

01 NCAC 41D .0101 was proposed for readoption as published in 35:08 NCR 831 but is now repealed as follows:

**01 NCAC 41D .0101      PURPOSE AND ORGANIZATION**

*History Note:      Authority G.S. 143-58.4; 143-58.5;*

*Eff. May 1, 2007;*

*Repealed Eff. July 1, 2021.*

**01 NCAC 41D .0302 WAS PROPOSED FOR READOPTION AS PUBLISHED IN 35:08 NCR 831 BUT IS  
NOW REPEALED AS FOLLOWS:**

01 NCAC 41D .0302

*History Note: Authority G.S. 143-58.4; 143-58.5;  
Eff. May 1, 2007;  
Repealed Eff. July 1, 2021.*



**STATE OF NORTH CAROLINA  
OFFICE OF ADMINISTRATIVE HEARINGS**

May 20, 2021

Jennifer Everett, Rulemaking Coordinator  
Department of Environmental Quality  
**Sent via email only: [Jennifer.Everett@ncdenr.gov](mailto:Jennifer.Everett@ncdenr.gov)**

Re: 01 NCAC 41D .0101 and .0302

Dear Ms. Everett:

At its meeting this morning, the Rules Review Commission objected to the above-captioned rules in accordance with G.S. 150B-21.10.

The RRC objected to the Rules for lack of necessity. Specifically, the RRC found for Rule 41D .0101 that as written, the Rule does not appear to set any requirements, but instead, partially recites two statutes. For Rule 41D .0302, the RRC found that as written, the Rule does not appear to set any requirements that are not governed by statute. As such, the RRC found that both rules were unnecessary.

Please respond to this letter in accordance with the provisions of G.S. 150B-21.12. If you have any questions regarding the Commission's action, please let me know.

Sincerely,

  
Amanda J. Reeder  
Commission Counsel

**Julian Mann, III**, Director  
Chief Administrative Law Judge

**Fred G. Morrison, Jr.**  
Senior Administrative Law Judge

**Linda T. Worth**  
Deputy Director

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## **RRC STAFF OPINION**

*PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.*

AGENCY: Department of Environmental Quality

RULE CITATION: 15A NCAC 41D .0101

RECOMMENDED ACTION:

- Approve, but note staff's comment
- X Object, based on:
  - Lack of statutory authority
  - Unclear or ambiguous
- X Unnecessary
  - Failure to comply with the APA
- Extend the period of review

COMMENT:

*Staff recommends objection to this Rule for lack of necessity. As written, the Rule does not appear to set any requirements, but instead, partially recites two statutes. Therefore, staff believes the Rule is unnecessary.*

Amanda J. Reeder  
Commission Counsel  
Issued May 10, 2021

#### **§ 143-58.4. Energy credit banking and selling program.**

(a) The following definitions apply in this section:

(1) AFV. - A hybrid electric vehicle that derives its transportation energy from gasoline and electricity. AFV also means an original equipment manufactured vehicle that operates on compressed natural gas, propane, or electricity.

(2) Alternative fuel. - Biodiesel, biodiesel blend, ethanol, compressed natural gas, propane, and electricity used as a transportation fuel in blends or in a manner as defined by the Energy Policy Act.

(3) B-20. - A blend of twenty percent (20%) by volume biodiesel fuel and eighty percent (80%) by volume petroleum-based diesel fuel.

(3a) Biodiesel. - A fuel comprised of mono-alkyl esters of long fatty acids derived from vegetable oils or animal fats, designated B100 and meeting the requirements of the American Society for Testing and Materials (ASTM) D-6751.

(3b) Biodiesel blend. - A blend of biodiesel fuel with petroleum-based diesel fuel, designated BXX where XX represents the percentage of volume of fuel in the blend meeting the requirements of ASTM D-6751.

(4) Department. - The Department of Environmental Quality.

(5) Energy Policy Act. - The federal Energy Policy Act of 1992, Pub. L. No. 102-486, 106 Stat. 2782, 42 U.S.C. § 13201, et seq.

(6) EAct credit. - A credit issued pursuant to the Energy Policy Act.

(7) E-85. - A blend of eighty-five percent (85%) by volume ethanol and fifteen percent (15%) by volume gasoline.

(8) Incremental fuel cost. - The difference in cost between an alternative fuel and conventional petroleum fuel at the time the fuel is purchased.

(9) Incremental vehicle cost. - The difference in cost between an AFV and conventional vehicle of the same make and model. For vehicles with no comparable conventional model, incremental vehicle cost means the generally accepted difference in cost between an AFV and a similar conventional model.

(b) Establish Program. - The State Energy Office of the Department, in cooperation with State departments, institutions, and agencies, shall establish and administer an energy credit banking and selling program to allow State departments, institutions, and agencies to use moneys generated by the sale of EAct credits to purchase alternative fuel, develop alternative fuel refueling infrastructure, and purchase AFVs for use by State departments, institutions, and agencies. Each State department, institution, and agency shall provide the State Energy Office with all vehicle fleet information necessary to determine the number of EAct credits generated

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annually by the State. The State Energy Office may sell credits in any manner that is in accordance with the provisions of the Energy Policy Act.

(c) Adopt Rules. - The Secretary of Environmental Quality shall adopt rules as necessary to implement this section. (2005-413, s. 1; 2009-237, s. 1; 2009-446, s. 1(g), (h); 2013-360, s. 15.22(n); 2015-241, s. 14.30(u), (v).)

#### **§ 143-58.5. Alternative Fuel Revolving Fund.**

(a) The definitions set out in G.S. 143-58.4 apply to this section.

(b) The Alternative Fuel Revolving Fund is created and shall be held by the State Treasurer. The Fund shall consist of moneys received from the sale of EPart credits under G.S. 143-58.4, any moneys appropriated to the Fund by the General Assembly, and any moneys obtained or accepted by the Department for deposit into the Fund. The Fund shall be managed to maximize benefits to the State for the purchase of alternative fuel, related refueling infrastructure, and AFV purchases. To the extent possible, benefits from the sale of EPart credit shall be distributed to State departments, institutions, and agencies in proportion to the number of EPart credits generated by each. No portion of the Fund shall be transferred to the General Fund, and any appropriation made to the Fund shall not revert. The State Treasurer shall invest moneys in the Fund in the same manner as other funds are invested. Interest and moneys earned on such investments shall be credited to the Fund.

(c) The Fund shall be used to offset the incremental fuel cost of biodiesel and biodiesel blend fuel with a minimum biodiesel concentration of B-20 for use in State vehicles, for the purchase of ethanol fuel with a minimum ethanol concentration of E-85 for use in State vehicles, the incremental vehicle cost of purchasing AFVs, for the development of related refueling infrastructure, for the costs of administering the Fund, and for projects approved by the Energy Policy Council.

(d) The Secretary of Environmental Quality shall adopt rules as necessary to implement this section.

(e) The Department shall submit to the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources and the Fiscal Research Division no later than October 1 of each year a report on the expenditures from the Fund during the preceding fiscal year. (2005-413, s. 1; 2009-237, s. 2; 2017-57, s. 14.1(a); 2017-102, s. 20.1(a).)

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Environmental Quality

RULE CITATION: 01 NCAC 41D .0101

**DEADLINE FOR RECEIPT: Friday, March 12, 2021**

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*What is the purpose of this Rule? It appears to simply partially recite statute. What does this do that the statutes do not?*

*In (a), line 4, insert a comma after "G.S. 143-58.4"*

*Also on line 4, delete the "has" before "established"*

*On lines 6 and 9, insert a comma after "infrastructure"*

*In (b), G.S. 143-58.5 states:*

### **§ 143-58.5. Alternative Fuel Revolving Fund.**

(a) The definitions set out in G.S. 143-58.4 apply to this section.

(b) The Alternative Fuel Revolving Fund is created and shall be held by the State Treasurer. The Fund shall consist of moneys received from the sale of EPAct credits under G.S. 143-58.4, any moneys appropriated to the Fund by the General Assembly, and any moneys obtained or accepted by the Department for deposit into the Fund. **The Fund shall be managed to maximize benefits to the State for the purchase of alternative fuel, related refueling infrastructure, and AFV purchases.** To the extent possible, benefits from the sale of EPAct credit shall be distributed to State departments, institutions, and agencies in proportion to the number of EPAct credits generated by each. No portion of the Fund shall be transferred to the General Fund, and any appropriation made to the Fund shall not revert. The State Treasurer shall invest moneys in the Fund in the same manner as other funds are invested. Interest and moneys earned on such investments shall be credited to the Fund.

(c) **The Fund shall be used to offset the incremental fuel cost of biodiesel and biodiesel blend fuel with a minimum biodiesel concentration of B-20 for use in State vehicles, for the purchase of ethanol fuel with a minimum ethanol concentration of E-85 for use in State vehicles, the incremental vehicle cost of purchasing AFVs, for the**

Amanda J. Reeder  
Commission Counsel

Date submitted to agency: March 2, 2021

development of related refueling infrastructure, for the costs of administering the Fund, and for projects approved by the Energy Policy Council.

(d) The Secretary of Environmental Quality shall adopt rules as necessary to implement this section.

(e) The Department shall submit to the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources and the Fiscal Research Division no later than October 1 of each year a report on the expenditures from the Fund during the preceding fiscal year. (2005-413, s. 1; 2009-237, s. 2; 2017-57, s. 14.1(a); 2017-102, s. 20.1(a).)

*It appears that Paragraph (b) is only including the expenditures mandated by G.S. 143-58.5(b) and not the mandates of G.S. 143-58.5(c). What is the agency's authority to do this?*

*On line 7, delete the "has" before "established"*

*On line 8, as the expenditure is required by statute, change "may" to "shall"*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.



01 NCAC 41D .0101 is readopted as published in 35:08 NCR 831 as follows:

**01 NCAC 41D .0101      PURPOSE AND ORGANIZATION**

(a) Pursuant to G.S. 143-58.4 the State Energy Office has established a credit banking and selling program to allow State departments, institutions, and agencies to use monies generated by the sale of E Pact credits to purchase alternative fuel, develop related refueling infrastructure and purchase alternative fuel vehicles.

(b) Pursuant to G.S. 143-58.5, the State Energy Office has established an Alternative Fuel Revolving Fund generated from the sale of E Pact credits. These funds may to be used to purchase alternative fuel, develop related refueling infrastructure and purchase alternative fuel vehicles for use by State departments, institutions, and agencies.

*History Note:      Authority G.S. 143-58.4; 143-58.5;*  
*Eff. May 1, 2007;*  
*Readopted Eff. April 1, 2021.*

## **RRC STAFF OPINION**

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AGENCY: Department of Environmental Quality

RULE CITATION: 15A NCAC 41D .0302

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
  - ☐ Lack of statutory authority
  - ☐ Unclear or ambiguous
  - ☒ Unnecessary
  - ☐ Failure to comply with the APA
- ☐ Extend the period of review

COMMENT:

*Staff recommends objection to this Rule for lack of necessity. As written, the Rule does not appear to set any requirements that are not governed by statute. Therefore, staff believes the Rule is unnecessary.*

Amanda J. Reeder  
Commission Counsel  
Issued May 10, 2021

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Environmental Quality

RULE CITATION: 01 NCAC 41D .0302

**DEADLINE FOR RECEIPT: Friday, March 12, 2021**

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In reviewing this Rule, the staff recommends the following technical changes be made:

*What is the purpose of this Rule? What does it accomplish that the governing statute does not? And won't ability to utilize the funds be contingent upon being approved under Rule .0301?*

*If you need it, on line 4, capitalize "State"*

*On line 4, insert a comma after "institutions"*

*Replace "are" with "shall be"*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder  
Commission Counsel  
Date submitted to agency: March 2, 2021

**01 NCAC 41D .0302 IS READOPTED AS PUBLISHED IN 35:08 NCR 831 AS FOLLOWS:**

## 01 NCAC 41D .0302 FUND DISBURSEMENTS

All state departments, institutions and agencies are eligible to utilize Alternative Fuel Revolving Funds.

*History Note: Authority G.S. 143-58.4; 143-58.5;  
Eff. May 1, 2007;  
Readopted Eff. April 1, 2021.*