

Burgos, Alexander N

Subject: FW: [External] RE: 15A NCAC 13B Request for Changes

From: Peaslee, William W <bill.peaslee@oah.nc.gov>

Sent: Monday, August 15, 2022 12:49 PM

To: Everett, Jennifer <jennifer.everett@ncdenr.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Stanley, Sherri <Sherri.Stanley@ncdenr.gov>; Montie, Jessica <jessica.montie@ncdenr.gov>; Reynolds, Phillip T <preynolds@ncdoj.gov>

Subject: RE: [External] RE: 15A NCAC 13B Request for Changes

Thank you for your email.

It is my intention to recommend approval.

William W. Peaslee

Rules Review Commission Counsel / Legislative Liaison

Office of Administrative Hearings

1711 New Hope Church Road

Raleigh NC, 27609

(984) 236-1939

Bill.Peaslee@oah.nc.gov

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From: Everett, Jennifer <jennifer.everett@ncdenr.gov>

Sent: Monday, August 15, 2022 12:14 PM

To: Peaslee, William W <bill.peaslee@oah.nc.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Stanley, Sherri <Sherri.Stanley@ncdenr.gov>; Montie, Jessica <jessica.montie@ncdenr.gov>; Reynolds, Phillip T <preynolds@ncdoj.gov>

Subject: RE: [External] RE: 15A NCAC 13B Request for Changes

Hi Bill,

Checking in ahead of the meeting this week. Are you recommending approval of the two 15A NCAC 13B rules?

Jennifer

Jennifer Everett

DEQ Rulemaking Coordinator

N.C. Depart. Of Environmental Quality

Office of General Counsel

1601 Mail Service Center

Raleigh, NC 27699-1601

Tele: (919)-707-8614

<https://deg.nc.gov/permits-rules/rules-regulations/deg-proposed-rules>

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Burgos, Alexander N

Subject: FW: [External] RE: 15A NCAC 13B Request for Changes
Attachments: 08.2022 - EMC 15A NCAC 13B Response To Request for Changes.docx

From: Montie, Jessica <jessica.montie@ncdenr.gov>
Sent: Friday, August 5, 2022 10:16 PM
To: Reynolds, Phillip T <preynolds@ncdoj.gov>; Peaslee, William W <bill.peaslee@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Stanley, Sherri <Sherri.Stanley@ncdenr.gov>; Everett, Jennifer <jennifer.everett@ncdenr.gov>
Subject: RE: [External] RE: 15A NCAC 13B Request for Changes

The technical change request document mentioned below which includes the agency's updated response is attached.



Jessica Montie
Environmental Program Consultant
Division of Waste Management
North Carolina Department of Environmental Quality
919.707.8247 (Office)
Jessica.Montie@ncdenr.gov

Email correspondence to and from this address is subject to the North Carolina Public Records Law and may be disclosed to third parties.

From: Reynolds, Phillip <PReynolds@ncdoj.gov>
Sent: August 5, 2022 10:10 PM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Montie, Jessica <jessica.montie@ncdenr.gov>; Stanley, Sherri <Sherri.Stanley@ncdenr.gov>; Everett, Jennifer <jennifer.everett@ncdenr.gov>
Subject: [External] RE: 15A NCAC 13B Request for Changes

CAUTION: External email. Do not click links or open attachments unless you verify. Send all suspicious email as an attachment to [Report Spam](#).

Bill

Thank you again for your time today. As we discussed, please find below some additional clarification for your consideration.

Regarding your earlier questions, the use of the phrase "consistent with" in the response document was not meant to have the same meaning as the phrase "substantively identical." It was only meant to convey that the language between the rules required to be adopted and those that you are reviewing incorporated similar language as that required by the session law.

As we also discussed, two different "versions" (for lack of a better term) of the rules are going through the process; one at the direction of the session law and one at the election of the agency. The two versions were submitted on separate forms after discussing the issue with the Codifier; however, the version submitted by the agency that you are reviewing

address different types of applications than those addressed by the session law. In other words, the changes made at the election of the EMC do not conflict with the changes required by the session law and were made for consistency.

The first “version” of the rule addresses the changes required by [S.L. 2021-153](#), and specifically those changes required in Section 1.(c), “Implementation.” Section 1.(c)(3) addresses the information required to be submitted for those applications for a “permit amendment” (as defined in statute) for a change in ownership or corporate structure. It also included the following requirement for those applications: “k. Any additional information that the Division may request that is necessary for compliance with the requirements of this section and the requirements of Subchapter B of Chapter 13 of Title 15A of the North Carolina Administrative Code.” A new paragraph, Paragraph (c)(2), was added to the rules to address the legislative mandate, and that version of the rule was submitted on a separate form since it is exempt from review by the RRC and will automatically be subjected to legislative review. The effect of the Session Law was to separate out those applications for a change in ownership or corporate structure from other types of “permit amendment” applications, which are addressed in Paragraph (c)(1) of amended Rules .0535 and .1617 (this was Paragraph (c) in the existing rule).

The Session Law did not change or otherwise have any impact on the requirements related to “new permits” (as defined in statute), including the new permit application requirements contained in Paragraph (b) pertaining to proposed expansions of the permitted activities at the landfill. The proposed language was included because the Division is required to determine whether the application contains all of the information required and, if not, it is necessary for the Department to request the additional information necessary for the review from the applicant. The request for additional information would not be open-ended, but tied to the sufficiency of the information already required to be submitted, especially as it relates to site-specific issues, including what may fall under the purview of the licensed professional engineers and licensed geologists who may certify all or part of these applications, if required by G.S. 89C and 89E. As you will see below and attached, we attempted to modify the language to make this point more clear after you and I spoke. While the change was not required by the session law, the authority to request additional information is nevertheless provided in G.S. 130A-294, on which the two rules are predicated.

The EMC also sought to mirror the language in Paragraph (b) with that in amended Part (c)(2)(K) of Rules .0565 and .1617 in an effort to make the application requirements consistent for the regulated community. While we recognize that the use of similar language previously isn’t conclusive, the EMC and the Department endeavor to ensure that the applications are consistent both between the types of applications covered by the rules you are reviewing, and as between the other applications required in other permitting rules throughout Subchapter 13B, including those adopted within the last few years. Based on the consistency of the language, which was developed through the stakeholder and public comment processes, the regulated community is very familiar with the information required for permitting, and the potential need for submitting additional information when necessary to complete the application process.

Based on your concerns regarding the proposed language in Paragraph (b), we have attempted to further modify the language for clarification as shown below to address your concerns. The modified language is also included in the two attached rule text files. Please do not hesitate to let us know if you have any additional questions.

Also, I recognize that this information is in response to the requests, but a separate “tech change request” document isn’t attached. If you prefer, we can put the information in the document and send it next week. I’ll be out of the office, but I think Jessica might be available to send it to you while I’m out, if needed.

- (5) if the applicant is proposing changes to the final elevations in the existing facility permit as a part of the proposed expansion:
 - (A) an updated engineering plan prepared in accordance with Rule .0539 of this Section;
 - (B) an updated construction quality assurance plan prepared in accordance with Rule .0541 of this Section; and
 - (C) an updated closure and post-closure plan prepared in accordance with Rule .0543 of this Section; and
- (6) if the applicant is proposing changes to the facility operations as a part of the proposed expansion, an updated operation plan prepared in accordance with Rule .0542 of this Section.

Thanks again,
Phillip



Phillip T. Reynolds

Special Deputy Attorney General
Environmental Division
Commissions, Coastal and Administrative Section
Phone: (919) 716-6971
Email: preynolds@ncdoj.gov
114 W. Edenton St., Raleigh, NC 27603
www.ncdoj.gov

Please note that messages to or from this address may be public records.

From: Reynolds, Phillip

Sent: Friday, August 5, 2022 2:31 PM

To: Peaslee, William W <bill.peaslee@oah.nc.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Montie, Jessica <jessica.montie@ncdenr.gov>; Stanley, Sherri <Sherri.Stanley@ncdenr.gov>; Everett, Jennifer <jennifer.everett@ncdenr.gov>

Subject: RE: 15A NCAC 13B Request for Changes

Bill,

Thank you for the email. And I agree that it captures what we discussed. We are still working on the response and intend to send it to you soon.

Thanks again,
Phillip



Phillip T. Reynolds

Special Deputy Attorney General
Environmental Division
Commissions, Coastal and Administrative Section
Phone: (919) 716-6971
Email: preynolds@ncdoj.gov
114 W. Edenton St., Raleigh, NC 27603
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From: Peaslee, William W <bill.peaslee@oah.nc.gov>

Sent: Friday, August 5, 2022 2:20 PM

To: Reynolds, Phillip <PReynolds@ncdoj.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Montie, Jessica <jessica.montie@ncdenr.gov>; Stanley, Sherri <Sherri.Stanley@ncdenr.gov>; Everett, Jennifer <jennifer.everett@ncdenr.gov>

Subject: RE: 15A NCAC 13B Request for Changes

Good afternoon, Phillip,

This email is to memorialize the relevant points of our telephone conversation earlier today.

Each agency makes a determination as to whether a matter should be reviewed by the Rules Review Commission (RRC) pursuant to Article 2A of G.S. 150B. Staff counsel to the RRC is not in a position to determine whether an agency is required to submit a matter for review. That is for the agency's deliberation and determination based upon its analysis of applicable law.

Here the agency determined that only the amendments to paragraph (b) 15A NCAC 13B .0535 and 15A NCAC 13B .1617 were subject to RRC review pursuant to S.L. 2021-153.

The agency's response to the Request for Changes implied that the agency may be reconsidering whether RRC review of the aforesaid amendments was necessary. Accordingly, I responded. As I understand it, that question is being considered by the agency.

We also discussed that, while the General Assembly can and sometimes does use ambiguous language in defining the parameters of an agency's authority to adopt administrative rule, the statute or session law does not empower the agency to use the same or similar ambiguous language unless explicitly empowered to so do. Pursuant to G.S. 150B-21.9(a)(2), administrative rules must be clear and unambiguous, or the rules will be subject to an objection by the Rules Review Commission.

In the absence of explicit authority to so do by the legislature, an agency cannot grant itself by rule broad and undefined authority to issue requirements upon the regulated public on a case by case, and thus circumvent RRC review. In short, agency practice requirements must be adopted pursuant to the APA, which mandates that the requirements must be clear and unambiguous.

I believe this covers the relevant points of our conversation. If you feel this is an incomplete or inaccurate memorialization, please reply.

As I understand it, the agency will be replying to the following issues: 1) Should the proposed amendments in (b) of the aforesaid rules remain under RRC consideration, and (2) if so, how is the amendment to the amendment clear and unambiguous?

The initial amendment required the application to contain "information that demonstrates compliance with the rules of this Section." This language is unclear and ambiguous, and places any applicant in the position of having to ask the agency "what do you want?"

The amendments to the amendments require applications which contain "any additional information..." which the Division requests in writing, presumably after the application has been filed. How is that possible?

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1939
Bill.Peaslee@oah.nc.gov

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1 15A NCAC 13B .0535 is amended with changes as published in 36:20 NCR 1634 as follows:

2
3 **15A NCAC 13B .0535 APPLICATION REQUIREMENTS FOR C&DLF FACILITIES**

4 (a) New permit as defined in G.S. 130A-294(a3)(1)a, c, d, and e. An applicant for a new C&DLF permit as defined
5 in G.S. 130A-294(a3)(1)a, c, d, and e shall meet the requirements of Rule .0536 of this Section prior to submitting an
6 application for a permit to construct.

7 (1) Permit to Construct. An application for a permit to construct for a new permit as defined in G.S.
8 130A-294(a3)(1)a, c, d, and e shall contain the following:

9 (A) a facility plan that describes the comprehensive development of the C&DLF facility
10 prepared in accordance with Rule .0537 of this Section;

11 (B) a design hydrogeologic report prepared in accordance with Rule .0538(b) of this Section;

12 (C) an engineering plan for the initial phase of landfill development prepared in accordance
13 with Rule .0539 of this Section;

14 (D) a construction quality assurance plan prepared in accordance with Rule .0541 of this
15 Section;

16 (E) an operation plan prepared in accordance with Rule .0542 of this Section;

17 (F) a closure and post-closure plan prepared in accordance with Rule .0543 of this Section;

18 (G) monitoring plans prepared in accordance with Rule .0544 of this Section;

19 (H) an environmental compliance history for the applicant in accordance with G.S. 130A-
20 295.3; and

21 (I) for an applicant that is not a federal, State, or local government, an organization chart
22 showing the ownership structure of the applicant.

23 (2) Permit to Operate. The owner and operator shall meet the pre-operative requirements of the permit
24 to construct to qualify the constructed C&DLF unit for a permit to operate.

25 (b) New permit as defined in G.S. 130A-294(a3)(1)b. An application for a new C&DLF permit as defined in G.S.
26 130A-294(a3)(1)b. shall identify the proposed expansion of the permitted activity and shall contain:

27 (1) a facility plan that describes the comprehensive development of the C&DLF facility prepared in
28 accordance with Rule .0537 of this Section;

29 (2) local government approval in accordance with Rule .0536(c)(11) of this Section;

30 ~~[(3) information that demonstrates compliance with the rules of this Section;]~~

31 ~~[(4)](3)~~ an environmental compliance history for the applicant in accordance with G.S. 130A-295.3; ~~and~~

32 ~~[(5)](4)~~ for an applicant that is not a federal, State, or local government, an organization chart showing the
33 ownership structure of the ~~applicant.~~ applicant.

34 ~~(5)~~ if the applicant is proposing changes to the final elevations in the existing facility permit as a part
35 of the proposed expansion.

36 (A) an updated engineering plan prepared in accordance with Rule .0539 of this Section;

1 (B) an updated construction quality assurance plan prepared in accordance with Rule .0541 of
2 this Section; and

3 (C) an updated closure and post-closure plan prepared in accordance with Rule .0543 of this
4 Section; and

5 (6) if the applicant is proposing changes to the facility operations as a part of the proposed expansion,
6 an updated operation plan prepared in accordance with Rule .0542 of this Section.

7 (c) Amendment to the permit. An application for an amendment to the permit shall contain:

8 (1) an updated design hydrogeologic report prepared in accordance with Rule .0538(b) of this Section;

9 (2) an updated engineering plan prepared in accordance with Rule .0539 of this Section;

10 (3) an updated construction quality assurance plan prepared in accordance with Rule .0541 of this
11 Section;

12 (4) an updated operation plan prepared in accordance with Rule .0542 of this Section;

13 (5) an updated closure and post-closure plan prepared in accordance with Rule .0543 of this Section;

14 (6) an updated monitoring plan prepared in accordance with Rule .0544 of this Section;

15 (7) an updated environmental compliance history for the applicant in accordance with G.S. 130A-295.3;
16 and

17 (8) for an applicant that is not a federal, State, or local government, an updated organization chart
18 showing the ownership structure of the applicant.

19 (d) Modifications to the permit. The owner or operator may propose to modify plans that were prepared and approved
20 in accordance with the requirements set forth in Rules .0531 through .0546 of this Section. A complete application
21 shall identify the requirement(s) proposed for modification and provide information that demonstrates compliance
22 with Rules .0531 through .0546 of this Section.

23 (e) A permit for closure and post-closure. An application for closure and post-closure permit shall contain:

24 (1) an updated engineering plan prepared in accordance with Rule .0539 of this Section;

25 (2) an updated construction quality assurance plan prepared in accordance with Rule .0541 of this
26 Section;

27 (3) an updated closure plan and updated post-closure plan prepared in accordance with Rule .0543 of
28 this Section; and

29 (4) for an applicant that is not a federal, State, or local government, an updated organization chart
30 showing the ownership structure of the applicant.

31
32 *History Note: Authority G.S. 130A-294;*

33 *Eff. January 1, 2007;*

34 *Readopted Eff. September 16, 2021-2021;*

35 *Amended Eff. Pending Legislative Review of Session Law Amendments Under Separate Submittal.*

1 15A NCAC 13B .1617 is amended with changes as published in 36:20 NCR 1634 as follows:

2
3 **15A NCAC 13B .1617 APPLICATION REQUIREMENTS FOR MSWLF FACILITIES**

4 (a) New permit as defined in G.S. 130A-294(a3)(1)a, c, d, and e. An applicant for a new MSWLF permit as defined
5 in G.S. 130A-294(a3)(1)a, c, d, and e shall meet the requirements of Rule .1618 of this Section prior to submitting an
6 application for a permit to construct.

7 (1) Permit to Construct. A complete application for a permit to construct for a new permit as defined in
8 G.S. 130A-294(a3)(1)a, c, d, and e shall contain the following:

9 (A) a facility plan that describes comprehensive development of the MSWLF facility prepared
10 in accordance with Rule .1619 of this Section;

11 (B) an engineering plan that is prepared for the initial phase of landfill development prepared
12 in accordance with Rule .1620 of this Section;

13 (C) a construction quality assurance plan prepared in accordance with Rule .1621 of this
14 Section;

15 (D) an operation plan prepared in accordance with Rule .1625 of this Section;

16 (E) a closure and post-closure plan prepared in accordance with Rule .1629 of this Section;

17 (F) the design hydrogeologic report and monitoring plans prepared in accordance with Rule
18 .1623(b) of this Section;

19 (G) an environmental compliance history for the applicant in accordance with G.S. 130A-
20 295.3; and

21 (H) for an applicant that is not a federal, State, or local government, an organization chart
22 showing the ownership structure of the applicant.

23 (2) Permit to Operate. The owner or operator shall meet the pre-operative requirements of the permit to
24 construct to qualify the constructed MSWLF unit for a permit to operate.

25 (b) New permit as defined in G.S. 130A-294(a3)(1)b. A complete application for a new MSWLF permit as defined
26 in G.S. 130A-294(a3)(1)b shall identify the proposed expansion of the permitted activity and shall contain:

27 (1) a facility plan that describes the comprehensive development of the MSWLF facility prepared in
28 accordance with Rule .1619 of this Section;

29 (2) local government approval in accordance with Rule .1618(c)(6) of this Section;

30 ~~[(3) information that demonstrates compliance with the rules of this Section;]~~

31 ~~[(4)](3)~~ an environmental compliance history for the applicant in accordance with G.S. 130A-295.3; ~~and~~

32 ~~[(5)](4)~~ for an applicant that is not a federal, State, or local government, an organization chart showing the
33 ownership structure of the ~~applicant.~~ applicant;

34 (5) if the applicant is proposing changes to the final elevations in the existing facility permit as a part
35 of the proposed expansion:

36 (A) an updated engineering plan prepared in accordance with Rule .1620 of this Section;

1 (B) an updated construction quality assurance plan prepared in accordance with Rule .1621 of
2 this Section; and

3 (C) an updated closure and post-closure plan prepared in accordance with Rule .1629 of this
4 Section; and

5 (6) if the applicant is proposing changes to the facility operations as a part of the proposed expansion,
6 an updated operation plan prepared in accordance with Rule .1625 of this Section.

7 (c) Amendment to the permit. An application for an amendment to the permit shall contain:

8 (1) an updated engineering plan prepared in accordance with Rule .1620 of this Section;

9 (2) an updated construction quality assurance plan prepared in accordance with Rule .1621 of this
10 Section;

11 (3) an updated operation plan prepared in accordance with Rule .1625 of this Section;

12 (4) an updated closure and post-closure plan prepared in accordance with Rule .1629 of this Section;

13 (5) an updated design hydrogeologic report and monitoring plans prepared in accordance with Rule
14 .1623(b) of this Section;

15 (6) an updated environmental compliance history for the applicant in accordance with G.S. 130A-295.3;
16 and

17 (7) for an applicant that is not a federal, State, or local government, an updated organization chart
18 showing the ownership structure of the applicant.

19 (d) Modifications to the permit. The owner or operator may propose to modify plans that were prepared and approved
20 in accordance with the requirements set forth in this Section. A complete application shall identify the requirement(s)
21 proposed for modification and provide information that demonstrates compliance with the rules of this Section.

22 (e) A permit for closure and post-closure. An application for closure and post-closure shall contain:

23 (1) an updated engineering plan prepared in accordance with Rule .1620 of this Section;

24 (2) an updated construction quality assurance plan prepared in accordance with Rule .1621 of this
25 Section;

26 (3) an updated closure plan and updated post-closure plan prepared in accordance with Rule .1629 of
27 this Section; and

28 (4) for an applicant that is not a federal, State, or local government, an updated organization chart
29 showing the ownership structure of the applicant.

30
31 *History Note: Authority G.S. 130A-294;*

32 *Eff. October 9, 1993;*

33 *Readopted Eff. September 16, ~~2021~~ 2021;*

34 *Amended Eff. Pending Legislative Review of Session Law Amendments Under Separate Submittal.*

35

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

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 13B .0535

DEADLINE FOR RECEIPT: August 11, 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:

Page 1, Line 30: This is ambiguous. What information would satisfy the agency? What information does the agency seek? Is there a prescribed format? The regulated public would not know what the agency seeks without contacting the agency. This of course opens the door for arbitrary requests that are inconsistently applied.

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

Agency Response:

In order to address these concerns, the agency has modified the language in question as shown below to provide further clarification regarding the additional information that would be required in certain circumstances:

- (5) if the applicant is proposing changes to the final elevations in the existing facility permit as a part of the proposed expansion:
 - (A) an updated engineering plan prepared in accordance with Rule .0539 of this Section;
 - (B) an updated construction quality assurance plan prepared in accordance with Rule .0541 of this Section; and
 - (C) an updated closure and post-closure plan prepared in accordance with Rule .0543 of this Section; and
- (6) if the applicant is proposing changes to the facility operations as a part of the proposed expansion, an updated operation plan prepared in accordance with Rule .0542 of this Section.

William W. Peaslee
Commission Counsel

Date submitted to agency: July 28, 2022

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

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 13B .1617

DEADLINE FOR RECEIPT: August 11, 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:

Page 1, Line 30: This is ambiguous. What information would satisfy the agency? What information does the agency seek? Is there a prescribed format? The regulated public would not know what the agency seeks without contacting the agency. This of course opens the door for arbitrary requests that are inconsistently applied.

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

Agency Response:

This rule has been revised to address these concerns in the same manner as Rule .0535 above.

William W. Peaslee
Commission Counsel
Date submitted to agency: July 28, 2022

Burgos, Alexander N

Subject: FW: 15A NCAC 13B Request for Changes

From: Peaslee, William W <bill.peaslee@oah.nc.gov>

Sent: Thursday, August 4, 2022 12:33 PM

To: Everett, Jennifer <jennifer.everett@ncdenr.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Reynolds, Phillip T <preynolds@ncdoj.gov>; Montie, Jessica <jessica.montie@ncdenr.gov>; Stanley, Sherri <Sherri.Stanley@ncdenr.gov>; Snyder, Ashley B <ashley.snyder@oah.nc.gov>

Subject: RE: 15A NCAC 13B Request for Changes

Thank you for your email and the response to the Request for Changes (REC) of the above captioned rules.

My understanding is that the agency had an email conversation with the Codifier, and that as a part of that conversation the agency determined that the amendments to the above captioned Rules were not requirements of the S.L. 2021-153 and therefore subject to Part 3 of Article 2A of Chapter 150B review. In other words, the amendments were not “substantively identical” to Section 1(c) of S.L. 2021-153.

However, in your response to the (REC) you stated, “This revised language is consistent with the language that was also added to this same rule in Subparagraph (c)(2)(K) as required by S.L. 2021-153. The changes required by S.L. 2021-153 were adopted by the agency and submitted to OAH concurrently with this amendment, however they were exempted from review by the RRC and automatically subject to legislative review.”

As the agency has now submitted amendments to the amendments, is the agency drawing a distinction between “consistent with” and “substantively identical”? In short, has the agency determined that the amendments, as currently written, are substantively identical to Subparagraph (c)(2)(K) of S.L. 2021-153? And if that this the case, would that agency like to withdraw the amendments for RRC consideration?

In the alternative, if the agency has determined that the amendments, as currently written, are not substantively identical to Subparagraph (c)(2)(K) of S.L. 2021-153, then the averment that S.L. 2021-153 permits ambiguousness in the amendments falls short.

William W. Peaslee

Rules Review Commission Counsel / Legislative Liaison

Office of Administrative Hearings

1711 New Hope Church Road

Raleigh NC, 27609

(984) 236-1939

Bill.Peaslee@oah.nc.gov

Burgos, Alexander N

Subject: FW: 15A NCAC 13B Request for Changes
Attachments: 08.2022 - EMC 15A NCAC 13B Response To Request for Changes.docx; 15A NCAC 13B .0535 With Tech Changes.docx; 15A NCAC 13B .1617 With Tech Changes.docx

From: Everett, Jennifer <jennifer.everett@ncdenr.gov>
Sent: Wednesday, August 3, 2022 4:34 PM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Reynolds, Phillip T <preynolds@ncdoj.gov>; Montie, Jessica <jessica.montie@ncdenr.gov>; Stanley, Sherri <Sherri.Stanley@ncdenr.gov>
Subject: RE: 15A NCAC 13B Request for Changes

Bill,

Please find attached responses and re-written rule addressing your technical change requests for 15A NCAC 13B.

Jennifer

Jennifer Everett
DEQ Rulemaking Coordinator
N.C. Depart. Of Environmental Quality
Office of General Counsel
1601 Mail Service Center
Raleigh, NC 27699-1601
Tele: (919)-707-8614
<https://deq.nc.gov/permits-rules/rules-regulations/deq-proposed-rules>

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

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 13B .0535

DEADLINE FOR RECEIPT: August 11, 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:

Page 1, Line 30: This is ambiguous. What information would satisfy the agency? What information does the agency seek? Is there a prescribed format? The regulated public would not know what the agency seeks without contacting the agency. This of course opens the door for arbitrary requests that are inconsistently applied.

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

Agency Response:

In response to this request, the agency has revised the rule language to state that the NC DEQ Division of Waste Management (Division) will provide a request for any additional information in writing to the applicant, removing any ambiguity for the applicant. In other words, they would not have to submit any additional information unless the Division specified what was required in writing either before or after the initial application submittal. This revised language is consistent with the language that was also added to this same rule in Subparagraph (c)(2)(K) as required by S.L. 2021-153. The changes required by S.L. 2021-153 were adopted by the agency and submitted to OAH concurrently with this amendment, however they were exempted from review by the RRC and automatically subject to legislative review.

To provide some background, the regulated community did have the opportunity to review the Session Law language added in Subparagraph (c)(2)(K) and agreed to that language because it facilitated the opportunity to reduce the amount of documentation required to be submitted under most circumstances. In the rules existing prior to the readoption process, all applications submitted for new permits, including expansions, were required to submit all of the plans and documents listed under Paragraph (a)(1) to ensure that the Division was able to determine compliance with all regulations, and all applications for permit

William W. Peaslee
Commission Counsel

Date submitted to agency: July 28, 2022

amendments for required to submit all documentation listed under Subparagraph (c)(1) for the same reason. During stakeholder meetings for the readoption and the subsequent discussions in drafting the Session Law, the Division worked with the stakeholders/regulated community to try to split out and reduce the application requirements for new permits for proposed expansions and permit amendments for a change in ownership to try to reduce the burden for application packages. However, because the Division does not have the authority to issue permits that are not in compliance with the general statutes and rules and are *required* to deny permits for the reasons listed in G.S. 130A-294(a)(4)c, the Division must have the ability to ensure that they are provided with sufficient information to make such determinations.

Because every application for these types of sanitary landfills have site-specific and local challenges, requirements, and standards for licensed professional geologists, engineers, and surveyors under G.S. 89C and E that are dictated by the topography, geology, existing surrounding communities, structures, and infrastructure, and local government ordinance; the information necessary to determine compliance is likely to be different with each application, which is why it's not possible to predict for each application what may be necessary to determine compliance. The other option would be to return to requiring all of the originals plans and documents that were required prior to readoption, which would be against the wishes of the regulated community.

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

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 13B .1617

DEADLINE FOR RECEIPT: August 11, 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.

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

Agency Response:

See the response provided for this same language in Rule .0535 above.

1 15A NCAC 13B .0535 is amended with changes as published in 36:20 NCR 1634 as follows:

2
3 **15A NCAC 13B .0535 APPLICATION REQUIREMENTS FOR C&DLF FACILITIES**

4 (a) New permit as defined in G.S. 130A-294(a3)(1)a, c, d, and e. An applicant for a new C&DLF permit as defined
5 in G.S. 130A-294(a3)(1)a, c, d, and e shall meet the requirements of Rule .0536 of this Section prior to submitting an
6 application for a permit to construct.

7 (1) Permit to Construct. An application for a permit to construct for a new permit as defined in G.S.
8 130A-294(a3)(1)a, c, d, and e shall contain the following:

9 (A) a facility plan that describes the comprehensive development of the C&DLF facility
10 prepared in accordance with Rule .0537 of this Section;

11 (B) a design hydrogeologic report prepared in accordance with Rule .0538(b) of this Section;

12 (C) an engineering plan for the initial phase of landfill development prepared in accordance
13 with Rule .0539 of this Section;

14 (D) a construction quality assurance plan prepared in accordance with Rule .0541 of this
15 Section;

16 (E) an operation plan prepared in accordance with Rule .0542 of this Section;

17 (F) a closure and post-closure plan prepared in accordance with Rule .0543 of this Section;

18 (G) monitoring plans prepared in accordance with Rule .0544 of this Section;

19 (H) an environmental compliance history for the applicant in accordance with G.S. 130A-
20 295.3; and

21 (I) for an applicant that is not a federal, State, or local government, an organization chart
22 showing the ownership structure of the applicant.

23 (2) Permit to Operate. The owner and operator shall meet the pre-operative requirements of the permit
24 to construct to qualify the constructed C&DLF unit for a permit to operate.

25 (b) New permit as defined in G.S. 130A-294(a3)(1)b. An application for a new C&DLF permit as defined in G.S.
26 130A-294(a3)(1)b. shall identify the proposed expansion and shall contain:

27 (1) a facility plan that describes the comprehensive development of the C&DLF facility prepared in
28 accordance with Rule .0537 of this Section;

29 (2) local government approval in accordance with Rule .0536(c)(11) of this Section;

30 ~~(3) information that demonstrates compliance with the rules of this Section;~~

31 ~~(4)~~(3) an environmental compliance history for the applicant in accordance with G.S. 130A-295.3; ~~and~~

32 ~~(5)~~(4) for an applicant that is not a federal, State, or local government, an organization chart showing the
33 ownership structure of the ~~applicant.~~ applicant; and

34 (5) any additional information requested by the Division in writing and necessary to determine whether
35 the proposed expansion complies with the requirements of Article 9 of Chapter 130A and the rules
36 of this Section.

37 (c) Amendment to the permit. An application for an amendment to the permit shall contain:

- 1 (1) an updated design hydrogeologic report prepared in accordance with Rule .0538(b) of this Section;
- 2 (2) an updated engineering plan prepared in accordance with Rule .0539 of this Section;
- 3 (3) an updated construction quality assurance plan prepared in accordance with Rule .0541 of this
- 4 Section;
- 5 (4) an updated operation plan prepared in accordance with Rule .0542 of this Section;
- 6 (5) an updated closure and post-closure plan prepared in accordance with Rule .0543 of this Section;
- 7 (6) an updated monitoring plan prepared in accordance with Rule .0544 of this Section;
- 8 (7) an updated environmental compliance history for the applicant in accordance with G.S. 130A-295.3;
- 9 and
- 10 (8) for an applicant that is not a federal, State, or local government, an updated organization chart
- 11 showing the ownership structure of the applicant.

12 (d) Modifications to the permit. The owner or operator may propose to modify plans that were prepared and approved
13 in accordance with the requirements set forth in Rules .0531 through .0546 of this Section. A complete application
14 shall identify the requirement(s) proposed for modification and provide information that demonstrates compliance
15 with Rules .0531 through .0546 of this Section.

16 (e) A permit for closure and post-closure. An application for closure and post-closure permit shall contain:

- 17 (1) an updated engineering plan prepared in accordance with Rule .0539 of this Section;
- 18 (2) an updated construction quality assurance plan prepared in accordance with Rule .0541 of this
- 19 Section;
- 20 (3) an updated closure plan and updated post-closure plan prepared in accordance with Rule .0543 of
- 21 this Section; and
- 22 (4) for an applicant that is not a federal, State, or local government, an updated organization chart
- 23 showing the ownership structure of the applicant.

24
25 *History Note:* Authority G.S. 130A-294;

26 Eff. January 1, 2007;

27 Readopted Eff. September 16, 2021-2021;

28 Amended Eff. Pending Legislative Review of Session Law Amendments Under Separate Submittal.

1 15A NCAC 13B .1617 is amended with changes as published in 36:20 NCR 1634 as follows:

2
3 **15A NCAC 13B .1617 APPLICATION REQUIREMENTS FOR MSWLF FACILITIES**

4 (a) New permit as defined in G.S. 130A-294(a3)(1)a, c, d, and e. An applicant for a new MSWLF permit as defined
5 in G.S. 130A-294(a3)(1)a, c, d, and e shall meet the requirements of Rule .1618 of this Section prior to submitting an
6 application for a permit to construct.

7 (1) Permit to Construct. A complete application for a permit to construct for a new permit as defined in
8 G.S. 130A-294(a3)(1)a, c, d, and e shall contain the following:

9 (A) a facility plan that describes comprehensive development of the MSWLF facility prepared
10 in accordance with Rule .1619 of this Section;

11 (B) an engineering plan that is prepared for the initial phase of landfill development prepared
12 in accordance with Rule .1620 of this Section;

13 (C) a construction quality assurance plan prepared in accordance with Rule .1621 of this
14 Section;

15 (D) an operation plan prepared in accordance with Rule .1625 of this Section;

16 (E) a closure and post-closure plan prepared in accordance with Rule .1629 of this Section;

17 (F) the design hydrogeologic report and monitoring plans prepared in accordance with Rule
18 .1623(b) of this Section;

19 (G) an environmental compliance history for the applicant in accordance with G.S. 130A-
20 295.3; and

21 (H) for an applicant that is not a federal, State, or local government, an organization chart
22 showing the ownership structure of the applicant.

23 (2) Permit to Operate. The owner or operator shall meet the pre-operative requirements of the permit to
24 construct to qualify the constructed MSWLF unit for a permit to operate.

25 (b) New permit as defined in G.S. 130A-294(a3)(1)b. A complete application for a new MSWLF permit as defined
26 in G.S. 130A-294(a3)(1)b shall identify the proposed expansion and shall contain:

27 (1) a facility plan that describes the comprehensive development of the MSWLF facility prepared in
28 accordance with Rule .1619 of this Section;

29 (2) local government approval in accordance with Rule .1618(c)(6) of this Section;

30 ~~[(3) information that demonstrates compliance with the rules of this Section;]~~

31 ~~[(4)](3)~~ an environmental compliance history for the applicant in accordance with G.S. 130A-295.3; ~~and~~

32 ~~[(5)](4)~~ for an applicant that is not a federal, State, or local government, an organization chart showing the
33 ownership structure of the ~~applicant.~~ applicant; and

34 ~~(5)~~ any additional information requested by the Division in writing and necessary to determine whether
35 the proposed expansion complies with the requirements of Article 9 of Chapter 130A and the rules
36 of this Section.

37 (c) Amendment to the permit. An application for an amendment to the permit shall contain:

- 1 (1) an updated engineering plan prepared in accordance with Rule .1620 of this Section;
- 2 (2) an updated construction quality assurance plan prepared in accordance with Rule .1621 of
- 3 this Section;
- 4 (3) an updated operation plan prepared in accordance with Rule .1625 of this Section;
- 5 (4) an updated closure and post-closure plan prepared in accordance with Rule .1629 of this
- 6 Section;
- 7 (5) an updated design hydrogeologic report and monitoring plans prepared in accordance with
- 8 Rule .1623(b) of this Section;
- 9 (6) an updated environmental compliance history for the applicant in accordance with G.S.
- 10 130A-295.3; and
- 11 (7) for an applicant that is not a federal, State, or local government, an updated organization
- 12 chart showing the ownership structure of the applicant.

13 (d) Modifications to the permit. The owner or operator may propose to modify plans that were prepared and approved
14 in accordance with the requirements set forth in this Section. A complete application shall identify the requirement(s)
15 proposed for modification and provide information that demonstrates compliance with the rules of this Section.

16 (e) A permit for closure and post-closure. An application for closure and post-closure shall contain:

- 17 (1) an updated engineering plan prepared in accordance with Rule .1620 of this Section;
- 18 (2) an updated construction quality assurance plan prepared in accordance with Rule .1621 of this
- 19 Section;
- 20 (3) an updated closure plan and updated post-closure plan prepared in accordance with Rule .1629 of
- 21 this Section; and
- 22 (4) for an applicant that is not a federal, State, or local government, an updated organization chart
- 23 showing the ownership structure of the applicant.

24
25 *History Note: Authority G.S. 130A-294;*

26 *Eff. October 9, 1993;*

27 *Readopted Eff. September 16, ~~2021~~ 2021;*

28 *Amended Eff. Pending Legislative Review of Session Law Amendments Under Separate Submittal.*

29

Burgos, Alexander N

From: Peaslee, William W
Sent: Thursday, July 28, 2022 1:40 PM
To: Everett, Jennifer
Cc: Burgos, Alexander N
Subject: 15A NCAC 13B Request for Changes
Attachments: 08.2022 - EMC 15A NCAC 13B Request for Changes.docx

Good afternoon, Jennifer,

I'm the attorney who reviewed the Rule submitted by the Environmental Management Commission for the August 2022 RRC meeting. The RRC will formally review these Rule at its meeting on Thursday, August 18, 2022, at 9:00 a.m. The meeting will be a hybrid of in-person and WebEx attendance, and an evite should be sent to you as we get closer to the meeting. If there are any other representatives from your agency who will want to attend virtually, let me know prior to the meeting, and we will get evites out to them as well.

Please submit the revised Rule and forms to me via email, no later than 5 p.m. on August 11, 2022.

In the meantime, please let me know if you have any questions or concerns.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1939
Bill.Peaslee@oah.nc.gov

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