

STATE OF NORTH CAROLINA
DEPARTMENT OF ENVIRONMENTAL QUALITY
DIVISION OF WASTE MANAGEMENT

REPORT OF PROCEEDINGS OF PUBLIC HEARING
ON AMENDMENTS TO THE RULES 15A NCAC 13A .0102, 15A NCAC 13A
.0103 AND 15A NCAC 13A .0106 TEMPORARY 2015 DEFINITION OF
SOLID WASTE.

October 5, 2015
RALEIGH, NC

ENVIRONMENTAL MANAGEMENT COMMISSION

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CHAPTER I

**Summaries and
Recommendations****Proposed amendments to Rules 15A NCAC 13A .0102, 15A NCAC 13A .0103 AND 15A
NCAC 13A .0106 Temporary 2015 Definition of Solid Waste****BACKGROUND AND SUMMARY**

A public hearing was held in Raleigh, NC on October 5, 2015 to receive public comments on amendments to Rules 15A NCAC 13A .0102, 15A NCAC 13A .0103 and 15A NCAC 13A .0106 Temporary 2015 Definition of Solid Waste, which propose changes to the hazardous waste rules for adoption by the Environmental Management Commission (EMC).

The North Carolina Department of Environmental Quality, Division of Waste Management, Hazardous Waste Section has proposed temporary rulemaking with the North Carolina Office of Administrative Hearings to amend 15A NCAC 13A .0102, 15A NCAC 13A .0103 and 15A NCAC 13A .0106. These changes are necessary due to recent changes to applicable federal regulations.

The United States Environmental Protection Agency (“EPA”) has authorized North Carolina to operate the State Hazardous Waste Program in lieu of the federal program under the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. §§ 6901 to 6992k. Because the State Hazardous Waste Program is federally delegated, EPA continues to exercise oversight—including the ability to revoke program authorization—to ensure consistency with RCRA. Specifically, the State Hazardous Waste Program must remain equivalent to, consistent with, and no less stringent than the Federal program.

The EPA is requiring states to adopt certain provisions of the new Definition of Solid Waste Rule that was promulgated on January 13, 2015, 80 Fed. Reg. 1694 (January 13, 2015) (“2015 DSW Rule”). The 2015 DSW Rule retains certain changes originally made in an October 30, 2008 DSW Final Rule, 73 Fed. Reg. 64668 (October 30, 2008) but “revises several recycling-related provisions associated with the definition of solid waste used to determine hazardous waste regulation under Subtitle C of [RCRA].” Its purpose “is to ensure that the hazardous secondary materials recycling regulations, as implemented, encourage reclamation in a way that does not result in increased risk to human health and the environment from discarded hazardous secondary material.”

The EPA is requiring states to adopt certain provisions of the new Definition of Solid Waste Rule that was promulgated on January 13, 2015, 80 Fed. Reg. 1694 (January 13, 2015) (“2015 DSW Rule”) and became effective July 13, 2015. The EPA revised the 2008 DSW rule because of significant regulatory gaps that could result in harm to human health and the environment and could have a disproportionate impact on minority and low-income populations.

The proposed changes to 15A NCAC 13A .0102, 15A NCAC 13A .0103 and 15A NCAC 13A .0106 would make the State Hazardous Waste Program equivalent to, consistent with, and no less stringent than the federal RCRA program, by incorporating federal changes to 40 CFR 260.10 and 40 CFR 261.

PUBLIC COMMENTS AND RESPONSES THERETO

Comment: Mr. Todd Blake, Environmental Compliance Manager for Saftey-Kleen North Carolina, I support the agency to adopt the Temporary DSW Rules.

Response: Thank you.

CONCLUSION

One individual provided comment on the proposed amendments to the Temporary DSW Rules during the comment period for the hearing record. With one positive comment received the hearing officer is recommending the proposed rules reflected in Chapter II of this hearing report be adopted.

HEARING OFFICER'S RECOMMENDATION

The Hearing Officer recommends that the proposed amendments as presented in Chapter II of this hearing report be adopted by the Environmental Management Commission.

CHAPTER II

Rule Change Formatting Key

Chapter IV of this hearing record represents the proposed rules as noticed on the OAH website for public comment.

Chapter II represents the proposed rules with changes of the following: ~~Environment and Natural Resources (DENR)~~-Environmental Quality (DEQ).

For Rule Amendments:

~~Text~~ = deleted text Text
= added text

Note: For new rules proposed for adoption, all text is initially underlined. If there are changes to the proposed new rule following publication in the NCR, the underlining is removed, deleted text is struck through, added text is underlined, and there is no highlighting.

1 15A NCAC 13A .0102 is proposed as a temporary rule as follows:

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3 **15A NCAC 13A .0102 DEFINITIONS**

4 (a) The definitions contained in G.S. 130A-290 apply to this Subchapter.

5 (b) 40 CFR 260.10 (Subpart B), Definitions, is incorporated by reference, including subsequent amendments and editions except
6 that the Definitions for "Disposal", "Landfill", "Management or hazardous waste management", "Person", "Sludge", "Storage", and
7 "Treatment" are defined by G.S. 130A-290 and are not incorporated by ~~reference~~, reference and the ~~definitions~~ definition in 260.10
8 for "Contained" ~~"Facility", "Transfer Facility", "Hazardous secondary material", "Hazardous secondary material generated and
9 reclaimed under the control of the generator", "Hazardous secondary material generator", "Intermediate facility", and "Land based
10 unit" are not incorporated by reference~~ is not incorporated by reference.

11 (c) ~~The following definitions shall be substituted for "Facility" and "Transfer Facility":~~ The following definition shall be substituted
12 for "Contained":

13 (1) ~~"Facility" means:~~

14 (A) ~~All contiguous land, structures, other appurtenances, and improvements on the land, used for treating,
15 storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal
16 operational units (e.g., one or more landfills, surface impoundments, or combinations of them).~~

17 (B) ~~For the purpose of implementing corrective action under 40 CFR 264.101, all contiguous property under
18 the control of the owner or operator seeking a permit under Subtitle C of RCRA. This definition also
19 applies to facilities implementing corrective action under RCRA Section 3008(h).~~

20 (C) ~~Notwithstanding Part (B) of this definition, a remediation waste management site is not a facility that is
21 subject to 40 CFR 264.101, but is subject to corrective action requirements if the site is located within
22 such a facility.~~

23 (2) ~~"Transfer facility" means any transportation related facility including loading docks, parking areas, storage areas
24 and other similar areas where shipments of hazardous waste are held during the normal course of transportation.~~

25 (1) "Contained" means held in a unit (including a land-based unit as defined in this subpart) that meets the following
26 criteria:

27 (A) The unit is in good condition, with no leaks or other continuing or intermittent unpermitted releases of
28 the hazardous secondary materials or hazardous constituents originating from the hazardous secondary
29 materials to the environment, and is designed, as appropriate for the hazardous secondary materials, to
30 prevent releases of hazardous secondary materials to the environment. Unpermitted releases are releases
31 that are not covered by a permit (such as a permit to discharge to water or air) and may include, but are
32 not limited to, releases through surface transport by precipitation
33 runoff, releases to soil and groundwater, windblown dust, fugitive air emissions, and catastrophic unit
34 failures;

35 (B) The unit is properly labeled or otherwise has a system (such as a log) to immediately identify the
36 hazardous secondary materials in the unit; and

37 (C) The unit holds hazardous secondary materials that are compatible with other hazardous secondary
38 materials placed in the unit and is compatible with the materials used to construct the unit and addresses
39 any potential risks of fires or explosions.

40 (D) Hazardous secondary materials in units that meet the applicable requirements of 40 CFR parts 264 or 265
41 are presumptively contained.

42 (d) The following additional definitions shall apply throughout this Subchapter:

- 1 (1) "Section" means the Hazardous Waste Section, in the
2 Division of Waste Management, Department of ~~Environment and Natural Resources~~ Environmental Quality.
- 3 (2) The "Department" means the Department of ~~Environment and Natural Resources (DENR)~~ Environmental Quality
4 (DEQ).
- 5 (3) "Division" means the Division of Waste Management (DWM).
- 6 (4) "Long Term Storage" means the containment of hazardous waste for an indefinite period of time in a facility
7 designed to be closed with the hazardous waste in place.
- 8 (5) "Off-site Recycling Facility" means any facility that receives shipments of hazardous waste from off-site to be
9 recycled or processed for recycling through any process conducted at the facility, but does not include any facility
10 owned or operated by a generator of hazardous waste solely to recycle their own waste.

11
12 History Note: Authority G.S. 130A 294(c); 150B-21.6;
13 Eff. September 1, 1979;
14 Amended Eff. June 1, 1989; June 1, 1988; February 1, 1987; October 1, 1986;
15 Transferred and Recodified from 10 NCAC 10F .0002 Eff. April 4, 1990;
16 Amended Eff. April 1, 1993; October 1, 1990; August 1, 1990;
17 Recodified from 15A NCAC 13A .0002 Eff. December 20, 1996;
18 Amended Eff. August 1, 2000;
19 Temporary Amendment Eff. January 1, 2009;
20 Amended Eff. July 1, 2010.
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1 NCAC 13A .0103 is proposed as a temporary rule as follows:

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15A NCAC 13A .0103 PETITIONS PART 260

(a) All rulemaking petitions for changes in this Subchapter shall be made in accordance with ~~15A NCAC 24B .0101~~ 15A NCAC 02I .0501.

(b) In applying the federal requirements incorporated by reference in this Rule, "~~15A NCAC 24B .0101~~" 15A NCAC 02I .0501 shall be substituted for references to 40 CFR 260.20.

(c) 40 CFR 260.21 through 260.43 (Subpart C), "Rulemaking Petitions," are incorporated by reference including subsequent amendments and ~~editions, editions, except that 40 CFR 260.30(d), 260.30(e), 260.33(c), 260.34, 260.42 and 260.43 are not incorporated by reference.~~

History Note: Authority G.S. 130A-294(c); 150B-21.6;
Eff. November 19, 1980;
Amended Eff. June 1, 1988; May 1, 1987; January 1, 1986; October 1, 1985;
Transferred and Recodified from 10 NCAC 10F .0028 Eff. April 4, 1990;
Amended Eff. April 1, 1993; November 1, 1991; October 1, 1990;
Recodified from 15A NCAC 13A .0003 Eff. December 20, 1996;
Amended Eff. August 1, 2000;
Temporary Amendment Eff. January 1, 2009;
Amended Eff. July 1, 2010.

1 15A NCAC 13A .0106 is proposed as a temporary rule as follows:

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3 **15A NCAC 13A .0106 IDENTIFICATION AND LISTING OF HAZARDOUS WASTES - PART 261**

4 (a) 40 CFR 261.1 through 261.9 (Subpart A), "General", are incorporated by reference including subsequent amendments and
5 ~~editions, editions, except that 40 CFR 261.2(a)(2)(ii) and 40 CFR 261.4(a)(23), 261.4(a)(24), and 261.4(a)(25) are not incorporated~~
6 ~~by reference.~~

7 (b) 40 CFR 261.10 through 261.11 (Subpart B), "Criteria for Identifying the Characteristics of Hazardous Waste and for Listing
8 Hazardous Waste", are incorporated by reference including subsequent amendments and editions.

9 (c) 40 CFR 261.20 through 261.24 (Subpart C), "Characteristics of Hazardous Waste" are incorporated by reference including
10 subsequent amendments and editions.

11 (d) 40 CFR 261.30 through 261.37 (Subpart D), "Lists of Hazardous Wastes" are incorporated by reference including subsequent
12 amendments and editions.

13 (e) 40 CFR 261.38 through 261.41 (Subpart E), "Exclusions/Exemptions" are incorporated by reference including subsequent
14 amendments and editions.

15 (f) 40 CFR 261.140 through 261.151 (Subpart H), "Financial Requirements for Management of Excluded Hazardous Secondary
16 Materials" are incorporated by reference including subsequent amendments and editions.

17 (g) 40 CFR 261.170 through 261.179 (Subpart I), "Use and Management of Containers" are incorporated by reference including
18 subsequent amendments and editions.

19 (h) 40 CFR 261.190 through 261.200 (Subpart J) "Tank Systems" are incorporated by reference including subsequent amendments
20 and editions.

21 (i) 40 CFR 261.400 through 261.420 (Subpart M), "Emergency Preparedness and Response for Management of Excluded Hazardous
22 Secondary Materials" are incorporated by reference including subsequent amendments and editions.

23 (j) 40 CFR 261.1030 through 261.1049 (Subpart AA) "Air Emission Standards for Process Vents", are incorporated by reference
24 including subsequent amendments and editions.

25 (k) 40 CFR 261.1050 through 261.1079 (Subpart BB) "Air Emission Standards for Equipment Leaks" are incorporated by reference
26 including subsequent amendments and editions.

27 (l) 40 CFR 261.1080 through 261.1090 (Subpart CC) "Air Emission Standards for Tanks and Containers" are incorporated by
28 reference including subsequent amendments and editions.

29 ~~(m)~~ (m) The Appendices to 40 CFR Part 261 are incorporated by reference including subsequent amendments and editions.

30
31 *History Note: Authority G.S. 130A-294(c); 150B-21.6;*
32 *Eff. November 19, 1980;*
33 *Amended Eff. June 1, 1988; February 1, 1988; December 1, 1987;*
34 *August 1, 1987;*
35 *Transferred and Recodified from 10 NCAC 10F .0029 Eff. April 4, 1990;*
36 *Recodified from 15A NCAC 13A .0007 Eff. August 30, 1990;*
37 *Amended Eff. January 1, 1996; April 1, 1993; February 1, 1992;*
38 *December 1, 1990;*
39 *Recodified from 15A NCAC 13A .0006 Eff. December 20, 1996;*
40 *Amended Eff. April 1, 2007; August 1, 2000;*
41 *Temporary Amendment Eff. January 1, 2009;*
42

CHAPTER III
REPORT OF PROCEEDINGS

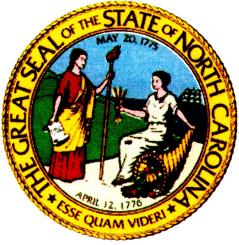
Introduction

The Department of Environmental Quality, Division of Waste Management, held a public hearing on October 5, 2015 at 1:00pm in Raleigh, NC.

The hearing considered the proposed amendments to the Temporary 2015 Definition of Solid Waste rules.

The proposed effective date for these rules is pending legislative review.

A public notice announcing this hearing was emailed to each person on the official list for the Hazardous Waste Section and the Division of Waste Management Regulatory Updates. The public notice was also published on the OAH Website at least 5 days before the public hearing and posted on the North Carolina Division of Waste Management and the Hazardous Waste Section's website at least 30 days prior to adopting the temporary rule.



ENVIRONMENTAL MANAGEMENT COMMISSION

**NORTH CAROLINA
DEPARTMENT OF ENVIRONMENTAL QUALITY**

Gerard P. Carroll
Chairman
Kevin Martin
Vice Chairman

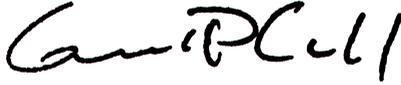
Pat McCrory, Governor
Donald R. van der Vaart, Secretary

David W. Anderson
Charles Carter
Tommy Craven
Daniel E. Dawson
Charles B. Elam
E. O. Ferrell
Manning Puette

Dr. Lawrence W. Raymond
Dr. Albert R. Rubin
Clyde E. Smith, Jr.
John D. Solomon
Steve W. Tedder
Julie A. Wilsey

October 5, 2015

MEMORANDUM

TO: Dr. Albert R. Rubin
FROM: Gerard C. Carroll, Chairman 
SUBJECT: Hearing Officer Appointment

I hereby appoint you to serve as hearing officer for a public hearing for the Temporary Definition of Solid Waste Rules (15A NCAC 13A .0102, .0103 and .0106) to be held in accordance with federal Resource Conservation and Recovery Act requirements. The purpose of this hearing is to gather comments on the proposed federal rule including a state revision. An overview of proposed requirements will be presented to the interested public by staff of the Division of Waste Management.

The public hearing is to be held on Monday, October 5, 2015 at 1:00 p.m. in the ENR Building located at 217 W. Jones Street, Raleigh, NC in the GS - Rm 3001-Videoconference Room. Staff support will be provided by Julie Woosley (919-707-8203) and Ann Preston (919-707-8226). Please present your findings and recommendations to the Environmental Management Commission.

Thank you for your assistance and service.

cc: Julie Woosley
Ann Preston
Lois Thomas

NORTH CAROLINA ENVIRONMENTAL MANAGEMENT COMMISSION
PUBLIC NOTICE

Notice is hereby given for one public hearing to be heard by the North Carolina Department of Environment and Natural Resources, Division of Waste Management, Hazardous Waste Section concerning the proposed changes to hazardous waste rules.

PURPOSE:

The North Carolina Department of Environment and Natural Resources, Division of Waste Management, Hazardous Waste Section has proposed temporary rulemaking with the North Carolina Office of Administrative Hearings to amend 15A NCAC 13A .0102, 15A NCAC 13A .0103 and 15A NCAC 13A .0106. These changes are necessary due to recent changes to applicable federal regulations.

The United States Environmental Protection Agency ("EPA") has authorized North Carolina to operate the State Hazardous Waste Program in lieu of the federal program under the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6901 to 6992k. Because the State Hazardous Waste Program is federally delegated, EPA continues to exercise oversight—including the ability to revoke program authorization—to ensure consistency with RCRA. Specifically, the State Hazardous Waste Program must remain equivalent to, consistent with, and no less stringent than the Federal program.

The EPA is requiring states to adopt certain provisions of the new Definition of Solid Waste Rule that was promulgated on January 13, 2015, 80 Fed. Reg. 1694 (January 13, 2015) ("2015 DSW Rule"). The 2015 DSW Rule retains certain changes originally made in an October 30, 2008 DSW Final Rule, 73 Fed. Reg. 64668 (October 30, 2008) but "revises several recycling-related provisions associated with the definition of solid waste used to determine hazardous waste regulation under Subtitle C of [RCRA]." Its purpose "is to ensure that the hazardous secondary materials recycling regulations, as implemented, encourage reclamation in a way that does not result in increased risk to human health and the environment from discarded hazardous secondary material."

The EPA is requiring states to adopt certain provisions of the new Definition of Solid Waste Rule that was promulgated on January 13, 2015, 80 Fed. Reg. 1694 (January 13, 2015) ("2015 DSW Rule") and became effective July 13, 2015. The EPA revised the 2008 DSW rule because of significant regulatory gaps that could result in harm to human health and the environment and could have a disproportionate impact on minority and low-income populations.

The proposed changes to 15A NCAC 13A .0102, 15A NCAC 13A .0103 and 15A NCAC 13A .0106 would make the State Hazardous Waste Program equivalent to, consistent with, and no less stringent than the federal RCRA program, by incorporating federal changes to 40 CFR 260.10 and 40 CFR 261.

DATES AND LOCATION: Monday, October 5, 2015 from 1:00PM to 2:00PM
217 West Jones Street, Raleigh, NC 27603
Rm 3001 -Videoconference Room

COMMENT PROCEDURES: All persons interested in this matter are invited to attend the public hearing. Any person desiring to comment is requested to submit a written statement for inclusion in the record of proceedings at the public hearing. The hearing officer may limit oral presentation lengths if many people want to speak. The hearing record will remain open from September 14, 2015 until October 9, 2015 to receive additional written statements. To be included, the statement must be received or postmarked by October 9, 2015.

Comments should be sent to:

Ms. Ann Preston
Hazardous Waste Section
1646 Mail Service Center
Raleigh, NC 27699-1646
919-707-8226
DENR.DWM_Rules@ncdenr.gov

INFORMATION: Copies of the proposed rule changes may be downloaded at
<http://portal.ncdenr.org/web/wm/proposed-rules>

This the 14th day of September, 2015

By: 
Julie S. Woosley, Chief
Hazardous Waste Section

Transcript

A transcript of the October 5 2015 hearing has not been prepared; however, an audio recording of the proceeding will be kept on file with the Division of Waste management for one year from the date of the final actions by the Environmental Management Commission.

A list of those attending the hearing as follows:

Hearing Officer

Dr. Albert Rubin, Environmental Management Commission

Staff Members

Ms. Julie Woosley, DWM, DENR
Ms. Ann Preston, DWM, DENR

Members of the General Public

Mr. Todd Blake, EHS Manager, Safety-Kleen-North Carolina

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CHAPTER IV

EXHIBITS

<u>EXHIBIT</u>	<u>PAGE</u>
Proposed Regulations as Published on the North Carolina OAH website and Presented at the Hearing	IV-2
Hearing Officer comments at the public hearing	IV- 5

Note from the Codifier: The OAH website includes notices and the text of proposed temporary rules as required by G.S. 150B-21.1(a1). Prior to the agency adopting the temporary rule, the agency must hold a public hearing no less than five days after the rule and notice have been published and must accept comments for at least 15 business days.

For questions, you may contact the Office of Administrative Hearings at 919.431.3000 or email oah.postmaster@oah.nc.gov.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Rulemaking Agency: *Environmental Management Commission*

Codifier of Rules received for publication the following notice and proposed temporary rule(s) on: *September 11, 2015*

Rule Citations: *15A NCAC 13A .0102, .0103, and .0106*

Public Hearing:

Date: *October 5, 2015*

Time: *1:00 p.m. to 2:00 p.m.*

Location: *217 West Jones Street, Raleigh, NC 27603, Room 3001 – Videoconference Room*

Reason: *A Recent federal regulation. Cite: 40 CFR 260.10, 40 CFR 260.30(d), 260.30(e), 260.33(c), 260.34, 260.42, 260.43 and 40 CFR 261.2(a)(2)(ii), 40 CFR 261.4(a)(23), 261.4(a)(24), and 261.4(a)(25) and 40 CFR 261 Subparts H, I, J, M, AA, BB and CC. Effective Date: July 13, 2015.*

The North Carolina Department of Environment and Natural Resources, Division of Waste Management, Hazardous Waste Section has determined that temporary rulemaking to amend 15A NCAC 13A .0102, 15A NCAC 13A .0103 and 15A NCAC 13A .0106 are necessary due to recent changes to applicable federal regulations. N.C.G.S. 150B-21.1(a)(4).

The "State Hazardous Waste Program" consists of the North Carolina Solid Waste Management Act ("the Act"), contained in Chapter 130A, Article 9 of the North Carolina General Statutes, and the rules promulgated thereunder and codified in Subchapter 13A of Title 15A of the North Carolina Administrative Code ("the Rules").

The United States Environmental Protection Agency ("EPA") has authorized North Carolina to operate the State Hazardous Waste Program in lieu of the federal program under the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6901 to 6926k. Because the State Hazardous Waste Program is federally delegated, EPA continues to exercise oversight—including the ability to revoke program authorization—to ensure consistency with RCRA. Specifically, the State Hazardous Waste Program must remain equivalent to, consistent with, and no less stringent than the Federal program. RCRA 3006(b), 42 U.S.C. 6926(b); 40 C.F.R. 271.4.

The Act instructs the Department to "cooperate with the federal government in the formulation and carrying out of a solid waste management program," including a program for the management of hazardous waste "designed to protect the public health, safety, and welfare; [and to] preserve the environment." N.C.G.S. 130A-294(a)(2), (b). The Act mandates the adoption of rules to implement that program. N.C.G.S. 130A-294(b). The Rules largely adopt and incorporate the applicable federal regulations by reference.

Another statute prohibits the adoption of rules for the protection of the environment or natural resources that are more restrictive "than those imposed by federal law or rule, if a federal law or rule pertaining to the same subject matter has been adopted," unless one of the enumerated exceptions applies. N.C.G.S. 150B-19.3.

On 30 October 2008, EPA promulgated a final rule concerning the Definition of Solid Waste, 73 Fed. Reg. 64668 (Oct. 30, 2008) ("2008 DSW Rule"), which various entities subsequently challenged through litigation, including claims that the rule contained significant regulatory gaps that could result in harm to human health and the environment and could have a disproportionate impact on minority and low-income populations.

On 13 January 2015, EPA promulgated a revised final rule concerning the Definition of Solid Waste, 80 Fed. Reg. 1694 (Jan. 13, 2015) ("2015 DSW Rule") that became effective on 13 July 2015. The 2015 DSW Rule retains certain changes originally made in the 2008 DSW Rule but "revises several recycling-related provisions associated with the definition of solid waste used to determine hazardous waste regulation under Subtitle C of [RCRA]." Its purpose "is to ensure that the hazardous secondary materials recycling regulations, as implemented, encourage reclamation in a way that does not result in increased risk to human health and the environment from discarded hazardous secondary material." Id. at 1694.

The proposed changes to 15A NCAC 13A .0102 would make the State Hazardous Waste Program equivalent to, consistent with, and no less stringent than the federal RCRA program, by incorporating federal changes to 40 C.F.R. 260.10, with one State wording modification to make explicit a prohibition on releases of hazardous constituents in the definition of "contained," which is implicit in the federal regulation.

The proposed changes to 15A NCAC 13A .0103 would make the State Hazardous Waste Program equivalent to, consistent with, and no less stringent than the federal RCRA program, by incorporating federal changes to 40 C.F.R. Part 260, Subpart C.

The proposed changes also include a corresponding clerical revision to input the correct updated citation into .0103(a) and (b) instead of the current reference to a rule that no longer exists.

The proposed changes to 15A NCAC 13A .0106 would make the State Hazardous Waste Program equivalent to, consistent with, and no less stringent than the federal RCRA program, by incorporating federal changes to 40 C.F.R. Part 261.

The proposed changes to 15A NCAC 13A .0102, 15A NCAC 13A .0103 and 15A NCAC 13A .0106 do not conflict with N.C.G.S. 150B-19.3.

PROPOSED TEMPORARY RULES

Comment Procedures: *Comments from the public shall be directed to: Ann Preston, 1646 Mail Service Center, Raleigh, NC 27699-1646, phone 919-707-8226, fax 919-707-8226, email DENR.DWM_Rules@ncdenr.gov. The comment period begins September 14, 2015 and ends October 9, 2015.*

CHAPTER 13 – SOLID WASTE MANAGEMENT

SUBCHAPTER 13A - HAZARDOUS WASTE MANAGEMENT

SECTION .0100 - HAZARDOUS WASTE

15A NCAC 13A .0102 DEFINITIONS

- (a) The definitions contained in G.S. 130A-290 apply to this Subchapter.
- (b) 40 CFR 260.10 (Subpart B), Definitions, is incorporated by reference, including subsequent amendments and editions except that the Definitions for "Disposal", "Landfill", "Management or hazardous waste management", "Person", "Sludge", "Storage", and "Treatment" are defined by G.S. 130A-290 and are not incorporated by reference, ~~reference and the definitions-definition in 260.10 for "Contained" "Facility", "Transfer Facility", "Hazardous secondary material", "Hazardous secondary material generated and reclaimed under the control of the generator", "Hazardous secondary material generator", "Intermediate facility", and "Land-based unit" are not incorporated by reference~~ is not incorporated by reference.
- (c) ~~The following definitions shall be substituted for "Facility" and "Transfer Facility":~~ The following definition shall be substituted for "Contained":
- (1) "Facility" means:
 - (A) All contiguous land, structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations of them).
 - (B) For the purpose of implementing corrective action under 40 CFR 264.101, all contiguous property under the control of the owner or operator seeking a permit under Subtitle C of RCRA. This definition also applies to facilities implementing corrective action under RCRA Section 3008(h).
 - (C) Notwithstanding Part (B) of this definition, a remediation waste management site is not a facility that is subject to 40 CFR 264.101, but is subject to corrective action requirements if the site is located within such a facility.
 - (2) "Transfer facility" means any transportation related facility including loading docks, parking areas, storage areas and other similar areas where shipments of hazardous waste are held during the normal course of transportation.
 - (1) "Contained" means held in a unit (including a land-based unit as defined in this subpart) that meets the following criteria:
 - (A) The unit is in good condition, with no leaks or other continuing or intermittent unpermitted releases of the hazardous secondary materials or hazardous constituents originating from the hazardous secondary materials to the environment, and is designed, as appropriate for the hazardous secondary materials, to prevent releases of hazardous secondary materials to the environment. Unpermitted releases are releases that are not covered by a permit (such as a permit to discharge to water or air) and may include, but are not limited to, releases through surface transport by precipitation runoff, releases to soil and groundwater, windblown dust, fugitive air emissions, and catastrophic unit failures;
 - (B) The unit is properly labeled or otherwise has a system (such as a log) to immediately identify the hazardous secondary materials in the unit; and
 - (C) The unit holds hazardous secondary materials that are compatible with other hazardous secondary materials placed in the unit and is compatible with the materials used to construct the unit and addresses any potential risks of fires or explosions;
 - (D) Hazardous secondary materials in units that meet the applicable requirements of 40 CFR parts 264 or 265 are presumptively contained.
- (d) The following additional definitions shall apply throughout this Subchapter:
- (1) "Section" means the Hazardous Waste Section, in the Division of Waste Management, Department of Environment and Natural Resources.
 - (2) The "Department" means the Department of Environment and Natural Resources (DENR).
 - (3) "Division" means the Division of Waste Management (DWM).
 - (4) "Long Term Storage" means the containment of hazardous waste for an indefinite period of time in a facility designed to be closed with the hazardous waste in place.
 - (5) "Off-site Recycling Facility" means any facility that receives shipments of hazardous waste from off-site to be recycled or processed for recycling through any process conducted at the facility, but does not include any facility owned or operated by a generator of hazardous waste solely to recycle their own waste.

Authority G.S. 130A 294(c); 150B-21.6.

15A NCAC 13A .0103 PETITIONS PART 260

- (a) All rulemaking petitions for changes in this Subchapter shall be made in accordance with ~~15A NCAC 24B .0101~~, 15A NCAC 02I .0501.

PROPOSED TEMPORARY RULES

(b) In applying the federal requirements incorporated by reference in this Rule, "~~15A NCAC 24B .0101~~" 15A NCAC 02I .0501 shall be substituted for references to 40 CFR 260.20.

(c) 40 CFR 260.21 through 260.43 (Subpart C), "Rulemaking Petitions," are incorporated by reference including subsequent amendments and ~~editions, editions, except that 40 CFR 260.30(d), 260.30(e), 260.33(e), 260.34, 260.42 and 260.43 are not incorporated by reference.~~

Authority G.S. 130A-294(c); 150B-21.6.

15A NCAC 13A .0106 IDENTIFICATION AND LISTING OF HAZARDOUS WASTES - PART 261

(a) 40 CFR 261.1 through 261.9 (Subpart A), "General", are incorporated by reference including subsequent amendments and ~~editions, editions, except that 40 CFR 261.2(a)(2)(ii) and 40 CFR 261.4(a)(23), 261.4(a)(24), and 261.4(a)(25) are not incorporated by reference.~~

(b) 40 CFR 261.10 through 261.11 (Subpart B), "Criteria for Identifying the Characteristics of Hazardous Waste and for Listing Hazardous Waste", are incorporated by reference including subsequent amendments and editions.

(c) 40 CFR 261.20 through 261.24 (Subpart C), "Characteristics of Hazardous Waste" are incorporated by reference including subsequent amendments and editions.

(d) 40 CFR 261.30 through 261.37 (Subpart D), "Lists of Hazardous Wastes" are incorporated by reference including subsequent amendments and editions.

(e) 40 CFR 261.38 through 261.41 (Subpart E), "Exclusions/Exemptions" are incorporated by reference including subsequent amendments and editions.

(f) 40 CFR 261.140 through 261.151 (Subpart H), "Financial Requirements for Management of Excluded Hazardous Secondary Materials" are incorporated by reference including subsequent amendments and editions.

(g) 40 CFR 261.170 through 261.179 (Subpart I), "Use and Management of Containers" are incorporated by reference including subsequent amendments and editions.

(h) 40 CFR 261.190 through 261.200 (Subpart J) "Tank Systems" are incorporated by reference including subsequent amendments and editions.

(i) 40 CFR 261.400 through 261.420 (Subpart M), "Emergency Preparedness and Response for Management of Excluded Hazardous Secondary Materials" are incorporated by reference including subsequent amendments and editions.

(j) 40 CFR 261.1030 through 261.1049 (Subpart AA) "Air Emission Standards for Process Vents", are incorporated by reference including subsequent amendments and editions.

(k) 40 CFR 261.1050 through 261.1079 (Subpart BB) "Air Emission Standards for Equipment Leaks" are incorporated by reference including subsequent amendments and editions.

(l) 40 CFR 261.1080 through 261.1090 (Subpart CC) "Air Emission Standards for Tanks and Containers" are incorporated by reference including subsequent amendments and editions.

~~(m)~~ The Appendices to 40 CFR Part 261 are incorporated by reference including subsequent amendments and editions.

Authority G.S. 130A-294(c); 150B-21.6.

Hearing Officer's Suggested Hearing Comments

INTRODUCTION

[Hearing officer]:

Good evening ladies and gentlemen. My name is Dr. Albert Rubin. I am a member of the Environmental Management Commission. My role as hearing officer is to listen to all relevant comment on these proceedings and report them to the full commission. Sitting with me is Ms. Julie Woosley. She is with the North Carolina Division of Waste Management, Hazardous Waste Section.

Some of the staff from the Division of Waste Management is here to assist us. Ms. Woosley, please introduce the staff present.

[Ms. Woosley] (Introduces staff)

[Hearing officer]:

This afternoon we will take comments on amendments to North Carolina's Temporary 2015 Definition of Solid Waste rules (15A NCAC 13A .0102, .0103, and .0106). The hearing will be held according to the North Carolina Administrative Procedures Act, G.S. 150B-21.2(e) and (f). The public notice for this hearing has been published on the *OAH Website* and on the Department of Environmental Quality and the Hazardous Waste Sections websites. An email of the notice was sent to those on the Division of Waste Management Regulatory Update and the Hazardous Waste Section Regulatory Updates email lists. I will enter the public notice and the proposed amendments into the hearing record without reading them at this time.

It would be helpful if any person desiring to comment also submits a written statement for inclusion into the hearing record. Once called to speak, please come to the podium and state your name clearly, identify the rule or rules you are commenting on, and whom you represent.

I will now open the hearing and take relevant comments on amendments to North Carolina's Temporary 2015 Definition of Solid Waste rules.

[Hearing officer]: Optional Time Limit-if needed

Due to time constraints, speakers' presentations will be limited to 3 minutes. It would be helpful if speakers would also submit a written statement by the close of the comment period for inclusion into the hearing record.

[Hearing officer]:

I will now take any comments that you may have.

[SPEAKERS]

[Hearing officer]:

Is there anyone else who would like to comment? If there are no more comments, then this hearing is closed. The hearing record will remain open until October 9, 2015, for additional written comments.