REGULATORY IMPACT ANALYSIS FOR AMENDMENTS TO 15A NCAC 02N UNDERGROUND STORAGE TANKS

January 29, 2021

General Information

Agency/Commission:	Environmental Management Commission
Department:	Department of Environmental Quality, Division of Waste Management, Underground Storage Tank Section
Contact:	Andria Merritt Underground Storage Tank Section (919) 707-8157 andria.merritt@ncdenr.gov
Title of Rule Set:	Underground Storage Tanks
Citation:	15A NCAC 02N .0406, .0901, .0905, .0906
Authority:	§143-215.94T provides authority for the Environmental Management Commission (EMC) to adopt and the Department of Environment Quality (DEQ) to implement and enforce rules relating to UST systems including standards and requirements applicable to existing and new UST systems. State rules governing UST systems are found in Title 15A, Subchapter 02N of the North Carolina Administrative Code.
Impact Summary:	State government: No Local government: No Private Sector: No Substantial impact: No Federal Requirement or Impact: No

Proposed Rule-Making Schedule:

Date	*Action*
May 24, 2021	File Notice with Office of Administrative Hearings
June 15, 2021	Rules published in NC Register and Agency website; comment period begins
June 30, 2021	Earliest date for public hearing
August 16, 2021	Comment period end
September 9, 2021	EMC meeting: Approval of Hearing Officer's Report and Adoption of Rules
Unknown at this time	File Rules with the Rules Review Commission
Unknown at this time	Legislative Review of Rules
Unknown at this time	Earliest effective date for rules

Necessity and Purpose of Rule Change

It is the responsibility of the Division of Waste Management (Division) Underground Storage Tank Section (Section) to implement and enforce rules relating to underground storage tank (UST) systems including standards and requirements applicable to existing and new UST systems under the statutory authority of General Statute 143-215.94T. State rules governing UST systems are found in Title 15A, Subchapters 02N and 02O of the North Carolina Administrative Code.

The rule changes being proposed will not result in any increased benefits or additional costs at this time for the private sector, or state or local government because the proposed changes are a result of two North Carolina Session Laws (NCSL) that have already implemented the proposed changes without expiration dates. NCSL 2018-114 Sections 19.(a)-(e) and 19.1.(a)-(e) became law on June 27, 2018 and NCSL 2020-74 Section 17.(a)-(e) applied to certain spill buckets replaced on or after August 1, 2020. These session laws remain in effect until permanent rules are adopted.

Fiscal Summary

The proposed amendments to 15A NCAC 02N .0406(2), .0905(g) and .0906(e) codify an increase in the number of testing and inspection protocols made available by NCSL 2018-114 Sections 19.1(a)-(e), offering more flexibility to UST owners and operators. There is no known evidence at this time that suggests any one of these method offers more effective environmental protection than another.

The proposed amendments to 15A NCAC 02N .0901 (d) and (k) are consistent with NCSL 2020-74 Section 17.(a)-(e) which allowed a spill bucket installed before November 1, 2007 to be replaced with a double-walled spill bucket with a mechanical liquid-detecting sensor that is monitored once every 30 days instead of a double-walled spill bucket with

an electronic liquid-detecting sensor that is monitored continuously. This change could result in an increased number of releases over time if a spill bucket with a mechanical liquid-detecting sensor sustains damage that goes undetected until the next 30-day check.

The proposed amendments to 15A NCAC 02N .0901(o) are consistent with NCSL 2018-114 Section 19.(a)-(e) which reduced the operability check frequency for overfill equipment installed on or after November 1, 2007, from annual to every three years. This could result in an increased number of releases over time if damaged or faulty equipment goes undetected for a longer period of time.

Fiscal Analysis

Private Sector, and State and Local Government Impact

Types of Businesses or Facilities Potentially Affected by Rule Changes:

- Regulated UST facilities permitted by the Division

The impacts to state and local governments associated with the proposed rule changes are the same as private entities, since state and local governments also own and operate regulated USTs.

Benefits

The changes proposed in 15A NCAC 02N .0406(2), .0905(g)and .0906(e) are a result of NCSL 2018-114 Section 19.1(a)-(e), which requires the EMC to adopt permanent rules to allow UST owners and operators to use all test methods and equipment that are approved by the EPA. The proposed amendments would incorporate that requirement into the rules pertaining to the periodic testing and inspection of spill prevention equipment, containment sumps used for interstitial monitoring of piping, and overfill prevention devices. The current rules allow for periodic testing and inspection methods that are developed by: the equipment manufacturer, a nationally-recognized association or independent laboratory, or requirements that the Division (meaning the “Division of Waste Management”) determines are no less protective of human health and the environment. The proposed changes add the words “US Environmental Protection Agency or the” in order to allow UST owners and operators to use all test methods and equipment that are approved by the EPA in addition to the Division. This change increased the number of testing and inspection protocols available to UST owners and operators which allowed them more flexibility. There is no known evidence at this time that suggests one method offers more effective environmental protection than another.

The changes proposed in 15A NCAC 02N .0901 (d) and (k) are included as a result of NCSL 2020-74 Section 17.(a)-(e) which allowed spill buckets associated with tanks installed prior to November 1, 2007, to be replaced with double-walled spill buckets with mechanical liquid detecting sensors instead of repairing existing buckets with liners or replacing existing buckets with double-walled buckets with electronic liquid detecting sensors. Double-walled spill buckets with mechanical liquid-detecting sensors do not rely on electrical conduit and monitoring consoles being installed as do double-walled spill buckets with electronic liquid-detecting sensors. Replacing a single-walled bucket with a

new double-walled spill bucket with mechanical liquid detecting sensor is most likely more protective of the environment than repairing that bucket with a liner. This is because the new spill bucket will be constructed of two walls. A defect in the inner wall will not lead to a release to the environment due to the added protection of the outer wall. Furthermore, the interstitial space of the new double-walled spill bucket will be checked at least once every 30 days for signs of a leak versus a lined single wall spill bucket which is not monitored for leaks at all. Conversely, using a bucket with a mechanical liquid detecting sensor is most likely less protective of the environment than replacing the original bucket with a double-walled spill bucket equipped with an electronic liquid-detecting sensor since buckets with electronic liquid-detecting sensors are continuously monitored for releases to the interstitial space versus once every 30 days. Since the proposed amendments add a spill bucket option but do not eliminate any options, it is not possible to say whether this amendment overall will increase or decrease environmental protection.

The changes proposed in 15A NCAC 02N .0901(o) are a result of NCSL 2018-114 Section 19.(a)-(e) which requires the EMC to adopt permanent rules to change the requirement for checking the operability of overfill prevention equipment installed or replaced on or after November 1, 2007, from annually to every three years. The rules currently require checking the operability of overfill prevention equipment installed or replaced on or after November 1, 2007, annually, and checking the operability of overfill prevention equipment installed or replaced before November 1, 2007, every three years. Therefore, the session law reduced the operability check frequency for overfill equipment installed on or after November 1, 2007, which is less protective of the environment. Increasing the amount of time between operability checks could increase the amount of time it takes to discover damaged or faulty equipment which could lead to more releases over time.

15A NCAC 02N .0406 is proposed for amendment as follows:

15A NCAC 02N .0406 PERIODIC TESTING OF SPILL PREVENTION EQUIPMENT AND CONTAINMENT SUMPS USED FOR INTERSTITIAL MONITORING OF PIPING AND PERIODIC INSPECTION OF OVERFILL PREVENTION EQUIPMENT

The regulations governing "Periodic testing of spill prevention equipment and containment sumps used for interstitial monitoring of piping and periodic inspection of overfill prevention equipment" set forth in 40 CFR 280.35 are hereby incorporated by reference, excluding any subsequent amendments and editions, except that:

(1) UST system or UST system component installations or replacements completed on or after November 1, 2007, shall meet the requirements of Section .0900 of this Subchapter.

(2) 40 CFR 280.35(a)(1)(ii)(C) shall be rewritten as follows: (C) Requirements determined by the <u>US Environmental Protection Agency or the</u> Division to be no less protective of human health and the environment than the requirements listed in Paragraphs (a)(1)(ii)(A) and (B) of this section.

History Note: *Authority G.S. 143-215.3(a)(15); 143B-282(a)(2)(h);*
Eff. June 1, 2017;
Amended Eff. January 1, 2021.

15A NCAC 02N .0901 is proposed for amendment as follows:

SECTION .0900 - PERFORMANCE STANDARDS FOR UST SYSTEM OR UST SYSTEM COMPONENT INSTALLATION OR REPLACEMENT COMPLETED ON OR AFTER NOVEMBER 1, 2007

15A NCAC 02N .0901 GENERAL REQUIREMENTS

(a) This Section applies to a UST system or UST system component installation or replacement completed on or after November 1, 2007.

(b) A UST system or UST system component shall not be installed or replaced within an area defined in Rule .0301(b) of this Subchapter.

(c) A tank shall meet the requirements for secondary containment including interstitial release detection monitoring in accordance with this Rule.

(d) All UST system components other than tanks including connected piping, underground ancillary equipment, dispensers, line leak detectors, submersible pumps, spill buckets, siphon bars, and remote fill pipes shall meet the requirements for secondary containment including interstitial release detection monitoring in accordance with this Rule. Spill buckets replaced on tanks installed prior to November 1, 2007 may comply with the interstitial monitoring requirements described in Paragraph (k) of this Rule. Gravity-fed vertical fill pipes, vapor recovery, vent lines, and containment sumps are excluded from the secondary containment requirements in this Rule.

(e) A UST system design is required for installation or replacement of a UST system, UST, or connected piping. If required by G.S. 89C, UST system designs must be prepared by a Professional Engineer licensed by the North Carolina Board of Examiners for Engineers and Surveyors.

[Note: The North Carolina Board of Examiners for Engineers and Surveyors has determined via letter dated December 20, 1993, that preparation of a UST system design constitutes practicing engineering under G.S. 89C.]

(f) If required by the equipment manufacturer, persons installing, replacing or repairing UST systems or UST system components must be trained and certified by the equipment manufacturer or the equipment manufacturer's authorized representative to install, replace or repair such equipment.

(g) UST systems or UST system components shall be installed, tested, operated, and maintained in accordance with the manufacturer's specifications and the codes of practice, and industry standards described in Rule .0907 of this Section.

(h) UST systems or UST system components shall not be installed or replaced in areas where they will be in contact with contaminated soil or free product.

(i) Secondary containment systems shall be designed, constructed, installed and maintained to:

(1) detect the failure of the inner wall and outer wall for UST system components with double wall construction;

(2) contain regulated substances released from a UST system until they are detected and removed;

(3) prevent a release of regulated substances to the environment outside of the containment system;

(4) direct releases to a monitoring point or points;

(5) provide a release detection monitoring device or monitoring method for the interstitial space;

(6) on an uninterrupted basis, monitor the inner and outer walls of double-walled tanks for breaches of integrity using pressure, vacuum or hydrostatic monitoring methods or monitor the interstitial space of double-walled tanks for releases using an electronic liquid detecting sensor method along with periodic testing as specified in Rule .0903(f) of this Section;

(7) on an uninterrupted basis, monitor the inner and outer walls of double-walled non-tank components for breaches of integrity using pressure, vacuum, or hydrostatic methods, or monitor a non-tank component for releases by using an electronic liquid detecting sensor placed in a containment sump and in the interstitial space of a double-walled spill bucket along with periodic integrity testing as specified in Rules .0904(f), .0905(g) and .0906(e) of this Section; and

(8) provide a printed record of release detection monitoring results and an alarm history for each month.

(j) Electronic liquid detecting sensors used to monitor the interstitial space of double-walled tanks and non-tank components shall meet the following requirements:

(1) Electronic liquid detecting sensors used for tanks and spill buckets shall be located at the lowest point in the interstitial space. Electronic liquid detecting sensors used for containment sumps shall be located as specified in Rule .0905(d) of this Section.

(2) A tank shall have a method to verify that an electronic liquid detecting sensor is located at the lowest point of the interstitial space. Verification of the sensor location shall be available for inspection.

(3) Electronic liquid detecting sensors shall detect the presence of any liquid in the interstitial space and shall activate an alarm when any type of liquid is detected.

(4) Any liquid detected in the interstitial space must be removed within 48 hours of discovery.

(k) Spill buckets replaced on tanks installed prior to November 1, 2007 may use mechanical liquid detecting sensors for interstitial leak detection monitoring instead of electronic liquid detecting sensors. If a mechanical liquid detecting sensor is used, then Subparagraphs (i)(7) and (8) of this Rule do not apply. However, the spill bucket shall comply with all spill bucket requirements of Rule .0906 of this Section. In addition, the following specific requirements shall be met:

(1) mechanical liquid detecting sensors shall be located at the lowest point in the interstitial space;

(2) mechanical liquid detecting sensors shall detect the presence of any liquid in the interstitial space. The presence of liquid shall register on a gauge that can be viewed from within the spill bucket;

(3) spill buckets shall be monitored every 30 days. The interstitial leak detection monitoring results shall be documented for each month;

(4) any liquid detected in the interstitial space shall be removed within 48 hours of discovery; and

(5) spill buckets shall be integrity tested every three years in accordance with Rule .0906(e) of this Section.

~~(k)~~(l) New or replacement dispensers shall be provided with under dispenser containment sumps and shall meet the secondary containment requirements and performance standards of this Rule.

~~(l)~~(m) All release detection monitoring equipment shall be installed, calibrated, operated and maintained in accordance with manufacturer's instructions. All release detection monitoring equipment shall be checked annually for operability, proper operating condition and proper calibration in accordance with the manufacturer's written guidelines. The results of the last annual check must be recorded, maintained at the UST site or the tank owner or operator's place of business, and made available for inspection.

~~(m)~~(n) Releases detected in an interstitial space shall be reported in accordance with Rule .0601 of this Subchapter and investigated in accordance with the manufacturer's written guidelines. Any changes in the original physical characteristics or integrity of a piping system or a containment sump shall also be reported in accordance with Rule .0601 of this Subchapter and investigated in accordance with the manufacturer's written guidelines.

~~(n)~~(o) UST systems and UST system components shall also meet all of the requirements specified in 40 CFR 280.20(c), (d), and (e). In addition, overfill prevention equipment shall be ~~checked annually~~ inspected at least once every three years for operability, proper operating condition and proper calibration in accordance with:

(1) written requirements developed by the manufacturer;

(2) a code of practice developed by a nationally recognized association or independent testing laboratory; or

(3) requirements determined by the US Environmental Protection Agency or the Division to be no less protective of human health and the environment than the requirements listed in Subparagraph (1) or (2) of this Paragraph. The inspection shall ensure that overfill prevention equipment is set to activate at the correct level specified in 40 CFR 280.20(c)(1)(ii) and will activate when regulated substance reaches that level.

(4) The results of the last ~~annual~~ triennial check shall be recorded, maintained at the UST site or the tank owner or operator's place of business, and made available for inspection.

History Note: *Authority G.S. 143-215.3(a)(15); 143B-282(a)(2)(h);*
Eff. November 1, 2007;
Amended Eff. February 1, 2010;
Readopted Eff. January 1, 2021.

15A NCAC 02N .0905 is proposed for amendment as follows:

15A NCAC 02N .0905 CONTAINMENT SUMPS

(a) Containment sumps shall be constructed of non-corroding materials.

(b) Containment sumps shall be designed and manufactured expressly for the purpose of containing and detecting a release.

(c) Containment sumps shall be designed, constructed, installed, and maintained to prevent water infiltration.

(d) Electronic sensor probes used for release detection monitoring shall be located no more than two inches above the lowest point of the containment sump.

(e) At installation, containment sumps shall be tested for tightness after construction, but before backfilling. Tightness testing shall be conducted in accordance with the manufacturer's written guidelines and PEI/RP100, "Recommended Practice for Installation of Underground Liquid Storage Systems." Other tightness test methods may be used if they are approved by the Division. In approving a containment sump tightness testing method the Division shall consider the following factors:

(1) the inner surface of the sump is tested to at least four inches above the highest joint or penetration fitting, whichever is higher; and

(2) the method is capable of detecting a fracture, perforation or gap in the sump within the specified test period.

(f) If a containment sump fails an installation tightness test, the sump shall be replaced or repaired by the manufacturer or the manufacturer's authorized representative in accordance with the manufacturer's specifications. Following replacement or repair, the containment sump shall be re-tested for tightness in accordance with Paragraph (e) of this Rule.

(g) Containment sumps that are not monitored on an uninterrupted basis for releases using vacuum, pressure or hydrostatic interstitial monitoring methods shall be tested for tightness every three years following installation in accordance with:

(1) written requirements developed by the manufacturer;

(2) a code of practice developed by a nationally recognized association or independent testing laboratory; or

(3) requirements determined by the <u>US Environmental Protection Agency or the</u> Division to be no less protective of human health and the environment than the requirements listed in Subparagraph (1) and (2) of this Paragraph.

If a containment sump fails a periodic tightness test, the sump shall be replaced in accordance with Paragraphs (a), (b) and (c) of this Rule or repaired by the manufacturer or the manufacturer's authorized representative in accordance with the manufacturer's specifications or a code of practice developed by a nationally recognized association or independent testing laboratory. Following replacement or repair, the containment sump shall be re-tested for tightness in accordance with Paragraph (e) of this Rule. The last periodic tightness test record shall be maintained at the UST site or the tank owner or operator's place of business and shall be available for inspection.

(h) All containment sumps shall be visually inspected at least annually in accordance with Rule .0407 of this Subchapter. Any water or regulated substance present in a sump at the time of inspection shall be removed from the sump within 48 hours of discovery. The visual inspection results shall be documented and shall be maintained for at least one year at the UST site or the tank owner's or operator's place of business and shall be available for inspection.

History Note: *Authority G.S. 143-215.3(a)(15); 143B-282(2)(h);*
Eff. November 1, 2007;
Readopted Eff. January 1, 2021.

15A NCAC 02N .0906 is proposed for amendment as follows:

15A NCAC 02N .0906 SPILL BUCKETS

(a) Spill buckets shall be pre-fabricated with double-walled construction.

(b) Spill buckets shall be protected from corrosion by being constructed of non-corroding materials.

(c) Spill buckets shall be designed, constructed, installed, and maintained to prevent water infiltration.

(d) After installation but before backfilling, the primary containment and interstitial space of the spill bucket shall be tested in accordance with the manufacturer's written guidelines or a code of practice developed by a nationally recognized association or independent testing laboratory. Any change in vacuum during a vacuum test or any change in liquid level in an interstitial space liquid reservoir beyond the limits specified by the equipment manufacturer shall be considered a failure of the integrity of the spill bucket. If the spill bucket fails a tightness test, it shall be replaced or repaired by the manufacturer or the manufacturer's authorized representative in accordance with the manufacturer's specifications. Following any repair, the spill bucket shall be re-tested for tightness in accordance with the manufacturers' written guidelines or a code of practice developed by a nationally recognized association or independent testing laboratory.

(e) Spill buckets that are not monitored on an uninterrupted basis for releases using vacuum, pressure or hydrostatic methods, shall be tested for tightness at installation and every three years following installation. The primary containment and interstitial space of the spill bucket shall be tested in accordance with:

(1) written requirements developed by the manufacturer;

(2) a code of practice developed by a nationally recognized association or independent testing laboratory; or

(3) requirements determined by the <u>US Environmental Protection Agency or the</u> Division to be no less protective of human health and the environment than the requirements listed in Subparagraph (1) and (2) of this Paragraph.

If the spill bucket fails a tightness test, it shall be replaced and tested in accordance with Paragraphs (a) through (d) of this Rule or repaired by the manufacturer or the manufacturer's authorized representative in accordance with the manufacturer's specifications. Following any repair, the spill bucket shall be re-tested for tightness in accordance with the manufacturers' written guidelines or a code of practice developed by a nationally recognized association or independent testing laboratory. The last periodic tightness test record shall be maintained at the UST site or the tank owner or operator's place of business and shall be available for inspection.

History Note: *Authority G.S. 143-215.3(a)(15); 143B-282(2)(h);*
Eff. November 1, 2007;
Readopted Eff. January 1, 2021.

restrictions on the current or future use of real property on such a site shall only be allowed ~~as provided in~~if the Department has determined that the requirements of G.S. 143-215.104AA or G.S. 130A-310.73A, as ~~applicable.~~applicable, have been satisfied for the site.

…."

SECTION 18.(b) G.S. 143B-279.11 reads as rewritten:

"**§ 143B-279.11. Recordation of residual petroleum from underground or aboveground storage tanks or other sources.**

…

(h) ~~Except with respect to land contaminated from a discharge or release of petroleum from an underground storage tank, the provisions of this section shall only apply~~ With respect to sites contaminated by the discharge or release of petroleum from an aboveground storage tank, or another petroleum source, from which contamination has migrated to off-site properties, as that term is defined under G.S. 130A-310.65(3a), ~~in compliance with~~ the provisions of this section shall only apply if the Department has determined that the requirements of G.S. 143-215.104AA or G.S. 130A-310.73A, as ~~applicable.~~applicable, have been satisfied for the site."

SECTION 18.(c) This section becomes effective retroactively to October 4, 2017.

MODIFY OTHER REQUIREMENTS FOR UNDERGROUND STORAGE TANKS (USTS)

SECTION 19.(a) Definitions. – "General Requirements Applicable to Performance Standards for UST System or UST System Component Installation or Replacement Rule" means 15A NCAC 2N .0901 (General Requirements) for purposes of this section and its implementation.

SECTION 19.(b) General Requirements Applicable to Performance Standards for UST System or UST System Component Installation or Replacement Rule. – Until the effective date of the revised permanent rule that the Environmental Management Commission is required to adopt pursuant to subsection (d) of this section, the Commission shall implement the General Requirements Applicable to Performance Standards for UST System or UST System Component Installation or Replacement Rule, as provided in subsection (c) of this section.

SECTION 19.(c) Implementation. – Notwithstanding subsection (n) of the General Requirements Applicable to Performance Standards for UST System or UST System Component Installation or Replacement Rule, the Commission shall not require overfill prevention equipment to be checked annually for operability, proper operating condition and proper calibration in accordance with the manufacturer's written guidelines, but shall instead require such equipment to be checked for these purposes once every three years as provided for under federal law.

SECTION 19.(d) Additional Rule-Making Authority. – The Commission shall adopt a rule to amend the General Requirements Applicable to Performance Standards for UST System or UST System Component Installation or Replacement Rule consistent with subsection (c) of this section. Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be substantively identical to the provisions of subsection (c) of this section. Rules adopted pursuant to this section are not subject to Part 3 of Article 2A of Chapter 150B of the General Statutes. Rules adopted pursuant to this section shall become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received as provided by G.S. 150B-21.3(b2).

SECTION 19.(e) Sunset. – This section expires when permanent rules adopted as required by subsection (d) of this section become effective.

SECTION 19.1.(a) Definitions. – For purposes of this section and its implementation, "UST Rules" means Subchapter 2N (Underground Storage Tanks) of 15A NCAC.

SECTION 19.1.(b) UST Rules. – Until the effective date of the revised permanent rule that the Environmental Management Commission is required to adopt pursuant to subsection (d) of this section, the Commission shall implement the UST Rules, as provided in subsection (c) of this section.

SECTION 19.1.(c) Implementation. – Notwithstanding any prohibition under the UST Rules, or guidance adopted by the Department of Environmental Quality thereunder, the Department shall allow owners or operators of USTs to use all test methods and testing equipment that are approved by the United States Environmental Protection Agency, including the use of a Testable Drop Tube, for required testing of UST equipment.

SECTION 19.1.(d) Additional Rule-Making Authority. – The Commission shall adopt a rule to amend the UST Rules consistent with subsection (c) of this section. Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be substantively identical to the provisions of subsection (c) of this section. Rules adopted pursuant to this section are not subject to Part 3 of Article 2A of Chapter 150B of the General Statutes. Rules adopted pursuant to this section shall become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received as provided by G.S. 150B-21.3(b2).

SECTION 19.1.(e) Sunset. – This section expires when permanent rules adopted as required by subsection (d) of this section become effective.

EXPAND EXEMPTIONS FOR CERTAIN LOCAL GOVERNMENTS' AUTHORITY TO ENACT FLOW CONTROL

SECTION 20.(a) G.S. 130A-291(c) reads as rewritten:

"(c) Except as provided in subsections (d) and (e) of this section, a unit of local government may, by ordinance, franchise, business license, contract, or otherwise, require that all solid waste generated within the geographic area and placed in the waste stream for disposal be delivered to the permitted solid waste management facility or facilities serving the geographic area only under one of the following conditions:

(1) If the unit of local government has debt associated with solid waste management facilities and equipment outstanding on September 1, 2017, the unit of local government may adopt and enforce such an ordinance until the date that such debt has matured.

(2) If the unit of local government incurs debt after September 1, 2017, and the issuance of the debt will be conditioned upon the unit of local government requiring that all waste collected within the county be disposed of within the landfill, for expansion of a landfill or construction of a new landfill after all necessary approvals for issuance of the debt have been obtained from the Local Government Commission in compliance with Chapter 159 of the General Statutes, including the demonstration of need and cost required by G.S. 159-211, the unit of local government may adopt and enforce such an ordinance until the date the debt associated with expansion of the landfill, or construction of the new landfill, has matured.

(3) If the unit of local government is a party to an exclusive franchise agreement with a private entity governing the management or disposal of waste within the jurisdiction in effect on September 1, 2017, the unit of local government may adopt and enforce such an ordinance until the date that such franchise has expired.

(4) If the unit of local government purchased or otherwise acquired title to property between January 1, 2006, and September 1, 2017, with the specific intent of adding the property to an existing landfill for the disposal of municipal solid waste, which landfill (i) is contiguous to the property

…

f. To issue a permit, certification, authorization, or other approval by electronic delivery, registered or certified mail, or any other means authorized by G.S. 1A-1, Rule 4.

…."

NONBETTERMENT COST RECOVERY FOR CERTAIN PRIVATE WATER AND SEWER SYSTEMS

SECTION 16.(a) G.S. 136-27.1 reads as rewritten:

"**§ 136-27.1. Relocation of water and sewer lines of municipalities, nonprofit water or sewer corporations or associations, ~~and~~ local boards of ~~education.~~education, and certain private water or sewer utilities.**

(a) The Department of Transportation shall pay the nonbetterment cost for the relocation of water and sewer lines, located within the existing State transportation project right-of-way, that are necessary to be relocated for a State transportation improvement project and that are owned by: (i) a municipality with a population of 10,000 or less according to the latest decennial census; (ii) a nonprofit water or sewer association or corporation; (iii) any water or sewer system organized pursuant to Chapter 162A of the General Statutes; (iv) a rural water system operated by a County as an enterprise system; (v) any sanitary district organized pursuant to Part 2 of Article 2 of Chapter 130A of the General Statutes; (vi) constructed by a water or sewer system organized pursuant to Chapter 162A of the General Statutes and then sold or transferred to a municipality with a population of greater than 10,000 according to the latest decennial census; ~~or~~ (vii) a local board of ~~education.~~education; or (viii) a private water or sewer utility organized pursuant to Chapter 62 of the General Statutes serving 10,000 or fewer customers.

(b) A municipality with a population of greater than 10,000 shall pay a percentage of the nonbetterment cost for relocation of water and sewer lines owned by the municipality and located within the existing State transportation project right-of-way that are necessary to be relocated for a State transportation improvement project. The percentage shall be based on the municipality's population, with the Department paying the remaining costs, as follows:

(1) A municipality with a population of greater than 10,000, but less than 50,000, shall pay twenty-five percent (25%) of the cost.

(2) A municipality with a population of 50,000 or greater, but less than 100,000, shall pay fifty percent (50%) of the cost.

(3) A municipality with a population of 100,000 or greater shall pay one hundred percent (100%) of the cost."

SECTION 16.(b) This section is effective retroactively to March 1, 2020, and shall apply to nonbetterment costs for State transportation improvement projects incurred on or after that date. The Department of Transportation shall reimburse any nonbetterment costs for State transportation improvement projects collected from a private water or sewer utility organized pursuant to Chapter 62 of the General Statutes serving 10,000 or fewer customers after March 1, 2020.

UNDERGROUND STORAGE TANK SPILL BUCKET RULE CHANGE

SECTION 17.(a) Definitions. – For purposes of this section and its implementation, "UST Spill Bucket General Requirement Rule" means 15A NCAC 02N .0901 (General Requirements).

SECTION 17.(b) UST Spill Bucket General Requirement Rule. – Until the effective date of the revised permanent rule that the Environmental Management Commission is required to adopt pursuant to subsection (d) of this section, the Commission shall implement the UST Spill Bucket General Requirement Rule as provided in subsection (c) of this section.

SECTION 17.(c) Implementation. – Spill buckets replaced on tanks installed prior to November 1, 2007, may use mechanical liquid detecting sensors for interstitial leak detection monitoring instead of electronic liquid detecting sensors. If a mechanical liquid detecting sensor is used, then a spill bucket shall comply with all spill bucket requirements of 15A NCAC 02N .0906 except that Subparagraphs (i)(7) and (8) of 15A NCAC 02N .0901 do not apply. In addition, all of the following specific requirements shall be met:

(1) Mechanical liquid detecting sensors shall be located at the lowest point in the interstitial space.
(2) Mechanical liquid detecting sensors shall detect the presence of any liquid in the interstitial space. The presence of liquid shall register on a gauge that can be viewed from within the spill bucket.
(3) Spill buckets shall be monitored every 30 days. The interstitial leak detection monitoring results shall be documented for each month.
(4) Any liquid detected in the interstitial space shall be removed within 48 hours of discovery.
(5) Spill buckets shall be integrity tested every three years in accordance with 15A NCAC 02N .0906(e).

SECTION 17.(d) Additional Rule-Making Authority. – The Commission shall adopt a rule to amend the UST Spill Bucket General Requirement Rule consistent with subsection (c) of this section. Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be substantively identical to the provisions of subsection (c) of this section. Rules adopted pursuant to this section are not subject to Part 3 of Article 2A of Chapter 150B of the General Statutes. Rules adopted pursuant to this section shall become effective as provided in G.S. 150B-21.3(b1), as though 10 or more written objections had been received as provided in G.S. 150B-21.3(b2).

SECTION 17.(e) Applicability and Sunset. – This section and rules adopted pursuant to this section apply to all spill buckets replaced on or after August 1, 2020. This section expires when permanent rules adopted as required by subsection (d) of this section become effective.

PREVENT FROM BECOMING EFFECTIVE RULES MODIFYING THE NORTH CAROLINA BUILDING CODE

SECTION 18. Notwithstanding G.S. 150B-21.3(b1), the following rules, as adopted by the North Carolina Building Code Council on March 10, 2020, and approved by the Rules Review Commission on May 21, 2020, shall not become effective:

1102.7 (2018 NC Plumbing Code/Fittings).
1102.2 (2018 NC Plumbing Code/Inside Storm Drainage Conductors).
702.4 (2018 NC Plumbing Code/Fittings).
702.1 (2018 NC Plumbing Code/Above-Ground Sanitary Drainage and Vent Pipe).

LIBRARY STATUTE CHANGES

SECTION 19.(a) G.S. 143B-68 reads as rewritten:

"**§ 143B-68. Public Librarian Certification Commission – members; selection; quorum; compensation.**

The Public Librarian Certification Commission of the Department of Natural and Cultural Resources shall consist of five members as follows: (i) the chairman of the public libraries section of the North Carolina Library Association, (ii) two individuals named by the Governor upon the nomination of the North Carolina Library Association, (iii) the ~~dean~~ dean, department chair, program director, or equivalent of a State or regionally accredited graduate school of librarianship in North Carolina appointed by the Governor, and (iv) one member at large appointed by the Governor.

Merritt, Andria

From: Hollis, Carrie
Sent: Monday, February 1, 2021 5:27 PM
To: Merritt, Andria; Everett, Jennifer
Cc: McGhee, Dana; Grozav, Anca
Subject: Review - Spill Buckets, 15A NCAC 02N .0406, .0901, .0905, and .0906
Attachments: DEQ_2021-02-01a.pdf

OSBM has reviewed the Division of Waste Management's proposed changes to rules 15A NCAC 02N .0406, .0901, .0905, and .0906 in accordance with G.S. 150B-21.4 and with E.O. 70 from 10/21/2010 as amended by E.O. 48 from 4/9/2014. OSBM has determined the amendments have little to no impact on state or local governments and no substantial economic impact. The fiscal note is approved for publication.

Regards,
Carrie

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NC Office of State Budget and Management
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