



# NOTICE OF TEXT

[Authority G.S. 150B-21.2(c)]

**OAH USE ONLY**

VOLUME:

ISSUE:

*file*  
*7/25/17*

CHECK APPROPRIATE BOX:

- Notice with a scheduled hearing
- Notice without a scheduled hearing
- Republication of text. Complete the following cite for the volume and issue of previous publication, as well as blocks 1 - 4 and 7 - 13. If a hearing is scheduled, complete block 5.  
Previous publication of text was published in Volume:            Issue:

1. Rule-Making Agency: Environmental Management Commission

2. Link to agency website pursuant to G.S. 150B-19.1(c): <http://deq.nc.gov/about/divisions/waste-management/ust/whats-new>

3. Proposed Action -- Check the appropriate box(es) and list rule citation(s) beside proposed action:

- ADOPTION:
- READOPTION with substantive changes: 15A NCAC 02T .1502, .1505, and .1507
- READOPTION without substantive changes: 15A NCAC 02T .1501, .1503, .1504, and .1506
- AMENDMENT:
- REPEAL:

FILED  
2017 JUL 25 PM 3:32  
OFFICE OF ADMIN HEARINGS

4. Proposed effective date: January 1, 2018

5. Is a public hearing planned?  Yes  No

If yes: Public Hearing date: August 30, 2017  
 Public Hearing time: 2:00 pm  
 Public Hearing Location: Green Square Building, Room 1210  
 217 West Jones Street  
 Raleigh, NC 27603

6. If no public hearing is scheduled, provide instructions on how to demand a public hearing: N/A

**7. Explain Reason For Proposed Rule(s):** The Division of Waste Management (DWM) received a request from stakeholders indicating that, for closure of a soil remediation permitted facility, having a closure/cleanup based on a non-detection level of soil contamination is unreasonable. The DWM concurs that it is more reasonable to use risk based levels that are protective of groundwater quality, human health, and the environment to avoid extensive and expensive analyses based on non-detection levels.

**8. Procedure for Subjecting a Proposed Rule to Legislative Review:** If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Rule(s) is automatically subject to legislative review. Cite statutory reference:

**9. The person to whom written comments may be submitted on the proposed rule(s):**

**Name:** Jeremy Poplawski

**Address:** NCDEQ/DWM/UST Section

1646 Mail Service Center

Raleigh, NC 27699-1646

**Phone (optional):** 919-707-8151

**Fax (optional):** 919-715-1117

**E-Mail (optional):** Jeremy.poplawski@ncdenr.gov

**10. Comment Period Ends:** October 16, 2017

**11. Fiscal impact (check all that apply).**

If this form contains rules that have different fiscal impacts, list the rule citations beside the appropriate impact.

- State funds affected
- Environmental permitting of DOT affected  
Analysis submitted to Board of Transportation
- Local funds affected
- Substantial economic impact ( $\geq$ \$1,000,000)
- Approved by OSBM
- No fiscal note required by G.S. 150B-21.4
- No fiscal note required by G.S. 150B-21.3A(d)(2)

**12. Rule-making Coordinator:** Jennifer Everett

**Address:** 1601 Mail Service Center  
Raleigh, NC 27699-1601

**Phone:** 919-707-8614

**E-Mail:** Jennifer.everett@ncdenr.gov

**Agency contact, if any:** Jeremy Poplawski

**Phone:** 919-707-8151

**E-mail:** Jeremy.poplawski@ncdenr.gov

**13. The Agency formally proposed the text of this rule(s) on**  
**Date:** July 13, 2017

**14. Signature of Agency Head\* or Rule-making Coordinator:**



\*If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

**Typed Name:** Jennifer Everett

**Title:** Rulemaking Coordinator

1 15A NCAC 02T .1502 is proposed for readoption with substantive changes as follows:  
2

3 **15A NCAC 02T .1502 DEFINITIONS**

4 The following definitions apply to this Section:

- 5 (1) "Contaminated soil" means soil containing petroleum products or other soil that has been  
6 affected by non-petroleum substances as a result of a release or discharge, but does not include  
7 hazardous waste.
- 8 (2) "Dedicated site" means a site used for the repetitive treatment of soils.
- 9 (3) "Permitting agency" means the Division of Waste Management, UST Section, for contaminated  
10 soils originating from underground storage tanks (USTs) and for dedicated sites. For other soil,  
11 the permitting agency means the Division of Water ~~Quality~~Resources. When the permitting  
12 agency is the Division of Waste Management, the Division of Waste Management shall be  
13 considered the Division for the purposes of Section .0100 of this Subchapter.
- 14 (4) "Petroleum contaminated soil" or "Soil containing petroleum products" shall mean any soil that  
15 has been exposed to petroleum products because of any emission, spillage, leakage, pumping,  
16 pouring, emptying, or dumping of petroleum products onto or beneath the land surface and that  
17 exhibits characteristics or concentrations of petroleum product constituents in sufficient  
18 quantities that exceed either the "soil-to-groundwater" or the residential maximum soil  
19 contaminant concentrations established by the Department pursuant to 15A NCAC 02L .0411,  
20 whichever is lower as to be detectable by compatible laboratory analytical procedures pursuant  
21 to 15A NCAC 02H .0800.
- 22 (5) "Petroleum product" means all petroleum products as defined by G.S. 143-215.94A and  
23 includes motor gasoline, aviation gasoline, gasohol, jet fuels, kerosene, diesel fuel, fuel oils (#1  
24 through #6), and motor oils (new and used).
- 25 (6) "Soil remediation at conventional rates" means the treatment of contaminated soils by land  
26 application methods, at an evenly distributed thickness not to exceed six inches.
- 27 (7) "Soil remediation at minimum rates" means the treatment of contaminated soils by land  
28 application methods, at an evenly distributed application thickness not to exceed an average of  
29 one inch.

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31 *History Note: Authority G.S. 143-215.1; 143-215.3(a);*  
32 *Eff. September 1, 2006.*  
33 *Readopted Eff. XX 1, 201X.*

1 15A NCAC 02T .1505 is proposed for readoption with substantive changes as follows:  
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3 **15A NCAC 02T .1505 DESIGN CRITERIA**

4 (a) Land Application of Soils Containing Petroleum Products at Minimum Rates. Petroleum contaminated soils  
5 shall be incorporated into the native soils of the receiver site immediately upon application. Liming, fertilization,  
6 and aeration of the soils mixture shall be optional. Subsequent application of petroleum contaminated soils onto  
7 the same receiver site shall not occur for at least 18 months from the date of the most recent application of  
8 petroleum contaminated soils and shall cause the receiver site to be reclassified as a "dedicated site" unless the  
9 permittee or applicant can demonstrate, through soil sampling and contaminant analytical procedures pursuant to  
10 15A NCAC 02H .0800, that the petroleum contaminant level in the upper eight inches of the receiver site soils is  
11 below either the "soil-to-groundwater" or the residential maximum soil contaminant concentrations established  
12 by the Department pursuant to 15A NCAC 02L .0411, whichever is lower. ~~analytical detection levels.~~

13 (b) Land Application of Soil Containing Petroleum Products at Conventional Rates. Land application of soils  
14 containing petroleum products at an application thickness greater than one inch shall require fertilization, liming,  
15 and aeration of the native soils and petroleum contaminated soils mixture. Application thickness shall be based  
16 upon the nature of the receiver site soils, depth to the seasonal high water table, the intended cover crop, and the  
17 source of contamination. Operation of the land application program shall not result in contravention of  
18 groundwater or surface water standards. Subsequent application of petroleum contaminated soils onto the same  
19 receiver site shall not occur for at least 18 months from the date of the most recent application of petroleum  
20 contaminated soils and shall cause the receiver site to be reclassified as a "dedicated site" unless the permittee or  
21 applicant can demonstrate, through soil sampling and contaminant analytical procedures pursuant to 15A NCAC  
22 02H .0800, that the petroleum contaminant level in the upper eight inches of the receiver site soils is below either  
23 the "soil-to-groundwater" or the residential maximum soil contaminant concentrations established by the  
24 Department pursuant to 15A NCAC 02L .0411, whichever is lower. ~~analytical detection levels.~~

25 (c) Disposal of Soils Containing Petroleum Products at Dedicated Land Application Sites. Subsequent  
26 applications of petroleum contaminated soils at dedicated sites shall not recur until such time as it can be  
27 demonstrated that additional applications of contaminated soils will not result in the contravention of any  
28 groundwater or surface water standards.

29 (d) Containment and Treatment and Containment and Utilization of Contaminated Soil.

30 (1) A containment structure designed to bioremediate or volatilize contaminated soil shall be  
31 constructed of either a synthetic liner of at least 30 mils thickness or of a one foot thick liner of  
32 natural material, compacted to at least 95 percent standard proctor dry density and with a  
33 permeability of less than  $1 \times 10^{-7}$  cm/sec.

34 (2) The bottom of the containment structure shall be at least three feet above the seasonal high  
35 water table or bedrock.

1 (3) A leachate collection system ~~must~~shall be installed in order to prevent runoff from the  
2 contaminated soils within the containment structure, or a cover provided to avoid accumulation  
3 of stormwater within the containment structure.

4 (4) The containment structure shall be compatible with the chemical and physical properties of the  
5 contaminants involved.

6

7 *History Note: Authority G.S. 143-215.1; 143-215.3(a);*

8 *Eff. September 1, 2006.*

9 *Readopted Eff. XX 1, 201X.*

1 15A NCAC 02T .1507 is proposed for readoption with substantive changes as follows:

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3 **15A NCAC 02T .1507 CLOSURE REQUIREMENTS**

4 (a) A permit ~~must~~shall be held and renewed if necessary until such time that the soil remediation facility has  
5 satisfied all conditions for closure and the permitting agency has notified the permit holder that the facility has  
6 satisfied conditions necessary for closure and rescinded the permit. The permittee ~~must~~shall notify the permitting  
7 agency 30 days prior to the initiation of closure activities. This Rule does not apply to deemed permitted facilities  
8 as described in Rule .1503 of this Section.

9 (b) A facility may be considered for closure once all of the following conditions have been satisfied:

10 (1) Any and all outstanding enforcement actions levied by the permitting agency have been  
11 resolved.

12 (2) Requirements for all other related on-site permitted activities have been met.

13 (3) For all land application sites the applicant shall provide to the permitting agency:

14 (A) Demonstration that no contaminant constituents in the groundwater exceed  
15 groundwater standards for dedicated and conventional rate land application sites.

16 (B) Demonstration that all remaining contaminated soil has been remediated to below  
17 either the "soil-to-groundwater" or the residential maximum soil contaminant  
18 concentrations established by the Department pursuant to 15A NCAC 02L .0411,  
19 whichever is lower.~~detection levels.~~ The demonstration shall be based upon  
20 representative samples from the permitted site.

21 (C) If a groundwater drainage system or surface waters are present on the site or within  
22 the compliance boundary, a demonstration that surface water has not been impacted  
23 by contaminants at concentrations in excess of those established in Subchapter 15A  
24 NCAC 02B.

25 (4) For facilities utilizing containment and treatment or portable self-contained treatment systems.

26 (A) Demonstration by the applicant to the permitting agency that all treated soil has been  
27 remediated to below either the "soil-to-groundwater" or the residential maximum soil  
28 contaminant concentrations established by the Department pursuant to 15A NCAC  
29 02L .0411, whichever is lower.~~detection levels.~~ based upon analysis of representative  
30 soil samples or is disposed of under Subparagraph (b)(4)(B) of this Rule.

31 (B) All remaining soil that contains contaminants at levels that exceed either the "soil-to-  
32 groundwater" or the residential maximum soil contaminant concentrations established  
33 by the Department pursuant to 15A NCAC 02L .0411, whichever is lower.~~the method~~  
34 ~~detection levels.~~ must~~shall~~ be disposed of at another permitted facility and the  
35 permitting agency ~~must~~shall be notified prior to transport.

36 (C) Demonstration by the applicant to the permitting agency that the facility has been  
37 decontaminated based upon analysis of samples.

1 (5) For storage facilities, a demonstration that the storage facility has been decontaminated to  
2 below either the "soil-to-groundwater" or the residential maximum soil contaminant  
3 concentrations established by the Department pursuant to 15A NCAC 02L .0411, whichever is  
4 lower-detection-levels shall be submitted by the permittee to the Division. The demonstration  
5 shall be based upon analysis of pollutants identified in the contaminated soil as provided in  
6 Rule .1504(a)(1) of this Section.

7 (c) A facility that satisfies the conditions for closure may petition the permitting agency for closure status  
8 approval and shall provide the following information:

- 9 (1) identification of the original permit authorizing the construction and operation of the soil  
10 remediation facility;
- 11 (2) the reason(s) for closure of facility;
- 12 (3) the name and title of the contact;
- 13 (4) sample analyses (tabulated and graphed) for the last four groundwater sampling events prior to  
14 facility shutdown showing the concentrations of the parameters of concern and if groundwater  
15 monitoring is required at a land application site, groundwater analytical results for sample  
16 collection to satisfy Subparagraph (b)(3)(A) of this Rule; Rule .1507(b)(3)(A);
- 17 (5) laboratory analytical results for soil samples collected from the treated soil, which have been  
18 analyzed by methods approved in accordance with Rule .1504(a)(1) of this Section;
- 19 (6) if a groundwater drainage network (ditches) or surface waters are present on the site or within  
20 the compliance boundary, analytical results for surface water samples collected upstream of the  
21 facility, within the facility if applicable, and at a downstream location at the edge of the property  
22 to document that surface waters have not been impacted;
- 23 (7) decontamination procedures for any treatment or containment structure;
- 24 (8) a sedimentation and erosion control plan, prepared in accordance with the Division of Energy,  
25 Mineral, and Land Resources requirements pursuant to Subchapter 15A NCAC 04B, if a plan  
26 to restore the site to pre-soil treatment conditions is proposed that will disturb an area of land  
27 equal to or greater than one acre;
- 28 (9) a map of the facility ~~facility, which that~~ shows the size, orientation, and location of the facility  
29 relative to existing monitor wells, roads, structures, and other site features; and
- 30 (10) certification that the closure has been accomplished and that the information submitted is  
31 complete, factual and accurate.

32 (d) Once the permitting agency has determined that all conditions required for site closure have been satisfied,  
33 the permitting agency shall issue a notice stating that the permit for the facility has been rescinded and "closure  
34 status" has been granted.

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36 *History Note: Authority G.S. 143-215.1; 143-215.3(a);*  
37 *Eff. September 1, 2006;*

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*Amended Eff. August 1, 2012 (see S.L. 2012-143, s.1.(f)).*

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*Readopted Eff. XX 1, 201X.*