

Burgos, Alexander N

Subject: FW: EMC 15A NCAC 02B .0305

From: Duke, Lawrence <lawrence.duke@oah.nc.gov>

Sent: Friday, August 11, 2023 2:37 PM

To: Everett, Jennifer <jennifer.everett@deq.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Weaver, Adriene <adriene.weaver@deq.nc.gov>; Wojoski, Paul A <Paul.Wojoski@deq.nc.gov>

Subject: RE: EMC 15A NCAC 02B .0305

Jennifer,

Thank you for making the changes to this Rule. It is good to go, and I will be recommending approval.

Have a good weekend.

Lawrence Duke

Counsel, NC Rules Review Commission

Office of Administrative Hearings

(984) 236-1938

Burgos, Alexander N

Subject: FW: EMC 15A NCAC 02B .0305
Attachments: 15A NCAC 02B .0305.docx; Environmental Management Commission - 08.2023 - 15A NCAC 02B .0305 - Response to RRC Request for Changes.docx

From: Everett, Jennifer <jennifer.everett@deq.nc.gov>
Sent: Wednesday, August 9, 2023 2:02 PM
To: Duke, Lawrence <lawrence.duke@oah.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Weaver, Adriene <adriene.weaver@deq.nc.gov>; Wojoski, Paul A <Paul.Wojoski@deq.nc.gov>
Subject: RE: EMC 15A NCAC 02B .0305

Lawrence,

Attached are the responses to your technical change requests and the re-written rule.

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)-707-8595
<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.

1 15A NCAC 02B .0305 is amended **with changes** as published in 37:17 NCR 1128-1130 as follows:

2
3 **15A NCAC 02B .0305 WATAUGA RIVER BASIN**

4 (a) Classifications assigned to the waters within the Watauga River Basin are set forth in the Watauga River Basin
5 Classification Schedule, which may be inspected at the following places:

- 6 (1) the Internet at [https://deq.nc.gov/about/divisions/water-resources/water-planning/classification-](https://deq.nc.gov/about/divisions/water-resources/water-planning/classification-standards/river-basin-classification)
7 [standards/river-basin-classification](https://deq.nc.gov/about/divisions/water-resources/water-planning/classification-standards/river-basin-classification) and
8 (2) the following offices of the North Carolina Department of Environmental Quality:
9 (A) Asheville Regional Office
10 2090 US Highway 70
11 Swannanoa, **North Carolina; NC 28711-8211;**
12 (B) Winston-Salem Regional Office
13 450 West Hanes Mill **RoadRoad, Suite 300**
14 Winston-Salem, **North Carolina; and NC 27105; and**
15 (C) Division of Water Resources
16 Central Office
17 512 North Salisbury Street
18 Raleigh, **North Carolina; NC 27604.**

19 (b) Unnamed streams entering the State of Tennessee are classified "C."

20 (c) The Watauga River Basin Classification Schedule was amended effective:

- 21 (1) August 12, 1979;
22 (2) February 1, 1986;
23 (3) October 1, 1987;
24 (4) August 1, 1989;
25 (5) August 1, 1990;
26 (6) December 1, 1990;
27 (7) April 1, 1992;
28 (8) August 3, 1992;
29 (9) February 1, 1993;
30 (10) April 1, 1994;
31 (11) August 1, 1998;
32 (12) November 1, **2007-2007; and**
33 **(13) September 1, 2023.**

34 (d) The Watauga River Basin Classification Schedule was amended effective July 1, **19891989,** as follows:

- 35 (1) Dutch Creek **(Index No. 8-11)Index No. 8-11** was reclassified from Class C-trout to Class B-trout.
36 (2) Pond Creek **(Index No. 8-20-2)Index No. 8-20-2** from water supply intake **(**located just above
37 Tamarack Road**)** to Beech Creek and **all** tributary waters were reclassified from Class WS-III to C.

1 (e) The Watauga River Basin Classification Schedule was amended effective December 1, ~~1990~~1990, with the
2 reclassification of the Watauga River from the US Highway 321 bridge to the North Carolina/Tennessee state line
3 from Class C to Class B.

4 (f) The Watauga River Basin Classification Schedule was amended effective April 1, ~~1992~~1992, with the
5 reclassification of Pond Creek from Classes WS-III and C to Classes WS-III Trout and C Trout.

6 ~~(g) The Watauga River Basin Classification Schedule was amended effective August 3, 1992 with the reclassification
7 of all water supply waters (waters with a primary classification of WS I, WS II or WS III). These waters were
8 reclassified to WS I, WS II, WS III, WS IV or WS V as defined in the revised water supply protection rules (15A
9 NCAC 2B .0100, .0200 and .0300), which became effective on August 3, 1992. In some cases, streams with primary
10 classifications other than WS were reclassified to a WS classification due to their proximity and linkage to water
11 supply waters. In other cases, waters were reclassified from a WS classification to an alternate appropriate primary
12 classification after being identified as downstream of a water supply intake or identified as not being used for water
13 supply purposes.~~

14 (g) The Watauga River Basin Classification Schedule was amended effective August 3, 1992, as follows:

15 (1) Class WS-I, WS-II or WS-III waters were reclassified to WS-I, WS-II, WS-III, WS-IV or WS-V as
16 defined in the revised water supply protection rules 15A NCAC 02B .0100 through .0300, which
17 became effective on August 3, 1992.

18 (2) Additional waters classified as Class C were reclassified to a WS classification and additional waters
19 classified as Class B were reclassified to a Class WS & B classification due to proximity and linkage
20 to water supply waters.

21 (3) Additional Class WS-I, WS-II, or WS-III waters were reclassified to remove the WS classification
22 after being identified as downstream of a water supply intake or identified as not being used for
23 water supply purposes.

24 (h) The Watauga River Basin Classification Schedule was amended effective February 1, ~~1993~~1993, with the
25 reclassification of Boone Fork ~~(Index No. 8-7)~~Index No. 8-7 and ~~all~~ tributary waters from Classes C Tr HQW and C
26 HQW to Classes C Tr ORW and C ORW.

27 (i) The Watauga River Basin Classification Schedule was amended effective April 1, ~~1994~~1994, with the
28 reclassification of the Elk River from Peavine Branch to the North Carolina/Tennessee state line ~~Index No. 8-22-~~
29 ~~(3)~~Index No. 8-22-(3) from Class C Tr to Class B Tr.

30 (j) The Watauga River Basin Classification Schedule was amended effective August 1, ~~1998~~1998, with the
31 reclassification of East Fork Pond Creek from its source to the backwater of Santis Lake, ~~Index No. 8-20-2-1.5~~Index
32 No. 8-20-2-1.5 from Class WS-II Tr to Class WS-III Tr; the reclassification of West Fork Pond Creek (Santis Lake)
33 ~~Index No. 8-20-2-1-(2)~~Index No. 8-20-2-1-(2) from the backwaters of Santis Lake to Pond Creek from WS-II Tr CA
34 to WS-III Tr CA; and the reclassification of the connecting stream of Lake Coffey ~~Index No. 8-20-2-2~~Index No. 8-
35 ~~20-2-2~~ from the dam at Lake Coffey to Pond Creek from WS-II Tr CA to C Tr.

1 (k) The Watauga River Basin Classification Schedule was amended effective November 1, 2007~~2007~~, with the
2 reclassification of the Beech Creek Bog near Beech Creek ~~Index No. 8-20~~Index No. 8-20 to Class WL UWL. The
3 North Carolina Division of Water Resources maintains a Geographic Information Systems data layer of the UWL.

4 (l) The Watauga River Basin Classification Schedule was amended effective September 1, 2023, with the
5 reclassification of the following waterbodies:

- 6 (1) Green Ridge Branch ~~Index No. 8-3~~ Index No. 8-3 and tributary waters from the source to
7 Watauga River from Class C to Class C ORW;
- 8 (2) Harrison Branch ~~Index No. 8-10-1~~ Index No. 8-10-1 and tributary waters from the source to
9 Laurel Fork from Class C to Class C ORW;
- 10 (3) The portion of Upper Laurel Fork ~~Index No. 8-10-3~~ Index No. 8-10-3 and tributary waters from
11 source to SR103 from Class C to Class C ORW;
- 12 (4) The portion of Dutch Creek ~~Index No. 8-12-(0.5)~~ Index No. 8-12-(0.5) and tributary waters from
13 source to Pigeonroost Creek from Class B Tr to Class B Tr ORW;
- 14 (5) Craborchard Creek ~~Index No. 8-12-3~~ Index No. 8-12-3 and tributary waters from source to Dutch
15 Creek from Class C Tr to Class C Tr HQW;
- 16 (6) The portion of South Fork Ellison Branch ~~Index No. 8-15-1-2~~ Index No. 8-15-1-2 and tributary
17 waters from source to U.S. 421 from Class C to Class C ORW;
- 18 (7) Laurel Creek ~~Index No. 8-17~~ Index No. 8-17 and tributary waters from source to Watauga River
19 from Class C Tr to Class C Tr ORW, including Worley Creek ~~Index No. 8-17-1~~Index No. 8-17-
20 1 from source to Laurel Creek from Class C Tr to Class Tr ORW and Spice Branch (Creek) ~~Index~~
21 No. 8-17-2 Index No. 8-17-2 from source to Laurel Creek from Class C to Class C ORW;
- 22 (8) The portion of Little Beaverdam Creek ~~Index No. 8-19-2~~Index No. 8-19-2 and tributary waters
23 from source to Fork Branch from Class C Tr to Class C Tr HQW, including Jones Branch ~~Index~~
24 No. 8-19-2-1 Index No. 8-19-2-1 from source to Little Beaverdam Creek from Class C to Class C
25 HQW;
- 26 (9) West Fork Rube Creek ~~Index No. 8-19-3-2~~Index No. 8-19-3-2 and tributary waters from source
27 to Rube Creek from Class C to Class C HQW;
- 28 (10) The portion of Stone Mountain Branch ~~Index No. 8-2~~Index No. 8-2 and tributary waters from
29 source to unnamed tributary located approximately 350 feet southwest of the intersection of SR
30 1206 and SR 1201 from Class C to Class C HQW; and
- 31 (11) Shawnehaw Creek ~~Index No. 8-22-7~~ Index No. 8-22-7 and tributary waters from source to Mill
32 Pond, Elk River from Class C Tr to Class C Tr ORW.

33
34
35 *History Note: Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1);*
36 *Eff. February 1, 1976;*

1 *Amended Eff. November 1, 2007; August 1, 1998; April 1, 1994; February 1, 1993; August 3, 1992;*
2 *April 1, 1992;*
3 *Readopted Eff. November 1, 2019;*
4 *Amended Eff. September 1, 2023.*

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02B .0305

DEADLINE FOR RECEIPT: Thursday, August 10, 2023

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:

Throughout the Rule, for the Index No. references, it is correct to remove the parenthesis. Would it be clearer to set these references off with commas before and after?

The decision to remove the parentheses for the Index No. references for this Rule was made because the Rules Review Commission counsel requested their removal in a similar, recently codified rule: 15A NCAC 02B .0315 Neuse River Basin. Therefore, this rule was formatted to be consistent to 02B .0315.

Several parentheses were removed. If possible, please remove the parentheses in Subparagraph (d)(2) and Paragraph (g).

Requested changes made. Paragraph (g) has been rewritten without parentheses.

“All” should not be used if “a”, “an”, or “the” can be used with the same meaning or if the word can be omitted. This appears on page 2, lines 7 and 15.

Requested changes made. “All” has been removed the Rule.

“Appropriate” should be avoided if possible. This appears on page 2, line 11.

Requested changes made. Paragraph (g) has been rewritten without the word “Appropriate”.

In Paragraph (g), “In some cases” and “In other cases” seems unnecessary. Please remove.

Requested changes made. Paragraph (g) has been rewritten without these phrases.

Please retype the rule accordingly and resubmit it to our office electronically.

Burgos, Alexander N

From: Duke, Lawrence
Sent: Friday, August 4, 2023 2:33 PM
To: Everett, Jennifer; Weaver, Adriene
Cc: Burgos, Alexander N
Subject: EMC 15A NCAC 02B .0305
Attachments: Environmental Management Commission - 08.2023 - 15A NCAC 02B .0305 - Change Requests.docx

Jennifer,

Thank you for sending the 02D and 02Q rules. I will take a look at them and respond.

Please see the attached change request for one of the EMC rules for this month. We split the rule package for some reason above my pay grade...

Hope you have a good weekend!

Lawrence Duke



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