

Burgos, Alexander N

From: Reynolds, Phillip <PReynolds@ncdoj.gov>
Sent: Saturday, July 23, 2022 3:27 PM
To: Duke, Lawrence
Cc: Robin Smith; Everett, Jennifer; Burgos, Alexander N; Grozav, Anca
Subject: [External] EMC's Response to RRC's Objection re: 02B Rules
Attachments: 2022-07-23 EMC Response to RRC re 02B Rules.pdf

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Lawrence,

Pursuant to N.C. Gen. Stat. § 150B 21.12(a), please find attached the North Carolina Environmental Management Commission's response to the North Carolina Rules Review Commission's objections to the above referenced rules.

Should you have any questions, please feel free to contact me.

Sincerely,
Phillip



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

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JOSH STEIN
ATTORNEY GENERAL

STATE OF NORTH CAROLINA
DEPARTMENT OF JUSTICE

REPLY TO:
PHILLIP T. REYNOLDS
ENVIRONMENTAL DIVISION
preynolds@ncdoj.gov
(919)716-6971

July 23, 2022

North Carolina Rules Review Commission
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh, North Carolina 27609

Via Email to Lawrence.Duke@oah.nc.gov

Re: EMC Response to RRC's Objection to Rules 15A NCAC 02B .0208, .0212, .0214, .0216, and .0218

Dear Chair Doran and Commission Members:

On behalf of the North Carolina Environmental Management Commission ("EMC") and pursuant to N.C. Gen. Stat. § 150B-21.12(a)(2), please accept this letter as the EMC's written response to the North Carolina Rules Review Commission ("RRC") indicating that the EMC has decided not to change the rules referenced above at this time. The EMC notes that the RRC's objection is not predicated on the contents of the proposed rules, and therefore no revision of the rules is necessary to address the objection. Instead, the RRC has objected to the EMC's Regulatory Impact Analysis ("RIA") and fiscal note, which were reviewed and approved by the Office of State Budget and Management ("OSBM") prior to the publication of the notice of text of the proposed rules. While the EMC disagrees with the RRC's objection, the EMC intends to submit additional information to the RRC prior to its August meeting in an effort to resolve the RRC's objection, especially as it relates to N.C. Gen. Stat. § 150B-21.4.

Please note that this written response is not intended to be – and should not be interpreted as – a written request to return the rules pursuant to N.C. Gen. Stat. § 150B-21.12(d). The EMC appreciates the opportunity to continue working with the RRC and its staff to resolve the RRC's objection.

EMC Response to RRC's Objections to
Rules 15A NCAC 02B .0208, .0212, .0214, .0216, and .0218
July 23, 2022
Page 2

Sincerely,

s/Phillip T. Reynolds
Phillip T. Reynolds
Special Deputy Attorney General
Counsel to the EMC

cc: Robin W. Smith, EMC Chair, *electronically*
Jennifer Everett, EMC Rulemaking Coordinator, *electronically*
Lawrence Duke, Rules Review Commission Counsel, *electronically*
Alex Burgos, Paralegal, Office of Administrative Hearings, *electronically*
Anca Grozav, Assistant State Budget Officer, OSBM, *electronically*

Burgos, Alexander N

Subject: FW: RRC Follow-up Agenda Items: EMC & CRC Rules
Attachments: CRC - 07.2022 - 07H Change Requests.docx

From: Duke, Lawrence <lawrence.duke@oah.nc.gov>
Sent: Wednesday, July 13, 2022 7:50 PM
To: Everett, Jennifer <jennifer.everett@ncdenr.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Lucasse, Mary L <mlucasse@ncdoj.gov>; Lopazanski, Mike <mike.lopezanski@ncdenr.gov>; Willis, Angela <angela.willis@ncdenr.gov>; Goebel, Christine A <Christine.Goebel@NCDENR.GOV>; Wright, Alyssa N <Alyssa.Wright@ncdenr.gov>
Subject: RE: RRC Follow up Agenda Items: EMC & CRC Rules

Jennifer,

They are attached. These rules were difficult to wade through as they did not seem to have been reviewed before being submitted for readoption. There are several issues listed in the change requests that are grounds for objection.

I apologize for getting to these this close to the meeting. Let me know if you have any questions.

Lawrence Duke

Counsel, NC Rules Review Commission
Office of Administrative Hearings
(984) 236 1938

From: Everett, Jennifer <jennifer.everett@ncdenr.gov>
Sent: Wednesday, July 13, 2022 1:27 PM
To: Duke, Lawrence <lawrence.duke@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Lucasse, Mary L <mlucasse@ncdoj.gov>; Lopazanski, Mike <mike.lopezanski@ncdenr.gov>; Willis, Angela <angela.willis@ncdenr.gov>; Goebel, Christine A <Christine.Goebel@NCDENR.GOV>; Wright, Alyssa N <Alyssa.Wright@ncdenr.gov>
Subject: RE: RRC Follow up Agenda Items: EMC & CRC Rules

Lawrence,

We are still awaiting technical change requests on CRC's 07H .1300 .2700.

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

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Burgos, Alexander N

From: Duke, Lawrence
Sent: Wednesday, July 13, 2022 12:04 PM
To: Everett, Jennifer
Cc: Burgos, Alexander N
Subject: RRC Follow-up Agenda Items: EMC & CRC Rules

Jennifer,

I hope you're doing well. I wanted to check in on several sets of rules that will be on the RRC's follow up agenda for its July meeting.

First, EMC's 02B Rules (.0208, .0212, .0214, .0215, .0216, .0218) remain on the agenda. It is my understanding that the EMC is meeting today and tomorrow. This means that the deadline for sending EMC's response to RRC's objection would fall on July 24. Do you have any other update on these rules?

Second, EMC's 02Q Rules (.0103, .0503, .0504, .0505, .0507, .0508, .0509, .0514, .0516, .0518, .0521, .0522, .0525, .0526) are also on the follow up agenda. The deadline for those Rules can continue to be extended to the August RRC meeting. Since I have not heard anything on these rules, I assume that is EMC's plan for the July meeting. If you plan to do something different, please let me know.

Finally, CRC's 07H, J, K, & M Rules (07H .0104, .0208, .0304, .0305, .0306, .0308, .0309, .0310, .1205, .1801; 07J .0403, .0404, .1201, .1202, .1203, .1204, .1205, .1206, .1301, .1302, .1303; 07K .0208; 07M .0301, .0302, .0303, .0306, .0307, .0308, .0310) are on the agenda. I have reviewed Mike Lopanzanski's responses to my requests for changes, and they are sufficient. I will be recommending approval for these rules and so you don't need to do anything more on them.

Please let me know if I have anything incorrect about these rule sets, or if you have any questions.

Thanks,
Lawrence Duke

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

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Burgos, Alexander N

Subject: FW: EMC 02B Rules

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

Sent: Tuesday, June 14, 2022 9:07 PM

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

Cc: Ventaloro, Christopher <christopher.ventaloro@ncdenr.gov>; Reynolds, Phillip T <preynolds@ncdoj.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: RE: EMC 02B Rules

Lawrence,

The next regularly scheduled meeting for the EMC is July 14. I anticipate a response to you shortly after its meeting.

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

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Burgos, Alexander N

From: Duke, Lawrence
Sent: Monday, June 13, 2022 12:58 PM
To: Everett, Jennifer
Cc: Ventaloro, Christopher; Reynolds, Phillip T; Burgos, Alexander N
Subject: EMC 02B Rules

Jennifer,

The EMC 02B Rules (.0208, .0212, .0214, .0215, .0216, .0218) will be on the Rules Review Commission's Agenda for the upcoming June Meeting this Thursday.

Have you decided what action EMC will take with these Rules?

Just as a reminder, G.S. 150B 21.12 requires EMC to either (1) "change the Rules to satisfy the Commission's objection and submit the revised rule to the Commission" or (2) "submit a written response to the Commission indicating that the agency has decided not to change the Rules". This must be done either "within 30 days after receiving the Commission's statement of objection [sent May 25, 2022] or within 10 days after [EMC's] next regularly scheduled meeting, whichever comes later." Has the EMC met? If not, when is there next "regularly scheduled meeting"?

I look forward to hearing from you on this so that I can give the Rules Review Commission an update on where these Rules stand. Let me know if you have any questions.

Thanks,
Lawrence Duke

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

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Burgos, Alexander N

From: Duke, Lawrence
Sent: Wednesday, May 25, 2022 11:47 AM
To: Everett, Jennifer; Reynolds, Phillip T
Cc: Ventaloro, Christopher; Burgos, Alexander N; Liebman, Brian R; Peaslee, William W
Subject: 15A NCAC 02B Rules - RRC Objection Letter
Attachments: EMC - 05.2022 - Objection Letter - 15A NCAC 02B.pdf

Jennifer,

Please see attached letter of objection regarding 15A NCAC 02B .0208, .0212, .0214, .0215, .0216, .0218.

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

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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

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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

114 W. Edenton St., Raleigh, NC 27603

www.ncdoj.gov

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

Sent: Thursday, May 19, 2022 7:47 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

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

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

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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
114 W. Edenton St., Raleigh, NC 27603
www.ncdoj.gov

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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> wrote:

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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
114 W. Edenton St., Raleigh, NC 27603
www.ncdoj.gov

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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 ⁻⁶	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
RL	= Risk Level	1.00 x 10 ⁻⁶	02B .0208
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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 *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
RL	= Risk Level	1.00 x 10 ⁻⁶	02B .0208
BW	= Body Weight	70 kg	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 Fish Consumption Only

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BW	= Body Weight	70 kg	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

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

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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 11th 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
114 W. Edenton St., Raleigh, NC 27603
www.ncdoj.gov

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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

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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

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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

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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>

Sent: Tuesday, April 19, 2022 11:59 AM

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

Cc: Ventaloro, Christopher <christopher.ventaloro@ncdenr.gov>; Burgos, Alexander N <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

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From: Everett, Jennifer

Sent: Wednesday, April 13, 2022 1:10 PM

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

Cc: Ventaloro, Christopher <christopher.ventaloro@ncdenr.gov>; Burgos, Alexander N <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

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

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

To: Everett, Jennifer <jennifer.everett@ncdenr.gov>

Cc: Ventaloro, Christopher <christopher.ventaloro@ncdenr.gov>; Burgos, Alexander N <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 evite 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 evites 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

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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]