



North Carolina Department of Environment and Natural Resources

Division of Air Quality

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**MEMORANDUM**

**To:** Central Office Permit Engineers

**From:** Donald R. van der Vaart, Ph.D., P.E., J.D.  
Chief, Permits Section

**Re:** Improving Environmental Performance  
502(b)(10) and Minor Permit Modifications at Title V Facilities

**Date:** October 1, 2013

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This memorandum supersedes prior DAQ guidance with respect to Clean Air Act Section 502(b)(10) and minor permit changes at Title V facilities. The federal EPA required North Carolina, as a condition of program approval, to include in its Title V operating permit program minimum operational flexibility provisions. Two of the operational flexibility provisions are “502(b)(10)” and “minor” changes. Not all changes at a Title V facility can qualify under these provisions. However, for those that do qualify the permittee may begin construction and operation upon satisfying the requirements of these rules. This memorandum provides a summary of the rules and the procedures to be following when processing one of these requests.

**Procedures for Processing 502(b)(10) Notifications**

The NC Title V regulations provide that 502(b)(10) changes do not require permit revisions.<sup>1</sup> A 502(b)(10) change is defined as a “changes that [do not] contravene an express permit term or condition” in 15A NCAC 2Q .0503(16). The procedures for processing a 502(b)(10) change are contained at 15A NCAC 2Q .0523 and provide that a permittee may make a 502(b)(10) changes without having the permit revised if:

- The changes are not a modification under 15A NCAC 02D or Title I of the federal Clean Air Act;
- The changes do not require a permit under the North Carolina Toxics program;
- The changes do not cause the emissions allowed under the permit to be exceeded;
- The permittee notifies the Director and EPA with written notification at least seven days before the change is made; and
- The permittee attaches the notice to the relevant permit.

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<sup>1</sup> See also N.C. Gen Stat. §143-215.108(a1).

The determination of whether a change qualifies as a 502(b)(10) is highly fact specific and may be unique to the individual facility. Some examples of changes that might qualify as 502(b)(10) changes (provided they satisfy the conditions above) include:

- Replacing an emission/process unit with an identical unit.
- Adding an emissions unit to an existing process with permitted units, operating under an emissions cap, when the addition results in no emissions increase over the cap.
- Making a change to a permitted source that affects emissions but does not result in an emissions increase above an existing emissions limit.
- Increasing or changing fuels or raw materials used in a permitted source that affects emissions but does not result in an emissions increase above an existing emissions limit.
- Installing emission control equipment or limiting emissions from a permitted source provided the action does not avoid an applicable requirement.
- Changing the filter size of an existing bagfilter.

The DAQ has developed a “502(b)(10) Notification & Checklist” that can be completed and submitted to the DAQ ( See Attachment A). As required by the rule, a copy of the 502(b)(10) Notification and Checklist should be sent to the DAQ Chief of Permits Section and the federal EPA. Upon receipt the DAQ will:

- Enter the notification into the IBEAM Application module;
- Make a copy of the 502(b)(10) Notification & Checklist and send a copy to the DAQ Regional Office; and
- Scan the 502(b)(10) Notification & Checklist and enter the scanned document into the IBEAM Documents module.

The DAQ will incorporate the 502(b)(10) change into the Title V permit the next time a significant modification is processed or upon Title V renewal. At that time, the DAQ may require additional information from the applicant (e.g. monitoring range changes, documentation of applicable regulations).

Consistent with 15A NCAC 2Q .0523 the permittee may make the change after the expiration of the seven day notice period. See 15A NCAC 2Q .0523(a)(1)(C). The DAQ will send a letter acknowledging receipt of the 502(b)(10) Notification and Checklist. However, there is no DAQ approval or review required to verify whether the change qualifies as a 502(b)(10) change. If the DAQ subsequently determines that a change does not qualify as a 502(b)(10) and the permittee has already made the change, the facility may be subject to enforcement for having failed to obtain a permit revision. Pursuant to 15A NCAC 2Q .0111, the permittee may submit an applicability determination request asking the DAQ to verify that the proposed change does qualify as a 502(b)(10) change. The permit shield does not extend to 502(b)(10) changes but the permittee must certify compliance with the existing permit terms on the annual compliance certification.

### **Procedures for Processing “Minor Modifications” 15A NCAC 2Q .0515**

In addition to the 502(b)(10) changes, the North Carolina Title V regulations also authorize Title V permittees to make changes to their facility prior to receiving a revised Title V permit if the change is a “minor modification” under 15A NCAC 2Q .0515.<sup>2</sup> Minor modifications are changes that:

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<sup>2</sup> See also N.C. Gen. Stat. §143-215.108(a2).

- do not violate any applicable requirement;
- do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit;
- do not require a permit under the North Carolina Toxics program;
- do not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;
- do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the facility has assumed to avoid an applicable requirement to which the facility would otherwise be subject. Such terms and conditions include: (A) a federally enforceable emissions cap assumed to avoid an applicable requirement under any provision of Title I of the federal Clean Air Act; or (B) an alternative emissions limit approved as part of an early reduction plan submitted pursuant to Section 112(i)(5) of the federal Clean Air Act;
- are not modifications under any provision of Title I of the federal Clean Air Act; and
- are not required to be processed as a significant modification under 15A NCAC 2Q .0516 of this Section.

The determination of whether a change qualifies as a “minor modification” is highly fact specific and may be unique to the individual facility. Any modification that meets the conditions of a 502(b)(10) change may be processed as a minor modification. Furthermore, adding a new controlled or uncontrolled emission source that will be subject only to limitations, monitoring, recordkeeping, and reporting conditions similar to those already included in the permit might also qualify as minor modification if the facility is a minor PSD/NSR source or the potential increase in emissions is not significant.

Pursuant to 15A NCAC 2Q .0515(f), the permit applicant may make the change proposed in their minor permit modification application immediately after filing the completed application with the Division.<sup>3</sup> The DAQ will issue a completeness determination within 10 days of receipt of the application. In order for a minor modification to be complete the application shall contain the following items:

- Application fee consistent with 15A NCAC 2Q .0200;
- Zoning Consistency consistent with 15A NCAC 2Q .0507(d); and
- Minor Modification Checklist (See Attachment B).

If the DAQ determines the application to be complete, the agency will send a completeness determination letter to the applicant at which time the applicant can make the changes proposed. After making the change, the facility shall comply with both the applicable requirements governing the change and the proposed permit terms and conditions until the Director takes final action on the minor modification application. Between the filing of the permit modification application and the Director's final action, the facility need not comply with the existing permit terms and conditions it seeks to modify. However, if the facility fails to comply with its proposed permit terms and conditions during this time period, the Director may enforce the terms and conditions of the existing permit that the applicant seeks to modify. The permit shield does not extend to minor modifications but the permittee must certify compliance with the proposed permit terms on the annual compliance certification.

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<sup>3</sup> If the State-enforceable only portion of the permit is revised, the permittee must follow the procedures in 15A NCAC 2Q .0300.

If the DAQ determines that the application is NOT complete, the DAQ will notify the applicant in writing and allow the applicant up to 30 days to file a complete application. The applicant is not authorized to make the change unless and until the application is deemed complete.

If the applicant does not address the deficiency which made the application incomplete or the DAQ determines that the change does not qualify as a “minor modification,” the DAQ will either return the application or process the application as a significant modification in accordance with the current procedure for modifications of this type. See 15A NCAC 2Q .0516.

Upon receipt of a minor permit modification application the DAQ will:

- Enter the Minor Modification into the IBEAM application tracking system;
- Scan a copy of the Minor Modification Checklist and upload a PDF copy to the IBEAM documents module;
- Send a copy to the DAQ Regional Office;
- Within 10 days make a completeness determination; and
- Upload a copy of the completeness determination into the IBEAM Documents module.