

Burgos, Alexander N

Subject: FW: [External] EMC Response to RRC Objection - Return of Rules
Attachments: 2026 05 21 - EMC - Return of Rules.pdf

From: Miller, Christopher S <christopher.miller@oah.nc.gov>
Sent: Thursday, May 21, 2026 4:20 PM
To: Young, Elizabeth S <esyong@ncdoj.gov>; Everett, Jennifer <jennifer.everett@deq.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Quinlan, Katherine L <katherine.quinlan@deq.nc.gov>; Liebman, Brian R <brian.liebman@oah.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>; Miller, Christopher S <christopher.miller@oah.nc.gov>
Subject: RE: [External] EMC Response to RRC Objection - Return of Rules

Thanks, Elly. Per your request, we are returning these rules. Please see the attached letter.

Let me know if you have any questions.

Regards,
Chris

Chris Miller

Rules Review Commission Counsel
North Carolina Office of Administrative Hearings | Rules Division
1711 New Hope Church Road
Raleigh, NC 27609
(984) 236-1935

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**STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS**

May 21, 2026

Elly S. Young, Counsel to the EMC
Jennifer Everett, DEQ Rulemaking Coordinator
The North Carolina Environmental Management Commission (“EMC”)
Sent via email to esyoun@NCDOJ.GOV and jennifer.everett@deq.nc.gov

Re: Return of 15A NCAC 02Q .0114 and Amended 15A NCAC 02Q .0501 and .0507

Dear Ms. Young and Ms. Everett:

At its April 28, 2026, meeting, the Rules Review Commission objected to the above captioned rules finding that the rules did not satisfy G.S. 150B-21.9(a). A statement of objection was sent to you both on April 28, 2026, pursuant to G.S. 150B-21.12(a).

On May 20, 2026, the EMC responded in accordance with the provisions of G.S. 150B-21.12(a)(2) stating that the EMC has decided not to change the rules and requesting that the RRC return said rules. In accordance with G.S. 150B-21.12(d), the above captioned rules are being returned pursuant to this letter.

If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

/s/ Christopher S. Miller
Christopher S. Miller
Commission Counsel

Cc: Brian Liebman, Codifier of Rules

Melissa Owens Lassiter, Director
Chief Administrative Law Judge

Lawrence R. Duke
Senior Administrative Law Judge

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www.oah.nc.gov

Burgos, Alexander N

From: Young, Elizabeth <esyoun@NCDOJ.GOV>
Sent: Wednesday, May 20, 2026 2:04 PM
To: rrc.comments; Miller, Christopher S
Cc: Burgos, Alexander N; Everett, Jennifer; Quinlan, Katherine L
Subject: [External] EMC Response to RRC Objection
Attachments: 2026-05-20 EMC Response to RRC Objection 2Q .0114, .0501, .0507.pdf

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Good afternoon, all,

Please find attached the Environmental Management Commission's response to the RRC's objections to rules 15A NCAC 02Q .0114, .0501, and .0507.

Thanks,
Elly



Elly S. Young (she/her)
Special Deputy Attorney General
Environmental Division
Commissions, Coastal and Administrative Section
Phone: (919) 716-6944
Email: esyoun@ncdoj.gov
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Burgos, Alexander N

From: Young, Elizabeth <esyoun@NCDOJ.GOV>
Sent: Wednesday, May 20, 2026 2:04 PM
To: rrc.comments; Miller, Christopher S
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Subject: [External] EMC Response to RRC Objection
Attachments: 2026-05-20 EMC Response to RRC Objection 2Q .0114, .0501, .0507.pdf

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Good afternoon, all,

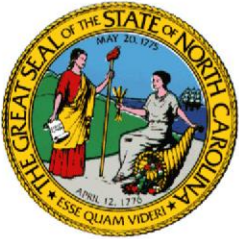
Please find attached the Environmental Management Commission's response to the RRC's objections to rules 15A NCAC 02Q .0114, .0501, and .0507.

Thanks,
Elly



Elly S. Young (she/her)
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ENVIRONMENTAL MANAGEMENT COMMISSION

NORTH CAROLINA DEPARTMENT OF ENVIRONMENTAL QUALITY

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Kevin Tweedy
Jared C. Wright
Bill Yarborough

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

May 20, 2026


Re: EMC Response to RRC Objection to Rules 15A NCAC 02Q .0114, .0501, and .0507

Dear Rules Review Commissioners,

At its May 14, 2026 meeting, the Environmental Management Commission reviewed the RRC's April 28, 2026 objection to rules 15A NCAC 02Q .0114, .0501, and .0507 for lack of statutory authority. Pursuant to N.C. Gen. Stat. § 150B-21.12, the EMC has determined that it is unable to satisfy the RRC's objection and has decided not to change the rules. The EMC therefore requests that the RRC return rule 15A NCAC 02Q .0114 and the proposed changes to rules 15A NCAC 02Q .0501 and .0507.

The EMC thanks you for your time and consideration.

Respectfully submitted,


Elly S. Young
Counsel to the Environmental Management Commission

Burgos, Alexander N

Subject: FW: [External] RRC Objection to EMC Rules Clarification

From: Young, Elizabeth <esyoud@NCDOJ.GOV>

Sent: Tuesday, May 12, 2026 4:08 PM

To: Miller, Christopher S <christopher.miller@oah.nc.gov>

Cc: Everett, Jennifer <jennifer.everett@deq.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: RE: [External] RRC Objection to EMC Rules Clarification

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Thanks for your quick reply, Chris. I'll try to find a better word than "die" in the future! 😊



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From: Miller, Christopher S <christopher.miller@oah.nc.gov>

Sent: Tuesday, May 12, 2026 4:07 PM

To: Young, Elizabeth <esyoud@ncdoj.gov>

Cc: Everett, Jennifer <jennifer.everett@deq.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Miller, Christopher S <christopher.miller@oah.nc.gov>

Subject: RE: [External] RRC Objection to EMC Rules Clarification

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Hello Elly,

Your understanding is correct. If the rules were returned, 02Q .0114 "dies" and never goes into the code while the current versions of 02Q .0501 and .0507 would remain in the code untouched. Only the proposed amendments would "die."

Let me know if you have any other questions.

Thanks,
Chris

Chris Miller

Rules Review Commission Counsel
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Raleigh, NC 27609
(984) 236-1935

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From: Young, Elizabeth <esyong@NCDOJ.GOV>
Sent: Tuesday, May 12, 2026 9:44 AM
To: Miller, Christopher S <christopher.miller@oah.nc.gov>
Cc: Everett, Jennifer <jennifer.everett@deq.nc.gov>
Subject: RE: [External] RRC Objection to EMC Rules Clarification

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Morning, Chris,

One of my Commissioners asked about the ramifications of the EMC accepting the objection and asking that the rules be returned as it relates to the two rules being amended (15A NCAC 02Q .0501 and .0507). It is my understanding that when the RRC objects to a *new* rule, such as 02Q .0114, and the agency requests return of the rule, the new rule simply dies and never enters the Code. For amended rules that are objected to, however, it's my understanding that when the agency requests return of the rule, the *changes* do not go into effect, but the currently existing rule stays in place. For this rule package, 02Q .0114 would die, while the currently existing rules 02Q .0501 and .0507 would remain in the Code without the proposed changes. In other words, even though the RRC objected to the changes in rules 02Q .0501 and .0507, the effect of the EMC requesting return of those rules would simply be that the changes are not entered in the Code, but otherwise the current rules stay in place.

Is that accurate?

Thanks again for your help with this.

Elly



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Burgos, Alexander N

Subject: FW: [External] RE: EMC Responses to Final Rules for April 2026 RRC Meeting

From: Everett, Jennifer <jennifer.everett@deq.nc.gov>
Sent: Tuesday, April 28, 2026 3:29 PM
To: Miller, Christopher S <christopher.miller@oah.nc.gov>; Young, Elizabeth S <esyoun@ncdoj.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Quinlan, Katherine L <katherine.quinlan@deq.nc.gov>; Higgins, Karen <karen.higgins@deq.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>
Subject: RE: [External] RE: EMC Responses to Final Rules for April 2026 RRC Meeting

Got it, thanks!

Jennifer Everett
DEQ Rulemaking Coordinator
N.C. Depart. Of Environmental Quality
Office of General Counsel
1601 Mail Service Center
Raleigh, NC 27699-1601
Tele: (919)-707-8595
<https://www.deq.nc.gov/accessdeq/rules-regulations>

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From: Miller, Christopher S <christopher.miller@oah.nc.gov>
Sent: Tuesday, April 28, 2026 2:18 PM
To: Young, Elizabeth S <esyoun@ncdoj.gov>; Everett, Jennifer <jennifer.everett@deq.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Quinlan, Katherine L <katherine.quinlan@deq.nc.gov>; Higgins, Karen <karen.higgins@deq.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>; Miller, Christopher S <christopher.miller@oah.nc.gov>
Subject: RE: [External] RE: EMC Responses to Final Rules for April 2026 RRC Meeting

Good afternoon,

Following up on today's meeting – please see attached an Objection Letter regarding rules 15A NCAC 02Q .0114, .0501, and .0507.

Let me know if you have any questions.

Best,
Chris

Chris Miller
Rules Review Commission Counsel

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(984) 236-1935

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Burgos, Alexander N

Subject: FW: [External] RE: EMC Responses to Final Rules for April 2026 RRC Meeting
Attachments: 15A NCAC 02B .0206_04-27-26.docx; 15A NCAC 02H .0107.docx; 15A NCAC 02Q .0114.docx; 15A NCAC 02Q .0501 - 04272026.docx; 15A NCAC 02Q .0507 - 04272026 - rev1.docx

From: Miller, Christopher S <christopher.miller@oah.nc.gov>
Sent: Monday, April 27, 2026 2:01 PM
To: Young, Elizabeth S <esyoun@ncdoj.gov>
Cc: Everett, Jennifer <jennifer.everett@deq.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Quinlan, Katherine L <katherine.quinlan@deq.nc.gov>; Higgins, Karen <karen.higgins@deq.nc.gov>; Miller, Christopher S <christopher.miller@oah.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>
Subject: RE: [External] RE: EMC Responses to Final Rules for April 2026 RRC Meeting

Thank you! Changes look good to me. I'm attaching the final revised versions for all five rules – to be used at tomorrow's meeting. Let me know if you notice any discrepancies.

Best,
Chris

Chris Miller

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Burgos, Alexander N

Subject: FW: [External] RE: EMC Responses to Final Rules for April 2026 RRC Meeting
Attachments: 2026-04 EMC Responses to RRC Tech Change Requests_Round 2.docx; 15A NCAC 02B .0206_04-27-26.docx; 15A NCAC 02Q .0501 - 04272026.docx; 15A NCAC 02Q .0507 - 04272026 - rev1.docx

From: Young, Elizabeth <esyoud@NCDOJ.GOV>
Sent: Monday, April 27, 2026 12:17 PM
To: Miller, Christopher S <christopher.miller@oah.nc.gov>
Cc: Everett, Jennifer <jennifer.everett@deq.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Quinlan, Katherine L <katherine.quinlan@deq.nc.gov>; Higgins, Karen <karen.higgins@deq.nc.gov>
Subject: RE: [External] RE: EMC Responses to Final Rules for April 2026 RRC Meeting

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Chris,

See attached for the EMC's responses to your highlighted questions and the newly revised rules.

Thanks,
Elly



Elly S. Young (she/her)
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1 15A NCAC 02B .0206 is amended with changes as published in 40:06 NCR 561-565 and 40:08 NCR 726-732 as
2 follows:

3
4 **15A NCAC 02B .0206 FLOW DESIGN CRITERIA FOR EFFLUENT LIMITATIONS**

5 (a) For purposes of this Rule, the following definitions shall apply:

6 (1) “1Q10” means the minimum average flow for a period of one day that has an average recurrence of
7 once in ten years;

8 (2) “7Q10” means the minimum average flow for a period of seven consecutive days that has an average
9 recurrence of once in ten years;

10 (3) “30Q2” means the minimum average flow for a period of 30 consecutive days that has an average
11 recurrence of once in two years;

12 (4) “Mean annual flow” means the same as “annual mean flow” as defined in 40 CFR [125.83.] 125.83,
13 which is incorporated by reference including subsequent amendments and editions and available
14 free of charge at: [https://www.ecfr.gov/current/title-40/chapter-I/subchapter-D/part-125/subpart-](https://www.ecfr.gov/current/title-40/chapter-I/subchapter-D/part-125/subpart-I/section-125.83)
15 [I/section-125.83](https://www.ecfr.gov/current/title-40/chapter-I/subchapter-D/part-125/subpart-I/section-125.83).

16 (5) “Non-erosive velocity” means the same as defined in 15A NCAC 02H .1002 (26).

17 (6) The “Rational Method” estimates peak flow for a storm of interest as a function of a composite
18 runoff coefficient, rainfall intensity for the storm of interest, and drainage area.

19 ~~(a)~~(b) Water quality based effluent limitations shall be developed by the Director to allow appropriate frequency and
20 duration of deviations from water quality standards so that the designated uses of receiving streams and downstream
21 waters are protected. There are water quality standards for a number of categories of pollutants and to protect a range
22 of water uses. For this reason, the appropriate frequency and duration of deviations from water quality standards shall
23 not be the same for all pollutants. A flow design criterion shall be used in the development of water quality based
24 effluent limitations as a simplified means of estimating the acceptable frequency and duration of deviations. More
25 complex modeling techniques [that the Director has determined on a case by case basis will protect the designated
26 uses of the receiving streams and downstream waters] may be used to set effluent limitations based on frequency and
27 duration criteria published by the U.S. Environmental Protection Agency and incorporated by reference, including
28 subsequent amendments and editions. Frequency and duration criteria published by the U.S. Environmental Protection
29 Agency is available free of charge at: <http://water.epa.gov/scitech/swguidance/standards/criteria/current/index.cfm>.
30 Where the Director determines that the applicant selected model will not protect the designated uses of the receiving
31 streams and downstream waters, then the Director shall notify the applicant in writing the reasons why the selected
32 model is not suitable.

33 (c) ~~Effluent~~ Water quality based effluent limitations shall be developed using the following flow design criteria:

34 (1) ~~All standards except~~ Except for toxic substances and aestheticsaesthetics, all water quality standards
35 shall be protected using the 7Q10 flow.minimum average flow for a period of seven consecutive
36 days that has an average recurrence of once in ten years (7Q10 flow). Other governing flow
37 strategies, such as varying discharges with the receiving stream’s or downstream water’swaters

1 ability to assimilate wastes, may be designated by the ~~Commission or its designee~~ Director on a
2 case-by-case basis if the discharger or permit applicant provides evidence that establishes that the
3 alternative flow strategies will give equal or better protection for ~~the of~~ water quality standards
4 standards. ~~"Better protection for the water quality standards" means that~~ such that deviations from
5 the standard would be expected at the same or less ~~less~~ frequency than provided by using
6 the 7Q10 flow.

7 (2) Toxic substances shall be protected as follows:

8 (A) Toxic substance standards to protect aquatic life from chronic toxicity shall be protected
9 using the 7Q10 flow.

10 ~~(3)~~ (B) Toxic substance standards to protect aquatic life from acute toxicity shall be protected
11 using the 1Q10 flow.

12 ~~(4)~~ Toxic substance standards to protect human health shall be the following:

13 (A) ~~(C)~~ Toxic substance ~~The 7Q10 flow for~~ standards to protect human health through the
14 consumption of water, fish, and shellfish from ~~noncarcinogens;~~ noncarcinogens shall be
15 protected using the 7Q10 flow; and

16 (B) ~~(D)~~ The mean annual flow Toxic substance standards to protect human health ~~from carcinogens~~
17 through the consumption of water, fish, and shellfish from carcinogens shall be protected
18 using the mean annual flow, unless site specific fish contamination concerns necessitate
19 the use of an alternative design ~~flow;~~ flow.

20 ~~(5)~~ (3) Aesthetic quality shall be protected using the 30Q2 flow, ~~minimum average flow for a period of 30~~
21 consecutive days that has an average recurrence of once in two years (30Q2 flow).

22 ~~More complex modeling techniques may also be used to set effluent limitations directly based on frequency and~~
23 ~~duration criteria published by the U.S. Environmental Protection Agency, available free of charge at~~
24 ~~<http://water.epa.gov/scitech/swguidance/standards/criteria/current/index.cfm> and incorporated by reference,~~
25 ~~including subsequent amendments and editions, and the Commission or its designee has determined, on a case-by-~~
26 ~~case basis, that the techniques will protect the designated uses of receiving waters.~~

27 ~~(b)~~ (d) If the stream flow is regulated, a minimum daily low flow may be used as a substitute for the 7Q10 flow, except
28 in cases where there are acute toxicity concerns for aquatic life. ~~In the cases~~ For streams where there are acute toxicity
29 concerns, an alternative low flow, such as the instantaneous minimum release, shall be ~~approved~~ used if the Director
30 determines, on a case-by-case basis, that the designated uses of receiving streams and downstream waters are
31 protected.

32 ~~(e)~~ (e) Flow design criteria shall be used to develop water quality based effluent limitations and in the design of
33 wastewater treatment facilities. Deviations from a specific water quality standard resulting from discharges that are
34 demonstrated to be in compliance with water quality based effluent limitations for that water quality standard shall
35 not be a violation pursuant to G.S. 143-215.6 ~~143-215.6A~~ when the actual stream flow is less than the design flow.

36 ~~(d)~~ (f) If the 7Q10 flow of the receiving stream is estimated to be zero, ~~zero and the 30Q2 flow of the receiving stream~~
37 is estimated to be greater than zero, then water quality based effluent limitations shall be assigned as follows:

1 (1) ~~If the 30Q2 flow is estimated to be greater than zero, effluent limitations for new~~New or expanded
2 ~~(additional)~~ discharges of oxygen consuming waste shall be set at BOD₅ = 5 mg/l, NH₃-N = 2 mg/l
3 and DO = 6 mg/l, unless it is determined by the Director through modeling or other analysis that
4 these limitations will not protect water quality standards. ~~Requirements for existing discharges shall~~
5 ~~be determined on a case by case basis by the Director.~~ More stringent limits shall be applied if
6 violations of water quality standards are predicted to occur for a new or expanded discharge with
7 the limits set pursuant to this Rule or if existing limits are determined to be inadequate to protect
8 water quality standards.

9 ~~(2) If the 30Q2 and 7Q10 flows are both estimated to be zero, no new or expanded discharge of oxygen~~
10 ~~consuming waste shall be allowed. Requirements for existing discharges to streams where the 30Q2~~
11 ~~and 7Q10 flows are both estimated to be zero shall be determined on a case by case basis.~~

12 ~~(3)~~(2) Other water quality standards shall be protected by requiring the discharge to meet the water quality
13 standards set forth in this Subchapter, unless the Director determines that alternative limitations
14 protect the designated uses of receiving streams and downstream waters. ~~classified water uses.~~

15 (3) ~~Requirements for existing discharges shall be determined on a case-by-case basis by the Director~~
16 using a site-specific analysis for each discharge.

17 (g) ~~If the 7Q10 flow and the 30Q2 flow of the receiving streams are both estimated to be zero, then [the following~~
18 ~~shall apply to new or expanded] domestic wastewater discharges of oxygen consuming [waste:waste. Domestic~~
19 ~~wastewater discharges of oxygen consuming] waste shall [not] be permitted only if all of the following are met: [that~~
20 ~~do not meet the following:]~~

21 (1) ~~The proposed permitted flow for the wastewater discharge shall be lesser of:~~

22 (A) ~~No more than one-tenth of the flow generated by the one-year, 24-hour storm event based~~
23 ~~on the drainage area of the receiving stream at the discharge location and calculated using~~
24 ~~the Rational Method. The Rational Method shall be used to calculate the peak runoff for~~
25 ~~the one-year, 24-hour precipitation event in cubic feet per second. The peak runoff shall~~
26 ~~then be divided by 10 and multiplied by 646,272 to convert the result to gallons per day of~~
27 ~~allowable discharge at the point studied; or~~

28 (B) ~~No more than two million gallons per day.~~

29 (2) ~~All wastewater discharges shall be directed to a system that utilizes low-energy methodologies prior~~
30 ~~to discharging to receiving streams at non-erosive velocities, such as:~~

31 (A) ~~An infiltration system, which may include engineered materials to achieve higher rates of~~
32 ~~infiltration. Engineered materials shall have an ASTM gradation of fine to coarse grain~~
33 ~~sand and shall be angular to maintain structural integrity of the slope;~~

34 (B) ~~Constructed free-surface wetland with a hydraulic residence time of at least 14 days; or~~

35 (C) ~~Other technologies that meet the standard of practice for NC Licensed Professional~~
36 ~~Engineers for such devices that provide a physical buffer or hydraulic residence time ~~[of at~~
37 ~~least 14 days] sufficient to discharge at non-erosive velocities.~~~~

- 1 ~~(3) [Wastewater discharges] If the wastewater discharge to the receiving stream [shall not exceed]~~
2 ~~exceeds~~ one cubic foot per second based on the average daily flow of the ~~[discharge.] discharge,~~
3 ~~then more than one outfall to the receiving stream shall be utilized for the wastewater discharge.~~
4 ~~The discharge at each outfall shall not exceed one cubic foot per second and the [Wastewater~~
5 ~~discharges from multiple] outfalls shall be at least 50 linear feet apart along the receiving streams.~~
6 ~~Cumulative discharge to the receiving stream shall not exceed the lesser of the requirements in~~
7 ~~Subparagraph (g)(1) of this Rule.~~
- 8 ~~(4) No wastewater discharges shall be allowed to Class SA, SB, SC, WS-I, WS-II, WS-III, WS-IV, WS-~~
9 ~~V, ORW or HQW waters.~~
- 10 ~~(5) For wastewater discharges to NSW waters, the Director may require additional modeling by the~~
11 ~~applicant using a site-specific analysis for each discharge. Additional allocation of flow shall be at~~
12 ~~the discretion of the Director using a site-specific analysis for each discharge.~~
- 13 ~~(6) In addition to any other effluent limits for any other parameters to ensure the permit does not violate~~
14 ~~any EPA-approved NC water quality standards, the following effluent limits shall apply:~~
15 ~~(A) Biological oxygen demand (BOD5) shall not exceed 5.0 mg/l monthly average;~~
16 ~~(B) NH3, 0.5 mg/l monthly average, 1.0 mg/l daily maximum;~~
17 ~~(C) Total nitrogen shall not exceed 4.0 mg/l monthly average;~~
18 ~~(D) Total phosphorus, 1.0 mg/l monthly average, 2.0 mg/l daily maximum;~~
19 ~~(E) Fecal coliforms, 14 colonies/100ml or less;~~
20 ~~(F) Dissolved oxygen, 7.0 mg/l or greater;~~
21 ~~(G) Total suspended solids, 5.0 mg/l monthly average, 8mg/l daily maximum; and~~
22 ~~(H) Nitrate, 1.0 mg/l monthly average, 2.0 mg/l daily maximum.~~
23 ~~The Director may impose different effluent limits than those set forth in Parts [~~(A)~~ (g)(6)(A)~~
24 ~~through (H) [in Subparagraph (g)(6)] of this Rule to ensure that the permit does not violate any~~
25 ~~EPA-approved NC water quality standards using a site-specific analysis for each discharge.~~
- 26 ~~(7) The applicant shall demonstrate:~~
27 ~~(A) The proposed discharge meets the requirements in Subparagraphs (g)(1), (2), (3), and (4)~~
28 ~~of this Rule;~~
29 ~~(B) The proposed discharge is a domestic wastewater discharge as defined in Rule .0202 of~~
30 ~~this [Subchapter] Section;~~
31 ~~(C) When the receiving stream has naturally occurring low dissolved oxygen levels, the~~
32 ~~proposed discharge complies with G.S. 143-215.1(c7); and~~
33 ~~(D) When the receiving stream does not have naturally occurring low dissolved oxygen levels,~~
34 ~~the proposed discharge does not reduce the dissolved oxygen levels of the receiving stream~~
35 ~~more than 0.1 mg/l below the approved modeled in-stream dissolved oxygen level for the~~
36 ~~receiving stream at total permitted capacity for all discharges to such receiving stream. The~~
37 ~~applicant shall use a model utilized elsewhere in USEPA Region 4, such as the Streeter-~~

1 Phelps model used in the State of Alabama, and the selected model shall be approved by
2 the Director as suitable for the particular discharge and receiving stream.

3 (8) If an applicant requests less stringent effluent limits than those set forth in Subparagraph (g)(6) of
4 this Rule, then the applicant shall conduct more complex modeling. The applicant shall use a model
5 accepted elsewhere in USEPA Region 4 that is approved by the Director as suitable for the particular
6 discharge and receiving stream. The modeling ~~[must]~~ shall demonstrate the requirement in Part
7 ~~(g)(7)(B)~~ (g)(7)(C) or ~~(g)(7)(C)~~ (g)(7)(D) of this Rule, whichever is applicable, is met, and all
8 EPA-approved NC water quality standards are protected.

9 (9) Applicants shall provide either:

10 (A) Mapping data from USGS; or

11 (B) Mapping data prepared by an engineer of record licensed in the ~~[state of NC]~~ State utilizing
12 either USGS mapping data or other maps approved for use by the Director.

13 (10) Where the Director determines that the applicant selected model under Subparagraphs (g)(5) or
14 (g)(8) of this Rule or Part (g)(7)(D) of this Rule is not suitable for the particular discharge or
15 receiving stream and downstream waters, then the Director shall notify the applicant in writing the
16 reasons why the selected model is not suitable.

17 ~~[(h) If the 7Q10 flow and the 30Q2 flow of the receiving stream are both estimated to be zero, then new or expanded~~
18 ~~discharges of oxygen-consuming waste that do not meet the criteria in Paragraph (g) of this Rule shall not be allowed.~~

19 ~~(i) If the 7Q10 flow and the 30Q2 flow of the receiving stream are both estimated to be zero, then the requirements~~
20 ~~for existing discharges shall be determined on a case-by-case basis by the Director.]~~

21 ~~(e)(f)(h)~~ Receiving water flow statistics shall be estimated through consultation with the U.S. Geological Survey.
22 Estimates for any given location may be based on actual flow data, modeling analyses, or other methods determined
23 to be appropriate by the ~~Commission or its designee.~~ Director.

24
25 *History Note:* Authority G.S. ~~143-214.1; 143-214.1; 143-215.1(c7); 143-215.3(a)(1); 143-215.3(a)(1); SL 2024-44~~
26 ~~s. 5.1; SL 2025-94 s. 23;~~

27 *Eff. February 1, 1976;*

28 *Amended Eff. January 1, 2015; February 1, 1993; October 1, 1989; August 1, 1985; January 1,*
29 *1985;*

30 *Readopted Eff. November 1, 2019;*

31 *Amended Eff. May 1, 2026.*

1 15A NCAC 02Q .0501 is amended with changes as published in 40:08 NCR 732 and 40:12 NCR 1008 as follows:

2
3 **SECTION .0500 - TITLE V PROCEDURES**
4

5 **15A NCAC 02Q .0501 PURPOSE OF SECTION AND REQUIREMENT FOR A PERMIT**

6 (a) ~~The purpose of this Section is to establish~~This section establishes an air quality permitting program as required
7 pursuant to Title V of the Clean Air Act and 40 CFR Part 70.

8 (b) With the exception in Paragraph (c) of this ~~Rule, Rule and the provisions of 15A NCAC 02Q .0114,~~ the owner or
9 operator of an existing facility, new facility, or modification of an existing ~~facility (except~~facility, except for minor
10 modifications pursuant to 15A NCAC 02Q ~~.0515),.0515,~~ including significant modifications that would not
11 contravene or conflict with a condition in the existing permit, shall not begin construction without first obtaining:

12 (1) a construction and operation permit following the procedures set forth in this Section
13 ~~(except~~Section, except for 15A NCAC 02Q ~~.0504),.0504,~~ or

14 (2) a construction and operation permit following the procedures set forth in 15A NCAC 02Q .0504
15 and filing a complete application within 12 months after commencing operation to modify the
16 construction and operation permit to meet the requirements of this Section.

17 (c) With the exception provided in the provisions of 15A NCAC 02Q .0114, if~~If~~ the owner or operator proposes to
18 make a significant modification pursuant to 15A NCAC 02Q .0516 that would contravene or conflict with a condition
19 in the existing permit, the owner or operator shall not begin construction or make the modification until the owner or
20 operator has obtained:

21 (1) a construction and operation permit following the procedures set forth in this Section ~~(except~~except
22 for 15A NCAC 02Q ~~.0504),.0504;~~ or

23 (2) a construction and operation permit following the procedures set forth in 15A NCAC 02Q .0504
24 and, before beginning operation, files an application and obtains a permit modifying the construction
25 and operation permit to meet the requirements of this ~~Section (except for 15A NCAC 02Q~~
26 ~~.0504).~~Section.

27 (d) All facilities subject to this Section shall have a permit to operate that assures compliance with 40 CFR Part 70
28 and all applicable federal and State requirements.

29 (e) Except as allowed pursuant to 15A NCAC 02Q .0515(f) (minor modifications), no facility subject to the
30 requirements of this Section may operate after the time that it is required to submit a timely and complete application
31 pursuant to this Section except in compliance with a permit issued pursuant to this Section. This Paragraph does not
32 apply to ~~to~~ permit renewals pursuant to 15A NCAC 02Q .0513.

33 (f) If the conditions of 15A NCAC 02Q .0512(b) (application shield) are met, the facility's failure to have a permit
34 pursuant to this Section shall not be a violation of operating without a permit.

35 (g) If the owner or operator of a facility subject to the requirements of this Section submits an application for a revision
36 to his permit before receiving the initial permit pursuant to this Section, the application for the revision shall be
37 processed pursuant to 15A NCAC 02Q .0300.

1 (h) The owner or operator of a facility or source subject to the requirements of this Section may also be subject to the
2 toxic air pollutant procedures set forth in 15A NCAC 2Q .0700.

3 (i) The owner or operator of an affected unit subject to the acid rain program requirements of Title IV of the Clean
4 Air Act as set forth in 40 CFR Part 72 is also subject to the procedures ~~pursuant to~~ set forth in 15A NCAC 02Q .0400.

5 (j) The owner or operator of a facility subject to the requirements of this Section shall pay permit fees in accordance
6 with the requirements of 15A NCAC 02Q .0200.

7
8 *History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108; 143-215.108A;*
9 *Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule*
10 *becomes effective, whichever is sooner;*
11 *Eff. July 1, 1994;*
12 *Amended Eff. July 1, 1998; July 1, 1996;*
13 *Readopted Eff. April 1, ~~2018~~, 2018;*
14 *Amended Eff. (Pending On the first day of a month that is 60 days after the Secretary of the*
15 *Department of Environmental Quality certifies to the Revisor of Statutes that the U.S. Environmental*
16 *Protection Agency has approved the amended rule into the North Carolina State Implementation*
17 *Plan pursuant to S.L. 2023-134, Section 12.11, as amended by S.L. 2024-1, Section 4.13.)*

1 15A NCAC 02Q .0507 is amended with changes as published in 40:08 NCR 732 and 40:12 NCR 1009 as follows:

2
3 **15A NCAC 02Q .0507 APPLICATION**

4 (a) Except for:

- 5 (1) minor permit modifications covered pursuant to 15A NCAC 02Q .0515;
- 6 (2) significant modifications covered pursuant to 15A NCAC 02Q .0516(c); or
- 7 (3) renewals submitted pursuant to 15A NCAC 02Q .0513;

8 the owner or operator of a new or existing source shall have 12 months after the facility or source becomes subject to
9 the Title V operating permit program pursuant to 15A NCAC 02Q .0500 to file a complete application for a permit or
10 permit revision. However, except as provided in 15A NCAC 02Q .0114, the owner or operator of a source shall not
11 begin construction or operation of a source until he or she has obtained a construction and operation permit pursuant
12 to 15A NCAC 02Q .0501(b) or (c) and 15A NCAC 02Q .0504.

13 (b) An application shall include the information described in 40 CFR 70.3(d) and 70.5(c), including a list of
14 insignificant activities because of size or production rate but not including insignificant activities because of category.
15 An application shall be certified by a responsible official for truth, accuracy, and completeness. In an application
16 submitted pursuant to this Rule, the applicant may attach copies of applications submitted pursuant to 15A NCAC
17 02Q .0400 or 15A NCAC 02D .0530 or .0531 if the information in those applications contains information required
18 in this Section and is current, accurate, and complete.

19 (c) Application for a permit, permit revision, or permit renewal shall be made in accordance with 15A NCAC 02Q
20 .0104 on forms of the Division and shall include plans and specifications with complete data and information as
21 required by this Rule. If the information provided on these forms does not describe the source or its air pollution
22 abatement equipment to the extent necessary to evaluate the application, the Director shall request that the applicant
23 provide other information necessary to evaluate the source and its air pollution abatement equipment.

24 (d) Along with filing a complete application, the applicant shall also file the following:

- 25 (1) for a new facility or an expansion of existing facility, a consistency determination in accordance
26 with G.S. 143-215.108(f) that:
 - 27 (A) bears the date of receipt entered by the clerk of the local government; or
 - 28 (B) consists of a letter from the local government indicating that zoning or subdivision
29 ordinances are met by the facility;
- 30 (2) for a new facility or an expansion of an existing facility in an area without zoning, an affidavit and
31 proof of publication of a legal notice as required pursuant to 15A NCAC 02Q .0113; and
- 32 (3) if required by the Director, information showing that:
 - 33 (A) the applicant is financially qualified to carry out the permitted activities; or
 - 34 (B) the applicant has substantially complied with the air quality and emissions standards
35 applicable to any activity in which the applicant has previously been engaged and has been
36 in substantial compliance with federal and State environmental laws and rules.

1 (e) An applicant who fails to submit relevant facts or submits incorrect information in a permit application shall, upon
2 becoming aware of the failure or incorrect submittal, submit supplementary facts or corrected information to resolve
3 the deficiency. In addition, an applicant shall provide additional information to address applicable requirements as
4 defined in 15A NCAC 02Q .0103 to which the source becomes subject after the date the applicant filed a complete
5 application but prior to release of a draft permit.

6 (f) The submittal of a complete permit application shall not affect the requirement that a facility have a permit pursuant
7 to 15A NCAC 02D .0530, .0531, or .0532 or pursuant to 15A NCAC 02Q .0400.

8 (g) The Director shall give priority to permit applications containing early reduction demonstrations pursuant to
9 Section 112(i)(5) of the federal Clean Air Act. Act as set forth in 42 U.S.C. 7412(i)(5). The Director shall take final
10 action on these permit applications after receipt of the complete permit application.

11 (h) Except as specified in 15A NCAC 02Q .0203(i), a non-refundable permit application processing fee, defined in
12 15A NCAC 02Q .0200, shall accompany the application. The permit application shall be deemed incomplete until the
13 permit application processing fee is received.

14 (i) The applicant shall retain during the permit term one complete copy of the application package and the information
15 submitted in support of the application package.

16
17 *History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108; 143-215.108A;*
18 *Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule*
19 *becomes effective, whichever is sooner;*
20 *Eff. July 1, 1994;*
21 *Amended Eff. July 1, 1997; July 1, 1996; February 1, 1995;*
22 *Temporary Amendment Eff. December 1, 1999;*
23 *Amended Eff. September 1, 2015; April 1, 2004; July 1, 2000;*
24 *Readopted Eff. April 1, 2018;*
25 *Amended Eff. September 1, 2023; ~~September 1, 2022~~; 2022;*
26 *Amended Eff. (Pending On the first day of a month that is 60 days after the Secretary of the*
27 *Department of Environmental Quality certifies to the Revisor of Statutes that the U.S. Environmental*
28 *Protection Agency has approved the amended rule into the North Carolina State Implementation*
29 *Plan pursuant to S.L. 2023-134, Section 12.11, as amended by S.L. 2024-1, Section 4.13.)*

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

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

Questions contained herein suggest that the rule as written is unclear or there is some ambiguity. If this document includes questions and you do not understand the question, please contact the reviewing attorney to discuss. Failure to respond may result in a staff opinion recommending objection.

Staff may suggest the agency "consider" an idea or language in this document. This is in no way a formal request that the agency adopt the idea or language but rather is offered merely for the agency's consideration which the agency may find preferable and clarifying.

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

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

Note the following general instructions:

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

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

Christopher S. Miller
Commission Counsel

Date submitted to agency: April 14, 2026

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

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02B .0206

DEADLINE FOR RECEIPT: April 21, 2026

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:

(a)(4): Please confirm whether 40 CFR 125.83 is incorporated by reference elsewhere in your rules, in compliance with § 150B-21.6. Response: The language has been updated to comply with § 150B-21.6.

(b), line 15: “[S]hall be developed” by whom? Who does this statement bind? Response: Water quality based effluent limitations shall be developed by DEQ per delegation from the U.S. Environmental Protection Agency. The language has been updated.

(c)(1), page 2, line 1: Should “less” be changed to “lesser”? Response: The language has been updated.

(c)(3): What is “aesthetic quality”? Does this have a special meaning? Response: The term “aesthetic” follows the webster’s definition (e.g., “pleasing in appearance”), it does not have a special meaning.

(f)(3): Is there a standard or specific set of factors that the Director considers when making these case-by-case determinations? If so, can this be incorporated into your rule? Response: The Clean Water Act (33 USC 1311, 33 USC 1312, and 40 CFR 122.44) requires that the permitting authority determine the need and stringency of water quality-based effluent limits based on a site-specific analysis for each discharge. Because each determination is based on site-specific factors, not generally applicable factors, we cannot add a specific set of factors to the rule.

Noted. I think the additional context would be helpful. For clarity, consider adding to the end of this sentence, “... shall be determined on a case-by-case basis by the Director using a site-specific analysis for each discharge.” If you have a rule that elaborates on or governs these site-specific analyses, you could also include a reference here.
Response: The language has been updated.

Christopher S. Miller
Commission Counsel

Date submitted to agency: April 14, 2026

(g), lines 12-14: *As re-written, the wording is a little bit awkward. Couldn't this be consolidated for clarity? For example, consider: "If the 7Q10 flow and the 30Q2 flow of the receiving streams are both estimated to be zero, then domestic wastewater discharges of oxygen consuming waste shall be permitted only if they meet the following: ..."* Please revise as necessary. Response: The language has been revised as suggested.

(g)(2): *Are "non-erosive velocities" defined or set in your rules? Does the regulated public know what constitutes a "non-erosive velocity"?* Response: The term is defined in 15A NCAC 02H .1002. A definition has been added to paragraph (a) of this Rule referring to that definition.

(g)(5) and (g)(6): *Is there a standard or specific set of factors that the Director considers when making these discretionary determinations? If so, can this be incorporated into your rule?* Response: The Clean Water Act (33 USC 1311, 33 USC 1312, and 40 CFR 122.44) requires that the permitting authority determine the need and stringency of water quality-based effluent limits based on a site-specific analysis for each discharge. Because each determination is based on site-specific factors, not generally applicable factors, we cannot add a specific set of factors to the rule.

See follow-up comment above regarding (f)(3).

Response: The language has been updated.

(g)(7)(C): *Add "and" at the end of this.* Response: The language has been revised as suggested.

(g)(9)(B), line 5: *Change "state of NC" to "State".* Response: The language has been revised as suggested.

And delete "of NC", as previously noted.

Response: The language has been updated.

History Note, Authority: Two citations are missing dashes. Please correct to "143-214.1" and "143-215.3(a)(1)". Response: The language has been revised as suggested.

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

Christopher S. Miller
Commission Counsel

Date submitted to agency: April 14, 2026

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

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02H .0107

DEADLINE FOR RECEIPT: April 21, 2026

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:

(b): You reference application forms here, which are set forth in other agency rules. Please confirm whether all of the required contents of such forms are set forth in your rules. If not, you should consider amending Rule .0105(a) to include this information.
Response: Thank you for this comment, we will review and confirm that all of the required contents of such forms are set forth in our rules during the rule readoption process.

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

Christopher S. Miller
Commission Counsel

Date submitted to agency: April 14, 2026

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

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02Q .0114 (Adoption)

DEADLINE FOR RECEIPT: April 21, 2026

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:

Line 4: Insert "air quality" before "permit".

Response: The rule has been revised by inserting "an air quality" before "permit".

Line 5: What does "consistent with G.S. 143-213" mean here? That is a definitions statute. Which words are you reading as being consistent with G.S. 143-213? Are you referring to the statute's pending definition of "administratively complete"?

Response: The phrase "consistent with G.S. 143-213" was used in consultation with RRC counsel in the Permit Timelines and Definitions rulemaking that also resulted from S.L. 2023-134 changes. The language is meant to align with the definition of "administratively complete" at such time as the statute and associated rules become effective. In the Permit Timelines and Definitions rulemaking that was approved by the RRC last year, similar language was used in Rule 02Q .0103 after receiving a comment from the EPA during the comment period. The EPA noted that it cannot approve a cross-reference to a statute into a State Implementation Plan (SIP), as it would inadvertently allow a SIP to be changed outside of the public participation process (which conflicts with the Clean Air Act and federal implementing regulations). The agency developed this language to acknowledge that the requirements of the definition come from statute, while also complying with EPA SIP requirements.

Line 6: What does "equipment" mean? What type(s) of equipment? This seems to be vague/unclear.

Response: The term "equipment" is retained for consistency with the statutory language in G.S.143-215.108A(b1). The term "equipment" is broad in nature and encompasses the broad range of industries and variable nature of sources and their construction that the EMC is charged with regulating and permitting under the General Statutes and the Clean Air Act. The term is used throughout the statute, air quality rules and EPA rules and retains its commonly understood meaning.

(1), line 8: Insert "to" before "15A NCAC 02D .0530".

Response: The word "to" has been inserted as requested.

Christopher S. Miller
Commission Counsel

Date submitted to agency: April 14, 2026

(2): Please confirm that this citation is correct. I see no mention of “risk-based” standards in 15A NCAC 02D .1111.

Response: 15A NCAC 02D .1111 adopts 40 CFR Part 63. 40 CFR Part 63 is where the regulatory requirements associated with the residual risk standards pursuant to 42 U.S.C. § 7412(f) referenced in G.S. 143-215.108A(b1)(5)(ii) are incorporated into the federal regulations.

Lines 14-15: This seems to be redundant. You already state, “but not operation”, in line 5. Why is this necessary?

Response: The language of lines 14-15 is retained for consistency with the statute.

History Note, Effective Date: Please explain why the rule and its effective date must be adopted in this order and manner?

Response: Session Law 2023-134, section 12.11, as amended by Session law 2024-1, changes N.C.G.S. § 143-215.108A(b1)(5) to allow construction (though not operation) of new air contaminant sources, equipment, or the associated air cleaning or emissions control devices prior to issuance of an air quality permit. That change in statute affects North Carolina’s current State Implementation Plan (SIP). All states must have an EPA-approved SIP, and any amendments to the SIP must also be approved by the EPA. **In order to amend a SIP, the changes must go through a public process to receive comments. Because statutory changes and session laws do not go through a public process, rulemaking is generally how a SIP is changed.**

The adoption of this rule complies with the federal requirement to go through a public process and thus allows the EPA to consider whether the SIP amendment based on the rule complies with the Clean Air Act. If EPA determines the rule complies with the Clean Air Act, it will allow the SIP amendment, which in turn allows N.C.G.S. § 143.215.108A to change and the rules in this rulemaking package to become effective. The EMC provided greater detail on the SIP process as it applies to this rulemaking in a pre-review request to RRC Counsel in July of 2025. That letter and RRC Counsel’s response is attached here for convenience.

*S.L. 2024-1 requires DEQ to “prepare and submit to the United States Environmental Protection Agency for approval by that agency a proposed North Carolina State Implementation Plan amendment” based on the law’s changes to § 143-215.108A. Is this rule part of the State Implementation Plan? And if so, why does this permanent rule need to be adopted at this time when the statute requires **proposed** amendments be sent to the EPA? If this rule were to be approved by the RRC, what happens if the EPA then declines the language of the rule? And how long will EPA’s review take?*

Response: This rule will become part of the North Carolina SIP if it is approved by the EPA. In September 2024, the EPA declined the EMC’s request to review proposed rule changes while the rule was going through the formal rulemaking process. The EMC thus initiated permanent rulemaking to ensure the statutory changes set out in session law would comply with federal requirements for SIP amendments, including the public process requirements, and would allow EPA to review final rules for

Christopher S. Miller
Commission Counsel

Date submitted to agency: April 14, 2026

compliance with the Clean Air Act. If the EPA determines that the rule does not comply with the Clean Air Act, the rule would never become effective and never be included in the Code.

The EPA must make a completeness determination on the proposed SIP amendment within 6 months of receipt and must make a final determination on approval of the SIP amendment within 12 months of the completeness determination. 42 U.S.C. §7410(k).

Did the Commission consider implementing temporary rules in place of permanent rules until the contingency is met?

Response: No. Temporary rules are only appropriate when the EMC determines that adherence to the notice and hearing requirements of N.C.G.S. § 150B-21.2 would be contrary to the public interest and the immediate adoption of the rules is required based on one or more of a variety of statutory set factors. See N.C.G.S. § 150B-21.1(a). These rules do not meet the statutory criteria for temporary rules under the APA.

Also there is an issue with statutory authority. Based on how S.L. 2024-1 was written, the session law's amendments, including changes to § 143-215.108A, are not yet in effect and only kick in upon EPA approval. Because of this, the rule you are putting in front of the RRC is in conflict with the current version of the statute because that version does not allow for construction of sources prior to receipt of an air permit. So how does the Commission have statutory authority to adopt this rule at this time? "Prepare and submit" does not seem to encompass permanent rulemaking.

Response: The EMC is not suggesting that the rules be placed in the Code prior to N.C.G.S. § 143-215.108A being amended. Session Law 2024-1, Section 4.11(g), provides that the amendments to N.C.G.S. § 143-215.108A become effective on the first day of the month that is 60 days after the DEQ Secretary certifies EPA approval of the rule. Consistent with that directive, the agency was required to prepare and submit a SIP revision, namely this rule. EPA, however, reviews only final rules that have completed the State's rulemaking process, including public notice and comment. The contingent effective date was therefore necessary to bridge the interval between completion of the State rulemaking process and EPA's subsequent SIP review. The General Assembly may prescribe a more specific effective date, including a contingent effective date, as it has done here and has done before. See, e.g., N.C.G.S. § 150B-21.3, which provides for a contingent effective date upon receipt of 10 letters of objection.

History Note, line 19: Please remove the word "Adoption".

Response: "Adoption" has been stricken.

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

Christopher S. Miller
Commission Counsel

Date submitted to agency: April 14, 2026

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

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02Q .0501

DEADLINE FOR RECEIPT: April 21, 2026

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:

(a): Is this paragraph necessary? This does not seem to meet the definition of a Rule as provided in G.S. 150B-2(8a).

Response: Paragraph (a) is a statement of general applicability implementing an enactment of Congress (Title V of the Clean Air Act) and a regulation adopted by a federal agency (40 CFR Part 70). It is thus a rule under the APA. N.C.G.S. § 150B-2(8a) (“Rule.--Any agency regulation, standard, or statement of general applicability that implements or interprets an enactment of the General Assembly or Congress or a regulation adopted by a federal agency[.]”).

I'm okay with this given that you're tying the rules back to the fed statute and reg. However, I would not be surprised if you get a necessity question on this at Tuesday's meeting since you use the language, "The purpose of this Section ...".

Response: 15A NCAC 02Q .0501(a) has been revised as follows: *"The purpose of this Section is to establish This section establishes".*

(b), lines 9-10: Avoid the use of parentheses. Use parentheses only for words, phrases, clauses, or sentences by way of example. Instead, consider adding this information to the exceptions that you list at the beginning of the paragraph.

Response: Parentheses have been removed.

(b)(1): Same comment as above regarding parentheses.

Response: Parentheses have been removed.

(c)(1): Please see comment above regarding (b)(1).

Response: Parentheses have been removed.

(c)(2): Unless you believe it is needed, please consider removing "(except for 15A NCAC 02Q .0504)" entirely. This is quite confusing given that (c)(2) applies to persons with permits pursuant 02Q .0504. Wouldn't they have to follow that rule in order to have that type of permit?

Christopher S. Miller
Commission Counsel

Date submitted to agency: April 14, 2026

Response: 15A NCAC 02Q .0504 provides a procedural, two-step option, not a substantive requirement, for obtaining a Title V permit. There is also a one-step process for obtaining a Title V permit set out in 15A NCAC 02Q .0501. The EMC is checking to see if the “except for 15A NCAC 02Q .0504” language is necessary for consistency with the Clean Air Act and associated regulations. For the time being, the language has been retained.

Thanks. I still think the wording is a bit awkward. Could “(except for 15A NCAC 02Q .0504)” on line 25 be replaced by adding the word “separate” before “permit” on line 24? Or could line 25 read as, “... that is not another permit issued under 15A NCAC 02Q .0504”? If you think that the current language you have is necessary and clear to the regulated public, then I’m okay with leaving it if you remove the parenthesis.

Response: Upon further review and discussion, the parenthetical in (c)(2) was determined to be unnecessary and the text has been revised as follows “Section (except for 15A NCAC 02Q .0504).Section.”

(e), line 29: Consider removing “timely”. This does not seem to be needed given what the rest of the sentence states.

Response: The term “timely” has a specific meaning in the context of Title V permitting. “Timely” is defined in 15A NCAC 02Q .0503.

(i), line 3: “Title IV” of what?

Response: “Title IV” was meant to reference the Acid Deposition Control provisions of Title IV of the Clean Air Act Amendments (CAA) of 1990. The reference “of the Clean Air Act as set forth in 40 CFR Part 72” has been added for clarity.

(i), line 4: For clarity, I would change “pursuant to” to “set forth in”.

Response: The language has been revised to “set forth in”.

History Note, Effective Date: Please see my questions and comments on this for Rule 15A NCAC 02Q .0114.

Response: Please see responses to questions above.

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

Christopher S. Miller
Commission Counsel

Date submitted to agency: April 14, 2026

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

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02Q .0507

DEADLINE FOR RECEIPT: April 21, 2026

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:

(e), line 3: Which "requirements" are you referring to? This is rather vague/unclear.

Response: This could be any rule (state or federal), statute, SIP, other permit term/condition, Clean Air Act requirement, Risk Management Plan, NAAQS, visibility requirement, or other applicable requirement that the facility triggers in between the time that the application is submitted and when the final permit is issued. The term "applicable requirements" is defined in 15A NCAC 02Q .0103.

Noted. If the term "applicable requirements" is already defined and is relevant here, then consider adding the word "applicable".

Response: 02Q .0507(e), has been revised as follows "applicable requirements as defined in 15A NCAC 02Q .0103".

(g), line 8: Add a legal cite after "the federal Clean Air Act".

Response: Added "as set forth in 42 U.S.C. 7412(i)(5)."

History Note, Effective Date: Please see my questions and comments on this for Rule 15A NCAC 02Q .0114.

Response: Please see responses to questions above.

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

Christopher S. Miller
Commission Counsel

Date submitted to agency: April 14, 2026

Burgos, Alexander N

Subject: FW: [External] RE: EMC Responses to Final Rules for April 2026 RRC Meeting

From: Young, Elizabeth <esyoud@NCDOJ.GOV>

Sent: Monday, April 27, 2026 9:01 AM

To: Miller, Christopher S <christopher.miller@oah.nc.gov>

Cc: Everett, Jennifer <jennifer.everett@deq.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Quinlan, Katherine L <katherine.quinlan@deq.nc.gov>; Higgins, Karen <karen.higgins@deq.nc.gov>

Subject: RE: [External] RE: EMC Responses to Final Rules for April 2026 RRC Meeting

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

Thanks Chris. I'm working with DEQ to get final responses to you this morning. We all appreciate the time you put into these rules.

Elly



Elly S. Young (she/her)
Special Deputy Attorney General
Environmental Division
Commissions, Coastal and Administrative Section
Phone: (919) 716-6944
Email: esyoud@ncdoj.gov
114 W. Edenton St., Raleigh, NC 27603
ncdoj.gov

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

From: Miller, Christopher S <christopher.miller@oah.nc.gov>

Sent: Sunday, April 26, 2026 3:30 PM

To: Young, Elizabeth <esyoud@NCDOJ.GOV>

Cc: Everett, Jennifer <jennifer.everett@deq.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Quinlan, Katherine L <katherine.quinlan@deq.nc.gov>; Higgins, Karen <karen.higgins@deq.nc.gov>; Miller, Christopher S <christopher.miller@oah.nc.gov>

Subject: RE: [External] RE: EMC Responses to Final Rules for April 2026 RRC Meeting

EXTERNAL SENDER: This email originated from outside the organization. Do not click on links or open attachments unless you can validate the sender and the contents are safe.

Elly,
Please also find attached a courtesy copy of my staff opinion for these rules. It recommends approval w/ note. I will be on the lookout for your final rule revisions/responses.
Thanks,

Chris

Chris Miller

Rules Review Commission Counsel

North Carolina Office of Administrative Hearings | Rules Division

1711 New Hope Church Road

Raleigh, NC 27609

(984) 236-1935

NOTICE: E-mail correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by authorized State officials.

Burgos, Alexander N

Subject: FW: [External] RE: EMC Responses to Final Rules for April 2026 RRC Meeting
Attachments: 04 2026 - EMC - Staff Opinion - CSM v2.doc

From: Miller, Christopher S <christopher.miller@oah.nc.gov>
Sent: Sunday, April 26, 2026 3:30 PM
To: Young, Elizabeth S <esyong@ncdoj.gov>
Cc: Everett, Jennifer <jennifer.everett@deq.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Quinlan, Katherine L <katherine.quinlan@deq.nc.gov>; Higgins, Karen <karen.higgins@deq.nc.gov>; Miller, Christopher S <christopher.miller@oah.nc.gov>
Subject: RE: [External] RE: EMC Responses to Final Rules for April 2026 RRC Meeting

Elly,
Please also find attached a courtesy copy of my staff opinion for these rules. It recommends approval w/ note. I will be on the lookout for your final rule revisions/responses.
Thanks,
Chris

Chris Miller
Rules Review Commission Counsel
North Carolina Office of Administrative Hearings | Rules Division
1711 New Hope Church Road
Raleigh, NC 27609
(984) 236-1935

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Burgos, Alexander N

Subject: FW: [External] RE: EMC Responses to Final Rules for April 2026 RRC Meeting

From: Young, Elizabeth <esyoun@NCDOJ.GOV>

Sent: Friday, April 24, 2026 3:34 PM

To: Miller, Christopher S <christopher.miller@oah.nc.gov>

Cc: Everett, Jennifer <jennifer.everett@deq.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Quinlan, Katherine L <katherine.quinlan@deq.nc.gov>; Higgins, Karen <karen.higgins@deq.nc.gov>

Subject: RE: [External] RE: EMC Responses to Final Rules for April 2026 RRC Meeting

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

Received, thanks Chris. We'll get you updated responses and rule edits as soon as possible. I appreciate the heads up on Commissioner questions.

Elly



Elly S. Young (she/her)
Special Deputy Attorney General
Environmental Division
Commissions, Coastal and Administrative Section
Phone: (919) 716-6944
Email: esyoun@ncdoj.gov
114 W. Edenton St., Raleigh, NC 27603
ncdoj.gov

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

From: Miller, Christopher S <christopher.miller@oah.nc.gov>

Sent: Friday, April 24, 2026 3:29 PM

To: Young, Elizabeth <esyoun@NCDOJ.GOV>

Cc: Everett, Jennifer <jennifer.everett@deq.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Quinlan, Katherine L <katherine.quinlan@deq.nc.gov>; Higgins, Karen <karen.higgins@deq.nc.gov>; Miller, Christopher S <christopher.miller@oah.nc.gov>

Subject: RE: [External] RE: EMC Responses to Final Rules for April 2026 RRC Meeting

EXTERNAL SENDER: This email originated from outside the organization. Do not click on links or open attachments unless you can validate the sender and the contents are safe.

Elly,
Thank you for the thorough responses – this was helpful. I have a few additional questions/comments for your consideration. Please see my follow-up highlighted in **yellow** in the attached document. Please provide responses as soon as possible.

Also a heads up – For rules 15A NCAC 02Q .0114, .0501, and .0507, I anticipate that the Commissioners will be asking some questions regarding the interplay between the Clean Air Act, the State’s statutes, and the proposed rules. So please be prepared to address this.

Best,
Chris

Chris Miller

Rules Review Commission Counsel
North Carolina Office of Administrative Hearings | Rules Division
1711 New Hope Church Road
Raleigh, NC 27609
(984) 236-1935

NOTICE: E-mail correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by authorized State officials.

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

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02B .0206

DEADLINE FOR RECEIPT: April 21, 2026

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:

(a)(4): Please confirm whether 40 CFR 125.83 is incorporated by reference elsewhere in your rules, in compliance with § 150B-21.6. Response: The language has been updated to comply with § 150B-21.6.

(b), line 15: “[S]hall be developed” by whom? Who does this statement bind? Response: Water quality based effluent limitations shall be developed by DEQ per delegation from the U.S. Environmental Protection Agency. The language has been updated.

(c)(1), page 2, line 1: Should “less” be changed to “lesser”? Response: The language has been updated.

(c)(3): What is “aesthetic quality”? Does this have a special meaning? Response: The term “aesthetic” follows the webster’s definition (e.g., “pleasing in appearance”), it does not have a special meaning.

(f)(3): Is there a standard or specific set of factors that the Director considers when making these case-by-case determinations? If so, can this be incorporated into your rule? Response: The Clean Water Act (33 USC 1311, 33 USC 1312, and 40 CFR 122.44) requires that the permitting authority determine the need and stringency of water quality-based effluent limits based on a site-specific analysis for each discharge. Because each determination is based on site-specific factors, not generally applicable factors, we cannot add a specific set of factors to the rule.

Noted. I think the additional context would be helpful. For clarity, consider adding to the end of this sentence, “... shall be determined on a case-by-case basis by the Director using a site-specific analysis for each discharge.” If you have a rule that elaborates on or governs these site-specific analyses, you could also include a reference here.

(g), lines 12-14: As re-written, the wording is a little bit awkward. Couldn’t this be consolidated for clarity? For example, consider: “If the 7Q10 flow and the 30Q2 flow of the receiving streams are both estimated to be zero, then domestic wastewater

Christopher S. Miller
Commission Counsel

Date submitted to agency: April 14, 2026

discharges of oxygen consuming waste shall be permitted only if they meet the following: ...” Please revise as necessary. Response: The language has been revised as suggested.

(g)(2): Are “non-erosive velocities” defined or set in your rules? Does the regulated public know what constitutes a “non-erosive velocity”? Response: The term is defined in 15A NCAC 02H .1002. A definition has been added to paragraph (a) of this Rule referring to that definition.

(g)(5) and (g)(6): Is there a standard or specific set of factors that the Director considers when making these discretionary determinations? If so, can this be incorporated into your rule? Response: The Clean Water Act (33 USC 1311, 33 USC 1312, and 40 CFR 122.44) requires that the permitting authority determine the need and stringency of water quality-based effluent limits based on a site-specific analysis for each discharge. Because each determination is based on site-specific factors, not generally applicable factors, we cannot add a specific set of factors to the rule.

See follow-up comment above regarding (f)(3).

(g)(7)(C): Add “and” at the end of this. Response: The language has been revised as suggested.

(g)(9)(B), line 5: Change “state of NC” to “State”. Response: The language has been revised as suggested.

And delete “of NC”, as previously noted.

History Note, Authority: Two citations are missing dashes. Please correct to “143-214.1” and “143-215.3(a)(1)”. Response: The language has been revised as suggested.

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: Environmental Management Commission

RULE CITATION: 15A NCAC 02H .0107

DEADLINE FOR RECEIPT: April 21, 2026

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:

(b): You reference application forms here, which are set forth in other agency rules. Please confirm whether all of the required contents of such forms are set forth in your rules. If not, you should consider amending Rule .0105(a) to include this information.
Response: Thank you for this comment, we will review and confirm that all of the required contents of such forms are set forth in our rules during the rule readoption process.

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

Christopher S. Miller
Commission Counsel

Date submitted to agency: April 14, 2026

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

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02Q .0114 (Adoption)

DEADLINE FOR RECEIPT: April 21, 2026

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:

Line 4: Insert "air quality" before "permit".

Response: The rule has been revised by inserting "an air quality" before "permit".

Line 5: What does "consistent with G.S. 143-213" mean here? That is a definitions statute. Which words are you reading as being consistent with G.S. 143-213? Are you referring to the statute's pending definition of "administratively complete"?

Response: The phrase "consistent with G.S. 143-213" was used in consultation with RRC counsel in the Permit Timelines and Definitions rulemaking that also resulted from S.L. 2023-134 changes. The language is meant to align with the definition of "administratively complete" at such time as the statute and associated rules become effective. In the Permit Timelines and Definitions rulemaking that was approved by the RRC last year, similar language was used in Rule 02Q .0103 after receiving a comment from the EPA during the comment period. The EPA noted that it cannot approve a cross-reference to a statute into a State Implementation Plan (SIP), as it would inadvertently allow a SIP to be changed outside of the public participation process (which conflicts with the Clean Air Act and federal implementing regulations). The agency developed this language to acknowledge that the requirements of the definition come from statute, while also complying with EPA SIP requirements.

Line 6: What does "equipment" mean? What type(s) of equipment? This seems to be vague/unclear.

Response: The term "equipment" is retained for consistency with the statutory language in G.S.143-215.108A(b1). The term "equipment" is broad in nature and encompasses the broad range of industries and variable nature of sources and their construction that the EMC is charged with regulating and permitting under the General Statutes and the Clean Air Act. The term is used throughout the statute, air quality rules and EPA rules and retains its commonly understood meaning.

(1), line 8: Insert "to" before "15A NCAC 02D .0530".

Response: The word "to" has been inserted as requested.

Christopher S. Miller
Commission Counsel

Date submitted to agency: April 14, 2026

(2): Please confirm that this citation is correct. I see no mention of “risk-based” standards in 15A NCAC 02D .1111.

Response: 15A NCAC 02D .1111 adopts 40 CFR Part 63. 40 CFR Part 63 is where the regulatory requirements associated with the residual risk standards pursuant to 42 U.S.C. § 7412(f) referenced in G.S. 143-215.108A(b1)(5)(ii) are incorporated into the federal regulations.

Lines 14-15: This seems to be redundant. You already state, “but not operation”, in line 5. Why is this necessary?

Response: The language of lines 14-15 is retained for consistency with the statute.

History Note, Effective Date: Please explain why the rule and its effective date must be adopted in this order and manner?

Response: Session Law 2023-134, section 12.11, as amended by Session law 2024-1, changes N.C.G.S. § 143-215.108A(b1)(5) to allow construction (though not operation) of new air contaminant sources, equipment, or the associated air cleaning or emissions control devices prior to issuance of an air quality permit. That change in statute affects North Carolina’s current State Implementation Plan (SIP). All states must have an EPA-approved SIP, and any amendments to the SIP must also be approved by the EPA. **In order to amend a SIP, the changes must go through a public process to receive comments. Because statutory changes and session laws do not go through a public process, rulemaking is generally how a SIP is changed.**

The adoption of this rule complies with the federal requirement to go through a public process and thus allows the EPA to consider whether the SIP amendment based on the rule complies with the Clean Air Act. If EPA determines the rule complies with the Clean Air Act, it will allow the SIP amendment, which in turn allows N.C.G.S. § 143.215.108A to change and the rules in this rulemaking package to become effective. The EMC provided greater detail on the SIP process as it applies to this rulemaking in a pre-review request to RRC Counsel in July of 2025. That letter and RRC Counsel’s response is attached here for convenience.

*S.L. 2024-1 requires DEQ to “prepare and submit to the United States Environmental Protection Agency for approval by that agency a proposed North Carolina State Implementation Plan amendment” based on the law’s changes to § 143-215.108A. Is this rule part of the State Implementation Plan? And if so, why does this permanent rule need to be adopted at this time when the statute requires **proposed** amendments be sent to the EPA? If this rule were to be approved by the RRC, what happens if the EPA then declines the language of the rule? And how long will EPA’s review take?*

Response: This rule will become part of the North Carolina SIP if it is approved by the EPA. In September 2024, the EPA declined the EMC’s request to review proposed rule changes while the rule was going through the formal rulemaking process. The EMC thus initiated permanent rulemaking to ensure the statutory changes set out in session law would comply with federal requirements for SIP amendments, including the public process requirements, and would allow EPA to review final rules for

Christopher S. Miller
Commission Counsel

Date submitted to agency: April 14, 2026

compliance with the Clean Air Act. If the EPA determines that the rule does not comply with the Clean Air Act, the rule would never become effective and never be included in the Code.

The EPA must make a completeness determination on the proposed SIP amendment within 6 months of receipt and must make a final determination on approval of the SIP amendment within 12 months of the completeness determination. 42 U.S.C. §7410(k).

Did the Commission consider implementing temporary rules in place of permanent rules until the contingency is met?

Response: No. Temporary rules are only appropriate when the EMC determines that adherence to the notice and hearing requirements of N.C.G.S. § 150B-21.2 would be contrary to the public interest and the immediate adoption of the rules is required based on one or more of a variety of statutory set factors. See N.C.G.S. § 150B-21.1(a). These rules do not meet the statutory criteria for temporary rules under the APA.

Also there is an issue with statutory authority. Based on how S.L. 2024-1 was written, the session law's amendments, including changes to § 143-215.108A, are not yet in effect and only kick in upon EPA approval. Because of this, the rule you are putting in front of the RRC is in conflict with the current version of the statute because that version does not allow for construction of sources prior to receipt of an air permit. So how does the Commission have statutory authority to adopt this rule at this time? "Prepare and submit" does not seem to encompass permanent rulemaking.

Response: The EMC is not suggesting that the rules be placed in the Code prior to N.C.G.S. § 143-215.108A being amended. Session Law 2024-1, Section 4.11(g), provides that the amendments to N.C.G.S. § 143-215.108A become effective on the first day of the month that is 60 days after the DEQ Secretary certifies EPA approval of the rule. Consistent with that directive, the agency was required to prepare and submit a SIP revision, namely this rule. EPA, however, reviews only final rules that have completed the State's rulemaking process, including public notice and comment. The contingent effective date was therefore necessary to bridge the interval between completion of the State rulemaking process and EPA's subsequent SIP review. The General Assembly may prescribe a more specific effective date, including a contingent effective date, as it has done here and has done before. See, e.g., N.C.G.S. § 150B-21.3, which provides for a contingent effective date upon receipt of 10 letters of objection.

History Note, line 19: Please remove the word "Adoption".

Response: "Adoption" has been stricken.

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

Christopher S. Miller
Commission Counsel

Date submitted to agency: April 14, 2026

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

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02Q .0501

DEADLINE FOR RECEIPT: April 21, 2026

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:

(a): Is this paragraph necessary? This does not seem to meet the definition of a Rule as provided in G.S. 150B-2(8a).

Response: Paragraph (a) is a statement of general applicability implementing an enactment of Congress (Title V of the Clean Air Act) and a regulation adopted by a federal agency (40 CFR Part 70). It is thus a rule under the APA. N.C.G.S. § 150B-2(8a) (“Rule.--Any agency regulation, standard, or statement of general applicability that implements or interprets an enactment of the General Assembly or Congress or a regulation adopted by a federal agency[.]”).

I'm okay with this given that you're tying the rules back to the fed statute and reg. However, I would not be surprised if you get a necessity question on this at Tuesday's meeting since you use the language, "The purpose of this Section ...".

(b), lines 9-10: Avoid the use of parentheses. Use parentheses only for words, phrases, clauses, or sentences by way of example. Instead, consider adding this information to the exceptions that you list at the beginning of the paragraph.

Response: Parentheses have been removed.

(b)(1): Same comment as above regarding parentheses.

Response: Parentheses have been removed.

(c)(1): Please see comment above regarding (b)(1).

Response: Parentheses have been removed.

(c)(2): Unless you believe it is needed, please consider removing "(except for 15A NCAC 02Q .0504)" entirely. This is quite confusing given that (c)(2) applies to persons with permits pursuant 02Q .0504. Wouldn't they have to follow that rule in order to have that type of permit?

Response: 15A NCAC 02Q .0504 provides a procedural, two-step option, not a substantive requirement, for obtaining a Title V permit. There is also a one-step

Christopher S. Miller
Commission Counsel

Date submitted to agency: April 14, 2026

process for obtaining a Title V permit set out in 15A NCAC 02Q .0501. The EMC is checking to see if the “except for 15A NCAC 02Q .0504” language is necessary for consistency with the Clean Air Act and associated regulations. For the time being, the language has been retained.

Thanks. I still think the wording is a bit awkward. Could “(except for 15A NCAC 02Q .0504)” on line 25 be replaced by adding the word “separate” before “permit” on line 24? Or could line 25 read as, “... that is not another permit issued under 15A NCAC 02Q .0504”? If you think that the current language you have is necessary and clear to the regulated public, then I’m okay with leaving it if you remove the parenthesis.

(e), line 29: Consider removing “timely”. This does not seem to be needed given what the rest of the sentence states.

Response: The term “timely” has a specific meaning in the context of Title V permitting. “Timely” is defined in 15A NCAC 02Q .0503.

(i), line 3: “Title IV” of what?

Response: “Title IV” was meant to reference the Acid Deposition Control provisions of Title IV of the Clean Air Act Amendments (CAA) of 1990. The reference “of the Clean Air Act as set forth in 40 CFR Part 72” has been added for clarity.

(i), line 4: For clarity, I would change “pursuant to” to “set forth in”.

Response: The language has been revised to “set forth in”.

History Note, Effective Date: Please see my questions and comments on this for Rule 15A NCAC 02Q .0114.

Response: Please see responses to questions above.

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

Christopher S. Miller
Commission Counsel

Date submitted to agency: April 14, 2026

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

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02Q .0507

DEADLINE FOR RECEIPT: April 21, 2026

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:

(e), line 3: Which "requirements" are you referring to? This is rather vague/unclear.

Response: This could be any rule (state or federal), statute, SIP, other permit term/condition, Clean Air Act requirement, Risk Management Plan, NAAQS, visibility requirement, or other applicable requirement that the facility triggers in between the time that the application is submitted and when the final permit is issued. The term "applicable requirements" is defined in 15A NCAC 02Q .0103.

Noted. If the term "applicable requirements" is already defined and is relevant here, then consider adding the word "applicable".

(g), line 8: Add a legal cite after "the federal Clean Air Act".

Response: Added "as set forth in 42 U.S.C. 7412(i)(5)."

History Note, Effective Date: Please see my questions and comments on this for Rule 15A NCAC 02Q .0114.

Response: Please see responses to questions above.

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

Christopher S. Miller
Commission Counsel

Date submitted to agency: April 14, 2026

Burgos, Alexander N

Subject: FW: [External] RE: EMC Responses to Final Rules for April 2026 RRC Meeting
Attachments: 15A NCAC 02Q .0114 Pre-Review Request to RRC Counsel_FINAL.pdf; RE: [External] EMC Request for Pre-Review of Rule

From: Young, Elizabeth <esyoun@NCDOJ.GOV>
Sent: Wednesday, April 22, 2026 2:40 PM
To: Miller, Christopher S <christopher.miller@oah.nc.gov>
Cc: Everett, Jennifer <jennifer.everett@deq.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Quinlan, Katherine L <katherine.quinlan@deq.nc.gov>; Higgins, Karen <karen.higgins@deq.nc.gov>
Subject: [External] RE: EMC Responses to Final Rules for April 2026 RRC Meeting

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Mr. Miller,

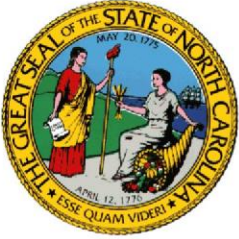
It struck me today that in the EMC's response to your technical change requests, I referenced a pre-review done by RRC Counsel for rule 02Q .0114 but failed to include the request and RRC response. Those items are attached here. My apologies for their late delivery. Please let me know if you have any questions.

Best,
Elly



Elly S. Young (she/her)
Special Deputy Attorney General
Environmental Division
Commissions, Coastal and Administrative Section
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ENVIRONMENTAL MANAGEMENT COMMISSION

NORTH CAROLINA DEPARTMENT OF ENVIRONMENTAL QUALITY

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

Re: Explanation of the Need for a Pre-Review regarding 15A NCAC 02Q .0114

Counsel to Rules Review Commission,

North Carolina Session Law 2023-134, section 12.11, as amended by Session Law 2024-1, revises General Statute § 143-215.108A(b1)(5) to allow construction (though not operation) of new air contaminant sources, equipment, or the associated air cleaning or emissions control devices prior to issuance of an air quality permit. The change in statute goes into effect on the first day of a month that is 60 days after the Environmental Protection Agency (EPA) approves an amendment to North Carolina's air quality State Implementation Plan (SIP) reflecting the change in statute. S.L. 2024-1, sec. 4.13(a).

States are required to adopt SIPs under the Clean Air Act. 42 U.S.C. § 7410. The EPA is responsible for approving SIPs to ensure they meet federal statutory requirements. 42 U.S.C. § 7410(k)(3). One of the statutory requirements states must meet is 40 C.F.R. § 51.160. Therein, states are required to adopt legally enforceable procedures enabling the State to determine “whether the construction or modification of a facility, building, structure or installation, or combination of these will result in [] [a] violation of applicable portions of the control strategy.” *Id.* Control strategy is further defined at 40 C.F.R. § 51.100(n) as “a combination of measures designed to achieve the aggregate reduction of emissions necessary for attainment and maintenance of national standards”

General Statute § 143-215.108A changes North Carolina's “legally enforceable procedure” for determining whether construction will result in violation of a control strategy. If a change in State law affects an approved SIP, the State is required to submit to EPA a proposed amendment to its SIP for EPA's approval. 40 C.F.R. § 51.104.

Pursuant to Section 110(a) of the Clean Air Act, the original SIP and any subsequent amendments must be publicly noticed and a public hearing held before the state can adopt the SIP or SIP amendments. 42 U.S.C. § 7410(a); *see also* 40 C.F.R. § 51.102 (outlining the federal requirements for public hearings). Because session laws and statutory text may be changed without any public notice or hearing, it is state

rules and regulations that make up the bulk of North Carolina's approved SIP as they are required to proceed through public notice and hearing as part of the administrative process.

In order to comply with federal requirements for SIP amendments and Session Law 2023-134, the EMC drafted a new rule, 15A NCAC 02Q .0114, as part of its regulatory program that comprises North Carolina's SIP. The text of that rule would be submitted to the EPA for approval as part of the SIP. However, the text of the rule closely mirrors that of the proposed statutory language in G.S. § 143-215.108A as amended by Session Law 2023-134. This alignment between proposed rule and statute is simply due to the clarity and precision with which the legislature drafted the law.

The EMC recognizes the potential for this rule to conflict with the NC APA, in particular G.S. § 150B-19(4), which prohibits an agency from repeating in rule the contents of a law. However, the EMC submits that the rule is consistent with the broader scheme of the APA. First, the rule is necessary to incorporate the legislative change set out in Session Law 2023-134 into North Carolina's SIP, and in turn ensure that North Carolina remains in compliance with the federal Clean Air Act. The rule thus complies with G.S. § 150B-19.1(a)(3). *See also*, N.C.G.S. § 150B-21.9(3) (requiring the RRC to consider whether a rule is necessary to implement an enactment of the General Assembly or of Congress). Second, the rule is a brief statement informing the public of a requirement imposed by law pursuant to G.S. § 150B-19(4), and thus, while it may be repetitive of statute, it should be permissible under the APA as necessary to fulfill the rule's purpose to make pre-permitting construction regulations accessible to the regulated public *while also* incorporating those requirements into the SIP.

Recognizing the potential discord this proposed rule presents with regard to adoption under the APA, the EMC is seeking the RRC's review prior to adoption of the rule and submission to the RRC. Please direct any questions or concerns to EMC Counsel, Elly Young, at esyoun@ncdoj.gov or 919-716-6944. The EMC thanks you for your time and consideration.

Respectfully submitted,



Elly S. Young
Counsel, Environmental Management Commission

Cc: oah.rules@oah.nc.gov

Encl: 15A NCAC 02Q .0114 Draft Rule
Session Law 2023-134, Section 12.11
Session Law 2024-1, Section 4.13
42 U.S.C. § 7410
40 C.F.R. § 51.100
40 C.F.R. § 51.102
40 C.F.R. § 51.104
40 C.F.R. § 51.160

Burgos, Alexander N

From: Young, Elizabeth <esyoun@NCDOJ.GOV>
Sent: Tuesday, April 21, 2026 6:02 PM
To: Miller, Christopher S
Cc: Everett, Jennifer; Burgos, Alexander N; Quinlan, Katherine L; Higgins, Karen
Subject: [External] EMC Responses to Final Rules for April 2026 RRC Meeting
Attachments: 2026-04 EMC Responses to RRC Tech Change Requests.docx; 15A NCAC 02B .0206_04-21-26.docx; 15A NCAC 02Q .0114.docx; 15A NCAC 02Q .0501.docx; 15A NCAC 02Q .0507.docx

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Mr. Miller,

I'm counsel to the EMC and am providing the EMC's responses to your requests for technical changes on multiple EMC rules set for review on the April RRC agenda. Responses and revised rules are attached.

Please reach out with any issues or questions. I will also be present at the meeting next week should the Commission have any questions.

Best,
Elly



Elly S. Young (she/her)
Special Deputy Attorney General
Environmental Division
Commissions, Coastal and Administrative Section
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1 15A NCAC 02B .0206 is amended with changes as published in 40:06 NCR 561-565 and 40:08 NCR 726-732 as
2 follows:

3
4 **15A NCAC 02B .0206 FLOW DESIGN CRITERIA FOR EFFLUENT LIMITATIONS**

5 (a) For purposes of this Rule, the following definitions shall apply:

6 (1) “1Q10” means the minimum average flow for a period of one day that has an average recurrence of
7 once in ten years;

8 (2) “7Q10” means the minimum average flow for a period of seven consecutive days that has an average
9 recurrence of once in ten years;

10 (3) “30Q2” means the minimum average flow for a period of 30 consecutive days that has an average
11 recurrence of once in two years;

12 (4) “Mean annual flow” means the same as “annual mean flow” as defined in 40 CFR [125.83.] 125.83,
13 which is incorporated by reference including subsequent amendments and editions and available
14 free of charge at: [https://www.ecfr.gov/current/title-40/chapter-I/subchapter-D/part-125/subpart-](https://www.ecfr.gov/current/title-40/chapter-I/subchapter-D/part-125/subpart-I/section-125.83)
15 [I/section-125.83](https://www.ecfr.gov/current/title-40/chapter-I/subchapter-D/part-125/subpart-I/section-125.83).

16 (5) “Non-erosive velocity” means the same as defined in 15A NCAC 02H .1002 (26).

17 (6) The “Rational Method” estimates peak flow for a storm of interest as a function of a composite
18 runoff coefficient, rainfall intensity for the storm of interest, and drainage area.

19 ~~(a)~~(b) Water quality based effluent limitations shall be developed by the Director to allow appropriate frequency and
20 duration of deviations from water quality standards so that the designated uses of receiving streams and downstream
21 waters are protected. There are water quality standards for a number of categories of pollutants and to protect a range
22 of water uses. For this reason, the appropriate frequency and duration of deviations from water quality standards shall
23 not be the same for all pollutants. A flow design criterion shall be used in the development of water quality based
24 effluent limitations as a simplified means of estimating the acceptable frequency and duration of deviations. More
25 complex modeling techniques [that the Director has determined on a case by case basis will protect the designated
26 uses of the receiving streams and downstream waters] may be used to set effluent limitations based on frequency and
27 duration criteria published by the U.S. Environmental Protection Agency and incorporated by reference, including
28 subsequent amendments and editions. Frequency and duration criteria published by the U.S. Environmental Protection
29 Agency is available free of charge at: <http://water.epa.gov/scitech/swguidance/standards/criteria/current/index.cfm>.
30 Where the Director determines that the applicant selected model will not protect the designated uses of the receiving
31 streams and downstream waters, then the Director shall notify the applicant in writing the reasons why the selected
32 model is not suitable.

33 (c) ~~Effluent~~ Water quality based effluent limitations shall be developed using the following flow design criteria:

34 (1) ~~All standards except~~ Except for toxic substances and aestheticsaesthetics, all water quality standards
35 shall be protected using the 7Q10 flow.minimum average flow for a period of seven consecutive
36 days that has an average recurrence of once in ten years (7Q10 flow). Other governing flow
37 strategies, such as varying discharges with the receiving stream’s or downstream water’swaters

1 ability to assimilate wastes, may be designated by the ~~Commission or its designee~~ Director on a
2 case-by-case basis if the discharger or permit applicant provides evidence that establishes that the
3 alternative flow strategies will give equal or better protection for ~~the~~ of water quality standards
4 standards. "~~Better protection for the water quality standards~~" means that such that deviations from
5 the standard would be expected at the same or less ~~less~~ frequency than provided by using
6 the 7Q10 flow.

7 (2) Toxic substances shall be protected as follows:

8 (A) Toxic substance standards to protect aquatic life from chronic toxicity shall be protected
9 using the 7Q10 flow.

10 ~~(3)~~ (B) Toxic substance standards to protect aquatic life from acute toxicity shall be protected
11 using the 1Q10 flow.

12 ~~(4)~~ Toxic substance standards to protect human health shall be the following:

13 (A) ~~(C)~~ Toxic substance ~~The 7Q10 flow for~~ standards to protect human health through the
14 consumption of water, fish, and shellfish from ~~noncarcinogens;~~ noncarcinogens shall be
15 protected using the 7Q10 flow; and

16 (B) ~~(D)~~ The mean annual flow Toxic substance standards to protect human health ~~from carcinogens~~
17 through the consumption of water, fish, and shellfish from carcinogens shall be protected
18 using the mean annual flow, unless site specific fish contamination concerns necessitate
19 the use of an alternative design ~~flow;~~ flow.

20 ~~(5)~~ (3) Aesthetic quality shall be protected using the 30Q2 flow, ~~minimum average flow for a period of 30~~
21 consecutive days that has an average recurrence of once in two years (30Q2 flow).

22 ~~More complex modeling techniques may also be used to set effluent limitations directly based on frequency and~~
23 ~~duration criteria published by the U.S. Environmental Protection Agency, available free of charge at~~
24 ~~<http://water.epa.gov/scitech/swguidance/standards/criteria/current/index.cfm> and incorporated by reference,~~
25 ~~including subsequent amendments and editions, and the Commission or its designee has determined, on a case-by-~~
26 ~~case basis, that the techniques will protect the designated uses of receiving waters.~~

27 ~~(b)~~ (d) If the stream flow is regulated, a minimum daily low flow may be used as a substitute for the 7Q10 flow, except
28 in cases where there are acute toxicity concerns for aquatic life. ~~In the cases~~ For streams where there are acute toxicity
29 concerns, an alternative low flow, such as the instantaneous minimum release, shall be ~~approved~~ used if the Director
30 determines, on a case-by-case basis, that the designated uses of receiving streams and downstream waters are
31 protected.

32 ~~(e)~~ (e) Flow design criteria shall be used to develop water quality based effluent limitations and in the design of
33 wastewater treatment facilities. Deviations from a specific water quality standard resulting from discharges that are
34 demonstrated to be in compliance with water quality based effluent limitations for that water quality standard shall
35 not be a violation pursuant to G.S. 143-215.6 ~~143-215.6A~~ when the actual stream flow is less than the design flow.

36 ~~(d)~~ (f) If the 7Q10 flow of the receiving stream is estimated to be zero, ~~zero and the 30Q2 flow of the receiving stream~~
37 is estimated to be greater than zero, then water quality based effluent limitations shall be assigned as follows:

1 (1) ~~If the 30Q2 flow is estimated to be greater than zero, effluent limitations for new~~New or expanded
2 ~~(additional)~~ discharges of oxygen consuming waste shall be set at BOD₅ = 5 mg/l, NH₃-N = 2 mg/l
3 and DO = 6 mg/l, unless it is determined by the Director through modeling or other analysis that
4 these limitations will not protect water quality standards. ~~Requirements for existing discharges shall~~
5 ~~be determined on a case by case basis by the Director.~~ More stringent limits shall be applied if
6 violations of water quality standards are predicted to occur for a new or expanded discharge with
7 the limits set pursuant to this Rule or if existing limits are determined to be inadequate to protect
8 water quality standards.

9 ~~(2) If the 30Q2 and 7Q10 flows are both estimated to be zero, no new or expanded discharge of oxygen~~
10 ~~consuming waste shall be allowed. Requirements for existing discharges to streams where the 30Q2~~
11 ~~and 7Q10 flows are both estimated to be zero shall be determined on a case by case basis.~~

12 ~~(3)~~(2) Other water quality standards shall be protected by requiring the discharge to meet the water quality
13 standards set forth in this Subchapter, unless the Director determines that alternative limitations
14 protect the designated uses of receiving streams and downstream waters. ~~classified water uses.~~

15 (3) Requirements for existing discharges shall be determined on a case-by-case basis by the Director.

16 (g) If the 7Q10 flow and the 30Q2 flow of the receiving streams are both estimated to be zero, then [the following
17 shall apply to new or expanded] domestic wastewater discharges of oxygen consuming [waste:waste. Domestic
18 wastewater discharges of oxygen consuming] waste shall [not] be permitted only if all of the following are met: [that
19 do not meet the following:]

20 (1) The proposed permitted flow for the wastewater discharge shall be lesser of:

21 (A) No more than one-tenth of the flow generated by the one-year, 24-hour storm event based
22 on the drainage area of the receiving stream at the discharge location and calculated using
23 the Rational Method. The Rational Method shall be used to calculate the peak runoff for
24 the one-year, 24-hour precipitation event in cubic feet per second. The peak runoff shall
25 then be divided by 10 and multiplied by 646,272 to convert the result to gallons per day of
26 allowable discharge at the point studied; or

27 (B) No more than two million gallons per day.

28 (2) All wastewater discharges shall be directed to a system that utilizes low-energy methodologies prior
29 to discharging to receiving streams at non-erosive velocities, such as:

30 (A) An infiltration system, which may include engineered materials to achieve higher rates of
31 infiltration. Engineered materials shall have an ASTM gradation of fine to coarse grain
32 sand and shall be angular to maintain structural integrity of the slope;

33 (B) Constructed free-surface wetland with a hydraulic residence time of at least 14 days; or

34 (C) Other technologies that meet the standard of practice for NC Licensed Professional
35 Engineers for such devices that provide a physical buffer or hydraulic residence time [of at
36 least 14 days] sufficient to discharge at non-erosive velocities.

- 1 (3) ~~[Wastewater discharges]~~ If the wastewater discharge to the receiving stream ~~[shall not exceed]~~
2 exceeds one cubic foot per second based on the average daily flow of the ~~[discharge.]~~ discharge,
3 then more than one outfall to the receiving stream shall be utilized for the wastewater discharge.
4 The discharge at each outfall shall not exceed one cubic foot per second and the ~~[Wastewater~~
5 ~~discharges from multiple]~~ outfalls shall be at least 50 linear feet apart along the receiving streams.
6 Cumulative discharge to the receiving stream shall not exceed the lesser of the requirements in
7 Subparagraph (g)(1) of this Rule.
- 8 (4) No wastewater discharges shall be allowed to Class SA, SB, SC, WS-I, WS-II, WS-III, WS-IV, WS-
9 V, ORW or HQW waters.
- 10 (5) For wastewater discharges to NSW waters, the Director may require additional modeling by the
11 applicant. Additional allocation of flow shall be at the discretion of the Director.
- 12 (6) In addition to any other effluent limits for any other parameters to ensure the permit does not violate
13 any EPA-approved NC water quality standards, the following effluent limits shall apply:
- 14 (A) Biological oxygen demand (BOD5) shall not exceed 5.0 mg/l monthly average;
15 (B) NH3, 0.5 mg/l monthly average, 1.0 mg/l daily maximum;
16 (C) Total nitrogen shall not exceed 4.0 mg/l monthly average;
17 (D) Total phosphorus, 1.0 mg/l monthly average, 2.0 mg/l daily maximum;
18 (E) Fecal coliforms, 14 colonies/100ml or less;
19 (F) Dissolved oxygen, 7.0 mg/l or greater;
20 (G) Total suspended solids, 5.0 mg/l monthly average, 8mg/l daily maximum; and
21 (H) Nitrate, 1.0 mg/l monthly average, 2.0 mg/l daily maximum.
- 22 The Director may impose different effluent limits than those set forth in Parts ~~[(A)]~~ (g)(6)(A)
23 through (H) ~~[in Subparagraph (g)(6)]~~ of this Rule to ensure that the permit does not violate any
24 EPA-approved NC water quality standards.
- 25 (7) The applicant shall demonstrate:
- 26 (A) The proposed discharge meets the requirements in Subparagraphs (g)(1), (2), (3), and (4)
27 of this Rule;
- 28 (B) The proposed discharge is a domestic wastewater discharge as defined in Rule .0202 of
29 this ~~[Subchapter:]~~ Section;
- 30 (C) When the receiving stream has naturally occurring low dissolved oxygen levels, the
31 proposed discharge complies with G.S. 143-215.1(c7); and
- 32 (D) When the receiving stream does not have naturally occurring low dissolved oxygen levels,
33 the proposed discharge does not reduce the dissolved oxygen levels of the receiving stream
34 more than 0.1 mg/l below the approved modeled in-stream dissolved oxygen level for the
35 receiving stream at total permitted capacity for all discharges to such receiving stream. The
36 applicant shall use a model utilized elsewhere in USEPA Region 4, such as the Streeter-

1 Phelps model used in the State of Alabama, and the selected model shall be approved by
2 the Director as suitable for the particular discharge and receiving stream.

3 (8) If an applicant requests less stringent effluent limits than those set forth in Subparagraph (g)(6) of
4 this Rule, then the applicant shall conduct more complex modeling. The applicant shall use a model
5 accepted elsewhere in USEPA Region 4 that is approved by the Director as suitable for the particular
6 discharge and receiving stream. The modeling ~~[must]~~ shall demonstrate the requirement in Part
7 ~~(g)(7)(B)~~ (g)(7)(C) or ~~(g)(7)(C)~~ (g)(7)(D) of this Rule, whichever is applicable, is met, and all
8 EPA-approved NC water quality standards are protected.

9 (9) Applicants shall provide either:

10 (A) Mapping data from USGS; or

11 (B) Mapping data prepared by an engineer of record licensed in the ~~[state]~~ State of NC utilizing
12 either USGS mapping data or other maps approved for use by the Director.

13 (10) Where the Director determines that the applicant selected model under Subparagraphs (g)(5) or
14 (g)(8) of this Rule or Part (g)(7)(D) of this Rule is not suitable for the particular discharge or
15 receiving stream and downstream waters, then the Director shall notify the applicant in writing the
16 reasons why the selected model is not suitable.

17 ~~[(h) If the 7Q10 flow and the 30Q2 flow of the receiving stream are both estimated to be zero, then new or expanded~~
18 ~~discharges of oxygen-consuming waste that do not meet the criteria in Paragraph (g) of this Rule shall not be allowed.~~

19 ~~(i) If the 7Q10 flow and the 30Q2 flow of the receiving stream are both estimated to be zero, then the requirements~~
20 ~~for existing discharges shall be determined on a case-by-case basis by the Director.]~~

21 ~~(e)(f)(h)~~ Receiving water flow statistics shall be estimated through consultation with the U.S. Geological Survey.
22 Estimates for any given location may be based on actual flow data, modeling analyses, or other methods determined
23 to be appropriate by the ~~Commission or its designee.~~ Director.

24
25 *History Note:* Authority G.S. ~~143-214.1; 143-214.1; 143-215.1(c7); 143-215.3(a)(1); 143-215.3(a)(1); SL 2024-44~~
26 ~~s. 5.1; SL 2025-94 s. 23;~~

27 *Eff. February 1, 1976;*

28 *Amended Eff. January 1, 2015; February 1, 1993; October 1, 1989; August 1, 1985; January 1,*
29 *1985;*

30 *Readopted Eff. November 1, 2019;*

31 *Amended Eff. May 1, 2026.*

1 15A NCAC 02Q .0501 is amended as published in 40:08 NCR 732 and 40:12 NCR 1008 as follows:

2
3 **SECTION .0500 - TITLE V PROCEDURES**
4

5 **15A NCAC 02Q .0501 PURPOSE OF SECTION AND REQUIREMENT FOR A PERMIT**

6 (a) The purpose of this Section is to establish an air quality permitting program as required pursuant to Title V of the
7 Clean Air Act and 40 CFR Part 70.

8 (b) With the exception in Paragraph (c) of this ~~Rule, Rule and the provisions of 15A NCAC 02Q .0114,~~ the owner or
9 operator of an existing facility, new facility, or modification of an existing ~~facility (except~~ facility, except for minor
10 modifications pursuant to 15A NCAC 02Q ~~.0515),.0515,~~ including significant modifications that would not
11 contravene or conflict with a condition in the existing permit, shall not begin construction without first obtaining:

- 12 (1) a construction and operation permit following the procedures set forth in this Section
13 ~~(except~~ Section, except for 15A NCAC 02Q ~~.0504),.0504,~~ or
14 (2) a construction and operation permit following the procedures set forth in 15A NCAC 02Q .0504
15 and filing a complete application within 12 months after commencing operation to modify the
16 construction and operation permit to meet the requirements of this Section.

17 (c) With the exception provided in the provisions of 15A NCAC 02Q .0114, ~~if~~ If the owner or operator proposes to
18 make a significant modification pursuant to 15A NCAC 02Q .0516 that would contravene or conflict with a condition
19 in the existing permit, the owner or operator shall not begin construction or make the modification until the owner or
20 operator has obtained:

- 21 (1) a construction and operation permit following the procedures set forth in this Section ~~(except~~ except
22 for 15A NCAC 02Q ~~.0504),.0504;~~ or
23 (2) a construction and operation permit following the procedures set forth in 15A NCAC 02Q .0504
24 and, before beginning operation, files an application and obtains a permit modifying the construction
25 and operation permit to meet the requirements of this Section (except for 15A NCAC 02Q .0504).

26 (d) All facilities subject to this Section shall have a permit to operate that assures compliance with 40 CFR Part 70
27 and all applicable federal and State requirements.

28 (e) Except as allowed pursuant to 15A NCAC 02Q .0515(f) (minor modifications), no facility subject to the
29 requirements of this Section may operate after the time that it is required to submit a timely and complete application
30 pursuant to this Section except in compliance with a permit issued pursuant to this Section. This Paragraph does not
31 apply to ~~to~~ permit renewals pursuant to 15A NCAC 02Q .0513.

32 (f) If the conditions of 15A NCAC 02Q .0512(b) (application shield) are met, the facility's failure to have a permit
33 pursuant to this Section shall not be a violation of operating without a permit.

34 (g) If the owner or operator of a facility subject to the requirements of this Section submits an application for a revision
35 to his permit before receiving the initial permit pursuant to this Section, the application for the revision shall be
36 processed pursuant to 15A NCAC 02Q .0300.

1 (h) The owner or operator of a facility or source subject to the requirements of this Section may also be subject to the
2 toxic air pollutant procedures set forth in 15A NCAC 2Q .0700.

3 (i) The owner or operator of an affected unit subject to the acid rain program requirements of Title IV of the Clean
4 Air Act as set forth in 40 CFR Part 72 is also subject to the procedures ~~pursuant to~~ set forth in 15A NCAC 02Q .0400.

5 (j) The owner or operator of a facility subject to the requirements of this Section shall pay permit fees in accordance
6 with the requirements of 15A NCAC 02Q .0200.

7
8 *History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108; 143-215.108A;*
9 *Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule*
10 *becomes effective, whichever is sooner;*
11 *Eff. July 1, 1994;*
12 *Amended Eff. July 1, 1998; July 1, 1996;*
13 *Readopted Eff. April 1, ~~2018~~, 2018;*
14 *Amended Eff. (Pending On the first day of a month that is 60 days after the Secretary of the*
15 *Department of Environmental Quality certifies to the Revisor of Statutes that the U.S. Environmental*
16 *Protection Agency has approved the amended rule into the North Carolina State Implementation*
17 *Plan pursuant to S.L. 2023-134, Section 12.11, as amended by S.L. 2024-1, Section 4.13.)*

1 15A NCAC 02Q .0114 is adopted with changes as published in 40:08 NCR 732 and 40:12 NCR 1008 as follows:

2
3 **15A NCAC 02Q .0114 ACTIVITIES ALLOWED PRIOR TO PERMIT ISSUANCE**

4 Upon determination that an application for an air quality permit or permit modification contains all information
5 required by statute, regulation, and application form, consistent with G.S. 143-213, the construction, but not operation,
6 of a new air contaminant source, equipment, or associated air cleaning or emission control devices may commence
7 prior to permit issuance if the emissions source is not subject to:

- 8 (1) permit limits set pursuant to programs for prevention of significant deterioration pursuant to 15A
9 NCAC 02D .0530 and for the attainment of air quality standards in nonattainment areas pursuant to
10 15A NCAC 02D .0531;
11 (2) a residual risk-based hazardous air pollutant standard pursuant to 15A NCAC 02D .1111; or
12 (3) a case-by-case maximum achievable control technology (MACT) permit requirement issued by the
13 Division pursuant to 15A NCAC 02D .1109 and Rule .0526 of this Subchapter.

14 The undertaking of pre-permitting activities pursuant to this Rule shall not entitle the applicant to operate any air
15 contaminant source, equipment, or associated air cleaning or emissions control devices prior to permit issuance.

16
17
18 *History Note: Authority G.S. 143-212; 143-213; 143-215.3(a)(1); 143-215.108A;*
19 *~~Adoption-Eff.~~ (Pending On the first day of a month that is 60 days after the Secretary of the*
20 *Department of Environmental Quality certifies to the Revisor of Statutes that the U.S. Environmental*
21 *Protection Agency has approved the amended rule into the North Carolina State Implementation*
22 *Plan pursuant to S.L. 2023-134, Section 12.11, as amended by S.L 2024-1, Section 4.13.)*

1 15A NCAC 02Q .0507 is amended with changes as published in 40:08 NCR 732 and 40:12 NCR 1009 as follows:

2
3 **15A NCAC 02Q .0507 APPLICATION**

4 (a) Except for:

- 5 (1) minor permit modifications covered pursuant to 15A NCAC 02Q .0515;
- 6 (2) significant modifications covered pursuant to 15A NCAC 02Q .0516(c); or
- 7 (3) renewals submitted pursuant to 15A NCAC 02Q .0513;

8 the owner or operator of a new or existing source shall have 12 months after the facility or source becomes subject to
9 the Title V operating permit program pursuant to 15A NCAC 02Q .0500 to file a complete application for a permit or
10 permit revision. However, except as provided in 15A NCAC 02Q .0114, the owner or operator of a source shall not
11 begin construction or operation of a source until he or she has obtained a construction and operation permit pursuant
12 to 15A NCAC 02Q .0501(b) or (c) and 15A NCAC 02Q .0504.

13 (b) An application shall include the information described in 40 CFR 70.3(d) and 70.5(c), including a list of
14 insignificant activities because of size or production rate but not including insignificant activities because of category.
15 An application shall be certified by a responsible official for truth, accuracy, and completeness. In an application
16 submitted pursuant to this Rule, the applicant may attach copies of applications submitted pursuant to 15A NCAC
17 02Q .0400 or 15A NCAC 02D .0530 or .0531 if the information in those applications contains information required
18 in this Section and is current, accurate, and complete.

19 (c) Application for a permit, permit revision, or permit renewal shall be made in accordance with 15A NCAC 02Q
20 .0104 on forms of the Division and shall include plans and specifications with complete data and information as
21 required by this Rule. If the information provided on these forms does not describe the source or its air pollution
22 abatement equipment to the extent necessary to evaluate the application, the Director shall request that the applicant
23 provide other information necessary to evaluate the source and its air pollution abatement equipment.

24 (d) Along with filing a complete application, the applicant shall also file the following:

- 25 (1) for a new facility or an expansion of existing facility, a consistency determination in accordance
26 with G.S. 143-215.108(f) that:
 - 27 (A) bears the date of receipt entered by the clerk of the local government; or
 - 28 (B) consists of a letter from the local government indicating that zoning or subdivision
29 ordinances are met by the facility;
- 30 (2) for a new facility or an expansion of an existing facility in an area without zoning, an affidavit and
31 proof of publication of a legal notice as required pursuant to 15A NCAC 02Q .0113; and
- 32 (3) if required by the Director, information showing that:
 - 33 (A) the applicant is financially qualified to carry out the permitted activities; or
 - 34 (B) the applicant has substantially complied with the air quality and emissions standards
35 applicable to any activity in which the applicant has previously been engaged and has been
36 in substantial compliance with federal and State environmental laws and rules.

1 (e) An applicant who fails to submit relevant facts or submits incorrect information in a permit application shall, upon
2 becoming aware of the failure or incorrect submittal, submit supplementary facts or corrected information to resolve
3 the deficiency. In addition, an applicant shall provide additional information to address requirements to which the
4 source becomes subject after the date the applicant filed a complete application but prior to release of a draft permit.

5 (f) The submittal of a complete permit application shall not affect the requirement that a facility have a permit pursuant
6 to 15A NCAC 02D .0530, .0531, or .0532 or pursuant to 15A NCAC 02Q .0400.

7 (g) The Director shall give priority to permit applications containing early reduction demonstrations pursuant to
8 Section 112(i)(5) of the federal Clean Air Act. Act as set forth in 42 U.S.C. 7412(i)(5). The Director shall take final
9 action on these permit applications after receipt of the complete permit application.

10 (h) Except as specified in 15A NCAC 02Q .0203(i), a non-refundable permit application processing fee, defined in
11 15A NCAC 02Q .0200, shall accompany the application. The permit application shall be deemed incomplete until the
12 permit application processing fee is received.

13 (i) The applicant shall retain during the permit term one complete copy of the application package and the information
14 submitted in support of the application package.

15
16 *History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108; 143-215.108A;*
17 *Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule*
18 *becomes effective, whichever is sooner;*
19 *Eff. July 1, 1994;*
20 *Amended Eff. July 1, 1997; July 1, 1996; February 1, 1995;*
21 *Temporary Amendment Eff. December 1, 1999;*
22 *Amended Eff. September 1, 2015; April 1, 2004; July 1, 2000;*
23 *Readopted Eff. April 1, 2018;*
24 *Amended Eff. September 1, 2023; ~~September 1, 2022~~; 2022;*
25 *Amended Eff. (Pending On the first day of a month that is 60 days after the Secretary of the*
26 *Department of Environmental Quality certifies to the Revisor of Statutes that the U.S. Environmental*
27 *Protection Agency has approved the amended rule into the North Carolina State Implementation*
28 *Plan pursuant to S.L. 2023-134, Section 12.11, as amended by S.L. 2024-1, Section 4.13.)*

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

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

Questions contained herein suggest that the rule as written is unclear or there is some ambiguity. If this document includes questions and you do not understand the question, please contact the reviewing attorney to discuss. Failure to respond may result in a staff opinion recommending objection.

Staff may suggest the agency "consider" an idea or language in this document. This is in no way a formal request that the agency adopt the idea or language but rather is offered merely for the agency's consideration which the agency may find preferable and clarifying.

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

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

Note the following general instructions:

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

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

Christopher S. Miller
Commission Counsel

Date submitted to agency: April 14, 2026

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

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02B .0206

DEADLINE FOR RECEIPT: April 21, 2026

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:

(a)(4): Please confirm whether 40 CFR 125.83 is incorporated by reference elsewhere in your rules, in compliance with § 150B-21.6. Response: The language has been updated to comply with § 150B-21.6.

(b), line 15: “[S]hall be developed” by whom? Who does this statement bind? Response: Water quality based effluent limitations shall be developed by DEQ per delegation from the U.S. Environmental Protection Agency. The language has been updated.

(c)(1), page 2, line 1: Should “less” be changed to “lesser”? Response: The language has been updated.

(c)(3): What is “aesthetic quality”? Does this have a special meaning? Response: The term “aesthetic” follows the webster’s definition (e.g., “pleasing in appearance”), it does not have a special meaning.

(f)(3): Is there a standard or specific set of factors that the Director considers when making these case-by-case determinations? If so, can this be incorporated into your rule? Response: The Clean Water Act (33 USC 1311, 33 USC 1312, and 40 CFR 122.44) requires that the permitting authority determine the need and stringency of water quality-based effluent limits based on a site-specific analysis for each discharge. Because each determination is based on site-specific factors, not generally applicable factors, we cannot add a specific set of factors to the rule.

(g), lines 12-14: As re-written, the wording is a little bit awkward. Couldn’t this be consolidated for clarity? For example, consider: “If the 7Q10 flow and the 30Q2 flow of the receiving streams are both estimated to be zero, then domestic wastewater discharges of oxygen consuming waste shall be permitted only if they meet the following: ...” Please revise as necessary. Response: The language has been revised as suggested.

Christopher S. Miller
Commission Counsel

Date submitted to agency: April 14, 2026

(g)(2): Are “non-erosive velocities” defined or set in your rules? Does the regulated public know what constitutes a “non-erosive velocity”? Response: The term is defined in 15A NCAC 02H .1002. A definition has been added to paragraph (a) of this Rule referring to that definition.

(g)(5) and (g)(6): Is there a standard or specific set of factors that the Director considers when making these discretionary determinations? If so, can this be incorporated into your rule? Response: The Clean Water Act (33 USC 1311, 33 USC 1312, and 40 CFR 122.44) requires that the permitting authority determine the need and stringency of water quality-based effluent limits based on a site-specific analysis for each discharge. Because each determination is based on site-specific factors, not generally applicable factors, we cannot add a specific set of factors to the rule.

(g)(7)(C): Add “and” at the end of this. Response: The language has been revised as suggested.

(g)(9)(B), line 5: Change “state of NC” to “State”. Response: The language has been revised as suggested.

History Note, Authority: Two citations are missing dashes. Please correct to “143-214.1” and “143-215.3(a)(1)”. Response: The language has been revised as suggested.

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

Christopher S. Miller
Commission Counsel

Date submitted to agency: April 14, 2026

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

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02H .0107

DEADLINE FOR RECEIPT: April 21, 2026

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:

(b): You reference application forms here, which are set forth in other agency rules. Please confirm whether all of the required contents of such forms are set forth in your rules. If not, you should consider amending Rule .0105(a) to include this information.
Response: Thank you for this comment, we will review and confirm that all of the required contents of such forms are set forth in our rules during the rule readoption process.

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

Christopher S. Miller
Commission Counsel

Date submitted to agency: April 14, 2026

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

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02Q .0114 (Adoption)

DEADLINE FOR RECEIPT: April 21, 2026

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:

Line 4: Insert "air quality" before "permit".

Response: The rule has been revised by inserting "an air quality" before "permit".

Line 5: What does "consistent with G.S. 143-213" mean here? That is a definitions statute. Which words are you reading as being consistent with G.S. 143-213? Are you referring to the statute's pending definition of "administratively complete"?

Response: The phrase "consistent with G.S. 143-213" was used in consultation with RRC counsel in the Permit Timelines and Definitions rulemaking that also resulted from S.L. 2023-134 changes. The language is meant to align with the definition of "administratively complete" at such time as the statute and associated rules become effective. In the Permit Timelines and Definitions rulemaking that was approved by the RRC last year, similar language was used in Rule 02Q .0103 after receiving a comment from the EPA during the comment period. The EPA noted that it cannot approve a cross-reference to a statute into a State Implementation Plan (SIP), as it would inadvertently allow a SIP to be changed outside of the public participation process (which conflicts with the Clean Air Act and federal implementing regulations). The agency developed this language to acknowledge that the requirements of the definition come from statute, while also complying with EPA SIP requirements.

Line 6: What does "equipment" mean? What type(s) of equipment? This seems to be vague/unclear.

Response: The term "equipment" is retained for consistency with the statutory language in G.S.143-215.108A(b1). The term "equipment" is broad in nature and encompasses the broad range of industries and variable nature of sources and their construction that the EMC is charged with regulating and permitting under the General Statutes and the Clean Air Act. The term is used throughout the statute, air quality rules and EPA rules and retains its commonly understood meaning.

(1), line 8: Insert "to" before "15A NCAC 02D .0530".

Response: The word "to" has been inserted as requested.

Christopher S. Miller
Commission Counsel

Date submitted to agency: April 14, 2026

(2): Please confirm that this citation is correct. I see no mention of “risk-based” standards in 15A NCAC 02D .1111.

Response: 15A NCAC 02D .1111 adopts 40 CFR Part 63. 40 CFR Part 63 is where the regulatory requirements associated with the residual risk standards pursuant to 42 U.S.C. § 7412(f) referenced in G.S. 143-215.108A(b1)(5)(ii) are incorporated into the federal regulations.

Lines 14-15: This seems to be redundant. You already state, “but not operation”, in line 5. Why is this necessary?

Response: The language of lines 14-15 is retained for consistency with the statute.

History Note, Effective Date: Please explain why the rule and its effective date must be adopted in this order and manner?

Response: Session Law 2023-134, section 12.11, as amended by Session law 2024-1, changes N.C.G.S. § 143-215.108A(b1)(5) to allow construction (though not operation) of new air contaminant sources, equipment, or the associated air cleaning or emissions control devices prior to issuance of an air quality permit. That change in statute affects North Carolina’s current State Implementation Plan (SIP). All states must have an EPA-approved SIP, and any amendments to the SIP must also be approved by the EPA. In order to amend a SIP, the changes must go through a public process to receive comments. Because statutory changes and session laws do not go through a public process, rulemaking is generally how a SIP is changed.

The adoption of this rule complies with the federal requirement to go through a public process and thus allows the EPA to consider whether the SIP amendment based on the rule complies with the Clean Air Act. If EPA determines the rule complies with the Clean Air Act, it will allow the SIP amendment, which in turn allows N.C.G.S. § 143.215.108A to change and the rules in this rulemaking package to become effective. The EMC provided greater detail on the SIP process as it applies to this rulemaking in a pre-review request to RRC Counsel in July of 2025. That letter and RRC Counsel’s response is attached here for convenience.

*S.L. 2024-1 requires DEQ to “prepare and submit to the United States Environmental Protection Agency for approval by that agency a proposed North Carolina State Implementation Plan amendment” based on the law’s changes to § 143-215.108A. Is this rule part of the State Implementation Plan? And if so, why does this permanent rule need to be adopted at this time when the statute requires **proposed** amendments be sent to the EPA? If this rule were to be approved by the RRC, what happens if the EPA then declines the language of the rule? And how long will EPA’s review take?*

Response: This rule will become part of the North Carolina SIP if it is approved by the EPA. In September 2024, the EPA declined the EMC’s request to review proposed rule changes while the rule was going through the formal rulemaking process. The EMC thus initiated permanent rulemaking to ensure the statutory changes set out in session law would comply with federal requirements for SIP amendments, including the public process requirements, and would allow EPA to review final rules for compliance with the Clean Air Act. If the EPA determines that the rule does not

Christopher S. Miller
Commission Counsel

Date submitted to agency: April 14, 2026

comply with the Clean Air Act, the rule would never become effective and never be included in the Code.

The EPA must make a completeness determination on the proposed SIP amendment within 6 months of receipt and must make a final determination on approval of the SIP amendment within 12 months of the completeness determination. 42 U.S.C. §7410(k).

Did the Commission consider implementing temporary rules in place of permanent rules until the contingency is met?

Response: No. Temporary rules are only appropriate when the EMC determines that adherence to the notice and hearing requirements of N.C.G.S. § 150B-21.2 would be contrary to the public interest and the immediate adoption of the rules is required based on one or more of a variety of statutory set factors. See N.C.G.S. § 150B-21.1(a). These rules do not meet the statutory criteria for temporary rules under the APA.

Also there is an issue with statutory authority. Based on how S.L. 2024-1 was written, the session law's amendments, including changes to § 143-215.108A, are not yet in effect and only kick in upon EPA approval. Because of this, the rule you are putting in front of the RRC is in conflict with the current version of the statute because that version does not allow for construction of sources prior to receipt of an air permit. So how does the Commission have statutory authority to adopt this rule at this time? "Prepare and submit" does not seem to encompass permanent rulemaking.

Response: The EMC is not suggesting that the rules be placed in the Code prior to N.C.G.S. § 143-215.108A being amended. Session Law 2024-1, Section 4.11(g), provides that the amendments to N.C.G.S. § 143-215.108A become effective on the first day of the month that is 60 days after the DEQ Secretary certifies EPA approval of the rule. Consistent with that directive, the agency was required to prepare and submit a SIP revision, namely this rule. EPA, however, reviews only final rules that have completed the State's rulemaking process, including public notice and comment. The contingent effective date was therefore necessary to bridge the interval between completion of the State rulemaking process and EPA's subsequent SIP review. The General Assembly may prescribe a more specific effective date, including a contingent effective date, as it has done here and has done before. See, e.g., N.C.G.S. § 150B-21.3, which provides for a contingent effective date upon receipt of 10 letters of objection.

History Note, line 19: Please remove the word "Adoption".

Response: "Adoption" has been stricken.

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

Christopher S. Miller
Commission Counsel

Date submitted to agency: April 14, 2026

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

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02Q .0501

DEADLINE FOR RECEIPT: April 21, 2026

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:

(a): Is this paragraph necessary? This does not seem to meet the definition of a Rule as provided in G.S. 150B-2(8a).

Response: Paragraph (a) is a statement of general applicability implementing an enactment of Congress (Title V of the Clean Air Act) and a regulation adopted by a federal agency (40 CFR Part 70). It is thus a rule under the APA. N.C.G.S. § 150B-2(8a) (“Rule.--Any agency regulation, standard, or statement of general applicability that implements or interprets an enactment of the General Assembly or Congress or a regulation adopted by a federal agency[.]”).

(b), lines 9-10: Avoid the use of parentheses. Use parentheses only for words, phrases, clauses, or sentences by way of example. Instead, consider adding this information to the exceptions that you list at the beginning of the paragraph.

Response: Parentheses have been removed.

(b)(1): Same comment as above regarding parentheses.

Response: Parentheses have been removed.

(c)(1): Please see comment above regarding (b)(1).

Response: Parentheses have been removed.

(c)(2): Unless you believe it is needed, please consider removing “(except for 15A NCAC 02Q .0504)” entirely. This is quite confusing given that (c)(2) applies to persons with permits pursuant 02Q .0504. Wouldn't they have to follow that rule in order to have that type of permit?

Response: 15A NCAC 02Q .0504 provides a procedural, two-step option, not a substantive requirement, for obtaining a Title V permit. There is also a one-step process for obtaining a Title V permit set out in 15A NCAC 02Q .0501. The EMC is checking to see if the “except for 15A NCAC 02Q .0504” language is necessary for consistency with the Clean Air Act and associated regulations. For the time being, the language has been retained.

Christopher S. Miller
Commission Counsel

Date submitted to agency: April 14, 2026

(e), line 29: Consider removing “timely”. This does not seem to be needed given what the rest of the sentence states.

Response: The term “timely” has a specific meaning in the context of Title V permitting. “Timely” is defined in 15A NCAC 02Q .0503.

(i), line 3: “Title IV” of what?

Response: “Title IV” was meant to reference the Acid Deposition Control provisions of Title IV of the Clean Air Act Amendments (CAA) of 1990. The reference “of the Clean Air Act as set forth in 40 CFR Part 72” has been added for clarity.

(i), line 4: For clarity, I would change “pursuant to” to “set forth in”.

Response: The language has been revised to “set forth in”.

History Note, Effective Date: Please see my questions and comments on this for Rule 15A NCAC 02Q .0114.

Response: Please see responses to questions above.

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

Christopher S. Miller
Commission Counsel

Date submitted to agency: April 14, 2026

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

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02Q .0507

DEADLINE FOR RECEIPT: April 21, 2026

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:

(e), line 3: Which "requirements" are you referring to? This is rather vague/unclear.

Response: This could be any rule (state or federal), statute, SIP, other permit term/condition, Clean Air Act requirement, Risk Management Plan, NAAQS, visibility requirement, or other applicable requirement that the facility triggers in between the time that the application is submitted and when the final permit is issued. The term "applicable requirements" is defined in 15A NCAC 02Q .0103.

(g), line 8: Add a legal cite after "the federal Clean Air Act".

Response: Added "as set forth in 42 U.S.C. 7412(i)(5)."

History Note, Effective Date: Please see my questions and comments on this for Rule 15A NCAC 02Q .0114.

Response: Please see responses to questions above.

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

Christopher S. Miller
Commission Counsel

Date submitted to agency: April 14, 2026

Burgos, Alexander N

From: Everett, Jennifer
Sent: Tuesday, April 14, 2026 3:03 PM
To: Miller, Christopher S
Cc: Burgos, Alexander N; Quinlan, Katherine L; Higgins, Karen
Subject: RE: EMC: Final Rules for April 2026 RRC Meeting

Hello,

Received, thanks. Will be in touch.

Jennifer

Jennifer Everett
DEQ Rulemaking Coordinator
N.C. Depart. Of Environmental Quality
Office of General Counsel
1601 Mail Service Center
Raleigh, NC 27699-1601
Tele: (919)-707-8595
<https://www.deq.nc.gov/accessdeq/rules-regulations>

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From: Miller, Christopher S <christopher.miller@oah.nc.gov>
Sent: Tuesday, April 14, 2026 2:19 PM
To: Everett, Jennifer <jennifer.everett@deq.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Miller, Christopher S <christopher.miller@oah.nc.gov>; Quinlan, Katherine L <katherine.quinlan@deq.nc.gov>; Higgins, Karen <karen.higgins@deq.nc.gov>
Subject: EMC: Final Rules for April 2026 RRC Meeting

Hello,

I'm the staff attorney who reviewed the rules submitted by the Environmental Management Commission for the April 2026 RRC meeting. The RRC will formally review these rules at its meeting on Tuesday, April 28, 2026, at 10:00 a.m. The meeting will be a hybrid of in-person and WebEx attendance, and an invite should be sent to you as we get close to the meeting. If there are any other representatives from your agency who want to attend virtually, please let me know prior to the meeting, and we will get invites out to them as well.

Attached is my Request for Changes Pursuant to G.S. 150B-21.10. Please submit the responses and revised rules to me via email, no later than **5 p.m. on April 21, 2026.**

Let me know if you have any questions.

Best,
Chris

Chris Miller

Rules Review Commission Counsel
North Carolina Office of Administrative Hearings | Rules Division
1711 New Hope Church Road
Raleigh, NC 27609
(984) 236-1935

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