

STATE OF NORTH CAROLINA  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
DIVISION OF AIR QUALITY

REPORT OF PROCEEDINGS OF PUBLIC HEARING  
ON PROPOSED AMENDMENT AND READOPTION TO  
15A NCAC 02D .0405, OZONE

AUGUST 3, 2017  
CHARLOTTE, NC

ENVIRONMENTAL MANAGEMENT COMMISSION

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## CHAPTER I

**Summaries and Recommendations**

Proposed amendment and readoption to Rule 15A NCAC 02D .0405, Ozone.

**BACKGROUND AND SUMMARY**

The United States Environmental Protection Agency (USEPA) strengthened its national ambient air quality standards (NAAQS) for ozone, also known as O<sub>3</sub>, on October 1, 2015 (80 FR 65291). These revisions are the result of USEPA's five-year periodic review of NAAQS as required by the Clean Air Act. USEPA revised the primary and secondary ozone standards from 0.075 ppm, set in 2008, to 0.070 ppm, while retaining the indicators (O<sub>3</sub>), forms (fourth-highest daily maximum, averaged across three consecutive years) and averaging times (eight hours).

A public hearing was held in Charlotte, North Carolina, on August 3, 2017 for Rule 15A NCAC 02D .0405, Ozone. Mr. Gerard P. Carroll, Environmental Management Commissioner, was appointed and acted as the hearing officer during the hearing.

The proposed changes to Rule 15A NCAC 02D .0405, Ozone, are necessary to comply with federal requirements. The rule is also proposed for readoption to meet the requirements of G.S.150B-21.3A, Periodic Review and Expiration of Existing Rules.

A fiscal note was submitted to the Office of State Budget and Management (OSBM). OSBM reviewed the Division of Air Quality's proposed changes to Rule 15A NCAC 02D .0405, Ozone, in accordance with G.S. 150B-21.4. OSBM determined the rule changes have minimal state, unlikely private sector, and no substantial or local impacts. A copy of the approved fiscal note is available in Chapter VI of this hearing record.

**PUBLIC COMMENTS AND RESPONSES THERETO**

**Comment:** R. Scott Davis of the USEPA commented that they have completed their review of the prehearing package. Specifically, the amendment and readoption to 15A NCAC 02D .0405, Ozone. The USEPA offered no comments at this time.

**Response:** Thank you for your review.

**Comment:** Terry Lansdell of Clean Air Carolina commented in support of strengthening the ozone NAAQS to mirror the federal standard.

**Response:** Thank you for the comment.

**CONCLUSION**

Two comments were received on the proposed rule during the comment period. The USEPA commented that they reviewed the proposed rule in the prehearing package and did not offer comments. Clean Air Carolina commented in support of strengthening the ozone NAAQS to mirror the federal standard. No changes were made to the proposed rule as presented in Chapter IV of this hearing record.

**HEARING OFFICERS' RECOMMENDATION**

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

## 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 .0405 is proposed for readoption with substantive changes as follows:

2

3 **15A NCAC 02D .0405 OZONE**

4 The ambient air quality standard for ozone measured by a reference method based on Appendix D of 40 CFR Part 50  
5 and designated according to 40 CFR Part 53 is ~~0.075~~ 0.070 parts per million (ppm), daily maximum 8-hour average.

6 The standard is attained at an ambient air quality monitoring site when the average of the annual fourth-highest daily  
7 maximum 8-hour average ozone concentration is less than or equal to ~~0.075~~ 0.070 parts per million (ppm) as  
8 determined by ~~Appendix P~~ Appendix U of 40 CFR Part 50, or equivalent methods established under 40 CFR Part 53.

9

10 *History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3);*

11 *Eff. February 1, 1976;*

12 *Amended Eff. January 1, 2010; April 1, 1999; July 1, 1984; July 1, 1979; December 1, ~~1976~~. 1976;*

13 *Readopted Eff. January 1, 2018.*



CHAPTER III  
REPORT OF PROCEEDINGS

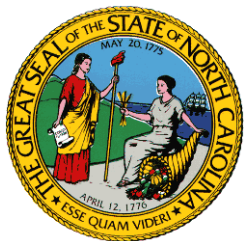
**Introduction**

The Department of Environmental Quality, Division of Air Quality, held a public hearing on August 3, 2017 at 2:00 pm in Charlotte, NC.

The hearing considered the proposed amendment and readoption of Rule 15A NCAC 02D .0405, Ozone.

The proposed effective date for this rule is projected to be January 1, 2018.

A public notice announcing this hearing was emailed to each person on the interested party email distribution list. 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 ENVIRONMENTAL QUALITY

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Clyde E. Smith, Jr.  
Steve W. Tedder  
Julie A. Wilsey

May 17, 2017

**To:** Gerard P. Carroll

**From:** J. D. Solomon 

**Subject:** Hearing Officer Appointment

Public hearings have been scheduled for August 3, 2017 at 2:00 p.m. at the Mecklenburg County Land Use and Environmental Services Agency Building, Suttle Avenue, Charlotte, NC, 28208, to receive public comments on revisions to incorporate the 2015 Ozone National Ambient Air Quality Standards (NAAQS) into the state rule and re-adoption of the first set of air quality rules, in 15A NCAC 02D .0100, .0200, .0300, .0400, 1300, .2000, and .2200, pursuant to G.S. 150B-21.3A. The attached public notice describes the hearings' purpose.

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

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

JDS/jb

Attachment

cc: Mike Abraczinskas  
Lois Thomas  
Hearing Record File

## NORTH CAROLINA ENVIRONMENTAL MANAGEMENT COMMISSION

## PUBLIC NOTICE

Notice is hereby given for public hearings to be heard by the North Carolina Department of Environmental Quality, Division of Air Quality concerning the proposed amendment to air quality rules.

## PURPOSE:

Hearing 1: To receive comments on proposed amendments to Rule 15A NCAC 02D .0405, Ozone, to reflect changes to the national ambient air quality standards (NAAQS) for ozone. These proposed rule changes are necessary to comply with federal requirements. The rule is also proposed for re-adoption to meet the requirements of G.S.150B-21.3A, Periodic Review and Expiration of Existing Rules.

The United States Environmental Protection Agency (USEPA) strengthened its NAAQS for ozone, also known as O<sub>3</sub>, on October 1, 2015 (80 FR 65291). These revisions are the result of USEPA's five-year periodic review of NAAQS as required by the Clean Air Act. USEPA revised the primary and secondary ozone standards from 0.075 ppm, set in 2008, to 0.070 ppm, while retaining the indicators (O<sub>3</sub>), forms (fourth-highest daily maximum, averaged across three consecutive years) and averaging times (eight hours).

Hearing 2: To receive comments on the amendment and proposed re-adoption of air quality rules in several sections in 15A NCAC 02D to meet the requirements of G.S.150B-21.3A, Periodic Review and Expiration of Existing Rules.

Section .0100 - Definitions and References

The rules in Section .0100 include definitions and references that apply throughout Subchapter 02D unless specified otherwise in a particular rule. 15A NCAC 02D .0101 is proposed for re-adoption with amendments to update format of units and references and .0103, .0104, and .0105 for amendment to update agency name and addresses, include web addresses where referenced documents may be obtained, and update references to document costs.

Section .0200 - Air Pollution Sources

The rules in Section .0200 reflect the system used to classify air pollution sources of importance in establishing the air quality program and the agency authority to require registration of such sources. 15A NCAC 02D .0201-.0202 are proposed for re-adoption.

#### Section .0300 - Air Pollution Emergencies

The rules in Section .0300 address prevention of buildup of air contaminants during an air pollution episode in order to prevent a public health emergency. 15A NCAC 02D .0301 and .0303-.0304, are proposed for readoption with amendments to update format of references. 02D .0302 is proposed for readoption with amendments to update who proclaims air quality alerts and warnings and declarations of emergency at various pollutant levels requiring abatement actions to the Secretary's level with concurrence of the Governor, to remove obsolete pollutant levels triggering such proclamations or declarations and update format of units for consistency. 02D .0305, .0306, and .0307 are proposed for readoption with amendments to reference the open burning rule and eliminate redundant language in Paragraph (4).

#### Section .0400 - Ambient Air Quality Standards

The rules in Section .0400 contain the ambient air quality standards and associated monitoring methodologies for the state and reflect the National Ambient Air Quality Standards (NAAQS). 15A NCAC 02D .0401., .0409, and .0410 are proposed for readoption with amendments to update format of references and acronyms and .0402, .0404, .0407, and .0408 are proposed for readoption.

#### Section .1300 - Oxygenated Gasoline Standard

Section .1300 establishes requirements for use of gasoline with certain oxygen content in carbon monoxide (CO) nonattainment or maintenance areas. 15A NCAC 02D Section .1300 is proposed for repeal because the measures were part of a contingency plan for the CO NAAQS and the limited maintenance plan for CO has now expired.

#### Section .2000 - Transportation Conformity

Section .2000 reflects federally set requirements to assure conformity of federal, state, or local funded transportation projects and plans with plans for attainment and maintenance of NAAQS for areas designated nonattainment or maintenance. 15A NCAC 02D .2001-.2005 are proposed for readoption. 02D .2001 is proposed for readoption with amendments to remove obsolete references to affected areas based on current attainment status, update internal paragraph references, include clarifying reference to 40 CFR 93.119 regarding provisions for areas without motor vehicle emissions budgets, and clarify duration of applicability to maintenance areas. 02D .2002 and .2004 are proposed for readoption and .2003 and .2005 for readoption with updates to format of references.



Section .2200 – Special Orders

Section .2200 lays out procedures to be followed for establishing Special Orders by Consent to achieve compliance with air quality requirements in 15A NCAC 02D or 02Q consistent with the requirements of G.S. 143-215.110. 15A NCAC 02D .2201-.2202 and .2205 are proposed for readoption, .2203 is proposed for readoption with amendments to update the rule for consistency with the statutory language in G.S. 143-15.110(a1)(2) specifying online posting, and .2204 is proposed for readoption with amendments to update format of references.

NOTE: The proposed amendments considered in this hearing, 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.

## DATE AND LOCATION:

August 3, 2017, 2:00 P.M.  
Pine & Fraser Fir Rooms, 4th Floor, Mecklenburg County Land Use and Environmental Services Agency Building, 2145 Suttle Avenue, Charlotte, NC 28208

## 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 the length of oral presentations if many people want to speak. The hearing record will remain open until August 14, 2017 to receive additional written statements. To be included, the statement must be received by the Division by August 14, 2017.

## INFORMATION:

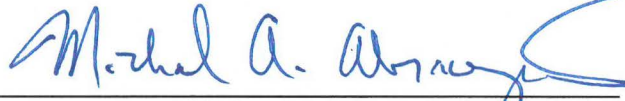
Copies of the proposed rule changes may be downloaded <http://deq.nc.gov/about/divisions/air-quality/air-quality-rules/rules-hearing-process>. Copies of the proposals may also be reviewed at the regional offices of the North Carolina Department of Environmental Quality, Division of Air Quality, located 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	336/776-9800

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

Ms. Joelle Burleson  
Division of Air Quality  
1641 Mail Service Center  
Raleigh, North Carolina 27699-1641  
(919) 707-8720 Phone/Fax  
[daq.publiccomments@ncdenr.gov](mailto:daq.publiccomments@ncdenr.gov)  
(Please type "08-03-2017 Hearings" in subject line)

DATE: 5/25/17



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Michael A. Abraczinskas,  
DAQ Director

## **Transcript**

A transcript of the August 3, 2017 Charlotte 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 Charlotte hearing are as follows:

### **Hearing Officer:**

Mr. Gerard P. Carroll, Environmental Management Commission

### **Staff Members of the Division of Air Quality or other state employees at the Charlotte hearing:**

Ms. Joelle Burleson, DAQ, DEQ

Mr. Matthew Davis, DAQ, DEQ

Mr. Patrick Knowlson, DAQ, DEQ

Ms. Leslie Rhodes, MCAQ

Mr. Jason Rayfield, MCAQ

Ms. Lexin Murphy, MCAQ

Mr. Chuck Greco, MCAQ

Ms. Ivonne Hernandez, MCAQ

### **Members of the General Public:**

Mr. Terry Lansdell

Mr. Gordon Miller

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## CHAPTER IV

## EXHIBITS

*(Please note that the exhibits are hyperlinked for customer service.)*

<u>EXHIBIT</u>	<u>PAGE</u>
Proposed Regulations as Published in the North Carolina Register and Presented at the Public Hearing	IV-2
Hearing Officer's Suggested Hearing Comments	IV-18

North Carolina Justice Academy. All trainee presentations must have met the criteria and conditions specified in the course orientation of the "Basic Instructor Training Manual;"

Authority G.S. 17C-6.

- (2) attain the minimum score on each performance area as specified in the course abstract of the "Basic Instructor Manual" for the final written lesson plan and final 80-minute presentation; and,
- (3) achieve a score of 75 percent correct answers on the comprehensive written examination.

**12 NCAC 09G .0414 INSTRUCTOR TRAINING**

- (a) The instructor training course required for general instructor certification shall consist of a minimum of 78 hours of instruction presented during a continuous period of not more than two weeks.
- (b) Each instructor training course shall be designed to provide the trainee with the skills and knowledge to perform the function of a criminal justice instructor.

(c) Each instructor training course shall include as a minimum the following identified topic ~~areas:~~ areas and minimum instructional hours for each area:

(b) Should a trainee fail to meet the minimum criteria on the final lesson plan or the final ~~80-minute~~ 70-minute presentation, he/she shall be authorized one opportunity to correct either of these deficiencies by the end of the original two-week course.

- (1) Orientation and Pretest; 3 hours
- (2) ~~Curriculum Development: ISD Model;~~ Instructional Systems Design (ISD); 6 hours
- (3) ~~Civil Liability for Law Enforcement Trainers;~~ Law Enforcement Instructor Liabilities and Legal Responsibilities; 3 hours
- (4) ~~Interpersonal Communication in Instruction;~~ Instructional Leadership 4 hours
- (5) Lesson Plan Preparation: Professional Resources; 3 hours
- (6) Lesson Plan ~~Preparation:~~ Development: Format and Objectives; 4 hours
- (7) ~~Teaching Adults;~~ Adult Learning; 4 hours
- (8) ~~Principles of Instruction: Demonstration Methods and Practical Exercise;~~ Instructional Style and Platform Skills; 4 hours
- (9) ~~Methods and Strategies of Instruction;~~ Classroom Management; 4 hours
- (10) Active Learning: Demonstration and Practical Exercises; 6 hours
- ~~(10)~~(11) ~~The Evaluation Process;~~ Process of Learning; 4 hours
- ~~(11)~~(12) Principles of Instruction: Audio-Visual Aids; 4 hours
- ~~(12)~~(13) Student ~~10-Minute~~ 8-Minute Talk and Video Critique; and 6 hours
- ~~(13)~~(14) Student Performance: 5 hours
  - First 30-Minute Presentation; 5 hours
  - Second 30-Minute Presentation; and
  - Final ~~80-Minute~~ 70-Minute ~~Presentation.~~ Presentation and Review; 12 hours
- (15) Course Closing 1 hour

(d) The ~~"Basic Instructor Training Manual"~~ "Instructor Training Manual" as published by the North Carolina Justice Academy is to ~~shall~~ be applied as the basic curriculum for ~~delivery of basic~~ instructor training courses. Copies of this publication may be inspected at the agency:

*Commission intends to amend the rules cited as 15A NCAC 02D .0103-.0105, readopt with substantive changes the rules cited as 15A NCAC 02D .0302, .0305-.0307, .0405, .1301-.1305, .2001, .2203 and readopt without substantive changes the rules cited as 15A NCAC 02D .0101, .0201, .0202, .0301, .0303, .0304, .0401, .0402, .0404, .0407-.0410, .2002-.2005, .2201, .2202, .2204 and .2205. Existing rules proposed for re adoption without changes have been underlined.*

Criminal Justice Standards Division  
 North Carolina Department of Justice  
 1700 Tryon Park Drive Post Office Drawer 149  
 Raleigh, North Carolina 27602

**Link to agency website pursuant to G.S. 150B-19.1(c):**  
<http://deq.nc.gov/about/divisions/air-quality/air-quality-rules/rules-hearing-process>

and may be purchased at the cost of printing and postage from the North Carolina Justice Academy at the following address:

North Carolina Justice Academy  
 Post Office Drawer 99  
 Salemburg, North Carolina 28385

**Proposed Effective Date:** January 1, 2018

Authority G.S. 17C-6.

**Public Hearing:**  
**Date:** August 3, 2017  
**Time:** 2:00 p.m.

**Location:** Pine and Fraser Fir Rooms, 4<sup>th</sup> Floor, Mecklenburg County Land Use and Environmental Services Agency Building, 2145 Suttle Avenue, Charlotte, NC 28208

**TITLE 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY**  
*Notice is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g. that the Environmental Management*

**Reason for Proposed Action:**

*Hearing 1: To receive comments on proposed amendments to Rule 15A NCAC 02D .0405, Ozone, to reflect changes to the national ambient air quality standards (NAAQS) for ozone. These proposed rule changes are necessary to comply with federal requirements. The rule is also proposed for readoption to meet the requirements of G.S. 150B-21.3A, Periodic Review and Expiration of Existing Rules.*

*The United States Environmental Protection Agency (USEPA) strengthened its NAAQS for ozone, also known as O<sub>3</sub>, on October 1, 2015 (80 FR 65291). These revisions are the result of USEPA's five-year periodic review of NAAQS as required by the Clean Air Act. USEPA revised the primary and secondary ozone standards from 0.075 ppm, set in 2008, to 0.070 ppm, while retaining the indicators (O<sub>3</sub>), forms (fourth-highest daily maximum, averaged across three consecutive years) and averaging times (eight hours).*

*Hearing 2: To receive comments on the amendment and proposed readoption of air quality rules in several sections in 15A NCAC 02D to meet the requirements of G.S. 150B-21.3A, Periodic Review and Expiration of Existing Rules.*

Section .0100 - Definitions and References

*The rules in Section .0100 include definitions and references that apply throughout Subchapter 02D unless specified otherwise in a particular rule. 15A NCAC 02D .0101 is proposed for readoption with amendments to update format of units and references and .0103, .0104, and .0105 for amendment to update agency name and addresses, include web addresses where referenced documents may be obtained, and update references to document costs.*

Section .0200 - Air Pollution Sources

*The rules in Section .0200 reflect the system used to classify air pollution sources of importance in establishing the air quality program and the agency authority to require registration of such sources. 15A NCAC 02D .0201-.0202 are proposed for readoption.*

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Section .1300 - Oxygenated Gasoline Standard

*Section .1300 establishes requirements for use of gasoline with certain oxygen content in carbon monoxide (CO) nonattainment or maintenance areas. 15A NCAC 02D Section .1300 is proposed for repeal because the measures were part of a contingency plan for the CO NAAQS and the limited maintenance plan for CO has now expired.*

Section .2000 - Transportation Conformity

*Section .2000 reflects federally set requirements to assure conformity of federal, state, or local funded transportation projects and plans with plans for attainment and maintenance of NAAQS for areas designated nonattainment or maintenance. 15A NCAC 02D .2001-.2005 are proposed for readoption. 02D .2001 is proposed for readoption with amendments to remove obsolete references to affected areas based on current attainment status, update internal paragraph references, include clarifying reference to 40 CFR 93.119 regarding provisions for areas without motor vehicle emissions budgets, and clarify duration of applicability to maintenance areas. 02D .2002 and .2004 are proposed for readoption and .2003 and .2005 for readoption with updates to format of references.*

Section .2200 - Special Orders

*Section .2200 lays out procedures to be followed for establishing Special Orders by Consent to achieve compliance with air quality requirements in 15A NCAC 02D or 02Q consistent with the requirements of G.S. 143-215.110. 15A NCAC 02D .2201-.2202 and .2205 are proposed for readoption, .2203 is proposed for readoption with amendments to update the rule for consistency with the statutory language in G.S. 143-15.110(a1)(2) specifying online posting, and .2204 is proposed for readoption with amendments to update format of references.*

**Comments may be submitted to:** Joelle Burlison, 1641 Mail Service Center, Raleigh, NC 27699-1641; phone (919) 707-8720; fax (919) 707-8720; email [daq.publiccomments@ncdenr.gov](mailto:daq.publiccomments@ncdenr.gov) (Please type "08-03-2017 Hearings" in subject line)

**Comment period ends:** August 14, 2017

**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**  
 **Environmental permitting of DOT affected**  
 **Analysis submitted to Board of Transportation**  
 **Local funds affected**  
 **Substantial economic impact (≥\$1,000,000)**  
 **Approved by OSBM**  
 **No fiscal note required by G.S. 150B-21.4**  
 **No fiscal note required by G.S. 150B-21.3A(d)(2)**

**CHAPTER 02 - ENVIRONMENTAL MANAGEMENT**

**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 of Article 21.
- (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 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 the 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, that are located on one or more adjacent properties under common control.
- (17) "FR" means the 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. Uses of the equipment includes 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 devoted 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 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 shall be measured by the methods specified in this Subchapter.
- (39) "Transportation facility" means a complex source as defined in G.S. 143-213(22).
- (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.
- (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.
- (42) "ug" or "µg" means micrograms.

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

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

(a) Copies of applicable Code of Federal Regulations sections referred to in this Subchapter are available for public inspection at Department of ~~Environment and Natural Resources~~ Environmental Quality regional offices. They are:

- (1) Asheville Regional Office, 2090 Highway 70, Swannanoa, North Carolina 28778;
- (2) Winston-Salem Regional Office, ~~585 Waughtown Street, Winston-Salem, North Carolina 27107;~~ 450 West Hanes Mill Road, Suite 300, Winston-Salem, NC 27105;
- (3) Mooresville Regional Office, 610 East Center Avenue, Suite 301, Mooresville, North Carolina 28115;
- (4) Raleigh Regional Office, 3800 Barrett Drive, Post Office Box 27687, Raleigh, North Carolina ~~27611;~~ 27609;
- (5) Fayetteville Regional Office, Systel Building, 225 Green Street, Suite 714, Fayetteville, North Carolina 28301;
- (6) Washington Regional Office, 943 Washington Square Mall, Washington, North Carolina 27889;
- (7) Wilmington Regional Office, 127 Cardinal Drive Extension, Wilmington, North Carolina 28405.

(b) Copies of such rules ~~can be made at these regional offices for ten cents (\$0.10) per page or~~ may be obtained free of charge

online at <https://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>.

Authority G.S. 143-215.3; 150B-21.6.

#### 15A NCAC 02D .0104 INCORPORATION BY REFERENCE

(a) Anywhere there is a reference to rules contained in the Code of Federal Regulations (CFR) or to an American Society for Testing and Materials method (ASTM) in this Subchapter, those rules and methods are incorporated by reference.

(b) The Code of Federal Regulations and American Society for Testing and Materials methods incorporated by reference in this Subchapter shall automatically include any later amendments thereto unless a specific rule specifies otherwise.

(c) The Code of Federal Regulations is available in electronic form free of charge at <https://www.gpo.gov/fdsys/search/home.action>. ~~may be purchased from the Superintendent of Documents, PO Box 371954, Pittsburgh, PA 15250. The cost of the referenced documents is as follows:~~

- (1) 40 CFR Parts 1 to 51: fifty dollars (\$50.00).
- (2) 40 CFR Part 52: thirty nine dollars (\$39.00).
- (3) 40 CFR Parts 53 to 59: eleven dollars (\$11.00).
- (4) 40 CFR Part 60: thirty six dollars (\$36.00).
- (5) 40 CFR Parts 61 to 71: thirty six dollars (\$36.00).
- (6) 40 CFR Parts 72 to 85: forty one dollars (\$41.00).
- (7) 40 CFR Part 86: forty dollars (\$40.00).
- (8) 40 CFR Parts 87 to 135: five dollars (\$5.00).
- (9) 40 CFR Parts 260 to 299: forty dollars (\$40.00).

~~These prices are October 15, 1996 prices.~~

(d) The American Society for Testing and Materials methods may be purchased from <https://www.astm.org/> the Air Quality Division, PO Box 29580, Raleigh, North Carolina 27626-0580 at a price of twenty cents (\$0.20) per page. Purchase price is dependent on the particular method and format chosen.

Authority G.S. 150B-21.6.

#### 15A NCAC 02D .0105 MAILING LIST

(a) The Division shall develop and maintain a mailing list of persons who have requested notification of rule-making as required by G.S. 150B 21.2(d). Such persons shall receive a copy of the complete notice as filed with the Office of Administrative Hearings.

(b) Any person requesting to be on a mailing list established under Paragraph (a) of this Rule shall submit a written request to the Division of Air Quality, 1641 Mail Service Center, Raleigh, North Carolina, ~~27699~~. 27699-1641. Payment of fees required under this ~~Section~~ Rule may be by check or money order for thirty dollars (\$30.00) made payable to the Department of ~~Environment and Natural Resources~~. Environmental Quality. Payment shall be submitted with each request and received by June 1 of each year. The fee covers from July 1 to June 30 of the following year. A person requesting to be on the list for notification of rule-making

may opt to receive notification via email free of charge by contacting Division staff.

Authority G.S. 143-215.3(a)(1); 150B 21.2(d).

### SECTION .0200 - AIR POLLUTION SOURCES

#### 15A NCAC 02D .0201 CLASSIFICATION OF AIR POLLUTION SOURCES

(a) Purpose. This Regulation establishes a system for classifying air pollution sources. The Commission shall use this classification system to classify air pollution sources which the Commission believes to be of sufficient importance to justify classification or control.

(b) Scope. This Regulation shall apply to all air pollution sources, both combustion and non-combustion. The following system for classifying air pollution sources shall be used:

- (1) "Class I-C" includes all sources of air pollution using fuel burning equipment for the production of heat to generate electricity for public use.
- (2) "Class II-C" includes all sources of air pollution using fuel burning equipment for the production of steam, and for other process uses at commercial and industrial establishments.
- (3) "Class III-C" includes all sources of air pollution using fuel burning equipment for comfort heating at institutional, commercial or industrial establishments, or apartment houses having a central heating system serving more than four apartments.
- (4) "Class IV-C" includes all sources of air pollution burning trash, rubbish, refuse, or similar materials in incinerators, teepee burners, or similar devices.
- (5) "Class V-C" includes all sources of air pollution using fuel burning equipment for comfort heating that are not included in Class III-C.
- (6) "Class VI-C" includes all sources of air pollution using internal combustion engines.
- (7) "Class I-I" includes all sources of air pollution resulting from industrial plants engaged in the manufacture of chemicals or allied products whose processes depend on the chemical reaction of two or more elements or compounds and includes plants producing acids, fertilizer materials, dyestuff, synthetic fibers and industrial gases.
- (8) "Class II-I" includes all sources of air pollution resulting from industrial plants engaged in the production of pulp and paper.
- (9) "Class III-I" includes all sources of air pollution resulting from the mining and processing of minerals, stone, clay and cement products, and includes phosphate ore, mica and feldspar operations, stone quarries and crushers, cement plants, concrete mixing plants, and masonry block plants.
- (10) "Class IV-I" includes all sources of air pollution resulting from industrial operations using

petroleum products, and includes asphalt mix plants, roofing felt plants, and petroleum products storage areas.

- (11) "Class V-I" includes all sources of air pollution resulting from furniture, lumber, or wood product plants.
- (12) "Class VI-I" includes all sources of air pollution resulting from textile manufacturing, textile dyeing or finishing plants.
- (13) "Class VII-I" includes all sources of air pollution resulting from the shelling, drying, storage, ginning and processing of tobacco, corn, soybeans, peanuts, cotton, fruits, vegetables, or other agricultural products.
- (14) "Class VIII-I" includes all sources of air pollution resulting from industries engaged in the processing of metals, and includes smelting, casting foundries, metal working, and other similar operations.
- (15) "Class IX-I" includes all sources of air pollution resulting from slaughtering and processing of meat, poultry, fish, and similar products and from rendering or the recovering of by-products of these operations.
- (16) "Class X-I" includes all sources of air pollution resulting from industries which do not fall within the classifications described in Subparagraphs (b)(7) through (b)(15) of this Regulation.

These sources shall be controlled pursuant to the requirements of regulations and other provisions of law.

*Authority G.S. 143-215.3(a)(1); 143-215.107(a)(4).*

#### **15A NCAC 02D .0202 REGISTRATION OF AIR POLLUTION SOURCES**

(a) The Director may require the owner or operator of a source of air pollution to register that source.

(b) Any person required to register a source of air pollution with the Division shall register the source on forms provided by the Division and shall provide the following information:

- (1) the name of the person, company, or corporation operating the sources;
- (2) the address, location, and county;
- (3) principal officer of the company;
- (4) quantities and kinds of raw materials used;
- (5) process flow sheets;
- (6) operating schedules;
- (7) total weights and kinds of air pollution released;
- (8) types and quantities of fuels used;
- (9) stack heights; and
- (10) other information considered essential in evaluating the potential of the source to cause air pollution.

The forms shall be completed and returned to the Division within 60 days following their receipt.

*Authority G.S. 143-215.3(a)(1); 143-215.107(a)(4).*

#### **SECTION .0300 - AIR POLLUTION EMERGENCIES**

##### **15A NCAC 02D .0301 PURPOSE**

Notwithstanding any other provisions of air pollution control regulations or standards, this Section is designed to prevent the excessive buildup of air contaminants during air pollution episodes thereby preventing the occurrence of an emergency due to the effects of these contaminants on the public health.

*Authority G.S. 143-215.3(a)(1); 143-215.3(a)(12).*

##### **15A NCAC 02D .0302 EPISODE CRITERIA**

Conditions justifying the proclamation of an air pollution alert, air pollution warning, or air pollution emergency shall be deemed to exist whenever the ~~director~~ Director determines that the accumulation of air contaminants in any place is attaining or has attained levels that could, if such levels are sustained or exceeded, lead to a threat to the health of the public. In making this determination, the ~~director~~ Director shall be guided by the following criteria:

- (1) Air Pollution Forecast. An internal watch by the Division and local air pollution control agencies shall be activated by a National Weather Service advisory that an atmospheric stagnation advisory is in effect, or the equivalent local forecast of stagnant atmospheric conditions.
- (2) Alert. The alert level is that concentration of pollutants at which first stage control actions are to begin. The ~~director~~ Secretary of the Department of Environmental Quality with the concurrence of the Governor shall proclaim an alert when any of the following levels is reached at any monitoring site:
  - (a) sulfur dioxide -- 800 ~~ug/m<sup>3</sup>~~ ug/m<sup>3</sup> (0.3 ~~p.p.m.~~ ppm), 24-hour average;
  - (b) ~~particulate -- 375 ug/m<sup>3</sup>, 24-hour average;~~
  - (c) ~~sulfur dioxide and particulate combined product of sulfur dioxide ug/m<sup>3</sup>, 24-hour average, and particulate ug/m<sup>3</sup>, 24-hour average, equal to 65,000;~~
  - (d) carbon monoxide -- 17 ~~ug/m<sup>3</sup>~~ ug/m<sup>3</sup> (15 ~~p.p.m.~~ ppm), eight-hour average;
  - (e) ozone -- 400 ~~ug/m<sup>3</sup>~~ ug/m<sup>3</sup> (0.2 ~~p.p.m.~~ ppm), one-hour average;
  - (f) nitrogen dioxide -- 1130 ~~ug/m<sup>3</sup>~~ ug/m<sup>3</sup> (0.6 ~~p.p.m.~~ ppm), one-hour average; 282 ~~ug/m<sup>3</sup>~~ ug/m<sup>3</sup> (0.15 ~~p.p.m.~~ ppm), 24-hour average;
  - (g) PM10--350 ~~ug/m<sup>3</sup>~~ ug/m<sup>3</sup> 24-hour average; ~~and~~ average; ~~and meteorological conditions are such that pollutant concentrations can be expected to remain at these levels for 12 or more hours or increase or, for ozone, the situation is likely to recur within the next 24 hours unless control actions are taken.~~

- (f) in addition to the levels listed for the above pollutants, meteorological conditions are such that pollutant concentrations can be expected to remain at the above levels for 12 or more hours or increase, or in the case of ozone, the situation is likely to reoccur within the next 24-hours unless control actions are taken.
- (3) Warning. The warning level indicates that air quality is continuing to degrade and that additional abatement actions are necessary. The Secretary of the Department of Environmental Quality with the concurrence of the Governor Director shall proclaim a warning when any one of the following levels is reached at any monitoring site:
- (a) sulfur dioxide -- 1600  $\mu\text{g}/\text{m}^3$   $\mu\text{g}/\text{m}^3$  (0.6 p.p.m.),ppm), 24-hour average
- (b) ~~particulate 625  $\mu\text{g}/\text{m}^3$ , 24 hour average;~~
- (c) ~~sulfur dioxide and particulate combined product of sulfur dioxide  $\mu\text{g}/\text{m}^3$ , 24 hour average, and particulate  $\mu\text{g}/\text{m}^3$ , 24 hour average, equal to 261,000;~~
- (d)(b) carbon monoxide -- 34  $\mu\text{g}/\text{m}^3$   $\mu\text{g}/\text{m}^3$  (30 p.p.m.),ppm), eight-hour average;
- (e)(c) ozone -- 800  $\mu\text{g}/\text{m}^3$   $\mu\text{g}/\text{m}^3$  (0.4 p.p.m.), ppm), one-hour average;
- (f)(d) nitrogen dioxide -- 2260  $\mu\text{g}/\text{m}^3$   $\mu\text{g}/\text{m}^3$  (1.2 p.p.m.), ppm), one-hour average; 565  $\mu\text{g}/\text{m}^3$   $\mu\text{g}/\text{m}^3$  (0.3 p.p.m.),ppm), 24-hour average;
- (g)(e) PM10 -- 420  $\mu\text{g}/\text{m}^3$   $\mu\text{g}/\text{m}^3$  24-hour average; ~~and average; and meteorological conditions are such that pollutant concentrations can be expected to remain at these levels for 12 or more hours or increase or, for ozone, the situation is likely to recur within the next 24 hours unless control actions are taken.~~
- (f) in addition to the levels listed for the above pollutants, meteorological conditions are such that pollutant concentrations can be expected to remain at the above levels for 12 or more hours or increase, or in the case of ozone, the situation is likely to reoccur within the next 24-hours unless control actions are taken.
- (4) Emergency. The emergency level indicates that air quality is continuing to degrade to a level that should never be reached and that the most stringent control actions are necessary. The Secretary of the ~~Department of Environment and Natural Resources~~ Department of Environmental Quality with the concurrence of the Governor shall declare an emergency when any one of the following levels is reached at any monitoring site:
- (a) sulfur dioxide -- 2100  $\mu\text{g}/\text{m}^3$   $\mu\text{g}/\text{m}^3$  (0.8 p.p.m.),ppm) 24-hour average;
- (b) ~~particulate 875  $\mu\text{g}/\text{m}^3$ , 24 hour average;~~
- (c) ~~sulfur dioxide and particulate combined product of sulfur dioxide  $\mu\text{g}/\text{m}^3$ , 24 hour average, and particulate  $\mu\text{g}/\text{m}^3$ , 24 hour average, equal to 393,000;~~
- (d)(b) carbon monoxide -- 46  $\text{mg}/\text{m}^3$   $\mu\text{g}/\text{m}^3$  (40 p.p.m.), ppm), eight-hour average;
- (e)(c) ozone -- 1000  $\mu\text{g}/\text{m}^3$   $\mu\text{g}/\text{m}^3$  (0.5 p.p.m.), ppm), one-hour average;
- (f)(d) nitrogen dioxide -- 3000  $\mu\text{g}/\text{m}^3$   $\mu\text{g}/\text{m}^3$  (1.6 p.p.m.),ppm), one-hour average; 750  $\mu\text{g}/\text{m}^3$   $\mu\text{g}/\text{m}^3$  (0.4 p.p.m.), 24-hour average;
- (g)(e) PM10--500  $\mu\text{g}/\text{m}^3$ ;  $\mu\text{g}/\text{m}^3$  24-hour average; ~~average; and~~
- (f) in addition to the levels listed for the above pollutants, meteorological conditions are such that pollutant concentrations can be expected to remain at the above levels for 12 or more hours or increase, or in the case of ozone, the situation is likely to reoccur within the next 24-hours unless control actions are taken. Same clarification applies to Warning and Emergency Levels.
- (5) Termination. Once declared any level reached by application of these criteria shall remain in effect until the criteria for that level are no longer met. At that time the next lower level shall be assumed.

Authority G.S. 143-215.3(a)(1); 143-215.3(a)(12).

### 15A NCAC 02D .0303 EMISSION REDUCTION PLANS

(a) Air Pollution Alert. Any person responsible for the operation of a source of air pollution described in ~~Regulation 15A NCAC 02D .0305, .0305 of this Section,~~ shall take all air pollution alert actions required for that source and shall put into effect the preplanned program for an air pollution alert.

(b) Air Pollution Warning. Any person responsible for the operation of a source of air pollution described in ~~Regulation .0306 of this Section,~~ 15A NCAC 02D .0306, shall take all air pollution warning actions required for that source and shall put into effect the preplanned program for an air pollution warning.

(c) Air Pollution Emergency. Any person responsible for the operation of a source of air pollution described in ~~Regulation .0307 of this Section,~~ 15A NCAC 02D .0307, shall take all air pollution emergency actions required for that source and shall put into effect the preplanned program for an air pollution emergency.

Authority G.S. 143-215.3(a)(1); 143-215.3(a)(12).



### 15A NCAC 02D .0304 PREPLANNED ABATEMENT PROGRAM

(a) Any person who is responsible for the operation of a source of air pollution that is described in 15A NCAC 02D Regulations .0305, .0306, or .0307, ~~.0307 of this Section,~~ or that emits 100 tons per year or more of any one pollutant shall prepare a plan to reduce the emissions of air pollutants into the outdoor atmosphere during periods of an air pollution episode. The plan shall be consistent with good industrial practices and safe operating procedures. When the Director requests that the plan be submitted for his review, the owner or operator of the source shall submit the plan within 30 days of the Director's request.

(b) When requested by the Commission in writing, any person responsible for the operation of a source not described in Regulations 15A NCAC 02D .0305, .0306, or .0307, ~~.0307 of this Section,~~ shall prepare a plan to reduce the emissions of air pollutants into the outdoor atmosphere during periods of air pollution alert, air pollution warning, and air pollution emergency. The plan shall be consistent with good industrial practices and safe operating procedures.

Authority G.S. 143-215.3(a)(1); 143-215.3(a)(12).

### 15A NCAC 02D .0305 EMISSION REDUCTION PLAN: ALERT LEVEL

#### (a) ~~General-General.~~

- (1) There shall be no open burning ~~by any person of trade waste, vegetation, refuse, or debris in any form; any material otherwise allowed under 15A NCAC 02D .1900.~~
- (2) The use of incinerators for the disposal of any form of solid waste shall be limited to the hours between ~~12 noon~~ 12:00 p.m. and 4:00 p.m.
- (3) Persons operating fuel burning equipment which requires boiler lancing or soot blowing shall perform such operations only between the hours of ~~12 noon~~ 12:00 p.m. and 4:00 p.m.
- (4) Persons operating motor vehicles should eliminate all unnecessary operations.

(b) Source Curtailment. Any person responsible for the operation of a source of air pollution shall take all required control actions for the alert level that are listed below:

- (1) Operators of coal or oil fired electric power generating facilities shall:
  - (A) use fuels having low ash and sulfur content,
  - (B) perform boiler lancing and soot blowing between ~~12 noon~~ 12:00 p.m. and 4:00 p.m., and
  - (C) divert electric power generation to facilities outside of alert area;
- (2) Operators of coal or oil fired process steam generating facilities shall:
  - (A) use fuels having low ash and sulfur content,
  - (B) perform boiler lancing and soot blowing between ~~12 noon~~ 12:00 p.m. and 4:00 p.m., and

- (C) reduce steam load demands consistent with continuing plant operation;
- (3) Operators of manufacturing industries of the following classifications: primary metals industry; petroleum refining and related industries; chemical and allied products industries; paper and allied products industries; glass, clay, and concrete products industries shall:
  - (A) reduce air pollutants from manufacturing operations by curtailing, postponing or deferring production and related operations;
  - (B) defer trade waste disposal operations which emit particles, gases, vapors, or malodorous substances;
  - (C) reduce heat load demands for processing; and
  - (D) perform boiler lancing or soot blowing between ~~12 noon~~ 12:00 p.m. to 4:00 ~~p.m.; p.m.;~~ and
- (4) ~~Municipal and commercial refuse disposal operations shall limit burning of refuse in incinerators to hours between 12 noon to 4:00 p.m.;~~
- (5)(4) Other persons requested by the Commission to prepare a preplanned abatement plan shall take all required control actions for the alert level contained in their plan.

Authority G.S. 143-215.3(a)(1); 143-215.3(a)(12).

### 15A NCAC 02D .0306 EMISSION REDUCTION PLAN: WARNING LEVEL

#### (a) General

- (1) There shall be no open burning ~~by any person of trade waste, refuse, vegetation, or debris in any form; any material otherwise allowed under 15A NCAC 02D .1900.~~
- (2) The use of incinerators for the disposal of solid waste or liquid waste shall be prohibited.
- (3) Persons operating fuel burning equipment which requires boiler lancing or soot blowing shall perform such operations only between ~~12 noon~~ 12:00 p.m. and 4:00 ~~p.m. p.m.~~
- (4) Persons operating motor vehicles should minimize their use through car pools and increased use of public transportation.

(b) Source Curtailment. Any person responsible for the operation of a source of air pollution shall take all required control actions for the warning level that are listed below:

- (1) Operators of coal or oil fired electric power generating facilities shall:
  - (A) use fuels having the lowest ash and sulfur ~~content;~~ content;
  - (B) perform boiler lancing and soot blowing between ~~12 noon~~ 12:00 p.m. to 4:00 ~~p.m.; p.m.;~~ and

- (C) divert electric power generating to facilities outside of warning area;
- (2) Operators of coal or oil fired process steam generating facilities shall:
- (A) use fuels having the lowest ash and sulfur ~~content,~~ content;
- (B) perform boiler lancing and soot blowing between ~~12 noon~~ 12:00 p.m. to 4:00 ~~p.m.,~~ p.m.;
- (C) reduce steam load demands consistent with continuing plant ~~operations,~~ operations; and
- (D) prepare to use the plan of action to be taken if an emergency develops;
- (3) Operators of manufacturing industries of the following classifications: primary metal industries; petroleum refining and related industries; chemical and allied products industries; paper and allied products industries; glass, clay and concrete products industries shall:
- (A) reduce air pollutants from manufacturing operations by, if necessary, assuming reasonable economic hardship by postponing production and related operations;
- (B) defer trade waste disposal operations which emit particles, gases, vapors, or malodorous substances;
- (C) reduce heat load demands for processing consistent with continuing plant operations; and
- (D) perform boiler lancing or soot blowing between ~~12 noon~~ 12:00 p.m. to 4:00 ~~p.m.,~~ p.m.; and
- ~~(4) Municipal and commercial refuse disposal operations shall stop incinerating waste;~~
- ~~(5)~~(4) Other persons requested by the Commission to prepare a preplanned abatement plan shall take all required control actions for the warning level contained in their plan.
- (B) all manufacturing establishments except those required to have in force an air pollution emergency plan;
- (C) all construction work involving grading or other operations which generate dust;
- (D) all wholesale and retail establishments except pharmacies and stores primarily engaged in the sale of food;
- (E) all commercial and manufacturing establishments, automobile repair services and garages, laundries, barbershops, beauty shops and motion picture theaters; and
- (F) elementary and secondary schools, colleges, universities and professional schools.
- (4) The use of motor vehicles ~~is~~ shall be prohibited except in emergencies with the approval of local or state police.
- (b) Source Curtailment. Any person responsible for the operation of a source of air pollution shall take all required control actions for the emergency level that are listed below:
- (1) Operators of coal or oil fired electric power generating facilities shall:
- (A) use fuels having lowest ash and sulfur content,
- (B) perform boiler lancing or soot blowing between ~~12 noon~~ 12:00 p.m. to 4:00 ~~p.m.,~~ p.m.;
- (C) divert electric power generating to facilities outside of emergency area;
- (2) Operators of coal or oil fired process steam generating facilities shall:
- (A) reduce heat and steam demands to that absolutely necessary to prevent equipment damage,
- (B) perform boiler lancing and soot blowing between ~~12 noon~~ 12:00 p.m. and 4:00 ~~p.m.,~~ p.m.;
- (C) take the action called for in the abatement plan;
- (3) Operators of manufacturing industries of the following classifications: primary metals industries; petroleum refining and related industries; chemical and allied products industries; paper and allied products industries; glass, clay and concrete products industries shall:
- (A) eliminate air pollutants from manufacturing operations by ceasing, curtailing, postponing or deferring production and related operations of the extent possible without causing injury to persons or damage to equipment;
- (B) eliminate air pollution from trade waste disposal processes which emit

Authority G.S. 143-215.3(a)(1); 143-215.3(a)(12).

**15A NCAC 02D .0307 EMISSION REDUCTION PLAN:  
EMERGENCY LEVEL**

(a) General

- (1) There shall be no open burning ~~by any person of trade waste, vegetation, refuse, or debris in any form.~~ any material otherwise allowed under 15A NCAC 02D .1900.
- (2) The use of incinerators for the disposal of any form of solid or liquid waste shall be prohibited.
- (3) All places of employment described below shall immediately cease operations:
- (A) mining and quarrying of nonmetallic minerals;

- particles, gases, vapors, or malodorous substances;
- (C) reduce heat load demands for processing to the minimum;
- (D) perform boiler lancing or soot blowing between ~~12 noon~~ 12:00 p.m. to 4:00 p.m.; and
- (4) ~~Municipal and commercial refuse disposal operations shall stop incinerating waste;~~
- (5)(4) Other persons requested by the Commission to prepare a preplanned abatement plan shall take all required control actions for the emergency level contained in their plan.

Authority G.S. 143-215.3(a)(1); 143-215.3(a)(12).

## SECTION .0400 - AMBIENT AIR QUALITY STANDARDS

### 15A NCAC 02D .0401 PURPOSE

(a) The purpose of the ambient air quality standards set out in this Section is to establish certain maximum limits on parameters of air quality considered desirable for the preservation and enhancement of the quality of the state's air resources. Furthermore, the objective of the Commission, consistent with the North Carolina Air Pollution Control Law, shall be to prevent significant deterioration in ambient air quality in any substantial portion of the state where existing air quality is better than the standards. An atmosphere in which these standards are not exceeded should provide for the protection of the public health, plant and animal life, and property.

(b) Ground level concentrations of pollutants will be determined by sampling at fixed locations in areas beyond the premises on which a source is located. The standards are applicable at each such sampling location in the state.

(c) No facility or source of air pollution shall cause any ambient air quality standard in this Section to be exceeded or contribute to a violation of any ambient air quality standard in this Section except as allowed by Rules 15A NCAC 02D .0531 or .0532 of this Subchapter. .0532.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3).

### 15A NCAC 02D .0402 SULFUR OXIDES

(a) The ambient air quality standards for sulfur oxides measured as sulfur dioxide are:

- (1) 80 micrograms per cubic meter (0.03 ppm) annual arithmetic mean,
- (2) 365 micrograms per cubic meter (0.14 ppm) maximum 24-hour concentration not to be exceeded more than once per year, and
- (3) 1300 micrograms per cubic meter (0.5 ppm) maximum three-hour concentration not to be exceeded more than once per year.

(b) Sampling and analysis shall be in accordance with procedures in Appendix A or A-1 of 40 CFR Part 50 or by a Federal Equivalent Method (FEM) designated in accordance with 40 CFR Part 53.

(c) Applicability of the standards listed in Subparagraph (a)(1) and (2) of this Rule ~~is~~ shall be in effect until one year after the

effective date of initial designations under Section 107(d) of the Clean Air Act for the sulfur dioxide standard in Paragraph (d) of this Rule.

(d) The primary one-hour annual ambient air quality standard for oxides of sulfur is 75 parts per billion (ppb, which is 1 part in 1,000,000,000), measured in the ambient air as sulfur dioxide.

(e) The one-hour primary standard ~~is~~ shall be met at an ambient air quality monitoring site when the three-year average of the annual (99th percentile) of the daily maximum one-hour average concentrations is less than or equal to 75 ppb, as determined in accordance with Appendix T of 40 CFR Part 50.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3).

### 15A NCAC 02D .0404 CARBON MONOXIDE

(a) The ambient air quality standards for carbon monoxide are:

- (1) 9 parts per million (10 milligrams per cubic meter) maximum eight-hour average concentration not to be exceeded more than once per year, and
- (2) 35 parts per million (40 milligrams per cubic meter) maximum one-hour average concentration not to be exceeded more than once per year.

(b) Sampling and analysis shall be in accordance with procedures in Appendix C of 40 CFR Part 50 or equivalent methods established under 40 CFR Part 53.

(c) An eight-hour average shall be considered valid if at least 75 percent of the hourly averages for the eight-hour period are available. In the event that only six or seven hourly averages are available, the eight-hour average shall be computed on the basis of the hours available using six or seven as the divisor.

(d) When summarizing data for comparison with the standards, averages shall be stated to one decimal place. Comparison of the data with the levels of the standards in parts per million shall be made in terms of integers with fractional parts of 0.5 or greater rounding up.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3).

### 15A NCAC 02D .0405 OZONE

The ambient air quality standard for ozone measured by a reference method based on Appendix D of 40 CFR Part 50 and designated according to 40 CFR Part 53 is ~~0.075~~ 0.070 parts per million (ppm), daily maximum 8-hour average. The standard is attained at an ambient air quality monitoring site when the average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to ~~0.075~~ 0.070 parts per million (ppm) as determined by ~~Appendix P~~ Appendix U of 40 CFR Part 50, or equivalent methods established under 40 CFR Part 53.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3).

### 15A NCAC 02D .0407 NITROGEN DIOXIDE

(a) The primary annual ambient air quality standard for oxides of nitrogen is 53 parts per billion annual average concentration measured in the ambient air as nitrogen dioxide.

(b) The primary one hour ambient air quality standard for oxides of nitrogen is 100 parts per billion one hour annual average concentration measured in the ambient air as nitrogen dioxide.

(c) The secondary ambient air quality standard for nitrogen dioxide is 0.053 parts per million (100 micrograms per cubic meter) annual arithmetic mean concentration.

(d) Sampling and analysis shall be in accordance with:

- (1) procedures in Appendix F of 40 CFR Part 50; or
- (2) by a Federal Equivalent Method (FEM) designated in accordance with 40 CFR Part 53.

(e) The annual primary standard ~~is~~ shall be attained when the annual average concentration in a calendar year is less than or equal to 53 parts per billion, as determined in accordance with Appendix S of 40 CFR Part 50 for the annual standard.

(f) The one hour primary standard ~~is~~ shall be attained when the three-year average of the annual 98th percentile of the daily maximum one-hour average concentration is less than or equal to 100 ppb, as determined in accordance with Appendix S of 40 CFR Part 50 for one hour standard.

(g) The secondary standard ~~is~~ shall be attained when the annual arithmetic mean concentration in a calendar year is less than or equal to 0.053 parts per million, rounded to three decimal places (fractional parts equal to or greater than 0.0005 parts per million are rounded up). To demonstrate attainment, an annual mean ~~must~~ shall be based on hourly data that are at least 75 percent complete or on data derived from manual methods that are at least 75 percent complete for the scheduled sampling days in each calendar quarter.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3).

#### 15A NCAC 02D .0408 LEAD

The ambient air quality standard for lead and its compounds, measured as elemental lead by a reference method based on Appendix G of 40 CFR Part 50 or by an equivalent method established under 40 CFR Part 53, is 0.15 micrograms per cubic meter. The standard ~~is~~ shall be met when the maximum arithmetic three month mean concentration for a three year period, as determined in accordance with Appendix R of 40 CFR Part 50, is less than or equal to 0.15 micrograms per cubic meter.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3).

#### 15A NCAC 02D .0409 PM10 PARTICULATE MATTER

(a) The ambient air quality standard for PM10 particulate matter is 150 micrograms per cubic meter (~~ug/m3~~), ( $\mu\text{g}/\text{m}^3$ ), 24-hour average concentration. This standard ~~is~~ shall be attained when 150 (~~ug/m3~~), ( $\mu\text{g}/\text{m}^3$ ), as determined according to Appendix N of 40 CFR Part 50, is not exceeded more than once per year on average over a three-year period.

(b) For the purpose of determining attainment of the standards in Paragraph (a) of this Rule, particulate matter shall be measured in the ambient air as PM10 (particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers) by either:

- (1) a reference method based on Appendix M of 40 CFR Part 50 and designated according to 40 CFR Part 53; or

- (2) an equivalent method designated according to 40 CFR Part 53.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3).

#### 15A NCAC 02D .0410 PM2.5 PARTICULATE MATTER

(a) The national primary ambient air quality standards for PM2.5 are 12.0 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ) annual arithmetic mean concentration and 35  $\mu\text{g}/\text{m}^3$  24-hour average Concentration measured in the ambient air as PM2.5 (particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers) by either:

- (1) A reference method based on appendix L to 40 ~~C.F.R.~~ CFR Part 50 and designated in accordance with 40 ~~C.F.R.~~ CFR Part 53; or
- (2) An equivalent method designated in accordance with 40 ~~C.F.R.~~ CFR Part 53.

(b) The primary annual PM2.5 standard ~~is~~ shall be met when the annual arithmetic mean concentration, as determined in accordance with ~~appendix~~ Appendix N of 40 ~~C.F.R.~~ CFR Part 50, is less than or equal to 12.0  $\mu\text{g}/\text{m}^3$ .

(c) The primary 24-hour PM2.5 standard ~~is~~ shall be met when the 98<sup>th</sup> percentile 24-hour concentration, as determined in accordance with ~~appendix~~ Appendix N of 40 ~~C.F.R.~~ CFR Part 50, is less than or equal to 35  $\mu\text{g}/\text{m}^3$ .

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3).

### SECTION .1300 - OXYGENATED GASOLINE STANDARD

#### 15A NCAC 02D .1301 PURPOSE

~~This Section sets forth oxygenated gasoline standards in areas where an oxygenated gasoline program is implemented pursuant to State law for all gasoline sold wholesale for use or for all gasoline sold retail, offered for use, dispensed, or otherwise provided for use in any spark ignition engine other than aircraft in the areas defined in Rule .1302 of this Section during the time periods defined in Rule .1302(e) of this Section.~~

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3),(7).

#### 15A NCAC 02D .1302 APPLICABILITY

~~(a) This Section shall apply to gasoline identified in Rule .1301 of this Section during the time period described in Paragraph (e) of this Rule in any of the following areas, and in that area only, when the Director notices in accordance with Paragraph (b) of this Rule in the North Carolina Register that oxygenated gasoline is needed in that area to attain and maintain the ambient air quality standard for carbon monoxide:~~

- ~~(1) the Greensboro/Winston Salem/High Point Metropolitan Statistical Area consisting of Davie, Davidson, Forsyth, Guilford, Randolph, Stokes, and Yadkin Counties;~~
- ~~(2) the Charlotte/Gastonia/Rock Hill Metropolitan Statistical Area consisting of Cabarrus, Gaston, Mecklenburg, and Union Counties; and~~

- (3) ~~the Raleigh/Durham Metropolitan Statistical Area consisting of Durham, Franklin, Orange, and Wake Counties.~~

~~(b) If a violation of the ambient air quality standard for carbon monoxide is measured in accordance with 40 CFR 50.8 in one of the areas named in Paragraph (a) of this Rule, the Director shall initiate analyses to determine if additional measures are needed to attain and maintain the ambient air quality standards in that area. If the Director finds that 2.7 percent oxygen by weight oxygenated gasoline is needed, the Director shall notice in the North Carolina Register by the following September 1 that only oxygenated gasoline shall be sold in that area beginning on the following November 1. The notice shall identify the area in which oxygenated gasoline shall be sold. Also by the following July 1, the Director shall notify the Gasoline and Oil Inspection Board and the primary gasoline distributors that only oxygenated gasoline shall be sold in the area beginning on the following November 1.~~

~~(c) This Section applies to gasoline identified in Rule .1301 of this Section and in the counties identified in Paragraph (a) of this Rule for the four month period beginning November 1 and running through the last day of February of the following year.~~

~~(d) Gasoline in storage within the counties identified in Paragraph (a) of this Rule prior to November 1 of the year in which this Section goes into effect at a dispensing facility having total gasoline tank capacity of less than 550 gallons or a total weekly dispensing rate of less than 550 gallons is exempted from Rule .1304 of this Section, but any gasoline supplied to the facility during the period identified in Paragraph (c) of this Rule shall comply with Rule .1304 of this Section.~~

*Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3),(7).*

#### 15A NCAC 02D .1303 DEFINITIONS

~~For the purpose of this Section, "oxygenated gasoline" means any gasoline which contains a substance or substances to raise the oxygen content of the gasoline to conform with Rule .1304 of this Section.~~

*Authority G.S. 143-213; 143-215.3(a)(1); 143-215.108(c)(7).*

#### 15A NCAC 02D .1304 OXYGEN CONTENT STANDARD

~~Gasoline to which this Section applies in accordance with Rule .1302(a) of this Section shall have an oxygen content of not less than 2.7 percent by weight during the period defined in Rule .1302(c) of this Section.~~

*Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3),(7).*

#### 15A NCAC 02D .1305 MEASUREMENT AND ENFORCEMENT

~~(a) Gasoline samples shall be taken and handled by methods approved by the Gasoline and Oil Inspection Board.~~

~~(b) Gasoline samples shall be analyzed by the American Society for Testing and Materials (ASTM) standard test method, designation D 4815 89 or by other methods approved by the Gasoline and Oil Inspection Board and the United States Environmental Protection Agency.~~

~~(c) Enforcement shall be in accordance with procedures adopted by the Gasoline and Oil Inspection Board in 2 NCAC 42 .0100.~~

*Authority G.S. 119-26; 143-215.3(a)(1); 143-215.107(a)(3),(7); 150B-21.6.*

### SECTION .2000 - TRANSPORTATION CONFORMITY

#### 15A NCAC 02D .2001 PURPOSE, SCOPE AND APPLICABILITY

(a) The purpose of this Section is to assure the conformity of transportation plans, programs, and projects that are developed, funded, or approved by the United States Department of Transportation and by metropolitan planning organizations or other recipients of funds under Title 23 U.S.C. or the Federal Transit Act (49 U.S.C. 1601 et seq.), or State or Local only sources of funds, with all plans required of areas designated as nonattainment or maintenance under 40 CFR 81.334 for the pollutants specified therein or listed in Paragraph (b), (c), or (d) (c) of this Rule.

(b) This Section applies to the emissions of volatile organic compounds and nitrogen oxides in the following areas:

- ~~(1) Davidson County,~~
- ~~(2) Durham County,~~
- ~~(3) Forsyth County,~~
- ~~(4) Gaston County,~~
- ~~(5) Guilford County,~~
- ~~(6) Mecklenburg County,~~
- ~~(7) Wake County,~~
- ~~(8) Dutchville Township in Granville County, and that part of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek, and back to the Yadkin River.~~
- ~~(9) townships of Central Cabarrus, Concord, Georgeville, Harrisburg, Kannapolis, Midland, Mount Pleasant, New Gilead, Odell, Poplar Tent, and Rimertown in Cabarrus County;~~
- ~~(2) townships of Crowders Mountain, Dallas, Gastonia, Riverbend, and South Point in Gaston County;~~
- ~~(3) townships of Davidson and Coddle Creek in Iredell County;~~
- ~~(4) townships of Catawba Springs, Lincolnton, and Ironton in Lincoln County;~~
- ~~(5) all townships in Mecklenburg County;~~
- ~~(6) townships of Atwell, China Grove, Franklin, Gold Hill, Litaker, Locke, Providence, Salisbury, Steele, and Unity in Rowan County;~~
- ~~(7) townships of Goose Creek, Marshville, Monroe, Sandy Ridge, and Vance in Union County.~~

~~(c) This Section applies to the emissions of carbon monoxide in the following areas:~~

- ~~(1) Durham County,~~
- ~~(2) Forsyth County,~~
- ~~(3) Mecklenburg County, and~~
- ~~(4) Wake County.~~

~~(d)(c) This Section applies to the emissions of:~~

- (1) particulate matter in areas identified in 40 CFR 81.334 as nonattainment or that have been redesignated attainment and are current maintenance areas for fine particulate (PM<sub>2.5</sub>), or
- (2) volatile organic compounds or nitrogen oxides in areas identified in 40 CFR 81.334 as nonattainment or that have been redesignated attainment and are current maintenance areas for ozone.

~~(e)~~(d) This Section applies to FHWA/FTA projects or regionally significant State or local projects. For FHWA/FTA projects or regionally significant State or local projects in the areas identified in Paragraph ~~(b)~~, ~~(e)~~, ~~or (d)~~(b) of this Rule and for the pollutants identified in Paragraph ~~(b)~~, ~~(e)~~, ~~or (d)~~(c) of this Rule, this Section applies to:

- (1) the adoption, acceptance, approval, or support of transportation plans and transportation plan amendments developed pursuant to 23 CFR Part 450 or 49 CFR Part 613 by a metropolitan planning organization or the United States Department of Transportation;
- (2) the adoption, acceptance, approval, or support of transportation improvement programs or amendments to transportation improvement programs pursuant to 23 CFR Part 450 or 49 CFR Part 613 by a metropolitan planning organization or the United States Department of Transportation; or
- (3) the approval, funding, or implementation of FHWA/FTA projects.

Conformity determinations are not required under this Section for individual projects that are not FHWA/FTA projects. However, 40 CFR 93.121 shall apply to these projects if they are regionally significant projects.

~~(f)~~(e) This Section applies to maintenance areas for 20 years from the date the ~~Environment~~ Environmental Protection Agency approves the area's request under Section 107(d) of the Clean Air Act for redesignation to ~~attainment~~ attainment or until the effective date of revocation of the conformity requirements for the NAAQS by EPA.

*Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10).*

### 15A NCAC 02D .2002 DEFINITIONS

For the purposes of this Section, the definitions contained in 40 CFR 93.101 and the following definitions apply:

- (1) "Consultation" means that one party confers with another identified party, provides all information necessary to that party needed for meaningful input, and considers and responds to the views of that party in a timely, substantive written manner prior to any final decision.
- (2) "Regionally significant project" means a transportation project (other than an exempt project under 40 CFR 93.126) that is on a facility that serves regional transportation needs (such as access to and from the area outside of

the region, major activity centers in the region, major planned developments such as new retail malls and sports complexes, or transportation terminals as well as most terminals themselves) and would normally be included in the modeling of a metropolitan area's transportation network, including at a minimum all principal arterial highways and all fixed guide way transit facilities that offer an alternative to regional highway travel.

- (3) "Regionally significant State or local project" means any highway or transit project that is a regionally significant project and that is proposed to receive only funding assistance (receives no federal funding) or approval through the State or any local program.

*Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10).*

### 15A NCAC 02D .2003 TRANSPORTATION CONFORMITY DETERMINATION

(a) Conformity analyses, determinations, and redeterminations for transportation plans, transportation improvement programs, FHWA/FTA projects, and State or local regionally significant projects shall be made according to the requirements of 40 CFR 93.104 and shall comply with the applicable requirements of 40 CFR 93.119, 93.120, 93.124, 93.125, and 93.126. For the purposes of this Rule, regionally significant State or local projects shall be subject to the same requirements under 40 CFR Part 93 as FHWA/FTA projects except that State Environmental Policy Act procedures and requirements shall be substituted for National Environmental Policy Act procedures and requirements. Regionally significant State or local projects subject to this Section for which the State Environmental Policy Act process and a conformity determination have been completed may proceed toward implementation without further conformity determination unless more than three years have elapsed since the most recent major step (State Environmental Policy Act process completion, start of final design, acquisition of a significant portion of the right-of-way, or approval of the plans, specifications, and estimates) occurred. All phases of these projects considered in the conformity determination are also included if these phases were for the purpose of funding final design, right-of-way acquisition, construction, or any combination of these phases.

(b) Before making a conformity determination, the metropolitan planning organizations, local transportation departments, North Carolina Department of Transportation, United States Department of Transportation, the Division of Air Quality, local air pollution control agencies, and United States Environmental Protection Agency shall consult with each other on matters described in 15A NCAC ~~2D02D~~ .2005. Consultation shall begin as early as possible in the development of the emissions analysis used to support a conformity determination. The agency that performs the emissions analysis shall make the analysis available to the Division of Air Quality and at least 21 days shall be allowed for review and comment on the emissions analysis. The 21-day review period shall begin upon receipt of the analysis by the Director of the Division of Air Quality. After review by the Division of Air Quality the approving agency shall seek public

comments in accordance with its public participation policy. The agency making the conformity determination shall address all written comments received prior to close of the public comment period, and these comments and responses thereto shall be included in the final document. If the Division of Air Quality disagrees with the resolution of its comments, the conflict may be escalated to the Governor within 14 days and shall be resolved in accordance with 40 CFR 93.105(d). The 14-day appeal period shall begin upon receipt by the Director of the Division of Air Quality of the metropolitan planning organization's resolution that determines conformity.

(c) The agency that performs the conformity analysis shall notify the Division of Air Quality of:

- (1) any changes in planning or analysis assumptions [including land use and vehicle miles traveled (VMT) forecasts], and
- (2) any revisions to transportation plans or transportation improvement plans that add, delete, or change projects that require a new emissions analysis (including design scope and dates that change the transportation network existing in a horizon year).

Comments made by the Division of Air Quality and responses thereto made by the agency shall become part of the final planning document.

(d) Transportation plans shall satisfy the requirements of 40 CFR 93.106. Transportation plans and transportation improvement programs shall satisfy the fiscal constraints specified in 40 CFR 93.108. Transportation plans, programs, and FHWA/FTA projects shall satisfy the applicable requirements of 40 CFR 93.109 through ~~93.118~~ 93.119.

(e) Written commitments to implement control measures that are not included in the transportation plan and transportation improvement program (TIP) shall be obtained before a conformity determination and these commitments shall be fulfilled. Written commitments to implement mitigation measures shall be obtained before a positive conformity determination, and project sponsors shall comply with these commitments.

(f) A recipient of federal funds designated under Title 23 U.S.C. or the Federal Transit Act shall not adopt or approve a regionally significant highway or transit project, regardless of funding source, unless the requirements of 40 CFR Part 93 are fully complied with.

(g) The degree of specificity required in a transportation plan and the specific travel network assumed for air quality modeling shall not preclude the consideration of alternatives in the National Environmental Policy Act of 1969 process, in accordance with 40 CFR 93.107.

(h) When assisting or approving any action with air quality-related consequence, the Federal Highway Administration and the Federal Transit Administration of the Department of Transportation shall give priority to the implementation of those transportation portions of an applicable implementation plan prepared to attain and maintain the national ambient air quality standards as provided under 40 CFR 93.103. This priority shall be consistent with statutory requirements for allocation of funds among states or other jurisdictions.

*Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10).*

#### **15A NCAC 02D .2004 DETERMINING TRANSPORTATION-RELATED EMISSIONS**

(a) The procedures in 40 CFR 93.122 shall be used to determine regional transportation-related emissions.

(b) The procedures in 40 CFR 93.123 shall be used to determine localized carbon monoxide concentrations (hot-spot analysis).

*Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10).*

#### **15A NCAC 02D .2005 MEMORANDUM OF AGREEMENT**

(a) The Division of Air Quality shall develop and maintain a memorandum of agreement with the North Carolina Department of Transportation, the metropolitan planning organizations of the areas identified in 15A NCAC 02D Rule .2001(b), (c), or (d) of this Section, and the United States Department of Transportation to describe the participation and responsibilities of each of these agencies in implementing the requirements of this Section and 40 CFR Part 93. For those areas identified in Rule 15A NCAC 02D .2001(b), (c), or (d) of this Section for which there is no metropolitan planning organization, the North Carolina Department of Transportation shall represent those areas for the purposes of the memorandum of agreement. The memorandum of agreement shall include:

- (1) consultation procedures described under 40 CFR 93.105;
- (2) the projected time allotted for each agency to review and comment on or to respond to comments on transportation improvement programs, transportation plans, and transportation projects; and
- (3) consultation procedures for the development of State Implementation Plans that relate to transportation.

The contents of the Memorandum of Agreement shall comply with the criteria and procedures in the federal Clean Air Act Section 176(c) [42 U.S.C. 7401-7671q] and 40 CFR Part 51, Subpart T, 40 CFR Part 93, Subpart A, and Rules 15A NCAC 02D .2001 through ~~2004 of this Section~~, 2004.

(b) No recipient of federal funds (as defined at 40 CFR 93.101) designated under Title 23 U.S.C. or the Federal Transit Act shall adopt or approve or take any action to develop or implement a regionally significant highway or transit project unless such recipient has signed the Memorandum of Agreement established under this Rule. This Memorandum of Agreement shall bind the recipient to adhere to the conformity criteria and procedures of this Section.

(c) No agency shall adopt or approve or take any action to implement or develop any transportation plan, transportation improvement program, or federally funded or approved FHWA/FTA highway or transit project unless the agency has signed the Memorandum of Agreement established under this Rule. This Memorandum of Agreement shall bind the recipient to adhere to the conformity criteria and procedures of this Section.

(d) Each federal agency that participates in determinations of conformity to state and federal implementation plans shall sign the Memorandum of Agreement established under this Rule. This

Memorandum of Agreement shall bind the recipient to adhere to the conformity criteria and procedures of this Section.

*Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10).*

## SECTION .2200 – SPECIAL ORDERS

### 15A NCAC 02D .2201 PURPOSE

The purpose of this Section is to implement the provisions of G.S. 143-215.110 pertaining to the issuance of air quality Special Orders by the Environmental Management Commission.

*Authority G.S. 143-215.3(a)(1); 143-215.110.*

### 15A NCAC 02D .2202 DEFINITIONS

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

- (1) "Special Order" means a directive of the Commission to any person whom it finds responsible for causing or contributing to any pollution of the air of the State. The term includes all orders or instruments issued by the Commission pursuant to G.S. 143-215.110.
- (2) "Consent Order" means a Special Order into which the Commission enters with the consent of the person who is subject to the order.
- (3) "Special Order by Consent" means "Consent Order."

*Authority G.S. 143-212; 143-213; 143-215.3(a)(1); 143-215.110.*

### 15A NCAC 02D .2203 PUBLIC NOTICE

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

(b) Notice of proposed Consent Order:

- (1) The Director shall give notice pursuant to G.S. 143-215.110(a1).
- (2) The Director shall give notice of a proposed Consent Order at least 30 days prior to any final action regarding the Consent Order.
- (3) The notice shall be posted on the North Carolina Division of Air Quality web site at <http://deq.nc.gov/about/divisions/air-quality/air-quality-enforcement/special-orders-by-consent> and provided to those persons specified in G.S. 143-215.110(a1)(1) for air quality special orders.
- ~~(2)~~(4) The notice shall include at least the following:
  - (A) name, address, and telephone number of the Division;
  - (B) name and address of the person to whom the proposed order is directed;
  - (C) a brief summary of the conditions of the proposed order including the period of time in which action shall be taken to achieve compliance and the

major permit conditions or emission standards that the source will be allowed to exceed during the pendency of the order;

- (D) a brief description of the procedures to be followed by the Commission or Director in reaching a final decision on the proposed order, which shall include descriptions of the process for submitting comments and requesting a public hearing. The description shall specify that comments and requests for a public hearing are to be received by the Division within 30 days following the date of public notice; and
- (E) a description of the information available for public review, where it can be found, and procedures for obtaining copies of pertinent documents.

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

- (1) The Director shall consider all requests for a public hearing, and if he determines significant public interest for a public hearing exists, then he shall hold a public hearing.
- (2) The Director shall give notice of the public hearing at least 30 days before the hearing.
- (3) The notice shall be ~~advertised in a local newspaper~~ posted on the North Carolina Division of Air Quality web site at <http://deq.nc.gov/about/divisions/air-quality/air-quality-enforcement/special-orders-by-consent> and provided to those persons specified in G.S. 143-215.110(a1)(2) for air quality special orders.
- (4) The notice shall include the information specified in Subparagraph ~~(b)(2)~~(b)(4) of this Rule. It shall also state the time and location for the hearing along with procedures for providing comment.
- (5) The Chairman of the Commission or the Director shall appoint one or more hearing officers to preside over the public hearing and to receive written and oral comments. The hearing officer shall provide the Commission a written report of the hearing, which shall include:
  - (A) a copy of the public ~~notice published in the newspaper~~; notice;
  - (B) a copy of all the written comments and supporting documentation received;
  - (C) a summary of all the oral comments received;
  - (D) recommendations of the hearing officer to the Commission; and
  - (E) a proposed Consent Order for the Commission's consideration.



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

(e) The Director may satisfy the requirements in Paragraphs (b) and (c) of this Rule by issuing a notice that complies with both Paragraphs.

(f) Any Consent Order may be amended by the Director to incorporate minor modifications, such as modification of standard conditions to reflect updated versions, correction of typographical errors, or interim date extensions, in a consent order without public notice provided that the modifications do not extend the final compliance date by more than four months.

Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.3(a)(3); 143-215.3(a)(4); 143-215.110.

**15A NCAC 02D .2204 FINAL ACTION ON CONSENT ORDERS**

(a) The Director shall take final action for the Commission on Consent Orders for which a public hearing has not been held as provided in ~~Rule .2203 of this Section.~~ 15A NCAC 02D .2203. The final action on the proposed order shall be taken no later than 60 days following publication of the notice.

(b) The Commission shall take final action on Consent Orders for which a public hearing has been held as provided in ~~Rule .2203 of this Section.~~ 15A NCAC 02D .2203. The final action on the proposed order shall be taken no later than 90 days following the hearing.

Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.3(a)(4); 143-215.110.

**15A NCAC 02D .2205 NOTIFICATION OF RIGHT TO CONTEST SPECIAL ORDERS ISSUED WITHOUT CONSENT**

For any Special Orders other than Consent Orders, the Commission shall notify the person subject to the order of the procedure set out in G.S. 150B-23 to contest the Special Order.

Authority G.S. 143-215.2(b); 143-215.3(a)(1); 143-215.110(b).

\*\*\*\*\*

Notice is hereby given in accordance with G.S. 150B-21.2 that the Coastal Resources Commission intends to amend the rules cited as 15A NCAC 07H .2201, .2202, .2204, and. 2205.

**Link to agency website pursuant to G.S. 150B-19.1(c):**  
<http://deq.nc.gov/permits-regulations/rules-regulations/proposed-rules>

**Proposed Effective Date:** December 1, 2017

**Public Hearing:**

**Date:** July 12, 2017

**Time:** 1:30 p.m.

**Location:** Holiday Inn, 203 SW Greenville Blvd., Greenville, NC 27834

**Reason for Proposed Action:** *Section 07H .2200 defines specific development requirements for the construction of Freestanding Moorings. The Coastal Resources Commission is proposing to amend its administrative rules to expand this General Permit to include bird nesting poles as well as make this General Permit consistent with General Permit 07H .1200.*

**Comments may be submitted to:** *Braxton Davis, 400 Commerce Avenue, Morehead City, NC 28557; phone (252) 808-2808*

**Comment period ends:** August 14, 2017

**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
- Environmental permitting of DOT affected Analysis submitted to Board of Transportation
- Local funds affected
- Substantial economic impact (≥\$1,000,000)
- Approved by OSBM
- No fiscal note required by G.S. 150B-21.4

**CHAPTER 07 - COASTAL MANAGEMENT**

**SUBCHAPTER 07H - STATE GUIDELINES FOR AREAS OF ENVIRONMENTAL CONCERN**

**SECTION .2200 - GENERAL PERMIT FOR CONSTRUCTION OF FREESTANDING MOORINGS AND BIRD NESTING POLES IN ESTUARINE WATERS AND PUBLIC TRUST AREAS AND OCEAN HAZARD AREAS**

**15A NCAC 07H .2201 PURPOSE**

A general permit pursuant to this Section shall allow the construction of freestanding moorings and bird nesting poles in the estuarine waters and public trust areas AECs according to the procedures provided in 15A NCAC 07J .1100 and according to the rules in this Section. This permit shall not apply to waters adjacent to oceanfront shorelines or to waters and shorelines adjacent to the Ocean Hazard AEC with the exception of those shorelines that feature characteristics of the Estuarine Shoreline AEC. Such features include the presence of wetland vegetation,

## Hearing Officer's Suggested Hearing Comments

### INTRODUCTION

[Hearing officer]:

Good afternoon ladies and gentlemen. My name is Mr. Gerard P. Carroll. 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 afternoon we are conducting two hearings. During Hearing 1, we will take comments concerning the amendments to Rule 15A NCAC 02D .0405, Ozone. The rule is also proposed for re-adoption to meet the requirements of G.S.150B-21.3A, Periodic Review and Expiration of Existing Rules. During Hearing 2, we will take comments on the amendment and proposed re-adoption of air quality rules in several sections in 15A NCAC 02D to meet the requirements of G.S.150B-21.3A, Periodic Review and Expiration of Existing Rules. These hearings will be held in accordance with the North Carolina Administrative Procedures Act. The public notice for these hearings has been published on the North Carolina Office of Administrative Hearings website, in the North Carolina Register and Division of Air Quality website. The public notice also has been emailed to those on the DAQ email distribution list. I will enter the public notice and the proposed rule changes into the hearing record without reading them at this time.

It would be helpful if any person desiring to comment would 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 hearing and take relevant comments on the amendment and proposed readoption to the ozone rule.

The United States Environmental Protection Agency (USEPA) strengthened its NAAQS for ozone, also known as O<sub>3</sub>, on October 1, 2015 (80 FR 65291). These revisions are the result of USEPA's five-year periodic review of NAAQS as required by the Clean Air Act. USEPA revised the primary and secondary ozone standards from 0.075 ppm, set in 2008, to 0.070 ppm, while retaining the indicators (O<sub>3</sub>), forms (fourth-highest daily maximum, averaged across three consecutive years) and averaging times (eight hours).

A fiscal note was submitted to the Office of State Budget and Management (OSBM). OSBM reviewed the Division of Air Quality's proposed change to rule 15A NCAC 02D .0405 in accordance with G.S. 150B-21.4. OSBM determined the rule changes have minimal state, unlikely private sector, and no local or substantial impacts.

[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 August 14, 2017, for additional written comments.

**[Hearing 2]:**

I will now open the hearing and take relevant comments on the amendment and proposed readoption of air quality rules in several sections in 15A NCAC 02D to meet the requirements of G.S.150B-21.3A, Periodic Review and Expiration of Existing Rules.

Pursuant to S.L. 2013-413 rules in several sections in 15A NCAC 02D are proposed for initial readoption with primarily minor administrative updates, one section of rules is proposed for readoption as a repeal, and three rules initially readopted through the report phase of the process as necessary without substantive public interest are proposed for amendment.

**Section .0100 - Definitions and References**

The rules in Section .0100 include definitions and references that apply throughout Subchapter 02D unless specified otherwise in a particular rule. 15A NCAC 02D .0101 is proposed for readoption with amendments to update format of units and references and .0103, .0104, and .0105 for amendment to update agency name and addresses, include web addresses where referenced documents may be obtained, and update references to document costs.

**Section .0200 - Air Pollution Sources**

The rules in Section .0200 reflect the system used to classify air pollution sources of importance in establishing the air quality program and the agency authority to require registration of such sources. 15A NCAC 02D .0201-.0202 are proposed for readoption.

**Section .0300 - Air Pollution Emergencies**

The rules in Section .0300 address prevention of buildup of air contaminants during an air pollution episode in order to prevent a public health emergency. 15A NCAC 02D .0301 and .0303-.0304, are proposed for readoption with amendments to update format of references. 02D .0302 is proposed for readoption with amendments to update who proclaims air quality alerts and warnings and declarations of emergency at various pollutant levels requiring abatement actions to the Secretary's level with concurrence of the Governor, to remove obsolete pollutant levels triggering such proclamations or declarations and update format of units for consistency. 02D

.0305, .0306, and .0307 are proposed for readoption with amendments to reference the open burning rule and eliminate redundant language in Paragraph (4).

### **Section .0400 - Ambient Air Quality Standards**

The rules in Section .0400 contain the ambient air quality standards and associated monitoring methodologies for the state and reflect the National Ambient Air Quality Standards (NAAQS). 15A NCAC 02D .0401., .0409, and .0410 are proposed for readoption with amendments to update format of references and acronyms and .0402, .0404, .0407, and .0408 are proposed for readoption.

### **Section .1300 - Oxygenated Gasoline Standard**

Section .1300 establishes requirements for use of gasoline with certain oxygen content in carbon monoxide (CO) nonattainment or maintenance areas. 15A NCAC 02D Section .1300 is proposed for repeal because the measures were part of a contingency plan for the CO NAAQS and the limited maintenance plan for CO has now expired.

### **Section .2000 - Transportation Conformity**

Section .2000 reflects federally set requirements to assure conformity of federal, state, or local funded transportation projects and plans with plans for attainment and maintenance of NAAQS for areas designated nonattainment or maintenance. 15A NCAC 02D .2001-.2005 are proposed for readoption. 02D .2001 is proposed for readoption with amendments to remove obsolete references to affected areas based on current attainment status, update internal paragraph references, include clarifying reference to 40 CFR 93.119 regarding provisions for areas without motor vehicle emissions budgets, and clarify duration of applicability to maintenance areas. 02D .2002 and .2004 are proposed for readoption and .2003 and .2005 for readoption with updates to format of references.

### **Section .2200 – Special Orders**

Section .2200 lays out procedures to be followed for establishing Special Orders by Consent to achieve compliance with air quality requirements in 15A NCAC 02D or 02Q consistent with the requirements of G.S. 143-215.110. 15A NCAC 02D .2201-.2202 and .2205 are proposed for

readoption, .2203 is proposed for readoption with amendments to update the rule for consistency with the statutory language in G.S. 143-15.110(a1)(2) specifying online posting, and .2204 is proposed for readoption with amendments to update format of references.

A regulatory impact analysis was submitted to the Office of State Budget and Management (OSBM). OSBM determined the rule changes have little to no impact on state or local governments and no substantial economic impact.

[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 August 14, 2017, for additional written comments.



## CHAPTER V

## COMMENTS DURING THE COMMENT PERIOD

## INDEX OF COMMENTERS

*(Please note that the index is hyperlinked for customer service.)*

<u>NAME</u>	<u>REPRESENTING</u>	<u>PAGE</u>
R. Scott Davis	United States Environmental Protection Agency, Region 4	V-2
Terry Lansdell	Clean Air Carolina	V-3



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

August 14, 2017

Michael A. Abraczinskas, Director  
Division of Air Quality  
North Carolina Department of Environmental Quality  
1641 Mail Service Center  
Raleigh, North Carolina 27699-1641

Dear Mr. Abraczinskas:

Thank you for the opportunity to review your proposed revisions to North Carolina's State Implementation Plan regarding the Readoption of Group 1 Air Quality Rules and Incorporation of the 2015 8-hour Ozone National Ambient Air Quality Standards. These revisions were the subject of a public comment period beginning June 15, 2017, with written comments due by the close of business on August 14, 2017. We have completed our review of the submittal and offer no comments 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, Air Regulatory Management Section at (404) 562-9040, or have your staff contact Ms. Nacosta Ward at (404) 562-9140.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Scott Davis".

R. Scott Davis  
Chief  
Air Planning & Implementation Branch



August 11, 2017

Joelle Burleson, EIT, CPM  
Rules Development Branch Supervisor  
Division of Air Quality, Planning Section  
North Carolina Department of Environmental Quality

RE: 08-03-2017 Hearings- Incorporation of 2015 Ozone Ambient Standard and Readoption of Group 1 Air Quality Rules

Dear Joelle,

We thank you for the opportunity to present our interest and concern over the NCAC rules in this periodic rule review process. This process is so very important to North Carolina residents, these air quality rules and regulations are first line of defense for public health protection from polluters and pollution generated in North Carolina.

Specifically, we embrace the opportunity to support the amendments to rule 15A NCAC 02D.405 to adjust the ozone standard to match the national ambient air quality standards (NAAQS). This effort would reinforce the amazing work of local, regional and state agencies to reduce pollutants that form ozone in our community. It should be noted and that the strengthening of the ozone standard from 75 to 70 ppb will prevent deaths and improve health outcomes here in Charlotte and across the state.

Sincerely,

A handwritten signature in black ink that reads "Terry Lansdell". The signature is written in a cursive style with a large initial "T".

Terry Lansdell  
Program Director  
Clean Air Carolina  
Medical Advocates for Healthy Air  
980-213-6446  
[www.cleanaircarolina.org](http://www.cleanaircarolina.org)  
[www.medicaladvocatesforhealthyair.org](http://www.medicaladvocatesforhealthyair.org)



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## CHAPTER VI

## INDEX OF ATTACHMENTS

*(Please note that the index is hyperlinked for customer service.)*

<u>ATTACHMENTS</u>	<u>PAGE</u>
1. Fiscal Note	VI-2
2. Federal Register Notice, 40 CFR Part 50, 51, 52, et al. National Ambient Air Quality Standards for Ozone; Final Rule	VI-5

**ENVIRONMENTAL MANAGEMENT COMMISSION  
FISCAL NOTE FOR PROPOSED AMENDMENT AND READOPTION TO THE  
OZONE NATIONAL AMBIENT AIR QUALITY STANDARDS RULE**

<b>Rule Adoptions:</b>	None
<b>Rule Amendments / Readoption:</b>	15A NCAC 02D .0405, Ozone
<b>Rule Repeals:</b>	None
<b>Rule Topic:</b>	Revisions to Ozone Standards
<b>DEQ Division:</b>	Division of Air Quality
<b>Agency Contact:</b>	Joelle Burleson, Rule Development Branch Supervisor Division of Air Quality (DAQ) (919) 707-8720 <a href="mailto:Joelle.Burleson@ncdenr.gov">Joelle.Burleson@ncdenr.gov</a>
<b>Analyst:</b>	Matthew Davis, Environmental Specialist Division of Air Quality (DAQ) (919) 707-8707 <a href="mailto:Matthew.Davis@ncdenr.gov">Matthew.Davis@ncdenr.gov</a>
<b>Impact Summary:</b>	State government: Minimal Local government: No Substantial impact: No Private Sector: Unlikely
<b>Statutory Authority:</b>	G.S. 143-215.3(a)(1); 143-215.107(a)(3).
<b>Necessity:</b>	To update and readopt the ambient standards for Ozone in Rule 15A NCAC 02D .0405, Ozone. These proposed rule changes are necessary to comply with federal regulations.

## **I. Certificate of Federal Requirement**

The United States Environmental Protection Agency (USEPA) strengthened its primary and secondary National Ambient Air Quality Standards (NAAQS) for ground-level ozone on October 1, 2015. Primary standards provide public health protection, including the health of “sensitive” populations such as asthmatics, children, and the elderly. Secondary standards provide public welfare protection, including protection against decreased visibility and damage to animals, crops, vegetation, and buildings. The USEPA recently determined that the 2008 primary and secondary ground-level ozone standard of 0.075 parts per million (ppm) is not adequate to protect public health and welfare from known or anticipated adverse effects. Based

on its review of the air quality criteria for ozone and related photochemical oxidants and NAAQS, USEPA revised the primary and secondary ground-level ozone standard to 0.070 ppm pursuant to Clean Air Act (CAA) Sections 108 and 109.

The ozone monitoring season has been expanded by one month to ensure compliance with the 2008 and 2015 ozone NAAQS, and to ensure citizens are alerted when ozone reaches levels of concern. However, the indicators, forms, and averaging times (the annual fourth-highest daily maximum 8-hour concentration, averaged over 3 consecutive years) have been retained. There are currently 4 ozone monitors operating year-round which will not be affected by the rule. However, there are labor costs for incorporating the one-month change to several existing ozone monitors. Labor for each monitor is approximately \$270 each month (\$30/hr, for 3 hours, over 3 days). This new regulation will affect 26 existing monitors, so there's a new total labor cost of approximately \$7,020. No new monitors will be installed, and there's no additional cost for electricity or audits to existing units. The monitoring season changes are effective January 1, 2017.

In accordance with the requirements outlined in G.S. §150B-19.1(g) and §150B-21.3A, the DAQ is proposing to amend and readopt rule 15A NCAC 02D .0405, Ozone. The amendment is identical to 40 CFR 50.19 that the DAQ is required to implement in accordance with CAA section 107(a): “Each State shall have the primary responsibility for assuring air quality within the entire geographic area comprising such State by submitting an implementation plan for such State which will specify the manner in which national primary and secondary ambient air quality standards will be achieved and maintained within each air quality control region in such State.”

The primary benefit of this set of amendments is to address applicability consistent with the requirements of the CAA and ensure approval of the state implementation plan (SIP) by USEPA. Without the proposed rule change, USEPA will not be able to approve the current version of the plan. If the state does not have a plan that meets federal requirements, the USEPA approval can require corrective action within required timeframes or implement a federal implementation plan (FIP) for North Carolina. A FIP may require solutions that are not the best to fit a particular area and are less preferable than having a state-controlled program.

The USEPA intends to provide final air quality designations by October 1, 2017. Based on the 2013 – 2015 certified ambient monitoring data, the design values for all ozone monitors in North Carolina are below the revised 2015 8-hour ozone NAAQS.<sup>1</sup> In addition, for 2016, based on preliminary data recorded through September 11, the design values for all ozone monitors in North Carolina are below the revised 2015 ozone standard.<sup>2</sup> Therefore, North Carolina is recommending that all counties in North Carolina be designated as “Attainment” for the revised 8-hour ozone standard. As such, the DAQ anticipates unlikely private sector and minimal state impacts.

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<sup>1</sup> NCDEQ. Division of Air Quality. Ozone Design Values for 2013 – 2015 in NC Counties  
<https://deq.nc.gov/node/83248/>

<sup>2</sup> NCDEQ. Division of Air Quality. Preliminary Ozone Design Values for 2014 – 2016 in NC Counties  
[https://ncdenr.s3.amazonaws.com/s3fs-public/Air%20Quality/planning/attainment/mapping/NC\\_Ozone%20Design\\_Values\\_2014\\_2016.jpg](https://ncdenr.s3.amazonaws.com/s3fs-public/Air%20Quality/planning/attainment/mapping/NC_Ozone%20Design_Values_2014_2016.jpg)

## II. Conclusion

The DAQ does not expect NC counties to exceed the new ozone standard in the foreseeable future. Over the past decade, NC has implemented substantial, progressive emissions reductions that have resulted in statewide attainment of the 1997 8-hour and 2008 8-hour ozone standards. NC has historically accomplished attainment of the ozone NAAQS within CAA timelines through hard work with local, state, and federal partners. The partnerships allow for effective planning for optimum control measures or strategies to bringing an area into attainment and maintain the area in compliance with the federal standards. Currently, ozone concentrations in NC are attaining the 1997, 2008, and 2015 primary and secondary standards.

No direct economic impacts are expected for state or local governments if the ozone standard is exceeded. This is especially true since NC's final and preliminary design values<sup>1,2</sup> are attaining the 2015 standard. However, indirect impacts to industry may occur in the unlikely event that the state is designated nonattainment based on 2017 ozone season data. The impacts may include new requirements for facilities to install air pollution control equipment or may have various operational limits. If such control measures are needed, the DAQ would initiate rulemaking consistent with the timelines codified in the CAA; and in the process, seek approval from the EMC and the stakeholder community. Also, several voluntary measures may be implemented such as utilizing mass transit, riding bikes, carpool lanes, reducing vehicle idling, alter fuel formulations, and other various methods to reduce pollutants.



**Federal Register Notice**

The text of the final rule is not included in the hearing record. It can be found with the following information:

**Final Rule Title:**

40 CFR Part 50, 51, 52, et al. National Ambient Air Quality Standards for Ozone; Final Rule

**Issue Date:**

Monday, October 26, 2015

**Volume/Issue:**

*Federal Register* Volume 80, Number 206

**Pages:**

65292 - 65468

**Agency/Docket Numbers:**

EPA-HQ-OAR-2008-0699

FRL-9933-18-OAR

**RIN Number:**

2060-AP38

**Effective Date:**

December 28, 2015

**Website:**

<https://www.gpo.gov/fdsys/pkg/FR-2015-10-26/pdf/2015-26594.pdf>

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## 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 31, Issue 24, pages 2463-2478.
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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