

REQUEST FOR TECHNICAL CHANGE

AGENCY: Emergency Management Commission

RULE CITATION: 15A NCAC 02H .0901

DEADLINE FOR RECEIPT: Friday, April 12, 2019

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 call our office to inquire concerning the staff recommendation.

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

On line 6, please capitalize "State" assuming you mean NC.

On line 7, replace "which" with "that"

On line 8, I suggest simply deleting "which" in both places.

In (b), line 10, what "rules" do you mean?

In (2), line 20, this address information is new and was published as such in the Register. Please be sure to underline it.

Also on line 20, end the language with a period, not a semicolon. As you published this correctly in the Register, do not show it as a change – simply do it.

In (7), line 35, and Page 2, Item (8), line 1, and Item (9), lines 4 and 5 – the underlined and struck language was not published. Please be sure to just remove it here.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: April 4, 2019

1 15A NCAC 02H .0901 is readopted as published in 32:21 NCR 1943 as follows:

2
3 **15A NCAC 02H .0901 PURPOSE**

4 (a) The rules in this Section are designed to implement North Carolina General Statutes 143-215.3(a)(14) and 143-215.1
5 and provisions of the Federal Water Pollution Control Act (also known as the "Clean Water Act") regarding the
6 discharge of non-domestic wastewater into publicly owned treatment works (POTWs). They establish responsibilities of
7 state and local government, industry, and the public to implement pretreatment standards to control pollutants which pass
8 through or interfere with treatment processes in POTWs, which may contaminate sewage sludge, or which otherwise
9 have an adverse impact on the POTW, its workers, or the environment.

10 (b) Copies of rules referenced in this Section may be obtained from the Division of Water ~~Quality, Resources, Surface~~
11 ~~Water Protection~~ Water Quality Permitting Section Section, free of charge, at the following locations:

12 (1) ~~http://portal.ncdenr.org/web/wq/swp/ps/pret/; http://dcq.nc.gov/about/divisions/water-resources/water-~~
13 ~~resources-permits/percs/pretreatment-permits;~~

14 (2) the North Carolina Department of ~~Environment and Natural Resources, Environmental Quality,~~
15 Division of Water ~~Quality-Resources~~ Offices of the Pretreatment, Emergency Response, and
16 Collection Systems (PERCS) Unit

17 Physical Address: Archdale Building, 512 N. Salisbury St.

18 Raleigh, N.C. 27604

19 Mailing Address: 1617 Mail Service Center

20 Raleigh, N.C. 27699-1617;

21 ~~(3) — Raleigh Regional Office~~

22 ~~3800 Barrett Dr.~~

23 ~~Raleigh, N.C. 27609;~~

24 ~~(4) — Asheville Regional Office~~

25 ~~2090 US Highway 70~~

26 ~~Swannanoa, NC 28778;~~

27 ~~(5) — Mooresville Regional Office~~

28 ~~610 East Center Avenue, Suite 301~~

29 ~~Mooresville, N.C. 28115;~~

30 ~~(6) — Fayetteville Regional Office~~

31 ~~System Bldg; Suite 714~~

32 ~~225 Green Street~~

33 ~~Fayetteville, N.C. 28301;~~

34 ~~(7) — Washington Regional Office~~

35 ~~1424 Carolina Avenue, 943 Washington Square Mall~~

36 ~~Washington, N.C. 27889;~~

37 ~~(8) — Wilmington Regional Office~~

38 ~~127 Cardinal Drive Extension, Extension~~

1 ~~Wilmington, N.C. 28405-3845; and~~
2 ~~(9) Winston-Salem Regional Office~~
3 ~~585 Waughtown Street 450 Hanes Mill Road, Suite 300~~
4 ~~Winston-Salem, N.C. 27107. 27105.~~

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6 *History Note: Authority G.S. 143-215.3(a)(14);*
7 *Eff. March 28, 1980;*
8 *Amended Eff. April 1, 2011; November 1, 1994; October 1, 1987; December 1, ~~1984~~1984;*
9 *Readopted Eff. May 1, 2019.*

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REQUEST FOR TECHNICAL CHANGE

AGENCY: Emergency Management Commission

RULE CITATION: 15A NCAC 02H .0902

DEADLINE FOR RECEIPT: Friday, April 12, 2019

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

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

On lines 5, 8, and 11 (both places), replace "which" with "that"

On lines 10 – 12, I believe this language of what is excluded would work better if it was pulled out of Item (3) and just aligned on the left margin. Thus:

These Rules apply to:

(3) Any new or existing source subject to pretreatment standards.

This Section does not apply to...

On lines 4 and 10, please be consistent and either state "Rules" or "Section" or even "rules of this Section" both places.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: April 4, 2019

1 15A NCAC 02H .0902 is readopted as published in 32:21 NCR 1943 as follows:
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3 **15A NCAC 02H .0902 SCOPE**

4 These Rules apply to:

- 5 (1) Pollutants from non-domestic sources covered by pretreatment standards which are indirectly
6 discharged into or transported by truck or rail or otherwise introduced into POTWs as defined in 40
7 CFR 403.3 and Rule .0903 of this Section;
- 8 (2) POTWs and control authorities which receive wastewater from sources subject to pretreatment
9 standards; and
- 10 (3) Any new or existing source subject to pretreatment standards. ~~Pretreatment standards do~~ This Section
11 does not apply to sources which discharge to a sewer which is not connected to a POTW treatment
12 plant.

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14 *History Note: Authority G.S. 143-215.3(a)(14);*
15 *Eff. March 28, 1980;*
16 *Amended Eff. April 1, 2011; November 1, 1994; October 1, ~~1987-1987~~;*
17 *Readopted Eff. May 1, 2019.*

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REQUEST FOR TECHNICAL CHANGE

AGENCY: Emergency Management Commission

RULE CITATION: 15A NCAC 02H .0903

DEADLINE FOR RECEIPT: Friday, April 12, 2019

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

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

In (a), since I believe the intent is to incorporate all CFRs used in all rules (such as in Rule .0902), I suggest stating "Unless otherwise stated in Paragraph (b) of this Rule, in this Section, the definitions..."

On line 8, do not underline and strike the same language. If this a hyperlink and you cannot remove the underline, please just let me know.

On line 9, insert a period at the end of the sentence.

In (b), line 10, I think you mean "Section" and not just this Rule. I suggest you replace the term with "Section"

On lines 10 -11, I suggest you delete most of the language and just state: "For this Section, the following additional definitions shall apply:"

In (b)(1) through (34), consider ending these with periods and not semicolons. If you do this, remove the "and" at the end of (34), Page 5, line 10.

If you do not want to do that, please note that (b)(17) currently ends with a period and you will need to change it to a semicolon in order to be consistent.

In (b)(1), line 13, please state "his or her"

In (b)(2), line 16, replace "which" with "that"

In (b)(3), I do not understand the use of the sentence on lines 17-18. What is it there for? Should this read "facility, as set forth in Rule .0919..."?

In (b)(4), line 20, what do you mean by "or its successor"? I suggest deleting the language.

In (b)(5), lines 23-24, I am sure your regulated public understands this, but I do not. What does this mean?

Amanda J. Reeder
Commission Counsel
Date submitted to agency: April 4, 2019

In (b)(7), will the control authority be creating this document? And will the contents be based upon these Rules and the federal law?

In (b)(10), line 34 and elsewhere the term is used, I take it your regulated public knows what “NPDES” means?

In (b)(11), Page 2, line 2, you refer to the Clean Water Act. What is the citation for this?

In (b)(13), line 4, please go ahead and say “IWS” here since you are using it on line 9. State “Industrial Waste Survey” or “IWS” refers...

In (b)(14), if you are going to retain the semicolons separating the clauses, I recommend either creating a list through further subdivision or at least inserting a colon after “of the” on line 12.

On lines 13, 26, and 30, replace “which” with “that”

On line 14 and elsewhere you use the phrase “(or the POTW’s if different from the control authority)” what does this mean? What are you conveying here? If the POTW is different from the control authority, are they the approving authority?

On line 15-16, why is the underlined language contained in parenthesis? I think it should not be.

In (b)(15), line 18, what are “isolation wastes”? Does your regulated public know?

In (b)(16), line 22, I am merely asking – why are the terms “Headworks Analysis” and the “Plans” in Monitoring plans, as well as “Long Term” and “Short Term,” capitalized?

Consider stating “... designated as Long Term (LTMP) or Short Term (STMP), as the Division...”

On line 23, what is “necessary” here and upon what grounds will the Division Director determine it? And what specific authority are you relying upon here for it to be outside of rulemaking? Will the determination be made in a permit?

In (b)(17), line 24, please move the comma after “Standard” inside the quotation marks both places.

On line 29, I know you are relying upon the CFR language, but I think “Chapter” and “Subpart” should be capitalized.

For the language on lines 30 – 32, have you considered changing (a) to state that all definitions in 40 CFR 403 are incorporated by reference and just using that to cover this definition?

If you want to keep this, please insert a url to access these CFRs. Feel free to give the ecf shorter url both here and in (a).

In current (b)(18), line 35, please correctly renumber by striking (18) and inserting (19). As this was published correctly in the NC Register, you don’t need to show it as a change – simply do it.

On Page 3, replace “which” with “that” on lines 1, 4, 5, 8, and 9.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: April 4, 2019

In (b)(19), line 1 and elsewhere the term is used, I take it “direct contact” is known by your regulated public?

In (b)(22), so that I’m clear - it’s the term “waste” that is defined in G.S. 143-213 and that is what you are referring to?

On line 14, heat is a pollutant?

On lines 15 and 16, what is “TSS,” “BOD,” and “COD”? I take it your regulated public knows?

In (b)(23), line 18, end the sentence after “program.” Then state “A pollutant...”

On line 18, delete “but is not limited to”

On line 19, what is a “priority pollutant”?

In (b)(24), line 22, please put the comma inside the quotation marks for “POTW” and “Works”

On line 23, this is not the first time you referred to the Clean Water Act but it is the first time you use CWA. Why is this? Should the acronym be used earlier in the Rule?

On line 23, can “a state” be some state other than NC?

On line 24, if “recycling” is different from “reclamation” I suggest you insert a comma after “recycling”

On lines 26-27, that Rule defines one term – manure haulers. Why not just state “It also includes manure haulers as defined in 15A NCAC 02T .0402.”?

On line 31, I do not understand what you mean by “second type” Is this the owner of a collection system?

On lines 31 and 32, please bring the commas inside of the quotation marks.

In (b)(25), line 36, please state “his or her”

In (b)(30), line 19, why not just state “POTW” rather than spelling it out?

I understand that (b)(30) is reliant upon the language in 40 CFR 403.3(v) (with changes), but I do have some suggestions:

In (b)(30)(A), line 21, remove the parenthesis and insert a comma after “cooling”

In (b)(30)(B), line 22, replace “which” with “that”

On line 24, insert a comma after “TSS”

In (b)(30)(C), line 25, capitalize “Chapter” and “Subpart”

In (b)(30)(D), line 28, what is “reasonable potential”? Who determines this?

Amanda J. Reeder
Commission Counsel
Date submitted to agency: April 4, 2019

On line 30, replace the quotation marks in POTW's with an apostrophe.

I know that the citation on line 31 is in the CFR, but I don't understand it – isn't 403.8(f)(6) just the list? It seems to me the citation is more applicable to (b)(30)(E).

In (b)(31)(A), Page 5, line 9, please put "Chronic violations" in quotation marks as you did for the term being defined in (b)(31)(B).

In (b)(31)(B), line 17, insert a comma after "oil"

In (b)(31)(D), line 25, should this read "health or welfare, the environment, or has resulted...?"

On line 27, replace "such" with "the"

In (b)(31)(G), line 34, define "accurately"

End (b)(31)(H) with a period.

I do not understand the sentence on Page 6, lines 1-2. First, do you need this now that the effective date of the language was over 7 years ago? Second, you said on Page 5 that if "one or more of the following criteria are met" then the individual would meet the status of non-compliance. Why would you need to restate that these criteria matter on Page 6? I suggest deleting the sentence.

In (b)(34), line 8, insert a comma after "facilities"

On line 10, what is "contributed into"?

In (b)(35), that statute defines "waters" So, please state "Waters of the State" shall have the same meaning as the term "waters" as defined in G.S. 143-212."

On lines 14-15, you did not publish the language that is both struck and underlined. Remove it altogether here.

In the History Note, why are you citing to G.S. 130A-334(13)? That defines the term "sewage" and seems unnecessary here.

Also in the History Note, delete the citation to G.S. 150B-21.6.

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

1 15A NCAC 02H .0903 is readopted as published in 32:21 NCR 1943 as follows:
2

3 **15A NCAC 02H .0903 DEFINITION OF TERMS**

4 (a) Unless otherwise defined in Paragraph (b) of this Rule, the definitions promulgated by the Environmental Protection
5 Agency and codified as 40 CFR ~~Part~~ 403.3 are hereby incorporated by reference, including any subsequent amendments
6 and editions. ~~This material is available for inspection at the locations listed in Rule .0901 of this Section and at~~
7 ~~http://efpub1.epa.gov/npdes/home.cfm?program_id=3. A copy of the reference material can be found at~~
8 ~~<http://water.epa.gov/polwaste/npdes/pretreatment/index.cfm>. [http://www.ecfr.gov/cgi-bin/text-](http://www.ecfr.gov/cgi-bin/text-idx?SID=002b8fe78be0d299d7289c36ef66652d&mc=true&tpl=/ecfrbrowse/Title40/40CISubchapN.tpl)~~
9 ~~[idx?SID=002b8fe78be0d299d7289c36ef66652d&mc=true&tpl=/ecfrbrowse/Title40/40CISubchapN.tpl](http://www.ecfr.gov/cgi-bin/text-idx?SID=002b8fe78be0d299d7289c36ef66652d&mc=true&tpl=/ecfrbrowse/Title40/40CISubchapN.tpl), free of charge~~

10 (b) For this Rule the following definitions in addition to those incorporated by reference in Paragraph (a) of this Rule
11 shall apply:

- 12 (1) "Approval Authority" means the Director of the Division of Water ~~Quality Resources~~ of the North
13 Carolina Department of ~~Environment and Natural Resources~~ Environmental Quality, or his/her
14 designee;
- 15 (2) "Average" means the value calculated by dividing the sum of the data values collected over a time
16 period by the number of data points which comprise the sum;
- 17 (3) "Bypass" is the intentional diversion of waste streams from any portion of a pretreatment facility.
18 Also see Rule .0919 of this Section and 40 CFR ~~Part~~ 403.17 for additional requirements;
- 19 (4) "Commission" means the Environmental Management Commission of the North Carolina Department
20 of ~~Environment and Natural Resources~~ Environmental Quality or its successor;
- 21 (5) "Control Authority" refers to the POTW ~~organization~~ if the POTW'S POTW organization's
22 pretreatment program has been approved in accordance with Rules .0905, .0906, and .0907 of this
23 Section, and that approval has not been subsequently withdrawn. Otherwise, the approval authority is
24 the control authority;
- 25 (6) "Division" refers to the North Carolina Department of ~~Environment and Natural Resources~~
26 Environmental Quality, Division of Water ~~Quality Resources~~;
- 27 (7) "Enforcement Response Plan" or "ERP" means the control authority pretreatment program document
28 describing the guidelines for identifying violations of and enforcing specific local limits and other
29 pretreatment standards and requirements;
- 30 (8) "EPA" means the United States Environmental Protection Agency;
- 31 (9) "Fundamentally Different Factors" are factors upon which a variance from a categorical standard may
32 be granted under Rule .0912 of this Section and 40 CFR ~~Part~~ 403.13;
- 33 (10) "Headworks Analysis" or "HWA" is the analysis used to calculate the maximum allowable POTW
34 influent loadings for flow and pollutants of concern based on design capacity, NPDES or non-
35 discharge permit limits, pass through, interference, sludge, or worker safety and health considerations,
36 as applicable. The headworks analysis is the technical basis for deriving local limits applied to
37 industrial users;

- 1 (11) "Indirect Discharge" or "Discharge" refers to the introduction of pollutants into a POTW from any
2 non-domestic source regulated under Sections 307(b), (c), or (d) of the Clean Water Act;
- 3 (12) "Industrial User" or "User" means a source of indirect discharge;
- 4 (13) "Industrial Waste Survey" refers to the survey of the users of the POTW collection system or treatment
5 plant performed by the control authority as required by 40 CFR ~~Part~~ 403.8 (f)(2)(i-iii) and Rule .0905
6 of this Section, including identification of all industrial users and the character and amount of
7 pollutants contributed to the POTW by these industrial users and identification of those industrial
8 users meeting the definition of significant industrial user. Where the control authority accepts
9 wastewater from one or more satellite POTWs, the IWS for that control authority shall address all
10 satellite POTW service areas, unless the pretreatment program in those satellite service areas is
11 administered by a separate control authority;
- 12 (14) "Interference" refers to inhibition or disruption of the POTW collection system; treatment processes;
13 operations; or its sludge process, use, or disposal which causes or contributes to a violation of any
14 requirement of the control authority's (or the POTW's if different from the control authority) NPDES,
15 collection system, or non-discharge permit (including an increase in the magnitude or duration of a
16 violation) or prevents sewage sludge use or disposal in compliance with specified applicable State and
17 Federal statutes, regulations, or permits;
- 18 (15) "Medical Waste" refers to isolation wastes, infectious agents, human blood and blood products,
19 pathological wastes, sharps, body parts, contaminated bedding, surgical wastes, potentially
20 contaminated laboratory wastes, and dialysis wastes;
- 21 (16) "Monitoring Plan" refers to the monitoring plan designed to collect POTW site-specific data for use in
22 the Headworks Analysis. Monitoring Plans may be designated as "Long Term" or "Short Term,"
23 LTMP and STMP, respectively, as the Division Director determines to be necessary;
- 24 (17) ~~"National Categorical Pretreatment Standard" Standard~~, or ~~"Categorical~~ "Pretreatment Standard" or
25 "Standard" refers to means any regulation containing pollutant discharge limits promulgated by the
26 EPA in accordance with Sections 307(b) and (c) of the Clean Water Act which applies to industrial
27 users, a specific category of industrial users, and which appears in 40 CFR Parts 405-471; This term
28 also includes any prohibitive discharge limits established pursuant to 40 CFR 403.5, categorical
29 standards established under the appropriate subpart of 40 CFR chapter I, subpart N or local limit which
30 applies to an industrial user. 40 CFR 403.5, Chapters I and N of Part 405 of Title 40 of the Code of
31 Federal Regulations are hereby incorporated by reference, including any subsequent amendments and
32 editions.
- 33 ~~(18) "National Prohibited Discharge Standard" is an absolute prohibition against the discharge of certain~~
34 ~~substances to the POTW, including both general and specific prohibitions;~~
- 35 (18) "Net/Gross Calculation" is an adjustment of a categorical standard to reflect the presence of pollutants
36 in the industrial user's intake water that may be granted under Rule .0915 of this Section and 40 CFR
37 ~~Part~~ 403.15;

- 1 (2019) "Noncontact Cooling Water" is water used for cooling which does not come into direct contact with
2 any raw material, intermediate product, waste product, or finished product;
- 3 (2120) "Non-discharge Permit" is a permit issued by the State pursuant to G.S. 143-215.1(d) for a waste
4 which is not discharged directly to surface waters of the State or for a wastewater treatment works
5 which does not discharge directly to surface waters of the State;
- 6 ~~(22) "Operator in Responsible Charge" is the operator designated to fulfill the requirements of G.S. 90A-~~
7 ~~44;~~
- 8 (2321) "Pass Through" means a discharge which exits the POTW into waters of the State in quantities or
9 concentrations which, alone or with discharges from other sources, causes a violation, including an
10 increase in the magnitude or duration of a violation, of the control authority's (or the POTW's, if
11 different from the control authority) NPDES, collection system, or non-discharge permit;
- 12 (2422) "Pollutant" includes any waste defined in G.S. 143-213(18); dredged spoil; solid waste; incinerator
13 residue; garbage; sewage sludge; munitions; medical wastes; chemical waste; biological materials;
14 radioactive materials; heat; wrecked or discarded equipment; rock; sand; cellar dirt; municipal and
15 agricultural waste; and certain characteristics of wastewater, such as pH, temperature, TSS, turbidity,
16 color, metals, BOD, COD, toxicity, and odor;
- 17 (2523) "Pollutant of Concern" or "POC" is a pollutant identified as being of concern to the control authority
18 for purposes of the pretreatment program; a pollutant of concern may include but not be limited to
19 conventional wastewater pollutant, such as BOD, TSS, or ammonia; any of the priority pollutants; pH;
20 and any pollutant that may be identified as a source of interference, pass through, whole effluent
21 toxicity, or sludge contamination;
- 22 (2624) "POTW", or "Publicly Owned Treatment Works," means a treatment works as defined by Section 212
23 of the Clean Water Act (CWA), which is owned by a state or municipality. ~~local government~~
24 ~~organization~~. This definition includes any devices and systems used in the storage, treatment,
25 recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes
26 the collection system, only if it conveys wastewater to a POTW treatment plant. Also see 15A NCAC
27 02T .0402. The term also means the ~~local government organization~~, or municipality, as defined in
28 Section 502(4) of the CWA, which has jurisdiction over indirect discharges to and the discharges from
29 such a treatment works. ~~In this context, the organization~~ The municipality may be the owner of the
30 POTW treatment plant or the owner of the collection system into which an indirect discharger
31 discharges. This second type of POTW municipality may be referred to as a "satellite municipality", a
32 "satellite POTW" or a "satellite POTW organization"; ~~organization~~. For clarity, the local government
33 ~~may be referred to as the "POTW organization" or "Control Authority" as applicable in this Rule and~~
34 ~~all other rules in this Section. See also Subparagraph (b)(5) of this Rule and Rule .0908(h) of this~~
35 ~~Section;~~
- 36 (2725) "POTW Director" means the chief administrative officer of the control authority or his/her delegate;

- 1 ~~(2826)~~ "Pretreatment" refers to the reduction of the amount of pollutants, the elimination of pollutants, or the
2 alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or
3 otherwise introducing such pollutants into a POTW collection system or treatment plant. The
4 reduction or alteration may be obtained by physical, chemical, or biological processes, or process
5 changes or other means, except as prohibited by 40 CFR ~~Part 403.6(d);~~ 403.6(d). Where wastewater
6 from a regulated process is mixed with unregulated wastewater or with wastewater from another
7 regulated process, the pretreatment limit must be calculated in accordance with 40CFR 403.6(e);
8 ~~(29) "Pretreatment Standard" is any prohibited discharge standard, categorical standard, or local limit~~
9 ~~which applies to an industrial user;~~
10 ~~(3027)~~ "Process Wastewater" means any water which, during manufacturing or processing, comes into direct
11 contact with or results from the production or use of any raw material, intermediate product, finished
12 product, by-product, or waste product;
13 ~~(3128)~~ "Removal Credits" are credits that may be granted under Rule .0921 of this Section and 40 CFR Parts
14 403.7 and 403.11 to adjust categorical standards in such a way as to reflect POTW consistent removal
15 of a particular pollutant;
16 ~~(3229)~~ "Sewer Use Ordinance" or "SUO" means the POTW or control authority organization ordinance
17 providing the legal authority for administering the pretreatment program;
18 ~~(3330)~~ "Significant Industrial User" or "SIU" means an industrial user that discharges wastewater into a
19 publicly owned treatment works and that:
20 (A) Discharges an average of 25,000 gallons per day or more of process wastewater to the
21 POTW (excluding sanitary, noncontact cooling and boiler blowdown wastewaters);
22 (B) Contributes process wastewater which makes up five percent or more of the NPDES or non-
23 discharge permitted flow limit or organic capacity of the POTW treatment plant. In this
24 context, organic capacity refers to BOD, TSS and ammonia;
25 (C) Is subject to categorical standards under 40 CFR ~~Part 403.6~~ and 40 CFR chapter I, subpart N;
26 Parts 405-471;
27 (D) is designated as such by the control authority on the basis that the industrial user has a
28 reasonable potential for adversely affecting the POTW's operation (including contributing to
29 violations of the limitation and requirements of the NPDES or non-discharge permit or
30 limiting the POTW's sludge disposal options) or for violating any pretreatment standard or
31 requirement (in accordance with 40 CFR 403.8(f)(6)); ~~requirement, or the POTW's effluent~~
32 ~~limitations and conditions in its NPDES or non-discharge permit, or to limit the POTW's~~
33 ~~sludge disposal options;~~
34 (E) Subject to approval under Rule .0907(b) of this Section, the control authority may determine
35 that an industrial user meeting the criteria in Parts (A) or (B) of this Subparagraph has no
36 reasonable potential for adversely affecting the POTW's operation or for violating any
37 pretreatment standard or requirement, the POTW's effluent limitations and conditions in its

1 NPDES or non-discharge permit, or to limit the POTW's sludge disposal options, and thus is
2 not a significant industrial user; or

3 (F) Subject to approval under Rule .0907(b) of this Section, the control authority may determine
4 that an industrial user meeting the criteria in Part (C) of this Subparagraph meets the
5 requirements of 40 CFR ~~Part~~ 403.3(v)(2) and thus is a non-significant categorical industrial
6 user;

7 (3431) "Significant Noncompliance" or "SNC" is the status of noncompliance of a significant industrial user
8 when one or more of the following criteria are met:

9 (A) Chronic violations of wastewater discharge limits, defined here as those in which 66 percent
10 or more of all the measurements taken for the same pollutant parameter (not including flow)
11 during a six month period exceed (by any magnitude) a numeric pretreatment standard or
12 requirement including instantaneous limits, as defined by 40 CFR ~~Part~~ 403.3(l);

13 (B) "Technical Review Criteria" (TRC) violations, defined here as those in which 33 percent or
14 more of all the measurements taken for the same pollutant parameter during a six-month
15 period equal or exceed the product of the numeric pretreatment standard or requirement
16 including instantaneous limits, as defined by 40 CFR ~~Part~~ 403.3(l) multiplied by the
17 applicable TRC; (TRC = 1.4 for BOD, TSS, fats, oil and grease, 1.2 for all other pollutants
18 (except flow and pH));

19 (C) Any other violation of a pretreatment standard or requirement as defined by 40 CFR ~~Part~~
20 403.3(l) (daily maximum, long-term average, instantaneous limit, or narrative standard) that
21 the control authority (or POTW, if different from the control authority), determines has
22 caused, alone or in combination with other discharges, interference or pass through
23 (including endangering the health of POTW personnel or the general public);

24 (D) Any discharge of a pollutant or wastewater that has caused imminent endangerment to human
25 health, welfare or to the environment or has resulted in either the control authority's or the
26 POTW's, if different from the control authority, exercise of its emergency authority under 40
27 CFR ~~Part~~ 403.8(f)(1)(vi)(B) to halt or prevent such a discharge;

28 (E) Failure to meet, within 90 days after the schedule date, a compliance schedule milestone
29 contained in a pretreatment permit or enforcement order for starting construction, completing
30 construction, or attaining final compliance;

31 (F) Failure to provide, within 45 days after the due date, required reports such as baseline
32 monitoring reports, 90-day compliance reports, self-monitoring reports, and reports on
33 compliance with compliance schedules;

34 (G) Failure to accurately report noncompliance; or

35 (H) Any other violation or group of violations that the control authority or POTW determines
36 will adversely affect the operation or implementation of the local pretreatment program;

1 Additionally, effective January 1, 2012, any industrial user which meets the criteria in Parts (C), (D),
2 or (H) of this Subparagraph shall also be in SNC;

3 ~~(3532)~~ "Staff" means the staff of the Division of Water Quality Resources, Department of ~~Environment and~~
4 ~~Natural Resources-Environmental Quality~~;

5 ~~(3633)~~ "Upset" means the same as set out in Rule .0914 of this Section and 40 ~~CFR~~-Part 403.16;

6 ~~(37)~~ ~~"Waste reduction" means source reduction and recycling;~~

7 ~~(3834)~~ "Wastewater" means the liquid and water-carried industrial or domestic wastes from dwellings,
8 commercial buildings, industrial facilities, mobile sources, treatment facilities and institutions,
9 together with any groundwater, surface water, and storm water that may be present, whether treated or
10 untreated, which are contributed into or permitted to enter the POTW; and

11 ~~(3935)~~ "Waters of the State" as defined in G.S. 143-212. ~~are all streams, rivers, brooks, swamps, sounds,~~
12 ~~tidal estuaries, bays, creeks, lakes, waterways, reservoirs, and all other bodies or accumulations of~~
13 ~~water, surface or underground, natural or artificial, public or private, which are contained in, flow~~
14 ~~through, or border upon the State or any portion thereof. thereof, including any portion of the Atlantic~~
15 ~~Ocean over which the State has jurisdiction.~~

16
17 *History Note: Authority G.S. 130A-334(13); 143-215.3(a)(1); 143-215.3(a)(14);150B-21.6;*

18 *Eff. March 28, 1980;*

19 *Amended Eff. April 1, 2011; November 1, 1994; October 1, 1987; December 1, 1984-1984;*

20 *Readopted Eff. May 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Emergency Management Commission

RULE CITATION: 15A NCAC 02H .0904

DEADLINE FOR RECEIPT: Friday, April 12, 2019

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

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

On line 5, why not state "EPA" since you defined the term in Rule .0902?

Please do not strike and underline the same language on line 8. If this a hyperlink and you cannot remove the underline, please just let me know.

On line 10, please insert a period at the end of the line.

Please delete the blank line space on line 11.

In (b), line 12, I take it the "may" allow will be based upon factors later stated in the Paragraph?

On lines 14-15, what is being "designated by the Division Director"? The exception or the portions of the Rules cited?

On line 16, by "may" do you mean "shall"?

On line 16, what is "percent" modifying – just industrial flow?

I take it your regulated public knows what "industrial flow" and "industrial waste characteristics" means?

On line 17, who determines the potential for industrial growth?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: April 4, 2019

1 15A NCAC 02H .0904 is readopted as published in 32:21 NCR 1943 as follows:
2

3 **15A NCAC 02H .0904 REQUIRED PRETREATMENT PROGRAMS**

4 (a) The regulations regarding pretreatment program development by the control authority promulgated by the
5 Environmental Protection Agency and codified as 40 CFR ~~Parts~~ 403.8(a) through 403.8(e) are hereby incorporated by
6 reference, including any subsequent amendments and editions. ~~This material is available for inspection at the locations~~
7 ~~listed in Rule .0901 of this Section and at http://efpub1.epa.gov/npdes/home.cfm?program_id=3.~~
8 ~~<http://water.epa.gov/polwaste/npdes/pretreatment/index.cfm>.~~ A copy of the reference material can be found at
9 [http://www.ecfr.gov/cgi-bin/text-](http://www.ecfr.gov/cgi-bin/text-idx?SID=002b8fe78be0d299d7289c36ef66652d&mc=true&tpl=/ecfrbrowse/Title40/40CISubchapN.tpl)
10 [idx?SID=002b8fe78be0d299d7289c36ef66652d&mc=true&tpl=/ecfrbrowse/Title40/40CISubchapN.tpl](http://www.ecfr.gov/cgi-bin/text-idx?SID=002b8fe78be0d299d7289c36ef66652d&mc=true&tpl=/ecfrbrowse/Title40/40CISubchapN.tpl), free of charge
11

12 (b) The Division may allow a control authority having a combined permitted flow less than or equal to two million
13 gallons per day and less than four significant industrial users to develop and implement a modified pretreatment program
14 that encompasses a portion of the requirements in Rules .0905 and .0906 of this Section, as designated by the Division
15 Director. In making the decision to allow modified pretreatment program development and implementation, the Division
16 Director may consider factors including percent industrial flow, industrial waste characteristics, compliance status of the
17 facility, and the potential for industrial growth.

18
19 *History Note: Authority G.S. 143-215.1(a); 143-215.1(b); 143-215.3(a)(14); 150B-21.6;*
20 *Eff. March 28, 1980;*
21 *Amended Eff. April 1, 2011; November 1, 1994; October 1, 1987; December 1, ~~1984~~ 1984;*
22 *Readopted Eff. May 1, 2019.*
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REQUEST FOR TECHNICAL CHANGE

AGENCY: Emergency Management Commission

RULE CITATION: 15A NCAC 02H .0905

DEADLINE FOR RECEIPT: Friday, April 12, 2019

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

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

I suggest making this a two-paragraph rule. Paragraph (a) would be lines 4-8. Paragraph (b) would be lines 11-16.

On line 5, why not state "EPA" since you defined the term in Rule .0902?

Please do not strike and underline the same language on line 7. If this a hyperlink and you cannot remove the underline, please just let me know.

Please insert a period at the end of line 8.

I suggest you delete the language on lines 9- 10, as this addressed in Rule .0901.

On line 11, why do you have "In general"?

I suggest further breaking lines 11-16 into a list, like so:

*The implementation of a pretreatment program involves:
(1) updating the SUO;
(2) implementing IWS activities...*

On lines 11-15, you already defined these acronyms. Why are you restating the full name and then giving the acronyms? Please use one or the other, and consider using only the acronyms.

On line 12, you state, "updating the HWA or technical basis for local limits;" However, .0902(10) defines HWA as "the technical basis for deriving local limits applied to industrial users" So, isn't the language after "HWA" duplicative here?

On lines 14-15, what is "maintenance"?

On line 15, what is contained in this description?

In the History Note, delete the citation to G.S. 150B-21.6.

In the History Note, why are you citing to the statutes in G.S. 153A and 160A?

Amanda J. Reeder
Commission Counsel
Date submitted to agency: April 4, 2019

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: April 4, 2019

1 15A NCAC 02H .0905 is readopted as published in 32:21 NCR 1943 as follows:

2
3 **15A NCAC 02H .0905 POTW PRETREATMENT PROGRAM IMPLEMENTATION REQUIREMENTS**

4 Except where specified differently in this Section, the POTW pretreatment program requirements promulgated by the
5 Environmental Protection Agency and codified as 40 CFR ~~Part~~ 403.8(f) and (g) are hereby incorporated by reference,
6 including any subsequent amendments and editions. A copy of the reference material can be found at
7 <http://water.epa.gov/polwaste/npdes/pretreatment/index.cfm> ~~http://www.ecfr.gov/cgi-bin/text-~~
8 ~~idx?SID=002b8fe78be0d299d7289c36ef66652d&mc=true&tpl=/ecfrbrowse/Title40/40CISubchapN.tpl, free of charge~~

9 This material is available for inspection at the locations listed in Rule .0901 of this Section and at
10 ~~http://efpub1.epa.gov/npdes/home.cfm?program_id=3~~, <http://water.epa.gov/polwaste/npdes/pretreatment/index.cfm>.

11 In general, the implementation of a pretreatment program involves the updating of the sewer use ordinance (SUO);
12 implementation of industrial waste survey (IWS) activities; updating of the headworks analysis (HWA), or technical
13 basis for local limits; implementation of the long or short term monitoring plan (LTMP/STMP); implementation of
14 compliance activities, including sampling and inspection of significant industrial users; maintenance of control authority
15 organization description; maintenance of staffing and funding information; implementation of the enforcement response
16 plan (ERP), and reporting to the Division on pretreatment program activities.

17
18 *History Note:* Authority G.S. 143-215.1(a); 143-215.1(b); 143-215.3(a)(1); 143-215.3(a)(14); 150B-21.6; 153A-274;
19 153A-275; 160A-311; 160A-312;
20 Eff. March 28, 1980;
21 Amended Eff. April 1, 2011; November 1, 1994; October 1, 1987; December 1, ~~1984~~, 1984;
22 Readopted Eff. May 1, 2019.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Emergency Management Commission

RULE CITATION: 15A NCAC 02H .0906

DEADLINE FOR RECEIPT: Friday, April 12, 2019

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

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

In (a), line 4, you say, 'Except where in conflict' How is this conflict determined? Should this language instead mirror .0905, 'Except where specified differently'?

On line 6, why not state "EPA" since you defined the term in Rule .0902?

Please insert a period at the end of line 9.

Please do not strike and underline the same language on lines 10-11. If this a hyperlink and you cannot remove the underline, please just let me know.

In (b)(1), line 15 and elsewhere you use the term attorney's statement," I take it the term is used because of the requirements in 40 CFR 403.9(b)(1)? If so, you may wish to clarify the language on line 15 and move "along with an attorney's statement" to behind "as required by ... Section." Otherwise, it appears you are relying upon 40 CFR 403.8 for the attorney statement, and I don't see that authority in that CFR.

On line 19, I suggest you delete "et seq"

On line 20, replace "which" with "that"

On line 26, what is "documentation"? What does it include?

In (b)(2), what is an "industrial user survey" if it is not an IWS?

I suggest replacing the citation on lines 28-29 with simply "Rule .0903 of this Section;"

In (b)(4), line 35, what is "literature data" and who determines if it is relevant?

On line 36, remove the parenthesis and just state "pollutants, as defined in..."

In (b)(6), Page 2, line 6, simply insert a space between "and" and ".0917" Don't show it as a change – just do it.

In (b)(7), line 8, insert a comma after "operation"

Amanda J. Reeder
Commission Counsel

Date submitted to agency: April 4, 2019

In (b)(9), line 14, delete or define “brief”

Also on line 14, change “which” to “that”

On line 17, why is “Industrial User” capitalized?

In (b)(11), line 22, will your regulated public know what is applicable here?

In the History Note, delete the citation to G.S. 150B-21.6.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: April 4, 2019

1 15A NCAC 02H .0906 is readopted as published in 32:21 NCR 1943 as follows:
2

3 **15A NCAC 02H .0906 SUBMISSION FOR PRETREATMENT PROGRAM APPROVAL**

4 (a) Except where in conflict with any part of this Section, the regulations regarding the contents of pretreatment
5 programs submitted for approval and the contents of a request to revise national categorical pretreatment standards,
6 promulgated by the Environmental Protection Agency and codified as 40 CFR ~~Part~~ 403.9 are hereby incorporated by
7 reference, including any subsequent amendments and editions. A copy of the reference material can be found at
8 [http://www.ecfr.gov/cgi-bin/text-](http://www.ecfr.gov/cgi-bin/text-idx?SID=002b8fe78be0d299d7289c36ef66652d&mc=true&tpl=/ecfrbrowse/Title40/40CISubchapN.tpl)

9 [idx?SID=002b8fe78be0d299d7289c36ef66652d&mc=true&tpl=/ecfrbrowse/Title40/40CISubchapN.tpl](http://www.ecfr.gov/cgi-bin/text-idx?SID=002b8fe78be0d299d7289c36ef66652d&mc=true&tpl=/ecfrbrowse/Title40/40CISubchapN.tpl), free of charge
10 ~~This material is available for inspection at the locations listed in Rule .0901 of this Section and at~~
11 http://efpub1.epa.gov/npdes/home.cfm?program_id=3. <http://water.epa.gov/polwaste/npdes/pretreatment/index.cfm>.

12 (b) In addition to the contents of a control authority pretreatment program submission described in Paragraph (a) of this
13 Rule, the program submission shall contain:

- 14 (1) a sewer use ordinance (SUO) providing the legal authority for implementing the pretreatment program,
15 along with an attorney's statement, as required by 40 CFR ~~Part~~ 403.8 (f)(1) and Rule .0905 of this
16 Section. Where the control authority accepts wastewater from one or more satellite POTWs and is the
17 control authority within the satellite POTW's service area, the attorney's statement for that control
18 authority shall document the interlocal agreements (ILAs) authorized by G.S. 153A-278 and 160A-460
19 et seq and SUO sections that establish the control authority's authority for regulation within all satellite
20 POTW services areas which are tributary to the control authority's POTW. Where a satellite POTW
21 serves as the control authority within its service area, the attorney's statement for that control authority
22 shall document the ILAs and SUO sections that establish the satellite POTW's authority for regulation
23 within its service area and the requirements for the satellite POTW to implement its pretreatment
24 program in accordance with the downstream POTW's SUO and the ILA. In either case, where the
25 POTW organizations have other written procedures to outline responsibilities not covered by the ILA
26 or SUO, the applicable attorney's statements shall also include documentation of these procedures and
27 the source of their enforceability;
- 28 (2) an industrial waste survey (IWS), or industrial user survey, as defined in Subparagraph (13) of Rule
29 .0903(b) ~~.0905(b)~~ of this Section;
- 30 (3) a monitoring plan to provide POTW site-specific data for the HWA and subsequent technical
31 evaluations of local limits to satisfy the requirements of 40 CFR ~~Part~~ 122.21(j). Modified pretreatment
32 programs developed under Rule .0904(b) of this Section shall be allowed to implement a short term
33 monitoring plan (STMP);
- 34 (4) a headworks analysis (HWA) and supporting documentation, including POTW site-specific and
35 relevant literature data, upon which to base industrial user-specific effluent limits and other local limits
36 for prohibited pollutants (as defined in 40 CFR ~~Parts~~ 403.5(a) and (b) and Rule .0909 of this Section);

- 1 (5) a compliance monitoring program, including inspection, sampling, equipment, and other compliance
2 procedures, which will implement the requirements of 40 CFR ~~Parts~~ 403.8(f) and 403.12, and Rules
3 .0905 and .0908 of this Section;
- 4 (6) draft industrial user pretreatment permits for significant industrial users as required by 40 CFR ~~Parts~~
5 403.8(f)(1)(iii) and 403.9(b)(1)(ii) and Rule .0916 of this Section, and supporting documentation
6 outlined in Rules .0916 and .0917 of this Section;
- 7 (7) procedures for approving the construction of pretreatment facilities by industrial users and for
8 permitting industrial users for construction, operation and discharge as required by G.S. 143-215.1;
9 procedures for approving construction shall include issuance of authorization to construct, as
10 appropriate;
- 11 (8) an enforcement response plan (ERP) as required by 40 CFR ~~Parts~~ 403.8(f)(5) and 403.9(b)(1)(ii) for
12 identifying violations of and enforcing specific local limits and other pretreatment requirements as
13 required by and specified in 40 CFR ~~Parts~~ 403.5 and 403.6 and Rules .0909 and .0910 of this Section;
- 14 (9) a brief description (including organization charts) of the control authority which will administer the
15 pretreatment program. Where more than one POTW organization is involved in the POTW
16 wastewater collections or treatment system, the description shall address all the agencies, including
17 identification of which party will receive Industrial User applications for new and changed discharges
18 and how the parties will communicate on significant industrial user determinations;
- 19 (10) a description of funding levels and full- and part-time manpower available to implement the program;
- 20 (11) a description of data management procedures for compiling and managing compliance, LTMP/STMP,
21 and any other pretreatment-related monitoring data, including documentation of approval of electronic
22 reporting procedures as required under 40 CFR Part 3 if applicable; and
- 23 (12) a request for pretreatment program approval as required by 40 CFR ~~Part~~ 403.9 and this Section.

24
25 *History Note: Authority G.S. 143-215.1(a); 143-215.1(b); 143-215.3(a)(1); 143-215.3(a)(14); 150B-21.6;*
26 *Eff. March 28, 1980;*
27 *Amended Eff. April 1, 2011; November 1, 1994; October 1, 1987; December 1, ~~1984~~. 1984;*
28 *Readopted Eff. May 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Emergency Management Commission

RULE CITATION: 15A NCAC 02H .0907

DEADLINE FOR RECEIPT: Friday, April 12, 2019

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

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

On the Submission for Permanent Rule form, Box 2, there is a minor typographical error in the name of the Rule. Please correct the spelling of "withdrawal"

In (a)(1), line 7, you say, "Except where in conflict" How is this conflict determined? Should this language instead mirror .0905, "Except where specified differently"?

On line 9, why not state "EPA" since you defined the term in Rule .0902?

Please do not strike and underline the same language on lines 10-13. If this a hyperlink and you cannot remove the underline, please just let me know.

Delete the blank line space on line 17.

In (a)(2), is this Subparagraph stating that this Rule is implementing G.S. 143-215.1(f)? I realize it's not in the History Note, but that appears to be what you are doing here.

On line 19, please insert a comma after "operation"

End line 21 with a period, not a semicolon. And please note the same for Page 2, lines 10 and 23.

In (b), line 22, and elsewhere you refer to the Division taking this action, what authority are you relying upon for this delegation?

On line 23, delete "but is not limited to"

On line 24, what do you mean by "legal authority"? Is this the ILA in the previous rule?

On lines 24-26, please either only refer to the acronym or the full term, not both.

In (b)(1), lines 29-30, what documents are these? How will this request be communicated?

On line 30, delete "merely" and just state "may consist of verification"

Amanda J. Reeder
Commission Counsel
Date submitted to agency: April 4, 2019

In (b)(2), line 35, what public notices are these?

On line 36, deemed by whom?

On line 36, what is “sufficient”?

In (b)(3), Page 2, line 1, state “his or her”

On lines 2-3, what is this memorandum? How can one see it? And what is your authority to incorporate this into the Rule?

In (b)(4), line 4, why not state “A pretreatment program revision shall become effective upon written approval of the Division Director, except as follows:”?

In (b)(4)(A), line 6, I suggest stating “Pretreatment permits shall become effective as set forth in Rule .0917(d) of this Section; and”

In (b)(4)(B), line 8, delete “in which”

On line 8, what are “general” comments?

Also on line 8, insert a comma after “objections to”

On line 10, what do you mean “final and binding”? Do you mean that the request is deemed effective?

In (c), what specific authority are you relying upon to withdraw the approval and for the Division Director to make this determination?

In (c)(2), line 15, replace “such” with “the’

On line 15, define “orderly transfer”

On line 16, is “relevant” defined in the parenthetical language on lines 16-17? If not, what is it?

On line 17, insert a comma after “reports”

On line 17, delete “which is’

In (c)(3), line 19, you refer to “transfer plan”. What is this – is it what is required in (c)(2)?

On lines 20 and 21, what do you mean by “identify”? Do you mean “determine”?

In (c)(4), where will this be published?

In (d), line 24, what specific procerus are you referring to?

In (e), line 26, replace “is” with “shall be”

On line 26, who will consider this inactive? And what does “inactive” mean?

Amanda J. Reeder
Commission Counsel
Date submitted to agency: April 4, 2019

On line 26, delete “industrial users defined as” so the sentence just reads “inactive when significant industrial users no longer...”

On line 29, do you mean “shall” rather than “may”? Or will the updating be determined on a case-by-case basis? If so, based upon what?

On line 30, they only have to update to meet Rule .0906, nothing else?

I don't understand how lines 31-32 work – didn't the Division require the POTW to become active? What happens if they don't get approval but you required them to become effective?

In (f), what does this Paragraph do? I am guessing the intent is to give notice of these meetings, but I'm not sure it does that or actually says anything.

On line 33, what will be the circumstances where the Division “may” ask for these meetings/

On line 34, define “periodically”

In the History Note, Page 3, line 2, why are you citing to G.S. 143-215.3(e)?

Also on line 2, delete the citation to G.S. 150B-21.6.

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

1 15A NCAC 02H .0907 is readopted as published in 32:21 NCR 1943 as follows:
2

3 **15A NCAC 02H .0907 PROCEDURES FOR PRETREATMENT PROGRAM APPROVAL, REVISION**
4 **AND WITHDRAWAL**

5 (a) Procedures for approval of a control authority pretreatment program and for removal credit authorization are as
6 follows:

- 7 (1) Except where in conflict with any part of this Section, the approval procedures for control authority
8 pretreatment programs and applications for removal credit authorization promulgated by the
9 Environmental Protection Agency and codified as 40 CFR ~~Part~~ 403.11 are hereby incorporated by
10 reference, including any subsequent amendments and editions. ~~This material is available for~~
11 ~~inspection at the locations listed in Rule .0901 of this Section and at~~
12 ~~http://efpub1.epa.gov/npdes/home.cfm?program_id=3;~~
13 ~~<http://water.epa.gov/polwaste/npdes/pretreatment/index.cfm>; and~~ A copy of the reference material can
14 be found at [http://www.ecfr.gov/cgi-bin/text-](http://www.ecfr.gov/cgi-bin/text-idx?SID=002b8fe78be0d299d7289c36ef66652d&mc=true&tpl=/ecfrbrowse/Title40/40CISubchapN.tp)
15 [idx?SID=002b8fe78be0d299d7289c36ef66652d&mc=true&tpl=/ecfrbrowse/Title40/40CISubchapN.tp](http://www.ecfr.gov/cgi-bin/text-idx?SID=002b8fe78be0d299d7289c36ef66652d&mc=true&tpl=/ecfrbrowse/Title40/40CISubchapN.tp)
16 l, free of charge; and

- 17
18 (2) Upon program approval, a control authority is delegated, subject to the provisions of Rules .0916 and
19 .0917 of this Section, the authority to issue the construction, operation and discharge permits required
20 by G.S. 143-215.1(a) for those significant industrial users discharging or proposing to discharge to the
21 POTW;

22 (b) Either the Division or the control authority may initiate program revisions. The control authority shall submit a
23 request to the Division for approval of modifications to its approved pretreatment program, including, but not limited to
24 its legal authority, or sewer use ordinance (SUO), headworks analysis (HWA), long or short term monitoring plan
25 (LTMP/STMP), enforcement response plan (ERP), summary of industrial waste survey (IWS) activities, and revisions to
26 the list of significant industrial users (SIUs). Revisions to an approved pretreatment program shall be accomplished as
27 follows:

- 28 (1) the control authority shall submit a modified program description, an attorney's statement if the legal
29 authority of the program is being modified, and other documents as the Division Director determines
30 to be necessary under the circumstances. The attorney's statement may consist merely of a verification
31 that the North Carolina model pretreatment sewer use ordinance is proposed for adoption by the
32 control authority, if that is the case;
- 33 (2) whenever the Division Director determines that the proposed program modifications are substantial as
34 defined in 40 CFR ~~Part~~ 403.18(b), the Division shall issue public notice and provide an opportunity for
35 public comment as described in Rules .0109 and .0110 of this Subchapter. Public notices issued by
36 the control authority are deemed sufficient notice;

1 (3) the Division Director or his/her delegate shall approve or disapprove program revisions based on the
2 requirements of this Section, G.S. 143-215.1, G.S. 143-215.3 and the Water Quality Memorandum of
3 Agreement between the Division and the EPA; and

4 (4) Except as specified below, a pretreatment program revision shall become effective upon written
5 approval of the Division Director:

6 (A) Pretreatment permits: See Rule .0917(d); and

7 (B) The Division shall have 30 days from the receipt of a request for deletion of SIUs from the
8 SIU list in which to make general comments upon, objections to or recommendations with
9 respect to the request. Unless such an objection or request for more information is made, the
10 request shall be final and binding;

11 (c) The Division Director may withdraw pretreatment program approval when a control authority no longer complies
12 with requirements of this Section and the control authority fails to take corrective action. The following procedures
13 apply when the Division Director determines that program withdrawal may be needed:

14 (1) The Division Director shall give the control authority 180 days notice of the program withdrawal;

15 (2) the control authority shall submit within 60 days of such notice a plan for the orderly transfer of all
16 relevant program information not in the possession of the Division (such as permit files, compliance
17 files, reports and permit applications) which is necessary for the Division to administer the
18 pretreatment program;

19 (3) within 60 days of the receipt of the control authority transfer plan, the Division Director shall evaluate
20 the control authority plan and shall identify any additional information needed by the Division for
21 program administration or identify any other deficiencies in the plan; and

22 (4) at least 30 days before the program withdrawal, the Division Director shall publish public notice of the
23 program transfer and shall mail notice to all pretreatment permit holders of the control authority;

24 (d) Applications for removal credit authorization shall be made in accordance with procedures established by this Rule.
25 Approval shall become effective upon written approval of the Division Director.

26 (e) A pretreatment program is considered inactive when industrial users defined as significant industrial users no longer
27 discharge to the POTW, based on modifications of the control authority pretreatment program approved by the Division.
28 Inactive approved pretreatment programs shall notify the Division when a significant industrial user proposes to
29 discharge to the POTW. When required by the Division to return to active status, a control authority may be required to
30 update any or all of the requirements listed in Rule .0906 of this Section that no longer meet the standards of these Rules.

31 The control authority shall obtain Division approval of the reactivation under this Rule prior to commencement of
32 discharge of the significant industrial user.

33 (f) The Division may require that representatives of modified pretreatment programs developed under Rule .0904(b) of
34 this Section meet with Division personnel periodically to discuss implementation of and revisions to their modified
35 pretreatment program.

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1 *History Note: Authority G.S. 143-215(a); 143-215.1(a); 143-215.1(c); 143-215.3(a)(3) ; 143-215.3(a)(14); 143-*
2 *215.3(e); 150B-21.6;*
3 *Eff. March 28, 1980;*
4 *Amended Eff. April 1, 2011; November 1, 1994; October 1, 1987; December 1, ~~1984~~. 1984;*
5 *Readopted Eff. May 1, 2019.*

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REQUEST FOR TECHNICAL CHANGE

AGENCY: Emergency Management Commission

RULE CITATION: 15A NCAC 02H .0908

DEADLINE FOR RECEIPT: Friday, April 12, 2019

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

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

In (a)(1), line 5, you say, 'Except where in conflict' How is this conflict determined? Should this language instead mirror .0905, 'Except where specified differently'?

On line 6, why not state "EPA" since you defined the term in Rule .0902?

On line 7, you already incorporated 40 CFR 403.8(g) in Rule .0905. Do you think you need to do so here again just for the ease of reference for your regulated public?

Please do not strike and underline the same language on line 9. If this a hyperlink and you cannot remove the underline, please just let me know.

I don't follow the requirements in Paragraph (b) works – is it one report or two? Because it seems like you are requiring both. I think this can be clarified to state exactly what is required.

On line 16, what are the contents of this form? G.S. 150B-2(8a)(d) requires the substantive requirements of forms to be in law or rule. Are these set forth somewhere? And how are these forms provided?

In (b)(1), line 17, define "narrative summary"

In (b)(2), line 19, define "summary"

Also on line 19, what are contained in these "forms or format provided by the Division"? In order to comply with the APA, this needs to be set forth in Rule or law.

In (b)(3), line 21, there should not be a semicolon after "violations"

On lines 21-22, please note the earlier question regarding "forms or format"

In (b)(5), line 24, what is "in the opinion of the Director"? Should this read "the Division Director determines"?

And how is this request for additional information requested?

Amanda J. Reeder
Commission Counsel
Date submitted to agency: April 4, 2019

On line 25, I suggest you just retain “including” and don’t insert “examples include”

On line 26, what are these “compliance schedules”? Does your regulated public know?

On line 30, please note the earlier queries regarding “form or format provided by the Division.”

In Paragraph (c), what authority do you have to not require these reports in light of G.S. 143-215.65?

Assuming you have authority, you need to state under what specific circumstances the Director will require this for the programs under Rule .0904(b) within this Rule.

On line 32, what is a “partial” annual report?

In (e), Page 2, line 1, what is “independent” here?

In (e)(1), line 3, I suggest stating “A minimum of once each year for all permit-limited parameters, including flow, except as follows:” This is for both clarity and because the use of “below” is not favored in Rules.

In (e)(1)(A), line 6, replace “which” with “that”

On line 6, I take it “categorical standard” is a term known to your regulated public?

In (e)(1)(B), line 11, it seems you are either missing language or “at” should be “by” before “a significant industrial user”

On line 13, why do you have this citation? Do you want to say “as set forth in 403.8...” Or that the citation applies?

In (e)(1)(C), line 16, why is this citation in parenthesis? Should you say it applies?

End (e)(2), line 19, with a period.

In (f)(1), line 22, insert a comma after “results”

In (f)(2), line 24, what do you mean by “any portion”? Do you mean “rule”?

On line 26, I suggest stating “expired, been updated, or replaced;”

In (f)(3), lines 28-29, please note the earlier queries about “form or format provided by the Division”

In (f)(4), why not state “Laboratory records shall be maintained as set forth in Rule .0805 of this Subchapter.”

Either delete (g) altogether or explain what you mean by “Section” and “logical order” and “if appropriate” and are you not requiring electronic reporting by now?

In the History Note, Page 3, line 5, do not cite to 143-215.63 through 215.69. This is because: 1) some of these do not apply; and 2) G.S. 143-215.68 was repealed in 1987.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: April 4, 2019

Aren't you primarily relying upon G.S. 143-215.65? However, that law requires quarterly reporting and this Rule requires an annual report. How does this Rule comply with that law?

Also in the History Note, delete the citation to G.S. 150B-21.6.

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

1 15A NCAC 02H .0908 is readopted as published in 32:21 NCR 1943 as follows:
2

3 **15A NCAC 02H .0908 REPORTING/RECORD KEEPING REQUIREMENTS FOR**
4 **POTWS/INDUSTRIAL USERS**

5 (a) Except where in conflict with any part of this Section, the regulations regarding the reporting requirements for
6 control authorities and industrial users promulgated by the Environmental Protection Agency and codified as 40 CFR
7 ~~Parts~~ 403.8(g) and 403.12 are hereby incorporated by reference, including any subsequent amendments and editions.

8 ~~This material is available for inspection at the locations listed in Rule .0901 of this Section and at~~
9 ~~http://cfpub1.epa.gov/npdes/home.cfm?program_id=3, <http://water.epa.gov/polwaste/npdes/pretreatment/index.cfm>.~~ A
10 copy of the reference material can be found at <http://www.ecfr.gov/cgi-bin/text-idx?SID=002b8fe78be0d299d7289c36ef66652d&mc=true&tpl=/ecfrbrowse/Title40/40CISubchapN.tpl>, free of charge.

11 (b) Control authorities with active approved pretreatment programs shall submit once per year a pretreatment report
12 describing its pretreatment activities over the previous 12 months. Two copies of each pretreatment report shall be
13 submitted to the Division by March 1 of each year for activities conducted for two six-month periods, January 1 through
14 June 30 and July 1 through December 31 of the previous year. This annual report shall contain the following information
15 in accordance with forms provided by the Division:

- 17 (1) a narrative summary of actions taken by the control authority to ensure compliance with pretreatment
18 requirements;
- 19 (2) a pretreatment program summary on forms or in a format provided by the Division;
- 20 (3) a list of industrial users in significant noncompliance with pretreatment requirements, the nature of the
21 violations, and actions taken or proposed to correct the violations; on forms or in a format provided by
22 the Division;
- 23 (4) an allocation table as described in Rule .0916(c)(4) of this Section; and
- 24 (5) other information which in the opinion of the Division Director is needed to determine compliance
25 with the implementation of the pretreatment program, including, but not limited to, examples include
26 significant industrial user compliance schedules, public notice of industrial users in significant
27 noncompliance, a summary of significant industrial user effluent monitoring data as described in
28 Paragraphs (a) and (e) of this Rule, a summary of information related to significant non-compliance
29 determination for industrial users that are not considered significant industrial users, and Long or Short
30 Term Monitoring Plan data on forms or in a format provided by the Division;

31 (c) In lieu of submitting annual reports as described in Paragraph (b) of this Rule, the Division Director may allow
32 modified pretreatment programs developed under Rule .0904(b) of this Section to submit only a partial annual report, or
33 to meet with Division personnel as required to discuss enforcement of pretreatment requirements and other pretreatment
34 implementation issues.

35 (d) Inactive pretreatment programs are not required to submit the report described in Paragraphs (b) and (c) of this Rule.
36 Inactive approved pretreatment programs shall notify the Division when a significant industrial user proposes to
37 discharge to the POTW and shall comply with Rule .0907 of this Section.

1 (e) Samples shall be collected and analyzed by the control authority independent of the industrial users for each
2 significant industrial user as follows:

3 (1) Except as specified below, a minimum of once each year for all permit-limited parameters including
4 flow:

5 (A) Independent monitoring of the industrial user by the control authority is not required for
6 pollutants which are limited by a categorical standard for which specific certification or other
7 alternative procedures apply where the industrial user submits the required documentation for
8 that certification or procedure, even if the industrial user chooses to monitor in addition to
9 using certification or other alternative procedures;

10 (B) The minimum frequencies in this Subparagraph shall be reduced by half for all permit-limited
11 parameters at a significant industrial user determined by the control authority, subject to
12 approval under Rule .0907 of this Section, to fit the criteria under 40 CFR ~~Part~~ 403.12(e)(3)
13 (Middle Tier CIU), [after 403.8(f)(2)(v)(C)]; and

14 (C) For categorical parameters with monitoring waived under 40 CFR ~~Part~~ 403.12(e)(2), a
15 minimum of once during the term of the applicable significant industrial user pretreatment
16 permit (40 CFR ~~Part~~ 403.8(f)(2)(v)(A)); and

17 (2) If the control authority elects to sample and analyze in lieu of the industrial user, the control authority
18 shall collect and analyze for the required parameters and, if applicable, in accordance with categorical
19 standards;

20 (f) Records Retention:

21 (1) Control authorities and industrial users shall retain for three years records of monitoring activities and
22 results along with supporting information including annual pretreatment reports, general records, water
23 quality records, and records of industrial user impact on the POTW;

24 (2) Other documents required by any portion of this Section (including supporting information) for other
25 pretreatment program elements, such as pretreatment permits (IUPs), HWAs, SUOs, ERPs, etc., shall
26 be retained for three years after the document has expired or been updated or replaced;

27 (3) A summary of all significant industrial user effluent monitoring data reported to the control authority
28 by the industrial user or obtained by the control authority shall be maintained on forms or in a format
29 provided by the Division for review by the Division; and

30 (4) Also see Rule .0805 of this Subchapter for laboratory records retention requirements.

31 (g) Forms or format deviating from Division provided forms or format for all documents and supporting information
32 required by any portion of this Section shall contain all required information in a logical order or, if appropriate, in a
33 computer-compatible format.

34 (h) In the case where the receiving POTW treatment plant is not owned by the same local governmental organization as
35 the control authority, all information required to be reported to the industrial user's control authority by this Section shall
36 also be submitted to the POTW treatment plant governmental organization.

1 (i) In the case where the control authority accepts electronic reporting, the reporting shall comply with 40 CFR Part 3,
2 and the control authority shall maintain documentation of approval as required under 40 CFR Part 3.

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4 *History Note:* Authority G.S. 143-215.1(a); 143-215.1(b); 143-215.2; 143-215.3(a)(2); 143-215.3(a)(14); 143-
5 215.6(a)(1); 143-215.63 through 143-215.69; 150B-21.6;
6 Eff. March 28, 1980;
7 Amended Eff. April 1, 2011; November 1, 1994; October 1, 1987; December 1, ~~1984~~, 1984;
8 Readopted Eff. May 1, 2019.

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REQUEST FOR TECHNICAL CHANGE

AGENCY: Emergency Management Commission

RULE CITATION: 15A NCAC 02H .0909

DEADLINE FOR RECEIPT: Friday, April 12, 2019

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

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

On line 5, why not state "EPA" since you defined the term in Rule .0902?

Please do not strike and underline the same language on line 8. If this a hyperlink and you cannot remove the underline, please just let me know.

In the History Note, line 13, delete the citation to G.S. 150B-21.6.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: April 4, 2019

1 15A NCAC 02H .0909 is readopted as published in 32:21 NCR 1943 as follows:
2

3 **15A NCAC 02H .0909 NATIONAL PRETREATMENT STANDARDS: PROHIBITED DISCHARGES**

4 The regulations regarding national prohibited pretreatment standards and local limits development and enforcement
5 promulgated by the Environmental Protection Agency and codified as 40 CFR ~~Part~~ 403.5 are hereby incorporated by
6 reference, including any subsequent amendments and editions. ~~This material is available for inspection at the locations~~
7 ~~listed in Rule .0901 of this Section and at http://efpub1.epa.gov/npdes/home.cfm?program_id=3.~~
8 ~~<http://water.epa.gov/polwaste/npdes/pretreatment/index.cfm>.~~ A copy of the reference material can be found at
9 [http://www.ecfr.gov/cgi-bin/text-](http://www.ecfr.gov/cgi-bin/text-idx?SID=002b8fe78be0d299d7289c36ef66652d&mc=true&tpl=/ecfrbrowse/Title40/40CISubchapN.tpl)
10 [idx?SID=002b8fe78be0d299d7289c36ef66652d&mc=true&tpl=/ecfrbrowse/Title40/40CISubchapN.tpl](http://www.ecfr.gov/cgi-bin/text-idx?SID=002b8fe78be0d299d7289c36ef66652d&mc=true&tpl=/ecfrbrowse/Title40/40CISubchapN.tpl), free of charge.

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13 *History Note:* Authority G.S. 143-215.1(a)(7); 143-215.1(b); 143-215.3(a)(1); 143-215.3(a)(14); 150B-21.6;
14 *Eff. March 28, 1980;*
15 *Amended Eff. March 1, 2011; November 1, 1994; October 1, 1987; December 1, ~~1984~~, 1984;*
16 *Readopted Eff. May 1, 2019.*

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REQUEST FOR TECHNICAL CHANGE

AGENCY: Emergency Management Commission

RULE CITATION: 15A NCAC 02H .0910

DEADLINE FOR RECEIPT: Friday, April 12, 2019

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

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

On lines 4 - 5, why not state "EPA" since you defined the term in Rule .0902?

Please do not strike and underline the same language on line 8. If this a hyperlink and you cannot remove the underline, please just let me know.

In the History Note, line 13, delete the citation to G.S. 150B-21.6.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: April 4, 2019

1 15A NCAC 02H .0910 is readopted as published in 32:21 NCR 1943 as follows:
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3 **15A NCAC 02H .0910 NATIONAL PRETREATMENT STANDARDS: CATEGORICAL STANDARDS**

4 The regulations regarding national categorical pretreatment standards promulgated by the Environmental Protection
5 Agency and codified as pursuant to 40 CFR Part 403.6 are hereby incorporated by reference, including any subsequent
6 amendments and editions. ~~This material is available for inspection at the locations listed in Rule .0901 of this Section~~
7 ~~and _____ at _____~~ http://efpub1.epa.gov/npdes/home.cfm?program_id=3.
8 <http://water.epa.gov/polwaste/npdes/pretreatment/index.cfm>. ~~A copy of the reference material can be found at~~
9 [http://www.ecfr.gov/cgi-bin/text-](http://www.ecfr.gov/cgi-bin/text-idx?SID=002b8fe78be0d299d7289c36ef66652d&mc=true&tpl=/ecfrbrowse/Title40/40CISubchapN.tpl)
10 [idx?SID=002b8fe78be0d299d7289c36ef66652d&mc=true&tpl=/ecfrbrowse/Title40/40CISubchapN.tpl](http://www.ecfr.gov/cgi-bin/text-idx?SID=002b8fe78be0d299d7289c36ef66652d&mc=true&tpl=/ecfrbrowse/Title40/40CISubchapN.tpl), free of charge.

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History Note: Authority G.S. 143-215.1(a)(7); 143-215.1(b); 143-215.3(a)(14); 150B-21.6;
Eff. March 28, 1980;
Amended Eff. March 1, 2011; November 1, 1994; October 1, 1987; December 1, ~~1984~~.1984;
Readopted Eff. May 1, 2019.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Emergency Management Commission

RULE CITATION: 15A NCAC 02H .0912

DEADLINE FOR RECEIPT: Friday, April 12, 2019

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

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

On line 5, why not state "EPA" since you defined the term in Rule .0902?

Please do not strike and underline the same language on line 8. If this a hyperlink and you cannot remove the underline, please just let me know.

In the History Note, line 13, delete the citation to G.S. 150B-21.6.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: April 4, 2019

1 15A NCAC 02H .0912 is readopted as published in 32:21 NCR 1943 as follows:
2

3 **15A NCAC 02H .0912 ADJUSTMENTS FOR FUNDAMENTALLY DIFFERENT FACTORS**

4 The regulations regarding variances from national categorical pretreatment standards for fundamentally different factors
5 promulgated by the Environmental Protection Agency and codified as 40 CFR ~~Part~~ 403.13 are hereby incorporated by
6 reference, including any subsequent amendments and editions. ~~This material is available for inspection at the locations~~
7 ~~listed in Rule .0901 of this Section and at http://efpub1.epa.gov/npdes/home.cfm?program_id=3.~~
8 ~~<http://water.epa.gov/polwaste/npdes/pretreatment/index.cfm>.~~ A copy of the reference material can be found at
9 [http://www.ecfr.gov/cgi-bin/text-](http://www.ecfr.gov/cgi-bin/text-idx?SID=002b8fe78be0d299d7289c36ef66652d&mc=true&tpl=/ecfrbrowse/Title40/40CISubchapN.tpl)
10 [idx?SID=002b8fe78be0d299d7289c36ef66652d&mc=true&tpl=/ecfrbrowse/Title40/40CISubchapN.tpl](http://www.ecfr.gov/cgi-bin/text-idx?SID=002b8fe78be0d299d7289c36ef66652d&mc=true&tpl=/ecfrbrowse/Title40/40CISubchapN.tpl), free of charge.
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History Note: Authority G.S. 143-215(a); 143-215.1(a); 143-215.1(b); 143-215.3(a)(14); 143-215.3(e); 150B-21.6;
Eff. March 28, 1980;
Amended Eff. March 1, 2011; November 1, 1994; October 1, 1987; December 1, ~~1984~~ 1984;
Readopted Eff. May 1, 2019.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Emergency Management Commission

RULE CITATION: 15A NCAC 02H .0913

DEADLINE FOR RECEIPT: Friday, April 12, 2019

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

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

In (a), lines 5-6, I suggest you delete "which may be so"

On line 7, insert a comma after "public"

On line 7, what do you mean by "other interested person"?

On line 7, do you mean "specifically identifies" or "identifies the specific information that is confidential"? In other words, are you looking for express language that says, "this is a trade secret"?

On line 8, what is "to the satisfaction of the POTW Director"?

On line 14, assuming you mean for "state" to mean "NC" please capitalize the term.

In (c), consider breaking this into a list, like so:

Information provided... State agency for:

- (1) uses related to the pretreatment program;*
- (2) the NPDES permit...*

On line 15, I am only asking – why are you spelling out what NPDES stands for here, but not elsewhere?

In (d), line 18, please capitalize "State"

In the History Note, why are you citing to anything in G.S. 132? Is this to address that the information submitted to the POTW is also confidential and G.S. 143-215.3C only applies to the information provided to the Commission?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: April 4, 2019

1 15A NCAC 02H .0913 is readopted as published in 32:21 NCR 1943 as follows:
2

3 **15A NCAC 02H .0913 PUBLIC ACCESS TO INFORMATION**

4 (a) Information and data provided by an industrial user to the POTW Director pursuant to this Section, identifying the
5 nature and frequency of a discharge, shall be available to the public without restriction. All other information which may
6 be so submitted by an industrial user to the POTW Director in connection with any required reports shall also be
7 available to the public unless the industrial user or other interested person specifically identifies the information as
8 confidential upon submission and is able to demonstrate to the satisfaction of the POTW Director that the disclosure of
9 such information or a particular part thereof to the general public would divulge methods or processes entitled to
10 protection as trade secrets.

11 (b) Information and data provided by an industrial user to the Division Director shall be subject to the processes set forth
12 in G.S. 143-215.3C.

13 (c) Information provided by an industrial user to a control authority that is determined to be entitled to confidential
14 treatment shall be made available upon written request to the Division or any state agency for uses related to the
15 pretreatment program, the National Pollutant Discharge Elimination System (NPDES) permit, collection system permit,
16 stormwater permit, or non-discharge permit, and for uses related to judicial review or enforcement proceedings involving
17 the person furnishing the report.

18 (d) Information and data received by the Division or other state agency under Paragraph (c) of this Rule shall be subject
19 to the processes set forth in G.S. 143-215.3C.

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21 *History Note: Authority G.S. 132-1.2; 132-6; 132-9; 143-215.1; 143-215.3; 143-215.3C;*
22 *Eff. March 28, 1980;*
23 *Amended Eff. April 1, 2011; October 1, ~~1987~~, 1987;*
24 *Readopted Eff. May 1, 2019.*

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REQUEST FOR TECHNICAL CHANGE

AGENCY: Emergency Management Commission

RULE CITATION: 15A NCAC 02H .0914

DEADLINE FOR RECEIPT: Friday, April 12, 2019

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

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

On line 4, why not state "EPA" since you defined the term in Rule .0902?

Please do not strike and underline the same language on lines 6-7. If this a hyperlink and you cannot remove the underline, please just let me know.

In the History Note, line 12, delete the citation to G.S. 150B-21.6.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: April 4, 2019

1 15A NCAC 02H .0914 is readopted as published in 32:21 NCR 1943 as follows:
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3 **15A NCAC 02H .0914 UPSET PROVISION**

4 The upset provision promulgated by the Environmental Protection Agency and codified as 40 CFR ~~Part~~ 403.16 is hereby
5 incorporated by reference, including any subsequent amendments and editions. ~~This material is available for inspection~~
6 ~~at the locations listed in Rule .0901 of this Section and at http://efpub1.epa.gov/npdes/home.cfm?program_id=3.~~
7 ~~<http://water.epa.gov/polwaste/npdes/pretreatment/index.cfm>.~~ A copy of the reference material can be found at
8 ~~[http://www.ecfr.gov/cgi-bin/text-](http://www.ecfr.gov/cgi-bin/text-idx?SID=002b8fe78be0d299d7289c36ef66652d&mc=true&tpl=/ecfrbrowse/Title40/40CISubchapN.tpl)~~
9 ~~<http://www.ecfr.gov/cgi-bin/text-idx?SID=002b8fe78be0d299d7289c36ef66652d&mc=true&tpl=/ecfrbrowse/Title40/40CISubchapN.tpl>, free of charge.~~
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12 *History Note: Authority G.S. 143-215.3(a)(1); 143-215.3(a)(14); 150B-21.6;*
13 *Eff. December 1, 1984;*
14 *Amended Eff. March 1, 2011; November 1, 1994; October 1, ~~1987, 1987~~;*
15 *Readopted Eff. May 1, 2019.*
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REQUEST FOR TECHNICAL CHANGE

AGENCY: Emergency Management Commission

RULE CITATION: 15A NCAC 02H .0915

DEADLINE FOR RECEIPT: Friday, April 12, 2019

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

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

On line 4, why not state "EPA" since you defined the term in Rule .0902?

Please do not strike and underline the same language on lines 5-7. If this a hyperlink and you cannot remove the underline, please just let me know.

In the History Note, line 12, delete the citation to G.S. 150B-21.6.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: April 4, 2019

1 15A NCAC 02H .0915 is readopted as published in 32:21 NCR 1943 as follows:
2

3 **15A NCAC 02H .0915 NET/GROSS CALCULATION**

4 The net/gross calculation provisions promulgated by the Environmental Protection Agency and codified as 40 CFR Part
5 403.15 are hereby incorporated by reference, including any subsequent amendments and editions. ~~This material is~~
6 ~~available for inspection at the locations listed in Rule .0901 of this Section and at~~
7 ~~http://efpub1.epa.gov/npdes/home.cfm?program_id=3. <http://water.epa.gov/polwaste/npdes/pretreatment/index.cfm>. A~~
8 ~~copy of the reference material can be found at [http://www.ecfr.gov/cgi-bin/text-](http://www.ecfr.gov/cgi-bin/text-idx?SID=002b8fe78be0d299d7289c36ef66652d&mc=true&tpl=/ecfrbrowse/Title40/40CISubchapN.tpl)~~
9 ~~[idx?SID=002b8fe78be0d299d7289c36ef66652d&mc=true&tpl=/ecfrbrowse/Title40/40CISubchapN.tpl](http://www.ecfr.gov/cgi-bin/text-idx?SID=002b8fe78be0d299d7289c36ef66652d&mc=true&tpl=/ecfrbrowse/Title40/40CISubchapN.tpl), free of charge.~~

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12 *History Note: Authority G.S. 143-215.3(a)(1); 143-215.3(a)(14); 150B-21.6;*

13 *Eff. December 1, 1984;*

14 *Amended Eff. March 1, 2011; November 1, 1994; October 1, ~~1987-1987~~;*

15 *Readopted Eff. May 1, 2019.*

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REQUEST FOR TECHNICAL CHANGE

AGENCY: Emergency Management Commission

RULE CITATION: 15A NCAC 02H .0916

DEADLINE FOR RECEIPT: Friday, April 12, 2019

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

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

In (a), so that I'm clear - significant industrial users can either discharge to a POTW or construct/operate a pretreatment facility to dispose of the pollutants in wastewater?

In (c), on line 8, you deleted "organization" from "POTW organization" in the definition of "Control Authority" in Rule .0903(b)(5). Should it be deleted here, as well?

In (c)(1), line 10, insert a comma after "sign"

On line 11, what if the control authority is the Division? How will the division prescribe the fees and procedures?

On line 12, do you need to retain "as a minimum"? Are there other things to accept, or is this language to allow the control authority to ask for other things?

Consider beginning (c)(1)(A) through (L) with articles where applicable.

In (c)(1)(F), line 19, what are "major" products and services?

I take it you need to retain the language in (c)(1)(M) in order to give notice that this is required by statute, but not part of the application? If you need to retain it, I suggest you remove the (M) and just pull the language to align with the left margin in (c)(1). If you do this, end (c)(1)(L) with a period, not a semicolon. I also recommend you begin the sentence "The application shall include a written ..."

In (c)(2), are the required contents of the form what is listed in (c)(1)?

On line 33, how will they establish this? In a policy?

I suggest you end (c)(2), line 34, (c)(3), Page 2, line 16, (c)(4), line 29, and (c)(5), Page 3, line 16, with periods and not semicolons.

In (c)(3)(B), Page 2, line 1, I take it "complete" will be that it contains all elements in (c)(1)?

In (c)(3)(D), lines 7 and 8, by "tentative" do you mean a preliminary decision?

Amanda J. Reeder
Commission Counsel
Date submitted to agency: April 4, 2019

In (c)(3)(D)(iii), line 14, replace “which” with “that”

On lines 14-15, what is a “significant impact”?

In (c)(4)(A), line 20, delete “but not limited to”

On line 22, what are the “forms or in a format provided by the Division”? Where are they prescribed? In order to comply with the APA, all contents of forms must be in Rule or law. Where are these contents codified?

In (c)(5)(A), line 31, isn’t it possible for the POTW Director to deny the permit for the facility or allow the discharge? Right now, the only two allowed actions are to grant the permit or deny the discharge. Or do you believe this is addressed in (c)(5)(B)? Should this instead say the POTW shall take final action on all permit applications within 90 days and omit the specific actions stated here?

In (c)(5)(A), line 33, please hyphenate “30 day”

On line 35, should the cross-reference be to .0917(q)(2)?

In (c)(5)(B)(iv), Page 3, line 6, please insert an “and” at the end of the line and delete the “and” at the end of line 8.

In (c)(5)(C), line 11, what is “reasonable”? Is this entirely within the POTW Director’s discretion? Are there no factors for him or her to consider?

In (c)(5)(D), line 14, please state “his or her”

On line 15, change “which” to “that”

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: April 4, 2019

1 15A NCAC 02H .0916 is readopted as published in 32:21 NCR 1943 as follows:
2

3 **15A NCAC 02H .0916 PRETREATMENT PERMITS**

4 (a) All significant industrial users who discharge waste into a POTW or who construct or operate a pretreatment facility
5 shall obtain a permit from the control authority.

6 (b) Where the Division is the control authority, permits shall be issued in accordance with Section .0100 of this
7 Subchapter.

8 (c) Where the control authority is a POTW organization, significant industrial user permits shall be issued as follows:

9 (1) Application: any significant industrial user required to obtain a permit in Paragraph (a) of this Rule
10 shall be required to complete, sign and submit to the control authority a permit application.
11 Application fees and procedures may be prescribed by the control authority. All pretreatment permit
12 applications shall include as a minimum:

13 (A) name of industrial user;

14 (B) address of industrial user;

15 (C) standard industrial classification (SIC) code(s) or expected classification and industrial user
16 category;

17 (D) wastewater flow;

18 (E) types and concentrations (or mass) of pollutants contained in the discharge;

19 (F) major products manufactured or services supplied;

20 (G) description of existing on-site pretreatment facilities and practices;

21 (H) locations of discharge points;

22 (I) raw materials used or stored at the site;

23 (J) flow diagram or sewer map for the industrial user;

24 (K) number of employees; and

25 (L) operation and production schedules; ~~and~~

26 ~~(M) description of current and projected waste reduction activities in accordance with G.S. 143-~~
27 ~~215.1(g);~~

28 (M) a written description of current and projected waste reduction activities in accordance with
29 G.S. 143-215.1 (g). The written description shall not be considered part of the permit
30 application and shall not serve as a basis for denial of a permit.

31 (2) Renewals: Applications for pretreatment permit renewals shall be accomplished by filing an
32 application form as listed in Subparagraph (c)(1) of this Rule prior to permit expiration. The number
33 of days prior to expiration by which the application shall be filed shall be established by the control
34 authority;

35 (3) Review and Evaluation:

36 (A) The POTW Director is authorized to accept applications for the Commission and shall refer
37 all applications to the control authority staff for review and evaluation;

- 1 (B) The POTW Director shall acknowledge receipt of a complete application, or if not complete,
2 shall return the application to the applicant with a statement of what additional information is
3 required;
- 4 (C) The control authority staff shall include documentation of the most recent ~~on-site~~ on-site
5 inspection of the industrial user and any existing wastewater pretreatment system as part of
6 the permit record for new and renewed permits; and
- 7 (D) The control authority staff shall conduct an evaluation and make a tentative determination to
8 issue or deny the permit. If the control authority staff's tentative determination is to issue the
9 permit, it shall make the following additional determinations in writing and transmit them to
10 the industrial user:
- 11 (i) proposed effluent limitations for those pollutants proposed to be limited;
12 (ii) a proposed schedule of compliance, including interim dates and requirements, for
13 meeting the proposed effluent limitations; and
14 (iii) a description of any other proposed special conditions which will have significant
15 impact upon the discharge described in the application;
- 16 The control authority staff shall organize the determinations made into a pretreatment permit;
- 17 (4) Permit supporting documentation. The control authority staff shall prepare the following documents
18 for all significant industrial user permits:
- 19 (A) An allocation table (AT) listing permit information for all significant industrial users,
20 including but not limited to permit limits, permit effective and expiration dates, and a
21 comparison of total permitted flows and loads with Division approved maximum allowable
22 loadings of the POTW, including flow, on forms or in a format provided by the Division.
23 The AT shall be updated as permits are issued or renewed, and as permits are modified where
24 the permitted limits or other AT information is revised;
- 25 (B) The basis, or rationale, for the pretreatment limitations, including documentation of
26 categorical determination, including documentation of any calculations used in applying
27 categorical standards; and
- 28 (C) Documentation of the rationale of any parameters for which monitoring has been waived
29 under 40 CFR Part 403.12(e)(2);
- 30 (5) Final Action on Permit Applications:
- 31 (A) The POTW Director shall take final action on all applications by either issuing a pretreatment
32 permit or by denying the discharge not later than 90 days following the receipt of a complete
33 application. If, following the 30 day period required by Rules .0917(d) and .0922 of this
34 Section, no written demand for hearing, objection, or request for more information under
35 Rule .0917(f)(2) of this Section has been made, the permit shall become final and binding;
- 36 (B) The POTW Director is authorized to:

- 1 (i) issue a permit containing such conditions as are necessary to effectuate the purposes
2 of G.S. 143-215.1;
- 3 (ii) issue a permit containing time schedules for achieving compliance with applicable
4 pretreatment standards and limitations and other legally applicable requirements;
- 5 (iii) modify or revoke any permit pursuant to Subparagraph (c)(6) of this Rule;
- 6 (iv) deny a permit application;
- 7 (v) issue permits to industrial users not identified as significant industrial users using
8 procedures prescribed by the control authority; and
- 9 ~~(vi) require industrial users to develop a waste reduction plan and implement waste
10 reduction techniques and technologies;~~
- 11 (C) Permits shall be issued or renewed for a period of time deemed reasonable by the POTW
12 Director but in no case shall the period exceed five years; and
- 13 (D) The POTW Director shall notify an applicant by certified or registered mail of the denial of
14 his/her permit application. Notifications of denial shall specify the reasons for the denial and
15 the proposed changes which in the opinion of the POTW Director will be required to obtain
16 the permit;
- 17 (6) Modification and Revocation of Permits:
- 18 (A) Any permit issued pursuant to this Rule is subject to revocation or modification in whole or
19 part as outlined in the control authority's sewer use ordinance; and
- 20 (B) Modifications of permits may be initiated by the control authority or the significant industrial
21 user and shall be subject to the same procedural requirements as the issuance of permits.
22 ~~except as follows: Permit modification requests made by the significant industrial user must~~
23 ~~be made in writing and can be by letter or by application form as determined by the control~~
24 ~~authority.~~
- 25 ~~(i) permit modification requests made by the significant industrial user must be made~~
26 ~~in writing and can be in the form of a letter or by application form as determined by~~
27 ~~the control authority; and changes in the ownership of the discharge when no other~~
28 ~~change in the permit is indicated;~~
- 29 ~~(ii) a single modification of any compliance schedule not in excess of four months;~~
- 30 ~~(iii) modification of compliance schedules (construction schedules) in permits for new~~
31 ~~sources where the new source will not begin to discharge until control facilities are~~
32 ~~operational; or~~
- 33 ~~(iv) modifications of the monitoring requirements in the permit; and~~
- 34 (7) Permit effective dates and modification effective dates shall not be retroactive.
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1 *History Note: Authority G.S. 143-215(a); 143-215.1(a); 143-215.1(c); 143-215.1(g); 143-215.3(a)(3);*
2 *143-215.3(a)(14); 143-215.3(e);*
3 *Eff. October 1, 1987;*
4 *Amended Eff. April 1, 2011; November 1, ~~1994~~1994;*
5 *Readopted Eff. May 1, 2019.*

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REQUEST FOR TECHNICAL CHANGE

AGENCY: Emergency Management Commission

RULE CITATION: 15A NCAC 02H .0917

DEADLINE FOR RECEIPT: Friday, April 12, 2019

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

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

In (a), I suggest you simplify this language and state "Each control authority shall transmit to the Division copies of all significant industrial pretreatment permits 30 days prior to the effective date."

If you do not want to do that, on line 4, delete "(30)" As this was published correctly, you will not show the deletion as a change – simply do it.

In (b), lines 7 and 8, consider replacing "below" with "in this Paragraph"

End (b)(3), line 11, with a period, not a semicolon.

In (c), line 13, do you mean the Division Director shall consider factors, not may?

Also on line 13, delete "certain" and just state "factors, including ..." and delete "Examples include"

How will this waiver be communicated?

In (d), line 17, delete "in which"

On line 17, what are "general" comments?

On line 18, insert a comma after "objections to"

On line 19, what do you mean "final and binding"? Do you mean that the request is deemed effective?

In (e), line 20, delete "to which" and "has" and insert a "to" before "the Division staff" so it reads "Within 30 days of the receipt of a pretreatment permit the Division Director objected to, the Divisions staff..."

In (e)(1) and (2), begin with lowercase letters to be consistent with (b)(1) through (3) and (f)(10) through (4) and (g)(1) through (3).

In (e)(1), line 22, I take it you intend to refer to federal regulations and State rules?

Amanda J. Reeder
Commission Counsel
Date submitted to agency: April 4, 2019

In (e)(2), line 24, replace “which” with “that”

On line 24, insert a comma after “objection”

On line 25, either delete “which” altogether or replace it with “that”

End line 25 with a period.

So that I’m clear – is (e)(2) a suggestion or a requirement that the control authority set these standards and conditions?

In (f)(2), line 30, capitalize “State” assuming you mean NC.

In (f)(3), line 32, delete “which”

On line 33, since you refer to “standard or regulation” (singular), replace “them” with “it”

In (c)(4), line 35, what will influence the judgement of the Director? Will the rules and law serve as the lodestar?

In (g)(1), Page 2, line 1, insert a space between “Rules” and “.0916” Don’t show it as a change, simply insert it.

In (g)(2), consider moving “may” to after “adequate” Note the same type of change for (g)(3).

On line 4, how will this determination of what is “necessary” be made?

On line 6, please hyphenate “30 day” before “review period”

At the end of (g)(3), line 10, end the sentence with a period and delete the semicolon and “and”

In (h), line 11, insert a comma after “objection”

What specific authority are you relying upon for the sentence on lines 13-14?

In the History Note, why are you citing to G.S. 143-215.3(e)? I know that statute governs variances, and you allow waiver in (c), but the statute requires a hearing and the Rule does not seem to contemplate this.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: April 4, 2019

1 15A NCAC 02H .0917 is readopted as published in 32:21 NCR 1943 as follows:
2

3 **15A NCAC 02H .0917 PRETREATMENT PERMIT SUBMISSION AND REVIEW**

4 (a) Thirty (30) days prior to the effective date ~~Upon issuance~~, each control authority shall transmit to the Division copies
5 of all ~~issued~~ significant industrial user pretreatment permits.

6 (b) Permits and permit renewal submissions to the Division for significant industrial users shall include the supporting
7 information listed below. Permit modification submissions for significant industrial users shall include updated versions
8 of this supporting information listed below as applicable to that modification:

- 9 (1) the rationale for limits and allocation table required by Rule .0916(c)(4) of this Section;
- 10 (2) a copy of the completed application required in Rule .0916(c)(1) of this Section; and
- 11 (3) a copy of the record of the inspection required in Rule .0916(c)(3)(C) of this Section;

12 (c) The Division Director may waive some or all of the requirements in Paragraphs (a) and (b) of this Rule. In making
13 the decision to waive these requirements, the Division Director may consider certain factors. ~~including but not limited to~~
14 Examples include training levels of control authority staff, quality of previous pretreatment permit submissions, percent
15 maximum allowable headworks loading capacity remaining, percent industrial user flow, industrial user waste
16 characteristics, and compliance status of the POTW and its respective environmental permits.

17 (d) The Division shall have 30 days from the receipt of pretreatment permits in which to make general comments upon,
18 objections to or recommendations with respect to the permit. Unless such an objection or request for more information in
19 accordance with Paragraph (g) of this Rule is made, the permit shall be final and binding.

20 (e) Within 30 days of the receipt of a pretreatment permit to which the Division Director has objected the Division staff
21 shall set forth in writing and transmit to the control authority:

- 22 (1) A statement of the reasons for the objection, including the rules or regulations that support the
23 objection; and
- 24 (2) The actions which shall be taken by the control authority to eliminate the objection including the
25 effluent limitations and conditions which the permit would include if it were issued by the Division;

26 (f) The Division Director's objection to the issuance of a pretreatment permit shall be based upon one or more of the
27 following grounds:

- 28 (1) the permit fails to apply or to ensure compliance with any applicable requirement of this Section;
- 29 (2) the procedures followed in connection with formulation of the pretreatment permit failed to comply
30 with the procedures required by state statute or by the control authority's approved pretreatment
31 program;
- 32 (3) a finding made by the control authority in connection with the pretreatment permit which misinterprets
33 any categorical standard or pretreatment regulation or misapplies them to the facts; and
- 34 (4) the provisions of the pretreatment permit relating to the maintenance of records, monitoring or
35 sampling by the control authority and the industrial user are, in the judgment of the Division Director,
36 inadequate to assure compliance with permit conditions or applicable pretreatment standards;

37 (g) Prior to notifying the control authority of an objection, the Division Director:

- 1 (1) shall consider all data transmitted pursuant to Rules.0916 and .0917 of this Section;
- 2 (2) may, if more information is needed to determine whether the permit is adequate, request the control
- 3 authority to make available to the Division staff the complete record of permit proceedings, or any
- 4 portions of the record that the Division Director determines are necessary for review. Requests shall
- 5 be made within 30 days of the Division's receipt of the permit under Rule .0916 of this Section, and
- 6 shall suspend the 30 day review period in Paragraph (d) of this Rule. When the Division staff has
- 7 obtained the requested records or portions of the record, the Division staff shall have an additional 30
- 8 days for review; and
- 9 (3) may, to the extent feasible within the period of time available, afford interested persons the
- 10 opportunity to comment on the basis for the objection; and

11 (h) If within 60 days of the receipt of the Division Director's objection the control authority does not resubmit a permit

12 revised to meet the Division Director's objection, the Division Director may issue the permit in accordance with Section

13 .0100 of this Subchapter. Exclusive authority to issue the permit required by G.S. 143-215.1(a) passes to the Division

14 when this time expires.

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16 *History Note: Authority G.S. 143-215(a); 143-215.1(a); 143-215.1(c); 143-215.3(a)(3) ; 143-215.3(a)(14); 143-*

17 *215.3(e);*

18 *Eff. October 1, 1987;*

19 *Amended Eff. April 1, 2011; November 1, ~~1994~~1994;*

20 *Readopted Eff. May 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Emergency Management Commission

RULE CITATION: 15A NCAC 02H .0918

DEADLINE FOR RECEIPT: Friday, April 12, 2019

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

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

What is the purpose of this Rule? What is it intended to do?

On line 5, how is the determination of "not less stringent" determined? And who determines it?

In the History Note, please as you did in earlier rules, please separate the serial citations, such as "G.S. 143-215.1(a); 143-215.1(b)"

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: April 4, 2019

1 15A NCAC 02H .0918 is readopted as published in 32:21 NCR 1943 as follows:
2

3 **15A NCAC 02H .0918 LOCAL LAW**

4 Nothing in the rules of this Section is intended to affect any pretreatment requirements, including any standards or
5 prohibitions, established by local law as long as the local requirements are not less stringent than any set forth in National
6 Pretreatment Standards, or any other requirements or prohibitions established under the Clean Water Act, the North
7 Carolina General Statutes, or the rules of this Section.

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9 *History Note: Authority G.S. 143-215.1(a), (b); 143-215.3(a)(1), (14); 153A-274; 153A-275;*
10 *160A-311; 160A-312;*
11 *Eff. November 1, ~~1994~~1994;*
12 *Readopted Eff. May 1, 2019.*
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REQUEST FOR TECHNICAL CHANGE

AGENCY: Emergency Management Commission

RULE CITATION: 15A NCAC 02H .0919

DEADLINE FOR RECEIPT: Friday, April 12, 2019

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

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

On line 4, why not state "EPA" since you defined the term in Rule .0902?

Please do not strike and underline the same language on line 7. If this a hyperlink and you cannot remove the underline, please just let me know.

In the History Note, line 12, delete the citation to G.S. 150B-21.6.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: April 4, 2019

1 15A NCAC 02H .0919 is readopted as published in 32:21 NCR 1943 as follows:
2

3 **15A NCAC 02H .0919 BYPASS**

4 The regulations regarding the bypass provisions promulgated by the Environmental Protection Agency and codified as 40
5 CFR ~~Part~~ 403.17 are hereby incorporated by reference. ~~including any subsequent amendments and editions. This~~
6 ~~material is available for inspection at the locations listed in Rule .0901 of this Section and at~~
7 ~~http://efpub1.epa.gov/npdes/home.cfm?program_id=3. <http://water.epa.gov/polwaste/npdes/pretreatment/index.cfm>. A~~
8 ~~copy of the reference material can be found at [http://www.ecfr.gov/cgi-bin/text-](http://www.ecfr.gov/cgi-bin/text-idx?SID=002b8fe78be0d299d7289c36ef66652d&mc=true&tpl=/ecfrbrowse/Title40/40CisubchapN.tpl)~~
9 ~~<http://www.ecfr.gov/cgi-bin/text-idx?SID=002b8fe78be0d299d7289c36ef66652d&mc=true&tpl=/ecfrbrowse/Title40/40CisubchapN.tpl>, free of charge.~~

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12 *History Note: Authority G.S. 143-215.1(a)(1); 143-215.3(a)(14); 150B-21.6;*

13 *Eff. November 1, 1994;*

14 *Amended Eff. March 1, ~~2011~~ 2011;*

15 *Readopted Eff. May 1, 2019.*

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1 15A NCAC 02H .0920 is readopted as a repeal as published in 32:21 NCR 1943 as follows:
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3 **15A NCAC 02H .0920 PRETREATMENT FACILITY OPERATION AND MAINTENANCE**

4
5 *History Note: Authority G.S. 143-215.3;*
6 *Eff. November 1, 1994;*
7 *Amended Eff. April 1, ~~2011~~2011;*
8 *Repealed Eff. May 1, 2019.*

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REQUEST FOR TECHNICAL CHANGE

AGENCY: Emergency Management Commission

RULE CITATION: 15A NCAC 02H .0921

DEADLINE FOR RECEIPT: Friday, April 12, 2019

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

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

On line 4, why not state "EPA" since you defined the term in Rule .0902?

Please do not strike and underline the same language on line 7. If this a hyperlink and you cannot remove the underline, please just let me know.

In the History Note, line 12, delete the citation to G.S. 150B-21.6.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: April 4, 2019

1 15A NCAC 02H .0921 is readopted as published in 32:21 NCR 1943 as follows:
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3 **15A NCAC 02H .0921 REVISION TO REFLECT POTW REMOVAL OF POLLUTANT**

4 The regulations regarding removal credits promulgated by the Environmental Protection Agency and codified as 40 CFR
5 ~~Part~~ 403.7 are hereby incorporated by reference, including any subsequent amendments and editions. ~~This material is~~
6 ~~available for inspection at the locations listed in Rule .0901 of this Section and at~~
7 ~~http://efpub1.epa.gov/npdes/home.cfm?program_id=3. <http://water.epa.gov/polwaste/npdes/pretreatment/index.cfm>. A~~
8 ~~copy of the reference material can be found at [http://www.ecfr.gov/cgi-bin/text-](http://www.ecfr.gov/cgi-bin/text-idx?SID=002b8fe78be0d299d7289c36ef66652d&mc=true&tpl=/ecfrbrowse/Title40/40CISubchapN.tpl)~~
9 ~~<http://www.ecfr.gov/cgi-bin/text-idx?SID=002b8fe78be0d299d7289c36ef66652d&mc=true&tpl=/ecfrbrowse/Title40/40CISubchapN.tpl>, free of charge.~~

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12 *History Note: Authority G.S. 143-215.1(a); 143-215.1(b); 143-215.3(a)(14); 150B-21.6;*

13 *Eff. November 1, 1994;*

14 *Amended Eff. March 1, ~~2011~~, 2011;*

15 *Readopted Eff. May 1, 2019.*

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REQUEST FOR TECHNICAL CHANGE

AGENCY: Emergency Management Commission

RULE CITATION: 15A NCAC 02H .0922

DEADLINE FOR RECEIPT: Friday, April 12, 2019

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

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

In (a), line 5, do you need the term "effective"?

On line 6, please insert a comma after "authorities"

In (a)(2), lines 15 and 15-16, so that I'm clear – if the user deems it unacceptable, that user will have the opportunity to request review pursuant to this Rule, assuming the control authority provides for this process?

In (b), line 21, you allow the control authority to establish the number of days after receipt of an action by which the industrial user can ask for the review. G.S. 143-215.6A(k) sets one deadline.

(k) A person who has been assessed a civil penalty by a local government as provided by subsection (j) of this section may request a review of the assessment by filing a request for review with the local government **within 30 days of the date the notice of assessment is received.** If a local ordinance provides for a local administrative hearing, the hearing shall afford minimum due process including an unbiased hearing official. The local government shall make a final decision on the request for review within 90 days of the date the request for review is filed. The final decision on a request for review shall be subject to review by the superior court pursuant to Article 27 of Chapter 1 of the General Statutes. If the local ordinance does not provide for a local administrative hearing, a person who has been assessed a civil penalty by a local government as provided by subsection (j) of this section may contest the assessment by filing a civil action in superior court within 60 days of the date the notice of assessment is received.

Does this procedure apply to only (a)(2)?

In the History Note, why are you citing to G.S. 143-215.1(g), 143-215.2(b), and 143-214.3(e)?

I suggest you delete G.S. 153A-123, 160A-175, 162A-9.1, and 162A-81. While appropriately cited in the Rule text, they don't confer any rulemaking authority for the EMC.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: April 4, 2019

1 15A NCAC 02H .0922 is readopted as published in 32:21 NCR 1943 as follows:
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3 **15A NCAC 02H .0922 HEARINGS**

4 (a) The control authority sewer use ordinance (SUO) and attorney's statement required under Rule .0906(b)(1) shall
5 provide for the effective enforcement and compliance with its pretreatment program in accordance with the provisions of
6 G.S. 160A-175 for municipalities, G.S. 153A-123 for counties, G.S. 162A-9.1 for water and sewer authorities and G.S.
7 162A-81 for metropolitan sewerage districts. This shall include:

8 (1) providing industrial users assessed civil penalties by the control authority for violations of its
9 pretreatment program with the opportunity to request review of the penalty in accordance with the
10 provisions of G.S. 143-215.6A(k); and

11 (2) providing industrial users the opportunity to request review of other actions taken by the control
12 authority to administer and enforce its pretreatment program. Such control authority actions may
13 include denial or termination of a pretreatment permit or other permission to discharge, issuance of a
14 permit or other permission to discharge subject to conditions the industrial users deems unacceptable,
15 and the issuance of an administrative order subject to conditions the industrial users deems
16 unacceptable. The opportunity to request review may include the right to request a review of a control
17 authority action with the local government as established in that local government's SUO, or to request
18 a review by the superior court having local jurisdiction.

19 (b) If the control authority elects to provide industrial users with the opportunity for local government reviews under
20 Subparagraphs (a)(1) and (a)(2) of this Rule, the control authority may establish procedures and requirements for the
21 review process. These procedures may include the number of days after receipt of an action by which the industrial user
22 must request the review, the contents or form of the request, and which party or parties will conduct local government
23 hearings.

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25 *History Note:* Authority G.S. 143-215(a); 143-215.1(a); 143-215.1(c); 143-215.1(g); 143-215.2(b); 143-215.3(a)(3);
26 143-215.3(a)(14); 143-214.3(e); 143-215.6A(j); 143-215.6A(k); 153A-123; 160A-175; 162A-9.1;
27 162A-81;

28 *Eff. April 1, 2011-2011;*

29 *Readopted Eff. May 1, 2019.*
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