Hearing Officer's Report for Re-adoption of in 15A NCAC 02L .0100 “General Considerations”

Public Hearing Held
on November 3, 2021

Presented to the
North Carolina Environmental Management Commission
on

March 10, 2022

Department of Environmental Quality
Division of Water Resources
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I – SUMMARY OF RULEMAKING ACTIVITY

The Classifications and Water Quality Standards Applicable to Groundwaters of North Carolina (15A NCAC 02L Rules) are implemented by the Division of Water Resources and Division of Waste Management and are divided into five sections: General Consideration (.0100), Classifications and Groundwater Quality Standards (.0200), Assignment of Underground Water Classifications (.0300), Risk-Based Assessment and Corrective Action for Petroleum Underground Storage Tanks (.0400), and Risk-Based Assessment and Corrective Action for Petroleum Releases from Aboveground Storage Tanks and Sources (.0500). These rules underwent rule review required by S.L. 2013-413 (HB74) during 2017. The final rule review report determined that rules in Section .0100 (General Considerations) were “necessary with substantive public interest”. The rules, therefore, needed to be re-adopted, and a readoption deadline of November 30, 2022, was established by the NC Rules Review Commission (RRC).

The NC Division of Water Resources (DWR) began the rulemaking process in early 2019 by preparing an initial draft of the rules and soliciting internal stakeholders for comments. In November 2020, DWR invited external stakeholders to comment on the final initial draft rules. DWR considered the external comments and updated the draft rules where applicable. The draft rules were completed in December 2020. DWR staff sent draft rules for a pre-review to the RRC in January 2021 and subsequently incorporated the RRC’s comments.

II – PUBLIC HEARING PROCESS

In April 2021, DWR staff informed the Groundwater and Wastewater Management Committee (GWWMC) of the progress and content of the draft rules consisting of 15A NCAC 02L Section .0100. A Regulatory Impact Analyses (RIA) was completed for the 15A NCAC 02L .0100 rules in May 2021 which determined that no fiscal notes were necessary for the rule package. In July 2021, the GWMMC approved the final rules and request to proceed to the full Environmental Management Commission (EMC). In September 2021, the EMC approved the draft rules and request to proceed to public hearing. The link to September 9, 2021 EMC agenda is listed below:


The Notice of Text was filed in Volume 36 Issue 08 of the NC Register dated October 15, 2021. In the abundance of caution, and to address protective measures to help prevent the spread of COVID-19, the DWR held an online public hearing (via WebEx) regarding the proposed readoption of the 02L .0100 rules and the associated regulatory impact analyses under the authority of the NC General Statutes, Chapter 143, on November 3, 2021 at 6:00pm.

The announcement of the hearing and a WebEx link, password, and call-in number were published in the October 15, 2021 edition of the North Carolina Register:


The public hearing announcement is included in Attachment C.
Additionally, the announcement of the public comment period and the public hearing and background information was made available on the following websites:

DEQ Upcoming events: https://deq.nc.gov/news/events

The notice in the North Carolina Public Register also included information on how to submit comments. The sixty-day comment period for the proposed rule revisions began on October 15, 2021 and closed on December 14, 2021.

Four persons attended the public hearing, and no person presented oral comments. One set of written comments were received during the comment period. The comments came from DWR staff.

III – HEARING OFFICER MEETINGS, CONSIDERATIONS, AND RECOMMENDATIONS

Following the close of the comment period on December 14, 2021, DWR staff worked with the hearing officer to consider and deliberate over the comments and then to develop recommendations presented in this report.

The comments received were used in developing specific rule changes. The comments received were mostly proposed minor grammatical changes and slight reorganizations for clarification. After considering the comments, the Hearing Officer recommends incorporating the changes into the proposed rules. The Hearing Officer's specific responses to all comments are presented in Section IV of this Hearing Officer's Report. The Hearing Officer’s recommendation is that the EMC re-adopt the rules in 15A NCAC 02L .0100 with the Hearing Officer’s amendments to the proposed rules noticed in the NC Register. The 15A NCAC 02L .0100 rules recommended for re-adoption are presented in Section V of this Hearing Officer’s Report.
<table>
<thead>
<tr>
<th>Rule</th>
<th>Public Comment</th>
<th>Hearing Officer Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>.0103(a)</td>
<td>delete “citizens of North Carolina” to be consistent.</td>
<td>Acceptable</td>
</tr>
<tr>
<td>.0104(d)</td>
<td>Add “predicted or” in front of “expected” for consistency.</td>
<td>Acceptable</td>
</tr>
<tr>
<td>.0106(b)</td>
<td>replace the word “steps” with “requirements” as a better word choice.</td>
<td>Acceptable</td>
</tr>
<tr>
<td>.0106(c)(6)(A)</td>
<td>add “for natural attenuation corrective action” for clarification.</td>
<td>Acceptable</td>
</tr>
<tr>
<td>.0106(c)(6)(B)</td>
<td>add the word “the” before corrective action plan for grammar.</td>
<td>Acceptable</td>
</tr>
<tr>
<td>.0106(c)(6)(C)</td>
<td>add “for natural attenuation corrective action” for clarification.</td>
<td>Acceptable</td>
</tr>
<tr>
<td>.0106(d)(2)</td>
<td>don’t delete the “(2)” as this was an oversight.</td>
<td>Acceptable</td>
</tr>
<tr>
<td>.0106(e)(6)(A)</td>
<td>add “for natural attenuation corrective action” for clarification.</td>
<td>Acceptable</td>
</tr>
<tr>
<td>.0106(e)(6)(B)</td>
<td>make the same as .0106(c)(6)(B) for consistency.</td>
<td>Acceptable</td>
</tr>
<tr>
<td>.0106(e)(6)(C)</td>
<td>add “for natural attenuation corrective action” for clarification.</td>
<td>Acceptable</td>
</tr>
<tr>
<td>.0106(j)</td>
<td>add “prior to achieving the standards” at the end of the second sentence for clarification.</td>
<td>Acceptable</td>
</tr>
<tr>
<td>.0106(j)(1)</td>
<td>combine with (j) as this should all be one rule.</td>
<td>Acceptable</td>
</tr>
<tr>
<td>.0106(j)(2)</td>
<td>make this the new (i) as this should be a separate rule.</td>
<td>Acceptable</td>
</tr>
<tr>
<td>.0106(j)(3)</td>
<td>make this the new (l) as this should be a separate rule.</td>
<td>Acceptable</td>
</tr>
<tr>
<td>.0106(l)</td>
<td>fix the reference from (j)(1)(E) to (j)(5) after the (j)(1) is combined with (j).</td>
<td>Acceptable</td>
</tr>
<tr>
<td>.0106(p)(2)</td>
<td>add a reference to the new (l) which would have been (j)(3).</td>
<td>Acceptable</td>
</tr>
<tr>
<td>.0111(c)(6)(F)</td>
<td>instead of the words “that evaluates”, use “to evaluate” for grammar.</td>
<td>Acceptable</td>
</tr>
<tr>
<td>.0111(c)(6)(G)</td>
<td>add “or predictive calculations” after modeling for clarification and consistency.</td>
<td>Acceptable</td>
</tr>
<tr>
<td>.0111(c)(8)</td>
<td>change wording to “a copy of the calculations or model runs and all supporting technical data; and”. This is because of adding the predictive calculations to (c)(6)(G).</td>
<td>Acceptable</td>
</tr>
<tr>
<td>.0111(c)(9)</td>
<td>NEW. Add the following: [Note: this is in the current 02L Rule but was inadvertently left out of the proposed rule] (c)(9) a demonstration that: (A) all necessary access agreements needed to monitor groundwater quality have been or can be obtained; and (B) the proposed corrective action plan would be consistent with all other environmental laws.</td>
<td>Acceptable</td>
</tr>
</tbody>
</table>
## Rule 0111(d)

Rearrange (d) to the following to be consistent with the current 2L Rule and to provide additional clarification [Note: this does not change the intent of the original 02L Rule or proposed Rule and is essentially just a reorganization of the proposed Rule (d) with no new requirements]:

(d) Corrective action plans submitted pursuant to Paragraphs (c) or (e) in Rule .0106 of this Section for natural attenuation shall include:

1. a summary of the results of the site assessment submitted in accordance with Paragraph (b) of this Rule;
2. the technical basis for the requested corrective action;
3. an evaluation of risk to receptors within the contaminant plume and in areas where the plume is predicted to migrate through modeling;
4. an evaluation of projected groundwater use within 1,500 feet of the predicted impacted area based on current State or local government planning efforts;
5. the predicted time to return to compliance with the standards;
6. the results of any modeling or predictive calculations that show the projected movement of the contaminant plume until the predicted time to return to compliance with the standards;
7. all technical data utilized in support of any interpretations, conclusions, determinations, or evaluations made;
8. a copy of the calculations or model runs and all supporting technical data;
9. a monitoring plan to evaluate the effectiveness of the natural attenuation; and
10. a demonstration that:
   A. all sources of contamination and free product have been removed or controlled pursuant to Rule .0106(f) of this Section;
   B. the contaminant has the capacity to degrade or attenuate under the site-specific conditions;
   C. the time and direction of contaminant travel can be predicted based on subsurface conditions and the contaminant’s physical and chemical properties;
   D. contaminant migration will not result in any violation of applicable standards at any existing or potential receptor;
   E. contaminants have not and will not migrate onto adjacent properties, or that:
      i. such properties are served by an existing public water supply system dependent on surface waters or hydraulically isolated groundwater; or
      ii. the owners of such properties have consented in writing to the request;

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<td>Acceptable</td>
</tr>
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</table>
(F) if the contaminant plume is predicted or expected to intercept surface waters, the groundwater discharge will not possess contaminant concentrations that would result in violations of the surface water standards established under 15A NCAC 02B .0200;
(G) all necessary access agreements needed to monitor groundwater quality have been or can be obtained;
(H) public notice of the request has been provided in accordance with Rule .0114(b) and (c) of this Section; and
(I) the proposed corrective action plan would be consistent with all other environmental laws.

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<tr>
<td>.0113(b)</td>
<td>delete the words “Environmental Management” in front of the word “Commission” as they are unnecessary.</td>
<td>Acceptable</td>
</tr>
<tr>
<td>.0114(b)</td>
<td>Add “predicted or” in front of “expected” for consistency.</td>
<td>Acceptable</td>
</tr>
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</table>
V – ATTACHMENTS AND SUPPORTING DOCUMENTATION
15A NCAC 02L .0101  AUTHORIZATION PURPOSE
(a) N.C. General Statute 143-214.1 directs that the Commission develop and adopt after proper study a series of classifications and standards which will be appropriate for the purpose of classifying each of the waters of the State in such a way as to promote the policy and purposes of the act. Pursuant to this statute, the rules in Sections .0200 and .0300 of this Subchapter establish a series of classifications and water quality standards applicable to the groundwaters of the State.
(b) These rules in Section .0100 of this Subchapter shall apply to all permitted and unpermitted activities or actions, intentional or accidental, which contribute to the degradation of groundwater quality, regardless of any permit issued by a governmental agency authorizing such action or activity, except an innocent landowner who is a bona fide purchaser of property which contains a source of groundwater contamination, who purchased such property without knowledge or a reasonable basis for knowing that groundwater contamination had occurred, or a person whose interest or ownership in the property is based or derived from a security interest in the property, shall not be considered a responsible party.

History Note: Authority G.S. 143-214.1; 143-214.2; 143-215.3(a)(1); 143B-282; Eff. June 10, 1979; Amended Eff. August 1, 1989; July 1, 1988; September 1, 1984; December 30, 1983.

15A NCAC 02L .0102  DEFINITIONS
The definition of any word or phrase used in these Rules in this Subchapter shall be the same as given in G.S. 143-212 and G.S. 143-213 except that the following words and phrases shall have the following meanings:

1. "Active remediation" means corrective action that includes active physical, biological, or chemical manipulation of groundwater or of the rock or soil media for the purpose of reducing the amount of contamination or minimizing the spread of contamination.
2. "Anthropogenic" means of, relating to, or resulting from the influence of human beings on nature.
3. "Background threshold values" mean statistically derived values of the concentrations of substances in environmental media not affected by site conditions, actions, or activities for use as a basis for compliance with the rules in this Subchapter.
4. "Bedrock" means any consolidated rock encountered in the place in which it was formed or deposited and which cannot be readily excavated without the use of explosives or power equipment.
5. "Commission" means the Environmental Management Commission as organized under G.S. 143B.
"Chief administrative officer" shall be, for the purposes of this Rule, the mayor, chairman of the county commissioners, the county manager, or the city manager who is responsible for environmental issues in their jurisdiction.

"Compliance boundary" means a boundary around the a waste disposal area of a disposal system at and beyond which groundwater quality standards may not be exceeded and only applies to facilities which have received an individual permit issued under the authority of G.S. 143-215.1 or G.S. 143A-143 215.1, Article 9 of G.S. 130A, or Article 11 of G.S. 130A.

"Compliance zone" means the area encompassed within the compliance boundary.

"Constituent of interest" means any substance that is manmade or naturally occurring that is or may be associated with or influenced by site activities or actions and that is of interest to the protection of public health and the environment.

"Contaminant" means any substance occurring in groundwater as a result of anthropogenic sources or activities in concentrations which exceed the groundwater quality standards specified in Rule .0202 of this Subchapter.

"Control" means the ability to direct, restrain, or influence sources of contamination and contaminant distribution.

"Corrective action plan" means a plan for controlling or eliminating sources of groundwater contamination or for restoring groundwater quality, achieving groundwater quality restoration or both.

"Director" means Director of the Division of Environmental Management, Water Resources or Waste Management or their delegate.

"Division" means the Division of Environmental Management, Water Resources or Waste Management.

"Exposure pathway" means a course taken by a contaminant by way of a transport medium after its release to the environment.

"Free product" means a non-aqueous phase liquid which may be present within the saturated zone or in surface water.

"Fresh groundwaters" means those groundwaters having a chloride concentration equal to or less than 250 milligrams per liter.

"Groundwaters" means those waters occurring in the subsurface under saturated conditions.


"Licensed geologist" means a person who has been duly licensed as a geologist in accordance with the requirements of G.S. 89E.

"Licensed soil scientist" means a person who has been licensed as a soil scientist in accordance with the requirements of G.S. 89F.
"Natural remediation attenuation" means those natural processes acting to restore groundwater quality, including dilution, filtration, sorption, ion-exchange, chemical transformation, and biodegradation.

"Natural conditions or naturally occurring" means the physical, biological, chemical and radiological conditions which occur naturally and are not a result of anthropogenic sources or activities.

"Person" shall be as defined in G.S. 130A-290(22).

"Potable waters" means those waters suitable for drinking by humans.

"Practical Quantitation Limit" means the lowest concentration of a given material that can be reliably achieved among laboratories within specified limits of precision and accuracy by a given analytical method during routine laboratory analysis.

"Natural conditions" means the physical, biological, chemical and radiological conditions which occur naturally.

"Potable waters" means those waters suitable for drinking by humans.

"Professional Engineer" means a person who has been duly registered and licensed as a professional engineer in accordance with the requirements of G.S. 89C.

"Receptor" means any human, plant, animal, or structure which is, or has the potential to be, adversely affected by the release or migration of contaminants. Any well constructed for the purpose of monitoring groundwater and contaminant concentrations shall not be considered a receptor, is as defined in G.S. 130A-309.201 and, for the purposes of this Rule, shall also include waters of the State as defined in G.S. 143-212(6).

"Review boundary" means a boundary around a permitted waste disposal facility, area midway between a waste boundary and a compliance boundary at which groundwater monitoring is may be required.

"Saline groundwaters" means those groundwaters having a chloride concentration of more than 250 mg/l.

"Saturated zone" means that part of the subsurface below the water table in which all the interconnected voids are filled with water under pressure at or greater than atmospheric. It does not include the capillary fringe.

"Secretary" means the Secretary of the Department of Environmental Quality or their delegate.

"Standards" "Standard" or "standards" means groundwater quality standards as specified in Rule .0202 of this Subchapter and any interim maximum allowable concentrations established by the Director per Rule .0202(c) of this Subchapter.

"Suitable for drinking" means a quality of water which does not contain substances in concentrations which, either singularly or in combination if ingested into the human body, may cause death, disease, behavioral abnormalities, congenital defects, genetic mutations, or result in an incremental lifetime
cancer risk in excess of $1 \times 10^{-6}$, or render the water unacceptable due to aesthetic qualities, including

taste, odor, or appearance.

(25) "Time of travel" means the time required for contaminants in groundwater to move a unit distance.

(26)(33) "Waste boundary" means the perimeter of the permitted waste disposal area.

(34) "Waste disposal area" means that portion of a disposal system permitted under authority of G.S 143-215.1, Article 9 of G.S. 130A, or Article 11 of G.S. 130A whose purpose is the temporary or permanent disposal of waste.

(27)(35) "Water table" means the surface of the saturated zone below which all interconnected voids are filled with water and at which the pressure is atmospheric.

History Note: Authority G.S. 143-214.1; 143-215; 143B-282;
Eff. June 10, 1979;
Amended Eff. October 1, 1993; August 1, 1989; July 1, 1988; March 1, 1985.

15A NCAC 02L .0103  POLICY

(a) The rules established in this Subchapter are intended to maintain and preserve the quality of the groundwaters, prevent and abate pollution and contamination of the waters of the state, protect public health, and permit management of the groundwaters for their best usage by the citizens of North Carolina. It is the policy of the Commission that the best usage of the groundwaters of the state is as a source of drinking water. These groundwaters generally are a potable source of drinking water without the necessity of significant treatment. It is the intent of these Rules to protect the overall high quality of North Carolina's groundwaters to the level established by the standards and to enhance and restore the quality of degraded groundwaters where feasible and necessary to protect human health and the environment, or to ensure their suitability as a future source of drinking water.

(b) It is the intention of the Commission to protect all groundwaters to a level of quality at least as high as that required under the standards established in Rule .0202 of this Subchapter. In keeping with the policy of the Commission to protect, maintain, and enhance groundwater quality within the State of North Carolina, the Commission will not approve any disposal system subject to the provisions of G.S. 143-215.1 which would result in any of the following:

(1) the significant degradation of groundwaters which have existing quality that is better than the assigned standard, unless such degradation is found to be in the best interests of the citizens of North Carolina based upon the projected economic benefits of the facility and a determination that public health will be protected, or protected.

(2) a violation of a groundwater quality standard beyond a designated compliance boundary, or boundary as a result of the permitted activities.

(3) the impairment of existing groundwater uses or increased risk to the public health or safety of the public due to the operation of a waste disposal system.
(c) Violations of the standards resulting from groundwater withdrawals which are in compliance with water use permits issued pursuant to G.S. 143-215.15, shall not be subject to the corrective action requirements of Rule .0106 of this Subchapter. Section.

(d) No person shall conduct or cause to be conducted, any activity which causes the concentration of any substance to exceed that specified in Rule .0202 of this Subchapter, the standards, except as authorized by the rules of this Subchapter.

(e) Work that is within the scope of the practice of geology and engineering, performed pursuant to the requirements of this Subchapter, which involves site assessment, the interpretation of subsurface geologic conditions, preparation of conceptual corrective action plans or any work requiring detailed technical knowledge of site conditions which is submitted to the Director, shall be performed by persons, firms, or professional corporations who are duly licensed to offer geological or engineering services by the appropriate occupational licensing board or are exempted from such licensing by G.S. 89E-6. Work which involves design of remedial systems or specialized construction techniques shall be performed by persons, firms, or professional corporations who are duly licensed to offer engineering services. Corporations that are authorized by law to perform engineering or geological services and are exempt from the Professional Corporation Act, G.S. 55B, may perform these services.

History Note: Authority G.S. 143-214; 143-214.1; 143-214.2; 143-215.3(e); 143-215.3(a)(1); 143B-282; Eff. June 10, 1979;
Amended Eff. August 1, 1989; July 1, 1988; September 1, 1984; December 30, 1983;
RRC Objection Eff. September 17, 1993, due to lack of necessity for Paragraph (e);

15A NCAC 02L .0104  RESTRICTED DESIGNATION (RS)

(a) The RS designation restricted designation (RS) serves as a warning means that groundwater so designated may not be suitable for use as a drinking water supply without treatment. The designation is temporary and will be removed by the Director upon a determination that the quality of the groundwater so designated has been restored to the level of the applicable standards or when the groundwaters have been reclassified by the Commission. The Director is authorized to designate GA or GSA groundwaters as RS under any of the following circumstances:

(1) Where, as a result of man's activities, groundwaters have been contaminated and the Director has approved a corrective action plan, or termination of corrective action, that will not result in the immediate restoration of such groundwaters to the standards established under this Subchapter.

(2) Where a statutory variance has been granted as provided in Rule .0113 of this Subchapter.

(b) The Director is authorized to apply the RS to GA or GSA groundwaters, as defined under Rule .0201 of this Subchapter, under any of the following circumstances:

(1) For sites undergoing risk-based remediation per Rule .0106(i) of this Section.

(2) Areas of remaining contamination where the Secretary has approved the termination of an approved corrective action per Rule .0106(j) of this Section.
Where a variance has been granted by the Commission as provided in Rule .0113 of this Section.

Groundwaters occurring within an area defined by a compliance boundary in a waste disposal permit are deemed to be designated RS.

The boundary of the designated RS area may be approximated in the absence of analytical data sufficient to define the dimension of the area. The boundary shall be located at least 250 feet or greater away from the predicted edge boundary of the contaminant plume, plume and shall include any areas into which the contamination is predicted or expected to migrate. Predictive modeling may be used to supplement site-specific sample data in characterizing the current and predicted future extent of the plume.

In areas designated RS, the person responsible for groundwater contamination shall establish and implement a groundwater monitoring system sufficient to detect changes in groundwater quality within the RS designated area. Monitoring shall be quarterly for the first year and may be reduced to semi-annually thereafter until the applicable standards have been achieved. If during the monitoring period, contaminant concentrations increase, additional remedial action or monitoring pursuant to these Rules may be required.

The applicant for an RS designation shall also provide written verification that all property owners within and adjacent to the proposed RS area have been notified of the requested RS designation.

Where the RS area crosses, intercepts, or adjoins surface waters, the RS shall not give the right to cause or contribute to an exceedance of the surface water standards established under 15A NCAC 02B .0200.

Application for RS. The person requesting a RS shall provide to the Director a plan that includes the following:

1. The person's name, address, phone number.
2. The physical location of the facility or site where the contamination originated.
3. If applicable, a copy of the Secretary's approval for termination of corrective action or a variance granted by the Commission as provided in Rule .0113 of this Section.
4. A summary of the site assessment and corrective actions including the results of any predictive modeling that estimates the time to return compliance for the RS area.
5. Maps showing the current horizontal and vertical extent of any contamination and the areas where the contamination is predicted or expected to migrate including the current and predicted quantities of any contaminants and all current and potential future receptors within 1,500 feet of contamination.
6. A map showing the proposed RS area including the county title number, county tax identification number, or the property tax book and page identifiers of the properties included within the proposed RS area.
7. A plan for monitoring the groundwater quality within the RS area that includes the current or proposed wells to be monitored, the frequency of the monitoring, and the constituents of interest to be monitored.
8. If the proposed RS area extends beyond the source property's boundary, a signed statement from each property owner agreeing to the proposed RS area on their property if required by programmatic statute.
If the proposed RS area crosses, intercepts, or adjoins surface waters, a plan to ensure the surface water standards established under 15A NCAC 02B.0200 are not violated.

The Director shall review the proposed plan and whether the proposed plan is protective of public health and the environment for receptors within the RS and otherwise complies with requirements of this Rule.

Prior to approving the proposed plan in Paragraph (f) of this Rule, the Division shall provide public notice of the intent to designate any groundwater with RS in accordance with the following requirements: as follows:

1. Notice shall be published at least 30 days prior to any proposed final action in accordance with G.S. 143-215.4. In addition, notice shall be provided to all property owners identified pursuant to Paragraph (e) of this Rule and to the local County Health Director and the chief administrative officer of the political jurisdiction(s) in which the contamination occurs. and provide such notice to all property owners with signed statements per Subparagraph (f)(8) of this Rule, to the local County Health Director, and the chief administrative officer of the jurisdiction(s) in which the contamination occurs.

2. The notice shall contain the following information:
   
   (A) name, address, and phone number of the agency issuing the public notice;
   
   (B) A copy of the plan in Paragraph (f) of this Rule or where the plan can be obtained.
   
   (C) the location and extent of the designated area;
   
   (D) a brief description of the action or actions which resulted in the degradation of groundwater in the area;
   
   (E) actions or intended actions taken to restore groundwater quality;
   
   (F) the significance of the RS designation;
   
   (G) conditions applicable to removal of the RS designation; and
   
   (H) address and phone number of a Division contact from whom interested parties may obtain further information.

3. The Director shall consider all requests for a public hearing, and if he or she determines that there is significant public interest he or she shall issue public notice and hold a public hearing in accordance with G.S. 143-215.4(b) and Rule .0113(e) of this Section.

4. These requirements shall not apply to groundwaters defined in Paragraph (b)(c) of this Rule.

(i) The Director shall approve the plan if the proposal complies with requirements of this Rule. Upon making a determination, the Director shall provide specific findings to support their decision to approve or disapprove a proposed plan and may require a person who proposes a plan to supply any additional information not provided in Paragraph (f) of this Rule necessary to make their determination.
The process for recordation, application, and removal of an approved RS area shall be in accordance with G.S. 143B-279.10 or G.S. 143B-279.11. The land use restriction shall be that groundwater within the RS may not be suitable for drinking without treatment.

The RS shall also be removed if the groundwater within the RS is reclassified by the Commission per G.S. 143-214.1.

History Note: Authority G.S. 143-214.1; 143-215.3(a)(1); 143B-279.9; 143B-279.10; 143B-279.11; 143B-282(2);
Eff. June 10, 1979;
Amended Eff. October 1, 1993; December 1, 1989; August 1, 1989; December 30, 1983.

15A NCAC 02L .0105  ADOPTION BY REFERENCE

15A NCAC 02L .0106  INITIAL RESPONSE, SITE ASSESSMENT, AND CORRECTIVE ACTION

(a) Where groundwater quality has been degraded, the goal of any required corrective action shall be restoration to the level of the standards, or as closely thereto as is economically and technologically feasible as determined by the Department in accordance with this Rule. The corrective action strategies addressed in this Rule can be through either active remediation in Paragraph (g) of this Rule, natural attenuation in Paragraph (h) of this Rule, or risk-based remediation in Paragraph (i) of this Rule. In all cases involving requests to the Secretary, as defined in 15A NCAC 02C .0102, for approval of corrective action plans or termination of corrective action, the responsibility for providing all information required by this Rule lies with the person(s) making the request.

(b) Any person conducting or controlling an activity, permitted or unpermitted, that results in the discharge of a waste or hazardous substance or oil to the ground surface, vadose zone, or groundwaters of the State, or in proximity thereto, shall take action upon discovery to terminate and control the discharge, mitigate any hazards resulting from exposure to the pollutants, and notify the Department, as defined in 15A NCAC 02C .0102, of the discharge, follow the requirements in Paragraphs (c), (d), or (e) of this Rule.

(c) Any person conducting or controlling an activity that has not been permitted by the Department pursuant to G.S. 143-215.1, Article 9 of G.S. 130A, or Article 11 of G.S. 130A and that results in an increase in the concentration of a substance in excess of the standard, other than agricultural operations, defined under G.S. 106-581.1, shall take the following steps:

1. Within 24 hours of discovery of the violation, notify the Department of the activity that has resulted in the increase and the contaminant concentration levels, if known.
2. Respond in accordance with Paragraph (f) of this Rule.
3. Submit a report to the Secretary assessing the cause, significance, and extent of the violation, and...
(4) Implement an approved corrective action plan for restoration of groundwater quality in accordance with a schedule established by the Secretary. In establishing a schedule, the Secretary shall consider a schedule proposed by the person submitting the plan. A report shall be made to the Health Director of the county or counties in which the contamination occurs in accordance with the requirements of Rule .0114(a) in this Section.

(3) Implement a monitoring program in accordance with Rule .0110 of this Section.

(4) Submit a site assessment report to the Director in accordance with Rule .0111 of this Section.

(5) Submit a notification in accordance with the requirements of Rule .0114(a) of this Section.

(6) If required, submit a corrective action plan to the Director in accordance with Rule .0111 of this Section or pursue risk-based remediation per Paragraph (i) of this Rule. If a corrective action plan is submitted for active remediation or natural attenuation, then:

(A) For natural attenuation corrective action, submit a notification in accordance with the requirements of Rule .0114(b) of this Section.

(B) Implement the corrective action plan upon its approval by the Secretary.

(C) For natural attenuation corrective action, submit a notification in accordance with the requirements of Rule .0114(c) of this Section.

Any activity not permitted pursuant to G.S. 143-215.1 or G.S. 130A-294 shall, for the purpose of this Rule, be deemed not permitted by the Department and subject to the provisions of this Paragraph.

(d) For any person conducting or controlling an activity that is conducted under the authority of a permit initially issued by the Department on or after December 30, 1983 pursuant to G.S. 143-215.1, Article 9 of G.S. 130A, or Article 11 of G.S. 130A or G.S. 130A-294 and that results in an increase in concentration of a substance in excess of the standards, standards at or beyond the review boundary:

(1) at or beyond a review boundary: the Director may require, based on information including data trends, geologic and hydrogeologic conditions, and spacing between the review and compliance boundaries, that the person shall demonstrate, through predictive calculations or modeling, that one or more of the following natural site conditions, facility design and operational controls will prevent a violation of standards at the compliance boundary:

(A) geologic or hydrogeologic conditions;
(B) facility design; or
(C) operational controls.

Alternately, the person may submit a plan for alteration of existing site conditions, facility design, or operational controls that will prevent a violation at the compliance boundary, and implement that plan upon its approval by the Secretary.

(2) at or beyond a compliance boundary: the person shall respond in accordance with Paragraph (f) of this Rule, assess the cause, significance and extent of the violation of standards and submit the results of the investigation, and a plan and proposed schedule for corrective action to the Secretary. The permittee shall implement the plan as approved by and in accordance with a schedule
established by the Secretary. In establishing a schedule the Secretary shall consider any schedule proposed by the permittee, the scope of the project, the extent of contamination, and the corrective action being proposed. If an exceedance of the standards is predicted at or beyond the compliance boundary, the person may submit a plan for alteration of existing site conditions, facility design, or operational controls that will prevent a violation at the compliance boundary, and implement that plan upon its approval by the Director. In approving the plan, the Director shall consider geologic and hydrogeologic conditions, the nature and extent of the contamination, technical and economic feasibility, and public health impacts on all potential receptors should the contaminated plume reach them.

(e) For any person conducting or controlling an activity that is conducted under the authority of a permit issued by the Department pursuant to G.S. 143-215.1, Article 9 of G.S. 130A, or Article 11 of G.S. 130A that results in an increase in concentration of a substance in excess of the standards beyond the compliance boundary or within the compliance zone as specified by Rule .0107(q) of this Section, the person shall take the following steps:

(1) Within 24 hours of discovery of the initial violation, notify the Department of the activity that has resulted in the increase, the contaminants that are in exceedance, and the contaminant concentration levels.

(2) Respond in accordance with Paragraph (f) of this Rule.

(3) Implement a monitoring program in accordance with Rule .0110 of this Section.

(4) Submit a site assessment report to the Director in accordance with Rule .0111 of this Section.

(5) Submit a notification in accordance with the requirements of Rule .0114(a) of this Section.

(6) If required, submit a corrective action plan to the Director in accordance with Rule .0111 of this Section or pursue risk-based remediation per Paragraph (i) of this Rule. The corrective action plan may include alteration of existing site conditions, facility design, or operational controls that will prevent a violation at the compliance boundary. If a corrective action plan is submitted for active remediation or natural attenuation, then:

(A) For natural attenuation corrective action, submit a notification in accordance with the requirements of Rule .0114(b) of this Section.

(B) Implement the corrective action upon its approval by the Secretary.

(C) For natural attenuation corrective action, submit a notification in accordance with the requirements of Rule .0114(c) of this Section.

(e) Any person conducting or controlling an activity that is conducted under the authority of a permit initially issued by the Department prior to December 30, 1983 pursuant to G.S. 143-215.1 or G.S. 130A-294, and that results in an increase in concentration of a substance in excess of the standards at or beyond the compliance boundary specified in the permit, shall:

(1) within 24 hours of discovery of the violation, notify the Department of the activity that has resulted in the increase and the contaminant concentration levels;

(2) respond in accordance with Paragraph (f) of this Rule;
(3) submit a report to the Secretary assessing the cause, significance and extent of the violation; and
(4) implement an approved corrective action plan for restoration of groundwater quality at or beyond the compliance boundary, in accordance with a schedule established by the Secretary. In establishing a schedule the Secretary shall consider any schedule proposed by the person submitting the plan. A report shall be made to the Health Director of the county or counties where the contamination occurs in accordance with the requirements of Rule .0114(a) in this Section.

(f) Initial response actions required to be conducted prior to or concurrent with the site assessment required in Paragraphs (c), (d), or (e) of this Rule shall include:

(1) Prevention of fire, explosion, or the spread of noxious fumes.
(2) Abatement, containment, or control of the migration of contaminants.
(3) Removal, treatment, or control of any primary pollution source such as buried waste, waste stockpiles, or surficial accumulations of free products.
(4) Removal, treatment, or control of secondary pollution sources that would be potential continuing sources of pollutants to the groundwaters, such as contaminated soils and non-aqueous phase liquids. Contaminated soils that threaten the quality of groundwaters shall be treated, contained, or disposed of in accordance with rules in this Chapter Subchapter and in 15A NCAC 13 applicable to such activities. The treatment or disposal of contaminated soils shall be conducted in a manner that will not result in a violation of the standards or North Carolina Hazardous Waste Management rules. Standards or 15A NCAC 13 Rules.

The initial response actions shall be documented in the site assessment report required under Rule .0111(b) of this Section. The Director may request written documentation of the response actions in advance of the site assessment report if there is an immediate threat to human health.

(g) The site assessment conducted pursuant to the requirements of Paragraphs (c), (d), or (e) of this Rule, shall include:

(1) The source and cause of contamination;
(2) Any imminent hazards to public health and safety, as defined in G.S. 130A-2, and any actions taken to mitigate them in accordance with Paragraph (f) of this Rule;
(3) All receptors and significant exposure pathways;
(4) The horizontal and vertical extent of soil and groundwater contamination and all significant factors affecting contaminant transport; and
(5) Geological and hydrogeological features influencing the movement, chemical, and physical character of the contaminants.

Reports of site assessments shall be submitted to the Department as soon as practicable or in accordance with a schedule established by the Secretary. In establishing a schedule the Secretary shall consider a proposal by the person submitting the report.

(h) Corrective action plans for restoration of groundwater quality, submitted pursuant to Paragraphs (c), (d), and (e) of this Rule shall include:

(1) A description of the proposed corrective action and reasons for its selection;
Specific plans, including engineering details where applicable, for restoring groundwater quality;

A schedule for the implementation and operation of the proposed plan; and

A monitoring plan for evaluating the effectiveness of the proposed corrective action and the movement of the contaminant plume.

(i) In the evaluation of corrective action plans, the Secretary shall consider the extent of any violations, the extent of any threat to human health or safety, the extent of damage or potential adverse impact to the environment, technology available to accomplish restoration, the potential for degradation of the contaminants in the environment, the time and costs estimated to achieve groundwater quality restoration, and the public and economic benefits to be derived from groundwater quality restoration.

(j)(g) Corrective action using active remediation. A corrective action plan prepared pursuant to Paragraphs (c), (d), or (e)(c) or (e) of this Rule shall be implemented using a remedial technology demonstrated to provide the most effective means, taking into consideration geological and hydrogeological conditions at the contaminated site, for restoration of groundwater quality to the level of the standards. Corrective action plans prepared pursuant to Paragraphs (c) or (e) of this Rule may request an exception as provided in Paragraphs (k), (l), (m), (r), and (s) of this Rule. Corrective action plans for active remediation shall include the information in Rule .0111(c) of this Section.

(k) Any person required to implement an approved corrective action plan for a site subject to Paragraphs (c) or (e) of this Rule may request that the Secretary approve such a plan without requiring groundwater remediation to the standards. A request submitted to the Secretary under this Paragraph shall include a description of site-specific conditions, including information on the availability of public water supplies for the affected area; the technical basis for the request; and any other information requested by the Secretary to evaluate the request in accordance with Subparagraphs (1) through (7) of this Paragraph. The person making the request shall demonstrate:

(1) that all sources of contamination and free product have been removed or controlled pursuant to Paragraph (f) of this Rule;

(2) that the time and direction of contaminant travel can be predicted with reasonable certainty;

(3) that contaminants have not and will not migrate onto adjacent properties, or that:

(A) such properties are served by an existing public water supply system dependent on surface waters or hydraulically isolated groundwater; or

(B) the owners of such properties have consented in writing to the request;

(4) that the standards specified in Rule .0202 of this Subchapter will be met at a location no closer than one year time of travel upgradient of an existing or foreseeable receptor, based on travel time and the natural attenuation capacity of subsurface materials or on a physical barrier to groundwater migration that exists or will be installed by the person making the request;

(5) that, if the contaminant plume is expected to intercept surface waters, the groundwater discharge will not possess contaminant concentrations that would result in violations of standards for surface waters contained in 15A NCAC 02B .0200;

(6) that public notice of the request has been provided in accordance with Rule .0114(b) of this Section; and
that the proposed corrective action plan would be consistent with all other environmental laws.

Corrective action using natural attenuation. Any person required to implement an approved corrective action plan for a site subject to Paragraphs (c) or (e) of this Rule may request that the Secretary approve such a plan based upon natural processes of degradation and attenuation of contaminants. Corrective action plans for natural attenuation shall make the demonstration and include the information in Rule .0111(d) of this Section. A request submitted to the Secretary under this Paragraph shall include a description of site-specific conditions, including written documentation of projected groundwater use in the contaminated area based on current state or local government planning efforts; the technical basis for the request; and any other information requested by the Secretary to evaluate the request in accordance with Subparagraphs (1) through (10) of this Paragraph. The person making the request shall demonstrate:

(1) that all sources of contamination and free product have been removed or controlled pursuant to Paragraph (f) of this Rule;
(2) that the contaminant has the capacity to degrade or attenuate under the site-specific conditions;
(3) that the time and direction of contaminant travel can be predicted based on subsurface conditions and the contaminant's physical and chemical properties;
(4) that contaminant migration will not result in any violation of applicable groundwater standards at any existing or foreseeable receptor;
(5) that contaminants have not and will not migrate onto adjacent properties, or that:
   (A) such properties are served by an existing public water supply system dependent on surface waters or hydraulically isolated groundwater; or
   (B) the owners of such properties have consented in writing to the request;
(6) that, if the contaminant plume is expected to intercept surface waters, the groundwater discharge will not possess contaminant concentrations that would result in violations of standards for surface waters contained in 15A NCAC 02B .0200;
(7) that the person making the request will put in place a groundwater monitoring program that, based on subsurface conditions and the physical and chemical properties of the contaminant, will accurately track the degradation and attenuation of contaminants and contaminant by-products within and down gradient of the plume and to detect contaminants and contaminant by-products prior to their reaching any existing or foreseeable receptor at least one year's time of travel upgradient of the receptor and no greater than the distance the groundwater at the contaminated site is predicted to travel in five years;
(8) that all necessary access agreements needed to monitor groundwater quality pursuant to Subparagraph (7) of this Paragraph have been or can be obtained;
(9) that public notice of the request has been provided in accordance with Rule .0114(b) of this Section; and
(10) that the proposed corrective action plan would be consistent with all other environmental laws.

Corrective action using risk-based remediation. A person choosing to use risk-based remediation shall comply with the requirements in G.S. 130A Article 9 Part 8.
(m)(j) Termination of active remediation prior to achieving the standards. The Department or any person required to implement an approved corrective action plan for a site subject to Paragraphs (c) or (e) or Paragraph (g) of this Rule may request that the Secretary approve termination of the active remediation prior to achieving the standards. The owner and operator of an active remediation system shall demonstrate that, by terminating the active remediation and then implementing an approved natural attenuation corrective action under Paragraph (h) of this Rule, all potential receptors will be protected. A request submitted to the Secretary under this Paragraph shall include:

1. A request submitted to the Secretary under this Paragraph shall include:
   - a discussion of the duration of the corrective action, the total project cost, projected annual cost for continuance and evaluation of the success of the corrective action;
   - an evaluation of alternate treatment technologies that could result in further reduction of contaminant levels, projected capital, and annual operating costs for each technology; and
   - the effects, including health and safety impacts, on groundwater users if contaminant levels remain at levels existing at the time corrective action is terminated.

2. An evaluation of alternate treatment technologies that could potentially result in further reduction of contaminant levels, projected capital, and annual operating costs for each technology.

3. The effects, including public health impacts, on groundwater users if contaminant levels remain at levels existing at the time corrective action is terminated.

4. The proposed contaminant concentrations to actively remediate to in the source area and all predictive calculations and model runs demonstrating that the standards will be met at all existing or potential receptors, based on travel time and the natural attenuation capacity of subsurface materials or on a barrier to groundwater migration that exists or will be installed by the person making the request.

5. A demonstration that continuation of active remediation would not result in a significant reduction in the concentration of contaminants. This demonstration shall show the duration and degree of success of existing remedial efforts to attain the standards. For the purpose of this Rule, a "significant reduction" is demonstrated by showing that the asymptotic slope of the contaminant concentrations over time is less than a ratio of 1:40 over a term of one year based on four consecutive quarters with sampling events spaced at least three months apart.

6. A natural attenuation corrective action plan for the remaining contamination in accordance with Paragraph (h) of this Rule.

(2) In addition, the person making the request shall demonstrate:

(A) that continuation of corrective action would not result in a significant reduction in the concentration of contaminants. This demonstration shall show the duration and degree of success of existing remedial efforts to attain standards. For the purpose of this Part, a "significant reduction" is demonstrated by showing that the asymptotic slope of the...
contaminants curve of decontamination is less than a ratio of 1:40 over a term of one year based on quarterly sampling;

\( (B) \) that contaminants have not and will not migrate onto adjacent properties, or that:

\( (i) \) such properties are served by an existing public water supply system dependent on surface waters or hydraulically isolated groundwater; or

\( (ii) \) the owners of such properties have consented in writing to the request;

\( (C) \) that, if the contaminant plumes are expected to intercept surface waters, the groundwater discharge will not possess contaminant concentrations that would result in violations of standards for surface waters contained in 15A NCAC 02B .0200;

\( (D) \) that public notice of the request has been provided in accordance with Rule .0114(b) of this Section; and

\( (E) \) that the proposed termination would be consistent with all other environmental laws.

(3) The Secretary shall not authorize termination of corrective action for any area that, at the time the request is made, has been identified by a state or local groundwater use planning process for resource development.

(4) The Secretary may authorize the termination of corrective action, or amend the corrective action plan after considering all the information in the request. In making the authorization, the Secretary shall consider health and safety impacts on all existing and foreseeable receptors and the impacts the contaminated plume may have if it reaches them. Upon termination of corrective action, the Secretary shall require implementation of a groundwater monitoring program that, based on subsurface conditions and the physical and chemical properties of the contaminants, will accurately track the degradation and attenuation of contaminants at a location of no less than one year’s predicted time of travel upgradient of any existing or foreseeable receptor. The monitoring program shall remain in effect until there is sufficient evidence that the contaminant concentrations have been reduced to the level of the standards. For the purpose of this Part, "sufficient evidence" means that sampling and analyses demonstrate that contaminant concentrations have been reduced to the level of the standards on multiple sampling events.

(k) The Secretary shall not authorize termination of active remediation for any area that, at the time the request is made, has been identified by a state or local groundwater use planning process for resource development.

(l) The Secretary may authorize the termination of active remediation, or amend the corrective action plan after considering all the information in the request. In making the authorization, the Secretary shall consider geologic and hydrogeologic conditions, the nature and extent of the contamination, technical and economic feasibility, and public health impacts on all potential receptors should the contaminated plume reach them. The Secretary will review the request for completeness and may request any additional information necessary to make their authorization.

(m) In the evaluation of active remediation or natural attenuation corrective action plans, the Secretary shall consider the extent of any violations, the extent of any threat to human health, the extent of damage or potential adverse impact
to the environment, technology available to accomplish restoration, the potential for degradation of the contaminants in the environment, geologic and hydrogeologic conditions, the time estimated to achieve groundwater quality restoration, technical and economic feasibility, and the public and economic benefits to be derived from groundwater quality restoration.

(n) Upon a determination by the Secretary that continued corrective action would result in no significant reduction in contaminant concentrations, concentrations as determined in Part (i)(5) of this Rule, and the contaminated groundwaters can be rendered potable by treatment using technologies that are in use in other applications and shown to be effective for removal of contaminants, the person may request that the Secretary may designate the remaining area of degraded groundwater RS. Where the remaining degraded groundwaters cannot be made potable by such treatment, the Secretary Commission may also consider a request for reclassification of the groundwater to a GC classification as outlined in Rule .0201 .0319 of this Subchapter.

(o) If at any time the Secretary determines that a new technology is available that would remediate the contaminated groundwater to the standards specified in Rule .0202 of this Subchapter, the Secretary may require the responsible party person to evaluate the economic and technological feasibility of implementing the new technology in an active groundwater remediation corrective action plan in accordance with a schedule established by the Secretary. The Secretary's determination to utilize new technology at any site or for any particular contaminant or constituent of interest shall include a consideration of the factors in Paragraph (h) of this Rule. Rule .0111(c) of this Section.

(p) Where the standards are exceeded as a result of the application of pesticides or other agricultural chemicals, the Secretary shall request the Pesticide Board or the Department of Agriculture and Consumer Services to assist the Department in determining the cause of the violation. If the violation is determined to have resulted from the use of pesticides, the Secretary shall request the Pesticide Board to take appropriate regulatory action to control the use of the chemical or chemicals responsible for, or contributing to, such violations, or to discontinue their use.

(q) The approval pursuant to this Rule of any corrective action plan, or modification or termination thereof, that permits the migration of a contaminant onto adjacent property, shall not affect any private right of action by any party that may be affected by that contamination.

(q) If a discharge or release is not governed by the rules in Section .0400 of this Subchapter and the increase in the concentration of a substance in excess of the standard resulted in whole or in part from a release from a commercial or noncommercial underground storage tank as defined in G.S. 143-215.94A, any person required to implement an approved corrective action plan pursuant to this Rule and seeking reimbursement for the Commercial or Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Funds shall implement a corrective action plan meeting the requirements of Paragraph (k) or (l)(g) or (h) of this Rule unless the person demonstrates to the Secretary that:

1. contamination resulting from the discharge cannot qualify for approval of a plan based on the requirements of the Paragraphs; or
2. the cost of making such a demonstration would exceed the cost of implementing a corrective action plan submitted pursuant to Paragraph (c) of this Rule. Rule .0111(c) of this Section.
If a discharge or release is not governed by the rules in Section .0400 of this Subchapter and the increase in the concentration of a substance in excess of the standard resulted in whole or in part from a release from a commercial or noncommercial underground storage tank as defined in G.S. 143-215.94A, the Secretary may require any person implementing or operating a previously approved corrective action plan pursuant to this Rule to:

1. develop and implement a corrective action plan meeting the requirements of Paragraphs (k) and (l) of this Rule; or
2. seek discontinuance of corrective action pursuant to Paragraph (m) of this Rule.

Pursuant to this Rule, the approval of any corrective action plan, modification, or termination thereof, that permits the migration of a contaminant onto adjacent property, shall not affect any private right of action by any party that may be affected by that contaminant.


15A NCAC 02L .0107 COMPLIANCE BOUNDARY

(a) For disposal systems individually permitted prior to December 30, 1983, the compliance boundary shall be established at a horizontal distance of 500 feet from the waste boundary or at the property boundary, whichever is closer to the source.
(b) For disposal systems individually permitted on or after December 30, 1983, a compliance boundary shall be established at a horizontal distance of 250 feet from the waste boundary, or 50 feet within the property boundary, whichever point is closer to the source.
(c) The compliance boundary shall be established by the Director, or his designee at the time of permit issuance, and shall remain in place for the duration of the permit. Any sale or transfer of property which affects a compliance boundary shall be reported immediately to the Director, or his designee. For disposal systems which are not governed by Paragraphs (e) or (f) of this Rule, the compliance boundary affected by the sale or transfer of property will be re-established consistent with Paragraphs (a) or (b) of this Rule, whichever is applicable.
(d) Except as provided in Paragraph (g) of this Rule, no water supply wells shall be constructed or operated within the compliance boundary of a disposal system individually permitted or repermitted after January 1, 1993.
(e) The compliance boundary and zone shall extend vertically from the surface through the water table to the maximum depth of saturation.
(f) The permitted activity shall not cause or contribute to an exceedance of the surface water standards established under 15A NCAC 02B .0200.
Multiple contiguous properties under common ownership and permitted for use as a waste disposal area shall be treated as a single property with regard to determination of a compliance zone and setbacks to property lines as per Paragraphs (a) or (b) of this Rule.

Where compliance zones for separately permitted waste disposal areas under the same ownership on the same property intersect, the Director shall combine the compliance zones into one single compliance zone with a single compliance boundary.

The permittee shall establish a monitoring program within the compliance zone per the requirements in Rule .0110 of this Section.

Except as provided in Paragraph (m) of this Rule, no new water supply wells shall be constructed within the compliance zone of a disposal system individually permitted after January 1, 1993.

Except as provided in Paragraph (g)(m) of this Rule, a permittee shall not transfer if the land within an established compliance boundary zone of a disposal system permitted or repermitted after January 1, 1993 unless:

1. The land transferred is serviced by a community water system as defined in 15A NCAC 18C, the source of which is located outside the compliance boundary, the deed shall contain notice of the permit, including the permit number, a description of the type of permit, and the name, address and telephone number of the permitting agency.
   - The deed transferring the property:
     - (A) contains notice of the permit, including the permit number, a description of the type of permit, and the name, address and telephone number of the permitting agency; and
     - (B) contains a restrictive covenant running with the land and in favor of the permittee and the State, as a third party beneficiary, which prohibits the construction and operation of water supply wells within the compliance boundary; and
     - (C) contains a restrictive covenant running with the land and in favor of the permittee and the State, as a third party beneficiary, which grants the right to the permittee and the State to enter on such property within the compliance boundary for groundwater monitoring and remediation purposes.

Except as provided in Paragraph (g)(m) of this Rule, if at the time a permit is issued or reissued after January 1, 1993, the permittee is not the owner of the land within the compliance boundary zone, it shall be a condition of the permit issued or renewed that the landowner of the land within the compliance boundary zone, if other than the permittee, execute and file in the Register of Deeds in the county in which the land is located, an easement running with the land which contains either a notice of the permit, including the permit number, a description of the type of permit, and the name, address and telephone number of the permitting agency; or a reference to a notice of the permit with book and page number of its recordation if such notice is required to be filed by statute. The Director shall, upon request by the landowner, file a document terminating the easement with the appropriate Register of Deeds once the following conditions have been met:

1. All required groundwater remediation has been completed.
groundwater monitoring is no longer required; and

(3) monitoring wells have been abandoned in accordance with 15A NCAC 02C .0113.

(4) contains:

(A) either a notice of the permit, including the permit number, a description of the type of permit, and the name, address and telephone number of the permitting agency; or

(B) a reference to a notice of the permit with book and page number of its recordation if such notice is required to be filed by statute;

(2) prohibits the construction and operation of water supply wells within the compliance boundary; and

(3) reserves the right to the permittee and the State to enter on such property within the compliance boundary for groundwater monitoring and remediation purposes. The easement may be terminated by the Director when its purpose has been fulfilled or the need for the easement no longer exists. Under those conditions the Director shall, upon request by the landowner, file a document terminating the easement with the appropriate Register of Deeds.

(i) Any sale or transfer of property which affects a compliance boundary shall be reported to the Director within seven days of the final sale or transfer. For disposal systems which are not governed by Paragraphs (j) or (k) of this Rule, the compliance boundary affected by the sale or transfer of property shall be reestablished consistent with this Rule.

(g)(m) The requirements of Paragraphs (d), (e) and (f) of this Rule are not applicable to For ground adsorption sewage treatment and disposal systems serving four or fewer single family dwellings or multiunit dwellings of four or fewer units. units regulated under 15A NCAC 02T .0600, the requirements of Paragraphs (i), (j), and (k) of this Rule shall not be applicable.

(h) The boundary shall form a vertical plane extending from the water table to the maximum depth of saturation.

(i)(n) For ground absorption sewage treatment and disposal systems which are permitted regulated under 15A NCAC 02T .0600, 18A.1900, the compliance boundary shall be established at the property boundary.

(j)(o) Penalties authorized pursuant to G.S. 143-215.6A(a)(1) will shall not be assessed for violations of the standards within a compliance boundary zone unless the violations are the result of violations of permit conditions or negligence in the management of the facility.

(k) The Director shall require:

(1) that permits for all activities governed by G.S. 143-215.1 be written to protect the quality of groundwater established by applicable standards, at the compliance boundary;

(2) that necessary groundwater quality monitoring shall be conducted within the compliance boundary;

and

(3) that a violation of standards within the compliance boundary resulting from activities conducted by the permitted facility be remedied through clean-up, recovery, containment, or other response when any of the following conditions occur:

(A) a violation of any standard in adjoining classified groundwaters occurs or can be reasonably predicted to occur considering hydrogeologic conditions, modeling, or other available evidence;
(B) an imminent hazard or threat to the public health or safety exists; or

(C) a violation of any standard in groundwater occurring in the bedrock other than limestones found in the Coastal Plain sediments, unless it can be demonstrated that the violation will not adversely affect, or have the potential to adversely affect a water supply well.

(p) The Director shall require that permits for all activities governed by G.S. 143-215.1, Article 9 of G.S. 130A, or Article 11 of G.S. 130A be written in such a way to protect groundwater at or beyond the compliance boundary.

(q) The Director shall require that exceedances of the standards resulting from activities conducted by the permitted facility within the compliance zone be remedied through clean-up, recovery, containment, facility design, or operational control if any of the following occur:

1. A violation of the standards occurs or is predicted to occur through groundwater modeling in groundwater at or beyond the compliance boundary as a result of the permitted activities.
2. A violation of the surface water standards established under 15A NCAC 02B .0200 occurs or is predicted to occur through modeling as a result of the permitted activities.
3. An imminent hazard as defined in G.S.130A-2 exists.
4. An exceedance of the standards occurs in bedrock within the compliance zone as a result of the permitted activities unless it can be demonstrated that the violation will not adversely affect any receptor.

History Note: Authority G.S. 143-215.1(b); 143-215.1; 143-215.3(a)(1); 143B-282;
Eff. August 1, 1989;

15A NCAC 02L .0108 REVIEW BOUNDARY

A review boundary is established around any waste disposal system area midway between the compliance boundary and the waste boundary. When the concentration of any substance equals or exceeds the standard at the review boundary as determined by monitoring, the permittee shall be required to take action in accordance with the provisions of Rule .0106(c)(2)(A),.0106(d) of this Subchapter. Section.

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

15A NCAC 02L .0109 DELEGATION

(a) The Director is delegated the authority to enter into consent special orders under G.S. 143-215.2 for violations of the standards except when a public meeting is required as provided in 15A NCAC 2H 02H .1203.

(b) The Director is delegated the authority to prepare a proposed special order to be issued by the Commission without the consent of the person affected and to notify the affected person of that proposed order and of the procedure set out in G.S. 150B-23 to contest the proposed special order.
(c) The **Director, or his designee** shall give public notice of proposed consent special orders as specified in 15A NCAC 02H.1203.

**History Note:** Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.3(a)(4);
Eff. August 1, 1989;
Amended Eff. October 1, 1993; October 1, 1990.

**15A NCAC 02L.0110** MONITORING

(a) Except where exempted by statute or this Subchapter, the **Director may require** any person who causes, permits, or has control over any discharge of waste or groundwater cleanup program, shall install and implement a monitoring program system at such locations and in such detail as the Director, or his designee may require. The Director shall consider information including the geologic and hydrogeologic conditions, potential receptors, and risks to public health and the environment in determining the nature and extent of any required monitoring program. The monitoring plan shall be prepared under the responsible charge of a Professional Engineer or Licensed Geologist and bear the seal of the same if required under G.S. 89C or G.S. 89E.

(b) Monitoring systems within the monitoring program shall be constructed and operated in a manner that will not result in the contamination of adjacent groundwaters of a higher quality.

(c) The Director may require modification of a monitoring program or system or require additional monitoring of a contaminant or constituent of interest if it is determined to be in the best interest to public health and the environment.

(d) Monitoring systems within the monitoring program shall be able to:

1. Track the migration, degradation, and attenuation of contaminants and contaminant by-products from the source area through a point of compliance such as a compliance boundary (if applicable), within a contaminant plume, and in areas where the contaminant plume is expected or predicted to migrate.

2. Be used to determine the background groundwater quality that is not affected by site conditions, actions, or activities.

3. Detect contaminants and contaminant by-products prior to their reaching any potential receptor.

4. Detect if a groundwater contaminant plume is causing or contributing to exceedances of the surface water standards established under 15A NCAC 02B.0200.

(e) Monitoring shall be conducted and results reported in a manner and at a frequency specified by the **Director, or his designee** based on information including the geologic and hydrogeologic conditions, potential receptors, and risks to public health and the environment.

(f) Monitoring programs shall remain in effect until it is demonstrated that the contaminant concentrations resulting from site activities or actions have been reduced to a level at or below the standards for a minimum of four consecutive
quarters with monitoring events spaced at least three months apart. The Director may require an extension of
monitoring if the Director determines that concentrations are fluctuating at or near the standards or the data trends
suggest that concentrations may be increasing. Once the Director is satisfied that the standards have been met or that
corrective action is no longer necessary to ensure compliance with the Rules of this Subchapter, the Director shall
furnish a letter stating that no further action is required. The Director shall also require a plan be submitted for
maintaining or abandoning the monitoring wells in accordance with 15A NCAC 02C.0100.

History Note: Authority G.S. 143-215.1(b); 143-215.3(a)(1); 143-215.65; 143-215.66; 143B-282;
Eff. August 1, 1989;

15A NCAC 02L.0111 REPORTS (a) Any person subject to the requirements for corrective action specified in Rule .0106 of this Section Subchapter shall submit to the Director, in such detail as the Director may require, a written report that describes: plans or reports including those associated with initial response, site assessment, and corrective action. Reports shall be submitted in accordance with a schedule established by the Director. In establishing a schedule, the Director shall consider a proposal by the person submitting the plan or report.

(1) the results of the investigation specified in Paragraphs (c) and (d) of Rule .0106 of this Section, including but not limited to:
   (A) a description of the sampling procedures followed and methods of chemical analyses used;
   and
   (B) all technical data utilized in support of any conclusions drawn or determinations made.

(2) the results of the predictive calculations or modeling, including a copy of the calculations or model runs and all supporting technical data, used in the demonstration required in Paragraph (d) of Rule .0106 of this Section; and

(3) the proposed methodology and timetable associated with the corrective action for those situations identified in Paragraphs (c) and (d) of Rule .0106 of this Section.

(b) The report shall be prepared under the responsible charge of a Professional Engineer or Licensed Geologist and bear the seal of the same as specified in Rule .0106(d) of this Section.

(b) A site assessment conducted pursuant to the requirements of Paragraphs (c) or (e) in Rule .0106 of this Section shall include:

(1) a description of the site including current and historical operations at the facility and all current and historical waste streams;

(2) the source and cause of contamination;

(3) any imminent hazards to public health and any actions taken to mitigate them;

(4) a description of the initial response actions taken in accordance with Rule .0106(f) of this Section;

(5) all potential receptors and expected exposure pathways;
(6) the horizontal and vertical extent of soil and groundwater contamination and all significant factors affecting contaminant transport;

(7) background threshold values for affected media;

(8) geological and hydrogeological features influencing the movement, chemical, and physical character of the contaminants;

(9) the nature and extent of any surface water or sediment contamination resulting from interactions with contaminated soil or groundwater;

(10) a description of the sampling procedures followed, and methods of chemical analyses used;

(11) all technical data utilized in support of any interpretations, conclusions, determinations, or evaluations made; and

(12) the results of predictive calculations or modeling, including a copy of the calculations or model runs and all supporting technical data.

(c) Corrective action plans submitted pursuant to Paragraphs (c) or (e) in Rule .0106 of this Section for active remediation shall include:

(1) a summary of the results of the site assessment submitted in accordance with Paragraph (b) of this Rule;

(2) the technical basis for the requested corrective action;

(3) an evaluation of risk to receptors within the contaminant plume and in areas where the plume is predicted to migrate through modeling;

(4) an evaluation of projected groundwater use within 1,500 feet of the predicted impacted area based on current State or local government planning efforts;

(5) a summary of the available technology that could feasibly be used as a potential remedial strategy based on the specific site conditions and nature and extent of the contamination that includes the predicted time to return to compliance with the standards and the estimated costs to implement each potential strategy;

(6) the proposed remedial technology that the person proposes to implement that includes:

(A) the rationale for selecting the proposed technology;

(B) plans and specifications, including engineering details;

(C) a schedule for implementation and operation of the technology;

(D) the predicted time to return to compliance with the standards;

(E) the estimated costs to implement and operate the technology;

(F) a monitoring plan to evaluate the effectiveness of the technology; and

(G) the results of any modeling or predictive calculations that show the projected movement of the contaminant plume until the predicted time to return to compliance with the standards;

(7) all technical data utilized in support of any interpretations, conclusions, determinations, or evaluations made; and

(8) a copy of the calculations or model runs and all supporting technical data; and
(d) Corrective action plans submitted pursuant to Paragraphs (c) or (e) in Rule .0106 of this Section for natural attenuation shall include:

1. a summary of the results of the site assessment submitted in accordance with Paragraph (b) of this Rule;
2. the technical basis for the requested corrective action;
3. an evaluation of risk to receptors within the contaminant plume and in areas where the plume is predicted to migrate through modeling;
4. an evaluation of projected groundwater use within 1,500 feet of the predicted impacted area based on current State or local government planning efforts;
5. the predicted time to return to compliance with the standards;
6. the results of any modeling or predictive calculations that show the projected movement of the contaminant plume until the predicted time to return to compliance with the standards;
7. all technical data utilized in support of any interpretations, conclusions, determinations, or evaluations made;
8. a copy of the calculations or model runs and all supporting technical data;
9. a monitoring plan to evaluate the effectiveness of the natural attenuation; and
10. a demonstration that:
   A. all sources of contamination and free product have been removed or controlled pursuant to Rule .0106(f) of this Section;
   B. the contaminant has the capacity to degrade or attenuate under the site-specific conditions;
   C. the time and direction of contaminant travel can be predicted based on subsurface conditions and the contaminant's physical and chemical properties;
   D. contaminant migration will not result in any violation of applicable standards at any existing or potential receptor;
   E. contaminants have not and will not migrate onto adjacent properties, or that:
      i. such properties are served by an existing public water supply system dependent on surface waters or hydraulically isolated groundwater; or
      ii. the owners of such properties have consented in writing to the request;
   F. if the contaminant plume is predicted or expected to intercept surface waters, the groundwater discharge will not possess contaminant concentrations that would result in violations of the surface water standards established under 15A NCAC 02B .0200;
   G. all necessary access agreements needed to monitor groundwater quality have been or can be obtained;
(H) public notice of the request has been provided in accordance with Rule .0114(b) and (c) of this Section; and

(I) the proposed corrective action plan would be consistent with all other environmental laws.

(e) All reports and plans shall be prepared under the charge of a professional engineer, licensed soil scientist, or licensed geologist if required under G.S. 89C, G.S. 89E, or G.S. 89F.

History Note: Authority G.S. 143-215.1(b); 143-215.3(a)(1); 143-215.65; 143B-282;
Eff. August 1, 1989;

15A NCAC 02L .0112 ANALYTICAL PROCEDURES
Tests or analytical procedures to determine compliance or noncompliance with the standards established in Rule .0202 of this Subchapter will shall be in accordance with 15A NCAC 02H .0805(a)(1).

(1) The most sensitive of the following methods or procedures for substances where the standard is at or above the method detection limit value:

(a) The most recent version of Standard Methods for the Examination of Water and Wastewater, published jointly by American Public Health Association, American Water Works Association and Water Pollution Control Federation;

(b) Methods for Chemical Analysis of Water and Waste, 1979, U.S. Environmental Protection Agency publication number EPA-600/4-79-020, as revised March 1983;


(d) Test Procedures for the Analysis of Pollutants Under the Clean Water Act, Federal Register Vol. 49, No. 209, 40 CFR Part 136, October 26, 1984;

(e) Methods or procedures approved by letter from the Director upon application by the regulated source; or

(2) A method or procedure approved by the Director for substances where the standard is less than the method detection limit value.

History Note: Authority G.S. 143-215.3(a)(1); 143B-282;
Eff. August 1, 1989;

15A NCAC 02L .0113 VARIANCE
(a) The Commission, on its own initiative or pursuant to a request under G.S. 143-215.3(e), may grant variances to the rules of this Subchapter.
Requests for variances are filed by letter submitted by the applicant to the Environmental Management Commission. The application shall be mailed submitted in writing to the chairman of the Commission in care of the Director, Division of Environmental Management, Post Office Box 29535, Raleigh, N.C. 27626-0535. Director.

The application shall contain the following information:

1. Applications filed by counties or municipalities must include a resolution of the County Board of Commissioners or the governing board of the municipality requesting the variance.

2. A description of the past, existing or proposed activities or operations that have or would result in a discharge of contaminants to the groundwaters.

3. Description of the proposed area for which a variance is requested. A detailed location map showing the orientation of the facility, potential for groundwater contaminant migration, as well as the area covered by the variance request, with reference to at least two geographic references including (numbered roads, named streams/rivers, etc.) etc. must be included.

4. Supporting information to establish that the variance will not endanger the public health and safety, including health and environmental effects from exposure to groundwater contaminants. Location of wells and other water supply sources including details of well construction, if known, within 1/2 mile of site must be shown on a map.

5. Supporting information to establish that requirements of this Rule cannot be achieved by providing the best available technology economically reasonable. This information must identify specific technology considered, and the costs of implementing the technology, and the impact of the costs on the applicant.

6. Supporting information to establish that compliance would produce serious financial hardship on the applicant.

7. Supporting information that compliance would produce serious financial hardship without equal or greater public benefit.

8. A copy of any Special Order that was issued in connection with contaminants in the proposed area and supporting information that applicant has complied with the Special Order.

9. A list of the names and addresses of any property owners within the proposed area of the variance as well as any property owners adjacent to the site covered by the variance.

Upon receipt of the application, the Director will review it for completeness and request additional information if necessary. When the application is complete, the Director shall give public notice of the application and schedule the matter for a public hearing in accordance with G.S. 143-215.4(b) and the procedures set out in Paragraph (e) of this Rule.

Notice of Public Hearing:

1. Notice of public hearing on any variance application shall be circulated in the geographical areas of the proposed variance by the Director at least 20 days prior to the date of the hearing. The Director shall:
(A) by publishing publish the notice one time in a newspaper having general circulation in said county;

(B) by mailing submit the notice to the North Carolina Department of Environment, Health, and Natural Resources, Health and Human Services, Division of Environmental Health Section and appropriate local health agency, health director;

(C) by mailing submit the notice to any other federal, state or local agency upon request;

(D) by mailing submit the notice to the local governmental unit or units having jurisdiction over the geographic area covered by the variance;

(E) by mailing submit the notice to any property owner within the proposed area of the variance, as well as any property owners adjacent to the site covered by the variance;

(F) by mailing submit the notice to any person or group upon request; and

(G) post the notice on the Department website.

(2) The contents of public notice of any hearing shall include at least the following:

(A) name, address, and phone number of agency holding the public hearing;

(B) name and address of each applicant whose application will be considered at the meeting;

(C) a brief summary of the variance request;

(D) a geographic description of a proposed area for which a variance is requested;

(E) a brief description of activities or operations which have or will result in the discharge of contaminants to the groundwaters waters of the State described in the variance application;

(F) a brief reference to the public notice issued for each variance application;

(G) information regarding the time and location for the hearing;

(H) the purpose of the hearing;

(I) the address and phone number of premises at which interested persons may obtain further information, request a copy of each application, and inspect and copy forms and related documents; and

(J) a brief description of the nature of the hearing including the rules and procedures to be followed. The notice shall also state that additional information is on file with the Director and may be inspected at any time during normal working hours. Copies of the information on file will be made available upon request and payment of cost or reproduction.

(f) All comments received within 30 days following the date of the public hearing publication in the newspaper in Part (e)(1)(a) of this Rule shall be made part of the application file and shall be considered by the Commission prior to taking final action on the application.

(g) In determining whether to grant a variance, the Commission shall consider whether the applicant has complied with any Special Order, Order or Special Order by Consent issued under G.S. 143-215.2.
If the Commission's final decision is unacceptable, the applicant may file a petition for a contested case in accordance with Chapter 150B of the General Statutes. If the petition is not filed within 60 days, the decision on the variance shall be final and binding.

(i) A variance shall not operate as a defense to an action at law based upon a public or private nuisance theory or any other cause of action.

**History Note:**

Authority G.S. 143-215.3(a)(1); 143-215.3(a)(3); 143-215.3(a)(4); 143-215.3(e); 143-215.4;

Eff. August 1, 1989;


### 15A NCAC 02L .0114 NOTIFICATION REQUIREMENTS

(a) Any person subject to the requirements of Rule .0106(e) or (c) of this Section shall submit to the local Health Director and the chief administrative officer of the political jurisdictions in which the groundwater contamination has occurred, a report that describes:

1. The area extent of the contaminant plume;
2. The chemical constituents in the groundwater which exceed the standards described in Rule .0202 of this Subchapter;
3. Actions taken and intended to mitigate threats to human health;
4. The location of any wells installed for the purpose of monitoring the contaminant plume and the frequency of sampling.

The report described in this Rule shall be submitted no later than five working days after submittal of the completed copy of the site assessment report assessing the cause, significance and extent of the violation as required by Rule .0106(e). .0111(b) of this Section.

(b) Any person who submits a request under Rule .0106(k), (l), or (m) of this Section shall notify the local Health Director and the chief administrative officer of the political jurisdictions in which the contaminant plume occurs, and all property owners and occupants within or contiguous to the area underlain by the contaminant plume, and under the areas where it is predicted or expected to migrate, of the nature a summary of the request and reasons supporting it. Notification shall be made by certified mail concurrent with the submittal of the request to the Director. A final decision by the Director shall be postponed for a period of 30 days following receipt of the request so that the Director may consider comments submitted by individuals interested in the request.

(c) Any person whose request under Rule .0106(k), (l), or (m) of this Section is granted by the Director shall notify parties specified in Paragraph (b) of this Rule of the Director's decision and a summary of the actions to be taken. Notification shall be made by certified mail within 30 days of receipt of the Director's decision.

**History Note:**

Authority G.S. 143-214.1; 143-215.3(a)(1); 143B-282(2)b;

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

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;
Temporary Adoption Eff. January 2, 1998;
Eff. October 29, 1998;
Recodified to 15A NCAC 02L .0400 Eff. December 1, 2005.
ATTACHMENT B – OSBM APPROVED REGULATORY IMPACT ANALYSES
**Regulatory Impact Analysis**

**Rule Citation:** 15A NCAC 02L .0101 - .0104, .0106 - .0114

**Rule Topic:** Re-adoption of 02L Rules: Groundwater Classifications and Standards: General Considerations

**DEQ Divisions:** Division of Water Resources (DWR)

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**Impact Summary:**  
State government: No  
NCDOT: No  
Local government: No  
Private entities: No  
Environment: No  
Substantial Impact: No

1. **Necessity for Rule Change**

N.C. Gen. Stat. §150B-21.3A requires state agencies to review existing rules every 10 years, determine which rules are still necessary, and either re-adopt or repeal each rule as appropriate. The proposed rulemaking satisfies these requirements for 15A NCAC 02L .0100. All 13 rules in the proposed rulemaking are considered necessary and are therefore proposed for re-adoption.

The Division prepared draft rules and solicited input on the proposed actions from internal and external stakeholders. After a final internal draft of the rules was created, it was sent out to over 200 external stakeholders in November 2020 to review and provide comments. The rules were placed on the NC Department of Environmental Quality’s (DEQ) website. A press release was also created and sent to an additional 652 people. Several external stakeholders provided feedback that the Division considered in creating a draft of the rules for pre-review by counsel to the Rules Review Commission (RRC). The RRC counsel pre-review was completed in February 2021; changes in response to those comments were incorporated into the draft rules.

2. **Purpose of Rules**

In accordance with Rule 15A NCAC 02L .0103(a), the purpose of the rules established in Subchapter 15A NCAC 02L is to “maintain and preserve the quality of the groundwaters,
prevent and abate pollution and contamination of the waters of the State, protect public
health and permit management of the groundwaters for their best usage by the citizens of
North Carolina.” Historically, the North Carolina Environmental Management Commission
(EMC) has considered the best usage of groundwaters of the State to be as a source of
drinking water.

The rules in 15A NCAC 02L .0100 address the requirements for site assessment and
corrective action to restore groundwater quality to the standards. These are foundational
rules used by Division of Waste Management (DWM) regulatory programs including
Brownfields, Underground Storage Tanks, Superfund (includes Inactive Hazardous Sites
and Dry-cleaning Solvent Cleanup), Solid Waste, and Hazardous Waste as well as DWR
regulatory programs such as Non-Discharge and Groundwater Protection. Each of these
regulatory programs have their own rules and statutes that impose additional requirements
that are specific to the particular DWM program. Many of these additional requirements
are based on the chemical and physical properties of the specific type of wastes that are
regulated by the program. For example, the DWM Underground Storage Tank rules (15A
NCAC 02N) contain sections on tank integrity testing and spill control measures
requirements that go beyond those of the subject rules.

3. Regulatory Baseline

As part of the permanent rulemaking process, North Carolina General Statute 150B-19.1
requires agencies to quantify to the “greatest extent possible” the costs and benefits to affected
parties of a proposed rule. To understand what the costs and benefits of the proposed rule
changes would be to affected parties, it is necessary to establish a regulatory baseline for
comparison. For the purpose of this analysis, the following items are considered to comprise
the baseline:

- the current version of rules in 15A NCAC 02L .0100 General Considerations
  (effective dates range from August 1, 1989 through July 1, 2016); and

- North Carolina General Statutes with specific provisions relating to groundwater corrective
  action:

  - G.S. 130A-310.65 Risk-Based Environmental Remediation of Sites
  - G.S. 130A-310.77
  - G.S. 143-214.1 Water; water quality standards and classifications; duties of
  Commission.
  - G.S. 143-279.10 Recordation of contaminated sites.

4. Cost-Benefit Analysis

4.1 Proposed rule amendments

The proposed rule amendments and associated economic and environmental impacts are
summarized in the following table:
### Section .0100 – General Considerations

<table>
<thead>
<tr>
<th>Rule</th>
<th>Proposed Change</th>
<th>Economic Impact</th>
<th>Environmental Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>15A NCAC 02L .0101 Purpose</td>
<td>Minor technical changes for consistency and clarity.</td>
<td>None</td>
<td>None</td>
</tr>
</tbody>
</table>
| 15A NCAC 02L .0102 Definitions | Add definitions to provide clarity for terms used in the 02L rules:  
Delete definitions that are duplicative of statute or are unused in the 02L rules.  
Clarify that “waters of the State” are considered a type of “receptor” that can be adversely affected by contaminants. | None | None |
| 15A NCAC 02L .0103 Policy | Minor technical changes. | None | None |
| 15A NCAC 02L .0104 Restricted Designation | Clarify what information is required on applications for RS designation.  
Identify the process for recording a Restricted designation or “RS” per G.S. 143B-279.10. Recordation of contaminated sites is already required by G.S. 143-279.10.  
Identify the process for removing an RS designation per G.S. 143-214.1.  
Minor technical changes.  
Reorganize and streamline for clarity. | None | None |
| 15A NCAC 02L .0105 Adoption by Reference | Repealed Eff. Aug 1, 1989. | None | None |
| 15A NCAC 02L .0106 Initial Response, Site Assessment, and Corrective Action | Update rule to reference risk-based remediation option as allowed in G.S. 130A Article 9 Part 8 (G.S. 130A-310.65 thru G.S. 130A-310.77; enacted in 2011; amended in 2015).  
Add cross references to other 02L .0100 rules for clarity.  
Reorganize and streamline for clarity. | None | None |
<table>
<thead>
<tr>
<th>Rule Section</th>
<th>Action</th>
<th>Cost Savings</th>
<th>Time Savings</th>
</tr>
</thead>
<tbody>
<tr>
<td>15A NCAC 02L .0107 Compliance Boundary</td>
<td>Add cross references to other 02L .0100 rules for clarity. Reorganize and streamline for clarity. Reworking and updating terminology for clarity.</td>
<td>None</td>
<td>None</td>
</tr>
<tr>
<td>15A NCAC 02L .0108 Review Boundary</td>
<td>Minor technical changes.</td>
<td>None</td>
<td>None</td>
</tr>
<tr>
<td>15A NCAC 02L .0109 Delegation</td>
<td>Minor technical changes.</td>
<td>None</td>
<td>None</td>
</tr>
<tr>
<td>15A NCAC 02L .0110 Monitoring</td>
<td>Make it optional, rather than mandatory, for the Director to require a responsible party to implement a monitoring program. Reorganize and streamline for clarity.</td>
<td>Unlikely to result in additional cost savings to regulated community beyond ongoing rule implementation. None</td>
<td></td>
</tr>
<tr>
<td>15A NCAC 02L .0111 Reports</td>
<td>Moved selected content to other rules in Section 02L .0100 for clarity. Clarify what information is required in site assessment reports.</td>
<td>None</td>
<td>None</td>
</tr>
<tr>
<td>15A NCAC 02L .0112 Analytical Procedures</td>
<td>Delete obsolete test method reference. Minor technical changes.</td>
<td>None</td>
<td>None</td>
</tr>
<tr>
<td>15A NCAC 02L .0113 Variance</td>
<td>Minor technical changes.</td>
<td>None</td>
<td>None</td>
</tr>
<tr>
<td>15A NCAC 02L .0114 Notification Requirements</td>
<td>Streamline process for submitting a site assessment report.</td>
<td>Likely negligible cost savings to regulated community</td>
<td>None</td>
</tr>
<tr>
<td>15A NCAC 02L .0115 Risk-Based Assessment and Corrective Action for Petroleum Underground Storage Tanks</td>
<td>Recodified to 15A NCAC 02L .0400 Eff. Dec 1, 2005</td>
<td>None</td>
<td>None</td>
</tr>
</tbody>
</table>

### 4.2 Costs and Benefits to the Regulated Community

Most of the proposed amendments to the subject rules are technical in nature for the purpose of providing clarity, consistency with North Carolina General Statutes, and updating references. This should make the rules easier to understand, which should translate into less time spent by the regulated community on the application, monitoring, and reporting processes. The amount of time saved will be negligible and
will not provide a significant financial benefit; however, it is noted here for completeness.

An amendment to 15A NCAC 02L .0102(29) adds “waters of the State” to the definition of a “receptor.” As used in these rules, a “receptor” is a term that applies broadly to anything in the environment (human, plant, animal) as well as structures that have the potential to be adversely affected by groundwater contamination. The clarification that “waters of the State” can be a receptor and can be adversely affected by groundwater contamination makes it clear that an assessment of impacts to waters of the State is expected for Comprehensive Site Assessments and Corrective Action Plans, as appropriate. As stated in Section 2 of this document, the purpose of the 15A NCAC 02L rules includes the prevention and abatement of pollution and contamination of the waters of the State. When considered as a whole, the subject rules are already being implemented such that waters of the State are protected as a potential receptor of contamination. It follows that the addition of “waters of the State” to the definition of “receptor” will not result in any changes to the implementation of the 15A NCAC 02L rules. As such, the change will not result in any new costs or benefits to the regulated community.

An amendment to 15A NCAC 02L .0104(f) lists the information that must be included on an application for Restricted Designation (RS) of a groundwater source. This information is already required by the RS designation process and will not result in additional burdens on the regulated community.

An amendment to 15A NCAC 02L .0110(a) makes it optional, rather than mandatory, for the Director to require a responsible party to implement a monitoring program. This change will bring the rule in line with DWR’s ongoing practice of determining on a case-by-case basis whether the risk to public health and the environment justify the expense of this type of monitoring program. Groundwater monitoring programs are required for the many of the sites that are subject to this Rule, and that is not expected to change as a result of the proposed amendment. Small-scale waste application operations such as single-family systems are the most likely to be excluded from monitoring requirements depending on the nature and amount of their waste application. The proposed rule amendment is not expected to change the types of operations that are already excluded from monitoring requirements; as such, the amendment is unlikely to result in additional cost savings or expense.

An amendment to 15A NCAC 02L .0111(b) lists the information that must be included in a site assessment report. This information is already required as part of the corrective action reporting process and will not result in additional burdens to the regulated community.

An amendment to 15A NCAC 02L .0114(a) streamlines the requirement for reporting a groundwater contamination event. The amendment replaces the requirement for a responsible party to create an entirely new report, instead allowing the responsible party to use the site assessment report required by Rule 15A NCAC 02L .0111(b) to satisfy this reporting requirement. This will reduce the time spent by responsible parties on extracting and repackaging information into a different format. The amount of time
saved will be negligible and will not provide a significant financial benefit; however, it is noted here for completeness.

4.3 Costs and Benefits to State and Local Government

None of the proposed changes will require DEQ or local governments to revise their existing procedures or to procure additional staff; as such, there should be no economic cost to state agencies or local governments. Changes are technical in nature for the purpose of providing clarity to the regulated community thereby making the rules easier to understand. This should translate into less time spent by DEQ regulatory staff providing technical assistance. The amount of time saved will be negligible and will not provide a significant financial benefit; however, it is noted here for completeness.

The proposed changes will not affect environmental permitting of NC Department of Transportation (NCDOT); as such, there should be no economic impact to NCDOT.

4.4 Environmental Impact

As measured from the baseline conditions, the proposed changes will maintain existing environmental protections at an equivalent level with no cost or benefit to the environment.

5. Summary

As measured from the baseline conditions, there are no economic costs associated with the proposed rules re-adoptation. Some of the language removed or added has the intent to improve clarity and reduce administrative burden to the regulated community; some of the language has the intent to be in accordance with current General Statutes. While some of these revisions could have a positive economic impact to a small portion of the regulated community, any potential impact is expected to be negligible. No new environmental costs or benefits are anticipated to result from the proposed rules re-adoption.
SUBCHAPTER 2L - GROUNDWATER CLASSIFICATION AND STANDARDS

SECTION .0100 - GENERAL CONSIDERATIONS

15A NCAC 02L .0101 AUTHORIZATION

(a) N.C. General Statute 143-214.1 directs that the Commission develop and adopt after proper study a series of classifications and standards which will be appropriate for the purpose of classifying each of the waters of the state in such a way as to promote the policy and purposes of the act. Pursuant to this statute, the rules in Sections .0200 and .0300 of this Subchapter establish a series of classifications and water quality standards applicable to the groundwaters of the state.

(b) These rules in Section .0100 of this Subchapter are applicable to all permitted and unpermitted activities or actions, intentional or accidental, which contribute to the degradation of groundwater quality, regardless of any permit issued by a governmental agency authorizing such action or activity, except an innocent landowner who is a bona fide purchaser of property which contains a source of groundwater contamination, who purchased such property without knowledge or a reasonable basis for knowing that groundwater contamination had occurred, or a person whose interest or ownership in the property is based or derived from a security interest in the property, shall not be considered a responsible party.

History Note: Authority G.S. 143-214.1; 143-214.2; 143-215.3(a)(1); 143B-282;
Eff. June 10, 1979;
Amended Eff. August 1, 1989; July 1, 1988; September 1, 1984; December 30, 1983.

15A NCAC 02L .0102 DEFINITIONS

The definition of any word or phrase used in these rules in this Subchapter shall be the same as given in G.S. 143-212 and G.S. 143-213 except that the following words and phrases shall have the following meanings:

(1) "Active remediation" means corrective action that includes active physical, biological, or chemical manipulation of groundwater or of the rock or soil media for the purpose of reducing the amount of contamination or minimizing the spread of contamination.

(2) "Anthropogenic" means of, relating to, or resulting from the influence of human beings on nature.

(3) "Background threshold values" mean statistically derived values of the concentrations of substances in environmental media not affected by site conditions, actions, or activities for use as a basis for compliance with the Rules in this Subchapter.

(4)(4) "Bedrock" means any consolidated rock encountered in the place in which it was formed or deposited and which cannot be readily excavated without the use of explosives or power equipment.

(2)'Commission" means the Environmental Management Commission as organized under G.S. 143B.

(3)(5) "Chief administrative officer" shall be, for the purposes of this Rule, the mayor, chairman of the county commissioners, the county manager, or the city manager who is responsible for environmental issues in their jurisdiction.
"Compliance boundary" means a boundary around the waste disposal area of a disposal system at and beyond which groundwater quality standards may not be exceeded and only applies to facilities which have received an individual permit issued under the authority of G.S. 143-215.1 or G.S. 130A.143.215.1, Article 9 of G.S. 130A, or Article 11 of G.S. 130A.

“Compliance zone” means the area encompassed within the compliance boundary.

“Constituent of interest” means any substance that is manmade or naturally occurring that is or may be associated with or influenced by site activities or actions and that is of interest to the protection of public health and the environment.

"Contaminant" means any substance occurring in groundwater as a result of anthropogenic sources or activities in concentrations which exceed the groundwater quality standards specified in Rule .0202 of this Subchapter.

“Control” means the ability to direct, restrain, or influence sources of contamination and contaminant distribution.

“Corrective action plan” means a plan for controlling or eliminating sources of groundwater contamination or for restoring groundwater quality achieving groundwater quality restoration or both.

"Director" means Director of the Division of Environmental Management or Waste Management or their delegate.

"Division" means the Division of Environmental Management or Waste Management.

"Exposure pathway" means a course taken by a contaminant by way of a transport medium after its release to the environment.

"Free product" means a non-aqueous phase liquid which may be present within the saturated zone or in surface water.

"Fresh groundwaters" means those groundwaters having a chloride concentration equal to or less than 250 milligrams per liter.

"Groundwaters" means those waters occurring in the subsurface under saturated conditions.


"Licensed geologist" means a person who has been duly licensed as a geologist in accordance with the requirements of G.S. 89E.

"Licensed soil scientist" means a person who has been licensed as a soil scientist in accordance with the requirements of G.S. 89F.

“Lower Limit of Quantitation” means the lowest acceptable concentration used in the daily calibration curve.
“Method Detection Limit” means the minimum measured concentration of a substance that can be reported with 99% confidence that the measured concentration is distinguishable from method blank results.

“Natural remediation” means those natural processes acting to restore groundwater quality, including dilution, filtration, sorption, ion-exchange, chemical transformation, and biodegradation.

“Natural conditions or naturally occurring” means the physical, biological, chemical and radiological conditions which occur naturally and are not a result of anthropogenic sources or activities.

“Natural conditions” means the physical, biological, chemical and radiological conditions which occur naturally.

“Potable waters” means those waters suitable for drinking by humans.

“Professional Engineer” means a person who has been duly registered and licensed as a professional engineer in accordance with the requirements of G.S. 89C.

“Receptor” means any human, plant, animal, or structure which is, or has the potential to be, adversely affected by the release or migration of contaminants. Any well constructed for the purpose of monitoring groundwater and contaminant concentrations shall not be considered a receptor as defined in G.S. 130A-309.201 and, for the purposes of this Rule, shall also include waters of the State as defined in G.S. 143-212(6).

“Review boundary” means a boundary around a permitted waste disposal area midway between a waste boundary and a compliance boundary at which groundwater monitoring may be required.

“Saline groundwaters” means those groundwaters having a chloride concentration of more than 250 mg/l.

“Saturated zone” means that part of the subsurface below the water table in which all the interconnected voids are filled with water under pressure at or greater than atmospheric. It does not include the capillary fringe.

“Secretary” means the Secretary of the Department of Environmental Quality or their delegate.

“Standards” or “standard” or “standards” means groundwater quality standards as specified in Rule .0202 of this Subchapter and any interim maximum allowable concentrations established by the Director per Rule .0202(c) of this Subchapter.
"Suitable for drinking" means a quality of water which does not contain substances in concentrations which, either singularly or in combination if ingested into the human body, may cause death, disease, behavioral abnormalities, congenital defects, genetic mutations, or result in an incremental lifetime cancer risk in excess of $1 \times 10^{-6}$, or render the water unacceptable due to aesthetic qualities, including taste, odor, or appearance.

"Time of travel" means the time required for contaminants in groundwater to move a unit distance.

"Waste boundary" means the perimeter of the permitted waste disposal area.

"Waste disposal area" means that portion of a disposal system permitted under authority of G.S 143-215.1, Article 9 of G.S. 130A, or Article 11 of G.S. 130A whose purpose is the temporary or permanent disposal of waste.

"Water table" means the surface of the saturated zone below which all interconnected voids are filled with water and at which the pressure is atmospheric.

**History Note:** Authority G.S. 143-214.1; 143-215; 143B-282; Eff. June 10, 1979. Amended Eff. October 1, 1993; August 1, 1989; July 1, 1988; March 1, 1985.

**15A NCAC 02L .0103 POLICY**

(a) The rules established in this Subchapter are intended to maintain and preserve the quality of the groundwaters, prevent and abate pollution and contamination of the waters of the state, protect public health, and permit management of the groundwaters for their best usage by the citizens of North Carolina. It is the policy of the Commission that the best usage of the groundwaters of the state is as a source of drinking water. These groundwaters generally are a potable source of drinking water without the necessity of significant treatment. It is the intent of these Rules to protect the overall high quality of North Carolina's groundwaters to the level established by the standards and to enhance and restore the quality of degraded groundwaters where feasible and necessary to protect human health and the environment, or to ensure their suitability as a future source of drinking water.

(b) It is the intention of the Commission to protect all groundwaters to a level of quality at least as high as that required under the standards established in Rule .0202 of this Subchapter. In keeping with the policy of the Commission to protect, maintain, and enhance groundwater quality within the State of North Carolina, the Commission will not approve any disposal system subject to the provisions of G.S. 143-215.1 which would result in any of the following:

1. The significant degradation of groundwaters which have existing quality that is better than the assigned standard, unless such degradation is found to be in the best interests of the citizens of North Carolina based upon the projected economic benefits of the facility and a determination that public health will be protected, or
2. A violation of a groundwater quality standard beyond a designated compliance boundary, or

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The impairment of existing groundwater uses or increased risk to the public health or safety of the public due to the operation of a waste disposal system.

(c) Violations of the standards resulting from groundwater withdrawals which are in compliance with water use permits issued pursuant to G.S. 143-215.15, shall not be subject to the corrective action requirements of Rule .0106 of this Subchapter.

(d) No person shall conduct or cause to be conducted, any activity which causes the concentration of any substance to exceed that specified in Rule .0202 of this Subchapter, except as authorized by the rules of this Subchapter.

(e) Work that is within the scope of the practice of geology and engineering, performed pursuant to the requirements of this Subchapter, which involves site assessment, the interpretation of subsurface geologic conditions, preparation of conceptual corrective action plans, or any work requiring detailed technical knowledge of site conditions which is submitted to the Director, shall be performed by persons, firms, or professional corporations who are duly licensed to offer geological or engineering services by the appropriate occupational licensing board or are exempted from such licensing by G.S. 89E-6. Work which involves design of remedial systems or specialized construction techniques shall be performed by persons, firms, or professional corporations who are duly licensed to offer engineering services. Corporations that are authorized by law to perform engineering or geological services and are exempt from the Professional Corporation Act, G.S. 55B, may perform these services.

History Note: Authority G.S. 143-214.1; 143-214.2; 143-215.3(a); 143-215.3(a)(1); 143B-282;
Eff. June 10, 1979;
Amended Eff. August 1, 1989; July 1, 1988; September 1, 1984; December 30, 1983;
RRC Objection Eff. September 17, 1993, due to lack of necessity for Paragraph (e);

15A NCAC 02L .0104   RESTRICTED DESIGNATION (RS)

(a) The RS designation restricted designation (RS) serves as a warning that groundwater so designated may not be suitable for use as a drinking water supply without treatment. The designation is temporary and will be removed by the Director upon a determination that the quality of the groundwater so designated has been restored to the level of the applicable standards or when the groundwaters have been reclassified by the Commission. The Director is authorized to designate GA or GSA groundwaters as RS under any of the following circumstances:

(1) Where, as a result of man's activities, groundwaters have been contaminated and the Director has approved a corrective action plan, or termination of corrective action, that will not result in the immediate restoration of such groundwaters to the standards established under this Subchapter.

(2) Where a statutory variance has been granted as provided in Rule .0113 of this Subchapter.

(b) The Director is authorized to apply the RS to GA or GSA groundwaters as defined under Rule .0201 of this Subchapter, under any of the following circumstances:

(1) For sites undergoing risk-based remediation per Rule .0106(i) of this Section.
Areas of remaining contamination where the Secretary has approved the termination of an approved corrective action per Rule .0106(j) of this Section.

Where a variance has been granted by the Commission as provided in Rule .0113 of this Section.

Groundwaters occurring within an area defined by a compliance boundary in a waste disposal permit are deemed to be designated RS.

The boundary of a designated RS, the RS area may be approximated in the absence of analytical data sufficient to define the dimension of the area. The boundary shall be located at least 250 feet or greater away from the predicted edge boundary of the contaminant plume and shall include any areas into which the contamination is expected to migrate. Predictive modeling may be used to supplement site-specific sample data in characterizing the current and predicted future extent of the plume.

In areas designated RS, the person responsible for groundwater contamination shall establish and implement a groundwater monitoring system sufficient to detect changes in groundwater quality within the RS designated area. Monitoring shall be quarterly for the first year and may be reduced to semi-annually thereafter until the applicable standards have been achieved. If during the monitoring period, contaminant concentrations increase, additional remedial action or monitoring pursuant to these Rules may be required.

The applicant for an RS designation shall also provide written verification that all property owners within and adjacent to the proposed RS area have been notified of the requested RS designation.

Where the RS area crosses, intercepts, or adjoins surface waters, the RS shall not give the right to cause or contribute to an exceedance of the surface water standards established under 15A NCAC 02B .0200.

Application for RS. The person requesting a RS shall provide to the Director a plan that includes the following:

1. The person’s name, address, phone number.
2. The physical location of the facility or site where the contamination originated.
3. If applicable, a copy of the Secretary’s approval for termination of corrective action or a variance granted by the Commission as provided in Rule .0113 of this Section.
4. A summary of the site assessment and corrective actions including the results of any predictive modeling that estimates the time to return compliance for the RS area.
5. Maps showing the current horizontal and vertical extent of any contamination and the areas where the contamination is predicted or expected to migrate including the current and predicted quantities of any contaminants and all current and potential future receptors within 1,500 feet of contamination.
6. A map showing the proposed RS area including the county title number, county tax identification number, or the property tax book and page identifiers of the properties included within the proposed RS area.
7. A plan for monitoring the groundwater quality within the RS area that includes the current or proposed wells to be monitored, the frequency of the monitoring, and the constituents of interest to be monitored.
8. If the proposed RS area extends beyond the source property’s boundary, a signed statement from each property owner agreeing to the proposed RS area on their property if required by programmatic statute.
(9) If the proposed RS area crosses, intercepts, or adjoins surface waters, a plan to ensure the surface water standards established under 15A NCAC 02B.0200 are not violated.
(g) The Director shall review the proposed plan and whether the proposed plan is protective of public health and the environment for receptors within the RS and otherwise complies with requirements of this Rule.
(h) Prior to approving the proposed plan in Paragraph (f) of this Rule, the Division shall provide public notice of the intent to designate any groundwater with RS in accordance with the following requirements:

(1) Notice shall be published at least 30 days prior to any proposed final action in accordance with G.S. 143-215.4. In addition, notice shall be provided to all property owners identified pursuant to Paragraph (e) of this Rule and to the local County Health Director and the chief administrative officer of the political jurisdiction(s) in which the contamination occurs, and provide such notice to all property owners with signed statements per Paragraph (f)(8) of this Rule, to the local County Health Director, and the chief administrative officer of the jurisdiction(s) in which the contamination occurs.

(2) The notice shall contain the following information:
   (A) name, address, and phone number of the agency issuing the public notice;
   (B) a copy of the plan in Paragraph (f) of this Rule or where the plan can be obtained;
   (C) the location and extent of the designated area;
   (D) the county title number, county tax identification number, or the property tax book and page identifiers;
   (E) a brief description of the action or actions which resulted in the degradation of groundwater in the area;
   (F) actions or intended actions taken to restore groundwater quality;
   (G) conditions applicable to removal of the RS designation; and
   (H) address and phone number of a Division contact from whom interested parties may obtain further information.

(3) The Director shall consider all requests for a public hearing, and if he/she determines that there is significant public interest, he/she shall issue public notice and hold a public hearing in accordance with G.S 143-215.4(b) and Rule 0113(e)(2) of this Section.

(4) The requirements of this Paragraph shall not apply to groundwaters defined in Paragraph (b)(c) of this Rule.

(i) The Director shall approve the plan if the proposal complies with requirements of this Rule. Upon making a determination, the Director shall provide specific findings to support their decision to approve or disapprove a proposed plan and may require a person who proposes a plan to supply any additional information not provided in Paragraph (f) of this Rule necessary to make their determination.
The process for recordation, application, and removal of an approved RS area shall be in accordance with G.S. 143B-279.10. The land use restriction shall be that groundwater within the RS may not be suitable for drinking without treatment.

(k) The RS shall be removed if the groundwater within the RS is reclassified by the Commission per G.S. 143-214.1.

History Note: Authority G.S. 143-214.1; 143-215.3(a)(1); 143B-282(2); 143B-279.9; 143B-279.10;
Eff. June 10, 1979;
Amended Eff. October 1, 1993; December 1, 1989; August 1, 1989; December 30, 1983.

15A NCAC 02L .0105 ADOPTION BY REFERENCE

History Note: Authority G.S. 143-214.1;
Eff. December 30, 1983;

15A NCAC 02L .0106 INITIAL RESPONSE, SITE ASSESSMENT, AND CORRECTIVE ACTION

(a) Where groundwater quality has been degraded, the goal of any required corrective action shall be restoration to the level of the standards, or as closely thereto as is economically and technologically feasible as determined by the Department in accordance with this Rule. The corrective action strategies addressed in this Rule can be through either active remediation in Paragraph (g), natural attenuation in Paragraph (h), or risk-based remediation in Paragraph (i). In all cases involving requests to the Secretary, as defined in 15A NCAC 02C .0102, the responsibility for providing all information required by this Rule lies with the person(s) making the request.

(b) Any person conducting or controlling an activity, permitted or unpermitted, that results in the discharge of a waste or hazardous substance or oil to the ground surface, vadose zone, or groundwaters of the State, or in proximity thereto, shall take action upon discovery to terminate and control the discharge, mitigate any hazards resulting from exposure to the pollutants, and notify the Department, as defined in 15A NCAC 02C .0102, of the discharge, follow the steps in Paragraphs (c), (d), or (e) of this Rule.

(c) Any person conducting or controlling an activity that has not been permitted by the Department pursuant to G.S. 143-215.1, Article 9 of G.S. 130A, or Article 11 of G.S. 130A and that results in an increase in the concentration of a substance in excess of the standard, other than agricultural operations, shall take the following steps:

(1) within 24 hours of discovery of the violation, notify the Department of the activity that has resulted in the increase and the contaminant concentration levels, if known;
(2) respond in accordance with Paragraph (f) of this Rule;
(3) submit a report to the Secretary assessing the cause, significance, and extent of the violation; and
(4) implement an approved corrective action plan for restoration of groundwater quality in accordance with a schedule established by the Secretary. In establishing a schedule, the Secretary shall consider...
a schedule proposed by the person submitting the plan. A report shall be made to the Health Director of the county or counties in which the contamination occurs in accordance with the requirements of Rule .0114(a) in this Section.

(3) Implement a monitoring program in accordance with Rule .0110 of this Section.

(4) Submit a site assessment report to the Director in accordance with Rule .0111 of this Section.

(5) Submit a notification in accordance with the requirements of Rule .0114(a) of this Section.

(6) If required, submit a corrective action plan to the Director in accordance with Rule .0111 of this Section or pursue risk-based remediation per Paragraph (i) of this Rule. If a corrective action plan is submitted for active remediation or natural attenuation, then:

(A) Submit a notification in accordance with the requirements of Rule .0114(b) of this Section.

(B) Implement corrective action plan upon its approval by the Secretary.

(C) Submit a notification in accordance with the requirements of Rule .0114(c) of this Section.

Any activity not permitted pursuant to G.S. 143-215.1 or G.S. 130A-294 shall, for the purpose of this Rule, be deemed not permitted by the Department and subject to the provisions of this Paragraph.

(d) For any person conducting or controlling an activity that is conducted under the authority of a permit initially issued by the Department on or after December 30, 1983 pursuant to G.S. 143-215.1, Article 9 of G.S. 130A, or Article 11 of G.S. 130A or G.S. 130A-294 and that results in an increase in concentration of a substance in excess of the standards standards at or beyond the review boundary:

(1) at or beyond a review boundary: The Director may require, based on information including data trends, geologic and hydrogeologic conditions, and spacing between the review and compliance boundaries, that the person shall demonstrate, through predictive calculations or modeling, that one or more of the following natural site conditions, facility design and operational controls will prevent a violation of standards at the compliance boundary:

(A) geologic or hydrogeologic conditions;

(B) facility design; or

(C) operational controls.

Alternately, the person may submit a plan for alteration of existing site conditions, facility design, or operational controls that will prevent a violation at the compliance boundary, and implement that plan upon its approval by the Secretary.

(2) at or beyond a compliance boundary: The person shall respond in accordance with Paragraph (f) of this Rule, assess the cause, significance and extent of the violation of standards and submit the results of the investigation, and a plan and proposed schedule for corrective action to the Secretary. The permittee shall implement the plan as approved by and in accordance with a schedule established by the Secretary. In establishing a schedule the Secretary shall consider any schedule proposed by the permittee, the scope of the project, the extent of contamination, and the corrective
action being proposed. If an exceedance of the standards is predicted at or beyond the compliance boundary, the person may submit a plan for alteration of existing site conditions, facility design, or operational controls that will prevent a violation at the compliance boundary, and implement that plan upon its approval by the Director. In approving the plan, the Director shall consider geologic and hydrogeologic conditions, the nature and extent of the contamination, technical and economic feasibility, and public health impacts on all potential receptors should the contaminated plume reach them.

(e) For any person conducting or controlling an activity that is conducted under the authority of a permit issued by the Department pursuant to G.S. 143-215.1, Article 9 of G.S. 130A, or Article 11 of G.S. 130A that results in an increase in concentration of a substance in excess of the standards beyond the compliance boundary or within the compliance zone as specified by Rule .0107(q) of this Section, the person shall take the following steps:

1. Within 24 hours of discovery of the initial violation, notify the Department of the activity that has resulted in the increase, the contaminants that are in exceedance, and the contaminant concentration levels.
2. Respond in accordance with Paragraph (f) of this Rule.
3. Implement a monitoring program in accordance with Rule .0110 of this Section.
4. Submit a site assessment report to the Director in accordance with Rule .0111 of this Section.
5. Submit a notification in accordance with the requirements of Rule .0114(a) of this Section.
6. If required, submit a corrective action plan to the Director in accordance with Rule .0111 of this Section or pursue risk-based remediation per Paragraph (i) of this Rule. The corrective action plan may include alteration of existing site conditions, facility design, or operational controls that will prevent a violation at the compliance boundary. If a corrective action plan is submitted for active remediation or natural attenuation, then:
   (A) Submit a notification in accordance with the requirements of Rule .0114(b) of this Section.
   (B) Implement an approved corrective action plan upon its approval by the Secretary.
   (C) Submit a notification in accordance with the requirements of Rule .0114(c) of this Section.

(e) Any person conducting or controlling an activity that is conducted under the authority of a permit initially issued by the Department pursuant to G.S. 143-215.1 or G.S. 130A 294, and that results in an increase in concentration of a substance in excess of the standards at or beyond the compliance boundary specified in the permit, shall:

1. within 24 hours of discovery of the violation, notify the Department of the activity that has resulted in the increase and the contaminant concentration levels;
2. respond in accordance with Paragraph (f) of this Rule;
3. submit a report to the Secretary assessing the cause, significance and extent of the violation; and
4. implement an approved corrective action plan for restoration of groundwater quality at or beyond the compliance boundary, in accordance with a schedule established by the Secretary. In establishing a schedule the Secretary shall consider any schedule proposed by the person submitting the plan. A
report shall be made to the Health Director of the county or counties where the contamination occurs in accordance with the requirements of Rule .0114(a) in this Section.

(f) Initial response actions required to be conducted prior to or concurrent with the site assessment required in Paragraphs (c), (d), or (e) of this Rule shall include:

1. Prevention of fire, explosion, or the spread of noxious fumes.
2. Abatement, containment, or control of the migration of contaminants.
3. Removal, treatment, or control of any primary pollution source such as buried waste, waste stockpiles, or surficial accumulations of free products.
4. Removal, treatment, or control of secondary pollution sources that would be potential continuing sources of pollutants to the groundwaters, such as contaminated soils and non-aqueous phase liquids.

Contaminated soils that threaten the quality of groundwaters shall be treated, contained, or disposed of in accordance with rules in this Chapter Subchapter and in 15A NCAC 13 applicable to such activities. The treatment or disposal of contaminated soils shall be conducted in a manner that will not result in a violation of the standards or North Carolina Hazardous Waste Management rules.

The initial response actions shall be documented in the site assessment report required under Rule .0111(b) of this Section. The Director may request written documentation of the response actions in advance of the site assessment report if there is an immediate threat to human health.

(g) The site assessment conducted pursuant to the requirements of Paragraphs (c), (d), or (e) of this Rule, shall include:

1. The source and cause of contamination;
2. Any imminent hazards to public health and safety, as defined in G.S. 130A-2, and any actions taken to mitigate them in accordance with Paragraph (f) of this Rule;
3. All receptors and significant exposure pathways;
4. The horizontal and vertical extent of soil and groundwater contamination and all significant factors affecting contaminant transport; and
5. Geological and hydrogeological features influencing the movement, chemical, and physical character of the contaminants.

Reports of site assessments shall be submitted to the Department as soon as practicable or in accordance with a schedule established by the Secretary. In establishing a schedule the Secretary shall consider a proposal by the person submitting the report.

(h) Corrective action plans for restoration of groundwater quality, submitted pursuant to Paragraphs (c), (d), and (e) of this Rule shall include:

1. A description of the proposed corrective action and reasons for its selection;
2. Specific plans, including engineering details where applicable, for restoring groundwater quality;
3. A schedule for the implementation and operation of the proposed plan; and
4. A monitoring plan for evaluating the effectiveness of the proposed corrective action and the movement of the contaminant plume.
In the evaluation of corrective action plans, the Secretary shall consider the extent of any violations, the extent of any threat to human health or safety, the extent of damage or potential adverse impact to the environment, technology available to accomplish restoration, the potential for degradation of the contaminants in the environment, the time and costs estimated to achieve groundwater quality restoration, and the public and economic benefits to be derived from groundwater quality restoration.

Corrective action using active remediation. A corrective action plan prepared pursuant to Paragraphs (c), (d), or (e) of this Rule shall be implemented using a remedial technology demonstrated to provide the most effective means, taking into consideration geological and hydrogeological conditions at the contaminated site, for restoration of groundwater quality to the level of the standards. Corrective action plans prepared pursuant to Paragraphs (c) or (e) of this Rule may request an exception as provided in Paragraphs (k), (l), (m), (n), and (o) of this Rule. Corrective action plans for active remediation shall include the information in Rule .0111(c) of this Section. Any person required to implement an approved corrective action plan for a site subject to Paragraphs (c) or (e) of this Rule may request that the Secretary approve such a plan without requiring groundwater remediation to the standards. A request submitted to the Secretary under this Paragraph shall include a description of site-specific conditions, including information on the availability of public water supplies for the affected area; the technical basis for the request; and any other information requested by the Secretary to evaluate the request in accordance with Subparagraphs (1) through (7) of this Paragraph. The person making the request shall demonstrate:

(1) that all sources of contamination and free product have been removed or controlled pursuant to Paragraph (f) of this Rule;
(2) that the time and direction of contaminant travel can be predicted with reasonable certainty;
(3) that contaminants have not and will not migrate onto adjacent properties, or that:
   (A) such properties are served by an existing public water supply system dependent on surface waters or hydraulically isolated groundwater; or
   (B) the owners of such properties have consented in writing to the request;
(4) that the standards specified in Rule .0202 of this Subchapter will be met at a location no closer than one year time of travel upgradient of an existing or foreseeable receptor, based on travel time and the natural attenuation capacity of subsurface materials or on a physical barrier to groundwater migration that exists or will be installed by the person making the request;
(5) that, if the contaminant plume is expected to intercept surface waters, the groundwater discharge will not possess contaminant concentrations that would result in violations of standards for surface waters contained in 15A NCAC 02B .0200;
(6) that public notice of the request has been provided in accordance with Rule .0114(b) of this Section;
and
(7) that the proposed corrective action plan would be consistent with all other environmental laws.

Corrective action using natural attenuation. Any person required to implement an approved corrective action plan for a site subject to Paragraphs (c) or (e) of this Rule may request that the Secretary approve such a plan based upon natural processes of degradation and attenuation of contaminants. Corrective action plans for natural attenuation
shall make the demonstration and include the information in Rule .0111(d) of this Section. A request submitted to the Secretary under this Paragraph shall include a description of site-specific conditions, including written documentation of projected groundwater use in the contaminated area based on current state or local government planning efforts; the technical basis for the request; and any other information requested by the Secretary to evaluate the request in accordance with Subparagraphs (1) through (10) of this Paragraph. The person making the request shall demonstrate:

1. that all sources of contamination and free product have been removed or controlled pursuant to Paragraph (f) of this Rule;
2. that the contaminant has the capacity to degrade or attenuate under the site-specific conditions;
3. that the time and direction of contaminant travel can be predicted based on subsurface conditions and the contaminant's physical and chemical properties;
4. that contaminant migration will not result in any violation of applicable groundwater standards at any existing or foreseeable receptor;
5. that contaminants have not and will not migrate onto adjacent properties, or that:
   A. such properties are served by an existing public water supply system dependent on surface waters or hydraulically isolated groundwater; or
   B. the owners of such properties have consented in writing to the request;
6. that, if the contaminant plume is expected to intercept surface waters, the groundwater discharge will not possess contaminant concentrations that would result in violations of standards for surface waters contained in 15A NCAC 02B .0200;
7. that the person making the request will put in place a groundwater monitoring program that, based on subsurface conditions and the physical and chemical properties of the contaminant, will accurately track the degradation and attenuation of contaminants and contaminant by-products within and down gradient of the plume and to detect contaminants and contaminant by-products prior to their reaching any existing or foreseeable receptor at least one year's time of travel upgradient of the receptor and no greater than the distance the groundwater at the contaminated site is predicted to travel in five years;
8. that all necessary access agreements needed to monitor groundwater quality pursuant to Subparagraph (7) of this Paragraph have been or can be obtained;
9. that public notice of the request has been provided in accordance with Rule .0114(b) of this Section; and
10. that the proposed corrective action plan would be consistent with all other environmental laws.

(i) Corrective action using risk-based remediation. A person choosing to use risk-based remediation shall comply with the requirements in G.S. 130A Article 9 Part 8.

(m)(j) Termination of active remediation prior to achieving the standards. The Department or any person required to implement an approved corrective action plan for a site subject to Paragraphs (c) or (e) of this Rule may request that the Secretary approve termination of the active remediation. The owner and operator of an active remediation system shall demonstrate that, by terminating the active remediation and then...
implementing an approved natural attenuation corrective action under Paragraph (h) of this Rule, all potential receptors will be protected.

(1) A request submitted to the Secretary under this Paragraph shall include:

(A) A discussion of the duration of the corrective action, the total project cost, projected annual cost for continuance, and evaluation of the success of the corrective action.

(B) An evaluation of alternate treatment technologies that could potentially result in further reduction of contaminant levels, projected capital, and annual operating costs for each technology.

(C) The effects, including public health and safety impacts, on groundwater users if contaminant levels remain at levels existing at the time corrective action is terminated.

(D) The proposed contaminant concentrations to actively remediate to in the source area and all predictive calculations and model runs demonstrating that the standards will be met at all existing or potential receptors, based on travel time and the natural attenuation capacity of subsurface materials or on a barrier to groundwater migration that exists or will be installed by the person making the request.

(E) A demonstration that continuation of active remediation would not result in a significant reduction in the concentration of contaminants. This demonstration shall show the duration and degree of success of existing remedial efforts to attain standards. For the purpose of this Rule, a “significant reduction” is demonstrated by showing that the asymptotic slope of the contaminant concentrations over time is less than a ratio of 1:40 over a term of one year based on four consecutive quarters with sampling events spaced at least three months apart.

(F) A natural attenuation corrective action plan for the remaining contamination in accordance with Paragraph (h) of this Rule.

(2) In addition, the person making the request shall demonstrate:

(A) that continuation of corrective action would not result in a significant reduction in the concentration of contaminants. This demonstration shall show the duration and degree of success of existing remedial efforts to attain standards. For the purpose of this Part, a "significant reduction" is demonstrated by showing that the asymptotic slope of the contaminants curve of decontamination is less than a ratio of 1:40 over a term of one year based on quarterly samplings.

(B) that contaminants have not and will not migrate onto adjacent properties, or that:

    (i) such properties are served by an existing public water supply system dependent on surface waters or hydraulically isolated groundwater; or

    (ii) the owners of such properties have consented in writing to the request;
(C) that, if the contaminant plumes are expected to intercept surface waters, the groundwater discharge will not possess contaminant concentrations that would result in violations of standards for surface waters contained in 15A NCAC 02B .0200;

(D) that public notice of the request has been provided in accordance with Rule .0114(b) of this Section; and

(E) that the proposed termination would be consistent with all other environmental laws.

(3)(2) The Secretary shall not authorize termination of active remediation corrective action for any area that, at the time the request is made, has been identified by a state or local groundwater use planning process for resource development.

(4)(3) The Secretary may authorize the termination of active remediation, corrective action, or amend the corrective action plan after considering all the information in the request. In making the authorization, the Secretary shall consider geologic and hydrogeologic conditions, the nature and extent of the contamination, technical and economic feasibility, and public health and safety impacts on all existing and foreseeable potential receptors should the contaminated plume reach them receptors and the impacts the contaminated plume may have if it reaches them. The Secretary will review the request for completeness and may request any additional information necessary to make their authorization. Upon termination of corrective action, the Secretary shall require implementation of a groundwater monitoring program that, based on subsurface conditions and the physical and chemical properties of the contaminants, will accurately track the degradation and attenuation of contaminants at a location of no less than one year's predicted time of travel upgradient of any existing or foreseeable receptor. The monitoring program shall remain in effect until there is sufficient evidence that the contaminant concentrations have been reduced to the level of the standards. For the purpose of this Part, "sufficient evidence" means that sampling and analyses demonstrate that contaminant concentrations have been reduced to the level of the standards on multiple sampling events.

(k) In the evaluation of active remediation or natural attenuation corrective action plans, the Secretary shall consider the extent of any violations, the extent of any threat to human health, the extent of damage or potential adverse impact to the environment, technology available to accomplish restoration, the potential for degradation of the contaminants in the environment, geologic and hydrogeologic conditions, the time estimated to achieve groundwater quality restoration, technical and economic feasibility, and the public and economic benefits to be derived from groundwater quality restoration.

(l) Upon a determination by the Secretary that continued corrective action would result in no significant reduction in contaminant concentrations, concentrations as determined in Part (j)(1)(E) of this Rule and the contaminated groundwaters can be rendered potable by treatment using technologies that are in use in other applications and shown to be effective for removal of contaminants, the person may request that the Secretary may designate the remaining area of degraded groundwater RS. Where the remaining degraded groundwaters cannot be
made potable by such treatment, the Secretary Commission may also consider a request for reclassification of the groundwater to a GC classification as outlined in Rule .0201.0319 of this Subchapter.

(o)(m) If at any time the Secretary determines that a new technology is available that would remediate the contaminated groundwater to the standards specified in Rule .0202 of this Subchapter, the Secretary may require the responsible party to evaluate the economic and technological feasibility of implementing the new technology in an active groundwater remediation corrective action plan in accordance with a schedule established by the Secretary. The Secretary's determination to utilize new technology at any site or for any particular contaminant or constituent of interest shall include a consideration of the factors in Paragraph (h) of this Rule, Rule .0111(c) of this Section.

(p)n Where the standards are exceeded as a result of the application of pesticides or other agricultural chemicals, the Secretary shall request the Pesticide Board or the Department of Agriculture and Consumer Services to assist the Department in determining the cause of the violation. If the violation is determined to have resulted from the use of pesticides, the Secretary shall request the Pesticide Board to take appropriate regulatory action to control the use of the chemical or chemicals responsible for, or contributing to, such violations, or to discontinue their use.

(q) The approval pursuant to this Rule of any corrective action plan, or modification or termination thereof, that permits the migration of a contaminant onto adjacent property, shall not affect any private right of action by any party that may be affected by that contamination.

(o)(o) If a discharge or release is not governed by the rules in Section .0400 of this Subchapter and the increase in the concentration of a substance in excess of the standard resulted in whole or in part from a release from a commercial or noncommercial underground storage tank as defined in G.S. 143-215.94A, any person required to implement an approved corrective action plan pursuant to this Rule and seeking reimbursement for the Commercial or Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Funds shall implement a corrective action plan meeting the requirements of Paragraph (k) or (l) of this Rule unless the person demonstrates to the Secretary that:

1. contamination resulting from the discharge cannot qualify for approval of a plan based on the requirements of the Paragraphs; or
2. the cost of making such a demonstration would exceed the cost of implementing a corrective action plan submitted pursuant to Paragraph (q) of this Rule, Rule .0111(c) of this Section.

(p) If a discharge or release is not governed by the rules in Section .0400 of this Subchapter and the increase in the concentration of a substance in excess of the standard resulted in whole or in part from a release from a commercial or noncommercial underground storage tank as defined in G.S. 143-215.94A, the Secretary may require any person implementing or operating a previously approved corrective action plan pursuant to this Rule to:

1. develop and implement a corrective action plan meeting the requirements of Paragraphs (k) and (l) of this Rule; or
2. seek discontinuance of corrective action pursuant to Paragraph (m) of this Rule.
Pursuant to this Rule, the approval of any corrective action plan, modification, or termination thereof, that permits the migration of a contaminant onto adjacent property, shall not affect any private right of action by any party that may be affected by that contaminant.

History Note: Authority G.S. 143-215.1; 143-215.3; 143-215.94A; 143-215.94T; 143-215.94V; 143B-282;
1995 (Reg. Sess. 1996) c. 648, s. 1;
Eff. August 1, 1989;
Amended Eff. October 1, 1993; September 1, 1992;

15A NCAC 02L .0107  COMPLIANCE BOUNDARY
(a) For disposal systems individually permitted prior to December 30, 1983, the compliance boundary shall be established at a horizontal distance of 500 feet from the waste boundary or at the property boundary, whichever is closer to the source.
(b) For disposal systems individually permitted on or after December 30, 1983, a compliance boundary shall be established at a horizontal distance of 250 feet from the waste boundary, or 50 feet within the property boundary, whichever point is closer to the source.
(c) The compliance boundary shall be established by the Director, or his designee at the time of permit issuance, and shall remain in place for the duration of the permit. Any sale or transfer of property which affects a compliance boundary shall be reported immediately to the Director, or his designee. For disposal systems which are not governed by Paragraphs (e) or (f) of this Rule, the compliance boundary affected by the sale or transfer of property will be re-established consistent with Paragraphs (a) or (b) of this Rule, whichever is applicable.
(d) Except as provided in Paragraph (g) of this Rule, no water supply wells shall be constructed or operated within the compliance boundary of a disposal system individually permitted or repermitted after January 1, 1993.
(d) The compliance boundary and zone shall extend vertically from the surface through the water table to the maximum depth of saturation.
(e) The permitted activity shall not cause or contribute to an exceedance of the surface water standards established under 15A NCAC 02B .0200.
(f) Multiple contiguous properties under common ownership and permitted for use as a waste disposal area shall be treated as a single property with regard to determination of a compliance zone and setbacks to property lines as per Paragraphs (a) or (b) of this Rule.
(g) Where compliance zones for separately permitted waste disposal areas under the same ownership on the same property intersect, the Director shall combine the compliance zones into one single compliance zone with a single compliance boundary.
(h) The permittee shall establish a monitoring program within the compliance zone per the requirements in Rule .0110 of this Section.
(i) Except as provided in Paragraph (m) of this Rule, no new water supply wells shall be constructed within the compliance zone of a disposal system individually permitted after January 1, 1993.

(e)(j) Except as provided in Paragraph (e)(m) of this Rule, a permittee shall not transfer land within an established compliance boundary of a disposal system permitted or repermitted after January 1, 1993 unless:

1. The land transferred is serviced by a community water system as defined in 15A NCAC 18C, the source of which is located outside the compliance boundary; and
2. the deed transferring the property:
   (A) contains notice of the permit, including the permit number, a description of the type of permit, and the name, address and telephone number of the permitting agency; and
   (B) contains a restrictive covenant running with the land and in favor of the permittee and the State, as a third party beneficiary, which prohibits the construction and operation of water supply wells within the compliance boundary; and
   (C) contains a restrictive covenant running with the land and in favor of the permittee and the State, as a third party beneficiary, which grants the right to the permittee and the State to enter on such property within the compliance boundary for groundwater monitoring and remediation purposes.

(f)(k) Except as provided in Paragraph (e)(m) of this Rule, if at the time a permit is issued or reissued after January 1, 1993, the permittee is not the owner of the land within the compliance boundary, it shall be a condition of the permit issued or renewed that the landowner of the land within the compliance boundary, if other than the permittee, execute and file in the Register of Deeds in the county in which the land is located, an easement running with the land which:

1. contains:
   (A) either a notice of the permit, including the permit number, a description of the type of permit, and the name, address and telephone number of the permitting agency; or
   (B) a reference to a notice of the permit with book and page number of its recordation if such notice is required to be filed by statute;
2. prohibits the construction and operation of water supply wells within the compliance boundary; and
3. reserves the right to the permittee and the State to enter on such property within the compliance boundary for groundwater monitoring and remediation purposes. The Director shall, upon request by the landowner, file a document terminating the easement with the appropriate Register of Deeds. The easement may be terminated by the Director when its purpose has been fulfilled or the need for the easement no longer exists. Under those conditions, the Director shall, upon request by the landowner, file a document terminating the easement with the appropriate Register of Deeds.

(l) Any sale or transfer of property which affects a compliance boundary shall be reported to the Director within one week of the final sale or transfer. For disposal systems which are not governed by Paragraphs (j) or (k) of this Rule, the compliance boundary affected by the sale or transfer of property shall be reestablished consistent with this Rule.
The requirements of Paragraphs (d), (e) and (f) of this Rule are not applicable to ground adsorption sewage treatment and disposal systems serving four or fewer single family dwellings or multiunit dwellings of four or fewer units regulated under 15A NCAC 02T .0600, the requirements of Paragraphs (j) and (k) of this Rule shall not be applicable.

The boundary shall form a vertical plane extending from the water table to the maximum depth of saturation.

For ground absorption sewage treatment and disposal systems which are permitted regulated under 15A NCAC 02T .0600, 18A .1900, the compliance boundary shall be established at the property boundary.

Penalties authorized pursuant to G.S. 143-215.6A(a)(1) will not be assessed for violations of the standards within a compliance boundary zone unless the violations are the result of violations of permit conditions or negligence in the management of the facility.

The Director shall require:

1. that permits for all activities governed by G.S. 143-215.1 be written to protect the quality of groundwater established by applicable standards, at the compliance boundary;
2. that necessary groundwater quality monitoring shall be conducted within the compliance boundary; and
3. that a violation of standards within the compliance boundary resulting from activities conducted by the permitted facility be remedied through clean-up, recovery, containment, or other response when any of the following conditions occur:
   A. a violation of any standard in adjoining classified groundwaters occurs or can be reasonably predicted to occur considering hydrogeologic conditions, modeling, or other available evidence;
   B. an imminent hazard or threat to the public health or safety exists; or
   C. a violation of any standard in groundwater occurring in the bedrock other than limestones found in the Coastal Plain sediments, unless it can be demonstrated that the violation will not adversely affect, or have the potential to adversely affect a water supply well.

The Director shall require that permits for all activities governed by G.S. 143-215.1 be written in such a way to protect groundwater at or beyond the compliance boundary.

The Director shall require that exceedances of the standards resulting from activities conducted by the permitted facility within the compliance zone be remedied through clean-up, recovery, containment, facility design, or operational control if any of the following occur:

1. A violation of the standards occurs or is predicted to occur through groundwater modeling in groundwater at or beyond the compliance boundary as a result of the permitted activities.
2. A violation of the surface water standards established under 15A NCAC 02B .0200 occurs or is predicted to occur through modeling as a result of the permitted activities.
3. An imminent hazard as defined in G.S.130A-2 exists.
An exceedance of the standards occurs in bedrock within the compliance boundary as a result of the permitted activities unless it can be demonstrated that the violation will not adversely affect any receptor.

History Note: Authority G.S. 143-215.1(b); 143-215.1; 143-215.3(a)(1); 143B-282; Eff. August 1, 1989; Amended Eff. October 1, 1993; November 2, 1992.

15A NCAC 02L .0108 REVIEW BOUNDARY

A review boundary is established around any waste disposal system area midway between the compliance boundary and the waste boundary. When the concentration of any substance equals or exceeds the standard at the review boundary as determined by monitoring, the permittee shall be required to take action in accordance with the provisions of Rule .0106(c)(2)(A),.0106(d) of this Subchapter. Section.

History Note: Authority G.S. 143-215.1(b); 143-215.3(a)(1); 143B-282; Eff. August 1, 1989.

15A NCAC 02L .0109 DELEGATION

(a) The Director is delegated the authority to enter into consent special orders under G.S. 143-215.2 for violations of the standards except when a public meeting is required as provided in 15A NCAC 2402H .1203.

(b) The Director is delegated the authority to prepare a proposed special order to be issued by the Commission without the consent of the person affected and to notify the affected person of that proposed order and of the procedure set out in G.S. 150B-23 to contest the proposed special order.

(c) The Director, or his designee, shall give public notice of proposed consent special orders as specified in 15A NCAC 2402H .1203.

History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.3(a)(4); Eff. August 1, 1989; Amended Eff. October 1, 1993; October 1, 1990.

15A NCAC 02L .0110 MONITORING

(a) Except where exempted by statute or this Subchapter, the Director may require any person who causes, permits, or has control over any discharge of waste, waste, or groundwater cleanup program, shall install and to implement a monitoring program system, at such locations, and in such detail as the Director, or his designee may require, to evaluate the effects of the discharge upon the environment or waters of the state, including the effect of any actions taken to restore groundwater quality, as well as the efficiency of any treatment facility. The Director shall consider information including the geologic and hydrogeologic conditions, potential receptors, and risks to public health and the environment in determining the nature and extent of any required monitoring program. The monitoring program plan shall be prepared under the responsible charge of a Professional
professional Engineer or Licensed Geologist and bear the seal of the same if required under G.S. 89C or G.S. 89E.

(b) Monitoring systems within the monitoring program shall be constructed and operated in a manner that will not result in the contamination of adjacent groundwaters of a higher quality waters of the State.

(c) The Director may require modification of a monitoring program or system or require additional monitoring of a contaminant or constituent of interest if it is determined to be in the best interest to public health and the environment.

(d) Monitoring systems within the monitoring program shall be able to:

1. Track the migration, degradation, and attenuation of contaminants and contaminant by-products within a source area and within and down gradient of a contaminant plume.

2. Detect contaminants and contaminant by-products prior to their reaching any potential receptor.

3. Detect if a groundwater contaminant plume is causing or contributing to exceedances of the surface water standards established under 15A NCAC 02B .0200.

(e) Monitoring shall be conducted and results reported in a manner and at a frequency specified by the Director, or his designee, based on information including the geologic and hydrogeologic conditions, potential receptors, and risks to public health and the environment.

(f) Monitoring programs shall remain in effect until it is demonstrated that the contaminant concentrations resulting from site activities or actions have been reduced to a level at or below the standards for a minimum of four consecutive quarters with monitoring events spaced at least three months apart. The Director may require an extension of monitoring if the Director determines that concentrations are fluctuating at or near the standards or the data trends suggest that concentrations may be increasing. Once the Director is satisfied that the standards have been met or that corrective action is no longer necessary to ensure compliance with the Rules of this Subchapter, the Director shall furnish a letter stating that no further action is required. The Director shall also require a plan be submitted for maintaining or abandoning the monitoring wells in accordance with 15A NCAC 02C .0100.

15A NCAC 02L .0111 REPORTS

(a) Any person subject to the requirements for corrective action specified in Rule .0106 of this Subchapter shall submit to the Director, in such detail as the Director may require, a written report that describes:

Including those associated with initial response, site assessment, and corrective action. Reports shall be submitted in accordance with a schedule established by the Director. In establishing a schedule, the Director shall consider a proposal by the person submitting the plan or report.

1. The results of the investigation specified in Paragraphs (c) and (d) of Rule .0106 of this Section including but not limited to:

   A. A description of the sampling procedures followed and methods of chemical analyses used, and
(B) all technical data utilized in support of any conclusions drawn or determinations made;

(2) the results of the predictive calculations or modeling, including a copy of the calculations or model runs and all supporting technical data, used in the demonstration required in Paragraph (d) of Rule .0106 of this Section; and

(3) the proposed methodology and timetable associated with the corrective action for those situations identified in Paragraphs (c) and (d) of Rule .0106 of this Section.

(b) The report shall be prepared under the responsible charge of a Professional Engineer or Licensed Geologist and bear the seal of the same as specified in Rule .0106(d) of this Section.

(b) A site assessment conducted pursuant to the requirements of Paragraphs (c) or (e) in Rule .0106 of this Section shall include:

(1) a description of the site including current and historical operations at the facility and all current and historical waste streams;

(2) the source and cause of contamination;

(3) any imminent hazards to public health and any actions taken to mitigate them;

(4) a description of the initial response actions taken in accordance with Rule .0106(f) of this Section;

(5) all potential receptors and expected exposure pathways;

(6) the horizontal and vertical extent of soil and groundwater contamination and all significant factors affecting contaminant transport;

(7) background threshold values for affected media;

(8) geological and hydrogeological features influencing the movement, chemical, and physical character of the contaminants;

(9) the nature and extent of any surface water or sediment contamination resulting from interactions with contaminated soil or groundwater;

(10) a description of the sampling procedures followed, and methods of chemical analyses used;

(11) all technical data utilized in support of any interpretations, conclusions, determinations, or evaluations made; and

(12) the results of predictive calculations or modeling, including a copy of the calculations or model runs and all supporting technical data.

c) Corrective action plans submitted pursuant to Paragraphs (c) or (e) in Rule .0106 of this Section for active remediation shall include:

(1) a summary of the results of the site assessment submitted in accordance with Paragraph (b) of this Rule;

(2) the technical basis for the requested corrective action;

(3) an evaluation of risk to receptors within the contaminant plume and in areas where the plume is predicted to migrate through modeling;

(4) an evaluation of projected groundwater use within 1,500 feet of the predicted impacted area based on current State or local government planning efforts;
(5) a summary of the available technology that could feasibly be used as a potential remedial strategy
based on the specific site conditions and nature and extent of the contamination that includes the
predicted time to return to compliance with the standards and the estimated costs to implement each
potential strategy;

(6) the proposed remedial technology that the person proposes to implement that includes:
   (A) the rationale for selecting the proposed technology;
   (B) plans and specifications, including engineering details;
   (C) a schedule for implementation and operation of the technology;
   (D) the predicted time to return to compliance with the standards;
   (E) the estimated costs to implement and operate the technology;
   (D) a monitoring plan that evaluates the effectiveness of the technology; and
   (E) the results of any modeling that shows the projected movement of the contaminant plume
       until the predicted time to return to compliance with the standards;

(7) all technical data utilized in support of any interpretations, conclusions, determinations, or
evaluations made; and

(8) the results of predictive calculations or modeling, including a copy of the calculations or model runs
and all supporting technical data.

(d) Corrective action plans submitted pursuant to Paragraphs (c) or (e) in Rule .0106 of this Section for natural
attenuation shall include all of the information required in Paragraph (c) of this Rule and demonstrate that:
(1) all sources of contamination and free product have been removed or controlled pursuant to Rule
    .0106(f) of this Section;
(2) the contaminant has the capacity to degrade or attenuate under the site-specific conditions;
(3) the time and direction of contaminant travel can be predicted based on subsurface conditions and
    the contaminant's physical and chemical properties;
(4) contaminant migration will not result in any violation of applicable standards at any existing or
    potential receptor;
(5) contaminants have not and will not migrate onto adjacent properties, or that:
    (A) such properties are served by an existing public water supply system dependent on surface
        waters or hydraulically isolated groundwater; or
    (B) the owners of such properties have consented in writing to the request;
(6) if the contaminant plume is expected to intercept surface waters, the groundwater discharge will not
    possess contaminant concentrations that would result in violations of the surface water standards
    established under 15A NCAC 02B.0200;
(7) the person making the request will put in place a groundwater monitoring program in conformance
    with Rule .0110 of this Section;
(8) all necessary access agreements needed to monitor groundwater quality have been or can be
    obtained;
(9) public notice of the request has been provided in accordance with Rule .0114(b) of this Section; and
(10) the proposed corrective action plan would be consistent with all other environmental laws.
(e) All reports and plans shall be prepared under the charge of a professional engineer, licensed soil scientist, or
licensed geologist if required under G.S. 89C, G.S. 89E, or G.S. 89F.

History Note:  Authority G.S. 143-215.1(b); 143-215.3(a)(1); 143-215.65; 143B-282;
Eff. August 1, 1989;

15A NCAC 02L .0112  ANALYTICAL PROCEDURES
Test or analytical procedures to determine compliance or noncompliance with the standards established in Rule .0202
of this Subchapter will be in accordance with 15A NCAC 02H .0805(a)(1).
(1) The most sensitive of the following methods or procedures for substances where the standard is at
or above the method detection limit value:
   (a) The most recent version of Standard Methods for the Examination of Water and
       Wastewater, published jointly by American Public Health Association, American Water
       Works Association and Water Pollution Control Federation;
   (b) Methods for Chemical Analysis of Water and Waste, 1979, U.S. Environmental Protection
       Agency publication number EPA-600/4-79-020, as revised March 1983;
   (c) Test Methods for Evaluating Solid Wastes: Physical/Chemical Methods, 3rd Edition, 1986,
       U.S. Environmental Protection Agency publication number SW-846;
   (d) Test Procedures for the Analysis of Pollutants Under the Clean Water Act, Federal Register
       Vol. 49, No. 209, 40 CFR Part 136, October 26, 1984;
   (e) Methods or procedures approved by letter from the Director upon application by the
       regulated source; or
(2) A method or procedure approved by the Director for substances where the standard is less than the
method detection limit value.

History Note:  Authority G.S. 143-215.3(a)(1); 143B-282;
Eff. August 1, 1989;

15A NCAC 02L .0113  VARIANCE
(a) The Commission, on its own initiative or pursuant to a request under G.S. 143-215.3(e), may grant variances to
the rules of this Subchapter.
(b) Requests for variances are filed by letter from submitted by the applicant to the Environmental Management
Commission. The application shall be mailed submitted in writing to the chairman of the Commission in care of the
Director, Division of Environmental Management, Post Office Box 29535, Raleigh, N.C. 27626-0535, Director.
(c) The application shall contain the following information:
Applications filed by counties or municipalities shall include a resolution of the County Board of Commissioners or the governing board of the municipality requesting the variance.

A description of the past, existing, or proposed activities or operations that have or would result in a discharge of contaminants to the groundwaters.

Description of the proposed area for which a variance is requested. A detailed location map showing the orientation of the facility, potential for groundwater contaminant migration, as well as the area covered by the variance request, with reference to at least two geographic references including numbered roads, named streams/rivers, etc., etc., shall be included.

Supporting information to establish that the variance will not endanger the public health and safety, including health and environmental effects from exposure to groundwater contaminants. Location of wells and other water supply sources including details of well construction, if known, within 1/2 mile of site must be shown on a map.

Supporting information to establish that requirements of this Rule cannot be achieved by providing the best available technology economically reasonable. This information shall identify specific technology considered, and the costs of implementing the technology, and the impact of the costs on the applicant.

Supporting information to establish that compliance would produce serious financial hardship on the applicant.

Supporting information that compliance would produce serious financial hardship without equal or greater public benefit.

A copy of any Special Order that was issued in connection with contaminants in the proposed area and supporting information that applicant has complied with the Special Order.

A list of the names and addresses of any property owners within the proposed area of the variance, as well as any property owners adjacent to the site covered by the variance.

(d) Upon receipt of the application, the Director shall review it for completeness and request additional information if necessary. When the application is complete, the Director shall give public notice of the application and schedule the matter for a public hearing in accordance with G.S. 143-215.4(b) and the procedures set out in Paragraph (e) of this Rule.

(e) Notice of Public Hearing:

(1) Notice of public hearing on any variance application shall be circulated in the geographical areas of the proposed variance by the Director at least 30 days prior to the date of the hearing. The Director shall:

(A) publish the notice one time in a newspaper having general circulation in said county;

(B) submit the notice to the North Carolina Department of Environment, Health, and Natural Resources, Division of Environmental Health Section and appropriate local health agency.
(C) by mailing the notice to any other federal, state or local agency upon request;

(D) by mailing the notice to the local governmental unit or units having jurisdiction over the geographic area covered by the variance;

(E) by mailing the notice to any property owner within the proposed area of the variance, as well as any property owners adjacent to the site covered by the variance;

(F) by mailing the notice to any person or group upon request; and

(G) post the notice on the Department website.

(2) The contents of public notice of any hearing shall include at least the following:

(A) name, address, and phone number of agency holding the public hearing;

(B) name and address of each applicant whose application will be considered at the meeting;

(C) a brief summary of the variance request;

(D) a geographic description of a proposed area for which a variance is requested;

(E) a brief description of activities or operations which have or will result in the discharge of contaminants to the groundwaters, waters of the State described in the variance application;

(F) a brief reference to the public notice issued for each variance application;

(G) information regarding the time and location for the hearing;

(H) the purpose of the hearing;

(I) the address and phone number of premises at which interested persons may obtain further information, request a copy of each application, and inspect and copy forms and related documents; and

(J) a brief description of the nature of the hearing including the rules and procedures to be followed. The notice shall also state that additional information is on file with the Director and may be inspected at any time during normal working hours. Copies of the information on file will be made available upon request and payment of cost or reproduction.

(f) All comments received within 30 days following the date of publication in the newspaper in Part (e)(1)(a) of this Rule shall be made part of the application file and shall be considered by the Commission prior to taking final action on the application.

(g) In determining whether to grant a variance, the Commission shall consider whether the applicant has complied with any Special Order or Special Order by Consent issued under G.S. 143-215.2.

(h) If the Commission's final decision is unacceptable, the applicant may file a petition for a contested case in accordance with Chapter 150B of the General Statutes. If the petition is not filed within 60 days, the decision on the variance shall be final and binding.

(i) A variance shall not operate as a defense to an action at law based upon a public or private nuisance theory or any other cause of action.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.3(a)(3); 143-215.3(a)(4); 143-215.3(e); 143-215.4;
15A NCAC 02L .0114  NOTIFICATION REQUIREMENTS

(a) Any person subject to the requirements of Rule .0106(c) or (e) of this Section shall submit to the local Health Director and the chief administrative officer of the political jurisdictions in which the groundwater contamination has occurred, a report that describes:

(1) The area extent of the contaminant plume;

(2) The chemical constituents in the groundwater which exceed the standards described in Rule .0202 of this Subchapter;

(3) Actions taken and intended to mitigate threats to human health;

(4) The location of any wells installed for the purpose of monitoring the contaminant plume and the frequency of sampling.

The report described in this Rule shall be submitted no later than five working days after submittal of the completed copy of the site assessment report assessing the cause, significance and extent of the violation as required by Rule .0106(c), .0111(b) of this Section.

(b) Any person who submits a request under Rule .0106(k), (l), or (m) .0106(g) or (h) of this Section shall notify the local Health Director and the chief administrative officer of the political jurisdictions in which the contaminant plume occurs, and all property owners and occupants within or contiguous to the area underlain by the contaminant plume, and under the areas where it is expected to migrate, of the nature summary of the request and reasons supporting it. Notification shall be made by certified mail concurrent with the submittal of the request to the Director. A final decision by the Director shall be postponed for a period of 30 days following receipt of the request so that the Director may consider comments submitted by individuals interested in the request.

(c) Any person whose request under Rule .0106(k), (l), or (m), .0106(g) or (h) of this Section is granted by the Director shall notify parties specified in Paragraph (b) of this Rule of the Director's decision and a summary of the actions to be taken. Notification shall be made by certified mail within 30 days of receipt of the Director's decision.

History Note: Authority G.S. 143-214.1; 143-215.3(a)(1); 143B-282(2)b;


15A NCAC 02L .0115  RISK-BASED ASSESSMENT AND CORRECTIVE ACTION FOR PETROLEUM UNDERGROUND STORAGE TANKS

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;

Temporary Adoption Eff. January 2, 1998;
Eff. October 29, 1998;
Recodified to 15A NCAC 02L .0400 Eff. December 1, 2005.
ATTACHMENT C – PUBLIC HEARING ANNOUNCEMENT

DEQ Website:  https://deq.nc.gov/news/events/groundwater-resources-public-hearing-permanent-rules-15a-ncac-02l-0100

Groundwater Resources: Public Hearing on Permanent Rules 15A NCAC 02L .0100

PUBLIC NOTICE is hereby given that, on September 9, 2021, the North Carolina Environmental Management Commission (EMC) approved the Division of Water Resources (DWR) to amend the permanent rules 15A NCAC 02L .0100 – General Considerations.

A public hearing will be conducted to consider public comments on proposed amendments to rule 15A NCAC 02L .0100 – General Considerations. The purpose of the rule-making is to incorporate changes required by Session Law 2018-114 Sections 19.(a)–(e) and 19.1(a)-(e) and Session Law 2020-74 Section 17.1(a)-(e). The last significant changes to these rules occurred in 1993 and 1998. Based on the Regulatory Impact Analysis, the current proposed changes will not have any significant fiscal impacts on the State or regulated community.

The public is hereby notified that DWR will hold a public hearing at 6 p.m. on Wednesday, November 3, 2021 via an online WebEx meeting event detailed below. The purpose of this public hearing is to allow interested persons to submit oral comments regarding the DWR’s proposed amendments to Permanent Rules 15A NCAC 02L .0100.

If you wish to attend or speak at the hearing, you must register before 5 p.m. on Wednesday, November 3, 2021. You may register to attend and/or speak at this hearing using the following registration form: https://forms.office.com/g/favjce1WYv.

A virtual public hearing will be held by webinar as follows:
https://ncdenrits.webex.com/ncdenrits/j.php?MTID=me8e9760d90fbb373c01c9b5790727440
Wednesday, Nov 3, 2021 6 p.m. | 2 hours | (UTC-04:00) Eastern Time (US & Canada)
Event number: 2429 916 8947
Event password: NCDEQ
Join by phone: +1-415-655-0003 US TOLL
Access code: 242 991 68947

The public is also invited to comment in writing on the application. Written comments must be received by DWR no later than 5:00 p.m. on December 14, 2021. Please email written comments to groundwater.comments@ncdenr.gov. Please include “2L Rules” in the email’s subject line. Comments may also be submitted in writing to: Eric Smith, Division of Water Resources, 1636 Mail Service Center, Raleigh, NC 27699-1636.
Good evening, my name is Morella Sanchez King and I am the supervisor of the Division of Water Resources Regional Operations Section at the DEQ Wilmington Regional Office. My role as hearing officer is to receive comments on the proposed rule actions and the regulatory impact analysis; and report those comments and recommend actions to the Environmental Management Commission.

During this virtual public hearing tonight, we will be receiving oral comments from those individuals who requested to speak when they pre-registered for this event. If you are having technical difficulties with WebEx, you can use the chat feature in WebEx to ask questions or seek assistance. You can also visit the Department of Environmental Quality’s website using the link in the public notice for this hearing for instructions on various ways to connect to WebEx.

We will now open the hearing on the proposed re-adoption of 15A NCAC 02L Section .0100 titled “General Considerations”.

A regulatory impact analysis was drafted for these rule changes, and the final version was approved for publication by the NC Office of State Budget and Management pursuant to G.S. 150B-21.4 on May 20, 2021. The Office of State Budget and Management determined that no fiscal note is necessary because the proposed rule changes do not have state or local government impacts, or substantial economic impacts to the regulated community.

The public notice for this hearing was published in Volume 36, Issue 8 of the North Carolina Register on October 15, 2021, and the public notice and regulatory impact analysis were posted on the Department of Environmental Quality’s website. The public notice was also emailed to those on the Division of Water Resources rules development email distribution list. We will add the public notice, regulatory impact analysis, and the proposed rule changes into the hearing record without reading them at this time.

Rick Bolich from the Division of Water Resources will now give a brief overview of the amendments to these rules.

PRESENTATION

We will now take comments on re-adoption and amendments to 15A NCAC 02L Section .0100 “General Considerations”. (Use option 1 or 2 below, as appropriate)

To do this, I would have called the names of each of the pre-registered speakers in order, but no one has registered to speak at this hearing, so instead the WebEx Host will unmute each of the
attendees and ask them if they would still like to provide a comment even though they did not register. Each person will be given 3 minutes to give their comments.

Please do not start speaking until the WebEx Host has indicated that your microphone has been unmuted. It would also be helpful if any person speaking tonight would also submit a written statement for inclusion into the hearing record.

If we call your name, but cannot hear you after you have been unmuted, please check to see if you are still muted on the WebEx screen on your computer, or on your phone. If you are having audio issues, try a different method of audio connection within WebEx or use the “Call Me” feature to have WebEx call your personal telephone line. If we still cannot hear you, we will proceed to the next registered speaker, but will call your name again at the end of the hearing.

If you did not register to speak, but still want to provide comments on the proposed rulemaking, remember there are several other ways to provide comments until the end of the comment period, which is December 14, 2021:

To provide written comments, you have two options:

- You can email them to groundwater.comments@ncdenr.gov with “2L Rules” in the subject line.
- You can also mail written comments to the address listed in the public notice.

Thank you all for your participation in this virtual public hearing and your interest in the public hearing process. This hearing is adjourned.

THANK YOU!
Digital Public Hearing - Readoption and Amendments to Rules in 15A NCAC 02L Section .0100 “General Considerations

Thank you for joining the WebEx public hearing for:

Readoption and Amendments to Rules in
15A NCAC 02L Section .0100 “General Considerations”

The hearing will begin at 6:00 p.m.
Please be patient as our WebEx Host identifies attendees and speakers.

Important notes:
You will be muted upon entry to hearing. The host will unmute you when it is your turn to speak.
This public hearing will be recorded. The recording (audio, video, and chat record) will be made a part of the public record for the facility.
If you are experiencing technical difficulties, please try leaving the meeting and rejoining or contact us through the chat feature.
If you use the chat feature to contact us, please send message to “All Attendees”.

You may also submit written comments by December 14, 2021 via e-mail to:
groundwater.comments@ncdenr.gov (Please type “2L Rules" in the subject line)
Proposed Amendments to 15A NCAC 02L .0100
Re-Adoption

• Re-Adoption required by SL-2013-413 and G.S. 150B-21.3A.

• Re-Adoption of 15A NCAC 02L Section .0100 – General Considerations only at this time.
Overview

• No Major Changes are Currently Proposed.

• Revisions are mostly reorganization and clarifications.

• No significant impacts noted (for both regulated community and State).
• Preliminary external review by interested parties completed (December 2020)

• Rule Review Commission pre-review completed (February 2021)

• Regulatory Impact Analysis Approved (May 2021)

• Approval from Environmental Management Commission to proceed to public hearing (September 2021)
02L .0101 Summary

• 2L .0101 Authorization
  • Changed title to “Purpose” for consistency with other rules.
  • No significant changes.
02L .0102 Summary

• 2L .0102 Definitions
  • Added definitions for the following words for clarification:
    Active remediation, Anthropogenic, Background threshold values, Chief
    Administrative Officer, Compliance zone, Constituent of interest, Control,
    Licensed soil scientist, Lower limit of quantitation, Method detection limit,
    Person, Secretary (to include their designee), and Waste disposal
    system
  • .0102(29) – Added “waters of the State,” as defined in G.S. 143-212(6), to
    the definition for receptor.
02L .0103 Summary

• 2L .0103 Policy
  • No significant changes.
02L .0104 Summary

• 2L .0104 Restricted Designation
  • .0104(a) – Clarified that the RS is a *land use restriction* rather than a groundwater classification. Only the Environmental Management Commission can designate groundwater classifications.

  • .0104(b) – Clarified that the designation is only for certain corrective action methods.
    • Risk-based
    • Areas of remaining contamination after approved termination of active corrective action
    • Where a variance has been granted
02L .0105 Summary

- 2L .0105 Adoption by Reference
  - Repealed August 1, 1989

- No change
02L .0106 Summary

• 2L .0106 Corrective Action
  • Re-organized this section, but no substantial changes.

  • Retitled to “Initial Response, Site Assessment, And Corrective Action” for clarification.

  • Proposed language reads more like a step-by-step process.

  • Moved monitoring and reporting parts to rules to .0110 and .0111.
02L .0106 Summary

• 2L .0106 Corrective Action (cont.)
  • .0106(d) – Stated that the Director may require groundwater modeling to determine if there will be a violation of groundwater standards at the compliance boundary.
    • Decision to be based on data trends, geologic and hydrogeologic conditions, and spacing between review and compliance boundaries.

• .0106(i) – Clarified that the person may also choose to pursue Risk Based remediation per G.S. 130A, Article 9, Part 8 (if applicable).
• 02L .0106 Corrective Action (cont.)
  • .0106(j) – Clarified that, if a person requests to terminate active remediation prior to achieving the standards, they must demonstrate that natural attenuation will result in a return to the standards.
02L .0107 Summary

• 2L .0107 Compliance Boundary
  • Definitions - Introduced the concept of compliance zone (the area between the compliance boundary and the waste boundary). Helps define that area without having to make references to the “area within the compliance boundary” as the rules currently do.

• .0107(c) - Added that the compliance boundary shall remain in place for the duration of the permit. Currently, there is no specified timeframe for the termination of the compliance boundary. When the permit is rescinded or revoked, the compliance boundary no longer exists.
02L .0107 Summary

- 2L .0107 Compliance Boundary (cont.)
  - .0107(f) - Allowed multiple contiguous properties to be treated as a single property. Applied from General Statute 143-215.1(i).
  - .0107(j) – Reworded the language to clarify that DEQ is not prohibiting the transfer of land within a compliance boundary for permitted facilities.
    - Instead, the rule states what is required if the land is to be transferred, which is essentially a deed modification.
02L .0107 Summary

• 2L .0107 Compliance Boundary (cont.)
  • .0107(j) – Deleted the prohibition of construction of new wells within the compliance boundary as this is already in the rules [.0107(i)].

• .0107(j) – Deleted the rule that grants the right of the permittee and State to enter property as this authority is already granted in G.S. 143-215.3(a)(2).
02L .0107 Summary

• 2L .0107 Compliance Boundary (cont.)
  • .0107(k) – Similar changes as in .0107(j).
    • Added clarification as to what is required for the termination of the easement. Current rule states only that it may be terminated “once its purpose has been fulfilled.”

• .0107(l) – Added a timetable to report sales or transfers of property that affect the compliance boundary to the Director.
  • Current rule says immediately.
  • Revised rule specifies reporting to Director within 7 (calendar) days of final sale or transfer.
02L .0107 Summary

• 2L .0107 Compliance Boundary (cont.)
  • .0107(q)(4) - For potential violations within the compliance boundary, we deleted the exception for limestones within the Coastal Plain so that it applies to all bedrock.
02L .0108 Summary

• 2L .0108 Review Boundary
  • Specified that if there is an exceedance of a Standard at the review boundary, the person shall be required to take action per .0106(d).

• .0106(d) – Provided specific items that the Director may consider for requiring groundwater modeling. Considerations include:
  • Geological or hydrogeological conditions
  • Data trends (i.e. if the standards are exceeded by a very small margin, concentrations are trending downward, or for one-time exceedances)
  • Spacing between compliance boundary and review boundary
02L .0109 Summary

• 2L .0109 Delegation
  • No significant changes.
02L .0110 Summary

• 2L .0110 Monitoring
  • Moved the monitoring requirements previously in .0106 to this rule.

  • .0110(c) – Clarified that the Director may require additional monitoring of any constituent of interest (COI).
    • For example, monitoring for a COI that could result from a geochemical change (change in pH, etc.) in the groundwater due to the presence of the waste system.
02L .0110 Summary

• 2L .0110 Monitoring
  • .0110(d)(2) – Deleted requirement for placing wells “one year’s time of travel up gradient” of a potential receptor and “no greater than the distance the groundwater at the contaminated site is predicted to travel in five years”.
    • Groundwater can travel as little as a few centimeters per year.

Instead, we stated that the wells have to be able to detect contaminants prior to reaching a receptor (.0110(d)(3)).
02L .0110 Summary

• **2L .0110 Monitoring (cont.)**
  
  • .0110(d)(4) – Added monitoring systems (i.e. wells, seepage meters, etc.) shall be able to detect if a groundwater contaminant plume is causing or contributing to surface water standard exceedances.
    
    • A system such as this would not be required unless it is determined that contaminated groundwater is discharging into a surface water body.

• .0110(f) – Clarified the timeframe for the termination of monitoring programs.
  
  • If concentrations are at or below the standards for four consecutive quarters, the Director may issue a “No Further Action” letter depending on data trends.
02L .0111 Summary

• 2L .0111 Reports
  • Moved the reporting requirements previously in .0106 to this rule.

  • .0111(b), (c), and (d) – Added some specific items to what is required in site assessment reports and corrective action plans.
    • These are items that are deemed necessary for complete and thorough reports.

    • Allow for easier evaluation by DWR staff.

  ➢ The items proposed to be required in these reports are generally provided by consultants although they are not currently specified in the Rule.
02L .0112 Summary

• 2L .0112 Analytical Procedures
  • Referred directly to 15A NCAC 02H .0805(a)(1) which is the rule for laboratory procedures, analytical methods, sample preservation, sample containers, and sample holding times.
02L .0113-.0115 Summary

• 2L .0113 through .0115
  • No significant changes.
# Re-Adoption Timeline

<table>
<thead>
<tr>
<th>Action item</th>
<th>Dates</th>
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<tbody>
<tr>
<td>Public Comment Period Opens</td>
<td>October 15, 2021</td>
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<tr>
<td>Public Hearing</td>
<td>November 3, 2021</td>
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<tr>
<td>Public Comment Period Closes</td>
<td>December 14, 2021</td>
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<tr>
<td>Compile Hearing Officers Report (HOR)</td>
<td>December 2021 - February 2022</td>
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<tr>
<td>EMC Adopts Rules</td>
<td>March 2022</td>
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<td>RRC Review and Approval</td>
<td>April 2022</td>
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<tr>
<td>Effective Date for Rules</td>
<td>May 2022</td>
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</tbody>
</table>
• Written comments can be submitted through **December 14, 2021**
• Via email: groundwater.comments@ncdenr.gov
• Via mail: 2L.0100 Comments
  1636 Mail Service Center
  Raleigh, NC 27699-1636
Contact Information

Rick Bolich
Groundwater Resources Section
NCDEQ Division of Water Resources
(919) 707-3671
rick.bolich@ncdenr.gov
ATTACHMENT F – PUBLIC HEARING REGISTERED ATTENDEES

1) Amanda Strawderman
2) Call-in User (704) ####-####
3) Dan Curry
4) Elizabeth Kountis

No affiliations were given.
None of the attendees registered to speak and none chose to speak at the end.
ATTACHMENT H - WRITTEN COMMENTS RECEIVED

DWR Suggested Revisions to 2L .0100 Rules (12/14/21)

.0104 Restricted Designation
   (d) add “predicted or” in front of expected for consistency.

.0103 Policy
   (a) – delete “citizens of North Carolina” to be consistent.

.0106 Initial Response, Site Assessment, and Corrective Action
   (b) – replace the word “steps” with “requirements” as a better word choice.
   (c)(6)(A) – add “for natural attenuation corrective action” for clarification.
   (c)(6)(B) – add the word “the” before corrective action plan for grammar.
   (c)(6)(C) - add “for natural attenuation corrective action” for clarification.
   (d)(2) – don’t delete the (2) as this was an oversight.
   (e)(6)(A) – add “for natural attenuation corrective action” for clarification.
   (e)(6)(B) – make the same as (c)(6)(B) for consistency.
   (e)(6)(C) - add “for natural attenuation corrective action” for clarification.
   (j) – add “prior to achieving the standards” at the end of the second sentence for clarification.
   (j)(1) – combine with (j) as this should all be one rule.
   (j)(2) – make this the new (k) as this should be a separate rule.
   (j)(3) – make this the new (l) as this should be a separate rule.
   (l) – fix the reference from (j)(1)(E) to (j)(5) after the (j)(1) is combined with (j).
   (p)(2) – add a reference to the new (l) which would have been (j)(3).

.0111 Reports
   (c)(6)(F) – instead of the words “that evaluates”, use “to evaluate” instead for grammar.
   (c)(6)(G) – add “or predictive calculations” after modeling for clarification and consistency.
   (c)(8) – change wording to “a copy of the calculations or model runs and all supporting technical data; and”. This is because of adding the predictive calculations to (c)(6)(G).

Add the following for consistency with the current 02L Rule [Note: this is in the current 02L Rule but was inadvertently left out of the proposed rule]:
(c)(9) a demonstration that:
   (A) all necessary access agreements needed to monitor groundwater quality have been or can be obtained; and
   (B) the proposed corrective action plan would be consistent with all other environmental laws.

Rearrange (d) to the following to be consistent with the current 2L Rule and to provide additional clarification [Note: this does not change the intent of the original 02L Rule and is essentially just a reorganization of the proposed Rule (d) with no new requirements]:

A108
Corrective action plans submitted pursuant to Paragraphs (c) or (e) in Rule .0106 of this Section for natural attenuation shall include:

1. a summary of the results of the site assessment submitted in accordance with Paragraph (b) of this Rule;

2. the technical basis for the requested corrective action;

3. an evaluation of risk to receptors within the contaminant plume and in areas where the plume is predicted to migrate through modeling;

4. an evaluation of projected groundwater use within 1,500 feet of the predicted impacted area based on current State or local government planning efforts;

5. the predicted time to return to compliance with the standards;

6. the results of any modeling or predictive calculations that show the projected movement of the contaminant plume until the predicted time to return to compliance with the standards;

7. all technical data utilized in support of any interpretations, conclusions, determinations, or evaluations made;

8. a copy of the calculations or model runs and all supporting technical data;

9. a monitoring plan to evaluate the effectiveness of the natural attenuation; and

10. a demonstration that:

   A. all sources of contamination and free product have been removed or controlled pursuant to Rule .0106(f) of this Section;

   B. the contaminant has the capacity to degrade or attenuate under the site-specific conditions;

   C. the time and direction of contaminant travel can be predicted based on subsurface conditions and the contaminant's physical and chemical properties;

   D. contaminant migration will not result in any violation of applicable standards at any existing or potential receptor;

   E. contaminants have not and will not migrate onto adjacent properties, or that:

      i. such properties are served by an existing public water supply system dependent on surface waters or hydraulically isolated groundwater; or

      ii. the owners of such properties have consented in writing to the request;

   F. if the contaminant plume is predicted or expected to intercept surface waters, the groundwater discharge will not possess contaminant concentrations that would result in violations of the surface water standards established under 15A NCAC 02B .0200;

   G. all necessary access agreements needed to monitor groundwater quality have been or can be obtained;
(H) public notice of the request has been provided in accordance with Rule .0114(b) and (c) of this Section; and

(I) the proposed corrective action plan would be consistent with all other environmental laws.

.0113 Variance
(b) – delete the words “Environmental Management” in front of the word “Commission” as they are unnecessary.

.0114 Notification Requirements
(b) – add “predicted or” in front of expected for consistency.