



TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: Environmental Management Commission

2. Rule citation & name: 15A NCAC 02L .0404 REQUIRED INITIAL ABATEMENT ACTIONS BY RESPONSIBLE PARTY

3. Action: ☐ Adoption ☒ Amendment ☐ Repeal

4. Was this an Emergency Rule: ☐ Yes ☒ No Effective date:

5. Provide dates for the following actions as applicable:

- a. Proposed Temporary Rule submitted to OAH: July 14, 2017
- b. Proposed Temporary Rule published on the OAH website: July 19, 2017
- c. Public Hearing date: July 31, 2017
- d. Comment Period: July 14, 2017 to August 11, 2017
- e. Notice pursuant to G.S. 150B-21.1(a3)(2): July 14, 2017
- f. Adoption by agency on: September 14, 2017
- g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]:
- h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:

6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.

- ☐ A serious and unforeseen threat to the public health, safety or welfare.
- ☒ The effective date of a recent act of the General Assembly or of the U.S. Congress.
Cite: NC General Assembly - Session Law 2017-57 (Senate Bill 257)
Effective date: July 1, 2017
- ☐ A recent change in federal or state budgetary policy.
Effective date of change:
- ☐ A recent federal regulation.
Cite:
Effective date:
- ☐ A recent court order.
Cite order:
- ☐ State Medical Facilities Plan.
- ☐ Other:

Explain:

NC Session Law 2017-57 Section 13.19.(a) requires the adoption of temporary rules to define the Department's application of the requirements from SL 2015-241 until such time as permanent rulemaking is completed. NC Session Law 2015-241 Section 14.16B requires the amendment of rules that directed the owner or operator of a noncommercial underground storage tank (UST) to immediately respond to any release by trying to recover all accessible contamination. The Session Law directs the Department of Environmental Quality to classify the risk posed by a noncommercial UST discharge before the UST owner or operator is required to perform any cleanup actions. The amendments in 15A NCAC 02L .0404 clarify that the existing initial abatement actions requirements remain for a commercial UST release, and describe the emergency response, reporting, and, if determined by the Department to represent a 'high' risk, the initial abatement actions required for a noncommercial UST release in a manner consistent with SL 2015-241 Section 14.16B.

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

In the NC Session Law 2017-57 Section 13.19.(a), the General Assembly directed the Environmental Management Commission to commence temporary rulemaking procedures and adopt these rules no later than October 1, 2017. Given this directive, a condensed comment period was necessary to meet the requirements of the Session Law.

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

☐ Yes

Agency submitted request for consultation on:
Consultation not required. Cite authority:

☒ No

9. Rule-making Coordinator: Jennifer Everett

Phone: 919-707-8614

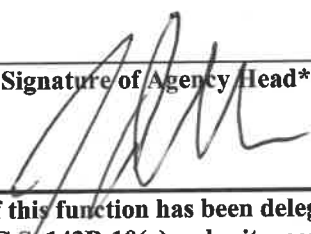
E-Mail: jennifer.everett@ncdenr.gov

Agency contact, if any: Jeremy Poplawski

Phone: 919-707-8151

E-Mail: jeremy.poplawski@ncdenr.gov

10. Signature of Agency Head*:


* 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: John D. Solomon

Title: Chairman of the Environmental Management Commission

E-Mail: pamlicojd@gmail.com

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

Fund, the ~~Marine Fisheries Commission~~ Division of Marine Fisheries shall consult with the Wildlife Resources Commission about ~~these proposals~~ funding requests.
...."

DMF ARTIFICIAL REEFS PROGRAM FUNDING CLARIFICATION

SECTION 13.16. G.S. 113-175.1 is amended by adding a new subsection to read:

"(d) To enhance fishing opportunities, the Marine Resources Fund may be used to construct artificial reefs in the estuarine and ocean waters of the State and federal waters up to 20 nautical miles from land."

UST PROGRAM RULE MAKING AND REPORT

SECTION 13.19.(a) The Environmental Management Commission shall adopt temporary rules implementing Section 14.16B of S.L. 2015-241 no later than October 1, 2017. Notwithstanding G.S. 150B-21.1(d), the temporary rules shall remain in effect until the effective date of the permanent rule adopted to replace the temporary rule.

SECTION 13.19.(b) The Commission shall report regarding the status of the rule making required by this section and by Section 14.16B of S.L. 2015-241 to the chairs of the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources and the Fiscal Research Division no later than December 31, 2017.

MERCURY SWITCH PROGRAM EXTENSION

SECTION 13.21.(a) Section 9 of S.L. 2007-142, as amended by Section 14.1(a) of S.L. 2016-94, reads as rewritten:

"**SECTION 9.** Sections 1, 2, 6, 7, and 9 of this act become effective when this act becomes law. Sections 3, 4, and 8 of this act become effective 1 July 2007. Section 5 of this act becomes effective 1 July 2007 and applies to violations that occur on or after that date. The Department shall submit the first annual report required by G.S. 130A-310.57, as enacted by Section 7 of this act, on or before 1 October 2008. Effective June 30, ~~2017~~, 2021, Part 6 of Article 9 of Chapter 130A of the General Statutes, as amended by this act, is repealed."

SECTION 13.21.(b) Section 14.1(c) of S.L. 2016-94 reads as rewritten:

"**SECTION 14.1.(c)** Subsection (b) of this section becomes effective June 30, ~~2017~~, 2021. Funds remaining in the Mercury Pollution Prevention Fund (Fund Code 24300-2119) on that date shall be transferred to the Division of Waste Management (Fund Code 14300-1760)."

SECTION 13.21.(c) This section becomes effective June 30, 2017.

WATER AND SEWER INFRASTRUCTURE GRANTS

SECTION 13.22.(a) The following allocations are made from nonrecurring funds appropriated by this act to the Division of Water Infrastructure of the Department of Environmental Quality for water and sewer infrastructure grants:

- (1) The sum of three million dollars (\$3,000,000) for the 2017-2018 fiscal year and the sum of two million dollars (\$2,000,000) for the 2018-2019 fiscal year to the Johnston County Research and Training Zone Association, Inc. for a regional wastewater project.
- (2) The sum of one million dollars (\$1,000,000) for the 2017-2018 fiscal year for grants to grantees located in development tier one or tier two areas, as defined in G.S. 143B-437.08, for any of the following:
 - a. Construction, protection, or expansion of water intake structures located in surface water impoundments. For purposes of this subdivision, protection of water intake structures may include the stabilization or restoration of natural stream functions upstream and downstream of the water intake.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02L .0404

DEADLINE FOR RECEIPT: Tuesday, September 19, 2017

PLEASE NOTE: 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:

Line 6, add a comma after "explosion"

Line 7, add a comma after ".0604"

Line 7, delete the "and" after ".0604"

Line 7, add a comma after ".0703"

Line 8, the comma after "02N" seems unnecessary. Consider deleting

Line 11, replace "Such" with "The"

Line 15, replace "which" with "that"

Line 17, replace "such" with "the"

Lines 18 and 29, is the term "low risk" used in a prior rule or is it a defined term? The "For purposes of this Section" seems to occur in Rule .0406 and it may be help to add a cross-reference to this Rule, as it occurs first in the Code, to clarify where "low risk" is defined.

Line 23, for the citations to the General Statutes, please provide a full and separate citation for each statute.

Line 24, add an "and" at the end of the clause

Lines 25 thru 26, what is meant by this clause? It seems very broad. Please clarify the types of "information required by the Department to determine the site risk"

Line 28, replace "will" with "shall"

Abigail M. Hammond
Commission Counsel

Date submitted to agency: Friday, September 15, 2017

Line 33, what is meant by “are likely”? Is this merely tracking the statutory language in [G.S. 143-215.94V\(b\)](#)?

Line 35, replace “which” with “that”

Page 2, line 1, is the term “high risk” used in a prior rule or is it a defined term? The “For purposes of this Section” seems to occur in Rule .0406 and it may be help to add a cross-reference to this Rule, as it occurs first in the Code, to clarify where “high risk” is defined.

Page 2, lines 2 and 3, is the term “unacceptable risk” used in a prior rule or is it a defined term? The term is used in [G.S. 143-215.94V\(d\)](#), but the statute does not appear to define the term. Consider adding a cross-reference to this Rule to clarify

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: Friday, September 15, 2017

1 15A NCAC 02L .0404 is amended under temporary procedures as follows:

2
3 **15A NCAC 02L .0404 REQUIRED INITIAL ABATEMENT ACTIONS BY RESPONSIBLE PARTY**

4 (a) A responsible party for a commercial underground storage tank shall:

- 5 (1) take ~~immediate~~ action to prevent any further discharge or release of petroleum from the underground
6 storage tank; identify and mitigate any fire, explosion or vapor hazard; remove any free product;
7 and comply with the requirements of Rules .0601 through .0604 and .0701 through .0703 and .0705
8 of Subchapter ~~02N;~~02N, within 24 hours of discovery;
9 (2) incorporate the requirements of 15A NCAC 02N .0704 into the submittal required under Item (3)
10 of this Paragraph or the limited site assessment report required under 15A NCAC 02L .0405 of this
11 Section, whichever is applicable. Such submittals shall constitute compliance with the reporting
12 requirements of 15A NCAC 02N .0704(b); and
13 (3) submit within 90 days of the discovery of the discharge or release a soil contamination report
14 containing information sufficient to show that remaining unsaturated soil in the side walls and at the
15 base of the excavation does not contain contaminant levels which exceed either the "soil-to-
16 groundwater" or the residential maximum soil contaminant concentrations established by the
17 Department pursuant to 15A NCAC 02L .0411 of this Section, whichever is lower. If such showing
18 is made, the discharge or release shall be classified as low risk by the Department;

19 (b) A responsible party for a noncommercial underground storage tank shall:

- 20 (1) take necessary actions to protect public health, safety, and welfare and the environment, including
21 actions to prevent any further discharge or release of petroleum from the noncommercial
22 underground storage tank; to identify and mitigate any fire, explosion, or vapor hazard; and to report
23 the release within 24 hours of discovery, in compliance with G.S. 143-215.83(a), 84(a), 85(b), and
24 94E;
25 (2) provide or otherwise make available any information required by the Department to determine the
26 site risk.

27 (c) The Department shall notify the responsible party for a noncommercial underground storage tank that no cleanup,
28 no further cleanup, or no further action will be required without requiring additional soil remediation pursuant to Rule
29 .0408 of this Section, if the site is determined by the Department to be low risk. This classification shall be based on
30 information provided to the Department that:

- 31 (1) describes the source and type of the petroleum release, site-specific risk factors, and risk factors
32 present in the surrounding area as defined in Rules .0406 and .0407 of this Section;
33 (2) demonstrates that no remaining risk factors are present that are likely to be affected per G.S. 143-
34 215.94V(b); or
35 (3) documents that soils remaining onsite do not contain contaminant levels which exceed either the
36 "soil-to-groundwater" or the residential maximum soil contaminant concentrations established by
37 the Department pursuant to Rule .0411 of this Section, whichever is lower.

1 The Department shall reclassify the site as high risk upon receipt of new information related to site conditions
2 indicating that the discharge or release from a noncommercial underground storage tank poses an unacceptable risk
3 or a potentially unacceptable risk to human health or the environment, as described in Rule .0407 of this Section.
4

5 *History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.94A; 143-215.94E; 143-215.94T; 143-*
6 *215.94V; 143B-282; 1995 (Reg. Sess. 1996) c. 648,s. 1;*
7 *Recodified from 15A NCAC 02L .0115(c)(1)-(3);*
8 *Amended Eff. December 1, ~~2005~~ 2005;*
9 *Temporary Amendment Eff. September 29, 2017.*
10



**TEMPORARY RULE-MAKING
FINDINGS OF NEED**
[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: Environmental Management Commission

2. Rule citation & name: 15A NCAC 02L .0405 REQUIREMENTS FOR LIMITED SITE ASSESSMENT

3. Action: ☐ Adoption ☒ Amendment ☐ Repeal

4. Was this an Emergency Rule: ☐ Yes ☒ No **Effective date:**

5. Provide dates for the following actions as applicable:

- a. Proposed Temporary Rule submitted to OAH: July 14, 2017
- b. Proposed Temporary Rule published on the OAH website: July 19, 2017
- c. Public Hearing date: July 31, 2017
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- g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]:
- h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:

6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.

- ☐ A serious and unforeseen threat to the public health, safety or welfare.
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Cite: NC General Assembly - Session Law 2017-57 (Senate Bill 257)
Effective date: July 1, 2017
- ☐ A recent change in federal or state budgetary policy.
Effective date of change:
- ☐ A recent federal regulation.
Cite:
Effective date:
- ☐ A recent court order.
Cite order:
- ☐ State Medical Facilities Plan.
- ☐ Other:

Explain:

NC Session Law 2017-57 Section 13.19(a) requires the adoption of temporary rules to define the Department's application of the requirements from SL 2015-241 until such time as permanent rulemaking is completed. NC Session Law 2015-241 Section 14.16B requires the amendment of rules that directed the owner or operator of a noncommercial underground storage tank (UST) to immediately respond to any release by trying to recover all accessible contamination. The Session Law directs the Department of Environmental Quality to classify the risk posed by a noncommercial UST discharge before the UST owner or operator is required to perform any cleanup actions. The amendments in 15A NCAC 02L .0405 clarify that the Responsible Party shall comply with the existing limited site assessment requirements for a commercial UST release, and, (consistent with the initial abatement actions,) a noncommercial UST release if the release is determined by the Department to represent an unacceptable risk, in a manner consistent with SL 2015-241 Section 14.16B.

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

In the NC Session Law 2017-57 Section 13.19.(a), the General Assembly directed the Environmental Management Commission to commence temporary rulemaking procedures and adopt these rules no later than October 1, 2017. Given this directive, a condensed comment period was necessary to meet the requirements of the Session Law.

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

☐ Yes

Agency submitted request for consultation on:
Consultation not required. Cite authority:

☒ No

9. Rule-making Coordinator: Jennifer Everett

Phone: 919-707-8614

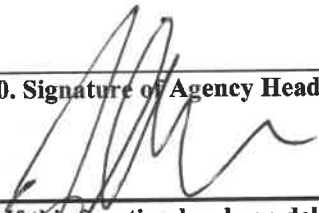
E-Mail: jennifer.everett@ncdenr.gov

Agency contact, if any: Jeremy Poplawski

Phone: 919-707-8151

E-Mail: jeremy.poplawski@ncdenr.gov

10. Signature of Agency Head*:


* 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: John D. Solomon

Title: Chairman of the Environmental Management Commission

E-Mail: pamlicojd@gmail.com

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

Fund, the ~~Marine Fisheries Commission~~ Division of Marine Fisheries shall consult with the Wildlife Resources Commission about ~~these proposals~~ funding requests.
...."

DMF ARTIFICIAL REEFS PROGRAM FUNDING CLARIFICATION

SECTION 13.16. G.S. 113-175.1 is amended by adding a new subsection to read:

"(d) To enhance fishing opportunities, the Marine Resources Fund may be used to construct artificial reefs in the estuarine and ocean waters of the State and federal waters up to 20 nautical miles from land."

UST PROGRAM RULE MAKING AND REPORT

SECTION 13.19.(a) The Environmental Management Commission shall adopt temporary rules implementing Section 14.16B of S.L. 2015-241 no later than October 1, 2017. Notwithstanding G.S. 150B-21.1(d), the temporary rules shall remain in effect until the effective date of the permanent rule adopted to replace the temporary rule.

SECTION 13.19.(b) The Commission shall report regarding the status of the rule making required by this section and by Section 14.16B of S.L. 2015-241 to the chairs of the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources and the Fiscal Research Division no later than December 31, 2017.

MERCURY SWITCH PROGRAM EXTENSION

SECTION 13.21.(a) Section 9 of S.L. 2007-142, as amended by Section 14.1(a) of S.L. 2016-94, reads as rewritten:

"**SECTION 9.** Sections 1, 2, 6, 7, and 9 of this act become effective when this act becomes law. Sections 3, 4, and 8 of this act become effective 1 July 2007. Section 5 of this act becomes effective 1 July 2007 and applies to violations that occur on or after that date. The Department shall submit the first annual report required by G.S. 130A-310.57, as enacted by Section 7 of this act, on or before 1 October 2008. Effective June 30, ~~2017~~, 2021, Part 6 of Article 9 of Chapter 130A of the General Statutes, as amended by this act, is repealed."

SECTION 13.21.(b) Section 14.1(c) of S.L. 2016-94 reads as rewritten:

"**SECTION 14.1.(c)** Subsection (b) of this section becomes effective June 30, ~~2017~~, 2021. Funds remaining in the Mercury Pollution Prevention Fund (Fund Code 24300-2119) on that date shall be transferred to the Division of Waste Management (Fund Code 14300-1760)."

SECTION 13.21.(c) This section becomes effective June 30, 2017.

WATER AND SEWER INFRASTRUCTURE GRANTS

SECTION 13.22.(a) The following allocations are made from nonrecurring funds appropriated by this act to the Division of Water Infrastructure of the Department of Environmental Quality for water and sewer infrastructure grants:

- (1) The sum of three million dollars (\$3,000,000) for the 2017-2018 fiscal year and the sum of two million dollars (\$2,000,000) for the 2018-2019 fiscal year to the Johnston County Research and Training Zone Association, Inc. for a regional wastewater project.
- (2) The sum of one million dollars (\$1,000,000) for the 2017-2018 fiscal year for grants to grantees located in development tier one or tier two areas, as defined in G.S. 143B-437.08, for any of the following:
 - a. Construction, protection, or expansion of water intake structures located in surface water impoundments. For purposes of this subdivision, protection of water intake structures may include the stabilization or restoration of natural stream functions upstream and downstream of the water intake.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02L .0405

DEADLINE FOR RECEIPT: Tuesday, September 19, 2017

PLEASE NOTE: 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:

Line 5, is the term "unacceptable risk" used in a prior rule or is it a defined term? The term is used in [G.S. 143-215.94V\(d\)](#), but the statute does not appear to define the term. Consider adding a cross-reference to this Rule to clarify

Line 9, replace "Such" with "The"

Line 9, delete the comma after "include" and delete the clause "at a minimum" as it is not necessary language

Line 11, it looks like there are too many "and" in this sentence. Would it be correct to delete the "and" after "supply wells," leave the comma, and add a comma after "surface waters"? Or would these suggestions change the identified different bodies of water?

Lines 12 and 16, has the USC used in this Rule already been incorporated in a prior rule in accordance with [G.S. 150B-21.6](#)? If not, please incorporate accordingly.

Line 18 cites to a 1985 map. Is that citation still accurate?

Lines 20, 25, and 29, replace "which" with "that"

Line 24, add a comma after "safety"

Line 28, add a comma after "borings"

Page 2, lines 10 and 13, replace "can" with "may"

Page 2, line 12, replace "must" with "shall"

Page 2, line 19, replace "which" with "that"

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Friday, September 15, 2017

Page 2, line 20, replace "Such" with "The"

Page 2, lines 24 thru 30, is this the information that the Department considers when approving a "greater time limit" on page 1, line 7? If so, consider adding a cross-reference on page 1, line 7 to Item (10) to clarify how a request is reviewed.

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: Friday, September 15, 2017

1 15A NCAC 02L .0405 is amended under temporary procedures as follows:

2
3 **15A NCAC 02L .0405 REQUIREMENTS FOR LIMITED SITE ASSESSMENT**

4 If the required showing for a commercial underground storage tank cannot be made or if the Department determines
5 that a release from a noncommercial underground storage tank represents an unacceptable risk under 15A NCAC 02L
6 .0404 of this Section, the responsible party shall submit within 120 days of the discovery of the discharge or release,
7 or within such other greater time limit approved by the Department, a report containing information needed by the
8 Department to classify the level of risk to human health and the environment posed by a discharge or release under
9 15A NCAC 02L .0406 of this Section. Such report shall include, at a minimum:

- 10 (1) a location map, based on a USGS topographic map, showing the radius of 1500 feet from the source
11 area of a confirmed release or discharge and depicting all water supply wells and, surface waters
12 and designated wellhead protection areas as defined in 42 U.S.C. 300h-7(e) within the 1500-foot
13 radius. For purposes of this Section, source area means point of release or discharge from the
14 underground storage tank system;
- 15 (2) a determination of whether the source area of the discharge or release is within a designated wellhead
16 protection area as defined in 42 U.S.C. 300h-7(e);
- 17 (3) if the discharge or release is in the Coastal Plain physiographic region as designated on a map
18 entitled "Geology of North Carolina" published by the Department in 1985, a determination of
19 whether the source area of the discharge or release is located in an area in which there is recharge
20 to an unconfined or semi-confined deeper aquifer which is being used or may be used as a source
21 of drinking water;
- 22 (4) a determination of whether vapors from the discharge or release pose a threat of explosion due to
23 the accumulation of vapors in a confined space or pose any other serious threat to public health,
24 public safety or the environment;
- 25 (5) scaled site map(s) showing the location of the following which are on or adjacent to the property
26 where the source is located: site boundaries, roads, buildings, basements, floor and storm drains,
27 subsurface utilities, septic tanks and leach fields, underground storage tank systems, monitoring
28 wells, borings and the sampling points;
- 29 (6) the results from a limited site assessment which shall include:
 - 30 (a) the analytical results from soil samples collected during the construction of a monitoring
31 well installed in the source area of each confirmed discharge or release from a
32 noncommercial or commercial underground storage tank and either the analytical results
33 of a groundwater sample collected from the well or, if free product is present in the well,
34 the amount of free product in the well. The soil samples shall be collected every five feet
35 in the unsaturated zone unless a water table is encountered at or greater than a depth of 25
36 feet from land surface in which case soil samples shall be collected every 10 feet in the
37 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; 2005; Temporary Amendment Eff. September 29, 2017.



TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: Environmental Management Commission

2. Rule citation & name: 15A NCAC 02L .0406 DISCHARGE OR RELEASE CLASSIFICATIONS

3. Action: ☐ Adoption ☒ Amendment ☐ Repeal

4. Was this an Emergency Rule: ☐ Yes ☒ No Effective date:

5. Provide dates for the following actions as applicable:

- a. Proposed Temporary Rule submitted to OAH: July 14, 2017
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6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.

- ☐ A serious and unforeseen threat to the public health, safety or welfare.
- ☒ The effective date of a recent act of the General Assembly or of the U.S. Congress.
Cite: NC General Assembly - Session Law 2017-57 (Senate Bill 257)
Effective date: July 1, 2017
- ☐ A recent change in federal or state budgetary policy.
Effective date of change:
- ☐ A recent federal regulation.
Cite:
Effective date:
- ☐ A recent court order.
Cite order:
- ☐ State Medical Facilities Plan.
- ☐ Other:

Explain:

NC Session Law 2017-57 Section 13.19.(a) requires the adoption of temporary rules to define the Department's application of the requirements from SL 2015-241 until such time as permanent rulemaking is completed. NC Session Law 2015-241 Section 14.16B requires the amendment of rules that directed the owner or operator of a noncommercial underground storage tank (UST) to immediately respond to any release by trying to recover all accessible contamination. The Session Law directs the Department of Environmental Quality to classify the risk posed by a noncommercial UST discharge before the UST owner or operator is required to perform any cleanup actions. The amendments in 15A NCAC 02L .0406 differentiate the risk posed by a release of petroleum from a commercial UST, a release of motor fuel from a noncommercial UST (typically a farm tank), and a release (typically heating oil) from a noncommercial UST. An evaluation of historical data found noncommercial heating oil impacts to drinking wells extended only up to about 75 feet from the location of the release, a much shorter distance than found for commercial tanks or noncommercial motor fuel tanks, which can both reach 1000 feet (or more.) The amendments use 'high' and 'low' risk to satisfy the division in SL 2015-241 Section 14.16B between "unacceptable risk" and "low risk" noncommercial releases.

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

In the NC Session Law 2017-57 Section 13.19.(a), the General Assembly directed the Environmental Management Commission to commence temporary rulemaking procedures and adopt these rules no later than October 1, 2017. Given this directive, a condensed comment period was necessary to meet the requirements of the Session Law.

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

☐ Yes

Agency submitted request for consultation on:
Consultation not required. Cite authority:

☒ No

9. Rule-making Coordinator: Jennifer Everett

Phone: 919-707-8614


E-Mail: jennifer.everett@ncdenr.gov

Agency contact, if any: Jeremy Poplawski

Phone: 919-707-8151

E-Mail: jeremy.poplawski@ncdenr.gov

10. Signature of Agency Head*:


* 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: John D. Solomon

Title: Chairman of the Environmental Management Commission

E-Mail: pamlicojd@gmail.com

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

Fund, the ~~Marine Fisheries Commission~~ Division of Marine Fisheries shall consult with the Wildlife Resources Commission about ~~these proposals~~ funding requests.
...."

DMF ARTIFICIAL REEFS PROGRAM FUNDING CLARIFICATION

SECTION 13.16. G.S. 113-175.1 is amended by adding a new subsection to read:

"(d) To enhance fishing opportunities, the Marine Resources Fund may be used to construct artificial reefs in the estuarine and ocean waters of the State and federal waters up to 20 nautical miles from land."

UST PROGRAM RULE MAKING AND REPORT

SECTION 13.19.(a) The Environmental Management Commission shall adopt temporary rules implementing Section 14.16B of S.L. 2015-241 no later than October 1, 2017. Notwithstanding G.S. 150B-21.1(d), the temporary rules shall remain in effect until the effective date of the permanent rule adopted to replace the temporary rule.

SECTION 13.19.(b) The Commission shall report regarding the status of the rule making required by this section and by Section 14.16B of S.L. 2015-241 to the chairs of the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources and the Fiscal Research Division no later than December 31, 2017.

MERCURY SWITCH PROGRAM EXTENSION

SECTION 13.21.(a) Section 9 of S.L. 2007-142, as amended by Section 14.1(a) of S.L. 2016-94, reads as rewritten:

"**SECTION 9.** Sections 1, 2, 6, 7, and 9 of this act become effective when this act becomes law. Sections 3, 4, and 8 of this act become effective 1 July 2007. Section 5 of this act becomes effective 1 July 2007 and applies to violations that occur on or after that date. The Department shall submit the first annual report required by G.S. 130A-310.57, as enacted by Section 7 of this act, on or before 1 October 2008. Effective June 30, ~~2017~~, 2021, Part 6 of Article 9 of Chapter 130A of the General Statutes, as amended by this act, is repealed."

SECTION 13.21.(b) Section 14.1(c) of S.L. 2016-94 reads as rewritten:

"**SECTION 14.1.(c)** Subsection (b) of this section becomes effective June 30, ~~2017~~, 2021. Funds remaining in the Mercury Pollution Prevention Fund (Fund Code 24300-2119) on that date shall be transferred to the Division of Waste Management (Fund Code 14300-1760)."

SECTION 13.21.(c) This section becomes effective June 30, 2017.

WATER AND SEWER INFRASTRUCTURE GRANTS

SECTION 13.22.(a) The following allocations are made from nonrecurring funds appropriated by this act to the Division of Water Infrastructure of the Department of Environmental Quality for water and sewer infrastructure grants:

- (1) The sum of three million dollars (\$3,000,000) for the 2017-2018 fiscal year and the sum of two million dollars (\$2,000,000) for the 2018-2019 fiscal year to the Johnston County Research and Training Zone Association, Inc. for a regional wastewater project.
- (2) The sum of one million dollars (\$1,000,000) for the 2017-2018 fiscal year for grants to grantees located in development tier one or tier two areas, as defined in G.S. 143B-437.08, for any of the following:
 - a. Construction, protection, or expansion of water intake structures located in surface water impoundments. For purposes of this subdivision, protection of water intake structures may include the stabilization or restoration of natural stream functions upstream and downstream of the water intake.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02L .0406

DEADLINE FOR RECEIPT: Tuesday, September 19, 2017

PLEASE NOTE: 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:

Line 4, add a comma after "intermediate"

Lines 4 thru 5, what is the purpose of the clause "unless the discharge....of this Section"? It is unclear as this Rule seems to be defining the classification options and it does not appear to conflict or duplicate what is occurring in Rule .0404. Is this clause necessary?

Lines 13, 17, and 20, check the citation for "A(2)(a)" as it appears to be "A(2)a."

Lines 13, 17, and 20, simply add a comma after the correct citation for "A(2)" and say "A(7)" and delete the "and 94A(7)"

Line 35 cites to a 1985 map. Is that citation still accurate?

Page 2, line 1, replace "which" with "that"

Page 2, line 2, how does the "Department determines is being used or may be used"? Please clarify. Please note that this language is not in Rule .0405, where similar language is used on lines 20 thru 21. Consider using consistent language.

Page 2, lines 4 and 12 reference outside authorities. Has the USC and CFR used in this Rule already been incorporated in a prior rule in accordance with [G.S. 150B-21.6](#)? If not, please incorporate accordingly.

Page 2, lines 6 thru 7, is the punctuation correct on these identified chemicals? Would it be correct to add a comma after "benzene," delete the "and" after "benzene," and add a comma after "alkane"? Or would these suggestions change the identified chemicals?

Page 2, line 17, add a comma after "assessment"

Abigail M. Hammond
Commission Counsel

Date submitted to agency: Friday, September 15, 2017

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: Friday, September 15, 2017

1 15A NCAC 02L .0406 is amended under temporary procedures as follows:

2
3 **15A NCAC 02L .0406 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 15A NCAC 02L ~~.0404(3)~~ .0404(a)(3) or .0404(c) of this Section. For
6 purposes of this Section:

7 (1) "High risk" means that:

- 8 (a) a water supply well, including one used for non-drinking purposes, has been contaminated
9 by the release or discharge;
- 10 (b) a water supply well used for drinking water is located within 1000 feet of the source area
11 of a confirmed discharge or ~~release~~ release from a commercial underground storage tank
12 or a noncommercial underground storage tank storing motor fuel as defined by G.S. 143-
13 215.94A(2)(a) and 94A(7);
- 14 (c) a water supply well not used for drinking water is located within 250 feet of the source area
15 of a confirmed discharge or ~~release~~ release from a commercial underground storage tank
16 or a noncommercial underground storage tank storing motor fuel as defined by G.S. 143-
17 215.94A(2)(a) and 94A(7);
- 18 (d) the groundwater within 500 feet of the source area of a confirmed discharge or release from
19 a commercial underground storage tank or a noncommercial underground storage tank
20 storing motor fuel as defined by G.S. 143-215.94A(2)(a) and 94A(7) has the potential for
21 future use in that there is no source of water supply other than the groundwater;
- 22 (e) a water supply well, including one used for non-drinking purposes, is located within 150
23 feet of the source area of a confirmed discharge or release from a noncommercial
24 underground storage tank storing heating oil for consumptive use on the premises;
- 25 ~~(e)(f)~~ (f) the vapors from the discharge or release pose a serious threat of explosion due to
26 accumulation of the vapors in a confined space; or
- 27 ~~(f)(g)~~ (g) the discharge or release poses an imminent danger to public health, public safety, or the
28 environment.

29 (2) "Intermediate risk" means that:

- 30 (a) surface water is located within 500 feet of the source area of a confirmed discharge or
31 release from a commercial underground storage tank and the maximum groundwater
32 contaminant concentration exceeds the applicable surface water quality standards and
33 criteria found in 15A NCAC 02B .0200 by a factor of 10;
- 34 (b) in the Coastal Plain physiographic region as designated on a map entitled "Geology of
35 North Carolina" published by the Department in 1985, the source area of a confirmed
36 discharge or release from a commercial underground storage tank is located in an area in

- 1 which there is recharge to an unconfined or semi-confined deeper aquifer which the
2 Department determines is being used or may be used as a source of drinking water;
- 3 (c) the source area of a confirmed discharge or release from a commercial underground storage
4 tank is within a designated wellhead protection area, as defined in 42 U.S.C. 300h-7(e);
- 5 (d) the levels of groundwater contamination associated with a confirmed discharge or release
6 from a commercial underground storage tank for any contaminant except ethylene
7 dibromide, benzene and alkane and aromatic carbon fraction classes exceed 50 percent of
8 the solubility of the contaminant at 25 degrees Celsius or 1,000 times the groundwater
9 standard or interim standard established in 15A NCAC 02L .0202, whichever is lower; or
- 10 (e) the levels of groundwater contamination associated with a confirmed discharge or release
11 from a commercial underground storage tank for ethylene dibromide and benzene exceed
12 1,000 times the federal drinking water standard set out in 40 CFR 141.
- 13 (3) "Low risk" means that:
- 14 (a) the risk posed does not fall within the ~~high or intermediate risk categories;~~ high risk
15 category for any underground storage tank, or within the intermediate risk category for a
16 commercial underground storage tank; or
- 17 (b) based on review of site-specific information, limited assessment or interim corrective
18 actions, the Department determines that the discharge or release poses no significant risk
19 to human health or the environment.
- 20 If the criteria for more than one risk category applies, the discharge or release shall be classified at the highest risk
21 level identified in 15A NCAC 02L .0407 of this Section.

22

23 *History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.94A; 143-215.94E; 143-215.94T; 143-*
24 *215.94V; 143B-282; 1995 (Reg. Sess. 1996) c. 648, s. 1;*
25 *Recodified from 15A NCAC 02L .0115(d);*
26 *Amended Eff. December 1, 2005; 2005;*
27 *Temporary Amendment Eff. September 29, 2017.*
28



TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: Environmental Management Commission

2. Rule citation & name: 15A NCAC 02L .0408 ASSESSMENT AND REMEDIATION PROCEDURES

3. Action: ☐ Adoption ☒ Amendment ☐ Repeal

4. Was this an Emergency Rule: ☐ Yes ☒ No Effective date:

5. Provide dates for the following actions as applicable:

- a. Proposed Temporary Rule submitted to OAH: July 14, 2017
- b. Proposed Temporary Rule published on the OAH website: July 19, 2017
- c. Public Hearing date: July 31, 2017
- d. Comment Period: July 14, 2017 to August 11, 2017
- e. Notice pursuant to G.S. 150B-21.1(a3)(2): July 14, 2017
- f. Adoption by agency on: September 14, 2017
- g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]:
- h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:

6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.

- ☐ A serious and unforeseen threat to the public health, safety or welfare.
- ☒ The effective date of a recent act of the General Assembly or of the U.S. Congress.
Cite: NC General Assembly - Session Law 2017-57 (Senate Bill 257)
Effective date: July 1, 2017
- ☐ A recent change in federal or state budgetary policy.
Effective date of change:
- ☐ A recent federal regulation.
Cite:
Effective date:
- ☐ A recent court order.
Cite order:
- ☐ State Medical Facilities Plan.
- ☐ Other:

Explain:

NC Session Law 2017-57 Section 13.19.(a) requires the adoption of temporary rules to define the Department's application of the requirements from SL 2015-241 until such time as permanent rulemaking is completed. NC Session Law 2015-241 Section 14.16B requires the amendment of rules that directed the owner or operator of a noncommercial underground storage tank (UST) to immediately respond to any release by trying to recover all accessible contamination. The Session Law directs the Department of Environmental Quality to classify the risk posed by a noncommercial UST discharge before the UST owner or operator is required to perform any cleanup actions. The amendments in 15A NCAC 02L .0408 clarify that the existing assessment and remediation requirements remain for a commercial UST release and a noncommercial UST release, if determined by the Department to represent a 'high' risk, as required by SL 2015-241 Section 14.16B. The amendments also clarify that a formal soil cleanup report is only required for a 'low' risk commercial UST release, but not for noncommercial UST releases determined by the Department to be 'low' risk (as they receive notification of no cleanup, no further cleanup, or no further action from the Department upon classification as 'low' risk.)

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

In the NC Session Law 2017-57 Section 13.19.(a), the General Assembly directed the Environmental Management Commission to commence temporary rulemaking procedures and adopt these rules no later than October 1, 2017. Given this directive, a condensed comment period was necessary to meet the requirements of the Session Law.

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

☐ Yes

Agency submitted request for consultation on:
Consultation not required. Cite authority:

☒ No

9. Rule-making Coordinator: Jennifer Everett

Phone: 919-707-8614

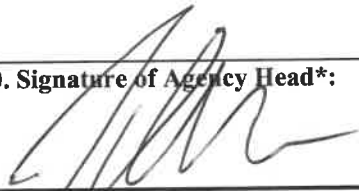
E-Mail: jennifer.everett@ncdenr.gov

Agency contact, if any: Jeremy Poplawski

Phone: 919-707-8151

E-Mail: jeremy.poplawski@ncdenr.gov

10. Signature of Agency Head*:


* 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: John D. Solomon

Title: Chairman of the Environmental Management Commission

E-Mail: pamlicojd@gmail.com

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

Fund, the ~~Marine Fisheries Commission~~ Division of Marine Fisheries shall consult with the Wildlife Resources Commission about ~~these proposals~~ funding requests.
...."

DMF ARTIFICIAL REEFS PROGRAM FUNDING CLARIFICATION

SECTION 13.16. G.S. 113-175.1 is amended by adding a new subsection to read:

"(d) To enhance fishing opportunities, the Marine Resources Fund may be used to construct artificial reefs in the estuarine and ocean waters of the State and federal waters up to 20 nautical miles from land."

UST PROGRAM RULE MAKING AND REPORT

SECTION 13.19.(a) The Environmental Management Commission shall adopt temporary rules implementing Section 14.16B of S.L. 2015-241 no later than October 1, 2017. Notwithstanding G.S. 150B-21.1(d), the temporary rules shall remain in effect until the effective date of the permanent rule adopted to replace the temporary rule.

SECTION 13.19.(b) The Commission shall report regarding the status of the rule making required by this section and by Section 14.16B of S.L. 2015-241 to the chairs of the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources and the Fiscal Research Division no later than December 31, 2017.

MERCURY SWITCH PROGRAM EXTENSION

SECTION 13.21.(a) Section 9 of S.L. 2007-142, as amended by Section 14.1(a) of S.L. 2016-94, reads as rewritten:

"**SECTION 9.** Sections 1, 2, 6, 7, and 9 of this act become effective when this act becomes law. Sections 3, 4, and 8 of this act become effective 1 July 2007. Section 5 of this act becomes effective 1 July 2007 and applies to violations that occur on or after that date. The Department shall submit the first annual report required by G.S. 130A-310.57, as enacted by Section 7 of this act, on or before 1 October 2008. Effective June 30, ~~2017~~, 2021, Part 6 of Article 9 of Chapter 130A of the General Statutes, as amended by this act, is repealed."

SECTION 13.21.(b) Section 14.1(c) of S.L. 2016-94 reads as rewritten:

"**SECTION 14.1.(c)** Subsection (b) of this section becomes effective June 30, ~~2017~~, 2021. Funds remaining in the Mercury Pollution Prevention Fund (Fund Code 24300-2119) on that date shall be transferred to the Division of Waste Management (Fund Code 14300-1760)."

SECTION 13.21.(c) This section becomes effective June 30, 2017.

WATER AND SEWER INFRASTRUCTURE GRANTS

SECTION 13.22.(a) The following allocations are made from nonrecurring funds appropriated by this act to the Division of Water Infrastructure of the Department of Environmental Quality for water and sewer infrastructure grants:

- (1) The sum of three million dollars (\$3,000,000) for the 2017-2018 fiscal year and the sum of two million dollars (\$2,000,000) for the 2018-2019 fiscal year to the Johnston County Research and Training Zone Association, Inc. for a regional wastewater project.
- (2) The sum of one million dollars (\$1,000,000) for the 2017-2018 fiscal year for grants to grantees located in development tier one or tier two areas, as defined in G.S. 143B-437.08, for any of the following:
 - a. Construction, protection, or expansion of water intake structures located in surface water impoundments. For purposes of this subdivision, protection of water intake structures may include the stabilization or restoration of natural stream functions upstream and downstream of the water intake.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02L .0408

DEADLINE FOR RECEIPT: Tuesday, September 19, 2017

PLEASE NOTE: *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:

Lines 7, 8, 19, and 25, is the term "industrial/commercial" used in a prior rule or is it a defined term? Consider adding a cross-reference to this Rule to clarify

Line 9, replace "does" with "shall"

Item (2) is addressing discharge or release from commercial or noncommercial storage tanks that are classified as "high risk." And Item (3) is addressing discharge or release from only commercial storage tanks that are classified as "low risk." If those statements are incorrect, then the language of this Rule is unclear. It could be that Item (2) applies to any discharge or release from a commercial storage tank, but it appears to be limited based on Item (3). If the two statements above are not correct, please clarify Items (2) and (3).

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: Friday, September 15, 2017

1 15A NCAC 02L .0408 is amended under temporary procedures as follows:

2
3 **15A NCAC 02L .0408 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 Paragraph, "site" means both the property upon
11 which the discharge or release has occurred and any property upon which soil has been affected by
12 the discharge or release.
- 13 (2) ~~The~~ For any discharge or release from a commercial underground storage tank, or for a discharge or
14 release from a noncommercial underground storage tank classified by the Department as high risk,
15 the responsible party shall submit a report to the Department assessing the vertical and horizontal
16 extent of soil contamination.
- 17 (3) For a discharge or release from a commercial underground storage tank classified by the Department
18 as low risk, the responsible party shall submit a report demonstrating that soil contamination has
19 been remediated to either the residential or industrial/commercial maximum soil contaminant
20 concentration established by the Department pursuant to 15A NCAC 02L .0411 of this Section,
21 whichever is applicable.
- 22 (4) For a discharge or release classified by the Department as high or intermediate risk, the responsible
23 party shall submit a report demonstrating that soil contamination has been remediated to the lower
24 of:
- 25 (a) the residential or industrial/commercial maximum soil contaminant concentration,
26 whichever is applicable, that has been established by the Department pursuant to 15A
27 NCAC 02L .0411 of this Section; or
- 28 (b) the "soil-to-groundwater" maximum soil contaminant concentration that has been
29 established by the Department pursuant to 15A NCAC 02L .0411 of this Section.

30
31 *History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.94A; 143-215.94E; 143-215.94T; 143-*
32 *215.94V; 143B-282; 1995 (Reg. Sess. 1996) c. 648, s. 1;*
33 *Recodified from 15A NCAC 02L .0115(i);*
34 *Amended Eff. December 1, 2005; 2005;*
35 *Temporary Amendment Eff. September 29, 2017.*
36



TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: Environmental Management Commission

2. Rule citation & name: 15A NCAC 02L .0409 NOTIFICATION REQUIREMENTS

3. Action: ☐ Adoption ☒ Amendment ☐ Repeal

4. Was this an Emergency Rule: ☐ Yes ☒ No Effective date:

5. Provide dates for the following actions as applicable:

- a. Proposed Temporary Rule submitted to OAH: July 14, 2017
- b. Proposed Temporary Rule published on the OAH website: July 19, 2017
- c. Public Hearing date: July 31, 2017
- d. Comment Period: July 14, 2017 to August 11, 2017
- e. Notice pursuant to G.S. 150B-21.1(a3)(2): July 14, 2017
- f. Adoption by agency on: September 14, 2017
- g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]:
- h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:

6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.

- ☐ A serious and unforeseen threat to the public health, safety or welfare.
- ☒ The effective date of a recent act of the General Assembly or of the U.S. Congress.
Cite: NC General Assembly - Session Law 2017-57 (Senate Bill 257)
Effective date: July 1, 2017
- ☐ A recent change in federal or state budgetary policy.
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- ☐ A recent federal regulation.
Cite:
Effective date:
- ☐ A recent court order.
Cite order:
- ☐ State Medical Facilities Plan.
- ☐ Other:

Explain:

NC Session Law 2017-57 Section 13.19.(a) requires the adoption of temporary rules to define the Department's application of the requirements from SL 2015-241 until such time as permanent rulemaking is completed. NC Session Law 2015-241 Section 14.16B requires the amendment of rules that directed the owner or operator of a noncommercial underground storage tank (UST) to immediately respond to any release by trying to recover all accessible contamination. The Session Law directs the Department of Environmental Quality to classify the risk posed by a noncommercial UST discharge before the UST owner or operator is required to perform any cleanup actions. The amendment in 15A NCAC 02L .0409 includes public notification requirements for noncommercial UST releases that are determined to be 'low' risk and therefore do not have to perform initial abatement, site assessment, or other remediation to meet the groundwater or interim standards or maximum soil contaminant concentrations, as described under the preceding temporary rules.

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

In the NC Session Law 2017-57 Section 13.19.(a), the General Assembly directed the Environmental Management Commission to commence temporary rulemaking procedures and adopt these rules no later than October 1, 2017. Given this directive, a condensed comment period was necessary to meet the requirements of the Session Law.

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

☐ Yes

Agency submitted request for consultation on:

Consultation not required. Cite authority:

☒ No

9. Rule-making Coordinator: Jennifer Everett

Phone: 919-707-8614

E-Mail: jennifer.everett@ncdenr.gov

Agency contact, if any: Jeremy Poplawski

Phone: 919-707-8151

E-Mail: jeremy.poplawski@ncdenr.gov

10. Signature of Agency Head*:



*** 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: John D. Solomon

Title: Chairman of the Environmental Management Commission

E-Mail: pamlicojd@gmail.com

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

Fund, the ~~Marine Fisheries Commission~~ Division of Marine Fisheries shall consult with the Wildlife Resources Commission about ~~these proposals~~ funding requests.
...."

DMF ARTIFICIAL REEFS PROGRAM FUNDING CLARIFICATION

SECTION 13.16. G.S. 113-175.1 is amended by adding a new subsection to read:

"(d) To enhance fishing opportunities, the Marine Resources Fund may be used to construct artificial reefs in the estuarine and ocean waters of the State and federal waters up to 20 nautical miles from land."

UST PROGRAM RULE MAKING AND REPORT

SECTION 13.19.(a) The Environmental Management Commission shall adopt temporary rules implementing Section 14.16B of S.L. 2015-241 no later than October 1, 2017. Notwithstanding G.S. 150B-21.1(d), the temporary rules shall remain in effect until the effective date of the permanent rule adopted to replace the temporary rule.

SECTION 13.19.(b) The Commission shall report regarding the status of the rule making required by this section and by Section 14.16B of S.L. 2015-241 to the chairs of the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources and the Fiscal Research Division no later than December 31, 2017.

MERCURY SWITCH PROGRAM EXTENSION

SECTION 13.21.(a) Section 9 of S.L. 2007-142, as amended by Section 14.1(a) of S.L. 2016-94, reads as rewritten:

"**SECTION 9.** Sections 1, 2, 6, 7, and 9 of this act become effective when this act becomes law. Sections 3, 4, and 8 of this act become effective 1 July 2007. Section 5 of this act becomes effective 1 July 2007 and applies to violations that occur on or after that date. The Department shall submit the first annual report required by G.S. 130A-310.57, as enacted by Section 7 of this act, on or before 1 October 2008. Effective June 30, ~~2017~~, 2021, Part 6 of Article 9 of Chapter 130A of the General Statutes, as amended by this act, is repealed."

SECTION 13.21.(b) Section 14.1(c) of S.L. 2016-94 reads as rewritten:

"**SECTION 14.1.(c)** Subsection (b) of this section becomes effective June 30, ~~2017~~, 2021. Funds remaining in the Mercury Pollution Prevention Fund (Fund Code 24300-2119) on that date shall be transferred to the Division of Waste Management (Fund Code 14300-1760)."

SECTION 13.21.(c) This section becomes effective June 30, 2017.

WATER AND SEWER INFRASTRUCTURE GRANTS

SECTION 13.22.(a) The following allocations are made from nonrecurring funds appropriated by this act to the Division of Water Infrastructure of the Department of Environmental Quality for water and sewer infrastructure grants:

- (1) The sum of three million dollars (\$3,000,000) for the 2017-2018 fiscal year and the sum of two million dollars (\$2,000,000) for the 2018-2019 fiscal year to the Johnston County Research and Training Zone Association, Inc. for a regional wastewater project.
- (2) The sum of one million dollars (\$1,000,000) for the 2017-2018 fiscal year for grants to grantees located in development tier one or tier two areas, as defined in G.S. 143B-437.08, for any of the following:
 - a. Construction, protection, or expansion of water intake structures located in surface water impoundments. For purposes of this subdivision, protection of water intake structures may include the stabilization or restoration of natural stream functions upstream and downstream of the water intake.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02L .0409

DEADLINE FOR RECEIPT: Tuesday, September 19, 2017

PLEASE NOTE: 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:

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

Line 4, add a comma after "attenuation"

Line 4, delete the "or" after "attenuation"

Line 10, replace "Such" with "The"

Lines 14 and 27 thru 28, what is meant by "within a time frame determined by the Department to be sufficient"? Please clarify.

Lines 16 and 30, what is meant by "impractical"? Please clarify

Lines 16 and 30, replace "may" with "shall"

Lines 17 and 32, replace "such" with "the"

Lines 17 and 30, define or delete "prominently"

Lines 17 and 31, what is meant by "actual notice"? Is this process supposed to be like process service under [G.S. 1A-1, Rule 4](#)? Please clarify

Line 18 requires that the Department be provided a "copy of the posted notice," but line 32 does not contain this requirement. Is that accurate? Consider using consistent language.

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: Friday, September 15, 2017

1 15A NCAC 02L .0409 is amended under temporary procedures as follows:

2
3 **15A NCAC 02L .0409 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 15A NCAC 02L
6 .0202, or to cleanup soil other than to the standard for residential use or soil-to-groundwater contaminant concentration
7 established pursuant to this Section, whichever is lowest, shall give notice to: the local Health Director and the chief
8 administrative officer of each political jurisdiction in which the contamination occurs; all property owners and
9 occupants within or contiguous to the area containing the contamination; and all property owners and occupants within
10 or contiguous to the area where the contamination is expected to migrate. Such notice shall describe the nature of the
11 plan and the reasons supporting it. Notification shall be made by certified mail concurrent with the submittal of the
12 corrective action plan. Approval of the corrective action plan by the Department shall be postponed for a period of
13 30 days following receipt of the request so that the Department may consider comments submitted. The responsible
14 party shall, within a time frame determined by the Department to be sufficient, provide the Department with a copy
15 of the notice and proof of receipt of each required notice, or of refusal by the addressee to accept delivery of a required
16 notice. If notice by certified mail to occupants under this Paragraph is impractical, the responsible party may give
17 notice by posting such notice prominently in a manner designed to give actual notice to the occupants. If notice is
18 made to occupants by posting, the responsible party shall provide the Department with a copy of the posted notice and
19 a description of the manner in which such posted notice was given.

20 (b) A responsible party who receives a notice pursuant to 15A NCAC 02L .0404(c) or .0407(d) of this Section for a
21 discharge or release which has not been remediated to the groundwater standards or interim standards established in
22 Rule .0202 of this Subchapter or to the lower of the residential or soil-to-groundwater contaminant concentrations
23 established under 15A NCAC 02L .0411 of this Section, shall, within 30 days of the receipt of such notice, provide a
24 copy of the notice to: the local Health Director and the chief administrative officer of each political jurisdiction in
25 which the contamination occurs; all property owners and occupants within or contiguous to the area containing
26 contamination; and all property owners and occupants within or contiguous to the area where the contamination is
27 expected to migrate. Notification shall be made by certified mail. The responsible party shall, within a time frame
28 determined by the Department, provide the Department with proof of receipt of the copy of the notice, or of refusal
29 by the addressee to accept delivery of the copy of the notice. If notice by certified mail to occupants under this
30 Paragraph is impractical, the responsible party may give notice by posting a copy of the notice prominently in a manner
31 designed to give actual notice to the occupants. If notice is made to occupants by posting, the responsible party shall
32 provide the Department with a 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); 143-215.94A; 143-215.94E; 143-215.94T; 143-*
35 *215.94V; 143B-282; 1995 (Reg. Sess. 1996) c. 648, s. 1;*
36 *Recodified from 15A NCAC 02L .0115(j) and (k);*
37 *Amended Eff. December 1, ~~2005~~, 2005;*

1 Temporary Amendment Eff. September 29, 2017.
2