

**REGISTERED ENVIRONMENTAL CONSULTANT RULE REVISIONS
FISCAL AND REGULATORY IMPACT ANALYSIS****Rule Citation Number** 15A NCAC 13C .0301-.0308**Rule Topic:** Voluntary Remedial Action Oversight by Registered Environmental Consultants at Inactive Hazardous Sites**DEQ Division:** Division of Waste Management**Agency Contact:** Janet Macdonald
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Janet.Macdonald@ncdenr.gov**Impact Summary:** State government: Yes
Local government: No
Substantial impact: No
Private Sector: Yes**Authority:** G.S. 130A-310.12(b)**Necessity:** Since the Program's inception in 1997, changes in standard industry practice, new risk-based remediation legislation, and consistent feedback from the stakeholders associated with the REC Program have necessitated modification to the REC rules. For example, remedial technologies have evolved and often require more time with bench-scale testing, pilot testing in the field, and multiple phases of full-scale implementation. The deadlines built into the rules have proven insufficient and unrealistic at some sites, so an allowance for DEQ to grant extensions in specific cases was deemed necessary. As the rules currently exist, remediating parties have chosen to terminate their voluntary cleanup in the REC Program to avoid a violation of the rules if a missed deadline is imminent.

In 2011 and 2015 legislation was passed allowing a risk-based cleanup option. Since many REC sites are eligible for a risk-based remedy due to their relatively low risk to human health and the environment, content and wording are proposed in the rules to reflect the language and requirements in the risk-based cleanup option. Finally, experience from DEQ staff working in the REC Program and feedback from remediating parties and their consultants have indicated a need to clarify some of the rules and the procedures therein. As a result, minor modifications to the rules are proposed.

Introduction

Within the Department of Environmental Quality (Department; DEQ), the Division of Waste Management's Inactive Hazardous Sites Branch (Branch) has drafted revisions to rules 15A NCAC 13C .0300 – Voluntary Remedial Action Oversight by Registered Environmental Consultants. Since the Program's inception in 1997, changes in standard industry practice, new legislation, and feedback from the stakeholders associated with the REC Program have necessitated modification to the REC rules. For example, remedial technologies have evolved and often require bench-scale testing, pilot testing in the field, and multiple phases of full-scale implementation. The phase of work deadlines built into the rules have proven insufficient and unrealistic at some sites, so an allowance for DEQ to grant extensions in specific cases has been added. These existing deadlines have caused remediating parties to abruptly leave the REC Program for fear of enforcement or have deterred remediating parties from even considering the REC Program. Allowing extensions in specific cases is proposed to provide flexibility to keep existing remediating parties in the program and to potentially entice new remediating parties to enter the program.

In addition, the 2011 and 2015 legislation allowing risk-based cleanup levels requires consideration of current and potential future risk to human health and the environment, so content and wording is added to accommodate the recent cleanup option. Finally, experience from DEQ staff working in the REC Program and feedback from remediating parties and their consultants have indicated a need to clarify some of the procedures in the REC Program.

The proposed revisions are intended to streamline and clarify some of the requirements and procedures in the REC rules. They were made by a working group that included representatives of remediating parties, environmental consultants, and conservationists in addition to DEQ staff. The stakeholders also solicited input from other entities outside of the working group. Included with this report is background information regarding the REC Program and a general summary of the more significant proposed modifications made to each rule.

Background

The Branch is responsible for oversight and approval of the assessment and remediation of hazardous substance contaminated sites under the authority of the Inactive Hazardous Sites Act. These sites include historical and any recent accidental releases of hazardous substances and, where present in or threatening groundwater, other contaminants. Excluded are discharges associated with DEQ permits, hazardous waste dumping, agricultural operations, federal remediation sites, petroleum releases and sites undergoing remediation by the State's Dry-cleaning Solvent Cleanup Act (DSCA) Program. The Branch oversees remedial actions, conducts any necessary enforcement at sites deemed to be the highest priority and conducts the work itself at orphaned sites when state resources are available for such.

Due to the large number of contaminated sites, the Branch is unable to respond to all requests for remedial action oversight. To help address this problem, the North Carolina General Assembly amended the Inactive Hazardous Response Act in 1994 and 1995 to establish a

mechanism for privatizing the Branch's oversight role at lower priority voluntary remedial action sites. These amendments required the establishment of rules for implementing and overseeing voluntary remedial actions under the Registered Environmental Consultant (REC) Program.

The REC Program rules, 15A NCAC 13C .0300, became effective April 1, 1997. These rules include the minimum qualification requirements for RECs and their Registered Site Managers (RSMs), and the technical and administrative requirements for conducting voluntary remedial actions under the REC Program. The REC is the approved firm, and the RSMs are REC employees approved to make compliance certifications on behalf of the REC and their client, the remediating party. The REC's RSM is responsible for certifying that the actions taken comply with the REC Program rules. Participation in the REC Program is voluntary, and parties have an obligation to do the same work as if a remedial action has Branch oversight.

In most cases, groundwater must be remediated to the groundwater quality standards promulgated in Title 15A of the North Carolina Administrative Code, Subchapter 2L (commonly referred to as the "2L Standards"). These standards incorporate conservative human health-based risk assumptions and represent an inflexible end goal irrespective of groundwater use, land use, or actual site exposure risk factors. Remediating contaminated sites to these conservative criteria is often costly and time-consuming, resulting in years of routine monitoring prior to closing a site.

In 2011, the General Assembly of North Carolina amended Chapter 130A of the General Statutes by adding a new Part entitled "Risk-based Environmental Remediation of Sites". This Part was then amended in 2015 to broaden its application.

The risk-based approach to remediation allows site-calculated cleanup levels in lieu of the 2L standards provided that all current and potential future risks are mitigated through engineered or institutional controls and with Department approval. This remedial option is geared toward lower-risk sites and increases the responsibility of remediating parties and their consultants to thoroughly understand and assess potential receptors, exposure pathways, and risks posed by contaminants remaining in the environment. In addition, certain criteria must be met, such as demonstrating that the groundwater plume is stable or shrinking and no unacceptable risk exists in any other contaminated medium including vapors from volatile contaminants, instituting land-use restrictions prohibiting groundwater use, and obtaining acknowledgement and acceptance from affected property owner(s).

Because the REC Program serves the oversight role at lower priority (e.g., lower risk) voluntary remedial action sites, over a dozen risk-based remedial action plans have already been received for review and approval by REC Program staff. As a result, several rule changes are proposed that incorporate and complement the language and requirements associated with risk-based cleanups.

Summary of Proposed Rule Revisions and Regulatory Impact

A summary of each of the more significant rule revisions is provided. All other proposed

revisions provide simplification, clarification, and/or more detailed explanation to the current rules.

15A NCAC 13C .0301 DEFINITIONS

No significant modifications are proposed to .0301 by the working group. Minor modifications to the rule included two phrases (“Sensitive Environments” and “Sensitive Populations or Property Uses”) that were added because no definitions were previously provided for these terms. This language is added to accommodate the requirements associated with risk-based cleanups that rely on restrictions to future property uses if sensitive environments or populations could be exposed.

15A NCAC 13C .0302 GENERAL PROVISIONS

(h). The original rules did not allow the Department to grant extensions to the established work-phase deadlines. Therefore, paragraph.0302(h) has been modified to give the Department authority to grant a remediating party’s written request for deadline extensions under certain conditions. This change allows consultants to fully characterize a complex site or employ remedial technologies that may have multiple phases of design and implementation that may require more time than is allowed in the rule. By granting extensions for the specified situations, remediating parties and their RECs can continue remedial activities without cancelling their voluntary agreement with the Department for fear of enforcement action, including loss of approved voluntary remedial action status. The extensions will have little to no impact on the life of the cleanup or further risk to human or environmental health since it allows more flexibility to apply the most appropriate technologies with a methodical approach for cases where it may be necessary. No added burden is placed on DEQ or the public with this rule modification.

(l). Documentation/reporting requirements have been reduced by requiring only one comprehensive assessment report when the remedial investigation is complete rather than separate reports following each phase of the assessment. Similarly, the information required in a pre-construction report and a construction completion report can be included in the remedial action plan or in the first field event report following initiation of groundwater remedial action. So, although the information required in the reports has not changed, the number of milestone documents has been reduced from eight or more to five. No added burden is placed on DEQ or the public with this rule modification, but remediating parties will save time and expense preparing and certifying necessary reports. Note that these changes are also reflected in .0306(b)(5).

(m). The requirement for “the REC to preserve and maintain any documents for six years” has been modified. Modernization through electronic file storage at DEQ has rendered this requirement unnecessary. Therefore, this rule has been modified to allow RECs to “confirm that the Department has received the records” through an electronic file search. This rule change will directly benefit RECs and have no adverse impact on DEQ or the public.

15A NCAC 13C. 0303 APPROVAL OF REGISTERED ENVIRONMENTAL CONSULTANTS

(d). Text has been added whereby if a RSM changes employment from one approved REC to another, approval must be obtained by the Department. This procedure is already in place, so remediating parties and their consultants will not incur any change, but the Department will benefit by having documented guidelines for when RSMs change to other companies.

15A NCAC 13C. 0304 MINIMUM QUALIFICATIONS FOR REGISTERED ENVIRONMENTAL CONSULTANTS

No significant modifications are proposed to .0304.

15A NCAC 13C. 0305 STANDARDS OF CONDUCT FOR REGISTERED ENVIRONMENTAL CONSULTANTS

(a) and (b). Regarding compliance with standards of professional competence and responsibility, respectively, the following language has been removed: “RECs failing to do so shall be disqualified from performing work as a REC pursuant to this Section and shall be subject to any other applicable form of enforcement” because such determinations are based on judgement. A similar statement is already contained in rule .0302(c) with more specific examples that define the violations that could result in enforcement and/or disqualification as a REC. Removing this language will remove a significant deterrent that has kept RECs from directing their client (remediating parties) to the REC Program for obvious reasons. Increasing voluntary cleanups through the REC program directly benefits the Department, remediating parties, RECs and the public.

(b)(1)(A and C). Examples of imminent hazards and immediate actions have been provided to clarify the what is meant by these terms. These changes will help RECs ensure the public’s health is considered and protected.

(b)(1)(D). The original rule does not provide a specific means for a remediating party and REC to implement interim measures for abating imminent hazards. Currently there is only a provision for preparing a site-wide remedial action plan that requires a 30-day public comment period before remedial measures can be implemented. To address this issue, a paragraph has been added to the rule to allow interim measures to immediately abate an imminent hazard. The addition includes the required content for an interim abatement plan and examples of activities that can be taken by parties to implement the measures. This rule change will directly benefit RECs, the environment and the public. The Department also benefits by having documented guidelines for these situations to assist with regulating environmental cleanups.

15A NCAC 13C. 0306 TECHNICAL STANDARDS FOR REGISTERED ENVIRONMENTAL CONSULTANTS

(b)(4). Item (B) has been added to accommodate current remedial technologies that may require

additional site characterization, bench-scale treatability studies, and/or pilot testing in the field. This rule change will directly benefit remediating parties and RECs by providing procedures for these scenarios that are currently not accommodated. The Department also benefits by having documented guidelines for these situations to assist with regulating environmental cleanups.

(b)(5)(B). Additional wording has been added to clarify that remedial action plans cannot be approved by the REC until the steps provided are completed. RECs will benefit from this clarification since it has been a significant point of confusion since the inception of the REC Program. The Department also benefits by having documented guidelines for these situations to assist with regulating environmental cleanups.

(b)(5)(C) and (b)(5)(D) were added to correspond with the changes to the modified phases of work described in rules .0302(3) and .0302(h)(4), respectively.

(c). This is a new rule: Currently, the executed agreement with the Department requires all remediating parties or their REC to submit a notarized letter project status update report every quarter to demonstrate and document that progress is being made toward the work-phase completion deadlines. Paragraph .0306(c) has been added to make these progress update reports a rule requirement, thus eliminating the need for the report under the agreement. In addition, submittal of the project status update report under the rule will only be required annually, rather than quarterly. The quarterly reports have proven to not be beneficial to DEQ or the remediating party and their REC. Remediating parties and their REC will benefit from this change by reducing the work required to produce and notarize the reports, and DEQ will benefit by not having to review and process the documents. This change will have no effect on hindering cleanups and may encourage more parties to enter the REC Program.

(e). Paragraph (e) is now paragraph (f): More detail has been added to this rule to clarify for RECs the type of evidence they should use to assess areas of a property as part of a remedial investigation. The existing rule has led some RECs to investigate portions of a property that have no documented or visual evidence of contamination, resulting in costly evaluation and reporting of constituents that may actually be associated with naturally occurring background conditions. This addition benefits remediating parties, RECs and the Department by saving time and costs with no adverse impact to the public or the environment. The Department also benefits by having more detailed documented guidelines for these situations to assist with regulating environmental cleanups.

(f). Paragraph (f) is now paragraph (g): This paragraph has been enhanced to include a definition of the contaminant delineation endpoints and an acknowledgement that (1) natural and anthropogenic background concentrations may serve as delineation endpoints if their levels are demonstrated, and (2) deep vertical delineation may not be required in cases where a technical impracticability can be justified. The proposed rule changes also add an option to demonstrate that vertical delineation of deep contamination is technically impractical if the criteria specified in (1), (2), and (3) are met. This addition benefits remediating parties and RECs by substantially reducing assessment costs in cases where there is no risk to human health and the environment. The Department also benefits by having documented guidelines for these situations to assist with regulating environmental cleanups.

(g). Paragraph (g) is now paragraph (h): At the request of RECs, a provision has been added to this rule that allows RECs to provide professional judgement as to why a specific requirement is not relevant to the remedial investigation. Under sub rule (4)(D) the reference to GS 89C was removed as it is specified in another law and understood by the regulated community. Sub rule (7)(D) expanded the definition of “environmentally sensitive areas” and sub rule (7)(13) is added to accommodate the requirements associated with risk-based cleanups that rely on restrictions to future property uses if sensitive environments or populations could be exposed. See related change in Rule .0301(7) and .0301(8). No added burden is placed on DEQ or the public with these rule modifications.

(h). Paragraph (h) is now paragraph (i): Language in item (1) was added to require the REC to demonstrate that progress is being made to meet the milestones established in these rules. These updates were already required under the administrative agreement, so there will be no impact to the public or the Department with this addition. (i)(4) clarifies the rule by adding examples of sample locations. In addition, the reference to the land surveying statute was replaced with a sentence stating that all surveying must be performed by a registered land surveyor duly authorized under NC law to conduct such activities. No added burden is placed on DEQ or the public with these rule modifications. (i)(10) adds information as to when contaminant delineation maps are required and what information should be therein. (i)(11) adds information as to when cross sections are required and what information should be therein. (i)(12) adds a requirement that contaminant migration to potential receptors must be addressed to accommodate the requirements associated with risk-based cleanups. There will be no increase in the amount or type of work a REC must conduct as a result of these changes.

(j). Since inception of the REC Program over 20 years ago, remedial technologies have evolved and often require bench-scale testing, pilot testing in the field, and multiple phases of full-scale implementation. The current rule does not provide a specific means for a remediating party and REC to prepare and submit a plan for conducting additional site characterization, pilot studies, and treatability studies for a site after a remedial investigation [.0306(g) and (h) of the current rule] has been completed. Paragraph .0306(j) has been added to the rule to provide direction and instruction for these plans under a specific paragraph for this task. There will be no significant changes in the amount or type of work a REC must conduct as a result of these changes. However, the Department benefits by having documented guidelines for these situations to assist with regulating environmental cleanups.

(l)(1). Paragraph (l) is now paragraph (n): Paragraph (1) adds a requirement that the remedial action plan must also include a discussion pertaining to the migration of contamination in any media to any receptors. This addition accommodates the requirements associated with risk-based cleanups, whereby future risk associated with the movement of contamination must also be considered. The additional work is all part of developing a conceptual site model but having it in the rules renders it an enforceable requirement. This addition will incur no additional time or financial burden to the remediating parties or RECs. The general public benefits by ensuring that RECs document the fate and transport of contaminated media. Paragraph (4) is now a combination of paragraphs (7) and (8), which have been deleted.

(o) this is a new rule: Similar to the modification in .0305 described above, the original rules do not provide a specific means for a remediating party and REC to implement interim remedial action prior to development of a sitewide RAP. Interim remedial actions are unique in that they are not typically designed to address the entire site, so they currently do not necessarily meet rule requirements. Therefore, paragraph .0306(o) has been added to the rule to provide direction and instruction and includes examples of interim remedial actions that can be taken by parties for this task. No added work is required with this rule addition nor is there any burden on the general public. However, the Department benefits by having documented guidelines for these situations to assist with regulating environmental cleanups.

(m) and (n) and (o). The preconstruction report, construction completion report and remedial action progress reporting requirements have been replaced with new rule (q). Merging the requirements into one paragraph simplifies the rule. Remediating parties, RECs and the Department will benefit from reduced time and expenses associated with creating, reviewing and storing the preconstruction and construction completion reports.

(p) This is a new rule: This rule is added to inform remediating parties and RECs that approved remedies can be changed and how to document the change. There is no effect from this minor rule change.

(q) This is a new rule: This paragraph and its sub rules is a combination of current rules (m), (n), and (o). Since this new rule is a combination of three existing rules, there are no detriments associated with this new rule. RECs and the Department will benefit from reduced time and expenses associated with creating, reviewing and storing the preconstruction and construction completion reports.

15A NCAC 13C. 0307 DEPARTMENTAL AUDITS AND INSPECTIONS

No significant modifications are proposed to .0307. The modifications provide simplification, clarification, and/or more detailed explanation to the existing rule.

15A NCAC 13C. 0308 CLEANUP LEVELS

No significant modifications are proposed to .0308. The modifications provide simplification, clarification, and/or more detailed explanation to the existing rule.

Impact Statement

None of the proposed changes will create a financial burden to the general public or the state of North Carolina. In fact, the rule modifications as proposed are intended to streamline procedures by reducing reporting requirements for the regulated community and, in turn, reducing the report process and storage requirement for the state. The work required by the regulated community will remain the same but reporting of those activities will result in less documentation (three reports into one) which is a cost savings in both time and materials.

Adding a provision to allow the implementation of interim measures for abatement of an

imminent hazard will benefit the environment and the general public. Currently, abatement measures cannot be implemented until a remedial action plan is prepared and provided to the public for a 30-day public comment period. Allowing immediate action without the time delays will allow more immediate action in these rare cases when needed.

Other text modifications or additions will provide a minor improvement to the regulated community by clarifying procedures or providing commonality with other statutes relied upon during their remedial efforts. For example, risk-based remediation is now a remedial alternative afforded to sites that pose a lower risk to human health and the environment. Remediating parties are turning to this remedial alternative because the statutes are intended to “accelerate the cleanup of contaminated sites for the purpose of limiting human and environmental exposure to safe levels, to protect current and likely future uses of groundwater, and to ensure the cost - effective application of limited public and private resources.” Though these risk statutes have their own fiscal impact to the community and the state, modifying the REC Rules as proposed will not have a significant impact of any kind.

Many of the changes allow for some flexibility in the cleanup process and streamline the reporting requirements to reduce paperwork. In addition, some of the proposed changes establish work requirements in rule that previously were only guidelines, allowing the Department to better regulate environmental cleanup. In general, these proposed changes are intended to entice more remediating parties to voluntarily conduct environmental cleanup in the REC Program, which will benefit the general public, the regulated community, the North Carolina government, and the environment.

The table below shows who benefits from the change: the private sector (more specifically, the regulated community), the state government, and the environment.

Rule 15A NCAC 13C.	Proposed modification to REC Rule	Private Sector	State Government	Environment
.0302(h)	Allow the Department to grant extensions to work-phase deadlines in certain situations	X		
.0302(l) & .0306(m,n,o)	Reduce in the number of reports required	X	X	
.0302(m)	Eliminate the need to preserve and maintain documents for six years	X		
.0303	Add to the rules the existing policy of requiring approval if RSMs who change REC employment		X	
.0305	Remove language referring to disqualification and enforcement increasing the appeal of the REC Program and enticing more environmental cleanups	X	X	X
.0305(b)(1)(D) & new rule under 0306	Add procedures for documenting interim abatement measures in specified cases	X	X	
.0306(b)(4)	Add procedures for documenting treatability studies and pilot testing	X	X	
New rule under .0306	Require project status reports annually rather than quarterly	X	X	