Attachment 3

North Carolina General Statutes and State-Only Rules Referenced in the North Carolina Certification for Clean Air Act Sections 110(a)(1) and (2) 2010 1-Hour Sulfur Dioxide Infrastructure State Implementation Plan Requirements

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Attachment 3a

North Carolina General Statutes

This attachment contains the North Carolina General Statutes (NCGS) that are referenced in the North Carolina's certification for Clean Air Act Sections 110(a)(1) and (a)(2) requirements for the 2010 1-Hour Sulfur Dioxide (SO_2) National Ambient Air Quality Standards. Full text is also posted at http://www.ncleg.net/gascripts/statutes/statutes.asp.

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§ 143-215.107. Air quality standards and classifications.

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

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

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

* *

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

(5) To develop and adopt emission control standards as in the judgment of the Commission may be necessary to prohibit, abate, or control air pollution commensurate with established air quality standards. This subdivision does not apply to that portion of the National Emission Standards for Hazardous Air Pollutants for asbestos that governs demolition and renovation as set out in 40 C.F.R. § 61.141, 61.145, 61.150, and 61.154 (1 July 1993 edition).

* *

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

* *

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

§ 143-215.107D. Emissions of oxides of nitrogen (NOx) and sulfur dioxide (SO2) from certain coal-fired generating units.

(a) As used in this section:

(1) "Coal-fired generating unit" means a coal-fired generating unit, as defined by 40 Code of Federal Regulations § 96.2 (1 July 2001 Edition), that is located in this State and has the capacity to generate 25 or more megawatts of electricity.

(2) "Investor-owned public utility" means an investor-owned public utility, as defined in G.S. 62-3.

(b) An investor-owned public utility that owns or operates coal-fired generating units that collectively emitted more than 75,000 tons of oxides of nitrogen (NOx) in calendar year 2000:

(1) Shall not collectively emit from the coal-fired generating units that it owns or operates more than 35,000 tons of oxides of nitrogen (NOx) in any calendar year beginning 1 January 2007.

(2) Shall not collectively emit from the coal-fired generating units that it owns or operates more than 31,000 tons of oxides of nitrogen (NOx) in any calendar year beginning 1 January 2009.

(c) An investor-owned public utility that owns or operates coal-fired generating units that collectively emitted 75,000 tons or less of oxides of nitrogen (NOx) in calendar year 2000 shall not collectively emit from the coal-fired generating units that it owns or operates more than 25,000 tons of oxides of nitrogen (NOx) in any calendar year beginning 1 January 2007.

(d) An investor-owned public utility that owns or operates coal-fired generating units that collectively emitted more than 225,000 tons of sulfur dioxide (SO2) in calendar year 2000:

(1) Shall not collectively emit from the coal-fired generating units that it owns or operates more than 150,000 tons of sulfur dioxide (SO2) in any calendar year beginning 1 January 2009.

(2) Shall not collectively emit from the coal-fired generating units that it owns or operates more than 80,000 tons of sulfur dioxide (SO2) in any calendar year beginning 1 January 2013.

(e) An investor-owned public utility that owns or operates coal-fired generating units that collectively emitted 225,000 tons or less of sulfur dioxide (SO2) in calendar year 2000:

(1) Shall not collectively emit from the coal-fired generating units that it owns or operates more than 100,000 tons of sulfur dioxide (SO2) in any calendar year beginning 1 January 2009.

(2) Shall not collectively emit from the coal-fired generating units that it owns or operates more than 50,000 tons of sulfur dioxide (SO2) in any calendar year beginning 1 January 2013.

(f) Each investor-owned public utility to which this section applies may determine how it will achieve the collective emissions limitations imposed by this section. Compliance with the emissions limitations set out in this section does not alter the obligation of any person to comply with any other federal or State law, regulation, or rule related to air quality or visibility. This subsection shall not be construed to limit the authority of the Commission to impose specific limitations on the emission of oxides of nitrogen (NOx) and sulfur dioxide (SO2) from an individual coal-fired generating unit owned or operated by an investor-owned public utility.

(g) A coal-fired generating unit that is subject to the collective emissions limitations set out in this section on 1 July 2002 shall remain subject to the collective emissions limitations whether or not it thereafter continues to be owned or operated by an investor-owned public utility.

(h) The Commission shall require that any permit or modified permit issued for a coal-fired generating unit that is subject to this section include conditions that provide for testing, monitoring, record keeping, and reporting adequate to assure compliance with the requirements of this section.

(i) The Governor may enter into an agreement with an investor-owned public utility under which the investor-owned public utility voluntarily agrees to transfer to the State any emissions allowances acquired or that may be acquired by the investor-owned public utility pursuant to 42 U.S.C. §§ 7651-7651o, as implemented by 40 Code of Federal Regulations §§ 73.1 through 73.90 (1 July 2001 Edition); 42 U.S.C. 7410(a)(2)(D)(i)(I), as implemented by 40 Code of Federal Regulations § 51.121 (1 July 2001 Edition), related federal regulations, and the associated State Implementation Plan; 42 U.S.C. § 7426, as implemented by 40 Code of Federal Regulations § 52.34 (1 July 2001 Edition) and related federal regulations; or any similar program established under federal law that result from compliance with the emissions limitations set out in this section. An agreement entered into pursuant to this subsection shall be binding and shall be enforceable by specific performance. If the Governor enters into an agreement that provides for the transfer of emissions allowances to the State, the Governor shall file verified copies of the agreement with the Attorney General, the Secretary of State, the State Treasurer, the Secretary of Environment and Natural Resources, and the Utilities Commission. The State Treasurer shall hold all emissions allowances that are transferred to the State as provided in this subsection in trust for the people of this State and shall sell, trade, transfer, or otherwise dispose of the emissions allowances only as the General Assembly shall provide by law.

(j) An investor-owned public utility that is subject to the emissions limitations set out in this section shall submit to the Utilities Commission and to the Department on or before 1 April of each year a verified statement pursuant to subsection (i) of G.S. 62-133.6. (2002-4, s. 1.)

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

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

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

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

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

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

(a1) The Commission may by rule establish procedures that meet the requirements of section 502(b)(10) of Title V (42 U.S.C. § 7661a(b)(10)) and 40 Code of Federal Regulations § 70.4(b)(12) (1 July 1993 Edition) to allow a permittee to make changes within a permitted facility without requiring a revision of the permit.

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

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

(c) The Commission shall have the power:

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

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

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

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

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

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

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

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

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

As used in this subdivision, the words "affiliate," "parent," and "subsidiary" have the same meaning as in 17 Code of Federal Regulations 240.12b-2 (1 April 1990 Edition);

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

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

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

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

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

the permit or (ii) remand the application to the Commission for action upon the application within a specified time.

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

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

(d1) No Title V permit issued pursuant to this section shall be issued or renewed for a term exceeding five years. All other permits issued pursuant to this section shall be issued for a term not to exceed eight years.

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

(f) An applicant for a permit under this section for a new facility or for the expansion of a facility permitted under this section shall request each local government having jurisdiction over any part of the land on which the facility and its appurtenances are to be located to issue a determination as to whether the local government has in effect a zoning or subdivision ordinance applicable to the facility and whether the proposed facility or expansion would be consistent with the ordinance. The request to the local government shall be accompanied by a copy of the draft permit application and shall be delivered to the clerk of the local government personally or by certified mail. The determination shall be verified or supported by affidavit signed by the official designated by the local government to make the determination and, if the local government states that the facility is inconsistent with a zoning or subdivision ordinance, shall include a copy of the ordinance and the specific reasons for the determination of inconsistency. A copy of any such determination shall be provided to the applicant when it is submitted to the Commission. The Commission shall not act upon an application for a permit under this section until it has received a determination from each local government requested to make a determination by the applicant. If a local government determines that the new facility or the expansion of an existing facility is inconsistent with a zoning or subdivision ordinance, and unless the local government makes a subsequent determination of consistency with all ordinances cited in the determination or the proposed facility is determined by a court of competent jurisdiction to be consistent with the cited ordinances, the Commission shall attach as a condition of the permit a requirement that the

applicant, prior to construction or operation of the facility under the permit, comply with all lawfully adopted local ordinances, including those cited in the determination, that apply to the facility at the time of construction or operation of the facility. If a local government fails to submit a determination to the Commission as provided by this subsection within 15 days after receipt of the request, the Commission may proceed to consider the permit application without regard to local zoning and subdivision ordinances. This subsection shall not be construed to affect the validity of any lawfully adopted franchise, local zoning, subdivision, or land-use planning ordinance or to affect the responsibility of any person to comply with any lawfully adopted franchise, local zoning, subdivision, or land-use planning ordinance. This subsection shall not be construed to limit any opportunity a local government may have to comment on a permit application under any other law or rule. This subsection shall not apply to any facility with respect to which local ordinances are subject to review under either G.S. 104E-6.2 or G.S. 130A-293.

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

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

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

a. Publish any required notices, using the draft permit included with the application;
b. Schedule any required public meetings or hearings on the application and permit; and
c. Initiate any and all technical review of the application in a manner to ensure substantial completion of the technical review by the time of any public hearing on the application, or if there is no hearing, by the close of the notice period.

(2) Completeness Review. – Within 10 working days of receipt of the permit application certified by a professional engineer under this subsection, the Department shall determine whether the application is complete for purposes

of this subsection. The Department shall determine whether the permit application certified by a professional engineer is complete by comparing the information provided in the application with the checklist contained in the rules adopted by the Commission pursuant to this subsection.

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

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

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

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

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

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

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

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

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

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

a. Revise and resubmit the application; or

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

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

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

(1) Determining that the permit application is complete;
(2) Requesting additional information to determine completeness;
(3) Determining that additional information is needed to conduct a technical review of the application;
(4) Completing all technical review of the permit application;
(5) Holding and completing all public meetings and hearings required for the application;

(6) Completing the record from reviewing and acting on the application; and
(7) Taking final action on the permit, including granting or denying the application.
(1973, c. 821, s. 6; c. 1262, s. 23; 1979, c. 545, ss. 2, 3; 1987, c. 461, s. 2; c. 827, ss. 154, 206; 1989, c. 168, s. 30; c. 492; 1989 (Reg. Sess., 1990), c. 1037, s. 2; 1991, c. 552, s. 5; c. 629, s. 1; c. 761, s. 27(a)-(c); 1993, c. 400, s. 8; 1995, c. 484, s. 2; 1995 (Reg. Sess., 1996), c. 728, s. 1; 2002-4, s. 2; 2003-340, s. 1.8(b); 2003-428, ss. 1, 2; 2011-398, s. 60(a).)

§ 143-215.112. Local air pollution control programs.

(a) The Commission is authorized and directed to review and have general oversight and supervision over all local air pollution control programs and to this end shall review and certify such programs as being adequate to meet the requirements of this Article and Article 21 of this Chapter and any applicable standards and rules adopted pursuant thereto. The Commission shall certify any local program which:

(1) Provides by ordinance or local law for requirements compatible with those imposed by the provisions of this Article and Article 21 of this Chapter, and the standards and rules issued pursuant thereto; provided, however, the Commission upon request of a municipality or other local unit may grant special permission for the governing body of such unit to adopt a particular class of air contaminant regulations which would result in more effective air pollution control than applicable standards or rules promulgated by the Commission;

(2) Provides for the adequate enforcement of such requirements by appropriate administrative and judicial process;

(3) Provides for an adequate administrative organization, staff, financial and other resources necessary to effectively and efficiently carry out its programs; and

(4) Is approved by the Commission as adequate to meet the requirements of this Article and any applicable rules pursuant thereto.

(b) No municipality, county, local board or commission or group of municipalities and counties may establish and administer an air pollution control program unless such program meets the requirements of this section and is so certified by the Commission.

(c) (1) The governing body of any county, municipality, or group of counties and municipalities within a designated area of the State, as defined in this Article and Article 21, subject to the approval of the Commission, is hereby authorized to establish, administer, and enforce a local air pollution control program for the county, municipality, or designated area of the State which includes but is not limited to:

a. Development of a comprehensive plan for the control and abatement of new and existing sources of air pollution;

b. Air quality monitoring to determine existing air quality and to define problem areas, as well as to provide background data to show the effectiveness of a pollution abatement program;

c. An emissions inventory to identify specific sources of air contamination and the contaminants emitted, together with the quantity of material discharged into the outdoor atmosphere;

d. Adoption, after notice and public hearing, of air quality and emission control standards, or adoption by reference, without public hearing, of any applicable rules and standards duly adopted by the Commission; and administration of such rules and standards in accordance with provisions of this section.

e. Provisions for the establishment or approval of time schedules for the control or abatement of existing sources of air pollution and for the review of plans and specifications and issuance of approval documents

covering the construction and operation of pollution abatement facilities at existing or new sources;

f. Provision for adequate administrative staff, including an air pollution control officer and technical personnel, and provision for laboratory and other necessary facilities.

(2) Subject to the approval of the Commission as provided in this Article and Article 21, the governing body of any county or municipality may establish, administer, and enforce an air pollution control program by any of the following methods:

a. Establishing a program under the administration of the duly elected governing body of the county or municipality.

b. Appointing an air pollution control board consisting of not less than five nor more than seven members who shall serve for terms of six years each and until their successors are appointed and qualified. Two members shall be appointed for two-year terms, two shall be appointed for four-year terms, and the remaining member or members shall be appointed for six-year terms. Where the term "governing body" is referred to in this section, it shall include the air pollution control board. Such board shall have all the powers and authorities granted to any local air pollution control program. The board shall elect a chairman and shall meet at least quarterly or upon the call of the chairman or any two members of the board.

c. Appointing an air pollution control board as provided in this subdivision, and by appropriate written agreement designating the local health department or other department of county or municipal government as the administrative agent for the air pollution control board.

d. Designating, by appropriate written agreement, the local board of health and the local health department as the air pollution control board and agency.

(2a) Any board or body which approves permits or enforcement orders shall have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits or enforcement orders under the Clean Air Act and any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers shall be adequately disclosed.

(3) If the Commission finds that the location, character or extent of particular concentrations of population, air contaminant sources, the geographic, topographic or meteorological considerations, or any combinations thereof, are such as to make impracticable the maintenance of appropriate levels of air quality without an area-wide air pollution control program, the Commission may determine the boundaries within which such program is necessary and require such area-wide program as the only acceptable alternative to direct State administration. Subject to the provisions of this section, each governing body of a county or municipality is hereby authorized and empowered to establish by contract, joint resolution, or other agreement with any other

governing body of a county or municipality, upon approval by the Commission, an air pollution control region containing any part or all of the geographical area within the jurisdiction of those boards or governing bodies which are parties to such agreement, provided the counties involved in the region are contiguous or lie in a continuous boundary and comprise the total area contained in any region designated by the Commission for an area-wide program. The participating parties are authorized to appoint a regional air pollution control board which shall consist of at least five members who shall serve for terms of six years and until their successors are appointed and qualified. Two members shall be appointed for two-year terms, two shall be appointed for four-year terms and the remaining member or members shall be appointed for six-year terms. A participant's representation on the board shall be in relation to its population to the total population of the region based on the latest official United States census with each participant in the region having at least one representative; provided, that where the region is comprised of less than five counties, each participant will be entitled to appoint members in relation to its population to that of the region so as to provide a board of at least five members. Where the term "governing body" is used, it shall include the governing board of a region. The regional board is hereby authorized to exercise any and all of the powers provided in this section. The regional air pollution control board shall elect a chairman and shall meet at least quarterly or upon the call of the chairman or any two members of the board. In lieu of employing its own staff, the regional air pollution control board is authorized, through appropriate written agreement, to designate a local health department as its administrative agent.

(4) Each governing body is authorized to adopt any ordinances, resolutions, rules or regulations which are necessary to establish and maintain an air pollution control program and to prescribe and enforce air quality and emission control standards, a copy of which must be filed with the Commission and with the clerk of court of any county affected. Provisions may be made therein for the registration of air contaminant sources; for the requirement of a permit to do or carry out specified activities relating to the control of air pollution, including procedures for application, issuance, denial and revocation; for notification of violators or potential violators about requirements or conditions for compliance; for procedures to grant temporary permits or variances from requirements or standards; for the declaration of an emergency when it is found that a generalized condition of air pollution is causing imminent danger to the health or safety of the public and the issuance of an order to the responsible person or persons to reduce or discontinue immediately the emission of air contaminants; for notice and hearing procedures for persons aggrieved by any action or order of any authorized agent; for the establishment of an advisory council and for other administrative arrangements; and for other matters necessary to establish and maintain an air pollution control program.

(5) No permit required by section 305(e) of Title III (42 U.S.C. § 7429(e)) for a solid waste incineration unit combusting municipal waste shall be issued by a

local air pollution control program that is administered by the governing body of a unit of local government that is responsible, in whole or in part, for the design, construction, or operation of the unit.

(d) (1) Violation of any ordinances, resolutions, rules or regulations duly adopted by a governing body are punishable as provided in G.S. 143-215.114B.

(1a) Each governing body, or its authorized agent, shall have the power to assess civil penalties under G.S. 143-215.114A. Any person assessed shall be notified of the assessment by registered or certified mail, and the notice shall specify the reasons for the assessment. If the person assessed fails to pay the amount of the assessment to the governing body or its authorized agent within 30 days after receipt of notice, or such longer period not to exceed 180 days as the governing body or its authorized agent may specify, the governing body may institute a civil action in the superior court of the county in which the violation occurred, to recover the amount of the assessment. If any action or failure to act for which a penalty may be assessed under this section is continuous, the governing body or its authorized agent may assess a penalty not to exceed twenty-five thousand dollars ($25,000) per day for so long as the violation continues. In determining the amount of the penalty, the governing body or its authorized agent shall consider the degree and extent of harm caused by the violation, the cost of rectifying the damage, and the amount of money the violator saved by not having made the necessary expenditures to comply with the appropriate pollution control requirements.

(2) Each governing body, or its duly authorized agent, may institute a civil action in the superior court, brought in the name of the agency having jurisdiction, for injunctive relief to restrain any violation or immediately threatened violation of such ordinances, orders, rules, or regulations and for such other relief as the court shall deem proper. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from the penalty prescribed by this Article and Article 21 for any violation of same.

(d1) (1) The governing body responsible for each local air pollution control program shall require that the owner or operator of all air contaminant sources subject to the requirement to obtain a permit under Title V pay an annual fee, or the equivalent over some other period, sufficient to cover costs as provided in section 502(b)(3)(A) of Title V (42 U.S.C. § 7661a(b)(3)(A)) and G.S. 143-215.3(a)(1d). Fees collected pursuant to this subdivision shall be used solely to cover all reasonable direct and indirect costs required to develop and administer the Title V permit program.

(2) Each governing body is authorized to expend tax funds, nontax funds, or any other funds available to it to finance an air pollution control program and such expenditures are hereby declared to be for a public purpose and a necessary expense.

(d2) (1) Any final administrative decision rendered in an air pollution control program of such governing body shall be subject to judicial review as provided by Article 4 of Chapter 150B of the General Statutes, and "administrative agency" or "agency" as used therein shall mean and include for this purpose

the governing body of any county or municipality, regional air pollution control governing board, and any agency created by them in connection with an air pollution control program.

(2) A local air pollution control program shall inform a permit applicant as to whether or not the application is complete within the time specified in the rules for action on the application. If a local air pollution program fails to act on an application for a permit required by Title V or this Article within the time periods specified by the Commission under G.S 143-215.108(d)(2), the failure to act on the application constitutes a final agency decision to deny the permit. A permit applicant, permittee, or other person aggrieved, as defined in G.S. 150B-2, may seek judicial review of a failure to act on the application as provided in G.S. 143-215.5 and Article 4 of Chapter 150B of the General Statutes. Notwithstanding the provisions of G.S. 150B-51, upon review of a failure to act on an application for a permit required by Title V or this Article, a court may either: (i) affirm the denial of the permit or (ii) remand the application to the local air pollution control program for action upon the application within a specified time.

(e) (1) If the Commission has reason to believe that a local air pollution control program certified and in force pursuant to the provisions of this section is inadequate to abate or control air pollution in the jurisdiction to which such program relates, or that such program is being administered in a manner inconsistent with the requirement of this Article, the Commission shall, upon due notice, conduct a hearing on the matter.

(2) If, after such hearing, the Commission determines that an existing local air pollution control program or one which has been certified by the Commission is inadequate to abate or control air pollution in the municipality, county, or municipalities or counties to which such program relates, or that such program is not accomplishing the purposes of this Article, it shall set forth in its findings the corrective measures necessary for continued certification and shall specify a reasonable period of time, not to exceed one year, in which such measures must be taken if certification is not to be rescinded.

(3) If the municipality, county, local board or commission or municipalities or counties fail to take such necessary corrective action within the time specified, the Commission shall rescind any certification as may have been issued for such program and shall administer within such municipality, county, or municipalities or counties all of the regulatory provisions of this Article and Article 21. Such air pollution control program shall supersede all municipal, county or local laws, regulations, ordinances and requirements in the affected jurisdiction.

(4) If the Commission finds that the control of a particular class of air contaminant source because of its complexity or magnitude is beyond the reasonable capability of the local air pollution control authorities or may be more efficiently and economically performed at the State level, it may assume and retain jurisdiction over that class of air contaminant source. Classification pursuant to this subdivision may be either on the basis of the nature of the

sources involved or on the basis of their relationship to the size of the communities in which they are located.

(5) Any municipality or county in which the Commission administers its air pollution control program pursuant to subdivision (3) of this subsection may, with the approval of the Commission, establish or resume a municipal, county, or local air pollution control program which meets the requirements for certification by the Commission.

(6) Repealed by Session Laws 1993, c. 400, s. 10.

(7) Any municipality, county, local board or commission or municipalities or counties or designated area of this State for which a local air pollution control program is established or proposed for establishment may make application for, receive, administer and expend federal grant funds for the control of air pollution or the development and administration of programs related to air pollution control; provided that any such application is first submitted to and approved by the Commission. The Commission shall approve any such application if it is consistent with this Article, Article 21 and other applicable requirements of law.

(8) Notwithstanding any other provision of this section, if the Commission determines that an air pollution source or combination of sources is operating in violation of the provisions of this Article and that the appropriate local authorities have not acted to abate such violation, the Commission, upon written notice to the appropriate local governing body, may act on behalf of the State to require any person causing or contributing to the pollution to cease immediately the emission of air pollutants causing or contributing to the violation or may require such other action as it shall deem necessary. (1973, c. 821, s. 6; c. 1262, s. 23; c. 1331, s. 3; 1979, c. 545, s. 7; 1987, c. 748, s. 1; c. 827, ss. 1, 154, 210; 1989, c. 135, s. 7; 1993, c. 400, s. 10; 1997-496, s. 6; 2010-180, s. 6.)

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

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

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

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

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

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

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

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

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

compliance with administrative and self-monitoring reporting requirements, and to consider, in those cases where the cost of renewal or amendment of a permit is less than for the original permit, a lower fee for the renewal or amendment.

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

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

b. Improve the quality of permits issued;

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

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

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

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

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

c. When funds in the Title V Account exceed the total amount necessary to cover the cost of the Title V program for the next fiscal year, the Secretary shall reduce the amount billed for the next fiscal year so that the excess funds are used to supplement the cost of administering the Title V permit program in that fiscal year.

(1e) The Commission shall collect the application, annual, and project fees for processing and administering permits, certificates of coverage under general permits, and certifications issued under Parts 1 and 1A of this Article and for compliance monitoring under Parts 1 and 1A of this Article as provided in G.S. 143-215.3D and G.S. 143-215.10G.

(2) To direct that such investigation be conducted as it may reasonably deem necessary to carry out its duties as prescribed by this Article or Article 21A or Article 21B of this Chapter, and for this purpose to enter at reasonable times

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

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

(4) To delegate such of the powers of the Commission as the Commission deems necessary to one or more of its members, to the Secretary or any other qualified employee of the Department. The Commission shall not delegate to persons other than its own members and the designated employees of the Department the power to conduct hearings with respect to the classification of waters, the assignment of classifications, air quality standards, air contaminant source classifications, emission control standards, or the issuance of any special order except in the case of an emergency under subdivision (12) of this subsection for the abatement of existing water or air pollution. Any employee of the Department to whom a delegation of power is made to conduct a hearing shall report the hearing with its evidence and record to the Commission.

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

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

(7) To direct the investigation of any killing of fish and wildlife which, in the opinion of the Commission, is of sufficient magnitude to justify investigation and is known or believed to have resulted from the pollution of the waters or air as defined in this Article, and whenever any person, whether or not he shall have been issued a certificate of approval, permit or other document of approval authorized by this or any other State law, has negligently, or carelessly or

unlawfully, or willfully and unlawfully, caused pollution of the waters or air as defined in this Article, in such quantity, concentration or manner that fish or wildlife are killed as the result thereof, the Commission, may recover, in the name of the State, damages from such person. The measure of damages shall be the amount determined by the Department and the North Carolina Wildlife Resources Commission, whichever has jurisdiction over the fish and wildlife destroyed to be the replacement cost thereof plus the cost of all reasonable and necessary investigations made or caused to be made by the State in connection therewith. Upon receipt of the estimate of damages caused, the Department shall notify the persons responsible for the destruction of the fish or wildlife in question and may effect such settlement as the Commission may deem proper and reasonable, and if no settlement is reached within a reasonable time, the Commission shall bring a civil action to recover such damages in the superior court in the county in which the discharge took place. Upon such action being brought the superior court shall have jurisdiction to hear and determine all issues or questions of law or fact, arising on the pleadings, including issues of liability and the amount of damages. On such hearing, the estimate of the replacement costs of the fish or wildlife destroyed shall be prima facie evidence of the actual replacement costs of such fish or wildlife. In arriving at such estimate, any reasonably accurate method may be used and it shall not be necessary for any agent of the Wildlife Resources Commission or the Department to collect, handle or weigh numerous specimens of dead fish or wildlife.

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

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

Article 21B of this Chapter. The Commission may make reasonable distinctions among the various sources of water and air pollution and may direct that its order shall apply only to those sources which it determines will result in a generalized condition of water or air pollution.

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

Notice of hearing shall be given in accordance with the provisions of G.S. 150B-21.2.

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

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

(10) To require a laboratory facility that performs any tests, analyses, measurements, or monitoring required under this Article or Article 21B of this Chapter to be certified annually by the Department, to establish standards that a laboratory facility and its employees must meet and maintain in order for the laboratory facility to be certified, and to charge a laboratory facility a fee for certification. Fees collected under this subdivision shall be credited to the Water and Air Account and used to administer this subdivision. These fees shall be applied to the cost of certifying commercial, industrial, and municipal laboratory facilities.

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

(12) To declare an emergency when it finds that a generalized condition of water or air pollution which is causing imminent danger to the health or safety of the public. Regardless of any other provisions of law, if the Department finds that

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

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

(13) Repealed by Session Laws 1983, c. 296, s. 6.
(14) To certify and approve, by appropriate delegations and conditions in permits required by G.S. 143-215.1, requests by publicly owned treatment works to implement, administer and enforce a pretreatment program for the control of pollutants which pass through or interfere with treatment processes in such treatment works; and to require such programs to be developed where necessary to comply with the Federal Water Pollution Control Act and the Resource Conservation and Recovery Act, including the addition of conditions and compliance schedules in permits required by G.S. 143-215.1. Pretreatment programs submitted by publicly owned treatment works shall include, at a minimum, the adoption of pretreatment standards, a permit or equally effective system for the control of pollutants contributed to the treatment works, and the ability to effectively enforce compliance with the program.

(15) To adopt rules for the prevention of pollution from underground tanks containing petroleum, petroleum products, or hazardous substances. Rules adopted under this section may incorporate standards and restrictions which exceed and are more comprehensive than comparable federal regulations.
(16) To adopt rules limiting the manufacture, storage, sale, distribution or use of cleaning agents containing phosphorus pursuant to G.S. 143-214.4(e), and to adopt rules limiting the manufacture, storage, sale, distribution or use of cleaning agents containing nitrilotriacetic acid.
(17) To adopt rules to implement Part 2A of Article 21A of Chapter 143.

(b) Research Functions. – The Department shall have the power to conduct scientific experiments, research, and investigations to discover economical and practical corrective methods for air pollution and waste disposal problems. To this end, the Department may cooperate with any public or private agency or agencies in the conduct of such experiments, research, and investigations, and may, when funds permit, establish research studies in any North Carolina educational institution, with the consent of such institution. In addition, the Department shall have the power to cooperate and enter into contracts with technical divisions of State agencies, institutions and with municipalities, industries, and other persons in the execution of such surveys, studies, and research as it may deem necessary in fulfilling its functions under this Article or Article 21B of this Chapter. All State departments shall advise with and cooperate with the Department on matters of mutual interest.

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

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

(e) Variances. – Any person subject to the provisions of G.S. 143-215.1 or 143-215.108 may apply to the Commission for a variance from rules, standards, or limitations established pursuant to G.S. 143-214.1, 143-215, or 143-215.107. The Commission may grant such variance, for fixed or indefinite periods after public hearing on due notice, or where it is found that circumstances so require, for a period not to exceed 90 days without prior hearing and notice. Prior to granting a variance hereunder, the Commission shall find that:

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

(2) Compliance with the rules, standards, or limitations from which variance is sought cannot be achieved by application of best available technology found to be economically reasonable at the time of application for such variances, and would produce serious hardship without equal or greater benefits to the public, provided that such variances shall be consistent with the provisions of the Federal Water Pollution Control Act as amended or the Clean Air Act as amended; and provided further, that any person who would otherwise be entitled to a variance or modification under the Federal Water Pollution Control Act as amended or the Clean Air Act as amended shall also be entitled to the same variance from or modification in rules, standards, or limitations established pursuant to G.S. 143-214.1, 143-215, and 143-215.107, respectively.

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

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

§ 143-215.6A. Enforcement procedures: civil penalties.

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

(1) Violates any classification, standard, limitation, or management practice established pursuant to G.S. 143-214.1, 143-214.2, or 143-215.

(2) Is required but fails to apply for or to secure a permit required by G.S. 143-215.1, or who violates or fails to act in accordance with the terms, conditions, or requirements of such permit or any other permit or certification issued pursuant to authority conferred by this Part, including pretreatment permits issued by local governments and laboratory certifications.

(3) Violates or fails to act in accordance with the terms, conditions, or requirements of any special order or other appropriate document issued pursuant to G.S. 143-215.2.

(4) Fails to file, submit, or make available, as the case may be, any documents, data, or reports required by this Article or G.S. 143-355(k) relating to water use information.

(5) Refuses access to the Commission or its duly designated representative to any premises for the purpose of conducting a lawful inspection provided for in this Article.

(6) Violates a rule of the Commission implementing this Part, Part 2A of this Article, or G.S. 143-355(k).

(7) Violates or fails to act in accordance with the statewide minimum water supply watershed management requirements adopted pursuant to G.S. 143-214.5, whether enforced by the Commission or a local government.

(8) Violates the offenses set out in G.S. 143-215.6B.

(9) Is required, but fails, to apply for or to secure a certificate required by G.S. 143-215.22L, or who violates or fails to act in accordance with the terms, conditions, or requirements of the certificate.

(10) Violates subsections (c1) through (c5) of G.S. 143-215.1 or a rule adopted pursuant to subsections (c1) through (c5) of G.S. 143-215.1.

(11) Violates or fails to act in accordance with G.S. 143-214.7(d1).

(a1) For purposes of this section, the term "Part" includes Part 1A of this Article.

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

(b1) The Secretary may assess a civil penalty of more than ten thousand dollars ($10,000) or, in the case of a continuing violation, more than ten thousand dollars ($10,000) per day, against a violator only if a civil penalty has been imposed against the violator within the five years preceding the violation. The Secretary may assess a civil penalty of more than ten thousand dollars ($10,000) or, in the case of a continuing violation, more than ten thousand dollars ($10,000) per day for so long as the violation continues, for a violation of subdivision (4) of subsection (a) of this section only if the Secretary determines that the violation is intentional.

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

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

(e) Consistent with G.S. 143B-282.1, a civil penalty of not more than ten thousand dollars ($10,000) per month may be assessed by the Commission against any local government that fails to adopt a local water supply watershed protection program as required by G.S. 143-214.5, or willfully fails to administer or enforce the provisions of its program in substantial compliance with the minimum statewide water supply watershed management requirements. No such penalty shall be imposed against a local government until the Commission has assumed the responsibility for administering and enforcing the local water supply watershed protection program. Civil penalties shall be imposed pursuant to a uniform schedule adopted by the Commission. The schedule of civil penalties shall be based on acreage and other relevant cost factors and shall be designed to recoup the costs of administration and enforcement.

(f) Requests for remission of civil penalties shall be filed with the Secretary. Remission requests shall not be considered unless made within 30 days of receipt of the notice of assessment. Remission requests must be accompanied by a waiver of the right to a contested case hearing pursuant to Chapter 150B and a stipulation of the facts on which the assessment was based. Consistent with the limitations in G.S. 143B-282.1(c) and (d), remission requests may be resolved by the Secretary and the violator. If the Secretary and the violator are unable to resolve the request, the Secretary shall deliver remission requests and his recommended action to the Committee on Civil Penalty Remissions of the Environmental Management Commission appointed pursuant to G.S. 143B-282.1(c).

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

(h) Repealed by Session Laws 1995 (Regular Session, 1996), c. 743, s. 14.

(h1) The clear proceeds of civil penalties assessed by the Secretary or the Commission pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(i) As used in this subsection, "municipality" refers to any unit of local government which operates a wastewater treatment plant. As used in this subsection, "unit of local government" has the same meaning as in G.S. 130A-290. The provisions of this subsection shall apply whenever a municipality that operates a wastewater treatment plant with an influent bypass diversion structure and with a permitted discharge of 10 million gallons per day or more into any of the surface waters of the State that have been classified as nutrient sensitive waters (NSW) under rules adopted by the Commission is subject to a court order which specifies (i) a schedule of activities with respect to the treatment of wastewater by the municipality; (ii) deadlines for the

completion of scheduled activities; and (iii) stipulated penalties for failure to meet such deadlines. A municipality as specified herein that violates any provision of such order for which a penalty is stipulated shall pay the full amount of such penalty as provided in the order unless such penalty is modified, remitted, or reduced by the court.

(j) Local governments certified and approved by the Commission to administer and enforce pretreatment programs pursuant to G.S. 143-215.3(a)(14), stormwater programs pursuant to G.S. 143-214.7, or riparian buffer protection programs pursuant to G.S. 143-214.23 may assess civil penalties for violations of their respective programs in accordance with the powers conferred upon the Commission and the Secretary in this section, except that actions for collection of unpaid civil penalties shall be referred to the attorney representing the assessing local government. The total of the civil penalty assessed by a local government and the civil penalty assessed by the Secretary for any violation may not exceed the maximum civil penalty for such violation under this section.

(k) A person who has been assessed a civil penalty by a local government as provided by subsection (j) of this section may request a review of the assessment by filing a request for review with the local government within 30 days of the date the notice of assessment is received. If a local ordinance provides for a local administrative hearing, the hearing shall afford minimum due process including an unbiased hearing official. The local government shall make a final decision on the request for review within 90 days of the date the request for review is filed. The final decision on a request for review shall be subject to review by the superior court pursuant to Article 27 of Chapter 1 of the General Statutes. If the local ordinance does not provide for a local administrative hearing, a person who has been assessed a civil penalty by a local government as provided by subsection (j) of this section may contest the assessment by filing a civil action in superior court within 60 days of the date the notice of assessment is received. (1951, c. 606; 1967, c. 892, s. 1; 1973, c. 698, s. 12; c. 712, s. 2; c. 1262, s. 23; c. 1331, s. 3; 1975, c. 583, s. 7; c. 842, ss. 6, 7; 1977, c. 771, s. 4; 1979, c. 633, ss. 9-11; 1981, c. 514, s. 1; c. 585, s. 13; 1987, c. 271; c. 827, ss. 154, 164; 1989, c. 426, s. 4; 1989 (Reg. Sess., 1990), c. 951, s. 1; c. 1036, s. 3; c. 1045, s. 1; c. 1075, s. 6; 1991, c. 579, s. 2; c. 725, s. 3; 1993, c. 348, s. 2; 1995 (Reg. Sess., 1996), c. 743, s. 14; 1997-458, s. 6.2; 1998-215, s. 63; 1999-329, ss. 5.1, 5.3, 5.5, 5.7; 2004-124, s. 6.29(b); 2006-250, s. 6; 2007-484, s. 43.7C; 2007-518, s. 5; 2007-536, s. 3.)

§ 143-215.6B. Enforcement procedures: criminal penalties.

(a) For purposes of this section, the term "person" shall mean, in addition to the definition contained in G.S. 143-212, any responsible corporate or public officer or employee; provided, however, that where a vote of the people is required to effectuate the intent and purpose of this Article by a county, city, town, or other political subdivision of the State, and the vote on the referendum is against the means or machinery for carrying said intent and purpose into effect, then, and only then, this section shall not apply to elected officials or to any responsible appointed officials or employees of such county, city, town, or political subdivision.

(a1) For purposes of this section, the term "Part" includes Part 1A of this Article.

(b) No proceeding shall be brought or continued under this section for or on account of a violation by any person who has previously been convicted of a federal violation based upon the same set of facts.

(c) In proving the defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to shield himself from relevant information. Consistent with the principles of common law, the subjective mental state of defendants may be inferred from their conduct.

(d) For the purposes of the felony provisions of this section, a person's state of mind shall not be found "knowingly and willfully" or "knowingly" if the conduct that is the subject of the prosecution is the result of any of the following occurrences or circumstances:

(1) A natural disaster or other act of God which could not have been prevented or avoided by the exercise of due care or foresight.

(2) An act of third parties other than agents, employees, contractors, or subcontractors of the defendant.

(3) An act done in reliance on the written advice or emergency on-site direction of an employee of the Department. In emergencies, oral advice may be relied upon if written confirmation is delivered to the employee as soon as practicable after receiving and relying on the advice.

(4) An act causing no significant harm to the environment or risk to the public health, safety, or welfare and done in compliance with other conflicting environmental requirements or other constraints imposed in writing by environmental agencies or officials after written notice is delivered to all relevant agencies that the conflict exists and will cause a violation of the identified standard.

(5) Violations of permit limitations causing no significant harm to the environment or risk to the public health, safety, or welfare for which no enforcement action or civil penalty could have been imposed under any written civil enforcement guidelines in use by the Department at the time, including but not limited to, guidelines for the pretreatment permit civil penalties. This subdivision shall not be construed to require the Department to develop or use written civil enforcement guidelines.

(6) Occasional, inadvertent, short-term violations of permit limitations causing no significant harm to the environment or risk to the public health, safety, or welfare. If the violation occurs within 30 days of a prior violation or lasts for more than 24 hours, it is not an occasional, short-term violation.

(e) All general defenses, affirmative defenses, and bars to prosecution that may apply with respect to other criminal offenses under State criminal offenses may apply to prosecutions

brought under this section or other criminal statutes that refer to this section and shall be determined by the courts of this State according to the principles of common law as they may be applied in the light of reason and experience. Concepts of justification and excuse applicable under this section may be developed in the light of reason and experience.

(f) Any person who negligently violates any: (i) classification, standard, or limitation established in rules adopted by the Commission pursuant to G.S. 143-214.1, 143-214.2, or 143-215; (ii) term, condition, or requirement of a permit issued pursuant to this Part, including permits issued pursuant to G.S. 143-215.1, pretreatment permits issued by local governments, and laboratory certifications; (iii) term, condition, or requirement of a special order or other appropriate document issued pursuant to G.S. 143-215.2; or (iv) rule of the Commission implementing this Part; and any person who negligently fails to apply for or to secure a permit required by G.S. 143-215.1 shall be guilty of a Class 2 misdemeanor which may include a fine not to exceed fifteen thousand dollars ($15,000) per day of violation, provided that such fine shall not exceed a cumulative total of two hundred thousand dollars ($200,000) for each period of 30 days during which a violation continues.

(g) Any person who knowingly and willfully violates any (i) classification, standard, or limitation established in rules adopted by the Commission pursuant to G.S. 143-214.1, 143-214.2, or 143-215; (ii) term, condition, or requirement of a permit issued pursuant to this Part, including permits issued pursuant to G.S. 143-215.1, pretreatment permits issued by local governments, and laboratory certifications; or (iii) term, condition, or requirement of a special order or other appropriate document issued pursuant to G.S. 143-215.2; and any person who knowingly and willfully fails to apply for or to secure a permit required by G.S. 143-215.1 shall be guilty of a Class I felony, which may include a fine not to exceed one hundred thousand dollars ($100,000) per day of violation, provided that this fine shall not exceed a cumulative total of five hundred thousand dollars ($500,000) for each period of 30 days during which a violation continues. For the purposes of this subsection, the phrase "knowingly and willfully" shall mean intentionally and consciously as the courts of this State, according to the principles of common law interpret the phrase in the light of reason and experience.

(h) (1) Any person who knowingly violates any: (i) classification, standard, or limitation established in rules adopted by the Commission pursuant to G.S. 143-214.1, 143-214.2, 143-215; (ii) term, condition, or requirement of a permit issued pursuant to this Part, including permits issued pursuant to G.S. 143-215.1, pretreatment permits issued by local governments, and laboratory certifications; or (iii) term, condition, or requirement of a special order or other appropriate document issued pursuant to G.S. 143-215.2; and any person who knowingly fails to apply for or to secure a permit required by G.S. 143-215.1 and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury shall be guilty of a Class C felony, which may include a fine not to exceed two hundred fifty thousand dollars ($250,000) per day of violation, provided that this fine shall not exceed a cumulative total of one million dollars ($1,000,000) for each period of 30 days during which a violation continues.

(2) For the purposes of this subsection, a person's state of mind is knowing with respect to:

a. His conduct, if he is aware of the nature of his conduct;

b. An existing circumstance, if he is aware or believes that the circumstance exists; or

c. A result of his conduct, if he is aware or believes that his conduct is substantially certain to cause danger of death or serious bodily injury.

(3) Under this subsection, in determining whether a defendant who is a natural person knew that his conduct placed another person in imminent danger of death or serious bodily injury:

a. The person is responsible only for actual awareness or actual belief that he possessed; and

b. Knowledge possessed by a person other than the defendant but not by the defendant himself may not be attributed to the defendant.

(4) It is an affirmative defense to a prosecution under this subsection that the conduct charged was conduct consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of an occupation, a business, or a profession; or of medical treatment or medical or scientific experimentation conducted by professionally approved methods and such other person had been made aware of the risks involved prior to giving consent. The defendant may establish an affirmative defense under this subdivision by a preponderance of the evidence.

(i) Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Article or a rule implementing this Article; or who knowingly makes a false statement of a material fact in a rulemaking proceeding or contested case under this Article; or who falsifies, tampers with, or knowingly renders inaccurate any recording or monitoring device or method required to be operated or maintained under this Article or rules of the Commission implementing this Article shall be guilty of a Class 2 misdemeanor which may include a fine not to exceed ten thousand dollars ($10,000).

(j) Repealed by Session Laws 1993, c. 539, s. 1315.

(k) The Secretary shall refer to the State Bureau of Investigation for review any discharge of waste by any person or facility in any manner that violates this Article or rules adopted pursuant to this Article that involves the possible commission of a felony. Upon receipt of a referral under this section, the State Bureau of Investigation may conduct an investigation and, if appropriate, refer the matter to the district attorney in whose jurisdiction any criminal offense has occurred. This subsection shall not be construed to limit the authority of the Secretary to refer any matter to the State Bureau of Investigation for review. (1951, c. 606; 1967, c. 892, s. 1; 1973, c. 698, s. 12; c. 712, s. 2; c. 1262, s. 23; c. 1331, s. 3; 1975, c. 583, s. 7; c. 842, ss. 6, 7; 1977, c. 771, s. 4; 1979, c. 633, ss. 9-11; 1981, c. 514, s. 1; c. 585, s. 13; 1987, c. 271; c. 827, ss. 154, 164; 1989, c. 426, s. 4; 1989 (Reg. Sess., 1990), c. 1004, s. 48; c. 1045, s. 2; 1991, c. 725, s. 4; 1993, c. 539, ss. 1018, 1019, 1313-1315; 1994, Ex. Sess., c. 24, s. 14(c); 1997-458, s. 11.1; 2007-536, s. 4.)

§ 143-215.6C. Enforcement procedures; injunctive relief.
Whenever the Department has reasonable cause to believe that any person has violated or is threatening to violate any of the provisions of this Part, any of the terms of any permit issued pursuant to this Part, or a rule implementing this Part, the Department may, either before or after the institution of any other action or proceeding authorized by this Part, request the Attorney General to institute a civil action in the name of the State upon the relation of the Department for injunctive relief to restrain the violation or threatened violation and for such other and further relief in the premises as the court shall deem proper. The Attorney General may institute such action in the superior court of the county in which the violation occurred or may occur or, in his discretion, in the superior court of the county in which the person responsible for the violation or threatened violation resides or has his or its principal place of business. Upon a determination by the court that the alleged violation of the provisions of this Part or the regulations of the Commission has occurred or is threatened, the court shall grant the relief necessary to prevent or abate the violation or threatened violation. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from any penalty prescribed for violation of this Part. For purposes of this section references to "this Part" include Part 1A of this Article and G.S. 143-355(k) relating to water use information. (1951, c. 606; 1967, c. 892, s. 1; 1973, c. 698, s. 12; c. 712, s. 2; c. 1262, s. 23; c. 1331, s. 3; 1975, c. 583, s. 7; c. 842, ss. 6, 7; 1977, c. 771, s. 4; 1979, c. 633, ss. 9-11; 1981, c. 514, s. 1; c. 585, s. 13; 1987, c. 217; c. 827, ss. 154, 164; 1989, c. 426, s. 4; 1989 (Reg. Sess., 1990), c. 1045, s. 3; 2007-536, s. 5.)

§ 143B-283. Environmental Management Commission – members; selection; removal; compensation; quorum; services.

(a) The Environmental Management Commission shall consist of 13 members appointed by the Governor. The Governor shall select the members so that the membership of the Commission shall consist of:

(1) One who shall be a licensed physician with specialized training and experience in the health effects of environmental pollution;

(2) One who shall, at the time of appointment, be actively connected with the Commission for Public Health or local board of health or have experience in health sciences;

(3) One who shall, at the time of appointment, be actively connected with or have had experience in agriculture;

(4) One who shall, at the time of appointment, be a registered engineer with specialized training and experience in water supply or water or air pollution control;

(5) One who shall, at the time of appointment, be actively connected with or have had experience in the fish and wildlife conservation activities of the State;

(6) One who shall, at the time of appointment, have special training and scientific expertise in hydrogeology or groundwater hydrology;

(7) Three members interested in water and air pollution control, appointed from the public at large;

(8) One who shall, at the time of appointment, be actively employed by, or recently retired from, an industrial manufacturing facility and knowledgeable in the field of industrial air and water pollution control;

(9) One who shall, at the time of appointment, be actively connected with or have had experience in pollution control problems of municipal or county government;

(10) One who shall, at the time of appointment, have special training and scientific expertise in air pollution control and the effects of air pollution; and

(11) One who shall, at the time of appointment, have special training and scientific expertise in freshwater, estuarine, marine biological, or ecological sciences.

(b) Members appointed by the Governor shall serve terms of office of six years. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term. The Governor may reappoint a member of the Commission to an additional term if, at the time of the reappointment, the member qualifies for membership on the Commission under subsection (a) of this section.

(b1) The Governor shall have the power to remove any member of the Commission from office for misfeasance, malfeasance, or nonfeasance in accordance with the provisions of G.S. 143B-13 of the Executive Organization Act of 1973.

(b2) The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

(b3) A majority of the Commission shall constitute a quorum for the transaction of business.

(b4) All clerical and other services required by the Commission shall be supplied by the Secretary of Environment and Natural Resources.

(c) Nine of the members appointed by the Governor under this section shall be persons who do not derive any significant portion of their income from persons subject to permits or enforcement orders under this Chapter. The Governor shall require adequate disclosure of

potential conflicts of interest by members. The Governor, by executive order, shall promulgate criteria regarding conflicts of interest and disclosure thereof for determining the eligibility of persons under this section, giving due regard to the requirements of federal legislation, and for this purpose may promulgate rules, regulations or guidelines in conformance with those established by any federal agency interpreting and applying provisions of federal law.

(d) In addition to the members designated by subsection (a) of this section, the General Assembly shall appoint six members, three upon the recommendation of the Speaker of the House of Representatives, and three upon the recommendation of the President Pro Tempore of the Senate. Appointments by the General Assembly shall be made in accordance with G.S. 120-121, and vacancies in those appointments shall be filled in accordance with G.S. 120-122. Members appointed by the General Assembly shall serve terms of two years. (1973, c. 1262, s. 20; 1977, c. 771, s. 4; 1979, 2nd Sess., c. 1158, ss. 5, 6; 1981 (Reg. Sess., 1982), c. 1191, s. 19; 1989, c. 315; c. 727, s. 218(129); 1995, c. 490, s. 18; 1997-381, s. 1; 1997-443, s. 11A.119(a); 1998-217, s. 17; 2000-172, ss. 4.1, 4.2; 2001-486, s. 2.16; 2007-182, s. 2.)

§ 150B-21.1. Procedure for adopting a temporary rule.

(a) Adoption. – An agency may adopt a temporary rule when it finds that adherence to the notice and hearing requirements of G.S. 150B-21.2 would be contrary to the public interest and that the immediate adoption of the rule is required by one or more of the following:

(1) A serious and unforeseen threat to the public health, safety, or welfare.

(2) The effective date of a recent act of the General Assembly or the United States Congress.

(3) A recent change in federal or State budgetary policy.

(4) A recent federal regulation.

(5) A recent court order.

(6) The need for a rule establishing review criteria as authorized by G.S. 131E-183(b) to complement or be made consistent with the State Medical Facilities Plan approved by the Governor, if the rule addresses a matter included in the State Medical Facilities Plan, and the proposed rule and a notice of public hearing is submitted to the Codifier of Rules prior to the effective date of the Plan.

(7) The need for the Wildlife Resources Commission to establish any of the following:

a. No wake zones.

b. Hunting or fishing seasons.

c. Hunting or fishing bag limits.

d. Management of public game lands as defined in G.S. 113-129(8a).

(8) The need for the Secretary of State to implement the certification technology provisions of Article 11A of Chapter 66 of the General Statutes, to adopt uniform Statements of Policy that have been officially adopted by the North American Securities Administrators Association, Inc., for the purpose of promoting uniformity of state securities regulation, and to adopt rules governing the conduct of hearings pursuant to this Chapter.

(9) The need for the Commissioner of Insurance to implement the provisions of G.S. 58-2-205.

(10) The need for the Chief Information Officer to implement the information technology procurement provisions of Article 3D of Chapter 147 of the General Statutes.

(11) The need for the State Board of Elections to adopt a temporary rule after prior notice or hearing or upon any abbreviated notice or hearing the agency finds practical for one or more of the following:

a. In accordance with the provisions of G.S. 163-22.2.

b. To implement any provisions of state or federal law for which the State Board of Elections has been authorized to adopt rules.

c. The need for the rule to become effective immediately in order to preserve the integrity of upcoming elections and the elections process.

(12) The need for an agency to adopt a temporary rule to implement the provisions of any of the following acts until all rules necessary to implement the provisions of the act have become effective as either temporary or permanent rules:

a. Repealed by Session Laws 2000-148, s. 5, effective July 1, 2002.

b. Repealed by Session Laws 2000-69, s. 5, effective July 1, 2003.

(13), (14) Reserved.

(15) Expired pursuant to Session Laws 2002-164, s. 5, effective October 1, 2004.

(16) Expired pursuant to Session Laws 2003-184, s. 3, effective July 1, 2005.

(a1) Recodified as subdivision (a)(16) of this section by Session Laws 2004-156, s. 1.

(a2) A recent act, change, regulation, or order as used in subdivisions (2) through (5) of subsection (a) of this section means an act, change, regulation, or order occurring or made effective no more than 210 days prior to the submission of a temporary rule to the Rules Review Commission. Upon written request of the agency, the Commission may waive the 210-day requirement upon consideration of the degree of public benefit, whether the agency had control over the circumstances that required the requested waiver, notice to and opposition by the public, the need for the waiver, and previous requests for waivers submitted by the agency.

(a3) Unless otherwise provided by law, the agency shall:

(1) At least 30 business days prior to adopting a temporary rule, submit the rule and a notice of public hearing to the Codifier of Rules, and the Codifier of Rules shall publish the proposed temporary rule and the notice of public hearing on the Internet to be posted within five business days.

(2) At least 30 business days prior to adopting a temporary rule, notify persons on the mailing list maintained pursuant to G.S. 150B-21.2(d) and any other interested parties of its intent to adopt a temporary rule and of the public hearing.

(3) Accept written comments on the proposed temporary rule for at least 15 business days prior to adoption of the temporary rule.

(4) Hold at least one public hearing on the proposed temporary rule no less than five days after the rule and notice have been published.

(a4) An agency must also prepare a written statement of its findings of need for a temporary rule stating why adherence to the notice and hearing requirements in G.S. 150B-21.2 would be contrary to the public interest and why the immediate adoption of the rule is required. If the temporary rule establishes a new fee or increases an existing fee, the agency shall include in the written statement that it has complied with the requirements of G.S. 12-3.1. The statement must be signed by the head of the agency adopting the temporary rule.

(b) Review. – When an agency adopts a temporary rule it must submit the rule and the agency's written statement of its findings of the need for the rule to the Rules Review Commission. Within 15 business days after receiving the proposed temporary rule, the Commission shall review the agency's written statement of findings of need for the rule and the rule to determine whether the statement meets the criteria listed in subsection (a) of this section and the rule meets the standards in G.S. 150B-21.9. The Commission shall direct a member of its staff who is an attorney licensed to practice law in North Carolina to review the statement of findings of need and the rule. The staff member shall make a recommendation to the Commission, which must be approved by the Commission or its designee. The Commission's designee shall be a panel of at least three members of the Commission. In reviewing the statement, the Commission or its designee may consider any information submitted by the agency or another person. If the Commission or its designee finds that the statement meets the criteria listed in subsection (a) of this section and the rule meets the standards in G.S. 150B-21.9, the Commission or its designee must approve the temporary rule and deliver the rule to the Codifier of Rules within two business days of approval. The Codifier of Rules must enter the rule into the North Carolina Administrative Code on the sixth business day following receipt from the Commission or its designee.

(b1) If the Commission or its designee finds that the statement does not meet the criteria listed in subsection (a) of this section or that the rule does not meet the standards in G.S. 150B-21.9, the Commission or its designee must immediately notify the head of the agency. The agency may supplement its statement of need with additional findings or submit a new statement. If the agency provides additional findings or submits a new statement, the Commission or its designee must review the additional findings or new statement within five business days after the agency submits the additional findings or new statement. If the Commission or its designee again finds that the statement does not meet the criteria listed in subsection (a) of this section or that the rule does not meet the standards in G.S. 150B-21.9, the Commission or its designee must immediately notify the head of the agency and return the rule to the agency.

(b2) If an agency decides not to provide additional findings or submit a new statement when notified by the Commission or its designee that the agency's findings of need for a rule do not meet the required criteria or that the rule does not meet the required standards, the agency must notify the Commission or its designee of its decision. The Commission or its designee shall then return the rule to the agency. When the Commission returns a rule to an agency in accordance with this subsection, the agency may file an action for declaratory judgment in Wake County Superior Court pursuant to Article 26 of Chapter 1 of the General Statutes.

(b3) Notwithstanding any other provision of this subsection, if the agency has not complied with the provisions of G.S. 12-3.1, the Codifier of Rules shall not enter the rule into the Code.

(c) Standing. – A person aggrieved by a temporary rule adopted by an agency may file an action for declaratory judgment in Wake County Superior Court pursuant to Article 26 of Chapter 1 of the General Statutes. In the action, the court shall determine whether the agency's written statement of findings of need for the rule meets the criteria listed in subsection (a) of this section and whether the rule meets the standards in G.S. 150B-21.9. The court shall not grant an ex parte temporary restraining order.

(c1) Filing a petition for rule making or a request for a declaratory ruling with the agency that adopted the rule is not a prerequisite to filing an action under this subsection. A person who files an action for declaratory judgment under this subsection must serve a copy of the complaint on the agency that adopted the rule being contested, the Codifier of Rules, and the Commission.

(d) Effective Date and Expiration. – A temporary rule becomes effective on the date specified in G.S. 150B-21.3. A temporary rule expires on the earliest of the following dates:

(1) The date specified in the rule.

(2) The effective date of the permanent rule adopted to replace the temporary rule, if the Commission approves the permanent rule.

(3) The date the Commission returns to an agency a permanent rule the agency adopted to replace the temporary rule.

(4) The effective date of an act of the General Assembly that specifically disapproves a permanent rule adopted to replace the temporary rule.

(5) 270 days from the date the temporary rule was published in the North Carolina Register, unless the permanent rule adopted to replace the temporary rule has been submitted to the Commission.

(e) Publication. – When the Codifier of Rules enters a temporary rule in the North Carolina Administrative Code, the Codifier must publish the rule in the North Carolina Register. (1973, c. 1331, s. 1; 1981, c. 688, s. 12; 1981 (Reg. Sess., 1982), c. 1232, s. 1; 1983, c. 857; c. 927, ss. 4, 8; 1985, c. 746, s. 1; 1985 (Reg. Sess., 1986), c. 1022, s. 1(1), 1(8); 1987, c. 285, ss. 10-12; 1991, c. 418, s. 1; 1991 (Reg. Sess., 1992), c. 900, s. 149; 1993, c. 553, s. 54; 1995, c. 507, s. 27.8(c);

1996, 2nd Ex. Sess., c. 18, ss. 7.10(c), (d); 1997-403, ss. 1-3; 1998-127, s. 2; 1998-212, s. 26B(h); 1999-434, s. 16; 1999-453, s. 5(a); 2000-69, ss. 3, 5; 2000-148, ss. 4, 5; 2001-126, s. 12; 2001-421, ss. 2.3, 5.3; 2001-424, ss. 27.17(b), (c), 27.22(a), (b); 2001-487, s. 21(g); 2002-97, ss. 2, 3; 2002-164, s. 4.6; 2003-184, s. 3; 2003-229, s. 2; 2003-413, ss. 27, 29; 2004-156, s. 1; 2011-398, s. 4.)

§ 150B-21.2. Procedure for adopting a permanent rule.

(a) Steps. – Before an agency adopts a permanent rule, the agency must comply with the requirements of G.S. 150B-19.1, and it must take the following actions:

(1) Publish a notice of text in the North Carolina Register.

(2) When required by G.S. 150B-21.4, prepare or obtain a fiscal note for the proposed rule.

(3) Repealed by Session Laws 2003-229, s. 4, effective July 1, 2003.

(4) When required by subsection (e) of this section, hold a public hearing on the proposed rule after publication of the proposed text of the rule.

(5) Accept oral or written comments on the proposed rule as required by subsection (f) of this section.

(b) Repealed by Session Laws 2003-229, s. 4, effective July 1, 2003.

(c) Notice of Text. – A notice of the proposed text of a rule must include all of the following:

(1) The text of the proposed rule.

(2) A short explanation of the reason for the proposed rule and a link to the agency's Web site containing the information required by G.S. 150B-19.1(c).

(3) A citation to the law that gives the agency the authority to adopt the rule.

(4) The proposed effective date of the rule.

(5) The date, time, and place of any public hearing scheduled on the rule.

(6) Instructions on how a person may demand a public hearing on a proposed rule if the notice does not schedule a public hearing on the proposed rule and subsection (e) of this section requires the agency to hold a public hearing on the proposed rule when requested to do so.

(7) The period of time during which and the person to whom written comments may be submitted on the proposed rule.

(8) If a fiscal note has been prepared for the rule, a statement that a copy of the fiscal note can be obtained from the agency.

(9) The procedure by which a person can object to a proposed rule and the requirements for subjecting a proposed rule to the legislative review process.

(d) Mailing List. – An agency must maintain a mailing list of persons who have requested notice of rule making. When an agency publishes in the North Carolina Register a notice of text of a proposed rule, it must mail a copy of the notice or text to each person on the mailing list who has requested notice on the subject matter described in the notice or the rule affected. An agency may charge an annual fee to each person on the agency's mailing list to cover copying and mailing costs.

(e) Hearing. – An agency must hold a public hearing on a rule it proposes to adopt if the agency publishes the text of the proposed rule in the North Carolina Register and the agency receives a written request for a public hearing on the proposed rule within 15 days after the notice of text is published. The agency must accept comments at the public hearing on both the proposed rule and any fiscal note that has been prepared in connection with the proposed rule.

An agency may hold a public hearing on a proposed rule and fiscal note in other circumstances. When an agency is required to hold a public hearing on a proposed rule or decides to hold a public hearing on a proposed rule when it is not required to do so, the agency must publish in the North Carolina Register a notice of the date, time, and place of the public hearing. The hearing date of a public hearing held after the agency publishes notice of the hearing in the North Carolina Register must be at least 15 days after the date the notice is

published. If notice of a public hearing has been published in the North Carolina Register and that public hearing has been cancelled, the agency shall publish notice in the North Carolina Register at least 15 days prior to the date of any rescheduled hearing.

(f) Comments. – An agency must accept comments on the text of a proposed rule that is published in the North Carolina Register and any fiscal note that has been prepared in connection with the proposed rule for at least 60 days after the text is published or until the date of any public hearing held on the proposed rule, whichever is longer. An agency must consider fully all written and oral comments received.

(g) Adoption. – An agency shall not adopt a rule until the time for commenting on the proposed text of the rule has elapsed and shall not adopt a rule if more than 12 months have elapsed since the end of the time for commenting on the proposed text of the rule. Prior to adoption, an agency shall review any fiscal note that has been prepared for the proposed rule and consider any public comments received in connection with the proposed rule or the fiscal note. An agency shall not adopt a rule that differs substantially from the text of a proposed rule published in the North Carolina Register unless the agency publishes the text of the proposed different rule in the North Carolina Register and accepts comments on the proposed different rule for the time set in subsection (f) of this section.

An adopted rule differs substantially from a proposed rule if it does one or more of the following:

(1) Affects the interests of persons who, based on the proposed text of the rule published in the North Carolina Register, could not reasonably have determined that the rule would affect their interests.

(2) Addresses a subject matter or an issue that is not addressed in the proposed text of the rule.

(3) Produces an effect that could not reasonably have been expected based on the proposed text of the rule.

When an agency adopts a rule, it shall not take subsequent action on the rule without following the procedures in this Part. An agency must submit an adopted rule to the Rules Review Commission within 30 days of the agency's adoption of the rule.

(h) Explanation. – An agency must issue a concise written statement explaining why the agency adopted a rule if, within 15 days after the agency adopts the rule, a person asks the agency to do so. The explanation must state the principal reasons for and against adopting the rule and must discuss why the agency rejected any arguments made or considerations urged against the adoption of the rule. The agency must issue the explanation within 15 days after receipt of the request for an explanation.

(i) Record. – An agency must keep a record of a rule-making proceeding. The record must include all written comments received, a transcript or recording of any public hearing held on the rule, any fiscal note that has been prepared for the rule, and any written explanation made by the agency for adopting the rule. (1973, c. 1331, s. 1; 1975, 2nd Sess., c. 983, s. 63; 1977, c. 915, s. 2; 1983, c. 927, ss. 3, 7; 1985, c. 746, s. 1; 1985 (Reg. Sess., 1986), c. 1022, s. 1(1), (7); 1987, c. 285, ss. 7-9; 1989, c. 5, s. 1; 1991, c. 418, s. 1; 1995, c. 507, s. 27.8(d); 1996, 2nd Ex. Sess., c. 18, s. 7.10(e); 2003-229, s. 4; 2011-398, s. 5.)

Attachment 3b

North Carolina State-Only Rules

This attachment contains North Carolina air quality rules that are not approved by the U.S. Environmental Protection Agency as part of the state implementation plan. These state-only rules are provided as reference material in the North Carolina's certification for Clean Air Act Sections 110(a)(1) and (a)(2) requirements for the 2010 1-Hour Sulfur Dioxide (SO_2) National Ambient Air Quality Standards. Full text is also posted at http://www.ncair.org/rules/rules/.

15A NCAC 2D .1200 - Control of Emissions from Incinerators 2

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15A NCAC 2D .1200 - Control of Emissions from Incinerators

15A NCAC 02D .1201 PURPOSE AND SCOPE
(a) This Section sets forth rules for the control of the emissions of air pollutants from incinerators.
(b) The rules in this Section apply to all types of incinerators as defined by 15A NCAC 02D .0101(21), including incinerators with heat recovery and industrial incinerators.
(c) The rules in this Section do not apply to:
(1) afterburners, flares, fume incinerators, and other similar devices used to reduce the emissions of air pollutants from processes, whose emissions shall be regulated as process emissions;
(2) any boilers or industrial furnaces that burn waste as a fuel, except hazardous waste as defined in 40 CFR 260.10;
(3) air curtain burners, which shall comply with Section .1900 of this Subchapter; or
(4) incinerators used to dispose of dead animals or poultry, that meet the following requirements:
(A) the incinerator is located on a farm and is operated by the farm owner or by the farm operator;
(B) the incinerator is used solely to dispose of animals or poultry originating on the farm where the incinerator is located;
(C) the incinerator is not charged at a rate that exceeds its design capacity; and
(D) the incinerator complies with Rule .0521 (visible emissions) and .1806 (odorous emissions) of this Subchapter.
(d) If an incinerator is more than one type of incinerator, then the following order shall be used to determine the standards and requirements to apply:
(1) hazardous waste incinerators;
(2) sewage sludge incinerators;
(3) sludge incinerators;
(4) municipal waste combustors;
(5) commercial and industrial solid waste incinerators;
(6) hospital, medical, or infectious waste incinerators (HMIWIs);
(7) other solid waste incinerators;
(8) conical incinerators;
(9) crematory incinerators; and
(10) other incinerators.
(e) In addition to any permit that may be required under 15A NCAC 02Q, Air Quality Permits Procedures, a permit may
be required by the Division of Waste Management as determined by the permitting rules enforced by the Division of Waste Management.
(f) Referenced document SW-846 "Test Methods for Evaluating Solid Waste," Third Edition, cited by rules in this Section is hereby incorporated by reference and does not include subsequent amendments or editions. A copy of this document is available for inspection at the North Carolina Department of Environment and Natural Resources Library
located at 512 North Salisbury Street, Raleigh, NC 27603. Copies of this document may be obtained through the US Government Printing Office, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954, or by calling
(202) 783-3238. The cost of this document is three hundred nineteen dollars ($319.00).
History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(1), (3), (4), (5);
Eff. October 1, 1991;
Amended Eff. July 1, 2000; July 1, 1999; July 1, 1998; April 1, 1995; December 1, 1993;
Temporary Amendment Eff. March 1, 2002;
Amended Eff. July 1, 2007; December 1, 2005; August 1, 2002.

15A NCAC 02D .1202 DEFINITIONS
(a) For the purposes of this Section, the definitions at G.S. 143-212 and 143-213 and 15A NCAC 02D .0101 shall apply,
and in addition, the following definitions shall apply. If a term in this Rule is also defined at 15A NCAC 02D .0101, then

the definition in this Rule controls.
(1) "Class I municipal waste combustor" means a small municipal waste combustor located at a municipal waste combustion plant with an aggregate plant combustion capacity greater than 250 tons per day of municipal solid waste.
(2) "Commercial and industrial solid waste incinerator" (CISWI) or "commercial and industrial solid waste incineration unit" means any combustion device, except air pollution control devices, that combusts commercial and industrial waste.
(3) "Commercial and industrial waste" means solid waste combusted in an enclosed device using controlled flame combustion without energy recovery that is a distinct operating unit of any commercial or industrial facility (including field-erected, modular, and custom built incineration units operating with starved or excess air).
(4) "Co-fired combustor (as defined in 40 CFR Part 60, Subpart Ec)" means a unit combusting hospital, medical, or infectious waste with other fuels or wastes (e.g., coal, municipal solid waste) and subject to an enforceable requirement limiting the unit to combusting a fuel feed stream, 10 percent or less of the weight of which is comprised, in aggregate, of hospital, medical, or infectious waste as measured on a calendar quarter basis. For the purposes of this definition, pathological waste, chemotherapeutic waste, and low-level radioactive waste are considered "other" wastes when calculating the percentage of hospital, medical, or infectious waste combusted.
(5) "Crematory incinerator" means any incinerator located at a crematory regulated under 21 NCAC 34C that is used solely for the cremation of human remains.
(6) "Construction and demolition waste" means wood, paper, and other combustible waste, except for hazardous waste and asphaltic material, resulting from construction and demolition projects.
(7) "Dioxin and Furan" means tetra- through octa- chlorinated dibenzo-p-dioxins and dibenzofurans.
(8) "Hazardous waste incinerator" means an incinerator regulated under 15A NCAC 13A .0101 through .0119, 40 CFR 264.340 to 264.351, Subpart O, or 265.340 to 265.352, Subpart O.
(9) "Hospital, medical and infectious waste incinerator (HMIWI)" means any device that combusts any amount of hospital, medical and infectious waste.
(10) "Large HMIWI" means:
(A) a HMIWI whose maximum design waste burning capacity is more than 500 pounds per hour;
(B) a continuous or intermittent HMIWI whose maximum charge rate is more than 500 pounds per hour; or
(C) a batch HMIWI whose maximum charge rate is more than 4,000 pounds per day.
(11) "Hospital waste" means discards generated at a hospital, except unused items returned to the manufacturer. The definition of hospital waste does not include human corpses, remains, and anatomical parts that are intended for interment or cremation.
(12) "Institutional facility" means a land-based facility owned or operated by an organization having a governmental, educational, civic, or religious purpose, such as a school, hospital, prison, military installation, church, or other similar establishment or facility.
(13) "Institutional waste" means solid waste that is combusted at any institutional facility using controlled flame combustion in an enclosed, distinct operating unit:
(A) whose design does not provide for energy recovery and
(B) which is operated without energy recovery or operated with only waste heat recovery.
Institutional waste also means solid waste combusted on site in an air curtain incinerator that is a distinct operating unit of any institutional facility.
(14) "Institutional waste incineration unit" means any combustion unit that combusts institutional waste and is a distinct operating unit of the institutional facility that generated the waste.
(15) "Large municipal waste combustor" means each municipal waste combustor unit with a combustion capacity greater than 250 tons per day of municipal solid waste.
(16) "Medical and Infectious Waste" means any waste generated in the diagnosis, treatment, or immunization of human beings or animals, in research pertaining thereto, or in the production or testing of biologicals that is listed in Part (A)(i) through (A)(vii) of this Subparagraph.
(A) The definition of medical and infectious waste includes:
(i) cultures and stocks of infectious agents and associated biologicals, including:
(I) cultures from medical and pathological laboratories;
(II) cultures and stocks of infectious agents from research and industrial laboratories;

(III) wastes from the production of biologicals;
(IV) discarded live and attenuated vaccines; and
(V) culture dishes and devices used to transfer, inoculate, and mix cultures;
(ii) human pathological waste, including tissues, organs, and body parts and body fluids that are removed during surgery or autopsy, or other medical procedures, and specimens of body fluids and their containers;
(iii) human blood and blood products including:
(I) liquid waste human blood;
(II) products of blood;
(III) items saturated or dripping with human blood; or
(IV) items that were saturated or dripping with human blood that are now caked with dried human blood including serum, plasma, and other blood components, and their containers, which were used or intended for use in either patient care, testing and laboratory analysis or the development of pharmaceuticals. Intravenous bags are also included in this category;
(iv) sharps that have been used in animal or human patient care or treatment or in medical, research, or industrial laboratories, including hypodermic needles, syringes (with or without the attached needle), pasteur pipettes, scalpel blades, blood vials, needles with attached tubing, and culture dishes (regardless of presence of infectious agents). Also included are other types of broken or unbroken glassware that were in contact with infectious agents, such as used slides and cover slips;
(v) animal waste including contaminated animal carcasses, body parts, and bedding of animals that were known to have been exposed to infectious agents during research (including research in veterinary hospitals), production of biologicals or testing of pharmaceuticals;
(vi) isolation wastes including biological waste and discarded materials contaminated with blood, excretions, exudates, or secretions from humans who are isolated to protect others from highly communicable diseases, or isolated animals known to be infected with highly communicable diseases; and
(vii) unused sharps including the following unused or discarded sharps;
(I) hypodermic needles;
(II) suture needles;
(III) syringes; and
(IV) scalpel blades.
(B) The definition of medical and infectious waste does not include:
(i) hazardous waste identified or listed under 40 CFR Part 261;
(ii) household waste, as defined in 40 CFR 261.4(b)(1);
(iii) ash from incineration of medical and infectious waste, once the incineration process has been completed;
(iv) human corpses, remains, and anatomical parts that are intended for interment or cremation; and
(v) domestic sewage materials identified in 40 CFR 261.4(a)(1).
(17) "Medium HMIWI" means:
(A) a HMIWI whose maximum design waste burning capacity is more than 200 pounds per hour but less than or equal to 500 pounds per hour;
(B) a continuous or intermittent HMIWI whose maximum charge rate is more than 200 pounds per hour but less than or equal to 500 pounds per hour; or
(C) a batch HMIWI whose maximum charge rate is more than 1,600 pounds per day but less than or equal to 4,000 pounds per day.
(18) "Municipal waste combustor (MWC) or municipal waste combustor unit" means a municipal waste combustor as defined in 40 CFR 60.51b.
(19) "Municipal waste combustor plant" means one or more designated units at the same location.
(20) "Municipal waste combustor unit capacity" means the maximum charging rate of a municipal waste combustor unit expressed in tons per day of municipal solid waste combusted, calculated according to the procedures under 40 CFR 60.58b(j). Section 60.58b(j) includes procedures for determining municipal waste combustor unit capacity for continuous and batch feed municipal waste combustors.

(21) "Municipal-type solid waste (MSW) or Municipal Solid Waste" means municipal-type solid waste defined in 40 CFR 60.51b.
(22) "POTW" means a publicly owned treatment works as defined in 40 CFR 501.2.
(23) "Other solid waste incineration unit" or "OSWI unit" means either a very small municipal waste combustion unit or an institutional waste incineration unit, as defined in this Paragraph.
(24) "Same Location" means the same or contiguous property that is under common ownership or control including properties that are separated only by a street, road, highway, or other public right-of-way. Common ownership or control includes properties that are owned, leased, or operated by the same entity, parent entity, subsidiary, subdivision, or any combination thereof including any municipality or other governmental unit, or any quasi-governmental authority (e.g., a public utility district or regional waste disposal authority).
(25) "Sewage sludge incinerator" means any incinerator regulated under 40 CFR Part 503, Subpart E.
(26) "Sludge incinerator" means any incinerator regulated under Rule .1110 of this Subchapter but not under 40 CFR Part 503, Subpart E.
(27) "Small HMIWI" means:
(A) a HMIWI whose maximum design waste burning capacity is less than or equal to 200 pounds per hour;
(B) a continuous or intermittent HMIWI whose maximum charge rate is less than or equal to 200 pounds per hour; or
(C) a batch HMIWI whose maximum charge rate is less than or equal to 1,600 pounds per day.
(28) "Small municipal waste combustor" means each municipal waste combustor unit with a combustion capacity that is greater than 11 tons per day but not more than 250 tons per day of municipal solid waste.
(29) "Small remote HMIWI" means any small HMIWI which is located more than 50 miles from the boundary of the nearest Standard Metropolitan Statistical Area (SMSA) and which burns less than 2,000 pounds per week of hospital, medical and infectious waste. The 2,000 pound per week limitation does not apply during performance tests.
(30) "Standard Metropolitan Statistical Area (SMSA)" means any area listed in Office of Management and Budget (OMB) Bulletin No. 93-17, entitled "Revised Statistical Definitions for Metropolitan Areas" dated July 30, 1993. The referenced document cited by this Item is hereby incorporated by reference and does not include subsequent amendments or editions. A copy of this document may be obtained from the Division of Air Quality, P.O. Box 29580, Raleigh, North Carolina 27626-0580 at a cost of 10 cents ($0.10) per page or may be obtained through the internet at http://www.census.gov/population/estimates/metro-city/93mfips.txt .
(31) "Very small municipal waste combustion unit" means any municipal waste combustion unit that has the capacity to combust less than 35 tons per day of municipal solid waste or refuse-derived fuel, as determined by the calculations in 40 CFR 60.3076.
(b) Whenever reference is made to the Code of Federal Regulations in this Section, the definition in the Code of Federal
Regulations shall apply unless specifically stated otherwise in a particular rule.
History Note: Authority G.S. 143-213; 143-215.3(a)(1);
Eff. October 1, 1991;
Amended Eff. July 1, 2000; July 1, 1999; July 1, 1998; July 1, 1996; April 1, 1995; December 1, 1993;
Temporary Amendment Eff. March 1, 2002;
Amended Eff. July 1, 2007; August 1, 2002.

15A NCAC 02D .1203 HAZARDOUS WASTE INCINERATORS

(a) Applicability. This Rule applies to hazardous waste incinerators.
(b) Definitions. For the purpose of this Rule, the definitions contained in 40 CFR 260.10, 270.2, and 40 CFR 63.1201
shall apply in addition to the definitions in Rule .1202 of this Section.
(c) Emission Standards.
(1) The emission standards in this Paragraph apply to all incinerators subject to this Rule except where Rule .0524, .1110, or .1111 of this Subchapter applies. However, when Subparagraphs (8) or (9) of

this Paragraph or Paragraph (h) of this Rule and Rules .0524, .1110, or .1111 of this Subchapter regulate the same pollutant, the more restrictive provision for each pollutant shall apply, notwithstanding provisions of Rules .0524, .1110, or .1111 of this Subchapter to the contrary.
(2) Particulate Matter. Any incinerator subject to this Rule shall meet the particulate matter emission requirements of 40 CFR 264.343(c).
(3) Visible Emissions. Any incinerator subject to this Rule shall comply with Rule .0521 of this Subchapter for the control of visible emissions.
(4) Sulfur Dioxide. Any incinerator subject to this Rule shall comply with Rule .0516 of this Subchapter for the control of sulfur dioxide emissions.
(5) Odorous Emissions. Any incinerator subject to this Rule shall comply with Rule .1806 of this Subchapter for the control of odorous emissions.
(6) Hydrogen Chloride. Any incinerator subject to this Rule shall meet the hydrogen chloride emission requirements of 40 CFR 264.343(b). Compliance with this Subparagraph shall be determined by averaging emissions over a one-hour period.
(7) Mercury Emissions. The emissions of mercury and mercury compounds from the stack or chimney of any incinerator subject to this Rule shall not exceed 0.032 pounds per hour. Compliance with this Subparagraph shall be determined by averaging emissions over a one-hour period.
(8) Toxic Emissions. The owner or operator of any incinerator subject to this Rule shall demonstrate compliance with Section .1100 of this Subchapter according to 15A NCAC 02Q .0700 for the control of toxic emissions.
(9) Ambient Standards.
(A) In addition to the ambient air quality standards in Section .0400 of this Subchapter, the following ambient air quality standards, which are an annual average, in milligrams per cubic meter at 77 degrees F (25 degrees C) and 29.92 inches (760 mm) of mercury pressure and which are increments above background concentrations, shall apply aggregately to all incinerators at a facility subject to this Rule:
(i) arsenic and its compounds $2.3x10_{-7}$
(ii) beryllium and its compounds $4.1x10_{-6}$
(iii) cadmium and its compounds $5.5x10_{-6}$
(iv) chromium (VI) and its compounds $8.3x10_{-8}$
(B) The owner or operator of a facility with incinerators subject to this Rule shall demonstrate compliance with the ambient standards in Subparts (i) through (iv) of Part (A) of this Subparagraph by following the procedures set out in Rule .1106 of this Subchapter. Modeling demonstrations shall comply with the requirements of Rule .0533 of this Subchapter.
(C) The emission rates computed or used under Part (B) of this Subparagraph that demonstrate compliance with the ambient standards under Part (A) of this Subparagraph shall be specified as a permit condition for the facility with incinerators subject to this Rule as their allowable emission limits unless Rules .0524, .1110, or .1111 of this Subchapter requires more restrictive rates.
(d) Operational Standards.
(1) The operational standards in this Rule do not apply to any incinerator subject to this Rule when applicable operational standards in Rules .0524, .1110, or .1111 of this Subchapter apply.
(2) Hazardous waste incinerators shall comply with 15A NCAC 13A .0101 through .0119, which are administered and enforced by the Division of Waste Management.
(e) Test Methods and Procedures.
(1) The test methods and procedures described in Section .2600 of this Subchapter and in 40 CFR Part 60 Appendix A and 40 CFR Part 61 Appendix B shall be used to determine compliance with emission rates. Method 29 of 40 CFR Part 60 shall be used to determine emission rates for metals. However, Method 29 shall be used to sample for chromium (VI), and SW 846 Method 0060 shall be used for the analysis.
(2) The Director may require the owner or operator to test his incinerator to demonstrate compliance with the emission standards listed in Paragraph (c) of this Rule.
(f) Monitoring, Recordkeeping, and Reporting.
(1) The owner or operator of an incinerator subject to the requirements of this Rule shall comply with the monitoring, recordkeeping, and reporting requirements in Section .0600 of this Subchapter, 40 CFR

270.31, and 40 CFR 264.347.
(2) The owner or operator of an incinerator subject to the requirements of this Rule shall maintain and operate a continuous temperature monitoring and recording device for the primary chamber and, where there is a secondary chamber, for the secondary chamber. The owner or operator of an incinerator that has installed air pollution abatement equipment to reduce emissions of hydrogen chloride shall install, operate, and maintain continuous monitoring equipment to measure pH for wet scrubber systems and rate of alkaline injection for dry scrubber systems. The Director shall require the owner or operator of an incinerator with a permitted charge rate of 750 pounds per hour or more to install, operate, and maintain continuous monitors for oxygen or for carbon monoxide or both as necessary to determine proper operation of the incinerator. The Director may require the owner or operator of an incinerator with a permitted charge rate of less than 750 pounds per hour to install, operate, and maintain monitors for oxygen or for carbon monoxide or both as necessary to determine proper operation of the incinerator.
(g) Excess Emissions and Start-up and Shut-down. All incinerators subject to this Rule shall comply with Rule .0535,
Excess Emissions Reporting and Malfunctions, of this Subchapter.
(h) Incinerators subject to this Rule shall comply with the emission limits, operational specifications, and other restrictions or conditions determined by the Division of Waste Management under 40 CFR 270.32, establishing Resource
Conservation and Recovery Act permit conditions, as necessary to protect human health and the environment.
History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);
Eff. October 1, 1991;
Amended Eff. June 1, 2008; August 1, 2002; July 1, 2000; July 1, 1999; July 1, 1998; April 1, 1995.

15A NCAC 02D .1204 SEWAGE SLUDGE AND SLUDGE INCINERATORS

(a) Applicability. This Rule applies to sewage sludge and sludge incinerators.
(b) Definitions. For the purpose of this Rule, the definitions in 40 CFR Part 503 shall apply in addition to the definitions
in Rule .1202 of this Section.
(c) Emission Standards.
(1) The emission standards in this Paragraph apply to any incinerator subject to this Rule except where Rules .0524, .1110, or .1111 of this Subchapter applies. However when Subparagraphs (11) or (12) of this Paragraph and Rules .0524, .1110, or .1111 of this Subchapter regulate the same pollutant, the more restrictive provision for each pollutant shall apply, notwithstanding provisions of Rules .0524, .1110, or .1111 of this Subchapter to the contrary.
(2) Particulate Matter. Any incinerator subject to this Rule shall comply with one of the following emission standards for particulate matter:
(A) For refuse charge rates between 100 and 2000 pounds per hour, the allowable emissions rate for particulate matter from any stack or chimney of any incinerator subject to this Rule shall not exceed the level calculated with the equation E=0.002P, calculated to two significant figures, where "E" equals the allowable emission rate for particulate matter in pounds per hour and "P" equals the refuse charge rate in pounds per hour. For refuse charge rates of 0 to 100 pounds per hour the allowable emission rate is 0.2 pounds per hour. For refuse charge rates of 2000 pounds per hour or greater the allowable emission rate shall be 4.0 pounds per hour. Compliance with this Part shall be determined by averaging emissions over a block three-hour period.
(B) Instead of meeting the standards in Part (A) of this Subparagraph, the owner or operator of any incinerator subject to this Rule may choose to limit particulate emissions from the incinerator to 0.08 grains per dry standard cubic foot corrected to 12 percent carbon dioxide. In order to choose this option, the owner or operator of the incinerator shall demonstrate that the particulate ambient air quality standards will not be violated. To correct to 12 percent carbon dioxide, the measured concentration of particulate matter is multiplied by 12 and divided by the measured percent carbon dioxide. Compliance with this Part shall be determined by averaging emissions over a block three-hour period.

(3) Visible Emissions. Any incinerator subject to this Rule shall comply with Rule .0521 of this Subchapter for the control of visible emissions.
(4) Sulfur Dioxide. Any incinerator subject to this Rule shall comply with Rule .0516 of this Subchapter for the control of sulfur dioxide emissions.
(5) Odorous Emissions. Any incinerator subject to this Rule shall comply with Rule .1806 of this Subchapter for the control of odorous emissions.
(6) Hydrogen Chloride. Any incinerator subject to this Rule shall control hydrogen chloride emissions such that they do not exceed four pounds per hour unless they are reduced by at least 90 percent by weight or to no more than 50 parts per million by volume corrected to seven percent oxygen (dry basis). Compliance with this Subparagraph shall be determined by averaging emissions over a onehour period.
(7) Mercury Emissions. Emissions of mercury from any incinerator subject to this Rule are regulated under 15A NCAC 02D .1110.
(8) Beryllium Emissions. Emissions of beryllium from any incinerator subject to this Rule are regulated under 15A NCAC 02D .1110.
(9) Lead Emissions. The daily concentration of lead in sewage sludge fed to a sewage sludge incinerator shall meet the requirements specified in 40 CFR 503.43(c).
(10) Other Metal Emissions. The daily concentration of arsenic, cadmium, chromium, and nickel in sewage sludge fed to a sewage sludge incinerator shall meet the requirements specified in 40 CFR 503.43(d).
(11) Toxic Emissions. The owner or operator of any incinerator subject to this Rule shall demonstrate compliance with Section .1100 of this Subchapter according to 15A NCAC 02Q .0700.
(12) Ambient Standards.
(A) In addition to the ambient air quality standards in Section .0400 of this Subchapter, the following ambient air quality standards, which are an annual average, in milligrams per cubic meter at 77 degrees F (25 degrees C) and 29.92 inches (760 mm) of mercury pressure and which are increments above background concentrations, shall apply aggregately to all incinerators at a facility subject to this Rule:
(i) arsenic and its compounds $2.3x10_{-7}$
(ii) beryllium and its compounds $4.1x10_{-6}$
(iii) cadmium and its compounds $5.5x10_{-6}$
(iv) chromium (VI) and its compounds $8.3x10_{-8}$
(B) The owner or operator of a facility with incinerators subject to this Rule shall demonstrate compliance with the ambient standards in Subparts (i) through (iv) of Part (A) of this Subparagraph by following the procedures set out in Rule .1106 of this Subchapter. Modeling demonstrations shall comply with the requirements of Rule .0533 of this Subchapter.
(C) The emission rates computed or used under Part (B) of this Subparagraph that demonstrate compliance with the ambient standards under Part (A) of this Subparagraph shall be specified as a permit condition for the facility with incinerators subject to this Rule as their allowable emission limits unless Rules .0524, .1110, or .1111 of this Subchapter requires more restrictive rates.
(d) Operational Standards.
(1) The operational standards in this Rule do not apply to any incinerator subject to this Rule when applicable operational standards in Rules .0524, .1110, or .1111 of this Subchapter apply.
(2) Sewage Sludge Incinerators.
(A) The maximum combustion temperature for a sewage sludge incinerator shall be specified as a permit condition and be based on information obtained during the performance test of the sewage sludge incinerator to determine pollutant control efficiencies as needed to comply with .1204(c).
(B) The values for the operational parameters for the sewage sludge incinerator air pollution control device(s) shall be specified as a permit condition and be based on information obtained during the performance test of the sewage sludge incinerator to determine pollutant control efficiencies as needed to comply with .1204(c).
(C) The monthly average concentration for total hydrocarbons, or carbon monoxide as provided in 40 CFR 503.40(c), in the exit gas from a sewage sludge incinerator stack, corrected to zero percent moisture and seven percent oxygen as specified in 40 CFR 503.44, shall not exceed

100 parts per million on a volumetric basis using the continuous emission monitor required in
Part (f)(3)(A) of this Rule.
(3) Sludge Incinerators. The combustion temperature in a sludge incinerator shall not be less than 1200$_{o}$F.
The maximum oxygen content of the exit gas from a sludge incinerator stack shall be:
(A) 12 percent (dry basis) for a multiple hearth sludge incinerator;
(B) seven percent (dry basis) for a fluidized bed sludge incinerator;
(C) nine percent (dry basis) for an electric sludge incinerator; and
(D) 12 percent (dry basis) for a rotary kiln sludge incinerator.
(e) Test Methods and Procedures.
(1) The test methods and procedures described in Section .2600 of this Subchapter and in 40 CFR Part 60
Appendix A and 40 CFR Part 61 Appendix B shall be used to determine compliance with emission
rates. Method 29 of 40 CFR Part 60 shall be used to determine emission rates for metals. However,
Method 29 shall be used to sample for chromium (VI), and SW 846 Method 0060 shall be used for the
analysis.
(2) The Director may require the owner or operator to test his incinerator to demonstrate compliance with
the emission standards listed in Paragraph (c) of this Rule.
(3) The owner or operator of a sewage sludge incinerator shall perform testing to determine pollutant
control efficiencies of any pollution control equipment and obtain information on operational
parameters, including combustion temperature, to be specified as a permit condition.
(f) Monitoring, Recordkeeping, and Reporting.
(1) The owner or operator of an incinerator subject to the requirements of this Rule shall comply with the
monitoring, recordkeeping, and reporting requirements in Section .0600 of this Subchapter.
(2) The owner or operator of an incinerator subject to the requirements of this Rule shall maintain and
operate a continuous temperature monitoring and recording device for the primary chamber and, where
there is a secondary chamber, for the secondary chamber. The owner or operator of an incinerator that
has installed air pollution abatement equipment to reduce emissions of hydrogen chloride shall install,
operate, and maintain continuous monitoring equipment to measure pH for wet scrubber systems and
rate of alkaline injection for dry scrubber systems.
(3) In addition to the requirements of Subparagraphs (1) and (2) of this Paragraph, the owner or operator
of a sewage sludge incinerator shall:
(A) install, operate, and maintain, for each incinerator, continuous emission monitors to
determine the following:
(i) total hydrocarbon concentration of the incinerator stack exit gas according to 40
CFR 503.45(a) unless the requirements for continuously monitoring carbon
monoxide as provided in 40 CFR 503.40(c) are satisfied;
(ii) oxygen content of the incinerator stack exit gas; and
(iii) moisture content of the incinerator stack exit gas;
(B) monitor the concentration of beryllium and mercury from the sludge fed to the incinerator at
least as frequently as required by Rule .1110 of this Subchapter but in no case less than once
per year;
(C) monitor the concentrations of arsenic, cadmium, chromium, lead, and nickel in the sewage
sludge fed to the incinerator at least as frequently as required under 40 CFR 503.46(a)(2) and
(3);
(D) determine mercury emissions by use of Method 101 or 101A of 40 CFR Part 61, Appendix
B, where applicable to 40 CFR 61.55(a);
(E) maintain records of all material required under Paragraph (e) of this Rule and this Paragraph
according to 40 CFR 503.47; and
(F) for class I sludge management facilities (as defined in 40 CFR 503.9), POTWs (as defined in
40 CFR 501.2) with a design flow rate equal to or greater than one million gallons per day,
and POTWs that serve a population of 10,000 people or greater, submit the information
recorded in Part (D) of this Subparagraph to the Director on or before February 19 of each
year.
(g) Excess Emissions and Start-up and Shut-down. All incinerators subject to this Rule shall comply with Rule
.0535,
Excess Emissions Reporting and Malfunctions, of this Subchapter.
History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(4),(5);

Eff. October 1, 1991;
Amended Eff. June 1, 2008; August 1, 2002; July 1, 2000; July 1, 1999; July 1, 1998; July 1, 1996;
April 1, 1995; December 1, 1993.

15A NCAC 02D .1205 LARGE MUNICIPAL WASTE COMBUSTORS

(a) Applicability. This Rule applies to large municipal waste combustors as defined in Rule .1202 of this Section.
(b) Definitions. For the purpose of this Rule, the definitions contained in 40 CFR 60.31b (except administrator means
the Director of the Division of Air Quality) apply in addition to the definitions in Rule .1202 of this Section.
(c) Emission Standards.
(1) The emission standards in this Paragraph apply to any municipal waste combustor subject to the requirements of this Rule except where Rule .0524, .1110, or .1111 of this Subchapter applies. However, when Subparagraphs (13) or (14) of this Paragraph and Rule .0524, .1110, or .1111 of this Subchapter regulate the same pollutant, the more restrictive provision for each pollutant apply, notwithstanding provisions of Rules .0524, .1110, or .1111 of this Subchapter to the contrary.
(2) Particulate Matter. Emissions of particulate matter from each municipal waste combustor shall not exceed 25 milligrams per dry standard cubic meter corrected to seven percent oxygen.
(3) Visible Emissions. The emission limit for opacity from any municipal waste combustor shall not exceed 10 percent (6-minute average).
(4) Sulfur Dioxide. Emissions of sulfur dioxide from each municipal waste combustor shall be reduced by at least 75 percent by weight or volume or to no more than 29 parts per million by volume, whichever is less stringent. Percent reduction shall be determined from continuous emissions monitoring data and according to Reference Method 19, Section 12.5.4 of 40 CFR Part 60 Appendix A-7. Compliance with either standard is based on a 24-hour daily block geometric average of concentration data corrected to seven percent oxygen (dry basis).
(5) Nitrogen Oxide. Emissions of nitrogen oxides from each municipal waste combustor shall not exceed the emission limits in Table 1 to Subpart Cb of Part 60 "Nitrogen Oxide Guidelines for Designated Facilities." Nitrogen oxide emissions averaging is allowed as specified in 40 CFR 60.33b(d)(1)(i) through (d)(1)(v). If nitrogen oxide emissions averaging is used, the emissions shall not exceed Table 2 to Subpart Cb of Part 60 "Nitrogen Oxides Limits for Existing Designated Facilities Included in an Emission Averaging Plan at a Municipal Waste Combustor Plant."
(6) Odorous Emissions. Each municipal waste combustor shall comply with Rule .1806 of this Subchapter for the control of odorous emissions.
(7) Hydrogen Chloride. Emissions of hydrogen chloride from each municipal waste combustor shall be reduced by at least 95 percent (simultaneously at the inlet and outlet data sets with a minimum of three valid test periods, the length of each test period shall be a minimum of one-hour); or shall not exceed, as determined by Reference Method 26 or 26A of 40 CFR Part 60 Appendix A-8, more than 29 parts per million volume, whichever is less stringent. Compliance with this Subparagraph shall be determined by averaging emissions over three 1-hour test runs, with paired data sets for percent reduction and correction to seven percent oxygen (dry basis).
(8) Mercury Emissions. Emissions of mercury from each municipal waste combustor shall be reduced by at least 85 percent by weight of potential mercury emissions (simultaneously at the inlet and outlet data sets with a minimum of three valid test periods, the length of each test period shall be a minimum of one-hour); or shall not exceed, as determined by Reference Method 29 of 40 CFR Part 60 Appendix A-8 or ASTM D6784-02 (Ontario Hydro method), more than 50 micrograms per dry standard cubic meter, whichever is less stringent. Compliance with this Subparagraph shall be determined by averaging emissions over three 1-hour test runs corrected to seven percent oxygen (dry basis).
(9) Lead Emissions. Emissions of lead from each municipal waste combustor shall not exceed, as determined by Reference Method 29 of 40 CFR Part 60 Appendix A-8, 400 micrograms per dry standard cubic meter and corrected to seven percent oxygen.
(10) Cadmium Emissions. Emissions of cadmium from each municipal waste combustor shall not exceed, as determined by Reference Method 29 of 40 CFR Part 60 Appendix A-8, 35 micrograms per dry standard cubic meter and corrected to seven percent oxygen.
(11) Dioxins and Furans. Emissions of dioxins and furans from each municipal waste combustor:
(A) that employs an electrostatic precipitator-based emission control system, shall not exceed 35

nanograms per dry standard cubic meter (total mass dioxins and furans).
(B) that does not employ an electrostatic precipitator-based emission control system, shall not exceed 30 nanograms per dry standard cubic meter (total mass dioxins and furans).
Compliance with this Subparagraph shall be determined by averaging emissions over three test runs with a minimum of four hour duration per test run, performed in accordance with Reference Method 23 of 40 CFR Part 60 Appendix A-7, and corrected to seven percent oxygen.
(12) Fugitive Ash.
(A) On or after the date on which the initial performance test is completed, no owner or operator of a municipal waste combustor shall cause to be discharged to the atmosphere visible emissions of combustion ash from an ash conveying system (including conveyor transfer points) in excess of five percent of the observation period (i.e., nine minutes per three-hour block period), as determined by visible emission observations using Reference Method 22 of 40 CFR 60 Appendix A-7, except as provided in Part (B) of this Subparagraph. Compliance with this Part shall be determined from at least three one-hour observation periods when the facility transfers ash from the municipal waste combustor to the area where the ash is stored or loaded into containers or trucks.
(B) The emission limit specified in Part (A) of this Subparagraph covers visible emissions discharged to the atmosphere from buildings or enclosures, not the visible emissions discharged inside of the building or enclosures, of ash conveying systems.
(13) Toxic Emissions. The owner or operator of a municipal waste combustor shall demonstrate compliance with Section .1100 of this Subchapter according to 15A NCAC 02Q .0700.
(14) Ambient Standards.
(A) In addition to the ambient air quality standards in Section .0400 of this Subchapter, the following are annual average ambient air quality standards in milligrams per cubic meter at 77 degrees F (25 degrees C) and 29.92 inches (760 mm) of mercury pressure:
(i) arsenic and its compounds 2.3x10-7
(ii) beryllium and its compounds 4.1x10-6
(iii) cadmium and its compounds 5.5x10-6
(iv) chromium (VI) and its compounds 8.3x10-8
These are increments above background concentrations and apply aggregately to all municipal waste combustors at a facility subject to this Rule.
(B) The owner or operator of a facility with municipal waste combustors shall demonstrate compliance with the ambient standards in Subparts (i) through (iv) of Part (A) of this Subparagraph by following the procedures set out in Rule .1106 of this Subchapter.
Modeling demonstrations shall comply with the good engineering practice stack height requirements of Rule .0533 of this Subchapter.
(C) The emission rates computed or used under Part (B) of this Subparagraph that demonstrate compliance with the ambient standards under Part (A) of this Subparagraph shall be specified as a permit condition for the facility with municipal waste combustors as their allowable emission limits unless Rule .0524, .1110, or .1111 of this Subchapter requires more restrictive rates.
(15) The emission standards of Subparagraphs (1) through (14) of this Paragraph apply at all times except during periods of municipal waste combustor startup, shutdown, or malfunction that last no more than three hours.
(d) Operational Standards.
(1) The operational standards in this Rule do not apply to any municipal waste combustor when applicable operational standards in Rule .0524, .1110, or .1111 of this Subchapter apply.
(2) Each municipal waste combustor shall meet the following operational standards:
(A) The concentration of carbon monoxide at the municipal waste combustor outlet shall not exceed the applicable emissions level contained in Table 3 to Subpart Cb of Part 60 "Municipal Waste Combustor Operating Guidelines."
(B) The load level shall not exceed 110 percent of the maximum demonstrated municipal waste combustor load determined from the highest 4-hour block arithmetic average achieved during four consecutive hours in the course of the most recent dioxins and furans stack test that demonstrates compliance with the emission limits of Paragraph (c) of this Rule.

(C) The combustor operating temperature measured at the particulate matter control device inlet shall not exceed 63 degrees F above the maximum demonstrated particulate matter control device temperature from the highest 4-hour block arithmetic average measured at the inlet of the particulate matter control device during four consecutive hours in the course of the most recent dioxins and furans stack test that demonstrates compliance with the emission limits of Paragraph (c) of this Rule.
(D) The owner or operator of a municipal waste combustor with activated carbon control system to control dioxins and furans or mercury emissions shall maintain an eight-hour block average carbon feed rate at or above the highest average level established during the most recent dioxins and furans or mercury test.
(E) The owner or operator of a municipal waste combustor is exempted from limits on load level, temperature at the inlet of the particular matter control device, and carbon feed rate during:
(i) the annual tests for dioxins and furans;
(ii) the annual mercury tests for carbon feed requirements only;
(iii) the two weeks preceding the annual tests for dioxins and furans;
(iv) the two weeks preceding the annual mercury tests (for carbon feed rate requirements only); and
(v) any activities to improve the performance of the municipal waste combustor or its emission control including performance evaluations and diagnostic or new technology testing.
The municipal waste combustor load limit continues to apply and remains enforceable until and unless the Director grants a waiver in writing.
(F) The limits on load level for a municipal waste combustor are waived when the Director concludes that the emission control standards would not be exceeded based on test activities to evaluate system performance, test new technology or control technology, perform diagnostic testing, perform other activities to improve the performance; or perform other activities to advance the state of the art for emissions controls.
(3) The operational standards of this Paragraph apply at all times except during periods of municipal waste combustor startup, shutdown, or malfunction that last no more than three hours, with the following exception: For the purpose of compliance with the carbon monoxide emission limits in Subparagraph (2) of this Paragraph, if a loss of boiler water level control (e.g., boiler waterwall tube failure) or a loss of combustion air control (e.g., loss of combustion air fan, induced draft fan, combustion grate bar failure) is determined to be a malfunction according to 15A NCAC 02D .0535, the duration of the malfunction period is limited to 15 hours per occurrence. During such periods of malfunction, monitoring data shall be dismissed or excluded from compliance calculations, but shall be recorded and reported in accordance with the provisions of Paragraph (f) of this Rule.
(e) Test Methods and Procedures.
(1) The test methods and procedures described in Section .2600 of this Subchapter and in Parts (A) through (K) in this Subparagraph shall be used to demonstrate compliance:
(A) 40 CFR 60.58b(b) for continuous emissions monitoring of oxygen or carbon monoxide at each location where carbon monoxide, sulfur dioxide, or nitrogen oxides are monitored;
(B) 40 CFR 60.58b(c) for determination of compliance with particulate and opacity emission limits. The data from the continuous opacity monitoring system shall not be used to determine compliance with the opacity limit.
(C) 40 CFR 60.58b(d) for determination of compliance with emission limits for cadmium, lead and mercury;
(D) 40 CFR 60.58b(e) for determination of compliance with sulfur dioxide emission limits from continuous emissions monitoring data;
(E) 40 CFR 60.58b(f) for determination of compliance with hydrogen chloride emission limits;
(F) 40 CFR 60.58b(g) for determination of compliance with dioxin/furan emission limits;
(G) 40 CFR 60.58b(h) for determination of compliance with nitrogen oxides limits from continuous emission monitoring data;
(H) 40 CFR 60.58b(i) for determination of compliance with operating requirements under Paragraph (d);
(I) 40 CFR 60.58b(j) for determination of municipal waste combustor capacity;
(J) 40 CFR 60.58b(k) for determination of compliance with the fugitive ash emission limit; and

(K) 40 CFR 60.58b(m)(1) to determine parametric monitoring for carbon injection control systems.
(2) Method 29 of 40 CFR Part 60 Appendix A-8 shall be used to determine emission rates for metals. However, Method 29 shall be used only to collect sample for chromium (VI), and SW 846 Method 0060 shall be used for the analysis.
(3) The owner or operator shall conduct initial stack tests to measure the emission levels of dioxins and furans, cadmium, lead, mercury, beryllium, arsenic, chromium (VI), particulate matter, opacity, hydrogen chloride, and fugitive ash. Annual stack tests for the same pollutants except beryllium, arsenic, and chromium (VI) shall be conducted no less than 9 months and no more than 15 months since the previous test and must complete five performance tests in each 5-year calendar period.
(4) The testing frequency for dioxin and furan may be reduced to the alternative testing schedule specified in 40 CFR 60.58b(g)(5)(iii) if the owner or operator notifies the Director of the intent to begin the reduced dioxin and furan performance testing schedule during the following calendar year.
(5) The owner or operator of an affected facility may request that compliance with the dioxin and furan emission limit be determined using carbon dioxide measurements corrected to an equivalent of seven percent oxygen. The relationship between oxygen and carbon dioxide levels for the affected facility shall be established as specified in 40 CFR 60.58b(b)(6). The Director will approve the request after verification of the correct calculations that provides the relationship between oxygen and carbon dioxide levels and of the completeness of stack test data used to establish the relationship between oxygen and carbon dioxide levels.
(6) The Director may require the owner or operator of any municipal waste combustor subject to this Rule to test his municipal waste combustor to demonstrate compliance with the emission standards in Paragraph (c) of this Rule.
(f) Monitoring, Recordkeeping, and Reporting.
(1) The owner or operator of a municipal waste combustor shall comply with the monitoring, recordkeeping, and reporting requirements in Section .0600 of this Subchapter.
(2) The owner or operator of a municipal waste combustor that has installed air pollution abatement equipment to reduce emissions of hydrogen chloride shall install, operate, and maintain continuous monitoring equipment to measure pH for wet scrubber systems and rate of alkaline injection for dry scrubber systems.
(3) The owner or operator of a municipal waste combustor shall:
(A) install, calibrate, operate, and maintain, for each municipal waste combustor, continuous emission monitors to determine:
(i) sulfur dioxide concentration;
(ii) nitrogen oxides concentration;
(iii) oxygen or carbon dioxide concentration;
(iv) opacity according to 40 CFR 60.58b(c); and
(v) carbon monoxide at the combustor outlet and record the output of the system and shall follow the procedures and methods specified in 40 CFR 60.58b(i)(3);
(B) monitor the load level of each municipal waste combustor according to 40 CFR 60.58b(i)(6);
(C) monitor the temperature of each municipal waste combustor flue gases at the inlet of the particulate matter air pollution control device according to 40 CFR 60.58b(i)(7);
(D) monitor carbon feed rate of each municipal waste combustor carbon delivery system and total plant predicted quarterly usage if activated carbon is used to abate dioxins and furans or mercury emissions according to 40 CFR 60.58b(m)(2) and (m)(3);
(E) maintain records of the information listed in 40 CFR 60.59b(d)(1) through (d)(15) for a period of at least five years;
(F) following the first year of municipal combustor operation, submit an annual report specified in 40 CFR 60.59b(g) for municipal waste combustors no later than February 1 of each year following the calendar year in which the data were collected. Once the municipal waste combustor is subject to permitting requirements under 15A NCAC 02Q .0500, Title V Procedures, the owner or operator of an affected facility shall submit these reports semiannually; and
(G) submit a semiannual report specified in 40 CFR 60.59b(h) for each municipal waste combustor for any recorded pollutant or parameter that does not comply with the pollutant or parameter limit specified in this Section, according to the schedule specified in 40 CFR

60.59b(h)(6).
(g) Excess Emissions and Start-up and Shut-down. All municipal waste combustors shall comply with Rule .0535, Excess Emissions Reporting and Malfunctions, of this Subchapter.
(h) Operator Certification.
(1) Each facility operator and shift supervisor shall have completed full certification or scheduled a full certification exam with the American Society of Mechanical Engineers (ASME QRO-1-1994).
(2) The requirement to complete full certification or schedule a full certification exam with the American Society of Mechanical Engineers (ASME QRO-1-1994) does not apply to chief facility operators, shift supervisors, and control room operators who have obtained full certification from the American Society of Mechanical Engineers on or before July 1, 1998.
(3) No owner or operator of an affected facility shall allow the facility to be operated at any time unless one of the following persons is on duty and at the affected facility;
(A) a fully certified chief facility operator;
(B) a provisionally certified chief facility operator who is scheduled to take the full certification exam within six months;
(C) a fully certified shift supervisor; or
(D) a provisionally certified shift supervisor who is scheduled to take the full certification exam within six months.
(4) Operator Substitution
(A) A provisionally certified control room operator may perform the duties of the certified chief facility operator or certified shift supervisor if both are off site for 12 hours or less and no other certified operator is on site.
(B) If the certified chief facility operator and certified shift supervisor are both off site for longer than 12 hours but for two weeks or less, then the owner or operator of the affected facility must record the period when the certified chief facility operator and certified shift supervisor are off site and include that information in the annual report as specified under 60.59b(g)(5).
(C) If the certified chief facility operator and certified shift supervisor are off site for more than two weeks, and no other certified operator is on site, the provisionally certified control room operator may perform the duties of the certified chief facility operator or certified shift supervisor. However, the owner or operator of the affected facility must notify the Director in writing and state what caused the absence and actions are being taken to ensure that a certified chief facility operator or certified shift supervisor is on site as expeditiously as practicable. The notice shall be delivered within 30 days of the start date of when the provisionally certified control room operator takes over the duties of the certified chief facility operator or certified shift supervisor. A status report and corrective action summary shall be submitted to the Director every four weeks following the initial notification.
(D) If the Director provides notice that the status report or corrective action summary is disapproved, the municipal waste combustor may continue operation for 90 days, but then must cease operation. If corrective actions are taken in the 90-day period such that the Director withdraws the disapproval, municipal waste combustor operation may continue.
(E) The Director shall disapprove the status report or corrective action summary report, described in Part (C) of this Subparagraph, if operating permit requirements are not being met, the status and corrective action reports indicate that the effort to have a certified chief facility operator or certified shift supervisor on site as expeditiously as practicable is not being met, or the reports are not delivered in a timely manner.
(5) A provisionally certified operator who is newly promoted or recently transferred to a shift supervisor position or a chief facility operator position at the municipal waste combustion facility may perform the duties of the certified chief facility operator or certified shift supervisor without notice to, or approval by, the Director for up to six months before taking the ASME QRO - Certification for Municipal Solid Waste Combustion Facilities Operators.
(6) If the certified chief facility operator and certified shift supervisor are both unavailable, a provisionally certified control room operator who is scheduled to take the full certification exam, may fulfill the requirements of this Subparagraph.
The referenced ASME exam (ASME QRO-1-1994), "Standard for the Qualification and Certification of Resource Recovery Facility Operators," in this Paragraph is hereby incorporated by reference and includes subsequent amendments

and editions. Copies of the referenced ASME exam may be obtained from the American Society of Mechanical Engineers (ASME), 22 Law Drive, Fairfield, NJ 07007, at a cost of forty-nine dollars ($49.00).
(i) Training.
(1) The owner or operator of each municipal waste combustor shall develop and update on a yearly basis a site-specific operating manual that shall address the elements of municipal waste combustor operation specified in 40 CFR 60.54b(e)(1) through (e)(11). The operating manual shall be kept in a readily accessible location for all persons required to undergo training under Subparagraph (2) of this Paragraph. The operating manual and records of training shall be available for inspection by the personnel of the Division on request.
(2) The owner or operator of the municipal waste combustor plant shall establish a training program to review the operating manual according to the schedule specified in Parts (A) and (B) of this Subparagraph with each person who has responsibilities affecting the operation of the facility including chief facility operators, shift supervisors, control room operators, ash handlers, maintenance personnel, and crane and load handlers:
(A) A date prior to the day when the person assumes responsibilities affecting municipal waste combustor operation; and
(B) Annually, following the initial training required by Part (A) of this Subparagraph.
History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3),(4),(5); 40 CFR 60.35b; 40 CFR 60.34e; 40 CFR 60.1515;
Eff. October 1, 1991;
Amended Eff. July 1, 2000; July 1, 1999; July 1, 1998; July 1, 1996; April 1, 1995;
Temporary Amendment Eff. March 1, 2002;
Amended Eff. August 1, 2002;
Temporary Amendment Eff. March 1, 2003;
Temporary Amendment Expired December 12, 2003;
Amended Eff. July 1, 2010; April 1, 2004.

15A NCAC 02D .1206 HOSPITAL, MEDICAL, AND INFECTIOUS WASTE INCINERATORS

(a) Applicability. This Rule applies to any hospital, medical, and infectious waste incinerator (HMIWI), except:
(1) any HMIWI required to have a permit under Section 3005 of the Solid Waste Disposal Act;
(2) any pyrolysis unit;
(3) any cement kiln firing hospital waste or medical and infectious waste;
(4) any physical or operational change made to an existing HMIWI solely for the purpose of complying with the emission standards for HMIWIs in this Rule. These physical or operational changes are not considered a modification and do not result in an existing HMIWI becoming subject to the provisions of 40 CFR Part 60, Subpart Ec;
(5) any HMIWI during periods when only pathological waste, low-level radioactive waste, or chemotherapeutic waste is burned, provided that the owner or operator of the HMIWI:
(A) notifies the Director of an exemption claim; and
(B) keeps records on a calendar quarter basis of the periods of time when only pathological waste, low-level radioactive waste, or chemotherapeutic waste is burned; or
(6) any co-fired HMIWI, if the owner or operator of the co-fired HMIWI:
(A) notifies the Director of an exemption claim;
(B) provides an estimate of the relative weight of hospital, medical and infectious waste, and other fuels or wastes to be combusted; and
(C) keeps records on a calendar quarter basis of the weight of hospital, medical and infectious waste combusted, and the weight of all other fuels and wastes combusted at the co-fired HMIWI.
(b) Definitions. For the purpose of this Rule, the definitions contained in 40 CFR 60.51c shall apply in addition to the
definitions in Rule .1202 of this Section.
(c) Emission Standards.
(1) The emission standards in this Paragraph apply to all HMIWIs subject to this Rule except where Rules .0524, .1110, or .1111 of this Subchapter applies. However, when Subparagraphs (7) or (8) of this

Paragraph and Rules .0524, .1110, or .1111 of this Subchapter regulate the same pollutant, the more restrictive provision for each pollutant shall apply, notwithstanding provisions of Rules .0524, .1110, or .1111 of this Subchapter to the contrary;
(2) Prior to July 1, 2013, each HMIWI for which construction was commenced on or before June 20, 1996, or for which modification is commenced on or before March 16, 1998, shall not exceed the requirements listed in Table 1A of Subpart Ce of 40 CFR Part 60;
(3) On or after July 1, 2013, each HMIWI for which construction was commenced on or before June 20, 1996, or for which modification is commenced on or before March 16, 1998, shall not exceed the requirements listed in Table 1B of Subpart Ce of 40 CFR Part 60;
(4) Each HMIWI for which construction was commenced after June 20, 1996 but no later than December 1, 2008, or for which modification is commenced after March 16, 1998 but no later than April 6, 2010, shall not exceed the more stringent of the requirements listed in Table 1B of Subpart Ce and Table 1A of Subpart Ec of 40 CFR Part 60;
(5) Each small remote HMIWI for which construction was commenced on or before June 20, 1996, or for which modification was commenced on or before March 16, 1998, and which burns less than 2,000 pounds per week of hospital waste and medical or infectious waste shall not exceed emission standards listed in Table 2A of Subpart Ce of 40 CFR Part 60 before July 1, 2013. On or after July 1, 2013, each small remote HMIWI shall not exceed emission standards listed in Table 2B of Subpart Ce of 40 CFR Part 60;
(6) Visible Emissions. Prior to July 1, 2013, the owner or operator of any HMIWI shall not cause to be discharged into the atmosphere from the stack of the HMIWI any gases that exhibit greater than 10 percent opacity (6-minute block average). On or after July 1, 2013, the owner or operator of any HMIWI shall not cause to be discharged into the atmosphere from the stack of the HMIWI any gases that exhibit greater than six percent opacity six-minute block average);
(7) Toxic Emissions. The owner or operator of any HMIWI subject to this Rule shall demonstrate compliance with Section .1100 of this Subchapter according to 15A NCAC 02Q .0700; and
(8) Ambient Standards.
(A) In addition to the ambient air quality standards in Section .0400 of this Subchapter, the following ambient air quality standards, which are an annual average, in milligrams per cubic meter at 77 degrees F (25 degrees C) and 29.92 inches (760 mm) of mercury pressure, and which are increments above background concentrations, shall apply aggregately to all HMIWIs at a facility subject to this Rule:
(i) arsenic and its compounds $2.3x10^{-7}$
(ii) beryllium and its compounds $4.1x10^{-6}$
(iii) cadmium and its compounds $5.5x10^{-6}$
(iv) chromium (VI) and its compounds $8.3x10^{-8}$;
(B) The owner or operator of a facility with HMIWIs subject to this Rule shall demonstrate compliance with the ambient standards in Subparts (i) through (iv) of Part (A) of this Subparagraph by following the procedures set out in Rule .1106 of this Subchapter. Modeling demonstrations shall comply with the requirements of Rule .0533 of this Subchapter; and
(C) The emission rates computed or used under Part (B) of this Subparagraph that demonstrate compliance with the ambient standards under Part (A) of this Subparagraph shall be specified as a permit condition for the facility with HMIWIs subject to this Rule as their allowable emission limits unless Rules .0524, .1110, or .1111 of this Subchapter requires more restrictive rates.
(d) Operational Standards.
(1) The operational standards in this Rule do not apply to any HMIWI subject to this Rule when applicable operational standards in Rule .0524, .1110, or .1111 of this Subchapter apply;
(2) Annual Equipment Inspection.
(A) Each HMIWI shall undergo an equipment inspection initially within 6 months upon this Rule's effective date and an annual equipment inspection (no more than 12 months following the previous annual equipment inspection);
(B) The equipment inspection shall include all the elements listed in 40 CFR 60.36e(a)(1)(i) through (xvii);
(C) Any necessary repairs found during the inspection shall be completed within 10 operating

days of the inspection unless the owner or operator submits a written request to the Director for an extension of the 10 operating day period; and
(D) The Director shall grant the extension if the owner or operator submits a written request to the Director for an extension of the 10 operating day period if the owner or operator of the small remote HMIWI demonstrates that achieving compliance by the time allowed under this Part is not feasible, the Director does not extend the time allowed for compliance by more than 30 days following the receipt of the written request, and the Director concludes that the emission control standards would not be exceeded if the repairs were delayed;
(3) Air Pollution Control Device Inspection.
(A) Each HMIWI shall undergo air pollution control device inspections, as applicable, initially within six months upon this Rule's effective date and annually (no more than 12 months following the previous annual air pollution control device inspection) to inspect air pollution control device(s) for proper operation, if applicable: ensure proper calibration of thermocouples, sorbent feed systems, and any other monitoring equipment; and generally observe that the equipment is maintained in good operating condition. Any necessary repairs found during the inspection shall be completed within 10 operating days of the inspection unless the owner or operator submits a written request to the Director for an extension of the 10 operating day period; and
(B) The Director shall grant the extension if the owner or operator of the HMIWI demonstrates that achieving compliance by the 10 operating day period is not feasible, the Director does not extend the time allowed for compliance by more than 30 days following the receipt of the written request, and the Director concludes that the emission control standards would not be exceeded if the repairs were delayed;
(4) Any HMIWI, except for a small HMIWI for which construction was commenced on or before June 20, 1996, or for which modification was commenced on or before March 16, 1998, and subject to the requirements listed in Table 1B of Subpart Ce of 40 CFR Part 60, shall comply with 40 CFR 60.56c except for:
(A) Before July 1, 2013, the test methods listed in Paragraphs 60.56c(b)(7) and (8), the fugitive emissions testing requirements under 40 CFR 60.56c(b)(14) and (c)(3), the CO CEMS requirements under 40 CFR 60.56c(c)(4), and the compliance requirements for monitoring listed in 40 CFR 60.56c(c)(5)(ii) through (v), (c)(6), (c)(7), (e)(6) through (10), (f)(7) through (10), (g)(6) through (10), and (h); and
(B) On or after July 1, 2013, sources subject to the emissions limits under Table 1B of Subject Ce of 40 CFR Part 60 or more stringent of the requirements listed in Table 1B of Subpart 1B of Subpart Ce of 40 CFR Part 60 and Table 1A of Subpart Ec of 40 CFR Part 60 may, however, elect to use CO CEMS as specified under 40 CFR 60.56c(c)(4) or bag detection systems as specified under 40 CFR 60.57c(h);
(5) Prior to July 1, 2013, the owner or operator of any small remote HMIWI shall comply with the following compliance and performance testing requirements:
(A) conduct the performance testing requirements in 40 CFR 60.56c(a), (b)(1) through (b)(9), (b)(11)(mercury only), and (c)(1). The 2,000 pound per week limitation does not apply during performance tests;
(B) establish maximum charge rate and minimum secondary chamber temperature as site-specific operating parameters during the initial performance test to determine compliance with applicable emission limits; and
(C) following the date on which the initial performance test is completed, ensure that the HMIWI does not operate above the maximum charge rate or below the minimum secondary chamber temperature measured as three hour rolling averages, calculated each hour as the average of all previous three operating hours, at all times except during periods of start-up, shut-down and malfunction. Operating parameter limits do not apply during performance tests. Operation above the maximum charge rate or below the minimum secondary chamber temperature shall constitute a violation of the established operating parameters;
(6) On or after July 1, 2013, any small remote HMIWI constructed on or before June 20, 1996, or for which modification was commenced on or before March 16, 1998, is subject to the requirements listed in Table 2B of Subpart Ce of 40 CFR Part 60. The owner or operator shall comply with the compliance and performance testing requirements of 40 CFR 60.56c, excluding test methods listed in

40 CFR 60.56c(b)(7), (8), (12), (13) (Pb and Cd), and (14), the annual PM, CO, and HCl emissions testing requirements under 40 CFR 60.56c(c)(2), the annual fugitive emissions testing requirements under 40 CFR 60.56c(c)(3), the CO CEMS requirements under 40 CFR 60.56c(c)(4), and the compliance requirements for monitoring listed in 40 CFR 60.56c(c)(5) through (7), and (d) through (k);
(7) On or after July 1, 2013, any small remote HMIWI For which construction was commenced on or before June 20, 1996, or for which modification was commenced on or before March 16, 1998, subject to the requirements listed in Table 2A or 2B of Subpart Ce of 40 CFR Part 60, and not equipped with an air pollution control device shall meet the following compliance and performance testing requirements:
(A) Establish maximum charge rate and minimum secondary chamber temperature as sitespecific operating parameters during the initial performance test to determine compliance with applicable emission limits. The 2,000 pounds per week limitation does not apply during performance tests;
(B) The owner or operator shall not operate the HMIWI above the maximum charge rate or below the minimum secondary chamber temperature measured as 3-hour rolling averages (calculated each hour as the average of the previous three operating hours) at all times. Operating parameter limits shall not apply during performance tests. Operation above the maximum charge rate or below the minimum secondary chamber temperature shall constitute a violation of the established operating parameter(s); and
(C) Operation of an HMIWI above the maximum charge rate and below the minimum secondary chamber temperature (each measured on a three-hour rolling average) simultaneously shall constitute a violation of the PM, CO, and dioxin/furan emissions limits. The owner or operator of an HMIWI may conduct a repeat performance test within 30 days of violation of applicable operating parameter(s) to demonstrate that the designated facility is not in violation of the applicable emissions limit(s). Repeat performance tests conducted shall be conducted under process and control device operating conditions duplicating as nearly as possible those that indicated during the violation;
(8) On or after July 1, 2013, any small HMIWI constructed commenced emissions guidelines as promulgated on September 15, 1997, meeting all requirements listed in Table 2B of Subpart Ce of 40 CFR Part 60, which is located more than 50 miles from the boundary of the nearest Standard Metropolitan Statistical Area and which burns less than 2,000 pounds per week of hospital, medical and infectious waste and is subject to the requirements listed in Table 2B of Subpart Ce of 40 CFR Part 60. The 2,000 pounds per week limitation does not apply during performance tests. The owner or operator shall comply with the compliance and performance testing requirements of 40 CFR 60.56c, excluding the annual fugitive emissions testing requirements under 40 CFR 60.56c(c)(3),the CO CEMS requirements under 40 CFR 60.56c(c)(4), and the compliance requirements for monitoring listed in 40 CFR 60.56c(c)(5)(ii) through (v), (c)(6), (c)(7), (e)(6) through (10), (f)(7) through (10), and (g)(6) through (10). The owner or operator may elect to use CO CEMS as specified under 40 CFR 60.56c(c)(4) or bag leak detection systems as specified under 40 CFR 60.57c(h); and
(9) On or after July 1, 2013, the owner or operator of any HMIWI equipped with selective noncatalytic reduction technology shall:
(A) Establish the maximum charge rate, the minimum secondary chamber temperature, and the minimum reagent flow rate as site specific operating parameters during the initial performance test to determine compliance with the emissions limits;
(B) Ensure that the affected facility does not operate above the maximum charge rate, or below the minimum secondary chamber temperature or the minimum reagent flow rate measured as three-hour rolling averages (calculated each hour as the average of the previous three operating hours) at all times. Operating parameter limits shall not apply during performance tests; and
(C) Operation of any HMIWI above the maximum charge rate, below the minimum secondary chamber temperature, and below the minimum reagent flow rate simultaneously shall constitute a violation of the NO_x emissions limit. The owner or operator may conduct a repeat performance test within 30 days of violation of applicable operating parameter(s) to demonstrate that the affected facility is not in violation of the applicable emissions limit(s). Repeat performance tests conducted pursuant to this paragraph shall be conducted using the

identical operating parameters that indicated a violation.
(e) Test Methods and Procedures.
(1) The test methods and procedures described in Section .2600 of this Subchapter and in 40 CFR Part 60 Appendix A and 40 CFR Part 61 Appendix B shall be used to determine compliance with emission rates. Method 29 of 40 CFR Part 60 shall be used to determine emission rates for metals. However, Method 29 shall be used to sample for chromium (VI), and SW 846 Method 0060 shall be used for the analysis; and
(2) The Director may require the owner or operator to test the HMIWI to demonstrate compliance with the emission standards listed in Paragraph (c) of this Rule.
(f) Monitoring, Recordkeeping, and Reporting.
(1) The owner or operator of an HMIWI subject to the requirements of this Rule shall comply with the monitoring, recordkeeping, and reporting requirements in Section .0600 of this Subchapter;
(2) The owner or operator of an HMIWI subject to the requirements of this Rule shall maintain and operate a continuous temperature monitoring and recording device for the primary chamber and, where there is a secondary chamber, for the secondary chamber. The owner or operator of an HMIWI that has installed air pollution abatement equipment to reduce emissions of hydrogen chloride shall install, operate, and maintain continuous monitoring equipment to measure pH for wet scrubber systems and rate of alkaline injection for dry scrubber systems. The Director shall require the owner or operator of an HMIWI with a permitted charge rate of 750 pounds per hour or more to install, operate, and maintain continuous monitors for oxygen or for carbon monoxide or both as necessary to determine proper operation of the HMIWI. The Director may require the owner or operator of an HMIWI with a permitted charge rate of less than 750 pounds per hour to install, operate, and maintain monitors for oxygen or for carbon monoxide or both as necessary to determine proper operation of the HMIWI;
(3) In addition to the requirements of Subparagraphs (1) and (2) of this Paragraph, the owner or operator of a HMIWI shall comply with the reporting and recordkeeping requirements listed in 40 CFR 60.58c(b), (c), (d), (e), and (f), excluding 40 CFR 60.58c(b)(2)(ii) and (b)(7);
(4) In addition to the requirements of Subparagraphs (1), (2) and (3) of this Paragraph, the owner or operator of a small remote HMIWI shall:
(A) maintain records of the annual equipment inspections, any required maintenance, and any repairs not completed within 10 days of an inspection;
(B) submit an annual report containing information recorded in Part (A) of this Subparagraph to the Director no later than 60 days following the year in which data were collected. Subsequent reports shall be sent no later than 12 calendar months following the previous report. The report shall be signed by the HMIWI manager; and
(C) submit the reports required by Parts (A) and (B) of this Subparagraph to the Director semiannually once the HMIWI is subject to the permitting procedures of 15A NCAC 02Q .0500, Title V Procedures;
(5) Waste Management Guidelines. The owner or operator of a HMIWI shall comply with the requirements of 40 CFR 60.55c for the preparation and submittal of a waste management plan;
(6) Except as provided in Subparagraph (7) of this Paragraph, the owner or operator of any HMIWI shall comply with the monitoring requirements in 40 CFR 60.57c;
(7) The owner or operator of any small remote HMIWI shall:
(A) install, calibrate, maintain, and operate a device for measuring and recording the temperature of the secondary chamber on a continuous basis, the output of which shall be recorded, at a minimum, once every minute throughout operation;
(B) install, calibrate, maintain, and operate a device which automatically measures and records the date, time, and weight of each charge fed into the HMIWI; and
(C) obtain monitoring data at all times during HMIWI operation except during periods of monitoring equipment malfunction, calibration, or repair. At a minimum, valid monitoring data shall be obtained for 75 percent of the operating hours per day and for 90 percent of the operating hours per calendar quarter that the HMIWI is combusting hospital, medical, and infectious waste;
(8) On or after July 1, 2013, any HMIWI, except for small remote HMIWI not equipped with an air pollution control device, subject to the emissions requirements in Table 1B or Table 2B of Subpart Ce of 40 CFR Part 60, or the more stringent of the requirements listed in Table 1B of Subpart Ce of 40 CFR Part 60 and Table 1A of Subpart Ec of 40 CFR Part 60, shall perform the monitoring

requirements listed in 40 CFR 60.57c;
(9) On or after July 1, 2013, the owner or operator of a small remote HMIWI, not equipped with an air pollution control device and subject to the emissions requirements in Table 2B of Subpart Ce of 40 CFR Part 60 shall:
(A) install, calibrate (to manufacturers' specifications), maintain, and operate a device for measuring and recording the temperature of the secondary chamber on a continuous basis, the output of which shall be recorded, at a minimum, once every minute throughout operation;
(B) install, calibrate (to manufacturers' specifications), maintain, and operate a device which automatically measures and records the date, time, and weight of each charge fed into the HMIWI; and
(C) obtain monitoring data at all times during HMIWI operation except during periods of monitoring equipment malfunction, calibration, or repair. At a minimum, valid monitoring data shall be obtained for 75 percent of the operating hours per day for 90 percent of the operating hours per calendar quarter that the designated facility is combusting hospital, medical and infectious waste;
(10) On or after July 1, 2013, any HMIWI for which construction commenced on or before June 20, 1996, or for which modification was commenced on or before March 16, 1998, and is subject to requirements listed in Table 1B of Subpart Ce of 40 CFR Part 60; or any HMIWI which construction was commenced after June 20, 1996 but no later than December 1, 2008, or for which modification is commenced after March 16, 1998 but no later than April 6, 2010, and subject to the requirements of Table 1B of this Subpart and Table 1A of Subpart Ec of 40 CFR Part 60, may use the results of previous emissions tests to demonstrate compliance with the emissions limits, provided that:
(A) Previous emissions tests had been conducted using the applicable procedures and test methods listed in 40 CFR 60.56c(b);
(B) The HMIWI is currently operated in a manner that would be expected to result in the same or lower emissions than observed during the previous emissions test and not modified such that emissions would be expected to exceed; and
(C) The previous emissions test(s) had been conducted in 1996 or later;
(11) On or after July 1, 2013, any HMIWI, (with the exception of small remote HMIWI and HMIWIs for which construction was commenced no later than December 1, 2008, or for which modification is commenced no later than April 6, 2010, and subject to the requirements listed in Table 1B of Subpart Ce of 40 CFR Part 60 or the more stringent of the requirements listed in Table 1B of Subpart Ce of 40 CFR Part 60 and Table 1A of Subpart Ec), shall include the reporting and recordkeeping requirements listed in 40 CFR 60.58c(b); and
(12) On or after July 1, 2013, any HMIWI for which construction was commenced no later than December 1, 2008, or for which modification is commenced no later than April 6, 2010, and subject to the requirements listed in Table 1B or the more stringent of the requirements listed in Table 1B of Subpart Ce of 40 CFR Part 60 and Table 1A of Subpart Ec of 40 CFR Part 60, is not required to maintain records required in 40 CFR 60.58c(b)(2)(xviii) (bag leak detection system alarms), (b)(2)(xix) (CO CEMS data), and (b)(7) (siting documentation).
(g) Excess Emissions and Start-up and Shut-down. All HMIWIs subject to this Rule shall comply with Rule .0535, Excess Emissions Reporting and Malfunctions, of this Subchapter. Emissions from bypass conditions shall not be exempted as provided under Paragraphs (c) and (g) of Rule 0.535 of this Subchapter.
(h) Operator Training and Certification.
(1) The owner or operator of a HMIWI shall not allow the HMIWI to operate at any time unless a fully trained and qualified HMIWI operator is accessible, either at the facility or available within one hour. The trained and qualified HMIWI operator may operate the HMIWI directly or be the direct supervisor of one or more HMIWI operators;
(2) Operator training and qualification shall be obtained by completing the requirements of 40 CFR 60.53c(c) through (g);
(3) The owner or operator of a HMIWI shall maintain, at the facility, all items required by 40 CFR 60.53c(h)(1) through (h)(10);
(4) The owner or operator of a HMIWI shall establish a program for reviewing the information required by Subparagraph (3) of this Paragraph annually with each HMIWI operator. The reviews of the information shall be conducted annually; and

(5) The information required by Subparagraph (3) of this Paragraph shall be kept in a readily accessible location for all HMIWI operators. This information, along with records of training shall be available for inspection by Division personnel upon request.
History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); 40 CFR 60.34e;
Eff. October 1, 1991;
Amended Eff. January 1, 2011; June 1, 2008; August 1, 2002; July 1, 2000; July 1, 1999; July 1, 1998; July 1, 1996; April 1, 1995; December 1, 1993.

15A NCAC 02D .1207 CONICAL INCINERATORS

(a) Purpose. The purpose of this Rule is to set forth the requirements of the Commission relating to the use of conical
incinerators in the burning of wood and agricultural waste.
(b) Scope. This Rule shall apply to all conical incinerators which are designed to incinerate wood and agricultural waste.
(c) Each conical incinerator subject to this Rule shall be equipped and maintained with:
(1) an underfire and an overfire forced air system and variable damper which is automatically controlled to ensure the optimum temperature range for the complete combustion of the amount and type of material waste being charged into the incinerator;
(2) a temperature recorder for continuously recording the temperature of the exit gas;
(3) a feed system capable of delivering the waste to be burned at a sufficiently uniform rate to prevent temperature from dropping below 800oF during normal operation, with the exception of one startup and one shutdown per day.
(d) The owner of the conical incinerator shall monitor and report ambient particulate concentrations using the appropriate method specified in 40 CFR Part 50 with the frequency specified in 40 CFR Part 58. The Director may require more frequent monitoring if measured particulate concentrations exceed the 24-hour concentration allowed under
15A NCAC 2D .0400. The owner or operator shall report the monitoring data quarterly to the Division.
(e) In no case shall the ambient air quality standards as defined in Section .0400 of this Subchapter be exceeded.
(f) The conical incinerator shall not violate the opacity standards in Rule .0521 of this Subchapter.
(g) The distance a conical incinerator is located and operated from the nearest structure(s) in which people live or work
shall be optimized to prevent air quality impact and shall be subject to approval by the Commission.
(h) New conical incinerators shall be in compliance with this Rule on startup.
History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(4),(5);
Eff. October 1, 1991;
Amended Eff. July 1, 2000; July 1, 1998.

15A NCAC 02D .1208 OTHER INCINERATORS

(a) Applicability.
(1) This Rule applies to any incinerator not covered under Rules .1203 through .1207, or .1210 through .1212 of this Section.
(2) If any incinerator subject to this Rule:
(A) is used solely to cremate pets; or
(B) if the emissions of all toxic air pollutants from an incinerator subject to this Rule and associated waste handling and storage are less than the levels listed in 15A NCAC 02Q .0711; the incinerator is exempt from Subparagraphs (b)(6) through (b)(9) and Paragraph (c) of this Rule.
(b) Emission Standards.
(1) The emission standards in this Rule apply to any incinerator subject to this Rule except where Rules .0524, 1110, or .1111 of this Subchapter apply. However, when Subparagraphs (8) or (9) of this Paragraph and Rules .0524, .1110, or .1111 of this Subchapter regulate the same pollutant, the more restrictive provision for each pollutant applies notwithstanding provisions of Rules .0524, .1110, or

.1111 of this Subchapter to the contrary.
(2) Particulate Matter. Any incinerator subject to this Rule shall comply with one of the following emission standards for particulate matter:
(A) For refuse charge rates between 100 and 2000 pounds per hour, the allowable emissions rate for particulate matter from any stack or chimney of any incinerator subject to this Rule shall not exceed the level calculated with the equation E=0.002P calculated to two significant figures, where "E" equals the allowable emission rate for particulate matter in pounds per hour and "P" equals the refuse charge rate in pounds per hour. For refuse charge rates of 0 to 100 pounds per hour the allowable emission rate in 0.2 pounds per hour. For refuse charge rates of 2000 pounds per hour or greater the allowable emission rate shall be 4.0 pounds per hour. Compliance with this Part shall be determined by averaging emissions over a threehour block period.
(B) Instead of meeting the standards in Part (A) of this Subparagraph, the owner or operator of any incinerator subject to this Rule may choose to limit particulate emissions from the incinerator to 0.08 grains per dry standard cubic foot corrected to 12 percent carbon dioxide. In order to choose this option, the owner or operator of the incinerator shall demonstrate that the particulate ambient air quality standards will not be violated. To correct to 12 percent carbon dioxide, the measured concentration of particulate matter is multiplied by 12 and divided by the measured percent carbon dioxide. Compliance with this Part shall be determined by averaging emissions over a three-hour block period.
(3) Visible Emissions. Any incinerator subject to this Rule shall comply with Rule .0521 of this Subchapter for the control of visible emissions.
(4) Sulfur Dioxide. Any incinerator subject to this Rule shall comply with Rule .0516 of this Subchapter for the control of sulfur dioxide emissions.
(5) Odorous Emissions. Any incinerator subject to this Rule shall comply with Rule .1806 of this Subchapter for the control of odorous emissions.
(6) Hydrogen Chloride. Any incinerator subject to this Rule shall control emissions of hydrogen chloride such that they do not exceed four pounds per hour unless they are reduced by at least 90 percent by weight or to no more than 50 parts per million by volume corrected to seven percent oxygen (dry basis). Compliance with this Subparagraph shall be determined by averaging emissions over a onehour period.
(7) Mercury Emissions. Emissions of mercury and mercury compounds from the stack or chimney of any incinerator subject to this Rule shall not exceed 0.032 pounds per hour. Compliance with this Subparagraph shall be determined by averaging emissions over a one-hour period.
(8) Toxic Emissions. The owner or operator of any incinerator subject to this Rule shall demonstrate compliance with Section .1100 of this Subchapter according to 15A NCAC 02Q .0700.
(9) Ambient Standards.
(A) In addition to the ambient air quality standards in Section .0400 of this Subchapter, the following ambient air quality standards, which are an annual average, in milligrams per cubic meter at 77 degrees F (25 degrees C) and 29.92 inches (760 mm) of mercury pressure, and which are increments above background concentrations, apply aggregately to all incinerators at a facility subject to this Rule:
(i) arsenic and its compounds $2.3x10^{-7}$
(ii) beryllium and its compounds $4.1x10^{-6}$
(iii) cadmium and its compounds $5.5x10^{-6}$
(iv) chromium (VI) and its compounds $8.3x10^{-8}$
(B) The owner or operator of a facility with incinerators subject to this Rule shall demonstrate compliance with the ambient standards in Subparts (i) through (iv) of Part (A) of this Subparagraph by following the procedures set out in Rule .1106 of this Subchapter. Modeling demonstrations shall comply with the requirements of Rule .0533 of this Subchapter.
(C) The emission rates computed or used under Part (B) of this Subparagraph that demonstrate compliance with the ambient standards under Part (A) of this Subparagraph shall be specified as a permit condition for the facility with incinerators subject to this Rule as their allowable emission limits unless Rule .0524, .1110 or .1111 of this Subchapter requires more restrictive rates.

(c) Operational Standards.
(1) The operational standards in this Rule do not apply to any incinerator subject to this Rule when applicable operational standards in Rule .0524, .1110, or .1111 of this Subchapter apply.
(2) Crematory Incinerators. Gases generated by the combustion shall be subjected to a minimum temperature of 1600 degrees F for a period of not less than one second.
(3) Other Incinerators. All incinerators not subject to any other rule in this Section shall meet the following requirement: Gases generated by the combustion shall be subjected to a minimum temperature of 1800 degrees F for a period of not less than one second. The temperature of 1800 degrees F shall be maintained at least 55 minutes out of each 60-minute period, but at no time shall the temperature go below 1600 degrees F.
(4) Except during start-up where the procedure has been approved according to Rule .0535(g) of this Subchapter, waste material shall not be loaded into any incinerator subject to this Rule when the temperature is below the minimum required temperature. Start-up procedures may be determined on a case-by-case basis according to Rule .0535(g) of this Subchapter. Any incinerator subject to this Rule shall have automatic auxiliary burners that are capable of maintaining the required minimum temperature in the secondary chamber excluding the heat content of the wastes.
(d) Test Methods and Procedures.
(1) The test methods and procedures described in Section .2600 of this Subchapter and in 40 CFR Part 60 Appendix A and 40 CFR Part 61 Appendix B shall be used to determine compliance with emission rates. Method 29 of 40 CFR Part 60 shall be used to determine emission rates for metals. However, Method 29 shall be used to sample for chromium (VI), and SW 846 Method 0060 shall be used for the analysis.
(2) The Director shall require the owner or operator to test his incinerator to demonstrate compliance with the emission standards listed in Paragraph (b) of this Rule if necessary to determine compliance with the emission standards of Paragraph (b) of this Rule.
(e) Monitoring, Recordkeeping, and Reporting.
(1) The owner or operator of an incinerator subject to the requirements of this Rule shall comply with the monitoring, recordkeeping, and reporting requirements in Section .0600 of this Subchapter.
(2) The owner or operator of an incinerator, except an incinerator meeting the requirements of Parts .1201(c)(4)(A) through (D) of this Section, shall maintain and operate a continuous temperature monitoring and recording device for the primary chamber and, where there is a secondary chamber, for the secondary chamber. The Director shall require a temperature monitoring device for incinerators meeting the requirements of Parts .1201(c)(4)(A) through (D) of this Section if the incinerator is in violation of the requirements of Part .1201(c)(4)(D) of this Section. The owner or operator of an incinerator that has installed air pollution abatement equipment to reduce emissions of hydrogen chloride shall install, operate, and maintain continuous monitoring equipment to measure pH for wet scrubber systems and rate of alkaline injection for dry scrubber systems. The Director shall require the owner or operator of an incinerator with a permitted charge rate of 750 pounds per hour or more to install, operate, and maintain continuous monitors for oxygen or for carbon monoxide or both as necessary to determine proper operation of the incinerator. The Director shall require the owner or operator of an incinerator with a permitted charge rate of less than 750 pounds per hour to install, operate, and maintain monitors for oxygen or for carbon monoxide or both if necessary to determine proper operation of the incinerator.
(f) Excess Emissions and Start-up and Shut-down. Any incinerator subject to this Rule shall comply with Rule .0535,
Excess Emissions Reporting and Malfunctions, of this Subchapter.
History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10);
Eff. July 1, 1998;
Amended Eff. August 1, 2008; June 1, 2008; July 1, 2007; January 1, 2005; August 1, 2002; July 1, 2000; July 1, 1999.

15A NCAC 02D .1209 COMPLIANCE SCHEDULES

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(4),(5);
Eff. October 1, 1991;

Amended Eff. July 1, 1999; July 1, 1998; April 1, 1995; December 1, 1993; March 2, 1992;
Repealed Eff. July 1, 2000.

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

(a) Applicability. With the exceptions in Paragraph (b) of this Rule, this Rule applies to the commercial and industrial
solid waste incinerators (CISWI).

(b) Exemptions. The following types of incineration units are exempted from this Rule:
(1) incineration units covered under Rules .1203 through .1206 of this Section;
(2) units, burning 90 percent or more by weight on a calendar-quarter basis, excluding the weight of auxiliary fuel and combustion air, of agricultural waste, pathological waste, low-level radioactive waste, or chemotherapeutic waste, if the owner or operator of the unit:
(A) notifies the Director that the unit qualifies for this exemption; and
(B) keeps records on a calendar-quarter basis of the weight of agricultural waste, pathological waste, low level radioactive waste, or chemotherapeutic waste burned, and the weight of all other fuels and wastes burned in the unit;
(3) small power production or cogeneration units if;
(A) the unit qualifies as a small power-production facility under Section 3(17)(C) of the Federal Power Act (16 U.S.C. 796(17)(C)) or as a cogeneration facility under section 3(18)(B) of the Federal Power Act (16 U.S.C. 796(18)(B));
(B) the unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity; and
(C) the owner or operator of the unit notifies the Director that the unit qualifies for this exemption;
(4) units that combust waste for the primary purpose of recovering metals;
(5) cyclonic barrel burners;
(6) rack, part, and drum reclamation units that burn the coatings off racks used to hold small items for application of a coating;
(7) cement kilns;
(8) chemical recovery units burning materials to recover chemical constituents or to produce chemical compounds as listed in 40 CFR 60.2555(n)(1) through (7);
(9) laboratory analysis units that burn samples of materials for the purpose of chemical or physical analysis;
(10) air curtain burners covered under Rule .1904 of this Subchapter.

(c) The owner or operator of a chemical recovery unit not listed under 40 CFR 60.2555(n) may petition the Director to
be exempted. The petition shall include all the information specified under 40 CFR 60.2559(a). The Director shall approve the exemption if he finds that all the requirements of 40 CFR 60.2555(n) are satisfied and that the unit burns materials to recover chemical constituents or to produce chemical compounds where there is an existing market for such
recovered chemical constituents or compounds.

(d) Definitions. For the purpose of this Rule, the definitions contained in 40 CFR 60.2875 apply in addition to the definitions in Rule .1202 of this Section.

(e) Emission Standards. The emission standards in this Rule apply to all incinerators subject to this Rule except where
Rules .0524, .1110, or .1111 of this Subchapter applies. When Subparagraphs (12) or (13) of this Paragraph and Rules
.0524, .1110, or .1111 of this Subchapter regulate the same pollutant, the more restrictive provision for each pollutant
applies, notwithstanding provisions of Rules .0524, .1110, or .1111 of this Subchapter to the contrary.
(1) Particulate Matter. Emissions of particulate matter from a CISWI unit shall not exceed 70 milligrams per dry standard cubic meter corrected to seven percent oxygen (dry basis).
(2) Opacity. Visible emissions from the stack of a CISWI unit shall not exceed 10 percent opacity (6-minute block average).
(3) Sulfur Dioxide. Emissions of sulfur dioxide from a CISWI unit shall not exceed 20 parts per million

by volume corrected to seven percent oxygen (dry basis).
(4) Nitrogen Oxides. Emissions of nitrogen oxides from a CISWI unit shall not exceed 368 parts per million by volume corrected to seven percent oxygen (dry basis).
(5) Carbon Monoxide. Emissions of carbon monoxide from a CIWI unit shall not exceed 157 parts per million by volume, corrected to seven percent oxygen (dry basis).
(6) Odorous Emissions. Any incinerator subject to this Rule shall comply with Rule .1806 of this Subchapter for the control of odorous emissions.
(7) Hydrogen Chloride. Emissions of hydrogen chloride from a CISWI unit shall not exceed 62 parts per million by volume, corrected to seven percent oxygen (dry basis).
(8) Mercury Emissions. Emissions of mercury from a CISWI unit shall not exceed 0.47 milligrams per dry standard cubic meter, corrected to seven percent oxygen.
(9) Lead Emissions. Emissions of lead from a CISWI unit shall not exceed 0.04 milligrams per dry standard cubic meter, corrected to seven percent oxygen.
(10) Cadmium Emissions. Emissions of cadmium from a CISWI unit shall not exceed 0.004 milligrams per dry standard cubic meter, corrected to seven percent oxygen.
(11) Dioxins and Furans. Emissions of dioxins and furans from a CISWI unit shall not exceed 0.41 nanograms per dry standard cubic meter (toxic equivalency basis), corrected to seven percent oxygen. Toxic equivalency is given in Table 4 of 40 CFR part 60, Subpart DDDD.
(12) Toxic Emissions. The owner or operator of any incinerator subject to this Rule shall demonstrate compliance with Section .1100 of this Subchapter according to 15A NCAC 02Q .0700.
(13) Ambient Standards.
(A) In addition to the ambient air quality standards in Section .0400 of this Subchapter, the following ambient air quality standards, which are an annual average, in milligrams per cubic meter at 77 degrees F (25 degrees C) and 29.92 inches (760 mm) of mercury pressure, and which are increments above background concentrations, apply aggregately to all incinerators at a facility subject to this Rule:
(i) arsenic and its compounds $2.3x10^{-7}$
(ii) beryllium and its compounds $4.1x10^{-6}$
(iii) cadmium and its compounds $5.5x10^{-6}$
(iv) chromium (VI) and its compounds $8.3x10^{-8}$
(B) The owner or operator of a facility with incinerators subject to this Rule shall demonstrate compliance with the ambient standards in Subparts (i) through (iv) of Part (A) of this Subparagraph by following the procedures set out in Rule .1106 of this Subchapter. Modeling demonstrations shall comply with the requirements of Rule .0533 of this Subchapter.
(C) The emission rates computed or used under Part (B) of this Subparagraph that demonstrate compliance with the ambient standards under Part (A) of this Subparagraph shall be specified as a permit condition for the facility with incinerators as their allowable emission limits unless Rules .0524, .1110, or .1111 of this Subchapter requires more restrictive rates.
(f) Operational Standards.
(1) The operational standards in this Rule do not apply to any incinerator subject to this Rule when applicable operational standards in Rules .0524, .1110, or .1111 of this Subchapter apply.
(2) If a wet scrubber is used to comply with emission limitations:
(A) operating limits for the following operating parameters shall be established:
(i) maximum charge rate, which shall be measured continuously, recorded every hour, and calculated using one of the following procedures:
(I) for continuous and intermittent units, the maximum charge rate is 110 percent of the average charge rate measured during the most recent compliance test demonstrating compliance with all applicable emission limitations; or
(II) for batch units, the maximum charge rate is 110 percent of the daily charge rate measured during the most recent compliance test demonstrating compliance with all applicable emission limitations;
(ii) minimum pressure drop across the wet scrubber, which shall be measured continuously, recorded every 15 minutes, and calculated as 90 percent of:
(I) the average pressure drop across the wet scrubber measured during the

most recent performance test demonstrating compliance with the
particulate matter emission limitations, or
(II) the average amperage to the wet scrubber measured during the most recent
performance test demonstrating compliance with the particulate matter
emission limitations;
(iii) minimum scrubber liquor flow rate, which shall be measured continuously,
recorded every 15 minutes, and calculated as 90 percent of the average liquor flow
rate at the inlet to the wet scrubber measured during the most recent compliance test
demonstrating compliance with all applicable emission limitations; and
(iv) minimum scrubber liquor pH, which shall be measured continuously, recorded
every 15 minutes, and calculated as 90 percent of the average liquor pH at the inlet
to the wet scrubber measured during the most recent compliance test demonstrating
compliance with all applicable emission limitations.
(B) A three hour rolling average shall be used to determine if operating parameters in Subparts
(A)(i) through (A)(iv) of this Subparagraph have been met.
(C) The owner or operator of the CISWI unit shall meet the operating limits established during
the initial performance test on the date the initial performance test is required or completed.
(3) If a fabric filter is used to comply with the emission limitations, then it shall be operated as specified in
40 CFR 60.2675(c);
(4) If an air pollution control device other than a wet scrubber is used or if emissions are limited in some
other manner to comply with the emission standards of Paragraph (e) of this Rule, the owner or
operator shall petition the Director for specific operating limits that shall be established during the
initial performance test and continuously monitored thereafter. The initial performance test shall not be
conducted until after the Director approves the petition. The petition shall include:
(A) identification of the specific parameters to be used as additional operating limits;
(B) explanation of the relationship between these parameters and emissions of regulated
pollutants, identifying how emissions of regulated pollutants change with changes in these
parameters, and how limits on these parameters will serve to limit emissions of regulated
pollutants;
(C) explanation of establishing the upper and lower limits for these parameters, which will
establish the operating limits on these parameters;
(D) explanation of the methods and instruments used to measure and monitor these parameters,
as well as the relative accuracy and precision of these methods and instruments;
(E) identification of the frequency and methods for recalibrating the instruments used for
monitoring these parameters.
The Director shall approve the petition if he finds that the requirements of this Subparagraph have
been satisfied and that the proposed operating limits will ensure compliance with the emission
standards in Paragraph (e) of this Rule.
(g) Test Methods and Procedures.
(1) For the purposes of this Paragraph, "Administrator" in 40 CFR 60.8 means "Director".
(2) The test methods and procedures described in Section .2600 of this Subchapter, in 40 CFR Part 60
Appendix A, 40 CFR Part 61 Appendix B, and 40 CFR 60.2690 shall be used to determine compliance
with emission standards in Paragraph (e) this Rule. Method 29 of 40 CFR Part 60 shall be used to
determine emission standards for metals. However, Method 29 shall be used to sample for chromium
(VI), and SW 846 Method 0060 shall be used for the analysis.
(3) All performance tests shall consist of a minimum of three test runs conducted under conditions
representative of normal operations. Compliance with emissions standards under Subparagraph (e)(1),
(3) through (5), and (7) through (11) of this Rule shall be determined by averaging three one-hour
emission tests. These tests shall be conducted within 12 months following the initial performance test
and within every twelve month following the previous annual performance test after that.
(4) The owner or operator of CISWI shall conduct an initial performance test as specified in 40 CFR 60.8
to determine compliance with the emission standards in Paragraph (e) of this Rule and to establish
operating standards using the procedure in Paragraph (f) of this Rule.
(5) The owner or operator of the CISWI unit shall conduct an annual performance test for particulate
matter, hydrogen chloride, and opacity as specified in 40 CFR 60.8 to determine compliance with the
emission standards for the pollutants in Paragraph (e) of this Rule.

(6) If the owner or operator of CISWI unit has shown, using performance tests, compliance with particulate matter, hydrogen chloride, and opacity for three consecutive years, the Director shall allow the owner or operator of CISWI unit to conduct performance tests for these three pollutants every third year. However, each test shall be within 36 months of the previous performance test. If the CISWI unit continues to meet the emission standards for these three pollutants the Director shall allow the owner or operator of CISWI unit to continue to conduct performance tests for these three pollutants every three years.
(7) If a performance test shows a deviation from the emission standards for particulate matter, hydrogen chloride, or opacity, the owner or operator of the CISWI unit shall conduct annual performance tests for these three pollutants until all performance tests for three consecutive years show compliance for particulate matter, hydrogen chloride, or opacity.
(8) The owner or operator of CISWI unit may conduct a repeat performance test at any time to establish new values for the operating limits.
(9) The owner or operator of the CISWI unit shall repeat the performance test if the feed stream is different than the feed streams used during any performance test used to demonstrate compliance.
(10) If the Director has evidence that an incinerator is violating a standard in Paragraph (e) or (f) of this Rule or that the feed stream or other operating conditions have changed since the last performance test, the Director may require the owner or operator to test the incinerator to demonstrate compliance with the emission standards listed in Paragraph (e) of this Rule at any time.
(h) Monitoring.
(1) The owner or operator of an incinerator subject to the requirements of this Rule shall comply with the monitoring, recordkeeping, and reporting requirements in Section .0600 of this Subchapter.
(2) The owner or operator of an incinerator subject to the requirements of this Rule shall establish, install, calibrate to manufacturers specifications, maintain, and operate:
(A) devices or methods for continuous temperature monitoring and recording for the primary chamber and, where there is a secondary chamber, for the secondary chamber;
(B) devices or methods for monitoring the value of the operating parameters used to determine compliance with the operating parameters established under Paragraph (f)(2) of this Rule;
(C) a bag leak detection system that meets the requirements of 40 CFR 60.2730(b) if a fabric filter is used to comply with the requirements of the emission standards in Paragraph (e) of this Rule; and
(D) equipment necessary to monitor compliance with the cite-specific operating parameters established under Paragraph (f)(4) of this Rule.
(3) The Director shall require the owner or operator of a CISWI unit with a permitted charge rate of 750 pounds per hour or more to install, operate, and maintain continuous monitors for oxygen or for carbon monoxide or both as necessary to determine proper operation of the CISWI unit.
(4) The Director shall require the owner or operator of a CISWI unit with a permitted charge rate of 750 pounds per hour or less to install, operate, and maintain continuous monitors for oxygen or for carbon monoxide or both if necessary to determine proper operation of the CISWI unit.
(5) The owner or operator of the CISWI unit shall conduct all monitoring at all times the CISWI unit is operating, except;
(A) malfunctions and associated repairs;
(B) required quality assurance or quality control activities including calibrations checks and required zero and span adjustments of the monitoring system.
(6) The data recorded during monitoring malfunctions, associated repairs, and required quality assurance or quality control activities shall not be used in assessing compliance with the operating standards in Paragraph (f) of this Rule.
(i) Recordkeeping, and Reporting.
(1) The owner or operator of CISWI unit shall maintain records required by this Rule on site in either paper copy or electronic format that can be printed upon request for a period of five years.
(2) The owner or operator of CISWI unit shall maintain all records required under 40 CFR 60.2740.
(3) The owner or operator of CISWI unit shall submit as specified in Table 5 of 40 CFR 60, Subpart DDDD the following reports:
(A) Waste Management Plan;
(B) initial test report, as specified in 40 CFR 60.2760;
(C) annual report as specified in 40 CFR 60.2770;

(D) emission limitation or operating limit deviation report as specified in 40 CFR 60.2780;
(E) qualified operator deviation notification as specified in 40 CFR 60.2785(a)(1);
(F) qualified operator deviation status report, as specified in 40 CFR 60.2785(a)(2);
(G) qualified operator deviation notification of resuming operation as specified in 40 CFR 60.2785(b).
(4) The owner or operator of the CISWI unit shall submit a deviation report if:
(A) any recorded three-hour average parameter level is above the maximum operating limit or below the minimum operating limit established under Paragraph (f) of this Rule;
(B) the bag leak detection system alarm sounds for more than five percent of the operating time for the six-month reporting period; or
(C) a performance test was conducted that deviated from any emission standards in Paragraph (e) of this Rule.
The deviation report shall be submitted by August 1 of the year for data collected during the first half of the calendar year (January 1 to June 30), and by February 1 of the following year for data collected during the second half of the calendar year (July 1 to December 31).
(5) The owner or operator of the CISWI unit may request changing semiannual or annual reporting dates as specified in this Paragraph, and the Director may approve the request change using the procedures specified in 40 CFR 60.19(c).
(6) Reports required under this Rule shall be submitted electronically or in paper format, postmarked on or before the submittal due dates.
(7) If the CISWI unit has been shut down by the Director under the provisions of 40 CFR 60.2665(b)(2), due to failure to provide an accessible qualified operator, the owner or operator shall notify the Director that the operations are resumed once a qualified operator is accessible.
(j) Excess Emissions and Start-up and Shut-down. All incinerators subject to this Rule shall comply with 15A NCAC 2D
.0535, Excess Emissions Reporting and Malfunctions, of this Subchapter.
(k) Operator Training and Certification.
(1) The owner or operator of the CISIWI unit shall not allow the CISWI unit to operate at any time unless a fully trained and qualified CISWI unit operator is accessible, either at the facility or available within one hour. The trained and qualified CISWI unit operator may operate the CISWI unit directly or be the direct supervisor of one or more CISWI unit operators.
(2) Operator training and qualification shall be obtained by completing the requirements of 40 CFR 60.2635(c) by the later of:
(A) six month after CISWI unit startup; or
(B) six month after an employee assumes responsibility for operating the CISWI unit or assumes responsibility for supervising the operation of the CISWI unit.
(3) Operator qualification is valid from the date on which the training course is completed and the operator passes the examination required in 40 CFR 60.2635(c)(2).
(4) Operator qualification shall be maintained by completing an annual review or refresher course covering:
(A) update of regulations;
(B) incinerator operation, including startup and shutdown procedures, waste charging, and ash handling;
(C) inspection and maintenance;
(D) responses to malfunctions or conditions that may lead to malfunction;
(E) discussion of operating problems encountered by attendees.
(5) Lapsed operator qualification shall be renewed by:
(A) completing a standard annual refresher course as specified in Subparagraph (4) of this Paragraph for a lapse less than three years, and
(B) repeating the initial qualification requirements as specified in Subparagraph (2) of this Paragraph for a lapse of three years or more.
(6) The owner or operator of the CISIWI unit shall:
(A) have documentation specified in 40 CFR 60.2660(a)(1) through (10) and (c)(1) through (c)(3) available at the facility and accessible for all CISWI unit operators and are suitable for inspection upon request;
(B) establish a program for reviewing the documentation specified in Part (A) of this

Subparagraph with each CISWI unit operator:
(i) the initial review of the documentation specified in Part (A) of this Subparagraph
shall be conducted by the later of the two dates:
(I) six month after CISWI unit startup; or
(II) six month after an employee assumes responsibility for operating the
CISWI unit or assumes responsibility for supervising the operation of the
CISWI unit; and
(ii) subsequent annual reviews of the documentation specified in Part (A) of this
Subparagraph shall be conducted no later than twelve month following the previous
review.
(7) The owner or operator of the CISIWI unit shall meet one of the two criteria specified in 40 CFR
60.2665(a) and (b), depending on the length of time, if all qualified operators are temporarily not at the
facility and not able to be at the facility within one hour.
(l) Prohibited waste. The owner or operator of a CISIW shall not incinerate any of the wastes listed in G.S. 130A-
309.10(f1).
(m) Waste Management Plan.
(1) The owner or operator of the CISWI unit shall submit a waste management plan to the Director that
identifies in writing the feasibility and the methods used to reduce or separate components of solid
waste from the waste stream in order to reduce or eliminate toxic emissions from incinerated waste.
(2) The waste management plan shall include:
(A) consideration of the reduction or separation of waste-stream elements such as paper,
cardboard, plastics, glass, batteries, or metals; and the use of recyclable materials;
(B) a description of how the materials listed in G.S. 130A-309.10(f1) are to be segregated from
the waste stream for recycling or proper disposal;
(C) identification of any additional waste management measures; and
(D) implementation of those measures considered practical and feasible, based on the
effectiveness of waste management measures already in place, the costs of additional
measures and the emissions reductions expected to be achieved and the environmental or
energy impacts that the measures may have.
(n) The final control plan shall contain the information specified in 40 CFR 60.2600(a)(1) through (5), and a copy
shall
be maintained on site.
*History Note: Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(4),(5); 40 CFR
60.215(a)(4);*
Eff. August 1, 2002;
Amended Eff. June 1, 2008; January 1, 2005.

15A NCAC 02D .1211 OTHER SOLID WASTE INCINERATION UNITS

(a) Applicability. With the exceptions in Paragraph (b), this Rule applies to other solid waste incineration (OSWI)
units.
(b) Exemptions. The following types of incineration units are exempted from this Rule:
(1) incineration units covered under Rules .1203 through .1206 and .1210 of this Section;
(2) units, burning 90 percent or more by weight on a calendar-quarter basis, excluding the weight of
auxiliary fuel and combustion air, pathological waste, low-level radioactive waste, or
chemotherapeutic waste, if the owner or operator of the unit:
(A) notifies the Director that the unit qualifies for this exemption; and
(B) keeps records on a calendar-quarter basis of the weight, pathological waste, low-level
radioactive waste, or chemotherapeutic waste burned, and the weight of all other fuels and
wastes burned in the unit;
(3) Cogeneration units if;
(A) The unit qualifies as a cogeneration facility under section 3(18)(B) of the Federal Power Act
(16 U.S.C. 796(18)(B));
(B) The unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity
and steam or other forms of energy used for industrial, commercial, heating, or cooling

purposes; and
(C) The owner or operator of the unit notifies the Director that the unit qualifies for this exemption;
(4) Small power production unit if:
(A) The unit qualifies as a small power-production facility under section 3(17)(C) of the Federal Power Act (16 U.S.C. 796(17)(C));
(B) The unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity; and
(C) The owner or operator of the unit notifies the Director that the unit qualifies for this exemption.
(5) units that combust waste for the primary purpose of recovering metals;
(6) rack, part, and drum reclamation units that burn the coatings off racks used to hold items for application of a coating;
(7) cement kilns;
(8) laboratory analysis units that burn samples of materials for the purpose of chemical or physical analysis;
(9) air curtain burners covered under Rule .1904 of this Subchapter;
(10) institutional boilers and process heaters regulated under 40 CFR Part 63, Subpart DDDDD (National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters);
(11) rural institutional waste incinerators that meet the conditions in 40 CFR 60.2993(h);
(12) incinerators that combust contraband or prohibited goods if owned or operated by a government agency, such as police, customs, agricultural inspection, or a similar agency, to destroy only illegal or prohibited goods, such as illegal drugs, or agricultural food products that cannot be transported into the country or across state lines to prevent biocontamination. The exclusion does not apply to items either confiscated or incinerated by private, industrial, or commercial entities; or
(13) Incinerators used for national security and is used solely:
(A) to destroy national security materials integral to the field exercises during military training field exercises; or
(B) to incinerate national security materials when necessary to safeguard national security if the owner or operator follows to procedures in 40 CFR 60.2993(q)(2) to receive this exemption.
(c) Definitions. For the purpose of this Rule, the definitions contained in 40 CFR 60.3078 shall apply in addition to the
definitions in Rule .1202 of this Section.
(d) Emission Standards. The emission standards in this Rule apply to all incinerators subject to this Rule except where
Rule .0524, .1110, or .1111 of this Subchapter applies. When Subparagraphs (12) or (13) of this Paragraph and Rules
.0524, .1110, or .1111 of this Subchapter regulate the same pollutant, the more restrictive provision for each pollutant
shall apply, notwithstanding provisions of Rules .0524, .1110, or .1111 of this Subchapter to the contrary.
(1) Particulate Matter. Emissions of particulate matter from an OSWI unit shall not exceed 0.013 grains per dry standard cubic foot corrected to seven percent oxygen, dry basis (3-run average with 1 hour minimum sample time per run).
(2) Opacity. Visible emissions from the stack of an OSWI unit shall not exceed 10 percent opacity (6-minute block average with 1 hour minimum sample time per run).
(3) Sulfur Dioxide. Emissions of sulfur dioxide from an OSWI unit subject to the requirements of this Rule shall not exceed 3.1 parts per million by volume corrected to seven percent oxygen, dry basis (3-run average with 1 hour minimum sample time per run).
(4) Nitrogen Oxides. Emissions of nitrogen oxides from an OSWI unit shall not exceed 103 parts per million by dry volume corrected to seven percent oxygen, dry basis (3-run average with 1 hour minimum sample time per run).
(5) Carbon Monoxide. Emissions of carbon monoxide from an OSWI unit shall not exceed 40 parts per million by dry volume, corrected to seven percent oxygen, dry basis (3-run average with 1 hour minimum sample time per run) and 12-hour rolling averages measured using continuous emissions monitoring system (CEMS).

(6) Odorous Emissions. An OSWI unit shall comply with Rule .1806 of this Subchapter for the control of odorous emissions.
(7) Hydrogen Chloride. Emissions of hydrogen chloride from an OSWI unit shall not exceed 15 parts per million by dry volume, corrected to seven percent oxygen, dry basis (3-run average with 1 hour minimum sample time per run).
(8) Mercury Emissions. Emissions of mercury from an OSWI unit shall not exceed 74 micrograms per dry standard cubic meter, corrected to seven percent oxygen, dry basis (3-run average with 1 hour minimum sample time per run).
(9) Lead Emissions. Emissions of lead from an OSWI unit shall not exceed 226 micrograms per dry standard cubic meter, corrected to seven percent oxygen, dry basis (3-run average with 1 hour minimum sample time per run).
(10) Cadmium Emissions. Emissions of cadmium from an OSWI unit shall not exceed 18 micrograms per dry standard cubic meter, corrected to seven percent oxygen, dry basis (3-run average with 1 hour minimum sample time per run).
(11) Dioxins and Furans. Emissions of dioxins and furans from an OSWI unit shall not exceed 33 nanograms per dry standard cubic meter, corrected to seven percent oxygen, dry basis (3-run average with 1 hour minimum sample time per run).
(12) Toxic Emissions. The owner or operator of any incinerator subject to the requirements of this Rule shall demonstrate compliance with Section .1100 of this Subchapter according to Section 15A NCAC 02Q .0700.
(13) Ambient Standards.
(A) In addition to the ambient air quality standards in Section .0400 of this Subchapter, the following ambient air quality standards, which are an annual average, in milligrams per cubic meter at 77oF (25oC) and 29.92 inches (760 mm) of mercury pressure, and which are increments above background concentrations, shall apply aggregately to all incinerators at a facility subject to this Rule:

POLLUTANT	STANDARD
arsenic and its compounds	2.3x10-7
beryllium and its compounds	4.1x10-6
cadmium and its compounds	5.5x10-6
chromium (VI) and its compounds	8.3x10-8

(B) The owner or operator of a facility with OSWI units subject to this Rule shall demonstrate compliance with the ambient standards in Part (A) of this Subparagraph by following the procedures set out in Rule .1106 of this Subchapter. Modeling demonstrations shall comply with the requirements of Rule .0533 of this Subchapter.
(C) The emission rates computed or used under Part (B) of this Subparagraph that demonstrate compliance with the ambient standards under Part (A) of this Subparagraph shall be specified as a permit condition for the facility with incinerators as their allowable emission limits unless Rule .0524, .1110, or .1111 of this Subchapter requires more restrictive rates.
(e) Operational Standards.
(1) The operational standards in this Rule do not apply to an OSWI unit when applicable operational standards in Rule .0524, .1110, or .1111 of this Subchapter apply.
(2) The owner or operator of the OSWI shall meet the emission standards in Paragraph (d) of this Rule by July 1, 2010.
(3) If a wet scrubber is used to comply with emission limitations, then the owner or operator of the OSWI unit:
(A) shall establish operating limits for the four operating parameters as specified in the Table 3 of 40 CFR 60, Subpart FFFF and as described in Paragraphs 40 CFR 60.3023(a) during the initial performance test, and;
(B) shall meet the operating limits established during the initial performance test beginning on July 1, 2010.
(4) If an air pollution control device other than a wet scrubber is used or if emissions are limited in some

other manner to comply with the emission standards of Paragraph (d) of this Rule, the owner or operator of the OSWI unit subject to the requirements of this Rule shall petition the US Environmental Protection Agency (EPA) for specific operating limits that shall be established during the initial performance test and continuously monitored thereafter. The initial performance test shall not be conducted until after the EPA approves the petition. The petition shall include the five items listed in the Paragraph 40 CFR 60.3024(a) through (e).

(f) Periods of Startup, Shutdown, and Malfunction. The emission and operating standards apply at all times except during OSWI unit startups, shutdowns, or malfunctions.

(g) Test Methods and Procedures.

(1) The test methods and procedures described in Rule .0501 of this Subchapter, 40 CFR Part 60, Appendix A, 40 CFR Part 61, Appendix B, and 40 CFR 60.3027 shall be used to determine compliance with the emission standards in Paragraph (d) this Rule.

(2) The owner or operator of OSWI unit shall conduct:

(A) an initial performance test as required under 40 CFR 60.8 and according to 40 CFR 60.3027, no later than July 1, 2010; and after that;

(B) annual performance tests according to 40 CFR 60.3027 and 40 CFR 60.3033, within 12 months following the initial performance test and within each 12 months thereafter.

(3) The owner or operator of OSWI unit shall use the results of these tests:

(A) to demonstrate compliance with the emission standards in Paragraph (d) of this Rule, and;

(B) to establish operating standards using the procedures in Subparagraphs (e)(3) and (e)(4) of this Rule.

(4) The owner or operator of OSWI unit may conduct annual performance testing less often if the requirements of 40 CFR 60.3035 are met.

(5) The owner or operator of OSWI unit may conduct a repeat performance test at any time to establish new values for the operating limits. The Director may request a repeat performance test at any time if he finds that the current operating limits are no longer appropriate.

(h) Monitoring.

(1) The owner or operator of OSWI unit shall comply with the monitoring, recordkeeping, and reporting requirements in Section .0600 of this Subchapter and in 40 CFR 60.13, Monitoring Requirements.

(2) The owner or operator of OSWI unit shall:

(A) install, calibrate to manufacturers specifications, maintain, and operate continuous emission monitoring systems for carbon monoxide and for oxygen. The oxygen concentration shall be monitored at each location where the carbon monoxide concentrations are monitored;

(B) operate the continuous monitoring system according to 40 CFR 60.3039;

(C) conduct daily, quarterly, and annual evaluations of the continuous emission monitoring systems according to 40 CFR 60.3040;

(D) collect the minimum amount of monitoring data using the procedures in 40 CFR 60.3041(a) through (e) if the continuous emission monitoring system is operating or the procedures in 40 CFR 60.3041(f) if the continuous emissions monitoring system is temporarily unavailable; and

(E) convert the one-hour arithmetic averages into the appropriate averaging times and units as specified in 40 CFR 60.3042 to monitor compliance with the emission standards in Paragraph (d) of this Rule.

(3) The owner or operator of OSWI unit shall:

(A) install, calibrate to manufacturers specifications, maintain, and operate devices or establish methods for monitoring or measuring the operating parameters as specified in 40 CFR 60.3043; and

(B) obtain operating parameter monitoring data as specified in 40 CFR 60.3044 to monitor compliance with the operational standards in Paragraph (e) of this Rule.

(i) Recordkeeping and Reporting. The owner or operators of an OSWI unit:

(1) shall maintain all records required specified in 40 CFR 60.3046;

(2) shall keep and submit records according to 40 CFR 60.3047;

(3) shall submit, as specified in 40 CFR 60.3048, the following reports:

(A) an initial test report and operating limits, as specified in 40 CFR 60.3049(a) and (b);

(B) a waste management plan as specified in 40 CFR 60.3049(c); and

(C) an annual report as specified in 40 CFR 60.3050 and 40 CFR 60.3051;

(D) a deviation report as specified in 40 CFR 60.3053 if a deviation from the operating limits or the emission limitations occurs according to 40 CFR 60.3052(a); the deviation report shall be submitted following 40 CFR 60.3052(b);
(E) a deviation report according to 40 CFR 60.3054(a) if a deviation from the requirement to have a qualified operator accessible occurs;
(4) shall keep records and submit reports and notifications as required by 40 CFR 60.7;
(5) may request changing semiannual or annual reporting dates as specified in this Paragraph; the Director may approve the request change using the procedures in 40 CFR 60.19(f).
(6) shall submit reports in electronic or paper format postmarked on or before the submittal due dates.
(j) Excess Emissions and Start-up and Shut-down. All OSWI units shall comply with Rule .0535, Excess Emissions Reporting and Malfunctions, of this Subchapter.
(k) Operator Training and Certification.
(1) No OSWI unit shall be operated unless a fully trained and qualified OSWI unit operator is accessible, either at the facility or available within one hour. The trained and qualified OSWI unit operator may operate the OSWI unit directly or be the direct supervisor of one or more other plant personnel who operate OSWI unit.
(2) Operator training and qualification shall be obtained by completing the requirements of 40 CFR 60.3014(c) by the latest of:
(A) January 1, 2010,
(B) six month after OSWI unit startup, or
(C) six month after an employee assumes responsibility for operating the OSWI unit or assumes responsibility for supervising the operation of the OSWI unit.
(3) Operator qualification shall be valid from the date on which the training course is completed and the operator successfully passes the examination required in 40 CFR 60.3014 (c)(2).
(4) Operator qualification shall be maintained by completing an annual review or refresher course covering:
(A) update of regulations;
(B) incinerator operation, including startup and shutdown procedures, waste charging, and ash handling;
(C) inspection and maintenance;
(D) responses to malfunctions or conditions that may lead to malfunction; and
(E) discussion of operating problems encountered by attendees.
(5) Lapsed operator qualification shall be renewed by:
(A) Completing a standard annual refresher course as specified in Subparagraph (4) of this Paragraph for a lapse less than three years, and
(B) Repeating the initial qualification requirements as specified in Subparagraph (3) of this Paragraph for a lapse of three years or more.
(6) The owner or operator of the OSWI unit subject to the requirements of this Rule shall:
(A) have documentation specified in 40 CFR 60.3019(a) and (c) available at the facility and readily accessible for all OSWI unit operators and are suitable for inspection upon request;
(B) establish a program for reviewing the documentation specified in Part (A) of this Subparagraph with each OSWI unit operator in a manner that the initial review of the information listed in Part (A) of this Subparagraph shall be conducted by the later of the three dates: January 1, 2010, six month after OSWI unit startup, or six month after an employee assumes responsibility for operating the OSWI unit or assumes responsibility for supervising the operation of the OSWI unit; and subsequent annual reviews of the information listed in Part (A) of this Subparagraph shall be conducted no later than twelve month following the previous review.
(7) The owner or operator of the OSWI unit shall follow the procedures in 40 CFR 60.3020 if all qualified OSWI unit operators are temporarily not at the facility and not able to be at the facility within one hour.
(l) Waste Management Plan.
(1) The owner or operator of the OSWI unit shall submit a waste management plan that identifies in writing the feasibility and the methods used to reduce or separate components of solid waste from the waste stream in order to reduce or eliminate toxic emissions from incinerated waste. A waste management plan shall be submitted to the Director before September 1, 2010.

(2) The waste management plan shall include:
(A) consideration of the reduction or separation of waste-stream elements such as paper, cardboard, plastics, glass, batteries, or metals; and the use of recyclable materials;
(B) identification of any additional waste management measures;
(C) implementation of those measures considered practical and feasible, based on the effectiveness of waste management measures already in place;
(D) the costs of additional measures and the emissions reductions expected to be achieved; and
(E) any other environmental or energy impacts.
(m) Compliance Schedule.
(1) This Paragraph applies only to OSWI that commenced construction on or before December 9, 2004.
(2) The owner or operator of an OSWI unit shall submit a permit application, including a compliance schedule, to the Director before January 1, 2008.
(3) All OSWI shall be in compliance with this Rule no later than January 1, 2010.
(4) The owner or operator of an CISWI unit shall notify the Director within 10 business days after the OSWI unit is to be in final compliance whether the final compliance has been achieved. The final compliance is achieved by completing all process changes and retrofitting construction of control devices, as specified in the permit application and required by its permit, so that, if the affected OSWI unit is brought on line, all necessary process changes and air pollution control devices would operate as designed and permitted. If the final compliance has not been achieved the owner or operator of the OSWI unit, shall submit a notification informing the Director that the final compliance has not been met and submit reports each subsequent calendar month until the final compliance is achieved.
(5) The owner or operator of an OSWI unit who closes the OSWI unit and restarts it before January 1, 2010 shall submit a permit application, including a compliance schedule, to the Director. Final compliance shall be achieved by January 1, 2010.
(6) The owner or operator of an OSWI unit who closes the OSWI unit and restarts it after January 1, 2010, shall submit a permit application to the Director and shall complete the emission control retrofit and meet the emission limitations of this Rule by the date that the OSWI unit restarts operation. The initial performance test shall be conducted within 30 days of restarting the OSWI unit.
(7) The permit applications for OSWI units shall be processed under 15A NCAC 02Q .0500, Title V Procedures.
(8) The owner or operator of an OSWI unit who plans to close it rather than comply with the requirements of this Rule shall submit a closure notification including the date of closure to the Director by January 1, 2008, and shall cease operation by January 1, 2010.
History Note: Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(4), (5), (10); 40 CFR 60.3014 through 60.3020;
Eff. August 1, 2007.

15A NCAC 02D .1212 SMALL MUNICIPAL WASTE COMBUSTORS

(a) Applicability. This Rule applies to Class I municipal waste combustors, as defined in Rule .1202 of this Section.
(b) Definitions. For the purpose of this Rule, the definitions contained in 40 CFR 60.1940 (except administrator means
the Director of the Division of Air Quality) apply in addition to the definitions in Rule .1202 of this Section.
(c) Emission Standards.
(1) The emission standards in this Paragraph apply to any municipal waste combustor subject to the requirements of this Rule except where Rule .0524, .1110, or .1111 of this Subchapter applies. However, when Subparagraphs (13) or (14) of this Paragraph and Rule .0524, .1110, or .1111 of this Subchapter regulate the same pollutant, the more restrictive provision for each pollutant applies, notwithstanding provisions of Rules .0524, .1110, or .1111 of this Subchapter to the contrary.
(2) Particulate Matter. Emissions of particulate matter from each municipal waste combustor shall not exceed 27 milligrams per dry standard cubic meter corrected to seven percent oxygen.
(3) Visible Emissions. The emission limit for opacity from each municipal waste combustor shall not exceed 10 percent average during any six-minute period.
(4) Sulfur Dioxide. Emissions of sulfur dioxide from each municipal waste combustor shall not exceed 31 parts per million by volume, dry basis, or potential sulfur dioxide emissions shall be reduced by at

least 75 percent volume, dry basis, whichever is less stringent. Percent reduction shall be determined from continuous emissions monitoring data and in accordance with Reference Method 19, Section 12.5.4 of 40 CFR Part 60, Appendix A-7. Compliance with either standard is based on a 24-hour daily block geometric average of concentration data corrected to seven percent oxygen.

(5) Nitrogen Oxide. Emissions of nitrogen oxide from each municipal waste combustor shall not exceed the emission limits in Table 3 of 40 CFR Part 60, Subpart BBBB.

(6) Odorous Emissions. Each municipal waste combustor shall comply with Rule .1806 of this Subchapter for the control of odorous emissions.

(7) Hydrogen Chloride. Emissions of hydrogen chloride from each municipal waste combustor shall not exceed 31 milligrams per dry standard cubic meter (31 parts per million by weight as determined by Reference Method 26 or 26A of 40 CFR Part 60, Appendix A-8) or potential hydrogen chloride emissions shall be reduced by at least 95 percent of the mass concentration, dry basis, whichever is less stringent. Compliance with this Part shall be determined by averaging emissions over three onehour test runs, with paired data sets for percent reduction and correction to seven percent oxygen.

(8) Mercury Emissions. Emissions of mercury from each municipal waste combustor shall not exceed 0.080 milligrams per dry standard cubic meter (as determined by Reference Method 29 of 40 CFR Part 60, Appendix A-8) or potential mercury emissions shall be reduced by at least 85 percent of the mass concentration, basis, whichever is less stringent. Compliance with this Subparagraph shall be determined by averaging emissions over three one-hour test runs, with paired data sets for percent reduction and correction to seven percent oxygen.

(9) Lead Emissions. Emissions of lead from each municipal waste combustor shall not exceed 0.490 milligrams per dry standard cubic meter and corrected to seven percent oxygen (as determined by Reference Method 29 of 40 CFR Part 60, Appendix A-8).

(10) Cadmium Emissions. Emissions of cadmium from each municipal waste combustor shall not exceed 0.040 milligrams per dry standard cubic meter, corrected to seven percent oxygen (as determined by Reference Method 29 of 40 CFR Part 60, Appendix A-8).

(11) Dioxins and Furans. Emissions of dioxins and furans from each municipal waste combustor shall not exceed:

(A) 60 nanograms per dry standard cubic meter (total mass) for facilities that employ an electrostatic precipitator-based emission control system, or

(B) 30 nanograms per dry standard cubic meter (total mass) for facilities that do not employ an electrostatic precipitator-based emission control system.

Compliance with this Subparagraph shall be determined by averaging emissions over three test runs with a minimum four hour run duration, performed in accordance with Reference Method 23 of 40 CFR Part 60, Appendix A-7, and corrected to seven percent oxygen.

(12) Fugitive Ash.

(A) On or after the date on which the initial performance test is completed, no owner or operator of a municipal waste combustor shall cause to be discharged to the atmosphere visible emissions of combustion ash from an ash conveying system (including conveyor transfer points) in excess of five percent of the observation period as determined by Reference Method 22 (40 CFR Part 60, Appendix A-7), except as provided in Part (B) of this Subparagraph. Compliance with this Part shall be determined from at least three 1-hour observation periods when the facility transfers ash from the municipal waste combustor to the area where the ash is stored or loaded into containers or trucks.

(B) The emission limit specified in Part (A) of this Subparagraph covers visible emissions discharged to the atmosphere from buildings or enclosures, not the visible emissions discharged inside of the building or enclosures, of ash conveying systems.

(13) Toxic Emissions. The owner or operator of a municipal waste combustor shall demonstrate compliance with Section .1100 of this Subchapter in accordance with 15A NCAC 02Q .0700.

(14) Ambient Standards.

(A) In addition to the ambient air quality standards in Section .0400 of this Subchapter, the following annual average ambient air quality standards in milligrams per cubic meter (77 degrees Fahrenheit, 25 degrees Celsius, and 29.92 inches, 760 millimeters of mercury pressure) are arsenic and its compounds ($2.3x10^{-7}$), beryllium and its compounds ($4.1x10^{-6}$), cadmium and its compounds ($5.5x10^{-6}$), and chromium (VI) and its compounds ($8.3x10^{-8}$). These are increments above background concentrations and apply aggregately to all

municipal waste combustors at a facility.
(B) The owner or operator of a facility with municipal waste combustors shall demonstrate compliance with the ambient standards in Part (A) of this Subparagraph by following the procedures set out in Rule .1106 of this Subchapter. Modeling demonstrations shall comply with the good engineering practice stack height requirements of Rule .0533 of this Subchapter.
(C) The emission rates computed or used under Part (B) of this Subparagraph that demonstrate compliance with the ambient standards under Part (A) of this Subparagraph shall be specified as a permit condition for the facility with municipal waste combustors as their allowable emission limits unless Rule .0524, .1110, or .1111 of this Subchapter requires more restrictive rates.
(15) The emission standards of Subparagraphs (1) through (14) of this Paragraph apply at all times except during periods of municipal waste combustor startup, shutdown, or malfunction that last no more than three hours.
(d) Operational Standards.
(1) The operational standards in this Rule do not apply to any municipal waste combustors subject to this Rule when applicable operational standards in Rule .0524, .1110, or .1111 of this Subchapter apply.
(2) Each municipal waste combustor shall meet the following operational standards:
(A) The concentration of carbon monoxide at the municipal waste combustor outlet shall not exceed the concentration in Table 5 of 40 CFR Part 60, Subpart BBBB for each municipal waste combustor. The municipal waste combustor technology named in this table is defined in 40 CFR 60.1940.
(B) The load level shall not exceed 110 percent of the maximum demonstrated municipal waste combustor load determined from the highest four-hour block arithmetic average achieved during four consecutive hours in the course of the most recent dioxins and furans stack test that demonstrates compliance with the emission limits of Paragraph (c) of this Rule.
(C) The temperature at which the combustor operates measured at the particulate matter control device inlet shall not exceed 63 degrees F (17 degrees C) above the maximum demonstrated particulate matter control device temperature determined from the highest 4-hour block arithmetic average measured at the inlet of the particulate matter control device during four consecutive hours in the course of the most recent dioxins and furans stack test that demonstrates compliance with the emission limits of Paragraph (c) of this Rule.
(D) The owner or operator of a municipal waste combustor with activated carbon control system to control dioxins and furans or mercury emissions shall maintain an eight-hour block average carbon feed rate at or above the highest average level established during the most recent dioxins and furans or mercury test. The owner or operator of a municipal waste combustor shall calculate the required quarterly usage of carbon using the equation in 40 CFR 60.1935(f).
(E) The owner or operator of a municipal waste combustor is exempted from limits on load level, temperature at the inlet of the particular matter control device, and carbon feed rate during the annual tests for dioxins and furans, the annual mercury tests (for carbon feed requirements only), the two weeks preceding the annual tests for dioxins and furans, and the two weeks preceding the annual mercury tests (for carbon feed rate requirements only).
(F) The limits on load level for a municipal waste combustor are waived when the Director concludes that the emission control standards would not be exceeded based on test activities to evaluate system performance, test new technology or control technology, perform diagnostic testing, perform other activities to improve the performance; or perform other activities to advance the state of the art for emissions controls.
(3) The operational standards of this Paragraph apply at all times except during periods of municipal waste combustor startup, shutdown, or malfunction that last no more than three hours. For periods of municipal waste combustor startup, shutdown, or malfunction that last more than three hours emission data shall not be discarded from compliance calculations and all provisions of 40 CFR 60.11(d) apply. During all periods of municipal waste combustor startup, shutdown, or malfunction, data shall be recorded and reported in accordance with the provisions of Paragraphs (f) and (g) of this Rule.
(e) Test Methods and Procedures.
(1) References contained in Table 8 of 40 CFR Part 60, Subpart BBBB shall be used to determine the

sampling location, pollutant concentrations, number of traverse points, individual test methods, and other testing requirements for the different pollutants.
(2) Stack tests for all the pollutants shall consist of at least three test runs, as specified in 40 CFR 60.8 and use the average of the pollutant emission concentrations from the three test runs to determine compliance with the applicable emission limits of Paragraph (c).
(3) An oxygen (or carbon dioxide) measurement shall be obtained at the same time as pollutant measurements to determine diluent gas levels, as specified in 40 CFR 60.1720.
(4) The equations in 40 CFR 60.1935 shall be used to calculate emission levels at seven percent oxygen (or an equivalent carbon dioxide basis), the percent reduction in potential hydrogen chloride emissions, and the reduction efficiency for mercury emissions. Other required equations are contained in individual test methods specified in Table 6 of 40 CFR Part 60, Subpart BBBB.
(5) The owner or operator may apply to the Director for approval under 40 CFR 60.8(b) to use a reference method with minor changes in methodology, use an equivalent method, use an alternative method the results of which the Director has determined are adequate for demonstrating compliance, waive the requirement for a performance test because the owner or operator have demonstrated compliance by other means, or use a shorter sampling time or smaller sampling volume.
(6) The test methods and procedures described in Section 15A NCAC 02D .2600 of this Subchapter, 40 CFR Part 60, Appendix A and 40 CFR Part 61, Appendix B shall be used to determine compliance with emission standards in Paragraph (c) according to table 8 of 40 CFR Part 60, Subpart BBBB.
(7) Method 29 of 40 CFR Part 60, Appendix A-8 shall be used to determine emission rates for metals for toxic evaluations except for chromium (VI). Method 29 shall be used only to collect samples and SW 846 Method 0060 shall be used to analyze the samples of chromium (VI).
(8) The owner or operator shall conduct initial stack tests to measure the emission levels of dioxins and furans, cadmium, lead, mercury, beryllium, arsenic, chromium (VI), particulate matter, opacity, hydrogen chloride, and fugitive ash. Annual stack tests for the same pollutants except beryllium, arsenic, and chromium (VI) shall be conducted no less than 9 months and no more than 15 months since the previous test and must complete five performance tests in each five-year calendar period.
(9) The owner or operator must use results of stack tests for dioxins and furans, cadmium, lead, mercury, particulate matter, opacity, hydrogen chloride, and fugitive ash to demonstrate compliance with the applicable emission limits in this rule except for carbon monoxide, nitrogen oxides, and sulfur dioxide.
(10) The owner or operator must use results of continuous emissions monitoring of carbon monoxide, nitrogen oxides, and sulfur dioxide to demonstrate compliance with the applicable emission limits in this rule. The data from the continuous opacity monitoring system shall not be used to determine compliance with the opacity limit.
(11) The testing frequency for dioxin and furan may be reduced if the conditions under 40 CFR 60.1795(b) are met.
(12) The Director may require the owner or operator of any municipal waste combustor subject to this Rule to test his municipal waste combustor to demonstrate compliance with the emission standards in Paragraph (c) of this Rule.
(f) Monitoring, Recordkeeping, and Reporting.
(1) The owner or operator shall comply with the monitoring, recordkeeping, and reporting requirements developed pursuant to Section .0600 of this Subchapter.
(2) The owner or operator that has installed air pollution abatement equipment to reduce emissions of hydrogen chloride shall install, operate, and maintain continuous parametric monitoring equipment to measure pH for wet scrubber systems and rate of alkaline injection for dry scrubber systems.
(3) The owner or operator shall:
(A) install, calibrate, operate, and maintain, for each municipal waste combustor, continuous emission monitors to determine opacity, sulfur dioxide emissions, nitrogen oxides emissions, carbon monoxide, and oxygen (or carbon dioxide) according to 40 CFR 60.1715 through 60.1770;
(B) monitor load level of each municipal waste combustor according to 40 CFR 60.1810 and 60.1825;
(C) monitor temperature of the flue gases at the inlet of the particulate matter air pollution control device according to 40 CFR 60.1815 and 60.1825;
(D) monitor carbon feed rate if activated carbon is used to abate dioxins and furans or mercury emissions according to 40 CFR 60.1820 and 60.1825;

(E) maintain records of the information listed in 40 CFR 60.1830 through 60.1855 for a period of at least five years;
(F) submit a semiannual report specified in 40 CFR 60.1885, no later than February 1 and August 1 each year; and
(G) submit semiannual reports specified in 40 CFR 60.1900 of any recorded pollutant or parameter that does not comply with the pollutant or parameter limit specified in this Section using the schedule specified in 40 CFR 60.1895.
(g) Excess Emissions and Start-up and Shut-down. All municipal waste combustors subject to this Rule shall comply with Rule .0535, Excess Emissions Reporting and Malfunctions, of this Subchapter.
(h) Operator Certification.
(1) Each chief facility operator and shift supervisor shall obtain and keep a current provisional certification within six months after he transfers to the municipal waste combustion facility or six months after he is hired to work at the municipal waste combustor facility.
(2) Each chief facility operator and shift supervisor shall have obtained a full certification or have scheduled a full certification exam with the American Society of Mechanical Engineers (ASME QRO-1-1994) after he transfers to the municipal waste combustor facility or six months after he is hired to work at the municipal waste combustor facility.
(3) The owner or operator of a municipal waste combustor facility shall not allow the facility to be operated at any time unless one of the following persons is on duty at the affected facility:
(A) a fully certified chief facility operator;
(B) a provisionally certified chief facility operator who is scheduled to take the full certification exam;
(C) a fully certified shift supervisor; or
(D) a provisionally certified shift supervisor who is scheduled to take the full certification exam.
(4) If the certified chief facility operator and certified shift supervisor both are unavailable, a provisionally certified control room operator at the municipal waste combustor may fulfill the certified operator requirement. Depending on the length of time that a certified chief facility operator and certified shift supervisor are away, one of three criteria shall be met:
(A) When the certified chief facility operator and certified shift supervisor are both offsite for 12 hours or less and no other certified operator is on-site, the provisionally certified control room operator may perform those duties without notice to or approval by the Director.
(B) When the certified chief facility operator and certified shift supervisor are offsite for more than 12 hours, but for two weeks or less, and no other certified operator is on-site, the provisionally certified control room operator may perform those duties without notice to or approval by the Director. However, the owner or operator must record the periods when the certified chief facility operator and certified shift supervisor are offsite and include the information in the annual report as specified under 40 CFR 60.1885(l).
(C) When the certified chief facility operator and certified shift supervisor are offsite for more than two weeks and no other certified operator is on-site, the provisionally certified control room operator may perform those duties without notice to or approval by the Director. However, the owner or operator shall notify the Director in writing and submit a status report and corrective action summary to the Director every four weeks. In the notice, the owner or operator shall state what caused the absence and what is being done to ensure that a certified chief facility operator or certified shift supervisor is on-site. If the Director notifies the owner or operator that the status report or corrective action summary is disapproved, the municipal waste combustor may continue operation for 90 days, but then shall cease operation. If corrective actions are taken in the 90-day period such that the Director withdraws the disapproval, municipal waste combustor operations may continue.
(D) The Director shall disapprove the status report and corrective action summary report, described in Part (C) of this Subparagraph, if operating permit requirements are not being met, the status or corrective action reports indicate that the effort to have a certified chief facility operator or certified shift supervisor on site as expeditiously as practicable is not being met, or the reports are not delivered in a timely manner.
The referenced ASME exam (ASME QRO-1-1994), "Standard for the Qualification and Certification of Resource Recovery Facility Operators," in this Paragraph is hereby incorporated by reference and includes subsequent amendments

and editions. Copies of the referenced ASME exam may be obtained from the American Society of Mechanical Engineers (ASME), 22 Law Drive, Fairfield, NJ 07007, at a cost of forty-nine dollars ($49.00).
(i) Training.
(1) The owner or operator of each municipal waste combustor shall develop and update on a yearly basis a site-specific operating manual that shall address:
(A) a summary of all applicable requirements in this Rule;
(B) a description of the basic combustion principles that apply to municipal waste combustors;
(C) procedures for receiving, handling, and feeding municipal solid waste;
(D) procedures to be followed during periods of startup, shutdown, and malfunction of the municipal waste combustor;
(E) procedures for maintaining a proper level of combustion air supply;
(F) procedures for operating the municipal waste combustor in compliance with the requirements contained in 40 CFR 60 Subpart JJJ;
(G) procedures for responding to periodic upset or off-specification conditions;
(H) procedures for minimizing carryover of particulate matter;
(I) procedures for handling ash;
(J) procedures for monitoring emissions from the municipal waste combustor; and
(K) procedures for recordkeeping and reporting.
The operating manual shall be updated continually and be kept in a readily accessible location for all persons required to undergo training under Subparagraph (2) of this Paragraph. The operating manual and records of training shall be available for inspection by the personnel of the Division on request.
(2) The owner or operator of the municipal waste combustor plant shall establish a training program to review the operating manual according to the schedule specified in Parts (A) and (B) of this Subparagraph with each person who has responsibilities affecting the operation of the facility including chief facility operators, shift supervisors, control room operators, ash handlers, maintenance personnel, and crane and load handlers:
(A) A date prior to the day when the person assumes responsibilities affecting municipal waste combustor operation; and
(B) Annually, following the initial training required by Part (A) of this Subparagraph.
History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3),(4),(5); 40 CFR 60.35b; 40 CFR 60.34e; 40 CFR 60.1515;
Eff. July 1, 2010.

15A NCAC 2D .1600 - General Conformity

15A NCAC 02D .1601 PURPOSE, SCOPE AND APPLICABILITY

(a) The purpose of this Section is also to assure that a federal action conforms with all plans required of areas designated as
nonattainment or maintenance under 40 CFR 81.334 and listed in Paragraph (b) or (c) of this Rule. No department, agency, or
instrumentality of the Federal Government shall engage in, support in any way or provide financial assistance for, license or
permit, or approve any activity which does not conform to these maintenance plans.
(b) This Section applies to the emissions of volatile organic compounds and nitrogen oxides in the following areas:
(1) Davidson County,
(2) Durham County,
(3) Forsyth County,
(4) Gaston County,
(5) Guilford County,
(6) Mecklenburg County,
(7) Wake County,
(8) Dutchville Township in Granville County, and
(9) that part of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek, and back to the Yadkin River.
(c) This Section applies to the emissions of carbon monoxide in the following areas:
(1) Durham County,
(2) Forsyth County,
(3) Mecklenburg County, and
(4) Wake County.
(d) This Section applies, in the areas identified in Paragraph (b) or (c) of this Rule for the pollutants identified in Paragraph
(b) or (c) of this Rule, to federal actions not covered by Section .2000 of this Subchapter.
History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10);
Eff. April 1, 1995;
Amended Eff. April 1, 1999.

15A NCAC 02D .1602 DEFINITIONS

For the purposes of this Section, the definitions contained in 40 CFR 51.852 apply.
History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10);
Eff. April 1, 1995.

15A NCAC 02D .1603 GENERAL CONFORMITY DETERMINATION

(a) The appropriate federal agency shall make a determination that a federal action conforms with the maintenance plans for
the areas identified in Rule .1601 of this Section in accordance with the requirements of this Section before the action is taken
with the exceptions specified in 40 CFR 51.850(c). A conformity determination is required for each pollutant where the total
of direct and indirect emissions caused by a federal action would equal or exceed 100 tons per year of carbon monoxide,
nitrogen oxides, or volatile organic compounds, with the exceptions specified in 40 CFR 51.853(c), (d), or (e). The Division
shall provide technical assistance for the analysis necessary to determine the conformity of the federal action.
(b) Notwithstanding any other requirements of this Section, actions specified by individual federal agencies that have met the
requirements of 40 CFR 51.853(g) and (h) are presumed to conform, except as provided in 40 CFR 51.853(j). Where 40 CFR
51.853(j) is applicable, the requirements of 40 CFR 51.853(j) shall apply.

(c) Any federal department, agency, or instrumentality of the federal government taking an action subject to this Section shall
comply with the requirements of 40 CFR 51.854 through 51.859. Any measures that are intended to mitigate air quality
impacts shall comply with the requirements of 40 CFR 51.860.
(d) Notwithstanding any other requirement of this Section, when the total direct and indirect emissions of any pollutant from
a federal action does not equal or exceed the rates specified in 40 CFR 51.853(b), but represents ten percent or more of the
maintenance area's total emissions of that pollutant, the action is defined as a regionally significant action and the requirements of 40 CFR 51.850 and 51.855 through 51.860 shall apply for the federal action.
(e) Notwithstanding any provision of this Section, a determination that an action is in conformance with the applicable
maintenance plan does not exempt the action from any other requirement of the applicable maintenance plan, the National
Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.), or the federal Clean Air Act.
History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10);
Eff. April 1, 1995;
Amended Eff. July 1, 1998.

15A NCAC 2D .1800 - Control of Odors

15A NCAC 02D .1801 DEFINITIONS
For the purpose of this Section, the following definitions apply:
(1) "Animal operation" means animal operation as defined in G.S. 143-215.10B.
(2) "Child care center" means child care centers as defined in G.S. 110-86 licensed under G.S. 110, Article 7.
(3) "Construction" means any physical change (including fabrication, erection, installation, replacement, demolition, excavation, or other modification) at any contiguous area under common control.
(4) "Control technology" means economically feasible control devices installed to effectively reduce objectionable odors from animal operations.
(5) "Existing animal operation" means an animal operation that is in operation or commences construction on or before February 28, 1999.
(6) "Historic properties" means historic properties acquired by the State pursuant to G.S. 121-9 or listed in the North Carolina Register of Historic Places pursuant to G.S. 121-4.1.
(7) "Modified animal operation" means an animal operation that commences construction after February 28, 1999, to increase the steady state live weight that can be housed at that animal operation. Modified animal operation does not include renovating existing barns, relocating barns, or replacing existing lagoons or barns if the new barn or lagoon is no closer to the nearest property and if the new barn or lagoon does not increase the steady state live weight that can be housed at that animal operation.
(8) "New animal operation" means an animal operation that commences construction after February 28, 1999.
(9) "Objectionable odor" means any odor present in the ambient air that by itself, or in combination with other odors, is or may be harmful or injurious to human health or welfare, or may unreasonably interfere with the comfortable use and enjoyment of life or property. Odors are harmful or injurious to human health if they tend to lessen human food and water intake, interfere with sleep, upset appetite, produce irritation of the upper respiratory tract, or cause symptoms of nausea, or if their chemical or physical nature is, or may be, detrimental or dangerous to human health.
(10) "Occupied residence" means occupied residence as defined in G.S. 106-802.
(11) "State Parks" means State Parks as defined in G.S. 113-44.9.
(12) "Technologically feasible" means that an odor control device or a proposed solution to an odor problem has previously been demonstrated to accomplish its intended objective, and is generally accepted within the technical community. It is possible for technologically feasible solutions to have demonstrated their suitability on similar, but not identical, sources for which they are proposed to control.
History Note: Authority G.S. 143-213; 143-215.3(a)(1); 143-215.107(a)(11);
Temporary Adoption Eff. April 27, 1999; March 1, 1999;
Eff. July 1, 2000.

15A NCAC 02D .1802 CONTROL OF ODORS FROM ANIMAL OPERATIONS USING LIQUID ANIMAL

WASTE MANAGEMENT SYSTEMS
(a) Purpose. The purpose of this Rule is to control objectionable odors from animal operations beyond the boundaries of
animal operations.
(b) Applicability. This Rule shall apply to all animal operations.
(c) Required management practices. All animal operations shall be required to implement applicable management practices for the control of odors as follows:
(1) The carcasses of dead animals shall be disposed of within 24 hours after becoming aware of the death of the animal according to the methods approved by the State Veterinarian for disposal of dead domesticated animals under G.S. 106-403;
(2) Waste from animal wastewater application spray systems shall be applied in such a manner and under such conditions to prevent drift from the irrigation field of the wastewater spray beyond the boundary of the animal operation, except waste from application spray systems may be applied in an emergency

to maintain safe lagoon freeboard if the owner or operator notifies the Department and resolves the
emergency with the Department as written in Section III.6 of the Swine Waste Operation General
Permit;
(3) Animal wastewater application spray system intakes shall be located near the liquid surface of the
animal wastewater lagoon;
(4) Ventilation fans shall be maintained according to the manufacturer=s specifications; and
(5) Animal feed storage containers located outside of animal containment buildings shall be covered
except when necessary to remove or add feed; this Subparagraph does not apply to the storage of
silage or hay or to commodity boxes with roofs; and
All animal operations shall be in compliance with this Paragraph by June 1, 1999.
(d) Odor management plan for existing animal operations for swine. Animal operations for swine that meet the
criteria in
the table in this Paragraph shall submit an odor management plan to the Director according to the schedule in the
table in
this Paragraph. The odor management plan shall describe how odors are currently being controlled and how these
odors
will be controlled in the future. The odor management plan shall contain the elements described in Rule .1803(a) of
this
Section. The animal operation shall be required to submit its odor management plan only once.
100 pounds steady state
live weight of swine
at least but less
than
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, historic
property, or child care center
Date by when the odor
management plan is to be
submitted
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
For the purposes of this Rule, the distance shall be measured from the edge of the barn or lagoon, whichever is
closer, to
the boundary of the neighboring occupied property with an inhabitable structure, business, school, hospital, church,
outdoor recreational facility, national park, State Park, historic property, or child care center. All animal operations
for
swine that are of the size in the table in this Paragraph shall submit by the date specified in this table either an odor
management plan or documentation that no neighboring occupied property with an inhabitable structure, business,
school, hospital, church, outdoor recreational facility, national park, State Park, historic property, or child care
center is
within the distances specified in the table as of the date that the submittal is due. After July 15, 2002, the Director
may
require existing animal operations for swine with a steady state live weight of swine between 1,000 to 10,000
hundredweights to submit an odor management plan if the Director determines that these animal operations may
cause or
contribute to an objectionable odor. The Director may require an existing animal operation to submit a best
management
plan under Paragraph (h) of this Rule if the existing animal operation fails to submit an odor management plan by
the
schedule in this Paragraph of this Rule.
(e) Location of objectionable odor determinations.
(1) For an existing animal operation that does not meet the following siting requirements:
(A) at least 1500 feet from any occupied residence not owned by the owner of the animal

operation;
(B) at least 2500 feet from any school, hospital, church, outdoor recreation facility. national park;
State Park, historic property, or child care center; and
(C) at least 500 feet from any property boundary;
objectionable odors shall be determined at neighboring occupied property not owned by the owner of
the animal operation, businesses, schools, hospitals, churches, outdoor recreation facilities, national
parks, State Parks, historic properties, or child care centers that are affected.
(2) For a new animal operation or existing animal operation that meets the siting requirements in
Subparagraph (1) of this Paragraph, objectionable odors shall be determined beyond the boundary of
the animal operation.
(f) Complaints. The Director shall respond to complaints about objectionable odors from animal operations as
follows:
(1) Complaints shall be investigated to the extent practicable.
(2) Complaints may be used to assist in determination of a best management plan failure or a control
technology failure.
(3) The Director shall respond to complaints within 30 days.
(4) Complaint response shall at least include a written response of the Director's evaluation of the
complaint.
(5) The investigation of a complaint shall be completed as expeditiously as possible considering the
meteorology, activities at the animal operation, and other conditions occurring at the time of the
complain.
(g) Determination of the existence of an objectionable odor. In deciding if an animal operation is causing or
contributing
to an objectionable odor, the Director may consider one or more of the following:
(1) the nature, intensity, frequency, pervasiveness, and duration of the odors from the animal operation;
(2) complaints received about objectionable odors from the animal operation;
(3) emissions from the animal operation of known odor causing compounds, such as ammonia, total
volatile organics, hydrogen sulfide or other sulfur compounds at levels that could cause or contribute
to an objectionable odor;
(4) any epidemiological studies associating health problems with odors from the animal operation or
documented health problems associated with odors from the animal operation provided by the State
Health Director; or
(5) any other evidence, including records maintained by neighbors, that show that the animal operation is
causing or contributing to an objectionable odor.
(h) Requirement for a best management plan for controlling odors from existing animal operations. If the Director
finds
that an existing animal operation is causing or contributing to an objectionable odor, the owner or operator of the
animal
operation shall:
(1) submit to the Director as soon as practical, but not to exceed 90 days after receipt of written
notification from the Director that the animal operation is causing or contributing to an objectionable
odor, a best management plan for odor control as described in Rule .1803 of this Section; and
(2) be in compliance with the terms of the plan within 30 days after the Director approves the best
management plan (compliance with an approved compliance schedule in the best management plan is
deemed to be in compliance with the plan).
(i) Requirement for amendment to best management plan. No later than 60 days from completion of a compliance
schedule in an approved best management plan or if the best management plan contains no compliance schedule, no
later
than 60 days from the implementation date of the best management plan, the Director shall determine whether the
plan
has been properly implemented. If the Director determines that a plan submitted under Paragraph (h) of this Rule
does
not control objectionable odors from the animal operation, the Director shall require the owner or operator of the
animal
operation to amend the plan to incorporate additional or alternative measures to control objectionable odors from the
animal operation. The owner or operator shall:

(1) submit a revised best management plan to the Director as soon as practical but not later than 60 days after receipt of written notification from the Director that the plan is inadequate; and
(2) be in compliance with the revised plan within 30 days after the Director approves the revisions to the best management plan (compliance with an approved compliance schedule in the best management plan is deemed to be in compliance with the plan).
(j) Plan failure. Any of the following conditions shall constitute failure of a best management plan:
(1) failing to submit the initial best management plan required under Paragraph (h) of this Rule within 90 days of receipt of written notification from the Director that the animal operation is causing or contributing to an objectionable odor;
(2) failing to submit a revised best management plan required under Paragraph (i) of this Rule within 60 days of receipt of written notification from the Director that the animal operation is causing or contributing to an objectionable odor;
(3) failing to correct all deficiencies in a submitted best management plan under Rule .1803(c) of this Section within 30 days of receipt of written notification from the Director to correct these deficiencies;
(4) failing to implement the best management plan after it has been approved; or
(5) finding by the Director, using the criteria under Paragraph (g) of this Rule, that, after the best management plan has been implemented and revised no more than one time (voluntary revisions and revisions made pursuant to 15A NCAC 2D .1803(c) shall not be counted as revisions under this Subparagraph); the best management plan does not adequately control objectionable odors from the animal operation and will not adequately control objectionable odors even with further amendments.
(k) Requirements for control technology. If a plan failure occurs, the Director shall require the owner or operator of the
animal operation to install control technology to control odor from the animal operation. The owner or operator shall submit within 90 days from receipt of written notification from the Director of a plan failure, a permit application for
control technology and an installation schedule. If the owner or operator demonstrates to the Director that a permit application cannot be submitted within 90 days, the Director may extend the time for submittal up to an additional 90
days. Control technology shall be determined according to Subparagraph (1) of this Paragraph. The installation schedule
shall contain the increments of progress described in Subparagraph (2) of this Paragraph. The owner or operator may at
any time request adjustments in the installation schedule and shall in his request explain why the schedule cannot be met.
If the Director finds that the reason for not meeting the schedule is valid, the Director shall revise the installation schedule as requested; however, the Director shall not extend the final compliance date beyond 24 months from the date
that the permit was first issued for the control technology. The owner or operator shall certify to the Director within five
days after the deadline for each increment of progress described in Subparagraph (2) of this Paragraph whether the required increment of progress has been met.
(1) Control technology. The owner or operator of an animal operation shall identify control technologies that are technologically feasible for his animal operation and shall select the control technology or control technologies that results in the greatest reduction of odors considering human health, energy, environmental, and economic impacts and other costs. The owner or operator shall explain the reasons for selecting the control technology or control technologies. If the Director finds that the selected control technology or control technologies will effectively control odors following the procedures in 15A NCAC 2Q .0300 or .0500, he shall approve the installation of the control technology or control technologies for this animal operation. The owner or operator of the animal operation shall comply with all terms and conditions in the permit.
(2) Installation schedule. The installation schedule for control technology shall contain the following increments of progress:
(A) a date by which contracts for odor control technology shall be awarded or orders shall be issued for purchase of component parts;
(B) a date by which on-site construction or installation of the odor control technology shall begin;

(C) a date by which on-site construction or installation of the odor control technology shall be
completed; and
(D) a date by which final compliance shall be achieved.
Control technology shall be in place and operating as soon as practical but not to exceed 12 months
from the date that the permit is issued for control technology.
(l) New or modified animal operations. This Paragraph does not apply to activities exempted from the moratorium
on
construction or expansion of swine farms in S.L. 1997, c. 458, s. 1.1 provided that the owner or operator
demonstrates to
the Director that the activity will not result in an objectionable odor.
(1) Before beginning construction, the owner or operator of a new or modified animal operation raising or
producing swine shall submit and have an approved best management plan and shall meet the
following: A house or lagoon that is a component of an animal operation shall be constructed:
(A) at least 1500 feet from any occupied residence not owned by the owner of the animal
operation;
(B) at least 2500 feet from any school, hospital, church, outdoor recreation facility, national park,
State Park, historic property, or child care center; and
(C) at least 500 feet from any property boundary;
(2) Before beginning construction, the owner or operator of a new or modified animal operation other than
swine shall submit and have an approved best management plan.
(3) For new or modified animal operations raising or producing swine, the outer perimeter of the land area
onto which waste is applied that is a component of an animal operation shall be:
(A) at least 75 feet from any boundary of property on which an occupied residence not owned by
the owner of the animal operation is located, and
(B) at least 200 feet from any occupied residence not owned by the owner of the animal
operation.
(4) The Director shall either approve or disapprove the best management plan submitted under this
Paragraph within 90 days after receipt of the plan. If the Director disapproves the plan, he shall
identify the plan=s deficiency.
History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(11); 143-215.108(a);
Temporary Adoption Eff. April 27, 1999; March 1, 1999;
Eff. July 1, 2000.

15A NCAC 02D .1803 BEST MANAGEMENT PLANS FOR ANIMAL OPERATIONS
(a) Contents of a best management plan. The best management plan for animal operations shall:
(1) identify the name, location, and owner of the animal operation;
(2) identify the name, title, address, and telephone number of the person filing the plan;
(3) identify the sources of odor within the animal operation;
(4) describe how odor will be controlled from:
(A) the animal houses;
(B) the animal wastewater lagoon, if used;
(C) the animal wastewater application lands, if used;
(D) waste conveyances and temporary accumulation points; and
(E) other possible sources of odor within the animal operation;
(5) contain a diagram showing all structures and lagoons at the animal operation, forced air directions, and
approximate distances to structures or groups of structures within 3000 feet of the property line of the
animal operation; a recent or updated aerial photograph may be submitted in place of a diagram
provided the items required under this Subparagraph of this Rule are shown;
(6) for existing animal operations, contain a schedule not to exceed six months by which the plan will be
implemented (a new animal operation is to have and be in compliance with its best management plan
when it begins operation); for an amended best management plan, the implementation schedule shall
not exceed six months;
(7) describe how the plan will be implemented, including training of personnel;
(8) describe inspection and maintenance procedures; and
(9) describe methods of monitoring and recordkeeping to verify compliance with the plan.
(b) The Division shall review all best management plan submittals within 30 days of receipt of the submittal to

determine if the submittal is complete or incomplete for processing purposes. To be complete, the submittal shall contain
all the elements listed in Paragraph (a) of this Rule. The Division shall notify the person submitting the plan by letter stating that:
(1) the submittal is complete,
(2) the submittal is incomplete and identifying the missing elements and a date by which the missing elements need to be submitted to the Division, or
(3) the best management plan is incomplete and requesting that the person rewrite and resubmit the plan.
(c) Approval of the best management plan. The Director shall approve the plan if he finds that:
(1) the plan contains all the required elements in Paragraph (a) of this Rule;
(2) the proposed schedule contained in the plan will reduce objectionable odors in a timely manner;
(3) the methods used to control objectionable odors are likely to prevent objectionable odors beyond the property lines of the animal operation (the Director shall not consider impacts of objectionable odors on neighboring property if the owner of the neighboring property agrees in writing that he does not object to objectionable odors on his property and this written statement is included with the proposed best management plan; this agreement becomes void if the neighboring property changes ownership. If the neighboring property changes ownership, the plan shall be revised, if necessary, to prevent objectionable odors on this property unless the new owner agrees in writing that he does not object to objectionable odors on his property); and
(4) the described compliance verification methods are sufficient to verify compliance with the plan.
Within 90 days after receipt of a plan, the Director shall determine whether the proposed plan meets the requirements of
this Paragraph of this Rule. If the Director finds that the proposed plan does not meet the requirements of this Paragraph,
he shall notify the owner or operator of the animal operation in writing of the deficiencies in the proposed plan. The owner or operator shall have 30 days after receiving written notification from the Director to correct the deficiencies. If
the Director finds that the proposed plan is acceptable, he shall notify the owner or operator in writing that the proposed
plan has been approved.
History Note: Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215-215.107(a)(11);
Temporary Adoption Eff. April 27, 1999; March 1, 1999;
Eff. July 1, 2000.

15A NCAC 02D .1804 REPORTING REQUIREMENTS FOR ANIMAL OPERATIONS
If the Department receives an odor complaint about an animal operation, the Department may require the owner or operator of the animal operation to submit the following information:
(1) the name and location of the animal operation;
(2) the name, title, address, and telephone number of the person filing the report;
(3) the type and number of animals at the animal operation;
(4) potential sources of odors, such as animal housing structures, lagoons, collection and handling devices, and storage containers, with a physical description of these sources;
(5) waste water land application procedures; and
(6) measures taken to reduce odors.
This information shall be submitted to the Division within 15 days after receipt of the request.
History Note: Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215-215.107(a)(11);
Temporary Adoption Eff. March 1, 1999;
Eff. July 1, 2000.

15A NCAC 02D .1805 IMPLEMENTATION PLAN
History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(11);
Temporary Adoption Eff. March 1, 1999;
Temporary Repeal Eff. May 25, 1999.

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

(a) Purpose. The purpose of this Rule is to provide for the control and prohibition of objectionable odorous emissions.
(b) Definitions. For the purpose of this Rule the following definitions shall apply:
(1) "Commercial purposes" means activities that require a state or local business license to operate.
(2) "Temporary activities or operations" means activities or operations that are less than 30 days in duration during the course of a calendar year and do not require an air quality permit.
(c) Applicability. With the exceptions in Paragraph (d) of this Rule, this Rule shall apply to all operations that may produce odorous emissions that can cause or contribute to objectionable odors beyond the facility's boundaries.
(d) Exemptions. The requirements of this Rule do not apply to:
(1) processes at kraft pulp mills identified in Rule .0528 of this Section, and covered under Rule .0524 or .0528 of this Section;
(2) processes at facilities that produce feed-grade animal proteins or feed-grade animal fats and oils identified in and covered under Rule .0539;
(3) motor vehicles and transportation facilities;
(4) all on-farm animal and agricultural operations, including dry litter operations and operations covered under Rule .1804 of this Section;
(5) municipal wastewater treatment plants and municipal wastewater handling systems;
(6) restaurants and food preparation facilities that prepare and serve food on site;
(7) single family dwellings not used for commercial purposes;
(8) materials odorized for safety purposes;
(9) painting operations that do not require a business license; or
(10) all temporary activities or operations.
(e) Control Requirements. The owner or operator of a facility subject to this Rule shall not operate the facility without
implementing management practices or installing and operating odor control equipment sufficient to prevent odorous
emissions from the facility from causing or contributing to objectionable odors beyond the facility's boundary.
(f) Maximum feasible controls. If the Director determines that a source or facility subject to this Rule is emitting an objectionable odor by the procedures described in Paragraph (g) of this Rule, the Director shall require the owner or operator to implement maximum feasible controls for the control of odorous emissions. (Maximum feasible controls shall
be determined according to the procedures in Rule .1807 of this Section.) The owner or operator shall:
(1) within 180 days of receipt of written notification from the Director of the requirement to implement maximum feasible controls, complete the determination process outlined in 15A NCAC 2D .1807 and submit the completed maximum feasible control determination process along with a permit application for maximum feasible controls and a compliance schedule to the Division of Air Quality; the compliance schedule shall contain the following increments of progress:
(A) a date by which contracts for the odorous emission control systems and equipment shall be awarded or orders shall be issued for purchase of component parts;
(B) a date by which on-site construction or installation of the odorous emission control systems and equipment shall begin;
(C) a date by which on-site construction or installation of the odorous emission control systems and equipment shall be completed; and
(D) a date by which final compliance shall be achieved.
(2) within 18 months after receiving written notification from the Director of the requirement to implement maximum feasible controls, have installed and begun operating maximum feasible controls.
The owner or operator shall certify to the Director within five days after the deadline for each increment of progress in
this Paragraph whether the required increment of progress has been met.
(g) Determination of the existence of an objectionable odor. A source or facility is causing or contributing to an objectionable odor when:
(1) A member of the Division staff determines by field investigation that an objectionable odor is present by taking into account nature, intensity, pervasiveness, duration, and source of the odor and other pertinent factors;
(2) The source or facility emits known odor causing compounds such as ammonia, total volatile organics,

hydrogen sulfide, or other sulfur compounds at levels that cause objectionable odors beyond the property line of that source or facility; or
(3) The Division receives epidemiological studies associating health problems with odors from the source or facility or evidence of documented health problems associated with odors from the source or facility provided by the State Health Director.
History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);
Eff. April 1, 2001.

15A NCAC 02D .1807 DETERMINATION OF MAXIMUM FEASIBLE CONTROLS FOR ODOROUS EMISSIONS
(a) Scope. This Rule sets out procedures for determining maximum feasible controls for odorous emissions. The owner
or operator of the facility shall be responsible for providing the maximum feasible control determination.
(b) Process for maximum feasible control determinations. The following sequential process shall be used on a case-bycase
basis to determine maximum feasible controls:
(1) Identify all available control technologies. In the first step, all available options for the control of odorous emissions shall be listed. Available options include all possible control technologies or techniques with a practical potential to control, reduce, or minimize odorous emissions. For the purposes of this document, in some specific cases a comprehensive, effective odor control plan can be listed among the possible odor control technologies as a viable and satisfactory maximum feasible control technology option. All available control technologies shall be included on this list regardless of their technical feasibility or potential energy, human health, economic, or environmental impacts.
(2) Eliminate technically infeasible options. In the second step, the technical feasibility of all the control options identified under Subparagraph (b)(1) of this Rule shall be evaluated with respect to source specific factors. A demonstration of technical infeasibility shall be clearly documented and shall show, based on physical, chemical, or engineering principles, that technical difficulties preclude the successful use of the control option under review. Technically infeasible control options shall then be eliminated from further consideration as maximum feasible controls.
(3) Rank remaining control technologies by control effectiveness. All the remaining control technologies, which have not been eliminated under Subparagraph (b)(2) of this Rule, shall be ranked and then listed in order of their ability to control odorous emissions, with the most effective control option at the top of the list. The list shall present all the control technologies that have not been previously eliminated and shall include the following information:
(A) control effectiveness;
(B) economic impacts (cost effectiveness);
(C) environmental impacts: this shall include any significant or unusual other media impacts (for example, water or solid waste), and, at a minimum, the impact of each control alternative on emissions of toxic or hazardous air pollutants;
(D) human health impacts; and
(E) energy impacts.
However, an owner or operator proposing to implement the most stringent alternative, in terms of control effectiveness, need not provide detailed information concerning the other control options. In such cases, the owner or operator shall only document, to the satisfaction of the Director, that the proposed control option is indeed the most efficient, in terms of control effectiveness, and provide a review of collateral environmental impacts.
(4) Evaluate most effective controls and document results. Following the delineation of all available and technically feasible control technology options under Subparagraph (b)(3) of this Rule, the energy, human health, environmental, and economic impacts shall be considered in order to arrive at the maximum feasible controls. An analysis of the associated impacts for each option shall be conducted. The owner or operator shall present an objective evaluation of the impacts of each alternative. Beneficial and adverse impacts shall be analyzed and, if possible, quantified. If the owner or operator has proposed to select the most stringent alternative, in terms of control effectiveness, as maximum feasible controls, he shall evaluate whether impacts of unregulated air pollutants or environmental impacts in other media would justify selection of an alternative control technology. If there are no concerns regarding collateral environmental impacts, the analysis is ended and this proposed option is

selected as maximum feasible controls. In the event the most stringent alternative is inappropriate, due to energy, human health, environmental, or economic impacts, the justification for this conclusion shall be fully documented; and the next most stringent option, in terms of control effectiveness, becomes the primary alternative and is similarly evaluated. This process shall continue until the control technology evaluated can not be eliminated due to source-specific environmental, human health, energy, or economic impacts.

(5) Select maximum feasible controls. The most stringent option, in terms of control effectiveness, not eliminated under Subparagraph (b)(4) of this Rule shall be selected as maximum feasible controls.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);
Eff. April 1, 2001.

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

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

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

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

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

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

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

History Note: Authority G.S. 143-215.10I; 143-215.3(a)(1); 143-215.107(a)(11); 143-215.108(a);
Eff. January 1, 2009.

15A NCAC 2D .2200 - Special Orders

15A NCAC 02D .2201 PURPOSE
The purpose of this Section is to implement the provisions of G.S. 143-215.110 pertaining to the issuance of air quality
Special Orders by the Environmental Management Commission.
History Note: Authority G.S. 143-215.3(a)(1); 143-215.110;
Eff. April 1, 2004.

15A NCAC 02D .2202 DEFINITIONS
For the purposes of this Section, the following definitions apply:
(1) "Special Order" means a directive of the Commission to any person whom it finds responsible for causing or contributing to any pollution of the air of the State. The term includes all orders or instruments issued by the Commission pursuant to G.S. 143-215.110.
(2) "Consent Order" means a Special Order into which the Commission enters with the consent of the person who is subject to the order.
(3) "Special Order by Consent" means "Consent Order."
History Note: Authority G.S. 143-212; 143-213; 143-215.3(a)(1); 143-215.110;
Eff. April 1, 2004.

15A NCAC 02D .2203 PUBLIC NOTICE
(a) The requirements of this Rule for public notice and public hearing apply to Consent Orders. The Commission may
specify other conditions for Special Orders issued without consent if it finds such conditions are necessary to achieve or
demonstrate compliance with a requirement under this Subchapter or 15A NCAC 02Q.
(b) Notice of proposed Consent Order:
(1) The Director shall give notice pursuant to G.S. 143-215.110(a1).
(2) The notice shall include at least the following:
(A) name, address, and telephone number of the Division;
(B) name and address of the person to whom the proposed order is directed;
(C) a brief summary of the conditions of the proposed order including the period of time in which action shall be taken to achieve compliance and the major permit conditions or emission standards that the source will be allowed to exceed during the pendency of the order;
(D) a brief description of the procedures to be followed by the Commission or Director in reaching a final decision on the proposed order, which shall include descriptions of the process for submitting comments and requesting a public hearing. The description shall specify that comments and requests for a public hearing are to be received by the Division within 30 days following the date of public notice; and
(E) a description of the information available for public review, where it can be found, and procedures for obtaining copies of pertinent documents.
(c) Notice of public hearing for proposed Consent Order:
(1) The Director shall consider all requests for a public hearing, and if he determines significant public interest for a public hearing exists, then he shall hold a public hearing.
(2) The Director shall give notice of the public hearing at least 30 days before the hearing.
(3) The notice shall be advertised in a local newspaper and provided to those persons specified in G.S. 143-215.110(a1)(2) for air quality special orders.
(4) The notice shall include the information specified in Subparagraph (b)(2) of this Rule. It shall also state the time and location for the hearing along with procedures for providing comment.
(5) The Chairman of the Commission or the Director shall appoint one or more hearing officers to preside over the public hearing and to receive written and oral comments. The hearing officer shall provide the Commission a written report of the hearing, which shall include:
(A) a copy of the public notice published in the newspaper;
(B) a copy of all the written comments and supporting documentation received;
(C) a summary of all the oral comments received;
(D) recommendations of the hearing officer to the Commission; and
(E) a proposed Consent Order for the Commission's consideration.

(d) Any person may request to receive copies of all notices required by this Rule, and the Director shall mail copies of
notices to those who have submitted a request.
(e) The Director may satisfy the requirements in Paragraphs (b) and (c) of this Rule by issuing a notice that complies with both Paragraphs.
(f) Any Consent Order may be amended by the Director to incorporate minor modifications, such as modification of standard conditions to reflect updated versions, correction of typographical errors, or interim date extensions, in a consent
order without public notice provided that the modifications do not extend the final compliance date by more than four
months.
History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.3(a)(3); 143-215.3(a)(4); 143-215.110;
Eff. April 1, 2004.

15A NCAC 02D .2204 FINAL ACTION ON CONSENT ORDERS

(a) The Director shall take final action for the Commission on Consent Orders for which a public hearing has not been
held as provided in Rule .2203 of this Section. The final action on the proposed order shall be taken no later than 60 days
following publication of the notice.
(b) The Commission shall take final action on Consent Orders for which a public hearing has been held as provided in
Rule .2203 of this Section. The final action on the proposed order shall be taken no later than 90 days following the hearing.
History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.3(a)(4); 143-215.110;
Eff. April 1, 2004.

15A NCAC 02D .2205 NOTIFICATION OF RIGHT TO CONTEST SPECIAL ORDERS ISSUED WITHOUT CONSENT

For any Special Orders other than Consent Orders, the Commission shall notify the person subject to the order of the procedure set out in G.S. 150B-23 to contest the Special Order.
History Note: Authority G.S. 143-215.2(b); 143-215.3(a)(1); 143-215.110(b);
Eff. April 1, 2004.

15A NCAC 2D .2300 - Banking Emission Reduction Credits

15A NCAC 02D .2301 PURPOSE

This Section provides for the creation, banking, transfer, and use of emission reduction credits for:
(1) nitrogen oxides (NOx),
(2) volatile organic compounds (VOC),
(3) sulfur dioxide (SO_2),
(4) fine particulate (PM2.5), and
(5) ammonia (NH_3)
for offsets under 15A NCAC 02D .0531, Sources in Nonattainment Area.
History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(12);
Eff. December 1, 2005.

15A NCAC 02D .2302 DEFINITIONS

For the purposes of this Section, the following definitions shall apply:
(1) "Air permit" means a construction and operation permit issued under 15A NCAC 02Q .0300, Construction and Operation Permits, or .0500, Title V Procedures.
(2) "Banking" means a system for recording emission reduction credits so that they may be used or transferred in the future.
(3) "Enforceable" means enforceable by the Division. Methods for ensuring that emission reduction credits are enforceable include conditions in air permits issued.
(4) "Federally designated ozone nonattainment area in North Carolina" means an area designated as nonattainment for ozone and described in 40 CFR 81.334.
(5) "Federally designated fine particulate (PM2.5) nonattainment area in North Carolina" means an area designated as nonattainment for fine particulate (PM2.5) and described in 40 CFR 81.334.
(6) "Netting Demonstration" means the act of calculating a "net emissions increase" under the preconstruction review requirements of Title I, Part D of the Federal Clean Air Act and the regulations promulgated there under in 15A NCAC 02D .0530, Prevention of Significant Deterioration, or .0531, Sources in Nonattainment Area.
(7) "Permanent means assured for the life of the corresponding emission reduction credit through an enforceable mechanism such as a permit condition or revocation.
(8) "Quantifiable" means that the amount, rate, and characteristics of the emission reduction credit can be estimated through a reliable, reproducible method.
(9) "Real" means a reduction in actual emissions emitted into the air.
(10) "Surplus" means not required by any local, State, or federal law, rule, order, or requirement and in excess of reductions used by the Division in issuing any air permit, in excess of any conditions in an air permit to avoid an otherwise applicable requirement, or to demonstrate attainment of ambient air quality standards in 15A NCAC 02D .0400 or reasonable further progress towards achieving attainment of ambient air quality standards. For the purpose of determining the amount of surplus emission reductions, any seasonal emission limitation or standard shall be assumed to apply throughout the year. The following are not considered surplus:
(a) emission reductions that have previously been used to avoid 15A NCAC 02D .0530 or .0531 (new source review) through a netting demonstration;
(b) Emission reductions in hazardous air pollutants listed pursuant to Section 112(b) of the federal Clean Air Act to the extent needed to comply with 15A NCAC 02D .1109, .1111, or .1112; however, emission reductions in hazardous air pollutants that are also volatile organic compounds beyond that necessary to comply with 15A NCAC 02D .1109, .1111, or .1112 are surplus; or
(c) emission reductions used to offset excess emissions from another source as part of an alternative mix of controls ("bubble") demonstration under 15A NCAC 02D .0501.
History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(12);
Eff. December 1, 2005.

15A NCAC 02D .2303 APPLICABILITY AND ELIGIBILITY

(a) Applicability. Any facility that has the potential to emit nitrogen oxides, volatile organic compounds, sulfur dioxide,
ammonia, or fine particulate (PM2.5) in amounts greater than 25 tons per year and that is in a federally designated ozone
or fine particulate (PM2.5) nonattainment area in North Carolina is eligible to create and bank nitrogen oxides, volatile
organic compounds, sulfur dioxide, ammonia, or fine particulate (PM2.5) emission reduction credits.

(b) Eligibility of emission reductions.

(1) To be approved by the Director as an emission reduction credit, a reduction in emissions shall be real, permanent, quantifiable, enforceable, and surplus and shall have occurred:

(A) for ozone after December 31, 2002 for the Charlotte-Gastonia-Rock Hill, NC-SC nonattainment area, the Raleigh-Durham-Chapel Hill nonattainment area, the Rocky Mount nonattainment area, and the Haywood and Swain Counties (Great Smoky Mountains National Park) nonattainment area, and after December 31, 2000 for all other nonattainment areas.

(B) for fine particulate (PM2.5) after December 31, 2002 for the Greensboro-Winston-Salem-High Point, NC and Hickory-Morganton-Lenoir, NC nonattainment areas.

(2) To be eligible for consideration as emission reduction credits, emission reductions may be created by any of the following methods:

(A) installation of control equipment beyond what is necessary to comply with existing rules;

(B) a change in process inputs, formulations, products or product mix, fuels, or raw materials;

(C) a reduction in actual emission rate;

(D) a reduction in operating hours;

(E) production curtailment or reduction in throughput;

(F) shutdown of emitting sources or facilities; or

(G) any other enforceable method that the Director finds resulting in real, permanent, quantifiable, enforceable, and surplus reduction of emissions.

(c) Ineligible for emission reduction credit. Emission reductions from the following are not eligible to be banked as emission reduction credits:

(1) sources covered under a special order or variance until compliance with the emission standards that are the subject of the special order or variance is achieved;

(2) sources that have operated less than 24 months;

(3) emission allocations and allowances used in the budget trading program under 15A NCAC 02D .1419 or .2408;

(4) emission reductions outside North Carolina; or

(5) mobile sources.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(12);
Eff. December 1, 2005;
Amended Eff. July 1, 2007.

15A NCAC 02D .2304 QUALIFICATION OF EMISSION REDUCTION CREDITS

For purposes of calculating the amount of emission reduction that can be quantified as an emission reduction credit, the
following procedures shall be followed:

(1) The source's average actual annual emissions before the emission reduction shall be calculated in tons per year. In calculating average actual annual emissions before the emission reduction, data from the 24-month period immediately preceding the reduction in emissions shall be used. The Director may allow the use of a different time period, not to exceed seven years immediately preceding the reduction in emissions if the owner or operator of the source documents that such period is more representative of normal source operation.

(2) The emission reduction credit generated by the emission reduction shall be calculated by subtracting the allowable annual emissions rate following the reduction from the average actual annual emissions prior to the reduction.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(12);
Eff. December 1, 2005.

15A NCAC 02D .2305 CREATING AND BANKING EMISSION REDUCTION CREDITS

(a) The owner or operator of a source seeking to create and bank emission reduction credits shall submit over the signature of the responsible official for a Title V facility or the official identified in 15A NCAC 02Q .0304(j) for a non-
Title V facility the following information, which may be on an application form provided by the Division:
(1) the company name, contact person and telephone number, and street address of the source seeking the emission reduction credit;
(2) a description of the type of source where the proposed emission reduction occurred or will occur;
(3) a detailed description of the method or methods to be employed to create the emission reduction;
(4) the date that the emission reduction occurred or will occur;
(5) quantification of the emission reduction credit as described under Rule .2304 of this Section;
(6) the proposed method for ensuring the reductions are permanent and enforceable, including any necessary application to amend the facility's air permit or, for a shutdown of an entire facility, a request for permit rescission;
(7) whether any portion of the reduction in emissions to be used to create the emission reduction credit has previously been used to avoid 15A NCAC 02D .0530 (prevention of significant deterioration) or .0531 (nonattainment major new source review) through a netting demonstration;
(8) any other information necessary to demonstrate that the reduction in emissions is real, permanent, quantifiable, enforceable, and surplus; and
(9) a complete permit application if the permit needs to be modified to create or enforce the emission reduction credit.
(b) If the Director finds that
(1) all the information required to be submitted under Paragraph (a) of this Rule has been submitted;
(2) the source is eligible under Rule .2303 of this Section;
(3) a complete permit application has been submitted, if necessary, to implement the reduction in emissions; and
(4) the reduction in emissions is real, permanent, quantifiable, enforceable, and surplus; the Director shall issue the source a certificate of emission reduction credit once the facility's permit is modified, if necessary, to reflect permanently the reduction in emissions. The Director shall register the emission reduction credit for use only after the reduction has occurred.
(c) Processing schedule.
(1) The Division shall send written acknowledgement of receipt of the request to create and bank emission credits within 10 days of receipt of the request.
(2) The Division shall review all request to create and bank emission credits within 30 days to determine whether the application is complete or incomplete for processing purposes. If the application is incomplete the Division shall notify the applicant of the deficiency. The applicant shall have 90 days to submit the requested information. If the applicant fails to provide the requested information within 90 days, the Division shall return the application.
(3) The Director shall either approve or disapprove the request within 90 days after receipt of a complete application requesting the banking of emission reduction credits. Upon approval the Director shall issue a certificate of emission reduction credit.
History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(12);
Eff. December 1, 2005.

15A NCAC 02D .2306 DURATION OF EMISSION REDUCTION CREDITS

Banked emission reduction credits are permanent until withdrawn by the owner or until withdrawn by the Director under
Rule .2310 of this Section.
History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(12);
Eff. December 1, 2005.

15A NCAC 02D .2307 USE OF EMISSION REDUCTION CREDITS

(a) Persons holding emission reduction credits may withdraw the emission reduction credits and may use them in any
manner consistent with this Section.

(b) An emission reduction credit may be withdrawn only by the owner of record or by the Director under Rule .2310 of
this Section and may be withdrawn in whole or in part. In the case of a partial withdrawal, the Director shall issue a revised certificate of emission reduction credit to the owner of record reflecting the new amount of the credit and shall
revoke the original certificate.
(c) Emission reduction credits may be used for the following purposes:
(1) as offsets or netting demonstrations required by 15A NCAC 02D .0531 for a major new source of:
(A) nitrogen oxides or volatile organic compounds in a federally designated ozone nonattainment area, or
(B) fine particulate (PM2.5) in a federally designated PM2.5 nonattainment area;
(2) as offsets or netting demonstrations required by 15A NCAC 02D .0531 for a major modification to an existing major source of:
(A) nitrogen oxides or volatile organic compounds in a federally designated ozone nonattainment area, or
(B) fine particulate (PM2.5) in a federally designated PM2.5 nonattainment area;
(3) as part of a netting demonstration required by 15A NCAC 02D .0530 when the source using the emission reduction credits is the same source that created and banked the emission reduction credits; or
(4) to remove a permit condition that created an emission reduction credit.
(d) Emission reduction credits generated through reducing emissions of one pollutant shall not be used for trading with
or offsetting of another pollutant, for example emission reduction credits for volatile organic compounds in an ozone nonattainment area shall not be used to offset nitrogen oxide emissions.
(e) Limitations on use of emission reduction credits.
(1) Emission reduction credits shall not be used to exempt a source from:
(A) prevention of significant deterioration requirements (15A NCAC 02D .0530) for netting demonstrations unless the emission reduction credits have been banked by the facility at which the new or modified source is located and have been banked during the period specified in 15A NCAC 02D .0530. This Subparagraph does not preclude the use of emission reductions not banked as emission credits to complete netting demonstrations.
(B) nonattainment major new source review (15A NCAC 02D .0531) unless the emission reduction credits have been banked by the facility at which the new or modified source is located and have been banked during the period specified in 15A NCAC 02D .0531. This Subparagraph does not preclude the use of emission reductions not banked as emission credits to complete netting demonstrations.
(C) new source performance standards (15A NCAC 02D .0524), national emission standards for hazardous air pollutants (15A NCAC 02D .1110), or maximum achievable control technology (15A NCAC 02D .1109, .1111, or .1112); or
(D) any other requirement of Subchapter 15A NCAC 02D unless the emission reduction credits have been banked by the facility at which the new or modified source is located.
(2) Emission reduction credits shall not be used to allow a source to emit above the limit established by a rule in Subchapter 15A NCAC 02D. (If the owner or operator wants to permit a source to emit above the limit established by a rule in Subchapter 15A NCAC 02D, he needs to follow the procedures in 15A NCAC 02D .0501 for an alternative mix of controls ["bubble"].)
History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(12);
Eff. December 1, 2005.

15A NCAC 02D .2308 CERTIFICATES AND REGISTRY

(a) Certificates of emission reduction credit issued by the Director shall contain the following information:
(1) the pollutant reduced (nitrogen oxides, volatile organic compounds, sulfur dioxide, ammonia, fine particulate);
(2) the amount of the credit in tons per year;
(3) the date the reduction occurred;
(4) company name, the street address and county of the source where the reduction occurred; and
(5) the date of issuance of the certificate.

(b) The Division shall maintain an emission reduction credit registry that constitutes the official record of all certificates
of emission reduction credit issued and all withdrawals made. The registry shall be available for public review. For each
certificate issued, the registry shall show the amount of the emission reduction credit, the pollutant reduced, the name and
location of the facility generating the emission reduction credit, and the facility contact person. The Division shall maintain records of all deposits, deposit applications, withdrawals, and transactions.
History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(12);
Eff. December 1, 2005.

15A NCAC 02D .2309 TRANSFERRING EMISSION REDUCTION CREDITS
(a) If the owner of a certificate of emission reduction credit transfers the certificate to a new owner, the Director shall
issue a certificate of emission reduction credit to the new owner and shall revoke the certificate held by the current owner
of record.
(b) If the owner of a certificate of emission reduction credit transfers part of the emission reduction credits represented
by the certificate to a new owner, the Director shall issue a certificate of emission reduction credit to the new owner reflecting the transferred amount and shall issue a certificate of emission reduction credit to the current owner of record
reflecting the amount of emission reduction credit remaining after the transfer. The Director shall revoke the original certificate of emission reduction credit.
(c) For any transferred emission reduction credits, the creator of the emission reduction credit shall continue to have enforceable conditions in the appropriate permit to assure permanency of the emission reduction and shall be held liable
for compliance with those conditions; the user of any transferred emission reduction credits shall not be held liable for
any failure of the creator to comply with its permit.
History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(12);
Eff. December 1, 2005.

15A NCAC 02D .2310 REVOCATION AND CHANGES OF EMISSION REDUCTION CREDITS
(a) The Director may withdraw emission reduction credits if the emission reduction credits
(1) have already been used;
(2) are incorrectly calculated; or
(3) achieved are less than those claimed.
(b) If a banked emission reduction credit were calculated using an emission factor and the emission factor changes, the
Director shall revise the banked emission reduction credit to reflect the change in the emission factor. If a banked emission reduction credit had been used, then no change shall be made in the use credit.
(c) When a rule is adopted or amended in this Subchapter or Subchapter 15A NCAC 02Q after November 1, 2005, the
Director shall adjust the banked emission reduction credits to account for changes in emissions that would be allowed
under the new emission limitation with which the source must currently comply if it is still operating. If a source has permanently ceased operations, then the Director shall make no adjustments in its banked emissions reduction credits. If
a banked emission reduction credit has been used, no change shall be made in the used credit.
History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(12);
Eff. December 1, 2005.

15A NCAC 02D .2311 MONITORING

The Director shall require the owner or operator of a source whose emissions are being reduced to create an emission
reduction credit to verify the reduction in emissions with a source test, continuous emission monitoring, or other methods
that measure the actual emissions or may require the use of parametric monitoring to show that the source or its control
device is being operated in the manner that it is designed or is permitted.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.66; 143-215.107(a)(12);
Eff. December 1, 2005.