



**North Carolina Department of Environmental Quality  
Division of Air Quality**

# **GUIDELINES FOR INTENT TO CONSTRUCT**

**August 19, 2003  
Revised March 23, 2004  
Revised February 12, 2021**

## INTRODUCTION

On August 19, 2003, Senate Bill 945, "Air Quality Permits," became law and applies to construction of any new facility and construction associated with the modification of a permit for an existing facility that commences on or after that date.

The bill specifies activities that may be undertaken prior to securing an air quality permit required under GS 143-215.108. It also requires a permittee to provide published notice of intent to alter or expand physical arrangement or operation of permitted facilities at least 15 days prior to that action and specifies contents of notice. A permittee who submits a notice of intent must pay a \$200 fee. The bill specifies criteria for the Environmental Management Commission to consider in reviewing such notices of intent and requires the Commission to notify the permittee within 15 days of its determination as to whether the criteria have been met and whether the proposed alteration or expansion can commence.

The Division of Air Quality (DAQ) is providing the following construction guidelines to assist new permittees or applicants (Part I-A) and existing permittees or applicants (Part I-B). Part II is provided to assist the DAQ in the implementation of the bill. This guidance document also provides appendices that include a process flow chart, checklists, example letters, templates, and a copy of the General Statute 143-215.108A. This guidance document is provided only as guidance and does not represent DAQ policy.

**PART I-A**  
**PERMITTEE (APPLICANT)**  
**NEW AND EXISTING NON-PERMITTED FACILITIES**

A person may not, without obtaining an air permit, construct or operate an air contaminant source, equipment, or associated air cleaning device at a site or facility where, at the time of the construction, there is no other air contaminant source, equipment, or associated air cleaning device for which an air permit is required. A person may, however, undertake the following activities prior to obtaining an air permit:

1. clearing and grading;
2. construction of access roads, driveways, and parking lots;
3. construction and installation of underground pipe work, including water, sewer, electric, and telecommunications utilities; and
4. construction of ancillary structures, including fences and office buildings, that are not a necessary component of an air contaminant source, equipment, or associated air cleaning device for which an air permit is required.

A facility with an air permit may also undertake the aforementioned four activities without an air permit.

**PART I-B**  
**PERMITTEE (APPLICANT)**  
**EXISTING PERMITTED FACILITIES**

**Eligibility**

Any facility that currently has an air permit (a permit issued under 15A NCAC 02Q) may use the procedures in G.S. 143-215.108A to begin construction or modification before receipt of an air permit unless the source being constructed or modified is subject to one of the following rules:

1. 15A NCAC 02D .0530, Prevention of Significant Deterioration.
2. 15A NCAC 02D .0531, Sources in Nonattainment Areas.
3. 15A NCAC 02D .0532, Sources Contributing to an Ambient Violation.
4. 15A NCAC 02D .0800, Transportation Facilities.
5. 15A NCAC 02D .0952, Petition for Alternative [VOC] Controls
6. 15A NCAC 02D .0959, Petition for Superior Alternative [VOC] Controls
7. 15A NCAC 02D .1100, Control of Toxic Air Pollutants **(Applicant should contact the DAQ, not all 02D .1100 toxics proposals are ineligible. The Director will make a case by case determination.)**
8. 15A NCAC 02D .1109, 112(j) Case-by-Case Maximum Achievable Control Technology.
9. 15A NCAC 02D .1112, 112(g) Case-by-Case Maximum Achievable Control.
10. 15A NCAC 02D .1412, Petition for Alternative [NOx] Limitations.

If the source is subject to one of the aforementioned rules, it is ineligible for this process.

If the construction or modification would make the source or facility subject to the requirements for prevention of significant deterioration in an attainment area or major new source review in a nonattainment area without a permit condition to avoid these requirements, it is ineligible for this process.

**Newspaper Notice**

At least 15 days before commencing construction, the permittee (applicant) shall publish a notice in a local newspaper of general circulation in the county or counties where the source or facility is located. The notice in the newspaper must contain the following:

- a. The name and location of the facility and the name and address of the permittee.
- b. The permit number of each permit issued under G.S. 143-215.108 for the facility.
- c. The nature of the air contaminant sources and equipment associated with the proposed modification of the permit.
- d. An estimate of total regulated air contaminant emissions associated with the proposed modification of the permit.

- e. The air cleaning devices that are to be employed to address each of the air contaminant sources associated with the modification of the permit.
  - f. The schedule for alteration or expansion of the facility associated with the proposed modification of the permit.
  - g. A statement that written comments may be submitted to DAQ.
- A check list and template for notices in newspapers are in the Appendices.

## **Submittal to DAQ**

The permittee shall submit the following to DAQ:

1. \$200.00 processing fee;
2. a notice of intent to construct that includes the nine items required to be sent to the Commission by G.S. 143-108(b); they are a through f above plus the following:
  - a. An acknowledgment by the permittee that the air contaminant sources, equipment, and associated air cleaning devices may not be operated in a manner that alters the emission of any air contaminant until the permittee has obtained a modified permit under G.S. 143-215.108.
  - b. An acknowledgment by the permittee that any alteration or expansion of the physical arrangement or operation of an air contaminant source, equipment, or associated air cleaning device prior to the modification of a permit under G.S. 143-215.108 is undertaken at the permittee's own risk and with the knowledge that the permittee may be denied a modification of the permit under G.S. 143-215.108 without regard to the permittee's financial investment or alteration or expansion of the facility.
  - c. A certification under oath that all of the information contained in the notice of intent is complete and accurate to the best of the permittee's knowledge and ability, executed by the permittee or, if the permittee is a corporation, by the appropriate officers of the corporation.
3. proof of publication of notice in a local newspaper of general circulation in the county or counties where the source or facility is located; proof of publication is
  - a. an affidavit from the newspaper showing the notice and date of publication, or
  - b. a copy of the page from the newspaper showing the notice and date of publication.

(Proof of publication must be sent to DAQ within 15 days after publication. It need not be sent with the processing fee and notice of intent to construct. Without proof of publication, the submittal is incomplete, and DAQ shall disapprove the request.)

A checklist for notices of intent to construct is in the Appendices.

## **Certification Under Oath**

The "certification under oath" may be satisfied by the responsible official as defined at 15A NCAC 2Q .0503(15) for a Title V facility or an official described in 15A NCAC 2Q .0304(j) for a non-Title V facility signing the following statement:

“The undersigned certifies under penalty of law that all information and statements provided in this notice of intent to construct, including any attachments, are true, accurate, and complete to best of my knowledge and ability.”

### **Commence Construction**

The permittee shall not commence construction until:

1. The permittee receives written approval from the Director to commence construction; and
2. At least 15 days have elapsed since the notice of intent to construct has appeared in a local newspaper.

Once these two conditions have been met, the permittee may begin construction.

### **Cease Construction**

The permittee shall cease construction upon receipt of an order from the Director to cease construction. The permittee shall not commence construction again unless:

1. The Director of DAQ later allows the construction to commence again before receipt of an air permit; or
2. The permittee receives an air permit or permit modification to construct and operate.

An example letter for “order to cease construction, alteration, or expansion” is in the Appendices.

### **Commence Operation**

The permittee shall not commence operating the source(s) until receipt of an air permit. To begin operation as soon as possible, the permittee is urged to submit a complete permit application along with the notice of intent to construct so that DAQ can begin its review of the application. Once DAQ receives a completed permit application, it shall issue the air permit or deny the air permit request within the time specified in 15A NCAC 2Q, Air Quality Permit Procedures.

## PART II

### DIVISION OF AIR QUALITY

#### **Receipt of Notice of Intent**

The office receiving notice of intent to construct shall send an acknowledgment letter receipt of notice of intent to construct. The acknowledgement letter may include a request to supply missing information. An example acknowledgement letter for receipt of notice to construct is in the appendices.

Upon receipt of a notice of intent to construct, the office reviewing the notice of intent shall enter the information into PAM.

DAQ must approve or disapprove a request for intent to construct within **15 days** of receipt of a notice of intent to construct. An example letter for construction prior to receipt of air permit (approval/disapproval letter) is in the appendices

[NOTE: If the applicant does not already have an air permit, this process cannot be used.]

#### **Completeness Review**

To be complete the notice of intent must include:

1. \$200.00 processing fee;
2. proof of publication of notice in a local newspaper of general circulation in the county or counties where the source or facility is located; proof of publication is
  - a. an affidavit from the newspaper showing the notice and date of publication, or
  - b. a copy of the page from the newspaper showing the notice and date of publication.

(Proof of publication does not have to accompany the notice of intent sent to DAQ. However, the applicant must submit to DAQ proof of publication within 15 days after the public notice appears in the newspaper.)

The notice in the newspaper must contain the following:

- a. The name and location of the facility and the name and address of the permittee (legal permit holder).
- b. The permit number of each permit issued under G.S. 143-215.108 for the facility.
- c. The nature of the air contaminant sources and equipment associated with the proposed modification of the permit.
- d. An estimate of total regulated air contaminant emissions associated with the proposed modification of the permit.
- e. The air cleaning devices that are to be employed to address each of the air contaminant sources associated with the modification of the permit.

- f. The schedule for alteration or expansion of the facility associated with the proposed modification of the permit.
  - g. A statement that written comments may be submitted to DAQ.  
(If the newspaper notice does not contain all of these elements, it is an invalid notice. DAQ shall disapprove the request if the newspaper notice is invalid. The newspaper notice must appear in the newspaper at least 15 days before commencing construction.)
3. the nine items required to be sent to the Commission by G.S. 143-108(b); they are a through f above plus the following:
- a. An acknowledgment by the permittee that the air contaminant sources, equipment, and associated air cleaning devices may not be operated in a manner that alters the emission of any air contaminant until the permittee has obtained a modified permit under G.S. 143-215.108.
  - b. An acknowledgment by the permittee that any alteration or expansion of the physical arrangement or operation of an air contaminant source, equipment, or associated air cleaning device prior to the modification of a permit under G.S. 143-215.108 is undertaken at the permittee's own risk and with the knowledge that the permittee may be denied a modification of the permit under G.S. 143-215.108 without regard to the permittee's financial investment or alteration or expansion of the facility.
  - c. A certification under oath that all of the information contained in the notice of intent is complete and accurate to the best of the permittee's knowledge and ability, executed by the permittee or, if the permittee is a corporation, by the appropriate officers of the corporation.

If DAQ receives an incomplete submittal, the reviewer should telephone the permittee as soon as possible and ask for the missing information. If the permittee does not supply the missing information within time needed to complete the review within 15 days, the notice of intent is incomplete, and DAQ shall disapprove the request.

### **Review of Notice of Intent to Construct**

Upon receipt of a notice of intent, DAQ begins its 15-day review. If the facility is a Title V facility, the Raleigh Central Office shall do the review. If the facility is not a Title V facility, the appropriate Regional Office shall do the review. Within **13 days**, the reviewer shall complete the review and forward to the Director a recommendation to approve or disapprove the notice to construct. The Director shall be the authority to issue the approval or disapproval. The reviewer shall send the Director a copy of the review and a completed approval or disapproval letter. If the reviewer's recommendation is to disapprove, the disapproval recommendation shall contain an explanation justifying the disapproval. If the reviewer recommends disapproval, he should telephone the permittee at the same time, if not before, that the recommendation is being sent to the Director and inform the permittee that the recommendation is to disapprove.

In reviewing a notice of intent to construct, the reviewer shall answer each of the following statements "yes" or "no":

1. The permittee is and has been in substantial compliance with other permits issued the permittee.
2. The facility will be altered or expanded so that it will be used for either the same or a similar use as the use already permitted.
3. The alteration or expansion will not result in a disproportionate increase in the size of the facility already permitted.
4. The alteration or expansion will result in the same or substantially similar emissions as that of the facility already permitted.
5. The alteration or expansion will not have a significant effect on air quality.
6. The Commission is likely to issue the permit modification.
7. The source(s) being constructed are not ineligible.
8. The notice of intent is complete, i.e., it contains proof of publication, the notice in the newspaper contains all the required elements, the notice of intent sent to DAQ contains all the required elements, a \$200.00 processing fee has been submitted.
9. **Is the date authorizing construction contained in the “Construction Prior to Receipt of Air Permit” letter at least 15 days after the date of publication of the public notice?**

If any one of these statements is answered “no,” the recommendation shall be disapproval.

### **Ineligible**

Any source that is or may be subject to the following rules may not use these procedures for notice of intent to construct:

1. 15A NCAC 02D .0530, Prevention of Significant Deterioration.
2. 15A NCAC 02D .0531, Sources in Nonattainment Areas.
3. 15A NCAC 02D .0532, Sources Contributing to an Ambient Violation.
4. 15A NCAC 02D .0800, Transportation Facilities.
5. 15A NCAC 02D .0952, Petition for Alternative [VOC] Controls
6. 15A NCAC 02D .0959, Petition for Superior Alternative [VOC] Controls
7. 15A NCAC 02D .1100, Control of Toxic Air Pollutants (**Applicant should contact the DAQ, not all 2D .1100 toxics proposals are ineligibility. The Director will make a case by case determination.**)
8. 15A NCAC 02D .1109, 112(j) Case-by-Case Maximum Achievable Control Technology.
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10. 15A NCAC 02D .1412, Petition for Alternative [NOx] Limitations.

If the source is subject to one of the aforementioned rules, it is ineligible for this process.

If the construction or modification would make the source or facility subject to the requirements for prevention of significant deterioration or major new source review in a nonattainment area without a permit condition to avoid these requirements, it is ineligible for this process.

## **Requests for Additional Information**

During the review process, the reviewer may ask the permittee for additional information if necessary to review adequately the notice of intent to construct. Requesting additional information does not “stop the clock” or extend the amount of time available for review. Because of the short time involved, the reviewer should use the telephone, FAX, and e-mail if possible to request and receive additional information.

## **Commence Construction**

The permittee may not begin construction until:

1. The permittee receives written approval from the Director; and
2. At least 15 days have elapsed since the notice of intent to construct has appeared in a local newspaper.

Once these two conditions have been met, the permittee may begin construction. However, the Permittee may not operate the source until an air permit is issued.

## **Cease Construction**

If as a result of reviewing the permit application or inspecting the facility, DAQ finds that the permittee may not qualify for a permit or permit modification, the Director may order the permittee to cease construction. The permittee shall cease construction upon receipt of a notice from the Director to cease construction.

If Director later finds that the circumstances that resulted in the order to cease construction have been addressed, the Director may allow the construction to commence again before receipt of an air permit. If, after receiving an order to cease construction, the permittee receives an air permit or permit modification, the permittee may commence construction again.

An example letter for an order to cease construction, alteration, or expansion is in the appendices.

## **APPENDICES**

### **SEE THE WEB SITE FOR THESE DOCUMENTS**

#### **Flow Chart**

1. air quality construction bill processing flow chart

#### **Checklists**

1. checklist for public notice in the newspaper, and
2. checklist for notice of intent to the North Carolina DAQ

#### **Letters**

1. receipt of notice of intent to construct [acknowledgement/request for missing information letter]
2. construction prior to receipt of air permit [approval/disapproval letter]
3. order to cease construction, alteration, or expansion

#### **Templates**

1. notice of construction prior to receipt of air permit [newspaper public notice]

#### **General Statute**

1. G.S. 143-215.108A

#### **Questions and Answers**

1. notice of intent to construct frequently asked questions and answers