

## TITLE 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY

**Notice** is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g. that the Department of Environmental Quality intends to adopt the rule cited as 15A NCAC 01D .0305, and readopt with substantive changes the rules cited as 15A NCAC 01D .0102, .0302 and .0303.

**Link to agency website pursuant to G.S. 150B-19.1(c):** <https://deq.nc.gov/permits-regulations/rules-regulations/proposed-main>

**Proposed Effective Date:** March 1, 2022

**Instructions on How to Demand a Public Hearing:** (must be requested in writing within 15 days of notice): Send to: Jennifer Everett, DEQ Rulemaking Coordinator, Office of General Counsel, 1601 Mail Service Center, Raleigh NC 27699-1601 or email: [Jennifer.everett@ncdenr.gov](mailto:Jennifer.everett@ncdenr.gov)

**Reason for Proposed Action:** The rules in 15A NCAC 01D establish the procedures within DEQ related to certifying projects for which the N.C. Department of Commerce requests project certification prior to the issuance of revenue bonds for a project. These rules are being readopted pursuant to G.S. 150B-21.3A.

**Comments may be submitted to:** Jennifer Everett, 1601 Mail Service Center, Raleigh, NC 27699-1601; email [jennifer.everett@ncdenr.gov](mailto:jennifer.everett@ncdenr.gov)

**Comment period ends:** January 14, 2022

**Procedure for Subjecting a Proposed Rule to Legislative Review:** If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

**Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.**

- ☐ State funds affected
- ☐ Local funds affected
- ☐ Substantial economic impact ( $\geq$  \$1,000,000)
- ☒ Approved by OSBM
- ☒ No fiscal note required

### CHAPTER 01 - DEPARTMENTAL RULES

#### SUBCHAPTER 01D - PROJECT CERTIFICATION RELATING TO INDUSTRIAL AND PRIVATE POLLUTION CONTROL REVENUE BONDS

##### SECTION .0100 - PURPOSE AND DEFINITIONS

###### 15A NCAC 01D .0102 DEFINITIONS OF TERMS

The terms used in this Subchapter shall be as defined in G.S. 159C-3 and as follows:

- (1) ~~EHNR~~ " DEQ " ~~shall mean means~~ the Department of ~~Environment, Health, and Natural Resources~~. Environmental Quality.
- (2) ~~Secretary~~ "Secretary" ~~shall mean means~~ the Secretary of ~~EHNR~~ DEQ or his or her appointed designee.
- (3) ~~Project certification~~ "Project certification" ~~shall mean means~~ a written statement by the ~~Secretary~~, Secretary of EHNR, the state agency having jurisdiction over environmental matters, as provided in G.S. 113A-1 et seq. and G.S. 143-215.11 et seq., that a proposed industrial project will meet the criteria contained in Rule .0302 of this ~~Subchapter~~ Subchapter, and a proposed pollution control project will meet the criteria contained in Rule .0303 of this ~~Subchapter~~ Subchapter, or a proposed hazardous waste facility will meet the criteria contained in Rule .0305 of this Subchapter.

*History Note:* Authority G.S. ~~159C-7~~; 159C-7(d);  
Eff. June 16, 1977;  
Amended Eff. March 1, 1990; July 1, 1988.

##### SECTION .0300 - CERTIFICATION CRITERIA

###### 15A NCAC 01D .0302 PROPOSED INDUSTRIAL PROJECT NO MATERIALLY ADVERSE EFFECT ON THE ENVIRONMENT TEST

In the case where the Secretary of ~~ECD~~ the Department of Commerce requests ~~has requested~~ a project certification for a proposed industrial ~~project, project~~ or for a proposed industrial project that includes a pollution control project project, connected to a new or expanded industrial facility, the Secretary shall of EHNR will apply the "materially adverse" test, as follows: If the Secretary determines that no state water or air quality standard or limitation will be violated, that use of water by the industrial project will not substantially affect other users, and that the project will have no other materially adverse effect on the environment, the Secretary will certify that the project will not have a materially adverse effect on the environment. environment if the Secretary determines that no applicable State and federal environmental laws, rules, standards or limitations will be violated, that use of water by the proposed industrial project will not substantially affect other users, and that the proposed project will have no other materially adverse effect on the environment. Issuance to the operator of the proposed project of ~~valid wastewater discharge, air pollution control, water withdrawal permits and any other major~~ the required environmental permits determined by the Secretary to be required for the proposed project, or a determination by EHNR that such permits would not be required for a specific operation, may be considered as "compelling proof" indicates that the ~~certain~~ environmental impacts considerations surrounding of a the proposed project have been ~~were evaluated, and the Secretary may consider such evaluations in making a certification decision, duly evaluated.~~

*History Note:* Authority G.S. ~~159C-7~~; 159C-7(d);  
Eff. June 16, 1977;  
Amended Eff. March 1, 1990; July 1, 1988.

#### **15A NCAC 01D .0303 PROPOSED POLLUTION CONTROL PROJECT MATERIALLY FAVORABLE IMPACT TEST**

In the case where the Secretary of ~~ECD~~ the Department of Commerce requests a project certification for a proposed ~~water and/or air~~ pollution control project, the Secretary of EHNR will apply the "materially favorable" test. ~~If the Secretary determines that the project meets all relevant state emission control standards, water effluent limitations, pretreatment standards (if applicable), new source performance standards, and toxic substances emission effluent limitations, does not contravene any ambient air or water quality standard, and has no other materially adverse effect on the environment, the Secretary will~~ shall certify that the proposed project will have a materially favorable impact on the environment, environment or will prevent or diminish materially the impact of the pollution which that would otherwise occur; occur, as set forth in G.S. 159C-7(d), if the Secretary determines that: the proposed project meets all applicable State and federal emission control standards, water effluent limitations, pretreatment standards, new source performance standards, and toxic substances emission effluent limitations, does not contravene ambient air or water quality standards, and has an otherwise materially favorable impact on the environment. Issuance to the operator of the proposed project of the required environmental permits valid wastewater discharge, air pollution control, water withdrawal permits and any other major permits determined by the Secretary to be required for the project, or determination by EHNR that such permits would not be required for a specific operation, may be considered as compelling proof indicates that the certain environmental impact impacts of a the proposed project has been ~~duly considered, were evaluated, and the Secretary may consider such evaluations in making a certification decision.~~

*History Note:* Authority G.S. ~~159C-7~~; 159C-7(d);  
Eff. June 16, 1977;  
Amended Eff. March 1, 1990; July 1, 1988.

#### **15A NCAC 01D .0305 PROPOSED HAZARDOUS WASTE FACILITY**

In the case where the Secretary of the Department of Commerce requests a project certification for a hazardous waste facility, the Secretary shall certify that the proposed project is environmentally sound, will not have an adverse effect on public health and will further the waste management goals of North Carolina, in accordance with G.S. 159C-7(d), if the Secretary determines that the proposed project meets applicable State and federal laws and regulations, has applied for and received the required environmental permits, including those outlined in G.S. 130A-295, 130A-295.01, and 130A-295.04 for hazardous waste facilities, and meets the current and anticipated waste management needs of the State. Issuance to the operator of the proposed project of the required environmental permits indicates that certain environmental impacts of the proposed project were evaluated, and the Secretary may consider such evaluations in making a certification decision.

*History Note:* Authority G.S. 159C-7(d);  
Eff.