

Regulatory Impact Analysis

Rule Citation Number 15A NCAC 02D .1100 and .1200, 15A NCAC 02Q .0700

Rule Topic: Readoption of Several Rules in 15A NCAC 02D .1100 and .1200, and 15A NCAC 02Q .0700

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Impact Summary:

State government:	No
Local government:	No
Substantial impact:	No
Private Sector:	No

Authority: G.S. 143-215.3(a)(1); 143-215.107(a)(3); 143-215.107(a)(5); 143-215.107(a)(7); 143-215.108(b)

Necessity: The proposed amendments readopt several rules in 15A NCAC 02D .1100 and .1200, and 15A NCAC 02Q .0700 pursuant to requirements of G.S. 150B-21.3A.

I. Executive Summary

The purpose of this document is to provide a regulatory impact analysis addressing the fiscal impacts associated with the readoption and amendments to rules in 15A NCAC 02D .1100, Control of Toxic Air Pollutants, and .1200, Control of Emissions from Incinerators, and 15A NCAC 02Q .0700, Permit Exemptions, pursuant to requirements of S.L. 2013-413 and G.S. 150-B.

A fiscal and regulatory impact analysis is required for readoptions if **all** of the following criteria apply:

- The rule is readopted with substantive change;
- The change results in state, local or substantial impact; and
- A rule in the package proposed to be adopted together creates a net cost on any part of the regulated community.

G.S. 150B-21.3A(d)(2) states that “If a rule is readopted without substantive change or the rule is amended to impose a less stringent burden on regulated persons, the agency is not required to prepare a fiscal note as provided by G.S. 150B-21.4.”

G.S. 150B-21.4(d) states that “If an agency proposes the repeal of an existing rule, the agency is not required to prepare a fiscal note on the proposed rule change as provided by this section.”

The proposed readoptions consist primarily of administrative updates that have minimal impact to the State and do not rise to the level of substantial impact to the regulated community.

II. Background

N.C. Gen. Stat. §150B-21.3A, adopted in 2013, requires state agencies to review existing rules every 10 years. Following an initial review, rules will be reviewed on a 10-year review cycle. The initial review comment period on all of the air quality rules in 15A NCAC 02D, Air Pollution Control Requirements, and 15A NCAC 02Q, Air Quality Permits Procedures, was held from March 13, 2015 through June 19, 2015. On November 4, 2015, the Environmental Management Commission (EMC) approved the report on the review of the rules and comments received. The report was approved by the Rules Review Commission (RRC) on December 17, 2015. The Administrative Procedures Oversight Committee of the state legislature met on January 5, 2016, and the report became final. The rules determined to be unnecessary (15A NCAC 02D .2400, 02D .2500, and 02D .1600) expired effective February 1, 2016. On May 19, 2016, the RRC established December 31, 2020 as the date by which the EMC must readopt the rules in subchapters 02D and 02Q designated as necessary.

III. Proposed Rule Changes

15A NCAC 02D .1100 - CONTROL OF TOXIC AIR POLLUTANTS

15A NCAC 02D .1100 consists of 12 rules for the control of toxic air pollutants to protect public health.

15A NCAC 02D .1101, Purpose, is proposed for readoption without change.

15A NCAC 02D .1102, Applicability, is proposed for readoption without substantive changes to remove the reference to 15A NCAC 02D .1109 through .1112 from the applicability because facilities subject to federal maximum achievable control technology (MACT) standards are exempt under 15A NCAC 02Q .0700. Also, changes are proposed to be made to update the format of references and other administrative language.

15A NCAC 02D .1103, Definition, is proposed for readoption without substantive changes to update the format of references.

15A NCAC 02D .1104, Toxic Air Pollutant Guidelines, is proposed for readoption with substantive changes to remove the acceptable ambient levels (AALs) for dichlorodifluoromethane (75-71-8), dichlorofluoromethane (75-43-4), 1,1,1,2-tetrachloro-2,2-difluoroethane (76-11-9), 1,1,2,2-tetrachloro-1,2-difluoroethane (76-12-0), trichlorofluoromethane (75-69-4), 1,1,2-trichloro-1,2,2-trifluoroethane (76-13-1) as recommended in the May 2015 Science Advisory Board (SAB) report. Also, changes are proposed to be made to clarify some regulatory language.

15A NCAC 02D .1105, Facility Reporting, Recordkeeping, is proposed for readoption without substantive changes to update the format of references.

15A NCAC 02D .1106, Determination of Ambient Air Concentration, is proposed for readoption with substantive changes to update a reference to 40 CFR Part 51, Subpart W, remove some obsolete language, and update the format of references and other administrative language.

15A NCAC 02D .1107, Multiple Facilities, is proposed for readoption without substantive changes to remove language for modeling cavity effects because the current modeling software protocols take them into account. Also, changes are proposed to be made to update the format of references and other administrative language.

15A NCAC 02D .1108, Multiple Pollutants, is proposed for readoption without change.

15A NCAC 02D .1109, 112(J) Case by Case Maximum Achievable Control Technology, is proposed for readoption without substantive changes to update the format of references and other administrative changes.

15A NCAC 02D .1110, National Emission Standards for Hazardous Air Pollutants (NESHAP), is proposed for readoption with substantive changes to remove Paragraph (c) since the language is deemed unnecessary because new sources of VOCs are understood to be required to comply with applicable regulations in Section 02D .0900 and any federal NESHAP standards. Also, changes are proposed to be made to update the format of references and remove a reference to a repealed rule.

15A NCAC 02D .1111, Maximum Achievable Control Technology, is proposed for readoption with substantive changes to remove Paragraph (c) since the language is deemed unnecessary because new sources of VOCs are understood to be required to comply with applicable regulations in Section 02D .0900 and any federal MACT standards. Also, changes are proposed to be made to update the format of references and remove a reference to a repealed rule.

15A NCAC 02D .1112, 112(G) Case by Case Maximum Achievable Control Technology, is proposed for readoption without substantive changes to update the format of references and other administrative changes.

15A NCAC 02D .1200 - CONTROL OF EMISSIONS FROM INCINERATORS

There are 11 rules and one repealed rule in 15A NCAC 02D .1200 that regulate the emissions of air pollutants from incinerators.

15A NCAC 02D .1201, Purpose and Scope, is proposed for readoption with substantive change to update and repeal applicability requirements related to the reduction in the incinerator population in North Carolina. Paragraph (d) is repealed as obsolete after EPA has promulgated specific requirements for each type of incinerator. Therefore, an incinerator would no longer be classified as more than one type. Paragraph (e) is repealed as obsolete to reflect the fact that DAQ has not identified any existing sources subject to this rule. Paragraph (f) was reformatted into Paragraph (c) to reflect the fact that the referenced document may be obtained free of charge online.

15A NCAC 02D .1202, Definitions, is proposed for readoption with substantive changes to remove several definitions because either there are no sources identified in North Carolina or the definitions are

no longer applicable. Definitions were added for air curtain incinerator, sewage sludge, sewage sludge incineration (SSI) unit and solid waste to reflect the changes in federal regulations. In addition, the format of NCAC references was revised.

15A NCAC 02D .1203, Hazardous Waste Incinerators, is proposed for readoption as a repeal to reflect the fact that DAQ has not identified any existing sources subject to this rule.

15A NCAC 02D .1205, Large Municipal Waste Combustors, is proposed for readoption as a repeal to reflect the fact that DAQ has not identified any existing sources subject to this rule.

15A NCAC 02D .1206, Hospital, Medical, and Infectious Waste Incinerators, is proposed for readoption with substantive changes to remove regulatory requirements that expired in July 1, 2013, to remove the ambient standards, to remove startup, shutdown and malfunction provisions, and to update the format of references.

15A NCAC 02Q .1207, Conical Incinerators, is proposed for readoption as a repeal to reflect the fact that DAQ has not identified any existing sources subject to this rule.

15A NCAC 02D .1208, Other Incinerators, is proposed for readoption without substantive changes to clarify exemption criteria, update arsenic ambient air quality standards, and revise the format of references. The arsenic ambient air level in 15A NCAC 02D .1104 was amended on July 7, 2014. The arsenic ambient air quality standard in this rule should be the same as in 15A NCAC 02D .1104.

15A NCAC 02D .1211, Other Solid Waste Incineration Units, is proposed for readoption as a repeal to reflect the fact that DAQ has not identified any existing sources subject to this rule.

15A NCAC 02D .1212, Small Municipal Waste Combustors, is proposed for readoption as a repeal to reflect the fact that DAQ has not identified any existing sources subject to this rule. At one time, WASTEC had two small municipal waste combustors units operated by New Hanover County. These units stopped operation in April 2011 and in 2013 they were both permanently closed. However, prior to the shutdown, the units were under federally enforceable requirements and were never required to comply with the state small municipal waste combustors rule.

15A NCAC 02Q .0700 – TOXIC AIR POLLUTANT PROCEDURES

15A NCAC 02Q .0700 consists of 12 rules and two repealed rules that contain the permitting requirements for toxic air pollutants.

15A NCAC 02Q .0701, Applicability, is proposed for readoption without substantive changes to update the format of references.

15A NCAC 02Q .0702, Exemptions, is proposed for readoption with substantive changes to amend Subparagraph (a)(21) to replace a reference to 15A NCAC 02Q .0102 that was removed when it was amended on June 13, 2016. The language that was removed from that specific paragraph was added to the exemption in this rule. Part (a)(22)(G) is proposed to be removed because perchloroethylene dry cleaning

already is exempted by Subpart (a)(27)(B). Dry cleaning is covered by 40 CFR Part 63 Subpart M. Also, changes are proposed to be made to update the format of references and other administrative language.

15A NCAC 02Q .0703, Definitions, is proposed for re-adoption with substantive changes to clarify the type of fuels that can be combusted by a combustion source defined in Item (6). The definition for “SIC” is proposed to be removed since it is not used in 15A NCAC 02Q .0700 and the definition for “toxic air pollutant” is proposed to be removed since it is defined in 15A NCAC 02Q .0103. Also, changes are proposed to be made to update the format of references and other administrative language.

15A NCAC 02Q .0704, New Facilities, is proposed for re-adoption with substantive changes to add language to Paragraph (c) to clarify that the DAQ is responsible for evaluating any toxic air pollutant emissions from sources exempt by 02Q .0702(a)(27). Also, changes are proposed to be made to update the format of references and other administrative language.

15A NCAC 02Q .0706, Modifications, is proposed for re-adoption with substantive changes to update Paragraph (a) to clarify when modifications require a permit to be submitted. Also, changes are proposed to be made to remove redundant language in Paragraph (c) and to update the format of references and other administrative language.

15A NCAC 02Q .0707, Previously Permitted Facilities, is proposed for re-adoption without substantive changes to update the format of references.

15A NCAC 02Q .0708, Compliance Schedule for Previously Unknown Toxic Air Pollutant Emissions, is proposed for re-adoption with substantive changes to remove “permitted” from Paragraph (a). Also, changes are proposed to be made to update the format of references.

15A NCAC 02Q .0709, Demonstrations, is proposed for re-adoption with substantive changes to add language to Subparagraph (a)(1) to be consistent with 15A NCAC 02D .1106(a), to remove perchloroethylene dry cleaning facilities in Paragraph (b) because they are exempt from permitting, and to update the format of references and other administrative language.

15A NCAC 02Q .0710, Public Notice and Opportunity for Public Hearing, is proposed for re-adoption without substantive changes to update the format of references and other administrative language.

15A NCAC 02Q .0711, Emission Rates Requiring a Permit, is proposed for re-adoption with substantive changes to remove the Toxics Air Pollutant Air Permitting Emission Rates (TPER) for dichlorodifluoromethane (75-71-8), dichlorofluoromethane (75-43-4), 1,1,1,2-tetrachloro-2,2-difluoroethane (76-11-9), 1,1,2,2-tetrachloro-1,2-difluoroethane (76-12-0), trichlorofluoromethane (75-69-4), 1,1,2-trichloro-1,2,2-trifluoroethane (76-13-1). These toxic air pollutants were recommended to be delisted in the May 2015 Science Advisory Board (SAB) report.

15A NCAC 02Q .0712, Calls by the Director, is proposed for re-adoption without substantive changes to update the format of references.

15A NCAC 02Q .0713, Pollutants with Otherwise Applicable Federal Standards or Requirements, is proposed for re-adoption as a repeal because the rule predates the promulgation of the final MACT standards. Therefore, it is deemed unnecessary because: (1) Part 70 requires that full MACT conditions be placed in permits, and (2) all final MACTs have been promulgated to date.

IV. Estimating the Fiscal Impacts

There are 33 total rules that are being proposed for readoption pursuant to the requirements of S.L. 2013-413 and G.S. 150-B. Of these, two rules that are being proposed for readoption with no changes, and 11 rules that are being proposed for readoption without substantive changes. Therefore, these 13 rule readoptions would not result in a fiscal impact. Likewise, there are six rules that are being proposed for repeal. The remaining 14 rules that are proposed for readoption with substantive change are listed below with the potential fiscal impacts due to the amendments to those rules.

15A NCAC 02D .1104, Toxic Air Pollutant Guidelines, is proposed for readoption with substantive changes to remove the acceptable ambient levels (AALs) for dichlorodifluoromethane (75-71-8), dichlorofluoromethane (75-43-4), 1,1,1,2-tetrachloro-2,2- difluoroethane (76-11-9), 1,1,2,2-tetrachloro-1,2-difluoroethane (76-12-0), trichlorofluoromethane (75-69-4), 1,1,2-trichloro-1,2,2-trifluoroethane (76-13-1) as recommended in the May 2015 Science Advisory Board (SAB) report. Also, changes are proposed to be made to clarify some regulatory language.

No fiscal impact is expected as a result of the changes. There are no facilities in North Carolina that emit any of these air pollutants listed above. These air pollutants are part of a group of chlorofluorocarbons (CFCs) that have been banned worldwide from being produced.

15A NCAC 02D .1106, Determination of Ambient Air Concentration, proposed for readoption with substantive changes to update a reference to 40 CFR Part 51, Subpart W, remove some obsolete language, and update the format of references and other administrative language.

No fiscal impact is expected as a result of the changes. The change of a reference from 40 CFR 51.166(l) to 40 CFR 51, Appendix W is just an update to the language in the rule. It does not add any additional requirements. The removal of the language for modeling cavity effects does not remove any requirement, because the current modeling software already incorporates cavity effects.

15A NCAC 02D .1111, Maximum Achievable Control Technology, is proposed for readoption with substantive changes to remove Paragraph (c) since the language is deemed unnecessary because new sources of VOCs are understood to be required to comply with applicable regulations in Section 02D .0900 and any federal MACT standards. Also, changes are proposed to be made to update the format of references and remove a reference to a repealed rule.

15A NCAC 02D .1112, 112(G) Case by Case Maximum Achievable Control Technology, is proposed for readoption without substantive changes to update the format of references and other administrative changes.

No fiscal impact is expected as a result of the changes in 15A NCAC 02D .1111 and .1112. The volatile organic compound requirements in Paragraph (c) of 02D .1111 and Paragraph (d) of 02D .1112 are deemed unnecessary because new sources of VOCs are understood to be required to comply with applicable regulations in 15A NCAC 02D .0900 and any federal MACT standards.

15A NCAC 02D .1201, Purpose and Scope, is proposed for readoption with substantive change to update and repeal applicability requirements related to the reduction in the incinerator population in North Carolina. Paragraph (d) is repealed as obsolete after EPA has promulgated specific requirements

for each type of incinerator. Therefore, an incinerator would not be classified as more than one type. Paragraph (e) is repealed as obsolete to reflect the fact that DAQ has not identified any existing sources subject to this rule. Paragraph (f) was reformatted into Paragraph (c) to reflect the fact that the referenced document may be obtained free of charge online.

No fiscal impact is expected as a result of the changes. Most of the changes were to delete obsolete language that does not affect the applicability of an incinerator. A person could possibly save some money by downloading the test methods instead of purchasing hard copies, however the rule does not require them to obtain a copy of the test method.

15A NCAC 02D .1202, Definitions, is proposed for readoption with substantive changes to remove several definitions because either there are no sources identified in North Carolina or the definitions are no longer applicable. Definitions were added for air curtain incinerator, sewage sludge, sewage sludge incineration (SSI) unit and solid waste to reflect the changes in federal regulations. In addition, the format of references was revised.

No fiscal impact is expected as a result of the changes. Paragraph (a) is proposed to be revised to remove definitions for Class I municipal waste combustor, commercial and industrial waste, construction and demolition waste, hazardous waste incinerator, institutional facility, institutional waste, institutional waste incineration unit, large municipal waste combustor, municipal waste combustor, municipal waste combustor unit, municipal waste combustor plant, municipal waste combustor unit capacity, municipal-type solid waste, municipal solid waste, POTW, other solid waste incineration unit, OSWI unit, same location, sewage sludge incinerator, sludge incinerator, small municipal waste combustor and very small municipal waste combustor. These definitions were removed because either there are no sources identified in NC or the definitions are no longer applicable. Definitions were added for air curtain incinerator, sewage sludge, sewage sludge incineration (SSI) unit and solid waste to reflect the changes in federal regulations. The definitions themselves do not have a fiscal impact. The fiscal impact for SSI units were accounted for in a separate regulatory impact analysis already approved by OSBM. There are separate rulemaking activities on different timelines that will estimate the impacts due to changes in regulatory requirements for air curtain incinerators and commercial and industrial solid waste incineration (CISWI) units.

15A NCAC 02D .1206, Hospital, Medical, and Infectious Waste Incinerators, is proposed for readoption with substantive changes to remove regulatory requirements that expired in July 1, 2013, to remove the ambient standards, to remove startup, shutdown and malfunction (SSM) provisions, and to update the format of references.

No fiscal impact is expected as a result of the changes. Throughout the proposed rule, there were requirements that an HMIWI had to comply with before July 1, 2013 and after July 1, 2013. The requirements before July 1, 2013 have expired and are proposed to be removed. The removal of expired requirements do not have a fiscal impact. The ambient standards were removed from the rule since they are based on the ambient air standards that are contained in 15A NCAC 02D .1104 which are still applicable. The SSM language was removed from the rule but facilities can still use the SSM provisions in 15A NCAC 02D .0535. A less stringent burden is imposed on the facilities by allowing them to use the malfunction provisions of 15A NCAC 02D .0535 for bypass events.

15A NCAC 02Q .0702, Exemptions, is proposed for readoption with substantive changes to amend Subparagraph (a)(21) to replace a reference to 15A NCAC 02Q .0102 that was removed when it was amended on June 13, 2016. The language that was removed from that specific paragraph was added to the exemption in this rule. Part (a)(22)(G) is proposed to be removed because perchloroethylene dry cleaning is already exempted by Part (a)(27)(B). Dry cleaning is covered by 40 CFR Part 63 Subpart M. Also, changes are proposed to be made to update the format of references and other administrative language.

No fiscal impact is expected as a result of the changes. The removal of the Part (a)(22)(G) removes a redundant exemption for perchloroethylene dry cleaners. The language added to Subpart (a)(18) removes conflicting exemptions in the rule. When the rule was amended on May 1, 2014 to add the exemption for 40 CFR Part 63 sources as required under Section 1 of Session Law 2012-91, Subpart (a)(18) should have been amended at that time to remove the requirement that combustion sources after July 10, 2010 were not exempt. The amended language in Subpart (a)(21) adds back the language that was removed from 15A NCAC 02D .0102(c)(1)(I) when that rule was amended on June 13, 2016.

15A NCAC 02Q .0703, Definitions, is proposed for readoption with substantive changes to clarify the type of fuels that can be combusted by a combustion source defined in Item (6). The definition for “SIC” is proposed to be removed since it is not used in 15A NCAC 02Q .0700 and the definition for “toxic air pollutant” is proposed to be removed since it is defined in 15A NCAC 02Q .0103. Also, changes are proposed to be made to update the format of references and other administrative language.

No fiscal impact is expected as a result of the change. The modification of the definition of “combustion source” was made to include non-hazardous secondary materials that are not solid wastes pursuant to 40 CFR Part 241. This aligns the definition with the Boiler MACT, Subpart DDDDD, and Boiler GACT, Subpart JJJJJ. These boilers are already exempt under 15A NCAC 02Q .0702(a)(27)(B) so there would not be an increase or decrease in number of affected sources.

15A NCAC 02Q .0704, New Facilities, is proposed for readoption with substantive changes to add language to Paragraph (c) to clarify that the DAQ is responsible for evaluating any toxic air pollutant emissions from sources exempt by 02Q .0702(a)(27). Also, changes are proposed to be made to update the format of references and other administrative language.

No fiscal impact is expected as a result of the changes. The responsibility of DAQ to evaluate any toxic air pollutants from sources exempt by Subparagraph 02Q .0702(a)(7) is in Section 1 of Session Law 2012-91. The fiscal impact to the DAQ was accounted for in the fiscal note for the rule changes adopted on May 1, 2014 resulting from the Session Law.

15A NCAC 02Q .0706, Modifications, is proposed for readoption with substantive changes to update Paragraph (a) to clarify when modifications require a permit to be submitted. Also, changes are proposed to be made to remove redundant language in Paragraph (c) and to update the format of references and other administrative language.

The intent of the proposed changes in Paragraph (a) was to clarify when a facility needs to submit a permit application for a modification to comply with 2D .1100. Until February 2015, a memo issued on July 27, 2000 was used to address how insignificant activities subject to 02D .1100 would be permitted. On February 2, 2015, a memo was issued archiving the July 27, 2000 memo, in anticipation of rule

changes that would negate the need for the policy memo. The change proposed in Paragraph (a) are simply codifying what has been in practice since July 27, 2000. Under the APA process, the baseline is the actual text in the rule in the Administrative Code, not what was in practice by a memo or policy. The current rule in the Administrative Code requires for a modification to any facility required to have a permit to comply with Paragraphs (b) and (c) of the rule. The proposed readoption does not change the applicability for non-Title V facilities. The proposed language affects Title V facilities. For Title V facilities, Paragraphs (b) and (c) apply only if the facility emits a pollutant that is part of the facility's previous modeling demonstration conducted pursuant to 15A NCAC 02D .1104 and 02Q .0709. This proposed language change would impose a less stringent burden on facilities by limiting the permit applications to modifications where a pollutant emitted due to the modification was already part of a previous modeling demonstration.

15A NCAC 02Q .0708, Compliance Schedule for Previously Unknown Toxic Air Pollutant Emissions, is proposed for readoption with substantive changes to remove "permitted" from Paragraph (a). Also, changes are proposed to be made to update the format of references.

No fiscal impact is expected as a result of these changes. The removal of "permitted" from Paragraph (a) is necessary because the unknown toxic air pollutant may occur from a previously unpermitted source. The DAQ very rarely finds an unknown toxic air pollutant from an unpermitted source that is not exempted by 15A NCAC 02Q .0702.

15A NCAC 02Q .0709, Demonstrations, is proposed for readoption with substantive changes add language to Subparagraph (a)(1) to be consistent with 15A NCAC 02D .1106(a), to remove perchloroethylene dry cleaning facilities in Paragraph (b) because they are exempt from permitting, and to update the format of references and other administrative language.

No fiscal impact is expected as a result of the changes. The removal of the perchloroethylene dry cleaning facilities in Paragraph (b) does not have a fiscal impact because these dry cleaning facilities are already exempt from permitting.

15A NCAC 02Q .0711, Emission Rates Requiring a Permit, is proposed for readoption with substantive changes to remove the Toxics Air Pollutant Air Permitting Emission Rates (TPER) for dichlorodifluoromethane (75-71-8), dichlorofluoromethane (75-43-4), 1,1,1,2-tetrachloro-2,2-difluoroethane (76-11-9), 1,1,2,2-tetrachloro-1,2-difluoroethane (76-12-0), trichlorofluoromethane (75-69-4), 1,1,2-trichloro-1,2,2-trifluoroethane (76-13-1). These toxic air pollutants were recommended to be delisted in the May 2015 Science Advisory Board (SAB) report.

No fiscal impact is expected as a result of the changes. There are no facilities in the state that emit any of the six toxic air pollutants. Therefore, there would not be any impact from their removal from the rule.

V. Conclusion

The proposed readoptions consist of amendments that are of administrative nature to clean up and update the existing 27 rules and repeal of six rules that are no longer necessary. Overall, the proposed readoptions and repeals do not result in a significant state or local fiscal impact or substantial economic impact to the regulated community or other parties.