

CHAPTER 3

AIR QUALITY CONTROL¹

SUBCHAPTER 3A - AIR POLLUTION CONTROL REQUIREMENTS

SECTION .0300 - REMEDIES FOR ENFORCEMENT OF STANDARDS - SPECIAL ORDERS

.0301 APPLICABILITY

North Carolina's federally approved air quality implementation plan provides that sources must be in compliance with national ambient air quality standards. This Section provides for enforcement procedures to be used when point sources and area sources have not complied with the standards provided by this Chapter and approved compliance schedules. (Ord. No. 8-77, §§1, 2, 8-1-77; Ord. No. 9-94, 12-19-94)

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.0302 ISSUANCE

The Director of the Environmental Affairs Department is hereby empowered to issue (and from time to time revoke) a Special Order to any person whom he finds responsible for causing or contributing to any pollution of the air in violation of the standards contained in this Chapter. This Special Order may direct such person to take or refrain from taking action in order to alleviate or eliminate such pollution within a period of time specified in such Special Order. The Director is authorized to enter into consent Special Orders by negotiation and agreement with the person responsible for the pollution of the air. Neither a Special Order nor a Special Order by Consent may be issued except after notice and hearing as provided by Rule .0308 of this Section. The person against whom a Special Order is used may appeal to the Forsyth County Board of Commissioners by filing a notice of appeal with the County Manager within ten (10) days after the date of issuance of said Special Order. (Ord. No. 8-77, §§1, 2, 8-1-77; Ord. No. 9-94, 12-19-94)

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¹**Cross references**--Buildings and building regulations, Ch. 7; erosion control, Ch. 9; fire prevention and protection, Ch. 10; zoning ordinance, Ch. 23.

State law references--Air pollution control, G.S. §143-215.105 *et seq.*; authority of Board of County Commissioners to establish, administer, and enforce a local air pollution control program. G.S. §143-215.112(c); authority to levy taxes to maintain and administer such program, G.S. §153A-149(c)(3).

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.0303 DEFINITIONS

The following definitions apply throughout this section:

- (1) "Point Source" means any source capable of emitting more than one hundred (100) tons per year of any pollutant, should no control be applied.
- (2) "Good faith effort" means that positive action has been taken by a person that is specifically intended to achieve compliance with the applicable air quality standards. Verbal assurances of acts done or to be done will not constitute good faith effort. Positive action includes but is not limited to awarding of contracts, application for permits, ordering equipment, installation of equipment, and documented futile attempts to obtain clean fuel when control in the past has not been practical.
- (3) "Area sources" means all sources other than point sources.
- (4) "Special Order" means a writing signed by the Director which sets forth the violation of the standard, as provided in this Chapter, the findings of fact generated at the public hearing, the control measures required to alleviate or eliminate the violation of the standard, and a time schedule for implementation of the required control measures, and such other information as necessary to inform the person in violation of what is required of him to alleviate or eliminate the violation. (Ord. No. 8-77, §§ 1, 2, 8-1-77; Ord. No. 9-94, 12-19-94)

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.0304 CATEGORIES OF SOURCES

Point sources and area sources will be divided into four (4) categories, as follows:

- (1) Category A will include sources which have shown good faith, but due to the following types of reasons will be unable to meet their present compliance schedules (the following list is inclusive):
 - (A) Delays in construction, due to the inability to obtain construction materials (example: Steel);
 - (B) Inability to obtain firm contracts for low sulfur fuels;
 - (C) Delays in equipment delivery;
 - (D) Operational problems associated with new control equipment;
 - (E) Sources that have achieved compliance through utilizing by-product markets, but are required to change control strategy;

- (F) Equipment installation delays beyond the control of the source.
- (2) Category B will include sources which have shown good faith, but due to the following types of reasons will be unable to meet their present compliance schedules (the following list is inclusive):
 - (A) Sources that have not established controls due to technological indecision;
 - (B) Sources that have been identified by the Forsyth County Environmental Affairs Department in the latter part of the compliance period, thus making it impossible to meet the compliance schedule;
 - (C) Contracts for control equipment were not made in time to allow installation in time to meet compliance schedule.
- (3) Category C will include those sources which have made little or no effort to comply with air quality emission standards, compliance schedules, permit conditions, or have failed to apply for or renew a permit.
- (4) Category D will include sources, including those in any of the above categories, which if granted an extension of time for compliance, would either singularly or in combination with other sources result in a violation of any national primary ambient air quality standard. The determination that a source would, if granted an extension of time for compliance, result in a violation as stated above must be based on statistical projections which meet the standards of accuracy generally accepted in the air quality regulatory field. (Ord. No. 8-77 §§1, 2, 8-1-77; Ord. No. 9-94, 12-19-94)

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.0305 ENFORCEMENT PROCEDURES

(a) General enforcement. In general, enforcement procedures will consist of one of the following:

- (1) Special Order by Consent;
- (2) Special Order;
- (3) Criminal action; or
- (4) Injunctive relief.

(b) Enforcement procedures for sources in Categories A and B as defined in Rule .0304 of this Section. A good faith attempt will be made to negotiate with the source and enter into a Special Order by Consent using the procedures as set forth in Paragraph .0306(a) of this Section. If the source refuses to enter into a Special Order by Consent, then a Special Order will be entered using the procedures set forth in Paragraph .0306(b) of this Section.

(c) Enforcement procedures against sources in Category C as defined in Rule .0304 of this Section. The enforcement procedure for sources in Category C will be a Special Order using the

procedure as set forth in Rule .0306 of this Section. Criminal action and injunctive relief will be reserved for sources which violate Special Orders by Consent, and Special Orders.

(d) Enforcement procedures against sources in Category D as defined in Rule .0304 of this Section. No extension of time for compliance will be approved for sources in Category D unless the source meets the requirements of Section 110(f) of the Clean Air Act Amendments (42 U.S.C. 1857 et seq.). If the source satisfies the Section 110 requirements, enforcement will be by Special Order by Consent, or Special Order. If the source does not meet the Section 110 requirements, enforcement will be by criminal action or injunctive relief. (Ord. No. 8-77, §§1, 2, 8-1-77; Ord. No. 7-90, 6-11-90; Ord. No. 9-94, 12-19-94)

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.0306 REQUIRED PROCEDURES FOR ISSUANCE OF SPECIAL ORDERS BY CONSENT AND SPECIAL ORDERS

(a) Procedure for issuance of Special Orders by Consent:

- (1) Notify source by letter of the impending deadline for compliance, probability of violation, and desire to resolve the matter by issuance of a Special Order by Consent.
- (2) Negotiate with the source. Negotiations to include, but not be limited to: Compliance schedules, and such special conditions as needed and filing of documentation by source.
- (3) Publish notice of the proposed Special Order and of the public hearing thereon, as provided in Rule .0308 of this Section; a public hearing will be held by the Forsyth County Environmental Affairs Board; and, the findings of fact developed at the public hearing will be made a part of the Special Order by Consent.

(b) Procedure for issuance of Special Orders. The procedure for issuing Special Orders will be the same as provided in Paragraph .0306(a) of this Section, provided that the Director additionally will issue a letter to the owner or operator of any emission source requiring him to establish and maintain such records; make such reports; install, use and maintain such monitoring equipment or methods as required by Subchapter 3D, Section .0600 and Rule .0307 of this Section; and, to provide such information as the Director may reasonably require. (Ord. No. 8-77, §§1, 2, 8-1-77; Ord. No. 7-86, 3-10-86; Ord. No. 7-90, 6-11-90; Ord. No. 9-94, 12-19-94)

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.0307 DOCUMENTATION FOR SPECIAL ORDERS

Documentation procedures shall consist of the following:

- (1) Establish five (5) increments of progress for the attainment of control strategies;
- (2) Contract date made for the installation of control equipment;
- (3) In cases where delays have occurred, due to non-availability of control equipment, obtain documentation from supplier;
- (4) In cases where lack of clean fuel is the case of noncompliance, show documented proof by at least two (2) fuel suppliers that clean fuel is not available;
- (5) Evidence that emissions levels will be maintained at, or below present levels, pending completion of control installation;
- (6) Furnish report on all increments of progress;
- (7) Conferences with Environmental Affairs Department staff and Forsyth County Environmental Affairs Board concerning adequate schedule to complete the attainment of control concerning each source;
- (8) Source is to proceed as expeditiously as possible toward obtaining compliance. (Ord. No. 8-77, §§1, 2, 8-1-77; Ord. No. 7-90, 6-11-90; Ord. No. 9-94, 12-19-94)

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.0308 PUBLIC HEARING

(a) No Special Order by Consent or Special Order may be issued by the Director, except after notice of a public hearing thereon has been published in a newspaper of general circulation in Forsyth County, at least once, no less than thirty (30) days before the date of the scheduled hearing, and the public hearing is held by the Forsyth County Environmental Affairs Board.

(b) The notice of public hearing to be published in the newspaper shall contain a notice of intent to issue a Special Order and the proposed terms of said Special Order. One public notice may be used to publish several notices of public hearing and notices of intent to issue Special Orders.

(c) In conducting the public hearing as required herein, the Forsyth County Environmental Affairs Board shall act as a fact-finding body only, and it shall not ultimately determine if issuance of the Special Order or Special Order by Consent shall occur. The Environmental Affairs Board shall make its findings of fact, which shall be incorporated into the Special Order by Consent of the Special Order, based on evidence presented at the hearing by all interested parties. Parties who wish to be heard at the hearing may be represented by counsel and the Environmental Affairs Board may require parties with similar interests to appoint a spokesman to speak for them. The Environmental Affairs Board may set

such other Rules as they deem necessary for the fair and efficient conduct of the public hearing. (Ord. No. 8-77, §§1, 2, 8-1-77; Ord. No. 9-94, 12-19-94)

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.0309 COMPLIANCE BONDS

A Special Order may provide that a bond or other surety be posted to ensure compliance. In determining the amount of such bond the Director shall consider the degree and extent of harm which may result if the person to whom the Special Order is directed fails to comply with the terms of the order, the cost of rectifying such harm, the economic consequences to the person to whom the Special Order is directed if the Special Order is issued as compared to the consequences of a denial, suspension, or revocation of the Special Order or permit, and the person's history of compliance with pollution control requirements, other Special Orders, history of payment of any penalties which may have been previously assessed by the Director. In the event of noncompliance with the Special Order or other instrument, the bond shall be forfeited and the entire amount of the bond shall be deposited in the Forsyth County General Fund. (Ord. No. 7-90, 6-11-90; Ord. No. 9-94, 12-19-94)

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