

Temporary Rules September 2017 Technical Changes

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~~ **explosion**, or vapor hazard; remove any free
7 product; and comply with the requirements of Rules .0601 through ~~.0604 and .0604~~, .0701 through
8 ~~.0703 and .0703, and~~ .0705 of Subchapter ~~02N;~~ **[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~~ **The** 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~~ **that** 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~~ **the**
18 showing is made, the discharge or release shall be classified as low risk by the
19 ~~Department;~~ **Department as defined in Rules .0406 and .0407 of this Section.**

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

- 21 (1) take necessary actions to protect public health, safety, and welfare and the environment, including
22 actions to prevent any further discharge or release of petroleum from the noncommercial
23 underground storage tank; to identify and mitigate any fire, explosion, or vapor hazard; and to report
24 the release within 24 hours of discovery, in compliance with G.S. 143-215.83(a), ~~[84(a);]G.S. 143-~~
25 ~~215.84(a), [85(b);]G.S. 143-215.85(b), and [94E;]G.S. 143-215.94E; and~~
- 26 (2) provide or otherwise make available any information required by the Department to determine the
27 site ~~[risk;]risk as described in Rules .0405, .0406, and .0407 of this Section.~~

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

- 32 (1) describes the source and type of the petroleum release, site-specific risk factors, and risk factors
33 present in the surrounding area as defined in Rules .0406 and .0407 of this Section;
- 34 (2) demonstrates that no remaining risk factors are present that are likely to be affected per G.S. 143-
35 215.94V(b); or

1 (3) documents that soils remaining onsite do not contain contaminant levels ~~which~~that exceed either
2 the "soil-to-groundwater" or the residential maximum soil contaminant concentrations established
3 by the Department pursuant to Rule .0411 of this Section, whichever is lower.

4 The Department shall reclassify the site as high ~~risk~~risk, as defined in Rule .0406(1) of this Section, upon receipt of
5 new information related to site conditions indicating that the discharge or release from a noncommercial underground
6 storage tank poses an unacceptable risk or a potentially unacceptable risk to human health or the environment, as
7 described in Rule .0407 of this Section.

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

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

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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~~Department pursuant to Item (10) of this Rule, a
8 report containing information needed by the Department to classify the level of risk to human health and the
9 environment posed by a discharge or release under 15A NCAC 02L .0406 of this Section. ~~Such~~The report shall
10 ~~include, at a minimum:~~include:

- 11 (1) a location map, based on a USGS topographic map, showing the radius of 1500 feet from the source
12 area of a confirmed release or discharge and depicting all water supply ~~wells and wells~~, surface
13 ~~waterswaters~~, and designated wellhead protection areas as defined in 42 U.S.C. 300h-7(e) within
14 the 1500-foot radius. 42 U.S.C. 300h-7(e), is incorporated by reference including subsequent
15 amendments and editions. Copies may be obtained at no cost from the U.S. Government Bookstore's
16 website at 25 whether the source area of the discharge or release is located in an area in which there is recharge
26 to an unconfined or semi-confined deeper aquifer ~~which that~~ is being used or may be used as a source
27 of drinking water;
- 28 (4) a determination of whether vapors from the discharge or release pose a threat of explosion due to
29 the accumulation of vapors in a confined space or pose any other serious threat to public health,
30 public ~~safety~~safety, or the environment;
- 31 (5) scaled site map(s) showing the location of the following ~~which that~~ are on or adjacent to the property
32 where the source is located: site boundaries, roads, buildings, basements, floor and storm drains,
33 subsurface utilities, septic tanks and leach fields, underground storage tank systems, monitoring
34 wells, ~~borings~~borings, and the sampling points;
- 35 (6) the results from a limited site assessment ~~which that~~ shall include:
- 36 (a) the analytical results from soil samples collected during the construction of a monitoring
37 well installed in the source area of each confirmed discharge or release from a

1 noncommercial or commercial underground storage tank and either the analytical results
2 of a groundwater sample collected from the well or, if free product is present in the well,
3 the amount of free product in the well. The soil samples shall be collected every five feet
4 in the unsaturated zone unless a water table is encountered at or greater than a depth of 25
5 feet from land surface in which case soil samples shall be collected every 10 feet in the
6 unsaturated zone. The soil samples shall be collected from suspected worst-case locations
7 exhibiting visible contamination or elevated levels of volatile organic compounds in the
8 borehole;

9 (b) if any constituent in the groundwater sample from the source area monitoring well installed
10 in accordance with Sub-item (a) of this Item, for a site meeting the high risk classification
11 in 15A NCAC 02L .0406(1), exceeds the standards or interim standards established in 15A
12 NCAC 02L .0202 by a factor of 10 and is a discharge or release from a commercial
13 underground storage tank, the analytical results from a groundwater sample collected from
14 each of three additional monitoring wells or, if free product is present in any of the wells,
15 the amount of free product in such well. The three additional monitoring wells shall be
16 installed as follows: as best as ~~can~~may be determined, one upgradient of the source of
17 contamination and two downgradient of the source of contamination. The monitoring wells
18 installed upgradient and downgradient of the source of contamination ~~must~~shall be located
19 such that groundwater flow direction ~~can~~may be determined; and

20 (c) potentiometric data from all required wells;

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

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

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

28 (10) names and current addresses of all owners and operators of the underground storage tank systems
29 for which a discharge or release is confirmed, the owner(s) of the land upon which such systems are
30 located, and all potentially affected real property owners. When considering a request from a
31 responsible party for additional time to submit the report, the Division shall consider the extent to
32 which the request for additional time is due to factors outside of the control of the responsible party,
33 the previous history of the person submitting the report in complying with deadlines established
34 under the Commission's rules, the technical complications associated with assessing the extent of
35 contamination at the site or identifying potential receptors, and the necessity for ~~immediate~~
36 to eliminate an imminent threat to public health or the environment.

1 *History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.94A; 143-215.94E; 143-215.94T; 143-*
2 *215.94V; 143B-282; 1995 (Reg. Sess. 1996) c. 648,s. 1;*
3 *Recodified from 15A NCAC 02L .0115(c)(4);*
4 *Amended Eff. December 1, ~~2005~~, 2005;*
5 *Temporary Amendment Eff. September 29, 2017.*
6

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

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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~~intermediate, or low
5 risk unless the discharge or release has been classified under 15A NCAC 02L ~~.0404(3)~~.0404(a)(3) or .0404(c) of this
6 Section. For 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. ~~[443-~~
13 ~~215.94A(2)(a) and 94A(7);~~143-215.94A(2)a., (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. ~~[443-~~
17 ~~215.94A(2)(a) and 94A(7);~~143-215.94A(2)a., (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. [443-215.94A(2)(a) and 94A(7);~~143-215.94A(2)a.,
21 ~~(7)~~ has the potential for future use in that there is no source of water supply other than the
22 groundwater;

23 ~~(e) a water supply well, including one used for non-drinking purposes, is located within 150~~
24 ~~feet of the source area of a confirmed discharge or release from a noncommercial~~
25 ~~underground storage tank storing heating oil for consumptive use on the premises;~~

26 ~~(e)(f)~~ the vapors from the discharge or release pose a serious threat of explosion due to
27 accumulation of the vapors in a confined space; or

28 ~~(f)(g)~~ the discharge or release poses an imminent danger to public health, public safety, or the
29 environment.

30 (2) "Intermediate risk" means that:

31 (a) surface water is located within 500 feet of the source area of a confirmed discharge or
32 release from a commercial underground storage tank and the maximum groundwater
33 contaminant concentration exceeds the applicable surface water quality standards and
34 criteria found in 15A NCAC 02B .0200 by a factor of 10;

35 (b) in the Coastal Plain physiographic region as designated on a map entitled "Geology of
36 North Carolina" published by the Department in 1985, the source area of a confirmed
37 discharge or release from a commercial underground storage tank is located in an area in

1 ~~which~~that 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~~benzene, and alkane and aromatic carbon fraction classes exceed 50
8 percent of the solubility of the contaminant at 25 degrees Celsius or 1,000 times the
9 groundwater standard or interim standard established in 15A NCAC 02L .0202, whichever
10 is lower; or

11 (e) the levels of groundwater contamination associated with a confirmed discharge or release
12 from a commercial underground storage tank for ethylene dibromide and benzene exceed
13 1,000 times the federal drinking water standard set out in 40 CFR 141. 40 CFR 141, is
14 incorporated by reference including subsequent amendments and editions. Copies may be
15 obtained at no cost from the U.S. Government Bookstore's website at
16 <https://www.gpo.gov/fdsys/pkg/CFR-2015-title40-vol23/pdf/CFR-2015-title40-vol23->
17 [part141.pdf](https://www.gpo.gov/fdsys/pkg/CFR-2015-title40-vol23/pdf/CFR-2015-title40-vol23-). The material is available for inspection at the Department of Environmental
18 Quality, UST Section, 217 West Jones Street, Raleigh, NC 27603.

19 (3) "Low risk" means that:

20 (a) the risk posed does not fall within the ~~high or intermediate risk categories;~~high risk
21 category for any underground storage tank, or within the intermediate risk category for a
22 commercial underground storage tank; or

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

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

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

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

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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~~shall 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.

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

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3 **15A NCAC 02L .0409 NOTIFICATION REQUIREMENTS**

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

20 (b) A responsible party who receives a notice pursuant to 15A NCAC 02L .0404(c) or .0407(d) of this Section for a
21 discharge or release ~~which that~~ has not been remediated to the groundwater standards or interim standards established
22 in 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 shall~~ give notice by posting a copy of the notice ~~prominently~~ in a
31 manner designed to give actual notice to the occupants. If notice is made to occupants by posting, the responsible
32 party shall provide the Department with a description of the manner in which ~~such the~~ posted notice was given.

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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;*

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Temporary Amendment Eff. September 29, 2017.