to move “A completeness determination shall not be necessary for minor modifications pursuant to 15A NCAC 02Q .0515.” up to the first paragraph of Item (2) where it says, “The Division shall review all permit applications...”.

The suggested revision has been made.

In Subitem (2)(b), does “necessary to conduct the technical review” include information required in rule/regs?

Yes, the “technical review” includes information required to demonstrate compliance with the applicable rules and regulations for the facility, in order to determine the source’s compliance with the Clean Air Act and its applicable requirements and implementing regulations in 40 CFR Part 70.

What does “if such information is necessary to properly evaluate” on line 19 mean?

This language allows the DAQ to request information needed to issue the permit. Such information can vary widely and is determined on a case-by-case basis for each source.

In Item (4), when or how is the public hearing “approved by the Director”?

This sentence was intended to be identical to item (5) of the current rule, and “required” should be “requested”. This typographical error has been corrected. With this revision, the Director can approve a public hearing after one is requested by a member of the public.

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

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Commission Counsel
Date submitted to agency: June 3, 2022

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02Q .0526

DEADLINE FOR RECEIPT: Friday, June 10, 2019

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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 technical changes be made:

Throughout, “applicable”.

The DAQ believes that the term “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.

Subparagraph (d)(1), what does “reasonably” mean? Define or delete.

The term “reasonably” is well known by the regulated community and is used by the EPA to describe this requirement in 40 CFR 63.52(a)(1).

In Part (a)(3)(A), what does “substantially” mean? Define or delete. On line 12, “If the Division determines...”, how does the Division determine?

The DAQ understands that you are referring to Part (d)(3)(A) in your comment. The term “substantially” is from 40 CFR 63.52(a)(3)(i) and is a term well understood by the regulated public. With respect to the term “If the Division determines....” In 40 CFR Part 63.52(a)(3)(i), the EPA allows the permitting authority to evaluate whether the previously adopted 112(g) requirements are comparable to the 112(j) requirements. The requirements in 40 CFR Part 63.52 are understood by the regulated community. As specified on lines 8-9, the Division uses the procedures in 40 CFR 63.52(e) to make this determination.

In Part (a)(3)(B), what does “substantially” mean? Define or delete in both instances.

The DAQ believes that you are referring to Part (d)(3)(B) in your comment. The term is from 40 CFR 63.52 and is a term well understood by the regulated public. Part (d)(3)(B) is implementing the requirements of 40 CFR 63.52(a)(3)(ii), which requires the Division to make an equivalency determination to evaluate whether the emission limitations under the 112(g) determination are substantially equivalent to those that would be adopted pursuant

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to 112(j). The requirements in 40 CFR Part 63.52 are understood by the regulated community.

In Part (a)(3)(A), what does “substantially” mean? Define or delete.

The DAQ believes that you are referring to Part (d)(3)(A) in your comment. The term is from 40 CFR 63.52 and is a term well understood by the regulated public.

In Subparagraph (e)(1), what does “substantially” mean? Define or delete. Also, remove parenthesis. Also, line 15, “If the Division determines...”, how does the Division determine?

The term “substantially” is from 40 CFR 63.52 and is a term well understood by the regulated public. With respect to the term “If the Division determines...”, this language implements the requirements of 40 CFR Part 63.52(b)(2), in which the EPA requires the permitting authority to evaluate whether the previously adopted 112(g) requirements are comparable (i.e., substantially equivalent) to the 112(j) requirements. As specified on lines 11-12 of this subparagraph, the equivalency determination is performed using the procedures in 40 CFR 63.52(e). The requirements in 40 CFR Part 63.52 are understood by the regulated community.

In Subparagraphs (e)(3), (4), and (f)(2), please remove parenthesis.

The parentheses have been removed. We have also removed parentheses in paragraph (d). Additionally, we have removed the word “that” from Part (d)(3)(B) to correct a grammatical error.

In Subparagraph (h)(2), what does “substantially as effective” mean? Define or delete all three instances. Also, line 35 and line 2, “If the Director determines...”, how does the Director determine? Also, line 6, what is an “appropriate equivalent emission limitation”?

“Substantially as effective” (and subparagraph (h)(2), in general) is referring to an equivalency determination pursuant to 40 CFR 63.52(a)(3)(i), where the permitting authority evaluates if an emission limitation issued in a prior case-by-case 112(g) MACT determination is equivalent to the limit that would be established under a case-by-case 112(j) MACT determination. As specified on page 6, lines 7-11, the equivalency determination is made using the procedures in 40 CFR 63.52(e).

“Equivalent emission limitation” is defined earlier in the Rule in Subparagraph (b)(1).

Paragraph (j), what does “timely” mean? Please delete or define both instances.

“Timely” is defined in 15A NCAC 02Q .0503, which clarifies the meaning of this term in both instances in paragraph (j).

Paragraph (n), what does “if it is sufficient to begin processing the application” mean? When is it sufficient? What is required?

In this context, “sufficient” refers to the information required in 40 CFR 63.53(b)(2).

Subparagraph (o)(3), if “the Division shall not be required to incorporate a less stringent emission limitation of the promulgated standards after considering the effects on air quality”, does this mean the Division may incorporate less stringent standards or limitations? When and on what basis? Also, what does “as necessary to protect air quality” mean? Define, set factors, or delete.

This language is consistent with 40 CFR 63.56(c)(2) and relieves the DAQ of any obligation to relax an emission limitation from a 112(j) case-by-case MACT determination, if the EPA subsequently promulgates a MACT standard applicable to the source that requires a less stringent level of control. At the DAQ’s discretion, after considering air quality effects, the more stringent limit may be maintained, or changed to be equivalent to the EPA standard.

The phrase “as necessary to protect air quality” was added in response to a RRC technical request on February 1, 2018. In those technical corrections, the Commission Counsel asked the question “on what basis will the Division decide whether to consider a more stringent emission limitation as an applicable legal requirement?”. The response to that question is as follows:

Fixed; per our conversation on 3/7/18, we accomplished the following to address this question:

On line 34, we deleted “requirements” and inserted “requirements, as necessary to protect air quality,”

The language is consistent with 40 CFR 63.56(c)(2): “If the Administrator promulgates an emission standard under section 112(d) or (h) of the Act that is applicable to an affected source after the date a permit application is approved under § 63.52 or § 63.54, and the level of control required by the promulgated standard is less stringent than the level of control required by any emission limitation in the prior MACT determination, the permitting authority is not required to incorporate any less stringent emission limitation of the promulgated standard in the title V permit and may in its discretion consider any more stringent provisions of the MACT determination to be applicable legal requirements when issuing or revising such a title V permit.”

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

1 15A NCAC 02Q .0103 is amended with changes as published in 36:14 NCR 1202 as follows:/

2
3 **15A NCAC 02Q .0103 DEFINITIONS**

4 For the purposes of this Subchapter, the definitions in G.S. 143-212 and G.S. 143-213 and the following definitions
5 apply:

- 6 (1) "Administrator" means, when it appears in any Code of Federal Regulation incorporated by
7 reference in 15A NCAC 02Q, the Director of the Division of Air Quality unless:
8 (a) a specific rule in this Subchapter specifies otherwise, or
9 (b) the U.S. Environmental Protection Agency in its delegation or approval states that a
10 specific authority of the Administrator of the Environmental Protection Agency is not
11 included in its delegation or approval.
- 12 (2) "Air Pollutant" means an air pollution agent or combination of such agents, including any physical,
13 chemical, biological, radioactive substance, or matter that is emitted into or otherwise enters the
14 ambient air. Water vapor shall not be considered an air pollutant.
- 15 (3) "Allowable emissions" means the maximum emissions allowed by the applicable rules set forth in
16 15A NCAC 02D or by permit conditions if the permit limits emissions to a lesser amount.
- 17 (4) "Alter or change" means to make a modification.
- 18 (5) "Applicable requirements" means:
19 (a) any requirement of 15A NCAC 02Q .0500;
20 (b) any standard or other requirement provided for in the implementation plan approved or
21 promulgated by EPA through rulemaking pursuant to Title I of the federal Clean Air Act,
22 that implements the relevant requirements of the federal Clean Air Act including any
23 revisions to 40 CFR Part 52;
24 (c) any term or condition of a construction permit issued to a facility pursuant to 15A NCAC
25 02D .0530, .0531, or .0532;
26 (d) any standard or other requirement pursuant to Section 111 or 112 of the federal Clean Air
27 Act, but not including the contents of any risk management plan required pursuant to
28 Section 112 of the federal Clean Air Act;
29 (e) any standard or other requirement pursuant to Title IV of the federal Clean Air Act;
30 (f) any standard or other requirement governing solid waste incineration pursuant to Section
31 129 of the federal Clean Air Act;
32 (g) any standard or other requirement pursuant to Section 183(e), 183(f), or 328 of the federal
33 Clean Air Act;
34 (h) any standard or requirement pursuant to Title VI of the federal Clean Air Act unless a
35 permit for such requirement is not required pursuant to this Section;
36 (i) any requirement pursuant to Section 504(b) or 114(a)(3) of the federal Clean Air Act; or

- (j) any national ambient air quality standard or increment or visibility requirement pursuant to Part C of Title I of the federal Clean Air Act, but only as it would apply to temporary sources permitted pursuant to Section 504(e) of the federal Clean Air Act.
- (6) "Applicant" means a person who is applying for an air quality permit from the Division.
- (7) "Application package" means all elements or documents required to make an application complete.
- (8) "CFR" means the Code of Federal Regulations.
- (9) "Construction" means change in the method of operation or any physical change, including on-site fabrication, erection, installation, replacement, demolition, or modification of a source, that results in a change in emissions or affects the compliance status. The following activities shall not be considered construction:
- (a) clearing and grading;
 - (b) building access roads, driveways, and parking lots;
 - (c) building and installing underground pipe work, including water, sewer, electric, and telecommunications utilities; or
 - (d) building ancillary structures, including fences and office buildings that are not a necessary component of an air contaminant source, equipment, or associated air cleaning device for which a permit is required pursuant to G.S. 143-215.108.
- (10) "Director" means the Director of the Division of Air Quality.
- (11) "Division" means the Division of Air Quality.
- (12) "EPA" means the United States Environmental Protection Agency or the Administrator of the Environmental Protection Agency.
- (13) "EPA approves" means full approval, interim approval, or partial approval by EPA.
- (14) "Equivalent unadulterated fuels" means used oils that have been refined such that the content of toxic additives or contaminants in the oil are no greater than those in unadulterated fossil fuels.
- (15) "Facility" means all of the pollutant-emitting activities, except transportation facilities, that are located on one or more adjacent properties under common control.
- (16) ~~"Federally enforceable" or "federal enforceable"~~ "Federally-enforceable" means enforceable by EPA, Administrator as defined in Item (1) of this Rule, and citizens under the federal Clean Air Act.
- (17) "Fuel combustion equipment" means any fuel burning source covered pursuant to 15A NCAC 02D .0503, .0504, .0536, or 40 CFR Part 60 Subpart D, Da, Db, or Dc.
- (18) "Green wood" means wood with a moisture content of 18% or more.
- (19) "Hazardous air pollutant" means any pollutant that has been listed pursuant to Section 112(b) of the federal Clean Air Act. Pollutants listed only in 15A NCAC 02D .1104 (Toxic Air Pollutant Guidelines), but not pursuant to Section 112(b), shall not be included in this definition.
- (20) "Insignificant activities" means activities defined as insignificant activities because of category or as insignificant activities because of size or production rate pursuant to 15A NCAC 02Q .0503.

- 1 (21) "Lesser quantity cutoff" means:
- 2 (a) for a source subject to the requirements of Section 112(d) or (j) of the federal Clean Air
- 3 Act, the level of emissions of hazardous air pollutants below which the following are not
- 4 required:
- 5 (i) maximum achievable control technology (MACT) or generally available control
- 6 technology (GACT), including work practice standards, pursuant to Section
- 7 112(d) of the federal Clean Air Act;
- 8 (ii) a MACT standard established pursuant to Section 112(j) of the federal Clean Air
- 9 Act; or
- 10 (iii) substitute MACT or GACT adopted pursuant to Section 112(l) of the federal
- 11 Clean Air Act;
- 12 (b) for modification of a source subject ~~to to, or that may be subject to,~~ the requirements of
- 13 Section 112(g) of the federal Clean Air Act, the level of emissions of hazardous air
- 14 pollutants below which MACT is not required to be applied pursuant to Section 112(g) of
- 15 the federal Clean Air Act; or
- 16 (c) for all other sources, potential emissions of each hazardous air pollutant below 10 tons per
- 17 year and the aggregate potential emissions of all hazardous air pollutants below 25 tons per
- 18 year.
- 19 (22) "Major facility" means a major source as defined pursuant to 40 CFR 70.2.
- 20 (23) "Modification" means any physical change or change in method of operation that results in a change
- 21 in emissions or affects compliance status of the source or facility.
- 22 (24) "Owner or operator" means any person who owns, leases, operates, controls, or supervises a facility,
- 23 source, or air pollution control equipment.
- 24 (25) "Peak shaving generator" means a generator that is located at a facility and is used only to serve that
- 25 facility's on-site electrical load during peak demand periods for the purpose of reducing the cost of
- 26 electricity; it does not generate electricity for resale. A peak shaving generator may also be used for
- 27 emergency backup.
- 28 (26) "Permit" means the binding written document, including any revisions thereto, issued pursuant to
- 29 G.S. 143-215.108 to the owner or operator of a facility or source that emits one or more air pollutants
- 30 and that allows that facility or source to operate in compliance with G.S. 143-215.108. This
- 31 document shall specify the requirements applicable to the facility or source and to the permittee.
- 32 (27) "Permittee" means the person who has been issued an air quality permit from the Division.
- 33 (28) "Potential emissions" means the rate of emissions of any air pollutant that would occur at the
- 34 facility's maximum capacity to emit any air pollutant under its physical and operational design. Any
- 35 physical or operational limitation on the capacity of a facility to emit an air pollutant shall be treated
- 36 as a part of its design if the limitation is federally enforceable. Such physical or operational
- 37 limitations shall include air pollution control equipment and restrictions on hours of operation or on

the type or amount of material combusted, stored, or processed. Potential emissions shall include fugitive emissions as specified in the definition of major source in 40 CFR 70.2. Potential emissions shall not include a facility's secondary emissions such as those from motor vehicles associated with the facility and shall not include emissions from insignificant activities because of category as defined in 15A NCAC 02Q .0503. If a rule in 40 CFR Part 63 uses a different methodology to calculate potential emissions, that methodology shall be used for sources and pollutants regulated pursuant to that rule.

(29) "Portable generator" means a generator permanently mounted on a trailer or a frame with wheels.

(30) "Regulated air pollutant" means:

(a) nitrogen oxides or any volatile organic compound as defined pursuant to 40 CFR 51.100;

(b) any pollutant for which there is an ambient air quality standard pursuant to 40 CFR Part 50;

(c) any pollutant regulated pursuant to 15A NCAC 02D .0524, .1110, or .1111; or 40 CFR Part 60, 61, or 63;

(d) any pollutant subject to a standard promulgated pursuant to Section 112 of the federal Clean Air Act or other requirements established pursuant to Section 112 of the federal Clean Air Act, including Section 112(g) ~~(but only for~~ only the facility subject to Section 112(g)(2) of the federal Clean Air ~~Act), Act~~, (j), or (r) of the federal Clean Air Act; or

(e) any Class I or II substance listed pursuant to Section 602 of the federal Clean Air Act.

(31) "Sawmill" means a place or operation where logs are sawed into lumber consisting of one or more of these activities: debarking, sawing, and sawdust handling. Activities that shall not be considered part of a sawmill include chipping, sanding, planning, routing, lathing, and drilling.

(32) "Source" means any stationary article, machine, process equipment, or other contrivance, or combination thereof, from which air pollutants emanate or are emitted, either directly or indirectly.

(33) "State-enforceable only" means terms and conditions that are not required under the Clean Air Act or under any of its applicable requirements. Terms and conditions designated as State-enforceable only are not subject to the requirements of 40 CFR Part 70.

~~(33)~~(34) "Toxic air pollutant" means any of the carcinogens, chronic toxicants, acute systemic toxicants, or acute irritants that are listed in 15A NCAC 02D .1104.

~~(34)~~(35) "Transportation facility" shall be considered a complex source as defined in G.S. 143-213(22).

~~(35)~~(36) "Unadulterated fossil fuel" means fuel oils, coal, natural gas, or liquefied petroleum gas to which no toxic additives have been added that may result in the emissions of a toxic air pollutant listed pursuant to 15A NCAC 02D .1104.

History Note: Authority G.S. 143-212; 143-213; 143-215.3(a)(1);

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

1 *Eff. July 1, 1994;*
2 *Amended Eff. April 1, 1999; July 1, 1998; July 1, 1996;*
3 *Temporary Amendment Eff. December 1, 1999;*
4 *Amended Eff. January 1, 2015; December 1, 2005; July 1, 2000;*
5 *Readopted Eff. April 1, ~~2018-2018~~;*
6 *Amended Eff. September 1, 2022.*
7

1 15A NCAC 02Q .0503 is amended with changes as published in 36:14 NCR 1202 as follows:

2
3 **15A NCAC 02Q .0503 DEFINITIONS**

4 For the purposes of this Section, the definitions in G.S. 143-212, G.S. 143-213, 15A NCAC 02Q .0103, and the
5 following definitions apply:

- 6 (1) "Affected States" means all states or local air pollution control agencies whose areas of jurisdiction
7 are:
8 (a) contiguous to North Carolina and located less than $D=Q/12.5$ from the facility, where:
9 (i) Q = emissions of the pollutant emitted at the highest permitted rate in tons per
10 year, and
11 (ii) D = distance from the facility to the contiguous state or local air pollution control
12 agency in miles unless the applicant can demonstrate that the ambient impact in
13 the contiguous states or local air pollution control agencies is less than the
14 incremental ambient levels in 15A NCAC 02D .0532(c)(5); or
15 (b) within 50 miles of the permitted facility.
16 (2) "Complete application" means an application that provides all information described in 40 CFR
17 70.5(c) and such other information that is necessary to determine compliance with all applicable
18 federal and State requirements.
19 (3) "Draft permit" means the version of a permit that the Division offers for public participation
20 pursuant to 15A NCAC 02Q .0521 or affected ~~State~~ state review pursuant to 15A NCAC 02Q .0522.
21 (4) "Emissions allowable under the permit" means an emissions ~~limit (including limit, including~~ a work
22 practice ~~standard) standard~~, established by a federally enforceable permit term or condition, or a
23 federally enforceable emissions cap that the facility has assumed to avoid an applicable requirement
24 to which the facility would otherwise be subject.
25 (5) "Final permit" means the version of a permit that the Director issues that has completed all review
26 procedures required pursuant to this Section if the permittee does not file a petition pursuant to
27 Article 3 of G.S. 150B that is related to the permit.
28 (6) "Fugitive emissions" means those emissions which could not reasonably pass through a stack,
29 chimney, vent, or other functionally-equivalent opening.
30 (7) "Insignificant activities because of category" means:
31 (a) mobile sources;
32 (b) air-conditioning units used for human comfort that are not subject to applicable
33 requirements pursuant to Title VI of the federal Clean Air Act and do not exhaust air
34 pollutants into the ambient air from any manufacturing or other industrial process;
35 (c) ventilating units used for human comfort that do not exhaust air pollutants into the ambient
36 air from any manufacturing or other industrial process;

- (d) heating units used for human comfort that have a heat input of less than 10,000,000 Btu per hour and that do not provide heat for any manufacturing or other industrial process;
- (e) noncommercial food preparation;
- (f) consumer use of office equipment and products;
- (g) janitorial services and consumer use of janitorial products;
- (h) internal combustion engines used for landscaping purposes;
- (i) new residential wood heaters subject to 40 CFR Part 60, Subpart AAA; and
- (j) demolition and renovation activities covered solely pursuant to 40 CFR Part 61, Subpart M.
- (8) "Insignificant activities because of size or production rate" means any activity whose emissions would not violate any applicable emissions standard and whose potential emission of particulate, sulfur dioxide, nitrogen oxides, volatile organic compounds, and carbon monoxide before air pollution control devices, are each no more than five tons per year and whose potential emissions of hazardous air pollutants before air pollution control devices, are each below 1000 pounds per year.
- (9) "Minor facility" means any facility that is not a major facility.
- (10) "Operation" means the use of equipment that emits regulated pollutants.
- (11) "Permit renewal" means the process by which a permit is reissued at the end of its term.
- (12) "Permit revision" means any permit modification pursuant to 15A NCAC 02Q .0515, .0516, or .0517 or any administrative permit amendment pursuant to 15A NCAC 02Q .0514.
- (13) "Proposed permit" means the version of a permit that the Director proposes to issue and forwards to EPA for review pursuant to 15A NCAC 02Q .0522.
- ~~(14)~~ "Relevant source" means only those sources that are subject to applicable requirements.
- ~~(15)~~(15) "Responsible official" means a responsible official as defined in 40 CFR 70.2.
- ~~(16)~~(16) "Section 502(b)(10) changes" means changes that contravene an express permit term or condition. Such changes shall not include changes that would violate applicable requirements or contravene federally enforceable permit terms and conditions that are monitoring (including monitoring, including test methods), methods, recordkeeping, reporting, or compliance certification requirements.
- ~~(17)~~(16) "Synthetic minor facility" means a facility that would otherwise be required to follow the procedures of this Section except that the potential to emit is restricted by one or more federally enforceable physical or operational limitations, including air pollution control equipment and restrictions on hours or operation, the type or amount of material combusted, stored, or processed, or similar parameters.
- ~~(18)~~(17) "Timely" means:

- (a) for a new facility or newly subject facility, 12 months from the date that the facility or source becomes subject to the Title V operating permit program pursuant to 15A NCAC 02Q .0500; one year after commencing operation;
- (b) for renewal of a permit previously issued pursuant to this Section, six months before the expiration of that permit;
- (c) for a minor modification pursuant to 15A NCAC 02Q .0515, before commencing the modification;
- (d) for a significant modification pursuant to 15A NCAC 02Q .0516 where the change would not contravene or conflict with a condition in the existing permit, 12 months after commencing operation;
- (e) for reopening for cause pursuant to 15A NCAC 02Q .0517, as specified by the Director in a request for additional information by the Director;
- (f) for requests for additional information, as specified by the Director in a request for additional information by the Director; or
- (g) for modifications made pursuant to Section 112(j) of the federal Clean Air Act, 18 months after EPA fails to promulgate a standard for that category of source pursuant to Section 112 of the federal Clean Air Act by the date established pursuant to Section 112(e)(1) or (3) of the federal Clean Air Act.

History Note: Authority G.S. 143-215.3(a)(1); 143-212; 143-213;
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. July 1, 1996;
Temporary Amendment Eff. December 1, 1999;
Amended Eff. January 1, 2007; July 1, 2000;
Readopted Eff. April 1, ~~2018~~ 2018;
Amended Eff. September 1, 2022.

1 15A NCAC 02Q .0504 is amended with changes as published in 36:14 NCR 1202 as follows:

2
3 **15A NCAC 02Q .0504 OPTION FOR OBTAINING CONSTRUCTION AND OPERATION PERMIT**

4 (a) Pursuant to 15A NCAC 02Q ~~.0501(e)(2)~~.0501(b)(2) or ~~(d)(2)(c)(2)~~, the owner or operator of a new or modified
5 facility subject to the requirements of this Section that chooses to obtain a construction and operation permit before
6 the facility ~~must~~ is required to obtain a permit pursuant to this Section may file an application pursuant to 15A NCAC
7 02Q .0300.

8 (b) The applicant shall state in his or her permit application that he or she wishes to follow the procedures in Paragraph
9 (a) of this Rule.

10 ~~(c) If the option allowed pursuant to 15A NCAC 02Q .0501(b)(1) is used, then the application processing procedures~~
11 ~~for prevention of significant deterioration in 15A NCAC 02D .0530 and new source review for nonattainment areas~~
12 ~~in 15A NCAC 02D .0531 do not apply. If the option allowed pursuant to 15A NCAC 02Q .0501(b)(2) is used, then~~
13 ~~the application processing procedures in this Section and in either of the following rules shall apply:~~

14 ~~(1) 15A NCAC 02D .0530 for prevention of significant deterioration; or~~

15 ~~(2) 15A NCAC 02D .0531 for new source review for nonattainment areas.~~

16 ~~(d)(c)~~ If the procedures in 15A NCAC 02Q .0300 are followed, the permittee shall have ~~one year~~ 12 months after the
17 facility or source becomes subject to the permit program in 15A NCAC 02Q .0500 if the permittee is applying for a
18 Title V permit for the first time. Otherwise, the permittee shall have from 12 months from the date of beginning
19 operation of the modified facility or source to file an amended application following the procedures in this Section.
20 The Director shall place a condition in the construction and operation permit stating this requirement.

21
22 *History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108;*

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

25 *Eff. July 1, 1994;*

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

27 *Amended Eff. September 1, 2022.*
28

1 15A NCAC 02Q .0505 is amended with changes as published in 36:14 NCR 1202 as follows:

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

4 If an applicant does not ~~submit, submit~~ the following information with its application package, the application package
5 shall 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 if required; and
- 11 (e) applications as required pursuant to 15A NCAC 02Q .0507(a) and (e) and signed as
12 required by 15A NCAC 02Q .0520;
- 13 (2) for renewals: applications as required pursuant to 15A NCAC 02Q .0507(a) and (e) and signed as
14 required by 15A NCAC 02Q .0520;
- 15 (3) for a name change: three copies of a letter signed by a responsible official in accordance with 15A
16 NCAC 02Q .0520 indicating the current facility name, the date on which the name change will
17 occur, and the new facility name;
- 18 (4) for an ownership change: an application fee as required pursuant to 15A NCAC 02Q .0200; ~~and;~~
19 ~~and three copies of a letter bearing the signature of both the seller and buyer and containing a written~~
20 ~~agreement with a specific date for the transfer of permit responsibility, coverage, and liability~~
21 ~~between the current and new permittee; and~~
22 ~~(a) three copies of a letters signed by the seller and the buyer indicating the change; or~~
23 ~~(b) three copies of a letter bearing the signature of both the seller and buyer and containing a~~
24 ~~written agreement with a specific date for the transfer of permit responsibility, coverage,~~
25 ~~and liability between the current and new permittee; and~~
- 26 (5) for corrections of typographical errors; changes of the name, address, or telephone number of any
27 individual identified in the permit; changes in test dates or construction dates; or similar minor
28 changes: three copies of a letter signed by a responsible official in accordance with 15A NCAC 02Q
29 .0520 describing the proposed change and explaining the need for the proposed change.

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

1 15A NCAC 02Q .0507 is amended with changes as published in 36:14 NCR 1202 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 source shall have 12 months after the one year from the date of beginning of operation of a
9 source that facility or source becomes subject to the Title V operating permit program pursuant to 15A NCAC 02Q
10 .0500 to file a complete application for a permit or permit revision. However, the owner or operator of a source shall
11 not begin construction or operation of a source until he or she has obtained a construction and operation permit
12 pursuant to 15A NCAC 02Q ~~.0501(e)~~.0501(b) or ~~(d)~~(c) and 15A 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 data and information as
21 required by this Rule. If the information provided on these forms does not describe the source or its air pollution
22 abatement equipment to the extent necessary to evaluate the application, the Director shall request that the applicant
23 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~~ State environmental laws and rules.

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

- (1) for sources subject to the requirements of 15A NCAC 02D .0530, .0531, or .1200, five copies plus one additional copy for each affected state that the Director has to notify pursuant to 15A NCAC 02Q .0521 and 15A NCAC 02Q .0522;
- (2) for sources not subject to the requirements of 15A NCAC 02D .0530, .0531, or .1200, three copies plus one additional copy for each affected state that the Director has to notify pursuant to 15A NCAC 02Q .0521 and 15A NCAC 02Q .0522.
- (f) Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date ~~he~~ the applicant filed a complete application but prior to release of a draft permit.
- (g) The applicant shall submit the same number of copies of additional information as required for the application package.
- (h) The submittal of a complete permit application shall not affect the requirement that any facility have a permit pursuant to 15A NCAC 02D .0530, .0531, or .0532 or pursuant to 15A NCAC 02Q .0400.
- (i) The Director shall give priority to permit applications containing early reduction demonstrations pursuant to Section 112(i)(5) of the federal Clean Air Act. The Director shall take final action on such permit applications after receipt of the complete permit application.
- (j) Except as specified in 15A NCAC 02Q .0203(i), a non-refundable permit application processing fee, defined in 15A NCAC 02Q .0200, shall accompany each application. Each permit application shall be deemed incomplete until the permit application processing fee is received.
- (k) The applicant shall retain for the duration of the permit term one complete copy of the application package and all information submitted in support of the application package.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108;
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. July 1, 1997; July 1, 1996; February 1, 1995;
Temporary Amendment Eff. December 1, 1999;
Amended Eff. September 1, 2015; April 1, 2004; July 1, 2000;
Readopted Eff. April 1, ~~2018-2018~~;
Amended Eff. September 1, 2022.

1 15A NCAC 02Q .0508 is amended with changes as published in 36:14 NCR 1202 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 every six months. The permittee shall
20 submit reports:

21 (A) on forms obtained from the Division at the address 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 deviations
30 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

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

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

8 (i) A permit shall:

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

33 ~~(The [The]permit shall also state that for information claimed to be confidential, the~~

34 ~~permittee may furnish such records directly to EPA along with a claim of~~

35 ~~confidentiality.)[confidentiality;]~~

36 The permit shall also state that for information claimed to be confidential, the permittee may furnish

37 such records directly to EPA along with a claim of confidentiality;

- 1
- 2 (10) contain a provision to ensure that the permittee pays fees required by 15A NCAC 02Q .0200;
- 3 (11) contain a condition that authorizes the permittee to make Section 502(b)(10) changes, off-permit
- 4 changes, or emission trades in accordance with 15A NCAC 02Q .0523;
- 5 (12) include all applicable requirements for all sources covered by the permit;
- 6 (13) include fugitive emissions ~~emissions, if regulated,~~ in the same manner as stack emissions;
- 7 (14) contain a condition requiring annual reporting of actual emissions as required by 15A NCAC 02Q
- 8 0207;
- 9 (15) include all sources including insignificant activities; and
- 10 (16) contain other provisions the Director considers appropriate.
- 11 (j) A permit shall state the terms and conditions for reasonably anticipated operating scenarios identified by the
- 12 applicant in the application. These terms and conditions shall:
- 13 (1) require the permittee, contemporaneously with making a change from one operating scenario to
- 14 another, to record in a log at the permitted facility a record of the operating scenario in which it is
- 15 operating;
- 16 (2) extend the permit shield described in 15A NCAC 02Q .0512 to all terms and conditions in each such
- 17 operating scenario; and
- 18 (3) ensure that each operating scenario meets all applicable requirements of Subchapter 02D of this
- 19 Chapter and of this Section.
- 20 (k) A permit shall identify which terms and conditions are enforceable ~~by:~~ by the Division only.
- 21 ~~(1) both EPA and the Division;~~
- 22 ~~(2) the Division only; and~~
- 23 ~~(3) EPA only and~~
- 24 ~~(4) citizens pursuant to the federal Clean Air Act.~~
- 25 (l) A permit shall state that the permittee will allow personnel of the Division to:
- 26 (1) enter the permittee's premises where the permitted facility is located or emissions-related activity is
- 27 conducted, or where records are kept by the conditions of the permit;
- 28 (2) have access to and copy any records that are required to be kept by the conditions of the permit;
- 29 (3) inspect any source, ~~equipment (including equipment, including~~ monitoring and air pollution control
- 30 ~~equipment), equipment,~~ practices, or operations regulated or required by the permit; and
- 31 (4) sample or monitor substances or parameters, for the purpose of assuring compliance with the permit
- 32 or applicable requirements.
- 33 (m) When a compliance schedule is required by 40 CFR 70.5(c)(8) or by a rule contained in Subchapter 02D of this
- 34 Chapter, the permit shall contain the compliance schedule and shall state that the permittee shall submit at least
- 35 semiannually, or more frequently if specified in the applicable requirement, a progress report. The progress report
- 36 shall contain:

- 1 (1) dates for achieving the activities, milestones, or compliance required in the compliance schedule
2 and dates when such activities, milestones, or compliance were achieved; and
3 (2) an explanation of why any dates in the compliance schedule were not or will not be met and any
4 preventive or corrective measures adopted.
- 5 (n) The permit shall contain requirements for compliance certification with the terms and conditions in the permit
6 that are enforceable by EPA pursuant to Title V of the federal Clean Air Act, including emissions limitations,
7 standards, and work practices. The permit shall specify:
- 8 (1) the ~~frequency (not frequency, not~~ less than annually or more frequently as specified in the applicable
9 ~~requirements) requirements~~, of submissions of compliance certifications;
10 (2) a means for monitoring the compliance of the source with its emissions limitations, standards, and
11 work practices; and
12 (3) a requirement that the compliance certification include:
- 13 (A) the identification of each term or condition of the permit that is the basis of the certification;
14 (B) the status of compliance with the terms and conditions of the permit for the period covered
15 by the certification, based on the methods or means designated in 40 CFR
16 70.6(c)(5)(iii)(B). The certification shall identify each deviation and take it into account in
17 the compliance certification. The certification shall also identify as possible exceptions to
18 compliance any periods during which compliance was required and in which an excursion
19 or exceedance as defined in 40 CFR 64 occurred;
20 (C) whether compliance was continuous or intermittent;
21 (D) the identification of the methods or other means used by the owner and operator for
22 determining the compliance status with each term and condition during the certification
23 period; these methods shall include the methods and means required in 40 CFR Part
24 ~~70.6(a)(3); 70.6(a)(3). If necessary, the~~ The owner or operator also shall identify any other
25 material information that must be included in the certification to comply with
26 Section 113(c)(2) of the federal Clean Air Act, which prohibits knowingly making a false
27 certification or omitting material information; and
28 (E) such other facts as the Director may require to determine the compliance status of the
29 source; and
30 (4) that all compliance certifications be submitted to EPA as well as to the Division.

31
32 *History Note:* Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(10); 143-215.108;
33 Temporary Rule Eff. March 8, 1994 for a period of 180 days or until the permanent rule is effective,
34 whichever is sooner;
35 Eff. July 1, 1994;
36 Amended Eff. July 1, 1996;
37 Temporary Amendment Eff. December 1, 1999;

1 *Amended Eff. August 1, 2008; June 1, 2008; January 1, 2007; December 1, 2005; April 1, 2001;*
2 *July 1, 2000;*
3 *Readopted Eff. April 1, ~~2018, 2018~~;*
4 *Amended Eff. September 1, 2022.*
5

1 15A NCAC 02Q .0509 is amended as published in 36:14 NCR 1202 as follows:

2
3 **15A NCAC 02Q .0509 PERMITTING OF NUMEROUS SIMILAR FACILITIES**

4 (a) The Director shall not issue a single permit to cover numerous similar facilities or sources unless a notice and
5 opportunity for public participation has been provided as required by 15A NCAC 02Q .0521.

6 (b) The Director shall not issue a single permit for numerous similar facilities and sources pursuant to this Rule unless:

7 (1) there is no difference between the facilities or sources that would require special permit conditions
8 for any individual facility or source; and

9 (2) no unique analysis is required for any facility or source covered by the permit.

10 (c) A permit issued pursuant to this Rule shall comply with all the requirements of this Section.

11 (d) A permit issued pursuant to this Rule shall identify criteria by which facilities or sources may qualify for the
12 permit. To facilities or sources that qualify, the Director shall grant the terms and conditions of the permit.

13 (e) The facility or source shall be subject to enforcement action for operating without a permit if the facility or source
14 is later determined not to qualify for the terms and conditions of the permit issued pursuant to this Rule.

15 (f) Sources subject to Title IV shall not be eligible for a permit issued pursuant to this Rule.

16 (g) The owner or operator of a facility or source that qualifies for a permit issued pursuant to this Rule shall apply for
17 coverage by the terms of the permit issued pursuant to this Rule or shall apply for a standard permit for each facility
18 or source pursuant to this Section.

19 (h) The Division need not repeat the public participation procedures pursuant to 15A NCAC 02Q .0521 if it grants a
20 request by a permit applicant to operate by a permit issued pursuant to this ~~Rule.~~ Rule, but such a grant shall not be a
21 final permit action for purposes of judicial review.

22
23 *History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108;*

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

26 *Eff. July 1, 1994;*

27 *Readopted Eff. April 1, ~~2018~~ 2018;*

28 *Amended Eff. September 1, 2022.*

1 15A NCAC 02Q .0514 is amended with changes as published in 36:14 NCR 1202 as follows:

2
3 **15A NCAC 02Q .0514 ADMINISTRATIVE PERMIT AMENDMENTS**

4 (a) An "administrative permit amendment" means a permit revision that:

- 5 (1) corrects typographical errors;
- 6 (2) identifies a change in the name, address, or telephone number of any individual identified in the
- 7 permit or provides a similar minor administrative change at the facility;
- 8 (3) requires more frequent monitoring or reporting by the permittee;
- 9 (4) changes test dates or construction dates provided that no applicable requirements are violated by the
- 10 change in test dates or construction dates;
- 11 (5) ~~moves~~ ~~removes designation of State-enforceable only from~~ terms and conditions ~~from the~~
- 12 ~~State-enforceable only portion of a permit to the State and federal enforceable portion of the permit~~
- 13 provided that the terms and conditions ~~being moved~~ have become federally enforceable through
- 14 Section 110, 111, or 112 or other parts of the federal Clean Air Act;
- 15 ~~(6) moves terms and conditions from the federal enforceable only portion of a permit to the State and~~
- 16 ~~federal enforceable portion of the permit;~~
- 17 ~~(7)(6)~~ changes the permit number without changing any portion of the permit ~~that is federally enforceable~~
- 18 that would not otherwise qualify as an administrative amendment; or
- 19 ~~(8)(7)~~ removes references and non-applicable permit conditions; requirements for equipment that has been
- 20 permanently removed from service. ~~or~~
- 21 ~~(9) removes references to equipment that has been permanently removed from service.~~

22 (b) In making administrative permit amendments, the Director:

- 23 (1) shall take final action on a request for an administrative permit amendment within 60 days after
- 24 receiving such request;
- 25 (2) may make administrative amendments without providing notice to the public or any affected states
- 26 pursuant to 15A NCAC 02Q .0521(a), provided he or she designates any such permit revision as
- 27 having been made pursuant to this Rule; and
- 28 (3) shall submit a copy of the revised permit to EPA.

29 (c) The permittee may implement the changes addressed in the request for an administrative amendment immediately

30 upon submittal of the request.

31 ~~(d) Upon taking final action granting a request for an administrative permit amendment, the Director shall allow~~

32 ~~coverage by the permit shield pursuant to 15A NCAC 02Q .0512 for the administrative permit amendments made.~~

33 ~~(e)(d)~~ Administrative amendments for sources covered pursuant to Title IV shall be governed by rules in 15A NCAC

34 02Q .0400.

35 ~~(f)(e)~~ This Rule shall not apply to the ~~state-enforceable~~ State-enforceable only part of a Title V permit. For the ~~state-~~

36 ~~enforceable~~ State-enforceable only part of a Title V permit, 15A NCAC 02Q .0316 shall govern administrative permit

37 amendments.

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History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108;
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, 2007; July 1, 1997;
Readopted Eff. April 1, ~~2018-2018~~;
Amended Eff. September 1, 2022.

1 15A NCAC 02Q .0516 is amended as published in 36:14 NCR 1202 as follows:

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3 **15A NCAC 02Q .0516 SIGNIFICANT PERMIT MODIFICATION**

4 (a) The procedures set out in this Rule shall apply to applications requesting permit modifications pursuant to this
5 Rule or permit modifications that are not governed by 15A NCAC 02Q .0514, .0515, .0523, or .0524.

6 (b) An application for a significant permit modification that would contravene or conflict with an existing permit
7 shall be processed following the procedure set out in 15A NCAC 02Q .0501(c).

8 (c) An application for a significant permit modification that does not contravene or conflict with an existing permit
9 shall be processed following the procedure set out in 15A NCAC 02Q .0501(b).

10 (d) This Rule shall not preclude the permittee from making changes consistent with this Section that would render
11 existing permit compliance terms and conditions irrelevant.

12 (e) Except for the State-enforceable only portion of the permit, the procedures set out in 15A NCAC 02Q .0507,
13 .0521, or .0522 shall be followed to revise a permit pursuant to this Rule. If the State-enforceable only portion of the
14 permit is revised, the procedures in 15A NCAC 02Q .0300 shall be followed. The proceedings shall affect only those
15 parts of the permit related to the significant modification.

16 (f) Significant permit modifications shall be covered by the permit shield in accordance with 15A NCAC 02Q .0512.

17 (g) Significant permit modifications shall be processed in accordance with 15A NCAC 02Q .0525.
18

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

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

22 *Eff. July 1, 1994;*

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

24 *Amended Eff. September 1, 2022.*
25

1 15A NCAC 02Q .0518 is amended as published in 36:14 NCR 1202 as follows:

2
3 **15A NCAC 02Q .0518 FINAL ACTION**

4 (a) The Director ~~may~~ shall:

- 5 (1) issue a permit, permit revision, or renewal containing the conditions necessary to carry out the
6 purposes of G.S. 143, Article 21B and the federal Clean Air Act;
7 (2) rescind a permit upon request by the permittee; or
8 (3) deny a permit application when necessary to carry out the purposes of G.S. 143, Article 21B and the
9 federal Clean Air Act.

10 (b) The Director ~~may~~ shall not issue a final permit or permit revision, except administrative permit amendments
11 pursuant to 15A NCAC 02Q ~~.0514, .0514 and .0524~~, until 15 days after the end of EPA's 45-day review period has
12 ~~expired~~ or until EPA has notified the Director that EPA will not object to issuance of the permit or permit revision,
13 whichever occurs first. ~~The Director shall issue the permit or permit revision within five days of receipt of notification~~
14 ~~from EPA that it will not object to issuance or of the expiration of EPA's 45-day review period, whichever occurs first.~~

15 (c) If EPA objects to a proposed permit, the Director shall respond to EPA's objection within 90 days after receipt of
16 EPA's objection. The Director shall not issue a permit pursuant to this Section over EPA's objection.

17 (d) If EPA does not object in writing to the issuance of a permit, any person may petition EPA to make such objections
18 by following the procedures and meeting the requirements of 40 CFR 70.8(d).

19 (e) No permit shall be issued, revised, or renewed pursuant to this Section unless all the procedures set out in this
20 Section have been followed and all the requirements of this Section have been met. The Director shall not issue any
21 permit, permit revision, or permit renewal pursuant to this Section by default.

22 (f) Notwithstanding the application processing schedules set forth in 15A NCAC 02Q .0514, .0515, and .0524, the
23 Division shall take final action on each permit application, including a request for permit modification or renewal,
24 within 18 months of receipt of a complete application.

25 ~~(f)(g)~~ (g) Thirty days after issuing a permit, including a permit issued pursuant to 15A NCAC 02Q .0509, that is not
26 challenged by the applicant, the Director shall notice the issuance of the final permit. The notice shall be issued on the
27 North Carolina Division of Air Quality web site at <http://deq.nc.gov/about/divisions/air-quality>. The notice shall
28 include the name and address of the facility and the permit number.

29
30 *History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108;*

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. January 1, 2010; February 1, 1995;*

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

36 *Amended Eff. September 1, 2022.*

1 15A NCAC 02Q .0521 is amended with changes as published in 36:14 NCR 1202 as follows:

2
3 **15A NCAC 02Q .0521 PUBLIC PARTICIPATION**

4 (a) The Director shall give public notice with an opportunity for comments and a hearing on all draft permits and
5 permit revisions except permit revisions issued pursuant to 15A NCAC 02Q .0514, .0515, and .0524. The Director
6 shall give public notice with an opportunity for comments and a hearing on draft permit revisions issued pursuant to
7 15A NCAC 02Q .0514, .0515, and .0524 if the Director finds it is in the best interest of the public.

8 (b) Notice of any draft permit for an existing facility for which a public hearing is scheduled or for a new facility shall
9 be given by publication in a newspaper of general circulation in the area where the facility is located, posted on the
10 North Carolina Division of Air Quality web site at ~~http://deq.nc.gov/about/divisions/air-quality,~~
11 http://deq.nc.gov/about/divisions/air-quality for the duration of the public comment period, and emailed to persons
12 who are on the Division's emailing list for air quality permits.

13 (c) Notice for existing facilities for which a public hearing is not scheduled shall be given by posting the draft permit
14 on the North Carolina Division of Air Quality web site at http://deq.nc.gov/about/divisions/air-quality for the duration
15 of the public comment period and shall be emailed to persons who are on the Division's emailing list for air quality
16 permit notices.

17 (d) The notice shall identify:

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

30 (e) The Director shall send a copy of the notice to affected states and EPA.

31 (f) The notice shall allow 30 days for public comments.

32 (g) ~~If the Director finds that a public hearing is in the best interest of the public, the Director shall require a public~~
33 ~~hearing to be held on a draft permit.~~ Notice of a any public hearing shall be given at least 30 days before the hearing.

34 (h) The Division shall keep a record of the public participation process, including the following:

- 35 (1) the names of all commenters;
36 (2) the issues raised during the public participation process; and
37 (3) all written comments submitted during the public participation process.

1 If EPA requests a record of the comments and of the issues raised during the public participation process, the Director
2 shall provide EPA this record.

3 (i) The Division shall respond in writing to comments raised during the public participation process, including any
4 ~~such~~ written comments submitted during the public comment period and any ~~such~~ comments raised during any
5 public hearing on the permit. The response to comments shall be included in the statement of basis and ~~any~~ Hearing
6 Officer's ~~report, if applicable.~~ report.

7 ~~(i)~~ (j) Persons who desire to be placed on the Division's email notification list for air quality permit notices shall
8 subscribe to the permits email list serve at <http://deq.nc.gov/about/divisions/air-quality>.

9
10 *History Note: Authority G.S. 143-215.3(a)(1),(3); 143-215.107(a)(10); 143-215.108; 143-215.111(4);*
11 *Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule*
12 *becomes effective, whichever is sooner;*
13 *Eff. July 1, 1994;*
14 *Amended Eff. January 1, 2010; July 1, 1998;*
15 *Readopted Eff. April 1, ~~2018-2018~~;*
16 *Amended Eff. September 1, 2022.*
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1 15A NCAC 02Q .0522 is amended with changes as published in 36:14 NCR 1202 as follows:

2
3 **15A NCAC 02Q .0522 REVIEW BY EPA AND AFFECTED STATES**

4 (a) The Director shall provide EPA with a copy of each permit application, including any application for permit
5 revision, the statement of basis required under Paragraph (b) of this Rule, each proposed permit, and each final permit
6 issued pursuant to this Section. If EPA has informed the Director that a permit application summary and relevant
7 portion of the permit application and compliance plan are sufficient, the Director may provide these documents instead
8 of the complete application.

9 (b) The Division shall provide a statement that sets forth the legal and factual basis for the draft permit conditions,
10 including references for the applicable statutory or regulatory provisions. The Division shall provide this statement to
11 EPA and any other person who requests it.

12 (c) If comments are received during the public participation process, the written responses shall be provided to EPA
13 through submittal of a statement of basis, required pursuant to 15A NCAC 02Q .0521, with an explanation of how
14 those public comments and the Division's responses are available to the public.

15 ~~(b)(d)~~ The Division shall retain for five years a copy of all permit applications, permits, and other related material
16 submitted to or issued by the Division pursuant to this Section.

17 ~~(e)(e)~~ The Director shall provide notice to each affected state of each draft permit at or before the time notice is
18 provided to the public pursuant to 15A NCAC 02Q .0521.

19 ~~(d)(f)~~ The Director, in writing, shall notify EPA and any affected state of any refusal by the Division to accept all
20 recommendations for the proposed permit that the affected state submitted during the public or affected state review
21 period and shall state the reasons for not accepting any such recommendations.

22 (g) ~~[To the extent practicable, the]~~ The information specified in Paragraphs (a) through (c) of this Rule shall be
23 provided to EPA in a computer-readable format compatible with EPA's national database management system.

24
25 *History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108; 143-215.111(5);*

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

30 *Amended Eff. September 1, 2022.*

1 15A NCAC 02Q .0525 is amended with changes as published in 36:14 NCR 1202 as follows:

2
3 **15A NCAC 02Q .0525 APPLICATION PROCESSING SCHEDULE**

4 The Division shall adhere to the following schedule in processing permit applications:

- 5 (1) The Division shall send written acknowledgment of receipt of an application to the applicant within
6 10 days of receipt of the application.
- 7 (2) The Division shall review all permit applications within 60 days of receipt of the application to
8 determine whether the application is complete or incomplete. A completeness determination shall
9 not be necessary for minor modifications pursuant to 15A NCAC 02Q .0515. The Division shall
10 notify the applicant by letter:
- 11 (a) stating that the application as submitted is complete and specifying the completeness date;
12 (b) stating that the application is incomplete, requesting additional ~~information, information~~
13 necessary to conduct the technical review of the application, and specifying the date by
14 which the requested information is required to be received by the Division; or
15 (c) stating that the application is incomplete and requesting that the applicant rewrite and
16 resubmit the application.

17 If the Division does not notify the applicant by letter dated within 60 days of receipt of the
18 application that the application is incomplete, the application shall be deemed complete. A
19 completeness determination shall not prevent the Director from requesting additional information
20 at a later date if such information is necessary to properly evaluate the source, its air pollution
21 abatement equipment, or the facility. If the applicant has not provided the requested additional
22 information by the date specified in the letter requesting additional information, the Director shall
23 cease processing the application until additional information is provided. The applicant may request
24 a time extension for submittal of the requested additional information. ~~A completeness~~
25 ~~determination shall not be necessary for minor modifications pursuant to 15A NCAC 02Q .0515.~~

- 26 (3) ~~The Division shall determine within 60 days of receipt of a complete application if any additional~~
27 ~~information is needed to conduct the technical review of the application. A technical completeness~~
28 ~~determination shall not prevent the Director from requesting additional information at a later date~~
29 ~~when such information is necessary to properly evaluate the source, its air pollution abatement~~
30 ~~equipment or the facility. The Division shall complete the technical review of significant~~
31 ~~modifications received pursuant to 15A NCAC 02Q .0516 in accordance with 40 CFR 70.7(e)(4)(ii).~~
32 ~~within 270 days of receipt of a complete application or 10 days after receipt of requested additional~~
33 ~~information, whichever is later.~~
- 34 (4) The Division shall provide for public participation in accordance with 15A NCAC 02Q .0521. The
35 Director shall send the public notice for public comment on the draft permit to affected states, to
36 EPA, and to persons on the mailing list within 270 days after receipt of a complete application or
37 10 days after receipt of requested additional information, whichever is later. If a public hearing is

- 1 ~~[required]~~ requested and approved by the Director for a draft permit, it shall be held within 45 days
2 of the Director's decision to hold a public hearing.
- 3 (5) ~~— If a public hearing is requested and approved by the Director for a draft permit, it shall be held~~
4 ~~within 45 days of the Director's decision to hold a public hearing.~~
- 5 (6)(5) The Director shall complete the review of the record and send the proposed permit to EPA; EPA
6 and affected states in accordance with 15A NCAC 02Q .0522.
- 7 (a) ~~— within 30 days after the close of the public comment period if there is no public hearing on~~
8 ~~the draft permit; or~~
- 9 (b) ~~— within 45 days after the close of the public hearing if there is a public hearing on the draft~~
10 ~~permit.~~
- 11 (7) ~~— If EPA does not object to the proposed permit, the Director shall issue the permit within five days~~
12 ~~after:~~
- 13 (a) ~~— expiration of EPA 45 day review period; or~~
- 14 (b) ~~— receipt of notice from EPA that it will not object to issuance, whichever comes first.~~
- 15 (8) ~~— If EPA objects to the proposed permit, the Director shall respond to EPA's objection within 90 days~~
16 ~~after receipt of EPA's objections~~
- 17 (6) Final permit action shall be taken in accordance with 15A NCAC 02Q .0518.

18

19 *History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108;*
20 *Eff. February 1, 1995;*
21 *Amended Eff. July 1, 1998;*
22 *Readopted Eff. April 1, ~~2018~~ 2018;*
23 *Amended Eff. September 1, 2022.*
24
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1 15A NCAC 02Q .0526 is amended with changes as published in 36:14 NCR 1202 as follows:

2
3 **15A NCAC 02Q .0526 112(J) CASE-BY-CASE MACT PROCEDURES**

4 (a) An owner or operator of a source required to apply maximum achievable control technology (MACT) pursuant
5 to 15A NCAC 02D .1109 shall follow the permit procedures set out in this Rule.

6 (b) For the purposes of this Rule, the definitions in 15A NCAC 02D .1109, 40 CFR 63.51, 40 CFR 63.2, and the
7 following definitions apply:

8 (1) "Equivalent emission limitation" means an emission limitation, established pursuant to Section
9 112(j) of the federal Clean Air Act, that is equivalent to the MACT standard that EPA would have
10 promulgated pursuant to Section 112(d) or (h) of the federal Clean Air Act.

11 (2) "Source category schedule for standards" means the schedule for promulgating MACT standards
12 issued pursuant to Section 112(e) of the federal Clean Air Act.

13 (3) "Title V permit" means a permit issued pursuant to this Section.

14 (c) Except as provided for in Paragraph (d) or (e) of this Rule, the owner or operator of a source required to apply
15 MACT pursuant to 15A NCAC 02D .1109 shall submit an application for a permit or for a significant permit
16 revision, as applicable pursuant to this Section.

17 (d) Approval process for new and existing affected sources that are subject to Section 112(j) as of the Section 112(j)
18 deadline. The requirements of Subparagraphs (d)(1) and (2) of this Paragraph shall apply to major sources that
19 include, as of the Section 112(j) deadline, one or more sources in a category or subcategory for which the EPA has
20 failed to promulgate an emission standard pursuant to 40 CFR Part 63 on or before an applicable Section 112(j)
21 deadline. Existing source MACT ~~requirements, including requirements (including relevant compliance deadlines),~~
22 ~~deadlines~~, as specified in a Title V permit issued to the facility pursuant to the requirements of 40 CFR Part 63,
23 Subpart B, shall apply to such sources.

24 (1) The owner or operator shall submit an application for a permit or for a revision to an existing Title
25 V permit issued or a pending Title V permit that meets the requirements of Subparagraph (m)(1)
26 of this Rule by the Section 112(j) deadline if the owner or operator can reasonably determine that
27 one or more sources at the facility belong in a category or subcategory subject to Section 112(j) of
28 the federal Clean Air Act.

29 (2) The owner or operator of a source that does not submit an application pursuant to Subparagraph
30 ~~(d)(1)(A)(d)(1)~~ of this Rule and is notified in writing by the Division that one or more sources at
31 the facility belong to a category or subcategory subject to Section 112(j) of the federal Clean Air
32 Act shall submit an application for a Title V permit or for a revision to an existing Title V permit
33 that meets the requirements of Paragraph (m)(1) of this Rule within 30 days after being notified in
34 writing by the Division. The Division shall not be required to make this notification.

35 (3) The requirements in Parts (A) and (B) of this Subparagraph shall apply if the owner or operator
36 has obtained a Title V permit that incorporates a Section 112(g) case-by-case MACT
37 determination by the Division pursuant to 15A NCAC 02D .1112, but has not submitted an

1 application for a Title V permit revision that addresses the emission limitation requirements of
2 Section 112(j) of the federal Clean Air Act.

3 (A) If the owner or operator has a Title V permit that incorporates a Section 112(g) case-by-
4 case MACT determination pursuant to 15A NCAC 02D .1112, the owner or operator
5 shall submit an application that meets the requirements of Paragraph (m)(1) of this Rule
6 for a Title V permit revision within 30 days of the Section 112(j) deadline or within 30
7 days of being notified in writing by the Division that one or more sources at the major
8 facility belong in such category or subcategory. The Division shall use the procedures in
9 40 CFR 63.52(e) to determine whether the emission limitations adopted pursuant to the
10 prior 112(g) case-by-case MACT determination are substantially as effective as the
11 emission limitations that Division would otherwise adopt pursuant to Section 112(j) of
12 the federal Clean Air Act for the source in question. If the Division determines the
13 previously adopted 112(g) emission limitations are substantially as effective, then the
14 Division shall retain the existing limitations in the permit to effectuate Section 112(j) of
15 the federal Clean Air Act. If the Division does not retain the previously adopted 112(g)
16 emission limitations, the MACT requirements of this Rule shall be satisfied upon
17 issuance of a revised Title V permit incorporating any additional Section 112(j)
18 requirements.

19 (B) If the owner or operator ~~that~~ has submitted a Title V permit application that incorporates
20 a Section 112(g) case-by-case MACT determination by the Division pursuant to 15A
21 NCAC 02D .1112, but has not received the permit incorporating the Section 112(g)
22 requirements, the owner or operator shall continue to apply for a Title V permit that
23 addresses the requirements of Section 112(g) of the federal Clean Air Act. The owner or
24 operator shall submit a permit application meeting the requirements of Paragraph (m)(1)
25 of this Rule within 30 days of issuance of that Title V permit. The Division shall use the
26 procedures in 40 CFR 63.52(e) to determine whether the emissions limitations adopted
27 pursuant to the prior 112(g) case-by-case MACT determination are substantially as
28 effective as the emission limitations that the Division would otherwise adopt pursuant to
29 Section 112(j) of the federal Clean Air Act for the source in question. If the Division
30 determines that the previously adopted 112(g) emission limitations are substantially as
31 effective, then the Director shall retain the existing emission limitations to effectuate
32 Section 112(j) of the federal Clean Air Act and revise the permit accordingly. If the
33 Division does not retain the previously adopted 112(g) emission limitations, the MACT
34 requirements of this Rule shall be satisfied upon issuance of a revised Title V permit
35 incorporating any additional Section 112(j) requirements.

36 (e) Sources that become subject to Section 112(j) of the federal Clean Air Act after the Section 112(j) deadline and
37 that do not have a Title V permit addressing Section 112(j) requirements. The requirements of this Paragraph shall

1 apply to sources that do not meet the criteria in Paragraph (d) of this Rule on the Section 112(j) deadline and are not
2 subject to Section 112(j) of the federal Clean Air Act on that date, but subsequent to the Section 112 (j) deadline the
3 source becomes subject to the requirements of this Rule and the source does not have a Title V permit that addresses
4 the requirements of Section 112(j) of the federal Clean Air Act.

5 (1) If one or more sources in a category or subcategory subject to the requirements of this Rule are
6 installed at a major source or result in the source becoming a major source due to the installation,
7 and the installation does not invoke Section 112(g) requirements in 15A NCAC 02D .1112, the
8 owner or operator shall submit an application meeting the requirements of Paragraph (m)(1) of this
9 Rule within 30 days of startup of the source. Existing source MACT requirements (including
10 relevant compliance deadlines), as specified in a Title V permit issued pursuant to the
11 requirements of this Rule, shall apply to such sources. The Division shall use the procedures in 40
12 CFR 63.52(e) to determine whether the emissions limitations adopted pursuant to the prior 112(g)
13 case-by-case MACT determination are substantially as effective as the emission limitations that
14 the Division would otherwise adopt pursuant to Section 112(j) of the federal Clean Air Act for the
15 source in question. If the Division determines the previously adopted 112(g) emission limitations
16 are substantially as effective, then the Division shall retain the existing emission limitations to
17 effectuate Section 112(j) of the federal Clean Air Act and revise the permit accordingly. If the
18 Division does not retain the previously adopted 112(g) emission limitations, the MACT
19 requirements of this Rule shall be satisfied upon issuance of a revised Title V permit incorporating
20 any additional Section 112(j) requirements.

21 (2) If one or more sources in a category or subcategory subject to 112(j) requirements are installed at
22 a major source or result in the source becoming a major source due to the installation, and the
23 installation requires 112(g) emission limitations to be established and permitted pursuant to 15A
24 NCAC 02Q .0528 and the owner or operator has not submitted an application for a Title V permit
25 revision that addresses the emission limitation requirements of Section 112(j) of the federal Clean
26 Air Act, the owner or operator shall apply for and obtain a Title V permit that addresses the
27 emission limitation requirements of Section 112(g) of the federal Clean Air Act. Within 30 days of
28 issuance of that Title V permit, the owner or operator shall submit an application that meets the
29 requirements of Paragraph (m)(1) of this Rule for a revision to the existing Title V permit. The
30 Division shall determine whether the emissions limitations adopted pursuant to the prior 112(g)
31 case-by-case MACT determination are substantially as effective as the emission limitations that
32 the Division would otherwise adopt pursuant to Section 112(j) of the federal Clean Air Act for the
33 source in question. If the Division determines the previously adopted 112(g) emission limitations
34 are substantially as effective, then the Division shall retain the existing emission limitations to
35 effectuate Section 112(j) of the federal Clean Air Act and revise the permit accordingly. If the
36 Division does not retain the previously adopted 112(g) emission limitations, the permit shall be
37 revised to incorporate any additional Section 112(j) requirements.

- (3) The owner or operator of an area source that, due to a relaxation in any federally enforceable emission ~~limitation (such limitation, such~~ as a restriction on hours of ~~operation)~~ operation, increases its potential to emit hazardous air pollutants such that the source becomes a major source that is subject to this Rule, shall submit an application meeting the requirements of Paragraph (m)(1) of this Rule within 30 days after the date that such source becomes a major source. The Director shall use the procedures in Paragraph (n) of this Rule in reviewing the application. The existing source MACT ~~requirements (including requirements, including~~ relevant compliance ~~deadlines)~~ deadlines, shall apply to such sources.
- (4) If EPA establishes a lesser quantity emission rate pursuant to Section 112(a)(1) of the Federal Clean Air Act that results in an area source becoming a major source that is subject to this Rule, then the owner or operator of such a major source shall submit an application that meets the requirements of Paragraph (m)(1) of this Rule on or before the date six months after the date that such source becomes a major source. Existing source MACT ~~requirements (including~~ requirements, including relevant compliance ~~deadlines)~~ deadlines, as specified in a Title V permit issued pursuant to the requirements of this Rule, shall apply to such sources.
- (f) Sources that have a Title V permit addressing Section 112(j) requirements. The requirements of this Paragraph apply to major sources that include one or more sources in a category or subcategory for which EPA fails to promulgate an emission standard on or before the Section 112(j) deadline, the owner or operator has a permit meeting the Section 112(j) requirements, and if changes occur at the major source to equipment, activities, or both subsequent to the Section 112(j) deadline.
- (1) If the Title V permit already provides the requirements that address the events described in this Paragraph subsequent to the Section 112(j) deadline, then the source shall comply with the applicable new source MACT or existing source MACT requirements as specified in the permit, and the Section 112(j) requirements shall be deemed satisfied.
- (2) If the Title V permit does not contain the requirements that address the events described in this Paragraph subsequent to the Section 112(j) deadline, then the owner operator shall submit an application for a revision of the existing Title V permit that meets the requirements of Paragraph (m)(1) of this Rule within 30 days of beginning construction. Existing source MACT ~~requirements (including requirements, including~~ relevant compliance ~~deadlines)~~ deadlines, as specified in a Title V permit issued pursuant to the requirements of this Rule, shall apply to such sources.
- (g) Requests for applicability determination. An owner or operator who is unsure of whether one or more sources at a major source belong in a category or subcategory for which EPA has failed to promulgate an emission standard pursuant to 40 CFR Part 63 may, on or before an applicable Section 112(j) deadline, request an applicability determination from the Division by submitting an application that meets the requirements of Paragraph (m)(1) of this Rule by the applicable deadlines specified in Paragraphs (d), (e), or (f) of this Rule.
- (h) An owner or operator who submits a Part 1 MACT application that meets the requirements of Paragraph (m)(1) of this Rule shall submit a Part 2 MACT application that meets the requirements of Paragraph (m)(2) of this Rule no

1 later than the applicable date specified in 40 CFR 63 Subpart B Table 1. The submission date specified in 40 CFR
2 63 Subpart B Table 1 for Miscellaneous Organic Chemical Manufacturing shall apply to sources in each of the
3 source categories listed in 40 CFR 63 Subpart B Table 2. If an owner or operator is required by 15A NCAC 02D
4 .1109 and this Rule to submit an application meeting the requirements of Paragraph (m)(1) of this Rule by a date
5 that is after the date for a Part 2 MACT application for sources in the category or subcategory in question
6 established by 40 CFR 63 Subpart B Table 1, the owner or operator shall submit a Part 2 MACT application meeting
7 the requirements of Paragraph (m)(2) of this Rule within 60 additional days after the applicable deadline for
8 submission of the Part 1 MACT application. The Part 2 applications shall be reviewed by the Division according to
9 the procedures established in 40 CFR 63.55.

10 (1) Any owner or operator who submitted a request for an applicability determination on or before
11 May 15, 2002, that remained pending as of May 30, 2003, and who still wishes to obtain such a
12 determination shall resubmit that request by the date that is 60 days after the Administrator
13 publishes in the Federal Register a proposed standard pursuant to Section 112(d) or 112(h) of the
14 Clean Air Act for the category or subcategory in question. Such a resubmitted request shall be
15 supplemented to discuss the relation between the sources in question and the applicability
16 provision in the proposed standard for the category or subcategory in question, and to explain why
17 there may still be uncertainties that require a determination of applicability. The Director shall
18 take action on each supplemented and resubmitted request within an additional 60 days after the
19 applicable deadline for the resubmitted request. If more than three years remain on the current
20 Title V permit, the owner or operator shall submit an application for a Title V permit revision to
21 make any conforming changes in the permit required to adopt the existing emission limitations as
22 the Section 112(j) MACT emission limitations. If less than three years remain on the current Title
23 V permit, any required conforming changes shall be made when the permit is renewed. If the
24 applicability determination is positive, the owner or operator shall submit a Part 2 MACT
25 application meeting the requirements of Paragraph (m)(2) of this Rule by the date specified for the
26 category or subcategory in question in 40 CFR 63 Subpart B Table 1. If the applicability
27 determination is negative, no further action by the owner or operator shall be necessary.

28 (2) An owner or operator who has submitted an application that meets the requirements of Paragraph
29 (m)(1) of this Rule may request a determination of whether emission limitations adopted pursuant
30 to a prior case-by-case MACT determination pursuant to Section 112(g) that apply to one or more
31 sources in a relevant category or subcategory are substantially as effective as the emission
32 limitations that the Division would otherwise adopt pursuant to this Rule for the source in
33 question. Such a request must be submitted by the date for the category or subcategory in question
34 specified in 40 CFR 63 Subpart B Table 1. Each request for a determination pursuant to this
35 Paragraph shall be construed as a complete application for an equivalent emission limitation
36 pursuant to this Rule. If the Director determines that the emission limitations in the prior case-by-
37 case MACT determination are substantially as effective as the emission limitations the Director

1 would otherwise adopt pursuant to this Rule, then the Director shall adopt the existing emission
2 limitations in the permit as the emission limitations to effectuate Section 112(j) for the source in
3 question. If the Director determines that the emission limitations in the prior case-by-case MACT
4 determination pursuant to Section 112(g) are not substantially as effective as the emission
5 limitations that the Director would otherwise adopt for the source in question pursuant to this
6 Rule, the Director shall make a new MACT determination and adopt a Title V permit
7 incorporating an appropriate equivalent emission limitation pursuant to this Rule. The Division
8 shall use the procedures in 40 CFR 63.52(e) to determine whether the emission limitations adopted
9 pursuant to the prior 112(g) case-by-case MACT determination are substantially as effective as the
10 emission limitations which Division would otherwise adopt pursuant to Section 112(j) of the
11 federal Clean Air Act for the source in question.

12 (i) If the Director disapproves a permit application submitted pursuant to this Rule or determines that the
13 application is incomplete, the owner or operator shall revise and resubmit the application to meet the Director's
14 objections not later than six months after first receiving notification that the application has been disapproved or is
15 incomplete.

16 (j) If the owner or operator of a source subject to this Rule has submitted a timely and complete application for a
17 permit, significant permit revision, or administrative amendment required by this Rule, any failure to have this
18 permit shall not be a violation of the requirements of this Rule unless the delay in final action is due to the failure of
19 the applicant to submit, in a timely manner, information required or requested to process the application.

20 (k) The permit shall contain the items specified in 40 CFR 63.52 including:

- 21 (1) specification of the affected source and the new affected source;
- 22 (2) emission limitations or emission standards equivalent to existing source MACT and emission
23 limitations equivalent to new source MACT for control of emissions of hazardous air pollutants
24 for that category or subcategory determined according to 40 CFR 63.55(a) on a case-by-case basis;
- 25 (3) emission limits, production limits, operational limits, or other terms and conditions necessary to
26 ensure practicable enforceability of the MACT emission limitation;
- 27 (4) notification, operation and maintenance, performance testing, monitoring, reporting, and
28 recordkeeping requirements; and
- 29 (5) compliance dates by which the owner or operator of an existing source is required to be in
30 compliance with the MACT emission limitation and all other applicable terms and conditions of
31 the permit, not to exceed three years from the date of issuance of the permit. The owner or
32 operator of a new affected source shall comply with a new source MACT level of control
33 immediately upon startup.

34 (l) Early reductions made pursuant to Section 112(i)(5)(A) of the federal Clean Air Act shall be achieved not later
35 than the date on which the relevant standard should have been promulgated according to the source category
36 schedule for standards.

37 (m) A permit application for a MACT determination shall consist of two parts.

- (1) The Part 1 application shall contain the information required by 40 CFR 63.53(a) and shall be submitted by the applicable deadline specified in Paragraph (d), (e), or (f) of this Rule.
- (2) The Part 2 application shall contain the information required by 40 CFR 63.53(b) and shall be submitted no later than the deadline in 40 CFR 63 Subpart B Table 1.
- (n) Permit application review. The Director shall follow 40 CFR 63.55(a) in reviewing permit applications for MACT. The resulting MACT determination shall be incorporated into the facility's Title V permit according to the procedures established in this Section. Following submittal of a Part 1 or Part 2 MACT application, the Director may request, pursuant to 15A NCAC 02Q .0507(c) and .0525(a), additional information from the owner or operator; and the owner or operator shall submit the requested information within 30 days. A Part 2 MACT application shall be deemed complete if it is sufficient to begin processing the application for a Title V permit addressing Section 112(j) requirements. If the Division disapproves a permit application or determines that the application is incomplete, the owner or operator shall revise and resubmit the application to meet the objections of the Division within the time period specified by the Division, which shall not exceed six months from the date that the owner or operator is first notified that the application has been disapproved or is incomplete. After receipt of a complete Part 2 MACT application that is subsequently approved by the Division, the Director shall issue a Title V permit that meets Section 112(j) requirements, following the schedule in 15A NCAC 02Q .0525.
- (o) The following requirements shall apply to case-by-case determinations of equivalent emission limitations when a MACT standard is subsequently promulgated:
- (1) If EPA promulgates an emission standard that is applicable to one or more sources within a major facility before the date a proposed permit pursuant to this Rule is approved, the permit shall contain the promulgated standard rather than the emission limitation determined pursuant to 15A NCAC 02D .1109, and the owner or operator of the source shall comply with the promulgated standard by the compliance date in the promulgated standard.
- (2) If EPA promulgates an emission standard that is applicable to a source after the date that a permit is issued pursuant to this Rule, the Director shall revise the permit on its next renewal to reflect the promulgated standard. Subparagraph (a)(1) of 15A NCAC 02Q .0517 shall not apply to requirements established pursuant to this Rule. The Director shall establish a compliance date in the revised permit that assures that the owner or operator complies with the promulgated standard within a reasonable time, but no longer than eight years after such standard is promulgated or eight years after the date by which the owner or operator was first required to comply with the emission limitation established by permit, whichever is earlier. The period for compliance for existing sources shall not be shorter than that provided for existing sources in the promulgated standard.
- (3) Notwithstanding the requirements of Subparagraphs (1) or (2) of this Paragraph, if EPA promulgates an emission standard that is applicable to a source after the date a proposed permit is approved, the Director shall not be required to change the emission limitation in the permit to reflect the promulgated standard if the level of control required by the emission limitation in the permit is as effective as that required by the promulgated standard. If EPA promulgates an

1 emission standard that is applicable to an affected source after the date a permit application is
2 approved and the level of control required by the promulgated standard is less stringent than the
3 level of control required by an emission limitation in the prior MACT determination, the Division
4 shall not be required to incorporate a less stringent emission limitation of the promulgated
5 standards after considering the effects on air quality. The Division may consider any more
6 stringent provision of the MACT determination to be applicable legal requirements, as necessary
7 to protect air quality, when issuing or revising such a Title V permit.

8
9 *History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108;*
10 *Eff. July 1, 1996;*
11 *Amended Eff. February 1, 2004;*
12 *Readopted Eff. April 1, ~~2018~~ 2018;*
13 *Amended Eff. August 1, 2022*
14
15
16

Burgos, Alexander N

Subject: FW: EMC 02Q rules

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

Sent: Tuesday, July 19, 2022 3:25 PM

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

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Knowlson, Patrick <patrick.knowlson@ncdenr.gov>

Subject: EMC 02Q rules

Lawrence,

We intend to submit the EMC 02Q rules and responses for the August meeting.

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: Wednesday, July 13, 2022 12:04 PM
To: Everett, Jennifer
Cc: Burgos, Alexander N
Subject: RRC Follow-up Agenda Items: EMC & CRC Rules

Jennifer,

I hope you're doing well. I wanted to check in on several sets of rules that will be on the RRC's follow-up agenda for its July meeting.

First, EMC's 02B Rules (.0208, .0212, .0214, .0215, .0216, .0218) remain on the agenda. It is my understanding that the EMC is meeting today and tomorrow. This means that the deadline for sending EMC's response to RRC's objection would fall on July 24. Do you have any other update on these rules?

Second, EMC's 02Q Rules (.0103, .0503, .0504, .0505, .0507, .0508, .0509, .0514, .0516, .0518, .0521, .0522, .0525, .0526) are also on the follow-up agenda. The deadline for those Rules can continue to be extended to the August RRC meeting. Since I have not heard anything on these rules, I assume that is EMC's plan for the July meeting. If you plan to do something different, please let me know.

Finally, CRC's 07H, J, K, & M Rules (07H .0104, .0208, .0304, .0305, .0306, .0308, .0309, .0310, .1205, .1801; 07J .0403, .0404, .1201, .1202, .1203, .1204, .1205, .1206, .1301, .1302, .1303; 07K .0208; 07M .0301, .0302, .0303, .0306, .0307, .0308, .0310) are on the agenda. I have reviewed Mike Lopanzanski's responses to my requests for changes, and they are sufficient. I will be recommending approval for these rules and so you don't need to do anything more on them.

Please let me know if I have anything incorrect about these rule sets, or if you have any questions.

Thanks,
Lawrence Duke

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

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Burgos, Alexander N

Subject: FW: Extension Letters - CRC 07H, J, K, & M & EMC 02Q
Attachments: 06.2022 - CRC Extension Letter.pdf; 06.2022 - EMC Extension Letter.pdf

From: Duke, Lawrence <lawrence.duke@oah.nc.gov>
Sent: Thursday, June 16, 2022 9:34 AM
To: Everett, Jennifer <jennifer.everett@ncdenr.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Lopazanski, Mike <mike.lopezanski@ncdenr.gov>; Knowlson, Patrick <patrick.knowlson@ncdenr.gov>
Subject: Extension Letters - CRC 07H, J, K, & M & EMC 02Q

Jennifer,

Please see attached letters regarding the extensions granted to both the Coastal Resources Commission and the Environmental Management Commission. Please let me know if you have any questions.

Thanks,
Lawrence Duke

Counsel to the North Carolina Rules Review Commission
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Lawrence.Duke@oah.nc.gov

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Burgos, Alexander N

Subject: FW: EMC 02Q Change Requests

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

Sent: Thursday, June 9, 2022 12:52 PM

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

Cc: Knowlson, Patrick <patrick.knowlson@ncdenr.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: RE: EMC 02Q Change Requests

Jennifer,

Thank you for the request for an extension on the EMC 02Q Rules. I will present it to the Commission and recommend they grant it.

Lawrence Duke

Counsel, NC Rules Review Commission

Office of Administrative Hearings

(984) 236-1938

Burgos, Alexander N

From: Everett, Jennifer
Sent: Wednesday, June 8, 2022 11:25 AM
To: Duke, Lawrence
Cc: Knowlson, Patrick; Burgos, Alexander N
Subject: RE: EMC 02Q Change Requests

Lawrence,

We are kindly requesting an extension for the period of review for 15A NCAC 02Q. This extension will allow additional time for staff to address your technical change requests.

Thank you.

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: Friday, June 3, 2022 5:37 PM
To: Everett, Jennifer <jennifer.everett@ncdenr.gov>
Cc: Knowlson, Patrick <patrick.knowlson@ncdenr.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: EMC 02Q Change Requests

Jennifer,

I have reviewed the Rules submitted by the Environmental Management Commission for the June 2022 RRC meeting. The RRC will formally review these Rules at its meeting on Thursday, June 16, 2022, at 9:00 a.m. The meeting will be a hybrid of in-person and WebEx attendance, and an invite should be sent to you as we get closer to the meeting. If there are any other representatives from your agency who will want to attend virtually, let me know prior to the meeting, and we will get invites out to them as well.

I have attached my requests for changes. Please submit the revised Rules and forms to me via email, no later than 5:00 p.m. on Friday, June 10, 2022. In the meantime, please let me know if you have any questions or concerns.

Thanks,

Lawrence Duke

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