

## Burgos, Alexander N

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**From:** Liebman, Brian R  
**Sent:** Monday, August 15, 2022 6:42 PM  
**To:** Millis, Chris  
**Cc:** rrc.comments; Peter Daniel, Jr.; Burgos, Alexander N  
**Subject:** RE: [External] RRC Agenda Item 7: Environmental Management Commission - 15A NCAC 02H .1301, .1401, .1402, .1403, .1404, .1405

Mr. Millis,

Your request to speak has been received, and I will inform the Commission that you intend to speak.

Other than what has already been posted on our website, we have not received any further information from EMC. If and when we receive further information, it will also be posted on the website.

Regardless of the circumstances, the deadline for submitting written objections pursuant to 150B-21.3(b2) remains the same – “no later than 5:00 P.M. of the day following the day the Commission approves the rule[.]”

Thanks,  
Brian

Brian Liebman  
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brian.liebman@oah.nc.gov

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**From:** Millis, Chris <CMillis@nchba.org>  
**Sent:** Monday, August 15, 2022 3:49 PM  
**To:** Liebman, Brian R <brian.liebman@oah.nc.gov>  
**Cc:** rrc.comments <rrc.comments@oah.nc.gov>; Peter Daniel, Jr. <pdaniel@ncchamber.com>  
**Subject:** RE: [External] RRC Agenda Item 7: Environmental Management Commission - 15A NCAC 02H .1301, .1401, .1402, .1403, .1404, .1405

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Thank you.

Please note that any information that can be shared with the public concerning what the Rules Staff or RRC may be considering regarding Agenda Item 7 would be helpful as I am currently at a loss as to what our association and other members of the regulated community will be facing on Thursday. It is my understanding that Agenda Item 7 is a part of the meeting as a follow-up matter according to the normal procedure of the RRC waiting for the Agency to respond according to G.S. 150B-21.12, but the communication from the DOJ and their colleagues at the SELC listed under the recently added “Additional Public Comments in support following RRC objection” tab on the website, one could suggest

that there is a move afoot for the RRC to reconsider their previous objection to the 15A NCAC 02H .1301, .1401, .1402, .1403, .1404, .1405 rule package. <https://www.oah.nc.gov/media/13601/open>

Again, any direction that could be shared with the public by the Rules Staff or the RRC concerning potential action that could take place concerning Item 7 would be greatly appreciated.

In case there is a mechanism within G.S. 150B that allows the agency to petition the RRC to reconsider a rule package it previously rejected, please find this email as a request to speak at the meeting on Thursday regarding any action the RRC may take involving 15A NCAC 02H .1301, .1401, .1402, .1403, .1404, .1405.

P.S.: If there is a mechanism within G.S. 150B that allows the agency to petition the RRC to reconsider a rule package it previously rejected, would the regulated community be allowed to submit 10 written letters of objection according to the timeframe established in G.S.150B-21.3(b2) to invoke Legislative Review? Just concerned about when would be considered the point of rule "adoption" depending on the potential action taken by the RRC on Thursday. Thanks again!

Chris Millis  
Director of Regulatory Affairs  
North Carolina Home Builders Association  
5580 Centerview Drive, Suite 415  
Raleigh, NC 27606  
(919) 676-9090

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**From:** Liebman, Brian R <[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)>  
**Sent:** Thursday, August 11, 2022 4:49 PM  
**To:** Millis, Chris <[CMillis@nchba.org](mailto:CMillis@nchba.org)>  
**Cc:** Everett, Jennifer <[jennifer.everett@ncdenr.gov](mailto:jennifer.everett@ncdenr.gov)>; Peter Daniel, Jr. <[pdaniel@ncchamber.com](mailto:pdaniel@ncchamber.com)>; Burgos, Alexander N <[alexander.burgos@oah.nc.gov](mailto:alexander.burgos@oah.nc.gov)>  
**Subject:** RE: [External] RRC Agenda Item 7: Environmental Management Commission - 15A NCAC 02H .1301, .1401, .1402, .1403, .1404, .1405

Dear Mr. Millis,

I am in receipt of your email from earlier today, below. At this time, RRC has not received any additional information from EMC. If EMC provides additional information, it will be posted on the website.

Thank you,  
Brian

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**From:** Millis, Chris <[CMillis@nchba.org](mailto:CMillis@nchba.org)>  
**Sent:** Thursday, August 11, 2022 1:11 PM  
**To:** Liebman, Brian R <[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)>  
**Cc:** rrc.comments <[rrc.comments@oah.nc.gov](mailto:rrc.comments@oah.nc.gov)>; Everett, Jennifer <[jennifer.everett@ncdenr.gov](mailto:jennifer.everett@ncdenr.gov)>; Peter Daniel, Jr. <[pdaniel@ncchamber.com](mailto:pdaniel@ncchamber.com)>

**Subject:** [External] RRC Agenda Item 7: Environmental Management Commission - 15A NCAC 02H .1301, .1401, .1402, .1403, .1404, .1405

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Mr. Liebman, I hope you are doing very well. Please note that concerning the RRC August Agenda Item 7: Environmental Management Commission - 15A NCAC 02H .1301, .1401, .1402, .1403, .1404, .1405, at this time (8/11/22) we are only aware of the 7/23/22 response (posted 7/25/22) by Mr. Reynolds with the NCDOJ. <https://www.oah.nc.gov/media/13495/open> (pages 1 & 2 at the time of this communication).

It is our understanding, per Mr. Reynold's response to the RRC, that the EMC has chosen to "(2) Submit a written response to the Commission indicating that the agency has decided not to change the rule" [G.S. 150B-21.12(a)] but has added a phrase outside the statute of "*at this time*". We are interested in the interpretation of how this response complies with the time limit subsection established in G.S. 150B-21.12(b). In addition, it is our understanding that the EMC response to the RRC claims that "*the EMC will provide additional information for the RRC's consideration prior to its August meeting*".

Within our previous letters to the RRC (one example attached), and our verbal comments during the RRC meeting when the rules were considered, we argued that the rule package violated G.S. 150B-19.3. It is our understanding per the 5/20/22 objection letter from OAH sent to the EMC that the RRC found that the agency lacked statutory authority to adopt the rule package as the agency was barred from doing so pursuant to G.S. 150B-19.3(a). <https://www.oah.nc.gov/media/13303/open>

Please find that we are currently unable to provide constructive public comments by the 8/11/22 deadline as we have no current knowledge of the contents of the "*additional information*" that the EMC and Mr. Reynolds intend to provide the RRC prior to the August meeting.

Based on our current knowledge, and timeframe constraints to provide public comment, we ask that since G.S. 150B-19.3 was extensively argued before the RRC verbally and in writing this past spring, and since the RRC has ruled that the rule package (still not revised by the EMC) is barred from enactment due to G.S. 150B-19.3, that further consideration not be granted and the rule package be returned to the agency according to G.S.150B-21.12(d).

It is our understanding that if the roles were reversed, and the agency was successful in fully adopting a rule that we found objectionable, we are not aware of a mechanism that the regulated community could utilize to seek reconsideration of the same rule package by the Commission prior to enactment. Instead, we recognize that the regulated community would have to utilize Legislative Review or seek to amend the rules that we found objectionable after adoption by starting over at the beginning of the rulemaking process. As a result, we humbly ask that equity between the regulators and the regulated community be maintained concerning this rule package.

Thank you for your time and consideration.

Chris Millis  
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(919) 676-9090