



Title V Rule Revisions
Environmental Management Commission Meeting – November 18, 2021
Department of Environmental Quality



Background

- August 2001 - EPA approval of North Carolina's Title V operating permit program (Effective October 1, 2001)
- 2005 – 1st EPA program review
- 2010 – 2nd EPA program review
- 2014 – 3rd EPA program review
- 2020 – Initiation of EPA's fourth program review
- February 2021 – Received EPA comments on Title V Rules
- July 2021 – Provided EPA with preliminary draft rules for review
- August 2021 – Received and addressed EPA feedback on preliminary draft rules

Overview

DAQ is proposing revisions to Title V Rules in 15A NCAC, Subchapter 02Q, in response to EPA review of Title V Program (553)

Comments from EPA include:

- Corrections of minor typographical and rule reference errors;
- Revisions of existing language, or addition of new language, for consistency with 40 CFR Part 70; and
- Procedural updates relating to permit processing timeframes and final actions, public participation, and submittal of documents to EPA.

EPA Comment and Rule Revisions

NC DAQ Rule	40 CFR Citation	EPA Comment/Recommendation	NC DAQ Response
Incomplete Reference		Incomplete reference to Article 3 of the General Statutes	The reference to Chapter 150B of the NCGS was inadvertently removed during a previous rulemaking and has been reinstated.
02Q .0503(5)	N/A		
Administrative permit Amendments		The use of “or” between paragraphs (a) and (b) should be revised to “and” in order to ensure that all requirements included in Part 70 are submitted.	Subparagraph (4)(a) has been removed so that the remaining language, under current subparagraph (4)(b), aligns with Part 70.
02Q .0505(4)	§70.7(d)(1)(iv)		
Complete Application Deadline		Add language to ensure the category of newly subject existing sources is covered under the complete application deadline.	Paragraph (a) of 02Q .0507 was revised to align with the language of 70.5(a) and now covers newly subject sources. The definition for “timely” in 02Q .0503(18) has also been revised for consistency.
02Q .0507(a)	§70.5(a)		

EPA Comment and Rule Revisions

NC DAQ Rule	40 CFR Citation	EPA Comment/Recommendation	NC DAQ Response
Typographical error		The word “fee” was removed.	The word “fee” has been restored.
02Q .0507(j)	N/A		
Violation of CAA language		Add “ <i>constitutes a violation of the Act and</i> ” language.	The CAA violation language is in North Carolina’s General Conditions, Section 3, stipulation 3, but has also been added to the rule
02Q .0508(i)(3)	§70.6(a)(6)(i)		
Fugitive emissions qualifier		Explain the reasoning behind the additional “ <i>if regulated</i> ” qualifier for fugitive emissions.	The phrase “if regulated” has been removed from subparagraph (i)(13).
02Q .0508(i)(13)	§70.3(d)		

EPA Comment and Rule Revisions

NC DAQ Rule	40 CFR Citation	EPA Comment/Recommendation	NC DAQ Response
Federally Enforceable only provision		Recommend updating this language to reflect the recent Hazlehurst petition response and no longer include an option for Title V permits to contain conditions that are enforceable by EPA only.	Paragraph (k) has been revised to only require identification of conditions that are “state-enforceable only”
02Q .0508(k)	§70.6(b)		
Credible Evidence Language		Add credible evidence language from Part 70 to NC rule (“ <i>If necessary...material information</i> ”).	The credible evidence language has been added to North Carolina’s rule.
02Q .0508(n)(3)(D)	§70.6(c)(5)(iii)(B)		
Judicial Review for Numerous Similar Facilities		Recommend adding language stating general permit issuances are not considered a final permit action for purposes of judicial review.	The judicial review language has been added to the rule.
02Q .0509(h)	§70.6(d)(2)		

Enforceability of Title V Permit Conditions

	Federally-Enforceable Only	Federally-Enforceable	State-Enforceable Only
Enforceable by:	EPA only	EPA, citizens, and State	State only
15A NCAC 02Q .0103 Definitions (as proposed)	N/A	<p>(16) "Federally-enforceable" means enforceable by EPA, Administrator as defined in Item (1), and citizens under the federal Clean Air Act.</p> <p>(1)"Administrator" means, when it appears in any Code of Federal Regulation incorporated by reference in 15A NCAC 02Q, the Director of the Division of Air Quality unless:</p> <ul style="list-style-type: none"> (a) a specific rule in this Subchapter specifies otherwise, or (b) the U.S. Environmental Protection Agency in its delegation or approval states that a specific authority of the Administrator of the Environmental Protection Agency is not included in its delegation or approval. 	<p>(33) "State-enforceable only" means terms and conditions that are not required under the Act or under any of its applicable requirements. Terms and conditions designated as State-enforceable only are not subject to the requirements of 40 CFR Part 70.</p>
Permit Condition Examples	CAA Section 112(r)(1) General Duty Clause – cannot be included in Title V permits	NSPS MACT	Toxics Fugitive Dust Odor

EPA Comment and Rule Revisions

NC DAQ Rule	40 CFR Citation	EPA Comment/Recommendation	NC DAQ Response
Administrative permit amendments		Subparagraph (8) is not approvable as written and may be an issue when combined with 02Q .0514(d). If intended to apply to removed equipment, (8) should be clarified.	Subparagraphs (a)(8) and (9) have been combined and revised to only apply to permanently removed equipment.
02Q .0514(a)(8) & (9)	§70.7(d)(1)(vi)		
Administrative permit amendments and permit shield		This condition is intended to apply to administrative amendments pursuant to 70.7(d)(1)(v). After proposed NC DAQ revisions, 02Q .0514(a) does not contain provisions pursuant to 70.7(d)(1)(v), so .0514(d) should either be removed, or .0514 should be revised to contain provisions pursuant to 70.7(d)(1)(v).	Paragraph (d) has been removed from 02Q .0514.
02Q .0514(d)	§70.7(d)(4)		

EPA Comment and Rule Revisions

NC DAQ Rule	40 CFR Citation	EPA Comment/Recommendation	NC DAQ Response
Significant modifications review deadline		Add significant modification technical review timeline to 02Q .0525 (majority completed within 9 months of receipt of a complete application)	New paragraph (g) has been added to reference 02Q .0525, which has been revised to reference 40 CFR 70.7(e)(4)(ii).
02Q .0516	§70.7(e)(4)(ii)		
Permit issuance deadline		Remove requirement to issue permit within 5 days of notification that EPA will not object since this is not always done in practice and the State may need additional time to address or respond to EPA's comments.	The 5-day issuance requirement has been removed. In practice, NC DAQ issues the permit on the 15 th day following the close of EPA's 45-day comment period, if EPA does not object. The revised language reflects this practice.
02Q .0518(b)	§70.7(e)(2)(iv) §70.7(e)(3)(iv)		

EPA Comment and Rule Revisions

NC DAQ Rule	40 CFR Citation	EPA Comment/Recommendation	NC DAQ Response
Public Notice			
02Q .0521(b) 02Q .0521(c)	§70.7(h)(1)	Specify web posting will remain for duration of comment period.	It is current practice to notice for the duration of comment period; (b), and (c) have been revised accordingly.
		Recommend removal of URL for websites to avoid rule revisions if URLs change.	Website URL changes qualify as a technical amendment under NCGS 150B-21.4(a)(4), which would not require a fiscal note, public notice, or RRC approval. NC DAQ prefers to retain URLs and has not made this change.
		If desired by DAQ, newspaper publication requirement can be removed	NC DAQ prefers to retain the newspaper noticing requirements as currently stated in the rules and has not made this change.

EPA Comment and Rule Revisions

NC DAQ Rule	40 CFR Citation	EPA Comment/Recommendation	NC DAQ Response
Public hearings		Change <i>“if the Director finds that a public hearing is in the best interest of the public”</i> to <i>“If the Director finds that there is substantial public interest in a public meeting”</i>	02Q .0521(g) has been revised to align with the language in 40 CFR §70.7(h)(4).
02Q .0521(f) and (g)	§70.7(h)(4)		
Record of Comments during public notice		Add requirement for the Division to keep a record of comments and issues raised during public participation process, as present in Part 70.	02Q .0521(h) has been revised to align with 40 CFR §70.7(h)(5) and current DAQ practices.
02Q .0521(h)	§70.7(h)(5)		
Response to significant comments		Add Part 70 language requiring NC DAQ to respond to all significant comments raised during public participation process, including public comment period and public hearing.	New paragraph (i) has been added to 02Q .0521 to align with the requirements of §70.7(h)(6) and current DAQ practices.
02Q .0521	§70.7(h)(6)		

EPA Comment and Rule Revisions

NC DAQ Rule	40 CFR Citation	EPA Comment/Recommendation	NC DAQ Response
Providing response to comments to EPA			
02Q .0522(a)	§70.8(a)(1)	Add requirements from §70.8(a)(1) that NC DAQ provide EPA with statement of basis, written responses to comments, and explanation of how comments and responses are available to public.	Paragraph (a) has been revised to require the DAQ submit the statement of basis to the EPA.
			New paragraph (b) has been added to align with §70.7(a)(5)
			New paragraph (c) has been added to require DAQ provide EPA with the written response to comments and explanation of how comments and responses are available to the public.
		Add requirement from §70.8(a)(1) that such information is provided in a computer-readable format compatible with EPA's national database management system.	New paragraph (g) has been added to specify the format of providing the information in (a) through (c).

EPA Comment and Rule Revisions

NC DAQ Rule	40 CFR Citation	EPA Comment/Recommendation	NC DAQ Response
Timeline for final action on permits		Revise to ensure final actions on permits take place within the 18-month timeframe outlined in §70.7(a)(2) and the majority of significant modifications are processed within the 9-month timeframe in §70.7(e)(4)(ii).	New paragraph (6) has been added to 02Q .0525 to reference 02Q .0518, which has been revised to require final action within 18 months (new paragraph (f)). 02Q .0525(3) has been revised to reference §70.7(e)(4)(ii), which contains the 9-month window for completion of the technical review for the majority of significant modifications.
02Q .0525	§70.5(a)(2) §70.7(a)(2)		
Typographical Error		Correct typographical error reference (d)(1)(A) to (d)(1).	The reference has been corrected to (d)(1).
02Q .0526(d)(2)	§63.52(a)(2)		

EPA Comment and Rule Revisions

NC DAQ Rule	40 CFR Citation	EPA Comment/Recommendation	NC DAQ Response
Expedited Processing			Expedited Title V permitting under 02Q .0527 codifies the requirements of NCGS 143-215.108(h).
02Q .0527	§70.4(b)(13)	Provide clarification regarding the use of this section; it is unclear, as they may result in “a permit that EPA does not recognize as a valid permit”	During the rulemaking to adopt 02Q .0527 (public hearing dated 12/3/1996), EPA commented with concern regarding the public notice and technical determination timeline requirements, specifically with respect to PSD rules which require the preliminary decision and all information used to make the preliminary decision be available for public inspection during the comment period. Since the expedited timelines are required by the NCGS, NC DAQ added the phrase to 02Q .0527 to warn applicants of the risk regarding EPA’s concern.

EPA Comment and Rule Revisions

NC DAQ Rule	40 CFR Citation	EPA Comment/Recommendation	NC DAQ Response
Statement of Basis		Add citation to §70.7(a)(5) requiring submittal of statement of basis to EPA and any other person who requests it.	Requirement for the DAQ to provide a statement of basis has been added to 02Q .0522
N/A	§70.4(b)(3)(viii) §70.4(a)(5)		
Judicial Review		There is not language regarding judicial review. The NC original approval relied upon AG opinion to demonstrate adequacy with Part 70 judicial review provisions; however, it cites directly to the original 18-month requirement that is no longer in NC's rule.	This comment will be addressed through an updated AG's opinion. No changes were made to the rules.
N/A	§70.4(b)(3)(x)-(xii)		

Additional Rule Revisions

NC DAQ Rule	NC DAQ Response
02Q .0103	<p>Revised definition for “federally-enforceable” to align with §70.6(b)(1) and recent Hazlehurst petition response.</p> <p>Added new definition for “state-enforceable only”, to align with §70.6(b)(2), as this term is used throughout the Title V rules and in permits.</p>
02Q .0504	<p>Corrected references in paragraph (a) from “.0501(c)(2) or (d)(2)” to “.0501(b)(2) or (c)(2)” to correctly reference the “2-step” application procedures.</p>
	<p>Removed paragraph (c) to clarify that PSD and NNSR application processing procedures apply regardless of whether a “1-step” or “2-step” application procedures is used under 02Q .0501(b)(1) or (2).</p>
	<p>Revised paragraph (d) to align with the changes to 02Q .0507(a) per EPA comment regarding application submittal date for sources newly subject to Title V.</p>
02Q .0507(a)	<p>Corrected references from “.0501(c) or (d)” to “.0501(b) or (c)”.</p>

Additional Rule Revisions

NC DAQ Rule	NC DAQ Response
02Q .0503(3) 02Q .0514(e)	Consistently capitalized “State-enforceable” throughout rules.
02Q .0508	Minor punctuation and list formatting corrections in (i)(5), (i)(9)(B) and (n)(2) to conform to APA requirements.
02Q .0514	Revised (a)(5) and removed (a)(6) to align with the revisions to 02Q .0508(k), which are proposed to only require identification of conditions that are state-enforceable only.
02Q .0518	Minor corrections in paragraphs (a) and (b) to correct “may” to “shall” to conform to APA requirements.

Additional Rule Revisions

NC DAQ Rule	NC DAQ Response
02Q .0525	Language added to (2)(b) to clarify the information required to complete the technical review of the application.
	Paragraphs (4) and (5) have been combined and revised to reference the public participation requirements outlined in 02Q .0521.
	Paragraph (6) has been revised to reference 02Q .0522 notification procedures for EPA and affected states.
	Paragraph (7) has been removed to align with the changes to 02Q .0518(b) regarding issuance timelines following EPA's 45-day review period.
	Paragraph (8) has been removed since the 90-day requirement is already in 02Q .0518(c). 02Q .0518 is referenced in new paragraph (6) in 02Q .0525.

Regulatory Impact Analysis

- Since the proposed revisions are primarily administrative, or updates to align the rules with Part 70 requirements and current DAQ practices, no economic impact is expected.
- OSBM determined the amendments have little to no impact on state or local governments and no substantial economic impact and approved the RIA.

Tentative Rulemaking Timeline

(Subject to Change)

- ✓ 5/12/2021 Concept to Air Quality Committee (AQC)
- ✓ September 2021 Draft Rules to AQC
- ✓ November 2021 Request to Proceed to Comment and Hearing to Environmental Management Commission (EMC)
- 12/15/21-2/14/22 Public Comment Period and Hearing
- March/May 2022 Adoption by EMC
- April/June 2022 Rules Review Commission Approval
- May/July 2022 Tentatively Effective

Recommendation

The Director recommends that the EMC authorize a public hearing on proposed rule amendments to 15A NCAC 02Q .0103 and .0500 and accompanying regulatory impact analysis, and for the Chairman to appoint a member(s) of the EMC to serve as hearing officer(s).

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Department of Environmental Quality

