

**Biennial Report to the North Carolina General Assembly's
Environmental Review Commission, Fiscal Research Division & Joint Legislative
Oversight Committee on Agriculture and Natural and Economic Resources**



***Processing Times for North Carolina's Environmental Permitting
Programs***

January 1, 2023

Division of Environmental Assistance and Customer Service & Division of Air Quality

**NORTH CAROLINA DEPARTMENT OF
ENVIRONMENTAL QUALITY**

Pursuant to G.S. 143-215.3A(c); G.S. 143B-279.17

Permit Processing Time Report
North Carolina Department of Environment Quality
State Fiscal Years 2020-2022

This report provides updated information and fulfills the requirements of §143B-279.17, with the expanded requirements of Session Law 2012-187, Sections 13 (a) and (b), to provide information on standard and express review processing times for a number of environmental permits issued by the Department of Environment Quality (DEQ). A breakdown of processing times for Fiscal Years 2020-22 is provided on Figures 1-4 and Tables 1-16 for Air Quality permits, Coastal Area Management Act (CAMA) permits, Erosion and Sedimentation Control Plan Approvals, State Stormwater permits, Water Quality 401 Water Quality Certification (WQC)/Isolated Waters/Stream/Buffer Determinations, Public Water Supply (PWS) Plan reviews and Central Coastal Plain Capacity Use (Groundwater Capacity Use) permits. In cases where an express component is available to applicants, both standard and express permit processing times are provided. DEQ provides an express option for a subset of all permits issued by the department.

For the above noted permitting programs, information is provided for 10,954 permits issued in FY 2020-2021 and 11,825 permits issued in FY2021-2022. For FY 2020-2021, 467 permits or 4.3% took more than 90 days to issue whereas those numbers decreased slightly to 398 permits or 3.4% for FY 2021-2022. In those cases, public review, comments from multiple agencies and waiting on information from applicants were significant factors and were reflected in longer processing times. The total time included a combination of DEQ review time, as well as the time for applicants to provide all necessary information and documentation. The majority of permits that required at least 90 days for issuance were among the more complex permit types such as Title V Air Quality permits, Coastal Area Management Act (CAMA) Major permits, 401 WQCs and State Stormwater permits. Complex sites with greater potential for environmental impact have become more common, and frequently require greater processing times.

The Express Permitting Program was authorized in 2005 and offers a timelier review process for several environmental permits required for development. This optional program offers applicants quicker permit decisions and certifications as well as consultation to identify necessary environmental requirements. Higher fees are charged for the express review and the additional monies are used to support the program. The following programs currently have an Express Review option: CAMA Major, Erosion and Sedimentation Control, State Stormwater and 401 WQCs/Isolated Waters/Stream/Buffer Determinations. As intended, the process offers a valuable option for time-sensitive projects without sacrificing the quality of the review for new construction and economic development projects. Since program inception, economic impacts have led to a decline in the number of express permits issued in some years and thus a reduction in staff. The data collected confirms that the express permit option is much quicker than the standard option as noted in Figures 1 and 3. A comparison of processing times between the standard and express options, showed express review in FY 2020-2021 resulted in an 86% reduction for Erosion and Sediment Control; 63% reduction for State Stormwater Permits; and 62% reduction for 401 WQCs/Isolated Waters/Stream/Buffer Determinations, as illustrated in Figure 2. For FY 2020-2021, there were no CAMA Major express permits received. In addition, the State Stormwater express option is only available within the 20 coastal counties. For FY 2021-2022 a comparison on the processing times between the standard and express options resulted in a 57% reduction for CAMA Majors, 85% reduction for Erosion and Sediment Control, an 88% reduction for State Stormwater and a 71% reduction for Stream Determinations as illustrated in Figure 4. For FY2021-2022, DWR only received express review applications for Stream determinations. The data in Table 13 shows total permits for 401 WQCs/Isolated Waters/Stream/Buffer

Determinations. However, the express reviews only consist of stream determination. As mentioned above, the express option for State Stormwater is only available within the 20 coastal counties. It is important to note that the "goal" processing time for each express permit issuance is a target established by that regulatory program. The goal, in all cases, represents a value much lower than the statutory requirements of the standard review programs.

The express permitting option for CAMA Major permits was not utilized during FY 2020-2021. One express permit was issued for CAMA Major permits during FY 2021-2022. The express permit issued for CAMA Major took 44 days (see Tables 3 and 5). Erosion and Sedimentation Control plan approvals took an average of 2.6 days for FYs 2020-2022 (see Tables 7 and 9). State Stormwater permits took an average of 20.9 days for FYs 2020-2022 (see Tables 8 and 10). 401 WQCs/Isolated Waters/Stream/Buffer Determinations were reviewed within an average of 13.3 days for FY 2020-2021 and 23.8 days for FY 2021-2022 (see Tables 11, 12, 14, and 15).

Session Law 2012-187, Section 13 (a) requires that the tracking of processing times include 1) the total processing time from initial receipt of an application by the department until issuance or denial and 2) the processing time from the time when a complete application is received to issuance or denial of the permit. The average days for each program's processing time is the date from complete application to a decision. Federal and state laws and regulations for air quality, coastal areas and several water quality programs define processing time from the date of a complete application. Historically, permit programs have tracked data from receipt of a complete application consistent with statutory requirements and because a decision cannot be made until all technical documents are submitted. However, all DEQ permit programs are now collecting data showing the complete review process including timeframes awaiting information, public comment periods, and other milestones. Information has also been collected to evaluate existing permit processing times and to identify additional permits and approvals that should be reported to the General Assembly.

DEQ continues to make permit process improvements in both the standard and express programs. The express review program is successfully meeting the need for faster review of time-sensitive projects. Successfully expediting the process has been accomplished without sacrificing the quality of environmental reviews.

Processing Days Comparison FY 2020-2021

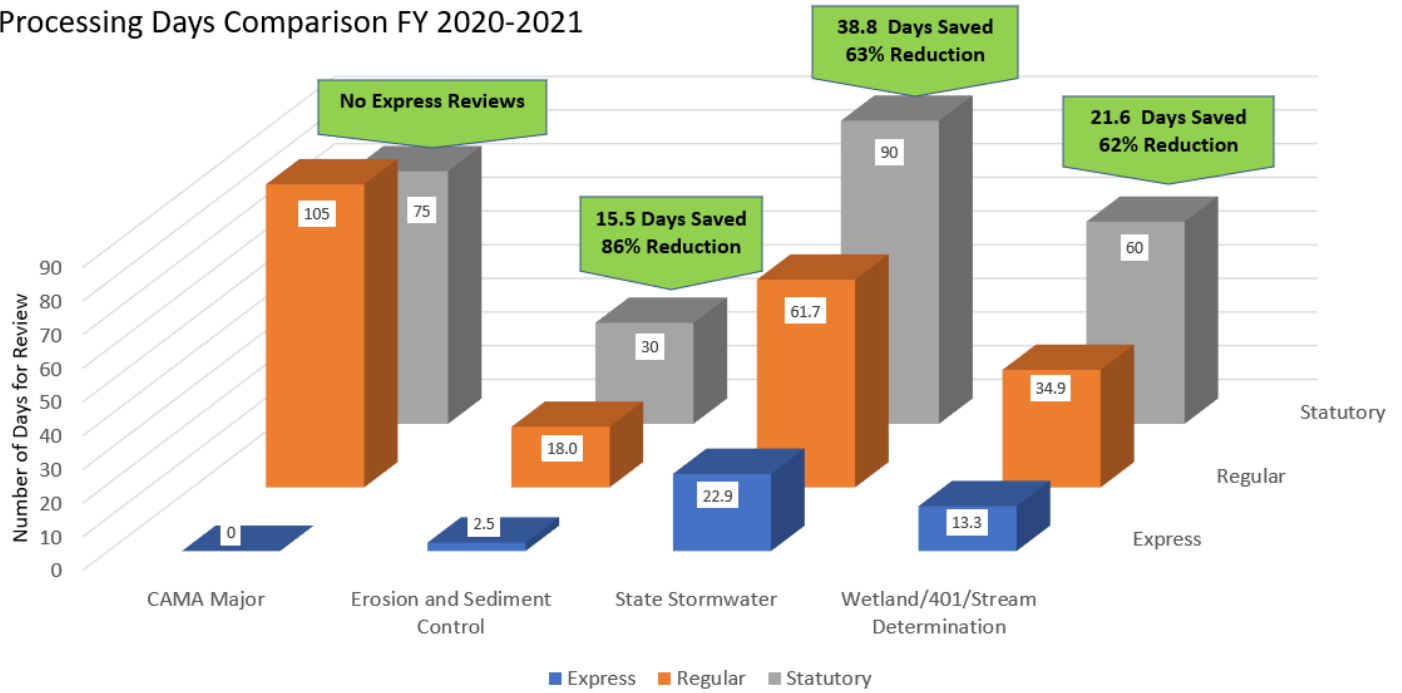


Figure 1: Processing Days for Permits with an Express Option FY 2020-2021

Percent Reduction In Processing Time FY 2020-2021

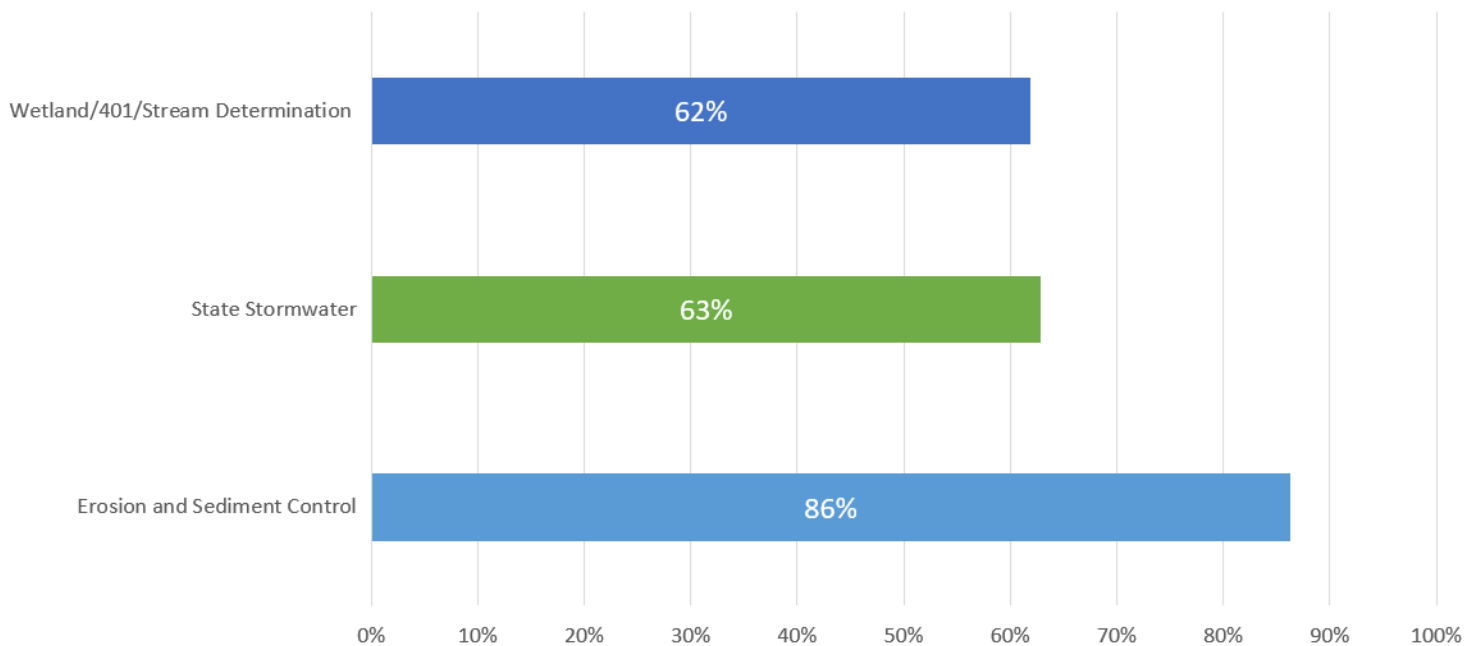


Figure 2: Reduction in Processing Times for Permits with a utilized Express Option FY 2020-2021

Processing Days Comparison FY 2021-2022

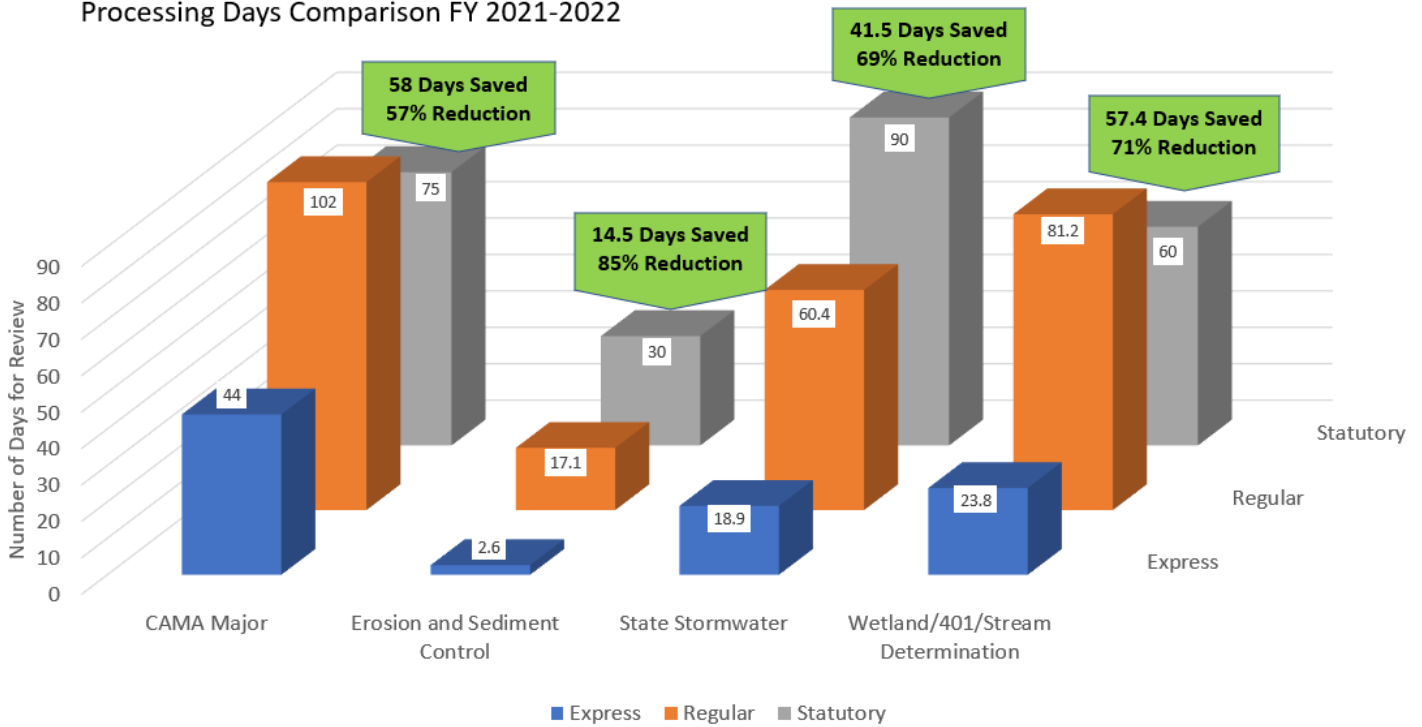


Figure 3: Processing Days for Permits with an Express Option FY 2021-2022

Percent Reduction in Processing Time FY 2021-2022

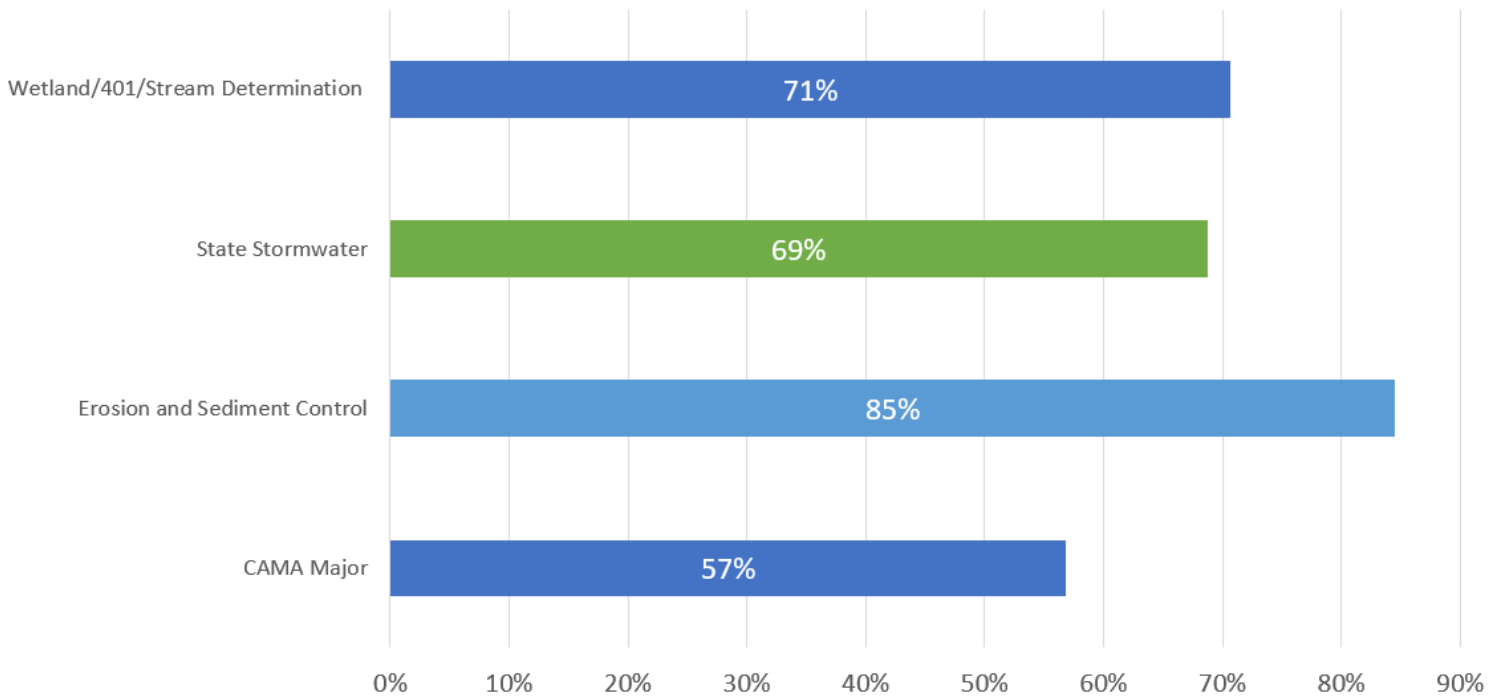


Figure 4: Reduction in Processing Times for Permits with an Express Option FY 2021-2022

Division of Air Quality Permit Processing

(FY 2020-21)

	Air Quality		
	Small	Synthetic Minor	Title V
Number of Permits	113	120	171
Average (days)	34	45	212
Goal (days)	90	90	See Notes
Beat Goal By (days)	56	45	See Notes
Number > 90 days	2	1	98
% > 90 days	1.8%	0.8%	57.3%

Table 1: Division of Air Quality Permit Processing – FY 2020-2021

Division of Air Quality Permit Processing

(FY 2021-22)

	Air Quality		
	Small	Synthetic Minor	Title V
Number of Permits	296	254	194
Average (days)	48	53	278
Goal (days)	90	90	Varies - See notes
Beat Goal By (days)	42	37	See notes
Number > 90 days	6	8	See notes
% > 90 days	2.4%	3.9%	See notes

Table 2: Division of Air Quality Permit Processing – FY 2020-2022

***General Title V Permitting Schedule Requirements**

Application Schedule: -Regulatory Requirement

Significant Modification and Renewals: -18 months from receipt of complete application defines backlog, then within 15 days after 45-day EPA review period by rule

PSD applications: -One year within receipt of complete application

Non-Significant and State modifications: -90 days within receipt of complete application

Potential Causes of over 90 days: -90 days is measured against "process" days rather than "days in house"

-Administrative errors in managing the "clock" for the above consideration

-Applicants with multiple applications in house may reprioritize those applications putting newer applications in front of older ones

-Applications may get priority treatment to address compliance issues or for other reasons as determined by management

-Data analysis needs to take into consideration all of the above

Division of Coastal Management Permit Processing

(FY 2020-21)

	Coastal Management	
	CAMA Major*	
	Regular	Express
Number of Permits	115	0
Average (days)	105	N/A
Goal (days)	75	N/A
Beat Goal By (days)	0	N/A
Number > 90 days	80	N/A
% > 90 days	76%	N/A

Table 3: Processing Times – CAMA Major Permits for FY 2020-2021

* The majority of CAMA Major Permits that required at least 90 days for issuance were among the more complex permit types that include multiple state and federal authorizations under an umbrella/one-stop-shop permitting framework. Increased averaged processing times were in part due to longer processing times needed by other review agencies.

	Coastal Management	
	Minor	General
Number of Permits	706	2,846
Average (days)	< 25	Generally 1 day
Goal (days)	25	Generally 1 day
Beat Goal By (days)	> 1	0
Number > 90 days	0	0
% > 90 days	0%	0%

Table 4: Processing Times – CAMA Minor and General Permits for FY 2020-2021

Division of Coastal Management Permit Processing

(FY 2021-22)

	Coastal Management	
	CAMA Major*	
	Regular	Express
Number of Permits	143	1
Average (days)	102	44
Goal (days)	75	30
Beat Goal By (days)	0	0
Number > 90 days	92	0
% > 90 days	64%	0%

Table 5: Processing Times – CAMA Major Permits for FY 2021-2022

* The majority of CAMA Major Permits that required at least 90 days for issuance were among the more complex permit types that include multiple state and federal authorizations under an umbrella/one-stop-shop permitting framework. Increased averaged processing times were in part due to longer processing times needed by other review agencies.

Average Days Saved Using Express for CAMA Major Permits	
58	days
57%	reduction

	Coastal Management	
	Minor	General
Number of Permits	938	2,910
Average (days)	< 25	Generally 1 Day
Goal (days)	25	Generally 1 Day
Beat Goal By (days)	> 1	0
Number > 90 days	0	0
% > 90 days	0%	0%

Table 6: Processing Times – CAMA Minor and General Permits for FY 2021-2022

Division of Energy, Mineral & Land Resources Permit Processing

(FY 2020-21)

	Energy, Mineral, and Land Resources	
	Erosion and Sediment Control	
	Regular	Express
Number of Permits	2,049	541
Average (days)	18.0	2.5
Goal (days)	25	5
Beat Goal By (days)	7.0	2.5
Number > 90 days	0	0
% > 90 days	0%	0%

Table 7: Processing Times for Erosion and Sediment Control Plans - FY 2020-2021

Average Days Saved Using Express for Erosion and Sediment Control	
15.5	days
86%	reduction

	Energy, Mineral, and Land Resources	
	State Stormwater	
	Regular	Express
Number of Permits	860	99
Average (days)	61.7	22.9
Goal (days)	60	15
Beat Goal By (days)	0.0	0.0
Number > 90 days	211	0
% > 90 days	25%	0%

Table 8: Processing Times for State Stormwater Permits – FY 2020-2021

Average Days Saved Using Express for State Stormwater	
38.8	days
63%	reduction

* For applications with >90-day processing, delays based on lack of resources or applicants informational delays

Division of Energy, Mineral & Land Resources Permit Processing

(FY 2021-22)

	Energy, Mineral, and Land Resources	
	Erosion and Sediment Control	
	Regular	Express
Number of Permits	2,163	557
Average (days)	17.1	2.6
Goal (days)	25	3
Beat Goal By (days)	7.9	0.4
Number > 30 days	78	1
% > 30 days	4%	0%

Table 9: Processing Times for Erosion and Sediment Control Plans - FY 2021-2022

Average Days Saved Using Express for Erosion and Sediment Control	
14.4	days
85%	reduction

	Energy, Mineral, and Land Resources	
	State Stormwater	
	Regular	Express
Number of Permits	1,071	128
Average (days)	60.4	18.9
Goal (days)	90	30
Beat Goal By (days)	29.6	11.1
Number > 90 days	245	0
% > 90 days	23%	0%

Table 10: Processing Times for State Stormwater Permits – FY 2021-2022

Average Days Saved Using Express for State Stormwater	
41.5	days
69%	reduction

* For applications with >90-day processing, delays based on lack of resources or applicants informational delays

Division of Water Resources Permit Processing (FY 2020-21)

	Water Resources	
	401 WQCs / Isolated Waters*	
	Regular	Express
Number of Permits	1,687	4
Average (days)	57	17
Goal (days)	60	60
Beat Goal By (Days)	3	43
Beat Goal # Projects (%)	1,127 (67%)	3 (75%)
Number > 90 days	248	0
% > 90 days	15%	0%

Table 11: Processing Times for 401/Isolated Wetlands FY 2020-2021

	Water Resources	
	Stream/Buffer Determinations**	
	Regular	Express
Number of Permits	55	13
Average (days)	91	12
Goal (days)	-	30
Beat Goal By (Days)	-	18
Beat Goal # Projects (%)	-	13 (100%)
Number > 90 days	24	0
% > 90 days	44%	0%

Table 12: Processing Times for Stream/Buffer Determinations FY 2020-2021

*Reported processing time is not adjusted for projects put on administrative hold or due to process adjustments resulting from federal rule changes.

*401 Water Quality Certificationss (WQC) and Isolated Water Permits have regulatory requirements for processing times; Stream/Buffer determinations do not have this requirement.

**Reported Regular Stream/Buffer Determinations are primarily from the Washington and Central offices and may not include those conducted in other parts of the state. DWR Raleigh Regional Office staff conducted 438 Stream/Buffer Determinations during FY 20-21.

*Buffer Authorizations are not accounted for in this data.

Average Days Saved Using Express for 401 WQCs/Isolated Waters/Stream/Buffer Determinations	
21.6	days
62%	reduction

	Water Resources	
	PWS Plan Review	GW Capacity Use
Number of Permits	1,042	48
Average (days)	18	43
Goal (days)	30	60
Beat Goal By (days)	12	17
Number > 90 days	0	1
% > 90 days	0%	2%

Table 13: Processing Times for PWS Plan Review and GW Capacity Use for FY 2020-2021

Division of Water Resources Permit Processing (FY 2021-22)

	Water Resources	
	401 WQCs / Isolated Waters*	
	Regular	Express
Number of Permits	1,872	0
Average (days)	48	-
Goal (days)	60	60
Beat Goal By (Days)	12	-
Beat Goal # Projects (%)	1,502 (80%)	-
Number > 90 days	211	-
% > 90 days	11%	-

Table 14: Processing Times for 401/Isolated Waters FY 2021-2022

	Water Resources	
	Stream/Buffer Determinations**	
	Regular	Express
Number of Permits	62	27
Average (days)	112	14
Goal (days)	-	30
Beat Goal By (Days)	-	16
Beat Goal # Projects (%)	-	24 (88.9%)
Number > 90 days	16	0
% > 90 days	26%	0%

Table 15: Processing Times for Stream/Buffer Determinations FY 2021-2022

*Reported processing time is not adjusted for projects put on administrative hold.

*401 Water Quality Classifications and Isolated Water Permits have regulatory requirements for processing times; Stream/Buffer determinations do not have this requirement.

**Reported Regular Stream/Buffer Determinations are primarily from the Washington and Central offices and may not include those conducted in other parts of the state. DWR Raleigh Regional Office staff conducted 509 Stream/Buffer Determinations during FY 21-22.

*Buffer Authorizations are not accounted for in this data.

Average Days Saved Using Express for 401 WQCs/Isolated Waters/Stream/Buffer Determinations	
98.6	days
81%	reductions

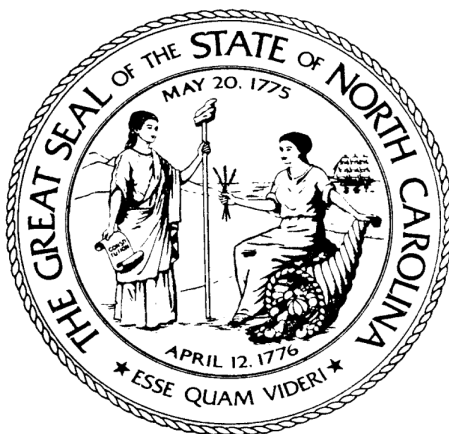
	Water Resources	
	PWS Plan Review	GW Capacity Use
Number of Permits	1,220	306
Average (days)	13	42
Goal (days)	30	45
Beat Goal By (days)	17	3
Number > 90 days	0	0
% > 90 days	0%	0%

Table 16: Processing Times for PWS Plan Review and GW Capacity Use for FY 2021-2022

STATE OF NORTH CAROLINA
AIR QUALITY PERMIT PROGRAM
ACCOUNTABILITY REPORT

**A Report to the
Environmental Review Commission, the Joint Legislative Oversight Committee
on Agriculture and Natural and Economic Resources and the
Fiscal Research Division**

**Submitted by the
North Carolina Department of Environmental Quality
Division of Air Quality
Michael A. Abraczinskas, Director**



JANUARY 2023

STATE OF NORTH CAROLINA

AIR QUALITY PERMIT PROGRAM

ACCOUNTABILITY REPORT

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**Submitted by the North Carolina Department of Environmental Quality
Division of Air Quality**

**This report is submitted pursuant to the requirement of NC G.S. 143-215.3A(c) and
15A NCAC 2Q .0206(e)**

JANUARY 2023

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EXECUTIVE SUMMARY

The enclosed annual report discusses the costs and other aspects of the North Carolina Division of Air Quality (NCDAQ) permit program, required under North Carolina General Statute (G.S.) 143-215.3A (Appendix A) and 15A NCAC 2Q .0206(e).

The NCDAQ permits minor and synthetic minor facilities under state regulations. True minor facilities are permitted when their emissions are above thresholds defined in 15A NCAC 02Q .0100. Synthetic minor facilities have taken operational or emission control limitations to remain below major source thresholds. These facilities are defined as synthetic minor facilities due to their ability to be major emitters if not for the operational or emissions limitations the facility has requested. Major facilities are permitted under Title V of the federal Clean Air Act Amendments of 1990. The Title V operating permit program consolidates all federal and state air quality regulations for a facility into a single air permit. North Carolina's largest facilities emitting air pollution are subject to the Title V permit program. The NC DAQ received approval from the EPA to implement the Title V program in North Carolina. The federal Clean Air Act requires the Title V program to be funded entirely by fees collected from permitted facilities.

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INTRODUCTION

North Carolina state law requires that the Department of Environmental Quality (DEQ):

“... shall report to the Environmental Review Commission, the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources, and the Fiscal Research Division on the cost of the State’s environmental permitting programs contained within the Department on or before January 1 of each odd-numbered year. The report shall include, but is not limited to, fees set and established under this Article, fees collected under this Article, revenues received from other sources for environmental permitting and compliance programs, changes made in the fee schedule since the last report, anticipated revenues from all other sources, interest earned and any other information requested by the General Assembly.” (G.S. 143-215.3A, attached as Appendix A)

This report describes the Permit Program in North Carolina as carried out by the Division of Air Quality (NCDAQ). The report focuses on funding and staffing issues. It does not cover permit programs under the jurisdiction of local air pollution control programs in Buncombe, Forsyth and Mecklenburg counties. The report summarizes all facility permitting classes: minor and synthetic minor facilities permitted under state requirements, and major facilities permitted under Title V of the Clean Air Act.

Congress established the Title V Permit Program under the 1990 amendments to the federal Clean Air Act primarily as a way to consolidate all air regulations affecting major emitters of certain air pollutants (as defined in Section 501 of the Clean Air Act) into a single document. Under the Clean Air Act, Title V permits are required for certain industry groups designated by the U.S. Environmental Protection Agency (EPA) and for any facility with the potential to emit at least:

- 100 tons per year of any regulated criteria pollutant, or
- 10 tons per year of any hazardous air pollutant (HAP), or
- 25 tons per year of any combination of HAPs.

This DAQ Permitting Program Report contains:

- A discussion of program accomplishments and goals,
- A discussion of current issues affecting the program,
- A detailed list of revenues and expenditures for state fiscal year 2020, and
- Appendices.

CURRENT STATUS AND RECENT ACCOMPLISHMENTS

The DAQ permit program encompasses the full range of activities associated with implementing the program, including:

- Reviewing applications for issuance, modification and renewal of permits,
- Advising the regulated community on applicability issues,
- Routinely inspecting permitted facilities,
- Soliciting and responding to citizens' concerns and suggestions,
- Gathering emissions inventory data and submitting the data to the EPA,
- Issuing invoices and collecting fees to operate the permitting program,
- Operating a network of air monitors,
- Performing public outreach, including issuing air quality advisories to citizens,
- Long-range planning (including computer modeling) to achieve and maintain healthy air quality for future generations,
- Working with legislators and appointed officials to ensure adequate statutory and regulatory authority to carry out the NCDAQ's mission, and
- Taking enforcement actions against violators, including assessing penalties, revoking permits and taking legal action when necessary.

Staffing Levels

The NCDAQ has 203 positions on the organizational chart, however only 173 of those are filled as of November 2022. Although many positions in the division have some Title V responsibility, the full-time equivalent (FTE) staff dedicated to the Title V program in between 2020 and 2022 was 92.5. The remaining FTEs are responsible for non-Title V air quality permits (minor and synthetic minor facilities); area sources of air pollution (such as open burning); motor vehicle emissions control (through programs to ensure proper functioning of vehicle emissions control equipment and reduce emissions from diesel engines); enforcement, and regulation of toxic air pollutants, and administration of the DAQ.

The NCDAQ has 100 fewer positions (203) from its highest level of 303 about a decade ago. The NCDAQ has attained this staffing level to manage and balance ever-changing business needs and fluctuations in revenues. As discussed later, fees received from permitted facilities have declined as major sources have been required by regulations to reduce emissions and change to lower emitting fuels to achieve compliance with state and federal requirements. On November 18, 2021, the new Title V fees were put in place to address a significant deficit in Title V revenues, following a process including research and analysis, stakeholder involvement, industrial outreach, rulemaking, public comment, and finally legislative approval.

In addition to the core functions listed above, the Title V program, as required by the Clean Air Act, also funds DEQ's Small Business Assistance Program and a Small Business Ombudsman.

Permitting and Compliance Actions

For the 2020-2021 and 2021-2022 state fiscal years, the NCDAQ performed the following permitted facility activities:

- Reviewed and processed 396 permit applications for Title V facilities, 385 permit applications for synthetic minor facilities and 431 permit applications for minor facilities.
- Performed a total of 3721 permit-related compliance evaluations including 592 full compliance evaluations (FCEs) of permitted Title V facilities, 1201 FCEs of permitted synthetic minor facilities, 1010 FCEs of permitted minor facilities, and 653 compliance assurance visits at registered/permit exempt facilities.
- Issued 508 compliance/enforcement letters to various regulated facilities including 177 total letters and 131 Notices of Violation (NOVs) to Title V facilities, 120 total letters and 64 NOVs to synthetic minor facilities, 178 total letters and 83 NOVs to permitted minor facilities, and 33 total letters and 19 NOVs to registered/permit exempt facilities.
- Assessed 29 enforcement cases against Title V facilities resulting in total penalties of \$562,288, 12 enforcement cases against synthetic minor facilities resulting in total penalties of \$91,708, and 10 enforcement cases against permitted minor/permit exempt facilities resulting in total penalties of \$150,677. (Per General Statute, all civil penalties collected by DAQ are transferred to local school systems.)

PROGRAM CHALLENGES

Title V Facilities

In order to maintain a federally approved Title V operating permit program, North Carolina's permit program must be adequately funded by the regulated sources. See Clean Air Act (CAA) §502; 40 CFR §70.10. Specifically, CAA §502(b)(3)(A) requires a state program to collect revenue "sufficient to cover all reasonable (direct and indirect) costs required to develop and administer the permit program requirements." Title V is triggered by certain emission levels and tonnage fees are applied to just Title V facilities. Therefore, due to a downward trend in emissions of air pollutants and an increase in new federal regulations, Title V program revenues have decreased, while the resources necessary to implement the program have increased.

Increased Federal Regulatory Programs

Since 2005 there has been an increase in the promulgation of federal air regulations. Every time a new regulation is promulgated, each facility must be evaluated to determine potential applicability of the new regulation and, if applicable, revise the facility's permit to incorporate the necessary emission limits, monitoring provisions, recordkeeping and reporting requirements. In general, these new federal regulations fall into the following areas:

MACT/GACT Standards

The federal EPA is required by the Clean Air Act to promulgate nationally applicable emission standards referred to as Maximum Achievable Control Technologies (MACTs) that apply to defined categories of major sources of hazardous air pollutants and Generally Available Control Technologies (GACTs) that apply to smaller non-major sources of hazardous air pollutants. Established MACTs and GACTs apply to a wide range of emission sources from large coal-fired utility boilers down to 25-horsepower emergency generators. Specifically, promulgated GACT regulations have expanded the universe of regulated sources at both Title V and non-Title V facilities. For example, the NCDAQ estimated that there are over 5,000 individual emergency generators located at facilities that currently hold an air quality permit. These engines are subject to the EPA's MACT/GACT standards for Reciprocating Internal Combustion Engines (RICE) units. Each individual engine must be evaluated for applicability, a determination made as to which specific requirements apply, and in many cases the existing air quality permit must be revised to include those federal requirements. Each MACT/GACT standard is complex and requires considerable resources to implement effectively.

New/Revised National Ambient Air Quality Standards (NAAQS)

In the past twelve years, the EPA has revised several National Ambient Air Quality Standards (NAAQS) – the concentration of a pollutant in the ambient air considered to be safe. Most notably the EPA established new standards for sulfur dioxide (1-hour averaging time) and nitrogen dioxide (1-hour averaging time). The revision of a NAAQS requires the states to design and maintain an ambient monitoring network and develop a regulatory State Implementation Plan (SIP) to ensure compliance with the new standard. The NCDAQ has implemented these new standards and has expended considerable resources to ensure their compliance. The EPA is obligated to reassess each NAAQS every five years which will require significant additional NCDAQ work when there are revisions, which we expect will be more of an impact as EPA contemplates revisions to the ozone and PM2.5 NAAQS soon.

New and revised federal regulatory programs create a challenge for the permit program because new requirements pose changes for air quality engineers, who need to maintain expertise on emerging technologies and regulatory compliance. In addition, communicating the regulatory requirements and drafting the complex permit conditions to implement those requirements can be very challenging and take a significant amount of time and resources. Therefore, a strong commitment to training staff is critical to maintaining those competencies. Compliance actions, inspections and evaluations are included as Title V compliance costs since Title V revenues are required to fund for all aspects of the program. As rules become more complex and permits become more complex, the analysis performed by the compliance staff becomes more difficult and requires more resources. The purpose for much of the additional complexity is to lower emissions. The effect of lowering emissions is a good environmental outcome but also results in reduced Title V revenues, so long as a portion of the fee structure is linked to emission levels.

Decline in Title V Revenue

In 1992, the Clean Air Act Advisory Council established by the North Carolina General Assembly recommended that half of the total Title V fees should come from a base permit fee (an annual flat fee for each permit). The council recognized that some fixed amount of work is required to permit and provide compliance oversight for every Title V permitted facility without regard to the individual facility's emissions. The other half of the revenue comes from annual per-ton charges imposed on top of the base permit fee. The tonnage fee is calculated from the per-ton rate and the "billable tons" a facility emits (up to a maximum defined emission level). As a direct result of this fee structure, Title V revenues decrease when emissions decrease. Billable tons in North Carolina have decreased over time. The DAQ experienced a 54% drop in total tons "as billed" from all TV facilities

from 2009 to 2019. The table below provides the most recent five-year period showing billable tons, number of Title V facilities in North Carolina, and the number of full-time equivalent positions funded under the program.

Fiscal Year	Billable Tons	Number of Title V Facilities	Actual FTE Funded Title V Positions
2014	165,437	321	94
2015	154,778	320	88
2016	146,394	314	83
2017	131,372	312	75
2018	129,124	289	74
2019	124,787	277	72
2020	121,500	290	72*
2021	114,348	291	72
2022	101,926	308	77.74

*DAQ conducted an internal review of workload related to Title V activities in 2019-2020. The results indicated that DAQ is undercharging time to this revenue stream. The review shows that 92.5 FTE should be charged to the Title V account. This discrepancy likely resulted from the steady reduction of positions over the past 7 years and the reassignment of Title V work to remaining staff. Concurrently, while the total number of Title V facilities and their emissions decreased, workload for DAQ did not decrease. These adjustments will be made when the revenues under the new fee structure fully support the fund shifts.

There is a myriad of reasons for the reduction in statewide emissions and facilities subject to Title V, ranging from economic factors to the implementation of state and federal air pollution reduction programs such as North Carolina’s landmark Clean Smokestacks Act (CSA) (Senate Bill 2002-1078). The CSA continues to require reductions in sulfur dioxide (SO₂) and nitrogen oxide (NO_x) emissions from the state’s coal-fired utilities. These reductions have been achieved by installing state-of-the-art pollution control systems on the large coal-fired units and by shutting down certain coal-fired units and replacing them with new natural gas units. Consequently, these reductions in emissions decreased the DAQ annual Title V revenue collected from utilities (based on tons of pollutants emitted) by about 56 percent between 2009 and 2019 (as invoiced).

Beginning in 2019 and through 2020, the DAQ performed an internal evaluation of activities related to the Title V program. The purpose was to evaluate all available options to sustain the Title V program as required by CAA §502 and 40 CFR §70.10. In early 2020 DAQ initiated a stakeholder process involving regulated facilities, consultants, environmental groups and industry group representation. The result of the stakeholder process was a revised Title V fee structure model that would be used to revise the current rules. All Title V facility “authorized” and “permit” contacts were invited to a webinar presentation on the fee structure revision. The DAQ also discussed the fee structure revision during several other public outreach engagements. The DAQ requested the Environmental Management Commission (EMC) approve a public hearing and comment period on the proposed fee rule revision. The public hearing was held on November 12, 2020. The comment period was open through November 30, 2020, with scheduled presentation of the hearing officer’s report to the EMC in January 2021.

The amended rule was adopted by the Environmental Management Commission (EMC) January 14, 2021. The rule amendments were approved by the Rules Review Commission (RRC) at its February 18, 2021, meeting. Sixteen letters of objection were received by the RRC (by February 10, 2021) and the rule was sent for legislative review during the 2021 session. The rule amendments were made effective by the Governor's signature of the state budget bill SB 105, Section 12.17 on November 18, 2021. The revised Title V annual fees first affected those facilities invoiced in December 2021 while the permit application fee went into effect immediately.

DAQ PERMIT PROGRAM REVENUES AND EXPENDITURES

The federal Clean Air Act (CAA) requires that the entire cost of the Title V Permit Program, including both direct and other related expenses, be funded by facilities' permit fees and that Title V permit fees be used only for the purpose of operating the program.

As a benchmark to allow the federal EPA to readily determine whether a state Title V program is collecting enough revenue to cover the cost of the Title V program, the CAA set a presumptive minimum fee of \$25 per ton of air pollutant emissions (1990 dollars). This presumptive minimum fee is adjusted for inflation every year. If a state collects less than the presumptive minimum fee, the EPA may require the state to demonstrate that they are sufficiently funding an effective Title V permit program.

In September 2021, the EPA adjusted the presumptive minimum for inflation to \$54.37 per ton for the 12-month period of September 1, 2021, through August 31, 2022¹. North Carolina's fee has consistently been below the EPA presumptive minimum and has provided, at EPA's request, adequate demonstrations that the program fees collected are sufficient to fund the Title V program.

Synthetic minor and minor facilities do not pay a fee per ton of pollution that they emit. However, they do pay an annual fee as well as fees for certain permitting actions.

TABLE 1. DAQ PERMIT PROGRAM COST FOR STATE FISCAL YEAR 2021

	Non-Title V	Title V	I&M	Fuel Tax	Total
Revenue	\$1,274,217	\$5,479,018	\$2,873,397	\$8,365,308	\$19,438,887
Salary/Fringe/ Overhead	\$962,487	\$6,807,460	\$1,349,426	\$6,194,503	\$15,313,876
Equipment	\$0	\$0	\$29,409	\$48,708	\$78,117
Operations	\$790,852	\$88,664	\$2,068,545	\$2,346,586	\$5,294,647
Total Expense	\$1,753,340	\$6,896,124	\$3,447,380	\$8,589,798	\$20,686,642

¹ https://www.epa.gov/system/files/documents/2021-09/fee70_2022.pdf

TABLE 2. DAQ PERMIT PROGRAM COST FOR STATE FISCAL YEAR 2022**

	Non-Title V	Title V	I&M	Fuel Tax	Total
Revenue	\$1,568,477	\$6,137,878	\$2,446,721	\$8,428,791	\$19,654,867
Salary/Fringe/ Overhead	\$950,626	\$7,155,454	\$1,481,145	\$5,995,887	\$15,583,112
Equipment	\$0	\$0	\$71,751	\$12,944	\$84,695
Operations	\$658,865	\$54,159	\$1,426,842	\$2,343,257	\$4,567,818
Total Expense	\$1,609,492	\$7,209,613	\$2,979,738	\$8,352,089	\$20,150,932

**This table illustrates total DAQ receipts and expenditures, not just the receipts and expenditures for the permitting program. DAQ federal grants are not shown here.

**APPENDIX A: NC GENERAL STATUTES ON THE PERMIT PROGRAM
(G.S. 143-215.3A)**

§ 143-215.3A. Water and Air Quality Account; use of application and permit fees; Title V Account; I & M Air Pollution Control Account; reports.

(a) The Water and Air Quality Account is established as an account within the Department. Revenue in the Account shall be applied to the costs of administering the programs for which the fees were collected. Revenue credited to the Account pursuant to G.S. 105-449.43, G.S. 105-449.125, and G.S. 105-449.136 shall be used to administer the air quality program. Any funds credited to the Account from fees collected for laboratory facility certifications under G.S. 143-215.3(a)(10) that are not expended at the end of each fiscal year for the purposes for which these fees may be used under G.S. 143-215.3(a)(10) shall revert. Any other funds credited to the Account that are not expended at the end of each fiscal year shall not revert. Except for the following fees, all application fees and permit administration fees collected by the State for permits issued under Articles 21, 21A, 21B, and 38 of this Chapter shall be credited to the Account:

- (1) Fees collected under Part 2 of Article 21A and credited to the Oil or Other Hazardous Substances Pollution Protection Fund.
- (2) Fees credited to the Title V Account.
- (3) Repealed by Session Laws 2005-454, s. 7, effective January 1, 2006.
- (4) Fees collected under G.S. 143-215.28A.
- (5) Fees collected under G.S. 143-215.94C shall be credited to the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund.
- (6) Fees collected under G.S. 143-215.3D for the following permits and certificates shall be credited to the General Fund for use by the Department to administer the program for which the fees were collected:
 - a. Stormwater permits and certificates of general permit coverage authorized under G.S. 143-214.7.
 - b. Permits to apply petroleum contaminated soil to land authorized under G.S. 143-215.1.

(a1) The total monies collected per year from fees for permits under G.S. 143-215.3(a)(1a), after deducting those monies collected under G.S. 143-215.3(a)(1d), shall not exceed thirty percent (30%) of the total budgets from all sources of environmental permitting and compliance programs within the Department. This subsection shall not be construed to relieve any person of the obligation to pay a fee established under this Article or Articles 21A, 21B, or 38 of this Chapter.

(b) The Title V Account is established as a nonreverting account within the Department. Revenue in the Account shall be used for developing and implementing a permit program that meets the requirements of Title V. The Title V Account shall consist of fees collected pursuant to G.S. 143-215.3(a)(1d) and G.S. 143-215.106A. Fees collected under G.S. 143-215.3(a)(1d) shall be used only to cover the direct and indirect costs required to develop and administer the Title V permit program, and fees collected under G.S. 143-215.106A shall be used only for the eligible expenses of the Title V program. Expenses of the ombudsman for the Small Business Stationary Source Technical and Environmental Compliance Assistance Program, support staff, equipment, legal services provided by the Attorney General, and contracts with consultants and program expenses listed in section 502(b)(3)(A) of Title V shall be included among Title V program expenses.

(b1) The I & M Air Pollution Control Account is established as a nonreverting account within the Department. Fees transferred to the Division of Air Quality of the Department pursuant to G.S. 20-

183.7(c) shall be credited to the I & M Air Pollution Control Account and shall be applied to administering the air quality program.

(c) The Department shall report to the Environmental Review Commission, the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources, and the Fiscal Research Division on the cost of the State's environmental permitting programs contained within the Department on or before January 1 of each odd-numbered year. The report shall include, but is not limited to, fees set and established under this Article, fees collected under this Article, revenues received from other sources for environmental permitting and compliance programs, changes made in the fee schedule since the last report, anticipated revenues from all other sources, interest earned, and any other information requested by the General Assembly. The Department shall submit this report with the report required by G.S. 143B-279.17 as a single report. (1987, c. 767, s. 2; 1989, c. 500, s. 121; c. 727, s. 218(104); 1989 (Reg. Sess., 1990), c. 976, s. 2; 1991, c. 552, s. 3; 1991 (Reg. Sess., 1992), c. 1039, s. 12; 1993, c. 400, s. 14; 1995, c. 390, s. 28; 1995 (Reg. Sess., 1996), c. 743, s. 13; 1998-212, s. 29A.11(c); 2001-452, s. 2.4; 2001-474, s. 27; 2005-386, s. 8.1; 2005-454, s. 7; 2008-198, s. 11.2; 2011-145, s. 13.7; 2011-266, ss. 1.35(b), 3.3(b); 2014-120, s. 38(a); 2015-241, s. 14.16(d); 2017-10, s. 4.12(a); 2017-57, ss. 13.1, 14.1(i).)

§ 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).)

APPENDIX B: NC DAQ RULE – TITLE V REPORT REQUIREMENT

15A NCAC 02Q .0206 PAYMENT OF FEES

- (a) Payment of fees required pursuant to 15A NCAC 02Q .0200 may be by check or money order made payable to the N.C. Department of Environmental Quality. Annual permit fee payments shall refer to the permit number.
- (b) If, within 30 days after being billed, the permit holder fails to pay an annual fee required pursuant to 15A NCAC 02Q .0200, the Director may initiate action to terminate the permit pursuant to 15A NCAC 02Q .0309 or .0519 as applicable.
- (c) A holder of multiple permits may arrange to consolidate the payment of annual fees into one annual payment.
- (d) The payment of the permit application fee required by 15A NCAC 02Q .0200 shall accompany the application and is non-refundable.
- (e) The Division shall annually prepare and make publicly available an accounting showing aggregate fee payments collected pursuant to 15A NCAC 02Q .0200 from facilities that have obtained or will obtain permits pursuant to 15A NCAC 02Q .0500 except synthetic minor facilities and showing a summary of reasonable direct and indirect expenditures required to develop and administer the Title V permit program.

*History Note: Authority G.S. 143-215.3(a)(1),(1a),(1b),(1d);
Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the
permanent rule becomes effective, whichever is sooner;
Eff. July 1, 1994;
Amended Eff. September 1, 2015;
Readopted Eff. April 1, 2018.*

APPENDIX C: NC DAQ FEE STRUCTURE


ROY COOPER
Governor
ELIZABETH S. BISER
Secretary
MICHAEL ABRACZINSKAS
Director



December 16, 2021

MEMORANDUM

TO: Air Quality Section Chiefs
Regional Air Quality Supervisors

FROM: Mike Abraczinskas, Director 

SUBJECT: Permit Annual and Application Fees for Calendar Year 2022

Attached are the official tables for the new Division of Air Quality permit annual and application fees for calendar year 2022. Please forward this memorandum to anyone likely to need it. In 2021, pursuant to 15A NCAC 02Q .0204, the Department of Environmental Quality increased the Title V fees by the Consumer Price Index (2.99772%). This annual inflation adjustment will go into effect starting January 1, 2022 for the Title V permit application fees. The new Title V annual fees will first affect those facilities invoiced in February 2022 which have January anniversary dates.

As a historical note, Title V Fees were also recently adjusted November 18, 2021 per rulemaking and legislative approved changes to 15A NCAC 02Q .0203.

More information regarding the Consumer Price Index and the 40 CFR Part 70 presumptive minimum fee can be found here: https://www.epa.gov/system/files/documents/2021-09/fee70_2022.pdf

Attachment

cc: Michael Pjetraj
Michele Godwin
Holly Groce



North Carolina Department of Environmental Quality | Division of Air Quality
217 West Jones Street | 1641 Mail Service Center | Raleigh, North Carolina 27699-1641
919.707.8400

CALENDAR YEAR 2022 AIR QUALITY FEES

ANNUAL PERMIT FEES (FOR CALENDAR YEAR 2022)

Facility Category	Tonnage Factor	Basic Permit Fee	Non-attainment Area Added Fee	Complexity Fee ^b (3-6 Programs) ^c	Complexity Fee ^b (7+ Programs) ^c
Title V	\$41.20 ^{b,*}	\$9,038 ^{b,*}	\$4,178*	\$2,575 ^{b,*}	\$7,725 ^{b,*}
Synthetic Minor		\$1,500			
Small		\$250			
General	50% of the otherwise applicable fee				
General TV ACI ^a	10% of the otherwise applicable fee				

^a Applies to air curtain incinerators (ACI) only

^b Reflects fee changes pursuant to 15A NCAC 2Q .0203 effective November 18, 2021

^c Federal Programs are defined in 2Q .0203(c) and include rules such as NSPS, MACT, PSD, etc.

PERMIT APPLICATION FEES (FOR CALENDAR YEAR 2022)

Facility Category	New or Modification	New **	2Q .0300 or Minor Modification	Significant Modification	Ownership Change
Title V		\$10,635*	\$3,090 ^{b,*}	\$7,210 ^{b,*}	\$60
Title V (PSD or NSR/NAA)	\$16,100*				\$60
Title V (PSD and NSR/NAA)	\$31,313*				\$60
Synthetic Minor	\$400				\$50
Small	\$50				\$50
General	50% of the otherwise applicable fee				
General TV ACI ^a	10% of the otherwise applicable fee				

^a Applies to new air curtain incinerators (ACI) only

^b Reflects fee changes pursuant to 15A NCAC 2Q .0203 effective November 18, 2021

The tables above as well as other useful information can be found on the Internet at <https://deq.nc.gov/about/divisions/air-quality/air-quality-permitting>

Make checks payable to: Department of Environmental Quality

* Pursuant to 15A NCAC 02Q .0200 rules, these fees reflect the Consumer Price Index (CPI) increase this year effective January 1, 2022.

** Please contact the Raleigh Central Office, Air Permits Section for fee amount. New is defined as a previously unpermitted (Air Permit) facility.

Go to <https://deq.nc.gov/epayments> for online payment options by credit/debit card or eCheck for Annual Fees and Permit Application fees.

Permit Application Fees Guide (For Calendar Year 2022)

Permit Application	Application Fee
Title V	
All Renewals (including TV)	\$0
Changes initiated by Director, name change with no ownership change, changes under 2Q .0523, construction date changes, test date change, a reporting procedure change, or similar changes	\$0
New TV (covers both the 2Q .0300 permit with condition to file TV 12 months after operation and the TV permit). New is defined as a previously unpermitted facility.	\$10,635 only once at the 1 st application, not again for the TV
TV - 501(b)(2) or 501(c)(2) – Two-Step significant (Fee is paid only with the first step. Two-Step applications submitted before November 18, 2021 will pay \$1002 for the second step under the previous fee schedule)	\$7,210
TV- Ownership Change (note no fee for name change only)	\$60
TV – Administrative Amendment	\$0
TV – Reopen for Cause (fee dependent on whether the impetus was that of the permittee or the Director)	\$0 changes initiated by the Director \$7,210 changes initiated by the permittee
TV- Significant 501(b)(1) or 501(c)(1) – One-Step significant	\$7,210
TV- Minor, TV State only	\$3,090
Expedited TV - Significant	\$7,210
Expedited TV - Minor	\$3,090
Synthetic minor, small or exclusionary to TV (TV application submitted only, can wait for TV permit to remove synthetic limit) (1 st time TV)	\$3,090
Synthetic minor or small to TV (2Q .0300 application submitted first, permit issued with condition to file TV 12 months after operation) and TV later (1 st time TV)	\$3,090 for modification to change fee class and \$3,090 for TV 1st time submittal
TV - PSD or NSR/NAA (PSD application submitted, permit condition to file TV 12 months after permit issuance)	\$16,100 only once at the 1 st application, not again for the TV
TV - PSD and NSR/NAA (same as TV-PSD or NSR/NAA)	\$31,313 only once at the 1 st application, not again for the TV
General TV Air Curtain Incinerator (ACI)	10% of otherwise applicable fee
Small, Synthetic Minor, Exclusionary, General, Construction Notice	
TV to synthetic minor	\$400
TV to small or exclusionary	\$50
Expedited synthetic	\$400
Expedited small	\$50
Synthetic minor (New or Modification)	\$400
Synthetic minor Ownership Change	\$50
Small or exclusionary small (New or Modification)	\$50
Small or synthetic minor administrative amendment (includes name change)	\$0
Small Ownership Change	\$50
General	50% of otherwise applicable fee
General Ownership Change	\$25
Construction Notice – Processing fee	\$200

APPENDIX D: EPA'S 2021 REVIEW OF NC TITLE V PROGRAM

The EPA typically conducts a review of NCDAQ's Clean Air Act Title V program every five years. The EPA Region IV conducted a review of the NCDAQ's Title V program in May 28, 2021, in Raleigh. This evaluation consisted of a review of staffing resources and internal management support, Title V revenue and expenses, public participation, environmental justice (EJ) in permitting, permit issuance rates, and a detailed review of 10 issued permits. The results of the review are kept on file at the EPA Region IV office in Atlanta, Ga. The following findings and recommendations are contained in EPA's July 30, 2021, Program Evaluation Report:

Programmatic Knowledge/Implementation

The EPA and NCDAQ held discussions on a variety of Title V topics including adequacy of Title V resources (staffing and capital), public participation, Title V workload, and renewal of Title V permits. NCDAQ currently has qualified, experienced staff and management resources, with limited turnover for successful implementation of the Title V program. Predicted retirements will continue to require NCDAQ's focus on succession planning, training, and a Salary Management Plan to address retention and hiring needs.

Resources

NCDAQ's Title V program is organized so that Title V applications are processed in the central office and enforcement and inspections are handled by the regional offices. The Permitting Section consists of three branches: Title V Permits Branch, New Source Review Permitting Branch, and Air Quality Analysis Branch. NCDAQ is responsible for 2,517 regulated sources, of which 296 are Title V sources (as of May 2021). The Permitting Section has 19 Title V FTE, supported by three meteorologists, one Environmental Specialist, one Administration and Data Technician, and section and branch supervisors. The regional offices assist the Permitting Section with permitting of non-major sources and perform most of the compliance inspections. In addition, in March 2020, NCDAQ initiated a "pilot" permitting program in which 7 regional staff assisted with reviewing Title V renewal permit applications, with the goal of providing career growth, as well as addressing permit backlog. The pilot approach, which NCDAQ reports requires some restructuring of resources and staff training, presents an additional option for addressing Title V workload. NCDAQ staff is responsible for taking care of all permitting issues for those assigned facilities including reviewing permit applications, drafting permits, calculating emissions, reviewing all submitted reports, answering questions, responding to citizens' information requests, and providing necessary compliance assistance. The permit writers also focus on other work associated with Title V facility permits such as prevention of significant deterioration, state-only permitting, quarterly stakeholder meetings, and multiple workgroups.

At the time of the May 28, 2021, program evaluation, NCDAQ's Title V sources were billed for actual emissions at a rate of \$34.75 per ton and an annual Title V fee of \$7,531.00. Newly

permitted Title V sources were billed a first-time fee of \$10,325.00. One issue that has concerned NCDAQ management is the steady decline in billable tons of emissions for the Title V program. This decline in billable tons has been a slow decrease over the years, and the program has been able to compensate for this with increases in the Title V billable tonnage rate.

From 2009 - 2012 the NCDAQ collected the following Title V revenue:

FY 09-10 - \$8,754,998.00
FY 10-11 - \$8,187,756.00
FY 11-12 - \$8,000,817.00
FY 12-13 - \$7,902,853.00
FY 13-14 - \$7,512,314.00
FY 14-15 - \$6,938,474.00
FY 15-16 - \$6,737,942.00
FY 16-17 - \$6,392,205.00
FY 17-18 - \$6,191,037.00
FY 18-19 - \$6,403,589.00
FY 19-20 - \$6,380,440.00

Title V revenue projected for FY21 is:
\$5,724,718

The EPA commends the state for their internal audit of the Title V permitting program funding and workload and proposed 2020 regulations, including stakeholder engagement to address the projected Title V program funding deficit. However, given that the NCDAQ program is projecting a significant deficit this year and substantial deficits during the next several years, and the delay in passage of amended fee schedule 15A NCAC 02Q .0203, the current fee schedule does not meet the Part 70 program requirements at 40 CFR § 70.9. It is the EPA's understanding that North Carolina is in the process of taking immediate legislative action to adopt a revised fee schedule in compliance with Title V, which we understand will be effective this year.

Public Participation

The NCDAQ works with its citizens to protect and improve outdoor air, or ambient, air quality in North Carolina for the health, benefit and economic wellbeing of all. Permits include conditions to ensure a facility is complying with federal and state rules and laws that are developed to protect human health. The EPA commends NCDAQ for their enhanced public notice permitting process, including tools and processes for meaningful engagement with the public and communities, with the goal of ensuring that potentially impacted communities are aware of their ability to participate in the permitting process.

Renewal Permits

At the time of the FY21 program review, NCDAQ had a backlog of 11 Title V permit renewal applications, i.e., older than eighteen (18) months past the Title V permit expiration date. This represents less than four (4) percent of NCDAQ's Title V universe. The applications for these permits were certified by NCDAQ as being timely, so they are extended and not expired (i.e., the facilities may continue to operate in compliance with their permits). NCDAQ reports that those permits in backlog status typically involved those with the most complexity, including pulp and paper and chemical processing, and those being consolidated with a number of modifications. NCDAQ management reports that 90-day modifications tend to take priority over the permits with longer deadlines. However, NCDAQ is prioritizing the backlogged permits and will be monitoring their progress on decreasing the backlog.

Conclusion

At the conclusion of the onsite portion of the Title V program review, Region 4 personnel met with NCDAQ officials to conduct an exit interview. Overall, the EPA believes that NCDAQ is meeting the requirements set forth for operation of a Title V program. The EPA takes special note of the work NCDAQ had done in strategic planning, as they continue to fully operate the Title V program while steadily addressing the reality of diminishing resources and simultaneously reducing the Title V backlog. The EPA acknowledges the ongoing nationwide challenge of maintaining a fully funded Title V program with significantly declining emissions and fees. However, NCDAQ is facing a significant funding shortfall starting in FY21, which the State must take immediate action to address. It is the EPA's understanding that the State is in the process of revising the fee schedule, which will be effective this year. In addition, NCDAQ should develop a process for ongoing periodic review of the actual FTE necessary to implement the Title V program. The EPA looks forward to continuing the working relationship with the NCDAQ.