

## Burgos, Alexander N

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**From:** Robert El-Jaouhari <rjaouhari@cshlaw.com>  
**Sent:** Wednesday, May 11, 2022 4:21 PM  
**To:** rrc.comments; Everett, Jennifer; Ventaloro, Christopher; Duke, Lawrence  
**Cc:** Patrick Mincey; Taylor Bolebruch  
**Subject:** [External] FW: Correspondence to NC Rules Review Commission regarding 14-Dioxane  
**Attachments:** Letter Comment to RRC.pdf

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Good afternoon all,

As before, I'd like to write to confirm that my notice and request to speak at Thursday's RRC meeting, in the attached comment submitted by the email below, was received, and to include Mr. Duke on my notice and request. Note that the email below included exhibits to the comment, which exhibits I have not re-attached here.

My statement will concern the rules proposed at 15A NCAC 2B .0208, .0212, .0214, .0215, .0216, and .0218. My contact information, as required by 26 NCAC 05 .0105, is:

Name: R. Robert El-Jaouhari  
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As indicated by my submitted comment, my remarks will be in opposition to the proposed rules.

Many thanks, looking forward to seeing you on the 19th. Let me know if you have questions or further needs in the meantime.

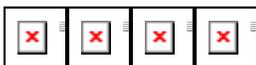
Best,  
Robert

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**From:** Taylor Bolebruch <tbolebruch@cshlaw.com>

**Sent:** Wednesday, May 11, 2022 4:06 PM

**To:** rrc.comments@oah.nc.gov; Jennifer.everett@ncdenr.gov; christopher.ventaloro@ncdenr.gov

**Cc:** Robert El-Jaouhari <rjaouhari@cshlaw.com>; Patrick Mincey <pmincey@cshlaw.com>

**Subject:** Correspondence to NC Rules Review Commission regarding 14-Dioxane

Good afternoon,

Attached please find letter correspondence from Attorneys Patrick Mincey and Robert El-Jaouhari regarding the above-referenced matter, along with 3 Exhibits. Please note that a hard copy of all documents are being sent to you via First-Class Mail, as well.

If you have any trouble accessing the attachment, or if I can be of further assistance, please let me know.

Thank you,  
Taylor Bolebruch  
Paralegal

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**Via E-Mail, to:**

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**RE: Comments in opposition to proposed rules to be codified at 15A  
NCAC 2B .0208, .0212, .0214, .0215, .0216, and .0218,  
and request and notice for oral presentation at the May 19, 2022,  
meeting of the Rules Review Commission.**

Members of the Commission, Ms. Everett, and Mr. Ventaloro:

Please allow the remarks below to supplement our Comment delivered to each of you on April 13, 2022, in further opposition to rules proposed by the North Carolina Environmental Management Commission ("EMC") to be codified at 15A NCAC 2B .0208, .0212, .0214, .0215, .0216, and .0218. For your reference, our April 13, 2022, Comment is enclosed as **Exhibit A**.

The above-referenced rules were first reviewed by the North Carolina Rules Review Commission (“RRC”) at its April 21, 2022, meeting. For that meeting, RRC staff recommended rejecting the proposed rules because “when EMC sent the entire regulatory framework, of which these Rules are part, to the Office of State Budget Management (OSBM) for certification, EMC did not comply with the requirements of the APA as to the fiscal impact analysis (“fiscal note”) for the regulation of 1,4-dioxane.” (RRC Staff Opinion p. 1). At the April 21, 2022, meeting, undersigned counsel for the City of Reidsville, R. Robert El-Jaouhari, spoke in favor of RRC Staff and in opposition to the proposed rules. Attorney Sean Sullivan, and attorney to EMC Philip Reynolds, spoke in favor of the proposed rules and against Staff’s recommendation. Eight members of this Commission voted: four voted to adopt Staff’s recommendation, and four voted against Staff’s recommendation. This Commission then tabled this matter for its May 19, 2022, meeting.

The above-referenced rules pertain to EMC’s efforts to regulate discharges of 1,4-dioxane into surface waters. As we outlined for the RRC in our April 13, 2022, Comment, and as Mr. El-Jaouhari discussed with the RRC at its April meeting, these proposed rules neither comport with statutory authority nor rule-making requirements, nor are they reasonably necessary to effectuate a lawful purpose in light of existing EMC rules on this same subject. While undersigned counsel continue to rely on our prior written comments and Mr. El-Jaouhari’s oral presentation, this present Comment will show that EMC indeed did not conduct a fiscal analysis for the proposed 1,4-dioxane rules, will address why EMC’s reliance on pre-existing “target values” cannot excuse EMC’s failure to conduct a fiscal analysis, and will explain why EMC has failed to comply with the N.C. Gen. Stat § 150B and, therefore, fails to satisfy G.S. §150B-21.9(a)(4) of the RRC’s review.

Please allow this letter to serve as request and notice by the undersigned R. Robert El-Jaouhari for an oral statement in opposition to the referenced proposed rules at the Commission’s upcoming May 19, 2022, meeting. Mr. El-Jaouhari’s contact information appears in the above letterhead.

### **The Commission’s Review Authority.**

The RRC’s review authority of an agency’s proposed rule is limited, but multifaceted. The RRC must determine (1) whether the proposed rule is within the agency’s delegated authority, (2) whether the adoption comports with statutory restrictions and requirements for rule-making, and (3) whether a rule is “reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency[,]” in which context “[t]he Commission

shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed.” N.C. Gen. Stat. 150B-21.9(a) (emphasis added).

For the following reasons, the proposed rules fail to meet the standards for this Commission’s approval.

**EMC Did Not Perform the Necessary Fiscal Analysis.**

In its well-meaning efforts to control the impact of 1,4-dioxane in North Carolina surface waters, EMC neglects rulemaking requirements meant to control the impact of rulemaking on regulated communities. North Carolina law requires agencies to quantify and analyze the financial impact of proposed rules on regulated communities, but EMC has conceded that it has not done so for its proposed 1,4-dioxane criterion at 0.35 ug/L. The Rules Review Commission’s staff has therefore, unsurprisingly, recommended against adoption of the proposed 1,4-dioxane criterion because “EMC did not comply with the requirements of the APA as to the fiscal impact analysis (“fiscal note”) for the regulation of 1,4-dioxane.” (RRC Staff Opinion p.1). The Commission should indeed reject the proposed 1,4-dioxane rules on account of EMC’s failure to meet statutory rulemaking requirements.

The Rules Review Commission does not need to look behind the economic substance of the fiscal analysis performed by EMC for its Triennial Review, nor substitute its own judgment for EMC’s judgment with regard to the economic substance of that analysis, in order to concur with Staff that EMC “did not comply with the requirements of the APA as to the fiscal impact analysis (“fiscal note”) for the regulation of 1,4-dioxane.” (RRC Staff Opinion p. 1). Instead, the Commission need only recognize what is true from the face of the fiscal analysis EMC today insists it has properly performed—namely, that the fiscal analysis for EMC’s Triennial Review specifically, purposefully, and expressly excludes any fiscal analysis of the economic impacts of the proposed 1,4-dioxane standard at 0.35 ug/L. That exclusion is in breach of statutory rulemaking procedure, and therefore causes the proposed 1,4-dioxane rules to fail the Commission’s review at G.S. § 150B-21.9(a)(4).

Indeed, as Mr. Reynolds argued at this Commission’s April meeting, and as RRC Staff recognizes, EMC did perform a fiscal analysis for the 2020-2022 Triennial Review, of which the 1,4-dioxane rules are a part. (See Regulatory Impact Analysis

(“RIA”), at <https://deq.nc.gov/media/24795/download?attachment>).<sup>1</sup> However, EMC has not equally highlighted for this Commission the express exclusion of any analysis of the economic impacts of the proposed 1,4-dioxane rules from the RIA. That exclusion—and, therefore, EMC’s clear decision not to perform a fiscal analysis for the proposed 1,4-dioxane rules—is apparent merely from the face of the RIA that EMC relies on: in no uncertain terms, the RIA states that “we [EMC] *have not included benefit/cost estimates for 1,4-dioxane in this analysis[,]*” (RIA p. D-4 (emphasis added)), and “we [EMC] *did not attempt to monetize costs or benefits for 1,4-dioxane.*” (RIA p. D-17 (emphasis added)).

EMC, and certain proponents of the proposed 1,4-dioxane rules, believe that this exclusion is permissible because EMC previously used its own agency rules to establish an in-stream target value for 1,4-dioxane in surface waters, and because the proposed rulemaking is a mere codification of that pre-existing requirement. As this argument goes, there would be absolutely no economic impact to regulated local governments from codifying the pre-existing target values because the proposed rules and the pre-existing target value set the same standard: 0.35 ug/L maximum concentrations of 1,4-dioxane in surface water.

Several flaws in this argument show that EMC cannot rely on its prior in-stream target value to avoid statutory rulemaking requirements for a fiscal analysis, that EMC has therefore failed to meet statutory rulemaking requirements for the proposed 1,4-dioxane rules, and that the RRC must therefore reject the proposed rules for failure to satisfy G.S. § 150B-21.9(a)(4).

First, EMC’s position entirely undercuts the purpose and existence of statutory rulemaking requirements. EMC here argues that its own application of its own agency rule, 15A NCAC 02B .0208 (the “Narrative Standard”), makes a fiscal note regarding 1,4-dioxane unnecessary. This position essentially argues that an agency may avoid statutory fiscal analyses so long as its rulemaking is preceded by an internal calculation of the very standard it seeks to codify. But, agency rules cannot override legislative requirements. Such a procedure as EMC proposes is all the more offensive to statutory requirements where, as here, EMC admits every statutory trigger for a fiscal analysis of the proposed 1,4-dioxane rules, but seeks to avoid the resulting analysis by relying on EMC’s own, internal, unenforced, and untested calculations. (See April 13, 2022, comment to RRC by undersigned counsel, pp. 2-5).

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<sup>1</sup> This is the same RIA to which our April 13, 2022, comment cited *passim*.

Regardless of what EMC's own rules purport to permit it to do, the *statutory* requirement for new codifications is clear, and EMC should not be permitted to codify rules with substantial economic impacts that have never had a fiscal analysis performed.

Second, the pre-existing target value EMC relies on is only that—a *target* value. By agreement with EMC reached only six months ago, the City of Greensboro began operating under a Special Order by Consent (“SOC”) limiting 1,4-dioxane concentrations in its wastewater discharge to 35.0, 31.5, and 23.0 ug/L over a three-year period.<sup>2</sup> The SOC replaces a prior SOC entered into by EMC and Greensboro, which had *higher* permissible concentrations of 1,4-dioxane (at 45.0 and 33.0 ug/L over a two-year period), and which was amended to the current SOC following a lawsuit filed against EMC by several environmental organizations and municipal entities. More importantly, the RIA *itself* documents EMC's history of treating this value as merely a target and not a requirement: as of the time of the RIA, EMC admits that there were “no general permits that require monitoring or have limits for 1,4-dioxane[,]” that 17 individual permits have 1,4-dioxane requirements for *monitoring only* but do not have discharge limits, and that only one individual permit in North Carolina has discharge limits for 1,4-dioxane. (RIA p. D-16 (underline in original); *see* RIA p. D-70 (containing the “Appendix II” cited by EMC on p. D-16 of the RIA)).<sup>3</sup> EMC's own RIA thus indicates that in advance of its current rulemaking there has been no permit or regulatory control document based on the proposed 0.35 ug/L standard for Class WS waters.

Third, EMC relies on a false baseline for evaluating economic impact of the proposed rules, and that false baseline cannot remedy EMC's failure to conduct the required fiscal analysis on the impacts of the proposed 1,4-dioxane standard. As shown above and in EMC's RIA, EMC has used its own agency rule, 15A NCAC 02B

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<sup>2</sup> Greensboro's current SOC is attached here as **Exhibit B** for the Commission's reference.

<sup>3</sup> That single individual permit is identified in the RIA as the permit to Radiator Specialty Company, (RIA p. D-16). The permit limits 1,4-dioxane discharges to 80.0 ug/L—the proposed standard for the Class C waters into which Radiator Specialty Company discharges, which is approximately 228-times higher than the proposed standard of 0.35 ug/L for discharge into Class WS waters. A selection from the Radiator Specialty Company permit (and its re-issuance in 2021 to the new owner at the same site) is enclosed herewith as **Exhibit C** for the Commission's reference.

.0208, the “Narrative Standard,” to set a target value of 0.35 ug/L for 1,4-dioxane, but its use of the Narrative Standard has not resulted in *actual* regulation to 0.35 ug/L. In contrast, the proposed 1,4-dioxane rules would establish a conclusive, codified maximum 1,4-dioxane concentration at 0.35 ug/L. Thus the true regulatory environment pre-existing codification, and therefore the true baseline for a statutory economic impact analysis, is a regulatory environment including (i) 17 of 18 individual wastewater discharge permits containing no 1,4-dioxane limits as of the time of the RIA, (ii) a single individual wastewater permit that included a 1,4-dioxane discharge limit—at 80.0 ug/L—as of the time of the RIA, and (iii) a municipal wastewater discharge permit limit (for the City of Greensboro) varying at different times between 23.0 ug/L and 45.0 ug/L.

Indeed, EMC admits that its infrequent enforcement of in-stream target values—EMC’s purported baseline—has provided it with insufficient data to assess whether its proposed standards will have an economic impact. According to the RIA:

- “North Carolina began adding 1,4-dioxane monitoring requirements to NPDES permits in 2018; as such, there is not a long history of water quality data on which to base a WQBEL[water quality based effluent limit,]” (RIA p. D-16); and
- “[a]s of this writing [the RIA], DEQ is continuing to gather information on costs associated with implementation of 1,4-dioxane ITVs [In-stream Target Values]. This data was not available in time to be included in this document[.]” (RIA p. D-17).

EMC could not be more clear that there is no economic baseline grounded in the current regulatory environment—EMC has not been using the 0.35 ug/L criterion derived from its Narrative Standard to set any actual permit limitations, and so the cost of a 0.35 ug/L criterion is necessarily unknown. As a result EMC ultimately concedes, as it must, that even in light of its artificial baseline EMC is unable to evaluate the economic impact of the proposed 1,4-dioxane rules, noting only “that the ongoing costs and benefits associated with the monitoring and treatment of 1,4-dioxane are likely to be considerable.” (RIA p. D-17).

In addition to each of these specific grounds, EMC’s position on the impact of mere codification is internally inconsistent. Despite EMC’s conclusion that mere codification of in-stream target values has no economic impact, EMC’s RIA simultaneously concluded that such simple codification can have at least *possible* positive impacts for the environment (RIA pp. D-11—D-12 (table summarizing economic and environmental impact of proposed rules, indicating “possible indirect,

long-term benefit[s] to human health.”)). EMC makes this conclusion on the *benefits* of rulemaking comfortably, but in the same table EMC concludes that there are not even *possible* economic impacts following on the proposed rulemaking—and again, does so despite EMC’s several admissions of the substantial economic impacts following implementation of the proposed rules.<sup>4</sup>

EMC’s reliance on its pre-existing target values cannot substitute for statutorily-required fiscal analyses of the 1,4-dioxane rule EMC currently proposes. EMC has clearly elected not to undertake that required fiscal analysis, and as we argued in our April comment, such fiscal analysis is indeed required because EMC recognizes and repeatedly admits the substantial economic impacts the proposed 1,4-dioxane rule will have on local governments and the regulated community. The proposed 1,4-dioxane rules therefore fail to meet statutory requirements and therefore should be rejected for failure to satisfy G.S. § 150B-21.9(a)(4).

### **The Proposed Rules Are Not Reasonably Necessary.**

The RRC should also reject the proposed 1,4-dioxane rules because they are not “reasonably necessary to implement or interpret an enactment of the General Assembly.” G.S. § 150B-21.9(a)(3). In the interest of not multiplying documents before the RRC, undersigned counsel rely on the arguments presented in our April 13, 2022, comment to the RRC. Mr. El-Jaouhari will be prepared to respond to questions of the Commissioners at the RRC’s May 19, 2022, meeting. In this comment, we request the RRC to recognize that the lack of reasonable necessity in the proposed rules is not the result of “legal sleight of hand,”<sup>5</sup> but the result of EMC’s prior rulemaking as to the “best usage” of the State’s various waters, G.S. § 143-214.1, and this Commission’s review of reasonable necessity itself necessarily including the Commission’s evaluation of “the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed.” G.S. 150B-21.9(a)(3).

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<sup>4</sup> See undersigned counsel’s April 13, 2022, comment to RRC, enclosed herewith as Exhibit A, at pp. 4-5.

<sup>5</sup> See Rebuttal Comments by Mr. Sullivan submitted to the RRC and dated April 20, 2022, p. 4.

**CONCLUSION**

EMC's proposed rules regarding 1,4-dioxane discharges into water supply surface waters is outside EMC's delegated authority, does not meet statutory requirements, and is not reasonably necessary in light of other rules on the same subject previously promulgated by EMC. On these bases the Commission can and should reject approval of EMC's proposed rules to be codified at 15A NCAC 2B .0208, .0212, .0214, .0215, .0216, and .0218.

Sincerely,



Patrick M. Mincey



R. Robert El-Jaouhari

*Counsel to the City of Reidsville*

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April 13, 2022

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**RE: Comments in opposition to proposed rules to be codified at 15A  
NCAC 2B .0208, .0212, .0214, .0215, .0216, and .0218,  
and request and notice for oral presentation at the April 21, 2022,  
meeting of the Rules Review Commission.**

Members of the Commission, Ms. Everett, and Mr. Ventaloro:

Please consider the remarks in this comment as grounds for rejecting the rules proposed by the North Carolina Environmental Management Commission ("EMC") to be codified at 15A NCAC 2B .0208, .0212, .0214, .0215, .0216, and .0218. These rules pertain to EMC's efforts to regulate discharges of 1,4-dioxane into surface waters, but the proposed rules neither comport with statutory authority nor rule-making requirements, nor are they reasonably necessary to effectuate a lawful purpose in light of existing EMC rules on this same subject.

Please furthermore allow this letter to serve as request and notice by the undersigned R. Robert El-Jaouhari for an oral statement in opposition to the referenced proposed rules at the Commission's upcoming April 21, 2022, meeting. Mr. El-Jaouhari sits in the Raleigh office of Cranfill Sumner, and his address, telephone number, fax number, and e-mail address are in the letterhead above.

### **This Commission's Review**

This Commission's review of an agency's proposed rule is limited, but multifaceted. It includes determining (1) whether the proposed rule is within the agency's delegated authority, (2) whether the adoption comports with statutory restrictions and requirements for rule-making, and (3) whether a rule is "*reasonably necessary* to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency[.]" in which context "[t]he Commission shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed." N.C. Gen. Stat. 150B-21.9(a) (emphasis added). The aforesaid regulations fail to meet the standards for this Commission's approval.

### **EMC did not perform the necessary fiscal analysis**

The authority to adopt standards is delegated to the EMC by the General Assembly in the organic statute, Article 21 of Chapter 143, but that delegation of rulemaking authority is limited by Chapter 150B. The EMC, and every other agency subject to the provisions of Chapter 150B, lacks authority to adopt rules which do not comport with the limitations set forth in G.S. 150B. Those limitations are plentiful.

Generally, an agency "shall not adopt a rule that is unnecessary or redundant[.]" and agencies are authorized only to adopt rules "that are necessary to serve the public interest." G.S. 150B-19.1(a)(1), (a)(4).

Specifically as regards the fiscal impact of rules, agencies "*shall* quantify the costs and benefits to all parties of a proposed rule to the greatest extent possible[.]" G.S. 150B-19.1(e), and "*shall* seek to reduce the burden upon those persons or entities who must comply with the rule[.]" G.S. 150B-19.1(a)(2) (emphases added). Agencies are accordingly required to undertake fiscal impact analyses "[b]efore an agency publishes in the North Carolina Register the proposed text of a permanent rule change" which would either "have a substantial economic impact" when not identical to a required federal regulation, or would "affect the expenditures or revenues of a unit of local government." G.S. 150B-21.4(b), (b1).

This fiscal analysis requires a fiscal note. Agencies promulgating rules that affect the expenditures of a local government must submit a fiscal note to the Office of State Budget and Management, the Fiscal Research Division of the General Assembly, the North Carolina Association of County Commissioners, and the North Carolina League of Municipalities, and that fiscal note “must state the amount by which the proposed rule change would increase or decrease expenditures or revenues of a unit of local government and must explain how the amount was computed.” G.S. 150B-21.4(b).

Where a rule creates a substantial economic impact (and is not required by federal regulation), an agency’s fiscal note must be approved by the Office of State Budget and Management, and that Office must certify that the agency sought to reduce the compliance burden on regulated persons or entities, that the rule is based on sound, reasonably available scientific, technical, economic, and other relevant information, and that the rule was designed to achieve the regulatory objective in a cost-effective and timely manner. G.S. 150B-21.4(b1) (referring to G.S. 150B-19.1(a)(2), (5), and (6)). Rules with substantial economic impacts require an agency also to describe two alternatives to the proposed rule that the agency considered, and the reasons why those alternatives were rejected. G.S. 150B-21.4(b2). If an agency is unsure “whether a proposed rule change would have a substantial economic impact,” then “the agency *shall* ask the Office of State Budget and Management to *determine* whether the proposed rule change has a substantial economic impact.” G.S. 150B-21.4(b1) (emphases added). Critically, an agency’s “[f]ailure to prepare or obtain approval of the fiscal note as required by this subsection shall be a basis for objection to the rule under G.S. 150B-21.9(a)(4)” — precisely inside this Commission’s scope of review. *Id.*; *see* G.S. 150B-21.9(a)(4) (element of this Commission’s review).

Analyzing substantial economic impacts means that an agency must, among other things, (1) “assess the baseline conditions against which the proposed rule is to be measured[,]” (2) “describe the persons who would be subject to the proposed rule and the type of expenditures these persons would be required to make[,]” and (3) estimate additional costs (“monetized to the greatest extent possible”) that are “created by *implementation* of the proposed rule[,]” essentially comparing the baseline with future conditions after the proposed rule is *implemented*. G.S. 150B-21.4(b1) (emphasis added).

Here, rather than undertake the required fiscal analysis, EMC made a cursory conclusion that the proposed 1,4-dioxane rules create no substantial economic impact. EMC so concluded despite acknowledging that there is no proven treatment technology for removal of 1,4-dioxane from wastewater on the scale that

would be required for a publicly-owned treatment works, which for all practical purposes means that the cost of meeting an effluent limit based on the proposed standard is far more expensive than necessary, if not impossible. Indeed, EMC has, in the same single regulatory impact analysis (hereafter referred to as the “RIA”) for its Triennial Review (including the proposed 1,4-dioxane standard), concluded that the proposed standard presents no substantial economic impact even though:

- “The Division was not able to analyze all potentially impacted permits due to staff and time constraints.” RIA p. D-3.
- The impact of the proposed standards *will be realized* upon regulated parties through the application of those standards in permits and waterbody impairment assessments. RIA p. D-10 (emphasis added).
  - o Indeed, EMC admits that “[t]he revised standards will be the foundations for impairment assessments.” RIA p. D-12, D-14 (“codification of 1,4-dioxane as a standard will allow water bodies to be assessed and, if appropriate, listed as impaired.”); *see* D-19 (“The listing of a waterbody as impaired may eventually result in the development of a TMDL [Total Maximum Daily Load]. Once approved by the EMC and EPA, the TMDL may require actions to be taken by stakeholders to reduce inputs of 1,4-dioxane into surface waters.”).
- “It is worth noting that there could be future impacts to NPDES wastewater dischargers if waterbodies are assessed as impaired for 1,4-dioxane, resulting in the development of a TMDL compliance strategy *that places additional requirements on dischargers.*” RIA p. D-16 (emphasis added).
- “Staff anticipate [schedules of compliance] *will be common due to the high cost of treatment technology.*” RIA p. D-16 (emphasis added).
- “[M]unicipal water and wastewater treatment facilities are generally not equipped to remove [1,4-dioxane] through their treatment processes.” RIA p. D-17.
- [C]onventional treatment processes are generally ineffective at removal[,]” and “[i]nstallation and operation of advanced treatment processes, such as those using hydrogen peroxide, ozone and/or ultra-violet photo-oxidation – all known to be effective for 1,4-dioxane removal at either wastewater treatment facilities or drinking water systems – *are anticipated to be prohibitively expensive for local governments and the citizens served by public utilities.*” RIA p. D-17 (emphasis added).
  - o And, that therefore the best approach to reducing 1,4-dioxane in surface water and drinking water is not by requiring wastewater treatment facilities to capture 1,4-dioxane in their effluent—which is precisely what this proposed codification will require. RIA p. D-17 (“[t]herefore, the most prudent approaches to reducing 1,4-dioxane

concentrations in surface water and drinking water are likely to be reduction, elimination and/or capture and treatment at industrial sources using or generating 1,4-dioxane, if possible.”).

- “[I]t is worth acknowledging that the ongoing costs and benefits associated with the monitoring and treatment of 1,4-dioxane are likely to be considerable. Unfortunately, *we have very limited data* upon which to expand on this topic” and “*DEQ is continuing to gather information on costs associated with implementation of 1,4-dioxane ITVs.*” RIA p. D-17 (emphasis added).

EMC’s own RIA thus makes clear that, despite an admitted substantial impact upon regulated parties when this standard is implemented, and despite acknowledging that regulated persons and entities—including public bodies such as North Carolina cities—have to find a way to implement the treatment processes EMC admits are prohibitively expensive, EMC has elected not to undertake the required fiscal analysis to evaluate the effect of that implementation. This contravenes G.S. 150B-21.4(b1)(4). *Id.* (evaluating substantial economic impact requires estimating “any additional costs that would be created by implementation of the proposed rule by measuring the incremental difference between the baseline and the future condition expected after implementation of the rule.”).

Indeed, EMC believes largely that it need not undertake a fiscal analysis and note because EMC already uses the same proposed standard as an in-stream target value under the narrative standard of 15A NCAC 02B.0208. But, EMC admits that narrative standards are intended for a different context than rule-making, namely, to “establish a broader descriptive protection, usually to address more complex scenarios where a numeric value is not feasible . . .” RIA p. D-5. Indeed, to the best knowledge of the undersigned, EMC does not undertake fiscal notes when implementing target values under the narrative standard, and the undersigned is not aware of any fiscal note performed for 1,4-dioxane’s target value when that value was calculated under 02B.0208. If true, this means that EMC’s proposed standard for 1,4-dioxane would be codified without the required fiscal note analysis ever having been made to capture the substantial economic impacts and impacts on local government which EMC admits. This runs contrary not only to the letter, but also the spirit, of Chapter 150B.

### **The proposed rules are not reasonably necessary**

By proposing a rule profoundly inconsistent with another very recently adopted rule, both of which purport to satisfy a standard protecting the best use of

drinking water, the EMC has exceeded the limitations of its statutory authority by proposing a rule not “reasonably necessary to implement or interpret an enactment of the General Assembly.” G.S. 150B-21.9(a)(3).

The Commission’s consideration of reasonable necessity includes evaluation of “the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed.” G.S. 150B-21.9(a)(3). With regard to 1,4-dioxane, EMC previously determined that a 1,4-dioxane standard of 3.0 ug/L, rather than the stricter .35 ug/L, is protective of the best use of drinkable groundwater (that best use being as water for human consumption). This drinking water standard is *nearly ten times higher* than the proposed standard for water supply waters, and is not an artifact of outdated rulemaking—rather, the effective date of the most recent rulemaking involving 1,4-dioxane in potable groundwater is April 1, 2022.

This wide difference in the two classifications arises out of EMC’s implementation of the same legislative enactment, G.S 143-214.1. Although groundwater and surface water are indeed two different classifications of water, the same statute is applicable to classification of surface waters and groundwater, and makes the two classifications subject to the same criterion of “best usage.” G.S 143-214.1. Moreover, the standards applicable to GA classified groundwater (that is, groundwater suitable for drinking) include a threshold of cancer risk identical to that applicable to water-supply classified surface waters. 15A NCAC 2L .0102(24); 15A NCAC 2L .0202(d)(2).

Indeed, with the same purpose resulting in two widely different standards, it seems that by the EMC’s own admission (namely, its prior codification of a 3.0 ug/L standard for groundwater), the proposed standard for water-supply classified surface waters at 0.35 ug/L is not reasonably necessary to implement the requirements of N.C. Gen. Stat. 143-214.1.

This difference in standards also contravenes EMC’s statutory authority. Agencies are authorized only to adopt rules “that are necessary to serve the public interest[.]” G.S. 150B-19.1(a)(1), but if EMC has already concluded that the use of water for human consumption is protected at a standard of 3.0 ug/L, then a standard which is an order of magnitude more stringent is not necessary to serve the public interest. Indeed, it operates contrary to the public interest because of the massive expenditure of limited public resources (in the case of regulated municipalities) required to attempt to comply with the more stringent standard. Relatedly, EMC has also failed to “seek to reduce the burden” of compliance upon wastewater dischargers who must meet the standard in the receiving waters, as is

required by G.S. 150B-19.1(a)(2). Lastly, if the regulatory objective is protection of the use of water as drinking water, then by not utilizing the standard applicable to groundwater (which is based on the same cancer risk factor and is drawn from the identical statutory criterion) the proposed surface water quality standard fails to achieve that objective in a cost-effective manner as required by G.S. 150B-19.1(a)(6).

### CONCLUSION

EMC's proposed rules regarding 1,4-dioxane discharges into water supply surface waters is outside EMC's delegated authority, does not meet statutory requirements, and is not reasonably necessary in light of other rules on the same subject previously promulgated by EMC. On these bases the Commission can and should reject approval of EMC's proposed rules to be codified at 15A NCAC 2B .0208, .0212, .0214, .0215, .0216, and .0218.

Sincerely,



Patrick M. Mincey



R. Robert El-Jaouhari

*Counsel to the City of Reidsville*

NORTH CAROLINA  
ENVIRONMENTAL MANAGEMENT COMMISSION

COUNTY OF GUILFORD

IN THE MATTER OF	)	
NORTH CAROLINA	)	AMENDED SPECIAL ORDER BY
NPDES PERMIT NC0047384	)	CONSENT
HELD BY	)	EMC SOC WQ S19-010
CITY OF GREENSBORO	)	
	)	

Pursuant to the provisions of North Carolina General Statutes (G.S.) 143-215.2, this Amended Special Order by Consent is entered into by the City of Greensboro, hereinafter referred to as the City, and the North Carolina Environmental Management Commission, an agency of the State of North Carolina created by G.S. 143B-282, and hereinafter referred to as the Commission.

1. The City and the Commission hereby stipulate the following:
  - a. This Amended Special Order by Consent (Amended SOC or Amended Special Order) addresses issues related to the discharge of elevated levels of 1,4-dioxane from the T.Z. Osborne WWTP to South Buffalo Creek. On November 14, 2019, the North Carolina Department of Environmental Quality (the Department or DEQ) issued a Notice of Violation (NOV) to the City related to the elevated discharges of 1,4-dioxane.
  - b. The City holds North Carolina NPDES permit NC0047384 for operation of an existing wastewater treatment works, and for making an outlet therefrom, for treated wastewater to South Buffalo Creek, Class WS-V, NSW waters of this State in the Cape Fear River Basin. NPDES Permit NC0047384 does not currently contain discharge limitations for 1,4-dioxane.
  - c. In its November 2017 Technical Fact Sheet on 1,4-dioxane, the United States Environmental Protection Agency (EPA) describes this compound as “a synthetic industrial chemical that is completely miscible in water.” Its primary historical use was as a stabilizer of chlorinated solvents. The EPA fact sheet states 1,4-dioxane is a by-product present in many goods, including paint strippers, dyes, greases, antifreeze and aircraft deicing fluids, and in some consumer and personal care products (deodorants, shampoos and cosmetics). EPA has classified 1,4-dioxane as a likely human carcinogen; however, to date no federal maximum contaminant level (MCL) has been established for 1,4-dioxane in drinking water.
  - d. The EPA Fact Sheet states “the physical and chemical properties and behavior of 1,4-dioxane create challenges for its characterization and treatment. It is highly mobile and does not readily biodegrade in the environment.” These properties, plus its widespread presence in industrial and consumer products, cause the compound to be identifiable in

reportable concentrations in groundwater, and within surface water downstream of industrialized and urbanized areas.

- e. EPA has issued a health advisory for 1,4-dioxane recommending concentrations not exceed 35 µg/L in drinking water as protection of a 1 in 10,000 excess estimated lifetime cancer risk. EPA risk assessments indicate the drinking water concentration representing a 1 in 1,000,000 cancer risk level for 1,4-dioxane is 0.35 µg/L.
- f. 1,4-dioxane can enter a publicly owned treatment works as a constituent of industrial and domestic wastewater. Most wastewater treatment plants are not currently designed for the removal of compounds such as 1,4-dioxane; therefore, it can pass through the treatment system and enter surface waters within the effluent discharge.
- g. The EPA's Third Unregulated Contaminant Monitoring Rule (UCMR 3) required public water supply systems throughout the United States to monitor for the presence of contaminants, including 1,4-dioxane, during the years 2013-2015.
- h. Results of UCMR 3 monitoring indicated the presence of 1,4-dioxane in North Carolina was most prevalent within the Cape Fear River Basin. The North Carolina Department of Environmental Quality conducted follow up stream sampling studies to better determine the concentrations of 1,4-dioxane, and their potential sources within the basin. Results of the DEQ studies noted above indicated detectable concentrations of 1,4-dioxane downstream of the discharge from the City of Greensboro's T.Z. Osborne WWTP.
- i. Beginning in 2015, the City of Greensboro voluntarily began a 1,4-dioxane source identification and reduction plan, which included monitoring of WWTP influent and effluent and the City's wastewater collection system. The City's efforts included meetings with industrial users to ask their assistance in identifying potential sources. Information from the industrial community and collection system monitoring revealed where to focus reduction efforts. By October 2015, the City's program had identified one of its Significant Industrial Users (SIU) as a quantifiable source of 1,4-dioxane to the WWTP. The SIU voluntarily agreed to conduct its own source reduction plan. Since the implementation of the plan, the discharge of 1,4-dioxane from the T.Z. Osborne wastewater treatment facility has been reduced by over 50% for the four-year period from February 2016 to the present.
- j. On October 31, 2017, the Division of Water Resources (DWR), via administrative letter, required the City to begin monthly monitoring of the effluent from the T.Z. Osborne WWTP for 1,4-dioxane and to report the results of their analyses on monthly monitoring reports, beginning with the report for December 2017.
- k. Results from T.Z. Osborne WWTP effluent monitoring have routinely indicated the presence of 1,4-dioxane. On August 7, 2019, an effluent concentration of 957.5 µg/L was reported. DEQ calculations predict that 1,4-dioxane concentrations of this magnitude within the T.Z. Osborne WWTP effluent discharge may cause the instream

concentration of 1,4-dioxane to exceed the 35 µg/L EPA health advisory level at a downstream drinking water supply raw water intake location.

- l. The Department has instituted a special study of the T.Z. Osborne WWTP effluent, conducting its own monitoring of the discharge and sharing its data with the City.
  - m. Sampling of waters downstream of the T.Z. Osborne WWTP discharge has indicated instances when the EPA health advisory concentration of 35 µg/L for 1,4-dioxane has been exceeded. The sampling results indicate that Greensboro's discharge contributes to the exceedances but they do not establish that Greensboro's discharge is the sole source of the exceedances.
  - n. The purpose of this Amended Special Order is to reduce the concentrations of 1,4-dioxane being discharged from the T.Z. Osborne WWTP. It is not intended to resolve, be applicable to, or encompass all other point and non-point sources that may be causing or contributing to elevated levels of 1,4-dioxane in the Cape Fear River Basin. The initial and primary goal of this Amended Special Order is that the City's effluent discharge will not cause concentrations of 1,4-dioxane in downstream drinking water supplies to exceed the EPA health advisory concentration of 35 µg/L.
  - o. The discharge of elevated levels of 1,4-dioxane causes or contributes to pollution of the waters of this State named above, and the City is within the jurisdiction of the Commission as set forth in G.S. Chapter 143, Article 21.
  - p. The Commission and the City acknowledge that the activities enumerated in this Amended Special Order are designed to reduce 1,4-dioxane concentrations within the Cape Fear River Basin, and that significant future reductions will require both technological advances and the cooperative institutional resolve of all affected parties. Acknowledging that the physical and chemical properties of 1,4-dioxane create challenges for its treatment and/or removal from municipal wastewater, and that large scale treatment technologies for the removal of 1,4-dioxane at municipal WWTPs do not currently exist, this Amended Special Order recognizes that source reduction will be the primary and most effective means of reducing 1,4-dioxane concentrations in the T.Z. Osborne WWTP effluent and the Cape Fear River Basin.
  - q. Since this Amended Special Order is by Consent, neither party will file a petition for a contested case or for judicial review concerning its terms.
2. The City of Greensboro, desiring to significantly reduce its contributions of 1,4-dioxane to the Cape Fear River Basin, hereby agrees to undertake the following activities in accordance with the indicated time schedule:
    - a. Increase T.Z. Osborne's WWTP 1,4-dioxane effluent Electronic Discharge Monitoring Report (eDMR) monitoring frequency for grab samples to weekly.

- b. The City's SIU Wastewater Discharge Permit Application shall include 1,4-dioxane as a site-specific Pollutant of Concern in the Priority Pollutant Checklist section requiring applicant to certify if 1,4-dioxane is: Present at Facility, Absent at Facility, Present in Discharge, Absent in Discharge. If the applicant indicates 1,4-dioxane is present at the facility or present in its discharge, the City will require the discharger to submit a description of the amount and concentration and how the applicant plans to reduce, eliminate, treat, or manage it, and, as appropriate, require analyses of all potential (new) industrial flows to the collection system for the presence of 1,4-dioxane prior to the City's approval or acceptance of the wastewater. The City may require the same or similar analyses of new commercial flows at its discretion. The City shall also obtain a description of the character of any new discharge, its estimated volume, and its location within the collection system.
- c. **Special Order Year One [to be required upon the execution date of this Amended SOC and continued until April 30, 2022]:**
- 1) Provide the Department with a copy of the City's existing 1,4-dioxane monitoring plan (Sampling/Monitoring Plan), and implement the following:
    - i. Resample, analyze, and report at previously identified junction locations, including North Buffalo Transfer Pump Station (1650 miles of sewer line as of January 10, 2020).
    - ii. Determine trunkline and industrial contributions and investigate further as concentrations or loadings warrant.
    - iii. Investigate and determine background levels of 1,4-dioxane that shall include the following: 1) industrial contributions, 2) domestic contributions, 3) commercial contributions, 4) all drinking water contributions, and 5) surface intake water contributions.
    - iv. Meet with the Department's Winston-Salem Regional Office (WSRO) on a quarterly basis to present progress updates and provide a written meeting summary.
    - v. As circumstances warrant, review and modify the 1,4-dioxane Sampling/Monitoring Plan. Provide the Department a copy of proposed changes prior to their implementation.
    - vi. Post reports generated under this section (i.e., 2(c)(1)) to the City's Water Resources Department website within one week of sending such reports to the Department.
  - 2) Contact, interview, and survey indirect dischargers with identifiable, contributing, 1,4-dioxane concentrations of greater than 100 µg/L.
  - 3) For any industrial user (including any SIU) with a discharge of 1-4-dioxane at concentrations greater than 100 µg/L, the City will continue collaboration and oversight regarding industrial dischargers of 1,4-dioxane to the WWTP.
    - i. Identify any industrial user (including any SIU) that is an indirect source of 1,4-dioxane at concentrations greater than 100 µg/L.
    - ii. Develop source reduction program.

- iii. Review adequacy of slug control plans and update if necessary.
  - iv. Increase inspection of selected SIU sources to three (3) times per year [per 2(c)(2)].
  - v. Submit summary of oversight activities in the Year One Report.
- 4) The City shall not exceed the Department's calculated effluent Year One daily maximum grab sample SOC compliance value of 35 µg/L (Year One SOC Compliance Value) to protect downstream drinking water intakes.
  - 5) Develop and implement an ongoing 1,4-dioxane public education outreach plan with applicability toward individual, commercial and industrial users of City Water Resources Department services. Submit a summary of the plan in Year One Report and post on the City's Water Resources Department website.
  - 6) Report all T.Z. Osborne WWTP effluent 1,4-dioxane sampling results monthly by email to the Department (in a format acceptable to DEQ) no later than the last calendar day of the month following the completed reporting period and post on the City's Water Resources Department website.
  - 7) Report by telephone within 24 hours to the WSRO after receiving any data (including any individual result from a grab, composite, or split sample if taken) indicating a T.Z. Osborne WWTP effluent 1,4-dioxane concentration greater than 35 µg/L. The City will also provide email notification to downstream drinking water utilities as soon as possible after the DEQ 24-hour notification is triggered, but no more than 24 hours after Greensboro receives data showing an exceedance of 35 µg/L. The City is also required to submit a written report on any finalized data regarding the exceedance, its cause, effects, and its duration to the WSRO within 5 business days by email of the City's first knowledge of the exceedance. The City will post this written report on the City's Water Resources Department website.
  - 8) Modify SIU permits or develop other pretreatment program mechanisms as necessary.
  - 9) In addition to any other reporting required by the Department, no later than forty-five (45) calendar days after the end of Year One, the City shall submit to the Department a written report on the Year One activities and post on the City's Water Resources Department website. The report may be submitted by hard copy or electronic means and must contain the following (at a minimum):
    - i. Summary of the City's investigation results [outlined in 2(c)(1)].
    - ii. Summary of any potential (new) industrial or commercial flows to the collection system [outlined in 2(b)].
    - iii. Any oversight activities [outlined in 2(c)(2), 2(c)(3) and 2(c)(8)].
    - iv. Public education outreach plan [outlined in 2(c)(5)].
    - v. A table of all monitoring results for 1,4-dioxane collected during the SOC Year One.

- vi. In the case of noncompliance with the Year One SOC Compliance Value, a statement of the reason(s) for noncompliance, remedial action(s) taken, and a statement on the extent to which subsequent dates or times for accomplishment of listed activities may be affected.
- vii. Based on Year One data and any follow-up monitoring activities, including IU inspections and oversight and City of Greensboro split sample data, determine the following and provide a summary to the Department:
  - o Long-term achievable effectiveness of source reduction efforts and resulting T.Z. Osborne WWTP effluent reductions
  - o Industrial contributions
  - o Domestic contributions
  - o Commercial contributions
  - o Surface and drinking water contributions

d. **Special Order Year Two [May 1, 2022 through April 30, 2023]:**

- 1) Continue investigating industrial sources and engage with sources not defined as SIUs that have 1,4-dioxane concentrations above 31.5 µg/L to reduce or eliminate 1,4-dioxane discharges.
- 2) Meet with the Department's WSRO on a quarterly basis to present progress updates and provide a written meeting summary.
- 3) Report all T.Z. Osborne WWTP effluent 1,4-dioxane sampling results monthly by email to the Department (in a format acceptable to DEQ) no later than the last calendar day of the month following the completed reporting period and post on the City's Water Resources Department website.
- 4) For any industrial user (including any SIU) that is determined to have a detectable concentration of 1,4-dioxane in its discharge in Year One and that does not have a source reduction plan in place, the City will sample and analyze the industrial user's discharge and engage with the industrial user. The City will require a "Source Investigation, Evaluation and Survey" (an example of which is attached as Exhibit 1) from those SIUs that have 1,4-dioxane concentrations above 31.5 µg/L. After receiving the results of the "Source Investigation, Evaluation and Survey," the City will determine appropriate next steps, including a source reduction program if appropriate, based on the investigation results and the SIU loading to the T.Z. Osborne WWTP.
- 5) The City shall not exceed the Department's calculated effluent Year Two daily maximum grab sample SOC compliance value of 31.5 µg/L (Year Two SOC Compliance Value) to protect downstream drinking water intakes based on EPA's drinking water health advisory.
- 6) Report by telephone within 24 hours to the Department's WSRO after receiving any data (including any individual result from a grab, composite, or split sample if

taken) indicating a T.Z. Osborne WWTP effluent 1,4-dioxane concentration greater than 31.5 µg/L. The City will also provide email notification to downstream drinking water utilities as soon as possible after the DEQ 24-hour notification is triggered, but no more than 24 hours after Greensboro receives data showing an exceedance of 31.5 µg/L. The City is also required to submit a written report on any finalized data regarding the exceedance, its cause, effects, and its duration to the WSRO within 5 business days by email of the City's first knowledge of the exceedance. The City will post this written report on the City's Water Resources Department website.

- 7) Modify SIU permits or develop other pretreatment program mechanisms as necessary.
  - 8) Calculate a T.Z. Osborne WWTP effluent 1,4-dioxane mass balance using all data (industrial, domestic, commercial, drinking water, and collection system data) and submit to the Department in the Year Two Report.
  - 9) In addition to any other reporting required by the Department, no later than forty-five (45) calendar days after the end of Year Two, the City shall submit to the Department a written report on the Year Two activities and post on the City's Water Resources Department website. The report may be submitted by hard copy or electronic means and must contain the following (at a minimum):
    - i. Summary of the City's oversight activities [outlined in 2(d)(1), 2(d)(4) and 2(d)(7)].
    - ii. Public education outreach plan update [outlined in 2(c)(5)].
    - iii. 1,4-dioxane mass balance [outlined in 2(d)(8)].
    - iv. A table of all monitoring results for 1,4-dioxane collected during the SOC Year Two.
    - v. In the case of noncompliance with the Year Two SOC Compliance Value, a statement of the reason(s) for noncompliance, remedial action(s) taken, and a statement on the extent to which subsequent dates or times for accomplishment of listed activities may be affected.
- e. **Special Order Year Three [May 1, 2023 through April 30, 2024]:**
- 1) Continue investigating industrial sources and engage with sources not defined as SIUs that have 1,4-dioxane concentrations above 23 µg/L to reduce or eliminate 1,4-dioxane discharges.
  - 2) Meet with the Department's WSRO on a quarterly basis to present progress updates and provide a written meeting summary.
  - 3) Report all T.Z. Osborne WWTP effluent 1,4-dioxane sampling results monthly by email to the Department (in a format acceptable to DEQ) no later than the last calendar day of the month following the completed reporting period and post on the City's Water Resources Department website.

- 4) For any industrial user (including any SIU) that is determined to have a detectable concentration of 1,4-dioxane in its discharge in Year Two and that does not have a source reduction plan in place, the City will sample and analyze the industrial user's discharge and engage with the industrial user. The City will require a "Source Investigation, Evaluation and Survey" (an example of which is attached as Exhibit 1) from those SIUs that have 1,4-dioxane concentrations above 23 µg/L. After receiving the results of the "Source Investigation, Evaluation and Survey," the City will determine appropriate next steps, including a source reduction program if appropriate, based on the investigation results and the SIU loading to the T.Z. Osborne WWTP.
- 5) The City shall not exceed the Department's calculated effluent Year Three daily maximum grab sample SOC compliance value of 23 µg/L (Year Three SOC Compliance Value) to protect downstream drinking water intakes based on EPA's drinking water health advisory.
- 6) Report by telephone within 24 hours to the Department's WSRO after receiving any data (including any individual result from a grab, composite, or split sample if taken) indicating a T.Z. Osborne WWTP effluent 1,4-dioxane concentration greater than 23 µg/L. The City will also provide email notification to downstream drinking water utilities as soon as possible after the DEQ 24-hour notification is triggered, but no more than 24 hours after Greensboro receives data showing an exceedance of 23 µg/L. The City is also required to submit a written report on any finalized data regarding the exceedance, its cause, effects, and its duration to the WSRO within 5 business days by email of the City's first knowledge of the exceedance. The City will post this report on the City's Water Resources Department website.
- 7) Modify SIU permits or develop other pretreatment program mechanisms as necessary.
- 8) In addition to any other reporting required by the Department, no later than forty-five (45) calendar days after April 30, 2024, the City shall submit to the Department a written report on the Year Three activities and post on the City's Water Resources Department website. The report may be submitted by hard copy or electronic means and must contain the following (at a minimum):
  - i. Summary of the City's oversight activities [outlined in 2(e)(1), 2(e)(4) and 2(e)(7)].
  - ii. A table of all monitoring results for 1,4-dioxane collected during the SOC Year Three.
  - iii. Public education outreach plan update [outlined in 2(c)(5)].
  - iv. In the case of noncompliance with the Year Three SOC Compliance Value, a statement of the reason(s) for noncompliance, remedial action(s) taken, and a statement on the extent to which subsequent dates or times for accomplishment of listed activities may be affected.

3. In case source reduction alone does not lead to the effluent SOC Compliance Value being achieved consistently, the following shall apply:
  - a. If greater than or equal to 30% of eDMR data exceed the Year One SOC Compliance Value of 35 µg/L at the end of SOC Year One, the City shall address 1,4-dioxane in the T.Z. Osborne WWTP effluent by performing the following:
    - 1) Submit to the Division for approval within 45 calendar days of the end of SOC Year One a report that considers the items below:
      - Investigation of alternate/additional treatment processes for removal of 1,4-dioxane at major industrial sources.
      - Investigation of the technical and economic feasibility of treatment technologies for the removal of 1,4-dioxane at wastewater treatment plants.
      - Investigation of the technical and economic feasibility of treatment technologies for removal of 1,4-dioxane at drinking water treatment facilities.
    - 2) Following the investigations in 3(a)(1), submit to the Division within 180 calendar days of the end of SOC Year One a draft Best Management Practices/1,4-dioxane Minimization Plan, which will include an implementation schedule that must be approved by the Division before proceeding.
    - 3) Upon Division approval of Items 1 and 2 above, post both items on the City’s Water Resources Department website.
4. The City of Greensboro, desiring to resolve the matters contributing to alleged water quality standard violations associated with its discharge of 1,4-dioxane from the T.Z. Osborne WWTP, has paid an upfront penalty in the amount of \$5,000.00 as settlement of the alleged violations noted in the November 14, 2019 NOV correspondence as well as any and all other alleged violations related to 1,4-dioxane beginning December 1, 2017 through the execution date of the original SOC, effective May 1, 2021.
  - a. Stipulated Penalties. The City agrees that unless excused under Paragraph 5, the City will pay the Director of DWR, by check payable to the North Carolina Department of Environmental Quality, stipulated penalties according to the following schedule for failure to meet the deadlines and requirements set out in Section 2.

Description	Stipulated Penalty
Failure to provide 24-hour notice to WSRO of elevated discharge levels specified in Sections 2(c)(7), 2(d)(6), and 2(e)(6) of this Amended Special Order	\$1,000 per event; \$100/day thereafter
Failure to submit to WSRO complete Annual Reports in Sections 2(c)(9), 2(d)(9) and 2(e)(8) of this Amended Special Order by specified date	\$1,000 per event; \$100/day thereafter

<p>Failure to meet the grab sample effluent daily maximum SOC Compliance Value in SOC Year One, Year Two, or Year Three</p>	<p><b>Exceedance &gt; applicable Compliance Value and ≤ 105 µg/L:</b></p> <ul style="list-style-type: none"> <li>• Exceedance 1-5 per SOC year: \$1,000 per event, per SOC year</li> <li>• Exceedance 6-10 per SOC year: \$2,000 per event, per SOC year</li> <li>• Exceedance 11 and up per SOC year: \$3,000 per event, per SOC year</li> </ul> <p><b>Exceedance &gt; 105 µg/L:</b></p> <ul style="list-style-type: none"> <li>• Exceedance 1-5 per SOC year: \$5,000 per event, per SOC year</li> <li>• Exceedance 6 or more per SOC year: \$10,000 per event, per SOC year</li> </ul> <p><b>Exceedance &gt; 500 µg/L:</b></p> <ul style="list-style-type: none"> <li>• \$5,000 per event in addition to any stipulated penalty listed above</li> </ul>
<p>Failure to achieve any other requirement of this Amended Special Order</p>	<p>\$1,000 per event</p>

5. The City and the Commission agree that the stipulated penalties are not due if the City satisfies DWR that noncompliance was caused solely by:
- a. An act of God;
  - b. An act of war;
  - c. An intentional act or omission of a third party, but this defense shall not be available if the act or omission is that of an employee or agent of the defendant or if the act or omission occurs in connection with a contractual relationship with the permittee;
  - d. An extraordinary event beyond the permittee’s control. Contractor delays or failure to obtain funding will not be considered as events beyond the permittee’s control; or
  - e. Any combination of the above causes.

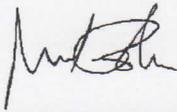
Failure by the City to within thirty (30) calendar days of receipt of a written demand either to pay the penalties, or challenge them by a contested case petition pursuant to G.S. 150B-23, will be grounds for a collection action, which the Attorney General is hereby authorized to initiate. The only issue in such an action will be whether the thirty (30) calendar days has elapsed.

6. This Amended Special Order by Consent and any terms and/or conditions contained herein, hereby supersede any and all previous Special Orders, Enforcement Compliance Schedule Letters, terms, conditions, and limits contained therein issued in connection with NPDES permit NC0047384.
7. Noncompliance with the terms of this Amended Special Order by Consent is subject to enforcement action in addition to the above stipulated penalties, including injunctive relief

pursuant to G.S. 143-215.6.C. Noncompliance with the terms of this Amended Special Order will not be subject to civil penalties in addition to the above stipulated penalties.

8. This Amended Special Order by Consent may be modified at the Commission's discretion, provided the Commission is satisfied that the City has made good faith efforts to complete the Compliance Schedule activities specified herein.
9. The permittee, upon complete execution but no earlier than December 1, 2021 of this Amended Special Order by Consent, will be expected to comply with all schedule dates, terms, and conditions of this document.
10. This Amended Special Order by Consent shall expire on July 15, 2024.

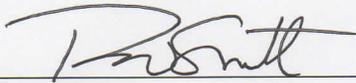
For City of Greensboro Water Resources Department:



\_\_\_\_\_  
Michael Borchers, Director of Water Resources  
City of Greensboro

Date: November 12, 2021

For the North Carolina Environmental Management Commission:



\_\_\_\_\_  
Robin Smith  
Chair of the Commission

Date 11/22/2021

# Exhibit 1

to Amended SOC

(1,4-dioxane Source Investigation,  
Evaluation, and Survey for SIUs)



## City of Greensboro 1,4-Dioxane Source Investigation, Evaluation, and Survey For SIUs

### Purpose

**You have been contacted and are receiving this follow-up correspondence because the initial 1,4-dioxane sampling conducted by the City of Greensboro (City) Industrial Waste Section (IWS) at your facility included at least one effluent sample with a concentration greater than 100 ug/l.**

The City of Greensboro (City) T. Z. Osborne Wastewater Treatment Plant effluent has had elevated levels of 1,4-dioxane in the past. There are several downstream drinking water utilities on the Haw/Cape Fear Rivers below us. The City signed a Special Order by Consent (SOC) with the North Carolina Department of Environmental Quality (NCDEQ) to address these elevated levels. As part of a source reduction effort, the SOC requires the City to conduct follow-up activities (contact, interview, survey) for 1,4-dioxane discharges to the sanitary sewer collection system that are >100 ug/l (parts per billion). The City has been collecting samples from all Significant Industrial Users in order to identify these facilities.

### 1,4-Dioxane Background Information

- Primary historical use was as a stabilizer of chlorinated solvents
- Not typically found as a raw material, rather it is usually an unintended by-product created during certain chemical processes/reactions
- By-product present in many goods, including paint strippers, dyes, greases, antifreeze and aircraft deicing fluids, and in some consumer products (deodorants, shampoos and cosmetics)
- Cannot be removed by conventional wastewater treatment processes or conventional drinking water treatment processes.
- Very stable and miscible in water
- Unregulated emerging contaminant: Currently there is no Federal EPA drinking water Maximum Contaminant Level (MCL)

### Required Actions for Facilities discharging >100 ug/l of 1,4-dioxane

1. Read EPA 1,4-Dioxane Fact Sheet (attached)
2. Conduct Document Survey: Review raw material Safety Data Sheets. Keep in mind that ingredients are only required to be listed on an SDS if the final product contains greater than 1% (1% = 10,000 ppm) of the ingredient.

3. Review chemistry of individual product wastestreams to identify potential significant sources of 1,4-dioxane
4. The following types of wastewaters have been identified as potential sources of 1,4-dioxane:
  - a. Used as purifying agent in manufacture of pharmaceuticals
  - b. By-product in the manufacture of Polyethylene Terephthalate (PET) plastic
  - c. By-product in the manufacture of ethoxylated chemicals (certain surfactants)
  - d. Traces may be present in some food supplements, food containing residues from packaging adhesives
5. Review all specific production records at the facility, including products that are not manufactured on a consistent basis or are discharged as a batch.
6. Once you have developed a list of potential 1,4-dioxane sources, develop a sampling/monitoring plan to investigate the potential source(s).
7. **Submit the list of potential sampling sites/sampling plan to the City IWS for review prior to implementation.**
8. Collect a representative work-day composite sample for each potential source identified in your monitoring plan, following the recommended sampling protocol to prevent contamination.
  - a. Contact a commercial laboratory prior to collecting the samples. The lab will provide sample containers and sampling instructions. The City uses Meritech Lab (336-342-4748) and Pace Laboratories (704-875-9092) for 1,4-dioxane, but you may use any laboratory that is certified by the State of NC to run 1,4-dioxane by EPA Method 624.1. The cost is about \$100 per sample and it may take 7-10 days to receive the results.
  - b. Note: Although the EPA method requires a grab sample, the City wants you to collect a composite sample.
  - c. You will not be required to have a trip blank or a field blank for this process control testing. You should notify the lab to prevent being charged for one.
9. **You are asked to provide a preliminary written report to the City Industrial Waste Section regarding the required activities listed in 1-8, including sampling results, within 45 days of receipt of this document.**

We are available to work with you as you proceed through your source reduction efforts. If you have questions, feel free to contact Martie Groome at 336-433-7229.

More information about 1,4-dioxane, including TZ Osborne WWTP effluent data, the SOC requirements and links to State and EPA documents, is posted on the City of Greensboro website.



ROY COOPER  
*Governor*  
MICHAEL S. REGAN  
*Secretary*  
LINDA CULPEPPER  
*Interim Director*

May 23, 2018

Mr. Stuart Kerkhoff  
Environmental Health and Safety Manager  
Radiator Specialty Company  
600 Radiator Road  
Indian Trail, NC 28079

Subject: Final NPDES Permit Renewal  
Permit NC0088838  
Radiator Specialty Company  
Union County  
Facility Grade I

Dear Mr. Smith:

Division personnel have reviewed and approved your application for renewal of the subject permit. Accordingly, we are forwarding the attached NPDES permit. This permit is issued pursuant to the requirements of North Carolina General Statute 143-215.1 and the Memorandum of Agreement between North Carolina and the U.S. Environmental Protection Agency dated October 15, 2007 (or as subsequently amended).

Please note that the receiving stream is listed as impaired for fish community (fair) and benthos (poor) on the North Carolina Final 2014 303(d) Impaired Waters List. Addressing impaired waters is a high priority with the Division, and instream data will continue to be evaluated. If there is noncompliance with permitted effluent limits and stream impairment can be attributed to your facility, then mitigative measures may be required.

**The Division received your comments in a letter dated March 14, 2018 and the following changes were made to the draft permit sent to you on February 7, 2018:**

- Monitoring frequency for TSS has been reduced from monthly to quarterly in light of reviewed effluent data showing consistent compliance with permit limits, yielding 7% detection over the span of eight years (from February 2010 through February 2018). TSS monitoring will remain in the permit as this is a pollutant of concern and a parameter routinely put in groundwater remediation NPDES permits.
- Monitoring frequency for pH has been reduced from monthly to quarterly in light of reviewed effluent data showing consistent compliance with water quality standards. pH will remain in the permit as this is a pollutant of concern and a parameter routinely in groundwater remediation NPDES permits.

Nothing Compares

State of North Carolina | Environmental Quality

1611 Mail Service Center | Raleigh, North Carolina 27699-1611

919-707-9000

- The facility component list on the Supplement to Permit Cover Sheet was revised by removing “with recorder” for the effluent meter per your request after verifying that the meter does not have a chart or other recording device, but flow readings are taken manually on a daily basis.
- 1,4-Dioxane limits and monitoring will remain in the permit as this parameter does have a NC calculated surface water criterion of 80 µg/L to protect human health in Class C waters. The reopener will remain in the permit to allow for changes to address 1,4-Dioxane monitoring, treatment and/or compliance.

1,4-Dioxane samples shall be analyzed by a NC certified laboratory using EPA Test Method 624.1, and results shall be reported to the lower reporting level of the procedure. In September 2017, EPA promulgated the 2017 Methods Update Rule approving test method 624.1 for 1,4-Dioxane. All tests for parameters listed in the NPDES permit must be performed in accordance with EPA approved test methods and by a NC certified laboratory. Currently, there are several laboratories certified in NC to perform 1,4-Dioxane testing. Radiator Specialty is required to submit effluent data results on 1,4-Dioxane using one of these certified labs. To learn what certified labs are in your area, please contact Dana Satterwhite, DWR Laboratory Certification Branch, at 919-733-3908 ext. 202 or by e-mail: [dana.satterwhite@ncdenr.gov](mailto:dana.satterwhite@ncdenr.gov).

**The final permit maintains the following significant changes identified in the letter sent on February 7, 2018:**

- Removed monitoring for Chloroethane from this permit, since an evaluation of submitted effluent data found no reasonable potential to exceed the EPA criterion of 550 µg/L.
- Removed monitoring for 1,1-Dichloroethene; 1,2-Dichloroethene (total); 1,1,1-Trichloroethane; and 1,2-Dichloroethane have been removed from this permit. These parameters are no longer pollutants of concern, based on reasonable potential evaluation and no significant levels in the influent.
- Revised daily limits for Tetrachloroethene and Vinyl Chloride. The 2015 EPA Human Health water quality criterion for these parameters was applied in this permit (technical change).
- Added monitoring with limits for pH. The pH is a pollutant of concern and the freshwater standard for Class C waters was applied in this permit.
- Added quarterly monitoring and a limit of 80 µg/L for 1,4-Dioxane to the permit with provisional monitoring increase to monthly if a sample measurement is equal to or greater than the limit. Added special condition A. (3.) REOPENER 1,4-DIOXANE in this permit. Adjacent monitoring wells data indicate potential migration of this pollutant to the groundwater remediation collection system, thus a potential for this pollutant to be present in excess of its WQBEL which may require modification of the permit to address compliance.
- Federal regulations require electronic submittal of all discharge monitoring reports (DMRs) and program reports. The final NPDES Electronic Reporting Rule was adopted and became effective on December 21, 2015. The requirement to begin reporting discharge monitoring data electronically using the NC DWR’s Electronic Discharge Monitoring Report (eDMR) internet application has been added to this permit. [See Special Condition A. (4.)]

For information on eDMR, registering for eDMR and obtaining an eDMR user account, please visit the following web page: <http://deq.nc.gov/about/divisions/water-resources/edmr>.

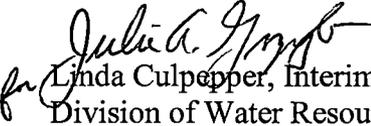
For more information on EPA's final NPDES Electronic Reporting Rule, please visit the following web site: <https://www.federalregister.gov/documents/2015/10/22/2015-24954/national-pollutant-discharge-elimination-system-npdes-electronic-reporting-rule>.

If any parts, measurement frequencies or sampling requirements contained in this permit are unacceptable to you, you have the right to an adjudicatory hearing upon written request within thirty (30) days following receipt of this letter. This request must be in the form of a written petition, conforming to Chapter 150B of the North Carolina General Statutes, and filed with the Office of Administrative Hearings (6714 Mail Service Center, Raleigh, North Carolina 27699-6714). Unless such demand is made, this decision shall be final and binding.

Please note that this permit is not transferable except after notice to the Division. The Division may require modification or revocation and reissuance of the permit. This permit does not affect the legal requirements to obtain other permits which may be required by the Division of Water Resources or any other Federal, State, or Local governmental permits that may be required.

If you have any questions concerning this permit, please contact Gary Perlmutter at (919) 807-6385 or via email at [gary.perlmutter@ncdenr.gov](mailto:gary.perlmutter@ncdenr.gov).

Sincerely,

  
Linda Culpepper, Interim Director  
Division of Water Resources, NCDEQ

Hardcopy: NPDES Files  
Central Files  
DWR / Winston-Salem Regional Office / Water Quality Operations  
e-Copy: ~~US EPA Region 4~~  
DWR / Aquatic Toxicity Branch / Susan Meadows

STATE OF NORTH CAROLINA  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
DIVISION OF WATER RESOURCES

**PERMIT**

TO DISCHARGE WASTEWATER UNDER THE  
**NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM**

In compliance with the provision of North Carolina General Statute 143-215.1, other lawful standards and regulations promulgated and adopted by the North Carolina Environmental Management Commission, and the Federal Water Pollution Control Act, as amended,

**Radiator Specialty Company**

is hereby authorized to discharge wastewater from a facility located at the

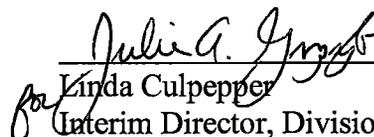
**Radiator Specialty Company  
600 Radiator Road  
Indian Trail  
Union County**

to receiving waters designated as an unnamed tributary to South Fork Crooked Creek in the Yadkin Pee-Dee River Basin in accordance with effluent limitations, monitoring requirements, and other applicable conditions set forth in Parts I, II, III, and IV hereof.

The permit shall become effective July 1, 2018.

This permit and the authorization to discharge shall expire at midnight on March 31, 2023.

Signed this day, May 23, 2018.

  
\_\_\_\_\_  
for Linda Culpepper  
Interim Director, Division of Water Resources  
By Authority of the Environmental Management Commission

## SUPPLEMENT TO PERMIT COVER SHEET

*All previous NPDES Permits issued to this facility, whether for operation or discharge are hereby revoked. As of this permit issuance, any previously issued permit bearing this number is no longer effective. Therefore, the exclusive authority to operate and discharge from this facility arises under the permit conditions, requirements, terms, and provisions included herein.*

### **Radiator Specialty Company is hereby authorized to:**

1. Continue to operate a 0.090 MGD Ground Water Remediation treatment facility consisting of:

- one (1) 6,000-gallon equalization tank
- one (1) transfer pump
- one (1) packed air stripper column with blower and overflow sump
- effluent meter
- gravity sewer to outfall

Located at Radiator Specialty Company, 600 Radiator Road, Indian Trail in Union County.

2. Discharge from said treatment works at the location specified on the attached map into unnamed tributary to the South Fork Crooked Creek, a class C water in the Yadkin River Basin.

## Part I

A. (1.) EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS  
 [15A NCAC .02B .0400 et seq., .02B .0500 et seq.]

- a. Beginning on the effective date of this permit and lasting until expiration, the Permittee is authorized to discharge treated groundwater from *Outfall 001* of this Grade I facility. Such discharges shall be limited and monitored<sup>1</sup> by the Permittee as specified below:

EFFLUENT CHARACTERISTICS	LIMITATIONS		MONITORING REQUIREMENTS		
	Monthly Average	Daily Maximum	Measurement Frequency	Sample Type	Sample Location
Flow <sup>2</sup>	0.090 MGD		Continuous	Recording	Effluent
Total Suspended Solids	30.0 mg/L	45.0 mg/L	Quarterly	Grab	Effluent
Tetrachloroethene		3.3 µg/L	Monthly	Grab	Effluent
Vinyl Chloride		2.4 µg/L	Monthly	Grab	Effluent
pH	Between 6.0 and 9.0 S.U.		Quarterly	Grab	Effluent
1,4-Dioxane <sup>3</sup>		80 µg/L	Quarterly <sup>3</sup>	Grab	Effluent
1,1-Dichloroethane	Monitor and Report		Quarterly	Grab	Effluent
Trichloroethene	Monitor and Report		Quarterly	Grab	Effluent
Benzene	Monitor and Report		Quarterly	Grab	Effluent
Methyl Chloride	Monitor and Report		Quarterly	Grab	Effluent
Toluene	Monitor and Report		Quarterly	Grab	Effluent
Chronic Toxicity <sup>4</sup>	Monitor and Report		Quarterly	Grab	Effluent

## Footnotes:

1. The Permittee shall submit Discharge Monitoring Reports electronically using NC DWR's eDMR application system. See Special Condition A. (4.).
2. Flow shall be measured with a totalizing flow meter.
3. 1,4-Dioxane measurement shall be conducted by a NC-certified laboratory using EPA Test Method 624.1, and the results shall be reported to the lower reporting level of the procedure. If a measurement is equal to or greater than 80 µg/L, then monitoring shall immediately be increased to monthly. See Special Condition A. (3.).
4. Chronic Toxicity (*Ceriodaphnia dubia*) limit at 90% with testing in January, April, July, and October; see Special Condition A. (2.). Quarterly toxicity testing shall coincide with the sampling of all the other parameters.

- b. There shall be no discharge of floating solids or visible foam in other than trace amounts.

**A. (2.) CHRONIC TOXICITY PERMIT LIMIT (Quarterly)**

[15A NCAC 02B .0200 et seq.]

The effluent discharge shall at no time exhibit observable inhibition of reproduction or significant mortality to *Ceriodaphnia dubia* at an effluent concentration of **90%**.

The permit holder shall perform at a minimum, *quarterly* monitoring using test procedures outlined in the "North Carolina *Ceriodaphnia* Chronic Effluent Bioassay Procedure," Revised December 2010, or subsequent versions or "North Carolina Phase II Chronic Whole Effluent Toxicity Test Procedure" (Revised- December 2010) or subsequent versions. The tests will be performed **during the months of January, April, July, and October**. These months signify the first month of each three-month toxicity testing quarter assigned to the facility. Effluent sampling for this testing must be obtained during representative effluent discharge and shall be performed at the NPDES permitted final effluent discharge below all treatment processes.

**If the test procedure performed as the first test of any single quarter results in a failure or ChV below the permit limit, then multiple-concentration testing shall be performed at a minimum, in each of the two following months as described in "North Carolina Phase II Chronic Whole Effluent Toxicity Test Procedure" (Revised-December 2010) or subsequent versions.**

All toxicity testing results required as part of this permit condition will be entered on the Effluent Discharge Monitoring Form (MR-1) for the months in which tests were performed, using the parameter code **TGP3B** for the pass/fail results and **THP3B** for the Chronic Value. Additionally, DWR Form AT-3 (original) is to be sent to the following address:

Attention: North Carolina Division of Water Resources  
Water Sciences Section/Aquatic Toxicology Branch  
1623 Mail Service Center  
Raleigh, NC 27699-1623

Completed Aquatic Toxicity Test Forms shall be filed with the Water Sciences Section no later than 30 days after the end of the reporting period for which the report is made.

Test data shall be complete, accurate, include all supporting chemical/physical measurements and all concentration/response data, and be certified by laboratory supervisor and ORC or approved designate signature. Total residual chlorine of the effluent toxicity sample must be measured and reported if chlorine is employed for disinfection of the waste stream.

Should there be no discharge of flow from the facility during a month in which toxicity monitoring is required, the permittee will complete the information located at the top of the aquatic toxicity (AT) test form indicating the facility name, permit number, pipe number, county, and the month/year of the report with the notation of "No Flow" in the comment area of the form. The report shall be submitted to the Water Sciences Section at the address cited above.

Should the Permittee fail to monitor during a month in which toxicity monitoring is required, monitoring will be required during the following month. Assessment of toxicity compliance is based on the toxicity testing quarter, which is the three-month time interval that begins on the first day of the month in which toxicity testing is required by this permit and continues until the final day of the third month.

(Continued A. (2) CHRONIC TOXICITY PERMIT LIMIT)

Should any test data from this monitoring requirement or tests performed by the North Carolina Division of Water Resources indicate potential impacts to the receiving stream, this permit may be re-opened and modified to include alternate monitoring requirements or limits.

NOTE: Failure to achieve test conditions as specified in the cited document, such as minimum control organism survival, minimum control organism reproduction, and appropriate environmental controls, shall constitute an **invalid test** and will require immediate follow-up testing to be completed no later than the last day of the month following the month of the initial monitoring.

A. (3.) REOPENER 1,4-DIOXANE [G.S. 143-215.1(b)]

Upon measurement of an effluent 1,4-Dioxane sample equal to or greater than 80 µg/L, monitoring shall be increased immediately to monthly. If deemed necessary by the Division, the permit may be reopened to modify permit requirements to address 1,4-Dioxane monitoring, treatment and/or compliance.

**A. (4.) ELECTRONIC REPORTING OF DISCHARGE MONITORING REPORTS**  
 [G.S. 143-215.1(b)]

Federal regulations require electronic submittal of all discharge monitoring reports (DMRs) and program reports. The final NPDES Electronic Reporting Rule was adopted and became effective on December 21, 2015.

NOTE: This special condition supplements or supersedes the following sections within Part II of this permit (*Standard Conditions for NPDES Permits*):

- Section B. (11.) Signatory Requirements
- Section D. (2.) Reporting
- Section D. (6.) Records Retention
- Section E. (5.) Monitoring Reports

**1. Reporting Requirements [Supersedes Section D. (2.) and Section E. (5.) (a)]**

The permittee shall report discharge monitoring data electronically using the NC DWR's Electronic Discharge Monitoring Report (eDMR) internet application.

Monitoring results obtained during the previous month(s) shall be summarized for each month and submitted electronically using eDMR. The eDMR system allows permitted facilities to enter monitoring data and submit DMRs electronically using the internet. Until such time that the state's eDMR application is compliant with EPA's Cross-Media Electronic Reporting Regulation (CROMERR), permittees will be required to submit all discharge monitoring data to the state electronically using eDMR and will be required to complete the eDMR submission by printing, signing, and submitting one signed original and a copy of the computer printed eDMR to the following address:

NC DEQ / Division of Water Resources / Water Quality Permitting Section  
 ATTENTION: Central Files  
 1617 Mail Service Center  
 Raleigh, North Carolina 27699-1617

If a permittee is unable to use the eDMR system due to a demonstrated hardship or due to the facility being physically located in an area where less than 10 percent of the households have broadband access, then a temporary waiver from the NPDES electronic reporting requirements may be granted and discharge monitoring data may be submitted on paper DMR forms (MR 1, 1.1, 2, 3) or alternative forms approved by the Director. Duplicate signed copies shall be submitted to the mailing address above. See "How to Request a Waiver from Electronic Reporting" section below.

Regardless of the submission method, the first DMR is due on the last day of the month following the issuance of the permit or in the case of a new facility, on the last day of the month following the commencement of discharge.

Starting on **December 21, 2020**, the permittee must electronically report the following compliance monitoring data and reports, when applicable:

(Continued A. (4.) ELECTRONIC REPORTING OF DISCHARGE MONITORING REPORTS)

- Sewer Overflow/Bypass Event Reports;
- Pretreatment Program Annual Reports; and
- Clean Water Act (CWA) Section 316(b) Annual Reports.

The Permittee may seek an electronic reporting waiver from the Division (see “How to Request a Waiver from Electronic Reporting” section below).

## 2. **Electronic Submissions**

In accordance with 40 CFR 122.41(l)(9), the permittee must identify the initial recipient at the time of each electronic submission. The Permittee should use the EPA’s website resources to identify the initial recipient for the electronic submission.

Initial recipient of electronic NPDES information from NPDES-regulated facilities means the entity (EPA or the state authorized by EPA to implement the NPDES program) that is the designated entity for receiving electronic NPDES data [see 40 CFR 127.2(b)].

EPA plans to establish a website that will also link to the appropriate electronic reporting tool for each type of electronic submission and for each state. Instructions on how to access and use the appropriate electronic reporting tool will be available as well. Information on EPA’s NPDES Electronic Reporting Rule is found at: <https://www.federalregister.gov/documents/2015/10/22/2015-24954/national-pollutant-discharge-elimination-system-npdes-electronic-reporting-rule>

Electronic submissions must start by the dates listed in the “Reporting Requirements” section above.

## 3. **How to Request a Waiver from Electronic Reporting**

The permittee may seek a temporary electronic reporting waiver from the Division. To obtain an electronic reporting waiver, a permittee must first submit an electronic reporting waiver request to the Division. Requests for temporary electronic reporting waivers must be submitted in writing to the Division for written approval at least sixty (60) days prior to the date the facility would be required under this permit to begin submitting monitoring data and reports. The duration of a temporary waiver shall not exceed 5 years and shall thereupon expire. At such time, monitoring data and reports shall be submitted electronically to the Division unless the permittee re-applies for and is granted a new temporary electronic reporting waiver by the Division. Approved electronic reporting waivers are not transferrable. Only permittees with an approved reporting waiver request may submit monitoring data and reports on paper to the Division for the period that the approved reporting waiver request is effective.

Information on eDMR and the application for a temporary electronic reporting waiver are found on the following web page:

<http://deq.nc.gov/about/divisions/water-resources/edmr>

(Continued A. (4.) ELECTRONIC REPORTING OF DISCHARGE MONITORING REPORTS)

**4. Signatory Requirements [Supplements Section B. (11.) (b) and Supersedes Section B. (11.) (d)]**

All eDMRs submitted to the permit issuing authority shall be signed by a person described in Part II, Section B. (11.) (a) or by a duly authorized representative of that person as described in Part II, Section B. (11.) (b). A person, and not a position, must be delegated signatory authority for eDMR reporting purposes.

For eDMR submissions, the person signing and submitting the DMR must obtain an eDMR user account and login credentials to access the eDMR system. For more information on North Carolina's eDMR system, registering for eDMR and obtaining an eDMR user account, please visit the following web page:

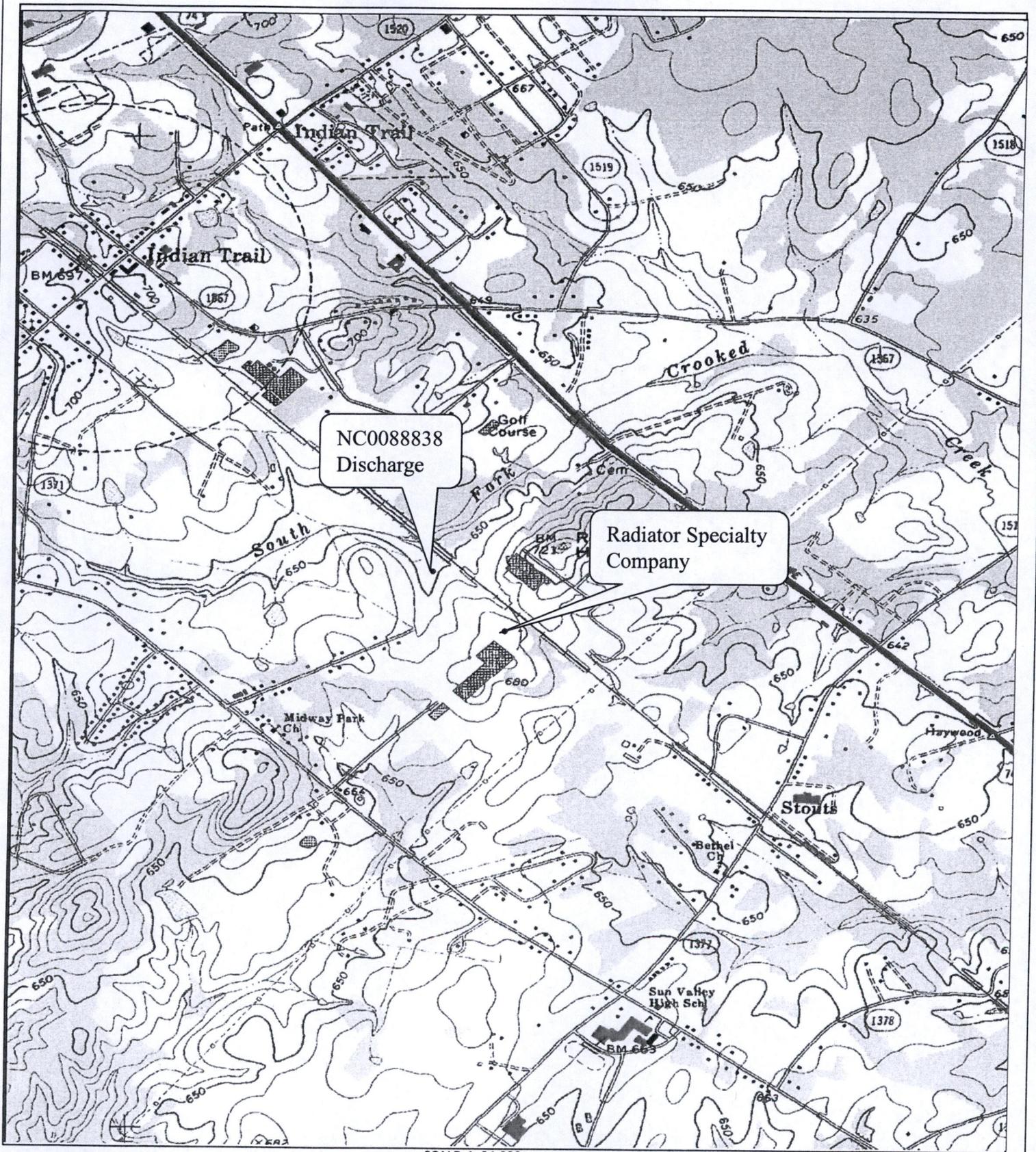
<http://deq.nc.gov/about/divisions/water-resources/edmr>

Certification. Any person submitting an electronic DMR using the state's eDMR system shall make the following certification [40 CFR 122.22]. NO OTHER STATEMENTS OF CERTIFICATION WILL BE ACCEPTED:

*"I certify, under penalty of law, that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."*

**5. Records Retention [Supplements Section D. (6.)]**

The permittee shall retain records of all Discharge Monitoring Reports, including eDMR submissions. These records or copies shall be maintained for a period of at least 3 years from the date of the report. This period may be extended by request of the Director at any time [40 CFR 122.41].



SCALE: 1: 24,000

USGS Quad: G16SW Matthews, NC

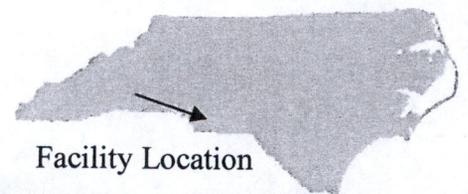
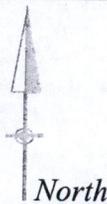
<u>Outfall</u>	<u>Facility</u>
Latitude: 35° 3' 55" W	35° 3' 45" W
Longitude: 80° 39' 14" N	80° 39' 3" N

Stream Class: C

Subbasin: 03-07-12

HUC: 03040105

Receiving Stream: UT to South Fork Crooked Creek



Radiator Specialty Company NC0088838  
Union County

ROY COOPER

Governor

ELIZABETH S. BISER

Secretary

S. DANIEL SMITH

Director



NORTH CAROLINA  
Environmental Quality

11/16/2021

Mr. Patrick Pierce, Manager  
Radiator Specialty Company  
605 Lexington Avenue, Suite 100  
Charlotte, NC 28203

Subject: Modification to NPDES Permit NC0088838  
600 Radiator Road, LLC  
Union County  
Grade PC-1 Biological WPCS

Dear Permittee:

The Division has received and approved your request to transfer ownership of the subject permit. This permit modification is issued pursuant to the requirements of North Carolina General Statute 143-215.1 and the Memorandum of Agreement between North Carolina and the U.S. Environmental Protection Agency dated October 15, 2007 (or as subsequently amended).

If any parts, measurement frequencies or sampling requirements contained in this modification are unacceptable to you, you have the right to an adjudicatory hearing upon written request within thirty (30) days following receipt of this letter. This request must be in the form of a written petition, conforming to Chapter 150B of the North Carolina General Statutes, and filed with the Office of Administrative Hearings (6714 Mail Service Center, Raleigh, North Carolina 27699-6714). Unless such demand is made, this decision shall be final and binding.

This permit is not transferable except after notice to the Division. The Division may require modification or revocation and reissuance of the permit. This permit does not affect the legal requirements to obtain other permits which may be required by any other Federal, State, or Local governmental regulation. If you have any questions concerning these changes, please contact Emily Phillips via e-mail [emily.phillips@ncdenr.gov].

Sincerely,

DocuSigned by:

A handwritten signature in cursive script, appearing to read "S. Daniel Smith".

8328B44CE9EB4A1...

for S. Daniel Smith, Director  
Division of Water Resources



STATE OF NORTH CAROLINA  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
DIVISION OF WATER RESOURCES

**PERMIT**

TO DISCHARGE WASTEWATER UNDER THE  
**NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM**

In compliance with the provision of North Carolina General Statute 143-215.1, other lawful standards and regulations promulgated and adopted by the North Carolina Environmental Management Commission, and the Federal Water Pollution Control Act, as amended,

**600 Radiator Road, LLC**

is hereby authorized to discharge wastewater from a facility located at

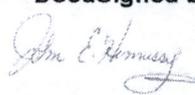
**600 Radiator Road  
Indian Trail  
Union County**

to receiving waters designated as an unnamed tributary to South Fork Crooked Creek in the Yadkin Pee-Dee River Basin in accordance with effluent limitations, monitoring requirements, and other applicable conditions set forth in Parts I, II, III, and IV hereof.

The permit shall become effective January 1, 2021

This permit and the authorization to discharge shall expire at midnight on March 31, 2023.

Signed this day November 16, 2021

DocuSigned by:  
  
8328B44CE9EB4A1...

---

S. Daniel Smith  
Director, Division of Water Resources  
By Authority of the Environmental Management Commission

## SUPPLEMENT TO PERMIT COVER SHEET

*All previous NPDES Permits issued to this facility, whether for operation or discharge are hereby revoked. As of this permit issuance, any previously issued permit bearing this number is no longer effective. Therefore, the exclusive authority to operate and discharge from this facility arises under the permit conditions, requirements, terms, and provisions included herein.*

### **Radiator Specialty Company is hereby authorized to:**

1. Continue to operate a 0.090 MGD Ground Water Remediation treatment facility consisting of:

- one (1) 6,000-gallon equalization tank
- one (1) transfer pump
- one (1) packed air stripper column with blower and overflow sump
- effluent meter
- gravity sewer to outfall

Located at Radiator Specialty Company, 600 Radiator Road, Indian Trail in Union County.

2. Discharge from said treatment works at the location specified on the attached map into unnamed tributary to the South Fork Crooked Creek, currently classified C water in the Yadkin River Basin.

**Part I.****A. (1.) EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS  
[15A NCAC .02B .0400 et seq., .02B .0500 et seq.]**

Grade PC-1 Biological Water Pollution Control System [15A NCAC 08G .0302]

Beginning on the effective date of this permit and lasting until expiration, the Permittee is authorized to discharge treated groundwater from *Outfall 001* of this Grade I facility. Such discharges shall be limited and monitored<sup>1</sup> by the Permittee as specified below:

EFFLUENT CHARACTERISTICS	LIMITATIONS		MONITORING REQUIREMENTS		
	Monthly Average	Daily Maximum	Measurement Frequency	Sample Type	Sample Location
Flow <sup>2</sup> 50050	0.090 MGD		Continuous	Recording	Effluent
Total Suspended Solids (TSS) CO530	30.0 mg/L	45.0 mg/L	Quarterly	Grab	Effluent
Tetrachloroethene 78389		3.3 µg/L	Monthly	Grab	Effluent
Vinyl Chloride 39175		2.4 µg/L	Monthly	Grab	Effluent
pH 00400	Between 6.0 and 9.0 S.U.		Quarterly	Grab	Effluent
1,4-Dioxane <sup>3</sup> 82388		80 µg/L	Quarterly <sup>3</sup>	Grab	Effluent
1,1-Dichloroethane 34496	Monitor and Report		Quarterly	Grab	Effluent
Trichloroethene 78391	Monitor and Report		Quarterly	Grab	Effluent
Benzene 34030	Monitor and Report		Quarterly	Grab	Effluent
Methyl Chloride 34418	Monitor and Report		Quarterly	Grab	Effluent
Toluene 34010	Monitor and Report		Quarterly	Grab	Effluent
Chronic Toxicity <sup>4</sup> 00187	Monitor and Report		Quarterly	Grab	Effluent

Footnotes:

1. The Permittee shall submit Discharge Monitoring Reports electronically using NCDWR's eDMR application system. See A. (4.).
2. Flow shall be measured with a totalizing flow meter.
3. 1,4-Dioxane measurement shall be conducted by a NC-certified laboratory using EPA Test Method 624.1, and the results shall be reported to the lower reporting level of the procedure. If a measurement is equal to or greater than 80 µg/L, then monitoring shall immediately be increased to monthly. See Special Condition A. (3.).
4. Chronic Toxicity (*Ceriodaphnia dubia*) limit at 90% with testing in January, April, July, and October; see Special Condition A. (2.). Quarterly toxicity testing shall coincide with the sampling of all the other parameters.

*There shall be no discharge of floating solids or visible foam in other than trace amounts.*

**A. (2.) CHRONIC TOXICITY PERMIT LIMIT (Quarterly)  
[15A NCAC 02B .0200 et seq.]**

The effluent discharge shall at no time exhibit observable inhibition of reproduction or significant mortality to *Ceriodaphnia dubia* at an effluent concentration of 90%.

The permit holder shall perform at a minimum, *quarterly* monitoring using test procedures outlined in the "North Carolina *Ceriodaphnia* Chronic Effluent Bioassay Procedure," Revised December 2010, or subsequent versions or "North Carolina Phase II Chronic Whole Effluent Toxicity Test Procedure" (Revised- December 2010) or subsequent versions. The tests will be performed **during the months of January, April, July, and October**. These months signify the first month of each three-month toxicity testing quarter assigned to the facility. Effluent sampling for this testing must be obtained during representative effluent discharge and shall be performed at the NPDES permitted final effluent discharge below all treatment processes.

**If the test procedure performed as the first test of any single quarter results in a failure or ChV below the permit limit, then multiple-concentration testing shall be performed at a minimum, in each of the two following months as described in "North Carolina Phase II Chronic Whole Effluent Toxicity Test Procedure" (Revised-December 2010) or subsequent versions.**

All toxicity testing results required as part of this permit condition will be entered on the Effluent Discharge Monitoring Form (MR-1) for the months in which tests were performed, using the parameter code **TGP3B** for the pass/fail results and **THP3B** for the Chronic Value. Additionally, DWR Form AT-3 (original) is to be sent to the following address:

Attention: North Carolina Division of Water Resources  
Water Sciences Section/Aquatic Toxicology Branch  
1623 Mail Service Center  
Raleigh, NC 27699-1623

Completed Aquatic Toxicity Test Forms shall be filed with the Water Sciences Section no later than 30 days after the end of the reporting period for which the report is made.

Test data shall be complete, accurate, include all supporting chemical/physical measurements and all concentration/response data, and be certified by laboratory supervisor and ORC or approved designate signature. Total residual chlorine of the effluent toxicity sample must be measured and reported if chlorine is employed for disinfection of the waste stream.

Should there be no discharge of flow from the facility during a month in which toxicity monitoring is required, the permittee will complete the information located at the top of the aquatic toxicity (AT) test form indicating the facility name, permit number, pipe number, county, and the month/year of the report with the notation of "No Flow" in the comment area of the form. The report shall be submitted to the Water Sciences Section at the address cited above.

Should the Permittee fail to monitor during a month in which toxicity monitoring is required, monitoring will be required during the following month. Assessment of toxicity compliance is based on the toxicity testing quarter, which is the three-month time interval that begins on the first day of the month in which toxicity testing is required by this permit and continues until the final day of the third month.

Should any test data from this monitoring requirement or tests performed by the North Carolina Division of Water Resources indicate potential impacts to the receiving stream, this permit may be re-opened and modified to include alternate monitoring requirements or limits.

NOTE: Failure to achieve test conditions as specified in the cited document, such as minimum control organism survival, minimum control organism reproduction, and appropriate environmental controls, shall constitute an **invalid test** and will require immediate follow-up testing to be completed no later than the last day of the month following the month of the initial monitoring.

**A. (3.) REOPENER 1,4-DIOXANE  
[G.S. 143-215.1(b)]**

Upon measurement of an effluent 1,4-Dioxane sample equal to or greater than 80 µg/L, monitoring shall be increased immediately to monthly. If deemed necessary by the Division, the permit may be reopened to modify permit requirements to address 1,4-Dioxane monitoring, treatment and/or compliance.

**A. (4.) ELECTRONIC REPORTING - DISCHARGE MONITORING REPORTS  
[G.S. 143-215.1 (b)]**

Federal regulations require electronic submittal of all discharge monitoring reports (DMRs) and program reports. The final NPDES Electronic Reporting Rule was adopted and became effective on December 21, 2015.

NOTE: This special condition supplements or supersedes the following sections within Part II of this permit (*Standard Conditions for NPDES Permits*):

- Section B. (11.)            Signatory Requirements
- Section D. (2.)            Reporting
- Section D. (6.)            Records Retention
- Section E. (5.)            Monitoring Reports

Reporting Requirements [Supersedes Section D. (2.) and Section E. (5.) (a)]

The permittee shall report discharge monitoring data electronically using the NC DWR’s Electronic Discharge Monitoring Report (eDMR) internet application.

Monitoring results obtained during the previous month(s) shall be summarized for each month and submitted electronically using eDMR. The eDMR system allows permitted facilities to enter monitoring data and submit DMRs electronically using the internet. The eDMR system may be accessed at: <https://deq.nc.gov/about/divisions/water-resources/edmr>.

If a permittee is unable to use the eDMR system due to a demonstrated hardship or due to the facility being physically located in an area where less than 10 percent of the households have broadband access, then a temporary waiver from the NPDES electronic reporting requirements may be granted and discharge monitoring data may be submitted on paper DMR forms (MR 1, 1.1, 2, 3) or alternative forms approved by the Director. Duplicate signed copies shall be submitted to the following address:

NC DEQ / Division of Water Resources / Water Quality Permitting Section  
ATTENTION: Central Files  
1617 Mail Service Center  
Raleigh, North Carolina 27699-1617

See “How to Request a Waiver from Electronic Reporting” section below.

Monitoring results obtained during the previous month(s) shall be summarized for each month and reported via the eDMR system no later than the last calendar day of the month following the completed reporting period. Regardless of the submission method, the first DMR is due on the last day of the month following the issuance of the permit or in the case of a new facility, on the last day of the month following the commencement of discharge.

Starting on December 21, 2025, the permittee must electronically report the following compliance monitoring data and reports, when applicable:

Sewer Overflow/Bypass Event Reports;  
Pretreatment Program Annual Reports; and  
Clean Water Act (CWA) Section 316(b) Annual Reports.

The permittee may seek an electronic reporting waiver from the Division (see “How to Request a Waiver from Electronic Reporting” section below).

#### Electronic Submissions

In accordance with 40 CFR 122.41(l)(9), the permittee must identify the initial recipient at the time of each electronic submission. The permittee should use the EPA’s website resources to identify the initial recipient for the electronic submission.

Initial recipient of electronic NPDES information from NPDES-regulated facilities means the entity (EPA or the state authorized by EPA to implement the NPDES program) that is the designated entity for receiving electronic NPDES data [see 40 CFR 127.2(b)].

EPA plans to establish a website that will also link to the appropriate electronic reporting tool for each type of electronic submission and for each state. Instructions on how to access and use the appropriate electronic reporting tool will be available as well. Information on EPA’s NPDES Electronic Reporting Rule is found at: <https://www.federalregister.gov/documents/2015/10/22/2015-24954/national-pollutant-discharge-elimination-system-npdes-electronic-reporting-rule>

Electronic submissions must start by the dates listed in the “Reporting Requirements” section above.

#### How to Request a Waiver from Electronic Reporting

The permittee may seek a temporary electronic reporting waiver from the Division. To obtain an electronic reporting waiver, a permittee must first submit an electronic reporting waiver request to the Division. Requests for temporary electronic reporting waivers must be submitted in writing to the Division for written approval at least sixty (60) days prior to the date the facility would be required under this permit to begin submitting monitoring data and reports. The duration of a temporary waiver shall not exceed 5 years and shall thereupon expire. At such time, monitoring data and reports shall be submitted electronically to the Division unless the permittee re-applies for and is granted a new temporary electronic reporting waiver by the Division. Approved electronic reporting waivers are not transferrable. Only permittees with an approved reporting waiver request may submit monitoring data and reports on paper to the Division for the period that the approved reporting waiver request is effective.

Information on eDMR and the application for a temporary electronic reporting waiver are found on the following web page:

<http://deq.nc.gov/about/divisions/water-resources/edmr>

#### Signatory Requirements [Supplements Section B. (11.) (b) and Supersedes Section B. (11.) (d)]

All eDMRs submitted to the permit issuing authority shall be signed by a person described in Part II, Section B. (11.) (a) or by a duly authorized representative of that person as described in Part II, Section B. (11.) (b). A person, and not a position, must be delegated signatory authority for eDMR reporting purposes.

For eDMR submissions, the person signing and submitting the DMR must obtain an eDMR user account and login credentials to access the eDMR system. For more information on North Carolina’s eDMR system, registering for eDMR and obtaining an eDMR user account, please visit the following web page:

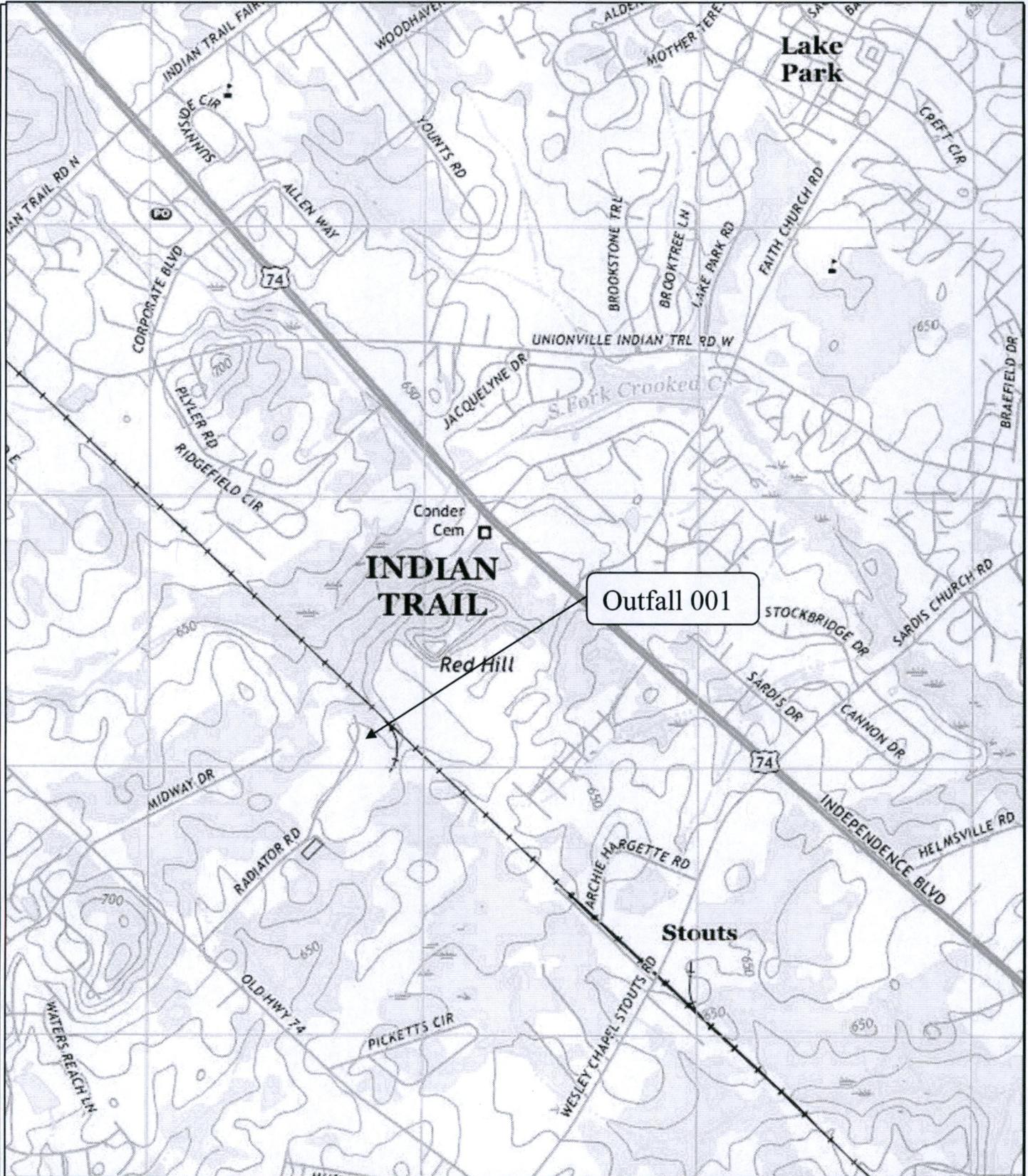
<http://deq.nc.gov/about/divisions/water-resources/edmr>

Certification. Any person submitting an electronic DMR using the state’s eDMR system shall make the following certification [40 CFR 122.22]. NO OTHER STATEMENTS OF CERTIFICATION WILL BE ACCEPTED:

*"I certify, under penalty of law, that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."*

**1. Records Retention [Supplements Section D. (6.)]**

The permittee shall retain records of all Discharge Monitoring Reports, including eDMR submissions. These records or copies shall be maintained for a period of at least 3 years from the date of the report. This period may be extended by request of the Director at any time [40 CFR 122.41].



Latitude: 35° 03' 55"  
Longitude: 80° 39' 14"  
Stream Class: C  
Sub-basin: 03-07-12  
Receiving Stream: UT to S. Fork Crooked Creek

**NC0088838**  
**600 Radiator Road, LLC**



North

Facility  
Location



Union County

## Burgos, Alexander N

---

**From:** Duke, Lawrence  
**Sent:** Thursday, May 12, 2022 6:03 PM  
**To:** Robert El-Jaouhari  
**Cc:** Burgos, Alexander N  
**Subject:** RE: [External] FW: Correspondence to NC Rules Review Commission regarding 14-Dioxane

Mr. El-Jaouhari,

Thank you for your letter. You are confirmed for speaking at the May meeting of the RRC.

**Lawrence Duke**

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

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**From:** Robert El-Jaouhari <rjaouhari@cshlaw.com>  
**Sent:** Wednesday, May 11, 2022 4:21 PM  
**To:** rrc.comments <rrc.comments@oah.nc.gov>; Everett, Jennifer <jennifer.everett@ncdenr.gov>; Ventaloro, Christopher <christopher.ventaloro@ncdenr.gov>; Duke, Lawrence <lawrence.duke@oah.nc.gov>  
**Cc:** Patrick Mincey <pmincey@cshlaw.com>; Taylor Bolebruch <tbolebruch@cshlaw.com>  
**Subject:** [External] FW: Correspondence to NC Rules Review Commission regarding 14-Dioxane

**CAUTION:** External email. Do not click links or open attachments unless you verify. Send all suspicious email as an attachment to [Report Spam](#).

Good afternoon all,

As before, I'd like to write to confirm that my notice and request to speak at Thursday's RRC meeting, in the attached comment submitted by the email below, was received, and to include Mr. Duke on my notice and request. Note that the email below included exhibits to the comment, which exhibits I have not re-attached here.

My statement will concern the rules proposed at 15A NCAC 2B .0208, .0212, .0214, .0215, .0216, and .0218. My contact information, as required by 26 NCAC 05 .0105, is:

Name: R. Robert El-Jaouhari  
Address: 5420 Wade Park Blvd., Ste. 300, Raleigh, NC 27607  
Phone: (919)863-8718  
Fax: (919)863-3489  
Email: [rjaouhari@cshlaw.com](mailto:rjaouhari@cshlaw.com)

As indicated by my submitted comment, my remarks will be in opposition to the proposed rules.

Many thanks, looking forward to seeing you on the 19th. Let me know if you have questions or further needs in the meantime.

Best,  
Robert

Robert El-Jaouhari  
Attorney at Law



P +1 9198638718 | F +1 9198633489

5420 Wade Park Blvd. Suite 300, Raleigh, NC 27607  
Post Office Box 27808, Raleigh, NC 27611-7808



[WWW.CSHLAW.COM](http://WWW.CSHLAW.COM)

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**From:** Taylor Bolebruch <[tbolebruch@cshlaw.com](mailto:tbolebruch@cshlaw.com)>  
**Sent:** Wednesday, May 11, 2022 4:06 PM  
**To:** [rrc.comments@oah.nc.gov](mailto:rrc.comments@oah.nc.gov); [Jennifer.everett@ncdenr.gov](mailto:Jennifer.everett@ncdenr.gov); [christopher.ventaloro@ncdenr.gov](mailto:christopher.ventaloro@ncdenr.gov)  
**Cc:** Robert El-Jaouhari <[rjaouhari@cshlaw.com](mailto:rjaouhari@cshlaw.com)>; Patrick Mincey <[pmincey@cshlaw.com](mailto:pmincey@cshlaw.com)>  
**Subject:** Correspondence to NC Rules Review Commission regarding 14-Dioxane

Good afternoon,

Attached please find letter correspondence from Attorneys Patrick Mincey and Robert El-Jaouhari regarding the above-referenced matter, along with 3 Exhibits. Please note that a hard copy of all documents are being sent to you via First-Class Mail, as well.

If you have any trouble accessing the attachment, or if I can be of further assistance, please let me know.

Thank you,  
Taylor Bolebruch  
Paralegal

**Confidentiality Notice:** If you are not the intended recipient of this message, you are not authorized to intercept, read, print, retain, copy, forward, or disseminate this communication, including any attachments. This communication may contain information that is proprietary, attorney/client privileged, attorney work product, confidential or otherwise legally exempt from disclosure. If you have received this message in error, please notify the sender immediately either by phone at +18008494444 or by return e-mail and destroy all copies of this message (electronic, paper, or otherwise).

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## Burgos, Alexander N

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**From:** Duke, Lawrence  
**Sent:** Thursday, May 12, 2022 6:05 PM  
**To:** Sullivan, Sean  
**Cc:** 'James West'; Burgos, Alexander N; Everett, Jennifer  
**Subject:** RE: [External] Rules Review Commission - Request to Speak regarding Modifications to 15A NCAC chapter 02B

Mr. Sullivan,

Thank you for your letter on behalf of the FPWC. You are confirmed to speak on the EMC rules at the May meeting of the RRC.

**Lawrence Duke**

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

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**From:** Sullivan, Sean <SSullivan@robinsonbradshaw.com>  
**Sent:** Wednesday, May 11, 2022 7:23 PM  
**To:** Duke, Lawrence <lawrence.duke@oah.nc.gov>  
**Cc:** 'James West' <James.West@faypwc.com>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Everett, Jennifer <jennifer.everett@ncdenr.gov>  
**Subject:** [External] Rules Review Commission - Request to Speak regarding Modifications to 15A NCAC chapter 02B  
**Importance:** High

**CAUTION:** External email. Do not click links or open attachments unless you verify. Send all suspicious email as an attachment to [Report Spam](#).

Dear Mr. Duke,

This firm represents the Fayetteville Public Works Commission ("FPWC"). I am writing to request an opportunity to speak to the Rules Review Commission during its May 19, 2022 meeting on behalf of FPWC and in favor of the Environmental Management Commission's proposed modifications to the following regulations:

15A NCAC 02B.0202  
15A NCAC 02B.0208  
15A NCAC 02B.0211  
15A NCAC 02B.0212  
15A NCAC 02B.0214  
15A NCAC 02B.0215  
15A NCAC 02B.0216  
15A NCAC 02B.0218

Would you please confirm your receipt of this request and provide me with instructions regarding the logistics for speaking at the meeting?

Thank you in advance for your assistance with this matter.

Best regards,

---

## Sean M. Sullivan

### Robinson Bradshaw

t : 919.239.2604

434 Fayetteville Street, Suite 1600

Raleigh, NC 27601

[ssullivan@robinsonbradshaw.com](mailto:ssullivan@robinsonbradshaw.com) | [Bio](#)  
[robinsonbradshaw.com](http://robinsonbradshaw.com)

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