



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

May 25, 2022

Environmental Management Commission
Jennifer Everett, Rulemaking Coordinator
217 West Jones Street
Raleigh, North Carolina 27603
Sent via email: Jennifer.Everett@ncdenr.gov

Re: Objection to 15A NCAC 02B .0208, .0212, .0214, .0215, .0216, and .0218

Dear Ms. Everett,

At its meeting on May 19, 2022, the North Carolina Rules Review Commission voted to object to 15A NCAC 02B .0208, .0212, .0214, .0215, .0216, and .0218. The Commission determined that each proposed Rule, as amended, had not been adopted in accordance with Part 2 of Article 2A of the N.C. Administrative Procedure Act (“APA”). *See* N.C. Gen. Stat. § 150B-21.9(a)(4). This letter shall serve as the Commission’s statement of objection pursuant to N.C. Gen. Stat. § 150B-21.12(a).

The APA requires that, prior to publishing notice of the proposed text of a rule, the State agency must prepare a fiscal note that assesses the costs imposed by the rule to the greatest extent possible and state the amount of funds that would be expended pursuant to the rule. This allows both the public and regulated entities the opportunity to give informed comment, either to the agency during the rule adoption process, this Commission during the rule review process, or the legislature once the rule has been approved. *See* N.C. Gen. Stat. § 150B-21.2(e) and (f); 150B-21.3(b2).

Specifically, the Commission determined that the Environmental Management Commission (“EMC”) had not complied with the requirements of N.C. Gen. Stat. § 150B-21.4 when it proposed the inclusion of 1,4-dioxane in-stream target values in surface water standards set by 15A NCAC 02B .0208, .0212, .0214, .0215, .0216, and .0218. EMC achieved this by setting baseline target values for 1,4-dioxane through regulatory policy and permitting agreements instead of through the rule-making process required by law, then using these values as the baseline when submitting the addition of 1,4-dioxane target values to these rules for OSBM fiscal impact analysis. This resulted in the fiscal note concluding there would be no additional fiscal impact because there would be no

Donald Robert van der Vaart, Director
Chief Administrative Law Judge

Fred G. Morrison, Jr.
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change in in-stream target values. The fiscal note stated this even though adding 1,4-dioxane into EMC's regulatory rules would require treatment processes that are, in EMC's own words, "prohibitively expensive for local governments and the citizens served by public utilities," and yet EMC's fiscal note "did not attempt to monetize costs" because the baseline target values were already in place. This is not sufficient to satisfy the APA as costs must be quantified to the greatest extent possible and published with or before the publication of the notice of text of the proposed rule.

The Rules Review Commission is not taking the position that EMC is not allowed to add 1,4-dioxane target values into its rules. That is a policy decision it alone may make. However, it must do so in the manner prescribed by law. The Rules Review Commission is simply requiring of EMC, as it would require of any other rule-making body within the State, that it follow the good-governance requirements of the APA rule-making process and transparently assess and make known to regulated entities and the citizens of this State the fiscal impact of proposed rules and proposed rule amendments.

Please respond to this objection in accordance with the provisions of N.C. Gen. Stat. § 150B-21.12.

If you have any questions regarding the Commission's actions, please let me know.

Sincerely,



Lawrence R. Duke
Commission Counsel

cc: Phillip T. Reynolds, Environmental Management Commission Counsel