

RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02H .1030

RECOMMENDED ACTION:

- Approve, but note staff's comment
- Object, based on:
 - Lack of statutory authority
 - Unclear or ambiguous
 - Unnecessary
- Failure to comply with the APA
- Extend the period of review

COMMENT:

Beginning on page 5, lines 21 through 31, the text is new to this Rule and was not published in the Register. See page 12 of this document. Under G.S. 150B-21.2(g), an agency should not adopt a substantially different rule after the close of the comment period, unless the text is republished for additional comments.

(g) Adoption. - An agency shall not adopt a rule until the time for commenting on the proposed text of the rule has elapsed and shall not adopt a rule if more than 12 months have elapsed since the end of the time for commenting on the proposed text of the rule. Prior to adoption, an agency shall review any fiscal note that has been prepared for the proposed rule and consider any public comments received in connection with the proposed rule or the fiscal note. **An agency shall not adopt a rule that differs substantially from the text of a proposed rule published in the North Carolina Register unless the agency publishes the text of the proposed different rule in the North Carolina Register and accepts comments on the proposed different rule for the time set in subsection (f) of this section.**

An adopted rule differs substantially from a proposed rule if it does one or more of the following:

- (1) Affects the interests of persons who, based on the proposed text of the rule published in the North Carolina Register, could not reasonably have determined that the rule would affect their interests.

(2) Addresses a subject matter or an issue that is not addressed in the proposed text of the rule.

(3) Produces an effect that could not reasonably have been expected based on the proposed text of the rule.

When an agency adopts a rule, it shall not take subsequent action on the rule without following the procedures in this Part. An agency must submit an adopted rule to the Rules Review Commission within 30 days of the agency's adoption of the rule.

In looking at the text of 15A NCAC 02H .1030, as published in the June 2, 2014 Register, the proposed text of this Rule indicated that the "Division shall establish record keeping, self-inspection, and self-reporting requirements." See page 7 of this document. The specifics of these future "requirements" were not provided in the proposed text. After the close of the comment period, the Environmental Management Commission has added the following additional requirements to this Rule:

- (1) that records be kept on the permitted site for the length of the permit;
- (2) a 24 hour reporting requirement for issues with the permitted site; and
- (3) a weekly inspection of the site, or more frequently depending on the weather.

These specific requirements placed upon the regulated public are substantially more specific than the future establishment of such standards. These requirements were not available to the regulated public and have not been subjected to public comments. These specific requirements were not a subject matter or an issue addressed in the proposed text of the rule published on June 2, 2014.

Based upon this substantial change, it is staff's recommendation that this rule, with the new text as outlined on page 5, lines 21 through 31, be republished in accordance with G.S. 150B-21.2(f), which states the following:

(f) Comments. - An agency must accept comments on the text of a proposed rule that is published in the North Carolina Register and any fiscal note that has been prepared in connection with the proposed rule for at least 60 days after the text is published or until the date of any public hearing held on the proposed rule, whichever is longer. An agency must consider fully all written and oral comments received.

Summary:

The Environmental Management Commission has submitted a permanent rule that differs substantially from the proposed text published in the Register on June 2, 2014. The specific breakout of record keeping, self-reporting, and self-inspection requirements now set forth in Subparagraphs (c)(5), (c)(6), and (c)(7) addresses subject matters not addressed in the proposed text. Therefore, it is staff's recommendation that the Rules Review Commission should object to 15A NCAC 02H .1030 for failure to comply with the Administrative Procedure Act. This Rule, with the additional language added after publication, should be republished in the Register for at least a 60 day comment period.

NORTH CAROLINA REGISTER

VOLUME 28 • ISSUE 23 • Pages 2809 – 2974

June 2, 2014

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PUBLISHED BY

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Note from the Codifier: The notices published in this Section of the NC Register include the text of proposed rules. The agency must accept comments on the proposed rule(s) for at least 60 days from the publication date, or until the public hearing, or a later date if specified in the notice by the agency. If the agency adopts a rule that differs substantially from a prior published notice, the agency must publish the text of the proposed different rule and accept comment on the proposed different rule for 60 days.
Statutory reference: G.S. 150B-21.2.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Comment period ends: August 1, 2014

Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to adopt the rules cited as 15A NCAC 02H .1030 and amend the rules cited as 15A NCAC 02T .0113, .1001, .1501; 02U .0113.

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

- Agency obtained G.S. 150B-19.1 certification:**
 OSBM certified on: May 23, 2014
 RRC certified on:
 Not Required

- Fiscal impact (check all that apply).**
 State funds affected
 Environmental permitting of DOT affected Analysis submitted to Board of Transportation
 Local funds affected
 Substantial economic impact (≥\$1,000,000)
 No fiscal note required by G.S. 150B-21.4

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://portal.ncdenr.org/web/wq/rules>

Proposed Effective Date: Pending legislative approval

CHAPTER 02 – ENVIRONMENTAL MANAGEMENT COMMISSION

Public Hearing:
Date: July 1, 2014
Time: 6:00 p.m.
Location: Dennis A. Wicker Civic Center, 1801 Nash Street, Sanford, NC 27330

SUBCHAPTER 02H – PROCEDURES FOR PERMITS: APPROVALS

SECTION .1000 – STORMWATER MANAGEMENT

Reason for Proposed Action: Session Law 2012-143 directed the Environmental Management Commission (EMC) to adopt rules for stormwater control for sites on which oil and gas exploration and development activities are conducted. It also directed the EMC to adopt rules "For matters within its jurisdiction that allow for and regulate horizontal drilling and hydraulic fracturing for the purpose of oil and gas exploration and development." Following a review of the EMC's rules for water quality protection, the mandate in S.L. 2012-143, as well as information about the operation and potential environmental impacts of modern oil and gas exploration and production activities, the EMC is proposing to adopt a new rule for stormwater management at sites where oil and gas exploration and development activities are conducted and to make minor revisions to four other water quality rules in order to appropriately regulate horizontal drilling and hydraulic fracturing for the purpose of oil and gas exploration and development.
Please know that this rulemaking is separate from, and much more limited in scope than, the more comprehensive rulemaking actions of the Mining and Energy Commission.

15A NCAC 02H .1030 STORMWATER REQUIREMENTS: OIL AND GAS EXPLORATION AND PRODUCTION

(a) Regulated Development Activity. Persons engaged in oil and gas exploration, development, and production activities shall manage stormwater runoff in accordance with the provisions of this Rule.

Comments may be submitted to: Evan Kane, Groundwater Planning and Environmental Review Branch Chief, NC Division of Water Resources, 1611 Mail Service Center, Raleigh, NC 27699-1611; email Stormwater_and_LandApp_Rules@lists.ncmail.net

- (1) Such persons shall submit a permit application to the Division of Energy, Mineral, and Land Resources (Division) in accordance with the requirements of this Section.
- (2) Such persons shall obtain a permit from the Division prior to any on-site activities other than land surveying, and surface soil testing

of hydraulic conductivity and engineering properties.

- (3) This Rule authorizes the Division to issue a stormwater-only permit. The Division shall not authorize by permit the discharge to surface waters of stormwater commingled with any other fluid.
- (4) The Division may issue stormwater permits as discrete, stand-alone stormwater permits or may incorporate stormwater permit conditions into an environmental protection permit encompassing multiple regulatory programs.

(b) Permit Application Requirements.

- (1) Notwithstanding the qualifying provisions of Rule .1003(b)(1),(2), and (3) of this Section, a complete permit application and a permit are required for oil and gas exploration, development, and production activity regardless of whether the activity also requires a CAMA major development permit or an Erosion and Sedimentation Control Plan; and regardless of whether the development is located in the 20 coastal counties, or drains to Outstanding Resource Waters (ORW), or drains to High Quality Waters (HQW).
- (2) The Division shall treat each stormwater permit application for oil and gas exploration, development, and production activities as a High Density Project application as provided for in Rule .1003(d)(2), and shall only grant permit coverage if the application itself and the proposed development meet the requirements of this Rule.
- (3) The permit application for oil and gas exploration, development, and production activities shall be submitted to the Division at the Raleigh Central Office.
- (4) The stormwater permit application shall comply with the requirements in Rule .1003(g) of this Section. In addition, the application shall include the following information;

- (A) all North Carolina classifications and supplemental classifications (if any) assigned to the receiving water;
- (B) the location of all stormwater discharge points, both by latitude and longitude coordinates and by graphic representation at a scale sufficient for the Division's review;
- (C) the graphic representation of the location and delineation of wetlands and regulated buffers on the site, adjacent to the site, or between the site and the receiving

water at a scale sufficient for the Division's review;

- (D) a statement that there are no threatened or endangered species identified for the receiving water or for downstream receiving waters. Alternatively, the application shall identify the threatened and endangered species and their reported locations in the receiving water and downstream receiving waters;
- (E) a design narrative that explains the assumptions and calculations for the engineering design of the stormwater control systems proposed and that individually identifies how the design complies with each specific requirement of this Section;
- (F) Final Site Close Out Plan: the graphic representation, at a scale sufficient for the Division's review, of the final site grade and site conditions that will be implemented in support of a future request to rescind the stormwater permit or comprehensive environmental permit based on the final close out and the end of the permit holder's commercial interest in the site.

(c) Stormwater Management Requirements.

- (1) During initial site clearing, grading, excavation, and construction of earthen surface features, including temporary erosion and sedimentation control measures and permanent stormwater control measures, the permittee shall manage site conditions, materials, activities, and stormwater as follows.
 - (A) Equipment, petroleum products, equipment wash waters, and associated spent fluids shall be managed (operated, maintained, stored, handled, cleaned up, and disposed of) to prevent the potential or actual pollution of surface waters by direct discharge or via stormwater runoff.
 - (B) Herbicides, pesticides, fertilizers, and similar materials shall be managed to prevent introduction into stormwater runoff, and in accordance with label restrictions and the Federal Insecticide, Fungicide, and Rodenticide Act.
 - (C) Building material waste, land clearing and demolition debris, litter, and sanitary wastes shall be

- managed to prevent introduction into stormwater runoff. Dedicated management areas shall be established for these materials a minimum of 50 feet away from surface waters and discrete stormwater conveyances.
- (D) Topsoil and excavated material stockpiles shall be located a minimum of 50 feet away from surface waters and stormwater conveyances and shall be managed to prevent runoff transport of the stockpiled materials to the surface waters of North Carolina.
- (E) Excess concrete, concrete wash water, and cement slurries shall be managed to prevent the potential or actual pollution of surface waters by direct discharge or via stormwater runoff.
- (2) During initial site clearing, grading, excavation, and construction of earthen surface features, including temporary erosion and sedimentation control measures and permanent stormwater control measures, the permittee shall manage site conditions, materials, activities, and stormwater as follows.
- (A) All perimeter dikes, perimeter swales, perimeter ditches, perimeter slopes, all slopes steeper than 3:1, and all slopes longer than 50 feet shall be provided with temporary or permanent ground cover stabilization as soon as practical, but in every case within seven calendar days from the last land disturbing activity.
- (B) All other disturbed areas shall be provided temporary or permanent ground cover stabilization as soon as practical, but in every case within 14 calendar days from the last land disturbing activity.
- (C) Time extensions may be granted by the Division based on weather or site-specific conditions. The Division may also deny requests for such extensions.
- (D) Treatment measure requirements.
- (i) All sediment basins and traps with a contributing drainage area of one acre or greater must utilize outlet structures that withdraw water from the surface.
- (ii) Stormwater treated with polymers, flocculants, or other treatment chemicals must be routed through sediment traps, filters, and/or other settling devices to ensure removal prior to discharge to surface waters. Only chemicals that have been approved by the Division may be used.
- (3) During initial site clearing, grading, excavation, and construction of earthen surface features, including temporary erosion and sedimentation control measures and permanent stormwater control measures, and prior to the full demobilization of the site preparation equipment and forces, and prior to any mobilization to the site of any equipment or material intended to support subsurface activities, the individual designing the stormwater control system identified in Rule .1008(j) of this Section must certify in writing to the Division in accordance with Rule .1008(j) of this Section. Regardless of whether a certificate of occupancy is provided or required by other authority, no additional mobilization to the site shall take place until the Division accepts the designer's certification in writing. The Division may withhold acceptance of the designer's certification pending a favorable site inspection by the Regional Office.
- (4) After completion of the surface site preparation activity, and beginning with the surface activity in direct support of well drilling and continuing thereafter, the permittee shall manage site conditions, materials, activities, and stormwater as follows.
- (A) Stormwater control measures shall control and treat the runoff from the one-inch rainfall; or, stormwater control measures shall control and treat the difference in runoff for pre-development and post-development conditions for the 90th percentile rainfall event.
- (B) Stormwater control measures shall discharge at a rate less than or equal to the peak pre-development discharge rate for the 1-year, 24-hour storm.
- (C) Stormwater control measures shall be designed in accordance with the provisions of Rule .1008 of this Section, with options and guidance

provided by the version of the Division's Stormwater Best Management Practices Manual current at the time of permit application or permit revision request.

(D) In addition to the measures identified in Rule .1008(a) of this Section, measures appearing in the Division's Stormwater Best Management Practices Manual shall be approved where individually, or in combination, the measures achieve 85 percent average annual removal of Total Suspended Solids, and upon the Division's review and conclusion of appropriate design and suitability for the anticipated site conditions.

(E) All stormwater control measures shall be equipped with underflow baffles or other effective means to prevent the discharge of hydrocarbons and floating pollutants.

(5) The Division shall establish record-keeping, self-inspection, and self-reporting permit requirements to insure effective site management attention, response actions, and control of the potential for polluted stormwater.

(d) Coordination with other water quality regulations.

(1) For oil and gas exploration, development, and production activities, compliance with this Rule satisfies the requirements of Rule .1006 of this Section. However, the Division may require more stringent measures for development activities draining to HQW waters as provided in Rule .1006 of this Section.

(2) For oil and gas exploration, development, and production activities, compliance with this Rule satisfies the Freshwater ORW requirements of Rule .1007 of this Section. However, the Division may require more stringent measures for development activities draining to ORW waters as provided in Rule .1007 of this Section.

(3) This Rule is not intended to modify, repeal, or supersede any other rule, regulation, or other provision of law. The requirements of this Rule are in addition to the requirements of any other rule, regulation, or other provision of law. Where any requirement of this Rule imposes restrictions different from those imposed by any other rule, regulation, or other provision of law, whichever requirement is more restrictive or imposes higher protective standards for human or

environmental health, safety, and welfare shall control. This includes, but is not limited to, Sections 15A NCAC 02B .0100, 15A NCAC 02B .0200, and 15A NCAC 02B .0300 whether administered by the State or by a local unit of government.

Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a); 113-391(a3)(1).

SUBCHAPTER 02T – WASTE NOT DISCHARGED TO SURFACE WATERS

SECTION .0100 – GENERAL REQUIREMENTS

15A NCAC 02T .0113 PERMITTING BY REGULATION

(a) The following disposal systems as well as those in Permitting By Regulation rules in this Subchapter (i.e., Rules .0203, .0303, .0403, .1003, .1103, .1203, .1303, .1403, and .1503) are deemed to be permitted pursuant to G.S. 143-215.1(b) and it shall not be necessary for the Division to issue individual permits or coverage under a general permit for construction or operation of the following disposal systems provided the system does not result in any violations of surface water or groundwater standards, there is no direct discharge to surface waters, and all criteria required for the specific system is met:

- (1) Swimming pool and spa filter backwash and drainage, filter backwash from aesthetic fountains, and filter backwash from commercial or residential water features such as garden ponds or fish ponds, that is discharged to the land surface;
- (2) Backwash from raw water intake screening devices that is discharged to the land surface;
- (3) Condensate from residential or commercial air conditioning units that is discharged to the land surface;
- (4) Discharges to the land surface from individual non-commercial car washing operations;
- (5) Discharges to the land surface from flushing and hydrostatic testing water associated with utility distribution systems, new sewer extensions or new reclaimed water distribution lines;
- (6) Street wash water that is discharged to the land surface;
- (7) Discharges to the land surface from fire fighting activities;
- (8) Discharges to the land surface associated with emergency removal and treatment activities for spilled oil authorized by the federal or state on-scene coordinator when such removals are undertaken to minimize overall environmental damage due to an oil spill;

1 **15A NCAC 02H .1030 HAS BEEN ADOPTED WITH CHANGES AS PUBLISHED IN 28:23 NCR 2814-2820**
2 **AS FOLLOWS:**

3
4 **15A NCAC 02H .1030 STORMWATER REQUIREMENTS: OIL AND GAS EXPLORATION AND**
5 **PRODUCTION**

6 (a) Regulated Development Activity. Persons engaged in oil and gas exploration, development, and production
7 activities shall manage stormwater runoff in accordance with the provisions of this Rule.

8 (1) Such persons shall submit a permit application to the Division of Energy, Mineral, and Land
9 Resources (Division) in accordance with the requirements of this Section.

10 (2) Such persons shall obtain a permit from the Division prior to any on-site activities other than land
11 surveying, and surface soil testing of hydraulic conductivity and engineering properties.

12 (3) This Rule authorizes the Division to issue a stormwater-only permit. ~~The Division shall not~~
13 ~~authorize by permit the discharge to surface waters of stormwater commingled with any other~~
14 ~~fluid.~~ Any other discharge to surface waters is prohibited unless permitted in accordance with G.S.
15 143-215.1.

16 (4) The Division may issue stormwater permits as discrete, stand-alone stormwater permits or may
17 incorporate stormwater permit conditions into an environmental protection permit encompassing
18 multiple regulatory programs.

19 (b) Permit Application Requirements.

20 (1) Notwithstanding the qualifying provisions of Rule .1003(b)(1), (2), and (3) of this Section, a
21 complete permit application and a permit are required for oil and gas exploration, development,
22 and production activity, regardless of whether the activity also requires a CAMA major
23 development permit or an Erosion and Sedimentation Control ~~Plan~~; Plan. A permit application and
24 permit are also required and regardless of whether the development is located in the 20 coastal
25 counties, or drains to Outstanding Resource Waters (ORW), or drains to High Quality Waters
26 (HQW).

27 (2) The Division shall treat each stormwater permit application for oil and gas exploration,
28 development, and production activities as a High Density Project application as provided for in
29 Rule ~~.1003(d)(2)~~, 1003(d)(2) of this Section, and shall only grant permit coverage if the
30 application itself and the proposed development meet the requirements of this Rule.

31 ~~(3)~~ The Director may solicit and receive comments from other regulatory agencies and the public
32 when necessary to obtain additional information needed to complete the review of either the
33 stormwater permit application or the stormwater conditions in an application for an environmental
34 protection permit encompassing multiple regulatory programs.

35 ~~(3)(4)~~ (4) The permit application for oil and gas exploration, development, and production activities shall be
36 submitted to the Division at the Raleigh Central ~~Office~~; Office located at 512 North Salisbury
37 Street, Raleigh, North Carolina 27604.

1 ~~(4)~~(5) The stormwater permit application shall comply with the requirements in Rule .1003(g) of this
2 Section. In addition, the application shall include the following ~~information;~~information:

3 (A) all North Carolina classifications and supplemental classifications (if any) assigned to the
4 receiving water;

5 (B) the location of all stormwater discharge points, both by latitude and longitude coordinates
6 and by graphic ~~representation at a scale sufficient for the Division's~~
7 ~~review;~~representation:

8 (C) the graphic representation of the location and delineation of wetlands and regulated
9 buffers on the site, adjacent to the site, or between the site and the receiving ~~water at a~~
10 ~~scale sufficient for the Division's review;~~water;

11 (D) a statement that there are no threatened or endangered species identified for the receiving
12 water or for downstream receiving waters. ~~Alternatively, If threatened or endangered~~
13 ~~species are present~~ the application shall identify the threatened and endangered species
14 and their reported locations in the receiving water and downstream receiving
15 ~~waters;~~waters. The application shall propose specific measures for the protection of any
16 threatened or endangered species present in the receiving water. The Division shall
17 evaluate the proposed measures and may require additional or different measures in the
18 final form of the stormwater management permit;

19 (E) a design narrative that explains the assumptions and calculations for the engineering
20 design of the stormwater control systems proposed and that ~~individually~~ identifies how
21 the design complies with each specific requirement of this Section; and

22 (F) ~~Final Site Close Out Plan: the~~ a graphic ~~representation, at a scale sufficient for the~~
23 ~~Division's review;~~ representation of the final site grade and site conditions that will be
24 implemented in support of a future request to rescind the stormwater permit, or
25 comprehensive environmental permit, based on the final close out and the end of the
26 permit holder's commercial interest in the site.

27 ~~(6)~~ As a part of the permit application, the applicant shall submit a Stormwater Management Plan that
28 identifies the physical and procedural stormwater management measures proposed to minimize
29 the discharge of pollutants via stormwater. The Stormwater Management Plan shall address all
30 phases of site activity and operation. The Stormwater Management Plan shall include:

31 (A) a description of site activities with the potential to affect the pollutant content of
32 stormwater runoff;

33 (B) a description of the permittee's stormwater management strategy to control and minimize
34 stormwater exposure of significant materials;

35 (C) a description of the permittee's spill prevention and response procedures;

- 1 (D) a description of the permittee's preparations in anticipation of, and in response to, rainfall
- 2 events in excess of the design basis of the physical stormwater control and treatment
- 3 measures employed;
- 4 (E) a description of good housekeeping measures and supporting facility inspections
- 5 including a schedule of inspections and maintenance on any structural control measures;
- 6 (F) a description of the training of site personnel in stormwater pollution prevention; and
- 7 (G) the identification of the specific person or position responsible for the overall
- 8 coordination, development, implementation, and revision of the Stormwater Management
- 9 Plan.

10 (c) Stormwater Management Requirements.

- 11 (1) During initial site clearing, grading, excavation, and construction of earthen surface features,
- 12 including temporary erosion and sedimentation control measures and permanent stormwater
- 13 control measures, the permittee shall manage (control, operate, maintain, store, handle, clean up,
- 14 and dispose of) site conditions, materials, activities, and stormwater as ~~follows~~follows:
- 15 (A) Equipment, petroleum products, equipment wash waters, and associated spent fluids shall
- 16 be managed ~~(operated, maintained, stored, handled, cleaned up, and disposed of)~~ to
- 17 prevent the potential or actual pollution of surface waters by direct discharge or via
- 18 stormwater runoff.
- 19 (B) Herbicides, pesticides, fertilizers, and similar materials shall be managed to prevent
- 20 introduction into stormwater runoff, and in accordance with label restrictions and the
- 21 Federal Insecticide, Fungicide, and Rodenticide ~~Act~~Act, 7 U.S.C. 136 et seq.
- 22 (C) Building material waste, land clearing and demolition debris, litter, and sanitary wastes
- 23 shall be managed to prevent introduction into stormwater runoff. Dedicated management
- 24 areas shall be established for these materials a minimum of 50 feet away from surface
- 25 waters and discrete stormwater conveyances.
- 26 (D) Topsoil and excavated material stockpiles shall be located a minimum of 50 feet away
- 27 from surface waters and stormwater conveyances and shall be managed to prevent runoff
- 28 transport of the stockpiled materials to ~~the surface waters of North Carolina~~ waters.
- 29 (E) Excess concrete, concrete wash water, and cement slurries shall be managed to prevent
- 30 the potential or actual pollution of surface waters by direct discharge or via stormwater
- 31 runoff.
- 32 (2) During initial site clearing, grading, excavation, and construction of earthen surface features,
- 33 including temporary erosion and sedimentation control measures and permanent stormwater
- 34 control measures, the permittee shall manage site conditions, materials, activities, and stormwater
- 35 as ~~follows~~follows:
- 36 (A) All perimeter dikes, perimeter swales, perimeter ditches, perimeter slopes, all slopes
- 37 steeper than 3:1, and all slopes longer than 50 feet shall be provided with temporary or

1 permanent ground cover stabilization ~~as soon as practical, but in every case~~ within 7
2 calendar days from the last land disturbing activity.

3 (B) All other disturbed areas shall be provided temporary or permanent ground cover
4 stabilization ~~as soon as practical, but in every case~~ within 14 calendar days from the last
5 land disturbing activity.

6 (C) Time extensions may be granted by the Division based on weather or site-specific
7 conditions. The Division may also deny requests for such extensions.

8 (D) Treatment measure requirements.

9 (i) All sediment basins and traps with a contributing drainage area of ~~one~~ acre or
10 greater ~~must~~shall utilize outlet structures that withdraw water from the surface.

11 (ii) Stormwater treated with polymers, flocculants, or other treatment chemicals
12 ~~must~~shall be routed through sediment traps, filters, ~~and/or~~ other settling
13 devices to ensure removal prior to discharge to surface waters. Only chemicals
14 that have been approved by the Division may be used.

15 (3) During initial site clearing, grading, excavation, and construction of earthen surface features,
16 including temporary erosion and sedimentation control measures and permanent stormwater
17 control measures, and at least 72 hours prior to ~~the full demobilization of the site preparation~~
18 ~~equipment and forces, and prior to any mobilization to the site of any equipment or material~~
19 ~~intended to support subsurface activities, spudding an oil or gas well, the permittee shall deliver to~~
20 ~~the Division written certification by the individual designing the stormwater control system~~
21 ~~identified in accordance with Rule .1008(j) of this Section must certify in writing to the Division~~
22 ~~in accordance with Rule .1008(j) of this Section. Regardless of whether a certificate of occupancy~~
23 ~~is provided or required by other authority, no additional mobilization to the site shall take place~~
24 the permittee shall not proceed with spudding the well until the Division accepts the designer's
25 certification in writing. The Division shall inspect the permitted stormwater control system.
26 Subsequent to the inspection, the Division may withhold acceptance of the designer's certification
27 pending a favorable site inspection by the Regional Office, upon concluding that the stormwater
28 control system has not been installed in accordance with the stormwater permit and the approved
29 stormwater permit application documents. If the Division fails to inspect the stormwater control
30 system within 72 hours of receiving the designer's certification, the permittee may proceed with
31 spudding the well. For this Rule, 'spudding' the well means starting the oil or gas well drilling
32 process by removing rock, dirt, and other sedimentary material with the drill bit.

33 (4) After completion of the surface site preparation activity, and beginning with the surface activity in
34 direct support of well ~~drilling and continuing thereafter, drilling,~~ the permittee shall manage site
35 conditions, materials, activities, and stormwater as ~~follows,~~follows:

36 (A) Stormwater control measures shall control and treat the runoff from the 1" rainfall; ~~or,~~
37 ~~stormwater control measures shall control and treat the difference in runoff for pre-~~

1 ~~development and post development conditions for the 90th percentile rainfall~~
2 ~~event.~~ rainfall event with a 24-hour precipitation total greater than or equal to 90 percent
3 of all 24-hour rainfall event totals on an annual basis.

4 (B) Stormwater control measures shall discharge at a rate less than or equal to the peak pre-
5 development discharge rate for the 1-year, 24-hour storm.

6 (C) Stormwater control measures shall be designed in accordance with the provisions of Rule
7 .1008 of this Section, ~~with options and guidance provided by the version of the Division's~~
8 ~~Stormwater Best Management Practices Manual current at the time of permit application~~
9 ~~or permit revision request.~~ Section.

10 (D) In addition to the measures identified in Rule .1008(a) of this Section, other measures
11 ~~appearing in the Division's Stormwater Best Management Practices Manual~~ shall be
12 approved where individually, or in combination, the measures achieve 85% average
13 annual removal of Total Suspended Solids, and upon the Division's review and
14 conclusion of appropriate design and suitability for the anticipated site conditions.

15 (E) All stormwater control measures shall be equipped with underflow baffles or other
16 effective means to prevent the discharge of hydrocarbons and floating pollutants.

17 (F) The requirements identified in Subparagraphs (1) and (2) of this Paragraph for initial site
18 construction also apply to all subsequent phases of site operation.

19 (5) ~~The Division shall establish record keeping, self inspection, and self reporting permit~~
20 ~~requirements to insure effective site management attention, response actions, and control of the~~
21 ~~potential for polluted stormwater.~~ All records required by this Rule shall be kept on site for the life
22 of the permit.

23 (6) The permittee shall report all bypasses, malfunctions, failures, and unpermitted discharges of the
24 stormwater control system to the Division's Regional Office within 24 hours of becoming aware
25 of the conditions.

26 (7) During the initial site clearing and grading phase of site operations, the permittee shall inspect all
27 erosion control measures weekly and after any storm event greater than 0.5" of rain per 24-hour
28 period; and shall keep written records of the inspections, observations, and response actions. The
29 Division's acceptance of the certification required in Subparagraph (3) of this Paragraph shall be
30 used to release the permittee from the inspections and record keeping required during the initial
31 site clearing and grading phase.

32 (8) Stormwater management requirements provided in this Paragraph pertain to the well pad area, all
33 adjacent developed areas, and access and haul roads in proximity to the well pad or directly
34 associated with the operation of the permitted site.

35 (d) Coordination with other water quality regulations.

36 (1) For oil and gas exploration, development, and production activities, compliance with this Rule
37 satisfies the requirements of Rule .1006 of this Section. However, pursuant to Rule .1006 of this

1 Section, the Division may require more stringent measures for development activities draining to
2 HQW ~~waters as provided in Rule .1006 of this Section.~~ waters.

3 (2) For oil and gas exploration, development, and production activities, compliance with this Rule
4 satisfies the Freshwater ORW requirements of Rule .1007 of this Section. However, pursuant to
5 Rule .1007 of this Section, the Division may require more stringent measures for development
6 activities draining to ORW ~~waters as provided in Rule .1007 of this Section.~~ waters.

7 (3) This Rule is not intended to modify, repeal, or supersede any other rule, regulation, or other
8 provision of law. The requirements of this Rule are in addition to the requirements of any other
9 rule, regulation, or other provision of law. Where any requirement of this Rule imposes
10 restrictions different from those imposed by any other rule, regulation, or other provision of law,
11 whichever requirement is more restrictive or imposes higher protective standards for human or
12 environmental health, safety, and welfare shall control. This includes, but is not limited to,
13 Sections 15A NCAC 02B .0100, 15A NCAC 02B .0200, and 15A NCAC 02B ~~.0300~~ .0300,
14 whether administered by the State or by a local unit of government.

15
16 *History Note:* Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a); ~~113-391(a3)(1)~~113-391(a3)(1);
17 S.L. 2014-4 Section 2.(e);
18 Eff. Date pending legislative review.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02H .1030

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 22, for "activity" punctuation change is to whole words. Please look at the coversheet for how to properly track this change.

Line 25, delete the first "or"

Lines 31 through 34, how is this accomplished? What are the standards to solicit comments? How is it determine "when necessary"? Please look at 15A NCAC 05H .1307, available on the RRC December agenda as a rule from the Mining and Energy Commission.

Page 2, lines 24 and 25, for "permit" punctuation change is to whole words. Please look at the coversheet for how to properly track this change.

Page 2, line 29, replace "via" with "through"

Page 3, line 4, what is meant by "good housekeeping measures"? Please clarify.

Page 3, line 6, how is the training provided? Is there a rule to cross-reference?

Lines 13 through 14, consider taking the language within the parentheses and creating a new sentence as follows:

"Manage" means to control, operate, maintain, store, handle, clean up, and dispose of site conditions, materials, activities, and stormwater..

Page 3, lines 15, 19, 22, 26, and 29, consider begin these clauses with lowercase letters

Page 3, lines 18, 21, 25, and 28, consider replacing the periods at the end of the clauses with semicolons

Abigail M. Hammond
Commission Counsel

Date submitted to agency: Wednesday, November 26, 2014

Page 3, lien 36; and page 4, 3, 6, and 8, consider begin these clauses with lowercase letters

Page 4, liens 2, 5, and 7, consider replacing the periods at the end of the clauses with semicolons

Page 4, line 8, replace the period at the end with a colon

Page 3, line 21, is the referenced Act incorporated by another rule? If not, please incorporate in accordance with [G.S. 150-21.6](#)

Page 3, line 28, add an “and” at the end of the line

Page 4, lines 6 through 7, how is this requested? Please clarify.

Page 4, line 7, delete the second sentence, as it is not necessary

Page 4, lines 13 through 14, where is this list of chemicals located? Please provide and, if necessary, incorporate in accordance with [G.S. 150-21.6](#)

Page 4, line 15, replace “During” with “After”

Page 4, line 25, add “within 72 hours of receiving the designer’s certificate” after “inspect”

Page 4, line 31, add “and the certificate shall be deemed accepted by the Division and” before “the permitte may”

Page 4, line 36, and page 5, lines 4, 6, 10, 15, and 17, consider begin these clauses with lowercase letters

Page 5, lines 3, 5, 9, 14, and 16, consider replacing the periods at the end of the clauses with semicolons

Page 5, line 16, add an “and” at the end of the line

Page 5, line 18, add “shall” between “construction also”

Page 6, line 16, the citations should be in numerical order. Please correct.

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

1 **15A NCAC 02H .1030 HAS BEEN ADOPTED WITH CHANGES AS PUBLISHED IN 28:23 NCR 2814-2820**
2 **AS FOLLOWS:**

3
4 **15A NCAC 02H .1030 STORMWATER REQUIREMENTS: OIL AND GAS EXPLORATION AND**
5 **PRODUCTION**

6 (a) Regulated Development Activity. Persons engaged in oil and gas exploration, development, and production
7 activities shall manage stormwater runoff in accordance with the provisions of this Rule.

8 (1) Such persons shall submit a permit application to the Division of Energy, Mineral, and Land
9 Resources (Division) in accordance with the requirements of this Section.

10 (2) Such persons shall obtain a permit from the Division prior to any on-site activities other than land
11 surveying, and surface soil testing of hydraulic conductivity and engineering properties.

12 (3) This Rule authorizes the Division to issue a stormwater-only permit. ~~The Division shall not~~
13 ~~authorize by permit the discharge to surface waters of stormwater commingled with any other~~
14 ~~fluid.~~ Any other discharge to surface waters is prohibited unless permitted in accordance with G.S.
15 143-215.1.

16 (4) The Division may issue stormwater permits as discrete, stand-alone stormwater permits or may
17 incorporate stormwater permit conditions into an environmental protection permit encompassing
18 multiple regulatory programs.

19 (b) Permit Application Requirements.

20 (1) Notwithstanding the qualifying provisions of Rule .1003(b)(1), (2), and (3) of this Section, a
21 complete permit application and a permit are required for oil and gas exploration, development,
22 and production activity, regardless of whether the activity also requires a CAMA major
23 development permit or an Erosion and Sedimentation Control ~~Plan~~; Plan. A permit application and
24 permit are also required and regardless of whether the development is located in the 20 coastal
25 counties, or drains to Outstanding Resource Waters (ORW), or drains to High Quality Waters
26 (HQW).

27 (2) The Division shall treat each stormwater permit application for oil and gas exploration,
28 development, and production activities as a High Density Project application as provided for in
29 Rule ~~.1003(d)(2)~~, 1003(d)(2) of this Section, and shall only grant permit coverage if the
30 application itself and the proposed development meet the requirements of this Rule.

31 ~~(3)~~ The Director may solicit and receive comments from other regulatory agencies and the public
32 when necessary to obtain additional information needed to complete the review of either the
33 stormwater permit application or the stormwater conditions in an application for an environmental
34 protection permit encompassing multiple regulatory programs.

35 ~~(3)(4)~~ (4) The permit application for oil and gas exploration, development, and production activities shall be
36 submitted to the Division at the Raleigh Central ~~Office~~; Office located at 512 North Salisbury
37 Street, Raleigh, North Carolina 27604.

1 ~~(4)~~(5) The stormwater permit application shall comply with the requirements in Rule .1003(g) of this
2 Section. In addition, the application shall include the following ~~information;~~information:

3 (A) all North Carolina classifications and supplemental classifications (if any) assigned to the
4 receiving water;

5 (B) the location of all stormwater discharge points, both by latitude and longitude coordinates
6 and by graphic ~~representation at a scale sufficient for the Division's~~
7 ~~review;~~representation:

8 (C) the graphic representation of the location and delineation of wetlands and regulated
9 buffers on the site, adjacent to the site, or between the site and the receiving ~~water at a~~
10 ~~scale sufficient for the Division's review;~~water;

11 (D) a statement that there are no threatened or endangered species identified for the receiving
12 water or for downstream receiving waters. ~~Alternatively, If threatened or endangered~~
13 ~~species are present~~ the application shall identify the threatened and endangered species
14 and their reported locations in the receiving water and downstream receiving
15 ~~waters;~~waters. The application shall propose specific measures for the protection of any
16 threatened or endangered species present in the receiving water. The Division shall
17 evaluate the proposed measures and may require additional or different measures in the
18 final form of the stormwater management permit;

19 (E) a design narrative that explains the assumptions and calculations for the engineering
20 design of the stormwater control systems proposed and that ~~individually~~ identifies how
21 the design complies with each specific requirement of this Section; and

22 (F) ~~Final Site Close Out Plan: the~~ a graphic ~~representation, at a scale sufficient for the~~
23 ~~Division's review;~~ representation of the final site grade and site conditions that will be
24 implemented in support of a future request to rescind the stormwater permit, or
25 comprehensive environmental permit, based on the final close out and the end of the
26 permit holder's commercial interest in the site.

27 ~~(6)~~ As a part of the permit application, the applicant shall submit a Stormwater Management Plan that
28 identifies the physical and procedural stormwater management measures proposed to minimize
29 the discharge of pollutants via stormwater. The Stormwater Management Plan shall address all
30 phases of site activity and operation. The Stormwater Management Plan shall include:

31 (A) a description of site activities with the potential to affect the pollutant content of
32 stormwater runoff;

33 (B) a description of the permittee's stormwater management strategy to control and minimize
34 stormwater exposure of significant materials;

35 (C) a description of the permittee's spill prevention and response procedures;

- 1 (D) a description of the permittee's preparations in anticipation of, and in response to, rainfall
- 2 events in excess of the design basis of the physical stormwater control and treatment
- 3 measures employed;
- 4 (E) a description of good housekeeping measures and supporting facility inspections
- 5 including a schedule of inspections and maintenance on any structural control measures;
- 6 (F) a description of the training of site personnel in stormwater pollution prevention; and
- 7 (G) the identification of the specific person or position responsible for the overall
- 8 coordination, development, implementation, and revision of the Stormwater Management
- 9 Plan.

10 (c) Stormwater Management Requirements.

- 11 (1) During initial site clearing, grading, excavation, and construction of earthen surface features,
- 12 including temporary erosion and sedimentation control measures and permanent stormwater
- 13 control measures, the permittee shall manage (control, operate, maintain, store, handle, clean up,
- 14 and dispose of) site conditions, materials, activities, and stormwater as ~~follows~~follows:
- 15 (A) Equipment, petroleum products, equipment wash waters, and associated spent fluids shall
- 16 be managed ~~(operated, maintained, stored, handled, cleaned up, and disposed of)~~ to
- 17 prevent the potential or actual pollution of surface waters by direct discharge or via
- 18 stormwater runoff.
- 19 (B) Herbicides, pesticides, fertilizers, and similar materials shall be managed to prevent
- 20 introduction into stormwater runoff, and in accordance with label restrictions and the
- 21 Federal Insecticide, Fungicide, and Rodenticide ~~Act~~Act, 7 U.S.C. 136 et seq.
- 22 (C) Building material waste, land clearing and demolition debris, litter, and sanitary wastes
- 23 shall be managed to prevent introduction into stormwater runoff. Dedicated management
- 24 areas shall be established for these materials a minimum of 50 feet away from surface
- 25 waters and discrete stormwater conveyances.
- 26 (D) Topsoil and excavated material stockpiles shall be located a minimum of 50 feet away
- 27 from surface waters and stormwater conveyances and shall be managed to prevent runoff
- 28 transport of the stockpiled materials to ~~the surface waters of North Carolina~~ waters.
- 29 (E) Excess concrete, concrete wash water, and cement slurries shall be managed to prevent
- 30 the potential or actual pollution of surface waters by direct discharge or via stormwater
- 31 runoff.
- 32 (2) During initial site clearing, grading, excavation, and construction of earthen surface features,
- 33 including temporary erosion and sedimentation control measures and permanent stormwater
- 34 control measures, the permittee shall manage site conditions, materials, activities, and stormwater
- 35 as ~~follows~~follows:
- 36 (A) All perimeter dikes, perimeter swales, perimeter ditches, perimeter slopes, all slopes
- 37 steeper than 3:1, and all slopes longer than 50 feet shall be provided with temporary or

1 permanent ground cover stabilization ~~as soon as practical, but in every case~~ within 7
2 calendar days from the last land disturbing activity.

3 (B) All other disturbed areas shall be provided temporary or permanent ground cover
4 stabilization ~~as soon as practical, but in every case~~ within 14 calendar days from the last
5 land disturbing activity.

6 (C) Time extensions may be granted by the Division based on weather or site-specific
7 conditions. The Division may also deny requests for such extensions.

8 (D) Treatment measure requirements.

9 (i) All sediment basins and traps with a contributing drainage area of ~~one~~ acre or
10 greater ~~must~~ shall utilize outlet structures that withdraw water from the surface.

11 (ii) Stormwater treated with polymers, flocculants, or other treatment chemicals
12 ~~must~~ shall be routed through sediment traps, filters, ~~and/or~~ other settling
13 devices to ensure removal prior to discharge to surface waters. Only chemicals
14 that have been approved by the Division may be used.

15 (3) During initial site clearing, grading, excavation, and construction of earthen surface features,
16 including temporary erosion and sedimentation control measures and permanent stormwater
17 control measures, and at least 72 hours prior to ~~the full demobilization of the site preparation~~
18 ~~equipment and forces, and prior to any mobilization to the site of any equipment or material~~
19 ~~intended to support subsurface activities, spudding an oil or gas well, the permittee shall deliver to~~
20 ~~the Division written certification by the individual designing the stormwater control system~~
21 ~~identified in accordance with Rule .1008(j) of this Section must certify in writing to the Division~~
22 ~~in accordance with Rule .1008(j) of this Section. Regardless of whether a certificate of occupancy~~
23 ~~is provided or required by other authority, no additional mobilization to the site shall take place~~
24 the permittee shall not proceed with spudding the well until the Division accepts the designer's
25 certification in writing. The Division shall inspect the permitted stormwater control system.
26 Subsequent to the inspection, the Division may withhold acceptance of the designer's certification
27 pending a favorable site inspection by the Regional Office, upon concluding that the stormwater
28 control system has not been installed in accordance with the stormwater permit and the approved
29 stormwater permit application documents. If the Division fails to inspect the stormwater control
30 system within 72 hours of receiving the designer's certification, the permittee may proceed with
31 spudding the well. For this Rule, 'spudding' the well means starting the oil or gas well drilling
32 process by removing rock, dirt, and other sedimentary material with the drill bit.

33 (4) After completion of the surface site preparation activity, and beginning with the surface activity in
34 direct support of well ~~drilling and continuing thereafter, drilling,~~ the permittee shall manage site
35 conditions, materials, activities, and stormwater as ~~follows,~~ follows:

36 (A) Stormwater control measures shall control and treat the runoff from the 1" rainfall; ~~or,~~
37 ~~stormwater control measures shall control and treat the difference in runoff for pre-~~

1 ~~development and post-development conditions for the 90th percentile rainfall~~
2 ~~event.~~ rainfall event with a 24-hour precipitation total greater than or equal to 90 percent
3 of all 24-hour rainfall event totals on an annual basis.

4 (B) Stormwater control measures shall discharge at a rate less than or equal to the peak pre-
5 development discharge rate for the 1-year, 24-hour storm.

6 (C) Stormwater control measures shall be designed in accordance with the provisions of Rule
7 .1008 of this Section, ~~with options and guidance provided by the version of the Division's~~
8 ~~Stormwater Best Management Practices Manual current at the time of permit application~~
9 ~~or permit revision request.~~ Section.

10 (D) In addition to the measures identified in Rule .1008(a) of this Section, other measures
11 ~~appearing in the Division's Stormwater Best Management Practices Manual~~ shall be
12 approved where individually, or in combination, the measures achieve 85% average
13 annual removal of Total Suspended Solids, and upon the Division's review and
14 conclusion of appropriate design and suitability for the anticipated site conditions.

15 (E) All stormwater control measures shall be equipped with underflow baffles or other
16 effective means to prevent the discharge of hydrocarbons and floating pollutants.

17 (F) The requirements identified in Subparagraphs (1) and (2) of this Paragraph for initial site
18 construction also apply to all subsequent phases of site operation.

19 (5) ~~The Division shall establish record keeping, self inspection, and self reporting permit~~
20 ~~requirements to insure effective site management attention, response actions, and control of the~~
21 ~~potential for polluted stormwater.~~ All records required by this Rule shall be kept on site for the life
22 of the permit.

23 (6) The permittee shall report all bypasses, malfunctions, failures, and unpermitted discharges of the
24 stormwater control system to the Division's Regional Office within 24 hours of becoming aware
25 of the conditions.

26 (7) During the initial site clearing and grading phase of site operations, the permittee shall inspect all
27 erosion control measures weekly and after any storm event greater than 0.5" of rain per 24-hour
28 period; and shall keep written records of the inspections, observations, and response actions. The
29 Division's acceptance of the certification required in Subparagraph (3) of this Paragraph shall be
30 used to release the permittee from the inspections and record keeping required during the initial
31 site clearing and grading phase.

32 (8) Stormwater management requirements provided in this Paragraph pertain to the well pad area, all
33 adjacent developed areas, and access and haul roads in proximity to the well pad or directly
34 associated with the operation of the permitted site.

35 (d) Coordination with other water quality regulations.

36 (1) For oil and gas exploration, development, and production activities, compliance with this Rule
37 satisfies the requirements of Rule .1006 of this Section. However, pursuant to Rule .1006 of this

1 Section, the Division may require more stringent measures for development activities draining to
2 HQW ~~waters as provided in Rule .1006 of this Section.~~ waters.

3 (2) For oil and gas exploration, development, and production activities, compliance with this Rule
4 satisfies the Freshwater ORW requirements of Rule .1007 of this Section. However, pursuant to
5 Rule .1007 of this Section, the Division may require more stringent measures for development
6 activities draining to ORW ~~waters as provided in Rule .1007 of this Section.~~ waters.

7 (3) This Rule is not intended to modify, repeal, or supersede any other rule, regulation, or other
8 provision of law. The requirements of this Rule are in addition to the requirements of any other
9 rule, regulation, or other provision of law. Where any requirement of this Rule imposes
10 restrictions different from those imposed by any other rule, regulation, or other provision of law,
11 whichever requirement is more restrictive or imposes higher protective standards for human or
12 environmental health, safety, and welfare shall control. This includes, but is not limited to,
13 Sections 15A NCAC 02B .0100, 15A NCAC 02B .0200, and 15A NCAC 02B ~~.0300~~ .0300,
14 whether administered by the State or by a local unit of government.

15
16 *History Note:* Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a); ~~113-391(a3)(1)~~113-391(a3)(1);
17 S.L. 2014-4 Section 2.(e);
18 Eff. Date pending legislative review.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02T .0113

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 17, add a comma after "extensions"

Line 30, is the statement "Drilling muds, cuttings and well water from the development" an accurate statement? Please clarify.

Page 2, lines 5 and 6, add a comma after "municipalities"

Page 2, line 15, define "NPDES"

Page 2, line 21, replace "should" with "shall"

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
Date submitted to agency: Wednesday, November 26, 2014

1 **15A NCAC 02T .0113 HAS BEEN AMENDED AS PUBLISHED IN 28:23 NCR 2814-2820 AS FOLLOWS:**

2
3 **15A NCAC 02T .0113 PERMITTING BY REGULATION**

4 (a) The following disposal systems as well as those in Permitting By Regulation rules in this Subchapter (i.e., Rules
5 .0203, .0303, .0403, .1003, .1103, .1203, .1303, .1403, and .1503) are deemed to be permitted pursuant to G.S. 143-
6 215.1(b) and it shall not be necessary for the Division to issue individual permits or coverage under a general permit for
7 construction or operation of the following disposal systems provided the system does not result in any violations of
8 surface water or groundwater standards, there is no direct discharge to surface waters, and all criteria required for the
9 specific system is met:

- 10 (1) Swimming pool and spa filter backwash and drainage, filter backwash from aesthetic fountains, and
11 filter backwash from commercial or residential water features such as garden ponds or fish ~~ponds~~
12 ponds, that is discharged to the land surface;
- 13 (2) Backwash from raw water intake screening devices that is discharged to the land surface;
- 14 (3) Condensate from residential or commercial air conditioning units that is discharged to the land surface;
- 15 (4) Discharges to the land surface from individual non-commercial car washing operations;
- 16 (5) Discharges to the land surface from flushing and hydrostatic testing water associated with utility
17 distribution systems, new sewer extensions or new reclaimed water distribution lines;
- 18 (6) Street wash water that is discharged to the land surface;
- 19 (7) Discharges to the land surface from fire fighting activities;
- 20 (8) Discharges to the land surface associated with emergency removal and treatment activities for spilled
21 oil authorized by the federal or state on-scene coordinator when such removals are undertaken to
22 minimize overall environmental damage due to an oil spill;
- 23 (9) Discharges to the land surface associated with biological or chemical decontamination activities
24 performed as a result of an emergency declared by the Governor or the Director of the Division of
25 Emergency Management and that are conducted by or under the direct supervision of the federal or
26 state on-scene coordinator and that meet the following criteria:
 - 27 (A) the volume produced by the decontamination activity is too large to be contained onsite;
 - 28 (B) the Division is informed prior to commencement of the decontamination activity; and
 - 29 (C) the wastewater is not radiologically contaminated or classified as hazardous waste;
- 30 (10) Drilling muds, cuttings and well water from the development of wells or from other construction
31 activities including directional ~~boring~~; boring, except such wastes generated in the construction and
32 development of oil and gas wells regulated by Article 27 of G.S. 113;
- 33 (11) Purge water from groundwater monitoring wells;
- 34 (12) Composting facilities for dead animals, if the construction and operation of the facilities is approved
35 by the North Carolina Department of Agriculture and Consumer Services; the facilities are constructed
36 on an impervious, weight-bearing foundation, operated under a roof; and the facilities are approved by
37 the State Veterinarian pursuant to G.S. 106-403;

- 1 (13) Overflow from elevated potable water storage facilities;
- 2 (14) Mobile carwashes if:
- 3 (A) all detergents used are biodegradable;
- 4 (B) no steam cleaning, engine or parts cleaning is being conducted;
- 5 (C) notification is made prior to operation by the owner to the municipality or if not in a
- 6 municipality then the county where the cleaning service is being provided; and
- 7 (D) all non-recyclable washwater is collected and discharged into a sanitary sewer or wastewater
- 8 treatment facility upon approval of the facility's owner;
- 9 (15) Mine tailings where no chemicals are used in the mining process;
- 10 (16) Mine dewatering where no chemicals are used in the mining process; and
- 11 (17) Wastewater created from the washing of produce, with no further processing on-site, on farms where
- 12 the wastewater is irrigated onto fields so as not to create runoff or cause a discharge.

13 (b) Nothing in this Rule shall be deemed to allow the violation of any assigned surface water, groundwater, or air quality

14 standards, and in addition any such violation shall be considered a violation of a condition of a permit. Further, nothing

15 in this Rule shall be deemed to apply to or permit disposal systems for which a state NPDES permit is otherwise required.

16 (c) Any violation of this Rule or discharge to surface waters from the disposal systems listed in Paragraph (a) of this

17 Rule or the activities listed in other Permitted By Regulation rules in this Subchapter shall be reported in accordance with

18 15A NCAC 02B .0506.

19 (d) Disposal systems deemed permitted under this Subchapter shall remain deemed permitted, notwithstanding any

20 violations of surface water or groundwater standards or violations of this Rule or other Permitted By Regulation rules in

21 this Subchapter, until such time as the Director determines that they should not be deemed permitted in accordance with

22 the criteria established in this Rule.

23 (e) The Director may determine that a disposal system should not be deemed to be permitted in accordance with this

24 Rule or other Permitted By Regulation rules in this Subchapter and require the disposal system to obtain an individual

25 permit or a certificate of coverage under a general permit. This determination shall be made based on existing or

26 projected environmental impacts, compliance with the provisions of this Rule or other Permitted By Regulation rules in

27 this Subchapter, and the compliance history of the facility owner.

28

29 *History Note:* Authority G.S. 130A-300; ~~143-215.1(a)(1)~~; 143-215.1(a); 143-215.1(b)(4)(e); ~~143-215.3(a),(d)~~; 143-

30 215.3(a);

31 *Eff. September 1, 2006;*

32 *Amended Eff. pending legislative review; June 18, 2011.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02T .1001

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 13, add "regulated by Article 27 of G.S. 113" after "rehabilitation"

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

Date submitted to agency: Wednesday, November 26, 2014

1 **15A NCAC 02T .1001 HAS BEEN AMENDED AS PUBLISHED IN 28:23 NCR 2814-2820 AS FOLLOWS:**

2
3 **15A NCAC 02T .1001 SCOPE**

4 This Section applies to closed-loop recycle systems in which nondomestic wastewater is repeatedly recycled back
5 through the process in which the waste was generated. The following systems are not regulated by this Section:

- 6 (1) the reuse or return of wastewater from a permitted animal waste lagoon facility for waste flushing
7 ~~cover~~ covered by Section .1300 of this Subchapter;
- 8 (2) the recycling of wastewater from groundwater remediation systems through an Injection Well or
9 Infiltration Gallery ~~specifically~~ covered by Section .1600 of this Subchapter; ~~and~~
- 10 (3) the reuse of wastewater through treatment and distribution as reclaimed water ~~specifically~~ covered by
11 Section .0900 of this ~~Subchapter.~~ Subchapter; and
- 12 (4) the recycling of wastewater or well drilling fluids for well construction, well development, well
13 stimulation, or well rehabilitation.

14
15 *History Note:* Authority G.S. 143-215.1; 143-215.3(a);
16 Eff. September 1, 2006.
17 Amended Eff. pending legislative review.
18

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02T .1501

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.

Lines 6, 9, and 11 through 12, place the term being defined within quotation marks.

Line 9 and 11 through 12, please verify that the identified word being defined is actually defined in the citation provided.

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

Date submitted to agency: Wednesday, November 26, 2014

1 **15A NCAC 02T .1501 HAS BEEN AMENDED AS PUBLISHED IN 28:23 NCR 2814-2820 AS FOLLOWS:**

2
3 **15A NCAC 02T .1501 SCOPE**

4 The rules in this Section apply to the Disposal or Treatment of Soils Containing Petroleum Products or other
5 Contaminated Soil by Land Application, Storage, or Containment and Treatment. These Rules do not apply to:

- 6 (1) hazardous waste as defined in 40 CFR 260.10 as adopted by reference in 15A NCAC 13A .0102(b),
7 40 CFR 261.3 as adopted by reference in 15A NCAC 13A .0106(a), and North Carolina General
8 Statute ~~130A-290~~; or 130A-290;
- 9 (2) soil contaminated with hazardous waste or hazardous waste constituents as defined in 40 CFR 260.10
10 as adopted by reference in 15A NCAC 13A .0102(b) and 40 CFR 261.3 as adopted by reference in
11 15A NCAC 13A .0106(a) from Hazardous Waste Management Units or Solid Waste Management
12 Units as defined in 40 CFR 260.10 as adopted by reference in ~~15A NCAC 13A .0102(b)~~; 15A NCAC
13 13A .0102(b); or
- 14 (3) cuttings and other wastes generated in the construction and development of oil and gas wells regulated
15 by Article 27 of G.S. 113.

16
17 *History Note:* Authority G.S. 143-215.1; 143-215.3(a);
18 Eff. September 1, 2006.
19 Amended Eff. pending legislative review.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02U .0113

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 deemed to" with "shall"

Line 4, replace "is not" with "shall not be"

Line 10, add a comma after "extension"

Line 19, replace "does" with "shall"

Page 2, line 10, add "as set forth in Subchapter 05H of this Chapter" after "Commission"

Page 2, line 17, replace "should" with "shall"

Page 2, line 22, add a comma after "Rule"

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

Date submitted to agency: Wednesday, November 26, 2014

1 **15A NCAC 02U .0113 HAS BEEN AMENDED AS PUBLISHED IN 28:23 NCR 2814-2820 AS FOLLOWS:**

2
3 **15A NCAC 02U .0113 PERMITTING BY REGULATION (SEE S.L. 2011-48)**

4 (a) The following utilizations of reclaimed water are deemed to be permitted pursuant to G.S. 143-215.1(b) and it is not
5 necessary for the Division to issue individual permits or coverage under a general permit for construction or operation of
6 the following utilization systems provided the system does not result in any violations of surface water or groundwater
7 standards, there is no unpermitted direct discharge to surface waters, and all criteria required for the specific system is
8 met:

- 9 (1) Discharges to the land surface from flushing and hydrostatic testing water associated with utility
10 distribution systems, new sewer extensions or new reclaimed water distribution lines;
- 11 (2) Overflow from elevated reclaimed water storage facilities where no viable alternative exists and all
12 possible measures are taken to reduce the risk of overflow;
- 13 (3) Any de minimus runoff from reclaimed water used during fire fighting or extinguishing, dust control,
14 soil compaction for construction purposes, street sweeping, overspray on yard inlets, overspray on golf
15 cart paths, or vehicle ~~washing provided the use is approved in a permit issued by the Division;~~
16 washing;
- 17 (4) Incidental discharge to a municipal separate storm sewer system (MS4) that occurs as a result of
18 reclaimed water utilization ~~activities provided the use is approved in a permit issued by the Division,~~
19 activities, and the discharge does not violate water quality standards. This does not exempt the
20 reclaimed water user from complying with any applicable local ordinances that may prohibit such
21 discharges;
- 22 (5) Rehabilitation, repair, or replacement of reclaimed water lines in kind (i.e., size) with the same
23 horizontal and vertical alignment;
- 24 (6) In accordance with 15A NCAC 02H .0106(f)(5), flushing (including air release valve discharge) and
25 hydrostatic testing water discharges associated with reclaimed water distribution systems provided that
26 no water quality standards are violated;
- 27 (7) Utilization of reclaimed water received from a reclaimed water bulk distribution program permitted
28 under Rule .0601 of this Subchapter;
- 29 (8) Irrigation of residential lots or commercial (non-residential) application areas less than one acre in size
30 that are supplied with reclaimed water as part of a conjunctive use reclaimed water system meeting the
31 requirements of Rules .0301, .0401, .0403, .0501, and .0701 of this Subchapter; Chapter 89G of the
32 General Statutes; approved by the local building inspection department; and installed by a North
33 Carolina Licensed Irrigation Contractor pursuant to G.S. 89G. A scaled site map showing the location
34 of the reclaimed water irrigation system and all features necessary to show compliance with applicable
35 setbacks in Rule .0701 of this Subchapter shall be submitted to the reclaimed water provider;

1 (9) Irrigation of agricultural crops supplied with reclaimed water as part of a conjunctive use reclaimed
2 water system meeting the requirements of this Subchapter and approved by the reclaimed water
3 ~~provider; and provider;~~

4 (10) Drip irrigation sites supplied with reclaimed water as part of a conjunctive use reclaimed water system
5 generated from an onsite wastewater treatment facility meeting the criteria of this Subchapter and
6 where the conjunctive system has been approved by the Department and is permitted under ~~18A-1900.~~
7 15A NCAC 18A .1900; and

8 (11) Reuse of produced waters and flowback waters from oil and gas wells regulated by Article 27 of G.S.
9 113 for reuse in accordance with water and waste management plans approved pursuant to rules of the
10 Mining and Energy Commission.

11 (b) Nothing in this Rule shall be deemed to allow the violation of any assigned surface water, groundwater, or air quality
12 standards, and in addition any such violation is a violation of a condition of a permit.

13 (c) The reclaimed water user shall report any violation of this Rule or discharge to surface waters from the utilization
14 systems listed in Paragraph (a) of this Rule.

15 (d) Utilization systems deemed permitted under this Subchapter shall remain deemed permitted, notwithstanding any
16 violations of surface water or groundwater standards or violations of this Rule or other Permitted By Regulation rules in
17 this Subchapter, until such time as the Director determines that they should not be deemed permitted in accordance with
18 the criteria established in this Rule.

19 (e) The Director may determine that a utilization system should not be deemed to be permitted in accordance with this
20 Rule and require the utilization system to obtain an individual permit or a certificate of coverage under a general permit.
21 This determination shall be made based on existing or projected environmental impacts, compliance with the provisions
22 of this Rule and the compliance history of the facility owner.

23
24 *History Note: Authority G.S. 130A-300; 143-215.1(a)(1); 143-215.1(b)(4)(e); 143-215.3(a),(d);*
25 *Eff. June 18, 2011 (See S.L. 2011-48).*
26 *Amended Eff. pending legislative review.*