

Regulatory Impact Analysis

Rule Topic: Revisions to Source Reduction and Recycling Report Requirement Rules to Reflect S.L. 2014-120 (530)

Rules Citation: 15A NCAC 02Q .0206 *PAYMENT OF FEES*
15A NCAC 02Q .0304 *APPLICATIONS*
15A NCAC 02Q .0507 *APPLICATION*

DENR Division: Division of Air Quality

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

Authority: G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108; S.L. 2014-120.

Necessity: The General Assembly enacted Session Law 2014-120 (S.L. 2014-120) on September 18, 2014 to require the Environmental Management Commission (EMC) to eliminate outdated air quality reporting requirement rules that pertain to source reduction and recycling. Section 38.(c) of the Session Law repealed G.S. 143-215.108(g) which was the underlying requirement that sources submit a written description of their current and projected plans to reduce emissions of air contaminants by source reduction and recycling with their air permit applications for new facilities and for modifications. This requirement was determined to be unnecessary and its repeal reduces burden on permit applicants. Three Division of Air Quality (DAQ) rules need to be amended to reflect the session law repeal of the outdated requirement and involve paragraph renumbering: namely, 15A NCAC 02Q .0206 Payment of Fee; .0304, Applications; and .0507, Application (see text of the proposed rule changes in the Appendix).

I. Executive Summary

The purpose of this regulatory impact analysis is to evaluate the costs and benefits associated with the mandatory revisions to three air quality rules associated with source reduction and recycling report requirements to reflect the provisions of Section 38.(c) of S.L. 2014-120, “An act to provide further regulatory relief to the Citizens of North Carolina by providing for various administrative reforms, by eliminating certain unnecessary or outdated statutes and regulations, and by modernizing or simplifying cumbersome and outdated regulations, and by making other statutory changes.” S.L. 2014-120 repeals the statutory requirements to report source

reduction and recycling plans which in turn requires the EMC to amend the corresponding rules; therefore, any impact from these changes stems from the session law and not actual conforming amendments to the rule.

As a result of S.L. 2014-120, Section 38.(g), three DAQ rules need amendment to reflect the repeal of the outdated statutory requirement and involve paragraph renumbering: namely, 15A NCAC 02Q .0206, Payment of Fee; .0304, Applications; and .0507, Application. These requirements were determined to be of no longer useful value and their repeal reduces burden on permit applicants to report their plans for source reduction and recycling. These rule amendments do not cause substantial economic impacts, as defined in the Administrative Procedure Act in N.C.G.S. 150B-21.4(b1), meaning that the estimated impacts exceed \$1,000,000 in a 12-month period. The amendments do not cause impacts on state or local funds, but private sector impacts are estimated to be approximately \$530,000.

II. Background

The intent of the reporting requirement in rules 15A NCAC 02Q Sections .0200 - Permit Fees, .0300 - Construction and Operating Permits, and .0500 - Title V Procedures was to encourage facilities to consider source reduction and recycling as a means of pollution prevention. Now many secondary materials have enough value making it worthwhile to recycle without government intervention. Instead of facilities reporting information, the NC Department of Environment and Natural Resources has developed web sites to help connect those that produce recyclable materials and fuels with matching collectors, processors, and end users.¹ The DAQ began implementing the provisions of the repeal when it became effective on September 18, 2014 by discontinuing the requirement for permit holders to report their source reduction and recycling plans.

III. Description of Existing Rules 15A NCAC 02Q .0206, .0304, and .0507

15A NCAC 02Q .0206 – *Payment of Fees*. This rule requires permit holders to report their plans for source reduction and recycling along with the annual permit fee payment.

15A NCAC 02Q .0304 - *Applications*. This rule requires non-Title V permit holders to report their plans for source reduction and recycling along with their permit application.

15A NCAC 02Q .0507 - *Application*. This rule requires Title V permit holders to report their plans for source reduction and recycling along with their permit application.

Note that G.S. 143-215.108(g) contained the same language in its first two sentences as mentioned in the three rules above, but also included the following language in its third sentence: “The written description required by this subsection shall not be considered part of a permit application and shall not serve as the basis for the denial of a permit or permit modification.” DAQ interpreted the third sentence to mean there would not be any adverse consequences for not reporting any source reduction and recycling information. In addition, DAQ had developed a one-page form (Form A4) to simplify the reporting for source reduction and recycling which was used as the report submittal by all permitted facilities. Review of a few hundred recent Form A4 submittals showed that more than 90 percent only contained the facility’s name and contact information without any specific information reported on source reduction and recycling plans. Given that most Form A4s contained no relevant content and if they did have content there was no subsequent data processing for it, Form A4 held little value

¹ See <http://www.p2pays.org/dmrm/start.aspx> and <http://www.ncwastetrader.org/home.aspx>

and warranted minimal priority in handling. Its absence in future DAQ and local programs' workload level will not result in any staffing level changes or redistribution of any funds, and therefore is considered too negligible for which to estimate a meaningful cost savings.

Table 1 presents the cost estimate for the baseline condition for permit holders when source reduction and recycling reporting was a requirement under the prior practice of submitting a Form A4. There are approximately 3,650 permitted facilities in North Carolina including those permitted by the DAQ and the three local programs. Conservative estimates are used as the basis for the overall percentage of facilities submitting Form A4 with and without content, the level of effort (Labor hours per facility) with and without Form A4 content, and the average labor cost (\$100/hour). Table 1 shows that the total cost estimate for the baseline is approximately \$530,000 over a 12-month period, well below the \$1,000,000 threshold for substantial economic impacts, as defined in the Administrative Procedure Act in N.C.G.S. 150B-21.4(b1).

Table 1. Cost Estimate for Source Reduction and Recycling Reporting via Form A4 Submittals

Estimates for Form A4 Submittals	Facilities	Labor hours per facility	Labor cost, \$/hr	Cost, \$
Total number of facilities	3,650			
Facility submittals with Form A4 content (assumed 10%)	365	10 ^a	100 ^b	365,000
Facility submittals without Form A4 content (assumed 90%)	3,285	0.5 ^c	100 ^b	164,250
Total for Form A4 submittals				529,250

^a Estimates from three contractors providing permitting service indicated that it took up to four hours on average to complete Form A4 if there were detailed content on source reduction and recycling plans; DAQ's conservative estimate assumed 10 hours for such an effort.

^b Estimates from the same three contractors indicated that the billable labor rate for engineers to complete Form A4 averaged \$80/hour - \$90/hour; DAQ's conservative estimate assumed \$100/hour labor rate.

^c Estimates are that it took up to five minutes to make a copy of the previous Form A4 submittal when there was no content; DAQ's conservative estimate assumed 30 minutes or 0.5 labor hours for such an effort.

IV. Motivation for the Proposed Changes

The motivation for the S.L. 2014-120 statute and the ensuing proposed rules is to reduce the economic impact of environmental rules found to be unnecessary without any loss of air quality.

V. Identification of the Affected Sources

Affected sources will be all 3,650 Title V and non-Title V permitted facilities in the state.

VI. Conclusions

The DAQ began implementing the provisions of Section 38.(g) of the S.L. 2014-120 when it became effective on September 18, 2014. The revision to rules 15A NCAC 02Q .0206, *Payment of Fee*; .0304, *Applications*; and .0507, *Application*, removes the need for permit holders to report their source reduction and recycling plans. These rule amendments do not cause substantial economic impacts, as defined in the Administrative Procedure Act in N.C.G.S. 150B-21.4(b1), meaning that the estimated impacts exceed \$1,000,000 in a 12-month period. The rule amendments are *de minimis* and do not have any impact on state or local funds, therefore this regulatory impact analysis was prepared because a fiscal note is not required for amendment of rules with estimated impacts less than \$1,000,000.

1 **APPENDIX A**

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3 15A NCAC 02Q .0203 is proposed for amendment as follows:
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5 **15A NCAC 02Q .0206 PAYMENT OF FEES**

6 (a) Payment of fees required under this Section may be by check or money order made payable to the N.C.
7 Department of ~~Environment, Environment-Health~~ and Natural Resources. Annual permit fee payments shall
8 refer to the permit number.

9 (b) If, within 30 days after being billed, the permit holder fails to pay an annual fee required under this Section,
10 the Director may initiate action to terminate the permit under Rule .0309 or .0519 of this Subchapter, as
11 appropriate.

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

14 ~~(d) The permit holder shall submit a written description of current and projected plans to reduce the emissions of~~
15 ~~air contaminants by source reduction and recycling in accordance with G.S. 143-215.108(g) along with the~~
16 ~~annual permit fee payment. The description shall include a summary of activities related to source reduction~~
17 ~~and recycling and a quantification of air emissions reduced and material recycled during the previous year and a~~
18 ~~summary of plans for further source reduction and recycling.~~

19 ~~(e)~~ (d) The payment of the permit application fee required by this Section shall accompany the application and is
20 non-refundable.

21 ~~(f)~~ (e) The Division shall annually prepare and make publicly available an accounting showing aggregate fee
22 payments collected under this Section from facilities which have obtained or will obtain permits under Section
23 .0500 of this Subchapter except synthetic minor facilities and showing a summary of reasonable direct and
24 indirect expenditures required to develop and administer the Title V permit program.

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26 *History Note: Filed as a Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the*
27 *permanent*

28 *rule becomes effective, whichever is sooner;*

29 *Authority G.S. 143-215.3(a)(1),(1a),(1b),(1d); ~~143-215.108~~; 150B-21.6;*

30 *Amended Eff. _____; Eff. July 1, 1994.*
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1 **15A NCAC 02Q .0304 is proposed for amendment as follows:**

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

4 (a) Obtaining and filing application. Permit, permit modification, or permit renewal applications may be
5 obtained and shall be filed in writing according to Rule .0104 of this Subchapter.

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

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

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

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

13 (2) for a new facility or an expansion of existing facility in an area without zoning, an affidavit and
14 proof of publication of a legal notice as required under Rule .0113 of this Subchapter;

15 ~~(3) for a new facility or modification of an existing facility, a written description of current and~~
16 ~~projected plans to reduce the emissions of air contaminants by source reduction and recycling according~~
17 ~~to G.S. 143-215.108(g); the description shall include:~~

18 (A) ~~for an existing facility, a summary of activities related to source reduction and~~
19 ~~recycling and a quantification of air emissions reduced and material recycled during~~
20 ~~the previous year and a summary of plans for further source reduction and recycling; or~~

21 (B) ~~for a new facility, a summary of activities related to and plans for source reduction and~~
22 ~~recycling; and~~

23 ~~(4)~~ (3) for permit renewal, an emissions inventory that contains the information specified under 15A
24 NCAC 02D .0202, Registration of Air Pollution Sources (the applicant may use emission inventory
25 forms provided by the Division to satisfy this requirement); and

26 ~~(5)~~ (4) documentation showing the applicant complies with Parts (A) or (B) of this Subparagraph if the
27 Director finds this information necessary to evaluate the source, its air pollution abatement equipment,
28 or the facility:

29 (A) The applicant is financially qualified to carry out the permitted activities, or

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

(c) When to file application. For sources subject to the requirements of 15A NCAC 02D .0530 (prevention of significant deterioration) or .0531 (new source review for sources in nonattainment areas), applicants shall file air permit applications at least 180 days before the projected construction date. For all other sources, applicants shall file air permit applications at least 90 days before the projected date of construction of a new source or modification of an existing source.

(d) Permit renewal, name, or ownership changes with no modifications. If no modification has been made to the originally permitted source, application for permit change may be made by letter to the Director at the address specified in Rule .0104 of this Subchapter. The permit renewal, name, or ownership change letter must state that there have been no changes in the permitted facility since the permit was last issued. However, the Director may require the applicant for ownership change to submit additional information, if the Director finds the following information necessary to evaluate the applicant for ownership change, showing that:

(1) The applicant is financially qualified to carry out the permitted activities, or

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

To make a name or ownership change, the applicant shall send the Director the number of copies of letters specified in Rule .0305(a)(3) or (4) of this Section signed by a person specified in Paragraph (j) of this Rule.

(e) Applications for date and reporting changes. Application for changes in construction or test dates or reporting procedures may be made by letter to the Director at the address specified in Rule .0104 of this Subchapter. To make changes in construction or test dates or reporting procedures, the applicant shall send the Director the number of copies of letters specified in Rule .0305(a)(5) of this Section signed by a person specified in Paragraph (j) of this Rule.

(f) When to file applications for permit renewal. Applicants shall file applications for renewals such that they are mailed to the Director at the address specified in Rule .0104 of this Subchapter and postmarked at least 90 days before expiration of the permit.

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

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

(i) Requesting additional information. Whenever the information provided on the permit application forms does not adequately describe the source and its air cleaning device, the Director may request that the applicant provide any other information that the Director considers necessary to evaluate the source and its air cleaning device. Before acting on any permit application, the Director may request any information from an applicant and

1 conduct any inquiry or investigation that he considers necessary to determine compliance with applicable
2 standards.

3 (j) Signature on application. Permit applications submitted pursuant to this Rule shall be signed as follows:

4 (1) for corporations, by a principal executive officer of at least the level of vice-president, or his duly
5 authorized representative, if such representative is responsible for the overall operation of the facility
6 from which the emissions described in the permit application form originates;

7 (2) for partnership or limited partnership, by a general partner;

8 (3) for a sole proprietorship, by the proprietor;

9 (4) for municipal, state, federal, or other public entity, by a principal executive officer, ranking elected
10 official, or other duly authorized employee.

11 (k) Application fee. With the exceptions specified in Rule .0203(i) of this Subchapter, a non-refundable permit
12 application processing fee shall accompany each application. The permit application processing fees are defined
13 in Section .0200 of this Subchapter. A permit application is incomplete until the permit application processing
14 fee is received.

15 (l) Correcting submittals of incorrect information. An applicant has a continuing obligation to submit relevant
16 facts pertaining to his permit application and to correct incorrect information on his permit application.

17 (m) Retaining copy of permit application package. The applicant shall retain for the duration of the permit term
18 one complete copy of the application package and any information submitted in support of the application
19 package.
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21 *History Note: Authority G.S. 143-215.3(a)(1); 143-215.108;*

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

24 *Eff. July 1, 1994;*

25 *Amended Eff. _____; Amended Eff. January 1, 2009; December 1, 2005; July 1, 1999.*
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1 **15A NCAC 02Q .0507 is proposed for amendment as follows:**

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

4 (a) Except for:

5 (1) minor permit modifications covered under Rule .0515 of this Section,

6 (2) significant modifications covered under Rule .0516(c) of this Section, or

7 (3) permit applications submitted under Rule .0506 of this Section,

8 the owner or operator of a source shall have one year from the date of beginning of operation of the source to
9 file a complete application for a permit or permit revision. However, the owner or operator of the source shall
10 not begin construction or operation until he has obtained a construction and operation permit pursuant to Rule
11 .0501(c) or (d) and Rule .0504 of this Section.

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

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

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

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

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

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

30 (2) for a new facility or an expansion of an existing facility in an area without zoning, an affidavit and
31 proof of publication of a legal notice as required under Rule .0113 of this Subchapter; and

1 ~~(3) for a new facility or modification of an existing facility, a written description of current and~~
2 ~~projected plans to reduce the emissions of air contaminants by source reduction and recycling in~~
3 ~~accordance with G.S. 143-215.108(g); the description shall include:~~

- 4 ~~(A) — for an existing facility, a summary of activities related to source reduction and recycling~~
5 ~~and a quantification of air emissions reduced and material recycled during the previous~~
6 ~~year and a summary of plans for further source reduction and recycling; or~~
7 ~~(B) — for a new facility, a summary of activities related to and plans for source reduction and~~
8 ~~recycling; and~~

9 ~~(4) (3)~~ if required by the Director, information showing that:

- 10 (A) The applicant is financially qualified to carry out the permitted activities, or
11 (B) The applicant has substantially complied with the air quality and emissions standards
12 applicable to any activity in which the applicant has previously been engaged, and has
13 been in substantial compliance with federal and state environmental laws and rules.

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

- 15 (1) for sources subject to the requirements of 15A NCAC 02D .0530, .0531, or .1200, six copies plus
16 one additional copy for each affected state that the Director has to notify;
17 (2) for sources not subject to the requirements of 15A NCAC 02D .0530, .0531, or .1200, four copies
18 plus one additional copy for each affected state that the Director has to notify.

19 The Director may at any time during the application process request additional copies of the complete
20 application package from the applicant.

21 (f) Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit
22 application shall, upon becoming aware of such failure or incorrect submittal, submit, as soon as possible, such
23 supplementary facts or corrected information. In addition, an applicant shall provide additional information as
24 necessary to address any requirements that become applicable to the source after the date he filed a complete
25 application but prior to release of a draft permit.

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

28 (h) The submittal of a complete permit application shall not affect the requirement that any facility have a
29 preconstruction permit under 15A NCAC 02D .0530, .0531, or .0532 or under Section .0400 of this Subchapter.

30 (i) The Director shall give priority to permit applications containing early reduction demonstrations under
31 Section 112(i)(5) of the federal Clean Air Act. The Director shall take final action on such permit applications as
32 soon as practicable after receipt of the complete permit application.

(j) With the exceptions specified in Rule .0203(i) of this Subchapter, a non-refundable permit application processing fee shall accompany each application. The permit application processing fees are defined in Section .0200 of this Subchapter. Each permit or renewal application is incomplete until the permit application processing fee is received.

(k) The applicant shall retain for the duration of the permit term one complete copy of the application package and any information submitted in support of the application package.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108;
Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. July 1, 1994;
Amended Eff. July 1, 1997; July 1, 1996; February 1, 1995;
Temporary Amendment Eff. December 1, 1999;
Amended Eff. _____; Amended Eff. April 1, 2004; July 1, 2000.

APPENDIX B**SESSION LAW 2014-120
SENATE BILL 734**

AN ACT TO PROVIDE FURTHER REGULATORY RELIEF TO THE CITIZENS OF NORTH CAROLINA BY PROVIDING FOR VARIOUS ADMINISTRATIVE REFORMS, BY ELIMINATING CERTAIN UNNECESSARY OR OUTDATED STATUTES AND REGULATIONS AND MODERNIZING OR SIMPLIFYING CUMBERSOME OR OUTDATED REGULATIONS, AND BY MAKING VARIOUS OTHER STATUTORY CHANGES

ELIMINATE OUTDATED AIR QUALITY REPORTING REQUIREMENTS

SECTION 38.(a) G.S. 143-215.3A reads as rewritten:

"§ 143-215.3A. Water and Air Quality Account; use of application and permit fees; Title V Account; I & M Air Pollution Control Account; reports.

...

(c) The Department shall report to the Environmental Review Commission and the Fiscal Research Division on the cost of the State's environmental permitting programs contained within the Department on or before 1 November of each year. In addition, the Department shall report to the Environmental Review Commission and the Fiscal Research Division on the cost of the Title V Program on or before 1 November of each year. The reports report shall include, but are is not limited to, fees set and established under this Article, fees collected under this Article, revenues received from other sources for environmental permitting and compliance programs, changes made in the fee schedule since the last report, anticipated revenues from all other sources, interest earned and any other information requested by the General Assembly."

SECTION 38.(b) The following sections of S.L. 2002-4 are repealed:

- (1) Section 10.
- (2) Section 11, as amended by Section 12 of S.L. 2006-79 and S.L. 2010-142.
- (3) Section 12.
- (4) Section 13.

SECTION 38.(c) G.S. 143-215.108(g) is repealed.

North Carolina General Statute 143-215.108

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(g) Any person who is required to hold a permit under this section shall submit to the Department a written description of his current and projected plans to reduce the emission of air contaminants under such permit by source reduction or recycling. The written description shall accompany the payment of the annual permit fee. The written description shall also accompany any application for a new permit, or for modification of an existing permit, under this section. The written description required by this subsection shall not be considered part of a permit application and shall not serve as the basis for the denial of a permit or permit modification.