

Table of Contents

- Attachment A - Documentation to demonstrate adequate resources and legal authority to administer and enforce the Federal Plan
- Attachment B - Inventory of the affected NC Sewage Sludge Incineration Units
- Attachment C - Inventory of Emissions from the affected NC SSI units
- Attachment D - Provision for State progress reports to EPA
- Attachment E - Public Notice Report/Hearing Officer's Report

Attachment A
Adequate Resources and Legal Authority to Administer and Enforce the Federal Plan

The following is provided as documentation of adequate resources and authority to administer and enforce the Federal Plan 40 CFR 62 Subpart LLL. Copies of the North Carolina General Statutes (N.C.G.S.) referenced in this document are included and can also be found on the North Carolina General Assembly website (<http://www.ncleg.net/gascripts/statutes/Statutes.asp>).

Under its fully approved 40 CFR Part 70 Title V permitting program (66 FR 45941), the Division of Air Quality (DAQ) already serves as the Title V permitting authority for the three affected facilities. The facilities are already classified as Title V and are paying Title V fees. As a result of interaction in this role, the DAQ already provides assistance regarding the regulatory requirements of the Federal Plan. The DAQ is also already the compliance and enforcement authority for other state and federal air quality requirements at these facilities and inspects them annually. Thus, existing resources are considered adequate to assume delegation of the Federal Plan for the three existing facilities.

The following statutes provide supporting authority to administer and enforce the Federal Plan.

- N.C.G.S. 143-211 (c) provides the authority for the Department to administer the air quality program stating:

"It is the intent of the General Assembly, through the duties and powers defined herein, to confer such authority upon the Department of Environmental Quality as shall be necessary to administer a complete program of water and air conservation, pollution abatement and control and to achieve a coordinated effort of pollution abatement and control with other jurisdictions."

and provides the authority for the Department-

"to qualify to administer federally mandated programs of environmental management and to qualify to accept and administer funds from the federal government for such programs."

- N.C.G.S. 143-215.106 provides that-

"The Department shall administer the air quality program of the State."

- N.C.G.S. 143-215.107(a)(10) establishes the duty

"to develop and adopt standards and plans necessary to implement requirements of the federal Clean Air Act and implementing regulations adopted by the United States Environmental Protection Agency."

- N.C.G.S. 143-215.3 provides authority to implement permit fees including Title V Permit fees (143-215.3(a)(1d)). The rules in 15A NCAC 02Q .0200, Permit Fees, (<http://deq.nc.gov/about/divisions/air-quality/air-quality-rules/rules/permit-fees>) provide the

Attachment A
Adequate Resources and Legal Authority to Administer and Enforce the Federal Plan

mechanism by which stationary sources that emit air pollutants pay a fee based on the type of permit and the quantity of emissions emitted. These fees include Title V fees and cover the costs of reviewing, approving, implementing and enforcing a permit.

- N.C.G.S. 143-215.3(c) provides that-

“(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.”

In its capacity as the primary implementing authority for air quality requirements overall, the Division already performs the functions of administration and oversight of compliance reporting and recordkeeping requirements, inspections, and preparation of enforcement actions for other air quality requirements at the affected facilities.

In G.S. 143-215.3(a)(2) and 143-215.108 (c)(1) State law provides authority to incorporate into permits inspection and entry requirements consistent with 40 CFR 70.6(c)(2).

In G.S. 143-215.108(c)(1) and 143-215.107(a)(10) State law provides authority to incorporate into an operating permit, upon issuance or renewal, all applicable requirements as defined in 40 CFR 70.2, and as provided generally in the CAA and 40 CFR part 70. G.S. 143-215.107(a)(10) empowers the EMC to adopt standards and plans necessary to implement the CAA and EPA's implementing regulations. G.S. 143-215.108(c)(1) authorizes the State to attach such conditions to a permit as are necessary to achieve the purposes of the CAA and EPA's implementing regulations.

State law provides authority to incorporate monitoring, recordkeeping, reporting, and compliance certification requirements into operating permits consistent with 40 CFR 70.6. State law provides authority to incorporate into the permit periodic monitoring or testing requirements where the existing State implementation plan or other applicable requirement does not contain such a requirement, consistent with 40 CFR 70.6(a) (3) (i) (B). G.S. 143-215.63, et seq. authorizes the EMC to require periodic monitoring or testing of all sources subject to permitting requirements. G.S. 143-215.107(a)(10) empowers the EMC to adopt standards and plans necessary to implement the CAA and EPA's implementing regulations. G.S. 143-215.108(c)(1) authorizes the State to attach such conditions to a permit as are necessary to achieve the purposes of the CAA and EPA's implementing regulations.

In G.S. 143-215.114A State law provides civil and criminal enforcement authority consistent with 40 CFR 70.11, including authority to recover penalties and fines.

Attachment A
Adequate Resources and Legal Authority to Administer and Enforce the Federal Plan

Article 21.

Water and Air Resources.

Part 1. Organization and Powers Generally; Control of Pollution.

§ 143-211. Declaration of public policy.

(a) It is hereby declared to be the public policy of this State to provide for the conservation of its water and air resources. Furthermore, it is the intent of the General Assembly, within the context of this Article and Articles 21A and 21B of this Chapter, to achieve and to maintain for the citizens of the State a total environment of superior quality. Recognizing that the water and air resources of the State belong to the people, the General Assembly affirms the State's ultimate responsibility for the preservation and development of these resources in the best interest of all its citizens and declares the prudent utilization of these resources to be essential to the general welfare.

(b) It is the public policy of the State to maintain, protect, and enhance water quality within North Carolina. Further, it is the public policy of the State that the cumulative impact of transfers from a source river basin shall not result in a violation of the antidegradation policy set out in 40 Code of Federal Regulations § 131.12 (1 July 1997 Edition) and the statewide antidegradation policy adopted pursuant thereto.

(c) It is the purpose of this Article to create an agency which shall administer a program of water and air pollution control and water resource management. It is the intent of the General Assembly, through the duties and powers defined herein, to confer such authority upon the Department of Environmental Quality as shall be necessary to administer a complete program of water and air conservation, pollution abatement and control and to achieve a coordinated effort of pollution abatement and control with other jurisdictions. Standards of water and air purity shall be designed to protect human health, to prevent injury to plant and animal life, to prevent damage to public and private property, to insure the continued enjoyment of the natural attractions of the State, to encourage the expansion of employment opportunities, to provide a permanent foundation for healthy industrial development and to secure for the people of North Carolina, now and in the future, the beneficial uses of these great natural resources. It is the intent of the General Assembly that the powers and duties of the Environmental Management Commission and the Department of Environmental Quality be construed so as to enable the Department and the Commission to qualify to administer federally mandated programs of environmental management and to qualify to accept and administer funds from the federal government for such programs. (1951, c. 606; 1967, c. 892, s. 1; 1973, c. 1262, s. 23; 1977, c. 771, s. 4; 1979, 2nd Sess., c. 1158, s. 2; 1989, c. 135, s. 1; c. 727, s. 218(102); 1997-443, s. 11A.119(a); 1998-168, s. 1; 2006-259, ss. 31(b), 31(c); 2015-241, s. 14.30(u).)

Attachment A
Adequate Resources and Legal Authority to Administer and Enforce the Federal Plan

Article 21B.

Air Pollution Control.

§ 143-215.105. Declaration of policy; definitions.

The declaration of public policy set forth in G.S. 143-211, the definitions in G.S. 143-212, and the definitions in G.S. 143-213, applicable to the control and abatement of air pollution, shall be applicable to this Article. (1973, c. 821, s. 6; 1987, c. 827, s. 203.)

Attachment A
Adequate Resources and Legal Authority to Administer and Enforce the Federal Plan

§ 143-215.106. Administration of air quality program.

The Department shall administer the air quality program of the State. (1973, c. 821, s. 6; c. 1262, s. 23; 1977, c. 771, s. 4; 1987, c. 827, s. 204.)

§ 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 IA, Articles 21A, 21B, and 38 of this Chapter;
 - b. Administering permits or registrations issued under Article 21, other than Parts 1 and I A, 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 IA, 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,

Attachment A
Adequate Resources and Legal Authority to Administer and Enforce the Federal Plan

- 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.
- (lc) 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.
- (ld) 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 (lb) 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.
- (le) 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 I and IA of this Article and for compliance monitoring under Parts I and IA 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

Attachment A

Adequate Resources and Legal Authority to Administer and Enforce the Federal Plan

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,

Attachment A
Adequate Resources and Legal Authority to Administer and Enforce the Federal Plan

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

Adequate Resources and Legal Authority to Administer and Enforce the Federal Plan

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

Attachment A
Adequate Resources and Legal Authority to Administer and Enforce the Federal Plan

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

Attachment A
Adequate Resources and Legal Authority to Administer and Enforce the Federal Plan

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.

Attachment A
Adequate Resources and Legal Authority to Administer and Enforce the Federal Plan

1086; 1967, c. 892, s. 1; 1969, c. 538; 1971, 1167, ss. 7, 8; 1973, c. 698, ss. 1-7, 9, 17; 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.1 l(b).)

Attachment A
Adequate Resources and Legal Authority to Administer and Enforce the Federal Plan

§ 143-215.107. Air quality standards and classifications.

(a) Duty to Adopt Plans, Standards, etc. – The Commission is hereby directed and empowered, as rapidly as possible within the limits of funds and facilities available to it, and subject to the procedural requirements of this Article and Article 21:

- (1) To prepare and develop, after proper study, a comprehensive plan or plans for the prevention, abatement and control of air pollution in the State or in any designated area of the State.
- (2) To determine by means of field sampling and other studies, including the examination of available data collected by any local, State or federal agency or any person, the degree of air contamination and air pollution in the State and the several areas of the State.
- (3) To develop and adopt, after proper study, air quality standards applicable to the State as a whole or to any designated area of the State as the Commission deems proper in order to promote the policies and purposes of this Article and Article 21 most effectively.
- (4) To collect information or to require reporting from classes of sources which, in the judgment of the Environmental Management Commission, may cause or contribute to air pollution. Any person operating or responsible for the operation of air contaminant sources of any class for which the Commission requires reporting shall make reports containing such information as may be required by the Commission concerning location, size, and height of contaminant outlets, processes employed, fuels used, and the nature and time periods or duration of emissions, and such other information as is relevant to air pollution and available or reasonably capable of being assembled.
- (5) To develop and adopt emission control standards as in the judgment of the Commission may be necessary to prohibit, abate, or control air pollution commensurate with established air quality standards. The Department shall implement rules adopted pursuant to this subsection as follows:
 - a. Except as provided in sub-subdivision b. of this subdivision, rules adopted pursuant to this subdivision that control emissions of toxic air pollutants shall not apply to an air emission source that is any of the following:
 1. Subject to an applicable requirement under 40 C.F.R. Part 61, as amended.
 2. An affected source under 40 C.F.R. Part 63, as amended.
 3. Subject to a case-by-case maximum achievable control technology (MACT) permit requirement issued by the Department pursuant to 42 U.S.C. § 7412G), as amended.
 - b. Upon receipt of a permit application for a new source or facility, or for the modification of an existing source or facility, that would result in an increase in the emission of toxic air pollutants, the Department shall review the application to determine if the emission of toxic air pollutants from the source or facility would present an unacceptable risk to human health. Upon making a written finding that a source or facility presents or would present an unacceptable risk to human health, the Department shall require the owner or operator of the source or facility to submit a permit application for any or all emissions of toxic air pollutants from the facility that eliminates the unacceptable risk to human health. The written finding may be based on modeling, epidemiological studies, actual

Attachment A

Adequate Resources and Legal Authority to Administer and Enforce the Federal Plan

monitoring data, or other information that indicates an unacceptable health risk. When the Department requires the owner or operator of a source or facility to submit a permit application pursuant to this subdivision, the Department shall report to the Chairs of the Environmental Review Commission on the circumstances surrounding the permit requirement, including a copy of the written finding.

- (6) To adopt motor vehicle emissions standards; to adopt, when necessary and practicable, a motor vehicle emissions inspection and maintenance program to improve ambient air quality; to require manufacturers of motor vehicles to furnish to the Equipment and Tool Institute and, upon request and at a reasonable charge, to any person who maintains or repairs a motor vehicle, all information necessary to fully make use of the on-board diagnostic equipment and the data compiled by that equipment; to certify to the Commissioner of Motor Vehicles that ambient air quality will be improved by the implementation of a motor vehicle emissions inspection and maintenance program in a county. The Commission shall implement this subdivision as provided in G.S. 143-215.107A.
- (7) To develop and adopt standards and plans necessary to implement programs for the prevention of significant deterioration and for the attainment of air quality standards in nonattainment areas.
- (8) To develop and adopt standards and plans necessary to implement programs to control acid deposition and to regulate the use of sulfur dioxide (SO₂) allowances and oxides of nitrogen (NO_x) emissions in accordance with Title IV and implementing regulations adopted by the United States Environmental Protection Agency.
- (9) To regulate the content of motor fuels, as defined in G.S. 105-449.60, to require use of reformulated gasoline as the Commission determines necessary, to implement the requirements of Title II and implementing regulations adopted by the United States Environmental Protection Agency, and to develop standards and plans to implement this subdivision. Rules may authorize the use of marketable oxygen credits for gasoline as provided in federal requirements.
- (10) Except as provided in subsection (h) of this section, to develop and adopt standards and plans necessary to implement requirements of the federal Clean Air Act and implementing regulations adopted by the United States Environmental Protection Agency.
- (11) To develop and adopt economically feasible standards and plans necessary to implement programs to control the emission of odors from animal operations, as defined in G.S. 143-215.10B.
- (12) To develop and adopt a program of incentives to promote voluntary reductions of emissions of air contaminants, including, but not limited to, emissions banking and trading and credit for voluntary early reduction of emissions.
- (13) To develop and adopt rules governing the certification of persons who inspect vehicle-mounted tanks used to transport motor fuel and to require that inspection of these tanks be performed only by certified personnel.

Attachment A

Adequate Resources and Legal Authority to Administer and Enforce the Federal Plan

- (14) To develop and adopt rules governing the sale and service of mobile source exhaust emissions analyzers and to require that vendors of these analyzers provide adequate surety to purchasers for the performance of the vendor's contractual or other obligations related to the sale and service of analyzers.

(b) Criteria for Standards. – In developing air quality and emission control standards, motor vehicle emissions standards, motor vehicle emissions inspection and maintenance requirements, rules governing the content of motor fuels or requiring the use of reformulated gasoline, and other standards and plans to improve ambient air quality, the Commission shall consider varying local conditions and requirements and may prescribe uniform standards and plans throughout the State or different standards and plans for different counties or areas as may be necessary and appropriate to improve ambient air quality in the State or within a particular county or area, achieve attainment or preclude violations of state or national ambient air quality standards, meet other federal requirements, or achieve the purposes of this Article and Article 21.

(c) Chapter 150B of the General Statutes governs the adoption and publication of rules under this Article.

(d), (c) Repealed by Session Laws 1987, c. 827, s. 205.

(f), (g) Repealed by Session Laws 1995, c. 507, s. 27.

(h) With respect to any regulation adopted by the United States Environmental Protection Agency limiting emissions from wood heaters and adopted after May 1, 2014, neither the Commission nor the Department shall do any of the following:

- (1) Issue rules limiting emissions from wood heaters to implement the federal regulations described in this subsection.
- (2) Enforce against a manufacturer, distributor, or consumer the federal regulations described in this subsection. (1973, c. 821, s. 6; c. 1262, s. 23; 1975, c. 784; 1979, c. 545, s. 1; c. 931; 1987, c. 827, ss. 154, 205; 1989, c. 132; c. 168, s. 48; 1991, c. 403, s. 3; c. 552, s. 9; c. 761, s. 40; 1991 (Reg. Sess., 1992), c. 889, s. 3; 1993, c. 400, s. 7; 1993 (Reg. Sess., 1994), c. 686, s. 6; 1995, c. 123, s. 9; c. 507, s. 27.8(s); 1997-458, s. 3.1; 1999-328, s. 3.12; 2000-134, s. 1; 2002-4, s. 3; 2002-165, s. 1.7; 2012-91, s. 1; 2015-286, s. 4.3(a).)

§ 143-215.108. Control of sources of air pollution; permits required.

(a) Except as provided in subsections (a1) and (a2) of this section, no person shall do any of the following things or carry out any of the following activities that contravene or will be likely to contravene standards established pursuant to G.S. 143-215.107 or set out in G.S. 143-215.107D unless that person has obtained a permit for the activity from the Commission and has complied with any conditions of the permit:

- (1) Establish or operate any air contaminant source, except as provided in G.S. 143-215.108A.
- (2) Build, erect, use, or operate any equipment that may result in the emission of an air contaminant or that is likely to cause air pollution, except as provided in G.S. 143-215.108A.
- (3) Alter or change the construction or method of operation of any equipment or process from which air contaminants are or may be emitted.
- (4) Repealed by Session Laws 2003-428, s. 1, effective August 19, 2003.

(a1) The Commission may by rule establish procedures that meet the requirements of section 502(b)(10) of Title V (42 U.S.C. § 7661a(b)(10)) and 40 Code of Federal Regulations § 70.4(b)(12) (1 July 1993 Edition) to allow a permittee to make changes within a permitted facility without requiring a revision of the permit.

(a2) The Commission may adopt rules that provide for a minor modification of a permit. At a minimum, rules that provide for a minor modification of a permit shall meet the requirements of 40 Code of Federal Regulations § 70.7(c)(2) (1 July 1993 Edition). If the Commission adopts rules that provide for a minor modification of a permit, a permittee shall not make a change in the permitted facility while the application for the minor modification is under review unless the change is authorized under the rules adopted by the Commission.

(b) The Commission shall act upon all applications for permits so as to effectuate the purposes of this Article by reducing existing air pollution and preventing, so far as reasonably possible, any increased pollution of the air from any additional or enlarged sources.

(c) The Commission shall have the power:

- (1) To grant and renew a permit with any conditions attached that the Commission believes necessary to achieve the purposes of this Article or the requirements of the Clean Air Act and implementing regulations adopted by the United States Environmental Protection Agency;
- (2) To grant and renew any temporary permit for such period of time as the Commission shall specify even though the action allowed by such permit may result in pollution or increase pollution where conditions make such temporary permit essential;
- (3) To terminate, modify, or revoke and reissue any permit upon not less than 60 days' written notice to any person affected;
- (3a) To suspend any permit pursuant to the provisions of G.S. 150B-3(c);
- (4) To require all applications for permits and renewals to be in writing and to prescribe the form of such applications;
- (5) To request such information from an applicant and to conduct such inquiry or investigation as it may deem necessary and to require the submission of plans and specifications prior to acting on any application for a permit;

(5a) To require that an applicant satisfy the Department that the applicant, or any parent, subsidiary, or other affiliate of the applicant or parent:

- a. Is financially qualified to carry out the activity for which a permit is required under subsection (a); and
- h. Has substantially complied with the air quality and emission control standards applicable to any activity in which the applicant has

previously engaged, and has been in substantial compliance with federal and state laws, regulations, and rules for the protection of the environment.

As used in this subdivision, the words "affiliate," "parent," and "subsidiary" have the same meaning as in 17 Code of Federal Regulations 240.12b-2 (1 April 1990 Edition);

- (6) To adopt rules, as it deems necessary, establishing the form of applications and permits and procedures for the granting or denial of permits and renewals pursuant to this section; and all permits, renewals and denials shall be in writing;
 - (7) To prohibit any stationary source within the State from emitting any air pollutant in amounts that will prevent attainment or maintenance by any other state of any national ambient air quality standard or that will interfere with measures required to be included in the applicable implementation plan for any other state to prevent deterioration of air quality or protect visibility; and
 - (8) To designate certain classes of activities for which a general permit may be issued, after considering the environmental impact of an activity, the frequency of the activity, the need for individual permit oversight, and the need for public review and comment on individual permits.
- (d)
- (1) The Commission may conduct any inquiry or investigation it considers necessary before acting on an application and may require an applicant to submit plans, specifications, and other information the Commission considers necessary to evaluate the application. A permit application may not be deemed complete unless it is accompanied by a copy of the request for determination as provided in subsection (f) of this section that bears a date of receipt entered by the clerk of the local government and until the 15-day period for issuance of a determination has elapsed.
 - (2) The Commission shall adopt rules specifying the times within which it must act upon applications for permits required by Title V and other permits required by this section. The times specified shall be extended for the period during which the Commission is prohibited from issuing a permit under subdivisions (3) and (4) of this subsection. The Commission shall inform a permit applicant as to whether or not the application is complete within the time specified in the rules for action on the application. If the Commission fails to act on an application for a permit required by Title V or this section within the time period specified, the failure to act on the application constitutes a final agency decision to deny the permit. A permit applicant, permittee, or other person aggrieved, as defined in G.S. 150B-2, may seek judicial review of a failure to act on the application as provided in G.S. 143-215.5 and Article 4 of Chapter 150B of the General Statutes. Notwithstanding the provisions of G.S. 150B-51, upon review of a failure to act on an application for a permit required by Title V or this section, a court may either: (i) affirm the denial of the permit or (ii) remand the application to the Commission for action upon the application within a specified time.
 - (3) If the Administrator of the United States Environmental Protection Agency validly objects to the issuance of a permit required by Title V within 45 days after the Administrator receives the proposed permit and the required portions of the permit application, the Commission shall not issue the permit until the Commission revises the proposed permit to meet all objections

noted by the Administrator or otherwise satisfies all objections consistent with Title V and implementing regulations adopted by the United States Environmental Protection Agency.

- (4) If the Administrator of the United States Environmental Protection Agency validly objects to the issuance of a permit required by Title V after the expiration of the 45-day review period specified in subdivision (3) of this subsection as a result of a petition filed pursuant to section 505(b)(2) of Title V (42 U.S.C. § 7661d(b)(2)) and prior to the issuance of the permit by the Commission, the Commission shall not issue the permit until the Commission revises the proposed permit to meet all objections noted by the Administrator or otherwise satisfies all objections consistent with Title V and implementing regulations adopted by the United States Environmental Protection Agency.

(d1) No Title V permit issued pursuant to this section shall be issued or renewed for a term exceeding five years. All other permits issued pursuant to this section shall be issued for a term of eight years.

(e) A permit applicant or permittee who is dissatisfied with a decision of the Commission on a permit application may commence a contested case by filing a petition under G.S. 150B-23 within 30 days after the Commission notifies the applicant or permittee of its decision. If the permit applicant or permittee does not file a petition within the required time, the Commission's decision on the application is final and is not subject to review. The filing of a petition under this subsection will stay the Commission's decision until resolution of the contested case.

(e1) A person other than a permit applicant or permittee who is a person aggrieved by the Commission's decision on a permit application may commence a contested case by filing a petition under G.S. 150B-23 within 30 days after the Commission provides notice of its decision on a permit application, as provided in G.S. 150B-23(f), or by posting the decision on a publicly available Web site. The filing of a petition under this subsection does not stay the Commission's decision except as ordered by the administrative law judge under G.S. 150B-33(b).

(f) An applicant for a permit under this section for a new facility or for the expansion of a facility permitted under this section shall request each local government having jurisdiction over any part of the land on which the facility and its appurtenances are to be located to issue a determination as to whether the local government has in effect a zoning or subdivision ordinance applicable to the facility and whether the proposed facility or expansion would be consistent with the ordinance. The request to the local government shall be accompanied by a copy of the draft permit application and shall be delivered to the clerk of the local government personally or by certified mail. The determination shall be verified or supported by affidavit signed by the official designated by the local government to make the determination and, if the local government states that the facility is inconsistent with a zoning or subdivision ordinance, shall include a copy of the ordinance and the specific reasons for the determination of inconsistency. A copy of any such determination shall be provided to the applicant when it is submitted to the Commission. The Commission shall not act upon an application for a permit under this section until it has received a determination from each local government requested to make a determination by the applicant. If a local government determines that the new facility or the expansion of an existing facility is inconsistent with a zoning or subdivision ordinance, and unless the local government makes a subsequent determination of consistency with all ordinances cited in the determination or the proposed facility is determined by a court of competent jurisdiction to be consistent with the cited ordinances, the Commission shall attach as a condition of the permit a requirement that the applicant, prior to construction or operation

of the facility under the permit, comply with all lawfully adopted local ordinances, including those cited in the determination, that apply to the facility at the time of construction or operation of the facility. If a local government fails to submit a determination to the Commission as provided by this subsection within 15 days after receipt of the request, the Commission may proceed to consider the permit application without regard to local zoning and subdivision ordinances. This subsection shall not be construed to affect the validity of any lawfully adopted franchise, local zoning, subdivision, or land-use planning ordinance or to affect the responsibility of any person to comply with any lawfully adopted franchise, local zoning, subdivision, or land-use planning ordinance. This subsection shall not be construed to limit any opportunity a local government may have to comment on a permit application under any other law or rule. This subsection shall not apply to any facility with respect to which local ordinances are subject to review under either G.S. 104E-6.2 or G.S. 130A-293.

(g) Repealed by Session Laws 2014-120, s. 38(c), effective September 18, 2014.

(h) Expedited Review of Applications Certified by a Professional Engineer. – The Commission shall adopt rules governing the submittal of permit applications certified by a professional engineer, including draft permits, that can be sent to public notice and hearing upon receipt and subjected to technical review by personnel within the Department. These rules shall specify, at a minimum, any forms to be used; a checklist for applicants that lists all items of information required to prepare a complete permit application; the form of the certification required on the application by a professional engineer; and the information that must be included in the draft permit. The Department shall process an application that is certified by a professional engineer as provided in subdivisions (1) through (7) of this subsection.

(1) Initiation of Review. – Upon receipt of an application certified by a professional engineer in accordance with this subsection and the rules adopted pursuant to this subsection, the Department shall determine whether the application is complete as provided in subdivision (2) of this subsection. Within 30 days after the date on which an application is determined to be complete, the Department shall:

- a. Publish any required notices, using the draft permit included with the application;
- b. Schedule any required public meetings or hearings on the application and permit; and
- c. Initiate any and all technical review of the application in a manner to ensure substantial completion of the technical review by the time of any public hearing on the application, or if there is no hearing, by the close of the notice period.

(2) Completeness Review. – Within 10 working days of receipt of the permit application certified by a professional engineer under this subsection, the Department shall determine whether the application is complete for purposes of this subsection. The Department shall determine whether the permit application certified by a professional engineer is complete by comparing the information provided in the application with the checklist contained in the rules adopted by the Commission pursuant to this subsection.

- a. If the application is not complete, the Department shall promptly notify the applicant in writing of all deficiencies of the application, specifying the items that need to be included, modified, or supplemented in order to make the application complete, and the 10-day time period is suspended after this request for further information. If the applicant submits the requested information within the time specified, the 10-day time period shall begin again on

the day the additional information was submitted. If the additional information is not submitted within the time periods specified, the Department shall return the application to the applicant, and the applicant may treat the return of the application as a denial of the application or may resubmit the application at a later time.

- b. If the Department fails to notify the applicant that an application is not complete within the time period set forth in this subsection, the application shall be deemed to be complete.
- (3) **Time for Permit Decision.** – For any application found to be complete under subdivision (2) of this subsection, the Department shall issue a permit decision within 30 days of the last day of any public hearing on the application, or if there is no hearing, within 30 days of the close of the notice period.
- (4) **Rights if Permit Decision Not Made in Timely Fashion.** If the Department fails to issue a permit decision within the time periods specified in subdivision (3) of this subsection, the applicant may:
 - a. Take no action, thereby consenting to the continued review of the application; or
 - b. Treat the failure to issue a permit decision as a denial of the application and appeal the denial as provided in subdivision (2) of subsection (d) of this section.
- (5) **Power to Halt Review.** – At any time after the permit application certified by a professional engineer has been determined to be complete under subdivision (2) of this subsection, the Department may immediately terminate review of that application, including technical review and any hearings or meetings scheduled on the application, upon a determination of one of the following:
 - a. The permit application is not in substantial compliance with the applicable rules; or
 - b. The applicant failed to pay all permit application fees.
- (6) **Rights if Review Halted.** – If the Department terminates review of an application under subdivision (5) of this subsection, the applicant may take any of the following actions:
 - a. Revise and resubmit the application; or
 - b. Treat the action as a denial of the application and appeal the denial under Article 3 of Chapter 150B of the General Statutes.
- (7) **Option; No Additional Fee.** – The submittal of a permit application certified by a professional engineer to be considered under this subsection shall be an option and shall not be required of any applicant. The Department shall not impose any additional fees for the receipt or processing of a permit application certified by a professional engineer.

(i) **Rules for Review of Applications Other Than Those Certified by a Professional Engineer.** – The Commission shall adopt rules governing the times of review for all permit applications submitted pursuant to this section other than those certified by a professional engineer pursuant to subsection (h) of this section. Those rules shall specify maximum times for, among other things, the following actions in reviewing the permit applications covered by this subsection:

- (1) Determining that the permit application is complete;
- (2) Requesting additional information to determine completeness;

Attachment A

Adequate Resources and Legal Authority to Administer and Enforce the Federal Plan

- (3) Determining that additional information is needed to conduct a technical review of the application;
- (4) Completing all technical review of the permit application;
- (5) Holding and completing all public meetings and hearings required for the application;
- (6) Completing the record from reviewing and acting on the application; and
- (7) Taking final action on the permit, including granting or denying the application.

(j) **No Power to Regulate Residential Combustion.** – Nothing in this section shall be interpreted to give the Commission or the Department the power to regulate the emissions from any combustion heater, appliance, or fireplace in private dwellings, except to the extent required by federal law. For purposes of this subsection, "combustion heater, appliance, or fireplace" means any heater, appliance, or fireplace that burns combustion fuels, including, but not limited to, natural or liquefied petroleum gas, fuel oil, kerosene, wood, or coal, for heating, cooking, drying, or decorative purposes. (1973, c. 821, s. 6; c. 1262, s. 23; 1979, c. 545, ss. 2, 3; 1987, c. 461, s. 2; c. 827, ss. 154, 206; 1989, c. 168, s. 30; c. 492; 1989 (Reg. Sess., 1990), c. 1037, s. 2; 1991, c. 552, s. 5; c. 629, s. 1; c. 761, s. 27(a)-(c); 1993, c. 400, s. 8; 1995, c. 484, s. 2; 1995 (Reg. Sess., 1996), c. 728, s. 1; 2002-4, s. 2; 2003-340, s. 1.8(b); 2003-428, ss. 1, 2; 2011-398, s. 60(a); 2013-413, s. 29; 2014-115, s. 17; 2014-120, ss. 24(g), 38(c); 2015-286, s. 4.17(a).)

§ 143-215.114A. Enforcement procedures: civil penalties.

(a) A civil penalty of not more than twenty-five thousand dollars (\$25,000) may be assessed by the Secretary against any person who:

- (1) Violates any classification, standard or limitation established pursuant to G.S. 143-215.107.
- (2) Is required but fails to apply for or to secure a permit required by G.S. 143-215.108 or who violates or fails to act in accordance with the terms, conditions, or requirements of such permit.
- (3) Violates or fails to act in accordance with the terms, conditions, or requirements of any special order or other appropriate document issued pursuant to G.S. 143-215.110.
- (4) Fails to file, submit, or make available, as the case may be, any documents, data or reports required by this Article or Parts 1 or 7 of Article 21 of this Chapter.
- (5) Violates a rule of the Commission or a local governing body implementing this Article or Parts 1 or 7 of Article 21.
- (6) Violates the offenses set out in G.S. 143-215.114B.
- (7) Violates the emissions limitations set out in G.S. 143-215.107D.

(b) If any action or failure to act for which a penalty may be assessed under this section is continuous, the Secretary may assess a penalty not to exceed twenty-five thousand dollars (\$25,000) per day for so long as the violation continues.

(b1) The Secretary may assess a civil penalty of not more than twenty-five thousand dollars (\$25,000) per day for a violation of the emissions limitations set out in G.S. 143-215.107D as provided in this subsection. If at the end of any calendar year, an investor-owned public utility has violated an emissions limitation set out in G.S. 143-215.107D, the violation shall be considered to be continuous from the day that the collective emissions first exceeded the emissions limitation set out in G.S. 143-215.107D through the end of the calendar year and the Secretary may assess a separate civil penalty for each day.

(c) In determining the amount of the penalty the Secretary shall consider the factors set out in G.S. 143B-282.1(b). The procedures set out in G.S. 143B-282.1 shall apply to civil penalty assessments that are presented to the Commission for final agency decision.

(d) The Secretary shall notify any person assessed a civil penalty of the assessment and the specific reasons therefor by registered or certified mail, or by any means authorized by G.S. 1A-1, Rule 4. Contested case petitions shall be filed within 30 days of receipt of the notice of assessment.

(e) Requests for remission of civil penalties shall be filed with the Secretary. Remission requests shall not be considered unless made within 30 days of receipt of the notice of assessment. Remission requests must be accompanied by a waiver of the right to a contested case hearing pursuant to Chapter 150B and a stipulation of the facts on which the assessment was based. Consistent with the limitations in G.S. 143B-282.1(c) and (d), remission requests may be resolved by the Secretary and the violator. If the Secretary and the violator are unable to resolve the request, the Secretary shall deliver remission requests and his recommended action to the Committee on Civil Penalty Remissions of the Environmental Management Commission appointed pursuant to G.S. 143B-282.1(c).

(f) If any civil penalty has not been paid within 30 days after notice of assessment has been served on the violator, the Secretary shall request the Attorney General to institute a civil action in the Superior Court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment, unless the violator contests

the assessment as provided in subdivision (4) of this subsection, or requests remission of the assessment in whole or in part as provided in subdivision (5) of this subsection. If any civil penalty has not been paid within 30 days after the final agency decision or court order has been served on the violator, the Secretary shall request the Attorney General to institute a civil action in the Superior Court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment. Such civil actions must be filed within three years of the date the final agency decision or court order was served on the violator.

(g) Repealed by Session Laws 1996, Second Extra Session c. 18, s. 27.34(f).

(h) The clear proceeds of penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1973, c. 821, s. 6; c. 1262, s. 23; c. 1331, s. 3; 1975, c. 19, s. 53; c. 842, ss. 6, 7; 1977, c. 771, s. 4; 1979, c. 545, ss. 4-6; 1987, c. 748, s. 2; c. 827, ss. 154, 212; 1989, c. 135, s. 8; 1989 (Reg. Sess., 1990), c. 1036, s. 8; c. 1045, s. 4; 1991, c. 552, s. 4; c. 725, s. 7; 1991 (Reg. Sess., 1992), c. 890, s. 18; 1996, 2nd Ex. Sess., c. 18, s. 27.34(f); 1997-496, s. 7; 1998-215, s. 73; 2002-4, ss. 4, 5; 2002-165, s. 1.12; 2007-296, s. 1.)

Attachment B
Inventory of the affected NC Sewage Sludge Incineration Units*

Units	Facility Name	Facility ID	Address	Owner Name	Unit Description	Dry Sludge Capacity	Control Description
1	T.Z. Osborne Water Reclamation Facility (two units)**	4100923	2350 Huffine Mill Road McLeansville, Guilford County, North Carolina 27301	City of Greensboro	ES-1 Natural gas/No. 2 fuel oil-fired-fluidized bed sewage sludge incinerator	6,500 pounds of dry sludge per hour maximum charge rate; 8.61 million Btu per hour rated auxiliary heat input	One hydrosonic wet scrubber (631 gallons per minute minimum liquid injection rate) in series with one wet tray scrubber (440 gallons per minute minimum liquid injection rate)
2					ES-20 Natural gas/No. 2 fuel oil-fired-fluidized bed sewage sludge incinerator	6,500 pounds of dry sludge per hour maximum charge rate; 13.0 million Btu per hour rated auxiliary heat input	One hydrosonic wet scrubber (631 gallons per minute minimum liquid injection rate) in series with one wet tray scrubber (440 gallons per minute minimum liquid injection rate)
3	Eastside Wastewater Treatment Plant	4100977	5898 Riverdale Drive Jamestown, Guilford County, North Carolina	City of High Point	ES-01 Natural gas/No. 2 fuel oil-fired-fluidized bed sewage sludge incinerator	3,000 pounds of dry sludge per hour maximum charge rate; 5.05 million Btu per hour rated auxiliary heat input	Wet scrubber (392 gallons per minute liquid injection rate) Activated carbon adsorber (6 to 10.4 inches of H ₂ O pressure drop)

4	Rocky River Regional Wastewater Treatment Plant	1300002	6400 Breezy Lane Concord, Cabarrus County, North Carolina	Water and Sewer Authority of Cabarrus County	ES-1 swage sludge multiple hearth incinerator fired by twelve (12) No. 2 fuel oil/recycled No. 2 fuel oil-fired burners	22.25 feet in diameter, with a maximum average permitted charging rate of 21,200 wet pounds per hour. 18.8 million Btu per hour total heat input rating.	No. 2 fuel oil-fired afterburner (ID No. 3, 7.77 million Btu maximum burner rating), conditioning system consisting of a spray quencher and two- tray impingement cooler (ID No. 4), packed tower scrubber (ID No. CD-06, 200 gallons per minute minimum liquid injection rate), wet electrostatic precipitator (ID No. 2, 2,439 square feet of collector plate area)
---	-------------------------------------------------	---------	-----------------------------------------------------------------------	-------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

*The database has been developed on the information presented in the air quality permits No. 04489T23; 08074R09; and 04475R19 issued in the period of years 2014 through 2016 by NCDEQ.

**T.Z. Osborne is a wastewater treatment plant with a newer sewage sludge incinerator (ES-20) that first began burning sewage sludge on an intermittent test basis on August 10, 2011 and an older sewer sludge incinerator (ES-1) that temporarily ceased operation on September 1, 2011. At no time did the two incinerators operate simultaneously. The water reclamation facility operates around the clock, as does the incinerator, with the exception of short time periods (48-72 hours) when it is down for repairs or maintenance. The facility has stated that they plan to put ES-1 back in operation in during the summer of 2016.

Attachment C
Inventory of Emissions from the affected NC SSI units*

Pollutants	CAS No or Pollutant Code	T.Z. Osborne Water Reclamation Facility. ¹Calendar Year 2012	City of High Point - Eastside Wastewater Treatment Plant. Calendar Year 2013	WSACC – Rocky River Regional Wastewater Treatment Plant. Calendar Year 2013
Criteria (NAAQS) Pollutants	Pollutant Code	Emissions – Criteria Pollutants (Tons/Year)	Emissions – Criteria Pollutants (Tons/Year)	Emissions – Criteria Pollutants (Tons/Year)
CO	CO**	18.8600	2.9300	85.8400
NOx	NOx**	15.6600	2.3700	26.8700
TSP	TSP**	9.9000	0.1100	4.3000
PM10	PM10**	9.8400	0.1100	1.1700
PM2.5	PM2.5**	9.8200		0.9300
SO2	SO2**	8.9100	1.1200	24.3800
VOC	VOC	7.1400	1.1200	6.4400
HAP/TAP Pollutants	CAS	Emissions HAP/TAP (Pounds/Year)	Emissions HAP/TAP (Pounds/Year)	Emissions HAP/TAP (Pounds/Year)
Acetaldehyde	75-07-0			2.5745
Acetonitrile	75-05-8			12.0678
Acrylonitrile	107-13-1			7.8843
Antimony Unlisted Compounds	SBC-Other			3.8617
Arsenic Total	7440-38-2	0.5632	0.1460	2.8963
Benzene	71-43-2	7.1479	1.1200	2.7354
Beryllium	7440-41-7			
Beryllium Unlisted Compounds	BEC-Other			0.0965
Cadmium Total	7440-43-9**	14.2953	0.0790	1.7699

Pollutants	CAS No or Pollutant Code	T.Z. Osborne Water Reclamation Facility. ¹Calendar Year 2012	City of High Point - Eastside Wastewater Treatment Plant. Calendar Year 2013	WSACC – Rocky River Regional Wastewater Treatment Plant. Calendar Year 2013
Carbon tetrachloride	56-23-5	0.4282		0.0161
Chlorobenzene	108-90-7			4.1835
Chloroform	67-66-3	71.3720		7.8843
Chromium (VI) Non-Specific Unlisted Compounds	NSCR6-Other		0.2510	0.9654
Chromium Unlisted Compound	CRC-Other	8.9424	0.7930	
Calcium chromate (VI)	13765-19-0		27.9000	
Cobalt Unlisted Compound	COC-Other			7.2407
DEHP(2-ethylhexyl) phthalate	117-81-7	1463.1260	229.0000	5.1489
Dichlorobenzene(p), 1,4	106-46-7	8564.6400	1339.0000	6.5971
Ethyl Benzene	100-41-4			0.3218
Ethylene dichloride	107-06-2			0.1609
Formaldehyde	50-00-0			6.4361
Hexachlorodibenzo-p-dioxin 1,2,3,6,7,8	57653-85-7**	0.00003		0.0001
Hydrogen chloride (hydrochloric acid)	7647-01-0**	1784.3000	279.0000	160.9040
Lead Unlisted Compound	PBC-Other**	0.4899		482.7120
MEK	78-93-3			0.8045
Manganese Unlisted Compounds	MNC-Other	10.7476		13.6768
Mercury, vapor	7439-97-6**			6.1144
Mercury Unlisted Compound	HGC-Other**	8.8452	0.1910	
Methyl chloroform	71-55-6	9.2901		22.5266
Methylene chloride	75-09-2	24.9802	3.9100	6.4362
Naphthalene	91-20-3	3390.2263	530.0000	144.8136

Pollutants	CAS No or Pollutant Code	T.Z. Osborne Water Reclamation Facility. ¹Calendar Year 2012	City of High Point - Eastside Wastewater Treatment Plant. Calendar Year 2013	WSACC – Rocky River Regional Wastewater Treatment Plant. Calendar Year 2013
Nickel Unlisted Compounds	NIC-Other	60.6871	0.6030	0.0483
Perchloroethylene (tetrachloroethylene)	127-18-4	4.2823		3.2181
Phenol	108-95-2			28.9627
Selenium Compounds	SEC			0.9654
Sulfuric acid	7664-93-9	2141.1600	335.0000	804.5200
TCE (trichloroethylene)	79-01-6			7.2407
Tetrachlorodibenzo-p-dioxin, 2,3,7,8	1746-01-6**	0.00001		0.00001
Tetrachloroethane, 1,1,2,2	79-34-5			193.0848
Toluene	108-88-3	12.7989		10.4588
Vinyl chloride	75-01-4			59.5345
Vinylidene chloride	75-35-4			4.0226
Xylene	1330-20-7			15.2859

*The database has been developed on the latest available information presented in North Carolina Air Pollutant Emissions Inventory Database from the affected sources issued in the period of years 2012 through 2013 by NCDEQ. Empty cell is indication that this pollutant is not reported for a given unit.

**Pollutants regulated under Federal Plan Requirements for Sewage Sludge Incineration Units Constructed on or Before October 14, 2010 (81 FR 26040, 40 CFR Part 62 Subpart LLL).

¹ Only one of two units operated in 2012 and emissions are reported for that unit (ES-20).

Attachment D

Provision for State progress reports to EPA

Progress Reports:

North Carolina will submit annual progress reports to EPA to document implementation and enforcement of the Federal Plan. Reporting will begin 1 year after the Federal Plan is delegated.

These reports will include:

- 1) Status of enforcement actions;
- 2) Status of increments of progress;
- 3) Identification of sources that have shut down or started operation;
- 4) Emissions inventory data for sources that were not in operation at the time of plan development but that began operation during the reporting period;
- 5) Additional data as necessary to update previously submitted source and emissions information;
and
- 6) Copies of technical reports on all performance testing and monitoring.

Attachment E
Public Notice Report

NORTH CAROLINA DEPARTMENT OF ENVIRONMENTAL QUALITY

PUBLIC NOTICE

PURPOSE: The North Carolina Department of Environmental Quality, Division of Air Quality (NCDAQ) hereby gives notice of a public comment period and hearing regarding its Request for Delegation of authority to implement and enforce the Clean Air Act (CAA) Section 111(d)/129 Federal Plan under 40 CFR 62 Subpart LLL - Federal Plan Requirements for Sewage Sludge Incineration Units Constructed on or Before October 14, 2010. On April 29, 2016, the Environmental Protection Agency (EPA) published in the Federal Register its final Federal Plan Requirements for certain Sewage Sludge Incineration Units that commenced construction on or before October 14, 2010, with an effective date of May 31, 2016 (81 FR 26040-26088). In accordance with 40 CFR 62.15865, a state may meet its CAA obligation by submitting an acceptable written request for delegation of the Federal Plan. Once finalized the request will be submitted to the EPA to transfer authority for implementation of the Federal Plan to NCDAQ until such time as an updated state plan reflecting the Subpart LLL requirements is submitted to and approved by EPA.

DATE AND LOCATION: November 29, 3:00 P.M.
Training Room (#1210), DEQ Green Square Office Building
217 West Jones Street, Raleigh, NC 27603

COMMENT PROCEDURES: All persons interested in these matters are invited to attend the public hearing. Any person desiring to comment is requested to submit a written statement for inclusion in the record of proceedings at the public hearing. The hearing officer may limit oral presentation lengths if many people want to speak. The hearing record will remain open until November 29, 2016 to receive additional written statements. To be included, the statement must be received by the NCDAQ by November 29, 2016.

INFORMATION: Copies of the Pre-hearing Request for Delegation of authority for the Federal Plan for Sewage Sludge Incineration Units may be downloaded from the NCDAQ website at <http://deq.nc.gov/about/divisions/air-quality/air-quality-rules/rules-hearing-process>.

Comments can be submitted electronically to:
daq.publiccomments@ncdenr.gov
(please type "SSI Delegation " in subject line)

Comments can be mailed or faxed to:
Ms. Joelle Burleson
Division of Air Quality
1641 Mail Service Center
Raleigh, North Carolina 27699-1641
(919) 707-8720 Phone/Fax

The Pre-hearing Request for Delegation of the Federal Plan for Sewage Sludge Incineration Units may be reviewed in person during normal business hours at the following North Carolina Department of Environmental Quality, Division of Air Quality offices:

Raleigh Central Office, Planning Section	(919) 707-8400
Mooreville Regional Office	(704) 663-1699
Winston-Salem Regional Office	(336) 776-9800

Date: 10/21/16

Michael A. Abramo for S.H.
Sheila C. Holman, Director

Hearing Officer's Report

Steven Vozzo, Fayetteville Regional Office Supervisor, acted as Public Hearing Officer for this scheduled public hearing. The hearing was held on November 29, 2016 at 3:00 pm as noted in the text of the public notice above. At that time, Mr. Vozzo opened the public hearing and read a prepared statement summarizing the actions being undertaken by the Division of Air Quality in requesting delegation of the Federal Plan 40 CFR 62, Subpart LLL. There being no participants at the hearing, the proceedings were closed with the reading of that summary.

The public comment period for this request was advertised on the DAQ webpage and sent to those who have been requested to be placed on an email distribution list for rule making activities. No written or electronic comments were received during the comment period. No modifications to the draft request as originally transmitted to EPA, Region 4 on October 21, 2016 were necessary.