

Article II. DEFINITIONS

Sec. 1-25 Definitions.

The definitions of any word or phrase used in this chapter shall be the same as given in article 21, chapter 143, section 213 of the General Statutes of North Carolina, as amended, except as hereinafter provided and unless the context otherwise requires. The following words and phrases, which are not defined in said article, shall be construed to have the following meanings:

Act means The North Carolina Water and Air Resources Act" (G.S. ## 143-211--143-215.10).

Advisory council shall mean the Western North Carolina Regional Air Pollution Control Advisory Council.

Agency shall mean the Western North Carolina Regional Air Pollution Control Agency.

Air contaminant means any particulate matter or any gas or vapor of odorous substances or any combination thereof.

Air pollution means the presence in the outdoor atmosphere of one or more air contaminants in such quantities characteristics or duration as is or tends to be injurious to human health or welfare, or animal or plant life or health, or property, or would interfere with or endanger life or property.

Ambient air means that portion of the atmosphere outside of buildings and other enclosures, stacks or ducts, which surrounds human, animal or plant life or property.

Board shall mean the Western North Carolina Regional Air Pollution Control Board.

Carbon monoxide CO means a colorless, odorless gas which is normally the product of the incomplete combustion of carbon.

CFR means the Code of Federal Regulations, which is a codification of rules and regulations issued by the administrative agencies of the United States government.

Combustible materials means any substance which, when ignited, will burn in air.

Department means the Western North Carolina Regional Air Pollution Control Agency.

Director means the director of the Western North Carolina Regional Air Pollution Control Agency.

Dustfall means particulate matter which settles out of the air and is expressed in units of grams per square meter per thirty-day period.

Fuel-burning equipment means equipment whose primary purpose is the' production of thermal energy or power from the combustion of any fuel. Such equipment is generally that used for, but not limited to, heating water, generating or circulation steam, heating air as in warm air furnaces, furnishing process heat entirely through transfer by fluids or transmissions through process vessel walls.

Fugitive dust means solid airborne particulate matter or dust emitted from any source other than a flue, stack, or open burning.

Garbage means any animal or vegetable waste resulting from the handling, preparation, cooking and serving of food.

Hydrocarbons means organic compounds whose molecules consist exclusively of atoms of carbon and hydrogen.

Incinerator means a device designed and engineered to burn solid, liquid or gaseous waste material.

Jurisdiction means and shall include the unincorporated area of Buncombe and Haywood Counties and the incorporated areas within Buncombe and Haywood Counties. To this end, the rules and regulations established herein shall apply throughout Buncombe and Haywood Counties.

New source means any plant, facility, equipment or air cleaning device placed under contract for construction or the construction or modification of which is commenced after the effective date of a regulation or standard which applies to that source.

Nitro dioxide NO₂ means a reddish-orange-brown gas with a very pungent, stifling odor, usually formed by the union of oxygen with nitric oxide.

Opacity means that property of a substance tending to obscure vision and is measured in terms of percent obscuration.

Open burning means any fire wherein the products of combustion are emitted directly into the outdoor atmosphere and are not directed thereto through a stack or chimney, approved incinerator or other similar device.

Particulate matter means any material, except uncombined water, that exists in a finely divided form as a liquid or a solid at standard conditions per reference method as related to ambient air quality standard or source testing.

Photochemical oxidants means secondary pollutants formed by sunlight- induced oxidation processes. The most common oxidants found in the atmosphere are ozone (O₃), peroxyacetyl nitrate (PAN), and nitrogen dioxide (NO₂).

Refuse means any garbage, rubbish and trade waste.

Rubbish means solid or liquid wastes from residences and dwellings, commercial establishments and institutions.

Rural area means an area which is primarily devoted to, but not necessarily limited to, the following uses: agriculture, recreation, wildlife management, state parks, national parks or any area of natural cover.

Salvage operation means any business, trade or industry engaged in whole or in part in salvaging or reclaiming any product or material, including, but not limited to, materials, chemicals, motor vehicles, shipping containers or drums.

Smoke means small gas borne particles resulting from incomplete combustion, consisting predominantly of carbon, ash and other burned or unburned residue of combustible materials that form a visible plume.

Smoke density measuring device means:

- (1) Ringelmann Chart, which is the chart published and described in the U.S. Bureau of Mines, Information Circular 8333, and on which is illustrated graduated shades of gray to black for use in estimating the light-obscuring capacity of smoke;
- (2) The pocket size Ringelmann Chart and other adaptations commonly used by trained smoke inspectors; and
- (3) Other equivalent standards as approved by the Board.
- (4) Method 9, as stated in 40 CFR 60 Appendix. A as of March 13, 1985, which must be used in determining the opacity of a plume.

Sulfur oxides include sulfur dioxide, sulfur trioxide, their acids and the salts of their acids. For purposes of these ambient air quality standards, measurements of sulfur dioxide, by the method specified herein, shall be taken to indicate the concentration of sulfur oxides.

Suspended particulate means any material, except water in uncombined form, that is or has been airborne, and is quantitatively expressed in concentrations i.e., micrograms per cubic meter.

Trade wastes means all solid, liquid or gaseous waste materials or rubbish resulting from combustion, salvage operations, building operations, or the perpetration of any business, trade or industry including, but not limited to, plastic products, paper, wood, glass, metal, paint, grease, oil and other petroleum products, chemicals and ashes.

"ug" means micrograms.

THIS IS THE FEDERALLY APPROVED REGULATION AS OF October 1, 2017

	Date Submitted To EPA	Date Approved by EPA	Federal Register
Original Reg	JUN 14, 1990	MAY 2, 1991	56 FR 20140

Sec. 1-26. Enforcement of chapter.

The Western North Carolina Air Pollution Control Agency is charged with the duty of investigating, preventing and abating causes of air pollution and enforcing the provisions of the standards and regulations contained in this chapter. Responsibility for the enforcement of these standards and regulations shall rest with the Air Quality Control Director.

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Sec. 1-27. General powers and duties of director.

- (a) The director shall have the following powers and duties:
- (1) Supervise the implementation of the standards and regulations contained in this chapter.
 - (2) Make recommendations to the Board of any and all persons violating any provision of this chapter and institute necessary criminal and/or civil legal proceedings in the name of the Board: prosecute violators of this chapter; compel the prevention and abatement of air pollution or nuisances arising from violations of this chapter; and assure compliance with applicable standards.
 - (3) Examine and review in order to approve or disapprove plans and make recommendations to the Board for fuel-and refuse-burning equipment, process equipment and control equipment which is to be installed, constructed, reconstructed, added to or altered, to assure that they are in accordance with the requirements of the standards and regulations contained in this chapter.
 - (4) Make inspections and tests of existing and newly installed, constructed, reconstructed or altered fuel or refuse-burning equipment, process equipment and control equipment, to determine if there is compliance with applicable standards and regulations.
 - (5) Investigate complaint of violations of this chapter and make inspections and observations of air pollution sources, and record such investigations, complaints, inspections and observations.
 - (6) Issue certificates of operation, notices or other materials required under the provisions of this chapter.
 - (7) Prepare and submit to the Western North Control Air Pollution Control Board for its consideration, after receiving recommendations of the Advisory Council, proposals, additions or revisions of the standards and regulations prescribed proposals, additions or revisions of the standards and regulations prescribed by this chapter of any other. regulations pertaining to air pollution abatement.
 - (8) Encourage voluntary cooperation by persons or affected groups in air quality control.
 - (9) Collect and disseminate information on air quality control to the public, civic groups, community organizations and others.
 - (10) Work with planning and zoning agencies for the purpose of coordinating activities under provisions of this chapter to foster and encourage the best possible management and conservation of the air resources within Buncombe and Haywood Counties.
 - (11) Cooperate and work with federal, state, county, municipal and other agencies concerned with air quality control in regard to aerometric studies, abatement programs, public complaints and other matters to the end that the air resources of the county shall best be conserved and improved.

(12) Declare an emergency when it is found that a generalized condition of air pollution is causing imminent danger to the health or safety of the public, and issue orders in the of the Board to responsible persons to reduce or discontinue immediately the emission of contaminants.

(13) Recommend to the Board the adopting of required procedural modifications as set forth in the Code of Federal Regulations for evaluating standards contained in this chapter after notice and public hearing before the Western North Carolina Regional Air Pollution Control Board.

(14) Perform other acts which may be necessary for the successful enforcement of and compliance with the standards and regulations contained in this chapter or may be required by the Western North Carolina Regional Air Pollution Control Board.

(b) The Western North Carolina Regional Air Pollution Control Board may, by resolution, delegate to the director such other duties and responsibilities, consistent with the provisions of article 21 of chapter 143 of the North Carolina General Statutes, as are deemed appropriate, including but not limited to, the determination of facts based upon standards contained in this chapter.

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Sec. 1-28. Authority of director to establish administrative procedures.

(a) The director may establish administrative procedures relating to the submission of requests for permits under this chapter, including such information as is needed, and such other procedures deemed necessary in order to fulfill his responsibilities and not inconsistent with this chapter.

(b) Prior to issuing any permit for a source on the Code of Federal Regulations list of sources requiring a review for the prevention of significant deterioration, 40 CFR. 51.24 (b) as of Feb. 28, 1985, or for any other source that may be designated by the director, the information submitted by the owner or operator, as well as the agency's analysis of the effect on ambient air quality shall be made available for public inspection. A notice for public comment shall be published in the newspaper of general circulation and shall allow a thirty-day period for submittal of comments. Confidential material will be handled in accordance with Section 1-29.

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Sec. 1-29. Confidentiality of records and information furnished by the Department.

(a) Any records or other information furnished to the department concerning one or more air contaminant sources, which records or information, as certified by the owner or operator, relate to production or sales figures or to processes or production unique to the owner or operator, or which tend to affect adversely the competitive position of such owner or operator, shall be only for the confidential use of the department in the administration of this chapter, unless such owner or operator shall expressly agree to their publication or availability to the general public, or unless the disclosure of such information is required for the prosecution of a violation; provided that, emission data reported by source owners or operators of others shall be available for public inspection as provided for under the guidelines issued by the Environmental Protection Agency of the United States.

(b) Nothing in this section shall be construed to prevent the use of such records or information by the department in compiling or publishing analyses or summaries relating to the general condition of the outdoor atmosphere, provided such analyses or summaries do not identify any owner or operator or reveal any information otherwise confidential in this section.

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Sec. 1-30. Fees for inspection, permits and certificates required by chapter.

Fees for inspections and the issuance of permit and certificates required by this chapter shall be made payable to the Western North Carolina Regional Air Pollution Control Board's Fiscal Agent. The amount of such fees shall be established by the Board and shall be based upon a reasonable approximation of the cost of the supervision and inspection required by the standards and regulations contained in this chapter and the necessary for the enforcement thereof.

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Sec. 1 -31 Reserved.

Sec. 1-32. Variances.

(a) A variance may be granted by the Western North Carolina Regional Air Pollution Board on the grounds that there are no practicable means known or available for the adequate prevention, abatement or control of the air pollution involved. If a variance is granted, it shall be only until the necessary means for prevention, abatement or control of the excess emissions became known and available, and shall be subject to the taking of any substitute or alternate sures that may be prescribed. The Board shall not grant a variance to any NSPS* or NESHAP*source.

(b) The board will take no action on a request for a variance under this section, until a public hearing has been held on the request.

(c) A variance may not be issued to any source whose emissions would exceed any regulation standards if those emissions would interfere with the attainment and/or maintenance of the National Ambient Air Quality Standard.

*NSPS See Section 1-158.

*NESHAP See Section 1-159

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Sec. 1-33. Penalties for violation of chapter.

The violation of this chapter is punishable by fine and imprisonment as follows:

- (1) Any person who violates any classification, standard or requirement of a permit or of a special order or other appropriate document or any regulation of the Western North Carolina Regional Air Pollution Control Board implenaling any of this chapter; shall be guilty of a misdemeanor punishable by a fine not to exceed fifteen thousand dollars (\$15,000.00) per day of violation provided that such fine shall not exceed a cumulative total of two hundred thousand dollars (\$200,000.00) for each period of 30 days during which a violation continues, or imprisonment not to exceed six (6) months, or by both.
- (2) Any person who knowingly mikes any false statement, representation of certification in any application, record, report, plan or other document filed or required to be maintained under this chapter, or who falsifies, tampers with or knowingly renders inaccurate any recording or monitoring device or method required to be operated or maintained under the provisions of this chapter, shall be guilty of a misdemeanor punishable by a fine not to exceed ten thousand dollars (10,000.00) or by imprisonment not to exceed six (6) months or both.
- (3) Any person convicted of an offense under this chapter following a previous conviction thereunder shall be subject to a fine or imprisonment, or both, not exceeding twice the amount of the fine, or twice the term or imprisonment provided above, under which the second or subsequent conviction occurs.

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Sec. 1-34. Civil Relief for Violation of Chapter.

The director may, on behalf of the Board, institute civil actions for institute civil actions or other relief to restrain any violation or threatened violation of this chapter. Whenever the agency has reasonable cause to believe that any person has violated or is threatening to violate any of the provisions of this chapter, the agency, either before or after the institution of any other action or proceeding authorized by this chapter, may institute a civil action for injunctive relief to restrain the violation or threatened violation and for such other and further relief on the premises as the court shall deem proper. Upon determination by the court that the alleged violation of the provisions of this chapter has occurred or is threatened, the court shall grant the relief necessary to prevent or abate the violation. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from any penalty prescribed for violation of this chapter.

State Law References - Similar provisions, G.S. # 143-215.112. (d)

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Sec. 1-35. Chapter does not prohibit private actions for relief.

Nothing contained in this chapter shall be construed as intended to prohibit any private right of action for damages, injunctive relief, or other appropriate relief by any person who has suffered, or is exposed to the immediate threat of damage or injury by reason of the violation or threatened violation of this chapter or by reason of the emission into the atmosphere of air contaminants in sufficient quantities as to constitute a nuisance.

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Sec. 1-36. Judicial review of administrative decisions rendered under chapter.

Any final administrative decision rendered pursuant to the standards and regulations contained in this chapter shall be subject to judicial review as provided by Article 33 of Chapter 143 of the North Carolina General Statutes.

State Law Reference - Similar provisions; G.S. # 143-215. 112 (d) (4).

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Secs. 1-37 -- 1-41. Reserved.