

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

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02H .0804

DEADLINE FOR RECEIPT: August 23, 2024

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:

From your cover sheet and fiscal note, it appears that there are not currently rules or permits establishing PFAS limits, but that there are forthcoming rules on this subject. Is this correct? If so, what is the status of those rules?

I am aware of a recent appellate case involving DEQ, permitting, and rules. (DEQ v. Farm Bureau 291 N.C. App. 188 (2023)). Your form does not indicate that this rule was prompted by Court order. Does that case impact this rule or are they unrelated?

*On p. 2, line 1, should this be “**Surfactants, such** as”?*

On p. 2, lines 13 through 17, does “Residue” have a precise definition somewhere? Or just the dictionary definition? I am not sure what these lines are referring to.

On p. 2, line 27 through 35, what does “Vector Attraction Reduction” mean?

On p.4, line 23, does “Per- and polyfluoroalkyl substances (PFAS)” need a definition? It sounds like a scientific term, but I noticed that your draft rule under consideration (15A NCAC 02L .0202) uses different terms. See <https://www.deq.nc.gov/key-issues/2l-proposed-amendment/download?attachment>, p. 8 and 9. Is there a controlling definition somewhere?

Regarding standards for PFAS testing, it appears that you are incorporating the details of the standard from the sources listed in Rule .0805(a)(1). Where in the incorporated documents is the standard? I did not see a specific reference to PFAS measurement in 40 CFR parts 136 or 503.

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

Seth Ascher
Commission Counsel

Date submitted to agency: August 13, 2024

1 15A NCAC 02H .0804 is amended as published in 38:17 NCR 1066 as follows:

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3 **15A NCAC 02H .0804 PARAMETERS FOR WHICH CERTIFICATION MAY BE REQUESTED**

4 (a) Commercial Laboratories shall obtain Certification for Parameter Methods used to generate data that will be
5 reported by the client to the State in accordance with the rules of this Section. Municipal and Industrial Laboratories
6 shall obtain Certification for Parameter Methods used to generate data that will be reported to the State in
7 accordance with the rules of this Section. Commercial Laboratories shall obtain Certification for Field Parameter
8 Methods used to generate data that will be reported by the client to the State in accordance with the rules of this
9 Section. Municipal and Industrial laboratories shall obtain Certification for Field Parameter Methods used to
10 generate data that will be reported to the State in accordance with the rules of this Section.

11 (b) Inorganics: Each of the inorganic, physical characteristic, and microbiological analytes listed in this Paragraph
12 shall be considered a certifiable parameter. Analytical methods shall be determined from the sources listed in Rule
13 .0805(a)(1) of this Section. One or more analytical methods or Parameter Methods may be listed with a laboratory's
14 certified Parameters. Certifiable inorganic, physical characteristic, and microbiological Parameters are as follows:

- 15 (1) Acidity;
- 16 (2) Alkalinity;
- 17 (3) Biochemical Oxygen Demand;
- 18 (4) Bromide;
- 19 (5) Carbonaceous Biochemical Oxygen Demand;
- 20 (6) Chemical Oxygen Demand;
- 21 (7) Chloride;
- 22 (8) Chlorine, Free Available;
- 23 (9) Chlorine, Total Residual;
- 24 (10) Chlorophyll;
- 25 (11) Coliform, Fecal;
- 26 (12) Coliform, Total;
- 27 (13) Color;
- 28 (14) Conductivity/Specific Conductance;
- 29 (15) Cyanide;
- 30 (16) Dissolved Organic Carbon;
- 31 (17) Dissolved Oxygen;
- 32 (18) Enterococci;
- 33 (19) Escherichia Coliform (E. coli);
- 34 (20) Flash Point;
- 35 (21) Fluoride;
- 36 (22) Hardness, Total;
- 37 (23) Ignitability;

- 1 (24) Surfactants as Methylene Blue Active Surfactants;
- 2 (25) Nitrogen, Ammonia;
- 3 (26) Nitrogen, Nitrite plus Nitrate;
- 4 (27) Nitrogen, Nitrate;
- 5 (28) Nitrogen, Nitrite;
- 6 (29) Nitrogen, Total Kjeldahl;
- 7 (30) Oil and Grease;
- 8 (31) Orthophosphate;
- 9 (32) Paint Filter Liquids;
- 10 (33) pH;
- 11 (34) Phenols;
- 12 (35) Phosphorus, Total;
- 13 (36) Residue, Settleable;
- 14 (37) Residue, Total;
- 15 (38) Residue, Total Dissolved;
- 16 (39) Residue, Total Suspended;
- 17 (40) Residue, Volatile;
- 18 (41) Salinity;
- 19 (42) Salmonella;
- 20 (43) Silica;
- 21 (44) Sulfate;
- 22 (45) Sulfide;
- 23 (46) Sulfite;
- 24 (47) Temperature;
- 25 (48) Total Organic Carbon;
- 26 (49) Turbidity;
- 27 (50) Vector Attraction Reduction: Option 1;
- 28 (51) Vector Attraction Reduction: Option 2;
- 29 (52) Vector Attraction Reduction: Option 3;
- 30 (53) Vector Attraction Reduction: Option 4;
- 31 (54) Vector Attraction Reduction: Option 5;
- 32 (55) Vector Attraction Reduction: Option 6;
- 33 (56) Vector Attraction Reduction: Option 7;
- 34 (57) Vector Attraction Reduction: Option 8; and
- 35 (58) Vector Attraction Reduction: Option 12.

1 (c) Metals: Each of the metals listed in this Paragraph shall be considered a certifiable Parameter. One or more
2 Parameter Methods shall be listed with a laboratory's certified Parameters. Analytical methods shall be determined
3 from the sources listed in Rule .0805(a)(1) of this Section. Certifiable metals are as follows:

- 4 (1) Aluminum;
- 5 (2) Antimony;
- 6 (3) Arsenic;
- 7 (4) Barium;
- 8 (5) Beryllium;
- 9 (6) Boron;
- 10 (7) Cadmium;
- 11 (8) Calcium;
- 12 (9) Chromium, Hexavalent (Chromium VI);
- 13 (10) Chromium, Total;
- 14 (11) Chromium, Trivalent (Chromium III);
- 15 (12) Cobalt;
- 16 (13) Copper;
- 17 (14) Hardness, Total (Calcium + Magnesium);
- 18 (15) Iron;
- 19 (16) Lead;
- 20 (17) Lithium;
- 21 (18) Magnesium;
- 22 (19) Manganese;
- 23 (20) Mercury;
- 24 (21) Molybdenum;
- 25 (22) Nickel;
- 26 (23) Potassium;
- 27 (24) Phosphorus;
- 28 (25) Selenium;
- 29 (26) Silica;
- 30 (27) Silver;
- 31 (28) Sodium;
- 32 (29) Strontium;
- 33 (30) Thallium;
- 34 (31) Tin;
- 35 (32) Titanium;
- 36 (33) Vanadium; and
- 37 (34) Zinc.

1 (d) Organics: Each of the organic Parameters listed in this Paragraph shall be considered a certifiable Parameter.
2 One or more Parameter Methods shall be listed with a laboratory's certified Parameters. Analytical methods shall be
3 determined from the sources listed in Rule .0805(a)(1) of this Section. Certifiable organic Parameters are as follows:

- 4 (1) 1,2-Dibromoethane (EDB); 1,2-Dibromo-3-chloro-propane (DBCP); 1,2,3-Trichloropropane
- 5 (TCP);
- 6 (2) Acetonitrile;
- 7 (3) Acrolein, Acrylonitrile;
- 8 (4) Adsorbable Organic Halides;
- 9 (5) Base/Neutral and Acid Organics;
- 10 (6) Benzidines;
- 11 (7) Chlorinated Acid Herbicides;
- 12 (8) Chlorinated Hydrocarbons;
- 13 (9) Chlorinated Phenolics;
- 14 (10) Explosives;
- 15 (11) Extractable Petroleum Hydrocarbons;
- 16 (12) Haloethers;
- 17 (13) N-Methylcarbamates;
- 18 (14) Nitroaromatics and Isophorone;
- 19 (15) Nitrosamines;
- 20 (16) Nonhalogenated Volatile Organics;
- 21 (17) Organochlorine Pesticides;
- 22 (18) Organophosphorus Pesticides;
- 23 (19) Per- and polyfluoroalkyl substances (PFAS);
- 24 ~~(19)~~ (20) Phenols;
- 25 ~~(20)~~ (21) Phthalate Esters;
- 26 ~~(21)~~ (22) Polychlorinated Biphenyls;
- 27 ~~(22)~~ (23) Polynuclear Aromatic Hydrocarbons;
- 28 ~~(23)~~ (24) Purgeable Aromatics;
- 29 ~~(24)~~ (25) Purgeable Halocarbons;
- 30 ~~(25)~~ (26) Purgeable Organics;
- 31 ~~(26)~~ (27) Total Organic Halides;
- 32 ~~(27)~~ (28) Total Petroleum Hydrocarbons – Diesel Range Organics;
- 33 ~~(28)~~ (29) Total Petroleum Hydrocarbons – Gasoline Range Organics; and
- 34 ~~(29)~~ (30) Volatile Petroleum Hydrocarbons.

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36 *History Note: Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10);*
37 *Eff. February 1, 1976;*

1 *Amended Eff. November 2, 1992; December 1, 1984;*
2 *Temporary Amendment Eff. October 1, 2001;*
3 *Amended Eff. August 1, 2002;*
4 *Readopted Eff. July 1, 2019;*
5 *Amended Eff. September 1, 2024.*
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