



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

May 20, 2022

Jonathan Avery, Assistant General Counsel  
Department of Natural and Cultural Resources  
**Sent via email only to: Jonathan.avery@ncdcr.gov**

Re: Objection to 07 NCAC 02H .0306

Dear Mr. Avery:

At its meeting on May 19, 2022, the Rules Review Commission objected to Rule 07 NCAC 02H. .0306 finding that the rule was not reasonably necessary reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of federal agency, pursuant to G.S. 150B-21.9(3).

Please respond to this objection in accordance with the provisions of G.S. 150B-21.12.

If you have any questions regarding the Commission's actions, please let me know.

Sincerely,

/s/ William W. Peaslee

William W. Peaslee  
Commission Counsel

**Donald Robert van der Vaart**, Director  
Chief Administrative Law Judge

**Fred G. Morrison, Jr.**  
Senior Administrative Law Judge

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

May 25, 2022

Environmental Management Commission  
Jennifer Everett, Rulemaking Coordinator  
217 West Jones Street  
Raleigh, North Carolina 27603  
**Sent via email: [Jennifer.Everett@ncdenr.gov](mailto:Jennifer.Everett@ncdenr.gov)**

Re: Objection to 15A NCAC 02B .0208, .0212, .0214, .0215, .0216, and .0218

Dear Ms. Everett,

At its meeting on May 19, 2022, the North Carolina Rules Review Commission voted to object to 15A NCAC 02B .0208, .0212, .0214, .0215, .0216, and .0218. The Commission determined that each proposed Rule, as amended, had not been adopted in accordance with Part 2 of Article 2A of the N.C. Administrative Procedure Act (“APA”). *See* N.C. Gen. Stat. § 150B-21.9(a)(4). This letter shall serve as the Commission’s statement of objection pursuant to N.C. Gen. Stat. § 150B-21.12(a).

The APA requires that, prior to publishing notice of the proposed text of a rule, the State agency must prepare a fiscal note that assesses the costs imposed by the rule to the greatest extent possible and state the amount of funds that would be expended pursuant to the rule. This allows both the public and regulated entities the opportunity to give informed comment, either to the agency during the rule adoption process, this Commission during the rule review process, or the legislature once the rule has been approved. *See* N.C. Gen. Stat. § 150B-21.2(e) and (f); 150B-21.3(b2).

Specifically, the Commission determined that the Environmental Management Commission (“EMC”) had not complied with the requirements of N.C. Gen. Stat. § 150B-21.4 when it proposed the inclusion of 1,4-dioxane in-stream target values in surface water standards set by 15A NCAC 02B .0208, .0212, .0214, .0215, .0216, and .0218. EMC achieved this by setting baseline target values for 1,4-dioxane through regulatory policy and permitting agreements instead of through the rule-making process required by law, then using these values as the baseline when submitting the addition of 1,4-dioxane target values to these rules for OSBM fiscal impact analysis. This resulted in the fiscal note concluding there would be no additional fiscal impact because there would be no

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change in in-stream target values. The fiscal note stated this even though adding 1,4-dioxane into EMC's regulatory rules would require treatment processes that are, in EMC's own words, "prohibitively expensive for local governments and the citizens served by public utilities," and yet EMC's fiscal note "did not attempt to monetize costs" because the baseline target values were already in place. This is not sufficient to satisfy the APA as costs must be quantified to the greatest extent possible and published with or before the publication of the notice of text of the proposed rule.

The Rules Review Commission is not taking the position that EMC is not allowed to add 1,4-dioxane target values into its rules. That is a policy decision it alone may make. However, it must do so in the manner prescribed by law. The Rules Review Commission is simply requiring of EMC, as it would require of any other rule-making body within the State, that it follow the good-governance requirements of the APA rule-making process and transparently assess and make known to regulated entities and the citizens of this State the fiscal impact of proposed rules and proposed rule amendments.

Please respond to this objection in accordance with the provisions of N.C. Gen. Stat. § 150B-21.12.

If you have any questions regarding the Commission's actions, please let me know.

Sincerely,



Lawrence R. Duke  
Commission Counsel

cc: Phillip T. Reynolds, Environmental Management Commission Counsel



STATE OF NORTH CAROLINA  
OFFICE OF ADMINISTRATIVE HEARINGS

May 20, 2022

Jennifer Everett  
Environmental Management Commission  
**Sent via email only to: Jennifer.Everett@ncdenr.gov**

Re: Objection to 15A NCAC 02H .1301, .1401, .1402, .1403, .1404, .1405

Dear Ms. Everett:

At its meeting on May 19, 2022, the Rules Review Commission objected to Rules 15A NCAC 02H .1301, .1401, .1402, .1403, .1404, .1405 in accordance with G.S. 150B-21.10.

Specifically, the Commission found the agency lacked statutory authority to adopt Rules 15A NCAC 02H .1301, .1401, .1402, .1403, .1404, .1405 as the agency was barred from doing so pursuant to G.S. 150B-19.3(a). Further, the Commission found the definition of the term “impact” in Rule 15A NCAC .02H .1401, and as applied to Rules .1402, .1403, .1404, and .1405 was unclear and ambiguous as it did not provide certainty as to what acts were subject to regulation. Finally, the Commission found that the post-publication change from “discharge” to “impact” in Rule 15A NCAC 02H .1401, and as applied to Rules .1402, .1403, .1404, and .1405 amounted to a substantial change pursuant to G.S. 150B-21.2(g)(3), in that it produced an effect that could not reasonably have been expected based on the proposed text of these Rules.

Please respond to this objection in accordance with the provisions of G.S. 150B-21.12.

If you have any questions regarding the Commission’s actions, please let me know.

Sincerely,

Brian Liebman  
Commission Counsel

Donald Robert van der Vaart, Director  
Chief Administrative Law Judge

Fred G. Morrison, Jr.  
Senior Administrative Law Judge

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

May 20, 2022

Jennifer Everett  
Marine Fisheries Commission  
**Sent via email only to: Jennifer.Everett@ncdenr.gov**

Re: Objection to 15A NCAC 03O .0114 and 15 NCAC 03O .0209

Dear Ms. Everett:

At its meeting on May 19, 2022, the Rules Review Commission objected to Rules 15A NCAC 03O .0114 and 15A NCAC 03O .0209 in accordance with G.S. 150B-21.10.

With respect to Rule 15A NCAC 03O .0114, the Commission found that the agency lacked statutory authority to criminalize evasion of service of written notice of the suspension or revocation of licenses issued under Article 14A, Article 14B, and Article 25A of Chapter 113 of the North Carolina General Statutes.

With respect to Rule 15A NCAC 03O .0209, the Commission found that the agency lacked statutory authority to condition the transfer of a shellfish lease or franchise on approval by the Division of Marine Fisheries, to require the use of a form provided and approved by the Division, or to limit the size of a transfer.

Please respond to this objection in accordance with the provisions of G.S. 150B-21.12.

If you have any questions regarding the Commission's actions, please let me know.

Sincerely,

Brian Liebman  
Commission Counsel

**Donald Robert van der Vaart**, Director  
Chief Administrative Law Judge

**Fred G. Morrison, Jr.**  
Senior Administrative Law Judge

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**STATE OF NORTH CAROLINA  
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May 25, 2022

Carrie A. Ruhlman, Senior Policy Analyst  
North Carolina Wildlife Resources Commission  
Office of Conservation Policy & Analysis  
1751 Varsity Drive  
Raleigh, NC 27606  
**Sent via email only to: [Carrie.Ruhlman@ncwildlife.org](mailto:Carrie.Ruhlman@ncwildlife.org)**

Re: Extension of the Period of Review for 15A NCAC 10D .0103, .0209, .0226, .0229, .0230, .0239, .0240, .0243, .0260, and .0276

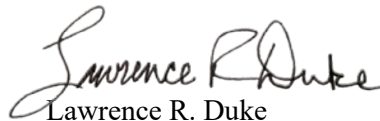
Dear Ms. Ruhlman:

At its May meeting last week, the Rules Review Commission extended the period of review for the above-captioned rules in accordance with G.S. 150B-21.10. They did so in response to a request from the agency to extend the period of review through the end of the 2022 Legislative Session of the General Assembly, as one or more of these rules await legislative review.

Pursuant to G.S. 150B-21.13, when the Commission extends the period of review, it is required to approve or object to rules or call a public hearing on the same within 70 days, which should be enough time for the agency and this Commission to know whether legislative review will be undertaken by the legislature.

If you have any questions regarding the Commission's actions, please let me know.

Sincerely,

  
Lawrence R. Duke  
Commission Counsel

CC: Ashley Pekrul, Regulatory Analyst, NC Wildlife Resources Commission

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STATE OF NORTH CAROLINA  
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May 20, 2022

Eric C. Davis, Chairman  
State Board of Education  
**Sent via email only: [eric.davis@dpi.nc.gov](mailto:eric.davis@dpi.nc.gov)**

Re: Objection to Rule 16 NCAC 06E .0204.

Dear Mr. Davis:

At its meeting on May 19, 2022, the Rules Review Commission objected to the above-captioned temporary Rule in accordance with G.S. 150B-21.1(b).

The Rules Review Commission objected to 16 NCAC 06E .0204 for lack of statutory authority. Specifically, the Commission found that the State Board of Education lacked statutory authority to delegate the authority to waive student eligibility requirements to an administering organization.

Please respond to this letter in accordance with the provisions of G.S. 150B-21.1(b1) or (b2). If you have any questions regarding the Rule Review Commission's action, please let me know.

Sincerely,

Brian Liebman  
Commission Counsel

cc: Brandon Walker, Rulemaking Coordinator

**Donald Robert van der Vaart**, Director  
Chief Administrative Law Judge

**Fred G. Morrison, Jr.**  
Senior Administrative Law Judge

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