

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02B .0206

DEADLINE FOR RECEIPT: Wednesday, December 10, 2014

NOTE WELL: This request when viewed on computer extends 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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 4, replace "are" with "shall"

Line 7, replace "is not" with "shall not be"

Line 8, replace "is" with "shall be"

Line 10, replace "can" with "may"

Line 11 references the Federal Clean Water Act. Is this incorporated already and could be cross referenced? Is there a main rule that provides details about incorporated materials, like [15A NCAC 02Q .0105](#) and [15A NCAC 02Q .0106](#)? Otherwise, properly incorporate as required by [G.S. 150B-21.6](#).

Lines 12, 15, 23, and 33, replace "will" with "shall"

Line 14, replace "are" with "shall"

Line 19, replace "provide evidence which" with "provides evidence that"

Line 21, the term being defined should be placed in quotation marks. Furthermore, this term does not mirror the language on the prior line. Is the full term "Better protection for the water quality standards"? Please correct.

Line 27, replace "will be:" with "shall be the following:"

Lines 29 and 31, add a comma after "fish"

Line 29, add an "and" at the end of the line

Abigail M. Hammond
Commission Counsel

Date submitted to agency: Wednesday, November 26, 2014

Lines 31 through 32, is this text missing a word? The phrase beginning with “unless...” seems incomplete. Consider reorganizing as follows:

“unless fish contamination concerns for a specific site necessitate...”

Line 36, add a comma after “flow”

Page 2, line 1, is a person reviewing and approving the use of alternative low flow? If so, please indicate the person and the review standard in this Rule.

Page 2, lines 3 and 22, replace “are” with “shall be”

Page 2, line 4, replace “which” with “that”

Page 2, lines 5, 8, 10, 12, 13, 18, 19, 21, and 24, replace “will” with “shall”

Page 2, lines 11, 15, and 19, reference a determination being made. Is a person reviewing existing limits? If so, please indicate the person and the review standard in this Rule.

Page 2, line 22, consider the following rewrite:

“unless the Director determines that alternative limitations protect the classified water uses.”

When the Director is making this determination, what are the applicable standards?

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

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02B .0211

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In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Lines 4 and 37, replace "are" with "shall be"

Line 9, what is NPDES? Please define.

Line 11, add a comma after "agriculture"

Line 12, add a comma after "culinary"

Line 16, replace "which" with "that"

Page 2, line 1, replace "are to" with "shall"

Page 2, line 2, add a comma after "technique"

Page 2, line 3, replace the semicolon after "method" with a period

Page 2, line 3, capitalize "in"

Page 2, line 6, add a comma after "wastes"

Page 2, line 22, replace "must" with "shall"

Page 2, line 27, replace "are" with "shall be"

Page 3, line 2, replace "above" with "in this Subparagraph"

Page 3, line 3, replace "A WER is" with " "WER" means..."

Page 3, line 5, replace "is" with "shall be"

Abigail M. Hammond
Commission Counsel

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Page 3, line 5, what is the purpose of “(1)”? There does not appear to be a “(2)” and the numerical spelling of “one” is sufficient to establish the value of a WER.

Page 3, line 5, is it an accurate statement to say “any person”? Please clarify.

Page 3, line 6, replace “is” with “may be”

Page 3, line 7, define or delete “appropriately”

Page 3, line 9 incorporates material. How is this material found and what is the cost? [G.S. 150B-21.6](#) requires this information.

Page 3, line 10, replace “can” with “may”

Page 3, lines 11 through 13 appear to speak to a standard. Where is this standard found? Please incorporate in accordance with [G.S. 150B-21.6](#) if “[a]ll or part of a code, standard, or regulation adopted by another agency, the federal government, or a generally recognized organization or association.”

Page 3, line 16, replace “are” with “shall be”

Page 3, line 21, replace “will” with “shall”

Page 3, line 24, again, define NPDES, unless the prior definition applies across this Rule.

Page 3, line 26, replace “requires” with “shall have”

Page 3, line 35, add a comma after “ratio (WER)” and add the following:

“which is set forth in Sub-Item (b).

Page 3, line 35, through page 4, line 7, delete the remainder of the text that is duplicative of Sub-Item (b).

Page 4, line 11, replace “are” with “shall be”

Page 4, line 12, replace “15A NCAC 02B .0211(d).” with “Sub-Item (d) of this Rule.”

Page 5, lines 4 through 20, correct the alignment of this text.

Page 5, lines 12 and 15, replace “will” with “shall”

Page 5, line 17, replace “is” with “shall be”

Page 5, lines 21 and 24, add a comma after “colored”

Page 5, line 22, add a comma after “recreation”

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Page 5, line 22, add a semicolon after “wildlife”

Page 5, line 23, add a comma after “quality”

Page 5, line 25, delete “but not limited to”

Page 6, lines 1 through 2, this text should be restored to comply with [G.S. 150B-21.6](#).

Page 6, line 16, add an “and” at the end of the line

Page 6, line 18, delete “generally”

Page 7, line 6, add a comma after “lakes”

Page 7, line 12, replace “must” with “shall”

Page 7, line 13, add a comma after “operation”

Page 9, lines 6 and 23, again, define NPDES, unless the prior definition applies across this Rule.

Page 9, line 10, add an “and” at the end of the line

Page 9, line 16, is the term “Action Levels” or “chronic Action Levels,” as used in 15A NCAC 02B .0220, page 6, line 31? Please use consistent terms.

Page 9, lines 24 through 26, who is making this determination? If it is an identifiable position, please indicate the person by title and the review standard for this Rule.

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

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REQUEST FOR TECHNICAL CHANGE

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RULE CITATION: 15A NCAC 02B .0212

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In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 5, consider the following re-write:

“watersheds classified as WS-I.”

Line 6, add “shall” between “Section also”

Lines 8, 11, and 28, replace “are” with “shall be”

Line 12, define or delete “essentially”

Line 14, replace “must” with “shall”

Line 14, define or delete “relatively”

Lines 18 and 20, replace “which” with “that”

Page 2, lines 16 and 35, add an “and” at the end of the clause

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

Abigail M. Hammond
Commission Counsel

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REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02B .0214

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In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 5, consider the following re-write:

“watersheds classified as WS-II.”

Line 6, add “shall” between “Section also”

Lines 8, 11, 16, and 31, replace “are” with “shall be”

Lines 12, 14, 20, and 22, replace “which” with “that”

Line 12, define or delete “predominately”

Line 17, replace “are not” with “shall not be”

Line 35, define for delete “effectively”

Page 2, lines 2 and 3, replace “which” with “that”

Page 2, lines 10 and 19, replace “must” with “shall”

Page 2, line 13, add a comma after “right-of-way)”

Page 2, line 27, replace “is” with “shall be”

Page 2, line 33, replace “are” with “shall be”

Page 3, line 1, replace “are” with “shall be”

Page 3, line 23, replace “is not” with “shall not be”

Abigail M. Hammond
Commission Counsel

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Page 3, line 26, what is meant by “10 percent/ 70 percent”?

Page 3, line 33, replace “must” with “shall”

Page 3, line 35, add a comma after “waters”

Page 3, line 35, what is meant by “best management practices”? Please define, clarify, or cross-reference another rule.

Page 4, lines 1 and 35, replace “must” with “shall”

Page 4, lines 7, 11, 16, and 26, replace “is” with “shall be”

Page 4, lines 12 through 13, what is occurring based upon this language?

Page 4, line 17, add a comma after “signs”

Page 4, line 22, add a comma after “waters”

Page 4, line 22, what is meant by “maximize the utilization of BMPs”? What are the BPM’s being referenced? How is utilization maximized?

Page 4, line 23, define “NPDES”

Page 4, line 29, add a comma after “right-of-way)”

Page 5, lines 2 and 3, replace “are” with “shall be”

Page 5, line 8, replace “which” with “that”

Page 5, line 26, add an “and” at the end of the clause

Page 6, line 8, add an “and” at the end of the clause

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

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REQUEST FOR TECHNICAL CHANGE

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In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 5, consider the following re-write:

“watersheds classified as WS-III.”

Line 6, add “shall” between “Section also”

Lines 7, 10, 15, 16, 17, 18, and 31, replace “are” with “shall be”

Lines 11, 21, and 23, replace “which” with “that”

Line 11, define or delete “generally”

Line 35, define for delete “effectively”

Line 37, the language referring to the “discharger” is not consistent with the language in the other rules. Please correct in a consistent manner.

Page 2, lines 2 and 3, replace “which” with “that”

Page 2, lines 10 and 19, replace “must” with “shall”

Page 2, line 13, add a comma after “right-of-way)”

Page 2, line 27, replace “is” with “shall be”

Page 2, line 33, replace “are” with “shall be”

Page 3, line 1, replace “are” with “shall be”

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Page 3, line 8, add a comma after “organization”

Page 3, line 23, replace “is not” with “shall not be”

Page 3, line 26, what is meant by “10 percent/ 70 percent”?

Page 3, line 33, replace “must” with “shall”

Page 3, line 35, what is meant by “best management practices”? Please define, clarify, or cross-reference another rule.

Page 4, lines 1 and 34, replace “must” with “shall”

Page 4, line 4, replace “which” with “that”

Page 4, lines 7, 11, and 15, replace “is” with “shall be”

Page 4, lines 12 through 13, what is occurring based upon this language?

Page 4, line 16, add a comma after “signs”

Page 4, line 21, add a comma after “waters”

Page 4, line 21, what is meant by “maximize the utilization of BMPs”? What are the BPM’s being referenced? How is utilization maximized?

Page 4, line 22, define “NPDES”

Page 4, line 25, add “shall be” between “development limited”

Page 4, line 27, add a comma after “right-of-way)”

Page 5, lines 2 and 3, replace “are” with “shall be”

Page 5, line 8, replace “which” with “that”

Page 5, line 26, add an “and” at the end of the clause

Page 6, line 8, add an “and” at the end of the clause

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

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REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02B .0216

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In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Correct the page numbers for this Rule.

Line 4, consider the following re-write:

“watersheds classified as WS-IV.”

Line 5, add “shall” between “Section also”

Lines 6, 9, 16, 20, and 33, replace “are” with “shall be”

Lines 10, 12, 22, and 24, replace “which” with “that”

Line 10, define or delete “generally”

Line 14, add a comma after “discharges”

Line 36, delete the “shall” between “that have”

Line 37, define for delete “effectively”

Page 2, lines 5, 13, and 26, replace “which” with “that”

Page 2, line 19, add a comma after “right-of-way)”

Page 2, line 21, add a comma after “acre”

Page 2, line 28, add a comma after “Rule”

Page 3, lines 7 and 12, replace “are” with “shall be”

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Page 3, line 28, replace “which” with “that”

Page 3, line 29, define or delete “ultimate”

Page 3, line 31, replace “is” with “shall be”

Page 3, lines 35 through 37, what is occurring based upon this language?

Page 4, line 2, add a comma after “signs”

Page 4, line 7, add a comma after “waters”

Page 4, line 7, what is meant by “maximize the utilization of BMPs”? What are the BPM’s being referenced? How is utilization maximized?

Page 4, why is the text in lines 8 through 28 in a different order than in the prior rules? Is there a justification? Otherwise, please maintain a consistent format with like rules.

Page 4, line 18, what is meant by “10 percent/ 70 percent”?

Page 4, line 27, what is meant by “best management practices”? Please define, clarify, or cross-reference another rule.

Page 4, line 30, replace “which” with “that”

Page 4, line 36, add a comma after “right-of-way)”

Page 5, line 16, replace “which” with “that”

Page 5, line 16, combine “can not” to be consistent with other rules.

Page 5, line 36, add an “and” at the end of the clause

Page 6, line 18, add an “and” at the end of the clause

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

Abigail M. Hammond
Commission Counsel

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REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02B .0218

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In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 5, consider the following re-write:

“watersheds classified as WS-III.”

Line 6, add “shall” between “Section also”

Lines 7, 15, 20, and 25, replace “are” with “shall be”

Lines 7, 18, 23, 32, and 33, replace “which” with “that”

Line 8, define or delete “generally”

Lines 10 through 11, replace “is not” with “shall not be”

Line 27, define for delete “effectively”

Page 2, line 5, replace “which” with “that”

Page 2, line 5, combine “can not” to be consistent with other rules.

Page 2, line 25, add an “and” at the end of the clause

Page 3, line 7, add an “and” at the end of the clause

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

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Commission Counsel

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REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02B .0220

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In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 4, replace "are" with "shall be"

Lines 10 and 13, what is PNA? Please define.

Line 13, replace "which" with "that"

Lines 30 through 31 incorporates material. How is this material found and what is the cost? [G.S. 150B-21.6](#) requires this information. Is there a main rule that provides details about incorporated materials, like [15A NCAC 02Q .0105](#) and [15A NCAC 02Q .0106](#)?

Page 2, line 8, replace "must" with "shall"

Page 2, line 13, delete "only"

Page 2, lines 23, 27, and 32, replace "will" with "shall"

Page 3, line 18, replace "A WER is" with "WER" means..."

Page 3, line 20, replace "is" with "shall be"

Page 3, line 20, what is the purpose of "(1)"? There does not appear to be a "(2)" and the numerical spelling of "one" is sufficient to establish the value of a WER.

Page 3, line 21, is it an accurate statement to say "any person"? Please clarify.

Page 3, line 22, replace "is" with "may be"

Page 3, line 22, define or delete "appropriately"

Abigail M. Hammond
Commission Counsel

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Page 3, lines 24 through 25 incorporates material. How is this material found and what is the cost? [G.S. 150B-21.6](#) requires this information.

Page 3, line 25, replace “can” with “may”

Page 3, lines 25 through 28 appear to speak to a standard. Where is this standard found? Please incorporate in accordance with [G.S. 150B-21.6](#) if “[a]ll or part of a code, standard, or regulation adopted by another agency, the federal government, or a generally recognized organization or association.”

Page 3, lines 29 and 32, add a comma after “colored”

Page 3, line 30, add a comma after “recreation”

Page 3, line 33, delete “but not limited to”

Page 3, line 36, the quantity in this Rule differs from Rule 15A NCAC 02B .0211. Is that correct?

Page 4, lines 4, 8, and 11, the quantities in this Rule differs from Rule 15A NCAC 02B .0211. Is that correct?

Page 4, line 13, define or delete “generally”

Page 5, line 1, the quantity in this Rule differs from Rule 15A NCAC 02B .0211. Is that correct? Also, “NTU” is spelled out in 15A NCAC 02B .0211. Please be consistent.

Page 5, line 5, replace “must” with “shall”

Page 5, line 6, add a comma after “operation”

Page 6, line 27, what is NPDES? Please define.

Page 6, lines 28, 29, and 30, the quantities in this Rule differs from Rule 15A NCAC 02B .0211. Is that correct?

Page 6, line 33, replace “are” with “shall be”

Page 6, lines 35 through 36, delete “be required to”

Page 7, lines 2 and 4, again, please define NPDES.

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

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Commission Counsel

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1 which Action Levels are listed in this ~~Subparagraph~~ Item ~~may~~ shall be limited as appropriate in the
2 NPDES permit if sufficient information (to be determined for metals by measurements of that
3 portion of the dissolved instream concentration of the Action Level parameter attributable to a
4 specific NPDES permitted discharge) exists to indicate that any of those substances may be a
5 causative factor resulting in toxicity of the effluent. ~~NPDES permit limits may be based on~~
6 ~~translation of the toxic form to total recoverable metals. Studies used to determine the toxic form~~
7 ~~or translators must be designed according to: "Water Quality Standards Handbook Second~~
8 ~~Edition" published by the Environmental Protection Agency (EPA 823-B-94-005a) or "The Metals~~
9 ~~Translator: Guidance For Calculating a Total Recoverable Permit Limit From a Dissolved~~
10 ~~Criterion" published by the Environmental Protection Agency (EPA 823-B-96-007) which are~~
11 ~~hereby incorporated by reference including any subsequent amendments. The Director shall~~
12 ~~consider conformance to EPA guidance as well as the presence of environmental conditions that~~
13 ~~limit the applicability of translators in approving the use of metal translators.~~

14
15 *History Note:* Authority G.S. 143-214.1; 143-215.3(a)(1);
16 Eff. October 1, 1995;
17 Amended Eff. January 1, 2015; May 1, 2007; August 1, 2000.
18