

STATE OF NORTH CAROLINA
DEPARTMENT OF ENVIRONMENTAL QUALITY
DIVISION OF WASTE MANAGEMENT

REPORT OF PROCEEDINGS OF PUBLIC HEARING AND COMMENT PERIOD

TEMPORARY RULE AMENDMENTS IN 15A NCAC 2L SECTION .0400:
NONCOMMERCIAL UST RELEASES

JULY 31, 2017
RALEIGH, NORTH CAROLINA

ENVIRONMENTAL MANAGEMENT COMMISSION

CONTENTS

Summaries and Recommendations

- Background and Summary
- Public Comments and Responses Thereto
- Conclusion
- Hearing Officer's Recommendations

Report of Proceedings

- Introduction
- Designation of Hearing Officer Memo
- Public Notice
- Transcript from Public Hearing

Exhibits

- Comment Received via E-mail

SUMMARIES AND RECOMMENDATION

Background and Summary

A public hearing was held in Raleigh North Carolina on July 31, 2017, to hear public comments on proposed Temporary Rule Amendments in 15A NCAC 2L Section .0400 (.0404, .0405, .0406, .0408, and .0409), to define the Department's application of the requirements from SL 2015-241 until permanent rulemaking is completed. Ms. Carin Kromm of the UST Section acted as the hearing officer for this hearing.

Session Law 2015-241 (HB 97) was the FY15-16 State Budget Bill. Section 14.16A of the law describes the phase-out of the Noncommercial Leaking UST Fund for petroleum releases discovered after October 1, 2015. Section 14.16B eliminates the initial abatement requirements for noncommercial petroleum releases until the Department classifies the risk posed by the release. Cleanup will be required if there are emergency conditions and if the release is classified as high risk. No further action is required if the incident is classified as low risk. The law grants additional rule making authority to the Department to adopt rules to amend 15A NCAC 02L .0400. Session Law 2017-57 (SB 257) requires temporary rule making before October 1, 2017. Permanent rulemaking for 15A NCAC 02L .0400 is included in the scheduled 15A NCAC 02L Review/Reauthorization which commenced in 2016 and is expected to be complete in 2018-2019.

The temporary rule will, in essence

- Provide criteria for emergency conditions for further cleanup
- Provide procedures for classifying risk
- Provide procedures for closure

Public Comments and Responses Thereto

There was one comment during the public hearing and comments from one interested party received during the comment period.

Comment No. 1: Mr. Seth Parker of NC Realtors® commented in favor of the temporary rules. He expects that it will alleviate confusion regarding required actions when discovering a leaking residential heating oil UST during a property transaction.

Response No. 1: No change to the temporary rule is recommended.

Comment No. 2 (a-c): Mr. Al Quarles, of SM&E, Inc., requested responses to the following questions:

- a) .0404(c)(3) at line 36-Why is the phrase "soil-to-groundwater" contained in quotes when residential is not contained in quotes?
- b) .0404(c)(3) at line 36-What about the action levels?
- c) .0406(1)(e) at line 23-Why is there a reduction from 250 feet to 150 feet?

Response No. 2(a): The temporary rule is consistent with existing language used in the rest of .0400 existing rules. Punctuation changes will be taken under advisement during the permanent rule making period scheduled to begin in early 2018. No change to the rule are recommended.

Response No. 2(b): Except for .0417 (Establishing Cleanup Requirements for Sites Eligible to Continue Remediation under Rules Existing Before the Effective Date of 15A NCAC 02L .0115), the action levels are established for screening purposes that may initiate cleanup, or conversely, enable closure. The soil-to-groundwater and residential maximum soil contaminant concentrations are

established as cleanup goals for contaminated soil which is the intent of this portion of the temporary rule. No changes to the temporary rule are recommended.

Response 2(c): The Department evaluated existing data for the distances between the source areas and contaminated potable water supply wells at residential heating oil UST releases. The data indicated that the maximum distance between them was approximately 70-75 feet at sites across the state. To be conservative and proactively protect human health and the environment, the Department doubled the distance to 150 feet. The distance to a non-potable water supply well from a regulated commercial UST release remains 250 feet. No changes to the temporary rule are recommended.

Comment 3: Mr. Quarles suggested changes to the text of the rule:
.0406(3)(a) at line 14-reorganize wording in the line to read:
the risk posed does not fall within the high risk category for any underground storage tank, or intermediate risk category for a commercial underground storage tank; or

Response 3: The existing language is consistent with the format required for rulemaking and does not change the intent of the sentence.

Mr. Quarles comments questions are attached as an exhibit. Other *de minimis* changes suggested by Mr. Quarles were not apparent on the version submitted for public comment. The full response to each of Mr. Quarles' questions are provided in an email attached as an exhibit.

Conclusion

One of two comments received were in favor of the proposed temporary rules as written. The second comment consisted of three questions regarding punctuation, the lack of reference for the action levels and the reasoning behind the distance of 150 feet from the source area to a potable water supply well. The third recommendation to change the language was not necessary because it was consistent with the language format required for rulemaking and the rest of the document. Therefore, no changes to the temporary rule are recommended.

Hearing Officer's Recommendations

The Hearing Officer recommends that the proposed temporary rule presented in the hearing report be adopted by the Environmental Management Commission.

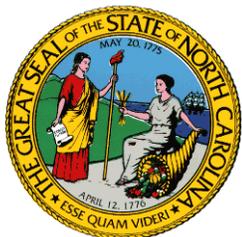
REPORT OF PROCEEDINGS

Introduction

The Department of Environmental Quality, Division of Waste Management, held a public hearing on July 31, 2017 at 1:00 p.m. in the Training Room #1210, Green Square Building located at 217 West Jones Street in Raleigh, North Carolina.

The hearing considered the proposed temporary rule amendments in 15A NCAC 2L .0404, .0405, .0406, .0408, and .0409. The proposed effective date for the temporary rule changes is September 29, 2017. A public notice announcing this hearing was posted to the DWM website on July 14, 2017 at least 16 days before the public hearing.

Designation of Hearing Officer Memo



ENVIRONMENTAL MANAGEMENT COMMISSION

NORTH CAROLINA DEPARTMENT OF ENVIRONMENTAL QUALITY

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Richard Whisnant

July 18, 2017

MEMORANDUM

To: Carin Kromm
Division of Waste Management/UST Section

From: John D. Solomon 
Chairman of Environmental Management Commission

Subject: Hearing Officer Appointment

A public hearing has been scheduled for Monday, July 31, 2017 at 1:00 p.m. in the Green Square Building Training Room #1210, 217 West Jones Street in Raleigh. The purpose of this hearing is to gather comments on proposed temporary rulemaking for 15A NCAC 02L .0400 regarding Noncommercial Underground Storage Tanks.

I am hereby appointing you to serve as hearing officer for this hearing. Please receive all relevant public comment and report your findings and recommendations to the Environmental Management Commission. Mr. Jeremy Poplawski will provide staff support for you.

If you have any questions, please feel free to contact Jeremy Poplawski at (919) 707-8151.

JDS/lct

Attachment

cc: Lois Thomas
Jeremy Poplawski
Hearing Record

Public Notice



**PROPOSED TEMPORARY RULE FOR
PUBLICATION ON THE OAH WEBSITE**

OFFICE USE ONLY

Published on the OAH
website:

CHECK APPROPRIATE BOX:

- Proposed Temporary Rule [G.S. 150B-21.1(a3)]
- Proposed Temporary Rule simultaneously adopted as an emergency rule [G.S. 150B-21.1A(a)]

1. Rule-Making Agency: Environmental Management Commission

2. Proposed Action -- Mark the appropriate box(es) and list rule citation(s) beside proposed action:

- ADOPTION:**
- AMENDMENT:** 15A NCAC 02L .0404, .0405, .0406, .0408, and .0409

REPEAL:

3. Public Hearing:

Date: 07/31/2017

Time: 1:00 P.M.

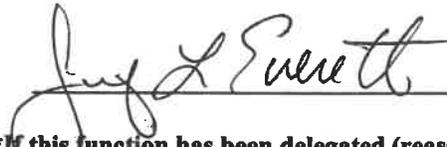
Location: Green Square Building - Training Room (#1210), 217 West Jones Street, Raleigh, NC 27603

4. Reason for agency adopting rule(s) under temporary action:

- A serious and unforeseen threat to the public health, safety or welfare.
- The effective date of a recent act of the General Assembly or of the U.S. Congress.
Cite: NC General Assembly - Session Law 2017-57
Effective date: July 1, 2017
- A recent change in federal or state budgetary policy.
Effective date of change:
- A recent federal regulation.
Cite:
Effective date:
- A recent court order.
Cite order:
- State Medical Facilities Plan.
- Other:

Explain: NC Session Law 2015-241 Section 14.16B requires the amendment of rules that directed the owner or operator of a noncommercial underground storage tank (UST) to immediately respond to any release by trying to recover all accessible contamination. The Session Law directs the Department of Environmental Quality (Department) to classify the risk posed by a noncommercial UST discharge before the UST owner or operator is required to perform any cleanup actions. NC Session Law 2017-57 Section 13.19.(a) requires the adoption of temporary rules to define the Department's application of the requirements from SL 2015-241 until such time as permanent rulemaking is completed (scheduled to coincide with the G.S. 150B-21.3A periodic rule review and readoption process currently underway for Title 15A NCAC 2L, per the Title 26 NCAC 05 .0211 calendar).

OFFICE OF ADMINISTRATIVE HEARINGS
2017 JUL 14 PM 3:16
FILED

5. Comments from the public shall be directed to: Name: Jared M. Edwards Address: NCDEQ/DWM/UST Section 1646 Mail Service Center Raleigh, NC 26799-1646 Phone (optional): 919-707-8153 Fax (optional): 919-715-1117 E-Mail (optional): jared.edwards@ncdenr.gov	
6. Comment Period Starts: July 14, 2017	Comment Period Ends: August 11, 2017
7. Rule-making Coordinator: Jennifer Everett Address: NCDEQ 1601 Mail Service Center Raleigh, NC 27699-1601 Phone: 919-707-8614 E-Mail: jennifer.everett@ncdenr.gov Agency contact, if any: Jeremy Poplawski DEQ-DWM-UST Section Phone: 919-707-8151 E-mail: jeremy.poplawski@ncdenr.gov	8. The Agency formally proposed the text of this rule(s) on Date: July 13, 2017
	9. Signature of Agency* Head or Rule-making Coordinator:  <hr/> *If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form. Typed Name: Jennifer Everett Title: DEQ Rulemaking Coordinator

Note from the Codifier: The OAH website includes notices and the text of proposed temporary rules as required by G.S. 150B-21.1(a1). Prior to the agency adopting the temporary rule, the agency must hold a public hearing no less than five days after the rule and notice have been published and must accept comments for at least 15 business days.
For questions, you may contact the Office of Administrative Hearings at 919.431.3000 or email oah.postmaster@oah.nc.gov.

TITLE 15A - DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Agency: *Environmental Management Commission*

Codifier of Rules received for publication the following notice and proposed temporary rule(s) on: *July 14, 2017*

Rule Citations: *15A NCAC 02L .0404-.0406 and .0408-.0409*

Public Hearing:

Date: *July 31, 2017*

Time: *1:00 p.m.*

Location: *Green Square Building – Training Room (#1210), 217 West Jones Street, Raleigh, NC 27603*

Reason: *The effective date of a recent act of the General Assembly or of the U.S. Congress. S.L. 2017-57, Effective Date: July 1, 2017. NC Session Law 2015-241 Section 14.16B requires the amendment of rules that directed the owner or operator of a noncommercial underground storage tank (UST) to immediately respond to any release by trying to recover all accessible contamination. The Session Law directs the Department of Environmental Quality (Department) to classify the risk posed by a noncommercial UST discharge before the UST owner or operator is required to perform any cleanup actions.*

NC Session Law 2017-57 Section 13.19.(a) requires the adoption of temporary rules to define the Department's application of the requirements from SL 2015-241 until such time as permanent rulemaking is completed (scheduled to coincide with the G.S. 150B-21.3A periodic rule review and readoption process currently underway for Title 15A NCAC 02L, per the Title 26 NCAC 05 .0211 calendar).

Comment Procedures: *Comments from the public shall be directed to: Jared M. Edwards, NCDEQ/DWM/UST Section, 1646 Mail Service Center, Raleigh, NC 27699-1646; phone (919) 707-8153; fax (919) 715-1117; email jared.edwards@ncdenr.gov. The comment period begins July 14, 2017 and ends August 11, 2017.*

CHAPTER 02 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 02L - GROUNDWATER CLASSIFICATION AND STANDARDS

SECTION .0400 - RISK-BASED ASSESSMENT AND CORRECTIVE ACTION FOR PETROLEUM UNDERGROUND STORAGE TANKS

15A NCAC 02L .0404 REQUIRED INITIAL ABATEMENT ACTIONS BY RESPONSIBLE PARTY

(a) A responsible party for a commercial underground storage tank shall:

- (1) take ~~immediate~~ action to prevent any further discharge or release of petroleum from the underground storage tank; identify and mitigate any fire, explosion or vapor hazard; remove any free product; and comply with the requirements of Rules .0601 through .0604 and .0701 through .0703 and .0705 of Subchapter ~~02N;02N~~, within 24 hours of discovery;
- (2) incorporate the requirements of 15A NCAC 02N .0704 into the submittal required under Item (3) of this Paragraph or the limited site assessment report required under 15A NCAC 02L .0405 of this Section, whichever is applicable. Such submittals shall constitute compliance with the reporting requirements of 15A NCAC 02N .0704(b); and
- (3) submit within 90 days of the discovery of the discharge or release a soil contamination report containing information sufficient to show that remaining unsaturated soil in the side walls and at the base of the excavation does not contain contaminant levels which exceed either the "soil-to-groundwater" or the residential maximum soil contaminant concentrations established by the Department pursuant to 15A NCAC 02L .0411 of this Section, whichever is lower. If such showing is made, the discharge or release shall be classified as low risk by the Department;

(b) A responsible party for a noncommercial underground storage tank shall:

- (1) take necessary actions to protect public health, safety, and welfare and the environment, including actions to prevent any further discharge or release of petroleum from the noncommercial underground storage tank; to identify and mitigate any fire, explosion, or vapor hazard; and to report the release within 24 hours of discovery, in compliance with G.S. 143-215.83(a), G.S. 143-215.84(a), G.S. 143-215.85(b), and G.S. 143-215.94E;
- (2) provide or otherwise make available any information required by the Department to determine the site risk.

(c) The Department shall notify the responsible party for a noncommercial underground storage tank that no cleanup, no further cleanup, or no further action will be required without requiring additional soil remediation pursuant to Rule .0408 of this Section, if the site is determined by the Department to be low risk. This classification shall be based on information provided to the Department that:

- (1) describes the source and type of the petroleum release, site-specific risk factors, and risk factors present in the surrounding area as defined in Rules .0406 and .0407 of this Section;
- (2) demonstrates that no remaining risk factors are present that are likely to be affected per G.S. 143-215.94V(b); or

- (3) documents that soils remaining onsite do not contain contaminant levels which exceed either the "soil-to-groundwater" or the residential maximum soil contaminant concentrations established by the Department pursuant to Rule .0411 of this Section, whichever is lower.

The Department shall reclassify the site as high risk upon receipt of new information related to site conditions indicating that the discharge or release from a noncommercial underground storage tank poses an unacceptable risk or a potentially unacceptable risk to human health or the environment, as described in Rule .0407 of this Section.

Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.94A; 143-215.94E; 143-215.94T; 143-215.94V; 143B-282; 1995 (Reg. Sess. 1996) c. 648, s. 1.

15A NCAC 02L .0405 REQUIREMENTS FOR LIMITED SITE ASSESSMENT

If the required showing for a commercial underground storage tank cannot be made or if the Department determines that a release from a noncommercial underground storage tank represents an unacceptable risk under 15A NCAC 02L .0404 of this Section, the responsible party shall submit within 120 days of the discovery of the discharge or release, or within such other greater time limit approved by the Department, a report containing information needed by the Department to classify the level of risk to human health and the environment posed by a discharge or release under 15A NCAC 02L .0406 of this Section. Such report shall include, at a minimum:

- (1) a location map, based on a USGS topographic map, showing the radius of 1500 feet from the source area of a confirmed release or discharge and depicting all water supply wells and, surface waters and designated wellhead protection areas as defined in 42 U.S.C. 300h-7(e) within the 1500-foot radius. For purposes of this Section, source area means point of release or discharge from the underground storage tank system;
- (2) a determination of whether the source area of the discharge or release is within a designated wellhead protection area as defined in 42 U.S.C. 300h-7(e);
- (3) if the discharge or release is in the Coastal Plain physiographic region as designated on a map entitled "Geology of North Carolina" published by the Department in 1985, a determination of whether the source area of the discharge or release is located in an area in which there is recharge to an unconfined or semi-confined deeper aquifer which is being used or may be used as a source of drinking water;
- (4) a determination of whether vapors from the discharge or release pose a threat of explosion due to the accumulation of vapors in a confined space or pose any other serious threat to public health, public safety or the environment;
- (5) scaled site map(s) showing the location of the following which are on or adjacent to the property where the source is located: site boundaries, roads, buildings, basements, floor and storm drains, subsurface utilities, septic tanks and leach fields, underground storage tank systems, monitoring wells, borings and the sampling points;
- (6) the results from a limited site assessment which shall include:
 - (a) the analytical results from soil samples collected during the construction of a monitoring well installed in the source area of each confirmed discharge or release from a noncommercial or commercial underground storage tank and either the analytical results of a groundwater sample collected from the well or, if free product is present in the well, the amount of free product in the well. The soil samples shall be collected every five feet in the unsaturated zone unless a water table is encountered at or greater than a depth of 25 feet from land surface in which case soil samples shall be collected every 10 feet in the unsaturated zone. The soil samples shall be collected from suspected worst-case locations exhibiting visible contamination or elevated levels of volatile organic compounds in the borehole;
 - (b) if any constituent in the groundwater sample from the source area monitoring well installed in accordance with Sub-item (a) of this Item, for a site meeting the high risk classification in 15A NCAC 02L .0406(1), exceeds the standards or interim standards established in 15A NCAC 02L .0202 by a factor of 10 and is a discharge or release from a commercial underground storage tank, the analytical results from a groundwater sample collected from each of three additional monitoring wells or, if free product is present in any of the wells, the amount of free product in such well. The three additional monitoring wells shall be installed as follows: as best as can be determined, one upgradient of the source of contamination and two downgradient of the source of contamination. The monitoring wells installed upgradient and downgradient of the source of contamination must be located such that groundwater flow direction can be determined; and
 - (c) potentiometric data from all required wells;
- (7) the availability of public water supplies and the identification of properties served by the public water supplies within 1500 feet of the source area of a confirmed discharge or release;
- (8) the land use, including zoning if applicable, within 1500 feet of the source area of a confirmed discharge or release;
- (9) a discussion of site specific conditions or possible actions which could result in lowering the risk classification assigned to the release. Such discussion shall be based on information known or required to be obtained under this Paragraph; and
- (10) names and current addresses of all owners and operators of the underground storage tank systems for which a discharge or release is confirmed, the owner(s) of the land upon which such systems are located, and all potentially affected real property owners. When considering a request from a responsible party for additional time to submit the report, the Division shall consider the extent to which the request for additional time is due to factors outside of the control of the responsible party, the previous history of the person submitting the report in complying with deadlines established under the Commission's rules, the technical complications associated with assessing the extent of contamination at the site or identifying potential receptors, and the necessity for immediate action to eliminate an imminent threat to public health or the environment.

15A NCAC 02L .0406 DISCHARGE OR RELEASE CLASSIFICATIONS

The Department shall classify the risk of each known discharge or release as high, intermediate or low risk unless the discharge or release has been classified under 15A NCAC 02L ~~.0404(3)~~ .0404(a)(3) or .0404(c) of this Section. For purposes of this Section:

- (1) "High risk" means that:
 - (a) a water supply well, including one used for non-drinking purposes, has been contaminated by the release or discharge;
 - (b) a water supply well used for drinking water is located within 1000 feet of the source area of a confirmed discharge or ~~release~~ release from a commercial underground storage tank or a noncommercial underground storage tank storing motor fuel as defined by G.S. 143-215.94A(2)(a) and G.S. 143-215.94A(7);
 - (c) a water supply well not used for drinking water is located within 250 feet of the source area of a confirmed discharge or ~~release~~ release from a commercial underground storage tank or a noncommercial underground storage tank storing motor fuel as defined by G.S. 143-215.94A(2)(a) and G.S. 143-215.94A(7);
 - (d) the groundwater within 500 feet of the source area of a confirmed discharge or release from a commercial underground storage tank or a noncommercial underground storage tank storing motor fuel as defined by G.S. 143-215.94A(2)(a) and G.S. 143-215.94A(7) has the potential for future use in that there is no source of water supply other than the groundwater;
 - ~~(e)~~ a water supply well, including one used for non-drinking purposes, is located within 150 feet of the source area of a confirmed discharge or release from a noncommercial underground storage tank storing heating oil for consumptive use on the premises;
 - ~~(f)~~ the vapors from the discharge or release pose a serious threat of explosion due to accumulation of the vapors in a confined space; or
 - ~~(g)~~ the discharge or release poses an imminent danger to public health, public safety, or the environment.
- (2) "Intermediate risk" means that:
 - (a) surface water is located within 500 feet of the source area of a confirmed discharge or release from a commercial underground storage tank and the maximum groundwater contaminant concentration exceeds the applicable surface water quality standards and criteria found in 15A NCAC 02B .0200 by a factor of 10;
 - (b) in the Coastal Plain physiographic region as designated on a map entitled "Geology of North Carolina" published by the Department in 1985, the source area of a confirmed discharge or release from a commercial underground storage tank is located in an area in which there is recharge to an unconfined or semi-confined deeper aquifer which the Department determines is being used or may be used as a source of drinking water;
 - (c) the source area of a confirmed discharge or release from a commercial underground storage tank is within a designated wellhead protection area, as defined in 42 U.S.C. 300h-7(e);
 - (d) the levels of groundwater contamination associated with a confirmed discharge or release from a commercial underground storage tank for any contaminant except ethylene dibromide, benzene and alkane and aromatic carbon fraction classes exceed 50 percent of the solubility of the contaminant at 25 degrees Celsius or 1,000 times the groundwater standard or interim standard established in 15A NCAC 02L .0202, whichever is lower; or
 - (e) the levels of groundwater contamination associated with a confirmed discharge or release from a commercial underground storage tank for ethylene dibromide and benzene exceed 1,000 times the federal drinking water standard set out in 40 CFR 141.
- (3) "Low risk" means that:
 - (a) the risk posed does not fall within the ~~high or intermediate risk categories~~ high risk category for any underground storage tank, or within the intermediate risk category for a commercial underground storage tank; or
 - (b) based on review of site-specific information, limited assessment or interim corrective actions, the Department determines that the discharge or release poses no significant risk to human health or the environment.

If the criteria for more than one risk category applies, the discharge or release shall be classified at the highest risk level identified in 15A NCAC 02L .0407 of this Section.

15A NCAC 02L .0408 ASSESSMENT AND REMEDIATION PROCEDURES

Assessment and remediation of soil contamination shall be addressed as follows:

- (1) At the time that the Department determines the risk posed by the discharge or release, the Department shall also determine, based on site-specific information, whether the site is "residential" or "industrial/commercial." For purposes of this Section, a site is presumed residential, but may be classified as industrial/commercial if the Department determines based on site-specific information that exposure to the soil contamination is limited in time due to the use of the site and does not involve exposure to children. For purposes of this Paragraph, "site" means both the property upon which the discharge or release has occurred and any property upon which soil has been affected by the discharge or release.

- (2) ~~The~~For any discharge or release from a commercial underground storage tank, or for a discharge or release from a noncommercial underground storage tank classified by the Department as high risk, the responsible party shall submit a report to the Department assessing the vertical and horizontal extent of soil contamination.
- (3) For a discharge or release from a commercial underground storage tank classified by the Department as low risk, the responsible party shall submit a report demonstrating that soil contamination has been remediated to either the residential or industrial/commercial maximum soil contaminant concentration established by the Department pursuant to 15A NCAC 02L .0411 of this Section, whichever is applicable.
- (4) For a discharge or release classified by the Department as high or intermediate risk, the responsible party shall submit a report demonstrating that soil contamination has been remediated to the lower of:
- (a) the residential or industrial/commercial maximum soil contaminant concentration, whichever is applicable, that has been established by the Department pursuant to 15A NCAC 02L .0411 of this Section; or
 - (b) the "soil-to-groundwater" maximum soil contaminant concentration that has been established by the Department pursuant to 15A NCAC 02L .0411 of this Section.

Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.94A; 143-215.94E; 143-215.94T; 143-215.94V; 143B-282; 1995 (Reg. Sess. 1996) c. 648, s. 1.

15A NCAC 02L .0409 NOTIFICATION REQUIREMENTS

(a) A responsible party who submits a corrective action plan which proposes natural attenuation or to cleanup groundwater contamination to a standard other than a standard or interim standard established in 15A NCAC 02L .0202, or to cleanup soil other than to the standard for residential use or soil-to-groundwater contaminant concentration established pursuant to this Section, whichever is lowest, shall give notice to: the local Health Director and the chief administrative officer of each political jurisdiction in which the contamination occurs; all property owners and occupants within or contiguous to the area containing the contamination; and all property owners and occupants within or contiguous to the area where the contamination is expected to migrate. Such notice shall describe the nature of the plan and the reasons supporting it. Notification shall be made by certified mail concurrent with the submittal of the corrective action plan. Approval of the corrective action plan by the Department shall be postponed for a period of 30 days following receipt of the request so that the Department may consider comments submitted. The responsible party shall, within a time frame determined by the Department to be sufficient, provide the Department with a copy of the notice and proof of receipt of each required notice, or of refusal by the addressee to accept delivery of a required notice. If notice by certified mail to occupants under this Paragraph is impractical, the responsible party may give notice by posting such notice prominently in a manner designed to give actual notice to the occupants. If notice is made to occupants by posting, the responsible party shall provide the Department with a copy of the posted notice and a description of the manner in which such posted notice was given.

(b) A responsible party who receives a notice pursuant to 15A NCAC 02L .0404(c) or .0407(d) of this Section for a discharge or release which has not been remediated to the groundwater standards or interim standards established in Rule .0202 of this Subchapter or to the lower of the residential or soil-to-groundwater contaminant concentrations established under 15A NCAC 02L .0411 of this Section, shall, within 30 days of the receipt of such notice, provide a copy of the notice to: the local Health Director and the chief administrative officer of each political jurisdiction in which the contamination occurs; all property owners and occupants within or contiguous to the area containing contamination; and all property owners and occupants within or contiguous to the area where the contamination is expected to migrate. Notification shall be made by certified mail. The responsible party shall, within a time frame determined by the Department, provide the Department with proof of receipt of the copy of the notice, or of refusal by the addressee to accept delivery of the copy of the notice. If notice by certified mail to occupants under this Paragraph is impractical, the responsible party may give notice by posting a copy of the notice prominently in a manner designed to give actual notice to the occupants. If notice is made to occupants by posting, the responsible party shall provide the Department with a description of the manner in which such posted notice was given.

Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.94A; 143-215.94E; 143-215.94T; 143-215.94V; 143B-282; 1995 (Reg. Sess. 1996) c. 648, s. 1.

Transcript from Public Hearing

Hearing Officer's Opening Statement
Raleigh, North Carolina
July 31, 2017

Carin Kromm: Hi, my name is Carin Kromm of the Winston-Salem Regional Office of the UST Section. I am the hearing officer for the proposed temporary rules for the 2L .0400 for noncommercial UST releases of petroleum. Session Law 2015-241 defunded the noncommercial trust fund and took back the initial abatement requirements. There was a lot of confusion regarding what needed to be done. Session Law 2017-57 required temporary rulemaking to be completed by October 1, 2017. We are here to hear your comments and get any feedback you might have. Do you want me to summarize the rule?

We used to require soil sampling and initial abatement of contaminated soil. Now, if you see contamination visually, you don't have to do anything until the Department assigns the risk for the incident. This change is supposed to help homeowners avoid costly cleanup but may muddy the waters when they sell the property. Further cleanup is required when your incident is high risk. High risk situations are a water supply well within 150 feet, free product on a surface water body or on the ground surface, product seeping through basement floors and walls. There is flowchart, Figure 5 in the STIRA Guidelines on our website which describes the process and risk assignment. A well within 150 feet of the source area is the most common high risk situation. We would require either moving the water supply well to a distance greater than 150 feet, connect to municipal water or perhaps install a well on the neighbor's property. Once the risk to the water supply well is mitigated, the Department can change the risk to low and close the site with land use restrictions, restricting the use of the soil and groundwater beneath your property. If you do not want a deed restriction, then you must cleanup soil and groundwater to below the unrestricted use standards. Even though there isn't any initial abatement, if there is release, you must report it within 24-hours to the regional office in which the incident occurred.

Are there any questions or comments?

Mr. Seth Palmer, regulatory affairs director for NC Realtors® prepared and read the following statement: My name is Seth Palmer, Regulatory Affairs Director of NC Realtors®. On behalf of more than 39,000 NC realtors that represent the entire NC real estate industry, I would like to thank you for the opportunity to speak on these important matters for our State property owners. These rules represent an important step forward to address the issues faced by property owners affected by USTs. Following closure of the noncommercial fund in 2015, hundreds of property transactions have been affected both by the lack of remediation funds as well as the ambiguity of the rules governing cleanup. While many of these transactions have been able to proceed, there have been many of which have failed, leading to numerous properties facing an uncertain future and properties that are unconveyable in many instances. NC Realtors® and its members appreciate the efforts of the Department staff in the development of these rules as well as continued discussions with members who face issues with tanks on properties they are engaged with. We encourage the Department to continue their outreach efforts to consumers regarding these rules and the effect that they may have on properties found to have a UST. We recommend that education outreach also be conducted with remediation and lending communities to ensure that consumers are being fully informed as to their rights in situations involving such tanks on their properties or properties that they have interest in. It is important to continue study and examination of a state-wide presence of these tanks so that future rulemaking efforts can reflect the actual needs of all citizens. NC Realtors® and its member look forward to working with Department staff and stakeholders in the development of permanent rules and corresponding educational materials. Thank you for your time and consideration.

Meeting adjourned at 1:30 p.m.

Comment Received via E-mail

Jared,

See attached. Some of the revisions (missing spaces) may be due to the pdf to Word conversion.

Al Quarles

Senior Geologist



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From: Ryals, Scott [<mailto:scott.ryals@ncdenr.gov>]

Sent: Friday, July 14, 2017 8:09 AM

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Subject: RE: Temporary Rule Amendments in 15A NCAC 2L Section .0400

Here is the corrected notice. Please disregard the previous.

Questions or comments shall be directed to Jared Edwards, Jeremy Poplawski, or Scott Bullock.

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Email correspondence to and from this address is subject to the North Carolina Public Records Law and may be disclosed to third parties.

1 15A NCAC 02L .0404 is proposed for amendment under temporary procedures as follows:

2
3 **15A NCAC 02L .0404 REQUIRED INITIAL ABATEMENT ACTIONS BY RESPONSIBLE PARTY**

4 (a) A responsible party for a commercial underground storage tank shall:

- 5 (1) take immediate action to prevent any further discharge or release of petroleum from the
6 underground
7 storage tank; identify and mitigate any fire, explosion or vapor hazard; remove any free product;
8 and comply with the requirements of Rules .0601 through .0604 and .0701 through .0703 and .0705
9 of Subchapter 02N; 02N, within 24 hours of discovery;
- 10 (2) incorporate the requirements of 15A NCAC 02N .0704 into the submittal required under Item (3)
11 of this Paragraph or the limited site assessment report required under 15A NCAC 02L .0405 of this
12 Section, whichever is applicable. Such submittals shall constitute compliance with the reporting
13 requirements of 15A NCAC 02N .0704(b); ~~and~~
- 14 (3) submit within 90 days of the discovery of the discharge or release a soil contamination report
15 containing information sufficient to show that remaining unsaturated soil in the side walls and at the
16 base of the excavation does not contain contaminant levels which exceed either the "soil-to-
17 groundwater" or the residential maximum soil contaminant concentrations established by the
18 Department pursuant to 15A NCAC 02L .0411 of this Section, whichever is lower. If such showing
19 is made, the discharge or release shall be classified as low risk by the Department;

19 (b) A responsible party for a noncommercial underground storage tank shall:

- 20 (1) take necessary actions to protect public health, safety, and welfare and the environment, including
21 actions to prevent any further discharge or release of petroleum from the noncommercial
22 underground storage tank; to identify and mitigate any fire, explosion, or vapor hazard; and to report
23 the release within 24 hours of discovery, in compliance with G.S. 143-215.83(a), 84(a), 85(b), and
24 94E;
- 25 (2) provide or otherwise make available any information required by the Department to determine the
26 site risk.

27 (c) The Department shall notify the responsible party for a noncommercial underground storage tank that no cleanup,
28 no further cleanup, or no further action will be required without requiring additional soil remediation pursuant to Rule
29 .0408 of this Section, if the site is determined by the Department to be low risk. This classification shall be based on
30 information provided to the Department that:

- 31 (1) describes the source and type of the petroleum release, site-specific risk factors, and risk factors
32 present in the surrounding area as defined in Rules .0406 and .0407 of this Section;
- 33 (2) demonstrates that no remaining risk factors are present that are likely to be affected per G.S. 143-
34 215.94V(b); or
- 35 (3) documents that soils remaining onsite do not contain contaminant levels which exceed either the
36 "soil-to-groundwater" or the residential maximum soil contaminant concentrations established by
37 the Department pursuant to Rule .0411 of this Section, whichever is lower.

Commented [AQ1]: Why have one in quotes and the other not in quotes? What about the Action Levels?

1 The Department shall reclassify the site as high risk upon receipt of new information related to site conditions
2 indicating that the discharge or release from a noncommercial underground storage tank poses an unacceptable risk
3 or a potentially unacceptable risk to human health or the environment, as described in Rule .0407 of this Section.
4

5 *History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.94A; 143-215.94E; 143-215.94T; 143-*
6 *215.94V; 143B-282; 1995 (Reg. Sess. 1996) c. 648, s. 1;*

7 *Recodified from 15A NCAC 02L .0115(c)(1)-(3);*

8 *Amended Eff. December 1, 2005.2005;*

9 *Temporary Amendment Eff. September 29, 2017.*
10

1 15A NCAC 02L .0405 is proposed for amendment under temporary procedures as follows:

2
3 **15A NCAC 02L .0405 REQUIREMENTS FOR LIMITED SITE ASSESSMENT**

4 If the required showing for a commercial underground storage tank cannot be made or if the Department determines
5 that a release from a noncommercial underground storage tank represents an unacceptable risk under 15A NCAC 02L
6 .0404 of this Section, the responsible party shall submit within 120 days of the discovery of the discharge or release,
7 or within such other greater time limit approved by the Department, a report containing information needed by the
8 Department to classify the level of risk to human health and the environment posed by a discharge or release under
9 15A NCAC 02L .0406 of this Section. Such report shall include, at a minimum:

- 10 (1) a location map, based on a USGS topographic map, showing the radius of 1500 feet from the source
11 area of a confirmed release or discharge and depicting all water supply wells and, surface waters
12 and designated wellhead protection areas as defined in 42 U.S.C. 300h-7(e) within the 1500-foot
13 radius. For purposes of this Section, source area means point of release or discharge from the
14 underground storage tank system;
- 15 (2) a determination of whether the source area of the discharge or release is within a designated wellhead
16 protection area as defined in 42 U.S.C. 300h-7(e);
- 17 (3) if the discharge or release is in the Coastal Plain physiographic region as designated on a map
18 entitled "Geology of North Carolina" published by the Department in 1985, a determination of
19 whether the source area of the discharge or release is located in an area in which there is recharge
20 to an unconfined or semi-confined deeper aquifer which is being used or may be used as a source
21 of drinking water;
- 22 (4) a determination of whether vapors from the discharge or release pose a threat of explosion due to
23 the accumulation of vapors in a confined space or pose any other serious threat to public health,
24 public safety or the environment;
- 25 (5) scaled site map(s) showing the location of the following which are on or adjacent to the property
26 where the source is located: site boundaries, roads, buildings, basements, floor and storm drains,
27 subsurface utilities, septic tanks and leach fields, underground storage tank systems, monitoring
28 wells, borings and the sampling points;
- 29 (6) the results from a limited site assessment which shall include:
 - 30 (a) the analytical results from soil samples collected during the construction of a monitoring
31 well installed in the source area of each confirmed discharge or release from a
32 noncommercial or commercial underground storage tank and either the analytical results
33 of a groundwater sample collected from the well or, if free product is present in the well,
34 the amount of free product in the well. The soil samples shall be collected every five feet
35 in the unsaturated zone unless a water table is encountered at or greater than a depth of 25
36 feet from land surface in which case soil samples shall be collected every 10 feet in the
37 unsaturated zone. The soil samples shall be collected from suspected worst-case locations

- 1 exhibiting visible contamination or elevated levels of volatile organic compounds in the
 2 borehole;
- 3 (b) if any constituent in the groundwater sample from the source area monitoring well installed
 4 in accordance with Sub-item (a) of this Item, for a site meeting the high risk classification
 5 in 15A NCAC 02L .0406(1), exceeds the standards or interim standards established in 15A
 6 NCAC 02L .0202 by a factor of 10 and is a discharge or release from a commercial
 7 underground storage tank, the analytical results from a groundwater sample collected from
 8 each of three additional monitoring wells or, if free product is present in any of the wells,
 9 the amount of free product in such well. The three additional monitoring wells shall be
 10 installed as follows: as best as can be determined, one upgradient of the source of
 11 contamination and two downgradient of the source of contamination. The monitoring wells
 12 installed upgradient and downgradient of the source of contamination must be located such
 13 that groundwater flow direction can be determined; and
- 14 (c) potentiometric data from all required wells;
- 15 (7) the availability of public water supplies and the identification of properties served by the public
 16 water supplies within 1500 feet of the source area of a confirmed discharge or release;
- 17 (8) the land use, including zoning if applicable, within 1500 feet of the source area of a confirmed
 18 discharge or release;
- 19 (9) a discussion of site specific conditions or possible actions which could result in lowering the risk
 20 classification assigned to the release. Such discussion shall be based on information known or
 21 required to be obtained under this Paragraph; and
- 22 (10) names and current addresses of all owners and operators of the underground storage tank systems
 23 for which a discharge or release is confirmed, the owner(s) of the land upon which such systems are
 24 located, and all potentially affected real property owners. When considering a request from a
 25 responsible party for additional time to submit the report, the Division shall consider the extent to
 26 which the request for additional time is due to factors outside of the control of the responsible party,
 27 the previous history of the person submitting the report in complying with deadlines established
 28 under the Commission's rules, the technical complications associated with assessing the extent of
 29 contamination at the site or identifying potential receptors, and the necessity for immediate action
 30 to eliminate an imminent threat to public health or the environment.

31

32 *History Note:* Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.94A; 143-215.94E; 143-215.94T; 143-
 33 215.94V; 143B-282; 1995 (Reg. Sess. 1996) c. 648, s. 1;

34 *Recodified from 15A NCAC 02L .0115(c)(4);*

35 *Amended Eff. December 1, 2005. 2005;*

36 *Temporary Amendment Eff. September 29, 2017.*

37

1 15A NCAC 02L .0406 is proposed for amendment under temporary procedures as follows:

2
3 **15A NCAC 02L .0406 DISCHARGE OR RELEASE CLASSIFICATIONS**

4 The Department shall classify the risk of each known discharge or release as high, intermediate or low risk unless the
5 discharge or release has been classified under 15A NCAC 02L .0404(3), .0404(a)(3) or .0404(c) of this Section. For
6 purposes of this Section:

7 (1) "High risk" means that:

- 8 (a) a water supply well, including one used for non-drinking purposes, has been contaminated
9 by the release or discharge;
- 10 (b) a water supply well used for drinking water is located within 1000 feet of the source area
11 of a confirmed discharge or release; release from a commercial underground storage tank
12 or a noncommercial underground storage tank storing motor fuel as defined by G.S. 143-
13 215.94A(2)(a) and 94A(7);
- 14 (c) a water supply well not used for drinking water is located within 250 feet of the source area
15 of a confirmed discharge or release; release from a commercial underground storage tank
16 or a noncommercial underground storage tank storing motor fuel as defined by G.S. 143-
17 215.94A(2)(a) and 94A(7);
- 18 (d) the groundwater within 500 feet of the source area of a confirmed discharge or release from
19 a commercial underground storage tank or a noncommercial underground storage tank
20 storing motor fuel as defined by G.S. 143-215.94A(2)(a) and 94A(7) has the potential for
21 future use in that there is no source of water supply other than the groundwater;
- 22 (e) a water supply well, including one used for non-drinking purposes, is located within 150
23 feet of the source area of a confirmed discharge or release from a noncommercial
24 underground storage tank storing heating oil for consumptive use on the premises;
- 25 (e)(f) the vapors from the discharge or release pose a serious threat of explosion due to
26 accumulation of the vapors in a confined space; or
- 27 (f)(g) the discharge or release poses an imminent danger to public health, public safety, or the
28 environment.

29 (2) "Intermediate risk" means that:

- 30 (a) surface water is located within 500 feet of the source area of a confirmed discharge or
31 release from a commercial underground storage tank and the maximum groundwater
32 contaminant concentration exceeds the applicable surface water quality standards and
33 criteria found in 15A NCAC 02B .0200 by a factor of 10;
- 34 (b) in the Coastal Plain physiographic region as designated on a map entitled "Geology of
35 North Carolina" published by the Department in 1985, the source area of a confirmed
36 discharge or release from a commercial underground storage tank is located in an area in

Commented [A Q2]: Why the reduction from 250 to 150 here?

- 1 which there is recharge to an unconfined or semi-confined deeper aquifer which the
 2 Department determines is being used or may be used as a source of drinking water;
- 3 (c) the source area of a confirmed discharge or release from a commercial underground storage
 4 tank is within a designated wellhead protection area, as defined in 42 U.S.C. 300h-7(e);
- 5 (d) the levels of groundwater contamination associated with a confirmed discharge or release
 6 from a commercial underground storage tank for any contaminant except ethylene
 7 dibromide, benzene and alkane and aromatic carbon fraction classes exceed 50 percent of
 8 the solubility of the contaminant at 25 degrees Celsius or 1,000 times the groundwater
 9 standard or interim standard established in 15A NCAC 02L .0202, whichever is lower; or
- 10 (e) the levels of groundwater contamination associated with a confirmed discharge or release
 11 from a commercial underground storage tank for ethylene dibromide and benzene exceed
 12 1,000 times the federal drinking water standard set out in 40 CFR 141.
- 13 (3) "Low risk" means that:
- 14 (a) the risk posed does not fall within the high risk category for any underground storage tank
 15 or intermediate risk category ~~or high risk~~
 16 category for any underground storage tank, or within the intermediate risk category for a
 17 commercial underground storage tank; or
- 18 (b) based on review of site-specific information, limited assessment or interim corrective
 19 actions, the Department determines that the discharge or release poses no significant risk
 20 to human health or the environment.
- 21 If the criteria for more than one risk category applies, the discharge or release shall be classified at the highest risk
 22 level identified in 15A NCAC 02L .0407 of this Section.

23 *History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.94A; 143-215.94E; 143-215.94T; 143-*
 24 *215.94V; 143B-282; 1995 (Reg. Sess. 1996) c. 648, s. 1;*
 25 *Recodified from 15A NCAC 02L .0115(d);*
 26 *Amended Eff. December 1, 2005. 2005;*
 27 *Temporary Amendment Eff. September 29, 2017.*
 28

1 15A NCAC 02L .0408 is proposed for amendment under temporary procedures as follows:

2
3 **15A NCAC 02L .0408 ASSESSMENT AND REMEDIATION PROCEDURES**

4 Assessment and remediation of soil contamination shall be addressed as follows:

- 5 (1) At the time that the Department determines the risk posed by the discharge or release, the
6 Department shall also determine, based on site-specific information, whether the site is "residential"
7 or "industrial/commercial." For purposes of this Section, a site is presumed residential, but may be
8 classified as industrial/commercial if the Department determines based on site-specific information
9 that exposure to the soil contamination is limited in time due to the use of the site and does not
10 involve exposure to children. For purposes of this Paragraph, "site" means both the property upon
11 which the discharge or release has occurred and any property upon which soil has been affected by
12 the discharge or release.
- 13 (2) ~~The~~For any discharge or release from a commercial underground storage tank, or for a discharge or
14 release from a noncommercial underground storage tank classified by the Department as high risk,
15 the responsible party shall submit a report to the Department assessing the vertical and horizontal
16 extent of soil contamination.
- 17 (3) For a discharge or release from a commercial underground storage tank classified by the Department
18 as low risk, the responsible party shall submit a report demonstrating that soil contamination has
19 been remediated to either the residential or industrial/commercial maximum soil contaminant
20 concentration established by the Department pursuant to 15A NCAC 02L .0411 of this Section,
21 whichever is applicable.
- 22 (4) For a discharge or release classified by the Department as high or intermediate risk, the responsible
23 party shall submit a report demonstrating that soil contamination has been remediated to the lower
24 of:
- 25 (a) the residential or industrial/commercial maximum soil contaminant concentration,
26 whichever is applicable, that has been established by the Department pursuant to 15A
27 NCAC 02L .0411 of this Section; or
- 28 (b) the "soil-to-groundwater" maximum soil contaminant concentration that has been
29 established by the Department pursuant to 15A NCAC 02L .0411 of this Section.

30
31 *History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.94A; 143-215.94E; 143-215.94T; 143-*
32 *215.94V; 143B-282; 1995 (Reg. Sess. 1996) c. 648, s. 1;*
33 *Recodified from 15A NCAC 02L .0115(i);*
34 *Amended Eff. December 1, 2005, 2005;*
35 *Temporary Amendment Eff. September 29, 2017.*
36

1 15A NCAC 02L .0409 is proposed for amendment under temporary procedures as follows:

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3 **15A NCAC 02L .0409 NOTIFICATION REQUIREMENTS**

4 (a) A responsible party who submits a corrective action plan which proposes natural attenuation or to cleanup
5 groundwater contamination to a standard other than a standard or interim standard established in 15A NCAC 02L
6 .0202, or to cleanup soil other than to the standard for residential use or soil-to-groundwater contaminant
concentration
7 established pursuant to this Section, whichever is lowest, shall give notice to: the local Health Director and the chief
8 administrative officer of each political jurisdiction in which the contamination occurs; all property owners and
9 occupants within or contiguous to the area containing the contamination; and all property owners and occupants
within

10 or contiguous to the area where the contamination is expected to migrate. Such notice shall describe the nature of the
11 plan and the reasons supporting it. Notification shall be made by certified mail concurrent with the submittal of the
12 corrective action plan. Approval of the corrective action plan by the Department shall be postponed for a period of
13 30 days following receipt of the request so that the Department may consider comments submitted. The responsible
14 party shall, within a time frame determined by the Department to be sufficient, provide the Department with a copy
15 of the notice and proof of receipt of each required notice, or of refusal by the addressee to accept delivery of a
required

16 notice. If notice by certified mail to occupants under this Paragraph is impractical, the responsible party may give
17 notice by posting such notice prominently in a manner designed to give actual notice to the occupants. If notice is
18 made to occupants by posting, the responsible party shall provide the Department with a copy of the posted notice
and
19 a description of the manner in which such posted notice was given.

20 (b) A responsible party who receives a notice pursuant to 15A NCAC 02L ~~.0404(c)~~ or .0407(d) of this Section for a
21 discharge or release which has not been remediated to the groundwater standards or interim standards established in
22 Rule .0202 of this Subchapter or to the lower of the residential or soil-to-groundwater contaminant concentrations
23 established under 15A NCAC 02L .0411 of this Section, shall, within 30 days of the receipt of such notice, provide a
24 copy of the notice to: the local Health Director and the chief administrative officer of each political jurisdiction in
25 which the contamination occurs; all property owners and occupants within or contiguous to the area containing
26 contamination; and all property owners and occupants within or contiguous to the area where the contamination is
27 expected to migrate. Notification shall be made by certified mail. The responsible party shall, within a time frame
28 determined by the Department, provide the Department with proof of receipt of the copy of the notice, or of refusal
29 by the addressee to accept delivery of the copy of the notice. If notice by certified mail to occupants under this
30 Paragraph is impractical, the responsible party may give notice by posting a copy of the notice prominently in a
manner

31 designed to give actual notice to the occupants. If notice is made to occupants by posting, the responsible party shall
32 provide the Department with a description of the manner in which such posted notice was given.

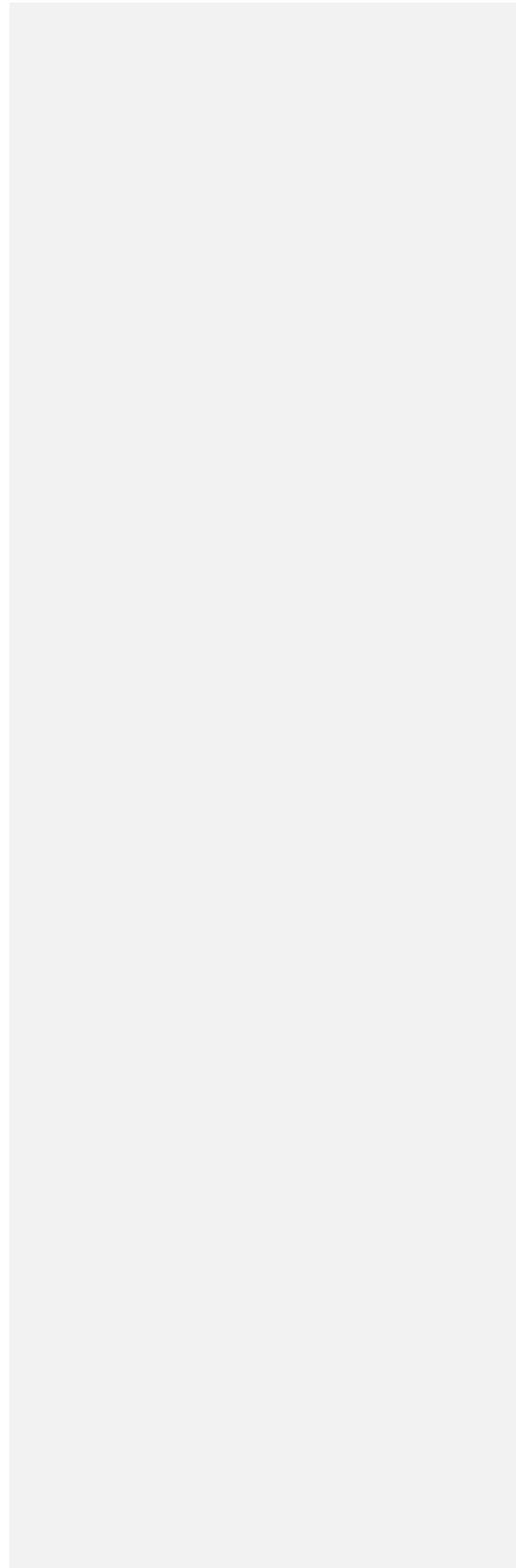
33

34 *History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.94A; 143-215.94E; 143-215.94T; 143-*
35 *215.94V; 143B-282; 1995 (Reg. Sess. 1996) c. 648, s. 1;*
36 *Recodified from 15A NCAC 02L .0115(j) and (k);*

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Amended Eff. December 1, 2005, 2005:

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Temporary Amendment Eff. September 29, 2017.