

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Department of Environmental Quality

RULE CITATION: 15A NCAC 01C .0103

DEADLINE FOR RECEIPT: Thursday, April 14, 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 technical changes be made:

Please add oxford commas to each of the following Items:

- (1) – Lines 11 and 12*
- (4) – Line 19*
- (6) – Lines 25, 26, and 28*
- (7) – Lines 31 (three instances) and 34*
- (9) – Line 7*
- (16) – Line 37*
- (18) – Line 5 (“air₁ and water₁ and other natural systems”)*
- (22) – Lines 14 and 17*

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

Response: DEQ made the technical changes to this Rule as recommended above.

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Department of Environmental Quality

RULE CITATION: 15A NCAC 01C .0108

DEADLINE FOR RECEIPT: Thursday, April 14, 2022

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

In Paragraph (a), line 7, what qualifies as an “immediate” threat? Please define or establish criteria.

Response: The term “immediate” has its common, dictionary meaning. The Rule further clarifies that the “immediate threat” must be to the public health, safety, and welfare for this provision to be applied.

In Paragraph (b), what is “long-term environmental productivity” and by what criteria is this established? Also, what are “various circumstances”? Can this be clarified?

Response: DEQ proposes deletion of those terms/phrases from the Rule.

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

Lawrence R. Duke
Commission Counsel
Date submitted to agency: April 8, 2022

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Department of Environmental Quality

RULE CITATION: 15A NCAC 01C .0109

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

In Paragraph (d), if any state action must comply with all applicable rules and statutes, is it necessary to have this requirement restated here?

Response: The purpose of this language is to make it clear to those preparing environmental documents (both in the private and public sector) that there are additional laws that govern the content and processing of environmental documents. This language was included to increase awareness and improve transparency.

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

Lawrence R. Duke
Commission Counsel
Date submitted to agency: April 8, 2022

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Department of Environmental Quality

RULE CITATION: 15A NCAC 01C .0206

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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 technical changes be made:

What is the statutory authority for the change from mandatory environmental assessment preparation for established situations to discretionary assessment preparation for situations in which the Secretary would not otherwise be able to require an assessment?

Response: There is no "change" in how the NCEPA statute, DEQ's minimum criteria at Section .0400, and the Secretary's authority in .0306 interact. The changes to .0206 are clerical edits to improve clarity.

The analysis of whether an environmental document is required starts with the NCEPA statutory thresholds and the statutory exemptions. If the action does not trigger the statutory thresholds or is statutorily exempt, then no environmental document needs to be prepared for that action and there is no further analysis required under DEQ's SEPA rules for that action.

If an action does trigger preparation of an environmental document under the statute and DEQ is taking that action, the analysis then turns to DEQ's minimum criteria (in .0400) to determine whether, by rule, an environmental document need not be prepared. The NCEPA statute requires DEQ to adopt rules establishing minimum criteria, which the statute defines as "a rule that designates a particular action or class of actions for which the preparation of environmental documents is not required." In four circumstances set forth in .0306, the Secretary has retained authority to override DEQ's minimum criteria and require preparation of an environmental document. These rules do not allow the Secretary to override the statutory thresholds or statutory exemptions.

In Paragraph (b), how does DEQ decide to prepare an environmental impact statement versus an environmental assessment? What criteria is used and what is the difference between the two?

Response: G.S. 113A-9 defines "environmental assessment" and "environmental impact statement." As required by the NCEPA statute, the Department of Administration has rules

Lawrence R. Duke
Commission Counsel

Date submitted to agency: April 8, 2022

at 01 NCAC 25 that govern the decision regarding which type of environmental document to prepare.

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

Lawrence R. Duke
Commission Counsel
Date submitted to agency: April 8, 2022

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Department of Environmental Quality

RULE CITATION: 15A NCAC 01C .0208

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

In Paragraph (b), by what standard is “relevant” determined? What does “reasonable” mean? How is it determined whether “the overall cost of and time for it are out of proportion to the potential environmental effects of the activity”? These same questions apply to Paragraph (c).

Response: “Relevant” has its common, dictionary meaning. The Rule further clarifies that the information needs to be relevant to the effects upon the environment (see .0208(a) for context regarding the scope of “effects.”)

“Reasonable” has its common, dictionary meaning.

DEQ has proposed revised language related to your concern regarding “the overall cost of and time for it are out of proportion to the potential environmental effects of the activity.”

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

Lawrence R. Duke
Commission Counsel
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REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Department of Environmental Quality

RULE CITATION: 15A NCAC 01C .0305

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

In Item (1), please capitalize “construction”.

Response: DEQ made the technical change to this Rule as recommended above.

In Item (2), please add an oxford comma after “rehabilitation”. Also, please change “and/or” so that it does not have a “/”.

Response: DEQ made the technical changes to this Rule as recommended above.

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

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Commission Counsel
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REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Department of Environmental Quality

RULE CITATION: 15A NCAC 01C .0306

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

In Item (1), please add commas after “streams” (line 9), “state” (line 10), and “research” (line 11). Also, please capitalize “state” on line 12.

Response: DEQ made the technical changes to this Rule as recommended above.

Please delete “or” at the end of both Item (1) and (2).

Response: DEQ made the technical changes to this Rule as recommended above.

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

Lawrence R. Duke
Commission Counsel
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REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Department of Environmental Quality

RULE CITATION: 15A NCAC 01C .0408

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

What is the statutory authority for the "Specific Criteria" listed in Item (2)?

Response: G.S. 113A-11 requires State agencies to adopt minimum criteria and the "Specific Criteria" in Item (2) are a component of DEQ's minimum criteria for minor construction activities.

Do these criteria comply with G.S. 113A-12? Some items on the list seems to be exempted from having an environmental document required.

Response: If a DEQ action on a project triggered one of the statutory exemptions under G.S. 113A-12, then that action would not require preparation of an environmental document and these rules (including .0408) would be inapplicable to that action. DEQ's minimum criteria in .0400 do not override the statutory thresholds or the statutory exemptions.

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

Lawrence R. Duke
Commission Counsel
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REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Department of Environmental Quality

RULE CITATION: 15A NCAC 01C .0409

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

Please double-check the numbering of the Items. It appears that after Item (18) the numbering may be off.

Response: DEQ reviewed the numbering of Items and has made the technical changes to this Rule as recommended above.

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

Lawrence R. Duke
Commission Counsel
Date submitted to agency: April 8, 2022

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Department of Environmental Quality

RULE CITATION: 15A NCAC 01C .0410

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

The first letter of each item in a list need not be capitalized. Also, each item should be followed by a semicolon.

Response: DEQ made the technical changes to this Rule as recommended above.

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

Lawrence R. Duke
Commission Counsel
Date submitted to agency: April 8, 2022

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Department of Environmental Quality

RULE CITATION: 15A NCAC 01C .0411

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

Please add an oxford comma after "contain" on line 4.

Response: DEQ made the technical changes to this Rule as recommended above.

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

Lawrence R. Duke
Commission Counsel
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Commission Counsel
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1 15A NCAC 01C .0103 is readopted as published in 36:08 NCR 584 with changes as follows:

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3 **15A NCAC 01C .0103 DEFINITIONS**

4 The definition of any word or phrase used in rules of this Subchapter is the same as given in G.S. ~~113A-9~~ 113A-9, and in
5 ~~1 NCAC 25~~, including subsequent amendments and editions. The following words and phrases have the following
6 meaning.

7 (1) ~~—"Agency" means the Divisions and Offices of DENR, as well as the boards, commissions, committees,~~
8 ~~and councils of DENR having decision-making authority and adopting these rules by reference; except~~
9 ~~where the context clearly indicates otherwise.~~

10 (2) (1) "Channel Disturbance" means activities that permanently remove or degrade the natural functions of
11 the stream such as culverting, relocation, channelization channelization, or streambank stabilization
12 methods including gabions, ~~rip rap~~ rip rap, or similar hard structures.

13 (3) (2) "Cumulative Impacts" ~~mean~~ means environmental impacts resulting from incremental effects of an
14 activity when added to other past, present, and reasonably foreseeable future activities regardless of
15 what entities undertake such other actions. Cumulative impacts are the reasonably foreseeable
16 impacts from individually minor but collectively significant activities.

17 (4) (3) "Direct Impacts" mean environmental impacts which are caused by an activity and occurring at the
18 same time and place.

19 (5) (4) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking leaking, or placing of
20 any waste into or on any land or water so that the waste or any constituent part of the waste may enter
21 the environment or be emitted into the air or discharged into any waters, including groundwaters, or
22 beneath or on the surface of the land.

23 (6) (5) "Ecosystem" means all the interrelated organisms and their environment within a defined area.

24 (7) (6) "Forestry Management Plan" means a document that guides the practical and sustainable application
25 of biological, physical, quantitative, managerial, economic, social social, and policy principles to the
26 regeneration, management, utilization utilization, and conservation of forests to meet specified goals
27 goals, and objectives while maintaining the productivity of the forest. Forest management includes
28 management for aesthetics, fish, recreation, urban values, water, wilderness, wildlife, wood products
29 and other forest resource values.

30 (8) (7) "Hazardous Waste" means a waste, or combination of wastes, in any state or form including gas,
31 liquid liquid, or solid, that because of its quantity, concentration concentration, or physical, chemical
32 chemical, or infectious characteristics may cause or contribute to an increase in mortality or an
33 increase in irreversible or incapacitating reversible illness, or pose a present or potential hazard to
34 human health or the environment when improperly treated, stored, transported, disposed of of, or
35 otherwise managed.

36 (9) (8) "High Quality Waters (HQW)" ~~has the same meaning as in 15A NCAC 02B .0224. means a subset of~~
37 ~~waters with quality higher than the existing classification standards. These include those rated as~~

1 excellent based on biological and physical/chemical characteristics through Division of Water Quality
2 monitoring or special studies; native and special native trout waters (and their tributaries) designated
3 by the Wildlife Resources Commission; primary nursery areas (PNA) designated by the Marine
4 Fisheries Commission and other functional nursery areas designated by the Marine Fisheries
5 Commission; all water supply watersheds which are either classified as WS I or WS II or those for
6 which a formal petition for reclassification as WS I or WS II has been received from the appropriate
7 local government and accepted by the Division of Water Quality; and all Class SA waters.

8 ~~(10)~~ (9) "Inlet" means a waterway between islands connecting a lagoon, estuary, sound sound, or similar water
9 body with the ocean.

10 ~~(11)~~ (10) "Instream Flow" means the amount of water needed in a stream to adequately provide for downstream
11 uses occurring within the stream channel, including some or all of the following: aquatic habitat,
12 recreation, wetlands maintenance, navigation, hydropower, riparian vegetation, and water quality.

13 ~~(12)~~ (11) "Land-Disturbing Activity" has the same meaning as in G.S. 113A-52. means any use of the land by
14 any person in residential, industrial, educational, institutional or commercial development, highway
15 and road construction and maintenance that results in a change in the natural cover or topography and
16 that may cause or contribute to sedimentation.

17 ~~(13)~~ — "Lead Agency" means the agency or agencies preparing or having taken primary responsibility for
18 preparing an environmental document. The lead agency is a sub-agency of the state project agency.

19 ~~(14)~~ — "Non State Entity" means local governments, special purpose units of government, contractors, and
20 individuals or corporations to whom NCEPA may apply.

21 ~~(12)~~ "Lead Division" means the division within DEQ that has been appointed by the Secretary, pursuant to
22 15A NCAC 01C .0105, to have primary responsibility for preparation of an environmental document
23 when DEQ is the state project agency.

24 ~~(15)~~ (13) "Perennial Stream" means a channel that contains water year round during a year of normal rainfall
25 with the aquatic bed located below the water table for most of the year. Groundwater is the primary
26 source of water for a perennial stream, but it also carries stormwater runoff. A perennial stream
27 exhibits the typical biological, hydrological, and physical characteristics commonly associated with
28 the continuous conveyance of water.

29 ~~(16)~~ (14) "Prime agricultural and forest land" means lands ~~which~~ that possess the best combination of physical
30 and chemical characteristics for producing food, feed, fiber (including forest products), forage,
31 oilseed, and other agricultural products (including livestock), without intolerable soil erosion. This
32 does not apply to lands ~~which~~ that are already in or committed to development projects such as water
33 impoundment, transportation, and urban development.

34 ~~(17)~~ (15) "Reclaimed Water Utilization" means the use of reclaimed water that meets the criteria provided in
35 15A NCAC 02H .0219(k) for beneficial uses in lieu of water from other sources. "Reclaimed Water"
36 has the same meaning as in 15A NCAC 02U .0103.

1 ~~(18)~~ (16) "Resource" means any natural product or value, not necessarily economic, but including trees,
2 minerals, wildlife, clean air and water, fisheries, ecosystems, ~~landscapes~~ landscapes, and open space.

3 ~~(19)~~ (17) "River Basin" means the watershed of a major river system.

4 ~~(20)~~ (18) "Secondary Impacts" mean indirect impacts caused by and resulting from a specific activity that
5 occur later in time or further removed in distance than direct impacts, but are reasonably foreseeable.
6 Indirect impacts may include growth inducing effects and other effects related to induced changes in
7 the pattern of land use, population density or growth rate, and related effects on ~~air and~~ air, water
8 water, and other natural systems, including ecosystems.

9 ~~(21)~~ (19) "Secretary" means the Secretary of ~~DENR~~. DEQ.

10 ~~(22)~~ (20) "State Project Agency" means the state department or council of state agency ~~which~~ that has been
11 designated pursuant to ~~+~~ 01 NCAC 25 .0210(a) for ensuring compliance with NCEPA.

12 ~~(23)~~ (21) "Stream Enhancement" means the process of implementing stream rehabilitation practices in order to
13 improve water quality or ecological function. These practices are typically conducted on the stream
14 bank or in the flood prone area. Enhancement activities may also include the placement of in-stream
15 habitat structures.

16 ~~(24)~~ (22) "Stream Restoration" means the process of converting an unstable, ~~altered~~ altered, or degraded
17 stream corridor, including adjacent riparian zone and flood prone areas to its natural or referenced,
18 stable conditions considering recent and future watershed conditions. This process also includes
19 restoring the geomorphic dimension, ~~pattern~~ pattern, and profile as well as biological and chemical
20 integrity, including transport of water and sediment produced by the stream's watershed in order to
21 achieve dynamic equilibrium.

22 ~~(25)~~ (23) "Total Design Withdrawal" means the pumping rate at which water can be removed from the
23 contributing stream. It is the sum of any pre-existing withdrawal capacity plus any withdrawal
24 increase.

25 ~~(26)~~ (24) "Wetlands" ~~mean "wetlands" as defined~~ has the same meaning as in 15A NCAC 02B .0202.

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27 *History Note: Authority G.S. 113A-2; 113A-6; 113A-9; 143B-10;*
28 *Eff. April 1, 2003;*
29 *Readopted Eff. June 1, 2022.*

1 15A NCAC 01C .0108 is readopted as published in 36:08 NCR 584 with changes as follows:

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3 **15A NCAC 01C .0108 EMERGENCIES**

4 (a) ~~Where emergency circumstances make it necessary to take an otherwise lawful action with potential environmental~~
5 ~~effects without observing the public review provisions of the NC EPA, the DENR agency taking the action shall notify~~
6 ~~the Secretary and limit actions to those necessary to control and mitigate for the immediate threat to the public health,~~
7 ~~safety, and welfare. If there is an immediate threat to public health, safety, and welfare, DEQ may take otherwise lawful~~
8 ~~actions with potential environmental effects without preparing an environmental document. In those emergency~~
9 ~~circumstances, DEQ shall limit actions to those necessary to control and mitigate for the immediate threat to the public~~
10 ~~health, safety, and welfare.~~

11 (b) ~~DENR agencies~~ DEQ may prepare and maintain environmental documents for repetitive emergency programs
12 affecting the ~~public, public~~ to review the scope of involved activities, identify specific effects to be expected, and
13 ~~identify~~ mitigation measures that can be ~~employed. employed in various circumstances to assure protection of the public~~
14 ~~and long term environmental productivity.~~

15 (c) ~~The minimum criteria established pursuant to Section .0400 of this Subchapter or the review processes for~~
16 ~~environmental assessments or environmental impact statements set out in Rules 01 NCAC 25 .0506 and .0605, may be~~
17 ~~altered where an emergency makes it necessary to take action or control or mitigate any threat to the public health, safety~~
18 ~~and welfare caused by the emergency. Rule 01 NCAC 25 .1002 establishes the procedures to supplement the provisions~~
19 ~~of this Chapter in an emergency consistent with the policies of NC EPA.~~

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21 *History Note: Authority G.S. 113A-4; 113A-6; 113A-7; 143B-10;*
22 *Eff. April 1, 2003;*
23 *Readopted Eff. June 1, 2022.*
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1 15A NCAC 01C .0208 is readopted as published in 36:08 NCR 584 with changes as follows:

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15A NCAC 01C .0208 INCOMPLETE OR UNAVAILABLE INFORMATION

(a) Where a DENR agency DEQ is evaluating significant effects upon the environment in an environmental document and there are gaps in relevant information or scientific uncertainty, the DENR agency DEQ should always shall make clear that such information is lacking or that uncertainty exists.

~~(b) If the information relevant to the effects is essential to a reasonable choice among alternatives and the overall costs of and time for obtaining it are not out of proportion to the potential environmental effects of the activity, the DENR agency [DEQ] should [shall] include the information in the environmental document.~~

~~(c) If the information relevant to the effects is essential to a reasoned choice among alternatives and the overall cost of and time for obtaining it are out of proportion to the potential environmental effects of the activity, or the means of obtaining it are not known (beyond the state of the art), then the DENR agency [DEQ] shall weigh the need for the action against the risk and severity of possible adverse impacts were the action to proceed in the face of uncertainty. If the DENR agency [DEQ] proceeds, it shall include within the environmental document:~~

~~(b) In considering whether unavailable information should be sought and included in the environmental document, DEQ shall consider whether the information can be obtained, how long it would take to obtain that information, and the significance of the information to understanding the effects of the proposed action or alternative. If, after considering those factors, DEQ proceeds with preparation of the environmental document without the information, DEQ shall include within the environmental document:~~

- (1) a statement that such information is incomplete or unavailable;
- (2) a statement of the relevance of the incomplete or unavailable information to evaluating reasonably foreseeable significant adverse impacts on the human environment;
- (3) a summary of existing credible scientific evidence which is relevant to evaluating the reasonably foreseeable significant adverse impacts on the human environment; and
- (4) ~~the DENR agency's DEQ's~~ evaluation of such impacts based upon theoretical approaches or research methods generally accepted in the scientific community.

~~(d)~~(c) For the purposes of this Section, "reasonably foreseeable" includes impacts which have catastrophic consequences, even if their probability of occurrence is low, provided that the analysis of the impacts is supported by credible scientific evidence, is not based on pure conjecture, and is within the rule of reason.

*History Note: Authority G.S. 113A-4; 113A-6; 143B-10;
Eff. April 1, 2003;
Readopted Eff. June 1, 2022.*

1 15A NCAC 01C .0305 is readopted as published in 36:08 NCR 584 with changes as follows:

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3 **SECTION .0300 – SPECIAL CIRCUMSTANCES**

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5 **15A NCAC 01C .0305 ACTIVITIES UNDERTAKEN BY DEQ TYPES OF ACTIVITIES REQUIRING**
6 **ENVIRONMENTAL DOCUMENTATION**

7 The following ~~DENR agency activities~~ activities, when undertaken by DEQ, ~~will shall be deemed to have a potential~~
8 ~~effect upon the environment of the state and~~ require preparation of an environmental document unless they ~~fall under~~
9 satisfy the minimum criteria set out in Section .0400 of this Subchapter.

- 10 (1) ~~Proposed~~ construction Construction of facilities or infrastructures on lands and waters owned or
11 managed by ~~any DENR agency~~ DEQ.
- 12 ~~(2) Specific programs conducted by DENR agencies on lands and waters or in the atmosphere owned or~~
13 ~~managed by the state.~~
- 14 ~~(3)~~ (2) Demolition of or additions, rehabilitation rehabilitation, and/or and or renovations to a structure listed
15 in the National Register of Historic Places or more than 50 years of age except where agreement exists
16 with the Department of Natural and Cultural Resources that the structure lacks architectural or
17 historical significance.
- 18 ~~(4)~~ (3) Ground disturbances involving National Register listed archaeological sites or areas around buildings
19 50 years old or older, except where agreement exists with the Department of Natural and Cultural
20 Resources.

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22 *History Note: Authority G.S. 113A-4; 113A-6; 113A-8; 113A-9; 113A-10; 143B-10;*

23 *Eff. April 1, 2003;*

24 *Readopted Eff. June 1, 2022.*

1 15A NCAC 01C .0306 is readopted as published in 36:08 NCR 584 with changes as follows:

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3 **15A NCAC 01C .0306 ACTIVITIES OF A SPECIAL NATURE**

4 ~~Any activity falling within the parameters of the minimum criteria set out in Section .0400 of this Subchapter shall not~~
5 ~~routinely be required to have environmental documentation under the NCEPA. However, an environmental document is~~
6 ~~required when the Secretary determines that~~ The Secretary may require preparation of an environmental document that
7 would otherwise not be required through application of DEQ's minimum criteria if the Secretary determines:

- 8 (1) the proposed activity may have a potential for significant adverse effects on wetlands; surface waters
9 such as rivers, ~~streams streams~~, and estuaries; parklands; game lands; prime agricultural or forest
10 lands; or areas of local, ~~state state~~, or federally recognized scenic, recreational, archaeological,
11 ecological, scientific ~~research research~~, or historical value, including secondary impacts; or would
12 threaten a species identified on the Department of Interior's or the ~~state's State's~~ threatened and
13 endangered species lists; ~~or~~
- 14 (2) the proposed activity could cause changes in industrial, commercial, residential, agricultural, or
15 silvicultural land use concentrations or distributions which would be expected to create adverse water
16 quality, instream flow, air quality, or ground water impacts; or affect long-term recreational benefits,
17 fish, wildlife, or their natural habitats; ~~or~~
- 18 (3) the proposed activity has secondary impacts, or is part of cumulative impacts, not generally covered in
19 the approval process for the state action, and that may result in a potential risk to human health or the
20 environment; or
- 21 (4) the proposed activity is of such an unusual nature or has such widespread implications that a concern
22 for its environmental effects has been identified by ~~the DENR agency~~ DEQ or expressed to ~~the DENR~~
23 ~~agency--DEQ.~~

24
25 *History Note: Authority G.S. 113A-4; 113A-6; 113A-9; 113A-10; 113A-11; 113A-12; 143B-10;*
26 *Eff. April 1, 2003;*
27 *Readopted Eff. June 1, 2022.*
28
29

1 15A NCAC 01C .0409 is readopted as published in 36:08 NCR 584 with changes as follows:

2
3 **15A NCAC 01C .0409 MANAGEMENT ACTIVITIES**

4 Management activities do not require the ~~filling preparation~~ of environmental documents. These activities include but are
5 not limited to the following:

- 6 (1) Replenishment of shellfish beds through the placement of seed oysters, seed clams or shellfish cultch
7 on marine or estuarine habitats.
- 8 (2) Creation and enhancement of marine fisheries habitat through the establishment of artificial reefs in
9 accordance with the Division of Marine Fisheries' Artificial Reef Master Plan.
- 10 (3) Placement of fish attractors and shelter in public waters managed by the N.C. Wildlife Resources
11 Commission.
- 12 (4) Translocation and stocking of native or naturalized fish and wildlife in accordance with appropriate
13 ~~DENR agency~~ DEQ species management plans, watershed management plans, or other state agency
14 approved resource management plans.
- 15 (5) Reintroduction of native endangered or threatened species in accordance with state or federal
16 guidelines or recovery plans.
- 17 (6) Production of native and agricultural plant species to create or enhance fish or wildlife habitat and
18 forest resources, including fertilization, planting, mowing, and burning in accordance with fisheries,
19 wildlife, or forestry management plans.
- 20 (7) Forest products harvest in accordance with the forestry Best Management Practices (BMPs) and the
21 performance standards in the Forest Practice Guidelines (FPGs) Related to Water Quality (~~15A NCAC~~
22 ~~01H .0201 — .0209~~) (02 NCAC 60C) and the United States Forest Service or the N.C. Division of
23 Forest Resources forest management plans.
- 24 (8) Reforestation of woodlands in accordance with the United States Forest Service or the N.C. Division
25 of Forest Resources forest management plans.
- 26 (9) Use of forestry best management practices to meet the performance standards in Forest Practice
27 Guidelines Related to Water Quality codified as ~~15A NCAC 01H~~ in 02 NCAC 60C.
- 28 (10) The control of forest or agricultural insects and disease outbreaks by biological treatments, mechanical
29 treatments, or the lawful application of labeled pesticides by licensed applicators, or any combination
30 of those practices, on areas of no more than 100 acres.
- 31 (11) Control of species composition on managed forestlands as prescribed by approved forest management
32 plans by the lawful application of labeled herbicides by licensed applicators, on areas no more than
33 100 acres.
- 34 (12) ~~(7)~~ Control of aquatic weeds in stream channels, canals and other water bodies, by the lawful
35 application of labeled herbicides by licensed applicators pursuant to Article 15, Chapter 113A of the
36 NC General Statutes, on areas of no more than two acres or 25 percent of surface area, whichever is
37 less, except in Primary Nursery Areas designated by the Marine Fisheries Commission, Inland

1 ~~Primary Nursery Areas designated by the Wildlife Resources Commission, and Anadromous Fish~~
2 ~~Spawning Areas designated by the Marine Fisheries Commission or the Wildlife Resources~~
3 ~~Commission.~~

4 (13) [(8)] Removal of logs, stumps, trees, and other debris from stream channels where there is no
5 channel excavation, and activities are carried out in accordance with "Best Management Practices
6 (BMPs) for Selective Clearing and Snagging," Appendix B in Incremental Effects of Large Woody
7 Debris Removal on Physical Aquatic Habitat, US Army Corps of Engineers Technical Report EL-92-
8 35, Smith et al, 1992, or other guidelines approved through the Intergovernmental Review process as
9 set out at 01 NCAC 25 .0211.

10 (14) [(9)] Dredging of existing navigation channels and basins to originally approved specifications,
11 provided that the spoil is placed in existing and approved high ground disposal areas.

12 (15) [(10)] Controlled or prescribed burning for wildlife, timber enhancement, and hazard reduction in
13 accordance with applicable management plans.

14 (16) [(11)] Plowing fire lines with tractor plow units, or other mechanized equipment, for the purpose of
15 suppressing wildland (brush, grass, or woodland) fires and prescribed burning.

16 (17) [(11)] Scooping or dipping water from streams, lakes, or sounds with aircraft or helicopters for the
17 purpose of suppressing wild land (brush, grass, or woodland) fires.

18 (18) [(12)] Drainage projects where the mean seasonal water table elevation will be lowered less than
19 one foot over an area of one square mile or less, and riparian and wetland areas will not be affected.

20 (19) [(13)] Manipulation of water levels in reservoirs or impoundments in accordance with approved
21 management plans, for the purpose of providing for water supply storage, flood control, recreation,
22 hydroelectric power, fish and wildlife, downstream water quality and aquatic weed control.

23 (20) [(14)] Installation of on-farm Best Management Practices that meet the standards of the North
24 Carolina Soil and Water Conservation Commission and the federal Natural Resources Conservation
25 Service.

26 (21) [(15)] Continuation of previously permitted activities where no increase in quantity or decrease in
27 quality are proposed.

28 (22) [(16)] Acquisition or acceptance of real property to be retained in a totally natural condition for its
29 environmental benefits.

30 (23) [(17)] Acquisition or acceptance of real property to be managed in accordance with plans for which
31 environmental documents have been approved.

32 (24) [(18)] Care of all trees, plants, and groundcovers on public lands.

33 (25) [(19)] Care, including medical treatment, of all animals maintained for public display.

34 (26) [(20)] Activities authorized for control of mosquitoes such as the following:

- 35 (a) Mosquito control water management work in freshwater streams performed in accordance
36 with "Best Management Practices (BMPs) for Selective Clearing and Snagging" Appendix B
37 in Incremental Effects of Large Woody Debris Removal on Physical Aquatic Habitat, US

1 Army Corps of Engineers Technical Report EL-92-35, Smith et al, 1992, or other guidelines
2 reviewed through the Intergovernmental Review process as set out at 01 NCAC 25 .0211;

3 (b) Mosquito control water management work in salt marsh environments performed under
4 Open Marsh Water Management guidelines reviewed through the Intergovernmental Review
5 process as set out at 01 NCAC 25 .0211;

6 (c) Lawful application of chemicals approved for mosquito control by the United States
7 Environmental Protection Agency and the State when performed under the supervision of
8 licensed operators; and

9 (d) Lawful use of established species to control mosquitoes.

10
11 *History Note: Authority G.S. 113A-4; 113A-6; 113A-9; 113A-10; 113A-11; 113A-12; 143B-10;*
12 *Eff. April 1, 2003;*
13 *Readopted Eff. June 1, 2022.*
14
15

1 15A NCAC 01C .0410 is readopted as published in 36:08 NCR 584 with changes as follows:

2
3 **15A NCAC 01C .0410 PRIVATE USE OF PUBLIC LANDS**

4 Activities related to the private use of public lands, when conducted in accordance with permit requirements, do not
5 require the ~~filig~~ preparation of environmental documents. These activities include but are not limited to the following:

- 6 (1) ~~Use~~ **use** of pound ~~nets, nets;~~
- 7 (2) ~~Shellfish shellfish,~~ relaying and ~~transplanting, transplanting;~~
- 8 (3) ~~Harvest harvest~~ of shellfish during closed ~~season, season;~~
- 9 (4) ~~Special special~~ fisheries management activities under ~~15A NCAC 03I-.0012 15A NCAC~~
10 ~~03O [.0506.] .0506;~~
- 11 (5) ~~Aquaculture aquaculture~~ operations within coastal ~~waters, waters;~~
- 12 (6) ~~Scientific scientific~~ collecting within coastal ~~waters, waters;~~
- 13 (7) ~~Introduction introduction~~ and transfer of marine and estuarine organisms.
- 14 (8) ~~Development requiring a Coastal Area Management Act (CAMA) or a State Dredge and Fill~~
15 ~~Law permit that does not involve:~~
 - 16 (a) ~~Construction of a new marina, or a 25% or greater expansion in the number of slips~~
17 ~~at existing and operating marinas;~~
 - 18 (b) ~~Excavation of a new navigation channel. Maintenance activities associated with~~
19 ~~maintaining the traditional and established use of a channel and new excavation~~
20 ~~activities located entirely within 100 feet of the shoreline, or within 50 feet from the~~
21 ~~waterward edge of any existing or authorized docking facility and involving the~~
22 ~~excavation of less than 5,000 square feet of public trust bottom do not constitute~~
23 ~~excavation of a new navigation channel for purposes of these rules.~~
 - 24 (c) ~~Excavation of materials from aquatic environments for use for beach nourishment~~
25 ~~or other purposes not directly related to approved navigation projects;~~
 - 26 (d) ~~A large scale beach nourishment or spoil deposition project. A project shall be~~
27 ~~considered large scale when it places more than a total volume of 200,000 cubic~~
28 ~~yards of sand at an average ratio of more than 50 cubic yards of sand per linear foot~~
29 ~~of shoreline;~~
 - 30 (e) ~~The salvaging of cut logs from public trust waters for commercial use, unless the~~
31 ~~salvage operation complies with any Departmentally approved best management~~
32 ~~practices developed for such activities;~~
 - 33 (f) ~~The construction over state owned submerged lands or private bridges to privately~~
34 ~~owned islands, unless the length of the bridge is less than 50 feet; and~~
 - 35 (g) ~~The excavation, dredging or other hydrodynamic manipulation of an inlet, inlet~~
36 ~~channel(s) or inlet shoal(s) for non navigational purposes.~~

1 ~~(9) — Construction of piers and boat docks on all State Lakes when conducted in accordance with 15A~~
2 ~~NCAC 12C .0300.~~

3

4 *History Note:* *Authority G.S. 113A-4; 113A-6; 113A-9; 113A-10; 113A-11; 113A-12; 143B-10;*

5 *Eff. April 1, 2003;*

6 *Readopted Eff. June 1, 2022.*

7

8

1 15A NCAC 01C .0411 is readopted as published in 36:08 NCR 584 with changes as follows:

2

3 **15A NCAC 01C .0411 REMEDIATION ACTIVITIES**

4 Activities that seek to clean up, remove, remediate, abate, ~~contain~~ **contain**, or otherwise protect public health or the
5 environment from the effect of contamination released to the environment do not require the ~~file~~ preparation of
6 environmental ~~documentation~~ documents.

7

8 *History Note: Authority G.S. 113A-4; 113A-6; 113A-9; 113A-10; 113A-11; 113A-12; 143B-10;*

9 *Eff. April 1, 2003;*

10 *Readopted Eff. June 1, 2022.*

11

12

Burgos, Alexander N

From: Everett, Jennifer
Sent: Tuesday, May 17, 2022 1:23 PM
To: Duke, Lawrence; Rules, Oah
Cc: Burgos, Alexander N
Subject: RE: DEQ Rule (01C) Submissions - RRC

Great, thanks. FYI-The 'communication with agency' link is wrong. It currently has the EMC responses that under Brian's review.

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>

E-mail correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties.

From: Duke, Lawrence <lawrence.duke@oah.nc.gov>
Sent: Monday, May 16, 2022 4:30 PM
To: Everett, Jennifer <jennifer.everett@ncdenr.gov>; Rules, Oah <oah.rules@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: DEQ Rule (01C) Submissions - RRC

Yes, I did receive the change request responses. Thank you.

Lawrence Duke
Counsel, NC Rules Review Commission
Office of Administrative Hearings
(984) 236-1938

From: Everett, Jennifer <jennifer.everett@ncdenr.gov>
Sent: Monday, May 16, 2022 3:55 PM
To: Duke, Lawrence <lawrence.duke@oah.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: DEQ Rule (01C) Submissions - RRC

Hi Lawrence,

Just double checking that you are receipt of this email addressing your technical change requests?

Thanks.

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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From: Everett, Jennifer
Sent: Wednesday, May 11, 2022 1:08 PM
To: Duke, Lawrence <lawrence.duke@oah.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: DEQ Rule (01C) Submissions - RRC

Hi Lawrence,

Attached are the rewritten rules and responses to your technical change requests for 15A NCAC 01C.

Thank you.

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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From: Duke, Lawrence <lawrence.duke@oah.nc.gov>
Sent: Thursday, April 14, 2022 1:40 PM
To: Everett, Jennifer <jennifer.everett@ncdenr.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: DEQ Rule (01C) Submissions - RRC

Jennifer,

Thank you for this request. I will recommend that the RRC grant this extension for your reason stated below.

Lawrence Duke

Counsel, NC Rules Review Commission
Office of Administrative Hearings
(984) 236-1938

From: Everett, Jennifer <jennifer.everett@ncdenr.gov>
Sent: Wednesday, April 13, 2022 2:14 PM
To: Duke, Lawrence <lawrence.duke@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: DEQ Rule (01C) Submissions - RRC

Hi Lawrence,

We are kindly requesting an extension for the period of review for 15A NCAC 01C. This extension will allow additional time for staff to address your technical change requests.

Thank you!

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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From: Duke, Lawrence <lawrence.duke@oah.nc.gov>
Sent: Friday, April 8, 2022 5:06 PM
To: Everett, Jennifer <jennifer.everett@ncdenr.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: DEQ Rule Submissions - RRC

Jennifer,

I have reviewed the Rules submitted by the Dept. of Environmental Quality for the April 2022 RRC meeting. The RRC will formally review these Rules at its meeting on Thursday, April 21, 2022, at 9:00 a.m. The meeting will be a hybrid of in-person and WebEx attendance, and an invite 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 invites out to them as well.

I have attached my requests for changes. Please submit the revised Rules and forms to me via email, no later than 5:00 p.m. on Thursday, April 14, 2022. In the meantime, please let me know if you have any questions or concerns.

Thanks,

Lawrence Duke

Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984) 236-1938
Lawrence.Duke@oah.nc.gov

E-mail correspondence to and from this address may be subject to the North Carolina Public Records Law N.C.G.S. Chapter 132 and may be disclosed to third parties.

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