



ENVIRONMENTAL MANAGEMENT COMMISSION

NORTH CAROLINA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

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September 11, 2014

TO: RULES REVIEW COMMISSION

FROM: Benne Hutson, Chair, Environmental Management Commission 

RE: Periodic Review of Existing Rules

The Environmental Management Commission (EMC) has conducted its periodic review of existing rules required by SL 2013-413 for the following subchapters:

15A NCAC 02B
15A NCAC 02H
15A NCAC 02T
15A NCAC 02U

The EMC proposed an initial classification of "necessary with substantive public interest" for all of the rules contained in these subchapters. During the public comment period, 871 comments/other statements were received. Approximately 50 were considered "public comment" as defined in G.S. 150B-21.3A(a)(5). The EMC acted to keep the determinations as "necessary with substantive public interest" as the final agency determination at its regular meeting on September 11, 2014. The following response will apply, that the EMC will consider and/or address all comments during the rule re-adoption process. The report for the Rules Review Commission is attached. Copies of all of the comments and other statements received are also attached. The comments/statements are also available electronically via today's agenda on the EMC's webpage (<http://portal.ncdenr.org/web/emc/agenda/2014/home>).

Attachments:
Subchapter Reports
The Comments/Statements
Forms 0800

G.S. 150B-21.3A Report for 15A NCAC Subchapter 02H, PROCEDURES FOR PERMITS: APPROVALS								
Agency - Environmental Management Commission								
Comment Period - 3/17/14-5/21/14								
Date Submitted to APO - Filled in by RRC staff								
Rule Section	Rule Citation	Rule Name	Date and Last Agency Action on the Rule	Agency Determination [150B-21.3A(c)(1)a]	Implements or Conforms to Federal Regulation [150B-21.3A(d1)]	Federal Regulation Citation	Public Comment Received [150B-21.3A(c)(1)]	Agency Determination Following Public Comment [150B-21.3A(c)(1)]
SECTION .0100 - POINT SOURCE DISCHARGES TO THE SURFACE WATERS	15A NCAC 02H .0101	PURPOSE	Amended Eff. August 3, 1992	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	CWA Sect 102(a)	Yes	Necessary with substantive public interest
	15A NCAC 02H .0102	SCOPE	Amended Eff. March 1, 1993	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	CWA Sect 102(a)	No	Necessary with substantive public interest
	15A NCAC 02H .0103	DEFINITION OF TERMS	Amended Eff. April 1, 2003	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	CWA Sect 102(a)	No	Necessary with substantive public interest
	15A NCAC 02H .0105	APPLICATION: PERMIT FEES: ASSESSMENT FOR NEW SOURCES	Amended Eff. March 1, 1993	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	CWA Sect 102(a)	Yes	Necessary with substantive public interest
	15A NCAC 02H .0106	FILING APPLICATIONS	Amended Eff. April 1, 2003	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	CWA Sect 102(a)	No	Necessary with substantive public interest
	15A NCAC 02H .0107	STAFF REVIEW AND EVALUATION	Amended Eff. March 1, 1993	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	CWA Sect 102(a)	No	Necessary with substantive public interest
	15A NCAC 02H .0108	FACT SHEETS	Amended Eff. March 1, 1993	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	CWA Sect 102(a)	No	Necessary with substantive public interest
	15A NCAC 02H .0109	PUBLIC NOTICE	Amended Eff. March 1, 1993	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	CWA Sect 102(a)	No	Necessary with substantive public interest
	15A NCAC 02H .0111	MEETINGS AND HEARINGS	Amended Eff. March 1, 1993	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	CWA Sect 102(a)	No	Necessary with substantive public interest
	15A NCAC 02H .0112	FINAL ACTION ON PERMIT APPLICATIONS	Amended Eff. March 1, 1993	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	CWA Sect 102(a)	No	Necessary with substantive public interest
	15A NCAC 02H .0113	NOTIFICATION OF APPLICANTS	Amended Eff. October 1, 1987	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	CWA Sect 102(a)	No	Necessary with substantive public interest
	15A NCAC 02H .0114	MODIFICATION AND REVOCATION OF PERMITS	Amended Eff. March 1, 1993	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	CWA Sect 102(a)	No	Necessary with substantive public interest
	15A NCAC 02H .0115	PUBLIC ACCESS	Amended Eff. March 1, 1993	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	CWA Sect 102(a)	No	Necessary with substantive public interest
	15A NCAC 02H .0116	EMERGENCY PROCEDURES	Amended Eff. December 1, 1984	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	CWA Sect 102(a)	No	Necessary with substantive public interest

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	15A NCAC 02H .0117	INVESTIGATIONS: MONITORING: AND REPORTING	Amended Eff. March 1, 1993	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	CWA Sect 102(a)	No	Necessary with substantive public interest
	15A NCAC 02H .0118	EFFLUENT LIMITATIONS AND STANDARDS	Amended Eff. March 1, 1993	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	CWA Sect 102(a)	No	Necessary with substantive public interest
	15A NCAC 02H .0120	LIMITATION ON DELEGATION	Amended Eff. March 1, 1993	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	CWA Sect 102(a)	No	Necessary with substantive public interest
	15A NCAC 02H .0121	SUSPENSION OF REQUIREMENT FOR STATE NPDES PERMITS	Amended Eff. December 1, 1984	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	CWA Sect 102(a)	No	Necessary with substantive public interest
	15A NCAC 02H .0124	RELIABILITY	Amended Eff. March 1, 1993	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	CWA Sect 102(a)	No	Necessary with substantive public interest
	15A NCAC 02H .0125	PERMIT REQUIREMENTS FOR PEAT MINING	Eff. September 1, 1986	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	CWA Sect 102(a)	No	Necessary with substantive public interest
	15A NCAC 02H .0126	STORMWATER DISCHARGES	Amended Eff. July 3, 2012	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	CWA Sect 102(a)	No	Necessary with substantive public interest
	15A NCAC 02H .0127	GENERAL PERMITS	Amended Eff. March 1, 1993	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	CWA Sect 102(a)	Yes	Necessary with substantive public interest
	15A NCAC 02H .0138	AUTHORIZATION TO CONSTRUCT PERMITS	Amended Eff. August 1, 2012 (see S.L. 2012-14, 3 s.1.(f))	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	CWA Sect 102(a)	No	Necessary with substantive public interest
	15A NCAC 02H .0139	MINIMUM DESIGN REQUIREMENTS	Eff. October 1, 1987	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	CWA Sect 102(a)	No	Necessary with substantive public interest
	15A NCAC 02H .0140	CERTIFICATION OF COMPLETION	Eff. October 1, 1987	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	CWA Sect 102(a)	No	Necessary with substantive public interest
	15A NCAC 02H .0141	OPERATIONAL AGREEMENTS	Eff. October 1, 1987	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	CWA Sect 102(a)	No	Necessary with substantive public interest
	15A NCAC 02H .0142	USE/WASTEWATER TRTMT WORKS EMGCY MAIN: OPER/REPAIR FUND	Eff. August 1, 1988	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	CWA Sect 102(a)	No	Necessary with substantive public interest
	15A NCAC 02H .0150	DEFINITIONS	Eff. July 3, 2012	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	CWA Section 101(a), 402; 40CFR 122.21, 122.26, 122.28-122.37	No	Necessary with substantive public interest
	15A NCAC 02H .0151	DESIGNATION AND PETITION PROCESS	Eff. July 3, 2012	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	CWA Section 101(a), 402; 40CFR 122.21, 122.26, 122.28-122.37	No	Necessary with substantive public interest

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	15A NCAC 02H .0152	DEVELOPMENT IN URBANIZING AREAS	Amended Eff. July 1, 2013	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	CWA Section 101(a), 402; 40CFR 122.21, 122.26, 122.28-122.37	No	Necessary with substantive public interest
	15A NCAC 02H .0153	PROGRAM IMPLEMENTATION	Eff. July 3, 2012	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	CWA Section 101(a), 402; 40CFR 122.21, 122.26, 122.28-122.37	No	Necessary with substantive public interest
	15A NCAC 02H .0154	POST-CONSTRUCTION PRACTICES	Eff. July 3, 2012	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	CWA Section 101(a), 402; 40CFR 122.21, 122.26, 122.28-122.37	No	Necessary with substantive public interest
SECTION .0200 - WASTE NOT DISCHARGED TO SURFACE WATERS	15A NCAC 02H .0223	DEMONSTRATION OF FUTURE WASTEWATER TREATMENT CAPACITIES	Amended Eff. February 1, 1994	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	CWA Sect 102(a)	No	Necessary with substantive public interest
	15A NCAC 02H .0224	TREATMENT FACILITY OPERATION AND MAINTENANCE	Eff. February 1, 1993	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	CWA Sect 102(a)	No	Necessary with substantive public interest
SECTION .0400 - COASTAL WASTE TREATMENT DISPOSAL	15A NCAC 02H .0401	STATEMENT OF POLICY	Eff. February 1, 1976	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	CWA Sec 102(a)	No	Necessary with substantive public interest
	15A NCAC 02H .0402	APPLICABILITY	Amended Eff. September 13, 1981	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	CWA Sec 102(a)	No	Necessary with substantive public interest
	15A NCAC 02H .0403	DEFINITION OF COASTAL AREAS	Amended Eff. September 13, 1981	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	CWA Sec 102(a)	No	Necessary with substantive public interest
	15A NCAC 02H .0404	FACILITY LOCATION AND DESIGN	Amended Eff. November 1, 1986	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	CWA Sec 102(a) 40 CFR 124-120-124	Yes	Necessary with substantive public interest
	15A NCAC 02H .0405	PRIVATELY OWNED INSTALLATIONS	Amended Eff. September 13, 1981	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	CWA Sec 102(a)	No	Necessary with substantive public interest
	15A NCAC 02H .0406	PUBLICLY OWNED SEWERAGE FACILITIES	Amended Eff. September 13, 1981	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	CWA Sec 102(a)	No	Necessary with substantive public interest
	15A NCAC 02H .0407	EXCEPTIONS FROM REQUIREMENTS	Eff. February 1, 1976	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	CWA 401(a)(1); 33 USC1341(a)(1).	No	Necessary with substantive public interest
SECTION .0500 - WATER QUALITY CERTIFICATION	15A NCAC 02H .0501	PURPOSE	Eff. October 1, 1996	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	CWA 401(a)(1); 33 USC1341(a)(1).	No	Necessary with substantive public interest
	15A NCAC 02H .0502	APPLICATION	Amended Eff. October 1, 1996	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	CWA 401(a)(1); 33 USC1341(a)(1).	No	Necessary with substantive public interest
	15A NCAC 02H .0503	PUBLIC NOTICE	Amended Eff. October 1, 1996	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	CWA 401(a)(1); 33 USC1341(a)(1).	No	Necessary with substantive public interest
	15A NCAC 02H .0504	HEARING	Amended Eff. October 1, 1996	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	CWA 401(a)(1); 33 USC1341(a)(1).	No	Necessary with substantive public interest

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	15A NCAC 02H .0506	REVIEW OF APPLICATIONS	Eff. October 1, 1996	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	CWA 401(a)(1); 33 USC1341(a)(1).	Yes	Necessary with substantive public interest
	15A NCAC 02H .0507	ISSUANCE OF CERTIFICATION	Amended Eff. October 1, 1996	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	CWA 401(a)(1); 33 USC1341(a)(1).	No	Necessary with substantive public interest
SECTION .0800 – LABORATORY CERTIFICATION	15A NCAC 02H .0801	PURPOSE	Amended Eff. August 1, 2002	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	40 CFR Part 122/40 CFR Part 136	No	Necessary with substantive public interest
	15A NCAC 02H .0802	SCOPE	Amended Eff. August 1, 2002	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	41 CFR Part 122/40 CFR Part 136	No	Necessary with substantive public interest
	15A NCAC 02H .0803	DEFINITIONS	Amended Eff. August 1, 2002	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	42 CFR Part 122/40 CFR Part 136	No	Necessary with substantive public interest
	15A NCAC 02H .0804	PARAMETERS FOR WHICH CERTIFICATION MAY BE REQUESTED	Amended Eff. August 1, 2002	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	43 CFR Part 122/40 CFR Part 136	No	Necessary with substantive public interest
	15A NCAC 02H .0805	CERTIFICATION AND RENEWAL OF CERTIFICATION	Amended Eff. August 1, 2002	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	44 CFR Part 122/40 CFR Part 136	No	Necessary with substantive public interest
	15A NCAC 02H .0806	FEES ASSOCIATED WITH CERTIFICATION PROGRAM	Amended Eff. August 1, 2002	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	45 CFR Part 122/40 CFR Part 136	No	Necessary with substantive public interest
	15A NCAC 02H .0807	DECERTIFICATION AND CIVIL PENALTIES	Amended Eff. August 1, 2002	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	46 CFR Part 122/40 CFR Part 136	No	Necessary with substantive public interest
	15a NCAC 02H .0808	RECERTIFICATION	Amended Eff. August 1, 2002	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	47 CFR Part 122/40 CFR Part 136	No	Necessary with substantive public interest
	15A NCAC 02H .0809	RECIPROCITY	Amended Eff. November 2, 1992	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	48 CFR Part 122/40 CFR Part 136	No	Necessary with substantive public interest
	15A NCAC 02H .0810	ADMINISTRATION	Amended Eff. August 1, 2002	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	49 CFR Part 122/40 CFR Part 136	No	Necessary with substantive public interest
SECTION .0900 - LOCAL PRETREATMENT PROGRAMS	15A NCAC 02H .0901	PURPOSE	Amended Eff. April 1, 2011	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	40 CFR 403.1	No	Necessary with substantive public interest
	15A NCAC 02H .0902	SCOPE	Amended Eff. April 1, 2011	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	40 CFR 403.1	No	Necessary with substantive public interest
	15A NCAC 02H .0903	DEFINITION OF TERMS	Amended Eff. April 1, 2011	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	40 CFR 403.8	No	Necessary with substantive public interest
	15A NCAC 02H .0904	REQUIRED PRETREATMENT PROGRAMS	Amended Eff. April 1, 2011	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	40 CFR 403.8	No	Necessary with substantive public interest

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	15A NCAC 02H .0905	POTW PRETREATMENT PROGRAM IMPLEMENTATION REQUIREMENTS	Amended Eff. April 1, 2011	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	40 CFR 403.5; 40 CFR 403.8; 40 CFR 403.9; 40 CFR 403.12	No	Necessary with substantive public interest
	15A NCAC 02H .0906	SUBMISSION FOR PRETREATMENT PROGRAM APPROVAL	Amended Eff. April 1, 2011	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	40 CFR 403.5; 40 CFR 403.8; 40 CFR 403.9; 40 CFR 403.12	No	Necessary with substantive public interest
	15A NCAC 02H .0907	PROCEDURES FOR PRETREATMENT PROGRAM APPROVAL, REVISION AND WITHDRAWAL	Amended Eff. April 1, 2011	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	40 CFR 403.11; 40 CFR 403.18	No	Necessary with substantive public interest
	15A NCAC 02H .0908	REPORTING/RECORD KEEPING REQUIREMENTS FOR POTWS/INDUSTRIAL USERS	Amended Eff. April 1, 2011	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	40 CFR 403.8; 40 CFR 403.12	No	Necessary with substantive public interest
	15A NCAC 02H .0909	NATIONAL PRETREATMENT STANDARDS: PROHIBITED DISCHARGES	Amended Eff. March 1, 2011	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	40 CFR 403.5	No	Necessary with substantive public interest
	15A NCAC 02H .0910	NATIONAL PRETREATMENT STANDARDS: CATEGORICAL STANDARDS	Amended Eff. March 1, 2011	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	40 CFR 403.6	No	Necessary with substantive public interest
	15A NCAC 02H .0912	ADJUSTMENTS FOR FUNDAMENTALLY DIFFERENT FACTORS	Amended Eff. March 1, 2011	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	40 CFR 403.13	No	Necessary with substantive public interest
	15A NCAC 02H .0913	PUBLIC ACCESS TO INFORMATION	Amended Eff. April 1, 2011	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	40 CFR 403.14	No	Necessary with substantive public interest
	15A NCAC 02H .0914	UPSET PROVISION	Amended Eff. March 1, 2011	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	40 CFR 403.16	No	Necessary with substantive public interest
	15A NCAC 02H .0915	NET/GROSS CALCULATION	Amended Eff. March 1, 2011	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	41 CFR 403.15	No	Necessary with substantive public interest
	15A NCAC 02H .0916	PRETREATMENT PERMITS	Amended Eff. April 1, 2011	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	40 CFR 403.8	No	Necessary with substantive public interest
	15A NCAC 02H .0917	PRETREATMENT PERMIT SUBMISSION AND REVIEW	Amended Eff. April 1, 2011	Necessary with substantive public interest	No		No	Necessary with substantive public interest
	15A NCAC 02H .0918	LOCAL LAW	Eff. November 1, 1994	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	40 CFR 403.4	No	Necessary with substantive public interest
	15A NCAC 02H .0919	BYPASS	Amended Eff. March 1, 2011	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	41 CFR 403.17	No	Necessary with substantive public interest

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	15A NCAC 02H .0920	PRETREATMENT FACILITY OPERATION AND MAINTENANCE	Amended Eff. April 1, 2011	Necessary with substantive public interest	No		No	Necessary with substantive public interest
	15A NCAC 02H .0921	REVISION TO REFLECT POTW REMOVAL OF POLLUTANT	Amended Eff. March 1, 2011	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	40 CFR 403.7	No	Necessary with substantive public interest
	15A NCAC 02H .0922	HEARINGS	Eff. April 1, 2011	Necessary with substantive public interest	No		No	Necessary with substantive public interest
SECTION .1000 - STORMWATER MANAGEMENT	15A NCAC 02H .1001	STORMWATER MANAGEMENT POLICY	Amended Eff. September 1, 1995	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	CWA; 40 CFR 131.10, 131.12	No	Necessary with substantive public interest
	15A NCAC 02H .1002	DEFINITIONS	Amended Eff. August 1, 2012 (see S.L. 2012-143, s.1.(f))	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	CWA; 40 CFR 131.10, 131.12	No	Necessary with substantive public interest
	15A NCAC 02H .1003	STORMWATER MANAGEMENT: COVERAGE: APPLICATION: FEES	Amended Eff. December 1, 1995	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	CWA; 40 CFR 131.10, 131.12	No	Necessary with substantive public interest
	15A NCAC 02H .1005	STORMWATER REQUIREMENTS: COASTAL COUNTIES	Amended Eff. March 1, 2013	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	CWA; 40 CFR 131.10, 131.12	Yes	Necessary with substantive public interest
	15A NCAC 02H .1006	STORMWATER REQUIREMENTS: HIGH QUALITY WATERS	Amended Eff. December 1, 1995	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	CWA; 40 CFR 131.10, 131.12	No	Necessary with substantive public interest
	15A NCAC 02H .1007	STORMWATER REQUIREMENTS: OUTSTANDING RESOURCE WATERS	Eff. September 1, 1995	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	CWA; 40 CFR 131.10, 131.12	No	Necessary with substantive public interest
	15A NCAC 02H .1008	DESIGN OF STORMWATER MANAGEMENT MEASURES	Eff. September 1, 1995	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	CWA; 40 CFR 131.10, 131.12	No	Necessary with substantive public interest
	15A NCAC 02H .1009	STAFF REVIEW AND PERMIT PREPARATION	Eff. September 1, 1995	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	CWA; 40 CFR 131.10, 131.12	No	Necessary with substantive public interest
	15A NCAC 02H .1010	FINAL ACTION ON PERMIT APPLICATIONS TO THE DIVISION	Eff. September 1, 1995	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	CWA; 40 CFR 131.10, 131.12	No	Necessary with substantive public interest
	15A NCAC 02H .1011	MODIFICATION AND REVOCATION OF PERMITS	Eff. September 1, 1995	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	CWA; 40 CFR 131.10, 131.12	No	Necessary with substantive public interest
	15A NCAC 02H .1012	DELEGATION OF AUTHORITY	Eff. September 1, 1995	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	CWA; 40 CFR 131.10, 131.12	No	Necessary with substantive public interest
	15A NCAC 02H .1013	GENERAL PERMITS	Eff. September 1, 1995	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	CWA; 40 CFR 131.10, 131.12	No	Necessary with substantive public interest
	15A NCAC 02H .1014	STORMWATER MANAGEMENT FOR URBANIZING AREAS	Eff. July 3, 2012	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	CWA; 40 CFR 131.10, 131.12	No	Necessary with substantive public interest

G.S. 150B-21.3A Report for 15A NCAC Subchapter 02H, PROCEDURES FOR PERMITS: APPROVALS								
Agency - Environmental Management Commission								
Comment Period - 3/17/14-5/21/14								
Date Submitted to APO - Filled in by RRC staff								
Rule Section	Rule Citation	Rule Name	Date and Last Agency Action on the Rule	Agency Determination [150B-21.3A(c)(1)a]	Implements or Conforms to Federal Regulation [150B-21.3A(d1)]	Federal Regulation Citation	Public Comment Received [150B-21.3A(c)(1)]	Agency Determination Following Public Comment [150B-21.3A(c)(1)]
	15A NCAC 02H .1015	URBANIZING AREA DEFINITIONS	Eff. July 3, 2012	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	CWA; 40 CFR 131.10, 131.12, 122.26, 122.28-122.37	No	Necessary with substantive public interest
	15A NCAC 02H .1016	DEVELOPMENT IN URBANIZING AREAS	Amended Eff. July 1, 2013	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	CWA; 40 CFR 131.10, 131.12, 122.26, 122.28-122.37	No	Necessary with substantive public interest
	15A NCAC 02H .1017	POST-CONSTRUCTION PRACTICES	Eff. July 3, 2012	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	CWA; 40 CFR 131.10, 131.12, 122.26, 122.28-122.37	No	Necessary with substantive public interest
	15A NCAC 02H .1020	UNIVERSAL STORMWATER MANAGEMENT PROGRAM	Eff. January 1, 2007	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	CWA; 40 CFR 131.10, 131.12, 122.26, 122.28-122.37	Yes	Necessary with substantive public interest
SECTION .1100 - BIOLOGICAL LABORATORY CERTIFICATION	15A NCAC 02H .1101	PURPOSE	Amended Eff. March 1, 1993	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	40 CFR Part 122/40 CFR Part 136	No	Necessary with substantive public interest
	15A NCAC 02H .1102	SCOPE	Eff. October 1, 1988	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	40 CFR Part 122/40 CFR Part 136	No	Necessary with substantive public interest
	15A NCAC 02H .1103	DEFINITIONS	Amended Eff. April 1, 1993	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	40 CFR Part 122/40 CFR Part 136	No	Necessary with substantive public interest
	15A NCAC 02H .1104	FEES ASSOCIATED WITH CERTIFICATION PROGRAM	Eff. October 1, 1988	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	40 CFR Part 122/40 CFR Part 136	No	Necessary with substantive public interest
	15A NCAC 02H .1105	CERTIFICATION	Eff. October 1, 1988	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	40 CFR Part 122/40 CFR Part 136	No	Necessary with substantive public interest
	15A NCAC 02H .1106	DECERTIFICATION	Amended Eff. March 1, 1993	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	40 CFR Part 122/40 CFR Part 136	No	Necessary with substantive public interest
	15A NCAC 02H .1107	RECERTIFICATION	Amended Eff. March 1, 1993	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	40 CFR Part 122/40 CFR Part 136	No	Necessary with substantive public interest
	15A NCAC 02H .1108	RECIPROCITY	Amended Eff. March 1, 1993	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	40 CFR Part 122/40 CFR Part 136	No	Necessary with substantive public interest
	15A NCAC 02H .1109	ADMINISTRATION	Amended Eff. March 1, 1993	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	40 CFR Part 122/40 CFR Part 136	No	Necessary with substantive public interest
	15A NCAC 02H .1110	IMPLEMENTATION	Amended Eff. October 1, 1993	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	40 CFR Part 122/40 CFR Part 136	No	Necessary with substantive public interest
	15A NCAC 02H .1111	BIOLOGICAL LABORATORY CERT/CRITERIA PROCEDURES DOCUMENT	Eff. October 1, 1988	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	40 CFR Part 122/40 CFR Part 136	No	Necessary with substantive public interest
SECTION .1200 - SPECIAL ORDERS	15A NCAC 02H .1201	PURPOSE	Eff. October 1, 1990.	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	CWA Sect 102(a)	No	Necessary with substantive public interest

G.S. 150B-21.3A Report for 15A NCAC Subchapter 02H, PROCEDURES FOR PERMITS: APPROVALS								
Agency - Environmental Management Commission								
Comment Period - 3/17/14-5/21/14								
Date Submitted to APO - Filled in by RRC staff								
Rule Section	Rule Citation	Rule Name	Date and Last Agency Action on the Rule	Agency Determination [150B-21.3A(c)(1)a]	Implements or Conforms to Federal Regulation [150B-21.3A(d1)]	Federal Regulation Citation	Public Comment Received [150B-21.3A(c)(1)]	Agency Determination Following Public Comment [150B-21.3A(c)(1)]
	15A NCAC 02H .1202	DEFINITIONS	Eff. October 1, 1990.	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	CWA Sect 102(a)	No	Necessary with substantive public interest
	15A NCAC 02H .1203	PUBLIC NOTICE	Amended Eff. August 3, 1992.	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	CWA Sect 102(a)	No	Necessary with substantive public interest
	15A NCAC 02H .1204	FINAL ACTION ON SPECIAL ORDERS BY CONSENT	Eff. October 1, 1990	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	CWA Sect 102(a)	No	Necessary with substantive public interest
	15A NCAC 02H .1205	ACTION ON SPECIAL ORDERS ISSUED WITHOUT CONSENT	Amended Eff. August 3, 1992	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	CWA Sect 102(a)	No	Necessary with substantive public interest
	15A NCAC 02H .1206	WATER QUALITY SPECIAL ORDERS BY CONSENT	Eff. August 3, 1992	Necessary with substantive public interest	Yes If yes, include the citation to the federal law	CWA Sect 102(a)	No	Necessary with substantive public interest
SECTION .1300 – DISCHARGES TO ISOLATED WETLANDS AND ISOLATED WATERS	15A NCAC 02H .1301	SCOPE AND PURPOSE	Eff. April 1, 2003	Necessary with substantive public interest	No		Yes	Necessary with substantive public interest
	15A NCAC 02H .1302	APPLICATION PROCESS	Eff. April 1, 2003	Necessary with substantive public interest	No		Yes	Necessary with substantive public interest
	15A NCAC 02H .1303	PUBLIC NOTICE AND PUBLIC HEARING	Eff. April 1, 2003	Necessary with substantive public interest	No		Yes	Necessary with substantive public interest
	15A NCAC 02H .1304	DECISION ON APPLICATIONS FOR PERMITS OR CERTIFICATES OF COVERAGE	Eff. April 1, 2003	Necessary with substantive public interest	No		Yes	Necessary with substantive public interest
	15A NCAC 02H .1305	REVIEW OF APPLICATIONS	Amended Eff. August 1, 2012 (see S.L. 2012-143, s.1.(f))	Necessary with substantive public interest	No		Yes	Necessary with substantive public interest

15A NCAC 02H Comments

Rule	Rule Name	Commenter Name	Affiliation	Do you agree with the Agency's determination?	Do you want to comment on this rule?	Comment	Attachment
15A NCAC 02H .0101	PURPOSE	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .0101	PURPOSE	Cassie Gavin	NC Chapter Sierra Club	Yes.	Yes, A different type of comment.		Cassie Gavin Attachment
15A NCAC 02H .0101	PURPOSE	Jay Stem	North Carolina Aggregates Association	no, unnecessary	Yes, Objection to the rule in whole or in part.	Years of data has been collected without proper management or evaluation of compliance. Some permit holders never sample or submit DMR's with little to no enforcement. Companies that strive to truly comply with permit requirements continue to be required to sample when years of data support a high level of compliance. However, regular sampling requirements continue with the annual submittal of more data that goes up, processed or reviewed.	
15A NCAC 02H .0103	DEFINITION OF TERMS	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .0105	APPLICATION: PERMIT FEES: ASSESSMENT FOR NEW SOURCES	Karla Knotts	taxpayer, voter	Yes.	Yes, Objection to the rule in whole or in part.		
15A NCAC 02H .0105	APPLICATION: PERMIT FEES: ASSESSMENT FOR NEW SOURCES	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .0106	FILING APPLICATIONS	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .0107	STAFF REVIEW AND EVALUATION	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .0108	FACT SHEETS	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .0109	PUBLIC NOTICE	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	

15A NCAC 02H Comments

Rule	Rule Name	Commenter Name	Affiliation	Do you agree with the Agency's determination?	Do you want to comment on this rule?	Comment	Attachment
15A NCAC 02H .0109	PUBLIC NOTICE	Kara Dodson	none	Yes.	Yes, A different type of comment.	I support this public notice procedure as is and I request that DENR keep this section in place.	
15A NCAC 02H .0111	MEETINGS AND HEARINGS	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .0113	NOTIFICATION OF APPLICANTS	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .0114	MODIFICATION AND REVOCATION OF PERMITS	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .0115	PUBLIC ACCESS	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .0116	EMERGENCY PROCEDURES	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .0117	INVESTIGATIONS: MONITORING: AND REPORTING	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .0118	EFFLUENT LIMITATIONS AND STANDARDS	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .0120	LIMITATION ON DELEGATION	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .0121	SUSPENSION OF REQUIREMENT FOR STATE NPDES PERMITS	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .0124	RELIABILITY	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .0125	PERMIT REQUIREMENTS FOR PEAT MINING	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	

15A NCAC 02H Comments

Rule	Rule Name	Commenter Name	Affiliation	Do you agree with the Agency's determination?	Do you want to comment on this rule?	Comment	Attachment
15A NCAC 02H .0126	STORMWATER DISCHARGES	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .0127	GENERAL PERMITS	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .0127	GENERAL PERMITS	Lisa Martin	NC Home Builders Association	no, unnecessary		Objection regarding lack of authority to implement specific parts general and individual permits. See comments under 15A NCAC 2H .0506	
15A NCAC 02H .0138	AUTHORIZATION TO CONSTRUCT PERMITS	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .0139	MINIMUM DESIGN REQUIREMENTS	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .0140	CERTIFICATION OF COMPLETION	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .0141	OPERATIONAL AGREEMENTS	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .0142	USE/WASTEWATER TRTMT WORKS EMGCY MAIN: OPER/REPAIR FUND	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .0150	DEFINITIONS	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .0151	DESIGNATION AND PETITION PROCESS	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .0152	DEVELOPMENT IN URBANIZING AREAS	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .0153	PROGRAM IMPLEMENTATION	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	

15A NCAC 02H Comments

Rule	Rule Name	Commenter Name	Affiliation	Do you agree with the Agency's determination?	Do you want to comment on this rule?	Comment	Attachment
15A NCAC 02H .0154	POST-CONSTRUCTION PRACTICES	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .0223	DEMONSTRATION OF FUTURE WASTEWATER TREATMENT CAPACITIES	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .0224	TREATMENT FACILITY OPERATION AND MAINTENANCE	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .0401	STATEMENT OF POLICY	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .0402	APPLICABILITY	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .0403	DEFINITION OF COASTAL AREAS	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .0404	FACILITY LOCATION AND DESIGN	Michael Gallant	Michael C. Gallant, PE, PA	Yes.	Yes, Objection to the rule in whole or in part.	The rule is too restrictive and requires too much "green area" for systems using high rate infiltration disposal.	Michael Gallant Letter
15A NCAC 02H .0404	FACILITY LOCATION AND DESIGN	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .0404	FACILITY LOCATION AND DESIGN	Thomas Roberts	Aqua North Carolina, Inc.	no, unnecessary			
15A NCAC 02H .0405	PRIVATELY OWNED INSTALLATIONS	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .0406	PUBLICLY OWNED SEWERAGE FACILITIES	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	

15A NCAC 02H Comments

Rule	Rule Name	Commenter Name	Affiliation	Do you agree with the Agency's determination?	Do you want to comment on this rule?	Comment	Attachment
15A NCAC 02H .0407	EXCEPTIONS FROM REQUIREMENTS	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .0501	PURPOSE	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .0502	APPLICATION	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .0503	PUBLIC NOTICE	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .0504	HEARING	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .0506	REVIEW OF APPLICATIONS	Karla Knotts	taxpayer, voter	Yes.	Yes, Objection to the rule in whole or in part.	most requirements of Water quality certifications (WQC) have not gone through proper rule-making. WQC must only impose the conditions which DENR has authority to implement and must be taken through the rulemaking process	
15A NCAC 02H .0506	REVIEW OF APPLICATIONS	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	

15A NCAC 02H Comments

Rule	Rule Name	Commenter Name	Affiliation	Do you agree with the Agency's determination?	Do you want to comment on this rule?	Comment	Attachment
15A NCAC 02H .0506	REVIEW OF APPLICATIONS	Lisa Martin	NC Home Builders Association	Yes.	Yes, Objection to the rule in whole or in part.	<p>While NCHBA does not dispute CWA authority DENR issuance of water quality certifications, we object to many requirements within the certifications that have not gone through the proper rule making procedures. For instance, DENR does not have specific authority to use water quality certifications to require stormwater management and these requirements are not “absolutely required due to Nationwide Permit revisions”. While water quality certification conditions can require the applicant to show compliance with any applicable state mandated (not local mandated) stormwater requirements, DENR does not have the authority to implement stormwater management requirements without taking those requirements through the administrative rulemaking process. Further, requiring treatment of all runoff from every drainage area meeting the impervious surface threshold is not only unauthorized, it is inconsistent with existing policy and procedures that calculate percent impervious surface using the entire site.</p> <p>Water quality certifications also include regulations regarding cumulative impacts from development of private property adapted from the State Environmental Policy Act (SEPA) requirements for public projects. The cumulative impact “policy” has substantial impact on private projects, injects DENR into the local land use permitting process and has the same effect as a rule, but has never been taken through the rulemaking process. DENR has no statutory authority to enforce cumulative impact policy or regulations on private property (or projects without public funding).</p> <p>Water quality certifications must only impose the conditions which DENR has authority to implement and must be taken through the rulemaking process</p>	
15A NCAC 02H .0507	ISSUANCE OF CERTIFICATION	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .0801	PURPOSE	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .0802	SCOPE	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .0803	DEFINITIONS	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	

15A NCAC 02H Comments

Rule	Rule Name	Commenter Name	Affiliation	Do you agree with the Agency's determination?	Do you want to comment on this rule?	Comment	Attachment
15A NCAC 02H .0804	PARAMETERS FOR WHICH CERTIFICATION MAY BE REQUESTED	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .0805	CERTIFICATION AND RENEWAL OF CERTIFICATION	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .0806	FEES ASSOCIATED WITH CERTIFICATION PROGRAM	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .0807	DECERTIFICATION AND CIVIL PENALTIES	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .0808	RECERTIFICATION	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .0809	RECIPROCITY	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .0810	ADMINISTRATION	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .0901	PURPOSE	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .0902	SCOPE	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .0903	DEFINITION OF TERMS	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .0904	REQUIRED PRETREATMENT PROGRAMS	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	

15A NCAC 02H Comments

Rule	Rule Name	Commenter Name	Affiliation	Do you agree with the Agency's determination?	Do you want to comment on this rule?	Comment	Attachment
15A NCAC 02H .0905	POTW PRETREATMENT PROGRAM IMPLEMENTATION REQUIREMENTS	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .0906	SUBMISSION FOR PRETREATMENT PROGRAM APPROVAL	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .0907	PROCEDURES FOR PRETREATMENT PROGRAM APPROVAL, REVISION AND WITHDRAWAL	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .0908	REPORTING/RECORD KEEPING REQUIREMENTS FOR POTWS/INDUSTRIAL USERS	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .0909	NATIONAL PRETREATMENT STANDARDS: PROHIBITED DISCHARGES	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .0910	NATIONAL PRETREATMENT STANDARDS: CATEGORICAL STANDARDS	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .0912	ADJUSTMENTS FOR FUNDAMENTALLY DIFFERENT FACTORS	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	

15A NCAC 02H Comments

Rule	Rule Name	Commenter Name	Affiliation	Do you agree with the Agency's determination?	Do you want to comment on this rule?	Comment	Attachment
15A NCAC 02H .0913	PUBLIC ACCESS TO INFORMATION	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .0914	UPSET PROVISION	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .0915	NET/GROSS CALCULATION	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .0916	PRETREATMENT PERMITS	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .0917	PRETREATMENT PERMIT SUBMISSION AND REVIEW	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .0918	LOCAL LAW	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .0919	BYPASS	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .0920	PRETREATMENT FACILITY OPERATION AND MAINTENANCE	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .0921	REVISION TO REFLECT POTW REMOVAL OF POLLUTANT	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .0922	HEARINGS	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .1001	STORMWATER MANAGEMENT POLICY	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	

15A NCAC 02H Comments

Rule	Rule Name	Commenter Name	Affiliation	Do you agree with the Agency's determination?	Do you want to comment on this rule?	Comment	Attachment
15A NCAC 02H .1002	DEFINITIONS	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .1003	STORMWATER MANAGEMENT: COVERAGE: APPLICATION: FEES	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .1005	STORMWATER REQUIREMENTS: COASTAL COUNTIES	Karla Knotts	taxpayer, voter	Yes.	Yes, Objection to the rule in whole or in part.	rule does not have a federal mandate & thus must be repealed	
15A NCAC 02H .1005	STORMWATER REQUIREMENTS: COASTAL COUNTIES	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .1005	STORMWATER REQUIREMENTS: COASTAL COUNTIES			no, unnecessary	Yes, Objection to the rule in whole or in part.	15A NCAC 2H .1005 are unnecessary and redundant due to implementation of the federal Phase II stormwater program. Thus, 15A NCAC 2H .1005 does not have a federal mandate and must be repealed.	
15A NCAC 02H .1006	STORMWATER REQUIREMENTS: HIGH QUALITY WATERS	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .1007	STORMWATER REQUIREMENTS: OUTSTANDING RESOURCE WATERS	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .1008	DESIGN OF STORMWATER MANAGEMENT MEASURES	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .1009	STAFF REVIEW AND PERMIT PREPARATION	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	

15A NCAC 02H Comments

Rule	Rule Name	Commenter Name	Affiliation	Do you agree with the Agency's determination?	Do you want to comment on this rule?	Comment	Attachment
15A NCAC 02H .1010	FINAL ACTION ON PERMIT APPLICATIONS TO THE DIVISION	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .1011	MODIFICATION AND REVOCATION OF PERMITS	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .1012	DELEGATION OF AUTHORITY	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .1013	GENERAL PERMITS	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .1014	STORMWATER MANAGEMENT FOR URBANIZING AREAS	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .1015	URBANIZING AREA DEFINITIONS	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .1016	DEVELOPMENT IN URBANIZING AREAS	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .1017	POST-CONSTRUCTION PRACTICES	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .1020	UNIVERSAL STORMWATER MANAGEMENT PROGRAM	Karla Knotts	taxpayer, voter	Yes.	Yes, Objection to the rule in whole or in part.	the requirement to adopt one set of rules for a jurisdiction clearly can NOT be accurate since most jurisdictions have different water quality classifications in the jurisdiction. ALSO: allowing 20 coastal counties to have DWQ enforce in their area allows DWQ to enforce rules exceeding DWQ standards: to which DWQ does NOT have that authority, nor does DWQ have the authority to enforce NPDESII in incorporated areas. The requiremetns of the USMP are unauthorized and should be repealed	
15A NCAC 02H .1020	UNIVERSAL STORMWATER MANAGEMENT PROGRAM	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	

15A NCAC 02H Comments

Rule	Rule Name	Commenter Name	Affiliation	Do you agree with the Agency's determination?	Do you want to comment on this rule?	Comment	Attachment
15A NCAC 02H .1020	UNIVERSAL STORMWATER MANAGEMENT PROGRAM	Lisa Martin	NC Home Builders Association	no, unnecessary	Yes, Objection to the rule in whole or in part.	The Universal Stormwater Management Program (USMP) allows local governments to implement a single set of post-construction requirements within their jurisdiction. The post-construction requirements for Water Supply Watersheds, Outstanding Resource Waters, High Quality Waters and the other programs specified in the USMP rule (15A NCAC 2H .1020) are presumed to be based upon specific water quality standards and criteria necessary to preserve existing uses. In adopting an ordinance under the USMP, a local government must adopt one set of regulations for their jurisdiction - even though those regulations may not be reflective of or based upon the water quality classifications or standards present throughout the entire jurisdiction. Further, under 15A NCAC 2H .1020, the rules allow a local government within one of the 20 coastal counties to “elect to have the Division of Water Quality administer and implement the USMP, either in whole or in part, within their jurisdiction.” The state does not have the authority to enforce standards that exceed the requirements of their own stormwater management program throughout a local government’s jurisdiction. The state does not have the authority to enforce the HQW or ORW requirements outside of those areas specifically designated as HQW or ORW. The state does not have the authority to enforce the NPDES Phase II post-construction requirements within incorporated municipalities. The requirements of the USMP are arbitrary, unreasonable and unauthorized and should never have been adopted by the EMC.	
15A NCAC 02H .1101	PURPOSE	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .1102	SCOPE	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .1103	DEFINITIONS	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .1104	FEES ASSOCIATED WITH CERTIFICATION PROGRAM	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .1105	CERTIFICATION	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	

15A NCAC 02H Comments

Rule	Rule Name	Commenter Name	Affiliation	Do you agree with the Agency's determination?	Do you want to comment on this rule?	Comment	Attachment
15A NCAC 02H .1106	DECERTIFICATION	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .1107	RECERTIFICATION	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .1108	RECIPROCITY	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .1109	ADMINISTRATION	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .1110	IMPLEMENTATION	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .1111	BIOLOGICAL LABORATORY CERT/CRITERIA PROCEDURES DOCUMENT	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .1201	PURPOSE	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .1202	DEFINITIONS	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .1203	PUBLIC NOTICE	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .1204	FINAL ACTION ON SPECIAL ORDERS BY CONSENT	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .1205	ACTION ON SPECIAL ORDERS ISSUED WITHOUT CONSENT	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	

15A NCAC 02H Comments

Rule	Rule Name	Commenter Name	Affiliation	Do you agree with the Agency's determination?	Do you want to comment on this rule?	Comment	Attachment
15A NCAC 02H .1206	WATER QUALITY SPECIAL ORDERS BY CONSENT	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .1301	SCOPE AND PURPOSE	karla knotts	citizen, taxpayer, voter	Yes.	Yes, Objection to the rule in whole or in part.	Neither “isolated wetlands” nor “isolated waters” are defined in the NC General Statutes or the rule. Activities in such waters are not subject to any permit requirement under Section 404 of the Clean Water Act. they also do not meet the EMC definition of 'wetlands'. Therefore, if isolated wetlands and isolated waters are not waters of the U.S. for the purposes of the Clean Water Act, they are not waters of the state, then activities in such areas are not subject to the permitting jurisdiction of N.C. Gen. Stat. §143-215.1 All rules under 15A NCAC 2H .1300 Discharges to Isolated Wetlands and Isolated Waters does not have a federal mandate and must be repealed. Under G.S. 150B-19.3, the EMC may not adopt a rule for the protection of the environment or natural resources that imposes a more restrictive standard, limitation, or requirement than those imposed by federal law or rule.	
15A NCAC 02H .1301	SCOPE AND PURPOSE	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	

Rule	Rule Name	Commenter Name	Affiliation	Do you agree with the Agency's determination?	Do you want to comment on this rule?	Comment	Attachment
15A NCAC 02H .1301	SCOPE AND PURPOSE	Lisa Martin	NC Home Builders Association	no, unnecessary	Yes, Objection to the rule in whole or in part.	<p>15A NCAC 2H .1300 requires permits from the Environmental Management Commission for activities in “isolated wetlands and isolated waters.” Neither “isolated wetlands” nor “isolated waters” are defined in the NC General Statutes or the rule.</p> <p>15A NCAC 2H .1300 was adopted because the U.S. Supreme Court determined that waters (or wetlands) that were isolated were not “waters of the United States” within the jurisdiction of the Clean Water Act, and, thus, activities in such waters are not subject to any permit requirement under Section 404 of the Clean Water Act. The EMC did adopt rules governing activities in wetlands, including a definition of the term “wetlands,” which states: wetlands are "waters" as defined by G.S. 143-212(6) and are areas that are inundated or saturated by an accumulation of surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas. Wetlands classified as waters of the state are restricted to waters of the United States as defined by 33 CFR 328.3 and 40 CFR 230.3. The last sentence of the EMC definition of wetlands means that wetlands which are not “waters of the U.S.” under the Clean Water Act and its implementing regulations are not wetlands or waters of the state – i.e., activities in those areas are not regulated under Part 21 of Chapter 143 of the General Statutes. Therefore, if isolated wetlands and isolated waters are not waters of the U.S. for the purposes of the Clean Water Act, they are not waters of the state, then activities in such areas are not subject to the permitting jurisdiction of N.C. Gen. Stat. §143-215.1 (the section upon which the isolated wetlands and isolated waters permit requirement relies for its authority), or any other part of Part 21 of Article 143 of the General Statutes. DENR does not dispute the lack of a federal mandate for regulating isolated wetlands and isolated waters.</p> <p>The Corps of Engineers issues permits for the discharge of dredged or fill material in waters of the U.S. under Section 404 of the Clean Water Act. Discharge of dredged or fill “material” has been broadly interpreted by the federal courts to include a wide range of activities in wetlands. States are required to issue certifications under Section 401 of the Clean Water Act, to certify that water quality standards will not be violated as a result of</p>	

Rule	Rule Name	Commenter Name	Affiliation	Do you agree with the Agency's determination?	Do you want to comment on this rule?	Comment	Attachment
15A NCAC 02H .1301	SCOPE AND PURPOSE	Jay Stem	North Carolina Aggregates Association	no, unnecessary	Yes, Objection to the rule in whole or in part.	<p>The 2001 Supreme Court "SW ANCC decision" (Solid Waste Agency of Northern Cook County v. United States Army Corps of Engineers et al., 531 U.S. 159) excluded many isolated wetlands from federal regulation. The Supreme Court based this decision on a legal interpretation of jurisdiction under the federal Clean Water Act (CWA). The key factor was the language in the Act that relates to navigable waters. Under Section 404 of the CWA, federal protection extends to those wetlands located on or adjacent to navigable waters of the United States or their tributary systems. Wetlands that do not meet this requirement, such as isolated wetlands with no link to interstate commerce, are not regulated as waters of the United States and are therefore not protected under the CWA.</p> <p>Prior to the SW ANCC decision, the presence of migratory birds was considered enough to establish a link to interstate commerce, and thus CWA protection for 'isolated wetlands. In SW ANCC however the Court ruled that the mere presence of migratory birds is not sufficient for asserting CWA jurisdiction over isolated, intrastate, nonnavigable water bodies. As a result of this ruling, many isolated wetlands are no longer protected by federal law.</p> <p>In general, the Corps of Engineers consider isolated wetlands to be those of any size that are not adjacent* to or do not have a sufficient hydrologic connection to navigable waters. (*See 33 CFR 328.3[c] for definition.)</p> <p>After the SW ANCC decision, there was confusion about which wetlands were covered under the CWA. The U.S. Supreme Court provided little clarity in their 2006 "Rapanos decision" (Rapanos v. United States, 547 U.S. 715).</p> <p>Therefore, in 2008, the Corps and the U.S. Environmental Protection Agency (EPA) issued joint guidance describing how they determine which 'wetlands are covered under the CWA based on the two decisions.</p> <p>Applicants and consultants must coordinate all projects potentially affecting isolated wetlands with the Corps and receive a written jurisdictional determination. Consultants can provide information to the agencies, but the final determination must be made by the Corps.</p> <p>In NC many isolated wetlands do not meet the opinions of the Supreme Court related to</p>	
15A NCAC 02H .1302	APPLICATION PROCESS	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .1302	APPLICATION PROCESS	Lisa Martin	NC Home Builders Association	no, unnecessary	Yes, Objection to the rule in whole or in part.	Please see comments under 15A NCAC 2H .1301	

15A NCAC 02H Comments

Rule	Rule Name	Commenter Name	Affiliation	Do you agree with the Agency's determination?	Do you want to comment on this rule?	Comment	Attachment
15A NCAC 02H .1303	PUBLIC NOTICE AND PUBLIC HEARING	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .1303	PUBLIC NOTICE AND PUBLIC HEARING	Lisa Martin	NC Home Builders Association	no, unnecessary	Yes, Objection to the rule in whole or in part.	Please see comments under 15A NCAC 2H .1301	
15A NCAC 02H .1304	DECISION ON APPLICATIONS FOR PERMITS OR CERTIFICATES OF COVERAGE	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .1304	DECISION ON APPLICATIONS FOR PERMITS OR CERTIFICATES OF COVERAGE	Lisa Martin	NC Home Builders Association	no, unnecessary	Yes, Objection to the rule in whole or in part.	Please see comments under 15A NCAC 2H .1301	
15A NCAC 02H .1305	REVIEW OF APPLICATIONS	Paul Calamita	NC Water Quality Association	Yes.	Yes, A different type of comment.	NCWQA will submit detailed recommended revisions to the regulations under review in a separate comment letter.	
15A NCAC 02H .1305	REVIEW OF APPLICATIONS	Lisa Martin	NC Home Builders Association	no, unnecessary	Yes, Objection to the rule in whole or in part.	Please see comments under 15A NCAC 2H .1301	

May 13, 2014

DENR Rule Comments
1601 Mail Service Center
Raleigh, NC 27699

*Submitted via the DENR Periodic Review and Expiration of Existing Rules website at:
<http://www.ncwater.org/rules-review/> and email*

Re: Comments on DENR proposed classifications of water quality and wetland rules for the rules review process required by Session Law 2013-413

To: NC Department of Environment and Natural Resources,

These comments are being submitted in response to the DENR's proposed classification of water quality and wetland rules for purposes of the rule review required under Session Law 2013-413. The law requires the EMC to determine whether the rules under review should be classified as:

- 1) Necessary with substantive public interest;
- 2) Necessary without substantive public interest; or
- 3) Unnecessary.

The EMC has submitted reports classifying rules in Title 15A, Subchapters 2B, 2H, 2T and 2U of the North Carolina Administrative Code in these three categories. It is our understanding that the 60-day comment period now underway invites public comment on the proposed classification of the rules. Although rule objections may be relevant to concluding that a rule has substantive public interest (which requires re-adoption of the rule), we reserve the right to comment further on the substance of the rules in response to the formal public notice required for re-adoption. As requested by the Rules Review Commission, the EMC reports also indicate whether a rule implements or conforms to a federal statute or rule. We appreciate your consideration of these comments on the EMC reports.

First, we would like to note some general comments. In an earlier letter, we encouraged the EMC to reconsider the decision to put all of the water quality and wetland rules through review and re-adoption without regard to how recently those rules have been adopted. Session Law 2013-413 does not require review of rules adopted or amended within the last ten years. A number of large, complex water quality rule sets have been adopted in the last five years. The workload associated with reviewing those rules will put an unreasonable and unnecessary burden on the EMC and on DENR staff. It will be difficult to do a thoughtful rule review and the volume of rule review activity will also make it difficult for the water quality program to meet its other responsibilities under state and federal law.

Many of the water quality rules also represent comprehensive strategies to address an existing water quality problem. The rule classification process underway now should not be used to identify an individual rule as unnecessary when the rule plays a role in a larger water quality strategy. The nutrient management strategies in particular have been carefully constructed to achieve pollution reductions from all major sources contributing to water quality impairment.

Those rule sets must be reviewed as a whole to insure that the rules continue to meet the Clean Water Act mandate for pollution reductions necessary to achieve water quality standards.

We would also offer more specific comments on the four subchapters:

Subchapter 2B (Surface Water and Wetland Standards): We agree that all of the rules in Subchapter 2B are necessary and have substantive public interest. It is important to note that many of these rules – including all of the standards for nutrient sensitive water bodies – are required to satisfy the Clean Water Act’s requirement that the State must reduce the discharge of pollutants contributing to impaired water quality.

Subchapter 2H (Procedures for Permits and Approvals): Again, we agree that all of the Subchapter 2H rules are necessary and have substantive public interest. The EMC has identified a few of the rules as not implementing or conforming to federal regulations. That determination may be significant for several reasons. Under S.L. 2013-413, failure to review a rule can cause the rule to automatically expire – unless the rule implements or conforms to a federal statute or rule. The relationship between state rules and federal regulations may also become significant in the rule re-adoption process given the APA’s restrictions on adoption of environmental rules that go beyond federal standards.

The EMC report identifies 19 of the 22 rules for local wastewater pretreatment programs as implementing or conforming to federal regulations. While it may be correct that three of the state pretreatment rules are not specifically mandated by federal regulation, the state rules as a whole have been adopted to ensure that local pretreatment programs meet federal requirements. In those circumstances, we think the better course would be to conclude that all of the pretreatment rules implement federal regulations (specifically, that 15A N.C. Admin. Code 02H .0917, .0920, .0922 implement 40 C.F.R. §§ 403.8 and 403.12). Making an overly narrow rule-by-rule decision on the relationship to federal regulations could undermine the overall state pretreatment program. Federal statutes and rules rarely include all of the procedural requirements needed to run a delegated state program. Those additional requirements should still be considered necessary to implement federal regulations.

We are also concerned that the EMC has taken too narrow a view of the relationship between the isolated wetlands rules and implementation of federal regulations. Although isolated wetlands fall outside the scope of the permitting program established in Section 404 of the Clean Water Act, protection of the water quality functions of isolated wetlands has links to other sections of the Clean Water Act that require reduction of pollutant loading to impaired waters and development of plans to reduce nonpoint source pollution. The isolated wetlands rules can also have a role in implementation of other federal laws such as the Endangered Species Act.

Subchapter 2T (Waste Not Discharged to Surface Waters): We agree that all of the Subchapter 2T rules are both necessary and have substantive public interest.

Subchapter 2U (Reclaimed Water): We agree that all of the Subchapter 2U rules are both necessary and have substantive public interest. We also believe the EMC is correct in finding that the reclaimed water rules implement or conform to federal regulation. Some stakeholders

have argued in the past that reclaimed water can be discharged without a Clean Water Act permit. We believe that position reflects a basic misunderstanding of the Clean Water Act and the reclaimed water rules clearly implement federal requirements concerning discharge of wastewater.

Thank you for considering these comments and we look forward to participating in future discussions of the substance of these rules.

Sincerely,

Molly Diggins, State Director
Sierra Club, NC Chapter

Jane Preyer, Director
Environmental Defense Fund, NC Office

Julie Youngman, Senior Attorney
Southern Environmental Law Center

cc: Mr. Benne Hutson, Chair, EMC, Benne.Hutson@gmail.com
Tom Reeder, Division of Water Resources, tom.reeder@ncdenr.gov
Joe DeLuca, Rules Review Commission, joe.deluca@oah.nc.gov

Michael Gallant Letter

This comment refers to the "green area" requirement.

15A NCAC 02H .0404 (g) (7) is as follows:

- (7) Waste disposal areas are to contain at least 1,000 square feet of open "green area" for each residential unit served, or 2,500 square feet per thousand gallons per day of waste flow, whichever is less. The term "green area" contained herein is defined as an area suitable for waste disposal, either in its natural state or which has been modified by planting vegetative cover of grasses or low growing shrubbery. Green areas shall not include street or roadway right-of-ways or areas not available for waste disposal. Not more than 25 percent of the required area may be covered with non-traffic bearing paved surfaces such as walkways or patios. Subsurface disposal areas shall not be used as parking lots, driveways, or for other vehicular traffic uses.

Pluris believes that this amount of land presents a financial hardship and is not necessary when the actual disposal area required is far less than the computed "Green Area". For non-discharge systems that use high rate infiltration disposal the actual disposal area can be far less than the computed green area. It is imprudent and at times cost prohibitive to set aside many several times the amount of land needed for disposal in green area.

Pluris suggests the following be added to this section

For systems utilizing high rate infiltration disposal combined with tertiary treatment the required green area shall be computed as equal to the area required for the high rate infiltration infrastructure.

This would allow for the facility to be able to set aside enough land to duplicate the disposal system. It is believed that the original formula for calculating green area is related to spray irrigation system requirements. The rule does not address the changing technology and practices of high rate infiltration design.