

1 15A NCAC 02D .0540 is proposed for readoption with substantive changes as follows:

2
3 **15A NCAC 02D .0540 PARTICULATES FROM FUGITIVE DUST EMISSION SOURCES**

4 (a) For the purpose of this Rule the following definitions apply:

- 5 (1) "Excess fugitive dust emissions" means:
- 6 (A) ~~Fugitive~~ fugitive dust is visible extending beyond the facility's property ~~line,~~line; or
- 7 (B) ~~Upon~~upon inspection of settled dust on adjacent property, the Division finds that the dust
- 8 came from the adjacent facility.
- 9 (2) "Fugitive dust emissions" means particulate matter that does not pass through a process stack or
- 10 vent and that is generated within plant property boundaries from activities such as unloading and
- 11 loading areas, process areas, stockpiles, stock-pile working, plant parking lots, and plant roads
- 12 (including access roads and haul roads).
- 13 (3) "Production of crops" means:
- 14 (A) cultivation of land for crop planting;
- 15 (B) crop irrigation;
- 16 (C) harvesting;
- 17 (D) on site curing, storage, or preparation of crops; or
- 18 (E) protecting them from damage or disease conducted according to practices acceptable to the
- 19 North Carolina Department of Agriculture and Consumer Services.
- 20 (4) "Public parking" means an area dedicated to or maintained for the parking of vehicles by the general
- 21 public.
- 22 (5) "Public road" means any road that is part of the State highway system or any road, street, or right-
- 23 of-way dedicated or maintained for public use.
- 24 (6) "Substantive complaints" means complaints that are verified by the Division with physical ~~evidence.~~
- 25 evidence of excess fugitive dust emissions.

26 (b) This Rule does not apply to:

- 27 (1) abrasive blasting covered ~~under by Rule 15A NCAC 02D .0541;~~0541 of this Section;
- 28 (2) cotton ginning operations covered ~~under by Rule 15A NCAC 02D .0542;~~0542 of this Section;
- 29 (3) non-production military base operations;
- 30 (4) land disturbing ~~activities,~~activities that do not require a permit pursuant to 15A NCAC 02Q or are
- 31 not subject to a requirement pursuant to 15A NCAC 02D, such as clearing, grading, or digging, and
- 32 related activities such as hauling fill and cut material, building material, or equipment; or
- 33 (5) public roads, public parking, timber harvesting, or production of crops.

34 (c) The owner or operator of a facility required to have a permit ~~under~~pursuant to 15A NCAC 02Q or ~~of~~ a source

35 subject to a requirement ~~under~~pursuant to 15A NCAC 02D shall not cause or allow fugitive dust emissions to cause

36 or contribute to substantive complaints, or visible emissions in excess of that allowed ~~under~~pursuant to Paragraph (e)

37 of this Rule.

1 (d) If fugitive dust emissions from a facility required to comply with this Rule cause or contribute to substantive
2 complaints, the owner or operator of the facility shall:

- 3 (1) within 30 days upon receipt of written notification from the Director of a second substantive
4 complaint in a 12-month period, submit to the Director a written report that includes the
5 identification of the probable ~~source(s)~~sources of the fugitive dust emissions causing complaints
6 and what measures can be made to abate the fugitive emissions;
- 7 (2) within 60 days of the initial report submitted ~~under~~pursuant to Subparagraph (1) of this Paragraph,
8 submit to the Director a fugitive dust control plan as described in Paragraph (f) of this Rule; and
- 9 (3) within 30 days after the Director approves the plan, be in compliance with the plan.

10 (e) ~~If there is sufficient environmental benefit to justify a fugitive dust control plan, the~~The Director shall require
11 that the owner or operator of a facility covered by Paragraph (c) of this Rule develop and submit a fugitive dust control
12 plan as described in Paragraph (f) of this Rule if:

- 13 (1) ambient air quality measurements or dispersion modeling as provided in 15A NCAC 02D .1106(e)
14 show that the excess fugitive dust emissions cause the~~show violation or a potential for a violation of an~~
15 ambient air quality standard for particulates in 15A NCAC 02D .~~0400;~~0400 to be exceeded; or
- 16 (2) the Division observes ~~excessive~~excess fugitive dust emissions from the facility beyond the property
17 boundaries for six minutes in any one hour using Reference Method 22 in 40 CFR 60, Appendix A.

18 (f) The fugitive dust control plan shall:

- 19 (1) identify the sources of fugitive dust emissions within the facility;
- 20 (2) describe how fugitive dust will be controlled from each identified source;
- 21 (3) contain a schedule by which the plan will be implemented;
- 22 (4) describe how the plan will be implemented, including training of facility personnel; and
- 23 (5) ~~describe methods~~propose any methods that will be used to verify compliance with the plan.

24 (g) The Director shall approve the plan if he or she finds that:

- 25 (1) the plan contains all required elements in Paragraph (f) of this Rule;
- 26 (2) the proposed schedule contained in the plan will reduce fugitive dust emissions ~~in a timely manner;~~
27 in accordance with the timeliness for implementing the proposed method or equipment;
- 28 (3) the methods used to control fugitive dust emissions ~~are sufficient to~~ prevent fugitive dust emissions
29 from causing or contributing to a violation of the ambient air quality standards for particulates; and
- 30 (4) the ~~described~~proposed compliance verification methods ~~are sufficient to~~ verify compliance with the
31 fugitive dust control plan.

32 If the Director finds that the proposed plan does not meet the requirements of this ~~Paragraph~~Paragraph, he or she shall
33 notify the owner or operator of the facility of any deficiencies in the proposed plan. The owner or operator shall have
34 30 days after receiving written notification from the Director to correct the deficiencies or submit a schedule describing
35 actions to be taken and the time by which they will be implemented.

36 (h) If after a plan has been implemented, the Director finds that the plan ~~inadequately controls~~ fails to control excess
37 fugitive dust emissions, he or she shall require the owner or operator of the facility to correct the deficiencies in the

1 plan. Within 90 days after receiving written notification from the Director identifying the deficiency, the owner or
2 operator of the facility shall submit a revision to his or her plan to correct the deficiencies.

3

4 *History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); 143-215.108(c)(7);*

5 *Eff. July 1, 1998;*

6 *Amended Eff. July 10, 2010; August 1, ~~2007-2007~~;*

7 *Readopted Eff. _____.*

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9

1 15A NCAC 02D .1801 is proposed for readoption without substantive changes as follows:

2
3 **SECTION .1800 - CONTROL OF ODORS**

4
5 **15A NCAC 02D .1801 DEFINITIONS**

6 For the purpose of this Section, the following definitions apply:

- 7 (1) "Animal operation" means animal operation as defined in G.S. 143-215.10B.
- 8 (2) "Child care center" means child care centers as defined in G.S. 110-86 and licensed under pursuant
9 to G.S. 110, Article 7.
- 10 (3) "Construction" means any physical change (including fabrication, erection, installation,
11 replacement, demolition, excavation, or other modification) at any contiguous area ~~under~~-in
12 common control.
- 13 (4) "Control technology" means economically feasible control devices installed to ~~effectively~~ reduce
14 objectionable odors from animal operations.
- 15 (5) "Existing animal operation" means an animal operation that is in operation or commences
16 construction on or before February 28, 1999.
- 17 (6) "Historic properties" means historic properties acquired by the State pursuant to G.S. 121-9 or listed
18 in the North Carolina Register of Historic Places pursuant to G.S. 121-4.1.
- 19 (7) "Modified animal operation" means an animal operation that commences construction after
20 February 28, 1999, to increase the steady state live weight that can be housed at that animal
21 operation. Modified animal operation does not include renovating existing barns, relocating barns,
22 or replacing existing lagoons or barns if the new barn or lagoon is no closer to the nearest property
23 and if the new barn or lagoon does not increase the steady state live weight that can be housed at
24 that animal operation.
- 25 (8) "New animal operation" means an animal operation that commences construction after February 28,
26 1999.
- 27 (9) "Objectionable odor" means any odor present in the ambient air that by itself, or in combination
28 with other odors, is or may be harmful or injurious to human health or welfare, or may unreasonably
29 interfere with the comfortable use and enjoyment of life or property. Odors are harmful or injurious
30 to human health if they tend to lessen human food and water intake, interfere with sleep, upset
31 appetite, produce irritation of the upper respiratory tract, ~~or~~ cause symptoms of nausea, or if their
32 chemical or physical nature is, or may be, detrimental or dangerous to human health.
- 33 (10) "Occupied residence" means occupied residence as defined in G.S. 106-802.
- 34 (11) "State Parks" means State Parks System as defined in G.S. ~~113-44.9,~~ 143B-135.44.
- 35 (12) "Technologically feasible" means that an odor control device or a proposed solution to an odor
36 problem has previously been demonstrated to accomplish its intended objective, and is generally
37 accepted within the technical community. It is possible for technologically feasible solutions to

1 have demonstrated their suitability on similar, but not identical, sources for which they are proposed
2 to control.

3

4 *History Note:* *Authority G.S. ~~143-213~~; 143-215.3(a)(1); 143-215.107(a)(11);*
5 *Temporary Adoption Eff. April 27, 1999; March 1, 1999;*
6 *Eff. July 1, ~~2000~~, 2000;*
7 *Readopted Eff. _____.*

1 15A NCAC 02D .1802 is proposed for readoption with substantive changes as follows:

2
3 **15A NCAC 02D .1802 CONTROL OF ODORS FROM ANIMAL OPERATIONS USING LIQUID**
4 **ANIMAL WASTE MANAGEMENT SYSTEMS**

5 (a) Purpose. The purpose of this Rule is to control objectionable odors from animal operations beyond the boundaries
6 of animal operations.

7 (b) Applicability. This Rule shall apply to all animal ~~operations.~~ operations using liquid animal waste management
8 systems.

9 (c) Required management practices. All animal operations shall be required to implement applicable management
10 practices for the control of odors as follows:

11 (1) ~~The the~~ carcasses of dead animals shall be disposed of within 24 hours after becoming aware of the
12 death of the animal according to the methods approved by the State Veterinarian for disposal of
13 dead domesticated animals ~~under pursuant to G.S. 106-403; G.S. 106-403 and 02 NCAC 52C .0102.~~
14 02 NCAC 52C .0102 is hereby incorporated by reference and includes subsequent amendments or
15 editions;

16 (2) ~~Waste waste~~ from animal wastewater application spray systems shall be applied in such a manner
17 and ~~under pursuant to~~ such conditions to prevent drift from the irrigation field of the wastewater
18 spray beyond the boundary of the animal operation, except waste from application spray systems
19 may be applied in an emergency to maintain safe lagoon freeboard if the owner or operator notifies
20 the Department and resolves the emergency with the Department as written in Section ~~HL-6~~ III.13 of
21 the Swine Waste Operation General Permit;

22 (3) ~~Animal animal~~ wastewater application spray system intakes shall be located near the liquid surface
23 of the animal wastewater lagoon;

24 (4) ~~Ventilation ventilation~~ fans shall be maintained according to the ~~manufacturer's~~ manufacturer's
25 specifications; and

26 (5) ~~Animal animal~~ feed storage containers located outside of animal containment buildings shall be
27 covered except when ~~necessary to remove or add feed; removing or adding feed.~~ this ~~this~~
28 Subparagraph ~~does shall~~ not apply to the storage of silage or hay or to commodity boxes with ~~roofs;~~
29 and roofs.

30 ~~All animal operations shall be in compliance with this Paragraph by June 1, 1999.~~

31 (d) Odor management plan (OMP) for existing animal operations for swine. Animal operations for swine that meet
32 the criteria in the table in this Paragraph shall submit an odor management plan to the ~~Director according to the~~
33 ~~schedule in the table in this Paragraph.~~ Director. The odor management plan shall describe how odors are currently
34 being controlled and how these odors will be controlled in the future. ~~The odor management plan shall contain the~~
35 ~~elements described in Rule .1803(a) of this Section.~~ The animal operation shall be required to submit its odor
36 management plan only once. The odor management plan shall:

37 (1) identify the name, location, and owner of the animal operation;

- 1 (2) identify the name, title, address, and telephone number of the person filing the plan;
- 2 (3) identify the sources of odor within the animal operation;
- 3 (4) describe how odor will be controlled from:
 - 4 (A) the animal houses;
 - 5 (B) the animal wastewater lagoon, if used;
 - 6 (C) the animal wastewater application lands, if used;
 - 7 (D) waste conveyances and temporary accumulation points; and
 - 8 (E) other possible sources of odor within the animal operation;
- 9 (5) contain a diagram showing all structures and lagoons at the animal operation, forced air directions,
10 and approximate distances to structures or groups of structures within 3,000 feet of the property line
11 of the animal operation; a recent or updated aerial photograph instead of a diagram provided the
12 items required by this Subparagraph are shown;
- 13 (6) for existing animal operations, contain a schedule not to exceed six months by which the plan will
14 be implemented;
- 15 (7) describe how the plan will be implemented, including training of personnel;
- 16 (8) describe inspection and maintenance procedures; and
- 17 (9) describe methods of monitoring and recordkeeping to verify compliance with the plan.

100 pounds steady state live weight of swine		Distance in feet to the boundary of the nearest neighboring occupied property with an inhabitable structure, business, school, hospital, church, outdoor recreational facility, national park, State Park-parks , historic property, or child care center	Date by when the odor management plan is to be submitted
at least	but less than		
10,000	20,000	less than or equal to 3,000	January 15, 2002
20,000	40,000	less than or equal to 4,000	July 15, 2001
40,000		less than or equal to 5,000	January 15, 2001

19

20 For the purposes of this Rule, the distance shall be measured from the edge of the barn or lagoon, whichever is closer,

21 to the boundary of the neighboring occupied property with an inhabitable structure, business, school, hospital, church,

22 outdoor recreational facility, national park, State ~~Park-parks~~, historic property, or child care center. All animal

23 operations for swine that are of the capacity size in the table in this Paragraph shall submit ~~by the date specified in this~~

24 ~~table~~ either an odor management plan or documentation that no neighboring occupied property with an inhabitable

25 structure, business, school, hospital, church, outdoor recreational facility, national park, State ~~Park-parks~~, historic

26 property, or child care center is within the distances specified in the ~~table as of the date that the submittal is due.~~ table.

27 ~~After July 15, 2002, the~~ The Director may require existing animal operations for swine with a steady state live weight

28 of swine between ~~1,000~~ 100,000 to ~~40,000~~ 1,000,000 pounds steady state live weight ~~hundredweights~~ to submit an odor

29 management plan if the Director determines pursuant to Paragraph (g) of this Rule that these animal operations ~~may~~

30 cause or contribute to an objectionable odor. The Director may require an existing animal operation to submit a best

1 management plan (BMP) pursuant to 15A NCAC 02D .1803, ~~under~~ then submit the BMP pursuant to Paragraph (h)
 2 of this Rule if the existing animal operation fails to submit an odor management ~~plan by the schedule in this Paragraph~~
 3 ~~of this Rule. plan.~~

4 (e) Location of objectionable odor determinations.

5 (1) For an existing animal operation that does not meet the following siting requirements:

6 (A) at least ~~1500~~ 1,500 feet from any occupied residence not owned by the owner of the animal
 7 operation;

8 (B) at least ~~2500~~ 2,500 feet from any school, hospital, church, outdoor recreation ~~facility.~~
 9 Facility, national ~~park;~~ parks, State ~~Park;~~ parks, historic property, or child care center; and

10 (C) at least 500 feet from any property boundary;

11 objectionable odors shall be determined at neighboring occupied property not owned by the owner
 12 of the animal operation, such as businesses, schools, hospitals, churches, outdoor recreation
 13 facilities, national parks, State ~~Parks;~~ parks, historic properties, or child care centers that are
 14 affected.

15 (2) For a new animal operation or existing animal operation that meets the siting requirements in
 16 Subparagraph (1) of this Paragraph, objectionable odors shall be determined beyond the boundary
 17 of the animal operation.

18 (f) Complaints. The Director shall respond to complaints about objectionable odors from animal operations as follows:

19 (1) Complaints shall be ~~investigated to the extent practicable.~~ investigated;

20 (2) Complaints may be used to assist in determination of a best management plan failure or a control
 21 technology ~~failure.~~ failure;

22 (3) The Director shall respond to complaints within 30 ~~days.~~ days of receipt of the complaint;

23 (4) Complaint response shall ~~at least include a written response of~~ the Director's evaluation of the
 24 ~~complaint.~~ complaint;

25 (5) The investigation of a complaint shall be completed as expeditiously as possible considering the
 26 meteorology, activities at the animal operation, and other conditions occurring at the time of the
 27 ~~complain.~~ complaint.

28 (g) Determination of the existence of an objectionable odor. In ~~deciding~~ determining if an animal operation is causing
 29 or contributing to an objectionable odor, the factors the Director may consider ~~one or more of the following;~~ include:

30 (1) the nature, intensity, frequency, pervasiveness, and duration of the odors from the animal operation;

31 (2) complaints received about objectionable odors from the animal operation;

32 (3) emissions from the animal operation of known odor causing compounds, such as ammonia, total
 33 volatile organics, hydrogen ~~sulfide~~ sulfide, or other sulfur compounds at levels that could cause or
 34 contribute to an objectionable odor;

35 (4) any epidemiological studies associating health problems with odors from the animal operation or
 36 documented health problems associated with odors from the animal operation provided by the State
 37 Health Director; or

1 (5) any other evidence, including records maintained by neighbors, that show that the animal operation
2 is causing or contributing to an objectionable odor.

3 (h) ~~Requirement~~ Requirements for a best management plan for ~~controlling~~ control of odors from existing animal
4 operations. If the Director ~~finds~~ determines that an existing animal operation is causing or contributing to an
5 objectionable odor, the owner or operator of the animal operation shall:

6 (1) submit to the Director as soon as practical, but not to exceed 90 days after receipt of written
7 notification from the Director that the animal operation is causing or contributing to an objectionable
8 odor, a best management plan for odor control as described in 15A NCAC 02D .1803; Rule .1803
9 ~~of this Section;~~ and

10 (2) be in compliance with the terms of the best management plan within 30 days after the Director
11 approves the best management ~~plan~~ plan, or an approved compliance schedule by the Director.
12 ~~(approved compliance schedule is an alternate schedule to 30 days. (compliance with an approved~~
13 ~~compliance schedule in the best management plan is deemed to be in compliance with the plan).~~

14 (i) Requirement for amendment to the best management plan. No later than 60 days from completion of a compliance
15 schedule in an approved best management plan or if the best management plan contains no compliance schedule, no
16 later than 60 days from the implementation date of the best management plan, the Director shall determine whether
17 the plan has been properly implemented. If the Director determines at any time that a plan submitted ~~under~~ pursuant
18 to Paragraph (h) of this Rule does not control objectionable odors from the animal operation, the Director shall require
19 the owner or operator of the animal operation to amend the plan to incorporate additional or alternative measures to
20 control objectionable odors from the animal operation. The owner or operator shall:

21 (1) submit a revised best management plan to the Director as soon as practical but not later than 60 days
22 after receipt of written notification from the Director that the plan is inadequate; and

23 (2) be in compliance with the revised best management plan within 30 days after the Director approves
24 the revisions to the best management ~~plan~~ plan. ~~(approved compliance schedule is an alternate~~
25 ~~schedule to 30 days.) (compliance with an approved compliance schedule in the best management~~
26 ~~plan is deemed to be in compliance with the plan).~~

27 ~~(j) Plan failure. Any of the following conditions shall constitute failure of a best management plan:~~

28 ~~(1) failing to submit the initial best management plan required under Paragraph (h) of this Rule within~~
29 ~~90 days of receipt of written notification from the Director that the animal operation is causing or~~
30 ~~contributing to an objectionable odor;~~

31 ~~(2) failing to submit a revised best management plan required under Paragraph (i) of this Rule within~~
32 ~~60 days of receipt of written notification from the Director that the animal operation is causing or~~
33 ~~contributing to an objectionable odor;~~

34 ~~(3) failing to correct all deficiencies in a submitted best management plan under Rule .1803(c) of this~~
35 ~~Section within 30 days of receipt of written notification from the Director to correct these~~
36 ~~deficiencies;~~

37 ~~(4) failing to implement the best management plan after it has been approved; or~~

1 ~~(5) finding by the Director, using the criteria under Paragraph (g) of this Rule, that, after the best~~
 2 ~~management plan has been implemented and revised no more than one time (voluntary revisions~~
 3 ~~and revisions made pursuant to 15A NCAC 2D .1803(c) shall not be counted as revisions under this~~
 4 ~~Subparagraph); the best management plan does not adequately control objectionable odors from the~~
 5 ~~animal operation and will not adequately control objectionable odors even with further amendments.~~

6 (j)(k) Requirements for control technology. After the best management plan has been implemented and revised no
 7 more than one time excluding voluntary revisions and revisions made pursuant to 15A NCAC 2D .1803(c). If a A
 8 plan failure occurs, shall constitute a finding by the Director, using the criteria pursuant to Paragraph (g) of this Rule.
 9 If a plan failure occurs, the Director shall require the owner or operator of the animal operation to install control
 10 technology to control odor from the animal operation. ~~The owner or operator shall submit within~~ Within 90 days from
 11 receipt of written notification from the Director of a plan failure, ~~the owner or operator shall submit~~ a permit
 12 application for control technology and an installation schedule. If the owner or operator demonstrates to the Director
 13 that a permit application cannot be submitted within 90 days, the Director ~~may shall~~ shall extend the time for submittal up
 14 to an additional 90 ~~days.~~ days if the owner or operator demonstrates the delay in submitting the application was beyond
 15 his or her control. Control technology shall be determined according to Subparagraph (1) of this Paragraph. The
 16 installation schedule shall contain the increments of progress described in Subparagraph (2) of this Paragraph. The
 17 owner or operator may at any time request adjustments in the installation schedule and shall in his or her request
 18 explain why the schedule cannot be met. If the Director finds ~~that the request reason for not meeting the schedule is~~
 19 ~~valid, to be accurate,~~ the Director shall revise the installation schedule as requested; however, the Director shall not
 20 extend the final compliance date beyond 24 months from the date that the permit was first issued for the control
 21 technology. The owner or operator shall certify to the Director within five days after the deadline for each increment
 22 of progress described in Subparagraph (2) of this Paragraph whether the required increment of progress has been met.

23 (1) Control technology. The owner or operator of an animal operation shall identify control technologies
 24 that are technologically feasible for his or her animal operation and shall select the control
 25 technology or control technologies that results in the greatest reduction of odors considering human
 26 health, energy, environmental, and economic impacts and other costs. The owner or operator shall
 27 explain the reasons for selecting the control technology or control technologies. If the Director finds
 28 that the selected control technology or control technologies will effectively control odors following
 29 the procedures in 15A NCAC ~~2Q 02Q~~ .0300 or .0500, he or she shall approve the installation of the
 30 control technology or control technologies for this animal operation upon permit issuance. The
 31 owner or operator of the animal operation shall comply with all terms and conditions in the permit.

32 (2) Installation schedule. The installation schedule for control technology shall contain the following
 33 increments of progress:

34 (A) a date by which contracts for odor control technology shall be awarded or orders shall be
 35 issued for purchase of component ~~parts;~~ parts or materials;

36 (B) a date by which on-site construction or installation of the odor control technology shall
 37 begin;

1 (C) a date by which on-site construction or installation of the odor control technology shall be
2 completed; and

3 (D) a date by which final compliance shall be achieved.

4 Control technology shall be in place and operating as soon as practical but not to exceed 12 months
5 from the date that the permit is issued for control technology.

6 ~~(k)(4) New or modified animal operations. This Paragraph does not apply to activities exempted from the moratorium~~
7 ~~on construction or expansion of swine farms in S.L. 1997, c. 458, s. 1.1 provided that the owner or operator~~
8 ~~demonstrates to the Director that the activity will not result in an objectionable odor. The following requirements shall~~
9 ~~apply to new or modified animal operations:~~

10 (1) Before beginning construction, the owner or operator of a new or modified animal operation raising
11 or producing swine shall submit and have an approved best management plan and shall meet the
12 ~~following:~~ following setbacks. A house or lagoon that is a component of an animal operation shall
13 be constructed:

14 (A) at least ~~1500~~ 1,500 feet from any occupied residence not owned by the owner of the animal
15 operation;

16 (B) at least ~~2500~~ 2,500 feet from any school, hospital, church, outdoor recreation facility,
17 national park, State ~~Park,~~ parks, historic property, or child care center; and

18 (C) at least 500 feet from any property boundary;

19 (2) Before beginning construction, the owner or operator of a new or modified animal operation other
20 than swine shall submit and have an approved best management plan.

21 (3) For new or modified animal operations raising or producing swine, the outer perimeter of the land
22 area onto which waste is applied that is a component of an animal operation shall be:

23 (A) at least 75 feet from any boundary of property on which an occupied residence not owned
24 by the owner of the animal operation is ~~located,~~ located; and

25 (B) at least 200 feet from any occupied residence not owned by the owner of the animal
26 operation.

27 (4) The Director shall either approve or disapprove the best management plan submitted ~~under~~ pursuant
28 to this Paragraph within 90 days after receipt of the plan. If the Director disapproves the plan, he or
29 she shall identify the ~~plan's~~ plan's deficiency.

31 *History Note:* Authority G.S. 143-215.3(a)(1); 143-215.107(a)(11); 143-215.108(a); 150B-21.6;

32 *Temporary Adoption Eff. April 27, 1999; March 1, 1999;*

33 *Eff. July 1, ~~2000,~~ 2000;*

34 *Readopted Eff.*

1 15A NCAC 02D .1803 is proposed for readoption without substantive changes as follows:

2
3 **15A NCAC 02D .1803 BEST MANAGEMENT PLANS FOR ANIMAL OPERATIONS**

4 (a) Contents of a best management plan. The best management plan for animal operations shall:

- 5 (1) identify the name, location, and owner of the animal operation;
- 6 (2) identify the name, title, address, and telephone number of the person filing the plan;
- 7 (3) identify the sources of odor within the animal operation;
- 8 (4) describe how odor will be controlled from:
 - 9 (A) the animal houses;
 - 10 (B) the animal wastewater lagoon, if used;
 - 11 (C) the animal wastewater application lands, if used;
 - 12 (D) waste conveyances and temporary accumulation points; and
 - 13 (E) other possible sources of odor within the animal operation;
- 14 (5) contain a diagram showing all structures and lagoons at the animal operation, forced air directions,
15 and approximate distances to structures or groups of structures within 3000 feet of the property line
16 of the animal operation; a recent or updated aerial photograph may be submitted in place of a
17 diagram provided the items required ~~under~~ in accordance with this Subparagraph of this Rule are
18 shown;
- 19 (6) for existing animal operations, contain a schedule not to exceed six months by which the plan will
20 be ~~implemented~~ implemented. ~~(A new animal operation is to have shall~~ and be in compliance with
21 its best management plan when it begins ~~operation~~; operations. ~~for~~ For an amended best
22 management plan, the implementation schedule shall not exceed six months;
- 23 (7) describe how the plan will be implemented, including training of personnel;
- 24 (8) describe inspection and maintenance procedures; and
- 25 (9) describe methods of monitoring and recordkeeping to verify compliance with the plan.

26 (b) The Division shall review all best management plan submittals within 30 days of receipt of the submittal to
27 determine if the submittal is complete or incomplete for processing purposes. To be complete, the submittal shall
28 contain all the elements listed in Paragraph (a) of this Rule. The Division shall notify the person submitting the plan
29 by letter stating that:

- 30 (1) the submittal is ~~complete~~, complete;
- 31 (2) the submittal is partially incomplete and identifying the missing elements and a date by which the
32 missing elements need to be submitted to the ~~Division~~, Division; or
- 33 (3) the best management plan is incomplete and requesting that the person rewrite and resubmit the
34 plan.

35 (c) Approval of the best management plan. The Director shall approve the plan if he or she finds that:

- 36 (1) the plan contains all the required elements in Paragraph (a) of this Rule;
- 37 (2) the proposed schedule contained in the plan will reduce objectionable odors in a timely manner;

1 (3) the methods used to control objectionable odors are likely to prevent objectionable odors beyond
 2 the property lines of the animal ~~operation~~ operation. ~~(the~~ The Director shall not consider impacts of
 3 objectionable odors on neighboring property if the owner of the neighboring property agrees in
 4 writing that he or she does not object to objectionable odors on his or her property and this written
 5 statement is included with the proposed best management ~~plan;~~ plan. ~~this~~ This agreement becomes
 6 void if the neighboring property changes ownership. If the neighboring property changes
 7 ownership, the plan shall be revised, if necessary, to prevent objectionable odors on this property
 8 unless the new owner agrees in writing that he or she does not object to objectionable odors on his
 9 property); and

10 (4) the described compliance verification methods are sufficient to verify compliance with the plan.
 11 Within 90 days after receipt of a plan, the Director shall determine whether the proposed plan meets the requirements
 12 of this Paragraph of this ~~Rule.~~ Paragraph. If the Director finds that the proposed plan does not meet the requirements
 13 of this Paragraph, he or she shall notify the owner or operator of the animal operation in writing of the deficiencies in
 14 the proposed ~~plan.~~ plan was approved. The owner or operator shall have 30 days after receiving written notification
 15 from the Director to correct the deficiencies. If the Director finds that the proposed plan is acceptable, he or she shall
 16 notify the owner or operator in writing that the proposed plan has been approved.

17
 18 *History Note:* Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(11);
 19 Temporary Adoption Eff. April 27, 1999; March 1, 1999;
 20 Eff. July 1, ~~2000~~, 2000;
 21 Readopted Eff. _____.
 22

1 15A NCAC 02D .1804 is proposed for readoption without changes as follows:

2

3 **15A NCAC 02D .1804 REPORTING REQUIREMENTS FOR ANIMAL OPERATIONS**

4 If the Department receives an odor complaint about an animal operation, the Department may require the owner or
5 operator of the animal operation to submit the following ~~information:~~ information if necessary to investigate the odor
6 compliant:

- 7 (1) the name and location of the animal operation;
- 8 (2) the name, title, address, and telephone number of the person reporting: ~~filing the report;~~
- 9 (3) the type and number of animals at the animal operation;
- 10 (4) potential sources of odors, such as animal housing structures, lagoons, collection and handling
11 devices, and storage containers, with a physical description of these sources;
- 12 (5) waste water land application procedures; and
- 13 (6) measures taken to reduce odors.

14 The owner or operator shall submit this ~~This information shall be submitted~~ to the Division within 15 days after
15 receipt of the request.

16

17 *History Note: Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; ~~143-215-215.107(a)(11); 143-~~*
18 *215.107(a)(11)*
19 *Temporary Adoption Eff. March 1, 1999;*
20 *Eff. July 1, ~~2000; 2000;~~*
21 *Readopted Eff. _____.*
22

1 15A NCAC 02D .1806 is proposed for readoption with substantive changes as follows:

2
3 **15A NCAC 02D .1806 CONTROL AND PROHIBITION OF ODOROUS EMISSIONS**

4 (a) Purpose. The purpose of this Rule is to provide for the control and prohibition of objectionable odorous emissions.

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

6 (1) "Commercial purposes" means activities that require a ~~state~~ state or local business license to operate.

7 (2) "Temporary activities or operations" means activities or operations that are less than 30 days in
8 duration during the course of a calendar year and do not require an air quality permit.

9 (c) Applicability. With the ~~exceptions~~ exemptions in Paragraph (d) of this Rule, this Rule shall apply to all operations
10 that ~~may~~ produce odorous emissions that can cause or contribute to objectionable odors beyond the facility's
11 boundaries.

12 (d) Exemptions. The requirements of this Rule do not apply to:

13 (1) processes at kraft pulp mills identified in 15A NCAC 02D Rule .0528 of this Section, and covered
14 ~~under~~ subject to Rule 15A NCAC 02D .0524 or .0528 of this Section; .0528;

15 (2) processes at facilities that produce feed-grade animal proteins or feed-grade animal fats and oils
16 identified in ~~and covered under Rule .0539;~~ 15A NCAC 02D .0539;

17 (3) motor vehicles and transportation facilities;

18 (4) all on-farm animal and agricultural operations, including dry litter operations and operations ~~covered~~
19 ~~under Rule .1804 of this Section;~~ subject to 15A NCAC 02D .1804;

20 (5) municipal wastewater treatment plants and municipal wastewater handling systems;

21 (6) restaurants and food preparation facilities that prepare and serve food on site;

22 (7) single family dwellings not used for commercial purposes;

23 (8) materials odorized for safety purposes;

24 (9) painting and coating operations that do not require a business license; ~~or~~

25 (10) all temporary activities or ~~operations.~~ operations; or

26 (11) any facility that stores products that are grown, produced, or generated on one or more agricultural
27 operations and that are "renewable energy resources," as defined in G.S.62-133.8(a)(8) if the facility
28 identifies the sources of potential odor emissions and specifies odor management practices in their
29 permit pursuant to 15A NCAC 02Q .0300 or .0500 to minimize objectionable odor beyond the
30 property lines.

31 (e) Control Requirements. The owner or operator of a facility subject to this Rule shall not operate the facility without
32 implementing management practices or installing and operating odor control equipment sufficient to prevent odorous
33 emissions from the facility from causing or contributing to objectionable odors beyond the facility's boundary.

34 (f) Odor management plan. If the Director determines, pursuant to Paragraph (i) of this Rule, that a source or facility
35 subject to this Rule is causing or contributing to objectionable odors beyond its property boundary by the procedures
36 described in Paragraph (i) of this Rule, the owner or operator shall develop and submit an odor management plan

1 within 60 days of receipt of written notification from the Director of an objectionable odor determination. The odor
 2 management plan shall:

- 3 (1) identify the sources of odorous emissions;
- 4 (2) describe how odorous emissions will be controlled from each identified source;
- 5 (3) describe how the plan will be implemented; and
- 6 (4) contain a schedule by which the plan will be implemented.

7 Upon receipt of an approval letter from the Director for the odor management plan, the source or facility shall
 8 implement the approved plan within 30 days, unless an alternative schedule of implementation is approved as part of
 9 the odor management plan submittal. If the Director finds that the odor management plan does not meet the
 10 requirements of this Paragraph or that the plan is insufficient to address the specific odor concerns, he or she shall
 11 notify the owner or operator of any deficiencies in the proposed plan. The owner or operator shall have 30 days after
 12 receipt of written notification from the Director to resubmit the odor management plan correcting the stated
 13 deficiencies with the plan or the schedule of implementation. If the owner or operator fails to correct the plan
 14 deficiencies with the second draft plan submittal or repeatedly fails to meet the deadlines set forth in this Paragraph
 15 or Paragraph (g) of this Rule, the Director shall notify the owner or operator in writing that they are required to comply
 16 with the maximum feasible control requirements in Paragraph (h) of this Rule.

17 (g) Odor management plan revision. If after the odor management plan has been implemented, the Director determines
 18 that the plan fails to eliminate objectionable odor emissions from a source or facility using the procedures described
 19 in Paragraph (i) of this Rule, he or she shall require the owner or operator of the facility to submit a revised plan.
 20 Within 60 days after receiving written notification from the Director of a new objectionable odor determination, the
 21 owner or operator of the facility shall submit a revision to their odor management plan following the procedures and
 22 timelines in Paragraph (f) of this Rule. If the revised plan, once implemented, fails to eliminate objectionable odors,
 23 then the source or facility shall comply with requirements in Paragraph (h) of this Rule.

24 (h)(f) Maximum feasible controls. If an amended odor management plan does not prevent objectionable odors beyond
 25 the facility's boundary, If the Director determines that a source or facility subject to this Rule is emitting an
 26 objectionable odor by the procedures described in Paragraph (g) of this Rule, the Director shall require the owner or
 27 operator to implement maximum feasible controls for the control of odorous emissions. (Maximum Maximum feasible
 28 controls shall be determined according to the procedures in Rule .1807 of this Section.)15A NCAC 02D .1807. The
 29 owner or operator shall:

- 30 (1) within 180 days of receipt of written notification from the Director of the requirement to implement
 31 maximum feasible controls, complete the determination process outlined in 15A NCAC 2D .1807
 32 and submit the completed maximum feasible control determination process along with a permit
 33 application for maximum feasible controls and a compliance schedule to the Division of Air Quality;
 34 the compliance schedule shall contain the following increments of progress: complete the process
 35 outlined in 15A NCAC 02D .1807 and submit a complete permit application according to 15A
 36 NCAC 02Q .0300 or 15A NCAC 02Q .0500, as applicable, within 180 days of receipt of written

1 notice from the Director requiring implementation of maximum feasible controls. The application
 2 shall include a compliance schedule containing the following increments of progress:

- 3 (A) a date by which contracts for the odorous emission control systems and equipment shall be
 4 awarded or orders shall be issued for purchase of component parts;
- 5 (B) a date by which on-site construction or installation of the odorous emission control systems
 6 and equipment shall begin;
- 7 (C) a date by which on-site construction or installation of the odorous emission control systems
 8 and equipment shall be completed; and
- 9 (D) a date by which final compliance shall be achieved.

- 10 (2) install and begin operating maximum feasible controls within 18 months after receiving written
 11 notification from the Director of the requirement to implement maximum feasible ~~controls, have~~
 12 ~~installed and begun operating maximum feasible controls.~~ The owner or operator may
 13 request an extension to implement maximum feasible controls. The Director shall approve an
 14 extension request if he or she finds that the extension request is the result of circumstances beyond
 15 the control of the owner or operator.

16 The owner or operator shall certify to the Director within five days after the deadline for each increment of progress
 17 in this Paragraph whether the required increment of progress has been met.

18 ~~(i)(g)~~ Determination of the existence of an objectionable odor. A source or facility is causing or contributing to an
 19 objectionable odor when:

- 20 (1) ~~A~~ a member of the Division staff determines by field investigation that an objectionable odor is
 21 present by taking into account the nature, intensity, pervasiveness, duration, and source of the odor
 22 and other pertinent factors;
- 23 (2) ~~The~~ the source or facility emits known ~~odor-causing~~ odor-causing compounds such as ammonia,
 24 total volatile organics, hydrogen sulfide, or other sulfur compounds at levels that cause objectionable
 25 odors beyond the property line of that source or facility; or
- 26 (3) ~~The~~ the Division receives from the State Health Director epidemiological studies associating health
 27 problems with odors from the source or ~~facility~~ facility, ~~or evidence of documented health problems~~
 28 ~~associated with odors from the source or facility provided by the State Health Director.~~

29
 30 *History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);*

31 *Eff. April 1, 2001-2001;*

32 *Readopted Eff. _____.*

33

1 15A NCAC 02D .1807 is proposed for reoption without substantive changes as follows:

2
3 **15A NCAC 02D .1807 DETERMINATION OF MAXIMUM FEASIBLE CONTROLS FOR ODOROUS**
4 **EMISSIONS**

5 (a) Scope. This Rule sets out procedures for determining maximum feasible controls for odorous emissions. The
6 owner or operator of the facility shall be responsible for providing the maximum feasible control determination.

7 (b) Process for maximum feasible control determinations. The following sequential process shall be used on a case-
8 by-case basis to determine maximum feasible controls:

9 (1) Identify all available control technologies. In the first step, all available options for the control of
10 odorous emissions shall be listed. Available options include all possible control technologies or
11 techniques with a practical potential to control, reduce, or minimize odorous emissions. For the
12 purposes of this document, in some specific cases a comprehensive, effective odor control plan ~~can~~
13 may be listed among the possible odor control technologies as a viable and satisfactory maximum
14 feasible control technology option. All available control technologies shall be included on this list
15 regardless of their technical feasibility or potential energy, human health, economic, or
16 environmental impacts.

17 (2) Eliminate technically infeasible options. In the second step, the technical feasibility of all the control
18 options identified ~~under-pursuant to~~ Subparagraph (b)(1) of this Rule shall be evaluated with respect
19 to source specific factors. A demonstration of technical infeasibility shall be clearly documented
20 and shall show, based on physical, chemical, or engineering principles, that technical difficulties
21 preclude the successful use of the control option under review. Technically infeasible control
22 options shall then be eliminated from further consideration as maximum feasible controls.

23 (3) Rank remaining control technologies by control effectiveness. All the remaining control
24 technologies, which have not been eliminated ~~under-pursuant to~~ Subparagraph (b)(2) of this Rule,
25 shall be ranked and then listed in order of their ability to control odorous emissions, with the most
26 effective control option at the top of the list. The list shall present all the control technologies that
27 have not been previously eliminated and shall include the following information:

28 (A) control effectiveness;

29 (B) economic impacts (cost effectiveness);

30 (C) environmental impacts: this shall include any significant ~~or unusual other~~ media impacts
31 (for example, water or solid waste), ~~and~~, at a ~~minimum,~~ minimum the impact of each
32 control alternative on emissions of toxic or hazardous air pollutants;

33 (D) human health impacts; and

34 (E) energy impacts.

35 However, an owner or operator proposing to implement the most stringent alternative, in terms of
36 control effectiveness, need not provide detailed information concerning the other control options.

37 In such cases, the owner or operator shall ~~only document, to the satisfaction of the Director,~~ provide

1 documentation to the Director ~~that~~ the proposed control option is ~~indeed~~ the most efficient, in terms
 2 of control effectiveness, and provide a review of collateral environmental impacts.

- 3 (4) Evaluate most effective controls and document results. Following the delineation of all available
 4 and technically feasible control technology options ~~under-pursuant to~~ Subparagraph (b)(3) of this
 5 Rule, the energy, human health, environmental, and economic impacts shall be considered in order
 6 to arrive at the maximum feasible controls. An analysis of the predicted and associated impacts for
 7 each option shall be conducted. The owner or operator shall present an objective evaluation of the
 8 impacts of each alternative. Beneficial and adverse impacts shall be analyzed and, if possible,
 9 quantified. If the owner or operator ~~has~~ proposed to select the most stringent alternative, in terms
 10 of control effectiveness, as maximum feasible controls, he or she shall evaluate whether impacts of
 11 unregulated air pollutants or environmental impacts in other media would justify selection of an
 12 alternative control technology. If there are no concerns regarding collateral environmental impacts,
 13 the analysis is ended and this proposed option is selected as maximum feasible controls. In the event
 14 the most stringent alternative is inappropriate, due to energy, human health, environmental, or
 15 economic impacts, the justification for this conclusion shall be fully ~~documented; documented, and~~
 16 ~~the~~ The next most stringent option, in terms of control effectiveness, ~~becomes the primary~~
 17 ~~alternative and is similarly evaluated,~~ shall become the primary alternatively and be similarly
 18 evaluated. This process shall continue until the control technology evaluated ~~can not~~ cannot be
 19 eliminated due to source-specific environmental, human health, energy, or economic impacts.
- 20 (5) Select maximum feasible controls. The most stringent option, in terms of control ~~effectiveness,~~
 21 effectiveness, that is not eliminated ~~under-pursuant to~~ Subparagraph (b)(4) of this Rule shall be
 22 selected as maximum feasible controls.

23
 24 *History Note:* Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);
 25 Eff. April 1, 2001-2001;
 26 Readopted Eff. _____.
 27

1 15A NCAC 02D .1808 is proposed for reoption without substantive changes as follows:

2

3 **15A NCAC 02D .1808 EVALUATION OF NEW OR MODIFIED SWINE FARMS**

4 (a) Purpose. The purpose of this Rule is to specify the methods for evaluating new or modified swine farms for
5 compliance with the performance standard in G.S. 143-215.10I (b)(3).

6 (b) Applicability. This Rule applies to new or modified swine farms required by G.S. 143-215.10I to meet the
7 performance standard in G.S. 143-215.10I (b)(3).

8 (c) Requirements. New or modified swine farms subject to this ~~rule~~ Rule shall comply with the requirements in this
9 Section.

10 (d) Evaluation of new or modified swine farms. For the purpose of evaluating odor at new or modified swine farms
11 for compliance with the performance standard in G.S. 143-215.10I (b)(3), the following shall apply:

12 (1) When a field olfactometry method and instrumentation is used to determine odor intensity at the
13 designated evaluation location, as specified in ~~Rule .1802(e) of this Section~~ 15A NCAC 02D
14 .1802(e), the measured dilution-to-threshold ratio shall be less than or equal to 7:1 as determined
15 using the manufacturer's instrument procedures and instructions; or

16 (2) When odor intensity is determined using an Odor Intensity Referencing Scale (OIRS) as specified
17 in ASTM 544-99, the instantaneous observed level shall be less than the equivalent of 225 parts per
18 million n-butanol in air. In addition, the average of 30 consecutive observations conducted over a
19 minimum of 30-minutes at designated evaluation locations shall be less than the equivalent of 75
20 parts per million n-butanol in air and a minimum of ~~four~~ 4 readings out of the minimum 30 readings
21 shall be less than or equal to the equivalent 25 parts per million n-butanol in air.

22

23 *History Note:* Authority G.S. 143-215.10I; 143-215.3(a)(1); 143-215.107(a)(11); 143-215.108(a);

24 *Eff. January 1, ~~2009~~ 2009;*

25 *Readopted Eff.*

26

1 15A NCAC 02D .1901 is proposed for re adoption without substantive changes as follows:

2

3

SECTION .1900 – OPEN BURNING

4

15A NCAC 02D .1901 OPEN BURNING: PURPOSE: SCOPE

6 (a) Open Burning Prohibited. A person shall not cause, allow, or permit open burning of combustible material except
7 as allowed by ~~Rule 15A NCAC 02D .1903 and Rule 1904 of this Section .1904.~~

8 (b) Purpose. The purpose of this Section is to control air pollution resulting from the open burning of combustible
9 materials and to protect the air quality in the immediate area of the open burning.

10 (c) Scope. This Section applies to all operations involving open burning. This Section does not authorize any open
11 burning that is a crime ~~under pursuant to~~ G.S. 14-136, G.S. 14-137, G.S. 14-138.1 and G.S. 14-140.1, or affect the
12 authority of the North Carolina Forest Service to issue or deny permits for open burning in or adjacent to woodlands
13 as provided in G.S. 106-940 through G.S. 106-950. This Section does not affect the authority of any local government
14 to regulate open burning through its fire codes or other ordinances. The issuance of any open burning permit by the
15 North Carolina Forest Service or any local government does not relieve any person from the necessity of complying
16 with this Section or any other air quality rule.

17

18 *History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);*

19 *Eff. July 1, 1996;*

20 *Amended Eff. January 1, 2015; July 1, 2007; June 1, ~~2004-2004;~~*

21 *Readopted Eff. _____.*

22

23

1 15A NCAC 02D .1902 is proposed for readoption with substantive changes as follows:

2
3 **15A NCAC 02D .1902 DEFINITIONS**

4 For the purpose of this Section, the following definitions apply:

- 5 (1) "Air Curtain ~~Burner~~"Incinerator" means a stationary or portable combustion device that operates by
6 directs~~directing~~ a plane of high velocity forced draft air through a manifold head ~~into a pit~~onto an
7 open chamber, pit, or container with vertical walls ~~in such a manner as~~ to maintain a curtain of air
8 over the surface of the pit and a recirculating motion of air under the curtain. These incinerators can
9 be built above or below ground and be constructed with or without refractory walls and floors. These
10 shall not include conventional combustion devices with enclosed fireboxes or controlled air
11 technology such as mass burn, modular, or fluidized bed combustors.
- 12 (2) "Air Quality Action Day Code 'Orange' or above" means an air quality index of 101 or greater than
13 100—as defined in 40 CFR Part 58, Appendix G. This includes Codes Orange, Red, Purple, and
14 Maroon.
- 15 (3) ~~"Air quality forecast area" means for:~~
- 16 (a) ~~Asheville air quality forecast area: Buncombe, Haywood, Henderson, Jackson, Madison, Swain,~~
17 ~~Transylvania, and Yancey Counties;~~
- 18 (b) ~~Charlotte air quality forecast area: Cabarrus, Gaston, Iredell South of Interstate 40, Lincoln,~~
19 ~~Mecklenburg, Rowan, and Union Counties;~~
- 20 (c) ~~Hickory air quality forecast area: Alexander, Burke, Caldwell, and Catawba Counties;~~
- 21 (d) ~~Fayetteville air quality forecast area: Cumberland and Harnett Counties;~~
- 22 (e) ~~Rocky Mount air quality forecast area: Edgecombe and Nash Counties;~~
- 23 (f) ~~Triad air quality forecast area: Alamance, Caswell, Davidson, Davie, Forsyth, Guilford,~~
24 ~~Randolph, Rockingham, and Stokes Counties; and~~
- 25 (g) ~~Triangle air quality forecast area: Chatham, Durham, Franklin, Granville, Johnston,~~
26 ~~Person, Orange, Vance, and Wake Counties.~~
- 27 (4)(3) "Dangerous materials" means explosives or containers used in the holding or transporting of
28 explosives.
- 29 (5)(4) "Initiated" means to start or ignite a fire or reignite or rekindle a fire.
- 30 (6) ~~"HHCU" means the Health Hazards Control Unit of the Division of Public Health.~~
- 31 (7)(5) "Land clearing" means the uprooting or clearing of vegetation in connection with construction for
32 buildings; ~~right of way maintenance;~~ agricultural, residential, commercial, institutional, or
33 industrial development; mining activities; or the initial clearing of vegetation to enhance property
34 ~~value; but value.~~ This term does not include ~~routine~~regularly scheduled maintenance or property
35 clean-up activities.
- 36 (8)(6) "Log" means any limb or trunk whose diameter exceeds six inches.
- 37 (9)(7) "Nonattainment area" means an area designated in 40 CFR 81.334 as nonattainment.

- 1 ~~(10)~~(8) "Nuisance" means causing physical irritation exacerbating a documented medical condition,
 2 visibility impairment, or evidence of soot or ash on property or structure other than the property on
 3 which the burning is done.
- 4 ~~(11)~~(9) "Occupied structure" means a building ~~in which~~where people ~~may live or work~~, can be reasonably
 5 expected to be present or ~~one intended~~a building used for housing farm or ~~other~~domestic animals.
- 6 ~~(12)~~(10) "Off-site" means any area not on the premises of the land-clearing activities.
- 7 ~~(13)~~(11) "Open burning" means the burning of any matter in such a manner that the products of combustion
 8 resulting from the burning are emitted directly into the atmosphere without passing through a stack,
 9 chimney, or a permitted air pollution control device.
- 10 ~~(14)~~ "Operator" as used in ~~.1904(b)(6) and .1904(b)(2)(D)~~ of this Section, ~~means the person in~~
 11 ~~operational control over the open burning.~~
- 12 ~~(15)~~ "Permanent site" ~~means for an air curtain burner, a place where an air curtain burner is operated for~~
 13 ~~more than nine months.~~
- 14 ~~(16)~~(12) "Person" as used in 15A NCAC 02D .1901(e), .1901 means:
 15 (a) the person in operational control over the open burning; or
 16 (b) the landowner or person in possession or control of the land when he or she has directly or
 17 indirectly allowed the open burning or the Division determined that the land owner has
 18 benefited from it.
- 19 ~~(17)~~(13) "Pile" means a quantity of combustible material assembled together in ~~a mass.~~one place.
- 20 ~~(18)~~(14) "Public pick-up" means the removal of refuse, yard trimmings, limbs, or other plant material from
 21 a residence by a governmental agency, private company contracted by a governmental agency, or
 22 municipal service.
- 23 ~~(19)~~(15) "Public road" means any road that is part of the State highway ~~system;~~system or any road, street, or
 24 right-of-way dedicated or maintained for public use.
- 25 ~~(20)~~ "RACM" ~~means regulated asbestos containing material as defined in 40 CFR 61.142.~~
- 26 ~~(21)~~(16) "Refuse" means any garbage, rubbish, or trade waste.
- 27 ~~(22)~~(17) "Regional Office Supervisor" means the supervisor of personnel of the Division of Air Quality in a
 28 regional office of the Department of ~~Environment and Natural Resources.~~Environmental Quality.
- 29 (18) "Right-of-way maintenance" means vegetation management, including grass cutting, weed
 30 abatement, tree trimming and tree/brush removal of existing streets, highways, and public places.
- 31 ~~(23)~~(19) "Salvageable items" means any product or material that was first discarded or damaged and then ~~all,~~
 32 ~~or part,~~all or part was ~~saved~~recovered for future ~~use,~~use. ~~and~~ Examples of these items include
 33 insulated wire, electric motors, and electric transformers.
- 34 ~~(24)~~(20) "Smoke management plan" means the plan developed following the North Carolina Forest Service's
 35 smoke management program and approved by the North Carolina Forest Service. The purpose of
 36 the smoke management plan is to manage smoke from prescribed burns of public and private forests
 37 to minimize the impact of smoke on air quality and visibility.

1 ~~(25)~~(21) "Synthetic material" means man-made material, including tires, asphalt materials such as shingles
2 or asphaltic roofing materials, construction materials, packaging for construction materials, wire,
3 electrical insulation, and treated or coated wood.

4
5 *History Note:* *Authority G.S. 143-212; 143-213; 143-215.3(a)(1);*

6 *Eff. July 1, 1996;*

7 *Amended Eff. January 1, 2015; July 1, 2007; December 1, 2005; June 1, 2004; July 1, ~~1998-1998;~~*

8 *Readopted Eff.*
9
10

1 15A NCAC 02D .1903 is proposed for readoption with substantive changes as follows:

2
3 **15A NCAC 02D .1903 OPEN BURNING WITHOUT AN AIR QUALITY PERMIT**

4 (a) All open burning is prohibited except open burning allowed ~~under pursuant to~~ Paragraph (b) of this Rule or ~~Rule~~
5 ~~.1904 of this Section. 15A NCAC 02D .1904.~~ Except as allowed ~~under Paragraphs~~ pursuant to Subparagraphs (b)(3)
6 through (b)(9) of this Rule, open burning shall not be initiated in ~~an air quality forecast area~~ a county that the
7 ~~Department, Department~~ or the Forsyth County Office of Environmental Assistance and Protection ~~Environmental~~
8 ~~Affairs Department for the Triad air quality forecast area,~~ has forecasted to be in an Air Quality Action Day Code
9 "Orange" or above during the 24-hour time period covered by that ~~forecast.~~ Air Quality Action Day.

10 (b) The following types of open burning are permissible without an air quality ~~permit.~~ permit.

11 (1) The open burning of leaves, logs, stumps, tree ~~branches~~ branches, or yard trimmings, if the following
12 conditions are met:

13 (A) ~~The~~ the material burned originates on the premises of private residences and is burned on
14 those ~~premises;~~ premises and does not include material collected from multiple private
15 residences and combined for burning;

16 (B) ~~There~~ there are no public pickup services available;

17 (C) ~~Non-vegetative~~ non-vegetative materials, such as household garbage, ~~lumber,~~ treated or
18 coated wood, or any other synthetic materials are not burned;

19 (D) ~~The~~ the burning is initiated no earlier than 8:00 a.m. and no additional combustible material
20 is added to the fire between 6:00 p.m. on one day and 8:00 a.m. on the following day;

21 (E) ~~The~~ the burning does not create a nuisance; and

22 (F) ~~Material~~ material is not burned when the North Carolina Forest Service or other
23 government agencies ~~has~~ have banned burning for that area.

24 The burning of logs or stumps of any size shall not be considered to create a nuisance for purposes
25 of the application of the open burning air quality permitting exception described in this
26 ~~Subparagraph.~~ Subparagraph:

27 (2) The open burning for land clearing or right-of-way maintenance if the following conditions are met:

28 (A) The wind direction at the time that the burning is initiated and the wind direction as
29 forecasted by the National Weather Service at the time that the burning is initiated are away
30 from any area, including public roads within 250 feet of the burning as measured from the
31 edge of the pavement or other roadway surface, which may be affected by smoke, ash, or
32 other air pollutants from the burning;

33 (B) The location of the burning is at least 500 feet from any dwelling, group of dwellings, or
34 commercial or institutional establishment, or other occupied structure not located on the
35 property ~~on which~~ where the burning is conducted. The regional office supervisor may
36 grant exceptions to the setback requirements if:

- 1 (i) a signed, written statement waiving objections to the open burning associated with
 2 the land clearing operation is obtained and submitted to, and the exception granted
 3 by, the regional office supervisor before the burning begins from a resident or an
 4 owner of each dwelling, commercial or institutional establishment, or other
 5 occupied structure within 500 feet of the open burning site. In the case of a lease
 6 or rental agreement, the lessee or renter shall be the person from whom permission
 7 shall be gained prior to any burning; or
 8 (ii) an air curtain ~~burner-incinerator~~ that complies with ~~Rule .1904 of this Section, 15A~~
 9 NCAC 02D .1904 is utilized at the open burning site.

10 Factors that the regional supervisor shall consider in deciding to grant the exception
 11 include: all the persons who need to sign the statement waiving the objection have signed
 12 it; the location of the burn; and the type, amount, and nature of the combustible substances.
 13 The regional supervisor shall not grant a waiver if a college, school, licensed day care,
 14 hospital, licensed rest home, or other similar institution is less than 500 feet from the
 15 proposed burn site when such institution is ~~occupied-occupied~~;

- 16 (C) Only land-cleared plant growth is burned. Heavy oils, ~~asphaltic materials such as shingles~~
 17 ~~and other roofing materials,~~ items containing natural or synthetic rubber, synthetic
 18 materials, or any materials other than plant growth shall not be burned; however, kerosene,
 19 distillate oil, or diesel fuel may be used to start the fire;
- 20 (D) Initial burning begins only between the hours of 8:00 a.m. and 6:00 p.m., and no
 21 combustible material is added to the fire between 6:00 p.m. on one day and 8:00 a.m. on
 22 the following day;
- 23 (E) No fires are initiated or vegetation added to existing fires when the North Carolina Forest
 24 Service or other government agencies ~~has-have~~ banned burning for that area; and
- 25 (F) Materials are not carried off-site or transported over public roads for open burning unless
 26 the materials are carried or transported to:
- 27 (i) Facilities permitted in accordance with 15A NCAC 02D .1904 (~~Air-Curtain~~
 28 ~~Burners~~) for the operation of an air curtain ~~burner-incinerator~~ at a permanent site;
 29 or
- 30 (ii) A location, where the material is burned not more than four times per calendar
 31 year, that meets all of the following criteria:
- 32 (I) ~~At~~ at least 500 feet from any dwelling, group of dwellings, or commercial
 33 or institutional establishment, or other occupied structure not located on
 34 the property on which the burning is ~~conducted-conducted~~;
- 35 (II) ~~There-there~~ are no more than two piles, each no more than 20 feet in
 36 diameter, being burned at one ~~time-time~~; and

- 1 (III) ~~The~~the location is not a permitted solid waste management ~~facility.~~
2 facility;
- 3 (3) camp fires and fires used solely for outdoor cooking and other recreational purposes, ~~or for~~
4 ceremonial occasions, or for human warmth and comfort and ~~which~~that do not create a nuisance and
5 do not use synthetic ~~materials~~materials, ~~or refuse~~refuse, or salvageable materials for fuel;
- 6 (4) fires purposely set to public or private forest land for forest management practices for which burning
7 is currently acceptable to the North Carolina Forest ~~Service;~~ Service and ~~which follow the smoke~~
8 ~~management plan as outlined in the North Carolina Forest Service's smoke management program;~~
- 9 (5) fires purposely set to agricultural lands for disease and pest control and fires set for other agricultural
10 or apicultural practices for which burning is currently acceptable to the Department of Agriculture;
- 11 (6) fires purposely set for wildlife management practices for which burning is currently acceptable to
12 the Wildlife Resource Commission;
- 13 (7) fires for the disposal of dangerous materials when the Divisions has determined that it is the safest
14 and most practical method of disposal;
- 15 (8) fires purposely set by manufacturers of fire-extinguishing materials or equipment, testing
16 laboratories, or other persons, for the purpose of testing or developing these materials or equipment
17 in accordance with a standard qualification program;
- 18 (9) fires purposely set for the instruction and training of fire-fighting personnel at permanent fire-
19 fighting training facilities;
- 20 (10) fires purposely set for the instruction and training of fire-fighting personnel when conducted under
21 the supervision of or with the cooperation of one or more of the following agencies:
- 22 (A) the North Carolina Forest Service;
- 23 (B) the North Carolina Insurance Department; or
- 24 ~~(C) North Carolina technical institutes; or~~
- 25 ~~(D)(C) North Carolina community Community collegesColleges; including:~~
- 26 ~~(i) the North Carolina Fire College; or~~
- 27 ~~(ii) the North Carolina Rescue College;~~
- 28 (11) fires not described in Subparagraphs (9) or (10) of this Paragraph, purposely set for the instruction
29 and training of fire-fighting personnel, provided that:
- 30 (A) ~~The~~the regional office supervisor ~~of the appropriate regional office and the HHCB have~~has
31 been notified according to the procedures and deadlines contained in the notification
32 ~~appropriate regional notification form.~~ form and the regional office supervisor has granted
33 permission for the burning. The information required to be submitted in the form include:
- 34 (i) the address of the fire department that is requesting the training exercise;
- 35 (ii) the location of the training exercise;
- 36 (iii) a description of the type of structure or object and amount of materials to be
37 burned at the location of the training exercise;

1 (iv) the dates that the training exercise will be performed; and

2 (v) an inspection from a North Carolina Asbestos Inspector that the structure being
 3 burned is free of asbestos.

4 The form shall be submitted 10 days prior to commencement of the burn. This form may
 5 be obtained in electronic format at [https://deq.nc.gov/about/divisions/air-quality/air-](https://deq.nc.gov/about/divisions/air-quality/air-quality-enforcement/open-burning/firefighter-information)
 6 quality-enforcement/open-burning/firefighter-information or by writing the appropriate
 7 regional office at the address in Rule 15A NCAC .1905 of this Section and requesting it,
 8 and it.

9 (B) ~~The regional office supervisor has granted permission for the burning.~~ Factors that the
 10 regional office supervisor shall consider in granting permission for the burning ~~include~~
 11 ~~include:~~ type, amount, and nature of combustible substances. The regional office
 12 supervisor shall ~~not grant permission for the burning of salvageable items, such as insulated~~
 13 ~~wire and electric motors or if the primary purpose of the fire is to dispose of synthetic~~
 14 ~~materials or refuse. The regional office supervisor of the appropriate regional office shall~~
 15 ~~not consider previously demolished structures as having training value. However, the~~
 16 ~~regional office supervisor of the appropriate regional office may allow an exercise~~
 17 ~~involving the burning of motor vehicles burned over a period of time by a training unit or~~
 18 ~~by several related training units. Any deviations from the dates and times of exercises,~~
 19 ~~including additions, postponements, and deletions, submitted in the schedule in the~~
 20 ~~approved plan shall be communicated verbally to the regional office supervisor of the~~
 21 ~~appropriate regional office at least one hour before the burn is scheduled; and~~

22 (i) type, amount, and nature of combustible substances. The regional office
 23 supervisor shall not grant permission for the burning of salvageable items or if the
 24 primary purpose of the fire is to dispose of synthetic materials or refuse;

25 (ii) the burning of previously demolished structures. The regional office supervisor
 26 shall not consider these structures as having training value;

27 (iii) the burning of motor vehicles. The regional office supervisor may allow an
 28 exercise involving the burning of motor vehicles burned over a period of time by
 29 a training unit or by several related training units if he or she determines that they
 30 have training value; and

31 (iv) the distance from the location of the fire training to residential, commercial, or
 32 institutional buildings or properties.

33 Any deviations from the dates and times of exercises, including additions, postponements,
 34 and deletions, submitted in the schedule in the approved plan shall be communicated
 35 verbally to the regional office supervisor at least one hour before the burn is scheduled.

36 (12) fires for the disposal of material generated as a result of a natural disaster, such as tornado, hurricane,
 37 or flood, if the regional office supervisor grants permission for the burning. The person desiring to

1 do the burning shall document and provide written notification to the regional office supervisor of
 2 ~~the appropriate regional office~~ that there is no other practical method of disposal of the waste.
 3 Factors that the regional office supervisor shall consider in granting permission for the burning
 4 include type, amount, location of the burning, and nature of combustible substances. The regional
 5 office supervisor shall not grant permission for the burning if the primary purpose of the fire is to
 6 dispose of synthetic materials or refuse or recovery of salvageable materials. ~~Fires authorized under~~
 7 ~~this Subparagraph shall comply with the conditions of Subparagraph (b)(2) of this Rule.~~

8 (c) The authority to conduct open burning ~~under pursuant to~~ this Section does not exempt or excuse any person from
 9 the consequences, ~~damages~~ damages, or injuries that may result from this conduct. It does not excuse or exempt any
 10 person from complying with all applicable laws, ordinances, rules or orders of any other governmental entity having
 11 jurisdiction even though the open burning is conducted in compliance with this Section.

12
 13 *History Note:* Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); S.L. 2011-394, s.2;

14 *Eff. July 1, 1996;*

15 *Amended Eff. June 13, 2016; March 19, 2015; July 3, 2012; July 1, 2007; December 1, 2005; June*
 16 *1, 2004; July 1, ~~1998-1998~~;*

17 *Readopted Eff.* .
 18
 19

1 15A NCAC 02D .1904 is proposed for readoption with substantive changes as follows:

2
3 **15A NCAC 02D .1904 AIR CURTAIN ~~BURNERS~~INCINERATORS**

4 (a) ~~Applicability. Air quality permits are required for air curtain burners subject to 40 CFR 60.2245 through~~
5 ~~60.2265, 60.2810 through 60.2870, 60.2970 through 60.2975, or 60.3062 through 60.3069 or located at permanent~~
6 ~~sites or where materials are transported in from another site. Air quality permits are not required for air curtain~~
7 ~~burners located at temporary land clearing or right of way maintenance sites for less than nine months unless they~~
8 ~~are subject to 40 CFR 60.2245 through 60.2265, 60.2810 through 60.2870, 60.2970 through 60.2975, or 60.3062~~
9 ~~through 60.3069. The operation of air curtain burners in particulate and ozone nonattainment areas shall cease in~~
10 ~~any area that has been forecasted by the Department, or the Forsyth County Environmental Affairs Department for~~
11 ~~the Triad air quality forecast area, to be in an Air Quality Action Day Code "Orange" or above during the time~~
12 ~~period covered by that forecast.~~

13 (1) This Rule applies to all new and existing air curtain incinerators subject to 40 CFR 60.2245
14 through 60.2265, 60.2810 through 60.2870, 60.2970 through 60.2975, or 60.3062 through
15 60.3069 that combust the following materials:

16 (A) 100 percent wood waste;

17 (B) 100 percent yard waste; or

18 (C) 100 percent mixture of only wood waste and yard waste.

19 (2) This Rule applies to new and existing temporary air curtain incinerators used at industrial,
20 commercial, institutional, or municipal sites where a temporary air curtain incinerator is defined in
21 Subparagraph (b)(5).

22 (3) Air curtain incinerators that combust materials other than those listed in Parts (a)(1)(A) through (C)
23 are subject to the following requirements;

24 (A) 40 CFR 60 Subpart CCCC or 40 CFR 60 Subpart DDDD, for air curtain incinerators that
25 have a charge rate of greater than or equal to 35 tons per day; or

26 (B) 40 CFR 60 Subpart EEEE or 40 CFR 60 Subpart FFFF, for air curtain incinerators that have
27 a charge rate of less than 35 tons per day.

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

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

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

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

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

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

4 (6) “Temporary-use air curtain incinerator used in disaster recovery” means an air curtain incinerator
 5 that meets all of the following requirements:

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

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

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

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

17 (7) “Wood waste” means tree stumps (whole or chipped), trees, tree limbs (whole or chipped), bark,
 18 sawdust, chips, scraps, slabs, millings, and shavings. Wood waste does not include treated or
 19 untreated wood products, construction waste, renovation waste, or demolition waste.

20 (8) “Yard waste” means bushes, shrubs, and clippings from bushes and shrubs. Yard waste comes from
 21 residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or
 22 other private or public lands. This does not include grass, grass clippings, or collected leaves.

23 ~~(b)(c)~~ Air curtain burners-incinerators shall comply with the following conditions and stipulations: requirements:

24 (1) the operation of air curtain incinerators in particulate and ozone nonattainment areas shall cease in
 25 a county that the Department or the Forsyth County Office of Environmental Assistance and
 26 Protection has forecasted to be an Air Quality Action Day Code “Orange” or above during the 24-
 27 hour time period covered by that Air Quality Action Day;

28 ~~(1)(2)~~ The the wind direction at the time that the burning is initiated and the wind direction as forecasted
 29 by the National Weather Service during the time of the burning shall be away from any area,
 30 including public roads within 250 feet of the burning as measured from the edge of the pavement
 31 or other roadway surface, which may be affected by smoke, ash, or other air pollutants from the
 32 burning;

33 ~~(2)~~ Only collected land clearing and yard waste materials may be burned. Heavy oils, asphaltic
 34 materials, items containing natural or synthetic rubber, tires, grass clippings, collected leaves,
 35 paper products, plastics, general trash, garbage, or any materials containing painted or treated
 36 wood materials shall not be burned. Leaves still on trees or brush may be burned;

- 1 (3) ~~No~~no fires shall be started or material added to existing fires when the North Carolina Forest
2 ~~Service~~Service, Fire Marshall, or other governmental agency has banned burning for that area;
- 3 (4) ~~Burning~~burning shall be conducted only between the hours of 8:00 a.m. and 6:00 ~~p.m.~~p.m. ~~No~~
4 ~~combustible materials shall be added to the air curtain incinerator prior to or after this time period;~~
- 5 (5) The air curtain burner shall not be operated more than the maximum source operating hours-per-
6 day and days-per-week. The maximum source operating hours-per-day and days-per-week shall
7 be set to protect the ambient air quality standard and prevention of significant deterioration (PSD)
8 increment for particulate. The maximum source operating hours-per-day and days-per-week shall
9 be determined using the modeling procedures in Rule .1106(b), (c), and (f) of this Subchapter.
10 This Subparagraph shall not apply to temporary air curtain burners;
- 11 ~~(6) An air curtain burner with an air quality permit shall have onsite at all times during operation of~~
12 ~~the burner a visible emissions reader certified according to 40 CFR Part 60, Method 9 to read~~
13 ~~visible emissions, and the facility shall test for visible emissions within five days after initial~~
14 ~~operation and within 90 days before permit expiration;~~
- 15 ~~(7)~~(6) ~~Air~~air curtain ~~burners~~burners-incinerators shall meet manufacturer's specifications for operation and
16 upkeep to ensure complete burning of material charged into the pit. Manufacturer's specifications
17 shall be kept on site and be available for inspection by Division staff;
- 18 ~~(8) Except during start-up, visible emissions shall not exceed ten percent opacity when averaged over~~
19 ~~a six minute period except that one six minute period with an average opacity of more than ten~~
20 ~~percent but no more than 35 percent shall be allowed for any one hour period. During start-up, the~~
21 ~~visible emissions shall not exceed 35 percent opacity when averaged over a six minute period.~~
22 ~~Start up shall not last for more than 45 minutes, and there shall be no more than one start up per~~
23 ~~day. Instead of complying with the opacity standards in this Subparagraph, air curtain burners~~
24 ~~subject to:~~
- 25 ~~(A) 40 CFR 60.2245 through 60.2265 shall comply with the opacity standards in 40 CFR 60.2250;~~
26 ~~(B) 40 CFR 60.2810 through 60.2870 shall comply with the opacity standards in 40 CFR~~
27 ~~60.2860;~~
- 28 ~~(C) 40 CFR 60.2970 through 60.2975 shall comply with the opacity standards in 40 CFR~~
29 ~~60.2971; or~~
- 30 ~~(D) 40 CFR 60.3062 through 60.3069 shall comply with the opacity standards in 40 CFR~~
31 ~~60.3066;~~
- 32 ~~(9)~~(7) The owner or operator of an air curtain burner shall not allow ash to build up in the pit to a depth
33 higher than one third of the depth of the pit or to the point where the ash begins to impede
34 ~~combustion, whichever occurs first. The~~the owner or operator of an air curtain ~~burner~~burner-incinerator
35 shall allow the ashes to cool and water the ash prior to its removal to prevent the ash from
36 becoming airborne;

1 ~~(10) The owner or operator of an air curtain burner shall not load material into the air curtain burner~~
 2 ~~such that it will protrude above the air curtain;~~

3 ~~(11)(8) Only~~ only distillate oil, kerosene, diesel fuel, natural gas, or liquefied petroleum gas may be used
 4 to start the fire; and

5 ~~(12)(9) The~~ the location of the burning shall be at least 300 feet from any dwelling, group of dwellings, or
 6 commercial or institutional establishment, or other occupied structure not located on the property
 7 on which the burning is conducted. The regional office supervisor may grant exceptions to the
 8 setback requirements if a signed, written statement waiving objections to the air curtain burning is
 9 obtained from a resident or an owner of each dwelling, commercial or institutional establishment,
 10 or other occupied structure within 300 feet of the burning site. In case of a lease or rental
 11 agreement, the lessee or renter, and the property owner shall sign the statement waiving objections
 12 to the burning. The statement shall be submitted to and approved by the regional office supervisor
 13 before initiation of the burn. Factors that the regional supervisor shall consider in deciding to
 14 grant the exception include: all the persons who need to sign the statement waiving the objection
 15 have signed it; the location of the burn; and the type, amount, and nature of the combustible
 16 substances.

17 ~~Compliance with this Rule does not relieve any owner or operator of an air curtain burner from the necessity of~~
 18 ~~complying with other rules in this Section or any other air quality rules.~~

19 (d) Exemptions. Temporary-use air curtain incinerators used in disaster recovery are excluded from the
 20 requirements of this Rule if the following conditions are met:

21 (1) the air curtain incinerator meets the definition of a temporary-use air curtain incinerators used in
 22 disaster recovery as specified in Subparagraph (d)(5) of this Rule;

23 (2) the air curtain incinerator meets all the requirements pursuant to 40 CFR 60.2969 or 60.3061, as
 24 applicable; and

25 (3) the air curtain incinerator is operated in a manner consistent with the operations manual for the air
 26 curtain incinerator and the charge rate during all periods of operation is less than or equal to the
 27 lesser of 35 tons per day or the maximum charge rate specified by the manufacturer of the air
 28 curtain incinerator.

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

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

32 (2) The owner or operator of a new or existing temporary air curtain incinerator shall obtain a General
 33 Operating Permit pursuant to 15A NCAC 02Q .0510 Permitting of Facilities at Multiple
 34 Temporary Sites.

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

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

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

7 (f) Opacity limits.

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

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

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

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

19 (g) Performance tests.

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

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

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

30 (4) After the initial test for opacity, the owner or operator of a new or existing air curtain incinerator
31 subject to this Rule shall conduct annual opacity tests on the air curtain incinerator no more than
32 12 calendar months following the date of the previous test.

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

36 (h) Increments of Progress and Compliance Requirements.

1 (1) The owner or operator of an air curtain incinerator subject to this Rule that has a charge rate of
 2 greater than 35 tons per day shall meet the increments of progress according to 40 CFR 60.2815
 3 through 60.2845.

4 (2) The owner or operator of an air curtain incinerator subject to this Rule shall demonstrate
 5 compliance with the emission limits in Subparagraph (f)(1) of this Rule.

6 ~~(e)(i) Recordkeeping and Reporting Requirements. The owner or operator of an air curtain burner at a permanent~~
 7 ~~site shall keep a daily log of specific materials burned and amounts of material burned in pounds per hour and tons~~
 8 ~~per year. The logs at a permanent air curtain burner site shall be maintained on site for a minimum of two years and~~
 9 ~~shall be available at all times for inspection by the Division of Air Quality. The owner or operator of an air curtain~~
 10 ~~burner at a temporary site shall keep a log of total number of tons burned per temporary site. Additionally, the~~
 11 ~~owner or operator of air curtain burner subject to:~~

12 ~~(1) 40 CFR 60.2245 through 60.2265 shall comply with the monitoring, recordkeeping, and reporting~~
 13 ~~requirements in 40 CFR 60.2245 through 60.2265;~~

14 ~~(2) 40 CFR 60.2810 through 60.2870 shall comply with the monitoring, recordkeeping, and reporting~~
 15 ~~requirements in 40 CFR 60.2810 through 60.2870;~~

16 ~~(3) 40 CFR 60.2970 through 60.2975 shall comply with the monitoring, recordkeeping, and reporting~~
 17 ~~requirements in 40 CFR 60.2970 through 60.2975; or~~

18 ~~(4) 40 CFR 60.3062 through 60.3069 shall comply with comply with the monitoring, recordkeeping,~~
 19 ~~and reporting requirements in 40 CFR 60.3062 through 60.3069.~~

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

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

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

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

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

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

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

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

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

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

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

1 ~~(d) Title V Considerations. Burners that have the potential to burn 8,100 tons of material or more per year may be~~
 2 ~~subject to Section 15A NCAC 02Q .0500, Title V Procedures.~~

3 ~~(e) Prevention of Significant Deterioration Consideration. Burners that burn 16,200 tons per year or more may be~~
 4 ~~subject to 15A NCAC 02D .0530, Prevention of Significant Deterioration.~~

5 ~~(f) A person may use a burner using a different technology or method of operation than an air curtain burner as~~
 6 ~~defined under Rule .1902 of this Section if he demonstrates to the Director that the burner is at least as effective as~~
 7 ~~an air curtain burner in reducing emissions and if the Director approves the use of the burner. The Director shall~~
 8 ~~approve the burner if he finds that it is at least as effective as an air curtain burner. This burner shall comply with all~~
 9 ~~the requirements of this Rule.~~

10 ~~(g)~~(j) In addition to complying with the requirements of this Rule, an air curtain burner ~~incinerator~~ subject to:

- 11 (1) 40 CFR Part 60, Subpart CCCC ~~that commenced construction after November 30, 1999, or that~~
 12 ~~commenced reconstruction or modification on or after June 1, 2001, shall also comply with 40~~
 13 ~~CFR 60.2245 through 60.2265, or 60.2265;~~
- 14 (2) 40 CFR Part 60, Subpart EEEE ~~that commenced construction after December 9, 2004, or that~~
 15 ~~commenced reconstruction or modification on or after June 16, 2006, shall also comply with 40~~
 16 ~~CFR 60.2970 through 60.2975-60.2975; or~~
- 17 (3) 40 CFR Subpart FFFF shall also comply with 40 CFR 60.3062 through 60.3069.

18
 19 *History Note:* Authority G.S. 143-215.3(a)(1); ~~143-215.107(a)(5), (10); 143-215.65; 143-215.66; 143-~~
 20 ~~215.107(a)(5); 143-215.107(a)(10); 143-215.108; 40 CFR 60.2865; S.L. 2011-394, s.2;~~
 21 ~~Eff. July 1, 1996;~~
 22 ~~Amended Eff. July 3, 2012; July 1, 2007; December 1, 2005; August 1, 2004, 2004;~~
 23 ~~Readopted Eff. _____.~~
 24
 25

1 15A NCAC 02D .1905 is proposed for amendment as follows:

2

3 **15A NCAC 02D .1905 REGIONAL OFFICE LOCATIONS**

4 Inquiries, ~~requests~~requests, and plans shall be handled by the appropriate Department of ~~Environment and Natural~~
5 ~~Resources~~Environmental Quality regional ~~offices~~office. They are:

6 (1) Asheville Regional Office, 2090 ~~U.S. 70 Highway~~Highway 70, Swannanoa, North Carolina
7 ~~28778~~28778;

8 (2) Winston-Salem Regional Office, ~~585 Waughtown Street~~450 West Hanes Mill Road, Suite 300,
9 Winston-Salem, North Carolina ~~27107~~27105;

10 (3) Mooresville Regional Office, 610 East Center Avenue, Suite 301, Mooresville, North Carolina
11 28115;

12 (4) Raleigh Regional Office, 3800 Barrett Drive, Raleigh, North Carolina ~~27611~~27609;

13 (5) Fayetteville Regional Office, ~~System Building~~225 Green Street, Suite 714, Fayetteville, North
14 Carolina 28301;

15 (6) Washington Regional Office, 943 Washington Square Mall, Washington, North Carolina 27889;
16 and

17 (7) Wilmington Regional Office, 127 Cardinal Drive Extension, Wilmington, North Carolina 28405.

18

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

20 *Eff. July 1, 1996;*

21 *Amended Eff. December 1, 2005;*

22 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 5,*
23 ~~2016~~2016;

24 *Amended Eff. _____.*

25

26

1 15A NCAC 02D .1906 is proposed for reoption without substantive changes as follows:

2
3 **15A NCAC 02D .1906 DELEGATION TO COUNTY GOVERNMENTS**

4 (a) The governing body of any county or municipality or group of counties or municipalities may establish a partial
5 air pollution control program to implement and enforce this Section provided ~~that~~ that the program complies with G.S.
6 143-215.112.

7 (1) ~~It has the administrative organization, staff, financial and other resources necessary to carry out such~~
8 ~~a program;~~

9 (2) ~~It has adopted appropriate ordinances, resolutions, and regulations to establish and maintain such a~~
10 ~~program; and~~

11 (3) ~~It has otherwise complied with G.S. 143-215.112 "Local Air Pollution Control Programs."~~

12 (b) The governing body shall submit to the Director documentation demonstrating that the requirements of Paragraph
13 (a) of this Rule have been met. Within 90 days after receiving the ~~submital~~ submission from the governing body, the
14 Director shall review the documentation to determine if the requirements of Paragraph (a) of this Rule have been met
15 and shall present his or her findings to the Commission. If the Commission determines that the air pollution program
16 ~~is adequate,~~ meets the requirements in G.S. 143-215.112, it shall certify the local air pollution program to implement
17 and enforce this Section within its area of jurisdiction.

18 (c) County and municipal governments shall not have the authority to issue permits for air curtain ~~burners~~ incinerators
19 at a permanent site as defined in 15A NCAC 02D .1904.

20 (d) The three certified local air pollution programs, the Western North Carolina Regional Air Quality ~~Control~~ Agency,
21 the Forsyth County Office of Environmental Assistance and Protection, ~~Environmental Affairs Department~~, and
22 Mecklenburg County Air Quality, a Division of Land Use and Environmental Services Agency, shall continue to
23 enforce open burning rules and have the authority to issue permits for air curtain incinerators as part of their local air
24 pollution programs.

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26 *History Note:* Authority G.S. 143-215.3(a)(1); 143-215.112;

27 *Eff. July 1, 1996;*

28 *Amended Eff. December 1, 2005; June 1, ~~2004~~ 2004;*

29 *Readopted Eff. _____.*

1 15A NCAC 02D .1907 is proposed for reoption without substantive change as follows:

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3 **15A NCAC 02D .1907 MULTIPLE VIOLATIONS ARISING FROM A SINGLE EPISODE**

4 (a) Multiple violations arising from a single episode of open burning may ~~result in multiple civil penalties be assessed~~
 5 multiple penalties using the procedures set forth in G.S. 143-215.3(a)(9). Factors the Director shall consider in
 6 determining the number of violations per episode of open burning include:

7 (1) the type of material ~~burned, burned;~~

8 (2) the amount of material ~~burned, burned;~~

9 (3) the location of the ~~burn, burn;~~ and

10 (4) any necessary costs incurred by the State in removing, correcting or abating any adverse effects
 11 upon the air quality resulting from the unauthorized discharge. ~~other factor relevant to air pollution~~
 12 ~~control or air quality.~~

13 (b) Each pile of land clearing or ~~road~~ right-of-way maintenance debris that does not comply with the specifications of
 14 15A NCAC 02D .1903(b)(2) shall constitute a separate violation.

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16 *History Note:* Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);

17 *Eff. July 1, ~~2007~~, 2007;*

18 *Readopted Eff.*

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