

Burgos, Alexander N

Subject: FW: EMC RFC - October 2025
Attachments: 15A NCAC 02B .0219 & .0226 EMC RFC October 2025 10-14-25 Final.docx; 15A NCAC 02B .0219.docx; 15A NCAC 02B .0226.docx

From: Everett, Jennifer <jennifer.everett@deq.nc.gov>
Sent: Thursday, October 16, 2025 2:08 PM
To: Ascher, Seth M <seth.ascher@oah.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Shelton, Bridget <Bridget.Shelton@deq.nc.gov>; Young, Elizabeth S <esyoung@ncdoj.gov>; Higgins, Karen <karen.higgins@deq.nc.gov>; Ventaloro, Christopher <christopher.ventaloro@deq.nc.gov>
Subject: RE: EMC RFC - October 2025

Hello Seth,

Attached are rewritten rules from the EMC and responses to your technical change requests.

Thanks.

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
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REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02B .0219

DEADLINE FOR RECEIPT: October 16, 2025

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:

Regarding item (3)(a), lines 17-24, “to the satisfaction of the Commission” considering the “quality and quantity of the sewage” seems like a potentially vague standard. Can you provide additional context for what the standard is here? Or the processes the Commission is using to make this determination?

This standard establishes that any discharge of waste shall not prevent the attainment of the water from being classified as and used for primary contact recreation (i.e. swimming, etc.). The Commission determines the “quality and quantity of the sewage” using existing regulatory programs, such as their NPDES permits, to ensure the primary contact recreation use continues to be met. The rule has been revised to clarify that the quality and quantity of sewage allowable must not affect the water’s use for primary contact recreation as defined in 15A NCAC 02B .0202.

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

Seth Ascher
Commission Counsel

Date submitted to agency: October 2, 2025

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02B .0226

DEADLINE FOR RECEIPT: October 16, 2025

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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:

The statutory citations on line 5 are missing a hyphen. Please correct.

Corrections completed. The hyphens were published in the Register but were inadvertently removed afterwards. The corrections to add the hyphens back were made but not with the indicating highlight format.

Are the standards in 40 CFR 131.14 and 40 CFR 131.10 incorporated somewhere?

Language has been added to clarify that by adding the citations, the standards are also incorporated by reference. A link to each CFR was also added.

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

1 15A NCAC 02B .0219 is amended with changes as published in 39:17 NCR 11-13 as follows:

2
3 **15A NCAC 02B .0219 FRESH SURFACE WATER QUALITY STANDARDS FOR CLASS B WATERS**

4 The following water quality standards shall apply to surface waters that are for primary contact recreation as defined
5 in Rule .0202 of this Section, and are classified as Class B waters. Water quality standards applicable to Class C waters
6 as described in Rule .0211 of this Section also apply to Class B waters.

7 (1) The best usage of Class B waters shall be primary contact recreation and any other best usage
8 specified for Class C waters.

9 (2) Class B waters shall meet the standards of water quality for outdoor bathing places as specified in
10 Item (3) of this Rule and shall be of sufficient size and depth for primary contact recreation. In
11 assigning the B classification to waters intended for primary contact recreation, the Commission
12 shall consider the relative proximity of sources of water pollution and the potential hazards involved
13 in locating swimming areas close to sources of water pollution and shall not assign this classification
14 to waters in which such water pollution could result in a hazard to public health. Sources of water
15 pollution that preclude any of these uses on either a short-term or long-term basis shall be deemed
16 to violate a water quality standard.

17 (3) Quality standards applicable to Class B waters:

18 (a) Sewage, industrial wastes, or other wastes: none shall be allowed that are not treated to ~~the~~
19 ~~satisfaction of the Commission. In determining~~ the degree of treatment required for ~~such~~
20 ~~waste when discharged into waters to be used for bathing, the water to be used for primary~~
21 ~~contact recreation as defined in Rule .0202 of this Section. In determining the degree of~~
22 ~~treatment required,~~ the Commission shall consider the quality and quantity of the ~~sewage~~
23 ~~sewage, and the~~ wastes ~~involved involved,~~ and the proximity of such discharges ~~of waste~~
24 to waters in this ~~class,~~ class so as to maintain the primary contact recreation use. Discharges
25 in the immediate vicinity of ~~bathing~~ primary contact recreation use areas shall not be
26 allowed if the Director determines that the waste cannot be treated to ensure the protection
27 of primary contact recreation;

28 (b) ~~Fecal coliforms~~ Escherichia coli shall not exceed a geometric mean of ~~200~~ 126/100 ml (~~MF~~
29 ~~count~~ colony forming units or most probable number) based on at least five samples taken
30 over a 30 day ~~period, period. nor~~ Escherichia coli also shall not exceed ~~400~~ 274/100 ml
31 (colony forming units or most probable number) in more than 20 percent of the samples
32 examined during such period.

33 (4) Wastewater discharges to waters classified as B shall meet the reliability requirements specified in
34 15A NCAC 02H .0124. Discharges to waters where a primary contact recreational use is determined
35 by the Director to be attainable shall be required to meet water quality standards and reliability
36 requirements to protect this use concurrently with reclassification efforts.

1 *History Note:* *Authority G.S. 143-214.1; 143-215.3(a)(1);*
2 *Eff. January 1, 1990;*
3 *Amended Eff. October 1, 1995;*
4 *Readopted Eff. November 1, 2019;*
5 *Amended Eff. November 1, 2025; June 1, 2022.*

1 15A NCAC 02B .0226 is amended with changes as published in 39:17 NCR 11-13 as follows:

2
3 **15A NCAC 02B .0226 EXEMPTIONS FROM SURFACE WATER QUALITY STANDARDS**

4 Variances from applicable standards, revisions to water quality standards or site-specific water quality standards may
5 be granted by the Commission on a case-by-case basis pursuant to G.S. 143-215.3(e), 143-214.3 or 143-214.1. In
6 addition, variances from applicable standards shall meet the requirements set forth in 40 CFR ~~131.14.~~131.14, which
7 is incorporated by reference including subsequent amendments and editions. This material is available free of charge
8 at <https://www.ecfr.gov/current/title-40/chapter-I/subchapter-D/part-131/subpart-B/section-131.14>. A listing of
9 existing variances shall be maintained and made available to the public by the Division. Exemptions established
10 pursuant to this Rule shall be reviewed as part of the Triennial Review of Water Quality Standards conducted pursuant
11 to 40 CFR ~~131.10(e).~~131.10(g), which is incorporated by reference including subsequent amendments and editions.
12 This material is available free of charge at [https://www.ecfr.gov/current/title-40/chapter-I/subchapter-D/part-](https://www.ecfr.gov/current/title-40/chapter-I/subchapter-D/part-131/subpart-B/section-131.10)
13 [131/subpart-B/section-131.10](https://www.ecfr.gov/current/title-40/chapter-I/subchapter-D/part-131/subpart-B/section-131.10).

14
15 *History Note: Authority G.S. 143-214.1; 143-214.3; 143-215.3(e);*
16 *Eff. October 1, 1995;*
17 *Readopted Eff. November 1, ~~2019.~~ 2019;*
18 *Amended Eff. November 1, 2025.*

Request for Changes Pursuant to N.C. Gen. Stat. § 150B-21.10

Staff reviewed these Rules to ensure that each Rule is within the agency's statutory authority, reasonably necessary, clear and unambiguous, and adopted in accordance with Part 2 of the North Carolina Administrative Procedure Act. Following review, staff has issued this document that may request changes pursuant to G.S. 150B-21.10 from your agency or ask clarifying questions.

If the request includes questions, please contact the reviewing attorney to discuss.

In order to properly submit rewritten rules, please refer to the following Rules in the NC Administrative Code:

- Rule 26 NCAC 02C .0108 – The Rule addresses general formatting.
- Rule 26 NCAC 02C .0404 – The Rule addresses changing the introductory statement.
- Rule 26 NCAC 02C .0405 – The Rule addresses properly formatting changes made after publication in the NC Register.

Note the following general instructions:

1. You must submit the revised rule via email to oah.rules@oah.nc.gov. The electronic copy must be saved as the official rule name (XX NCAC XXXX).
2. For rules longer than one page, insert a page number.
3. Use line numbers; if the rule spans more than one page, have the line numbers reset at one for each page.
4. Do not use track changes. Make all changes using manual strikethroughs, underlines and highlighting.
5. You cannot change just one part of a word. For example:
 - Wrong: “~~a~~Association”
 - Right: “~~association~~ Association”
6. Treat punctuation as part of a word. For example:
 - Wrong: “day;, and”
 - Right: “~~day,~~ day, and”
7. Formatting instructions and examples may be found at:
<https://www.oah.nc.gov/rule-format-examples>

If you have any questions regarding proper formatting of edits after reviewing the rules and examples, please contact the reviewing attorney.

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Seth Ascher
Commission Counsel
Date submitted to agency: October 2, 2025

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02B .0226

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Burgos, Alexander N

Subject: FW: EMC RFC - October 2025

From: Everett, Jennifer <jennifer.everett@deq.nc.gov>
Sent: Tuesday, October 7, 2025 3:18 PM
To: Ascher, Seth M <seth.ascher@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Shelton, Bridget <Bridget.Shelton@deq.nc.gov>; Young, Elizabeth S <esyong@ncdoj.gov>; Higgins, Karen <karen.higgins@deq.nc.gov>
Subject: RE: EMC RFC - October 2025

Great, thanks for responding so quickly.

Jennifer

Jennifer Everett
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N.C. Depart. Of Environmental Quality
Office of General Counsel
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Raleigh, NC 27699-1601
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From: Ascher, Seth M <seth.ascher@oah.nc.gov>
Sent: Tuesday, October 7, 2025 3:15 PM
To: Everett, Jennifer <jennifer.everett@deq.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Shelton, Bridget <Bridget.Shelton@deq.nc.gov>; Young, Elizabeth S <esyong@ncdoj.gov>; Higgins, Karen <karen.higgins@deq.nc.gov>
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No, I did review that rule and had no change requests. I neglected to mention that in my initial email.

Seth Ascher

Counsel to the North Carolina Rules Review Commission

Office of Administrative Hearings

(984) 236-1934

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From: Everett, Jennifer <jennifer.everett@deq.nc.gov>

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To: Ascher, Seth M <seth.ascher@oah.nc.gov>

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Subject: RE: EMC RFC - October 2025

Hi Seth,

This may be premature, but we also had one more EMC rule, 15A NCAC 02L .0202. Just wanted to make sure if any tech change requests are forthcoming or no?

Thanks.

Jennifer Everett
DEQ Rulemaking Coordinator
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Burgos, Alexander N

From: Everett, Jennifer
Sent: Thursday, October 2, 2025 4:46 PM
To: Ascher, Seth M; Ventaloro, Christopher
Cc: Burgos, Alexander N
Subject: RE: EMC RFC - October 2025

Thank you, Seth. We will be in touch.

Jennifer Everett
DEQ Rulemaking Coordinator
N.C. Depart. Of Environmental Quality
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Raleigh, NC 27699-1601
Tele: (919)-707-8595
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From: Ascher, Seth M <seth.ascher@oah.nc.gov>
Sent: Thursday, October 2, 2025 3:25 PM
To: Everett, Jennifer <jennifer.everett@deq.nc.gov>; Ventaloro, Christopher <christopher.ventaloro@deq.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: EMC RFC - October 2025

Good afternoon,

I'm the attorney who reviewed the Rules submitted by the Environmental Management Commission for the October 2025 RRC meeting. The RRC will formally review these Rules at its meeting on Thursday, October 30, 2025, at 10:00 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 close to the meeting. If there are any other representatives from your agency who want to attend virtually, let me know prior to the meeting, and we will get invites out to them as well.

Attached is the Request for Changes Pursuant to G.S. 150B-21.10. Please submit your responses, the revised Rules, and forms to me via email, no later than 5 p.m. on October 16, 2025.

Please let me know if you have any questions or concerns.

Seth Ascher

Counsel to the North Carolina Rules Review Commission

Office of Administrative Hearings

(984) 236-1934

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