

## Burgos, Alexander N

---

**From:** Duke, Lawrence  
**Sent:** Friday, May 20, 2022 9:03 PM  
**To:** Everett, Jennifer  
**Cc:** Burgos, Alexander N; Reynolds, Phillip T  
**Subject:** Re: Letters of Objection

Jennifer,

I am aware of none. There was more than ten for those rules to which the Commission objected, but that would only have had any effect if the Commission had approved those rules. I am fairly certain there were no letters seeking legislative review for the EMC 02B rules the Commission approved.

I am working on the objection letter from the Commission as to the other 02B rules and will be sending it at the beginning of next week.

Let me know if you have any other questions.

Have a good weekend.

Lawrence

Get [Outlook for iOS](#)

---

**From:** Everett, Jennifer <jennifer.everett@ncdenr.gov>  
**Sent:** Friday, May 20, 2022 7:43:34 PM  
**To:** Duke, Lawrence <lawrence.duke@oah.nc.gov>  
**Cc:** Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Reynolds, Phillip T <preynolds@ncdoj.gov>  
**Subject:** Letters of Objection

Hi Lawrence,

Were there any more letters of objection received by the RRC by 5pm today for the EMC rules in 15A NCAC 02B?

Thanks.

Jennifer

Jennifer Everett  
DEQ Rulemaking Coordinator  
N.C. Depart. Of Environmental Quality  
Office of General Counsel  
1601 Mail Service Center  
Raleigh, NC 27699-1601  
Tele: (919)-707-8614  
<https://deq.nc.gov/permits-rules/rules-regulations/deq-proposed-rules>

## Burgos, Alexander N

---

**Subject:** FW: [External] Slides

---

**From:** Reynolds, Phillip <PREynolds@ncdoj.gov>

**Sent:** Thursday, May 19, 2022 7:50 AM

**To:** Burgos, Alexander N <alexander.burgos@oah.nc.gov>

**Cc:** Everett, Jennifer <jennifer.everett@ncdenr.gov>; Duke, Lawrence <lawrence.duke@oah.nc.gov>

**Subject:** RE: [External] Slides

**CAUTION:** External email. Do not click links or open attachments unless you verify. Send all suspicious email as an attachment to [Report Spam](#).

Thanks for letting me know and thanks for your help.



**Phillip T. Reynolds**

Special Deputy Attorney General

Environmental Division

Commissions, Coastal and Administrative Section

Phone: (919) 716-6971

Email: [preynolds@ncdoj.gov](mailto:preynolds@ncdoj.gov)

114 W. Edenton St., Raleigh, NC 27603

[www.ncdoj.gov](http://www.ncdoj.gov)

Please note that messages to or from this address may be public records.

---

**From:** Burgos, Alexander N <[alexander.burgos@oah.nc.gov](mailto:alexander.burgos@oah.nc.gov)>

**Sent:** Thursday, May 19, 2022 7:47 AM

**To:** Reynolds, Phillip <[PREynolds@ncdoj.gov](mailto:PREynolds@ncdoj.gov)>

**Cc:** Everett, Jennifer <[jennifer.everett@ncdenr.gov](mailto:jennifer.everett@ncdenr.gov)>; Duke, Lawrence <[lawrence.duke@oah.nc.gov](mailto:lawrence.duke@oah.nc.gov)>

**Subject:** RE: [External] Slides

I only have judge Jackson as remote.

**Alexander Burgos**

Paralegal

Office of Administrative Hearings

1711 New Hope Church Road

Raleigh NC, 27609

(984) 236-1940

[Alexander.burgos@oah.nc.gov](mailto:Alexander.burgos@oah.nc.gov)

## Burgos, Alexander N

---

**From:** Reynolds, Phillip <PReynolds@ncdoj.gov>  
**Sent:** Thursday, May 19, 2022 7:46 AM  
**To:** Burgos, Alexander N  
**Cc:** Everett, Jennifer; Duke, Lawrence  
**Subject:** RE: [External] Slides

**CAUTION:** External email. Do not click links or open attachments unless you verify. Send all suspicious email as an attachment to [Report Spam](#).

Fantastic. Do you know if any members are attending remotely?



**Phillip T. Reynolds**  
Special Deputy Attorney General  
Environmental Division  
Commissions, Coastal and Administrative Section  
Phone: (919) 716-6971  
Email: [preynolds@ncdoj.gov](mailto:preynolds@ncdoj.gov)  
114 W. Edenton St., Raleigh, NC 27603  
[www.ncdoj.gov](http://www.ncdoj.gov)

Please note that messages to or from this address may be public records.

---

**From:** Burgos, Alexander N <alexander.burgos@oah.nc.gov>  
**Sent:** Thursday, May 19, 2022 7:45 AM  
**To:** Reynolds, Phillip <PReynolds@ncdoj.gov>  
**Cc:** Everett, Jennifer <jennifer.everett@ncdenr.gov>; Duke, Lawrence <lawrence.duke@oah.nc.gov>  
**Subject:** Re: [External] Slides

Yes I can print and place on their chairs

Sent from my iPhone

On May 19, 2022, at 7:43 AM, Reynolds, Phillip <[PReynolds@ncdoj.gov](mailto:PReynolds@ncdoj.gov)> wrote:

**CAUTION:** External email. Do not click links or open attachments unless you verify. Send all suspicious email as an attachment to [Report Spam](#).

Good morning, Alex,

Hope you're doing well. I have four slides related to the EMC's rules on 1,4-dioxane that I wanted to be able to show the RRC this morning. Would it be possible to have them available for the presentation this morning?

Thanks,  
Phillip

**Phillip T. Reynolds**  
Special Deputy Attorney General  
Environmental Division  
Commissions, Coastal and Administrative Section  
Phone: (919) 716-6971  
Email: [preynolds@ncdoj.gov](mailto:preynolds@ncdoj.gov)  
114 W. Edenton St., Raleigh, NC 27603  
[www.ncdoj.gov](http://www.ncdoj.gov)

Please note that messages to or from this address may be public records.

---

Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

# Calculate *Water Quality Standard* For Water and Fish Consumption

Pursuant to 15A NCAC 02B .0208, water quality standards and in-stream target values shall be calculated using the procedures given in this Rule

$$WQS = \frac{RL \times BW}{CPF \times [DWI + (FCR \times BCF)]} = 0.35 \mu\text{g/L}$$

ABR	Description	Value	Source
RL	= Risk Level	1.00 x 10 <sup>-6</sup>	02B .0208
BW	= Body Weight	70 kg	02B .0208
WI	= Drinking Water Intake	2.0 L/day	02B .0208
FCR	= Fish Consumption Rate	17.5 g/day	02B .0208
CPF	= Cancer Potency Factor	0.1 mg/kg/day	EPA*
BCF	= BioConcentration Factor	0.5 L/kg	EPA*

\* Published value specific to 1,4-Dioxane

# Calculate *In-stream Target Value* For Water and Fish Consumption

Pursuant to 15A NCAC 02B .0208, water quality standards and in-stream target values shall be calculated using the procedures given in this Rule

$$WQS = \frac{RL \times BW}{CPF \times [DWI + (FCR \times BCF)]} = 0.35 \mu\text{g/L}$$

ABR	Description	Value	Source
<b>RL</b>	= Risk Level	1.00 x 10 <sup>-6</sup>	02B .0208
<b>BW</b>	= Body Weight	70 kg	02B .0208
<b>WI</b>	= Drinking Water Intake	2.0 L/day	02B .0208
<b>FCR</b>	= Fish Consumption Rate	17.5 g/day	02B .0208
<b>CPF</b>	= Cancer Potency Factor	0.1 mg/kg/day	EPA*
<b>BCF</b>	= BioConcentration Factor	0.5 L/kg	EPA*

\* Published value specific to 1,4-Dioxane

# Calculate *Water Quality Standard* For Fish Consumption Only

Pursuant to 15A NCAC 02B .0208, water quality standards and in-stream target values shall be calculated using the procedures given in this Rule

$$WQS = \frac{RL \times BW}{CPF \times FCR \times BCF} = 80 \mu\text{g/L}$$

ABR	Description	Value	Source
<b>RL</b>	= Risk Level	1.00 x 10 <sup>-6</sup>	02B .0208
<b>BW</b>	= Body Weight	70 kg	02B .0208
<b>FCR</b>	= Fish Consumption Rate	17.5 g/day	02B .0208
<b>CPF</b>	= Cancer Potency Factor	0.1 mg/kg/day	EPA*
<b>BCF</b>	= BioConcentration Factor	0.5 L/kg	EPA*

\* Published value specific to 1,4-Dioxane

# Calculate *In-stream Target Value* For Fish Consumption Only

Pursuant to 15A NCAC 02B .0208, water quality standards and in-stream target values shall be calculated using the procedures given in this Rule

$$WQS = \frac{RL \times BW}{CPF \times FCR \times BCF} = 80 \mu\text{g/L}$$

ABR	Description	Value	Source
<b>RL</b>	= Risk Level	1.00 x 10 <sup>-6</sup>	02B .0208
<b>BW</b>	= Body Weight	70 kg	02B .0208
<b>FCR</b>	= Fish Consumption Rate	17.5 g/day	02B .0208
<b>CPF</b>	= Cancer Potency Factor	0.1 mg/kg/day	EPA*
<b>BCF</b>	= BioConcentration Factor	0.5 L/kg	EPA*

\* Published value specific to 1,4-Dioxane



## Burgos, Alexander N

---

**From:** Reynolds, Phillip <PReynolds@ncdoj.gov>  
**Sent:** Wednesday, May 18, 2022 4:17 PM  
**To:** Duke, Lawrence; Everett, Jennifer  
**Cc:** Burgos, Alexander N  
**Subject:** [External] RE: 02B Rules - 1,4 Dioxane Objection & Leg. Review Letters

**CAUTION:** External email. Do not click links or open attachments unless you verify. Send all suspicious email as an attachment to [Report Spam](#).

Lawrence,

Can you please identify for us the rules that you intend to object to and the general grounds of the new objections, even if you are continuing to “update” the opinion? A sudden about face at the 11<sup>th</sup> hour as to which rules you are recommending objection is in fact a substantive change in the opinion, and creates very real transparency concerns.

Phillip



**Phillip T. Reynolds**  
Special Deputy Attorney General  
Environmental Division  
Commissions, Coastal and Administrative Section  
Phone: (919) 716-6971  
Email: [preynolds@ncdoj.gov](mailto:preynolds@ncdoj.gov)  
114 W. Edenton St., Raleigh, NC 27603  
[www.ncdoj.gov](http://www.ncdoj.gov)

Please note that messages to or from this address may be public records.

---

**From:** Duke, Lawrence <lawrence.duke@oah.nc.gov>  
**Sent:** Wednesday, May 18, 2022 10:48 AM  
**To:** Everett, Jennifer <jennifer.everett@ncdenr.gov>  
**Cc:** Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Reynolds, Phillip <PReynolds@ncdoj.gov>  
**Subject:** 02B Rules - 1,4 Dioxane Objection & Leg. Review Letters

Jennifer,

As of today, the Rules Review Commission has received more than ten letters objecting to 15A NCAC 02B .0212, .0214, .0215, .0216, & .0218. These rules are therefore subject to legislative disapproval pursuant to N.C. Gen. Stat. § 150B-21.3(b2). Additionally, I am currently updating my staff opinion recommending that the Rules Review Commission object to these rules. My opinion, however, has not changed substantively, as I am still recommending objection.

If you have any questions, please let me know.

**Lawrence Duke**

Counsel to the North Carolina Rules Review Commission  
Office of Administrative Hearings  
(984) 236-1938

[Lawrence.Duke@oah.nc.gov](mailto:Lawrence.Duke@oah.nc.gov)

E-mail correspondence to and from this address may be subject to the North Carolina Public Records Law N.C.G.S. Chapter 132 and may be disclosed to third parties.

---

Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

## **Burgos, Alexander N**

---

**From:** Duke, Lawrence  
**Sent:** Wednesday, May 18, 2022 10:48 AM  
**To:** Everett, Jennifer  
**Cc:** Burgos, Alexander N; Reynolds, Phillip T  
**Subject:** 02B Rules - 1,4 Dioxane Objection & Leg. Review Letters

Jennifer,

As of today, the Rules Review Commission has received more than ten letters objecting to 15A NCAC 02B .0212, .0214, .0215, .0216, & .0218. These rules are therefore subject to legislative disapproval pursuant to N.C. Gen. Stat. § 150B-21.3(b2). Additionally, I am currently updating my staff opinion recommending that the Rules Review Commission object to these rules. My opinion, however, has not changed substantively, as I am still recommending objection.

If you have any questions, please let me know.

### **Lawrence Duke**

Counsel to the North Carolina Rules Review Commission  
Office of Administrative Hearings  
(984) 236-1938  
[Lawrence.Duke@oah.nc.gov](mailto:Lawrence.Duke@oah.nc.gov)

E-mail correspondence to and from this address may be subject to the North Carolina Public Records Law N.C.G.S. Chapter 132 and may be disclosed to third parties.

---

Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

## Burgos, Alexander N

---

**From:** Everett, Jennifer  
**Sent:** Tuesday, April 19, 2022 4:32 PM  
**To:** Duke, Lawrence  
**Cc:** Ventaloro, Christopher; Burgos, Alexander N  
**Subject:** RE: EMC Rules (02B) Submission - RRC

Great, thank you. And, thanks for letting us know about the objection letters to date.

Jennifer

Jennifer Everett  
DEQ Rulemaking Coordinator  
N.C. Depart. Of Environmental Quality  
Office of General Counsel  
1601 Mail Service Center  
Raleigh, NC 27699-1601  
Tele: (919)-707-8614  
<https://deq.nc.gov/permits-rules/rules-regulations/deq-proposed-rules>

E-mail correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties.

---

**From:** Duke, Lawrence <lawrence.duke@oah.nc.gov>  
**Sent:** Tuesday, April 19, 2022 3:24 PM  
**To:** Everett, Jennifer <jennifer.everett@ncdenr.gov>  
**Cc:** Ventaloro, Christopher <christopher.ventaloro@ncdenr.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>  
**Subject:** RE: EMC Rules (02B) Submission - RRC

Jennifer,

Thank you for checking in on your 02B rules. I have reviewed your responses and they look fine.

Just as an FYI, we have received a request to speak from Sean Sullivan at Robinson Bradshaw. He has asked to speak on behalf of his client, Fayetteville Public Works Commission, in favor of EMC's proposed modifications to 15A NCAC 02B .0202, .0208, .0211, .0212, .0214, .0215, .0216, and .0218.

Additionally, there have been at least three letters of objection and request for legislative review on these same 1,4-dioxane rules.

Let me know if you need anything further.

**Lawrence Duke**  
Counsel, NC Rules Review Commission  
Office of Administrative Hearings  
(984) 236-1938

---

**From:** Everett, Jennifer <[jennifer.everett@ncdenr.gov](mailto:jennifer.everett@ncdenr.gov)>  
**Sent:** Tuesday, April 19, 2022 11:59 AM  
**To:** Duke, Lawrence <[lawrence.duke@oah.nc.gov](mailto:lawrence.duke@oah.nc.gov)>  
**Cc:** Ventaloro, Christopher <[christopher.ventaloro@ncdenr.gov](mailto:christopher.ventaloro@ncdenr.gov)>; Burgos, Alexander N <[alexander.burgos@oah.nc.gov](mailto:alexander.burgos@oah.nc.gov)>  
**Subject:** RE: EMC Rules (02B) Submission - RRC

Hi Lawrence,

Just checking to see if you have had a chance to review our responses for the EMC 02B rules.

Thank you!

Jennifer Everett  
DEQ Rulemaking Coordinator  
N.C. Depart. Of Environmental Quality  
Office of General Counsel  
1601 Mail Service Center  
Raleigh, NC 27699-1601  
Tele: (919)-707-8614  
<https://deq.nc.gov/permits-rules/rules-regulations/deq-proposed-rules>

E-mail correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties.

---

**From:** Everett, Jennifer  
**Sent:** Wednesday, April 13, 2022 1:10 PM  
**To:** Duke, Lawrence <[lawrence.duke@oah.nc.gov](mailto:lawrence.duke@oah.nc.gov)>  
**Cc:** Ventaloro, Christopher <[christopher.ventaloro@ncdenr.gov](mailto:christopher.ventaloro@ncdenr.gov)>; Burgos, Alexander N <[alexander.burgos@oah.nc.gov](mailto:alexander.burgos@oah.nc.gov)>  
**Subject:** RE: EMC Rules (02B) Submission - RRC

Hi Lawrence,

Attached are the 15A NCAC 02B rewritten rules and our responses to your change requests.

Let us know if there are further questions.

Thank you!

Jennifer Everett  
DEQ Rulemaking Coordinator  
N.C. Depart. Of Environmental Quality  
Office of General Counsel  
1601 Mail Service Center  
Raleigh, NC 27699-1601  
Tele: (919)-707-8614  
<https://deq.nc.gov/permits-rules/rules-regulations/deq-proposed-rules>

E-mail correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties.

---

**From:** Duke, Lawrence <[lawrence.duke@oah.nc.gov](mailto:lawrence.duke@oah.nc.gov)>

**Sent:** Friday, April 8, 2022 12:46 PM

**To:** Everett, Jennifer <[jennifer.everett@ncdenr.gov](mailto:jennifer.everett@ncdenr.gov)>

**Cc:** Ventaloro, Christopher <[christopher.ventaloro@ncdenr.gov](mailto:christopher.ventaloro@ncdenr.gov)>; Burgos, Alexander N <[alexander.burgos@oah.nc.gov](mailto:alexander.burgos@oah.nc.gov)>

**Subject:** EMC Rules Submission - RRC

Jennifer,

I have reviewed the Rules submitted by the Environmental Management Commission for the April 2022 RRC meeting. The RRC will formally review these Rules at its meeting on Thursday, April 21, 2022, at 9:00 a.m. The meeting will be a hybrid of in-person and WebEx attendance, and an invite should be sent to you as we get closer to the meeting. If there are any other representatives from your agency who will want to attend virtually, let me know prior to the meeting, and we will get invites out to them as well.

I have attached my requests for changes. Please submit the revised Rules and forms to me via email, no later than 5:00 p.m. on Thursday, April 14, 2022. In the meantime, please let me know if you have any questions or concerns.

Thanks,

**Lawrence Duke**

Counsel to the North Carolina Rules Review Commission

Office of Administrative Hearings

(984) 236-1938

[Lawrence.Duke@oah.nc.gov](mailto:Lawrence.Duke@oah.nc.gov)

E-mail correspondence to and from this address may be subject to the North Carolina Public Records Law N.C.G.S. Chapter 132 and may be disclosed to third parties.

---

Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

## REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02B .0202

**DEADLINE FOR RECEIPT: Thursday, April 14, 2022**

***PLEASE NOTE: This request may extend to 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 email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

*In the first Paragraph, is the phrase “which are not defined in this article” necessary? If not, please remove. Also in this paragraph, please use “defined” instead of “interpreted”.*

*In Item (1), starting with “Acute toxicity shall be determined using the following procedures:” and including (a) through (d), are these part of the definition of “acute toxicity to aquatic life” or are these substantive requirements or procedures? Do these belong in the “Definitions” rule or are they the proper subject of a separate rule?*

*In Item (9), do the phrases “structural or nonstructural”, “used singularly or in combination”, or “point source or nonpoint source” include or exclude or help define “Best Management Practices”?*

*In Item (31), Does the phrase “disturbed or undisturbed” add clarity or help define “forest vegetation”?*

*In Item (31), Does the phrase “directly or indirectly” add clarity or help define “offensive condition”? Also, please add a comma after “herbage”.*

*Should the list in Item (53) be alphabetized, or is there a reason they are listed in this order?*

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

Lawrence R. Duke  
Commission Counsel

Date submitted to agency: April 8, 2022 [v.2: April 11, 2022]

**REQUEST FOR § 150B-21.10 CHANGES**

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02B .0208

**DEADLINE FOR RECEIPT: Thursday, April 14, 2022**

***PLEASE NOTE: This request may extend to 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 email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*In Subpart (a)(2)(B)(xvi), the roman numeral (xv) is missing. Please correct the numbering.*

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

Lawrence R. Duke  
Commission Counsel

Date submitted to agency: April 8, 2022 [v.2: April 11, 2022]



**REQUEST FOR § 150B-21.10 CHANGES**

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02B .0211

**DEADLINE FOR RECEIPT: Thursday, April 14, 2022**

***PLEASE NOTE: This request may extend to 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 email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*In Item (1), the phrase “as defined in Rule .0202 of this Section” is unnecessary. Please delete.*

*In Item (18), the capitalization of “waters” on line 12 seems unnecessary. Please correct unless there is a reason it is capitalized.*

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

Lawrence R. Duke  
Commission Counsel

Date submitted to agency: April 8, 2022 [v.2: April 11, 2022]

**REQUEST FOR § 150B-21.10 CHANGES**

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02B .0219

**DEADLINE FOR RECEIPT: Thursday, April 14, 2022**

***PLEASE NOTE: This request may extend to 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 email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*In Subitem (3)(b), because (c) has been omitted, the sentence should end “period.” instead of “period;”.*

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

Lawrence R. Duke  
Commission Counsel

Date submitted to agency: April 8, 2022 [v.2: April 11, 2022]