

## Burgos, Alexander N

---

**Subject:** FW: [External] Re: RFC for August EMC Rule

---

**From:** Young, Elizabeth <[esyoung@NCDOJ.GOV](mailto:esyoung@NCDOJ.GOV)>  
**Sent:** Monday, August 26, 2024 10:26 AM  
**To:** Ascher, Seth M <[seth.ascher@oah.nc.gov](mailto:seth.ascher@oah.nc.gov)>; Everett, Jennifer <[jennifer.everett@deq.nc.gov](mailto:jennifer.everett@deq.nc.gov)>; Rules, Oah <[oah.rules@oah.nc.gov](mailto:oah.rules@oah.nc.gov)>  
**Cc:** Burgos, Alexander N <[alexander.burgos@oah.nc.gov](mailto:alexander.burgos@oah.nc.gov)>; Crawford, Todd <[todd.crawford@deq.nc.gov](mailto:todd.crawford@deq.nc.gov)>  
**Subject:** RE: [External] Re: RFC for August EMC Rule

Some people who received this message don't often get email from [esyoung@ncdoj.gov](mailto:esyoung@ncdoj.gov). [Learn why this is important](#)

**CAUTION:** External email. Do not click links or open attachments unless verified. Report suspicious emails with the Report Message button located on your Outlook menu bar on the Home tab.

Seth,

Great, thank you. We will work on correcting the website ASAP.

Best,  
Elly



**Elly S. Young** (she/her)  
Assistant Attorney General  
Environmental Division  
Commissions, Coastal and Administrative Section  
Phone: (919) 716-6944  
Email: [esyoung@ncdoj.gov](mailto:esyoung@ncdoj.gov)  
114 W. Edenton St., Raleigh, NC 27603  
[ncdoj.gov](http://ncdoj.gov)

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

---

**From:** Ascher, Seth M <[seth.ascher@oah.nc.gov](mailto:seth.ascher@oah.nc.gov)>  
**Sent:** Monday, August 26, 2024 10:24 AM  
**To:** Young, Elizabeth <[esyoung@NCDOJ.GOV](mailto:esyoung@NCDOJ.GOV)>; Everett, Jennifer <[jennifer.everett@deq.nc.gov](mailto:jennifer.everett@deq.nc.gov)>; Rules, Oah <[oah.rules@oah.nc.gov](mailto:oah.rules@oah.nc.gov)>  
**Cc:** Burgos, Alexander N <[alexander.burgos@oah.nc.gov](mailto:alexander.burgos@oah.nc.gov)>; Crawford, Todd <[todd.crawford@deq.nc.gov](mailto:todd.crawford@deq.nc.gov)>  
**Subject:** Re: [External] Re: RFC for August EMC Rule

Good morning,

Thank you for the thorough responses to my questions. Based on the additional information provided, I anticipate recommending approval of the rule as originally submitted at Wednesday's meeting. If anything changes before then, I will let you know.

Also, if you were not aware, you can likely correct the website under 150B-21.5(4) by contacting the codifier.

Sincerely,

**Seth Ascher**

Counsel to the North Carolina Rules Review Commission

Office of Administrative Hearings

(984) 236-1934

---

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

---

**Subject:** FW: [External] Re: RFC for August EMC Rule

---

**From:** Young, Elizabeth <esyoung@NCDOJ.GOV>

**Sent:** Friday, August 23, 2024 4:23 PM

**To:** Ascher, Seth M <seth.ascher@oah.nc.gov>; Everett, Jennifer <jennifer.everett@deq.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>

**Cc:** Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Crawford, Todd <todd.crawford@deq.nc.gov>

**Subject:** [External] Re: RFC for August EMC Rule

Some people who received this message don't often get email from [esyoung@ncdoj.gov](mailto:esyoung@ncdoj.gov). [Learn why this is important](#)

**CAUTION:** External email. Do not click links or open attachments unless verified. Report suspicious emails with the Report Message button located on your Outlook menu bar on the Home tab.

Seth,

I'm now counsel to the EMC. The website (<https://www.epa.gov/hw-sw846>) and set of documents you found is correct, and we will to update rule .0805 with an accurate website.

There are a number of different SW-846 test methods, with method 8327 being one of them, and the method we are referring to for measuring PFAS.

Please let me know if you have any other questions, and I'll do my best to answer.

Elly

Get [Outlook for Android](#)

---

## Burgos, Alexander N

---

**Subject:** FW: RFC for August EMC Rule

---

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

**Sent:** Friday, August 23, 2024 3:37 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>; Crawford, Todd <todd.crawford@deq.nc.gov>; Young, Elizabeth S <esyoung@ncdoj.gov>

**Subject:** Re: RFC for August EMC Rule

Jennifer,

I need further clarification on at least one point:

The link for "Test Methods for Evaluating Solid Waste, SW-846, Third Edition" provided in 15A NCAC 02H .0805(H)(iii) (<https://www.epa.gov/osw/hazard/testmethods/sw846/online>) appears to no longer be live. When I searched the title, I found this website: <https://www.epa.gov/hw-sw846>. Is this the correct set of documents?

Is "Test Method 8327" (<https://www.epa.gov/hw-sw846/sw-846-test-method-8327-and-polyfluoroalkyl-substances-pfas-liquid-chromatographytandem>) a testing method for measuring PFAS under your rules? If not, can you point me to a method?

Thanks,

**Seth Ascher**

Counsel to the North Carolina Rules Review Commission

Office of Administrative Hearings

(984) 236-1934

---

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.

---

**From:** Everett, Jennifer <[jennifer.everett@deq.nc.gov](mailto:jennifer.everett@deq.nc.gov)>

**Sent:** Friday, August 23, 2024 1:18 PM

**To:** Ascher, Seth M <[seth.ascher@oah.nc.gov](mailto:seth.ascher@oah.nc.gov)>; Rules, Oah <[oah.rules@oah.nc.gov](mailto:oah.rules@oah.nc.gov)>

**Cc:** Burgos, Alexander N <[alexander.burgos@oah.nc.gov](mailto:alexander.burgos@oah.nc.gov)>; Crawford, Todd <[todd.crawford@deq.nc.gov](mailto:todd.crawford@deq.nc.gov)>; Young, Elizabeth S <[esyoung@ncdoj.gov](mailto:esyoung@ncdoj.gov)>

**Subject:** RE: RFC for August EMC Rule

Seth,

Attached are responses to your technical change requests for EMC's 15A NCAC 02H .0804.

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  
<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.

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

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02H .0804

**DEADLINE FOR RECEIPT: August 23, 2024**

***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:

*From your cover sheet and fiscal note, it appears that there are not currently rules or permits establishing PFAS limits, but that there are forthcoming rules on this subject. Is this correct? If so, what is the status of those rules?*

**Response:** As an initial point of clarification, Rule 02H .0804 does not require testing for PFAS. Nor does it require that laboratories become certified to test for PFAS. Instead, the Rule would grant DEQ's Laboratory Certification Branch the authority to certify private laboratories desiring to offer PFAS testing as a service to permittees that are required to monitor for PFAS. In other words, the Rule would expand private laboratories' abilities to meet permittee needs by expanding the parameters for which laboratories can be certified to test.

To provide additional context, when municipal or industrial wastewater dischargers receive an individual NPDES permit, the permit contains conditions that require the permittee to test its wastewater discharge for certain compounds. The test results are submitted to DEQ to ensure compliance with the permit. While some of the compounds for which testing is required have established limits, permittees may also be required to simply monitor for compounds that do not have regulatory limits.

Certain NPDES permits currently require PFAS monitoring, but because PFAS is not a listed parameter under Rule 02H .0804, no laboratories can be certified to test for this parameter. Data on PFAS in North Carolina's waters is therefore currently dependent on either (1) testing done by DEQ's in-house laboratory from samples collected by DEQ staff or by Chemours<sup>1</sup>, or (2) where current NPDES permits require permittees to monitor for PFAS, testing conducted by uncertified laboratories which potentially lack accurate and uniform results.

Finally, there are PFAS limits for drinking water. Groundwater and surface water PFAS standards have been developed, and the EMC's Water Quality Committee and

---

<sup>1</sup> Chemours is required to test for PFAS and limit PFAS discharge pursuant to a Court Order in case 17 CVS 580.

Seth Ascher

Commission Counsel

Date submitted to agency: August 13, 2024

the Groundwater and Waste Management Committee are currently reviewing the draft rules and regulatory impact analyses before they proceed to the full EMC for approval to go to public comment. Regardless of established limits, adding PFAS as a parameter in Rule 02H .0804 would allow the Department to certify private laboratories to conduct regulatory PFAS testing and allow permittees to come into full compliance with monitoring requirements.

*I am aware of a recent appellate case involving DEQ, permitting, and rules. (DEQ v. Farm Bureau 291 N.C. App. 188 (2023)). Your form does not indicate that this rule was prompted by Court order. Does that case impact this rule or are they unrelated?*

**Response:** The EMC's understanding is that the RRC's rule submission form requires agencies to indicate that a rule was prompted by a Court order only when a court case mandates that the agency take specific action on a rule. *DEQ v. Farm Bureau* makes no such mandates.

The *Farm Bureau* case concerns requirements contained in general permits applicable to Concentrated Animal Feeding Operations authorized under State law and the inclusion of conditions in the general permit that had not been specifically adopted through the rulemaking process. Rule 02H .0804 contains no requirements whatsoever. Rather, the rule is permissive, simply allowing DEQ's Laboratory Certification Branch to issue certifications to private laboratories testing for PFAS compounds. The two issues are unrelated.

*On p. 2, line 1, should this be "Surfactants, such as"?*

**Response:** No. "Methylene Blue Active Surfactants" is not an example of a multitude of Parameter types, rather Methylene Blue Active Surfactants are a specific type of surfactant and the only type tested for in North Carolina. To make the change suggested would broadly expand what surfactant testing may be lab certified.

*On p. 2, lines 13 through 17, does "Residue" have a precise definition somewhere? Or just the dictionary definition? I am not sure what these lines are referring to.*

**Response:** "Residue" retains its commonly understood definition: "something that remains after a part is taken, separated, or designated or after the completion of a process." *Residue*, Merriam Webster Dictionary (2024) <https://www.merriam-webster.com/dictionary/residue>. It is also a commonly understood term within testing facilities.

*On p. 2, line 27 through 35, what does “Vector Attraction Reduction” mean?*

**Response:** Vector Attraction Reduction is defined at 15A NCAC 02H .0803(37). Vectors are organisms such as insects and rodents, that can spread disease by carrying and transferring pathogens, and is also defined at 40 CFR § 503.31.

*On p.4, line 23, does “Per- and polyfluoroalkyl substances (PFAS)” need a definition? It sounds like a scientific term, but I noticed that your draft rule under consideration (15A NCAC 02L .0202) uses different terms. See <https://www.deq.nc.gov/key-issues/2l-proposed-amendment/download?attachment>, p. 8 and 9. Is there a controlling definition somewhere?*

**Response:** No, PFAS does not need a definition. Per- and polyfluoroalkyl substances, or PFAS, is a term that describes a group of chemical compounds (i.e., a parameter). As the term itself suggests, PFAS compounds are chemicals that contain a chain of linked fluorine (fluoro) and hydrocarbon (alkyl) molecules. The length of the chain and exact structure of those bonds is what defines each individual PFAS compound, including those referenced in the 02L .0202 rule.

*Regarding standards for PFAS testing, it appears that you are incorporating the details of the standard from the sources listed in Rule .0805(a)(1). Where in the incorporated documents is the standard? I did not see a specific reference to PFAS measurement in 40 CFR parts 136 or 503.*

**Response:** Standards generally refer to limits, whereas Rule 02H .0805 refers to approved methods for testing the parameters listed in Rule 02H .0804. The method for PFAS testing is found at 15A NCAC 02H .0805(a)(1)(C): “Test Methods for Evaluating Solid Waste, SW-846, Third Edition.”

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



## Burgos, Alexander N

---

**Subject:** FW: RFC for August EMC Rule

---

**From:** Everett, Jennifer <jennifer.everett@deq.nc.gov>  
**Sent:** Tuesday, August 13, 2024 12:23 PM  
**To:** Ascher, Seth M <seth.ascher@oah.nc.gov>; Crawford, Todd <todd.crawford@deq.nc.gov>  
**Cc:** Burgos, Alexander N <alexander.burgos@oah.nc.gov>  
**Subject:** RE: RFC for August EMC Rule

Thanks Seth. Will be in touch.

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.

---

**From:** Ascher, Seth M <[seth.ascher@oah.nc.gov](mailto:seth.ascher@oah.nc.gov)>  
**Sent:** Tuesday, August 13, 2024 10:14 AM  
**To:** Everett, Jennifer <[jennifer.everett@deq.nc.gov](mailto:jennifer.everett@deq.nc.gov)>; Crawford, Todd <[todd.crawford@deq.nc.gov](mailto:todd.crawford@deq.nc.gov)>  
**Cc:** Burgos, Alexander N <[alexander.burgos@oah.nc.gov](mailto:alexander.burgos@oah.nc.gov)>  
**Subject:** RFC for August EMC Rule

Good afternoon,

I'm the attorney who reviewed the Rules submitted by the Environmental Management Commission for the August 2024 RRC meeting. The RRC will formally review these Rules at its meeting on Wednesday, August 28, 2024, 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 August 23, 2024.

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

---

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.