

STATE OF NORTH CAROLINA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES
DIVISION OF AIR QUALITY

REPORT OF PROCEEDINGS OF PUBLIC HEARING
ON AMENDMENTS TO THE RULE 15A NCAC 02D .1903 OPEN BURNING
WITHOUT AN AIR QUALITY PERMIT TO INCORPORATE
REQUIREMENTS OF SECTION 28(B) OF S.L. 2013-413 AND TO THE
RULES 15A NCAC 02D .1901 AND 15A NCAC 02D .1902.

SEPTEMBER 3, 2014
RALEIGH, NC

ENVIRONMENTAL MANAGEMENT COMMISSION

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CHAPTER I

Summaries and Recommendations

Proposed amendments to Rules 15A NCAC 02D .1901, .1902, and .1903

BACKGROUND AND SUMMARY

A public hearing was held in Raleigh, NC on September 3, 2014, to receive public comments on amendment to Rule 15A NCAC 02D .1903, Open Burning without an Air Quality Permit, which incorporates requirements of Section 28(b) of S.L. 2013-413. The session law allows transporting of land clearing materials over public roads for open burning to locations other than facilities permitted by the provisions of the Rule 15A NCAC 02D .1904, Air Curtain Burners, if the specific requirements defined in Section 28(b) are met. Rules 15A NCAC 02D .1901 and .1902 are also proposed for amendments to update the references to the General Statute and the name of the former Division of Forest Resources to reflect its current name, the North Carolina Forest Service.

The current Rule 15A NCAC 02D .1903(b) (2) (F) does not allow someone to carry off-site or transport materials for land clearing or right-of-way maintenance over public roads for open burning unless the materials are carried off-site or transported over public roads to facilities permitted in accordance with the Rule 15A NCAC 02D .1904 to burn the materials in an air curtain burner at a permanent site. The air curtain burner is a stationary or portable combustion device that directs a draft air through a manifold head into a pit to maintain a curtain of air over the surface of the pit and a recirculating motion of air under the curtain. The Division of Air Quality (DAQ) database indicates that the state has only seven air curtain burners in operation. These air curtain burners are located in rural areas, and in many situations, the distance between a site for land clearing or right-of-way maintenance and an air curtain burner can be quite lengthy and the transportation can be expensive. The language of two other rules 15A NCAC 02D .1901 and 15A NCAC 02D .1902 currently contains the former name of the North Carolina Forest Service and outdated references to the General Statute.

S.L. 2013-413 mandates that the Commission adopt rules that pertain to open burning for land clearing or right-of-way maintenance that are substantively identical to the provisions of Section 28(b) of that Act which states that: “the Commission shall adopt a rule to amend 15A NCAC 02D .1903 (Open Burning Without an Air Quality Permit) consistent with Section 28.(b) of this act.”

The proposed change adds an option of open burning at an offsite location that meets the requirements listed in the Section 28(b) of the Act. These requirements, in addition to establishing the same 500 feet setback as the current rule .1903, also limit the number of piles being burned at one time to no more than two, each 20 feet in diameter and burning at an offsite location is limited to four times per year.

Currently, the DAQ is implementing the provisions of Section 28(b) of the Act. These provisions will expire on the date when the amendments to Rule 15A NCAC 02D .1903 become effective as required by Section 28(d) of S.L. 2013-413.

The amendments to the other two rules .1901 and .1902 update the name of the former Division of Forest Resources to reflect its current name, the North Carolina Forest Service, and also update the references to the General Statute. These changes are of technical nature.

Research conducted on information available to DAQ indicates that the overwhelming majority of the materials from land clearing or right-of-way maintenance operations are burned at the sites where the clearing occurs.

Pursuant to Section 28 of the session law, DAQ is implementing the provisions of Section 28(b) of the Act until the date when the amendments to the Rule 15A NCAC 02D .1903 will become effective as required by Section 28(d) of the Act. DAQ has not noticed any changes in the numbers of complaints since these provisions became effective.

The amendments align the rule with the statute and will have insignificant impact on open burning involved in land clearing operations as noted in the attached fiscal note (see Chapter VI). The amendments are not anticipated to interfere with the attainment and maintenance of the national ambient air quality standards.

PUBLIC COMMENTS AND RESPONSES THERETO

Comment: Mr. R Scott Davis, Chief, Air Planning Branch. EPA, Region IV, in his comments, requested that language to clarify that the amendments to this section do not interfere with the attainment and maintenance of the national ambient air quality standards (NAAQS) be included in the record.

Response: Based on information from the state offices of Sedimentation and Erosion Control and DAQ staff observations, the overwhelming majority of land clearing debris is burned on site. The option provided by the amendment is expected to be used in limited circumstances such as instances where setback requirements can't be met and no public pickup is available or a local ordinance prohibits burning at the site and no public pickup is available. Limits on the number and size of piles and frequency of burning at a given location included in the amendment inherently limit its use and potential for impact. Paragraph (a) of the rule continues to restrict open burning on days forecasted to be Code Orange or above. Since implementation began upon the July 26, 2013 effective date of the law, DAQ regional office field staff indicate little interest in or use of the provision and it is not expected to be used much in the future. In addition during the timeframe since the session law became effective, the state has not experienced any violations of any of the NAAQS. The amendments do not interfere with the attainment and maintenance of the national ambient air quality standards.

SUMMARY OF COMMENTS AND RESPONSES

<u>Comment</u>	<u>Response</u>
Recommendation to include in the hearing record language to clarify that the amendments to this section does not interfere with the attainment and maintenance of the national ambient air quality standards.	The amendments to this section are not anticipated to interfere with the attainment and maintenance of the national ambient air quality standards.

CONCLUSION

One member of the public commented on the proposed amendments during the comment period. The commenter made a general comment requesting clarification that the amendments to this section do not interfere with the attainment and maintenance of the (NAAQS) be included in the record.

Clarification that the amendments to this section do not interfere with the attainment and maintenance of the (NAAQS) is included in the response to the comment. No changes to the rule amendments are proposed in response to the comment.

HEARING OFFICER'S RECOMMENDATION

The Hearing Officer recommends that the proposed amendments as presented in Chapter II of this hearing report be adopted by the Environmental Management Commission.

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CHAPTER II

Rule Change Formatting Key

Chapter IV of this hearing record represents the proposed rules as noticed in the *North Carolina Register* for public comment.

Chapter II represents the proposed rules as published with changes made in response to comments received during the public comment period incorporated.

For Rule Amendments:

~~Text~~ = deleted text

Text = added text

~~Text~~ = existing text in what was published in the *North Carolina Register* (NCR) that is proposed to be deleted following the comment period

Text = text proposed to be added to what was published in the NCR following the comment period

~~Text~~ = text initially proposed in the NCR to be deleted that is restored following the comment period

[~~Text~~] = text proposed in the NCR to be added that is deleted following the comment period

Note: For new rules proposed for adoption, all text is initially underlined. If there are changes to the proposed new rule following publication in the NCR, the underlining is removed, deleted text is struck through, added text is underlined, and there is no highlighting.

1 15A NCAC 02D .1901 is proposed for amendment as follows:

2

3 **15A NCAC 02D .1901 OPEN BURNING: PURPOSE: SCOPE**

4 (a) Open Burning Prohibited. A person shall not cause, allow, or permit open burning of combustible material
5 except as allowed by Rule .1903 and Rule .1904 of this Section.

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

8 (c) Scope. This Section applies to all operations involving open burning. This Section does not authorize any open
9 burning which is a crime under ~~G.S. 14-136 through G.S. 14-140.1~~, G.S. 14-136, G.S. 14-137, G.S. 14-138.1 and
10 G.S. 14-140.1, or affect the authority of the ~~Division of North Carolina Forest Resources Service~~ to issue or deny
11 permits for open burning in or adjacent to woodlands as provided in ~~G.S. 113-60.21~~ G.S. 106-940 through ~~G.S. 113-~~
12 ~~60.31~~ G.S. 106-950. This Section does not affect the authority of any local government to regulate open burning
13 through its fire codes or other ordinances. The issuance of any open burning permit by the ~~Division of North~~
14 Carolina Forest Resources Service or any local government does not relieve any person from the necessity of
15 complying with this Section or any other air quality rule.

16

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

18 *Eff. July 1, 1996;*

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

20

21 15A NCAC 02D .1902 is proposed for amendment as follows:

22

23 **15A NCAC 02D .1902 DEFINITIONS**

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

25 (1) "Air Curtain Burner" means a stationary or portable combustion device that directs a plane of high
26 velocity forced draft air through a manifold head into a pit or container with vertical walls in such
27 a manner as to maintain a curtain of air over the surface of the pit and a recirculating motion of air
28 under the curtain.

29 (2) "Air Quality Action Day Code 'Orange' or above" means an air quality index greater than 100 as
30 defined in 40 CFR Part 58, Appendix G.

31 (3) "Air quality forecast area" means for

32 (a) Asheville air quality forecast area: Buncombe, Haywood, Henderson, Jackson, Madison,
33 Swain, Transylvania, and Yancey Counties;

34 (b) Charlotte air quality forecast area: Cabarrus, Gaston, Iredell South of Interstate 40,
35 Lincoln, Mecklenburg, Rowan, and Union Counties;

36 (c) Hickory air quality forecast area: Alexander, Burke, Caldwell, and Catawba Counties;

37 (d) Fayetteville air quality forecast area: Cumberland and Harnett Counties;

- 1 (e) Rocky Mount air quality forecast area: Edgecombe and Nash Counties;
- 2 (f) Triad air quality forecast area: Alamance, Caswell, Davidson, Davie, Forsyth, Guilford,
- 3 Randolph, Rockingham, and Stokes Counties; and
- 4 (g) Triangle air quality forecast area: Chatham, Durham, Franklin, Granville, Johnston,
- 5 Person, Orange, Vance, and Wake Counties.
- 6 (4) "Smoke management plan" means the plan developed following the North Carolina ~~Division of~~
7 Forest ~~Resources' Service's~~ Service's smoke management program and approved by the North Carolina
8 ~~Division of Forest Resources. Service.~~ The purpose of the smoke management plan is to manage
9 smoke from prescribed burns of public and private forests to minimize the impact of smoke on air
10 quality and visibility.
- 11 (5) "Dangerous materials" means explosives or containers used in the holding or transporting of
12 explosives.
- 13 (6) "HHCB" means the Health Hazards Control Branch of the Division of Epidemiology.
- 14 (7) "Initiated" means start or ignite a fire or reignite or rekindle a fire.
- 15 (8) "Land clearing" means the uprooting or clearing of vegetation in connection with construction for
16 buildings; right-of-way maintenance; agricultural, residential, commercial, institutional, or
17 industrial development; mining activities; or the initial clearing of vegetation to enhance property
18 value; but does not include routine maintenance or property clean-up activities.
- 19 (9) "Log" means any limb or trunk whose diameter exceeds six inches.
- 20 (10) "Nonattainment area" means an area identified in 40 CFR 81.334 as nonattainment.
- 21 (11) "Nuisance" means causing physical irritation exacerbating a documented medical condition,
22 visibility impairment, or evidence of soot or ash on property or structure other than the property on
23 which the burning is done.
- 24 (12) "Occupied structure" means a building in which people may live or work or one intended for
25 housing farm or other domestic animals.
- 26 (13) "Off-site" means any area not on the premises of the land-clearing activities.
- 27 (14) "Open burning" means the burning of any matter in such a manner that the products of combustion
28 resulting from the burning are emitted directly into the atmosphere without passing through a
29 stack, chimney, or a permitted air pollution control device.
- 30 (15) "Operator" as used in .1904(b)(6) and .1904(b)(2)(D) of this Section, means the person in
31 operational control over the open burning.
- 32 (16) "Person" as used in 02D .1901(c), means:
- 33 (a) the person in operational control over the open burning; or
- 34 (b) the landowner or person in possession or control of the land when he has directly or
35 indirectly allowed the open burning or has benefited from it.
- 36 (17) "Pile" means a quantity of combustible material assembled together in a mass.

- 1 (18) "Public pick-up" means the removal of refuse, yard trimmings, limbs, or other plant material from
 2 a residence by a governmental agency, private company contracted by a governmental agency or
 3 municipal service.
- 4 (19) "Public road" means any road that is part of the State highway system; or any road, street, or right-
 5 of-way dedicated or maintained for public use.
- 6 (20) "RACM" means regulated asbestos containing material as defined in 40 CFR 61.142.
- 7 (21) "Refuse" means any garbage, rubbish, or trade waste.
- 8 (22) "Regional Office Supervisor" means the supervisor of personnel of the Division of Air Quality in
 9 a regional office of the Department of Environment and Natural Resources.
- 10 (23) "Salvageable items" means any product or material that was first discarded or damaged and then
 11 all, or part, was saved for future use, and include insulated wire, electric motors, and electric
 12 transformers.
- 13 (24) "Synthetic material" means man-made material, including tires, asphalt materials such as shingles
 14 or asphaltic roofing materials, construction materials, packaging for construction materials, wire,
 15 electrical insulation, and treated or coated wood.
- 16 (25) "Permanent site" means for an air curtain burner, a place where an air curtain burner is operated
 17 for more than nine months.

18
 19 *History Note:* Authority G.S. 143-212; 143-213; 143-215.3(a)(1);
 20 Eff. July 1, 1996;
 21 Amended Eff. January 1, 2015; July 1, 2007; December 1, 2005; June 1, 2004; July 1, 1998.

22
 23
 24 15A NCAC 02D .1903 is proposed for amendment as follows:

25
 26 **15A NCAC 02D .1903 OPEN BURNING WITHOUT AN AIR QUALITY PERMIT**

27 (a) All open burning is prohibited except open burning allowed under Paragraph (b) of this Rule or Rule .1904 of
 28 this Section. Except as allowed under Paragraphs (b)(3) through (b)(9) of this Rule, open burning shall not be
 29 initiated in an air quality forecast area that the Department, or the Forsyth County Environmental Affairs
 30 Department for the Triad air quality forecast area, has forecasted to be in an Air Quality Action Day Code "Orange"
 31 or above during the time period covered by that forecast.

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

- 33 (1) open burning of leaves, tree branches or yard trimmings, excluding logs and stumps, if the
 34 following conditions are met:
- 35 (A) The material burned originates on the premises of private residences and is burned on
 36 those premises;
- 37 (B) There are no public pickup services available;

- 1 (C) Non-vegetative materials, such as household garbage, lumber, or any other synthetic
2 materials are not burned;
- 3 (D) The burning is initiated no earlier than 8:00 a.m. and no additional combustible material
4 is added to the fire between 6:00 p.m. on one day and 8:00 a.m. on the following day;
- 5 (E) The burning does not create a nuisance; and
- 6 (F) Material is not burned when the North Carolina Forest Service has banned burning for
7 that area.
- 8 (2) open burning for land clearing or right-of-way maintenance if the following conditions are met:
- 9 (A) The wind direction at the time that the burning is initiated and the wind direction as
10 forecasted by the National Weather Service at the time that the burning is initiated are
11 away from any area, including public roads within 250 feet of the burning as measured
12 from the edge of the pavement or other roadway surface, which may be affected by
13 smoke, ash, or other air pollutants from the burning;
- 14 (B) The location of the burning is at least 500 feet from any dwelling, group of dwellings, or
15 commercial or institutional establishment, or other occupied structure not located on the
16 property on which the burning is conducted. The regional office supervisor may grant
17 exceptions to the setback requirements if:
- 18 (i) a signed, written statement waiving objections to the open burning associated
19 with the land clearing operation is obtained and submitted to, and the exception
20 granted by, the regional office supervisor before the burning begins from a
21 resident or an owner of each dwelling, commercial or institutional
22 establishment, or other occupied structure within 500 feet of the open burning
23 site. In the case of a lease or rental agreement, the lessee or renter shall be the
24 person from whom permission shall be gained prior to any burning; or
- 25 (ii) an air curtain burner that complies with Rule .1904 of this Section, is utilized at
26 the open burning site.
- 27 Factors that the regional supervisor shall consider in deciding to grant the exception
28 include: all the persons who need to sign the statement waiving the objection have signed
29 it; the location of the burn; and the type, amount, and nature of the combustible
30 substances. The regional supervisor shall not grant a waiver if a college, school, licensed
31 day care, hospital, licensed rest home, or other similar institution is less than 500 feet
32 from the proposed burn site when such institution is occupied.
- 33 (C) Only land-cleared plant growth is burned. Heavy oils, asphaltic materials such as shingles
34 and other roofing materials, items containing natural or synthetic rubber, or any materials
35 other than plant growth shall not be burned; however, kerosene, distillate oil, or diesel
36 fuel may be used to start the fire;

- 1 (D) Initial burning begins only between the hours of 8:00 a.m. and 6:00 p.m., and no
2 combustable material is added to the fire between 6:00 p.m. on one day and 8:00 a.m. on
3 the following day;
- 4 (E) No fires are initiated or vegetation added to existing fires when the North Carolina Forest
5 Service has banned burning for that area; and
- 6 (F) Materials are not carried off-site or transported over public roads for open burning unless
7 the materials are carried ~~off-site~~ or transported ~~over public roads to facilities permitted~~
8 ~~according to Rule .1904 of this Section for the operation of an air curtain burner at a~~
9 ~~permanent site; to:~~
- 10 (i) Facilities permitted in accordance with 15A NCAC 02D .1904 (Air Curtain
11 Burners) for the operation of an air curtain burner at a permanent site; or
- 12 (ii) A location, where the material is burned not more than four times per year, that
13 meets all of the following criteria:
- 14 (I) At least 500 feet from any dwelling, group of dwellings, or commercial
15 or institutional establishment, or other occupied structure not located on
16 the property on which the burning is conducted.
- 17 (II) There are no more than two piles, each 20 feet in diameter, being
18 burned at one time.
- 19 (III) The location is not a permitted solid waste management facility.
- 20 (3) camp fires and fires used solely for outdoor cooking and other recreational purposes, or for
21 ceremonial occasions, or for human warmth and comfort and which do not create a nuisance and
22 do not use synthetic materials or refuse or salvageable materials for fuel;
- 23 (4) fires purposely set to public or private forest land for forest management practices for which
24 burning is acceptable to the North Carolina Forest Service and which follow the smoke
25 management plan as outlined in the North Carolina Forest Service's smoke management program;
- 26 (5) fires purposely set to agricultural lands for disease and pest control and fires set for other
27 agricultural or apicultural practices for which burning is currently acceptable to the Department of
28 Agriculture;
- 29 (6) fires purposely set for wildlife management practices for which burning is currently acceptable to
30 the Wildlife Resource Commission;
- 31 (7) fires for the disposal of dangerous materials when it is the safest and most practical method of
32 disposal;
- 33 (8) fires purposely set by manufacturers of fire-extinguishing materials or equipment, testing
34 laboratories, or other persons, for the purpose of testing or developing these materials or
35 equipment in accordance with a standard qualification program;
- 36 (9) fires purposely set for the instruction and training of fire-fighting personnel at permanent fire-
37 fighting training facilities;

- 1 (10) fires purposely set for the instruction and training of fire-fighting personnel when conducted under
2 the supervision of or with the cooperation of one or more of the following agencies:
- 3 (A) the North Carolina Forest Service;
- 4 (B) the North Carolina Insurance Department;
- 5 (C) North Carolina technical institutes; or
- 6 (D) North Carolina community colleges, including:
- 7 (i) the North Carolina Fire College; or
- 8 (ii) the North Carolina Rescue College;
- 9 (11) fires not described in Subparagraphs (9) or (10) of this Paragraph, purposely set for the instruction
10 and training of fire-fighting personnel, provided that:
- 11 (A) The regional office supervisor of the appropriate regional office and the HHCB have
12 been notified according to the procedures and deadlines contained in the appropriate
13 regional notification form. This form may be obtained by writing the appropriate regional
14 office at the address in Rule .1905 of this Section and requesting it, and
- 15 (B) The regional office supervisor has granted permission for the burning. Factors that the
16 regional office supervisor shall consider in granting permission for the burning include
17 type, amount, and nature of combustible substances. The regional office supervisor shall
18 not grant permission for the burning of salvageable items, such as insulated wire and
19 electric motors or if the primary purpose of the fire is to dispose of synthetic materials or
20 refuse. The regional office supervisor of the appropriate regional office shall not consider
21 previously demolished structures as having training value. However, the regional office
22 supervisor of the appropriate regional office may allow an exercise involving the burning
23 of motor vehicles burned over a period of time by a training unit or by several related
24 training units. Any deviations from the dates and times of exercises, including additions,
25 postponements, and deletions, submitted in the schedule in the approved plan shall be
26 communicated verbally to the regional office supervisor of the appropriate regional office
27 at least one hour before the burn is scheduled; and
- 28 (12) fires for the disposal of material generated as a result of a natural disaster, such as tornado,
29 hurricane, or flood, if the regional office supervisor grants permission for the burning. The person
30 desiring to do the burning shall document and provide written notification to the regional office
31 supervisor of the appropriate regional office that there is no other practical method of disposal of
32 the waste. Factors that the regional office supervisor shall consider in granting permission for the
33 burning include type, amount, location of the burning, and nature of combustible substances. The
34 regional office supervisor shall not grant permission for the burning if the primary purpose of the
35 fire is to dispose of synthetic materials or refuse or recovery of salvageable materials. Fires
36 authorized under this Subparagraph shall comply with the conditions of Subparagraph (b)(2) of
37 this Rule.

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

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

7 *Eff. July 1, 1996;*

8 *Amended Eff. [Pending Legislative Review]; July 3, 2012; July 1, 2007; December 1, 2005; June*
9 *1, 2004; July 1, 1998*

10

11

CHAPTER III
REPORT OF PROCEEDINGS

Introduction

The Department of Environment and Natural Resources, Division of Air Quality, held a public hearing on September 3, 2014 at 3:00pm in Raleigh, NC.

The hearing considered the proposed amendments to the open burning rules.

The proposed effective date for these rules is projected to be January 1, 2015.

A public notice announcing this hearing was mailed to each person on the official mailing list for rule-making hearings. The public notice was also published in the North Carolina Register at least 15 days before the public hearing and posted on the North Carolina Division of Air Quality website at least 30 days prior to the public hearing.



ENVIRONMENTAL MANAGEMENT COMMISSION

NORTH CAROLINA
DEPARTMENT OF ENVIRONMENT AND NATURAL
RESOURCES

Benne C. Hutson
Chairman
Kevin Martin
Vice Chairman

Pat McCrory, Governor
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Manning Puette
Dr. Lawrence W. Raymond
Dr. Albert R. Rubin
Clyde E. Smith, Jr.
Steve W. Tedder
Julie A. Wilsey

July 10, 2014

MEMORANDUM

TO: Charles Carter

From: Benne C. Hutson

Subject: Hearing Officer Appointment

Public hearings have been scheduled for September 3, 2014 at 3:00 p.m. at the Division of Air Quality central office in Raleigh, Room 1210, to receive public comments on repeal of the Transportation Facility rules, and amendments to the Open Burning rules and Permit Term rule. The attached public notice describes the hearing's purpose.

I am hereby appointing you to serve as hearing officer for this hearing. Please receive all relevant public comment and report your findings and recommendations to the Environmental Management Commission. Ms. Joelle Burlison will provide staff support for you.

If you have any questions, please feel free to contact Joelle Burlison at (919) 707-8720, or me.

SCH/jb

Attachment

cc: Sheila Holman
Lois Thomas
Hearing Record File

NORTH CAROLINA ENVIRONMENTAL MANAGEMENT COMMISSION

PUBLIC NOTICE

Notice is hereby given for one public hearing to be heard by the North Carolina Department of Environment and Natural Resources, Division of Air Quality concerning the proposed repeals and amendments to air quality rules.

PURPOSE:

Hearing 1: To receive comments on the repeal to the transportation facility permitting requirements in Sections 15A NCAC 02D .0800 and 02Q .0600. Rules 15A NCAC 02Q .0101, .0103, .0104 and .0203 are proposed to be amended to remove obsolete cross references that would remain due to the transportation facility permitting rules being proposed for repeal.

Hearing 2: To receive comments on amendment to Rule 15A NCAC 02D .1903, Open Burning without an Air Quality Permit, which incorporates requirements in Section 28(b) of S.L. 2013-413 which also allows transporting of land clearing materials over public roads for open burning to locations other than facilities permitted by the provisions of the Rule 15A NCAC 02D .1904 if the specific requirements defined in the Section 28(b) are met. Rules 15A NCAC 02D .1901 and .1902 are also proposed for amendment to update the references to the General Statute and the name of the former Division of Forest Resources to reflect its current name, the North Carolina Forest Service.

Hearing 3: To receive comments on amendment to Rule 15A NCAC 02Q .0308, Final Action on Permit Applications, which revises the permit term for non-Title V air quality permits from five years to eight years to reflect Session Law 2013-413.

NOTE: The proposed repeals and amendments considered in these hearings, if adopted, will be effective statewide and submitted to the United States Environmental Protection Agency to be included in the North Carolina State Implementation Plan (SIP); if they are later adopted by a local air pollution control agency, then that agency will enforce them in its area of jurisdiction.

DATES AND LOCATION: September 3, 2014, 3:00 P.M.
Training Room (#1210), DENR Green Square Office
Building, 217 West Jones Street, Raleigh, NC

COMMENT PROCEDURES: All persons interested in these matters are invited to attend the public hearings. **Any person desiring to comment is requested to submit a written statement for inclusion in the record of proceedings at the public hearing.** The hearing officer may limit oral presentation lengths if many people want to speak. The hearing record will remain open until September 30, 2014 to receive additional written statements. To be included, the statement must be received by the Division of Air Quality by September 30, 2014.

INFORMATION: Copies of the proposed rule changes may be downloaded at <http://daq.state.nc.us/Rules/Hearing/>. Copies of the proposals may also be reviewed at the regional offices of the North Carolina Department of Environment and Natural Resources, Division of Air Quality, located at the following cities:

Asheville	828/296-4500
Fayetteville	910/433-3300
Mooresville	704/663-1699
Raleigh	919/791-4200
Washington	252/946-6481
Wilmington	910/796-7215
Winston-Salem	336/771-5000

Comments should be sent to and additional information concerning the hearings or the proposals may be obtained by contacting:

Ms. Joelle Burlison
Division of Air Quality
1641 Mail Service Center
Raleigh, North Carolina 27699-1641
(919) 707-8720 Phone/Fax
daq.publiccomments@ncdenr.gov

DATE: 7/16/14

Sheila Holman,
DAQ Director

Transcript

A transcript of the September 3, 2014 hearing has not been prepared; however, an audio recording of the proceeding will be kept on file with the Division of Air Quality for one year from the date of the final actions by the Environmental Management Commission.

A list of those attending the hearing as follows:

Hearing Officer

Mr. Charlie Carter, Environmental Management Commission

Staff Members

Ms. Joelle Burlison, DAQ, DENR
Mr. Patrick Knowlson, DAQ, DENR
Ms. Sushma Masemore, DAQ, DENR
Mr. Tom Mather, DAQ, DENR
Mr. Glenn Sappie, DAQ, DENR
Ms. Angela Terry, DAQ, DENR
Mr. Vladimir Zaytsev, DAQ, DENR
Mr. Tony Pendola, DENR, DEACS, SBEAP

Members of the General Public

Mr. Jay Stem, Executive Director, North Carolina Aggregates Association

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CHAPTER IV

EXHIBITS

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NORTH CAROLINA REGISTER

VOLUME 29 • ISSUE 03 • Pages 221 – 396

August 1, 2014

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- "Security Guard," "Security Officer," "Armored Car Guard," or "Armored Car Officer" in capital letters approximately one-half inch in height; and
- (3) affixed over the "Security Guard" or "Security Officer," "Security Guard," "Security Officer," "Armored Car Guard," or "Armored Car Officer" tag, a metal, plastic, or cloth tag bearing the name of the wearer. The name tag may be smaller than the "Security Guard" or "Security Officer," "Security Guard," "Security Officer," "Armored Car Guard," or "Armored Car Officer" tag if it is displayed in capital letters five-sixteenth inch to one-half inch in height.

(d) The wearing of the armed or unarmed private protective services card visible on the outermost garment (except foul weather clothing) satisfies the requirements of Subparagraphs (c)(1), (2) and (3) of this Rule.

(e) All holders who perform the duties of a security guard or security officer and who are not required to wear a military style uniform shall have affixed over the right or left breast pocket of the outermost garment (except for rainwear or other foul weather clothing) a tag as described in (c)(2) of this Rule.

Authority G.S. 74C-5; 74C-12; 74C-15.

12 NCAC 07D .0116 APPLICATION COMPLETION DEADLINE

All necessary photographs, record checks, proof of insurance, explanations, interviews or requested documents must be submitted by any applicant for a permit, license, registration or certificate within 60 days of the Board's receipt of the application form or a request from Board staff, whichever is later. Any failure to submit required or requested documents to complete the application process within this 60-day period shall void the application and require re-application.

Authority G.S. 74C-2; 74C-5; 74C-8; 74C-8.1; 74C-12.

SECTION .0800 – ARMED SECURITY GUARD FIREARM REGISTRATION PERMIT

12 NCAC 07D .0809 AUTHORIZED FIREARMS

Armed security officers Armed licensees or registrants are authorized, while in the performance of official duties or traveling directly to and from work, to carry a standard ~~.38~~ caliber, ~~.32~~ caliber or ~~.357~~ caliber revolver, revolver from .32 caliber to .357 caliber, or any a standard semi-automatic pistol of from .354 caliber and higher, to .45 caliber or any standard 12 gauge shotgun, as long as the officer licensee or registrant has been properly trained on his respective duty weapon as required pursuant to 12 NCAC 07D .0807. For purposes of this Section, "standard weapon" a "standard" firearm means a weapon-firearm which has not been modified or altered from its original manufactured design.

Authority G.S. 74C-5; 74C-13.

SECTION .1400 – ARMORED CAR SERVICE GUARD REGISTRATION (UNARMED)

12 NCAC 07D .1408 UNIFORMS AND EQUIPMENT

The provisions of 12 NCAC 07D .0105 apply to unarmed armored car service guards.

Authority G.S. 74C-5; 74C-12; 74C-15.

SECTION .1500 – ARMED ARMORED CAR SERVICE GUARDS FIREARM REGISTRATION PERMIT

12 NCAC 07D .1508 UNIFORMS AND EQUIPMENT

The provisions of 12 NCAC 07D .0105 apply to armed armored car service guards.

Authority G.S. 74C-5; 74C-12; 74C-15.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to amend the rules cited as 15A NCAC 02D .0101, .1901-.1903; 02Q .0101, .0103-.0104, .0203, .0308 and repeal the rules cited as 15A NCAC 02D .0801-.0802, .0804-.0806; 02Q .0601-.0607.

Agency obtained G.S. 150B-19.1 certification:

- OSBM certified on:** January 10, 2014 (15A NCAC 02D .0101, .0801-.0801, .0804-.0806; 15A NCAC 02Q .0101, .0103, .0104, .0203, .0601-.0607);
June 3, 2014 (15A NCAC 02D .1901-.1903);
June 20, 2014 (15A NCAC 02Q .0308)

- RRC certified on:**
 Not Required

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://www.ncair.org/rules/hearing/>

Proposed Effective Date: Pending legislative review (15A NCAC .02D .1903);
January 1, 2015 (all other rules).

Public Hearing:

Date: September 3, 2014

Time: 3:00 p.m.

Location: DENR Green Square Office Building, 217 West Jones Street, Training Room #1210, Raleigh, NC 27603

Reason for Proposed Action:

15A NCAC 02D .0101 – Rule 15A NCAC 02D .0101 is proposed to be amended to remove obsolete cross references that would remain due to the transportation facility permitting rules being proposed for repeal.

15A NCAC 02D .0801-.0802, .0804-.0806 – To repeal Rules in Sections 15A NCAC 02D .0800 and 02Q .0600 repeal to the transportation facility permitting requirements in Sections 15A NCAC 02D .0800 and 02Q .0600.

15A NCAC 02D .1901, .1902 – Rules 15A NCAC 02D .1901 and .1902 are also proposed for amendment to update the references to the General Statute and the name of the former Division of Forest Resources to reflect its current name, the North Carolina Forest Service.

15A NCAC 02D .1903 – To amend Rule 15A NCAC 02D .1903, Open Burning without an Air Quality Permit, to incorporate requirements in Section 28(b) of S.L. 2013-413 which also allows transporting of land clearing materials over public roads for open burning to locations other than facilities permitted by the provisions of the Rule 15A NCAC 02D .1904 if the specific requirements defined in the Section 28(b) are met.

15A NCAC 02Q .0101, .0103, .0104, .0203 – Rules 15A NCAC 02Q .0101, .0103, .0104 and .0203 are proposed to be amended to remove obsolete cross references that would remain due to the transportation facility permitting rules being proposed for repeal.

15A NCAC 02Q .0308 – To amend Rule 15A NCAC 02Q .0308, Final Action on Permit Applications, to revise the permit term for non-Title V air quality permits from five years to eight years to reflect changes to G.S. 143-215.108 enacted by Session Law 2013-413.

15A NCAC 02Q .0601-.0607 – To repeal Rules in Sections 15A NCAC 02D .0800 and 02Q .0600 repeal to the transportation facility permitting requirements in Sections 15A NCAC 02D .0800 and 02Q .0600.

Comments may be submitted to: Joelle Burlison, Division of Air Quality, 1641 Mail Service Center, Raleigh, NC 27699-1641; phone (919) 707-8720; fax (919) 707-8720; email daq.publiccomments@ncdenr.gov (Please type "Transportation Facilities, Open Burning or Permit Term" in the subject line)

Comment period ends: September 30, 2014

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact (check all that apply).

- State funds affected** 15A NCAC 02Q .0308
- Environmental permitting of DOT affected**
- Analysis submitted to Board of Transportation**
- Local funds affected** 15A NCAC 02Q .0308
- Substantial economic impact (≥\$1,000,000)**
15A NCAC 02Q .0308

No fiscal note required by G.S. 150B-21.4 15A NCAC 02D .0101, .0801, .0802, .0804-.0806; 15A NCAC 02Q .0101, .0103, .0104, .0203, .0601-.0607

CHAPTER 02 – ENVIRONMENTAL MANAGEMENT COMMISSION

SUBCHAPTER 02D – AIR POLLUTION CONTROL REQUIREMENTS

SECTION .0100 – DEFINITIONS AND REFERENCES

15A NCAC 02D .0101 DEFINITIONS

The definition of any word or phrase used in Rules of this Subchapter is the same as given in Article 21, G.S. 143, as amended. The following words and phrases, which are not defined in the article, have the following meaning:

- (1) "Act" means "The North Carolina Water and Air Resources Act."
- (2) "Administrator" means when it appears in any Code of Federal Regulation incorporated by reference in this Subchapter, the Director of the Division of Air Quality unless:
 - (a) a specific rule in this Subchapter specifies otherwise, or
 - (b) the U.S. Environmental Protection Agency in its delegation or approval specifically states that a specific authority of the Administrator of the Environmental Protection Agency is not included in its delegation or approval.
- (3) "Air pollutant" means an air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive substance or matter emitted into or otherwise entering the ambient air.
- (4) "Ambient air" means that portion of the atmosphere outside buildings or other enclosed structures, stacks or ducts, and that surrounds human, animal or plant life, or property.
- (5) "Approved" means approved by the Director of the Division of Air Quality according to these Rules.
- (6) "Capture system" means the equipment (including hoods, ducts, fans, etc.) used to contain, capture, or transport a pollutant to a control device.
- (7) "CFR" means "Code of Federal Regulations."
- (8) "Combustible material" means any substance that, when ignited, will burn in air.
- (9) "Construction" means change in 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.
- (10) "Control device" means equipment (fume incinerator, adsorber, absorber, scrubber, filter

- media, cyclone, electrostatic precipitator, or the like) used to destroy or remove air pollutant(s) before discharge to the ambient air.
- (11) "Day" means a 24-hour period beginning at midnight.
- (12) "Director" means the Director of the Division of Air Quality unless otherwise specified.
- (13) "Division" means Division of Air Quality.
- (14) "Dustfall" means particulate matter that settles out of the air and is expressed in units of grams per square meter per 30-day period.
- (15) "Emission" means the release or discharge, whether directly or indirectly, of any air pollutant into the ambient air from any source.
- (16) "Facility" means all of the pollutant emitting activities, ~~except transportation facilities as defined under Rule .0802 of this Subchapter, transportation facilities,~~ that are located on one or more adjacent properties under common control.
- (17) "FR" means Federal Register.
- (18) "Fugitive emission" means those emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.
- (19) "Fuel burning equipment" means equipment whose primary purpose is the production of energy or power from the combustion of any fuel. The equipment is generally used for, but not limited to, heating water, generating or circulating steam, heating air as in warm air furnace, or furnishing process heat by transferring energy by fluids or through process vessel walls.
- (20) "Garbage" means any animal and vegetable waste resulting from the handling, preparation, cooking and serving of food.
- (21) "Incinerator" means a device designed to burn solid, liquid, or gaseous waste material.
- (22) "Opacity" means that property of a substance tending to obscure vision and is measured as percent obscuration.
- (23) "Open burning" means any fire whose products of combustion are emitted directly into the outdoor atmosphere without passing through a stack or chimney, approved incinerator, or other similar device.
- (24) "Owner or operator" means any person who owns, leases, operates, controls, or supervises a facility, source, or air pollution control equipment.
- (25) "Particulate matter" means any material except uncombined water that exists in a finely divided form as a liquid or solid at standard conditions.
- (26) "Particulate matter emissions" means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by methods specified in this Subchapter.
- (27) "Permitted" means any source subject to a permit under this Subchapter or Subchapter 15A NCAC 02Q.
- (28) "Person" as defined in G.S. 143-212 includes any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, political subdivision, or any other legal entity, or its legal representative, agent or assigns.
- (29) "PM10" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by methods specified in this Subchapter.
- (30) "PM10 emissions" means finely divided solid or liquid material, with an aerodynamic diameter less than or equal to a nominal 10 micrometers emitted to the ambient air as measured by methods specified in this Subchapter.
- (31) PM2.5 means particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers as measured by methods specified in this Subchapter.
- (32) "Refuse" means any garbage, rubbish, or trade waste.
- (33) "Rubbish" means solid or liquid wastes from residences, commercial establishments, or institutions.
- (34) "Rural area" means an area that is primarily devoted to, but not necessarily limited to, the following uses: agriculture, recreation, wildlife management, state park, or any area of natural cover.
- (35) "Salvage operation" means any business, trade, or industry engaged in whole or in part in salvaging or reclaiming any product or material, including, but not limited to, metal, chemicals, motor vehicles, shipping containers, or drums.
- (36) "Smoke" means small gas-borne particles resulting from incomplete combustion, consisting predominantly of carbon, ash, and other burned or unburned residue of combustible materials that form a visible plume.
- (37) "Source" means any stationary article, machine, process equipment, or other contrivance; or any combination; or any tank-truck, trailer, or railroad tank car; from which air pollutants emanate or are emitted, either directly or indirectly.
- (38) "Sulfur oxides" means sulfur dioxide, sulfur trioxide, their acids and the salts of their acids. The concentration of sulfur dioxide is measured by the methods specified in this Subchapter.

- (39) ~~"Transportation facility" means a complex source as defined in G.S. 143-213(22).~~
- (39)(40) ~~"Total suspended particulate" means any finely divided solid or liquid material, except water in uncombined form, that is or has been airborne as measured by methods specified in this Subchapter.~~
- (40)(41) ~~"Trade wastes" means all solid, liquid, or gaseous waste materials or rubbish resulting from combustion, salvage operations, building operations, or the operation of any business, trade, or industry including, but not limited to, plastic products, paper, wood, glass, metal, paint, grease, oil and other petroleum products, chemicals, and ashes.~~
- (41)(42) ~~"ug" means micrograms.~~

Authority G.S. 143-213; 143-215.3(a)(1).

SECTION .0800 – COMPLEX SOURCES

15A NCAC 02D .0801 PURPOSE AND SCOPE

- (a) ~~The purpose of this Section is to set forth requirements of the Commission relating to construction or modification of a transportation facility which may result in an ambient air quality standard for carbon monoxide being exceeded.~~
- (b) ~~For purposes of this Section any transportation facility that was under construction or was the subject of a contract for construction prior to November 15, 1973, shall not be considered a new air pollution source.~~
- (c) ~~Approval to construct or modify a transportation facility shall not relieve any owner or developer of the transportation facility of the responsibility to comply with the state control strategy and all local and state regulations which are part of the North Carolina State Implementation Plan for Air Quality.~~

Authority G.S. 143-215.3(a)(1); 143-215.109.

15A NCAC 02D .0802 DEFINITIONS

For the purposes of this Section, the following definitions apply:

- (1) ~~"Construction" means any activity following land clearing or grading that engages in a program of construction specifically designed for a transportation facility in preparation for the fabrication, erection, or installation of the building components which are a part of the transportation facility, e.g. curbing, footings, conduit, paving, etc.~~
- (2) ~~"Modify" or "modification" means to alter or change the facility resulting in an increase in parking capacity as defined in Rule .0805 of this Section or the number of aircraft operations from an airport as defined in Rule .0804 of this Section.~~
- (3) ~~"Peak hour aircraft operation" means the hour during the calendar year when the maximum number of aircraft operations (one operation equals one takeoff or one landing) occur.~~

- (4) ~~"Owner or developer" means any person who owns, leases, develops, or controls a transportation facility.~~
- (5) ~~"Transportation facility" means a complex source as defined in G.S. 143-213(22) which is subject to the requirements of this Section.~~

Authority G.S. 143-215.3(a)(1); 143-215.109.

15A NCAC 02D .0804 AIRPORT FACILITIES

- (a) ~~This Rule does not apply to military airfields.~~
- (b) ~~Before constructing or modifying any airport facility designed to have at least 100,000 annual aircraft operations, or at least 45 peak-hour aircraft operations (one operation equals one takeoff or one landing), the owner or developer of the airport facility shall apply for and have received a permit as described in 15A NCAC 2Q .0600, and shall comply with all terms and conditions therein.~~

Authority G.S. 143-215.3(a)(1); 143-215.109.

15A NCAC 02D .0805 PARKING FACILITIES

- (a) ~~The owner or developer of a transportation facility shall not construct or modify a parking area or associated buildings until he has applied for and received a permit under 15A NCAC 2Q .0600 where the parking area is for:~~

- (1) ~~construction of a new or expansion of an existing parking lot or combination of parking lots resulting in a parking capacity of at least 1500 spaces or a potential open parking area of at least 450,000 square feet (1500 spaces at 300 square feet per stall);~~
- (2) ~~modification of an existing parking lot or combination of parking lots with a parking capacity of at least 1500 spaces that will be expanded by at least 500 spaces beyond the last permitted number of spaces;~~
- (3) ~~construction of a new or expansion of an existing parking deck or garage resulting in a parking capacity of at least 750 spaces or a potential parking area of at least 225,000 square feet (750 spaces at 300 square feet per stall);~~
- (4) ~~modification of an existing parking deck or garage with a parking capacity of at least 750 spaces that will be expanded by at least 250 spaces beyond the last permitted number of spaces;~~
- (5) ~~construction of a new or expansion of an existing combination of parking lots, decks, and garages resulting in a parking capacity of at least 1000 spaces or a potential parking area of at least 300,000 square feet; or~~
- (6) ~~modification of an existing combination of parking lots, decks, and garages with a parking capacity of at least 1000 spaces that will be expanded by at least 500 spaces beyond the last permitted number of spaces.~~

~~(b) New or modified parking lots, decks, or garages with a parking capacity of 500 or more spaces and existing or proposed parking facilities that:~~

- ~~(1) are directly adjacent to each other and the combined parking capacities are greater than those defined in Paragraph (a) of this Rule, and~~
- ~~(2) use the same public roads or traffic network, shall be considered one lot or deck. Transportation facilities shall be considered to be directly adjacent if they are within 100 meters of each other in a suburban or rural area or 50 meters of each other in an urban area and if there are no existing physical barriers, such as, buildings or terrain.~~

~~(c) Temporary barriers shall not be used to reduce the capacity of an otherwise affected transportation facility to less than the amount which requires permitting. The design and plan shall clearly show the total parking capacity.~~

~~(d) Phased construction shall be evaluated and permitted for a period not to exceed five years from the date of application.~~

Authority G.S. 143-215.3(a)(1); 143-215.109.

15A NCAC 02D .0806 AMBIENT MONITORING AND MODELING ANALYSIS

~~(a) The Director may require the owner or developer of a transportation facility subject to the requirements of this Section to conduct ambient air quality monitoring if dispersion modeling, traffic analysis, or other ambient air quality monitoring data indicates that there is a potential for the ambient air quality standard for carbon monoxide to be exceeded. If ambient air quality monitoring is required, the permit shall specify the duration of such monitoring.~~

~~(b) The Director may require the owner or developer of a transportation facility subject to the requirements of this Section to perform dispersion modeling analyses to predict the impact of proposed construction or modification of a transportation facility on ambient air quality if ambient air quality monitoring, traffic analysis, or other dispersion modeling analysis indicates that there is a potential for the ambient air quality standard for carbon monoxide to be exceeded.~~

Authority G.S. 143-215.3(a)(1); 143-215.66; 143-215.109.

SECTION .1900 – OPEN BURNING

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

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

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

(c) Scope. This Section applies to all operations involving open burning. This Section does not authorize any open burning which is a crime under G.S. 14-136 through G.S. 14-140.1, G.S.

14-136, G.S. 14-137, G.S. 14-138.1 and G.S. 14-140.1, or affect the authority of the ~~Division of North Carolina Forest Resources Service~~ to issue or deny permits for open burning in or adjacent to woodlands as provided in ~~G.S. 113-60.21~~ G.S. 106-940 through ~~G.S. 113-60.31~~ G.S. 106-950. This Section does not affect the authority of any local government to regulate open burning through its fire codes or other ordinances. The issuance of any open burning permit by the ~~Division of North Carolina Forest Resources Service~~ or any local government does not relieve any person from the necessity of complying with this Section or any other air quality rule.

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

15A NCAC 02D .1902 DEFINITIONS

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

- (1) "Air Curtain Burner" means a stationary or portable combustion device that directs a plane of high velocity forced draft air through a manifold head into a pit or container with vertical walls in such a manner as to maintain a curtain of air over the surface of the pit and a recirculating motion of air under the curtain.
- (2) "Air Quality Action Day Code 'Orange' or above" means an air quality index greater than 100 as defined in 40 CFR Part 58, Appendix G.
- (3) "Air quality forecast area" means for
 - (a) Asheville air quality forecast area: Buncombe, Haywood, Henderson, Jackson, Madison, Swain, Transylvania, and Yancey Counties;
 - (b) Charlotte air quality forecast area: Cabarrus, Gaston, Iredell South of Interstate 40, Lincoln, Mecklenburg, Rowan, and Union Counties;
 - (c) Hickory air quality forecast area: Alexander, Burke, Caldwell, and Catawba Counties;
 - (d) Fayetteville air quality forecast area: Cumberland and Harnett Counties;
 - (e) Rocky Mount air quality forecast area: Edgecombe and Nash Counties;
 - (f) Triad air quality forecast area: Alamance, Caswell, Davidson, Davie, Forsyth, Guilford, Randolph, Rockingham, and Stokes Counties; and
 - (g) Triangle air quality forecast area: Chatham, Durham, Franklin, Granville, Johnston, Person, Orange, Vance, and Wake Counties.
- (4) "Smoke management plan" means the plan developed following the North Carolina ~~Division of Forest Resources' Service's~~ smoke management program and approved by the North Carolina ~~Division of Forest Resources Service~~. The purpose of the smoke management plan is to manage smoke from

- prescribed burns of public and private forests to minimize the impact of smoke on air quality and visibility.
- (5) "Dangerous materials" means explosives or containers used in the holding or transporting of explosives.
- (6) "HHCB" means the Health Hazards Control Branch of the Division of Epidemiology.
- (7) "Initiated" means start or ignite a fire or reignite or rekindle a fire.
- (8) "Land clearing" means the uprooting or clearing of vegetation in connection with construction for buildings; right-of-way maintenance; agricultural, residential, commercial, institutional, or industrial development; mining activities; or the initial clearing of vegetation to enhance property value; but does not include routine maintenance or property clean-up activities.
- (9) "Log" means any limb or trunk whose diameter exceeds six inches.
- (10) "Nonattainment area" means an area identified in 40 CFR 81.334 as nonattainment.
- (11) "Nuisance" means causing physical irritation exacerbating a documented medical condition, visibility impairment, or evidence of soot or ash on property or structure other than the property on which the burning is done.
- (12) "Occupied structure" means a building in which people may live or work or one intended for housing farm or other domestic animals.
- (13) "Off-site" means any area not on the premises of the land-clearing activities.
- (14) "Open burning" means the burning of any matter in such a manner that the products of combustion resulting from the burning are emitted directly into the atmosphere without passing through a stack, chimney, or a permitted air pollution control device.
- (15) "Operator" as used in .1904(b)(6) and .1904(b)(2)(D) of this Section, means the person in operational control over the open burning.
- (16) "Person" as used in 02D .1901(c), means:
- (a) the person in operational control over the open burning; or
 - (b) the landowner or person in possession or control of the land when he has directly or indirectly allowed the open burning or has benefited from it.
- (17) "Pile" means a quantity of combustible material assembled together in a mass.
- (18) "Public pick-up" means the removal of refuse, yard trimmings, limbs, or other plant material from a residence by a governmental agency, private company contracted by a governmental agency or municipal service.
- (19) "Public road" means any road that is part of the State highway system; or any road, street, or right-of-way dedicated or maintained for public use.
- (20) "RACM" means regulated asbestos containing material as defined in 40 CFR 61.142.
- (21) "Refuse" means any garbage, rubbish, or trade waste.
- (22) "Regional Office Supervisor" means the supervisor of personnel of the Division of Air Quality in a regional office of the Department of Environment and Natural Resources.
- (23) "Salvageable items" means any product or material that was first discarded or damaged and then all, or part, was saved for future use, and include insulated wire, electric motors, and electric transformers.
- (24) "Synthetic material" means man-made material, including tires, asphalt materials such as shingles or asphaltic roofing materials, construction materials, packaging for construction materials, wire, electrical insulation, and treated or coated wood.
- (25) "Permanent site" means for an air curtain burner, a place where an air curtain burner is operated for more than nine months.

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

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

(a) All open burning is prohibited except open burning allowed under Paragraph (b) of this Rule or Rule .1904 of this Section. Except as allowed under Paragraphs (b)(3) through (b)(9) of this Rule, open burning shall not be initiated in an air quality forecast area that the Department, or the Forsyth County Environmental Affairs Department for the Triad air quality forecast area, has forecasted to be in an Air Quality Action Day Code "Orange" or above during the time period covered by that forecast.

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

- (1) open burning of leaves, tree branches or yard trimmings, excluding logs and stumps, if the following conditions are met:
 - (A) The material burned originates on the premises of private residences and is burned on those premises;
 - (B) There are no public pickup services available;
 - (C) Non-vegetative materials, such as household garbage, lumber, or any other synthetic materials are not burned;
 - (D) The burning is initiated no earlier than 8:00 a.m. and no additional combustible material is added to the fire between 6:00 p.m. on one day and 8:00 a.m. on the following day;

- (E) The burning does not create a nuisance; and
- (F) Material is not burned when the North Carolina Forest Service has banned burning for that area.
- (2) open burning for land clearing or right-of-way maintenance if the following conditions are met:
- (A) The wind direction at the time that the burning is initiated and the wind direction as forecasted by the National Weather Service at the time that the burning is initiated are away from any area, including public roads within 250 feet of the burning as measured from the edge of the pavement or other roadway surface, which may be affected by smoke, ash, or other air pollutants from the burning;
- (B) The location of the burning is at least 500 feet from any dwelling, group of dwellings, or commercial or institutional establishment, or other occupied structure not located on the property on which the burning is conducted. The regional office supervisor may grant exceptions to the setback requirements if:
- (i) a signed, written statement waiving objections to the open burning associated with the land clearing operation is obtained and submitted to, and the exception granted by, the regional office supervisor before the burning begins from a resident or an owner of each dwelling, commercial or institutional establishment, or other occupied structure within 500 feet of the open burning site. In the case of a lease or rental agreement, the lessee or renter shall be the person from whom permission shall be gained prior to any burning; or
- (ii) an air curtain burner that complies with Rule .1904 of this Section, is utilized at the open burning site.
- Factors that the regional supervisor shall consider in deciding to grant the exception include: all the persons who need to sign the statement waiving the objection have signed it; the location of the burn; and the type, amount, and nature of the combustible substances. The regional supervisor shall not grant a waiver if a college, school, licensed day care, hospital, licensed rest home, or other similar institution is less than 500 feet from the proposed burn site when such institution is occupied.
- (C) Only land-cleared plant growth is burned. Heavy oils, asphaltic materials such as shingles and other roofing materials, items containing natural or synthetic rubber, or any materials other than plant growth shall not be burned; however, kerosene, distillate oil, or diesel fuel may be used to start the fire;
- (D) Initial burning begins only between the hours of 8:00 a.m. and 6:00 p.m., and no combustible material is added to the fire between 6:00 p.m. on one day and 8:00 a.m. on the following day;
- (E) No fires are initiated or vegetation added to existing fires when the North Carolina Forest Service has banned burning for that area; and
- (F) Materials are not carried off-site or transported over public roads for open burning unless the materials are carried ~~off site~~ or transported ~~over public roads to facilities permitted according to Rule .1904 of this Section for the operation of an air curtain burner at a permanent site; to:~~
- (i) Facilities permitted in accordance with 15A NCAC 02D .1904 (Air Curtain Burners) for the operation of an air curtain burner at a permanent site; or
- (ii) A location, where the material is burned not more than four times per year, that meets all of the following criteria:
- (I) At least 500 feet from any dwelling, group of dwellings, or commercial or institutional establishment, or other occupied structure not located on the property on which the burning is conducted.

- (II) There are no more than two piles, each 20 feet in diameter, being burned at one time.
- (III) The location is not a permitted solid waste management facility.
- (3) camp fires and fires used solely for outdoor cooking and other recreational purposes, or for ceremonial occasions, or for human warmth and comfort and which do not create a nuisance and do not use synthetic materials or refuse or salvageable materials for fuel;
- (4) fires purposely set to public or private forest land for forest management practices for which burning is acceptable to the North Carolina Forest Service and which follow the smoke management plan as outlined in the North Carolina Forest Service's smoke management program;
- (5) fires purposely set to agricultural lands for disease and pest control and fires set for other agricultural or apicultural practices for which burning is currently acceptable to the Department of Agriculture;
- (6) fires purposely set for wildlife management practices for which burning is currently acceptable to the Wildlife Resource Commission;
- (7) fires for the disposal of dangerous materials when it is the safest and most practical method of disposal;
- (8) fires purposely set by manufacturers of fire-extinguishing materials or equipment, testing laboratories, or other persons, for the purpose of testing or developing these materials or equipment in accordance with a standard qualification program;
- (9) fires purposely set for the instruction and training of fire-fighting personnel at permanent fire-fighting training facilities;
- (10) fires purposely set for the instruction and training of fire-fighting personnel when conducted under the supervision of or with the cooperation of one or more of the following agencies:
- (A) the North Carolina Forest Service;
- (B) the North Carolina Insurance Department;
- (C) North Carolina technical institutes; or
- (D) North Carolina community colleges, including:
- (i) the North Carolina Fire College; or
- (ii) the North Carolina Rescue College;
- (11) fires not described in Subparagraphs (9) or (10) of this Paragraph, purposely set for the instruction and training of fire-fighting personnel, provided that:
- (A) The regional office supervisor of the appropriate regional office and the HHCMB have been notified according to the procedures and deadlines contained in the appropriate regional notification form. This form may be obtained by writing the appropriate regional office at the address in Rule .1905 of this Section and requesting it, and
- (B) The regional office supervisor has granted permission for the burning. Factors that the regional office supervisor shall consider in granting permission for the burning include type, amount, and nature of combustible substances. The regional office supervisor shall not grant permission for the burning of salvageable items, such as insulated wire and electric motors or if the primary purpose of the fire is to dispose of synthetic materials or refuse. The regional office supervisor of the appropriate regional office shall not consider previously demolished structures as having training value. However, the regional office supervisor of the appropriate regional office may allow an exercise involving the burning of motor vehicles burned over a period of time by a training unit or by several related training units. Any deviations from the dates and times of exercises, including additions, postponements, and deletions, submitted in the schedule in the approved plan shall be communicated verbally to the regional office supervisor of the appropriate regional office at least one hour before the burn is scheduled; and
- (12) fires for the disposal of material generated as a result of a natural disaster, such as tornado, hurricane, or flood, if the regional office supervisor grants permission for the burning. The person desiring to do the burning shall document and provide written notification to the regional office supervisor of the appropriate regional office that there is no other practical method of disposal of the waste. Factors that the regional office supervisor shall consider in granting permission for the burning include type,

amount, location of the burning, and nature of combustible substances. The regional office supervisor shall not grant permission for the burning if the primary purpose of the fire is to dispose of synthetic materials or refuse or recovery of salvageable materials. Fires authorized under this Subparagraph shall comply with the conditions of Subparagraph (b)(2) of this Rule.

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

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); S.L. 2011-394, s.2.

SUBCHAPTER 02Q – AIR QUALITY PERMITS PROCEDURES

SECTION .0100 – GENERAL PROVISIONS

15A NCAC 02Q .0101 REQUIRED AIR QUALITY PERMITS

(a) No owner or operator shall do any of the following activities, that is not otherwise exempted, without first applying for and obtaining an air quality permit:

- (1) construct, operate, or modify a source subject to an applicable standard, requirement, or rule that emits any regulated pollutant or one or more of the following:
 - (A) sulfur dioxide,
 - (B) total suspended particulates,
 - (C) particulate matter (PM10),
 - (D) carbon monoxide,
 - (E) nitrogen oxides,
 - (F) volatile organic compounds,
 - (G) lead and lead compounds,
 - (H) fluorides,
 - (I) total reduced sulfur,
 - (J) reduced sulfur compounds,
 - (K) hydrogen sulfide,
 - (L) sulfuric acid mist,
 - (M) asbestos,
 - (N) arsenic and arsenic compounds,
 - (O) beryllium and beryllium compounds,
 - (P) cadmium and cadmium compounds,
 - (Q) chromium(VI) and chromium(VI) compounds,
 - (R) mercury and mercury compounds,
 - (S) hydrogen chloride,
 - (T) vinyl chloride,
 - (U) benzene,
 - (V) ethylene oxide,
 - (W) dioxins and furans,
 - (X) ozone, or

(Y) any toxic air pollutant listed in 15A NCAC 02D .1104; or

(2) construct, operate, or modify a facility that has the potential to emit at least 10 tons per year of any hazardous air pollutant or 25 tons per year of all hazardous air pollutants combined or that are subject to requirements established under the following sections of the federal Clean Air Act:

- (A) Section 112(d), emissions standards;
- (B) Section 112(f), standards to protect public health and the environment;
- (C) Section 112(g), construction and reconstruction;
- (D) Section 112(h), work practice standards and other requirements;
- (E) Section 112(i)(5), early reduction;
- (F) Section 112(j), federal failure to promulgate standards;
- (G) Section 112(r), accidental releases.

(b) There are two types of air quality permits:

(1) Stationary Source Construction and Operation Permit: With the exception allowed by G.S. 143-215.108A, the owner or operator of a new, modified, or existing facility or source shall not begin construction or operation without first obtaining a construction and operation permit in accordance with the standard procedures under Section .0300 of this Subchapter. Title V facilities are subject to the Title V procedures under Section .0500 of this Subchapter including the acid rain procedures under Section .0400 of this Subchapter. A facility may also be subject to the air toxic procedures under 15A NCAC 02Q .0700.

~~(2) Transportation Facility Construction Permit. The owner or operator of a transportation facility subject to the requirements of 15A NCAC 02D .0800 shall obtain a construction only permit following the procedures under Section .0600 of this Subchapter.~~

(c) Fees shall be paid in accordance with the requirements of Section .0200 of this Subchapter.

Authority G.S. 143-215.3(a)(1); 143-215.108; 143-215.109.

15A NCAC 02Q .0103 DEFINITIONS

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

- (1) "Administrator" means when it appears in any Code of Federal Regulation incorporated by reference in this Subchapter, the Director of the Division of Air Quality unless:
 - (a) a specific rule in this Subchapter specifies otherwise, or
 - (b) the U.S. Environmental Protection Agency in its delegation or approval specifically states that a specific authority of the Administrator of the

- Environmental Protection Agency is not included in its delegation or approval.
- (2) "Air Pollutant" means an air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive substance or matter which is emitted into or otherwise enters the ambient air. Water vapor is not considered to be an air pollutant.
- (3) "Allowable emissions" mean the maximum emissions allowed by the applicable rules contained in 15A NCAC 2D or by permit conditions if the permit limits emissions to a lesser amount.
- (4) "Alter or change" means to make a modification.
- (5) "Applicable requirements" means:
- any requirement of Section .0500 of this Subchapter;
 - any standard or other requirement provided for in the implementation plan approved or promulgated by EPA through rulemaking under Title I of the federal Clean Air Act that implements the relevant requirements of the federal Clean Air Act including any revisions to 40 CFR Part 52;
 - any term or condition of a construction permit for a facility covered under 15A NCAC 2D .0530, .0531, or .0532;
 - any standard or other requirement under Section 111 or 112 of the federal Clean Air Act, but not including the contents of any risk management plan required under Section 112 of the federal Clean Air Act;
 - any standard or other requirement under Title IV;
 - any standard or other requirement governing solid waste incineration under Section 129 of the federal Clean Air Act;
 - any standard or other requirement under Section 183(e), 183(f), or 328 of the federal Clean Air Act;
 - any standard or requirement under Title VI of the federal Clean Air Act unless a permit for such requirement is not required under this Section;
 - any requirement under Section 504(b) or 114(a)(3) of the federal Clean Air Act; or
 - any national ambient air quality standard or increment or visibility requirement under Part C of Title I of the federal Clean Air Act, but only as it would apply to temporary sources permitted pursuant to 504(e) of the federal Clean Air Act.
- (6) "Applicant" means the person who is applying for an air quality permit from the Division.
- (7) "Application package" means all elements or documents needed to make an application complete.
- (8) "CFR" means 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 are not construction:
- clearing and grading;
 - building access roads, driveways, and parking lots, ~~except parking lots required to have a construction permit under 15A NCAC 02Q .0600; lots;~~
 - building and installing underground pipe work, including water, sewer, electric, and telecommunications utilities; or
 - 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 under 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 as defined under Rule .0802 of this Subchapter, transportation facilities,~~ that are located on one or more adjacent properties under common control.
- (16) "Federally enforceable" or "federal-enforceable" means enforceable by EPA.
- (17) "Fuel combustion equipment" means any fuel burning source covered under 15A NCAC 2D .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 which 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), are not 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 under Rule .0503 of this Subchapter.
- (21) "Lesser quantity cutoff" means:
- (a) for a source subject to the requirements of Section 112(d) or (j) of the federal Clean Air Act, the level of emissions of hazardous air pollutants below which the following are not required:
 - (i) maximum achievable control technology (MACT) or generally available control technology (GACT), including work practice standards, requirement under Section 112(d) of the federal Clean Air Act;
 - (ii) a MACT standard established under Section 112(j) of the federal Clean Air Act; or
 - (iii) substitute MACT or GACT adopted under Section 112(l) of the federal Clean Air Act.
 - (b) for modification of a source subject to, or may be subject to, the requirements of Section 112(g) of the federal Clean Air Act, the level of emissions of hazardous air pollutants below which MACT is not required to be applied under Section 112(g) of the federal Clean Air Act; or
 - (c) for all other sources, potential emissions of each hazardous air pollutant below 10 tons per year and the aggregate potential emissions of all hazardous air pollutants below 25 tons per year.
- (22) "Major facility" means a major source as defined under 40 CFR 70.2.
- (23) "Modification" means any physical change or change in method of operation that results in a change in emissions or affects compliance status of the source or facility.
- (24) "Owner or operator" means any person who owns, leases, operates, controls, or supervises a facility, source, or air pollution control equipment.
- (25) "Peak shaving generator" means a generator that is located at a facility and is used only to serve that facility's on-site electrical load during peak demand periods for the purpose of reducing the cost of electricity; it does not generate electricity for resale. A peak shaving generator may also be used for emergency backup.
- (26) "Permit" means the legally binding written document, including any revisions thereto, issued pursuant to G.S. 143-215.108 to the owner or operator of a facility or source that emits one or more air pollutants and that allows that facility or source to operate in compliance with G.S. 143-215.108. This document specifies the requirements applicable to the facility or source and to the permittee.
- (27) "Permittee" means the person who has received an air quality permit from the Division.
- (28) "Potential emissions" means the rate of emissions of any air pollutant that would occur at the facility's maximum capacity to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a facility to emit an air pollutant shall be treated as a part of its design if the limitation is federally enforceable. Such physical or operational limitations 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 include fugitive emissions as specified in the definition of major source in 40 CFR 70.2. Potential emissions do not include a facility's secondary emissions such as those from motor vehicles associated with the facility and do not include emissions from insignificant activities because of category as defined under Rule .0503 of this Section. 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 covered under 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 under 40 CFR 51.100;
 - (b) any pollutant for which there is an ambient air quality standard under 40 CFR Part 50;
 - (c) any pollutant regulated under 15A NCAC 02D .0524, .1110, or .1111 or 40 CFR Part 60, 61, or 63;

- (d) any pollutant subject to a standard promulgated under Section 112 of the federal Clean Air Act or other requirements established under Section 112 of the federal Clean Air Act, including Section 112(g) (but only for the facility subject to Section 112(g)(2) of the federal Clean Air Act), (j), or (r) of the federal Clean Air Act; or
- (e) any Class I or II substance listed under 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 are not 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) "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) "Transportation facility" means a complex source as defined at G.S. 143-213(22) that is subject to the requirements of 15A NCAC 02D .0800, in G.S. 143-213(22).
- (35) "Unadulterated fossil fuel" means fuel oils, coal, natural gas, or liquefied petroleum gas to which no toxic additives have been added that could result in the emissions of a toxic air pollutant listed under 15A NCAC 02D .1104.

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

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

- (a) Application forms for a permit or permit modification may be obtained from and shall be filed with the Director, Division of Air Quality, 1641 Mail Service Center, Raleigh, North Carolina 27699-1641 or any of the regional offices listed under Rule .0105 of this Section.
- (b) The number of copies of applications to be filed are specified in Rules .0305 (construction and operation permit procedures), .0507 (Title V permit procedures), and .0602 (transportation facility construction air permit procedures) of this Subchapter.

Authority G.S. 143-215.3(a)(1); 143-215.108; 143-215.109.

SECTION .0200 – PERMIT FEES

15A NCAC 02Q .0203 PERMIT AND APPLICATION FEES

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

ANNUAL PERMIT FEES			
Facility Category	Tonnage Factor	Basic Permit Fee	Nonattainment Area Added Fee
Title V		\$22.50 upon Rule effective date; \$25.00 on 01/01/2009; \$27.50 on 01/01/2010; \$30.00 on 01/01/2011 and thereafter.	\$3,500
Synthetic Minor		\$1,500	
Small		\$250	
Transportation		\$0	
General		50% of the otherwise applicable fee	

A facility, other than a Title V facility, which has been in compliance is eligible for a 25 percent discount from the annual permit fees as described in Paragraph (a) of Rule .0205 of this Section. Annual permit fees for Title V facilities shall be adjusted for inflation as described in Rule .0204 of this Section. Annual permit fees for Title V facilities consist of the sum of the applicable fee elements.

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

PERMIT APPLICATION FEES (FEES FOR CALENDAR YEAR 1994)				
Facility Category	New or Modification	New or Significant Modification	Minor Modification	Ownership Change
Title V		\$7200	\$700	\$50
Title V (PSD or NSR/NAA)	\$1090			50
Title V (PSD and NSR/NAA)	21200			50
Synthetic Minor	400			50
Small	50			25
Transportation	400			50
General	50% of the otherwise applicable fee			25

Permit application fees for Title V facilities shall be adjusted for inflation as described in Rule .0204 of this Section.

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

(d) The tonnage factor fee shall be applicable only to Title V facilities. It shall be computed by multiplying the tonnage factor indicated in the table in Paragraph (a) of this Rule by the facility's combined total actual emissions of all regulated air pollutants, rounded to the nearest ton, contained in the latest emissions inventory that has been completed by the Division. The calculation shall not include:

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

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

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

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

(f) A Title V (PSD or NSR/NAA) facility is a facility whose application is subject to review under 15A NCAC 02D .0530 (Prevention of Significant Deterioration) or 15A NCAC 02D .0531 (Sources in Nonattainment Areas).

(g) A Title V (PSD and NSR/NAA) facility is a facility whose application is subject to review under 15A NCAC 02D .0530 (Prevention of Significant Deterioration) and 15A NCAC 02D .0531 (Sources in Nonattainment Areas).

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

(i) No permit application fee is required for renewal of an existing permit, for changes to an unexpired permit when the only reason for the changes is initiated by the Director or the Commission, for a name change with no ownership change, for a change under Rule .0523 (Changes Not Requiring Permit Revisions) of this Subchapter, or for a construction date change,

a test date change, a reporting procedure change, or a similar change.

(j) The permit application fee paid for modifications under 15A NCAC 02Q .0400, Acid Rain Procedures, shall be the fee for the same modification if it were under 15A NCAC 02D .0500, Title V Procedures.

(k) An applicant who files permit applications pursuant to Rule .0504 of this Subchapter shall pay an application fee as would be determined by the application fee for the permit required under Section .0500 of this Subchapter; this fee will cover both applications provided that the second application covers only what is covered under the first application. If permit terms or conditions in an existing or future permit issued under Section .0500 of this Subchapter will be established or modified by an application for a modification and if these terms or conditions are enforceable by the Division only, then the applicant shall pay the fee under the column entitled "02Q .0300 Only or Minor Modification" in the table in Paragraph (b) of this Rule.

Authority G.S. 143-215.3(a)(1),(1a),(1b),(1d); 150B-21.6.

SECTION .0300 – CONSTRUCTION AND OPERATION PERMITS

15A NCAC 02Q .0308 FINAL ACTION ON PERMIT APPLICATIONS

(a) The Director may:

- (1) issue a permit, permit modification, or a renewal containing the conditions necessary to carry out the purposes of G.S. 143, Article 21B;
- (2) rescind a permit upon request by the permittee;
- (3) deny a permit application when necessary to carry out the purposes of G.S. 143, Article 21B.

(b) Any person whose application for a permit, permit modification, renewal or letter requesting change in name or ownership, construction or test date, or reporting procedure, is denied or is granted subject to conditions which are unacceptable to him shall have the right to appeal the Director's decision under Article 3 of G.S. 150B. The person shall have 30 days following receipt of the notice of the Director's decision on the application or permit in which to appeal the Director's decision. The permit becomes final if the applicant does not contest the permit within this 30-day period.

(c) The Director shall issue or renew a permit for a ~~period of time that the Director considers reasonable, but such period shall not exceed five years.~~ term of eight years.

Authority G.S. 143-215.3(a)(1); 143-215.108.

SECTION .0600 – TRANSPORTATION FACILITY PROCEDURES

15A NCAC 02Q .0601 PURPOSE OF SECTION AND REQUIREMENT FOR A PERMIT

~~(a) The purpose of this Section is to describe the procedures to be followed in applying for and issuing a permit for a transportation facility.~~

~~(b) The owner or developer of a transportation facility subject to the requirements of 15A NCAC 2D .0800 shall obtain a construction only permit following the procedures in this Section. An operation permit is not needed.~~

~~(c) The owner or developer of a transportation facility required to have a permit under this Section shall not commence construction or modification of a transportation facility until he has applied for and received a construction permit.~~

Authority G.S. 143-215.3(a)(1); 143-215.108; 143-215.109.

15A NCAC 02Q .0602 DEFINITIONS

For the purposes of this Section, the following definitions apply:

- ~~(1) "Construction" means any activity following land clearing or grading that engages in a program of construction specifically designed for a transportation facility in preparation for the fabrication, erection, or installation of the building components associated with the transportation facility, e.g. curbing, footings, conduit, paving, etc.~~
- ~~(2) "Level of service" means a qualitative measure describing operational conditions within a traffic stream; generally described in terms of such factors as speed and travel time, freedom to maneuver, traffic interruptions, comfort and convenience, and safety.~~
- ~~(3) "Owner or developer" means any person who owns, leases, develops, or controls a transportation facility.~~
- ~~(4) "Transportation facility" means a complex source as defined at G.S. 143-213(22) and subject to the requirements of 15A NCAC 2D .0800.~~

Authority G.S. 143-213; 143-215.3(a)(1); 143-215.108.

15A NCAC 02Q .0603 APPLICATIONS

~~(a) A transportation facility permit application may be obtained from and shall be filed in writing in accordance with Rule .0104 of this Subchapter.~~

~~(b) Applicants shall file transportation facility permit applications at least 90 days before projected date of construction of a new transportation facility or modification of an existing transportation facility.~~

~~(c) The permittee shall file requests for permit name or ownership changes as soon as the permittee is aware of the imminent name or ownership change.~~

~~(d) A transportation facility permit application shall be made in triplicate on forms from the Division and shall include plans and specifications giving all data and information as required by this Section and 15A NCAC 02D, .0800, Transportation Facilities.~~

~~(e) A transportation facility permit application containing dispersion modeling analyses that demonstrate compliance with ambient air quality standards for carbon monoxide or traffic analyses showing a level of service of A, B, C, or D as defined in the Highway Capacity Manual, using planned roadway and intersection improvements shall include approval for the improvements from the appropriate state or city department of~~

~~transportation. The Highway Capacity Manual is hereby incorporated by reference and shall include any later amendments and editions. This manual may be obtained from the Institute of Transportation Engineers, 1099 14th Street, NW, Suite 300 West, Washington, D.C. 20005-3438 at a cost of one hundred twenty dollars (\$120.00).~~

~~(f) Whenever the information provided on the permit application forms does not describe the transportation facility to the extent necessary to evaluate the application, the Director may request that the applicant provide any other information as allowed or required by this Section and 15A NCAC 02D, .0800 and necessary to evaluate the transportation facility. Before acting on any permit application, the Director may request any information from an applicant and conduct any inquiry or investigation that he considers necessary to determine compliance with applicable standards including traffic level of service.~~

~~(g) A non refundable permit application fee shall accompany each transportation facility permit application. The permit application fee is described in Section .0200 of this Subchapter.~~

Authority G.S. 143-215.3(a)(1); 143-215.108; 143-215.109.

15A NCAC 02Q .0604 PUBLIC PARTICIPATION

~~(a) Before approving or disapproving a permit to construct or modify a transportation facility, the Director shall provide public notice for comments with an opportunity to request a public hearing on the draft permit.~~

~~(b) The public notice shall be given by publication in a newspaper of general circulation in the area where the transportation facility is located.~~

~~(c) The public notice shall identify:~~

- ~~(1) the affected facility;~~
- ~~(2) the name and address of the permittee;~~
- ~~(3) the name and address of the person to whom comments and requests for public hearing are to be sent;~~
- ~~(4) the name, address, and telephone number of Divisional staff from whom interested persons may obtain additional information, including copies of the draft permit, the application, monitoring and compliance reports, all other relevant supporting materials, and all other materials available to Division that are relevant to the permit decision;~~
- ~~(5) a brief description of the proposed project;~~
- ~~(6) a brief description of the public comment procedures;~~
- ~~(7) the procedures to follow to request a public hearing unless a public hearing has already been scheduled; and~~
- ~~(8) the time and place of any hearing that has already been scheduled.~~

~~(d) The public notice shall allow at least 30 days for public comments.~~

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

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

~~(g) Any persons requesting copies of material identified in Subparagraph (c)(4) of this Rule shall pay ten cents (\$.10) a page for each page copied. Confidential material shall be handled in accordance with Rule .0107 of this Subchapter.~~

~~Authority G.S. 143-215.3(a)(1),(3); 143-215.4(b); 143-215.108; 143-215.109.~~

15A NCAC 02Q .0605 FINAL ACTION ON PERMIT APPLICATIONS

~~(a) The Director may:~~

- ~~(1) issue a permit containing the conditions necessary to carry out the purposes of G.S. 143, Article 21B;~~
- ~~(2) rescind a permit upon request by the permittee; or~~
- ~~(3) deny a permit application when necessary to carry out the purposes of G.S. 143, Article 21B.~~

~~(b) The Director shall issue a permit for the construction or modification of a transportation facility subject to the rules in 15A NCAC 02D .0800 if the permit applicant submits a complete application and demonstrates to the satisfaction of the Director that the ambient air quality standard for carbon monoxide shall not be exceeded.~~

~~(c) The Director shall issue a permit for a period of time necessary to complete construction, but such period shall not exceed five years.~~

~~(d) The Director shall not approve a permit for a transportation facility that:~~

- ~~(1) interferes with the attainment or maintenance of the ambient air quality standard for carbon monoxide~~
- ~~(2) results in a contravention of applicable portions of the implementation plan control strategy, or~~
- ~~(3) is demonstrated with dispersion modeling to exceed the ambient air quality standard for carbon monoxide.~~

~~Authority G.S. 143-215.3(a)(1); 143-215.108; 143-215.109.~~

15A NCAC 02Q .0606 TERMINATION, MODIFICATION AND REVOCATION OF PERMITS

~~(a) The Director may terminate, modify, or revoke and reissue any permit issued under this Section if:~~

- ~~(1) The information contained in the application or presented in support thereof is determined to be incorrect;~~
- ~~(2) The conditions under which the permit was granted have changed;~~
- ~~(3) Violations of conditions contained in the permit have occurred;~~

~~(4) The permittee refuses to allow the Director or his authorized representative upon presentation of credentials:~~

~~(A) to enter, at reasonable times and using reasonable safety practices, the permittee's premises where the transportation facility is located or where any records are required to be kept under terms and conditions of the permit;~~

~~(B) to have access, at reasonable times, to any copy or records required to be kept under terms and conditions of the permit;~~

~~(C) to inspect, at reasonable times and using reasonable safety practices, the transportation facility and any monitoring equipment or monitoring procedures required in the permit; or~~

~~(D) to sample, at reasonable times and using reasonable safety practices, emissions from the facility; or~~

~~(5) The Director finds that modification or revocation of a permit is necessary to carry out the purpose of G.S. 143, Article 21B.~~

~~(b) The construction or continuation of construction of a transportation facility after its permit has been revoked is a violation of this Section, G.S. 143-215.108, and G.S. 143-215.109.~~

~~Authority G.S. 143-215.3(a)(1),(1a),(1b); 143-215.108; 143-215.109.~~

15A NCAC 02Q .0607 APPLICATION PROCESSING SCHEDULE

~~(a) The Division shall adhere to the following schedule in processing applications for transportation source permits:~~

~~(1) The Division shall send written acknowledgment of receipt of the permit application to the applicant within 10 days of receipt of the application.~~

~~(2) The Division shall review all permit applications within 30 days of receipt of the application to determine whether the application is complete or incomplete for processing purposes. The Division shall notify the applicant by letter:~~

~~(A) stating that the application as submitted is complete and specifying the completeness date,~~

~~(B) stating that the application is incomplete, requesting additional information and specifying the deadline date by which the requested information is to be received by the Division, or~~

~~(C) stating that the application is incomplete and requesting that the~~

~~applicant rewrite and resubmit the application.~~

~~If the Division does not notify the applicant by letter dated within 30 days of receipt of the application that the application is incomplete, the application shall be deemed complete. A completeness determination shall not prevent the Director from requesting additional information at a later date when such information is considered necessary to properly evaluate the source, its air pollution abatement equipment, or the facility. If the applicant has not provided the requested additional information by the deadline specified in the letter requesting additional information, the Director may return the application to the applicant as incomplete. The applicant may request a time extension for submittal of the requested additional information.~~

- (3) ~~The Division shall determine within 60 days of receipt of a complete application if any additional information is needed to conduct the technical review of the application. A technical completeness determination shall not prevent the Director from requesting additional information at a later date when such information is considered necessary to properly evaluate the source, its air pollution abatement equipment or the facility. The Division shall complete the technical review within 90 days of receipt of a complete application or 10 days after receipt of requested additional information, whichever is later.~~
- (4) ~~The Director shall send the draft permit to public notice within 60 days after receipt of a complete application or 10 days after receipt of requested additional information, whichever is later.~~
- (5) ~~If the draft permit is not required to go to public hearing, the Director shall complete the review of the record and take final action on the permit within 30 days after the close of the public comment period.~~
- (6) ~~If the draft permit is required to go to public hearing as a result of a request for public hearing under Rule .0604(e) of this Section, the Director shall:~~
- (A) ~~send the draft permit to public hearing within 45 days after approving the request for the public hearing, and~~
- (B) ~~complete the review of the record and take final action on the permit within 30 days after the close of the public hearing.~~

~~(b) The days that fall between the sending out a letter requesting additional information and receiving that additional information~~

~~shall not be counted in the schedules under Paragraph (a) of this Rule.~~

~~(c) The Director may return at any time applications containing insufficient information to complete the review.~~

~~Authority G.S. 143-215.3(a)(1); 143-215.108; 143-215.109.~~

~~*****~~

~~Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to amend the rule cited as 15A NCAC 02H .1002.~~

Agency obtained G.S. 150B-19.1 certification:

- OSBM certified on:** July 8, 2014
- RRC certified on:**
- Not Required**

Link to agency website pursuant to G.S. 150B-19.1(c):

~~<http://portal.ncdenr.org/web/guest/event-calendar>~~

Proposed Effective Date: ~~January 1, 2015~~

Public Hearing:

Date: ~~August 20, 2014~~

Time: ~~2:00 p.m.~~

Location: ~~Archdale Building, 512 N. Salisbury St., Ground Floor Hearing Room, Raleigh, NC 27604~~

Reason for Proposed Action: ~~The purpose of this rule change is threefold. First, some of the proposed changes to Rule 15A NCAC 02H .1002 are necessary in order to align the Rule with recent changes to G.S. 143-214.7. Section 51.(d) of North Carolina Session Law 2013-413 amended G.S. 143-214.7 such that "gravel" was excluded from the definition of "built-upon area." The proposed rulemaking incorporates the amendments to G.S. 143-214.7 into Rule 15A NCAC 02H .1002.~~

~~Second, the amendments to G.S. 143-214.7 excluded "gravel" from the definition of "built-upon area," but they did not provide a definition of the term "gravel." This proposed rulemaking defines the term "gravel" and includes other changes that are technical in nature, such as renumbering and alphabetizing the definitions. All of these changes provide clarity to the regulated community on the implementation of stormwater rules that are required by G.S. 143-214.7.~~

~~Third, the proposed rulemaking will replace a temporary rule that was adopted pursuant to G.S. 150B-21.1 and published in the North Carolina Register on April 15, 2014. The temporary rule will expire unless a permanent rule is adopted by the Environmental Management Commission and submitted to the Rules Review Commission by January 10, 2015. The text, purpose, and justification of the proposed rule are identical to those of the temporary rule.~~

Comments may be submitted to: ~~Julie Ventaloro, NCDENR-Land Quality Section-Stormwater Permitting Program, 1612 Mail Service Center, Raleigh, NC 27699-1612; phone (919) 807-6370; fax (919) 807-6494; email julie.ventaloro@ncdenr.gov~~

Hearing Officer's Suggested Hearing Comments

INTRODUCTION

[Hearing officer]:

Good evening ladies and gentlemen. My name is Charlie Carter. I am a member of the North Carolina Environmental Management Commission. My role as hearing officer is to listen to all relevant comment on these proceedings and report them to the full commission. Sitting with me is Ms. Joelle Burleson. She is with the North Carolina Division of Air Quality, Planning Section.

Some of the staff from the Division of Air Quality are here to assist. Ms. Burleson, please introduce the staff present.

[Ms. Burleson] (Introduces staff)

[Hearing officer]:

This evening we are conducting three public hearings. During Hearing 1, we will take comments concerning the repeal to the transportation facility permitting requirements. During Hearing 2, we will take comment on an amendment to North Carolina's open burning rule. During Hearing 3, we will take comment on an amendment to revise the permit term for non-Title V air quality permits. A fiscal note was not required for the rule repeals in Hearing 1. Fiscal notes have been written for all of the rule amendments presented in Hearings 2 and 3 tonight and were approved and certified by the Office of State Budget and Management (OSBM). These hearings will be held according to the North Carolina Administrative Procedures Act. The public notice for these hearings has been published in the North Carolina Register and on the Division of Air Quality website. Copies of the notice have been sent to those on the official DAQ mailing list. I will enter the public notice, the proposed repeals and amendments and the fiscal notes into the hearing record without reading them at this time.

It would be helpful if any person desiring to comment also submit a written statement for inclusion into the hearing record. Once called to speak, please come to the podium and state your name clearly, identify the rule or rules you are commenting on, and whom you represent.

[Hearing 1]:

I will now open the first hearing and take relevant comments on the repeal to the transportation facility permitting requirements.

At the conclusion of the 2013 legislative session, the General Assembly enacted S.L. 2013-413 to provide the Environmental Management Commission the flexibility to determine whether rules are necessary for controlling the effects of transportation facilities on air quality.

The Division of Air Quality (DAQ) identified the Transportation Facilities Permitting rules as outdated requirements that are not providing environmental benefit. The rules are focused on addressing carbon monoxide emissions; however, North Carolina does not have any carbon monoxide (CO) nonattainment areas. Currently, the CO monitors are measuring ambient concentrations at approximately 20 percent of the standard. Additionally, federal engine standards have resulted in significant CO reductions from mobile sources. Also, evaluations of transportation facility applications have resulted in no additional requirements, and therefore are no longer necessary.

Rules in Sections 15A NCAC 02D .0800 and 02Q .0600 are proposed for repeal to reduce unnecessary burden to the regulated community while maintaining public health. Amendments to Rules 15A NCAC 02Q .0101, .0103, .0104 and .0203 are necessary to remove obsolete cross references that would remain due to the rules being proposed for repeal.

{optional script if there are a large number of speakers}

[Hearing officer]: Optional Time Limit

Many people have requested to speak at this hearing. Due to time constraints, speakers' presentations will be limited to ___ minutes. It would be helpful if speakers would also submit a written statement by the close of the comment period for inclusion into the hearing record.

[Hearing officer]:

I will now take any comments that you may have.

[SPEAKERS]

[Hearing officer]:

Is there anyone else who would like to comment? If there are no more comments, then this hearing is closed. The hearing record will remain open until September 30, 2014, for additional written comments.

[Hearing 2]:

I will now open the second hearing and take relevant comments on amendments to North Carolina's open burning rules.

The General Assembly enacted Session Law 2013-413 that amends the requirements that pertain to permissible open burning for land clearing or right-of-way maintenance. The amendments add an option that allows land clearing or right-of-way maintenance materials to be carried or transported to a location, where the material is burned not more than four times per year, that is:

- 1) at least 500 feet from any dwelling, group of dwellings, or commercial or institutional establishment, or other occupied structure not located on the property where the burning is

conducted; 2) where there are no more than two piles, each 20 feet in diameter, burned at one time; and 3) not a permitted solid waste management facility.

Section 28(c) of the Session Law requires the Commission to adopt amendments to 15A NCAC 02D .1903, Open Burning Without an Air Quality Permit, that are substantively identical to the Session Law provisions. Per the Session Law, these rule amendments are not subject to review by the Rules Review Commission under the Administrative Procedures Act. The amendments are to become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received and thus would become effective following opportunity for legislative review by the next regular session of the General Assembly that begins at least 25 days following adoption of the amendments provided by G.S. 150B-21.3(b2).

15A NCAC 02D .1901 and .1902 are proposed to be revised to update the name of the former Division of Forest Resources to reflect its current name, the North Carolina Forest Service.

{optional script if there are a large number of speakers}

 [Hearing officer]: Optional Time Limit

Many people have requested to speak at this hearing. Due to time constraints, speakers' presentations will be limited to ___ minutes. It would be helpful if speakers would also submit a written statement by the close of the comment period for inclusion into the hearing record.

[Hearing officer]:

I will now take any comments that you may have.

[SPEAKERS]

[Hearing officer]:

Is there anyone else who would like to comment? If there are no more comments, then this hearing is closed. The hearing record will remain open until September 30, 2014, for additional written comments.

[Hearing 3]:

I will now open the third hearing and take relevant comments on an amendment to revise the permit term for non-Title V air quality permits.

The General Assembly enacted Session Law 2013-413 to revise the permit term for non-Title V air quality permits from five years to eight years. Part V, Section 29 of the Session Law amended G.S. 143-215.108 to require non-Title V air quality permits to be issued for a term of eight years. Rule 15A NCAC 02Q .0308, Final Action on Permit Applications, is proposed to be amended to reflect this change in the length of permit term for consistency with the statute.

Due to the proposed rule change, over 2,400 private sector facilities receive regulatory relief from delaying periodic consulting firm charges to prepare an emission inventory required at permit renewal. About six percent of permit renewals are the result of implementation efforts by two of North Carolina local government air programs. The Division of Air Quality and these local air programs will eventually experience both increases and decreases in permit renewal workload as the transition to 8-year permit term occurs. The fiscal impacts of extending the non-Title V permit term from five years to eight years are estimated to be \$0.6 million to \$1.4 million during the sixth through eighth years (2019 through 2021), but there is no fiscal impact during the first five years (2014 through 2018). The fiscal note that estimates the full impact of this amendment is available on both the Office of State Budget and Management (OSBM) and Division of Air Quality websites.

{optional script if there are a large number of speakers}

[Hearing officer]: Optional Time Limit

Many people have requested to speak at this hearing. Due to time constraints, speakers' presentations will be limited to ___ minutes. It would be helpful if speakers would also submit a written statement by the close of the comment period for inclusion into the hearing record.

[Hearing officer]:

I will now take any comments that you may have.

[SPEAKERS]

[Hearing officer]:

Is there anyone else who would like to comment? If there are no more comments, then this hearing is closed. The hearing record will remain open until September 30, 2014, for additional written comments.

CHAPTER V

COMMENTS DURING THE COMMENT PERIOD

INDEX OF COMMENTERS

<u>NAME</u>	<u>REPRESENTING</u>	<u>PAGE</u>
R. Scott Davis	United States Environmental Protection Agency	2



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

October 2, 2014

Ms. Sheila C. Holman, Director
Division of Air Quality
North Carolina Department of
Environment and Natural Resources
1641 Mail Service Center
Raleigh, North Carolina 27699-1641

Dear Ms. Holman:

Thank you for your letters dated July 30, 2014, and September 3, 2014, transmitting prehearing packages regarding the Transportation Facilities Permitting, Open Burning, Permit Term Rules, and the 110(l) Noninterference Demonstration for Repeal of Transportation Facilities Rules in North Carolina. We have completed our review of the prehearing submissions and offer a general comment in the enclosure on the Open Burning Rules. We offer no comments on the rules regarding Transportation Facilities Permitting, Permit Terms, and the 110(l) Noninterference Demonstration for Repeal of Transportation Facilities at this time.

We look forward to continuing to work with you and your staff. If you have any questions, please contact Ms. Lynorae Benjamin, Chief, Regulatory Development Section at (404) 562-9040, or have your staff contact Nacosta C. Ward at (404) 562-9140.

Sincerely,

A handwritten signature in black ink that reads "R. Scott Davis".

R. Scott Davis
Chief
Air Planning Branch

Enclosure

Enclosure – General Comment on Open Burning Rules

15A NCAC 02D .1903 Open Burning Without an Air Quality Permit

b. 2. F. ii. Please include language to clarify that the amendments to this section do not interfere with the attainment and maintenance of the national ambient air quality standards.

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CHAPTER VI
INDEX OF ATTACHMENTS

<u>ATTACHMENTS</u>	<u>PAGE</u>
1. Fiscal Note	VI-2
2. Session Law 2013-413, Section 28, Effective Date: the 26 th day of July, 2013	VI-15

Fiscal Note

Rule Topic: Revisions to Open Burning Rules to Reflect S.L. 2013-413 (521)

RULE CITATION: 15A NCAC 02D .1901 *Open Burning: Purpose: Scope*
 15A NCAC 02D .1902 *Definitions*
 15A NCAC 02D .1903 *Open Burning Without an Air Quality Permit*

DENR Division: Division of Air Quality

Agency Contact: Joelle Burluson, Rule Development Branch Supervisor
 Division of Air Quality (DAQ)
 (919) 707-8720
joelle.burluson@ncdenr.gov

Analyst: Vladimir Zaytsev, Rule Development Branch Engineer
 Division of Air Quality (DAQ)
 (919) 707-8702
vladimir.zaytsev@ncdenr.gov

Impact Summary: State government: No
 Local government: No
 Substantial impact: No
 Federal government: No

Authority: G.S. 143-215.3(a) (1); 143-215.107(a) (5); 62-133.8; S.L. 2013-413.

Necessity: At the conclusion of the 2013 legislative session, the General Assembly enacted Session Law 2013-413, An Act to Improve and Streamline the Regulatory Process in Order to Stimulate Job Creation, to Eliminate Unnecessary Regulation, to Make Various Other Statutory Changes, and to Amend Certain Environmental and Natural Resources Laws (the Act). The Act requires the Commission to adopt rules that pertain to open burning for land clearing or right-of-way maintenance to be substantively identical to the provisions of Section 28(b) of the Act.

The Division of Air Quality (DAQ) is proposing changes to the open burning rules for the adoption by the Environmental Management Commission to fulfill the requirements of Section 28(c) of the Act (see the text of the proposed rule changes in the Appendix). DAQ is also proposing to amend the Rules 15A NCAC 02D .1901 and .1902 to update the name of the former Division of Forest Resources to reflect its current name, the North Carolina Forest Service, and also to update the references to the General Statute.

I. Executive Summary

The purpose of this fiscal note is to conduct an evaluation of the costs and benefits associated with the mandatory revisions to the air quality rules on open burning to reflect the provisions of Section 28(b) of the Act. The Act requires the agency to adopt rules that are substantively identical to the provisions in the Act; therefore, any impact from the change stems from the statute and not the rule.

The current Rule 15A NCAC 02D .1903(b) (2) (F) does not allow someone to carry off-site or transport materials for land clearing or right-of-way maintenance over public roads for open burning unless the materials are carried off-site or transported over public roads to facilities permitted in accordance with the Rule 15A NCAC 02D .1904 to burn the materials in an air curtain burner at a permanent site. The air curtain burner is a stationary or portable combustion device that directs a draft air through a manifold head into a pit to maintain a curtain of air over the surface of the pit and a recirculating motion of air under the curtain. The DAQ database indicates that the state has only seven operated air curtain burners. These air curtain burners are located in rural areas, and in many situations, the distance between a site for land clearing or right-of-way maintenance and an air curtain burner can be quite lengthy and the transportation can be expensive.

The amendments incorporate requirements for compliance with Section 28(b) of S.L. 2013-413 which allows transporting of such materials over public roads for open burning to locations other than facilities permitted by the provisions of the Rule 15A NCAC 02D .1904 if the specific requirements defined in the Section 28.(b) are met. In addition, the amendments revise the related Rules 15A NCAC 02D .1901 and .1902 to update the references to the General Statute and the name of the former Division of Forest Resources to reflect its current name, the North Carolina Forest Service.

These changes require amendments to the following three rules:

- 15A NCAC 02D .1901, Open Burning: Purpose: Scope;
- 15A NCAC 02D .1902, Definitions; and
- 15A NCAC 02D .1903, Open Burning Without An Air Quality Permit.

These rule amendments do not cause substantial economic impacts, as defined in the Administrative Procedures Act in N.C.G.S. 150B-21.4, meaning that the estimated impacts exceed \$1,000,000 in a 12-month period. The amendments are de minimis rules – rules with little impact on state funds, local funds, or private entities.

II. Background

The rules 15A NCAC 02D .1901, .1902, .1903 became effective July 1, 1996. The rule .1901 identifies the purpose and the scope of the Section .1900 – Open Burning.

The rule .1902 lists definitions that apply to the Section .1900.

The rule .1903 specifies types of open burning allowed without a permit. It also establishes requirements such as setbacks for the protection of occupied structures and public roads from the wind-blown smoke. The rule was amended June 1, 2004, to add the conditions that must be met for open burning for land clearing and right-of-way maintenance to ensure that burning would not create a public nuisance. Land clearing operations described in this evaluation mean the uprooting or clearing of vegetation in connection with construction for buildings; right-of-way maintenance; agricultural, residential, commercial, institutional, or industrial development; mining activities; or the initial clearing of vegetation to enhance property value but does not include routine maintenance or property

clean-up activities. The most recent amendment which occurred in July 3, 2012 changed the setback requirements for the open burning from 1,000 feet to 500 feet in accordance with Session Law 2011-394.

Currently, the DAQ is implementing the provisions of Section 28(b) of the Act which state that open burning for land clearing or right-of-way maintenance is permissible without an air quality permit if materials are not carried off site or transported over public roads for open burning unless the materials are carried or transported to: (1) Facilities permitted in accordance with 15A NCAC 02D .1904 (Air Curtain Burners) for the operation of an air curtain burner at a permanent site; or (2) A location, where the material is burned not more than four times per year, that meets all of the following criteria: at least 500 feet from any dwelling, group of dwellings, or commercial or institutional establishment, or other occupied structure not located on the property on which the burning is conducted; there are no more than two piles, each 20 feet in diameter, being burned at one time; and the location is not a permitted solid waste management facility.

The provisions of Section 28(b) of this Act which have been enacted since August 2013 will expire on the date when the amendments to the Rule 15A NCAC 02D .1903 become effective as required by Section 28(d) of S.L. 2013-413.

III. Description of Existing Rules 15A NCAC 02D .1903, 15A NCAC 02D .1901, and 15A NCAC 02D .1902.

The current version of the rule .1903 allows two options to land clearing contractors to burn the material from land clearing or right-of-way maintenance: (1) material may be burned on site if all conditions listed in 1903(b)(2)(A) and (B) are met, or (2) the materials may be carried off-site or transported over public roads to air curtain burner facilities permitted according to Rule .1904.

The land clearing contractors have two more options to dispose the material from land clearing or right-of-way maintenance: (1) the materials are mulched on site, or (2) the material are carried off-site or transported over public roads to the land clearing and inert debris landfill (LCID) for the disposal. These two options do not involve the open burning and do not pertain to the current version of the Rule 15A NCAC 02D .1903; however, they are readily available to the land clearing contractors and are alternatives to burning that are encouraged by the DAQ Public Outreach. All these options establish the baseline for these changes.

Based on discussions with the DAQ regional supervisors, the option (1) “material may be burned on site if all conditions listed in 1903(b)(2)(A) and (B) are met” is the most attractive to the land clearing contractors. The current option to carry the material off-site or transport over public roads to air curtain burner facilities has a potential to create fiscal losses for the land clearers if an air curtain burner is located far away from a land clearing operation. The potential fiscal losses would be due to transportation costs which would be a function of distance to the air curtain burner.

Since the current rule .1903 does not require an air quality permit for open burning of land clearing or right-of-way maintenance debris on-site, and the DAQ does not maintain data on these operations, the database of the open burning complaints received and investigated by DAQ are the best source of the current compliance status with the rule .1903.

Table 1 reflects trends in number of investigated complaints of open burning on land clearing and the percentage of those that resulted in a rule violation and enforcement action. The data for this table does

not include the local programs and is presented to characterize the level of efforts by DAQ to investigate the open burning complaints related to the land clearing.

Table 1. Number of open burning complaints investigated by DAQ during FY07-FY14.

	FY	Violation	No Violation	Total Complaints	% Violations
OB - Land Clearing	FY07	141	108	249	57%
OB - Land Clearing	FY08	106	68	174	61%
OB - Land Clearing	FY09	79	40	119	66%
OB - Land Clearing	FY10	59	35	94	63%
OB - Land Clearing	FY11	38	44	82	46%
OB - Land Clearing	FY12	29	42	71	41%
OB - Land Clearing	FY13	30	39	69	43%
OB - Land Clearing	FY14	10	29	39	26%

The DAQ staff investigated 71 complaints related to open burning setback violations for land clearing or right-of-way maintenance in FY2012 which resulted in issuing 29 notices of violations (NOV) with penalties issued for three of them in the range from \$463 to \$1,740. Forsyth County issued only one NOV and The Western North Carolina Regional Air Quality Agency issued 29 NOVs in year 2012. The Director of the Mecklenburg County Air Quality Department delegated the administration and enforcement of the open burning regulation to the County Fire Marshal under the provisions of Mecklenburg County Air Pollution Control Ordinance (MCAPCO) Regulation 1.5101, and the County Fire Marshal is solely responsible for issuing and enforcing the air quality permits for the open burning.

The number of complaints and percent of the resulting violations have been trending downward since FY12. This trend may be explained by a number of factors including: implementation of Session Law 2011-394 which amended the setback distance from 1,000 feet to 500 feet required in the Rule 15A NCAC 02D .1903, recent economic downturn, reductions in land clearing activities and the DAQ outreach efforts. Other techniques, encouraged for dealing with land clearing debris, such as preparing and selling mulch are aimed at reducing the sole reliance on open burning for the disposal. Most of these burning operations are conducted in compliance with the provisions of the rule .1903(2). However, approximately 0.5% or 53 out of 12,000 land clearing burning was in violation of the existing rule in 2013.

The state offices of Erosion and Sedimentation Control issued 12,000 permits for land clearing or right-of-way maintenance operations in 2012. According to their observations during the site inspections, the debris from land clearing or right-of-way maintenance was mostly burned at the sites. This observation also is confirmed by very low activities of the land clearing or right-of-way maintenance materials burning in air curtain burners. In most cases, the provisions of the rule .1903(2) allows landowners to burn materials on the site legally without violations of air quality rules if the conditions in the rule are met.

As another alternative to open burning, the land clearing materials can be taken to the land clearing and inert debris landfill (LCID) for disposal. North Carolina has 63 such facilities located statewide¹. They accept the land clearing materials for an average fee of \$35 per ton which is not always economically beneficial for the contractors.

The language of two other rules .1901 and .1902 contains the former name of the North Carolina Forest Service and outdated references to the General Statute.

IV. Motivation for the Proposed Changes

S.L. 2013-413 mandates that the Commission adopt rules that pertain to open burning for land clearing or right-of-way maintenance that are substantively identical to the provisions of Section 28(b) of that Act. The proposed change adds an option of open burning at an offsite location that meets the requirements listed in the Section 28(b) of the Act. These requirements, in addition to establishing the same 500 feet setback as the current rule .1903, also limit the number of piles being burned at one time to no more than two, each 20 feet in diameter and burning at an offsite location is limited to 4 times per year. These additional requirements may make this option generally less attractive than other available alternatives and inherently limit its use. All these requirements are designed to minimize the potential for impacts to the public.

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

V. Identification of the Affected Parties

Given that the agency has no leeway in the implementation of the provisions laid out in S.L. 2013-413, any impact from the proposed change is a direct result of the statute.

Regulated parties affected by the statute are the land clearing and right-of-way maintenance contractors and air curtain burner owners or operators. According to the NC Erosion and Sedimentation Program, approximately 12,000 land clearing operations were performed in year 2013 and most of the materials from these operations was burned or mulched on the sites.

The implementing agency is the DAQ which is responsible for bringing the open burning rules into compliance with Section 28(b) of the Act.

Based on the DAQ IBEAM database, the DAQ issued air quality permits to 10 air curtain burner owners or operators to burn between 10 and 20 ton/hr in each air curtain burner. However, three of them have not been operating for a long time and the remaining seven burners are operating infrequently, in the range between 2-4 weeks to 1-2 month per year, as noted by Division of Air Quality (DAQ) inspection reports

¹ <http://portal.ncdenr.org/web/wm/sw/facilitylist>

Under certain circumstances, this rule change will be beneficial for the businesses involved in land clearing operations because it provides an option to minimize expenses. In some situations land clearing occurs within city limits and the open burning is prohibited by the city ordinance or the setback requirements for onsite burning cannot be met. The amendments to the other two rules .1901 and .1902 are of technical nature and are not the subject of further evaluation.

The proposed amendments will create an alternative to the land clearing contractors to burn the materials at the alternative site if they find it fiscally attractive. The benefits of these amendments occur on case by case basis and therefore cannot be calculated. However, the number of the total complaints in Table 1 and the fact that burning material on site is the most popular option indicate that the number of such cases will be small. Field observations from the regional supervisors also confirm that, since the enactment of the session law. Little interest has been shown in using this option, and they don't think it will be used much in the future. Based on these assumptions, it is unlikely that there will be any significant change from the baseline or that any impacts will occur due to these proposed amendments.

VII. Conclusions.

The available open burning complaints data and interviews with DENR personnel responsible for land clearing and air curtain burners permit and inspection programs indicates that the overwhelming majority of the materials from land clearing or right-of-way maintenance operations is burned at the sites. Most of these burning operations are conducted in compliance with the provisions of the rule .1903(2). However, approximately 0.5% or 53 out of 12,000 land clearing burning was in violation of the existing rule in 2013. Three penalties in the range between \$463 and up to \$1,750 were issued for these violations. These numbers indicate that the new amendments will have insignificant impact on the contractors involved in land clearing operations, air curtain burner owners or operators, and the state and local budgets.

Currently, the DAQ is implementing the provisions of Section 28(b) of the Act until the date when the amendments to the Rule 15A NCAC 02D .1903 become effective as required by Section 28(d) of the Act. The DAQ staff has not noticed any changes in the numbers of complaints since these provisions were implemented. However, the statute and the resulting amendments to the agency's rule will bring benefits for the land clearing contractors by adding flexibility to land clearing operations when burning the materials on the site where the open burning is otherwise prohibited by law.

The number of notices of violations and low activity of air curtain burners in the baseline indicate that these benefits of the rule changes will be insignificant. However, due to the fact that the open burning of the materials from the land clearing operations does not require permits and specific data characterizing such operations is not tracked, the exact amount of these benefits cannot be calculated. The amendments will allow burning the materials in offsite areas only if the provisions of the amended rule .1903(2) will be met.

These rule amendments do not cause substantial economic impacts, as defined in the Administrative Procedures Act in N.C.G.S. 150B-21.4, meaning that the estimated impacts exceed \$1,000,000 in a 12-month period. The amendments are de minimis rules – rules with little impact on state funds, local funds, or private entities.

1 **APPENDIX**

2

3 15A NCAC 02D .1901 is proposed for amendment as follows:

4

5

SECTION .1900 - OPEN BURNING

6

7 **15A NCAC 02D .1901 OPEN BURNING: PURPOSE: SCOPE**

8

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

9

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

12 (c) Scope. This Section applies to all operations involving open burning. This Section does not authorize any open
13 burning which is a crime under ~~G.S. 14-136 through G.S. 14-140.1~~, G.S. 14-136, G.S. 14-137, G.S. 14-138.1 and G.S. 14-
14 140.1, or affect the authority of the Division of Forest Resources to issue or deny permits for open burning in or adjacent to
15 woodlands as provided in ~~G.S. 113-60.21~~ G.S. 106-940 through G.S. 113-60.31, G.S. 106-950. This Section does not affect
16 the authority of any local government to regulate open burning through its fire codes or other ordinances. The issuance of
17 any open burning permit by the ~~Division of North Carolina Forest Resources Service~~ or any local government does not
18 relieve any person from the necessity of complying with this Section or any other air quality rule.

19

20 *History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);*21 *Eff. July 1, 1996;*22 *Amended Eff. July 1, 2007; June 1, ~~2004~~, 2004;*23 *Amended Eff. January 1, 2015*

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15A NCAC 02D .1902 is proposed for amendment as follows:

15A NCAC 02D .1902 DEFINITIONS

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

- (1) "Air Curtain Burner" means a stationary or portable combustion device that directs a plane of high velocity forced draft air through a manifold head into a pit or container with vertical walls in such a manner as to maintain a curtain of air over the surface of the pit and a recirculating motion of air under the curtain.
- (2) "Air Quality Action Day Code 'Orange' or above" means an air quality index greater than 100 as defined in 40 CFR Part 58, Appendix G.
- (3) "Air quality forecast area" means for
 - (a) Asheville air quality forecast area: Buncombe, Haywood, Henderson, Jackson, Madison, Swain, Transylvania, and Yancey Counties;
 - (b) Charlotte air quality forecast area: Cabarrus, Gaston, Iredell South of Interstate 40, Lincoln, Mecklenburg, Rowan, and Union Counties;
 - (c) Hickory air quality forecast area: Alexander, Burke, Caldwell, and Catawba Counties;
 - (d) Fayetteville air quality forecast area: Cumberland and Harnett Counties;
 - (e) Rocky Mount air quality forecast area: Edgecombe and Nash Counties;
 - (f) Triad air quality forecast area: Alamance, Caswell, Davidson, Davie, Forsyth, Guilford, Randolph, Rockingham, and Stokes Counties; and
 - (g) Triangle air quality forecast area: Chatham, Durham, Franklin, Granville, Johnston, Person, Orange, Vance, and Wake Counties.
- (4) "Smoke management plan" means the plan developed following the North Carolina ~~Division of Forest Resources' Service's~~ smoke management program and approved by the North Carolina ~~Division of Forest Resources' Service~~. The purpose of the smoke management plan is to manage smoke from prescribed burns of public and private forests to minimize the impact of smoke on air quality and visibility.
- (5) "Dangerous materials" means explosives or containers used in the holding or transporting of explosives.
- (6) "HHCB" means the Health Hazards Control Branch of the Division of Epidemiology.
- (7) "Initiated" means start or ignite a fire or reignite or rekindle a fire.
- (8) "Land clearing" means the uprooting or clearing of vegetation in connection with construction for buildings; right-of-way maintenance; agricultural, residential, commercial, institutional, or industrial development; mining activities; or the initial clearing of vegetation to enhance property value; but does not include routine maintenance or property clean-up activities.
- (9) "Log" means any limb or trunk whose diameter exceeds six inches.

- 1 (10) "Nonattainment area" means an area identified in 40 CFR 81.334 as nonattainment.
- 2 (11) "Nuisance" means causing physical irritation exacerbating a documented medical condition, visibility
3 impairment, or evidence of soot or ash on property or structure other than the property on which the
4 burning is done.
- 5 (12) "Occupied structure" means a building in which people may live or work or one intended for housing
6 farm or other domestic animals.
- 7 (13) "Off-site" means any area not on the premises of the land-clearing activities.
- 8 (14) "Open burning" means the burning of any matter in such a manner that the products of combustion
9 resulting from the burning are emitted directly into the atmosphere without passing through a stack,
10 chimney, or a permitted air pollution control device.
- 11 (15) "Operator" as used in .1904(b)(6) and .1904(b)(2)(D) of this Section, means the person in operational
12 control over the open burning.
- 13 (16) "Person" as used in 02D .1901(c), means:
- 14 (a) the person in operational control over the open burning; or
- 15 (b) the landowner or person in possession or control of the land when he has directly or indirectly
16 allowed the open burning or has benefited from it.
- 17 (17) "Pile" means a quantity of combustible material assembled together in a mass.
- 18 (18) "Public pick-up" means the removal of refuse, yard trimmings, limbs, or other plant material from a
19 residence by a governmental agency, private company contracted by a governmental agency or municipal
20 service.
- 21 (19) "Public road" means any road that is part of the State highway system; or any road, street, or right-of-way
22 dedicated or maintained for public use.
- 23 (20) "RACM" means regulated asbestos containing material as defined in 40 CFR 61.142.
- 24 (21) "Refuse" means any garbage, rubbish, or trade waste.
- 25 (22) "Regional Office Supervisor" means the supervisor of personnel of the Division of Air Quality in a
26 regional office of the Department of Environment and Natural Resources.
- 27 (23) "Salvageable items" means any product or material that was first discarded or damaged and then all, or
28 part, was saved for future use, and include insulated wire, electric motors, and electric transformers.
- 29 (24) "Synthetic material" means man-made material, including tires, asphalt materials such as shingles or
30 asphaltic roofing materials, construction materials, packaging for construction materials, wire, electrical
31 insulation, and treated or coated wood.
- 32 (25) "Permanent site" means for an air curtain burner, a place where an air curtain burner is operated for more
33 than nine months.

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35 *History Note: Authority G.S. 143-212; 143-213; 143-215.3(a)(1);*
36 *Eff. July 1, 1996;*
37 *Amended Eff. July 1, 2007; December 1, 2005; June 1, 2004; July 1, ~~1998-1998~~;*

Amended Eff. January 1, 2015

15A NCAC 02D .1903 is proposed for amendment as follows:

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

(a) All open burning is prohibited except open burning allowed under Paragraph (b) of this Rule or Rule .1904 of this Section. Except as allowed under Paragraphs (b)(3) through (b)(9) of this Rule, open burning shall not be initiated in an air quality forecast area that the Department, or the Forsyth County Environmental Affairs Department for the Triad air quality forecast area, has forecasted to be in an Air Quality Action Day Code "Orange" or above during the time period covered by that forecast.

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

- (1) open burning of leaves, tree branches or yard trimmings, excluding logs and stumps, if the following conditions are met:
 - (A) The material burned originates on the premises of private residences and is burned on those premises;
 - (B) There are no public pickup services available;
 - (C) Non-vegetative materials, such as household garbage, lumber, or any other synthetic materials are not burned;
 - (D) The burning is initiated no earlier than 8:00 a.m. and no additional combustible material is added to the fire between 6:00 p.m. on one day and 8:00 a.m. on the following day;
 - (E) The burning does not create a nuisance; and
 - (F) Material is not burned when the North Carolina Forest Service has banned burning for that area.
- (2) open burning for land clearing or right-of-way maintenance if the following conditions are met:
 - (A) The wind direction at the time that the burning is initiated and the wind direction as forecasted by the National Weather Service at the time that the burning is initiated are away from any area, including public roads within 250 feet of the burning as measured from the edge of the pavement or other roadway surface, which may be affected by smoke, ash, or other air pollutants from the burning;
 - (B) The location of the burning is at least 500 feet from any dwelling, group of dwellings, or commercial or institutional establishment, or other occupied structure not located on the property on which the burning is conducted. The regional office supervisor may grant exceptions to the setback requirements if:
 - (i) a signed, written statement waiving objections to the open burning associated with the land clearing operation is obtained and submitted to, and the exception granted by, the regional office supervisor before the burning begins from a resident or an owner of each dwelling, commercial or institutional establishment, or other occupied structure within 500 feet of the open burning site. In the case of a lease or rental agreement, the lessee or

1 renter shall be the person from whom permission shall be gained prior to any burning;
 2 or

- 3 (ii) an air curtain burner that complies with Rule .1904 of this Section, is utilized at the
 4 open burning site.

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

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

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

- 17 (E) No fires are initiated or vegetation added to existing fires when the North Carolina Forest
 18 Service has banned burning for that area; and

- 19 (F) Materials are not carried off-site or transported over public roads for open burning unless the
 20 materials are carried off site or transported over public roads to facilities permitted according to
 21 Rule .1904 of this Section for the operation of an air curtain burner at a permanent site; to:

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

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

26 (I) At least 500 feet from any dwelling, group of dwellings, or commercial or
 27 institutional establishment, or other occupied structure not located on the
 28 property on which the burning is conducted.

29 (II) There are no more than two piles, each 20 feet in diameter, being burned at
 30 one time.

31 (III) The location is not a permitted solid waste management facility.

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

- 1 (4) fires purposely set to public or private forest land for forest management practices for which burning is
 2 acceptable to the North Carolina Forest Service and which follow the smoke management plan as
 3 outlined in the North Carolina Forest Service's smoke management program;
- 4 (5) fires purposely set to agricultural lands for disease and pest control and fires set for other agricultural or
 5 agricultural practices for which burning is currently acceptable to the Department of Agriculture;
- 6 (6) fires purposely set for wildlife management practices for which burning is currently acceptable to the
 7 Wildlife Resource Commission;
- 8 (7) fires for the disposal of dangerous materials when it is the safest and most practical method of disposal;
- 9 (8) fires purposely set by manufacturers of fire-extinguishing materials or equipment, testing laboratories, or
 10 other persons, for the purpose of testing or developing these materials or equipment in accordance with a
 11 standard qualification program;
- 12 (9) fires purposely set for the instruction and training of fire-fighting personnel at permanent fire-fighting
 13 training facilities;
- 14 (10) fires purposely set for the instruction and training of fire-fighting personnel when conducted under the
 15 supervision of or with the cooperation of one or more of the following agencies:
- 16 (A) the North Carolina Forest Service;
- 17 (B) the North Carolina Insurance Department;
- 18 (C) North Carolina technical institutes; or
- 19 (D) North Carolina community colleges, including:
- 20 (i) the North Carolina Fire College; or
- 21 (ii) the North Carolina Rescue College;
- 22 (11) fires not described in Subparagraphs (9) or (10) of this Paragraph, purposely set for the instruction and
 23 training of fire-fighting personnel, provided that:
- 24 (A) The regional office supervisor of the appropriate regional office and the HHCB have been
 25 notified according to the procedures and deadlines contained in the appropriate regional
 26 notification form. This form may be obtained by writing the appropriate regional office at the
 27 address in Rule .1905 of this Section and requesting it, and
- 28 (B) The regional office supervisor has granted permission for the burning. Factors that the regional
 29 office supervisor shall consider in granting permission for the burning include type, amount, and
 30 nature of combustible substances. The regional office supervisor shall not grant permission for
 31 the burning of salvageable items, such as insulated wire and electric motors or if the primary
 32 purpose of the fire is to dispose of synthetic materials or refuse. The regional office supervisor of
 33 the appropriate regional office shall not consider previously demolished structures as having
 34 training value. However, the regional office supervisor of the appropriate regional office may
 35 allow an exercise involving the burning of motor vehicles burned over a period of time by a
 36 training unit or by several related training units. Any deviations from the dates and times of

1 exercises, including additions, postponements, and deletions, submitted in the schedule in the
2 approved plan shall be communicated verbally to the regional office supervisor of the
3 appropriate regional office at least one hour before the burn is scheduled; and

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

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

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

19 *Eff. July 1, 1996;*

20 *Amended Eff. July 3, 2012; July 1, 2007; December 1, 2005; June 1, 2004; July 1, ~~1998-1998~~;*

21 *Amended Eff. Pending Legislative Review*

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013**

**SESSION LAW 2013-413
HOUSE BILL 74**

AN ACT TO IMPROVE AND STREAMLINE THE REGULATORY PROCESS IN ORDER TO STIMULATE JOB CREATION, TO ELIMINATE UNNECESSARY REGULATION TO MAKE VARIOUS OTHER STATUTORY CHANGES, AND TO AMEND CERTAIN ENVIRONMENTAL AND NATURAL RESOURCES LAWS.

The General Assembly of North Carolina enacts:

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

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

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

- (1) Facilities permitted in accordance with 15A NCAC 02D .1904 (Air Curtain Burners) for the operation of an air curtain burner at a permanent site; or
- (2) A location, where the material is burned not more than four times per year, that meets all of the following criteria:
 - a. At least 500 feet from any dwelling, group of dwellings, or commercial or institutional establishment, or other occupied structure not located on the property on which the burning is conducted.
 - b. There are no more than two piles, each 20 feet in diameter, being burned at one time.
 - c. The location is not a permitted solid waste management facility.

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

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

SECTION 28.(e) G.S. 130A-294(a)(4) is amended by adding a new sub-subdivision to read:

"d. Management of land clearing debris burned in accordance with 15A NCAC 02D .1903 shall not require a permit pursuant to this section."

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VII-1

Chapter VII

The following documentation of filing and notification is incorporated as part of this hearing record and is maintained on file:

1. ENR 101 Internal Approval Form.
2. Submission for Notice Form and material submitted to the Office of Administrative Hearings.
3. The public notice as it appears in *The North Carolina Register* Volume 29, Issue 03, pages 234-249.
4. Memorandum transmitting hearing notice and proposal to regional offices for public inspection.
5. Memorandum transmitting hearing notice and proposal to local programs.
6. Submission of Filing Forms and material filed with Office of Administrative Hearings.
7. Executive Order No. 70 Certification Form
8. Letter notifying EPA of hearing.
9. Letter transmitting hearing record to EPA.

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