

1 15A NCAC 02H .0101 is proposed for re adoption with substantive changes as follows:

2
3 **15A NCAC 02H .0101 PURPOSE**

4 (a) ~~These The Rules implement G.S. 143-215.1 which requires permits for control of sources of water pollution by~~
5 ~~providing of this Section set forth the requirements and procedures for application and issuance of state NPDES permits~~
6 ~~pursuant to G.S. 143-215.1, et seq., for the control of point sources of water pollution, a discharge from an outlet,~~
7 ~~point source, or disposal system discharging to the surface waters of the state, and for the construction, entering a~~
8 ~~contract for construction, and operation of treatment works with such a discharge (see Section .0200 of this Subchapter~~
9 ~~regarding permits for disposal systems not discharging to the surface waters of the state). These Rules also contain the~~
10 ~~requirements and procedures for issuance of state permits for pretreatment facilities. (See Section .0900 of this~~
11 ~~Subchapter for rules for permits issued by local pretreatment programs). These Rules apply to the following state~~
12 ~~permits and authorizations:~~

- 13 (1) ~~NPDES permits for the discharge of waste or stormwater from an outlet, point source, or disposal~~
14 ~~system to surface waters of the state.~~
15 (2) ~~NPDES permits for the discharge of stormwater in accordance with Rule .0126 of this Section.~~
16 (3) ~~authorizations or permits for the construction, entering a contract for construction, and operation of~~
17 ~~treatment works with such a discharge, and~~
18 (4) ~~permits for the discharge of waste from a pretreatment facility to a disposal system that discharges~~
19 ~~to surface waters of the state.~~

20 (b) Rules and Statutes referenced in this Section can be accessed through the Department of Environmental Quality
21 web site (<http://deq.nc.gov/>) or may be obtained by writing or visiting the Division of Environmental Management,
22 Water Quality Section's Water Resources' offices at the following locations:

- 23 - Permits and Engineering Unit, Archdale Building Water Quality Permitting Section
24 P.O. Box 29535, Physical Address: Archdale Building, 512 N. Salisbury St., Raleigh, N.C. 27626-
25 053527604
26 Mailing Address: 1617 Mail Service Center, Raleigh, N.C. 27699-1617
27 - Raleigh Regional Office
28 Physical Address: 3800 Barrett Dr., Raleigh, N.C. 27611
29 Mailing Address: 1628 Mail Service Center, Raleigh, N.C. 27699-1628
30 - Asheville Regional Office
31 59 Woodfin Pl., 2090 U.S. Highway 70
32 Asheville, N.C. 28802 Swannanoa, N.C. 28778
33 - Mooreville Regional Office
34 919 N. Main St., 610 East Center Ave., Suite 301
35 Mooreville, N.C. 28115
36 - Fayetteville Regional Office
37 Wachovia Bldg. Suite 714, 225 Green Street, Systel Bldg., Suite 714

Commented [A1]: Change: Updated organizational names and addresses. Added website address as source of reference materials. Re-organized Paragraph (a) to improve clarity.
Effect: Technical corrections and clarification.

Formatted: SubParagraph

Commented [A2]: Change: Updated information regarding availability of documents, including office addresses.
Effect: Technical corrections and clarification.

1 Fayetteville, N.C. 28301
2 - Washington Regional Office
3 ~~1424 Carolina Avenue~~ 943 Washington Square Mall,
4 Washington, N.C. 27889
5 - Wilmington Regional Office
6 127 Cardinal Drive Extension,
7 Wilmington, N.C. 28405-3845
8 - Winston-Salem Regional Office
9 ~~8025 North Point Blvd.,~~ 585 Waughtown Street
10 Winston-Salem, N.C. ~~27106~~ 27107
11

12 *History Note: Authority G.S. 143-215.3(a)(1); 143-215.1;*
13 *Eff. February 1, 1976;*
14 *Amended Eff. <date>; August 3, 1992; August 1, 1988; October 1, 1987; December 1, 1984.*
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1 15A NCAC 02H .0102 is proposed for readoption with substantive changes as follows:

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3 **15A NCAC 02H .0102 SCOPE**

4 (a) These Rules apply to all persons:

- 5 (1) discharging or proposing to discharge ~~wastewater~~, directly or indirectly, from a point source to the
- 6 surface waters of the state; or
- 7 (2) constructing or proposing to construct a treatment or pretreatment works with a discharge as
- 8 described in ~~PartSubparagraph (1) or (2) of this Rule;Paragraph;~~ or
- 9 (3) ~~operate~~operating or ~~propose~~proposing to operate a treatment works with a discharge as described in
- 10 ~~PartSubparagraph (1) or (2) of this Rule;Paragraph;~~ or
- 11 (4) discharging or proposing to discharge stormwater which results in water pollution.

12 (b) ~~This Rule does~~These Rules do not apply to:

- 13 (1) ~~those persons who have obtained a permit from a local pretreatment control authority;authority that~~
- 14 ~~is authorized to issue such permits, and whose permits under a local~~ pretreatment program was
- 15 approved in accordance with Section .0900 of this Subchapter.
- 16 (2) sanitary sewage systems or solid waste management facilities that are permitted under the authority
- 17 of the Commission for Public Health; and
- 18 (3) other persons or activities specifically exempted in these Rules.

19
20 *History Note:* Authority G.S. 143-215.3(a)(1); 143-215.1; 143-215.3(a)(14);
21 Eff. February 1, 1976;
22 Amended Eff. <date>; March 1, 1993; November 1, 1987; December 1, 1984.
23
24

Commented [A1]: Change: Corrected grammar and sentence structure.
Effect: Clarification.

Commented [A2]: Change: Modified references to other parts of the rule.
Effect: Clarification.

Commented [A3]: Change: Clarified to specifically refer to both pretreatment facilities and direct discharges, which is the intent.
Effect: Technical corrections and clarification

Commented [A4]: Change: Added language from 2T .0102 that exempts certain systems regulated by other units of government.
Effect: Clarification.

1 15A NCAC 02H .0103 is proposed for re adoption with substantive changes as follows:

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3 **15A NCAC 02H .0103 DEFINITION OF TERMS**

4 The terms used in this Section shall be as defined in G.S. ~~143-213~~ 143-212 and 143-213; the federal Clean Water Act
5 (33 U.S.C. 1251 et seq.); 40 CFR Parts 122, 124, and 125; and as follows:

- 6 (1) "Authorization to Construct" means a permit required for the construction of water pollution control
7 facilities necessary to comply with the terms and conditions of an NPDES permit.
- 8 (2) "Certificate of Coverage" means the approval given dischargers that meet the requirements of
9 coverage under a general permit.
- 10 (3) "Commission" means the Environmental Management Commission.
- 11 (4) "Committee" means the NPDES committee of the Environmental Management Commission.
- 12 (5) "Decontamination" means the physical or chemical process of reducing contamination and
13 preventing the spread of contamination from persons and equipment at biological or chemical agent
14 incidents.
- 15 (6) "Department" means the Department of ~~Environment and Natural Resources~~ Environmental Quality
16 or its successor.
- 17 (7) "Director" means the Director of the Division of Water Quality Resources or the Division of Energy,
18 Mineral and Land Resources, Department of ~~Environment and Natural Resources~~ Environmental
19 Quality, whichever is the permitting authority in a particular instance; or his designee.
20 (8) "Discharges associated with biological or chemical decontamination" means the wastewater that is
21 produced during activities intended to reduce potential biological or chemical contaminants and that
22 are performed under the specific conditions listed in 15A NCAC 02H .0106(f)(11).
- 23 (9) "Division" means the Division of Water Quality Resources or the Division of Energy, Mineral and
24 Land Resources, Department of ~~Environment and Natural Resources~~ Environmental Quality,
25 whichever is the permitting authority in a particular instance. In this Section, "Division" or
26 "Division of Water Resources" can generally be read to mean either Division as the context requires.
- 27 (10) "EPA" means the United States Environmental Protection Agency.
- 28 (11) "Existing", with respect to implementing the NPDES permitting program, means:
29 (a) Facilities which physically exist and have been legally constructed, i.e., health department
30 or other agency approval or constructed prior to any regulatory requirements.
31 (b) Facilities which have received an NPDES Permit and have received an Authorization to
32 Construct and have constructed or begun significant construction of any wastewater
33 treatment facilities within the term of the current permit.
34 (c) Facilities which have received a phased NPDES Permit and have received an Authorization
35 to Construct for a phase of the permitted flow and have constructed or begun significant
36 construction of the phased wastewater treatment facilities.

Commented [A1]: Change: Updated organizational names and sources of reference materials. Revised grammar and punctuation.
Effect: Technical corrections and clarification.

Commented [A2]: Change: Expanded to include other applicable definitions, many established since original rule was established. Federal rules are incorporated by reference at 2H .0143.
Effect: Technical corrections.

Commented [A3]: Change: Revised definition to include directors of both divisions that have permitting authority under these rules.
Effect: Technical correction.

Commented [A4]: Change: Revised definition to include directors of both divisions that have permitting authority under these rules.
Effect: Technical correction.

Commented [A5]: Change: Added reference to DEMLR, since the stormwater permitting program is no longer a part of DWR.
Effect: Technical correction. The intent of 2nd sentence is to avoid having to name both divisions in every case.

1 For the purpose of this definition, significant construction shall be considered as more than a token
2 or nominal investment of money or other resources in the actual construction of the wastewater
3 treatment facility, based on the facility size, complexity, cost and the required construction time for
4 completion.

5 (12) "General Permit" means a "permit" issued under G.S. 143-215.1(b)(3) and (4) and 40 CFR 122.28
6 authorizing a category of similar discharges to surface waters.

7 (13) "Mine dewatering" means discharges of uncontaminated infiltrate and stormwater from mine
8 excavation and the water that is removed to lower the water table to allow mining in an area.

9 (14) "Municipality" means a city, town, borough, county, parish, district, or other public body created by
10 or under State law.

11 (15) "NPDES Permit" means a National Pollutant Discharge Elimination System permit required for the
12 operation of point source discharges in accordance with the requirements of Section 402 of the
13 Federal Water Pollution Control Act, 33 U.S.C. Section 1251 et seq.

14 (16) "New", with respect to implementing the NPDES permitting program, means:

15 (a) Proposed facilities that do not have ~~an~~ NPDES Permit nor have any facilities constructed.

16 (b) Facilities which physically exist, however are illegally constructed, i.e., no required agency
17 approvals.

18 (c) Facilities which have received an NPDES Permit and have received an Authorization to
19 Construct but have not begun significant construction of any wastewater treatment facilities
20 within the term of the current permit.

21 Any increases in treatment plant hydraulic capacity, which has not received an Authorization to
22 Construct shall be considered new and new effluent limitations and other requirements, if applicable,
23 would be imposed for the entire facility.

24 For the purpose of this definition, significant construction shall be considered as more than a token
25 or nominal investment of money or other resources in the actual construction of the wastewater
26 treatment facility, based on the facility size, complexity, cost and the required construction time for
27 completion.

28 (17) "New Source" means any industrial ~~installation, installation~~ from which there may be a discharge,
29 the construction or modification of which is commenced on or after the date of publication of new
30 source performance standards or pretreatment standards for new sources by the Environmental
31 Protection Agency.

32 (18) "New Source Performance Standards" means those standards of performance applied to industrial
33 discharges defined as new sources.

34 (19) "Notice of Intent" means formal written notification to the Division that a discharge, facility or
35 activity is intended to be covered by a general permit and takes the place of "application" used with
36 individual permits.

- 1 (20) "Oil terminal storage facilities" means petroleum bulk storage, product transfer, loading, unloading,
2 and related areas but does not include marinas or facilities primarily engaged in the retail sale of
3 petroleum products. Oil/water separators such as those at maintenance garages, gas stations, and
4 National Guard and military reserve facilities are included in this definition.
- 5 (21) "Once-through non-contact cooling water" means water taken from wells, surface waters, or water
6 supply systems and used in a non-contact cooling system without the addition of biocides or other
7 chemical additives. Boiler blowdown waters are included in this definition. Nuclear and fossil fuel
8 electric generating plants are not included in this definition.
- 9 (22) "Point Source ~~Discharge~~" means any discernible, confined, and discrete conveyance, including, but
10 specifically not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container,
11 rolling stock, or concentrated animal-feeding operation from which wastes are or may be discharged
12 to the surface waters of the State.
- 13 (23) "POTW" means Publicly Owned Treatment Works.
- 14 (24) "Pretreatment standard" means any regulation containing pollutant discharge limits for indirect
15 dischargers for ensuring compliance with Section 307(b) and (c) of the Clean Water Act, 33 U.S.C.
16 Section 1251 et seq. This term includes prohibited discharge limits and local sewer use ordinance
17 limits.
- 18 (25) "Primary industry" means an industry listed in 40 CFR 122, Appendix AA, which is hereby
19 incorporated by reference including any subsequent ~~amendments, amendments and editions~~. Copies
20 of this publication are available from the Government Institutes, Inc., 4 Research Place, Suite 200,
21 Rockville, MD 20850-1714 for a cost of thirty six (\$36.00) each plus four dollars (\$4.00) shipping
22 and handling. ~~These regulations can be accessed free of charge at <http://www.gpo.gov/fdsys/>.~~
23 Copies are also available at the Division of Water ~~Quality, Resources~~, Archdale Building, 512 N.
24 Salisbury Street, Raleigh, North Carolina 27604.
- 25 (26) "Professional Engineer" means a person who is presently registered and licensed as a professional
26 engineer by the North Carolina ~~State Board of Registration~~ Examiners For Professional Engineers
27 and ~~Land~~ Surveyors.
- 28 (27) "Sand dredge" means a facility to remove sand from river bottoms. No other mining activities are
29 included in this definition.
- 30 (28) "Seafood packing facility" means a business which is engaged in the sorting and packing of fresh
31 seafood and which has a discharge consisting entirely of washdown and rinse water. Trout packing
32 facilities are included in this definition. Wastewaters from seafood processing plants are not
33 included in this definition.
- 34 (29) "Seafood processing facility" means a business which is engaged in the removal of heads, entrails,
35 fins or scales, filleting, cooking, canning, or preparation of fresh seafood.
- 36 (30) "Staff" means the staff of the Division of Water ~~Quality, Resources~~, Department of ~~Environment and~~
37 ~~Natural Resources~~. Environmental Quality.

- 1 (31) "Stormwater" is defined in G.S. 143, Article 21.
2 (32) "Swimming pool filter backwash" means normal filter backwash water from both public and private
3 swimming pools ~~as well as~~ or from spas with backwash filter facilities.
4 (33) "Tourist Gem Mine" means a business which is engaged in the recreational practice of removing
5 gems and semi-precious stones from mined material.
6 (34) "Trout farm" means a facility for the commercial production of trout.
7 (35) "Water filtration facility" means backwash filters and sludge disposal systems associated with water
8 treatment plants and backwash filters associated with wells.
9

10 *History Note: Authority G.S. 106-399.4; 143-215.1(a); 143-215.3(a)(1);*
11 *Eff. February 1, 1976;*
12 *Amended Eff. September 1, 1995; March 1, 1993; August 3, 1992; August 1, 1991;*
13 *Temporary Amendment Eff. May 11, 2001;*
14 *Temporary Amendment Expired on February 26, 2002;*
15 *Amended Eff. <date>; April 1, 2003.*
16

1 15A NCAC 02H .0105 is proposed for readoption with substantive changes as follows:

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3 **15A NCAC 02H .0105 APPLICATION: PERMIT FEES: ASSESSMENT FOR NEW SOURCES**

4 (a) Except as provided in Paragraphs (d) and (e) of this Rule, any person who discharges or who proposes to discharge
5 pollutants to the surface waters of the state or to a POTW when pretreatment of the wastewater is required shall
6 complete, sign, and submit, in ~~triplicate, triplicate, or in an electronic format~~ allowed by state law and acceptable to
7 the Director, an application ~~accompanied by the form and~~ processing fee ~~as~~ described herein for each
8 ~~application~~ application. ~~Payment of fees shall be made in~~ the form of a check or money order made payable to N.C.
9 Department of ~~Environment, Health, and Natural Resources~~ Environmental Quality, or by electronic means allowed
10 by state law and acceptable to the Director.

11 (1) Application for state NPDES or pretreatment permits shall be made on state or EPA forms provided
12 by the Director. State forms shall conform with applicable information requirements specified in 40
13 CFR 122.21, which is hereby incorporated by reference, including any subsequent amendments and
14 editions. These regulations can be accessed free of charge at <http://www.gpo.gov/fdsys/>. ~~The State~~
15 ~~NPDES application forms to be used for the various types of discharges are as follows:~~

16 Std. Form A: ~~— All municipal systems greater than or equal to 1.0 MGD and any municipal~~
17 ~~system receiving industrial waste from a primary industry.~~

18 Short Form A: ~~— Any municipal system not covered by Std. Form A.~~

19 Short Form B: ~~— All agriculture related discharges.~~

20 Std. Form C: ~~— All primary industries as listed in 40 CFR 122.21, Appendix A and all other industrial~~
21 ~~or process and commercial discharges except~~

22 EPA Forms 1 and 2 C: ~~— cooling waters, cooling tower blowdown, and boiler blowdown.~~

23 EPA Forms 1 and 2F: ~~— Discharges consisting entirely of stormwater associated with industrial activity.~~

24 EPA Forms 1 and 2D: ~~— Discharges consisting of stormwater and non-stormwater.~~

25 Short Form C: ~~— Cooling waters, cooling tower blowdown, and boiler blowdown.~~

26 Short Form D: ~~— All domestic waste discharges not covered by Std. Form A and Short Form A.~~

27 (2) ~~The Authorization to Construct and Notice of Intent to seek coverage under a general permit shall~~
28 ~~be made on application forms to be used will be supplied by the Division provided by the Director~~
29 ~~or in a form consistent with that specified in the general permit.~~

30 (3) Application for an Authorization to Construct shall be made on forms provided by the Director.

31 (b) Permit Fees.

32 (1) ~~Permit Application Processing Fees. For every~~ Every application for ~~a new or renewed NPDES~~
33 ~~permits, permit or major modification of an existing NPDES permit, every~~ Notice of Intent to be
34 covered by a general ~~permit~~ permit, or ~~Authorization to Construct, and every application for a special~~
35 ~~order by consent or judicial order shall include~~ a nonrefundable application processing fee in the
36 amount stated in ~~Subparagraph (b)(5) of this Rule shall be submitted at the time of application.~~ G.S.
37 143-215.3D.

Commented [A1]: Change: Revised throughout to provide option for electronic submittals.
Effect: Additional flexibility as business practices change.

Commented [A2]: Change: Revised to replace the list of application forms with a broader reference to the forms and to federal standards for their contents. Updated organizational names and addresses. Added website address as source of reference materials.
Effect: Technical corrections only.

Commented [A3]: Change: Separated NOIs from ATC applications.
Effect: Clarification.

Commented [A4]: Change: Revised fee language to remove out-of-date fee schedule and to refer to the schedule now set in statute. Removed references to WWT Works Emergency Fund, which was repealed by 2006 session law.
Effect: Technical corrections & updates.

1 (A) Each ~~permit or renewal~~ such application or notice of intent is incomplete until the
2 application processing fee is received.

3 (B) For a facility with multiple discharges under a single permit, the application processing fee
4 shall be set by the single discharge to the waters of the state with the highest fee in the fee
5 schedule.

6 (C) No application processing fee will be charged for modification of unexpired permits when
7 the modifications are initiated by the Director.

8 (D) ~~An application processing fee of one hundred dollars (\$100.00) will be charged for the~~
9 ~~minor modifications listed in Rule .0114(b) of this Section.~~

10 (E) ~~A full~~The application processing fee will be charged for major permit modifications other
11 ~~than those listed in Rule .0114(b) of this Section; this fee requested by the permittee will be~~
12 ~~in the same amount as shown in Subparagraph (5) of Paragraph (c) of this Rule for~~
13 ~~applications for new applications/modifications/permits. Modifications other than those~~
14 ~~minor modifications listed in Rule .0114(b) of this Section are major modifications.~~

15 (F) ~~Permittees requesting special orders by consent, judicial orders or flow increases under~~
16 ~~G.S. 143-215.67(b), will pay a fee of four hundred dollars (\$400.00).~~

17 (2) Annual Administering and Compliance Monitoring Fees. An annual fee for administering and
18 ~~compliance monitoring~~ shall be charged in each year of the term of every NPDES permit, according
19 to the schedule in ~~Subparagraph (b)(5) of this Rule~~ G.S. 143-215.3D.

20 (A) ~~Collection of annual fees shall begin on the effective date of this Rule.~~ If a new permit or
21 major modification is issued, the application fee shall be accepted as payment for the
22 ensuing annual fee for that permit; if the permit or modification is not issued, the
23 application fee shall not be refunded.

24 (B) ~~If an existing permit expires but qualifies for administrative extension under Rule .0112,~~
25 ~~Annual annual fees must be paid for any facility operating on an expired permit after the~~
26 ~~effective date of this Rule shall continue to be charged as long as the permit remains in~~
27 ~~effect.~~ The Director shall establish an anniversary date for such a facility and notify the
28 responsible party of the requirement to pay annual ~~administering and compliance~~
29 ~~monitoring fees.~~

30 (C) For a facility with multiple discharges under a single permit, the annual ~~administering and~~
31 ~~compliance monitoring~~ fee shall be set by the single discharge to the waters of the state
32 with the highest fee in the fee schedule.

33 (D) A person with only one permit will be billed annually on an anniversary date to be
34 determined by the Division. This will normally be the first day of the month of permit
35 issuance.

36 (E) A person with multiple permits may have annual fees consolidated into one annual bill.

Commented [A5]: Change: Revised fee language to include NOIs for general permits.
Effect: Aligned requirements for individual and general permits to reflect current practice of the Division.

Commented [A6]: Change: Added cross-reference to existing rule.
Effect: Clarification.

Commented [A7]: Change: Added a key provision of the fee statute.
Effect: Technical change, consistent with GS.

Commented [A8]: Change: Added a key provision to require continued fees for extended permits, as has been the practice.
Effect: Technical change, consistent with GS, to clarify requirements.

(F) Any permittee which has maintained full compliance with all permit conditions during the previous calendar year will have its administering and monitoring annual fee reduced by 25 percent. Permittees operating under interim limits, judicial orders, or special orders by consent will not be eligible for any discount. Full compliance will be established if it can be certified by the Director that no Notice of Noncompliance or a Notice of Violation was sent to the permittee during the compliance period being considered. If a Notice of Noncompliance or a Notice of Violation was based on erroneous information, the Director can send a letter of correction to the permittee clearing the record for compliance purposes. Each application or notice of intent submitted pursuant to Paragraph (a) of this Rule is incomplete until annual fees due at the time of application, if any, are received by the Division.

(G) Permit Application Processing Fees and Annual ~~Administering and Compliance Monitoring~~ Fees for pretreatment facilities permitted by the Division shall be at the same rate as provided in ~~Subparagraph (b)(5) of this Rule, G.S. 143-215.3D for NPDES facilities.~~

(3) No fees are required to be paid under this Rule by a farmer who submits an application or receives a permit that pertains to farming operations.

(4) Failure to pay an annual fee within 30 days after being billed ~~may cause~~ grounds for the Division to initiate action to revoke the permit.

(5) Schedule of Fees: This SubParagraph is repealed pursuant to G.S. 143-215.3D.

Commented [A9]: Change: Reiterates that fees are a necessary part of a complete application package.
Effect: Added for emphasis.

Category	Permit Application		Annual Administerint And Compliance	
	Processing Fee		Monitoring	
	New Applications/ Modifications/ Late Renewals	Timely Renewals Without Modifications	Standard	In Compliance

≥10,000,000 GPD				
Industrial	\$400.	\$400.	\$1500.	\$1125.
Domestic/Cooling Water	400.	400.	1500.	1125.
1,000,001—10,000,000 GPD				
Industrial	400.	300.	1500.	1125.
Domestic/Cooling Water	400.	300.	1200.	900.

Commented [A10]: Change: Deleted the previous fee schedule and related paragraphs that were replaced by statute.
Effect: Technical change, consistent with GS.

1	100,001—1,000,000 GPD				
	Industrial	400.	250.	800.	600.
	Domestic/Cooling	400.	250.	600.	450.
	Water				
2					
3	1,001—100,000 GPD				
	Industrial	400.	200.	600.	450.
	Domestic/Cooling	400.	200.	450.	300.
	Water				
4					
5	≤1,000 GPD and				
	Single family dwelling	240.	240.	0	0
6					
7	Stormwater—				
8	Municipal Separate				
	Stormwater System	400.	400.	600.	450.
	Industrial Activity	400.	400.	600.	450.
	Stormwater				
9					
10	General Permits				
	Construction (Stormwater)	50.	50.	n/a	n/a
	Domestic	240.	240.	n/a	n/a
	Others	400.	400.	n/a	n/a
11					
12	Authorization to Construct				
13	(Permitted Flow) _____				
	≥100,001 GPD	200.	n/a	n/a	n/a
	≤100,000 GPD	150.	n/a	n/a	n/a
	≤1,000 GPD	100.	n/a	n/a	n/a

14

15 (6) If the total payment for fees required for all permits under G.S. 143-215.3(a)(1b) for any single

16 facility will exceed seventy-five hundred dollars (\$7,500.00) per year, the total for all these fees will

17 be reduced for this facility so that the total payment is seventy-five hundred dollars (\$7,500.00) per

18 year.

1 (7) A portion of the permit application processing fees shown in the fee schedule in Subparagraph (b)(5)
2 of this Rule will be transferred into the Wastewater Treatment Works Emergency Maintenance,
3 Operation and Repair Fund according to the following schedule:

4 (A) All nonmunicipal facilities treating wastewater which is predominantly domestic waste
5 with design flows of 100,000 gallons per day or less, except single family dwellings,
6 seventy five dollars (\$75.00);

7 (B) Single family dwellings, forty dollars (\$40.00);

8 (C) All other facilities, zero.

9 (8) When the total value of the Wastewater Treatment Works Emergency Maintenance, Operation and
10 Repair Fund, as certified by the State Treasurer, is at least seven hundred fifty thousand dollars
11 (\$750,000.00) at the end of a quarter, the permit application processing fees for facilities with
12 discharges of one hundred thousand gallons per day (100,000 GPD) or less shall be reduced by the
13 amounts being transferred under Subparagraph (7) of this Paragraph. This reduction shall continue
14 until, at the end of some subsequent quarter, the State Treasurer certifies that the fund's balance is
15 less than seven hundred fifty thousand dollars (\$750,000.00), in which case the full amount of the
16 permit application processing fees as listed in Subparagraph (b)(5) of this Rule shall be charged.

17 (9) In order to avoid violation of the statutory limit that total permit fees collected in any year not exceed
18 30 percent of the total budgets from all sources of environmental permitting and compliance
19 programs, the Division shall in the first half of each state fiscal year project revenues from all sources
20 including fees for the next fiscal year. If this projection shows that the statutory limit will be
21 exceeded, rulemaking shall be commenced in order to have an appropriately adjusted fee schedule
22 which will avoid excessive revenue collection from permit fees.

23 (10) Any applicant whose facility qualifies for a general permit under Rule .0127 of this Section may
24 pay the lower fees set in Subparagraph (b)(5) of this Rule shall be charged the amount provided in
25 G.S. 143-215.3D for the appropriate general permit.

26 (c) Engineering Alternatives Analysis. Applicants for new-NPDES permits for new or expanding discharges requiring
27 construction of water pollution control facilities shall in addition to applications required in Paragraph (a) of this Rule,
28 file, in ~~triplicate~~, triplicate or in an electronic format allowed by state law and acceptable to the Director, an engineering
29 proposal setting forth the following information:

30 (1) a description of the origin, type and flow of waste which is proposed to be discharged. Justification
31 The proposal shall include a rationale and a demonstration of need shall be provided for expected
32 the projected flow volumes. Flow shall be determined in accordance with 15A NCAC 2H
33 .0219(1);02T .0114;

34 (2) a summary of the available waste treatment and disposal options that were considered and why the
35 proposed system and point of discharge were selected; the summary should have sufficient detail to
36 assure establish that the most environmentally sound alternative was selected from the reasonably
37 cost effective options;

Commented [A11]: Change: Updated to clarify requirements, allow for electronic submittals.
Effect: Clarification and added flexibility.

Commented [A12]: Change: Updated cross-reference to design flows, now found in the 2T rules.
Effect: Technical correction.

- 1 (3) a narrative description of the proposed treatment works including type and arrangement of major
2 components, in sufficient detail to assure that the proposed facility has the capability to comply with
3 the permit limits; for commonly used treatment system ~~or~~ components or those with well established
4 treatment capabilities, detailed plans and specifications need not be submitted until the application
5 for the authorization to construct; however, detailed plans and specifications shall be required with
6 the permit application for any system or component without well established treatment capabilities
7 for the ~~nature~~ type of waste to be treated or degree of treatment needed to meet the permit limits;
- 8 (4) a general location map, showing orientation of the facility with reference to at least two geographic
9 references (numbered roads, named streams/rivers, etc.);
- 10 (5) a scale location plan of the site showing location of the proposed treatment works and the proposed
11 point of discharge;
- 12 (6) special studies or modeling ~~may be required~~ in cases where the impacts of the discharge cannot be
13 readily determined by the Division;
- 14 (7) a statement to demonstrate financial qualification and substantial previous compliance with federal
15 and state laws, regulations, and rules for the protection of the environment as required by G.S.
16 143-215.1(b)(4)(b).

17 (d) Applicants for new individual NPDES permits requiring construction of stormwater control facilities shall in
18 addition to applications required in Paragraph (a) of this Rule, design and construct the facilities in accordance with
19 criteria approved by the ~~Director, Director~~ or shall file ~~in triplicate~~, an engineering proposal setting forth the
20 information required in Paragraph (c) of this Rule.

21 (e) Applications for permit renewals shall be ~~accomplished~~ made by filing the appropriate application form or forms,
22 as listed in Paragraph (a) of this Rule, with the applicable processing fee described herein in the form of a check or
23 money order made payable to N.C. Department of Environment, Health, and Natural Resources, fee, if any, as specified
24 in Paragraph (b) of this Rule, at least 180 days prior to expiration of a permit. ~~Renewal requests received less than 180~~
25 ~~days prior to permit expiration will be required to pay the new application/modification/late renewal fee rather than~~
26 ~~the timely renewal without modification fee. Payment shall be in the form of a check or money order made payable~~
27 ~~to the N.C. Department of Environmental Quality or made by other lawful means acceptable to the Director.~~ The
28 notice and public participation procedures set forth in Rules .0109 and .0111 of this Section shall be followed for each
29 request for permit renewal. An acceptable residuals management plan shall be submitted with the application for
30 permit renewal in accordance with Rule .0138(b)(8) of this Section. Authorizations to Construct permits for
31 wastewater control facilities will not be subject to the notice and public participation procedures set forth in Rules
32 .0109 and .0111 of this Section. Authorizations to Construct may be issued for any length of time, however, the
33 NPDES permit must be in effect at time of construction. All applications are incomplete until required processing fees
34 are received, and incomplete applications may be returned to the applicant.

35 (f) Applications for permits for pretreatment facilities shall be made in triplicate upon forms approved by the Director
36 and submitted along with applicable supporting information to the Division of ~~Environmental Management~~ Water
37 Resources.

Commented [A13]: Change: Expanded payment options in anticipation of electronic payments in the future.
Effect: Provided flexibility to facilitate payment of fees.

Commented [A14]: Change: Corrected grammar.
Effect: Clarification.

1 (g) Applications for permits for new or modified discharges which propose to discharge industrial process or domestic
2 wastewater in excess of 500,000 gallons per day or 10 MGD of cooling water to the surface waters that meet the
3 criteria established in or pursuant to NCGS 113A, Article 1, shall file, include, in addition to the applications application
4 forms, fees, and supporting documents required in Paragraphs (a) and (b) (e) of this Rule, an environmental
5 assessment which shall meet the requirements of 401 NCAC 25 .0502.0500. Any assessment which is required by any
6 other state agency or any federal agency shall be deemed to comply with requirements of this Subsection provided
7 aquatic impacts are adequately addressed.

8 (h) Permits which result in construction of facilities which will be funded by public monies may require environmental
9 documentation pursuant to North Carolina Environmental Policy Act, NCGS 113A. NPDES permit applications for
10 which such documentation is required will be considered incomplete until supported by the required documentation.

11 (i) Applicants for permits for new nonmunicipal domestic wastewater discharges shall file a notarized statement
12 indicating whether or not each city or county government having jurisdiction over any part of the lands on which the
13 proposed facility is to be located has a zoning or subdivision ordinance in effect, and, if such an ordinance is in effect,
14 whether or not the proposed facility is consistent with the ordinance.

15 (j) For NPDES permits, a full disclosure of all known toxic components that can be reasonably expected to be in the
16 discharge, including but not limited to those contained in a priority pollutant analysis, must be submitted for all
17 primary industrial direct discharges in accordance with 40 CFR 122.21 Appendix D which are hereby incorporated
18 by reference including any subsequent amendments and editions, and for other direct discharges as required by the
19 Director. ~~This material is~~ These regulations are available for inspection at the Department of ~~Environment, Health, and~~
20 ~~Natural Resources, Environmental Quality, Division of Environmental Management, Water Resources, 512 N.~~
21 ~~Salisbury Street, Raleigh, North Carolina. Carolina. Copies may be obtained from the Superintendent of Documents,~~
22 ~~U.S. Government Printing Office, Washington D.C. 20402-9325 at a cost of thirty dollars (\$30.00) and can be accessed~~
23 free of charge at <http://www.gpo.gov/fdsys/>.

24
25 *History Note: Authority G.S. 143-215.1(c); 143-215.1(c)(6); 143-215.3(a); 143-215.3B; 143-215.3D;*
26 *Eff. February 1, 1976;*
27 *Amended Eff. <date>; March 1, 1993; August 1, 1991; October 1, 1990; August 1, 1988.*
28

Commented [A15]: Change: Updated to reflect changes in SEPA (NCGS 113A, Article 1), per SL2015-90. See also 2H.0138, ATCs.
Effect: Technical correction.

1 15A NCAC 02H .0106 is proposed for re adoption with substantive changes as follows:

2

3 **15A NCAC 02H .0106 FILING APPLICATIONS**

4 (a) Permit applications shall be filed with the Director, Division of Water ~~Quality Resources~~, 1617 Mail Service
5 Center, Raleigh, North Carolina, 27699-1617.

6 (b) All NPDES permit applications, except those addressed in Paragraph (d) of this Rule, shall be filed at least 180
7 days ~~in advance of the date on which an existing permit expires or in sufficient time prior to the proposed~~
8 ~~commencement of a waste discharge to ensure compliance with all legal procedures before the date on which the~~
9 ~~discharge is to commence and, thereafter, at least 180 days before the expiration date of the existing permit, unless~~
10 ~~permission for a later date has been granted by the Director. Persons proposing a new discharge are encouraged to~~
11 ~~submit their applications in advance of the 180-day requirement.~~

12 (c) All Authorization to Construct applications shall be filed at least 90 days in advance of the proposed
13 commencement date of construction of water pollution control facilities but no earlier than the establishment of
14 effluent limitations.

15 (d) All NPDES stormwater construction permit applications shall be filed in advance of the proposed commencement
16 date of land disturbing activity which results in a stormwater discharge.

17 (e) Permit applications filed with the Director shall be signed as follows:

- 18 (1) in the case of corporations, by a principal executive officer of at least the level of vice-president, or
19 his duly authorized representative, if such representative is responsible for the overall operation of
20 the facility from which the discharge described in the permit application form originates;
- 21 (2) in the case of a partnership or a limited partnership, by a general partner;
- 22 (3) in the case of a sole proprietorship, by the proprietor;
- 23 (4) in the case of a municipal, state, or other public entity by either a principal executive officer, ranking
24 elected official or other duly authorized employee.

25 (f) The following discharges are deemed to be permitted pursuant to G.S. 143-215.1(c) provided that no water quality
26 standards are contravened, or expected to be contravened, and it shall not be necessary for the Division to issue
27 separate permits for these activities:

- 28 (1) filter backwash and draining associated with swimming pools;
- 29 (2) filter backwash from raw water intake screening devices;
- 30 (3) condensate from residential or commercial air conditioning units;
- 31 (4) individual non-commercial vehicle washing operations;
- 32 (5) flushing and hydrostatic testing water associated with utility distribution systems;
- 33 (6) discharges associated with emergency removal and treatment activities for spilled oil authorized by
34 the federal or state on-scene coordinator when such removals are undertaken to minimize overall
35 environmental damage due to an oil spill;
- 36 (7) groundwaters generated by well construction or other construction activities;
- 37 (8) landscape irrigation, foundation or footing drains, or water from crawl space pumps;

Commented [A1]: Change: Updated Division name in two instances.
Effect: Technical corrections.

Commented [A2]: Change: Revised to clarify timeframes for submittal of renewal applications and to advise early submittal for new discharges.
Effect: Clarification.

- 1 (9) street wash water;
- 2 (10) flows from fire fighting; and
- 3 (11) excluding the provision in Subparagraph (f)(6) of this Rule, discharges associated with biological
- 4 or chemical decontamination activities performed as a result of an emergency declared by the
- 5 Governor or the Director of the Division of Emergency Management and that are conducted by or
- 6 under the direct supervision of the federal or state on-scene coordinator and that meet the following
- 7 specific conditions:
- 8 (A) the volume of discharge produced by the decontamination activity is too large to be
- 9 contained on-site;
- 10 (B) the Division of Water ~~Quality~~Resources is informed prior to commencement of the
- 11 discharge from the decontamination activity;
- 12 (C) overland flow or other non-discharge options are deemed to be impractical by the
- 13 authorities conducting the decontamination activity; and
- 14 (D) the discharge is not radiologically contaminated.

15 (g) Continued Applicability of Permit. A wastewater treatment facility or treatment unit that is taken out of service

16 but contains waste or residuals that could be discharged to surface waters or otherwise present an environmental or

17 public health risk under foreseeable circumstances, including severe weather events, shall remain subject to NPDES

18 permit requirements until such materials are properly disposed.

19

20 *History Note: Authority G.S. 106-399.4; 143-215.1(c); 143-215.1(b)(3); 143-215.3(a)(1);*

21 *Eff. February 1, 1976;*

22 *Amended Eff. March 1, 1993; November 1, 1987; January 1, 1984; November 1, 1978;*

23 *Temporary Amendment Eff. May 11, 2001;*

24 *Temporary Amendment Expired on February 26, 2002;*

25 *Amended Eff. <date>; April 1, 2003.*

26

Commented [A3]: Change: This adapts requirements in 2T .0105(j) for non-discharge WWTPs, which have long been applied to NPDES facilities.
Effect: Clarifies established requirements.

1 15A NCAC 02H .0107 is proposed for re adoption with substantive changes as follows:

2
3 **15A NCAC 02H .0107 STAFF REVIEW AND EVALUATION**

4 (a) The Director is authorized to accept applications for the Commission and shall refer all applications to the staff
5 for review and evaluation. Additionally, the Director shall refer NPDES Permit applications for the discharge of waste
6 into waters classified as sources of public water supply (WS classification) and shellfish waters classified SA to the
7 Public Water Supply Section, Division of Water Resources, and the Shellfish Sanitation Program, Division of
8 Environmental Health, Marine Fisheries, respectively, both of the Department of Environment, Health, and Natural
9 Resources, Environmental Quality, for review and written approval.

10 (b) The Director shall acknowledge receipt of a ~~complete~~ NPDES or Authorization to Construct permit application
11 upon verifying that the application is administratively complete, that is, includes the completed and signed application
12 forms specified in Rule .0105(a) of this Section, any necessary supplemental information, and any associated fees in
13 accordance with Rules .0105 and .0106 of this Section.

14 (1) ~~If an application is or, if not~~ administratively complete, the Director may return the application to
15 the applicant as incomplete or request the additional information required. The applicant may be
16 given up to 60 days to provide the information to make the application complete.

17 (2) If technical review of the application reveals that additional information is necessary for staff to
18 properly evaluate the proposed discharge, the Director may return the application to the applicant
19 as incomplete or request the necessary information. The applicant may be given up to 60 days to
20 provide the information to make the application complete. If the Director deems it necessary to
21 return an application after technical review has begun, the permit action is terminated, and the
22 applicant forfeits any associated processing fee. The applicant may re-apply for a permit, subject to
23 the same application and fee requirements.

24 (c) Tentative Determination and Draft individual NPDES Permit

25 (1) The staff shall conduct a site investigation and shall prepare its written evaluation and tentative
26 determination to issue or deny the NPDES permit. On-site investigations will not be necessary for
27 Authorization to Construct permits, activities covered under general ~~permits~~ permits, and renewal of
28 individual permits with no ~~modifications~~ modifications warranting such investigation.

29 (2) If the staff's tentative determination in ~~Paragraph~~ Subparagraph (1) of this Subdivision is to issue the
30 permit, it shall if necessary make the following additional determinations in writing:

- 31 (A) proposed effluent limitations for those pollutants proposed to be limited;
32 (B) a proposed schedule of compliance, including interim dates and requirements, for meeting
33 the proposed effluent limitations; and
34 (C) a brief description of any other proposed special conditions which will have significant
35 impact upon the discharge described in the application.

36 (3) The staff shall organize the determinations made pursuant to ~~Paragraphs~~ Subparagraphs (1) and (2)
37 of this Subdivision into a draft permit.

Commented [A1]: Change: Updated organizational names in multiple locations.
Effect: Technical corrections.

Commented [A2]: Change: Revised this paragraph and added subparagraphs in order to distinguish between initial admin review and subsequent technical reviews. Noted possible forfeiture of fees for lingering incomplete submittals.
Effect: Clarification of established practices.

Commented [A3]: Change: Revised punctuation and capitalization, made minor working changes, and corrected references to other parts of the rule.
Effect: Technical corrections.

1 (d) In the case of permits for which ~~notice of intent~~Notice of Intent is given on forms as described in Rule .0105(a)
2 of this Section, a Certificate of Coverage under a general permit may be prepared and issued directly to the applicant
3 in lieu of any other acknowledgment. If the Notice of Intent is unacceptable, it will be returned to the applicant with
4 an explanation of the inadequacies.

5

6 *History Note:* Authority G.S. 130-161; 143-215.3(a)(1); 143-215.3(a)(4); 143-215.1(a);
7 143-215.1(c);

8 *Eff. February 1, 1976;*

9 *Amended Eff. <date>; March 1, 1993; August 1, 1991; August 1, 1988; October 1, 1987.*

10

1 15A NCAC 02H .0108 is proposed for readoption with substantive changes as follows:
2

3 **15A NCAC 02H .0108 FACT SHEETS**

4 (a) For all discharges which do not qualify for a general NPDES permit and which have a total volume of 500,000 or
5 more gallons on any day, a fact sheet providing a brief synopsis of the application shall be prepared by the staff and
6 made available upon request following issuance of the public notice. The contents of such fact sheets shall include at
7 least the following information:

- 8 (1) a ~~sketch~~sketch, map, or detailed description of the location of the discharge described in the
9 application;
- 10 (2) a quantitative and qualitative description of the discharge described in the application which
11 includes at least the following:
12 (A) the rate or frequency of the proposed discharge; if the discharge is continuous, the average
13 daily flow in gallons per day or million gallons per day;
14 (B) for thermal discharges subject to limitation under the act, the average summer and winter
15 temperatures in degrees Fahrenheit; ~~and~~
16 (C) the average daily discharge in pounds per day of any pollutants which are present in
17 significant quantities or which are subject to limitations or prohibition; and
18 (D) the type and characteristics of the wastes to be discharged.
- 19 (3) the tentative determinations required under Rule .0107 of this Section;
- 20 (4) a brief citation of the water quality standards and effluent standards and limitations applied to the
21 proposed discharge, including a brief identification of the uses for which the receiving waters have
22 been classified; and
- 23 (5) a more detailed description of the procedures for the formulation of final determinations than that
24 given in a public notice including:
25 (A) the 30-day comment period required by ~~Rule .0110~~Rules .0109 and .0111 of this Section,
26 (B) procedures for requesting a public meeting/hearing and the nature thereof, and
27 (C) any other procedures by which the public may participate in the formulation of the final
28 determinations.

29 (b) Any person, upon request, will be furnished, without charge, one copy of any fact sheet.
30

31 *History Note: Authority G.S. 143-215.3(a)(1); 143-215.1(c)(2)(a);*
32 *Eff. February 1, 1976;*
33 *Amended Eff. <date>; March 1, 1993; August 1, 1988; October 1, 1987.*
34

Commented [A1]: Change: Added for completeness, consistent with current practice.
Effect: Clarification.

Commented [A2]: Change: Corrected citation; .0110 was repealed in 1987.
Effect: Technical correction.

Commented [A3]: Change: Corrected wording to be consistent with revised Rule 02H .0111.
Effect: Technical correction.

1 15A NCAC 02H .0109 is proposed for readoption with substantive changes as follows:

2
3 **15A NCAC 02H .0109 PUBLIC NOTICE**

4 (a) Notice of Application

5 (1) ~~Public~~The Director shall provide public notice of each ~~complete~~tentative determination to issue an
6 individual or general NPDES permit application and each general NPDES permit permit, or to deny
7 such permit, shall be circulated in the geographical ~~areas~~area of the proposed discharge by the
8 Director at least 45 days prior to any proposed final action:

9 (A) by publishing the notice one time in a newspaper having general circulation in said
10 ~~county~~county, provided that, to the extent publication by electronic means is lawful, such
11 publication may be substituted for newspaper publication; and

12 (B) by mailing the notice or transmitting the notice electronically to all persons or agencies
13 listed in ~~Subsection~~Paragraphs (c) and (d) of this Rule.

14 (2) The notice shall allow at least 30 days for public comment on the draft permit and the proposed final
15 action.

16 (3) The notice shall set forth at least the following:

- 17 (A) name, address, and phone number of the agency issuing the public notice;
- 18 (B) name and address of each applicant;
- 19 (C) brief description of each applicant's activities or operations which result in the discharge
20 described in the NPDES application;
- 21 (D) name of waterway to which each discharge is made and a short description of the location
22 of each discharge on the waterway indicating whether such discharge is a new or an
23 existing discharge;
- 24 (E) a statement of the tentative determination to issue or deny an NPDES permit for the
25 discharge described in the NPDES ~~application~~application or general permit;
- 26 (F) a brief description of the procedures for the formulation of final determinations, including
27 a 30-day comment period and any other means by which interested persons may influence
28 or comment upon the determinations; and
- 29 (G) address and phone number of state agency premises at which interested persons may obtain
30 further information, request a copy of the draft permit, request a copy of the fact sheet, and
31 inspect and copy NPDES application forms and related documents. Copies of the fact sheet
32 shall be made available free upon request. Copies of the information on file, other than fact
33 sheets, will be made available upon request and payment of the cost of reproduction.

34 ~~(3)~~(4) Public notice for those activities covered by Certificates of Coverage issued pursuant to a general
35 permit and for Authorizations to Construct shall not be required.

36 (b) Notice of Public Meeting Hearing

Commented [A1]: Change: Updated organizational names throughout.
Effect: Technical corrections.

Change: Modified several provisions of the rule to allow electronic notices and mailings of draft permits once legal authority is established (requires changes in G.S. and in federal rules).
Effect: Will improve availability and reduce costs of distributing notices and draft permits.

Commented [A2]: Change: Switched the paragraph to active voice.
Effect: Grammatical correction

Commented [A3]: Change: Provide for the future possibility of using electronic means to publish notice of draft permits.
Effect: Potential streamlining of the process. If authorization is granted in future legislation and federal regulations, will allow for more flexible and cost-effective public notices.

Commented [A4]: Change: Corrected references to other subdivisions of the rule.
Effect: Technical corrections.

Commented [A5]: Change: Replaced all instances of 'meeting' with 'hearing', consistent with the enabling G.S. and standard practice of the Division.
Effect: Technical corrections.

- 1 (1) Notice of public ~~meeting~~hearing on any NPDES permit application shall be circulated in the
 2 geographical ~~areas~~area of the proposed discharge by the Director at least 30 days prior to the date
 3 of the ~~meeting~~hearing:
- 4 (A) ~~by publishing the notice one time in a newspaper having general circulation in said~~
 5 ~~county;county, provided that, to the extent publication by electronic means is lawful, such~~
 6 ~~publication may be substituted for newspaper publication;~~
- 7 (B) ~~by mailing the notice or transmitting the notice electronically to all persons and government~~
 8 ~~agencies which received a copy of the notice or the fact sheet for the NPDES application;~~
 9 ~~and~~
- 10 (C) ~~by mailing the notice or transmitting the notice electronically to any person or group upon~~
 11 ~~request.~~
- 12 (2) The notice of any public ~~meeting~~hearing shall include at least the following:
- 13 (A) name, address, and phone number of agency holding the public ~~meeting~~hearing;
- 14 (B) name and address of each applicant whose application will be considered at the
 15 ~~meeting~~hearing;
- 16 (C) name of waterway to which each discharge is made and a short description of the location
 17 of each discharge on the waterway;
- 18 (D) a brief reference to the public notice issued for each NPDES application including
 19 identification number and date of issuance;
- 20 (E) information regarding the time and location for the ~~meeting~~hearing;
- 21 (F) the purpose of the ~~meeting~~hearing;
- 22 (G) address and phone number of premises at which interested persons may obtain further
 23 information, request a copy of each draft NPDES permit, request a copy of each fact sheet,
 24 and inspect and copy NPDES forms and related documents; and
- 25 (H) a brief description of the nature of the ~~meeting~~hearing including the rules and procedures
 26 to be ~~followed~~followed. The notice shall also state that additional information is on file
 27 with the ~~Division of Environmental Management, Department of Environment, Health, and~~
 28 ~~Natural Resources, Environmental Quality, Divison of Water Resources,~~ at the Archdale
 29 Building at 512 North Salisbury Street, Raleigh, North Carolina, and may be inspected at
 30 any time during normal working hours. Copies of the information on file will be made
 31 available upon request and payment of cost of reproduction.
- 32 (c) ~~Mailing Lists. Any person may request to receive copies of all notices required under this Rule and the Director~~
 33 ~~shall mail such notice to any such person. An annual charge of twenty five dollars (\$25.00) may be charged for any~~
 34 ~~person desiring to be placed and maintained on the NPDES Permit mailing list. The Director shall also give notice of~~
 35 ~~draft NPDES permits and related public hearings to the following for NPDES permits:following:~~
- 36 (1) State water pollution control agency for the States of Virginia, South Carolina, Tennessee, and
 37 Georgia;

Commented [A6]: Change: Revised to allow electronic notices.
Effect: Potential streamlining of public review process.

Commented [A7]: Change: Moved mailing list provisions to new paragraph (d), below. Clarified focus of remaining language.
Effect: Will improve availability and reduce costs of distributing notices and draft permits.

- 1 (2) Appropriate district engineer, U.S. Army Corps of Engineers;
- 2 (3) Lead agency responsible for preparation of plan pursuant to Section 208(b) of the Clean Water Act,
- 3 33 U.S.C. Section 1251 et seq, in approved 208 areas;
- 4 (4) State agency responsible for the preparation of plans pursuant to Section 303(e) of the Clean Water
- 5 Act, 33 U.S.C. Section 1251 et seq;
- 6 (5) ~~North Carolina Department of Environment, Health, and Natural Resources, Division of~~
- 7 ~~Environmental Health;~~ any user identified in the permit application of a privately owned treatment
- 8 works; and
- 9 (6) Any other federal, state, or local agency upon request.

10 (d) Mailing Lists. Any person may request to receive copies of all notices required under this Rule, and the Director

11 shall provide such copies to any such person. The Director shall establish and maintain an NPDES mailing list for this

12 purpose. An annual printing and mailing charge of twenty-five dollars (~~\$25.00~~) may be charged for any person on the

13 list requesting paper copies of the notices. The Director may distribute notices, or otherwise make them available, by

14 electronic means at no charge.

15

16 *History Note: Authority G.S. 143-215.1(a)(1); 143-215.1(c); 143-215.4(a); 143-215.4(c);*

17 *Eff. February 1, 1976;*

18 *Amended Eff. <date>; March 1, 1993; August 1, 1988; October 1, 1987; December 1, 1984.*

19

Commented [A8]: Change: Removed reference to DEH (Onsite Water Protection Branch), as other avenues for coordination between the programs are sufficient. Added a specific requirement found in 40 CFR 124.10(c)(1)(v) but not previously listed.
Effect: Technical corrections.

Commented [A9]: Change: Move mailing list requirements here (formerly para. (c)) and revised to reflect use of electronic means of information sharing. Clarified that fee applies only to persons requesting paper copies to be sent by U.S. mail.
Effect: Provides clarification and prevents unnecessary charging of fees.

1 15A NCAC 02H .0111 is proposed for readoption with substantive changes as follows:
2

3 **15A NCAC 02H .0111 MEETINGS AND PUBLIC HEARINGS**

4 (a) Public ~~Meetings:~~Hearings:

5 (1) The Director shall provide an opportunity for the applicant, any affected state, any affected interstate agency,
6 the regional administrator, or any interested agency, person, or group of persons to request or petition for a public
7 ~~meeting~~hearing with respect to NPDES permit applications. Any person who desires a public ~~meeting~~hearing on any
8 NPDES permit application shall so request in writing to the Director within 30 days following the publication date of
9 the notice of application. Any such request or petition for public ~~meeting~~hearing shall indicate the interest of the party
10 filing such request and the reasons why a ~~meeting~~hearing is warranted.

11 (2) The Director is delegated authority to determine if a public ~~meeting~~hearing shall be held in accordance with
12 G.S. 143-215.1(c)(3) and to issue public notice and conduct such ~~meeting~~hearing for the Commission.

13 (3) All comments received within 30 days following the publication date of the notice of NPDES permit
14 application shall be made part of the application file and shall be considered by the Director prior to taking final action
15 on the application.

16 (4) Any ~~meeting~~hearing brought pursuant to this Subsection shall be held in the geographical area of the
17 proposed discharge or other appropriate area, in the discretion of the Director, and may, as appropriate, consider
18 related groups of permit applications.

19 (b) Adjudicatory Hearings and appeals shall be conducted in accordance with Article 3 of Chapter 150B of the General
20 Statutes.

21

22 *History Note: Authority G.S. 143-215.3(a)(1); 143-215.1(c)(1); 143-215.3(a)(3); 143-215.3(a)(4);*
23 *143-215.5; 143-215.1(e);*
24 *Eff. February 1, 1976;*
25 *Amended Eff. <date>; March 1, 1993; November 1, 1987.*
26

Commented [A1]: Change: Replaced all instances of 'meeting' with 'hearing', consistent with the enabling G.S. and standard practice of the Division.
Effect: Technical corrections.

1 15A NCAC 02H .0112 is proposed for readoption with substantive changes as follows:

2
3 **15A NCAC 02H .0112 FINAL ACTION ON PERMIT APPLICATIONS**

4 (a) The Director shall take final action on all NPDES applications not later than 60 days following notice of intent to
5 issue or ~~deny~~; or, if a public ~~meeting~~ hearing is held, within 90 days following the closing of the record of the
6 ~~meeting or hearing~~; or, in the case of an Authorization to Construct ~~permit~~ permit, 90 days after the receipt of a complete
7 ~~application~~ application; or, if a public ~~meeting~~ hearing is held concerning the Authorization to Construct, within 90
8 days following the closing of the record of the ~~meeting~~ hearing.

9 (b) The Director is authorized to:

- 10 (1) issue a permit containing such conditions as are necessary to effectuate the purposes of G.S.
11 143-215.1 and G.S. 143-215.67;
- 12 (2) issue a permit containing time schedules for achieving compliance with applicable effluent
13 standards and limitations, water quality standards, and other legally applicable requirements;
- 14 (3) modify or revoke any permit upon giving 60 days notice to the person affected pursuant to Rule
15 .0114(a) of this Section;
- 16 (4) suspend a permit pursuant to Rule .0114(a) of this Section;
- 17 (5) rescind a permit upon request by the permittee;
- 18 (6) deny a permit application:
- 19 (A) where necessary to effectuate the purposes of Article 21 Chapter 143,
- 20 (B) for a discharge prohibited by G.S. 143-214.2(a),
- 21 (C) where the Secretary of the Army finds the discharge would substantially impair anchorage
22 and navigation,
- 23 (D) for a discharge to which the regional administrator of EPA has objected as provided in
24 Section 402(d) of the Clean Water Act as amended, 33 U.S.C. Section 1251 et seq,
- 25 (E) for any point discharge which conflicts with a plan approved pursuant to Section 208(b) of
26 the Clean Water Act as amended, 33 U.S.C. Section 1251 et seq, effective February 4,
27 1987.

28 (c) The permit applicant has the burden of providing sufficient evidence to reasonably ensure that the proposed system
29 will comply with all applicable water quality standards and requirements. No permit may be issued when the
30 imposition of conditions cannot reasonably ensure compliance with applicable water quality standards and regulations
31 of all affected states.

32 (d) Permits shall be issued or renewed for a period of time deemed reasonable by the Director except in no case shall
33 state NPDES permits be issued for a period to exceed five years.

34 (e) Continuation of expiring permits

35 (1) Notwithstanding Paragraph (d), the conditions of an expired permit continue in force until the
36 effective date of a new permit, or until otherwise terminated, if:

- 37 (A) The permittee has submitted a timely and complete application under Rule .0106; and

Commented [A1]: Change: Replaced all instances of 'meeting' with 'hearing', consistent with the enabling G.S. and standard practice of the Division.
Effect: Technical corrections.

Change: Revised punctuation.
Effect: Clarification.

Commented [A2]: NOTE: Language is consistent with GS 143-215.1(c)(4) but conflicts w/ State-EPA MOA, which allows EPA up to 90 days for review of draft permits.

Commented [A3]: Change: Clarified that only NPDES permits are limited to 5-year terms – terms of ATCs are not limited.
Effect: Clarification, no effect.

Commented [A4]: Change: Added provisions for administratively extended permits in (e) and (f), consistent with 40 CFR 122.6, as is currently practiced.
Effect: Technical change.

1 (B) The Director, through no fault of the permittee, does not issue a new permit with an
2 effective date on or before the expiration date of the previous permit (for example, when
3 issuance is impracticable due to time or resource constraints).

4 (2) Effect. Permits continued under this Paragraph remain fully effective and enforceable.

5 (f) Enforcement. When the permittee is not in compliance with the conditions of the expiring or expired permit,
6 the Director may choose to do any or all of the following:

7 (1) Initiate enforcement action based upon the permit which has been continued;

8 (2) Issue a notice of intent to deny the new permit under Paragraph (b) of this Rule. If the permit is
9 denied, the owner or operator shall cease the activities authorized by the continued permit or be
10 subject to enforcement action for operating without a permit;

11 (3) Issue a new permit under this Subchapter with appropriate conditions; or

12 (4) Take other actions authorized by G.S. 143-215.1 and these regulations.

13
14 *History Note:* Authority G.S. 143-215.3(a)(1); 143-215.1(c)(4); 143-215.1(b); 143-215.3(a)(3);
15 143-215.3(a)(4); 143-215.1(c)(5); 143-214.2(a); 143-215; 143-215.2(a);
16 Eff. February 1, 1976;
17 Amended Eff. <date>; March 1, 1993; October 1, 1987; September 1, 1986; December 1, 1984.
18

1 15A NCAC 02H .0113 is proposed for readoption without substantive changes as follows:

2

3 **15A NCAC 02H .0113 NOTIFICATION OF APPLICANTS**

4 The Director shall notify an applicant of the final decision of the applicant's permit application. Notifications of denial
5 shall be made by certified mail and shall specify the reasons therefor and the proposed changes which in the opinion
6 of the Director will be required to obtain the permit.

7

8 *History Note: Authority G.S. 143-215.3(a)(1); 143-215.1(a); 143-215.3(a)(4);*

9 *Eff. February 1, 1976;*

10 *Amended Eff. October 1, ~~1987~~1987;*

11 *Readopted Eff. <date>.*

12

1 15A NCAC 02H .0114 is proposed for readoption with substantive changes as follows:

3 **15A NCAC 02H .0114 MODIFICATION AND REVOCATION OF PERMITS**

4 (a) Any permit issued pursuant to this Section is subject to revocation or modification in whole or part pursuant to 40
5 CFR 122.62 or for any of the following:

- 6 (1) violation of any terms or conditions of the permit;
- 7 (2) obtaining a permit by misrepresentation or failure to disclose fully all relevant facts;
- 8 (3) a change in any condition that requires either a temporary or permanent reduction or limitation of
9 the permitted discharge; and
- 10 (4) unlawful refusal of the permittee to permit the Director or his authorized representative upon
11 presentation of proper credentials:
 - 12 (A) to enter upon permittee's premises in which an effluent source is located or in which any records
13 are required to be kept under terms and conditions of the permit,
 - 14 (B) to have access to any copy and records required to be kept under terms and conditions of the
15 permit,
 - 16 (C) to inspect any monitoring equipment or method required in the permit, or
 - 17 (D) to sample any discharge of ~~pollutants~~ pollutants;
- 18 (5) failure to pay the annual ~~fee for administering and compliance monitoring~~ permit fee.

19 (b) Modifications and reissuance of permits shall be subject to the same public notice and other procedural
20 requirements as the issuance of permits except as follows:

- 21 (1) modifications of the monitoring program contained in the permit,
- 22 (2) name changes or changes in the ownership of the discharge when no other change in the permit is
23 indicated,
- 24 (3) a single modification of any compliance schedule not in excess of four months,
- 25 (4) modification of compliance schedules (construction schedules) in permits for new sources where
26 the new source will not begin to discharge until control facilities are operational,
- 27 (5) modifications to include or amend pretreatment program requirements,
- 28 (6) issuance of permits revoked for failure to pay the annual ~~administering and compliance monitoring~~
29 permit fee,
- 30 (7) modifications determined by the Director to be minor, such as typographical errors, incorrect maps,
31 and similar minor changes.

33 *History Note:* Authority G.S. 143-215.3(a)(1); 143-215.1(b)(3);
34 Eff. February 1, 1976;
35 Amended Eff. <date>; March 1, 1993; September 1, 1988; November 1, 1987.

Commented [A1]: Change: Clarified the entry provisions to address concerns of DEQ legal counsel. Also moved copy to 2H .0117, Investigations.
Effect: Taken together, these changes clarify the access requirements.

Commented [A2]: Change: Revised throughout rule to reflect current fee structure.
Effect: Technical corrections.

Commented [A3]: Change: Revised to reflect current fee structure.
Effect: Technical corrections.

1 15A NCAC 02H .0115 is proposed for readoption with substantive changes as follows:

3 **15A NCAC 02H .0115 PUBLIC ACCESS TO RECORDS**

4 (a) ~~All records, reports, and information required to be submitted to the Commission or the Director; any public~~
5 ~~comment on these records, reports or information; and the draft and final permits shall be disclosed upon request to~~
6 ~~the public unless the person submitting the information can show that such information, if made public, would disclose~~
7 ~~methods or processes entitled to protection as trade secrets. In accordance with G.S. Article 132, the Public Records~~
8 ~~Law: All materials, including records, reports, data, maps, diagrams, draft or final permits, fact sheets, or other~~
9 ~~documents or information and any public comments, in printed or electronic form, submitted to the Commission, the~~
10 ~~Secretary, or the Director are public records in accordance with Chapter 132 of the General Statutes and are subject~~
11 ~~to disclosure pursuant to G.S. 132-6 unless the material qualifies as confidential information as defined in G.S. 132-~~
12 ~~2.1.~~

13 (b) ~~The Director is authorized to determine information which is entitled to confidential treatment. In the event the~~
14 ~~Director determines that such information (other than effluent data) is entitled to confidential treatment, he shall take~~
15 ~~steps to protect such information from disclosure. He shall submit the information considered to be confidential to the~~
16 ~~Regional Administrator, EPA, Region IV, for concurrence in his determination of confidentiality.~~

17 (c) ~~The Director shall:~~

- 18 (1) provide facilities for the inspection of information relating to permit applications and permits,
- 19 (2) ensure that the staff handle ~~request~~ requests for such inspections ~~promptly~~ in a timely manner, and
- 20 (3) ensure that copying machines or ~~other devices~~ or means of providing copies of such documents are
21 available for a reasonable fee.

22 (c) Confidentiality of Information.

- 23 (1) Any claim of confidentiality shall be made by marking "confidential" or "trade secret" on each page
24 containing such information or, in the case of information in electronic form, by other means
25 acceptable to the Director.
- 26 (2) Until a claim of confidentiality is made, all materials submitted pursuant to the permitting rules are
27 public records and subject to disclosure as described in Paragraph (a).
- 28 (3) Upon receiving a request for confidentiality, the Director shall maintain the affected materials
29 separately from public record documents and shall not disclose the materials unless or until he
30 determines that the materials do not qualify as confidential information.
- 31 (4) The Director shall provide copies of any request for confidentiality and the affected materials to the
32 Regional Administrator of EPA, Region 4, and may consult with the Regional Administrator
33 regarding whether materials marked as "confidential" or "trade secret" qualify as confidential
34 information.
- 35 (3) Upon reviewing a request for confidentiality, the Director shall notify the applicant of his findings.
36 If the Director determines that the materials or any portions thereof do not qualify as confidential
37 information, those portions shall not be released for at least 60 days following the notification of

Commented [A1]: Change: Clarified the standards and the process for treating information as confidential, consistent with state and federal regulations.
Effect: Clarification.

1 findings. If the applicant files a contested case in response to the Director's decision, the materials
2 shall not be released until conclusion of the contested case and then according to the court's decision.
3 If the Director determines that the materials or any portions thereof qualify as confidential
4 information, the Director shall continue to protect such information from disclosure.

5 (d) The following information may not be claimed as "confidential" or "trade secret":

6 (1) The name and address of any permit applicant or permittee;

7 (2) Permit applications, including information or data required to be disclosed on the NPDES
8 application forms provided by the Director pursuant to Rule 02H .0105 or in printed or electronic
9 attachments or appendices to such NPDES application forms.

10 (3) Permits and effluent data.

11
12 *History Note:* Authority G.S. 143-215.3(a)(1); 143-215.3(a)(2); 143-215.3(a)(4); 132-6;
13 143-215.65;
14 Eff. February 1, 1976;
15 Amended Eff. <date>; March 1, 1993; October 1, 1987.

16

1 15A NCAC 02H .0116 is proposed for reoption with substantive changes as follows:

2

3 **15A NCAC 02H .0116 EMERGENCY PROCEDURES**

4 If the Director determines any threatened or continuing violations exist which warrant immediate action, the Director
5 shall so notify the Commission or the secretary ~~who in order that they~~ may exercise the emergency powers granted
6 them pursuant to G.S. 143-215.3(a)(8), 143-215.13(d), ~~143-215.6(e), 143-215.6C,~~ or 143-215.3(a)(12).

7

8 *History Note: Authority G.S. 143-215.3(a)(8); 143-215.13(d); ~~143-215.6(e); 143-215.6C; 143-215.3(a)(12);~~*
9 *Eff. February 1, 1976;*
10 *Amended Eff. <date>; December 1, 1984; November 1, 1978.*

11

Commented [A1]: Change: Revise so that the rule does not merely repeat the statutory language.
Effect: Clarification.

1 15A NCAC 02H .0117 is proposed for readoption with substantive changes as follows:
2

3 **15A NCAC 02H .0117 INVESTIGATIONS: MONITORING: AND REPORTING**

4 (a) Staff of the Department of ~~Environment, Health, and Natural Resources~~ Environmental Quality are authorized to
5 conduct any investigations as provided in G.S. 143-215.3(a)(2), (7), and (9) for the purpose of determining compliance
6 with water quality standards, effluent limitations, permit conditions and any duly adopted rule of the Commission.

7 (b) Any person subject to the provisions of G.S. 143-215.1 shall comply with the monitoring and reporting
8 requirements of Rules in Section 15A NCAC 2B .0500.

9 (c) Any person subject to the provisions of G.S. 143-215.1 shall allow the Director or his authorized representative
10 upon presentation of proper credentials and other necessary documents as may be required by law:

11 (1) to enter upon permittee's premises in which an effluent source is located or in which any records are
12 required to be kept under terms and conditions of the permit,

13 (2) to have access to any copy and records required to be kept under terms and conditions of the permit,

14 (3) to inspect any monitoring equipment or method required in the permit, or

15 (4) to sample any discharge of pollutants.
16

17 *History Note: Authority G.S. 143-215.3(a)(1); 143-215.3(a)(4); 143-215.3(a)(2); 143-215.3(a)(7);*
18 *143-215.1(b)(1); 143-215.3(a)(9); 143-215.63;*
19 *Eff. February 1, 1976;*
20 *Amended Eff. <date>; March 1, 1993; October 1, 1987; December 1, 1984; November 1, 1978.*
21

Commented [A1]: Change: Corrected Department name.
Effect: Technical correction.

Commented [A2]: Change: Moved language here from
2H .0114, Modification and Revocation of permits. This rule
is the more appropriate location for access requirements.
Effect: Relocation of existing requirements.

1 15A NCAC 02H .0118 is proposed for re adoption with substantive changes as follows:
2

3 **15A NCAC 02H .0118 EFFLUENT LIMITATIONS AND STANDARDS**

4 Any state NPDES permit will contain effluent limitations and standards required by 15A NCAC ~~2B02B~~.0400 and the
5 Clean Water Act which is hereby incorporated by reference including any subsequent amendments and editions. The
6 02B .0400 rules contain the effluent standards and limitations for ensuring compliance with Sections 301, 302, 306,
7 and 307 of the Clean Water Act (33 USC 1251, et seq.). For water quality limited stream segments, the rules provide
8 that effluent limitations be calculated by the staff and approved by the Director, to comply with Section 301(b)(1)(C)
9 of the federal act. This material is available for inspection at the Department of ~~Environment, Health, and Natural~~
10 ~~Resources, Environmental Quality, Division of Environmental Management, Water Resources, 512 N. Salisbury Street,~~
11 ~~Raleigh, North Carolina. State regulations can be accessed free of charge at <http://www.oah.state.nc.us/rules/>. Copies~~
12 ~~of the~~The Clean Water Act ~~may can be obtained from the Superintendent of Documents, U.S. Government Printing~~
13 ~~Office, Washington D.C. 20402-9325 at a cost of fifty dollars (\$50.00); accessed free of charge at~~
14 ~~<http://www.gpo.gov/fdsys/>. That rule contains the effluent standards and limitations for ensuring compliance with~~
15 ~~Sections 301, 302, 306, and 307 of the Clean Water Act. For effluent limited stream segments, the rule incorporates~~
16 ~~by reference federal effluent limitations and guidelines as state effluent limitations and guidelines. For water quality~~
17 ~~limited stream segments, the rules provide that effluent limitations be calculated by the staff and approved by the~~
18 ~~Director, to comply with Section 301(b)(1)(C) of the federal act.~~

19
20 *History Note: Authority G.S. 143-213(23); 143-215; 143-215.1(b)(1); 143-215.3(a)(1);*
21 *Eff. February 1, 1976;*
22 *Amended Eff. <date>; March 1, 1993; November 1, 1987.*
23

Commented [A1]: Change: Updated organizational names and document sources. Re-arranged the paragraph for easier reading.
Effect: Technical corrections and clarification.

1 15A NCAC 02H .0120 is proposed for readoption with substantive changes as follows:

2

3 **15A NCAC 02H .0120** **LIMITATION ON DELEGATION**

4 ~~The Director~~Secretary is authorized to delegate any or all of the functions contained in this Section to the Director.

5 The Director is authorized to redelegate any or all of these functions to qualified employees of the Division of Water
6 Resources except the following:

- 7 (1) denial of a permit application,
- 8 (2) suspension of a permit,
- 9 (3) revocation of a permit not requested by the permittee,
- 10 (4) modification of a permit where initiated by the Division and which does not fall within the
- 11 exceptions listed in Rule .0114(b) of this Section, or
- 12 (5) determination of confidentiality.

13

14 *History Note:* Authority G.S. 143-215.3(a)(1); 143-215.3(a)(4);

15 Eff. February 1, 1976;

16 Amended Eff. <date>; March 1, 1993.

17

Commented [A1]: Change: Revised to clarify delegation authorities and limitations, per the Secretary.
Effect: Clarification.

1 15A NCAC 02H .0121 is proposed for reoption without substantive changes as follows:

2

3 **15A NCAC 02H .0121 SUSPENSION OF REQUIREMENT FOR STATE NPDES PERMITS**

4 (a) The Commission finds that an NPDES Permit issued by the U.S. Environmental Protection Agency will serve in
5 lieu of a State Permit under 15A NCAC 2H .0104 and G.S. 143-215.1 so long as the Federal Permit is valid.

6 (b) Nothing in this Rule shall prevent the Commission from enforcing laws and regulations which by their terms are
7 applicable without a G.S. 143-215.1 permit.

8

9 *History Note: Authority G.S. 143-215.3(a)(1); 143-215.1; 143B-282;*

10 *Eff. December 1, 1976;*

11 *Amended Eff. December 1, ~~1984~~1984;*

12 *Readopted Eff. <date>.*

13

1 15A NCAC 02H .0124 is proposed for readoption with substantive changes as follows:
2

3 **15A NCAC 02H .0124** **RELIABILITY**

4 All facilities shall provide adequate reliability measures, which, in the opinion of the Director, will ~~insure~~ensure
5 continued treatment and disinfection where the interruption of such treatment would render the waters unsafe for their
6 best intended uses. The reliability measures shall include the following:

- 7 (1) For new or hydraulically expanding facilities with mechanically operated components, and for any
8 facility designated by the Director, multiple (dual at a minimum) components such as pumps,
9 chemical feed systems, aeration equipment and disinfection equipment; and
10 (2) At least one of the following:
11 (a) dual or standby power supply on site, or
12 (b) approval by the Director that the facility:
13 (i) serves a private water distribution system which has automatic shut-off at power
14 failure and no elevated water storage tanks, and
15 (ii) has sufficient storage capacity that no potential for overflow exists, or
16 (iii) can tolerate septic wastewater due to prolonged detention, and
17 (iv) would have de minimus impacts as a result of power failure, or
18 (c) a demonstration that the waters that would be impacted by a power failure are classified as
19 C Waters, the applicant may be allowed to show a history of power reliability that would
20 demonstrate that an alternative power source would not be needed or demonstrate other
21 measures which provide comparable assurances that surface waters will not be impacted
22 during power failures;
23 (3) For new or hydraulically expanding mechanical facilities, the treatment plant must contain parallel
24 units for components in the liquid line (screening, primary sedimentation, biological treatment units,
25 chemical and physical treatment units, clarifiers, disinfection and effluent filters), unless the
26 applicant can demonstrate to the satisfaction of the Director that this requirement is unwarranted for
27 a particular case; and
28 (4) For mechanical facilities with a design capacity equal to or greater than 5.0 mgd, continuous
29 operation, 24 hours, seven days per week, with each shift staffed by at least one certified wastewater
30 operator shall be provided on or before October 1, 1993, unless the applicant can demonstrate to the
31 satisfaction of the Director that this requirement is unwarranted for a particular case; and
32 (5) For facilities permitted under this Section, the permittee must designate an Operator in Responsible
33 Charge and a back-up operator as required by the Water Pollution Control System Operators
34 Certification Commission as established in 15A NCAC ~~8A-0202.08G .0201~~; and
35 (6) In order to ~~insure~~ensure the proper operation and maintenance of facilities permitted under this
36 Section, the Operator in Responsible Charge, or back-up operator when appropriate, must operate

Commented [A1]: Change: In Items (5) and (6), updated cross-references from 8A to 08G rules.
Effect: Technical corrections.

Change: Corrected spelling.
Effect: Technical corrections.

1 and visit the facility as required by the Water Pollution Control System Operators Certification
2 Commission as established in 15A NCAC ~~8A-0202~~08G .0200 et seq.; and
3 (7) Compliance with other reliability measures that, in the opinion of the Director, are necessary in a
4 particular case.

5
6 *History Note:* Authority G.S. 143-214.1; 143-215.1(b); 143-215.3(a)(1);
7 Eff. December 1, 1984;
8 Amended Eff. <date>; March 1, 1993; October 1, 1987.
9

1 15A NCAC 02H .0125 is proposed for re adoption with substantive changes as follows:
2

3 **15A NCAC 02H .0125 PERMIT REQUIREMENTS FOR PEAT MINING**

Commented [A1]: Change: Updated Division name.
Effect: Technical correction.

4 (a) Policy. Studies on peat mining in North Carolina have identified effects that could adversely impact the existing
5 uses of the waters of the state. As there is no experience with peat mining in similar ecological systems, the
6 effectiveness of proposed control and mitigation measures has not been demonstrated and must be estimated by using
7 methods of analyses that are not well tested by experience. Many of the impacts of large-scale peat mining and
8 subsequent reclamation may be irreversible and may not be realized until years or decades after peat mining is initiated.
9 In addition, the estuarine/wetland systems have intricate interconnections which are not well understood at present
10 and which are essential to the viability of the very valuable public estuarine resources. Recognizing the unknowns
11 associated with peat mining, this Rule specifies procedures and requirements that are necessary to ensure compliance
12 with the water quality standards and protection of the uses of the waters affected by peat mining operations. The water
13 quality standards and uses of the waters shall be protected during all phases of a peat mining project, and the
14 cumulative impacts of other peat mining or land uses shall be considered in the evaluation of each permit.

15 (b) Applicability. The requirements of this Rule are to be met during mining, reclamation, and, to the extent necessary
16 to protect water quality standards, after reclamation for all peat mining operations that could contribute significant
17 increases in pollution (including freshwater) into estuarine nursery areas, or any other area, identified by the
18 Commission on a case-by-case basis when it is determined that potential exists for significant adverse effects on water
19 quality and existing uses. Estuarine nursery areas are areas that function as important breeding or development grounds
20 for estuarine or marine fishes, crustaceans or molluscs. These areas include:

- 21 (1) all designated Primary Nursery Areas,
- 22 (2) all designated Secondary Nursery Areas,
- 23 (3) all anadromous fish spawning grounds and nursery areas identified in publications of the N.C.
24 Division of Marine Fisheries, and
- 25 (4) all other nursery areas designated or otherwise identified by the Marine Fisheries Commission, or
26 the Wildlife Resources Commission.

27 (c) Drainage:

- 28 (1) Canals draining peat mines shall not outlet directly into estuarine nursery areas and shall be directed
29 towards appropriate freshwater bodies if possible.
- 30 (2) If the drainage could contribute significant flow, directly or indirectly, into estuarine nursery areas
31 or other areas determined by the Commission to require this protection, the project must be designed
32 such that the total annual water released from the site would not exceed that expected from the site
33 covered with mature natural vegetation. Mature natural vegetation is the assemblage of indigenous
34 plants expected to occur on a proposed project site if it were allowed to develop undisturbed. This
35 expectation may include periodic disturbance by fire at natural frequencies and intensities. Also, the
36 peak flows from the site shall be controlled by the use of basins or other management techniques
37 which moderate release rates so that flows do not exceed those expected from the site undrained

1 and with mature natural vegetation. For purposes of this Rule, undrained is the state of the proposed
2 project site without structures or features imposed by human agency intended to facilitate removal
3 of surface or subsurface water. In modelling or other analysis required by this Rule, major canals
4 existing at the time of rule adoption, at a density no greater than one per mile by one per 1/2 mile
5 (or 320 acre blocks), may be allowed at the discretion of the Commission when it is determined that
6 accurate evaluation of "undrained" conditions is not practicable. Water management systems must
7 be designed to meet these criteria utilizing models or other quantitative methods in accordance with
8 Paragraph (g) of this Rule and considering a wide range of rainfall conditions. The
9 frequency-duration distribution for flows leaving the site during and after mining should as much
10 as possible match the distribution that would occur if the site were undrained and covered with
11 mature natural vegetation.

12 (3) An initial transition period may be allowed such that the entire permitted mining site comes into
13 compliance with these limitations within four years. Reduction in runoff volumes must occur at a
14 rate achieving constant yearly improvements as stipulated in the permit, and at no time exceed those
15 expected under conditions existing at the time of permit issuance.

16 (d) Nutrients. The project shall be designed so that nutrient loadings discharged from the site are no greater than
17 would occur if the site were covered with mature natural vegetation. An initial transition period may be allowed such
18 that the entire permitted mining site comes into compliance within four years, and shows constant yearly
19 improvements in nutrient loadings as outlined in the proposed project plan. However, in accordance with Rule .0404(c)
20 of this Subchapter, more stringent conditions may be established for nutrient discharges to waters that are excessively
21 eutrophic.

22 (e) Sediment. Best management practices, including settling basins on field ditches, should be utilized to control
23 sediment in drainage waters. The levels of sediment discharged must be predicted for the different stages of the
24 operation and evidence provided that these levels will not adversely affect the uses of the receiving waters. The
25 deposition of windblown dust into both drainage and adjacent waters and the effects during and after fires must be
26 included in this analysis. Details on the rate of sediment buildup and the frequency and procedures for removal in the
27 various components for the water control system, including canals and settling basins, must be provided. Adequate
28 sediment controls must be provided during maintenance and expansion of canals and water control structures.

29 (f) Other pollutants. The characteristics of the drainage water leaving the site must be described fully for all phases
30 of the project. Any substances which may be discharged during some phase of the project must be evaluated as part
31 of the application and adequately controlled to comply with the water quality standards and to protect the uses of the
32 waters. Possible runoff or leachate from storage piles of peat, ash, or other substances on site must be included in this
33 analysis. Adequate means of disposal of solid wastes must be assured and discussed in the application in order to
34 assure reliable control of pollution from on-site storage piles.

35 (g) Quantitative methods of evaluation. The design and evaluation of proposed peat mining projects relies on
36 predictive models to an unusual degree since there is no experience with large-scale peat mining or the effectiveness

1 of pollution control measures in similar situations. Modelling or quantitative methods of analyses must, at a minimum,
2 meet the following requirements:

- 3 (1) All factors which may affect the quality or quantity of the discharge must be included in the design
4 and evaluation of the water control system, including factors such as very large storm events,
5 sequential storm events, fires, various land uses during different stages of the project, recharge or
6 discharge to the groundwater, and construction, expansion, filling-in and maintenance of ditches,
7 canals, settling basins, and impoundments;
- 8 (2) The complete assumptions for each analysis or condition must be listed and possible errors and the
9 effects of such errors, including interactions, must be evaluated for each assumption;
- 10 (3) Situations under which the predictions would be inaccurate must be identified and evaluated;
- 11 (4) Conditions under which the proposed water control system would fail to provide adequate controls
12 must be evaluated, including mechanical failures, and descriptions of the storage and flow capacities
13 of all system components along with the intensities and durations of storms which would be
14 expected to exceed the capacity of the various components during each phase of the project. The
15 impact of such failures on water quality and flows must be evaluated;
- 16 (5) To provide maximum information about the operation of the proposed system under all conditions
17 and to minimize the possibility of error or inapplicable assumptions, various methods of analyses
18 should be utilized, including detailed models using historical rainfall data, as well as methods based
19 on individual design storms and runoff coefficients.

20 (h) Wetland or swamp discharges. While wetlands and swamps are waters of the state and cannot be considered as
21 part of a treatment and disposal system, their assimilative capacity and water storage capabilities may play a role in
22 protecting the uses of downstream waters. For purposes of this Rule, wetlands are as defined in the federal NPDES
23 regulations in 40 CFR 122.2, as existing on July 1, 1985, including any subsequent amendments and editions. These
24 regulations can be accessed free of charge at <http://www.gpo.gov/fdsys/>. Copies may also be obtained from the
25 Director, Division of ~~Environmental Management~~ Water Resources, Raleigh. Where available, determinations of
26 wetland status by the U.S. Environmental Protection Agency or the U.S. Army Corps of Engineers may be used in
27 making wetland evaluations. The Commission may also make determinations of wetland status in defining where
28 water quality standards and uses must be protected. A discharge to a wetland or swamp must protect the uses of these
29 waters. The water quality benefits of a wetland filter area should be estimated conservatively. Detailed information
30 on the size, topography, soils, flows, water depths, channels, vegetation, wildlife resources, uses by wildlife and man,
31 and other characteristics of a proposed filter area must be provided in order to demonstrate that the discharge will flow
32 in the desired direction, that sheet flow and water quality benefits will be maintained over the long-term, and that
33 water quality and existing uses of the area will not be threatened. The effects of storms or high water levels on these
34 benefits and characteristics must also be evaluated. A description of the means of diffusion to provide sheet flow is
35 particularly important. The terms wildlife and wildlife resources are used as defined in G.S. 113-129.

36 (i) Effects on groundwater. The impacts of the proposed project and water control system on groundwater must be
37 fully evaluated and found to ensure compliance with Title 15A, Subchapter 2L, Classification and Water Quality

Commented [A2]: Change: Revised to ensure changes in federal regs do not require state rulemaking, consistent with incorporation in other rules. (As an approved state program, NC is required to implement 40 CFR 122.2.)
Effect: Technical correction.

1 Standards Applicable to the Groundwaters of North Carolina. Groundwater monitoring wells may be required to verify
2 compliance with this requirement.

3 (j) Effects on adjacent landowners. The effects of the proposed project on water quality in adjacent lands and nearby
4 wildlife refuges, parks, and other publicly owned lands, must be evaluated. Hydrologic and other alterations must not
5 threaten the uses in nearby waters. A brief description of the project and summary of the expected impacts on water
6 quality and uses must be sent to adjacent landowners and a copy attached to the permit application.

7 (k) Assurance of continued operation. As part of the permit application, legal mechanisms must be developed to
8 assure continuous proper long-term use and operation and maintenance of water control systems during all times when
9 permitted peat mining or reclamation activities are being carried out that could adversely impact the waters of the state
10 and thereafter where no other acceptable options are available to protect water quality. These mechanisms must include
11 paying for the costs of operating and maintaining the system. These assurances must be provided by current owners
12 and will be required through all changes in ownership during this time. Assurances of implementation of these
13 mechanisms prior to the initiation of mining activity shall be a condition of the permit.

14 (l) Abandonment. The consequences of abandonment of the drainage and water control systems must be fully
15 described for each phase of the project and particularly after the reclamation plan is implemented. If the area of the
16 project is abandoned at any time, the drainage discharges must come into compliance with the design requirements of
17 this Rule within four years or on a schedule approved by the Commission such that pollution never exceeds levels
18 existing at the start of the project. The analyses must verify that the mining bond and reclamation plan after the bond
19 is released are both adequate to meet this condition. Further, it must be determined whether the mined area would
20 flood, and if so, the depth of the water and points and rates of overflow must be described along with the impacts on
21 adjacent lands and waters.

22 (m) Characteristics of treatment systems. If an impoundment lagoon, canal or ditch does not meet all of the
23 characteristics listed in Subparagraphs (1) through (4) of this Paragraph, the water in the structure may be considered
24 classified waters of the state. Standards are not required to be met in waste treatment systems. However, if public uses
25 were established, such as fishing, the Commission may determine that continual protection of that use be achieved
26 which could preclude some benefits desired as a waste treatment system. The characteristics of a treatment system are
27 that the structure:

- 28 (1) is manmade and is utilized primarily for water management and water pollution control;
- 29 (2) is entirely on a single tract of privately owned land with the owner or owners controlling the inflows
30 and outflows;
- 31 (3) has controls at the outlet(s) so water may flow out, but under normal hydrological conditions not
32 into the structure or facility through the outlet(s);
- 33 (4) is not an integral part of the ecosystem of the receiving waters so that if the operation causing the
34 pollution is discontinued, the structure or facility can be removed from use without adversely
35 impacting the hydrology or water quality of the receiving waters.

36 (n) Identification of outlet points. Water in treatment systems need not meet the water quality standards nor maintain
37 public uses. Waters downstream from an outlet point must be protected to meet the standards and public uses. Canals

1 are generally classified waters of the state, either as named stream segments in the Schedule of Classifications or as
2 unnamed tributaries. The following factors can be used as guidance in determining the outlet point:

- 3 (1) The outlet point must be entirely on the property of the permit applicant;
- 4 (2) The outlet point must be selected so that the owner can block, obstruct, or open the outlet point:
 - 5 (A) without removing any established uses of the waters including navigation, fishing, and
6 wildlife, and
 - 7 (B) without adversely affecting drainage by other landowners;
- 8 (3) Once a point has been designated as an outlet, the receiving waters cannot be obstructed by any
9 landowner without approval and a permit modification by the Commission;
- 10 (4) Outlet designations may require declassifications.

11 (o) Application Information. The permit application must contain full information to evaluate and assure compliance
12 with the requirements of this Rule, including maps, diagrams, calculations, assumptions, engineering specifications,
13 and any proposed deed restrictions, easements, contracts or other legal means of assuring long-term compliance.
14 Applications for all permits required by G.S. 143-215.1 for the project site, including permits for waste disposal for
15 sanitary facilities, on-site power plants, or energy conversion facilities, should be submitted together where possible
16 in order to evaluate the full impacts of the proposed project.

17
18 *History Note:* Authority G.S. 143-214.1; 143-215(a); 143-215(b); 143-215.1; 143-215.3(a)(1);
19 Eff. September 1, ~~1986-1986~~;
20 Amended Eff. <date>.

21

1 15A NCAC 02H .0127 is proposed for readoption with substantive changes as follows:

2

3 **15A NCAC 02H .0127 GENERAL PERMITS**

4 (a) In accordance with the provisions of G.S. 143.215.1 (b)(3) and (4), general permits may be developed by the
5 Division and issued by the Director for categories of activities shown in this Rule. All those dischargers in the State
6 that received a "Certificate of Coverage" for that category from the Division will be deemed covered under that general
7 permit. Each of the general permits will be issued individually under G.S. 143-215.1, using all procedural requirements
8 specified for individual NPDES or state permits including application and public notice. Each general permit must be
9 approved by the U.S. EPA, before it becomes effective. Dischargers covered under general permits, developed in
10 accordance with this Rule, will be subject to the same effluent standards and limits, management practices,
11 enforcement authorities, and rights and privileges as specified in the general permit. Procedural requirements for
12 application and permit approval, unless specifically designated as applicable to individuals proposed to be covered
13 under the general permits, apply only to the issuance of the general permits. After issuance of the general permit by
14 the Director and approval by EPA, dischargers in the applicable categories may request coverage under the general
15 permit, and the Director or his designee shall grant appropriate certification. General permits may be written to regulate
16 categories of other discharges that all: Involve the same or substantially similar operations; Have similar discharge
17 characteristics; Require the same effluent limitations or operating conditions; Require the same or similar monitoring;
18 and In the opinion of the Director are more appropriately controlled by a general permit such as:

- 19 (1) once-through non-contact cooling waters with no biocidal additives;
- 20 (2) mine dewatering facilities;
- 21 (3) water filtration facilities;
- 22 (4) swimming pool filter backwash facilities;
- 23 (5) seafood packing facilities;
- 24 (6) oil terminal storage facilities;
- 25 (7) tourist gem mines;
- 26 (8) sand dredges;
- 27 (9) trout farms;
- 28 (10) aquifer restoration;
- 29 (11) stormwater discharges;
- 30 (12) other discharges that meet the criteria in Paragraph (a) of this Rule.

31 (b) General permits will only be granted for discharge into waters classified either WS or SA following review and
32 approval by the Shellfish Sanitation Program, Division of Marine Fisheries, and the Public Water Supply Section,
33 Division of Environmental Health, Water Resources, both of the Department of Environment, Health, and Natural
34 Resources, Environmental Quality.

35 (c) No provision in any general permit ~~issues~~ issued under this Rule shall be interpreted as allowing the permittee to
36 violate state water quality standards or other applicable environmental standards.

Commented [A1]: Change: Corrected grammar and organizational names.
Effect: Technical corrections.

1 (d) For one of these general permits to apply to a facility, a Notice of Intent to be covered by the general permit must
2 be given using forms described in Rule .0105(a) of this Section and, as appropriate, following the application
3 procedures specified in Rules .0105 and .0106 of this Section. If all requirements are met, coverage under the general
4 permit may be granted. If all requirements are not met, a long form application and full application review procedure
5 will be required.

6 (e) General permits will be effective for a term not to exceed five years at the end of which the Division may renew
7 them. All public notice requirements shall be satisfied prior to renewal of general permits. Dischargers covered by
8 general permits need not submit new Notices of Intent or renewal requests unless so directed by the Division. If the
9 Division chooses not to renew a general permit, all facilities covered under that general permit shall be notified to
10 submit applications for individual permits.

11 (f) All previous state water quality permits issued to a facility which can be covered by a general permit, whether for
12 construction or operation, are revoked upon request of the permittee, termination of the individual permit and issuance
13 of the Certification of Coverage.

14 (g) Anyone engaged in activities covered by the general permit rules but not permitted in accordance with this Section
15 will be considered in violation in G.S. 143-215.1.

16 (h) Any individual covered or considering coverage under a general permit may choose to pursue an individual permit
17 for any facility covered by this Rule.

18 (i) The Director may require any person, otherwise eligible for coverage under a general permit, to apply for an
19 individual NPDES permit by notifying that person that an application is required. Notification shall consist of a written
20 description of the reason(s) for the decision, appropriate permit application forms and application instructions, a
21 statement establishing the required date for submission of the application, and a statement informing the person that
22 coverage by the general permit shall automatically terminate upon issuance of the individual permit. Reasons for
23 requiring application for an individual permit may be:

- 24 (1) the discharge is a significant contributor of pollutants;
- 25 (2) conditions at the permitted site change, altering the constituents or characteristics of the discharge
26 such that the discharge no longer qualifies for coverage under a general permit;
- 27 (3) noncompliance with the general permit;
- 28 (4) noncompliance with Division Rules; or
- 29 (5) a change has occurred in the availability of demonstrated technology or practices for the control or
30 abatement of pollutants applicable to the point source;
- 31 (6) effluent limitations are promulgated for the point sources covered by the general permit;
- 32 (7) a water quality management plan containing the requirements applicable to such point sources is
33 approved after the issuance of the general permit;
- 34 (8) a determination that the water of the stream receiving the discharge is not meeting applicable water
35 quality standards.

36 (j) Any interested person may petition the Director to take an action under Paragraph (i) of this Rule to require an
37 individual NPDES permit.

1 (k) General permits may be modified, terminated, or revoked and reissued in accordance with the authority and
2 requirements of Rules .0112 and .0114 of this Section.

3

4 *History Note:* Authority G.S. 143-215(1); 143-215.3(a)(1);

5 Eff. October 1, 1987;

6 Amended Eff. <date>; March 1, 1993; August 1, 1991; August 1, 1988.

7

1 15A NCAC 02H .0138 is proposed for re adoption with substantive changes as follows:

2
3 **15A NCAC 02H .0138 AUTHORIZATION TO CONSTRUCT PERMITS**

4 (a) **Authorization** Required.

5 (1) After an NPDES permit has been issued by the Division of ~~Environmental Management~~ Water
6 Resources in accordance with this Section, construction of wastewater treatment facilities or
7 additions thereto shall not begin until final plans and specifications have been submitted to and an
8 Authorization to Construct has been issued to the permittee by the Division of ~~Environmental~~
9 ~~Management~~ Water Resources, except as provided in Subparagraph (2) of this Paragraph.

10 (2) ~~No Authorization to Construct shall be required for facilities intended to treat principally waste or~~
11 ~~sewage from an industrial facility whose discharge is authorized pursuant to an NPDES permit.~~

12 (3) If an Authorization to Construct has not been applied for in accordance with the requirements of the
13 NPDES permit during the term of the permit, the permit will be considered void upon expiration
14 and future actions will be considered as a new application.

15 (b) **Application**. An application for an Authorization to Construct shall include the following:

16 (1) ~~Application for Authorizations to Construct must be made in triplicate on official forms completely~~
17 ~~filled out, where applicable, provided by the Director either in printed form or in an electronic format~~
18 ~~allowed by state law and acceptable to the Director. Application forms shall be complete and fully~~
19 ~~executed. The signature of the consulting engineer or other agent will be accepted as representing~~
20 ~~the permittee on the application only if accompanied by a letter of authorization from the permittee.~~

21 (2) ~~Required sets of plans~~ Plans and specifications: The applicant shall provide one printed set and one
22 electronic copy, in a format acceptable to the Director.

23 (A) ~~regular projects — five sets of detailed plans and specifications,~~ specifications for the
24 proposed facilities or facility modifications.

25 (B) ~~federal and state grants/loan projects — four sets of detailed plans and specifications plus~~
26 ~~federal assurances required by appropriate federal agency;~~

27 (3) ~~Specifications~~ Additional specifications describing all materials to be used, methods of construction
28 and means for ~~assuring~~ ensuring the quality and integrity of the finished project.

29 (4) ~~When required, required by the Director,~~ a statement ~~submitted~~ that the wastewater treatment facility
30 involved will be properly disconnected and the wastewater discharged into an adequate district or
31 municipal system when it becomes available.

32 (5) If a Sedimentation and Erosion Control Plan is required by the Division of Energy, ~~Mineral~~, Mineral
33 and Land Resources or their designee, documentation ~~shall be provided~~ verifying that the applicant
34 has developed and submitted to the governing agency the required Plan.

35 (6) ~~A~~ Documentation that a 110 volt power source and a potable water supply, equipped with backflow
36 prevention, ~~must be~~ available at the treatment system to allow for maintenance, clean-up and

Commented [A1]: Change: Updated organizational names and sources of reference materials in multiple instances and updated one reference to another rule.
Effect: Technical corrections.

Commented [A2]: Change: Revised the rule pursuant to S.L. 2011-394, which exempts industrial facilities from ATC requirements.
Effect: Technical correction.

Commented [A3]: Change: Reorganized this paragraph to improve clarity and to allow for electronic submittals as now practiced.
Effect: Clarification and update.

1 sampling. In cases where this is not reasonable or economically achievable, an exception may be
2 granted by the Water Quality Permitting Section Chief.

3 (7) For those wastewater disposal facilities which have the potential to cause a contravention of
4 groundwater standards, hydrogeologic information ~~must be provided~~ as specified in Rule 2H .0205
5 of this Subchapter. 15A NCAC 02T .0504.

6 (8) A residuals management ~~plan must be submitted for all plan, if the~~ wastewater treatment systems
7 ~~that generate residuals and system generates residuals. The plan~~ must include the following:

8 (A) A detailed explanation as to how the residuals will be stabilized. In addition if the residuals
9 are generated from a system treating sewage, the explanation must show that the
10 stabilization process meets the Environmental Protection Agency's criteria for a Class B
11 residual as defined in 40 CFR 503 or for a Process to Significantly Reduce Pathogens
12 (PSRP) as defined in 40 CFR Part 257 Appendix II, hereby incorporated by reference
13 including any subsequent amendments and editions. This material is available for
14 inspection at the Department of ~~Environment, Health, and Natural~~
15 ~~Resources, Environmental Quality, Division of Environmental Management, Water~~
16 ~~Resources (DWR), 512 N. Salisbury Street, Raleigh, North Carolina. Carolina~~ Copies may
17 be obtained from the Superintendent of Documents, U.S. Government Printing Office,
18 Washington D.C. 20402-9325 at a cost of thirty-six dollars (\$36.00); and can be accessed
19 free of charge at <http://www.gpo.gov/fdsys/>.

20 (B) An evaluation of the residual storage requirements for the treatment facility. A minimum
21 of 30 days storage will be required on all facilities, unless the applicant can demonstrate to
22 the satisfaction of the Director that this requirement is unwarranted for a particular case.
23 Storage shall be calculated based upon average sludge production rate and shall be process
24 units that are separate from the treatment system, i.e., not the clarifiers or aeration basins.
25 Additional storage may be required based upon the method of final disposal/utilization.

26 (C) A residuals commitment. No authorization to construct will be issued unless the application
27 package includes a commitment from a ~~DEM-DWR~~-approved residual disposal/utilization
28 site for the acceptance of the residual and which demonstrates that the ~~DEM-DWR~~-
29 approved site has adequate capacity to accept the residuals.

30 (9) A construction sequence plan ~~must be submitted with applications for an Authorization to Construct~~
31 ~~for modification or for any project that will modify~~ existing wastewater treatment facilities. The plan
32 must outline the construction sequence to ensure continuous operation of the treatment system.

33 (e) Fees for Authorization to Construct Permits

34 (1) ~~For every application for a new or modified construction permit, for facilities with a permitted flow~~
35 ~~of greater than 100,000 gallons per day, a nonrefundable application processing fee of two hundred~~
36 ~~dollars (\$200.00) must be submitted.~~

Commented [A4]: Change: Deleted Paragraph (c) regarding ATC fees, which are no longer required, per G.S. 143-215.3D.
Effect: Technical correction.

1 ~~(2) — For every application for a new or modified construction permit, for facilities with a permitted flow~~
2 ~~of equal to or less than 100,000 gallons per day but greater than 1,000 gallons per day, a~~
3 ~~nonrefundable application processing fee of one hundred and fifty dollars (\$150.00) must be~~
4 ~~submitted.~~

5 ~~(3) — For every application for a new or modified construction permit, for facilities with a permitted flow~~
6 ~~of equal to or less than 1,000 gallons per day, a nonrefundable application processing fee of one~~
7 ~~hundred dollars (\$100.00) must be submitted.~~

8
9 *History Note:* *Authority G.S. 143-215.1(c)(1);*
10 *Eff. October 1, 1987;*
11 *Amended Eff. <date>: August 1, 2012 (see S.L. 2012-14, 3 s.1.(f)); March 1, 1993; August 3, 1992.*
12

1 15A NCAC 02H .0139 is proposed for readoption with substantive changes as follows:
2

3 **15A NCAC 02H .0139 MINIMUM DESIGN REQUIREMENTS**

4 All facilities requiring a permit pursuant to this Section shall be designed following good engineering practice and
5 comply with the minimum design requirements specified in Rule ~~2H-0219 of this Subchapter~~ 15A NCAC 02T .0105
6 and .0114. The plans and specifications must be stamped and sealed by a Professional Engineer licensed in North
7 Carolina unless all three of the following conditions are met:

- 8 (1) the plans and specifications are for domestic waste from a single family dwelling with flows of
9 ~~4000~~1,000 gallons per day or less, and
- 10 (2) the plans and specifications are prepared by the homeowner, and contain complete information
11 needed to evaluate the proposed facility, and
- 12 (3) the effluent limitations are for secondary treatment.

13
14 *History Note:* Authority G.S. 143-215.1(c)(1);
15 *Eff. October 1, ~~1987~~1987;*
16 *Amended Eff. <date>.*
17

Commented [A1]: Change: Updated cross-reference to another rule.
Effect: Technical correction.

1 15A NCAC 02H .0140 is proposed for readoption without substantive changes as follows:

2

3 **15A NCAC 02H .0140 CERTIFICATION OF COMPLETION**

4 Prior to operation of any treatment works or disposal system permitted in accordance with this Section, a certification
5 must be received from a professional engineer certifying that the treatment works or disposal system has been installed
6 in accordance with the approved plans and specifications. For facilities with phased construction or where there is a
7 need to operate certain equipment under actual operating conditions prior to certification, additional certification may
8 be needed as follow-ups to the initial, pre-operation, certification. In cases where the treatment works or disposal
9 system was designed by a homeowner rather than a professional engineer, either the permittee or a professional
10 engineer must submit this certification.

11

12 *History Note: Authority G.S. 143-215.1(c)(1);*

13 *Eff. October 1, ~~1987~~1987;*

14 *Readopted Eff. <date>.*

15

1 15A NCAC 02H .0141 is proposed for readoption with substantive changes as follows:

2

3 **15A NCAC 02H .0141 OPERATIONAL AGREEMENTS**

4 Prior to issuance or reissuance of a permit pursuant to this Section for a wastewater facility as specified in G.S.
5 143-215.1(d1), the applicant must either provide evidence to show that the applicant has been designated as a public
6 utility by the State Utilities Commission or enter into a properly executed operational agreement with the Division of
7 ~~Environmental Management-Water Resources~~. The requirement for assurance of financial solvency will be made on
8 a case by case determination.

9

10 *History Note: Authority G.S. 143-215.1(d1);*

11 *Eff. October 1, 1987-1987;*

12 *Amended Eff. <date>.*

13

Commented [A1]: Change: Updated Division name.
Effect: Technical corrections.

1 15A NCAC 02H .0142 is proposed for re adoption as a repeal as follows:

2

3 **15A NCAC 02H .0142 USE/WASTEWATER TRTMT WORKS EMGCY MAIN: OPER/REPAIR FUND**

4 ~~(a) In cases in which water quality standards are violated or an environmental health threat exists, monies from the~~
5 ~~Wastewater Treatment Works Emergency Maintenance, Operation and Repair Fund may be used at the discretion of~~
6 ~~the Director to correct the cause of such conditions.~~

7 ~~(b) In this, the Director shall:~~

8 ~~(1) Ensure the fiscal integrity of the fund;~~

9 ~~(2) Use the fund only as a measure of last resort to protect water quality or public health when all other~~
10 ~~compliance and enforcement procedures have failed;~~

11 ~~(3) Limit the use of the fund to wastewater treatment works with design flow capacities of less than or~~
12 ~~equal to one hundred thousand gallons per day (100,000 GPD);~~

13 ~~(4) Notify the permittee by certified mail of the intention to take emergency corrective action and to~~
14 ~~recoup monies spent;~~

15 ~~(5) Make every effort to recoup fund expenditures, including collection costs, from the parties~~
16 ~~responsible;~~

17 ~~(6) Coordinate use of the fund with the program of the Public Utilities Commission when a permittee~~
18 ~~is also a regulated utility; and~~

19 ~~(7) Provide a quarterly accounting of the fund to the Commission.~~

20

21 *History Note: Authority G.S. 143-215.3(a); 143-215.3B(c); 143-215.3B(e);*

22 *Eff. August 1, 1988; 1988;*

23 *Repealed Eff. <date> (S.L. 2005-454, §8, effective January 1, 2006).*

24

Commented [A1]: Change: Propose to repeal rule; the fund was eliminated by S.L. 2005-454, s8.
Effect: Technical correction.

1 15A NCAC 02H .0143 is proposed for adoption as follows:
2

3 **15A NCAC 02H .0143 INCORPORATION BY REFERENCE**

4 (a) The following sections of Title 40 of the Code of Federal Regulations (CFR) are incorporated by reference,
5 including subsequent amendments and editions, and shall apply throughout this Section except where procedural
6 details of the federal rules differ from procedures adopted elsewhere in this section, in which case the separately
7 adopted procedure governs. These regulations can be accessed free of charge at <http://www.gpo.gov/fdsys/>.

- 8 (1) 40 CFR Parts 122.2, 124.2, and 125.2: Definitions;
- 9 (2) §122.4: Prohibitions;
- 10 (3) §122.5(a) and (b): Effect of permit;
- 11 (4) §122.7(b) and (c): Confidential information;
- 12 (5) §122.21 (a)-(b), (c)(2), (e)-(k), (m)-(p), (q), and (r): Application for a permit;
- 13 (6) §122.22: Signatories;
- 14 (7) §122.23: Concentrated animal feeding operations;
- 15 (8) §122.24: Concentrated aquatic animal production facilities;
- 16 (9) §122.25: Aquaculture projects;
- 17 (10) §122.26: Storm water discharges;
- 18 (11) §122.27: Silviculture;
- 19 (12) §122.28: General permits;
- 20 (13) §122.29 (a), (b), and (d): New sources and new dischargers;
- 21 (14) §122.30: NPDES stormwater regulations for small MS4s: objectives;
- 22 (15) §122.31: NPDES stormwater regulations: role of Tribes;
- 23 (16) §122.32: NPDES stormwater regulations for small MS4s: applicability;
- 24 (17) §122.33: NPDES stormwater regulations for small MS4s: application for permit;
- 25 (18) §122.34: NPDES stormwater regulations for small MS4s: permit requirements;
- 26 (19) §122.35: NPDES stormwater regulations for small MS4s: shared responsibilities;
- 27 (20) §122.36: NPDES stormwater regulations for small MS4s: compliance;
- 28 (21) §122.37: NPDES stormwater regulations for small MS4s: evaluation;
- 29 (22) §122.41 (a)(1) and (b) through (n): Applicable permit conditions;
- 30 (23) §122.42: Conditions applicable to specified categories of permits;
- 31 (24) §122.43: Establishing permit conditions;
- 32 (25) §122.44: Establishing NPDES permit conditions;
- 33 (26) §122.45: Calculating permit conditions;
- 34 (27) §122.46: Duration;
- 35 (28) §122.47(a): Schedules of compliance;
- 36 (29) §122.48: Monitoring requirements;
- 37 (30) §122.50: Disposal into wells;

Commented [A1]: Change: Proposed rule incorporates multiple federal rules by reference. 40 CFR 123.25 requires approved states to implement most of these regulations, and NC has done so, but the state has yet to formally adopt them. (The same rule is proposed in Subchapter 02B, Sections 02B .0400 and .0500.)
Effect: In essence, a technical correction, as the state has implemented these rules for decades.

- 1 (31) §122.61: Permit transfer;
2 (32) §122.62: Permit modification;
3 (33) §122.64: Permit termination;
4 (34) §124.3(a): Application for a permit;
5 (35) §124.5 (a), (c), (d), and (f): Modification of permits;
6 (36) §124.6 (a), (c), (d), and (e): Draft permit;
7 (37) §124.8: Fact sheets;
8 (38) §124.10 (a)(1)(ii), (a)(1)(iii), (a)(1)(v), (b), (c), (d), and (e): Public notice;
9 (39) §124.11: Public comments and requests for hearings;
10 (40) §124.12(a): Public hearings;
11 (41) §124.17 (a) and (c): Response to comments;
12 (42) §124.56: Fact sheets;
13 (43) §124.57(a): Public notice;
14 (44) §124.59: Comments from government agencies;
15 (45) §124.62: Decision on variances;
16 (46) 40 CFR Part 125, Subparts A (Technology-Based Treatment Requirements), B (Aquaculture), D
17 (Fundamentally Different Factors), H (Alternative Limitations, CWA Section 316(a)), I (Cooling
18 Water Intake Structures, New Facilities, CWA Section 316(b)), J (Cooling Water Intake Structures,
19 Existing Facilities, CWA Section 316(b)), and N (Cooling Water Intake Structures, Offshore Oil
20 and Gas Facilities, CWA Section 316(b));
21 (47) 40 CFR Parts 129 (Toxic Pollutant Effluent Standards) and 133 (Secondary Treatment Regulation),
22 and Subchapter N (Effluent Guidelines and Standards);
23 (48) 40 CFR Part 3: Electronic reporting;
24 (49) 40 CFR Part 136: Guidelines for establishing test procedures for the analysis of pollutants; and
25 (50) 40 CFR 401.15: List of toxic pollutants pursuant to CWA Section 307(a)(1).
26 **(b) This rule is not an exclusive list of federal regulations adopted by reference in this Section. Other rules of the**
27 **Section incorporate some of these same federal regulations for clarity or emphasis and may incorporate additional**
28 **regulations not listed in Paragraph (a).**

29
30 *History Note: Authority G.S. 143-211(c); 143-215.1(b)(4); 143B-282(5);*
31 *Eff. <date>.*

1 15A NCAC 02H .0401 is proposed for reoption as a repeal as follows:

2

3 **15A NCAC 02H .0401 STATEMENT OF POLICY**

4 ~~It is hereby declared to be the policy of the Environmental Management Commission that all wastewater generated in~~
5 ~~the State of North Carolina shall be treated to such an extent as to insure the compliance with water quality standards~~
6 ~~promulgated by the Commission. It is further the policy of the Commission that regional and area wide wastewater~~
7 ~~collection and treatment facilities shall be promoted to the fullest practicable extent. The Commission recognizes,~~
8 ~~however, that development of area wide and regional sewerage systems is not always in keeping with the demands~~
9 ~~for growth within the areas and that interim regulations are necessary to insure that water quality standards are not~~
10 ~~violated. In keeping with this policy, the Commission adopts these Regulations of this Section.~~

11

12 *History Note:* Authority G.S. 143-215.3(a)(1); 143-211; 143-215.1(a); 143-215.1(b)(1);

13 *Eff. February 1, 1976-1976:*

14 *Repealed Eff. <date>.*

15

Commented [A1]: Change: Section 2H .0400 is proposed for repeal, except that certain requirements have been or are proposed to be moved to subchapters 2B, 2H, 2T, or 2U.
Effect: None. All necessary rules have been retained and recodified.

1 15A NCAC 02H .0402 is proposed for readoption as a repeal as follows:

2

3 **15A NCAC 02H .0402** **APPLICABILITY**

4 ~~These Regulations shall apply to treatment and disposal of waste from all installations located within the coastal areas~~
5 ~~which are subject to the regulations of the Environmental Management Commission.~~

6

7 *History Note:* Authority G.S. 143-215.3(a)(1); 143-211; 143-215.1(a); 143-215.1(b)(1);

8 *Eff. February 1, 1976;*

9 *Amended Eff. September 13, ~~1981~~ 1981;*

10

Repealed Eff. <date>.

11

Commented [A1]: Change: Repeals what are now duplicative requirements. Requirements for non-discharge and reclaimed water facilities are now found in the 02T and 02U rules. (See corresponding changes in 02T .0108, .0505, and .0705.) Surface discharges to surface waters are already subject to 02H and 02B rules.
Effect: Eliminates unnecessary rule.

1 15A NCAC 02H .0403 is proposed for re adoption as a repeal as follows:

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15A NCAC 02H .0403 DEFINITION OF COASTAL AREAS

The coastal areas for the purposes of these Regulations are defined to include:

- (1) the Outer Banks;
- (2) those land areas bordering the coastal waters, including all waters assigned a salt water "S" classification and all tributaries that have experienced excessive growths of microscopic or macroscopic vegetation or that, because of their relative size and lack of water exchange are found by the Commission to be subject to such excessive growths; and

- (3) land areas bordering all natural impoundments situated east of the line established by the North Carolina Environmental Management Commission to designate coastal waters, said land being described as follows:

"Extends from a point on the North Carolina/South Carolina state line near Calabash, North Carolina, generally along the lines of the Atlantic Coast Line Railroad and Norfolk Southern Railway, northeasterly and northerly to River Mile 66.0 (Lock No. 1) on the Cape Fear River; thence northerly to River Mile 30.0 on Black River; thence easterly to River Mile 48 on the North East Cape Fear River; thence northerly and easterly to River Mile 22.5 in New River; thence easterly and northerly to River Mile 25.0 on White Oak River (Atlantic Coast Line Railroad Bridge); thence northerly and easterly to River Mile 38.9 on Neuse River (Norfolk Southern Railway Bridge); thence northerly to River Mile 44.6 on Pamlico River (Norfolk Southern Railway Bridge); thence northeasterly and northerly crossing Albemarle Sound along Norfolk Southern Railway Bridge; ~~at Tunis~~; thence northerly and easterly to River Mile 13.5 on Perquimans River (Norfolk Southern Railway Bridge); thence easterly to River Mile 20.0 on Pasquotank River (Norfolk Southern Railway Bridge); and thence northerly to the North Carolina/Virginia state line near Moyock, North Carolina."

History Note: Authority G.S. 143-215.3(a)(1); 143-211; 143-215.1(a); 143-215.1(b)(1); Eff. February 1, 1976; Amended Eff. September 13, 1981; Repealed Eff. <date>.

Commented [A1]: Change: Repeals definition because state-wide requirements are now sufficient to protect coastal areas. Requirements for non-discharge and reclaimed water facilities are now found in the 02T and 02U rules. Surface discharges to surface waters are already subject to 02H and 02B rules.
Effect: Eliminates unnecessary rule.

1 15A NCAC 02H .0404 is proposed for re adoption as a repeal as follows:

2
3 **15A NCAC 02H .0404 FACILITY LOCATION AND DESIGN**

4 ~~(a) No domestic sewage regardless of the treatment proposed and no other wastes which could adversely affect the~~
5 ~~taking of shellfish for market purposes shall be discharged into water classified "SA", into unnamed waters tributary~~
6 ~~to "SA" waters classified "C" or "SC" in accordance with Rule 2B .0301(i)(1)(B) and (C), or into other waters in such~~
7 ~~close proximity as to adversely affect such "SA" waters. Wastes discharged into other waters tributary to waters~~
8 ~~classified "SA" shall be treated in such manner as to assure that no impairment of water quality in the "SA" segments~~
9 ~~shall occur. No permits shall be issued for discharges into waters classified "SA" unless Shellfish Sanitation,~~
10 ~~Environmental Health Section, Department of Human Resources, provides written concurrence that the discharge~~
11 ~~would not adversely affect shellfish water quality or the propagation of shellfish.~~

12 ~~(b) No wastes shall be discharged to waters classified "SB" unless these wastes are treated to the extent necessary to~~
13 ~~assure protection of assigned water quality standards.~~

14 ~~(c) The Director may prohibit or limit any discharge of waste into surface waters if, in the opinion of the Director,~~
15 ~~the surface waters experience or the discharge would result in:~~

- 16 ~~(1) — growths of microscopic vegetation such that chlorophyll a values are greater than 40 ug/l; or~~
- 17 ~~(2) — growths of microscopic or macroscopic vegetation which substantially impair the intended best~~
18 ~~usage of the waters.~~

19 ~~(d) The discharge of wastewaters to the Atlantic Ocean shall follow the guidelines and requirements set forth in the~~
20 ~~United States Environmental Protection Agency regulation Ocean Discharge Criteria, 40 C.F.R. 125.120 through~~
21 ~~125.124, which is specifically adopted by reference as promulgated on October 3, 1980.~~

22 ~~(e) In all cases where connection to an area wide sewerage system is feasible, such connection thereto shall be~~
23 ~~required.~~

24 ~~(f) Septic tank systems shall not be approved in high density areas. For purposes of this Regulation high density areas~~
25 ~~are defined as those areas producing more than 1,200 gallons of waste per acre per day or which contain more than~~
26 ~~three residential units per acre. For purposes of this Regulation a septic tank system is defined as a ground absorption~~
27 ~~sewage disposal system consisting of a holding or settling tank and a ground absorption field. Septic tank systems~~
28 ~~shall be designed and constructed in accordance with Environmental Management Commission regulations governing~~
29 ~~septic tank systems.~~

30 ~~(g) Interim Treatment and Disposal Facilities. In those cases where an approved area wide collection and treatment~~
31 ~~system is not available, and where discharge to the surface waters is prohibited in Paragraphs (a), (b), (c), and (d), and~~
32 ~~where use of a septic tank system is prohibited by paragraph (f) in Subchapters 02T or 02U of this Chapter, interim~~
33 ~~treatment and disposal facilities may be approved subject to their meeting the following requirements.~~

- 34 ~~(1) — Wastes other than those disposed of by spray irrigation shall receive tertiary treatment followed by~~
35 ~~adequate bactericidal treatment. For purposes of this Regulation tertiary treatment shall constitute~~
36 ~~biological treatment followed by acceptable solids removal to the extent accomplished by filtration.~~
37 ~~Also, flow equalization will be required unless it can be adequately demonstrated that either the~~

Commented [A1]: Change: Proposed for repeal. Necessary requirements have been or are proposed for recodification elsewhere. Comprehensive req'ts for nondischarge facilities have been established in the 02T & 02U rules.
Effect: Consolidation of nondischarge requirements in Subchapters 02T and 02U; and of discharge requirements in Subchapter 02B.

Commented [A2]: Change: Para. (a) and (d) will be recodified in the QBEL provisions in the 02B .0404 rule.
Effect: Consolidation of discharge requirements in Subchapter 2B.

Commented [A3]: Change: Para. (e) will be recodified in the requirements for new discharges in 02H .0100.
Effect: Consolidation of similar requirements in Section 02H .0100.

1 wastewater influent flow rate will be of a uniform nature or that the proposed treatment units are
2 designed such that they can adequately treat this wastewater without experiencing hydraulic
3 overload.

4 (2) —Waste treatment facilities (except septic tank surface sand filter systems) shall be located at least 10
5 feet from adjacent property under separate ownership, developed or undeveloped and at least 10 feet
6 from on-property residential units if these units are to be sold, e.g., condominiums, residential
7 subdivision houses. Septic tank surface sand filter systems shall be located at least 200 feet from
8 on-property residential units if these units are to be sold and at least 200 feet from adjacent property
9 under separate ownership.

10 (3) —Waste treatment facilities shall be equipped with effective noise and odor control devices and are to
11 be enclosed by a solid or semi-solid structure or other approved structure. An automatically activated
12 standby power source shall be provided. All essential treatment and disposal units shall be provided
13 in duplicate.

14 (4) —Treated wastes may be disposed of in on-site disposal facilities, which shall be located at least 500
15 feet from any impounded public surface water supply or public shallow (less than 50 feet deep)
16 ground water supply, and at least 100 feet from a private ground water supply except when a study
17 of the soil would indicate a lesser separation acceptable.

18 (5) —Waste disposal facilities shall be located at least 100 feet from any waters classified SA and at least
19 50 feet from any other waters. In the case of drainage ditches that are normally dry this distance
20 may be reduced to 25 feet.

21 (6) —Waste disposal facilities are to be designed on the basis of site conditions and soil percolation rates.
22 In Parts (A), (B), and (C) of this Subparagraph are given the maximum loading rates for three
23 different treatment systems. Higher loading rates or other methods of waste disposal may be
24 approved by the Director based upon data submitted by the applicant.

25 (A) —Subsurface Disposal Trench. One and one-half gallons per day per square foot of trench
26 bottom based on maximum trench width of three feet. Trenches shall be separated at least
27 eight feet center to center.

28 (B) —Low Pressure Distribution System. One gallon per day per square foot of effective
29 absorption area encompassed by the distribution system. The calculation of the amount of
30 effective absorption area required shall be based on a maximum distribution line separation
31 of five feet center to center.

32 (C) —Rotary Distributors. Ten gallons per day per square foot of surface area.

33 (7) —Waste disposal areas are to contain at least 1,000 square feet of open "green area" for each residential
34 unit served, or 2,500 square feet per thousand gallons per day of waste flow, whichever is less. The
35 term "green area" contained herein is defined as an area suitable for waste disposal, either in its
36 natural state or which has been modified by planting vegetative cover of grasses or low growing
37 shrubbery. Green areas shall not include street or roadway right of ways or areas not available for

1 waste disposal. Not more than 25 percent of the required area may be covered with non traffic
2 bearing paved surfaces such as walkways or patios. Subsurface disposal areas shall not be used as
3 parking lots, driveways, or for other vehicular traffic uses.

4 (8) — Wastes that are to be disposed of by spray irrigation shall receive a level of treatment which will not
5 render either the irrigation system or the disposal area unworkable. Spray irrigation systems shall
6 be located at least 200 feet from any adjoining property, buffered by trees to prevent excessive drift.
7 Such areas shall be surrounded by fencing with warning signs to discourage human use or trespass,
8 and designed according to good engineering practices with the application rate not to exceed one
9 and three fourth inches per week unless the Director determines, based on data submitted by the
10 applicant, that a higher application rate is justified.

11
12 *History Note:* Authority G.S. 143-211; 143-214.2(c); 143-215; 143-215.1(a);
13 143-215.1(b)(1); 143-215.3(a)(1);
14 Eff. February 1, 1976;
15 Amended Eff. November 1, 1986; April 1, 1983; September 13, 1981; May 11, ~~1980~~; 1980;
16 Repealed Eff. <date>.
17

1 15A NCAC 02H .0405 is proposed for readoption as a **repeal** as follows:

2

3 **15A NCAC 02H .0405 PRIVATELY OWNED INSTALLATIONS**

4 ~~(a) Privately owned waste collection treatment and disposal systems serving establishments existing on the effective~~
5 ~~date of these Regulations shall comply with the requirements enumerated in these Regulations unless impossible. If~~
6 ~~adherence to the guides is not possible, the highest level of control technology consistent with site limitations shall be~~
7 ~~employed. No expansion of the load tributary to existing non public facilities will be allowed until compliance with~~
8 ~~the guides established in these Regulations is obtained.~~

9 ~~(b) Privately owned wastewater collection, treatment and disposal systems serving establishments not in existence on~~
10 ~~the effective date of these Regulations shall comply with the provisions of these Regulations.~~

11

12 *History Note: Authority G.S. 143-215.3(a)(1); 143-211; 143-215.1(a); 143-215.1(b)(1);*

13 *Eff. February 1, 1976;*

14 *Amended Eff. September 13, ~~1981~~, 1981;*

15 *Repealed Eff. <date>.*

16

Commented [A1]: Change: Proposed for repeal due to uncertainty over the rule's intent and enforceability.
Effect: Removes ambiguous rule language.

1 15A NCAC 02H .0406 is proposed for readoption as a **repeal** as follows:

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15A NCAC 02H .0406 PUBLICLY OWNED SEWERAGE FACILITIES

(a) Existing publicly owned waste collection, treatment, and disposal facilities shall comply with the requirements of these Regulations unless such compliance is determined by the Commission to be "not in the public interest." Such a finding would result when requirements of these Regulations could not be met even after "best available control technology economically achievable" has been provided.

(b) New publicly owned waste collection, treatment, and disposal facilities shall comply with the provisions of these Regulations, and any other applicable regulations of the Commission.

*History Note: Authority G.S. 143-215.3(a)(1); 143-211; 143-215.1(a); 143-215.1(b)(1);
Eff. February 1, 1976;
Amended Eff. September 13, ~~1981~~, 1981;
Repealed Eff. <date>.*

Commented [A1]: Change: Proposed for repeal due to uncertainty over the rule's intent and enforceability.
Effect: Removes ambiguous rule language

1 15A NCAC 02H .0407 is proposed for readoption as a **repeal** as follows:

2

3 **15A NCAC 02H .0407 EXCEPTIONS FROM REQUIREMENTS**

4 ~~No exception from the requirements of these Regulations shall be made until such exception is approved by the~~
5 ~~Commission.~~

6

7 *History Note:* Authority G.S. 143-215.3(a)(1); 143-211; 143-215.1(a); 143-215.1(b)(1);

8

Eff. February 1, ~~1976~~1976;

9

Repealed Eff. <date>.

10

Commented [A1]: Change: Proposed for repeal due to uncertainty over the discretion given to the Commission.
Effect: Removes ambiguous rule language

1 15A NCAC 02H .0501 is proposed for amendment as follows:

3 **15A NCAC 02H .0501 PURPOSE-APPLICABILITY**

4 ~~(a) The provisions of this Section shall apply to all division regulatory, planning, resource management, liaison and~~
5 ~~financial aid determinations that affect surface waters and wetlands as defined by 15A NCAC 2B .0202. This Section~~
6 ~~shall only apply to specific activities which require state review after the effective date of this Rule and which require~~
7 ~~a Division determination concerning effects on surface waters or wetlands. Activities that are described in Section~~
8 ~~404(f)(1)(A)-(F) of the Clean Water Act (33 U.S.C. 1344) are exempt from this Rule.~~

9 (b)(a) ~~These Rules outline~~ This Section outlines the application and review procedures for activities that require state
10 water quality certifications (certifications) pursuant to Section 401 of the Clean Water Act (33 U.S.C. 1341).
11 ~~Certifications are required whenever construction or operation of facilities will result in a discharge into navigable~~
12 ~~waters as described in 33 CFR Part 323. The federal definition of navigable waters includes wetlands as defined at~~
13 ~~33 CFR 328.3 and 40 CFR 230.3.~~

14 (e)(b) ~~Water quality certifications~~ Certifications may be issued for individual activities (individual certifications) or
15 issued for specific types or groups of activities (general certifications):

- 16 (1) Individual certifications are issued on a case-by-case basis and the procedures outlined in ~~the~~
17 ~~following Rules~~ this Section are required for each individual certification.
- 18 (2) General certifications ~~are issued~~ may be developed by the Division and issued by the Director for
19 specific types or groups of activities that are similar in nature and considered to have minimal
20 impact. ~~All activities that receive a "Certificate of Coverage" under a general certification from the~~
21 ~~Division shall be deemed covered under that general certification.~~ The application and review
22 procedures for requesting ~~concurrent~~ a "Certificate of Coverage" under a general certification from
23 the Division ~~that the general certification can be used~~ for the proposed activity are the same as the
24 procedures outlined in ~~the following Rules~~ this Section for individual ~~certifications~~ certifications.
25 unless specifically stated otherwise in the general certification.

26 (c) The terms used in this Section shall be as defined in G.S. 143-212, G.S. 143-213 and as follows:

- 27 (1) "Director" means the Director of the Division.
- 28 (2) "Division" means the Division of Water Resources of the North Carolina Department of
29 Environmental Quality.
- 30 (3) "Person" means as defined in G.S. 143-212(4).
- 31 (4) "Wetland" means as defined in 15A NCAC 02B .0202.
- 32 (5) "Cumulative impact" means environmental impacts resulting from incremental effects of an activity
33 when added to other past, present, and reasonable foreseeable future activities regardless of what
34 entities undertake such other actions.
- 35 (6) "Class SWL wetland" means as defined at 15A NCAC 02B .0231.
- 36 (7) "Class UWL wetland" means as defined at 15A NCAC 02B .0231.

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1 (8) “Secondary impact” means actions, or actions directly linked to an activity, that may affect classified
2 surface waters or wetlands that would not occur but for the proposed activity.

Commented [HK16]: No effect – clarification

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4 *History Note:* Authority G.S. 143-211(c); 143-215.3(a)(1); 143-215.3(c); 143B-282(1)(u);
5 RRC Objection Eff. July 18, 1996 due to lack of statutory authority and ambiguity;
6 Eff. October 1, 1996.
7 Amended Eff. INSERT DATE

1 15A NCAC 02H .0502 is proposed for amendment as follows:

3 **15A NCAC 02H .0502 APPLICATION FILING APPLICATIONS**

4 (a) ~~Application for Certification.~~APPLICATION FOR CERTIFICATION. Any person, as defined in Article 21,
5 Chapter 143, North Carolina General Statutes, person desiring issuance of the a state water quality certification or
6 certificate of coverage under a general certification required by Section 401 of the Federal Water Pollution Control
7 Act as amended Clean Water Act (33 U.S.C. 1341) shall file with the Director of the North Carolina Division of Water
8 Quality (director).Resources (Director), at the office in 1617 Mail Service Center, Raleigh, North Carolina, 27699-
9 1617, an original and six three copies of an application for certification certification or submit one complete copy of
10 an application electronically. Submission of an application to the Division of Coastal Management for permits to
11 develop in North Carolina's coastal area shall suffice as an application for certification. The application must be made
12 on a form provided or approved by the Division or the U.S. Army Corps of Engineers and shall specify:

- 13 (1) the date of application;
- 14 (2) the name, address, and phone number of the property owner;owner or owners;
- 15 (3) if the applicant is a corporation, the state in which it is domesticated, the name of its principal
16 officers, the name and address of the North Carolina process agency, and the name, address
17 and phone number of the individual who shall be primarily responsible for the conduct of the activity
18 for which certification is sought;
- 19 (4) the nature of the activity to be conducted by applicant;
- 20 (5) whether the discharge has occurred or is proposed;
- 21 (6) the location of the discharge, stating the municipality, if applicable; the county; the drainage basin;
22 the name of the receiving waters; and the location of the point of discharge with regard to the
23 receiving waters;
- 24 (7) a description of the receiving waters, including type (creek, river, swamp, canal, lake, pond or
25 estuary) if applicable; nature (fresh, brackish or salt); and wetland classification;
- 26 (8) description of the type of waste treatment facilities if applicable;applicable; and
27 (9) Maps.MAPS. There shall be attached to the application a map(s) or sketch(es) with a scale(s) and
28 a north arrow(s) and of sufficient detail to accurately delineate the boundaries of the lands owned
29 or proposed to be utilized by the applicant in carrying out the activity; the location, dimensions
30 and type of any structures erected or to be erected on said lands for use in connection with the
31 activity; and the location and extent of the receiving waters including wetlands within the boundaries
32 of said lands.
- 33 (10) an application fee as required by G.S. 143-215.3D(e).
- 34 (11) Applications shall be signed by the owner with title to the property, a person who has been
35 authorized by the owner to apply for certification, or an entity with the power of eminent domain.
36 In signing the application, the applicant certifies that all information contained therein or in support

Commented [HK1]: No effect - clarification

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Commented [HK11]: No substantive change - need fewer copies than before

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Commented [HK18]: No Effect - formatting

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Commented [HK22]: No Effect - fee required in statute

1 thereof is true and correct to the best of their knowledge. For corporations, partnerships, proprietors,
2 or municipal, state or other public entity, the application shall be signed as follows:
3 (A) in the case of corporations, by a principal executive officer of at least the level of vice-president, or
4 their authorized representative;
5 (B) in the case of a partnership or limited partnership, by a general partner;
6 (C) in the case of a sole proprietorship, by the proprietor; and
7 (D) in the case of a municipal, state or other public entity, by either a principal executive officer, ranking
8 official or other duly authorized employee.

9 (b) Submission of an application to the Division of Coastal Management for a permit to develop in North Carolina's
10 coastal area in accordance with the rules of Section .0200 in 15A NCAC 07J shall suffice as an application for a water
11 quality certification or certificate of coverage under a general certification upon receipt by the Division.

12 (c) ~~Power to Request Additional Information.~~ POWER TO REQUEST ADDITIONAL INFORMATION. The
13 Director-Division may request request in writing, and the applicant shall furnish, any additional information that may
14 be found necessary for the proper consideration of the application. The 60-day processing period required in Rule
15 .0507 of this Section begins on the date the additional information is received by the Division.

16 (d) ~~Omissions From Applications.~~ OMISSIONS FROM APPLICATIONS. If the applicant considers-believes that it
17 is not feasible or is unnecessary to furnish any portion of the information required by Paragraphs (a) and (a), (b) and
18 (c) of this Rule, then the applicant shall submit a detailed statement explaining the reasons for omission of any such
19 information. The final decision regarding the completeness of the application shall be made by the Division based on
20 the information required in Paragraphs (a), (b) and (c), and any explanation provided by the applicant regarding
21 omitted information provided in this Paragraph.

22 (e) ~~Investigations.~~ INVESTIGATIONS. The staff of the Department of Environment, Health, and Natural Resources
23 (department)Division shall conduct such investigation as the Director-Division deems necessary-necessary, and The
24 applicant shall cooperate in the investigation to the extent that it shall furnish necessary information, allow the staff
25 safe access to the lands and facilities of the applicant and lend such assistance as shall be reasonable-reasonable, upon
26 the presentation of credentials.

27 (f) ~~Who Must Sign Applications.~~ The application shall be considered a "valid application" only if the application
28 bears the signature of a responsible officer of the company, municipal official, partner or owner. This signature
29 certifies that the applicant has title to the property, has been authorized by the owner to apply for certification or is a
30 public entity and has the power of eminent domain. Said official in signing the application shall also certify that all
31 information contained therein or in support thereof is true and correct to the best of his knowledge.

32 (g) ~~An application form may be obtained from the Division of Water Quality, the Division of Coastal Management,~~
33 ~~or the U.S. Army Corps of Engineers, Wilmington District, Regulatory Branch.~~

34
35 *History Note: Authority G.S. 143-211(c); 143-215.3(a)(1); 143-215(e); 143-215.3(e); 143B-282(1)(u);*
36 *Eff. February 1, 1976;*
37 *Amended Eff. December 1, 1984; January 1, 1979;*
38 *RRC Objection Eff. July 18, 1996 due to lack of statutory authority and ambiguity;*

Commented [HK23]: Moved from (f) – clarified who can sign applications. Language similar to other programs (e.g. NPDES)

Commented [HK24]: Moved from (a) above

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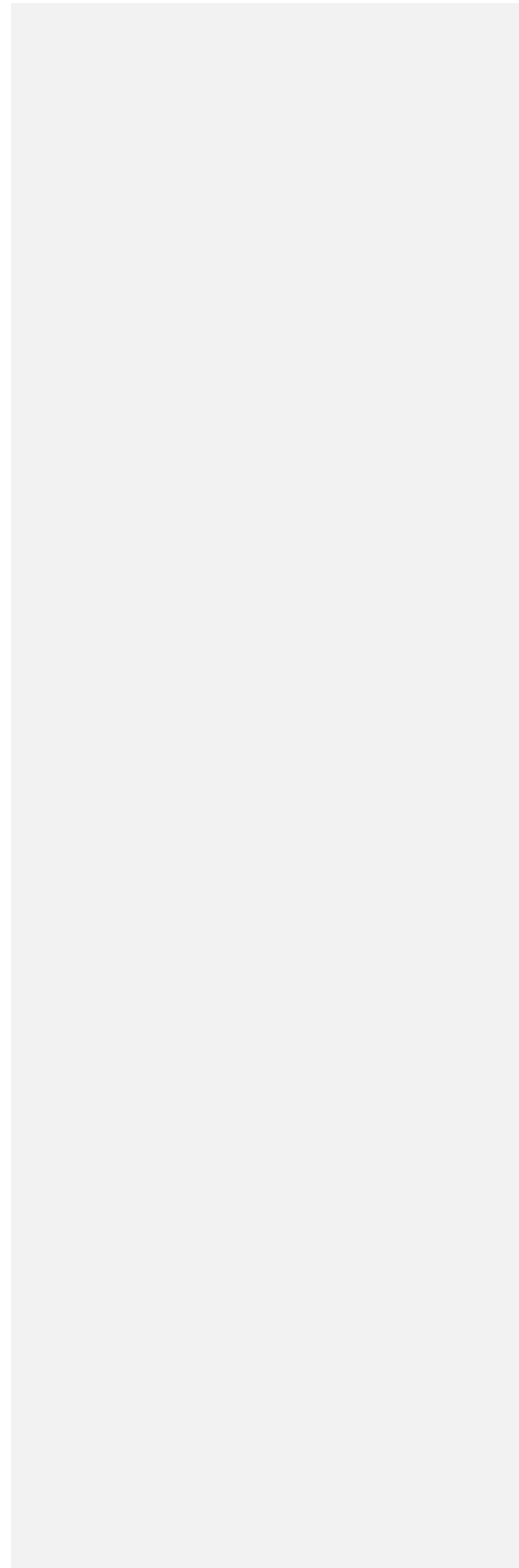
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1 *Recodified from 15A NCAC 2H .0501 Eff. October 1, 1996;*
2 *Amended Eff. October 1, 1996; INSERT DATE.*



1 15A NCAC 02H .0503 is proposed for amendment as follows:

2
3 **15A NCAC 02H .0503 PUBLIC NOTICE AND PUBLIC HEARING**

4 (a) ~~Notice by Publication.~~PUBLIC NOTICE FOR GENERAL CERTIFICATIONS. The Division shall provide
5 public notice for proposed General Certifications. This notice shall be sent to all individuals on the Mailing List
6 described in Paragraph (g) of this Rule and on the Division's website. Notice shall be made at least 30 calendar days
7 prior to proposed final action by the Division. Public Notice shall not be required for those activities covered by
8 Certificates of Coverage under a General Certification.

9 (b) PUBLIC NOTICE FOR INDIVIDUAL CERTIFICATIONS. Notice of each pending application for an individual
10 certification shall be published one time in a newspaper having general circulation in the county in which the discharge
11 will occur, or as provided in Paragraph (e) of this Rule sent to all individuals on the Mailing List described in Paragraph
12 (g) of this Rule and shall be posted on the Division's website. ~~Publication Notice shall be made at least 15-30 calendar~~
13 days prior to proposed final action by the ~~Director-Division upon on the application and not more than 20 days after~~
14 acceptance of a completed application.

15 (b)(c) ~~Contents of Notice.~~CONTENTS OF NOTICE FOR INDIVIDUAL CERTIFICATIONS. The notice shall set
16 forth the name and address of the applicant; the action requested in the application; the nature and location of the
17 discharge; and the proposed date of final action to be taken by the ~~Director-Division upon on the application.~~ The
18 notice shall also state ~~that where~~ additional information is on file with the ~~department-Division~~ and may be inspected
19 at any time during normal working hours. Copies of such information on file shall be made available upon request
20 and upon payment of the cost thereof to the ~~department-Division.~~

21 (d) REQUEST FOR A PUBLIC HEARING. Any person who desires a public hearing on a General Certification or
22 an Individual Certification application shall so request in writing to the Division. The request must be received by the
23 Division within 30 calendar days following the Public Notice.

24 (e)(e) JOINT NOTICE. The public notice requirement for an Individual Certification as described in Paragraph (b)
25 may also be satisfied by a joint notice with the Division of Coastal Management (15A NCAC ~~74071~~.0206) or the U.S.
26 Army Corps of Engineers according to their established procedures.

27 (d)(f) ~~Notice of Hearing.~~NOTICE OF HEARING. If the Director determines that ~~there is significant public interest~~
28 ~~in holding a hearing should be held concerning the granting or denial of the application-hearing,~~ the ~~Director-Division~~
29 shall publish notice of the hearing one time in a newspaper having general circulation in the county in which the
30 discharge will occur, notify the applicant by registered or certified mail, return receipt requested. The Division shall
31 also provide notice of the hearing to all individuals on the Mailing List as described in Paragraph (g) of this Rule and
32 shall post the notice on the Division's website. The notice shall be published at least 30 calendar days prior to the
33 date of the hearing. The notice shall state the time, place and nature of the hearing. ~~Such hearing shall be held within~~
34 90 calendar days following date of notification to the applicant. The record for each hearing held under this Paragraph
35 shall remain open for a period of 30 calendar days after the public hearing.

36 (e)(g) ~~Water Quality Certification Mailing List.~~MAILING LIST. Any ~~person-person~~ may request that he or she be
37 mailed-emailed copies of all public notices required by this Rule. The ~~Director-Division~~ shall add the name of any

Commented [HK1]: Combined .0504 into .0503

Commented [HK2]: No Effect – clarification

Commented [HK3]: No Effect – added header

Commented [HK4]: Removing requirement to publish notice in newspapers for individual certifications. Notices will be posted online and distributed to individuals on email listserv.

Commented [HK5]: No effect – currently done

Commented [HK6]: No effect - grammar

Commented [HK7]: No substantive change – notices go out for 30 days currently.

Commented [HK8]: No Effect – update name

Commented [HK9]: Removed this requirement as there are timing requirements in .0507.

Commented [HK10]: No Effect - formatting

Commented [HK11]: No Effect – update name

Commented [HK12]: No effect - grammar

Commented [HK13]: No Effect – update name

Commented [HK14]: No Effect – update name

Commented [HK15]: Clarifying timeframe to request a public hearing – consistent with requirement in Isolated Wetland Rules.

Commented [HK16]: No Effect - formatting

Commented [HK17]: No effect - clarification

Commented [HK18]: No Effect - grammar

Commented [HK19]: No Effect – update citation

Commented [HK20]: No Effect - formatting

Commented [HK21]: No Effect – moved from .0504

Commented [HK22]: No effect - clarification

Commented [HK23]: No effect – update name

Commented [HK24]: Remove requirement to publish in newspaper; notice will be posted online and sent to email listserv.

Commented [HK25]: No Effect – moved from .0504

Commented [HK26]: No effect - clarification

Commented [HK27]: No Effect – moved from .0504

Commented [HK28]: No Effect - formatting

Commented [HK29]: No effect - grammar

Commented [HK30]: Changing the paper list to an email listserv

Commented [HK31]: No Effect – update name

1 such person to ~~a water quality certification mailing list~~ Email Listserv and shall ~~mail~~ email copies of notices to all
2 persons on the list.

Commented [HK32]: Changing the paper list to an email listserv

3 ~~(f) Payment of Costs of Public Notice. The applicant shall pay to the department the costs of advertising public notice~~
4 ~~required by Paragraphs (a) and (d) of this Rule. Certification shall be withheld until such costs have been paid.~~

Commented [HK33]: Removed requirement to publish in newspaper so this Paragraph is no longer necessary.

5 (i) OTHER PUBLIC HEARINGS. Any public hearing held for this Rule may be coordinated with other public
6 hearings held by the Department of Environmental Quality or the U.S. Army Corps of Engineers.

Commented [HK34]: No substantive change - incorporating current policy.

7
8 *History Note: Authority G.S. 143-211(c); 143-215.3(a)(1); 143-215.3(c); 143B-282(1)(u);*
9 *Eff. February 1, 1976;*
10 *Amended Eff. December 1, 1984; September 1, 1984*
11 *RRC Objection Eff. July 18, 1996 due to lack of statutory authority and ambiguity;*
12 *Recodified from 15A NCAC 2H .0502 Eff. October 1, 1996;*
13 *Amended Eff. October 1, 1996; INSERT DATE.*

1 15A NCAC 02H .0504 is proposed for repeal as follows:

2

3 ~~15A NCAC 02H .0504 — HEARING~~

4 ~~(a) Public Hearing on Certification. If the Director determines that it is in the public interest that a public hearing for~~
5 ~~the purpose of reviewing public comment and additional information be held prior to granting or denying certification,~~
6 ~~the Director shall so notify the applicant by registered or certified mail, return receipt requested, and shall publish and~~
7 ~~give notice as required in Rule .0503(d) and (e) of this Section. Such hearing shall be held within 90 days following~~
8 ~~date of notification. The record of each hearing held under this Paragraph shall remain open for a period of 30 days.~~

9 ~~(b) Hearing for Applicant Upon Certification Denial. An applicant whose certification is denied or granted subject~~
10 ~~to unacceptable conditions, shall have the right to a contested case hearing pursuant to the provisions of G.S. 150B-23.~~

11

12 *History Note:* Authority G.S. 143-215.3(a)(1); 143-215.3(c); 143B-282(1)(u);

13 *Eff. February 1, 1976;*

14 *Amended Eff. July 1, 1988; December 1, 1984;*

15 *RRC Objection Eff. July 18, 1996 due to lack of statutory authority and ambiguity;*

16 *Recodified from 15A NCAC 2H .0503 Eff. October 1, 1996;*

17 *Amended Eff. October 1, 1996.*

18 *Repealed Eff. INSERT DATE*

Commented [HK1]: Moved to .0503

1 15A NCAC 02H .0506 is proposed for amendment as follows:

2

3 **15A NCAC 02H .0506 REVIEW OF APPLICATIONS**

4 ~~(a) NO WRITTEN CONCURRENCE REQUIRED. Those activities covered by General Certifications [Rule~~
5 ~~.0501(c)(2) of this Section] that do not require written concurrence from the Division shall be deemed certified if the~~
6 ~~conditions of the General Certification are followed. Those activities may proceed without the review procedures~~
7 ~~outlined in Paragraph (b) of this Rule.~~

Commented [HK1]: No effect – moved from (a) below

8 ~~(a) In evaluating requests for certification based on the procedures outlined in Paragraphs (b) through (e) of this Rule,~~
9 ~~the Director shall determine if the proposed activity has the potential to remove or degrade those significant existing~~
10 ~~uses which are present in the wetland or surface water. Activities which would not remove or degrade existing uses~~
11 ~~shall be reviewed according to the procedures found in Subparagraph (e)(2) (5) of this Rule. [Those activities covered~~
12 ~~by general certifications [15A NCAC 2H .0501(c)(2)] which do not require written concurrence from the Division~~
13 ~~shall be deemed certified if the conditions of the certification are followed and may proceed without the review~~
14 ~~procedures outlined in Paragraphs (b) through (e) of this Rule. An applicant may also demonstrate that designated~~
15 ~~uses are not present at a particular site using a wetland evaluation procedure approved by the Director according to~~
16 ~~the criteria found in 15A NCAC 2B .0103(e); otherwise the designated uses as outlined at 15A NCAC 2B .0231(a)(1)-~~
17 ~~(6) are assumed to exist in all classes of wetlands, and the appropriate review procedures shall be undertaken.~~
18 ~~Certification shall be issued where the Director determines water quality standards are met, including protection of~~
19 ~~existing uses.~~

Commented [HK2]: No effect – removed repetitive language from (a) and (b) to just be in (b) below

Commented [HK3]: No effect – moved to (a) above

20 ~~(b) The Director shall issue a certification upon determining that existing uses are not removed or degraded by a~~
21 ~~discharge to classified surface waters for an activity which: EVALUATION. The Division shall issue an individual~~
22 ~~certification or a "Certificate of Coverage" under a general certification upon determining that the proposed activity~~
23 ~~will comply with state water quality standards, which includes designated uses, numeric criteria, narrative criteria and~~
24 ~~the state's antidegradation policy, as defined in the rules of Section .0200 of 15A NCAC 02B and the rules of Sections~~
25 ~~.0100 and .0200 of 15A NCAC 02L. In assessing whether the proposed activity will comply with water quality~~
26 ~~standards, the Division shall evaluate if the proposed activity:~~

Commented [HK4]: Never implemented so removed

27 (1) ~~has no practical alternative under the criteria outlined in Paragraph (f) of this Rule; avoided and~~
28 ~~minimized impacts to surface waters and wetlands to ensure any remaining surface waters or~~
29 ~~wetlands, and any surface waters or wetlands downstream, continue to support existing uses during~~
30 ~~and after project completion;~~

Commented [HK5]: No effect – removed repetitive language from (a) and (b) to just be in (b)

Commented [HK6]: Removed as practical alternative analysis is conducted by the Corps

31 (2) ~~will minimize adverse impacts to the surface waters based on consideration of existing topography,~~
32 ~~vegetation, fish and wildlife resources, and hydrological conditions under the criteria outlined in~~
33 ~~Paragraph (g) of this Rule;~~

Commented [HK7]: No effect – consolidated avoid and minimize into one Subparagraph

34 (3)(2) ~~does not result in the degradation of groundwaters or surface waters; would cause or contribute to a~~
35 ~~violation of water quality standards;~~

Commented [HK8]: No effect - clarification

1 (4)(3) ~~does not~~would result in secondary or cumulative impacts, based upon past or reasonably anticipated
2 future impacts, impacts that cause or contribute to, or will cause or contribute to, a violation of
3 downstream water quality standards;

Commented [HK9]: No effect - clarification

4 (5) ~~provides for protection of downstream water quality standards through the use of on-site stormwater
5 control measures; and~~

Commented [HK10]: Removed per SL 2017-10

6 (6)(5) provides for replacement of existing uses through compensatory mitigation as described at
7 Subparagraphs (h)(1) in Paragraph (e) of this Rule. Rule.

Commented [HK11]: No effect - clarification

8 (6) ~~for Class SWL wetlands, is water dependent and requires access to water as a central element of its
9 basic function. Projects funded by government agencies may be exempted from this requirement;
10 and~~

Commented [HK12]: No effect - update citation

Commented [HK13]: No effect - punctuation

11 (7) ~~for Class UWL wetlands and wetlands that are habitat for state or federally listed threatened or
12 endangered species, is necessary to meet a demonstrated public need.~~

Commented [HK14]: No effect - moved from (d)(1)(B) below

13 (e) The Director shall issue a certification upon determining that sufficient existing uses are not removed or degraded
14 by a discharge to Class WL wetlands as defined at 15A NCAC 2B .0101(e)(8), for an activity which:

Commented [HK15]: No effect - moved from (e)(1) below

15 (1) ~~has no practical alternative as described in Paragraph (f) of this Rule, or impacts less than three acres
16 of Class WL wetlands;~~

17 (2) ~~will minimize adverse impacts to the wetland based on consideration of existing topography,
18 vegetation, fish and wildlife resources, and hydrological conditions under the criteria outlined in
19 Paragraph (g) of this Rule; or impacts less than one acre of wetland within 150 feet (including less
20 than 1/3 acre of wetland within 50 feet), of the mean high water line or normal water level of any
21 perennial or intermittent water body as shown by the most recently published version of the United
22 State Geological Survey 1:24,000 (7.5 minute) scale topographical map or other site specific data;~~

23 (3) ~~does not result in the degradation of groundwaters or surface waters;~~

24 (4) ~~does not result in cumulative impacts, based upon past or reasonably anticipated future impacts, that
25 cause or will cause a violation of downstream water quality standards;~~

26 (5) ~~provides protection for downstream water quality standards through the use of on-site stormwater
27 control measures; and~~

28 (6) ~~provides for replacement of existing uses through wetland mitigation under U.S. Army Corps of
29 Engineers requirements or as described in Subparagraph (h)(1)-(8) of this Rule.~~

30 (d) The Director shall issue a certification upon determining that significant existing uses are not removed or degraded
31 by a discharge to Class SWL wetland as defined at 15A NCAC 2B .0101(d)(4), wetlands that are contiguous to waters
32 designated as ORW, HQW, SA, WS I, WS II or Trout, or wetlands that are contiguous to rivers designated as a North
33 Carolina or National Wild and Scenic River for an activity which satisfies Subparagraphs (e)(2)-(5) of this Rule, and:

34 (1) ~~for wetlands classified as coastal wetlands pursuant to 15A NCAC 7H .0205:~~

35 (A) ~~has no practical alternative as described in Paragraph (f) of this Rule; and~~

1 (B) is water dependent and requires access to water as a central element of its basic function,
2 although, projects funded by government agencies may be exempted from this
3 requirement; and

4 (2) provides for replacement of existing uses through wetland mitigation under U.S. Army Corps of
5 Engineers requirements, or as described in Subparagraphs (h)(1)-(7) and (9) of this Rule.

6 (e) The Director shall issue a certification upon determining that significant existing uses are not removed or degraded
7 by a discharge to wetlands of exceptional state or national ecological significance including but not limited to Class
8 UWL wetlands, and wetlands that have been documented to the satisfaction of the Director as habitat essential for the
9 conservation of state or federally listed threatened or endangered species, provided that the wetlands have been so
10 classified or designated prior to the date of application for certification or a draft environmental impact statement has
11 been submitted to the Director, for an activity which satisfies Subparagraphs (c)(2) (5) and (d)(1) (2) and:

12 (1) the wetland impacts are necessary for the proposed project to meet a demonstrated public need; and

13 (2) provides for replacement of existing uses through wetland mitigation under U.S. Army Corps of
14 Engineers requirements, or as described in Subparagraphs (h)(1) (7) and (10) of this Rule.

15 (f) A lack of practical alternatives may be shown by demonstrating that, considering the potential for a reduction in
16 size, configuration or density of the proposed activity and all alternative designs the basic project purpose cannot be
17 practically accomplished in a manner which would avoid or result in less adverse impact to surface waters or wetlands.

18 (g) Minimization of impacts may be demonstrated by showing that the surface waters or wetlands are able to continue
19 to support the existing uses after project completion, or that the impacts are required due to:

20 (1) The spatial and dimensional requirements of the project; or

21 (2) The location of any existing structural or natural features that may dictate the placement or
22 configuration of the proposed project; or

23 (3) The purpose of the project and how the purpose relates to placement, configuration or density.

24 (h)(c) MITIGATION. Replacement or mitigation of unavoidable losses of existing uses shall be reviewed in
25 accordance with all of the following guidelines:

26 (1) The Director Division shall coordinate mitigation requirements with other permitting agencies that
27 are requiring mitigation for a specific project. Mitigation required by the U.S. Army Corps
28 of Engineers shall be considered to constitute the mitigation required by the certification unless the
29 Director determines that the mitigation proposal does not meet the criteria established in
30 Subparagraph (6) of this Paragraph.

31 (2) Mitigation shall not be required for Total impacts to less than one-tenth of one acre of Class WL and
32 Class SWL wetlands of less than one acre, for the entire project shall not require compensatory
33 mitigation.

34 (3) All impacts to Class UWL wetlands shall require compensatory mitigation.

35 (4) Total impacts to less than 300 linear feet of perennial streams for the entire project shall not require
36 compensatory mitigation. For linear publically owned and maintained transportation projects that

Commented [HK16]: No effect – combined (b)(c)(d) and (e) into one paragraph (b) above

Commented [HK17]: Moved to Subparagraph (b)(1) above

Commented [HK18]: No effect – formatting

Commented [HK19]: No effect - clarification

Commented [HK20]: No effect – update name

Commented [HK21]: State law does not comply with Corps requirements, so the mitigation required by the Corps cannot be the mitigation required by the state.

Commented [HK22]: No effect - clarification

Commented [HK23]: Changed requirement from one acre to one-tenth of one acre to match Corps requirement. Having consistent requirements with the Corps eases confusion for applicants.

Commented [HK24]: No effect - clarification

Commented [HK25]: See comment above

Commented [HK26]: No effect - clarification

Commented [HK27]: Require mitigation for all Class UWL (unique wetlands) impacts.

1 ~~the U.S. Army Corps of Engineers determines are not part of a larger common plan of development,~~
2 ~~impacts to less than 300 linear feet per perennial stream shall not require compensatory mitigation;~~
3 (5) ~~The ratio of mitigation required to classified surface waters or wetlands impacted is 1:1. The~~
4 ~~required area or length of mitigation required shall be multiplied by 1 for restoration, 1.5 for~~
5 ~~establishment, 2 for enhancement and 5 for preservation. These multiplier ratios shall not apply to~~
6 ~~approved mitigation sites where the Interagency Review Team (insert CFR reference) has approved~~
7 ~~other ratios;~~
8 (3)(6) ~~Participation in wetland restoration programs coordinated by the Department of Environmental,~~
9 ~~Health, and Natural Resources shall be preferred to individual project mitigation whenever the~~
10 ~~Director finds that such participation is available and satisfies the other requirements of this~~
11 ~~Paragraph, unless the applicant can demonstrate that participation in these restoration programs is~~
12 ~~not practical. Mitigation sites approved by the U.S. Army Corps of Engineers shall be deemed to~~
13 ~~be consistent with the Department's restoration plan. Mitigation shall comply with the requirements~~
14 ~~set forth in G.S. 143-214.11;~~
15 (4)(7) ~~Acceptable methods of wetlands mitigation are listed below in the order of preference: mitigation,~~
16 ~~as defined in 33 CFR Part 332 available free of charge on the internet at:~~
17 ~~http://water.epa.gov/lawsregs/guidance/wetlands/wetlandsmitigation_index.cfm, include~~
18 ~~restoration, including both re-establishment and rehabilitation, establishment (creation),~~
19 ~~enhancement, and preservation. No more than twenty-five percent (25%) of the mitigation required~~
20 ~~by Subparagraph (c)(2), (3) or (4) can be met through preservation, unless the Director determines~~
21 ~~that the public good would be better served by a higher percentage of preservation.~~
22 (A) ~~Restoration: the re-establishment of wetland hydrology and vegetation in an area where it~~
23 ~~previously existed.~~
24 (B) ~~Creation: the construction of a wetland in an area where wetlands did not exist in the recent past.~~
25 (C) ~~Enhancement: increasing one or more of the functions of an existing wetland by manipulation of~~
26 ~~vegetation or hydrology.~~
27 (D) ~~Preservation: protection of wetlands through purchase, donation or conveyance of a conservation~~
28 ~~easement to an appropriate government or non-profit agency for management.~~
29 (5) ~~Restoration is the preferred method of wetlands mitigation. The other methods may be utilized if~~
30 ~~the applicant can demonstrate that restoration is not practical or that the proposed alternative is the~~
31 ~~most ecologically viable method of replacing the lost functions and values;~~
32 (6) ~~All mitigation proposals shall provide for the replacement of wetland acres lost due to the proposed~~
33 ~~activity at a minimum of a 1:1 ratio through restoration or creation prior to utilizing enhancement~~
34 ~~or preservation to satisfy the mitigation requirements, unless the Director determines that the public~~
35 ~~good would be better served by other types of mitigation;~~
36 (7) ~~Wetlands mitigation shall be conducted based on the following ratios (acres mitigated to acres loss);~~
37 ~~4:1, for wetlands located within 150 feet of the mean high water line or normal water level of any~~

Commented [HK28]: No effect – incorporates recent session law changes

Commented [HK29]: No effect – moved from (6) below

Commented [HK30]: No effect – moved from (7) below

Commented [HK31]: No effect – clarification

Commented [HK32]: Reference federal definitions for ease of implementation and consistency

Commented [HK33]: Removed requirement for 1:1 restoration or creation in (6) below, but wanted to place a limit on preservation. Provide an option for the Director to allow for a higher preservation percentage on a case-by-case basis. 25% is consistent with requirement in consolidated buffer mitigation rule (15A NCAC 02B .0295)

Commented [HK34]: Removed definitions - reference federal definitions for ease of implementation and consistency

Commented [HK35]: Removed requirement for 1:1 restoration or creation

perennial or intermittent water body as shown by the most recently published version of the United States Geological Survey 1:24,000 (7.5 minute) scale topographical map; 2:1, for wetlands located between 150 feet and 1,000 feet from the mean high water line or normal water level of any perennial or intermittent water body as shown by the most recently published version of the United States Geological Survey 1:24,000 (7.5 minute) scale topographical map; and 1:1, for all other wetlands. For linear projects which impact less than 3 acres of wetlands the ratio shall be 2:1 regardless of the distance from surface waters. The above ratios apply only to restoration. ~~The acres of required mitigation for the other types of mitigation shall be determined by multiplying the above ratios by 1.5 for creation, 2 for enhancement, and 5 for preservation. The above ratios do not apply to approved mitigation sites where the state and federal review agencies have approved credit/debit ratios. This Subparagraph shall not apply to general certifications until the Department has established a wetlands restoration program or until January 1, 1997, whichever occurs first.~~

- (8) Mitigation for impacts to ~~classified surface waters and wetlands designated in Paragraph (c) of this Rule shall be conducted in North Carolina within the same river basin and physiographic province when practical. Unavoidable losses of wetlands adjacent to waters classified as WS-III shall be replaced within the water supply watershed when practical; in accordance with 33 CFR Part 332, available free of charge on the internet at: http://water.epa.gov/lawsregs/guidance/wetlands/wetlandsmitigation_index.cfm, unless otherwise approved by the Director;~~
- (9) Mitigation for impacts to ~~Class SWL wetlands designated in Paragraph (d) of this Rule shall be of the same wetland type and located within the same river sub-basin when practical. Mitigation for impacts to wetlands adjacent to waters classified as WS-I or WS-II shall be replaced within the water supply watershed when practical shall be Class SWL wetlands;~~
- (10) Mitigation for impacts to wetlands designated in ~~Paragraph (e) Subparagraph (b)(7) of this Rule shall be of the same wetland type and within the same watershed when practical-practical; and~~
- (11) ~~Mitigation for impacts to surface waters classified as WS-I, WS-II or WS-III and wetlands adjacent to waters classified as WS-I, WS-II or WS-III shall be within the same water supply watershed when practical.~~

(i) ~~The Director shall not duplicate the site-specific application of any guidelines employed by the United State Army Corps of Engineers in evaluating permit applications under 33 U.S.C. 1344 and applicable federal regulations.~~

*History Note: Authority G.S. 143-211(c); 143-214.7C; 143-215.3(a)(1); 143-215.3(c); 143B-282(1)(u); S.L 2017, c. 10
RRC Objection Eff. July 18, 1996 due to lack of statutory authority and ambiguity;
Eff. October 1, 1996.
Amended Eff. INSERT DATE*

Commented [HK36]: Removed – this was never implemented

Commented [HK37]: No effect – moved to (c)(5) above

Commented [HK38]: No effect - clarification

Commented [HK39]: No effect – unnecessary reference

Commented [HK40]: No effect – clarification

Commented [HK41]: No effect – reference federal requirements for ease of applicants and consistency

Commented [HK42]: No effect – moved to (c)(11) below

Commented [HK43]: No effect – reference federal requirements for ease of applicants and consistency

Commented [HK44]: No effect - clarification

Commented [HK45]: No effect – moved to (c)(11) below

Commented [HK46]: No effect – moved from earlier in the Subparagraph

Commented [HK47]: No effect – updated citation

Commented [HK48]: No effect - punctuation

Commented [HK49]: No effect – moved from (8) and (9) above

Commented [HK50]: Removed “No practical alternatives” from this rule, so no longer necessary to have this Paragraph

1 15A NCAC 02H .0507 is proposed for amendment as follows:

3 **15A NCAC 02H .0507 ISSUANCE OF DECISION ON APPLICATION FOR CERTIFICATION**

4 (a) ~~Time Limit for Final Action on Certification Application.~~ FINAL ACTION ON APPLICATION. All applications
5 for certification. The Director shall be granted issue or denied deny within 60 calendar days after receipt of a complete
6 application for certification electronically or at the offices of the Director in 1617 Mail Service Center, Raleigh, North
7 Carolina. Carolina, 27699-1617. Failure to take final action within 60 calendar days shall result in a waiver of the
8 certification requirement by the Director, unless:

- 9 (1) The applicant agrees, in writing, to a longer period;
- 10 (2) Final decision is to be made pursuant to a public hearing;
- 11 (3) ~~Applicant.~~ The applicant fails to furnish information necessary for the Director's decision;
- 12 (4) ~~Applicant.~~ The applicant refuses the staff access to its records or premises for the purpose of
13 gathering information necessary for the Director's decision or;
- 14 (5) Information necessary for the Director's decision is unavailable.

15 (b) ~~Time Limit for Final Action on Certification Application After Hearing.~~ FINAL ACTION AFTER HEARING.
16 All applications for certification. The Director shall be granted issue or denied deny the complete application for
17 certification within 60 calendar days after following the close of the record for the public hearing. Failure to take final
18 action within 60 calendar days shall result in a waiver of the certification requirement by the Director. Director, unless
19 the applicant otherwise agrees in writing, or unless Subparagraph Subparagraphs (a)(3); (a)(1), (3), (4), or (5) of this
20 Rule shall apply.

21 (c) ~~Conditions of Certification.~~ CONDITIONS OF CERTIFICATION. Any certification issued pursuant to this Rule
22 Section may contain such conditions as the Director shall deem necessary to insure ensure compliance with Sections
23 301, 302, 303, 306, and 307 of the Federal Water Pollution Control Act Amendments. Section 401 of the Clean Water
24 Act (33 U.S.C. 1341). The certification shall become enforceable when the federal permit or license is issued.

25 (d) ~~Modification or Revocation of Certification.~~ MODIFICATION OR REVOCATION. Modification or Revocation
26 of Certification:

- 27 (1) Any certification issued pursuant to this Rule Section shall be subject to revocation or modification
28 for violation of conditions of 301, 302, 303, 306, and 307 of the Federal Water Pollution Control
29 Act Amendments.
- 30 (2) Any certification issued pursuant to this Rule Section shall be subject to revocation or modification
31 upon a determination that information contained in the application or presented in support thereof
32 is incorrect or if conditions under which the certification was made have changed.

33 (e) ~~Notification of Unapproved Application.~~ NOTIFICATION OF FINAL ACTION. The Division shall notify the
34 applicant of the final action to issue or deny the application. In the event that the Director denies the application for
35 certification or for any reason is unable to approve the application, the Director shall so notify the applicant by certified
36 or registered mail, return receipt requested, specifying in such notification specify the reasons for the denial or inability

- Commented [HK1]: No effect - clarification
- Commented [HK2]: No effect - formatting / grammar
- Commented [HK3]: No effect - grammar
- Commented [HK4]: No effect - clarification
- Commented [HK5]: Update address
- Commented [HK6]: Update address
- Commented [HK7]: No effect - clarification
- Commented [HK8]: No effect - grammar
- Commented [HK9]: No effect - grammar
- Commented [HK10]: No effect - grammar
- Commented [HK11]: No effect - grammar
- Commented [HK12]: No effect - grammar
- Commented [HK13]: No effect - formatting
- Commented [HK14]: No effect - grammar
- Commented [HK15]: No effect - grammar
- Commented [HK16]: No effect - clarification
- Commented [HK17]: This should allow time to process the comments without having to put the project on hold at the end of the comment period.
- Commented [HK18]: Division may issue a request for additional info based on comments received.
- Commented [HK19]: No effect - clarification
- Commented [HK20]: No effect - update name
- Commented [HK21]: No effect - clarification
- Commented [HK22]: No effect - grammar
- Commented [HK23]: No effect - formatting
- Commented [HK24]: No effect - update citation
- Commented [HK25]: No effect - grammar
- Commented [HK26]: No effect - update citation
- Commented [HK27]: No effect - clarification
- Commented [HK28]: No effect - formatting
- Commented [HK29]: No effect - update citation
- Commented [HK30]: No effect - update citation
- Commented [HK31]: No effect - formatting
- Commented [HK32]: No effect - clarification
- Commented [HK33]: Will send denial by regular mail or email when application processing becomes paperless.

1 to ~~approve; and approve.~~ A copy of the notification shall be ~~mailed sent~~ to the appropriate federal licensing or
2 permitting agency and EPA.

3 (f) CONTESTED CASE HEARING. An applicant whose certification is denied or granted subject to unacceptable
4 conditions shall have the right to seek a contested case hearing pursuant to the provisions of G.S. 150B-23.

5
6 *History Note:* Authority G.S. 143-211(c); 143-215.3(a)(1); 143-215.3(c); 143B-282(1)(u);
7 Eff. February 1, 1976;
8 Amended Eff. July 1, 1988; December 1, 1984;
9 RRC Objection Eff. July 18, 1996 due to lack of statutory authority and ambiguity;
10 Recodified from 15A NCAC 2H .0504 Eff. October 1, 1996;
11 Amended Eff. October 1, 1996; INSERT DATE.

Commented [HK34]: No effect - grammar

Commented [HK35]: No substantive change; allows for an electronic copy instead of paper

Commented [HK36]: No effect – moved from .0504

SECTION .0900 - LOCAL PRETREATMENT PROGRAMS

15A NCAC 02H .0901 PURPOSE

(a) The rules in this Section are designed to implement North Carolina General Statutes 143-215.3(a)(14) and 143-215.1 and provisions of the Federal Water Pollution Control Act (also known as the "Clean Water Act") regarding the discharge of non-domestic wastewater into publicly owned treatment works (POTWs). They establish responsibilities of state and local government, industry, and the public to implement pretreatment standards to control pollutants which pass through or interfere with treatment processes in POTWs, which may contaminate sewage sludge, or which otherwise have an adverse impact on the POTW, its workers, or the environment.

(b) Copies of rules referenced in this Section may be obtained from the Division of Water Quality, Resources, Surface Water Protection, Water Quality Permitting Section, free of charge, at the following locations:

- (1) <http://portal.ncdenr.org/web/wq/swp/ps/pret/>; <http://deq.nc.gov/about/divisions/water-resources/water-resources-permits/percs/pretreatment-permits/>;
- (2) the North Carolina Department of ~~Environment and Natural Resources~~, ~~Environmental Quality~~, Division of Water ~~Quality Resources~~ Offices of the Pretreatment, Emergency Response, and Collection Systems (PERCS) Unit
Physical Address: Archdale Building, 512 N. Salisbury St.
Raleigh, N.C. 27604
Mailing Address: 1617 Mail Service Center
Raleigh, N.C. 27699-1617;
- (3) ~~Raleigh Regional Office~~
~~3800 Barrett Dr.~~
~~Raleigh, N.C. 27609;~~
- (4) ~~Asheville Regional Office~~
~~2090 US Highway 70~~
~~Swannanoa, NC 28778;~~
- (5) ~~Mooresville Regional Office~~
~~610 East Center Avenue, Suite 301~~
~~Mooresville, N.C. 28115;~~
- (6) ~~Fayetteville Regional Office~~
~~Systel Bldg; Suite 714~~
~~225 Green Street~~
~~Fayetteville, N.C. 28301;~~
- (7) ~~Washington Regional Office~~
~~1424 Carolina Avenue, 943 Washington Square Mall~~
~~Washington, N.C. 27889;~~
- (8) ~~Wilmington Regional Office~~
~~127 Cardinal Drive Extension, Extension~~

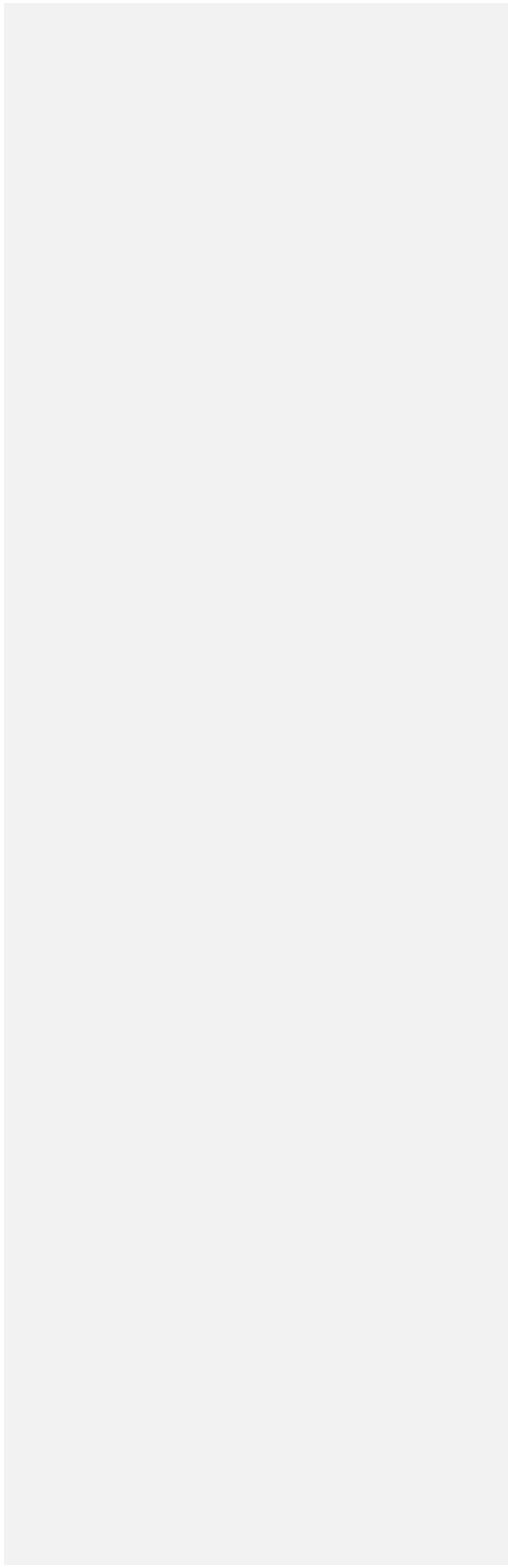
Commented [A1]: Name and address corrections only in this Section

1 Wilmington, N.C. 28405-3845; and
2 ~~(9)~~ Winston Salem Regional Office
3 585 Waughtown Street 450 Hanes Mill Road, Suite 300
4 Winston Salem, N.C. 27107-27105.

5
6 *History Note: Authority G.S. 143-215.3(a)(14);*
7 *Eff. March 28, 1980;*
8 *Amended Eff. April 1, 2011; November 1, 1994; October 1, 1987; December 1, 1984.*
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51 **15A NCAC 02H .0902 SCOPE**



1 These Rules apply to:

- 2 (1) Pollutants from non-domestic sources covered by pretreatment standards which are indirectly
3 discharged into or transported by truck or rail or otherwise introduced into POTWs as defined in 40
4 CFR 403.3 and Rule .0903 of this Section;
- 5 (2) POTWs and control authorities which receive wastewater from sources subject to pretreatment
6 standards; and
- 7 (3) Any new or existing source subject to pretreatment standards. ~~Pretreatment standards de This Section~~
8 ~~does~~ not apply to sources which discharge to a sewer which is not connected to a POTW treatment
9 plant.

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11 *History Note:* Authority G.S. 143-215.3(a)(14);
12 Eff. March 28, 1980;
13 Amended Eff. April 1, 2011; November 1, 1994; October 1, 1987.
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50 15A NCAC 02H .0903 DEFINITION OF TERMS

1 (a) Unless otherwise defined in Paragraph (b) of this Rule, the definitions promulgated by the Environmental Protection
2 Agency and codified as 40 CFR ~~Part~~ 403.3 are hereby incorporated by reference, including any subsequent amendments
3 and editions. ~~This material is available for inspection at the locations listed in Rule .0901 of this Section and at~~
4 ~~http://efpub1.epa.gov/npdes/home.cfm?program_id=3. A copy of the reference material can be found at~~
5 ~~http://water.epa.gov/polwaste/npdes/pretreatment/index.cfm. http://www.ecfr.gov/cgi-bin/text-~~
6 ~~idx?SID=002b8fe78be0d299d7289c36ef66652d&mc=true&tpl=/ecfrbrowse/Title40/40CISubchapN.tpl, free of charge~~

Commented [A2]: Updated EPA web address throughout document

7 (b) For this Rule the following definitions in addition to those incorporated by reference in Paragraph (a) of this Rule
8 shall apply:

- 9 (1) "Approval Authority" means the Director of the Division of Water ~~Quality Resources~~ of the North
10 Carolina Department of ~~Environment and Natural Resources~~ **Environmental Quality**, or his/her
11 designee;
- 12 (2) "Average" means the value calculated by dividing the sum of the data values collected over a time
13 period by the number of data points which comprise the sum;
- 14 (3) "Bypass" is the intentional diversion of waste streams from any portion of a pretreatment facility.
15 Also see Rule .0919 of this Section and 40 CFR ~~Part~~ 403.17 for additional requirements;
- 16 (4) "Commission" means the Environmental Management Commission of the North Carolina Department
17 of ~~Environment and Natural Resources~~ **Environmental Quality** or its successor;
- 18 (5) "Control Authority" refers to the POTW ~~organization~~ if the ~~POTW'S POTW organization's~~
19 pretreatment program has been approved in accordance with Rules .0905, .0906, and .0907 of this
20 Section, and that approval has not been subsequently withdrawn. Otherwise, the approval authority is
21 the control authority;
- 22 (6) "Division" refers to the North Carolina Department of ~~Environment and Natural Resources~~
23 **Environmental Quality**, Division of Water ~~Quality Resources~~;
- 24 (7) "Enforcement Response Plan" or "ERP" means the control authority pretreatment program document
25 describing the guidelines for identifying violations of and enforcing specific local limits and other
26 pretreatment standards and requirements;
- 27 (8) "EPA" means the United States Environmental Protection Agency;
- 28 (9) "Fundamentally Different Factors" are factors upon which a variance from a categorical standard may
29 be granted under Rule .0912 of this Section and 40 CFR ~~Part~~ 403.13;
- 30 (10) "Headworks Analysis" or "HWA" is the analysis used to calculate the maximum allowable POTW
31 influent loadings for flow and pollutants of concern based on design capacity, NPDES or non-
32 discharge permit limits, pass through, interference, sludge, or worker safety and health considerations,
33 as applicable. The headworks analysis is the technical basis for deriving local limits applied to
34 industrial users;
- 35 (11) "Indirect Discharge" or "Discharge" refers to the introduction of pollutants into a POTW from any
36 non-domestic source regulated under Sections 307(b), (c), or (d) of the Clean Water Act;
- 37 (12) "Industrial User" or "User" means a source of indirect discharge;

Commented [A3]: Deleted "organization" to match .0903 (25)

Commented [A4]: Corrected Division name

- 1 (13) "Industrial Waste Survey" refers to the survey of the users of the POTW collection system or treatment
 2 plant performed by the control authority as required by 40 CFR ~~Part~~ 403.8 (f)(2)(i-iii) and Rule .0905
 3 of this Section, including identification of all industrial users and the character and amount of
 4 pollutants contributed to the POTW by these industrial users and identification of those industrial
 5 users meeting the definition of significant industrial user. Where the control authority accepts
 6 wastewater from one or more satellite POTWs, the IWS for that control authority shall address all
 7 satellite POTW services areas, unless the pretreatment program in those satellite service areas is
 8 administered by a separate control authority;
- 9 (14) "Interference" refers to inhibition or disruption of the POTW collection system; treatment processes;
 10 operations; or its sludge process, use, or disposal which causes or contributes to a violation of any
 11 requirement of the control authority's (or the POTW's if different from the control authority) NPDES,
 12 collection system, or non-discharge permit (including an increase in the magnitude or duration of a
 13 violation) or prevents sewage sludge use or disposal in compliance with specified applicable State and
 14 Federal statutes, regulations, or permits;
- 15 (15) "Medical Waste" refers to isolation wastes, infectious agents, human blood and blood products,
 16 pathological wastes, sharps, body parts, contaminated bedding, surgical wastes, potentially
 17 contaminated laboratory wastes, and dialysis wastes;
- 18 (16) "Monitoring Plan" refers to the monitoring plan designed to collect POTW site-specific data for use in
 19 the Headworks Analysis. Monitoring Plans may be designated as "Long Term" or "Short Term,"
 20 LTMP and STMP, respectively, as the Division Director determines to be necessary;
- 21 (17) "National ~~Categorical Pretreatment Standard~~ Standard", or "~~Categorical~~ Pretreatment Standard" or
 22 "Standard" refers to means any regulation containing pollutant discharge limits promulgated by the
 23 EPA in accordance with Sections 307(b) and (c) of the Clean Water Act which applies to industrial
 24 users, a specific category of industrial users, and which appears in 40 CFR Parts 405-471. This term
 25 also includes any prohibitive discharge limits established pursuant to 40 CFR 403.5, categorical
 26 standards established under the appropriate subpart of 40 CFR chapter I, subpart N or local limit which
 27 applies to an industrial user, 40 CFR 403.5, Chapters I and N of Part 405 of Title 40 of the Code of
 28 Federal Regulations are hereby incorporated by reference, including any subsequent amendments and
 29 editions.
- 30 ~~(18) "National Prohibited Discharge Standard" is an absolute prohibition against the discharge of certain~~
 31 ~~substances to the POTW, including both general and specific prohibitions.~~
- 32 ~~(19)~~ "Net/Gross Calculation" is an adjustment of a categorical standard to reflect the presence of pollutants
 33 in the industrial user's intake water that may be granted under Rule .0915 of this Section and 40 CFR
 34 ~~Part~~ 403.15;
- 35 ~~(20)~~ "Noncontact Cooling Water" is water used for cooling which does not come into direct contact with
 36 any raw material, intermediate product, waste product, or finished product;

Commented [A5]: Added "including an increase in the magnitude or duration of a violation" to more closely match 40 CFR 403.3 (k)

Commented [A6]: Revised to combine numbers 17, 18 & 29 to more closely match 40 CFR 403.3 (l) and 403.6.

Commented [A7]: Deleted as unnecessary due to change in # 17

1 (2420) "Non-discharge Permit" is a permit issued by the State pursuant to G.S. 143-215.1(d) for a waste
2 which is not discharged directly to surface waters of the State or for a wastewater treatment works
3 which does not discharge directly to surface waters of the State;

4 (22) "Operator in Responsible Charge" is the operator designated to fulfill the requirements of G.S. 90A-
5 44;

6 (2321) "Pass Through" means a discharge which exits the POTW into waters of the State in quantities or
7 concentrations which, alone or with discharges from other sources, causes a violation, including an
8 increase in the magnitude or duration of a violation, of the control authority's (or the POTW's, if
9 different from the control authority) NPDES, collection system, or non-discharge permit;

10 (2422) "Pollutant" includes any waste defined in G.S. 143-213(18); dredged spoil; solid waste; incinerator
11 residue; garbage; sewage sludge; munitions; medical wastes; chemical waste; biological materials;
12 radioactive materials; heat; wrecked or discarded equipment; rock; sand; cellar dirt; municipal and
13 agricultural waste; and certain characteristics of wastewater, such as pH, temperature, TSS, turbidity,
14 color, metals, BOD, COD, toxicity, and odor;

15 (2523) "Pollutant of Concern" or "POC" is a pollutant identified as being of concern to the control authority
16 for purposes of the pretreatment program; a pollutant of concern may include but not be limited to
17 conventional wastewater pollutant, such as BOD, TSS, or ammonia; any of the priority pollutants; pH;
18 and any pollutant that may be identified as a source of interference, pass through, whole effluent
19 toxicity, or sludge contamination;

20 (2624) "POTW", or "Publicly Owned Treatment Works," means a treatment works as defined by Section 212
21 of the Clean Water Act (CWA), which is owned by a state or ~~municipality, local government~~
22 ~~organization~~. This definition includes any devices and systems used in the storage, treatment,
23 recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes
24 the collection system, only if it conveys wastewater to a POTW treatment plant. Also see 15A NCAC
25 02T .0402. The term also means the ~~local government organization, or~~ municipality, as defined in
26 Section 502(4) of the CWA, which has jurisdiction over indirect discharges to and the discharges from
27 such a treatment works. ~~In this context, the organization~~ ~~The municipality~~ may be the owner of the
28 POTW treatment plant or the owner of the collection system into which an indirect discharger
29 discharges. This second type of ~~POTW~~ ~~municipality~~ may be referred to as a "satellite municipality", a
30 "satellite POTW" or a "satellite POTW ~~organization~~"; ~~organization~~." For clarity, the local government
31 may be referred to as the "POTW organization" or "Control Authority" as applicable in this Rule and
32 all other rules in this Section. See also Subparagraph (b)(5) of this Rule and Rule .0908(h) of this
33 Section;

34 (2725) "POTW Director" means the chief administrative officer of the control authority or his/her delegate;

35 (2826) "Pretreatment" refers to the reduction of the amount of pollutants, the elimination of pollutants, or the
36 alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or
37 otherwise introducing such pollutants into a POTW collection system or treatment plant. The

Commented [A8]: Deleted as unnecessary due to deletion of .0920

Commented [A9]: Revised to use "municipality" instead of "local government organization" Effect: clarification

reduction or alteration may be obtained by physical, chemical, or biological processes, or process changes or other means, except as prohibited by 40 CFR Part 403.6(d); 403.6(d). Where wastewater from a regulated process is mixed with unregulated wastewater or with wastewater from another regulated process, the pretreatment limit must be calculated in accordance with 40CFR 403.6(e);

~~(29) "Pretreatment Standard" is any prohibited discharge standard, categorical standard, or local limit which applies to an industrial user;~~

(3027) "Process Wastewater" means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, by-product, or waste product;

(3128) "Removal Credits" are credits that may be granted under Rule .0921 of this Section and 40 CFR Parts 403.7 and 403.11 to adjust categorical standards in such a way as to reflect POTW consistent removal of a particular pollutant;

(3229) "Sewer Use Ordinance" or "SUO" means the POTW or control authority organization ordinance providing the legal authority for administering the pretreatment program;

(3330) "Significant Industrial User" or "SIU" means an industrial user that discharges wastewater into a publicly owned treatment works and that:

(A) Discharges an average of 25,000 gallons per day or more of process wastewater to the POTW (excluding sanitary, noncontact cooling and boiler blowdown wastewaters);

(B) Contributes process wastewater which makes up five percent or more of the NPDES or non-discharge permitted flow limit or organic capacity of the POTW treatment plant. In this context, organic capacity refers to BOD, TSS and ammonia;

(C) Is subject to categorical standards under 40 CFR Part 403.6 and 40 CFR chapter I, subpart N; Parts 405-471;

(D) is designated as such by the control authority on the basis that the industrial user has a reasonable potential for adversely affecting the POTW's operation (including contributing to violations of the limitation and requirements of the NPDES or non-discharge permit or limiting the POTW's sludge disposal options) or for violating any pretreatment standard or requirement (in accordance with 40 CFR 403.8(f)(6)); requirement, or the POTW's effluent limitations and conditions in its NPDES or non-discharge permit, or to limit the POTW's sludge disposal options;

(E) Subject to approval under Rule .0907(b) of this Section, the control authority may determine that an industrial user meeting the criteria in Parts (A) or (B) of this Subparagraph has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, the POTW's effluent limitations and conditions in its NPDES or non-discharge permit, or to limit the POTW's sludge disposal options, and thus is not a significant industrial user; or

Commented [A10]: Revised to include requirement to use combined waste stream formula to more closely match 40 CFR 403.3 (s)

Commented [A11]: Deleted as unnecessary due to change in #17

Commented [A12]: Chnage reference to more closely match 40 CFR 403.3 (v) (1) (i)

Commented [A13]: Rearranged language and added reference to 40 CFR 403.8 (f) (6) to more closely match 403.3 (v) (1) (ii)

1 (F) Subject to approval under Rule .0907(b) of this Section, the control authority may determine
2 that an industrial user meeting the criteria in Part (C) of this Subparagraph meets the
3 requirements of 40 CFR Part 403.3(v)(2) and thus is a non-significant categorical industrial
4 user;

5 (3431) "Significant Noncompliance" or "SNC" is the status of noncompliance of a significant industrial user
6 when one or more of the following criteria are met:

7 (A) Chronic violations of wastewater discharge limits, defined here as those in which 66 percent
8 or more of all the measurements taken for the same pollutant parameter (not including flow)
9 during a six month period exceed (by any magnitude) a numeric pretreatment standard or
10 requirement including instantaneous limits, as defined by 40 CFR Part 403.3(l);

11 (B) "Technical Review Criteria" (TRC) violations, defined here as those in which 33 percent or
12 more of all the measurements taken for the same pollutant parameter during a six-month
13 period equal or exceed the product of the numeric pretreatment standard or requirement
14 including instantaneous limits, as defined by 40 CFR Part 403.3(l) multiplied by the
15 applicable TRC; (TRC = 1.4 for BOD, TSS, fats, oil and grease, 1.2 for all other pollutants
16 (except flow and pH));

17 (C) Any other violation of a pretreatment standard or requirement as defined by 40 CFR Part
18 403.3(l) (daily maximum, long-term average, instantaneous limit, or narrative standard) that
19 the control authority (or POTW, if different from the control authority), determines has
20 caused, alone or in combination with other discharges, interference or pass through
21 (including endangering the health of POTW personnel or the general public);

22 (D) Any discharge of a pollutant or wastewater that has caused imminent endangerment to human
23 health, welfare or to the environment or has resulted in either the control authority's or the
24 POTW's, if different from the control authority, exercise of its emergency authority under 40
25 CFR Part 403.8(f)(1)(vi)(B) to halt or prevent such a discharge;

26 (E) Failure to meet, within 90 days after the schedule date, a compliance schedule milestone
27 contained in a pretreatment permit or enforcement order for starting construction, completing
28 construction, or attaining final compliance;

29 (F) Failure to provide, within 45 days after the due date, required reports such as baseline
30 monitoring reports, 90-day compliance reports, self-monitoring reports, and reports on
31 compliance with compliance schedules;

32 (G) Failure to accurately report noncompliance; or

33 (H) Any other violation or group of violations that the control authority or POTW determines
34 will adversely affect the operation or implementation of the local pretreatment program;

35 Additionally, effective January 1, 2012, any industrial user which meets the criteria in Parts (C), (D),
36 or (H) of this Subparagraph shall also be in SNC;

1 (3532) "Staff" means the staff of the Division of Water Quality Resources, Department of Environment and
 2 Natural Resources Environmental Quality;
 3 (3633) "Upset" means the same as set out in Rule .0914 of this Section and 40 CFR Part 403.16;
 4 (37) "Waste reduction" means source reduction and recycling;
 5 (3834) "Wastewater" means the liquid and water-carried industrial or domestic wastes from dwellings,
 6 commercial buildings, industrial facilities, mobile sources, treatment facilities and institutions,
 7 together with any groundwater, surface water, and storm water that may be present, whether treated or
 8 untreated, which are contributed into or permitted to enter the POTW; and
 9 (3935) "Waters of the State" as defined in G.S. 143-212 are all streams, rivers, brooks, swamps, sounds,
 10 tidal estuaries, bays, creeks, lakes, waterways, reservoirs, and all other bodies or accumulations of
 11 water, surface or underground, natural or artificial, public or private, which are contained in, flow
 12 through, or border upon the State or any portion thereof, thereof, including any portion of the Atlantic
 13 Ocean over which the State has jurisdiction;

Commented [A14]: Deleted as no longer necessary due to deletion of .0916

Commented [A15]: Revised to include "portions of the Atlantic Ocean over which the State has jurisdiction" to more closely match G.S. 143-212

14 *History Note:* Authority G.S. 130A-334(13); 143-215.3(a)(1); 143-215.3(a)(14); 150B-21.6;
 15 Eff. March 28, 1980;
 16 Amended Eff. April 1, 2011; November 1, 1994; October 1, 1987; December 1, 1984.
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1 **15A NCAC 02H .0904 REQUIRED PRETREATMENT PROGRAMS**

2 (a) The regulations regarding pretreatment program development by the control authority promulgated by the
3 Environmental Protection Agency and codified as 40 CFR ~~Parts~~ 403.8(a) through 403.8(e) are hereby incorporated by
4 reference, including any subsequent amendments and editions. ~~This material is available for inspection at the locations~~
5 ~~listed in Rule .0901 of this Section and at http://cfpub1.epa.gov/npdes/home.cfm?program_id=3;~~
6 ~~<http://water.epa.gov/polwaste/npdes/pretreatment/index.cfm>;~~ A copy of the reference material can be found at
7 ~~[http://www.ecfr.gov/cgi-bin/text-](http://www.ecfr.gov/cgi-bin/text-idx?SID=002b8fe78be0d299d7289c36ef66652d&mc=true&tpl=/ecfrbrowse/Title40/40CISubchapN.tpl)~~
8 ~~[idx?SID=002b8fe78be0d299d7289c36ef66652d&mc=true&tpl=/ecfrbrowse/Title40/40CISubchapN.tpl](http://www.ecfr.gov/cgi-bin/text-idx?SID=002b8fe78be0d299d7289c36ef66652d&mc=true&tpl=/ecfrbrowse/Title40/40CISubchapN.tpl), free of charge~~

9
10 (b) The Division may allow a control authority having a combined permitted flow less than or equal to two million
11 gallons per day and less than four significant industrial users to develop and implement a modified pretreatment program
12 that encompasses a portion of the requirements in Rules .0905 and .0906 of this Section, as designated by the Division
13 Director. In making the decision to allow modified pretreatment program development and implementation, the Division
14 Director may consider factors including percent industrial flow, industrial waste characteristics, compliance status of the
15 facility, and the potential for industrial growth.

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17 *History Note:* Authority G.S. 143-215.1(a); 143-215.1(b); 143-215.3(a)(14); 150B-21.6;
18 Eff. March 28, 1980;
19 Amended Eff. April 1, 2011; November 1, 1994; October 1, 1987; December 1, 1984.
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1 **15A NCAC 02H .0905 POTW PRETREATMENT PROGRAM IMPLEMENTATION REQUIREMENTS**

2 Except where specified differently in this Section, the POTW pretreatment program requirements promulgated by the
3 Environmental Protection Agency and codified as 40 CFR ~~Part~~ 403.8(f) and (g) are hereby incorporated by reference,
4 including any subsequent amendments and editions. **A copy of the reference material can be found at**
5 **~~<http://water.epa.gov/polwaste/npdes/pretreatment/index.cfm>~~ [http://www.ecfr.gov/cgi-bin/text-
7 idx?SID=002b8fe78be0d299d7289c36ef66652d&mc=true&tpl=/ecfrbrowse/Title40/40CISubchapN.tpl](http://www.ecfr.gov/cgi-bin/text-
6 idx?SID=002b8fe78be0d299d7289c36ef66652d&mc=true&tpl=/ecfrbrowse/Title40/40CISubchapN.tpl), free of charge**

7 This material is available for inspection at the locations listed in Rule .0901 of this Section and at
8 http://efpub1.epa.gov/npdes/home.cfm?program_id=3; <http://water.epa.gov/polwaste/npdes/pretreatment/index.cfm>.

9 In general, the implementation of a pretreatment program involves the updating of the sewer use ordinance (SUO);
10 implementation of industrial waste survey (IWS) activities; updating of the headworks analysis (HWA), or technical
11 basis for local limits; implementation of the long or short term monitoring plan (LTMP/STMP); implementation of
12 compliance activities, including sampling and inspection of significant industrial users; maintenance of control authority
13 organization description; maintenance of staffing and funding information; implementation of the enforcement response
14 plan (ERP), and reporting to the Division on pretreatment program activities.

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16 *History Note:* Authority G.S. 143-215.1(a); 143-215.1(b); 143-215.3(a)(1); 143-215.3(a)(14); 150B-21.6; 153A-274;
17 153A-275; 160A-311; 160A-312;
18 Eff. March 28, 1980;
19 Amended Eff. April 1, 2011; November 1, 1994; October 1, 1987; December 1, 1984.
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1 **15A NCAC 02H .0906 SUBMISSION FOR PRETREATMENT PROGRAM APPROVAL**

2 (a) Except where in conflict with any part of this Section, the regulations regarding the contents of pretreatment
3 programs submitted for approval and the contents of a request to revise national categorical pretreatment standards,
4 promulgated by the Environmental Protection Agency and codified as 40 CFR ~~Part~~ 403.9 are hereby incorporated by
5 reference, including any subsequent amendments and editions. A copy of the reference material can be found at

6 [http://www.ecfr.gov/cgi-bin/text-](http://www.ecfr.gov/cgi-bin/text-idx?SID=002b8fe78be0d299d7289c36ef66652d&mc=true&tpl=/ecfrbrowse/Title40/40CISubchapN.tpl,freeofcharge)
7 [idx?SID=002b8fe78be0d299d7289c36ef66652d&mc=true&tpl=/ecfrbrowse/Title40/40CISubchapN.tpl,free of charge](http://www.ecfr.gov/cgi-bin/text-idx?SID=002b8fe78be0d299d7289c36ef66652d&mc=true&tpl=/ecfrbrowse/Title40/40CISubchapN.tpl,freeofcharge)
8 This material is available for inspection at the locations listed in Rule .0901 of this Section and at
9 http://efpub1.epa.gov/npdes/home.cfm?program_id=3, <http://water.epa.gov/polwaste/npdes/pretreatment/index.cfm>.

10 (b) In addition to the contents of a control authority pretreatment program submission described in Paragraph (a) of this
11 Rule, the program submission shall contain:

- 12 (1) a sewer use ordinance (SUO) providing the legal authority for implementing the pretreatment program,
13 along with an attorney's statement, as required by 40 CFR ~~Part~~ 403.8 (f)(1) and Rule .0905 of this
14 Section. Where the control authority accepts wastewater from one or more satellite POTWs and is the
15 control authority within the satellite POTW's service area, the attorney's statement for that control
16 authority shall document the interlocal agreements (ILAs) authorized by G.S. 153A-278 and 160A-460
17 et seq and SUO sections that establish the control authority's authority for regulation within all satellite
18 POTW services areas which are tributary to the control authority's POTW. Where a satellite POTW
19 serves as the control authority within its service area, the attorney's statement for that control authority
20 shall document the ILAs and SUO sections that establish the satellite POTW's authority for regulation
21 within its service area and the requirements for the satellite POTW to implement its pretreatment
22 program in accordance with the downstream POTW's SUO and the ILA. In either case, where the
23 POTW organizations have other written procedures to outline responsibilities not covered by the ILA
24 or SUO, the applicable attorney's statements shall also include documentation of these procedures and
25 the source of their enforceability;
- 26 (2) an industrial waste survey (IWS), or industrial user survey, as defined in Subparagraph (13) of Rule
27 ~~.0903(b) .0905(b)~~ of this Section;
- 28 (3) a monitoring plan to provide POTW site-specific data for the HWA and subsequent technical
29 evaluations of local limits to satisfy the requirements of 40 CFR ~~Part~~ 122.21(j). Modified pretreatment
30 programs developed under Rule .0904(b) of this Section shall be allowed to implement a short term
31 monitoring plan (STMP);
- 32 (4) a headworks analysis (HWA) and supporting documentation, including POTW site-specific and
33 relevant literature data, upon which to base industrial user-specific effluent limits and other local limits
34 for prohibited pollutants (as defined in 40 CFR ~~Parts~~ 403.5(a) and (b) and Rule .0909 of this Section);
- 35 (5) a compliance monitoring program, including inspection, sampling, equipment, and other compliance
36 procedures, which will implement the requirements of 40 CFR ~~Parts~~ 403.8(f) and 403.12, and Rules
37 .0905 and .0908 of this Section;

Commented [A16]: Typographical correction of reference from .0905 (b) to .0903 (b)

- 1 (6) draft industrial user pretreatment permits for significant industrial users as required by 40 CFR Parts
2 403.8(f)(1)(iii) and 403.9(b)(1)(ii) and Rule .0916 of this Section, and supporting documentation
3 outlined in Rules .0916 and .0917 of this Section;
- 4 (7) procedures for approving the construction of pretreatment facilities by industrial users and for
5 permitting industrial users for construction, operation and discharge as required by G.S. 143-215.1;
6 procedures for approving construction shall include issuance of authorization to construct, as
7 appropriate;
- 8 (8) an enforcement response plan (ERP) as required by 40 CFR Parts 403.8(f)(5) and 403.9(b)(1)(ii) for
9 identifying violations of and enforcing specific local limits and other pretreatment requirements as
10 required by and specified in 40 CFR Parts 403.5 and 403.6 and Rules .0909 and .0910 of this Section;
- 11 (9) a brief description (including organization charts) of the control authority which will administer the
12 pretreatment program. Where more than one POTW organization is involved in the POTW
13 wastewater collections or treatment system, the description shall address all the agencies, including
14 identification of which party will receive Industrial User applications for new and changed discharges
15 and how the parties will communicate on significant industrial user determinations;
- 16 (10) a description of funding levels and full- and part-time manpower available to implement the program;
- 17 (11) a description of data management procedures for compiling and managing compliance, LTMP/STMP,
18 and any other pretreatment-related monitoring data, including documentation of approval of electronic
19 reporting procedures as required under 40 CFR Part 3 if applicable; and
- 20 (12) a request for pretreatment program approval as required by 40 CFR Part 403.9 and this Section.

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22 *History Note:* Authority G.S. 143-215.1(a); 143-215.1(b); 143-215.3(a)(1); 143-215.3(a)(14); 150B-21.6;
23 Eff. March 28, 1980;
24 Amended Eff. April 1, 2011; November 1, 1994; October 1, 1987; December 1, 1984.
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1 **15A NCAC 02H .0907 PROCEDURES FOR PRETREATMENT PROGRAM APPROVAL, REVISION**
2 **AND WITHDRAWAL**

3 (a) Procedures for approval of a control authority pretreatment program and for removal credit authorization are as
4 follows:

- 5 (1) Except where in conflict with any part of this Section, the approval procedures for control authority
6 pretreatment programs and applications for removal credit authorization promulgated by the
7 Environmental Protection Agency and codified as 40 CFR Part 403.11 are hereby incorporated by
8 reference, including any subsequent amendments and editions. This material is available for
9 inspection at the locations listed in Rule .0901 of this Section and at
10 http://cfpub1.epa.gov/npdes/home.cfm?program_id=3;
11 <http://water.epa.gov/polwaste/npdes/pretreatment/index.cfm>; and A copy of the reference material can
12 be found at [http://www.ecfr.gov/cgi-bin/text-
13 idx?SID=002b8fe78be0d299d7289c36ef66652d&mc=true&tpl=/ecfrbrowse/Title40/40CisubchapN.tp
14 l, free of charge; and](http://www.ecfr.gov/cgi-bin/text-idx?SID=002b8fe78be0d299d7289c36ef66652d&mc=true&tpl=/ecfrbrowse/Title40/40CisubchapN.tpl)

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16 (2) Upon program approval, a control authority is delegated, subject to the provisions of Rules .0916 and
17 .0917 of this Section, the authority to issue the construction, operation and discharge permits required
18 by G.S. 143-215.1(a) for those significant industrial users discharging or proposing to discharge to the
19 POTW;

20 (b) Either the Division or the control authority may initiate program revisions. The control authority shall submit a
21 request to the Division for approval of modifications to its approved pretreatment program, including, but not limited to
22 its legal authority, or sewer use ordinance (SUO), headworks analysis (HWA), long or short term monitoring plan
23 (LTMP/STMP), enforcement response plan (ERP), summary of industrial waste survey (IWS) activities, and revisions to
24 the list of significant industrial users (SIUs). Revisions to an approved pretreatment program shall be accomplished as
25 follows:

- 26 (1) the control authority shall submit a modified program description, an attorney's statement if the legal
27 authority of the program is being modified, and other documents as the Division Director determines
28 to be necessary under the circumstances. The attorney's statement may consist merely of a verification
29 that the North Carolina model pretreatment sewer use ordinance is proposed for adoption by the
30 control authority, if that is the case;
- 31 (2) whenever the Division Director determines that the proposed program modifications are substantial as
32 defined in 40 CFR Part 403.18(b), the Division shall issue public notice and provide an opportunity for
33 public comment as described in Rules .0109 and .0110 of this Subchapter. Public notices issued by
34 the control authority are deemed sufficient notice;
- 35 (3) the Division Director or his/her delegate shall approve or disapprove program revisions based on the
36 requirements of this Section, G.S. 143-215.1, G.S. 143-215.3 and the Water Quality Memorandum of
37 Agreement between the Division and the EPA; and

Commented [A17]: Grammatical correction

1 (4) Except as specified below, a pretreatment program revision shall become effective upon written
2 approval of the Division Director:

3 (A) Pretreatment permits: See Rule .0917(d); and

4 (B) The Division shall have 30 days from the receipt of a request for deletion of SIUs from the
5 SIU list in which to make general comments upon, objections to or recommendations with
6 respect to the request. Unless such an objection or request for more information is made, the
7 request shall be final and binding;

8 (c) The Division Director may withdraw pretreatment program approval when a control authority no longer complies
9 with requirements of this Section and the control authority fails to take corrective action. The following procedures
10 apply when the Division Director determines that program withdrawal may be needed:

11 (1) The Division Director shall give the control authority 180 days notice of the program withdrawal;

12 (2) the control authority shall submit within 60 days of such notice a plan for the orderly transfer of all
13 relevant program information not in the possession of the Division (such as permit files, compliance
14 files, reports and permit applications) which is necessary for the Division to administer the
15 pretreatment program;

16 (3) within 60 days of the receipt of the control authority transfer plan, the Division Director shall evaluate
17 the control authority plan and shall identify any additional information needed by the Division for
18 program administration or identify any other deficiencies in the plan; and

19 (4) at least 30 days before the program withdrawal, the Division Director shall publish public notice of the
20 program transfer and shall mail notice to all pretreatment permit holders of the control authority;

21 (d) Applications for removal credit authorization shall be made in accordance with procedures established by this Rule.
22 Approval shall become effective upon written approval of the Division Director.

23 (e) A pretreatment program is considered inactive when industrial users defined as significant industrial users no longer
24 discharge to the POTW, based on modifications of the control authority pretreatment program approved by the Division.
25 Inactive approved pretreatment programs shall notify the Division when a significant industrial user proposes to
26 discharge to the POTW. When required by the Division to return to active status, a control authority may be required to
27 update any or all of the requirements listed in Rule .0906 of this Section that no longer meet the standards of these Rules.

28 The control authority shall obtain Division approval of the reactivation under this Rule prior to commencement of
29 discharge of the significant industrial user.

30 (f) The Division may require that representatives of modified pretreatment programs developed under Rule .0904(b) of
31 this Section meet with Division personnel periodically to discuss implementation of and revisions to their modified
32 pretreatment program.

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34 *History Note: Authority G.S. 143-215(a); 143-215.1(a); 143-215.1(c); 143-215.3(a)(3) ; 143-215.3(a)(14); 143-*
35 *215.3(e); 150B-21.6;*
36 *Eff. March 28, 1980;*
37 *Amended Eff. April 1, 2011; November 1, 1994; October 1, 1987; December 1, 1984.*
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15A NCAC 02H .0908 REPORTING/RECORD KEEPING REQUIREMENTS FOR POTWS/INDUSTRIAL USERS

(a) Except where in conflict with any part of this Section, the regulations regarding the reporting requirements for control authorities and industrial users promulgated by the Environmental Protection Agency and codified as 40 CFR Parts 403.8(g) and 403.12 are hereby incorporated by reference, including any subsequent amendments and editions.

~~This material is available for inspection at the locations listed in Rule .0901 of this Section and at http://efpub1.epa.gov/npdes/home.cfm?program_id=3, <http://water.epa.gov/polwaste/npdes/pretreatment/index.cfm>. A copy of the reference material can be found at <http://www.ecfr.gov/cgi-bin/text-idx?SID=002b8fe78be0d299d7289c36ef66652d&mc=true&tpl=/ecfrbrowse/Title40/40CisubchapN.tpl>, free of charge.~~

(b) Control authorities with active approved pretreatment programs shall submit once per year a pretreatment report describing its pretreatment activities over the previous 12 months. Two copies of each pretreatment report shall be submitted to the Division by March 1 of each year for activities conducted for two six-month periods, January 1 through June 30 and July 1 through December 31 of the previous year. This annual report shall contain the following information in accordance with forms provided by the Division:

- (1) a narrative summary of actions taken by the control authority to ensure compliance with pretreatment requirements;
- (2) a pretreatment program summary on forms or in a format provided by the Division;
- (3) a list of industrial users in significant noncompliance with pretreatment requirements, the nature of the violations, and actions taken or proposed to correct the violations; on forms or in a format provided by the Division;
- (4) an allocation table as described in Rule .0916(c)(4) of this Section; and
- (5) other information which in the opinion of the Division Director is needed to determine compliance with the implementation of the pretreatment program, ~~including, but not limited to, examples include~~ significant industrial user compliance schedules, public notice of industrial users in significant noncompliance, a summary of significant industrial user effluent monitoring data as described in Paragraphs (a) and (e) of this Rule, a summary of information related to significant non-compliance determination for industrial users that are not considered significant industrial users, and Long or Short Term Monitoring Plan data on forms or in a format provided by the Division;

(c) In lieu of submitting annual reports as described in Paragraph (b) of this Rule, the Division Director may allow modified pretreatment programs developed under Rule .0904(b) of this Section to submit only a partial annual report, or to meet with Division personnel as required to discuss enforcement of pretreatment requirements and other pretreatment implementation issues.

Commented [A18]: Revised wording from "including but not limited to" to "examples include".

- 1 (d) Inactive pretreatment programs are not required to submit the report described in Paragraphs (b) and (c) of this Rule.
2 Inactive approved pretreatment programs shall notify the Division when a significant industrial user proposes to
3 discharge to the POTW and shall comply with Rule .0907 of this Section.
- 4 (e) Samples shall be collected and analyzed by the control authority independent of the industrial users for each
5 significant industrial user as follows:
- 6 (1) Except as specified below, a minimum of once each year for all permit-limited parameters including
7 flow:
- 8 (A) Independent monitoring of the industrial user by the control authority is not required for
9 pollutants which are limited by a categorical standard for which specific certification or other
10 alternative procedures apply where the industrial user submits the required documentation for
11 that certification or procedure, even if the industrial user chooses to monitor in addition to
12 using certification or other alternative procedures;
- 13 (B) The minimum frequencies in this Subparagraph shall be reduced by half for all permit-limited
14 parameters at a significant industrial user determined by the control authority, subject to
15 approval under Rule .0907 of this Section, to fit the criteria under 40 CFR Part 403.12(e)(3)
16 (Middle Tier CIU), [after 403.8(f)(2)(v)(C)]; and
- 17 (C) For categorical parameters with monitoring waived under 40 CFR Part 403.12(e)(2), a
18 minimum of once during the term of the applicable significant industrial user pretreatment
19 permit (40 CFR Part 403.8(f)(2)(v)(A)); and
- 20 (2) If the control authority elects to sample and analyze in lieu of the industrial user, the control authority
21 shall collect and analyze for the required parameters and, if applicable, in accordance with categorical
22 standards;
- 23 (f) Records Retention:
- 24 (1) Control authorities and industrial users shall retain for three years records of monitoring activities and
25 results along with supporting information including annual pretreatment reports, general records, water
26 quality records, and records of industrial user impact on the POTW;
- 27 (2) Other documents required by any portion of this Section (including supporting information) for other
28 pretreatment program elements, such as pretreatment permits (IUPs), HWAs, SUOs, ERPs, etc., shall
29 be retained for three years after the document has expired or been updated or replaced;
- 30 (3) A summary of all significant industrial user effluent monitoring data reported to the control authority
31 by the industrial user or obtained by the control authority shall be maintained on forms or in a format
32 provided by the Division for review by the Division; and
- 33 (4) Also see Rule .0805 of this Subchapter for laboratory records retention requirements.
- 34 (g) Forms or format deviating from Division provided forms or format for all documents and supporting information
35 required by any portion of this Section shall contain all required information in a logical order or, if appropriate, in a
36 computer-compatible format.

1 (h) In the case where the receiving POTW treatment plant is not owned by the same local governmental organization as
2 the control authority, all information required to be reported to the industrial user's control authority by this Section shall
3 also be submitted to the POTW treatment plant governmental organization.

4 (i) In the case where the control authority accepts electronic reporting, the reporting shall comply with 40 CFR Part 3,
5 and the control authority shall maintain documentation of approval as required under 40 CFR Part 3.

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7 *History Note:* Authority G.S. 143-215.1(a); 143-215.1(b); 143-215.2; 143-215.3(a)(2); 143-215.3(a)(14); 143-
8 215.6(a)(1); 143-215.63 through 143-215.69; 150B-21.6;
9 Eff. March 28, 1980;
10 Amended Eff. April 1, 2011; November 1, 1994; October 1, 1987; December 1, 1984.
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1 The regulations regarding national prohibited pretreatment standards and local limits development and enforcement
2 promulgated by the Environmental Protection Agency and codified as 40 CFR Part 403.5 are hereby incorporated by
3 reference, including any subsequent amendments and editions. This material is available for inspection at the locations
4 listed in Rule .0901 of this Section and at http://efpub1.epa.gov/npdes/home.cfm?program_id=3;
5 <http://water.epa.gov/polwaste/npdes/pretreatment/index.cfm>. A copy of the reference material can be found at
6 [http://www.ecfr.gov/cgi-bin/text-](http://www.ecfr.gov/cgi-bin/text-idx?SID=002b8fe78be0d299d7289c36ef66652d&mc=true&tpl=/ecfrbrowse/Title40/40CisubchapN.tpl)
7 [idx?SID=002b8fe78be0d299d7289c36ef66652d&mc=true&tpl=/ecfrbrowse/Title40/40CisubchapN.tpl](http://www.ecfr.gov/cgi-bin/text-idx?SID=002b8fe78be0d299d7289c36ef66652d&mc=true&tpl=/ecfrbrowse/Title40/40CisubchapN.tpl), free of charge.

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10 *History Note:* Authority G.S. 143-215.1(a)(7); 143-215.1(b); 143-215.3(a)(1); 143-215.3(a)(14); 150B-21.6;
11 Eff. March 28, 1980;
12 Amended Eff. March 1, 2011; November 1, 1994; October 1, 1987; December 1, 1984.

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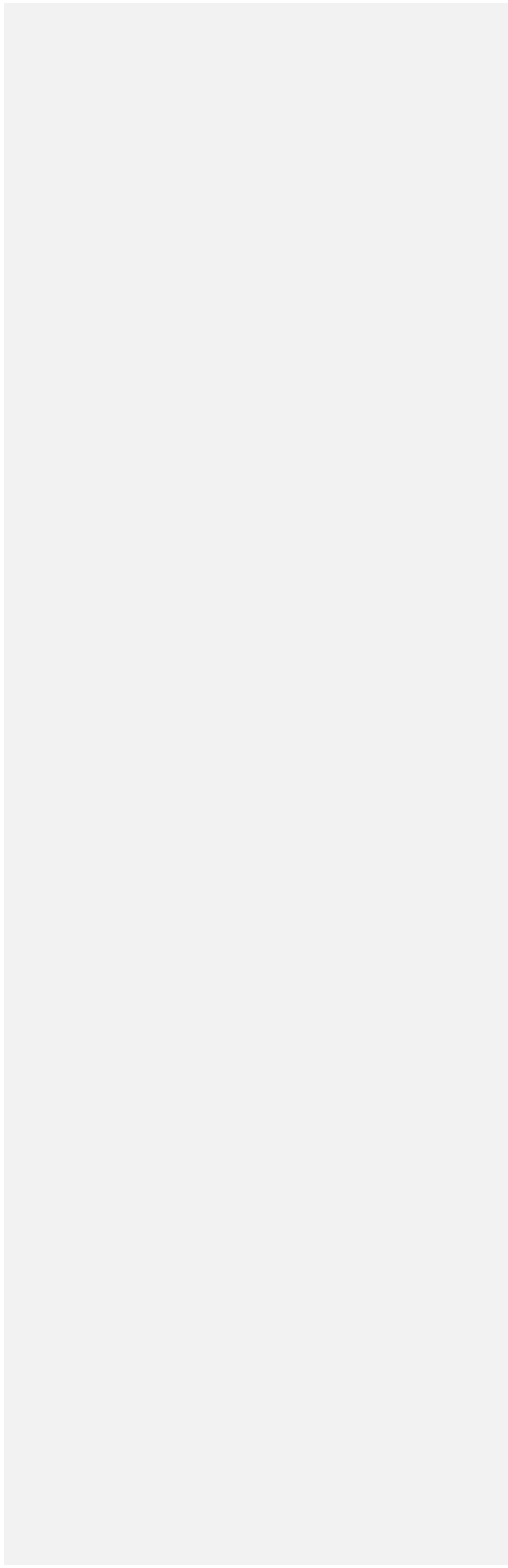
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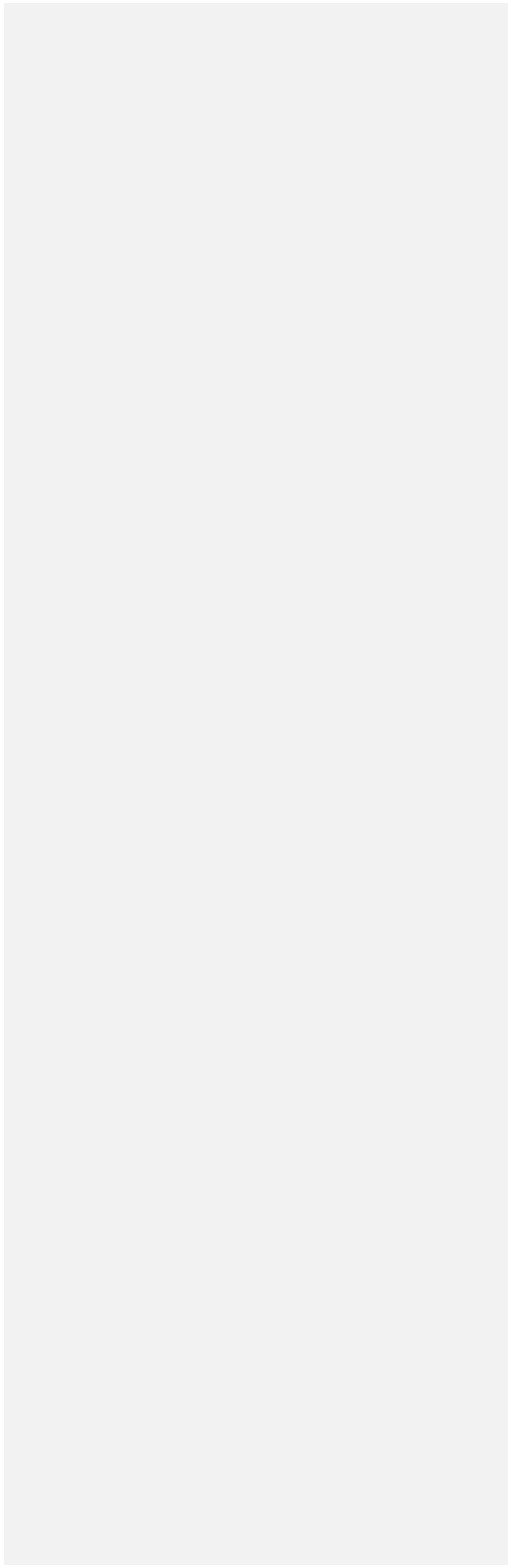
15A NCAC 02H .0910 NATIONAL PRETREATMENT STANDARDS: CATEGORICAL STANDARDS

The regulations regarding national categorical pretreatment standards promulgated by the Environmental Protection Agency and codified as pursuant to 40 CFR Part 403.6 are hereby incorporated by reference, including any subsequent amendments and editions. This material is available for inspection at the locations listed in Rule .0901 of this Section and at http://efpub1.epa.gov/npdes/home.cfm?program_id=3;http://water.epa.gov/polwaste/npdes/pretreatment/index.cfm A copy of the reference material can be found at <http://www.ecfr.gov/cgi-bin/text-idx?SID=002b8fe78be0d299d7289c36ef66652d&mc=true&tpl=/ecfrbrowse/Title40/40CisubchapN.tpl>, free of charge.

History Note: Authority G.S. 143-215.1(a)(7); 143-215.1(b); 143-215.3(a)(14); 150B-21.6; Eff. March 28, 1980; Amended Eff. March 1, 2011; November 1, 1994; October 1, 1987; December 1, 1984.

15A NCAC 02H .0911 REVISION TO REFLECT POTW REMOVAL OF POLLUTANT

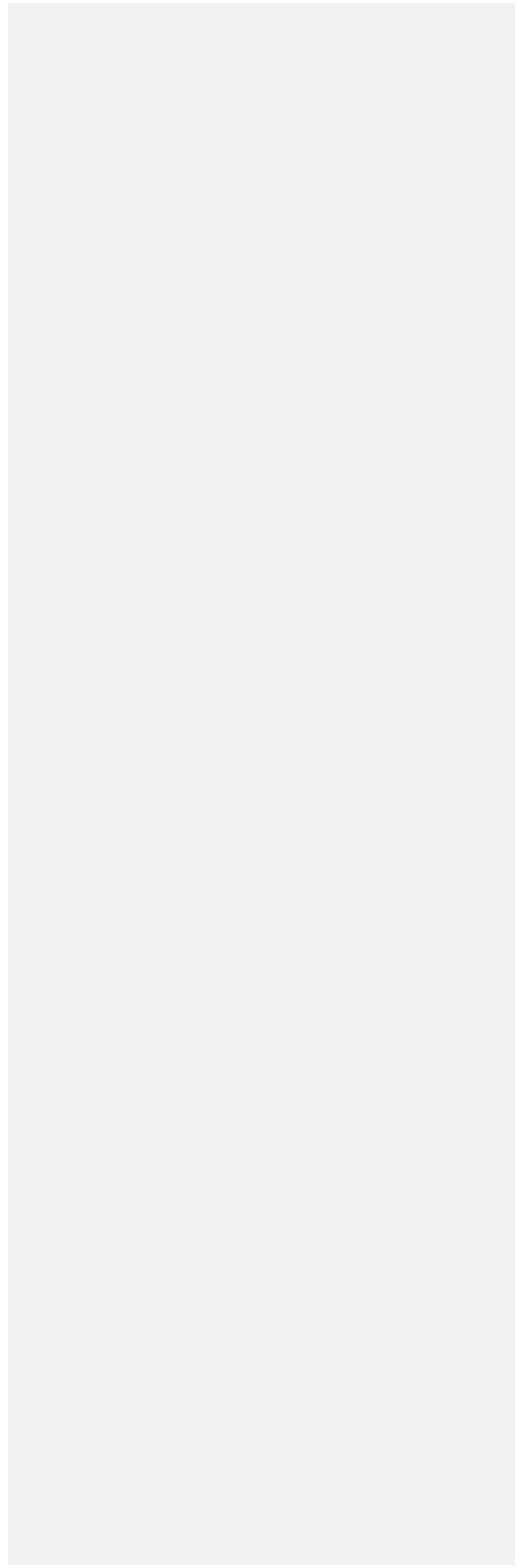
History Note: Authority G.S. 143-215.1(a),(b); 143-215.3(a)(14);



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Eff. March 28, 1980;
Amended Eff. December 1, 1984;
Repealed Eff. October 1, 1987.

15A NCAC 02H .0912 ADJUSTMENTS FOR FUNDAMENTALLY DIFFERENT FACTORS



1 The regulations regarding variances from national categorical pretreatment standards for fundamentally different factors
2 promulgated by the Environmental Protection Agency and codified as 40 CFR Part 403.13 are hereby incorporated by
3 reference, including any subsequent amendments and editions. This material is available for inspection at the locations
4 listed in Rule .0901 of this Section and at http://efpub1.epa.gov/npdes/home.cfm?program_id=3;
5 <http://water.epa.gov/polwaste/npdes/pretreatment/index.cfm>. A copy of the reference material can be found at
6 [http://www.ecfr.gov/cgi-bin/text-](http://www.ecfr.gov/cgi-bin/text-idx?SID=002b8fe78be0d299d7289c36ef66652d&mc=true&tpl=/ecfrbrowse/Title40/40CisubchapN.tpl)
7 [idx?SID=002b8fe78be0d299d7289c36ef66652d&mc=true&tpl=/ecfrbrowse/Title40/40CisubchapN.tpl](http://www.ecfr.gov/cgi-bin/text-idx?SID=002b8fe78be0d299d7289c36ef66652d&mc=true&tpl=/ecfrbrowse/Title40/40CisubchapN.tpl), free of charge.

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10 *History Note:* Authority G.S. 143-215(a); 143-215.1(a); 143-215.1(b); 143-215.3(a)(14); 143-215.3(e); 150B-21.6;
11 Eff. March 28, 1980;
12 Amended Eff. March 1, 2011; November 1, 1994; October 1, 1987; December 1, 1984.
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50 15A NCAC 02H .0913 PUBLIC ACCESS TO INFORMATION

1 (a) Information and data provided by an industrial user to the POTW Director pursuant to this Section, identifying the
2 nature and frequency of a discharge, shall be available to the public without restriction. All other information which may
3 be so submitted by an industrial user to the POTW Director in connection with any required reports shall also be
4 available to the public unless the industrial user or other interested person specifically identifies the information as
5 confidential upon submission and is able to demonstrate to the satisfaction of the POTW Director that the disclosure of
6 such information or a particular part thereof to the general public would divulge methods or processes entitled to
7 protection as trade secrets.

8 (b) Information and data provided by an industrial user to the Division Director shall be subject to the processes set forth
9 in G.S. 143-215.3C.

10 (c) Information provided by an industrial user to a control authority that is determined to be entitled to confidential
11 treatment shall be made available upon written request to the Division or any state agency for uses related to the
12 pretreatment program, the National Pollutant Discharge Elimination System (NPDES) permit, collection system permit,
13 stormwater permit, or non-discharge permit, and for uses related to judicial review or enforcement proceedings involving
14 the person furnishing the report.

15 (d) Information and data received by the Division or other state agency under Paragraph (c) of this Rule shall be subject
16 to the processes set forth in G.S. 143-215.3C.

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*History Note: Authority G.S. 132-1.2; 132-6; 132-9; 143-215.1; 143-215.3; 143-215.3C;
Eff. March 28, 1980;
Amended Eff. April 1, 2011; October 1, 1987.*

15A NCAC 02H .0914 UPSET PROVISION

1 The upset provision promulgated by the Environmental Protection Agency and codified as 40 CFR Part 403.16 is hereby
2 incorporated by reference, including any subsequent amendments and editions. This material is available for inspection
3 at the locations listed in Rule .0901 of this Section and at http://efpub1.epa.gov/npdes/home.cfm?program_id=3
4 <http://water.epa.gov/polwaste/npdes/pretreatment/index.cfm>. A copy of the reference material can be found at
5 <http://www.ecfr.gov/cgi-bin/text>
6 [idx?SID=002b8fe78be0d299d7289c36ef66652d&mc=true&tpl=/ecfrbrowse/Title40/40CISubchapN.tpl](http://www.ecfr.gov/cgi-bin/text?SID=002b8fe78be0d299d7289c36ef66652d&mc=true&tpl=/ecfrbrowse/Title40/40CISubchapN.tpl), free of charge.

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9 *History Note:* Authority G.S. 143-215.3(a)(1); 143-215.3(a)(14); 150B-21.6;
10 Eff. December 1, 1984;
11 Amended Eff. March 1, 2011; November 1, 1994; October 1, 1987.

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15A NCAC 02H .0915 NET/GROSS CALCULATION

1 The net/gross calculation provisions promulgated by the Environmental Protection Agency and codified as 40 CFR Part
2 403.15 are hereby incorporated by reference, including any subsequent amendments and editions. This material is
3 available for inspection at the locations listed in Rule .0901 of this Section and at
4 http://efpub1.epa.gov/npdes/home.cfm?program_id=3, <http://water.epa.gov/polwaste/npdes/pretreatment/index.cfm>. A
5 copy of the reference material can be found at [http://www.ecfr.gov/cgi-bin/text-](http://www.ecfr.gov/cgi-bin/text-idx?SID=002b8fe78be0d299d7289c36ef66652d&mc=true&tpl=/ecfrbrowse/Title40/40CisubchapN.tpl)
6 [idx?SID=002b8fe78be0d299d7289c36ef66652d&mc=true&tpl=/ecfrbrowse/Title40/40CisubchapN.tpl](http://www.ecfr.gov/cgi-bin/text-idx?SID=002b8fe78be0d299d7289c36ef66652d&mc=true&tpl=/ecfrbrowse/Title40/40CisubchapN.tpl), free of charge.

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9 *History Note:* Authority G.S. 143-215.3(a)(1); 143-215.3(a)(14); 150B-21.6;
10 Eff. December 1, 1984;
11 Amended Eff. March 1, 2011; November 1, 1994; October 1, 1987.

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50 -15A NCAC 02H .0916 PRETREATMENT PERMITS

- 1 (a) All significant industrial users who discharge waste into a POTW or who construct or operate a pretreatment facility
2 shall obtain a permit from the control authority.
- 3 (b) Where the Division is the control authority, permits shall be issued in accordance with Section .0100 of this
4 Subchapter.
- 5 (c) Where the control authority is a POTW organization, significant industrial user permits shall be issued as follows:
- 6 (1) Application: any significant industrial user required to obtain a permit in Paragraph (a) of this Rule
7 shall be required to complete, sign and submit to the control authority a permit application.
8 Application fees and procedures may be prescribed by the control authority. All pretreatment permit
9 applications shall include as a minimum:
- 10 (A) name of industrial user;
11 (B) address of industrial user;
12 (C) standard industrial classification (SIC) code(s) or expected classification and industrial user
13 category;
14 (D) wastewater flow;
15 (E) types and concentrations (or mass) of pollutants contained in the discharge;
16 (F) major products manufactured or services supplied;
17 (G) description of existing on-site pretreatment facilities and practices;
18 (H) locations of discharge points;
19 (I) raw materials used or stored at the site;
20 (J) flow diagram or sewer map for the industrial user;
21 (K) number of employees; **and**
22 (L) operation and production schedules; **and**
23 ~~(M) description of current and projected waste reduction activities in accordance with G.S. 143-~~
24 ~~215.1(g);~~
- 25 **(M) a written description of current and projected waste reduction activities in accordance with**
26 **G.S. 143-215.1 (g). The written description shall not be considered part of the permit**
27 **application and shall not serve as a basis for denial of a permit.**
- 28 (2) Renewals: Applications for pretreatment permit renewals shall be accomplished by filing an
29 application form as listed in Subparagraph (c)(1) of this Rule prior to permit expiration. The number
30 of days prior to expiration by which the application shall be filed shall be established by the control
31 authority;
- 32 (3) Review and Evaluation:
- 33 (A) The POTW Director is authorized to accept applications for the Commission and shall refer
34 all applications to the control authority staff for review and evaluation;
- 35 (B) The POTW Director shall acknowledge receipt of a complete application, or if not complete,
36 shall return the application to the applicant with a statement of what additional information is
37 required;

Commented [A19]: Deleted (c) (1)(M). G.S. 143-215.1 (g) states that this information is not part of the permit application process. Effect: industrial waste activity information will no longer be collected from industrial users as part of the permit application. More closely matches requirements of G.S.

- 1 (C) The control authority staff shall include documentation of the most recent ~~on-site~~ on-site
2 inspection of the industrial user and any existing wastewater pretreatment system as part of
3 the permit record for new and renewed permits; and
- 4 (D) The control authority staff shall conduct an evaluation and make a tentative determination to
5 issue or deny the permit. If the control authority staff's tentative determination is to issue the
6 permit, it shall make the following additional determinations in writing and transmit them to
7 the industrial user:
- 8 (i) proposed effluent limitations for those pollutants proposed to be limited;
 - 9 (ii) a proposed schedule of compliance, including interim dates and requirements, for
10 meeting the proposed effluent limitations; and
 - 11 (iii) a description of any other proposed special conditions which will have significant
12 impact upon the discharge described in the application;
- 13 The control authority staff shall organize the determinations made into a pretreatment permit;
- 14 (4) Permit supporting documentation. The control authority staff shall prepare the following documents
15 for all significant industrial user permits:
- 16 (A) An allocation table (AT) listing permit information for all significant industrial users,
17 including but not limited to permit limits, permit effective and expiration dates, and a
18 comparison of total permitted flows and loads with Division approved maximum allowable
19 loadings of the POTW, including flow, on forms or in a format provided by the Division.
20 The AT shall be updated as permits are issued or renewed, and as permits are modified where
21 the permitted limits or other AT information is revised;
 - 22 (B) The basis, or rationale, for the pretreatment limitations, including documentation of
23 categorical determination, including documentation of any calculations used in applying
24 categorical standards; and
 - 25 (C) Documentation of the rationale of any parameters for which monitoring has been waived
26 under 40 CFR Part 403.12(e)(2);
- 27 (5) Final Action on Permit Applications:
- 28 (A) The POTW Director shall take final action on all applications by either issuing a pretreatment
29 permit or by denying the discharge not later than 90 days following the receipt of a complete
30 application. If, following the 30 day period required by Rules .0917(d) and .0922 of this
31 Section, no written demand for hearing, objection, or request for more information under
32 Rule .0917(f)(2) of this Section has been made, the permit shall become final and binding;
 - 33 (B) The POTW Director is authorized to:
 - 34 (i) issue a permit containing such conditions as are necessary to effectuate the purposes
35 of G.S. 143-215.1;
 - 36 (ii) issue a permit containing time schedules for achieving compliance with applicable
37 pretreatment standards and limitations and other legally applicable requirements;

Commented [A20]: Corrected "on site" to "on-site"

- 1 (iii) modify or revoke any permit pursuant to Subparagraph (c)(6) of this Rule;
- 2 (iv) deny a permit application;
- 3 (v) issue permits to industrial users not identified as significant industrial users using
- 4 procedures prescribed by the control authority; and
- 5 ~~(vi) require industrial users to develop a waste reduction plan and implement waste~~
- 6 ~~reduction techniques and technologies;~~
- 7 (C) Permits shall be issued or renewed for a period of time deemed reasonable by the POTW
- 8 Director but in no case shall the period exceed five years; and
- 9 (D) The POTW Director shall notify an applicant by certified or registered mail of the denial of
- 10 his/her permit application. Notifications of denial shall specify the reasons for the denial and
- 11 the proposed changes which in the opinion of the POTW Director will be required to obtain
- 12 the permit;
- 13 (6) Modification and Revocation of Permits:
- 14 (A) Any permit issued pursuant to this Rule is subject to revocation or modification in whole or
- 15 part as outlined in the control authority's sewer use ordinance; and
- 16 (B) Modifications of permits may be initiated by the control authority or the significant industrial
- 17 user and shall be subject to the same procedural requirements as the issuance of permits.
- 18 ~~except as follows: Permit modification requests made by the significant industrial user must~~
- 19 ~~be made in writing and can be by letter or by application form as determined by the control~~
- 20 ~~authority.~~
- 21 (i) ~~permit modification requests made by the significant industrial user must be made~~
- 22 ~~in writing and can be in the form of a letter or by application form as determined by~~
- 23 ~~the control authority; and changes in the ownership of the discharge when no other~~
- 24 ~~change in the permit is indicated;~~
- 25 (ii) ~~a single modification of any compliance schedule not in excess of four months;~~
- 26 (iii) ~~modification of compliance schedules (construction schedules) in permits for new~~
- 27 ~~sources where the new source will not begin to discharge until control facilities are~~
- 28 ~~operational; or~~
- 29 (iv) ~~modifications of the monitoring requirements in the permit; and~~
- 30 (7) Permit effective dates and modification effective dates shall not be retroactive.

Commented [A21]: Deleted. Waste reduction activities are not part of the permit applicaiton process. More closely matches G.S.

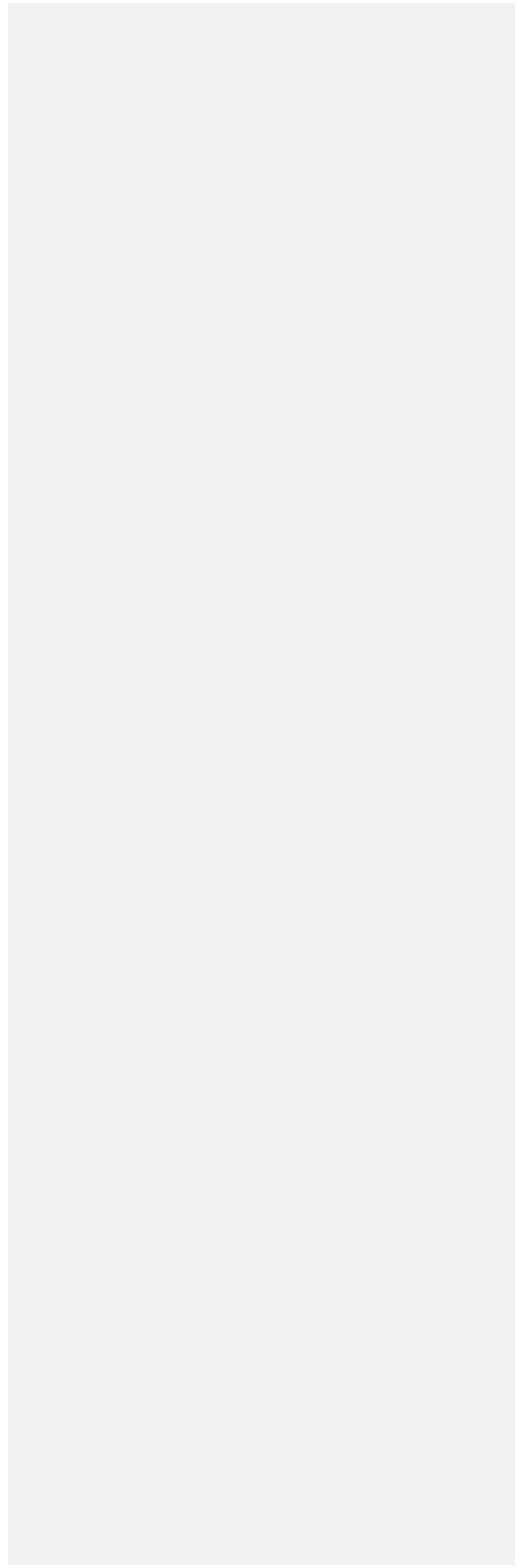
Commented [A22]: Revised to clarify permit modification requirements

31 *History Note:* Authority G.S. 143-215(a); 143-215.1(a); 143-215.1(c); 143-215.1(g); 143-215.3(a)(3);
 32 143-215.3(a)(14); 143-215.3(e);
 33 Eff. October 1, 1987;
 34 Amended Eff. April 1, 2011; November 1, 1994.
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35 **15A NCAC 02H .0917 PRETREATMENT PERMIT SUBMISSION AND REVIEW**

36 (a) **Thirty (30) days prior to the effective date Upon issuance**, each control authority shall transmit to the Division copies
37 of all **issued** significant industrial user pretreatment permits.



1 (b) Permits and permit renewal submissions to the Division for significant industrial users shall include the supporting
2 information listed below. Permit modification submissions for significant industrial users shall include updated versions
3 of this supporting information listed below as applicable to that modification:

- 4 (1) the rationale for limits and allocation table required by Rule .0916(c)(4) of this Section;
- 5 (2) a copy of the completed application required in Rule .0916(c)(1) of this Section; and
- 6 (3) a copy of the record of the inspection required in Rule .0916(c)(3)(C) of this Section;

7 (c) The Division Director may waive some or all of the requirements in Paragraphs (a) and (b) of this Rule. In making
8 the decision to waive these requirements, the Division Director may consider **the following** factors: **including but not**
9 **limited to** training levels of control authority staff, quality of previous pretreatment permit submissions, percent
10 maximum allowable headworks loading capacity remaining, percent industrial user flow, industrial user waste
11 characteristics, and compliance status of the POTW and its respective environmental permits.

12 (d) The Division shall have 30 days from the receipt of pretreatment permits in which to make general comments upon,
13 objections to or recommendations with respect to the permit. Unless such an objection or request for more information in
14 accordance with Paragraph (g) of this Rule is made, the permit shall be final and binding.

15 (e) Within 30 days of the receipt of a pretreatment permit to which the Division Director has objected the Division staff
16 shall set forth in writing and transmit to the control authority:

- 17 (1) A statement of the reasons for the objection, including the rules or regulations that support the
18 objection; and
- 19 (2) The actions which shall be taken by the control authority to eliminate the objection including the
20 effluent limitations and conditions which the permit would include if it were issued by the Division;

21 (f) The Division Director's objection to the issuance of a pretreatment permit shall be based upon one or more of the
22 following grounds:

- 23 (1) the permit fails to apply or to ensure compliance with any applicable requirement of this Section;
- 24 (2) the procedures followed in connection with formulation of the pretreatment permit failed to comply
25 with the procedures required by state statute or by the control authority's approved pretreatment
26 program;
- 27 (3) a finding made by the control authority in connection with the pretreatment permit which misinterprets
28 any categorical standard or pretreatment regulation or misapplies them to the facts; and
- 29 (4) the provisions of the pretreatment permit relating to the maintenance of records, monitoring or
30 sampling by the control authority and the industrial user are, in the judgment of the Division Director,
31 inadequate to assure compliance with permit conditions or applicable pretreatment standards;

32 (g) Prior to notifying the control authority of an objection, the Division Director:

- 33 (1) shall consider all data transmitted pursuant to Rules.0916 and .0917 of this Section;
- 34 (2) may, if more information is needed to determine whether the permit is adequate, request the control
35 authority to make available to the Division staff the complete record of permit proceedings, or any
36 portions of the record that the Division Director determines are necessary for review. Requests shall
37 be made within 30 days of the Division's receipt of the permit under Rule .0916 of this Section, and

1 shall suspend the 30 day review period in Paragraph (d) of this Rule. When the Division staff has
2 obtained the requested records or portions of the record, the Division staff shall have an additional 30
3 days for review; and

4 (3) may, to the extent feasible within the period of time available, afford interested persons the
5 opportunity to comment on the basis for the objection; and

6 (h) If within 60 days of the receipt of the Division Director's objection the control authority does not resubmit a permit
7 revised to meet the Division Director's objection, the Division Director may issue the permit in accordance with Section
8 .0100 of this Subchapter. Exclusive authority to issue the permit required by G.S. 143-215.1(a) passes to the Division
9 when this time expires.

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11 *History Note:* Authority G.S. 143-215(a); 143-215.1(a); 143-215.1(c); 143-215.3(a)(3) ; 143-215.3(a)(14); 143-
12 215.3(e);
13 *Eff. October 1, 1987;*
14 *Amended Eff. April 1, 2011; November 1, 1994.*
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46 **15A NCAC 02H .0918 LOCAL LAW**

47 Nothing in the rules of this Section is intended to affect any pretreatment requirements, including any standards or
48 prohibitions, established by local law as long as the local requirements are not less stringent than any set forth in National

1 Pretreatment Standards, or any other requirements or prohibitions established under the Clean Water Act, the North
2 Carolina General Statutes, or the rules of this Section.

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4 *History Note:* Authority G.S. 143-215.1(a), (b); 143-215.3(a)(1), (14); 153A-274; 153A-275;
5 160A-311; 160A-312;
6 Eff. November 1, 1994.
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49 **15A NCAC 02H .0919 BYPASS**

50 The regulations regarding the bypass provisions promulgated by the Environmental Protection Agency and codified as 40
51 CFR Part 403.17 are hereby incorporated by reference, including any subsequent amendments and editions. This
52 material is available for inspection at the locations listed in Rule .0901 of this Section and at

1 http://efpub1.epa.gov/npdes/home.cfm?program_id=3, <http://water.epa.gov/polwaste/npdes/pretreatment/index.cfm>, A
2 copy of the reference material can be found at [http://www.ecfr.gov/cgi-bin/text-](http://www.ecfr.gov/cgi-bin/text-idx?SID=002b8fe78be0d299d7289c36ef66652d&mc=true&tpl=/ecfrbrowse/Title40/40CSubchapN.tpl)
3 [idx?SID=002b8fe78be0d299d7289c36ef66652d&mc=true&tpl=/ecfrbrowse/Title40/40CSubchapN.tpl](http://www.ecfr.gov/cgi-bin/text-idx?SID=002b8fe78be0d299d7289c36ef66652d&mc=true&tpl=/ecfrbrowse/Title40/40CSubchapN.tpl), free of charge.

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6 *History Note:* Authority G.S. 143-215.1(a)(1); 143-215.3(a)(14); 150B-21.6;
7 Eff. November 1, 1994;
8 Amended Eff. March 1, 2011.
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15A NCAC 02H .0920 — PRETREATMENT FACILITY OPERATION AND MAINTENANCE

Commented [A23]: Deleted as unnecessary. An ORC is only required if the system is classified by the State. It is extremely unlikely that an industrial system discharging to a POTW would ever be classified. If this unlikely event did occur the rules requiring a certified ORC would then be applicable but it is not necessary to repeat them here.

1 (a) Upon classification of pretreatment facilities permitted under this Section and upon development of specific
2 certification and training programs for operators of classified facilities, the industrial user shall designate an operator in
3 responsible charge and a back-up operator as required by the Water Pollution Control System Operators Certification
4 Commission as established in Subchapter 08G of these Rules.

5 (b) In order to insure the proper operation and maintenance of facilities permitted under this Section and classified under
6 the rules of the Water Pollution Control System Operators Certification Commission (Subchapter 08G of these Rules),
7 the operator in responsible charge, or a back-up operator when appropriate, shall operate and visit the facility as required
8 by the Water Pollution Control System Operators Certification Commission as established in Subchapter 08G of these
9 Rules.

10 (c) Copies of rules referenced in this Rule may be obtained at the following locations:

- 11 (1) <http://portal.ncdenr.org/web/wq/admin/tacu>; and
- 12 (2) the North Carolina Department of Environment and Natural Resources, Division of Water Quality
13 Resources
14 Offices of the Technical Assistance and Certification Unit (TACU) NC Operators Certification
15 Program
16 Physical Address: 219 North East Street 512 N. Salisbury Street
17 Raleigh, N.C. 27601 27604
18 Mailing Address: 1618 Mail Service Center
19 Raleigh, N.C. 27699 1618.

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21 *History Note:* Authority G.S. 143-215.3;
22 Eff. November 1, 1994;
23 Amended Eff. April 1, 2011.
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1 The regulations regarding removal credits promulgated by the Environmental Protection Agency and codified as 40 CFR
2 Part 403.7 are hereby incorporated by reference, including any subsequent amendments and editions. ~~This material is~~
3 ~~available for inspection at the locations listed in Rule .0901 of this Section and at~~
4 ~~http://efpub1.epa.gov/npdes/home.cfm?program_id=3, <http://water.epa.gov/polwaste/npdes/pretreatment/index.cfm>, A~~
5 ~~copy of the reference material can be found at <http://www.ecfr.gov/cgi-bin/text->~~
6 ~~<http://www.ecfr.gov/cgi-bin/text-idx?SID=002b8fe78be0d299d7289c36ef66652d&mc=true&tpl=/ecfrbrowse/Title40/40CisubchapN.tpl>, free of charge.~~

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9 *History Note:* Authority G.S. 143-215.1(a); 143-215.1(b); 143-215.3(a)(14); 150B-21.6;
10 Eff. November 1, 1994;
11 Amended Eff. March 1, 2011.

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15A NCAC 02H .0922 HEARINGS

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(a) The control authority sewer use ordinance (SUO) and attorney's statement required under Rule .0906(b)(1) shall
49 provide for the effective enforcement and compliance with its pretreatment program in accordance with the provisions of

1 G.S. 160A-175 for municipalities, G.S. 153A-123 for counties, G.S. 162A-9.1 for water and sewer authorities and G.S.
2 162A-81 for metropolitan sewerage districts. This shall include:

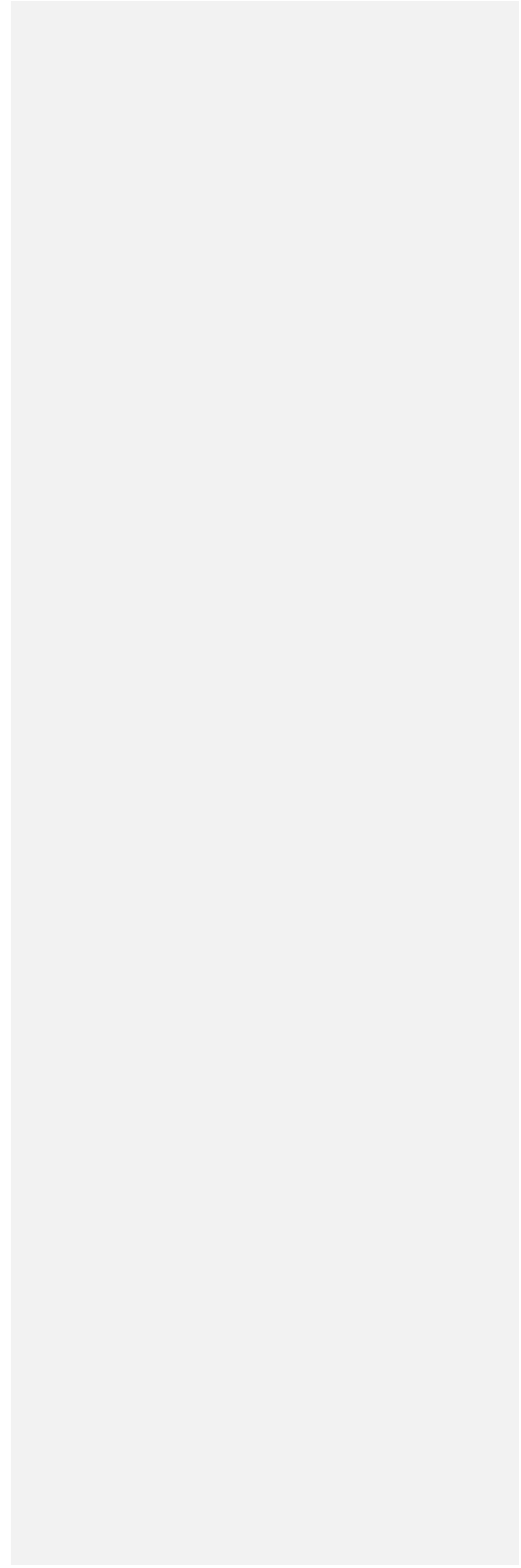
3 (1) providing industrial users assessed civil penalties by the control authority for violations of its
4 pretreatment program with the opportunity to request review of the penalty in accordance with the
5 provisions of G.S. 143-215.6A(k); and

6 (2) providing industrial users the opportunity to request review of other actions taken by the control
7 authority to administer and enforce its pretreatment program. Such control authority actions may
8 include denial or termination of a pretreatment permit or other permission to discharge, issuance of a
9 permit or other permission to discharge subject to conditions the industrial users deems unacceptable,
10 and the issuance of an administrative order subject to conditions the industrial users deems
11 unacceptable. The opportunity to request review may include the right to request a review of a control
12 authority action with the local government as established in that local government's SUO, or to request
13 a review by the superior court having local jurisdiction.

14 (b) If the control authority elects to provide industrial users with the opportunity for local government reviews under
15 Subparagraphs (a)(1) and (a)(2) of this Rule, the control authority may establish procedures and requirements for the
16 review process. These procedures may include the number of days after receipt of an action by which the industrial user
17 must request the review, the contents or form of the request, and which party or parties will conduct local government
18 hearings.

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20 *History Note: Authority G.S. 143-215(a); 143-215.1(a); 143-215.1(c); 143-215.1(g); 143-215.2(b); 143-215.3(a)(3);*
21 *143-215.3(a)(14); 143-214.3(e); 143-215.6A(j); 143-215.6A(k); 153A-123; 160A-175; 162A-9.1;*
22 *162A-81;*
23 *Eff. April 1, 2011.*
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1 15A NCAC 02H .1201 is proposed for readoption without substantive changes as follows:

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3 **15A NCAC 02H .1201 PURPOSE**

4 The purpose of this Section is to implement the provisions of G.S. 143-215.2 and G.S. 143-215.110 pertaining to the
5 issuance of surface water, ground water and air quality Special Orders by the Environmental Management
6 Commission.

7

8 *History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.110;*

9 *Eff. October 1, ~~1990~~1990;*

10 *Readopted Eff. <date>.*

11

1 15A NCAC 02H .1202 is proposed for reoption with substantive changes as follows:

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3 **15A NCAC 02H .1202 DEFINITIONS**

4 The terms used herein shall be as defined in G.S. 143-212 and G.S. 143-213. Other terms used in this Section are
5 defined as follows:

6 (1) "Special Order" means a directive of the Commission to any person whom it finds responsible for
7 causing or contributing to any pollution of the air or waters of the State. The term includes all orders
8 or instruments issued by the Commission pursuant to G.S. 143-215.2 or G.S. 143-215.110.

9 (2) "Consent Order" or "Special Order by Consent" means a type of Special Order where the
10 Commission enters into an agreement with the person responsible for water or air pollution to
11 achieve some stipulated actions designed to reduce, eliminate, or prevent air or water quality
12 degradation.

13 (3) "Director" means the Director of the Division of ~~Environmental Management~~ Water Resources.

14

15 *History Note:* Authority G.S. 143-212; 143-213; 143-215.2; 143-215.3(a)(1); 143-215.110;

16 *Eff. October 1, ~~1990~~ 1990;*

17 *Amended Eff. <date>.*

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1 15A NCAC 02H .1203 is proposed for readoption without substantive changes as follows:

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3 **15A NCAC 02H .1203 PUBLIC NOTICE**

4 (a) Notice of proposed Consent Order:

5 (1) The Director is delegated the authority to prepare the notice of the proposed Consent Order and shall
6 advertise it as specified in G.S. 143-215.2(a1)(1) at least 45 days prior to any final action by the
7 Commission or the Director.

8 (2) The Notice shall include at least the following:

9 (A) name, address, and phone number of the agency issuing the public notice;

10 (B) name and address of the person to whom the order is directed;

11 (C) a brief summary of the proposed conditions of the agreement including a disclosure of the
12 final compliance date and the major permit conditions which the permittee will be allowed
13 to exceed;

14 (D) a brief description of the procedures to be followed by the Commission or Director in
15 reaching a final determination on the proposed agreement. This shall include explanations
16 of the comment period and how interested persons may influence or comment on the
17 proposal along with procedures to request a public meeting. The description shall specify
18 that requests for a public meeting and comments are to be received by the Division within
19 30 days following the newspaper publication of the public notice;

20 (E) a description of the information available for public review, where it can be found, and
21 procedures for obtaining copies of pertinent documents.

22 (b) Notice of public meetings for proposed Consent Order:

23 (1) The Director shall consider all requests for a public meeting and if he determines that there is
24 significant public interest, then he will cause such a meeting to be held.

25 (2) Public meetings shall be noticed by the Director at least 30 days prior to the meeting.

26 (3) The Notice shall be advertised in a local newspaper and provided to those persons specified in G.S.
27 143-215.2(a1)(2) for water quality special orders and G.S. 143-215.110(a1)(2) for air quality special
28 orders.

29 (4) The Notice shall include the information specified in (a)(2)(A), (B), (C) and (E) of this Rule relative
30 to the identification of the parties involved, the conditions of the proposal, how to obtain additional
31 information and the procedures to be followed by the Commission in reaching a final determination.
32 It should also provide full information regarding the time and location for the meeting along with
33 procedures for the various methods of providing comment.

34 (c) Any person may request to receive copies of all notices required by this Rule, and the Director shall mail copies
35 of notices to those who have submitted a request.

36 (d) The Director may combine the requirements in Paragraphs (a) and (b) of this Rule with a combination comment
37 period and public meeting notice.

1 (e) Any Special Order by Consent may be amended by the Director to incorporate minor modifications, such as
2 reallocations of allowable flows, modification of standard conditions to reflect updated versions, correct typographical
3 errors and interim date extensions, in a consent order without public notice provided that the said modifications may
4 not extend final compliance date by more than four months.

5 (f) The requirements of this Rule for public notice and public meeting were developed to apply to Special Orders by
6 Consent. The Commission may specify other conditions for Special Orders issued without consent.

7

8 *History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.3(a)(3);*

9 *143-215.3(a)(4); 143-215.110;*

10 *Eff. November 1, 1990;*

11 *Amended Eff. August 3, ~~1992~~, 1992;*

12 *Readopted Eff. <date>.*

13

1 15A NCAC 02H .1204 is proposed for readoption without substantive changes as follows:

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3 **15A NCAC 02H .1204 FINAL ACTION ON SPECIAL ORDERS BY CONSENT**

4 The Director is authorized to take final action for the Commission on Special Orders by Consent except in those cases
5 where a public meeting is held as provided in 15A NCAC 2H .1203. The final action on the proposed order shall be
6 taken no later than 60 days following publication of the notice or, if a public meeting is held, within 90 days following
7 the meeting.

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9 *History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.3(a)(4); 143-215.110;*

10 *Eff. October 1, ~~1990~~1990;*

11 *Readopted Eff. <date>.*

12

1 15A NCAC 02H .1205 is proposed for readoption without substantive changes as follows:

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3 **15A NCAC 02H .1205 ACTION ON SPECIAL ORDERS ISSUED WITHOUT CONSENT**

4 The Commission may issue a proposed Special Order without the consent of the person affected. The Commission
5 shall notify the affected person of the procedure set out in G.S. 150B-23 to contest the proposed Special Order.

6

7 *History Note: Authority G.S. 143-215.2(b); 143-215.3(a)(1); 143-215.110(b);*

8 *Eff. October 1, 1990;*

9 *Amended Eff. August 3, ~~1992-1992~~;*

10 *Readopted Eff. <date>.*

11

1 15A NCAC 02H .1206 is proposed for re adoption with substantive changes as follows:

2

3 **15A NCAC 02H .1206 WATER QUALITY SPECIAL ORDERS BY CONSENT**

Commented [A1]: Change: Updated Division name and corrected spelling.
Effect: Technical correction.

4 (a) Requests for Water Quality Special Orders by Consent:

5 (1) Requests by permittees must be made in triplicate on forms supplied by the Division of
6 ~~Environmental Management~~ Water Resources along with a nonrefundable four hundred dollars
7 (\$400.00) fee and all other required information.

8 (2) Requests found to be incomplete will be returned to the permittee with an explanation of
9 deficiencies.

10 (3) Requests must be signed as follows:

11 (A) in the case of corporations, by a principal executive officer of at least the level of vice-
12 president, or his duly authorized representative, if such representative is responsible for the
13 overall operation of the facility for which the Order is being requested;

14 (B) in the case of a partnership, by a general partner and in the case of a limited partnership,
15 by a general partner;

16 (C) in the case of a sole proprietorship, by the proprietor;

17 (D) in the case of a municipal, state, or other public entity by either a principal executive
18 officer, ranking elected official or other duly authorized employee.

19 (b) Evaluation of the requests:

Commented [A2]: Change: In subparagraph (b)(1), deleted requirement that permittees seeking an SOC retain a consultant to evaluate causes of non-compliance.
Effect: Simplify negotiation of SOCs. The requirement is often more a hindrance than a help, and the evaluation of causes can still be negotiated if needed.

20 (1) Requests will not be evaluated unless it is demonstrated by the permittee to the satisfaction of the
21 Director that noncompliance is not due to failure by the permittee to properly operate, manage and
22 maintain the wastewater treatment system and that the existing wastewater treatment system is being
23 operated in such a way as to attain the highest degree of treatment possible under the existing
24 conditions. The demonstration must also evaluate all reasonably available low-capital-cost interim
25 improvements, even though they may not be directly related to the final treatment option. ~~This~~
26 ~~demonstration must be made in the form of a report prepared by an independent consultant (a~~
27 ~~professional with expertise in wastewater treatment).~~

28 (2) Requests will not be evaluated unless the permittee can demonstrate to the satisfaction of the
29 Director that:

30 (A) funds needed to meet the requirements of the proposed order are available or will be
31 available to meet the compliance schedule and any interim effluent limitations; or

32 (B) that the permittee can adopt specific alternative steps to achieve compliance where the
33 permittee cannot assure total financing of needed facilities.

34 (c) Development of the Special Order:

35 (1) The compliance schedule in the order must be sufficiently detailed to ~~insure~~ ensure that the permittee
36 is constantly progressing toward final compliance. This schedule will normally include, but not be

- 1 limited to, activities such as submission of plans and specifications, starting of construction,
2 completion of construction and achievement of final compliance.
- 3 (2) The interim effluent limitations must be based on the optimum expected efficiency of the existing
4 treatment system. In cases of phased construction or expected interim treatment facility
5 improvements, the interim limitations shall reflect these expected improvements. Likewise, if
6 treatment units must be taken off line due to construction, the interim limitations may be modified
7 during the period of actual outage.
- 8 (3) To ~~insure~~ ensure compliance with all schedules dates and interim effluent limitations, all orders must
9 contain stipulated penalties for violations of specified requirements. Also a monetary settlement will
10 normally be included in the order to settle previous violations.
- 11 (4) The order must contain a condition that advises the permittee that it is responsible for funding the
12 treatment system improvements and that lack of funds will not be a defense in contesting stipulated
13 penalties.
- 14 (d) Acceptance of additional wastewater into a wastewater treatment system owned or operated by a unit of
15 government, in accordance with G.S. 143-215.67(b).
- 16 (1) Additional flows will only be allowed as part of a consent Order when the following demonstrations
17 can be made:
- 18 (A) New or improved wastewater treatment facilities will be constructed in the near future that
19 will adequately treat the existing and additional waste or the permittee can adopt specific
20 alternative steps to offset the adverse effects of the additional waste.
- 21 (B) The flows are needed to provide minimum reasonable service to identified new residential,
22 commercial and industrial sources or equivalent substitutions for those sources as approved
23 by the Director.
- 24 (C) The nature of the additional flows is such that the waste characteristics do not exceed those
25 generally associated with domestic waste or are pretreated to domestic strengths. Waste of
26 greater than normal domestic strength may be accepted if the parameter(s) are not those for
27 which interim limitations have been developed and it can be demonstrated to the
28 satisfaction of the Director that the additional waste will not adversely affect the treatment
29 efficiency of the treatment system for any modified parameter or result in the violation of
30 any other permit limitation.
- 31 (D) All new and proposed industrial waste tributary to the system must be controlled using all
32 needed mechanisms including but not limited to adoption and implementation of industrial
33 waste control and pretreatment ordinances.
- 34 (E) The cumulative impacts of wastewater allowed under the order will not result in any
35 significant degradation in the quality of the waters ultimately receiving the wastewater
36 during flow conditions between and including the 7-day, 10-year minimum flow (7Q10)
37 and the average flow. The division must consider any special or protected waters such as

1 but not limited to, High Quality Waters, Water Supply Waters, Trout Waters and Shellfish
2 Waters in conducting this evaluation. Significant degradation shall be defined to include
3 but not be limited to the following:

- 4 (i) A predictive decrease in dissolved oxygen of 0.5 mg/l or greater at the point of
5 maximum dissolved oxygen sag. In cases where existing (prior to adding the
6 requested wastewater) dissolved oxygen conditions are above 3.0 mg/l at or above
7 7Q10 conditions, the amount of wastewater added will not be allowed to depress
8 oxygen levels below 3.0 mg/l at the corresponding stream flow levels. No
9 additional wastewater will be allowed if measured or predicted dissolved oxygen
10 levels at any stream flow at or above 7Q10 are less than 3.0 mg/l unless specific
11 approval is granted by the Environmental Management Commission. In making
12 this decision, the Commission will consider criteria such as but not limited to
13 naturally occurring background dissolved oxygen levels, projected duration of
14 impacts and stream miles impacted. In cases when adequate models do not exist
15 to allow the prediction of instream dissolved oxygen impacts, no additional
16 wastewater will be allowed into the system; or
- 17 (ii) A predictive increase in the length of the affected segment (that segment in which
18 the predicted dissolved oxygen is less than dissolved oxygen standards) of 0.5
19 miles or greater; or
- 20 (iii) An increase in coliform bacteria density predicted to exceed applicable water
21 quality standards; or
- 22 (iv) Increases in the coliform density, decreases in dissolved oxygen, or changes in
23 any other water quality parameters which are predicted to result in mortality of
24 fish or other aquatic life, closing of swimming areas or significant impact on other
25 water uses, regardless of compliance with conditions Subparts (d)(1)(E)(i)-(iii) of
26 this Rule;
- 27 (v) The proposed addition of toxic pollutants in quantities not generally associated
28 with domestic wastewater characteristics, unless the acceptance of the additional
29 wastewater can be supported through appropriate analyses acceptable to the
30 Director.

- 31 (2) Approvals of additional wastewater flows may be immediately rescinded by the Director for any
32 schedule or condition violation, or limit violations in two consecutive months, or any other violation
33 he considers sufficiently severe to warrant such action. In determining violations to be sufficiently
34 severe, the Director will consider factors such as but not limited to the parameter(s) being violated,
35 the magnitude of the violation(s), the projected duration of the violation(s), the waters being
36 impacted or projected to be impacted and the reasons for the violation(s). In the notification to the

1 permittee that the flow has been rescinded, the Director will identify the factor(s) that made the
2 decision necessary.

3
4 *History Note:* *Authority G.S. 143-215.2; 143-215.3(a)(1);*

5 *Eff. August 3, 1992-1992;*

6 *Amended Eff. <date>.*

7

1 15A NCAC 02H .1301 is proposed for amendment as follows:

2
3 **15A NCAC 02H .1301 SCOPE AND PURPOSE**

4 (a) The provisions of this Section shall apply to Division of Water ~~Quality Resources~~ (Division) regulatory and
5 resource management determinations regarding isolated wetlands and isolated classified surface waters. This Section
6 shall only apply to discharges resulting from activities that require state review after ~~the effective date of this~~
7 ~~Rule~~ October 22, 2001 and which require a Division determination concerning effects on isolated wetlands and isolated
8 classified surface waters. For the purpose of this Section, discharge shall be the deposition of dredged or fill material
9 including but not limited to fill, earth, construction debris and soil.

10 (b) This Section outlines the application and review procedures for permitting of discharges into isolated wetlands
11 and isolated classified surface waters ~~which that have been listed in 15A NCAC 02B .0300. If the US-U.S. Army~~
12 ~~Corps of Engineers or its designee determines that a particular water or wetland is isolated and not regulated under~~
13 ~~Section 404 of the Clean Water Act, then discharges to that water or wetland shall be covered by this Section (15A~~
14 ~~NCAC 02H .1301 -.1305). Section. If the U.S. Army Corps of Engineers or its designee determines that a particular~~
15 ~~wetland is not regulated under Section 404 of the Clean Water Act and that wetland is a Basin Wetland or Bog as~~
16 ~~described in the North Carolina Wetland Assessment User Manual prepared by the North Carolina Wetland Functional~~
17 ~~Assessment Team, version 4.1 October 2010 (available online at: [https://deq.nc.gov/about/divisions/water-](https://deq.nc.gov/about/divisions/water-resources/water-resources-data/water-quality-program-development/ncwam-manual)~~
18 ~~resources/water-resources-data/water-quality-program-development/ncwam-manual), then discharges to that wetland~~
19 ~~shall be covered by this Section. The Division shall verify the determination, extent and location of isolated wetlands~~
20 ~~and isolated classified surface waters using the U.S. Army Corps of Engineers Wetland Delineation Manual (Technical~~
21 ~~Report Y-87-1) and subsequent regional supplements and the Division publication, Methodology for Identification of~~
22 ~~Intermittent and Perennial Streams and Their Origins (v.4.11, 2010).~~

23 (c) Activities which result in a discharge may be ~~deemed permitted~~ as described in Rule .1305(b) of this Section or
24 authorized by the issuance of either an Individual Permit or a Certificate of Coverage to operate under a General
25 ~~Permit~~ Permit.

26 (1) Individual Permits shall be issued on a case-by-case basis using the procedures outlined in this
27 Section. These Individual Permits do not require approval by the U.S. Environmental Protection
28 Agency.

29 (2) ~~Certificates of Coverage for General Permits may be issued developed by the Division and issued~~
30 ~~by the Director for types or groups of discharges resulting from activities that are similar in nature~~
31 ~~and considered to have minimal impact. General Permits include but are not limited to activities~~
32 ~~such as maintenance, utility lines, and road crossings. General Permits shall be given public notice~~
33 ~~at least 45 days before the proposed effective date of the General Permit. These General Permits do~~
34 ~~not require approval by the U.S. Environmental Protection Agency. All activities that receive a~~
35 ~~“Certificate of Coverage” under a General Permit from the Division shall be deemed covered under~~
36 ~~that general permit. The application and review procedures for requesting a “Certificate of~~
37 ~~Coverage” under a general permit from the Division for the proposed activity are the same as the~~

Commented [HK1]: no effect – update name

Commented [HK2]: no effect – reflect 1st adoption date not latest amendment date

Commented [HK3]: no effect - grammar

Commented [HK4]: no effect – update name

Commented [HK5]: no effect - split out wetland and waters

Commented [HK6]: no effect – section implies this set of rules, so no need to restate them in parenthesis.

Commented [HK7]: per SL 2014-120 and SL 2015-286

Commented [HK8]: no effect – codify policy

Commented [HK9]: no effect – clarification

Commented [HK10]: no effect - punctuation

1 procedures outlined in this Section for individual certifications, unless specifically stated otherwise
2 in the general permit. Individual Permits and Certificates of Coverage for General Permits shall be
3 issued for a period of five years after which time the Permit shall be void unless the discharge is
4 complete or an extension is granted as described in 15A NCAC 02H .1304(e).

5 (d) Discharges resulting from activities which receive an Individual Permit or Certificate of Coverage under a General
6 Permit pursuant to this Section shall not be considered to remove existing uses of the isolated wetland or isolated
7 surface waters.

8 (e) The following are exempt from this Section:

9 (1) Activities ~~that are~~ described in 15A NCAC 02B .0230;

10 (2) Discharges to isolated, man-made ponds or isolated man-made ditches except for those wetlands or
11 waters constructed for compensatory mitigation or for on-site stormwater management; management
12 purposes;

13 (3) Discharges to any man-made isolated pond;

14 ~~(3)(4)~~ Discharges of treated effluent into isolated wetlands and isolated classified surface waters resulting
15 from activities which receive NPDES Permits or State Non-Discharge Permits;

16 ~~(4)(5)~~ Discharges for water dependent structures as defined in 15A NCAC 02B ~~.0202(67); .0202;~~

17 ~~(5)(6)~~ A discharge resulting from an activity if:

18 (A) The discharge resulting from the activity requires a 401 Certification and 404 Permit and
19 these were issued prior to the effective date of this Rule; October 22, 2001;

20 (B) The project requires a state permit, such as landfills, NPDES discharges of treated effluent,
21 Non-Discharge Permits, land application of residuals and road construction activities, that
22 has begun construction or are under contract to begin construction and have received all
23 required state permits prior to the effective date of this Rule; October 22, 2001;

24 (C) The project is being conducted by the N.C. Department of Transportation and they have
25 completed 30% of the hydraulic design for the project prior to the effective date of this
26 Rule; October 22, 2001; or

27 (D) The applicant has been authorized for a discharge into isolated wetlands or isolated waters
28 for a project which has established a Vested Right under North Carolina law prior to the
29 effective date of this Rule; October 22, 2001.

30 (f) The terms used in this Section shall be as defined in G.S. 143-212, G.S. 143-213 and as follows:

31 (1) "Director" means the Director of the Division.

32 (2) "Division" means the Division of Water Resources of the North Carolina Department of
33 Environmental Quality.

34 (3) "Person" means as defined in G.S. 143-212(4).

35 (4) "Wetland" means as defined in 15A NCAC 02B .0202.

Commented [HK11]: no effect – clarify GP process; wording consistent with 02H .0500 rules for general certifications.

Commented [HK12]: no effect - grammar

Commented [HK13]: per SL 2014-120 and SL 2015-286

Commented [HK14]: no effect – update citation

Commented [HK15]: no effect – reflect 1st adoption date not latest amendment date

Commented [HK16]: no effect – reflect 1st adoption date not latest amendment date

Commented [HK17]: no effect – reflect 1st adoption date not latest amendment date

Commented [HK18]: no effect – reflect 1st adoption date not latest amendment date

Commented [HK19]: added definitions for clarity

Commented [HK20]: No effect - clarification

1 (5) “Cumulative impact” means environmental impacts resulting from incremental effects of an activity
2 when added to other past, present, and reasonable foreseeable future activities regardless of what
3 entities undertake such other actions.

Commented [HK21]: No effect – moved from .1305

4 (6) “Class SWL wetland” means as defined at 15A NCAC 02B .0231.

5 (7) “Class UWL wetland” means as defined at 15A NCAC 02B .0231.

Commented [HK22]: No effect - clarification

6 (8) “Secondary impact” means actions, or actions directly linked to an activity, that may affect classified
7 surface waters or wetlands that would not occur but for the proposed activity.

Commented [HK23]: No effect – clarification

8
9 *History Note: Authority G.S. 143-215.1(a)(6); 143-215.3(a)(1); 143-215.3(c); S.L. 2014, c. 120; S.L. 2015, c.*
10 *286*

11 *Codifier determined that findings did not meet criteria for temporary rule on September 26, 2001*
12 *and October 12, 2001;*

13 *Temporary Adoption Eff. October 22, 2001;*

14 *Eff. April 1, 2003.*

15 *Amended Eff. INSERT DATE*
16

1 15A NCAC 02H .1302 is proposed for amendment as follows:

2
3 **15A NCAC 02H .1302 APPLICATION PROCESSING APPLICATIONS**

4 (a) ~~Application for a Permit.~~APPLICATION FOR A PERMIT. Any person, as defined in G.S. 143, Article 21, person
5 desiring issuance of a State Individual Permit or Certificate of Coverage under a General Permit for discharges
6 resulting from activities which affect isolated classified surface waters or isolated wetlands shall file with the Director
7 of the North Carolina Division of Water Quality Resources (Director), at 1617 Mail Service Center, Raleigh, North
8 Carolina, 27699-1617, an original and ~~six~~three copies of an application for a Permit. Permit or submit one complete
9 copy of an application electronically. The application must be made on a form provided or approved by the Division
10 and shall specify:

- 11 (1) the date of application;
- 12 (2) the name, address, and phone number of the property ~~owner;~~owner or owners;
- 13 (3) if the applicant is a corporation, the state in which it is domesticated, the name and address of the
14 North Carolina process agency, and the ~~name, address and phone number~~ of the individual
15 who shall be primarily responsible for the conduct of the discharge resulting from an activity for
16 which a Permit is sought;
- 17 (4) the nature of the discharge, including cumulative impacts to isolated and non-isolated wetlands and
18 isolated and non-isolated waters that cause or will cause a violation of downstream water quality
19 standards resulting from an activity to be conducted by the applicant;
- 20 (5) whether the discharge has occurred or is proposed;
- 21 (6) the location and extent of the discharge, stating the applicable municipality, the county; the drainage
22 basin; the name of the nearest named surface waters; and the location of the point of discharge with
23 regard to the nearest named surface waters;
- 24 (7) an application fee as required by G.S. ~~143-215.3D(e) with a check or money order to be made~~
25 ~~payable to the North Carolina Division of Water Quality.~~143-215.3D(e). If payment of a fee is
26 required for a 401 Water Quality Certification, then that fee shall suffice for this Rule; and
- 27 ~~(8) the information requested in Subparagraphs (1) through (7) of this Rule must be provided on or~~
28 ~~attached to the most current version of the North Carolina Division of Water Quality Isolated~~
29 ~~Wetlands Notification application form.~~
- 30 ~~(b)(8) Maps.~~MAPS. [There shall be attached to the application form a map(s) with scales and north arrows
31 and of sufficient detail to accurately delineate the boundaries of the lands owned or proposed to be
32 utilized by the applicant in carrying out the discharge; the location, dimensions and type of any
33 structures that affect isolated wetlands or waters for use in connection with the discharge; and the
34 location and extent of the isolated waters (preferably surveyed or located with Global Positioning
35 System equipment) including wetlands within the boundaries of said ~~lands.~~lands; and
- 36 (9) Applications shall be signed by the owner with title to the property, a person who has been
37 authorized by the owner to apply for certification, or an entity with the power of eminent domain.

Commented [HK1]: no effect - clarification

Commented [HK2]: no effect - formatting

Commented [HK3]: no effect - person is defined in .1301

Commented [HK4]: no effect - update name

Commented [HK5]: no effect - update address

Commented [HK6]: need fewer copies of applications

Commented [HK7]: will allow for paperless applications

Commented [HK8]: no effect - moved from paragraph (g) below

Commented [HK9]: no effect - clarification

Commented [HK10]: No Effect - clarification to match Corps' current application form

Commented [HK11]: no effect - just reference statute

Commented [HK12]: no effect - grammar

Commented [HK13]: moved to paragraph (a)

Commented [HK14]: no effect - formatting

Commented [HK15]: no effect - clarification

Commented [HK16]: no effect - punctuation

1 In signing the application, the applicant certifies that all information contained therein or in support
2 thereof is true and correct to the best of their knowledge. For corporations, partnerships, proprietors,
3 or municipal, state or other public entity, the application shall be signed as follows:

4 (A) in the case of corporations, by a principal executive officer of at least the level of
5 vice-president, or their authorized representative;

6 (B) in the case of a partnership or limited partnership, by a general partner;

7 (C) in the case of a sole proprietorship, by the proprietor; and

8 (D) in the case of a municipal, state or other public entity, by either a principal
9 executive officer, ranking official or other duly authorized employee

10 (c) Request For Additional Information.POWER TO REQUEST ADDITIONAL INFORMATION. The Director
11 Division may request-request in writing, writing within 60 days of receipt of an application and the applicant shall
12 furnish, any additional information that may be found necessary for the proper consideration of the application.
13 Incomplete applications shall be returned to the applicant. The 60-day processing period required in Rule .1304 of
14 this Section begins on the date the additional information is received by the Division.

15 (d) Omissions From Applications.OMISSIONS FROM APPLICATIONS. If the applicant believes that it is not
16 feasible or is unnecessary to furnish any portion of the information required by Paragraphs (a), (b) and (c) of this Rule,
17 then the applicant shall submit a detailed statement explaining the reasons for omission of any such information. The
18 final decision regarding the completeness of the application shall be made by the Division of Water Quality based on
19 the information required in Paragraphs (a), (b) and (c), and any explanation provided by the applicant regarding
20 omitted information provided in this Paragraph.Paragraph (e).

21 (e) Investigations.INVESTIGATIONS. The staff of the Department of Environment and Natural Resources
22 (Department)Division shall conduct such investigation as the Director-Division deems necessary and necessary. The
23 applicant shall cooperate in the investigation to the extent that it shall furnish necessary information, allow the staff
24 safe access to the lands and facilities of the applicant and lend such assistance as shall be reasonable-reasonable, upon
25 the presentation of credentials.

26 (f) Who Must Sign Applications. The application shall be considered a "valid application" only if the application
27 bears the signature of a responsible officer of the company, municipal official, partner or owner. This signature
28 certifies that the applicant has title to the property, has been authorized by the owner to apply for a Permit or is a
29 public entity and has the power of eminent domain. Said official in signing the application shall also certify that all
30 information contained therein or in support thereof is true and correct to the best of his knowledge.

31 (g) Applications for discharges to Isolated Wetlands and Waters must be made on forms provided or approved by the
32 Division of Water Quality.

33 (h) OTHER APPLICATIONS. Other applications for permitting or certification by a Division of the Department of
34 Environment and Natural Resources shall suffice for application for this Permit as long as the application contains all
35 of the information specified in Paragraphs (a) and (b) of this Rule and it is clearly specified to the Division by the
36 applicant that authorization is sought under this Rule. This application must be submitted to the Division of Water
37 Quality for review under this Permit.

Commented [HK17]: Moved from (f) – clarified who can sign applications. Language similar to other programs (e.g. NPDES)

Commented [HK18]: no effect - formatting

Commented [HK19]: no effect – update name

Commented [HK20]: no effect - punctuation

Commented [HK21]: no effect – 60 days is in .1304

Commented [HK22]: no effect - clarification

Commented [HK23]: no effect - formatting

Commented [HK24]: no effect - grammar

Commented [HK25]: no effect – update name

Commented [HK26]: no effect – update citation

Commented [HK27]: no effect - formatting

Commented [HK28]: no effect – update name

Commented [HK29]: no effect – update name

Commented [HK30]: no effect - grammar

Commented [HK31]: no effect – unnecessary language

Commented [HK32]: no effect - clarification

Commented [HK33]: moved to subparagraph (b)(9)

Commented [HK34]: moved to paragraph (b)

Commented [HK35]: no effect – added header

Commented [HK36]: no effect – update citation

Commented [HK37]: no effect – update name

1
2 *History Note:* *Authority G.S. 143-214.1; 143-215.1(a)(6); 143-215.3(a)(1); S.L. 2014, c. 120; S.L. 2015, c. 286*
3 *Codifier determined that findings did not meet criteria for temporary rule on September 26, 2001*
4 *and October 12, 2001;*
5 *Temporary Adoption Eff. October 22, 2001;*
6 *Eff. April 1, 2003.*
7 *Amended Eff. INSERT DATE*
8

1 15A NCAC 02H .1303 is proposed for amendment as follows:

2

3 **15A NCAC 02H .1303 PUBLIC NOTICE AND PUBLIC HEARING**

4 (a) ~~Notice of Publication.~~ PUBLIC NOTICE FOR GENERAL PERMITS. The Division shall provide public notice
5 for proposed General Permits. This notice shall be sent to all individuals on the Mailing List described in Paragraph
6 (g) of this Rule and on the Division's website. Notice shall be made at least 30 calendar days prior to proposed final
7 action by the Division. Public notice shall not be required for those activities covered by Certificates of Coverage
8 under a General Permit.

9 (b) PUBLIC NOTICE FOR INDIVIDUAL PERMITS. ~~Within 30 days of receipt of a complete application, the~~
10 Director shall decide whether to issue a public notice for an Individual Permit for a project or whether the project is
11 eligible for a General Permit.

12 ~~(1) Individual Permit. Notice of the Director's intent to issue or deny each pending complete application for an~~
13 Individual Permit shall be published one time in a newspaper having general circulation in the county in which the
14 discharge will occur sent to all individuals on the Mailing List described in Paragraph (g) of this Rule and shall be
15 posted on the Division's website. ~~Publication Notice shall be made at least 30 calendar days prior to proposed final~~
16 action by the ~~Director~~ Division on the application. ~~The applicant shall pay to the Department the costs of advertising~~
17 the public notice for an Individual Permit. The Permit shall not be issued until such costs have been paid as allowed
18 under G.S. 143-215.3(a)(1e). A copy of this notice shall be sent to a subset of individuals on the Wetland Permit
19 Mailing List described in Paragraph (d) of this Rule who request to be notified of these Permits.

20 ~~(2) General Permit. The Division shall provide public notice for proposed General Permits. This notice shall be~~
21 sent to all individuals on the Wetland Permit Mailing List described in Paragraph (d) of this Rule and in selected
22 newspapers with general circulation in the geographic areas affected by the proposed General Permit. Publication shall
23 be made at least 30 days prior to proposed final action by the Director.

24 ~~(b)(c) Contents of Notice.~~ CONTENTS OF NOTICE FOR INDIVIDUAL PERMITS. The notice shall set forth the
25 name and address of the applicant; the action requested in the application; the nature and location of the discharge;
26 and the proposed date of final action to be taken by the ~~Director~~ Division on the application. The notice shall also
27 state where additional information is on file with the ~~Department~~ Division and may be inspected at any time during
28 normal working hours. Copies of such information on file shall be made available upon request and upon payment of
29 the cost thereof to the ~~Department~~ Division.

30 ~~(d) JOINT NOTICE. This public notice requirement for an Individual Permit as described in Paragraph (b) may be~~
31 satisfied by a joint notice with the Division of Coastal Management (15A NCAC 07J .0206) or the U.S. Army Corps
32 of Engineers according to their established procedures or by a joint notice by the Division for an Individual
33 Certification in accordance with Rule .0503 of this SubChapter.

34 ~~(e) REQUEST FOR A PUBLIC HEARING. Any person who desires a public hearing on an Individual or a General~~
35 Permit or an Individual Permit application shall so request in writing to the ~~Director~~ Division. The request must be
36 received by the Division within 30 calendar days following the publication of the notice of intent. Public Notice.

Commented [HK1]: moved from subparagraph (b)(2) below

Commented [HK2]: no effect - added header

Commented [HK3]: removed - timing requirement set form in Rule .1304

Commented [HK4]: no effect - grammar

Commented [HK5]: Removing requirement to publish notice in newspapers for individual certifications. Notices will be posted online and distributed to individuals on email listserv.

Commented [HK6]: no effect - clarification

Commented [HK7]: no effect - update name change

Commented [HK8]: removed requirement to publish in newspaper so this language is no longer necessary.

Commented [HK9]: moved to paragraph (a) above

Commented [HK10]: no effect - formatting

Commented [HK11]: no effect - update name

Commented [HK12]: no effect - update name

Commented [HK13]: no effect - update name

Commented [HK14]: allow for joint notices with DCM permit, 404/401 applications

Commented [HK15]: no effect - added header

Commented [HK16]: no effect - grammar

Commented [HK17]: no effect - grammar

1 ~~(e)(f) Notice of Hearing-NOTICE OF HEARING. Within 30 days of receipt of a request for a public hearing, the~~
2 ~~Director shall decide whether a public hearing is necessary unless the applicant agrees in writing to an extension. If~~
3 ~~the Director determines that there is significant public interest in holding a hearing, the Director-Division shall publish~~
4 ~~notice of the hearing notify the applicant by registered or certified mail, return receipt requested. The Division shall~~
5 ~~also shall one time in a newspaper having general circulation in the county in which the discharge will provide notice~~
6 ~~of the hearing to all individuals on the Mailing List as described in Paragraph (g) of this Rule and shall post the notice~~
7 ~~on the Division's website. occur. In any county in which there is more than one newspaper having general circulation~~
8 ~~in that county, the Director shall cause a copy of such notice to be published in as many newspapers having general~~
9 ~~circulation in the county as the Director in his discretion determines may be necessary to assure that such notice is~~
10 ~~generally available in the county. The notice shall be published at least 30 calendar days prior to the date of the hearing.~~
11 ~~The notice shall state the time, place and nature of the hearing. Such hearing shall be held within 90 calendar days~~
12 ~~following date of notification to the applicant. The record for each hearing held under this Paragraph shall remain~~
13 ~~open for a period of 30 calendar days.~~

14 ~~(d)(g) Wetland Permit Mailing List-MAILING LIST. Any person may request that he or she be mailed emailed copies~~
15 ~~of all public notices required by this Rule. The Director-Division shall add the name of any such person to a Wetland~~
16 ~~Permit Mailing List an Email Listserv and shall mail copies of notices to all persons on the list and follow procedures~~
17 ~~set forth in Paragraph (g) of Rule .0503 of this Subchapter.~~

18 ~~(e)(h) OTHER PUBLIC HEARINGS. If other public hearings are being held by Divisions of the Department of~~
19 ~~Environment and Natural Resources, then anyAny public hearing held for this Rule may be coordinated with those~~
20 ~~hearings-other public hearings held by the Department of Environmental Quality or the U.S. Army Corps of Engineers.~~

21
22 *History Note: Authority G.S. 143-215.1(a)(6); 143-215.3(a)(1); 143-215.3(a)(1e); 143-215.3(c);*
23 *Codifier determined that findings did not meet criteria for temporary rule on September 26, 2001*
24 *and October 12, 2001;*
25 *Temporary Adoption Eff. October 22, 2001;*
26 *Eff. April 1, 2003.*
27 *Amended Eff. INSERT DATE*

- Commented [HK18]:** reorganized paragraph. also removed requirement to publish notice in newspapers for individual certifications. Notices will be posted online and distributed to individuals on email listserv.
- Commented [HK19]:** no effect – update name
- Commented [HK20]:** allow for emails instead of paper mailout
- Commented [HK21]:** no effect – update name
- Commented [HK22]:** allow for emails instead of paper mailout
- Commented [HK23]:** no effect - added header
- Commented [HK24]:** no effect – reworded and allow for joint hearing with the Corps

1 15A NCAC 02H .1304 is proposed for amendment as follows:

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3 **15A NCAC 02H .1304 DECISION ON APPLICATION FOR PERMITS OR CERTIFICATES OF**
4 **COVERAGE**

5 (a) ~~FINAL ACTION ON APPLICATION. Not later than 60 days following the publication of the notice of intent or~~
6 ~~decision to process the project under a General Permit, or within 90 days following a public hearing, the~~ The Director
7 ~~shall issue, issue with modifications, issue~~ or deny ~~within 60 calendar days after receipt of the complete Permit~~
8 application or complete application for Certificate of ~~Coverage. Coverage~~ electronically or at 1617 Mail Service
9 ~~Center, Raleigh, North Carolina, 27699-1617. Failure to take action within 60 or 90 days, respectively, calendar days~~
10 shall result in the waiver of the permit requirement by the ~~Director. Director~~, unless:

- 11 (1) ~~The applicant agrees, in writing, to a longer period;~~
- 12 (2) ~~Final decision is to be made pursuant to a public hearing;~~
- 13 (3) ~~The applicant fails to furnish information necessary to the Director's decision;~~
- 14 (4) ~~The applicant refuses the staff access to its records or premises for the purpose of gathering~~
15 ~~information necessary to the Director's decision; or~~
- 16 (5) ~~Information necessary to the Director's decision is unavailable.~~

17 (b) ~~FINAL ACTION AFTER HEARING. The Director shall issue or deny the complete Permit application or~~
18 ~~complete application for Certificate of Coverage within 60 calendar days following the close of the record for the~~
19 ~~public hearing. Failure to take action within 60 calendar days shall result in the waiver of the permit requirement by~~
20 ~~the Director, unless Subparagraphs (a)(1), (3), (4) or (5) of this Rule apply.~~

21 ~~(b)(c) Conditions of Permit. CONDITIONS OF PERMIT. Any Permit or Certificate of Coverage issued pursuant to~~
22 this Section may contain such conditions as the Director shall deem necessary to ~~insure ensure~~ compliance with this
23 Section including written post-discharge notification to the Division.

24 ~~(d) MODIFICATION OR REVOCATION. Modification or Revocation of Permit or Certificate of Coverage:~~
25 (1) Any Permit or Certificate of Coverage issued pursuant to this Section may be subject to revocation
26 or modification for violation of conditions of the Permit or Certificate of Coverage; and
27 (2) Any Permit or Certificate of Coverage issued pursuant to this Section may be subject to revocation
28 or modification upon a determination that information contained in the application or presented in
29 support thereof is incorrect or if the Director finds that the discharge has violated or may violate a
30 downstream water quality standard.

31 ~~(d)(e) Notification of Unapproved Application. NOTIFICATION OF FINAL ACTION. The Division shall notify the~~
32 ~~applicant of the final action to issue or deny the application. In the event that the Director denies the application for~~
33 a Permit or Certificate of Coverage or for any reason is unable to approve the application, the Director shall ~~so notify~~
34 ~~the applicant by certified or registered mail, return receipt requested, specifying in such notifications specify~~ the reasons
35 ~~for the denial or inability to be approved. approve.~~

Commented [HK1]: no effect – added header

Commented [HK2]: no effect – split out hearing language to paragraph (b)

Commented [HK3]: no effect - clarification

Commented [HK4]: no effect - clarification

Commented [HK5]: allows for 60 day review period to be extended if any of these apply; consistent with other DWR programs.

Commented [HK6]: no effect – moved from paragraph (a)

Commented [HK7]: no effect - formatting

Commented [HK8]: no effect - grammar

Commented [HK9]: no effect – added header

Commented [HK10]: no effect – added header

Commented [HK11]: no effect – clarification

Commented [HK12]: removes requirement to send denial by certified mail.

1 (f) TERM OF PERMIT. Individual Permits and Certificates of Coverage for General Permits shall be issued for a
2 period of five years, after which time the Permit shall be void, unless the discharge is complete or an extension is
3 granted pursuant to Paragraph (g) of this Rule. The permit shall become enforceable when issued.
4 ~~(e)~~(g) RENEWALS AND EXTENSIONS. Permit or Certificate of Coverage renewals shall require a new complete
5 application and payment of a fee to the Division of Water Quality Resources, unless the applicant may
6 request requests and is granted an extension in writing which shall be granted that the Division grant an extension
7 before the permit expires. An extension may be granted by the Division for a time period not to exceed one additional
8 year year, provided that the construction has commenced or is under contract to commence commence before the
9 permit expires.
10 ~~(f)~~(h) Contested Case Hearing for Applicant. CONTESTED CASE HEARING. An applicant whose Permit or
11 Certificate of Coverage is denied or granted subject to unacceptable conditions conditions shall have the right to seek
12 a contested case hearing pursuant to the provisions of G.S. 143-215.1(e)143-215.1(e), by filing a petition under G.S.
13 150B-23 within 30 calendar days after the Director notifies the applicant or permittee of its decision in writing. 150B-
14 23.

15
16 History Note: Authority G.S. 143-215.1(a)(6); 143-215.1(b); 143-215.3(a)(1); 143-215.3(c);
17 Codifier determined that findings did not meet criteria for temporary rule on September 26, 2001
18 and October 12, 2001;
19 Temporary Adoption Eff. October 22, 2001;
20 Eff. April 1, 2003.
21 Amended Eff. INSERT DATE

- Commented [HK13]: no effect – moved from Rule .1301
- Commented [HK14]: no effect – added header
- Commented [HK15]: clarification
- Commented [HK16]: no effect – update name
- Commented [HK17]: no effect - grammar
- Commented [HK18]: no effect - grammar
- Commented [HK19]: no effect – punctuation
- Commented [HK20]: clarification
- Commented [HK21]: no effect - formatting
- Commented [HK22]: no effect - punctuation
- Commented [HK23]: no effect – removed language to just reference statute

1 15A NCAC 02H .1305 is proposed for amendment as follows:

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15A NCAC 02H .1305 REVIEW OF APPLICATIONS

~~(a) In evaluating requests for an Individual Permit or Certificate of Coverage under a General Permit based on the procedures outlined in Paragraphs (c) through (d) of this Rule, the Director shall determine if the proposed discharge resulting from an activity has the potential to remove or degrade those existing uses in 15A NCAC 02B .0231(a) and (b) which are present in the isolated wetland or listed in the classification for classified isolated surface water. Discharges resulting from activities which would not remove or degrade existing uses shall be reviewed according to the procedures found in Subparagraphs (c)(2) through (c)(6) or (d)(2) through (d)(6) of this Rule. An applicant may also demonstrate that designated uses are not present at a particular site using a wetland evaluation procedure approved by the Director according to the criteria found in 15A NCAC 02B .0103(e); otherwise the designated uses as outlined at 15A NCAC 02B .0231(a) and (b) are assumed to exist, and the appropriate review procedures shall be undertaken. An Individual Permit or Certificate of Coverage under a General Permit shall be issued where the Director determines water quality standards will be met, including protection of existing uses.~~

~~(b)(a) Discharges from Activities Deemed to be Permitted: DISCHARGES FROM ACTIVITIES DEEMED TO BE PERMITTED. The following activities shall be deemed to be permitted:~~

- ~~(1) Discharges resulting from activities in isolated wetlands or waters that impact less than 1/2 acre of isolated classified surface waters for the entire project are below the thresholds described in Subparagraphs (c)(2) and (d)(2) of this Rule, are deemed to be permitted as long as provided they fully comply with the conditions listed below in Sub-paragraph (b)(4) of this Rule, and it shall not be necessary for the Division to issue permits for these activities, may proceed without review procedures outlined in Subparagraphs (c)(1) through (c)(6) and (d)(1) through (d)(6) of this Rule. However, the Director may require that any discharge resulting from an activity obtain an Individual Permit or Certificate of Coverage under a General Permit if the Director determines that the discharge would result in a violation of water quality or wetland standards listed in 15A NCAC 02B .0200. This determination shall be made based on existing or projected environmental impacts.~~
- ~~(2) Discharges resulting from activities that impact less than 150 linear feet of isolated classified streams for the entire project are deemed to be permitted provided they fully comply with the conditions listed in Sub-paragraph (b)(4) of this Rule, and it shall not be necessary for the Division to issue permits for these activities.~~
- ~~(3) Discharges resulting from activities that impact less than or equal to one acre of isolated wetlands for the entire project in the coastal region, less than or equal to one-half acre of isolated wetlands for the entire project in the piedmont region, and less than or equal to one-third acre of isolated wetlands for the entire project in the mountain region are deemed to be permitted provided they fully comply with the conditions listed in Sub-paragraph (b)(4) of this Rule, and it shall not be necessary for the Division to issue permits for these activities. For purposes of implementing this Sub-paragraph, the coastal, piedmont and mountain regions shall be as follows:~~

Commented [HK1]: no effect – removed repetitive language

Commented [HK2]: never implemented so removed

Commented [HK3]: no effect – removed repetitive language

Commented [HK4]: no effect - formatting

Commented [HK5]: clarification

Commented [HK6]: option removed per SL 2014-120 and SL 2015-286

Commented [HK7]: clarification

- 1 (A) “Coastal Region” includes Beaufort, Bertie, Bladen, Brunswick, Camden,
- 2 Carteret, Chowan, Columbus, Craven, Cumberland, Currituck, Dare, Duplin,
- 3 Edgecombe, Gates, Greene, Halifax, Harnett, Hertford, Hoke, Hyde, Johnston,
- 4 Jones, Lee, Lenoir, Martin, Moore, Nash, New Hanover, Northampton, Onslow,
- 5 Pamlico, Pasquotank, Pender, Perquimans, Pitt, Richmond, Robeson, Sampson,
- 6 Scotland, Tyrrell, Washington, Wayne, and Wilson Counties;
- 7 (B) “Piedmont Region” includes Alamance, Alexander, Anson, Burke, Cabarrus,
- 8 Caldwell, Caswell, Catawba, Chatham, Cleveland, Davidson, Davie, Durham,
- 9 Forsyth, Franklin, Gaston, Granville, Guilford, Iredell, Lincoln, Mecklenburg,
- 10 Montgomery, Orange, Person, Polk, Randolph, Rockingham, Rowan, Rutherford,
- 11 Stanly, Stokes, Surry, Union, Vance, Wake, Warren, Wilkes, and Yadkin
- 12 Counties;
- 13 (C) “Mountain Region” includes Alleghany, Ashe, Avery, Buncombe, Cherokee,
- 14 Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, McDowell,
- 15 Mitchell, Swain, Transylvania, Watauga and Yancey Counties.
- 16 (D) When a landowner believes their property is not in the correct region for purposes
- 17 of this Rule, they may have a soil scientist conduct a site-specific evaluation to
- 18 determine the soil series. The soil scientist shall be an individual who is currently
- 19 licensed or authorized to practice soil science under G.S. 89F by the North
- 20 Carolina Board for Licensing of Soil Scientists. The landowner shall submit the
- 21 soil report to the Division of Water Resources for review. Soil series that occur
- 22 in North Carolina have been categorized by the Natural Resources Conservation
- 23 Service of the US Department of Agriculture as defined in Rule .1306 of this
- 24 Section.

(4) Conditions which must be met for projects deemed to be permitted:

- 25 (+)(A) Erosion and sediment control practices shall equal ~~or exceed~~ at a minimum those
- 26 required by the N.C. Division of Energy, Mineral, and Land Resources or its local
- 27 delegated program for the Sedimentation Pollution Control Act and shall be in
- 28 full compliance with all specifications governing the proper design, installation,
- 29 operation and maintenance of such Best Management Practices in order to help
- 30 assure compliance with the appropriate turbidity and other water quality
- 31 standards;
- 32
- 33 (2)(B) All erosion and sediment control practices placed in isolated wetlands or isolated
- 34 classified surface waters must be removed and the original grade restored within
- 35 two months after the Division of Energy, Mineral, and Land Resources or local
- 36 delegated program ~~determines that the land disturbance project is completed and~~
- 37 ~~the file is closed out;~~ has released the specific area within the project;

Commented [HK8]: per SL 2014-120 and SL 2015-286

Commented [HK9]: no effect - grammar

Commented [HK10]: no effect - clarification

1 ~~(3)(C)~~ ~~Live or fresh Uncured or curing concrete shall not come into direct contact with~~
2 ~~surface water until the concrete has hardened; waters of the state; and~~

Commented [HK11]: no effect - clarification

3 (D) ~~All work in or adjacent to isolated stream waters shall be conducted so that the~~
4 ~~flowing stream does not come in contact with the disturbed area. Approved best~~
5 ~~management practices from the NC Sediment and Erosion Control Manual, or the~~
6 ~~NC DOT Construction and Maintenance Activities Manual shall be used to~~
7 ~~minimize excavation in flowing water.~~

Commented [HK12]: clarification

8 ~~(4)(E)~~ Measures shall be taken to ensure that the hydrology of any remaining isolated
9 wetland or isolated classified surface waters is not affected by the discharge.

10 ~~(e)(b) EVALUATION. The Director/Division shall issue an Individual Permit or a Certificate of Coverage under a~~
11 ~~General Permit upon determining that the proposed activity will comply with state water quality standards, which~~
12 ~~includes designated uses, numeric criteria, narrative criteria and the state's antidegradation policy, as defined in the~~
13 ~~rules of Section .0200 of 15A NCAC 02B and the rules of Section .0100 and .0200 of 15A NCAC 02L. existing uses~~
14 ~~are not removed or degraded by a discharge to isolated classified surface waters for a discharge resulting from an~~
15 ~~activity which: In assessing whether the proposed activity will comply with water quality standards, the Division shall~~
16 ~~evaluate if the proposed activity:~~

Commented [HK13]: removed repetitive language from above; just list evaluation criteria here

17 (1) ~~has no practical alternative under the criteria outlined in Paragraph (e) of this Rule; alternative. A~~
18 ~~lack of practical alternatives may be shown by demonstrating that, considering the potential for a~~
19 ~~reduction in size, configuration or density of the proposed project and all alternative designs, that~~
20 ~~the basic project purpose cannot be practically accomplished in an economically viable manner,~~
21 ~~which would avoid or result in less adverse impact to isolated classified surface waters or isolated~~
22 ~~wetlands;~~

Commented [HK14]: incorporated language from paragraph (e) into this sub-paragraph

23 (2) ~~will minimize adverse impacts to the isolated classified surface waters under criteria outlined in~~
24 ~~Paragraph (f) of this Rule, or impacts less than or equal to 1/3 acre of isolated classified surface~~
25 ~~waters or less than or equal to 150 linear feet of isolated streams for the entire project; has avoided~~
26 ~~and minimized impacts to isolated classified surface waters and isolated wetlands to ensure any~~
27 ~~remaining surface waters or wetlands, and any surface waters or wetlands downstream, continue to~~
28 ~~support existing uses during and after project completion;~~

Commented [HK15]: no effect - clarification

29 (3) ~~does would not result in the cause or contribute to a violation of groundwater standards, or water~~
30 ~~quality standards in the remaining surface waters; standards;~~

Commented [HK16]: no effect - clarification

31 (4) ~~does would not result in secondary or cumulative impacts which are environmental impacts resulting~~
32 ~~from incremental effects of an activity when added to other past, present, and reasonably foreseeable~~
33 ~~future activities regardless of what entities undertake such other actions, and that cause or contribute~~
34 ~~to, or will cause or contribute to, a violation of downstream water quality standards; and~~

Commented [HK17]: no effect - clarification

35 (5) ~~provides for protection of downstream water quality standards through the use of on-site stormwater~~
36 ~~control measures; and~~

Commented [HK18]: removed per SL 2017-10

1 (6)(5) provides for replacement of existing uses through compensatory mitigation with the following
2 provisions: as described in Paragraph (c) of this Rule.

3 (A) Impacts to all surface waters on the site which total less than one acre of surface
4 waters or less than 150 linear feet of streams do not require compensatory
5 mitigation;

6 (B) Mitigation shall be at a 2:11:1 ratio of acreage of waters or length of isolated
7 stream of mitigation to the acreage of waters or length of isolated stream;

8 (C) Mitigation for impacts to waters shall be conducted within the same river basin
9 and physiographic province when practical; and

10 (D) In kind mitigation will be required unless other forms of mitigation provide
11 greater water quality or aquatic life benefit.

12 (d) The Director shall issue an Individual Permit or Certificate of Coverage under a General Permit upon determining
13 that existing uses are not removed or degraded by a discharge to isolated wetlands for a discharge resulting from an
14 activity which:

15 (1) has no practical alternative as described in Paragraph (e) of this Rule;

16 (2) will minimize adverse impacts to the isolated wetlands under Paragraph (f) of this Rule on
17 consideration of existing topography, vegetation, fish and wildlife resources, and hydrological
18 conditions or impacts less than or equal to 1/3 acre of isolated wetlands east of I-95 and less than or
19 equal to 0.1 acre of isolated wetlands west of I-95 for the entire project;

20 (3) does not result in the violation of groundwater standards, or wetland standards in the remaining
21 wetlands;

22 (4) does not result in cumulative impacts which are described in Subparagraph (e)(4) of this Rule and
23 that cause or will cause a violation of downstream water quality standards;

24 (5) provides protection for downstream water quality standards through the use of on-site stormwater
25 control measures; and

26 (6) provides for replacement of existing uses through wetland mitigation as described in Subparagraphs
27 (g)(1) through (g)(9) of this Rule.

28 (e) A lack of practical alternatives may be shown by demonstrating that, considering the potential for a reduction in
29 size, configuration or density of the proposed project and all alternative designs that the basic project purpose cannot
30 be practically accomplished in an economically viable manner which would avoid or result in less adverse impact to
31 isolated classified surface waters or isolated wetlands.

32 (f) Minimization of discharges may be demonstrated by showing that any remaining isolated classified surface waters
33 or wetlands are able to continue to support the existing uses after project completion, or that the discharges are required
34 due to:

35 (1) The spatial and dimensional requirements of the project; or

36 (2) The location of any existing structural or natural features that may dictate the placement or
37 configuration of the proposed project; or

Commented [HK19]: moved to paragraph (c) below

Commented [HK20]: no effect – incorporated in paragraph (b) above

1 ~~(3)~~ The purpose of the project and how the purpose relates to placement, configuration or density.

2 ~~(c)~~ MITIGATION. Replacement or mitigation of unavoidable losses of existing uses in isolated classified surface

3 waters or isolated wetlands shall be reviewed in accordance with all of the following guidelines:

4 (1) The ~~Director Division~~ shall coordinate mitigation requirements with other permitting agencies that

5 are requiring mitigation for a specific ~~project project~~.

6 (2) ~~Mitigation shall not be required for discharges resulting from activities that impact a total of less~~

7 ~~than one acre of isolated and other wetlands.~~ Mitigation requirements for impacts to isolated

8 wetlands shall only apply to the amount of impact that exceeds the threshold set out in Subparagraph

9 (b)(3) of this Rule. The mitigation ratio for impacts exceeding the threshold for the entire project

10 shall be 1:1. Impacts to isolated wetlands shall not be combined with the project impacts to 404

11 jurisdictional wetlands or streams for the purpose of determining when impact thresholds that trigger

12 a mitigation requirement are met.

13 (3) ~~Total impacts to less than 300 linear feet of isolated perennial streams for the entire project shall not~~

14 ~~require compensatory mitigation. For linear publically owned and maintained transportation~~

15 ~~projects that the U.S. Army Corps of Engineers determines are not part of a larger common plan of~~

16 ~~development, impacts to less than 300 linear feet per stream shall not require compensatory~~

17 ~~mitigation. The mitigation ratio for isolated stream impacts shall be 1:1.~~

18 (4) The required area or length of mitigation required shall be multiplied by 1 for restoration, 1.5 for

19 establishment, 2 for enhancement and 5 for preservation. These multipliers do not apply to approved

20 mitigation sites where the Interagency Review Team has approved other ratios.

21 ~~(3)(5)~~ Participation in wetland restoration programs coordinated by the Department of Environment and

22 Natural Resources or approved mitigation banks (those mitigation banks which have been approved

23 by the United States Army Corp of Engineers through the Mitigation Banking Review Team

24 process) shall be required whenever the Director finds that such participation is available and

25 satisfies the other requirements of this Paragraph, unless the applicant can demonstrate that

26 participation in these restoration programs is not practical. Mitigation shall comply with the

27 requirements set forth in G.S. 143-214.11. Mitigation projects implemented within waters or

28 wetlands that are regulated under Section 404 of the Clean Water Act may be used to satisfy the

29 requirements of this Paragraph.

30 ~~(4)(6)~~ Acceptable methods of wetlands mitigation as defined in 33 CFR Part 332 available free of charge

31 on the internet at: http://water.epa.gov/lawsregs/guidance/wetlands/wetlandsmitigation_index.cfm,

32 include restoration, including both re-establishment and rehabilitation, establishment (creation),

33 enhancement and preservation. No more than twenty-five percent (25%) of the mitigation required

34 by Subparagraph (C)(2) or (3) can be met through preservation, unless the Director determines that

35 the public good would be better served by a higher percentage of preservation. ~~are listed below:~~

36 (A) Restoration: Re-establishment of hydrology to the natural or reference condition

37 which are sites within a specific geographic region that are chosen, for the

Commented [HK21]: moved language into Rule .1301

Commented [HK22]: no effect - clarification

Commented [HK23]: no effect – update name

Commented [HK24]: no effect - punctuation

Commented [HK25]: per SL 2014-120 and 2015-286

Commented [HK26]: no effect – clarification (in current and previous general permit)

Commented [HK27]: changed from 2:1

Commented [HK28]: no effect – moved from (6) below

Commented [HK29]: no effect - clarification

Commented [HK30]: Removed requirement for 1:1 restoration or creation, but wanted to place a limit on preservation. Provide an option for the Director to allow for a higher preservation percentage on a case-by-case basis. 25% is consistent with requirement in consolidated buffer mitigation rule (15A NCAC 02B .0295)

1 purposes of functional assessment or mitigation, to encompass the known
 2 variation of a group or class of wetlands, including both natural and disturbance
 3 variations and is in an area that contains hydric soils. Vegetation must also be re-
 4 established if it differs from the natural or reference condition;

5 (B) ~~Creation: Construction of wetlands in an area where wetlands did not exist in the~~
 6 ~~past;~~

7 (C) ~~Enhancement: Increasing one or more of the functions of an existing wetland by~~
 8 ~~manipulation of vegetation or hydrology; and~~

9 (D) ~~Preservation: Protection of wetlands through purchase, donation or conveyance~~
 10 ~~of a conservation easement to a government or non-profit agency for~~
 11 ~~management.~~

12 (5) ~~Restoration or creation shall be the required method of wetland mitigation. The other methods~~
 13 ~~may be utilized if the applicant can demonstrate that restoration or creation is not practical or that~~
 14 ~~the proposed alternative is the most ecologically viable method of replacing the lost functions and~~
 15 ~~values.~~

16 (6) ~~For all discharges resulting from activities which impact, in total, more than one acre of isolated and~~
 17 ~~other wetlands, the mitigation ratio shall be 2:1 acres of mitigation to the acreage impacted. This~~
 18 ~~mitigation must include at least a 1:1 ratio of restoration or creation except as outlined in~~
 19 ~~Subparagraph (g)(7) of this Rule. The acres of required mitigation for other types of mitigation~~
 20 ~~shall be determined by multiplying the 2:1 ratio by 1.5 for creation, 2 for enhancement, and 5 for~~
 21 ~~preservation. The multiplier ratios listed in this Paragraph do not apply to mitigation sites where~~
 22 ~~the state and federal review agencies have approved credit/debit ratios.~~

23 (7) ~~All mitigation proposals shall provide for the replacement of wetland acres lost due to the proposed~~
 24 ~~discharge resulting from an activity at a minimum of a 1:1 ratio through restoration or creation prior~~
 25 ~~to utilizing enhancement or preservation to satisfy the mitigation requirements, unless the Director~~
 26 ~~determines that other forms of mitigation would provide greater water quality or aquatic life benefit.~~

27 (8)(7) ~~Mitigation for impacts to isolated classified surface waters, isolated streams and isolated wetlands~~
 28 ~~designated in Paragraph (b) of this Rule shall be conducted in North Carolina within the same river~~
 29 ~~basin and physiographic province when practical, in accordance with 33 CFR Part 332, available~~
 30 ~~free of charge on the internet at:~~
 31 ~~http://water.epa.gov/lawsregs/guidance/wetlands/wetlandsmitigation_index.cfm, unless otherwise~~
 32 ~~approved by the Director; and~~

33 (9)(8) ~~In-kind mitigation is required unless the Director determines that other forms of mitigation would~~
 34 ~~provide greater water quality or aquatic life benefit.~~

Commented [HK31]: reference federal definitions for east of implementation and consistency

Commented [HK32]: removed hierarchy of preference for mitigation types

Commented [HK33]: moved to subparagraph (c)(4) above

Commented [HK34]: Removed requirement for 1:1 restoration or creation

Commented [HK35]: clarification

Commented [HK36]: no effect - clarification

35
 36 *History Note:* Authority G.S. 143-211(c); 143-214.7C; 143-215.1(a)(6); 143-215.3(a)(1); 143-215.3(c); S.L.
 37 2014, c. 120; S.L. 2015, c. 286; S.L. 2017, c. 10

1 *Codifier determined that findings did not meet criteria for temporary rule on September 26, 2001*
2 *and October 12, 2001;*
3 *Temporary Adoption Eff. October 22, 2001;*
4 *Eff. April 1, 2003;*
5 *Amended Eff. August 1, 2012 (see S.L. 2012-143, s.1.(f)); INSERT DATE*
6

1 15A NCAC 02H .1306 is proposed for adoption as follows:

2
3 **15A NCAC 02H .1306 SOIL SERIES**

4 For purposes of implementing the Rules in this Section, the Natural Resources Conservation Service of the U.S.
5 Department of Agriculture have categorized soil series that occur in North Carolina as follows:

6 (1) Soil series in the Mountain Region shall include the following: Alarka, Anakeesta, Arkaqua, Ashe,
7 Balsam, Bandana, Biltmore, Braddock, Bradson, Brasstown, Breakneck, Brevard, Brownwood,
8 Buladean, Burton, Cades, Calvin, Cashiers, Cataloochee, Cataska, Chandler, Cheoah, Chester,
9 Chestnut, Chestoa, Chiltoskie, Cleveland, Clifffield, Clifford, Clifton, Clingman, Codorus, Colvard,
10 Comus, Cowee, Craggey, Crossnore, Cruso, Cullasaja, Cullowhee, Dellwood, Dillard, Dillsboro,
11 Ditney, Edneytown, Edneyville, Ela, Ellijay, Elsinboro, Evard, Fannin, Farner, Fontaflora, French,
12 Greenlee, Guyot, Harmiller, Hatboro, Hayesville, Heintooga, Hemphill, Hiwassee, Horsetrough,
13 Huntdale, Iotla, Jeffrey, Junaluska, Kanuga, Keener, Kinkora, Lauada, Leatherwood, Longhope,
14 Lonon, Lostcove, Luftee, Mars Hill, Maymead, Micaville, Nantahala, Nikwasi, Northcove,
15 Nowhere, Oconaluftee, Ostin, Oteen, Peaks, Pigeonroost, Pineola, Pinnacle, Plott, Porters, Pullback,
16 Rabun, Reddies, Rosman, Saluda, Santeetlah, Saunook, Sauratown, Shinbone, Skyuka, Smokemont,
17 Snowbird, Soco, Spivey, Statler, Stecoah, Suches, Swannanoa, Sylco, Sylva, Tanasee, Tate,
18 Thunder, Thurmont, Toccoa, Toecane, Toxaway, Transylvania, Trimont, Tsali, Tuckasegee,
19 Tusquitee, Unaka, Unicoi, Unison, Walnut, Watauga, Wayah, Wesser, Whiteoak, Whiteside, and
20 Zillicoa.

21 (2) Soil series in the Piedmont Region shall include the following: Alamance, Altavista, Appling,
22 Appomattox, Armenia, Ashlar, Augusta, Ayersville, Badin, Banister, Bannertown, Belews Lake,
23 Bentley, Betheria, Bethlehem, Biscoe, Brickhaven, Buncombe, Callison, Carbonton, Cartecay,
24 Casville, Cecil, Chewacla, Cid, Claycreek, Cliffside, Clover, Colfax, Congaree, Coronaca,
25 Creedmoor, Cullen, Dan River, Danripple, Davidson, Davie, Delila, Devotion, Dorian, Durham,
26 Elbert, Enon, Enott, Exway, Fairview, Georgeville, Goldston, Granville, Green Level, Grover,
27 Gwinnett, Halifax, Hallison, Haw River, Helena, Herndon, Hibriten, Hiwassee, Hornsboro, Hulett,
28 Iredell, Jackland, Kinkora, Kirksey, Lackstown, Leaksville, Lignum, Lloyd, Louisa, Louisburg,
29 Madison, Mandale, Masada, Mattaponi, Mayodan, McQueen, Meadowfield, Mecklenburg, Merry
30 Oaks, Misenheimer, Mocksville, Monacan, Moncure, Montonia, Mooshaunee, Nanford, Nason,
31 Nathalie, Oak Level, Oakboro, Orange, Ostin, Pacolet, Pactolus, Peakin, Peawick, Penhook,
32 Pfafftown, Picture, Pilot Mountain, Pinkston, Pinoka, Pittsboro, Poindexter, Polkton, Poplar Forest,
33 Rasalo, Rhodhiss, Rion, Riverview, Ronda, Rowan, Saw, Secrest, Sedgefield, Siloam, Skyuka,
34 Spartanburg, Spray, Spriggs, Starr, Stoneville, Stott Knob, Tarrus, Tatum, Tillery, Toast, Toccoa,
35 Tomlin, Totier, Turbeville, Tussahaw, Uwharrie, Vance, Wadesboro, Wake, Warne, Wate, Wateree,
36 Wedowee, Wehadkee, Westfield, White Store, Wickham, Wilkes, Winnsboro, Woolwine,
37 Worsham, Wynott, Yadkin, and Zion.

Commented [HK1]: new rule to correspond with requirement in Subparagraph (a)(3) in Rule .1305

(3) Soil series in the Coastal Region shall include the following: Acredale, Ailey, Alaga, Alpin, Arapahoe, Argent, Augusta, Autryville, Aycock, Backbay, Ballahack, Barclay, Bayboro, Baymeade, Belhaven, Bertie, Bether, Bibb, Bladen, Blaney, Blanton, Bohicket, Bojac, Bolling, Bonneau, Bragg, Brookman, Butters, Byars, Cainhoy, Candor, Cape Fear, Cape Lookout, Caroline, Carteret, Centenary, Chapanoke, Charleston, Chastain, Chenneby, Chesapeake, Chipley, Chowan, Conaby, Conetoe, Corolla, Cowarts, Coxville, Craven, Croatan, Currituck, Dare, Deloss, Delway, Dogue, Dorovan, Dothan, Dragston, Duckston, Dunbar, Duplin, Echaw, Emporia, Engelhard, Exum, Faceville, Foreston, Fork, Fortescue, Fripp, Fuquay, Gertie, Gilead, Goldsboro, Grantham, Grifton, Gritney, Gullrock, Hobonny, Hobucken, Hyde, Hydeland, Icaria, Invershiel, Johns, Johnston, Kalmia, Kenansville, Kinston, Kureb, Lakeland, Leaf, Lenoir, Leon, Liddell, Lillington, Longshoal, Lucy, Lumbee, Lynchburg, Lynn Haven, Mandarin, Mantachie, Marlboro, Marvyn, Masontown, Maxton, Mayodan, McColl, Meggett, Mooshaunee, Muckalee, Munden, Murville, Myatt, Nahunta, Nakina, Nankin, Nawney, Neeses, Newhan, Newholland, Nimmo, Nixonton, Noboco, Norfolk, Ocilla, Onslow, Orangeburg, Osier, Ousley, Pactolus, Pamlico, Pantego, Pasquotank, Paxville, Peakin, Pelion, Pender, Perquimans, Pettigrew, Plummer, Pocalla, Polawana, Ponzer, Portsmouth, Pungo, Rains, Rimini, Roanoke, Roper, Rumford, Rutlege, Scuppernong, Seabrook, Seagate, Shellbluff, Stallings, State, Stockade, Suffolk, Tarboro, Tetotum, Thursa, Toisnot, Tomahawk, Tomotley, Torhunta, Troup, Uchee, Valhalla, Varina, Vacluse, Wagram, Wahee, Wakulla, Wando, Wasda, Weeksville, Wilbanks, Winton, Woodington, Wrightsboro, Wysocking, Yaupon, Yeopim, and Yonges.

History Note: Authority G.S. 143-215.1(a)(6); 143-215.3(a)(1); 143-215.3(c); S.L. 2014, c. 120; S.L. 2015, c. 286
Eff. DATE