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**From:** Grozav, Anca  
**Sent:** Wednesday, April 23, 2014 11:54 AM  
**To:** Manning, Jeff; Hoffmann, Jucilene; Everett, Jennifer  
**Cc:** Masich, Molly; Vojtko, Dana; Knuffman, Nathan; McLenaghan, Ed; Cox, Celia S  
**Subject:** Certification - 15A NCAC 02B .0206, .0211-.0212, .0214-.0216, .0218, .0220

OSBM has reviewed the DENR/ DWR Surface Water Quality Standards rule change (15A NCAC 02B .0206, .0211-.0212, .0214-.0216, .0218, .0220) in accordance with G.S. 150B-19.1 and certifies the rule changes. Please ensure that the Notice of Text reflects the state, local, and substantial economic impacts.

Please let me know if you have any questions.

Anca Grozav  
Economic Analyst  
NC Office of State Budget and Management  
919-807-4740  
[anca.grozav@osbm.nc.gov](mailto:anca.grozav@osbm.nc.gov)

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## Overview of Conformity with General Statutes 150B, Executive Order 70 and Federal Water Pollution Control Act

This document *“Fiscal Note for the Proposed Amendments to 15A NCAC 02B: Classifications and Water Quality Standards Applicable To Surface Waters and Wetlands of North Carolina; The Triennial Review of Surface Water Quality Standards and Classifications”* has been prepared to enable the Office of State Budget Management (OSBM) to review the proposed 15A NCAC 02B rule changes based on the NC Administrative Procedures Act (APA), Chapter 150B of the General Statutes (GS § 150B) and State of North Carolina Executive Order No. 70, using the guidance and policy as provided in the 2012 State Budget Manual <sup>1</sup>. After initial OSBM review and “approval for publication”<sup>2</sup>, the Environmental Management Commission (EMC) will publish the fiscal note and the proposed draft rules in the *North Carolina Register*. Announcement of a public review period is pursuant to Federal Water Pollution Control Act (Clean Water Act) requirements and NC APA processes (GS § 150B -21.2)

Additionally, Department of Environment and Natural Resources (DENR), in accordance with GS § 150B-19.1 will place on its website: the text of a proposed rule, reason for and explanation of the proposed rule, the federal certification required by subsection (g) of this section, if necessary, instructions on how and where to submit oral or written comments on the proposed rule, and this fiscal note as approved by OSBM. Any subsequent approved amendments to either the fiscal note or the proposed rules will be updated on the Division of Water Resources (DWR) website periodically to assure clarity and transparency for the public.

As this “Fiscal Note” may be modified from its original submission, pending public hearings, public comment and final EMC decisions on the draft rule package, DENR (the agency) will seek to receive OSBM certification that it’s efforts have complied with the principles of GS § 150B-19.1 and Section 2 of Executive Order No. 70. (OSBM “Certification before adoption” is outlined in GS § 150B-21.4)

The proposed changes to 15A NCAC 02B have been identified as having a “substantial economic impact”. Per the APA process pursuant to GS § 150B-21.4(b1), a “substantial economic impact” means an aggregate financial impact on all persons affected of at least one million dollars (\$1,000,000) in a 12-month period. (Cost + benefits = aggregate cost)

OSBM, in the State Budget Manual, notes that, depending upon the complexity of the rule change, three different tiers of information could be required in a fiscal note. The first tier is required for de minimis rule changes. The second tier is required for any non-substantial economic impact rule changes, while the third tier is reserved for substantial economic impact rule changes. DENR-Division of Waste Management (DWM) has provided information in this submission of the fiscal note to accomplish a

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<sup>1</sup> State Budget Manual : January 25, 2012; PDF format, Section 7

<sup>2</sup> “Approval for publication” refers to the state requirement that the agency (EMC) must receive OSBM approval before it may publish a proposed rule change in the *North Carolina Register* (GS 150B-21.4.)

Level 3 “tier” review by OSBM staff. For the general policy framework of the three tiers go to [http://www.osbm.state.nc.us/files/pdf\\_files/BudgetManual.pdf](http://www.osbm.state.nc.us/files/pdf_files/BudgetManual.pdf).

**A Level 3 OSBM analysis requires:**

**(1) A written “Scope of Analysis” using appropriate time frames.**

OSBM has noted that for rules with phased implementation, like the proposed 15A NCAC 02B regulations described in this fiscal note, the appropriate time frame may be much longer than those found in “de minimus” rules (Level 1 tier review). The Department’s use of, and the US EPAs federal approval of, compliance schedules combined with the fact that ambient water quality improvements will take years before they can be measured, Division assumed a water quality improvement in an increasing fraction of the surface waters because the rule changes would apply gradually over a 5-year cycle as the regulated community renews their discharge permits.. The Scope of Analysis can be found in Section 1: Purpose of Rule and Rule Change and subsequent chapters

**(2) Identification of a baseline.**

Per OSBM budget manual: The baseline must be the best assessment of the way the world would look if the rule change is not adopted. This assessment must account for all effective NC General Statutes and rules contained in the NC Administrative Code. Baseline discussions occur in each of the Chapters within Section IIII: Program Overview and Impacts, and are correlated to the following GS and NCAC:

NC General Statutes GS § 143-214.1 and 215.3(a)

15A NCAC 02B .0206, Flow Design Criteria for Effluent Limitations  
 15A NCAC 02B .0211, Fresh Surface Water Quality Standards for Class C Waters  
 15A NCAC 02B .0212, Fresh Surface Water Quality Standards for Class WS-I Waters  
 15A NCAC 02B .0214, Fresh Surface Water Quality Standards for Class WS-II Waters  
 15A NCAC 02B .0215, Fresh Surface Water Quality Standards for Class WS-III Waters  
 15A NCAC 02B .0216, Fresh Surface Water Quality Standards for Class WS-IV Waters  
 15A NCAC 02B .0218, Fresh Surface Water Quality Standards for Class WS-V Waters  
 15A NCAC 02B .0220, Tidal Salt Water Quality Standards for Class SC Waters  
 15A NCAC 02B .0400, Effluent Limitations  
 15A NCAC 02B .0500, Surface Water Monitoring: Reporting  
 15A NCAC 02H .0800, Laboratory Certification  
 15A NCAC 02H .0900, Local Pretreatment Programs  
 15A NCAC 02H .1000, Stormwater Management  
 15A NCAC 02N .0100-.0900 Criteria and Standards Applicable to Underground Storage Tanks

Although not specifically mentioned in the OSBM guidance for baseline assessments, the “Federal Water Pollution Control Act (Clean Water Act; CWA or the Act): “US Code – Title 33 –

Navigation and Navigable waters; Chapter 26 – Water Pollution Prevention and Control; Subchapter III – Standards and Enforcement; § 1313 significantly affected the decision on baseline conditions and was considered in the analysis.

**(3) Cost Estimates:**

Per OSBM guidance this Economic and Fiscal Analysis estimates the economic impact of the proposed changes to 15A NCAC 02B regulations between the baseline (see item 2 above) and the future condition expected after implementation of the regulation. Cost Estimate discussions occur in each of the Chapters within Section III: Program Overview and Impacts.

**(4) Benefit Estimates:**

Actions required by the proposed rule change are linked to expected ecological and human benefits. Section X contains information with respect to estimated ecological and economic benefits.

**(5) Transparency and Reproducibility:**

DENR staff has attempted throughout this document to establish the basic assumptions, methods of analysis and sources of data used. Additionally, DENR staff has included fiscal information obtained from interested affected parties to further enable the reader to understand how conclusions were reached.

**(6) Persons Affected:**

Based upon databases and relevant sources available to the Department, the estimated number of different entities impacted by the rule change and a summarization of how these units may be affected is listed in each of the Chapters within Section III: Program Overview and Impacts. For transparency purposes, they are additionally categorized in the Economic and Fiscal Analysis with Sections IV- X.

- a. State government entities,
- b. Local government entities,
- c. Federal government entities, and
- d. Private sector entities.

**In drafting the “Fiscal and Economic Analysis for the Proposed Amendments to 15A NCAC 02B: Classifications and Water Quality Standards Applicable To Surface Waters and Wetlands of North Carolina; The Triennial Review of Surface Water Quality Standards and Classifications”,** DENR reviewed the regulations in GS § 150B-19.1: “Requirements for agencies in the rule-making process”. While the Fiscal and Economic Analysis, in its entirety, will be used to deem compliance with these requirements, DENR offers a summary of the efforts below:

GS § 150B-19.1 (a): In developing and drafting rules for adoption in accordance with this Article, agencies shall adhere to the following principles:

**(1) An agency may adopt only rules that are expressly authorized by federal or State law and that are necessary to serve the public interest.**

Proposed regulations are designed to meet the state’s obligation under the Federal Water Pollution Control Act requirements (Clean Water Act; CWA or the Act): “US Code – Title 33 – Navigation and Navigable waters; Chapter 26 – Water Pollution Prevention and Control; Subchapter III – Standards and Enforcement; § 1313 and regulations in NC General Statutes 143-214.1 and 215.3(a)

The Clean Water Act (CWA) authorizes states to adopt water quality standards that protect human health and the environment. The standards may be numeric concentrations or narrative statements. The objective of the CWA is to establish standards and water pollution control programs (the NPDES programs) to conserve waters for the protection and propagation of fish and aquatic life and wildlife, recreational purposes and the withdrawal of such waters for water supply, agricultural, industrial and other purposes, these are referred to as the designated uses of the water. These water quality standards serve the public interest by providing protections of the public waters (coastal beaches and estuaries, rivers, lakes, streams, reservoirs) which are public trust resources.

As water quality standards are required by North Carolina GS 143-211 to “maintain for the citizens of the state a total environment of superior quality”, GS 143-214.1 outlines that these standards must protect the varying uses of the waters of the state, in direct correlation to the CWA requirements.

The State of NC has been delegated the authority (by the US EPA) and responsibility to assure that water quality standards meet the goals of the Clean Water Act. The US EPA ultimately retains the authority to either approve or disapprove any state adopted water quality standards regulations, as well as to promulgate an appropriate standard if they believe the State adopted standards that are not protective. EPA also retains the ability to take the standards program back under their authority.

**(2) An agency shall seek to reduce the burden upon those persons or entities who must comply with the rule.**

In this Economic and Fiscal Analysis, DENR recognizes that implementing these proposed standards may incur pollution control costs to the regulated community. To accomplish this principle, DENR staff has investigated options for compliance schedules, adjustments to sampling programs and potential solutions for treatment of wastewater while maintaining health protections for both human and ecological health. Water quality standards are established to protect the environment and to avoid the economic burden needed to clean up polluted waters and restore degraded and/or devastated aquatic habitats. Degradation of the state’s waters could significantly negatively impact tourism in NC. Costs related to bringing back the lost tourist and recreational value to the state must be considered as pollution prevention is almost always cheaper than pollution cleanup.

Any mechanism used to reduce the burden to the regulated parties, must, ultimately, ensure protection of the designated uses of the water as defined in NC regulation. To estimate the potential costs, and to seek efforts to reduce the burden to regulated parties, the Water Permitting Section (WPS) of the DWR reviewed permitting implementation policies, in accordance with US EPA guidance, NC General Statutes and state regulations. Additionally, the WPS sought information and advice from other states. Permitting policies are designed to provide for reduction of the burden (See Section III for further details). Federal policies/regulations and guidance have been considered that provide for compliance schedules, site-specific criterion development and variances, etc. Site-specific standards and variances, as defined by federal law, are a way to potentially alter or obtain relief from the national water quality standards. These federally approved processes may incur costs and be time-consuming; however, the process is designed for public knowledge and transparency as to the potential ecological and public health effects. Federal and state requirements mandate that variances adopted by a state be reviewed on a Triennial basis in accordance with 40 CFR 131.10 (g). State regulations (15A NCAC 02B .0226) require that variances , revisions to standards and site-specific standards be reviewed and granted on a case by case basis by the EMC (Commission) pursuant to GS 143-215.3 (e), GS 143-214.3 or 143-214.1.

**(3) Rules shall be written in a clear and unambiguous manner and must be reasonably necessary to implement or interpret federal or State law.**

The Clean Water Act Section 303(c)(1) mandates States to review and modify water quality standards, as needed to protect the public interests and the health of the aquatic system.

DENR has presented changes to the water quality standards, specifically for metals, using conventional chemical specific scientific language. The proposals are in accordance with CWA Section 303 (c) (1) and have been drafted to mimic the federal 304 (a) criteria to implement the CWA. With that said, these scientifically derived mathematical formulas may not be clear to the general public unaccustomed to such language. For this reason, the language also includes numerical concentrations and tables for illustrative purposes.

As noted above, the state of North Carolina is obligated under the Clean Water Act and general Statutes to review water quality standards and adopt revisions to assure continued protections for both human and aquatic life.

**(4) An agency shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed. The agency shall not adopt a rule that is unnecessary or redundant.**

A defined “surface water quality standard” is not included in any other rules or state regulations.

Federal CWA regulations were developed to provide comprehensive water quality protection. The proposed 15A NCAC 02B rules establish the environmental standards that North Carolina environmental programs are required to strive to maintain for the protection of the State’s resource waters. The water quality standards help the state and federal

government to answer the question “How clean is clean enough?” Each of the following rules was created to **implement** programs necessary to maintain water quality standards and protect the waters as required by state General Statutes and federal law.

15A NCAC 02B .0400, Effluent Limitations

15A NCAC 02B .0500, Surface Water Monitoring: Reporting

15A NCAC 02H .0800, Laboratory Certification

15A NCAC 02H .0900, Local Pretreatment Programs

15A NCAC 02H .1000 Stormwater Management

These regulations outline and define how permittees must meet all applicable effluent limits and report data in compliance with federal/state reporting requirements. To establish that the requirements of the CWA have been met, NPDES permit limits can be technology-based or water quality-based. Many treatment plants are already subject to multiple Water quality based effluent limits - WQBELs (for example, nutrients, metals, bacteria). The cumulative effects of those limits on the discharger are fully justified, because they are necessary to prevent the corresponding collective impacts of the pollutants on aquatic life and ecosystems in the receiving stream. *The potential for multiple impacts requires multiple control measures and multiple regulations to clearly define protective measures needed.*

**(5) When appropriate, rules shall be based on sound, reasonably available scientific, technical, economic, and other relevant information. Agencies shall include a reference to this information in the notice of text required by G.S. 150B-21.2(c).**

Modifications are proposed to bring NC in alignment with the “National Recommended Water Quality Criteria” as published by the US EPA (Reference: EPA-822-R-02-047). Water quality criteria are numeric values or narrative statements that describe the ambient concentrations protective of human health and the environment. These numbers are based solely on toxicity data and scientific judgments about the relationship between the pollutant concentrations and environmental and human health effects. Additional supporting science background information can be found in Section II.

These proposed criteria, as published by the US EPA under the requirements of CWA Section 304 (a), are published and scientifically peer-reviewed, but do not reflect consideration of economic impacts or the technological feasibility of meeting the chemical concentrations in ambient water. They are derived strictly from scientific data to prevent toxic effects in humans and aquatic life.

In accordance with GS § 150B-21.2(c), GS § 150B-19.1(c) and Clean Water Act public notification requirements, when the agency submits the notice of text for publication in the NC register, the following will be posted to the DWR website: the text of the proposed 2B rules; an explanation and reasons for the proposed rule; the federal certification required by

GS § 150B 19.1 subsection (g) ; Instructions on how and where to submit oral or written comments on the proposed rule; the economic analysis.

**(6) Rules shall be designed to achieve the regulatory objective in a cost-effective and timely manner.**

Per CWA requirements, the regulatory objective of protection of waters of the state is based on scientific assessment and toxicology. Achieving this regulatory objective in a cost-effective and timely manner is taken into consideration by the implementation policies used in accordance with federal guidelines. See additional comments in principle 2 (above).