Pre-Hearing Draft

North Carolina State Plan

Commercial and Industrial Solid Waste Incineration Emission Guidelines
40 CFR Part 60, Subpart DDDD
pursuant to
Clean Air Act Section 129/111(d)

Prepared by
North Carolina Department of Environmental Quality
Division of Air Quality

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PREFACE

This document serves as submittal of the North Carolina State Plan regarding emissions from Commercial and Industrial Solid Waste Incineration (CISWI) units subject to 40 CFR Part 60, Subpart DDDD. It serves to demonstrate the methods by which North Carolina will ensure and enforce compliance with the applicable Emission Guidelines.

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1.0 Executive Summary

1.1 Background and Purpose

The Clean Air Act (CAA) Amendments, Sections 111 and 129 require regulation of solid waste incineration units, including Commercial and Industrial Solid Waste Incineration (CISWI) units. On December 1, 2000, the United States Environmental Protection Agency (EPA) promulgated New Source Performance Standards (NSPS) and Emissions Guidelines (EG) for CISWI Units, codified at 40 CFR Part 60, Subparts CCCC and DDDD, respectively. On November 3, 2003, the CISWI Federal Plan codified at 40 CFR Part 62, Subpart III, became effective, which applies to existing CISWI units subject to the EG that are located in states without approved state plans, until a state plan is submitted and approved. CAA Section 129 requires states with affected CISWI units to submit a State Plan that is equally protective to implement and enforce the EG. Based on the language of the EG, a state may meet its CAA Amendments, Section 111(d)/129 obligations by submitting a State Plan that meets the requirements of 40 CFR §60.2515. North Carolina submitted a State Plan for compliance with the CISWI EG pursuant to CAA Section 129, which was approved effective November 28, 2005 (70 FR 56856). On March 21, 2011, February 7, 2013 and June 23, 2016, the EPA finalized revisions to the CISWI NSPS and EG under 40 CFR Part 60, Subparts CCCC and DDDD.

Effective July 1, 2018, North Carolina regulations for CISWI units, under 15A NCAC 02D .1210, were readopted and amended to incorporate the requirements of the revised EG.

This State Plan includes the required components, as outlined in Section 1.2.

1.2 Required Elements of State Plan

As specified in 40 CFR §60.2515, the State Plan must include the following elements:

1) Inventory of the affected CISWI units including those that have ceased operation but have not been dismantled;
2) Inventory of the emissions from the affected CISWI units;
3) Compliance schedules for each affected CISWI unit;
4) Emission limits, emission standards, operator training and qualification requirements, a waste management plan, and operating limits for affected CISWI units that are at least protective as the EGs contained in Subpart DDDD;
5) Performance testing, recordkeeping, and reporting requirements;
6) Certification that the hearing on the state plan was held, a list of witnesses and their organizational affiliations, if any, appearing at the hearing, and a brief written summary of each presentation or written submission;
7) Provisions for state progress reports for EPA;
8) Identification of enforceable state mechanisms selected for implementing the emission guidelines of Subpart DDDD; and
9) Demonstration of the state's legal authority to carry out the sections 111(d) and 129 state plan.

2.0 Inventory of Affected CISWI Units

40 CFR §60.25 requires an inventory of all designated facilities in the State Plan, including emission data for the designated pollutants and information related to emissions as specified in appendix D to Part 60. 40 CFR §60.2550 specifies that the state plan must address CISWI units and ACIs that commenced construction on or before June 4, 2010, or commenced modification or reconstruction after June 4, 2010 but no later than August 7, 2013, meet the definition of a CISWI as defined in 40 CFR §60.2875 or an ACI as defined in 40 CFR §60.2875, and incineration units not exempt under 40 CFR §60.2555. 40 CFR §60.2550(b) excludes CISWI units and ACIs that are modified or reconstructed after August 7, 2013, making it subject to Subpart CCCC. Physical or operational changes made to a CISWI unit or ACI primarily in order to comply with the state plan does not make the unit subject to Subpart CCCC, and does not constitute a modification or reconstruction under Subpart CCCC.

15A NCAC 02D .1210, *Commercial and Industrial Solid Waste Incineration Units*, specifies applicability and exemptions of the Rule in paragraphs (a) and (b). The Rule applies to existing CISWI units, including energy recovery units, kilns, small remote incinerators, and air curtain incinerators that burn solid waste, pursuant to 40 CFR §60.2550 and as defined in 40 CFR §60.2875, with the exception of the combustion units outlined in 15A NCAC 02D .1210(b). A CISWI unit is existing if it commenced construction on or before June 4, 2010, or commenced modification or reconstruction after June 4, 2010, but no later than August 7, 2013. ACIs which combust 100 percent wood waste, 100 percent clean lumber, 100 percent yard waste, or 100 percent mixture of only wood waste, clean lumber, and yard waste that are subject to 40 CFR §60.2245 through §60.2260 or §60.2970 through §60.2974 are subject to 15A NCAC 02D .1904, *Air Curtain Incinerators*.

Currently, North Carolina does not have any CISWI units covered under this State Plan. There are three ACIs covered under this State Plan, as shown in Table 1 of this section.

Table 1: Affected ACIs Covered Under North Carolina State Plan

Owner/Facility Name Facility ID Permit Number (Issue Year) Address	Unit Name Unit Description	Capacity
Ike Williamson Sand Pit, ACB Facility ID: 1000112 Permit No.: 09826G03 5785 Old Georgetown Road Shallotte, Brunswick County, NC 28459	ES-1 one air curtain incinerator (Air Curtain Destructor CP-2000T unit built prior to 2004) with forced air blowing over the fire in a pit (16 feet long x 8 feet wide x 8 feet deep)	Maximum capacity of approximately 10 tons burned per hour of only wood waste consisting of trees, logs, large brush, stumps relatively free of soil, and clean lumber.
	ES-2 One air curtain incinerator (Roberson Contracting Unit built prior to 2004) with forced air blowing over the fire in a pit (35 feet long x 12 feet wide x 12 feet deep)	Capacity of 20 tons burned per hour of only wood waste consisting of trees, logs, large brush, stumps relatively free of soil, and clean lumber.
Green Acres Land Development, Inc Facility ID: 2700033 Permit No.: 08519G05 128 West Side Lane Powells Point, NC 27966	ES-ACI-1 One forced air curtain burner (30 feet in length, 12 feet wide and 12 feet deep -- maximum rate of 14 tons per hour) powered by a 94 horsepower diesel-fired engine	8,550 cubic yards of material was burned in CY2019.

3.0 Inventory of Emissions from Affected CISWI Units

40 CFR §60.25(a) requires each plan to include an inventory of all designated facilities, including emission data for the designated pollutants and information related to emissions as specified in Appendix D to 40 CFR Part 60. Emission rates are to be summarized in the plan and emission rates of designated pollutants from designated facilities shall be correlated with applicable emission standards in such a manner as to show the relationship between measured or estimated amounts of emissions and emissions allowable under the standards.

The designated pollutants for 40 CFR Part 60, Subpart DDDD, are those listed in Tables 2 and 3 of the Emission Guidelines. Only pollutants which are considered designated pollutants under this Subpart are included in the inventory of emissions submitted with this State Plan. Appendix D requires an estimate of the designated pollutant emissions from the designated facility (maximum per hour and average per year) and the method used to determine the emissions.

This section contains two subsections. Subsection 3.1 contains the most recent opacity test results at each of the designated facilities for comparison with the emission limitation in Table 6 of the Emission Guidelines. Subsection 3.2 contains the tons per year or pounds per year of the designated pollutants that were reported in the North Carolina Emissions Inventory Database for the calendar year 2019.

3.1 Stack Test Results with Comparison to Emission Guidelines Limits

The opacity test results for the three affected ACIs are provided in Table 2 below.

Table 2: Opacity Test Results for Affected ACIs

Facility	Unit	Stack Test Result	Limit[1]	Test Method
Ike Williamson Sand Pit	ES-1	8.3%[2]	10% during normal operations 35% during startup	9
	ES-2	[3]	10% during normal operations 35% during startup	9
Green Acres Land Development	ES-ACB-1	[4]	10% during normal operations 35% during startup	9

[1] Emission limits for ACIs taken from 40 CFR §60.2860.
[2] Highest 6-minute average.
[3] ES-2 is a newly purchased ACI that was not set up for use at the time of the last DAQ inspection (November 20, 2020). The owner plans to have both ACIs able to operate near each other, but plans to only operate one ACI at a time. 15A NCAC 02D .1904(g)(3) requires an initial performance test for new ACIs within 60 days of achieving the maximum charge rate at which the ACI will be operated, but not later than 180 days after initial startup of the air curtain incinerator.
[4] Unit ES-ACB-1 was not in operation during the 2020 inspection.

3.2 Mass Emission Rates from Affected CISWI Units

The most recent emissions of designated pollutants reported in the North Carolina Emissions Inventory for the affected ACIs are included in Table 3 below.

Table 3: Mass Emission Rates for Affected ACI Units

Pollutants	CAS No or Pollutant Code	Units	Ike Williamson Sand Pit (2016) [5]	Green Acres Land Development (2015) [5]
Carbon Monoxide	CO	tons	42.00	97.20
Nitrogen Oxides	NOx	tons	7.00	
Total Suspended Particulate	TSP	tons	29.75	99.00
Particulate matter with a diameter of 10 microns or less	PM_{10}	tons	29.75	55.00
Particulate matter with a diameter of 2.5 microns or less	$PM_{2.5}$	tons	26.25	
Sulfur Dioxide	SO_2	tons	N/A	
Volatile organic compounds	VOC	tons	1.75	
Acetaldehyde	75-07-0	pounds	2,520.00	
Polycyclic Organic Matter (including PAH, dioxins, etc.)	POM	pounds	45.50	

[5] Ike Williamson Sand Pit and Green Acres Land Development last reported emissions in 2016 and 2015, respectively. As small sources, these facilities were only required to report emissions upon permit renewal. In accordance with 40 CFR §60.2805, both of these facilities obtained General Title V permits in calendar year 2020; therefore, these facilities should begin reporting emissions annually beginning with calendar year 2021.

4.0 Compliance Schedules

40 CFR§60.24(a) requires each state plan to include compliance schedules. Under 40 CFR 60.24(e), any compliance schedule extending more than 12 months from the date required for submittal of the plan must include legally enforceable increments of progress to achieve compliance for each designated facility. For incinerators and ACIs that commenced construction on or before November 30, 1999, 40 CFR §60.2535(a) requires compliance no later than the earlier of December 1, 2005, or three years after the effective

date of state plan approval. For incinerators and ACIs that commenced construction after November 30, 1999, but on or before June 4, 2010 or that commenced reconstruction or modification on or after June 1, 2001 but no later than August 7, 2013, and for CISWIs in the small remote incinerator, energy recovery unit, and waste-burning kiln subcategories that commenced construction before June 4, 2010, 40 CFR §60.2535(b) requires the state plan to include compliance schedules that require CISWIs to achieve final compliance as expeditiously as practicable after approval of the state plan but not later than the earlier of February 7, 2018, or three years after the effective date of state plan approval. For compliance schedules more than 1 year following the effective date of State plan approval, 40 CFR 60.2535(c) requires the State plan include dates for enforceable increments of progress as specified in 40 CFR 60.2580, which references Table 1 of Subpart DDDD. 40 CFR §60.2815 through §60.2845 contain requirements for increments of progress for ACIs for which compliance will not be achieved within 1 year following the effective date of state plan approval.

Under 15A NCAC 02D .1210(d), North Carolina requires compliance no later than February 7, 2018 for all affected CISWI units subject to the Rule.

5.0 Emission Limits and Standards, Operator Training and Qualification, and Operating Limits

5.1 Emission Limits and Standards

40 CFR §60.24 requires each plan to contain emission standards, either based on an allowance system or with prescribed allowable rates of emissions. Emission standards shall apply to all designated facilities within the State, and may contain emission standards adopted by local jurisdictions provided that the standards are enforceable by the State. Emission standards shall be no less stringent than the corresponding EG.

Model Rule

40 CFR §60.2670 requires the CISWI unit meet the emission limits and standards in Tables 2 or 6 through 9 to Subpart DDDD. The emission limits and standards apply at all times the unit is operating, including and not limited to startup, shutdown, or malfunction. Units without wet scrubbers must maintain opacity to less than or equal to that specified in Table 2 of the EG.

40 CFR §60.2860 specifies emission limits for ACIs. Opacity must be maintained to less than or equal to 10 percent opacity during normal operations, and less than 35% opacity during startup, which is within the first 30 minutes of operation, as determined by the average of three 1-hour blocks consisting of ten 6-minute average opacity values.

State Plan

North Carolina specifies emission limits for CISWI units under 15A NCAC 02D .1210(e), which adopts the emission limitations specified in Tables 6 through 9 of 40 CFR Part 60, Subpart DDDD and limits opacity to less than or equal to 10 percent using an averaging time of three 1-hour blocks consisting of 6-minute average opacity values pursuant to Table 2 of 40 CFR Part 60, Subpart DDDD. Odorous emissions are limited to those specified in 15A NCAC 02D .1806, and emissions of toxic air pollutants (TAPs) must be demonstrated to be in compliance with 15A NCAC 02D .1100.

North Carolina specifies opacity limits for ACIs under 15A NCAC 02D .1904(f), which requires the owner or operator of an existing ACI to meet the 35% opacity during startup, and 10% opacity during all times other than startup or during malfunctions, as determined by the average of 3 1-hour blocks consisting of 10 6-minute average opacity values.

15A NCAC 02D .1210(e) adopts the applicable emission limitations specified in 40 CFR §60.2670(a), which references Tables 6 through 9 to 40 CFR Part 60, Subpart DDDD, and 40 CFR §60.2670(b). 15A NCAC 02D .1904(f) incorporates the opacity limits from 40 CFR §60.2860. Therefore, the requirements are at least as stringent as the model rule, as required by the EG.

5.2 Operator Training and Qualifications

Model Rule

40 CFR §60.2635 through §60.2665 contain operator training and qualification requirements, course compliance dates, qualification methods, operator qualification maintenance methods, lapsed operator qualification renewal methods, compliance options for periods when qualified operators are temporarily not accessible, and documentation requirements.

A fully trained and qualified CISWI unit operator must be accessible when a CISWI unit is operated, either at the facility or able to be at the facility within 1 hour. The fully trained and qualified CISWI unit operator may operate the CISWI unit directly or be the direct

supervisor of one or more other plant personnel who operate the unit. If all qualified CISWI unit operators are temporarily not accessible, the procedures in 40 CFR §60.2665 apply, which allow for operation of the CISWI unit for less than 2 weeks by other plant personnel who are familiar with the operation of the CISWI unit and have completed a review of the information in 40 CFR §60.2660(a) within the past 12 months. If a qualified operator is not accessible for two weeks or more, written notification of the deviation must be provided to the Administrator within 10 days, and a status report provided every four weeks outlining the items listed in 40 CFR §60.2665(b)(2). If the Administrator disapproves the request, operation of the SSI unit must cease operation after no later than 90 days, resuming only when a qualified operator is accessible as required under 40 CFR §60.2635(a) and notification is provided to the Administrator.

Operator training and qualification must be obtained through a state-approved program or by completing the requirements included in §60.2635(c) by the dates specified in §60.2640. An annual review or refresher course covering the five topics in 40 CFR §60.2650 is required to maintain qualification. Lapsed qualifications are renewed by completing a standard annual refresher course described in 60.2650 for a lapse of less than three years, or repeating the initial qualification requirements in 60.2645(a) for a lapse of three years or more. Site-specific documentation is required according to 60.2660.

Operator training must be completed by the later of the final compliance date, six months after CISWI unit startup, or six months after an employee assumes responsibility for operating or supervising the operation of the CISWI unit.

State Plan

North Carolina regulates affected CISWI unit operator training and qualification under 15A NCAC 02D .1210(m), which adopts language from 40 CFR §60.2635 through §60.2665. CISWI units may not be operated unless a fully trained and qualified CISWI unit operator is at the facility or can be at the facility within one hour. The trained and qualified CISWI unit operator may operate the CISWI unit directly or be the direct supervisor of one or more other plant personnel who operate the unit. If all qualified CISWI unit operators are temporarily not accessible, the procedures in 40 CFR §60.2665(a) and (b) apply. Operator training and qualification is required in accordance with 40 CFR §60.2635(c) by the later of six months after CISWI unit startup, six months after an employee assumes responsibility for operating the CISWI unit or assumes responsibility for supervising the operation of the CISWI unit, or February 7, 2018. Completion of an annual review or refresher course covering the five topics specified in 40 CFR §60.2650(a) through (e) is required to maintain an operator qualification.

Renewal of a lapsed operator qualification is allowed through completion of a standard annual refresher course covering the topics in 40 CFR §60.2650(a) through (e) for a lapse of less than three years, or repeat of the initial qualification requirements in 40 CFR §60.2635(c) for a lapse of three years or more. When a qualified operator is not present at the facility and cannot be present within one hour, North Carolina rules require the criteria specified in 40 CFR §60.2665(a) and (b) to be met. Maintenance and review of the operator training documentation is required through completion of an annual refresher course covering the five topics specified in 40 CFR §60.2650(a) through (e). The requirements of 15A NCAC 02D .1204(m) are adopted from 40 CFR §60.2635 through §60.2665. Therefore, these requirements are at least as stringent as the model rule as required by the emission guidelines.

5.3 Waste Management Plan

Model Rule

40 CFR §60.2620 and §60.2630 contain the requirements for a waste management plan at the site that identifies the feasibility and methods used to reduce or separate certain components of solid waste from the waste stream in order to reduce or eliminate toxic emissions from incinerated waste. 40 CFR §60.2625 requires submittal of the waste management plan no later than the submittal of the final control plan.

State Plan

North Carolina specifies waste management plan requirements for CISWI units under 15A NCAC 02D .1210(o). The owner or operator of an affected CISWI unit is required to submit a written waste management plan to the Director that identifies the feasibility and methods used to reduce or separate components of solid waste from the waste stream in order to reduce or eliminate toxic emissions from incinerated waste, as required by 40 CFR §60.2620. 15A NCAC 02D .1210(o)(2) adopts language from the model rule requirements in 40 CFR §60.2630 and requires a description of how the materials listed in G.S. 130A-309.10(fl) are to be segregated from the waste stream for recycling or proper disposal. These requirements are at least as stringent as the model rule, as required by the emission guidelines.

5.4 Operating Limits

Model Rule

40 CFR §60.2675 contains operating limits and requirements and associated compliance dates. The specific operating limits vary based on the control device used to meet the

emission limits of the rule and the continuous monitoring systems in place. Operating limits must be met by the date that the performance test report is submitted to the EPA's Central Data Exchange or postmarked, per the requirements of 40 CFR §60.2795(b). If a wet scrubber, ESP, or fabric filter is not used to comply with emission limits and a PM CEMS or CPMS is not used to determine compliance with PM emission limits, 40 CFR §60.2675(h) requires opacity to be maintained at less than or equal to 10 percent opacity on a 1-hour block average. If an air pollution control device other than a wet scrubber, activated carbon injection, selective noncatalytic reduction, fabric filter, electrostatic precipitator, or dry scrubber is used to comply with emission limitations, or if emissions are limited in some other manner, 40 CFR §60.2680 requires petitioning to the EPA Administrator for specific operating limits to be established during the initial performance test and continuously monitored thereafter.

State Plan

15A NCAC 02D .1210(f) adopts the operational standards in 40 CFR §60.2675. If an air pollution control device other than a wet scrubber, activated carbon sorbent injection, selective non-catalytic reduction, fabric filter, electrostatic precipitator, or dry scrubber is used to comply with Rule 02D .1210 or emissions are limited in some other manner, a petition is required to the EPA Administrator in accordance with the requirements of 40 CFR §60.2680 for specific operating limits that shall be established during the initial performance test and continuously monitored thereafter. The operating limits from 40 CFR §60.2675 are adopted by reference and are therefore at least as stringent as the model rule, as required by the emission guidelines.

6.0 Performance Testing, Recordkeeping, and Reporting

6.1 Initial Compliance

Model Rule

40 CFR §60.2700 through §60.2706 of the Model Rule specify procedures for demonstrating initial compliance with emission limits and establishing operating limits, and establish deadlines for conducting air pollution control device inspections and repairs.

40 CFR §60.2865 requires use of Method 9 to determine compliance with the opacity limitation for ACIs. An initial test is required no later than 180 days after the final compliance date, and annual tests no more than 12 calendar months following the date of the previous test. 40 CFR §60.2850 specifies that the specified emission limits are

required to be met upon restarting of any ACI that is closed and then restarted after the final compliance date.

State Plan

North Carolina requires initial compliance for CISWI units in accordance with 15A NCAC 02D .1210(h). The initial compliance and operating limit requirements of 40 CFR §60.2700 through 40 CFR §60.2706 are adopted into 15A NCAC 02D .1210(h)(1). The initial performance test deadlines of 40 CFR §60.2705 and bypass requirements of 40 CFR §60.2700(a) are incorporated into 15A NCAC 02D .1210(h)(2). The results of the performance test are used according to 15A NCAC 02D .1210(h)(2)(A) through (D), which incorporates the language of 40 CFR §60.2700(a). 15A NCAC 02D .1210(h)(3) requires a performance evaluation of each CEMS within 60 days of installation as required by 40 CFR §60.2700(b), and an initial air pollution control device inspection no later than 180 days after February 7, 2018 pursuant to 40 CFR §60.2706.

15A NCAC 02D .1904(g) requires an initial opacity test using 40 CFR Part 60, Appendix A-4 Test Method 9 to demonstrate compliance with the ACI opacity limits, no later than 90 days after the effective date of the rule for existing ACIs, and no later than 60 days after achieving the maximum charge rate at which the ACI will be operated, but no later than 180 days after the initial startup of the ACI, for new ACIs.

The requirements of 40 CFR §60.2690 and §60.2700 through §60.2706 are adopted into 15A NCAC 02D .1210(h). 15A NCAC 02D .1904(g) incorporates the initial and annual opacity test methods from 40 CFR §60.2865, and performance test compliance dates at least as stringent as those in 40 CFR §60.2850. Therefore, the North Carolina requirements for affected CISWI and ACI units are at least as stringent as the model rule, as required by the emission guidelines.

6.2 Continuous Compliance

Model Rule

40 CFR §60.2710 specifies continuous compliance requirements for demonstrating continuous compliance with emission and operating limits. The annual performance test and air pollution control device inspection must be conducted by the dates specified in 40 CFR §60.2715 and §60.2716, with exceptions outlined in §60.2720. Repeat performance tests may be conducted to establish new operating limits as specified in 40 CFR §60.2725.

State Plan

North Carolina requires continuous compliance demonstration with the emission limits and operating standards under 15A NCAC 02D .1210.

15A NCAC 02D .1210(i)(1) adopts the provisions of 40 CFR §60.2710 through §60.2725 for demonstrating compliance with the emission limits and standards of subparagraphs (e)(1) and (f) of Rule 02D .1210. 15A NCAC 02D .1210(i)(2) through (10) incorporates the requirements of 40 CFR §60.2710(a)(4) for existing CISWI units that combusted a fuel or non-waste material and commence or recommence combustion of solid waste, the bypass requirements of 40 CFR §60.2710(v), the annual performance test requirements of 40 CFR §60.2710(b), the continuous monitoring operating parameter requirements specified in 40 CFR §60.2710(c) and §60.2735, the energy recovery unit waste and fuel requirements of 40 CFR §60.2710(d), the system-specific, unit-specific, and pollutant-specific monitoring provisions of 40 CFR §60.2710(e) through (j), (m) through (u), and (w) through (y), the annual air pollution control device inspection requirements under 40 CFR §60.2710(k), the site-specific monitoring plan requirements pursuant to 40 CFR §60.2710(l), and the monitoring system requirements of 40 CFR §60.2710(m) through (u) and (w) through (y). Annual performance tests are not required if CEMS or continuous opacity monitoring systems are used to determine compliance.

15A NCAC 02D .1210(i) incorporates the requirements of 40 CFR §60.2710 through §60.2725 of the model rule. Therefore, these requirements are at least as stringent as the Model Rule as required by the EG.

6.3 Performance Testing, Monitoring and Calibration

Model Rule

Initial and annual performance testing is required in accordance with 40 CFR §60.2690 to demonstrate compliance with emission limitations specified in 40 CFR §60.2695. Monitoring equipment must be installed and parameters monitored in accordance with 40 CFR §60.2730. Monitoring data must be obtained in accordance with 40 CFR §60.2735.

40 CFR §60.2865 requires use of Method 9 to determine compliance with the opacity limitation for ACIs. Annual tests are required no more than 12 calendar months following the date of the previous test. For any ACI that is closed and then restarted after the final compliance date, 40 CFR §60.2850 requires that the specified emission limits be met on the date that the ACI is restarted.

State Plan

North Carolina requires performance testing and monitoring for affected CISWI units under 15A NCAC 02D .1210(g) and (j).

North Carolina adopts the test methods and procedures in 15A NCAC 02D .2600, Tables 6 through 9 of Subpart DDDD, 40 CFR §60.2670(b), and 40 CFR §60.2690 for determining compliance with the emission standards. Method 9 from 40 CFR Part 60, Appendix A-4 is used for determining compliance with the opacity limit.

As required by 40 CFR §60.2695, results are used to determine compliance with emission limitations of 15A NCAC 02D .1210(e)(1), which references Tables 6 through 9 of 40 CFR Part 60, Subpart DDDD.

Monitoring for applicable CISWI units is required under 15A NCAC 02D .1210(j). The monitoring requirements in 15A NCAC 02D .0600 and 40 CFR §60.2730 through §60.2735 are adopted for CISWI units. The data collection requirements of 40 CFR §60.2735 are adopted for continuous monitoring systems required or allowed pursuant to 40 CFR §60.2730. The requirements in 40 CFR §60.2730 and §60.2730(c) are adopted for devices and methods used to determine or monitor compliance with the operating parameters established under 15A NCAC 02D .1210(f)(2) and (3). A CEMS, continuous automated sampling system, or other device specified in 40 CFR §60.2730 may be substituted for the annual performance test and used for monitoring compliance with operating parameters. The bypass stack monitoring device requirements of 40 CFR §60.2730(p) and the monitoring data requirements of 40 CFR §60.2735 are incorporated. The data recorded during malfunctions, out-of-control periods, repairs associated with malfunctions or out-of-control periods, quality assurance or quality control activities, and site-specific scheduled maintenance are not used in assessing compliance with operating standards. All data collected during all other periods, including data normalized for above-scale readings, is required to be used in assessing the operation of the control device and associated control system. Repairs shall be made as expeditiously as possible. Failure to collect monitoring data, with the exception of periods of malfunctions, out-of-control periods, repairs associated with malfunctions or out-of-control periods, and quality assurance or quality control activities, constitutes a deviation.

15A NCAC 02D .1904(g) requires annual opacity tests for ACI units using 40 CFR Part 60, Appendix A-4 Test Method 9 to demonstrate compliance with the opacity limits. After the initial ACI opacity test, annual opacity tests are required no more than 12 months after

the previous test. If an ACI ceases operation and is then restarted after more than 12 months since the previous test, an opacity test is required upon startup of the unit.

The performance testing, monitoring, and inspection requirements in 15A NCAC 02D .1210(g) and (j) adopt the requirements of the model rule. 15A NCAC 02D .1904(g) incorporates annual performance test requirements and compliance dates at least as stringent as those in 40 CFR §60.2850. Therefore, these requirements are at least as stringent as the model rule, as required by the EG.

6.4 Recordkeeping and Reporting

6.4.1 Deviations, Malfunctions, and Out-of-Control Periods

Model Rule

40 CFR §60.2775 through §60.2785 contains requirements for reporting deviations, malfunctions, and out-of-control periods for CISWI units.

State Plan

15A NCAC 02D .1210(k) specifies requirements for deviations, malfunctions, and out-of-control periods. Deviations, as defined in 40 CFR §60.2875, are required to be reported, including deviations from operating limits established in Table 3 in Subpart DDDD, 15A NCAC 02D .1210(f), 40 CFR §60.2675(c) through (g), or 40 CFR §60.2680, including any recorded 3-hour average parameter level above the established maximum operating limit or below the established minimum operating limit, as required by 40 CFR §60.2775(a). Also included are deviations from emission limitations established pursuant to Tables 6 through 9 of Subpart DDDD, operator qualification and accessibility requirements established pursuant to 40 CFR §60.2635, and deviations from operating permit conditions and terms. 15A NCAC 02D .1210(k)(2) incorporates the deviation report deadlines of 40 CFR §60.2775(b). Malfunctions, as defined in 40 CFR §60.2875, and periods during which a CEMS was out of control are included in the annual report required under Paragraphs (j) and (l) of Rule 02D .1210.

6.4.2 Annual Reports and Recordkeeping

Model Rule

40 CFR §60.2740 through §60.2770 and §60.2795 of the model rule contain recordkeeping and reporting requirements for affected CISWI units. Records are required to be maintained onsite for 5 years, and contain the information in 40 CFR §60.2740.

Records must be available onsite in either paper copy or printable computer-readable format. Reports are required as specified in 40 CFR Part 60, Subpart DDDD, Table 5. The waste management plan is required no later than the date specified in Table 1 of Subpart DDDD. The information specified in 40 CFR §60.2760 is required no later than 60 days after the initial performance test. An annual report is required no later than 12 months following the submission of information in 40 CFR §60.2760, and subsequent reports are required no more than 12 months following the previous report. The annual report must include the items listed in 40 CFR §60.2770. Any deviations from operating limits or emission limits require submission of a deviation report as specified in 40 CFR §§60.2775, 60.2780, and 60.2785. Notifications in accordance with 40 CFR §§60.7 and 60.2710(a) are required under 40 CFR §60.2790. 40 CFR §60.2795 specifies the required formats for reports. Requests for changes to the semiannual or annual reporting dates shall be submitted to the Administrator and in accordance with the procedures in 40 CFR §60.19(c).

40 CFR §60.2870 contains recordkeeping and reporting requirements for ACIs. Records of initial and annual opacity tests are required to be kept onsite either in paper copy or electronic format for at least 5 years and be made available for submittal to the EPA Administrator or for an inspector's onsite review. An initial report is required no later than 60 days following the initial opacity test, and must contain the information in 40 CFR §60.2870(c)(1) and (2). Annual opacity test results are required to be submitted within 12 months of the previous report, and initial and annual opacity test reports must be submitted as electronic or paper copies on or before the applicable submittal date, and a copy kept onsite for a period of 5 years.

State Plan

North Carolina specifies recordkeeping and reporting for affected CISWI units under 15A NCAC 02D .1210(l). Records must be maintained onsite for at least 5 years. Combustion units subject to Rule 02D .1210 are required to maintain records specified in 40 CFR §60.2740 through §60.2800. Exempt combustion units are subject to the requirements of 40 CFR §60.2740(u) through (w). 15A NCAC 02D .1210(l)(4) incorporates the reporting requirements of Table 5 of Subpart DDDD. Operator training records specified in 40 CFR §60.2660, §60.2665, and §60.2740(g) through (i) are required to maintained. CISWI unit shutdowns by the Director pursuant to 40 CFR §60.2665(b)(2) require notification to the Director upon resumption of operations. Requests for changes to semiannual or annual reporting dates are reviewed using the procedures specified in 40 CFR §60.19(c), as

required by 40 CFR §60.2800. Reports are required to be submitted to the US EPA as specified in 40 CFR §60.2795.

15A NCAC 02D .1904(h) specifies recordkeeping and reporting requirements for ACIs. Prior to commencing construction on a new ACI, the owner or operator must submit notification to the Director of the intent to construct, planned initial startup date, and materials planned to be combusted in the ACI. For existing ACIs, records of results of all initial and annual opacity tests are required to be kept onsite in either paper copy or electronic format for five years, and made available for submission to the Director or for an inspector's onsite review. The results of initial and annual opacity tests, as the average of three 1-hour blocks consisting of 10 6-minute average opacity values, are required to be reported. Submittal of initial opacity test results is required no later than 60 days following the initial test, and submittal of the annual opacity test results is required within 12 months following the previous report. Test reports are required to be submitted to the Division as electronic or paper copy on or before the applicable submittal date, and a copy of the report is required to be kept onsite for a period of five years.

The recordkeeping requirements of 40 CFR §60.2740 through §60.2770 and §60.2795 are adopted in 15A NCAC 02D .1210(l). 15A NCAC 02D .1904(h) incorporates the ACI recordkeeping requirements of 40 CFR §60.2870. Therefore, the state plan requirements are at least as stringent as the model rule, as required by the EG.

7.0 Certification of Hearing

North Carolina certifies that a public hearing was held in regard to the State Plan for CISWI Units on XX/XX/XXXX. A copy of the hearing record is included as Appendix C of this plan.

8.0 Provisions for State Progress Reports to EPA

North Carolina will submit annual progress reports to EPA to document implementation and enforcement of the State Plan.

These reports will include:

1) Status of enforcement actions;
2) Status of increments of progress;
3) Identification of sources that have shut down or started operation;

4) Emissions inventory data for sources that were not in operation at the time of plan development but that began operation during the reporting period;

5) Additional data as necessary to update previously submitted source and emissions information; and

6) Copies of technical reports on all performance testing and monitoring.

9.0 Enforceable State Mechanisms for Implementation

15A NCAC 02D .1210 was amended and readopted effective July 1, 2018 to adopt the emission limits, standards, operating limits, compliance provisions, operator training requirements, recordkeeping and reporting requirements, and compliance timelines of the model rule for 40 CFR Part 60, Subpart DDDD. 15A NCAC 02D .1210 applies to existing commercial and industrial solid waste incineration (CISWI) units, including energy recovery units, kilns, small remote incinerators, and air curtain incinerators that burn solid waste, pursuant to 40 CFR §60.2550 and as defined in 40 CFR §60.2875, unless exempted under 15A NCAC 02D .1210(b). An "existing CISWI unit" means a unit that commenced construction on or before June 4, 2010, or commenced modification or reconstruction after June 4, 2010, but no later than August 7, 2013. 15A NCAC 02D .1210(b)(9) references 15A NCAC 02D .1904 for air curtain incinerator requirements.

15A NCAC 02D .1904 was amended and readopted effective September 1, 2019, and applies to new and existing ACIs subject to 40 CFR §60.2245 through §60.2660 or §60.2970 through §60.2974 that combust 100 percent wood waste, 100 percent clean lumber, 100 percent yard waste, or 100 percent mixture of only wood waste, clean lumber, and yard waste, and new and existing temporary ACIs used at industrial, commercial, institutional, or municipal sites.

10.0 Demonstration of Legal Authority

The following is provided as documentation of adequate resources and authority to adopt and enforce emission standards and compliance schedules. Copies of the North Carolina General Statutes (NCGS) referenced in this document are included and can also be found on the North Carolina General Assembly website (http://www.ncleg.net/gascripts/statutes/Statutes.asp).

Under its fully approved 40 CFR Part 70 Title V permitting program (66 *FR* 45941), the Division of Air Quality (DAQ) already serves as the Title V permitting authority for the affected facilities. The facilities are already classified as Title V and are paying Title V fees. The DAQ is already the compliance and enforcement authority for other state and federal air quality requirements that may be applicable at these facilities and inspects them annually. Thus, existing resources are

considered adequate to enforce the State Plan for the existing facilities covered under this State Plan.

The following statutes provide supporting authority to administer and enforce the State Plan.

N.C.G.S. 143-211 (c) provides the authority for the Department to administer the air quality program stating:

"It is the intent of the General Assembly, through the duties and powers defined herein, to confer such authority upon the Department of Environmental Quality as shall be necessary to administer a complete program of water and air conservation, pollution abatement and control and to achieve a coordinated effort of pollution abatement and control with other jurisdictions."

and provides the authority for the Department:

"to qualify to administer federally mandated programs of environmental management and to qualify to accept and administer funds from the federal government for such programs."

N.C.G.S. 143-215.106 provides that:

"The Department shall administer the air quality program of the State."

N.C.G.S. 143-215.107(a)(10) establishes the duty -

"to develop and adopt standards and plans necessary to implement requirements of the federal Clean Air Act and implementing regulations adopted by the United States Environmental Protection Agency."

N.C.G.S. 143-215.3 provides authority to implement permit fees including Title V Permit fees (143-215.3(a)(1d)). The rules in 15A NCAC 02Q .0200, Permit Fees, (http://deq.nc.gov/about/divisions/air-quality/air-quality-rules/rules/permit-fees) provide the mechanism by which stationary sources that emit air pollutants pay a fee based on the type of permit and the quantity of emissions emitted. These fees include Title V fees and cover the costs of reviewing, approving, implementing and enforcing a permit.

N.C.G.S. 143-215.3(c) provides that:

"(c) Relation with the Federal Government. The Commission as official water and air pollution control agency for the State is delegated to act in local administration of all matters covered by any existing federal statutes and future legislation by Congress relating to water and air quality control. In order for the State of North Carolina to effectively participate in programs administered by federal agencies for the regulation and abatement of water and air pollution, the Department is authorized to accept and administer funds provided by federal agencies for water and air pollution programs and to enter into contracts with federal agencies regarding the use of such funds."

In its capacity as the primary implementing authority for air quality requirements overall, the Division already performs the functions of administration and oversight of compliance reporting and recordkeeping requirements, inspections, and preparation of enforcement actions for other air quality requirements at the affected facilities.

In G.S. 143-215.3(a)(2) and 143-215.108(c)(1), State law provides authority to incorporate into permits inspection and entry requirements consistent with 40 CFR §70.6(c)(2).

In G.S. 143-215.108(c)(l) and 143-215.107(a)(l0), State law provides authority to incorporate into an operating permit, upon issuance or renewal, all applicable requirements as defined in 40 CFR §70.2, and as provided generally in the CAA and 40 CFR Part 70. G.S. 143-215.107(a)(l0) empowers the EMC to adopt standards and plans necessary to implement the CAA and EPA's implementing regulations. G.S. 143-215.108(c)(l) authorizes the State to attach such conditions to a permit as are necessary to achieve the purposes of the CAA and EPA's implementing regulations.

State law provides authority to incorporate monitoring, recordkeeping, reporting, and compliance certification requirements into operating permits consistent with 40 CFR §70.6. State law provides authority to incorporate into the permit periodic monitoring or testing requirements where the existing State implementation plan or other applicable requirement does not contain such a requirement, consistent with 40 CFR §70.6(a)(3)(i)(B). G.S. 143-215.63, et seq. authorizes the EMC to require periodic monitoring or testing of all sources subject to permitting requirements. G.S. 143-215.107(a)(10) empowers the EMC to adopt standards and plans necessary to implement the CAA and EPA's implementing regulations. G.S. 143-215.108(c)(l) authorizes the State to attach such conditions to a permit as are necessary to achieve the purposes of the CAA and EPA's implementing regulations.

In G.S. 143-215.114A State law provides civil and criminal enforcement authority consistent with 40 CFR §70.11, including authority to recover penalties and fines.

Appendix A - Copy of 15A NCAC 02D .1210

15A NCAC 02D .1210 COMMERCIAL AND INDUSTRIAL SOLID WASTE INCINERATION UNITS

(a) Applicability. Unless exempt pursuant to Paragraph (b) of this Rule, this Rule shall apply to existing commercial and industrial solid waste incineration (CISWI) units, including energy recovery units, kilns, small remote incinerators, and air curtain incinerators that burn solid waste, pursuant to 40 CFR 60.2550 and as defined in 40 CFR 60.2875. An "existing CISWI unit" means a unit that commenced construction on or before June 4, 2010, or commenced modification or reconstruction after June 4, 2010, but no later than August 7, 2013.

(b) Exemptions. The following types of combustion units shall be exempted from this Rule:

(1) incineration units subject to Rules 15A NCAC 02D .1203 through 15A NCAC 02D .1206 and 15A NCAC 02D .1212;

(2) pathological waste incineration units burning 90 percent or more by weight on a calendar-quarter basis, excluding the weight of auxiliary fuel and combustion air, of pathological waste, low-level radioactive waste, or chemotherapeutic waste, as defined in 40 CFR 60.2875, if the owner or operator of the unit:
   (A) notifies the Director that the unit qualifies for this exemption; and
   (B) keeps records on a calendar-quarter basis of the weight of pathological waste, low-level radioactive waste, or chemotherapeutic waste burned and the weight of all other fuels and wastes burned in the unit;

(3) small power production or cogeneration units if:
   (A) the unit qualifies as a small power-production facility pursuant to Section 3(17)(C) of the Federal Power Act (16 U.S.C. 796(17)(C)) or as a cogeneration facility pursuant to Section 3(18)(B) of the Federal Power Act (16 U.S.C. 796(18)(B));
   (B) the unit burns homogeneous waste, not including refuse-derived fuel, to produce electricity, steam, or other forms of energy used for industrial, commercial, heating, or cooling purposes;
   (C) the owner or operator of the unit notifies the Director that the unit qualifies for this exemption; and
   (D) the owner or operator of the unit maintains the records specified in 40 CFR 60.2740(v) for a small power-production facility or 40 CFR 60.2740(w) for a cogeneration facility;

(4) units that combust waste for the primary purpose of recovering metals;

(5) cyclonic barrel burners;

(6) rack, part, and drum reclamation units that burn the coatings off racks used to hold small items for application of a coating;

(7) chemical recovery units as defined in 40 CFR 60.2875;

(8) laboratory analysis units that burn samples of materials for the purpose of chemical or physical analysis;

(9) air curtain incinerators that meet the requirements specified in 15A NCAC 02D .1904 and that burn only the following materials:
   (A) 100 percent wood waste;
   (B) 100 percent clean lumber; or
   (C) 100 percent mixture of only wood waste, clean lumber, and/or yard waste;

(10) sewage treatment plants that are subject to 40 CFR 60 Subpart O Standards of Performance for Sewage Treatment Plants;

(11) space heaters that meet the requirements of 40 CFR 279.23;

(12) soil treatment units that thermally treat petroleum contaminated soils for the sole purpose of site remediation; and

(13) the owner or operator of a combustion unit that is subject to this Rule may petition for an exemption to this Rule by obtaining a determination that the material being combusted is;
   (A) not a solid waste pursuant to the legitimacy criteria of 40 CFR 241.3(b)(1);
   (B) a non-waste pursuant to the petition process submitted pursuant to 40 CFR 241.3(c); or
   (C) a fuel that has been processed from a discarded non-hazardous secondary material pursuant to 40 CFR 241.3(b)(4).

(c) Definitions. For the purpose of this Rule, the definitions contained in 40 CFR 60.2875 shall apply in addition to the definitions in 15A NCAC 02D .1202. Solid waste is defined pursuant to 40 CFR 60.2875 and 40 CFR Part 241 Standards for Combustion of Non-Hazardous Secondary Materials (NHSM).
(d) Compliance Schedule. All CISWI units subject to this Rule shall be in compliance with this Rule no later than February 7, 2018.
(e) Emission Standards. The emission standards in this Rule shall apply to all CISWI units subject to this Rule except if 15A NCAC 02D .0524, .1110, or .1111 applies. If Subparagraph (4) of this Paragraph and 15A NCAC 02D .0524, .1110, or .1111 regulate the same pollutant, the more restrictive provision for each pollutant shall apply, notwithstanding provisions of 15A NCAC 02D .0524, .1110, or .1111 to the contrary.

(1) CISWI units subject to this Rule, including bypass stacks or vents, must meet the emissions limits specified in Tables 6 through 9 of 40 CFR 60 Subpart DDDD. The emission limitations shall apply at all times the unit is operating, including and not limited to startup, shutdown, or malfunction.
(2) Units that do not use wet scrubbers shall maintain opacity to less than or equal to 10 percent opacity using an averaging time of three 1-hour blocks consisting of ten 6-minute average opacity values as measured by 40 CFR 60 Appendix A-4 Test Method 9 pursuant to Table 2 of 40 CFR 60 Subpart DDDD.
(3) Odorous Emissions. An incinerator subject to this Rule shall comply with 15A NCAC 02D .1806 for the control of odorous emissions.
(4) Toxic Emissions. The owner or operator of a CISWI unit subject to this Rule shall demonstrate compliance with 15A NCAC 02D .1100 according to 15A NCAC 02Q .0700.

(f) Operational Standards.

(1) The operational standards in this Rule shall not apply to any CISWI unit subject to this Rule if applicable operational standards in 15A NCAC 02D .0524, .1110, or .1111 apply.
(2) The owner or operator of a CISWI unit subject to this Rule shall operate the CISWI unit according to the provisions in 40 CFR 60.2675.
(3) If an air pollution control device other than a wet scrubber, activated carbon sorbent injection, selective non-catalytic reduction, fabric filter, electrostatic precipitator, or dry scrubber is used to comply with this Rule or if emissions are limited in some other manner, including mass balances, to comply with the emission standards of Subparagraph (e)(1) of this Rule, the owner or operator shall petition the EPA Administrator in accordance with the requirements in 40 CFR 60.2680 for specific operating limits that shall be established during the initial performance test and be continuously monitored thereafter.

(g) Test Methods and Procedures.

(1) For the purposes of this Paragraph, "Administrator" in 40 CFR 60.8 means "Director."
(2) The test methods and procedures described in 15A NCAC 02D .2600, in Tables 6 through 9 of 40 CFR 60 Subpart DDDD, in 40 CFR 60.2670(b), and in 40 CFR 60.2690 shall be used to determine compliance with emission standards in Subparagraph (e)(1) of this Rule.
(3) Compliance with the opacity limit in Subparagraph (e)(2) of this Rule shall be determined using 40 CFR 60 Appendix A-4 Test Method 9.

(h) Initial Compliance Requirements.

(1) The owner or operator of a CISWI unit subject to this Rule shall demonstrate initial compliance with the emission limits in Subparagraph (e)(1) of this Rule and establish the operating standards in Paragraph (f) of this Rule according to the provisions in 40 CFR 60.2700 through 40 CFR 60.2706. If an owner or operator commences or recommences combusting a solid waste at an existing combustion unit at any commercial or industrial facility, the owner or operator shall comply with the requirements of this Paragraph.
(2) The owner or operator of a CISWI unit subject to this Rule shall conduct an initial performance test pursuant to 40 CFR 60.2670, 40 CFR 60.2690, and Paragraph (g) of this Rule. The initial performance test shall be conducted no later than 180 days after February 7, 2018, or according to 40 CFR 60.2705(b) or (c). The use of the bypass stack during a performance test shall invalidate the performance test. The initial performance test shall be used to:
    (A) determine compliance with the emission standards in Subparagraph (e)(1) of this Rule;
    (B) establish compliance with opacity operating limits in 40 CFR 60.2675(h);
    (C) establish the kiln-specific emission limit in 40 CFR 60.2710(y), as applicable; and

(D) establish operating limits using the procedures in 40 CFR 60.2675 or 40 CFR 60.2680 and in Paragraph (f) of this Rule.

(3) The owner or operator of a CISWI unit subject to this Rule shall also conduct:

(A) a performance evaluation of each continuous emissions monitoring system (CEMS) or continuous monitoring system within 60 days of installation of the monitoring system; and

(B) an initial air pollution control device inspection no later than 180 days after February 7, 2018, pursuant to 40 CFR 60.2706.

(i) Continuous Compliance Requirements.

(1) The owner or operator of a CISWI unit subject to this Rule shall demonstrate continuous compliance with the emission limits in Subparagraph (e)(1) of this Rule and the operating standards in Paragraph (f) of this Rule according to the provisions in 40 CFR 60.2710 through 40 CFR 60.2725.

(2) If an existing CISWI unit that combusted a fuel or non-waste material commences or recommences combustion of solid waste, the owner or operator shall:

(A) be subject to the provisions of 40 CFR 60 Subpart DDDD on the first day solid waste is introduced or reintroduced into the combustion chamber, and this date constitutes the effective date of the fuel-to-waste switch;

(B) complete all initial compliance demonstrations for any Section 112 standards that are applicable to the facility before commencing or recommencing combustion of solid waste; and

(C) provide 30 days prior notice of the effective date of the waste-to-fuel switch identifying the parameters listed in 40 CFR 60.2710(a)(4)(i) through (v).

(3) Pursuant to 40 CFR 60.2710(v), the use of a bypass stack at any time shall be an emissions standards deviation for particulate matter, hydrogen chloride, lead, cadmium, mercury, nitrogen oxides, sulfur dioxide, and dioxin/furans.

(4) The owner or operator of a CISWI unit subject to this Rule shall conduct an annual performance test for the pollutants listed in Subparagraph (e)(1) of this Rule, including opacity and fugitive ash, to determine compliance with the emission standards in 40 CFR 60 Subpart DDDD Tables 6 through 9. The annual performance test shall be conducted according to the provisions in Paragraph (g) of this Rule. Annual performance tests shall not be required if CEMS or continuous opacity monitoring systems are used to determine compliance.

(5) The owner or operator shall continuously monitor the operating parameters established in Paragraph (f) of this Rule and as specified in 40 CFR 60.2710(c) and 40 CFR 60.2735.

(6) The owner or operator of an energy recovery unit subject to this Rule shall only burn the same types of waste and fuels used to establish applicability to this Rule and to establish operating limits during the performance test.

(7) The owner or operator shall comply with the monitoring system-specific, unit-specific, and pollutant-specific provisions pursuant to 40 CFR 60.2710(e) through (j), (m) through (u), and (w) through (y).

(8) The owner or operator shall conduct an annual inspection of air pollution control devices used to meet the emission limitations in this Rule, as specified in 40 CFR 60.2710(k).

(9) The owner or operator shall develop and submit to the Director for approval a site-specific monitoring plan pursuant to the requirements in 40 CFR 60.2710(l). This plan shall be submitted at least 60 days before the initial performance evaluation of a continuous monitoring system. The owner or operator shall conduct a performance evaluation of each continuous monitoring system in accordance with the site-specific monitoring plan. The owner or operator shall operate and maintain the continuous monitoring system in continuous operation according to the site-specific monitoring plan.

(10) The owner or operator shall meet all applicable monitoring system requirements specified in 40 CFR 60.2710(m) through (u) and (w) through (y).

(j) Monitoring.

(1) The owner or operator of a CISWI unit subject to this Rule shall comply with the monitoring requirements in 15A NCAC 02D .0600 and 40 CFR 60.2730 through 60.2735.

(2) For each continuous monitoring system required or optionally allowed pursuant to 40 CFR 60.2730, the owner or operator shall monitor and collect data according to 40 CFR 60.2735.

(3) The owner or operator of a CISWI unit subject to this Rule shall establish, install, calibrate to manufacturers specifications, maintain, and operate:

(A) devices or methods for monitoring parameters used to determine compliance with the operating parameters established under Subparagraph (f)(2) of this Rule, as specified in 40 CFR 60.2730;

(B) devices or methods necessary to monitor compliance with the site-specific operating parameters established pursuant to Subparagraph (f)(3) of this Rule, as specified by 40 CFR 60.2730(c).

(4) To demonstrate continuous compliance with an emissions limit, a facility may substitute use of a CEMS, a continuous automated sampling system, or other device specified by 40 CFR 60.2730 for conducting the annual emissions performance test and for monitoring compliance with operating parameters, as specified by 40 CFR 60.2730.

(5) The owner or operator of a CISWI unit subject to this Rule with a bypass stack shall install, calibrate to manufacturers' specifications, maintain, and operate a device or method for measuring the use of the bypass stack. including date, time, and duration.

(6) The owner or operator of a CISWI unit subject to this Rule shall conduct all monitoring at all times the CISWI unit is operating, except during:

(A) monitoring system malfunctions and associated repairs specified in 40 CFR 60.2735;

(B) monitoring system out-of-control periods specified in 40 CFR 60.2770(o);

(C) required monitoring system quality assurance or quality control activities, including calibrations checks and required zero and span adjustments of the monitoring system; and

(D) scheduled maintenance as defined in the site-specific monitoring plan required by Subparagraph (i)(9) of this Rule.

(7) The data recorded during monitoring malfunctions, out-of-control periods, repairs associated with malfunctions or out-of-control periods, required quality assurance or quality control activities, and site-specific scheduled maintenance shall not be used in assessing compliance with the operating standards in Paragraph (f) of this Rule. Owners and operators of a CISWI unit subject to this Rule shall use all the data collected during all other periods, including data normalized for above-scale readings, in assessing the operation of the control device and the associated control system.

(8) Owners or operators of a CISWI unit subject to this Rule shall perform monitoring system repairs in response to monitoring system malfunctions or out-of-control periods and return the monitoring system to operation as expeditiously as practicable.

(9) Except for periods of monitoring system malfunctions or out-of-control periods, repairs associated with monitoring system malfunctions or out-of-control periods, and required monitoring system quality assurance or quality control activities, including, as applicable, calibration checks and required zero and span adjustments, failure to collect required monitoring data shall constitute a deviation from the monitoring requirements.

(k) Deviations, Malfunctions, and Out of Control Periods.

(1) Owners and operators of a CISWI unit subject to this Rule shall report all deviations as defined in 40 CFR 60.2875 including the following:

(A) a deviation from operating limits in Table 3 of 40 CFR 60 Subpart DDDD or a deviation from other operating limits established pursuant to Paragraph (f), 40 CFR 60.2675(c) through (g), or 40 CFR 60.2680, including any recorded 3-hour average parameter level that is above the established maximum operating limit or below the established minimum operating limit;

(B) a deviation from the emission limitations established pursuant to Tables 6 through 9 of 40 CFR 60 Subpart DDDD that is detected through monitoring or during a performance test;

(C) a deviation from the CISWI operator qualification and accessibility requirements established pursuant to 40 CFR 60.2635; or

(D) a deviation from any term or condition included in the operating permit of the CISWI unit.

(2) Owners and operators of a CISWI unit subject to this Rule shall submit all required deviation reports as specified by Paragraph (l) of this Rule. The deviation report shall be submitted by August 1 of the year for data collected during the first half of the calendar year (January 1 to June 30), and by February 1 of the following year for data collected during the second half of the calendar year (July 1 to December 31). In addition, the owner and operator shall report the deviation in the annual report specified by Paragraph (l) of this Rule.

(3) Owners and operators of a CISWI unit subject to this Rule shall report all malfunctions, as defined in 40 CFR 60.2875, in the annual report specified by Paragraph (j) and Paragraph (l) of this Rule.

(4) Owners and operators of a CISWI unit subject to this Rule shall report all periods during which a continuous monitoring system, including a CEMS, was out of control in the annual report specified by Paragraph (j) and Paragraph (l) of this Rule.

(l) Recordkeeping and Reporting.

(1) The owner or operator of a CISWI unit subject to this Rule shall maintain records required by this Rule on site for a period of five years in either paper copy, electronic format that can be printed upon request, or an alternate format that has been approved by the Director.

(2) Combustion units that are exempt units pursuant to Paragraph (b) of this Rule shall be subject to the recordkeeping and reporting requirements in 40 CFR 60.2740(u) through 40 CFR 60.2740(w).

(3) The owner or operator of a CISWI unit subject to this Rule shall maintain all records required by 40 CFR 60.2740 through 60.2800.

(4) The owner or operator of a CISWI unit subject to this Rule shall submit the following reports with the required information and by the required due dates specified in Table 5 of 40 CFR 60, Subpart DDDD:

(A) the waste management plan specified in 40 CFR 60.2755;

(B) the initial test report specified in 40 CFR 60.2760;

(C) the annual report specified in 40 CFR 60.2765 and 60.2770;

(D) the emission limitation or operating limit deviation report specified in 40 CFR 60.2775 and 60.2780;

(E) the qualified operator deviation notification specified in 40 CFR 60.2785(a)(1);

(F) the qualified operator deviation status report, specified in 40 CFR 60.2785(a)(2);

(G) the qualified operator deviation notification of resuming operation specified in 40 CFR 60.2785(b).

(5) The owner or operator shall maintain CISWI unit operator records specified by 40 CFR 60.2660, 60.2665, and 60.2740(g) through (i). If the CISWI unit has been shut down by the Director pursuant to 40 CFR 60.2665(b)(2) due to failure to provide an accessible qualified operator, the owner or operator shall notify the Director that the operations have resumed after a qualified operator is accessible.

(6) The owner or operator of a CISWI unit subject to this Rule may request changing semiannual or annual reporting dates specified in this Paragraph, and the Director shall review the requested change using the procedures specified in 40 CFR 60.19(c).

(7) Reports shall be submitted to US EPA as specified in 40 CFR 60.2795.

(A) The owner or operator of the CISWI unit shall submit initial, annual, and deviation reports electronically on or before the submittal due dates specified in 40 CFR 60.2795(a) via the Compliance and Emissions Data Reporting Interface (CEDRI), which can be accessed through the EPA's Central Data Exchange (CDX) (https://cdx.epa.gov/). Reports required pursuant to this Rule shall be submitted electronically or in paper format and postmarked on or before the submittal due dates.

(B) The owner or operator shall submit results of each performance test and CEMS performance evaluation within 60 days of the test or evaluation following the procedure specified in 40 CFR 60.2795(b).

(i) For data collected using test methods supported by the EPA's Electronic Reporting Tool (ERT) listed on the EPA's ERT Web site (https://www3.epa.gov/ttn/chief/ert/ert_info.html) at the time of the test, the owner or operator shall submit the results of the performance test to the EPA via the CEDRI.

(ii) For data collected using test methods that are not supported by the EPA's ERT listed on the EPA's ERT Web site at the time of the test, the owner or operator shall submit the results of the performance test to the Director.

(m) Operator Training and Certification.

(1) The owner or operator of the CISWI unit subject to this Rule shall not allow the CISWI unit to operate at any time unless a fully trained and qualified CISWI unit operator is present at the facility or can be present at the facility within one hour. The trained and qualified CISWI unit operator may operate

the CISWI unit directly or be the direct supervisor of one or more plant personnel who operate the unit.

(2) Operator training and qualification shall be obtained by completing the requirements of 40 CFR 60.2635(c) by the later of:
  (A) six months after CISWI unit startup;
  (B) six months after an employee assumes responsibility for operating the CISWI unit or assumes responsibility for supervising the operation of the CISWI unit; or
  (C) February 7, 2018.

(3) Operator qualification shall be valid from the date on which the training course is completed and the operator passes the examination required by 40 CFR 60.2635(c)(2).

(4) Operator qualification shall be maintained by completing an annual review or refresher course covering, at a minimum, the topics specified in 40 CFR 60.2650(a) through (e).

(5) Lapsed operator qualification shall be renewed by:
  (A) completing a standard annual refresher course as specified in Subparagraph (4) of this Paragraph for a lapse less than three years; or
  (B) repeating the initial qualification requirements as specified in Subparagraph (2) of this Paragraph for a lapse of three years or more.

(6) The owner or operator of a CISWI unit subject to this Rule shall:
  (A) have documentation specified in 40 CFR 60.2660(a)(1) through (10) and (c)(1) through (c)(3) available at the facility, accessible for all CISWI unit operators, and suitable for inspection upon request;
  (B) establish a program for reviewing the documentation specified in Part (A) of this Subparagraph with each CISWI unit operator. The initial review of the documentation specified in Part (A) of this Subparagraph shall be conducted no later than February 7, 2018, or no later than six months after an employee assumes responsibility for operating the CISWI unit or assumes responsibility for supervising the operation of the CISWI unit; and
  (C) conduct subsequent annual reviews of the documentation specified in Part (A) of this Subparagraph no later than twelve months following the previous review.

(7) The owner or operator of a CISWI unit subject to this Rule shall meet one of the two criteria specified in 40 CFR 60.2665(a) and (b), if all qualified operators are temporarily not at the facility and not able to be at the facility within one hour.

(n) Prohibited waste. The owner or operator of a CISWI subject to this Rule shall not incinerate any of the wastes listed in G.S. 130A-309.10(f1).

(o) Waste Management Plan.

(1) The owner or operator of a CISWI unit subject to this Rule shall submit a written waste management plan to the Director that identifies the feasibility and the methods used to reduce or separate components of solid waste from the waste stream in order to reduce or eliminate toxic emissions from incinerated waste.

(2) The waste management plan shall include:
  (A) consideration of the reduction or separation of waste-stream elements such as paper, cardboard, plastics, glass, batteries, or metals and the use of recyclable materials;
  (B) a description of how the materials listed in G.S. 130A-309.10(f1) are to be segregated from the waste stream for recycling or proper disposal;
  (C) identification of any additional waste management measures; and
  (D) implementation of those measures considered practical and feasible based on the effectiveness of waste management measures already in place, the costs of additional measures, the emissions reductions expected to be achieved, and the environmental or energy impacts that the measures may have.

History Note: *Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(4),(5); 40 CFR 60.215(a)(4);*
Eff. August 1, 2002;
Amended Eff. June 1, 2008; January 1, 2005;
Readopted Eff. July 1, 2018.

Appendix B – Copy of 15A NCAC 02D .1904

15A NCAC 02D .1904 AIR CURTAIN INCINERATORS

(a) Applicability. This Rule applies to the following air curtain incinerators:

(1) new and existing air curtain incinerators subject to 40 CFR 60.2245 through 60.2260 or 60.2970 through 60.2974 that combust the following materials:

(A) 100 percent wood waste;

(B) 100 percent clean lumber;

(C) 100 percent yard waste; or

(D) 100 percent mixture of only wood waste, clean lumber, and yard waste.

(2) new and existing temporary air curtain incinerators used at industrial, commercial, institutional, or municipal sites where a temporary air curtain incinerator is defined in Subparagraph (b)(6) of this Rule.

(b) Definitions. For the purpose of this Rule, the following definitions apply:

(1) "Clean lumber" means wood or wood products that have been cut or shaped and include wet, air-dried, and kiln-dried wood products. Clean lumber does not include wood or wood products that have been painted, pigment-stained, or pressure treated, or manufactured wood products that contain adhesives or resins.

(2) "Malfunction" means any unavoidable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures caused entirely or in part by poor maintenance, careless operations or any other upset condition within the control of the emission source are not considered a malfunction.

(3) "New air curtain incinerator" means an air curtain incinerator that began operating on or after the effective date of this Rule.

(4) "Operator" means the person in operational control over the open burning.

(5) "Permanent air curtain incinerator" means an air curtain incinerator whose owner or operator operates the air curtain incinerator at one facility or site during the term of the permit.

(6) "Temporary air curtain incinerator" means an air curtain incinerator whose owner or operator moves the air curtain incinerator to another site and operates it for land clearing or right-of-way maintenance at that site at least once during the term of its permit.

(7) "Temporary-use air curtain incinerator used in disaster recovery" means an air curtain incinerator that meets all of the following requirements:

(A) combusts less than 35 tons per day of debris consisting of the materials listed in Parts (a)(1)(A) through (C) of this Rule;

(B) combusts debris within the boundaries of an area officially declared a disaster or emergency by federal, state or local government; and

(C) combusts debris for less than 16 weeks unless the owner or operator submits a request for additional time at least 1 week prior to the end of the 16-week period and provides the reasons that the additional time is needed. The Director will provide written approval for the additional time if he or she finds that the additional time is warranted based on the information provided in the request.

Examples of disasters or emergencies include tornadoes, hurricanes, floods, ice storms, high winds, or acts of bioterrorism.

(8) "Wood waste" means untreated wood and untreated wood products, including tree stumps (whole or chipped), trees, tree limbs (whole or chipped), bark, sawdust, chips, scraps, slabs, millings, and shavings. Wood waste does not include:

(A) grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs from residential, commercial, institutional, or industrial sources as part of maintaining yards or other private or public lands;

(B) construction, renovation, or demolition wastes;

(C) clean lumber; and

(D) treated wood and treated wood products, including wood products that have been painted, pigment-stained, or pressure treated, or manufactured wood products that contain adhesives or resins.

(9) "Yard waste" means grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs. Yard waste comes from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands. Yard waste does not include:
(A) construction, renovation, or demolition wastes;
(B) clean lumber; and
(C) wood waste.

(c) Air curtain incinerators shall comply with the following conditions and requirements:
(1) the operation of air curtain incinerators in particulate and ozone nonattainment areas shall cease in a county that the Department or the Forsyth County Office of Environmental Assistance and Protection has forecasted to be an Air Quality Action Day Code "Orange" or above during the 24-hour time period covered by that Air Quality Action Day;
(2) the wind direction at the time that the burning is initiated and the wind direction as forecasted by the National Weather Service during the time of the burning shall be away from any area, including public roads within 250 feet of the burning as measured from the edge of the pavement or other roadway surface, which may be affected by smoke, ash, or other air pollutants from the burning;
(3) no fires shall be started or material added to existing fires when the North Carolina Forest Service, Fire Marshall, or other governmental agency has banned burning for that area;
(4) burning shall be conducted only between the hours of 8:00 a.m. and 6:00 p.m. No combustible materials shall be added to the air curtain incinerator prior to or after this time period;
(5) The air curtain incinerator shall not be operated more than the maximum source operating hours-per-day and days-per-week. The maximum source operating hours-per-day and days-per-week shall be set to protect the ambient air quality standard and prevention of significant deterioration (PSD) increment for particulate. The maximum source operating hours-per-day and days-per-week shall be determined using the modeling procedures in 15A NCAC 02D .1106(b), (c), and (f). This Subparagraph shall not apply to temporary air curtain incinerators;
(6) air curtain incinerators shall meet manufacturer's specifications for operation and upkeep to ensure complete burning of material charged into the pit. Manufacturer's specifications shall be kept on site and be available for inspection by Division staff;
(7) the owner or operator of an air curtain incinerator shall allow the ashes to cool and water the ash prior to its removal to prevent the ash from becoming airborne;
(8) only distillate oil, kerosene, diesel fuel, natural gas, or liquefied petroleum gas may be used to start the fire; and
(9) the location of the burning shall be at least 300 feet from any dwelling, group of dwellings, or commercial or institutional establishment, or other occupied structure not located on the property on which the burning is conducted. The regional office supervisor may grant exceptions to the setback requirements if a signed, written statement waiving objections to the air curtain burning is obtained from a resident or an owner of each dwelling, commercial or institutional establishment, or other occupied structure within 300 feet of the burning site. In case of a lease or rental agreement, the lessee or renter, and the property owner shall sign the statement waiving objections to the burning. The statement shall be submitted to and approved by the regional office supervisor before initiation of the burn. Factors that the regional supervisor shall consider in deciding to grant the exception include: all the persons who need to sign the statement waiving the objection have signed it; the location of the burn; and the type, amount, and nature of the combustible substances.

(d) Exemptions. Temporary-use air curtain incinerators used in disaster recovery are excluded from the requirements of this Rule if the following conditions are met:
(1) the air curtain incinerator meets the definition of a temporary-use air curtain incinerators used in disaster recovery as specified in Subparagraph (b)(7) of this Rule;
(2) the air curtain incinerator meets all the requirements pursuant to 40 CFR 60.2969 or 60.3061, as applicable; and
(3) the air curtain incinerator is operated in a manner consistent with the operations manual for the air curtain incinerator and the charge rate during all periods of operation is less than or equal to the lesser of 35 tons per day or the maximum charge rate specified by the manufacturer of the air curtain incinerator.

(e) Permitting. Air curtain incinerators shall be subject to 15A NCAC 02Q .0500.

(1) The owner or operator of a new or existing permanent air curtain incinerator shall obtain a General Title V Operating Permit pursuant to 15A NCAC 02Q .0509.

(2) The owner or operator of a new or existing temporary air curtain incinerator shall obtain a General Title V Operating Permit pursuant to 15A NCAC 02Q .0510.

(3) The owner or operator of an existing permanent or temporary air curtain incinerator shall complete and submit a permit application no later than 12 months after the effective date of this Rule.

(4) The owner or operator of a new permanent or temporary air curtain incinerator shall complete and submit a permit application 60 days prior to the date the unit commences operation.

(5) The owner or operator of an existing permanent or temporary air curtain incinerator that is planning to close rather than obtaining a permit pursuant to 15A NCAC 02Q .0509 or 15A NCAC 02Q .0510 shall submit a closure notification to the Director no later than 12 months after the effective date of this Rule.

(f) Opacity limits.

(1) The owner or operator of an existing air curtain incinerators shall meet the following opacity limits:

(A) Maintain opacity to less than or equal to 35 percent opacity (as determined by the average of 3 1-hour blocks consisting of 10 6-minute average opacity values) during startup of the air curtain incinerator, where startup is defined as the first 30 minutes of operation.

(B) Maintain opacity to less than or equal to 10 percent opacity (as determined by the average of 3 1-hour blocks consisting of 10 6-minute average opacity values) at all times, other than during startup or during malfunctions.

(2) The owner or operator of a new air curtain incinerator shall meet the opacity limits specified in Subparagraph (f)(1) of this Rule within 60 days after air curtain incinerator reaches the charge rate at which it will operate, but no later than 180 days after its initial startup.

(g) Performance tests.

(1) All initial and annual opacity tests shall be conducted using 40 CFR 60 Appendix A-4 Test Method 9 to determine compliance with the opacity limitations specified in Subparagraph (f)(1) of this Rule.

(2) The owner or operator of an existing air curtain incinerator shall conduct an initial performance test for opacity as specified in 40 CFR 60.8 on or before 90 days after the effective date of this rule.

(3) The owner or operator of a new air curtain incinerator shall conduct an initial performance test for opacity as specified in 40 CFR 60.8 within 60 days after achieving the maximum charge rate at which the affected air curtain incinerator will be operated, but not later than 180 days after initial startup of the air curtain incinerator.

(4) After the initial test for opacity, the owner or operator of a new or existing air curtain incinerator subject to this Rule shall conduct annual opacity tests on the air curtain incinerator no more than 12 calendar months following the date of the previous test.

(5) The owner or operator of an existing air curtain incinerator that has ceased operations and is restarting after more than 12 months since the previous test shall conduct an opacity test upon startup of the unit.

(h) Recordkeeping and Reporting Requirements.

(1) Prior to commencing construction of an air curtain incinerator, the owner or operator of a new air curtain incinerator shall submit the following information to the Director:

(A) a notification of intent to construct an air curtain incinerator;

(B) the planned initial startup date of the air curtain incinerator; and

(C) the materials planned to be combusted in the air curtain incinerator.

(2) The owner or operator of a new or existing air curtain incinerator shall do the following:

(A) keep records of results of all initial and annual opacity tests onsite in either paper copy or electronic format for five years;

(B) make all records available for submission to the Director or for an inspector's onsite review;

(C) report the results of the initial and annual opacity tests as the average of 3 1-hour blocks consisting of 10 6-minute average opacity values;

(D) submit initial opacity test results to the Division no later than 60 days following the initial test and submit annual opacity test results within 12 months following the previous report;

(E) submit initial and annual opacity test reports to the Division as electronic or paper copy on or before the applicable submittal date; and

(F) keep a copy of the initial and annual reports onsite for a period of five years.

(i) In addition to complying with the requirements of this Rule, an air curtain incinerator subject to:

(1) 40 CFR Part 60, Subpart CCCC, shall also comply with 40 CFR 60.2245 through 60.2260; or

(2) 40 CFR Part 60, Subpart EEEE, shall also comply with 40 CFR 60.2970 through 60.2974.

History Note: *Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5); 143-215.107(a)(10); 143-215.108; 40 CFR 60.2865; S.L. 2011-394, s.2;*
Eff. July 1, 1996;
Amended Eff. July 3, 2012; July 1, 2007; December 1, 2005; August 1, 2004;
Readopted Eff. September 1, 2019.

Appendix C - Copy of State Plan Hearing Record

Appendix D - Full Text of General Statutes for Authority

Article 21.

Water and Air Resources.

Part 1. Organization and Powers Generally; Control of Pollution.

§ 143-211. Declaration of public policy.

(a) It is hereby declared to be the public policy of this State to provide for the conservation of its water and air resources. Furthermore, it is the intent of the General Assembly, within the context of this Article and Articles 21A and 21B of this Chapter, to achieve and to maintain for the citizens of the State a total environment of superior quality. Recognizing that the water and air resources of the State belong to the people, the General Assembly affirms the State's ultimate responsibility for the preservation and development of these resources in the best interest of all its citizens and declares the prudent utilization of these resources to be essential to the general welfare.

(b) It is the public policy of the State to maintain, protect, and enhance water quality within North Carolina. Further, it is the public policy of the State that the cumulative impact of transfers from a source river basin shall not result in a violation of the antidegradation policy set out in 40 Code of Federal Regulations § 131.12 (1 July 1997 Edition) and the statewide antidegradation policy adopted pursuant thereto.

(c) It is the purpose of this Article to create an agency which shall administer a program of water and air pollution control and water resource management. It is the intent of the General Assembly, through the duties and powers defined herein, to confer such authority upon the Department of Environmental Quality as shall be necessary to administer a complete program of water and air conservation, pollution abatement and control and to achieve a coordinated effort of pollution abatement and control with other jurisdictions. Standards of water and air purity shall be designed to protect human health, to prevent injury to plant and animal life, to prevent damage to public and private property, to insure the continued enjoyment of the natural attractions of the State, to encourage the expansion of employment opportunities, to provide a permanent foundation for healthy industrial development and to secure for the people of North Carolina, now

and in the future, the beneficial uses of these great natural resources. It is the intent of the General Assembly that the powers and duties of the Environmental Management Commission and the Department of Environmental Quality be construed so as to enable the Department and the Commission to qualify to administer federally mandated programs of environmental management and to qualify to accept and administer funds from the federal government for such programs. (l951, c. 606; 1967, e. 892, s. 1; 1973, c.1262, s. 23; 1977, c. 771, s. 4; 1979, 2nd Sess., c.1158, s. 2; 1989, c. 135, s. l; c. 727, s. 218(102); 1997-443, s. 11A.119(a); 1998-168, s. l; 2006-259, ss. 3l(b), 31(c); 2015-241, s. 14.30(u).)

Article 21B.

Air Pollution Control.

§ **143-215.105. Declaration of policy; definitions.**

The declaration of public policy set forth in G.S. 143-211, the definitions in G.S. 143-212, and the definitions in G.S. 143-213, applicable to the control and abatement of air pollution, shall be applicable to this Article. (1973, c. 821, s. 6; 1987, c. 827, s. 203.)

§ 143-215.106. Administration of air quality program.

The Department shall administer the air quality program of the State. (1973, c. 821, s. 6; c. 1262, s. 23; 1977, *c.* 771, s.4; 1987, c.827, s.204.)

§ **143-215.3. General powers of Commission and Department; auxiliary powers.**

(a) Additional Powers. In addition to the specific powers prescribed elsewhere in this Article, and for the purpose of carrying out its duties, the Commission shall have the power:

(1) To make rules implementing Articles 21, 21 A, 21 B, or 38 of this Chapter.

(1a) To adopt fee schedules and collect fees for the following:

a. Processing of applications for permits or registrations issued under Article 21, other than Parts 1 and 1A, Articles 21A, 21B, and 38 of this Chapter;

b. Administering permits or registrations issued under Article 21, other than Parts 1 and 1A, Articles 21A, 21B, and 38 of this Chapter including monitoring compliance with the terms of those permits; and

c. Reviewing, processing, and publicizing applications for construction grant awards under the Federal Water Pollution Control Act.

No fee may be charged under this provision, however, to a farmer who submits an application that pertains to his farming operations.

(1b) The fee to be charged pursuant to G.S. 143-215.3(a)(1a) for processing an application for a permit under G.S. 143-215.108 and G.S. 143-215.109 of Article 21B of this Chapter may not exceed five hundred dollars ($500.00). The fee to be charged pursuant to G.S. 143-215.3(a)(la) for processing a registration under Part 2A of this Article or Article 38 of this Chapter may not exceed fifty dollars ($50.00) for any single registration. An additional fee of twenty percent (20%) of the registration processing fee may be assessed for a late registration under Article 38 of this Chapter. The fee for administering and compliance monitoring under Article 21, other than Parts 1 and 1A, and G.S. 143-215.108 and G.S.143-215.109 of Article 21B shall be charged on an annual basis for each year of the permit term and may not exceed one thousand five hundred dollars ($l,500) per year. Fees for processing all permits under Article 21A and all other sections of Article 21B shall not exceed one hundred dollars ($100.00) for any single permit. The total payment for fees that are set by the Commission under this subsection for all permits for any single facility shall not exceed seven thousand five hundred dollars ($7,500) per year, which amount shall include all application fees and fees for administration and compliance monitoring. A single facility is defined to be any contiguous area under one ownership and in which permitted activities occur. For all permits issued under these Articles where a fee schedule is not specified in the statutes, the Commission, or other commission specified by statute shall adopt a fee schedule in a rule following the procedures established by the Administrative Procedure Act. Fee schedules shall be established to reflect the size of the emission or discharge, the potential impact on the environment, the staff costs involved, relative costs of the issuance of new permits and the reissuance of existing permits, and shall include adequate safeguards to prevent unusual fee assessments which would result in serious economic burden on an individual applicant. A system shall be considered to allow consolidated annual payments for persons with multiple permits. In its rulemaking to establish fee schedules, the Commission is also directed to consider a method of rewarding facilities which achieve full compliance with administrative and self-monitoring reporting requirements, and to consider, in those cases where the cost of renewal or amendment of a permit is less than for the original permit, a lower fee for the renewal or amendment.

(1c) Moneys collected pursuant to G.S. 143-215.3(a)(la) shall be used to:

a. Eliminate, insofar as possible, backlogs of permit applications awaiting agency action;

b. Improve the quality of permits issued;

c. Improve the rate of compliance of permitted activities with environmental standards; and

d. Decrease the length or the processing period for permit applications.

(1d) The Commission may adopt and implement a graduated fee schedule sufficient to cover all direct and indirect costs required for the State to develop and administer a permit program which meets the requirements of Title V. The provisions of subdivision (1b) of this subsection do not apply to the adoption of a fee schedule under this subdivision. In adopting and implementing a fee schedule, the Commission shall require that the owner or operator of all air contaminant sources subject to the requirement to obtain a permit under Title V to pay an annual fee, or the equivalent over some other period, sufficient to cover costs as provided in section 502(b)(3)(A) of Title V. The fee schedule shall be adopted according to the procedures set out in Chapter 150B of the General Statutes.

a. The total amount of fees collected under the fee schedule adopted pursuant to this subdivision shall conform to the requirements of section 502(b)(3)(B) of Title V. No fee shall be collected for more than 4,000 tons per year of any individual regulated pollutant, as defined in section 502(b)(3)(B)(ii) of Title V, emitted by any source. Fees collected pursuant to this subdivision shall be credited to the Title V Account.

b. The Commission may reduce any permit fee required under this section to take into account the financial resources of small business stationary sources as defined under Title V and regulations promulgated by the United States Environmental Protection Agency.

c. When funds in the Title V Account exceed the total amount necessary to cover the cost of the Title V program for the next fiscal year, the Secretary

shall reduce the amount billed for the next fiscal year so that the excess funds are used to supplement the cost of administering the Title V permit program in that fiscal year.

(1e) The Commission shall collect the application, annual, and project fees for processing and administering permits, certificates of coverage under general permits, and certifications issued under Parts 1 and 1A of this Article and for compliance monitoring under Parts 1 and 1A of this Article as provided in G.S. 143-215.30 and G.S. 143-215.10G.

(2) To direct that such investigation be conducted as it may reasonably deem necessary to carry out its duties as prescribed by this Article or Article 21A or Article 21 B of this Chapter, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating the condition of any waters and the discharge therein of any sewage, industrial waste, or other waste or for the purpose of investigating the condition of the air, air pollution, air contaminant sources, emissions, or the installation and operation of any air-cleaning devices, and to require written statements or the filing of reports under oath, with respect to pertinent questions relating to the operation of any air-cleaning device, sewer system, disposal system, or treatment works. ln the case of effluent or emission data, any records, reports, or information obtained under this Article or Article 21A or Article 21B of this Chapter shall be related to any applicable effluent or emission limitations or toxic, pretreatment, or new source performance standards. No person shall refuse entry or access to any authorized representative of the Commission or Department who requests entry for purposes of inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper or interfere with any such representative while in the process of carrying out his official duties.

(3) To conduct public hearings and to delegate the power to conduct public hearings in accordance with the procedures prescribed by this Article or by Article 21B of this Chapter.

(4) To delegate such of the powers of the Commission as the Commission deems necessary to one or more of its members, to the Secretary or any other qualified employee of the Department. The Commission shall not delegate to persons other than its own members and the designated employees of the Department the power

to conduct hearings with respect to the classification of waters, the assignment of classifications, air quality standards, air contaminant source classifications, emission control standards, or the issuance of any special order except in the case of an emergency under subdivision (12) of this subsection for the abatement of existing water or air pollution. Any employee of the Department to whom a delegation of power is made to conduct a hearing shall report the hearing with its evidence and record to the Commission.

(5) To institute such actions in the superior court of any county in which a violation of this Article, Article 21B of this Chapter, or the rules of the Commission has occurred, or, in the discretion of the Commission, in the superior court of the county in which any defendant resides, or has his or its principal place of business, as the Commission may deem necessary for the enforcement of any of the provisions of this Article, Article 21B of this Chapter, or of any official action of the Commission, including proceedings to enforce subpoenas or for the punishment of contempt of the Commission.

(6) To agree upon or enter into any settlements or compromises of any actions and to prosecute any appeals or other proceedings.

(7) To direct the investigation of any killing of fish and wildlife which, in the opinion of the Commission, is of sufficient magnitude to justify investigation and is known or believed to have resulted from the pollution of the waters or air as defined in this Article, and whenever any person, whether or not he shall have been issued a certificate of approval, permit or other document of approval authorized by this or any other State law, has negligently, or carelessly or unlawfully, or willfully and unlawfully, caused pollution of the waters or air as defined in this Article, in such quantity, concentration or manner that fish or wildlife are killed as the result thereof, the Commission, may recover, in the name of the State, damages from such person. The measure of damages shall be the amount determined by the Department and the North Carolina Wildlife Resources Commission, whichever has jurisdiction over the fish and wildlife destroyed to be the replacement cost thereof plus the cost of all reasonable and necessary investigations made or caused to be made by the State in connection therewith. Upon receipt of the estimate of damages caused, the Department shall notify the persons responsible for the destruction of the fish or wildlife in question and may effect such settlement as the Commission may deem proper and reasonable, and if no settlement is reached

within a reasonable time, the Commission shall bring a civil action to recover such damages in the superior court in the county in which the discharge took place. Upon such action being brought the superior court shall have jurisdiction to hear and determine all issues or questions of law or fact, arising on the pleadings, including issues of liability and the amount of damages. On such hearing, the estimate of the replacement costs of the fish or wildlife destroyed shall be prima facie evidence of the actual replacement costs of such fish or wildlife. In arriving at such estimate, any reasonably accurate method may be used and it shall not be necessary for any agent of the Wildlife Resources Commission or the Department to collect, handle or weigh numerous specimens of dead fish or wildlife.

The State of North Carolina shall be deemed the owner of the fish or wildlife killed and all actions for recovery shall be brought by the Commission on behalf of the State as the owner of the fish or wildlife. The fact that the person or persons alleged lo be responsible for the pollution which killed the fish or wildlife holds or has held a certificate of approval, permit or other document of approval authorized by this Article or any other law of the State shall not bar any such action. The proceeds of any recovery, less the cost of investigation, shall be used to replace, insofar as and as promptly as possible, the fish and wildlife killed, or in cases where replacement is not practicable, the proceeds shall be used in whatever manner the responsible agency deems proper for improving the fish and wildlife habitat in question. Any such funds received are hereby appropriated for these designated purposes. Nothing in this paragraph shall be construed in any way to limit or prevent any other action which is now authorized by this Article.

(8) After issuance of an appropriate order, to withhold the granting of any permit or permits pursuant to G.S. 143-215.1 or G.S. 143-215.108 for the construction or operation of any new or additional disposal system or systems or air-cleaning device or devices in any area of the State. Such order may be issued only upon determination by the Commission, after public hearing, that the permitting of any new or additional source or sources of water or air pollution will result in a generalized condition of water or air pollution within the area contrary to the public interest, detrimental to the public health, safety, and welfare, and contrary to the policy and intent declared in this Article or Article 21B of this Chapter. The Commission may make reasonable distinctions among the various sources of water and air pollution and may direct that its order shall apply only to those sources which it determines will result in a generalized condition of water or air pollution.

The determination of the Commission shall be supported by detailed findings of fact and conclusions set forth in the order and based upon competent evidence of record. The order shall describe the geographical area of the State affected thereby with particularity and shall prohibit the issuance of permits pending a determination by the Commission that the generalized condition of water or air pollution has ceased.

Notice of hearing shall be given in accordance with the provisions of G.S. l 50B-21.2.

A person aggrieved by an order of the Commission under this subdivision may seek judicial review of the order under Article 4 of Chapter 150B of the General Statutes without first commencing a contested case. An order may not be stayed while it is being reviewed.

(9) If an investigation conducted pursuant to this Article or Article 21B of this Chapter reveals a violation of any rules, standards, or limitations adopted by the Commission pursuant to this Article or Article 21B of this Chapter, or a violation of any terms or conditions of any permit issued pursuant to G.S. 143-215.1 or 143-215.108, or special order or other document issued pursuant to G.S. 143-215.2 or G.S. 143-215.110, the Commission may assess the reasonable costs of any investigation, inspection or monitoring survey which revealed the violation against the person responsible therefor. If the violation resulted in an unauthorized discharge to the waters or atmosphere of the State, the Commission may also assess the person responsible for the violation for any actual and necessary costs incurred by the State in removing, correcting or abating any adverse effects upon the water or air resulting from the w1authorized discharge. If the person responsible for the violation refuses or fails within a reasonable time to pay any sums assessed, the Commission may institute a civil action in the superior court of the county in which the violation occurred or, in the Commission's discretion, in the superior court of the county in which such person resides or has his or its principal place of business, to recover such sums.

(10) To require a laboratory facility that performs any tests, analyses, measurements, or monitoring required under this Article or Article 21B of this Chapter to be certified annually by the Department, to establish standards that a laboratory facility and its employees must meet and maintain in order for the laboratory facility to be

certified, and to charge a laboratory facility a fee for certification. Fees collected under this subdivision shall be credited to the Water and Air Account and used to administer this subdivision. These fees shall be applied to the cost of certifying commercial, industrial, and municipal laboratory facilities.

(11) Repealed by Session Laws 1983, c. 296, s. 6.

(12) To declare an emergency when it finds that a generalized condition of water or air pollution which is causing imminent danger to the health or safety of the public. Regardless of any other provisions of law, if the Department finds that such a condition or water or air pollution exists and that it creates an emergency requiring immediate action to protect the public health and safety or to protect fish and wildlife, the Secretary of the Department with the concurrence of the Governor, shall order persons causing or contributing to the water or air pollution in question to reduce or discontinue immediately the emission or air contaminants or the discharge of wastes. Immediately after the issuance of such order, the chairman of the Commission shall fix a place and time for a hearing before the Commission to be held within 24 hours after issuance of such order, and within 24 hours after the commencement of such hearing, and without adjournment thereof, the Commission shall either affirm, modify or set aside the order.

In the absence of a generalized condition of air or water pollution of the type referred to above, if the Secretary finds that the emissions from one or more air contaminant sources or the discharge of wastes from one or more sources of water pollution is causing imminent danger to human health and safety or to fish and wildlife, he may with the concurrence of the Governor order the person or persons responsible for the operation or operations in question to immediately reduce or discontinue the emissions of air contaminants or the discharge of wastes or to take such other measures as are, in his judgment, necessary, without regard to any other provisions of this Article or Article 21B of this Chapter. In such event, the requirements for hearing and affirmance, modification or setting aside of such orders set forth in the preceding paragraph of this subdivision shall apply.

(13) Repealed by Session Laws 1983, c. 296, s. 6.

(14) To certify and approve, by appropriate delegations and conditions in permits required by G.S. 143-215. J, requests by publicly owned treatment works to

implement, administer and enforce a pretreatment program for the control of po11utants which pass through or interfere with treatment processes in such treatment works; and to require such programs to be developed where necessary to comply with the Federal Water Pollution Control Act and the Resource Conservation and Recovery Act, including the addition of conditions and compliance schedules in permits required by G.S. 143-215.1. Pretreatment programs submitted by publicly owned treatment works shall include, at a minimum, the adoption of pretreatment standards, a permit or equally effective system for the control of pollutants contributed to the treatment works, and the ability to effectively enforce compliance with the program.

(15) To adopt rules for the prevention of pollution from underground tanks containing petroleum, petroleum products, or hazardous substances. Rules adopted under this section may incorporate standards and restrictions which exceed and are more comprehensive than comparable federal regulations.

(16) To adopt rules limiting the manufacture, storage, sale, distribution or use of cleaning agents containing phosphorus pursuant to G.S. 143-214.4(e), and to adopt rules limiting the manufacture, storage, sale, distribution or use of cleaning agents containing nitrilotriacetic acid.

(17) To adopt rules to implement Part 2A of Article 21A of Chapter 143.

(b) Research Functions. The Department shall have the power to conduct scientific experiments, research, and investigations to discover economical and practical corrective methods for air pollution and waste disposal problems. To this end, the Department may cooperate with any public or private agency or agencies in the conduct of such experiments, research, and investigations, and may, when funds permit, establish research studies in any North Carolina educational institution, with the consent of such institution. In addition, the Department shall have the power to cooperate and enter into contracts with technical divisions of State agencies, institutions and with municipalities, industries, and other persons in the execution of such surveys, studies, and research as it may deem necessary in fulfilling its functions under this Article or Department on matters of mutual interest.

(c) Relation with the Federal Government. The Commission as official water and air pollution control agency for the State is delegated to act in local administration of all matters covered by any existing federal statutes and future legislation by Congress relating to water and air quality

control. In order for the State of North Carolina to effectively pat1icipate in programs administered by federal agencies for the regulation and abatement of water and air pollution, the Department is authorized to accept and administer funds provided by federal agencies for water and air pollution programs and to enter into contracts with federal agencies regarding the use of such funds.

(d) Relations with Other States. The Commission or the Department may, with the approval of the Governor, consult with qualified representatives of adjoining states relative to the establishment of regulations for the protection of waters and air or mutual interest, but the approval of the General Assembly shall be required to make any regulations binding.

(e) Variances. -Any person subject to the provisions of G.S. 143-215.l or 143-215.108 may apply to the Commission for a variance from rules, standards, or limitations established pursuant to G.S. 143-214.1) 143-215, or 143-215. l07. The Commission may grant such variance, for fixed or indefinite periods after public hearing on due notice, or where it is found that circumstances so require, for a period not to exceed 90 days without prior hearing and notice. Prior to granting a variance hereunder, the Commission shall find that:

(1) The discharge of waste or the emission of air contaminants occurring or proposed to occur do not endanger human health or safety; and

(2) Compliance with the rules, standards) or limitations from which variance is sought cannot be achieved by application of best available technology found to be economically reasonable at the time of application for such variances, and would produce serious hardship without equal or greater benefits to the public, provided that such variances shall be consistent with the provisions of the Federal Water Pollution Control Act as amended or the Clean Air Act as amended; and provided further, that any person who would otherwise be entitled to a variance or modification under the Federal Water Pollution Control Act as amended or the Clean Air Act as amended shall also be entitled to the same variance from or modification in rules, standards, or limitations established pursuant to G.S. 143-214.1, 143-215, and 143-215.l07, respectively.

(f) Notification of Completed Remedial Action. The definitions set out in G.S. 130A-310.31(b) apply to this subsection. Any person may submit a written request to the Department for a determination that groundwater has been remediated to meet the standards and classifications established under this Part. A request for a determination that groundwater has

been remediated to meet the standards and classifications established under this Part shall be accompanied by the fee required by G.S. 130A-310.39(a)(2). If the Department determines that groundwater has been remediated to established standards and classifications, the Department shall issue a written notification that no further remediation of the groundwater will be required. The notification shall state that no fm1her remediation of the groundwater will be required unless the Department later detem1ines, based on new information or information not previously provided to the Department, that the groundwater has not been remediated to established standards and classifications or that the Department was provided with false or incomplete information. Under any of those circumstances, the Department may withdraw the notification and require responsible parties to remediate the groundwater to established standards and classifications. (1951, e. 606; 1957, c. 1267, s. 3; 1959, c. 779, s. 8; 1963, c. 1086; 1967, c. 892, s. 1; 1969, c. 538; 1971, 1167, ss. 7, 8; 1973, c. 698, ss. 1-7, 9, 17; 712, s. 1; c. 1262, ss. 23, 86; c. 1331, s. 3; 1975, c. 583, ss. 5, 6; c. 655, s. 3; 1977, c. 771, s.4; 1979, c. 633, ss. 6-8; 1979, 2nd Sess., c. 1158, ss. 1, 3, 4; 1983, c. 296, ss. 5-8; 1985, c. 551, s. 2; 1987, c. 111, s. 2; c. 767, s. 1; c. 827, ss. l, 154, 161, 266; 1987 (Reg. Sess., 1988), c. 1035, s. 2; 1989, c. 500, s. 122; c. 652, s. 1; 1991, c. 552, ss. 2, 11; c. 712, s. 2; 1991 (Reg. Sess., 1992), c. 890, s. 16; c. 1039, ss. 14, 20.1; 1993, c. 344, s. 2; c.400, ss. 1(c), 2, 3, 15; c. 496, s. 4; 1993 (Reg. Sess., 1994), c. 694, s. 1; 1995, c. 484, s. 5; 1997-357, s. 6; 1997-496, s. 4; 1998-212, s. 29A.1 1(b).)

§ **143-215.107. Air quality standards and classifications.**

(a) Duty to Adopt Plans, Standards, etc. The Commission is hereby directed and empowered, as rapidly as possible within the limits of funds and facilities available to it, and subject to the procedural requirements of this Article and Article 21:

(1) To prepare and develop, after proper study, a comprehensive plan or plans for the prevention, abatement and control of air pollution in the State or in any designated area of the State.

(2) To determine by means or field sampling and other studies, including the examination of available data collected by any local, State or federal agency or any person, the degree of air contamination and air pollution in the State and the several areas of the State.

(3) To develop and adopt, after proper study, air quality standards applicable to the State as a whole or to any designated area of the State as the Commission deems proper in order to promote the policies and purposes of this Article and Article 21 most effectively.

(4) To collect information or to require reporting from classes of sources which, in the judgment of the Environmental Management Commission, may cause or contribute to air pollution. Any person operating or responsible for the operation of air contaminant sources of any class for which the Commission requires reporting shall make reports containing such information as may be required by the Commission concerning location, size, and height of contaminant outlets, processes employed, fuels used, and the nature and time periods or duration of emissions, and such other information as is relevant to air pollution and available or reasonably capable of being assembled.

(5) To develop and adopt emission control standards as in the judgment of the Commission may be necessary to prohibit, abate, or control air pollution commensurate with established air quality standards. The Department shall implement rules adopted pursuant to this subsection as follows:

a. Except as provided in sub-subdivision b. of this subdivision, rules adopted pursuant to this subdivision that control emissions of toxic air pollutants shall not apply to an air emission source that is any of the following:

1. Subject to an applicable requirement under 40 C.F.R. Part 61 as amended.

2. An affected source under 40 C.F.R. Part 63, as amended.

3. Subject to a case-by-case maximum achievable control technology (MACT) permit requirement issued by the Department pursuant to 42 U.S.C. *§* 7412G), as amended.

b. Upon receipt or a permit application for a new source or facility, or for the modification of an existing source or facility, that would result in an increase in the emission of toxic air pollutants, the Department shall review the application to determine if the emission of toxic air pollutants from the

source or facility would present an unacceptable risk to human health. Upon making a written finding that a source or facility presents or would present an unacceptable risk to human health, the Department shall require the owner or operator of the source or facility to submit a permit application for any or all emissions of toxic air pollutants from the facility that eliminates the unacceptable risk to human health. The written finding may he based on modeling, epidemiological studies, actual monitoring data, or other information that indicates an unacceptable health risk. When the Department requires the owner or operator of a source or facility to submit a permit application pursuant to this subdivision, the Department shall report to the Chairs of the Environmental Review Commission on the circumstances surrounding the permit requirement, including a copy of the written finding.

(6) To adopt motor vehicle emissions standards; to adopt, when necessary and practicable, a motor vehicle emissions inspection and maintenance program to improve ambient air quality; to require manufacturers of motor vehicles to furnish to the Equipment and Tool Institute and, upon request and at a reasonable charge, to any person who maintains or repairs a motor vehicle, all information necessary to fully make use of the on-board diagnostic equipment and the data compiled by that equipment; to certify to the Commissioner of Motor Vehicles that ambient air quality will be improved by the implementation of a motor vehicle emissions inspection and maintenance program in a county. The Commission shall implement this subdivision as provided in G.S. 143-215.107A.

(7) To develop and adopt standards and plans necessary to implement programs for the prevention of significant deterioration and for the attainment of air quality standards in nonattainment areas.

(8) To develop and adopt standards and plans necessary to implement programs to control acid deposition and to regulate the use of sulfur dioxide (SO2) allowances and oxides of nitrogen (NOx) emissions in accordance with Title IV and implementing regulations adopted by the United States Environmental Protection Agency.

(9) To regulate the content of motor fuels, as defined in G.S. 105-449.60, to require use of reformulated gasoline as the Commission determines necessary, to

implement the requirements of Title II and implementing regulations adopted by the United States Environmental Protection Agency, and to develop standards and plans to implement this subdivision. Rules may authorize the use of marketable oxygen credits for gasoline as provided in federal requirements.

(10) Except as provided in subsection (h) of this section, to develop and adopt standards and plans necessary to implement requirements of the federal Clean Air Act and implementing regulations adopted by the United States Environmental Protection Agency.

(11) To develop and adopt economically feasible standards and plans necessary to implement programs to control the emission of odors from animal operations, as defined in G.S. 143-215.10B.

(12) To develop and adopt a program of incentives to promote voluntary reductions of emissions of air contaminants, including, but not limited to, emissions banking and trading and credit for voluntary early reduction of emissions.

(13) To develop and adopt rules governing the certification of persons who inspect vehicle-mounted tanks used to transport motor fuel and to require that inspection of these tanks be performed only by certified personnel.

(14) To develop and adopt rules governing the sale and service of mobile source exhaust emissions analyzers and to require that vendors of these analyzers provide adequate surety to purchasers for the performance of the vendor's contractual or other obligations related to the sale and service of analyzers.

(b) Criteria for Standards. In developing air quality and emission control standards, motor vehicle emissions standards, motor vehicle emissions inspection and maintenance requirements, rules governing the content of motor fuels or requiring the use of reformulated gasoline, and other standards and plans to improve ambient air quality, the Commission shall consider varying local conditions and requirements and may prescribe uniform standards and plans throughout the State or different standards and plans for different counties or areas as may be necessary and appropriate to improve ambient air quality in the State or within a particular county or area, achieve attainment or preclude violations of state or national ambient air quality standards, meet other federal requirements, or achieve the purposes of this Article and Article 21.

(c) Chapter 150B of the General Statutes governs the adoption and publication of rules under this Article.

(d), (e) Repealed by Session Laws 1987, c. 827, s. 205.

(f), (g) Repealed by Session Laws 1995, c. 507, s.27.

(h) With respect to any regulation adopted by the United States Environmental Protection Agency limiting emissions from wood healers and adopted after May 1, 2014, neither the Commission nor the Department shall do any of the following:

(1) Issue rules limiting emissions from wood heaters to implement the federal regulations described in this subsection.

(2) Enforce against a manufacturer, distributor, or consumer the federal regulations described in this subsection. (1973, c. 821, s. 6; c. 1262, s. 23; 1975, c. 784; 1979, c. 545, s. 1; c. 931; 1987, c. 827, ss. 154, 205; 1989, c. 132; c. 168, s. 48; 1991, c. 403, s. 3; c. 552, s. 9; c. 761, s. 40; 1991 (Reg. Sess., 1992), c. 889, s. 3; 1993, c. 400, s. 7; 1993 (Reg. Sess., 1994), c. 686, s. 6; 1995, c. 123, s. 9; c. 507, s. 27.8(s); 1997-458, s. 3.1; 1999-328, s. 3.12; 2000-134, s. 1; 2002-4, s. 3; 2002-165, s. 1.7; 2012-91, s. l; 2015-286, s. 4.3(a).)

§ 143-215.108. Control of sources of air pollution; permits required.

(a) Except as provided in subsections (a1) and (a2) of this section, no person shall do any of the following things or carry out any of the following activities that contravene or will be likely to contravene standards established pursuant to G.S. 143-215.107 or set out in G.S. 143-215.107D unless that person has obtained a permit for the activity from the Commission and has complied with any conditions of the permit:

(1) Establish or operate any air contaminant source, except as provided in G.S. 143-215.108A.

(2) Build, erect, use, or operate any equipment that may result in the emission of an air contaminant or that is likely to cause air pollution, except as provided in G.S. 143-215.108A.

(3) Alter or change the construction or method of operation of any equipment or process from which air contaminants are or may be emitted.

(4) Repealed by Session Laws 2003-428, s. 1, effective August 19, 2003.

(a1) The Commission may by rule establish procedures that meet the requirements of section 502(b)(10) of Title V (42 U.S.C. § 7661a(b)(10)) and 40 Code of Federal Regulations § 70.4(b)(l2) (l July 1993 Edition) to allow a permittee to make changes within a permitted facility without requiring a revision of the permit.

(a2) The Commission may adopt rules that provide for a minor modification of a permit. At a minimum, rules that provide for a minor modification of a permit shall meet the requirements of 40 Code of Federal Regulations § 70.7(c)(2) (1 July 1993 Edition). If the Commission adopts rules that provide for a minor modification of a permit, a permittee shall not make a change in the permitted facility while the application for the minor modification is under review unless the change is authorized under the rules adopted by the Commission.

(b) The Commission shall act upon all applications for permits so as to effectuate the purposes of this Article by reducing existing air pollution and preventing, so far as reasonably possible, any increased pollution of the air from any additional or enlarged sources.

(c) The Commission shall have the power:

(1) To grant and renew a permit with any conditions attached that the Commission believes necessary to achieve the purposes of this Article or the requirements of the Clean Air Act and implementing regulations adopted by the United States Environmental Protection Agency;

(2) To grant and renew any temporary permit for such period of time as the Commission shall specify even though the action allowed by such permit may result in pollution or increase pollution where conditions make such temporary permit essential;

(3) To terminate, modify, or revoke and reissue any permit upon not less than 60 days' written notice to any person affected;

(3a) To suspend any permit pursuant to the provisions of G.S. 150B-3(c);

(4) To require all applications for permits and renewals to be in writing and to prescribe the form of such applications;

(5) To request such information from an applicant and to conduct such inquiry or investigation as it may deem necessary and to require the submission of plans and specifications prior to acting on any application for a permit;

(5a) To require that an applicant satisfy the Department that the applicant, or any parent, subsidiary, or other affiliate of the applicant or parent:

a. Is financially qualified to carry out the activity for which a permit is required under subsection (a); and

b. Has substantially complied with the air quality and emission control standards applicable to any activity in which the applicant has previously engaged, and has been in substantial compliance with federal and state laws, regulations, and rules for the protection of the environment.

As used in this subdivision, the words "affiliate," "parent," and "subsidiary" have the same meaning as in 17 Code of Federal Regulations 240.12b-2 (l April 1990 Edition);

(6) To adopt rules, as it deems necessary, establishing the form of applications and permits and procedures for the granting or denial of permits and renewals pursuant to this section; and all permits, renewals and denials shall be in writing;

(7) To prohibit any stationary source within the State from emitting any air pollutant in amounts that will prevent attainment or maintenance by any other state of any national ambient air quality standard or that will interfere with measures required to be included in the applicable implementation plan for any other state to prevent deterioration of air quality or protect visibility; and

(8) To designate certain classes of activities for which a general permit may be issued, after considering the environmental impact of an activity, the frequency of the activity, the need for individual permit oversight, and the need for public review and comment on individual permits.

(d) (1) The Commission may conduct any inquiry or investigation it considers necessary before acting on an application and may require an applicant to submit plans, specifications, and other information the Commission considers necessary to evaluate the application. A permit application may not be deemed complete unless it is accompanied by a copy of the request for determination as provided in subsection (f) of this section that bears a date of receipt entered by the clerk of the local government and until the 15-day period for issuance of a determination has elapsed.

(2) The Commission shall adopt rules specifying the times within which it must act upon applications for permits required by Title V and other permits required by this section. The times specified shall be extended for the period during which the Commission is prohibited from issuing a permit under subdivisions (3) and (4) of this subsection. The Commission shall inform a permit applicant as to whether or not the application is complete within the time specified in the rules for action on the application. If the Commission fails to act on an application for a permit required by Title V or this section within the time period specified, the failure to act on the application constitutes a final agency decision to deny the permit. A permit applicant, permittee, or other person aggrieved, as defined in G.S. 150B-2, may seek judicial review of a failure to act on the application as provided in G.S. 143-215.5 and Article 4 of Chapter 150B of the General Statutes. Notwithstanding the provisions of G.S.150B-51, upon review of a failure to act on an application for a permit required by Title V or this section, a court may either: (i) affirm the denial of the permit or (ii) remand the application to the Commission for action upon the application within a specified time.

(3) If the Administrator of the United States Environmental Protection Agency validly objects to the issuance of a permit required by Title V within 45 days after the Administrator receives the proposed permit and the required portions of the permit application, the Commission shall not issue the permit until the Commission revises the proposed permit to meet all objections noted by the Administrator or

otherwise satisfies all objections consistent with Title V and implementing regulations adopted by the United States Environmental Protection Agency.

(4) If the Administrator of the United States Environmental Protection Agency validly objects to the issuance of a permit required by Title V after the expiration of the 45-day review period specified in subdivision (3) of this subsection as a result of a petition filed pursuant to section 505(b)(2) of Title V (42 U.S.C. § 7661d(b)(2)) and prior to the issuance of the permit by the Commission, the Commission shall not issue the permit until the Commission revises the proposed permit to meet all objections noted by the Administrator or otherwise satisfies all objections consistent with Title V and implementing regulations adopted by the United States Environmental Protection Agency.

(d1) No Title V permit issued pursuant to this section shall be issued or renewed for a term exceeding five years. All other permits issued pursuant to this section shall be issued for a term of eight years.

(e) A permit applicant or permittee who is dissatisfied with a decision of the Commission on a permit application may commence a contested case by filing a petition under G.S. 150B-23 within 30 days after the Commission notifies the applicant or permittee of its decision. If the permit applicant or permittee does not file a petition within the required time, the Commission's decision on the application is final and is not subject to review. The filing of a petition under this subsection will stay the Commission's decision until resolution of the contested case.

(e1) A person other than a permit applicant or permittee who is a person aggrieved by the Commission's decision on a permit application may commence a contested case by filing a petition under G.S. 150B-23 within 30 days after the Commission provides notice of its decision on a permit application, as provided in G.S. 150B-23(f), or by posting the decision on a publicly available Web site. The filing of a petition under this subsection does not stay the Commission's decision except as ordered by the administrative law judge under G.S. 150B-33(b).

(f) An applicant for a permit under this section for a new facility or for the expansion of a facility permitted under this section shall request each local government having jurisdiction over any part of the land on which the facility and its appurtenances are to be located to issue a determination as to whether the local government has in effect a zoning or subdivision ordinance applicable to the facility and whether the proposed facility or expansion would be consistent with the ordinance. The request to the local government shall be accompanied by a copy of the draft

permit application and shall be delivered to the clerk of the local government personally or by certified mail. The determination shall be verified or supported by affidavit signed by the official designated by the local government to make the determination and, if the local government states that the facility is inconsistent with a zoning or subdivision ordinance, shall include a copy of the ordinance and the specific reasons for the determination of inconsistency. A copy of any such determination shall be provided to the applicant when it is submitted to the Commission. The Commission shall not act upon an application for a permit under this section until it has received a determination from each local government requested to make a determination by the applicant. If a local government determines that the new facility or the expansion of an existing facility is inconsistent with a zoning or subdivision ordinance, and unless the local government makes a subsequent determination of consistency with all ordinances cited in the determination or the proposed facility is determined by a court of competent jurisdiction to be consistent with the cited ordinances, the Commission shall attach as a condition of the permit a requirement that the applicant, prior to construction or operation of the facility under the permit, comply with all lawfully adopted local ordinances, including those cited in the determination, that apply to the facility at the time of construction or operation of the facility. If a local government fails to submit a determination to the Commission as provided by this subsection within 15 days after receipt of the request, the Commission may proceed to consider the permit application without regard to local zoning and subdivision ordinances. This subsection shall not be construed to affect the validity of any lawfully adopted franchise, local zoning, subdivision, or land-use planning ordinance or to affect the responsibility of any person to comply with any lawfully adopted franchise, local zoning, subdivision, or land-use planning ordinance. This subsection shall not be construed to limit any opportunity a local government may have to comment on a permit application under any other law or rule. This subsection shall not apply to any facility with respect to which local ordinances are subject to review under either G.S. 104E-6.2 or G.S. 130A-293.

(g) Repealed by Session Laws 2014-120, s. 38(c), effective September 18, 2014.

(h) Expedited Review of Applications Certified by a Professional Engineer. The Commission shall adopt rules governing the submittal of permit applications certified by a professional engineer, including draft permits, that can be sent to public notice and hearing upon receipt and subjected to technical review by personnel within the Department. These rules shall specify, at a minimum, any forms to be used; a checklist for applicants that lists all items of information required to prepare a complete permit application; the form of the certification required on the application by a professional engineer; and the information that must be included in the draft permit. The Department shall process an application that is certified by a professional engineer as provided in subdivisions (1) through (7) of this subsection.

(1) Initiation of Review. Upon receipt of an application certified by a professional engineer in accordance with this subsection and the rules adopted pursuant to this subsection, the Department shall determine whether the application is complete as provided in subdivision (2) of this subsection. Within 30 days after the date on which an application is determined to be complete, the Department shall:

a. Publish any required notices, using the draft permit included with the application;

b. Schedule any required public meetings or hearings on the application and permit; and

c. Initiate any and all technical review of the application in a manner to ensure substantial completion of the technical review by the time of any public hearing on the application, or if there is no hearing, by the close of the notice period.

(2) Completeness Review. Within 10 working days of receipt of the permit application certified by a professional engineer under this subsection, the Department shall determine whether the application is complete for purposes of this subsection. The Department shall determine whether the permit application certified by a professional engineer is complete by comparing the information provided in the application with the checklist contained in the rules adopted by the Commission pursuant to this subsection.

a. If the application is not complete, the Department shall promptly notify the applicant in writing of all deficiencies of the application, specifying the items that need to be included, modified, or supplemented in order to make the application complete, and the 10-day time period is suspended after this request for further information. If the applicant submits the requested information within the time specified, the 10-day time period shall begin again on the day the additional information was submitted. If the additional information is not submitted within the time periods specified, the Department shall return the application to the applicant, and the applicant may treat the return of the application as a denial of the application or may resubmit the application at a later time.

b. If the Department fails to notify the applicant that an application is not complete within the time period set forth in this subsection, the application shall be deemed to be complete.

(3) Time for Permit Decision. For any application found to be complete under subdivision (2) of this subsection, the Department shall issue a permit decision within 30 days of the last day of any public hearing on the application, or if there is no hearing, within 30 days of the close of the notice period.

(4) Rights if Permit Decision Not Made in Timely Fashion. If the Department fails to issue a permit decision within the time periods specified in subdivision (3) of this subsection, the applicant may:

a. Take no action, thereby consenting to the continued review of the application; or

b. Treat the failure to issue a permit decision as a denial of the application and appeal the denial as provided in subdivision (2) of subsection (d) of this section.

(5) Power to Halt Review. At any time after the permit application certified by a professional engineer has been determined to be complete under subdivision (2) of this subsection, the Department may immediately terminate review of that application, including technical review and any hearings or meetings scheduled on the application, upon a determination of one of the following:

a. The permit application is not in substantial compliance with the applicable rules; or

b. The applicant failed to pay all permit application fees.

(6) Rights if Review Halted. If the Department terminates review of an application under subdivision (5) of this subsection, the applicant may take any of the following actions:

a. Revise and resubmit the application; or

b. Treat the action as a denial of the application and appeal the denial under Article 3 of Chapter 150B of the General Statutes.

(7) Option; No Additional Fee. The submittal of a permit application certified by a professional engineer to be considered under this subsection shall be an option and shall not be required of any applicant. The Department shall not impose any additional fees for the receipt or processing of a permit application certified by a professional engineer.

(i) Rules for Review of Applications Other Than Those Certified by a Professional Engineer. The Commission shall adopt rules governing the times of review for all permit applications submitted pursuant to this section other than those certified by a professional engineer pursuant to subsection (h) of this section. Those rules shall specify maximum times for, among other things, the following actions in reviewing the permit applications covered by this subsection:

(1) Determining that the permit application is complete;

(2) Requesting additional information to determine completeness;

(3) Determining that additional information is needed to conduct a technical review of the application;

(4) Completing all technical review of the permit application;

(5) Holding and completing all public meetings and hearings required for the application;

(6) Completing the record from reviewing and acting on the application; and

(7) Taking final action on the permit, including granting or denying the application.

(j) No Power to Regulate Residential Combustion. Nothing in this section shall be interpreted to give the Commission or the Department the power to regulate the emissions from any combustion heater, appliance, or fireplace in private dwellings, except to the extent required by federal law. For purposes of this subsection, "combustion heater, appliance, or fireplace" means any heater, appliance, or fireplace that burns combustion fuels, including, but not limited to, natural or liquefied petroleum gas, fuel oil, kerosene, wood, or coal, for heating, cooking,

drying, or decorative purposes. (1973, c. 821, s. 6; c. 1262, s.23; 1979, c. 545, ss. 2, 3; 1987, c.461, s.2; c. 827, ss. l54, 206; 1989, c. 168, s.30; c.492; 1989 (Reg. Sess., 1990), c. 1037, s. 2; 1991, c. 552, s. 5; c. 629, s. l; c. 761, s. 27(a)-(c); 1993, c. 400, s. 8; 1995, c. 484, s. 2; 1995 (Reg. Sess., 1996), c. 728, s. 1; 2002-4, s. 2; 2003-340, s. 1.8(b); 2003-428, ss. 1, 2; 2011-398, s. 60(a); 2013-413, s. 29; 2014-I 15, s. 17: 2014-120, ss. 24(g), 38(c); 2015-286, s. 4.17(a).)

§ **143-215.114A. Enforcement procedures: civil penalties.**

(a) A civil penalty of not more than twenty-five thousand dollars ($25,000) may be assessed by the Secretary against any person who:

(1) Violates any classification, standard or limitation established pursuant to G.S. 143-215.107.

(2) Is required but fails to apply for or to secure a permit required by G.S. 143-215.108 or who violates or tails to act in accordance with the terms, conditions, or requirements of such permit.

(3) Violates or fails to act in accordance with the terms, conditions, or requirements of any special order or other appropriate document issued pursuant to G.S. 143-215.107D.

(4) Fails to file, submit, or make available, as the case may be, any documents, data or reports required by this Article or Parts 1 or 7 of Article 21 of this Chapter.

(5) Violates a rule of the Commission or a local governing body implementing this Article or Parts 1 or 7 of Article 21.

(6) Violates the offenses set out in G.S. 143-215.114B.

(7) Violates the emissions limitations set out in G.S. 143-215.107D.

(b) If any action or failure to act for which a penalty may be assessed under this section is continuous, the Secretary may assess a penalty not to exceed twenty-five thousand dollars ($25,000) per day for so long as the violation continues.

(b1) The Secretary may assess a civil penalty of not more than twenty-five thousand dollars ($25,000) per day for a violation of the emissions limitations set out in G.S. 143-215.107D as provided in this subsection. If at the end of any calendar year, an investor-owned public utility has violated an emissions limitation set out in G.S. 143-215.107D, the violation shall be considered to be continuous from the day that the collective emissions first exceeded the emissions limitation set out in G.S. 143-215.107D through the end of the calendar year and the Secretary may assess a separate civil penalty for each day.

(c) In determining the amount of the penalty the Secretary shall consider the factors set out in G.S. 143B-282.l(b). The procedures set out in G.S. 143B-282.1 shall apply to civil penalty assessments that are presented to the Commission for final agency decision.

(d) The Secretary shall notify any person assessed a civil penalty of the assessment and the specific reasons therefor by registered or certified mail, or by any means authorized by G.S. 1A-1, Rule 4. Contested case petitions shall be filed within 30 days of receipt of the notice of assessment.

(e) Requests for remission of civil penalties shall be filed with the Secretary. Remission requests shall not be considered unless made within 30 days of receipt of the notice of assessment. Remission requests must be accompanied by a waiver of the right to a contested case hearing pursuant to Chapter 150B and a stipulation of the facts on which the assessment was based. Consistent with the limitations in G.S. 143B-282.l(c) and (d), remission requests may be resolved by the Secretary and the violator. If the Secretary and the violator are unable to resolve the request, the Secretary shall deliver remission requests and his recommended action to the Committee on Civil Penalty Remissions of the Environmental Management Commission appointed pursuant to G.S. 143B-282.l(c).

(f) If any civil penalty has not been paid within 30 days after notice of assessment has been served on the violator, the Secretary shall request the Attorney General to institute a civil action in the Superior Court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment, unless the violator contests the assessment as provided in subdivision (4) of this subsection, or requests remission of the assessment in whole or in part as provided in subdivision (5) of this subsection. If any civil penalty has not been paid within 30 days after the final agency decision or court order has been served on the violator, the Secretary shall request the Attorney General to institute a civil action in the Superior Court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment. Such civil actions must be filed within three years of the date the final agency decision or court order was served on the violator.

(g) Repealed by Session Laws 1996, Second Extra Session c. 18, s. 27.34(f).

(h) The clear proceeds of penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1973, c. 821, s. 6; c. 1262, s. 23; c. 1331, s. 3; 1975, c. 19, s. 53; c. 842, ss. 6, 7; 1977, c. 771, s. 4; 1979, c. 545, ss. 4-6; 1987, c. 748, s. 2; c. 827, ss. 154, 212; 1989, c. 135, s. 8; 1989 (Reg. Sess., 1990), c. 1036, s. 8; c. 1045,

s. 4; 1991, c. 552, s. 4; c. 725, s. 7; 1991 (Reg. Sess., 1992), c. 890, s. 18; 1996, 2nd Ex. Sess., c. 18, s. 27.34(f); 1997-496, s. 7; 1998-215, s. 73; 2002-4, ss. 4, 5; 2002-165, s. 1.12; 2007-296, s. 1.)