

Regulatory Impact Analysis

Rule Citation: 15A NCAC 01D .0102, .0302, .0303, .0305

Rule Topic: Readoption of 01D Rules: Project Certification relating to Industrial and Private Pollution Control Revenue Bonds

DEQ Divisions: Divisions of Water Resources (DWR); Energy, Mineral, and Land Resources (DEMLR); Air Quality (DAQ); Waste Management (DWM); Mitigation Services (DMS); Marine Fisheries (DMF); Coastal Management (DCM); Water Infrastructure (DWI)

Staff Contact: Bill Lane, General Counsel, Department of Environmental Quality (DEQ)
bill.lane@ncdenr.gov
(919)707-8616

Jennifer Everett, Rulemaking Coordinator, DEQ
jennifer.everett@ncdenr.gov
(919) 707-8614

Julie Ventaloro: Economist II, DWR
julie.ventaloro@ncdenr.gov
(919) 707-9117

Impact Summary:

State government:	No
NCDOT:	No
Local government:	No
Private entities:	No
Environment:	No
Substantial Impact:	No

1. Necessity for Rule Change

N.C. Gen. Stat. §150B-21.3A requires state agencies to review existing rules every 10 years, determine which rules are still necessary, and either re-adopt or repeal each rule as appropriate. The proposed rulemaking satisfies these requirements for 15A NCAC 01D. Of the four rules in the proposed rulemaking, three are proposed for readoption and one is proposed for adoption. All of the proposed changes are for the purpose of clarification or alignment with N.C. Gen. Stat. §159C-7(d).

2. Purpose and Scope of Rules

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. In the context of these rules, “project certification” refers to a written statement by the Secretary of DEQ that: 1) a proposed industrial project will not have a materially adverse effect on the environment; 2) a pollution control project will have a materially favorable impact on the environment or will prevent or diminish the impact of the pollution that would otherwise occur; or 3) a hazardous waste

facility will not have an adverse effect on public health and will further the State's waste management goals.

The scope of these rules potentially includes all of DEQ's regulatory divisions. It should be noted that requests for certification pursuant to these rules are uncommon. Since 2010, there have been two certification requests: one for a pollution control project (2010) and one for an industrial project (2015).

3. Regulatory Baseline

As part of the permanent rulemaking process, [North Carolina General Statute 150B-19.1](#) requires agencies to quantify to the "greatest extent possible" the costs and benefits to affected parties of a proposed rule. To understand what the costs and benefits of the proposed rule changes would be to affected parties, it is necessary to establish a regulatory baseline for comparison. For the purpose of this analysis, the following items are considered to comprise the baseline:

- the current version of rules in 15A NCAC 01D Project Certification relating to Industrial and Private Pollution Control Revenue Bonds (effective date March 1, 1990); and
- North Carolina General Statute G.S. 159C-7(d) Approval of Industrial Projects and Pollution Control Projects by Secretary of Commerce.

4. Benefit-Cost Analysis

4.1 Proposed rule amendments

The following tables contain summaries of the proposed rule amendments and adoption as well as a statement about the anticipated impacts of each change.

Section .0100 – Purpose and Definitions

Rule	Proposed Change	Economic Impact	Environment Impact
15A NCAC 01D .0101 Purpose	Expired Eff. May 1, 2017.	-	-
15A NCAC 01D .0102 Definitions of Terms	Update DEQ agency name; Add reference to certification requirements for hazardous waste facilities; Other minor changes for clarity.	None	None

Section .0200 – Certification Procedures – Section 01D .0200 expired as of May 1, 2017.

Section .0300 – Certification Criteria

15A NCAC 01D .0301 General	Expired Eff. May 1, 2017.	-	-
15A NCAC 01D .0302 Proposed Industrial Project	Update Commerce agency name; Rework for clarity; Clarify that when certifying a proposed industrial project, the DEQ Secretary will consider applicable State and federal environmental laws and rules.	None	None
15A NCAC 01D .0303 Proposed Pollution Control Project	Update Commerce agency name; Rework for clarity; Clarify that when certifying a proposed pollution control project, the DEQ Secretary will consider applicable State and federal emission control standards.	None	None
15A NCAC 01D .0304 Responsibility for Providing Information	Expired Eff. May 1, 2017.	-	-
15A NCAC 01D .0305 Proposed Hazardous Waste Facility	Proposed rule to align with N.C. Gen. Stat. §159C-7(d); Clarify that when certifying a proposed hazardous waste facility, the DEQ Secretary will consider applicable State and federal laws and regulations.	None	None

4.2 Economic Impact to State Government and the Regulated Community

The proposed amendments to the subject rules and the proposed adoption are technical in nature for the purpose of updating the rules to align with North Carolina statute and to provide clarity. This should make the rules easier to understand, which should translate into less time spent by DEQ on the project certification process. The amount of time saved will be negligible and will not provide a significant financial benefit; however, it is noted here for completeness.

None of the proposed amendments or adoptions will impose new regulatory requirements; as such, there should be no costs to the regulated community or the implementing agency (DEQ). The proposed amendments will not affect environmental permitting of NC Department of Transportation (NCDOT); as such, there will be no costs or benefits to NCDOT. Lastly, as measured from the baseline conditions, the proposed amendments will maintain existing environmental protections at an equivalent level with no costs or benefits to the environment.

5. Summary of Economic and Environmental Impact

As measured from the baseline conditions, there are no economic costs, no quantifiable economic benefits, and no environmental costs or benefits associated with the proposed rule readoptions and adoption.

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

This Subchapter 1D of Title 15A of the North Carolina Administrative Code (T15A.01D); PROJECT CERTIFICATION RELATING TO INDUSTRIAL AND POLLUTION CONTROL REVENUE BONDS; has been transferred and recodified from Subchapter 1E of Title 15 of the North Carolina Administrative Code (T15.01E), effective November 1, 1989.

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, 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(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(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; or will prevent or diminish materially the impact of the pollution ~~which that~~ 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 were evaluated, and the Secretary may consider such evaluations in making a certification decision.

History Note: Authority G.S. 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.