



REGULATORY IMPACT ANALYSIS
for
Proposed Revisions for Mining Rules in 15A NCAC Chapter 05

General Information

Agency: Department of Environmental Quality, Division of Energy, Mineral, and Land Resources (DEMLR)

Commission: N.C. Mining Commission

Chapter Title: Mining: Mineral Resources

Citation: [15A NCAC Chapter 05](#), Subchapters: 05A, 05B, 05F and 05G

Rulemaking Authority: GS 143B-290

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Impact Summary:

State government:	Minor
Local government:	Minor
Federal government:	None
Regulated entities	Yes
Substantial economic impact:	No

A. Purpose of the Mining Act Rules in Chapter 05

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 NC 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.

B. Necessity for Rule Changes

§ 150B-21.3 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.

C. Regulatory Baseline

As part of the permanent rulemaking process, N.C. Gen. Stat. § 150B-19.1(e) requires agencies to quantify to the “greatest extent possible” the costs and benefits of proposed rule changes to affected parties. To do so, it is necessary to establish a regulatory baseline for comparison. For this analysis, the following items are considered the baseline: (1) the current version of rules in Subchapters 15A NCAC 05A, 05B, 05F, and 05G; and (2) G.S. 74-46 et seq. (The Mining Act of 1971).

D. Rule Change Proposals and Expected Regulatory Impact

The Mining Commission is proposing 23 rules for either readoption with no change, readoption with amendments, repeal through readoption, amendment, adoption or repeal. These 23 rules are rules that are proposed to be newly adopted rules, codify existing practices in rules, incorporate material by reference, add requirements from other rules, are rules proposed to be repealed, are proposed to be readopted with minor language changes, or are proposed to be readopted without any changes. The rules, as proposed, will continue to allow for mining activities while also helping ensure that the state's natural resources are mined in a manner that minimizes environmental impacts and protects surrounding communities. The rules will apply to anyone subject to the requirements in the Mining Act of 1971, which could include private companies, individuals, local governments. Pursuant to NCGS 74-67, NCDOT or their contractor, or mining on federal lands under a valid permit from USFS or US BLM are exempt from these rules. Year over year the state maintains roughly 720 – 750 permits depending on new issuances and releases after the site has been reclaimed. Over the past 5 years we have permitted 100 new permits, and the Department believes that this general trend will continue. Likewise, over the past 5 years we have inspected and determined that the permit has been reclaimed and ready for release. As of August 2025, there are currently 722 permitted sites that the changes in the rules would apply to. In North Carolina there are various commodities that are extracted through mining. Of the 722 mines 64% are sand and gravel sites, 20% are construction aggregate, 5% are brick clay mines, and the remainder are various commodities including lithium, phosphate, and silica.

1. Proposal to update rule .05A .0101 on “Name and Address” to Update the Department name and Mailing Address.

Expected Regulatory Impact: None.

2. Proposal to update rule .05A .0202 on “Authorities and Definitions” 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”

Expected Regulatory Impact: Added definitions will result in improved rule clarity. This improved clarity is expected to provide negligible benefits to applicants and permittees.

3. **Proposal to update rule .05B .0103 on “Bonding Requirements” 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.

Expected Regulatory Impact: **Minor.** The increase on the maximum allowable bond to be required was a change in statute and the update in rule reflects that statutory change. The increase in the individual factors accounts for 30 years of inflation. Dollar values would be roughly equivalent to the 1994 values approved by the Commission accounting for inflation and would not result in a relative financial increase to the regulated community when inflation is considered. The bonding calculation will only be performed during permit actions (new, modification, transfers) or enforcement that would require the permittees to post new or additional bonding adequate to cover reclamation costs.

Adding the required information to be included for the reclamation security submit to the Department is not changing the current process, however it is placing in rule the information provided on forms.

4. **Proposal to update rule .05B .0104 on “Information Required in Permit Application” 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.

Expected Regulatory Impact: **Minor** The additional requirement to record the land entry agreement with the deed will add a cost for new applications. It is estimated that this cost will be \$26 (standard recording fee). However, this will eliminate the need to

provide updated paperwork to the Department every time the land changes hands. Without this requirement in rule, it would be up to the permittee to have a new land entry completed and submitted to the Department each time the land is sold. Often this is not in the control of the permittee if they are operating on leased lands. It is rare for this to occur, however when it does, this rule offers protection to the land owner, the permittee, and the Department. It is the Department's estimate that it occurs less than once per year. The rule does not dictate who pays the recording fee.

5. **Proposal to update rule 05B .0105 on “Conditions which may be included in the permit” to add hydrogeologic studies.** 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.

Expected Regulatory Impact: None

These are examples of conditions that could be included in permits if the site specific conditions require but are not required in every permit. Some permits currently have the condition to provide a dewatering mitigation plan according to a hydrogeological study performed during the application process. Hydrological studies including modeling and reporting can range between \$150,000 up to \$350,000, with the average around \$170,000. These estimates were provided by current permittees within North Carolina. Over the last three years the Department estimates that there have only been 5 applications approved that required in-depth hydrological study that would have been equivalent to the \$170,000 estimate.

6. **Proposal to modify rule 05B .0106, “Standards for Denying an Application”. The staff recommended clarifying that the denial criteria apply when element can't be mitigated.** In addition, there was clarification the incorporation of surface water standards.

Expected Regulatory Impact: The changes will improve rule clarity, which should provide negligible benefits to applicants and permittees.

7. **Proposal to update rule 05B .0110 “Mining Reclamation Reports” 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.

Expected Regulatory Impact: Minor. Eliminating the requirement to submit an annual fee for sites that request release before the late deadline of September 30 would result in a loss of revenue to the State. Over the last 5 years the Department received 30 release requests in the Months of August and September that were then subsequently released, representing an average annual revenue loss of \$2,400. However, these sites were already complete and ready for release, and the fees were billed due to paperwork errors by the permittees. Allowing permittees to avoid paying the annual fee for sites that are complete and ready for release ensures that fees are not collected unnecessarily for sites that no longer require oversight.

8. **Proposal to change conditions in rule 05B .0111 for the Department holding public hearings** for applications for new or modified permit requests. The following changes were proposed:

- a) 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.
- b) 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.
- c) 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.
- d) 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.
- e) 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.
- f) 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.”
- g) Paragraph (e) limits the acceptance of public comments to 60 days for application that do not have a public hearing.

Expected Regulatory Impact: None

The proposed changes are to provide clarity and more consistency with the statutes and not to introduce any new requirements. The impacts on the public or the state agency should be minimal or nonexistent.

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

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.

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 acres between 25.0 and 26.0.

New paragraph (b) clarifies that administrative changes initiated by the Director require no fee.

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.

Expected Regulatory Impact: Minor

The removal of application processing fees from the rules will have no effect, as those fees are already addressed in statute.

Over the last 5 years, there were an average of 28 permits issued between September 1 and December 31, or an average of 5.6/year, which equates to roughly \$2,240 per year in annual fee revenue that was not collected. Because this is the existing practice, this should be considered an ongoing reduction in potential revenue. However, since the billing system is built around September 1 as a deadline for annual fee payments, requiring permits issued after that date to pay the same-year fee would be impractical. It would essentially mean billing new permit holders for a payment they had no realistic opportunity to make, and it would result in invoices that are immediately past due.

For this reason, while the rule does result in a small, but ongoing, cost to the State in the form of reduced fee revenue, it reflects the only feasible and administratively consistent approach.

- 10. Proposal to update rule 05B .0113 “Response Deadline to Department’s Request(s)” to update language consistent with statute.** Since 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.

Expected Regulatory Impact: None

- 11. Proposal to for 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.

Expected Regulatory Impact: None. Currently, any site that conducts blasting is required to utilize a seismograph and monitor the blasts as well as maintain records of blasts and provide them to the Department when requested as part of their permit conditions. These conditions were developed to address mitigation of denial criteria 74-51(d)(4). This rules moves the conditions from the permit to rule. No changes from an operational standpoint are occurring. Any future site that has blasting as part of their operation

would have to monitor using a seismograph as a permit condition. After soliciting feedback from several permittees, the Department estimates that seismograph monitoring costs are roughly \$400 – \$700 per seismograph per month. Over the last three years there have been 3 new applications that have blasting as a condition.

- 12. Proposal to add new rule 05B .0115 “Mining Permit Transfers” to clarify the requirements of documents and information to submit to the Department.** The rule add 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.

Expected Regulatory Impact: **None.** No changes to current process, this is taking a checklist that is currently used by the permittees and adding it to rule. All requirements added are a subset of the new and modification requirements.

- 13. Proposal to for 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 add 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.

Expected Regulatory Impact: **None.** No changes to current process, this is taking a checklist that is currently used by the permittees and adding it to rule. All requirements added are a subset of the new and modification requirements.

- 14. Proposal to for 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.**

Expected Regulatory Impact: **None.** The Department regularly circulates draft versions of the permit to the permittee upon application approval. This rule is proposed to clarify that any circulated copies of draft working version of the permit are not binding until issuance. Both the public and the regulated community will benefit from the removal of ambiguity of draft permits.

- 15. Proposal to modify rule 05F .0101 “Purpose and Scope” to remove the authority of the Mining and Energy Commission to hear appeals of assessed penalties.**

Expected Regulatory Impact: **None.** This authority is set in statute and given to the Office of Administrative Hearings pursuant to 74-61

- 16. Proposal to modify rule 05F .0103 “Who may Assess” to capitalize Director.**

Expected Regulatory Impact: **None**

- 17. Proposal to modify 05F .0105 “Civil Penalty for Mining Without a Permit” 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.

Expected Regulatory Impact: None

There should be no regulatory impact for having the Director sign these letters. The proposed change is intended to provide more consistency in implementation. However, it seems that the Director now signs these notifications rather than the regional staff, so no impact is expected.

- 18. Proposal to modify rule 05F .0106 “Civil Penalty for Violating Operating Permit” to remove language that specifies notice prior to an assessment.** The language in (a) matches almost exactly what exists in statute.

Expected Regulatory Impact: None

The staff will still use the process defined in statute 74-64.

- 19. Proposal to repeal Rule 05F .0108 “Administrative Remedies”.**

Expected Regulatory Impact: None

The staff will still use the administrative remedies defined in statute.

- 20. Proposal to repeal Rule 05F .0111 “Referral to Attorney General”.**

Expected Regulatory Impact: None

The staff will still use the process defined in statute 74-64(a)(3).

- 21. Proposal to repeal Rule 05F .0112 “Further Remedies”.**

Expected Regulatory Impact: None

The staff will still use the process defined in statute.

- 22. Proposal to update Rule 05G .0104 “Abandonment Plan: Bonding Requirements” to make grammatical corrections and capitalize Department.**

Expected Regulatory Impact: None

- 23. Proposal to update Rule 05G .0105 “Drilling: Casing: Testing and Abandonment” to align with current rule formatting requirements.**

Expected Regulatory Impact: None

E. Summary

This document analyzes proposed revisions to North Carolina’s mining rules, including repeals, updates, and readoptions. Most changes are administrative or grammatical and are not expected to create significant regulatory impacts. Regulatory impacts of these changes are expected to be minor for both State and local governments as well as regulated entities, with no impact projected for federal entities. One of the more substantive changes includes updates to bonding levels to account for inflation, ensuring that financial assurances remain adequate for mine reclamation.

Additional changes align fee structures with statutory requirements, clarify application procedures, and strengthen public participation processes.

Importantly, these revisions do not alter the core operation of State or local sediment control programs, nor do they increase regulatory burdens for most permittees; updates mostly codify current practices and support regulatory transparency. Enhanced clarity and consistency in the rules are expected to benefit applicants, permit holders, and agency staff, supporting North Carolina's goal of responsible mineral extraction that minimizes environmental impacts and protects communities.

The Mining Commission's proposals are informed by stakeholder feedback, industry best practices, and statutory mandates. By ensuring rules are clear, modernized, and environmentally protective, the State continues to foster both economic activity and environmental stewardship.

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