



STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS

Mailing address:
6714 Mail Service Center
Raleigh, NC 27699-6700

Street address:
1711 New Hope Church Rd
Raleigh, NC 27609-6285

July 12, 2019

Jennifer Everett, Rulemaking Coordinator
Environmental Management Commission
Sent via email only: Jennifer.Everett@ncdenr.gov

Re: Objection to Rules 15A NCAC 02B .0402-.0511; and 02H .0101-.0407 and .1201-.1206

Dear Ms. Everett:

At its meeting on June 20, 2019, the Rules Review Commission objected to the above-referenced rules in accordance with G.S. 150B-21.10.

The Commission objected to all rules based upon ambiguity, as reflected in the Requests for Technical Changes for each rule issued on April 4, 2019.

Please respond to this letter in accordance with the provisions of G.S. 150B-21.12. If you have any questions regarding the Commission's actions, please let me know.

Sincerely,

Amber C. May
Commission Counsel

cc: Phillip Reynolds, NC DOJ
Mike Templeton, NC Department of Environmental Quality

Administration
919/431-3000
fax: 919/431-3100

Rules Division
919/431-3000
fax: 919/431-3104

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April 18, 2019

Jennifer Everett
Environmental Management Commission
Sent via email only to: Jennifer.everett@ncdenr.gov

Re: Extension of the Period of Review for Rules 15A NCAC 02B .0402 - .0511 and 02H .0101 - .0407, .1201 - .1206

Dear Ms. Everett:

At its meeting this morning, the Rules Review Commission extended the period of review for the above-captioned rules in accordance with G.S. 150B-21.10. They did so in response to a request from the Environmental Management Commission to extend the period of review in order to allow the agency additional time to address the requested technical changes.

Please respond to this letter in accordance with G.S. 150B-21.13.

If you have any questions regarding the Commission's actions, please let me know.

Sincerely,

Amber C. May
Commission Counsel

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Burgos, Alexander N

Subject: FW: request for extension - 02h & 02b permitting rules

From: Templeton, Mike <mike.templeton@ncdenr.gov>

Sent: Friday, April 5, 2019 5:17 PM

To: May, Amber Cronk <amber.may@oah.nc.gov>

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

Subject: request for extension - 02h & 02b permitting rules

Dear Ms. May,

The RRC is scheduled to consider approval of 54 EMC rules (15A NCAC 02B .0400 & .0500 and 02H .0100, .0400, & .1200) at its April meeting. We would like to request an extension of our review period to allow time to properly address the technical change requests received. We intend to resolve any issues and have the rules ready for consideration at the RRC's May meeting.

Please let me know if this extension is acceptable. And, of course, let me know if you have any questions. Thank you.

– Mike Templeton

Michael E. Templeton, P.E.

Wastewater Permitting Section

Division of Water Resources

Department of Environmental Quality

Office: Archdale Building, 9th Floor (925V)

512 North Salisbury Street, Raleigh, NC 27604

Mailing Address: 1617 Mail Service Center, Raleigh, NC 27699-1617

Office: 919-707-3603 **NEW (8/18)**

mike.templeton@ncdenr.gov

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North Carolina Public Records Law and may be disclosed to third parties.*

Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: All Rules

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 that the following technical changes be made:

Throughout these use the words "herein" is used. Based upon the context, it's not clear what this means. Does the use of "herein" refer to "this Rule", "this Section", or "this Chapter"? Or none of these? I have tried to raise the issue in every use of "herein" throughout these Rules, but if I've missed one, please change "herein" to whatever you mean.

Also, throughout these rules you have said "at the Director's discretion" "or when in the opinion of the Director" without providing any additional information. Please ensure that this is still an accurate statement. If it is not, and you intend for these Rules and the CFRs to be binding, please say what the requirements actually is or provide the appropriate cross reference (here, I suspect that a lot of the requirements are actually contained elsewhere in your rules, CFRs or, statute and that you don't actually mean "do it like we tell you to outside of these Rules"); and delete this language. If it is accurate and the intent is to provide a waiver or variance of the Rule, please provide the factors that will be used in making the pertinent determination. I believe that some of these variances would fall under 143-215.3(d) where the factors are already provided, in which case you can just say something like "... at the director's discretion in accordance with 14-215.3(d)." Otherwise, I suspect that some of this information is set forth in CFRs or statute.

If not already done elsewhere in rule, statute, or CFR, for all forms referenced, please provide the substantive requirements of each form (as opposed to simply saying "on a form prescribed by the Director") 150B-2(8a)(d), does exclude forms from Rule, but only if "the contents or substantive requirements of which are prescribed by rule or statute."

Please change each instance of "his" or "he" to "his or her" or "he or she"

Throughout these rules, please change "should" to "may" or "shall", whichever is applicable.

Throughout these rules, change "will" to "shall" where appropriate. I note that while there may be a few places where "will" is appropriate, the vast majority of times where "will" is used, I think you mean "shall."

Amber May
Commission Counsel

Date submitted to agency: Thursday, April 4, 2019

Please be sure to include all pertinent authority in numerical order.

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

Amber May
Commission Counsel
Date submitted to agency: Thursday, April 4, 2019

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02B .0402

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 that the following technical changes be made:

On line 4, what is meant by "herein"? Do you mean this Section?

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

Amber May
Commission Counsel
Date submitted to agency: Thursday, April 4, 2019

1 15A NCAC 02B .0402 is readopted as published in 32:21 NCR 1943 as follows:

2
3 **15A NCAC 02B .0402 SCOPE**

4 Effluent limits established herein shall apply to all effluents discharged from pretreatment facilities and from outlets
5 and point sources to the waters of the state.

6
7 *History Note: Authority G.S. 143-215; 143-215.1; 143-215.3(a)(1);*

8 *Eff. February 1, ~~1976~~ 1976;*

9 *Readopted Eff. May 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02B .0403

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 that the following technical changes be made:

Since "Commission" is already defined in 143-212 and you have already provided the cross-reference to this Statute on line 1, please delete Item (1).

In Item (2), what are the "applicable regulations"? I assume that they are known by your regulated public and are incorporated by reference elsewhere in these Rules? I note that I don't see "conventional pollutants" used elsewhere in your Rules. I do see "pollutants." I understand the reasoning behind defining the various kinds of pollutants, but was the intent to also differentiate within your Rules. Alternatively, are you defining it for its use in 40 CFR Part 122 and 125?

Item (3) and (4), please consider deleting "or both", it seems unnecessary.

In Item (3), would the "director" of DEQ be the Secretary?

In Item (3), please change "his" to "his or her"

In Items (3) and (4), please consider changing "whichever is the permitting authority in a particular instance" to "whichever is applicable."

I don't see the term "Effluent limited segment" used elsewhere in these Rules. Do you need this definition? Is this the opposite of "water quality limited segment"?

In Item (5), please don't define a word with a word – here, please change "Segment" to something else"

In Item (5), what is meant by "where it is known"? By whom and how?

Do you need "and will continue to meet"? Again, how is this known and by whom?

In Item (5), what is meant by "adequate demonstration"? How is this demonstration made? By whom? Also, who makes this determination?

Amber May
Commission Counsel

Date submitted to agency: Thursday, April 4, 2019

In Item (6), I understand that all of these are the minimum treatments, but what is required within these minimum treatments. I assume that this is set forth elsewhere in rule, statute, or CFR? If so, please provide a cross-reference to the requirements.

In Item (8), recognized by whom? Rather than "recognized as being oxygen demanding", can you say "that are oxygen demanding..."

In Item (9), please either include the incorporation in .0408 or provide the cost. If you include it in .0408, there's no need to have incorporation language here.

In Item (10), delete "more fully." Also delete "The current version of"

In Item (11), what is meant by "a specified settling time"? is this the 45 and 15 minutes? If so, please delete "after a specified settling time" to make it clear that this isn't referring to do two different requirements.

In Item (11), please change the "is"s to "shall be"

In Item (11), delete or define "gently" and "immediately"

In Item (12), delete "or its successor"

In Item (13), what is the "required level"? Is there a cross-reference available?

In Item (14), delete or define "large", "relatively" and "shallow"

In Item (14), do you need "which may or may not have received prior treatment"? If so, change "which" to "that"

In (14)(a), please change this to say "Photosynthetic pond" means... to match the rest of the Rule. Same for (14)(b).

In (14)(a), please change "which" to "that" in "a pond which is"

In (14)(a), line 16, please change your semi-colon to a comma, and change "This includes" to including. It would then read "... waste treatment, including oxidation ponds and facultative lagoons."

In (14)(a)(i), delete or define "relatively" and "continuously"

In (14)(a)(ii), please change take the "typically one to three weeks" out of the parenthesis, add a comma after interval, and delete "about"

In (14)(b), please change "which" to "that" in "which is not"

In (14)(b), please consider changing this to say "A pond that uses mechanical means for air and is not designed to rely on any photosynthetic oxygenation to provide needed oxygen for biological waste treatment.

In (14)(b)(ii), please add "may" before "settle"

In (14)(b)(ii), line 30-31, is this language regarding algae necessary? If so, delete "but usually far fewer than in a photosynthetic pond" or provide some additional information to give this some meaning (I note that there is no reference to algae in the photosynthetic pond definition."

Lines 34-35, what is "the pond may be single-cell or multi-cell" applicable to? Do you mean polishing or holding ponds? Is this necessary since this seems to encompass all ponds (if they aren't single cell, aren't they multi-cell"? IF you do need it, do you mean something like "this definition shall not include single-cell or multi-cell polishing or holding ponds..."

In Item (16), what is meant by "a segment"? Please don't define a word with that same word.

Please delete "where it is known"

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

Amber May
Commission Counsel
Date submitted to agency: Thursday, April 4, 2019

1 15A NCAC 02B .0403 is readopted as published in 32:21 NCR 1943 as follows:

2
3 **15A NCAC 02B .0403 DEFINITION OF TERMS**

4 The terms used in this Section shall be as defined in G.S. ~~143-213~~ 143-212 and 143-213; the federal Clean Water Act
5 (33 U.S.C. 1251 et seq.); 40 CFR Parts 122, 124, and 125; and as follows:

- 6 (1) ~~The term "commission"~~ "Commission" means the Environmental Management Commission or its
7 successor.
- 8 (2) "Conventional pollutants" means biochemical oxygen demand (BOD(5)), Total Suspended Solids
9 (TSS), pH, fecal coliform, oil and grease, and any other pollutants the USEPA designates as
10 conventional in applicable regulations.
- 11 (2)(3) ~~The term "director"~~ "Director" means the Director of the Division of ~~Environmental Management,~~
12 ~~Water Resources or Division of Energy, Mineral and Land Resources, or both, Department of~~
13 ~~Natural Resources and Community Development.~~ Environmental Quality, whichever is the
14 permitting authority in a particular instance; or his designee.
- 15 (4) "Division" means the Division of Water Resources or the Division of Energy, Mineral and Land
16 Resources, or both, Department of Environmental Quality, whichever is the permitting authority in
17 a particular instance.
- 18 (4) ~~The term "BPCTCA" shall mean best practicable control technology currently available. Effluent~~
19 ~~limitations determined as BPCTCA are immediately applicable and shall be complied with not later~~
20 ~~than July 1, 1977.~~
- 21 (5) ~~The term "BPWTT" shall mean best practicable waste treatment technology. Effluent limitations~~
22 ~~established by this designation shall be complied with not later than July 1, 1983.~~
- 23 (6) ~~The term "BCT" shall mean best conventional pollutant control technology. Effluent limitations~~
24 ~~designated as BCT will control the discharge of pollutants determined to be conventional in nature~~
25 ~~and these limitations shall be complied with not later than July 1, 1984.~~
- 26 (7) ~~The term "BAT" shall mean best available technology economically achievable. Effluent limitations~~
27 ~~designated as BAT will control the discharge of pollutants determined to be nonconventional in~~
28 ~~nature and these limitations will come into effect on July 1, 1984, and shall be complied with not~~
29 ~~later than July 1, 1987.~~
- 30 (8) ~~The term "BAT/BMP'S" shall mean best available technology economically achievable/best~~
31 ~~management practices. Effluent limitations designated as BAT/BMP's will control the discharge of~~
32 ~~pollutants determined to be toxic in nature. Compliance with these designated effluent limitations~~
33 ~~must be maintained not later than three years after such limitations are developed, or not later than~~
34 ~~July 1, 1984, whichever is later, but in no case later than July 1, 1987.~~
- 35 (9) ~~The term "new source performance standards" shall mean the effluent limitations required of an~~
36 ~~industrial discharger determined under the guidance of 15A NCAC 2B .0407 to be a new source.~~

1 ~~(14)(5)~~ ~~The term "effluent~~ "Effluent limited segment" means a segment where it is known that water quality
2 is meeting and will continue to meet applicable water quality standards or where there is adequate
3 demonstration that water quality will meet applicable water quality standards after the application
4 of minimum treatment requirements.

5 ~~(12)(6)~~ ~~The term "minimum~~ "Minimum treatment requirements" means the minimum technology-based
6 effluent limitations that a specific discharge would be required to comply with the designations
7 secondary treatment as defined in 15A NCAC 2B .0406, BPWTT, BPCTCA, BCT, BAT and/or
8 BMP's as required of a specific wastewater discharge. meet in order to satisfy applicable treatment
9 standards, including the following:

10 (a) "Secondary treatment" is the minimum standard of treatment for POTWs.

11 (b) "Best waste stabilization pond technology" is the standard of treatment for waste
12 stabilization ponds treating municipal or similar wastewaters only.

13 (c) "Best practicable waste treatment technology," or "BPWTT," is an advanced standard of
14 treatment for POTWs.

15 (d) "Best practicable pollutant control technology," or "BPT," is the minimum standard of
16 treatment for existing industrial dischargers.

17 (e) "Best conventional pollutant control technology," or "BCT," is a standard of treatment for
18 existing industrial dischargers and typically applies to conventional pollutants.

19 (f) "Best available technology economically achievable," or "BAT" is a standard of treatment
20 for industrial dischargers and typically applies to nonconventional and priority pollutants.

21 (g) "New source performance standards" is the standard of treatment for industrial dischargers
22 determined to be a new source pursuant to 15A NCAC 02B .0407.

23 Minimum treatment requirements must be met even if the receiving waters affected can or are
24 expected to be able to accept higher pollutant-load levels and still meet applicable water quality
25 standards.

26 (7) "Nonconventional pollutant" means any pollutant not categorized as a conventional or priority
27 pollutant parameter.

28 ~~(16)(8)~~ ~~The term "oxygen~~ "Oxygen consuming wastes" means those wastewater discharge components
29 recognized as being oxygen demanding in the aquatic environment. These are generally limited by
30 BOD(5) and NH(3)-N.

31 (9) "Priority pollutant" means any chemical pollutant listed in 40 CFR Part 423, Appendix A, which is
32 hereby adopted by reference, including any subsequent amendments and editions.

33 (10) "Publicly owned treatment works," or "POTW," means a treatment works owned by a State or a
34 municipality and is as defined more fully in 40 CFR 403.3, which is hereby incorporated by
35 reference including any subsequent amendments or editions. The current version of this regulation
36 can be accessed free of charge at <http://www.gpo.gov/fdsys/>.

(15)(11) ~~The term "settleable"~~ "Settleable solids" means the volumetric measurement of solids after a specified settling time. The determination of settleable solids shall be made in the following manner: one liter of the wastewater is placed in a standard Imhoff cone and allowed to settle for 45 minutes. After 45 minutes settling, the liquid layer is gently stirred and allowed to settle for 15 additional minutes. The volume of solids is immediately read in milliliter per liter (ml/l).

(3)(12) ~~The term "staff"~~ "Staff" means the ~~division of environmental management~~, Division, or its successor.

(13) "Technology-based effluent limitations (or limits)," or "TBELs," means those effluent limits that are based on a required level of treatment performance.

(10)(14) ~~The term "waste"~~ "Waste stabilization pond" (also called "lagoons" or "oxidation ponds") ~~shall mean~~ means a large, relatively shallow basin designed for long term detention of wastewater which may or may not have received prior treatment. While in the basin, the wastewater is biologically treated to reduce biochemical oxygen demand and suspended solids. Stabilization ponds are further defined as:

(a) Photosynthetic Pond. A pond which is designed to rely on photosynthetic oxygenation (i.e., oxygen from algae) for any portion of the oxygen needed for waste treatment; This includes oxidation ponds and facultative lagoons. These ponds may have supplemental aeration by mechanical means. With regard to hydraulic flow, photosynthetic ponds are either of the:

- (i) flow-through type, in which the pond discharges relatively continuously throughout the year; or
- (ii) controlled-discharge type, in which the pond is designed to retain the wastewater without discharge from six months to one year, followed by controlled discharge over a short time interval (typically about one to three weeks);

(b) Aerated Pond. A pond which is not designed to rely on any photosynthetic oxygenation to provide oxygen needed for biological waste treatment; ~~Air~~ air is supplied by mechanical means. Aerated ponds are ~~either:~~ either of the:

- (i) ~~complete mix,~~ complete-mix type, in which sufficient energy is imparted to the wastewater to prevent deposition of solids in the pond; or
- (ii) ~~partial mix,~~ partial-mix type, in which only sufficient energy is used to dissolve and mix oxygen in the wastewater. Solid materials settle in the partial-mix pond and are decomposed anaerobically. There will be algae in the partial-mix aerated pond, but usually far fewer than in a photosynthetic pond.

This definition does not include polishing or holding ponds which are preceded by other biochemical or physical/chemical secondary treatment processes and designed to increase their efficiency. The pond may be single-cell or multi-cell.

(11) ~~The term "best waste stabilization pond technology" shall mean a monthly average effluent suspended solids concentration of 90 mg/l and a weekly maximum average effluent suspended solids~~

1 concentration of 135 mg/l for those waste stabilization ponds that are achieving the level of effluent
2 quality established for biochemical oxygen demand in .0406(a)(2) of this Section.

3 (15) "Water quality-based effluent limitations (or limits)," or "WOBELs," means those effluent limits
4 that are established to ensure that a discharge does not cause or contribute to a contravention of state
5 surface water quality standards.

6 ~~(13)~~(16) ~~The term "water "~~"Water quality limited segment" means a segment where it is known that water
7 quality does not meet applicable water quality standards or is not expected to meet them even after
8 the application of minimum treatment requirements.

9
10 *History Note:* Authority G.S. 143 - _ 215; 143 - _ 215.1; 143 - _ 215.3(a)(1);
11 *Eff. February 1, 1976;*
12 *Amended Eff. August 12, 1979; November 1, 1978; December 1, 1976. 1976;*
13 *Readopted May 1, 2019.*
14

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02B .0404

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 that the following technical changes be made:

What Is the intent of (a)? I'm really not sure that I understand, but it appears to have the potential to be a rule as defined by the APA that is not adopted in accordance with the APA. I'm reading this to say that if waters don't and are not expected to meet the minimum treatment requirements (I assume as set forth in these Rules), then you all can require "more stringent" effluent limitations (which you might want to consider defining.) If so, what is your authority for this?

In (a), please delete or define "reasonable"

What is the overall intent of (b)? Here do you mean something like "A permittee may request a seasonal variation in the discharge of oxygen-consuming wastes"? The Division may grant this request on a case-by-case basis as determined by (whatever you will use in making that determination)? If so, please say that. As written, I simply am not sure what the intent is.

In (b), what is meant by "The staff shall provide on a case-by-case basis for seasonal variation in the discharge of oxygen-consuming waste" Is this missing a word? What shall staff provide, to whom, when, and why? I think some additional information may aid in the clarity here.

In (b), who is submitting the request and why might they want to?

In (b), line 13, and (c), line 16, change "will" to "shall"

In (b), how is "demonstrated need" determined? What factors will be used?

In (c), line 17, delete "that portion of the year"

In (c), line 19, change "in no case" to "not"

In (d), change "which" to "that" in "which couldt"

Amber May
Commission Counsel
Date submitted to agency: Thursday, April 4, 2019

In (d), lines 21 and 24, delete or define "adversely affect", unless it's defined elsewhere (I suspect that it is.)

In (d), lines 23-24 appear to need some commas. Should there be one after "...tributary to "SA", "... and (C)",

In (d), is there a cross-reference available regarding the "written concurrence"

(e) appears to be speaking to Subpart M of 40 CFR 125? Please consider adding Subpart M to Rule .0408(a)(46), and deleting everything after "Criteria." Alternatively, please provide the Cost and where this CFR can be found.

Please put the authority in your History Note in numerical order

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

Amber May
Commission Counsel
Date submitted to agency: Thursday, April 4, 2019

1 15A NCAC 02B .0404 is readopted as published in 32:21 NCR 1943 as follows:

2
3 **15A NCAC 02B .0404 WATER QUALITY BASED EFFLUENT LIMITATIONS IN WATER QUALITY**
4 **LIMITED SEGMENTS**

5 (a) Effluent limitations more stringent than minimum treatment requirements shall be developed by the staff and
6 approved by the Director for all existing or proposed ~~dischargers~~ discharges to water quality limited segments of the
7 surface waters of the ~~state~~, state and for discharges that are found, through statistical analysis of effluent data or other
8 appropriate means, to have a reasonable potential to cause or contribute to exceedance of applicable water quality
9 standards. The basis of these water quality effluent limitations shall be maintenance of water quality standards.

10 (b) The staff shall also provide on a case-by-case basis for seasonal variation in the discharge of oxygen-consuming
11 wastes. In order to be considered eligible for seasonal effluent limitations, a request must be submitted to the Director
12 along with a rationale as to the need for such limitations. Permit reissuance or modification during the remaining time
13 of an existing permit will be considered on the basis of demonstrated need. In no case shall this variation cause or be
14 expected to cause a receiving water body to violate applicable water quality standards.

15 (c) For the purpose of determining seasonal effluent limitations, the year shall consist of a summer and a winter
16 discharge period. The summer period will begin April 1 and extend through October 31. The winter period shall be
17 that portion of the year from November 1 to March 31. The summer oxygen-consuming wasteload allocation shall be
18 developed using the flow criteria specified in 15A NCAC 02B .0206. The winter oxygen-consuming wasteload
19 allocation shall in no case be less stringent than two times the summer oxygen-consuming waste load limitations nor
20 shall it be less restrictive than minimum treatment requirements.

21 (d) No domestic sewage regardless of the treatment proposed and no other wastes which could adversely affect the
22 taking of shellfish for market purposes shall be discharged into water classified "SA", into unnamed waters tributary
23 to "SA" waters classified "C" or "SC" in accordance with 15A NCAC 02B .0301(i)(1)(B) and (C) or into other waters
24 in such close proximity as to adversely affect such "SA" waters. Wastes discharged into other waters tributary to
25 waters classified "SA" shall be treated in such manner as to assure that no impairment of water quality in the "SA"
26 segments shall occur. No permits shall be issued for discharges into waters classified "SA" unless Shellfish Sanitation,
27 Division of Marine Fisheries, Department of Environmental Quality, provides written concurrence that the discharge
28 would not adversely affect shellfish water quality or the propagation of shellfish.

29 (e) The discharge of wastewaters to the Atlantic Ocean shall follow the guidelines and requirements set forth in the
30 United States Environmental Protection Agency regulation Ocean Discharge Criteria, 40 C.F.R. 125.120 through
31 125.124, which is hereby adopted by reference, including any subsequent amendments and editions.

32
33 *History Note: Authority G.S. 143-215; 143-215.1; 143-215.3(a)(1); 143-214.2(c)*

34 *Eff. February 1, 1976;*

35 *Amended Eff. August 12, ~~1979~~ 1979;*

36 *Readopted May 1, 2019. (The provisions of paragraphs (d) and (e) of this Rule were previously*
37 *codified in 15A NCAC 02H .0404(a) and (d), respectively.)*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02B .0406

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 that the following technical changes be made:

As you make technical changes to this Rule, please be sure to remain consistent with your use of the introductory words (e.g., "Applicability." in (a), "Industrial Waste Discharges." in (b).

In (a)(1), what is this Regulation? Do you mean this Paragraph?

In (a)(1), please delete or define "primarily"

In (a)(1), line 7, what is meant by "herein"? Again, do you mean this Paragraph or this Rule?

In (a)(1), please change "will" to "shall" in "will be applicable"

In (a)(1), line 11, delete or define "significantly"

In (a)(2), please make this a complete sentence and provide some sort of introduction to the table. Perhaps something like "Effluent limitations, except for waste stabilization ponds subject to Subparagraph (3) of this Paragraph, shall be subject to the following table."

Is the last sentence of (a)(2) necessary given the table itself?

In (a)(3) please make this a complete sentence and provide some sort of introduction to the table. Perhaps something like "waste stabilization ponds that are the sole process used for secondary treatment that have a maximum facility design capacity of two million gallons per day or less, and that do not meet the requirements set forth in Subparagraph (2) of this Paragraph shall be subject to the following table:

In (a)(3)(C), what is "Part 2 of this Subsection"?

Are lines 6-7 ("In mg/L... average:") necessary given the table itself?

Please combine (b) and (c) and go ahead and say where these can be found and the cost.

In (b), change "such" to "the following

Amber May
Commission Counsel

Date submitted to agency: Thursday, April 4, 2019

What is the intent of (d)? Is the calculation to be used in setting the alternative effluent limits provided here (I don't think that it does)? If not, how will this be determined? Please provide this information in rule and delete "staff shall establish effluent limits" as it appears to be rulemaking outside of rulemaking.

In (d), how will it be determined whether the limits are not adequate to control settleable solids?

In (d), what exactly is the Director approving? The staff calculated limits? How will this determination and approval be made? Again, what is the intent? Is it just to say that if Paragraph (b) is inadequate, the Division shall establish different effluent limits (based on XXXXX)? I think this could be more clear. I have the same question for (e).

In (e), published and adopted by whom? Please see my notes regarding (d). They are applicable here as well.

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

1 15A NCAC 02B .0406 is readopted as published in 32:21 NCR 1943 as follows:

2
3 **15A NCAC 02B .0406 TECHNOLOGY BASED EFFLUENT LIMITS IN EFFLUENT LIMITED**
4 **SEGMENTS LIMITATIONS**

5 (a) Municipal (POTW) Wastewaters and Other Similar Discharges

6 (1) Applicability. This Regulation is applicable to all municipal wastewater treatment discharges and
7 all discharges consisting primarily of domestic sewage. In addition to the limits contained herein,
8 limits applicable to industrial categories contained in .0406(b) of this Section will be applicable to
9 any municipality ~~having industrial~~ if influent waste discharges from industries in any single category
10 ~~which discharges account for 10 or more percent of the its average daily wastewater flow to the~~
11 ~~municipal system or where the industrial discharges significantly impact the municipal system and~~
12 ~~the or its effluent discharge is significantly impacted.~~ discharge.

13 (2) Effluent Limitations Except for Waste Stabilization Ponds ~~Included in (3) of This Subsection~~
14 Subject to Subparagraph (3) of this Paragraph. In ~~mg/l~~ mg/L expressed as monthly average and
15 weekly maximum average:

Effluent Characteristic	SECONDARY		"BPWTT"	
	Monthly	Weekly Avg.	Avg.	Max.
	Avg.	Max.		
BOD(5)	30 mg/l	45 mg/l		Reserved
TSS	30 mg/l	45 mg/l		Reserved
Fecal Coliform	(Effluent limitations for			Reserved
	coliform bacteria and pH			
	shall be imposed only if			
pH	necessary to maintain			Reserved
	compliance with applicable			
	water quality standards.)			

Effluent Characteristic	SECONDARY		"BPWTT"	
	Monthly Avg.	Weekly Avg. Max.	Avg.	Max.
BOD(5)	30 mg/l	45 mg/l	Reserved	
TSS	30 mg/l	45 mg/l	Reserved	
Fecal Coliform	(Effluent limitations for coliform		Reserved	
pH	bacteria and pH shall be imposed only		Reserved	
	if necessary to maintain compliance			

	<u>with applicable water quality standards.)</u>	
--	--	--

(3) Effluent limitations for waste stabilization ponds provided that:

- (A) Waste stabilization ponds are the sole process used for secondary treatment;
- (B) The maximum facility design capacity is two million gallons per day or less; and
- (C) Operation and maintenance data indicate that the requirements for TSS of Part (2) of this Subsection cannot be achieved. In ~~mg/l~~ mg/L expressed as monthly average and weekly maximum average:

	SECONDARY	"BPWTT"		
Effluent Characteristic	Monthly Avg.	Weekly Avg. Max.	Avg.	Max.
BOD(5)	30 mg/l	45 mg/l	Reserved	
TSS	90 mg/l	135 mg/l	Reserved	
Fecal Coliform	(Effluent limitations for coliform bacteria and pH shall be imposed only if necessary to maintain compliance with applicable water quality standards.)		Reserved	
pH			Reserved	

	SECONDARY		"BPWTT"	
<u>Effluent Characteristic</u>	<u>Monthly Avg.</u>	<u>Weekly Avg. Max.</u>	<u>Avg.</u>	<u>Max.</u>
<u>BOD(5)</u>	<u>30 mg/L</u>	<u>45 mg/L</u>	<u>Reserved</u>	
<u>TSS</u>	<u>90 mg/L</u>	<u>135 mg/L</u>	<u>Reserved</u>	
<u>Fecal Coliform</u>	<u>(Effluent limitations for coliform bacteria and pH shall be imposed only if necessary to maintain compliance with applicable water quality standards.)</u>		<u>Reserved</u>	
<u>pH</u>			<u>Reserved</u>	

(b) Industrial Waste Discharges. Effluent limits for industrial waste discharges are set forth in ~~the Environmental Protection Agency~~ guidelines and standards ~~listed in this Rule which~~ promulgated by the Environmental Protection Agency, including those in 40 CFR Chapter I, Subpart N – Effluent Guidelines and Standards. Such guidelines and standards are ~~adopted hereby incorporated by reference as amended through June 1, 1984; reference, including any subsequent amendments and editions.~~

1
2 40 CFR Part 129 -- EPA Toxic Pollutant Effluent Standards
3 40 CFR Part 401 -- EPA General Provisions for Effluent Guidelines and Standards
4 40 CFR Part 405 -- EPA Effluent Guidelines and Standards for Dairy Products
5 40 CFR Part 406 -- EPA Effluent Guidelines and Standards for Grain Mills
6 40 CFR Part 407 -- EPA Effluent Guidelines and Standards for Canned and Preserved Fruits and Vegetables
7 40 CFR Part 408 -- EPA Effluent Guidelines and Standards for Canned and Preserved Seafood
8 40 CFR Part 409 -- EPA Effluent Guidelines and Standards for Sugar Processing
9 40 CFR Part 410 -- EPA Effluent Guidelines and Standards for Textiles
10 40 CFR Part 411 -- EPA Cement Manufacturing Effluent Guidelines and Standards
11 40 CFR Part 412 -- EPA Effluent Guidelines and Standards for Concentrated Animal Feeding Operations (CAFO)
12 40 CFR Part 413 -- EPA Effluent Guidelines and Standards for Electroplating
13 40 CFR Part 414 -- EPA Effluent Guidelines and Standards for Organic Chemicals
14 40 CFR Part 415 -- EPA Effluent Guidelines and Standards for Inorganic Chemicals
15 ~~40 CFR 416 -- EPA Effluent Guidelines and Standards for Plastics and Synthetics~~
16 40 CFR Part 417 -- EPA Effluent Guidelines and Standards for Soaps and Detergents
17 40 CFR Part 418 -- EPA Effluent Guidelines and Standards for Fertilizer Manufacturing
18 40 CFR Part 419 -- EPA Effluent Guidelines and Standards for Petroleum Refining
19 40 CFR Part 420 -- EPA Effluent Guidelines and Standards for Iron and Steel Manufacturing
20 40 CFR Part 421 -- EPA Effluent Guidelines and Standards for Nonferrous Metals
21 40 CFR Part 422 -- EPA Phosphate Manufacturing Effluent Guidelines and Standards
22 40 CFR Part 423 -- EPA Effluent Guidelines and Standards for Steam Electric Power Generating
23 40 CFR Part 424 -- EPA Effluent Guidelines for Ferroalloy Manufacturing
24 40 CFR Part 425 -- EPA Effluent Guidelines and Standards for Leather Tanning and Finishing
25 40 CFR Part 426 -- EPA Effluent Guidelines and Standards for Glass Manufacturing
26 40 CFR Part 427 -- EPA Effluent Guidelines and Standards for Asbestos Manufacturing
27 40 CFR Part 428 -- EPA Effluent Guidelines for Rubber Processing
28 40 CFR Part 429 -- EPA Effluent Guidelines and Standards for Timber Products
29 40 CFR Part 430 -- EPA Effluent Guidelines and Standards for Pulp, Paper, and Paper Board
30 ~~40 CFR 431 -- EPA Effluent Guidelines and Standards for Builders Paper and Board Mills~~
31 40 CFR Part 432 -- EPA Effluent Guidelines and Standards for Meat Products
32 40 CFR Part 433 -- EPA Effluent Guidelines and Standards for Metal Finishing
33 40 CFR Part 434 -- EPA Effluent Guidelines and Standards for Coal Mining
34 40 CFR Part 435 -- EPA Effluent Guidelines and Standards for Offshore Oil and Gas Extraction
35 40 CFR Part 436 -- EPA Effluent Guidelines and Standards for Mineral Mining and Processing
36 40 CFR Part 437 -- EPA Effluent Guidelines and Standards for Centralized Waste Treatment
37 40 CFR Part 438 -- EPA Effluent Guidelines and Standards for Metals Products and Machinery

1 40 CFR Part 439 -- EPA Effluent Guidelines and Standards for Pharmaceutical Manufacturing
2 40 CFR Part 440 -- EPA Effluent Guidelines and Standards for Ore Mining and Dressing
3 40 CFR Part 441 -- EPA Effluent Limitations Guidelines and Standards for the Dental Category
4 40 CFR Part 442 -- EPA Effluent Guidelines and Standards for Transportation Equipment Cleaning
5 40 CFR Part 443 -- EPA Effluent Guidelines and Standards for Paving and Roofing Materials
6 40 CFR Part 444 -- EPA Effluent Guidelines and Standards for Waste Combustors
7 40 CFR Part 445 -- EPA Effluent Guidelines and Standards for Landfills
8 40 CFR Part 446 -- EPA Effluent Guidelines and Standards for Paint Formulating
9 40 CFR Part 447 -- EPA Effluent Guidelines and Standards for Ink Formulating
10 40 CFR Part 449 -- EPA Effluent Guidelines and Standards for Airport Deicing
11 40 CFR Part 450 -- EPA Effluent Guidelines and Standards for Construction and Development
12 40 CFR Part 451 -- EPA Effluent Guidelines and Standards for Concentrated Aquatic Animal Production
13 (Aquaculture)
14 40 CFR Part 454 -- EPA Effluent Guidelines and Standards for Gum and Wood Chemicals Manufacturing
15 40 CFR Part 455 -- EPA Effluent Guidelines for Pesticide Chemicals Manufacturing
16 40 CFR Part 457 -- EPA Effluent Guidelines and Standards for Explosives Manufacturing
17 40 CFR Part 458 -- EPA Effluent Guidelines and Standards for Carbon Black Manufacturing
18 40 CFR Part 459 -- EPA Effluent Guidelines and Standards for Photographic Processing
19 40 CFR Part 460 -- EPA Effluent Guidelines and Standards for Hospitals
20 40 CFR Part 461 -- EPA Effluent Guidelines and Standards for Battery Manufacturing
21 40 CFR Part 463 -- EPA Effluent Guidelines and Standards for Plastic Molding and Forming
22 40 CFR Part 464 -- EPA Effluent Guidelines and Standards for Metal Molding and Casting (Foundries)
23 40 CFR Part 465 -- EPA Effluent Guidelines and Standards for Coil Coating
24 40 CFR Part 466 -- EPA Effluent Guidelines and Standards for Porcelain Enameling
25 40 CFR Part 467 -- EPA Effluent Guidelines and Standards for Aluminum Forming
26 40 CFR Part 468 -- EPA Effluent Guidelines and Standards for Copper Forming
27 40 CFR Part 469 -- EPA Effluent Guidelines and Standards for Electrical and Electronic Components
28 40 CFR Part 471 -- EPA Effluent Guidelines and Standards for Nonferrous Metals Forming and Metal Powders

29 (c) ~~Copies of these~~ The current version of these Federal Regulations can be accessed free of charge at
30 <http://www.gpo.gov/fdsys/> ~~are on file at:~~

- 31 (1) ~~Division of Environmental Management~~
32 ~~Department of Natural Resources and Community Development~~
33 ~~P.O. Box 27687, Raleigh, N.C. 27611~~
34 (2) ~~Asheville Regional Office~~
35 ~~Interchange Building, 59 Woodfin Place~~
36 ~~Asheville, N.C. 28802~~
37 (3) ~~Fayetteville Regional Office~~

- 1 ~~Wachovia Building, Suite 714~~
2 ~~Fayetteville, N.C. 28301~~
3 (4) ~~Mooresville Regional Office~~
4 ~~919 North Main Street~~
5 ~~Mooresville, N.C. 28115~~
6 (5) ~~Raleigh Regional Office~~
7 ~~3800 Barrett Drive~~
8 ~~Raleigh, N.C. 27609~~
9 (6) ~~Washington Regional Office~~
10 ~~1502 North Market Street~~
11 ~~Washington, N.C. 27889~~
12 (7) ~~Wilmington Regional Office~~
13 ~~7225 Wrightsville Avenue~~
14 ~~Wilmington, N.C. 28403.~~
15 (8) ~~Winston Salem Regional Office~~
16 ~~8003 North Point Boulevard~~
17 ~~Winston Salem, N.C. 27106~~

18 (d) In cases where effluent limits established by Paragraph (b) of this Rule are not adequate to control settleable
19 solids, the staff shall establish effluent limits for settleable solids. Such effluent limitations for settleable solids will
20 be applicable only when the projected average solids concentration exceeds 5.0 ml/l and the limitations established
21 shall lie within the range of 0.1 ml/l to 5.0 ml/l. The establishment of such limitations for any discharge shall be
22 approved by the Director of the Division of ~~Environmental Management~~ Water Resources or the Division.

23 (e) For industrial categories or parts of categories for which effluent limits and guidelines have not been published
24 and adopted, effluent limitations for existing industrial waste discharges, or new industrial waste discharges shall be
25 calculated by the staff using the projected limits of the Environmental Protection Agency, the Environmental
26 Protection Agency development document and other available information in order to achieve the purposes of Article
27 21. Such limits developed by the staff shall be subject to approval by the Director.

28
29 *History Note:* *Authority G.S. 143-215; 143 - 215.1; 143-215.3(a)(1), (4);*

30 *Eff. February 1, 1976;*

31 *Amended Eff. July 1, 1988; December 1, 1984; November 1, 1978; December 1, ~~1976.~~ 1976;*

32 *Readopted May 1, 2019.*
33

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02B .0407

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 that the following technical changes be made:

What is the intent of (a)? Is it to say that "A source shall be considered a "new source" for purposes of this Section if it meets the following requirements:"? If so, please say that. Please note that this will also require some verbs in (a)(1) through (4).

In (a), please change "should" to "shall"

In (a), please delete "by the Director provided on the date of publication of any applicable new source performance standard"

Alternatively, what is meant by "the date of publication of any applicable new source performance standard"? Is this a CFR? Is the date of publication the trigger or is it the effective date?

In (a)(1), delete or define "significant" and "major".

Delete "or" at the end of (a)(1), (a)(2) and change the period to a semicolon at the end of (a)(3)(E) and add an "or"

In (a)(2), and (3), delete or define "unique"

In (a)(3), please change the semi-colon after "or equipment to a period" and start "facilities" with a capital letter.

In (a)(3), change "only the major items listed below" to "the following"

In (a)(3), delete or define "substantial commitment"

In (a)(3)(A) through (D), please change the commas to semi-colons and delete "or" at the end of (a)(3)(A) through (C).

Amber May
Commission Counsel
Date submitted to agency: Thursday, April 4, 2019

In (a)(4), add a comma after "engineer." Delete or define "completed" and delete "(i.e. a turnkey plant.)" I understand that lends itself to your definition – if that is the intent, take it out of parenthesis.

In (b), change "will" to "shall"

In (b), please change "shall find" to "shall consider" and provide the factors in list form (i.e. whether the permit modification is appropriate (but I have no idea what this means, so some additional information needs to be provided for this language), whether the alteration can achieve the standard of performance..."

In (b), what is meant by "among other relevant factors"? Please provide those factors specifically in rule.

On line 22, delete or define "reasonably"

On line 22, what is the "standard of performance"? Do you mean something like "meets the requirements of these Rules"?

Is the modification requested by the permittee? If so, please say that. Is how the request to be made set forth elsewhere?

In (b), what are "new source performance standards" I note that this language is not used elsewhere – do you mean these Rules?

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

Amber May
Commission Counsel
Date submitted to agency: Thursday, April 4, 2019

1 15A NCAC 02B .0407 is readopted as published in 32:21 NCR 1943 as follows:

2
3 **15A NCAC 02B .0407 GUIDANCE FOR DETERMINING A NEW SOURCE**

4 (a) A source should be considered a new source by the Director provided on the date of publication of any applicable
5 new source performance standard there has not been any:

- 6 (1) significant site preparation work, such as major clearing or excavation; or
7 (2) placement, assembly, or installation of unique facilities or equipment at the premises where such
8 facilities or equipment will be used; or
9 (3) contractual obligation to purchase such unique facilities or equipment; ~~Facilities~~facilities and
10 equipment shall include only the major items listed below, provided that the value of such items
11 represents a substantial commitment to construct the facility:
12 (A) structures, or
13 (B) structural materials, or
14 (C) machinery, or
15 (D) process equipment, or
16 (E) construction equipment.
17 (4) contractual obligation with a firm to design, engineer and erect a completed facility (i.e., a turnkey
18 plant).

19 (b) A modification to an existing source will be considered a new source if the alteration is of such magnitude to, in
20 effect, create a new facility. In making such a determination, the Director shall find that the permit modification
21 procedures are not appropriate and shall consider, among other relevant factors, whether as a result of the alteration,
22 the source can reasonably achieve the standard of performance. Only those portions of a facility determined to be a
23 new source shall be required to achieve new source performance standards.

24
25 *History Note: Authority G.S. 143-215; 143-215.1; 143-215.3(a)(1), (4);*
26 *Eff. December 1, ~~1976~~, 1976;*
27 *Readopted Eff. May 1, 2019.*
28

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02B .0408

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 that the following technical changes be made:

On line 6, please change "rules" to "regulations" in "federal rules"

In (a), is the intent that these only be incorporated for purposes of this Section, or it is for this entire Subchapter? Please review and clarify if needed.

*On line 6-7, what is meant by "in which case the separately adopted procedure governs"? do you mean these Rules? If so, please consider saying something like "... procedural details of the federal **regulations** differ from procedures adopted elsewhere in this Section, **these Rules shall apply.**"*

What is the intent of (b)? Is it just to make sure that your regulated public is aware that additional portions of the CFRs may have been incorporated elsewhere in this Section?

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

Amber May
Commission Counsel
Date submitted to agency: Thursday, April 4, 2019

1 15A NCAC 02B .0408 is adopted as published in 32:21 NCR 1943 as follows:

2
3 **15A NCAC 02B .0408 INCORPORATION BY REFERENCE**

4 (a) The following sections of Title 40 of the Code of Federal Regulations (CFR) are incorporated by reference,
5 including subsequent amendments and editions, and shall apply throughout this Section except where procedural
6 details of the federal rules differ from procedures adopted elsewhere in this section, in which case the separately
7 adopted procedure governs. The current version of these regulations can be accessed free of charge at
8 <http://www.gpo.gov/fdsys/>.

- 9 (1) 40 CFR 122.2, 124.2, and 125.2: Definitions;
10 (2) 40 CFR 122.4: Prohibitions;
11 (3) 40 CFR 122.5 (a) and (b): Effect of permit;
12 (4) 40 CFR 122.7 (b) and (c): Confidential information;
13 (5) 40 CFR 122.21 (a)-(b), (c)(2), (e)-(k), (m)-(p), (q), and (r): Application for a permit;
14 (6) 40 CFR 122.22: Signatories;
15 (7) 40 CFR 122.23: Concentrated animal feeding operations;
16 (8) 40 CFR 122.24: Concentrated aquatic animal production facilities;
17 (9) 40 CFR 122.25: Aquaculture projects;
18 (10) 40 CFR 122.26: Storm water discharges;
19 (11) 40 CFR 122.27: Silviculture;
20 (12) 40 CFR 122.28: General permits;
21 (13) 40 CFR 122.29 (a), (b), and (d): New sources and new dischargers;
22 (14) 40 CFR 122.30: NPDES stormwater regulations for small MS4s: objectives;
23 (15) 40 CFR 122.31: NPDES stormwater regulations: role of Tribes;
24 (16) 40 CFR 122.32: NPDES stormwater regulations for small MS4s: applicability;
25 (17) 40 CFR 122.33: NPDES stormwater regulations for small MS4s: application for permit;
26 (18) 40 CFR 122.34: NPDES stormwater regulations for small MS4s: permit requirements;
27 (19) 40 CFR 122.35: NPDES stormwater regulations for small MS4s: shared responsibilities;
28 (20) 40 CFR 122.36: NPDES stormwater regulations for small MS4s: compliance;
29 (21) 40 CFR 122.37: NPDES stormwater regulations for small MS4s: evaluation;
30 (22) 40 CFR 122.41 (a)(1) and (b) through (n): Applicable permit conditions;
31 (23) 40 CFR 122.42: Conditions applicable to specified categories of permits;
32 (24) 40 CFR 122.43: Establishing permit conditions;
33 (25) 40 CFR 122.44: Establishing NPDES permit conditions;
34 (26) 40 CFR 122.45: Calculating permit conditions;
35 (27) 40 CFR 122.46: Duration;
36 (28) 40 CFR 122.47 (a): Schedules of compliance;
37 (29) 40 CFR 122.48: Monitoring requirements;

- 1 (30) 40 CFR 122.50: Disposal into wells;
2 (31) 40 CFR 122.61: Permit transfer;
3 (32) 40 CFR 122.62: Permit modification;
4 (33) 40 CFR 122.64: Permit termination;
5 (34) 40 CFR 124.3 (a): Application for a permit;
6 (35) 40 CFR 124.5 (a), (c), (d), and (f): Modification of permits;
7 (36) 40 CFR 124.6 (a), (c), (d), and (e): Draft permit;
8 (37) 40 CFR 124.8: Fact sheets;
9 (38) 40 CFR 124.10 (a)(1)(ii), (a)(1)(iii), (a)(1)(v), (b), (c), (d), and (e): Public notice;
10 (39) 40 CFR 124.11: Public comments and requests for hearings;
11 (40) 40 CFR 124.12 (a): Public hearings;
12 (41) 40 CFR 124.17 (a) and (c): Response to comments;
13 (42) 40 CFR 124.56: Fact sheets;
14 (43) 40 CFR 124.57 (a): Public notice;
15 (44) 40 CFR 124.59: Comments from government agencies;
16 (45) 40 CFR 124.62: Decision on variances;
17 (46) 40 CFR Part 125, Subparts A (Technology-Based Treatment Requirements), B (Aquaculture), D
18 (Fundamentally Different Factors), H (Alternative Limitations, CWA Section 316(a)), I (Cooling
19 Water Intake Structures, New Facilities, CWA Section 316(b)), J (Cooling Water Intake Structures,
20 Existing Facilities, CWA Section 316(b)), and N (Cooling Water Intake Structures, Offshore Oil
21 and Gas Facilities, CWA Section 316(b));
22 (47) 40 CFR Parts 129 (Toxic Pollutant Effluent Standards) and 133 (Secondary Treatment Regulation),
23 and Subchapter N (Effluent Guidelines and Standards);
24 (48) 40 CFR Part 3: Electronic reporting;
25 (49) 40 CFR Part 136: Guidelines for establishing test procedures for the analysis of pollutants; and
26 (50) 40 CFR 401.15: List of toxic pollutants pursuant to CWA Section 307(a)(1).
27 **(b) This Rule is not an exclusive list of federal regulations adopted by reference in this Section. Other rules of the**
28 **Section incorporate some of these same federal regulations for clarity or emphasis and may incorporate additional**
29 **regulations not listed in Paragraph (a) of this Rule.**

30
31 *History Note: Authority G.S. 143-211(c); 143-215.1(b)(4); 143B-282(5);*
32 *Eff. May 1, 2019.*
33

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02B .0501

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.f

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

On line 1, delete "of the Environmental Management Commission"

Please add any additional statutory authority and delete 143-215.68 from your History Note as this was repealed.

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

Amber May
Commission Counsel
Date submitted to agency: Thursday, April 4, 2019

1 15A NCAC 02B .0501 is readopted as published in 32:21 NCR 1943 as follows:

2
3 **15A NCAC 02B .0501 PURPOSE**

4 The purpose of this Section is to set forth the requirements of the Environmental Management Commission for
5 monitoring and reporting the quantity and quality of wastewater discharges to, and their effects upon, the water
6 resources of the state.

7
8 *History Note: Authority G.S. 143-215.64; 143-215.68;*

9 *Eff. February 1, 1976;*

10 *Amended Eff. December 1, ~~1984~~.1984;*

11 *Readopted Eff. May 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02B .0502

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 that the following technical changes be made:

Is this Rule necessary? If so, what is the intent of this Rule? Is it to say that these Rules apply to permittees?

Please add any additional statutory authority and delete 143-215.68 from your History Note as this was repealed.

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

Amber May
Commission Counsel
Date submitted to agency: Thursday, April 4, 2019

1 15A NCAC 02B .0502 is readopted as published in 32:21 NCR 1943 as follows:

2
3 **15A NCAC 02B .0502 SCOPE**

4 This Section shall apply to all persons subject to the provisions of G.S. 143-215.1.

5
6 *History Note: Authority G.S. 143-215.64; 143-215.68;*

7 *Eff. February 1, ~~1976~~1976;*

8 *Readopted Eff. May 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02B .0503

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 that the following technical changes be made:

On line 4, please delete "unless the context otherwise requires." I note that this language has not been used in 02B .0403 nor in 02H .0103.

In Item (1), please change "shall mean" to "means" for purposes of consistency.

In Item (1), please add a comma in between "impacts" and "including"

In Item (3), please change "which" to "that" in "which analyzes"

Please review Item (4) as it seems to be saying the same thing in two different ways. Specifically, you say that a sample can be gathered over a 24 hour period or by combining grab samples, then you go onto say that sample "may" occur in any of the following ways, but Paragraphs (4)(a) through (d) actually appear to be providing additional information about "continuous" and ways to combine grab samples. If that's correct, can you delete "a sample gathered over a 24 hour period by continuous sampling or combining grab samples in such a manner as to result in total sample which is representative of the wastewater discharge during the sample period"? As written, it's unclear whether these are two different and separate processes.

In Item (4), please change "which" to "that" in "which is representative..."

In Item (4), what is meant by "this sample may be obtained by methods given below, however, the Director may designate the most appropriate method, number, and size of aliquots necessary and the time interval between grab samples on a case-by-case basis."? Here, my "may be obtained", do you mean "shall be obtained"? Further, with regard to the Director's discretion, do you mean something like "this sample shall be obtained by methods set forth in this Item, except that the Director may designate the method, number, and size of aliquots necessary, and the time intervals between grab samples on a case-by-case basis (and include the factors that will be used in making this determination.)"

On line 18, please change "below" to "as set forth in this Item"

Amber May
Commission Counsel
Date submitted to agency: Thursday, April 4, 2019

On line 18, delete or define “appropriate”

Specifically, how will the Director make the determination 1) whether he or she will require specific samples and 2) what specific samples? Please provide some additional information in rule.

Please consider adding some sort of introductory statement to the kinds of methods. Perhaps something like “samples shall be obtained as follows:” If you use my suggestion or a variation of it regarding Item (4), this may need to be revised a bit.)

Can “Samples may be collected manually or automatically” be moved to the ways samples can be taken and make it a Sub-Item?

Please end (4)(a) through semi-colons as opposed to a period in (a) and commas in (b) and (c). Also, delete the “or” at the end of (4)(b).

In (4)(d), how will it be determined whether use of this method will be approved? Please provide the factors that will be used in making this determination.

In (5), what is considered to be a “legal holiday”?

In Item (5), what is meant by “unless otherwise specified by the Director”? How will this determination be made? What factors will be used?

In Item (6), please change “which” to “that” in “which a water pollution...”

In Item (7), what are the “specified limits”? Are those set forth in the permit?

Item (8) and (9), please consider deleting “or both”, it seems unnecessary.

In Item (8), would the “director” of DEQ be the Secretary?

In Item (8), please change “his” to “his or her”

In Items (8) and (9), please consider changing “whichever is the permitting authority in a particular instance” to “whichever is applicable.”

In Item (10), delete or define “normally”

In Item (11), delete “(downstream of)”

In Item (11), delete or define “reasonable” in “reasonable opportunity”

Also in Item (11), replace “as specified in the Commission’s Rules... of North Carolina” to cite the specific set of Rules.

In Item (14), delete or define “instantaneously”

Also in Item (14), what is the intent of “samples of this type must be representative of the discharge or the receiving waters”?

Amber May
Commission Counsel
Date submitted to agency: Thursday, April 4, 2019

In Item (15), please don't define a word using the same word. Here, you've used "industrial" to define "industrial."

In Item (15), add a coma in between commercial" and "or governmental"

In Item (15), change "which" to "that" in "which produces"

In Item (17), delete or define "various aspects"

In Item (18), please change "which" to "that" in "which results" and "which collects." Please also delete "In addition,"

In (18), please replace "is hereby assigned" with "shall use"

In Item (18), where can the manual be found and what is the cost? I see that you've provided where the classifications can be found, but how about the manual?

In Item (19), delete or define "discernible", "confined" and "discrete." Are these terms of art? Please also delete "specifically" in "but specifically not limited to"

In Item (23), please either take the language out of the parenthesis and delete or define "major" and replace the parenthesis with commas, or delete this language entirely. Alternatively, track language used in Item (18).

In Item (23), please change "which" to "that" in "which results" and "which collects." Please also delete "In addition,"

In (23), please replace "is hereby assigned" with "shall use"

In Item (23), where can the manual be found and what is the cost? I see that you've provided where the classifications can be found, but how about the manual? I also see that you've said where it can be inspected, but how can it actually be obtained?

In Item (24), change "which" to "that" in "which designates"

In Item (25), please either take the language out of the parenthesis and replace the parenthesis with commas, or delete this language entirely.

In Item (25), what are "other adverse health effects"? Do you mean something like "... upon exposure, ingestion, inhalation, or assimilation into any organism has the potential to cause adverse health effects, including death, disease, ... or physical deformities in an organism or offspring"?

In Item (25), change "such organism" to "an" or "the organism" and delete "their"

In Item (26), please either take the language out of the parenthesis and replace the parenthesis with commas, or delete this language entirely.

In Item (26), what are "ambient stream conditions"? Is this a term of art?

In Item (27), capitalize state.

Amber May
Commission Counsel
Date submitted to agency: Thursday, April 4, 2019

In Item (27), delete “now or hereafter created or established”

In (27), how would a unit of government be “empowered to provide wastewater collection systems or treatment works”? Is this getting to a permit?

In Item (28), delete “(upstream of)”

Please delete 143-215.68 from your History Note as this statute has been repealed. Please add any additional pertinent authority.

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

Amber May
Commission Counsel
Date submitted to agency: Thursday, April 4, 2019

1 15A NCAC 02B .0503 is readopted as published in 32:21 NCR 1943 as follows:

2
3 **15A NCAC 02B .0503 DEFINITIONS**

4 Unless the context otherwise requires, the terms used herein shall be as defined in G.S. ~~443-213~~ 143-212 and 143-
5 213; the federal Clean Water Act (33 U.S.C. 1251 et seq.); 40 CFR Parts 122, 124, and 125; and as follows:

- 6 (1) "Biological monitoring" shall mean the sampling or testing of the biological integrity of surface
7 waters and measurements of impacts including accumulations of pollutants in tissue, toxicity
8 monitoring, and characterization of instream biological populations.
- 9 (2) "Classified water pollution control facility" means a treatment works classified by the Water
10 Pollution Control System Operator Certification Commission pursuant to Chapter 90A of the North
11 Carolina General Statutes as class I, class II, class III, or class IV facility, or such other
12 classifications as the Water Pollution Control System Operator Certification Commission may
13 hereafter adopt.
- 14 (3) "Commercial laboratory" means any laboratory which analyzes water samples for a fee.
- 15 (4) "Composite sample" ~~means:~~ means a sample gathered over a 24 hour period by continuous sampling
16 or combining grab samples in such a manner as to result in a total sample which is representative of
17 the wastewater discharge during the sample period. This sample may be obtained by methods given
18 below, however, the Director may designate the most appropriate method, number and size of
19 aliquots necessary and the time interval between grab samples on a case-by-case basis. Samples
20 may be collected manually or automatically.
- 21 (a) Continuous - a single, continuous sample collected over a 24 hour period proportional to
22 the rate of flow.
- 23 (b) Constant time/variable volume - a series of grab samples collected at equal time intervals
24 over a 24 hour period of discharge and combined proportional to the rate of flow measured
25 at the time of individual sample collection, or
- 26 (c) Variable time/constant volume - a series of grab samples of equal volume collected over a
27 24 hour period with the time intervals between samples determined by a preset number of
28 gallons passing the sampling point. Flow measurement between sample intervals shall be
29 determined by use of a flow recorder and totalizer, and the preset gallon interval between
30 sample collection fixed at no greater than 1/24 of the expected total daily flow at the
31 treatment system, or
- 32 (d) Constant time/constant volume - a series of grab samples of equal volume collected over a
33 24 hour period at a constant time interval. This method may be used in situations where
34 effluent flow rates vary less than 15 percent. The grab samples shall be taken at intervals
35 of no greater than 20 minutes apart during any 24 hour period and must be of equal size
36 and of no less than 100 milliliters. Use of this method requires prior approval by the
37 Director.

- (5) "Daily" means every day on which a wastewater discharge occurs except Saturdays, Sundays and legal holidays unless otherwise specified by the Director.
- (6) "Design flow" means the average daily volume of wastewater which a water pollution control facility was designed, approved and constructed to treat.
- (7) "Design treatment capability" means a water pollution control facility's capacity to achieve a specified degree of reduction in waste constituents at a specified design flow, to meet specified limits or removal efficiencies.
- (8) "Director" means the Director of the Division of ~~Environmental Management, Water Resources or Division of Energy, Mineral and Land Resources, or both,~~ Department of ~~Environment, Health, and Natural Resources.~~ Environmental Quality, whichever is the permitting authority in a particular instance; or his designee.
- (9) "Division" means the Division of ~~Environmental Management, Water Resources or the Division of Energy, Mineral and Land Resources, or both,~~ Department of ~~Environment, Health, and Natural Resources.~~ Environmental Quality, whichever is the permitting authority in a particular instance.
- (10) "Domestic wastewater" means water-carried human wastes together with all other water-carried wastes normally present in wastewater from non-industrial processes.
- (11) "Downstream" means locations in the receiving waters below (downstream of) a point of waste discharge after a reasonable opportunity for dilution and mixture as specified in the Commission's "Rules, Regulations, Classifications and Water Quality Standards Applicable to the Surface Waters of North Carolina."
- (12) "Effluent" means wastewater discharged following all treatment processes from a water pollution control facility or other point source whether treated or untreated.
- (13) "Flow" means the total volume of wastewater discharged from an outlet during any given period.
- (14) "Grab sample" means an individual sample collected instantaneously. Samples of this type must be representative of the discharge or the receiving waters.
- (15) "Industrial establishment" means any industrial, business, commercial or governmental enterprise which produces water carried wastes.
- (16) "Influent" means the wastewater entering a water pollution control facility.
- (17) "Monitoring" means a program of sample collection, analysis, and observation sufficient to quantify various aspects of waste streams, treatment plant operations and environmental impacts.
- (18) "North American Industry Classification System" (NAICS) code means those six-digit numeric designations used to classify business establishments according to the processes employed to produce goods or services. For the purposes of this Section, each industry or unit of government shall be classified by NAICS codes applicable to each activity carried on by such establishment or unit which results in a discharge of wastewater. In addition, any industrial establishment or unit of government which collects or discharges domestic sewage is hereby assigned NAICS number 221320. The North American Industry Classification System Manual, as used in this Section, is

hereby incorporated by reference, including any subsequent amendments and editions. The classifications found in the manual may also be accessed at <https://www.census.gov/eos/www/naics/>.

(19) "Point source" means any discernible, confined, and discrete conveyance, including, but not specifically limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or concentrated animal feeding operation from which waste is or may be discharged to the waters of the state.

~~(19)~~(20) "Quarterly" means occurring four times during a 12-month period at a frequency of once per each interval of three consecutive months.

~~(20)~~(21) "Quarterly Average" means the average of all samples taken over a quarterly period.

~~(21)~~(22) "Sample" means a representative portion of the wastewater from water pollution control facilities or of receiving waters.

~~(22)~~(23) "Standard Industrial Classification" (SIC) code means those four-digit numerical designations set forth in "The Standard Industrial Classification Manual," (~~Superintendent of Documents, U.S. Government Printing Office~~) classifying industries according to the type of activity (relating to major products manufactured or principle services furnished) in which they are engaged. For the purposes of this Section, each industry or unit of government shall be classified by SIC numbers applicable to each activity carried on by such establishment or unit which results in a discharge of wastewater. In addition, any industrial establishment or unit of government which collects or discharges domestic sewage is hereby assigned SIC number 4952. The Standard Industrial Classification Manual, as used in this Section, is hereby incorporated by reference, including any subsequent amendments and editions. A copy is available for inspection at the central office of the Division of ~~Environmental Management~~ Water Resources, 512 North Salisbury Street, Raleigh, North Carolina. ~~Copies The classifications found in the manual may also be obtained accessed at the GPO Bookstore, Room 100, 275 Peachtree Street NE, or Post Office Box 56445, Atlanta GA 30343 at a cost of twenty four dollars (\$24.00).~~ https://www.osha.gov/pls/imis/sic_manual.html.

~~(23)~~(24) "Storet number" means a number which designates a test or measurement according to the analytical procedure used or a method of measurement and units of measurement. Storet is an acronym for the water quality data storage and retrieval computer system of the Environmental Protection Agency.

~~(24)~~(25) "Toxic substances" means any substance, or combinations of substances, including disease-causing agents, which, after discharge, and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, has the potential to cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions or suppression of reproduction or growth) or physical deformities in such organisms or their offspring or other adverse health effects.

~~(25)~~(26) "Toxicity monitoring" means controlled toxicity testing procedures employed to measure lethality or other harmful effects as measured by either aquatic populations or indicator species used as test

1 organisms from exposure to a specific chemical or mixture of chemicals (as in an effluent) or
2 ambient stream conditions.

3 ~~(26)~~(27) "Unit of government" means any incorporated city, town or village, county, sanitary district,
4 metropolitan sewerage district, water or sewer authority, special purpose district, other municipality,
5 or any agency, board, commission, department or political subdivision or public corporation of the
6 state, now or hereafter created or established, empowered to provide wastewater collection systems
7 or wastewater treatment works.

8 ~~(27)~~(28) "Upstream" means locations in the receiving waters near but above (upstream of) a point of
9 wastewater discharge and unaffected by the discharge.

10 ~~(28)~~(29) "Water pollution control facilities" or "facility" means "treatment works" as defined in G.S. 143-
11 213.

12
13 *History Note:* Authority G.S. 143-213; 143-215.68;
14 Eff. February 1, 1976;
15 Amended Eff. April 1, 1993; December 1, ~~1984~~, 1984;
16 Readopted May 1, 2019.
17

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02B .0504

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 that the following technical changes be made:

In (a), how will a person "determine" the number that they are required to use? By using the manual? I think that perhaps this Paragraph could be reworded for purposes of clarity.

In (a), how is the Director going to determine which number will be required? What factors will be used in making this determination?

In (a), line 6, why is this language in parenthesis? Please remove the parenthesis

In (a), what are the "appropriate classification manuals"?

In (b), delete "Environmental Management Commission hereby assigns..." and say something like "All industrial establishments or units of government that collect or discharge domestic wastewater shall use SIC number 4952 and NAICS number 221320." Of course include the examples also if necessary.

In (b), change "which" to "that" on line 9.

In (c), who is the "person in responsible charge"?

Also, how are they to determine the numbers?

In (c), line 11, please change "which" to "that" in "which receives."

In (c), line 13, please change "number(s)" to "number" or "numbers", whichever is intended. Please do the same for "activity(ies)" on line 14.

In (c), what are "applicable activities"? Again, is this made clear elsewhere (perhaps in the classification manuals)?

In (c), line 14-15, what is considered to be "toxic quantities"? I assume that this is set forth elsewhere?

Please consider breaking (c) out into a list. There is a log of information in one sentence.

Amber May

Commission Counsel

Date submitted to agency: Thursday, April 4, 2019

What is the intent of lines 17-18 of (c) ("provided; however... hereunder"? Is this language necessary?

In (d), by "may be computed", do you mean "shall be calculated"? What are the other options?

Please add any additional statutory authority and delete 143-215.68 from your History Note as this was repealed.

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

Amber May
Commission Counsel
Date submitted to agency: Thursday, April 4, 2019

1 15A NCAC 02B .0504 is readopted as published in 32:21 NCR 1943 as follows:

2
3 **15A NCAC 02B .0504 CLASSIFICATION OF WASTE SOURCES**

4 (a) All persons subject to the requirements of these Rules shall determine the standard industrial classification (SIC)
5 number or North American Industry Classification System number or both, as specified by the Director, for each type
6 of activity (required to be reported under Rule .0506 of this Section) in which they are engaged by reference to the
7 ~~Standard Industrial Classification Manual~~ appropriate classification manuals.

8 (b) Environmental Management Commission hereby assigns SIC number 4952 and NAICS number 221320 to every
9 industrial establishment or unit of government which collects or discharges domestic wastewater, whether from on-
10 premises bathrooms, restrooms, kitchens, dining rooms, water pollution control facilities, or from any other source.

11 (c) The owner or person in responsible charge of every water pollution control ~~facility,~~ facility which receives a
12 wastewater influent from more than one ~~source,~~ source shall determine and report to the Department of ~~Environment,~~
13 ~~Health, and Natural Resources~~ Environmental Quality the name and ~~standard~~ industrial classification number(s) for
14 each applicable activity(ies) of every industrial establishment contributing wastes containing toxic substances, in toxic
15 quantities, and also every industrial establishment contributing an average daily wastewater influent of one percent or
16 more of the design flow of the facility or in excess of 100,000 gallons per day, whichever is less, and shall report such
17 other information as is required by Rule .0505 of this Section; provided; however, that it is not required that the name
18 and SIC or NAICS number of any source contributing domestic sewage influent only be reported hereunder.

19 (d) The average daily influent volume contributed by any one source may be computed by dividing the total volume
20 of wastewater discharged by the source during the reporting year by the total number of days that the source operated
21 during the reporting year.

22
23 *History Note: Authority G.S. 143-215.64; 143-215.68;*
24 *Eff. February 1, 1976;*
25 *Amended Eff. April 1, 1993; December 1, 1984; November 1, ~~1978.~~1978;*
26 *Readopted Eff. May 1, 2019.*
27

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02B .0505

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 that the following technical changes be made:

Some of this Rule appears to repeat itself. Please review and make any necessary deletions if necessary.

In (a), what is meant by "every person subject to this Section"? Is there a cross-reference to statute available? It looks like 143-215.66 says that monitoring is required for all persons subject to G.S. 143-215.1, 143-215.108, and 143-215.109 who causes discharges or emissions"? Is it the "permittee" as you have said on line 22 (if so, that seems like a clearer, simpler way of saying who is required to follow this rule.) Given .0502, is this language necessary?

In (a), line 4, delete "be required to" so that it reads "shall establish, operated..."

In (a), what is meant by "or as required by the Director"? Please either provide the requirements or provide the factors that will be used in making this determination.

In (b)(1), what is meant by "a device or method, approved by the Director"? Are there not standard devices or methods to be used? If so, please provide what devices or methods are to be used. IF not, please provide the factors that the Director will use in making this determination.

If this language remains in (b)(1), please add a comma in between "approved by the Director" and "for determining..."

In (b)(1), line 10, what point sources require monthly reports? Is there a cross-reference available?

On line 10, please add a comma in between "are required" and "unless..."

On line 10, delete "specifically"

On line 11, how is the Director to determine whether something is "not significant"

Amber May
Commission Counsel

Date submitted to agency: Thursday, April 4, 2019

Also, on line 11, what is meant by “not significant”? Is this defined elsewhere in rule or statute? I note that I have looked for it and have not found similar language elsewhere.

What is the intent of lines 11-14, is this essentially saying the same thing as lines 8-11 in a different way? In any event, please either provide the required recording devices and totalizing devices or say what factors will be used in whether the director will make such an approval. Please do the same for flow measuring and control methods.

On line 15, delete or define “appropriate”

On line 15-16, what are “approved engineering and scientific practices”? Approved by whom?

On line 18, delete or define “accurately”

On line 21, please either say what the device shall be and where it shall be installed, or provide factors that the Director will use in making this determination. The location of the device appears to be addressed elsewhere in this Rule. Do you need this language here? If so, it appears as though there is at least a potential for some contradiction (your Rule gives specifics, but here it says that your Director will decide)

Please begin (b)(1)(A) and (B) with lower-case letters; and change the period to a semi-colon and add an “and” at the end of (b)(1)(A).

In (b)(2), please either provide when this stream sampling will be required or provide the factors as to how the Director will make the determination as to whether this is necessary.

In (c)(1), what is meant by “except as otherwise provided herein”?

In (c)(1), add a comma in between “effluent” and “stream samples”

Is (c)(2)(A) necessary? It appears to essentially say “do what .0508 tells you to”

In (c)(2)(B), how will the Director make this determination? Please provide the factors that will be used.

In (c)(3)(B), please change “Rule .0505(c)(3)(C) of this Section” to “Part (c)(3)(C) of this Rule”

In (c)(3)(B), what is meant by “unless required by the Director”? How will it be determined?

In (c)(3)(B), what is meant by “the director may specify the methods of sample collection as to type of sample and type of composite sampling required”? Please either provide the actual requirements or provide some additional information as to how this determination will be made.

Please change the commas to semi-colons at the end of (c)(3)(C)(i) through (xi) and add an “and” at the end of “phenols.” Alternatively, take this out of the list form and revise the remainder of this Part accordingly.

In (c)(4), who has the discretion in making the determination as to whether the flow conditions are too dangerous? Is this at the permittee's discretion? If so, please just confirm.

In (c)(4), please change "at such times as" to "when"

In (c)(4), delete or define "extreme" in "extreme weather conditions"

In (c)(4), please change "will" to "may"

In (c)(4), please either delete "This provision shall be strictly construed and may not be utilized to avoid the requirements of this Section when performance of these requirements is attainable" or provide some additional information as to how this is going to be determined.

In (d), by "may" be required, do you mean "shall"?

In (d), what are the "best use of the waters"? Is this set forth elsewhere in rule or statute?

In (e)(1), please consider breaking this into separate sentences.

In (e)(1), by "or that a violation of water quality standards may result under projected conditions", do you mean "or a potential violation"? If so, please consider saying that for purposes of simplification and clarity.

In (e)(2), please remove the parenthesis around (collected by the state or a public agency) and capitalize "state"

In (e)(2), on line 10, by "may", do you mean "shall"? If not, how will he or she make this determination?

Also, in (e)(2), lines 11-12, how the director determine the points and frequency of the required testing?

In (e)(2), lines 12-13, what is your authority to require additional tests from any "suspected discharger"? Would these folks be subject to reporting requirements otherwise?

In (e)(2), line 16-17, delete "established by the Environmental Management Commission"

In (e)(2), change "such" to "any"

In (e)(2), line 18, what factors will the Director use in making this determination?

In (e)(4)(A), please consider breaking all of the various kinds of methods into list form.

On line 20, please put a comma in between "preservation" and "and analysis"

Since you have included "subsequent amendments and editions" on line 34, delete "the most recent approved edition of" on line 28 and "1983, or subsequent editions" on line 31. Also delete "approved" in "approved amendments" and "approved editions" on line 34.

Where specifically can you find the methods for chemical analysis of waters and wastes and standard methods for the examination of water and wastewater? I have tried to find both at www.standardmethods.org, but have been unable to find these.

On line 32, would it make sense to move this catch-all to the end of (e)(4)(A)? Also, I understand the need for a catch all here, but what factors is the Director going to use in determining whether other methods will be acceptable? If they produce the same results as the other tests (please note that I don't think this is great language for rule purposes)?

On line 36, what is the cost of this material?

On line 37, when would the "Methods for Chemical Analysis of Waters and Wastes" be used? Elsewhere, you have provided when the various methods would be applicable. Also, please put this in quotations as you have elsewhere for the other methods.

In (e)(4)(B), where can this CFR be found and what's the cost (unless this has been incorporated elsewhere already.

On line 13, delete "sufficiently sensitive"

In (e)(5), please consider revising to say "Analytical determinations made pursuant to the requirements of this Section shall be made

In (e)(5), delete or define "adequately equipped"

In (e)(5), what is meant by "persons competent to perform tests"?

In (e)(5), change "which" to "that"

In (e)(5), delete or define "qualified" in "qualified employees"?

Overall in (e)(5), do you mean something like "All analytical determinations required by this Section shall be conducted in a laboratory certified by the Division in accordance with Section .0800 or .1100 of Subchapter 02H of these Rules"? If so, say that.

What is meant by (f)? I understand it will be made on a case-by-case basis, but what factors will be used? Please provide some additional information.

Please delete 143-215.68 from your History Note as this statute has been repealed. Please add any additional pertinent authority.

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

1 15A NCAC 02B .0505 is readopted as published in 32:21 NCR 1943 with changes as follows:

2
3 **15A NCAC 02B .0505 MONITORING REQUIREMENTS**

4 (a) General. Every person subject to this Section shall be required to establish, operate and maintain a monitoring
5 program consistent with their National Pollutant Discharge Elimination System (NPDES) Permit or as required by the
6 Director.

7 (b) Wastewater and Stream Flow Measurement.

8 (1) A device or method, approved by the Director for determining the rate of flow of all discharges of
9 wastewater whether treated or untreated shall be provided at those point sources of which monthly
10 reports of monitoring tests and measurements are required unless specifically excepted by the
11 Director as not significant. All water pollution control facilities shall install, operate, and maintain
12 continuous flow measuring with recording devices or totalizing devices, if approved by the Director,
13 or shall employ other flow measuring or flow control methods approved by the Director and shall
14 submit monthly reports of such data as required in Rule .0506 of this Section. The permittee shall
15 install appropriate flow measurement devices consistent with approved engineering and scientific
16 practices to ensure the accuracy and reliability of measurements of the volume of monitored
17 discharges. Devices selected shall be capable of measuring flows with a maximum deviation of less
18 than 10 percent from true discharge volumes. Flow measurement devices shall be accurately
19 calibrated at a minimum of once per year and maintained to ensure that the accuracy of the
20 measurements is consistent with the accepted capability of that type of device. The flow
21 measurement device and location shall be approved by the Director prior to installation. Records of
22 flow measurement device calibration shall be kept on file by the permittee for a period of at least
23 three years. At a minimum, data to be included in this documentation shall be:

24 (A) Date of flow measurement device calibration

25 (B) Name of person performing calibration.

26 (2) A reading of the U.S. Geological Survey stream flow staff gauge or reference point shall be made
27 at the time of stream sampling in those instances so determined the Director.

28 (c) Sampling.

29 (1) Frequency and Location. Except as otherwise provided herein, all industrial establishments and units
30 of government shall take influent, effluent and stream samples at such locations and with such
31 frequency as shall be necessary to conduct the tests and analyses required by Rule .0508 of this
32 Section.

33 (2) Establishment of Sampling Points:

34 (A) Sampling points as required in Rule .0508 of this Section shall be established for collecting
35 influent and effluent samples for each facility.

- (B) Sampling points shall be established in the receiving waters at one or more upstream locations and at one or more downstream locations. These locations shall be specified by the Director.
- (3) Collection of Samples:
- (A) Samples collected in receiving waters shall be grab samples.
- (B) Samples of the influent and effluent of the water pollution control facility or other point source shall be composite samples, except as provided in Rule .0505 (c)(3)(C) of this Section, or for facilities with design flows of 30,000 gallons per day or less unless required by the Director. The Director may specify the methods of sample collection as to type of sample and type of composite sampling required.
- (C) The following influent and effluent tests shall be made on grab samples and shall not be made on composite samples:
- (i) dissolved oxygen,
 - (ii) temperature,
 - (iii) settleable matter,
 - (iv) turbidity,
 - (v) pH,
 - (vi) residual chlorine,
 - (vii) coliform bacteria (fecal or total),
 - (viii) cyanide,
 - (ix) oil and grease,
 - (x) sulfides,
 - (xi) phenols,
 - (xii) volatile organics.
- (4) Stream sampling may be discontinued at such times as flow conditions in the receiving waters or extreme weather conditions will result in a substantial risk of injury or death to persons collecting samples. In such cases, on each day that sampling is discontinued, written justification for the discontinuance shall be specified in the monitoring report for the month in which the event occurred. This provision shall be strictly construed and may not be utilized to avoid the requirements of this Section when performance of these requirements is attainable. When there is a discontinuance pursuant to this provision, stream sampling shall be resumed at the first opportunity after the risk period has ceased.
- (d) Biological and Toxicity Monitoring. Biological and Toxicity monitoring may be required when, in the opinion of the Director, such monitoring is necessary to establish whether the designated best use of the waters as determined by the Environmental Management Commission, ~~Commission~~ is being or may be impaired or when toxic substances are known or suspected to be present in the facility's discharge.
- (e) Tests and Analyses.

- (1) If a water pollution control facility receives waste influent from two or more sources, every test required by Rule .0508 of this Section for the standard industrial classification number applicable to the sources shall be performed one time, and it shall not be necessary to repeat such tests for each source; however, the tests shall be performed at the intervals specified by Rule .0508 of this Section for the applicable industrial classification requiring the most frequent test interval.
- (2) If analyses of samples of any effluent or any receiving water (collected by the state or a public agency) indicate a violation of effluent ~~limitations~~, limitations or water quality standards ~~or indicate exceedances of stream action levels~~ or that a violation of water quality standards ~~or exceedances of stream action levels~~ may result under any projected ~~conditions~~ conditions, including minimum stream flow and temperature extremes, the Director may require the person responsible for the violation or potential violation to monitor the pollutants or parameters at such points and with such frequency as he determines appropriate. If the source of the pollutant is unknown, the Director may require monitoring for specific pollutants from any suspected discharger.
- (3) If the wastewaters discharged by any water pollution control facility violate any effluent limitations or water quality standards ~~or exceeds any stream action levels~~ or contribute to the violation of water quality standards ~~or exceedance of stream action levels~~ established by the Environmental Management ~~Commission~~ Commission, the facility shall perform and report such additional tests and measurements at such frequencies and for such periods of time as the Director may require.
- (4) Approved Methods of Analysis.
- (a)(A)** Methods. The methods used in collection, preservation and analysis of samples shall conform to the guidelines of the Environmental Protection Agency codified as 40 CFR Part 136, which is hereby incorporated by reference including any subsequent amendments and editions. ~~Copies may be obtained from the New Orders, Superintendent of Documents, PO Box 371954, Pittsburgh, PA 15250-7954 at a cost of three hundred forty dollars (\$340.00) per edition. The single volume containing 40 CFR Part 136 may be obtained at a cost of thirty dollars (\$30.00). The current version of these regulations can be accessed free of charge at <http://www.gpo.gov/fdsys/>.~~ Other analytical procedures shall conform to those found in either the most recent approved edition of "Standard Methods for the Examination of Water and Wastewater", (published jointly by the American Public Health Association, the American Water Works Association, and the Water Environment Federation), or "Methods for Chemical Analysis of Waters and Wastes", 1983, or subsequent editions or other methods as approved by the Director. Standard Methods for the Examination of Water and Wastewater is hereby incorporated by reference including any subsequent approved amendments and approved editions. ~~Copies may be obtained from the American Water Works Association, 6666 West Quincy Avenue, Denver CO 82535 at a cost of one hundred sixty dollars (\$160.00) per edition. The current version of these methods may be viewed at <http://www.standardmethods.org>.~~ Methods for Chemical Analysis of Waters and

Wastes is hereby incorporated by reference including any subsequent amendments and editions. These methods (document EPA-600-4-79-020) can be accessed free of charge at <http://nepis.epa.gov>. Copies may be obtained from the NTIS, 5285 Port Royal Road, Springfield, VA 22161 at a cost of fifty dollars (\$50.00) per edition. All material incorporated by reference in this Rule is available for inspection at the Central office of the Division of Environmental Management, 512 North Salisbury Street, Raleigh, North Carolina 27626-0535

(b)(B) Method Sensitivity. All test procedures must produce detection and reporting levels that are below the permit discharge requirements and all data generated must be reported to the approved detection level or lower reporting level of the procedure. Monitoring required for permit application or to determine compliance with effluent limitations or applicable water quality standards shall be performed using sufficiently sensitive methods in accordance with 40 CFR 122.21(e)(3) or 122.44(i), which are hereby incorporated by reference, including any subsequent amendments and editions. If no approved methods are determined capable of achieving detection and reporting levels below permit discharge requirements, then the approved method with the lowest detection and reporting level must be used. Biological testing shall be performed in accordance with 15A NCAC 02B .0103(b).

(5) Approval of Laboratories. Analytical determinations made pursuant to the monitoring and reporting requirements of this Section shall be made in adequately equipped laboratories staffed by person(s) competent to perform tests. Only monitoring programs which provide for the making of analytical determinations by qualified employees of the owner or by a laboratory certified by the Division under 15A NCAC 02H .0800 or 15A NCAC 02H .1100 will be considered adequate.

(f) Process Control Monitoring Testing: The Director may require, on a case-by-case basis, process control monitoring testing suitable for the size and classification of the facility.

*History Note: Authority G.S. 143-215.64; 143-215.66; 143-215.68;
Eff. February 1, 1976;
Amended Eff. April 1, 1993; December 1, 1984; November 1, 1978. 1978;
Readopted May 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02B .0506

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 that the following technical changes be made:

In (a)(1), what is meant by "every person subject to this Section"? Who are these people? Given .0502, is this language necessary?

At the end of (a)(1), would it be appropriate to add something like "as set forth in this Subparagraph"?

What is the difference in (a)(1)(A) and (b)? Are they both necessary?

In (a)(1)(B), is 40 CFR Part 3 incorporated by referenced elsewhere in rule? If you make .0408 applicable to this entire Subchapter, then there is no need to include "which is hereby incorporated by reference including subsequent amendments and additions." If you do not, please provide where this CFR can be found and the cost.

In (a)(1)(B), are the contents of the form set forth elsewhere in rule or statute? If not, please provide the contents of the form. Do the forms just contain the information set forth in 40 CFR 3? If so, say that.

In (a)(1)(B), what is meant by "on forms or in a format provided or approved by the Director"? Please delete this language and say what is required.

Is an electronic filing of this form available? If so, is it still applicable to require "duplicate filings"? Please review and clarify.

In (a)(1)(A), what is the "reporting period"? Is this set forth elsewhere?

In (a)(1)(C) and (D), delete or define "readily" in "readily available"

In (a)(1)(D), please change "is required to retain" to "shall retain"

In (a)(1)(E), change "is required to" to "shall"

In (a)(1)(E), what is meant by "all required information"? I assume pursuant to this Rule?

Amber May
Commission Counsel

Date submitted to agency: Thursday, April 4, 2019

In (a)(1)(E), how will the director determine whether the reporting requirements will be waived? Please also change this language to say "... "no follow", unless the reporting requirement is waived by the Director based on (whatever will be used in making this determination – I assume that the amount of time of no discharge will be one factor.)"

In (a)(2), (see my notes below for additional information), here do you mean something like

(2) All persons subject to G.S. 143-215.1, 143-215.108, and 143-215.109 shall report as follows:

(A) for any occurrence that may endanger the public health or fish and wildlife, and if contact with the central office or the appropriate regional office cannot be made, persons shall report the occurrence to the N.C. Emergency Operations Center at 1-800-858-0368 or 919-733-3300; or

(B) for the following occurrences, persons shall report the occurrence to the Central Office or the Regional Office in which the following occurred within 24 hours, or the next working day if the occurrence happens on a weekend or holiday: the working day following the occurrence. Every person subject to this Section shall report by telephone to either the central office or appropriate regional office of the Division as soon as possible but no later than 24 hours after occurrence or on the next working day (however, if the occurrence is one which may endanger the public health, or fish or wildlife, and contact with the central office or the appropriate regional office cannot be made, such person shall report as soon as possible to the State Highway Patrol Warning Point in state 1-800-662-7956 or out of state 919-733-3861) following the occurrence or first knowledge of the occurrence of any of the following:

(A) Any failure of a collection system, pumping station or treatment facility resulting in a bypass without treatment of all or any portion of the wastewater, wastewater;

(B) Any occurrence at the water pollution control facility which that results in the discharge of significant amounts of wastes which that are abnormal in quantity or characteristic, such as the dumping of the contents of a sludge digester, digester or the known passage of a hazardous substance through the facility; or facility, or any other unusual circumstances. circumstances; or

(C) Any process unit failure failure, due to known or unknown reasons, that renders the facility incapable of adequate wastewater treatment, such as mechanical or electrical failures of pumps, aerators, or compressors, compressors, etc. [etc.];

[except that if the occurrence is one which may endanger the public health or fish or wildlife, and if contact with the central office or the appropriate regional office cannot be made, such person shall report as soon as possible to the NC Emergency Operations Center 24/7 at 1-800-858-0368 (toll free) or 919-733-3300.]

In (a)(2), is your telephone number somewhere in these Rules? If not, please provide your telephone number and where the regional telephone numbers can be found. Also, is this at the discretion of the permittee? When should they contact one over the other?

In (a)(2), delete or define "appropriate" in "appropriate regional office"

In (a)(2), what is meant by "every person subject to this Section"?

In (a)(2), delete "as soon as possible but"

In (a)(2), when would 24 hours apply versus the next business day? I'm not sure what is actually being required here. Would it be 24 hours if it occurred on a Friday or Saturday, but otherwise would be the next business day? Please review and clarify. I note that in (a)(3), you only refer to "first knowledge of the occurrence."

In (a)(2), is it necessary to say both "the occurrence or first knowledge of the occurrence"?

Amber May
Commission Counsel
Date submitted to agency: Thursday, April 4, 2019

Please begin (a)(2)(A) through (C) with lower case letters.

With the following notes regarding (a)(2)(B) in mind, please consider revising (a)(2)(B) as follows: "any occurrence at the water pollution control facility that results in the discharge of wastes that are abnormal in quantity or characteristics, such as the dumping of the contents or a sludge digester or the passage of a hazardous substance through the facility."

In (a)(2)(B), please change "which" to "that" in "which results" and "which are abnormal"

In (a)(2)(B), delete or define "significant" and "unusual"

In (a)(2)(B), since you've said "such as", which indicates examples and not an all-inclusive list, there is no need to say "and any other unusual circumstance" Please consider deleting this language.

In (a)(2)(C), delete "due to known or unknown reasons" as it appears to be unnecessary.

In (a)(2)(C), delete or define "adequate"

In (a)(2)(C), delete "etc."

In (a)(3), what is meant by "electronic form"? Since you've said letter, is this an email to someone? Is there an online submittal option on your website? Please provide some additional information.

In (a)(3), delete or define "and pertinent information pertaining to the occurrence" (a)(4)(F) seems to provide for additional information already. What else it to be included? If you need this language, can you provide some examples?

In (a)(4), what is meant by "in addition to such other information as is required for the particular report"? I read as being THE report? Do you mean that information set forth in (b)(4)? If so, this language is unnecessary.

In (a)(4)(D), what is meant by "other approval document"? Can you provide some examples?

In (a)(5), is this confidentiality in accordance with 143-215.3C? If so, please say that.

Please break (a)(5) into separate sentences. In light of Paragraph (d), do you need this information?

What is the difference in (a)(1)(A) and (b)? Are they both necessary? If so, please make the differences between the two clear.

In (b)(1), please change "which" to "that" in "which includes"?

Also, what are the required "samples"? Are these the samples set forth in .0508? IF so, please provide the cross-reference.

In (b)(2), what is meant by "compliance status determined"? Just to be clear, this is determined by those folks set forth in (b)(2)(A) through (D)?

Amber May
Commission Counsel

Date submitted to agency: Thursday, April 4, 2019

Please begin (b)(2)(A) through (D) with lower case letters.

Please end (b)(2)(A)(i) with a semi-colon, rather than a comma.

In (b)(2)(A)(ii), what is “(in second quarter 1980 dollars)”? I honestly have no idea.

Delete “or” at the end of (b)(2)(B). Add the “or” at the end of (b)(2)(C).

In (b)(3)(D)(ii), change “specified” to “specifies”

In (b)(3)(D)(ii), delete “a position of equivalent responsibility” or say how this is going to be determined.

In (b)(3)(D)(ii), delete the language in parenthesis, or pull this out of parenthesis and make it its own sentence.

In (b)(3)(d)(iii), who is the “permitting issuing authority”?

I’m not sure that I understand what is going on with (b)(3). Can you make these subparagraphs instead of parts?

In (b)(3)(A), is this the language on the form? Please change “certifies” to “shall certify”

In (b)(3)(B), please change “which” to “that” in “which has” and “which does not”

In (b)(4), rather than “[see Subparagraph (a)(4) of this Rule]” say “as set forth in Paragraph (a)(4) of this Rule”

Please begin (b)(4)(A) through (L) with lower case letters.

End (b)(4)(F) with a semi-colon and an “and”

Please review (b)(4)(H) for clarity purposes and revise as necessary. I

In (b)(4)(H), please take the language out of the parenthesis and delete “properly” and “proper” in “properly placed” and “proper sort number”

In (b)(4)(H), what is meant by “or current enforcement document”?

In (b)(4)(H), what is meant by “Unless modified by the Director”? How will this determination be made?

Please review (b)(4)(K) to say “fecal coliform testing shall be reported using numeric values;” To the extent the remainder of this is necessary, change “will” to “shall”

In (b)(4)(J), delete “but not limited to.” If it is necessary, add commas before and after.

In (b)(4)(J), are the contents of the monthly report forms set forth in this Rule? If so, please just confirm.

End (b)(4)(K) with an “and”

In (b)(4)(L), change "he/she" to "he or she"

In (b)(4)(L), what is the "required visitation and process control"? Is there a cross-reference available?

In (c), change "Reporting/Monitoring" to "Reporting and Monitoring"

Is (c) necessary or can (c)(1) through (3) be their own Paragraphs?

In (c)(1), change "which" to "that" in "which may" and "which need"

In (c)(1), delete or define "proper" in "proper operation"

Do (c)(1) and (2) go together? Can you combine these?

In (c)(3), delete or define "proper" in "proper frequency" and "proper process control"

In (c)(3), delete or define "readily" in "readily available"

Please delete 143-215.68 from your History Note as this statute has been repealed. Please add any additional pertinent authority.

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

Amber May
Commission Counsel
Date submitted to agency: Thursday, April 4, 2019

1 15A NCAC 02B .0506 is readopted as published in 32:21 NCR 1943 as follows:

2 **15A NCAC 02B .0506 REPORTING REQUIREMENTS**

3 (a) General:

4 (1) Every person subject to this Section shall file certified monitoring reports setting forth the results of
5 tests and measurements conducted pursuant to NPDES permit monitoring requirements.

6 (A) Monthly monitoring reports shall be filed no later than 30 calendar days after the end of
7 the reporting period for which the report is made.

8 (B) Reports filed pursuant to the requirements of Subparagraph (a)(1) of this Rule shall be
9 submitted in a manner consistent with the requirements of 40 CFR Part 3, which is hereby
10 incorporated by reference including subsequent amendments and additions. Where
11 submittal of printed documents is allowed, of such submittals shall be made on forms
12 furnished or in a format provided or approved by the Director and shall be submitted in
13 duplicate to:

14 ATTN: CENTRAL FILES

15 DIVISION OF ~~ENVIRONMENTAL MANAGEMENT~~ WATER RESOURCES

16 ~~POST OFFICE BOX 29535~~

17 MAIL SERVICE CENTER 1617

18 RALEIGH, NORTH CAROLINA ~~27626-0535~~, 27699-1617

19 (C) A copy of all reports submitted to the Director pursuant to this Section shall be retained by
20 the owner of each ~~water pollution control~~ permitted facility for a period of at least three
21 years from the date of submission and be readily available to the Division for inspection.

22 (D) In order to document information contained in reports submitted to the Director pursuant
23 to this Section, the owner of each pollution control facility is required to retain or have
24 readily available for inspection by the ~~Division~~, Division the following items for a period
25 of at least three years from report submission:

26 (i) the original laboratory reports from any certified laboratory utilized for sample
27 analysis. Such reports must be signed by the laboratory supervisor, and must
28 indicate the date and time of sample collection and analysis, and the analysts'
29 name;

30 (ii) bench notes and data logs for sample analyses performed by the pollution control
31 facility staff or operator in responsible charge, whether or not the facility has a
32 certified lab; and

33 (iii) copies of all process control testing.

34 (E) In situations where no discharge has occurred from the facility during the report period,
35 the permittee is required to submit a monthly monitoring report giving all required
36 information and indicating "NO FLOW" unless the Director agrees to waive the reporting
37 requirement during extended conditions of no discharge.

- (2) Every person subject to this Section shall report by telephone to either the central office or appropriate regional office of the Division as soon as possible but no later than 24 hours after occurrence or on the next working day (~~however, if the occurrence is one which may endanger the public health, or fish or wildlife, and contact with the central office or the appropriate regional office cannot be made, such person shall report as soon as possible to the State Highway Patrol Warning Point in state 1 800 662 7956 or out of state 919 733 3861~~) following the occurrence or first knowledge of the occurrence of any of the following:
- (A) Any failure of a collection system, pumping station or treatment facility resulting in a by-pass without treatment of all or any portion of the ~~wastewater~~, wastewater;
 - (B) Any occurrence at the water pollution control facility which results in the discharge of significant amounts of wastes which are abnormal in quantity or characteristic, such as the dumping of the contents of a sludge digester, the known passage of a hazardous substance through the facility, or any other unusual ~~circumstances~~, circumstances; or
 - (C) Any process unit failure, due to known or unknown reasons, that renders the facility incapable of adequate wastewater treatment, such as mechanical or electrical failures of pumps, aerators, compressors, ~~etc.~~ etc.;
- except that if the occurrence is one which may endanger the public health or fish or wildlife, and if contact with the central office or the appropriate regional office cannot be made, such person shall report as soon as possible to the NC Emergency Operations Center 24/7 at 1-800-858-0368 (toll-free) or 919-733-3300.
- (3) Persons reporting such occurrences by telephone shall also provide a written report to the Division in letter or electronic form setting out the information required in Subparagraph (a)(4) of this Rule and pertinent information pertaining to the occurrence. This report must be received by the Division within five days following first knowledge of the occurrence.
- (4) All reports required to be filed by this Section shall contain the following information in addition to such other information as is required for the particular report:
- (A) name of facility,
 - (B) water pollution control facility location,
 - (C) the class assigned to the water pollution control facility,
 - (D) the water pollution control facility permit number assigned by the Department of ~~Environment, Health, and Natural Resources~~ Environmental Quality to the permit or other approval document issued by the Environmental Management Commission under which the discharge is made,
 - (E) contact ~~name and name~~, telephone ~~number number~~, email address, and mailing address,
 - (F) estimated nature and extent of environmental damage caused by the incident.
- (5) Any person desiring confidentiality for any influent information submitted shall specify the influent information for which confidentiality is sought and shall justify such request to the Department of

~~Environment, Health, and Natural Resources, Environmental Quality, and~~ if such request is approved by the ~~Director~~ Director, shall by an appropriate ~~stamp~~, stamp indicate the location of such information on each report filed thereafter.

(b) Monthly Monitoring Reports:

(1) Every person operating a monitoring system required by this Section shall file a monitoring report once each month which includes the data for the samples collected during the month. This report shall be filed no later than 30 calendar days after the end of the reporting period for which the report is made.

(2) Monthly monitoring reports shall be reviewed, compliance status determined, certified by signature, and submitted by the following:

(A) For a corporation: by a responsible corporate officer. For the purpose of the Section, a responsible corporate officer means:

(i) a president, secretary, treasurer or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or

(ii) the manager of one or more manufacturing production or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding twenty-five million dollars (\$25,000,000)(in second quarter 1980 dollars), if authority to sign documents had been assigned or delegated to the manager in accordance with corporate procedures.

(B) For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

(C) For a municipality, State, Federal, County, or other public agency: by either a principal executive officer or ranking elected official;

(D) Duly authorized representative of the person described in Paragraphs (b)(2)(A), (B) and (C). A person is a duly authorized representative only if:

(i) The authorization is made in writing by a person described in Paragraphs (b)(2)(A), (B) and (C);

(ii) The authorization specified either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or well field, superintendent, a position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.); and

(iii) The written authorization is submitted to the Permit Issuing Authority. ~~Permittees~~ A permittee authorizing another individual to sign as representative in no way

1 relinquishes any responsibility for the permit or his responsibility to remain
2 familiar with the permit ~~conditions~~, conditions and limits, including any
3 modifications, and for the compliance data reports for the permit.

4 ~~(E)~~(3) Permittee Certification by Signature.

5 (A) The permittee signing the report certifies to the following statement: "I certify, under
6 penalty of law, that this document and all attachments were prepared under my direction
7 or supervision in accordance with a system designed to assure that qualified personnel
8 properly gather and evaluate the information submitted. Based on my inquiry of the person
9 or persons who managed the system, or those persons directly responsible for gathering the
10 information, the information submitted is, to the best of my knowledge and belief, true,
11 accurate, and complete. I am aware that there are significant penalties for submitting false
12 information, including the possibility of fines and imprisonment for knowing violations."

13 (B) The monthly report shall also be certified by the operator in responsible charge of a
14 classified treatment facility or by the manager of an industrial establishment which has a
15 point source of waste discharge and which does not have a classified water pollution
16 control facility.

17 ~~(3)~~(4) In addition to the information required on all reports [see Subparagraph (a)(4) of this Rule] the
18 following information shall be submitted in monthly monitoring reports:

19 (A) ~~name~~ Name of person or group collecting sample or making observation;

20 (B) ~~name~~ Name of person or group that analyzed sample;

21 (C) ~~name~~ Name of operator in responsible charge of the facility and the grade certificate held;

22 (D) ~~sampling~~ Sampling point for each sample;

23 (E) ~~date~~ Date and time (on 2400 hour clock basis) at which each grab sample was collected;

24 (F) For composite samples:

25 (i) date on which collection of composite samples is commenced,

26 (ii) time of starting and ending of composite sample period on 2400 hour clock basis;

27 (G) ~~wastewater~~ Wastewater flow in million gallons per day (~~MGD~~); (MGD), or in units
28 specified in the permit;

29 (H) Results of analyses (reported to the designated number of figures with a properly placed
30 decimal point as indicated on each report sheet) together with the proper storet number (to
31 be furnished by the Division) for the analytical procedure used and the reporting units shall
32 be those specified by the NPDES permit or current enforcement document, unless modified
33 by the Director;

34 (I) Only numeric values will be accepted in reporting results of fecal coliform testing. The
35 reporting of "too numerous to count" (TNTC) as a value will constitute a violation;

36 (J) The results of all tests on the characteristics of the effluent, including but not limited to
37 NPDES Permit Monitoring Requirements, shall be reported on monthly report forms;

1 (K) The monthly average of analysis for each parameter and the maximum and minimum
2 values for the month shall be reported;

3 (L) Certification by the Operator in Responsible Charge (ORC) as to the accuracy and
4 completeness of the report and that he/she has performed and documented the required
5 visitation and process control.

6 (c) Additional Reporting/Monitoring Requirements:

7 (1) When a facility is operated on an independent contract basis, the operator in responsible charge shall
8 notify the owner of the facility in writing of any existing or anticipated conditions at the facility
9 which may interfere with its proper operation and which need corrective action by the owner. The
10 notice shall include recommendations for corrective action.

11 (2) Two ~~copies~~ printed copies, or an electronic copy, of the signed notice to the owner shall be sent to
12 the Division ~~as an attachment to~~ no later than the next monthly monitoring report.

13 (3) A log demonstrating visitation at the proper frequency for the assigned classification, including
14 dates and times of visits, and documentation of proper process control monitoring shall be
15 maintained and shall be submitted to the Division upon request. Copies of all information must be
16 readily available for inspection for a period of three years.

17 (d) All information submitted will be classified as public information unless determined otherwise by the ~~Director.~~
18 Director in accordance with 15A NCAC 02H .0115.

19
20 *History Note:* Authority G.S. 143-215.1(b); 143-215.64; 143-215.65; 143-215.68;

21 *Eff. February 1, 1976;*

22 *Amended Eff. August 2, 1993; April 1, 1993; December 1, 1984; November 1, ~~1978.~~ 1978;*

23 *Readopted May 1, 2019.*
24

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02B .0508

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 that the following technical changes be made:

In (a), is (a)(1) necessary?

In (a)(2), please change "these tables" to "the tables set forth in this Rule"

In (a)(2), since this is the first time it's used, please add "(SIC)" at the end of "standard industrial classification"

In (a)(2), please revise this to say something like "Before the tables set forth in this Rule may be applied, the following shall be determined:

- (A) the standard industrial classification (SIC) of the activities discharging to the water pollution control facility as provided by The Standard Industrial Classification Manual; and*
- (B) the classification of the facility as determined by the Water Pollution Control System Operators Certification Commission.*

In (b)(1), delete "it is demonstrated to the satisfaction of the Director that" Delete the comma following "group"

In (b)(1), how would it be demonstrated?

In (b)(1), what is meant by "other acceptable means"? Please delete or define "acceptable"

In (b)(1), what is meant by "to the extent the Director determines to be appropriate"? Please provide the factors that will be used in making this determination.

In (b)(2), how will it be determined whether additional tests will be required by the Director? Please provide some additional information.

In (b)(2), delete or define "adequately"

Amber May
Commission Counsel
Date submitted to agency: Thursday, April 4, 2019

In (b)(2), delete "but not limited to." If this language is necessary, please add commas before and after "but not limited to"

Again in (b)(2), how will it be determined whether weekends and holidays will be "deemed necessary" (I'm not sure that you need this language again since you've already given the director discretion here>)

In (b)(2), delete or define proper" in "proper operation"

Overall in (c), I assume that the intent here is to say that if something doesn't fall into any of the categories set forth in this Rule, there will still be required standards? If so, do you need anything other than (c)(2)?

What is the intent of (c)(1)? Is this enforceable or is this simply as aspirational statement?

In (c)(2), please change "it" to "he or she" Also how is the director going to make this determination?

On line 33 and 35, delete or define "properly"

On line 34, change "which" to "that"

What is the formatting intent of lines 9-14 of page 14? Are these intended to be separate paragraphs?

On page 14, line 9, change "will" to "shall" in "will be defined" and "will be applied"

On line 11, change "such discharge may impair" to "discharge impairs"

On line 11-12, what is the "best use of the receiving water"?

On line 13, delete or define "continuous" and "regularly" Is this sentence necessary given that this will be set by permit?

Please delete 143-215.68 from your History Note as this statute has been repealed. Please add any additional pertinent authority.

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

1 15A NCAC 02B .0508 is readopted as published in 32:21 NCR 1943 as follows:

2
3 **15A NCAC 02B .0508 TESTS AND MEASUREMENTS APPLICABLE TO SICS**

4 (a) Determination of Type and Frequency of Tests and Measurements:

5 (1) Introduction. The tables set forth in this Rule are designed to indicate, for any particular water
6 pollution control facility or point source, the minimum standard tests and measurements which are
7 to be performed, the minimum frequency with which the tests and measurements are to be
8 conducted, and the location and minimum number of sampling points that are required.

9 (2) Determination of Facility Class and SIC Numbers. Before these tables may be applied, the standard
10 industrial classification(s) of the activities discharging to the water pollution control facility must
11 be determined from The Standard Industrial Classification Manual. The classification of the facility
12 as determined by the Water Pollution Control System Operators Certification Commission, must
13 also be known.

14 (b) Modification of Test(s) or Measurement(s) Requirements:

15 (1) If it is demonstrated to the satisfaction of the Director that any of the tests and measurements,
16 sampling points, or frequency of sampling requirements, as required in this Rule for a particular SIC
17 group, are not applicable to the discharge of a particular water pollution control facility, or if it can
18 be demonstrated that the objectives of this Section can be achieved by other acceptable means, then
19 such requirements may be waived or modified to the extent that the Director determines to be
20 appropriate.

21 (2) In addition to the tests and measurements as listed in this Rule applicable to each of the SIC groups,
22 persons subject to this Section may be required to perform such additional tests and measurements
23 at such sampling points and with such frequency as are determined by the Director to be necessary
24 to adequately monitor constituents of the waste discharge and their effect upon the receiving waters.
25 This monitoring may ~~include~~, include but not be limited to weekends and holidays as deemed
26 necessary by the Director to ensure representative sampling and proper operation and maintenance
27 of any facility.

28 (c) Unclassified Activities:

29 (1) Any person owning or operating a water pollution control facility who determines that a major SIC
30 group(s) is not listed in this Rule for an activity subject to this Section shall so notify the Division.

31 (2) The Director shall prescribe the number and location of sampling points and the frequency with
32 which tests and measurements must be made for such pollutant or pollutant effects as it shall deem
33 necessary to properly monitor the quantity or quality of waste discharges resulting from any activity
34 subject to this Section which is not included in the major SIC groups set forth in this Rule and to
35 properly monitor effects of the discharges upon the waters of this state.

36 (d) Index of Major Standard Industrial Groups:

1	SIC Number	Major Products or Services
2	1400-1499	Mining
3	2000-2199	Food, Beverage and Tobacco Processing
4	2200-2299	Textile Processing
5	2400-2599	Lumber and Wood Products Except Wet Decking
6	2600-2699	Paper and Allied Products
7	2800-2899	Chemical and Allied Products
8	2900-2999	Petroleum Refining and Related Industries
9	3100-3199	Leather and Leather Products
10	3400-3699	Fabricated Metal Products Except Ordnance, Machinery and Transportation Equipment
11		Machinery Electrical Machinery, Equipment and Supplies
12	4900-4939	Electric, and Gas Services
13	4941	Water Supply
14	4952	Wastewater and all facilities discharging primarily domestic wastewater
15	7000-8999	Services

Abbreviations for sampling locations and frequencies to be used with SIC monitoring requirements:

"I" means influent "E" means effluent "U" means upstream "D" means downstream

"2/month" means samples are collected twice per month with a required 10 day interval between the collection of the samples

"3/week" means samples are collected three times per week on three separate days

MINING

MINIMUM REQUIREMENTS FOR SIC 1400-1499

	REQUIRED TEST	LOCATION	FREQUENCY			
			CLASS I	CLASS II	CLASS III	CLASS IV
1.	Turbidity	E	Monthly	Monthly	Monthly	Monthly
2.	Settleable Matter	E	Monthly	Monthly	Monthly	Monthly
3.	TSS	E	Monthly	Monthly	Monthly	Monthly
4.	pH	E	Monthly	Monthly	Monthly	Monthly
5.	Toxics and Toxicity		**	**	**	**

FOOD AND BEVERAGE PROCESSING AND TOBACCO PROCESSING

MINIMUM REQUIREMENTS FOR SIC 2000-2199

EFFLUENT LIMITED

	REQUIRED TEST	LOCATION	FREQUENCY			
			CLASS	CLASS	CLASS	CLASS
			I	II	III	IV
1.	pH	E	Weekly	Weekly	3/week	Daily
2.	Temperature, °C	E	Weekly	Weekly	3/week	Daily
3.	BOD, 5-day, 20°C	E	2/month	Weekly	3/week	Daily
4.	TSS	E	2/month	Weekly	3/week	Daily
5.	Ammonia Nitrogen	E	Monthly	2/month	Weekly	Weekly
6.	Total Nitrogen	E	*	*	*	*
7.	Total Phosphorus	E	*	*	*	*
8.	Toxics and Toxicity		**	**	**	**

WATER QUALITY LIMITED

1.	Dissolved Oxygen	E	Weekly	Weekly	3/week	Daily
2.	Dissolved Oxygen	U,D	Weekly	Weekly	3/week+	3/week+
3.	pH	E	Weekly	Weekly	3/week	Daily
4.	Temperature, °C	E	Weekly	Weekly	3/week	Daily
5.	Temperature, °C	U,D	Weekly	Weekly	3/week+	3/week+
6.	BOD, 5-day, 20°C	E	2/month	Weekly	3/week	Daily
7.	TSS	E	2/month	Weekly	3/week	Daily
8.	Ammonia Nitrogen	E	2/month	Weekly	3/week	Daily
9.	Total Nitrogen	E	*	*	*	*
10.	Total Phosphorus	E	*	*	*	*
11.	Toxics and Toxicity		**	**	**	**
12.	Conductivity	E	Weekly	Weekly	3/week	Daily
13.	Conductivity	U,D	Weekly	Weekly	3/week+	3/week+

TEXTILE PROCESSING

MINIMUM REQUIREMENTS FOR SIC 2200-2299

EFFLUENT LIMITED

REQUIRED TEST	LOCATION	FREQUENCY			
		CLASS	CLASS	CLASS	CLASS

			I	II	III	IV
1.	pH	E	Weekly	Weekly	3/week	Daily
2.	Temperature, °C	E	Weekly	Weekly	3/week	Daily
3.	BOD, 5-day, 20°C	E	2/month	Weekly	3/week	Daily
4.	COD	E	2/month	Weekly	3/week	Daily
5.	TSS	E	2/month	Weekly	3/week	Daily
6.	Total Nitrogen	E	*	*	*	*
7.	Total Phosphorus	E	*	*	*	*
8.	Toxics and Toxicity		**	**	**	**

WATER QUALITY LIMITED

	REQUIRED TEST	LOCATION	FREQUENCY			
			CLASS	CLASS	CLASS	CLASS
			I	II	III	IV
1.	Dissolved Oxygen	E	Weekly	Weekly	3/week	Daily
2.	Dissolved Oxygen	U,D	Weekly	Weekly	3/week+	3/week+
3.	pH	E	Weekly	Weekly	3/week	Daily
4.	Temperature, °C	E	Weekly	Weekly	3/week	Daily
5.	Temperature, °C	U,D	Weekly	Weekly	3/week+	3/week+
6.	BOD, 5-day, 20°C	E	2/month	Weekly	3/week	Daily
7.	COD	E	2/month	Weekly	Weekly	Weekly
8.	TSS	E	2/month	Weekly	3/week	Daily
9.	Total Nitrogen	E	*	*	*	*
10.	Total Phosphorus	E	*	*	*	*
11.	Toxics and Toxicity		**	**	**	**
12.	Conductivity	E	Weekly	Weekly	3/week	Daily
13.	Conductivity	U,D	Weekly	Weekly	3/week+	3/week+

LUMBER AND WOOD PRODUCTS (EXCLUDING WET DECKING)

MINIMUM REQUIREMENTS FOR SIC 2400-2599

EFFLUENT LIMITED

REQUIRED TEST	LOCATION	FREQUENCY			
		CLASS	CLASS	CLASS	CLASS
		I	II	III	IV

1.	pH	E	Weekly	Weekly	3/week	Daily
2.	Temperature, °C	E	Weekly	Weekly	3/week	Daily
3.	BOD, 5-day, 20°C	E	2/month	Weekly	3/week	Daily
4.	COD	E	Monthly	2/month	Weekly	3/week
5.	Total Phenols	E	2/month	Weekly	3/week	Daily
6.	TSS	E	2/month	Weekly	3/week	Daily
7.	Total Nitrogen	E	*	*	*	*
8.	Total Phosphorus	E	*	*	*	*
9.	Toxics and Toxicity		**	**	**	**

WATER QUALITY LIMITED

1.	Dissolved Oxygen	E	Weekly	Weekly	3/week	Daily
2.	Dissolved Oxygen	U,D	Weekly	Weekly	3/week+	3/week+
3.	pH	E	Weekly	Weekly	3/week	Daily
4.	Temperature, 0C	E	Weekly	Weekly	3/week	Daily
5.	Temperature, 0C	U,D	Weekly	Weekly	3/week+	3/week+
6.	BOD, 5-day, 200C	E	2/month	Weekly	3/week	Daily
7.	COD	E	2/month	Weekly	3/week	Daily
8.	Total Phenols	E	2/month	Weekly	3/week	Daily
9.	TSS	E	2/month	Weekly	3/week	Daily
10.	Total Nitrogen	E	*	*	*	*
11.	Total Phosphorus	E	*	*	*	*
12.	Toxics and Toxicity		**	**	**	**
13.	Conductivity	E	Weekly	Weekly	3/week	Daily
14.	Conductivity	U,D	Weekly	Weekly	3/week+	3/week+

PAPER AND ALLIED PRODUCTS

MINIMUM REQUIREMENTS FOR SIC 2600-2699

EFFLUENT LIMITED

	REQUIRED TEST	LOCATION	FREQUENCY			
			CLASS	CLASS	CLASS	CLASS
			I	II	III	IV
1.	pH	E	Weekly	Weekly	3/week	Daily
2.	Temperature, °C	E	Weekly	Weekly	3/week	Daily

3.	BOD, 5-day, 20°C	E	2/month	Weekly	3/week	Daily
4.	TSS	E	2/month	Weekly	3/week	Daily
5.	Total Nitrogen	E	*	*	*	*
6.	Total Phosphorus	E	*	*	*	*
7.	Toxics and Toxicity		**	**	**	**

WATER QUALITY LIMITED

1.	Dissolved Oxygen	E	Weekly	Weekly	3/week	Daily
2.	Dissolved Oxygen	U,D	Weekly	Weekly	3/week+	3/week+
3.	pH	E	Weekly	Weekly	3/week	Daily
4.	Temperature, °C	E	Weekly	Weekly	3/week	Daily
5.	Temperature, °C	U,D	Weekly	Weekly	3/week+	3/week+
6.	BOD, 5-day, 20°C	E	2/month	Weekly	3/week	Daily
7.	TSS	E	2/month	Weekly	3/week	Daily
8.	Total Nitrogen	E	*	*	*	*
9.	Total Phosphorus	E	*	*	*	*
10.	Toxics and Toxicity		**	**	**	**
11.	Conductivity	E	Weekly	Weekly	3/week	Daily
12.	Conductivity	U,D	Weekly	Weekly	3/week+	3/week+

CHEMICAL AND ALLIED PRODUCTS

MINIMUM REQUIREMENTS FOR SIC 2800-2899

EFFLUENT LIMITED

	REQUIRED TEST	LOCATION	FREQUENCY			
			CLASS	CLASS	CLASS	CLASS
			I	II	III	IV
1.	pH	E	Weekly	Weekly	3/week	Daily
2.	Temperature, °C	E	Weekly	Weekly	3/week	Daily
3.	BOD, 5-day, 20°C	E	2/month	Weekly	3/week	Daily
4.	TSS	E	2/month	Weekly	3/week	Daily
5.	Total Nitrogen	E	*	*	*	*
6.	Total Phosphorus	E	*	*	*	*
7.	Toxics and Toxicity		**	**	**	**

WATER QUALITY LIMITED

1.	Dissolved Oxygen	E	Weekly	Weekly	3/week	Daily
2.	Dissolved Oxygen	U,D	Weekly	Weekly	3/week+	3/week+
3.	pH	E	Weekly	Weekly	3/week	Daily
4.	Temperature, °C	E	Weekly	Weekly	3/week	Daily
5.	Temperature, °C	U,D	Weekly	Weekly	3/week+	3/week+
6.	BOD, 5-day, 20°C	E	2/month	Weekly	3/week	Daily
7.	TSS	E	2/month	Weekly	3/week	Daily
8.	Total Nitrogen	E	*	*	*	*
9.	Total Phosphorus	E	*	*	*	*
10.	Toxics and Toxicity		**	**	**	**
11.	Conductivity	E	Weekly	Weekly	3/week	Daily
12.	Conductivity	U,D	Weekly	Weekly	3/week+	3/week+

PETROLEUM REFINING AND RELATED INDUSTRIES

MINIMUM REQUIREMENTS FOR SIC 2900-2999

EFFLUENT LIMITED

	REQUIRED TEST	LOCATION	FREQUENCY			
			CLASS	CLASS	CLASS	CLASS
			I	II	III	IV
1.	pH	E	Weekly	Weekly	3/week	Daily
2.	Temperature, °C	E	Weekly	Weekly	3/week	Daily
3.	BOD, 5-day, 20°C	E	2/month	Weekly	3/week	Daily
4.	TSS	E	2/month	Weekly	3/week	Daily
5.	Total Phenols	E	2/month	Weekly	3/week	Daily
6.	Oil and Grease	E	2/month	Weekly	3/week	Daily
7.	Total Nitrogen	E	*	*	*	*
8.	Total Phosphorus	E	*	*	*	*
9.	Toxics and Toxicity		**	**	**	**

WATER QUALITY LIMITED

1.	Dissolved Oxygen	E	Weekly	Weekly	3/week	Daily
2.	Dissolved Oxygen	U,D	Weekly	Weekly	3/week+	3/week+

3.	pH	E	Weekly	Weekly	3/week	Daily
4.	Temperature, °C	E	Weekly	Weekly	3/week	Daily
5.	Temperature, °C	U,D	Weekly	Weekly	3/week+	3/week+
6.	BOD, 5-day, 20°C	E	2/month	Weekly	3/week	Daily
7.	TSS	E	2/month	Weekly	3/week	Daily
8.	Total Phenols	E	2/month	Weekly	3/week	Daily
9.	Oil and Grease	E	2/month	Weekly	3/week	Daily
10.	Total Nitrogen	E	*	*	*	*
11.	Total Phosphorus	E	*	*	*	*
12.	Toxics and Toxicity		**	**	**	**
13.	Conductivity	E	Weekly	Weekly	3/week	Daily
14.	Conductivity	U,D	Weekly	Weekly	3/week+	3/week+

LEATHER AND LEATHER PRODUCTS

MINIMUM REQUIREMENTS FOR SIC 3100-3199

EFFLUENT LIMITED

	REQUIRED TEST	LOCATION	FREQUENCY			
			CLASS	CLASS	CLASS	CLASS
			I	II	III	IV
1.	pH	E	Weekly	Weekly	3/week	Daily
2.	Temperature, °C	E	Weekly	Weekly	3/week	Daily
3.	BOD, 5-day, 20°C	E	2/month	Weekly	3/week	Daily
4.	TSS	E	2/month	Weekly	3/week	Daily
5.	COD	E	2/month	Weekly	Weekly	Daily
6.	Ammonia Nitrogen	E	Monthly	Weekly	Weekly	Weekly
7.	Oil and Grease	E	2/month	Weekly	3/week	Daily
8.	Turbidity	E	Weekly	3/week	Daily	Daily
9.	Total Nitrogen	E	*	*	*	*
10.	Total Phosphorus	E	*	*	*	*
11.	Toxics and Toxicity		**	**	**	**

WATER QUALITY LIMITED

1.	Dissolved Oxygen	E	Weekly	Weekly	3/week	Daily
2.	Dissolved Oxygen	U,D	Weekly	Weekly	3/week+	3/week+

3.	pH	E	Weekly	Weekly	3/week	Daily
4.	Temperature, °C	E	Weekly	Weekly	3/week	Daily
5.	Temperature, °C	U,D	Weekly	Weekly	3/week+	3/week+
6.	BOD, 5-day, 20°C	E	2/month	Weekly	3/week	Daily
7.	TSS	E	2/month	Weekly	3/week	Daily
8.	COD	E	2/month	Weekly	3/week	Daily
9.	Ammonia Nitrogen	E	2/month	Weekly	3/week	Daily
10.	Oil and Grease	E	2/month	Weekly	3/week	Daily
11.	Turbidity	E	Weekly	Weekly	3/week	Daily
12.	Total Nitrogen	E	*	*	*	*
13.	Total Phosphorus	E	*	*	*	*
14.	Toxics and Toxicity		**	**	**	**
15.	Conductivity	E	Weekly	Weekly	3/week	Daily
16.	Conductivity	U,D	Weekly	Weekly	3/week+	3/week+

FABRICATED METAL PRODUCTS EXCEPT ORDINANCE:MACHINERY AND TRANSPORTATION

EQUIPMENT MACHINERYELECTRICAL MACHINERY, EQUIPMENT AND SUPPLIES

MINIMUM REQUIREMENTS FOR SIC 3400-3699

EFFLUENT LIMITED

	REQUIRED TEST	LOCATION	FREQUENCY			
			CLASS	CLASS	CLASS	CLASS
			I	II	III	IV
1.	pH	E	Weekly	Weekly	3/week	Daily
2.	Temperature, °C	E	Weekly	Weekly	3/week	Daily
3.	Oil and Grease	E	2/month	Weekly	3/week	Daily
4.	Total Nitrogen	E	*	*	*	*
5.	Total Phosphorus	E	*	*	*	*
6.	Toxics and Toxicity		**	**	**	**
7.	Dissolved Oxygen	E	Weekly	Weekly	3/week	Daily

WATER QUALITY LIMITED

1.	Dissolved Oxygen	E	Weekly	Weekly	3/week	Daily
2.	pH	E	Weekly	Weekly	3/week	Daily
3.	Temperature, °C	E	Weekly	Weekly	3/week	Daily

4.	Oil and Grease	E	2/month	Weekly	3/week	Daily
5.	Total Nitrogen	E	*	*	*	*
6.	Total Phosphorus	E	*	*	*	*
7.	Toxics and Toxicity		**	**	**	**

ELECTRICAL AND GAS SERVICES

MINIMUM REQUIREMENTS FOR SIC 4900-4939

EFFLUENT LIMITED

	REQUIRED TEST	LOCATION	FREQUENCY			
			CLASS	CLASS	CLASS	CLASS
			I	II	III	IV
1.	pH	E	Weekly	Weekly	Weekly	Weekly
2.	Temperature, °C	E	Weekly	Weekly	Weekly	Weekly
3.	Total Nitrogen	E	*	*	*	*
4.	Total Phosphorus	E	*	*	*	*
5.	Toxics and Toxicity		**	**	**	**

WATER QUALITY LIMITED

1.	Dissolved Oxygen	E	Weekly	Weekly	Weekly	Weekly
2.	pH	E	Weekly	Weekly	Weekly	Weekly
3.	Temperature, °C	E	Weekly	Weekly	Weekly	Weekly
4.	Total Nitrogen	E	*	*	*	*
5.	Total Phosphorus	E	*	*	*	*
6.	Toxics and Toxicity		**	**	**	**

Note: The following monitoring for steam electric generating establishments discharging once through cooling water or cooling tower blowdown shall be required whether or not the discharge is from a classified facility.

	REQUIRED TEST	LOCATION	FREQUENCY			
			CLASS	CLASS	CLASS	CLASS
			I	II	III	IV
1.	Temperature, °C	E	Cont.	Cont.	Cont.	Cont.
2.	Temperature, °C	U, D	3/week+	3/week+	3/week+	3/week+
3.	Flow		Continuous	Continuous	Continuous	Continuous

during during during during
discharge discharge discharge discharge

WATER SUPPLY PLANTS

MINIMUM REQUIREMENTS FOR SIC 4941
EFFLUENT LIMITED

	REQUIRED TEST	LOCATION	FREQUENCY			
			CLASS	CLASS	CLASS	CLASS
			I	II	III	IV
1.	Settleable Solids	E	Weekly	Weekly	Weekly	Weekly
2.	TSS	E	2/month	2/month	2/month	2/month
3.	Turbidity	E	Weekly	Weekly	Weekly	Weekly
4.	pH	E	Weekly	Weekly	Weekly	Weekly
5.	Chloride	E	Weekly	Weekly	Weekly	Weekly

DOMESTIC WASTEWATER AND OTHER FACILITIES DISCHARGING PRIMARILY DOMESTIC

MINIMUM REQUIREMENTS FOR SIC 4952
EFFLUENT LIMITED

	REQUIRED TEST	LOCATION	FREQUENCY			
			CLASS	CLASS	CLASS	CLASS
			I	II	III	IV
1.	pH	E	2/month	Weekly	3/week	Daily
2.	Temperature, °C	E	Weekly	Weekly	3/week	Daily
3.	BOD, 5-day, 20°C	I,E	2/month	Weekly	3/week	Daily
4.	TSS	I,E	2/month	Weekly	3/week	Daily
5.	Ammonia Nitrogen	E	Monthly	2/month	Weekly	3/week
6.	Fecal Coliform	E	2/month	Weekly	3/week	Daily
7.	Total Nitrogen	E	*	*	*	*
8.	Total Phosphorus	E	*	*	*	*
9.	Toxics and Toxicity		**	**	**	**

WATER QUALITY LIMITED

1.	Dissolved Oxygen	E	Weekly	Weekly	3/week	Daily
2.	Dissolved Oxygen	U,D	Weekly	Weekly	3/week+	3/week+
3.	pH	E	2/month	Weekly	3/week	Daily
4.	Temperature, °C	E	Daily	Daily	Daily	Daily
5.	Temperature, °5	U,D	Weekly	Weekly	3/week+	3/week+
6.	BOD, 5-day, 20°C	E,I <u>I,E</u>	2/month	Weekly	3/week	Daily
7.	TSS	E,I <u>I,E</u>	2/month	Weekly	3/week	Daily
8.	Ammonia Nitrogen	E	2/month	Weekly	3/week	Daily
9.	Residual Chlorine	E	2/week	2/week	3/week	Daily
10.	Fecal Coliform	E	2/month	Weekly	3/week	Daily
11.	Fecal Coliform	U,D	2/month	Weekly	3/week+	3/week+
12.	Conductivity	E	Weekly	Weekly	3/week	Daily
13.	Conductivity	U,D	Weekly	Weekly	3/week+	3/week+
14.	Total Nitrogen	E	*	*	*	*
15.	Total Phosphorus	E	*	*	*	*
16.	Toxics and Toxicity		**	**	**	**

SERVICES

MINIMUM REQUIREMENTS FOR SIC 7000-8999

EFFLUENT LIMITED

	REQUIRED TEST	LOCATION	FREQUENCY			
			CLASS I	CLASS II	CLASS III	CLASS IV
1.	pH	E	Weekly	Weekly	3/week	Daily
2.	Temperature, °C	E	Weekly	Weekly	3/week	Daily
3.	BOD, 5-day, 20°C	E	2/month	Weekly	3/week	Daily
4.	TSS	E	2/month	Weekly	3/week	Daily
5.	Ammonia Nitrogen	E	Monthly	2/month	Weekly	3/week
6.	Detergents (MBAS)	E	2/month	Weekly	3/week	Daily
7.	Fecal Coliform	E	2/month	Weekly	3/week	Daily
8.	Total Nitrogen	E	*	*	*	*
9.	Total Phosphorus	E	Monthly	2/month	Weekly	3/week
10.	Toxics and Toxicity		**	**	**	**

WATER QUALITY LIMITED

1

1.	Dissolved Oxygen	E	Weekly	Weekly	3/week	Daily
2.	Dissolved Oxygen	U,D	Weekly	Weekly	3/week+	3/week+
3.	pH	E	Weekly	Weekly	3/week	Daily
4.	Temperature, °C	E	Weekly	Weekly	3/week	Daily
5.	Temperature, °C	U,D	Weekly	Weekly	3/week+	3/week+
6.	BOD, 5-day, 20°C	E	2/month	Weekly	3/week	Daily
7.	TSS	E	2/month	Weekly	3/week	Daily
8.	Ammonia Nitrogen	E	Monthly	2/month	Weekly	3/week
9.	Detergents (MBAS)	E	2/month	Weekly	3/week	Daily
10.	Fecal Coliform	E	2/month	Weekly	3/week	Daily
11.	Total Nitrogen	E	*	*	*	*
12.	Total Phosphorus	E	*	*	*	*
13.	Toxics and Toxicity		**	**	**	**
14.	Conductivity	E	Weekly	Weekly	3/week	Daily
15.	Conductivity	U,D	Weekly	Weekly	3/week+	3/week+

2

3 + Upstream and Downstream monitoring in water quality limited waters is to be conducted three times per week
 4 during June, July, August, and September, and once per week during the rest of the year.

5

6 * Total Nitrogen and Phosphorus Monitoring

7

8 (1) Monitoring Requirements

9 (A) All facilities equal to or greater than 50,000 gpd, shall monitor for total N and P.

10 (B) Facilities less than 50,000 gpd shall monitor for total N and P when discharging into
 11 nutrient sensitive waters as designated by the Division.

12 (2) Monitoring frequency for total N and P is based on river subbasins in two separate areas of the state
 13 as follows:

14 (A) Western area includes the French Broad, Broad, Savannah, New, Watauga, Little
 15 Tennessee, and Hiwassee:

	Facility Design Capacity:	Frequency
16	(i) 50,000 gpd or higher	Semi-annually
17	(ii) 1,000,000 gpd or higher	Quarterly.

18 (B) Piedmont and Eastern area includes the Catawba, Lumber, Yadkin, Cape Fear, Chowan,
 19 Neuse, Pasquotank, Roanoke, Tar-Pamlico, and White Oak:

	Facility Design Capacity	Frequency
20	(i) 50,000 gpd or higher	Quarterly

22

(ii) 1,000,000 gpd or higher Monthly.

(3) Definition for Total Nitrogen and Total Phosphorus:

(A) Total Nitrogen shall be the sum of total ~~kjeldahl~~ Kjeldahl nitrogen, nitrate nitrogen, and nitrite nitrogen expressed as "N" in milligrams per liter ~~(mg/l).~~ (mg/L).

(B) Total Phosphorus shall include all orthophosphates and condensed phosphates, both dissolved and particulate, organic and inorganic, expressed as "P" in milligrams per liter ~~(mg/l).~~ (mg/L).

** Specific test type, conditions, and limitations will be defined by permit. Toxicity limits will be applied to all major discharges and all discharges of complex wastewater. Toxicity limitations and monitoring requirements may be applied to permits for other discharges when, in the opinion of the Director, such discharge may impair the best use of the receiving water by the discharge of toxic substances in toxic amounts.

Specific frequency will be defined by individual permit conditions. For most facilities with continuous and regularly occurring discharges, frequency will be defined as a minimum of quarterly.

History Note: Authority G.S. 143-215.65; 143-215.66; 143-215.68;

Eff. February 1, 1976;

Amended Eff. April 1, 1993; December 1, 1984; November 1, ~~1978.~~ 1978;

Readopted May 1, 2019.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02B .0511

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 that the following technical changes be made:

On line 6, please change "rules" to "regulations" in "federal rules"

*On line 6-7, what is meant by "in which case the separately adopted procedure governs"? do you mean these Rules? If so, please consider saying something like "... procedural details of the federal **regulations** differ from procedures adopted elsewhere in this Section, **these Rules shall apply.**"*

What is the intent of (b)? Is it just to make sure that your regulated public is aware that additional portions of the CFRs may have been incorporated elsewhere in this Section?

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

Amber May
Commission Counsel
Date submitted to agency: Thursday, April 4, 2019

1 15A NCAC 02B .0511 is adopted as published in 32:21 NCR 1943 as follows:

2
3 **15A NCAC 02B .0511 INCORPORATION BY REFERENCE**

4 (a) The following sections of Title 40 of the Code of Federal Regulations (CFR) are incorporated by reference,
5 including subsequent amendments and editions, and shall apply throughout this Section except where procedural
6 details of the federal rules differ from procedures adopted elsewhere in this section, in which case the separately
7 adopted procedure governs. The current version of these regulations can be accessed free of charge at
8 <http://www.gpo.gov/fdsys/>.

- 9 (1) 40 CFR 122.2, 124.2, and 125.2: Definitions;
- 10 (2) 40 CFR 122.4: Prohibitions;
- 11 (3) 40 CFR 122.5 (a) and (b): Effect of permit;
- 12 (4) 40 CFR 122.7 (b) and (c): Confidential information;
- 13 (5) 40 CFR 122.21 (a)-(b), (c)(2), (e)-(k), (m)-(p), (q), and (r): Application for a permit;
- 14 (6) 40 CFR 122.22: Signatories;
- 15 (7) 40 CFR 122.23: Concentrated animal feeding operations;
- 16 (8) 40 CFR 122.24: Concentrated aquatic animal production facilities;
- 17 (9) 40 CFR 122.25: Aquaculture projects;
- 18 (10) 40 CFR 122.26: Storm water discharges;
- 19 (11) 40 CFR 122.27: Silviculture;
- 20 (12) 40 CFR 122.28: General permits;
- 21 (13) 40 CFR 122.29 (a), (b), and (d): New sources and new dischargers;
- 22 (14) 40 CFR 122.30: NPDES stormwater regulations for small MS4s: objectives;
- 23 (15) 40 CFR 122.31: NPDES stormwater regulations: role of Tribes;
- 24 (16) 40 CFR 122.32: NPDES stormwater regulations for small MS4s: applicability;
- 25 (17) 40 CFR 122.33: NPDES stormwater regulations for small MS4s: application for permit;
- 26 (18) 40 CFR 122.34: NPDES stormwater regulations for small MS4s: permit requirements;
- 27 (19) 40 CFR 122.35: NPDES stormwater regulations for small MS4s: shared responsibilities;
- 28 (20) 40 CFR 122.36: NPDES stormwater regulations for small MS4s: compliance;
- 29 (21) 40 CFR 122.37: NPDES stormwater regulations for small MS4s: evaluation;
- 30 (22) 40 CFR 122.41 (a)(1) and (b) through (n): Applicable permit conditions;
- 31 (23) 40 CFR 122.42: Conditions applicable to specified categories of permits;
- 32 (24) 40 CFR 122.43: Establishing permit conditions;
- 33 (25) 40 CFR 122.44: Establishing NPDES permit conditions;
- 34 (26) 40 CFR 122.45: Calculating permit conditions;
- 35 (27) 40 CFR 122.46: Duration;
- 36 (28) 40 CFR 122.47 (a): Schedules of compliance;
- 37 (29) 40 CFR 122.48: Monitoring requirements;

- (30) 40 CFR 122.50: Disposal into wells;
- (31) 40 CFR 122.61: Permit transfer;
- (32) 40 CFR 122.62: Permit modification;
- (33) 40 CFR 122.64: Permit termination;
- (34) 40 CFR 124.3 (a): Application for a permit;
- (35) 40 CFR 124.5 (a), (c), (d), and (f): Modification of permits;
- (36) 40 CFR 124.6 (a), (c), (d), and (e): Draft permit;
- (37) 40 CFR 124.8: Fact sheets;
- (38) 40 CFR 124.10 (a)(1)(ii), (a)(1)(iii), (a)(1)(v), (b), (c), (d), and (e): Public notice;
- (39) 40 CFR 124.11: Public comments and requests for hearings;
- (40) 40 CFR 124.12 (a): Public hearings;
- (41) 40 CFR 124.17 (a) and (c): Response to comments;
- (42) 40 CFR 124.56: Fact sheets;
- (43) 40 CFR 124.57 (a): Public notice;
- (44) 40 CFR 124.59: Comments from government agencies;
- (45) 40 CFR 124.62: Decision on variances;
- (46) 40 CFR Part 125, Subparts A (Technology-Based Treatment Requirements), B (Aquaculture), D (Fundamentally Different Factors), H (Alternative Limitations, CWA Section 316(a)), I (Cooling Water Intake Structures, New Facilities, CWA Section 316(b)), J (Cooling Water Intake Structures, Existing Facilities, CWA Section 316(b)), and N (Cooling Water Intake Structures, Offshore Oil and Gas Facilities, CWA Section 316(b));
- (47) 40 CFR Parts 129 (Toxic Pollutant Effluent Standards) and 133 (Secondary Treatment Regulation), and Subchapter N (Effluent Guidelines and Standards);
- (48) 40 CFR Part 3: Electronic reporting;
- (49) 40 CFR Part 136: Guidelines for establishing test procedures for the analysis of pollutants; and
- (50) 40 CFR 401.15: List of toxic pollutants pursuant to CWA Section 307(a)(1).
- (b) This Rule is not an exclusive list of federal regulations adopted by reference in this Section. Other rules of the Section incorporate some of these same federal regulations for clarity or emphasis and may incorporate additional regulations not listed in Paragraph (a) of this Rule.

History Note: Authority G.S. 143-211(c); 143-215.1(b)(4); 143B-282(5);
Eff. May 1, 2019.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02H .0101

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 that the following technical changes be made:

In (a), line 6, I don't understand the use of "et. seq." here.

Please change the commas to semi-colons at the end of (a)(1) through (3).

Please delete Paragraph (b) as there is no need to provide this information for your rules or State statutes. Please also delete "(a)" since there will no longer be a "(b)"

Please put the authority in your History Note in numerical order.

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

Amber May
Commission Counsel
Date submitted to agency: Thursday, April 4, 2019

1 15A NCAC 02H .0101 is readopted as published in 32:21 NCR 1943 as follows:

2
3 **15A NCAC 02H .0101 PURPOSE**

4 (a) ~~These~~ The Rules implement G.S. 143-215.1 which requires permits for control of sources of water pollution by
5 providing of this Section set forth the requirements and procedures for application and issuance of state NPDES
6 permits pursuant to G.S. 143-215.1, et seq., for the control of point sources of water pollution. ~~a discharge from an~~
7 ~~outlet, point source, or disposal system discharging to the surface waters of the state, and for the construction, entering~~
8 ~~a contract for construction, and operation of treatment works with such a discharge (see Section .0200 of this~~
9 ~~Subchapter regarding permits for disposal systems not discharging to the surface waters of the state). These Rules also~~
10 ~~contain the requirements and procedures for issuance of state permits for pretreatment facilities. (See Section .0900~~
11 ~~of this Subchapter for rules for permits issued by local pretreatment programs).~~ These Rules apply to the following
12 state permits and authorizations:

- 13 (1) NPDES permits for the discharge of waste or stormwater from an outlet, point source, or disposal
14 system to surface waters of the state,
15 (2) NPDES permits for the discharge of stormwater in accordance with Rule .0126 of this Section,
16 (3) authorizations or permits for the construction, entering a contract for construction, and operation of
17 treatment works with such a discharge, and
18 (4) permits for the discharge of waste from a pretreatment facility to a disposal system that discharges
19 to surface waters of the state.

20 (b) Rules and Statutes referenced in this Section ~~may be obtained by writing or visiting the Division of Environmental~~
21 ~~Management, Water Quality Section's offices at the following locations:~~ can be accessed free of charge through the
22 Department of Environmental Quality web site (<http://deq.nc.gov/>).

23 Permits and Engineering Unit, Archdale Building
24 P.O. Box 29535, 512 N. Salisbury St., Raleigh, N.C. 27626-0535
25 Raleigh Regional Office
26 3800 Barrett Dr., Raleigh, N.C. 27611
27 Asheville Regional Office
28 59 Woodfin Pl.,
29 Asheville, N.C. 28802
30 Mooresville Regional Office
31 919 N. Main St.,
32 Mooresville, N.C. 28115
33 Fayetteville Regional Office
34 Wachovia Bldg. Suite 714,
35 Fayetteville, N.C. 28301
36 Washington Regional Office
37 1424 Carolina Avenue,

~~Washington, N.C. 27889~~
~~Wilmington Regional Office~~
~~127 Cardinal Drive Extension,~~
~~Wilmington, N.C. 28405-3845~~
~~Winston Salem Regional Office~~
~~8025 North Point Blvd.,~~
~~Winston Salem, N.C. 27106~~

History Note: Authority G.S. 143-215.3(a)(1); 143-215.1;
Eff. February 1, 1976;
Amended Eff. August 3, 1992; August 1, 1988; October 1, 1987; December 1, ~~1984.~~ 1984.
Readopted Eff. May 1, 2019.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02H .0102

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 that the following technical changes be made:

In (a), what is meant by "these Rules"? Do you mean "The Rules in this Section"?

Please delete "or" at the end of (a)(1) and (2).

Please change "which" to "that" in (a)(4).

In (b)(4), what is meant by "other persons specifically exempted in these Rules"? What is your authority for this? 143-215.1(a6) appears to set forth when permits are not required. I don't see that you all have authority to do this through rule.

Please put the authority in your History Note in numerical order.

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

Amber May
Commission Counsel
Date submitted to agency: Thursday, April 4, 2019

1 15A NCAC 02H .0102 is readopted as published in 32:21 NCR 1943 as follows:

2
3 **15A NCAC 02H .0102 SCOPE**

4 (a) These Rules apply to all persons:

- 5 (1) discharging or proposing to discharge ~~waste~~ waste, directly or indirectly, from a point source to the
6 surface waters of the state; or
7 (2) constructing or proposing to construct a treatment or pretreatment works with a discharge as
8 described in ~~Part Subparagraph (1) or (2)~~ Paragraph; or
9 (3) ~~operate~~ operating or ~~propose~~ proposing to operate a treatment works with a discharge as described
10 in ~~Part Subparagraph (1) or (2)~~ Paragraph; or
11 (4) discharging or proposing to discharge stormwater which results in water pollution.

12 ~~(b) This Rule does~~ These Rules do not apply to:

- 13 (1) those persons who have obtained a permit from a local pretreatment control ~~authority~~, authority that
14 is authorized to issue such permits, and whose permits under a local pretreatment program was
15 approved in accordance with Section .0900 of this Subchapter. Subchapter;
16 (2) sanitary sewage systems or solid waste management facilities that are permitted under the authority
17 of the Commission for Public Health; and
18 (3) other persons or activities specifically exempted in these Rules.

19
20 *History Note:* *Authority G.S. 143-215.3(a)(1); 143-215.1; 143-215.3(a)(14);*
21 *Eff. February 1, 1976;*
22 *Amended Eff. March 1, 1993; November 1, 1987; December 1, ~~1984~~. 1984;*
23 *Readopted Eff. May 1, 2019.*
24

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02H .0103

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 that the following technical changes be made:

Since "Commission" is already defined in 143-212 and you have already provided the cross-reference to this Statute on line 1, please delete Item (1).

Please delete Item (6) since it is already defined in 143-212.

Item (7) and (9), please consider deleting "or both", it seems unnecessary.

In Item (7), would the "director" of DEQ be the Secretary?

In Item (7), please change "his" to "his or her"

In Items (7) and (9), please consider changing "whichever is the permitting authority in a particular instance" to "whichever is applicable."

In (11)(a) through (c), please begin each with lower-case letters, change the periods to semi-colons in (a) and (b), and add an "and" or "or", whichever is intended (I think "or") at the end of (11)(b).

In 11(a), change "which" to "that" in "which physically"

In (11)(a), please consider saying "... that have been legally constructed. For purposes of this definition, "legally constructed" means that the facility received approval from the health department or other required agency in accordance with the applicable rules, statutes, and federal regulations prior to construction, or was constructed prior to any regulatory requirements (but see my note on this.)" You can do this right in (11)(a).

In (11)(a), what is meant by "prior to any regulatory requirements"? Do you mean prior to 1978? Can you provide some additional information?

In (11)(c), delete "a token or" and "actual"

Amber May
Commission Counsel
Date submitted to agency: Thursday, April 4, 2019

In Item (12), delete or define “similar”

In Item (16), please begin (a) through (c) with lower case letters, change the periods to semi-colons at the end of (a) and (b) and add “and” at the end of (b).

In (16)(b), please change “which” to “that” in “which physically.” Please also consider revising this Subitem to read “... are constructed without required agency approvals (but please note my thoughts on this language.” What is meant by “agency approval”? Is this beyond the permitting requirements? Please provide some additional information (perhaps a cross-reference) to the required “agency approval”

In (16)(c), please change “which” to “that” in “which have”, delete “have received”, and add a comma in between “construct” and “but” so that it reads “facilities that have received an NPDES Permit and an Authorization to Construct, but have not...”

In (16)(c), please move lines 24-27 to the end of (16)(c) since “significant construction” isn’t contained elsewhere in this Item.

In (16), line 25 delete “a token or” and “actual”

In Item (16), should lines 21-23 be a Subitem of (16)? It appears as though it should. Here, could you just say “(d) increases in treatment plant hydraulic capacity that has not received an Authorization to Construct.”

ON line 21, delete the comma in between “capacity” and “which” and change “which” to “that”

On line 22, if you decide that this language is not appropriate for its own Subparagraph and you need this language, what are “other requirements”? By “... new effluent limitations and other requirements, if applicable, would be imposed for the entire facility” do you simply mean that if there’s an increase then they would need to meet the requirements of these Rules? If so, just say that. In any event, please change “would” to “shall” Also, wouldn’t this language apply to all “new” facilities, not just those increasing hydraulic capacity?

In Item (17), is “of which is commenced on or after... Agency” necessary? Given (17) and (18), I don’t think it is.

In Item (18), what are standards of performance? Are these the EPA requirements?

In Item (19), delete or define “formal”

In Item (19), please provide a cross-reference to the applicable “application” and take that word out of quotations.

In Item (20), should there be an “and” in between “product transfer” and “loading, unloading, and related areas”?

In Item (20), line 2, add a comma in between “areas” and “but does” and on line 4, in between “facilities” and “are included”

In Item (20), delete or define “primarily”

Amber May
Commission Counsel
Date submitted to agency: Thursday, April 4, 2019

In Item (22), delete or define “discernible”, “confined” and “discrete.” Are these terms of art? Please also delete “specifically” in “but specifically not limited to”

In Item (24), what is meant by “regulation”? Is this referring to the CFR or your Rules?

In Item (26), delete “presently”

In Item (27), change “to remove sand” to “that removes”

Out of curiosity – why have you specifically included seafood packing facilities, trout packing facilities, and trout farms. I only ask because I don’t see these separated out elsewhere in your rules or statutes (and I’m not sure why it’s being defined since not all of these terms are used.)

In Item (28), please change “which” to “that” in “which is engaged” and “which “has”

In Item (28), please consider saying “... and rinse water, including trout packing facilities” as opposed to making this two separate sentences.

Delete Item (31) since it’s already defined in statute.

In Item (32), delete or define “normal”

In Item (33), change “which” to “that” in “which is engaged” and “which has”

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

Amber May
Commission Counsel
Date submitted to agency: Thursday, April 4, 2019

1 15A NCAC 02H .0103 is readopted as published in 32:21 NCR 1943 as follows:

2
3 **15A NCAC 02H .0103 DEFINITION OF TERMS**

4 The terms used in this Section shall be as defined in G.S. ~~443-213~~ 143-212 and G.S. 143-213; the federal Clean Water
5 Act (33 U.S.C. 1251 et seq.); 40 CFR Parts 122, 124, and 125; and as follows:

- 6 (1) "Authorization to Construct" means a permit required for the construction of water pollution control
7 facilities necessary to comply with the terms and conditions of an NPDES permit.
- 8 (2) "Certificate of Coverage" means the approval given dischargers that meet the requirements of
9 coverage under a general permit.
- 10 (3) "Commission" means the Environmental Management Commission.
- 11 (4) "Committee" means the NPDES committee of the Environmental Management Commission.
- 12 (5) "Decontamination" means the physical or chemical process of reducing contamination and
13 preventing the spread of contamination from persons and equipment at biological or chemical agent
14 incidents.
- 15 (6) "Department" means the Department of ~~Environment and Natural Resources~~. Environmental
16 Quality or its successor.
- 17 (7) "Director" means the Director of the Division of Water ~~Quality, Resources or Division of Energy,~~
18 ~~Mineral and Land Resources, or both,~~ Department of ~~Environment and Natural Resources~~
19 ~~Environmental Quality, whichever is the permitting authority in a particular instance;~~ or his
20 ~~designee, his designee.~~
- 21 (8) "Discharges associated with biological or chemical decontamination" means the wastewater that is
22 produced during activities intended to reduce potential biological or chemical contaminants and that
23 are performed under the specific conditions listed in 15A NCAC 02H .0106(f)(11).
- 24 (9) "Division" means the Division of Water ~~Quality, Resources or the Division of Energy, Mineral and~~
25 ~~Land Resources, or both,~~ Department of ~~Environment and Natural Resources~~. Environmental
26 Quality, whichever is the permitting authority in a particular instance.
- 27 (10) "EPA" means the United States Environmental Protection Agency.
- 28 (11) "Existing", with respect to implementing the NPDES permitting program, means:
- 29 (a) Facilities which physically exist and have been legally constructed, i.e., health department
30 or other agency approval or constructed prior to any regulatory requirements.
- 31 (b) Facilities which have received an NPDES Permit and have received an Authorization to
32 Construct and have constructed or begun significant construction of any wastewater
33 treatment facilities within the term of the current permit.
- 34 (c) Facilities which have received a phased NPDES Permit and have received an Authorization
35 to Construct for a phase of the permitted flow and have constructed or begun significant
36 construction of the phased wastewater treatment facilities.

For the purpose of this definition, significant construction shall be considered as more than a token or nominal investment of money or other resources in the actual construction of the wastewater treatment facility, based on the facility size, complexity, cost and the required construction time for completion.

(12) "General Permit" means a "permit" issued under G.S. 143-215.1(b)(3) and (4) and 40 CFR 122.28 authorizing a category of similar discharges to surface waters.

(13) "Mine dewatering" means discharges of uncontaminated infiltrate and stormwater from mine excavation and the water that is removed to lower the water table to allow mining in an area.

(14) "Municipality" means a city, town, borough, county, parish, district, or other public body created by or under State law.

(15) "NPDES Permit" means a National Pollutant Discharge Elimination System permit required for the operation of point source discharges in accordance with the requirements of Section 402 of the Federal Water Pollution Control Act, 33 U.S.C. Section 1251 et seq.

(16) "New", with respect to implementing the NPDES permitting program, means:

(a) Proposed facilities that do not have a an NPDES Permit nor have any facilities constructed.

(b) Facilities which physically exist, however are illegally constructed, i.e., no required agency approvals.

(c) Facilities which have received an NPDES Permit and have received an Authorization to Construct but have not begun significant construction of any wastewater treatment facilities within the term of the current permit.

Any increases in treatment plant hydraulic capacity, which has not received an Authorization to Construct shall be considered new and new effluent limitations and other requirements, if applicable, would be imposed for the entire facility.

For the purpose of this definition, significant construction shall be considered as more than a token or nominal investment of money or other resources in the actual construction of the wastewater treatment facility, based on the facility size, complexity, cost and the required construction time for completion.

(17) "New Source" means any industrial ~~installation~~, installation from which there may be a discharge, the construction or modification of which is commenced on or after the date of publication of new source performance standards or pretreatment standards for new sources by the Environmental Protection Agency.

(18) "New Source Performance Standards" means those standards of performance applied to industrial discharges defined as new sources.

(19) "Notice of Intent" means formal written notification to the Division that a discharge, facility or activity is intended to be covered by a general permit and takes the place of "application" used with individual permits.

- (20) "Oil terminal storage facilities" means petroleum bulk storage, product transfer, loading, unloading, and related areas but does not include marinas or facilities primarily engaged in the retail sale of petroleum products. Oil/water separators such as those at maintenance garages, gas stations, and National Guard and military reserve facilities are included in this definition.
- (21) "Once-through non-contact cooling water" means water taken from wells, surface waters, or water supply systems and used in a non-contact cooling system without the addition of biocides or other chemical additives. Boiler blowdown waters are included in this definition. Nuclear and fossil fuel electric generating plants are not included in this definition.
- (22) "Point Source ~~Discharge~~" means any discernible, confined, and discrete conveyance, including, but specifically not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or concentrated animal-feeding operation from which wastes are or may be discharged to the surface waters of the State.
- (23) "POTW" means Publicly Owned Treatment Works.
- (24) "Pretreatment standard" means any regulation containing pollutant discharge limits for indirect dischargers for ensuring compliance with Section 307(b) and (c) of the Clean Water Act, 33 U.S.C. Section 1251 et seq. This term includes prohibited discharge limits and local sewer use ordinance limits.
- (25) "Primary industry" means an industry listed in 40 CFR 122, Appendix A ~~A~~, which is hereby incorporated by reference including any subsequent ~~amendments, amendments and editions~~. ~~Copies of this publication are available from the Government Institutes, Inc., 4 Research Place, Suite 200, Rockville, MD 20850-1714 for a cost of thirty six (\$36.00) each plus four dollars (\$4.00) shipping and handling. Copies are also available at the Division of Water Quality, Resources, Archdale Building, 512 N. Salisbury Street, Raleigh, North Carolina 27604. The current version of these regulations can be accessed free of charge at <http://www.gpo.gov/fdsys/>.~~
- (26) "Professional Engineer" means a person who is presently registered and licensed as a professional engineer by the North Carolina ~~State Board of Registration~~ Examiners For Professional Engineers and ~~Land~~ Surveyors.
- (27) "Sand dredge" means a facility to remove sand from river bottoms. No other mining activities are included in this definition.
- (28) "Seafood packing facility" means a business which is engaged in the sorting and packing of fresh seafood and which has a discharge consisting entirely of washdown and rinse water. Trout packing facilities are included in this definition. Wastewaters from seafood processing plants are not included in this definition.
- (29) "Seafood processing facility" means a business which is engaged in the removal of heads, entrails, fins or scales, filleting, cooking, canning, or preparation of fresh seafood.
- (30) "Staff" means the ~~staff of the Division of Water Quality, Department of Environment and Natural Resources~~. Division, or its successor.

- 1 (31) "Stormwater" is defined in G.S. 143, Article 21.
- 2 (32) "Swimming pool filter backwash" means normal filter backwash water from both public and private
- 3 swimming pools ~~as well as~~ or from spas with backwash filter facilities.
- 4 (33) "Tourist Gem Mine" means a business which is engaged in the recreational practice of removing
- 5 gems and semi-precious stones from mined material.
- 6 (34) "Trout farm" means a facility for the commercial production of trout.
- 7 (35) "Water filtration facility" means backwash filters and sludge disposal systems associated with water
- 8 treatment plants and backwash filters associated with wells.
- 9

10 *History Note: Authority G.S. 106-399.4; 143-215.1(a); 143-215.3(a)(1);*

11 *Eff. February 1, 1976;*

12 *Amended Eff. September 1, 1995; March 1, 1993; August 3, 1992; August 1, 1991;*

13 *Temporary Amendment Eff. May 11, 2001;*

14 *Temporary Amendment Expired on February 26, 2002;*

15 *Amended Eff. April 1, ~~2003~~, 2003;*

16 *Readopted Eff. May 1, 2019.*

17

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02H .0105

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 that the following technical changes be made:

I note that throughout this Rule, you refer to a "processing fee"; however, this is not the statutory language in 143-215.3D. By "processing fee" do you mean "application fee"? Please use consistent language with the statute.

In (a), lines 6 and 9-10, what is meant by "allowed by law and acceptable to the Director"? Please delete this language and say how to file electronically, if you offer this option.

In (a), line 7, by "herein", do you mean "this Rule"?

Please provide some sort of introduction to Subparagraphs (a)(1) through (3). Are these the documents that will need to be submitted and these are what is required to be submitted specifically? If so, could you move the fee as a subparagraph (d) as I assume that you will need that in order to process the request? Also, would all of these need to be submitted? If not, under what circumstance would one be submitted over another?

In (a)(1) through (3), please delete "on forms provided by the Director" (and accompanying language) and say where the forms can be found and what the substantive requirements of the form are, unless this information is already set forth elsewhere in rule, statute, or CFR (see my notes below.)

*In (a)(1), I'm not sure that I understand what is going on here. Is the intent here just to say that when you file, you have to do it on the provided application? Is this necessary? If the intent here is instead to require a specific form, are the contents of the form set forth elsewhere in rule or statute? Please indicates that a form is not a rule, **so long as the substantive requirements of the form are set forth.***

In (a)(2), are the contents of the notice of intent form set forth elsewhere in rule or statute?

In (a)(3), are the contents of the Application to Construct set forth elsewhere in rule or statute?

Amber May
Commission Counsel
Date submitted to agency: Thursday, April 4, 2019

Is the information in (a) related to fees necessary there since you have this in (b)? It appears to be repetitive.

In (b)(1), what is your authority to include "judicial orders" here? What are these?

In (b)(1), please provide some sort of introductory language to (b)(1)(A) through (E). Perhaps something like "and shall be applicable as set forth in this Subparagraph"

In (b)(1)(A), delete "such" in "such application"

In (b)(1)(A), change "is" to "shall be"

In (b)(1)(D), change "will" to "shall" in "will be"

In (b)(1)(D), what is your authority to say that the permit fee will be the same amount as the application for a new permit? 143-215.3D(d) says that "an application for a major modification... shall be... equal to thirty percent of that permit."

In (b)(1)(D), change "are" to "shall be considered" in "are major"

In (b)(1)(E), change "will" to "shall" in "will be charged"

In (b)(2)(B), what is the date for each facility? How is this to be determined by the Director?

What is the intent of (b)(2)(C)? Please review and simplify if possible.

In (b)(2)(D), change "will" to "shall" in "will be billed"

In (b)(2)(D), what is the date for each facility? How is this to be determined by the Director?

In (b)(2)(D), delete "this will normally be the first day of the month of the permit issuance." If the intent here is to say something like "The fee shall be due on the first day of the month of permit issuance, unless otherwise designated by the Director (based upon whatever the due date will be based upon)", then say that.

In (b)(2)(E), at whose discretion may this occur? Is this upon request by the permittee? If so, please add "upon request." If it is at the discretion of the director, please say how this determination will be made.

In (b)(2)(F), I'm not sure that I understand what is going on here – why would someone need to pay an annual fee on a application? Is this with regard to a renewal? Please review and clarify if needed.

In (b)(2)(F), please change "is" to "shall be considered"

In (b)(2)(G), why is this necessary? These appear to be included in NPDES permits pursuant to 143-215.3D.

In (b)(3), change "are" to "shall be" in "are required"

What is the intent of (b)(4)? Do you mean something like "The Division shall revoke a permit for failure to pay the annual fee within 30 days after being billed"? Also, what is meant by "billed"? Do you mean 30 days after you put the notice in the mailbox? Please provide some additional information. If you mean "may", as opposed to "shall", how will it be determined whether you revoke the permit based upon a failure to pay the annual fee.

In (b)(5), delete "This Subparagraph is repealed pursuant to G.S. 143-215.3D" and simply strike the language.

In (c), please move "in addition to applications required in Paragraph (a) of this Rule" to the beginning.

In (c), delete "in a format acceptable to the Director" and say what is actually required.

In (c)(1), change "which" to "that" in "which is proposed"

In (c)(2), what is meant by "environmentally sound alternative" and "reasonably cost effective options"? Are these terms of art?

In (c)(2), how and by whom is the feasibility determination made?

In (c)(3), add a comma in between "works" and "including"

In (c)(3), delete or define "commonly" and "well established"

In (c)(3), delete "detailed"

In (c)(4), delete "general"

Please add "such as" after "references" and take the language in the parenthesis out of the parenthesis.

In (c)(4), change "streams/rivers" to "streams and rivers"

In (c)(6), delete or define "readily" in "readily determined" Also, how is this to be determined?

In (c)(7), delete or define "substantial"

In (d), please consider moving "in addition to applications required in Paragraph (a) of this Rule" to the beginning of this Paragraph.

In (d), what is meant by "in accordance with criteria approved by the Director"? What is this criteria? How is this determined?

For purposes of clarity, please consider breaking Paragraph (e) into subparagraphs assuming that all of this pertains to renewal applications.

In (e), delete "appropriate"

In (e), how does the 180 days go with the 30 days in (b)(4).

In (e), what is meant by "other lawful means acceptable to the Director"? Please either say what these are or provide what "lawful" is and how the Director will make this determination.

In (e), delete "acceptable" in "acceptable residuals management plan"

In (e), are lines 2-4 necessary? Wouldn't be addressed by .0109 and .0111 and statute? If it is necessary, line 3, page 7, change "will not" to "shall not"

On line 4, how will it be determined how long an authorization to construct will be permitted?

Are lines 5-6 necessary? Is the intent here that this language be specific to renewal permits?

In (f), are the contents of this form set forth elsewhere in rule or statute? If not, please provide the substantive requirements and delete "forms approved by the Director"

In (f), what is meant by "applicable supporting information"

In (g), change "which shall meet" to that meets"

In (g), line 14, change "which" to "that" in "which is"

In (g), delete or define "adequately"

In (h), please change "which" to "that" in "which result"

In (h), delete "which will be"

In (h), by "may", do you mean "shall" in "may require"?

In (h), please change "will" to "shall" in "will be considered"

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

Amber May
Commission Counsel
Date submitted to agency: Thursday, April 4, 2019

1 15A NCAC 02H .0105 is readopted as published in 32:21 NCR 1943 as follows:

2
3 **15A NCAC 02H .0105 APPLICATION: PERMIT FEES: ASSESSMENT FOR NEW SOURCES**

4 (a) Except as provided in Paragraphs (d) and (e) of this Rule, any person who discharges or who proposes to discharge
5 pollutants to the surface waters of the state or to a POTW when pretreatment of the wastewater is required shall
6 complete, sign, and submit, in ~~triplicate~~, triplicate, or in an electronic format allowed by law and acceptable to the
7 Director, an application ~~accompanied by the form and~~ processing fee as described herein for each ~~application~~
8 application. Payment of fees shall be made in the form of a check or money order made payable to N.C. Department
9 of ~~Environment, Health, and Natural Resources~~. Environmental Quality, or by electronic means allowed by law and
10 acceptable to the Director.

11 (1) Application for state NPDES or pretreatment permits shall be made on state or EPA forms provided
12 by the Director. State forms shall conform with applicable information requirements specified in 40
13 CFR 122.21, which is hereby incorporated by reference, including any subsequent amendments and
14 editions. The current version of these regulations can be accessed free of charge at
15 <http://www.gpo.gov/fdsys/>. The State NPDES application forms to be used for the various types of
16 discharges are as follows:

17 ~~Std. Form A: All municipal systems greater than or equal to 1.0 MGD and any municipal~~
18 ~~system receiving industrial waste from a primary industry.~~

19 ~~Short Form A: Any municipal system not covered by Std. Form A.~~

20 ~~Short Form B: All agriculture related discharges.~~

21 ~~Std. Form C: All primary industries as listed in 40 CFR 122.21, Appendix A and all other~~
22 ~~industrial~~
23 ~~or process and commercial discharges except~~

24 ~~EPA Forms 1 and 2-C: cooling waters, cooling tower blowdown, and boiler blowdown.~~

25 ~~EPA Forms 1 and 2F: Discharges consisting entirely of stormwater associated with industrial activity.~~

26 ~~EPA Forms 1 and 2D: Discharges consisting of stormwater and non-stormwater.~~

27 ~~Short Form C: Cooling waters, cooling tower blowdown, and boiler blowdown.~~

28 ~~Short Form D: All domestic waste discharges not covered by Std. Form A and Short Form A.~~

29 (2) ~~The Authorization to Construct and Notice of Intent to seek coverage under a general permit shall~~
30 ~~be made on application forms to be used will be supplied by the Division. provided by the Director~~
31 ~~or in a form consistent with that specified in the general permit.~~

32 (3) Application for an Authorization to Construct shall be made on forms provided by the Director.

33 (b) Permit Fees.

34 (1) ~~Permit Application Processing Fees. For every~~ Every application for ~~a new or renewed NPDES~~
35 ~~permits, permit or major modification of an existing NPDES permit, every~~ Notice of Intent to be
36 covered by a general ~~permit permit, or Authorization to Construct, and every application for a~~
37 special order by consent or judicial order shall include a nonrefundable application processing fee

in the amount stated in ~~Subparagraph (b)(5) of this Rule shall be submitted at the time of application.~~
G.S. 143-215.3D.

(A) Each ~~permit or renewal~~ such application or notice of intent is incomplete until the application processing fee is received.

(B) For a facility with multiple discharges under a single permit, the application processing fee shall be set by the single discharge to the waters of the state with the highest fee in the fee schedule.

(C) No application processing fee will be charged for modification of unexpired permits when the modifications are initiated by the Director.

~~(D) An application processing fee of one hundred dollars (\$100.00) will be charged for the minor modifications listed in Rule .0114(b) of this Section.~~

~~(E)(D)~~ A full The application processing fee will be charged for major permit modifications other than those listed in Rule .0114(b) of this Section; this fee requested by the permittee will be in the same amount as shown in Subparagraph (5) of Paragraph (c) of this Rule for applications for new applications/modifications. permits. Modifications other than those minor modifications listed in Rule .0114(b) of this Section are major modifications.

(E) No application processing fee will be charged for renewal of an existing NDPES permit except that, if the permittee also requests a major modification for new or increased flows or other change that requires a substantial evaluation of permit conditions, such as in Paragraph (c) of this Rule, an application processing fee for such major modification shall be charged.

~~(F) Permittees requesting special orders by consent, judicial orders or flow increases under G.S. 143-215.67(b), will pay a fee of four hundred dollars (\$400.00).~~

(2) ~~Annual Administering and Compliance Monitoring Fees. An annual fee for administering and compliance monitoring shall be charged in each year of the term of every NPDES permit, according to the schedule in Subparagraph (b)(5) of this Rule. G.S. 143-215.3D.~~

~~(A) Collection of annual fees shall begin on the effective date of this Rule. If a new permit or major modification is issued, the application fee shall be accepted as payment for the ensuing annual fee for that permit; if the permit or modification is not issued, the application fee shall not be refunded.~~

~~(B) If an existing permit expires but qualifies for administrative extension under Rule .0112 of this Section, Annual annual fees must be paid for any facility operating on an expired permit after the effective date of this Rule. shall continue to be charged as long as the permit remains in effect. The Director shall establish an anniversary date for such a facility and notify the responsible party of the requirement to pay annual administering and compliance monitoring fees.~~

- (C) For a facility with multiple discharges under a single permit, the annual ~~administering and compliance monitoring~~ fee shall be set by the single discharge to the waters of the state with the highest fee in the fee schedule.
- (D) A person with only one permit will be billed annually on an anniversary date to be determined by the Division. This will normally be the first day of the month of permit issuance.
- (E) A person with multiple permits may have annual fees consolidated into one annual bill.
- (F) ~~Any permittee which has maintained full compliance with all permit conditions during the previous calendar year will have its administering and monitoring annual fee reduced by 25 percent. Permittees operating under interim limits, judicial orders, or special orders by consent will not be eligible for any discount. Full compliance will be established if it can be certified by the Director that no Notice of Noncompliance or a Notice of Violation was sent to the permittee during the compliance period being considered. If a Notice of Noncompliance or a Notice of Violation was based on erroneous information, the Director can send a letter of correction to the permittee clearing the record for compliance purposes. Each application or notice of intent submitted pursuant to Paragraph (a) of this Rule is incomplete until annual fees due at the time of application, if any, are received by the Division.~~
- (G) Permit Application Processing Fees and Annual ~~Administering and Compliance Monitoring~~ Fees for pretreatment facilities permitted by the Division shall be at the same rate as provided in ~~Subparagraph (b)(5) of this Rule.~~ G.S. 143-215.3D for NPDES facilities.
- (3) No fees are required to be paid under this Rule by a farmer who submits an application or receives a permit that pertains to farming operations.
- (4) Failure to pay an annual fee within 30 days after being billed ~~may cause~~ is grounds for the Division to initiate action to revoke the permit.
- (5) Schedule of Fees: This SubParagraph is repealed pursuant to G.S. 143-215.3D.

Category	Permit Application Processing Fee		Annual Administerint And Compliance Monitoring	
	New Applications/ Modifications/ Late Renewals	Timely Renewals Without Modifications	Standard	In Compliance
>10,000,000 GPD				
Industrial	\$400.	\$400.	\$1500.	\$1125.

	Domestic/Cooling Water	400.	400.	1500.	1125.
1					
2	1,000,001—10,000,000 GPD				
	Industrial	400.	300.	1500.	1125.
	Domestic/Cooling Water	400.	300.	1200.	900.
3					
4	100,001—1,000,000 GPD				
	Industrial	400.	250.	800.	600.
	Domestic/Cooling Water	400.	250.	600.	450.
5					
6	1,001—100,000 GPD				
	Industrial	400.	200.	600.	450.
	Domestic/Cooling Water	400.	200.	450.	300.
7					
8	<=1,000 GPD and Single—family dwelling	240.	240.	0	0
9					
10	Stormwater—				
11	Municipal Separate Stormwater System Industrial—Activity Stormwater	400. 400.	400. 400.	600. 600.	450. 450.
12					
13	General Permits				
	Construction (Stormwater)	50.	50.	n/a	n/a
	Domestic	240.	240.	n/a	n/a
	Others	400.	400.	n/a	n/a
14					
15	Authorization to Construct				
16	(Permitted Flow)				
	>=100,001 GPD	200.	n/a	n/a	n/a

<=100,000 GPD	150.	n/a	n/a	n/a
<=1,000 GPD	100.	n/a	n/a	n/a

- (6) ~~If the total payment for fees required for all permits under G.S. 143-215.3(a)(1b) for any single facility will exceed seventy five hundred dollars (\$7,500.00) per year, the total for all these fees will be reduced for this facility so that the total payment is seventy five hundred dollars (\$7,500.00) per year.~~
- (7) ~~A portion of the permit application processing fees shown in the fee schedule in Subparagraph (b)(5) of this Rule will be transferred into the Wastewater Treatment Works Emergency Maintenance, Operation and Repair Fund according to the following schedule:~~
- (A) ~~All nonmunicipal facilities treating wastewater which is predominantly domestic waste with design flows of 100,000 gallons per day or less, except single family dwellings, seventy five dollars (\$75.00);~~
- (B) ~~Single family dwellings, forty dollars (\$40.00);~~
- (C) ~~All other facilities, zero.~~
- (8) ~~When the total value of the Wastewater Treatment Works Emergency Maintenance, Operation and Repair Fund, as certified by the State Treasurer, is at least seven hundred fifty thousand dollars (\$750,000.00) at the end of a quarter, the permit application processing fees for facilities with discharges of one hundred thousand gallons per day (100,000 GPD) or less shall be reduced by the amounts being transferred under Subparagraph (7) of this Paragraph. This reduction shall continue until, at the end of some subsequent quarter, the State Treasurer certifies that the fund's balance is less than seven hundred fifty thousand dollars (\$750,000.00), in which case the full amount of the permit application processing fees as listed in Subparagraph (b)(5) of this Rule shall be charged.~~
- (9) ~~In order to avoid violation of the statutory limit that total permit fees collected in any year not exceed 30 percent of the total budgets from all sources of environmental permitting and compliance programs, the Division shall in the first half of each state fiscal year project revenues from all sources including fees for the next fiscal year. If this projection shows that the statutory limit will be exceeded, rulemaking shall be commenced in order to have an appropriately adjusted fee schedule which will avoid excessive revenue collection from permit fees.~~
- ~~(10)(6)~~ Any applicant whose facility qualifies for a general permit under Rule .0127 of this Section ~~may pay the lower fees set in Subparagraph (b)(5) of this Rule~~ shall be charged the amount provided in G.S. 143-215.3D for the appropriate general permit.

(c) Engineering Alternatives Analysis. Applicants for ~~new~~ NPDES permits for new or expanding discharges requiring construction of water pollution control facilities shall in addition to applications required in Paragraph (a) of this Rule, file, in ~~triplicate~~, triplicate or in an electronic format allowed by law and acceptable to the Director, an engineering proposal setting forth the following information:

- (1) a description of the origin, type and flow of waste which is proposed to be discharged. ~~Justification~~
~~The proposal shall include a rationale~~ and a demonstration of need ~~shall be provided for expected~~
~~the projected~~ flow volumes. Flow shall be determined in accordance with 15A NCAC ~~2H-0219(1);~~
02T .0114;
- (2) a summary of the available waste treatment and disposal options that were considered and why the
proposed system and point of discharge were selected; the summary should have sufficient detail to
~~assure~~ establish that the most environmentally sound alternative was selected from the reasonably
cost effective options; in all cases where connection to an area-wide sewerage system is feasible,
such connection thereto shall be required;
- (3) a narrative description of the proposed treatment works including type and arrangement of major
components, in sufficient detail to assure that the proposed facility has the capability to comply with
the permit limits; for commonly used treatment system ~~or~~ components or those with well established
treatment capabilities, detailed plans and specifications need not be submitted until the application
for the authorization to construct; however, detailed plans and specifications shall be required with
the permit application for any system or component without well established treatment capabilities
for the ~~nature type~~ of waste to be treated or degree of treatment needed to meet the permit limits;
- (4) a general location map, showing orientation of the facility with reference to at least two geographic
references (numbered roads, named streams/rivers, etc.);
- (5) a scale location plan of the site showing location of the proposed treatment works and the proposed
point of discharge;
- (6) special studies or modeling ~~may be required~~ in cases where the impacts of the discharge cannot be
readily determined by the Division;
- (7) a statement to demonstrate financial qualification and substantial previous compliance with federal
and state laws, regulations, and rules for the protection of the environment as required by G.S.
143-215.1(b)(4)(b).
- (d) Applicants for new individual NPDES permits requiring construction of stormwater control facilities shall in
addition to applications required in Paragraph (a) of this Rule, design and construct the facilities in accordance with
criteria approved by the ~~Director,~~ Director or shall file ~~in triplicate,~~ an engineering proposal setting forth the
information required in Paragraph (c) of this Rule.
- (e) Applications for permit renewals shall be ~~accomplished~~ made by filing the appropriate application form or forms,
as listed in Paragraph (a) of this Rule, with the applicable processing fee described herein in the form of a check or
~~money order made payable to N.C. Department of Environment, Health, and Natural Resources, fee, if any, as~~
specified in Paragraph (b) of this Rule, at least 180 days prior to expiration of a permit. ~~Renewal requests received~~
~~less than 180 days prior to permit expiration will be required to pay the new application/modification/late renewal fee~~
~~rather than the timely renewal without modification fee.~~ Payment shall be in the form of a check or money order made
payable to the N.C. Department of Environmental Quality or made by other lawful means acceptable to the Director.
The notice and public participation procedures set forth in Rules .0109 and .0111 of this Section shall be followed for

1 each request for permit renewal. An acceptable residuals management plan shall be submitted with the application for
2 permit renewal in accordance with Rule .0138(b)(8) of this Section. Authorizations to Construct permits for
3 wastewater control facilities will not be subject to the notice and public participation procedures set forth in Rules
4 .0109 and .0111 of this Section. Authorizations to Construct may be issued for any length of time, however, the
5 NPDES permit must be in effect at time of construction. All applications are incomplete until required processing fees
6 are received, and incomplete applications may be returned to the applicant.

7 (f) Applications for permits for pretreatment facilities shall be made in triplicate upon forms approved by the Director
8 and submitted along with applicable supporting information to the Division of ~~Environmental Management~~. Water
9 Resources.

10 (g) Applications for permits for new or modified discharges ~~which propose to discharge industrial process or domestic~~
11 ~~wastewater in excess of 500,000 gallons per day or 10 MGD of cooling water~~ to the surface waters that meet the
12 criteria established in or pursuant to G.S. 113A, Article 1, shall file, include, in addition to the ~~applications~~ application
13 forms, fees, and supporting documents required in Paragraphs (a) and ~~(b)(c)~~ of this Rule, an environmental assessment
14 which shall meet the requirements of ~~+ 01 NCAC 25 .0502, .0500.~~ Any assessment which is required by any other
15 state agency or any federal agency shall be deemed to comply with requirements of this Subsection provided aquatic
16 impacts are adequately addressed.

17 (h) Permits which result in construction of facilities which will be funded by public monies may require environmental
18 documentation pursuant to North Carolina Environmental Policy Act, G.S. 113A. NPDES permit applications for
19 which such documentation is required will be considered incomplete until supported by the required documentation.

20 (i) Applicants for permits for new nonmunicipal domestic wastewater discharges shall file a notarized statement
21 indicating whether or not each city or county government having jurisdiction over any part of the lands on which the
22 proposed facility is to be located has a zoning or subdivision ordinance in effect, and, if such an ordinance is in effect,
23 whether or not the proposed facility is consistent with the ordinance.

24 (j) For NPDES permits, a full disclosure of all known toxic components that can be reasonably expected to be in the
25 discharge, including but not limited to those contained in a priority pollutant analysis, must be submitted for all
26 primary industrial direct discharges in accordance with 40 CFR 122.21 Appendix ~~D~~ D, which ~~are~~ is hereby
27 incorporated by reference including any subsequent amendments and editions, and for other direct discharges as
28 required by the Director. ~~This material is available for inspection at the Department of Environment, Health, and~~
29 ~~Natural Resources, Division of Environmental Management, 512 N. Salisbury Street, Raleigh, North Carolina. Copies~~
30 ~~may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington D.C.~~
31 ~~20402-9325 at a cost of thirty dollars (\$30.00). The current version of these regulations can be accessed free of charge~~
32 at <http://www.gpo.gov/fdsys/>.

33
34 *History Note:* Authority G.S. 143-215.1(c); 143-215.1(c)(6); 143-215.3(a); ~~143-215.3B;~~ 143-215.3D;
35 *Eff. February 1, 1976;*
36 *Amended Eff. March 1, 1993; August 1, 1991; October 1, 1990; August 1, ~~1988.~~ 1988;*

1 Readopted Eff. May 1, 2019. (The provisions of the final clause of subparagraph (c)(2) of this Rule
2 (connection to area-wide sewage system) were previously codified in 15A NCAC 02H .0404(e).)
3

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02H .0106

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 that the following technical changes be made:

In (a), is there an electronic option available?

In (b), how will it be determined whether an extension of the deadline will be granted? Please provide the factors that will be used in making this determination. Also, how is someone to make this request?

In (b), delete "Persons proposing a new discharge are encouraged to submit their applications in advance of the 180-day requirement." This is an aspirational statement and it not appropriate for rules.

In (c), add a comma in between "facilities" and "but no"

In (d), please change "which" to "that"

In (e)(1), what is meant by "his duly authorized representative"?

In (e)(1), change "his" to "his or her"

In (e)(2), delete or define "general"

In (e)(4), delete or define "ranking"

In (e)(4), add a comma in between "official" and "or other"

In (e)(4), who is an "other duly authorized employee"

In (f), change "are deemed to be " to "shall be"

What is the overall intent of (f)? I think that this language could be simplified and made clearer.

In (f)(11), delete or define "direct" in "direct supervision"

Amber May
Commission Counsel
Date submitted to agency: Thursday, April 4, 2019

How if (f)(11)(A) to be determined? By the on-scene coordinator?

In (g), delete "Continued Applicability of Permit." This type of introductory language is not used in each paragraph of this Rule.

In (g), change "such" to "the"

In (g), delete or define "properly"

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

Amber May
Commission Counsel
Date submitted to agency: Thursday, April 4, 2019

1 15A NCAC 02H .0106 is readopted as published in 32:21 NCR 1943 as follows:

2
3 **15A NCAC 02H .0106 FILING APPLICATIONS**

4 (a) Permit applications shall be filed with the Director, Division of Water ~~Quality, Resources,~~ 1617 Mail Service
5 Center, Raleigh, North Carolina, 27699-1617.

6 (b) All NPDES permit applications, except those addressed in Paragraph (d) of this Rule, shall be filed at least 180
7 days ~~in advance of the date on which an existing permit expires or in sufficient time prior to the proposed~~
8 ~~commencement of a waste discharge to ensure compliance with all legal procedures.~~ before the date on which the
9 discharge is to commence and, thereafter, at least 180 days before the expiration date of the existing permit, unless
10 permission for a later date has been granted by the Director. Persons proposing a new discharge are encouraged to
11 submit their applications in advance of the 180-day requirement.

12 (c) All Authorization to Construct applications shall be filed at least 90 days in advance of the proposed
13 commencement date of construction of water pollution control facilities but no earlier than the establishment of
14 effluent limitations.

15 (d) All NPDES stormwater construction permit applications shall be filed in advance of the proposed commencement
16 date of land disturbing activity which results in a stormwater discharge.

17 (e) Permit applications filed with the Director shall be signed as follows:

- 18 (1) in the case of corporations, by a principal executive officer of at least the level of vice-president, or
19 his duly authorized representative, if such representative is responsible for the overall operation of
20 the facility from which the discharge described in the permit application form originates;
21 (2) in the case of a partnership or a limited partnership, by a general partner;
22 (3) in the case of a sole proprietorship, by the proprietor; and
23 (4) in the case of a municipal, state, or other public entity by either a principal executive officer, ranking
24 elected official or other duly authorized employee.

25 (f) The following discharges are deemed to be permitted pursuant to G.S. 143-215.1(c) provided that no water quality
26 standards are contravened, or expected to be contravened, and it shall not be necessary for the Division to issue
27 separate permits for these activities:

- 28 (1) filter backwash and draining associated with swimming pools;
29 (2) filter backwash from raw water intake screening devices;
30 (3) condensate from residential or commercial air conditioning units;
31 (4) individual non-commercial vehicle washing operations;
32 (5) flushing and hydrostatic testing water associated with utility distribution systems;
33 (6) discharges associated with emergency removal and treatment activities for spilled oil authorized by
34 the federal or state on-scene coordinator when such removals are undertaken to minimize overall
35 environmental damage due to an oil spill;
36 (7) groundwaters generated by well construction or other construction activities;
37 (8) landscape irrigation, foundation or footing drains, or water from crawl space pumps;

- 1 (9) street wash water;
- 2 (10) flows from fire fighting; and
- 3 (11) excluding the provision in Subparagraph (f)(6) of this Rule, discharges associated with biological
- 4 or chemical decontamination activities performed as a result of an emergency declared by the
- 5 Governor or the Director of the Division of Emergency Management and that are conducted by or
- 6 under the direct supervision of the federal or state on-scene coordinator and that meet the following
- 7 specific conditions:
- 8 (A) the volume of discharge produced by the decontamination activity is too large to be
- 9 contained on-site;
- 10 (B) the Division of Water ~~Quality~~ Resources is informed prior to commencement of the
- 11 discharge from the decontamination activity;
- 12 (C) overland flow or other non-discharge options are deemed to be impractical by the
- 13 authorities conducting the decontamination activity; and
- 14 (D) the discharge is not radiologically contaminated.

15 (g) Continued Applicability of Permit. A wastewater treatment facility or treatment unit that is taken out of service

16 but contains waste or residuals that could be discharged to surface waters or otherwise present an environmental or

17 public health risk under foreseeable circumstances, including severe weather events, shall remain subject to NPDES

18 permit requirements until such materials are properly disposed.

19

20 *History Note: Authority G.S. 106-399.4; 143-215.1(c); 143-215.1(b)(3); 143-215.3(a)(1);*

21 *Eff. February 1, 1976;*

22 *Amended Eff. March 1, 1993; November 1, 1987; January 1, 1984; November 1, 1978;*

23 *Temporary Amendment Eff. May 11, 2001;*

24 *Temporary Amendment Expired on February 26, 2002;*

25 *Amended Eff. April 1, ~~2003~~ 2003;*

26 *Readopted Eff. May 1, 2019.*

27

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02H .0107

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 that the following technical changes be made:

Much of this Rule appears to be internal management, which is specifically excluded as a rule under 150B-2(8a)(a). In addition, some of this Rule is addressed by 143-215.1(c)(2) So, Is this Rule necessary?

To the extent that this Rule is necessary, please say how these determinations will be made.

In (b), please delete or define "complete" and "completed" Please note that if you provide the required contents elsewhere (perhaps in .0105), this language will likely be okay as written.

In (b)(1), how will it be determined whether the application is returned? What factors will be used?

In (b)(1), how will it be determined how much time will be given (i.e. "up to" 60 days.) Here, do you mean that if it is returned, the applicant "shall have 60 days"?

In (b)(2), delete or define "properly"

In (b)(2), change "will" to "shall" in "will notify"

In (b)(2), is it necessary to say that the applicant may be given 60 days again? If so, how will this determination be made?

In (c), please provide some sort of introduction to (1) through (3) for purposes of consistency.

In (c)(1), change "will" to "shall" in "will not be necessary"

In (c)(1), what are "modifications warranting such investigations"? How is this determined? Is there a cross-reference available?

In (c)(2), what is meant by "if necessary"? When might it be necessary to make these additional findings?

Amber May
Commission Counsel
Date submitted to agency: Thursday, April 4, 2019

In (c)(2)(C), delete or define "brief" and "significant"

In (c)(2)(C), change "which will" to "that may"

What is the intent of (d)? I'm not sure that I understand what is going on here.

In (d), define "unacceptable"

In (d), what are the "inadequacies"? Perhaps addressing the contents of the form elsewhere will also address this concern.

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

Amber May
Commission Counsel
Date submitted to agency: Thursday, April 4, 2019

1 15A NCAC 02H .0107 is readopted as published in 32:21 NCR 1943 as follows:

2
3 **15A NCAC 02H .0107 STAFF REVIEW AND EVALUATION**

4 (a) The Director is authorized to accept applications for the Commission and shall refer all applications to the staff
5 for review and evaluation. Additionally, the Director shall refer NPDES Permit applications for the discharge of waste
6 into waters classified as sources of public water supply (WS classification) and shellfish waters classified SA to the
7 Public Water Supply Section, Division of Water Resources, and the Shellfish Sanitation Program, Division of
8 Environmental Health, Marine Fisheries, respectively, both of the Department of Environment, Health, and Natural
9 Resources, Environmental Quality, for review and written approval.

10 (b) The Director shall acknowledge receipt of ~~a complete an~~ NPDES or Authorization to Construct permit application
11 upon verifying that the application is administratively complete, that is, includes the completed and signed application
12 forms specified in Rule .0105(a) of this Section, any necessary supplemental information, and any associated fees in
13 accordance with Rules .0105 and .0106 of this Section.

14 (1) If an application is or, if not administratively complete, the Director may return the application to
15 the applicant as incomplete or request the additional information required. The applicant may be
16 given up to 60 days to provide the information to make the application complete.

17 (2) If technical review of the application reveals that additional information is necessary for staff to
18 properly evaluate the proposed discharge, the Director will notify the applicant of the additional
19 information required. The applicant may be given up to 60 days to provide the information to make
20 the application complete.

21 (c) Tentative Determination and Draft individual NPDES Permit.

22 (1) The staff shall conduct a site investigation and shall prepare its written evaluation and tentative
23 determination to issue or deny the NPDES permit. On-site investigations will not be necessary for
24 Authorization to Construct permits, activities covered under general ~~permits~~ permits, and renewal
25 of individual permits with no ~~modifications~~ modifications warranting such investigation.

26 (2) If the staff's tentative determination in ~~Paragraph~~ Subparagraph (1) of this ~~Subdivision~~ Paragraph is
27 to issue the permit, it shall if necessary make the following additional determinations in writing:

28 (A) proposed effluent limitations for those pollutants proposed to be limited;

29 (B) a proposed schedule of compliance, including interim dates and requirements, for meeting
30 the proposed effluent limitations; and

31 (C) a brief description of any other proposed special conditions which will have significant
32 impact upon the discharge described in the application.

33 (3) The staff shall organize the determinations made pursuant to ~~Paragraphs~~ Subparagraphs (1) and (2)
34 of this ~~Subdivision~~ Paragraph into a draft permit.

35 (d) In the case of permits for which ~~notice of intent~~ Notice of Intent is given on forms as described in Rule .0105(a)
36 of this Section, a Certificate of Coverage under a general permit may be prepared and issued directly to the applicant

1 in lieu of any other acknowledgment. If the Notice of Intent is unacceptable, it will be returned to the applicant with
2 an explanation of the inadequacies.

3
4 *History Note:* Authority G.S. 130-161; 143-215.3(a)(1); 143-215.3(a)(4); 143-215.1(a);
5 143-215.1(c);
6 Eff. February 1, 1976;
7 Amended Eff. March 1, 1993; August 1, 1991; August 1, 1988; October 1, ~~1987~~ 1987;
8 Readopted Eff. May 1, 2019.
9

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02H .0108

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 that the following technical changes be made:

In (a), just so I understand, is every application put out for public notice? Is this in accordance with .0109?

In (a), line 4, please change "which" to "that" in "which do not" and "which have"

In (a), when would a discharge not qualify for a NPDES permit? It is only when it has a total volume of 500,000 or more gallons? Please clarify.

In (a), delete or define "brief" on line 5.

In (a), please provide the appropriate cross-reference for the required "public notice"

In (a)(1), delete or define "detailed" in "detailed description"

In (a)(2)(B), what is "the act"?

In (a)(2)(C), change "which" to "that" in "which are present" and "which are subject"

In (a)(2)(C), delete or define "significant"

In (a)(2)(C), what discharge would be subject to limitations or prohibitions? Is there a cross-reference available?

In (a)(4), delete or define "brief" in "brief citation" and "brief identification"

In (a)(5), delete or define "more detailed"

End (a)(5)(A) and (B) with semi-colons, rather than periods.

In (a)(5)(B), are the procedures to request a public hearing actually set forth somewhere in rules or statute?

What is meant by (a)(5)(C)? Can you provide some examples?

Amber May

Commission Counsel

Date submitted to agency: Thursday, April 4, 2019

Is (b) necessary given the public records laws of the State?

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

Amber May
Commission Counsel
Date submitted to agency: Thursday, April 4, 2019

1 15A NCAC 02H .0108 is readopted as published in 32:21 NCR 1943 as follows:

2
3 **15A NCAC 02H .0108 FACT SHEETS**

4 (a) For all discharges which do not qualify for a general NPDES permit and which have a total volume of 500,000 or
5 more gallons on any day, a fact sheet providing a brief synopsis of the application shall be prepared by the staff and
6 made available upon request following issuance of the public notice. The contents of such fact sheets shall include at
7 least the following information:

- 8 (1) a ~~sketch~~ sketch, map, or detailed description of the location of the discharge described in the
9 application;
- 10 (2) a quantitative and qualitative description of the discharge described in the application which
11 includes at least the following:
- 12 (A) the rate or frequency of the proposed discharge; if the discharge is continuous, the average
13 daily flow in gallons per day or million gallons per day;
- 14 (B) for thermal discharges subject to limitation under the act, the average summer and winter
15 temperatures in degrees Fahrenheit; ~~and~~
- 16 (C) the average daily discharge in pounds per day of any pollutants which are present in
17 significant quantities or which are subject to limitations or prohibition; and
- 18 (D) the type and characteristics of the wastes to be discharged.
- 19 (3) the tentative determinations required under Rule .0107 of this Section;
- 20 (4) a brief citation of the water quality standards and effluent standards and limitations applied to the
21 proposed discharge, including a brief identification of the uses for which the receiving waters have
22 been classified; and
- 23 (5) a more detailed description of the procedures for the formulation of final determinations than that
24 given in a public notice including:
- 25 (A) the 30-day comment period required by ~~Rule .0110~~ Rules .0109 and .0111 of this Section,
- 26 (B) procedures for requesting a public ~~meeting~~ hearing and the nature thereof, and
- 27 (C) any other procedures by which the public may participate in the formulation of the final
28 determinations.

29 (b) Any person, upon request, will be furnished, without charge, one copy of any fact sheet.

30
31 *History Note: Authority G.S. 143-215.3(a)(1); 143-215.1(c)(2)(a);*
32 *Eff. February 1, 1976;*
33 *Amended Eff. March 1, 1993; August 1, 1988; October 1, ~~1987~~, 1987;*
34 *Readopted Eff. May 1, 2019.*
35

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02H .0109

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 that the following technical changes be made:

In light of 143-215.1(c) and Chapter 132 of the State, please review to determine whether all of this Rule is necessary. For example, much of (a) appears to recite statute.

In (a)(1), what is meant by "geographical area"?

In (a)(1), what is meant by "to the extent publication by electronic means is lawful"? What law? It looks like 143-215.1(c)(2)(a1) and 143-215.4(b)(1) requires newspaper publication (though I realize that this may be outdated, it's still in statute.) What is your authority to allow for a substitute?

In (a)(3)(C) and (a)(3)(F), delete or define "brief" in "brief description"

In (a)(3)(C), change "which" to "that" in "which result"

In (a)(3)(D), delete or define "short"

In (b)(1), what is meant by "geographical area"?

In (b)(1)(B), what is meant by "to the extent publication by electronic means is lawful"? What law? It looks like 143-215.1(c)(2)(a1) and 143-215.4(b)(1) requires newspaper publication (though I realize that this may be outdated, it's still in statute.) What is your authority to allow for a substitute?

In (b)(1)(B), change "which" to "that" in "which received"

In (b)(1)(C), delete or define "short" in "short description"

In (b)(1)(D) and (b)(1)(H), delete or define "brief" in "brief reference" and "brief description"

In (b)(1)(H), what are the "rules and procedures" to be followed?

In (b)(1)(H), what are "normal working hours"? Please delete or define.

Amber May
Commission Counsel
Date submitted to agency: Thursday, April 4, 2019

Please begin (c)(1) through (6) with lower case letters.

What is your authority to charge \$25.00 for the mailing list? Is this your actual cost pursuant to Chapter 132? I note that 143-215.4 does not provide authority to charge a fee.

Also, assuming that you have the authority for the fee, your use of "may" indicates there is discretion. Do you mean "shall"? If not, how will it be determined whether it will be charged?

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 .0109 is readopted as published in 32:21 NCR 1943 as follows:

2
3 **15A NCAC 02H .0109 PUBLIC NOTICE**

4 (a) Notice of Application

5 (1) ~~Public~~ The Director shall provide public notice of each complete tentative determination to issue an
6 individual or general NPDES permit application and each general NPDES permit permit, or to deny
7 such permit, shall be circulated in the geographical areas area of the proposed discharge by the
8 ~~Director~~ at least 45 days prior to any proposed final action:

9 (A) by publishing the notice one time in a newspaper having general circulation in said ~~county;~~
10 county, provided that, to the extent publication by electronic means is lawful, such
11 publication may be substituted for newspaper publication; and

12 (B) by mailing the notice or transmitting the notice electronically to all persons or agencies
13 listed in ~~Subsection~~ Paragraphs (c) and (d) of this Rule.

14 (2) The notice shall allow at least 30 days for public comment on the draft permit and the proposed final
15 action.

16 (3) The notice shall set forth at least the following:

17 (A) name, address, and phone number of the agency issuing the public notice;

18 (B) name and address of each applicant;

19 (C) brief description of each applicant's activities or operations which result in the discharge
20 described in the NPDES application;

21 (D) name of waterway to which each discharge is made and a short description of the location
22 of each discharge on the waterway indicating whether such discharge is a new or an
23 existing discharge;

24 (E) a statement of the tentative determination to issue or deny an NPDES permit for the
25 discharge described in the NPDES ~~application;~~ application or general permit;

26 (F) a brief description of the procedures for the formulation of final determinations, including
27 a 30-day comment period and any other means by which interested persons may influence
28 or comment upon the determinations; and

29 (G) address and phone number of state agency premises at which interested persons may obtain
30 further information, request a copy of the draft permit, request a copy of the fact sheet, and
31 inspect and copy NPDES application forms and related documents. Copies of the fact sheet
32 shall be made available free upon request. Copies of the information on file, other than fact
33 sheets, will be made available upon request and payment of the cost of reproduction.

34 ~~(3)(4)~~ Public notice for those activities covered by Certificates of Coverage issued pursuant to a general
35 permit and for Authorizations to Construct shall not be required.

36 (b) Notice of Public ~~Meeting~~ Hearing

- 1 (1) Notice of public ~~meeting~~ hearing on any NPDES permit application shall be circulated in the
2 geographical ~~areas~~ area of the proposed discharge by the Director at least 30 days prior to the date
3 of the ~~meeting;~~ hearing;
- 4 (A) by publishing the notice one time in a newspaper having general circulation in said ~~county;~~
5 county, provided that, to the extent publication by electronic means is lawful, such
6 publication may be substituted for newspaper publication;
- 7 (B) by mailing the notice or transmitting the notice electronically to all persons and government
8 agencies which received a copy of the notice or the fact sheet for the NPDES application;
9 and
- 10 (C) by mailing the notice or transmitting the notice electronically to any person or group upon
11 request.
- 12 (2) The notice of any public ~~meeting~~ hearing shall include at least the following:
- 13 (A) name, address, and phone number of agency holding the public ~~meeting;~~ hearing;
- 14 (B) name and address of each applicant whose application will be considered at the ~~meeting;~~
15 hearing;
- 16 (C) name of waterway to which each discharge is made and a short description of the location
17 of each discharge on the waterway;
- 18 (D) a brief reference to the public notice issued for each NPDES application including
19 identification number and date of issuance;
- 20 (E) information regarding the time and location for the ~~meeting;~~ hearing;
- 21 (F) the purpose of the ~~meeting;~~ hearing;
- 22 (G) address and phone number of premises at which interested persons may obtain further
23 information, request a copy of each draft NPDES permit, request a copy of each fact sheet,
24 and inspect and copy NPDES forms and related documents; and
- 25 (H) a brief description of the nature of the ~~meeting~~ hearing including the rules and procedures
26 to be ~~followed;~~ followed. The notice shall also state that additional information is on file
27 with the ~~Division of Environmental Management, Department of Environment, Health, and~~
28 ~~Natural Resources, Environmental Quality, Division of Water Resources,~~ at the Archdale
29 Building at 512 North Salisbury Street, Raleigh, North Carolina, and may be inspected at
30 any time during normal working hours. Copies of the information on file will be made
31 available upon request and payment of cost of reproduction.
- 32 (c) ~~Mailing Lists. Any person may request to receive copies of all notices required under this Rule and the Director~~
33 ~~shall mail such notice to any such person. An annual charge of twenty five dollars (\$25.00) may be charged for any~~
34 ~~person desiring to be placed and maintained on the NPDES Permit mailing list. The Director shall also give notice of~~
35 ~~draft NPDES permits and related public hearings to the following for NPDES permits: following:~~
- 36 (1) State water pollution control agency for the States of Virginia, South Carolina, Tennessee, and
37 Georgia;

- 1 (2) Appropriate district engineer, U.S. Army Corps of Engineers;
- 2 (3) Lead agency responsible for preparation of plan pursuant to Section 208(b) of the Clean Water Act,
- 3 33 U.S.C. Section 1251 et seq, in approved 208 areas;
- 4 (4) State agency responsible for the preparation of plans pursuant to Section 303(e) of the Clean Water
- 5 Act, 33 U.S.C. Section 1251 et seq;
- 6 (5) ~~North Carolina Department of Environment, Health, and Natural Resources, Division of~~
- 7 ~~Environmental Health; any user identified in the permit application of a privately owned treatment~~
- 8 ~~works; and~~
- 9 (6) Any other federal, state, or local agency upon request.

10 (d) Mailing Lists. Any person may request to receive copies of all notices required under this Rule, and the Director

11 shall provide such copies to any such person. The Director shall establish and maintain an NPDES mailing list for this

12 purpose. An annual printing and mailing charge of twenty-five dollars (\$25.00) may be charged for any person on the

13 list requesting paper copies of the notices. The Director may distribute notices, or otherwise make them available, by

14 electronic means at no charge.

15

16 *History Note: Authority G.S. 143-215.1(a)(1); 143-215.1(c); 143-215.4(a); 143-215.4(c);*

17 *Eff. February 1, 1976;*

18 *Amended Eff. March 1, 1993; August 1, 1988; October 1, 1987; December 1, 1984, 1984;*

19 *Readopted Eff. May 1, 2019.*

20

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02H .0111

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 that the following technical changes be made:

Is this Rule necessary? It appears to essentially recite 143-215.1(c)(3) and 143-215.5.

Please note the following if this Rule is determined to be necessary:

In (a)(1), rather than reciting 143-215.1(c)(3), simply provide a cross-reference

In (a)(2), please change "is delegated authority" to "may"

In (a)(2), how is the Director to make this determination? What factors will he or she use?

In (a)(4), what is meant by "other appropriate area"?

In (a)(4), how is the director to make this determination of discretion?

In (a)(4), how will it be determined whether "related groups of permit applications" will also be considered? What is meant by "related groups"?

Please put the authority in your History Note in numerical order

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

Amber May
Commission Counsel
Date submitted to agency: Thursday, April 4, 2019

1 15A NCAC 02H .0111 is readopted as published in 32:21 NCR 1943 as follows:

2
3 **15A NCAC 02H .0111 ~~MEETINGS AND~~ PUBLIC HEARINGS**

4 (a) Public ~~Meetings:~~ Hearings:

- 5 (1) The Director shall provide an opportunity for the applicant, any affected state, any affected interstate
6 agency, the regional administrator, or any interested agency, person, or group of persons to request
7 or petition for a public ~~meeting~~ hearing with respect to NPDES permit applications. Any person
8 who desires a public ~~meeting~~ hearing on any NPDES permit application shall so request in writing
9 to the Director within 30 days following the publication date of the notice of application. Any such
10 request or petition for public ~~meeting~~ hearing shall indicate the interest of the party filing such
11 request and the reasons why a ~~meeting~~ hearing is warranted.
- 12 (2) The Director is delegated authority to determine if a public ~~meeting~~ hearing shall be held in
13 accordance with G.S. 143-215.1(c)(3) and to issue public notice and conduct such ~~meeting~~ hearing
14 for the Commission.
- 15 (3) All comments received within 30 days following the publication date of the notice of NPDES permit
16 application shall be made part of the application file and shall be considered by the Director prior
17 to taking final action on the application.
- 18 (4) Any ~~meeting~~ hearing brought pursuant to this Subsection shall be held in the geographical area of
19 the proposed discharge or other appropriate area, in the discretion of the Director, and may, as
20 appropriate, consider related groups of permit applications.

21 (b) Adjudicatory Hearings and appeals shall be conducted in accordance with Article 3 of Chapter 150B of the General
22 Statutes.

23
24 *History Note:* Authority G.S. 143-215.3(a)(1); 143-215.1(c)(1); 143-215.3(a)(3); 143-215.3(a)(4); 143-215.5;
25 143-215.1(e);
26 Eff. February 1, 1976;
27 Amended Eff. March 1, 1993; November 1, ~~1987~~; 1987;
28 Readopted Eff. May 1, 2019.
29

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02H .0112

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 that the following technical changes be made:

Given 143-215.1(c)(4), is (a) necessary? Can you just say something like "Upon receipt of an application, the director shall take final action in accordance with the timelines set forth in 143-215.1(c)(4) (and whatever else may be applicable.)"

In (b), please change "the Director is authorized to" to "the Director Shall

In (b)(2), what are "other legally applicable requirements"? Is your regulated public familiar?

In (b)(4), I don't see suspension mentioned in .0114(a). Is the cross-reference correct?

Please end (b)(6)(A) through (D) with semi-colons and add an "and" at the end of (b)(6)(E).

In (b)(6)(C), is "substantially impair" a term of art? If not, please delete or define "substantially"

In (c), please change "has the burden of providing sufficient evidence to reasonably ensure that the proposed system will comply" to something like "Applications shall be approved upon a determination by the Division that the proposed system is able to comply with all applicable water..." then delete the second sentence.

In (d), delete or define "reasonable" Here, how will it be determined how long the permit will be issued? What factors will be used? Please provide some additional information.

Please add "shall" before "continue" in (e)(1).

Begin (e)(1)(A) and (B) with lower case letters

In (e)(2), delete "effect." as this was not done elsewhere in this Rule.

Given (e)(1), why is (2) necessary? It appears to say the same thing. If you keep Item (2), delete or define "fully"

In (e)(1)(A), delete or define "timely"

Amber May
Commission Counsel

Date submitted to agency: Thursday, April 4, 2019

In (f), delete "Enforcement." as you have not done this elsewhere in your rules.

Please begin (f)(1) through (4) with lower case letters.

In (f), how will he or she make the determination as to which enforcement mechanism is appropriate?

In (f)(1), change "which" to "that" in "which has been"

In (f)(4), delete or define "appropriate" in "appropriate conditions"

In (f)(4), what is meant by "these regulations"? Do you mean these Rules? If so, what rules specifically as I don't see enforcement elsewhere.

Please put the authority in your History Note in numerical order

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

Amber May
Commission Counsel
Date submitted to agency: Thursday, April 4, 2019

1 15A NCAC 02H .0112 is readopted as published in 32:21 NCR 1943 as follows:

2
3 **15A NCAC 02H .0112 FINAL ACTION ON PERMIT APPLICATIONS**

4 (a) The Director shall take final action on all NPDES applications not later than 60 days following notice of intent to
5 issue or ~~deny~~, deny; or, if a public ~~meeting~~ hearing is held, within 90 days following the closing of the record of the
6 ~~meeting or hearing~~; or, in the case of an Authorization to Construct ~~permit~~ permit, 90 days after the receipt of a
7 complete ~~application~~ application; or, if a public ~~meeting~~ hearing is held concerning the Authorization to Construct,
8 within 90 days following the closing of the record of the ~~meeting~~, hearing.

9 (b) The Director is authorized to:

- 10 (1) issue a permit containing such conditions as are necessary to effectuate the purposes of G.S.
11 143-215.1 and G.S. 143-215.67;
- 12 (2) issue a permit containing time schedules for achieving compliance with applicable effluent
13 standards and limitations, water quality standards, and other legally applicable requirements;
- 14 (3) modify or revoke any permit upon giving 60 days notice to the person affected pursuant to Rule
15 .0114(a) of this Section;
- 16 (4) suspend a permit pursuant to Rule .0114(a) of this Section;
- 17 (5) rescind a permit upon request by the permittee;
- 18 (6) deny a permit application:
- 19 (A) where necessary to effectuate the purposes of Article 21 Chapter 143,
- 20 (B) for a discharge prohibited by G.S. 143-214.2(a),
- 21 (C) where the Secretary of the Army finds the discharge would substantially impair anchorage
22 and navigation,
- 23 (D) for a discharge to which the regional administrator of EPA has objected as provided in
24 Section 402(d) of the Clean Water Act as amended, 33 U.S.C. Section 1251 et seq,
- 25 (E) for any point discharge which conflicts with a plan approved pursuant to Section 208(b) of
26 the Clean Water Act as amended, 33 U.S.C. Section 1251 et seq, effective February 4,
27 1987.

28 (c) The permit applicant has the burden of providing sufficient evidence to reasonably ensure that the proposed system
29 will comply with all applicable water quality standards and requirements. No permit may be issued when the
30 imposition of conditions cannot reasonably ensure compliance with applicable water quality standards and regulations
31 of all affected states.

32 (d) Permits shall be issued or renewed for a period of time deemed reasonable by the Director except in no case shall
33 state NPDES permits be issued for a period to exceed five years.

34 (e) Continuation of expiring permits

- 35 (1) Notwithstanding Paragraph (d) of this Rule, the conditions of an expired permit continue in force
36 until the effective date of a new permit, or until otherwise terminated, if:

1 (A) The permittee has submitted a timely and complete application under Rule .0106 of this
2 Section; and

3 (B) The Director, through no fault of the permittee, does not issue a new permit with an
4 effective date on or before the expiration date of the previous permit (for example, when
5 issuance is impracticable due to time or resource constraints).

6 (2) Effect. Permits continued under this Paragraph remain fully effective and enforceable.

7 (f) Enforcement. When the permittee is not in compliance with the conditions of the expiring or expired permit, the
8 Director may choose to do any or all of the following:

9 (1) Initiate enforcement action based upon the permit which has been continued;

10 (2) Issue a notice of intent to deny the new permit under Paragraph (b) of this Rule. If the permit is
11 denied, the owner or operator shall cease the activities authorized by the continued permit or be
12 subject to enforcement action for operating without a permit;

13 (3) Issue a new permit under this Subchapter with appropriate conditions; or

14 (4) Take other actions authorized by G.S. 143-215.1 and these regulations.

15
16 History Note: Authority G.S. 143-215.3(a)(1); 143-215.1(c)(4); 143-215.1(b); 143-215.3(a)(3); 143-215.3(a)(4);
17 143-215.1(c)(5); 143-214.2(a); 143-215; 143-215.2(a);
18 Eff. February 1, 1976;
19 Amended Eff. March 1, 1993; October 1, 1987; September 1, 1986; December 1, ~~1984.~~ 1984;
20 Readopted Eff. May 1, 2019.
21

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02H .0113

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 that the following technical changes be made:

Is this rule necessary?

On line 5-6, what is meant by "in the opinion of the Director will be required to obtain the permit"? I assume that you mean something about these rules and their requirements?

Please put the authority in your History Note in numerical order

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

Amber May
Commission Counsel
Date submitted to agency: Thursday, April 4, 2019

15A NCAC 02H .0113 is readopted as published in 32:21 NCR 1943 as follows:

15A NCAC 02H .0113 NOTIFICATION OF APPLICANTS

The Director shall notify an applicant of the final decision of the applicant's permit application. Notifications of denial shall be made by certified mail and shall specify the reasons therefor and the proposed changes which in the opinion of the Director will be required to obtain the permit.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.1(a); 143-215.3(a)(4);
Eff. February 1, 1976;
Amended Eff. October 1, ~~1987~~1987;
Readopted Eff. May 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02H .0114

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 that the following technical changes be made:

In (a)(2), please delete or define "fully" and "relevant"

In (a)(3), is there a cross-reference available to show what changes require a reduction or limitation of permitted discharge or is this something that would be set by the permit?

In (a)(4), delete or define "unlawful" and "proper"

Please end (a)(4)(A) through (C) with semi-colons, rather than commas.

In (a)(5), what is the annual permit fee? Please provide a cross-reference to the fee.

In (b), please provide a cross-reference to the public notice and procedural requirements.

Please end (b)(1) through (6) with semi-colons instead of commas, and add an "and" at the end of (b)(6).

In (b)(4), what is meant by "compliance schedules(construction schedules)"? Are these the same things?

Please consider revising (b)(7) to say "minor modifications, such as typographical errors and incorrect maps"

Please put the authority in your History Note in numerical order

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

Amber May
Commission Counsel
Date submitted to agency: Thursday, April 4, 2019

1 15A NCAC 02H .0114 is readopted as published in 32:21 NCR 1943 as follows:

2
3 **15A NCAC 02H .0114 MODIFICATION AND REVOCATION OF PERMITS**

4 (a) Any permit issued pursuant to this Section is subject to revocation or modification in whole or part pursuant to 40
5 CFR 122.62 or for any of the following:

- 6 (1) violation of any terms or conditions of the permit;
7 (2) obtaining a permit by misrepresentation or failure to disclose fully all relevant facts;
8 (3) a change in any condition that requires either a temporary or permanent reduction or limitation of
9 the permitted discharge; ~~and~~
10 (4) unlawful refusal of the permittee to permit the Director or his authorized representative upon
11 presentation of proper credentials:
12 (A) to enter upon permittee's premises in which an effluent source is located or in which any
13 records are required to be kept under terms and conditions of the permit,
14 (B) to have access to any copy and records required to be kept under terms and conditions of
15 the permit,
16 (C) to inspect any monitoring equipment or method required in the permit, or
17 (D) to sample any discharge of ~~pollutants~~ pollutants;
18 (5) failure to pay the annual ~~fee for administering and compliance monitoring~~ permit fee.

19 (b) Modifications and reissuance of permits shall be subject to the same public notice and other procedural
20 requirements as the issuance of permits except as follows:

- 21 (1) modifications of the monitoring program contained in the permit,
22 (2) name changes or changes in the ownership of the discharge when no other change in the permit is
23 indicated,
24 (3) a single modification of any compliance schedule not in excess of four months,
25 (4) modification of compliance schedules (construction schedules) in permits for new sources where
26 the new source will not begin to discharge until control facilities are operational,
27 (5) modifications to include or amend pretreatment program requirements,
28 (6) issuance of permits revoked for failure to pay the annual ~~administering and compliance monitoring~~
29 permit fee,
30 (7) modifications determined by the Director to be minor, such as typographical errors, incorrect maps,
31 and similar minor changes.

32
33 *History Note: Authority G.S. 143-215.3(a)(1); 143-215.1(b)(3);*
34 *Eff. February 1, 1976;*
35 *Amended Eff. March 1, 1993; September 1, 1988; November 1, ~~1987~~ 1987;*
36 *Readopted Eff. May 1, 2019.*
37

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02H .0115

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 that the following technical changes be made:

Given G.S. 132 and 143-215.3C, much of this Rule appears to be unnecessary. What is the overall intent? Is it to tell people how to claim confidentiality in accordance with 132-1.2 and 143-315.3C (which I note it not referenced in this Rule.)

If (a) is necessary, please change "132-2.1" to "132-1.2"

In (a), what about 143-215.3C.

(b) appears to be covered entirely by 132. Is any of (b) necessary?

In (c), please provide some sort of introductory language to the Subparagraphs.

In (c)(1), delete "by other means acceptable to the Director" and say how it needs to be done for electronic filings.

In (c)(2), what are the "permitting rules"? Please provide a specific cross-reference.

In (c)(2), please change "as described in Paragraph (a) of this Rule to "in accordance with G.S. 132-1"

In (c)(3), by "affected materials", do you mean "requested"?

In (c)(3), change "he" to "he or she"

In (c)(3), how is this determination to be made? In accordance with 143-215.3C and 132-1.2? If so, say that.

In (c)(3), what is your authority to not release the information that the director has deemed to be not confidential for 60 days? 143-215.3C speaks to a 10 day deadline to request a declaratory ruling. I don't see any other specific timelines.

Is (d) necessary? Some of this appears to be repeating 143-215.3C. Otherwise, in (d), generally, I understand that these will likely not qualify as a trade secret, however, what is

Amber May

Commission Counsel

Date submitted to agency: Thursday, April 4, 2019

your authority to say outright that they will not? Is there no chance that someone will divulge a trade secret on an attachment to the application form? I haven't looked at your forms, so perhaps the answer is "that's correct."

In (d)(2), change the period to a semicolon and add "and" at the end. Please also begin each Subparagraph with a lower case letter.

In (d)(2), delete "provided by the Director"

Please put the authority in your History Note in numerical order and add 143-215.3C

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

Amber May
Commission Counsel
Date submitted to agency: Thursday, April 4, 2019

1 15A NCAC 02H .0115 is readopted as published in 32:21 NCR 1943 as follows:

2
3 **15A NCAC 02H .0115 PUBLIC ACCESS TO RECORDS**

4 ~~(a) All records, reports, and information required to be submitted to the Commission or the Director; any public~~
5 ~~comment on these records, reports or information; and the draft and final permits shall be disclosed upon request to~~
6 ~~the public unless the person submitting the information can show that such information, if made public, would disclose~~
7 ~~methods or processes entitled to protection as trade secrets. All materials, including records, reports, data, maps,~~
8 ~~diagrams, draft or final permits, fact sheets, or other documents or information and any public comments, in printed~~
9 ~~or electronic form, submitted to the Commission, the Secretary, or the Director are public records in accordance with~~
10 ~~Chapter 132 of the General Statutes and are subject to disclosure pursuant to G.S. 132-6 unless the material qualifies~~
11 ~~as confidential information as defined in G.S. 132-2.1.~~

12 ~~(b) The Director is authorized to determine information which is entitled to confidential treatment. In the event the~~
13 ~~Director determines that such information (other than effluent data) is entitled to confidential treatment, he shall take~~
14 ~~steps to protect such information from disclosure. He shall submit the information considered to be confidential to the~~
15 ~~Regional Administrator, EPA, Region IV, for concurrence in his determination of confidentiality.~~

16 ~~(c)(b)~~ The Director shall:

- 17 (1) provide facilities for the inspection of information relating to permit applications and permits,
18 (2) ensure that the staff handle ~~request~~ requests for such inspections ~~promptly, in a timely manner, and~~
19 (3) ensure that copying machines or ~~other~~ devices or means of providing copies of such documents are
20 available for a reasonable fee.

21 (c) Confidentiality of Information.

- 22 (1) Any claim of confidentiality shall be made by marking "confidential" or "trade secret" on each page
23 containing such information or, in the case of information in electronic form, by other means
24 acceptable to the Director.
25 (2) Until a claim of confidentiality is made, all materials submitted pursuant to the permitting rules are
26 public records and subject to disclosure as described in Paragraph (a) of this Rule.
27 (3) Upon receiving a request for confidentiality, the Director shall maintain the affected materials
28 separately from public record documents and shall not disclose the materials unless or until he
29 determines that the materials do not qualify as confidential information.
30 (4) The Director may consult with the EPA Region 4 Administrator regarding whether materials marked
31 as "confidential" or "trade secret" qualify as confidential information.
32 (3) Upon reviewing a request for confidentiality, the Director shall notify the applicant of his findings.
33 If the Director determines that the materials or any portions thereof do not qualify as confidential
34 information, those portions shall not be released for at least 60 days following the notification of
35 findings. If the applicant files a contested case in response to the Director's decision, the materials
36 shall not be released until conclusion of the contested case and then according to the court's decision.

1 If the Director determines that the materials or any portions thereof qualify as confidential
2 information, the Director shall continue to protect such information from disclosure.

3 (d) The following information may not be claimed as "confidential" or "trade secret":

4 (1) The name and address of any permit applicant or permittee;

5 (2) Permit applications, including information or data required to be disclosed on the NPDES
6 application forms provided by the Director pursuant to Rule .0105 of this Section or in printed or
7 electronic attachments or appendices to such NPDES application forms.

8 (3) Permits and effluent data.

9
10 History Note: Authority G.S. 143-215.3(a)(1); 143-215.3(a)(2); 143-215.3(a)(4); 132-6; 143-215.65;
11 Eff. February 1, 1976;
12 Amended Eff. March 1, 1993; October 1, ~~1987~~ 1987;
13 Readopted Eff. May 1, 2019.
14

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02H .0116

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 that the following technical changes be made:

Is this Rule necessary? It appears to be a combination of internal management and a cross-reference to statute without providing any additional information.

If this Rule is necessary, please change "which" to "that" and indicate how the Director is to determine that threatened or continuing violations "warrant immediate action." Can you provide some examples of what may qualify?

Please put the authority in your History Note in numerical order

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

Amber May
Commission Counsel
Date submitted to agency: Thursday, April 4, 2019

1 15A NCAC 02H .0116 is readopted as published in 32:21 NCR 1943 as follows:

2
3 **15A NCAC 02H .0116 EMERGENCY PROCEDURES**

4 If the Director determines any threatened or continuing violations exist which warrant immediate action, the Director
5 shall so notify the Commission or the secretary ~~who~~ in order that they may exercise the emergency powers granted
6 them pursuant to G.S. 143-215.3(a)(8), 143-215.13(d), ~~143-215.6(e)~~, 143-215.6C, or 143-215.3(a)(12).

7
8 *History Note:* Authority G.S. 143-215.3(a)(8); 143-215.13(d); ~~143-215.6(e)~~; 143-215.6C; ~~143-215.3(a)(12)~~;
9 *Eff. February 1, 1976;*
10 *Amended Eff. December 1, 1984; November 1, ~~1978~~, 1978;*
11 *Readopted Eff. May 1, 2019.*
12

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02H .0117

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 that the following technical changes be made:

In (a), change "are authorized to" to "may"

In (a), change "duly adopted rule of the Commission" to "these Rules"

In (c), please change "his" to "his or her"

In (c), delete or define "proper" in "proper credentials"

In (c), what is meant by "other necessary documents as may be required by law"? Specifically, what are documents and laws. Please provide some additional information if you need this language.

Please change the commas at the end of (c)(1) through (3) to semi-colons.

Please put the authority in your History Note in numerical order

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

Amber May
Commission Counsel
Date submitted to agency: Thursday, April 4, 2019

1 15A NCAC 02H .0117 is readopted as published in 32:21 NCR 1943 as follows:

2
3 **15A NCAC 02H .0117 INVESTIGATIONS: MONITORING: AND REPORTING**

4 (a) Staff of the Department of ~~Environment, Health, and Natural Resources~~ Environmental Quality are authorized to
5 conduct any investigations as provided in G.S. 143-215.3(a)(2), (7), and (9) for the purpose of determining compliance
6 with water quality standards, effluent limitations, permit conditions and any duly adopted rule of the Commission.

7 (b) Any person subject to the provisions of G.S. 143-215.1 shall comply with the monitoring and reporting
8 requirements of Rules in Section 15A NCAC 02B .0500.

9 (c) Any person subject to the provisions of G.S. 143-215.1 shall allow the Director or his authorized representative
10 upon presentation of proper credentials and other necessary documents as may be required by law:

11 (1) to enter upon permittee's premises in which an effluent source is located or in which any records are
12 required to be kept under terms and conditions of the permit.

13 (2) to have access to any copy and records required to be kept under terms and conditions of the permit.

14 (3) to inspect any monitoring equipment or method required in the permit, or

15 (4) to sample any discharge of pollutants.

16
17 *History Note: Authority G.S. 143-215.3(a)(1); 143-215.3(a)(4); 143-215.3(a)(2); 143-215.3(a)(7);*

18 *143-215.1(b)(1); 143-215.3(a)(9); 143-215.63;*

19 *Eff. February 1, 1976;*

20 *Amended Eff. March 1, 1993; October 1, 1987; December 1, 1984; November 1, ~~1978~~. 1978;*

21 *Readopted Eff. May 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02H .0118

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 that the following technical changes be made:

On line 4, please change "will" to "shall"

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

Amber May
Commission Counsel
Date submitted to agency: Thursday, April 4, 2019

1 15A NCAC 02H .0118 is readopted as published in 32:21 NCR 1943 as follows:

2
3 **15A NCAC 02H .0118 EFFLUENT LIMITATIONS AND STANDARDS**

4 Any state NPDES permit will contain effluent limitations and standards required by 15A NCAC ~~2B~~ 02B .0400 and
5 the Clean Water Act which is hereby incorporated by reference including any subsequent amendments and editions.
6 ~~This material is available for inspection at the Department of Environment, Health, and Natural Resources, Division~~
7 ~~of Environmental Management, 512 N. Salisbury Street, Raleigh, North Carolina. 15A NCAC 02B .0400 contains the~~
8 ~~effluent standards and limitations for ensuring compliance with Sections 301, 302, 306, and 307 of the Clean Water~~
9 ~~Act (33 USC 1251, et seq.). For water quality limited stream segments, the rules provide that effluent limitations be~~
10 ~~calculated by the staff, and approved by the Director, to comply with Section 301(b)(1)(C) of the federal act. The~~
11 ~~current version of the state rules can be accessed free of charge at <http://www.oah.state.nc.us/rules/>. Copies of the~~
12 ~~Clean Water Act may (33 U.S.C. 1251, et seq.) can be obtained from the Superintendent of Documents, U.S.~~
13 ~~Government Printing Office, Washington D.C. 20402 9325 at a cost of fifty dollars (\$50.00). accessed free of charge~~
14 ~~at <http://www.gpo.gov/fdsys/>. That rule contains the effluent standards and limitations for ensuring compliance with~~
15 ~~Sections 301, 302, 306, and 307 of the Clean Water Act. For effluent limited stream segments, the rule incorporates~~
16 ~~by reference federal effluent limitations and guidelines as state effluent limitations and guidelines. For water quality~~
17 ~~limited stream segments, the rules provide that effluent limitations be calculated by the staff and approved by the~~
18 ~~Director, to comply with Section 301(b)(1)(C) of the federal act.~~

19
20 *History Note:* Authority G.S. 143-213(23); 143-215; 143-215.1(b)(1); 143-215.3(a)(1);
21 Eff. February 1, 1976;
22 Amended Eff. March 1, 1993; November 1, ~~1987~~; 1987;
23 Readopted Eff. May 1, 2019.
24

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02H .0120

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 that the following technical changes be made:

On line 4, please change "is authorized" to "may"

To whom may he or she delegate? Staff?

Please change the commas to semi-colons at the end of Items (1) through (4).

In (4), please change "and which" to "that"

In (5), please provide a cross-reference to G.S. 132 and 143-215.3C

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

Amber May
Commission Counsel
Date submitted to agency: Thursday, April 4, 2019

1 15A NCAC 02H .0120 is readopted as published in 32:21 NCR 1943 as follows:

2
3 **15A NCAC 02H .0120 LIMITATION ON DELEGATION**

4 The Director is authorized to delegate any or all of the functions contained in this Section except the following:

- 5 (1) denial of a permit application,
6 (2) suspension of a permit,
7 (3) revocation of a permit not requested by the permittee,
8 (4) modification of a permit where initiated by the Division and which does not fall within the
9 exceptions listed in Rule .0114(b) of this Section, or
10 (5) determination of confidentiality.

11
12 *History Note: Authority G.S. 143-215.3(a)(1); 143-215.3(a)(4);*
13 *Eff. February 1, 1976;*
14 *Amended Eff. March 1, ~~1993~~1993;*
15 *Readopted Eff. May 1, 2019.*
16

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02H .0121

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 that the following technical changes be made:

What is the intent of this Rule? Is it to say that if a NPDES permit has already been obtained, then the facility doesn't need to get a state permit? What is your specific authority for this?

Assuming you have authority for this, please consider rewording for clarity purposes. For example, "any facility (or whatever is applicable) that has a NPDES Permit issued by the EPA (which is a defined term so you don't have to spell it out) shall not be required to obtain a separate state permit pursuant to Rule .0104 of this Section and G.S. 14-215.1,

In (a), change "will" to "shall"

In (a), please delete or define "valid"

In (b), what is meant by "regulations"? Do you mean these Rules?

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

Amber May
Commission Counsel
Date submitted to agency: Thursday, April 4, 2019

15A NCAC 02H .0121 is readopted as published in 32:21 NCR 1943 as follows:

15A NCAC 02H .0121 SUSPENSION OF REQUIREMENT FOR STATE NPDES PERMITS

(a) The Commission finds that an NPDES Permit issued by the U.S. Environmental Protection Agency will serve in lieu of a State Permit under 15A NCAC 2H .0104 and G.S. 143-215.1 so long as the Federal Permit is valid.

(b) Nothing in this Rule shall prevent the Commission from enforcing laws and regulations which by their terms are applicable without a G.S. 143-215.1 permit.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.1; 143B-282;

Eff. December 1, 1976;

Amended Eff. December 1, ~~1984~~1984;

Readopted Eff. May 1, 2019.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02H .0124

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 that the following technical changes be made:

On line 4, delete "in the opinion of the Director," or say how this determination will be made.

On line 4, please change "will to "shall"

On line 5, delete or define "unsafe"

On line 6, what are the "best intended uses"?

In Item (1), delete "and for any facility designated by the Director" or say how this determination will be made.

It appears as though Items (1) and (2) go together and should be combined

Please end (2)(a) and (2)(b)(i) through (iv) with semi-colons rather than commas (but note my comment regarding (2)(b)(i) through (iv) below.

How is the Director to determine the qualifications in (2)(b)?

In (2)(c), what is the overall intent here? Please review and clarify.

In (2)(c), how is the facility to "demonstrate"? Also, should there be an "if" at the beginning of (2)(c)?

In (2)(c), delete "be allowed" Also, how is this determination going to be made?

I don't understand what is going on with (2)(b)(i) through (iv). Should (i) and (ii) go together and (iii) and (iv)? Please review the formatting of these.

In (2)(b)(i), change "which" to "that" in "which has automatic..."

In (2)(b)(iv), what is meant by "de minimum"? Please delete or define.

Amber May
Commission Counsel
Date submitted to agency: Thursday, April 4, 2019

In Item (3), line 24, rather than the parenthesis, please say "... liquid line, including primary sedimentation..." assuming that's the intent.

In Item (3), what is meant by "unless the applicant can demonstrate to the satisfaction of the Director that this requirement is unwarranted for a particular case"? How is this determined? What factors will be used?

In Item (4), delete or define "continuous" in "continuous operation"

In Item (4), do you still need this date? It does not appear to be necessary at this point.

In Item (4), what is meant by "unless the applicant can demonstrate to the satisfaction of the Director that this requirement is unwarranted for a particular case"? How is this determined? What factors will be used?

What is your authority for Items (5) and (6)? This appears to be within the authority of Water Pollution Control System Operators Certification Commission.

In Item (6), is "in order to ensure the proper maintenance of facilities permitted under this Section" necessary? Please consider deleting this language.

In (7), please either provide the requirements or provide the factors that will be used in making this determination.

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

Amber May
Commission Counsel
Date submitted to agency: Thursday, April 4, 2019

1 15A NCAC 02H .0124 is readopted as published in 32:21 NCR 1943 as follows:

2
3 **15A NCAC 02H .0124 RELIABILITY**

4 All facilities shall provide adequate reliability measures, which, in the opinion of the Director, will ~~insure~~ ensure
5 continued treatment and disinfection where the interruption of such treatment would render the waters unsafe for their
6 best intended uses. The reliability measures shall include the following:

- 7 (1) For new or hydraulically expanding facilities with mechanically operated components, and for any
8 facility designated by the Director, multiple (dual at a minimum) components such as pumps,
9 chemical feed systems, aeration equipment and disinfection equipment; and
- 10 (2) At least one of the following:
- 11 (a) dual or standby power supply on site, or
- 12 (b) approval by the Director that the facility:
- 13 (i) serves a private water distribution system which has automatic shut-off at power
- 14 failure and no elevated water storage tanks, and
- 15 (ii) has sufficient storage capacity that no potential for overflow exists, or
- 16 (iii) can tolerate septic wastewater due to prolonged detention, and
- 17 (iv) would have de minimus impacts as a result of power failure, or
- 18 (c) a demonstration that the waters that would be impacted by a power failure are classified as
- 19 C Waters, the applicant may be allowed to show a history of power reliability that would
- 20 demonstrate that an alternative power source would not be needed or demonstrate other
- 21 measures which provide comparable assurances that surface waters will not be impacted
- 22 during power failures;
- 23 (3) For new or hydraulically expanding mechanical facilities, the treatment plant must contain parallel
- 24 units for components in the liquid line (screening, primary sedimentation, biological treatment units,
- 25 chemical and physical treatment units, clarifiers, disinfection and effluent filters), unless the
- 26 applicant can demonstrate to the satisfaction of the Director that this requirement is unwarranted for
- 27 a particular case; and
- 28 (4) For mechanical facilities with a design capacity equal to or greater than 5.0 mgd, continuous
- 29 operation, 24 hours, seven days per week, with each shift staffed by at least one certified wastewater
- 30 operator shall be provided on or before October 1, 1993, unless the applicant can demonstrate to the
- 31 satisfaction of the Director that this requirement is unwarranted for a particular case; and
- 32 (5) For facilities permitted under this Section, the permittee must designate an Operator in Responsible
- 33 Charge and a back-up operator as required by the Water Pollution Control System Operators
- 34 Certification Commission as established in 15A NCAC ~~8A-.0202;~~ 08G .0201; and
- 35 (6) In order to ~~insure~~ ensure the proper operation and maintenance of facilities permitted under this
- 36 Section, the Operator in Responsible Charge, or back-up operator when appropriate, must operate

1 and visit the facility as required by the Water Pollution Control System Operators Certification
2 Commission as established in 15A NCAC ~~8A-0202~~; 08G .0200 et seq.; and

- 3 (7) Compliance with other reliability measures that, in the opinion of the Director, are necessary in a
4 particular case.

5
6 *History Note:* Authority G.S. 143-214.1; 143-215.1(b); 143-215.3(a)(1);
7 Eff. December 1, 1984;
8 Amended Eff. March 1, 1993; October 1, ~~1987~~ 1987;
9 Readopted Eff. May 1, 2019.
10

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02H .0125

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 that the following technical changes be made:

Overall, I'm not sure what is going on with this Rule, there are references to analyses, descriptions, and applications, but I'm not exactly sure who and when all of that comes into play. Please review and clarify. Is this Rule saying that in addition a NPDES permit application, peat mining operations have to adhere to this Rule?

What is the intent of Paragraph (a)? This Paragraph does not appear to be necessary. Please consider deleting as it does not provide any directive to your regulated public.

In (b), please change "are to be met during" to "shall apply to"

In (b), delete "to the extent necessary to protect water quality standards" or say how this is to be determined.

In (b), change "could contribute" to "contributes"

In (b), delete or define "significant"

In (b), what is meant by "that could contribute significant increases in pollution (including freshwater) into estuarine nursery areas, or any other area, identified by the Commission on a case-by-case basis when it is determined that potential exists for significant adverse effects on water quality and existing uses." How are these determinations made? Please review and clarify.

In (b), delete "(including freshwater)"

In (b), what is the intent of lines 19-26. It's not clear to me how this fits with the rest of the Paragraph.

In (b)(1) through (3), please end with semi-colons, rather than commas

In (b)(1) and (2), what is meant by "designated"? Are these the areas identified on a case-by-case basis?

Amber May
Commission Counsel
Date submitted to agency: Thursday, April 4, 2019

(c)(1) appears to be an aspirational statement based upon "if possible" If so, this is not appropriate for rule. Please review and clarify.

If (c)(1) is necessary, delete or define "directly" and "appropriate"

Also, given the reference to "freshwater bodies" here, I don't understand the reference in (b) if you decide to keep it.

In (c)(2), change "could contribute" to "contributes"

In (c)(2), delete or define "significant"

In (c)(2), delete "directly or indirectly"

In (c)(2), how will the Commission determined whether other areas "require this protection"? Also, what is "this protection"?

In (c)(2), change "would not" to "does not"

In (c)(2), how will it be determined how much water is expected from a site covered with natural vegetation.

In (c)(2), line 34, change "if it were allowed to develop" to "developed"

In (c)(2), I don't understand the reference to fire. Is the intent here to say that when determining what the vegetation would be if the site was undisturbed, they should account for fire?

In (c)(2), change "by the use of basins or other management techniques" to "management techniques, such as basins"

In (c)(2), line 37, change "which" to "that" in "which moderate"

In (c)(2), what is meant by "existing at the time of rule adoption"? Do you still need this language?

In (c)(2), how will it be determined whether "accurate evaluation of 'undrained' conditions is not practicable"? What factors will be used?

In (c)(2), page 2, line 7, what is meant by "these criteria"?

In (c)(2), what is meant by "wide range"?

In (c)(2), what is meant by "should as much as possible"? Again, this appears to be an aspirational statement not appropriate for rule.

In (c)(3), what is meant by "An initial transition period may be allowed such that the entire permitted mining site comes into compliance with these limitations within four years"? How will the determination whether this will be allowed be made? Do you mean "All mining sites shall comply with this Rule within four years or the issuance of the permit?"

Amber May
Commission Counsel

Date submitted to agency: Thursday, April 4, 2019

In (d), what is meant by “An initial transition period may be allowed such that the entire permitted mining site comes into compliance within four years, and shows constant yearly improvements in nutrient loadings as outlined in the proposed project plan.” Do you need this language here also? If so, please make the differences in (c) and (d) clear.

In (e), change “should” to “shall” in “should be utilized”

In (f), delete or define “fully” in “described fully”

In (f), what is meant by “Adequate means of disposal of solid wastes must be assured and discussed in the application in order to assure reliable control of pollution from on-site storage piles.” Specifically, “assured” and “discussed” and “reliable”

In (g), delete the first sentence as it is confusing and does not provide a directive to your public (it just appears to give unnecessary background information.)

In (g)(1), delete “very large”

In (g)(2), delete or define “complete”

In (g)(4), what is meant by “adequate controls”?

Please review the necessity of (g)(5). The first part appears unnecessary.

In (g)(5), change “should” to “shall”

In (g)(5), delete “detailed” in “detailed models”

What is the intent of (h)? Is it necessary? IT does not appear to be requiring anything. Please review and clarify the intent and delete any unnecessary language (most of it appears to be unnecessary to me, particularly lines 20-22 and 34-35.) To the extent this is necessary, please make the requirement clear.

In (h), delete “detailed” in “detailed information”

In (i), delete or define “fully” in “fully evaluated”

In (i), what is meant by “found to ensure compliance”? Is this the Division making this determination?

In (i), what factors will be used in determining whether monitoring wells will be required?

In (j), how will it be determined whether alterations would “threaten” nearby waters?

In (j), delete or define “nearby” in “nearby wildlife...” and “nearby waters” and “brief” in “brief description”

What is the overall intent of (k)? Is to just say that all permit requirements shall be adhered to, even if new owners take over? Please review and clarify.

In (k), delete or define “legal mechanisms”, “continuous”, “proper”, “acceptable options”

In (l), delete or define “fully” in “fully described”

In (l), delete “particularly”

In (l), change “come into compliance” with “comply”

In (l), what factors will the Commission use in making an approval determination regarding the schedule.

In (l), what is the intent of “such that pollution never exceeds levels existing at the start of the project.” Is it to say “following abandonment, no pollution shall exceed levels in existence at the start of the project”, then say that.

In (l), how is it to be determined whether something “would flood”

In (m), add a comma in between “canal” and “ditch”

In (m), by “may” do you mean “shall” in “may be considered...”?

In (m), what is meant by “standards are not required to be met in waste treatment systems. However if public uses were established, such as fishing, the Commission may determine...”? Is the intent here to say that if the lagoon, canal, or ditch then it will be “classified” and does not have to comply with these Rules, unless public uses, such as fishing, occurs? Please review and clarify.

I have no idea what lines 24-26 mean. Please review and clarify.

Line 23 refers to a classification of “classified waters”, but line 26 refers to “characteristics of a treatment system” Please be consistent in your use of terms where you can. Otherwise, I don’t understand what is going on here.

In (m)(1), delete or define “primarily”

What is the overall intent of (n)?

In (n), by “need not meet” do you mean “shall not be required to meet”

In (n), what is the intent of “canals are generally classified...” Is this necessary? It appears to be providing background information as opposed to giving a directive to your regulated public.

In (n), change “can be used” to “shall be used” Also, who is making this determination?

Begin (n)(1) through (4) with lower case letters.

End (n)(1)(A) with a semi-colon, rather than a comma.

In (n)(3), change “cannot” to “shall not”

In (n)(3), is there a cross-reference available for the “approval and permit modification”?

Amber May
Commission Counsel
Date submitted to agency: Thursday, April 4, 2019

In (n)(4), how will it be determined whether designations “require declassification”

In (o), are the contents of the application set forth elsewhere in rule or statute?

In (o), delete or define “full” (providing the contents of the application will likely address this)

In (o), delete “and assure”

*In (o), are the items listed on lines 12-13 documents needed in addition to the application?
If so, say that.*

In (o), what is meant by “other legal means for assured long-term compliance”?

In (o), change “should” to “shall” in “should be submitted”

In (o), what is meant by “where possible”

In (o), delete “full”

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 .0125 is readopted as published in 32:21 NCR 1943 as follows:

2
3 **15A NCAC 02H .0125 PERMIT REQUIREMENTS FOR PEAT MINING**

4 (a) Policy. Studies on peat mining in North Carolina have identified effects that could adversely impact the existing
5 uses of the waters of the state. As there is no experience with peat mining in similar ecological systems, the
6 effectiveness of proposed control and mitigation measures has not been demonstrated and must be estimated by using
7 methods of analyses that are not well tested by experience. Many of the impacts of large-scale peat mining and
8 subsequent reclamation may be irreversible and may not be realized until years or decades after peat mining is initiated.
9 In addition, the estuarine/wetland systems have intricate interconnections which are not well understood at present
10 and which are essential to the viability of the very valuable public estuarine resources. Recognizing the unknowns
11 associated with peat mining, this Rule specifies procedures and requirements that are necessary to ensure compliance
12 with the water quality standards and protection of the uses of the waters affected by peat mining operations. The water
13 quality standards and uses of the waters shall be protected during all phases of a peat mining project, and the
14 cumulative impacts of other peat mining or land uses shall be considered in the evaluation of each permit.

15 (b) Applicability. The requirements of this Rule are to be met during mining, reclamation, and, to the extent necessary
16 to protect water quality standards, after reclamation for all peat mining operations that could contribute significant
17 increases in pollution (including freshwater) into estuarine nursery areas, or any other area, identified by the
18 Commission on a case-by-case basis when it is determined that potential exists for significant adverse effects on water
19 quality and existing uses. Estuarine nursery areas are areas that function as important breeding or development grounds
20 for estuarine or marine fishes, crustaceans or molluscs. These areas include:

- 21 (1) all designated Primary Nursery Areas,
22 (2) all designated Secondary Nursery Areas,
23 (3) all anadromous fish spawning grounds and nursery areas identified in publications of the N.C.
24 Division of Marine Fisheries, and
25 (4) all other nursery areas designated or otherwise identified by the Marine Fisheries Commission, or
26 the Wildlife Resources Commission.

27 (c) Drainage:

- 28 (1) Canals draining peat mines shall not outlet directly into estuarine nursery areas and shall be directed
29 towards appropriate freshwater bodies if possible.
30 (2) If the drainage could contribute significant flow, directly or indirectly, into estuarine nursery areas
31 or other areas determined by the Commission to require this protection, the project must be designed
32 such that the total annual water released from the site would not exceed that expected from the site
33 covered with mature natural vegetation. Mature natural vegetation is the assemblage of indigenous
34 plants expected to occur on a proposed project site if it were allowed to develop undisturbed. This
35 expectation may include periodic disturbance by fire at natural frequencies and intensities. Also, the
36 peak flows from the site shall be controlled by the use of basins or other management techniques
37 which moderate release rates so that flows do not exceed those expected from the site undrained and

1 with mature natural vegetation. For purposes of this Rule, undrained is the state of the proposed
2 project site without structures or features imposed by human agency intended to facilitate removal
3 of surface or subsurface water. In modelling or other analysis required by this Rule, major canals
4 existing at the time of rule adoption, at a density no greater than one per mile by one per 1/2 mile
5 (or 320 acre blocks), may be allowed at the discretion of the Commission when it is determined that
6 accurate evaluation of "undrained" conditions is not practicable. Water management systems must
7 be designed to meet these criteria utilizing models or other quantitative methods in accordance with
8 Paragraph (g) of this Rule and considering a wide range of rainfall conditions. The
9 frequency-duration distribution for flows leaving the site during and after mining should as much
10 as possible match the distribution that would occur if the site were undrained and covered with
11 mature natural vegetation.

- 12 (3) An initial transition period may be allowed such that the entire permitted mining site comes into
13 compliance with these limitations within four years. Reduction in runoff volumes must occur at a
14 rate achieving constant yearly improvements as stipulated in the permit, and at no time exceed those
15 expected under conditions existing at the time of permit issuance.

16 (d) Nutrients. The project shall be designed so that nutrient loadings discharged from the site are no greater than
17 would occur if the site were covered with mature natural vegetation. An initial transition period may be allowed such
18 that the entire permitted mining site comes into compliance within four years, and shows constant yearly
19 improvements in nutrient loadings as outlined in the proposed project plan. However, in accordance with Rule .0404(c)
20 of this Subchapter, more stringent conditions may be established for nutrient discharges to waters that are excessively
21 eutrophic.

22 (e) Sediment. Best management practices, including settling basins on field ditches, should be utilized to control
23 sediment in drainage waters. The levels of sediment discharged must be predicted for the different stages of the
24 operation and evidence provided that these levels will not adversely affect the uses of the receiving waters. The
25 deposition of windblown dust into both drainage and adjacent waters and the effects during and after fires must be
26 included in this analysis. Details on the rate of sediment buildup and the frequency and procedures for removal in the
27 various components for the water control system, including canals and settling basins, must be provided. Adequate
28 sediment controls must be provided during maintenance and expansion of canals and water control structures.

29 (f) Other pollutants. The characteristics of the drainage water leaving the site must be described fully for all phases
30 of the project. Any substances which may be discharged during some phase of the project must be evaluated as part
31 of the application and adequately controlled to comply with the water quality standards and to protect the uses of the
32 waters. Possible runoff or leachate from storage piles of peat, ash, or other substances on site must be included in this
33 analysis. Adequate means of disposal of solid wastes must be assured and discussed in the application in order to
34 assure reliable control of pollution from on-site storage piles.

35 (g) Quantitative methods of evaluation. The design and evaluation of proposed peat mining projects relies on
36 predictive models to an unusual degree since there is no experience with large-scale peat mining or the effectiveness

of pollution control measures in similar situations. Modelling or quantitative methods of analyses must, at a minimum, meet the following requirements:

- (1) All factors which may affect the quality or quantity of the discharge must be included in the design and evaluation of the water control system, including factors such as very large storm events, sequential storm events, fires, various land uses during different stages of the project, recharge or discharge to the groundwater, and construction, expansion, filling-in and maintenance of ditches, canals, settling basins, and impoundments;
- (2) The complete assumptions for each analysis or condition must be listed and possible errors and the effects of such errors, including interactions, must be evaluated for each assumption;
- (3) Situations under which the predictions would be inaccurate must be identified and evaluated;
- (4) Conditions under which the proposed water control system would fail to provide adequate controls must be evaluated, including mechanical failures, and descriptions of the storage and flow capacities of all system components along with the intensities and durations of storms which would be expected to exceed the capacity of the various components during each phase of the project. The impact of such failures on water quality and flows must be evaluated;
- (5) To provide maximum information about the operation of the proposed system under all conditions and to minimize the possibility of error or inapplicable assumptions, various methods of analyses should be utilized, including detailed models using historical rainfall data, as well as methods based on individual design storms and runoff coefficients.

(h) Wetland or swamp discharges. While wetlands and swamps are waters of the state and cannot be considered as part of a treatment and disposal system, their assimilative capacity and water storage capabilities may play a role in protecting the uses of downstream waters. For purposes of this Rule, wetlands are as defined in the federal NPDES regulations in 40 CFR 122.2, as existing on July 1, 1985, including any subsequent amendments and editions. The current version of these regulations can be accessed free of charge at <http://www.gpo.gov/fdsys/>. ~~Copies may be obtained from the Director, Division of Environmental Management, Raleigh.~~ Where available, determinations of wetland status by the U.S. Environmental Protection Agency or the U.S. Army Corps of Engineers may be used in making wetland evaluations. The Commission may also make determinations of wetland status in defining where water quality standards and uses must be protected. A discharge to a wetland or swamp must protect the uses of these waters. The water quality benefits of a wetland filter area should be estimated conservatively. Detailed information on the size, topography, soils, flows, water depths, channels, vegetation, wildlife resources, uses by wildlife and man, and other characteristics of a proposed filter area must be provided in order to demonstrate that the discharge will flow in the desired direction, that sheet flow and water quality benefits will be maintained over the long-term, and that water quality and existing uses of the area will not be threatened. The effects of storms or high water levels on these benefits and characteristics must also be evaluated. A description of the means of diffusion to provide sheet flow is particularly important. The terms wildlife and wildlife resources are used as defined in G.S. 113-129.

(i) Effects on groundwater. The impacts of the proposed project and water control system on groundwater must be fully evaluated and found to ensure compliance with Title 15A, Subchapter 2L, Classification and Water Quality

Standards Applicable to the Groundwaters of North Carolina. Groundwater monitoring wells may be required to verify compliance with this requirement.

(j) Effects on adjacent landowners. The effects of the proposed project on water quality in adjacent lands and nearby wildlife refuges, parks, and other publicly owned lands, must be evaluated. Hydrologic and other alterations must not threaten the uses in nearby waters. A brief description of the project and summary of the expected impacts on water quality and uses must be sent to adjacent landowners and a copy attached to the permit application.

(k) Assurance of continued operation. As part of the permit application, legal mechanisms must be developed to assure continuous proper long-term use and operation and maintenance of water control systems during all times when permitted peat mining or reclamation activities are being carried out that could adversely impact the waters of the state and thereafter where no other acceptable options are available to protect water quality. These mechanisms must include paying for the costs of operating and maintaining the system. These assurances must be provided by current owners and will be required through all changes in ownership during this time. Assurances of implementation of these mechanisms prior to the initiation of mining activity shall be a condition of the permit.

(l) Abandonment. The consequences of abandonment of the drainage and water control systems must be fully described for each phase of the project and particularly after the reclamation plan is implemented. If the area of the project is abandoned at any time, the drainage discharges must come into compliance with the design requirements of this Rule within four years or on a schedule approved by the Commission such that pollution never exceeds levels existing at the start of the project. The analyses must verify that the mining bond and reclamation plan after the bond is released are both adequate to meet this condition. Further, it must be determined whether the mined area would flood, and if so, the depth of the water and points and rates of overflow must be described along with the impacts on adjacent lands and waters.

(m) Characteristics of treatment systems. If an impoundment lagoon, canal or ditch does not meet all of the characteristics listed in Subparagraphs (1) through (4) of this Paragraph, the water in the structure may be considered classified waters of the state. Standards are not required to be met in waste treatment systems. However, if public uses were established, such as fishing, the Commission may determine that continual protection of that use be achieved which could preclude some benefits desired as a waste treatment system. The characteristics of a treatment system are that the structure:

- (1) is manmade and is utilized primarily for water management and water pollution control;
- (2) is entirely on a single tract of privately owned land with the owner or owners controlling the inflows and outflows;
- (3) has controls at the outlet(s) so water may flow out, but under normal hydrological conditions not into the structure or facility through the outlet(s);
- (4) is not an integral part of the ecosystem of the receiving waters so that if the operation causing the pollution is discontinued, the structure or facility can be removed from use without adversely impacting the hydrology or water quality of the receiving waters.

(n) Identification of outlet points. Water in treatment systems need not meet the water quality standards nor maintain public uses. Waters downstream from an outlet point must be protected to meet the standards and public uses. Canals

are generally classified waters of the state, either as named stream segments in the Schedule of Classifications or as unnamed tributaries. The following factors can be used as guidance in determining the outlet point:

- (1) The outlet point must be entirely on the property of the permit applicant;
- (2) The outlet point must be selected so that the owner can block, obstruct, or open the outlet point:
 - (A) without removing any established uses of the waters including navigation, fishing, and wildlife, and
 - (B) without adversely affecting drainage by other landowners;
- (3) Once a point has been designated as an outlet, the receiving waters cannot be obstructed by any landowner without approval and a permit modification by the Commission;
- (4) Outlet designations may require declassifications.

(o) Application Information. The permit application must contain full information to evaluate and assure compliance with the requirements of this Rule, including maps, diagrams, calculations, assumptions, engineering specifications, and any proposed deed restrictions, easements, contracts or other legal means of assuring long-term compliance. Applications for all permits required by G.S. 143-215.1 for the project site, including permits for waste disposal for sanitary facilities, on-site power plants, or energy conversion facilities, should be submitted together where possible in order to evaluate the full impacts of the proposed project.

*History Note: Authority G.S. 143-214.1; 143-215(a); 143-215(b); 143-215.1; 143-215.3(a)(1);
Eff. September 1, 1986. 1986;
Readopted Eff. May 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02H .0127

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 that the following technical changes be made:

Throughout this Rule, please change "will" to "shall"

Please be consistent in your use of "individual" and "NPDES permit"

What is the overall intent of Paragraph (a)? Is it essentially to say something like "In accordance with 143.215.1(b3), the Division may issue general permits for minor activities. Much of it appears to be unnecessary. Please review and revise as necessary. Because there is so much information contained within (a), please consider breaking this Paragraph into several Paragraphs.

Much of (a) appears to repeat itself. Please review and revise as necessary.

For purposes of clarity and eliminating repetition, please consider something like the following revision (if you chose to use this language, or any variation of it, please ensure the accuracy):

(a) In accordance with the provisions of G.S. 143.215.1 (b)(3) and (4), general permits may be developed by the Division and issued by the Director for categories of activities shown in this Rule. for minor activities, including the following: All those dischargers in the State that received a "Certificate of Coverage" for that category from the Division will be deemed covered under that general permit. Each of the general permits will be issued individually under G.S. 143-215.1, using all procedural requirements specified for individual NPDES or state permits including application and public notice. Each general permit must be approved by the U.S. EPA, before it becomes effective. Dischargers covered under general permits, developed in accordance with this Rule, will be subject to the same effluent standards and limits, management practices, enforcement authorities, and rights and privileges as specified in the general permit. Procedural requirements for application and permit approval, unless specifically designated as applicable to individuals proposed to be covered under the general permits, apply only to the issuance of the general permits. After issuance of the general permit by the Director and approval by EPA, dischargers in the applicable categories may request coverage under the general permit, and the Director or his designee shall grant appropriate certification. General permits may be written to regulate categories of other discharges that all: Involve the same or substantially similar operations; Have similar discharge characteristics; Require the same effluent limitations or operating conditions; Require the same or similar monitoring; and In the opinion of the Director are more appropriately controlled by a general permit such as:

- (1) once-through non-contact cooling waters with no biocidal additives;

Amber May
Commission Counsel

Date submitted to agency: Thursday, April 4, 2019

- (2) mine dewatering facilities;
- (3) water filtration facilities;
- (4) swimming pool filter backwash facilities;
- (5) seafood packing facilities;
- (6) oil terminal storage facilities;
- (7) tourist gem mines;
- (8) sand dredges;
- (9) trout farms;
- (10) aquifer restoration;
- (11) stormwater discharges;
- (12) other discharges as determined by the Division based upon whether discharges: that meet the criteria in Paragraph (a) of this Rule.
 - (A) involve the same or similar operations;
 - (B) have similar discharge characteristics;
 - (C) require the same effluent limitations or operating conditions; and
 - (D) require the same or similar monitoring.

Then move everything else to their own paragraph(s).

What is the intent of "Each of the general permits will be issued individually under G.S. 143-215.1, using all procedural requirements specified for individual NPDES or state permits including application and public notice." Is this just to say that general permits follow the same requirements as individual permits? If so, can you just say that for clarity purposes.

Also with regard to this language, what is meant by "state permits"? I thought that we were talking about general and individual NPDES permits. What other kinds of permits are applicable here? IF this language is necessary, capitalize state.

Is there a cross-reference available for the EPA approval?

In (a), delete "developed in accordance with this Rule" on line 9-10.

IS "Procedural requirements for application and permit approval, unless specifically designated as applicable to individuals proposed to be covered under the general permits, apply only to the issuance of the general permits" necessary? It appears to repeat lines 7-8. If it is not repetitive and the intent is something else, I don't understand.

What is meant by "After issuance of the general permit by the Director and approval by EPA, dischargers in the applicable categories may request coverage under the general permit, and the Director or his designee shall grant appropriate certification." Does this go with (h)?

In (a), what is meant by "All those dischargers in the State that received a "Certificate of Coverage" for that category from the Division will be deemed covered under that general permit." Does this go with (f)?

What is the intent of (b)? Specifically, what do you mean by "following review and approval"? Here, do you simply mean something like "General permits shall only be issued for waters classified as either WS or SA by the Shellfish..." If so, change "will" to "shall" and delete "following review and approval"

Is (c) necessary, particularly in light of 143-215.1(b)(3)? If so, please say something like "Notwithstanding any provision of a general permit, permittees shall..." Also, what is meant

Amber May
Commission Counsel
Date submitted to agency: Thursday, April 4, 2019

by "state water quality standards and other applicable environmental standards"? Is this language consistent with the language you've used elsewhere in these Rules?

In (d), what is the overall intent? Is it to say that facilities may apply for a general permit, but if all requirements (see my notes below on this), then they have to use a "long form application and full application review process (again, see my notes below on this"? Can this language be simplified?

In (d), delete "as appropriate" on line 2 or provide some additional information as to how this determination will be made.

In (d), line 4, by "may", do you mean "shall"? As in, if all requirements are met, a general permit shall be issued?

In (d), line 3, what is meant by "if all requirements are met"? What requirements? Are these separate from the procedures set forth in .0105 and .0106?

In (d), line 4, what is meant by "a long form application and full application review procedure"? This appears to be something different than what is provided in .0105 and .0106. Is this set forth elsewhere in rule or statute? Please provide some additional information.

Also, on line 4, are the contents of a "long form application" set forth elsewhere in rule or statute? What are the differences?

In (e), how will it be determined for how long a permit will be effective?

In (e), how will it be determined whether the Division will renew a permit?

In (e), please provide a cross-reference to the required public notice.

In (e), what is meant by "Dischargers covered by general permits need not submit..." Does this mean that renewal will happen automatically? Out of curiosity, how do fees play into this?

In (e), change "need not" to "shall not"

In (e), how will it be determined by the Director whether new Notices of Intent or Renewal requests will be required? This is also an issue in lines 8-10, I think addressing it in one place will fix both issues.

On line 9, if you retain this language, change "chooses not" to "does not"

Does the language in (f) go with "All those dischargers in the State that received a "Certificate of Coverage" for that category from the Division will be deemed covered under that general permit" in (a)?

In (f), change "which" to "that"

In (f), what is meant by "all previous state water quality permits issued to a facility which can be covered by a general permit"? Do you still need this language? If so, what permits would qualify?

Amber May
Commission Counsel
Date submitted to agency: Thursday, April 4, 2019

In (f), change “are” to “shall be” and add a comma in between “individual permit” and “issuance”

Also in (f), would issuance of the Certification occur automatically or do they have to comply with these Rules? Please review and clarify if necessary.

Is (g) necessary? This appears to be addressed by statute.

If (g) is necessary, what is meant by “activities covered by the general permit rules”? Do you mean minor activities?

In (i)(1), delete or define “significant”

Delete the “or” at the end of (i)(4)

Add an “or” at the end of (i)(7)

What is the intent of (j)? How would a person go about making this request?

In (k), delete “the authority and requirements of”

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

Amber May
Commission Counsel
Date submitted to agency: Thursday, April 4, 2019

1 15A NCAC 02H .0127 is readopted as published in 32:21 NCR 1943 as follows:

2
3 **15A NCAC 02H .0127 GENERAL PERMITS**

4 (a) In accordance with the provisions of G.S. 143.215.1 (b)(3) and (4), general permits may be developed by the
5 Division and issued by the Director for categories of activities shown in this Rule. All those dischargers in the State
6 that received a "Certificate of Coverage" for that category from the Division will be deemed covered under that general
7 permit. Each of the general permits will be issued individually under G.S. 143-215.1, using all procedural requirements
8 specified for individual NPDES or state permits including application and public notice. Each general permit must be
9 approved by the U.S. EPA, before it becomes effective. Dischargers covered under general permits, developed in
10 accordance with this Rule, will be subject to the same effluent standards and limits, management practices,
11 enforcement authorities, and rights and privileges as specified in the general permit. Procedural requirements for
12 application and permit approval, unless specifically designated as applicable to individuals proposed to be covered
13 under the general permits, apply only to the issuance of the general permits. After issuance of the general permit by
14 the Director and approval by EPA, dischargers in the applicable categories may request coverage under the general
15 permit, and the Director or his designee shall grant appropriate certification. General permits may be written to regulate
16 categories of other discharges that all: Involve the same or substantially similar operations; Have similar discharge
17 characteristics; Require the same effluent limitations or operating conditions; Require the same or similar monitoring;
18 and In the opinion of the Director are more appropriately controlled by a general permit such as:

- 19 (1) once-through non-contact cooling waters with no biocidal additives;
20 (2) mine dewatering facilities;
21 (3) water filtration facilities;
22 (4) swimming pool filter backwash facilities;
23 (5) seafood packing facilities;
24 (6) oil terminal storage facilities;
25 (7) tourist gem mines;
26 (8) sand dredges;
27 (9) trout farms;
28 (10) aquifer restoration;
29 (11) stormwater discharges;
30 (12) other discharges that meet the criteria in Paragraph (a) of this Rule.

31 (b) General permits will only be granted for discharge into waters classified either WS or SA following review and
32 approval by the Shellfish Sanitation Program, Division of Marine Fisheries, and the Public Water Supply Section,
33 Division of Environmental Health, Water Resources, both of the Department of Environment, Health, and Natural
34 Resources, Environmental Quality.

35 (c) No provision in any general permit ~~issues~~ issued under this Rule shall be interpreted as allowing the permittee to
36 violate state water quality standards or other applicable environmental standards.

1 (d) For one of these general permits to apply to a facility, a Notice of Intent to be covered by the general permit must
2 be given using forms described in Rule .0105(a) of this Section and, as appropriate, following the application
3 procedures specified in Rules .0105 and .0106 of this Section. If all requirements are met, coverage under the general
4 permit may be granted. If all requirements are not met, a long form application and full application review procedure
5 will be required.

6 (e) General permits will be effective for a term not to exceed five years at the end of which the Division may renew
7 them. All public notice requirements shall be satisfied prior to renewal of general permits. Dischargers covered by
8 general permits need not submit new Notices of Intent or renewal requests unless so directed by the Division. If the
9 Division chooses not to renew a general permit, all facilities covered under that general permit shall be notified to
10 submit applications for individual permits.

11 (f) All previous state water quality permits issued to a facility which can be covered by a general permit, whether for
12 construction or operation, are revoked upon request of the permittee, termination of the individual permit and issuance
13 of the Certification of Coverage.

14 (g) Anyone engaged in activities covered by the general permit rules but not permitted in accordance with this Section
15 will be considered in violation in G.S. 143-215.1.

16 (h) Any individual covered or considering coverage under a general permit may choose to pursue an individual permit
17 for any facility covered by this Rule.

18 (i) The Director may require any person, otherwise eligible for coverage under a general permit, to apply for an
19 individual NPDES permit by notifying that person that an application is required. Notification shall consist of a written
20 description of the reason(s) for the decision, appropriate permit application forms and application instructions, a
21 statement establishing the required date for submission of the application, and a statement informing the person that
22 coverage by the general permit shall automatically terminate upon issuance of the individual permit. Reasons for
23 requiring application for an individual permit may be:

- 24 (1) the discharge is a significant contributor of pollutants;
- 25 (2) conditions at the permitted site change, altering the constituents or characteristics of the discharge
26 such that the discharge no longer qualifies for coverage under a general permit;
- 27 (3) noncompliance with the general permit;
- 28 (4) noncompliance with Division Rules; or
- 29 (5) a change has occurred in the availability of demonstrated technology or practices for the control or
30 abatement of pollutants applicable to the point source;
- 31 (6) effluent limitations are promulgated for the point sources covered by the general permit;
- 32 (7) a water quality management plan containing the requirements applicable to such point sources is
33 approved after the issuance of the general permit;
- 34 (8) a determination that the water of the stream receiving the discharge is not meeting applicable water
35 quality standards.

36 (j) Any interested person may petition the Director to take an action under Paragraph (i) of this Rule to require an
37 individual NPDES permit.

(k) General permits may be modified, terminated, or revoked and reissued in accordance with the authority and requirements of Rules .0112 and .0114 of this Section.

*History Note: Authority G.S. 143-215(1); 143-215.3(a)(1);
Eff. October 1, 1987;
Amended Eff. March 1, 1993; August 1, 1991; August 1, ~~1988~~ 1988;
Readopted Eff. May 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02H .0138

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 that the following technical changes be made:

I note that you've used both "Section Chief" and "director" in this Rule. Are they synonymous? Please be consistent where you can.

In (a)(3), change "will" to "shall" in "will be considered" on lines 13 and 14.

In (b), do you mean something like "in addition to the application, the following information shall be required"? I read (b) to say that is going to be required in the application (which you need somewhere), but I read (b)(2) through (9) to be all of the other "stuff" required along with the application. Please review and revise.

Please end (b)(1) through (8) with semi-colons instead of periods and add an "and" at the end of (b)(8)

In (b)(1), are the contents of the application set forth elsewhere in rule or statute? If not, please provide the information.

In (b)(1), delete "provided by the Director either in printed form or in an electronic format allowed by law and acceptable to the Director" and say what is required in the application and how it is to be submitted.

In (b)(1), line 18, delete or define "complete" and "fully"

In (b)(1), lines 19-20, what is your authority to say "The signature of the consulting engineer or other agency will be accepted as representing the permittee on the application only if accompanied by a letter of authorization from the permittee"? Are there any issues with the engineer's practice act with this? Assuming you have authority for it, please change "will" to "shall"

In (b)(2), delete "in a format acceptable to the Director" and say what is actually required.

In (b)(2), line 23, delete or define "detailed"

Amber May
Commission Counsel
Date submitted to agency: Thursday, April 4, 2019

In (b)(3), what are “additional specifications”?

In (b)(4), when will this statement be required by the Director? Please either say when it will be required or what factors will be used in making this determination.

In (b)(4), delete or define “properly” and “adequate”

In (b)(5), who is the “governing agency”? DEMLR?

In (b)(6), what kind of documentation would be adequate to show proof of this?

In (b)(6), what is meant by “in cases where this is not reasonable or economically achievable, an exception may be granted by the Water Quality Permitting Section Chief”? Who decides whether something is not reasonable or economically achievable? Here, do you mean something like “an applicant (or whomever) may request a waiver of this requirement. The Chief shall grant this request upon a determination that XXXXX based upon XXXXX)? If so, please say that (specifically be sure to include how the Division is going to make the determination.)

In (b)(7), please change “which” to “that” in “which have”

In (b)(8)(A), delete or define “detailed”

In (b)(8)(B), line 20, change “will” to “shall”

In (b)(8)(B), how is the applicant to demonstrate and how is the Director going to determine whether a waiver is to be granted? Please provide the requirements of the applicant in making this showing and also provide the factors as to how the Director is going to make this determination.

In (b)(8)(B), line 24, when exactly would additional storage be required.

In (b)(8)(C), delete “A residuals commitment.” You’ve not done this elsewhere in this Rule.

Change “will” to “shall” on line 25

In (b)(8)(C), is there a cross-reference available regarding approvals of DWR-approved residual disposal/utilization. Also, please change “disposal/utilization” to “disposal and” or “disposal or utilization”, whichever is intended.

In (b)(8)(C), change “and which” to “that” on line 27.

In (b)(9), delete or define “continuous”

In your History Note, delete “see. S.L. 2012-194, s. 33). The changes made in that Session Law appear to have been fully incorporated into 143-215.1. Please add any pertinent statutory authority.

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

Amber May
Commission Counsel
Date submitted to agency: Thursday, April 4, 2019

1 15A NCAC 02H .0138 is readopted as published in 32:21 NCR 1943 as follows:

2
3 **15A NCAC 02H .0138 AUTHORIZATION TO CONSTRUCT PERMITS**

4 (a) Authorization Required.

5 (1) After an NPDES permit has been issued by the Division of ~~Environmental Management~~ Water
6 Resources in accordance with this Section, construction of wastewater treatment facilities or
7 additions thereto shall not begin until final plans and specifications have been submitted to and an
8 Authorization to Construct has been issued to the permittee by the Division of ~~Environmental~~
9 ~~Management.~~ Water Resources, except as provided in Subparagraph (2) of this Paragraph.

10 (2) No Authorization to Construct shall be required for facilities intended to treat principally waste or
11 sewage from an industrial facility whose discharge is authorized pursuant to an NPDES permit.

12 (3) If an Authorization to Construct has not been applied for in accordance with the requirements of the
13 NPDES permit during the term of the permit, the permit will be considered void upon expiration
14 and future actions will be considered as a new application.

15 (b) Application. An application for an Authorization to Construct shall include the following:

16 (1) ~~Application for Authorizations to Construct must be made in triplicate on official forms completely~~
17 ~~filled out, where applicable, provided by the Director either in printed form or in an electronic format~~
18 ~~allowed by law and acceptable to the Director. Application forms shall be complete and fully~~
19 ~~executed. The signature of the consulting engineer or other agent will be accepted as representing~~
20 ~~the permittee on the application only if accompanied by a letter of authorization from the permittee.~~

21 (2) ~~Required sets of plans~~ Plans and specifications: The applicant shall provide one printed set and one
22 electronic copy, in a format acceptable to the Director,

23 (A) ~~regular projects—five sets of detailed plans and specifications, specifications for the~~
24 ~~proposed facilities or facility modifications.~~

25 (B) ~~federal and state grants/loan projects—four sets of detailed plans and specifications plus~~
26 ~~federal assurances required by appropriate federal agency;~~

27 (3) ~~Specifications~~ Additional specifications describing all materials to be used, methods of construction
28 and means for ~~assuring~~ ensuring the quality and integrity of the finished project.

29 (4) ~~When required,~~ required by the Director, a statement ~~submitted~~ that the wastewater treatment facility
30 involved will be properly disconnected and the wastewater discharged into an adequate district or
31 municipal system when it becomes available.

32 (5) If a Sedimentation and Erosion Control Plan is required by the Division of Energy, ~~Mineral,~~ Mineral
33 and Land Resources or their designee, documentation ~~shall be provided~~ verifying that the applicant
34 has developed and submitted to the governing agency the required Plan.

35 (6) A Documentation that a 110 volt power source and a potable water supply, equipped with backflow
36 prevention, must be are available at the treatment system to allow for maintenance, clean-up and

sampling. In cases where this is not reasonable or economically achievable, an exception may be granted by the Water Quality Permitting Section Chief.

- (7) For those wastewater disposal facilities which have the potential to cause a contravention of groundwater standards, hydrogeologic information ~~must be provided~~ as specified in Rule ~~2H-0205 of this Subchapter.~~ 15A NCAC 02T .0504.

- (8) A residuals management ~~plan must be submitted for all plan,~~ if the wastewater treatment ~~systems that generate residuals and~~ system generates residuals. The plan must include the following:

(A) A detailed explanation as to how the residuals will be stabilized. In addition if the residuals are generated from a system treating sewage, the explanation must show that the stabilization process meets the Environmental Protection Agency's criteria for a Class B residual as defined in 40 CFR 503 or for a Process to Significantly Reduce Pathogens (PSRP) as defined in 40 CFR Part 257 Appendix II, hereby incorporated by reference including any subsequent amendments and editions. ~~This material is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Environmental Management, 512 N. Salisbury Street, Raleigh, North Carolina. Copies may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington D.C. 20402-9325 at a cost of thirty six dollars (\$36.00). The current version of these regulations can be accessed free of charge at <http://www.gpo.gov/fdsys/>.~~

(B) An evaluation of the residual storage requirements for the treatment facility. A minimum of 30 days storage will be required on all facilities, unless the applicant can demonstrate to the satisfaction of the Director that this requirement is unwarranted for a particular case. Storage shall be calculated based upon average sludge production rate and shall be process units that are separate from the treatment system, i.e., not the clarifiers or aeration basins. Additional storage may be required based upon the method of final disposal/utilization.

(C) A residuals commitment. No authorization to construct will be issued unless the application package includes a commitment from a ~~DEM DWR-~~ approved residual disposal/utilization site for the acceptance of the residual and which demonstrates that the ~~DEM DWR-~~ approved site has adequate capacity to accept the residuals.

- (9) A construction sequence plan ~~must be submitted with applications for an Authorization to Construct for modification of~~ for any project that will modify existing wastewater treatment facilities. The plan must outline the construction sequence to ensure continuous operation of the treatment system.

~~(c) Fees for Authorization to Construct Permits~~

~~(1) For every application for a new or modified construction permit, for facilities with a permitted flow of greater than 100,000 gallons per day, a nonrefundable application processing fee of two hundred dollars (\$200.00) must be submitted.~~

~~(2) For every application for a new or modified construction permit, for facilities with a permitted flow of equal to or less than 100,000 gallons per day but greater than 1,000 gallons per day, a~~

1 ~~nonrefundable application processing fee of one hundred and fifty dollars (\$150.00) must be~~
2 ~~submitted.~~

- 3 (3) ~~For every application for a new or modified construction permit, for facilities with a permitted flow~~
4 ~~of equal to or less than 1,000 gallons per day, a nonrefundable application processing fee of one~~
5 ~~hundred dollars (\$100.00) must be submitted.~~

6
7 *History Note:* *Authority G.S. 143-215.1(c)(1);*

8 *Eff. October 1, 1987;*

9 *Amended Eff. August 1, 2012 (see S.L. ~~2012-14, s.1.(f)~~; 2012-194, s.33; March 1, 1993; August*
10 *3, ~~1992~~, 1992;*

11 *Readopted Eff. May 1, 2019.*
12

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02H .0139

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 that the following technical changes be made:

On line 4, delete "good engineering practices"

On line 6, what "plans and specifications"? Those required by 02T .0105 and .0114?

Please confirm that you have been in contact with the Board of Engineers to confirm that this is in accordance with their Practice Act.

Delete the "and" at the end of Item (1).

In Item (2), delete or define "complete"

*In Item (2) what sort of information would be "needed to evaluate the proposed facility"?
Would it be appropriate to provide a cross-reference?*

Please change the commas in (1) and (3) to semi-colons.

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

Amber May
Commission Counsel
Date submitted to agency: Thursday, April 4, 2019

1 15A NCAC 02H .0139 is readopted as published in 32:21 NCR 1943 as follows:

2
3 **15A NCAC 02H .0139 MINIMUM DESIGN REQUIREMENTS**

4 All facilities requiring a permit pursuant to this Section shall be designed following good engineering practice and
5 comply with the minimum design requirements specified in ~~Rule 2H .0219 of this Subchapter.~~ 15A NCAC 02T .0105
6 and .0114. The plans and specifications must be stamped and sealed by a Professional Engineer licensed in North
7 Carolina unless all three of the following conditions are met:

- 8 (1) the plans and specifications are for domestic waste from a single family dwelling with flows of ~~1000~~
9 1,000 gallons per day or less, and
10 (2) the plans and specifications are prepared by the homeowner, and contain complete information
11 needed to evaluate the proposed facility, and
12 (3) the effluent limitations are for secondary treatment.

13
14 *History Note: Authority G.S. 143-215.1(c)(1);*
15 *Eff. October 1, ~~1987~~. 1987;*
16 *Readopted Eff. May 1, 2019.*
17

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02H .0140

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 that the following technical changes be made:

Please consider breaking this Rule up into two or three separate paragraphs. Lines 7-8 (For facilities with phased construction...) and lines 8-10 (In cases where the treatment...) appear to be addressing a separate issue.

On line 5, by "received", do you mean "obtained"? Who has the responsibility here? The applicant? If so, please say "a certification shall be obtained by the applicant from a professional..."

On line 6, what is meant by "approved plans and specifications"? Approved by whom? The engineer or the department.

On line 7, delete or define "certain" and "actual"

On line 7, what is the potential "additional certification" and how will it be determined whether this is necessary?

When does the last line apply? The first line says "prior to the operation of any treatment works..." certification has to be obtained from a PE, but the last line says that if it was designed by a homeowner, then he or she can sign the certification? I'm a bit confused as to what the actual requirement is here.

Please confirm that you have been in contact with the PE Board to ensure that this is within their scope of practice.

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

Amber May
Commission Counsel
Date submitted to agency: Thursday, April 4, 2019

1 15A NCAC 02H .0140 is readopted as published in 32:21 NCR 1943 as follows:

2
3 **15A NCAC 02H .0140 CERTIFICATION OF COMPLETION**

4 Prior to operation of any treatment works or disposal system permitted in accordance with this Section, a certification
5 must be received from a professional engineer certifying that the treatment works or disposal system has been installed
6 in accordance with the approved plans and specifications. For facilities with phased construction or where there is a
7 need to operate certain equipment under actual operating conditions prior to certification, additional certification may
8 be needed as follow-ups to the initial, pre-operation, certification. In cases where the treatment works or disposal
9 system was designed by a homeowner rather than a professional engineer, either the permittee or a professional
10 engineer must submit this certification.

11
12 *History Note: Authority G.S. 143-215.1(c)(1);*

13 *Eff. October 1, ~~1987~~1987;*

14 *Readopted Eff. May 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02H .0141

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 that the following technical changes be made:

Please consider making lines 5-6 into a list. It would look something like the following:

- (a) Prior to issuance or reissuance of a permit pursuant to this Section for a wastewater facility as specified in G.S. 143-215.1(d1), the applicant must ~~either~~ either:
 - (1) provide evidence to show that the applicant has been designated as a public utility by the State Utilities ~~Commission~~ Commission; or
 - (2) enter into ~~a properly executed~~ operational agreement with the Division of ~~Environmental Management~~ Water Resources.
- (b) The requirement for assurance of financial solvency will be made on a case by case determination.

On line 5, what sort of evidence would be sufficient to show that the applicant has been designated as a public utility? Can you provide an example of sufficient evidence?

On line 6, what is meant by "properly executed"? Please delete or define. Do you mean an operational agreement in accordance with these Rules?

Please consider making the last sentence its own Paragraph. Also, how will this determination be made? I understand that it will be made on a case-by-case basis, but what factors will be used in making this determination?

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

Amber May
Commission Counsel
Date submitted to agency: Thursday, April 4, 2019

1 15A NCAC 02H .0141 is readopted as published in 32:21 NCR 1943 as follows:

2
3 **15A NCAC 02H .0141 OPERATIONAL AGREEMENTS**

4 Prior to issuance or reissuance of a permit pursuant to this Section for a wastewater facility as specified in G.S.
5 143-215.1(d1), the applicant must either provide evidence to show that the applicant has been designated as a public
6 utility by the State Utilities Commission or enter into a properly executed operational agreement with the Division of
7 ~~Environmental Management~~Water Resources. The requirement for assurance of financial solvency will be made on
8 a case by case determination.

9
10 *History Note: Authority G.S. 143-215.1(d1);*

11 *Eff. October 1, ~~1987~~1987;*

12 *Readopted Eff. May 1, 2019.*

1 15A NCAC 02H .0142 is repealed through readoption as published in 32:21 NCR 1943 as follows:

2
3 **15A NCAC 02H .0142 USE/WASTEWATER TRTMT WORKS EMGCY MAIN: OPER/REPAIR FUND**

4
5 *History Note: Authority G.S. 143-215.3(a); 143-215.3B(c); 143-215.3B(e);*

6 *Eff. August 1, ~~1988~~, 1988;*

7 *Repealed Eff. May 1, 2019 (S.L. 2005-454, §8, effective January 1, 2006).*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02H .0143

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 that the following technical changes be made:

On line 6, please change "rules" to "regulations" in "federal rules"

*On line 6-7, what is meant by "in which case the separately adopted procedure governs"? do you mean these Rules? If so, please consider saying something like "... procedural details of the federal **regulations** differ from procedures adopted elsewhere in this Section, **these Rules shall apply.**"*

What is the intent of (b)? Is it just to make sure that your regulated public is aware that additional portions of the CFRs may have been incorporated elsewhere in this Section?

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

Amber May
Commission Counsel
Date submitted to agency: Thursday, April 4, 2019

1 15A NCAC 02H .0143 is adopted as published in 32:21 NCR 1943 as follows:

2
3 **15A NCAC 02H .0143 INCORPORATION BY REFERENCE**

4 (a) The following sections of Title 40 of the Code of Federal Regulations (CFR) are incorporated by reference,
5 including subsequent amendments and editions, and shall apply throughout this Section except where procedural
6 details of the federal rules differ from procedures adopted elsewhere in this section, in which case the separately
7 adopted procedure governs. The current version of these regulations can be accessed free of charge at
8 <http://www.gpo.gov/fdsys/>.

- 9 (1) 40 CFR 122.2, 124.2, and 125.2: Definitions;
10 (2) 40 CFR 122.4: Prohibitions;
11 (3) 40 CFR 122.5 (a) and (b): Effect of permit;
12 (4) 40 CFR 122.7 (b) and (c): Confidential information;
13 (5) 40 CFR 122.21 (a)-(b), (c)(2), (e)-(k), (m)-(p), (q), and (r): Application for a permit;
14 (6) 40 CFR 122.22: Signatories;
15 (7) 40 CFR 122.23: Concentrated animal feeding operations;
16 (8) 40 CFR 122.24: Concentrated aquatic animal production facilities;
17 (9) 40 CFR 122.25: Aquaculture projects;
18 (10) 40 CFR 122.26: Storm water discharges;
19 (11) 40 CFR 122.27: Silviculture;
20 (12) 40 CFR 122.28: General permits;
21 (13) 40 CFR 122.29 (a), (b), and (d): New sources and new dischargers;
22 (14) 40 CFR 122.30: NPDES stormwater regulations for small MS4s: objectives;
23 (15) 40 CFR 122.31: NPDES stormwater regulations: role of Tribes;
24 (16) 40 CFR 122.32: NPDES stormwater regulations for small MS4s: applicability;
25 (17) 40 CFR 122.33: NPDES stormwater regulations for small MS4s: application for permit;
26 (18) 40 CFR 122.34: NPDES stormwater regulations for small MS4s: permit requirements;
27 (19) 40 CFR 122.35: NPDES stormwater regulations for small MS4s: shared responsibilities;
28 (20) 40 CFR 122.36: NPDES stormwater regulations for small MS4s: compliance;
29 (21) 40 CFR 122.37: NPDES stormwater regulations for small MS4s: evaluation;
30 (22) 40 CFR 122.41 (a)(1) and (b) through (n): Applicable permit conditions;
31 (23) 40 CFR 122.42: Conditions applicable to specified categories of permits;
32 (24) 40 CFR 122.43: Establishing permit conditions;
33 (25) 40 CFR 122.44: Establishing NPDES permit conditions;
34 (26) 40 CFR 122.45: Calculating permit conditions;
35 (27) 40 CFR 122.46: Duration;
36 (28) 40 CFR 122.47 (a): Schedules of compliance;
37 (29) 40 CFR 122.48: Monitoring requirements;

- (30) 40 CFR 122.50: Disposal into wells;
- (31) 40 CFR 122.61: Permit transfer;
- (32) 40 CFR 122.62: Permit modification;
- (33) 40 CFR 122.64: Permit termination;
- (34) 40 CFR 124.3 (a): Application for a permit;
- (35) 40 CFR 124.5 (a), (c), (d), and (f): Modification of permits;
- (36) 40 CFR 124.6 (a), (c), (d), and (e): Draft permit;
- (37) 40 CFR 124.8: Fact sheets;
- (38) 40 CFR 124.10 (a)(1)(ii), (a)(1)(iii), (a)(1)(v), (b), (c), (d), and (e): Public notice;
- (39) 40 CFR 124.11: Public comments and requests for hearings;
- (40) 40 CFR 124.12 (a): Public hearings;
- (41) 40 CFR 124.17 (a) and (c): Response to comments;
- (42) 40 CFR 124.56: Fact sheets;
- (43) 40 CFR 124.57 (a): Public notice;
- (44) 40 CFR 124.59: Comments from government agencies;
- (45) 40 CFR 124.62: Decision on variances;
- (46) 40 CFR Part 125, Subparts A (Technology-Based Treatment Requirements), B (Aquaculture), D (Fundamentally Different Factors), H (Alternative Limitations, CWA Section 316(a)), I (Cooling Water Intake Structures, New Facilities, CWA Section 316(b)), J (Cooling Water Intake Structures, Existing Facilities, CWA Section 316(b)), and N (Cooling Water Intake Structures, Offshore Oil and Gas Facilities, CWA Section 316(b));
- (47) 40 CFR Parts 129 (Toxic Pollutant Effluent Standards) and 133 (Secondary Treatment Regulation), and Subchapter N (Effluent Guidelines and Standards);
- (48) 40 CFR Part 3: Electronic reporting;
- (49) 40 CFR Part 136: Guidelines for establishing test procedures for the analysis of pollutants; and
- (50) 40 CFR 401.15: List of toxic pollutants pursuant to CWA Section 307(a)(1).
- (b) This Rule is not an exclusive list of federal regulations adopted by reference in this Section. Other rules of the Section incorporate some of these same federal regulations for clarity or emphasis and may incorporate additional regulations not listed in Paragraph (a) of this Rule.

History Note: Authority G.S. 143-211(c); 143-215.1(b)(4); 143B-282(5);
Eff. May 1, 2019.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02H .0401-.0407

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 that the following technical changes be made:

Please combine these repeals in accordance with 26 NCAC 02C .0406

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

Amber May
Commission Counsel
Date submitted to agency: Thursday, April 4, 2019

1 15A NCAC 02H .0401 is repealed through readoption as published in 32:21 NCR 1943 as follows:

2
3 **15A NCAC 02H .0401 STATEMENT OF POLICY**

4
5 *History Note:* Authority G.S. 143-215.3(a)(1); 143-211; 143-215.1(a); 143-215.1(b)(1);
6 Eff. February 1, ~~1976~~ 1976;
7 Repealed Eff. May 1, 2019.
8

1 15A NCAC 02H .0402 is repealed through readoption as published in 32:21 NCR 1943 as follows:

2
3 **15A NCAC 02H .0402 APPLICABILITY**

4
5 *History Note:* Authority G.S. 143-215.3(a)(1); 143-211; 143-215.1(a); 143-215.1(b)(1);
6 Eff. February 1, 1976;
7 Amended Eff. September 13, ~~1981~~, 1981;
8 Repealed Eff. May 1, 2019.
9

1 15A NCAC 02H .0403 is repealed through readoption as published in 32:21 NCR 1943 as follows:

2
3 **15A NCAC 02H .0403 DEFINITION OF COASTAL AREAS**

4
5 *History Note:* Authority G.S. 143-215.3(a)(1); 143-211; 143-215.1(a); 143-215.1(b)(1);
6 Eff. February 1, 1976;
7 Amended Eff. September 13, ~~1981~~, 1981;
8 Repealed Eff. May 1, 2019.
9

1 15A NCAC 02H .0404 is repealed through readoption as published in 32:21 NCR 1943 as follows:

2
3 **15A NCAC 02H .0404 FACILITY LOCATION AND DESIGN**

4
5 *History Note: Authority G.S. 143-211; 143-214.2(c); 143-215; 143-215.1(a);*

6 *143-215.1(b)(1); 143-215.3(a)(1);*

7 *Eff. February 1, 1976;*

8 *Amended Eff. November 1, 1986; April 1, 1983; September 13, 1981; May 11, ~~1980~~ 1980;*

9 *Repealed Eff. May 1, 2019.*

1 15A NCAC 02H .0405 is repealed through readoption as published in 32:21 NCR 1943 as follows:

2
3 **15A NCAC 02H .0405 PRIVATELY OWNED INSTALLATIONS**

4
5 *History Note: Authority G.S. 143-215.3(a)(1); 143-211; 143-215.1(a); 143-215.1(b)(1);*
6 *Eff. February 1, 1976;*
7 *Amended Eff. September 13, ~~1981~~, 1981;*
8 *Repealed Eff. May 1, 2019.*
9

1 15A NCAC 02H .0406 is repealed through readoption as published in 32:21 NCR 1943 as follows:

2
3 **15A NCAC 02H .0406 PUBLICLY OWNED SEWERAGE FACILITIES**

4
5 *History Note: Authority G.S. 143-215.3(a)(1); 143-211; 143-215.1(a); 143-215.1(b)(1);*
6 *Eff. February 1, 1976;*
7 *Amended Eff. September 13, ~~1981~~, 1981;*
8 *Repealed Eff. May 1, 2019.*
9

1 15A NCAC 02H .0407 is repealed through readoption as published in 32:21 NCR 1943 as follows:

2
3 **15A NCAC 02H .0407 EXCEPTIONS FROM REQUIREMENTS**

4
5 *History Note: Authority G.S. 143-215.3(a)(1); 143-211; 143-215.1(a); 143-215.1(b)(1);*
6 *Eff. February 1, ~~1976~~ 1976;*
7 *Repealed Eff. May 1, 2019.*
8

1 15A NCAC 02H .1201 is readopted as published in 32:21 NCR 1943 as follows:

2
3 **15A NCAC 02H .1201 PURPOSE**

4 The purpose of this Section is to implement the provisions of G.S. 143-215.2 and G.S. 143-215.110 pertaining to the
5 issuance of surface water, ground water and air quality Special Orders by the Environmental Management
6 Commission.

7
8 *History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.110;*

9 *Eff. October 1, ~~1990~~.1990;*

10 *Readopted Eff. May 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02H .1202

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 that the following technical changes be made:

On line 4, what is meant by "herein"? Do you mean "this Section"? If so, please say that.

In Item (2), the way that I am understanding these Rules, Special Orders issued pursuant to 143-215.2 would be applicable to pollution of waters and 143-215.110 would be applicable to pollution of air. With that in mind, could the Director here also be referring to the Director of Air Quality (or something of the like)?

In Item (3), just so I understand, how does the Commission go about finding a person "responsible"?

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

Amber May
Commission Counsel
Date submitted to agency: Thursday, April 4, 2019

1 15A NCAC 02H .1202 is readopted as published in 32:21 NCR 1943 as follows:

2
3 **15A NCAC 02H .1202 DEFINITIONS**

4 The terms used herein shall be as defined in G.S. 143-212 and G.S. 143-213. Other terms used in this Section are
5 defined as follows:

6 (1)(2) "Consent Order" or "Special Order by Consent" means a type of Special Order where the
7 Commission enters into an agreement with the person responsible for water or air pollution to
8 achieve some stipulated actions designed to reduce, eliminate, or prevent air or water quality
9 degradation.

10 (3)(2) "Director" means the Director of the Division of ~~Environmental Management~~ Water Resources.

11 (1)(3) "Special Order" means a directive of the Commission to any person whom it finds responsible for
12 causing or contributing to any pollution of the air or waters of the State. The term includes all orders
13 or instruments issued by the Commission pursuant to G.S. 143-215.2 or G.S. 143-215.110.

14
15 *History Note:* Authority G.S. 143-212; 143-213; 143-215.2; 143-215.3(a)(1); 143-215.110;
16 Eff. October 1, ~~1990~~ 1990;
17 Readopted Eff. May 1, 2019.
18
19
20

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02H .1203

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 that the following technical changes be made:

Given that much of this Rule repeats 143-215.2(a1), what is the overall intent? Is it to provide the delegation to the Director? If so, please consider revising as follows (please also note additional notes below – the suggestion has incorporated some of these changes as well.)

(a) Notice of proposed Consent Order:

(1) The Director is delegated the authority to prepare the notice of the proposed Consent Order and shall advertise it as specified in G.S. 143-215.2(a1)(1) at least 45 days prior to any final action by the Commission or the Director.

(2) The Notice shall include at least the following:

(a) The Director shall provide notice of a proposed Consent Order in accordance with G.S. 143-215.2(a1)(1) for water quality special orders and 143-215.110(a1) for air quality special orders. The notice shall include the following information:

(A)(1) name, address, and phone number of the agency issuing the public notice;

(B)(2) name and address of the person to whom the order is directed;

(C)(3) a brief summary of the proposed conditions of the agreement, including a disclosure of the final compliance date and the major permit conditions which that the permittee will be allowed to exceed;

(D)(4) a brief description of the procedures to be followed by the Commission or Director in reaching a final determination on the proposed agreement. This shall include explanations of the comment period and how interested persons may influence or comment on the proposal along with procedures to request a public meeting. The description shall specify that requests for a public meeting and comments are to be received by the Division within 30 days following the newspaper publication of the public notice; notice that a public meeting may be requested in accordance with G.S. 143-215.2(a1)(2) and G.S. 143-215.110(a1)(2); and

(E)(5) a description of the information available for public review, where it can be found, and procedures for obtaining copies of pertinent documents.

(b) If a public meeting request is received, the Director shall consider all requests in accordance with 143-215.2(a1)(2) for water quality special orders and G.S. 143-215.110(a1)(2) for air quality special orders. If he or she determines that there is public interest in holding a meeting, he or she shall provide notice as set forth in 143-215.2(a1)(2) and G.S. 143-215.110(a1)(2). The notice shall include the following: Notice of public meetings for proposed Consent Order:

(1) The Director shall consider all requests for a public meeting and if he determines that there is significant public interest, then he will cause such a meeting to be held.

Amber May
Commission Counsel

Date submitted to agency: Thursday, April 4, 2019

- (2) Public meetings shall be noticed by the Director at least 30 days prior to the meeting.
- (3) The Notice shall be advertised in a local newspaper and provided to those persons specified in G.S. 143-215.2(a1)(2) for water quality special orders and G.S. 143-215.110(a1)(2) for air quality special orders.
- (4)(1) The Notice shall include the information specified in (a)(2)(A), (B), (C) and (E) of this Rule; Rule relative to the identification of the parties involved, the conditions of the proposal, how to obtain additional information and the procedures to be followed by the Commission in reaching a final determination. It should also provide full information regarding
- (2) the time and location for the meeting; and
- (3) how public comment is to be provided.
- meeting along with procedures for the various methods of providing comment.

In (a), do you need a cross-reference to 143-215.110(a1) for air pollution as you have in (b)?

In (a)(1), what is meant by "the agency"? Wouldn't this always be EMC?

In (a)(2)(C) and (D), delete or define "brief"

In (a)(2)(C), please add a comma in between "agreement" and "including"

In (a)(2)(C), delete or define "major"

In (a)(2)(C), change "which" to "that" in "which the..."

In (a)(2)(D), what are the procedures that you all will use in reaching a final determination? Are these set forth elsewhere in rule or statute? Do you mean the process as set forth in 215-21(a1)(2)? If so, please consider deleting this language because it makes it sound as though these are the factors that you will use in determining whether to enter into the Consent Order (but based on the rest of the Subparagraph, I don't think that's what you mean.)

In (a)(2)(D), much of this Paragraph seems to have the same information as 143-215.2(a1)(2). As such, please consider simply cross-referencing this Statute.

Add an "and" at the end of (a)(2)(D).

In (a)(2)(E), what are the "procedures for obtaining copies of pertinent documents"? Are these set forth elsewhere in rule or statute?

In (a)(2)(E), delete or define "pertinent"

(b)(1) through (b)(3) appears to essentially recite 143-215.1(a1) and 143-215.110(a1), please consider simply providing a cross-reference.

In (b)(1), please change "he" to "he or she"

In (b)(4), delete lines 29-31 since you've already said that they have to provide this information. There's no need to repeat it.

In (b)(4), delete or define "full"

Amber May
Commission Counsel
Date submitted to agency: Thursday, April 4, 2019

In (b)(4), what are the “procedures for the various methods of providing comments”? What are the “various methods”?

Please confirm that Paragraph (c) is still accurate in that you all mail copies (it very well may be up to date.) Are there electronic notices as well?

Is (d) necessary?

In (e), what is meant by “modification of standard conditions to reflect updated versions”? Is this language necessary?

In (e), please change “correct” to “correction” to match the rest of this Paragraph

In (e), please add a comma after “errors”

In (e), please delete “said”

In (e), please change “may not” to “do not”

What is the intent of Paragraph (f)? “The Commission may specify other conditions for Special Orders issued without consent”? Is this language necessary here given 143-215.2(b) and 143-215.110(b).

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

Amber May
Commission Counsel
Date submitted to agency: Thursday, April 4, 2019

1 15A NCAC 02H .1203 is readopted as published in 32:21 NCR 1943 as follows:

2
3 **15A NCAC 02H .1203 PUBLIC NOTICE**

4 (a) Notice of proposed Consent Order:

- 5 (1) The Director is delegated the authority to prepare the notice of the proposed Consent Order and shall
6 advertise it as specified in G.S. 143-215.2(a1)(1) at least 45 days prior to any final action by the
7 Commission or the Director.
- 8 (2) The Notice shall include at least the following:
- 9 (A) name, address, and phone number of the agency issuing the public notice;
- 10 (B) name and address of the person to whom the order is directed;
- 11 (C) a brief summary of the proposed conditions of the agreement including a disclosure of the
12 final compliance date and the major permit conditions which the permittee will be allowed
13 to exceed;
- 14 (D) a brief description of the procedures to be followed by the Commission or Director in
15 reaching a final determination on the proposed agreement. This shall include explanations
16 of the comment period and how interested persons may influence or comment on the
17 proposal along with procedures to request a public meeting. The description shall specify
18 that requests for a public meeting and comments are to be received by the Division within
19 30 days following the newspaper publication of the public notice;
- 20 (E) a description of the information available for public review, where it can be found, and
21 procedures for obtaining copies of pertinent documents.

22 (b) Notice of public meetings for proposed Consent Order:

- 23 (1) The Director shall consider all requests for a public meeting and if he determines that there is
24 significant public interest, then he will cause such a meeting to be held.
- 25 (2) Public meetings shall be noticed by the Director at least 30 days prior to the meeting.
- 26 (3) The Notice shall be advertised in a local newspaper and provided to those persons specified in G.S.
27 143-215.2(a1)(2) for water quality special orders and G.S. 143-215.110(a1)(2) for air quality special
28 orders.
- 29 (4) The Notice shall include the information specified in (a)(2)(A), (B), (C) and (E) of this Rule relative
30 to the identification of the parties involved, the conditions of the proposal, how to obtain additional
31 information and the procedures to be followed by the Commission in reaching a final determination.
32 It should also provide full information regarding the time and location for the meeting along with
33 procedures for the various methods of providing comment.

34 (c) Any person may request to receive copies of all notices required by this Rule, and the Director shall mail copies
35 of notices to those who have submitted a request.

36 (d) The Director may combine the requirements in Paragraphs (a) and (b) of this Rule with a combination comment
37 period and public meeting notice.

1 (e) Any Special Order by Consent may be amended by the Director to incorporate minor modifications, such as
2 reallocations of allowable flows, modification of standard conditions to reflect updated versions, correct typographical
3 errors and interim date extensions, in a consent order without public notice provided that the said modifications may
4 not extend final compliance date by more than four months.

5 (f) The requirements of this Rule for public notice and public meeting were developed to apply to Special Orders by
6 Consent. The Commission may specify other conditions for Special Orders issued without consent.

7
8 *History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.3(a)(3);*
9 *143-215.3(a)(4); 143-215.110;*
10 *Eff. November 1, 1990;*
11 *Amended Eff. August 3, ~~1992~~, 1992;*
12 *Readopted Eff. May 1, 2019.*
13
14
15

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02H .1204

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 that the following technical changes be made:

Overall, is this Rule necessary? What is the overall intent? It is simply to show the delegation and to say that if a public meeting is not held, then the Director shall take final action within 60 days? Otherwise, this Rule appears to be repeating 143-215.2(a1)(4).

If you do need this, please consider saying something like "The Director shall take final action in accordance with G.S. 143-215.2(a1)(4) on Special Orders by Consent in those cases where a public meeting is not held as provided in G.S. 143-215.2(a1)(2)." That way you aren't simply repeating the entire statute and if something changes with the Statute, your Rule will not be inconsistent.

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

Amber May
Commission Counsel
Date submitted to agency: Thursday, April 4, 2019

15A NCAC 02H .1204 is readopted as published in 32:21 NCR 1943 as follows:

15A NCAC 02H .1204 FINAL ACTION ON SPECIAL ORDERS BY CONSENT

The Director is authorized to take final action for the Commission on Special Orders by Consent except in those cases where a public meeting is held as provided in 15A NCAC 2H .1203. The final action on the proposed order shall be taken no later than 60 days following publication of the notice or, if a public meeting is held, within 90 days following the meeting.

History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.3(a)(4); 143-215.110; Eff. October 1, ~~1990~~1990; Readopted Eff. May 1, 2019.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02H .1205

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 that the following technical changes be made:

Is this Rule necessary? It appears to essentially recite 143-215.2(b) and 143-215.110(b).

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

Amber May
Commission Counsel
Date submitted to agency: Thursday, April 4, 2019

15A NCAC 02H .1205 is readopted as published in 32:21 NCR 1943 as follows:

15A NCAC 02H .1205 ACTION ON SPECIAL ORDERS ISSUED WITHOUT CONSENT

The Commission may issue a proposed Special Order without the consent of the person affected. The Commission shall notify the affected person of the procedure set out in G.S. 150B-23 to contest the proposed Special Order.

History Note: Authority G.S. 143-215.2(b); 143-215.3(a)(1); 143-215.110(b);

Eff. October 1, 1990;

Amended Eff. August 3, ~~1992~~1992;

Readopted Eff. May 1, 2019.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02H .1206

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 that the following technical changes be made:

Overall, when would (a) be applicable? Is this when a permittee is requesting a special order? Please add some additional information to (a).

Please ensure that (a)(1) is still accurate – is the triplicate form the only option? The answer may be yes.

In (a)(1), are the contents of the form set forth elsewhere in rule or statute? If not, please provide the substantive requirements.

In (a)(1), what is meant by “all other required information”?

In (a)(2), delete or define “incomplete” I note that providing the substantive requirements of the form may address this issue.

In (a)(2), change “will” to “shall” in “will be returned”

Please add “or” or “and” at the end of (a)(3)(C).

What is the overall intent of (b)? Essentially, are these the factors that the Director will be use in determining whether to enter into a special consent order? If so, please say that. Do you means something like “In determining whether to grant a request for a Water Quality Special Order by Consent, the Director shall consider the following:”? Of course, this would require corresponding changes to the (b)(1) and (2).

In (b)(1), how will it be determined whether the demonstration is “to the satisfaction of the Director”? Also, how shall this be demonstrated?

On line 21, delete or define “properly”

In (b)(1), what is meant by “highest degree of treatment possible”? How and by whom is this determined?

Amber May
Commission Counsel
Date submitted to agency: Thursday, April 4, 2019

In (b)(1), how does a “demonstration” “evaluate”?

In(b)(1), delete or define “reasonably”

In (b)(1), what are “low-capital-cost interim improvements”?

In (b)(1), line 25, delete or define “directly”

In (b)(1), lines 26-27, how is the director to make this determination?

On line 28, delete “an independent consultant” and delete the parenthesis. Also, who is this “professional”? A certified wastewater person? If so, please say that.

Is (c) applicable if the Commission (or the Director as delegated) enters into a special consent order? If so, please say something like that to make it clear what is going on with (c)(1) through (4). In any event, please provide some additional information.

(c)(1) to say something like “the compliance schedule shall address activities to ensure progression toward final compliance, including submission of plans and specifications, beginning and completion of construction, and final compliance.

In (c)(1), delete or define “sufficiently detailed”, “constantly” and “normally”

In (c)(1), delete “but not limited to”

In (c)(2), how is the “optimum expected efficiency” to be determined?

In (c)(2), please consider revising lines 4-7 to say something like “Interim effluent limitations shall be modified as necessary based upon facility construction, including facility improvements or when facilities are taken offline due to construction.” I think that this language needs some finessing.

Alternatively, in (c)(2), delete “likewise, if treatment units must be taken off line due to construction” If you need this language, consider revising to say something like “The interim limitations shall be modified as necessary during the period of outage if units must be taken offline due to construction.”

In (c)(3), is it necessary to say “also a monetary settlement will normally be included in the order to settle previous violations”? Since this is what is to be included in the Order between two parties, does it need to be in rule? If so, delete or define “normally” and add a comma after “also”

In (c)(4), is the directive to the order itself or is this to put the party on notice? If it's the latter, please consider revising to say something like “The permittee shall be responsible for funding the treatment system improvements. Delete “A lack of funds shall not be a defense in contesting stipulated penalties.” This sounds like a legal conclusion that is not appropriate for rule.

Please revise (d) to provide some introductory language for (d)(1) through (2) (i.e. this Paragraph provides conditions regarding acceptance...”

Amber May
Commission Counsel
Date submitted to agency: Thursday, April 4, 2019

In (d)(1), change “will” to “shall” in “will only” and delete “only”

In (d)(1)(A), delete or define “near future”, “adequately”, “specific”, and “adverse effects.”

In (d)(1)(B), delete or define “minimum reasonable”

In (d)(1)(B), what are “equivalent substitutions”? How will approval be determined by the Director”?

In (d)(1)(B), add a comma in between “commercial” and “and industrial”

In (d)(1)(C), consider changing “the nature of the additional flows is such that the waste characteristics” to “waste characteristics either do not exceed those associated with domestic waste as a result of the additional flows or are pretreated to domestic strength.”

In (d)(1)(C), delete “generally” and “normal”

In (d)(1)(C), lines 25-30, how will this determination be made?

In (d)(1)(D), what is meant by “needed mechanisms”?

In (d)(1)(D), add a comma in between “mechanisms” and “including”; and delete “but not limited to”. If you need this language, add commas before and after “but not limited to”

In (d)(1)(E), change “will” to “shall” in “will not result”

In (d)(1)(E), add a comma in between “water” and “such as”; and delete “but not limited to” on lines 1 and 3 of page 3.

Begin (d)(1)(E)(i) through (v) with lower case letters, delete “or” at the end of (d)(1)(E)(i) through (iii), and add “or” at the end of (d)(1)(E)(iv).

In (d)(1)(E)(i), change “will” to “shall” in “will be allowed” on line 9, “will consider” on line 12, and “will be allowed” on line 16

In (d)(1)(E)(i), add a comma before “unless specific approval” Also, delete “specific”

In (d)(1)(E)(i), delete “but not limited to” on line 12.

In (d)(1)(E)(i), line 13, remove the comma after “levels” and add an “and” in between “levels” and “projected”

In (d)(1)(E)(ii), delete “affected segment” and remove the parenthesis around “that segment... standards)”

In (d)(1)(E)(iv), change “which” to “that” in “which are”

In (d)(1)(E)(iv), delete “significant” in “significant impact”

In (d)(1)(E)(v), delete or define “generally”

In (d)(1)(E)(v), delete or define "appropriate"

How is the Director to determine what analyses will be acceptable to the Director? Please provide some additional information as to how this determination will be made.

In (d)(2), delete or define "immediately"

In (d)(2), change "he" to "he or she"

In (d)(2), change "will" to "shall" in "will consider"

In (d)(2), add a comma in between "factors" and "such" and delete "but not limited to"

In (d)(2), please change delete (s) in "parameter(s)" and "violation(s)" and say either parameter or parameters or violation or violations, whichever is intended.

(d)(2) seems to be missing something before the notice. Here, do you mean something like "Upon a determination by the Director that the approval is to be rescinded, he or she shall provide notice to the permittee that shall include..."

Please add 143-215.3D to your history note as authority for your fee in (a)(1).

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

Amber May
Commission Counsel
Date submitted to agency: Thursday, April 4, 2019

1 15A NCAC 02H .1206 is readopted as published in 32:21 NCR 1943 as follows:

2
3 **15A NCAC 02H .1206 WATER QUALITY SPECIAL ORDERS BY CONSENT**

4 (a) Requests for Water Quality Special Orders by Consent:

- 5 (1) Requests by permittees must be made in triplicate on forms supplied by the Division of
6 ~~Environmental Management~~ Water Resources along with a nonrefundable four hundred dollars
7 (\$400.00) fee and all other required information.
- 8 (2) Requests found to be incomplete will be returned to the permittee with an explanation of
9 deficiencies.
- 10 (3) Requests must be signed as follows:
- 11 (A) in the case of corporations, by a principal executive officer of at least the level of vice-
12 president, or his duly authorized representative, if such representative is responsible for the
13 overall operation of the facility for which the Order is being requested;
- 14 (B) in the case of a partnership, by a general partner and in the case of a limited partnership,
15 by a general partner;
- 16 (C) in the case of a sole proprietorship, by the proprietor;
- 17 (D) in the case of a municipal, state, or other public entity by either a principal executive
18 officer, ranking elected official or other duly authorized employee.

19 (b) Evaluation of the requests:

- 20 (1) Requests will not be evaluated unless it is demonstrated by the permittee to the satisfaction of the
21 Director that noncompliance is not due to failure by the permittee to properly operate, manage and
22 maintain the wastewater treatment system and that the existing wastewater treatment system is being
23 operated in such a way as to attain the highest degree of treatment possible under the existing
24 conditions. The demonstration must also evaluate all reasonably available low-capital-cost interim
25 improvements, even though they may not be directly related to the final treatment option. ~~This~~
26 ~~demonstration must~~ If the applicant does not make this demonstration to the satisfaction of the
27 Director, the Director may require that the demonstration be made in the form of a report prepared
28 by an independent consultant (a professional with expertise in wastewater treatment).
- 29 (2) Requests will not be evaluated unless the permittee can demonstrate to the satisfaction of the
30 Director that:
- 31 (A) funds needed to meet the requirements of the proposed order are available or will be
32 available to meet the compliance schedule and any interim effluent limitations; or
- 33 (B) that the permittee can adopt specific alternative steps to achieve compliance where the
34 permittee cannot assure total financing of needed facilities.

35 (c) Development of the Special Order:

- 36 (1) The compliance schedule in the order must be sufficiently detailed to ~~insure~~ ensure that the permittee
37 is constantly progressing toward final compliance. This schedule will normally include, but not be

- 1 limited to, activities such as submission of plans and specifications, starting of construction,
2 completion of construction and achievement of final compliance.
- 3 (2) The interim effluent limitations must be based on the optimum expected efficiency of the existing
4 treatment system. In cases of phased construction or expected interim treatment facility
5 improvements, the interim limitations shall reflect these expected improvements. Likewise, if
6 treatment units must be taken off line due to construction, the interim limitations may be modified
7 during the period of actual outage.
- 8 (3) To ~~insure~~ ensure compliance with all schedules dates and interim effluent limitations, all orders
9 must contain stipulated penalties for violations of specified requirements. Also a monetary
10 settlement will normally be included in the order to settle previous violations.
- 11 (4) The order must contain a condition that advises the permittee that it is responsible for funding the
12 treatment system improvements and that lack of funds will not be a defense in contesting stipulated
13 penalties.
- 14 (d) Acceptance of additional wastewater into a wastewater treatment system owned or operated by a unit of
15 government, in accordance with G.S. 143-215.67(b).
- 16 (1) Additional flows will only be allowed as part of a consent Order when the following demonstrations
17 can be made:
- 18 (A) New or improved wastewater treatment facilities will be constructed in the near future that
19 will adequately treat the existing and additional waste or the permittee can adopt specific
20 alternative steps to offset the adverse effects of the additional waste.
- 21 (B) The flows are needed to provide minimum reasonable service to identified new residential,
22 commercial and industrial sources or equivalent substitutions for those sources as approved
23 by the Director.
- 24 (C) The nature of the additional flows is such that the waste characteristics do not exceed those
25 generally associated with domestic waste or are pretreated to domestic strengths. Waste of
26 greater than normal domestic strength may be accepted if the parameter(s) are not those for
27 which interim limitations have been developed and it can be demonstrated to the
28 satisfaction of the Director that the additional waste will not adversely affect the treatment
29 efficiency of the treatment system for any modified parameter or result in the violation of
30 any other permit limitation.
- 31 (D) All new and proposed industrial waste tributary to the system must be controlled using all
32 needed mechanisms including but not limited to adoption and implementation of industrial
33 waste control and pretreatment ordinances.
- 34 (E) The cumulative impacts of wastewater allowed under the order will not result in any
35 significant degradation in the quality of the waters ultimately receiving the wastewater
36 during flow conditions between and including the 7-day, 10-year minimum flow (7Q10)
37 and the average flow. The division must consider any special or protected waters such as

but not limited to, High Quality Waters, Water Supply Waters, Trout Waters and Shellfish Waters in conducting this evaluation. Significant degradation shall be defined to include but not be limited to the following:

- (i) A predictive decrease in dissolved oxygen of 0.5 mg/l or greater at the point of maximum dissolved oxygen sag. In cases where existing (prior to adding the requested wastewater) dissolved oxygen conditions are above 3.0 mg/l at or above 7Q10 conditions, the amount of wastewater added will not be allowed to depress oxygen levels below 3.0 mg/l at the corresponding stream flow levels. No additional wastewater will be allowed if measured or predicted dissolved oxygen levels at any stream flow at or above 7Q10 are less than 3.0 mg/l unless specific approval is granted by the Environmental Management Commission. In making this decision, the Commission will consider criteria such as but not limited to naturally occurring background dissolved oxygen levels, projected duration of impacts and stream miles impacted. In cases when adequate models do not exist to allow the prediction of instream dissolved oxygen impacts, no additional wastewater will be allowed into the system; or
- (ii) A predictive increase in the length of the affected segment (that segment in which the predicted dissolved oxygen is less than dissolved oxygen standards) of 0.5 miles or greater; or
- (iii) An increase in coliform bacteria density predicted to exceed applicable water quality standards; or
- (iv) Increases in the coliform density, decreases in dissolved oxygen, or changes in any other water quality parameters which are predicted to result in mortality of fish or other aquatic life, closing of swimming areas or significant impact on other water uses, regardless of compliance with conditions Subparts (d)(1)(E)(i)-(iii) of this Rule;
- (v) The proposed addition of toxic pollutants in quantities not generally associated with domestic wastewater characteristics, unless the acceptance of the additional wastewater can be supported through appropriate analyses acceptable to the Director.

- (2) Approvals of additional wastewater flows may be immediately rescinded by the Director for any schedule or condition violation, or limit violations in two consecutive months, or any other violation he considers sufficiently severe to warrant such action. In determining violations to be sufficiently severe, the Director will consider factors such as but not limited to the parameter(s) being violated, the magnitude of the violation(s), the projected duration of the violation(s), the waters being impacted or projected to be impacted and the reasons for the violation(s). In the notification to the

1 permittee that the flow has been rescinded, the Director will identify the factor(s) that made the
2 decision necessary.

3
4 *History Note:* *Authority G.S. 143-215.2; 143-215.3(a)(1);*
5 *Eff. August 3, ~~1992~~, 1992;*
6 *Readopted Eff. May 1, 2019.*
7