Hearing Officer's Report for the Public Hearing on proposed readoption of 15A NCAC 05A, 05B, 05F, and 05G "Mining Rules" ruleset.

Public Hearing Held

November 18, 2025

Presented to the

NORTH CAROLINA MINING COMMISSION

May 12, 2026

Department of Environmental Quality

Division of Energy, Mineral, and Land Resources

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PART I – SUMMARY OF RULEMAKING ACTIVITY

Proposed readoption of 15A NCAC 05A, 05B, 05F, and 05G "Mining Rules" ruleset.

Purpose of the Rules

The purpose of the Subchapters: 05A, 05B, 05F, and 05G of the Mining Act Rules, codified in 15A NCAC Chapter 05, are to enable full implementation of the Mining Act of 1971 (The Act). The General Assembly realized that the extraction of minerals by mining is a basic and essential activity making an important contribution to the economic well-being of North Carolina and the nation. They also realized that it is not practical to extract minerals without disturbing the surface of the earth and producing waste materials, and that the very character of certain surface mining operations precludes complete restoration of the land to its original condition. However, they stated in the Act that it is possible to conduct mining in such a way as to minimize its effects on the surrounding environment through planning and restoration. The Act is written to provide a framework to provide for the protection of the environment. The Act gave the North Carolina Mining Commission (Mining Commission) authority to adopt rules that provide more details about how that framework should be used to achieve full implementation of the Mining Act. The rules for the mining program are codified in 15A NCAC Chapter 05, specifically in Subchapters 05A, 05B, 05F, and 05G.

Necessity for Rule Change

§ 150B-21.3A requires a periodic review and readoption of all the rules used by state agencies on at least a 10-year basis. The Mining Commission has directed the staff of the Division of Energy, Mineral and Land Resources to implement the administrative process necessary for the review of the rules in Title 15A, Chapter 05 of the North Carolina Administrative Code. The proposed rule changes are designed not only to satisfy the readoption requirement, but also to update references and terminology and to revise requirements in line with current practices and technological advancements. These updates will help ensure the rules remain accurate, relevant, and effective.

In accordance with the General Statutes, the public notice for this hearing was published in Volume 40, Issue 08 of the *North Carolina Register* on **October 15, 2025**, and the public notice was posted on the Mining Commission's website. The Notice of Text is attached to this report as Appendix A.

On November 18, 2025, the Mining Commission held a public hearing in Raleigh, NC under the authority of the NC General Statutes, Chapter 150B. There were 8 members of the public that attended the meeting in person. There were 4 participants online. There were 2 member of the public that presented oral comments.

On December 15, 2025, the public comment period closed. Staff to the Commission received 31 written comments.

PART II – HEARING OFFICER RECOMMENDATIONS

The public comment period opened on October 15, 2025, and closed on December 15, 2025. There were two members of the public that presented oral comments at the hearing and Staff to the Commission received 31 written comments.

The Hearing Officer recommends that the Commission adopt the proposed rules adoption of 15A NCAC 05A .0101-.0202, .05B .0103 - .0117, 05F .0101 - .0112, and 05G .0103-.0105 ruleset as set forth in the Notice of Text, with the following exceptions:

- 15A NCAC 05B .0103 – Grammatical correction to 15A NCAC 05B .0103(e) to improve clarity of the rule. Updating the table to account for 32 years of inflation instead of 31 years. Additional language specify that the Department will publish the updated reclamation factors on their website.
- 15A NCAC 05B .0104 – Correction to amend the inconsistencies between the Regulatory Impact Analysis and the Register. Change to 05B .0104(12) to clarify that "adjoining land is specified in G.S. 74-50". Correction to 05B .0104(13) – (17) to underline to show these are new paragraphs. Correction to the text following 05B .0104(17) to strikethrough and illustrate that it is proposed for removal. Grammatical updates to 05B .0104(b)(10) and 05B .0104(d)
- 15A NCAC 05B .0113 – Grammatical correction to 15A NCAC 05B .0113 to improve clarity of the rule by putting all permit actions into the same tense.
- 15A NCAC 05B .0114 – Making the language consistent in 05B .0114(b), (c), (d), (e) and changing inhabited building to regularly occupied structure. Adding the formula reference in 05B .0114(c) for the scaled distance formulas.
- 15A NCAC 05F .0108 – Proposed for repeal. This rule was absent from the Notice of Text, however, was included in the Regulatory Impact Analysis and Draft Rules as proposed for repeal. This was proposed as unnecessary during the necessary and unnecessary process because it is redundant with statute.

PART III – SUMMARY OF PUBLIC COMMENTS AND HEARING OFFICER RESPONSES

15A NCAC 05A .0101 NAME AND ADDRESS
Proposed Language for Readoption Update the Department name and Mailing Address.
Public Comments 1. None.
Hearing Officer Response 1. None.
Revised Language for Readoption No revision made to the proposed rule language.

15A NCAC 05A .0202 AUTHORITIES AND DEFINITIONS

Proposed Language for Readoption

Proposal to update the Department name and Mailing Address, as well as add the following definitions: "Affected Land", "Administrative Change", "Contaminant", "Director", "Filed" or "Filing", "Mining Buffer", "Non-public roads", "Notice", "Transfer Material", "On-site Construction".

Public Comments

There were 19 commenters that provided statements about the definition of affected land and the definition of buffers. The comments can be summarized into the points below:

1. The comments related to 05A .0202(c)(2) provided statements that logging or timber harvesting must remain a mining activity.
2. Comments stated that 05A .0202(c)(7)(A) "unexcavated buffers" should not be defined and that only undisturbed or vegetative buffers should be defined and permitted. The comments stated that unexcavated buffers provide no protections.
3. Comments requested clarification for 05A .0202(c)(1) Administrative change. The comments wanted clarity on what constitutes a "substantial change", "typographical error", and "map inaccuracy".
4. The comments provided statements that the definition for "Affected land" in 05A .0202(c)(2) should not be added as it allows timbering to occur within the mine permit boundary, but unregulated by the mine permit. The comment also stated that the rule would be inconsistent with G.S. 74-49(7)(ii).
5. Comments opposed defining "Director" in 05A .0202(c)(4) to mean the Director of the Division of Energy, Mineral and Land Resources of the Department of Environmental Quality, or any position to which the Director has delegated their authority. The comment stated that the phrasing allows for too broad and easy delegation of power to make critical decisions and could lead to an abuse of power.
6. The comments stated that the definition of "On-site Construction" in 05A .0202(c)(10) should not include the phrase "but not sale", which eliminates any sale of material from a construction site.
7. Comments proposed that the definition for affected land in 05A .0202(c)(2), not include "where an erosion and sedimentation control plan is approved" because timber harvesting is exempt from the Sedimentation Pollution Control Act (SPCA) that requires erosion plans, and is instead regulated under the NC Forest Service best practices guidelines.
8. Comments stated that as defined in 05A .0202(c)(7)(C) a "vegetated buffer" could allow an existing forested buffer to be cut and replaced with grass and/or non-native vegetation that would not provide ethe same functions as a native riparian buffer described in 05B.0105(2).

Hearing Officer Response

1. Mining is defined pursuant to G.S. 74-49(7) and includes (ii) any activity or process constituting all or part of a process for the extraction or removal of minerals, ores, soils, and other solid matter from their original location. Land clearing for the preparation of mining where soil is exposed to accelerated erosion could be considered mining and would need to be covered in the permit or submitted as part of a modification. Areas not associated with the mining activity and identified as such would not be considered mining. The application would need to submit as part of their application a map that identifies any unrelated use area pursuant to 05B.0104(c)(13).

2. A definition of an unexcavated buffer is necessary to provide clarity on buffers that may not fit the definition of undisturbed or vegetative. Buffers provided in mine applications and included as part of the permit may exist for many reasons and are not always solely visual buffers. In order to provide measures to provide for safety to persons and adjoining property in excavation of rock pursuant to 05B.0104(b)(7) a mine permittee may propose an unexcavated buffer that would provide protection to neighboring property if a landslide were to occur, for example. An unexcavated buffer could provide space so that the excavation of a mine does not encroach on neighboring properties. Simply defining a type of buffer does not propose that they will be accepted in all situations. Additionally, a constructed berm that does provide a visual barrier would not be permitted as an undisturbed buffer. This type of visual screening method needs a defined buffer when it can be placed. The proposed buffer, type of buffer, and its applicability will still be reviewed by the Department during an application review.

3. The definition of "Administrative change" is proposed to clarify where there are changes that do not substantively change the permit. While it is not feasible to detail every scenario where a change is not substantive, the intent is to clarify that the change would not change the intent of the condition or the "spirt" of what the condition is mitigating. The phrases typographical error and map inaccuracies were included to provide context to what could be considered an administrative change; however, they are not entirely encompassing.

4. The purpose of the definition of "Affected land" in 05A .0202(c)(2) is to clarify and differentiate between lands that are subject to the mining permit because they are part of the mining operation and other lands that have activity occurring albeit within the mine permit boundary but are not associated with the mine. This is a regular occurrence where a mine operator may permit their entire parcel, but only show an affected area for the excavation, roads, and plant area. The other areas on the parcel may be utilized for agricultural use with the intent to add to the mining affected area at a later date through a permit modification.

   The comment stated that the definition of affected land in 05A .0202(c)(2) is inconsistent with G.S. 74-49(7)(ii) that states mining is "(ii) any activity or process constituting all or part of a process for the extraction or removal of minerals, ores, soils, and other solid matter from their original location." As proposed, the affected lands would include any activity or process for extracting materials, however unrelated activity that may have a surface disturbance would not be considered affected lands pursuant to G.S. 74-49(1).

5. Delegated authority is an important concept that ensures that regulatory actions can occur without bottlenecks of a single person holding sole authority. For example, pursuant to G.S.74-49(4) ""Department" means the Department of Environmental Quality. Whenever in this Article the Department is assigned duties, they may be performed by the Secretary or an employee of the Department designated by the Secretary." In the case of the Mining Act of 1971 the Secretary of the Department has the duties of the department. Without delegation of authority the Secretary

would need to perform all actions within the act. However, the statute is explicit when stating that the Secretary may designate an employee of the Department. Delegation of authority is limited in scope and defined at the Division level. In accordance with G.S. 143B-10, the Secretary of the North Carolina Department of Environmental Quality (DEQ) delegates the authority vested in the Secretary to positions within the Division of Energy, Mineral, and Land Resources (DEMLR).

6. The Commission is concerned that an operator may try to open a small mining operation under the guise of a construction site and therefore be exempt from the Mining Act. The Commission recognizes that construction activities may require removal of material but is of the opinion that the sale of material is not consistent with construction activity and would like to define that the construction exemption pursuant to G.S. 74-49(7)(d) not include the sale of material.

7. The proposed definition of Affected Land in 05A .0202(c)(2) seeks to clarify that these areas do not include unrelated activities. This is not limited to agriculture and silviculture but rather includes those activities. Other examples of unrelated activities could include unrelated office area, leased lands for schools or training facilities, processing or industrial facilities that are processing material brought onsite not associated with the mine, etc. The proposed language in 05A .0202(c)(2) goes on to say, "where an erosion and sedimentation plan is approved under G.S. 113A, Article 4, "when required". In the cases of agriculture and silviculture that the comment addressed, an erosion plan is not required and would not apply. However, there are other unrelated uses where an erosion plan would be required.

8. The change from "natural" to "vegetative" aligns with G.S. 74-51(f) which specifies visual screening "vegetative or otherwise". The change from "natural" to "vegetative" would not change the designation of any undisturbed buffers. Any stream that has a required undisturbed buffer through State or local stream protections requirements would still need to maintain those undisturbed buffers. The intent of a vegetative buffer is to allow a permittee to enhance through vegetative plantings, where an undisturbed buffer may be too restrictive and limit any activity.

   A buffer that is clear cut and replaced with vegetation that does not provide the same functions as a natural riparian buffer, may not adequately mitigate denial criteria pursuant to G.S. 74-51(d)(2) "That the operation will have unduly adverse effects on potable groundwater supplies, wildlife, or fresh water, estuarine, or marine fisheries;" or potentially denial criteria pursuant to G.S. 74-51(d)(3) "That the operation will violate standards of air quality, surface water quality, or groundwater quality that have been promulgated by the Department." This proposed buffer could result in a permit denial or if conducted after issuance could result in revocation and possible enforcement actions.

Revised Language for Readoption

No revision made to the proposed rule language.

15A NCAC 05B .0103 BONDING REQUIREMENTS

Proposed Language for Readoption

Proposal to match changes to G.S. 74-54 that raised the maximum amount the Department can require for a bond for a single mining site, or a blanket bond for all sites, from $500,000 to $1,000,000. There is also a proposal added to this rule to adjust the per acre bond factors to account for inflation over the last 30 years. Factors established in 1994 by the Mining Commission have been proposed to increase at 2% per year to be implemented for 2026 and increased at 2% per year for each subsequent year. The Commission is proposing these increases to account for increased costs in order to ensure that adequate reclamation can be performed. Failing to increase the bonds to keep up with inflation would result in insufficient funds to perform reclamation. (The maximum of $1,000,000 per site or the maximum blanket bond still applies.) Updates to the rule also include the requirements for information to be provided to the Department when completing Surety Bonds, Assignment of Savings Accounts, Irrevocable Standby Letter of Credits and Bank Guaranty.

Public Comments

There were 2 commenters that addressed when the new bonding requirements may be assessed, the cost of the initial calculation and reporting of the reclamation factors.

1. The comments stated that 05B .0103(e) should clarify that applications for new, transferred, or modified permits are the actions intended to subject operator to the new bonding amounts.
2. The comments stated that the updated values in the table only account for 31 years of 2% inflation. (1994 – 2025). Since the new rules are going to be implemented in 2026 the values in the table should be increased by 32 years.
3. The comments stated that the table in rule should be updated every year to reflect the change from the calculation. The comment recommended the language "the Department shall publish the Mining Reclamation Factors that will be in effect on July 1 of each year in the offices of the Department and on the Department's website. Upon making each annual adjustment to the Mining Reclamation Factors, the Department shall notify the Codifier of Rules, who shall adjust the amounts in 15A NCAC 05B .0103(e)(1) of the NC Administrative Code."
4. The comment stated that the RIA should be revised to reflect the cost to industry will be "major" to account for the increase in bonding requirement. The impact to small mines that have a cash bond or letter of credit will see a 60% increase.
5. Comments stated that they were concerned with the removal of the "good operating record" standard in 05B.0103(g), that allows the Director to make a determination if the operator does not have a good operating record that a single blanket bond covering all their sites may not be utilized and that each site must be bonded separately. The comment states that the denial criteria pursuant to G.S. 54-51(d)(7), would allow the Department to deny a permit for an applicant who has not been in substantial compliance or has not corrected violation.
6. Comments recommended a grammatical fix in 05B .0103(e) to improve clarity of the rule. The proposed language is as follows: (e) The initial bond calculation amount shall be based upon the criteria included in the table in Subparagraph (1) of this Paragraph and applied per acre of land approved by the Department to be affected. The criteria in Subparagraph (1) of this Paragraph does not apply to existing bonds already on file with the Department, until action is required to change the ~~bond~~ bond, including new, ~~transfer,~~ transferred, and modified mining permits on file with the ~~Department~~ Department, or compliance action taken by the Department.

Hearing Officer Response

1. The proposed language in 05B .0103(e) already contains the specific language that the new bonding amounts only apply to new, transfer, modified mining permits or if there is compliance action that requires the bond to be updated.
2. The bond factor table in the proposed rule is an estimate of inflation adjusted values to account for increase since 1994. As the comment mentions, the reclamation factors in the proposed rule have been increased from 1994 to 2025, a total of 31 years at 2% per year using simple interest. The table will be updated to account for 32 years at 2% per year using simple interest to bring the bond factors to a 2026 value.). **The proposed changes to the rule are shown below.**
3. General Statute § 150B-19(6) allows adoption of rules that modify a requirement set in rule as long as specific guidelines are established that the agency must follow in modifying the requirement. The annual 2% increase is allowable under the APA without going through the formal rulemaking—a process that would be required if the table in the rule were required to be changed annually. Additional language has been added to the rule that states that the Department shall publish the updated factors on their website each year on July 1. **The proposed changes to the rule are shown below.**
4. Based on the comment, the economic impact of this rule was reevaluated and it was determined that the rule could have a significant economic impact as the commenter suggested. The fiscal note has been revised to include an addendum on this rule that reflects more accurately and in detail the costs to industry, demonstrates the necessity of those raised costs, and provides an alternatives analysis demonstrating that the bond amounts chosen are the least burdensome to industry that also will achieve the regulatory objective. The fiscal note addendum has been published on DEQ's website and will be published on the Mining Commission's website if it is adopted.
5. There is no authority in statute pursuant to G.S. 74-54(b) that considers the permittees operating record. The proposal to remove the language in rule is to remain consistent with statute.
6. The proposed language in the comment for 05B .0103(e) improves the clarity of the rule and is recommended to amend the rule with the proposed changes. **The proposed changes to the rule are shown below.**

Revised Language for Readoption

15A NCAC 05B .0103 IS PROPOSED FOR READOPTION AS FOLLOWS:

15A NCAC 05B .0103 BONDING REQUIREMENTS

(a) After an application for a new mining permit or permit ~~renewal, modification,~~ modification, or transfer is ~~considered approvable~~ approved by the Department, an applicant or permittee shall ~~must~~ file a bond with the Department in an amount to be determined by the ~~Director.~~ Director in accordance with this Rule and G.S. 74-54.

(b) If the applicant or permittee disagrees with the bond amount determined by the Director, the applicant or permittee may submit to the Director for consideration, an estimate of reclamation costs from a third-party contractor to be used as the bond amount. The estimate shall be provided to the Director within 30 days following the receipt of the Director's initial bond determination. After considering the estimate and recommendations ~~provided~~ by Division ~~his~~ staff, the Director shall notify the applicant or permittee of ~~his~~ the bond determination and the process and conditions used to set the bond amount.

(c) The Director ~~may~~ shall ~~invite~~ allow the applicant or permittee to submit to the Department an estimate of reclamation costs from a third-party contractor for the Director's use in determining the required bond amount. After considering the estimate and the recommendations provided by ~~his~~ Division staff, the Director shall notify the applicant or permittee of ~~his~~ the bond determination and the process and conditions used to set the bond amount.

(d) The amount of the bond shall be based on the costs to reclaim the affected land as determined by the reclamation plan approved pursuant to G.S. 74-53 and ~~15A NCAC 5B .0004(b).~~ 15A NCAC 05B .0104(b). ~~The bond amount shall be based on a range of five hundred dollars ($500.00) to five thousand ($5000.00) per acre of land approved by the Department to be affected.~~ If the mining permit is modified to increase the total affected land, the bond shall be increased ~~accordingly~~ pursuant to this Rule. The Director shall consider the method and extent of the required reclamation for a particular site in determining the bond amount. As areas at a site are reclaimed and formally released by the Department, the permittee may substitute a bond in an amount covering the remaining affected land at the site for the bond previously filed with the Department; otherwise, without such bond substitution, the Department shall retain the previously filed bond until all reclamation has been completed and approved by the Department.

(e) The initial bond calculation amount shall be based upon the criteria included in the table in Subparagraph (1) of this Paragraph and applied per acre of land approved by the Department to be affected. The criteria in Subparagraph (1) of this Paragraph does not apply to existing bonds already on file with the Department, until action is required to change the bond, including new, transferred, and modified mining permits on file with the Department, or pursuant to compliance action taken by the Department resulting in requirement for an application for new, transferred or modified mining permits.

(1) Table of Mining Reclamation Factors.

Commodity Codes:			
SG	Sand and/or Gravel	PF	Pyrophyllite
GS	Gemstone	OL	Olivine

Borrow	Borrow/fill dirt	KY	Kyanite/Sillimanite/Andalusite
CS	Crushed Stone	PH	Phosphate
DS	Dimension Stone	CL	Clay/Shale
FS	Feldspar	PE	Peat
MI	Mica	AU	Gold
LI	Lithium	TI	Titanium

Type	**Tailings/ Sediment Ponds (Lake)**	**Tailings/ Sediment Ponds (Filled In)**	**Stockpiles**	**Wastepiles**	**Processing Area/Haul Roads**	**Mine Excavation (Lake)**	**Mine Excavation (Positive Drainage)**
SG,GS, Borrow	$820	$2,460	$2,952	$3,280	$2,952	$820	$3,280
CS, DS, FS, MI, LI, PF, OL, KY	$820	$2,460	$2,952	$3,280	$3,280	$820	$4,100
PH	$1,640	$4,100	$4,100	$8,200	$8,200	$3,280	$8,200
CL	$1,640	$4,100	$4,100	$8,200	$8,200	$3,280	$6,068
PE, AU, TI, OT	$1,640	$4,100	$4,100	$4,920	$5,740	$3,280	$8,200

(2) the amounts included in Subparapragh (1) of this Paragraph shall be increased by two percent per year on an annual basis beginning on July 1, 2027.

(3) the Department shall publish the Mining Reclamation Factors that will be in effect on July 1 of each year in the offices of the Department and on the Department's website.

(f) The final bond amount shall be calculated by increasing the initial bond calculation from Paragraph (e) of this Rule, by two percent per year of the estimated life of mine or life of lease to account for estimated inflation. The calculation shall be performed by Simple interest: Bond = Current Bond Value x (1+(.02 x # of years)).

(g) If an applicant or permittee has multiple sites, the applicant or permittee may file a separate bond with the Department for each site or the applicant or permittee may submit one blanket bond covering all sites in the aggregate amount of all bond totals. Once the total amount of all bonds for separate sites or the total blanket ~~bond(s)~~ bond for all sites reaches ~~five hundred thousand dollars ($500,000)~~ one million dollars ($1,000,000):

(1) the applicant or permittee with separate bonds may substitute a ~~five hundred thousand dollar ($500,000)~~ one million dollars ($1,000,000) blanket bond to be used for all future sites, or

(2) the applicant or permittee with ~~five hundred thousand dollar ($500,000)~~ one million dollars ($1,000,000) blanket bond covering all sites may use that blanket bond for all future sites,

~~if the Director finds that the applicant or permittee, in either case, has a good operating record, that the five hundred thousand dollars ($500,000) is sufficient to reclaim all sites and that no additional reclamation bond money is needed. If the Director finds that the applicant or permittee does not have a good operating record, that the five hundred thousand dollars ($500,000) is not sufficient to reclaim all sites, or that additional reclamation money is needed, the Director shall require per acreage bonding for future sites as provided in Paragraph (d) of this Rule.~~

~~(f) For the purposes of this Rule, a good operating record is defined as two consecutive years of operation within the State of North Carolina without final assessment of a civil penalty or other enforcement action pursuant to G.S. 74-64, or having a permit suspended or revoked under G.S. 74-58, or having a bond or other surety forfeited under G.S. 74-59. For the purposes of this Rule, a bond shall include any and all types type of security allowed under G.S. 74-54.~~

(h) In accordance with G.S. 74-51(h) no permit shall be issued until the operator deposits with the Department a reclamation bond pursuant to G.S. 74-54. Upon written request of the applicant or permittee to the Director, an additional specified period of time to deposit the bond, not to exceed 60 days shall be granted by the Director.

(i) In accordance with G.S. 74-51(d)(1) failure to provide the required security within the specified time period, or any extension granted pursuant to Paragraph (h) of this Rule, shall result in denial of the application.

(j) Any bond deposited with the Department shall include the following elements:

(1) Surety Bonds:

(A) Name, address and type of business entity of Principal exactly matching name of Permittee;

(B) The State of North Carolina, Department of Environmental Quality 1612 Mail Service Center Raleigh, North Carolina 27699-1612 as the Obligee;

(C) Name and address of Surety authorized by the Insurance Commissioner of North Carolina to do business in North Carolina;

(D) Sum of bonded amount required under this Rule;

(E) Conditioned that the Principal conducts or will conduct mining operations in North Carolina as described in the application for an operating permit which includes a Reclamation Plan as provided in G.S. 74-53 and has obtained approval of the application from the Department of Environmental Quality;

(F) Further conditioned that if the Principal shall comply with the requirements set forth in "The Mining Act of 1971" (G.S. 74-46 through 74-68) and with the rules and regulations adopted pursuant thereto and faithfully perform all obligations under their approved Reclamation Plan then this obligation shall be null and void; otherwise to be and remain in full force and effect until released by the Department of Environmental Quality in accordance with G.S. 74-56 or canceled by the surety. Cancellation by the surety shall be effectuated only upon 60 days written

notice thereof to the Department of Environmental Quality and the operator as provided in G.S. 74-54;

(G) Signature, Name, Title and Attestation by Officer of the Principal; and

(H) Notarization.

(2) Assignment of Savings Account:

(A) Name, address and type of business entity of Assignor exactly matching name of Permittee;

(B) The State of North Carolina, Department of Environmental Quality, 1612 Mail Service Center, Raleigh, North Carolina 27699-1612 as the Assignee;

(C) Name, address and account information for the bank holding assigned account;

(D) Sum of assigned amount required under this Rule;

(E) Statement that, in consideration of the promises contained in the agreement and the Department accepting the assignment of the savings account in question, the Assignor sells, assigns, transfers and sets over to the Department the sum in Part (j)(2)(D) of this Rule and directly authorizes the bank holding the assigned account to pay over to the Department the sum in Part (j)(2)(D) of this Rule upon request;

(F) Conditioned that if the Assignor conducts the mining operations faithfully, honestly, and lawfully and in compliance with the requirements of the Mining Act of 1971 and applicable rules and regulations adopted pursuant thereto, then the assignment shall be null and void; otherwise it shall remain in full force and effect and that compliance with the requirement of the Mining Act of 1971 and applicable rules and regulations shall be determined by the Department;

(G) Specification that the assignment is made and held by the Department as collateral security in lieu of a surety bond in accordance with "The Mining Act of 1971" (G.S. 74-46 through 74-68) to assure compliance and reclamation of the permitted operation and for all direct or indirect liabilities of the assignor Operator to the assignee Department that may arise by reason of the Mining Act 1971, Article 7, Chapter 74 of the General Statutes of North Carolina;

(H) Signature, Name and Title of an officer of the Assignor;

(I) Notarization of the Assignor's signature;

(J) Signature, Name and Title of an officer of the bank holding the assigned account acknowledging the assignment and committing that the funds assigned shall not be disbursed except to the Department so long as the assignment remains in effect; and

(K) Notarization of the Bank's signature.

(3) Irrevocable Standby Letter of Credit (ILOC)

(A) Name, address and type of business entity of Operator exactly matching name of Permittee;

(B) Name, address and type of business entity of Issuing Institution;

(C) The State of North Carolina, Department of Environmental Quality, Department of Environmental Quality 1612 Mail Service Center Raleigh, North Carolina 27699-1612 as the Beneficiary;

(D) Effective Date of the ILOC;

(E) Automatic renewal clause, such that the ILOC is continuous in nature, subject to at least 60 days notice via certified mail, return receipt requested, to the Permittee and the Department prior to nonrenewal;

(F) Sum of the ILOC required under this Rule;

(G) That the sum of the ILOC is available by the Department drafts on sight;

(H) Instructions for drafts by the Department;

(I) Non-transferability clause;

(J) Choice of Law provisions specifying North Carolina venue for all disputes

(K) Statement that the Issuing Institution agrees with the drawers, endorsers, and bona fide holders that all drafts drawn under and in compliance with the terms of the ILOC will be duly honored upon presentation to the Issuing Institution.

(L) Statement that the ILOC is being issued in lieu of a surety bond in accordance with "The Mining Act of 1971" (G.S. 74-46 through 74-68) to assure compliance and reclamation of the permitted operation;

(M) Signature, Name and Title of an officer of the Issuing Institution; and

(N) Notarization of the Issuing Institution officer's signature.

(4) Bank Guaranty

(A) Name, address and type of business entity of Operator exactly matching name of Permittee;

(B) Name, address and type of business entity of Issuing Institution;

(C) The State of North Carolina, Department of Environmental Quality, Department of Environmental Quality 1612 Mail Service Center Raleigh, North Carolina 27699-1612 as the Beneficiary;

(D) Effective Date of the guaranty;

(E) Automatic renewal clause, such that the guaranty is continuous in nature, subject to at least 60 days notice via certified mail, return receipt requested, to the Permittee and the Department prior to nonrenewal;

(F) Sum of the guaranty required under this Rule;

(G) That the sum of the guaranty is available by the Department drafts on sight;

(H) Instructions for drafts by the Department;

(I) Non-transferability clause;

(J) Choice of Law provisions specifying North Carolina venue for all disputes

(K) Statement that the Issuing Institution agrees with the drawers, endorsers, and bona fide holders that all drafts drawn under and in compliance with the terms of the guaranty will be duly honored upon presentation to the Issuing Institution.

(L) Statement that the guaranty is being issued in lieu of a surety bond in accordance with "The Mining Act of 1971" (G.S. 74-46 through 74-68) to assure compliance and reclamation of the permitted operation;

(M) Signature, Name and Title of an officer of the Issuing Institution; and

(N) Notarization of the Issuing Institution officer's signature.

(5) Cash Deposit:

(A) Cash in the form of a cashiers or certified check in the sum required under this Rule; and

(B) Cover Letter specifically identifying Permittee and specifying the intended function of the money to serve as the required bond amount under this Rule

History Note: *Authority G.S. 7451; 7454; 143B-290;*
Eff. February 1, 1976;
Amended Eff. January 1, 1994; April 1, 1990; November 1, 1985; November 1, 1984;
Readopted Eff. XXXX, 2025.

15A NCAC 05B .0104 INFORMATION REQUIRED IN PERMIT APPLICATION

Proposed Language for Readoption

Proposal to add application requirements, mapping requirements, clarify where approvable reclamation resources can be found, clarify who is authorized to sign an application and clarify requirements on time for submitting application fees. New requirements for the application require that the applicant identify the location of the mine and contact information. New map requirements include a requirement to show the permit boundary, existing and proposed contours, vicinity map, lands designated for use other than mining, cross sections of the excavation, and future reserves. The NC Sediment Manual, and NC Surface mining manual have been added as additional reclamation resources that may be approved for revegetation. Additional application elements include a recorded land entry agreement, proof of ownership, or proof of rights through a lease, and an authorization for the Department to launch drones for inspection purposes.

Public Comments

There were 15 commenters that provided statements about information required in the mining permit application. The comments can be summarized into the points below:

1. Comments stated that "owners of record" for the purposes of notice and the labeling of owners of record on the mine maps included all deeded owners. Comments suggested replacing a diligent search of "tax records" with a diligent search "of the register of deeds."
2. Comments stated that the application should require anticipated size and life of mine.
3. Comments stated that measures to screen must be consistent with current and identified use of neighboring land.
4. Comments stated that the addition of language in rule to allow for reclamation to occur longer than 2 years is vague and could allow reclamation to proceed indefinitely.
5. Comments stated that the addition of "mining" in 05B .0104 (a)(6)should not be added and that anything done on the site of the mine, whether it be mining related or not should be subject to wastewater discharge rules.
6. Comments stated that the proposed change from "To be taken" to "required" in 05B .0104 (a)(8), (9), and (10) should not occur. There was a concern on who determines what is required.
7. Comments proposed that "at a minimum" be added to 05B .0104(b) "Information required in the reclamation plan shall include methods and construction details for:"
8. Comments stated that approval for revegetation plans in 05B .0104(10)(A) – (10)(G) should include NC State Parks Department if the mine site is next to a State park.
9. Comments stated that the North Carolina Surface Mining Manual is dated and should not be used for the purposes of providing reference for revegetation.
10. Comments stated that 05B .0104(c) use "must" instead of "shall" for the requirements in mine maps.
11. Comments stated that 05B .0104(13) – (17) are underlined, indicating new language, in the Regulatory Impact Analysis (RIA) but not the Public notice found in the North Carolina Register. Additionally, the text following 05B .0104(17) has a strike through, indicating removal in the RIA but not in the Public notice found in the North Carolina Register.
12. Comments stated that the Department should not approve methods other than tax records to identify owners of adjoining land. It is not the Department's area of expertise and could accidentally approve a method that does not result in a thorough records search. The Comment proposed that owners of record include tax records and deeded owners.
13. Comments stated that there should be a grammatical correction to 05B .0104(b)(10) to remove "plan".
14. Comments stated that there should be a grammatical correction to 05B .0104(b)(10)(C) to remove "in a county listed".
15. The comment requested for further clarification for the contour requirement in 05B .0104(c)(10). The comment questioned the purpose of the requirement. It also questioned the area and contour interval that should be provided.
16. Comments stated that there should be a grammatical correction to 05B .0104(d)(1) to remove "and

approved by the department".

17. Comments stated that there should be a grammatical correction to 05B.0104(d)(2 and 3) to make consistent city, county and town manager in d(2) and county and municipality manager in d(3).
18. There was one comment that provided the statement that the requirement to record the Land Entry Agreement is costly and cumbersome for large, permitted areas with multiple tracts and landowners. The comment also stated that the current process with the Land Entry Agreements has been upheld by the courts allowing both the Department and its contractors to access the property for mine reclamation purposes.
19. Comments stated that additional information should be required in the application to identify established State or County plans for the land to be used for public parks, public recreation area, or other public uses. Future plans for state or county parks.
20. Comments stated that additional information should be required in the application to provide an assessment of why a mine is better use of land than proposed park or proposed recreation area.
21. Comments stated that the application should include the identification of permanent undisturbed buffers.
22. Comments stated that the application should include a verification that Federal or State grant obligation are not being broken.

Hearing Officer Response

1. G.S. 74-50(b1)(2) states that the applicant provide "owners of record" of notice of the application. The rule 05B .0104 states that the names of owners or record appear on the mine maps. "Owners of record" is not defined in statute or rule, however 05B .0104 clarifies that owners of record can be determined through a diligent search of the tax records or other sources of information approved in advance by the Department. It is important to note that tax records and title searches are both methods of showing ownership interest. Title searches are typically performed by title companies and attorneys and would be an unnecessary burden to put on the regulated community and the Department to verify that the tax record matches the title. Tax records are regularly maintained by the local government to determine ownership for taxing purposes. In the case an owner is not identifiable through tax records, the mine permit applicant may propose another method to identify the owner of record. This alternate method must be approved by the Department in advance. The Department is not determining ownership as many of the comments allege, it is allowing alternate methods of proof of ownership for the purpose of notice or labeling a mine map.
2. Size of the mining operation is currently part of the required information in the application. The average and proposed maximum depth are questions in the application. The size of the operation is requested through the affected area table, where the applicant has to list permitted acres as well as the acreages for the different operation activities. These are requirements in 05B .0104(4)(A)-(F). The proposed life of the operation is provided as part of the bond calculation. Pursuant to G.S. 74-50(d), mining permits are issued for life-of-site of the operation, however in order to calculate the amount of bond the proposed life is requested to calculate the cost of the bond at the potential year of closure. Each application is reviewed as a snapshot in time for what is proposed in the application. The final pit design is included in each application as part of the reclamation map as well as in the affected area table. No potential expansions beyond what is proposed in the application are required as these would be speculative. If however, a mine permittee wishes to expand beyond what is permitted it would require that a permit modification application be submitted to the Department, pursuant to G.S. 74-52. Any modification to change the size of the pit from the approved permit would need to include the information for that modification.
3. G.S. 74-51(f) provides that a permit may be conditioned to include a requirement of visual screening, vegetative or otherwise, so as to screen the view of the operation from public highways, public parks, or residential areas, where the Department finds screening to be feasible and desirable. To require that the screening method be consistent with the use of neighboring properties is outside the authority of the Act. The Mining Act does not address property values or aesthetics. Pursuant to G.S. 74-51, if the Department makes a finding that the operation including any proposed buffers or mitigation measures, would have a significantly adverse effect on the purposes of a publicly owned park, forest or recreation area, then the Department may deny the permit.
4. Pursuant to G.S. 74-53 "The plan shall provide that reclamation activities shall be completed within two years after completion or termination of mining on each segment of the area for which a permit is requested unless a longer period is specifically permitted by the Department" allows for longer. The statute is explicit that a longer period than 2 years to reclaim is allowable, so long as it is permitted by the Department. The rule is consistent with statute. This is an important distinction especially if an operator has provided a detailed reclamation schedule detailing the activities occurring during reclamation that would require a longer period than two years.
5. The addition of the word mining is not limiting rather it is clarifying that the rules apply to the operation regulated by the "mining" permit. The mining operation is not limited to the excavation,

rather the mining operation is all areas under permit.

6. The proposal to use the word "required" instead of "to be taken" is to clarify the rule. The permittee is required to protect adjacent surface resources and therefore they need to provide their intended practices to meet this requirement. The comment asked, "who determines what is required?" The requirement to protect surface resources is a statutory requirement found in the denial criteria pursuant to G.S. 74-51(d).
7. According to the 2021 Amendment to the 2019 Administrative Rule Style Guide (section 2.5) "Minimum and at least. Rules set minimum standards that the regulated public must follow. The use of the terms "at a minimum" or "at least" is unnecessary. Those terms should not be used."
8. Rule 05B .0104(b)(10) describes the list of agencies that may be used to approve a revegetation and stabilization for the affected areas. The approval of the plan is not relevant for the subsequent use of the land, rather it is focused on the seed mixture and plan to ensure that vegetation is established quickly to avoid loss of sediment. The list provides applicants with a discrete list of agencies from which they can select to obtain approval of their revegetation plan. Rule 05B .0104(b)(11) provides resource documents than can be utilized in lieu of the agencies listed in 05B .0104(b)(10). It is plausible that even if State Parks was included in the list that the applicant may choose not to utilize that agency as an approver.
9. The North Carolina Surface Mining Manual was developed over 30 years ago, however despite being dated, the information in the revegetation section remains valid for stabilizing disturbed areas. The purpose of revegetation is to minimize erosion and loss of sediment, so therefore the seed mixture should include some species that germinate quickly. Native species, while also recommended, may have a longer germination period that could allow for erosion to occur before vegetation is established.
10. According to the 2021 Amendment to the 2019 Administrative Rule Style Guide (section 2.5) ""Shall" usually imposes upon someone a duty to act. When a sentence contains the word "shall," check for proper use of the word by reading the sentence and substituting the phrase "he or she has the duty" for "he or she shall." To prohibit, use "shall not." Do not use the word "must.""
11. When submitting the rules to the Register there was a formatting issue with 05B .0104(12) – (17) and the text following 05B .0104(10). 05B .0104(12) has additional language to clarify that "adjoining land is specified in G.S. 74-50" which was in the RIA, but not the NC Register. The language should be included and has been added to the proposed rule change below. Subparagraphs (13) through (17) are all new Subparagraphs and should have been included in the NC Register. These Subparagraphs have been added to the proposed rule change below. The text below 05B .0104(17) is proposed for removal because it has been rewritten as Subparagraphs (13)-(17) and other areas of the Paragraph. **The proposed changes to the rule are shown below.**
12. Rule 05B .0104(d)(1) clarifies that owners of record can be determined through a diligent search of the tax records or other sources of information approved in advance by the Department. It is important to note that tax records and title searches are both methods of showing ownership interest. Title searches are typically performed by title companies and attorneys and would be an unnecessary burden to put on the regulated community and the Department to verify that the tax record matches the title. Tax records are regularly maintained by the local government to determine ownership for taxing purposes. In the case an owner is not identifiable through tax records, the mine permit applicant may propose another method to identify the owner of record. However, it is up to the applicant to provide to the Department the alternate method and a reason why the alternate method is necessary. The requirement in ruled 05B .0104(d)(1) is to include the information in the application of the names of owners of record. The rule does not change the

notice requirement pursuant to G.S. 74-50(b1), rather it provide the Department with information on how to verify that notice has been provided the adjoining landowners.

13. The word "plan" in 05B .0104(b)(10) "the affected areas which ~~plan~~ shall be approved." is a grammatical error and will be corrected in the amended proposed rules. **The proposed changes to the rule are shown below.**

14. The phrase "in a county listed" in 05B .0104(b)(10)(C) "North Carolina Cooperative Extension County Director ~~in a county listed~~ in the county(s) where…." is a grammatical error and will be corrected in the amended proposed rules. **The proposed changes to the rule are shown below.**

15. The contours need to be provided on the mine maps to accurately represent the topography of the site. Drainage areas need to be clearly defined to determine if erosion and sediment control measures have been accurately designed. Slopes of overburden areas need to be accurately represented for slope analysis. Depending on the area, contour interval may change. If additional detail is needed on contour intervals, the Department can request this information in an additional information request.

16. The phrase "and approved by the Department" in 05B .0104(d)(1) "or other sources of information approved in advance by the Department that identifies the owners of all adjoining land ~~and approved by the Department~~." is a grammatical error and will be corrected in the amended proposed rules. **The proposed changes to the rule are shown below.**

17. This is a grammatical error and will be corrected in the amended proposed rules to make 05B .0104(d)(3) consistent with 05B .0104(d)(2) and use city, county and town manager rather than county and municipality manager. **The proposed changes to the rule are shown below.**

18. The current practice of submitting a right of entry agreement with landowner and applicant signatures as part of an application for a new permit, permit modification, or permit transfer only provides a snapshot of landownership at the time of the application. Often times a landowner may sell their property to a new landowner, outside of any mine permit activity. When this happens the right of entry agreement on file with the Department is not up to date since the new landowner has not signed this document. Mine permittees are not in the practice of letting the new landowner know of the requirement to sign the right of entry agreement, nor are they in the practice of sending to the Department an updated right of entry agreement every time land where the permit is located changes hands.

    Recording the right of entry agreement ensures that each time the property changes hands that the agreement is up to date for the current owner. This is even more important on large permitted areas with multiple tracts and landowners because it eliminates the need for the permittee to manage the paperwork for right of entry agreements for each individual landowner.

19. During the application process the application is routed to other state and federal commenting agencies. Pursuant to G.S. 74-50(b3)(2), the Division of Parks and Recreation, Department of Natural and Cultural resources is requested to provide comment on the application to address whether the operation will have a significantly adverse effect on the purposes of a publicly owned park, forest or recreation area. Any park or recreation area that is proposed but not yet existing would be speculative as to whether there is an adverse effect. Similar issues have been addressed by the NC Supreme Court in litigation regarding North Carolina's Transportation/Roadway Corridor Official Map Act.

20. The requested requirement for an applicant to provide an assessment of why a mine is better use of land than proposed park is outside the scope of the Mining Act.

21. The requested requirement for an applicant to identify permanent undisturbed buffers are already required in 05B .0104(a)(10) (measures to screen from public view) and 05B .0104(a)(8) (measures to protect against landslides). These buffers would be reviewed as part of an application and if approved become permanent until or unless a modification application were submitted and approved pursuant to G.S. 74-52.
22. The requested requirement for an applicant to provide verification that federal/state grant obligation are not being broken is outside the scope of the Mining Act.

Revised Language for Readoption

15A NCAC 05B .0104 IS PROPOSED FOR READOPTION AS FOLLOWS:

15A NCAC 05B .0104 INFORMATION REQUIRED IN PERMIT APPLICATION

(a) The completed application for the mining permit shall include information concerning the mining operation and a reclamation plan for the restoration of all affected land. Information required concerning the mining operation shall include:

(1) materials to be mined;

(2) method of mining;

(3) expected depth of mine;

(4) size of the mine, including:

(A) acreage for tailings ponds,

(B) acreage for stockpiles,

(C) acreage for waste piles,

(D) acreage for processing plants,

(E) acreage for mine excavation,

(F) acreage for annual disturbance;

(5) anticipated effect on wildlife, freshwater, estuarine or marine fisheries;

(6) whether ~~or not~~ the mining operation will have a ~~waste water~~ wastewater discharge ~~or air contaminant emission which~~ that will require a permit from the ~~division of environmental management;~~ Division of Water Resources, an air contaminant emission that will require a permit from the Division of Air Quality, or will have a stormwater discharge that will require a permit from the Division of Energy, Mineral, and Land Resources;

(7) ~~method~~methods to prevent physical hazard to any neighboring dwelling house, school, church, hospital, commercial or industrial building, or public road if the mining excavation will come within 300 feet thereof;

(8) measures ~~to be taken~~ required to ~~insure~~ ensure against landslides and acid water pollution;

(9) measures ~~to be taken~~ required to minimize siltation of streams, lakes, or adjacent properties during the mining operation;

(10) measures ~~to be taken~~ required to screen the mining operation from public ~~view.~~view;

(11) name of mine and location;

(12) responsible officer contact information;

(13) site contact information; and

(14) statement of authority as provided in Paragraph (f) of this Rule, when necessary.

(b) Information required in the reclamation plan shall ~~include:~~include methods and construction details for:

(1) intended plan for overall mine reclamation, subsequent land use and the ~~general~~ methods to be used in reclaiming the affected land;

(2) intended practices ~~to be taken~~ required to protect adjacent surface resources;

(3) intended methods to prevent or eliminate conditions hazardous to animal or fish life in or adjacent to the affected areas;

(4) intended methods of rehabilitation of settling ponds;

(5) intended methods of restoration or establishment of stream channels and stream beds to a condition minimizing erosion, siltation and other pollution;

(6) intended measures to stabilize slopes;

(7) intended measures to provide for safety to persons and adjoining property in excavation in rock;

(8) intended measures of disposal of mining refuse and control of contaminants;

(9) provisions to prevent collection of noxious, odious or foul water in mined areas; and

(10) plan for revegetation and reforestation or other surface treatment of the affected areas which ~~plan~~ shall ~~must~~ be approved in writing by one of the following prior to submission of the application:

(A) Authorized ~~representatives~~ representative of the local soil and water conservation district having jurisdiction over lands in question;

(B) Authorized ~~representatives~~ representative of the ~~division of forest resources, Department of Environment, Health, and Natural Resources;~~ North Carolina Forest Service within the Department of Agriculture and Consumer Services;

(C) North Carolina Cooperative Extension ~~County agricultural extension chairmen~~ County Director in the county(s) where the site is located or research and extension personnel headquartered at North Carolina State University in the ~~school of agriculture and life sciences~~ School of Agriculture and Life Sciences;

(D) North Carolina licensed ~~landscape architects;~~ Landscape Architect pursuant to G.S. 89A;

(E) North Carolina licensed Professional Engineer pursuant to G.S.89C;

~~(E)~~(F) Private consulting ~~foresters~~ forester referred by the ~~division of forest resources, Department of Environment, Health, and Natural Resources;~~ North Carolina Forest Service within the Department of Agriculture and Consumer Services; or

~~(F)~~(G) Others as may be approved by the ~~department;~~ Department; Provided that areas expected to be in use beyond the maximum permissible permit period, such as processing plants or stockpiles, do not require a specific revegetation plan;

(11) In lieu of the written approval required by Subparagraph (10) of this Paragraph a plan for revegetation and reforestation developed utilizing one of the following:

(A) North Carolina Erosion and Sedimentation Control Planning and Design Manual; or

(B) North Carolina Surface Mining Manual: A Guide for Permitting, Operation and Reclamation; and

~~(11)~~(12) time schedule of reclamation that provides that reclamation activities be conducted simultaneously with mining operations whenever feasible and in any event be initiated at the earliest practicable time after completion or termination of mining on any segment and completed within two ~~years.~~ years unless a longer period is specifically permitted by the Department.

(c) An application shall include ~~In addition to the form, the operator shall also submit two copies of a county map showing the mine location and two copies~~ a copy of a mine map. Mine maps shall be consistent with the reclamation plan and shall ~~should~~ be accurate drawings, aerial photographs or enlarged topographic maps of the mine area and ~~must clearly~~ shall show the following:

(1) property lines or affected area of mining operation;

(2) outline of pits;

(3) outline of stockpile areas;

(4) outline of overburden disposal areas;

(5) location of processing plants (Processing plants may be described as to location and distance from ~~mine if sufficiently far removed.);~~ the mine if not contiguous to the mine property.);

(6) location and name of streams and lakes;

(7) outline of settling ponds;

(8) location of access roads;

(9) mine permit boundaries;

(10) existing and proposed contours showing all drainage areas;

~~(9)~~(11) map ~~legend;~~legend, including:

(A) name of company,

(B) name of mine,

(C) north arrow,

(D) county,

(E) scale,

(F) date prepared,

(G) name and title of person preparing map; and

~~(10)~~(12) names of owners of record, both public and private, of all adjoining ~~land.~~ land as is specified in G.S. 74-50.

(13) Any unrelated use area, that has the potential to disturb the soil surface, that does not meet the definition of mining within the permit boundaries.

(14) Vicinity map showing the mining operation in relation to the general area at a minimum scale of 1:24,000.

(15) Drawings showing typical sections or cross sections and layout of proposed reclamation where such drawings will assist in describing reclamation.

(16) Approximate limits of future reserves not included in affected area.

(17) Intended reclamation for projected phases or segments when reclamation is accomplished concurrently with mining.

~~The mine maps should be correlated with the reclamation plan. The approximate areas to be mined during the life of the permit should be clearly marked.~~

~~If reclamation is to be accomplished concurrently with mining, then show segments that are to be mined and reclaimed during each year of the permit.~~

~~Add drawings showing typical sections or cross sections and layout of proposed reclamation where such drawings will assist in describing reclamation.~~

(d) An application for a mining permit shall include:

(1) The ~~name~~ names and ~~address~~ addresses of all known owners, both private and public of all land adjoining the proposed mining site as is specified in G.S. 74-50 and as determined by a ~~diligent~~ search of the tax records or other sources of information approved in advance by the Department ~~about property ownership in a manner reasonable calculated to identify~~ that identifies the owners of all adjoining land. ~~land and approved by the department.~~ The proposed mining site means all land to be included within the proposed permitted area;

(2) The ~~name~~ names and addresses of the county, city and town managers, who serve as the chief administrative ~~officer~~ officers, ~~of the county or municipality~~ of the local governments in which any part of the proposed mining site is ~~located together with the officer's mailing address;~~ located; and

(3) Pursuant to G.S. 74-50, ~~Proof~~ proof satisfactory to the ~~department~~ Department that the applicant has made ~~a reasonable~~ the required effort to notify all owners of record of all adjoining land and the county, city and town mangers, who serve as the chief administrative ~~officer~~ officers, ~~of the county or municipality~~ of the local governments in which any part of the propose mining sited is located of the pending application. Proof satisfactory to the ~~department~~ Department shall include an affidavit by the applicant ~~that he has caused~~ stating that a notice of the pending application ~~to be~~ has been sent by certified or registered mail to all known adjoining owners and to the chief administrative ~~officer~~ officers of the county or municipality. Other means of notice shall be satisfactory if approved in advance by the ~~department.~~ Department.

(4) A copy of the recorded right of entry agreement that runs with the land, is binding on landowners, lessees and permittees and extinguishes permit release, providing that the landowner may not interfere with the permittee's obligations or the Department's ability to perform reclamation.

(5) Any application submitted to the Department for approval of mining activities pursuant to G.S. 74-50 shall include proof of ownership or the portion of valid and unexpired Memorandum Of Lease or option from the property owner allowing mining activities for all lands to be included in the permitted area as defined in G.S. 74-50(b)(3).

(e) An application for a mining permit shall not be deemed filed pursuant to G.S. 74-51(b) until the nonrefundable permit application processing fee required pursuant to G.S. 74-54.1 is received by the Department. If the necessary fee is not

received within 30 days of initial receipt of the application, the application shall be denied and required to be resubmitted in its entirety.

(f) Permit applications shall be signed as follows:

(1) in the case of corporations, by a principal executive officer of at least the level of vice-president, or their authorized representative;

(2) in the case of a partnership or limited partnership, by a general partner;

(3) in the case of a sole proprietorship, by the proprietor;

(4) in the case of a municipal, state or other public entity by either a principal executive officer, ranking official or other duly authorized employee.

(5) in the case of a limited liability company, by a managing member. The signature of the consulting engineer or other agent shall be accepted on the application only if accompanied by a letter of authorization from one of the individuals listed in Subparagraphs (1) through (5) of this Paragraph.

History Note: *Authority G.S. 74-63; 74--51; 74---53;74-56*
Eff. February 1, 1976;
Amended Eff. April 1, 1990; May 1, 1982; September 1, 1979; January 31, 1979;
Readopted Eff. XXXX, 2025.

15A NCAC 05B .0105 CONDITIONS WHICH MAY BE INCLUDED IN PERMIT

Proposed Language for Readoption

Proposal to add hydrogeologic analysis. Not every site will require a hydrogeologic study, however, where there is a need to determine if there are adverse impacts to groundwater supplies, it may be necessary to add a condition to provide a study and mitigation efforts.

Public Comments

There were 12 commenters that provided statements about conditions regarding buffers. The comments can be summarized into the points below:

1. Comments stated that any requirement in existing law should be a minimum and that additional buffer space should be required so as not to change the character of neighboring properties.
2. Comments stated that buffers should not be limited to streams but also apply to parks, residential areas, or other sensitive areas.
3. Comments stated that buffers for both streams and visual screening must always be included. Comments were concerned that the Director "may" require a permit or reclamation plan containing conditions.
4. Comments stated that stream buffers should not be limited to state or local stream protections requirements. Many streams are not identified for state or local stream protections and would therefore not have buffering requirements. The existing stream buffer requirement of 50 ft wide offers no visual barrier. The buffers were originally developed for nitrogen and don't take into consideration visual or other riparia purposes. Comments proposed to protect natural riparian buffers for all affected streams.
5. Comments requested that the rule reestablish "natural" instead of "vegetative" buffers. There was concern that a vegetative buffer could result in an existing buffer being disturbed and replaced with invasive or other vegetation not suitable for wildlife protections.

Hearing Officer Response

1. The rules in 15A NCAC serve to clarify language in statute and do not supersede any requirement in statute. The authority to condition a permit is stated in G.S. 74-51(f) and 15A NCAC 05B .0105 provides examples of conditions that may be included in a permit, however, is not an exhaustive list of all conditions that may be included in a permit. "See the 2019 Administrative Rule Style Guide, Section 2.5. Frequently Misused Words and Terms – "Including but not limited to. This phrase is commonly misused and should not be used. The word "limited to" adds nothing. The word "including" does not limit anything, it simply lists illustrative meanings. Using "including" is enough."

2. Buffers are not limited to streams, G.S. 74-51(f) states that a permit may include conditions that include a requirement of visual screening, vegetative or otherwise, so as to screen the view of the operation from public highways, public parks, or residential areas, where the Department finds screening to be feasible and desirable, and therefore would be repetitive in rule.

   Additionally, 05B .0105(5) states that a permit may include other conditions necessary to safeguard the adjacent surface resources or wildlife. This could include buffers for parks, residential areas, or other sensitive areas.

3. Buffer requirements are dependent on site-specific conditions. Pursuant to G.S. 74-51(f) the Department has within its authority the ability to condition a permit "with any other reasonable and appropriate requirements and safeguards that the Department determines are necessary to assure that the operation will comply fully with the requirements and objectives of [the Mining act of 1971]. These conditions may, among others, include a requirement of visual screening, vegetative or otherwise, so as to screen the view of the operation from public highways, public parks, or residential areas, where the Department finds screening to be feasible and desirable."

   Permit conditions to include buffers may be included when there are resources that require protections. A required buffer regardless of site-specific conditions may not always be applicable, for example, in the case where there are two mining operations on adjoining parcels. These operations may request that no buffer exists, especially if final reclamation of the sites is to combine their excavations and make a single pond.

4. The rule as proposed may require that a permit include conditions for buffers to be left between the affected area and any stream with State or local stream protection requirements. Buffers required on streams without State or local buffer requirements could be outside the authority of the Department. However, pursuant to 05B .0105(5), "other conditions necessary to safeguard the adjacent surface resources or wildlife" could result in additional buffers.

5. The change from "natural" to "vegetative" aligns with G.S. 74-51(f) which specifies visual screening "vegetative or otherwise". The change from "natural" to "vegetative" would not change the designation of any undisturbed buffers. Any stream that has a required undisturbed buffer though State or local steam protections requirements would still need to maintain those undisturbed buffers.

Revised Language for Readoption

No revision made to the proposed rule language.

15A NCAC 05B .0106 STANDARDS FOR DENYING AN APPLICATION

Proposed Language for Readoption

Proposal to repeal rule 05B .0106, "Standards for Denying an Application".

Public Comments

There were four commenters who provided statements on the proposed repeal of 05B .0106.

1. Comments were provided that stated the rule is not redundant with statute and should not only be kept but also expanded to include language that noise harms the purpose of parks.
2. Comments were provided that the proposal to repeal varied from what was discussed during the stakeholder processes but recognized that there was potential for repetitive language in statue and rule and potentially the need to repeal. The comment suggested that rather than repeal to modify the language to clarify if the denial criteria cannot be mitigated that the permit shall be denied.
3. Comments were provided that requested language clarify under which circumstances a permit would be denied pursuant to G.S. 74-51(d)(2). Comments questions how denial of projects would be prioritized allowing for the conservation of public trust resources and impacts to state wildlife resources.
4. Comments provided the statement that repeal of this rule will result in loss of reasons to deny a permit application. The comment stated that this rule should be expanded.

Hearing Officer Response

1. As written, while providing some clarity on how the Department could interpret unduly adverse effect on wildlife or fisheries, generally the standards for denying a permit are listed in G.S. 74-51(d) and would make this rule repetitive. No language was proposed for expansion as G.S. 74-51(e) requires the Department to grant a permit unless any of the specific provisions for denial in paragraph (f) are found to exist.
2. G.S. 74-51(d) states that the Department may deny the permit upon finding of any of the denial criteria in G.S. 74-51(d)(1) through (7). The comment made a proposal to change the language in rule to change "may deny" to "shall deny". This change would not be consistent with statute.
3. Pursuant to G.S. 74-50(b3) the Department sends notice of the application to other state and federal commenting agencies and requests that each agency provide written comment on the application. In a scenario where an application proposes a potential adverse effect on wildlife, both the North Carolina Wildlife Resources Commission and the US Fish and Wildlife Service would have the opportunity to provide the Department with comments stating that the operation would pose an unduly adverse effect. The repeal of the existing rule does not limit the comments that can be made to the Department, nor does it limit what can be considered unduly adverse effect. The intent of the rule was to clarify what is meant by unduly adverse effect and as written "other conditions designated by the North Carolina Wildlife Resources Commission as being unduly detrimental to wildlife" does not provide any additional clarity. Even with the appeal of the rule, comments provided by NCWRC designating an activity as being unduly detrimental to wildlife could result in a denial of an application.
4. The rule as written provided some clarity on how the Department could interpret unduly adverse effect on wildlife or fisheries. The proposed repeal of this rule does not eliminate reasons for which a permit can be denied, rather the repeal of this rule would leave interpretation of unduly adverse effect on wildlife or fisheries to the Department. The two conditions listed in rule could still apply if they are determined to be unduly adverse effect.

The Commission had recommended that this rule was unnecessary during the determination of necessary and unnecessary rules. After receiving public comment during the determination of necessary and unnecessary rules, this rule was determined to be necessary by the Rules Review Commission. The Commission once again believes that this rule is duplicative with what is in Statute. Removing the rule as written will require that the Department use discretion in interpreting the denial criteria listed in G.S. 74-51(d)

Revised Language for Readoption

No revision made to the proposed repeal of rule 05B .0106

15A NCAC 05B .0110 MINING RECLAMATION REPORTS

Proposed Language for Readoption

Proposal to update rule to be consistent with the statutes. The portion of the rule requiring when mine operators had to file yearly reclamation reports and when to file after termination for an area under permit was removed and replaced by reference to the updated statute and more clarity was added on actions to take in the event of a permit release.

Public Comments

1. None.

Hearing Officer Response

1. None.

Revised Language for Readoption

No revision made to the proposed rule language.

15A NCAC 05B .0111 PUBLIC HEARINGS

Proposed Language for Readoption

Proposal to make changes to the conditions in rule for the Department holding public hearings for applications for new or modified permit requests. The following changes were proposed:

1. The proposed changes made it clear in paragraph (a) that the Department can call for a public hearing not only for a new permit application but for a modification request that adds land area to an existing permit. The statutes allow for this, but the rule never clearly stated it.
2. The existing rule requires in paragraph (a) that the public hearing on an application shall be held "No sooner than 20 or later than 60 days of the filing of the application." The proposed rule change removes the "no sooner than 20" days and substitutes "90 days" for the "no . . .later than 60 days." Since the statute allows up to 90 days to hold the hearing, it is recommended that the rule not place a 60-day maximum on the Department to hold a public hearing.
3. The existing rule in paragraph (b) requires that the Department shall provide notice of a public hearing at least 10 days prior to a public hearing. The proposal is to change that to 20 days minimum notice which will provide more time for the public to be aware of the hearing. Allowing the public more time to provide comment can result in valuable feedback.
4. The existing rule in paragraph (b) requires that the Department shall "publish notice in a newspaper." The proposal is to add "or other media platform" to the rule to allow for notice to be given in another type of media, such as an electronic media, that has general coverage in the county. The change in this rule will allow the Department to adapt to the changing media environment. As current technology moves away from printed media, notice may occur potentially in an electronic format. The goal of this requirement remains the same: to effectively reach interested members of the public and encourage their participation in the decision-making process. The Department does not expect appreciable new costs or cost savings as a result of this change.
5. Clarify in paragraph (c) that the hearing officer may allow written comments to be submitted up to 10 days after the hearing. This change is meant to emphasize the importance of adhering to the publicized public comment period dates, thereby encouraging stakeholders to provide their comments in a timely manner.
6. The existing rule specifies in paragraph (d) that "Within ten days after the hearing or time for additional comment, the hearing office shall prepare a written report. . ." The proposed change eliminates the ambiguity of "within a period of time he deems appropriate."
7. Paragraph (c) limits the acceptance of public comments to 60 days for applications that do not have a public hearing.

Public Comments

There were 13 commenters that provided statements about time frames on when public comments may be submitted and when public hearings may be held to the Department on an application. The comments can be summarized into the points below:

1. Comments were provided that stated if comment windows close after 10 days following a hearing or 60 days if there is no public hearing that it would limit public comment and other agency input. As proposed, if the application changes significantly after the public hearing additional comments would not be allowed on the changes. There were concerns that State agencies would not be allowed to comment on any new or changing information that arises after a public hearing.
2. Comments stated that a public hearing must be held for substantial permit modifications and not limited to adding land to the existing permit. Additionally, comments proposed that additional language be added to allow a public hearing for application that add lands to affected area of permit.
3. Comments requested that 05B .0111(c) not eliminate "reasonable" in the sentence that states "The hearing officer may impose reasonable limitations on the length of time that any person may speak…".
4. Comments were provided that stated if comment windows close after 10 days following a hearing or 60 days if there is no public hearing that it would limit public comment. As proposed, if the application changes significantly after the public hearing additional comments would not be allowed on the changes. Comments recognized the need to close the window to complete the officer hearing report for the public hearing but questioned the authority of closing the public process altogether. There were questions how the Department could be expected to not consider relevant information if it is received, it must be considered. Comments proposed language that the public comment window should be open for 30 days after every change in the application or additional information submittal. It was stated that whether the Department received the comment from the public, or other means, for example, a newspaper article, the information is the same. Allowing one form of comment but not the other appears arbitrary.
5. There were comments questioning how is the Department showing they are giving full consideration to all comments.

Hearing Officer Response

1. The time limit on accepting public comments is necessary to allow sufficient time to respond to the comments and possibly make modifications based on the comments while still timely making a decision on the permit. The proposed rule does not propose that agency comments will not be considered after 10 days following a hearing or 60 days if there is no hearing, rather the limit is only applied to public comments. It is expected that if there is an agency comment provided to the Department in response to an application or supplemental information provided in response to an additional information request, that the information would be sent back to the commenting agency so that they may review the supplemental information to ensure their comment has been addressed.
2. Pursuant to G.S. 74-51(c) "If the Department determines, based on public comment relevant to the provisions of this Article, that significant public interest exists, the Department shall conduct a public hearing on any application for a new mining permit or for a modification of a mining permit to add land to the permitted area, as defined in G.S. 74-50(b)." The statue is requires public hearing when there is significant public interest in new applications or applications for a modification adding land to a permit boundary. Statute does not require a public hearing for applications that add lands to the affected area of a permit. The additional language proposed in rule will now align with statue.
3. The term "reasonable" in 05B .0111(c) that states "The hearing officer may impose reasonable limitations on the length of time that any person may speak…" is vague. It is proposed for elimination because it does not add clarity to the sentence.
4. In the instance where there is a public hearing for a mine permit application, there needs to be a closing date on the public comments to be included in the hearing officer report, otherwise it would be impossible to complete the report. The current rule closes the comment period after 10 days, comments that come in after the window are not included in the hearing report but may be considered in the review of the application. The Commission believes that an indefinite comment window for public comments unduly extends the potential for permit review. If there is a permit issued where the public believes the Department has made an error in issuance and overlooked a potential comment, or if there are additional conditions that the public believes should be in the permit, there are options pursuant to G.S. 74-61 to contest the decision of the Department. Additionally, pursuant to G.S. 74-57 the Department may modify the permit or reclamation plan if it determines that "the activities under the reclamation plan and other terms and conditions of the permit are failing to achieve the purposes and requirements of [the Mining Act]". Ongoing violation of the Mining Act could result in suspension or revocation of the permit pursuant to G.S. 74-58.
5. The hearing officer report is completed following a public hearing where the hearing officer will capture the comments from the hearing and provide a response to the criteria in the denial criteria of the Mining Act. There is typically also a summary of the comments that were received that do not address the denial criteria and to which the Department does not have the authority to address.

Revised Language for Readoption

No revision made to the proposed rule language.

15A NCAC 05B .0112 PERMIT APPLICATION PROCESSING FEES

Proposed Language for Readoption

Proposal to remove most of the fee requirement specifications in 05B .0112 "Permit Application Processing Fees."

1. The existing rule contains outdated application processing fees that have since been modified by the General Assembly. It was concluded that including them again in the rule was not the best alternative since it runs the risk of violating the Administrative Procedure Act prohibitions on repeating statutes in the rules. Also, any future statutory fee change would necessitate the lengthy rule-making process to update the rules without providing a corresponding benefit.
2. Clarifications are proposed to be added to clarify how to total new acres added and new acres affected within a previously approved area. In addition, it is proposed to clarify the fee when considering acreage between 25.0 and 26.0.
3. New paragraph (b) clarifies that administrative changes initiated by the Director require no fee.
4. New paragraph (c) states that new permits issued between September 1 and December 31– which is after initial invoices are sent for the annual fees – are not required to pay the annual fee for the same calendar year. This is a codification of an existing practice; as such, there will be no change for the regulated community or the state in terms of the process or the amount of fees collected.

Public Comments

1. None.

Hearing Officer Response

1. None.

Revised Language for Readoption

No revision made to the proposed rule language.

15A NCAC 05B .0113 RESPONSE DEADLINE TO DEPARTMENT'S REQUEST(S)

Proposed Language for Readoption

Proposal to update language consistent with statute. Since the Statute has changed to issue "Life-of-Site" permits, renewals are no longer part of the permitting process. This rule also removes the authority of the Mining and Energy Commission to extend the time to respond to requests.

Public Comments

1. One comment suggesting grammatical changes.

Hearing Officer Response

1. The comment suggests changes to the rule so that the permit action (i.e. new, modification, or transfer) all read consistently in the past tense. Staff agree that the action should be consistent however rather than use the past tense it is recommended that the action is centered around the permit itself. It is recommended to revise the language. The context of the rule remains unchanged. **The proposed changes to the rule are shown below.**

Revised Language for Readoption

15A NCAC 05B .0113 RESPONSE DEADLINE TO DEPARTMENT'S REQUEST(S)

An applicant or permittee shall submit to the Department supplemental information regarding an application for a new permit, ~~modified permit, or permit renewal~~ permit modification, or permit transfer within 180 days after the date of receipt of the Department's written ~~request(s)~~ request for such information. Upon written request of the applicant or permittee to the Director, an additional ~~reasonable~~ specified period of time not to exceed one year ~~shall~~ may be granted ~~upon determination of good cause~~ by the Director. ~~Additional time may be granted by the Mining and Energy Commission, provided written request is made by the applicant or permittee before the expiration of the one-year period.~~

15A NCAC 05B .0114 BLASTING

Proposed Language for Readoption

Proposal to adopt new rule 05B .0114 "Blasting" to set requirements for monitoring air blast and ground vibration as well as reporting requirements and mitigation efforts for flyrock. The rule specifies that all blasts must be monitored at the nearest non- company-owned dwelling by a seismograph. Compliance is determined by the "Z-Curve" that measures ground movement in inches/second measured against frequency. It also provides limits for air over pressure listed in a table. If the seismograph fails, there are formulas that have been added to calculate theoretical values. The rule also requires that blast records contain specific information including date and time of blast, geometry of shot and amount of explosives. These records shall be provided to the Department upon request.

Public Comments

There were 12 comments that provided statements to address the addition of the blasting rule 05B .0114. These 12 comments had many of the same concerns.

1. Comments stated that blasting location should include GPS coordinates and elevation as Mean Sea Level (MSL).
2. Comments stated that blast records from permitted sites should be submitted to the Department not only at the time of request but on a periodic basis. Many comments recommended a quarterly submission. Additionally, there were comments that suggested that the Department refuses to ask for blast records.
3. Comments stated that any exceedance of the limits should warrant correction action or potential revocation.
4. Comments requested reference to be provided for formulas in 05B .0114(c).
5. Comments requested that consistent language terms be used for regularly occupied structure and inhabited building. The comment recommended the use of regularly occupied structure.

Hearing Officer Response

1. The proposed rule adds the requirement for permittees who are blasting to maintain records on each blast and include the location of the blast on these records. This requirement is consistent with federal requirement in 30 CFR 817.68. In addition, the location must be accurate to provide the distance from blast to closest offsite regularly occupied structure. The Commission has proposed these additional requirements, while also striving to avoid creating a requirement for dual reporting where mine operators would have to retain records that meet the requirements of the Mine Safety and Health Administration and a second set of records to meet the requirements for the Department. As proposed the required information will satisfy both requirements.

   Comments made statements that blast location should include GPS coordinates. While it is assumed that commenters meant that blast location should include latitude and longitude, none of the comments went into the detail on which coordinate system or horizontal datum should be utilized. A requirement specifying that permittees must utilize latitude and longitude would not allow the use of state plane coordinate system which is arguably more accurate on a smaller scale.

   GPS based location and GPS Surveying has become more prevalent as technology has become more accessible, however traditional surveying utilizing total stations is still widely utilized and can even be a better solution depending on site conditions. Shots that are deep in the pit and near a highwall may be too far away from the horizon to acquire satellite connectivity depending on satellite location. In this scenario a total station would be better utilized for surveying locations within the pit. Requiring permittees to use GPS location would limit other valuable surveying methods.

   The requirement of Mean Sea Level (MSL) would limit other widely accepted vertical datum such as North American Vertical Datum or World Grid system. As proposed the rule allows the applicant to use any acceptable datum including MSL, NAVD88, or WGS84.

2. When the Department receives a complaint about a blast or if the Department believes that a blast has violated the proposed rule or the conditions of the permit it will request blast records to conduct an inspection pursuant to G.S. 74-56(a). The Commission believes that a blanket request of all blast data is outside the scope of the Mining Act and therefore is outside the scope of the Mining rules.

   Additionally, there are roughly 145 active mining permits that currently have blasting as a condition of their permit. These operations blast anywhere from once a week to once a quarter depending on production demands. Assuming that each permittee blasts every other week would mean that the Department would receive 4,060 blasting reports. The review of every blasting report is impractical and inefficient as there are historically less than 5 blasting violations per year. Even if there is no routine submission of blasting records, the Department retains the authority to obtain blasting records upon request.

3. Any exceedances of the limits for air overpressure or ground vibration proposed in rule would be a violation of the proposed rule. Pursuant to G.S. 74-64 operators who violate any rule adopted under the Mining Act may be subject to a civil penalty. The Notice of Violation will specify a time period and corrective actions to correct the violation. In addition to civil penalties, G.S. 74-58 details the process for suspension or revocation resulting from a violation.

4. Added the formula to 05B .0114(c) from ISEE Blasters Handbook17th Edition ISBN:1-892396-00-9. **The proposed changes to the rule are shown below.**
5. During the drafting of the proposed rules there was not active intention to differentiate between regularly occupied structure and inhabited building in 05B .0114(b), (c), (d), (e). It is recommended to make the language consistent and utilize regularly occupied structure. **The proposed changes to the rule are shown below**.

Revised Language for Readoption

15A NCAC 05B .0114 IS PROPOSED FOR ADOPTION AS FOLLOWS:

15A NCAC 05B .0114 BLASTING

(a) At any site where blasting occurs, the operator shall monitor each blast with a seismograph located at a distance no farther than the closest off site regularly occupied structure not owned or leased by the operator. A seismographic record including peak particle velocity, air overpressure, and vibration frequency levels shall be kept for each blast, except as provided in Paragraphs (c) and (e) of this Rule.

(b) In all blasting operations, the maximum peak particle velocity of any component of ground motion shall not exceed the alternative ground vibration limits in this Paragraph at the nearest regularly occupied structure outside of the permitted area such as a dwelling house, church, school, or public, commercial, or institutional building.

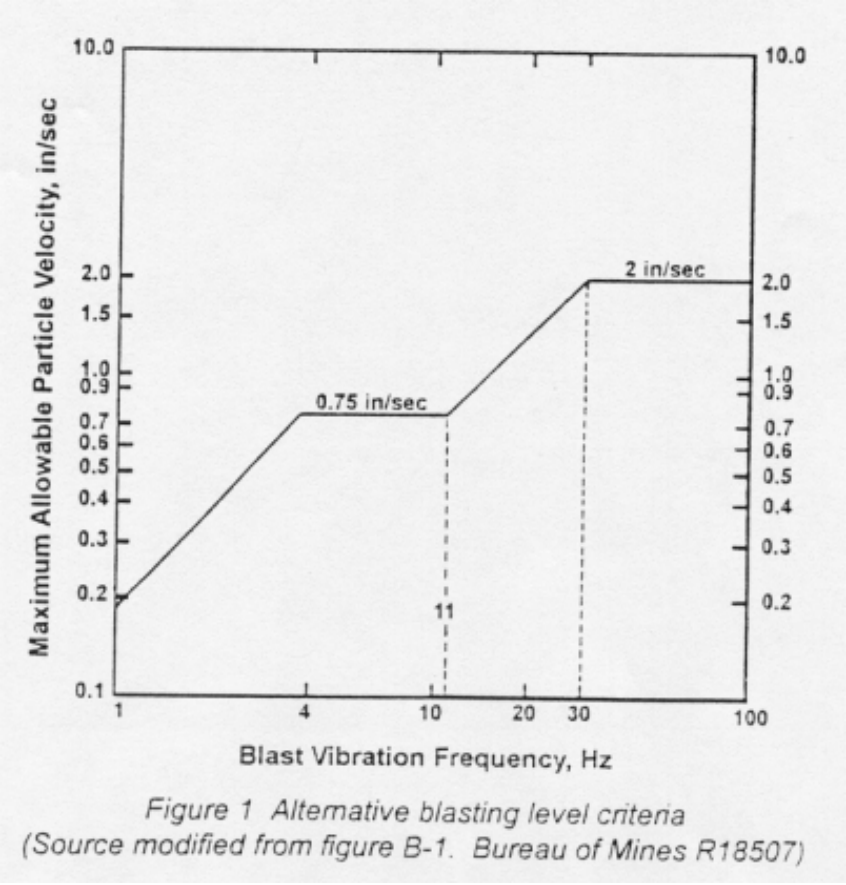

Figure 1 Alternative blasting level criteria
(Source modified from figure B-1. Bureau of Mines R18507)

(c) In the event of seismograph malfunction or other condition that prevents monitoring, blasting shall be conducted in accordance with the following scaled distance formulas:

Formula from ISEE Blasters Handbook17th Edition ISBN:1-892396-00-9

$$W = \left(\frac{D}{Ds}\right)^2 \qquad Ds = \frac{D}{\sqrt{W}} \qquad V = 160(Ds)^{-1.6}$$

W = Maximum charge weight of explosives per delay period of 8 milliseconds or more (pounds).

D = Distance from the blast site to the nearest regularly occupied structure not owned or leased by the mine operator. (feet).

Ds = Scaled distance factor.

V = Peak Particle Velocity (inches per second).

The peak particle velocity of any component shall not exceed 1.0 inch per second, for the purposes of this Paragraph.

(d) Air blast overpressure resulting from surface blasting shall not exceed 129 decibels linear (dBL) as measured at the nearest regularly occupied structure not owned or leased by the operator outside of the permitted area such as a dwelling house, church, school, or public, commercial, or institutional building, unless an alternate level based on the sensitivity of the seismograph microphone as specified in this Paragraph of this Rule:

Lower Frequency Limit of Measuring System (Hz)	**Max Level (dBL)**
0.1 Hz or lower-flat response	134 peak
2.0 Hz or lower-flat response	133 peak
6.0 Hz or lower-flat response	129 peak

(e) In the event of seismograph malfunction or other condition that prevents monitoring, blasting shall be conducted in accordance with the following formulas:

Formula from ISEE Blasters Handbook17th Edition ISBN:1-892396-00-9

$$P = 1.0\left(\frac{D}{\sqrt[3]{W}}\right)^{-1.1}$$

$$dB = 20\ log\left(\frac{P}{2.9x10^{-9}}\right)$$

P = Airblast overpressure average burial (pounds per square inch).

W = Maximum charge weight of explosives per delay period of 8 milliseconds or more (pounds).

D = Distance from the blast site to the nearest regularly occupied structure not owned or leased by the mine operator (feet).

dB = Airblast overpressure average burial (decibels).

A = Air blast or air overpressure for typical quarry situations (decibels).

The air blast/overpressure shall not exceed 129 decibels, for the purposes of this Paragraph.

(f) For the purposes of calculating Scale Distance, when using electronic detonators, the maximum charge weight of explosives per delay shall be calculated using actual delay of separation, a minimum delay of 1 milliseconds. When using non-electric detonators, the maximum charge weight shall be calculated on a delay of 8 milliseconds.

(g) The operator shall maintain records on each individual blast describing:

(1) name of Company or contractor;

(2) date, and time of the blast;

(3) type of material blasted;

(4) the total number of holes;

(5) pattern of holes and delay of intervals;

(6) depth and size of holes;

(7) type and total pounds of explosives;

(8) maximum pounds per 8ms delay interval;

(9) amount of stemming and burden for each hole;

(10) blast location;

(11) distance from blast to closest offsite regularly occupied structure;

(12) weather conditions at the time of the blast; and

(13) Whether mats or other protections were used.

Records shall be maintained at the permittee's mine office and copies shall be provided to the Department upon request.

(h) The operator shall take all reasonable precautions to ensure that flyrock is not thrown beyond areas where access is temporarily or permanently guarded by the operator.

(i) The operator shall provide to the Department a copy of the findings of the seismic studies conducted at the mine site by the permittee or their representative in response to an exceedance of a level allowed by these blasting conditions. The operator shall make an effort to incorporate the studies' recommendations into the production blasting program.

History Note: *Authority G.S. 74-51; 74-63;*
Eff. XXXX X, 2025.

15A NCAC 05B .0115 MINING PERMIT TRANSFERS

Proposed Language for Readoption

Proposal to adopt new rule 05B .0115 "Mining Permit Transfers" to clarify the requirements of documents and information to submit to the Department. The rule adds the requirement to submit a letter from the new permittee and existing permittee requesting the change, a non-refundable fee, contact information for the new permittee, business filing from the Secretary of State, land entry agreement, and reclamation security.

Public Comments

1. There was one comment that provided the statement that the requirement to record the Land Entry Agreement is costly and cumbersome for large, permitted areas with multiple tracts and landowners. The comment also stated that the current process with the Land Entry Agreements has been upheld by the courts allowing both the Department and its contractors to access the property for mine reclamation purposes.

Hearing Officer Response

1. The current practice of submitting a right of entry agreement with landowner and applicant signatures as part of an application for a new permit, permit modification, or permit transfer only provides a snapshot of landownership at the time of the application. Often times a landowner may sell their property to a new landowner, outside of any mine permit activity. When this happens the right of entry agreement on file with the Department is not up to date since the new landowner has not signed this document. Mine permittees are not in the practice of letting the new landowner know of the requirement to sign the right of entry agreement, nor are they in the practice of sending to the Department and updated right of entry agreement every time land where the permit is located changes hands.

   Recording the right of entry agreement ensures that each time the property changes hands the agreement remains up to date for the current owner. This is even more important on large permitted areas with multiple tracts and landowners because it eliminates the need for the permittee to manage the paperwork for right of entry agreements for each individual landowner.

Revised Language for Readoption

No revision made to the proposed rule language.

15A NCAC 05B .0116 PERMIT TRANSFERS DUE TO CORPORATE NAME CHANGES

Proposed Language for Readoption

Proposal to adopt new rule 05B .0116 "Permit Transfers Due to Corporate Name Changes" to clarify the requirements of documents and information to submit to the Department. The rule adds the requirement to submit a letter from the new permittee and existing permittee requesting the change, a non-refundable fee, contact information for the new permittee, mine maps, land entry agreement, and reclamation security.

Public Comments

1. There was one comment that provided the statement that the requirement to record the Land Entry Agreement is costly and cumbersome for large, permitted areas with multiple tracts and landowners. The comment also stated that the current process with the Land Entry Agreements has been upheld by the courts allowing both the Department and its contractors to access the property for mine reclamation purposes.

Hearing Officer Response

1. The current practice of submitting a right of entry agreement with landowner and applicant signatures as part of an application for a new permit, permit modification, or permit transfer only provides a snapshot of landownership at the time of the application. Often times a landowner may sell their property to a new landowner, outside of any mine permit activity. When this happens the right of entry agreement on file with the Department is not up to date since the new landowner has not signed this document. Mine permittees are not in the practice of letting the new landowner know of the requirement to sign the right of entry agreement, nor are they in the practice of sending to the Department and updated right of entry agreement every time land where the permit is located changes hands.

   Recording the right of entry agreement ensures that each time the property changes hands the agreement remains up to date for the current owner. This is even more important on large permitted areas with multiple tracts and landowners because it eliminates the need for the permittee to manage the paperwork for right of entry agreements for each individual landowner.

Revised Language for Readoption

No revision made to the proposed rule language.

15A NCAC 05B .0117 DRAFT PERMITS

Proposed Language for Readoption

Proposal to adopt new rule 05B .0117 "Draft Permits" to clarify that a preliminary draft that may be sent with a bond request is not issued or binding.

Public Comments

1. There was one comment provided that stated that Draft permits should be posted on the website to allow public transparency.

Hearing Officer Response

1. The new rule clarifies that any draft permit generated at approval of an application but prior to issuance shall be considered draft and non-binding. Pursuant to G.S. 74-50(c), no permit shall become effective until the operator has deposited with the Department an acceptable performance bond or other security pursuant to G.S. 74-54. Once a final decision on a permit has been made by the Department, the issued permit shall be posted to a publicly available website and the period in which to file a contested case shall begin pursuant to G.S. 74-61. Prior to issuance of the permit, no final decision has been made for which to file a contested case.

   It is the current practice of the Department to post the application materials, additional information requests, supplemental responses, draft permits and bond requests to a publicly available website as they are generated. Any items generated by the Department during the review of an application would also be subject to a public records request.

   The proposed rule does not add a requirement to the applicant or the Department and simply clarifies that a draft permit is non-binding. It is recommended to keep the proposed rule as is.

Revised Language for Readoption

No revision made to the proposed rule language.

15A NCAC 05F .0101 PURPOSE AND SCOPE

Proposed Language for Readoption

Proposal to remove the authority of the Mining and Energy Commission to hear appeals of assessed penalties to be consistent with statute.

Public Comments

1. None.

Hearing Officer Response

1. None.

Revised Language for Readoption

No revision made to the proposed rule language.

15A NCAC 05F .0103 WHO MAY ASSESS

Proposed Language for Readoption

Proposal to capitalize Director

Public Comments

1. None.

Hearing Officer Response

1. None.

Revised Language for Readoption

No revision made to the proposed rule language.

15A NCAC 05F .0105 CIVIL PENALTY FOR MINING WITHOUT A PERMIT

Proposed Language for Readoption

Proposal to have the Division Director sign notification letters in the future. The existing rule specifies that the "regional engineer" signs the letter notifying the person alleged to be operating without a permit. However, 05F .0106 "Civil Penalty for Violating Operating Permit" specifies that the Director signs those letters. The staff could see no benefit from specifying that the "regional engineer," which is now an inaccurate classification, sign the "Operating Without a Permit" letter and have the Director sign the "Violating Operating Permit" letter. Therefore, for consistency, rule 05F .0105 is proposed to be modified to also assign that duty to the Division Director.

Public Comments

1. None.

Hearing Officer Response

1. None.

Revised Language for Readoption

No revision made to the proposed rule language.

15A NCAC 05F .0106 CIVIL PENALTY FOR VIOLATING OPERATING PERMIT

Proposed Language for Readoption

Proposal to remove language that specifies notice prior to an assessment. The language in (a) matches almost exactly what exists in statute.

Public Comments

1. There was one comment provided that stated that the rule should not be readopted with the notice provision removed.

Hearing Officer Response

1. The notice provision in 05F .0106(a) is nearly identical to what is in statute in G.S. 74-64(a)(1)b. Notice of a Violation is required to be provided to an operator by the Department in writing, which shall describe the violation with reasonable particularity, shall specify a time period reasonably calculated to permit the violator to complete actions to correct the violation, and shall state that failure to correct the violation within that period may result in the assessment of a civil penalty.

Revised Language for Readoption

No revision made to the proposed rule language.

15A NCAC 05F .0108 ADMINISTRATIVE REMEDIES

Proposed Language for Readoption

Proposal to repeal Rule 05F .0108 "Administrative Remedies".

Public Comments

1. None.

Hearing Officer Response

1. This rule was absent from the Notice of Text, however, was included in the RIA and Draft Rules. This was proposed as unnecessary during the necessary and unnecessary process because it is redundant with statute. **The proposed changes to the rule are shown below.**

Revised Language for Readoption

15A NCAC 05F .0108 IS PROPOSED FOR REPEAL AS A READOPTION AS FOLLOWS:

~~**15A NCAC 05F .0108 ADMINISTRATIVE REMEDIES**~~

~~Within 60 days after receipt of notification of any civil penalty assessment, the person against whom the civil penalty is assessed may contest the decision of the department by filing a petition as described in G.S. 74-61 and G.S. 150B-23.~~

History Note: *Authority G.S. 74-61; 74-62; 74-63; 74-64; 143B-10;*
Eff. May 1, 1982;
Amended Eff. August 1, 1988.
Repealed Eff. XXXX, 2026

15A NCAC 05F .0111 REFERRAL TO ATTORNEY GENERAL

Proposed Language for Readoption

Proposal to repeal Rule 05F .0111 "Referral to Attorney General".

Public Comments

1. There was one comment provided that stated there was no reason to eliminate the referral to the Attorney General.

Hearing Officer Response

1. The processes for referral to the Attorney General is detailed in G.S. 74-64(a)(3). The rule is not necessary since the process is already defined in statute. In addition, the timeline in the rule was inconsistent with statute.

Revised Language for Readoption

No revision made to the proposed rule language.

15A NCAC 05F .0112 FURTHER REMEDIES

Proposed Language for Readoption

Proposal to repeal Rule 05F .0112 "Further Remedies".

Public Comments

1. There were 7 comments that provided statements questioning the proposal to repeal 05F .0112. The comments stated that the Director should have the authority to pursue other remedies of enforcement against operators who were violating the Mining Act.

Hearing Officer Response

1. The reason for the proposed repeal is the Commission believes this rule redundant with the statute, G.S. 74-64(a)(5) which states "In addition to other remedies, the Department may request the Attorney General to institute any appropriate action…" The statute recognizes that that the Department has within its authority the ability to pursue other remedies separate from requesting the Attorney General to pursue action. The rule as written did not provide any clarity other than stating that the right of the Director shall not be impaired to pursue other remedies already provided by law.

   It can also be noted that pursuant to G.S. 74-49(4) ""Department" means the Department of Environmental Quality. Whenever in this Article the Department is assigned duties, they may be performed by the Secretary or an employee of the Department designated by the Secretary." This authority to pursue other remedies is extended to the Director through the authority delegated to them by the Secretary.

Revised Language for Readoption

No revision made to the proposed rule language.

15A NCAC 05G .0103 PROCEDURES FOR OBTAINING PERMITS

Proposed Language for Readoption

Proposal to readopt without changes.

Public Comments

1. None.

Hearing Officer Response

1. None.

Revised Language for Readoption

No revision made to the proposed rule language.

15A NCAC 05G .0104 ABANDONMENT PLAN: BONDING REQUIREMENTS

Proposed Language for Readoption

Proposal to update Rule 05G .0104 "Abandonment Plan: Bonding Requirements" to make grammatical corrections and capitalize Department.

Public Comments

1. None.

Hearing Officer Response

1. None.

Revised Language for Readoption

No revision made to the proposed rule language.

15A NCAC 05G .0105 DRILLING: CASING: TESTING AND ABANDONMENT

Proposed Language for Readoption

Proposal to update Rule 05G .0105 "Drilling: Casing: Testing and Abandonment" to align with current rule formatting requirements.

Public Comments

1. None.

Hearing Officer Response

1. None.

Revised Language for Readoption

No revision made to the proposed rule language.