

1 15A NCAC 02B .0211 is amended as published in 36:05 NCR 294-298 with changes as follows:

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3 **15A NCAC 02B .0211 FRESH SURFACE WATER QUALITY STANDARDS FOR CLASS C WATERS**

4 In addition to the standards set forth in Rule .0208 of this Section, the following water quality standards shall apply
5 to all Class C waters. Additional standards applicable to other freshwater classifications are specified in Rules .0212,
6 .0214, .0215, .0216, .0218, .0219, .0223, .0224, .0225, and .0231 of this Section.

7 (1) The best usage of waters shall be aquatic life propagation, survival, and maintenance of biological
8 integrity (including fishing and fish); wildlife; secondary contact recreation; agriculture; and any
9 other usage except for primary contact recreation or as a source of water supply for drinking,
10 culinary, and food processing purposes. All freshwaters shall be classified to protect these uses at a
11 minimum.

12 (2) The conditions of waters shall be such that waters are suitable for all best uses specified in this Rule.
13 Sources of water pollution that preclude any of these uses on either a short-term or long-term basis
14 shall be deemed to violate a water quality standard;

15 (3) Chlorine, total residual: 17 ug/l;

16 (4) Chlorophyll a (corrected): except as specified in Sub-Item (a) of this Item, not greater than 40 ug/l
17 for lakes, reservoirs, and other waters subject to growths of macroscopic or microscopic vegetation
18 not designated as trout waters, and not greater than 15 ug/l for lakes, reservoirs, and other waters
19 subject to growths of macroscopic or microscopic vegetation designated as trout waters (not
20 applicable to lakes or reservoirs less than 10 acres in surface area). The Commission or its designee
21 may prohibit or limit any discharge of waste into surface waters if the surface waters experience or
22 the discharge would result in growths of microscopic or macroscopic vegetation such that the
23 standards established pursuant to this Rule would be violated or the intended best usage of the waters
24 would be impaired;

25 (a) Site-specific High Rock Lake Reservoir [Index Numbers 12-(108.5), 12-(114), 12-117-(1),
26 12-117-(3), 12-118.5, and the uppermost portion of 12-(124.5) to the dam of High Rock
27 Lake] Chlorophyll a (corrected): not greater than one exceedance of a growing season
28 geometric mean of 35 ug/L in the photic zone within a three-year period [based on samples
29 collected in a minimum of five different months during the growing season].

30 (b) For the purpose of [this Sub-Item,] Sub-Item (a) of this Item: [the growing season is April
31 1 through October 31 and the photic zone is represented by a composite sample taken from
32 the water surface down to twice the measured Secchi depth.] [Chlorophyll a shall not occur
33 in amounts that result in an adverse impact as defined in 15A NCAC 02H .1002.]

34 (i) The growing season is April 1 through October 31;

35 (ii) Samples shall be collected in a minimum of five different months within
36 each growing season with a minimum of two growing season geometric
37 means collected in a three-year period;

1 (iii) The photic zone shall be defined as the surface down to twice the Secchi
2 depth;

3 (iv) Samples shall be collected as a composite sample of the photic zone; and

4 (v) Samples that do not satisfy the requirements in Sub-Item (iv) of this Sub-
5 Item shall be excluded from the calculation of the geometric mean.

6 (5) Cyanide, available or total: 5.0 ug/l;

7 (6) Dissolved oxygen: not less than 6.0 mg/l for trout waters; for non-trout waters, not less than a daily
8 average of 5.0 mg/l with an instantaneous value of not less than 4.0 mg/l; swamp waters, lake coves,
9 or backwaters, and lake bottom waters may have lower values if caused by natural conditions;

10 (7) Fecal coliform: shall not exceed a geometric mean of 200/100ml (MF count) based upon at least
11 five samples taken over a 30-day period, nor exceed 400/100ml in more than 20 percent of the
12 samples examined during such period. Violations of this Item are expected during rainfall events
13 and may be caused by uncontrollable nonpoint source pollution. All coliform concentrations shall
14 be analyzed using the membrane filter technique. If high turbidity or other conditions would cause
15 the membrane filter technique to produce inaccurate data, the most probable number (MPN) 5-tube
16 multiple dilution method shall be used.

17 (8) Floating solids, settleable solids, or sludge deposits: only such amounts attributable to sewage,
18 industrial wastes, or other wastes as shall not make the water unsafe or unsuitable for aquatic life
19 and wildlife or impair the waters for any designated uses;

20 (9) Fluoride: 1.8 mg/l;

21 (10) Gases, total dissolved: not greater than 110 percent of saturation;

22 (11) Metals:

23 (a) With the exception of mercury, acute and chronic freshwater aquatic life standards for
24 metals shall be based upon measurement of the dissolved fraction of the metal. Mercury
25 water quality standards shall be based upon measurement of the total recoverable metal;

26 (b) With the exception of mercury, aquatic life standards for metals listed in this Sub-Item
27 shall apply as a function of the pollutant's water effect ratio (WER). The WER shall be
28 assigned a value equal to one unless any person demonstrates to the Division's satisfaction
29 in a permit proceeding that another value is developed in accordance with the "Water
30 Quality Standards Handbook: Second Edition" published by the US Environmental
31 Protection Agency (EPA-823-B-12-002), which is hereby incorporated by reference,
32 including subsequent amendments and editions, and can be obtained free of charge at
33 <http://water.epa.gov/scitech/swguidance/standards/handbook/>. Alternative site-specific
34 standards may also be developed when any person submits values that demonstrate to the
35 Commission that they were derived in accordance with the "Water Quality Standards
36 Handbook: Second Edition, Recalculation Procedure or the Resident Species Procedure",

which is hereby incorporated by reference including subsequent amendments and can be obtained free of charge at <http://water.epa.gov/scitech/swguidance/standards/handbook/>.

(c) Freshwater metals standards that are not hardness-dependent shall be as follows:

- (i) Arsenic, dissolved, acute: WER· 340 ug/l;
- (ii) Arsenic, dissolved, chronic: WER· 150 ug/l;
- (iii) Beryllium, dissolved, acute: WER· 65 ug/l;
- (iv) Beryllium, dissolved, chronic: WER· 6.5 ug/l;
- (v) Chromium VI, dissolved, acute: WER· 16 ug/l;
- (vi) Chromium VI, dissolved, chronic: WER· 11 ug/l;
- (vii) Mercury, total recoverable, chronic: 0.012 ug/l;
- (viii) Silver, dissolved, chronic: WER· 0.06 ug/l;

(d) Selenium, chronic: The standard for chronic selenium has the following components: fish egg/ovary tissue, fish whole body or muscle tissue, and water column (lentic and lotic). These components shall be used in the following order of preference provided data is available:

- (i) Fish egg/ovary tissue;
- (ii) Fish whole body or muscle tissue;
- (iii) Water column.

Fish tissue concentrations are determined as dry weight and water column concentrations are based on the dissolved fraction of selenium. Fish tissue components are expressed as steady-state concentrations and provide instantaneous point measurements that reflect integrative accumulation of selenium over time and space in fish populations at a given site. Fish tissue components supersede the water column component when both fish tissue and water concentrations are measured. Egg-ovary tissue results, where available, supersede all other tissue and water column components. The chronic selenium standards are as follows:

Component		Magnitude	Duration
Fish tissue	Fish egg/ovary tissue	15.1 mg/kg	Instantaneous
	Fish whole body or muscle tissue	8.5 mg/kg whole body	Instantaneous
		11.3 mg/kg muscle	Instantaneous
Water column	Lentic or	1.5 ug/l lentic	30-day average
	Lotic	3.1 ug/l lotic	30-day average

- (e) Hardness-dependent freshwater metals standards shall be derived using the equations specified in Table A: Dissolved Freshwater Standards for Hardness-Dependent Metals. If the actual instream hardness (expressed as CaCO₃ or Ca+Mg) is less than 400 mg/l, standards shall be calculated based upon the actual instream hardness. If the instream hardness is greater than 400 mg/l, the maximum applicable hardness shall be 400 mg/l.
- Table A: Dissolved Freshwater Standards for Hardness-Dependent Metals
- Numeric standards calculated at 25 mg/l hardness are listed below for illustrative purposes. The Water Effects Ratio (WER) is equal to one unless determined otherwise under Sub-Item (11)(b) of this Rule.

Metal	Equations for Hardness-Dependent Freshwater Metals (ug/l)	Standard at 25 mg/l hardness (ug/l)
Cadmium, Acute	$WER \cdot \{1.136672 - [\ln \text{hardness}](0.041838)\} \cdot e^{\{0.9789 [\ln \text{hardness}] - 3.443\}}$	0.75
Cadmium, Acute, Trout waters	$WER \cdot \{1.136672 - [\ln \text{hardness}](0.041838)\} \cdot e^{\{0.9789 [\ln \text{hardness}] - 3.866\}}$	0.49
Cadmium, Chronic	$WER \cdot \{1.101672 - [\ln \text{hardness}](0.041838)\} \cdot e^{\{0.7977 [\ln \text{hardness}] - 3.909\}}$	0.25
Chromium III, Acute	$WER \cdot [0.316 \cdot e^{\{0.8190 [\ln \text{hardness}] + 3.7256\}}]$	180
Chromium III, Chronic	$WER \cdot [0.860 \cdot e^{\{0.8190 [\ln \text{hardness}] + 0.6848\}}]$	24
Copper, Acute	$WER \cdot [0.960 \cdot e^{\{0.9422 [\ln \text{hardness}] - 1.700\}}]$ Or, Aquatic Life Ambient Freshwater Quality Criteria-Copper 2007 Revision (EPA-822-R-07-001)	3.6 NA
Copper, Chronic	$WER \cdot [0.960 \cdot e^{\{0.8545 [\ln \text{hardness}] - 1.702\}}]$ Or, Aquatic Life Ambient Freshwater Quality Criteria-Copper 2007 Revision (EPA-822-R-07-001)	2.7 NA

Lead, Acute	$WER \cdot [\{1.46203 - [\ln \text{hardness}](0.145712)\} \cdot e^{\{1.273[\ln \text{hardness}] - 1.460\}}$	14
Lead, Chronic	$WER \cdot [\{1.46203 - [\ln \text{hardness}](0.145712)\} \cdot e^{\{1.273[\ln \text{hardness}] - 4.705\}}$	0.54
Nickel, Acute	$WER \cdot [0.998 \cdot e^{\{0.8460[\ln \text{hardness}] + 2.255\}}$	140
Nickel, Chronic	$WER \cdot [0.997 \cdot e^{\{0.8460[\ln \text{hardness}] + 0.0584\}}$	16
Silver, Acute	$WER \cdot [0.85 \cdot e^{\{1.72[\ln \text{hardness}] - 6.59\}}$	0.30
Zinc, Acute	$WER \cdot [0.978 \cdot e^{\{0.8473[\ln \text{hardness}] + 0.884\}}$	36
Zinc, Chronic	$WER \cdot [0.986 \cdot e^{\{0.8473[\ln \text{hardness}] + 0.884\}}$	36

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(f) Compliance with acute instream metals standards shall only be evaluated using an average of two or more samples collected within one hour. Compliance with chronic instream metals standards, except for selenium shall only be evaluated using an average of a minimum of four samples taken on consecutive days or as a 96-hour average;

(12) Oils, deleterious substances, or colored or other wastes: only such amounts as shall not render the waters injurious to public health, secondary recreation, or to aquatic life and wildlife, or adversely affect the palatability of fish, aesthetic quality, or impair the waters for any designated uses. For the purpose of implementing this Rule, oils, deleterious substances, or colored or other wastes shall include substances that cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines, as described in 40 CFR 110.3(a)-(b), incorporated by reference including subsequent amendments and editions. This material is available, free of charge, at: <http://www.ecfr.gov/>;

- (13) Pesticides:
- (a) Aldrin: 0.002 ug/l;
 - (b) Chlordane: 0.004 ug/l;
 - (c) DDT: 0.001 ug/l;
 - (d) Demeton: 0.1 ug/l;
 - (e) Dieldrin: 0.002 ug/l;
 - (f) Endosulfan: 0.05 ug/l;
 - (g) Endrin: 0.002 ug/l;
 - (h) Guthion: 0.01 ug/l;
 - (i) Heptachlor: 0.004 ug/l;
 - (j) Lindane: 0.01 ug/l;

- 1 (k) Methoxychlor: 0.03 ug/l;
2 (l) Mirex: 0.001 ug/l;
3 (m) Parathion: 0.013 ug/l; and
4 (n) Toxaphene: 0.0002 ug/l;
- 5 (14) pH: shall be between 6.0 and 9.0 except that swamp waters may have a pH as low as 4.3 if it is the
6 result of natural conditions;
- 7 (15) Phenolic compounds: only such levels as shall not result in fish-flesh tainting or impairment of other
8 best usage;
- 9 (16) Polychlorinated biphenyls (total of all PCBs and congeners identified): 0.001 ug/l;
- 10 (17) Radioactive substances, based on at least one sample collected per quarter:
- 11 (a) Combined radium-226 and radium-228: the average annual activity level for combined
12 radium-226 and radium-228 shall not exceed five picoCuries per liter;
- 13 (b) Alpha Emitters: the average annual gross alpha particle activity (including radium-226, but
14 excluding radon and uranium) shall not exceed 15 picoCuries per liter;
- 15 (c) Beta Emitters: the average annual activity level for strontium-90 shall not exceed eight
16 picoCuries per liter, nor shall the average annual gross beta particle activity (excluding
17 potassium-40 and other naturally occurring radionuclides) exceed 50 picoCuries per liter,
18 nor shall the average annual activity level for tritium exceed 20,000 picoCuries per liter;
- 19 (18) Temperature: not to exceed 2.8 degrees C (5.04 degrees F) above the natural water temperature, and
20 in no case to exceed 29 degrees C (84.2 degrees F) for mountain and upper piedmont waters and 32
21 degrees C (89.6 degrees F) for lower piedmont and coastal plain waters; the temperature for trout
22 waters shall not be increased by more than 0.5 degrees C (0.9 degrees F) due to the discharge of
23 heated liquids, but in no case to exceed 20 degrees C (68 degrees F);
- 24 (19) Toluene: 0.36 ug/l in trout classified waters or 11 ug/l in all other waters;
- 25 (20) Trialkyltin compounds: 0.07 ug/l expressed as tributyltin;
- 26 (21) Turbidity: the turbidity in the receiving water shall not exceed 50 Nephelometric Turbidity Units
27 (NTU) in streams not designated as trout waters and 10 NTU in streams, lakes, or reservoirs
28 designated as trout waters; for lakes and reservoirs not designated as trout waters, the turbidity shall
29 not exceed 25 NTU; if turbidity exceeds these levels due to natural background conditions, the
30 existing turbidity level shall not be increased. Compliance with this turbidity standard shall be
31 deemed met when land management activities employ Best Management Practices (BMPs), as
32 defined by Rule .0202 of this Section, recommended by the Designated Nonpoint Source Agency,
33 as defined by Rule .0202 of this Section.
- 34 (22) Toxic Substance Level Applicable to NPDES Permits: Chloride: 230 mg/l. If chloride is determined
35 by the waste load allocation to be exceeded in a receiving water by a discharge under the specified
36 7Q10 criterion for toxic substances, the discharger shall monitor the chemical or biological effects
37 of the discharge. Efforts shall be made by all dischargers to reduce or eliminate chloride from their

1 effluents. Chloride shall be limited as appropriate in the NPDES permit if sufficient information
2 exists to indicate that it may be a causative factor resulting in toxicity of the effluent.

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4 *History Note: Authority G.S. 143-214.1; 143-215.3(a)(1);*
5 *Eff. February 1, 1976;*
6 *Amended Eff. January 1, 2015; May 1, 2007; April 1, 2003; August 1, 2000; October 1, 1995;*
7 *August 1, 1995; April 1, 1994; February 1, 1993;*
8 *Readopted Eff. November 1, 2019;*
9 *Amended Eff. September 1, 2022; June 1, 2022.*

10

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02P .0101

DEADLINE FOR RECEIPT: Friday, August 12, 2022

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

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 email the reviewing attorney to inquire concerning the staff recommendation.

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

In (c), is "assessment and remedial work" meant to refer to the actions defined in G.S. 143-215.94G(a)?

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

Brian Liebman
Commission Counsel

Date submitted to agency: August 5, 2022

1 15A NCAC 02P .0101 is amended as published in 36:20 NCR 1616 as follows:

2
3 **SUBCHAPTER 02P - COMMERCIAL LEAKING PETROLEUM UNDERGROUND STORAGE TANK**
4 **CLEANUP FUNDS FUND**

5
6 **SECTION .0100 - GENERAL CONSIDERATIONS**

7
8 **15A NCAC 02P .0101 GENERAL**

9 (a) ~~The purpose of this~~ This Subchapter ~~is to establish~~ establishes criteria and procedures for the reimbursement of
10 costs incurred by owners, operators, and landowners from the Commercial Leaking Petroleum Underground Storage
11 Tank Cleanup ~~Funds~~ Fund.

12 (b) ~~The Groundwater Section~~ Underground Storage Tank (UST) Section, hereafter referred to as "the Section," of the
13 Division of ~~Environmental~~ Waste Management of the Department of ~~Environment, Health and Natural Resources~~
14 Environmental Quality (DEQ), hereafter referred to as "the Department," shall administer the Commercial ~~and~~
15 Noncommercial Leaking Petroleum Underground Storage Tank Cleanup ~~Funds~~ Fund for the State of North Carolina.

16 (c) ~~As authorized by G.S. 14-3215.94G, the Department may engage in cleanup work it deems appropriate and pay~~
17 ~~the costs from the Noncommercial Fund in accordance with G.S. 143215.94D.~~

18 ~~(d)~~(c) The Department may engage in investigations assessment and cleanups remedial work pursuant to the authority
19 as set forth in G.S. 143-215.94G in accordance with ~~the severity of threat to human health and safety and to the~~
20 environment, 15A NCAC 02L and subject to the availability of resources, as determined by the ~~Division~~ Department.

21
22 *History Note: Authority G.S. 143-215.3; ~~143-215.76; 143-215.94B; 143-215.94D; 143-215.94E; 143-215.94G;~~*
23 *~~143-215.94L; 143-215.94T; 143B-282;~~*
24 *Eff. February 1, 1993;*
25 *Amended Eff. September 1, 1993;*
26 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6,*
27 *~~2018; 2018;~~*
28 *Amended Eff. September 1, 2022.*

1 15A NCAC 02P .0102 is repealed as published in 36:20 NCR 1616 as follows:

2

3 **15A NCAC 02P .0102 COPIES OF RULES INCORPORATED BY REFERENCE**

4

5 *History Note: Authority G.S. 12-3.1(c); 143-215.3; 143-215.94L; 143-215.94T; 143B-282; 150B-21.6;*

6 *Eff. February 1, 1993;*

7 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6,*

8 *~~2018.~~ 2018.*

9 *Repealed Eff. September 1, 2022.*

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02P .0103

DEADLINE FOR RECEIPT: Friday, August 12, 2022

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

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 email the reviewing attorney to inquire concerning the staff recommendation.

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

On lines 4 and 7-8, did you mean to exclude "landowner" from the list of individuals whose actions could be considered contributing to a discharge, etc?

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

Brian Liebman
Commission Counsel
Date submitted to agency: August 5, 2022

1 15A NCAC 02P .0103 is readopted as published in 36:20 NCR 1616 as follows:

2

3 **15A NCAC 02P .0103 FALSE OR MISLEADING INFORMATION**

4 ~~Any owner or operator~~ If any owner, operator, or authorized agent who knowingly submits any false or misleading
5 information with regard to ~~these the Rules may~~ rules of this Subchapter, and if the false or misleading information
6 results in delay of any efforts to stop the discharge or release, results in delay of detection of any portion of the
7 discharge or release, or results in delay of investigatory or remedial activities, then that owner, operator, or authorized
8 agent shall be considered to be contributing to a ~~discharge,~~ discharge or release, interfering with the mitigation of a
9 ~~discharge,~~ discharge or release, or preventing the early detection of a discharge or release pursuant to G.S. 143-
10 215.94E(g)(1). ~~143-215.94E(g)(1) if the false or misleading information results in delay of any efforts to stop the~~
11 ~~release or discharge, results in delay of detection of any portion of the discharge or release, or results in delay of~~
12 ~~investigatory or remedial activities.~~

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14 *History Note: Authority G.S. 143-215.3; 143-215.94E; 143-215.94L; 143-215.94T; 143B-282;*

15 *Eff. February 1, 1993. 1993;*

16 *Readopted Eff. September 1, 2022.*

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02P .0201

DEADLINE FOR RECEIPT: Friday, August 12, 2022

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

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 email the reviewing attorney to inquire concerning the staff recommendation.

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

In (b), line 10, please replace "have been" with "were".

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

Brian Liebman
Commission Counsel
Date submitted to agency: August 5, 2022

1 15A NCAC 02P .0201 is readopted as published in 36:20 NCR 1616 as follows:

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SECTION .0200 - PROGRAM SCOPE

4

15A NCAC 02P .0201 APPLICABILITY

6 (a) This Subchapter shall apply to the disbursement of funds from the Commercial Leaking Petroleum Underground
7 Storage Tank Cleanup Fund ~~and Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Fund~~, and
8 to the collection of annual operating fees.

9 (b) Any portions of this Subchapter which concern annual tank operating fees apply to all owners and operators of
10 Commercial Underground Storage Tanks that have been in use in North Carolina on or after January 1, 1989.

11 (c) This Subchapter shall apply to discharges or releases from ~~noncommercial or~~ commercial underground storage
12 tank systems, regardless of whether such systems are regulated under ~~Subchapter 2N of Title 15A, of the North~~
13 ~~Carolina Administrative Code.~~ 15A NCAC 02N.

14

15 *History Note: Authority G.S. 143-215.3; 143-215.94B; 143-215.94C; ~~143-215.94D~~; 143-215.94E;*

16 *143-215.94L; 143-215.94T; 143B-282;*

17 *Eff. February 1, ~~1993~~, 1993;*

18 *Readopted Eff. September 1, 2022.*

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02P .0202

DEADLINE FOR RECEIPT: Friday, August 12, 2022

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

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 email the reviewing attorney to inquire concerning the staff recommendation.

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

In (7), p.2, line 6, please define or delete “essential”.

In (7), p.2, line 9, what “documentation” are you requiring?

In (7), p.2, lines 10-11, is there a difference between performing something “in an efficient manner considering comparable costs...” and “utilizing cost-efficient methods”? It seems like these two clauses are requiring the same thing.

For my understanding, can you elaborate on the difference between a “tank in operation” and a “tank in use”? It seems to me that these definitions aren’t mutually exclusive.

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

Brian Liebman
Commission Counsel
Date submitted to agency: August 5, 2022

1 15A NCAC 02P .0202 is readopted with changes as published in 36:20 NCR 1616 as follows:

2
3 **15A NCAC 02P .0202 DEFINITIONS**

4 (a) The ~~Definitions for "Criteria and Standards Applicable to Underground Storage Tanks" contained definitions in~~
5 ~~15A NCAC 2N 02N .0203 are hereby incorporated by reference including subsequent amendments and editions,~~
6 ~~except that apply~~ for the purposes of this Subchapter, except the definition of "Underground Storage Tank" shall be
7 as defined in Subparagraph (b)(12) of this Rule.

8 (b) The following terms are defined for use in this Subchapter:

9 (1) "Annual operating fee" ~~is an~~ means the annual fee established in G.S. 143-215.94C that is required
10 to be paid to the Department by the owner or operator of each commercial underground storage tank
11 as defined in G.S. 143-215.94A, in use on or after 1 January of the year, beginning with 1989.
12 January 1, 1989.

13 (2) "Commission" means the Environmental Management Commission as organized under Chapter
14 143B of the General Statutes.

15 (3) "Department" means Department of ~~Environment, Health, and Natural Resources.~~ Environmental
16 Quality.

17 (4) "Discovered release" means a release ~~which~~ that an owner or operator, or its employee or agent, has
18 been made aware of, has been notified of, or has a reasonable basis for knowing has occurred.

19 (5) "~~Dual usage tank~~" ~~means an underground storage tank which could be considered both a commercial~~
20 ~~underground storage tank and a noncommercial underground storage tank and for which both the~~
21 ~~commercial and the noncommercial usages are integral to the operation or existence of the tank.~~

22 (6) "Household" means a permanent structure, whether freestanding or connected to other units, used
23 ~~primarily for living, where primary living space and primary food preparation facilities are~~
24 ~~controlled or maintained by the residents. "Household" includes single family houses, mobile~~
25 ~~homes, apartments, and single living units, whether or not the residents are related to each other and~~
26 ~~whether the units are occupied on a year round or seasonal basis. "Household" does not include~~
27 ~~dormitories, hospitals, hotels, motels, apartment buildings (as distinct from the individual~~
28 ~~apartments therein), or other multiple dwelling structures. The term "four or fewer households" shall~~
29 ~~relate to underground storage tanks serving households only.~~

30 (5)(7) "Landowner" means any record fee owner of real property that contains or contained a commercial
31 underground storage tank of which he or she does not qualify as an owner or operator pursuant to
32 G.S. 143-215.94A.

33 (6) "Notice of Residual Petroleum" means the recording of residual petroleum from underground
34 storage tanks in accordance with G.S. 143B-279.11.

35 (7)(8) "Occurrence" means one or more release(s) that result(s) [a release or releases resulting] in a single
36 plume of soil, [soil contamination,] surface water, [water contamination,] or groundwater
37 contamination (consisting [contamination, consisting] of free product or dissolved contaminants

1 ~~exceeding standards specified in 15A NCAC 2L [02L and 15A NCAC 02T .1500] or any other~~
2 ~~applicable laws, rules or regulations) originating at a single property. [facility as defined by G.S.~~
3 ~~143-215.94A(3a).]~~

4 ~~(7)(8)~~(9) "Reasonable and necessary expenditures" means expenditures for the ~~cleanup~~ assessment
5 and remediation of environmental damage performed in accordance with applicable environmental
6 ~~laws and regulations and which~~ laws, regulations, and rules that are essential in determining the
7 extent of contamination, in conducting release response or remediation, or which compensate ~~third~~
8 ~~parties~~ third parties for resulting bodily injury and property damage. The Commission shall consider
9 such expenditures reasonable and necessary to the extent that they are supported by documentation,
10 ~~sufficiently documented,~~ are performed in an efficient manner considering comparable costs for
11 labor, equipment, and materials, and utilize cost-efficient methods.

12 ~~(8)(9)~~ "Reasonable Rate Document" means the schedule of costs that the Department has determined to
13 be reasonable and necessary costs for specific tasks pursuant to G.S. 143-215.94E(e5)(3).

14 (10) "Substantive law, rule, or regulation" shall mean any law, rule, or regulation requiring an owner or
15 operator to ~~perform any act necessary and essential in preventing discharges or releases, in~~
16 ~~facilitating their early detection, and in mitigating the impact of discharges or releases.~~

17 ~~(9)(10)~~(11) "Tank in operation" means an underground storage tank into which product is added or
18 from which product is removed for purposes other than closure.

19 ~~(10)(11)~~(12) "Tank in use" means an underground storage tank intended for the containment or
20 dispensing of petroleum product.

21 ~~(11)(12)~~(13) "Underground storage ~~tank~~" as used in this Subchapter tank" means any Commercial ~~or~~
22 ~~Noncommercial~~ Underground Storage Tank as defined in G.S. 143-215.94A. ~~A dual usage tank is~~
23 ~~considered to be a commercial underground storage tank.~~

24
25 *History Note:* Authority G.S. 143-215.3; 143-215.94A; 143-215.94B; 143-215.94C; 143-215.94D; 143-215.94E;
26 143-215.94L; 143-215.94T; 143B-282;
27 Eff. February 1, 1993;
28 Amended Eff. September 1, 1993, 1993;
29 Readopted Eff. September 1, 2022.

1 15A NCAC 02P .0301 is readopted as published in 36:20 NCR 1616 as follows:

2
3 **SECTION .0300 - ANNUAL OPERATING FEES**
4

5 **15A NCAC 02P .0301 FEES AND PAYMENT**

6 ~~(a) The owner or operator of each commercial underground storage tank shall pay all annual tank operating fees due~~
7 ~~for that commercial underground storage tank tank, in accordance with G.S. 143-215.94C. Unpaid operating fees~~
8 ~~attach to the tanks, notwithstanding the ownership of the tanks.~~

9 ~~(b) The Division shall send an invoice, for the amount of the annual operating fees due, to the owner or operator of~~
10 ~~any commercial petroleum underground storage tank in use on January 1 of the year and which has been registered~~
11 ~~with the Department. The annual operating fee shall be due and payable 30 days following the date of the invoice and~~
12 ~~shall be submitted to the Division accordingly.~~

13 ~~(c) Any owner or operator not receiving an invoice for annual operating fees shall still pay any fees due according to~~
14 ~~the following schedule:~~

15 (1) ~~If the owner or operator has paid annual operating fees for the subject tank in previous years, the~~
16 ~~payment will be submitted to the Division within 30 days of the anniversary of the last invoicing~~
17 ~~date for the fees.~~

18 (2) ~~If the owner or operator has not previously paid annual operating fees for the subject tank, any~~
19 ~~annual operating fee is due on 1 January of that year and shall be submitted to the Division~~
20 ~~accordingly.~~

21 ~~(d) Any commercial underground storage tank (except commercial underground storage tanks not regulated under~~
22 ~~15A NCAC 2N) which was in operation on or after December 22, 1988 and has not been permanently closed in~~
23 ~~accordance with 15A NCAC 2N .0800, is considered to be in use unless the provisions of G.S. 143215.94D(b)(4) are~~
24 ~~applicable.~~

25 ~~(e) Any annual operating fee due on or after January 1, 1992, that is not paid within 30 days of the due date shall be~~
26 ~~subject to a late penalty of five dollars (\$5.00) per day up to an amount equal to the original fee. The late penalty will~~
27 ~~be assessed based on the date of receipt of fee payment by the Division.~~

28 ~~(f) All annual operating fees due for any year are assessed in accordance with the schedule of fees in effect during~~
29 ~~that year. Payment of fees due for a prior year will be at the rate in effect during that prior year. It is the responsibility~~
30 ~~of the owner or operator to determine that all fees have been paid in accordance with Paragraph (a) of this Rule.~~

31 ~~(g) In the event that an annual operating fee was paid for a tank for which a fee was not required, a refund of that fee~~
32 ~~payment may be requested by the owner or operator. A refund will be granted if the owner or operator provides~~
33 ~~adequate documentation that the tank was exempt from the requirement to pay the annual operating fee.~~

34
35 *History Note: Authority G.S. 143-215.3; 143-215.94C; ~~143-215.94D~~; 143-215.94E; 143-215.94L; 143-215.94T;*
36 *143B-282;*

37 *Eff. February 1, ~~1993~~. 1993;*

1 15A NCAC 02P .0302 is readopted as published in 36:20 NCR 1616 as follows:

2

3 **15A NCAC 02P .0302 NOTIFICATION**

4 Any person acquiring ownership of an existing commercial underground storage tank shall provide written notification
5 to the ~~Division~~ Department of this action within 30 days of the date of transfer. This notification ~~must~~ shall indicate
6 the following:

7 (1) ~~Name~~ name and address of the previous owner and the new owner;

8 (2) ~~Name,~~ name, identification number, and street address of the facility;

9 (3) ~~Date~~ date of transfer;

10 (4) ~~Signatures~~ signatures of the transferring owner and the new owner or their authorized
11 ~~representatives.~~ representatives;

12 (5) proof of placement of a Notice of Residual Petroleum for any known release at the site at the time
13 of the transfer of the property;

14 (6) statement of intent of whether the new owner intends to accept eligibility of any previous release
15 from the tank or tanks just acquired; and

16 (7) copy of ownership transfer documents.

17

18 *History Note: Authority G.S. 143-215.3; 143-215.94L; 143-215.94T; 143B-282;*

19 *Eff. February 1, 1993- 1993;*

20 *Readopted Eff. September 1, 2022.*

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02P .0401

DEADLINE FOR RECEIPT: Friday, August 12, 2022

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

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 email the reviewing attorney to inquire concerning the staff recommendation.

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

In (a)(2), line 12, what is the “first date of release”? Did you mean “date of first release”?

In (a)(4), line 21, please consider deleting “such time that”.

I'm not sure I understand (a)(4). Are you requiring the eligible party to reapply for eligibility once the cleanup has completed?

It appears to me that (c) is a run-on sentence. Please break up into multiple sentences, a list, or rephrase.

In the list in (d), I have several questions:

(1) – what contact information are you requiring? Please be specific.

(5) – what “compliance” history are you asking for?

(6) – what do you mean by “source of funding information for the release”?

(9) – the Rule requests “deeds” and “bills of sale”. Are you requiring more than just the current owner’s deed or bill of sale? How far back into the chain of title must the applicant go to satisfy this requirement?

(11) – what are you asking the affiant to swear to? Accuracy of the information?

Is (e) not a verbatim copy of G.S. 143-215.94E(g)(1)? Is this paragraph necessary?

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

Brian Liebman
Commission Counsel

Date submitted to agency: August 5, 2022

1 15A NCAC 02P .0401 is readopted with changes as published in 36:20 NCR 1616 as follows:

2
3 **SECTION .0400 - REIMBURSEMENT PROCEDURE**

4
5 **15A NCAC 02P .0401 ELIGIBILITY OF OWNER OR OPERATOR**

6 (a) Date of Release.

- 7 (1) An ~~owner or operator~~ owner, operator, or landowner of a commercial underground storage tank is
8 not eligible for reimbursement of costs from the Commercial Leaking Petroleum Underground
9 Storage Tank Cleanup Fund related to releases which were discovered prior to June 30, 1988.
- 10 (2) ~~An owner or operator of a noncommercial underground storage tank is eligible for reimbursement~~
11 ~~of costs without regard to the date a release is discovered. In the case of multiple releases that~~
12 ~~commingle into one plume, the deductible is established under the first date of release.~~
- 13 (3) ~~An owner or operator of a commercial underground storage tank which qualifies for the~~
14 ~~Noncommercial Fund pursuant to G.S. 143-215.94D(b)(3) and 143-215.94D(b)(4) is eligible for~~
15 ~~reimbursement of costs without regard to the date a release is discovered. Only the currently~~
16 ~~approved eligible party, determined in accordance with Paragraphs (b) through (d) of this Rule, may~~
17 ~~be reimbursed from the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund.~~
- 18 (4) ~~An owner or operator or landowner of a commercial underground storage tank, from which a release~~
19 ~~is discovered on or after July 3, 1991, is not eligible for reimbursement from the Commercial Fund~~
20 ~~if the tank had been removed from the ground more than 120 days prior to the date of discovery of~~
21 ~~the release. After such time that the Department has notified the eligible [responsible] party that no~~
22 ~~further action is required for a discharge or release pursuant to 15A NCAC 02L, eligibility may be~~
23 ~~reapplied for by either the current owner, operator, or landowner or former eligible [responsible]~~
24 ~~party as applicable and upon receiving eligibility, said party shall be credited for all prior~~
25 ~~[reimbursed amounts] reimbursable cleanup costs~~ subject to G.S. 143-215.94E(j) and G.S. 143-
26 215.94E(k).

27 (b) An owner or operator of a commercial underground storage tank is not eligible for reimbursement for costs related
28 to releases if any annual operating fees due have not been paid in accordance with Rule .0301 of this Subchapter prior
29 to ~~discovery.~~ discovery of a release from the tank. A previous owner or operator of a commercial underground storage
30 tank may be eligible for reimbursement of costs for cleanup of a release discovered after he or she ceases owning or
31 operating the underground storage tank if all fees due during his or her period of ownership and operation have been
32 paid prior to discovery of the release. A landowner is eligible for reimbursement of costs without regard to the payment
33 of ~~fees.~~ fees as long as the property has not been transferred to circumvent liability in accordance with this Paragraph.

34 (c) An ~~owner or operator~~ owner, operator, or landowner of a commercial ~~or noncommercial~~ underground storage tank
35 is not eligible for reimbursement of any expenditures ~~expended costs~~ which are in excess of the amount determined
36 reasonable in accordance with Rule ~~.0402,~~ .0402 of this Section and which are not necessary in performing cleanup
37 of environmental damage and in compensating ~~third parties~~ third-parties for bodily injury and property damage, and

1 ~~which that~~ are less than any deductible established for the ~~appropriate fund.~~ Commercial Leaking Petroleum
2 Underground Storage Tank Cleanup Fund.

3 (d) An ~~owner or operator~~ owner, operator, or landowner of a commercial ~~or noncommercial~~ underground storage tank
4 tank, who is eligible for reimbursement under the rules of this Section, may be reimbursed for eligible costs only after
5 submittal of a written application of eligibility to the ~~Division, Department,~~ on forms provided by the ~~Division,~~
6 Department, which are located at 217 West Jones Street, Raleigh, NC 27603 and on the Department's website, and
7 which includes any information and documentation necessary to determine eligibility and to determine that any
8 expended costs are reasonable and necessary. eligibility. An application of eligibility shall include:

- 9 (1) contact information for the applicant;
- 10 (2) site information, including tenant information if applicable;
- 11 (3) inventory of all tanks ever installed on the property;
- 12 (4) release discovery and reporting information;
- 13 (5) tank compliance history;
- 14 (6) disclosure of the existence of environmental liability insurance or any other potential sources of
15 funding information for the release;
- 16 (7) scaled site map showing location of all tanks and releases;
- 17 (8) tank upgrade information;
- 18 (9) property deeds and bills of sale to confirm ownership history;
- 19 (10) any UST Section inspection records; and
- 20 (11) a notarized affidavit from the applicant.

21 (e) An owner or operator of a commercial ~~or noncommercial~~ underground storage tank shall not be eligible for
22 reimbursement for costs related to releases if the owner or operator has willfully violated any substantive law, rule, or
23 regulation applicable to underground storage tanks intended to prevent, mitigate, or facilitate the early detection of
24 discharges or releases.

25 (f) The release response and corrective action requirements of any rules of the Commission and of any statute
26 administered by the Department shall not ~~in any way~~ be construed as limited by, or contingent upon, any
27 reimbursement from ~~either the Noncommercial Fund or the Commercial Leaking Petroleum Underground Storage~~
28 Tank Cleanup Fund.

29
30 *History Note: Authority G.S. 143-215.3; 143-215.94B; 143-215.94E; 143-215.94L; 143-215.94N; 143-215.94T;*
31 *143B-282;*
32 *Eff. February 1, 1993;*
33 *Amended Eff. September 1, 1993- 1993;*
34 *Readopted Eff. September 1, 2022.*

1 15A NCAC 02P .0402 is readopted as published in 36:20 NCR 1616 as follows:

2
3 **15A NCAC 02P .0402 CLEANUP COSTS**

4 (a) In determining whether costs expended by an ~~owner or operator~~ owner, operator, or landowner are reasonable and
5 necessary, the ~~Division~~ Department shall consider the following:

- 6 (1) ~~Adequacy~~ adequacy and cost-effectiveness of any work performed, and technical activity utilized
7 by the ~~owner or operator~~ owner, operator, or landowner in performing release response, site
8 ~~assessment~~ assessment, and corrective ~~action.~~ action;
- 9 (2) ~~Typical billing~~ industry rates of engineering, geological, or other environmental consulting firms
10 providing similar services in the State as determined by the ~~Division.~~ Department;
- 11 (3) ~~Typical rental~~ industry rental rates for any ~~necessary equipment~~ equipment, not to exceed the
12 purchase price, as determined by the Department. ~~Division.~~ The amount reimbursed for equipment
13 rental shall not exceed the typical purchase price of such equipment.
- 14 (4) ~~Typical costs or~~ industry rates of any other ~~necessary service, labor~~ labor, or ~~expense as determined~~
15 ~~by the Division.~~ expense; and
- 16 (5) ~~Whether~~ whether costs expended for corrective action were required by 15A NCAC ~~2L.~~ 02L.

17 (b) Expenditures not eligible for reimbursement shall include the following:

- 18 (1) ~~Costs of the removal and disposal of noncommercial underground storage tanks and contents~~
19 ~~removed on or after July 3, 1991, and of commercial underground storage tanks and contents~~
20 ~~removed on or after January 1, 1992; costs that are not eligible to be reimbursed pursuant to G.S.~~
21 143-215.94B, and any costs associated with noncommercial underground storage tanks;
- 22 (2) ~~Costs~~ costs of the replacement of any underground storage tank, piping, fitting, or ancillary
23 ~~equipment; equipment required to operate and maintain a UST system;~~
- 24 (3) ~~Costs~~ costs incurred in preparation of any proposals or bid by a provider of service for the purpose
25 of soliciting or bidding for the opportunity to perform an environmental investigation or cleanup,
26 even if that provider is ~~ultimately~~ selected to provide the service solicited;
- 27 (4) ~~Interest on any accounts, loans, etc.;~~ interest of any kind;
- 28 (5) ~~Expenses~~ expenses charged by the ~~owner or operator~~ owner, operator, or landowner in the
29 processing and management of a reimbursement application or subsequent claims;
- 30 (6) ~~Attorney's~~ attorney's fees;
- 31 (7) ~~Penalties, penalties,~~ fees, and fines assessed by any court or agency;
- 32 (8) ~~Loss~~ loss of profits, fees, and wages incurred by the ~~owner or operator~~ owner, operator, or
33 landowner;
- 34 (9) ~~Costs incurred during cleanup if preapproval of the cleanup tasks and associated costs was not~~
35 ~~obtained from the Division. Preapproval is not required for assessment activities or for costs~~
36 ~~determined by the Division to be related to emergency response actions; costs for which pre-~~
37 approval is required as set forth in G.S. 143-215.94E(e5)(1) and (2), and was not obtained;

1 (10) ~~Any any~~ other expenses not specifically related to environmental cleanup, or implementation of a
2 ~~cost-effective~~ cost-effective environmental cleanup, or ~~third-party~~ third-party bodily injury or
3 property ~~damage.~~ damage; and

4 (11) for any task for which a maximum rate is established in the Reasonable Rate Document, costs in
5 excess of that maximum rate shall not be eligible for reimbursement without prior written pre-
6 approval by the Department.

7 (c) When preapproval of costs is required and is obtained from the Department, the preapproval is valid for one year
8 from the date fully executed.

9
10 *History Note: Authority G.S. 143-215.3; 143-215.94B; ~~143-215.94D~~; 143-215.94E; 143-215.94L; 143-215.94T;*
11 *143-215.94V; 143B-282;*
12 *Eff. February 1, 1993;*
13 *Amended Eff. September 1, 1993;*
14 *Temporary Amendment Eff. January 2, 1998; January 2, 1996;*
15 *Amended Eff. October 29, 1998 (SB 1598);*
16 *Temporary Amendment Eff. October 1, 1999;*
17 *Amended Eff. August 1, ~~2000~~ 2000;*
18 *Readopted Eff. September 1, 2022.*

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02P .0403

DEADLINE FOR RECEIPT: Friday, August 12, 2022

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

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 email the reviewing attorney to inquire concerning the staff recommendation.

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

Throughout, is there a reason that "landowner" has been omitted from the list of entities referenced here?

In (a), line 6, please fix the citation to "G.S. 143-215.94E(e3)".

In (a), line 7, please define what "related documents" the Commission is requiring that an applicant provide.

In (a), line 11, please define "reasonable" and "necessary."

In (a), line 11, are you requiring the owner or operator to prove the 3rd party's case to the Commission, before the Commission will approve reimbursement?

Paragraphs (b) and (c) contain almost verbatim repetitions of statutory definitions in G.S. 143-215.94A(13) and (14). Are these necessary?

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

Brian Liebman
Commission Counsel

Date submitted to agency: August 5, 2022

1 15A NCAC 02P .0403 is readopted as published in 36:20 NCR 1616 as follows:

2
3 **15A NCAC 02P .0403 ~~THIRD-PARTY~~ THIRD-PARTY CLAIMS**

4 (a) An owner or operator seeking reimbursement from the ~~appropriate fund~~ Commercial Leaking Petroleum
5 Underground Storage Tank Cleanup Fund for any ~~third-party~~ third-party claim for bodily injury or property damage
6 ~~must shall~~ notify the ~~Division~~ Department of any such ~~claim.~~ claim in accordance with G.S. 143-215.94E(e)(3). The
7 owner or operator ~~must shall~~ provide the ~~Division~~ Department with all pleadings and other related documents ~~if of a~~
8 third-party damage lawsuit that has been filed. filed prior to entry into settlement agreement or consent judgement for
9 Departmental approval. The owner or operator shall provide to the ~~Division~~ Department copies of any medical reports,
10 statements, investigative reports, or certifications from licensed professionals necessary to ~~determine~~ prove that a
11 claim for bodily injury or property damage is reasonable and necessary.

12 (b) The term ~~third-party bodily injury~~ "third-party bodily injury" means specific physical bodily injury proximately
13 resulting from exposure, explosion, or fire caused by the presence of a petroleum release and which is incurred by a
14 person other than the owner or operator, or employees or agents of an owner or operator.

15 (c) The term ~~third-party property damage~~ "third-party property damage" means actual physical damage or damage
16 due to specific loss of normal use of property owned by a person other than the owner or operator of an underground
17 storage tank from which a release has occurred. A property owner shall not be considered a ~~third-party~~ third-party if
18 the property was transferred by the owner or operator of an underground storage tank in anticipation of damage due
19 to a release. ~~Third-party~~ Third-party property damage shall be reimbursed from the ~~appropriate fund~~ Commercial
20 Leaking Petroleum Underground Storage Tank Cleanup Fund based on the rental costs of comparable property during
21 the period of loss of use up to a maximum amount equal to the fair market value. In the case of property that is ~~actually~~
22 destroyed as a result of a petroleum release, reimbursement shall be at an amount necessary to replace or repair the
23 destroyed property.

24
25 *History Note: Authority G.S. 143-215.3; 143-215.94B; ~~143-215.94D~~; 143-215.94E; 143-215.94L; 143-215.94T;*
26 *143B-282;*
27 *Eff. February 1, ~~1993~~. 1993;*
28 *Readopted Eff. September 1, 2022.*

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02P .0404

DEADLINE FOR RECEIPT: Friday, August 12, 2022

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

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 email the reviewing attorney to inquire concerning the staff recommendation.

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

In (a), lines 6-7, "only after the determination... has been issued" is redundant. Please consider deleting.

In the list under (a), are these titles of each form? If so should they be capitalized?

Also with respect to the forms listed in and under (a), are the contents of these forms described in another rule or statute, or have these forms themselves gone through the rulemaking process?

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

Brian Liebman
Commission Counsel

Date submitted to agency: August 5, 2022

1 15A NCAC 02P .0404 is readopted as published in 36:20 NCR 1616 as follows:

2
3 **15A NCAC 02P .0404 REQUESTS FOR REIMBURSEMENT**

4 (a) ~~After a determination of eligibility, the owner, operator, or landowner may make a request for reimbursement. An~~
5 ~~application~~ A request for reimbursement must shall be made on a form forms located at 217 West Jones Street, Raleigh,
6 NC 27603 or on the Department's website provided by the Division. Department only after the determination of
7 eligibility has been issued. The application form must accompany the initial reimbursement request. request shall
8 include the following:

- 9 (1) notarized certification of the costs form;
10 (2) notarized certification of payment to subcontractors form, if applicable;
11 (3) summary of work performed form;
12 (4) reimbursement payment information form;
13 (5) certification of remediation system installation form, if applicable;
14 (6) itemized breakdown of the requested reimbursement, primary and secondary claim forms; and
15 (7) supporting documentation of the itemized costs, such as the following:
16 (A) subcontractor invoices;
17 (B) correspondence from regulatory agencies;
18 (C) invoices;
19 (D) bills of lading;
20 (E) per diem receipts;
21 (F) field logs; and
22 (G) reports.

23 (b) ~~A request for reimbursement shall include copies of any documentation required by the Division to determine that~~
24 ~~expended costs are reasonable and necessary. Proof of completion of work and payment must shall accompany any~~
25 ~~request for reimbursement, except when reimbursement will be is made jointly to the owner or operator owner,~~
26 ~~operator, or landowner and either a provider of service or a third party third-party claimant. The Division may require~~
27 ~~the owner or operator or landowner to submit any information required for the purpose of substantiating any claim for~~
28 ~~reimbursement on forms provided by the Division.~~

29 (c) A request for reimbursement may be returned or additional information requested by the ~~Division, Department,~~ if
30 it is found to be incomplete.

31 (d) The ~~Division Department~~ shall reimburse an ~~owner or operator eligible owner, operator,~~ or landowner for expenses
32 following completion of any ~~significant~~ phase of cleanup work ~~or~~ in accordance with the schedule allowed by G.S.
33 ~~143-215.94E(c).~~ 143-215.94E(c2).

34 (e) If any amount approved for reimbursement is less than the amount of reimbursement requested, the ~~Division~~
35 Department shall issue a written explanation of why the amount requested was not approved.

1 *History Note: Authority G.S. 143-215.3; 143-215.94B; 143-215.94E; 143-215.94G; 143-215.94L; 143-215.94T;*
2 *143B-282;*
3 *Eff. February 1, 1993;*
4 *Amended Eff. September 1, ~~1993~~ 1993;*
5 *Readopted Eff. September 1, 2022.*

1 15A NCAC 02P .0405 is readopted with changes as published in 36:20 NCR 1616 as follows:

2

3 **15A NCAC 02P .0405 METHOD OF REIMBURSEMENT**

4 (a) Reimbursement for cleanup costs shall be made only to an ~~owner or operator~~ eligible owner, operator, or
5 landowner of a petroleum underground storage tank, or jointly to an ~~owner or operator~~ owner, operator, or landowner
6 and a provider of service.

7 (b) Reimbursement of cleanup costs to the ~~owner or operator~~ owner, operator, or landowner shall be made only after
8 proof of completion of work and payment for such costs has been received by the ~~Division.~~ Department.

9 (c) Joint reimbursement of cleanup costs shall be made to an ~~owner or operator~~ owner, operator, or landowner and a
10 provider of service only upon receipt of a written agreement acknowledged by both parties. Any reimbursement check
11 shall be sent directly to the ~~owner or operator~~ owner, operator, or landowner.

12 (d) Payment of ~~third party~~ third-party claims shall be made to the owner or operator, or jointly to the owner or operator
13 and the ~~third party~~ third-party claimant.

14 (e) Any request for reimbursement that has not been returned to the owner, operator, or landowner, or reimbursed to
15 the owner, operator, or landowner within 90 days of submittal of such a request may be considered by the owner,
16 operator, or landowner as having been denied by the ~~Department.~~ Department in accordance with G.S. 143-
17 215.94E(c2).

18

19 *History Note: Authority G.S. 143-215.3; 143-215.94B; 143-215.94E; 143-215.94L; 143-215.94T; 143B-282;*
20 *Eff. February 1, 1993;*
21 *Amended Eff. September 1, ~~1993.~~ 1993;*
22 *Readopted Eff. September 1, 2022.*

1 15A NCAC 02P .0406 is readopted with changes as published in 36:20 NCR 1616 as follows:

2
3 **15A NCAC 02P .0406 REIMBURSEMENT APPORTIONMENT**

4 ~~(a) Where multiple occurrences are addressed in a single cleanup action, expenses will be reimbursed based on~~
5 ~~apportionment among the occurrences. The method of apportionment will be as follows:~~

- 6 (1) ~~Expenses related directly to a particular occurrence shall be applied only to that occurrence;~~
7 (2) ~~Expenses that are related to more than one occurrence will be apportioned equally among the~~
8 ~~occurrences.~~

9 ~~(a)(b) Where~~ If not all any of the underground storage tanks at a single facility contributing to a discharge or release
10 which resulted in a single plume of soil, surface water, or groundwater contamination pursuant to G.S. 143-
11 215.94B(b1) an occurrence are not eligible for reimbursement, reimbursement ~~will~~ shall be made at a rate equal to the
12 number of tanks contributing to the ~~occurrence~~ which discharge or release that are eligible for reimbursement divided
13 by the total number of tanks contributing to the ~~discharge or release. occurrence.~~

14 ~~(b)(e)~~ If multiple underground storage tanks at a single facility property are contributing to a single discharge or
15 release which resulted in a single plume of soil, surface water, or groundwater contamination, occurrence and the
16 tanks are owned or operated by different persons, reimbursement may be made to any of the owners or operators as if
17 the ~~occurrence~~ discharge or release were caused ~~solely~~ entirely by that person's underground storage tanks.

18 (c) If [multiple storage tanks, either] above ground [or underground,] and underground storage tanks at a single facility
19 are both contributing to a single ~~occurrence,~~ discharge or release which resulted in a single plume of soil, surface
20 water, or groundwater contamination, reimbursement shall be apportioned based upon the volume of eligible tanks
21 divided by the total volume of all tanks contributing to the release.

22 (d) Where multiple discharges or releases at a single facility which resulted in separate plume of soil, surface water,
23 or groundwater contamination pursuant to G.S. 143-215.94B(b1) [occurrences] are addressed in a single cleanup
24 action, expenses shall be reimbursed based on apportionment among the discharges or releases. [occurrences.] The
25 method of apportionment shall be as follows:

- 26 (1) expenses related to a particular discharge or release [occurrence] shall be applied only to that
27 discharge or release; [occurrence;] or
28 (2) expenses that are related to more than one discharge or release [occurrence] shall be apportioned on
29 a pro rata basis among the discharges or releases. [occurrences.]

30
31 *History Note: Authority G.S. 143-215.3; 143-215.94E; 143-215.94L; 143-215.94T; 143B-282;*
32 *Eff. February 1, 1993. 1993;*
33 *Readopted Eff. September 1, 2022.*

1 15A NCAC 02P .0407 is readopted with changes as published in 36:20 NCR 1616 as follows:

2
3 **15A NCAC 02P .0407 FINAL ACTION APPEAL RIGHTS**

4 (a) ~~The Director, or his delegate, Underground Storage Tank Section Chief, or Trust Fund Branch Head of the Division~~
5 ~~of Waste Management shall make the agency decision on a written application for eligibility for reimbursement from~~
6 ~~the appropriate fund. Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund. The Director, or his~~
7 ~~delegate, Underground Storage Tank Section Chief, or Trust Fund Branch Head shall make the agency decision on~~
8 ~~any written request claim for reimbursement made subsequent to an initial application. once an applicant has been~~
9 ~~granted eligibility.~~

10 (b) ~~An owner or operator owner, operator, or landowner who has not received a written notification of decision been~~
11 ~~denied of eligibility to or for reimbursement from the appropriate fund Commercial Leaking Petroleum Underground~~
12 ~~Storage Tank Cleanup Fund within 90 days of after~~ submittal of a written application in accordance with the
13 ~~procedures rules~~ of this Subchapter, ~~or who has had any written reimbursement request denied after submittal in~~
14 ~~accordance with the procedures of this Subchapter, shall be notified of the right to petition for a contested case in the~~
15 ~~Office of Administrative Hearings in accordance with the procedure set out in G.S. 150B-23. The Secretary of the~~
16 ~~Department of Environment, Health, and Natural Resources shall make the final agency decision in any contested case~~
17 ~~pursuant to G.S. 150B-36. Subchapter may elect to consider the application to have been denied and may file an appeal~~
18 ~~in accordance with G.S. 143-215.94E(c2). [as provided in Article 3 of Chapter 150B of the General Statutes.]~~

19 (c) ~~An owner, operator, or landowner who has received a written notification of eligibility to or for reimbursement~~
20 ~~from the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund after submittal of a written~~
21 ~~application in accordance with the rules of this Subchapter and disagrees with the notification may elect to file an~~
22 ~~informal appeal supplying additional information. Following review of the additional information, the Director,~~
23 ~~Underground Storage Tank Section Chief, or Trust Fund Branch Head shall issue a written agency decision. If the~~
24 ~~written decision by the Director, Underground Storage Tank Section Chief, or Trust Fund Branch Head does not~~
25 ~~change the original decision of eligibility to or for reimbursement from the Commercial Leaking Petroleum~~
26 ~~Underground Storage Tank Cleanup Fund, the Department shall notify the owner, operator, or landowner of the right~~
27 ~~to petition for a contested case in the Office of Administrative Hearings in accordance with G.S. 150B-23.~~

28 (d) ~~An owner, operator, or landowner who has received a written notification of eligibility to or for reimbursement~~
29 ~~from the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund after submittal of a written~~
30 ~~application in accordance with the rules of this Subchapter and disagrees with the notification may elect to file a~~
31 ~~petition for a contested case in the Office of Administrative Hearings in accordance with G.S. 150B-23 without~~
32 ~~providing any additional information.~~

33
34 *History Note:* Authority *G.S. 143-215.3; 143-215.94B; ~~143-215.94D~~; 143-215.94E; 143-215.94L; 143-215.94T;*
35 *143B-282; 150B-23; ~~150B-36~~;*
36 *Eff. February 1, 1993;*
37 *Amended Eff. September 1, ~~1993~~. 1993;*

