

1 **15A NCAC 02I .0501 IS ADOPTED PURSUANT TO G.S. 150B-21.5 WITH CHANGES AS FOLLOWS:**

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3 **15A NCAC 02I .0501 FORM AND CONTENTS OF PETITION**

4 (a) Any person wishing to request the adoption, amendment, or repeal of a rule of the Environmental Management
5 Commission (hereinafter referred to as the Commission) shall make ~~his~~ the request in a petition addressed to the Director
6 of the appropriate division of the Department of ~~Environment and Natural Resources~~, Environmental Quality, and a copy
7 in electronic or digital form shall also be sent to the Recording Clerk of the Commission:

8
9 Director
10 Division of Air Quality
11 1641 Mail Service Center
12 Raleigh, North Carolina 27699-1641

13
14 Director
15 Division of Energy, Mineral, and Land Resources
16 1612 Mail Service Center
17 Raleigh, North Carolina 27699-1612

18
19 Director
20 Division of Waste Management
21 1646 Mail Service Center
22 Raleigh, North Carolina 27699-1646

23
24 ~~Director~~
25 ~~Division of Water Quality~~
26 ~~1617 Mail Service Center~~
27 ~~Raleigh, North Carolina 27699-1617~~

28
29 Director
30 Division of Water Resources
31 1611 Mail Service Center
32 Raleigh, North Carolina 27699-1611

33
34 Recording Clerk of the Commission
35 Directors Office
36 Division of Water ~~Quality~~ Resources
37 ~~1617~~ 1611 Mail Service Center

(b) The petition shall contain the following information:

- (1) the text of the proposed rule(s) for adoption or amendment; conforming to the Codifier of Rules' requirements for publication of proposed rules in the North Carolina Register;
- ~~(2)~~ the statutory authority for the agency to promulgate the rule(s);
- ~~(3)~~(2) a statement of the reasons for adoption or amendment of the proposed ~~rule(s); rule(s), or the repeal of~~ an existing rule(s);
- ~~(4)~~(3) a statement of the effect on existing rules or orders;
- ~~(5)~~ copies of documents and data supporting the proposed rule(s);
- ~~(6)~~ a statement of the effect of the proposed rule(s) on existing practices in the area involved, including cost factors for persons affected by the proposed rule(s);
- ~~(7)~~ a statement explaining the computation of the cost factors;
- ~~(8)~~ a description, including the names and addresses, if known, of those most likely to be affected by the proposed rule(s); and
- ~~(9)~~(4) the name(s) and address(es) of the ~~petitioner(s); petitioner(s);~~ and
- (5) a request to present the petition to the committee in accordance with Rule .0502 of this Section, if desired.

(c) In its review of the proposed rule, the Commission shall consider whether it has authority to adopt the rule; the effect of the proposed rule on existing rules, programs, and practices; probable costs and cost factors of the proposed rule; and the impact of the rule on the public and regulated entities. The petitioner may include the following information within the request:

- (1) the statutory authority for the agency to promulgate the rules(s);
- (2) a statement of the effect of the proposed rule(s) on existing practices in the area involved, including cost factors for persons affected by the proposed rule(s);
- (3) a statement explaining the computation of the cost factors;
- (4) a description, including the names and addresses, if known, of those most likely to be affected by the proposed rule(s); and
- (5) documents and data supporting the proposed rule(s).

~~(e)~~(d) Petitions that do not fail to contain the required information required by Paragraph (b) of this Rule shall be returned to the petitioner by the Director on behalf of the ~~Chairman, Commission.~~

*History Note: Authority G.S. 143B-282; 150B-20;
Eff. April 1, 2003;
Amended Eff. December 1, 2016; November 1, 2012.*



**STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS**

Mailing address:
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Raleigh, NC 27609-6285

October 20, 2016

Sent via email: jennifer.everett@ncdenr.gov
Jennifer Everett, Rulemaking Coordinator
1601 Mail Service Center
Raleigh, North Carolina 27699-1601

Re: Rules 15A NCAC 02I .0501

Dear Ms. Everett:

At its October 20, 2016 meeting, the Rules Review Commission objected to the above-identified rules in accordance with G.S. 150B-21.10.

The Commission objected to this rule for lack of statutory authority. Specifically, the Commission found that the existing language of the rule exceeds the statutory language of G.S. 150B-20 and creates a higher burden for the general public than required in the specific legislative directive of the General Assembly.

Please respond to this letter in accordance with the provisions of G.S. 150B-21.12. If you have any questions regarding the Commission's action, please let me know.

Sincerely,

Abigail M. Hammond
Commission Counsel

Administration
919/431-3000
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Assistants
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Civil Rights
Division
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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 CITATIONS: 15A NCAC 02I .0501

RECOMMENDED ACTION:

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

COMMENT:

The Environmental Management Commission (EMC) has amended a rule under G.S. 150B-21.5(a) to correct a mailing address and Division name in 15A NCAC 02I .0501. This rule addresses the petition for rulemaking, as authorized by G.S. 150B-20, which states the following:

§ 150B-20. Petitioning an agency to adopt a rule.

(a) Petition. – A person may petition an agency to adopt a rule by submitting to the agency a written rule-making petition requesting the adoption. A person may submit written comments with a rule-making petition. If a rule-making petition requests the agency to create or amend a rule, the person must submit the proposed text of the requested rule change and a statement of the effect of the requested rule change. Each agency must establish by rule the procedure for submitting a rule-making petition to it and the procedure the agency follows in considering a rule-making petition.

....

15A NCAC 02I .0501(b) requires the following information for a petition for rulemaking:

- (1) the text of the proposed rule(s) conforming to the Codifier of Rules' requirements for publication of proposed rules in the North Carolina Register;
- (2) the statutory authority for the agency to promulgate the rule(s);

Abigail M. Hammond
Commission Counsel

- (3) a statement of the reasons for adoption of the proposed rule(s);
- (4) a statement of the effect on existing rules or orders;
- (5) copies of any documents and data supporting the proposed rule(s);
- (6) a statement of the effect of the proposed rule(s) on existing practices in the area involved, including cost factors for persons affected by the proposed rule(s);
- (7) a statement explaining the computation of the cost factors;
- (8) a description, including the names and addresses, if known, of those most likely to be affected by the proposed rule(s); and
- (9) the name(s) and address(es) of the petitioner(s).

Paragraph (c) of Rule 15A NCAC 02I .0501 states that “[p]etitions failing to contain the required information shall be returned by the Director on behalf of the Chairman.” The requirements set forth in Paragraph (b) and that an incomplete petition will be returned, as set forth in Paragraph (c) of the Rule, exceeds the simple requirements of G.S. 150B-20. The requirements of G.S. 150B-20 are the following:

- A. A person may petition an agency to adopt a rule by submitting to the agency a written rule-making petition requesting the adoption.
- B. A person may submit written comments with a rule-making petition.
- C. If a rule-making petition requests the agency to create or amend a rule, the person must submit the proposed text of the requested rule change and a statement of the effect of the requested rule change.

The following highlighted items set forth in Rule 15A NCAC 02I .0501 exceed the requirements of G.S. 150B-20:

- (1) the text of the proposed rule(s) conforming to the Codifier of Rules' requirements for publication of proposed rules in the North Carolina Register;
 - (2) the statutory authority for the agency to promulgate the rule(s);
 - (3) a statement of the reasons for adoption of the proposed rule(s);
 - (4) a statement of the effect on existing rules or orders;
 - (5) copies of any documents and data supporting the proposed rule(s);
 - (6) a statement of the effect of the proposed rule(s) on existing practices in the area involved, including cost factors for persons affected by the proposed rule(s);
 - (7) a statement explaining the computation of the cost factors;
 - (8) a description, including the names and addresses, if known, of those most likely to be affected by the proposed rule(s); and
 - (9) the name(s) and address(es) of the petitioner(s).
-

The requirement of the highlighted language, coupled with the requirement in Paragraph (d) that an incomplete petition shall be returned, exceeds the statutory requirements for a petition for rulemaking as set forth in G.S. 150B-20. Staff counsel notes that it may be appropriate for the un-highlighted language to be required information and the highlighted language to be permissive information submitted in a petition for rulemaking.

SUMMARY:

The Environmental Management Commission (EMC) has amended an existing rule to correct an address and Division name. However, the existing language of the rule exceeds the statutory language of G.S. 150B-20 and creates a higher burden for the general public than required in the specific legislative directive of the General Assembly. Staff counsel recommends objection to Rule 15A NCAC 02I .0501 for lack of statutory authority.

1 **15A NCAC 02I .0501 IS ADOPTED PURSUANT TO G.S. 150B-21.5 AS FOLLOWS:**

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3 **15A NCAC 02I .0501 FORM AND CONTENTS OF PETITION**

4 (a) Any person wishing to request the adoption, amendment, or repeal of a rule of the Environmental Management
5 Commission (hereinafter referred to as the Commission) shall make ~~his~~ the request in a petition addressed to the Director
6 of the appropriate division of the Department of ~~Environment and Natural Resources~~, Environmental Quality, and a copy
7 in electronic or digital form shall also be sent to the Recording Clerk of the Commission:

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33 Raleigh, NC ~~27699-1617~~ 27699-1611
34 EMCclerk@ncdenr.gov

35
36 (b) The petition shall contain the following information:

- 1 (1) the text of the proposed rule(s) conforming to the Codifier of Rules' requirements for publication of
- 2 proposed rules in the North Carolina Register;
- 3 (2) the statutory authority for the agency to promulgate the rule(s);
- 4 (3) a statement of the reasons for adoption of the proposed rule(s);
- 5 (4) a statement of the effect on existing rules or orders;
- 6 (5) copies of any documents and data supporting the proposed rule(s);
- 7 (6) a statement of the effect of the proposed rule(s) on existing practices in the area involved, including
- 8 cost factors for persons affected by the proposed rule(s);
- 9 (7) a statement explaining the computation of the cost factors;
- 10 (8) a description, including the names and addresses, if known, of those most likely to be affected by the
- 11 proposed rule(s); and
- 12 (9) the name(s) and address(es) of the petitioner(s).

13 (c) Petitions failing to contain the required information shall be returned by the Director on behalf of the Chairman.

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15 *History Note:* Authority G.S. 143B-282; 150B-20;
16 Eff. April 1, 2003;
17 Amended Eff. November 1, 2016; November 1, 2012.

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