



SENATE BILL 580: Title V Permit Fees/Effective Date.

2021-2022 General Assembly

Committee:	House Rules, Calendar, and Operations of the House	Date:	September 1, 2021
Introduced by:	Sens. B. Jackson, Sanderson, Edwards	Prepared by:	Jennifer McGinnis
Analysis of:	Second Edition		Staff Attorney

OVERVIEW: *Senate Bill 580 would provide that rule 15A NCAC 02Q .0203 (Permit and Application Fees) would become effective when this bill becomes law, notwithstanding provisions in the Administrative Procedure Act (APA) that would have given the rule a delayed effective date at some point during the 2022 Short Session.*

CURRENT LAW/BACKGROUND:

Title V Program

- Title V of the federal Clean Air Act (CAA), administered by the Department of Environmental Quality's (DEQ) Division of Air Quality (DAQ), requires major industrial sources of air pollution to obtain an Operating Permit and comply with permit conditions designed to ensure that operations meet State and federal air quality standards. These federal regulations also require air agencies to collect fees “sufficient to cover all reasonable (direct and indirect) costs required to develop and administer” the Title V program.
- [Federal law](#) requires that fees generated by Title V permits may only be used to support staffing and regulatory activities associated with the permits.
- Title V fees rely heavily on emissions fees, which have decreased 57% over the last decade.
- The last Title V fee rule-change was in 2008.
- On March 23, 2021, the United States Environmental Protection Agency (USEPA) issued a letter to the Director of DAQ to notify DAQ that USEPA had undertaken a review of the State's CAA Part 70 Operating Permit Program in accordance with federal law that requires USEPA to periodically review state fee demonstrations to ensure states are adequately funding their Title V permitting program and using their Title V fee revenue solely for Title V purposes. The letter stated in part:

"...

While our overall program evaluation is still ongoing, our preliminary review of the North Carolina title V fee demonstration, combined with the potential delay in the passage of North Carolina fee rule 15A NCAC 02Q .0203, raises concerns that warrant the State's immediate attention.

...

Jeffrey Hudson
Director



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Senate Bill 580

Page 2

Based on our review to date, we are concerned that NCDAQ collects less than the presumptive minimum allowed by 40 C.F.R. 70.9(b)(2) and has not demonstrated that the fees collected are sufficient to cover the title V Program implementation costs. In particular, the program is projecting a deficit this year and substantial deficits during the next several years.

...

Section 502(i) of the CAA, and the corresponding Part 70 rules provide authority for EPA to address inadequacies in state programs through the issuance of a notice of deficiency (NOD) to the state. Upon issuance of a NOD, the CAA and Part 70 rules provide a timeframe for the state to address the deficiency and specifies the consequences if a state fails to adequately respond. See 42 U.S.C. §7661a(i) and 40 C.F.R. 70.10(b). Insufficient fees are a type of programmatic inadequacy that could be appropriately addressed through issuance of a NOD.

...."

(Full letter is attached to this summary for reference).

15A NCAC 02Q .0203 (Permit and Application Fees)

Revisions to 15A NCAC 02Q .0203 (Permit and Application Fees) were adopted by the Environmental Management Commission on January 14, 2021, and approved by the Rules Review Commission (RRC) on February 18, 2021. The fee for a new Title V permit would increase under the revised rule from \$7,200 to \$10,177. Other fee increases applicable to Title V facilities that would be made by the revised rule (for major and minor permit modifications, etc.), and other changes to the rule, may be viewed [here](#).

APA Provisions for Delayed Effective Dates for Rules Subject to Legislative Review/Impact on 15A NCAC 02Q .0203

[G.S. 150B-21.3](#) provides a mechanism for legislative review of certain rules when 10 or more persons have submitted written objections to adoption of a permanent rule to the RRC, prior to the rule's adoption by the RRC, and the written objections clearly request legislative review of the rule. If the RRC receives written objections to the rule, the rule is given a delayed effective date, contingent on action of the General Assembly. When subject to legislative review, the earliest a rule can become effective is on the thirty first legislative day *of the next regular session of the General Assembly that begins at least 25 days after the date the RRC approved the rule*. A rule only becomes effective on the 31st legislative day if a legislator does not file a bill to disapprove the rule during that time period. If a bill that specifically disapproves the rule is introduced in either house of the General Assembly before the thirty-first legislative day of that session, the rule becomes effective on the earlier of either: (i) the day an unfavorable final action is taken on the bill, or (ii) the day that session of the General Assembly adjourns that session without ratifying a bill that specifically disapproves the rule.

More than 10 letters of objection were received for 15A NCAC 02Q .0203, thus the rule is now subject to legislative review and a delayed effective date. Per the terms of the APA, the earliest the rule could become effective is the thirty first legislative day of the next regular session of the General Assembly that begins at least 25 days after the date the RRC approved the rule. As the RRC did not approve the rule until February 18, 2021, the rule cannot become effective until some point during the next Regular Session of the General Assembly to be convened in 2022.

Senate Bill 580

Page 3

BILL ANALYSIS: The bill would provide that 15A NCAC 02Q .0203 (Permit and Application Fees), would become effective when this bill becomes law, notwithstanding provisions in the APA that would have given the rule a delayed effective date at some point during the 2022 Short Session.

EFFECTIVE DATE: The bill would be effective when it becomes law.