

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02L .0106

DEADLINE FOR RECEIPT: Thursday, March 10, 2016

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:

What is your authority to delegate decision-making to the Secretary, rather than having the Commission make these determinations? Are you relying upon G.S. 143-215.3(a)(4)? If so, you need to add this to your History Note.

In the History Note, you cite to G.S. 143-215.2, which explicitly confers upon the Commission the ability to issue special orders after notice and hearings. Are these corrective action plans meant to be special orders under G.S. 143-215.2?

On page 1, lines 5 and 6, how will the Department determine this?

On line 6, state "02C .0102" Since this is how it was published in the NC Register, you do not need to reflect it as a change; simply do it.

In (b), line 10, what is "immediate"?

In (c), line 19, underline "(2)" Since this is how it was published, you do not need to show this as a change – simply do it.

In (c)(3), line 20, I suggest inserting a comma after "significance"

In (c)(4), line 23, I suggest inserting a comma after "schedule"

On line 27, I suggest inserting a comma after "shall" and "Rule"

Just so I understand the language on lines 27 and 28 – this applies to individuals who have permits, but not permits for the specific activities?

In (d), so that I am clear – you do not intend a timeframe for notice to the Department, as required for Paragraphs (c) and (e)?

Amanda J. Reeder
Commission Counsel

Date submitted to agency: February 25, 2016

In (d)(1), line 32, consider inserting a colon after “at or beyond a review boundary” and stating “... boundary: the person shall demonstrate...”

On line 34, I suggest replacing the semicolon after “boundary” with a period, and beginning the next sentence “Alternatively, the person may submit...”

On line 34, I recommend inserting a colon after “facility design”

In (d)(2), Page 2, line 1, I suggest inserting a colon after “compliance boundary” and stating “boundary: the person shall ...”

On line 5, what else will the Secretary consider?

On line 6, delete or define “reasonable”

In (e)(1) through (e)(4), please note that elsewhere in the Rule, the first words in most of the Subparagraphs begin with capitalized letters. Please be consistent here.

In (e)(3), line 22, will the cause and significance always be known?

In (e)(4), line 23, how is the plan approved? The Subparagraph addresses how a schedule will be determined; is the plan approval in Paragraphs (h) and (i) of this Rule?

On line 25, delete or define “reasonable”

On line 26, replace “in which” with “where”

In (f), line 30, this is not the proper way to delete a comma after “Rule”

In (f)(1), line 31, I suggest inserting a comma after “explosion”

In (f)(2), line 32, I suggest inserting a comma after “containment”

In (f)(3), line 33, delete the “or” after “Removal,”

On line 34, I suggest inserting a comma after “stockpiles”

Also on line 34, I take it your regulated public knows the term “surficial accumulations of free products”?

In (f)(4), line 35, delete the “or” after “Removal,”

On line 36, I recommend inserting a comma after “groundwaters”

In (f)(4), Page 3, line 1, I suggest inserting a comma after “contained”

Also on line 1, what are the applicable rules? Does your regulated public know?

On line 2, what standards are you referring to? Are you relying upon the definition in 15A NCAC 02L .0102(23)?

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15A NCAC 02L .0102 DEFINITIONS

The definition of any word or phrase used in these Rules shall be the same as given in G.S. 143-212 and G.S. 143-213 except that the following words and phrases shall have the following meanings:

(23) "Standards" means groundwater quality standards as specified in Rule .0202 of this Subchapter.

On line 3, does your regulated public know what those rules are?

In (g), line 4, this is not the proper way to insert a comma after "(c)"

In (g)(2), line 6, what are "imminent hazards"?

In (g)(3), line 8, what is "significant exposure"?

On line 13, as soon as practicable for whom? The reporter?

Just for the sake of consistency - on line 15, you delete "reasonable" but you kept it elsewhere (see Paragraphs (d) and (e))

Please delete the blank line space between lines 15 and 16.

Please end (h)(1) through (3), lines 18-20, with a semicolon, not a period. Assuming you want all four of these, please insert an "and" after the semicolon in (h)(3).

In (h)(4), what is a "contaminant plume"? I take it your regulated public knows?

In (j), line 29, what is "best available technology"? How is this determined?

On line 30, so that I understand – this does not apply to Paragraph (d)? There are no corrective action plans for those permittees?

On line 31, I suggest inserting a comma after "(r)"

In (k), line 35, I believe "site-specific" should be hyphenated. (See (l)(2) on line 28, Page 4.)

In (k), line 36, what else will the Secretary request, and how will this request be communicated to the individual?

In (k), Page 4, lines 1-2, what does "to the satisfaction of the Secretary" mean and how will this be determined?

In (k)(1) through (7), please note that elsewhere in the Rule, the first words in most of the Subparagraphs begin with capitalized letters. Please be consistent here.

In (k)(3), as I understand it, there are really three things affecting adjacent properties. Why not state something like this:

(3) For adjacent properties, that:

(A) Contaminants have not migrated and will not migrate onto them;

(B) The properties are served by an existing public water supply system dependent on surface waters or hydraulically isolated groundwater; or

(C) The owners of the properties have given written consent to the request;

If that does not make sense for practical purposes, please replace the comma after “groundwater” on line 8 with a semicolon.

What does (k)(4) mean? Does your regulated public know?

In (k)(5), line 16, please state “02B” This is how it was published, so you do not need to show it as change; simply do it.

In (k)(6), line 17, please insert an “and” after “Section;”

In (k)(7), will your regulated public know what “all other environmental laws” are?

In (l), line 22, I believe “site-specific” should be hyphenated. (See (l)(2) on line 28.)

On line 24, what else will the Secretary request? How will the request be communicated to the individual?

On line 25, what does “to the satisfaction of the Secretary” mean and how will this be determined?

In (l)(3), line 29, define “reasonable certainty”

For (l)(5), please see the recommendation for (k)(3) above.

In (l)(6), Page 5, line 3, please state “02B .0200” Since this is how it was published, you do not need to show it as a change; simply do it.

In (l)(7), line 4, what does “sufficient” mean? Who determines this?

What does (l)(7) mean? Does your regulated public know?

In (m), again – permittees under Paragraph (d) are not allowed to seek corrective action plans through this mechanism?

In (m)(1)(A), line 17, why not state “total project cost”?

In (m)(1)(B), are you saying that this will further reduce all three of the contaminant levels, projected capital and annual operating costs? If so, separate them with commas. If not, please clarify what is being reduced.

In (m)(1)(C), please begin line 21 with “the”

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In (m)(1)(D), what other information will the Secretary request, and how will this request be communicated to the individual?

In (m)(2)(A), line 26, what is a “significant reduction”?

On line 33, please remove the period after “sampling”

For (m)(2)(B), please see the recommendation for (k)(3) above.

In (m)(2)(C), Page 6, line 1, should there be an “are” between “plumes” and “expected”?

On line 3, please state “02B .0200” Since it was published like this, you do not need to show it as change; simply do it.

In (m)(4), line 12, how is this sufficiency determined and who makes the determination?

On line 13, the time will be at least one year, but may be more? Is this determined by the Secretary based upon practical considerations? Is it solely within the discretion of the Secretary?

On line 15, what is “sufficient evidence”?

On line 16, are the standards the ones defined in Rule 15A NCAC 02L .012(23)?

In (n), lines 18 and 19, what is “readily available and economically reasonable technologies”?

On line 19, since the Secretary may designate the area if the conditions are met, under what circumstances will the Secretary refuse to do so if the conditions are met? Or do you mean “shall” instead of “may”?

In Paragraph (o), are you relying upon G.S. 143-215.3(f) as authority?

(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.

How does the request in Paragraph (p), especially lines 31 through 34, take place?

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In (q), line 37, replace “effected” with “affected”

On Page 7, in (r), line 1, and (s), line 11, Rules 15A NCAC 02L .0115 was recodified to Rules 15A NCAC 02L .0400. In order to be consistent with the rest of the Rule, please change the citations to “the rules in Section .0400 of this Subchapter”

On line 6, I suggest replacing “such a” with “the”

In (r)(2), so that I understand – doesn’t (c) only apply to those individuals without permits?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: February 25, 2016

1 15A NCAC 02L .0106 is amended with changes as published in 29:24 NCR 2790-2794 as follows:

2
3 **15A NCAC 02L .0106 CORRECTIVE ACTION**

4 (a) Where groundwater quality has been degraded, the goal of any required corrective action shall be restoration to the
5 level of the standards, or as closely thereto as is economically and technologically feasible as determined by the
6 Department. In all cases involving requests to the ~~Director~~ Secretary, as defined in 15A NCAC 2C .0102, for approval of
7 corrective action plans, or termination of corrective action, the responsibility for providing all information required by this
8 Rule lies with the person(s) making the request.

9 (b) Any person conducting or controlling an activity which that results in the discharge of a waste or hazardous substance
10 or oil to the groundwaters of the State, or in proximity thereto, shall take immediate action to terminate and control the
11 discharge, mitigate any hazards resulting from exposure to the pollutants and notify the ~~Division~~ Department, as defined
12 in 15A NCAC 2C .0102, of the discharge.

13 (c) Any person conducting or controlling an activity which that has not been permitted by the ~~Division~~ Department and
14 which that results in an increase in the concentration of a substance in excess of the standard, other than agricultural
15 operations, shall:

- 16 (1) ~~immediately within 24 hours of discovery of the violation,~~ notify the ~~Division~~ Department of the activity
17 that has resulted in the increase and the contaminant concentration levels;
18 (2) ~~take immediate action to eliminate the source or sources of contamination;~~
19 (2) respond in accordance with Paragraph (f) of this Rule;
20 (3) submit a report to the ~~Director~~ Secretary assessing the cause, significance and extent of the violation;
21 and
22 (4) implement an approved corrective action plan for restoration of groundwater quality in accordance with
23 a schedule established by the ~~Director, or his designee,~~ Secretary. In establishing a schedule the ~~Director,~~
24 ~~or his designee~~ Secretary shall consider any reasonable a schedule proposed by the person submitting
25 the plan. A report shall be made to the Health Director of the county or counties in which the
26 contamination occurs in accordance with the requirements of Rule .0114(a) in this Section.

27 Any activity not permitted pursuant to G.S. 143-215.1 or G.S. 130A-294 shall for the purpose of this Rule be deemed not
28 permitted by the Department and subject to the provisions of this Paragraph of this Rule.

29 (d) Any person conducting or controlling an activity which that is conducted under the authority of a permit initially issued
30 by the ~~Division~~ Department on or after December 30, 1983 pursuant to G.S. 143-215.1 or G.S. 130A-294 and which that
31 results in an increase in concentration of a substance in excess of the standards:

- 32 (1) at or beyond a review boundary, shall demonstrate, through predictive calculations or modeling, that
33 natural site conditions, facility design and operational controls will prevent a violation of standards at
34 the compliance boundary; or submit a plan for alteration of existing site conditions, facility design or
35 operational controls that will prevent a violation at the compliance boundary, and implement that plan
36 upon its approval by the ~~Director, or his designee,~~ Secretary.

(2) at or beyond a compliance boundary shall respond in accordance with Paragraph (f) of this Rule, assess the cause, significance and extent of the violation of standards and submit the results of the investigation, and a plan and proposed schedule for corrective action to the ~~Director, or his designee~~ Secretary. The permittee shall implement the plan as approved by and in accordance with a schedule established by the ~~Director, or his designee~~ Secretary. In establishing a schedule the ~~Director, or his designee~~ Secretary shall consider any reasonable schedule proposed by the permittee.

~~(e) For the purposes of Paragraphs (c) and (d) of this Rule, an activity conducted under the authority of a permit issued by the Division, and subject to Paragraph (d) of this Rule, is one for which:~~

- ~~(1) — a permit has been issued pursuant to G.S. 143-215.1;~~
- ~~(2) — the permit was originally issued after December 30, 1983;~~
- ~~(3) — the substance for which a standard has been exceeded outside the compliance boundary has been released to groundwater as a result of the permitted activity;~~
- ~~(4) — all other activities shall for the purpose of this Rule be deemed not permitted by the Division and subject to the provisions of Paragraph (c) of this Rule.~~

(e) Any person conducting or controlling an activity ~~[which] that~~ is conducted under the authority of a permit initially issued by the Department prior to December 30, 1983 pursuant to G.S. 143-215.1 or G.S. 130A-294, and ~~[which] that~~ results in an increase in concentration of a substance in excess of the standards at or beyond the compliance boundary specified in the permit, shall:

- (1) within 24 hours of discovery of the violation, notify the Department of the activity that has resulted in the increase and the contaminant concentration levels;
- (2) respond in accordance with Paragraph (f) of this Rule;
- (3) submit a report to the Secretary assessing the cause, significance and extent of the violation; and
- (4) implement an approved corrective action plan for restoration of groundwater quality at or beyond the compliance boundary, in accordance with a schedule established by the Secretary. In establishing a schedule the Secretary shall consider any reasonable schedule proposed by the person submitting the plan. A report shall be made to the Health Director of the county or counties in which the contamination occurs in accordance with the requirements of Rule .0114(a) in this Section.

~~(f) Corrective action Initial response required following discovery of the unauthorized release of a contaminant to the surface or subsurface of the land, and to be conducted~~ prior to or concurrent with the assessment required in Paragraphs ~~(c) and (d)~~ (c), (d), or (e) of this Rule, shall ~~include, but is not limited to: include:~~

- (1) Prevention of fire, explosion or the spread of noxious fumes;
- (2) Abatement, containment or control of the migration of contaminants;
- (3) Removal, or ~~treatment~~ treatment, or ~~and~~ control of any primary pollution source such as buried waste, waste stockpiles or surficial accumulations of free products;
- (4) Removal, ~~treatment~~ or treatment, or control of secondary pollution sources ~~which that~~ would be potential continuing sources of pollutants to the groundwaters such as contaminated soils and non-aqueous phase liquids. Contaminated soils ~~which that~~ threaten the quality of groundwaters ~~must shall~~ be treated,

1 contained or disposed of in accordance with applicable rules. The treatment or disposal of contaminated
2 soils shall be conducted in a manner that will not result in a violation of standards or North Carolina
3 Hazardous Waste Management rules.

4 (g) The site assessment conducted pursuant to the requirements of Paragraph (c), (d) or (e) of this Rule, shall include:

- 5 (1) The source and cause of contamination;
- 6 (2) Any imminent hazards to public health and safety and actions taken to mitigate them in accordance with
7 Paragraph (f) of this Rule;
- 8 (3) All receptors and significant exposure pathways;
- 9 (4) The horizontal and vertical extent of soil and groundwater contamination and all significant factors
10 affecting contaminant transport; and
- 11 (5) Geological and hydrogeological features influencing the movement, chemical, and physical character of
12 the contaminants.

13 Reports of site assessments shall be submitted to the ~~Division~~ Department as soon as practicable or in accordance with a
14 schedule established by the ~~Director, or his designee.~~ Secretary. In establishing a schedule the ~~Director, or his designee~~
15 Secretary shall consider any reasonable a proposal by the person submitting the report.

16 (h) Corrective action plans for restoration of groundwater quality, submitted pursuant to Paragraphs ~~(e) and (d)~~ (c), (d),
17 and (e) of this Rule shall include:

- 18 (1) A description of the proposed corrective action and reasons for its selection.
- 19 (2) Specific plans, including engineering details where applicable, for restoring groundwater quality.
- 20 (3) A schedule for the implementation and operation of the proposed plan.
- 21 (4) A monitoring plan for evaluating the effectiveness of the proposed corrective action and the movement
22 of the contaminant plume.

23 (i) In the evaluation of corrective action plans, the ~~Director, or his designee~~ Secretary shall consider the extent of any
24 violations, the extent of any threat to human health or safety, the extent of damage or potential adverse impact to the
25 environment, technology available to accomplish restoration, the potential for degradation of the contaminants in the
26 environment, the time and costs estimated to achieve groundwater quality restoration, and the public and economic benefits
27 to be derived from groundwater quality restoration.

28 (j) A corrective action plan prepared pursuant to Paragraph ~~(e) or (d)~~ (c), (d), or (e) of this Rule must shall be implemented
29 using the best available technology for restoration of groundwater quality to the level of the standards, standards.
30 Corrective action plans prepared pursuant to (c) or (e) may request an exception except as provided in Paragraphs (k), (l),
31 (m), (r) and (s) of this Rule.

32 (k) Any person required to implement an approved corrective action plan for a ~~non-permitted site pursuant to~~ site subject
33 to Paragraph (c) or (e) of this Rule may request that the ~~Director~~ Secretary approve such a plan without requiring
34 groundwater remediation to the standards. A request submitted to the ~~Director~~ Secretary under this Paragraph shall include
35 a description of site specific conditions, including information on the availability of public water supplies for the affected
36 area; the technical basis for the request; and any other information requested by the ~~Director~~ Secretary to thoroughly

1 evaluate the request. In addition, the person making the request ~~must shall~~ demonstrate to the satisfaction of the ~~Director:~~

2 Secretary:

- 3 (1) that all sources of contamination and free product have been removed or controlled pursuant to Paragraph
- 4 (f) of this Rule;
- 5 (2) that the time and direction of contaminant travel can be predicted with reasonable certainty;
- 6 (3) that contaminants have not and will not migrate onto adjacent properties, or that:
 - 7 (A) such properties are served by an existing public water supply system dependent on surface
 - 8 waters or hydraulically isolated groundwater, or
 - 9 (B) the owners of such properties have consented in writing to the request;
- 10 (4) that the standards specified in Rule .0202 of this Subchapter will be met at a location no closer than one
- 11 year time of travel upgradient of an existing or foreseeable receptor, based on travel time and the natural
- 12 attenuation capacity of subsurface materials or on a physical barrier to groundwater migration that exists
- 13 or will be installed by the person making the request;
- 14 (5) that, if the contaminant plume is expected to intercept surface waters, the groundwater discharge will
- 15 not possess contaminant concentrations that would result in violations of standards for surface waters
- 16 contained in 15A NCAC 2B .0200;
- 17 (6) that public notice of the request has been provided in accordance with Rule .0114(b) of this Section;
- 18 (7) that the proposed corrective action plan would be consistent with all other environmental laws.

19 (l) Any person required to implement an approved corrective action plan for a ~~non-permitted site pursuant to~~ site subject
20 to Paragraph (c) or (e) of this Rule may request that the ~~Director~~ Secretary approve such a plan based upon natural processes
21 of degradation and attenuation of contaminants. A request submitted to the ~~Director~~ Secretary under this Paragraph shall
22 include a description of site specific conditions, including written documentation of projected groundwater use in the
23 contaminated area based on current state or local government planning efforts; the technical basis for the request; and any
24 other information requested by the ~~Director~~ Secretary to ~~thoroughly~~ evaluate the request. In addition, the person making
25 the request ~~must shall~~ demonstrate to the satisfaction of the ~~Director:~~ Secretary:

- 26 (1) that all sources of contamination and free product have been removed or controlled pursuant to Paragraph
- 27 (f) of this Rule;
- 28 (2) that the contaminant has the capacity to degrade or attenuate under the site-specific conditions;
- 29 (3) that the time and direction of contaminant travel can be predicted with reasonable certainty;
- 30 (4) that contaminant migration will not result in any violation of applicable groundwater standards at any
- 31 existing or foreseeable receptor;
- 32 (5) that contaminants have not and will not migrate onto adjacent properties, or that:
 - 33 (A) such properties are served by an existing public water supply system dependent on surface
 - 34 waters or hydraulically isolated groundwater, or
 - 35 (B) the owners of such properties have consented in writing to the request;

- (6) that, if the contaminant plume is expected to intercept surface waters, the groundwater discharge will not possess contaminant concentrations that would result in violations of standards for surface waters contained in 15A NCAC 2B .0200;
- (7) that the person making the request will put in place a groundwater monitoring program sufficient to track the degradation and attenuation of contaminants and contaminant by-products within and down gradient of the plume and to detect contaminants and contaminant by-products prior to their reaching any existing or foreseeable receptor at least one year's time of travel upgradient of the receptor and no greater than the distance the groundwater at the contaminated site is predicted to travel in five years;
- (8) that all necessary access agreements needed to monitor groundwater quality pursuant to SubParagraph (7) of this Paragraph have been or can be obtained;
- (9) that public notice of the request has been provided in accordance with Rule .0114(b) of this Section; and
- (10) that the proposed corrective action plan would be consistent with all other environmental laws.
- (m) ~~The Division~~ Department or any person required to implement an approved corrective action plan for a ~~non-permitted site pursuant to~~ site subject to Paragraph (c) or (e) of this Rule may request that the ~~Director~~ Secretary approve termination of corrective action.
- (1) A request submitted to the ~~Director~~ Secretary under this Paragraph shall include:
- (A) a discussion of the duration of the corrective action, the total project's cost, projected annual cost for continuance and evaluation of the success of the corrective action;
- (B) an evaluation of alternate treatment technologies which that could result in further reduction of contaminant levels projected capital and annual operating costs for each technology;
- (C) effects, including health and safety impacts, on groundwater users if contaminant levels remain at levels existing at the time corrective action is terminated; and
- (D) any other information requested by the ~~Director~~ Secretary to ~~thoroughly~~ evaluate the request.
- (2) In addition, the person making the request must shall demonstrate to the satisfaction of the ~~Director~~ Secretary:
- (A) that continuation of corrective action would not result in a significant reduction in the concentration of ~~contaminants~~ contaminants. (At a minimum this demonstration must show the duration and degree of success of existing remedial efforts to attain standards and include a showing that the asymptotic slope of the contaminants curve of decontamination is less than a ratio of 1:40 over a term of one year based on quarterly sampling) This demonstration shall show the duration and degree of success of existing remedial efforts to attain standards and include a showing that the asymptotic slope of the contaminants curve of decontamination is less than a ratio of 1:40 over a term of one year based on quarterly sampling.;
- (B) that contaminants have not and will not migrate onto adjacent properties, or that:
- (i) such properties are served by an existing public water supply system dependent on surface waters or hydraulically isolated groundwater, or
- (ii) the owners of such properties have consented in writing to the request;

(C) that, if the contaminant plumes expected to intercept surface waters, the groundwater discharge will not possess contaminant concentrations that would result in violations of standards for surface waters contained in 15A NCAC 2B .0200;

(D) that public notice of the request has been provided in accordance with Rule .0114(b) of this Section; and

(E) that the proposed termination would be consistent with all other environmental laws.

(3) The ~~Director~~ Secretary shall not authorize termination of corrective action for any area that, at the time the request is made, has been identified by a state or local groundwater use planning process for resource development.

(4) The ~~Director~~ Secretary may authorize the termination of corrective action, or amend the corrective action plan after considering all the information in the request. Upon termination of corrective action, the ~~Director~~ Secretary shall require implementation of a groundwater monitoring program sufficient to track the degradation and attenuation of contaminants at a location of at least one year's predicted time of travel upgradient of any existing or foreseeable receptor. The monitoring program shall remain in effect until there is sufficient evidence that the contaminant concentrations have been reduced to the level of the standards.

(n) Upon a determination by the ~~Director~~ Secretary that continued corrective action would result in no significant reduction in contaminant concentrations, and the contaminated groundwaters can be rendered potable by treatment using readily available and economically reasonable technologies, the ~~Director~~ Secretary may designate the remaining area of degraded groundwater RS. Where the remaining degraded groundwaters cannot be made potable by such treatment, the ~~Director~~ Secretary may consider a request for reclassification of the groundwater to a GC classification as outlined in Rule .0201 of this Subchapter.

(o) If at any time the ~~Director~~ Secretary determines that a new technology is available that would remediate the contaminated groundwater to the standards specified in Rule .0202 of this Subchapter, the ~~Director~~ Secretary may require the responsible party to evaluate the economic and technological feasibility of implementing the new technology in an active groundwater corrective action plan in accordance with a schedule established by the ~~Director~~ Secretary. The ~~Director's~~ Secretary's determination to utilize new technology at any site or for any particular constituent shall include a consideration of the factors in Paragraph (h) of this Rule.

(p) Where standards are exceeded as a result of the application of pesticides or other agricultural chemicals, the ~~Director~~ Secretary shall request the Pesticide Board or the ~~Department of Agriculture~~ Department of Agriculture and Consumer Services to assist the ~~Division of Environmental Management~~ Department in determining the cause of the violation. If the violation is determined to have resulted from the use of pesticides, the ~~Director~~ Secretary shall request the Pesticide Board to take appropriate regulatory action to control the use of the chemical or chemicals responsible for, or contributing to, such violations, or to discontinue their use.

(q) The approval pursuant to this Rule of any corrective action plan, or modification or termination thereof, which that permits the migration of a contaminant onto adjacent property, shall not affect any private right of action by any party which that may be effected by that contamination.

(r) If a discharge or release is not governed by 15A NCAC 2L .0115 and the increase in the concentration of a substance in excess of the standard resulted in whole or in part from a release from a commercial or noncommercial underground storage tank as defined in G.S. 143-215.94A, any person required to implement an approved corrective action plan pursuant to this Rule and seeking reimbursement for the Commercial or Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Funds shall implement a corrective action plan meeting the requirements of Paragraph (k) or (l) of this Rule unless such a person demonstrates to the ~~Director~~ Secretary that:

- (1) contamination resulting from the discharge cannot qualify for approval of a plan based on the requirements of the Paragraphs; or
- (2) the cost of making such a demonstration would exceed the cost of implementing a corrective action plan submitted pursuant to Paragraph (c) of this Rule.

(s) If a discharge or release is not governed by 15A NCAC 2L .0115 and the increase in the concentration of a substance in excess of the standard resulted in whole or in part from a release from a commercial or noncommercial underground storage tank as defined in G.S. 143-215.94A, the ~~Director~~ Secretary may require any person implementing or operating a previously approved corrective action plan pursuant to this Rule to:

- (1) develop and implement a corrective action plan meeting the requirements of Paragraphs (k) and (l) of this Rule; or
- (2) seek discontinuance of corrective action pursuant to Paragraph (m) of this Rule.

History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.94A; 143-215.94T; 143-215.94V; 143B-282; 1995 (Reg. Sess. 1996) c. 648, s. 1; Eff. August 1, 1989; Amended Eff. October 1, 1993; September 1, 1992; Temporary Amendment Eff. January 2, 1998; January 2, 1996; Amended Eff. April 1, 2016; October 29, 1998.