

Burgos, Alexander N

Subject: FW: Commission for Public Health - June 2022 RRC Requests for Changes

Alexander Burgos

Paralegal
Office of Administrative Hearings
1711 New Hope Church Road
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(984) 236-1940
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From: Liebman, Brian R <brian.liebman@oah.nc.gov>
Sent: Friday, June 10, 2022 1:46 PM
To: Niehaus, Virginia <virginia.niehaus@dhhs.nc.gov>
Cc: Leloudis, Kirsten E <Kirsten.Leloudis@dhhs.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: Commission for Public Health - June 2022 RRC Requests for Changes

Sounds good! Have a great weekend.

Brian Liebman
Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984)236-1948
brian.liebman@oah.nc.gov

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From: Niehaus, Virginia <virginia.niehaus@dhhs.nc.gov>
Sent: Friday, June 10, 2022 1:39 PM
To: Liebman, Brian R <brian.liebman@oah.nc.gov>
Cc: Leloudis, Kirsten E <Kirsten.Leloudis@dhhs.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: Commission for Public Health - June 2022 RRC Requests for Changes

Hi Brian,

That sounds great. Thank you!

Our team will attend via WebEx, in case any questions come up during the meeting. We will keep an eye out for the WebEx invites.

Regards,
Virginia

Virginia R. Niehaus, JD, MPH
Director of Regulatory and Legal Affairs
Division of Public Health

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From: Liebman, Brian R <brian.liebman@oah.nc.gov>
Sent: Friday, June 10, 2022 1:35 PM
To: Niehaus, Virginia <virginia.niehaus@dhhs.nc.gov>
Cc: Leloudis, Kirsten E <Kirsten.Leloudis@dhhs.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: Commission for Public Health - June 2022 RRC Requests for Changes

FYI, unless you have any objections, I will forward the two rules you sent on to Dana for filing.

Thanks!

Brian

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(984)236-1948
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From: Niehaus, Virginia <virginia.niehaus@dhhs.nc.gov>
Sent: Thursday, June 9, 2022 6:11 PM
To: Liebman, Brian R <brian.liebman@oah.nc.gov>
Cc: Leloudis, Kirsten E <Kirsten.Leloudis@dhhs.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: Commission for Public Health - June 2022 RRC Requests for Changes

Hi Brian,

I have attached responses to the request for technical changes and the revised rules. Please let me know if you have any further questions on these rules.

Please include the following individuals on the WebEx Invite for the meeting:

virginia.niehaus@dhhs.nc.gov
Kirsten.Leloudis@dhhs.nc.gov
jbarkley@ncdoj.gov
larry.michael@dhhs.nc.gov
shane.smith@dhhs.nc.gov
alice.isley@dhhs.nc.gov

Thanks for your assistance!

Regards,
Virginia

Virginia R. Niehaus, JD, MPH
Director of Regulatory and Legal Affairs
Division of Public Health
[NC Department of Health and Human Services](#)
Pronouns: she/her/hers

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Burgos, Alexander N

Subject: FW: Commission for Public Health - June 2022 RRC Requests for Changes
Attachments: 2022.06 - 15A NCAC 18A Comm for Pub Health Request for Changes-Responses.docx; Tech Changes- 15A NCAC 18A .2508.docx; Tech Changes- 15A NCAC 18A .2545.docx

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Sent: Thursday, June 9, 2022 6:11 PM
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Cc: Leloudis, Kirsten E <Kirsten.Leloudis@dhhs.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: Commission for Public Health - June 2022 RRC Requests for Changes

Hi Brian,

I have attached responses to the request for technical changes and the revised rules. Please let me know if you have any further questions on these rules.

Please include the following individuals on the WebEx Invite for the meeting:

virginia.niehaus@dhhs.nc.gov

Kirsten.Leloudis@dhhs.nc.gov

jbarkley@ncdoj.gov

larry.michael@dhhs.nc.gov

shane.smith@dhhs.nc.gov

alice.isley@dhhs.nc.gov

Thanks for your assistance!

Regards,
Virginia

Virginia R. Niehaus, JD, MPH
Director of Regulatory and Legal Affairs
Division of Public Health
[NC Department of Health and Human Services](#)
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REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Commission for Public Health

RULE CITATION: 15A NCAC 18A .2508

DEADLINE FOR RECEIPT: Friday, June 10, 2022.

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

In (9), p.2, line 19, please define or delete "transitory".

We have revised the rule language for clarification.

In your History Note, is it necessary to cite to the two session laws? By my reading, neither contain applicable language that isn't otherwise codified in G.S. 130A-280.

Thank you for this question. We have removed the cites.

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

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

AGENCY: Commission for Public Health

RULE CITATION: 15A NCAC 18A .2545

DEADLINE FOR RECEIPT: Friday, June 10, 2022.

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Were the post-publication changes made pursuant to public comment?

Yes, these changes were made following public comments provided by the Pool & Hot Tub Alliance.

In (3)(d), line 25, should this read "34 ppm" or "3 ppm"? It's not clear whether "4" is struck-through.

Thank you for this question. The "4" is struck through and replaced with "3". The final text is intended to read "3 ppm."

In (5), lines 30-31, which Rules are you referring to when you say "the water quality standards set out in the Rules of this Section?" Is it just R .2535 and item (3) of this Rule? I think it's important to have clarity here because these Rules do not apply except as stated herein.

We have revised the language in Item (5) to clarify.

In (6), what water quality records are you requiring? Is this a reference to (3)(b), above?

Yes, Item (6) references the written records that must be kept pursuant to (3)(b). We have revised the rule language to clarify.

Is the reference to SL 2021-77 necessary in the History Note? It does not appear that there are any relevant portions of the SL that are not otherwise codified in the G.S.

Thank you for this question. We have removed the cite.

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

Brian Liebman
Commission Counsel
Date submitted to agency: June 2, 2022

1 15A NCAC 18A .2508 is amended with changes as published in 36:17 NCR 1431-1434 as follows:

2
3 **15A NCAC 18A .2508 DEFINITIONS**

4 The following definitions apply throughout this Section:

- 5 (1) "Department" means North Carolina Department of Health and Human Services.
- 6 (2) "Equipment replacement" means replacement of individual components of the hydraulic and
7 disinfection systems such as pumps, filters, and automatic chemical feeders.
- 8 (3) "Public swimming pool" means public swimming pool as defined in G.S. 130A-280. Public
9 swimming pools are divided into five types:
- 10 (a) "Swimming pools" are public swimming pools used primarily for swimming.
- 11 (b) "Spas" are public swimming pools designed for recreational and therapeutic use that are
12 not drained, cleaned, or refilled after each individual use. Spas may include units designed
13 for hydrojet circulation, hot water, cold water mineral bath, air induction bubbles, or any
14 combination thereof. Common terminology for spas includes "therapeutic pool,"
15 "hydrotherapy pool," "whirlpool," "hot spa," and "hot tub."
- 16 (c) "Wading pools" are public swimming pools designed for use by children, including wading
17 pools for toddlers and children's activity pools designed for casual water play ranging from
18 splashing activity to the use of interactive water features placed in the pool.
- 19 (d) "Water recreation attractions" are pools designed for special purposes that differentiate
20 them from swimming pools, wading pools, and spas. They include:
- 21 (i) water slide plunge pools and run out lanes, which transfer the kinetic energy of
22 the users' velocity through friction to the slide;
- 23 (ii) wave pools;
- 24 (iii) rapid rides;
- 25 (iv) lazy rivers;
- 26 (v) interactive play attractions that incorporate devices using sprayed, jetted, or other
27 water sources contacting the users and that do not incorporate standing or captured
28 water as part of the user activity area;
- 29 (vi) training pools deeper than a 24 inch deep wading pool and shallower than a 36
30 inch deep swimming pool; and
- 31 (vii) artificial swimming lagoons as defined in G.S. 130A-280.
- 32 (e) "Special purpose and therapy pools" are pools designed and used for therapeutic treatments
33 or physical training and fitness outside of a licensed medical facility or practice of a
34 licensed physical therapist. They include:
- 35 (i) float tanks used for float therapy in a salt brine solution;
- 36 (ii) swim spa training pools which use jetted water for stationary swimming against a
37 water current;

- (iii) exercise therapy and treadmill pools equipped for water resistance exercise therapy; and
- (iv) scuba pools designed and used for training swimmers to use self-contained underwater breathing apparatus.
- (f) “Display spa at a temporary event” or “DSTE” is a portable, above ground spa that contains water but is not used for body immersion and is displayed at a temporary event.
- (4) "Registered Design Professional" means an individual who is registered or licensed to practice engineering as defined by G.S. 89C or architecture as defined by G.S. 83A.
- (5) "Remodeled" means renovated in a manner requiring disruption of the majority of the pool shell or deck, changes in the pool profile, or redesign of the pool hydraulic system.
- (6) "Repair" means returning existing equipment to working order, replastering or repainting of the pool interior, replacement of tiles or coping, and similar maintenance activities. This term includes replacement of pool decks where the Department has determined that no changes are needed to underlying pipes or other pool structures.
- (7) "Safety vacuum release system" means a system or device capable of providing vacuum release at a suction outlet caused by a high vacuum occurrence due to suction outlet flow blockage.
- (8) "Splash zone" means the area of an interactive play attraction that sheds water to a surge tank or container to be recirculated.
- (9) “Temporary event” means a ~~transitory~~ non-permanent fair, carnival, circus, festival, or public exhibition.
- ~~(9)~~(10) "Unblockable drain" means a drain of any size and shape that a human body cannot sufficiently block to create a suction entrapment hazard.
- ~~(10)~~(11) "Water feature" means any component within a public swimming pool that pumps, jets, or sprays water above the waterline.

*History Note: Authority G.S. 130A-280; 130A-282; ~~S.L. 2019-88~~; ~~[S.L. 2021-77];~~
Eff. May 1, 1991;
Temporary Amendment Eff. June 1, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Amended Eff. April 1, 2013; May 1, 2010; March 1, 2004; April 1, 1999; January 1, 1996; October 1, 1994;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 20, 2019;
Temporary Amendment Eff. December 3, 2019;
Amended Eff. July 1, 2022; October 1, 2020.*

1 15A NCAC 18A .2545 is adopted with changes as published in 36:17 NCR 1431-1434 as follows:

2
3 **15A NCAC 18A .2545 DISPLAY SPA AT A TEMPORARY EVENT**

4 A display spa at a temporary event (DSTE) shall not be required to comply with the Rules of this Section except as
5 specified in this Rule.

- 6 (1) A DSTE shall not operate without a permit that has been issued by the local health department that
7 serves the county in which the temporary event is located. The duration of a permit for a DSTE shall
8 be no more than 21 consecutive calendar days. The applicant may apply for additional permits to
9 operate a DSTE for multiple 21-day periods at the same temporary event.
- 10 (2) One permit application shall be submitted for each DSTE. The applicant shall submit the application
11 for a permit at least 15 calendar days before commencing operation of a DSTE. The application
12 form shall be submitted to the local health department that serves the county in which the temporary
13 event is located and shall include the following information:
- 14 (a) applicant's name, address, and phone number;
 - 15 (b) name of the temporary event;
 - 16 (c) street address of the temporary event;
 - 17 (d) proposed operating dates; and
 - 18 (e) signature of the applicant.
- 19 (3) A DSTE shall meet the requirements of Rule .2535 of this Section, except as follows:
- 20 (a) automatic chemical feeders shall not be required;
 - 21 (b) written records shall only be required to include disinfectant concentration, pH, and the
22 type and amount of chemicals added to the DSTE;
 - 23 (c) disinfectant residual shall be measured every day before opening the DSTE to the ~~public;~~
24 public and every four hours thereafter until the DSTE is closed for the day;
 - 25 (d) disinfectant concentrations shall be maintained at or above 34 ppm free chlorine or 48 ppm
26 free bromine; and
 - 27 (e) pH shall be maintained between 7.0-7.8.
- 28 (4) A sign shall be posted on each permitted DSTE that states: "DISPLAY SPA – ONLY HANDS AND
29 FOREARMS ALLOWED IN WATER." The text on the sign shall be at least 2 inches in height.
- 30 (5) When the water in a DSTE does not meet the water quality standards set out in Item (3) the Rules
31 of this Rule or is closed for the day, Section, the DSTE shall be kept closed with a latched or locked
32 cover that prevents the public from coming into contact with the DSTE water. The applicant shall
33 post a sign on the DSTE that states: "SPA CLOSED." The text on the sign shall be at least 2 inches
34 in height.
- 35 (6) The applicant shall keep water quality records required under Sub-Item (3)(b) of this Rule on site
36 during the temporary event and for six months after the completion of the temporary event. The

1 applicant shall provide water quality records to the local health department that issued the DSTE
2 permit and the Department upon request.

3 (7) All pool chemicals stored on-site at the temporary event shall be stored in a water resistant, covered
4 container in an area that is not used by the public.

5 (8) When the applicant or applicant's designee is not available to supervise a DSTE, the DSTE shall be
6 kept closed with a latched or locked cover that prevents the public from coming into contact with
7 the DSTE water.

8 (9) The permit for each DSTE shall be posted for the duration of the temporary event in a location that
9 is visible to the public.

10 (10) The applicant or the applicant's designee shall report any death, serious injury, or complaint of illness
11 attributed to the applicant's DSTE in accordance with Rule .2540 of this Section.

12
13 *History Note: Authority G.S. 130A-280; 130A-282; ~~S.L. 2021-77;~~*
14 *Eff. July 1, 2022.*

Burgos, Alexander N

From: Niehaus, Virginia
Sent: Thursday, June 2, 2022 6:21 PM
To: Liebman, Brian R
Cc: Leloudis, Kirsten E; Burgos, Alexander N
Subject: RE: Commission for Public Health - June 2022 RRC Requests for Changes

Thanks for the clarification, Brian. Have a nice evening!

Virginia R. Niehaus, JD, MPH
Director of Regulatory and Legal Affairs
Division of Public Health
[NC Department of Health and Human Services](#)
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Sent: Thursday, June 2, 2022 6:19 PM
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Cc: Leloudis, Kirsten E <Kirsten.Leloudis@dhhs.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: Commission for Public Health - June 2022 RRC Requests for Changes

Hi Virginia,

You're right, there were only requests for changes on two of the three rules. I didn't have anything on Rule .2901.

Thanks!
Brian

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Counsel to the North Carolina Rules Review Commission
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Cc: Leloudis, Kirsten E <Kirsten.Leloudis@dhhs.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: RE: Commission for Public Health - June 2022 RRC Requests for Changes

Hi Brian,

Thank you for your feedback on these rules. We will review the request for technical changes and provide responses by June 10.

I noted that the technical change packet only addressed two of the three rules submitted for review at the June RRC meeting. Will you please confirm if you have any feedback on rule 15A NCAC 18A .2901?

Regards,
Virginia

Virginia R. Niehaus, JD, MPH

Director of Regulatory and Legal Affairs

Division of Public Health

[NC Department of Health and Human Services](#)

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Sent: Thursday, June 2, 2022 9:30 AM

To: Niehaus, Virginia <virginia.niehaus@dhhs.nc.gov>

Cc: Leloudis, Kirsten E <Kirsten.Leloudis@dhhs.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: Commission for Public Health - June 2022 RRC Requests for Changes

Good afternoon,

I'm the attorney who reviewed the Rules submitted by the Commission for Public Health for the June 2022 RRC meeting. The RRC will formally review these Rules at its meeting on Thursday, June 16, 2022, at 9:00 a.m. The meeting will be a hybrid of in-person and WebEx attendance, and an invite should be sent to you as we get closer to the meeting. If there are any other representatives from your agency who will want to attend virtually, let me know prior to the meeting, and we will get invites out to them as well.

Please submit the revised Rules and forms to me via email, no later than 5 p.m. on Friday June 10, 2022.

In the meantime, please do not hesitate to reach out via email with any questions or concerns.

Thanks,

Brian

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