

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: All rules pending for February 2016 Rules Review Commission meeting: 15A NCAC 02L .0501, .0502, .0503, .0504, .0505, .0506, .0507, .0508, .0509, .0510, .0511, .0512, .0513, .0514, .0515

RECOMMENDED ACTION:

X Approve, but note staff's comment **(UPDATE – prior staff opinion is withdrawn)**

Object, based on:

Lack of statutory authority

Unclear or ambiguous

Unnecessary

Failure to comply with the APA

Extend the period of review

COMMENT:

The Environmental Management Commission (EMC) has adopted fifteen rules in response to a petition for rulemaking, which were scheduled for review by the Rules Review Commission (RRC) at the December 2015 meeting. Based upon staff counsel's review of the rules filed by EMC on November 19, 2015, a staff opinion was issued citing a concern that these rules lacked specific rulemaking authority or legislative directive to the rulemaking agency. The EMC requested an extension of review from the December 2015 RRC meeting, which was granted by the RRC. On January 28, 2016, Jennie Wilhelm Hauser provided a letter on behalf of the EMC in response to the staff opinion. The letter, which is attached for review, cites to Session Law 2015-286, which is also attached for review. Section 4.7(b) of Session Law 2015-286 created G.S. 143-215.104AA, "Standards for petroleum releases from aboveground storage tanks and other sources." G.S. 143-215.104AA(a)(2), (b) provides specific directions to the EMC to adopt rules pertaining to aboveground storage tanks and other sources. As this

Abigail M. Hammond
Commission Counsel

statutory citation was not set forth in the set of rules filed by the EMC on November 19, 2015, staff counsel was unaware of the recent legislative directive. EMC has revised all of the history notes for the fifteen rules regulating the standards for petroleum releases from aboveground storage tanks and other sources to reflect the statutory authority for the rules.

SUMMARY:

The Environmental Management Commission has adopted fifteen rules that regulate the risk-based remediation for aboveground storage tanks containing petroleum. Staff counsel's prior concern that these rules lacked specific rulemaking authority or legislative directive to the rulemaking agency has been addressed by the January 28, 2016 letter from Jennie Wilhelm Hauser on behalf of the EMC. Please note that Section 4.7(b) of Session Law 2015-286 created G.S. 143-215.104AA, "Standards for petroleum releases from aboveground storage tanks and other sources" and provides several legislative directives to the EMC for adoption of rules. The history notes for the fifteen rules have been updated.



STATE OF NORTH CAROLINA
DEPARTMENT OF JUSTICE

ROY COOPER
ATTORNEY GENERAL

P.O. BOX 629
RALEIGH, NC 27602

REPLY TO:
JENNIE WILHELM HAUSER
ENVIRONMENTAL DIVISION
TEL: (919) 716-6600
FAX: (919) 716-6767
jhauser@ncdoj.gov

January 28, 2016

Abigail Hammond
Staff Counsel
Rules Review Commission
6714 Mail Service Center
Raleigh, NC 27699-6714

abigail.hammond@oah.nc.gov

RE: 15A NCAC 2L .0501-.0515¹

Dear Ms. Hammond:

I am writing on behalf of the Environmental Management Commission (EMC) and its staff in the Division of Waste Management (DWM) to address the concerns expressed in the RRC Staff Opinion regarding rules submitted by the EMC, which rules are proposed to be codified at 15A NCAC 2L .0501-.0515. Specifically, this letter is to address RRC staff's concern as to whether specific statutory authority supports the rules.

As a preliminary matter, the RRC Staff Opinion recognizes that these rules "appear to be within the general rulemaking authority of the agency." In fact, the EMC has had statutory authority to promulgate the rules throughout the rulemaking process. This statutory authority is found in N.C. Gen. Stat. §143-215.3, granting the Commission authority to adopt rules to implement Articles 21A of Chapter 143 (the "Oil Pollution and Hazardous Substances Act of 1978"), which requires reporting and remediation of regulated discharges.

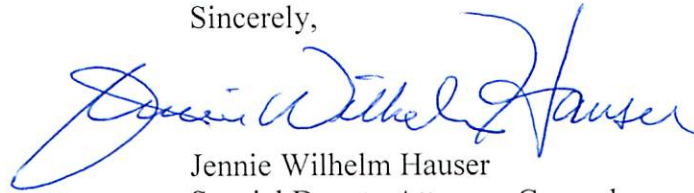
As to specific statutory authority to adopt the proposed rule set, North Carolina Session Law 2015-286, Section 4.7(b), which will be codified as N.C. Gen. Stat. Chapter 143, Article 21A, Part 7, and specifically N.C. Gen. Stat. §143-215.104AA (a)(2) and (b), direct the Commission to adopt rules with respect to a comprehensive program for risk-based assessment and cleanup of discharges and releases of petroleum from aboveground storage tanks and other sources. This Session Law became law on October 22, 2015. The rules to be codified at 15A

¹ This information has not been reviewed and approved in accordance with the procedure for issuing an Attorney General's Opinion.

NCAC 2L .0501-.0515 were adopted by the EMC at its meeting on November 5, 2015 and the “technical changes” to the rule set requested by RRC staff were adopted at the EMC’s meeting on January 14, 2016; therefore, these rules are properly and explicitly supported by specific statutory authority as of the date of their adoption.

Please feel free to contact me if you have any questions about the information contained in this letter. I will plan to attend the Rules Review Commission’s February meeting in case the members of the Commission have any questions.

Sincerely,



Jennie Wilhelm Hauser
Special Deputy Attorney General

cc: Steven J. Rowlan, EMC Chairman
Craig A. Bromby, DEQ/OGC
Jennifer Everett, DEQ/OGC
Linda Culpepper, DEQ/DWM
Art Barnhardt, DEQ/DWM
Lois C. Thomas-Spence, DEQ/DWR

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015**

**SESSION LAW 2015-286
HOUSE BILL 765**

AN ACT TO PROVIDE FURTHER REGULATORY RELIEF TO THE CITIZENS OF NORTH CAROLINA BY PROVIDING FOR VARIOUS ADMINISTRATIVE REFORMS, BY ELIMINATING CERTAIN UNNECESSARY OR OUTDATED STATUTES AND REGULATIONS AND MODERNIZING OR SIMPLIFYING CUMBERSOME OR OUTDATED REGULATIONS, AND BY MAKING VARIOUS OTHER STATUTORY CHANGES.

The General Assembly of North Carolina enacts:

PART I. ADMINISTRATIVE REFORMS

REPEAL OBSOLETE STATUTES

SECTION 1.1. The following statutes are repealed:

- (1) G.S. 14-197. Using profane or indecent language on public highways; counties exempt.
- (2) G.S. 14-401.8. Refusing to relinquish party telephone line in emergency; false statement of emergency.

BURDEN OF PROOF IN CERTAIN CONTESTED CASES

SECTION 1.2.(a) Article 3 of Chapter 150B of the General Statutes is amended by adding a new section to read:

"§ 150B-25.1. Burden of proof.

(a) Except as otherwise provided by law or by this section, the petitioner in a contested case has the burden of proving the facts alleged in the petition by a preponderance of the evidence.

(b) In a contested case involving the imposition of civil fines or penalties by a State agency for violation of the law, the burden of showing by clear and convincing evidence that the person who was fined actually committed the act for which the fine or penalty was imposed rests with the State agency.

(c) The burden of showing by a preponderance of the evidence that a career State employee subject to Chapter 126 of the General Statutes was discharged, suspended, or demoted for just cause rests with the agency employer."

SECTION 1.2.(b) The Joint Legislative Administrative Procedure Oversight Committee shall study whether there are other categories of contested cases in which the burden of proof should be placed with the agency.

SECTION 1.2.(c) This section is effective when this act becomes law and applies to contested cases commenced on or after that date.

LEGISLATIVE APPOINTMENTS

SECTION 1.3.(a) G.S. 120-121 is amended by adding two new subsections to read:

"(e) The following applies in any case where the Speaker of the House of Representatives or the President Pro Tempore of the Senate is directed by law to make a recommendation for an appointment by the General Assembly, and the legislator is also directed to make the recommendation in consultation with or upon the recommendation of a third party:

- (1) The recommendation or consultation is discretionary and is not binding upon the legislator.



with any human health or ecological risk assessments, groundwater modeling, financial assurance matters, or community outreach.

(2) To establish, administer, and maintain a system for the tracking of land-use restrictions recorded at sites that are remediated pursuant to this Part.

(c) The Department shall report to the Joint Legislative Commission on Governmental Operations, the Environmental Review Commission, and the Fiscal Research Division on or before October 1 of each year on the amounts and sources of funds collected by year received pursuant to this Part, the amounts and sources of those funds paid into the Risk-Based Remediation Fund established under G.S. 130A-310.76A, the number of acres of contamination for which funds have been received pursuant to subsection (a) of this section, and a detailed annual accounting of how the funds collected pursuant to this Part have been utilized by the Department to advance the purposes of this Part.

(d) The Commission may adopt rules to implement the requirements of subsection (a1) of this section.

"§ 130A-310.76A. Risk-Based Remediation Fund.

There is established under the control and direction of the Department the Risk-Based Remediation Fund. This fund shall be a revolving fund consisting of fees collected pursuant to G.S. 130A-310.76 and other monies paid to it or recovered by or on behalf of the Department. The Risk-Based Remediation Fund shall be treated as a nonreverting special trust fund pursuant to G.S. 147-69.2 and G.S. 147-69.3, except that interest and other income received on the Fund balance shall be treated as set forth in G.S. 147-69.1(d).

...."

SECTION 4.7.(b) Article 21A of Chapter 143 of the General Statutes is amended by adding a new Part to read:

"Part 7. Risk-Based Remediation for Petroleum Releases from Aboveground Storage Tanks and Other Sources.

"§ 143-215.104AA. Standards for petroleum releases from aboveground storage tanks and other sources.

(a) Legislative Findings and Intent. –

(1) The General Assembly finds the following:

- a. Risk-based corrective action gives the State flexibility in requiring different levels of cleanup based on scientific analysis of different site characteristics and allowing no action or no further action at sites that pose little risk to human health or the environment.
- b. A risk-based approach to the cleanup of environmental damage can adequately protect human health and the environment while preventing excessive or unproductive cleanup efforts, thereby assuring that limited resources are directed toward those sites that pose the greatest risk to human health and the environment.
- c. Risk-based corrective action has successfully been used to clean up contamination from petroleum underground storage tanks, as well as contamination at sites governed by other environmental programs.

(2) The General Assembly intends the following:

- a. To direct the Commission to adopt rules that will provide for risk-based assessment and cleanup of discharges and releases of petroleum from aboveground storage tanks and other sources. These rules are intended to combine groundwater standards that protect current and potential future uses of groundwater with risk-based analysis to determine the appropriate cleanup levels and actions.
- b. That these rules apply to all discharges or releases that are reported on or after the date the rules become effective in order to ascertain whether cleanup is necessary, and if so, the appropriate level of cleanup.
- c. That these rules may be applied to any discharge or release that has been reported at the time the rules become effective at the discretion of the Commission.
- d. That these rules, and decisions of the Commission and the Department in implementing these rules, facilitate the completion of more cleanups in a shorter period of time.

(b) The Commission shall adopt rules to establish a risk-based approach for the cleanup of discharges and releases of petroleum from aboveground storage tanks and other sources. At a minimum, the rules shall address all of the following:

- (1) The circumstances where site-specific information should be considered.
- (2) Criteria for determining acceptable cleanup levels.
- (3) The acceptable level or range of levels of risk to human health and the environment. Rules that use the distance between a source area of a confirmed discharge or release to a water supply well or a private drinking water well, as those terms are defined under G.S. 87-85, shall include a determination whether a nearby well is likely to be affected by the discharge or release as a factor in determining levels of risk.
- (4) Remediation standards and processes.
- (5) Requirements for financial assurance, where the Commission deems it necessary.
- (6) Appropriate fees to be applied to persons who undertake remediation of environmental contamination under site-specific remediation pursuant to this Part to pay for administrative and operating expenses necessary to implement this Part and rules adopted to implement this Part.

(c) The Commission may require an owner, operator, or landowner to provide information necessary to determine the degree of risk to human health and the environment that is posed by a discharge or release of petroleum from an aboveground storage tank or other source.

(d) If the Commission concludes that a discharge or release poses a degree of risk to human health or the environment that is no greater than the acceptable level of risk established by the Commission, the Commission shall notify an owner, operator, or landowner who provides the information required by subsection (c) of this section that no cleanup, further cleanup, or further action will be required unless the Commission later determines that the discharge or release poses an unacceptable level of risk or a potentially unacceptable level of risk to human health or the environment. If the Commission concludes that a discharge or release poses a degree of risk to human health or the environment that requires further cleanup, the Commission shall notify the owner, operator, or landowner who provides the information required by subsection (c) of this section of the cleanup method approved by the Commission. This section shall not be construed to prohibit an owner, operator, or landowner from selecting a cleanup method other than the cleanup method approved by the Commission so long as the Commission determines that the alternative cleanup method will address imminent threats to human health and the environment.

(e) Remediation of sites with off-site migration shall be subject to the following provisions:

- (1) Contaminated sites at which contamination has migrated to off-site properties may be remediated pursuant to this Part if either of the following occur:
 - a. The person who proposes to conduct the remediation pursuant to this Part remediates the contaminated off-site property to unrestricted use standards.
 - b. The person who proposes to conduct the remediation pursuant to this Part (i) provides the owner of the contaminated off-site property with a copy of this Part and the publication produced by the Department pursuant to subdivision (2) of this subsection and (ii) obtains written consent from the owner of the contaminated off-site property for the person to remediate the contaminated off-site property using site-specific remediation standards pursuant to this Part. Provided that the site-specific remediation standards shall not allow concentrations of contaminants on the off-site property to increase above the levels present on the date the written consent is obtained. Written consent from the owner of the off-site property shall be on a form prescribed by the Department and include an affirmation that the owner has received and read the publication and authorizes the person to remediate the owner's property using site-specific remediation standards pursuant to this Part.

- (2) In order to inform owners of contaminated off-site property of the issues and liabilities associated with the contamination on their property, the Department, in consultation with the Consumer Protection Division of the North Carolina Department of Justice and the North Carolina Real Estate Commission, shall develop and make available a publication entitled "Contaminated Property: Issues and Liabilities" to provide information on the nature of risk-based remediation and how it differs from remediation to unrestricted use standards, potential health impacts that may arise from residual contamination, as well as identification of liabilities that arise from contaminated property and associated issues, including potential impacts to real estate transactions and real estate financing. The Department shall update the publication as necessary.
- (3) If, after issuance of a no further action determination, the Department determines that additional remedial action is required for a contaminated off-site property, the responsible party shall be liable for the additional remediation deemed necessary.
- (4) Nothing in this subsection shall be construed to preclude or impair any person from obtaining any and all other remedies allowed by law.

(f) This section shall not be construed to limit the authority of the Commission to require investigation, initial response, and abatement of a discharge or release pending a determination by the Commission under subsection (d) of this section as to whether cleanup, further cleanup, or further action will be required. Notwithstanding any authority provided under this section to the Commission and the Department allowing use of a risk-based approach for the cleanup of discharges and releases of petroleum from aboveground storage tanks and other sources, a responsible party shall, at a minimum, do all of the following:

- (1) Perform initial abatement actions to (i) measure for the presence of a release where contamination is most likely to be present and to confirm the precise source of the release; (ii) determine the possible presence of free product and to begin free product removal immediately; (iii) continue to monitor and mitigate any additional fire, vapor, or explosion hazards posed by vapors or by free product; and (iv) submit a report summarizing these initial abatement actions within 20 days after a discharge or release. For purposes of this subdivision, the term "free product" means a non-aqueous phase liquid which may be present within the saturated zone or in surface water.
- (2) Remove, or in situ remediate, contaminated soil or free product that would act as a continuing source of contamination to groundwater. Actions conducted in conformance with this subdivision shall require approval by the Department.

(g) This section shall apply to discharges of petroleum from aboveground storage tanks and other sources not otherwise governed by the provisions of G.S. 143-215.94V."

SECTION 4.7.(c) G.S. 130A-310.8 is amended by adding a new subsection to read:

"§ 130A-310.8. Recordation of inactive hazardous substance or waste disposal sites.

...
 (i) If a site subject to the requirements of this section is remediated pursuant to the requirements of Part 8 of Article 9 of Chapter 130A of the General Statutes, a Notice of Residual Contamination may be prepared and filed in accordance with G.S. 130A-310.71(a)(9), in lieu of a Notice prepared and filed pursuant to this section."

SECTION 4.7.(d) G.S. 143-215.85A is amended by adding a new subsection to read:

"§ 143-215.85A. Recordation of oil or hazardous substance discharge sites.

...
 (g) If a site subject to the requirements of this section is remediated pursuant to the requirements of Part 8 of Article 9 of Chapter 130A of the General Statutes, a Notice of Residual Contamination may be prepared and filed in accordance with G.S. 130A-310.71(a)(9), in lieu of a Notice prepared and filed pursuant to this section."

SECTION 4.7.(e) G.S. 143B-279.10 is amended by adding a new subsection to read:

"§ 143B-279.10. Recordation of contaminated sites.

which burning material may not escape or (ii) within a protected area upon which a watch is being maintained and which is provided with adequate fire protection equipment.

(a1) Except in cases where the Commissioner has prohibited all open burning during periods of hazardous forest fire conditions or during air pollution episodes declared pursuant to Article 21B of Chapter 143 of the General Statutes, this Article shall not apply to, and no air quality permit shall be required for, the burning of polyethylene agricultural plastic used in connection with agricultural operations related to the growing, harvesting, or maintenance of crops, when all of the following conditions apply:

- (1) The burning does not violate any State or federal ambient air quality standards.
- (2) The burning is conducted between an hour after sunrise and an hour before sunset.
- (3) The fire is set back at least 250 feet from any paved public roadway and at least 500 feet from any dwelling, group of dwellings, commercial or institutional establishment, or other occupied structure not located on the property on which the burning is conducted.
- (4) The burning is conducted in a manner such that it does not constitute a public nuisance.
- (5) The burning is conducted by any of the following means:
 - a. By professionally manufactured equipment solely for the purpose of plastic mulch burning or incineration and approved by the Commissioner.
 - b. By a fire that is enclosed in a noncombustible container.
 - c. By a fire that is restricted to a pile no greater than eight feet in diameter built upon ground cleared of all combustible material.

(b) No charge shall be made for the granting of any permit required by this Article."

SECTION 4.39.(b) The Department of Agriculture and Consumer Services may adopt rules to implement the provisions of this section.

SECTION 4.39.(c) This section becomes effective January 1, 2015.

PART V. SEVERABILITY CLAUSE AND EFFECTIVE DATE

SECTION 5.1. If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part declared to be unconstitutional or invalid.

SECTION 5.2. Except as otherwise provided, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 30th day of September, 2015.

s/ Daniel J. Forest
President of the Senate

s/ Tim Moore
Speaker of the House of Representatives

s/ Pat McCrory
Governor

Approved 8:45 a.m. this 22nd day of October, 2015

1 15A NCAC 02L .0501 is adopted with changes as published in 30:03 NCR 284-291 as follows:

2
3 **SECTION .0500 – RISK-BASED ASSESSMENT AND CORRECTIVE ACTION FOR PETROLEUM**
4 **RELEASES FROM ABOVEGROUND STORAGE TANKS AND OTHER SOURCES**

5
6 **15A NCAC 02L .0501 PURPOSE AND SCOPE**

7 (a) The purpose of this Section is to establish procedures for risk-based assessment and corrective action sufficient
8 to:

- 9 (1) protect human health and the environment;
- 10 (2) abate and control contamination of the waters of the State as deemed necessary to protect human
11 health and the environment;
- 12 (3) permit management of the State's groundwaters to protect their designated current usage and
13 potential future uses;
- 14 (4) provide for anticipated future uses of the State's groundwater;
- 15 (5) recognize the diversity of contaminants, the State's ~~geology~~geology, and the characteristics of each
16 individual site; and
- 17 (6) accomplish these goals in a cost-efficient manner to assure the best use of the limited resources
18 available to address groundwater pollution within the State.

19 (b) The applicable portions of Section .0100 not specifically excluded apply to this Section.

20
21 *History Note: Authority G.S. ~~143-215.2; 143-215.3(a)(1); 143B-282; 143-215.84; 143-215.104AA.~~*
22 *Adopted Eff. ~~January 2, 2016~~ March 1, 2016.*

1 15A NCAC 02L .0502 is adopted with changes as published in 30:03 NCR 284-291 as follows:

2
3 **15A NCAC 02L .0502 DEFINITIONS**

4 The definitions as set out in Rule .0102 of this Subchapter apply to this Section, ~~except that~~ in addition the following
5 definitions apply throughout this Section:

- 6 (1) "Aboveground storage tank" or "AST" means any one or a combination of tanks (including
7 underground pipes connected thereto) that is used to contain an accumulation of petroleum.
- 8 (2) "AST system" means an aboveground storage tank, connected underground piping, underground
9 ancillary equipment, and containment system, if ~~any~~. any.
- 10 (3) "Discharge" ~~means, but is not limited to,~~ includes any emission, spillage, leakage, pumping, pouring,
11 emptying, or dumping of oil into groundwater or surface water or upon land in such proximity to
12 such water that it is likely to reach the water and any discharge upon land which is intentional,
13 ~~knowing~~ knowing, or willful.
- 14 (4) "Non-UST means as defined in G.S. 143-215.104AA(g) and excludes underground storage tank
15 releases governed by G.S. 143-215.94V.
- 16 ~~(4)~~ (5) "Operator" means any person in control of, or having responsibility for the daily operation of the
17 AST system.
- 18 ~~(5)~~ (6) "Owner" means any person who owns a petroleum aboveground storage tank or other non-UST
19 petroleum tank, stationary or mobile, used for storage, use, dispensing, or transport.
- 20 ~~(6)~~ (7) "Person" means an individual, trust, firm, joint stock company, Federal agency, corporation, state,
21 municipality, commission, political subdivision of a state, or any interstate body. "Person" also
22 includes a consortium, a joint venture, a commercial entity, and the United States Government.
- 23 ~~(7)~~ (8) "Petroleum" or "petroleum products" means as is defined in G.S. 143-215.94A(10).
- 24 ~~(8)~~ (9) "Release" means any spilling, leaking, emitting, discharging, escaping, ~~or leaching~~ leaching, or
25 disposing into groundwater, surface water, or surface or subsurface soils.
- 26 ~~(9)~~ (10) "Tank" ~~is~~ means a device used to contain an accumulation of petroleum and constructed of non-
27 earthen materials (e.g., concrete, steel, plastic) that provides structural support.

28
29 *History Note:* Authority G.S. 143-212(4); ~~143-215.2;~~143-215.3(a)(1); 143-215.77; 143B-282; 143-215.84; 143-
30 215.104AA.

31 Adopted Eff. ~~January 2, 2016~~ March 1, 2016.

1 15A NCAC 02L .0503 is adopted with changes as published in 30:03 NCR 284-291 as follows:

2

3 **15A NCAC 02L .0503 RULE APPLICATION**

4 This Section applies to any non-UST petroleum discharge. The requirements of this Section shall apply to the owner
5 and operator of a petroleum aboveground storage tank or other non-UST petroleum tank, stationary or mobile, from
6 which a discharge or release occurred and any person determined to be responsible for assessment and cleanup of a
7 discharge or release from a non-UST petroleum ~~source, source, including~~ This includes any person who has conducted
8 or controlled an activity ~~which that~~ results in the discharge or release of petroleum or petroleum products (as defined
9 in G.S. 143-215.94A(10)) to the groundwaters of the State, or in proximity ~~thereto; thereto, these~~ These persons shall
10 be collectively referred to as the "responsible party" for purposes of this ~~Section Section, as the "responsible party"~~.

11

12 *History Note: Authority G.S. ~~143-215.2; 143-215.3(a)(1); 143B-282; 143-215.84; 143-215.104AA.~~*

13 *~~Adopted Eff. January 2, 2016~~ March 1, 2016.*

1 15A NCAC 02L .0504 is adopted with changes as published in 30:03 NCR 284-291 as follows:

2
3 **15A NCAC 02L .0504 REQUIRED INITIAL REPOSE AND ABATEMENT ACTIONS BY**
4 **RESPONSIBLE PARTY**

5 A responsible party shall:

6 (1) take actions to prevent any further discharge or release of petroleum from the non-UST petroleum
7 source; identify and mitigate any fire, ~~explosion~~ explosion, or vapor hazard; and report the release
8 within 24 hours of discovery, in compliance with G.S. 143-215.83(a), 84(a), and 85(b);

9 (2) perform initial abatement actions to measure for the presence of a release where contamination is
10 most likely to be present and to confirm the precise source of the release; to investigate to determine
11 the possible presence of free product and to begin free product removal; and to continue to monitor
12 and mitigate any additional fire, ~~vapor explosion~~, or ~~explosion vapor~~ hazards posed by vapors or by
13 free product; and submit a report to the Department of Environmental Quality, UST Section,
14 Regional Office Supervisor in accordance with 15A NCAC 02B .0309 and .0311, within 20 days
15 after release confirmation summarizing these initial abatement actions;

16 (3) remove contaminated soil ~~which~~ that would act as continuing source of contamination to
17 groundwater. For a new release, no further action shall be necessary where:

18 (a) if initial abatement actions involving control and removal of contaminated materials are
19 can be initiated within 48 hours from ~~discovery~~; discovery and before contaminated
20 materials have the opportunity begin to impact groundwater; and

21 (b) if remaining soils contain contaminants with levels less than the TPH action level or less
22 than either the soil to groundwater or residential MSCCS (whichever is lowest); no further
23 action is necessary. ~~If the abatement actions cannot be initiated within 48 hours of~~
24 ~~discovery and petroleum contaminated soil concentrations less than TPH action level~~
25 ~~cannot be achieved, conduct activities in the subsequent items of this Rule.~~ analysis, in
26 accordance with the approved methods in 15A NCAC 2L .0412, of representative samples
27 of remaining soils shows concentrations (i) at or below the more stringent of the soil-to-
28 groundwater concentration value and the residential maximum soil contamination
29 concentration value, or (ii) using other EPA approved analytical methods in accordance
30 with 15A NCAC 02L .0412(b)(7) concentration values below the more stringent of the
31 soil-to-groundwater concentration alkane and aromatic carbon fraction class values and the
32 residential maximum soil contamination concentration alkane and aromatic carbon fraction
33 class values.

34 ~~If the abatement actions cannot be initiated within 48 hours of discovery conduct activities in the~~
35 ~~subsequent items of this Rule. If soil concentrations remain above the Total Petroleum Hydrocarbon~~
36 ~~action level conduct activities in the subsequent items of this Rule.~~ Provided that, for new releases,
37 if the abatement actions cannot be initiated within 48 hours of discovery, or if soil concentrations

1 remain above the values in (b), the responsible party shall conduct all activities under subsections
2 (1) through (5) of this Rule;

3 (4) conduct initial site assessment, assembling information about the site and the nature of the release,
4 including ~~but not necessarily limited to~~ the following:

5 (a) ~~Site~~ site history and site characterization, including ~~but not limited to~~, data on nature and
6 estimated quantity of release and data ~~form~~from available sources and site investigations
7 concerning surrounding populations, water quality, use, and approximate locations of
8 wells, surface water bodies, and subsurface structures potentially effected by the release,
9 subsurface soil conditions, locations of subsurface utilities, climatological conditions, and
10 landuse;

11 (b) ~~Results~~ results of free product investigations and free product removal, if applicable;

12 (c) ~~Results~~ results of groundwater and surface water investigations, if applicable;

13 (d) ~~Summary~~ summary of initial response and abatement actions; and submit this information
14 in the report required under Item (5) of this ~~Rule.~~ Rule; and

15 (5) submit as required in Item (2) of this Rule, within 90 days of the discovery of the discharge or
16 release an initial assessment and abatement report containing the site characterization information
17 required in Item (4) of this Rule; soil assessment information sufficient to show that remaining
18 unsaturated soil in the side walls and at the base of the excavation does not contain contaminant
19 levels which exceed either the "soil-to-groundwater" or the residential maximum soil contaminant
20 concentrations established by the Department pursuant to Rule .0511 of this Section, whichever is
21 lower; and documentation to show that neither bedrock nor groundwater was encountered in the
22 excavation (or if groundwater was encountered, that contaminant concentrations in groundwater
23 were equal to or less than the groundwater quality standards established in Rule .0202 of this
24 Subchapter). If such showing is made, the discharge or release shall be classified as low risk by the
25 Department.

26
27 *History Note:* Authority G.S. 143-215.2; 143-215.3(a)(1); 143B-282; 143-215.84; 143-215.104AA.
28 Adopted Eff. January 2, 2016~~March 1, 2016.~~

1 15A NCAC 02L .0505 is adopted with changes as published in 30:03 NCR 284-291 as follows:

2
3 **15A NCAC 02L .0505 REQUIREMENTS FOR LIMITED SITE ASSESSMENT**

4 If the required showing cannot be made by the responsible party under Rule .0504 of this Section, the responsible
5 party shall submit within 120 days of the discovery of the discharge or release, ~~or within such other greater time limit~~
6 ~~approved by the Department,~~ a report as required in Rule .0504 of this Section, containing information needed by the
7 Department to classify the level of risk to human health and the environment posed by a discharge or release under
8 Rule .0506 of this Section. The responsible party may request an extension prior to the deadline that demonstrates to
9 the Department that the extension would not increase the risk posed by the release. Such report shall ~~include,~~ include
10 at a minimum: the following:

- 11 (1) a location map, based on a USGS topographic map, showing the radius of 1500 feet from the source
12 area of a confirmed release or discharge and depicting all water supply wells, surface ~~waters~~ waters,
13 and designated ~~wellhead protection areas~~ “wellhead protection areas” as defined in 42 U.S.C. 300h-
14 7(e) within the 1500-foot radius. 42 U.S.C. 300h-7(e), is incorporated by reference including
15 subsequent amendments and editions. Copies may be obtained at no cost from the U.S. Government
16 Bookstore’s website at [http://www.gpo.gov/fdsys/pkg/USCODE-2010-title42-chap6A-subchapXII-partC-sec300h-7.htm](http://www.gpo.gov/fdsys/pkg/USCODE-2010-title42/html/USCODE-</u>
17 <u><a href=). The material is available for inspection at
18 the Department of Environmental Quality, UST Section, 217 West Jones Street, Raleigh, NC 27603.
19 For purposes of this Section, ~~source area~~ “source area” means point of release or discharge from the
20 non-UST petroleum ~~source or,~~ source, or if the point of release cannot be determined precisely,
21 ~~source area~~ “source area” is defined as means the area of highest contaminant concentrations;
- 22 (2) a determination of whether the source area of the discharge or release is within a designated ~~wellhead~~
23 ~~protection area~~ “wellhead protection area” as defined in 42 U.S.C. 300h-7(e);
- 24 (3) if the discharge or release is in the Coastal Plain physiographic region as designated on a map
25 entitled "Geology of North Carolina" published by the Department in 1985, a determination of
26 whether the source area of the discharge or release is located in an area in which there is recharge
27 to an unconfined or semi-confined deeper aquifer ~~which that~~ is being used or may be used as a
28 source of drinking water;
- 29 (4) a determination of whether vapors from the discharge or release pose a threat of explosion due to
30 the accumulation of vapors in a confined ~~space,~~ space; pose a risk to public health from ~~exposure,~~
31 exposure; or pose any other serious threat to public health, public ~~safety~~ safety, or the environment;
- 32 (5) scaled site map(s) showing the location of the following ~~which that~~ are on or adjacent to the property
33 where the source is located: ~~site boundaries, roads, buildings, basements, floor and storm drains,~~
34 ~~subsurface utilities, septic tanks and leach fields, underground and aboveground storage tank~~
35 ~~systems, monitoring wells, water supply wells, surface water bodies and other drainage features,~~
36 ~~borings and the sampling points;~~
37 (a) site boundaries;

- 1 (b) roads;
2 (c) buildings;
3 (d) basements;
4 (e) floor and storm drains;
5 (f) subsurface utilities;
6 (g) septic tanks and leach fields;
7 (h) underground and aboveground storage tank systems;
8 (i) monitoring wells;
9 (j) water supply wells;
10 (k) surface water bodies and other drainage features;
11 (l) borings; and
12 (k) the sampling points;
13 (6) the results from a limited site assessment ~~which that~~ shall include the following actions:
14 (a) ~~Determine~~ determine the presence, the lateral and vertical extent, and the maximum
15 concentration levels of soil and, if possible, groundwater contamination and free product
16 ~~accumulations.~~ accumulations;
17 (b) ~~Install~~ install as many monitoring wells constructed in accordance with ~~15A NCAC 02C~~
18 15A NCAC 02C .0108, within the area of maximum soil or groundwater contamination as
19 ~~needed~~ to determine the groundwater flow direction and maximum concentrations of
20 dissolved groundwater contaminants or accumulations of free product. ~~product, to include~~
21 ~~at a minimum three monitoring wells, unless a greater or lesser number are specified for a~~
22 ~~particular site by the Department; during~~ During well construction, the responsible party
23 shall collect and analyze soil ~~samples, samples which that should~~ represent the suspected
24 highest contaminant-level locations by exhibiting visible contamination or elevated levels
25 of volatile organic compounds, from successive locations at five-foot depth intervals in
26 the boreholes of each monitoring well within the unsaturated zone; collect potentiometric
27 data from each monitoring well; and collect and analyze groundwater or measure the
28 amount of free product, if present, in each monitoring well;
29 (7) the availability of public water supplies and the identification of properties served by the public
30 water supplies within 1500 feet of the source area of a confirmed discharge or release;
31 (8) the land use, including zoning if applicable, within 1500 feet of the source area of a confirmed
32 discharge or release;
33 (9) a discussion of site specific conditions or possible actions ~~which that could~~ may result in lowering
34 the risk classification assigned to the release. Such discussion shall be based on information known
35 or required to be obtained under this ~~Paragraph Item;~~ and
36 (10) names and current addresses of all responsible parties for all petroleum sources for which a
37 discharge or release is confirmed, the owner(s) of the land upon which such petroleum sources are

1 located, and all potentially affected real property owners. Documentation of ownership of ASTs or
2 other sources and of the property upon which a source is located shall be provided. When
3 considering a request from a responsible party for additional time to submit the report, the ~~Division~~
4 Department shall consider ~~the following:~~the extent to which the request for additional time is due
5 ~~to factors outside of the control of the responsible party, the previous history of the person~~
6 ~~submitting the report in complying with deadlines established under the Commission's rules, the~~
7 ~~technical complications associated with assessing the extent of contamination at the site or~~
8 ~~identifying potential receptors, and the necessity for action to eliminate an imminent threat to public~~
9 ~~health or the environment.~~

10 (a) the extent to which the request for additional time is due to factors outside of the control
11 of the responsible party,

12 (b) the previous history of the person submitting the report in complying with deadlines
13 established under the Commission's rules;

14 (c) the technical complications associated with assessing the extent of contamination at the
15 site or identifying potential receptors; and

16 (d) the necessity for action to eliminate an imminent threat to public health or the environment.

17
18 *History Note:* Authority G.S. 143-215.2; 143-215.3(a)(1); 143B-282; 143-215.84; 143-215.104AA.
19 Adopted Eff. January 2, 2016-March 1, 2016.
20

1 15A NCAC 02L .0506 is adopted with changes as published in 30:03 NCR 284-291 as follows:

2
3 **15A NCAC 02L .0506 DISCHARGE OR RELEASE CLASSIFICATIONS**

4 The Department shall classify the risk of each known discharge or release as high, intermediate or low ~~risk~~ risk, unless
5 the discharge or release has been classified under Rule ~~.0504(3)~~ .0504 of this Section. For purposes of this Section:

6 (1) "High risk" means that:

- 7 (a) a water supply well, including one used for non-drinking purposes, has been contaminated
8 by the release or discharge;
- 9 (b) a water supply well used for drinking water is located within 1000 feet of the source area
10 of a confirmed discharge or release;
- 11 (c) a water supply well not used for drinking water is located within 250 feet of the source area
12 of a confirmed discharge or release;
- 13 (d) the groundwater within 500 feet of the source area of a confirmed discharge or release has
14 the potential for future use in that there is no source of water supply other than the
15 groundwater;
- 16 (e) the vapors from the discharge or release pose a serious threat of explosion due to
17 accumulation of the vapors in a confined space or pose a risk to public health from
18 exposure; or
- 19 (f) the discharge or release poses an imminent danger to public health, public safety, or the
20 environment.

21 (2) "Intermediate risk" means that:

- 22 (a) surface water is located within 500 feet of the source area of a confirmed discharge or
23 release and the maximum groundwater contaminant concentration exceeds the applicable
24 surface water quality standards and criteria found in 15A NCAC 02B .0200 by a factor of
25 10;
- 26 (b) in the Coastal Plain physiographic region as designated on a map entitled "Geology of
27 North Carolina" published by the Department in 1985, the source area of a confirmed
28 discharge or release is located in an area in which there is recharge to an unconfined or
29 semi-confined deeper aquifer ~~which~~ that the Department determines is being used or may
30 be used as a source of drinking water;
- 31 (c) the source area of a confirmed discharge or release is within a designated wellhead
32 protection area, as defined in 42 U.S.C. 300h-7(e);
- 33 (d) the levels of groundwater contamination for any contaminant except ethylene dibromide,
34 ~~benzene~~ benzene, and alkane and aromatic carbon fraction classes exceed 50 percent of the
35 solubility of the contaminant at 25 degrees Celsius or 1,000 times the groundwater standard
36 or interim standard established in Rule .0202 of this Subchapter, whichever is lower; or

1 (e) the levels of groundwater contamination for ethylene dibromide and benzene exceed 1,000
2 times the federal drinking water standard ~~set out in 40 CFR 141~~ as referenced in 15A
3 NCAC 18C .1518 is hereby incorporated by reference including subsequent amendments
4 and editions and is available free of charge at [http://reports.oah.state.nc.us/ncac/title 15a -
5 environmental quality/chapter 18 - environmental health/subchapter c/15a ncac 18c
6 .1518.pdf](http://reports.oah.state.nc.us/ncac/title 15a - environmental quality/chapter 18 - environmental health/subchapter c/15a ncac 18c .1518.pdf).

7 (3) "Low risk" means that:
8 (a) the risk posed does not fall within the high or intermediate risk categories; or
9 (b) based on review of site-specific information, limited ~~assessment~~ assessment, or interim
10 corrective actions, the Department determines that the discharge or release poses no
11 significant risk to human health or the environment.

12 If the criteria for more than one risk category applies, the discharge or release shall be classified at the highest risk
13 level identified in Rule .0507 of this Section.

14
15 *History Note:* Authority ~~G.S. 143-215.2; 143-215.3(a)(1); 143B-282; 143-215.84; 143-215.104AA.~~
16 Adopted Eff. January 2, 2016-March 1, 2016.

17

1 15A NCAC 02L .0507 is adopted with changes as published in 30:03 NCR 284-291 as follows:

2
3 **15A NCAC 02L .0507 RECLASSIFICATION OF RISK LEVELS**

4 (a) The Department may reclassify the risk posed by a release if warranted by further information concerning the
5 potential exposure of receptors to the discharge or release or upon receipt of new information concerning changed
6 conditions at the site. After initial classification of the discharge or release, the Department may require limited
7 assessment, interim corrective action, or other actions ~~which that~~ the Department believes ~~will~~may result in a lower
8 risk classification. It shall be a continuing obligation of each responsible party to notify the Department of any changes
9 that ~~might~~may affect the level of risk assigned to a discharge or release by the Department if the change is known or
10 should be known by the responsible party. Such changes ~~shall~~may include, include ~~but shall not be limited to,~~ changes
11 in zoning of real property, use of real ~~property~~ property, or the use of groundwater that has been contaminated or is
12 expected to be contaminated by the discharge or ~~release, release if such change could cause the Department to~~
13 ~~reclassify the risk.~~

14 (b) If the risk posed by a discharge or release is determined by the Department to be high risk, the responsible party
15 shall comply with the assessment and cleanup requirements of Rule .0106(c), ~~(g)~~ (g), and (h) of this Subchapter. The
16 goal of any required corrective action for groundwater contamination shall be restoration to the level of the
17 groundwater standards set forth in Rule .0202 of this Subchapter, or as closely thereto as is economically and
18 technologically ~~feasible.~~ feasible as determined by the Department. In any corrective action plan submitted pursuant
19 to this Paragraph, ~~natural attenuation shall be used to the maximum extent possible.~~ natural attenuation may be used
20 when the benefits of its use shall not increase the risk to the environment and human health as determined by the
21 Department. and shall not increase the costs of the corrective action. If the responsible party demonstrates that natural
22 attenuation prevents the further migration of the plume, the Department may approve a groundwater monitoring plan.

23 (c) If the risk posed by a discharge or release is determined by the Department to be an intermediate risk, the
24 responsible party shall comply with the assessment requirements of Rule .0106(c) and (g) of this Subchapter. As part
25 of the comprehensive site assessment, the responsible party shall evaluate, based on site specific conditions, whether
26 the release poses a significant risk to human health or the environment. If the Department determines, based on the
27 site-specific conditions, that the discharge or release does not pose a significant threat to human health or the
28 environment, the site shall be reclassified as a low risk site. If the site is not reclassified, the responsible party shall,
29 at the direction of the Department, submit a groundwater monitoring plan or a corrective action plan, or a combination
30 thereof, meeting the cleanup standards of this Paragraph and containing the information required in Rule .0106(h) of
31 this Subchapter. Discharges or releases ~~which that~~ are classified as intermediate risk shall be remediated, at a
32 minimum, to a cleanup level of 50 percent of the solubility of the contaminant at 25 degrees Celsius or 1,000 times
33 the groundwater standard or interim standard established in Rule .0202 of this Subchapter, whichever is lower for any
34 groundwater contaminant except ethylene dibromide, ~~benzene~~ benzene, and alkane and aromatic carbon fraction
35 classes. Ethylene dibromide and benzene shall be remediated to a cleanup level of 1,000 times the federal drinking
36 water standard ~~set out in 40 CFR 141~~ as referenced in 15A NCAC 18C .1518 is hereby incorporated by reference
37 including subsequent amendments and editions and is available free of charge at

1 <http://reports.oah.state.nc.us/ncac/title 15a - environmental quality/chapter 18 - environmental health/subchapter c/15a>
2 [ncac 18c .1518.pdf](#). Additionally, if a corrective action plan or groundwater monitoring plan is required under this
3 Paragraph, the responsible party shall demonstrate that the groundwater cleanup levels are sufficient to prevent a
4 violation of:

- 5 (1) the rules contained in 15A NCAC 02B;
- 6 (2) the standards contained in Rule .0202 of this Subchapter in a deep aquifer as described in Rule
7 .0506(2)(b) of this Section; and
- 8 (3) the standards contained in Rule .0202 of this Subchapter at a location no closer than one year time
9 of travel upgradient of a well within a designated wellhead protection area, based on travel time and
10 the natural attenuation capacity of the subsurface materials or on a physical barrier to groundwater
11 migration that exists or will be installed by the person making the request.

12 In any corrective action plan submitted pursuant to this Paragraph, ~~natural attenuation shall be used to the maximum~~
13 ~~extent possible.~~ natural attenuation may be used when the benefits of its use shall not increase the risk to the
14 environment and human health and shall not increase the costs of the corrective action.

15 (d) If the risk posed by a discharge or release is determined by the Department to be a low risk, the Department shall
16 notify the responsible party that no cleanup, no further ~~cleanup~~ cleanup, or no further action will be required by the
17 Department, unless the Department later determines that the discharge or release poses an unacceptable risk or a
18 potentially unacceptable risk to human health or the environment. No notification ~~will~~ shall be issued pursuant to this
19 Paragraph, however, until the responsible party has completed soil remediation pursuant to Rule .0508 of this Section
20 or as closely thereto as economically or technologically feasible as determined by the Department; has submitted proof
21 of public notification and has recorded any land-use restriction(s), if required; and paid any applicable statutorily
22 authorized fees. The issuance by the Department of a notification under this Paragraph shall not affect any private
23 right of action by any party ~~which~~ that may be affected by the contamination.

24
25 *History Note:* Authority ~~G.S. 143-215.2;~~ 143-215.3(a)(1); 143B-282; 143-215.84; 143-215.104AA.
26 Adopted Eff. January 2, 2016-March 1, 2016.
27

1 15A NCAC 02L .0508 is adopted with changes as published in 30:03 NCR 284-291 as follows:

2
3 **15A NCAC 02L .0508 ASSESSMENT AND REMEDIATION PROCEDURES**

4 Assessment and remediation of soil contamination shall be addressed as follows:

- 5 (1) At the time that the Department determines the risk posed by the discharge or release, the
6 Department shall also determine, based on site-specific information, whether the site is "residential"
7 or "industrial/commercial." For purposes of this Section, a site is presumed residential, but may be
8 classified as industrial/commercial if the Department determines based on site-specific information
9 that exposure to the soil contamination is limited in time due to the use of the site and does not
10 involve exposure to children. For purposes of this Item, "site" means both the property upon which
11 the discharge or release has occurred and any property upon ~~which~~ that soil has been affected by the
12 discharge or release.
- 13 (2) The responsible party shall submit a report to the Department assessing the vertical and horizontal
14 extent of soil contamination.
- 15 (3) For a discharge or release classified by the Department as low risk, the responsible party shall submit
16 a report demonstrating that soil contamination has been remediated to either the residential or
17 industrial/commercial maximum soil contaminant concentration established by the Department
18 pursuant to Rule .0511 of this Section, whichever is applicable.
- 19 (4) For a discharge or release classified by the Department as high or intermediate risk, the responsible
20 party shall submit a report demonstrating that soil contamination has been remediated to the lower
21 of:
- 22 (a) the residential or industrial/commercial maximum soil contaminant concentration,
23 whichever is applicable, that has been established by the Department pursuant to Rule
24 .0511 of this Section; or
- 25 (b) the "soil-to-groundwater" maximum soil contaminant concentration that has been
26 established by the Department pursuant to Rule .0511 of this Section.

27
28 *History Note: Authority G.S. ~~143-215.2~~; 143-215.3(a)(1); 143B-282; 143-215.84; 143-215.104AA.*
29 *Adopted Eff. ~~January 2, 2016~~ March 1, 2016.*

1 15A NCAC 02L .0509 is adopted with changes as published in 30:03 NCR 284-291 as follows:

2
3 **15A NCAC 02L .0509 NOTIFICATION REQUIREMENTS**

4 (a) A responsible party who submits a corrective action plan ~~which~~that proposes natural attenuation or to cleanup
5 groundwater contamination to a standard other than a standard or interim standard established in Rule .0202 of this
6 Subchapter, or to cleanup soil other than to the standard for residential use or soil-to-groundwater contaminant
7 concentration established pursuant to this Section, whichever is lowest, shall give notice to: ~~the local Health Director~~
8 ~~and the chief administrative officer of each political jurisdiction in which the contamination occurs; all property~~
9 ~~owners and occupants within or contiguous to the area containing the contamination; and all property owners and~~
10 ~~occupants within or contiguous to the area where the contamination is expected to migrate.~~

11 (1) the local Health Director and the chief administrative officer of each political jurisdiction in which
12 the contamination occurs;

13 (2) all property owners and occupants within or contiguous to the area containing the contamination;
14 and

15 (3) all property owners and occupants within or contiguous to the area where the contamination is
16 expected to migrate.

17 Such notice shall describe the nature of the plan and the reasons supporting it. Notification shall be made by certified
18 mail concurrent with the submittal of the corrective action plan. Approval of the corrective action plan by the
19 Department shall be postponed for a period of 30 days following receipt of the request so that the Department may
20 consider comments submitted. The responsible party shall, within ~~a time frame determined by the Department to be~~
21 ~~sufficient~~60 days, provide the Department with a copy of the notice and proof of receipt of each required notice, or of
22 refusal by the addressee to accept delivery of a required notice. If notice by certified mail to occupants under this
23 Paragraph is impractical, the responsible party may give notice by posting such notice ~~prominently in a manner in a~~
24 prominent manner designed to give actual notice to the occupants. If notice is made to occupants by posting, the
25 responsible party shall provide the Department with a copy of the posted notice and a description of the manner in
26 which such posted notice was given.

27 (b) A responsible party who receives a notice pursuant to Rule .0507(d) of this Section for a discharge or release
28 ~~which~~that has not been remediated to the groundwater standards or interim standards established in Rule .0202 of this
29 Subchapter or to the lower of the residential or soil-to-groundwater contaminant concentrations established under Rule
30 .0511 of this Section, shall, within 30 days of the receipt of such notice, provide a copy of the notice to: ~~the local~~
31 ~~Health Director and the chief administrative officer of each political jurisdiction in which the contamination occurs;~~
32 ~~all property owners and occupants within or contiguous to the area containing contamination; and all property owners~~
33 ~~and occupants within or contiguous to the area where the contamination is expected to migrate.~~

34 (1) the local Health Director and the chief administrative officer of each political jurisdiction in which
35 the contamination occurs;

36 (2) all property owners and occupants within or contiguous to the area containing contamination; and

1 (3) all property owners and occupants within or contiguous to the area where the contamination is
2 expected to migrate.

3 __Notification shall be made by certified mail. The responsible party shall, within ~~a time frame determined by the~~
4 ~~Department to be sufficient, 60 days,~~ provide the Department with proof of receipt of the copy of the notice, or of
5 refusal by the addressee to accept delivery of the copy of the notice. If notice by certified mail to occupants under this
6 Paragraph is impractical, the responsible party may give notice by posting a copy of the notice ~~prominently in a~~
7 ~~manner~~ in a prominent manner designed to give actual notice to the occupants. If notice is made to occupants by
8 posting, the responsible party shall provide the Department with a description of the manner in which such posted
9 notice was given.

10
11 *History Note:* ~~Authority G.S. 143-215.2; 143-215.3(a)(1); 143B-282; 143-215.104AA.~~
12 ~~Adopted Eff. January 2, 2016~~ March 1, 2016.
13

1 15A NCAC 02L .0510 is adopted with changes as published in 30:03 NCR 284-291 as follows:

2

3 **15A NCAC 02L .0510 DEPARTMENTAL LISTING OF DISCHARGES OR RELEASES**

4 To the extent feasible, the Department shall maintain in each of the Department's regional offices a list of all non-UST
5 petroleum discharges or releases discovered and reported to the Department within the region.

6

7 *History Note: Authority G.S. ~~143-215.2~~; 143-215.3(a)(1); 143B-282.*

8 *~~Adopted Eff. January 2, 2016~~ March 1, 2016.*

1 15A NCAC 02L .0511 is adopted with changes as published in 30:03 NCR 284-291 as follows:

2

3 **15A NCAC 02L .0511 ESTABLISHING MAXIMUM SOIL CONTAMINATION CONCENTRATIONS**

4 For purposes of risk-based assessment and remediation for non-UST petroleum releases, refer to Rule .0411 of this
5 Subchapter for establishment of maximum soil contamination concentrations.

6

7 *History Note:* Authority G.S. ~~143-215.2; 143-215.3(a)(1); 143B-282; 143-215.84; 143-215.104AA.~~

8 ~~Adopted Eff. January 2, 2016-March 1, 2016.~~

9

1 15A NCAC 02L .0512 is adopted with changes as published in 30:03 NCR 284-291 as follows:

2

3 **15A NCAC 02L .0512 ANALYTICAL PROCEDURES FOR SOIL SAMPLES**

4 For purposes of risk-based assessment and remediation for non-UST petroleum releases, refer to Rule .0412 of this
5 Subchapter for analytical procedures for soil samples.

6

7 *History Note:* Authority G.S. ~~143-215.2;~~ 143-215.3(a)(1); 143B-282; 143-215.84; 143-215.104AA.

8

~~Adopted Eff. January 2, 2016~~ March 1, 2016.

9

1 15A NCAC 02L .0513 is adopted with changes as published in 30:03 NCR 284-291 as follows:

2

3 **15A NCAC 02L .0513 ANALYTICAL PROCEDURES FOR GROUNDWATER SAMPLES**

4 For purposes of risk-based assessment and remediation for non-UST-petroleum releases, refer to Rule .0413 of this

5 Subchapter for analytical procedures for groundwater samples.

6

7 *History Note:* Authority G.S. ~~143-215.2;~~ 143-215.3(a)(1); 143B-282; 143-215.84; 143-215.104AA.

8 ~~Adopted Eff. January 2, 2016-March 1, 2016.~~

9

1 15A NCAC 02L .0514 is adopted with changes as published in 30:03 NCR 284-291 as follows:

2

3 **15A NCAC 02L .0514 REQUIRED LABORATORY CERTIFICATION**

4 In accordance with 15A NCAC 02H .0804, laboratories ~~are required to~~shall obtain North Carolina Division of Water
5 Resources laboratory certification for parameters that ~~are required to~~shall be reported to the State in compliance with
6 the State's surface water, ~~groundwater~~groundwater, and pretreatment rules.

7

8 *History Note:* Authority ~~G.S. 143-215.2;~~ 143-215.3(a)(1); 143B-282; 143-215.84; 143-215.104AA.

9 ~~Adopted Eff. January 2, 2016~~ March 1, 2016.

10

1 15A NCAC 02L .0515 is adopted with changes as published in 30:03 NCR 284-291 as follows:

2

3 **15A NCAC 02L .0515 DISCHARGES OR RELEASES FROM OTHER SOURCES**

4 This Section shall not relieve any person responsible for assessment or cleanup of contamination from a source other
5 than a non-UST petroleum release from its obligation to assess and clean up contamination resulting from such
6 discharge or releases.

7

8 *History Note: Authority G.S. ~~143-215.2~~; 143-215.3(a)(1); 143B-282; 143-215.84; 143-215.104AA.*

9

~~Adopted Eff. January 2, 2016~~ March 1, 2016.

10



STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS

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

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

December 17, 2015

Sent via email jennifer.everett@ncdenr.gov:

Jennifer Everett, Rulemaking Coordinator
Environmental Management Commission
1601 Mail Service Center
Raleigh, NC 27699-1601

Re: Extension of the Period of Review for Rules 15A NCAC 02L .0501, .0502, .0503, .0504, .0505, .0506, .0507, .0508, .0509, .0510, .0511, .0512, .0513, .0514, .0515

Dear Ms. Everett:

At its December 17, 2015 meeting, the Rules Review Commission extended the period of review on the above-identified rules in accordance with G.S. 150B-21.10 and G.S. 150B-21.13. The Commission extended the period of review in response to a request from the Environmental Management Commission to allow additional time for review of technical change requests.

If you have any questions regarding the Commission's action, please do not hesitate to contact me directly at (919) 431-3076.

Sincerely,

Abigail M. Hammond
Commission Counsel

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

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

Judges and
Assistants
919/431-3000
fax: 919/431-3100

Clerk's Office
919/431-3000
fax: 919/431-3100

Rules Review
Commission
919/431-3000
fax: 919/431-3104

Civil Rights
Division
919/431-3036
fax: 919/431-3103

Hammond, Abigail M

From: Everett, Jennifer
Sent: Thursday, December 03, 2015 4:00 PM
To: Hammond, Abigail M
Cc: Smith, Linda; Barnhardt, Art; Davies, Robert; Edwards, Jared; Hauser, Jennie; Bromby, Craig A
Subject: Request for extension of review

Hi Abby,

We are requesting an extension for period of review regarding 15A NCAC 02L Section .0500 rules submitted on November 19, 2015. This extension will allow us to take the rule package back to the Environmental Management Commission (EMC) for approval of your technical change requests. The EMC's regularly scheduled meeting is January 14, 2016. If approved by the EMC, we plan to have these rules considered on the RRC's January 21 agenda.

Thank you.

Jennifer

Jennifer Everett
DEQ Rulemaking Coordinator
NC Department of Environmental Quality

919-707-8614 office
jennifer.everett@ncdenr.gov

1617 Mail Service Center
Raleigh, NC 27699



Email correspondence to and from this address is subject to the North Carolina Public Records Law and may be disclosed to third parties.

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: All rules pending for December Rules Review Commission meeting: 15A NCAC 02L .0501, .0502, .0503, .0504, .0505, .0506, .0507, .0508, .0509, .0510, .0511, .0512, .0513, .0514, .0515

RECOMMENDED ACTION:

- X 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:

The Environmental Management Commission has adopted fifteen rules in response to a petition for rulemaking. The petition, based upon the "Reason for Action" provided by the agency on the Submission for Permanent Rule form, seeks to expand "risk-based remediation for only petroleum contamination beyond underground storage tanks." See "Exhibit A." The rules adopted by the agency primarily cite three different authorities for this rulemaking action: (1) G.S. 143-215.2; (2) G.S. 143-215.3(a)(1); and (3) G.S. 143B-282. Each referenced statute is attached for your review; see "Exhibit B," "Exhibit C," and "Exhibit D," respectively. In addition, these rules cite substantially similar statutory authority justifying the Risk-Based Assessment and Corrective Action for Petroleum Underground Storage Tanks rules set forth in Section 400 of 15A NCAC 02L, which are also attached for your review as "Exhibit E."

Staff counsel is concerned that the Environmental Management Commission may lack the authority to regulate aboveground storage tanks of petroleum. Staff counsel notes that the

Abigail M. Hammond
Commission Counsel

rulemaking authority for the rules set forth in Section 400 of 15A NCAC 02L regulating underground storage tanks were specifically delegated to the agency by Part 2A of Article 21A of Chapter 143 of the General Statutes, titled “Leaking Petroleum Underground Storage Tank Cleanup.” For these aboveground tank rules, the agency appears to be relying exclusively on general rulemaking authority, such as “[t]o make rules implementing Articles 21, 21A, 21B, or 38 of this Chapter” as stated in G.S. 143-215.3(a)(1), or “[t]here is hereby created the Environmental Management Commission...with the power and duty to promulgate rules to be followed in the protection, preservation, and enhancement of the water and air resources of the State” as stated in G.S. 143B-282.

Staff counsel is concerned that the agency’s reliance on general rulemaking authority and the lack of specific citations to authority to regulate aboveground storage tanks, in light of the General Assembly’s prior specific delegation to regulate underground storage tanks, may make the agency’s statutory authority to promulgate these rules less clear. Staff counsel is aware of the petition for rulemaking and understands the significance of Risk-Based Assessment and Corrective Action plans for any petroleum spill, regardless of tank location. However, staff counsel is unable to find specific statutory authority directing the agency to promulgate rules regulating aboveground storage tanks.

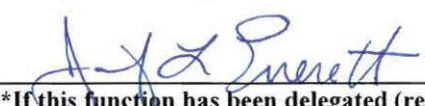
SUMMARY:

The Environmental Management Commission has adopted fifteen rules that regulate the risk-based remediation for aboveground storage tanks containing petroleum. These rules appear to be within the general rulemaking authority of the agency for the purpose of “protection, preservation, and enhancement of the water...resources of the State.” See G.S. 143B-282(a). It is staff counsel’s concern that these rules lack specific rulemaking authority or legislative directive to the rulemaking agency. As this has been a prior issue of discussion by the Commission, it is staff counsel’s recommendation that the Rules Review Commission determine whether the regulation of aboveground storage tanks containing petroleum is within the Environmental Management Commission’s rulemaking authority. If the Rules Review Commission finds that specific rulemaking authority is required for the Environmental Management Commission, then the rules should be objected to for lack of statutory authority.

Original
11/19/15

EXHIBIT A

SUBMISSION FOR PERMANENT RULE

1. Rule-Making Agency: Environmental Management Commission	
2. Rule citation & name (name not required for repeal): 15A NCAC 02L .0501 PURPOSE AND SCOPE	
3. Action: <input checked="" type="checkbox"/> ADOPTION <input type="checkbox"/> AMENDMENT <input type="checkbox"/> REPEAL	
4. Rule exempt from RRC review? <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No	5. Rule automatically subject to legislative review? <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No
6. Notice for Proposed Rule: <input checked="" type="checkbox"/> Notice Required Notice of Text published on: August 3, 2015 Link to Agency notice: http://portal.ncdenr.org/web/wm/ust/whatsnew Hearing on: August 26, 2015 Adoption by agency on: November 5, 2015 <input type="checkbox"/> Notice not required under G.S.: Adoption by agency on:	
7. Rule establishes or increases a fee? (See G.S. 12-3.1) <input type="checkbox"/> Yes Agency submitted request for consultation on: Consultation not required. Cite authority: <input checked="" type="checkbox"/> No	8. Fiscal impact (check all that apply): <input checked="" type="checkbox"/> State funds affected <input type="checkbox"/> Environmental permitting of DOT affected and analysis submitted to Board of Transportation <input checked="" type="checkbox"/> Local funds affected <input type="checkbox"/> Substantial economic impact (≥\$1,000,000) <input checked="" type="checkbox"/> Approved by OSBM <input type="checkbox"/> No fiscal note required
9. REASON FOR ACTION	
9A. What prompted this action? Check all that apply:	
<input type="checkbox"/> Agency <input type="checkbox"/> Court order / cite: <input type="checkbox"/> Federal statute / cite: <input type="checkbox"/> Federal regulation / cite:	<input type="checkbox"/> Legislation enacted by the General Assembly Cite Session Law: <input checked="" type="checkbox"/> Petition for rule-making <input type="checkbox"/> Other:
9B. Explain: The Environmental Management Commission has received a petition for rulemaking and the Division of Waste Management has taken comments from stakeholders who maintain it is inconsistent to require risk-based remediation for only petroleum contamination from petroleum underground storage tanks (USTs). This change can be protective of human health and the environment and will reduce costs to some stakeholders.	
10. Rule-making Coordinator: Jennifer Everett Address: 1601 Mail Service Center Raleigh, NC 27699-1601 Phone: (919)-707-8614 E-Mail: jennifer.everett@ncdenr.gov Agency Contact, if any: Linda L. Smith Phone: 919-707-8150 E-Mail: Linda.L.Smith@ncdenr.gov	11. Signature of Agency Head* or Rule-making Coordinator:  *If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form. Typed Name: Jennifer Everett Title: DEQ Rulemaking Coordinator
RRC AND OAH USE ONLY	
Action taken:	
<input type="checkbox"/> RRC Extended period of review: <input type="checkbox"/> RRC determined substantial changes: <input type="checkbox"/> Withdrawn by agency <input type="checkbox"/> Subject to Legislative Review <input type="checkbox"/> Other:	

FILED
2015 NOV 19 AM 9:56
OFFICE OF ADMIN HEARINGS

Save
Reset

§ 143-215.2. Special orders.

(a) Issuance. - The Commission may, after the effective date of classifications, standards and limitations adopted pursuant to G.S. 143-214.1 or G.S. 143-215, or a water supply watershed management requirement adopted pursuant to G.S. 143-214.5, issue, and from time to time modify or revoke, a special order, or other appropriate instrument, to any person whom it finds responsible for causing or contributing to any pollution of the waters of the State within the area for which standards have been established. The order or instrument may direct the person to take, or refrain from taking an action, or to achieve a result, within a period of time specified by the special order, as the Commission deems necessary and feasible in order to alleviate or eliminate the pollution. The Commission is authorized to enter into consent special orders, assurances of voluntary compliance or other similar documents by agreement with the person responsible for pollution of the water, subject to the provisions of subsection (a1) of this section regarding proposed orders, and the consent order, when entered into by the Commission after public review, shall have the same force and effect as a special order of the Commission issued pursuant to hearing.

(a1) Public Notice and Review of Consent Orders.

- (1) The Commission shall give notice of a proposed consent order to the proper State, interstate, and federal agencies, to interested persons, and to the public. The Commission may also provide any other data it considers appropriate to those notified. The Commission shall prescribe the form and content of the notice. The notice shall be given at least 45 days prior to any final action regarding the consent order. Public notice shall be given by publication of the notice one time in a newspaper having general circulation within the county in which the pollution originates.
- (2) Any person who desires a public meeting on any proposed consent order may request one in writing to the Commission within 30 days following date of the notice of the proposed consent order. The Commission shall consider all such requests for meetings. If the Commission determines that there is significant public interest in holding a meeting, the Commission shall schedule a meeting and shall give notice of such meeting at least 30 days in advance to all persons to whom notice of the proposed consent order was given and to any other person requesting notice. At least 30 days prior to the date of meeting, the Commission shall also have a copy of the notice of the meeting published at least one time in a newspaper having general circulation within the county in which the pollution originates. The Commission shall prescribe the form and content of notices under this subsection.
- (3) The Commission shall prescribe the procedures to be followed in such meetings. If the meeting is not conducted by the Commission, detailed minutes of the meeting shall be kept and shall be submitted, along with any other written comment, exhibits or other documents presented at the meeting, to the Commission for its consideration prior to final action granting or denying the consent order.
- (4) The Commission shall take final action on a proposed consent not later than 60 days following notice of the proposed consent order or, if a public meeting is held, within 90 days following such meeting.

(b) Procedure to Contest Certain Orders. - A special order that is issued without the consent of the person affected may be contested by that person by filing a petition for a contested case under G.S. 150B-23 within 30 days after the order is issued. If the person affected does not file a petition within the required time, the order is final and is not subject to review.

(c) Repealed by Session Laws 1987, c. 827, s. 160.

(d) Effect of Compliance. - Any person who installs a treatment works for the purpose of alleviating or eliminating water pollution in compliance with the terms of, or as a result of the conditions specified in, a permit issued pursuant to G.S. 143-215.1, or a special order, consent special order,

assurance of voluntary compliance or similar document issued pursuant to this section, or a final decision of the Commission or a court rendered pursuant to either of said sections, shall not be required to take or refrain from any further action nor be required to achieve any further results under the terms of this or any other State law relating to the control of water pollution, for a period to be fixed by the Commission or court as it shall deem fair and reasonable in the light of all the circumstances after the date when such special order, consent special order, assurance of voluntary compliance, other document, or decision, or the conditions of such permit become finally effective, if:

- (1) The treatment works result in the elimination or alleviation of water pollution to the extent required by such permit, special order, consent special order, assurance of voluntary compliance or other document, or decision and complies with any other terms thereof; and
- (2) Such person complies with the terms and conditions of such permit, special order, consent special order, assurance of voluntary compliance, other document, or decision within the time limit, if any, specified therein or as the same may be extended, and thereafter remains in compliance. (1951, c. 606; 1955, c. 1131, s. 2; 1967, c. 892, s. 1; 1973, c. 698, s. 3; c. 1262, s. 23; 1975, c. 19, s. 52; 1979, c. 889; 1987, c. 827, ss. 154, 160; 1989, c. 426, s. 3; c. 766, s. 1; 1995 (Reg. Sess., 1996), c. 626, s. 3.)

STAFF OPINION
WITHDRAWN

§ 143-215.3. General powers of Commission and Department; auxiliary powers.

(a) Additional Powers. - In addition to the specific powers prescribed elsewhere in this Article, and for the purpose of carrying out its duties, the Commission shall have the power:

(1) To make rules implementing Articles 21, 21A, 21B, or 38 of this Chapter.

(1a) To adopt fee schedules and collect fees for the following:

- a. Processing of applications for permits or registrations issued under Article 21, other than Parts 1 and 1A, Articles 21A, 21B, and 38 of this Chapter;
- b. Administering permits or registrations issued under Article 21, other than Parts 1 and 1A, Articles 21A, 21B, and 38 of this Chapter including monitoring compliance with the terms of those permits; and
- c. Reviewing, processing, and publicizing applications for construction grant awards under the Federal Water Pollution Control Act.

No fee may be charged under this provision, however, to a farmer who submits an application that pertains to his farming operations.

(1b) The fee to be charged pursuant to G.S. 143-215.3(a)(1a) for processing an application for a permit under G.S. 143-215.108 and G.S. 143-215.109 of Article 21B of this Chapter may not exceed five hundred dollars (\$500.00). The fee to be charged pursuant to G.S. 143-215.3(a)(1a) for processing a registration under Part 2A of this Article or Article 38 of this Chapter may not exceed fifty dollars (\$50.00) for any single registration. An additional fee of twenty percent (20%) of the registration processing fee may be assessed for a late registration under Article 38 of this Chapter. The fee for administering and compliance monitoring under Article 21, other than Parts 1 and 1A, and G.S. 143-215.108 and G.S. 143-215.109 of Article 21B shall be charged on an annual basis for each year of the permit term and may not exceed one thousand five hundred dollars (\$1,500) per year. Fees for processing all permits under Article 21A and all other sections of Article 21B shall not exceed one hundred dollars (\$100.00) for any single permit. The total payment for fees that are set by the Commission under this subsection for all permits for any single facility shall not exceed seven thousand five hundred dollars (\$7,500) per year, which amount shall include all application fees and fees for administration and compliance monitoring. A single facility is defined to be any contiguous area under one ownership and in which permitted activities occur. For all permits issued under these Articles where a fee schedule is not specified in the statutes, the Commission, or other commission specified by statute shall adopt a fee schedule in a rule following the procedures established by the Administrative Procedure Act. Fee schedules shall be established to reflect the size of the emission or discharge, the potential impact on the environment, the staff costs involved, relative costs of the issuance of new permits and the reissuance of existing permits, and shall include adequate safeguards to prevent unusual fee assessments which would result in serious economic burden on an individual applicant. A system shall be considered to allow consolidated annual payments for persons with multiple permits. In its rulemaking to establish fee schedules, the Commission is also directed to consider a method of rewarding facilities which achieve full compliance with administrative and self-monitoring reporting requirements, and to consider, in those cases where the cost of renewal or amendment of a permit is less than for the original permit, a lower fee for the renewal or amendment.

(1c) Moneys collected pursuant to G.S. 143-215.3(a)(1a) shall be used to:

- a. Eliminate, insofar as possible, backlogs of permit applications awaiting agency action;
- b. Improve the quality of permits issued;

- c. Improve the rate of compliance of permitted activities with environmental standards; and
 - d. Decrease the length of the processing period for permit applications.
- (1d) The Commission may adopt and implement a graduated fee schedule sufficient to cover all direct and indirect costs required for the State to develop and administer a permit program which meets the requirements of Title V. The provisions of subdivision (1b) of this subsection do not apply to the adoption of a fee schedule under this subdivision. In adopting and implementing a fee schedule, the Commission shall require that the owner or operator of all air contaminant sources subject to the requirement to obtain a permit under Title V to pay an annual fee, or the equivalent over some other period, sufficient to cover costs as provided in section 502(b)(3)(A) of Title V. The fee schedule shall be adopted according to the procedures set out in Chapter 150B of the General Statutes.
- a. The total amount of fees collected under the fee schedule adopted pursuant to this subdivision shall conform to the requirements of section 502(b)(3)(B) of Title V. No fee shall be collected for more than 4,000 tons per year of any individual regulated pollutant, as defined in section 502(b)(3)(B)(ii) of Title V, emitted by any source. Fees collected pursuant to this subdivision shall be credited to the Title V Account.
 - b. The Commission may reduce any permit fee required under this section to take into account the financial resources of small business stationary sources as defined under Title V and regulations promulgated by the United States Environmental Protection Agency.
 - c. When funds in the Title V Account exceed the total amount necessary to cover the cost of the Title V program for the next fiscal year, the Secretary shall reduce the amount billed for the next fiscal year so that the excess funds are used to supplement the cost of administering the Title V permit program in that fiscal year.
- (1e) The Commission shall collect the application, annual, and project fees for processing and administering permits, certificates of coverage under general permits, and certifications issued under Parts 1 and 1A of this Article and for compliance monitoring under Parts 1 and 1A of this Article as provided in G.S. 143-215.3D and G.S. 143-215.10G.
- (2) To direct that such investigation be conducted as it may reasonably deem necessary to carry out its duties as prescribed by this Article or Article 21A or Article 21B of this Chapter, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating the condition of any waters and the discharge therein of any sewage, industrial waste, or other waste or for the purpose of investigating the condition of the air, air pollution, air contaminant sources, emissions, or the installation and operation of any air-cleaning devices, and to require written statements or the filing of reports under oath, with respect to pertinent questions relating to the operation of any air-cleaning device, sewer system, disposal system, or treatment works. In the case of effluent or emission data, any records, reports, or information obtained under this Article or Article 21A or Article 21B of this Chapter shall be related to any applicable effluent or emission limitations or toxic, pretreatment, or new source performance standards. No person shall refuse entry or access to any authorized representative of the Commission or Department who requests entry for purposes of inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper or interfere with any such representative while in the process of carrying out his official duties.

- (3) To conduct public hearings and to delegate the power to conduct public hearings in accordance with the procedures prescribed by this Article or by Article 21B of this Chapter.
- (4) To delegate such of the powers of the Commission as the Commission deems necessary to one or more of its members, to the Secretary or any other qualified employee of the Department. The Commission shall not delegate to persons other than its own members and the designated employees of the Department the power to conduct hearings with respect to the classification of waters, the assignment of classifications, air quality standards, air contaminant source classifications, emission control standards, or the issuance of any special order except in the case of an emergency under subdivision (12) of this subsection for the abatement of existing water or air pollution. Any employee of the Department to whom a delegation of power is made to conduct a hearing shall report the hearing with its evidence and record to the Commission.
- (5) To institute such actions in the superior court of any county in which a violation of this Article, Article 21B of this Chapter, or the rules of the Commission has occurred, or, in the discretion of the Commission, in the superior court of the county in which any defendant resides, or has his or its principal place of business, as the Commission may deem necessary for the enforcement of any of the provisions of this Article, Article 21B of this Chapter, or of any official action of the Commission, including proceedings to enforce subpoenas or for the punishment of contempt of the Commission.
- (6) To agree upon or enter into any settlements or compromises of any actions and to prosecute any appeals or other proceedings.
- (7) To direct the investigation of any killing of fish and wildlife which, in the opinion of the Commission, is of sufficient magnitude to justify investigation and is known or believed to have resulted from the pollution of the waters or air as defined in this Article, and whenever any person, whether or not he shall have been issued a certificate of approval, permit or other document of approval authorized by this or any other State law, has negligently, or carelessly or unlawfully, or willfully and unlawfully, caused pollution of the waters or air as defined in this Article, in such quantity, concentration or manner that fish or wildlife are killed as the result thereof, the Commission, may recover, in the name of the State, damages from such person. The measure of damages shall be the amount determined by the Department and the North Carolina Wildlife Resources Commission, whichever has jurisdiction over the fish and wildlife destroyed to be the replacement cost thereof plus the cost of all reasonable and necessary investigations made or caused to be made by the State in connection therewith. Upon receipt of the estimate of damages caused, the Department shall notify the persons responsible for the destruction of the fish or wildlife in question and may effect such settlement as the Commission may deem proper and reasonable, and if no settlement is reached within a reasonable time, the Commission shall bring a civil action to recover such damages in the superior court in the county in which the discharge took place. Upon such action being brought the superior court shall have jurisdiction to hear and determine all issues or questions of law or fact, arising on the pleadings, including issues of liability and the amount of damages. On such hearing, the estimate of the replacement costs of the fish or wildlife destroyed shall be prima facie evidence of the actual replacement costs of such fish or wildlife. In arriving at such estimate, any reasonably accurate method may be used and it shall not be necessary for any agent of the Wildlife Resources Commission or the Department to collect, handle or weigh numerous specimens of dead fish or wildlife.

The State of North Carolina shall be deemed the owner of the fish or wildlife killed and all actions for recovery shall be brought by the Commission on behalf of the State as the owner of the fish or wildlife. The fact that the person or persons alleged to be responsible for the pollution which killed the fish or wildlife holds or has held a certificate of approval, permit or other document of approval authorized by this Article or any other law of the State shall not bar any such action. The proceeds of any recovery, less the cost of investigation, shall be used to replace, insofar as and as promptly as possible, the fish and wildlife killed, or in cases where replacement is not practicable, the proceeds shall be used in whatever manner the responsible agency deems proper for improving the fish and wildlife habitat in question. Any such funds received are hereby appropriated for these designated purposes. Nothing in this paragraph shall be construed in any way to limit or prevent any other action which is now authorized by this Article.

- (8) After issuance of an appropriate order, to withhold the granting of any permit or permits pursuant to G.S. 143-215.1 or G.S. 143-215.108 for the construction or operation of any new or additional disposal system or systems or air-cleaning device or devices in any area of the State. Such order may be issued only upon determination by the Commission, after public hearing, that the permitting of any new or additional source or sources of water or air pollution will result in a generalized condition of water or air pollution within the area contrary to the public interest, detrimental to the public health, safety, and welfare, and contrary to the policy and intent declared in this Article or Article 21B of this Chapter. The Commission may make reasonable distinctions among the various sources of water and air pollution and may direct that its order shall apply only to those sources which it determines will result in a generalized condition of water or air pollution.

The determination of the Commission shall be supported by detailed findings of fact and conclusions set forth in the order and based upon competent evidence of record. The order shall describe the geographical area of the State affected thereby with particularity and shall prohibit the issuance of permits pending a determination by the Commission that the generalized condition of water or air pollution has ceased.

Notice of hearing shall be given in accordance with the provisions of G.S. 150B-21.2.

A person aggrieved by an order of the Commission under this subdivision may seek judicial review of the order under Article 4 of Chapter 150B of the General Statutes without first commencing a contested case. An order may not be stayed while it is being reviewed.

- (9) If an investigation conducted pursuant to this Article or Article 21B of this Chapter reveals a violation of any rules, standards, or limitations adopted by the Commission pursuant to this Article or Article 21B of this Chapter, or a violation of any terms or conditions of any permit issued pursuant to G.S. 143-215.1 or 143-215.108, or special order or other document issued pursuant to G.S. 143-215.2 or G.S. 143-215.110, the Commission may assess the reasonable costs of any investigation, inspection or monitoring survey which revealed the violation against the person responsible therefor. If the violation resulted in an unauthorized discharge to the waters or atmosphere of the State, the Commission may also assess the person responsible for the violation for any actual and necessary costs incurred by the State in removing, correcting or abating any adverse effects upon the water or air resulting from the unauthorized discharge. If the person responsible for the violation refuses or fails within a reasonable time to pay any sums assessed, the Commission may institute a civil action in the superior court of the county in which the violation occurred or, in

the Commission's discretion, in the superior court of the county in which such person resides or has his or its principal place of business, to recover such sums.

- (10) To require a laboratory facility that performs any tests, analyses, measurements, or monitoring required under this Article or Article 21B of this Chapter to be certified annually by the Department, to establish standards that a laboratory facility and its employees must meet and maintain in order for the laboratory facility to be certified, and to charge a laboratory facility a fee for certification. Fees collected under this subdivision shall be credited to the Water and Air Account and used to administer this subdivision. These fees shall be applied to the cost of certifying commercial, industrial, and municipal laboratory facilities.
- (11) Repealed by Session Laws 1983, c. 296, s. 6.
- (12) To declare an emergency when it finds that a generalized condition of water or air pollution which is causing imminent danger to the health or safety of the public. Regardless of any other provisions of law, if the Department finds that such a condition of water or air pollution exists and that it creates an emergency requiring immediate action to protect the public health and safety or to protect fish and wildlife, the Secretary of the Department with the concurrence of the Governor, shall order persons causing or contributing to the water or air pollution in question to reduce or discontinue immediately the emission of air contaminants or the discharge of wastes. Immediately after the issuance of such order, the chairman of the Commission shall fix a place and time for a hearing before the Commission to be held within 24 hours after issuance of such order, and within 24 hours after the commencement of such hearing, and without adjournment thereof, the Commission shall either affirm, modify or set aside the order.

In the absence of a generalized condition of air or water pollution of the type referred to above, if the Secretary finds that the emissions from one or more air contaminant sources or the discharge of wastes from one or more sources of water pollution is causing imminent danger to human health and safety or to fish and wildlife, he may with the concurrence of the Governor order the person or persons responsible for the operation or operations in question to immediately reduce or discontinue the emissions of air contaminants or the discharge of wastes or to take such other measures as are, in his judgment, necessary, without regard to any other provisions of this Article or Article 21B of this Chapter. In such event, the requirements for hearing and affirmance, modification or setting aside of such orders set forth in the preceding paragraph of this subdivision shall apply.

- (13) Repealed by Session Laws 1983, c. 296, s. 6.
- (14) To certify and approve, by appropriate delegations and conditions in permits required by G.S. 143-215.1, requests by publicly owned treatment works to implement, administer and enforce a pretreatment program for the control of pollutants which pass through or interfere with treatment processes in such treatment works; and to require such programs to be developed where necessary to comply with the Federal Water Pollution Control Act and the Resource Conservation and Recovery Act, including the addition of conditions and compliance schedules in permits required by G.S. 143-215.1. Pretreatment programs submitted by publicly owned treatment works shall include, at a minimum, the adoption of pretreatment standards, a permit or equally effective system for the control of pollutants contributed to the treatment works, and the ability to effectively enforce compliance with the program.
- (15) To adopt rules for the prevention of pollution from underground tanks containing petroleum, petroleum products, or hazardous substances. Rules adopted under this section may incorporate standards and restrictions which exceed and are more

comprehensive than comparable federal regulations.

(16) To adopt rules limiting the manufacture, storage, sale, distribution or use of cleaning agents containing phosphorus pursuant to G.S. 143-214.4(e), and to adopt rules limiting the manufacture, storage, sale, distribution or use of cleaning agents containing nitrilotriacetic acid.

(17) To adopt rules to implement Part 2A of Article 21A of Chapter 143.

(b) **Research Functions.** - The Department shall have the power to conduct scientific experiments, research, and investigations to discover economical and practical corrective methods for air pollution and waste disposal problems. To this end, the Department may cooperate with any public or private agency or agencies in the conduct of such experiments, research, and investigations, and may, when funds permit, establish research studies in any North Carolina educational institution, with the consent of such institution. In addition, the Department shall have the power to cooperate and enter into contracts with technical divisions of State agencies, institutions and with municipalities, industries, and other persons in the execution of such surveys, studies, and research as it may deem necessary in fulfilling its functions under this Article or Article 21B of this Chapter. All State departments shall advise with and cooperate with the Department on matters of mutual interest.

(c) **Relation with the Federal Government.** - The Commission as official water and air pollution control agency for the State is delegated to act in local administration of all matters covered by any existing federal statutes and future legislation by Congress relating to water and air quality control. In order for the State of North Carolina to effectively participate in programs administered by federal agencies for the regulation and abatement of water and air pollution, the Department is authorized to accept and administer funds provided by federal agencies for water and air pollution programs and to enter into contracts with federal agencies regarding the use of such funds.

(d) **Relations with Other States.** - The Commission or the Department may, with the approval of the Governor, consult with qualified representatives of adjoining states relative to the establishment of regulations for the protection of waters and air of mutual interest, but the approval of the General Assembly shall be required to make any regulations binding.

(e) **Variances.** - Any person subject to the provisions of G.S. 143-215.1 or 143-215.108 may apply to the Commission for a variance from rules, standards, or limitations established pursuant to G.S. 143-214.1, 143-215, or 143-215.107. The Commission may grant such variance, for fixed or indefinite periods after public hearing on due notice, or where it is found that circumstances so require, for a period not to exceed 90 days without prior hearing and notice. Prior to granting a variance hereunder, the Commission shall find that:

(1) The discharge of waste or the emission of air contaminants occurring or proposed to occur do not endanger human health or safety; and

(2) Compliance with the rules, standards, or limitations from which variance is sought cannot be achieved by application of best available technology found to be economically reasonable at the time of application for such variances, and would produce serious hardship without equal or greater benefits to the public, provided that such variances shall be consistent with the provisions of the Federal Water Pollution Control Act as amended or the Clean Air Act as amended; and provided further, that any person who would otherwise be entitled to a variance or modification under the Federal Water Pollution Control Act as amended or the Clean Air Act as amended shall also be entitled to the same variance from or modification in rules, standards, or limitations established pursuant to G.S. 143-214.1, 143-215, and 143-215.107, respectively.

(f) **Notification of Completed Remedial Action.** - The definitions set out in G.S. 130A-310.31(b) apply to this subsection. Any person may submit a written request to the Department for a determination that groundwater has been remediated to meet the standards and classifications established under this Part. A request for a determination that groundwater has been remediated to meet the standards and

classifications established under this Part shall be accompanied by the fee required by G.S. 130A-310.39(a)(2). If the Department determines that groundwater has been remediated to established standards and classifications, the Department shall issue a written notification that no further remediation of the groundwater will be required. The notification shall state that no further remediation of the groundwater will be required unless the Department later determines, based on new information or information not previously provided to the Department, that the groundwater has not been remediated to established standards and classifications or that the Department was provided with false or incomplete information. Under any of those circumstances, the Department may withdraw the notification and require responsible parties to remediate the groundwater to established standards and classifications. (1951, c. 606; 1957, c. 1267, s. 3; 1959, c. 779, s. 8; 1963, c. 1086; 1967, c. 892, s. 1; 1969, c. 538; 1971, c. 1167, ss. 7, 8; 1973, c. 698, ss. 1-7, 9, 17; c. 712, s. 1; c. 1262, ss. 23, 86; c. 1331, s. 3; 1975, c. 583, ss. 5, 6; c. 655, s. 3; 1977, c. 771, s. 4; 1979, c. 633, ss. 6-8; 1979, 2nd Sess., c. 1158, ss. 1, 3, 4; 1983, c. 296, ss. 5-8; 1985, c. 551, s. 2; 1987, c. 111, s. 2; c. 767, s. 1; c. 827, ss. 1, 154, 161, 266; 1987 (Reg. Sess., 1988), c. 1035, s. 2; 1989, c. 500, s. 122; c. 652, s. 1; 1991, c. 552, ss. 2, 11; c. 712, s. 2; 1991 (Reg. Sess., 1992), c. 890, s. 16; c. 1039, ss. 14, 20.1; 1993, c. 344, s. 2; c. 400, ss. 1(c), 2, 3, 15; c. 496, s. 4; 1993 (Reg. Sess., 1994), c. 694, s. 1; 1995, c. 484, s. 5; 1997-357, s. 6; 1997-496, s. 4; 1998-212, s. 29A.11(b).)

STAFF OPINION
WITHDRAWN

Part 4. Environmental Management Commission.

§ 143B-282. Environmental Management Commission - creation; powers and duties.

(a) There is hereby created the Environmental Management Commission of the Department of Environment and Natural Resources with the power and duty to promulgate rules to be followed in the protection, preservation, and enhancement of the water and air resources of the State.

- (1) Within the limitations of G.S. 143-215.9 concerning industrial health and safety, the Environmental Management Commission shall have all of the following powers and duties:
- a. To grant a permit or temporary permit, to modify or revoke a permit, and to refuse to grant permits pursuant to G.S. 143-215.1 and G.S. 143-215.108 with regard to controlling sources of air and water pollution.
 - b. To issue a special order pursuant to G.S. 143-215.2(b) and G.S. 143-215.110 to any person whom the Commission finds responsible for causing or contributing to any pollution of water within such watershed or pollution of the air within the area for which standards have been established.
 - c. To conduct and direct that investigations be conducted pursuant to G.S. 143-215.3 and G.S. 143-215.108(c)(5).
 - d. To conduct public hearings, institute actions in superior court, and agree upon or enter into settlements, all pursuant to G.S. 143-215.3.
 - e. To direct the investigation of any killing of fish and wildlife pursuant to G.S. 143-215.3.
 - f. To consult with any person proposing to construct, install, or acquire an air or water pollution source pursuant to G.S. 143-215.3 and G.S. 143-215.111.
 - g. To encourage local government units to handle air pollution problems and to provide technical and consultative assistance pursuant to G.S. 143-215.3 and G.S. 143-215.112.
 - h. To review and have general oversight and supervision over local air pollution control programs pursuant to G.S. 143-215.3 and G.S. 143-215.112.
 - i. To declare an emergency when it finds a generalized dangerous condition of water or air pollution pursuant to G.S. 143-215.3.
 - j. To render advice and assistance to local government regarding floodways pursuant to G.S. 143-215.56.
 - k. To declare and delineate and modify capacity use areas pursuant to G.S. 143-215.13.
 - l. To grant permits for water use within capacity use areas pursuant to G.S. 143-215.15.
 - m. To direct that investigations be conducted when necessary to carry out duties regarding capacity use areas pursuant to G.S. 143-215.19.
 - n. To approve, disapprove and approve subject to conditions all applications for dam construction pursuant to G.S. 143-215.28; to require construction progress reports pursuant to G.S. 143-215.29.
 - o. To halt dam construction pursuant to G.S. 143-215.29.
 - p. To grant final approval of dam construction work pursuant to G.S. 143-215.30.
 - q. To have jurisdiction and supervision over the maintenance and operation of dams pursuant to G.S. 143-215.31.
 - r. To direct the inspection of dams pursuant to G.S. 143-215.32.
 - s. To modify or revoke any final action previously taken by the Commission pursuant to G.S. 143-214.1 and G.S. 143-215.107.
 - t. To have jurisdiction and supervision over oil pollution and dry-cleaning solvent use, contamination, and remediation pursuant to Article 21A of

- Chapter 143 of the General Statutes.
- u. To administer the State's authority under 33 U.S.C. § 1341 of the federal Clean Water Act.
 - v. To approve Coastal Habitat Protection Plans as provided in G.S. 143B-279.8.
- (2) **The Environmental Management Commission shall adopt rules:**
- a. For air quality standards, emission control standards and classifications for air contaminant sources pursuant to G.S. 143-215.107.
 - b. For water quality standards and classifications pursuant to G.S. 143-214.1 and G.S. 143-215.
 - c. To implement water and air quality reporting pursuant to Part 7 of Article 21 of Chapter 143 of the General Statutes.
 - d. To be applied in capacity use areas pursuant to G.S. 143-215.14.
 - e. To implement the issuance of permits for water use within capacity use areas pursuant to G.S. 143-215.15 and G.S. 143-215.16.
 - f. Repealed by Session Laws 1983, c. 222, s. 3.
 - g. For the protection of the land and the waters over which this State has jurisdiction from pollution by oil, oil products and oil by-products pursuant to Article 21A of Chapter 143.
 - h. Governing underground tanks used for the storage of oil or hazardous substances pursuant to Articles 21, 21A, or 21B of Chapter 143 of the General Statutes, including inspection and testing of these tanks and certification of persons who inspect and test tanks.**
 - i. To implement the provisions of Part 2A of Article 21 of Chapter 143 of the General Statutes.
 - j. To implement the provisions of Part 6 of Article 21A of Chapter 143 of the General Statutes.
 - k. To implement basinwide water quality management plans developed pursuant to G.S. 143-215.8B.
 - l. 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.
- (3) The Commission is authorized to make such rules, not inconsistent with the laws of this State, as may be required by the federal government for grants-in-aid for water and air resources purposes which may be made available to the State by the federal government. This section is to be liberally construed in order that the State and its citizens may benefit from such grants-in-aid.
- (4) The Commission shall make rules consistent with the provisions of this Chapter. All rules adopted by the Commission shall be enforced by the Department of Environment and Natural Resources.
- (5) The Environmental Management Commission shall have the power to adopt rules with respect to any State laws administered under its jurisdiction so as to accept evidence of compliance with corresponding federal law or regulation in lieu of a State permit, or otherwise modify a requirement for a State permit, upon findings by the Commission, and after public hearings, that there are:
- a. Similar and corresponding or more restrictive federal laws or regulations which also require an applicant to obtain a federal permit based upon the same general standards or more restrictive standards as the State laws and rules require; and
 - b. That the enforcement of the State laws and rules would require the applicant to also obtain a State permit in addition to the required federal permit; and

- c. That the enforcement of the State laws and rules would be a duplication of effort on the part of the applicant; and
- d. Such duplication of State and federal permit requirements would result in an unreasonable burden not only on the applicant, but also on the citizens and resources of the State.

(6) The Commission may establish a procedure for evaluating renewable energy technologies that are, or are proposed to be, employed as part of a renewable energy facility, as defined in G.S. 62-133.8; establish standards to ensure that renewable energy technologies do not harm the environment, natural resources, cultural resources, or public health, safety, or welfare of the State; and, to the extent that there is not an environmental regulatory program, establish an environmental regulatory program to implement these protective standards.

(b) The Environmental Management Commission shall submit quarterly written reports as to its operation, activities, programs, and progress to the Environmental Review Commission. The Environmental Management Commission shall supplement the written reports required by this subsection with additional written and oral reports as may be requested by the Environmental Review Commission. The Environmental Management Commission shall submit the written reports required by this subsection whether or not the General Assembly is in session at the time the report is due.

(c) The Environmental Management Commission shall implement the provisions of subsections (d) and (e) of 33 U.S.C. § 1313 by identifying and prioritizing impaired waters and by developing appropriate total maximum daily loads of pollutants for those impaired waters. The Commission shall incorporate those total maximum daily loads approved by the United States Environmental Protection Agency into its continuing basinwide water quality planning process.

(d) The Environmental Management Commission may adopt rules setting out strategies necessary for assuring that water quality standards are met by any point or nonpoint source or by any category of point or nonpoint sources that is determined by the Commission to be contributing to the water quality impairment. These strategies may include, but are not limited to, additional monitoring, effluent limitations, supplemental standards or classifications, best management practices, protective buffers, schedules of compliance, and the establishment of and delegations to intergovernmental basinwide groups.

(e) In appointing the members of the Commission, the appointing authorities shall make every effort to ensure fair geographic representation of the Commission. (1973, c. 1262, s. 19; 1975, c. 512; 1977, c. 771, s. 4; 1983, c. 222, s. 3; 1985, c. 551, s. 1; 1989, c. 652, s. 2; c. 727, s. 218(128); 1989 (Reg. Sess., 1990), c. 1036, s. 1; 1991 (Reg. Sess., 1992), c. 990, s. 1; 1993, c. 348, s. 3; 1996, 2nd Ex. Sess., c. 18, s. 27.4(b); 1997-392, s. 2(a), (b); 1997-400, s. 3.2; 1997-443, s. 11A.119(a); 1997-458, ss. 8.4, 8.5; 1997-496, s. 16; 1998-212, s. 14.9H(f); 1999-328, s. 4.13; 2001-424, s. 19.13(a); 2002-165, s. 1.9; 2007-397, s. 2(c); 2012-143, s. 2(h).)

SECTION .0400 - RISK-BASED ASSESSMENT AND CORRECTIVE ACTION FOR PETROLEUM UNDERGROUND STORAGE TANKS

15A NCAC 02L .0401 PURPOSE AND SCOPE

(a) The purpose of this Section is to establish procedures for risk-based assessment and corrective action sufficient to:

- (1) protect human health and the environment;
- (2) abate and control contamination of the waters of the State as deemed necessary to protect human health and the environment;
- (3) permit management of the State's groundwaters to protect their designated current usage and potential future uses;
- (4) provide for anticipated future uses of the State's groundwater;
- (5) recognize the diversity of contaminants, the State's geology and the characteristics of each individual site; and
- (6) accomplish these goals in a cost-efficient manner to assure the best use of the limited resources available to address groundwater pollution within the State.

(b) The applicable portions of Section .0100 not specifically excluded apply to this Section.

History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.94A; 143-215.94E; 143-215.94T; 143-215.94V; 143B-282; 1995 (Reg. Sess. 1996) c. 648, s. 1; Recodified from 15A NCAC 02L .0115(a); Amended Eff. December 1, 2005.

15A NCAC 02L .0402 DEFINITIONS

The definitions as set out in 15A NCAC 02L .0102 apply to this Section.

History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.94A; 143-215.94E; 143-215.94T; 143-215.94V; 143B-282; 1995 (Reg. Sess. 1996) c. 648, s. 1; Eff. December 1, 2005.

15A NCAC 02L .0403 RULE APPLICATION

This Section applies to any discharge or release from a "commercial underground storage tank" or a "noncommercial underground storage tank," as those terms are defined in G.S. 143-215.94A, which is reported on or after the effective date of this Section. This Section shall apply to any discharge or release from a "commercial underground storage tank" or a "noncommercial underground storage tank," as those terms are defined in G.S. 143-215.94A which is reported before the effective date of this Section as provided in 15A NCAC 02L .0416 of this Section. The requirements of this Section shall apply to the owner and operator of the underground storage tank from which the discharge or release occurred, a landowner seeking reimbursement from the Commercial Leaking Underground Storage Tank Fund or the Noncommercial Leaking Underground Storage Tank Fund under G.S. 143-215.94E, and any other person responsible for the assessment or cleanup of a discharge or release from an underground storage tank, including any person who has conducted or controlled an activity which results in the discharge or release of petroleum or petroleum products as defined in G.S. 143-215.94A(10) to the groundwaters of the State, or in proximity thereto; these persons shall be collectively referred to for purposes of this Section as the "responsible party." This Section shall be applied in a manner consistent with the rules found in 15A NCAC 2N in order to assure that the State's requirements regarding assessment and cleanup from underground storage tanks are no less stringent than Federal requirements.

History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.94A; 143-215.94E; 143-215.94T; 143-215.94V; 143B-282; 1995 (Reg. Sess. 1996) c. 648, s. 1; Recodified from 15A NCAC 02L .0115(b); Amended Eff. December 1, 2005.

15A NCAC 02L .0404 REQUIRED INITIAL ABATEMENT ACTIONS BY RESPONSIBLE PARTY

A responsible party shall:

- (1) take immediate action to prevent any further discharge or release of petroleum from the underground storage tank; identify and mitigate any fire, explosion or vapor hazard; remove any

- free product; and comply with the requirements of Rules .0601 through .0604 and .0701 through .0703 and .0705 of Subchapter 02N;
- (2) incorporate the requirements of 15A NCAC 02N .0704 into the submittal required under Item (3) of this Paragraph or the limited site assessment report required under 15A NCAC 02L .0405 of this Section, whichever is applicable. Such submittals shall constitute compliance with the reporting requirements of 15A NCAC 02N .0704(b);
 - (3) submit within 90 days of the discovery of the discharge or release a soil contamination report containing information sufficient to show that remaining unsaturated soil in the side walls and at the base of the excavation does not contain contaminant levels which exceed either the "soil-to-groundwater" or the residential maximum soil contaminant concentrations established by the Department pursuant to 15A NCAC 02L .0411 of this Section, whichever is lower. If such showing is made, the discharge or release shall be classified as low risk by the Department;

History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.94A; 143-215.94E; 143-215.94T; 143-215.94V; 143B-282; 1995 (Reg. Sess. 1996) c. 648, s. 1; Recodified from 15A NCAC 02L .0115(c)(1)-(3); Amended Eff. December 1, 2005.

15A NCAC 02L .0405 REQUIREMENTS FOR LIMITED SITE ASSESSMENT

If the required showing cannot be made under 15A NCAC 02L .0404 of this Section, submit within 120 days of the discovery of the discharge or release, or within such other greater time limit approved by the Department, a report containing information needed by the Department to classify the level of risk to human health and the environment posed by a discharge or release under 15A NCAC 02L .0406 of this Section. Such report shall include, at a minimum:

- (1) a location map, based on a USGS topographic map, showing the radius of 1500 feet from the source area of a confirmed release or discharge and depicting all water supply wells and, surface waters and designated wellhead protection areas as defined in 42 U.S.C. 300h-7(e) within the 1500-foot radius. For purposes of this Section, source area means point of release or discharge from the underground storage tank system;
- (2) a determination of whether the source area of the discharge or release is within a designated wellhead protection area as defined in 42 U.S.C. 300h-7(e);
- (3) if the discharge or release is in the Coastal Plain physiographic region as designated on a map entitled "Geology of North Carolina" published by the Department in 1985, a determination of whether the source area of the discharge or release is located in an area in which there is recharge to an unconfined or semi-confined deeper aquifer which is being used or may be used as a source of drinking water;
- (4) a determination of whether vapors from the discharge or release pose a threat of explosion due to the accumulation of vapors in a confined space or pose any other serious threat to public health, public safety or the environment;
- (5) scaled site map(s) showing the location of the following which are on or adjacent to the property where the source is located: site boundaries, roads, buildings, basements, floor and storm drains, subsurface utilities, septic tanks and leach fields, underground storage tank systems, monitoring wells, borings and the sampling points;
- (6) the results from a limited site assessment which shall include:
 - (a) the analytical results from soil samples collected during the construction of a monitoring well installed in the source area of each confirmed discharge or release from a noncommercial or commercial underground storage tank and either the analytical results of a groundwater sample collected from the well or, if free product is present in the well, the amount of free product in the well. The soil samples shall be collected every five feet in the unsaturated zone unless a water table is encountered at or greater than a depth of 25 feet from land surface in which case soil samples shall be collected every 10 feet in the unsaturated zone. The soil samples shall be collected from suspected worst-case locations exhibiting visible contamination or elevated levels of volatile organic compounds in the borehole;
 - (b) if any constituent in the groundwater sample from the source area monitoring well installed in accordance with Sub-item (a) of this Item, for a site meeting the high risk classification in 15A NCAC 02L .0406(1), exceeds the standards or interim standards

established in 15A NCAC 02L .0202 by a factor of 10 and is a discharge or release from a commercial underground storage tank, the analytical results from a groundwater sample collected from each of three additional monitoring wells or, if free product is present in any of the wells, the amount of free product in such well. The three additional monitoring wells shall be installed as follows: as best as can be determined, one upgradient of the source of contamination and two downgradient of the source of contamination. The monitoring wells installed upgradient and downgradient of the source of contamination must be located such that groundwater flow direction can be determined; and

- (c) potentiometric data from all required wells;
- (7) the availability of public water supplies and the identification of properties served by the public water supplies within 1500 feet of the source area of a confirmed discharge or release;
- (8) the land use, including zoning if applicable, within 1500 feet of the source area of a confirmed discharge or release;
- (9) a discussion of site specific conditions or possible actions which could result in lowering the risk classification assigned to the release. Such discussion shall be based on information known or required to be obtained under this Paragraph; and
- (10) names and current addresses of all owners and operators of the underground storage tank systems for which a discharge or release is confirmed, the owner(s) of the land upon which such systems are located, and all potentially affected real property owners. When considering a request from a responsible party for additional time to submit the report, the Division shall consider the extent to which the request for additional time is due to factors outside of the control of the responsible party, the previous history of the person submitting the report in complying with deadlines established under the Commission's rules, the technical complications associated with assessing the extent of contamination at the site or identifying potential receptors, and the necessity for immediate action to eliminate an imminent threat to public health or the environment.

History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.94A; 143-215.94E; 143-215.94T; 143-215.94V; 143B-282; 1995 (Reg. Sess. 1996) c. 648, s. 1; Recodified from 15A NCAC 02L .0115(c)(4); Amended Eff. December 1, 2005.

15A NCAC 02L .0406 DISCHARGE OR RELEASE CLASSIFICATIONS

The Department shall classify the risk of each known discharge or release as high, intermediate or low risk unless the discharge or release has been classified under 15A NCAC 02L .0404(3) of this Section. For purposes of this Section:

- (1) "High risk" means that:
 - (a) a water supply well, including one used for non-drinking purposes, has been contaminated by the release or discharge;
 - (b) a water supply well used for drinking water is located within 1000 feet of the source area of a confirmed discharge or release;
 - (c) a water supply well not used for drinking water is located within 250 feet of the source area of a confirmed discharge or release;
 - (d) the groundwater within 500 feet of the source area of a confirmed discharge or release has the potential for future use in that there is no source of water supply other than the groundwater;
 - (e) the vapors from the discharge or release pose a serious threat of explosion due to accumulation of the vapors in a confined space; or
 - (f) the discharge or release poses an imminent danger to public health, public safety, or the environment.
- (2) "Intermediate risk" means that:
 - (a) surface water is located within 500 feet of the source area of a confirmed discharge or release and the maximum groundwater contaminant concentration exceeds the applicable surface water quality standards and criteria found in 15A NCAC 02B .0200 by a factor of 10;
 - (b) in the Coastal Plain physiographic region as designated on a map entitled "Geology of North Carolina" published by the Department in 1985, the source area of a confirmed discharge or release is located in an area in which there is recharge to an unconfined or

- semi-confined deeper aquifer which the Department determines is being used or may be used as a source of drinking water;
- (c) the source area of a confirmed discharge or release is within a designated wellhead protection area, as defined in 42 U.S.C. 300h-7(e);
 - (d) the levels of groundwater contamination for any contaminant except ethylene dibromide, benzene and alkane and aromatic carbon fraction classes exceed 50 percent of the solubility of the contaminant at 25 degrees Celsius or 1,000 times the groundwater standard or interim standard established in 15A NCAC 02L .0202, whichever is lower; or
 - (e) the levels of groundwater contamination for ethylene dibromide and benzene exceed 1,000 times the federal drinking water standard set out in 40 CFR 141.
- (3) "Low risk" means that:
- (a) the risk posed does not fall within the high or intermediate risk categories; or
 - (b) based on review of site-specific information, limited assessment or interim corrective actions, the Department determines that the discharge or release poses no significant risk to human health or the environment.

If the criteria for more than one risk category applies, the discharge or release shall be classified at the highest risk level identified in 15A NCAC 02L .0407 of this Section.

History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.94A; 143-215.94E; 143-215.94T; 143-215.94V; 143B-282; 1995 (Reg. Sess. 1996) c. 648, s. 1; Recodified from 15A NCAC 02L .0115(d); Amended Eff. December 1, 2005.

15A NCAC 02L .0407 RECLASSIFICATION OF RISK LEVELS

(a) The Department may reclassify the risk posed by a release if warranted by further information concerning the potential exposure of receptors to the discharge or release or upon receipt of new information concerning changed conditions at the site. After initial classification of the discharge or release, the Department may require limited assessment, interim corrective action, or other actions which the Department believes will result in a lower risk classification. It shall be a continuing obligation of each responsible party to notify the Department of any changes that might affect the level of risk assigned to a discharge or release by the Department if the change is known or should be known by the responsible party. Such changes shall include, but shall not be limited to, changes in zoning of real property, use of real property or the use of groundwater that has been contaminated or is expected to be contaminated by the discharge or release, if such change could cause the Department to reclassify the risk.

(b) If the risk posed by a discharge or release is determined by the Department to be high risk, the responsible party shall comply with the assessment and cleanup requirements of Rule .0106(c), (g) and (h) of this Subchapter and 15A NCAC 02N .0706 and .0707. The goal of any required corrective action for groundwater contamination shall be restoration to the level of the groundwater standards set forth in 15A NCAC 02L .0202, or as closely thereto as is economically and technologically feasible. In any corrective action plan submitted pursuant to this Paragraph, natural attenuation shall be used to the maximum extent possible. If the responsible party demonstrates that natural attenuation prevents the further migration of the plume, the Department may approve a groundwater monitoring plan.

(c) If the risk posed by a discharge or release is determined by the Department to be an intermediate risk, the responsible party shall comply with the assessment requirements of 15A NCAC 02L .0106(c) and (g) and 15A NCAC 02N .0706. As part of the comprehensive site assessment, the responsible party shall evaluate, based on site specific conditions, whether the release poses a significant risk to human health or the environment. If the Department determines, based on the site-specific conditions, that the discharge or release does not pose a significant threat to human health or the environment, the site shall be reclassified as a low risk site. If the site is not reclassified, the responsible party shall, at the direction of the Department, submit a groundwater monitoring plan or a corrective action plan, or a combination thereof, meeting the cleanup standards of this Paragraph and containing the information required in 15A NCAC 02L .0106(h) and 15A NCAC 02N .0707. Discharges or releases which are classified as intermediate risk shall be remediated, at a minimum, to a cleanup level of 50 percent of the solubility of the contaminant at 25 degrees Celsius or 1,000 times the groundwater standard or interim standard established in 15A NCAC 02L .0202, whichever is lower for any groundwater contaminant except ethylene dibromide, benzene and alkane and aromatic carbon fraction classes. Ethylene dibromide and benzene shall be remediated to a cleanup level of 1,000 times the federal drinking water standard set out in 40 CFR 141. Additionally, if a corrective action plan or groundwater monitoring plan is required under this Paragraph, the responsible party shall demonstrate that the groundwater cleanup levels are sufficient to prevent a violation of:

- (1) the rules contained in 15A NCAC 02B;
- (2) the standards contained in 15A NCAC 02L .0202 in a deep aquifer as described in 15A NCAC 02L .0406(2)(b) of this Section; and
- (3) the standards contained in 15A NCAC 02L .0202 at a location no closer than one year time of travel upgradient of a well within a designated wellhead protection area, based on travel time and the natural attenuation capacity of the subsurface materials or on a physical barrier to groundwater migration that exists or will be installed by the person making the request.

In any corrective action plan submitted pursuant to this Paragraph, natural attenuation shall be used to the maximum extent possible.

(d) If the risk posed by a discharge or release is determined by the Department to be a low risk, the Department shall notify the responsible party that no cleanup, no further cleanup or no further action will be required by the Department unless the Department later determines that the discharge or release poses an unacceptable risk or a potentially unacceptable risk to human health or the environment. No notification will be issued pursuant to this Paragraph, however, until the responsible party has completed soil remediation pursuant to 15A NCAC 02L .0408 of this Section except as provided in 15A NCAC 02L .0416 of this Section or as closely thereto as economically or technologically feasible. The issuance by the Department of a notification under this Paragraph shall not affect any private right of action by any party which may be affected by the contamination.

History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.94A; 143-215.94E; 143-215.94T; 143-215.94V; 143B-282; 1995 (Reg. Sess. 1996) c. 648, s. 1; Recodified from 15A NCAC 02L .0115(e)-(h); Amended Eff. December 1, 2005.

15A NCAC 02L .0408 ASSESSMENT AND REMEDIATION PROCEDURES

Assessment and remediation of soil contamination shall be addressed as follows:

- (1) At the time that the Department determines the risk posed by the discharge or release, the Department shall also determine, based on site-specific information, whether the site is "residential" or "industrial/commercial." For purposes of this Section, a site is presumed residential, but may be classified as industrial/commercial if the Department determines based on site-specific information that exposure to the soil contamination is limited in time due to the use of the site and does not involve exposure to children. For purposes of this Paragraph, "site" means both the property upon which the discharge or release has occurred and any property upon which soil has been affected by the discharge or release.
- (2) The responsible party shall submit a report to the Department assessing the vertical and horizontal extent of soil contamination.
- (3) For a discharge or release classified by the Department as low risk, the responsible party shall submit a report demonstrating that soil contamination has been remediated to either the residential or industrial/commercial maximum soil contaminant concentration established by the Department pursuant to 15A NCAC 02L .0411 of this Section, whichever is applicable.
- (4) For a discharge or release classified by the Department as high or intermediate risk, the responsible party shall submit a report demonstrating that soil contamination has been remediated to the lower of:
 - (a) the residential or industrial/commercial maximum soil contaminant concentration, whichever is applicable, that has been established by the Department pursuant to 15A NCAC 02L .0411 of this Section; or
 - (b) the "soil-to-groundwater" maximum soil contaminant concentration that has been established by the Department pursuant to 15A NCAC 02L .0411 of this Section.

History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.94A; 143-215.94E; 143-215.94T; 143-215.94V; 143B-282; 1995 (Reg. Sess. 1996) c. 648, s. 1; Recodified from 15A NCAC 02L .0115(i); Amended Eff. December 1, 2005.

15A NCAC 02L .0409 NOTIFICATION REQUIREMENTS

(a) A responsible party who submits a corrective action plan which proposes natural attenuation or to cleanup groundwater contamination to a standard other than a standard or interim standard established in 15A NCAC 02L

.0202, or to cleanup soil other than to the standard for residential use or soil-to-groundwater contaminant concentration established pursuant to this Section, whichever is lowest, shall give notice to: the local Health Director and the chief administrative officer of each political jurisdiction in which the contamination occurs; all property owners and occupants within or contiguous to the area containing the contamination; and all property owners and occupants within or contiguous to the area where the contamination is expected to migrate. Such notice shall describe the nature of the plan and the reasons supporting it. Notification shall be made by certified mail concurrent with the submittal of the corrective action plan. Approval of the corrective action plan by the Department shall be postponed for a period of 30 days following receipt of the request so that the Department may consider comments submitted. The responsible party shall, within a time frame determined by the Department to be sufficient, provide the Department with a copy of the notice and proof of receipt of each required notice, or of refusal by the addressee to accept delivery of a required notice. If notice by certified mail to occupants under this Paragraph is impractical, the responsible party may give notice by posting such notice prominently in a manner designed to give actual notice to the occupants. If notice is made to occupants by posting, the responsible party shall provide the Department with a copy of the posted notice and a description of the manner in which such posted notice was given.

(b) A responsible party who receives a notice pursuant to 15A NCAC 02L .0407(d) of this Section for a discharge or release which has not been remediated to the groundwater standards or interim standards established in Rule .0202 of this Subchapter or to the lower of the residential or soil-to-groundwater contaminant concentrations established under 15A NCAC 02L .0411 of this Section, shall, within 30 days of the receipt of such notice, provide a copy of the notice to: the local Health Director and the chief administrative officer of each political jurisdiction in which the contamination occurs; all property owners and occupants within or contiguous to the area containing contamination; and all property owners and occupants within or contiguous to the area where the contamination is expected to migrate. Notification shall be made by certified mail. The responsible party shall, within a time frame determined by the Department, provide the Department with proof of receipt of the copy of the notice, or of refusal by the addressee to accept delivery of the copy of the notice. If notice by certified mail to occupants under this Paragraph is impractical, the responsible party may give notice by posting a copy of the notice prominently in a manner designed to give actual notice to the occupants. If notice is made to occupants by posting, the responsible party shall provide the Department with a description of the manner in which such posted notice was given.

History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.94A; 143-215.94E; 143-215.94T; 143-215.94V; 143B-282; 1995 (Reg. Sess. 1996) c. 648, s. 1; Recodified from 15A NCAC 02L .0115(j) and (k); Amended Eff. December 1, 2005.

15A NCAC 02L .0410 DEPARTMENTAL LISTING OF DISCHARGES OR RELEASES

To the extent feasible, the Department shall maintain in each of the Department's regional offices a list of all petroleum underground storage tank discharges or releases discovered and reported to the Department within the region on or after the effective date of this Section and all petroleum underground storage tank discharges or releases for which notification was issued under 15A NCAC 02L .0407(d) of this Section by the Department on or after the effective date of this Section.

History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.94A; 143-215.94E; 143-215.94T; 143-215.94V; 143B-282; 1995 (Reg. Sess. 1996) c. 648, s. 1; Recodified from 15A NCAC 02L .0115(l); Amended Eff. December 1, 2005.

15A NCAC 02L .0411 ESTABLISHING MAXIMUM SOIL CONTAMINATION CONCENTRATIONS

The Department shall publish, and annually revise, maximum soil contaminant concentrations to be used as soil cleanup levels for contamination from petroleum underground storage tank systems. The Department shall establish maximum soil contaminant concentrations for residential, industrial/commercial and soil-to-groundwater exposures as follows:

- (1) The following equations and references shall be used in establishing residential maximum soil contaminant concentrations. Equation 1 shall be used for each contaminant with an EPA carcinogenic classification of A, B1, B2, C, D or E. Equation 2 shall be used for each contaminant with an EPA carcinogenic classification of A, B1, B2 or C. The maximum soil contaminant concentration shall be the lower of the concentrations derived from Equations 1 and 2.
 - (a) Equation 1: Non-cancer Risk-based Residential Ingestion Concentration

Soil mg/kg = $[0.2 \times \text{oral chronic reference dose} \times \text{body weight, age 1 to 6} \times \text{averaging time noncarcinogens}] / [\text{exposure frequency} \times \text{exposure duration, age 1 to 6} \times (\text{soil ingestion rate, age 1 to 6} / 10^6 \text{ mg/kg})]$.

- (b) Equation 2: Cancer Risk-based Residential Ingestion Concentration
Soil mg/kg = $[\text{target cancer risk of } 10^{-6} \times \text{averaging time carcinogens}] / [\text{exposure frequency} \times (\text{soil ingestion factor, age adjusted} / 10^6 \text{ mg/kg}) \times \text{oral cancer slope factor}]$. The age adjusted soil ingestion factor shall be calculated by: $[(\text{exposure duration, age 1 to 6} \times \text{soil ingestion rate, age 1 to 6}) / (\text{body weight, age 1 to 6})] + [((\text{exposure duration, total - exposure duration, age 1 to 6}) \times \text{soil ingestion, adult}) / (\text{body weight, adult})]$.
- (c) The exposure factors selected in calculating the residential maximum soil contaminant concentrations shall be within the recommended ranges specified in the following references or the most recent version of these references:
- (i) EPA, 1990. Exposure Factors Handbook;
 - (ii) EPA, 1991. Risk Assessment Guidance for Superfund: Volume I Human Health Evaluation Manual (Part B, Development of Risk Based Preliminary Remediation Goals);
 - (iii) EPA Region III. Risk-based Concentration Tables (RBC Tables). Office of RCRA, Technical and Program Support Branch. Available at: <http://www.epa.gov/reg3hwmd/index.html>; and
 - (iv) EPA, 1995. Supplemental Guidance to RAGS: Region 4 Bulletins Human Health Risk Assessment, including future amendments.
- (d) The following references or the most recent version of these references, in order of preference, shall be used to obtain oral chronic reference doses and oral cancer slope factors:
- (i) EPA. Integrated Risk Information System (IRIS) Computer Database;
 - (ii) EPA. Health Effects Assessment Summary Tables (HEAST);
 - (iii) EPA Region III. Risk-based Concentration Tables (RBC Tables). Office of RCRA, Technical and Program Support Branch. Available at: <http://www.epa.gov/reg3hwmd/index.html>;
 - (iv) EPA, 1995. Supplemental Guidance to RAGS: Region 4 Bulletins Human Health Risk Assessment, including future amendments; and
 - (v) Other appropriate, published health risk assessment data, and scientifically valid peer-reviewed published toxicological data.
- (2) The following equations and references shall be used in establishing industrial/commercial maximum soil contaminant concentrations. Equation 1 shall be used for each contaminant with an EPA carcinogenic classification of A, B1, B2, C, D or E. Equation 2 shall be used for each contaminant with an EPA carcinogenic classification of A, B1, B2 or C. The maximum soil contaminant concentration shall be the lower of the concentrations derived from Equations 1 and 2.
- (a) Equation 1: Non-cancer Risk-based Industrial/Commercial Ingestion Concentration
Soil mg/kg = $[0.2 \times \text{oral chronic reference dose} \times \text{body weight, adult} \times \text{averaging time noncarcinogens}] / [\text{exposure frequency} \times \text{exposure duration, adult} \times (\text{soil ingestion rate, adult} / 10^6 \text{ mg/kg}) \times \text{fraction of contaminated soil ingested}]$.
- (b) Equation 2: Cancer Risk-based Industrial/Commercial Ingestion Concentration
Soil mg/kg = $[\text{target cancer risk of } 10^{-6} \times \text{body weight, adult} \times \text{averaging time carcinogens}] / [\text{exposure frequency} \times \text{exposure duration, adult} \times (\text{soil ingestion rate, adult} / 10^6 \text{ mg/kg}) \times \text{fraction of contaminated soil ingested} \times \text{oral cancer slope factor}]$.
- (c) The exposure factors selected in calculating the industrial/commercial maximum soil contaminant concentrations shall be within the recommended ranges specified in the following references or the most recent version of these references:
- (i) EPA, 1990. Exposure Factors Handbook;
 - (ii) EPA, 1991. Risk Assessment Guidance for Superfund: Volume I Human Health Evaluation Manual (Part B, Development of Risk Based Preliminary Remediation Goals);
 - (iii) EPA Region III. Risk-based Concentration Tables (RBC Tables). Office of RCRA, Technical and Program Support Branch. Available at: <http://www.epa.gov/reg3hwmd/index.html>; and

- (iv) EPA, 1995. Supplemental Guidance to RAGS: Region 4 Bulletins Human Health Risk Assessment, including future amendments.
- (d) The following references or the most recent version of these references, in order of preference, shall be used to obtain oral chronic reference doses and oral cancer slope factors:
 - (i) EPA. Integrated Risk Information System (IRIS) Computer Database;
 - (ii) EPA. Health Effects Assessment Summary Tables (HEAST);
 - (iii) EPA Region III. Risk-based Concentration Tables (RBC Tables). Office of RCRA, Technical and Program Support Branch. Available at <http://www.epa.gov/reg3hwmd/index.html>;
 - (iv) EPA, 1995. Supplemental Guidance to RAGS: Region 4 Bulletins Human Health Risk Assessment, including future amendments; and
 - (v) Other appropriate, published health risk assessment data, and scientifically valid peer-reviewed published toxicological data.
- (3) The following equations and references shall be used in establishing the soil-to-groundwater maximum contaminant concentrations:
 - (a) Organic Constituents:

Soil mg/kg = groundwater standard or interim standard x [(0.2 x soil organic carbon-water partition coefficient) + 4 + (1.733 x 41 x Henry's Law Constant (atm.-m³/mole))].

 - (i) If no groundwater standard or interim standard has been established under Rule .0202 of this Subchapter, the practical quantitation limit shall be used in lieu of a standard to calculate the soil-to-groundwater maximum contaminant concentrations.
 - (ii) The following references or the most recent version of these references, in order of preference, shall be used to obtain soil organic carbon-water partition coefficients and Henry's Law Constants:
 - (A) EPA, 1996. Soil Screening Guidance: Technical Background Document. (EPA/540/R95/128);
 - (B) EPA, 1986. Superfund Public Health Evaluation Manual. Office of Emergency and Remedial Response (EPA/540/1-86/060);
 - (C) Agency for Toxic Substances and Disease Registry, "Toxicological Profile for [individual chemical]." U.S. Public Health Service;
 - (D) Montgomery, J.H., 1996. Groundwater Chemicals Desk Reference. CRC Press, Inc;
 - (E) Sims, R.C., J.L. Sims and S.G. Hansen, 1991. Soil Transport and Fate Database, Version 2.0. EPA Robert S. Kerr Environmental Laboratory; and
 - (F) Other appropriate, published, peer-reviewed and scientifically valid data.
 - (b) Inorganic Constituents:

Soil mg/kg = groundwater standard or interim standard x [(20 x soil-water partition coefficient for pH of 5.5) + 4 + (1.733 x 41 x Henry's Law Constant (atm.-m³/mole))].

 - (i) If no groundwater standard or interim standard has been established under Rule .0202 of this Subchapter, the practical quantitation limit shall be used in lieu of a standard to calculate the soil-to-groundwater maximum contaminant concentrations.
 - (ii) The following references or the most recent version of these references, in order of preference, shall be used to obtain soil-water partition coefficients and Henry's Law Constants:
 - (A) EPA, 1996. Soil Screening Guidance: Technical Background Document. (EPA/540/R95/128);
 - (B) Baes, C.F., III, R.D. Sharp, A.L. Sjoreen, and R.W. Shor, 1984. A Review and Analysis of Parameters for Assessing Transport of Environmentally Released Radionuclides Through Agriculture. Oak Ridge National Laboratory;

- (C) Agency for Toxic Substances and Disease Registry, "Toxicological Profile for [individual chemical]." U.S. Public Health Service;
- (D) Sims, R.C., J.L. Sims and S.G. Hansen, 1991. Soil Transport and Fate Database, Version 2.0. EPA Robert S. Kerr Environmental Laboratory; and
- (E) Other appropriate, published, peer-reviewed and scientifically valid data.

History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.94A; 143-215.94E; 143-215.94T; 143-215.94V; 143B-282; 1995 (Reg. Sess. 1996) c. 648, s. 1; Recodified from 15A NCAC 02L .0115(m); Amended Eff. December 1, 2005.

15A NCAC 02L .0412 ANALYTICAL PROCEDURES FOR SOIL SAMPLES

(a) Analytical procedures for soil samples required under this Section, except as provided in 15A NCAC 02L .0417 of this Section, shall be methods accepted by the US EPA as suitable for determining the presence and concentration of petroleum hydrocarbons for the type of petroleum released.

(b) A sufficient number of soil samples collected, including the most contaminated sample, shall be analyzed as follows in order to determine the risks of the constituents of contamination:

- (1) soil samples collected from a discharge or release of low boiling point fuels, including, but not limited to gasoline, aviation gasoline and gasohol, shall be analyzed for volatile organic compounds and additives using EPA Method 8260, including isopropyl ether and methyl tertiary butyl ether;
- (2) soil samples collected from a discharge or release of high boiling point fuels, including, but not limited to, kerosene, diesel, varsol, mineral spirits, naphtha, jet fuels and fuel oil no. 2, shall be analyzed for volatile organic compounds using EPA Method 8260 and semivolatile organic compounds using EPA Method 8270;
- (3) soil samples collected from a discharge or release of heavy fuels shall be analyzed for semivolatile organic compounds using EPA Method 8270;
- (4) soil samples collected from a discharge or release of used and waste oil shall be analyzed for volatile organic compounds using EPA Method 8260, semivolatile organic compounds using EPA Method 8270, polychlorinated biphenyls using EPA Method 8080, and chromium and lead, using procedures specified in Subparagraph (6) of this Paragraph;
- (5) soil samples collected from any discharge or release subject to this Section shall be analyzed for alkane and aromatic carbon fraction classes using methods approved by the Director under Rule 2H .0805(a)(1) of this Chapter;
- (6) analytical methods specified in Subparagraphs (1), (2), (3), and (4) of this Paragraph shall be performed as specified in the following references or the most recent version of these references: Test Methods for Evaluating Solid Wastes:Physical/Chemical Methods, November 1990, U.S. Environmental Protection Agency publication number SW-846; or in accordance with other methods or procedures approved by the Director under 15A NCAC 2H.0805(a)(1);
- (7) other EPA-approved analytical methods may be used if the methods include the same constituents as the analytical methods specified in Subparagraphs (1), (2), (3), and (4) of this Paragraph and meet the detection limits of the analytical methods specified in Subparagraphs (1), (2), (3), and (4) of this Paragraph; and
- (8) metals and acid extractable organic compounds shall be eliminated from analyses of soil samples collected pursuant to this Section if these compounds are not detected in soil samples collected during the construction of the source area monitoring well required under 15A NCAC 02L .0405 of this Section.

History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.94A; 143-215.94E; 143-215.94T; 143-215.94V; 143B-282; 1995 (Reg. Sess. 1996) c. 648, s. 1; Recodified from 15A NCAC 02L .0115(n); Amended Eff. December 1, 2005.

15A NCAC 02L .0413 ANALYTICAL PROCEDURES FOR GROUNDWATER SAMPLES

(a) Analytical procedures for groundwater samples required under this Section shall be methods accepted by the US EPA as suitable for determining the presence and concentration of petroleum hydrocarbons for the type of petroleum released.

(b) A sufficient number of groundwater samples, including the most contaminated sample, shall be analyzed as follows in order to determine the risks of the constituents of contamination:

- (1) groundwater samples collected from a discharge or release of low boiling point fuels, including, but not limited to, gasoline, aviation gasoline and gasohol, shall be analyzed for volatile organic compounds using Standard Method 6210D or EPA Methods 601 and 602, including xylenes, isopropyl ether and methyl tertiary butyl ether. Samples shall also be analyzed for ethylene dibromide using EPA Method 504.1 and lead using Standard Method 3030C preparation. 3030C metals preparation, using a 0.45 micron filter, must be completed within 72 hours of sample collection;
- (2) groundwater samples collected from a discharge or release of high boiling point fuels, including, but not limited to, kerosene, diesel, varsol, mineral spirits, naphtha, jet fuels and fuel oil no. 2, shall be analyzed for volatile organic compounds using EPA Method 602 and semivolatile organic compounds plus the 10 largest non-target peaks identified using EPA Method 625;
- (3) groundwater samples collected from a discharge or release of heavy fuels shall be analyzed for semivolatile organic compounds plus the 10 largest non-target peaks identified using EPA Method 625;
- (4) groundwater samples collected from a discharge or release of used or waste oil shall be analyzed for volatile organic compounds using Standard Method 6210D, semivolatile organic compounds plus the 10 largest non-target peaks identified using EPA Method 625, and chromium and lead using Standard Method 3030C preparation. 3030C metals preparation, using a 0.45 micron filter, must be completed within 72 hours of sample collection;
- (5) groundwater samples collected from any discharge or release subject to this Section shall be analyzed for alkane and aromatic carbon fraction classes using methods approved by the Director under Rule 2H .0805(a)(1) of this Chapter;
- (6) analytical methods specified in Subparagraphs (1), (2), (3) and (4) of this Paragraph shall be performed as specified in the following references or the most recent version of these references: Test Procedures for the Analysis of Pollutants under the Clean Water Act, Federal Register Vol. 49 No. 209, 40 CFR Part 136, October 26, 1984; Standard Methods for the Examination of Water and Wastewater, published jointly by American Public Health Association, American Water Works Association and Water Pollution Control Federation; Methods for Determination of Organic Compounds in Drinking Water, U.S. Environmental Protection Agency publication number EPA-600/4-79-020; or in accordance with other methods or procedures approved by the Director under 15A NCAC 2H .0805(a)(1);
- (7) other EPA-approved analytical methods may be used if the methods include the same constituents as the analytical methods specified in Subparagraphs (1), (2), (3), and (4) of this Paragraph and meet the detection limits of the analytical methods specified in Subparagraphs (1), (2), (3), and (4) of this Paragraph; and
- (8) metals and acid extractable organic compounds shall be eliminated from analyses of groundwater samples collected pursuant to this Section if these compounds are not detected in the groundwater sample collected from the source area monitoring well installed pursuant to 15A NCAC 02L .0405 of this Section.

History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.94A; 143-215.94E; 143-215.94T; 143-215.94V; 143B-282; 1995 (Reg. Sess. 1996) c. 648, s. 1;
Recodified from 15A NCAC 02L .0115(o);
Amended Eff. December 1, 2005.

15A NCAC 02L .0414 REQUIRED LABORATORY CERTIFICATION

In accordance with 15A NCAC 02H .0804, laboratories are required to obtain North Carolina Division of Water Quality laboratory certification for parameters that are required to be reported to the State in compliance with the State's surface water, groundwater and pretreatment rules.

History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.94A; 143-215.94E; 143-215.94T; 143-215.94V; 143B-282; 1995 (Reg. Sess. 1996) c. 648, s. 1; Recodified from 15A NCAC 02L .0115(p); Amended Eff. December 1, 2005.

15A NCAC 02L .0415 DISCHARGES OR RELEASES FROM OTHER SOURCES

This Section shall not relieve any person responsible for assessment or cleanup of contamination from a source other than a commercial or noncommercial underground storage tank from its obligation to assess and clean up contamination resulting from such discharge or releases.

History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.94A; 143-215.94E; 143-215.94T; 143-215.94V; 143B-282; 1995 (Reg. Sess. 1996) c. 648, s. 1; Recodified from 15A NCAC 02L .0115(q); Amended Eff. December 1, 2005.

15A NCAC 02L .0416 ELIGIBILITY OF SITES TO CONTINUE REMEDIATION UNDER RULES EXISTING BEFORE THE EFFECTIVE DATE OF 15A NCAC 02L .0115

If the risk posed by the discharge or release has been classified by the Department as Class AB under S.L. 1995-648, s. 1 (Reg. Sess., 1996), the discharge or release is classified as high risk under this Section unless and until the Department reclassifies the risk posed by the discharge or release. If the risk posed by the discharge or release has been classified by the Department as Class CDE under S.L. 1995-648, s. 1 (Reg. Sess., 1996), the discharge or release is classified as low risk under this Section unless and until the Department reclassifies the risk posed by the discharge or release. The responsible party shall notify the Department of any factors that might affect the level of risk assigned to Class AB or Class CDE discharges or releases by the Department. Responsible parties for Class AB discharges or releases for which a site assessment pursuant to Rule .0106 (c) and (g) of this Subchapter has been submitted to the Department before the effective date of this Section, shall continue to comply with notices previously received from the Department unless and until the Department determines that application of all or part of this Section is necessary to protect human health or the environment or may result in a more cost effective assessment and cleanup of the discharge or release. If a site assessment pursuant to Rule .0106 (c) and (g) of this Subchapter has not been submitted to the Department for a Class AB or Class CDE discharge or release before the effective date of this Section, the responsible party shall comply with 15A NCAC 02L .0404 of this Section unless the Department has issued a closure notice for the discharge or release. For discharges or releases classified as low risk under this Paragraph and for which a site assessment pursuant to Rule .0106 (c) and (g) of this Subchapter has been submitted to the Department prior to the effective date of this Section, the Department may issue a notification under 15A NCAC 02L .0407(d) of this Section if the responsible party demonstrates that soil contamination does not exceed contamination cleanup levels established (March 1997) in 15A NCAC 02L .0417 of this Section.

History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.94A; 143-215.94E; 143-215.94T; 143-215.94V; 143B-282; 1995 (Reg. Sess. 1996) c. 648, s. 1; Recodified from 15A NCAC 02L .0115(r); Amended Eff. December 1, 2005.

15A NCAC 02L .0417 ESTABLISHING CLEANUP REQUIREMENTS FOR SITES ELIGIBLE TO CONTINUE REMEDIATION UNDER RULES EXISTING BEFORE THE EFFECTIVE DATE OF 15A NCAC 02L .0115

The Department may issue a notification under 15A NCAC 02L .0407(d) of this Section for a discharge or release classified as low risk under 15A NCAC 02L .0416 of this Section if a site assessment pursuant to Rule .0106(c) and (g) of this Subchapter was submitted to the Department prior to the effective date of this Section and the responsible party demonstrates that soil contamination from the discharge or release has been remediated to the final cleanup levels established under this Paragraph. If it has not already done so, a responsible party must submit all information necessary for the Department to establish a cleanup level under this Paragraph, including, but not limited to, the completed forms contained in Tables 1 and 2.

The following requirements are used to establish cleanup levels for sites eligible to continue remediation under the rules existing prior to the effective date of this Section.

- (1) In establishing a cleanup level, the Department shall determine whether any of the following conditions apply to the discharge or release:

- (a) groundwater is contaminated by the discharge or release;
 - (b) contaminated soil in the unsaturated zone is located less than five feet from the seasonal high water table, bedrock or transmissive indurated sedimentary units. Transmissive indurated sedimentary units shall include, but shall not be limited to shell limestone, fractured shale and sandstone; or
 - (c) vapors pose a serious threat of explosion or other public health concern due to the accumulation of the vapors in a confined space.
- (2) If any of the conditions specified in Item (1) of this Paragraph apply to the discharge or release, the final cleanup level for the discharge or release shall be:
- (a) 10 mg/kg total petroleum hydrocarbons for discharges or releases of low boiling point fuels, including, but not limited to, gasoline, aviation gasoline, and gasohol;
 - (b) 40 mg/kg total petroleum hydrocarbons for discharges or releases of medium and high boiling point fuels, including, but not limited to, kerosene, diesel, varsol, mineral spirits, naphtha, jet fuels and fuel oil no. 2; and
 - (c) 250 mg/kg total petroleum hydrocarbons for discharges or releases of waste oil and heavy fuels, including, but not limited to fuel oil nos. 4, 5 and 6, motor oil and hydraulic fluid.
- (3) If the conditions specified in Item (1) of this Paragraph do not apply to the discharge or releases, the Department shall determine a final cleanup level in the following manner:
- (a) the total site characteristics score shall be determined from Table 1 by recording and adding the five characteristic scores;
 - (b) the total site characteristics score shall be used to determine each applicable initial cleanup level on Table 2;
 - (c) using Table 3, the applicable Site Code shall be determined; and
 - (d) the final contamination cleanup level for the discharge or release shall be determined by multiplying each applicable initial cleanup level determined in Sub-item (b) of this Item by 1 for Code A sites, 2 for Code B sites and 3 for Code C sites.
- (4) Any soil samples obtained to determine cleanup levels pursuant to this Paragraph shall be analyzed as follows:
- (a) soil samples collected from a discharge or release of low boiling point fuels including, but not limited to, gasoline, aviation gasoline and gasohol, shall be analyzed using EPA Method modified 8015 (California Method) with EPA Method 5030 preparation;
 - (b) soil samples collected from a discharge or release of medium or high boiling point fuels including, but not limited to, kerosene, diesel, varsol, mineral spirits, naphtha, jet fuels and fuel oil no. 2, shall be analyzed using EPA Method modified 8015 (California Method) with EPA Method 3550 preparation; and
 - (c) soil samples collected from a discharge or release of waste oil and heavy fuels, including, but not limited to fuel oil nos. 4, 5 and 6, motor oil and hydraulic fluid, shall be analyzed using EPA Method 9071 or another equivalent EPA-approved method that meets the same detection limits.
- (5) Analytical methods for any soil samples obtained to determine cleanup levels pursuant to this Paragraph shall be performed as specified in the following references or the most recent version of these references: Test Methods for Evaluating Solid Wastes: Physical/Chemical Methods, November 1990, U.S. Environmental Protection Agency Publication number SW-846 and Guidelines for Addressing Fuel Leaks, D.M. Eisenberg and others, 1985, California Regional Water Quality Control Board, San Francisco Bay Region.

Table 1

SITE CHARACTERISTICS EVALUATION			
Characteristic	Condition	Rating	Score
1) Predominant grain size as classified in accordance with the Unified Soil Classification System or the U.S. Department of Agriculture Soil Classification System	Gravel	150	
	Sand	100	
	Silt	50	
	Clay	0	

2) Are preferential pathways for contaminant movement such as quartz veins, coarse-grained sediments, fractures and weathered igneous intrusions present in or below the contaminated soil?	Present and intersecting seasonal high water table	10
	Present but not intersecting seasonal high water table	5
	None Present	0
3) Distance between the contaminated/non-contaminated soil interference and the seasonal high water table	5-10 feet	20
	>10-40 feet	10
	>40 feet	0
4) Is the top of bedrock or transmissive indurated sediments located above seasonal high water table?	Yes	20
	No	0
5) Are artificial conduits present within the zone of contamination?	Present and intersecting seasonal high water table	150
	Present but not intersecting seasonal high water table	10
	Not Present	0
Total Site Characteristics Score		

Table 2

CLEANUP LEVEL DETERMINATION

Initial Cleanup Level

Final Cleanup Level

EPA Method 8015/5030 for Low Boiling Point Hydrocarbons such as Gasoline, Aviation Fuels, Gasohol

Total Site Characteristics Score	Initial Cleanup Level (mg/kg)	TPH	Select Site Code*	Final Cleanup Level
>150	<10		Code A	
121 - 150	20		(Multiply initial cleanup level by 1)	1 x ____ = ____mg/kg
91 - 120	40			
61 - 90	60			
31 - 60	80		Code B	
0 - 30	100		(Multiply initial cleanup level by 2)	2 x ____ = ____mg/kg
			Code C	
			(Multiply initial cleanup level by 3)	3 x ____ = ____mg/kg

EPA Method 8015/3550 for Medium and High Boiling Point Hydrocarbons
such as Kerosene, Diesel, Varsol, Mineral Spirits, Naptha

Total Site Characteristics Score	Initial Cleanup Level (mg/kg)	TPH	Select Site Code*	Final Cleanup Level
>150	<40		Code A (Multiply initial cleanup level by 1)	1 x ____ = ____mg/kg
121 - 150	80		Code B (Multiply initial cleanup level by 2)	2 x ____ = ____mg/kg
91 - 120	160		Code C (Multiply initial cleanup level by 3)	3 x ____ = ____mg/kg
61 - 90	240			
31 - 60	320			
0 - 30	400			

EPA Method 9071 for Heavy Fuels
such as Fuel Oil (#4,#5,#6), Motor Oil, Hydraulic Fluid, Waste Oil

Total Site Characteristics Score	Initial Cleanup Level (mg/kg)	TPH	Select Site Code*	Final Cleanup Level
>150	<250		Code A (Multiply initial cleanup level by 1)	1 x ____ = ____mg/kg
121 - 150	400		Code B (Multiply initial cleanup level by 2)	2 x ____ = ____mg/kg
91 - 120	550		Code C (Multiply initial cleanup level by 3)	3 x ____ = ____mg/kg
61 - 90	700			
31 - 60	850			
0 - 30	1000			

See Site Code Description, Table 3

TPH – Total Petroleum Hydrocarbons
mg/kg – milligram per kilogram

Table 3

SITE CODE DESCRIPTIONS

Code-A Site meets both of the following criteria:

1. Water supply well(s) are within 1500 feet of the release.
2. Public water supply is not available for connecting water supply well users.

Code-B Site meets both of the following criteria:

1. Water supply well(s) are within 1500 feet of the release.

2. Public water supply is available for connecting water supply well users, however, water supply wells are still being used.

Code-C Site meets the following criterion:

1. No known water supply well(s) are within 1500 feet of the release.

History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.94A; 143-215.94E; 143-215.94T; 143-215.94V; 143B-282; 1995 (Reg. Sess. 1996) c. 648, s. 1;
Recodified from 15A NCAC 02L .0115(s);
Amended Eff. December 1, 2005.

STAFF OPINION
WITHDRAWN

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02L .0501

DEADLINE FOR RECEIPT: Thursday, December 10, 2015

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 3, a new section title must be provided by the agency for codification

Lines 6 thru 8 appear to be redundant. Are both lines necessary?

Line 12, add a comma after "geology"

Line 19, delete the term "Adopted" and add a period after "2016"

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: Tuesday, November 24, 2015

1 15A NCAC 02L .0501 is adopted as published in 30:03 NCR 284-291 as follows:
2

3 **15A NCAC 02L .0501 PURPOSE AND SCOPE**

4 (a) The purpose of this Section is to establish procedures for risk-based assessment and corrective action sufficient
5 to:

6 (1) protect human health and the environment;

7 (2) abate and control contamination of the waters of the State as deemed necessary to protect human
8 health and the environment;

9 (3) permit management of the State's groundwaters to protect their designated current usage and
10 potential future uses;

11 (4) provide for anticipated future uses of the State's groundwater;

12 (5) recognize the diversity of contaminants, the State's geology and the characteristics of each individual
13 site; and

14 (6) accomplish these goals in a cost-efficient manner to assure the best use of the limited resources
15 available to address groundwater pollution within the State.

16 (b) The applicable portions of Section .0100 not specifically excluded apply to this Section.
17

18 *History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143B-282.*

19 *Adopted Eff. January 2, 2016*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02L .0502

DEADLINE FOR RECEIPT: Thursday, December 10, 2015

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, clarify if these definitions are "in addition" to the definitions set forth in Rule .0102 by replacing the term "except that" with "and in addition"

Line 10, delete "but is not limited to,"

Line 13, add a comma after "knowing"

Line 21, add the term "petroleum products" to the term being defined, as it is used in other rules

Line 21, replace "is" with "means as"

Line 22, delete the "or" after "escaping"

Line 22, add a comma after "leaching"

Line 23, delete "or" after "surface water"

Line 23, add a comma after "surface"

Line 24, replace "is" with "means"

Line 28, delete the term "Adopted" and add a period after "2016"

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: Tuesday, November 24, 2015

1 15A NCAC 02L .0502 is adopted as published in 30:03 NCR 284-291 as follows:

2
3 **15A NCAC 02L .0502 DEFINITIONS**

4 The definitions as set out in Rule .0102 of this Subchapter apply to this Section, except that the following definitions
5 apply throughout this Section:

6 (1) "Aboveground storage tank" or "AST" means any one or a combination of tanks (including
7 underground pipes connected thereto) that is used to contain an accumulation of petroleum.

8 (2) "AST system" means an aboveground storage tank, connected underground piping, underground
9 ancillary equipment, and containment system, if any".

10 (3) "Discharge" means, but is not limited to, any emission, spillage, leakage, pumping, pouring,
11 emptying, or dumping of oil into groundwater or surface water or upon land in such proximity to
12 such water that it is likely to reach the water and any discharge upon land which is intentional,
13 knowing or willful.

14 (4) "Operator" means any person in control of, or having responsibility for the daily operation of the
15 AST system.

16 (5) "Owner" means any person who owns a petroleum aboveground storage tank or other non-UST
17 petroleum tank, stationary or mobile, used for storage, use, dispensing, or transport.

18 (6) "Person" means an individual, trust, firm, joint stock company, Federal agency, corporation, state,
19 municipality, commission, political subdivision of a state, or any interstate body. "Person" also
20 includes a consortium, a joint venture, a commercial entity, and the United States Government.

21 (7) "Petroleum" is defined in G.S. 143-215.94A(10).

22 (8) "Release" means any spilling, leaking, emitting, discharging, escaping, or leaching or disposing into
23 groundwater, surface water, or surface or subsurface soils.

24 (9) "Tank" is a device used to contain an accumulation of petroleum and constructed of non-earthen
25 materials (e.g., concrete, steel, plastic) that provides structural support.

26
27 *History Note: Authority G.S. 143-212(4); 143-215.2; 143-215.3(a)(1); 143-215.77; 143B-282.*
28 *Adopted Eff. January 2, 2016*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02L .0503

DEADLINE FOR RECEIPT: Thursday, December 10, 2015

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 4, 5, and 7, the term "non-UST" is undefined. Replace with the defined term "AST"

Lines 6, 7, and 8, are both terms "discharge" and "release" necessary? The terms are defined. Can one term be used in this Rule?

Line 7, replace the comma after "source" with a period.

Line 7, replace "including" with "This includes"

Line 8, replace "which" with "that"

Line 9, replace the semicolon after "thereto" with a period and capitalize the term "these"

Line 10, move the clause "as the responsible party" before "for purposes"

Line 13, delete the term "Adopted" and add a period after "2016"

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: Tuesday, November 24, 2015

1 15A NCAC 02L .0503 is adopted as published in 30:03 NCR 284-291 as follows:

2

3 **15A NCAC 02L .0503 RULE APPLICATION**

4 This Section applies to any non-UST petroleum discharge. The requirements of this Section shall apply to the owner
5 and operator of a petroleum aboveground storage tank or other non-UST petroleum tank, stationary or mobile, from
6 which a discharge or release occurred and any person determined to be responsible for assessment and cleanup of a
7 discharge or release from a non-UST petroleum source, including any person who has conducted or controlled an
8 activity which results in the discharge or release of petroleum or petroleum products (as defined in G.S. 143-
9 215.94A(10)) to the groundwaters of the State, or in proximity thereto; these persons shall be collectively referred to
10 for purposes of this Section as the "responsible party".

11

12 *History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143B-282.*

13 *Adopted Eff. January 2, 2016*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02L .0504

DEADLINE FOR RECEIPT: Thursday, December 10, 2015

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, page 2, lines 1 and 10, are both terms "discharge" and "release" necessary? The terms are defined. Can one term be used in this Rule?

Line 6, the term "non-UST" is undefined. Replace with the defined term "AST"

Line 7, add a comma after "explosion"

Line 8, clarify the starting point for the "within 24 hours." Is it discovery?

Line 12, flip the terms "vapor" and "explosion" to be consistent with Line 7

Line 13, clarify where the report is being submitted or to whose attention

Line 15, replace "which" with "that"

Line 16, add the clause "no further action is necessary" before "if initial"

Line 17, replace "can" with "may"

Line 17, replace the semicolon after "discovery" with a comma

Line 18, replace the semicolon after "groundwater" with a comma

Line 19, are the acronyms "TPH" and "MSCCS" known terms? Are they defined in another rule that should be cross-referenced?

Line 20, replace the semicolon after "lowest)" with a period

Line 20, delete the clause "no further action is necessary"

Abigail M. Hammond
Commission Counsel

Date submitted to agency: Tuesday, November 24, 2015

Lines 22 thru 24, consider the following re-write to clarify the process:

If the abatement actions cannot be initiated within 48 hours of discovery or if soil concentrations remain above the Total Petroleum Hydrocarbon action level, the responsible party shall conduct activities in the subsequent items of this Rule;

Line 27, delete the clause "but not necessarily limited to"

Lines 28, 34, 35, and 36, begin the clauses with lowercase letters

Line 28, delete "but not limited to"

Page 2, line 1, clarify where the report is being submitted or to whose attention

Page 2, line 13, delete the term "Adopted" and add a period after "2016"

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: Tuesday, November 24, 2015

1 15A NCAC 02L .0504 is adopted with changes as published in 30:03 NCR 284-291 as follows:

2
3 **15A NCAC 02L .0504 REQUIRED INITIAL REPOSE AND ABATEMENT ACTIONS BY**
4 **RESPONSIBLE PARTY**

5 A responsible party shall:

- 6 (1) take actions to prevent any further discharge or release of petroleum from the non-UST petroleum
7 source; identify and mitigate any fire, explosion or vapor hazard; and report the release within 24
8 hours, in compliance with G.S. 143-215.83(a), 84(a), and 85(b);
- 9 (2) perform initial abatement actions to measure for the presence of a release where contamination is
10 most likely to be present and to confirm the precise source of the release; to investigate to determine
11 the possible presence of free product and to begin free product removal; and to continue to monitor
12 and mitigate any additional fire, vapor, or explosion hazards posed by vapors or by free product;
13 and submit a report within 20 days after release confirmation summarizing these initial abatement
14 actions;
- 15 (3) remove contaminated soil which would act as continuing source of contamination to groundwater.
16 For a new release, if initial abatement actions involving control and removal of contaminated
17 materials can be initiated within 48 hours from discovery; before contaminated materials have the
18 opportunity to impact groundwater; and if remaining soils contain contaminants with levels less
19 than the TPH action level or less than either the soil-to-groundwater or residential MSCCS
20 (whichever is lowest); no further action is necessary. ~~If the abatement actions cannot be initiated~~
21 ~~within 48 hours of discovery and petroleum contaminated soil concentrations less than TPH action~~
22 ~~level cannot be achieved, conduct activities in the subsequent items of this Rule.~~ If the abatement
23 actions cannot be initiated within 48 hours of discovery conduct activities in the subsequent items
24 of this Rule. If soil concentrations remain above the Total Petroleum Hydrocarbon action level
25 conduct activities in the subsequent items of this Rule.
- 26 (4) conduct initial site assessment, assembling information about the site and the nature of the release,
27 including but not necessarily limited to the following:
- 28 (a) Site history and site characterization, including but not limited to, data on nature and
29 estimated quantity of release and data from available sources and site investigations
30 concerning surrounding populations, water quality, use, and approximate locations of
31 wells, surface water bodies, and subsurface structures potentially effected by the release,
32 subsurface soil conditions, locations of subsurface utilities, climatological conditions, and
33 landuse;
- 34 (b) Results of free product investigations and free product removal, if applicable;
- 35 (c) Results of groundwater and surface water investigations, if applicable;
- 36 (d) Summary of initial response and abatement actions; and submit this information in the
37 report required under Item (5) of this Rule.

1 (5) submit within 90 days of the discovery of the discharge or release an initial assessment and
2 abatement report containing the site characterization information required in Item (4) of this Rule;
3 soil assessment information sufficient to show that remaining unsaturated soil in the side walls and
4 at the base of the excavation does not contain contaminant levels which exceed either the "soil-to-
5 groundwater" or the residential maximum soil contaminant concentrations established by the
6 Department pursuant to Rule .0511 of this Section, whichever is lower; and documentation to show
7 that neither bedrock nor groundwater was encountered in the excavation (or if groundwater was
8 encountered, that contaminant concentrations in groundwater were equal to or less than the
9 groundwater quality standards established in Rule .0202 of this Subchapter). If such showing is
10 made, the discharge or release shall be classified as low risk by the Department.

11
12 *History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143B-282.*

13 *Adopted Eff. January 2, 2016*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02L .0505

DEADLINE FOR RECEIPT: Thursday, December 10, 2015

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, clarify who is submitting the information and to who it is being submitted to for review. Is the submitter the responsible party? Is the reviewer the Division or the Department?

Lines 5, 7, 9, 11, 14, 16, 18, 21, page 2, lines 7, 9, and 14, are both terms "discharge" and "release" necessary? The terms are defined. Can one term be used in this Rule?

Line 5, clarify how the "greater time limit" is requested

Line 7, delete the comma after "include"

Line 7, replace "at a minimum" with "the following"

Line 9, add a comma after "waters"

Lines 11 and 12, place the term "source area" in quotation marks to clarify that it is being defined

Line 11, the term "non-UST" is undefined. Replace with the defined term "AST"

Line 12, add a comma after "petroleum source" and delete the comma after "or"

Line 12, replace "is defined as" with "means"

Line 14 thru 15, place the term "wellhead protection area" in quotation marks to clarify that it is being defined

Line 15, incorporate 42 USC 300h-7 in accordance with [G.S. 150B-21.6](#)

Abigail M. Hammond
Commission Counsel

Date submitted to agency: Tuesday, November 24, 2015

Line 18, is “recharge” a known term? Is there a definition that could be cross-referenced?

Lines 19, 24, 29, 37, and page 2, line 10, replace “which” with “that”

Line 22, replace the comma after “space” with a semicolon

Line 22, replace the comma after “exposure” with a semicolon

Line 23, add a comma after “safety”

Lines 25 through 28, consider providing the items in a drop-down lettered list to clarify. Commas should be replaced with semicolons in the list format

Lines 30 and 32, begin the clauses with lowercase letters

Line 31, replace the period with a semicolon

Line 32, begin this Sub-item with the following clause:

Unless a greater or lesser number of monitoring wells is specified for a particular site by the Department,

Line 32, explain how the Department reaches a conclusion of a greater or lesser number, such as does a request have to be filed by the responsible party?

Line 32, delete “as many”

Line 32, specify the rule being cross-referenced in 15A NCAC 02C

Line 33, delete the clause “as needed”

Line 36, delete all text after “wells” and replace the comma with a period

Line 37, capitalize “during”

Line 37, add “the responsible party shall” before “collect”

Line 37, delete the comma after “samples”

Line 37, delete “should”

Page 2, line 10, replace “could” with “may”

Page 2, line 12, clarify what is meant by “Paragraph” The information contained within this Rule is set forth as Items.

Page 2, line 17, is the reference to “Division” correct? Other references are to the “Department”

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Tuesday, November 24, 2015

Page 2, line 18, consider adding “the following” after “shall consider” and providing the remainder of the information in a drop-down lettered list to clarify. Commas should be replaced with semicolons in the list format

Page 2, line 25, delete the term “Adopted” and add a period after “2016”

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: Tuesday, November 24, 2015

1 15A NCAC 02L .0505 is adopted as published in 30:03 NCR 284-291 as follows:

2
3 **15A NCAC 02L .0505 REQUIREMENTS FOR LIMITED SITE ASSESSMENT**

4 If the required showing cannot be made under Rule .0504 of this Section, submit within 120 days of the discovery of
5 the discharge or release, or within such other greater time limit approved by the Department, a report containing
6 information needed by the Department to classify the level of risk to human health and the environment posed by a
7 discharge or release under Rule .0506 of this Section. Such report shall include, at a minimum:

- 8 (1) a location map, based on a USGS topographic map, showing the radius of 1500 feet from the source
9 area of a confirmed release or discharge and depicting all water supply wells, surface waters and
10 designated wellhead protection areas as defined in 42 U.S.C. 300h-7(e) within the 1500-foot radius.
11 For purposes of this Section, source area means point of release or discharge from the non-UST
12 petroleum source or, if the point of release cannot be determined precisely, source area is defined
13 as the area of highest contaminant concentrations;
- 14 (2) a determination of whether the source area of the discharge or release is within a designated wellhead
15 protection area as defined in 42 U.S.C. 300h-7(e);
- 16 (3) if the discharge or release is in the Coastal Plain physiographic region as designated on a map
17 entitled "Geology of North Carolina" published by the Department in 1985, a determination of
18 whether the source area of the discharge or release is located in an area in which there is recharge
19 to an unconfined or semi-confined deeper aquifer which is being used or may be used as a source
20 of drinking water;
- 21 (4) a determination of whether vapors from the discharge or release pose a threat of explosion due to
22 the accumulation of vapors in a confined space, pose a risk to public health from exposure, or pose
23 any other serious threat to public health, public safety or the environment;
- 24 (5) scaled site map(s) showing the location of the following which are on or adjacent to the property
25 where the source is located: site boundaries, roads, buildings, basements, floor and storm drains,
26 subsurface utilities, septic tanks and leach fields, underground and aboveground storage tank
27 systems, monitoring wells, water supply wells, surface water bodies and other drainage features,
28 borings and the sampling points;
- 29 (6) the results from a limited site assessment which shall include the following actions:
- 30 (a) Determine the presence, the lateral and vertical extent, and the maximum concentration
31 levels of soil and, if possible, groundwater contamination and free product accumulations.
- 32 (b) Install as many monitoring wells constructed in accordance with 15A NCAC 02C, within
33 the area of maximum soil or groundwater contamination as needed to determine the
34 groundwater flow direction and maximum concentrations of dissolved groundwater
35 contaminants or accumulations of free product, to include at a minimum three monitoring
36 wells, unless a greater or lesser number are specified for a particular site by the Department;
37 during well construction, collect and analyze soil samples, which should represent the

1 suspected highest contaminant-level locations by exhibiting visible contamination or
2 elevated levels of volatile organic compounds, from successive locations at five-foot depth
3 intervals in the boreholes of each monitoring well within the unsaturated zone; collect
4 potentiometric data from each monitoring well; and collect and analyze groundwater or
5 measure the amount of free product, if present, in each monitoring well;

6 (7) the availability of public water supplies and the identification of properties served by the public
7 water supplies within 1500 feet of the source area of a confirmed discharge or release;

8 (8) the land use, including zoning if applicable, within 1500 feet of the source area of a confirmed
9 discharge or release;

10 (9) a discussion of site specific conditions or possible actions which could result in lowering the risk
11 classification assigned to the release. Such discussion shall be based on information known or
12 required to be obtained under this Paragraph; and

13 (10) names and current addresses of all responsible parties for all petroleum sources for which a
14 discharge or release is confirmed, the owner(s) of the land upon which such petroleum sources are
15 located, and all potentially affected real property owners. Documentation of ownership of ASTs or
16 other sources and of the property upon which a source is located shall be provided. When
17 considering a request from a responsible party for additional time to submit the report, the Division
18 shall consider the extent to which the request for additional time is due to factors outside of the
19 control of the responsible party, the previous history of the person submitting the report in
20 complying with deadlines established under the Commission's rules, the technical complications
21 associated with assessing the extent of contamination at the site or identifying potential receptors,
22 and the necessity for action to eliminate an imminent threat to public health or the environment.

23
24 *History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143B-282.*

25 *Adopted Eff. January 2, 2016*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02L .0506

DEADLINE FOR RECEIPT: Thursday, December 10, 2015

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 3, 4, 5, 8, 10, 12, 13, 16, 19, 22, 28, 31, and page 2, line 8, are both terms "discharge" and "release" necessary? The terms are defined. Can one term be used in this Rule?

Line 4, add a comma after "risk"

Line 14 thru 15, what waters would not qualify under the clause as "potential for future use"? Is the intent to be that broad?

Line 28, is "recharge" a known term? Is there a definition that could be cross-referenced?

Line 29, replace "which" with "that"

Line 29, what waters would not qualify under the clause "may be used"? Is the intent to be that broad?

Line 32, incorporate 42 USC 300h-7 in accordance with [G.S. 150B-21.6](#)

Line 34, are "benzene" and "alkane" separate chemicals that should be separated by a comma instead of an "and"? Please clarify.

Line 34, add a comma after "alkane"

Page 2, line 2, incorporate 40 CFR 141 in accordance with [G.S. 150B-21.6](#)

Page 2, line 5, add a comma after "assessment"

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Tuesday, November 24, 2015

Page 2, line 12, delete the term "Adopted" and add a period after "2016"

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: Tuesday, November 24, 2015

1 15A NCAC 02L .0506 is adopted with changes as published in 30:03 NCR 284-291 as follows:

2
3 **15A NCAC 02L .0506 DISCHARGE OR RELEASE CLASSIFICATIONS**

4 The Department shall classify the risk of each known discharge or release as high, intermediate or low risk unless the
5 discharge or release has been classified under Rule ~~.0504(3)~~ .0504 of this Section. For purposes of this Section:

6 (1) "High risk" means that:

- 7 (a) a water supply well, including one used for non-drinking purposes, has been contaminated
8 by the release or discharge;
- 9 (b) a water supply well used for drinking water is located within 1000 feet of the source area
10 of a confirmed discharge or release;
- 11 (c) a water supply well not used for drinking water is located within 250 feet of the source area
12 of a confirmed discharge or release;
- 13 (d) the groundwater within 500 feet of the source area of a confirmed discharge or release has
14 the potential for future use in that there is no source of water supply other than the
15 groundwater;
- 16 (e) the vapors from the discharge or release pose a serious threat of explosion due to
17 accumulation of the vapors in a confined space or pose a risk to public health from
18 exposure; or
- 19 (f) the discharge or release poses an imminent danger to public health, public safety, or the
20 environment.

21 (2) "Intermediate risk" means that:

- 22 (a) surface water is located within 500 feet of the source area of a confirmed discharge or
23 release and the maximum groundwater contaminant concentration exceeds the applicable
24 surface water quality standards and criteria found in 15A NCAC 02B .0200 by a factor of
25 10;
- 26 (b) in the Coastal Plain physiographic region as designated on a map entitled "Geology of
27 North Carolina" published by the Department in 1985, the source area of a confirmed
28 discharge or release is located in an area in which there is recharge to an unconfined or
29 semi-confined deeper aquifer which the Department determines is being used or may be
30 used as a source of drinking water;
- 31 (c) the source area of a confirmed discharge or release is within a designated wellhead
32 protection area, as defined in 42 U.S.C. 300h-7(e);
- 33 (d) the levels of groundwater contamination for any contaminant except ethylene dibromide,
34 benzene and alkane and aromatic carbon fraction classes exceed 50 percent of the solubility
35 of the contaminant at 25 degrees Celsius or 1,000 times the groundwater standard or interim
36 standard established in Rule .0202 of this Subchapter, whichever is lower; or

1 (e) the levels of groundwater contamination for ethylene dibromide and benzene exceed 1,000
2 times the federal drinking water standard set out in 40 CFR 141.

3 (3) "Low risk" means that:

4 (a) the risk posed does not fall within the high or intermediate risk categories; or

5 (b) based on review of site-specific information, limited assessment or interim corrective
6 actions, the Department determines that the discharge or release poses no significant risk
7 to human health or the environment.

8 If the criteria for more than one risk category applies, the discharge or release shall be classified at the highest risk
9 level identified in Rule .0507 of this Section.

10

11 *History Note:* Authority G.S. 143-215.2; 143-215.3(a)(1); 143B-282.

12 *Adopted Eff. January 2, 2016*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02L .0507

DEADLINE FOR RECEIPT: Thursday, December 10, 2015

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 5, 6, 9, 12, 13, 20, 24, 28, and page 2, line 11, are both terms "discharge" and "release" necessary? The terms are defined. Can one term be used in this Rule?

Lines 7, 28, and page 2, line 16, replace "which" with "that"

Line 7, replace "will" with "may"

Line 9, replace "might" with "may"

Line 10, replace "shall" with "may"

Line 10, delete the comma after "include"

Line 10, delete "but shall not be limited to,"

Line 11, add a comma after "property"

Line 12, delete the clause beginning with "if such change..." as it appears to leave the notification requirement to the responsible party based upon their determination of the Department's classification. This level of discretion by the responsible party does not seem to be the intent of this Rule.

Line 14, add a comma after "(g)"

Line 16, and page 2, line 14, are the terms "economically and technologically" based on a statutory standard? The terms appear ambiguous. Clarify the factors considered in making this determination.

Line 19, is "plume" a known term? Is there a definition that could be cross-referenced?

Abigail M. Hammond
Commission Counsel

Date submitted to agency: Tuesday, November 24, 2015

Line 31, are “benzene” and “alkane” separate chemicals that should be separated by a comma instead of an “and”? Please clarify.

Line 31, add a comma after “alkane”

Line 33, incorporate 40 CFR 141 in accordance with [G.S. 150B-21.6](#). Incorporation in the prior Rule could apply to this entire Section, if specified.

Page 2, lines 7 thru 8, what is meant by “to the maximum extent possible”? The term appears ambiguous. Clarify the factors considered in making this determination.

Page 2, line 10, add a comma after “cleanup”

Page 2, line 12, replace “will” with “shall”

Page 2, line 20, delete the term “Adopted” and add a period after “2016”

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

1 15A NCAC 02L .0507 is adopted as published in 30:03 NCR 284-291 as follows:

2
3 **15A NCAC 02L .0507 RECLASSIFICATION OF RISK LEVELS**

4 (a) The Department may reclassify the risk posed by a release if warranted by further information concerning the
5 potential exposure of receptors to the discharge or release or upon receipt of new information concerning changed
6 conditions at the site. After initial classification of the discharge or release, the Department may require limited
7 assessment, interim corrective action, or other actions which the Department believes will result in a lower risk
8 classification. It shall be a continuing obligation of each responsible party to notify the Department of any changes
9 that might affect the level of risk assigned to a discharge or release by the Department if the change is known or should
10 be known by the responsible party. Such changes shall include, but shall not be limited to, changes in zoning of real
11 property, use of real property or the use of groundwater that has been contaminated or is expected to be contaminated
12 by the discharge or release, if such change could cause the Department to reclassify the risk.

13 (b) If the risk posed by a discharge or release is determined by the Department to be high risk, the responsible party
14 shall comply with the assessment and cleanup requirements of Rule .0106(c), (g) and (h) of this Subchapter. The goal
15 of any required corrective action for groundwater contamination shall be restoration to the level of the groundwater
16 standards set forth in Rule .0202 of this Subchapter, or as closely thereto as is economically and technologically
17 feasible. In any corrective action plan submitted pursuant to this Paragraph, natural attenuation shall be used to the
18 maximum extent possible. If the responsible party demonstrates that natural attenuation prevents the further migration
19 of the plume, the Department may approve a groundwater monitoring plan.

20 (c) If the risk posed by a discharge or release is determined by the Department to be an intermediate risk, the
21 responsible party shall comply with the assessment requirements of Rule .0106(c) and (g) of this Subchapter. As part
22 of the comprehensive site assessment, the responsible party shall evaluate, based on site specific conditions, whether
23 the release poses a significant risk to human health or the environment. If the Department determines, based on the
24 site-specific conditions, that the discharge or release does not pose a significant threat to human health or the
25 environment, the site shall be reclassified as a low risk site. If the site is not reclassified, the responsible party shall,
26 at the direction of the Department, submit a groundwater monitoring plan or a corrective action plan, or a combination
27 thereof, meeting the cleanup standards of this Paragraph and containing the information required in Rule .0106(h) of
28 this Subchapter. Discharges or releases which are classified as intermediate risk shall be remediated, at a minimum,
29 to a cleanup level of 50 percent of the solubility of the contaminant at 25 degrees Celsius or 1,000 times the
30 groundwater standard or interim standard established in Rule .0202 of this Subchapter, whichever is lower for any
31 groundwater contaminant except ethylene dibromide, benzene and alkane and aromatic carbon fraction classes.
32 Ethylene dibromide and benzene shall be remediated to a cleanup level of 1,000 times the federal drinking water
33 standard set out in 40 CFR 141. Additionally, if a corrective action plan or groundwater monitoring plan is required
34 under this Paragraph, the responsible party shall demonstrate that the groundwater cleanup levels are sufficient to
35 prevent a violation of:

- 36 (1) the rules contained in 15A NCAC 02B;

1 (2) the standards contained in Rule .0202 of this Subchapter in a deep aquifer as described in Rule
2 .0506(2)(b) of this Section; and

3 (3) the standards contained in Rule .0202 of this Subchapter at a location no closer than one year time
4 of travel upgradient of a well within a designated wellhead protection area, based on travel time and
5 the natural attenuation capacity of the subsurface materials or on a physical barrier to groundwater
6 migration that exists or will be installed by the person making the request.

7 In any corrective action plan submitted pursuant to this Paragraph, natural attenuation shall be used to the maximum
8 extent possible.

9 (d) If the risk posed by a discharge or release is determined by the Department to be a low risk, the Department shall
10 notify the responsible party that no cleanup, no further cleanup or no further action will be required by the Department,
11 unless the Department later determines that the discharge or release poses an unacceptable risk or a potentially
12 unacceptable risk to human health or the environment. No notification will be issued pursuant to this Paragraph,
13 however, until the responsible party has completed soil remediation pursuant to Rule .0508 of this Section or as closely
14 thereto as economically or technologically feasible; has submitted proof of public notification and has recorded any
15 land-use restriction(s), if required; and paid any applicable statutorily authorized fees. The issuance by the Department
16 of a notification under this Paragraph shall not affect any private right of action by any party which may be affected
17 by the contamination.

18
19 *History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143B-282.*
20 *Adopted Eff. January 2, 2016*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02L .0508

DEADLINE FOR RECEIPT: Thursday, December 10, 2015

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 5, 11, 12, 15, and 19, are both terms "discharge" and "release" necessary? The terms are defined. Can one term be used in this Rule?

Lines 7, 8, and 22, replace "industrial/commercial" with "industrial or commercial"

Line 11, replace "which" with "that"

Line 29, delete the term "Adopted" and add a period after "2016"

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: Tuesday, November 24, 2015

1 15A NCAC 02L .0508 is adopted as published in 30:03 NCR 284-291 as follows:

2
3 **15A NCAC 02L .0508 ASSESSMENT AND REMEDIATION PROCEDURES**

4 Assessment and remediation of soil contamination shall be addressed as follows:

5 (1) At the time that the Department determines the risk posed by the discharge or release, the
6 Department shall also determine, based on site-specific information, whether the site is "residential"
7 or "industrial/commercial." For purposes of this Section, a site is presumed residential, but may be
8 classified as industrial/commercial if the Department determines based on site-specific information
9 that exposure to the soil contamination is limited in time due to the use of the site and does not
10 involve exposure to children. For purposes of this Item, "site" means both the property upon which
11 the discharge or release has occurred and any property upon which soil has been affected by the
12 discharge or release.

13 (2) The responsible party shall submit a report to the Department assessing the vertical and horizontal
14 extent of soil contamination.

15 (3) For a discharge or release classified by the Department as low risk, the responsible party shall submit
16 a report demonstrating that soil contamination has been remediated to either the residential or
17 industrial/commercial maximum soil contaminant concentration established by the Department
18 pursuant to Rule .0511 of this Section, whichever is applicable.

19 (4) For a discharge or release classified by the Department as high or intermediate risk, the responsible
20 party shall submit a report demonstrating that soil contamination has been remediated to the lower
21 of:

22 (a) the residential or industrial/commercial maximum soil contaminant concentration,
23 whichever is applicable, that has been established by the Department pursuant to Rule
24 .0511 of this Section; or

25 (b) the "soil-to-groundwater" maximum soil contaminant concentration that has been
26 established by the Department pursuant to Rule .0511 of this Section.

27
28 *History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143B-282.*

29 *Adopted Eff. January 2, 2016*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02L .0509

DEADLINE FOR RECEIPT: Thursday, December 10, 2015

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 4 and 21, replace "which" with "that"

Lines 7 thru 10, and lines 23 thru 26, consider providing the items in a drop-down numbered list to clarify. Commas should be replaced with semicolons in the list format

Lines 14 and 27, specify the Department's time frame

Lines 17 and 30, replace "prominently in a manner" with "in a prominent manner"

Line 20, are both terms "discharge" and "release" necessary? The terms are defined. Can one term be used in this Rule?

Line 35, delete the term "Adopted" and add a period after "2016"

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: Tuesday, November 24, 2015

1 15A NCAC 02L .0509 is adopted as published in 30:03 NCR 284-291 as follows:

2
3 **15A NCAC 02L .0509 NOTIFICATION REQUIREMENTS**

4 (a) A responsible party who submits a corrective action plan which proposes natural attenuation or to cleanup
5 groundwater contamination to a standard other than a standard or interim standard established in Rule .0202 of this
6 Subchapter, or to cleanup soil other than to the standard for residential use or soil-to-groundwater contaminant
7 concentration established pursuant to this Section, whichever is lowest, shall give notice to: the local Health Director
8 and the chief administrative officer of each political jurisdiction in which the contamination occurs; all property
9 owners and occupants within or contiguous to the area containing the contamination; and all property owners and
10 occupants within or contiguous to the area where the contamination is expected to migrate. Such notice shall describe
11 the nature of the plan and the reasons supporting it. Notification shall be made by certified mail concurrent with the
12 submittal of the corrective action plan. Approval of the corrective action plan by the Department shall be postponed
13 for a period of 30 days following receipt of the request so that the Department may consider comments submitted.
14 The responsible party shall, within a time frame determined by the Department to be sufficient, provide the Department
15 with a copy of the notice and proof of receipt of each required notice, or of refusal by the addressee to accept delivery
16 of a required notice. If notice by certified mail to occupants under this Paragraph is impractical, the responsible party
17 may give notice by posting such notice prominently in a manner designed to give actual notice to the occupants. If
18 notice is made to occupants by posting, the responsible party shall provide the Department with a copy of the posted
19 notice and a description of the manner in which such posted notice was given.

20 (b) A responsible party who receives a notice pursuant to Rule .0507(d) of this Section for a discharge or release
21 which has not been remediated to the groundwater standards or interim standards established in Rule .0202 of this
22 Subchapter or to the lower of the residential or soil-to-groundwater contaminant concentrations established under Rule
23 .0511 of this Section, shall, within 30 days of the receipt of such notice, provide a copy of the notice to: the local
24 Health Director and the chief administrative officer of each political jurisdiction in which the contamination occurs;
25 all property owners and occupants within or contiguous to the area containing contamination; and all property owners
26 and occupants within or contiguous to the area where the contamination is expected to migrate. Notification shall be
27 made by certified mail. The responsible party shall, within a time frame determined by the Department, provide the
28 Department with proof of receipt of the copy of the notice, or of refusal by the addressee to accept delivery of the
29 copy of the notice. If notice by certified mail to occupants under this Paragraph is impractical, the responsible party
30 may give notice by posting a copy of the notice prominently in a manner designed to give actual notice to the
31 occupants. If notice is made to occupants by posting, the responsible party shall provide the Department with a
32 description of the manner in which such posted notice was given.

33
34 *History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143B-282.*
35 *Adopted Eff. January 2, 2016*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02L .0510

DEADLINE FOR RECEIPT: Thursday, December 10, 2015

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, the term "non-UST" is undefined. Replace with the defined term "AST"

Line 5, are both terms "discharge" and "release" necessary? The terms are defined. Can one term be used in this Rule?

Line 8, delete the term "Adopted" and add a period after "2016"

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: Tuesday, November 24, 2015

1 15A NCAC 02L .0510 is adopted as published in 30:03 NCR 284-291 as follows:

2

3 **15A NCAC 02L .0510 DEPARTMENTAL LISTING OF DISCHARGES OR RELEASES**

4 To the extent feasible, the Department shall maintain in each of the Department's regional offices a list of all non-UST
5 petroleum discharges or releases discovered and reported to the Department within the region.

6

7 *History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143B-282.*

8 *Adopted Eff. January 2, 2016*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02L .0511

DEADLINE FOR RECEIPT: Thursday, December 10, 2015

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, the term "non-UST" is undefined. Replace with the defined term "AST"

Line 8, delete the term "Adopted" and add a period after "2016"

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: Tuesday, November 24, 2015

1 15A NCAC 02L .0511 is adopted as published in 30:03 NCR 284-291 as follows:

2

3 **15A NCAC 02L .0511 ESTABLISHING MAXIMUM SOIL CONTAMINATION CONCENTRATIONS**

4 For purposes of risk-based assessment and remediation for non-UST petroleum releases, refer to Rule .0411 of this

5 Subchapter for establishment of maximum soil contamination concentrations.

6

7 *History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143B-282;*

8 *Adopted Eff. January 2, 2016*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02L .0512

DEADLINE FOR RECEIPT: Thursday, December 10, 2015

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, the term "non-UST" is undefined. Replace with the defined term "AST"

Line 8, delete the term "Adopted" and add a period after "2016"

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: Tuesday, November 24, 2015

1 15A NCAC 02L .0512 is adopted as published in 30:03 NCR 284-291 as follows:

2

3 **15A NCAC 02L .0512 ANALYTICAL PROCEDURES FOR SOIL SAMPLES**

4 For purposes of risk-based assessment and remediation for non-UST petroleum releases, refer to Rule .0412 of this

5 Subchapter for analytical procedures for soil samples.

6

7 *History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143B-282.*

8 *Adopted Eff. January 2, 2016*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02L .0513

DEADLINE FOR RECEIPT: Thursday, December 10, 2015

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, the term "non-UST" is undefined. Replace with the defined term "AST"

Line 8, delete the term "Adopted" and add a period after "2016"

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: Tuesday, November 24, 2015

1 15A NCAC 02L .0513 is adopted as published in 30:03 NCR 284-291 as follows:

2

3 **15A NCAC 02L .0513 ANALYTICAL PROCEDURES FOR GROUNDWATER SAMPLES**

4 For purposes of risk-based assessment and remediation for non-UST petroleum releases, refer to Rule .0413 of this

5 Subchapter for analytical procedures for groundwater samples.

6

7 *History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143B-282.*

8 *Adopted Eff. January 2, 2016*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02L .0514

DEADLINE FOR RECEIPT: Thursday, December 10, 2015

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 4 and 5, replace "are required to" with "shall"

Line 6, add a comma after "groundwater"

Line 9, delete the term "Adopted" and add a period after "2016"

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: Tuesday, November 24, 2015

1 15A NCAC 02L .0514 is adopted as published in 30:03 NCR 284-291 as follows:

2

3 **15A NCAC 02L .0514 REQUIRED LABORATORY CERTIFICATION**

4 In accordance with 15A NCAC 02H .0804, laboratories are required to obtain North Carolina Division of Water
5 Resources laboratory certification for parameters that are required to be reported to the State in compliance with the
6 State's surface water, groundwater and pretreatment rules.

7

8 *History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143B-282.*

9 *Adopted Eff. January 2, 2016*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02L .0515

DEADLINE FOR RECEIPT: Thursday, December 10, 2015

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 5, the term "non-UST" is undefined. Replace with the defined term "AST"

Line 6, are both terms "discharge" and "release" necessary? The terms are defined. Can one term be used in this Rule?

Line 9, delete the term "Adopted" and add a period after "2016"

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: Tuesday, November 24, 2015

1 15A NCAC 02L .0515 is adopted as published in 30:03 NCR 284-291 as follows:

2

3 **15A NCAC 02L .0515 DISCHARGES OR RELEASES FROM OTHER SOURCES**

4 This Section shall not relieve any person responsible for assessment or cleanup of contamination from a source other
5 than a non-UST petroleum release from its obligation to assess and clean up contamination resulting from such
6 discharge or releases.

7

8 *History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143B-282.*

9 *Adopted Eff. January 2, 2016*