



North Carolina Department of Environment and Natural Resources

Division of Water Quality

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MEMORANDUM

To: Aquifer Protection Section Central Office
Aquifer Protection Section Regional Supervisors
Interested Parties

From: Ted L. Bush, Jr., Deputy Director

Subject: Compliance and Enforcement Guidance for Unpermitted Reclaimed Water Releases

Introduction:

Reclaimed water is highly treated wastewater effluent that meets the standards established by North Carolina Administrative Code 15A NCAC 02U, and can be used in a beneficial manner to conserve the State's water resources by reducing the use of potable water, surface water, or groundwater. North Carolina General Statute G.S. 143-355.5 states, "It is the public policy of the State to reuse treated wastewater or reclaimed water to meet the existing and future water supply needs of the State." Properly implemented reclaimed water programs can help communities meet water demands while protecting public health and the environment. This guidance document is intended to be used by both reclaimed water distribution system operators and Division of Water Quality (DWQ) inspectors in order to provide consistent compliance and enforcement determinations. This guidance will help the regulated community better understand the expectations for reclaimed water systems and the potential consequences of unpermitted releases. In addition, this guidance can assist delegated reclaimed water programs in developing consistent enforcement procedures for their users.

The goal of reclaimed water utilization is to achieve a beneficial reuse of highly treated wastewater. Therefore, reclaimed water users have obvious incentives to prevent improper use of reclaimed water and to practice conservation of this commodity. Some types of reclaimed water releases are permitted by regulation (i.e., "deemed permitted") pursuant to paragraph (a) of Rule 15A NCAC 02U .0113. These types of releases have been determined to represent occasional activities that do not pose a significant risk to public health or the environment. The release must not result in violation of surface or groundwater standards to be considered a deemed permitted activity. The types of releases eligible for deemed permit coverage include:

- Discharges to land surface from flushing and hydrostatic testing;
- Discharges to surface water from flushing and hydrostatic testing;
- Overflow from elevated reclaimed water storage tanks;
- De minimus runoff from fire extinguishing, dust control, soil compaction, street sweeping, overspray on yard inlets, overspray on golf cart paths, or vehicle washing;

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- Incidental discharge to municipal separate storm sewer systems (MS4s) provided that the discharge does not violate surface water standards;
- Discharges to the land surface as a result of rehabilitation, repair, or replacement of reclaimed water lines; and
- Utilization of reclaimed water from a permitted bulk distribution program.

A planned continuous release such as a continuous blow-off of a distribution line to maintain residual chlorine concentration may not be considered a deemed permitted release. If a continuous release is expected, DWQ Regional Office staff shall be contacted to determine what type of permitting action is needed.

A reclaimed water release that is not authorized by a permit and does not meet the “deemed permitted” criteria established in Section .0113 of Rule 15A NCAC 02U as described above, constitutes a violation of G.S. 143.215.1. However, the purpose of this guidance document is to recognize that there are circumstances that may result in an unpermitted release of reclaimed water that may not warrant a notice of deficiency (NOD), notice of violation (NOV) or civil penalty assessment (CPA). Some common causes of unpermitted reclaimed water releases are:

- Distribution line breaks;
- Malfunction of irrigation equipment;
- Spills/overflow from storage facilities or pumping stations; and
- Continuous distribution line blow-off.

Applicability:

This guidance applies only to unpermitted releases of reclaimed water, either to the land surface or to waters of the State. General compliance issues with reclaimed water systems that are common to all types of non-discharge permits (such as limit violations, operational issues, setback compliance, etc.) will be addressed using existing enforcement procedures.

Enforcement Guidelines for Common Types of Unpermitted Reclaimed Water Releases:

Although widely recognized as a resource, reclaimed water does originate as a wastewater [15A NCAC 02U .0103(8)], and as such, discharge of reclaimed water that occurs outside of permitted activities is a violation of G.S. 143.215.1. However, recognizing the high level of treatment associated with reclaimed water, it may not be appropriate to issue a NOD, NOV or a CPA in all cases where a release occurs. The risk of negative environmental impacts from unpermitted releases of reclaimed water is significantly less than the risk resulting from sewer overflows, treatment plant bypass, or release of wastewater not meeting reclaimed water standards. Table 1 should be used as a guide to determine appropriate reporting requirements and Division action for reclaimed water releases. Since each situation is unique, Regional Office staff should use their best professional judgment and consider the factors listed below when determining if a NOD, NOV, and/or CPA is warranted. Note that any release determined to be caused by negligence on the part of the responsible party shall be subject to NOV and/or CPA.

Table 1. – Reporting Guidelines

Type of Unpermitted Release	Method of Reporting to DWQ ^b	Division Action ^c
Release to waters of the State	Notify Regional Office ^a	NOD, NOV or CPA
Release to land surface (volume ≥ 5,000 gallons)	Notify Regional Office ^a	NOD initially with potential for NOV and/or CPA for subsequent incidents
Release to land surface (< 5,000 gallons)	Document in operating log	No Action unless negligent

- a. The permit holder (either generator or user) is responsible for reporting releases to DWQ.
- b. The Permittee shall maintain a log of all releases including date of occurrence and estimated volume of release which shall be available to DWQ during inspections.
- c. Division action may occur in response to public complaint or inspection in addition to permittee reporting.

The Division should use the considerations below to evaluate the need for a NOD, NOV, and/or CPA:

1) Factors to be considered in determining if a release should result in the issuance of a NOD or a NOV:

- (a) Establishment of an affirmative defense (see following description of affirmative defense);
- (b) Volume of reclaimed water released;
- (c) Quality of the reclaimed water at the time of the release (based on permit required parameters);
- (d) Water quality standard violations (if any);
- (e) Release resulting from third party damage (ex. homeowner, contractor, vandalism);
- (f) Release resulting from negligence;
- (g) Operator’s knowledge of the release and/or the mechanisms in place to identify a release;
- (h) Release resulting from repeat problem or at repeat location;
- (i) Release reaching an adjacent property under separate ownership;
- (j) Self-reporting and documentation of release; and
- (k) Documented measures initiated to resolve the problem.

2) Factors to be considered in determining the need for and/or amount of a CPA:

- (a) Considerations for CPA must follow the statutory assessment factors in G.S. 143B -282.1(b);
- (b) Factors such as environmental damage (i.e. fish kill, scouring of stream, sediment deposition) and risk for adverse impacts to public health such as proximity to water supply wells must be considered; and
- (c) A CPA is appropriate for repeated releases or where negligence can be established. For cases where the reclaimed water user is a repeat violator, the reclaimed water generator holds the ultimate responsibility to address the issue, such as terminating service if necessary.

Affirmative Defense:

A Permittee has the option to establish an “affirmative defense” by requesting a reprieve from enforcement action for any unpermitted reclaimed water releases on a case by case basis. In order to be considered for a reprieve from enforcement action, the Permittee must submit a written claim to justify the unpermitted release to the appropriate Regional Office.

In order to make a successful demonstration, the Permittee shall submit operating logs and/or other relevant documentation to show one of the following:

- a) The unpermitted reclaimed water release was caused by severe natural conditions and there were no feasible alternatives to the release (ex. retention of the reclaimed water, use of backup equipment, or installation of necessary additional or replacement facilities); or
- b) The unpermitted reclaimed water release was exceptional, unintentional, temporary, and caused by factors beyond the reasonable control of the Permittee. The release could not have been prevented by exercising proper management, proper operation and maintenance procedures, or preventative maintenance. The Permittee took all reasonable steps to stop the release and mitigate any impacts of the release as soon as possible.