

TITLE 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY

Notice is hereby given in accordance with G.S. 150B-21.3A(c)(2)g. that the Environmental Management Commission intends to readopt with substantive changes the rules cited as 15A NCAC 02L .0403-.0409, .0502 and readopt without substantive changes the rules cited as 15A NCAC 02L .0401, .0402, .0410-.0415, .0501 and .0503-.0515.

Pursuant to G.S. 150B-21.2(c)(1), the text of rules to be readopted without substantive changes are not required to be published. The text of the rules is available on the OAH website: <http://reports.oah.nc.us/ncac.asp>.

Link to agency website pursuant to G.S. 150B-19.1(c): <https://deq.nc.gov/permits-regulations/rules-regulations/proposed-main>

Proposed Effective Date: *May 1, 2019*

Public Hearing:

Date: *January 8, 2019*

Time: *6:00 p.m.*

Location: *Green Square Building, Room 1210, 217 West Jones Street, Raleigh, NC 27603*

Reason for Proposed Action: *These rule changes are necessary to correct grammatical errors, clarify ambiguous language, conform to changes made to General Statute (G.S.) 143-215.94, replace current temporary rules required by SL 2017-57 Section 13.19 as required to implement SL 2015-241 Section 14.16B, and as part of the readoption of the 15A NCAC 02L rules as required by G.S. 150B-21.3A (Periodic Review of Existing Rules).*

Comments may be submitted to: *Jeremy Poplawski, NCDEQ/DWM/UST Section, 1646 Mail Service Center, Raleigh, NC 27699-1646, phone (919) 707-8151, fax (919) 715-1117, email Jeremy.Poplawski@ncdenr.gov*

Comment period ends: *February 15, 2019*

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact (check all that apply).

- State funds affected
- Environmental permitting of DOT affected
Analysis submitted to Board of Transportation
- Local funds affected
- Substantial economic impact (\geq \$1,000,000)
- Approved by OSBM
- No fiscal note required by G.S. 150B-21.4
- No fiscal note required by G.S. 150B-21.3A(d)(2)

CHAPTER 02 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 02L - GROUNDWATER CLASSIFICATION AND STANDARDS

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

15A NCAC 02L .0401 PURPOSE AND SCOPE (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02L .0402 DEFINITIONS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02L .0403 RULE APPLICATION

This Section ~~applies shall apply~~ to any discharge or release from a "commercial underground storage tank" or a "noncommercial underground storage tank," as those terms are defined in G.S. 143-215.94A, ~~which that~~ is reported on or after the effective date of this Section. ~~This Section shall apply to any discharge or release from a "commercial underground storage tank" or a "noncommercial underground storage tank," as those terms are defined in G.S. 143-215.94A which is reported before the effective date of this Section as provided in 15A NCAC 02L .0416 of this Section.~~ The requirements of this Section shall apply to the owner and operator of the underground storage tank from which the discharge or release occurred, a landowner seeking reimbursement from the Commercial

Leaking Underground Storage Tank Fund or the Noncommercial Leaking Underground Storage Tank Fund under G.S. 143-215.94E, and any other person responsible for the assessment or cleanup of a discharge or release from an underground storage tank, including any person who has conducted or controlled an activity ~~which that~~ results in the discharge or release of petroleum or petroleum products as defined in G.S. 143-215.94A(10) to the groundwaters of the ~~State, State~~ or in proximity thereto; these persons shall be collectively referred to for purposes of this Section as the "responsible party." This Section shall be applied in a manner consistent with the rules found in 15A NCAC ~~2N 02N~~ in order to assure that the State's requirements regarding assessment and cleanup from underground storage tanks are no less stringent than Federal requirements.

History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.94A; 143-215.94E; 143-215.94T; 143-215.94V; 143B-282; 1995 (Reg. Sess. 1996) c. 648, s. 1; Recodified from 15A NCAC 02L .0115(b); Amended Eff. December 1, ~~2005~~, 2005; Readopted Eff. XX 1, 20XX.

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

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

- (1) take ~~immediate~~ action to prevent ~~any all~~ further discharge or release of petroleum from the underground storage tank; identify and mitigate ~~any all~~ fire, ~~explosion or explosion, and~~ vapor ~~hazard; hazards;~~ remove any free product; and comply with the requirements of Rules 15A NCAC 02N .0601 through .0604 and .0604, .0701 through .0703, and .0705 of Subchapter 02N; within 24 hours of discovery;
- (2) incorporate the requirements of 15A NCAC 02N .0704 into the submittal required under Item (3) of this Paragraph or the limited site assessment report required under ~~15A NCAC 02L Rule .0405~~ of this Section, whichever is applicable. ~~Such~~ The submittals shall constitute compliance with the reporting requirements of 15A NCAC 02N .0704(b);
- (3) submit within 90 days of the discovery of the discharge or release a soil contamination report containing information sufficient to show that remaining unsaturated soil in the side walls and at the base of the excavation does not contain contaminant levels ~~which that~~ exceed either the "soil-to-groundwater" or the residential maximum soil contaminant concentrations established by the Department pursuant to ~~15A NCAC 02L Rule .0411~~ of this Section, whichever is lower. If ~~such~~ the showing is made, the discharge or release shall be classified as low risk by the ~~Department;~~ Department as defined in Rules .0406 and .0407 of this Section.

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

- (1) take necessary actions to protect public health, safety, and welfare and the environment, including actions to prevent all further discharge or release of petroleum from the noncommercial underground storage tank; to identify and mitigate all fire, explosion, and vapor hazards; and to report the release within 24 hours of discovery, in compliance with G.S. 143-215.83(a), G.S. 143-215.84(a), G.S. 143-215.85(b), and G.S. 143-215.94E; and
- (2) provide or otherwise make available any information required by the Department to determine the site risk as described in Rules .0405, .0406, and .0407 of this Section.

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

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

The Department shall reclassify the site as high risk, as defined in Rule .0406(1) of this Section, upon receipt of new information related to site conditions indicating that the discharge or release from a noncommercial underground storage tank poses an unacceptable risk or a potentially unacceptable risk to human health or the environment, as described in Rule .0407 of this Section.

History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.94A; 143-215.94E; 143-215.94T; 143-215.94V; 143B-282; 1995 (Reg. Sess. 1996) c. 648, s. 1; Recodified from 15A NCAC 02L .0115(c)(1)-(3); Amended Eff. December 1, ~~2005~~, 2005; Readopted Eff. XX 1, 20XX.

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

If the required showing for a commercial underground storage tank cannot be made or if the Department determines that a release from a noncommercial underground storage tank represents an unacceptable risk under ~~15A NCAC 02L Rule .0404~~ of this Section, the responsible party shall submit within 120 days of the discovery of the discharge or release, or within such other greater time limit approved by the Department, a report containing information needed by the Department to classify the level of risk to human health and the environment posed by a discharge or release under ~~15A NCAC 02L Rule .0406~~ of this Section. When considering a request from a responsible party for additional time to submit the report, the Department shall consider the extent to which the request for additional time is due to factors outside of the control of the responsible party, the previous history of the person submitting the report in complying with deadlines established under the Commission's rules, the technical complications associated with assessing the extent of

contamination at the site or identifying potential receptors, and the necessity for action to eliminate an imminent threat to public health or the environment. Such The report shall include, at a minimum, include:

- (1) a location map, based on a USGS topographic map, showing the radius of 1500 feet from the source area of a confirmed release or discharge and depicting all water supply ~~wells and~~, wells, surface ~~waters~~ waters, and designated wellhead protection areas as defined in 42 U.S.C. 300h-7(e) within the 1500-foot radius. 42 U.S.C. 300h-7(e), is incorporated by reference including subsequent amendments and editions. Copies may be obtained at no cost from the U.S. Government Bookstore's website at <http://www.gpo.gov/fdsys/pkg/USCODE-2010-title42/html/USCODE-2010-title42-chap6A-subchapXII-partC-sec300h-7.htm>. The material is available for inspection at the Department of Environmental Quality, UST Section, 217 West Jones Street, Raleigh, NC 27603. For purposes of this Section, source area means the point of release or discharge from the underground storage tank system;
- (2) a determination of whether the source area of the discharge or release is within a designated wellhead protection area as defined in 42 U.S.C. 300h-7(e);
- (3) if the discharge or release is in the Coastal Plain physiographic region as designated on a map entitled "Geology of North Carolina" published by the Department in 1985, a determination of whether the source area of the discharge or release is located in an area in which there is recharge to an unconfined or semi-confined deeper aquifer ~~which that~~ is being used or may be used as a source of drinking water;
- (4) a determination of whether vapors from the discharge or release pose a threat of explosion due to the accumulation of vapors in a confined space or pose any other serious threat to public health, public ~~safety~~ safety, or the environment;
- (5) scaled site ~~map(s)~~ maps showing the location of the following ~~which that~~ are on or adjacent to the property where the source is located: ~~site boundaries, roads, buildings, basements, floor and storm drains, subsurface utilities, septic tanks and leach fields, underground storage tank systems, monitoring wells, borings and the sampling points;~~
 - (a) site boundaries;
 - (b) roads;
 - (c) buildings;
 - (d) basements;
 - (e) floor and storm drains;
 - (f) subsurface utilities;
 - (g) septic tanks and leach fields;
 - (h) underground and aboveground storage tank systems;
 - (i) monitoring wells;
 - (j) water supply wells;
 - (k) surface water bodies and other drainage features;
 - (l) borings; and
 - (k) the sampling points;
- (6) the results from a limited site assessment ~~which that~~ shall include:
 - (a) the analytical results from soil samples collected during the construction of a monitoring well installed in the source area of each confirmed discharge or release from a noncommercial or commercial underground storage tank and either the analytical results of a groundwater sample collected from the well or, if free product is present in the well, the amount of free product in the well. The soil samples shall be collected every five feet in the unsaturated zone unless a water table is encountered at or greater than a depth of 25 feet from land surface in which case soil samples shall be collected every 10 feet in the unsaturated zone. The soil samples shall be collected from suspected worst-case locations exhibiting visible contamination or elevated levels of volatile organic compounds in the borehole;
 - (b) if any constituent in the groundwater sample from the source area monitoring well installed in accordance with Sub-item (a) of this Item, for a site meeting the high risk classification in ~~15A NCAC 02L .0406(1),~~ Rule .0406(1) of this Section, exceeds the standards or interim standards established in ~~15A NCAC 02L Rule .0202 of this Subchapter~~ by a factor of 10 and is a discharge or release from a commercial underground storage tank, the analytical results from a groundwater sample collected from each of three additional monitoring wells or, if free product is present in any of the wells, the amount of free product in such well. The three additional monitoring wells shall be installed as follows: ~~as best as can be determined~~, one upgradient of the source of contamination and two downgradient of the source of contamination. The monitoring wells installed upgradient and downgradient of the source of contamination ~~must~~ shall be located such that groundwater flow direction can be determined; and
 - (c) potentiometric data from all required wells;
- (7) the availability of public water supplies and the identification of properties served by the public water supplies within 1500 feet of the source area of a confirmed discharge or release;
- (8) the land use, including zoning if applicable, within 1500 feet of the source area of a confirmed discharge or release;
- (9) a discussion of ~~site specific~~ site-specific conditions or possible actions ~~which that~~ could result in lowering the risk classification assigned to the release. Such The discussion shall be based on information known or required to be obtained under this Paragraph; and
- (10) names and current addresses of all owners and operators of the underground storage tank systems for which a discharge or release is confirmed, the ~~owner(s)~~ owners of the land upon which such systems are located, and all potentially affected real property owners. ~~When considering a request from a responsible party for additional time to submit the report, the Division shall consider the extent to which the request for additional time is due to factors outside of the control of the responsible party, the previous history of the person submitting the report in complying with deadlines~~

~~established under the Commission's rules, the technical complications associated with assessing the extent of contamination at the site or identifying potential receptors, and the necessity for immediate action to eliminate an imminent threat to public health or the environment.~~

History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.94A; 143-215.94E; 143-215.94T; 143-215.94V; 143B-282; 1995 (Reg. Sess. 1996) c. 648, s. 1; Recodified from 15A NCAC 02L .0115(c)(4); Amended Eff. December 1, ~~2005~~; 2005; Readopted Eff. XX 1, 20XX.

15A NCAC 02L .0406 DISCHARGE OR RELEASE CLASSIFICATIONS

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

- (1) "High risk" means that:
 - (a) a water supply well, including one used for non-drinking purposes, has been contaminated by ~~the~~ a release or discharge;
 - (b) a water supply well used for drinking water is located within 1000 feet of the source area of a confirmed discharge or ~~release~~; release from a commercial underground storage tank or a noncommercial underground storage tank storing motor fuel as defined by G.S. 143-215.94A(2)a., (7);
 - (c) a water supply well not used for drinking water is located within 250 feet of the source area of a confirmed discharge or ~~release~~; release from a commercial underground storage tank or a noncommercial underground storage tank storing motor fuel as defined by G.S. 143-215.94A(2)a., (7);
 - (d) the groundwater within 500 feet of the source area of a confirmed discharge or release from a commercial underground storage tank or a noncommercial underground storage tank storing motor fuel as defined by G.S. 143-215.94A(2)a., (7) has the potential for future use in that there is no source of water supply other than the groundwater;
 - (e) a water supply well, including one used for non-drinking purposes, is located within 150 feet of the source area of a confirmed discharge or release from a noncommercial underground storage tank storing heating oil for consumptive use on the premises;
 - ~~(f)~~(g) the vapors from ~~the~~ a discharge or release pose a serious threat of explosion due to accumulation of the vapors in a confined space; or
 - ~~(f)~~(g) ~~the~~ a discharge or release poses an imminent danger to public health, public safety, or the environment.
- (2) "Intermediate risk" means that:
 - (a) surface water is located within 500 feet of the source area of a confirmed discharge or release from a commercial underground storage tank and the maximum groundwater contaminant concentration exceeds the applicable surface water quality standards and criteria found in 15A NCAC 02B .0200 by a factor of 10;
 - (b) in the Coastal Plain physiographic region as designated on a map entitled "Geology of North Carolina" published by the Department in 1985, the source area of a confirmed discharge or release from a commercial underground storage tank is located in an area in which there is recharge to an unconfined or semi-confined deeper aquifer ~~which~~ that the Department determines is being used or may be used as a source of drinking water;
 - (c) the source area of a confirmed discharge or release from a commercial underground storage tank is within a designated wellhead protection area, as defined in 42 U.S.C. 300h-7(e);
 - (d) the levels of groundwater contamination associated with a confirmed discharge or release from a commercial underground storage tank for any contaminant except ethylene dibromide, ~~benzene~~ benzene, and alkane and aromatic carbon fraction classes exceed 50 percent of the solubility of the contaminant at 25 degrees Celsius or 1,000 times the groundwater standard or interim standard established in ~~15A NCAC 02L .0202, Rule .0202~~ of this Subchapter, whichever is lower; or
 - (e) the levels of groundwater contamination associated with a confirmed discharge or release from a commercial underground storage tank for ethylene dibromide and benzene exceed 1,000 times the federal drinking water standard set out in 40 CFR 141. 40 CFR 141 is incorporated by reference including subsequent amendments and editions. Copies may be obtained at no cost from the U.S. Government Bookstore's website at <https://www.gpo.gov/fdsys/pkg/CFR-2015-title40-vol23/pdf/CFR-2015-title40-vol23-part141.pdf>. The material is available for inspection at the Department of Environmental Quality, UST Section, 217 West Jones Street, Raleigh, NC 27603.
- (3) "Low risk" means that:
 - (a) the risk posed does not fall within the ~~high or intermediate risk categories~~; high risk category for any underground storage tank, or within the intermediate risk category for a commercial underground storage tank; or
 - (b) based on review of site-specific information, limited ~~assessment~~ assessment, or interim corrective actions, ~~the Department determines that~~ the discharge or release poses no significant risk to human health or the environment.

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

History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.94A; 143-215.94E; 143-215.94T; 143-215.94V; 143B-282; 1995 (Reg. Sess. 1996) c. 648, s. 1; Recodified from 15A NCAC 02L .0115(d); Amended Eff. December 1, ~~2005~~; 2005; Readopted Eff. XX 1, 20XX.

15A NCAC 02L .0407 RECLASSIFICATION OF RISK LEVELS

(a) It shall be a continuing obligation that each responsible party shall notify the Department of any changes that may affect the level of risk assigned to a discharge or release by the Department if the change is known or should be known by the responsible party, including changes in zoning of real property, use of real property, or the use of groundwater that has been contaminated or is expected to be contaminated by the discharge or release. The Department ~~may~~ shall reclassify the risk posed by a release if warranted by further information concerning the potential exposure of receptors to the discharge or release or upon receipt of new information concerning changed conditions at the site. After initial classification of the discharge or release, the Department may require limited assessment, interim corrective action, or other actions ~~which that~~ that the Department believes will result in a lower risk classification. ~~It shall be a continuing obligation of each responsible party to notify the Department of any changes that might affect the level of risk assigned to a discharge or release by the Department if the change is known or should be known by the responsible party. Such changes shall include, but shall not be limited to, changes in zoning of real property, use of real property or the use of groundwater that has been contaminated or is expected to be contaminated by the discharge or release, if such change could cause the Department to reclassify the risk.~~

(b) If the risk posed by a discharge or release is determined by the Department to be high risk, the responsible party shall comply with the assessment and cleanup requirements of Rule .0106(c), ~~(g)~~ (g), and (h) of this Subchapter and 15A NCAC 02N .0706 and .0707. The goal of ~~any a~~ a required corrective action for groundwater contamination shall be restoration to the level of the groundwater standards set forth in ~~15A NCAC 02L .0202, Rule .0202 of this Subchapter,~~ Rule .0202 of this Subchapter, or as closely thereto as is economically and technologically feasible. In ~~any a~~ a corrective action plan submitted pursuant to this Paragraph, natural attenuation shall be used to the maximum extent ~~possible.~~ possible, when the benefits of its use shall not increase the risk to the environment and human health. If the responsible party demonstrates that natural attenuation prevents the further migration of the plume, the Department may approve a groundwater monitoring plan.

(c) If the risk posed by a discharge or release is determined by the Department to be an intermediate risk, the responsible party shall comply with the assessment requirements of ~~15A NCAC 02L Rule .0106(c) and (g) of this Subchapter~~ Rule .0106(c) and (g) of this Subchapter and 15A NCAC 02N .0706. As part of the comprehensive site assessment, the responsible party shall evaluate, based on ~~site-specific~~ site-specific conditions, whether the release poses a significant risk to human health or the environment. If the Department determines, based on the site-specific conditions, that the discharge or release does not pose a significant threat to human health or the environment, the site shall be reclassified as a low risk site. If the site is not reclassified, the responsible party shall, at the direction of the Department, submit a groundwater monitoring plan or a corrective action plan, or a combination thereof, meeting the cleanup standards of this Paragraph and containing the information required in ~~15A NCAC 02L Rule .0106(h) of this Subchapter~~ Rule .0106(h) of this Subchapter and 15A NCAC 02N .0707. Discharges or releases ~~which that~~ that are classified as intermediate risk shall be remediated, at a minimum, to a cleanup level of 50 percent of the solubility of the contaminant at 25 degrees Celsius or 1,000 times the groundwater standard or interim standard established in ~~15A NCAC 02L .0202, Rule .0202 of this Subchapter,~~ Rule .0202 of this Subchapter, whichever is ~~lower~~ lower, for any groundwater contaminant except ethylene dibromide, benzene and alkane and aromatic carbon fraction classes. Ethylene dibromide and benzene shall be remediated to a cleanup level of 1,000 times the federal drinking water standard ~~set out in 40 CFR 141. as referenced in 15A NCAC 18C .1518 incorporated by reference including subsequent amendments and editions, and available free of charge at <http://reports.oah.state.nc.us/ncac/title 15a - environmental quality/chapter 18 - environmental health/subchapter c/15a ncac 18c .1518.pdf>.~~ Additionally, if a corrective action plan or groundwater monitoring plan is required under this Paragraph, the responsible party shall demonstrate that the groundwater cleanup levels are sufficient to prevent a violation of:

- (1) the rules contained in 15A NCAC 02B;
- (2) the standards contained in ~~15A NCAC 02L Rule .0202 of this Subchapter~~ Rule .0202 of this Subchapter in a deep aquifer as described in ~~15A NCAC 02L Rule .0406(2)(b) of this Section;~~ and
- (3) the standards contained in ~~15A NCAC 02L Rule .0202 of this Subchapter~~ Rule .0202 of this Subchapter at a location no closer than one year time of travel upgradient of a well within a designated wellhead protection area, based on travel time and the natural attenuation capacity of the subsurface materials or on a physical barrier to groundwater migration that exists or will be installed by the person making the request.

In any corrective action plan submitted pursuant to this Paragraph, natural attenuation shall be used to the maximum extent ~~possible.~~ possible, if the benefits of its use will not increase the risk to the environment and human health.

(d) If the risk posed by a discharge or release is determined ~~by the Department~~ to be a low risk, the Department shall notify the responsible party that no cleanup, no further ~~cleanup~~ cleanup, or no further action will be required by the Department unless the Department later determines that the discharge or release poses an unacceptable risk or a potentially unacceptable risk to human health or the environment. No notification ~~will~~ shall be issued pursuant to this Paragraph, however, until the responsible party ~~has completed soil remediation pursuant to 15A NCAC 02L .0408 of this Section except as provided in 15A NCAC 02L .0416 of this Section or as closely thereto as economically or technologically feasible.~~ has:

- (1) completed soil remediation pursuant to Rule .0408 of this Section or as closely thereto as economically or technologically feasible;
- (2) submitted proof of public notification, if required; and
- (3) recorded all required land-use restrictions.

~~The issuance by the Department of a notification under this Paragraph shall not affect any private right of action by any party which may be affected by the contamination.~~

History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.94A; 143-215.94E; 143-215.94T; 143-215.94V; 143B-282; 1995 (Reg. Sess. 1996) c. 648, s. 1; Recodified from 15A NCAC 02L .0115(e)-(h); Amended Eff. December 1, 2005; 2005; Readopted Eff. XX 1, 20XX.

15A NCAC 02L .0408 ASSESSMENT AND REMEDIATION PROCEDURES

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

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

History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.94A; 143-215.94E; 143-215.94T; 143-215.94V; 143B-282; 1995 (Reg. Sess. 1996) c. 648, s. 1; Recodified from 15A NCAC 02L .0115(i); Amended Eff. December 1, 2005; 2005; Readopted Eff. XX 1, 20XX.

15A NCAC 02L .0409 NOTIFICATION REQUIREMENTS

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

- (1) the local Health Director and the chief administrative officer of each political jurisdiction in which the contamination occurs;
- (2) all property owners and occupants within or contiguous to the area containing the contamination; and
- (3) all property owners and occupants within or contiguous to the area where the contamination is expected to migrate.

~~Such~~ The notice shall describe the nature of the plan and the reasons supporting it. Notification shall be made by certified mail concurrent with the submittal of the corrective action plan. Approval of the corrective action plan by the Department shall be postponed for a period of ~~30~~ 60 days following receipt of the request so that the Department may consider ~~comments submitted.~~ comments. The responsible party shall, within a ~~time frame determined by the Department to be sufficient,~~ 30 days, provide the Department with a copy of the notice and proof of receipt of each required ~~notice,~~ notice or of refusal by the addressee to accept delivery of a required notice. If notice by certified mail to occupants under this Paragraph is impractical, the responsible party ~~may~~ shall give notice ~~by posting such notice prominently in a manner designed to give actual notice to the occupants.~~ as provided in G.S. 1A-1, Rule 4(j) or 4(j1). If notice is made to occupants by posting, the responsible party shall provide the Department with a copy of the posted notice and a description of the manner in which such posted notice was given.

(b) A responsible party who receives a notice from the Department pursuant to ~~15A NCAC 02L~~ Rule .0404(c) or .0407(d) of this Section for a discharge or release ~~which that~~ has not been remediated to the groundwater standards or interim standards established in Rule .0202 of this Subchapter or to the lower of the residential or soil-to-groundwater contaminant concentrations established under

~~15A NCAC 02L Rule .0411~~ of this Section, shall, within 30 days of the receipt of such notice, provide a copy of the notice to: ~~the local Health Director and the chief administrative officer of each political jurisdiction in which the contamination occurs; all property owners and occupants within or contiguous to the area containing contamination; and all property owners and occupants within or contiguous to the area where the contamination is expected to migrate.~~

- (1) the local Health Director and the chief administrative officer of each political jurisdiction in which the contamination occurs;
- (2) all property owners and occupants within or contiguous to the area containing the contamination; and
- (3) all property owners and occupants within or contiguous to the area where the contamination is expected to migrate.

Notification shall be made by certified mail. The responsible party shall, within ~~a time frame determined by the Department,~~ 60 days of receipt of the original notice from the Department, provide the Department with proof of receipt of the copy of the ~~notice,~~ notice or of refusal by the addressee to accept delivery of the copy of the notice. If notice by certified mail to occupants under this Paragraph is impractical, the responsible party ~~may shall~~ give notice ~~by posting such notice prominently in a manner designed to give actual notice to the occupants, as provided in G.S. 1A-1, Rule 4(j) or 4(j1).~~ If notice is made to occupants by posting, the responsible party shall provide the Department with a description of the manner in which ~~such~~ the posted notice was given.

History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.94A; 143-215.94E; 143-215.94T; 143-215.94V; 143B-282; 1995 (Reg. Sess. 1996) c. 648, s. 1; Recodified from 15A NCAC 02L .0115(j) and (k); Amended Eff. December 1, 2005- 2005; Readopted Eff. XX 1, 20XX.

15A NCAC 02L .0410 DEPARTMENTAL LISTING OF DISCHARGES OR RELEASES (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02L .0411 ESTABLISHING MAXIMUM SOIL CONTAMINATION CONCENTRATIONS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02L .0412 ANALYTICAL PROCEDURES FOR SOIL SAMPLES (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02L .0413 ANALYTICAL PROCEDURES FOR GROUNDWATER SAMPLES (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02L .0414 REQUIRED LABORATORY CERTIFICATION (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02L .0415 DISCHARGES OR RELEASES FROM OTHER SOURCES (READOPTION WITHOUT SUBSTANTIVE CHANGES)

SECTION .0500 – RISK-BASED ASSESSMENT AND CORRECTIVE ACTION FOR PETROLEUM RELEASES FROM ABOVEGROUND STORAGE TANKS AND SOURCES

15A NCAC 02L .0501 PURPOSE AND SCOPE (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02L .0502 DEFINITIONS

The definitions as set out in Rule .0102 of this Subchapter ~~apply to this Section, in addition the following definitions and the following definitions shall~~ apply throughout this Section:

- (1) "Aboveground storage tank" or "AST" means any one or a combination of ~~tanks (including underground tanks, including pipes connected thereto) thereto,~~ that is used to contain an accumulation of petroleum.
- (2) "AST system" means an aboveground storage tank, connected ~~underground~~ piping, ~~underground~~ ancillary equipment, and containment system, if any.
- (3) "Discharge" includes any emission, spillage, leakage, pumping, pouring, emptying, or dumping of oil into groundwater or surface water or upon land in such proximity to such water that it is likely to reach the water and any discharge upon land which is intentional, knowing, or willful.
- (4) "Non-UST" means as defined in G.S. 143-215.104AA(g) and excludes underground storage tank releases governed by G.S. 143-215.94V.
- (5) "Operator" means any person in control ~~of,~~ of or having responsibility for the daily operation of the AST system.
- (6) "Owner" means any person who owns a petroleum aboveground storage tank or other non-UST petroleum tank, stationary or mobile, used for storage, use, dispensing, or transport.
- (7) "Person" means an individual, trust, firm, joint stock company, Federal agency, corporation, state, municipality, commission, political subdivision of a state, or any interstate body. "Person" also includes a consortium, a joint venture, a commercial entity, and the United States Government.
- (8) "Petroleum" or "petroleum products" means as defined in G.S. 143-215.94A(10).
- (9) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing into groundwater, surface water, or surface or subsurface soils.

- (10) "Tank" means a device used to contain an accumulation of petroleum and constructed of non-earthen ~~materials (e.g., materials, such as~~ concrete, steel, ~~plastic)~~ plastic, that provides structural support.

History Note: Authority G.S. 143-212(4); 143-215.3(a)(1); 143-215.77; 143B-282; 143-215.84; 143-215.104AA;
~~Eff. March 1, 2016.~~ Eff. March 1, 2016;
Readopted Eff. XX 1, 20XX.

- 15A NCAC 02L .0503 RULE APPLICATION (READOPTION WITHOUT SUBSTANTIVE CHANGES)**
- 15A NCAC 02L .0504 REQUIRED INITIAL RESPONSE AND ABATEMENT ACTIONS BY RESPONSIBLE PARTY (READOPTION WITHOUT SUBSTANTIVE CHANGES)**
- 15A NCAC 02L .0505 REQUIREMENTS FOR LIMITED SITE ASSESSMENT (READOPTION WITHOUT SUBSTANTIVE CHANGES)**
- 15A NCAC 02L .0506 DISCHARGE OR RELEASE CLASSIFICATIONS (READOPTION WITHOUT SUBSTANTIVE CHANGES)**
- 15A NCAC 02L .0507 RECLASSIFICATION OF RISK LEVELS (READOPTION WITHOUT SUBSTANTIVE CHANGES)**
- 15A NCAC 02L .0508 ASSESSMENT AND REMEDIATION PROCEDURES (READOPTION WITHOUT SUBSTANTIVE CHANGES)**
- 15A NCAC 02L .0509 NOTIFICATION REQUIREMENTS (READOPTION WITHOUT SUBSTANTIVE CHANGES)**
- 15A NCAC 02L .0510 DEPARTMENTAL LISTING OF DISCHARGES OR RELEASES (READOPTION WITHOUT SUBSTANTIVE CHANGES)**
- 15A NCAC 02L .0511 ESTABLISHING MAXIMUM SOIL CONTAMINATION CONCENTRATIONS (READOPTION WITHOUT SUBSTANTIVE CHANGES)**
- 15A NCAC 02L .0512 ANALYTICAL PROCEDURES FOR SOIL SAMPLES (READOPTION WITHOUT SUBSTANTIVE CHANGES)**
- 15A NCAC 02L .0513 ANALYTICAL PROCEDURES FOR GROUNDWATER SAMPLES (READOPTION WITHOUT SUBSTANTIVE CHANGES)**
- 15A NCAC 02L .0514 REQUIRED LABORATORY CERTIFICATION (READOPTION WITHOUT SUBSTANTIVE CHANGES)**
- 15A NCAC 02L .0515 DISCHARGES OR RELEASES FROM OTHER SOURCES (READOPTION WITHOUT SUBSTANTIVE CHANGES)**