

Regulatory Impact Analysis for Amendments to Incorporate Pre-permitting Provisions pursuant to Session Law 2023-134, Section 12.11(e)-(g), as amended by Session Law 2024-1, Section 4.13

Rule Citation Number 15A NCAC 02Q .0114, .0501, and .0507

Rule Topic: Air Quality Pre-permitting Construction Activities Provisions

DEQ Division: Division of Air Quality

Agency Contact: Katherine Quinlan, Rule Development Branch Supervisor
Division of Air Quality (DAQ)
(919) 707-8702
Katherine.Quinlan@deq.nc.gov

Analyst: Joelle Burleson, DAQ
(919) 707-8720
joelle.burleson@deq.nc.gov

Impact Summary:

State government:	No
Local government:	No
Substantial impact:	No
Private Sector:	Potential benefit from increased permitting flexibility

Authority: G.S. 143-215.3(a)(1), (1a), (1b), (1d); G.S. 143-215.3A, G.S. 143-215.108, G.S. 143-215.108A

Necessity: To amend the air quality permitting rules to align with the provisions relating to pre-permitting construction activities pursuant to Session Law (S.L.) 2023-134, Section 12.11(e)-(g) as amended by S.L. 2024-1, Section 4.13

Contents

I.	Introduction	5
II.	Background	5
III.	Reason for Rule Amendment	9
IV.	Proposed Rules.....	9
V.	Estimating the Fiscal Impacts	10
A.	Permit Applications and Review Process.....	10
B.	Non-Title V Permit Actions	15
C.	Title V Permit Actions	16
1.	Title V Initial Permits and Significant Modifications.....	16
<i>1-Step Process:</i>		16
<i>2-Step Process:</i>		17
2.	Title V Minor Modifications.....	18
D.	Possible Impacts of S.L. Pre-permitting Provisions	19
<i>Impacts to the Regulated Community</i>		19
<i>Impacts to DAQ/DEQ</i>		20
<i>Impacts to General Public</i>		21
E.	Uncertainties.....	21
1.	Approval by EPA.....	21
2.	Effective Date of Proposed Provisions	22
3.	Applicant Use of Pre-permitting Construction Option	22
<i>Potential for Citizen Suit</i>		23
<i>Financial Risk to Applicants</i>		23
4.	Anticipated Time Savings.....	25
5.	Expected Changes to Review Processes for Modifications	26
<i>Non-Title V Permit Modifications</i>		26
<i>Title V Significant Modifications</i>		27
VI.	Public Health and Environmental Impacts.....	29
VII.	Rule Alternatives.....	29
VIII.	Cost and Benefit Summary	29
Appendix A:	Excerpt of Session Law 2023-134, Section 12.11	31
Appendix B:	Excerpt of Session Law 2024-1, Section 4.13	35
Appendix C:	Statute Provisions Effective Until Contingency is Met	37
Appendix D:	Statute Provisions Effective Once Contingency is Met	41

List of Tables

Table 1: Permit Applications Received by Year, 2019-2023	11
--	----

List of Figures

Figure 1: Non-Title V Applications Received by Year, 2019-2023	13
Figure 2: Title V Permit Applications Received by Year, 2019-2023.....	14
Figure 3: Review Process and Timeline for Non-Title V Initial Permits and Permit Modifications.....	15
Figure 4: 1-Step Review Process and Timeline for New Title V Permits and Significant Modifications..	17
Figure 5: 2-Step Review Process and Timeline for New Title V Permits and Significant Modifications..	18
Figure 6: Review Process and Timeline for Title V Minor Modifications	19
Figure 7: New (Pending) Review Process and Timeline for Non-Title V Permit Modifications	27
Figure 8: New (Pending) Review Process and Timeline for 1-Step Title V Significant Modifications	28
Figure 9: New (Pending) Review Process and Timeline for 2-Step Title V Significant Modifications	28

Acronyms

Abbreviation	Term
\$	Dollars
15A NCAC	Title 15A of the North Carolina Administrative Code
40 CFR	Title 40 of the Code of Federal Regulations
AQC	Air Quality Committee
DAQ	Division of Air Quality, DEQ
DEQ	Department of Environmental Quality
EMC	Environmental Management Commission
EPA	U.S. Environmental Protection Agency
IBEAM	Internet-Based Enterprise Application Management
G.S.	General Statute
MACT	Maximum Achievable Control Technology
NAAQS	National Ambient Air Quality Standard
NC	North Carolina
NCAC	North Carolina Administrative Code
NSR	New Source Review
PSD	Prevention of Significant Deterioration
SIP	State Implementation Plan
S.L.	Session Law

I. Introduction

The purpose of this document is to provide an analysis of the fiscal impacts associated with the proposed rule revisions to implement S.L. 2023-134, Section 12.11(e), as amended by S.L. 2024-1, Section 4.13.

II. Background

The version of General Statute (G.S.) 143-215.108A (Control of sources of air pollution; construction of new facilities; alteration or expansion of existing facilities) effective prior to provisions of S.L. 2023-134, as amended by 2024-1, applies to construction of any new facility and construction associated with the modification of a permit for an existing facility. The statute includes provisions specifying activities that may be undertaken prior to securing an air quality permit required under G.S. 143-215.108 (Control of sources of air pollution; permits required). Those activities are listed in G.S. 143-215.108A (a)(1)-(4) and include:

- (1) Clearing and grading.
- (2) Construction of access roads, driveways, and parking lots.
- (3) Construction and installation of underground pipe work, including water, sewer, electric, and telecommunications utilities.
- (4) Construction of ancillary structures, including fences and office buildings, that are not a necessary component of an air contaminant source, equipment, or associated air cleaning device for which a permit is required under G.S. 143-215.108.

G.S. 143-215.108A(b) currently prohibits a permit holder from altering or expanding the physical arrangement or operation of an air contaminant source, equipment, or associated air cleaning device in a manner that alters the emission of any air contaminant without first obtaining a permit modification under G.S. 143-215.108. However, the statute does allow a permit holder to alter or expand the physical arrangement or operation of an air contaminant source, equipment, or associated air cleaning device at their facility at the permit holder's own risk, if the permit holder complies with the "notice of intent" process specified in the statute. Under this "notice of intent" process, the statute requires a permittee to provide published notice of intent to construct, alter, or expand physical arrangement or operation of permitted facilities at least 15 days prior to that action and specifies contents the notice must include. The statute specifies criteria for the agency to consider in reviewing a notice of intent, requires the agency to notify the permittee within 15 days of its determination as to whether the criteria have been met and whether the proposed alteration or expansion can commence. A permittee who submits a notice of intent must pay a \$200 fee to DAQ. Between January 1, 2019, and December 31, 2024, DAQ processed 12 notices of intent to construct. Ten of the notices of intent to construct were for activities at Title V facilities and two were for activities at synthetic minor facilities.

On October 3, 2023, S.L. 2023-134 (2023-2024 State Budget Act) became effective. Section 12.11(e) of S.L. 2023-134 modifies air permitting provisions of G.S. 143-215.108A. Specifically, S.L. 2023-134 changes North Carolina's air permitting program by allowing for construction of sources prior to receipt of an air permit upon determination that an administratively complete application has been submitted to the DAQ. On

May 15, 2024, Governor Cooper signed into effect technical corrections to the State Budget Act in S.L. 2024-1. Section 4.13(a) of S.L. 2024-1 added two new paragraphs to S.L. 2023-134 as Section 12.11(f) and (g). Section 12.11.(f) established a July 1, 2025 deadline for submittal of a State Implementation Plan (SIP) revision to the U.S. Environmental Protection Agency (EPA) reflecting the statutory changes to North Carolina’s air permitting program. Section 12.11.(g) established the effective date of such revision as contingent upon EPA approval of such provisions into the SIP. An outline of the specific statutory changes of S.L. 2023-134, Section 12.11, is provided below:

S.L. 2023-134, Section 12.11(e), changes G.S. 143-215.108A¹ as follows:

G.S. 143-218.108A subsection (a) was revised to state that a person cannot commence construction or operation of a source at a new facility “except as provided in” a new subsection (b1).

Subsection (b) was revised to provide that “Except as provided in subsection (b1) of this section, the permittee may not operate the [source] without obtaining a permit.” Otherwise, subsection (b) was retained in full without modification.

A new subsection (b1) was added to the statute, providing:

“A person who (i) has filed an application under this Article to construct or operate an air contaminant source, equipment, or associated air cleaning device at a site or facility or (ii) holds a permit under G.S. 143-215.108 and who has applied to the Commission for a modification of the permit to allow the person to alter or expand the physical arrangement or operation of an air contaminant source, equipment, or associated air cleaning device in a manner that alters the emission of air contaminants may undertake the following activities prior to obtaining a permit if the person complies with the requirements of this section:

- (1) Clearing and grading.
- (2) Construction of access roads, driveways, and parking lots.
- (3) Construction and installation of underground pipe work, including water, sewer, electric, and telecommunications utilities.
- (4) Construction of ancillary structures, including fences and office buildings, that are not a necessary component of an air contaminant source, equipment, or associated air cleaning device for which a permit is required under G.S. 143-215.108.
- (5) Upon determination that an application for a permit or permit modification is administratively complete, the construction (but not operation) of a new air contaminant source, equipment, or associated air cleaning or emission control devices prior to permit issuance. The exception in this subdivision applies only to an application for the addition or modification of an emissions source that is not subject to (i) permit limits set pursuant to programs for the

¹ North Carolina G.S. 143-215.108A, Control of sources of air pollution; construction of new facilities; alteration or expansion of existing facilities.

https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_143/GS_143-215.108A.pdf

prevention of significant deterioration and for the attainment of air quality standards in nonattainment areas under G.S. 143-215.107(a)(7), (ii) a residual risk-based hazardous air pollutant standard under 42 U.S.C. 7412(f), as amended, or (iii) a case-by-case maximum achievable control technology (MACT) permit requirement issued by the Department pursuant to 42 U.S.C. 7412(j), as amended. The undertaking of pre permitting activities under this subdivision shall not entitle the permit or permit modification applicant to operate any air contaminant source, equipment, or associated air cleaning or emissions control devices prior to permit issuance.”

S.L. 2024-1, Section 4.13(a), added new Section 12.11(f) to S.L. 2023-134, which requires that:

“No later than July 1, 2025, the Department of Environmental Quality shall prepare and submit to the United States Environmental Protection Agency for approval by that agency a proposed North Carolina State Implementation Plan amendment based on the changes to the air permitting program provided in this section.”

S.L. 2024-1, Section 4.13(a), also added new Section 12.11(g) to S.L. 2023-134 to specify that:

“This section becomes effective on the first day of a month that is 60 days after the Secretary of the Department of Environmental Quality certifies to the Revisor of Statutes that the United States Environmental Protection Agency has approved an amendment to the North Carolina State Implementation Plan submitted as required by subsection (f) of this section. The Secretary shall provide this notice along with the effective date of this act on its website and by written or electronic notice to current holders of air permits issued by the Department. This section applies to applications for new air permits and for modifications of existing permits received on or after the effective date specified in this subsection.”

Exclusions from the statutory allowance to construct prior to issuance of a permit are as follows.

- (i) Sources subject to Prevention of Significant Deterioration (PSD) or Nonattainment New Source Review (NNSR) standards under Title 40 of the Code of Federal Regulations (40 CFR) Part 51. Permitting requirements for these sources are codified by North Carolina in 15A NCAC 02D .0530 and 02D .0531.

PSD is a pre-construction air pollution permitting program designed to ensure that air quality does not degrade beyond the National Ambient Air Quality Standard (NAAQS) levels or beyond specified incremental amounts above a prescribed baseline level. PSD applies to new major sources or major modifications at existing sources for pollutants where the area the source is located is designated as in attainment or unclassifiable with the NAAQS.

North Carolina has an approved PSD program implemented through 15A NCAC 02D .0530, *Prevention of Significant Deterioration*. The PSD program requires subject sources to obtain a PSD permit before the source may begin actual construction on the new or modified major source. North Carolina’s NNSR program is implemented through 15A NCAC 02D .0531, *Sources in Nonattainment Areas*. North Carolina currently has no nonattainment areas for any of the NAAQS.

The DAQ Permits Section management estimates that DAQ may receive 3-4 PSD permit applications per year on average.

- (ii) Sources subject to residual risk standards set under Title 42 of the United States Code (42 U.S.C.) §7412(f) (also known as Section 112(f) of the Clean Air Act (CAA))

Under the CAA, the EPA is required to regulate sources of hazardous air pollutants (HAPs) from categories of industrial facilities in a phased approach. The first phase is a technology-based approach during which EPA develops Maximum Achievable Control Technology (MACT) standards for controlling HAPs from sources in industrial category groups listed under Section 112(d) of the CAA. MACT standards generally apply to major sources of HAPs, which is defined as those sources with the potential to emit (PTE) 10 or more tons per year (tpy) of an individual HAP or 25 or more tpy of all HAPs in aggregate. These technology-based standards are based on emissions levels already being achieved by the best-controlled, lowest-emitting sources in an industry. Within eight years of setting the MACT standards for an industrial category, the EPA is required by CAA Section 112(f) to assess the remaining health risks from the source category. Under this second phase risk-based approach, known as residual risk, the EPA must determine whether the MACT standards protect public health with an ample margin of safety, protect against adverse environmental effects, and whether more health-protective standards are necessary.

- (iii) Sources subject to case-by-case MACT determinations made by the Department under CAA Section 112(j)

CAA Section 112(j) sets out the procedures for developing and implementing MACT when the EPA fails to promulgate a MACT standard for a source category within the time set forth in the law (CAA Section 112(j)). North Carolina's rules implementing the CAA Section 112(j) requirements are found in 15A NCAC 02D .1109, *112(j) Case-by-Case Maximum Achievable Control Technology*, and 15A NCAC 02Q .0526, *112(j) Case-by-Case MACT Procedures*. To date, the DAQ has only needed to make case-by-case MACT determinations for two industrial categories: industrial boilers; and brick manufacturing. Subsequent to the DAQ's determinations for these case-by-case MACT standards, the EPA promulgated MACT standards for those categories, which replaced the DAQ's case-by-case standards. As of 2025, MACT standards have been promulgated for all of EPA's currently listed industrial source categories. In the event that there is a future listed industrial category for which EPA failed to meet its deadline to promulgate a MACT standard, consistent with the provisions of new G.S. 143-215.108A(b1)(5) (as amended by S.L. 2023-134), a source in that category subject to case-by-case MACT determination provisions would not be eligible to be constructed prior to issuance of a permit and would still be required to meet the requirements of 15A NCAC 02D .1109, *112(j) Case-by-Case Maximum Achievable Control Technology*, and 15A NCAC 02Q .0526, *112(j) Case-by-Case MACT Procedures*.

112(g) Case-By-Case MACT For Modified/Constructed and Reconstructed Major Toxic Sources

Although not explicitly noted in S.L. 2023-134, new greenfield² major sources of HAPs are subject to requirements under Section 112(g) of the CAA. Section 112(g) requires states to develop and enforce

² In this context, "greenfield" refers to a new facility that is not already constructed and operating.

case-by-case determinations of MACT for new, reconstructed, or modified sources where no applicable emissions limitations have been yet established. In North Carolina's air quality rules, these requirements are implemented under the provisions of 15A NCAC 02D .1112, *112(g) Case by Case Maximum Achievable Control Technology*, and 15A NCAC 02Q .0528, *112(g) Case-by-Case MACT Procedures*. Such sources would not be able to construct upon a permit application being deemed administratively complete and would have to wait to begin construction until the permit meeting the requirements of 02D .1112 and 02Q .0528 is issued.

Few sources are anticipated to be subject to the exclusions listed in the new pre-permitting construction provisions of G.S. 143-215.108A(b1)(5). As a result, the majority of applicants for modifications of existing permits and greenfield permits for future new sources are expected to be eligible to opt to begin construction of the source upon their application being determined administratively complete rather than waiting until issuance of the permit.

Related to, but not part of this rulemaking is S.L. 2023-134 Section 12.11(c), which revised G.S. 143-213 and defines the term "administratively complete" to mean that "all information required by statute, regulation, or application form has been submitted to the Department for the purpose of processing a permit application." This definition is incorporated into 15A NCAC 02Q as part of a separate EMC rulemaking to amend nine Subchapter 02Q rules, which were adopted by the EMC at its March 13, 2025 meeting.³ For the rulemaking encompassed in this analysis, a DAQ determination that an application is "administratively complete" is also the point in the permitting process at which an applicant can begin construction under the revisions to G.S. 143-215.108A(b1)(5).

III. Reason for Rule Amendment

G.S. 143-215.108A, as amended by the 2023 Appropriations Act, S.L. 2023-134, and S.L. 2024-1, requires the Department of Environmental Quality (DEQ) to submit to the EPA a SIP revision for approval as a step to effectuate the new statutory allowance for construction of emission sources prior to receipt of a permit upon determination that an administratively complete permit application has been submitted. The DAQ is conducting this rulemaking to incorporate the new expanded allowances for construction into Subchapter 02Q, *Air Quality Permit Procedures*.

As amended by S.L. 2024-1, the provisions of S.L. 2023-134, Section 12.11 do not become effective until the first day of a month that is 60 days after the DEQ Secretary certifies to the Revisor of Statutes that the EPA has approved an amendment based on the statutory revisions into the NC SIP. Therefore, the DAQ is conducting this rulemaking to incorporate the S.L. pre-permitting construction provisions into the State's air quality rules, which will then be submitted to the EPA as a SIP amendment.

IV. Proposed Rules

This rulemaking includes one new rule proposed for adoption (15A NCAC 02Q .0114) and two existing rules proposed for amendment (15A NCAC 02Q.0501 and .0507). The proposed amendments to these rules

³ Agenda Item 25-12, Environmental Management Commission Agenda for March 13, 2025 Meeting, <https://edocs.deq.nc.gov/WaterResources/DocView.aspx?dbid=0&id=3706718&cr=1>

are limited in scope to the minimally necessary changes so that the permitting rules conform to the new statutory provisions for pre-permitting construction activities allowed at a site prior to receipt of a permit.

15A NCAC 02Q .0114, *Activities Allowed Prior to Permit Issuance*

One new Rule, 02Q .0114, is proposed for adoption to implement the pre-permitting construction provisions of S.L. 2023-134, Section 12.11(e). As proposed, the new rule allows a permit applicant to begin construction -- but not operation -- of an air contaminant source, equipment, or associated air cleaning or emission control devices before the permit is issued, provided the application is deemed administratively complete. However, this allowance does not apply if the source is subject to permit limits established under PSD or NNSR, a residual risk-based HAP standard under section 112(f) of the CAA, or a case-by-case MACT permit requirement under CAA section 112(j) issued by the DAQ.

15A NCAC 02Q .0501, *Purpose of Section and Requirement for a Permit*

Rule 02Q .0501 specifies applicability of, and exemptions from, the requirement to obtain a construction permit prior to operation of a Title V source. A clarifying amendment to Paragraph (b) is proposed to add to the list of exceptions a reference to 15A NCAC 02Q .0114, where the statutory exclusion from the requirement to obtain a permit prior to construction is proposed to be incorporated. Similarly, Paragraph (c) is proposed to be amended to add a cross reference to the exception in 15A NCAC 02Q .0114.

15A NCAC 02Q .0507, *Application*

The proposed amendment to Rule 02Q .0507 revises Paragraph (a) to add the phrase “except as provided in 15A NCAC 02Q .0114” as an exception to the requirement to obtain a permit prior to conducting certain activities at a site. The cross-reference to 15A NCAC 02Q .0114 incorporates the language reflecting the exceptions provided in the S.L.

V. Estimating the Fiscal Impacts

This rulemaking proposes to reflect an amendment to the state statutes that is specific in nature and requires the agency to make a submission to EPA for approval into the SIP. The statutory amendment does not explicitly, or by the nature in which it is crafted, provide the authority for the agency to consider alternatives regarding its applicability or exclusions. As a result, any effects of the proposed rules are directly attributable to the statutory amendment itself and associated session laws.

A qualitative approach describing the potential impacts was taken in analyzing this rulemaking. Because of the nature of the proposed changes, there is no definitive financial impact as the variables are market dependent and uncertain. This analysis qualitatively characterizes potential impacts to state government and the private sector regulated community.

A. Permit Applications and Review Process

To provide context around the types of permit applications processed by the DAQ, this Subsection presents an overview of the various Title V and non-Title V permit actions for new or modified sources. Permits issued under the provisions of the rules in 02Q .0300, or “Construction and Operation Permits,” provide the applicant with permission to begin construction of their facility or modification. Title V permits issued under the provisions of the rules in 02Q .0500, also referred to as “Operating Permits,” are permits for larger facilities and list all applicable requirements for a

facility (including state rules, federal regulations, and associated monitoring and recordkeeping to ensure compliance with all applicable standards).

As noted in Section II of this analysis and further described within this Section, the rule amendments proposed in this rulemaking will only have potential implications for applicants of new permits and permit modifications. While the total number of applications for new permits and permit modification applications has fluctuated over the five-year period from 2019-2024, the DAQ has seen an overall increasing trend in the total number of permit applications each year, as shown in Table 1 below.

Table 1: Permit Applications Received by Year, 2019-2023

Applications Received by Year, 2019-2023							
Permit Class	Application Type	2019	2020	2021	2022	2023	Average Annually
non-Title V	Modification*	94	81	87	77	52	78.2
non-Title V	New/Initial*	29	19	24	27	35	26.8
non-Title V	Renewal/Modification*	0	3	8	9	18	7.6
non-Title V	Renewal	2	3	188	249	268	142
non-Title V	Other	85	109	93	106	74	93.4
Total non-Title V		210	215	400	468	447	348
Title V	Minor Modification**	29	20	34	36	29	29.6
Title V	Reopen for Cause	1	2	7	0	1	2.2
Title V	Significant Modifications*	56	54	42	43	32	45.4
Title V	Modification - State Only*	4	4	8	6	4	5.2
Title V	New/Initial*	12	25	18	21	14	18
Title V	Renewal/Modification*	3	4	7	3	3	4
Title V	Renewal	39	49	50	45	43	45.2
Title V	Other	39	36	42	37	59	42.6
Total Title V		183	194	208	191	185	192.2
Total Initial Permits and Permit Modifications (Title V + non-Title V) with potential impacts under this rulemaking***		198	190	194	186	158	179.8
Total Applications		393	409	608	659	632	540.2

* Indicates an application type with potential impacts associated with this rulemaking. Each of these permit actions is described further in Subsections V.B and V.C below.

**Note: although the paragraph preceding Table 1 states that applicants for new permits and permit modifications are potentially impacted by this rulemaking, applicants for Title V minor modifications are not expected to be impacted since the existing provisions of Rule 02Q .0515, *Minor Permit Modifications*, and 40 CFR Part 70 already allow the applicant of a Title V minor modification to make their proposed change upon filing a complete application with the Division. This type of permit action is further described in Subsection V.C.2 of this document.

***Note that these totals include any applications excluded from the pre-permitting construction provisions proposed in this rulemaking (i.e., PSD, NNSR, case-by-case MACT permit requirement issued pursuant to CAA Section 112(j), or a

residual risk-based hazardous air pollutant standard under CAA Section 112(f)). The DAQ does not receive a significant number of these applications annually and estimates their contribution to the totals as minimal.

The data of Table 1 above is also provided as percentages in Figure 1 and Figure 2 below. These figures show the breakdown of permit application types received by the Division each year from 2019 through 2023 for non-Title V and Title V permit classes, respectively. The application types are grouped into modifications, new/initial permits, renewals, combined renewal/modifications, and “other,” which includes administrative amendments, ownership changes, name changes, Clean Air Act Section 502(b)(10) changes, construction notifications, changes not requiring permit revisions, and permit rescissions.

As seen in Figure 1, applications for non-Title V initial permits (shown in green) and permit modifications (shown in blue and purple) have comprised approximately 24-59% of the total non-Title V permit applications received annually.

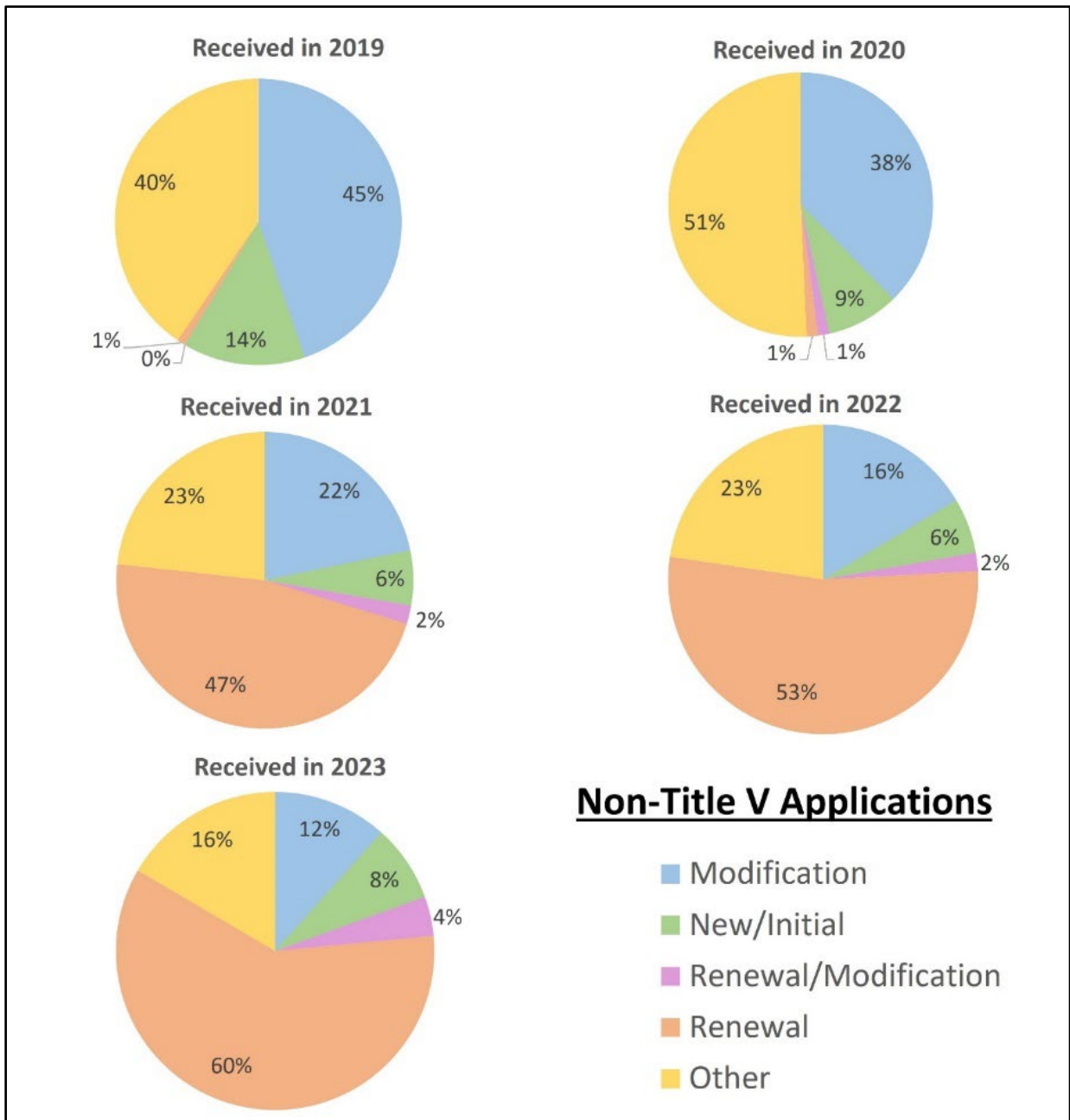


Figure 1: Non-Title V Applications Received by Year, 2019-2023

For Title V permits, there are various types of modification applications, including minor modifications, significant modifications, and modifications that only involve revisions to the “state-enforceable only” part of the permit. Figure 2 below shows the approximate breakdown of the different types of Title V permit applications received by the Division each year, including each type of Title V permit modification. As seen in Figure 2, applications for Title V initial permits (shown in green) and non-minor permit modifications (shown in red, dark blue, and purple) have comprised approximately 29-45% of the total Title V permit applications received annually.

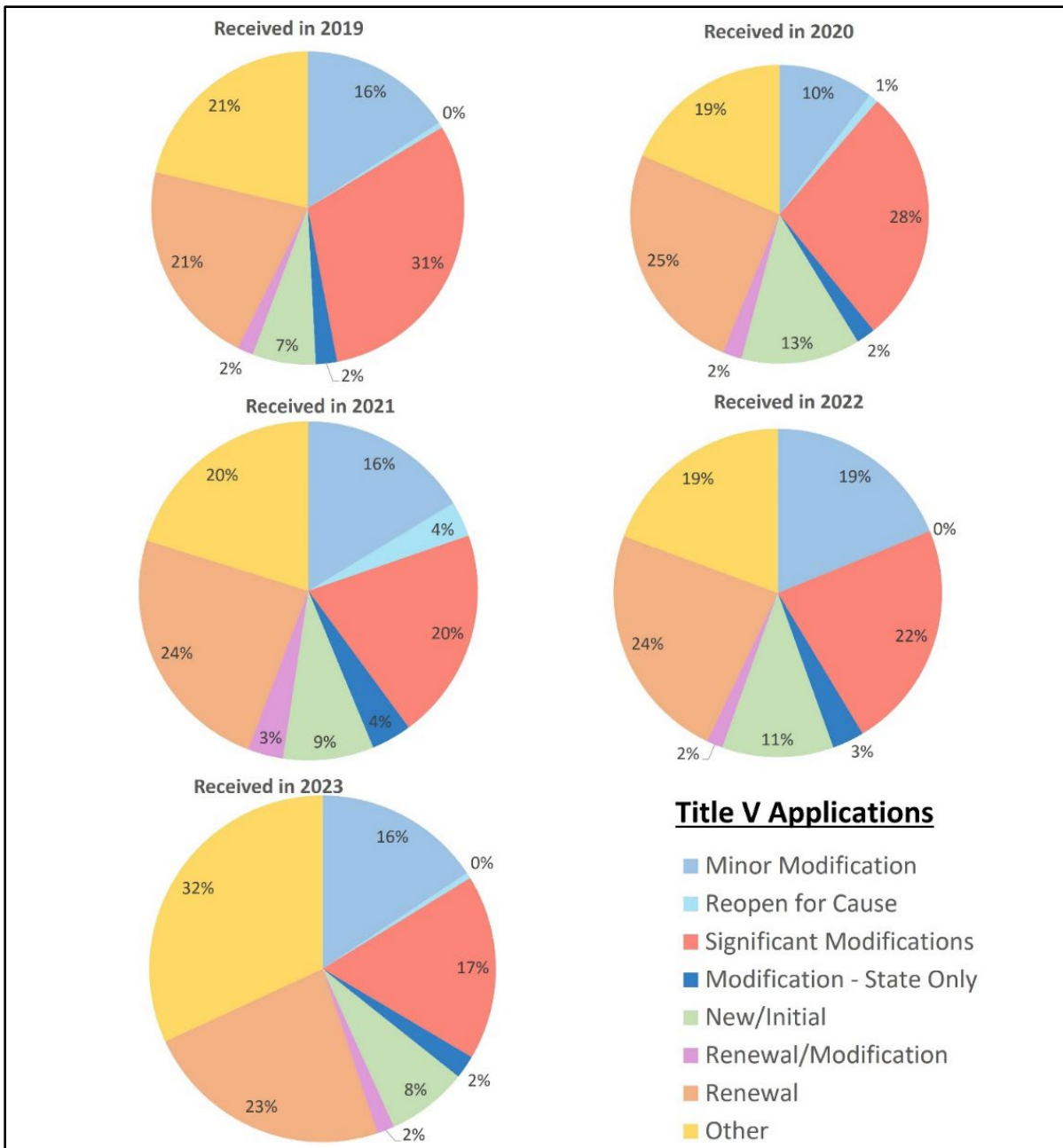


Figure 2: Title V Permit Applications Received by Year, 2019-2023

Regardless of which permit application timeline an application to construct is processed under, the applicant may construct an eligible source upon determination that the application is “administratively complete” rather than having to wait until permit issuance. Subsections V.B and V.C below provide further discussion of the review timeline for each type of permit action. As stated in Section II, a separate ongoing rulemaking is underway to incorporate the provisions of S.L. 2023-134, Section 12.11(a), which changes the review processes and timelines for permit modifications (non-Title V and Title V). As specified in S.L. 2024-1, Section 4.13(a), these new modification review procedures and timelines will not become effective until after the DAQ submits those amended rules to EPA for review, EPA approves North Carolina’s amended rules, and the DEQ

Secretary notifies the Revisor of Statutes of EPA’s approval. Since the new modification procedures are not yet in effect, they are not incorporated into the baseline scenario of this analysis. Rather, the baseline, or business-as-usual scenario against which this analysis evaluates the impacts of the pre-permitting construction provisions, is the current review procedures (i.e., prior to the new permit modification review procedures from S.L. 2023-134, Section 12.11(a)). However, Subsection V.E.5 discusses the possible uncertainties associated with the impacts discussed in this analysis, under a scenario where the new permit modification review procedures and timelines serve as the baseline scenario.

B. Non-Title V Permit Actions

Currently, the State’s air quality rules specify that all applications for non-Title V permits and permit modifications shall be reviewed within a timeframe of 90 processing days. As stated previously, permits issued under the provisions of the rules in 02Q .0300, or “Construction and Operation Permits,” provide the applicant with permission to begin construction of their facility or modification. If the facility is not a Title V facility, they may also begin operation of their new or modified source once the 02Q .0300 permit is issued and the source is constructed. Figure 3 below illustrates the review process and timeline for non-Title V initial permits and permit modifications processed under the procedures of 02Q .0300.

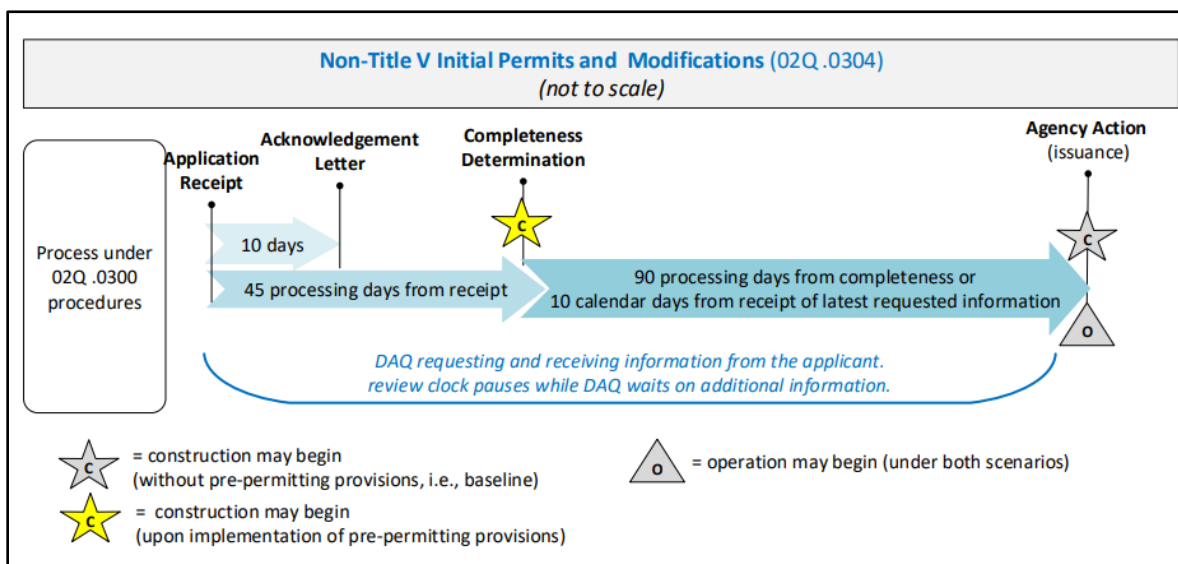


Figure 3: Review Process and Timeline for Non-Title V Initial Permits and Permit Modifications

As shown in the figure, within 10 days of receiving an application, the DAQ provides a letter to the applicant acknowledging receipt of the application and noting whether it contains all of the minimum elements to be accepted for processing by the Division. For all accepted applications, the Division reviews the application for completeness and makes a completeness determination within 45 days of receipt. During this 45-day window, the permit engineer requests any missing information from the applicant, and the time during which the permit engineer is waiting to receive that information is not counted towards the 45-day window.

- Under the current provisions (i.e., the baseline scenario of this analysis), the applicant must wait until the final permit is issued before beginning construction of the new or modified source.
- Upon the proposed pre-permitting provisions becoming effective, an applicant could choose to begin construction on the source once the application is deemed complete, as shown in Figure 3. While the applicant would still need to wait until the permit is issued before beginning operation of the new or modified source, they may experience potential time savings by being able to construct in parallel with the remainder of the Division’s review of their application.
- For non-Title V construction and modification permits, processed under the currently effective processing timelines, an applicant could theoretically begin construction as much as 90 processing days (plus any time associated with fulfilling additional information requests) earlier than waiting until permit issuance.

C. Title V Permit Actions

As noted in Subsection V.A above, Title V permits are issued under the procedures of the rules in 02Q .0500. For Title V facility permits, there are two main types of modifications: minor modifications and significant modifications. For initial Title V permits and significant modifications of Title V permits, the applicant may choose for their application to be processed under either a one-step process pursuant to 15A NCAC 02Q .0501(b)(1) or (c)(1), or under a two-step process pursuant to 15A NCAC 02Q .0501(b)(2) or (c)(2).

Generally, a Title V facility does not need to wait for issuance of their Title V Operating Permit pursuant to 02Q .0500 before beginning operation, as long as the facility has first obtained a construction and modification permit pursuant to 02Q .0300 (i.e., they have utilized the 2-step review process and completed the first step); however, some types of Title V modifications require the facility to file the 02Q .0500 permit application and obtain the issued Title V permit before beginning operation of the modification. Each of the types of Title V permit actions potentially affected by this rulemaking are summarized in this Subsection.

1. Title V Initial Permits and Significant Modifications

As described above, there are two different potential processes for review and issuance of a new Title V permit or significant modification to a Title V permit: a 1-Step process under 15A NCAC 02Q .0501(b)(1) or (c)(1), or a 2-Step process under 15A NCAC 02Q .0501(b)(2) or (c)(2). Each of these processes is described below.

1-Step Process:

Under the 1-step process, the applicant is issued a construction and operation permit in one step that is conducted under the provisions of Rule 02Q .0516. Currently, the Division provides an Acknowledgement/Acceptance letter to a permit applicant within 10 days of receiving an application for a new Title V permit or significant modification application, which indicates whether the application contains the minimum elements in 02Q .0505 and .0507 to be accepted

for processing. Within the first 60 days of the application review, the DAQ reviews the application for completeness, and requests any missing information from the applicant. The review clock pauses during any time that the DAQ permit engineer is waiting on information that has been requested, and once the application is deemed complete, the Division has 18 months to take final action on the permit. Figure 4 below illustrates the 1-Step review process for new Title V permits and significant modifications, noting where construction and operation may begin under the business-as-usual, or baseline conditions (i.e., without the proposed pre-permitting construction provisions), and the earliest date an applicant may construct upon the pre-permitting provisions becoming effective.

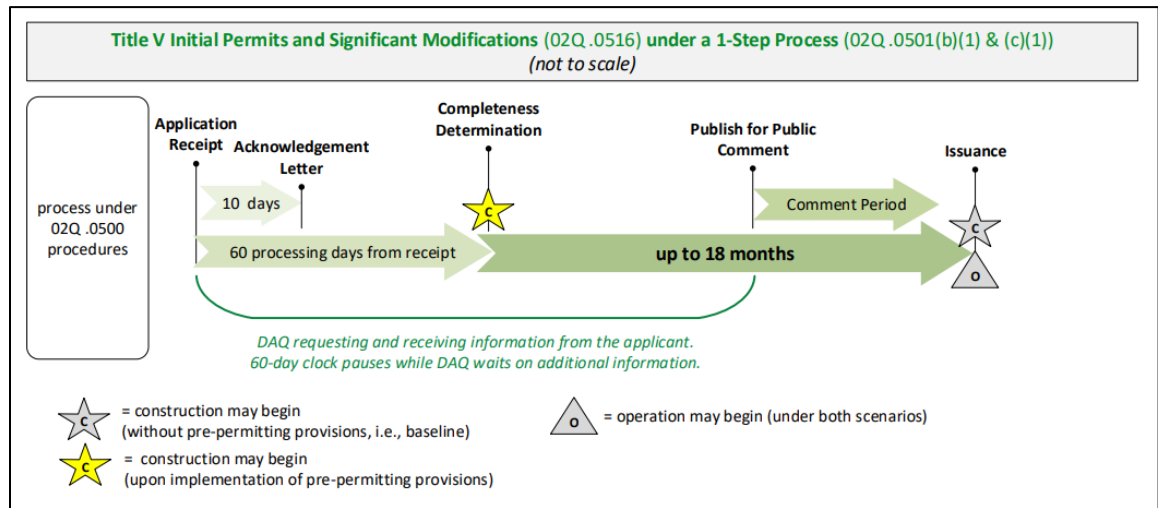


Figure 4: 1-Step Review Process and Timeline for New Title V Permits and Significant Modifications

For Title V 1-Step significant modifications, an applicant could potentially opt to begin construction as much as 18 months (plus any time associated with responding to additional information requests) earlier than waiting until permit issuance.

2-Step Process:

Under the 2-Step process, the applicant first applies for and obtains a construction and operation permit under the 02Q .0300 procedures (1st step) and subsequently submits an application to modify the construction and operation permit to meet Title V requirements under 02Q .0500 (i.e., the construction and operation permit is incorporated into the Title V permit). If this is a “first-time” Title V permit, the 2nd step application must be submitted within 12 months of becoming subject to the Title V program. Otherwise, the 2nd step application must be submitted within 12 months of beginning operation of the modified source, unless the significant modification would contravene or conflict with a condition in the existing Title V permit, in which case the 2nd step application must be submitted and the modified Title V permit must be issued before beginning operation of the modified source.

Figure 5 below provides an illustration of the allowable construction date for 2-Step significant modifications of Title V permits upon implementation of the S.L. pre-permitting provisions.

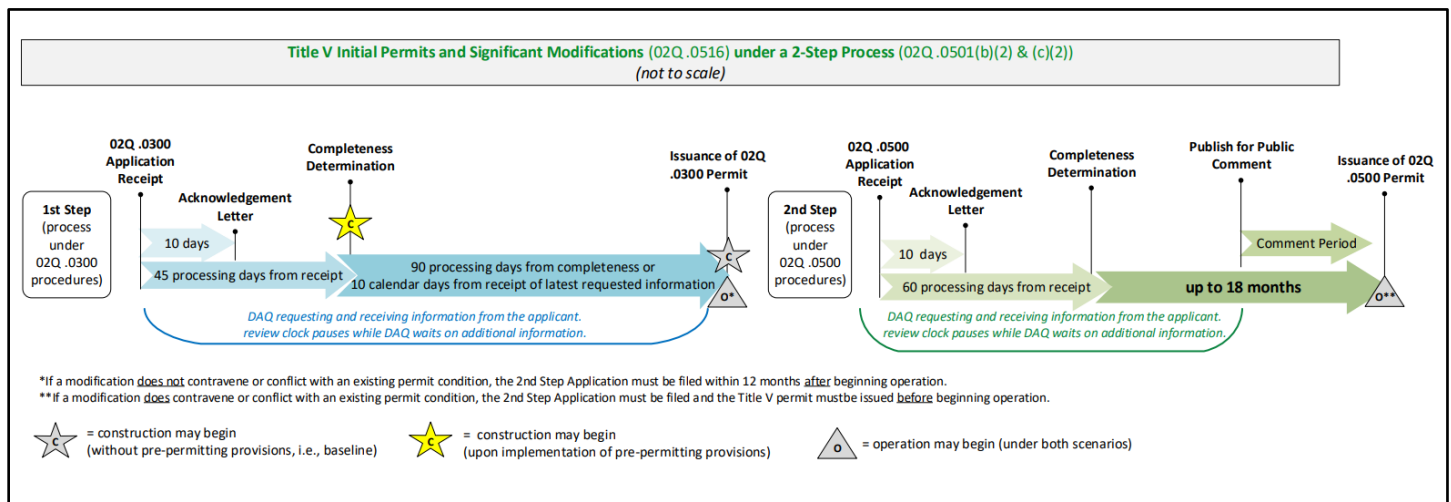


Figure 5: 2-Step Review Process and Timeline for New Title V Permits and Significant Modifications

For construction and modification applications processed under the currently effective permitting timelines, applicants that opt to construct once the application is deemed complete would be allowed to construct earlier than waiting until the permit is issued. For Title V 2-step initial applications and significant modifications, an applicant could theoretically begin to construct as much as 90 processing days earlier than waiting until permit issuance (i.e., 90 days plus time associated with fulfilling additional information requests).

2. Title V Minor Modifications

Title V permit holders can also apply to make a minor modification of their permit under the provisions of Rule 02Q .0515, *Minor Permit Modifications*. The current provisions of Rule 02Q .0515 and 40 CFR §70.7(e)(2)(v) allow the applicant of a Title V minor modification to make the proposed change upon receipt of a complete application by the Division. As shown in Figure 6, these proposed rule revisions do not impact the earliest start of construction date for an applicant of a Title V minor modification.

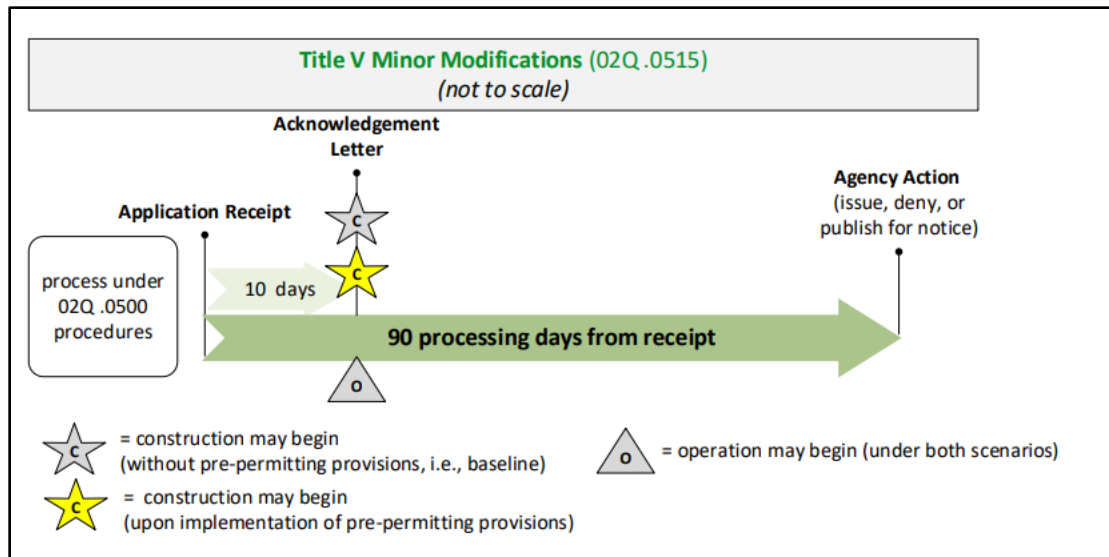


Figure 6: Review Process and Timeline for Title V Minor Modifications

D. Possible Impacts of S.L. Pre-permitting Provisions

Impacts to the Regulated Community

The pre-permitting construction provisions have the potential to impact both existing and new regulated sources. The provisions of the statute incorporated into the proposed rule changes would shift the earliest construction date for an emission source from the permit issuance date to the date that the construction or modification application is determined to be complete. Upon a completeness determination by the DAQ, an applicant may opt to begin construction of their new or modified source, unless the source is subject to limits established pursuant to PSD or nonattainment NSR implemented through Rules 02D .0530 and .0531, CAA Section 112(j) case-by-case MACT permit requirement implemented via Rules 02D .1109 and 02Q .0526, or subject to residual risk-based limits established under CAA Section 112(f), which are implemented under 40 CFR Part 63.

The rule changes do not create any additional process requirements or permit fees but merely incorporate the statutory shift in timing of when an applicant may begin the construction process from the point in time when a final permit is issued to when the Division has made a completeness determination on the application. This shift would allow an applicant to conduct the construction phase of a project in parallel with any technical analysis and review of the application that occurs after the Division's completeness determination, rather than having to wait to begin construction until after the permit is issued.

The permit action with the greatest potential for time savings under the pre-permitting construction provisions is applications for Title V initial permits and significant modifications that are processed using the 1-Step review process, due solely to the fact that it currently has the longest timeline for permit processing following a completeness determination (up to 18 months). Although the statutory pre-permitting construction provisions do not allow a source to begin operating any earlier, the fact that a facility may complete construction of their project earlier likely means that many sources may also begin operation of the source sooner. To the extent that a facility's proposed project is directly

tied to revenue, applicants choosing to utilize these pre-permitting construction provisions may experience increased revenue, faster cost recovery, or other savings by beginning operation of the project sooner. However, due to the unique nature of each regulated facility, wide range of potential proposed projects at a facility, additional factors that can impact the timeline of a permit review, and other variables (not associated with air permitting) that may affect a facility's timeline for constructing or operating a source, it is not possible to reasonably quantify any estimated savings to regulated sources.

Impacts to DAQ/DEQ

Section 12.11(e) of S.L. 2023-134 does not specify or require changes to DAQ's permit review process. The requirements of G.S. 143-215.108A remain in place regarding compliance with other state laws and federal air quality programs, as reflected in paragraphs (h) and (i) below.

“(h) Compliance With Other State Laws Not Affected. – This section does not relieve any person of the obligation to comply with any other requirement of State law, including any requirement to obtain any other permit or approval prior to undertaking any activity associated with preparation of the site or the alteration or expansion of the physical arrangement or operation of an air contaminant source, equipment, or associated air cleaning device at a facility for which a permit is required under G.S. 143-215.108.

(i) Federal Air Quality Programs Not Affected. – This section does not relieve any person from any preconstruction or construction prohibition imposed by any federal requirement, federal delegation, federally approved requirement in any State Implementation Plan, or federally approved requirement under the Title V permitting program, as determined solely by the Commission or by a local air pollution control program certified by the Commission as provided in G.S. 143-215.112. This section does not apply to any construction, alteration, or expansion that is subject to requirements for prevention of significant deterioration or federal nonattainment new source review, as determined solely by the Commission or by a local air pollution control program certified by the Commission as provided in G.S. 143-215.112. This section does not apply if it is inconsistent with any federal requirement, federal delegation, federally approved requirement in any State Implementation Plan, or federally approved requirement under

he Title V permitting program, as determined solely by the Commission or by a local air pollution control program certified by the Commission as provided in G.S. 143-215.112.”

As a result of these requirements, there is no change in the substance of the DAQ permit application review and analysis required, nor are there any anticipated impacts to the quality of permit application reviews.

The provisions of the S.L. in Section 12.11(e) provide the applicant with the option to choose to begin construction once the application is determined to be administratively complete as long as the source is not subject to one of the excluded emission standards or limits identified therein. This statutory option is an action on the part of the applicant that is independent of any agency action, beyond the DAQ having deemed the application complete, including further steps in the permit review process such as the detailed review and analysis of the complete application and any public

comment period or EPA review. The statute itself defines the meaning of an “administratively complete” application. In addition, that language has already been incorporated into the State’s Air Quality permitting rules in a separate ongoing rulemaking (although the effective date of those amended rules is also contingent upon EPA approval). Section 12.11(e) itself does not require adjustment of the permitting process milestones for DAQ action in order for the applicant to construct. The independent choice by an applicant to construct upon an application being deemed complete and prior to receipt of a permit does not impose an additional action on the agency in the processing of the permit application.

No costs or benefits to the DAQ or the DEQ from the proposed rule amendments to align the rules with the statute have been identified. As a result, there is no anticipated impact on the agency.

Impacts to General Public

No direct costs or benefits to the General Public have been identified as a result of this rulemaking; however, if a project being constructed is going to result in additional jobs in an area and constructing earlier facilitates the project’s ability to begin operating earlier, associated jobs might become available sooner than they otherwise would. Nonetheless, it is important to recognize that many other factors outside the realm of air quality permitting contribute to when a source actually completes construction (or modification of a source) and commissioning activities that ultimately allow it to begin operation.

E. Uncertainties

1. Approval by EPA

There is uncertainty as to whether EPA might find the statutorily based allowance for construction prior to permit issuance to be consistent with the provisions of the CAA and approvable into the SIP. Based on preliminary discussions in 2024, the EPA has indicated that the statutory provisions may be inconsistent with provisions of the CAA, EPA implementing regulations, and historical policy regarding prohibition of construction activities prior to obtaining a construction permit.

The purpose of minor new source review program permits is to prevent the construction of sources that would interfere with the attainment or maintenance of a NAAQS (e.g., violate a control strategy adopted in a nonattainment area). CAA Section 110(a)(2)(C) requires SIPs to include a program that regulates the modification and construction of any stationary source in areas covered by the Plan. 40 CFR 51.160 specifies that SIPs must “*set forth legally enforceable procedures that enable the State or local agency to determine whether the construction or modification of a facility, building, structure, or installation, or combination of these will result in -*

- (1) *A violation of applicable portions of the control strategy; or*
- (2) *Interference with attainment or maintenance of a national standard in the State in which the proposed source (or modification) is located or in a neighboring State.”*

The program must include a means for the permitting agency to prevent construction or modification if either of the above would occur. Prior to the technical review of the permit application, a permitting agency would be unable to verify that a proposed source (or modification) would not violate applicable requirements or interfere with attainment or maintenance of a standard.

S.L. 2024-1 makes the effective date of the statutory provisions of S.L. 2023-134, Section 12.11(e)-(g) and associated rule amendments contingent upon EPA approval into the SIP. Consequently, if EPA does not approve the proposed rule revisions into the SIP, the proposed rules would not go into effect, resulting in no impacts.

2. Effective Date of Proposed Provisions

Inherent uncertainty exists as to when EPA might approve the rule amendments into the SIP. This uncertainty is reflected in the Session Law 2024-1 language which makes the effective date of the statutory provisions of Section 12.11 and associated rule amendments contingent upon EPA approval into the SIP. As a result, it is uncertain when the rule amendments will actually become effective and be implemented and thus, when any benefits or costs may be realized.

3. Applicant Use of Pre-permitting Construction Option

One uncertainty that cannot be quantified is the impact on facilities' decisions to undertake new construction or expansion projects. Consequently, it is not possible to accurately predict the number of applicants that might choose to construct a source prior to issuance of a permit given that the pre-permitting construction is an option rather than a requirement.

There is also significant uncertainty regarding what types of projects involving construction and modification would occur in the future across the widely varying population of existing permitted sources and potential new greenfield sources.

Modifications and the need for construction tend to be market based and driven, and thus their occurrence is unpredictable. In some instances, being able to construct prior to permit issuance potentially may allow an applicant to take advantage of time limited funding sources that they might otherwise not be able to avail themselves of if they are required to wait until permit issuance to construct, or it may allow use of an earlier internal company budget cycle. Given the case-by-case and site-specific nature of both greenfield facilities and modifications at existing sources that may occur in the future, there are too many variables to quantify potential impacts.

The DAQ cannot predict the full range of reasons that might motivate an applicant to begin construction prior to its permit being issued. Regardless, the flexibility of being able to construct prior to permit issuance does not change the emissions standards and requirements that ultimately must be met by a source in order to be issued a permit.⁴

⁴ Note that the DAQ is not aware of any facilities that took advantage of the pre-permitting construction option during the period between when S.L. 2023-134 was adopted (October 3, 2023) and subsequently amended by S.L. 2024-1 (May 15, 2024) requiring EPA approval into the SIP.

As stated in G.S. 143-215.108A(e), “*applications for permit or permit modification must be made on the same basis as if the construction, alteration, or expansion allowed under this section had not occurred.*” The statute further provides that “*no evidence regarding any contract entered into, financial investment made, construction, alteration, or expansion undertaken, or economic loss incurred by any person or permittee who proceeds under this section without first obtaining a permit under G.S. 143-215.108 is admissible in any contested case or judicial proceeding involving any permit required under G.S. 143-215.108.*” Paragraph (f) of the statute also states that the State and EMC are “*not liable for any loss resulting from any contract entered into, financial investment made, construction, alteration, or expansion undertaken, or economic loss incurred by any person, permittee, or owner of any facility pursuant to this section*” and Paragraphs (g) through (i) of the statute specify that local zoning ordinances, compliance with other state laws, and federal air quality programs are all unaffected by the provisions of G.S. 143-215.108A. Two versions of the full text of the statute are provided in Appendices A and B of this analysis. Appendix A provides the text of G.S. 143-215.108A prior to enactment of S.L. 2023-134, Section 12.11, and Appendix B provides the text of G.S. 143-215.108A that will be effective once the contingency specified in S.L. 2023-134, Section 12.11(g) is met.

Potential for Citizen Suit

One factor an applicant may consider when deciding whether to utilize the pre-permitting construction provisions is the potential risk of a third-party citizen suit. Incorporation of requirements into the SIP provides for enforcement of CAA requirements by third parties. While a state’s SIP is generally enforced by the state, the EPA is authorized to take enforcement action against violators of requirements in federally approved SIPs. Members of the public can also file citizen suits under the CAA to address violations of SIP requirements.⁵

If the EPA approves the proposed rules into the SIP and if there is a strong argument that the pre-permitting construction allowed under the state law is inconsistent with or violates the CAA, that argument could be raised in a third-party citizen suit. Choosing to move forward with pre-permitting construction under these provisions may make an applicant vulnerable to such a third-party citizen suit. The applicant could incur costs associated with a lawsuit and its resultant outcome, potentially impacting the overall timeline and cost of the project.

Financial Risk to Applicants

Another factor that an applicant may consider when deciding whether to utilize the proposed pre-permitting construction provisions is the additional financial risk of constructing a source that has not yet been reviewed by the DAQ and confirmed to meet the air quality requirements needed to be issued a permit. It may be difficult for the DAQ to conclusively determine whether a proposed source (or modification) will meet all applicable air quality standards and permitting requirements solely during the application completeness review. Even after an application is determined “complete”, it is possible that the DAQ could later find, during the more detailed

⁵ Clean Air Act. Title III, Section 304 (42 U.S.C. §7604), <https://www.govinfo.gov/content/pkg/USCODE-2013-title42/html/USCODE-2013-title42-chap85-subchapIII-sec7604.htm>

technical review, that the source as proposed, will not meet all applicable air quality standards, or cannot comply without significant changes to the proposal. By moving forward with construction of the source prior to permit issuance, the applicant is taking the risk of incurring additional costs (e.g., if the applicant begins constructing a source that must then be retrofitted or otherwise changed to meet all applicable standards).

A completeness determination on an application does not guarantee that the permit will ultimately be issued, or issued exactly as applied for, without the need for some adjustments. At the point of a permit application being determined complete, the full substantive technical engineering review may not yet be complete. As a result, at that stage there still may be some uncertainty as to whether the complete application as submitted will demonstrate compliance with all applicable standards, which is required prior to issuance of the construction permit.

The quality of applications upon receipt, quality of responses to the DAQ's requests for additional information throughout the review process, and the overall workload of the DAQ permitting staff can impact the amount of time a permit engineer can dedicate to reviewing a permit application immediately upon receipt. Beyond containing the minimum elements needed for processing an application, a quality application is one that contains all applicable application forms and the information requested therein, detailed and thorough analyses of all potentially applicable rules (state and federal), accurate and comprehensive emissions calculations, including sample calculations that enable the DAQ to verify their accuracy, a complete air quality analysis (i.e., air dispersion modeling) if required, details about the proposed monitoring and recordkeeping that will be utilized to ensure compliance, and adherence to the scope of the original application submitted. Due to the complex nature of many facilities' processes and the permit review process, determination of the exact information needed to complete the technical review of any particular permit application can be an iterative process that benefits from a series of communications between the DAQ permit engineer and the applicant.

If the permit engineer determines, subsequent to making a completeness determination, that additional information is needed to properly evaluate the source, such information can still be requested.

Some examples that could/might occur include the following:

- Although sources subject to PSD are excluded by the Statute from using the pre-permitting construction provisions, under the PSD program, a source must obtain a permit before it may "begin actual construction," as reflected in 40 CFR 52.21 and 51.166. If upon an application being determined complete, an applicant begins construction on a source that is later in the review process determined to be a major source subject to PSD, the source could be subject to enforcement action under PSD regulations. Prior to a technical engineering review to determine that the application is technically and scientifically correct, Division permitting staff would not be able to verify whether a source or modification would be minor or major (i.e., subject to PSD review).

- Similarly, if a source is proposed to be a synthetic minor source, additional permit limits or controls may be necessary to ensure the source remains a minor source. If adequate measures have not been included in the permit application and the source has opted to construct prior to receipt of the permit, it is possible that potentially costly post-construction retrofits may be required. In the alternative (i.e., if the source does not take additional limits to remain minor), the source might have to be classified as Title V and incur costs associated with obtaining a Title V permit, along with the associated permit fees and enhanced monitoring, reporting, and recordkeeping required for Title V facilities. If the source has already been constructed and the applicant opts to take operational or production limits to remain below emission limits or applicability thresholds, the source may not be able to be utilized at its full design capacity and thus could be less cost effective from a production standpoint than originally designed. In these examples, the gain in time savings initially anticipated from starting construction prior to permit issuance may ultimately result in increased time delays, retrofit construction costs, or less cost-effective production than originally designed.

4. Anticipated Time Savings

Uncertainty also exists surrounding how much time constructing at the point of an application being determined complete versus at permit issuance would actually save in reality. Not all permits take the full time allotted in the current permitting timelines to be issued.

As described in Subsection V.D, an applicant that opts to begin construction upon DAQ's determination that an application is administratively complete may experience some time savings. The time savings for any given project would vary on a case-by-case basis and is dependent on the nature of the project as would any resulting time savings. As a result of the case-by-case specific nature of future construction and modification projects, it is not possible to accurately quantify the time that a facility might save by beginning construction earlier, and by extension, any potential economic impacts of the statutory revisions and the associated rule changes.

The most likely benefit to result from the proposed rule amendments to incorporate the statutory revision to allow construction prior to issuance of a permit is that it will provide flexibility to applicants to begin construction in parallel with processing of their administratively complete application. This has the potential to save time in the overall schedule for completion of construction and could potentially result in allowing a source to begin operating sooner following issuance of its permit. However, receipt of an air quality permit is only one of many factors, such as weather, availability of materials and manpower, and many other influences that can impact how quickly a source may actually be able to be constructed and come online.

Additionally, if the construction of a source is part of a project that would result in additional jobs, those jobs might ultimately be available sooner, although these potential estimated time savings are also unquantifiable.

5. Expected Changes to Review Processes for Modifications

As noted in Section II above, at its March 13, 2025, meeting, the EMC adopted rule revisions incorporating the provisions of S.L. 2023-134, Section 12.11(a)-(c) that revises G.S. 143-215.108(d)(2) and G.S. 143-213. Those statutory changes pertain to the Division’s timelines for reviewing permit modifications and incorporate a new definition for the term “administratively complete”. Per the statutory requirements, those rules will also have an effective date contingent upon approval into the SIP. Pursuant to S.L. 2024-1, Section 4.13, the DAQ will submit these amended rules to EPA no later than July 1, 2025, for review and approval. Upon EPA approval of the amended rules, the DEQ Secretary will notify the Revisor of Statutes of EPA’s approval, and the new modification procedures and timelines will become effective on the first day of a month that is 60 days following the Secretary’s notification. Since the EPA generally aims to take action on CAA Section 110 SIP submittals within 18 months of receipt, the resulting effective date of those provisions could extend into early 2027. The analysis presented thus far in Section V did not account for this parallel rulemaking, since it is not yet effective and therefore not part of the baseline scenario. This subsection provides context around the implications of these pre-permitting construction provisions after implementation of the new permit modification review processes.

Non-Title V Permit Modifications

As explained in further detail in the RIA for the Permit Timelines and Modifications rulemaking,⁶ Figure 7 below depicts the resulting permit review timeline incorporating those changes associated with a non-Title V permit modification. Under the revised timeline, a completeness determination, including evaluation of whether the application is administratively complete, is made within 45 processing days of receipt of an accepted application.

⁶ RIA for Permit Timelines and Definitions rulemaking, approved October 24, 2024, https://www.osbm.nc.gov/documents/files/DEQ_2024-10-24/open

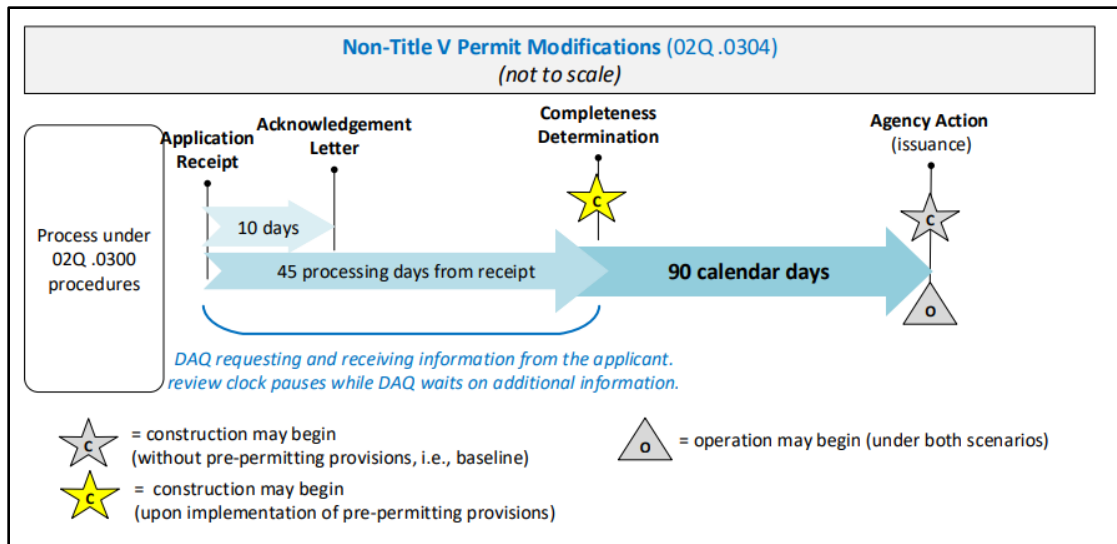


Figure 7: New (Pending) Review Process and Timeline for Non-Title V Permit Modifications

Under the new 02Q .0300 modification review procedures, “Completeness Determination,” triggers the timeline for Agency Action on the permit application. During the initial 45 days of the review, if the application originally submitted was not complete, the staff engineer will request the necessary information to make the application complete. During this step of the review, the 45-day clock to determine the application as complete is counted as 45 processing days (i.e., the time that the agency is waiting on information that has been requested from an applicant is not counted). Once the application has been determined as complete, the period of time from application completion (i.e., the date that the latest information was received, which made the application complete) to the Agency Action shall not exceed 90 calendar days, pursuant to the new statutory requirements. The Agency Action that must be taken within the new statutory timelines can include issuance of the modified permit, denial of the modified permit, or publication of the draft modified permit for public notice and comment. S.L. 2023-134, Section 12.11(a) requires that the agency take action on an application to modify a non-Title V permit within 90 calendar days of receiving an administratively complete application. As illustrated above, the proposed pre-permitting construction provisions would allow construction to begin at the time the application is determined to be complete, potentially saving the applicant up to 90 days if they choose to begin construction prior to permit issuance.

Title V Significant Modifications

1-Step Process:

Under the new S.L. review timelines for significant modifications, once the application is complete, the DAQ must take action on the application (issue, deny, or publish for public notice and comment) within 270 calendar days. If the permit engineer determines, subsequent to making a completeness determination, that additional information is needed to properly evaluate the source, such information can still be requested, but the review clock will not pause while the DAQ awaits that information.

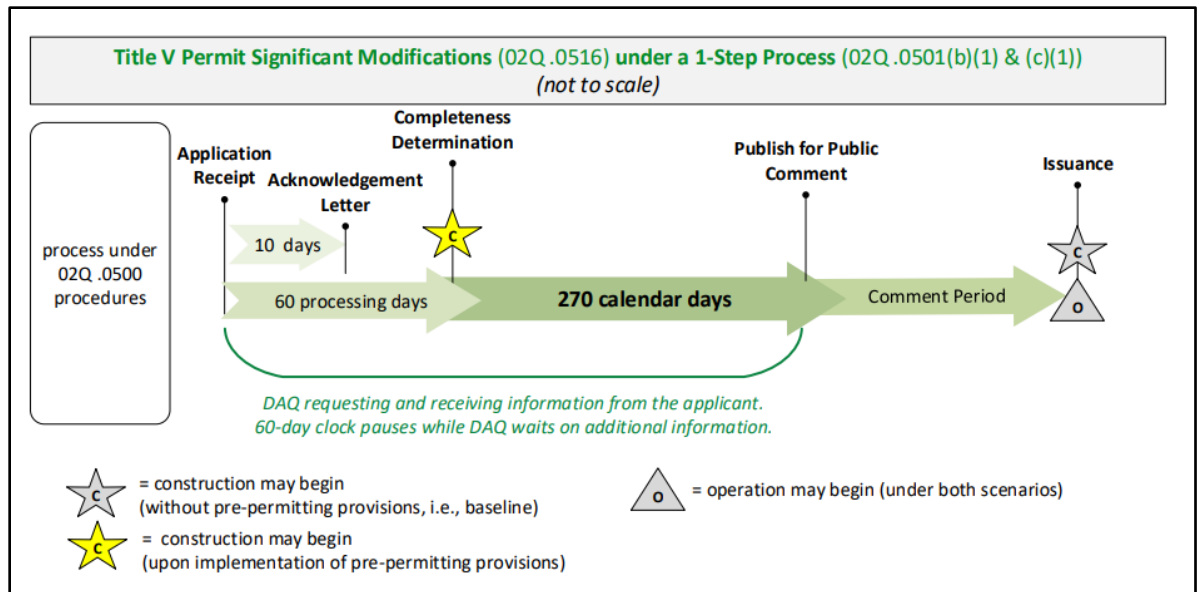


Figure 8: New (Pending) Review Process and Timeline for 1-Step Title V Significant Modifications

Under a scenario where both the Permit Timelines and Definitions rule changes and these pre-permitting construction rule changes are effective, any potential time savings resulting from the pre-permitting construction provisions would be reduced for Title V 1-Step applicants because the timeframe for issuance of the application (after the completeness determination) is reduced from 18 months to 270 days under the Permit Timelines and Definitions rulemaking plus any required comment period. While the agency may still request additional information during that timeframe, the clock does not pause while the agency awaits its receipt.

2-Step Process:

The 2-Step Review process for Title V significant modifications incorporates both the non-Title V (02Q .0300) review procedures and the Title V (02Q .0500) review procedures.

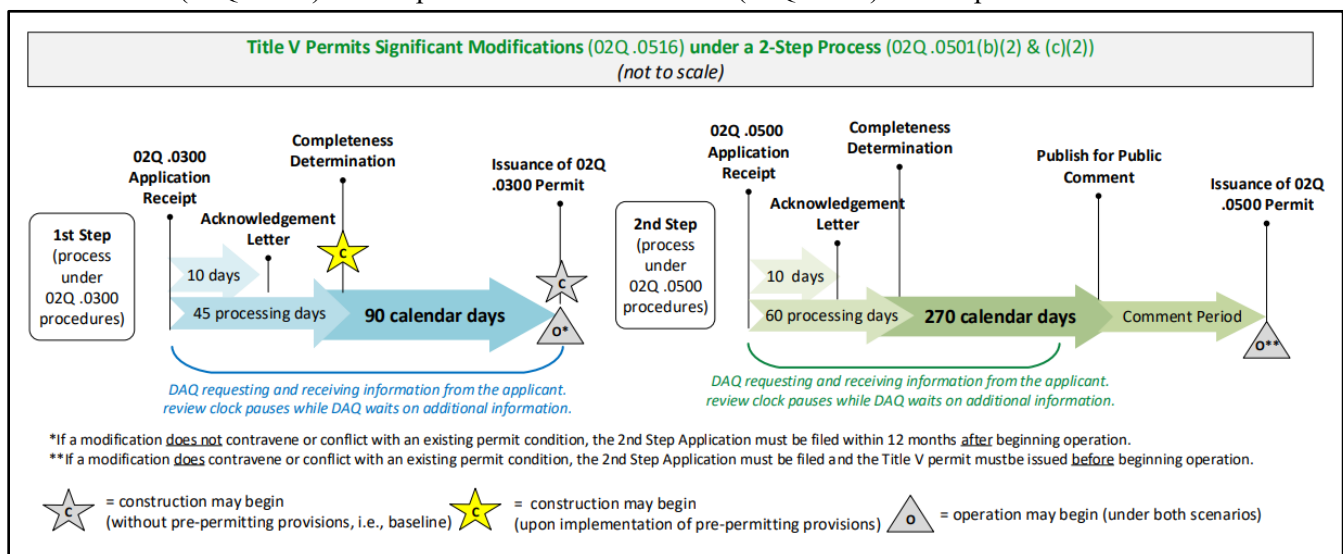


Figure 9: New (Pending) Review Process and Timeline for 2-Step Title V Significant Modifications

As shown in Figure 9 above, the applicant of a 2-Step significant modification could choose to construct upon determination that their 1st Step application (02Q .0300) is deemed administratively complete, instead of waiting until the 1st Step permit is issued, which may be up to 90 calendar days later.

VI. Public Health and Environmental Impacts

The emissions standards and requirements that a facility must meet in order to receive a permit from the DAQ have not changed in this proposal. Additionally, S.L. 2024-1, Section 4.13 requires the review and approval of these air permitting program changes by the EPA for this rulemaking to be fully implemented, which ensures standards for air quality permitting will be maintained. The permit review process must still adhere to the requirements for North Carolina's SIP and all federal and state requirements for facility air pollutant emissions. For these reasons, the quality of DAQ's review will not be diminished due to an applicant opting to construct prior to final permit issuance.

While the statutory changes allow construction prior to receipt of a permit, G.S. 143-215.108A(b1)(5) specifies that a source cannot operate until its permit is issued. The proposed rule changes merely reflect the statute change allowing construction to begin earlier. Therefore, no impacts to public health or the environment are expected to occur from the proposed rule changes.

VII. Rule Alternatives

In accordance with G.S. 150B-21.4(b2)(5), the fiscal note for a proposed rulemaking with a substantial economic impact is required to contain a description of at least two alternatives to the proposed rules. As defined in G.S. 150B-21.4(b1), "substantial economic impact" means an aggregate financial impact on all persons affected of at least one million dollars (\$1,000,000) in a 12-month period. As shown in Section V of this fiscal note, the proposed rules are not expected to have a substantial economic impact. Therefore, no alternatives have been evaluated in this section.

VIII. Cost and Benefit Summary

As described throughout this analysis, these rule amendments are proposed to align the State's air quality rules with the pre-permitting construction provisions of S.L. 2023-134, Section 12.11, as amended by S.L. 2024-1, Section 4.13.

The most likely potential for benefits resulting from this rulemaking is flexibility for an applicant to choose to begin construction upon the application being deemed administratively complete, rather than waiting until the permit is issued, which potentially provides an applicant with the opportunity to begin operating the new or modified source sooner. This alignment of the rules with the statutory change could result in some time savings in overall project completion relative to waiting until permit issuance to construct a source for those that opt to use it. There are no additional steps on the part of the applicant added to the permit process and no change to permit fees results from this rulemaking. However, there are uncertainties associated with this analysis, including whether and when the proposed rules would be approved by EPA into the North Carolina SIP, which is required before the statutory provisions and proposed rules become effective and implemented (and thus, when the impacts discussed in this analysis may be realized by applicants). There is also uncertainty around how many applicants will choose to utilize the proposed pre-permitting construction

provisions, due to potential for third-party citizen suits and the financial risk of constructing a source that has not been thoroughly reviewed by the DAQ. For applicants that choose to utilize the pre-permitting construction provisions, there is also uncertainty around how much time will be saved in the overall project timeline, particularly with respect to other pending rule revisions that impact permit modification review timelines.

No costs or benefits to State governments or the general public were identified as a result of this rulemaking. DAQ also did not identify any costs or benefits to the environment as a result of this rule change.

DAQ did not identify any impacts to local governments. To the extent that any of North Carolina's local government entities engage in construction of a source that would previously have required a permit prior to construction, those entities may experience similar impacts to those described for private sector entities throughout this analysis. However, there is no indication that these changes in pre-permitting provisions would impact the review processes implemented by any of the local air quality agencies in North Carolina.

Appendix A: Excerpt of Session Law 2023-134, Section 12.11

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023**

**SESSION LAW 2023-134
HOUSE BILL 259**

AN ACT TO MAKE BASE BUDGET APPROPRIATIONS FOR CURRENT OPERATIONS OF
STATE AGENCIES, DEPARTMENTS, AND INSTITUTIONS.

The General Assembly of North Carolina enacts:

PART I. TITLE AND INTRODUCTION

TITLE OF ACT

SECTION 1.1. This act shall be known as the "Current Operations Appropriations Act of 2023."

INTRODUCTION

SECTION 1.2. The appropriations made in this act are for maximum amounts necessary to provide the services and accomplish the purposes described in the budget in accordance with the State Budget Act. Savings shall be effected where the total amounts appropriated are not required to perform these services and accomplish these purposes, and the savings shall revert to the appropriate fund at the end of each fiscal year, except as otherwise provided by law.

AIR PERMITTING REVISIONS

AIR PERMITTING REVIEW AND ISSUANCE TIME LINES

SECTION 12.11.(a) G.S. 143-215.108(d)(2) reads as rewritten:

"(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 rules shall provide, at a minimum, that the Department shall issue the permit, deny the permit, or publish the permit for public notice and comment within 90 calendar days of receipt of an administratively complete application for a minor modification, or within 270 calendar days of receipt of an administratively complete application for a major modification. 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.~~ the permit applicant, permittee, or other person aggrieved, as defined in G.S. 150B-2, may commence a contested case under G.S. 150B-23(a4)."

SECTION 12.11.(b) G.S. 143-213(1) is recodified as G.S. 143-213(1a).

SECTION 12.11.(c) G.S. 143-213, as recodified by subsection (b) of this section, is amended by adding a new subdivision to read:

"(1) The term "administratively complete" means that all information required by statute, regulation, or application form has been submitted to the Department for the purpose of processing a permit application."

TITLE V RESEARCH AND DEVELOPMENT EXEMPTION

SECTION 12.11.(d) The Environmental Management Commission shall begin rulemaking to create a Title V permit exemption for non-major research and development activities consistent with the Environmental Protection Agency's position regarding exemption for such activities as set forth in the July 10, 1995, "White Paper for Streamlined Development of Part 70 Permit Applications." The rules shall include, at a minimum, allowance levels and minor permit modification thresholds to promote greater flexibility in research and development activities and to allow facilities subject to Title V permit requirements flexibility to work with the Department of Environmental Quality and notify them of research activities with a minor permit modification to maintain compliance. The Commission shall complete draft rulemaking activities and submit a Title V program amendment request to the Environmental Protection Agency no later than July 1, 2025.

PRE-PERMITTING ACTIVITIES

SECTION 12.11.(e) G.S. 143-215.108A reads as rewritten:

"§ 143-215.108A. Control of sources of air pollution; construction of new facilities; alteration or expansion of existing facilities.

(a) New Facilities. – ~~A-Except as provided in subsection (b1) of this section, a person may not, without obtaining a permit under G.S. 143-215.108, construct or operate an air contaminant source, equipment, or associated air cleaning device at a site or facility where, at the time of the construction, there is no other air contaminant source, equipment, or associated air cleaning device for which a permit is required under G.S. 143-215.108. A person may, however, undertake the following activities prior to obtaining a permit if the person complies with the requirements of this section:~~

- ~~(1) — Clearing and grading.~~
- ~~(2) — Construction of access roads, driveways, and parking lots.~~
- ~~(3) — Construction and installation of underground pipe work, including water, sewer, electric, and telecommunications utilities.~~
- ~~(4) — Construction of ancillary structures, including fences and office buildings, that are not a necessary component of an air contaminant source, equipment, or associated air cleaning device for which a permit is required under G.S. 143-215.108.~~

(b) Permitted Facilities. – A person who holds a permit under G.S. 143-215.108 may apply to the Commission for a modification of the permit to allow the person to alter or expand the physical arrangement or operation of an air contaminant source, equipment, or associated air cleaning device in a manner that alters the emission of air contaminants. The Except as provided

in subsection (b1) of this section, the permittee may not operate the altered, expanded, or additional air contaminant source, equipment, or associated air cleaning device in a manner that alters the emission of any air contaminant without obtaining a permit modification under G.S. 143-215.108. A permittee may, however, alter or expand the physical arrangement or operation of an air contaminant source, equipment, or associated air cleaning device at a facility permitted under G.S. 143-215.108 if the permittee complies with the requirements of this section. At least 15 days prior to commencing alteration or expansion under this subsection, the permittee shall give notice by publication and shall submit to the Commission a notice of the permittee's intent to alter or expand the physical arrangement or operation of an air contaminant source, equipment, or associated air cleaning device. Notice by publication shall be in a newspaper having general circulation in the county or counties where the facility is to be located; shall be at the permittee's own expense; shall include a statement that written comment may be submitted to the Commission, that the Commission will consider any comment that it receives, and the Commission's address for submission of written comment; and shall include all the information required by subdivisions (1) through (6) of this subsection. The permittee shall submit a proof of publication of the notice to the Commission within 15 days of the date of publication. The notice of intent to the Commission shall include all of the following:

...

(b1) A person who (i) has filed an application under this Article to construct or operate an air contaminant source, equipment, or associated air cleaning device at a site or facility or (ii) holds a permit under G.S. 143-215.108 and who has applied to the Commission for a modification of the permit to allow the person to alter or expand the physical arrangement or operation of an air contaminant source, equipment, or associated air cleaning device in a manner that alters the emission of air contaminants may undertake the following activities prior to obtaining a permit if the person complies with the requirements of this section:

- (1) Clearing and grading.
- (2) Construction of access roads, driveways, and parking lots.
- (3) Construction and installation of underground pipe work, including water, sewer, electric, and telecommunications utilities.
- (4) Construction of ancillary structures, including fences and office buildings, that are not a necessary component of an air contaminant source, equipment, or associated air cleaning device for which a permit is required under G.S. 143-215.108.
- (5) Upon determination that an application for a permit or permit modification is administratively complete, the construction (but not operation) of a new air contaminant source, equipment, or associated air cleaning or emissions control devices prior to permit issuance. The exception in this subdivision applies only to an application for the addition or modification of an emissions source that is not subject to (i) permit limits set pursuant to programs for the prevention of significant deterioration and for the attainment of air quality standards in nonattainment areas under G.S. 143-215.107(a)(7), (ii) a residual risk-based hazardous air pollutant standard under 42 U.S.C. § 7412(f), as amended, or (iii) a case-by-case maximum achievable control technology (MACT) permit requirement issued by the Department pursuant to 42 U.S.C. § 7412(j), as amended. The undertaking of pre permitting activities under this subdivision shall not entitle the permit or permit modification applicant to operate any air contaminant source, equipment, or associated air cleaning or emissions control devices prior to permit issuance.

EFFECTIVE DATE

SECTION 43.8. Except as otherwise provided, this act becomes effective July 1, 2023.

In the General Assembly read three times and ratified this the 22nd day of September, 2023.

s/ Phil Berger

President Pro Tempore of the Senate

s/ Tim Moore

Speaker of the House of Representatives

This bill having been presented to the Governor for signature on the 22nd day of September, 2023 and the Governor having failed to approve it within the time prescribed by law, the same is hereby declared to have become a law.

This 3rd day of October, 2023,

s/ Greg Johnson

Enrolling

Clerk

Appendix B: Excerpt of Session Law 2024-1, Section 4.13

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023**

**SESSION LAW 2024-1
SENATE BILL 508**

AN ACT TO MAKE TECHNICAL, CLARIFYING, AND OTHER AMENDATORY MODIFICATIONS TO THE CURRENT OPERATIONS APPROPRIATIONS ACT OF 2023 AND TO OTHER LEGISLATION.

The General Assembly of North Carolina enacts:

PRE-PERMITTING ACTIVITIES AMENDMENT

SECTION 4.13.(a) Section 12.11 of S.L. 2023-134 is amended by adding two new subsections to read:

"SECTION 12.11.(f) No later than July 1, 2025, the Department of Environmental Quality shall prepare and submit to the United States Environmental Protection Agency for approval by that agency a proposed North Carolina State Implementation Plan amendment based on the changes to the air permitting program provided in this section.

"SECTION 12.11.(g) This section becomes effective on the first day of a month that is 60 days after the Secretary of the Department of Environmental Quality certifies to the Revisor of Statutes that the United States Environmental Protection Agency has approved an amendment to the North Carolina State Implementation Plan submitted as required by subsection (f) of this section. The Secretary shall provide this notice along with the effective date of this act on its website and by written or electronic notice to current holders of air permits issued by the Department. This section applies to applications for new air permits and for modifications of existing permits received on or after the effective date specified in this subsection."

SECTION 4.13.(b) This section is effective retroactive to July 1, 2023.

PART XII. EFFECTIVE DATE

SECTION 12.1. Except as otherwise provided, this act is effective July 1, 2023. In the General Assembly read three times and ratified this the 6th day of May, 2024.

s/ Carl Ford
Presiding Officer of the Senate

s/ Mike Clappitt
Presiding Officer of the House of Representatives

s/ Roy Cooper
Governor

Approved 2:32 p.m. this 15th day of May, 2024

Appendix C: Statute Provisions Effective Until Contingency is Met

§ 143-215.108A. (Effective until contingency met – see note) Control of sources of air pollution; construction of new facilities; alteration or expansion of existing facilities.

(a) New Facilities. – A person may not, without obtaining a permit under G.S. 143-215.108, construct or operate an air contaminant source, equipment, or associated air cleaning device at a site or facility where, at the time of the construction, there is no other air contaminant source, equipment, or associated air cleaning device for which a permit is required under G.S. 143-215.108. A person may, however, undertake the following activities prior to obtaining a permit if the person complies with the requirements of this section:

- (1) Clearing and grading.
- (2) Construction of access roads, driveways, and parking lots.
- (3) Construction and installation of underground pipe work, including water, sewer, electric, and telecommunications utilities.
- (4) Construction of ancillary structures, including fences and office buildings, that are not a necessary component of an air contaminant source, equipment, or associated air cleaning device for which a permit is required under G.S. 143-215.108.

(b) Permitted Facilities. – A person who holds a permit under G.S. 143-215.108 may apply to the Commission for a modification of the permit to allow the person to alter or expand the physical arrangement or operation of an air contaminant source, equipment, or associated air cleaning device in a manner that alters the emission of air contaminants. The permittee may not operate the altered, expanded, or additional air contaminant source, equipment, or associated air cleaning device in a manner that alters the emission of any air contaminant without obtaining a permit modification under G.S. 143-215.108. A permittee may, however, alter or expand the physical arrangement or operation of an air contaminant source, equipment, or associated air cleaning device at a facility permitted under G.S. 143-215.108 if the permittee complies with the requirements of this section. At least 15 days prior to commencing alteration or expansion under this subsection, the permittee shall give notice by publication and shall submit to the Commission a notice of the permittee's intent to alter or expand the physical arrangement or operation of an air contaminant source, equipment, or associated air cleaning device. Notice by publication shall be in a newspaper having general circulation in the county or counties where the facility is to be located; shall be at the permittee's own expense; shall include a statement that written comment may be submitted to the Commission, that the Commission will consider any comment that it receives, and the Commission's address for submission of written comment; and shall include all the information required by subdivisions (1) through (6) of this subsection. The permittee shall submit a proof of publication of the notice to the Commission within 15 days of the date of publication. The notice of intent to the Commission shall include all of the following:

- (1) The name and location of the facility and the name and address of the permittee.
- (2) The permit number of each permit issued under G.S. 143-215.108 for the facility.
- (3) The nature of the air contaminant sources and equipment associated with the

- proposed modification of the permit.
- (4) An estimate of total regulated air contaminant emissions associated with the proposed modification of the permit.
 - (5) The air cleaning devices that are to be employed to address each of the air contaminant sources associated with the modification of the permit.
 - (6) The schedule for alteration or expansion of the facility associated with the proposed modification of the permit.
 - (7) An acknowledgment by the permittee that the air contaminant sources, equipment, and associated air cleaning devices may not be operated in a manner that alters the emission of any air contaminant until the permittee has obtained a modified permit under G.S. 143-215.108.
 - (8) An acknowledgment by the permittee that any alteration or expansion of the physical arrangement or operation of an air contaminant source, equipment, or associated air cleaning device prior to the modification of a permit under G.S. 143-215.108 is undertaken at the permittee's own risk and with the knowledge that the permittee may be denied a modification of the permit under G.S. 143-215.108 without regard to the permittee's financial investment or alteration or expansion of the facility.
 - (9) A certification under oath that all of the information contained in the notice of intent is complete and accurate to the best of the permittee's knowledge and ability, executed by the permittee or, if the permittee is a corporation, by the appropriate officers of the corporation.
- (c) Review and Determination by the Commission. –
- (1) Upon receipt of a complete notice of intent required under subsection (b) of this section, the Commission shall determine whether:
 - a. The permittee is and has been in substantial compliance with other permits issued the permittee.
 - b. The facility will be altered or expanded so that it will be used for either the same or a similar use as the use already permitted.
 - c. The alteration or expansion will not result in a disproportionate increase in the size of the facility already permitted.
 - d. The alteration or expansion will result in the same or substantially similar emissions as that of the facility already permitted.
 - e. The alteration or expansion will not have a significant effect on air quality.
 - f. The Commission is likely to issue the permit modification.
 - (2) Within 15 days after the Commission receives a complete notice of intent required under subsection (b) of this section, the Commission shall notify the permittee of its determination as to whether each of the conditions set out in subdivision (1) of this subsection has or has not been met. If the Commission finds that all of the conditions have been met, the notice shall state that the alteration or expansion of the physical arrangement or operation of an air contaminant source, equipment, or associated air cleaning device may begin. If the Commission finds that one or more of the conditions has not been met,

the notice shall state that the alteration or expansion of the physical arrangement or operation of an air contaminant source, equipment, or associated air cleaning device may not begin.

(d) Order to Cease Construction, Alteration, or Expansion. – If at any time during the construction, alteration, or expansion of the physical arrangement or operation of an air contaminant source, equipment, or associated air cleaning device, the Commission determines that the permittee will not qualify for a permit or permit modification under G.S. 143-215.108, the Commission may order that the construction, alteration, or expansion cease until the Commission makes a decision on the application for a permit or permit modification. If the Commission orders that construction, alteration, or expansion cease, then construction, alteration, or expansion may resume only if the Commission either makes a subsequent determination that the circumstances that resulted in the order to cease construction, alteration, or expansion have been adequately addressed or if the Commission issues a permit or permit modification under G.S. 143-215.108 that authorizes construction, alteration, or expansion to resume.

(e) Evaluation of Permit Applications; Administrative and Judicial Review of Permit Decisions. – The Commission shall evaluate an application for a permit or permit modification under G.S. 143-215.108 and make its decision on the same basis as if the construction, alteration, or expansion allowed under this section had not occurred. The Commission shall consider any written comment that it receives in response to a notice by publication given pursuant to subsection (b) of this section. No evidence regarding any contract entered into, financial investment made, construction, alteration, or expansion undertaken, or economic loss incurred by any person or permittee who proceeds under this section without first obtaining a permit under G.S. 143-215.108 is admissible in any contested case or judicial proceeding involving any permit required under G.S. 143-215.108. No evidence as to any determination or order by the Commission pursuant to subsection (c) or (d) of this section shall be admissible in any contested case or judicial proceeding related to any permit required under G.S. 143-215.108.

(f) State, Commission, and Employees Not Liable. – Every person, permittee, and owner of a facility who proceeds under this section shall hold the State, the Commission, and the officials, agents, and employees of the State and the Commission harmless and not liable for any loss resulting from any contract entered into, financial investment made, construction, alteration, or expansion undertaken, or economic loss incurred by any person, permittee, or owner of any facility pursuant to this section.

(g) Local Zoning Ordinances Not Affected. – This section 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.

(h) Compliance With Other State Laws Not Affected. – This section does not relieve any person of the obligation to comply with any other requirement of State law, including any requirement to obtain any other permit or approval prior to undertaking any activity associated with preparation of the site or the alteration or expansion of the physical arrangement or operation of an air contaminant source, equipment, or associated air cleaning device at a facility for which a permit is required under G.S. 143-215.108.

(i) Federal Air Quality Programs Not Affected. – This section does not relieve any person from any preconstruction or construction prohibition imposed by any federal requirement, federal

delegation, federally approved requirement in any State Implementation Plan, or federally approved requirement under the Title V permitting program, as determined solely by the Commission or by a local air pollution control program certified by the Commission as provided in G.S. 143-215.112. This section does not apply to any construction, alteration, or expansion that is subject to requirements for prevention of significant deterioration or federal nonattainment new source review, as determined solely by the Commission or by a local air pollution control program certified by the Commission as provided in G.S. 143-215.112. This section does not apply if it is inconsistent with any federal requirement, federal delegation, federally approved requirement in any State Implementation Plan, or federally approved requirement under the Title V permitting program, as determined solely by the Commission or by a local air pollution control program certified by the Commission as provided in G.S. 143-215.112.

(j) Fee. – A permittee who submits a notice of intent under subsection (b) of this section shall pay a fee of two hundred dollars (\$200.00) for each notice of intent submitted to cover a portion of the administrative costs of implementing this section. (2003-428, s. 3; 2023-134, s. 12.11(e)-(g).)

Appendix D: Statute Provisions Effective Once Contingency is Met

§ 143-215.108A. (Effective once contingency met – see note) Control of sources of air pollution; construction of new facilities; alteration or expansion of existing facilities.

(a) New Facilities. – Except as provided in subsection (b1) of this section, a person may not, without obtaining a permit under G.S. 143-215.108, construct or operate an air contaminant source, equipment, or associated air cleaning device at a site or facility where, at the time of the construction, there is no other air contaminant source, equipment, or associated air cleaning device for which a permit is required under G.S. 143-215.108.

(b) Permitted Facilities. – A person who holds a permit under G.S. 143-215.108 may apply to the Commission for a modification of the permit to allow the person to alter or expand the physical arrangement or operation of an air contaminant source, equipment, or associated air cleaning device in a manner that alters the emission of air contaminants. Except as provided in subsection (b1) of this section, the permittee may not operate the altered, expanded, or additional air contaminant source, equipment, or associated air cleaning device in a manner that alters the emission of any air contaminant without obtaining a permit modification under G.S. 143-215.108. A permittee may, however, alter or expand the physical arrangement or operation of an air contaminant source, equipment, or associated air cleaning device at a facility permitted under G.S. 143-215.108 if the permittee complies with the requirements of this section. At least 15 days prior to commencing alteration or expansion under this subsection, the permittee shall give notice by publication and shall submit to the Commission a notice of the permittee's intent to alter or expand the physical arrangement or operation of an air contaminant source, equipment, or associated air cleaning device. Notice by publication shall be in a newspaper having general circulation in the county or counties where the facility is to be located; shall be at the permittee's own expense; shall include a statement that written comment may be submitted to the Commission, that the Commission will consider any comment that it receives, and the Commission's address for submission of written comment; and shall include all the information required by subdivisions (1) through (6) of this subsection. The permittee shall submit a proof of publication of the notice to the Commission within 15 days of the date of publication. The notice of intent to the Commission shall include all of the following:

- (1) The name and location of the facility and the name and address of the permittee.
- (2) The permit number of each permit issued under G.S. 143-215.108 for the facility.
- (3) The nature of the air contaminant sources and equipment associated with the proposed modification of the permit.
- (4) An estimate of total regulated air contaminant emissions associated with the proposed modification of the permit.
- (5) The air cleaning devices that are to be employed to address each of the air contaminant sources associated with the modification of the permit.

- (6) The schedule for alteration or expansion of the facility associated with the proposed modification of the permit.
- (7) An acknowledgment by the permittee that the air contaminant sources, equipment, and associated air cleaning devices may not be operated in a manner that alters the emission of any air contaminant until the permittee has obtained a modified permit under G.S. 143-215.108.
- (8) An acknowledgment by the permittee that any alteration or expansion of the physical arrangement or operation of an air contaminant source, equipment, or associated air cleaning device prior to the modification of a permit under G.S. 143-215.108 is undertaken at the permittee's own risk and with the knowledge that the permittee may be denied a modification of the permit under G.S. 143-215.108 without regard to the permittee's financial investment or alteration or expansion of the facility.
- (9) A certification under oath that all of the information contained in the notice of intent is complete and accurate to the best of the permittee's knowledge and ability, executed by the permittee or, if the permittee is a corporation, by the appropriate officers of the corporation.

(b1) A person who (i) has filed an application under this Article to construct or operate an air contaminant source, equipment, or associated air cleaning device at a site or facility or (ii) holds a permit under G.S. 143-215.108 and who has applied to the Commission for a modification of the permit to allow the person to alter or expand the physical arrangement or operation of an air contaminant source, equipment, or associated air cleaning device in a manner that alters the emission of air contaminants may undertake the following activities prior to obtaining a permit if the person complies with the requirements of this section:

- (1) Clearing and grading.
- (2) Construction of access roads, driveways, and parking lots.
- (3) Construction and installation of underground pipe work, including water, sewer, electric, and telecommunications utilities.
- (4) Construction of ancillary structures, including fences and office buildings, that are not a necessary component of an air contaminant source, equipment, or associated air cleaning device for which a permit is required under G.S. 143-215.108.
- (5) Upon determination that an application for a permit or permit modification is administratively complete, the construction (but not operation) of a new air contaminant source, equipment, or associated air cleaning or emissions control devices prior to permit issuance. The exception in this subdivision applies only to an application for the addition or modification of an emissions source that is not subject to (i) permit limits set pursuant to programs for the prevention of significant deterioration and for the attainment of air quality standards in nonattainment areas under G.S. 143-215.107(a)(7), (ii) a residual

risk-based hazardous air pollutant standard under 42 U.S.C. § 7412(f), as amended, or (iii) a case-by-case maximum achievable control technology (MACT) permit requirement issued by the Department pursuant to 42 U.S.C. § 7412(j), as amended. The undertaking of pre permitting activities under this subdivision shall not entitle the permit or permit modification applicant to operate any air contaminant source, equipment, or associated air cleaning or emissions control devices prior to permit issuance.

(c) Review and Determination by the Commission. –

(1) Upon receipt of a complete notice of intent required under subsection (b) of this section, the Commission shall determine whether:

- a. The permittee is and has been in substantial compliance with other permits issued the permittee.
- b. The facility will be altered or expanded so that it will be used for either the same or a similar use as the use already permitted.
- c. The alteration or expansion will not result in a disproportionate increase in the size of the facility already permitted.
- d. The alteration or expansion will result in the same or substantially similar emissions as that of the facility already permitted.
- e. The alteration or expansion will not have a significant effect on air quality.
- f. The Commission is likely to issue the permit modification.

(2) Within 15 days after the Commission receives a complete notice of intent required under subsection (b) of this section, the Commission shall notify the permittee of its determination as to whether each of the conditions set out in subdivision (1) of this subsection has or has not been met. If the Commission finds that all of the conditions have been met, the notice shall state that the alteration or expansion of the physical arrangement or operation of an air contaminant source, equipment, or associated air cleaning device may begin. If the Commission finds that one or more of the conditions has not been met, the notice shall state that the alteration or expansion of the physical arrangement or operation of an air contaminant source, equipment, or associated air cleaning device may not begin.

(d) Order to Cease Construction, Alteration, or Expansion. – If at any time during the construction, alteration, or expansion of the physical arrangement or operation of an air contaminant source, equipment, or associated air cleaning device, the Commission determines that the permittee will not qualify for a permit or permit modification under G.S. 143-215.108, the Commission may order that the construction, alteration, or expansion cease until the Commission makes a decision on the application for a permit or permit modification. If the Commission orders that construction, alteration, or expansion cease, then construction,

alteration, or expansion may resume only if the Commission either makes a subsequent determination that the circumstances that resulted in the order to cease construction, alteration, or expansion have been adequately addressed or if the Commission issues a permit or permit modification under G.S. 143-215.108 that authorizes construction, alteration, or expansion to resume.

(e) Evaluation of Permit Applications; Administrative and Judicial Review of Permit Decisions. – The Commission shall evaluate an application for a permit or permit modification under G.S. 143-215.108 and make its decision on the same basis as if the construction, alteration, or expansion allowed under this section had not occurred. The Commission shall consider any written comment that it receives in response to a notice by publication given pursuant to subsection (b) of this section. No evidence regarding any contract entered into, financial investment made, construction, alteration, or expansion undertaken, or economic loss incurred by any person or permittee who proceeds under this section without first obtaining a permit under G.S. 143-215.108 is admissible in any contested case or judicial proceeding involving any permit required under G.S. 143-215.108. No evidence as to any determination or order by the Commission pursuant to subsection (c) or (d) of this section shall be admissible in any contested case or judicial proceeding related to any permit required under G.S. 143-215.108.

(f) State, Commission, and Employees Not Liable. – Every person, permittee, and owner of a facility who proceeds under this section shall hold the State, the Commission, and the officials, agents, and employees of the State and the Commission harmless and not liable for any loss resulting from any contract entered into, financial investment made, construction, alteration, or expansion undertaken, or economic loss incurred by any person, permittee, or owner of any facility pursuant to this section.

(g) Local Zoning Ordinances Not Affected. – This section 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.

(h) Compliance With Other State Laws Not Affected. – This section does not relieve any person of the obligation to comply with any other requirement of State law, including any requirement to obtain any other permit or approval prior to undertaking any activity associated with preparation of the site or the alteration or expansion of the physical arrangement or operation of an air contaminant source, equipment, or associated air cleaning device at a facility for which a permit is required under G.S. 143-215.108.

(i) Federal Air Quality Programs Not Affected. – This section does not relieve any person from any preconstruction or construction prohibition imposed by any federal requirement, federal delegation, federally approved requirement in any State Implementation Plan, or federally approved requirement under the Title V permitting program, as determined solely by the Commission or by a local air pollution control program certified by the Commission as provided in G.S. 143-215.112. This section does not apply to any construction, alteration, or expansion that is subject to requirements for prevention of significant deterioration or federal

nonattainment new source review, as determined solely by the Commission or by a local air pollution control program certified by the Commission as provided in G.S. 143-215.112. This section does not apply if it is inconsistent with any federal requirement, federal delegation, federally approved requirement in any State Implementation Plan, or federally approved requirement under the Title V permitting program, as determined solely by the Commission or by a local air pollution control program certified by the Commission as provided in G.S. 143-215.112.

(j) Fee. – A permittee who submits a notice of intent under subsection (b) of this section shall pay a fee of two hundred dollars (\$200.00) for each notice of intent submitted to cover a portion of the administrative costs of implementing this section. (2003-428, s. 3; 2023-134, s. 12.11(e)-(g); 2024-1, s. 4.13(a).)

1 15A NCAC 02Q .0114 is proposed for adoption as follows:

2
3 **15A NCAC 02Q .0114 ACTIVITIES ALLOWED PRIOR TO PERMIT ISSUANCE**

4 Upon determination that an application for a permit or permit modification contains all information required by statute,
5 regulation, and application form, consistent with G.S. 143-213, the construction, but not operation, of a new air
6 contaminant source, equipment, or associated air cleaning or emission control devices may commence prior to permit
7 issuance if the emissions source is not subject to:

8 (a) permit limits set pursuant to programs for prevention of significant deterioration pursuant 15A
9 NCAC 02D .0530 and for the attainment of air quality standards in nonattainment areas pursuant to
10 15A NCAC 02D .0531;

11 (b) a residual risk-based hazardous air pollutant standard pursuant to 15A NCAC 02D .1111; or

12 (c) a case-by-case maximum achievable control technology (MACT) permit requirement issued by the
13 Division pursuant to 15A NCAC 02D .1109 and Rule .0526 of this Subchapter.

14 The undertaking of pre-permitting activities under this subitem shall not entitle the applicant to operate any air
15 contaminant source, equipment, or associated air cleaning or emissions control devices prior to permit issuance.

16
17
18 History Note: Authority G.S. 143-212; 143-213; 143-215.3(a)(1); 143-215.108A;

19 Adoption Eff. (Pending On the first day of a month that is 60 days after the Secretary of the
20 Department of Environmental Quality certifies to the Revisor of Statutes that the U.S. Environmental
21 Protection Agency has approved the amended rule into the North Carolina State Implementation
22 Plan pursuant to S.L. 2023-134, Section 12.11, as amended by S.L. 2024-1, Section 4.13.)
23

1 15A NCAC 02Q .0501 is proposed for amendment as follows:

2
3 **SECTION .0500 - TITLE V PROCEDURES**
4

5 **15A NCAC 02Q .0501 PURPOSE OF SECTION AND REQUIREMENT FOR A PERMIT**

6 (a) The purpose of this Section is to establish an air quality permitting program as required pursuant to Title V of the
7 Clean Air Act and 40 CFR Part 70.

8 (b) With the exception in Paragraph (c) of this ~~Rule~~, Rule and the provisions of 15A NCAC 02Q .0114, the owner or
9 operator of an existing facility, new facility, or modification of an existing facility (except for minor modifications
10 pursuant to 15A NCAC 02Q .0515), including significant modifications that would not contravene or conflict with a
11 condition in the existing permit, shall not begin construction without first obtaining:

- 12 (1) a construction and operation permit following the procedures set forth in this Section (except for
13 15A NCAC 02Q .0504), or
14 (2) a construction and operation permit following the procedures set forth in 15A NCAC 02Q .0504
15 and filing a complete application within 12 months after commencing operation to modify the
16 construction and operation permit to meet the requirements of this Section.

17 (c) With the exception provided in the provisions of 15A NCAC 02Q .0114, ~~if~~ If the owner or operator proposes to
18 make a significant modification pursuant to 15A NCAC 02Q .0516 that would contravene or conflict with a condition
19 in the existing permit, the owner or operator shall not begin construction or make the modification until the owner or
20 operator has obtained:

- 21 (1) a construction and operation permit following the procedures set forth in this Section (except for
22 15A NCAC 02Q .0504); or
23 (2) a construction and operation permit following the procedures set forth in 15A NCAC 02Q .0504
24 and, before beginning operation, files an application and obtains a permit modifying the construction
25 and operation permit to meet the requirements of this Section (except for 15A NCAC 02Q .0504).

26 (d) All facilities subject to this Section shall have a permit to operate that assures compliance with 40 CFR Part 70
27 and all applicable federal and State requirements.

28 (e) Except as allowed pursuant to 15A NCAC 02Q .0515(f) (minor modifications), no facility subject to the
29 requirements of this Section may operate after the time that it is required to submit a timely and complete application
30 pursuant to this Section except in compliance with a permit issued pursuant to this Section. This Paragraph does not
31 apply to ~~to~~ permit renewals pursuant to 15A NCAC 02Q .0513.

32 (f) If the conditions of 15A NCAC 02Q .0512(b) (application shield) are met, the facility's failure to have a permit
33 pursuant to this Section shall not be a violation of operating without a permit.

34 (g) If the owner or operator of a facility subject to the requirements of this Section submits an application for a revision
35 to his permit before receiving the initial permit pursuant to this Section, the application for the revision shall be
36 processed pursuant to 15A NCAC 02Q .0300.

1 (h) The owner or operator of a facility or source subject to the requirements of this Section may also be subject to the
2 toxic air pollutant procedures set forth in 15A NCAC 2Q .0700.

3 (i) The owner or operator of an affected unit subject to the acid rain program requirements of Title IV is also subject
4 to the procedures pursuant to 15A NCAC 02Q .0400.

5 (j) The owner or operator of a facility subject to the requirements of this Section shall pay permit fees in accordance
6 with the requirements of 15A NCAC 02Q .0200.

7
8 *History Note:* Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108; 143-215.108A;
9 *Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule*
10 *becomes effective, whichever is sooner;*
11 *Eff. July 1, 1994;*
12 *Amended Eff. July 1, 1998; July 1, 1996;*
13 *Readopted Eff. April 1, ~~2018~~, 2018;*
14 *Amended Eff. (Pending On the first day of a month that is 60 days after the Secretary of the*
15 *Department of Environmental Quality certifies to the Revisor of Statutes that the U.S. Environmental*
16 *Protection Agency has approved the amended rule into the North Carolina State Implementation*
17 *Plan pursuant to S.L. 2023-134, Section 12.11, as amended by S.L. 2024-1, Section 4.13.)*
18
19

1 15A NCAC 02Q .0507 is proposed for amendment as follows:

2
3 **15A NCAC 02Q .0507 APPLICATION**

4 (a) Except for:

- 5 (1) minor permit modifications covered pursuant to 15A NCAC 02Q .0515;
- 6 (2) significant modifications covered pursuant to 15A NCAC 02Q .0516(c); or
- 7 (3) renewals submitted pursuant to 15A NCAC 02Q .0513;

8 the owner or operator of a new or existing source shall have 12 months after the facility or source becomes subject to
9 the Title V operating permit program pursuant to 15A NCAC 02Q .0500 to file a complete application for a permit or
10 permit revision. However, except as provided in 15A NCAC 02Q .0114, the owner or operator of a source shall not
11 begin construction or operation of a source until he or she has obtained a construction and operation permit pursuant
12 to 15A NCAC 02Q .0501(b) or (c) and 15A NCAC 02Q .0504.

13 (b) An application shall include the information described in 40 CFR 70.3(d) and 70.5(c), including a list of
14 insignificant activities because of size or production rate but not including insignificant activities because of category.
15 An application shall be certified by a responsible official for truth, accuracy, and completeness. In an application
16 submitted pursuant to this Rule, the applicant may attach copies of applications submitted pursuant to 15A NCAC
17 02Q .0400 or 15A NCAC 02D .0530 or .0531 if the information in those applications contains information required
18 in this Section and is current, accurate, and complete.

19 (c) Application for a permit, permit revision, or permit renewal shall be made in accordance with 15A NCAC 02Q
20 .0104 on forms of the Division and shall include plans and specifications with complete data and information as
21 required by this Rule. If the information provided on these forms does not describe the source or its air pollution
22 abatement equipment to the extent necessary to evaluate the application, the Director shall request that the applicant
23 provide other information necessary to evaluate the source and its air pollution abatement equipment.

24 (d) Along with filing a complete application, the applicant shall also file the following:

- 25 (1) for a new facility or an expansion of existing facility, a consistency determination in accordance
26 with G.S. 143-215.108(f) that:
 - 27 (A) bears the date of receipt entered by the clerk of the local government; or
 - 28 (B) consists of a letter from the local government indicating that zoning or subdivision
29 ordinances are met by the facility;
- 30 (2) for a new facility or an expansion of an existing facility in an area without zoning, an affidavit and
31 proof of publication of a legal notice as required pursuant to 15A NCAC 02Q .0113; and
- 32 (3) if required by the Director, information showing that:
 - 33 (A) the applicant is financially qualified to carry out the permitted activities; or
 - 34 (B) the applicant has substantially complied with the air quality and emissions standards
35 applicable to any activity in which the applicant has previously been engaged and has been
36 in substantial compliance with federal and State environmental laws and rules.

- (e) An applicant who fails to submit relevant facts or submits incorrect information in a permit application shall, upon becoming aware of the failure or incorrect submittal, submit supplementary facts or corrected information to resolve the deficiency. In addition, an applicant shall provide additional information to address requirements to which the source becomes subject after the date the applicant filed a complete application but prior to release of a draft permit.
- (f) The submittal of a complete permit application shall not affect the requirement that a facility have a permit pursuant to 15A NCAC 02D .0530, .0531, or .0532 or pursuant to 15A NCAC 02Q .0400.
- (g) The Director shall give priority to permit applications containing early reduction demonstrations pursuant to Section 112(i)(5) of the federal Clean Air Act. The Director shall take final action on these permit applications after receipt of the complete permit application.
- (h) Except as specified in 15A NCAC 02Q .0203(i), a non-refundable permit application processing fee, defined in 15A NCAC 02Q .0200, shall accompany the application. The permit application shall be deemed incomplete until the permit application processing fee is received.
- (i) The applicant shall retain during the permit term one complete copy of the application package and the information submitted in support of the application package.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108; 143-215.108A;
Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. July 1, 1994;
Amended Eff. July 1, 1997; July 1, 1996; February 1, 1995;
Temporary Amendment Eff. December 1, 1999;
Amended Eff. September 1, 2015; April 1, 2004; July 1, 2000;
Readopted Eff. April 1, 2018;
Amended Eff. September 1, 2023; September 1, ~~2022~~ 2022;
Amended Eff. (Pending On the first day of a month that is 60 days after the Secretary of the Department of Environmental Quality certifies to the Revisor of Statutes that the U.S. Environmental Protection Agency has approved the amended rule into the North Carolina State Implementation Plan pursuant to S.L. 2023-134, Section 12.11, as amended by S.L. 2024-1, Section 4.13.)*