Chapter 17 Air Quality Permit Procedures

SECTION .0100 - GENERAL PROVISIONS

.0101 REQUIRED AIR QUALITY PERMITS

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

(1) Construct, operate, or modify a source subject to an applicable standard, requirement, or rule that may emit regulated pollutant or one or more of the following:

(A) sulfur dioxide,
(B) total suspended particulates,
(C) particulate matter (PM10),
(D) carbon monoxide,
(E) nitrogen oxides,
(F) volatile organic compounds,
(G) lead and lead compounds,
(H) fluorides,
(I) total reduced sulfur,
(J) reduced sulfur compounds,
(K) hydrogen sulfide,
(L) sulfuric acid mist,
(M) asbestos,
(N) arsenic and arsenic compounds,
(O) beryllium and beryllium compounds,
(P) cadmium and cadmium compounds,
(Q) chromium (VI) and chromium (VI) compounds,
(R) mercury and mercury compounds,
(S) hydrogen chloride,
(T) vinyl chloride,
(U) benzene,
(V) ethylene oxide,
(W) dioxins and furans,
(X) odor,
(Y) ozone, or
(Z) any toxic air pollutant listed in Chapter 4 .1104;

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

(A) Section 112(d), emissions standards;
(B) Section 112(f), standards to protect health and environment;
(C) Section 112(g), modifications (but only for the facility subject to Section 112(g)(2));
(D) Section 112(h), work practices and other requirements;

(E) Section 112(j), federal failure to promulgate standards;
(F) Section 112(r), accidental releases; or
(g) Section 112(i), early reduction

(3) enter into an irrevocable contract or allow or cause the construction, operation, or modification of an air-cleaning device.

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

(1) Stationary Source Construction and Operation Permit: The owner or operator of a new, modified, or existing facility or source shall not begin construction or operation without first obtaining a construction and operation permit 1n accordance with the standard procedures under Section .0300 of this Chapter. Title V facilities are subject to the Title V procedures under Section .0500 of this Chapter including the acid rain procedures under Section .0400 of this Chapter. A facility may also be subject to the air toxic procedures under Chapter 8 .0610.

(2) Transportation Facility Construction Permit. The owner or operator of a transportation facility subject to the requirements of Chapter 4 .0800 shall obtain a construction only permit following the procedures under Section .0600.

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

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

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.0102 ACTIVITES EXEMPTED FROM PERMIT REQUIREMENTS

(a) If a source is subject to any of the following rules, then the sources is not exempted from permit requirements, and the exemptions in Paragraph (b) of this Rule do not apply:

(1) new source performance standards under Chapter 4 .0524, except new residential wood heaters;

(2) national emission standards for hazardous air pollutants under Chapter 4 .0525;

(3) prevention of significant deterioration under Chapter 4 .0530;

(4) new source review under Chapter 4 .0531 and .0532;

(5) sources required to apply maximum achievable control technology for hazardous air pollutants under Chapter 4 .1109 or 40 CFR Part 63; or

(6) sources at facilities subject to Chapter 4 .1100, and nothing can be excluded or exempted from a Title V permit to the extent it is needed to determine compliance with an applicable requirement.

(b) The following activities do not need a permit or permit modification under this Chapter; however, the Director may require the owner or operator of these activities to register them under Chapter 4.0200:

(1) activities exempted because of category:

(A) maintenance, upkeep, and replacement:

(i) maintenance, structural changes, or repairs which do not change the capacity of such process, fuel-burning, or control equipment, and do not involve any change in quality, nature, or quantity of emission of regulated air pollutants;

(ii) housekeeping activities or building maintenance procedures, including painting buildings, washing, portable vacuum cleaners, sweeping, or

(B) air conditioning or ventilation: comfort air conditioning or comfort ventilating systems which do not transport, remove, or exhaust regulated air pollutants to the atmosphere;

(C) laboratory equipment:

(i) laboratory equipment used exclusively for chemical or physical analysis for quality control purposes; or

(ii) non-production laboratory equipment used at non-profit health or non-profit educational institutions for chemical or physical analyses, bench scale experimentation or training, or instruction;

(D) storage tanks: storage tanks used solely to store fuel oils, kerosene, diesel, jet fuel, crude oil, used motor oil, natural gas, or liquified petroleum gas;

(E) combustion and heat transfer equipment:

(i) space heaters operating by direct heat transfer and used solely for comfort heat;

(ii) residential wood stoves, heaters, or fireplaces; ·

(iii) hot water heaters which are used for domestic purposes only and are not used to heat process water;

(F) wastewater treatment processes: industrial wastewater treatment processes in which the wastewater or wastewater treatment process does not contain volatile organic compounds or hazardous air pollutants; or

(G) miscellaneous:

(i) motor vehicles;

(ii) refrigeration equipment that is consistent with Section 601 through 618 of Title VI (Stratospheric Ozone Protection) of the federal Clean Air Act, 40 CFR Part 82, and any other regulations promulgated by EPA under Title VI for stratospheric ozone protection, except those units used as or in conjunction with air pollution control equipment; or

(iii) equipment that does not emit any regulated air pollutants.

(2) activities exempted because of size or production:

(A) storage tanks:

(i) storage tanks with a storage capacity of no more than 1100 gallons storing organic liquids, excluding hazardous air pollutants, with a true vapor pressure of no more than 10.8 pounds per square inch absolute at 70°F; or

(ii) underground storage tanks with a storage capacity of no more than 2500 gallons storing organic liquids, excluding hazardous air pollutants, with a true vapor pressure of no more than 10. 8 psi absolute at 70°F and an annual throughput of no more than 50,000 gallons per year;

(B) combustion and heat transfer equipment:

(i) combustion sources with a heat input of no more than 10,000,000 BTU per hour if the emissions from the combustion source is solely from kerosene, No. 1 fuel oil, No. 2 fuel oil, equivalent unadulterated fuels, natural gas, or liquified petroleum gas; or

(ii) space heaters burning waste oil if:

(I) The heater burns only oil that the owner or operator generates or used oil from do-it-yourself oil changers who generate used oil as household wastes;

(II) The heater is designed to have a maximum capacity of not more than 500,000 Btu per hour; and

(III) The combustion gases from the heater are vented to the ambient air.

(iii) emergency use generators and other internal combustion engines, except motor vehicles, that produce no more than:

(I) 40 kilowatts or 60 horsepower for natural gas-fired engines,

(II) 110 kilowatts or 150 horsepower for liquified petroleum gas-fired engines, or

(III) 5 kilowatts or 50 horsepower for diesel-fired engines; or

(C) miscellaneous:

(i) any emissions unit or source with a potential to emit no more than 1.0 pound in any hour and 4.38 tons per year (8760 hours) before control of each regulated pollutant that is not a hazardous air pollutant;

(ii) emissions of hazardous air pollutants below the de minimis emissions rates in 40 CPR Part 63;

(iii) electrostatic dry powder coating operations equipped with powder recovery including curing ovens with a heat input of no more than 10,000,000 BTU per hour; or

(iv) any incinerator owned and operated by a (armer covered under Paragraph (d) of Chapter 4 .1201;

(c) Emissions from stationary source activities identified in Paragraph (b) of this Rule shall be included in determining compliance with the toxic air pollutant requirements under Chapter 4.1100 or 8.0610.

Statutory Authority G.S. 143-215.3(a)(l); 143-215.107(a)(4); 143-215.108.

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.0103 DEFINITIONS

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

(1) "Agency" means the Western North Carolina Regional Air Pollution Control Agency.

(2) "Air Pollutant" means an air pollution agent or combination of such agents, including any physical, chemical, biological, radiative substance or matter which is emitted into or otherwise enters the ambient air.

(3) "Alter or change" means to make a modification.

(4) "Applicant" means the person who is applying for an air quality permit from the Agency.

(5) "Board" is the Western North Carolina Air Pollution Control Board.

(6) "Application package" means all elements or documents needed to make an application complete.

(7) "CPR" means Code of Federal Regulations.

(8) "Construction" means change in the method of operation or any physical change (including on- site fabrication, erection, installation, replacement, demolition, or modification of an emissions unit) that would result in a change in emissions or affect the compliance status.

(9) "Director" means the Director of the Western North Carolina Regional Air Pollution Control Agency.

(10) "Equivalent unadulterated fuels" means used oils that have been refined such that the content of toxic additives or contaminants· in the oil are no greater than those in unadulterated fossil fuels.

(11) "EPA" means the United States Environmental Protection Agency or the Administrator of the Environmental Protection Agency.

(12) "Facility" means all of the pollutant emitting activities that are located on one or more contiguous or adjacent properties under common control.

(13) "Federally enforceable" or "federal-enforceable" means enforceable by EPA.

(14) "Hazardous air pollutant" means any pollutant which has been listed pursuant to Section 112(b) of the federal Clean Air Act. Pollutants which are listed only in

Chapter 4 .1104 (Toxic Air Pollutant Guidelines), but not pursuant to Section l 12(b), are not included in this definition.

(15) "Insignificant activities" means any activity exempted under Rule .0102 of this Section.

(16) "Irrevocable contract" means a contract that cannot be revoked without substantial penalty.

(17) "Modification" means any physical change or change in method of operation that results in an increase in emissions or affects compliance status of the source or facility.

(18) "Owner or operator" means any person who owns, leases, operates, controls, or supervises a facility, emissions unit, stationary source, or air pollution control equipment.

(19) "Permittee" means the person who has received an air quality permit from the Agency.

(20) "Potential emissions" means the rate of emissions of any air pollutant which would occur at the facility's maximum capacity to emit any air pollutant under. its physical and operational design. Any physical or operational limitation on the capacity of a facility to emit an air pollutant shall be treated as a part of its design if the limitation is federally enforceable. Such physical or operational limitations include air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed. Potential emissions include fugitive emissions from as

specified in the definition of major source in 40 CFR 70.2. Potential emissions do not include a facility's secondary emissions such as those from motor vehicles associated with the facility and do not include emissions from insignificant activities listed in Rule .0102(b)(1) of this Section.

(21) "Regulated air pollutant" means:

(a) nitrogen oxides or any volatile organic compound;

(b) any pollutant for which there is an ambient air quality standard under Section Chapter 4 .0400;

(c) any pollutant regulated under Chapter 4 .0524 or .0525 or 40 CPR Part 60, 61, or 63;

(d) any pollutant subject to a standard promulgated under Section 112 of the federal Clean Air Act or other requirements established under Section 112 of the federal Clean Air Act, including Section 112(g) (but only for the facility subject to Section l 12(g)(2) of the federal Clean Air Act), (j), or (r) of the federal Clean Air Act; or

(e) any Class I or II substance listed under Section 602 of the federal Clean Air Act.

(22) “Source” means any stationary article, machine, process equipment, or other contrivance, or combination thereof, from which air pollutants emanate or are emitted, either directly or indirectly.

(23) “Title V” means Title V of the Clean Air Act.

(24) “Toxic air pollutant” means any of the carcinogens, chronic toxicants, acute systemic toxicants, or acute irritants that are listed in Chapter 4 .1104.

(25) “Transportation facility” means a complex sources as defined in G.S. 143-213(22) and is subject to the requirements of Chapter 4 .0800.

(26) “Unadulterated fossil fuel” means fuel oils, coal, natural gas, or liquified petroleum gas to which no toxic additives have been added that could result in the emissions of a toxic air pollutant listed under Chapter 4 .1104.

Statutory Authority G.S. 143-215.3(a)(l); 143-212,· 143-213.

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.0104 WHERE TO OBTAIN AND FILE PERMIT APPLICATIONS

(a) Official application forms for a permit or permit modification may be obtained from and shall be filed in writing with the Director, Western North Carolina Regional Air Pollution Control Agency, 4 Marjorie St. Asheville, N.C. 28801 or the Haywood County Health Department, 2216 Asheville Rd.. Waynesville, N.C. 28786 excluding information entitled to confidential treatment listed under Rule .0105 of this Section.

(b) The number of copies of applications to be filed are specified in Rules .0304 (construction and operation permit procedures), .0405 (acid rain permit procedures), .0507 (Title V permit procedures), and .0602 (transportation facility construction air permit procedures) of this Chapter.

Statutory Authority G.S. 143-215.J(a)(l); 143-215.108; 143-215.109.

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.0105 COPIES OF REFERENCED DOCUMENTS

(a) Copies of applicable Code of Federal Regulations (CPR) sections referred to in this Section are available for public inspection at Western North Carolina Regional Air Pollution Control Office, 4 Marjorie St. Asheville, N. C.

(b) Copies of CPR, permit applications, and permits can be made for ten cents ($0.10) per page.

Statutory Authority G.S. 150B-14.

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.0106 INCORPORATION BY REFERNCE

(a) Referenced CFR contained in this Chapter are incorporated by reference.
(b) The CFR incorporated by reference in this Chapter shall automatically include any later amendments thereto unless a specific rule specifies otherwise.
(c) The CFR may be purchased from the Superintendent of Documents, P. 0. Box 371954, Pittsburgh, PA 15250. The· cost of the 40 CFR Parts 61 to 80 is fourteen dollars ($14.00) as of January 1992.

*Statutory Authority G.*S. *150B-21. 6.*

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.0107 CONFIDENTIAL INFORMATION

(a) All information required to be submitted to the Board or the Director under this Chapter or Chapter 4 of this Title shall be disclosed to the public unless the person submitting the information can demonstrate that the information is entitled to confidential treatment under G.S. 143-215.3(a)(2).

(b) A request that information be treated as confidential shall be made by the person submitting the information at the time that the submittal is made. The request shall state in writing reasons why the information should be held confidential. Any request not meeting these requirements shall be invalid.

(c) The Director shall make a preliminary determination of which information is entitled to confidential treatment and shall notify the person requesting confidential treatment of his decision within 90 days of receipt of a request to treat information as confidential.

(d) Information necessary to determine compliance with standards contained in Chapter 4 or permit terms and conditions shall not be held confidential.

(e) Confidential treatment of any information that has been classified as confidential under this Rule shall cease five years following the date of the Director's determination unless the person who originally requested confidential treatment, or his successor, requests that the information continue to be treated as confidential for another five years.

(f) Any material classified as confidential or treated as if it were classified as confidential because of a request for confidential treatment before February 1, 1994; sh.all cease to be classified confidential on February 1, 1999, unless the person, or his successor, '?,'h0 requested confidential treatment requests that the information continue to be treated as confidential for another five years.·_· ·

Statutory Authority G.S. 143-215.3(a)(l),(2).

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.0108 DELEGATION OF AUTHORITY

Reserved.

.0109 COMPLIANCE SCHEDULE FOR PREVIOUSLY EXEMPTED ACTIVITIES

(a) This Rule applies to sources that have heretofore been exempted from needing a permit, but because of change in permit exemptions, they are now required to have a permit.

(b) If a source to which this Rule applies is located at a facility that currently has an air quality permit, the source shall be added to the air quality permit of facility the next time that permit is revised or renewed, whichever occurs first. ·

(c) If a source to which this Rule applies is located at a facility that currently does not have an air quality permit, the owner or operator' of that source shall apply for a permit:

(1) by the schedule in Rule .0506 of this Chapter if source is subject to the requirements of Section

.0500 of this Chapter or

(2) by January 1, 1998, if source is not subject to the requirements of Section .050 of this Chapter.

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

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.0110 RETENTION OF PERMIT AT PERMITTED FACILITY

The permittee shall retain a copy of all active permits issued under this Chapter at the facility identified in the permit.

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

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.0111 APPLICABILITY DETERMINATIONS

Any person may submit a request in writing to the Director requesting a determination as to whether a particular source or facility that the person owns or operates or proposes to own or operate is subject to any of the permitting requirements under this Chapter. The request shall contain such information believed to be sufficient for the Director to make the requested determination. The Director may request any additional information that is needed to make the determination.

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SECTION 17.0200 - PERMIT FEES

.0201 APPLICABILITY

(a) This Section, except for Rule .0207 (Annual Emissions Reporting) of this Section, is applicable to:

(1) as of July 1, 1994, to facilities that have actual emissions of:

(A) 100 tons per year or more of at least one regulated air pollutant;

(B) 10 tons per year or more of at least one hazardous air pollutant; or

(C) 25 tons per year or more of all hazardous air pollutants combined.

(2) as of October 1, 1994, all facilities other than the facilities described in Subparagraph (a) of this Rule. 1, 1994.

(b) Before the applicability date of Paragraph (a) of this Rule, the fees of Article XI arein effect.

(c) Rule .0207 of this Section is applicable to all facilities as of its effective date. _

History Note: Statutory Authority G.S. 143.215.3(a)(l), (la), (lb), (ld); 143-215.106A; 150B-
21.6·; Eff.

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.0202 DEFINITIONS

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

(1) "Actual emissions" means the actual rate of emissions of any regulated air pollutant emitted from a Part 70 Source over the preceding calendar year. Actual emissions shall be calculated using actual operating hours, production rates, in-place control equipment, and types of materials processed, stored, or combusted during the preceding calendar year. Actual emissions include emissions during violations, malfunctions, start-ups, and shut-downs, include fugitive emissions as specified in the definition of a major source in 40 CFR 70. ;2. Actual emissions do not include a facility's secondary emissions such as those from motor vehicles associated with the facility and do not include emissions from insignificant activities listed in Rule .0102(b)(1) of this section.

(2) "Before-control potential emissions" means the rate of emissions of any air pollutant which would occur at the facility's maximum capacity to emit any regulated air pollutant under its physical and operational design with any operational limitations, such as restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, but before any air pollution control equipment. Before-control potential emissions include fugitive emissions as specified in the definition of major source in 40 CFR 70.2. Before-control potential emissions do not include a facility's secondary emissions such as those from motor vehicles associated with the facility and do not include emissions from insignificant activities listed in Rule .0102(b)(1) of this Section.

(3) "Title V facility" means a facility that has or will have potential emissions of:

(A) 100 tons per year or more of at least one regulated air pollutant;

(B) 10 tons per year or more of at least one hazardous air pollutant; or

(C) 25 tons per_ year or more of all hazardous air pollutants combined.

(4) "Deferred facility" means a facility which would be required to have a permit under Title V of the Clean Air Act except that such facility may be exempted under 40 CPR 70.3(b).

(5) "Synthetic facility" means·· a facility which would be a Title V facility except that one or more federally-enforceable operational limitations in the permit, restrict the potential emissions by limiting hours of operation, the type or amount of material combusted, stored, or processed, or similar parameters. Emission limitations produced by pollution control equipment described in the permit do not constitute operational limitations in the permit for the purpose of this definition.

(6) "Intermediate facility" means a facility that has or will have before-control potential emissions of:

(a) l00 tons per year or more of at least one regulated air pollutant;

(b) 10 tons per year or more of at least one hazardous air pollutant; or

(c) 25 tons per year or more of all hazardous air pollutants combined.

and that is not a Title V facility, a deferred facility, nor a synthetic facility, and that is not solely a transportation facility.

(7) “Small facility” means a facility that has or will have before-control potential emissions of:

(a) less than 100 tons per year of each regulated air pollutant:

(b) less than 10 tons per year of each hazardous air pollutant; and

(c) less that 25 tons per year of all hazardous air pollutants combined;

and that is not a Title V facility, deferred facility, nor a synthetic facility, and that is not solely a transportation facility.

(8) "General facility" means a facility obtaining a permit under Rule .0310 or .0509 of this Chapter.

History Note: Statutory Authority G.S. 143.215.3(a)(l), (la), (lb), (ld); 150B-21.6; Eff.

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.0203 PERMIT AND APPLICAION FEES

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

ANNUAL OPERATING PERMIT FEES

(1) Beginning July 1, 1995 all Title V facilities shall pay an annual permit fee of $21.29 per ton of Regulated Air Pollutants emitted during each calendar year. This permit fee will be due on July 1, of each year for the previous year's emissions. Until July 1, 1995 the fees in Section XI remain in effect

(2) Beginning July 11, 1994, with each application the following fees are due:

(A) An application fee of $5000.00 shall be submitted for each Title V Source, each Major Modification, or each addition within a facility subject to PSD.

(B) An application fee of $10,000 shall be submitted with a new PSD facility site application.

(3) All other facilities shall pay the following fees annually on the anniversary of their permit expiration date

I. Fuel Burning Equipment

1,000,000 BTU Per Hour

	Fee
(a) 1 - 4.99	$ 100.00
(b) 5 - 14.99	150.00
(c) 15 - 34.99	200.00
(d) 35 - 74.99	250.00
(e) 75 - 99.9	300.00
(f) 100 and greater·	350.00

(Note: One boiler horsepower is equivalent to 33, 472 BTU per hour).

II. Incinerators

(Fees shall be assessed based upon the manufacturer's rated input as expressed in pounds per hour).

Input - Pounds Per Hour

(a) Up to 200	$ 100.00
(b) 200 to 599	150.00
(c) 600 to 999	200.00
(d) 1,000 and ,greater	-· 250.00

III. Process Equipment

(Fees shall be assessed based upon the process weight per hour as expressed in pounds per hour).

Input Process Weight Pounds Per Hour	
(a) Up to 999	$ 100.00
(b) 1,000 to 9,999	150.00
(c) 10,000 to 49,999	200.00
(d) 50,000 to 140,999	250.00
(e) 150,000 and greater	300.00

IV. Odor Producing Equipment

Each unit shall be assessed a fee of $150.00.

Miscellaneous

Any article, machine, equipment or other contrivance which is not included in the preceding schedules shall be assessed a fee of $150.00. Complex sources such as Parking Facilities requiring a construction permit shall pay an annual fee of $150.00.

CONSTRUCTION PERMIT FEES

No person shall construct, build, erect, or in any way establish any contaminants source and no person shall construct, build, or erect or in any way establish any air cleaning device, which exhaust to the outside atmosphere, without first having secured a Permit to Construct from the Board.

The following fee schedule shall apply to the issuance of all Permits to Construct:

Fuel Burning Equipment

1,000.00 BTU Per Hour	
(a) 1-4.99	$150.00
(b) 5-14.99	200.00
(c) 15-34.99	250.00
(d) 35-74.99	300.00
(e) 75-99.99	350.00
(f) 100 and greater	400.00

(Note: One boiler horsepower is equivalent to 33,472 BTU/hr)

Incinerators

(Fees shall be based upon the manufacturer's rated input as expressed in pounds per hour.)

Input- Pounds Per Hour	Fee
(a) Up to 200	$100.00
(b) 200 to 599	150.00
(c) 600 to 999	200.00
(d) 1000 and greater	250.00

III. Process Equipment

(Fees shall be based upon the process weight per hour as expressed in pounds per hour).

Input Process Weight Pounds Per Hour	
(a) Up to 999	$100.00
(b) 1,000 to 9,999	150.00
(c) 10,000 to 49,999	200.00
(d) 50,000 to 149,000	250.00
(e) 150,000 and greater	300.00

IV. Odor Producing Equipment

A fee of $150.00 per unit shall be assessed.

V. Miscellaneous

Any article, machine, equipment or other contrivance which is not included in preceding schedules shall be assessed a fee of $150.00 per unit. Transportation Facilities subject to Chapter 4.0805 shall pay a Construction Permit fee of $150.00.

(b) The tonnage factor fee shall be applicable only to major facilities. It shall be computed by multiplying the tonnage rate indicated in subparagraph (a)(l) of this Rule by the facility's combined total actual emissions of all regulated air pollutants, rounded to the nearest ton. The calculation shall not include:

(1) carbon monoxide;
(2) any pollutant that is regulated solely because it is a Class I or II substance listed under Section 602 of the federal Clean Air Act (ozone depletors);
(3) any pollutant that is regulated solely because it is subject to a

regulation or standard under Section 112(r) of the federal Clean Air Act (accidental releases); and

(4) the amount of actual emissions of each pollutant that exceeds 4,000 tons per year.

Even though a pollutant may be classified in more than one pollutant category, the amount of pollutant emitted is counted only once for tonnage factor fee purposes and in a pollutant category chosen by the permittee.

A Title V (PSD and NSR/NAA) facility is a facility whose application is subject to review under Chapter 4.0530 (Prevention of Significant Deterioration).

(c) The Construction Permit fee is required for any permit application except a renewal, ownership transfer, administrative change, or an application described in Paragraph (1) of this Rule.

(d) Title V facilities pay the standard application fee **until** the EPA approves the Western North Carolina Title V Permit Program. After that approval, major and sub-major facilities will pay either the new or significant modification permit application fee or the minor modification permit application fee, whichever is applicable. Minor modification permit application§: which are group processes require the payment of only one permit application fee for the group.

(e) No renewal permit application is required for permit renewals provjded no changes have been mad to the permitted facility -

(f) An administrative change application fee is required for administrative changes such as construction date changes, test date changes, or reporting procedure changes.

(g) No permit application processing fee is required for changes to an unexpired permit when the only reason for the changes is initiated by the Director or the Board.

History Note: Statutory Authority G.S. 143.215.3(a)(l), (la), (lb), (ld); lS0B-21.6; Eff.

DEMOLITION AND RENOVATION PERMITS - ASBESTOS

(a) Demolition

(1) A written permit must be obtained from the Western North Carolina Air Pollution Control Agency (WNCRAPCA) prior to the start of any demolition work.

(2) All friable asbestos containing materials and those that will become friable during demolition shall be removed prior to demolition and a permit for such removal obtained from the WNCRAPCA.

(3) All demolitions shall be wetted prior to and during demolition, unless freezing weather impedes or prior written approval from the Agency.

(4) Moving a residence or other non-commercial building off its foundation is considered a demolition. However, the removal of Asbestos Containing Material (ACM) from such a building will be determined on a case by case basis.

(b) Renovations

(1) All thermal system insulation (ACM) or Category II nonfriable ACM requires a written permit which must be obtained from the WNCRAPCA 10 days prior to commencement of work.

(2) A permit is required for the removal of all Category I nonfriable asbestos removed from a commercial, industrial, institutional, or public building; even if the materials do not become friable during removal.

(3) All asbestos containing material (ACM) removed by a contractor requires a written permit from the WNCRAPCA and must be obtained 10 days prior to commencement.

(c) Fees for permits shall be charged at time of approval of the application and shall be collected prior to the beginning of any work. Each subcontractor or his agency shall be responsible for payment of the permit fees charged to enable him to perform the work for which the permit is issued. The fees are as follows:

Residential……..$50.00

In commercial, industrial, institutional, and public hearings….

Category I & II Nonfriable Asbestos Removed by Hand ……150.00

Friable Asbestos:

0-159 square feet……..$50.00
160-300……150.00
201-500……300.00
501-1000……..500.00
1001-1500……750.00
1501 square feet and up……1000.00
To be calculated per containment.

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.0204 INFLATION ADJUSTMENT

(a) The fees of Rule .0203(a)(l) of this Section for Title V Sources permitted pursuant to Rule .0509 of this Chapter shall be adjusted for inflation as of January 1 of each year. The inflation adjustment shall be done by the method described in 40 CPR 70.(b)(2)(IV). Should this fee not cover the anticipated costs of the Title V Program, the Board may adjust the fee to assure adequate funding of the Program.

(b) All permit fees from the Title V Sources shall be placed in a separate account, for the financing of the Title V Program. Should the income exceed the costs of the Program, the surplus funds will be put in an Excess Funds Account for future Program needs. This Excess Funds Account shall only be used for the Title V operations.

History Note: Statutory Authority G.S. 143.215.3(a)(l), (la), (lb),(ld), 150B-21.6;

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.0205 OTHER ADJUSTMENTS

(a) The total payment for fees required for all permits under G.S. 143-215.3(a)(lb) (facilities other than Title V facilities permitted pursuant to Rule .0509 of this Chapter) for any single facility shall not exceed seven thousand five hundred dollars($?, 500) per year.

(b) No fees are required to be paid under this Section by a farmer who submits an application or receives a permit that pertains to his farming operations.

(c) If a facility changes so that its facility category changes, the annual fee changes with the next annual fee.

History Note: Statutory Authority G.S. 143.215.3(a)(l), (la), (lb), (ld); 143-215.106A; 150B-

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.0206 PAYMENT OF FEES

(a) Payment of fees required under this Section shall be by check or money order made payable to the Western North Carolina Regional Air Pollution Control Agency. Annual permit fee payments shall refer to the permit number.

(b) If, within 30 days after being billed, the permit holder fails to pay an annual fee required under this Section, the Director may initiate action to terminate the permit.

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

(d) The permit holder shall submit a source reduction and recycling description in accordance with G.S. 143-215.108 (g) along with the annual permit fee payment. The description shall include a summary of activities related to source reduction and recycling and of quantities of air emissions reduced and material recycled during the previous year and a summary of plans for further source reduction and recycling.

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

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

History Note: Statutory Authority G.S. 143.215.3(a)(1)
(1a), (1b), (1d); 143.215.108; 150b-21.6;
Eff. February 1, 1994

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.0207 ANNUAL EMISSIONS REPORTING

The owner or operator shall report by June 30th of each year the actual and potential emissions of each regulated pollutant, each hazardous air pollutant, and each toxic air pollutant, that is listed in Chapter 4.1104, from each source within the facility during the previous calendar year. The report shall be in or on such form as may be established by the Director. This annual reporting requirement shall begin with calendar year 1993 emissions. the accuracy of the report shall be certified by a responsible official of the facility as defined under 40 CFR 70.2. Reporting may be required for other facilities by permit condition or pursuant to Chapter 4.0202 (Registration of Air Pollution Sources).

History Note: Statutory Authority G.S. 143.215.3(a)(l), (la), (lb), (ld); 143,215.65; 143.215.107;
Eff. February 1, 1994

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SECTION .0300 - CONTRUCTION AND OPERATION PERMIT

.0301 APPLICABILITY

(a) Except for the permit exemptions allowed under Rules .0102 and .0302 of this Chapter, the owner or operator of a new, modified, or existing facility or source shall not begin construction or operation without first obtaining a construction and operation permit in accordance with the standard procedures under Section
.0300; however, Title V sources are subject to the Title V procedures under Section .0500 including the acid rain procedures under Section .0400 for Title IV sources.
(b) The owner or operator of a source required to have a permit under this Section may also be subject to the air toxic permit procedures under Chapter 8 .0610.
(c) The owner or operator of a source required to have a permit under this Section shall pay permit fees required under Section .0200 of this Chapter.

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

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.0302 FACILITIES NOT LIKELY TO CONTRAVENE DEMONSTRATION

(a) This Rule applies only to this Section. It does not apply to Section .0500 (Title V Procedures) of this Chapter.

(b) If a facility is subject to any of the following rules, the facility is not exempted from permit requirements, and the exemptions in Paragraph (c) or (d) of this Rule do not apply:

(1) new source performance standards under Chapter 4 .0524 or 40 CFR Part 60, except new residential wood heaters;

(2) national emission standards for hazardous air pollutants under Chapter 4 .0525 or 40 CFR Part 61, except asbestos demolition and renovation activities;

(3) prevention of significant deterioration under Chapter 4 .0530; or

(4) new source review under Chapter 4 .0531 and .0532;

(5) sources required to apply maximum achievable control technology for hazardous air pollutants under Chapter 4 .1109 or 40 CFR Part 63 or to apply generally available control technology (GACT) under or work practice standards 40 CFR Part 63;

(6) sources at facilities subject to Chapter 4 .1100; or

(7) facilities subject to Title V permitting procedures under Section .0500 of this Chapter.

(c) The owner or operator of any facility or source required to have a permit under this Section may request the Director to exempt the facility from the requirement to have a permit. The request shall be in writing. Along with the request, the owner or operator shall submit supporting documentation to show that air quality and emission control standards will not be, nor are likely to be contravened. If the documentation shows to the satisfaction of the Board that air quality and emission control standards will not be, nor are likely to be contravened, a permit shall not be required. This documentation shall include:

(1) documentation that the facility has no air pollution control devices;

(2) documentation that no source at the facility will violate any applicable emissions control standard when operating at maximum design or operating rate, whichever is greater; and

(3) ambient modeling showing that the ambient impact of emissions from the facility will not exceed the levels in Chapter 4 .0532(c)(5) when all sources at the facility are operated at maximum design or operating rate, whichever is greater.

If the documentation shows to the satisfaction of the Board that air quality and emission control standards will not be, nor are likely to be, contravened, a permit shall not be required.

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

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.0303 DEFINITIONS

For purposes of this Section, the following definitions apply:

(1) "New facility" means a facility that is receiving a permit from the Board for construction and operation of a source of an emissions polluting operation that it is not currently permitted.

(2) "Modified facility" means a modification of an existing facility or source and:

(a) The permitted facility or source is being modified in such a manner as to require the Agency to reissue the permit, or

(b) A new source is being added that requires the Board to reissue the permit.

A modified facility does not include a facility or source that request to change name or ownership, construction or test dates, or reporting procedures.

(3) "Plans and Specifications" means the completed application and any other documents required to define the operating conditions of the air pollution source.

(4) "Title IV source" means a source that is required to be permitted following the procedures under Section .0400 of this Chapter

(5) "Title V source" means a source that is required to be permitted following the procedures under Section .0500 of this Chapter.

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

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.0304 APPLICATIONS

(a) Permit, permit modification, or permit renewal applications may be obtained and shall be filed in writing in accordance with Rule .0 l 04 of this Chapter.

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

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

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

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

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

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

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

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

(c) For sources subject to the requirements of Chapter 4 .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 projected construction date.

For all other sources, applicants shall file air permit applications at least 90 days before projected date of construction of a new source or modification of an existing source.

(d) If no modification has been made to the originally permitted source, application for permit renewal or ownership change may be made by letter to the Board at the address specified in Rule .0104 of this Chapter. The renewal or ownership change letter must state that there have been no changes in the permitted facility since the permit was last issued. However, the Board may require the applicant for ownership change to submit additional information 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 rule.

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

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

(f) Applicants shall file applications for renewals such that they are received by the Agency at least 90 days before expiration of the permit.

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

(i) Whenever the information provided on the permit application forms does not adequately describe the source and its air cleaning device, the Board may request that the applicant provide any other information that the Board considers necessary to evaluate the source and its air cleaning device. Before acting on any permit application, the Board may request any information from an applicant and conduct any inquiry or investigation that he considers necessary to determine compliance with applicable standards.

(j) Permit applications submitted pursuant to this Rule shall be signed as follows:

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

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

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

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

(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.

Statutory Authority G.S. 143-215-.3(a)(1); 143-215.108.

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.0305 APPLICATION SUBMITTAL CONTENT

(a) If an applicant does not submit, at a minimum, the following information with his application package, the application package shall be returned:

(1) for new facilities and modified facilities:

(A) a consistency determination as required under Rule .0304(b)(l) of this Section,

(B) a financial qualification or substantial compliance statement if required, and

(C) applications as required under Rule .0304(a) and of this Section and Paragraph (b) of this Rule signed as required by Rule .0304(j) of this Section.

(2) for renewals: two copies of applications as required under Rule .0304(a) and (d) of this Section as required by Rule .0304(j) of this Section:

(3) for a name change: two copies of a letter signed by the appropriate individual listed in Rule .0304(j) indicating the current facility name, the date on which the name change shall occur, and the new facility name;

(4) for an ownership change: an application fee as required under Section .0200 of this Chapter and:

(A) two copies of a letter sent by each the seller and the buyer indicating the change, or

(B) two copies of a letter sent by either bearing the signature of both seller and buyer, and containing a written agreement with a specific date for the transfer or permit responsibility, coverage, and liability between the current and new permittee; and

(5) for corrections of typographical errors; changes name, address, or telephone number of any individual identified in the permit; changes in test dates or construction dates; or similar minor changes: two copies of a letter signed by the appropriate individual listed in Rule .0304(j) of this Section describing the proposed change and explaining the need for the proposed change.

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

(1) six copies for sources to the requirements of Chapter 4 .0530, .0531, or .1200.

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

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

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.0306 PERMITS REQUIRING PUBLIC PARTICIPATION

(a) The Board shall provide for public notice for comments with an opportunity to request a public hearing on draft permits for the following:

(1) any source that may be designated by the Board based on significant public interest relevant to air quality;
(2) a source to which Chapter 4 .0530 or .0531 applies;
(3) a source whose emission limitation is based on a good engineering practice stack height that exceeds the height defined in Chapter 4 .0533(a)(4)(A), (B), or (C);
(4) a source required to have controls more stringent than the applicable emission standards in Section Chapter 4 .0500 in accordance with Chapter 4 .0501 when necessary to comply with an ambient air quality standard under Chapter 4 .0400;
(5) any physical or operational limitation on the capacity of the source to emit a pollutant, including air cleaning device and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, when such a limitation is necessary to avoid the applicability of rules in Chapter 4 .0900;
(6) alternative controls different than the applicable emission standards in Chapter 4 .0900 in accordance with Chapter 4 .0952;
(7) an alternate compliance schedule promulgated in accordance with Chapter 4 .0910;
(8) a limitation on the quantity of solvent-borne ink that may be used by a printing unit or printing system in accordance with Chapter 4 .0936;
(9) an allowance of a particulate emission rate of 0.08 grains per dry standard cubic foot for an incinerator constructed before July 1, 1987, in accordance with Chapter 4 .1205(b)(2);

(10) an alternative mix of controls under Chapter 4 .0501(f);
(11) a source that is subject to the requirements of Chapter 4 .1109 because of Chapter 4 .1109(e); or
(12) the owner or operator who request that the draft permit go to public notice with an opportunity to request a public hearing.

(b) Failure of the owner or operator of a source permitted pursuant to this Rule to adhere to the terms and limitations of the permit shall be grounds for:
(1) enforcement action;
(2) permit termination, revocation and reissuance, or modification; or
(3) denial of permit renewal applications

(c) All emissions limitations, controls, and other requirements imposed by a permit issued pursuant to this Rule shall be at least as stringent as any other applicable requirement as defined under Rule .0503 of this Chapter. The permit shall not waive or make less stringent any limitations or requirement contained in any applicable requirement.
(d) Emissions limitations, controls and requirements contained in permits issued pursuant to the Rule shall be permanent, quantifiable, and otherwise enforceable as a practical matter.
(e) If EPA requires the State to submit a permit as part of the Western North Carolina State Local Implementation Plan for Air Quality (LIP) and if the Board approves a permit containing any of the conditions described in Paragraph (a) of this Rule as a part of the LIP, the Board shall submit the permit to the EPA on behalf of the Commission for inclusion as part of the federally approved LIP.

Statutory Authority G.S. 143-215.3(a)(1), (3); 143-214(b); 143-215.108.

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.0307 PUBLIC PARTICIPATION PROCEDURES

(a) This Rule does not apply to sources subject to the requirements of Chapter 4 .0530 or .0531 or Appendix S or 40 CFR Part 51. For sources subject to the requirements of Chapter 4 .0530 or .0531 or Appendix S of 40 CFR Part 51, the procedures in procedures in Chapter 4 .0530 or .0531 or Appendix S of 40 CFR Part 51 shall be followed, respectively.
(b) The public notice shall be given by publication in a newspaper of general circulation in the area where the facility is located and shall be mailed to persons who are on the Agency's mailing list for air quality permit notices and to EPA.
(c) The public notice shall identify:

(1) the affected facility;
(2) the name and address of the permittee;
(3) the name and address of the person to whom to send comments and requests for public hearing;
(4) the name, address, and telephone number of Agency staff from whom interested persons may obtain additional information, including copies of the draft permit, the application, compliance plan, monitoring and compliance reports, all other relevant supporting materials, and all other materials available to Agency that are relevant to the permit decision;
(5) the activity or activities involved in the permit action;
(6) any emissions change involved in any permit modification;
(7) a brief description of the public comment procedures;
(8) the procedures to follow to request a public hearing unless a public hearing has already been scheduled; and
(9) the time and place of any hearing that has already been scheduled.

(d) The notice shall allow 30 days for public and EPA comments.
(e) If the Board determines that significant public interest exists or that the public interest will be served, the Board shall require a public hearing to be held on a draft permit. Notice of a public hearing shall be given at least 30 days before the public hearing.
(f) The Board shall make available for public inspection in at least one location in the county affected, the information submitted by the permit applicant and the Agency's analysis of that application.
(g) The Board shall send EPA copy of each draft permit subject to public and EPA comment when he sends EPA the notice of request for public comment for that permit and shall send EPA a copy of each such permit when it is issued.
(h) Persons who desire to be placed on the Agency's mailing list for air quality permit notices shall send their request to the Board, Western North Carolina Regional Air Pollution Control Agency, Buncombe County Court House, Asheville, NC 28801-3569 and shall pay an annual fee of thirty dollars ($30.00).
(j) Any persons requesting copies of material identified in Subparagraph (b)(4) of this Rule shall pay ten cents ($0.10) a page for each page copied. Confidential material shall be handled in accordance with Rule
.0107 of this Chapter.

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

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.0308 FINAL ACTION ON PERMIT APPLICATIONS

(a) The Board may:

(1) issue a permit, permit modification, or a renewal containing the conditions necessary to carry out the purposes of G.S. Chapter 143, Article 21B;

(2) rescind a permit upon request by the permittee;

(3) deny a permit application when necessary to carry out the purposes of G.S. Chapter 143, Article 21B.

(b) Any person whose application for a permit, permit modification, or renewal or letter requesting change in name or ownership, construction or test date, or reporting procedure, is denied or is granted subject to conditions which are unacceptable to him shall have the right to appeal the Board's decision under Article 3 of G.S. 1_50B. The person shall have 30 days following the notice of the Board's decision on the application or permit in which to appeal the Board's decision. The permit becomes final if the applicant does not contest the permit within this 30-day period.

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

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

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.0309 TERMINATION, MODIFICATION AND REVOCATION OF PERMITS

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

(1) The information-contained in the application or presented in support thereof is determined to be incorrect;

(2) The conditions under which the permit or permit renewal was granted have changed;

(3) Violations of conditions contained in the permit have occurred;

(4) The permit holder fails to pay the fee required under Section .0200 of this Chapter within 30 days after being billed;

(5) The permittee refuses to allow the Board or his authorized representative upon presentation of credentials:

(A) to enter, at reasonable time and using reasonable safety practices, the permittee's premises in which a source of emissions is located or in which any records are required to be kept under terms and conditions of the permit;

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

(C) to inspect, at reasonable time and using reasonable safety practices, any source of emissions, control equipment, and any monitoring equipment or method required in the permit; or

(D) to sample, at reasonable time and using reasonable safety practices, any emission source at the facility;

(6) The Board finds that termination, modification, or revocation and reissuance of a permit is necessary to carry out the purpose of G.S. Chapter 143, Article 21B.

(b) The operation of a facility or source after its permit has been revoked is a violation of this Section and G.S. 143-215.108.

(c) The Board shall notify the permittee at least 60 days in advance of the date that the permit is to be terminated, modified, or revoked and reissued.

(d) The permittee may request modifications to his permit.

(e) When a permit is modified, the proceedings shall affect only those parts of the permit that are being modified

(f) Any person whose permit is terminated, modified, or revoked and reissued shall have the right to appeal the Board's decision under Article 3 of G.S. 150B. The person shall have 30 days following the receipt of the notice of the Board's decision on the termination, modification, or revocation and reissuance in which to appeal the Board's decision.

Statutory Authority G.S. 143-215.3(a)(1), (1a),(1b); 143-215.108; 143-215.114.

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.0310 PERMITTING OF NUMEROUS SIMILAR FACILITIES

(a) The Board may issue a permit to cover numerous similar facilities or sources.

(b) The Board shall not issue a permit under this Rule unless the following conditions are meet:

(1) There is no unique difference that would require special permit conditions for any individual facility; and

(2) No unique analysis is required for any facility covered under the permit.

(c) A permit issued under this Rule shall identify criteria by which facilities or sources may qualify for the permit. The Board shall grant the terms and conditions of the permit to facilities or sources that qualify.

(d) The facility or source shall be subject to enforcement action for operating without a permit if the facility or source is later determined not to qualify for the terms and conditions of the permit issued under this Rule.

(e) The owner or operator of a facility or source that qualifies for a permit issued under this Rule shall apply for coverage under the terms of the permit issued under this Rule or shall apply for a standard permit under this Section.

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

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.0311 PERMITTING OF FACILITIES AT MULTIPLE TEMPORARY SITES

(a) The Board may issue a single permit authorizing emissions from a facility or source at multiple temporary sites.
(b) In order for a facility or source to qualify for a permit for a multiple temporary sites under this Rule, the operation must involve at least one change of site during the term of the permit. ·
(c) Permits for facilities at multiple temporary sites shall include:

(1) the identification of each site;
(2) the conditions that will assure compliance with all applicable requirements at all approved sites;
(3) a requirement that the permittee notify the Agency at least 10 days in advance of each change of site; and
(4) the conditions that assure compliance with all other provisions of this Section.

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

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SECTION .0400 - ACID RAIN PROCEDURES

.0401 APPLICABILITY

(a) The procedures and requirements under this Section do not apply until the EPA approves this Section and Section .0500 of this Chapter.

(b) Each of the following units shall be an affected unit, and any facility that includes such a unit shall be an affected facility, subject to the requirements of the Acid Rain Program:

(1) A unit listed in 40 CFR Part 73, Subpart B, Table 1.

(2) A unit that is identified as qualifying for an allowance allocation under Sections 403 and 405 of the federal Clean Air Act and any other existing utility unit, except a unit under Paragraph (c) of this Rule.

(3) A utility unit, except a unit under Paragraph (c) of this Rule, that:

(A) is a new unit; or

(B) did not serve a generator with a nameplate capacity greater than 25 MWe on November 15, 1990, but serves such a generator on or after November 15, 1993.

(c) The following types of units are not affected units subject to the requirements of the Acid Rain Program:

(1) A simple combustion turbine that commenced operation before November 15, 1990.

(2) Any unit that commenced commercial operation before November 15, 1990, and that did not, as of November 15, 1990, and does not currently, serve a generator with a nameplate capacity of greater than 25 MWe.

(3) Any unit that, during 1985, did not serve a generator that produced electricity for sale and that did not, as of November 15, 1990, and does not currently, serve a generator that produces electricity for sale.

(4) A non-utility unit.
(5) Any other units under CFR 40 Part 72.6.

Statutory Authority G.S. 143-215.3(a)(l); 143-215.107(0)(8); 143-215.108.

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.0402 DEFINITIONS

The terms used in these Rules shall have the meanings set forth in the federal Clean Air Act and in this Chapter as follows:

(1) "Acid rain emissions reduction requirement" means a requirement under the Acid Rain Program to reduce the emissions of sulfur dioxide or nitrogen oxides from a unit to a specified level or by a specified percentage.
(2) "Acid Rain Program" means the national sulfur dioxide and nitrogen oxides air pollution control and emissions reduction program established in accordance with Title I_V.
(3) "Act" means the Clean Air Act, 42 U.S.C. 7401, et. seq. as amended by Public Law No. 101-549 (November 15, 1990).
(4) "Administrator" means the administrator of the United States Environmental Protection Agency (EPA) or the Administrators' duly authorized representative.
(5) "Affected Facility" means a facility that includes one or more affected units.
(6) "Affected Unit" means a unit that is subject to any acid rain emissions reduction requirement or acid rain emissions limitation.
(7) "Commenced commercial operation" means to have begun to generate electricity for sale, including the sale of test generation.
(8) "Designated representative" means a responsible natural authorized by the owners and operators of an affected facility, and of all the affected units at the facility, as evidenced by a certificate of representation submitted in accordance with CFR 40 Part 72, Subpart B, to represent and legally bind each owner and operator, as a matter of federal law, in matters pertaining to the Acid Rain Program.· Whenever the term "responsible official" :is used in this Chapter it shall be deemed to refer to title "designated representative" with regard to all matters

under the Acid Rain Program.
(9) “Draft permit” means the version of the permit, or the acid rain portion of an operating permit, that a permitting authority offers for public comment.
(10) “Facility” means any contiguous group of one or more sources.
(11) “Generator” means any device that produces electricity and was or would have been required to be reported as a generating unit pursuant to the United States Department of Energy Form 860 (1990 edition).
(12) "mmBTU" means millions of British Thermal Units.
(13) "MWe" means megawatts of electricity.
(14) "NADB" means the National Allowance Data Base.
(15) "Nameplate capacity" means the maximum electrical generating output (expressed in MWe) that a generator can sustain over a specified period of time when not restricted by seasonal or other deratings, as listed in the NADB under the data field "NAMECAP" if the generator is listed in the NADB or as measured in accordance with the United States Department of Energy standards if the generator is not listed in the NADB.
(16) "Owner or operator" means any person who operates, controls, or supervises an affected unit or an affected facility and shall include, but not be limited to, any holding company, utility system, or plant manager of an affected unit or affected facility.
(17) "Permit" as it is used in this Section means the legally binding written document, or portion of such document, issued by the Board including any permit revisions, specifying the Acid Rain Program requirements applicable to an affected facility, to each affected unit at an affected facility, and to the owners and operators l).nd the designated representative of the affected unit or the affected facility. In addition, the perm.it satisfies the procedures under Section .0500 of this Chapter.
(18) "Permit revision" means a permit modification, fast track modification, administrative permit amendment, or automatic permit amendment, as provided in 40 CFR Part 72, Subpart H.
(19) "Permitting authority" means either (i) the Administrator or (ii) the Board.
(20) "Phase I utility" refers to any of 110 utility plants identified by the EPA and listed in Section 404, Table A of the Act. Each unit has a nameplate capacity of greater than 100 MWe and emits greater than 2.5 lbs/mmBTU of sulfur dioxide.
(21) "Phase II utility" refers to the inclusion of additional utilities with capacities greater than 25 MWe to the Acid Rain Program.
(22) "Secretary of Energy" refers to the Secretary of the United States Department of Energy or the Secretary's duly authorized representative.
(23) "Simple Combustion Turbine" means a unit that is a rotary engine driven by a gas under pressure that is created by the combustion of any fuel. This term includes combined-cycle units without auxiliary firing but excludes such units with auxiliary firing.
(24) "Source" means any governmental, institutional, commercial or industrial structure, installation, plant or building tl1at emits or has the potential to emit any regulated air pollutant under the Act.
(25) "Unit" means a fossil fuel-fired combustion device.
(26) "Utility" means any person that sells electricity.

Statutory Authority G.S. 143-215.3(a)(I); 143-2,,.1. 5.107(a)(8); 143-215.108.

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.0403 NEW UNITS EXEMPTION

(a) Applicability. This Rule applies to any new utility unit that serves one or more generators with total nameplate capacity of 25 MWe or less and burns only fuels with a sulfur content of 0.05 percent or less by weight, as determined for a sample of each fuel delivery using the methods specified in 40 CFR 72.7(d)2.

(b) Exemption: The designated representative, authorized in accordance with 40 CFR 72.20, of a facility that includes a unit under Paragraph (a) of this Rule may petition the Board for a written exemption for the unit from certain requirements of the Acid Rain Program in accordance with 40 CFR 72.7.

Statutory Authority G.S. *143-215.3(a)(1); 143-215.107(a)(8); 143-215.108* .

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.0404 RETIRED UNITS EXEMPTION

(a) Applicability. This Rule applies to any affected unit that is ·retired prior to the issuance (including renewal) of a permit for the unit as a final Agency action.

(b) Exemption. The designated representative, authorized in accordance with 40 CFR Part 72, Subpart B, of a facility that includes a unit under Paragraph (a) of this Rule may petition the Board for a written exemption, or to renew a written exemption, for the unit-from certain requirements of 40 CFR Part 72·in accordance with 40 CFR 72.8.

Statutory Authority G.S. *143-215.3(a)(1); 143-215.107(a)(8),· 143-215.108* .

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.0405 REQUIREMENT TO APPLY

(a) Duty to apply. The designated representative of any facility with an affected unit shall submit a complete permit application by the applicable deadline in Paragraphs (b) and (c) of this Rule. The Owner or Operator shall not operate the facility without a permit that states its Acid Rain Program requirements.

(b) Deadlines:

(1) Phase II. For any facility with an existing unit under Subparagraphs (b)(l) or (2) of Rule .0401 of this Section, the designated representative shall submit a complete permit application governing such unit during Phase II to the Director on or before January 1, 1996.

(2) New Units.

(A) For any facility with a new unit under Part (b)(3)(A) of Rule .0401, the designated representative shall submit a complete permit application governing such unit to the Director at least 24 months before the later of January 1, 2000, or the date on which the unit commences operation.

(B) For any facility with a unit under Part (b)(3)(B) of Rule .0401, the designated representative shall submit a complete permit application governing such unit to the Director at least 24 months before the later of January 1, 2000, or the date on which the unit begins to serve a generator with a nameplate capacity greater than 25 MWe.

(3) Acid Rain Compliance Option Deadlines. The deadlines for applying for approval of any acid rain compliance options shall be the deadlines specified in the relevant section of 40 CFR Part 72, Subpart D and in Section 407 of the federal Clean Air Act and regulations implementing section 407 of the federal Clean Air Act.

(c) Duty to Reapply. The designated representative shall submit a complet permit application for each facility with an affected unit at least nine months prior to the expiration of an existing permit governing the unit during Phase II.
(d) Four copies of all permit applications shall be submitted to the Director.
(e) Permit Issuance Deadline.

(1) On or before December 31, 1997, the Board shall issue a permit for Phase II to each affected facility in the State as set forth in 40 CFR 72. 73(a); provided that the designated representative for the facility submitted a timely and complete permit application. Each permit issued in accordance with this Rule shall have a term of five years commencing on its effective date. Each permit shall take effect by the later of January 1, 2000, or, where the permit governs a unit under Subparagraph (b)(3) of Rule .0401 of this Section, the deadline for monitor certification under 40 CFR Part 75.
(2) Nitrogen Oxides. Not later than January 1, 1999, the Board shall reopen the permit to add the Acid Rain Program nitrogen oxides requirements. Such reopening shall not affect the term of the acid rain portion of a construction and operation permit.
(3) Grandfathering of Phase II Units. Pursuant to the Federal Register, vol. 57, no. 228, p. 55634, units that meet the following Phase I nitrogen oxides emission limitations before 1997:

(A) 0.45 lb/mmBtu for tangentially fired boilers;
(B)0.50 lb/mmBtu for dry bottom wall-fired boilers;
shall be exempted from any revision in emission limitations pursuant to Section 407(b)(2).

*Statutory Authority G.*S. *143-215. 3(a)(]),· 143-215. 107(a)(8); 143-215. 108.*

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.0406 REQUIREMENTS FOR PERMIT APPLICATIONS

A complete permit application shall contain the following elements in a format to be specified by the Administrator:

(1) identification of the affected facility for which the permit application is submitted;
(2) identification of each unit at the facility for which the permit application is submitted;
(3) a complete compliance plan for each unit, in accordance with 40 CPR Part 72, Subpart D;
(4) the standard requirements under 40 CPR Part 72. 9; and
(5) if the permit application is for Phase II and the unit is a new unit, the date that the unit has commenced or will commence operation and the deadline

or monitor certification.

Statut01y Authority G.S. *143-215.3(a)(1),· 143-215.107(a)(8); 143-21S.108.*

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.0407 PERMIT APPLCATION SHIELD AND BINDING EFFECT OF PERMIT APPLICATION

(a) Once a designated representative submits a timely and complete permit application, the owner or operator shall be deemed in compliance with the requirement to have a permit under 40 CFR 72. 9(a) and Paragraph (a) of Rule .0405 of this Section; provided that any delay in 'issuing a permit is not caused by the failure of the designated representative to submit in a complete and timely fashion supplemental information, as required by the Director, necessary to issue a permit.
(b) Prior to the earlier of the date on which a permit is issued subject to administrative appeal or judicial review, an affected unit governed by and operated in accordance with the terms and requirements of a timely and complete permit application shall be deemed to be operating in compliance with the Acid Rain Program and this Section.
(c) *A* complete permit application shall be binding on the owners and operators of the affected facility and the affected units covered by the permit application and shall be enforceable as a permit from the date of submission of the complete permit application until the final issuance or denial of a permit covering the units and subject to administrative appeal or judicial review.

Statutory Authority G.S. *143-215.3(a)(1); 143-215.107(a)(8),· 143-215.108.*

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.0408 COMPLIANCE PLANS

For each affected unit included in a permit application, a complete compliance plan shall follow the requirements under 40 CPR 72.40 where "permitting authority" is replaced with "Board."

Statutory Authority G.S. *143-215.3(a)(1),· 143-215.107(a)(8); 143-215.108 .*

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.0409 PHASE II REPOWERING EXTENSIONS

The procedures required for a repowering extension shall follow the requirements contained in 40 CFR 72.44 where "permitting authority" is replaced with "Board".

Statutory Authority G.S. *143-215.J(a)(I), 143-215.107(a)(8); 143-215.108.*

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.0410 PERMIT CONTENTS

Each permit (including any draft or proposed permit) shall contain the following elements:
(1) all elements required for a complete permit application under Rule .0406, as approved or modified by the Director;
(2) the applicable acid rain emissions limitation for sulfur dioxide; and
(3) the applicable acid rain emissions limitation for nitrogen oxides.

Statutory Authority G.S. *143-215.3(a)(l),· 143-215.107(a)(8); 143-215.108.*

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.0411 STANDARD REQUIREMENTS

(a) The standard requirements set forth in Paragraphs (b) through (i) of this Rule shall be binding on all owners and operators (including the desig11ated representative) of the affected facility and affected units at the facility.

(b) Permit Requirements. The owners or operators of each affected facility and each affected unit at the facility shall:

(1) submit a complete permit application (including a compliance plan) under this Section in accordance with the deadlines specified in Rule .0405;

(2) submit in a timely manner any supplemental information that the Director determines is necessary in order to review a permit application and issue or deny a permit;

(3) operate the unit in compliance with a complete permit application or a superseding permit issued by the Board; and

(4) have a permit.

(c) Monitoring Requirements.

(1) The owners and operators of each facility and each affected unit at the facility shall comply with all applicable monitoring requirements of 40 CPR Part 75 _and Section 407 of the federal Clean Air Act and rules implementing Section 407 of the federal Clean Air Act.

(2) The emissions measurements recorded and reported in accordance with 40 CPR Part 75 and Section 407 of the federal Clean Air Act and rules implementing Section 407 of the federal Clean Air Act shall be used to determine compliance by the unit with the acid rain emissions limitations and emissions reduction requirements for sulfur dioxide and nitrogen oxides requirements under the Acid Rain Program.

(3) The requirements of 40 CPR Part 75 and regulations implementing Section 407 of the federal Clean Air Act shall not affect the responsibility of the owners and operators to

monitor emissions of other pollutants or other emissions characteristics at the unit under other applicable requirements of the Act and other provisions of the operating permit for the facility.

(d) Sulfur Dioxide Requirements.

(1) The owners and operators of each facility and each affected unit at the facility shall:

(A) hold allowances, as of the allowance transfer deadline, in the unit's compliance subaccount (after deductions under 40 CPR 73.34(c)) not less than the total annual emissions of sulfur dioxide for the previous calendar year from the unit; and

(B) comply with the applicable acid rain emissions limitations for sulfur dioxide.

(2) Each ton of sulfur dioxide emitted in excess of the acid rain emissions limitations for sulfur dioxide shall constitute a separate violation of the federal Clean Air Act.

(3) An affected unit shall be subject to the requirements under Subparagraph (d)(l) of this Rule as follows:

(A) starting January 1, 2000, an affected unit under Subparagraph (b)(l) or (2) of Rule .0401;

(B) starting on the later of January 1, 2000, or the deadline for monitor certification under 40 CPR Part 75, an affected unit under Subparagraph (b)(3) of Rule .0401.

(4) Allowances shall be held in, deducted from, or transferred among Allowance Tracking System accounts in accordance with the Acid Rain Program.

(5) An allowance shall not be deducted, in order to comply with the requirements under Part (d)(l)(A) of this Rule, prior to the calendar year for which the allowance was allocated.

(6) An allowance allocated by the Administrator under the Acid Rain Program is a limited authorization to emit sulfur dioxide in accordance with the Acid Rain Program. No provision of the Acid 'Rain Program, the permit application, the permit, or the permit under 40 CPR Part 72.7 and Part 72. 8 and no provision of law shall be construed to limit the authority of the United States to terminate or limit such authorization.

(7) An allowance allocated by the Administrator under the Acid Rain Program does not constitute a property right.

(e) Nitrogen Oxides Requirements. The owners and operators of the facility and each affected unit at the facility shall comply with the applicable acid rain emissions limitation established by rules implementing Section 407 of the federal Clean Air Act, as modified by a permit application and a permit in accordance with the requirements of the Acid Rain Program.

(f) Excess Emissions Requirements. The owners and operators of an affected unit that has excess emissions for sulfur dioxide or nitrogen oxides in any calendar year shall:

(1) pay without demand the penalty required, and pay upon demand the interest on that penalty, as required by 40 CPR Part 77.

(2) submit a proposed offset plan and comply with the terms of an approved offset plan, as required by 40 CPR Part 77.

(g) Recordkeeping and Reporting Requirements.

(1) Unless otherwise provided, the owners and operators of the facility and each affected unit at the facility shall keep on site at the facility each of the following documents for a period of five years from the date the document is created; This period may be extended

for cause, at any time prior to the end of five years, in writing by the Administrator or Board:

(A) the certificate of representation for the designated representative for the facility and each affected unit at the facility and all documents that demonstrate the truth of the statements in the certificate of representation, in accordance with 40 CFR Part 72.24; provided that the certificates and documents shall be retained on site at the facility beyond such five-year period until such documents are superseded because of the submission of a new certificate of representation changing the designated representative.

(B) all emissions monitoring information, in accordance with 40 CFR Part 75.50(a).

(C) copies of all reports, compliance certifications, and other submissions and all records under the Acid Rain Program.

(D) copies of all documents used to complete a permit application and any other submission under the Acid Rain Program or to demonstrate compliance _with the requirements of the Acid Rain Program.

(2) The designated representative shall submit the reports and compliance certifications required under the Acid Rain Program, including those under 40 CPR Part 72, Subpart I, and 40 CFR Part 75.

(h) Liability.

(1) Any person who knowingly violates any requirement or prohibition of the Acid Rain Program a complete permit application, a permit, or a written exemption under Rule .0403 or of .0404 of this Section, including any requirement for the payment of any penalty owed to the United States, shall be subject to enforcement pursuant to G.S. 143-215.114A.

(2) Any person who knowingly makes a false, material statement in any record, submission, or report under the Acid Rain Program shall be subject to criminal enforcement pursuant to G.S. 143- 215.114A.

(3) No permit revision shall excuse any violation of the requirements of the Acid Rain Program that occurs prior to the date that the revision takes effect.

(4) Each affected facility and each affected unit shall meet the requirements of the Acid Rain Program.

(5) Any provision of the Acid Rain Program that applies to an affected facility shall also apply to the owners and operators (including the designated representative) of such facility and of the affected units at the facility.

(6) Any provision of the Acid Rain Program that applies to an affected unit shall also apply to the owners and operators (including the designated representative) of such unit. Except as provided under Rule .0409 of this Section, and Sections 407 of the federal Clean Air Act, and rules implementing Section 407 of the federal Clean Air Act, and except with regard to the requirements applicable to units with a common stack under 40 CFR Part 75 (including 40 CFR Parts 75.16, 75.17, and 75. 18), the owners and operators and the designated representative of one affected unit shall not be liable for any violation by any other affected unit of which they are not owners or operators and that is at the same facility unless they are owners or operators of that facility.

(7) Any violation of a provision of 40 CFR Parts 72, 73, 75, 77, and 78, or rules

implementing Sections 407 of the federal Clean Air Act by an affected unit, or by an owner or operator or designated representative of such unit, shall be a separate violation.

(i) Effect on Other Authorities. No provision of the Acid Rain Program, a permit application, a permit, or a written exemption under Rule ..0403 and,;0404 of this Section shall be construed as:

(1) except as expressly provided in Title -IV, exempting or excluding the owners and operators of an affected facility or affected unit from compliance with any other provision of the federal Clean Air Act, including the provisions of Title I of the federal Clean Air Act relating to applicable national ambient air quality standards or state implementation plans.

(2) limiting the number of allowances a unit can hold; provided, that the number of allowances held by the unit shall not affect the facility's obligation to comply with any other provisions of the federal Clean Air Act or Chapter 4 of Title 15A.

(3) requiring a change of any kind in any State law regulating electric utility rates and charges, affecting any State law regarding such State regulation, or limiting such State rule, including any prudence review requirements under such State Jaw.

(4) modifying the Federal Power Act or affecting the authority of the Federal Energy Regulatory Board under the Federal Power Act.

(5) interfering with or impairing any program for competitive bidding for power supply in a State in which such program is established.

Statutory Authority G.S. 143-215.3(a)(l); 143-215.107(a)(8); 143-215.65; 143-215.66; 143-215.108.

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.0412 PERMIT SHIELD

Each affected unit operated in accordance with the permit that governs the unit and that was issued in compliance with Title IV, as provided in this Part, 40 CPR Parts 73, 75, 77, and 78, and the rules implementing Sections 407 of the federal Clean Air Act, shall be deemed to be operating in compliance with the Acid Rain Program, except as provided in Subparagraph (h)(6) of Rule .0411 of this Section.

Statutory Authority G.S. 143--215.3(a)(l); 143-215.107(a)(8); 143-215.108.

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.0413 PERMIT REVISIONS GENERALLY

(a) The permit revision procedures shall govern revisions to any acid rain portion of any construction and operation permit.
(b) The permit revision procedures shall supersede the permit revision procedures specified in Section .0500 of this Chapter with regard to revision of any Acid Rain Program permit provision.
(c) A permit revision may be submitted for approval at any time. No permit revision shall affect the term of the permit to be revised. No permit revision shall excuse any violation of an Acid Rain Program requirement that occurred prior to the effective date of the revision.
(d) Except for minor permit modifications or administrative amendments, the terms of the permit shall apply while the permit revision is pending.
(e) Any determination by the Director or a State court modifying or voiding any permit provision shall be subject to review by the Administrator in accordance with 40 CFR 70. 8(c), unless the determination or interpretation is an administrative amendment approved in accordance with Rule .0416 of this Section.
(f) The standard requirements of 40 CFR Part 72.9 shall not be modified or voided by a permit revision.
(g) Any permit revision involving incorporation of a compliance option that was not submitted for approval and comment during the permit issuance process, or involving a change in a compliance option that was previously submitted, shall meet the requirements for applying for such compliance option under Rule .0409 of this Section and Section 407 of the federal Clean Air Act and rules implementing Section 407 of the federal Clean Air Act.
(h) For permit revisions not described in Rules .0414 and .0415 of this Section, the Director may, at his discretion, determine which of these Rules is applicable.

Statutory Authority G.S. 143-215.3(a)(l); 143-215.107(a)(8); 143-215.108.

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.0414 PERMIT MODIFICATIONS

(a) The following permit revisions shall follow the permit modification procedures:

(1) relaxation of an excess emission offset requirement after approval of the offset plan by the Administrator,

(2) incorporation of a final nitrogen oxides alternative emission limitation following a demonstration period, or

(3) determination of whether efforts to design, construct, and test repowering technology under a repowering extension plan were in good faith and whether such repowering technology was properly constructed and tested under 40 CFR 72.44(g)(l)(i) and (2).

(b) The following permit revisions shall follow either the permit modification procedures or the fast-track modification procedures under Rule .0415 of this Section:

(1) incorporation of a compliance option that the designated representative did not submit for approval and comment during the permit issuance process;

(2) addition of a nitrogen oxides alternative emissions limitation demonstration period or a nitrogen oxides averaging plan to a permit; or

(3) changes in a repowering plan, nitrogen oxides averaging plan, nitrogen oxides alternative emissions limitation demonstration period, or nitrogen oxides compliance deadline extension.

(c) Permit modifications shall follow the requirements of Rules .04 IO and .0412 of this Section and Section .0500 of this Chapter.

Statutory Authority G.S. 143-215.3(a)(J),· 143-215.107(a)(8); 143-215.108 .

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.0415 FAST-TRACK MODIFICATIONS

All fast-track modifications applicable to sources subject to the acid rain portion of this Section shall follow the procedures given in 40 CFR 72.80 where "permitting authority" should be replaced with "Board".

Statutory Authority G.S. 143-215.J(a)(l); 143-215.107(a)(8),· 143-215.108 .

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.0416 ADMINISTRATIVE PERMIT AMENDMENT

(a) The following revisions to the acid rain portion of the permit shall follow the administrative permit amendment procedures are:

(1) activation of a compliance option conditionally approved by the Director, provided that all requirements for activation under 40 CFR Part 72, Subpart D, are met;

(2) changes in the designated representative or alternative designated representative, provided that a new certificate of representation is submitted;

(3) correction of typographical errors;

(4) changes in names, addresses, or telephone or facsimile numbers;

(5) changes in the owners or operators, provided that a new certificate of representation is submitted within 30 days;

(6) termination of a compliance option in the permit, provided that this procedure shall not be used to terminate a repowering plan after December 31, 1999.

(b) Administrative amendments shall follow the procedures set forth under Section .0500 of this Chapter.

Statutory Authority G.S. *J43-215.3(a)(l); 143-215.107(a)(8),· 143-215.108.*

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.0417 AUTOMATIC PERMIT AMENDMENT

The following permit revisions shall be deemed to amend automatically, and become a part of, the affected unit's permit by operation of law without any further review: ·

(1) upon recordation by the Administrator under 40 CFR Part 73 all allowance allocations to, transfers to, and deductions from an affected unit's Allowance Tracking System account; and

(2) incorporation of an offset plan that has been approved by the Administrator under 40 CFR Part 77.

Statutory Authority G.S. *143-215.J(a)(l); 143-215.107(a)(8),· 143-215.108 .*

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.0418 PERMIT REOPENINGS

(a) As provided in Section .0500 of this Chapter, the Board shall reopen a permit for cause, including whenever additional requirements become applicable to any affected unit governed by the permit.

(b) Upon reopening a permit for cause, the Board shall issue a draft permit changing the provisions, or adding the requirements, for which the reopening was necessary.

(c) As necessary, the Board shall reopen a permit to incorporate nitrogen oxides requirements, consistent with Section 407 of the federal Clean Air Act and rules implementing Section 407 of the federal Clean Air
Act.

(d) Any reopening of a permit shall not affect the term of the permit.

Statutory Authority G.S. *143-215.J(a)(l); 143-215.107(a)(8); 143-215.108.*

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SECTION .0600 - TRANSPORTATION FACILITY PROCEDURES

.0601 PURPOSE OF SECTION AND REQUIREMENT FOR A PERMIT

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

(b) The owner or developer of a transportation facility subject to the requirements of Chapter 4 .0800 shall obtain a construction only permit following the procedures in this Section. An operation permit is not needed.

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

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

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.0602 DEFINITIONS

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

(1) "Construction" means any activity following land clearing or grading that engages in a program of construction specifically designed for a transportation facility in preparation for the fabrication, erection, or installation of the building components associated with the transportation facility, e.g. curbing, footings, conduit, paving, etc.

(2) "Level of service" means a qualitative measure describing operational conditions within a traffic stream; generally described in terms of such factors as speed .and travel time, freedom to maneuver, traffic interruptions, comfort and convenience, and safety.

(3) "Owner or developer" means any person who owns, leases, develops, or controls a transportation facility. ·

(4) "Transportation facility" means a complex source as defined at G.S. 143-213(22) and is subject t? the requirements of Chapter .4 .0800. ·

Statutory Authority G.S. 143-213, 143-215.3(a)(l); 143-215.108 .

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.0603 APPLICATIONS

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

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

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

(d) A transportation facility permit application shall be made in triplicate on official forms of the Director and shall include plans and specifications giving an necessary data and information as required by the application form.

(e) A transportation facility permit application containing dispersion modeling analyses that demonstrate compliance or traffic analyses showing an acceptable level of service using planned roadway and intersection improvements shall include approval for the improvements from the appropriate state or city department of transportation.

(f) Whenever the information provided on the permit application forms does not adequately describe the transportation facility, the Director may request that the applicant provide any other information that the Director considers necessary to evaluate the transportation facility. Before acting on any permit application, the Director may request any information from an applicant and conduct any inquiry or investigation that he considers necessary to determine compliance with applicable standards including traffic level of service.

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

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

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.0604 PUBLIC PARTICIPATION

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

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

(c) The public notice shall identify:

(1) the affected facility;

(2) the name and address of the permittee;

(3) the name and address of the person to whom comments and requests for public hearing are to be sent;

(4) the name, address, and telephone number of a person from whom interested persons may obtain additional information, including copies of the draft permit, the application, monitoring and compliance reports, all other relevant supporting materials, and all other materials available to Agency that are relevant to the permit decision;

(5) a brief description of the proposed project;

(6) a brief description of the public comment procedures;

(7) the procedures to follow to request a public hearing unless a public hearing has already been scheduled; and

(8) the time and place of any hearing that has already been sched11led.

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

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

(f) The Director shall make available for public inspection in at least one location in the region affected,
the information submitted by the permit applicant and the Agency's analysis of that application.
(g) Any persons requesting copies of material identified in Subparagraph (b)(4) of this Rule shall pay ten cents ($0.10) a page for each page copied. Confidential material shall be handled in accordance with Rule
.0107 of this Chapter.

Statutory Authority G.S. *143-215.3(a)(l), (3); 143-215.4(b); 143-215-.108; 143-215.109.*

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.0605 FINAL ACTION ON PERMIT APPLICATIONS

(a) The Board may:
(1) issue a permit containing the conditions necessary to carry out _the purposes of G.S. Chapter 143, Article 21B;
(2) rescind a permit upon request by the permittee; or
(3) deny a permit application when necessary to carry out the purposes of G.S. Chapter 143, Article 21B.
(b) The Board shall issue a permit for the construction or modification of a transportation facility subject to the rules in Chapter 4 .0800 if the permit applicant submits a complete application and demonstrates to the satisfaction of the Director that the applicable standards will not be exceeded.
(c) The Board shall issue a permit for a period of time that the Board considers reasonable, but such period shall not exceed five years.
(d) The Board shall not approve a permit for a transportation facility that:
(1) interferes with the attainment or maintenance of any applicable standard,
(2) results in a contravention of applicable portions of the implementation plan control strategy, or
(3) is demonstrated with dispersion modeling to exceed an applicable standard.
(e) Any person whose application for a permit is denied or is granted subject to conditions which are unacceptable to him shall have the right to appeal the Board's decision under Article 3 of G.S. 150B. The person shall have 30 days following the notice of the Board's decision on the application or permit in which to appeal the Board's decision.

Statutory Authority G.S. *143-215.J(a)(l); 143-215.108; 143-215.109.*

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.0606 TERMINATION, MODIFICATION AND REVOCATION OF PERMITS

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

(1) The information contained in the application or presented in support thereof is determined to be incorrect;

(2) The conditions under which the permit was granted have changed;

(3) Violations of conditions contained in the permit have occurred;

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

(A) to enter the permittee's premises where the transportation facility is located or where any records are required to be kept under terms and conditions of the permit;

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

(C) to inspect the transportation facility and any monitoring equipment or monitoring procedures required in the permit; or

(D) to sample emissions from the facility;

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

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

(c) Any person whose permit is terminated, modified, or revoked and reissued shall have the right to appeal the Board's decision under Article 3 of G.S. 150B. The person shall have 30 days following the notice of the Board's decision on the termination, modification, or revocation and reissuance in which to appeal the Board's decision.

Statutory Authority G.S. 143-215.3(a)(I), (la),(lb); 143-215.108; 143-215.109.

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