15A NCAC 02B .0206 is amended with changes as published in 40:06 NCR 561-565 and 40:08 NCR 726-732 as follows:

15A NCAC 02B .0206 FLOW DESIGN CRITERIA FOR EFFLUENT LIMITATIONS

(a) For purposes of this Rule, the following definitions shall apply:

(1) "1Q10" means the minimum average flow for a period of one day that has an average recurrence of once in ten years;

(2) "7Q10" means the minimum average flow for a period of seven consecutive days that has an average recurrence of once in ten years;

(3) "30Q2" means the minimum average flow for a period of 30 consecutive days that has an average recurrence of once in two years;

(4) "Mean annual flow" means the same as "annual mean flow" as defined in 40 CFR 125.83.

(5) The "Rational Method" estimates peak flow for a storm of interest as a function of a composite runoff coefficient, rainfall intensity for the storm of interest, and drainage area.

~~(a)~~(b) Water quality based effluent limitations shall be developed to allow appropriate frequency and duration of deviations from water quality standards so that the designated uses of receiving streams and downstream waters are protected. There are water quality standards for a number of categories of pollutants and to protect a range of water uses. For this reason, the appropriate frequency and duration of deviations from water quality standards shall not be the same for all pollutants. A flow design criterion shall be used in the development of water quality based effluent limitations as a simplified means of estimating the acceptable frequency and duration of deviations. More complex modeling techniques [~~that the Director has determined on a case-by-case basis will protect the designated uses of the receiving streams and downstream waters~~] may be used to set effluent limitations based on frequency and duration criteria published by the U.S. Environmental Protection Agency and incorporated by reference, including subsequent amendments and editions. Frequency and duration criteria published by the U.S. Environmental Protection Agency is available free of charge at: http://water.epa.gov/scitech/swguidance/standards/criteria/current/index.cfm. Where the Director determines that the applicant selected model will not protect the designated uses of the receiving streams and downstream waters, then the Director shall notify the applicant in writing the reasons why the selected model is not suitable.

(c) ~~Effluent~~ Water quality based effluent limitations shall be developed using the following flow design criteria:

(1) ~~All standards except~~Except for toxic substances and ~~aesthetics~~aesthetics, all water quality standards shall be protected using the 7Q10 flow.~~minimum average flow for a period of seven consecutive days that has an average recurrence of once in ten years (7Q10 flow).~~ Other governing flow strategies, such as varying discharges with the receiving stream's or downstream water's~~waters~~ ability to assimilate wastes, may be designated by the ~~Commission or its designee~~Director on a case-by-case basis if the discharger or permit applicant provides evidence that establishes that the alternative flow strategies will give equal or better protection ~~for the~~of water quality standards ~~standards. "Better protection for the water quality standards" means that~~such that deviations from

15A NCAC 02B .0206 is amended with changes as published in 40:06 NCR 561-565 and 40:08 NCR 726-732 as follows:

15A NCAC 02B .0206 FLOW DESIGN CRITERIA FOR EFFLUENT LIMITATIONS

(a) For purposes of this Rule, the following definitions shall apply:

(1) "1Q10" means the minimum average flow for a period of one day that has an average recurrence of once in ten years;

(2) "7Q10" means the minimum average flow for a period of seven consecutive days that has an average recurrence of once in ten years;

(3) "30Q2" means the minimum average flow for a period of 30 consecutive days that has an average recurrence of once in two years;

(4) "Mean annual flow" means the same as "annual mean flow" as defined in 40 CFR 125.83.

(5) The "Rational Method" estimates peak flow for a storm of interest as a function of a composite runoff coefficient, rainfall intensity for the storm of interest, and drainage area.

~~(a)~~(b) Water quality based effluent limitations shall be developed to allow appropriate frequency and duration of deviations from water quality standards so that the designated uses of receiving streams and downstream waters are protected. There are water quality standards for a number of categories of pollutants and to protect a range of water uses. For this reason, the appropriate frequency and duration of deviations from water quality standards shall not be the same for all pollutants. A flow design criterion shall be used in the development of water quality based effluent limitations as a simplified means of estimating the acceptable frequency and duration of deviations. More complex modeling techniques [~~that the Director has determined on a case-by-case basis will protect the designated uses of the receiving streams and downstream waters~~] may be used to set effluent limitations based on frequency and duration criteria published by the U.S. Environmental Protection Agency and incorporated by reference, including subsequent amendments and editions. Frequency and duration criteria published by the U.S. Environmental Protection Agency is available free of charge at: http://water.epa.gov/scitech/swguidance/standards/criteria/current/index.cfm. Where the Director determines that the applicant selected model will not protect the designated uses of the receiving streams and downstream waters, then the Director shall notify the applicant in writing the reasons why the selected model is not suitable.

(c) ~~Effluent~~ Water quality based effluent limitations shall be developed using the following flow design criteria:

(1) ~~All standards except~~Except for toxic substances and ~~aesthetics~~aesthetics, all water quality standards shall be protected using the 7Q10 flow.~~minimum average flow for a period of seven consecutive days that has an average recurrence of once in ten years (7Q10 flow).~~ Other governing flow strategies, such as varying discharges with the receiving stream's or downstream water's~~waters~~ ability to assimilate wastes, may be designated by the ~~Commission or its designee~~Director on a case-by-case basis if the discharger or permit applicant provides evidence that establishes that the alternative flow strategies will give equal or better protection ~~for the~~of water quality standards ~~standards. "Better protection for the water quality standards" means that~~such that deviations from

the standard would be expected at the same or less ~~frequently~~frequency than provided by using the 7Q10 flow.

(2) Toxic substances shall be protected as follows:

(A) Toxic substance standards to protect aquatic life from chronic toxicity shall be protected using the 7Q10 ~~flow.~~flow;

~~(3)~~(B) Toxic substance standards to protect aquatic life from acute toxicity shall be protected using the 1Q10 ~~flow.~~flow;

~~(4) Toxic substance standards to protect human health shall be the following:~~

~~(A)~~(C) Toxic substance ~~The 7Q10 flow for~~ standards to protect human health through the consumption of water, fish, and shellfish from ~~noncarcinogens;~~noncarcinogens shall be protected using the 7Q10 flow; and

~~(B)~~(D) ~~The mean annual flow~~Toxic substance standards to protect human health ~~from carcinogens~~ through the consumption of water, fish, and shellfish from carcinogens shall be protected using the mean annual flow, unless site specific fish contamination concerns necessitate the use of an alternative design ~~flow;~~flow.

~~(5)~~(3) Aesthetic quality shall be protected using the 30Q2 flow.~~minimum average flow for a period of 30 consecutive days that has an average recurrence of once in two years (30Q2 flow).~~

~~More complex modeling techniques may also be used to set effluent limitations directly based on frequency and duration criteria published by the U.S. Environmental Protection Agency, available free of charge at http://water.epa.gov/scitech/swguidance/standards/criteria/current/index.cfm and incorporated by reference, including subsequent amendments and editions, and the Commission or its designee has determined, on a case by case basis, that the techniques will protect the designated uses of receiving waters.~~

~~(b)~~(d) If the stream flow is regulated, a minimum daily low flow may be used as a substitute for the 7Q10 flow, except in cases where there are acute toxicity concerns for aquatic life. ~~In the cases~~For streams where there are acute toxicity concerns, an alternative low flow, such as the instantaneous minimum release, shall be ~~approved~~ used if the Director determines, on a case-by-case basis, that the designated uses of receiving streams and downstream waters are protected.

~~(c)~~(e) Flow design criteria shall be used to develop water quality based effluent limitations and in the design of wastewater treatment facilities. Deviations from a specific water quality standard resulting from discharges that are demonstrated to be in compliance with water quality based effluent limitations for that water quality standard shall not be a violation pursuant to G.S. ~~143-215.6~~143-215.6A when the actual stream flow is less than the design flow.

~~(d)~~(f) If the 7Q10 flow of the receiving stream is estimated to be ~~zero,~~ zero and the 30Q2 flow of the receiving stream is estimated to be greater than zero, then water quality based effluent limitations shall be assigned as follows:

(1) ~~If the 30Q2 flow is estimated to be greater than zero, effluent limitations for new~~New or expanded ~~(additional)~~ discharges of oxygen consuming waste shall be set at BOD_5= 5 mg/l, NH_3-N = 2 mg/l and DO = 6 mg/l, unless it is determined by the Director through modeling or other analysis that these limitations will not protect water quality standards. ~~Requirements for existing discharges shall~~

~~be determined on a case by case basis by the Director.~~ More stringent limits shall be applied if violations of water quality standards are predicted to occur for a new or expanded discharge with the limits set pursuant to this Rule or if existing limits are determined to be inadequate to protect water quality standards.

~~(2) If the 30Q2 and 7Q10 flows are both estimated to be zero, no new or expanded discharge of oxygen consuming waste shall be allowed. Requirements for existing discharges to streams where the 30Q2 and 7Q10 flows are both estimated to be zero shall be determined on a case by case basis.~~

~~(3)~~(2) Other water quality standards shall be protected by requiring the discharge to meet the water quality standards set forth in this Subchapter, unless the Director determines that alternative limitations protect the designated uses of receiving streams and downstream waters.~~classified water uses.~~

(3) Requirements for existing discharges shall be determined on a case-by-case basis by the Director.

(g) If the 7Q10 flow and the 30Q2 flow of the receiving streams are both estimated to be zero, then the following shall apply to [~~new or expanded~~]domestic wastewater discharges of oxygen consuming [~~waste:~~]waste. Domestic wastewater discharges of oxygen consuming waste shall not be permitted that do not meet the following:

(1) The proposed permitted flow for the wastewater discharge shall be lesser of:

(A) No more than one-tenth of the flow generated by the one-year, 24-hour storm event based on the drainage area of the receiving stream at the discharge location and calculated using the Rational Method. The Rational Method shall be used to calculate the peak runoff for the one-year, 24-hour precipitation event in cubic feet per second. The peak runoff shall then be divided by 10 and multiplied by 646,272 to convert the result to gallons per day of allowable discharge at the point studied; or

(B) No more than two million gallons per day.

(2) All wastewater discharges shall be directed to a system that utilizes low-energy methodologies prior to discharging to receiving streams at non-erosive velocities, such as:

(A) An infiltration system, which may include engineered materials to achieve higher rates of infiltration. Engineered materials shall have an ASTM gradation of fine to coarse grain sand and shall be angular to maintain structural integrity of the slope;

(B) Constructed free-surface wetland with a hydraulic residence time of at least 14 days; or

(C) Other technologies that meet the standard of practice for NC Licensed Professional Engineers for such devices that provide a physical buffer or hydraulic residence time [~~of at least 14 days~~] sufficient to discharge at non-erosive velocities.

(3) [~~Wastewater discharges~~] If the wastewater discharge to the receiving stream [~~shall not exceed~~] exceeds one cubic foot per second based on the average daily flow of the [~~discharge.~~] discharge, then more than one outfall to the receiving stream shall be utilized for the wastewater discharge. The discharge at each outfall shall not exceed one cubic foot per second and the [~~Wastewater discharges from multiple~~] outfalls shall be at least 50 linear feet apart along the receiving streams.

Cumulative discharge to the receiving stream shall not exceed the lesser of the requirements in Subparagraph (g)(1) of this Rule.

(4) No wastewater discharges shall be allowed to Class SA, SB, SC, WS-I, WS-II, WS-III, WS-IV, WS-V, ORW or HQW waters.

(5) For wastewater discharges to NSW waters, the Director may require additional modeling by the applicant. Additional allocation of flow shall be at the discretion of the Director.

(6) In addition to any other effluent limits for any other parameters to ensure the permit does not violate any EPA-approved NC water quality standards, the following effluent limits shall apply:

(A) Biological oxygen demand (BOD5) shall not exceed 5.0 mg/l monthly average;

(B) NH3, 0.5 mg/l monthly average, 1.0 mg/l daily maximum;

(C) Total nitrogen shall not exceed 4.0 mg/l monthly average;

(D) Total phosphorus, 1.0 mg/l monthly average, 2.0 mg/l daily maximum;

(E) Fecal coliforms, 14 colonies/100ml or less;

(F) Dissolved oxygen, 7.0 mg/l or greater;

(G) Total suspended solids, 5.0 mg/l monthly average, 8mg/l daily maximum; and

(H) Nitrate, 1.0 mg/l monthly average, 2.0 mg/l daily maximum.

The Director may impose different effluent limits than those set forth in Parts [~~(A)~~] (g)(6)(A) through (H) [~~in Subparagraph (g)(6)~~] of this Rule to ensure that the permit does not violate any EPA-approved NC water quality standards.

(7) The applicant shall demonstrate:

(A) The proposed discharge meets the requirements in Subparagraphs (g)(1), (2), (3), and (4) of this Rule;

(B) The proposed discharge is a domestic wastewater discharge as defined in Rule .0202 of this [~~Subchapter;~~] Section;

(C) When the receiving stream has naturally occurring low dissolved oxygen levels, the proposed discharge complies with G.S. 143-215.1(c7);

(D) When the receiving stream does not have naturally occurring low dissolved oxygen levels, the proposed discharge does not reduce the dissolved oxygen levels of the receiving stream more than 0.1 mg/l below the approved modeled in-stream dissolved oxygen level for the receiving stream at total permitted capacity for all discharges to such receiving stream. The applicant shall use a model utilized elsewhere in USEPA Region 4, such as the Streeter-Phelps model used in the State of Alabama, and the selected model shall be approved by the Director as suitable for the particular discharge and receiving stream.

(8) If an applicant requests less stringent effluent limits than those set forth in Subparagraph (g)(6) of this Rule, then the applicant shall conduct more complex modeling. The applicant shall use a model accepted elsewhere in USEPA Region 4 that is approved by the Director as suitable for the particular discharge and receiving stream. The modeling [~~must~~]shall demonstrate the requirement in Part

[~~(g)(7)(B)~~](g)(7)(C) or [~~(g)(7)(C)~~](g)(7)(D) of this Rule, whichever is applicable, is met, and all EPA-approved NC water quality standards are protected.

(9) Applicants shall provide either:

(A) Mapping data from USGS; or

(B) Mapping data prepared by an engineer of record licensed in the state of NC utilizing either USGS mapping data or other maps approved for use by the Director.

(10) Where the Director determines that the applicant selected model under Subparagraphs (g)(5) or (g)(8) of this Rule or Part (g)(7)(D) of this Rule is not suitable for the particular discharge or receiving stream and downstream waters, then the Director shall notify the applicant in writing the reasons why the selected model is not suitable.

[~~(h) If the 7Q10 flow and the 30Q2 flow of the receiving stream are both estimated to be zero, then new or expanded discharges of oxygen consuming waste that do not meet the criteria in Paragraph (g) of this Rule shall not be allowed. (i) If the 7Q10 flow and the 30Q2 flow of the receiving stream are both estimated to be zero, then the requirements for existing discharges shall be determined on a case-by-case basis by the Director.~~]

~~(e)~~[~~(i)~~](h) Receiving water flow statistics shall be estimated through consultation with the U.S. Geological Survey. Estimates for any given location may be based on actual flow data, modeling analyses, or other methods determined to be appropriate by the ~~Commission or its designee.~~ Director.

History Note: *Authority G.S. 143214.1; 143-215.1(c7); 143215.3(a)(1); SL 2024-44 s. 5.1; SL 2025-94 s. 23;*
Eff. February 1, 1976;
Amended Eff. January 1, 2015; February 1, 1993; October 1, 1989; August 1, 1985; January 1, 1985;
Readopted Eff. November 1, 2019;
Amended Eff. May 1, 2026.

the standard would be expected at the same or less ~~frequently~~frequency than provided by using the 7Q10 flow.

(2) Toxic substances shall be protected as follows:

(A) Toxic substance standards to protect aquatic life from chronic toxicity shall be protected using the 7Q10 ~~flow.~~flow;

~~(3)~~(B) Toxic substance standards to protect aquatic life from acute toxicity shall be protected using the 1Q10 ~~flow.~~flow;

~~(4) Toxic substance standards to protect human health shall be the following:~~

~~(A)~~(C) Toxic substance ~~The 7Q10 flow for~~ standards to protect human health through the consumption of water, fish, and shellfish from ~~noncarcinogens;~~noncarcinogens shall be protected using the 7Q10 flow; and

~~(B)~~(D) ~~The mean annual flow~~Toxic substance standards to protect human health ~~from carcinogens~~ through the consumption of water, fish, and shellfish from carcinogens shall be protected using the mean annual flow, unless site specific fish contamination concerns necessitate the use of an alternative design ~~flow;~~flow.

~~(5)~~(3) Aesthetic quality shall be protected using the 30Q2 flow.~~minimum average flow for a period of 30 consecutive days that has an average recurrence of once in two years (30Q2 flow).~~

~~More complex modeling techniques may also be used to set effluent limitations directly based on frequency and duration criteria published by the U.S. Environmental Protection Agency, available free of charge at http://water.epa.gov/scitech/swguidance/standards/criteria/current/index.cfm and incorporated by reference, including subsequent amendments and editions, and the Commission or its designee has determined, on a case by case basis, that the techniques will protect the designated uses of receiving waters.~~

~~(b)~~(d) If the stream flow is regulated, a minimum daily low flow may be used as a substitute for the 7Q10 flow, except in cases where there are acute toxicity concerns for aquatic life. ~~In the cases~~For streams where there are acute toxicity concerns, an alternative low flow, such as the instantaneous minimum release, shall be ~~approved~~ used if the Director determines, on a case-by-case basis, that the designated uses of receiving streams and downstream waters are protected.

~~(c)~~(e) Flow design criteria shall be used to develop water quality based effluent limitations and in the design of wastewater treatment facilities. Deviations from a specific water quality standard resulting from discharges that are demonstrated to be in compliance with water quality based effluent limitations for that water quality standard shall not be a violation pursuant to G.S. ~~143-215.6~~143-215.6A when the actual stream flow is less than the design flow.

~~(d)~~(f) If the 7Q10 flow of the receiving stream is estimated to be ~~zero,~~ zero and the 30Q2 flow of the receiving stream is estimated to be greater than zero, then water quality based effluent limitations shall be assigned as follows:

(1) ~~If the 30Q2 flow is estimated to be greater than zero, effluent limitations for new~~New or expanded ~~(additional)~~ discharges of oxygen consuming waste shall be set at BOD_5= 5 mg/l, NH_3-N = 2 mg/l and DO = 6 mg/l, unless it is determined by the Director through modeling or other analysis that these limitations will not protect water quality standards. ~~Requirements for existing discharges shall~~

~~be determined on a case by case basis by the Director.~~ More stringent limits shall be applied if violations of water quality standards are predicted to occur for a new or expanded discharge with the limits set pursuant to this Rule or if existing limits are determined to be inadequate to protect water quality standards.

~~(2) If the 30Q2 and 7Q10 flows are both estimated to be zero, no new or expanded discharge of oxygen consuming waste shall be allowed. Requirements for existing discharges to streams where the 30Q2 and 7Q10 flows are both estimated to be zero shall be determined on a case by case basis.~~

~~(3)~~(2) Other water quality standards shall be protected by requiring the discharge to meet the water quality standards set forth in this Subchapter, unless the Director determines that alternative limitations protect the designated uses of receiving streams and downstream waters.~~classified water uses.~~

(3) Requirements for existing discharges shall be determined on a case-by-case basis by the Director.

(g) If the 7Q10 flow and the 30Q2 flow of the receiving streams are both estimated to be zero, then the following shall apply to [~~new or expanded~~]domestic wastewater discharges of oxygen consuming [~~waste:~~]waste. Domestic wastewater discharges of oxygen consuming waste shall not be permitted that do not meet the following:

(1) The proposed permitted flow for the wastewater discharge shall be lesser of:

(A) No more than one-tenth of the flow generated by the one-year, 24-hour storm event based on the drainage area of the receiving stream at the discharge location and calculated using the Rational Method. The Rational Method shall be used to calculate the peak runoff for the one-year, 24-hour precipitation event in cubic feet per second. The peak runoff shall then be divided by 10 and multiplied by 646,272 to convert the result to gallons per day of allowable discharge at the point studied; or

(B) No more than two million gallons per day.

(2) All wastewater discharges shall be directed to a system that utilizes low-energy methodologies prior to discharging to receiving streams at non-erosive velocities, such as:

(A) An infiltration system, which may include engineered materials to achieve higher rates of infiltration. Engineered materials shall have an ASTM gradation of fine to coarse grain sand and shall be angular to maintain structural integrity of the slope;

(B) Constructed free-surface wetland with a hydraulic residence time of at least 14 days; or

(C) Other technologies that meet the standard of practice for NC Licensed Professional Engineers for such devices that provide a physical buffer or hydraulic residence time [~~of at least 14 days~~] sufficient to discharge at non-erosive velocities.

(3) [~~Wastewater discharges~~] If the wastewater discharge to the receiving stream [~~shall not exceed~~] exceeds one cubic foot per second based on the average daily flow of the [~~discharge.~~] discharge, then more than one outfall to the receiving stream shall be utilized for the wastewater discharge. The discharge at each outfall shall not exceed one cubic foot per second and the [~~Wastewater discharges from multiple~~] outfalls shall be at least 50 linear feet apart along the receiving streams.

Cumulative discharge to the receiving stream shall not exceed the lesser of the requirements in Subparagraph (g)(1) of this Rule.

(4) No wastewater discharges shall be allowed to Class SA, SB, SC, WS-I, WS-II, WS-III, WS-IV, WS-V, ORW or HQW waters.

(5) For wastewater discharges to NSW waters, the Director may require additional modeling by the applicant. Additional allocation of flow shall be at the discretion of the Director.

(6) In addition to any other effluent limits for any other parameters to ensure the permit does not violate any EPA-approved NC water quality standards, the following effluent limits shall apply:

(A) Biological oxygen demand (BOD5) shall not exceed 5.0 mg/l monthly average;

(B) NH3, 0.5 mg/l monthly average, 1.0 mg/l daily maximum;

(C) Total nitrogen shall not exceed 4.0 mg/l monthly average;

(D) Total phosphorus, 1.0 mg/l monthly average, 2.0 mg/l daily maximum;

(E) Fecal coliforms, 14 colonies/100ml or less;

(F) Dissolved oxygen, 7.0 mg/l or greater;

(G) Total suspended solids, 5.0 mg/l monthly average, 8mg/l daily maximum; and

(H) Nitrate, 1.0 mg/l monthly average, 2.0 mg/l daily maximum.

The Director may impose different effluent limits than those set forth in Parts [~~(A)~~] (g)(6)(A) through (H) [~~in Subparagraph (g)(6)~~] of this Rule to ensure that the permit does not violate any EPA-approved NC water quality standards.

(7) The applicant shall demonstrate:

(A) The proposed discharge meets the requirements in Subparagraphs (g)(1), (2), (3), and (4) of this Rule;

(B) The proposed discharge is a domestic wastewater discharge as defined in Rule .0202 of this [~~Subchapter;~~] Section;

(C) When the receiving stream has naturally occurring low dissolved oxygen levels, the proposed discharge complies with G.S. 143-215.1(c7);

(D) When the receiving stream does not have naturally occurring low dissolved oxygen levels, the proposed discharge does not reduce the dissolved oxygen levels of the receiving stream more than 0.1 mg/l below the approved modeled in-stream dissolved oxygen level for the receiving stream at total permitted capacity for all discharges to such receiving stream. The applicant shall use a model utilized elsewhere in USEPA Region 4, such as the Streeter-Phelps model used in the State of Alabama, and the selected model shall be approved by the Director as suitable for the particular discharge and receiving stream.

(8) If an applicant requests less stringent effluent limits than those set forth in Subparagraph (g)(6) of this Rule, then the applicant shall conduct more complex modeling. The applicant shall use a model accepted elsewhere in USEPA Region 4 that is approved by the Director as suitable for the particular discharge and receiving stream. The modeling [~~must~~]shall demonstrate the requirement in Part

[~~(g)(7)(B)~~](g)(7)(C) or [~~(g)(7)(C)~~](g)(7)(D) of this Rule, whichever is applicable, is met, and all EPA-approved NC water quality standards are protected.

(9) Applicants shall provide either:

(A) Mapping data from USGS; or

(B) Mapping data prepared by an engineer of record licensed in the state of NC utilizing either USGS mapping data or other maps approved for use by the Director.

(10) Where the Director determines that the applicant selected model under Subparagraphs (g)(5) or (g)(8) of this Rule or Part (g)(7)(D) of this Rule is not suitable for the particular discharge or receiving stream and downstream waters, then the Director shall notify the applicant in writing the reasons why the selected model is not suitable.

[~~(h) If the 7Q10 flow and the 30Q2 flow of the receiving stream are both estimated to be zero, then new or expanded discharges of oxygen consuming waste that do not meet the criteria in Paragraph (g) of this Rule shall not be allowed. (i) If the 7Q10 flow and the 30Q2 flow of the receiving stream are both estimated to be zero, then the requirements for existing discharges shall be determined on a case-by-case basis by the Director.~~]

~~(e)~~[~~(i)~~](h) Receiving water flow statistics shall be estimated through consultation with the U.S. Geological Survey. Estimates for any given location may be based on actual flow data, modeling analyses, or other methods determined to be appropriate by the ~~Commission or its designee.~~ Director.

History Note: *Authority G.S. 143214.1; 143-215.1(c7); 143215.3(a)(1); SL 2024-44 s. 5.1; SL 2025-94 s. 23;*
Eff. February 1, 1976;
Amended Eff. January 1, 2015; February 1, 1993; October 1, 1989; August 1, 1985; January 1, 1985;
Readopted Eff. November 1, 2019;
Amended Eff. May 1, 2026.

15A NCAC 02H .0107 is amended with changes as published in 40:06 NCR 561-565 and 40:08 NCR 726-732 as follows:

15A NCAC 02H .0107 STAFF REVIEW AND EVALUATION

(a) The Director is authorized to accept applications for the Commission and shall refer all applications to the staff for review and evaluation. Additionally, the Director shall refer NPDES Permit applications for the discharge of waste into waters classified as sources of public water supply (WS classification) and shellfish waters classified SA to the Public Water Supply Section, Division of Water Resources, and the Shellfish Sanitation Program, Division of Marine Fisheries, respectively, both of the Department of Environmental Quality, and shall not take final action on such applications until receiving written confirmation that the proposed discharge is acceptable.

(b) The Director shall acknowledge receipt of an NPDES or Authorization to Construct permit application upon verifying that the application is administratively complete, that is, includes the completed and signed application forms specified in Rule .0105(a) of this Section, any necessary supplemental information, and any associated fees, in accordance with Rules .0105 and .0106 of this Section.

(1) If an application is not administratively complete, the Director shall either return the application to the applicant as incomplete or request the additional information required. If additional information is requested, the applicant shall be given up to 60 days to provide the information to make the application complete.

(2) If technical review of the application reveals that additional information is necessary for staff to evaluate the proposed discharge, the Director shall notify the applicant of the additional information required. The applicant may be given up to 60 days to provide the information to make the application complete.

(3) If an application is submitted in accordance with 15A NCAC 02B .0206(g), then the following shall also apply:

(A) Within 30 days of the filing of an application for a wastewater discharge subject to 15A NCAC 02B .0206(g), the Director shall determine whether or not the application is complete and notify the applicant accordingly.

(B) If the Director determines an application is incomplete, the Director shall specify all such deficiencies in the notice to the applicant.

(C) The applicant may file an amended application or supplemental information within 60 days to cure the deficiencies identified by the Director for the Director 's review.

(c) The staff shall review the application, supplemental information, and other pertinent information, such as monitoring data, compliance records, special studies, and water quality management plans, and shall make a tentative determination to issue, reissue, deny, modify, revoke, rescind, or deny the permit.

(1) The staff shall conduct a site investigation of each facility prior to making its tentative determination regarding the NPDES permit. On-site investigations shall not be necessary for Authorization to Construct permits, activities covered under general permits, and renewal of individual permits when

renewal does not require significant reevaluation of permit conditions such as to address expansion of treatment plant capacity, modification of the wastewater treatment process, or changes in the nature or source of wastewaters to be treated.

(2) If the staff's tentative determination in Subparagraph (1) of this Paragraph is to issue the permit, it shall if necessary make the following additional determinations in writing:

(A) proposed effluent limitations for those pollutants proposed to be limited;

(B) a proposed schedule of compliance, including interim dates and requirements, for meeting the proposed effluent limitations; and

(C) a description of any other special conditions proposed in the draft permit.

(3) The staff shall organize the determinations made pursuant to Subparagraphs (1) and (2) of this Paragraph into a draft permit.

(d) In the case of permits for which Notice of Intent is given in accordance with Rules .0105 and .0127 of this Section, a Certificate of Coverage under a general permit may be issued directly to the applicant in lieu of any other acknowledgment. If the discharge is not eligible for coverage under the general permit, or if the Notice of Intent is not complete and accompanied by the required application fee, the Notice of Intent shall be returned to the applicant with an explanation of the inadequacies.

History Note: *Authority G.S. 130-161; 143-215.3(a)(1); 143-215.3(a)(4); 143-215.1(a); 143-215.1(c); SL 2024-44 s. 5.1; SL 2025-94 s. 23;*
Eff. February 1, 1976;
Amended Eff. March 1, 1993; August 1, 1991; August 1, 1988; October 1, 1987;
Readopted Eff. May 1, 2020;
Amended Eff. May 1, 2026.

15A NCAC 02Q .0114 is adopted as published in 40:08 NCR 732 and 40:12 NCR 1008 as follows:

15A NCAC 02Q .0114 ACTIVITIES ALLOWED PRIOR TO PERMIT ISSUANCE

Upon determination that an application for a permit or permit modification contains all information required by statute, regulation, and application form, consistent with G.S. 143-213, the construction, but not operation, of a new air contaminant source, equipment, or associated air cleaning or emission control devices may commence prior to permit issuance if the emissions source is not subject to:

(1) permit limits set pursuant to programs for prevention of significant deterioration pursuant 15A NCAC 02D .0530 and for the attainment of air quality standards in nonattainment areas pursuant to 15A NCAC 02D .0531;

(2) a residual risk-based hazardous air pollutant standard pursuant to 15A NCAC 02D .1111; or

(3) a case-by-case maximum achievable control technology (MACT) permit requirement issued by the Division pursuant to 15A NCAC 02D .1109 and Rule .0526 of this Subchapter.

The undertaking of pre-permitting activities pursuant to this Rule shall not entitle the applicant to operate any air contaminant source, equipment, or associated air cleaning or emissions control devices prior to permit issuance.

History Note: *Authority G.S. 143-212; 143-213; 143-215.3(a)(1); 143-215.108A;*
Adoption Eff. (Pending On the first day of a month that is 60 days after the Secretary of the Department of Environmental Quality certifies to the Revisor of Statutes that the U.S. Environmental Protection Agency has approved the amended rule into the North Carolina State Implementation Plan pursuant to S.L. 2023-134, Section 12.11, as amended by S.L 2024-1, Section 4.13.)

15A NCAC 02Q .0501 is amended as published in 40:08 NCR 732 and 40:12 NCR 1008 as follows:

SECTION .0500 - TITLE V PROCEDURES

15A NCAC 02Q .0501 PURPOSE OF SECTION AND REQUIREMENT FOR A PERMIT

(a) The purpose of this Section is to establish an air quality permitting program as required pursuant to Title V of the Clean Air Act and 40 CFR Part 70.

(b) With the exception in Paragraph (c) of this ~~Rule,~~ Rule and the provisions of 15A NCAC 02Q .0114, the owner or operator of an existing facility, new facility, or modification of an existing facility (except for minor modifications pursuant to 15A NCAC 02Q .0515), including significant modifications that would not contravene or conflict with a condition in the existing permit, shall not begin construction without first obtaining:

(1) a construction and operation permit following the procedures set forth in this Section (except for 15A NCAC 02Q .0504), or

(2) a construction and operation permit following the procedures set forth in 15A NCAC 02Q .0504 and filing a complete application within 12 months after commencing operation to modify the construction and operation permit to meet the requirements of this Section.

(c) With the exception provided in the provisions of 15A NCAC 02Q .0114, if ~~If~~ the owner or operator proposes to make a significant modification pursuant to 15A NCAC 02Q .0516 that would contravene or conflict with a condition in the existing permit, the owner or operator shall not begin construction or make the modification until the owner or operator has obtained:

(1) a construction and operation permit following the procedures set forth in this Section (except for 15A NCAC 02Q .0504); or

(2) a construction and operation permit following the procedures set forth in 15A NCAC 02Q .0504 and, before beginning operation, files an application and obtains a permit modifying the construction and operation permit to meet the requirements of this Section (except for 15A NCAC 02Q .0504).

(d) All facilities subject to this Section shall have a permit to operate that assures compliance with 40 CFR Part 70 and all applicable federal and State requirements.

(e) Except as allowed pursuant to 15A NCAC 02Q .0515(f) (minor modifications), no facility subject to the requirements of this Section may operate after the time that it is required to submit a timely and complete application pursuant to this Section except in compliance with a permit issued pursuant to this Section. This Paragraph does not apply to ~~to~~ permit renewals pursuant to 15A NCAC 02Q .0513.

(f) If the conditions of 15A NCAC 02Q .0512(b) (application shield) are met, the facility's failure to have a permit pursuant to this Section shall not be a violation of operating without a permit.

(g) If the owner or operator of a facility subject to the requirements of this Section submits an application for a revision to his permit before receiving the initial permit pursuant to this Section, the application for the revision shall be processed pursuant to 15A NCAC 02Q .0300.

(h) The owner or operator of a facility or source subject to the requirements of this Section may also be subject to the toxic air pollutant procedures set forth in 15A NCAC 2Q .0700.

(i) The owner or operator of an affected unit subject to the acid rain program requirements of Title IV is also subject to the procedures pursuant to 15A NCAC 02Q .0400.

(j) The owner or operator of a facility subject to the requirements of this Section shall pay permit fees in accordance with the requirements of 15A NCAC 02Q .0200.

History Note: *Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108; 143-215.108A;*
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, 1998; July 1, 1996;
Readopted Eff. April 1, ~~2018.~~ 2018;
Amended Eff. (Pending On the first day of a month that is 60 days after the Secretary of the Department of Environmental Quality certifies to the Revisor of Statutes that the U.S. Environmental Protection Agency has approved the amended rule into the North Carolina State Implementation Plan pursuant to S.L. 2023-134, Section 12.11, as amended by S.L 2024-1, Section 4.13.)

15A NCAC 02Q .0507 is amended as published in 40:08 NCR 732 and 40:12 NCR 1009 as follows:

15A NCAC 02Q .0507 APPLICATION

(a) Except for:

(1) minor permit modifications covered pursuant to 15A NCAC 02Q .0515;

(2) significant modifications covered pursuant to 15A NCAC 02Q .0516(c); or

(3) renewals submitted pursuant to 15A NCAC 02Q .0513;

the owner or operator of a new or existing source shall have 12 months after the facility or source becomes subject to the Title V operating permit program pursuant to 15A NCAC 02Q .0500 to file a complete application for a permit or permit revision. However, except as provided in 15A NCAC 02Q .0114, the owner or operator of a source shall not begin construction or operation of a source until he or she has obtained a construction and operation permit pursuant to 15A NCAC 02Q .0501(b) or (c) and 15A NCAC 02Q .0504.

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

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

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

(1) for a new facility or an expansion of existing facility, a consistency determination in accordance with G.S. 143-215.108(f) that:

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

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

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

(3) if required by the Director, information showing that:

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

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

(e) An applicant who fails to submit relevant facts or submits incorrect information in a permit application shall, upon becoming aware of the failure or incorrect submittal, submit supplementary facts or corrected information to resolve the deficiency. In addition, an applicant shall provide additional information to address requirements to which the source becomes subject after the date the applicant filed a complete application but prior to release of a draft permit.

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

(g) 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 these permit applications after receipt of the complete permit application.

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

(i) The applicant shall retain during the permit term one complete copy of the application package and the 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; 143-215.108A;*
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;
Amended Eff. September 1, 2023; September 1, ~~2022.~~ 2022;
Amended Eff. (Pending On the first day of a month that is 60 days after the Secretary of the Department of Environmental Quality certifies to the Revisor of Statutes that the U.S. Environmental Protection Agency has approved the amended rule into the North Carolina State Implementation Plan pursuant to S.L. 2023-134, Section 12.11, as amended by S.L 2024-1, Section 4.13.)