



March 2022 Environmental Management Commission

## Request for Adoption of Rule Text Modifications to 15A NCAC 02L .0202 Groundwater Quality Standards Made in Response to RRC's Objection Based upon Ambiguity

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# Background

- Division staff reviewed the current interim maximum allowable concentrations (IMACs) and proposed amendments to the 15A NCAC 02L .0202 Groundwater Quality Standards rule based on this review.
- EMC approved of the Hearing Officer's Report and the proposed amendments at the November 18, 2021 meeting.
- The Rules Review Commission (RRC) reviewed the EMC approved amendments to 15A NCAC 02L .0202 Groundwater Quality Standards at the February 17, 2022 meeting.



# RRC Objection

- RRC objected to Rule 15A NCAC 02L .0202 finding that the rule was **not clear and unambiguous**.
- Specifically, the Commission found the Rule was unclear and ambiguous as it lacked specific guidelines required by G.S. 150B-19(6) to waive or modify the practical quantitation limit requirement through the use of the Interim Maximum Allowable Concentration.



# Recommended Rule Changes After RRC Objection

15A NCAC 02L .0202(c):

(c) Except for ~~tracers used in concentrations which have been determined by the Division of Public Health to be protective of human health, and tracers,~~ the use of which has been permitted by the ~~Division,~~ Division per 15A NCAC 02C .0200, substances ~~which that~~ are not naturally occurring and for which no standard is specified under Paragraphs (h) or (i) of this Rule shall not be permitted in concentrations at or above the practical quantitation limit in Class GA or Class GSA groundwaters. Any person may ~~petition~~ request the Director of the Division of Water Resources ~~to modify this requirement by establishing~~ establish an ~~interim maximum allowable concentration~~ Interim Maximum Allowable Concentration (IMAC) ~~for a substance for which a standard has not been established under this Rule. in accordance with the specific guidelines listed below. In addition, any person may request the Director of the Division of Water Resources to update or remove an existing IMAC in accordance with the specific guidelines below.~~ The ~~petitioner~~ requestor shall submit relevant toxicological and epidemiological data, study results, and calculations ~~necessary to establish a standard~~ in accordance with ~~Paragraph~~ Paragraphs (d) and (e) of this Rule. ~~Within three months after the establishment of an interim maximum allowable concentration for a substance by the Director, the Director shall initiate action to consider adoption of a standard for that substance.~~



# Recommended Rule Changes continued

15A NCAC 02L .0202(c) continued:

The specific guidelines are as follows:

(1) The Division shall review the request to determine whether the information submitted is in accordance with Paragraphs (d) and (e) of this Rule.

(2) If the information submitted is not in accordance with Paragraphs (d) and (e) of this Rule, the Director of the Division of Water Resources shall request additional information from the [petitioner.] requester. If the [petitioner] requester does not provide the additional information necessary to be in accordance with Paragraphs (d) and (e) of this Rule, the Director of the Division of Water Resources shall [deny]return the [petition.]request. [The Director shall provide an annual update to the Commission on the status of IMAC requests.]



# Recommended Rule Changes continued

15A NCAC 02L .0202(c) continued:

(3) If the information submitted is in accordance with Paragraphs (d) and (e) of this Rule, ~~[At]~~ at least 30 days prior to ~~[establishing]~~ establishing, updating, or removing an IMAC for any substance, the Division of Water Resources shall provide public notice and opportunity for comment that an IMAC has been ~~[requested.]~~ requested to be established, updated, or removed. The public notice shall ~~[include]~~ include:

(A) the ~~[petition requesting the establishment]~~ request for the establishment, update, or removal of the IMAC for a substance,

(B) the level of the proposed IMAC, which is calculated by the Division of Water Resources in accordance with Paragraphs (d) and (e) of this Rule,

(C) if applicable the level of the existing IMAC, and

(D) the basis upon which the Division of Water Resources has relied in development of the proposed ~~[IMAC.]~~ IMAC establishment, update, or removal.

This notice shall be ~~[published in the North Carolina Register]~~ emailed to interested parties and posted on the Division of Water Resources's website: <https://deq.nc.gov/about/divisions/water-resources/water-planning/classification-standards/groundwater-imacs>.

# Recommended Rule Changes continued

15A NCAC 02L .0202(c) continued:

(4) If the Director of the Division of Water Resources finds the establishment, update or removal will not degrade the quality of the groundwaters, will not likely cause or contribute to pollution of the waters of the state, and will be protective of public health, then the Director shall establish, update or remove the IMAC. If the request does not meet the requirements listed in this Subparagraph, the Director of the Division of Water Resources shall return the request. The Director shall establish, update, or remove the IMAC or return the request within 180 calendar days of receipt of a request submitted in accordance with Paragraphs (d) and (e) of this Rule unless the requester agrees, in writing, to a longer period. Failure by the Director to establish, update or remove an IMAC or return the request within 180 days of receipt of a request submitted in accordance with Paragraphs (d) and (e) of this Rule shall be considered a return of the request.

(5) If the Director of the Division of Water Resources establishes or updates an IMAC, the IMAC shall be posted on the Division of Water Resource's website and the Commission shall be notified in writing within 30 calendar days and at the next regularly scheduled Commission meeting that a new IMAC has been [~~established.~~] established or an existing IMAC has been updated or removed.

# Recommended Rule Changes continued

15A NCAC 02L .0202(c) continued:

- (6) (A) Within twelve months of establishing an IMAC pursuant to this Paragraph, the Director of the Division of Water Resources shall make a recommendation to the Commission whether:
- (i) a new groundwater standard in place of the IMAC should be established pursuant to this Rule; or
  - (ii) the IMAC should expire.
- (B) After a recommendation is presented by the Director under Subparagraph (c)(6)(A) of this Rule, the Commission shall decide whether rulemaking shall be initiated to adopt a new groundwater standard in place of the IMAC.
- (C) If the Commission initiates rulemaking to adopt a new groundwater in place of the IMAC, then the IMAC shall remain in effect unless it expires under Subparagraph (c)(7) of this Rule.



# Recommended Rule Changes continued

15A NCAC 02L .0202(c) continued:

(7) An IMAC shall expire upon the earliest of:

(A) the date the Commission declines to initiate rulemaking to adopt a new groundwater standard in place of the IMAC under Subparagraph (c)(6)(B) of this Rule;

(B) the effective date of a Rule adopted by the Commission establishing a new groundwater standard in place of the IMAC; or

(C) after initiating rulemaking pursuant to Subparagraph (c)(6)(C) of this Rule, the date the Commission declines to adopt a new groundwater standard in place of the IMAC.



# Recommended Rule Changes continued

15A NCAC 02L .0202(c) continued:

(8) For any IMAC that expires prior to the adoption by the Commission of a new groundwater standard in place of the IMAC, any person may request an IMAC be established again under this Paragraph based on new information in accordance with Paragraphs (d) and (e) of this Rule that was not included in the original IMAC request to the Director or new site information that was not included in the original IMAC request to the Director.

(9) The Director of the Division of Water Resources shall provide an annual update to the Commission on the status of pending IMAC requests and any IMACs that have been established, updated or removed during the previous calendar year.



# Anticipated Rulemaking Schedule

Action	Date
Information Item: Part 1	GWWMC meeting – May 2020
Information Item: Part 2	GWWMC meeting – July 2020
Part 3 and Approval of Rule Text to go to EMC	GWWMC meeting – September 2020
Approval of Rule Text/Fiscal Note to go to Public Hearing/Comment Period	EMC – November 2020
Public Comment Period	January 2021 to March 2021
EMC Approval Hearing Officer's Report and Rule Package	November 2021
OAH RRC Objection of Rule based upon ambiguity	February 2022
<b>EMC Approval of Rule Text Modifications</b>	<b>March 2022</b>
OAH RRC Approval of Rule	April 2022
Anticipated effective date	May 1, 2022

## DWR's Requested Action

The Division is requesting that the EMC adopt the rule text modifications to 15A NCAC 02L .0202 Groundwater Quality Standards to satisfy the Rules Review Commission's objection.

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DWR, Classifications, Standards & Rules Review Branch:

<https://deq.nc.gov/about/divisions/water-resources/planning/classification-standards>

